

HEARING ON FOREST SERVICE ROAD RECON-  
STRUCTION ISSUES ON THE SOUTH CANYON  
ROAD

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FIELD HEARING  
BEFORE THE  
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
OF THE  
COMMITTEE ON RESOURCES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

NOVEMBER 13, 1999, WASHINGTON, DC.

**Serial No. 106-86**

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# HEARING ON FOREST SERVICE ROAD RECONSTRUCTION ISSUES ON THE SOUTH CANYON ROAD

SATURDAY, NOVEMBER 13, 1999

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH,  
COMMITTEE ON RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 1 p.m. at the Elko Convention Center, 700 Moren Way, Elko, Nevada, Hon. Helen Chenoweth-Hage (chairman of the subcommittee) presiding.

## STATEMENT OF THE HON. HELEN CHENOWETH-HAGE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mrs. CHENOWETH-HAGE. The Subcommittee on Forests and Forest Health will come to order. The subcommittee is meeting today in Elko, Nevada, to hear testimony on Forest Service reconstruction in Jarbidge, Nevada. I want to thank my colleague, Congressman Jim Gibbons, as well as the Elko County Commissioners for inviting the Subcommittee on Forests and Forest Health out to hold this hearing.

This is a very interesting set of circumstances out here. As you can well imagine, what may seem like just one afternoon's work does take an awful lot of work by a lot of staffers to put it together. At this time I would like to recognize those staffers who are so capable and who have done such a fine job for us.

I would like to first introduce my chief of staff of the subcommittee back in Washington, DC. With us here today, Doug Crandall. And the clerk of the committee is here, Michael Correia. He's back here.

And your own Karen Yates is here. And she's the recorder for today. And Jay Cranford from Congressman Gibbons' office and Gene Marchetti from Congressman Gibbons' office. So I want to thank all of them for the fine job that they have done.

And so now we will be getting into the nuts and bolts of the hearing. I do want to just set down a few little ground rules before we start. Many times there are statements that are given in the hearings where you just feel like you want to stand up and applaud. I want to let you know that this is an official Congressional hearing. It is not a town hall meeting, It is an official congressional hearing, so we keep the decorum of the hearing room. So we ask that there not be any applause; that you hold your applause. I

know how you feel. Sometimes I like to stand up and applaud, too, and I can't do it.

Our witnesses will be limited to a 5-minute time period. I do want to instruct our witnesses that there are lights there on the table. They are kind of like stoplights. As long as the green light is on, you can go ahead and testify. When the yellow light is on, it means step on the gas. And when the red light comes on, it means time is up. So we will be questioning you again. Both Congressman Gibbons and I will have a round each, maybe two rounds if we decide to do that, of questioning. So please be prepared for that.

So now with regard to the issue at hand, the thunderstorm that washed away parts of the South Canyon Road in the spring of 1995 must have also washed away common sense. This is evidenced by the recent notice of a potential United States governmental lawsuit against Elko County. It's hard to imagine that the attempt to reconstruct 1,700 feet of road can lead to 4 years of failed negotiations, endless environmental analyses, the emergency listing of the bull trout as threatened, the ranting and resignation of a Forest Service supervisor, numerous appeals, lawsuits, polarization, and distrust.

We are not here today to focus on personality disputes or to promote discord. Rather, we are here today to move this contentious and important issue and dispute toward rational resolution.

Now, the only way to accomplish this is to focus on pertinent facts and information and on the law. So the primary questions to be asked and answered today are questions of ownership and jurisdiction. Who owns the South Canyon Road? And who owns the private property adversely affected by the Forest Service's closure of that road? And what government agency or agencies have lawful jurisdiction over the legal issues involving this road and the properties affected? And last, who is liable to pay compensation for the infringements of property rights resulting from the road closure action?

Now, I would like to welcome my colleague, Mr. Jim Gibbons, for his opening statement and again express my sincere gratitude at being his guest in his district. Congressman?

[The prepared statement of Mrs. Chenoweth-Hage follows:]

**STATEMENT OF THE  
HONORABLE HELEN CHENOWETH-HAGE  
CHAIRMAN  
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
HEARING ON FOREST SERVICE ROAD RECONSTRUCTION  
IN JARBIDGE, NEVADA.  
November 13, 1999**

The thunderstorm that washed away parts of the South Canyon Road in the Spring of 1995 must have also washed away common sense. This is evidenced by the recent notice of a potential United States Government lawsuit against Elko County. It is hard to imagine that the attempt to reconstruct 1,700 feet of road could lead to four years of failed negotiations, endless environmental analyses, the emergency listing of the bull trout as threatened, the rantings and resignation of a forest supervisor, numerous appeals, lawsuits, polarization and distrust. We are not here today to focus on personality disputes or to promote discord, rather we are here to try and move this contentious and important dispute towards rational resolution. The only way to accomplish this is to focus on pertinent facts and information -- and on the law. So the primary questions to be asked and answered today are questions of ownership and jurisdiction. Who owns the South Canyon Road? Who owns the private property adversely affected by the Forest Service closure of the road? What government agency or agencies have lawful jurisdiction over the legal issues involving this road and the properties affected? And lastly, who is liable to pay compensation for the infringement of property rights resulting from the road closure action?

**STATEMENT OF THE HON. JIM GIBBONS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEVADA**

Mr. GIBBONS. Thank you very much, Madam Chairman. I too want to extend a great deal of thanks to all the people who have put on this event to hear this issue. I would like to make particular issue of thanks to the many people who are sitting in this audience today who have taken time out of a gorgeous weekend day to be present here to hear and get the information on this issue.

I would also like to welcome you to Nevada. I want to thank you for holding this hearing, to make sure that voices and issues like this are heard not just in Washington, DC. But in our districts, in our States, where events like this have become paramount to become literally the focus of much of our communities' activities, not just in Nevada but in other States as well.

This is an important hearing. It is important not just for the people of Elko. It's important for the people of Nevada, it's important for the people of Idaho and it's important for the people of America. At the beginning of this hearing I want to tell you that I want to keep my remarks as short as possible here.

Madam Chairman, events surrounding the reconstruction efforts of this road have become fodder for rhetoric, tirades, and unfortunately resulted in an escalation of tension and distrust between the Forest Service and the citizens of Elko County.

As we revisit this issue today in this congressional hearing, it's my hope that by the hearing's end we will have taken positive steps toward a resolution of this matter. Today let me say that the rhetoric will cease. Today the forum for speech will not be in the media on 15-second sound bites. But this congressional hearing as set forth by the Constitution of the United States will be the forum by which the information is put forward.

It's my understanding, Madam Chairman, that each of our witnesses will be sworn in, sworn in under oath, under penalty of perjury, and they will be bound by the U.S. Constitution to speak only the truth.

The importance of this open and public hearing should not be taken lightly. Today we are delving into a matter that represents a microcosm of a much broader issue and relationship. That is the relationship between Federal agencies and the citizens throughout the western United States. Our task today, our duty in fact today is to tell each side of this issue, and we will discuss for the public record a number of events and cover a wide array of legal matters involved. There are a number of questions that need to be asked and there are a number of questions that need to be answered. It's my hope that these questions will be answered today.

For example, as you articulately stated, who actually owns the road in the South Canyon that leads up to the wilderness area? In fact, I hope we will be able to determine legal ownership of the very road in question. And given the human activity in the Jarbidge Canyon prior to the formation of even the United States Forest Service, what documents show that the road area in question, if it does belong to somebody other than the people or the County of Elko, who does it belong to and by what documentation do they claim that ownership?

Additionally, this year, the State of Nevada experienced one of the worst fire seasons, Madam Chairman, in history. With this in mind and in light of the absence of all the access to this road, how can future forest fires be fought without a road leading to the edge of the wilderness area?

It was just this year we saw evidence of firefighters carrying all the equipment, water, tools, mile after mile just to reach an access to fire which could have been put out a lot earlier. But because they were denied access, they were unable to stop the fire. It destroyed much greater areas than was planned. After the record number of acres burned this year in northern Nevada, how can the habitat for even the endangered bull trout be protected unless there is a road?

Now, moving on, questions have arisen on the necessity of this congressional hearing. Since this issue is already in court, why would we proceed with this field hearing? Well, technically, several issues surrounding this matter fall under congressional jurisdiction. This hearing is the very best method for the legislative branch of our government to have a voice and a role in a situation where the executive and judiciary branches are already involved. But there is more than that. The citizens of the Second Congressional District of Nevada came to me with legitimate concerns about the road reconstruction issue. And I have the deep obligation to my constituents to make sure their concerns are addressed.

Fortunately, Chairman Chenoweth-Hage has provided this opportunity today to address these concerns in an open and public forum. This is not, as the Chairman stated, an inquisition. Nor is it an Elko witch hunt as some might believe. This hearing is not about finding fault with our U.S. Government employees. These employees in fact are real people who are trying to carry out their duties as best they can under the directions of their supervisors. Instead, our major responsibility, our duty to the citizens of Elko County is to use this public forum to determine the Federal agencies involved in this issue followed proper procedure.

Congress did not enact laws with the intent of excluding or limiting the people's access to public land. Indeed, the intent is to have these lands for the people now and in the future.

I welcome the opportunity to be here today. What we learn here can best be considered the opportunity to further address the system of Federal management of public lands and the right of people's access to those lands, not only in Elko County but everywhere in this country.

Our time is limited, Madam Chairman. So in order to proceed in this hearing I would like to thank you once again for sharing your time with the citizens of Elko County. I would request that my full statement be submitted for the record.

[The prepared statement of Mr. Gibbons follows:]

Opening Statement on Subcommittee on Forests and Forest Health,  
Field Hearing on Forest Service Road Reconstruction in Jarbidge, Nevada  
U.S. Congressman Jim Gibbons  
November 13, 1999

I thank the Chairman from Idaho for holding this important hearing in Elko, and for her leadership in this matter. I am eager to begin this important hearing, as are many of you, and I will keep my remarks short.

Madame Chairman, the events surrounding the reconstruction efforts of this road have become fodder for rhetorical tirades, and have unfortunately resulted in an escalation of tension and distrust between the Forest Service and the citizens of Elko County.

As we revisit this issue today in this Congressional hearing, it is my hope that by hearing's end, we will have taken positive steps toward a resolution of this matter.

Today, the rhetoric will cease. Today, the forum for speech will not be the media, but this Congressional proceeding, as set forth by the Constitution of the United States. Each of you will be sworn in and,

under penalty of perjury, are bound by the U.S. Constitution to speak only the truth.

The importance of this open and public hearing should not be taken lightly. Today, we are delving into a matter that represents a microcosm of broader relationships between federal agencies and the citizens throughout the Western United States.

Our task today — our duty in fact — is to tell each side of this issue. We will discuss, for the public record, a number of events and cover a wide array of legal matters involved.

There are a number of questions that need answers. It is my hope that these questions will be answered today...For example: Who actually owns the road in the South Canyon that leads up to the wilderness area? In fact, I hope we will be able to determine legal ownership of the very road in question. And, given the human activity in the Jarbidge canyon prior to the formation of the USFS, what documents show the road area in question as belonging to the USFS?

Additionally, this year the State of Nevada experienced one of the worst fire seasons in history. With this in mind, and in light of the absence of all access to this road, how can future forest fires be fought without a road leading to the edge of the Wilderness area? After the record number of acres burned just this year in Northern Nevada, how can the habitat for the Bull Trout be protected unless there is a road?

And now moving on, questions have arisen on the necessity of this Congressional hearing. Since this issue is already in court, why would we proceed with this field hearing? Technically, several issues surrounding this matter fall under Congressional jurisdiction. This hearing is the very best method for the Legislative branch of our government to have a voice and a role in a situation where the executive and judiciary branches are already involved.

But there is more to it than that. The citizens of the Second Congressional District of Nevada came to me with legitimate concerns about this road reconstruction issue.

And I have a deep obligation to my constituents to make sure their concerns are addressed. Fortunately, Chairman Chenoweth-Hage has provided this opportunity today to address these concerns in an open and public forum.

This is not an inquisition. Nor is it an "Elko Witch Hunt" as some might believe. This hearing is not about finding fault with our U.S. government employees; these employees, in fact, are real people who are trying to carry out their duties as best they can under the direction of their supervisors.

Instead, our major responsibility, our duty to the citizens of Elko County, is to use this public forum to determine that the federal agencies involved in this issue followed proper procedure.

Congress did not enact laws with the intention of excluding or limiting the people's access to public lands. Indeed, the intent is to have these lands for the people now and in the future.

I welcome the opportunity to be here today. What we learn here

can be the best opportunity to further address the system of federal management of public lands and the people's right for access to those lands, not only in Elko county, but everywhere in this county.

Our time is limited, Madame Chairman, so in order to proceed with this hearing, I would like to thank you for sharing your valuable time with the citizens of Elko County, and request that my full statement be submitted for the record. Thank you.

Mr. GIBBONS. And without objection, I would also like to submit for the record a memorandum from the Elko County Board of Commissioners from Otis W. Tipton, Road Supervisor, regarding the Jarbidge South Canyon Road for the record, if I could.

Mrs. CHENOWETH-HAGE. Without objection, so ordered.  
[The information referred to follows:]



*Elko County*  
*Highway Department*  
994 River St. • Elko, Nevada 89801  
(702) 738-5036 • Fax: (702) 753-4979

**MEMO**

December 6, 1998

**RECEIVED**

DEC 07 1998

ELKO COUNTY  
COMMISSIONERS OFFICE

TO: Elko County Board of Commissioners  
George R.E. Boucher, County Manager

FROM: Otis W. Tipton III, Road Supervisor

RE: Jarbidge, South Canyon Road

---

On December 4, 1998 Gene Marchetti, Charlie Voos, Gary Back, Otis Tipton, arrived in Jarbidge Nevada at 12:00 noon (MST).

When traveling south from the town of Jarbidge the first thing we noticed just before Pine Creek campground, there are three sections of sediment retention dams placed between the road and stream. This is the area U.S. Forest Service used for a borrow source in 1996 when stabilizing the road at Pine Creek Campground. While looking at the area we immediately noticed a muddy flume of water flowing down the stream. A measurement taken at approximately 2:00 pm (MST) showed this muddy flume of water at 1.9 miles down stream from the work area, visually ending at Jarbigde Campground.

Upon arriving at the U.S. Forest Service work sight, the first thing I noticed is all water pumps, and hoses were sitting in the Pine Creek Campground, along with a trailer load of straw bales. As we walked up stream it was obvious that U.S. Forest Service had just diverted approximately two thirds of the stream back into the original channel causing a muddy flume of water.

Continuing on up stream to the end of the project, we were devastated at the amount of damage that was being done to the area, "Best Management Practices" were not being used.

My observations are as follows;

1. When the water was returned back to the original stream, no effort was made to look for stranded fish.
2. Neither NDOW or U.S. Fish and Wildlife personnel were present.
3. No water samples were being taken.
4. Water was still subbing into the diversion channel while an excavator was removing rocks and liner causing sediment to go into the original channel. Straw bales or sediment dams were not being used.
5. As equipment worked traveling across the second crossing dirt was sliding into the diversion channel, no dam or straw bales were placed on the edges.
6. Large amounts of vegetation is being destroyed in the work area.
7. Sedimentation will be a great problem for a extended time because of large areas disturbed.
8. The road area will be destroyed and not reconstructed.
9. In this small area of approximately 1000 feet there was;
  - 10 ea. Workers
  - 2 ea. 10 wheel trucks
  - 2 ea. Loaders
  - 1 ea. Backhoe
  - 2 ea. Excavators
  - 1 ea. D-6 Dozer
10. Confluence Consulting from Montana are the job consultants.

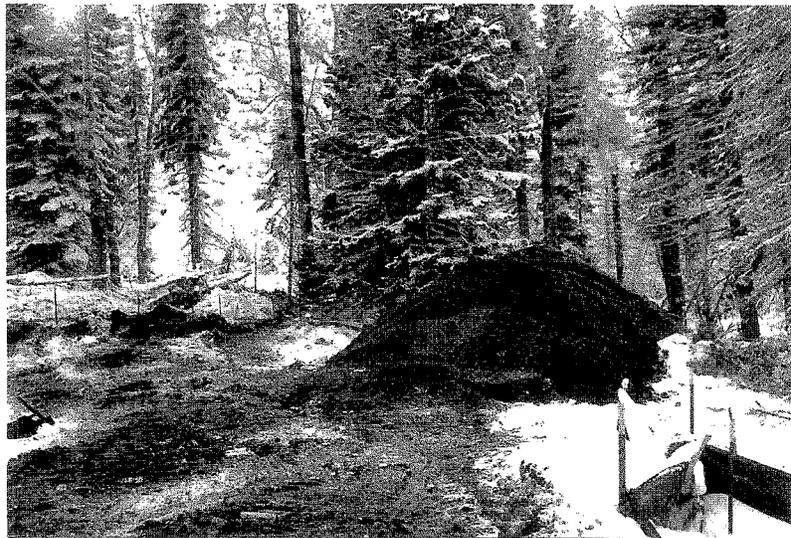
In conclusion it is obvious perpetuation of Bull Trout, and their listing as well as other wildlife that use riparian areas are of no concern to U.S. Forest Service. Because of actions that are being taken, and the time that they are being accomplished.



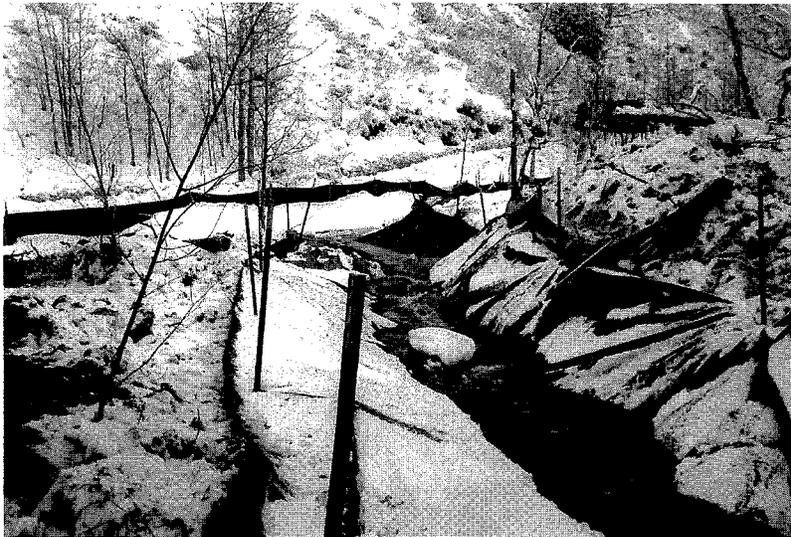
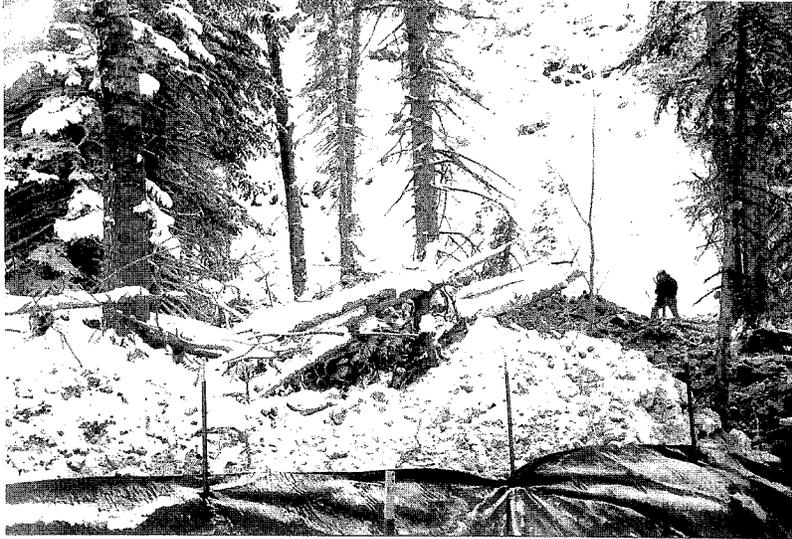






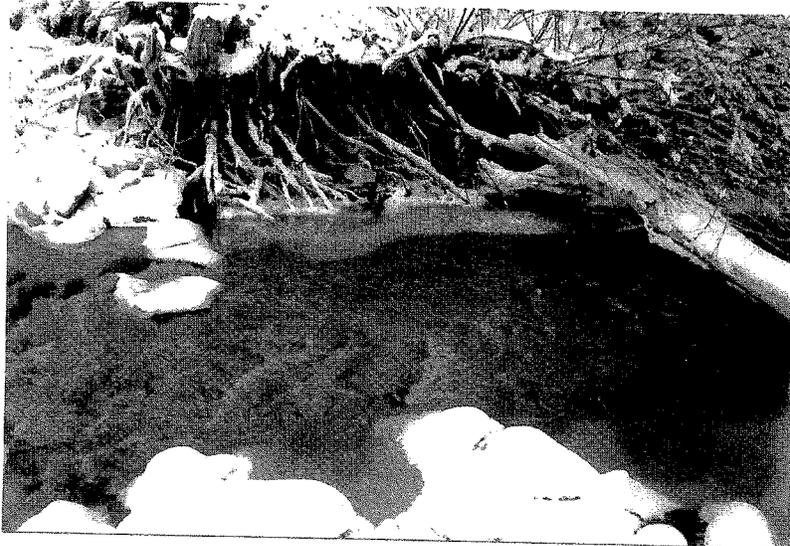






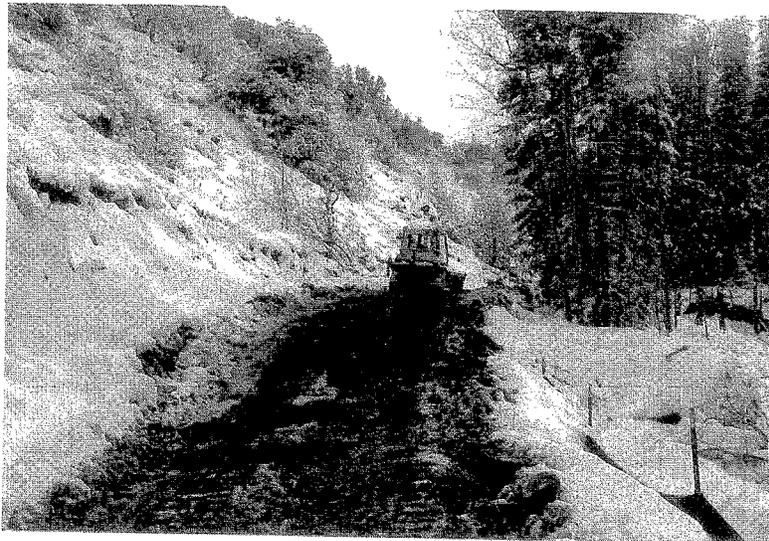
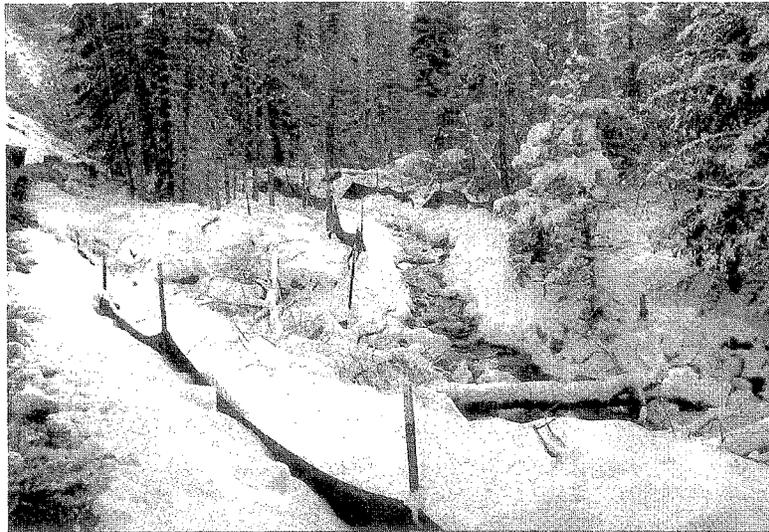


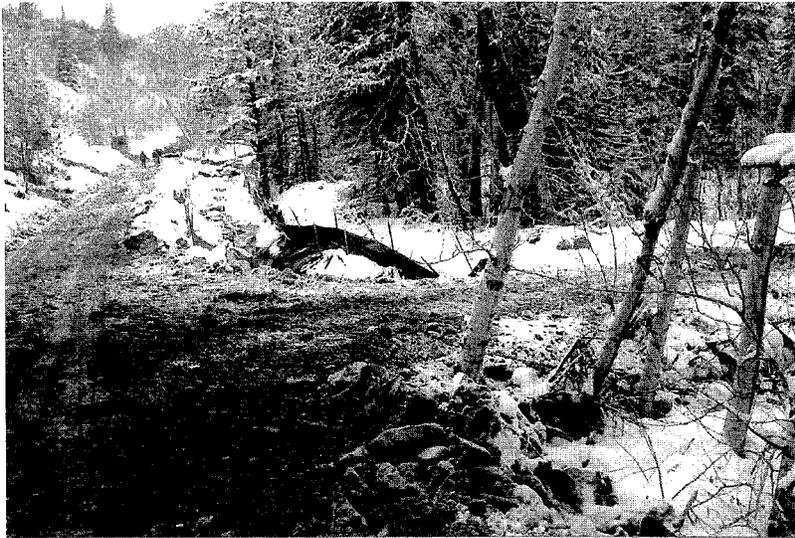




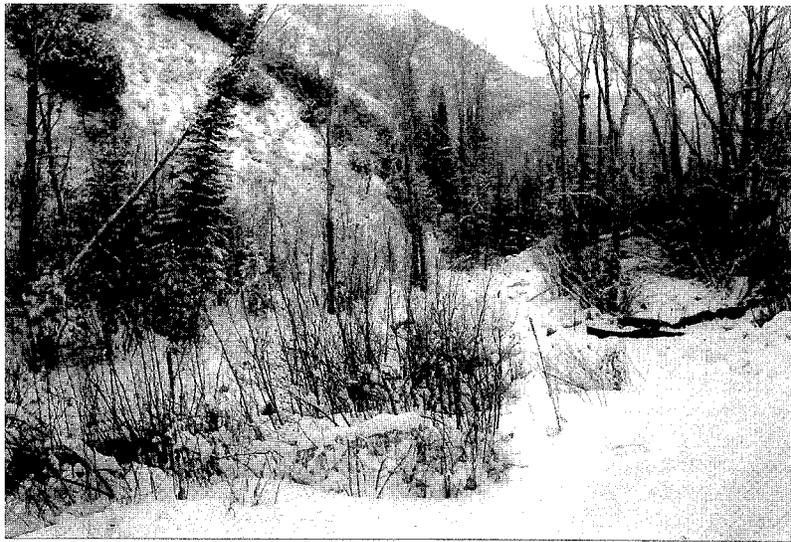






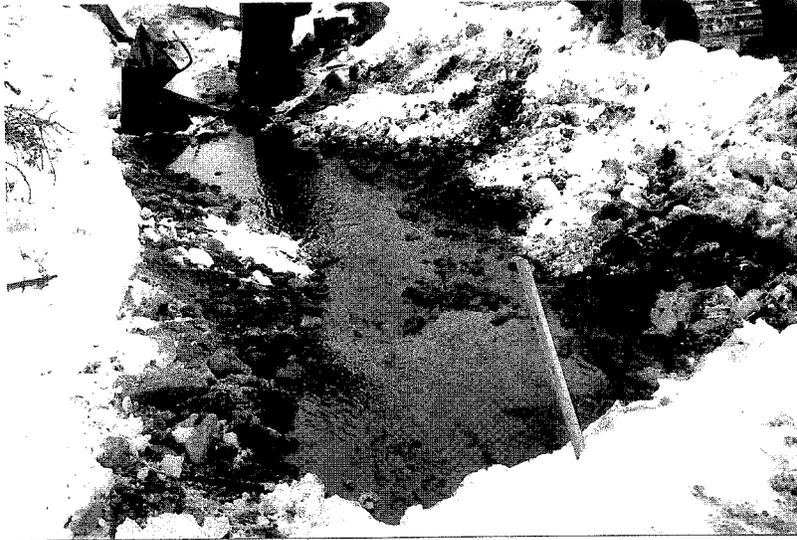


























**jbr environmental consultants, inc.**  
 555 West Silver Street #104, Elko, NV 89801  
 (702) 738-8766  
 (702) 738-2264 fax  
 jbrenvir@sierra.net

**Memorandum**

DATE: December 5, 1998  
 TO: George Boucher, Manager, Elko County  
 FROM: Gary N. Back *GB*  
 SUBJECT: Jarbidge site visit

**RECEIVED**

DEC 07 1998

ELKO COUNTY  
COMMISSIONERS OFFICE

Enclosed are some of the photos taken on December 4, 1998 of the South Canyon Road/South Fork Jarbidge River.

We arrived on site approximately 11 am pst. A plume of sediment was observed near the Pine Creek campground. The sediment was coming from the FS work. By the time you get this I'm sure you will have heard of how muddy the water was - take everything you hear with a grain of salt! There was a sediment plume. The initial plume prevented me from seeing the bottom of the stream (less than 6 inches deep). After two+ hours, it was still muddy, but I could make out the gravel and cobble on the bottom. The plume was readily distinguishable 1.9 miles downstream from the source. The plume originated about 0.1 mile upstream of Pine Creek Campground. Beyond 1.9 miles downstream it probably would have taken water samples to determine if sediments were present. In addition to the cloudy water, the ice at the edge of the river had a brown fringe from the sediment. This was quite visible downstream. Just upstream of the point where it became to determine the presence of sediment visually, there is a small, man-made rock dam which creates a pool. It is likely that this water was calm enough for most of the remaining sediment to drop out. At any rate, I would think the sediment discharge was in violation of the rolling stock, 404, and 401 permits.

It appears that the FS will put the river back into a portion of the original roadbed, but there was so much activity that one could not tell for sure what the final outcome would be. It was clear that the FS plan was much more invasive to the stream than the stabilization work proposed by the County.

The channel that was reopened by the County had been modified. Large boulders had been placed in the lower (downstream) portions of the affected reach. However, the upstream end of the reopened channel appeared to be in the process of being closed. My guess is that approximately one-half of the channel modification done by the County would be closed and fine material distributed for seeding groundcover.

It was clear that the FS is going to great lengths to prevent the County from considering future road reconstruction activities.

Other than the sediment release, I did not see anything that was out of line with the FS plan as submitted to NDEP. However, if the USFWS had any issue with the County's plan to stabilize 75 feet of embankment, I don't know how they could have not had heartburn over what the FS was doing.

It is curious to me that Trout Unlimited has not seen fit to be present during any of this work. At least I'm not aware of any members having made the trip to observe the FS activities.

As I indicated in my initial assessment of the County's activity, I did not see any significant impact to the fish in the Jarbidge from the July work. However, given the timing of the sediment release created by the FS - i.e., during or after spawning, I would not be able to come to the same conclusion about insignificant impacts. While it is my belief that most of the spawning takes place upstream of this construction site, the possibility of downstream spawning cannot be dismissed. The data does not exist one way or the other. Therefore, under the emergency listing by the USFWS I would have to conclude that "harassment" as defined in the emergency listing has occurred. The rerouting of the flow into the geotech-lined material, the electro-shocking (as called for in the FS plan, but not documented as having occurred), and the sediment release for over two hours (it was still occurring when we left, so we don't know the total extent of the release) would surely constitute harassment under the emergency listing.

A quick analogy: The magnitude of difference between the impact of the 1995 event and the work done by the County in July was similar in the magnitude of difference between the invasiveness of the work being conducted by the FS and the work planned by the County for embankment stabilization. Rerouting the stream, filling in the original channel/reestablished channel, and the removal of trees to create the diversion ditches, and general activity over all 950 feet of affected reach was many times greater in degree of invasiveness than what the County proposed for stabilizing 75 feet of embankment.

As you are aware, the approach JBR took in preparing the rolling stock permit was to stabilize the area in immediate danger of being impacted by spring high flows - a 75 foot reach at the upstream end of the affected reach. We felt that this would prevent any additional impacts while allowing time for the issue of ownership of the road and related issues to be resolved. Once these issues were resolved, the stream and road could be evaluated for additional work. We felt that this was the appropriate approach given the nature of the situation.

It is clear from the FS plan and the site visit, that their approach is to do as much work as possible now, with the intent of discouraging the County from attempting to continue with the road. It was quite disheartening to me to see *this amount of effort being conducted and the fact that this effort was approved by the permitting agencies in the absence of any resolution of the ownership issue.*

I will be out of town Monday and most of Tuesday. I will give you a call on Wednesday. If you

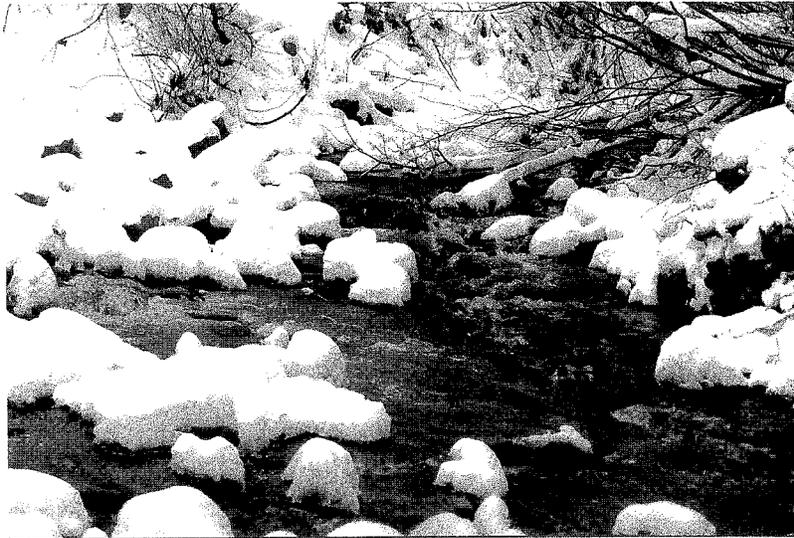
need to get any information to me, please call the office (738-8766) and leave a message with Suzanne. I will be checking in with her from time to time.

Photo descriptions: South Fork of the Jarbidge River (SFJR) during US Forest Service stream project.

| Photo # | Description   |
|---------|---|
| 1       | December 4, 1998. Confluence of SFJR (left) and Pine Creek (right) at approximately 2 pm. Note the muddy water in the SFJR.   |
| 2.      | December 4, 1998. Confluence of SFJR (left) and Pine Creek (right) at approximately 2 pm. Note the muddy water in the SFJR.   |
| 3.      | December 4, 1998. Diverted stream flow entering the old/County reopened channel. USFS has modified the banks and added large boulders. Note muddy water subbing into the channel from the right.  |
| 4.      | December 4, 1998. Cut banks and debris placed in the channel by USFS. Water subbing through this material is the source of the sediment plume in photos 1-3.  |
| 5.      | December 4, 1998. Sediment laden water below Pine Creek Campground at approximately 2 pm.   |
| 6       | December 4, 1998. Water at the bridge below Pine Creek Campground at approximately 2 pm. Sediment is still present, though decreasing.  |
| 7.      | December 4, 1998. Water clarity above the USFS work area.   |
| 8.      | December 4, 1998. Water clarity above the USFS work area.   |
| 9.      | December 4, 1998. Debris and downed trees at streamside.  |
| 10.     | December 4, 1998. Growth medium. Not sure of the origin of this material. It may have been excavated by USFS from the road reconstruction work initiated by the County in July. Or, it may have been the material screened for boulders. Or, it may have been trucked to the site for streambank growth medium. |
| 11.     | December 4, 1998. Material placed by the USFS in the original stream channel (i.e., the channel reopened by the County). Note trees knocked down since summer. Also note the fine material mixed with the rock.   |
| 12.     | December 4, 1998. Channel following bank stabilization and boulder placement.   |
| 13.     | December 4, 1998. Unlined diversion channel. The geotech lining had been removed and the water subbed to fill the ditch. The water will enter SFJR when the main diversion (geotech in the background) is removed. Also note, this and  |

the other diversion channels could not have been constructed without removing trees and other streamside vegetation.

14. December 4, 1998. Temporary diversion channel being prepared for removal.
15. December 4, 1998. Temporary diversion channel being prepared for removal.
16. December 4, 1998. Upper end of the work conducted by the County in July. Original channel (i.e., the channel reopened by the County) is on the left; heavy equipment is in this channel downstream. The geotech diversion ditch directs the flow from the pool to the right and then along the roadbed.
17. December 4, 1998. Upper end of the work conducted by the County in July. Original channel (i.e., the channel reopened by the County) is on the left; heavy equipment is in this channel downstream. The geotech diversion ditch directs the flow from the pool to the right and then along the roadbed.
18. December 4, 1998. View of the area proposed for stabilization by the County permit application (looking from upstream). This view is taken from the stream in the left side of picture 17. The flow is headed directly at this streambank, which is why the County felt additional stabilization was necessary. The diversion channel starts at the bottom center of the photo and directs the flow to the left and back to the geotech lining.
19. December 4, 1998. Bank proposed for stabilization by the County.
20. December 4, 1998. Upstream of the USFS activity. This is the next section of washed out road. Note the lack of large boulders - i.e., the 1995 event and the County work resulted in similar stream channel bottom configuration.



Picture 1



Picture 2



Picture 3



Picture 4



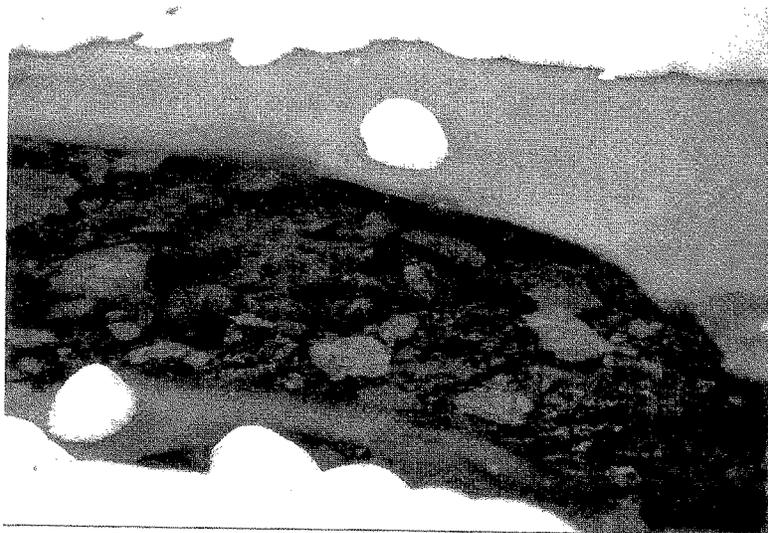
Picture 5



Picture 6



Picture 7



Picture 8



Picture 9



Picture 10



Picture 11



Picture 12



Picture 13



Picture 14



Picture 15



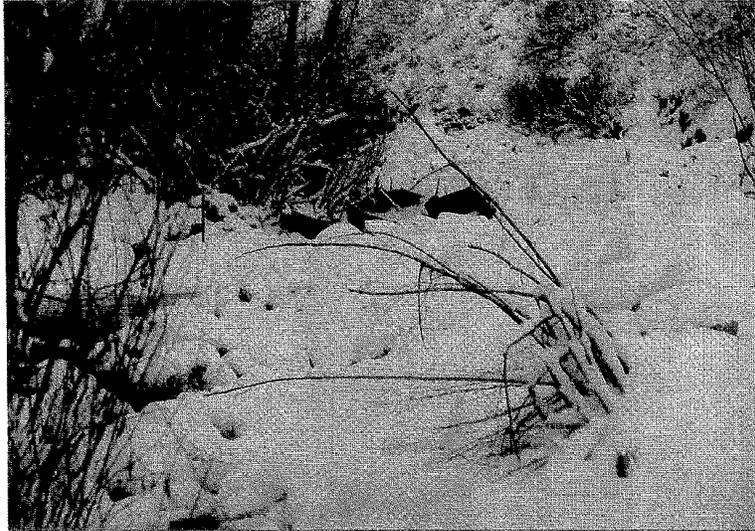
Picture 16



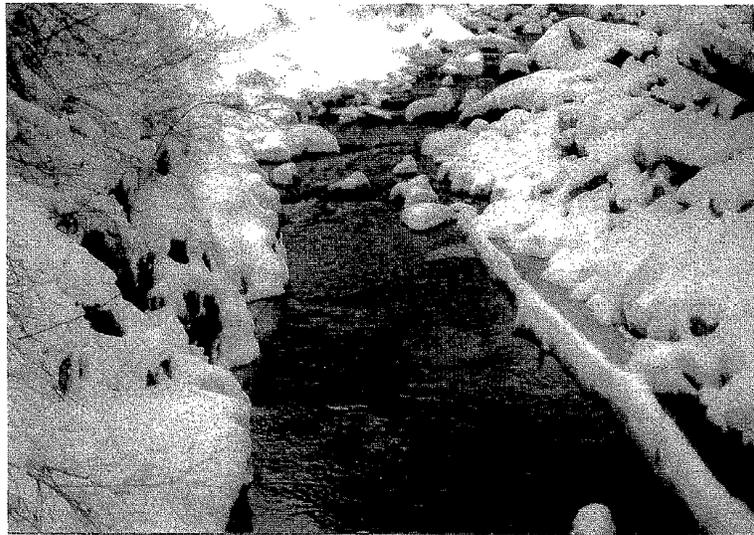
Picture 17



Picture 18



Picture 19



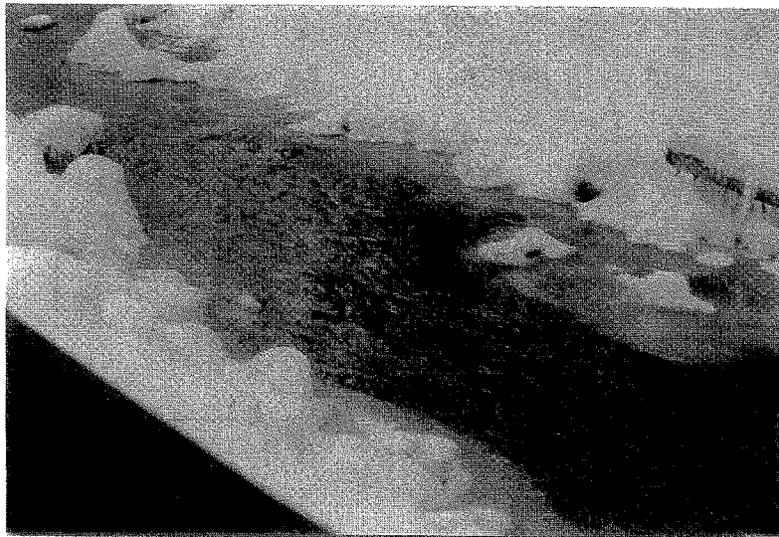
Picture 20

## Roll #2

1. December 4, 1998. SFJR looking upstream below the Pine Creek Campground. Approximately 11 am. Sediment in the river had just started.
2. December 4, 1998. SFJR near Pine Creek Campground. Approximately 11 am. Note silt fence in foreground.
3. December 4, 1998. SFJR at approximately 11 am. Fence post at left is part of silt fence.
4. December 4, 1998. SFJR carrying sediment from USFS construction.
5. December 4, 1998. SFJR looking upstream below the Pine Creek Campground. Approximately 11 am. Sediment in the river had just started.
6. December 4, 1998. Confluence of SFJR (left) and Pine Creek (right) at approximately 11 am. Note the muddy water in the SFJR.
7. December 4, 1998. Taken from the confluence of SFJR (right) and Pine Creek (left) looking downstream.
8. December 4, 1998. Sediment laden water of SFJR just above the confluence of Pine Creek and SFJR.
9. December 4, 1998. Taken at the confluence of SFJR (right) and Pine Creek (left) looking downstream.



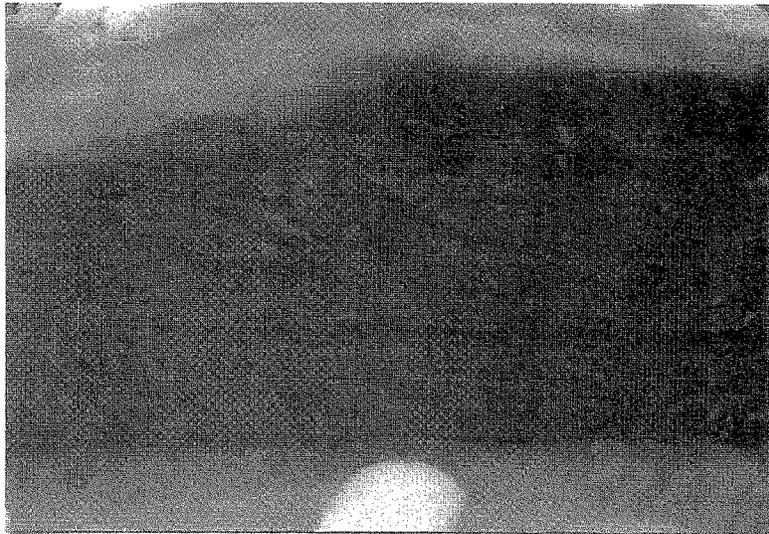
Picture 1



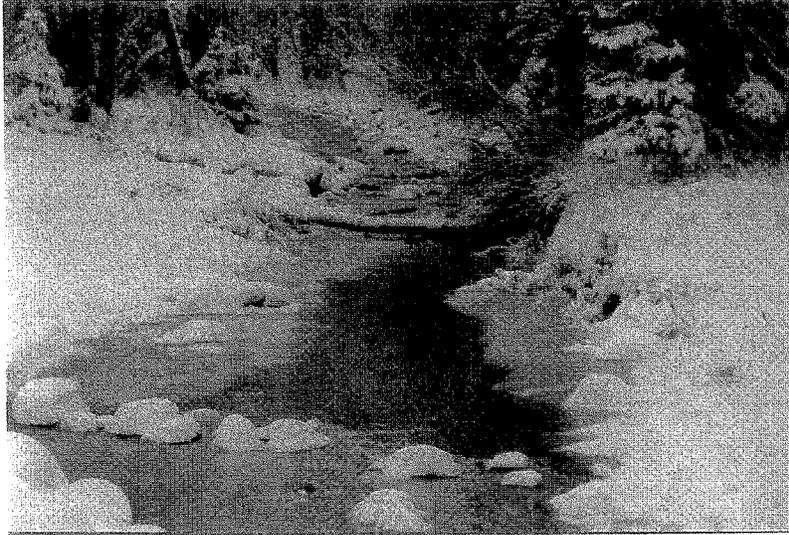
Picture 2



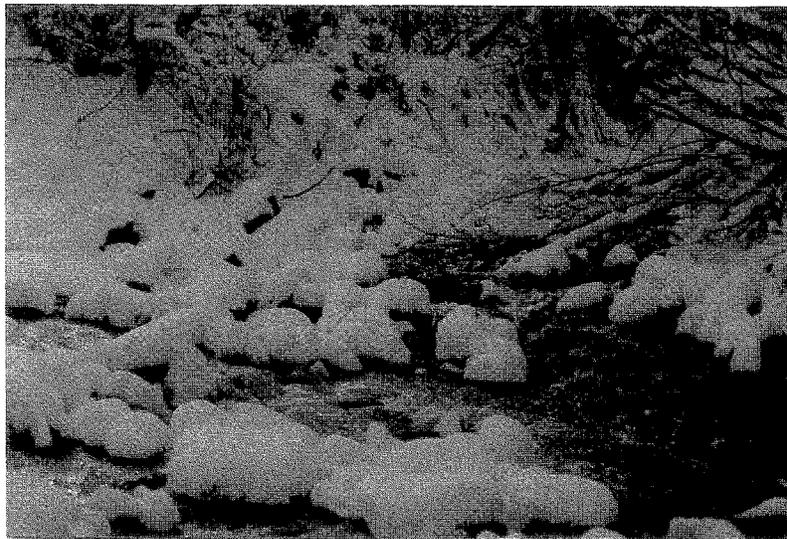
Picture 3



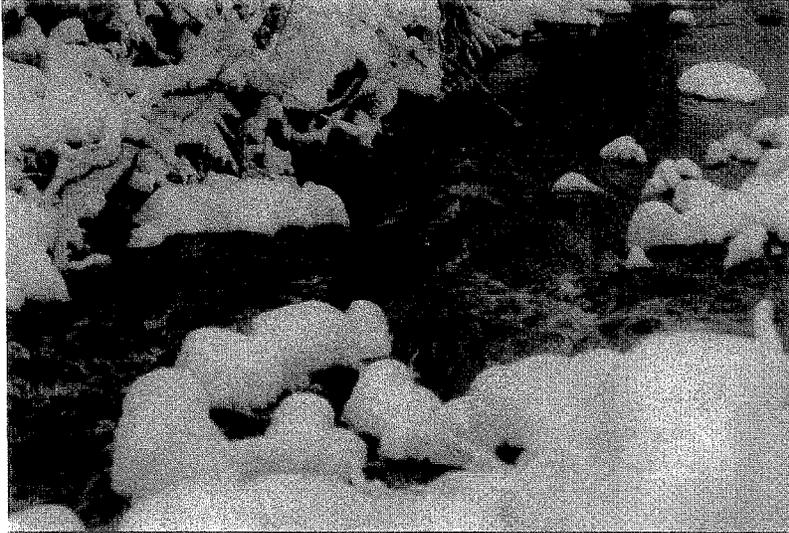
Picture 4



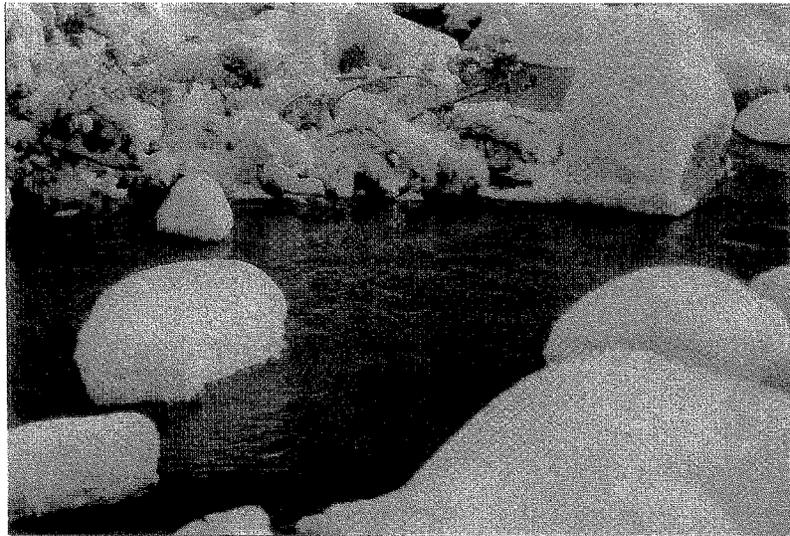
Picture 5



Picture 6



Picture 7



Picture 8



Picture 9

Mrs. CHENOWETH-HAGE. And it is my pleasure to be your guest here and bring the committee to Elko. Without further ado, I do want to mention, though, that this hearing is being broadcast live on KLIX radio. We also have the NPR station down from Boise that will be broadcasting part of this hearing.

So I would like to also remind those of you who did want to testify and we couldn't work you into the witness list, I do want you to know that your testimony is very, very important to us. We just had such a limited time, we weren't able to work all of you in.

So if you would please send your testimony to me at the Subcommittee on Forests and Forest Health, Longworth Building, U.S. House of Representatives, Washington, DC., I will get it. If you will please put it in the mail within 10 working days, we will be reviewing all of your testimonies.

So without further ado, I would like to introduce our first panel: Mr. Ladd Bedford, an attorney from San Francisco; Mr. Elwood Mose from Spring Creek, Nevada; and Mr. Bill Price from Elko, Nevada.

Now, I think that it was explained to you, but just in case, I do want to reexplain it is the intention of the Chairman to place all of the witnesses under the oath. Now, this is a formality of the committee that is meant to assure honest and open discussion. It should not affect the testimony given by our witnesses. I wonder if you might please stand and raise your arm to the square.

[Witnesses sworn.]

Mrs. CHENOWETH-HAGE. Mr. Bedford, will you begin your testimony?

**STATEMENT OF LADD BEDFORD, ATTORNEY, SAN FRANCISCO, CALIFORNIA; ELWOOD MOSE, SPRING CREEK, NEVADA; AND BILL PRICE, ELKO, NEVADA**

**STATEMENT OF LADD BEDFORD**

Mr. BEDFORD. Thank you, Congresswoman Chenoweth-Hage; and thank you, Congressman Gibbons.

Mr. GIBBONS. You may want to pull the mike closer to you.

Mrs. CHENOWETH-HAGE. It may not be on, Mr. Bedford. You want to tap it? We just need to have you pull it forward.

Mr. BEDFORD. Can you hear me now?

Mrs. CHENOWETH-HAGE. Not very well.

Mr. BEDFORD. How is that?

Mrs. CHENOWETH-HAGE. That's good.

Mr. BEDFORD. Thank you, Congresswoman Chenoweth-Hage; thank you, Congressman Gibbons. I'm here today to discuss the legal background and the issues involved.

Section 8 of the Mining Act of 1866 provided as follows: "The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted." These rights-of-way are commonly known as RS 2477 rights-of-way. The legitimacy of these rights-of-way was confirmed by the U.S. Supreme Court in Central Pacific Railway Company versus Alameda County, a 1932 decision.

In that decision the Supreme Court stated with respect to RS 2477 rights-of-way: "Governmental concurrence in and assent to the establishment of these roads are so apparent and their mainte-

nance so clearly in furtherance of the general policies of the United States, that the moral obligation to protect them against destruction or impairment follows as a rational consequence.”

As confirmed by the Ninth Circuit Court of Appeals in *Sierra Club versus Hodel*, a 1988 decision, and numerous Interior Department decisions, the validity of an RS 2477 right-of-way is to be determined under State law and is beyond the jurisdiction of the Federal Government.

The critical determination of the validity of an RS 2477 right-of-way, including what constitutes a highway, is decided through the application of State law. As pointed out by the Ninth Circuit Court of Appeals in *Schultz versus Army*, a 1993 decision, the RS 2477 grant is self-executing. An RS 2477 right-of-way comes into being automatically when a public highway is established across Federal lands in accordance with the law of the State. Whether a right-of-way has been established is a question of State law.

Under Nevada law, the public can perfect an RS 2477 right-of-way through mere use. It is true that the Federal Land Policy Management Act, finally known as FLPMA, enacted in 1976 repeals RS 2477 and its open-ended grants of rights-of-way over Federal lands. However, part of FLPMA contains a very important savings clause which explicitly protects rights-of-way in existence on the date of FLPMA’s passage, which was October 21, 1976.

This savings clause reads as follows: “Nothing in this subchapter shall have the effect of terminating any right-of-way heretofore issued, granted, or permitted.” The very language of this statute makes it clear that the Forest Service is powerless to take any action that would have the effect of terminating an RS 2477 right-of-way. The legislative intent when FLPMA was passed was plain and simple. RS 2477s in existence as of October 21, 1976, were to be protected against any attempts to restrict or eliminate them.

Clearly any action by the Forest Service to restrict or eliminate an RS 2477 right of way violates the existing law and contravenes the will of Congress.

In enacting FLPMA, Congress was well aware that the law of the States was being used to define the validity and scope of those rights-of-way. Congress nevertheless chose to preserve the status quo without affording the Forest Service or any other governmental agency any new powers whatsoever to change those rights-of-way.

And that is your basic legal background of the issues we’re dealing with.

Mrs. CHENOWETH-HAGE. And that concludes your oral testimony?

Mr. BEDFORD. That concludes my oral testimony.

Mrs. CHENOWETH-HAGE. All right, thank you.

Mrs. CHENOWETH-HAGE. The Chair now recognizes Mr. Mose for his testimony.

#### **STATEMENT OF ELWOOD MOSE**

Mr. MOSE. Thank you, Congressman Chenoweth-Hage, and thank you, Mr. Gibbons. My name is Elwood Mose. I’m a descendant of the third signatory of the Ruby Valley Treaty, one of the principal chiefs and head men of the Western Shoshone in 1863.

Earlier this year, in September, I went with Assemblyman John Carpenter and Grant Gerber and Chris Johnson to look at the

closed Jarbidge Road, and I had a little trouble believing how the Forest Service had gone to the extent of ripping up the road in order to close it.

So subsequently we determined to go and open up the road to effect repairs and make it available to public use again. But the Federal Government had gone and obtained a restraining order preventing anyone, including me as a Shoshone, a descendent of the treaty signer, to go and undertake any repair and reconstruction of the road.

This comes as a surprise to me because the Forest Service is obliged under various Federal statutes, under its own regulations, NEPA, ARPA, NCRA, so forth, to consult with Indians. We have two types of Indians here, one group which traces its ancestry, political ancestry, to the group of Shoshone who preexisted the creation of the United States, including having existed in this part of the country since time immemorial. We have modern-day tribal organizations organized under the laws of the United States and form sort of a corporate government for the tribes.

In no case did the Forest Service consult either group. And the dealings of the United States is through the Congress with the Indians under Article I, Section 8 of the Federal Constitution. That didn't occur. The President's Executive Order having to do with government-to-government relations with the organized tribes wasn't followed either.

Briefly, I want to speak to the Shoshone history in the Jarbidge area. We have occupied and controlled from time immemorial a swath of land approximately 1,000 miles long, reaching from Death Valley down in the southwest to the headwaters of the North Platte in Colorado.

We followed a tradition of life having to do with the seasons, following the changing of the seasons. There was a time to hunt, there was a time to gather, there was a time to take winter shelter. Although things have been altered by western civilization, our world view is pretty much the same. We respect the Earth and all around it and our role within it.

We can't do things like replant, but we sure can by our rituals and by our customs and by the maintenance of our traditions encourage the regrowth of next year's plants and regeneration of the Earth. That's what we have done for thousands of years. This is underpinned by what we call pu-ha. You might call it a unique medicine which comes to people by which we have stable—by which we have maintained a stable balance of ourselves in relation to the world. And those places where you acquire this is in the high places, in the mountains, on mountain peaks or valleys and caves, and so forth. This is all part of the Jarbidge area.

The Three Sister Peaks of Jarbidge, the streams and the lake there, we have our tales about the terrible spirit called the jobij which lives in the area. He's a terrible rock man who's got a big stone basket and collects wayward Indians to feed his kids. I guess he's got to make a living, too. We occupied this country. Our ancestors are buried there. And we use it continually.

As water follows the easiest course, the Jarbidge River made its way from the mountains, down the valleys, down the canyon, down

to what is now Idaho. And animals followed that valley. And we followed the animals, and we created paths and so forth.

Behind us came the trappers, the miners, the cowboys, and sheepmen. And the settlers came with their wagons. And eventually came the recreation seekers with their motor vehicles.

We are no different from these people now. We do the same thing. We use 4-wheelers; we use pickup trucks to get around. We can't do that with the road closed to us. We can't practice our ancient customs and traditions.

One thing I want to point out, part of the United States, the United States has a bad habit of violating its word, not only to the Indians in past cases, but to its citizens generally. That's where part of my concern with this business comes in.

For example, on the 19th of November, in 1863, President Lincoln delivered an address at the dedication of the cemetery at Gettysburg. A month-and-a-half before that time, they had made the Ruby Valley Treaty and promised the Indians some things, which were never lived up to.

We took the case to court. The upshot of that was that the government said: Well, we think you have been damaged to the tune of \$26 million. We are going to appropriate the money from the Treasury into a trust account in the Bureau of Indian Affairs.

That was done and in essence the government moved the money from the left pocket to the right pocket and claimed to have paid us for our land at the value of 15 cents per acre. We have not seen a penny of that money.

If you're interested in the title and ownership of that, we have a treaty that says the land is used, it's open for mines, for roads, for ranches, for towns. I think the true ownership resides in the people, in the citizens of Nevada, northeastern Nevada. And as far as the part which the government has said it's paid for, we don't have any legal proof of that.

I submit to you, Congressmen, that the Indians are the owners, and that the other owners are the citizens of northeast Nevada.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Mose.

[The prepared statement of Mr. Mose follows:]

**Elwood Aaron Mose**

HC 30 B-9 Lee • Spring Creek, Nevada 89815  
Tel. 775/744-4274 • Fax 775/744-2398

**STATEMENT OF ELWOOD MOSE  
ON THE JARBIDGE ROAD  
REPRESENTING HIMSELF AS A  
WESTERN SHOSHONE DESCENDANT**

**BEFORE THE HOUSE RESOURCES COMMITTEE,  
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH**

**ELKO CONVENTION CENTER  
13 NOVEMBER 1999**

STATEMENT OF ELWOOD MOSE ON FOREST SERVICE ROAD  
RECONSTRUCTION ISSUES ON THE SOUTH CANYON ROAD  
NEAR JARBIDGE, NEVADA BEFORE THE U.S. HOUSE OF  
REPRESENTATIVES COMMITTEE ON RESOURCES,  
SUB-COMMITTEE ON FORESTS AND FOREST HEALTH

13 NOVEMBER 1999

My name is Elwood Mose. I am Western Shoshone---a direct descendant of Kirk-weedgwa, third signatory to the Western Bands of the Shoshonee Nation of Indians Treaty of Peace and Friendship with the United States of America made at Ruby Valley, Territory of Nevada, 01 October 1863. I received my education locally and at the University of Nevada. I served in the administrations of Governors List and Bryan. Currently, I am chairman of the 2,500 member Te-Moak Tribe of Western Shoshone Indians. The Te-Moak Tribe has not yet adopted a formal position on Jarbidge.

On 17 September 1999 I went with Assemblyman John Carpenter, attorney Grant Gerber, and O.Q. "Chris" Johnson to look at the closed Jarbidge road and campgrounds. I was shocked by Forest Service obliteration of the road up the canyon to the campgrounds. After reviewing the overall issue, I resolved to help reopen the road and on 09 October with shovel and pick went to Jarbidge along with many other persons to help repair and reopen the road.

But on 08 October 1999 the government had sought and obtained a restraining order to stop anyone, including Shoshone Indians in their own ancestral lands, from undertaking any repair and reconstruction of the Jarbidge road. In its destruction of the Jarbidge road, the Forest Service failed to deal with or consult with Shoshone Indians: their traditional and customary organizations, chiefs and headmen and federally-recognized tribal governments and their elected officials as provided for by various laws and regulations. The Forest Service is blind to Article I., Section 8 of the federal constitution, the Ruby Valley Treaty and canons of treaty construction, two centuries of Indian law, the President's 29 April 1994 executive memorandum, and his 14 May 1998 Executive Order No. 13084.

A Brief Shoshone History Pertinent to Jarbidge

The Shoshone--*Newe* to native speakers--have occupied and controlled from time immemorial a homeland of a thousand-mile crescent of land stretching from California's Death Valley to the headwaters of the North Platte River in Colorado.

The self-sufficient family characterized the basic unit of Shoshone society. Age-old rhythms of activities following or set to the seasons marked Shoshone life. Semi-permanent seasonal camps were occupied as needed and groups formed for cooperative subsistence, social, and other activities.

Although altered by western civilization, the Shoshone world view today is little changed from what it was before the arrival of the whiteman: Shoshone view life as an interdependence of all things. We are inseparable from *sogobi*--the earth--and the total of its physical features and no less a part of it than are the birds of the air, the fish in the waters, and all other creatures great and small and the green and growing things. The earth has provided for us Shoshone and we have used all resources in a sensible and practical way. We give back to it in an obligation of stewardship: Shoshone rituals and ceremonies associated with hunting and gathering and major life changes of birth, puberty, marriage, and death were and are still conducted to ensure that everything continues to flourish and is accounted for, that balance prevails, and that renewal is ensured by application of religious custom, maintenance of tradition, and songs and prayer.

All was and is underpinned by *Puha*--unique medicine, healing or supernatural power which may come to vision-questing individuals exercising discipline and strength. The sources of *Puha* are in power spots: waters in springs, lakes, rivers, hot springs, and creeks; the high places in the mountains, on mountain peaks and passes or in certain valleys and caves. There are many places. Shoshone still seek out those places in personal and private ways.

The Jarbidge area, its Three Sisters peaks, its streams and lake are part of the ancestral Shoshone territory. Though the *Jobij*, a great and terrible rockman with his rock basket to collect wayward Indians to feed his ever-hungry children roamed the area, Shoshone occupied and used the country and continue to use it. Our ancient campsites, our *quop*--animal traps--exist still and Shoshone are buried there among the rocks; and under a landslide which once engulfed a camp and in a cave which collapsed on an unfortunate group.

Water follows the easiest course. Animals followed the natural corridor of the Jarbidge River Canyon over the pass to Mary's River headwaters. Shoshone followed the animals in hunt and for native trade and commerce. On their heels came the trappers, miners, cowboys, and sheepmen; settlers came with wagons and eventually, recreation-seekers with motor vehicles. Shoshone are no different from

anyone else---pickup trucks and four-wheelers have replaced foot and horse travel. Long before the Forest Service was established, Shoshone used the Jarbidge River corridor and we will continue to use it.

#### Failed Promises and Unfulfilled Obligations

On 19 November 1863, President Abraham Lincoln delivered an address at the dedication of the cemetery at Gettysburg. Scarcely a month and a half before Mr. Lincoln's address, federal treaty commissioners had made the Ruby Valley Treaty, the last of five treaties with the Shoshone. The commissioners had been instructed that the treaties were not expected to extinguish Indian title. The U.S. recognized Western Shoshone boundaries (map attached) and promised Shoshone a reservation within their country and to compensate them \$100,000 over twenty years for the loss of game.

But no permanent reservation was established and the government using an Indian concentration policy tried to move Shoshone north to Fort Hall, west to Walker River, and far south to Moapa. Shoshone refused to leave their homelands. As to Treaty annuities, the General Accounting Office in 1968 reported that the U.S. had recovered \$2,000 from the sureties of Indian Agent John How in a compromise settlement of a suit to recover approximately \$79,000 unaccounted for by him including \$13,155.94 under "Fulfilling Treaty with Shoshones, Western Bands".

#### Shoshone Land Issues and Jarbidge

In 1946, the Congress enacted a program of limited retrospective compensation based in part on the outcry for justice for American Indians who had been the victims of broken treaties and unfavorable court decisions, e.g., no lands had ever been won back by Indians in eighty-two years of U.S. Claims Court proceedings. Western Shoshone filed suit against the United States in 1951 before the Indian Claims Commission for unlawful use and other infringement on their lands. The government propounded a theory of "gradual encroachment" by which it claimed the Shoshone had lost 24 million acres of land.

Although the court had no jurisdiction to adjudicate title to Indian lands and Shoshone land issues were never litigated to prove how title passed from the Indians to the federal government, federal attorneys and lawyers representing the

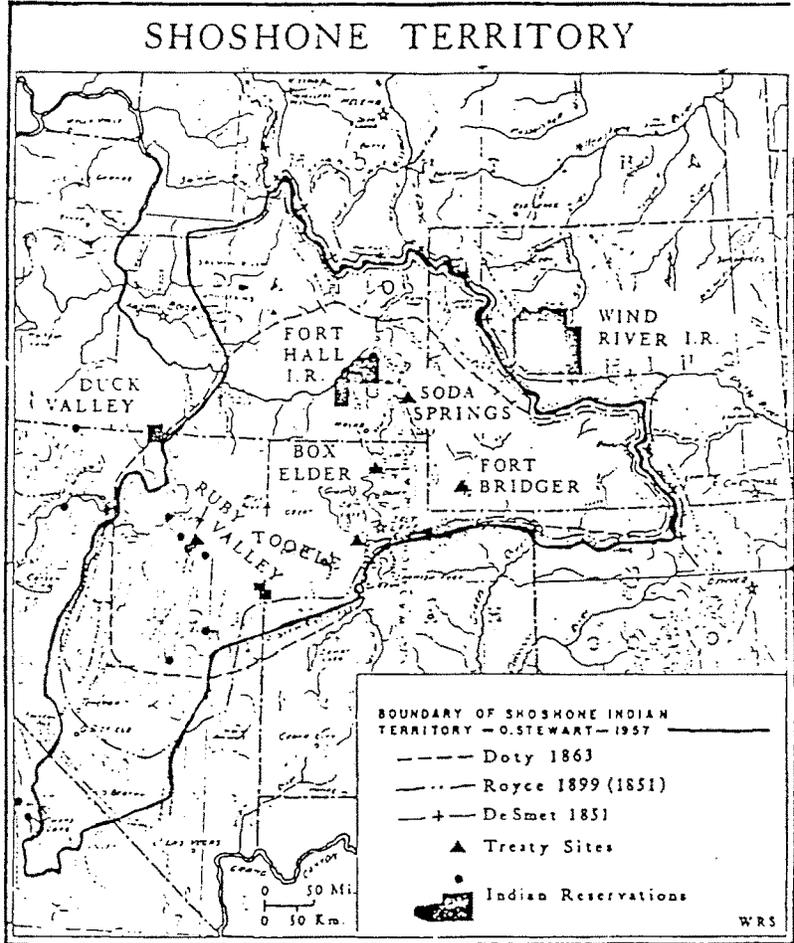
Shoshone in 1966 stipulated to an aggregate valuation date of 01 July 1872. 75% of the Indians' land was priced at 15 cents an acre. Congress subsequently appropriated \$26 million dollars for the court's judgment. Shoshone contest the government's one-sided determination of their claims issues. The government claims the Shoshone lost their title and been paid for their lands by the government's placing money into a government account. Shoshone have never received a penny.

Government agencies regular accuse and attack the Shoshone over claimed cattle and other trespass on Shoshone ancestral homelands. The Bureau of Land Management and Forest Service have made numerous attempts to remove Indians. In 1917 the Forest Service destroyed Shoshone cattle at Reese River and forced Indian relocation to Walker River and other reservations. Western Shoshone herdsmen and agriculturalists are claimed by the BLM to owe several million dollars for illegal grazing. The Bureau of Indian Affairs is at present making a reckless attempt to force money on the Shoshone to effect a closure of the unfulfilled obligations of the United States.

#### Conclusion

History instructs us on how we ought to proceed on an issue. The government has not kept its promises made to the Shoshone and it definitely has not kept its promise to the Elko County Commssioners and Elko County citizens that it would reopen the Jarbidge road. The government has a long history of violating its promises.

I am committed to stick with this issue and along with so many other citizens, am determined to see the road and campgrounds reopened.



Mrs. CHENOWETH-HAGE. The Chair recognizes Mr. Price for his testimony.

#### STATEMENT OF BILL PRICE

Mr. PRICE. Thank you both for coming. My name is Bill Price. I'm a professional land surveyor and a registered professional landman specializing in historical research. I've worked on four cases similar to this.

In 1998, Elko County asked me whether the South Canyon Route was used regularly by Elko County residents before the Forest Reserves beginning 1905. They believed this would establish the route as a nineteenth century highway, in quotation marks.

We reviewed books and publications, Forest Service reports, USGS data, and Elko County records, as indicated on the exhibits in the package I gave you. We constructed maps and 3-D models. We examined the area by helicopter together with Dr. Wayne Burkhardt, a noted expert on western history and agriculture.

We made several observations. The Jarbidge Mountains host plant, animal, and mineral resources that have been used seasonally by humans for millennia. Modern European activity began about 1825 and intensified over time. This activity included trapping, hunting, fishing, prospecting, and grazing. By the late 1890's, sheep numbers had reached tremendous levels, according to a 1906 Forest Service report by R.B. Wilson. Wilson reported 392,350 sheep amongst 43 owners competing for forage in his study area. The Jarbidge Mountains would have been a veritable beehive of activity.

In fact, it was the desire to preserve the mountains that was the impetus behind the Forest Reserve movement. Wilson made several observations about available trails and roads, and ease of access to timber in the Jarbidge Mountains. Much of that timber was and still is accessible only through the South Canyon.

The Jarbidge South Canyon is a natural corridor, as illustrated on the plates in the material I've given you, some 3-D views, some plan views. The canyon provides access not only to resources in the South Canyon, but it's the most logical route for individuals with pack animals to communicate or commute between the Jarbidge area and the Marys river basin.

We found evidence of just this activity in the Elko County records, as illustrated in plates 3 and 4 of the material package. William Mahoney and his wife, Pearl, for example, in concert with prominent Nevada pioneer Warren W. Williams of Fallon, established facilities in the Mary's River Basin, Jarbidge, and at Wilkins Island. Mahoney was reported to be in the Jarbidge area as early as 1892—that's Forest Service information—as was another entrant, William Perkins.

The first detailed survey of the South Canyon was by the USGS in 1910. F.C. Schrader mapped an upper trail and lower trail, two cabins near Snowslide Gulch, and spent the night at the Perkins cabin at the head of the Jarbidge River.

Remember, Perkins had been in the area since at least 1902, if not 1892, according to some literary records.

Between 1910 and 1923, the 19th century highway evolved into a 20th century road complete with bridges, capable of hauling in-

dustrial forest products from the mill at Sawmill Creek. Recall Wilson's observations about the access to timber in the Jarbidge Mountains earlier in the 1906 report.

This road has been in regular use and is depicted on the myriad of modern maps from that time to the present. In fact, when you objectively consider the preponderance of all this evidence, it's hard not to acknowledge that the county has a very compelling claim. RS 2477 is an act of Congress, too.

Much of this information and nearly all the leads came directly from Forest Service reports. The agency's recalcitrance begs the simple question: Is it oversight or is it obfuscation? I can't tell you that. I can tell you, though, the impact on your citizens is just as serious either way.

I can tell you what the agency sent Elko County as their ostensible proof that this road did not exist. They sent this copy of Schrader's 1912 report based on his 1910 survey. I've already indicated to you that plate 2 shows a portion of the South Canyon route. It shows the portion that the Forest Service buried recently. Schrader's survey field notes show most of the rest of the route. Interestingly, plate 2 is missing from this report.

I've worked on four similar cases as listed in appendix one of the materials I've given you. I have encountered similar things. As one example, in the interest of housekeeping, government agencies have destroyed a great number of historical documents over the past 10 or 15 years. In another instance, this agency failed to retract a report even after it learned it was based on a map of a different road. That report also included this affidavit. It was apparently written in 1995. The man who ostensibly wrote it died in 1988.

I'm just as concerned as everyone about the acrimony and mistrust described in recent public statements. I hope this committee can foster an atmosphere of openness that will assuage some of the misunderstandings. Thank you again for coming.

[The prepared statement of Mr. Price follows:]

**Black Rock Resource Company**

*Natural Resource Services*  
P.O. Box 1865, Elko, NV 89803  
(775) 738-3381

November 9, 1999

**Summary of Testimony, Bill Price, PLS**

In the matter of the U.S. House of Representatives Committee on Resources hearing of November 13, 1999, in Elko County, Nevada; Jarbidge South Canyon Route.

- 1) Scope of Examination
  - a) Location - The South Canyon Route is a road that follows the Jarbidge River southerly from its confluence with County Road 752 (the Charleston to Jarbidge Road) in Section 28, T46N, R58E, MDM, Elko County, Nevada.
  - b) Purpose of Investigation - Approximately one and one-half miles of the South Canyon Route between the mouth of Pine Creek in Section 33, T46N, R58E, and Snowslide Gulch in Section 3, T45N, R58E, MDM, is in contention. The question is whether this section of the South Canyon Route was used regularly and continuously by Elko County Residents before the effective Forest Reserve sometime November of 1905 and January of 1909.
  
- 2) Materials Reviewed
  - a) Books and Reports - in excess of eighty books and reports were consulted, including historical works, and reports from U.S. Government agencies such as the Forest Service and U.S. Geologic Survey. These books are itemized in Appendix A to be submitted with oral testimony.
  - b) Newspapers - seven contemporaneous newspapers were consulted for the period between 1895 and 1910, as Itemized in Appendix B to be submitted with oral testimony.
  - c) Maps - Available maps from U.S. Government agencies were consulted, as itemized in Appendix C to be submitted with oral testimony.
  
- 3) Items Considered
  - a) The Jarbidge Mountains host plant, animal, and mineral resources essential for human survival.
  - b) The Jarbidge Mountains have been used seasonally by humans since prehistoric times.
  - c) Modern humans have been trapping, hunting, prospecting and grazing in the Jarbidge Mountains since the early to mid-nineteenth century.
  - d) The South Canyon Route follows a natural corridor through the otherwise precipitous Jarbidge Mountains, connecting the Jarbidge vicinity with the Marys River valley just over the divide to the south.
  - e) The activity in the Jarbidge Mountains intensified over time so that by the late 1890's sheep grazing activity in particular was "tremendous" according to newspaper accounts and Forest Service reports.
  - f) Prospectors and sheep owners regularly and systematically occupied the Jarbidge Mountains during the period between 1897 and 1905. W. W. Williams, W. H.

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*Natural Resource Service*

- Mahoney, William Perkins, and others, located mining claims, land claims, and in lieu selections, and constructed facilities in the vicinities of Jarbidge, the Marys River Basin, Copper Basin, and Wilkins Island.
- g) Sheep use requires systematic planning, communication, and support between owners, camp tenders, and herders, involving regular and systematic ingress and egress.
  - h) The impetus behind the series of Forest Reserves that began in 1905 was the impact of this activity and the desire to preserve the area from degradation.
  - i) In his 1906 report recommending inclusion of the Jarbidge Mountains in a Forest Reserve, Forest Assistant R. B. Wilson reported a) that "Most of [the timber on the Jarbidge mountains] is accessible for logging by team."; b) that "The whole country is covered with roads, passable ... by sheep wagons in summer ..."; c) "... the only parts inaccessible to horses being the barren tops of the higher mountains; d) "No immediate work will be required from the Forest Service in either road or trail building."; and e) "... there are 392,350 sheep using the proposed Bruneau Forest Reserve ...".
  - j) The sheer numbers of sheep would have created an urgent competition for all available forage, base camps, and access routes. The Jarbidge Mountains, including the South Canyon, would have been a veritable "beehive" of activity.
  - k) When the Forest was permanently reserved in 1909, Forest Service officials recognized this activity and acquired some of the facilities constructed during this period.
  - l) The first detailed survey of the Jarbidge vicinity was conducted by the F. C. Schrader of the U.S. Geologic Survey in July and August of 1910. The maps and field notes resulting from this survey disclose two trails in the Jarbidge South Canyon. Schrader even stayed at a cabin belonging to long time resident William Perkins at the head of the South Canyon.
  - m) The South Canyon Route evolved into a modern road sometime between 1910 and 1923, cut to acceptable grade, with bridges competent enough for hauling industrial forest products produced by a sawmill at the mouth of Sawmill Creek, near Perkins Cabin at the head of the South Canyon. This Route shows on all modern maps.
- 4) Conclusions
- a) That the South Canyon Route began as a primitive trail in prehistoric times. It was used regularly on a seasonal basis, formed by the passage of foot traffic, and upgraded and maintained by hand labor.
  - b) That beginning about 1825, this primitive trail began to be used by trappers, hunters, and fishermen. By about 1860, this used expanded to include prospectors and grazers.
  - c) That by the 1890's, sheep owners began coming into the Jarbidge Mountains with regular frequency, constructing facilities that are most logically connected by the South Canyon Route.
  - d) That the South Canyon Route was well established before Forest Assistant R. B. Wilson conducted his field examination in 1906, giving rise to his observations about access to

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- timber, and availability of access.
- e) That the South Canyon Route evolved into a modern road that shows on nearly every map that has been produced, and has been used more or less continuously to the present time.

Respectfully submitted,

Bill Price, PLS





**COPY FROM:**

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93-055 *Box 2*

Regional Forester

1440  
October 24, 1960

L. A. Dremolski, F.S.

Inspection (GFI, Carnahan 8/60)

Reference is made to Mr. Carnahan's GFI report and your cover letter of October 17, 1960.

I certainly appreciate the report with his fine analysis of the engineering activity on the Humboldt National Forest. I am sure it will be of great assistance to the Humboldt staff and I hope will tend towards a closer relationship between Engineering and our forest engineering needs.

*J. S. Smith*

Humboldt National Forest

1440

October 17, 1960

Floyd Iverson, Regional Forester

## Inspection

Attached are the original and one copy of the General Engineering Functional Inspection of the Humboldt National Forest made by C. E. Carnahan in August, 1960.

After reviewing the report, I am impressed by your pressing need for engineering assistance. The suggestion to designate an engineer in the regional office to serve as your advisor and contact on engineering matters seems to me to be appropriate for the present time. I am not in a position to give you encouragement regarding the early, full time assignment of an engineer to your forest. Progress in obtaining capable engineers is slow and our need for them throughout the region is pressing. I hope you will make extensive use of the engineering specialists and facilities in this office to assist you during the immediate months ahead.

The Summary of Commendations in this report was particularly interesting and pleasing to me. Mr. Gardner has been singled out and complimented for his outstanding work. He has obviously been of great assistance to you and his retirement will necessitate changes in the supervision and administration of your engineering work.

The recommendations made along with the comments in the report should be helpful to you in overcoming some of the deficiencies cited.

I will be pleased to receive whatever comments or suggestions you care to make regarding this report or the inspection.

Your follow-up report should be prepared and forwarded to this office not later than June 1, 1961.

## Attachments

xc: Humboldt

cc: D  
O  
E, for routing

1440  
INSPECTION

ADMINISTRATIVELY CONFIDENTIAL

GENERAL ENGINEERING FUNCTIONAL INSPECTION

Humboldt National Forest

August 8-12, 1960

By

C. S. Carrahan, Chief, Section of Maps and Surveys  
Division of Engineering

1440  
 INSPECTION  
 GFI - Humboldt National Forest  
 C. E. Carnahan  
 August 8-12, 1960

I. INTRODUCTION

Kind of Inspection: General Engineering Functional Inspection.

Name of Unit Inspected: Humboldt National Forest.

Inspector: C. E. Carnahan, Chief, Section of Maps and Surveys, Division of Engineering.

Inspectee: Louis A. Dremolski, Forest Supervisor, Humboldt National Forest.

Dates of Inspection: August 8 through August 12, 1960.

Previous Inspections of Same Kind and Level: None.

Comments: The inspector appreciated the personal attention given by Supervisor Dremolski during this inspection. He chose to be present during the entire week rather than be represented by one of his staff. Assistant Supervisor George Swainston participated in discussions held on the morning of August 8 and the afternoon of August 12. Ranger Cox of the Ely District accompanied us on August 11. All ranger districts were visited with the exception of the Paradise Valley and Mountain City Districts.

II. SUMMARY APPRAISAL

Supervisor Dremolski is fully aware of deficiencies in the engineering phases of his forest administration. He and his assistant, George Swainston, share the responsibility for these activities, and with the heavy workload in general administration, personnel problems, watershed protection, range studies and adjustments, etc., it is to be expected that technical details will by necessity be neglected in many engineering operations.

The Humboldt National Forest has been fortunate in having Mr. Victor Gardner as a C&M foreman for many years. His ability and dedication are worthy of considerable recognition. The time is rapidly approaching when Mr. Gardner will retire (he is 65 years of age) and the forest will be left without this fine assistant. His son, Mr. Amos Gardner, is now serving the forest as a C&M foreman, and a talented young man, Mr. Garry Crawford, Equipment Operator, gives promise for future assignment to this responsibility.

The supervisor has presented an estimate of time spent by him and his staff on engineering activities as follows:

|                               |              |
|-------------------------------|--------------|
| L. A. Dremolski.....          | 10 days      |
| G. Swainston.....             | 30 "         |
| G. Horton.....                | 5 "          |
| Victor Gardner.....           | 20 "         |
| Amos Gardner.....             | 20 "         |
| Rangers (8) 10 days each..... | 80 "         |
|                               | 165 man days |

It should be understood that this is time spent on the bare essentials in engineering administration and as will be pointed out in this report, there are many functions not receiving the necessary attention.

During our discussions, I asked for a listing of the responsibilities which would be given to an engineer if one were assigned to the forest. This information is given in Appendix 2. It reflects advanced and very clear thinking on the part of the supervisor for he recognizes the role of engineering in the overall operation and administration of a forest even though heavy activity in timber sales is lacking. We have in the past been prone to relate the need for an engineer to volume of timber sold. This policy is being over-come and Supervisor Dremolski is a strong proponent for pushing ahead with engineering assistance on forests comparable to the Humboldt. There are other jobs which might have been added to his list (Appendix 2) such as: participation in (1) in-service and other training meetings, (2) assisting district rangers in preparation of project work plans, (3) participation in forest inspections, (4) maintenance of status records, (5) obtaining reference data for engineering functions, and many other activities outlined in the Engineering Workload Study for the forest level dated December 1958.

All of the foregoing adds up to the fact that the forest has a definite need for engineering assistance. The regional office has in the past provided limited help in making surveys and designing roads and bridges but it has been far from adequate and there is strong evidence of lack of follow-through on jobs that were started and dropped in the lap of the forest staff for completion. This statement will be substantiated later in the report. The best solution to this situation is, of course, the assignment of an engineer to the forest. We are all well aware of the pressing need for engineers on other forests and the lack of qualified men to fill the jobs. It is, therefore, obvious that there will be a period of some time to come when an alternate arrangement must be made. I propose the designation of an engineer to serve as the Humboldt National Forest adviser and contact on engineering matters. This individual could perhaps spend a part of his time on the forest to familiarize himself with conditions and problems but would serve principally as

the supervisor's representative in arranging for necessary engineering services and follow-up to see that work is carried through to completion. This should serve to help the Humboldt staff, but further consideration might well be given to provide assistance to other forests confronted with similar engineering service needs.

I wish to commend Supervisor Bremolski on his completed Bridge Inventory and Building Maintenance Plan and Record. These were the first such complete records that I have seen and was highly impressed by their clarity and accuracy. He has given both records much personal attention. Copies of the records for the Ely Ranger Station Maintenance Plan are shown in Appendix 3 for illustration purposes.

Signing in general is good and is progressing in accordance with an overall forest plan. They are constructed in compliance with the Sign Handbook. Vic Gardner's construction and maintenance work of all types is exceptional. He seems to excel in all phases of his field whether it be signs, campgrounds, roads, buildings, or other.

Outstanding among deficiencies noted were:

1. Lack of adherence to Nevada State laws regarding water rights.
2. Lack of attention to obtain purity tests on domestic water supplies.
3. Lack of use of operating plans for road and trail maintenance.
4. Limited knowledge of the location of boundaries for forest owned land.

### III. SUMMARY OF RECOMMENDATIONS

#### A. Roads and Trails

1. Obtain engineering assistance in location and construction of bridges to avoid possibility of poor installations. Examples; Jack Creek Culvert, Bluster Bridge, and Martin Creek Bridge No. 1.
2. Cost estimates for transportation of bridge materials from rail heads to site should be included in funds programmed for bridge construction projects.
3. The agreement drawn up with the Elko County Commissioners dated February 6, 1951 (See Appendix 4), should be revised or amended to clarify the term "maintenance" and to identify the roads involved.
4. Make comprehensive study and revision of the Road Inventory Record to show the actual prevailing conditions as they exist.
5. Make greater use of cross-dips on steep grades to divert water from road surface and prevent rutting.
6. Request surveys to determine an adequate location and cost for getting roads out of stream beds.
7. Consideration should be given to recommending work on Forest Highways No. 21 and 15 at the earliest possible date.
8. Make use of the R.O. Materials Engineer in making preparation for road construction and restoration operations.
9. Carry out road and trail maintenance by prepared plans.

#### B. Water Improvements

1. Developed water systems for dwelling and campground culinary use should be tested for bacteriological content as specified in Forest Service Handbook, paragraph 5652.31F and H-4 Supplement No. 72.
2. Attention should be given to obtaining certificate of appropriated water or other right to use water in compliance with the Nevada State law. This law applies to both underground and surface water. A need exists on the Humboldt National Forest for a review of the

certificates now held to determine what action needs to be taken to bring this matter up-to-date.

3. Campground plans requiring water systems should not be approved until a water system design is prepared, a water right is obtained, and a test for water purity is made.
4. Sewage disposal systems should be located and platted for all administrative sites and septic tanks should receive an inspection annually. It is recommended that the Manual of Septic Tank Practice, issued by the U. S. Public Health Service be followed. (See FSN 5652.11.)
5. Give consideration to improving the spillway at Angel Lake.

C. Equipment Management

1. A Limited Functional Inspection of equipment management was made in 1959 by Mr. D. G. Rose (See Appendix No. 6). For this reason very little attention was given to equipment during this inspection. A letter acknowledging the LFI and agreement to its contents was written by Mr. Drazowski on June 9, 1959. I suggest that the recommendations made in that report be considered a part of this GFI.
2. Action should be taken to obtain a blade for attachment to the new end-loader which is on order for the forest.

D. Land Line Location

1. Encourage all field-going personnel to be constantly on the alert to locate, photo identify, and record monuments controlling the boundaries of forest-owned land. (See FSN 5606.)
2. Make annual arrangement for assistance from the R.O. in corner search and recovery of corners and the location of property lines.

E. Signs

1. Remove or revise the sign at the Terraces Administrative Site.
2. The newly installed sign indicating the entrance to the Wheeler Peak Scenic Area should be moved to the east side of the highway.

3. The existing traffic control signs on the Duck Creek-Steptoe Road should be removed and consideration given to the need for replacing them.
4. Several old Nevada Forest signs are still in existence and should be scheduled for replacement.
5. The White Pine District is not signed to the same standards as the rest of the forest. Considerable work should be programmed for this district.

F. Maps and Photography

1. Rangers should be encouraged to make full use of the available aerial photos for administrative operations.
2. Recommendations concerning use of existing maps will not be made since extensive mapping activity is just getting started on the Humboldt.

G. Buildings and Improvements

1. Make site study in compliance with FSM 5651.51 prior to acquisition of land for building construction.
2. Prepare a case summary and consider the replacement of numerous small buildings at Lamolle Ranger Station with an adequate warehouse and garage.
3. Schedule the replacement of the present Gold Creek Ranger Station dwelling.
4. Give attention to the regular testing of fire extinguishers.

#### IV. ANALYSIS OF RECOMMENDATIONS

##### A. Roads and Trails

1. The extent of R.O. assistance in bridge and culvert construction has been directed toward site survey, design, and purchase of materials. The location of the bridge at the site has been left to the C&M foreman. The majority of the jobs completed are excellent. Examples are the Upper Bruneau and Thomas Campground bridges (See photos 1 and 2). Three installations were inspected which will require additional work to prevent damage during periods of heavy spring runoff. These are the Martin Creek Bridge No. 1, Bluster Bridge and Jack Creek Culvert.

The Martin Creek Bridge No. 1 (photo No. 3) is well located. However, the wing walls were left without adequate fill behind them. Heavy rock riprap should be installed at the ends of the wings to retain the fill required to give them support.

The Bluster Bridge is installed at an improper angle to the stream flow (photos Nos. 4 and 5) and is located just below a curve in the stream which causes flood waters to exert a heavy erosive action behind the wing wall shown in photo No. 5. Debris has been deposited behind the wing and erosion at its base has been heavy. A heavy rock berm should be constructed to channel flood water through the structure and protect the wing wall.

The Jack Creek culvert is improperly installed. By photos Nos. 6, 7, and 8, I have attempted to present a summary of the conditions here. The 96 inch diameter culvert is installed at an angle to the direction of heavy stream flow (photo No. 6) setting the stage for accelerated erosion. It is located in such a way that a slight reverse curve in the road is required to cross the culvert leaving it very short on the upstream side and long on the downstream side (See photos Nos. 7 and 8). This is indicative of inadequate design engineering. The slight reverse bend in the road was made to meet the culvert location. This condition is a hazard to traffic. The photos also point out the insufficient depth of fill over the culvert. This culvert should be moved to a position normal to the stream flow (length of culvert is adequate - 56 feet) and should be moved upstream to remove the reverse curve in the approach. The grade should also be raised on the road to provide adequate cover.

2. Supervisor Bromolski pointed out several projects for which the Division of Engineering did not provide funds for

transportation of materials to the construction site. This applies to two bridges currently under construction, Upper Jarbridge Bridges Nos. 3 and 4. The matter of transportation costs is a major one for the Humboldt because of its extension over a wide area. The matter has been discussed with the R.O. design engineer and he plans to take positive action to account for this item for future projects.

3. The agreement with the Elko County Commissioners is a good approach to get county cooperation in the maintenance of our system roads. There has always been a question as to the amount and type of work which should be done by each party in the fulfillment of this agreement. Route No. 148 along Jarbridge River has been the subject of considerable concern to Supervisor Dremolski. This is a county road, however, the Forest Service has replaced two bridges and a need exists to replace four more. It is a legitimate use of R&T funds to replace these bridges, however, the county should be urged to at least participate in the work. An amendment to the agreement should be made clarifying terminology and establishing standards, thus making a more firm, workable document. The roads designated on the document should be reviewed and corrected. For instance, the Ruby Valley (Secret Pass) and Lamoille Canyon roads are shown on the transportation system as forest highways and not subject to this type of negotiation. The Bruneau River road shown under county maintenance cannot be identified on the new inventory. In other words, the document has the appearance of being a display item rather than one which controls maintenance activities of the participating parties. Serious consideration should be given to its revision or possible elimination if Government advantage cannot be shown. The R.O. will be happy to assist in getting the job done.
4. There are many examples in the road inventory to point up the need for an intensive review to bring it up-to-date. Examples for reference are:
  - a. Route No. 137 is shown as R&M maintenance. In practice, it is entirely in the R category.
  - b. Route No. 148B is shown as R maintenance but is actually being maintained by the county.
  - c. Route No. 184D is in the same situation as item (b).
  - d. Route No. 176 is shown as a forest development road under R maintenance, however, since it has never

actually received any maintenance and according to the supervisor is probably not passable to anything except possibly a jeep, it is suggested that the road be shown as non-existing.

There are many others that can be cited such as roads shown in the J category of maintenance and actually at the present time no road exists. The present inventory shows the following tabulation of mileage by maintenance classification:

|       |   |            |       |
|-------|---|------------|-------|
| J     | - | 620.9      | miles |
| K     | - | 336.2      | "     |
| M     | - | 945.1      | "     |
| X     | - | <u>1.0</u> | "     |
| Total |   | 1,911.2    | miles |

The F.Y. 1960 allotment of F&T funds and the forest's accomplishment report give the following information:

|                    | <u>Allotment</u> | <u>Accomplishment</u> |
|--------------------|------------------|-----------------------|
| Road Maintenance   | \$18,136.00      | Not shown             |
| Road Restoration   | 20,820.00        | 17.6 miles            |
| Trail Maintenance  | 2,765.00         | 50.0 "                |
| Trail Restoration  | 4,680.00         | 27.0 "                |
| Bridge Replacement | 4,918.00         | 1 bridges             |

From the foregoing it can be seen that the forest is attempting to maintain 945 miles of road with \$18,136.00 annually, which amounts to something less than \$20.00 per mile. It is obvious that by necessity, from availability of funds alone, many of the roads that are now classified as "M" maintenance should be reclassified to "X" maintenance. A realistic maintenance classification of the forest road system, supported by a firm maintenance plan, will result in the most effective use of maintenance funds.

- As I have previously stated, most of the construction and maintenance work on the Humboldt is outstanding. At several locations, however, the installation of cross-dips on steep slopes will eliminate roadbed erosion. Examples are Route No. 137 north of Brunson River, F.H. No. 23 near Success Summit, and Route No. 405 after it leaves the White River drainage. Cross-dips are easily constructed and do not present a hazard to low speed traffic.

6. On two roads which were traveled during the inspection (Routes Nos. 436 and 405), I made note of sections in which the roadbed follows the streambed. There may be others. This is a poor practice both from maintenance and watershed protection standpoints. Route No. 436 had been bladed this year but just prior to our trip a flash flood had caused considerable displacement of soil on the section located in and near the streambed. A tabulation should be made of such problem areas and priorities established to make surveys for relocation and improvement. Following this, an evaluation of the cost compared to cost will dictate the allotment of funds for construction work. This is a function which should receive early attention by a designated engineer if such is arranged.
7. I had opportunity to see Forest Highways Nos. 21 and 15, both of which seriously need improvement. However, since I am in no position to evaluate the needs in the remainder of the state, I can only recommend that they again be considered at the next annual meeting between the regional engineer, the BPR, and the Nevada State Highway Commission. Route No. 21 will serve a large volume of recreation activity when an adequate road is provided. It is currently very rough and steep and no effort is being made to keep it open to provide winter recreation (See photo No. 9). It serves a highly scenic area and there are extensive plans for campground development in the area. A photogrammetric survey was completed for BPR by Fairchild Aerial Surveys in 1956. Route No. 15 is completed to high standards from Highway No. 93 to the summit of Secret Pass. From this point westward the road is very narrow, winding, and poorly maintained. Its completion is desirable to service the needs of ranchers, recreationists and the Forest Service. Since this inspection was made a meeting was held to establish the forest highway work plans for Nevada (See Appendix #1).
8. This recommendation is made to serve the currently programmed graveling project for Route No. 157 north of Gold Creek Ranger Station. During the inspection it was pointed out by the supervisor that he planned to use bank-run gravel for the job and that three sites had been selected for the source by the GNR Foreman. I have taken the liberty to notify our materials engineer of the project and he plans to visit the area, run tests on the material, and approve or recommend action to improve the operation. His services should be utilized on all such future projects.

9. Road and trail maintenance are currently being carried out without a prepared program showing estimated costs, operations scheduled, dates of actions, etc. The supervisor and his staff feel that they receive insufficient funds to come anywhere near doing an adequate job and therefore an attempt to carry through with prepared plans is useless. In 1957 the forest staff prepared a listing of their roads with a brief statement of work to be done (See Appendix No. 5). It has never been followed or charged upon. I feel strongly that the forest must start utilizing this planning tool, because of the approaching retirement of Mr. Gardner, if for no other reason. The use of maintenance plans and records are indispensable for estimating costs of needed work and providing a basis for requesting adequate funds to do the required work. Supervisor Drzemolski is rightfully proud of his building, maintenance records and bridge inventory. I feel certain that he will soon be equally convinced of the value of road and trail maintenance plans, once he starts using them. Since this activity is one which a forest engineer normally carries out, it is to be expected that this might be one of the details overlooked by the present staff.

#### B. Water Improvements

1. During the course of the inspection it was learned that testing of culinary water for dwellings and campgrounds was being done only at long intervals of time and often not at all. The only record of a purity test having been made was found at Mahoney Ranger Station. A record of contact with the State Department of Sanitation was found at the Lamont Ranger Station regarding rust deposits in the water during late fall. In this instance, the forest had requested assistance from the S.D. in determining the cause and our reply was given by memorandum, dated April 1, 1957, under designation 8-IMPROVEMENTS-Water Systems. There is a continuing need for S.D. assistance in this problem.

The forest is utilizing at several locations water taken from the collection pipes installed by Kennecott Copper Company. There is a wide ranging network of such pipes to provide sufficient water for the towns of Ruth and McGill and the smelter. An example of the source of this water is shown by photograph No. 12. As can be seen, the intake is well protected. However, the water is from surface run off and therefore subject to pollution. The Kennecott Copper Company collects this water in reservoirs and the water is treated prior to distribution to the communities. Since Forest Service use is made prior to this treatment, we should take positive action to determine whether this water

and any other water used for domestic purposes is polluted. If pollution is found, chlorinators can be installed in the system.

2. The matter of obtaining water rights is apparently in some cases overlooked. The water system at Angel Lake Campground was installed about a year ago without securing a right to use the water. This might prove to be embarrassing to the Forest Service if the rancher owning and operating the dam at Angel Lake has title to all of the water.

The water systems at Lehman Creek and Baker Creek Campgrounds are being installed without an approved water right. In the case of the Baker Creek Campground, an application to appropriate water was submitted to the R.O. on February 16, 1960, and is currently retained in the R.O. files. A reply was made to the forest on March 3, 1960, to the effect that finances to make the required survey to locate the spring would need to be furnished by the forest. The forest in turn requested funds for this job on March 17, 1960. This is the last recorded action. Apparently no funds were available for this work. There is a case of mismanagement in this process in that funds were programmed for the construction of the campground but not for the required actions to comply with the prevailing state laws in securing necessary water rights in advance of construction.

In the course of the inspection, it was learned that the forest was not informed as to what certificates of appropriated water actually are on file for the Humboldt National Forest. For the supervisor's benefit, I have listed the following certificates which are on file in the vault at the R.O.

| <u>Name</u>                        | <u>Certificate<br/>Number</u>      |
|------------------------------------|------------------------------------|
| Gold Creek Ranger Station ditch    | 276                                |
| Gold Creek Ranger Station pipeline | 2264                               |
| Ruby Ranger Station                | 2573                               |
| Unnamed spring                     | 2803                               |
| Easter Spring (Gillison T.S.)      | 2603                               |
| Secret Spring                      | 2667                               |
| Baker Ranger Station (By Road)     | White Pine Co.<br>Record No. 73667 |
| Boy Scout Spring                   | 2803                               |
| Allen Spring                       | 2102                               |
| Current Creek Campground           | 2115                               |

It is my understanding that action is being taken to have

these records transferred to the Forest for permanent retention in the future.

I have been told that the Forest Service has been encouraged in the past by a former Nevada State Engineer to avoid making application to appropriate stock water in ranch areas. Although this arrangement seems to be working well up to the present time, we recognize that it leaves the Forest Service in a questionable position. Subsequent to this inspection, a conference was arranged with the state engineer to review our water-use compared to certificates held and to discuss fully our water needs for present and future to aid the development of legal guidelines to control these operations.

5. There is a definite need for more coordination between personnel involved in campground design and layout and the development of the water system to serve that campground. Of the three campgrounds cited in section "2" the Angel Lake Campground water system was developed by the ranger. The systems for the Baker Creek and Lehman Creek Campgrounds were developed by a road engineer assigned to survey and location of the Lehman Creek Road. This work should be programmed and financed in Engineering to assure a complete followup on all systems to provide adequate design, obtain a right to use the water, arrange for test for purity, and make the survey to establish the location of the source. There should also be adequate engineering and supervision of the installation of the systems to be certain that the work is finished to adequate standards.
6. I was unable to find a record of the location and maintenance being given to sewage disposal systems at administrative sites. FSH and FSH-5652 should be followed in the care and maintenance of these installations. The Memorandum of Agreement between the Forest Service and the Public Health Service (See FSH 5652.03) spells out the concern for sanitation systems and directs us to follow the recommendations made in the Manual of Septic Tank Practice. This data should undoubtedly become a part of the supervisor's maintenance plan for administrative sites. This recommendation is made with full realization that locating the systems in most cases will be very difficult.
7. The Forest has only 3 dams operating under special use permits. These are the Wild Horse Dam, Wolfcreek Flat Dam, and Angel Lake Dam. The Wild Horse Dam is operated by the Bureau of Reclamation and due to the shortage of time was not visited. I was not in the vicinity and therefore did

not see the Sunflower Dam. This should be placed on Mr. Riley's LFI schedule. The Angel Lake Dam appears to be in very sound condition. (See photo No. 13.) The spillway at this dam consists of a channel free of vegetation and without protection by riprap or concrete lining. By photograph No. 14, it is apparent that this spillway has carried waterflow in the past. There is also evidence farther down the mountainside that a dam in this same position at sometime in the past has failed causing extensive erosion as the water surged down the channel to the valley below. In the interest of guarding against failure of the dam and improvement of the general appearance of the campground, which has recently been installed, it might be desirable to initiate action to obtain the cooperation of the rancher, the various civic groups who have an interest in the campground, and the Forest Service, to provide some type of lining for this spillway.

#### C. Equipment Management

1. The following pieces of equipment were inspected and found to be in acceptable order:

|                     |                             |
|---------------------|-----------------------------|
| Vehicle No. A-50480 | 3/4 ton, 1950, Chev. Pickup |
| Vehicle No. FS-216  | 3/4 ton, 1957, Ford Pickup  |
| Vehicle No. A-57485 | Chev. Sedan                 |

I looked over a trailer house just acquired from excess property at a total cost of \$900.00 including transportation costs. It is a poor investment. Extensive work will need to be done both inside and outside to make it serviceable. The frame and wheels on which it is mounted are sound.

2. I discussed with Mr. Bronowski the obvious need on the forest for a light piece of road maintenance equipment. With the light rainfall conditions prevailing on the Humboldt many of the roads require only a very light blade to remove rocks that have been accumulated on roads during the winter months. Since an order has been placed for a rubber tired tractor equipped with an end-loader, it is recommended that action be taken to provide a blade for this same piece of equipment to do light maintenance work as required.

#### D. Land Line Location

1. There was evidence in the files at Mahoney, Lamolle, and Wells Ranger Stations that the rangers are working at the job of determining where their property lines are located. This should be of prime interest to all district rangers

especially since the Humboldt National Forest is so badly broken up by private ownership. The current plans for land exchange programs to consolidate the forest-owned land can hardly be carried out effectively without knowing what lands are being exchanged. The present advocated system of using aerial photos in property corner search has been tried and proven, yet little actual use seems to be made of it. The regional cadastral engineer gave personal training to each ranger during the period, January 2 through February 4, 1960, and the Humboldt has been represented in the annual school of photogrammetry where training is given on this subject. The foundation has been laid for extensive attention to corner recovery action. All rangers, assistants, field survey crews, etc., must be continuously urged to keep the problem in mind if this big job is to be done.

2. This season, the regional cadastral surveyor gave his first positive assistance to the forest in locating a boundary line. He is scheduled for 4 pay periods of work during the late fall or early spring, depending on weather conditions. Supervisor, Erenolski, informed us that he asked for a location survey for the Angel Lake Campground last year and again this spring but received no assistance. I am unable to find a record of the request in E files. On August 4, he placed a telephone call to A. Johnson making a verbal request for the survey. On August 9, I dispatched Mr. Young and his crew to the site to complete the work. The corners were recovered and the necessary lines located in about 4 hours actual time. The survey proved to be disturbing to the ranger in that 3 units of the new Angel Lake Campground, and the spring supplying the water system were found to be located on Southern Pacific R.R. property. Again we are confronted with a lack of coordination between recreation development people and Engineering and perhaps a breakdown in followup on requests for assistance. During his scheduled work on the Humboldt this year, Mr. Young will plan to take care of pressing boundary problems and work on the areas proposed for land exchange. This will undoubtedly give the supervisor much needed assistance in these matters and pave the way for more effective work in the future.

#### E. Signs

1. A new sign has recently been made and erected at the "Terraces Administrative Site." (See photo No. 17.) It is very misleading to the public in that it reads "Terraces Ranger Station." There is no building here and no ranger in command has ever been assigned to this site. The building

consist of a warehouse, garage, and stable. A dwelling was built at this site during CCC days but was moved because of lack of use. The sign serves no useful purpose as it exists and should be removed or changed to read "Terraces Administrative Site."

2. A very appropriate and "eye-catching" sign has just been completed and erected at the entrance to the Wheeler Peak Scenic Area. It is located on the inside of a curve in the highway in a position which does not get the attention of highway travelers. Supervisor Bremowski, Ranger Cox, and I looked over the site and after some discussion concluded that it should be moved to the east side of the highway. This will put it on the outside of the curve and command the attention of approaching traffic from both directions.
3. On this one road which I traveled during the inspection, I noted several traffic control signs which were made up and installed several years ago (See photo No. 18). The signs are made of wood, painted yellow with black letters in compliance with the Sign Handbook. They are weathered and cracked and although prepared according to standards, give a poor impression in comparison to the rest of signing activity. After considerable thought and discussion with others, I have concluded that they should be removed and the opinions of perhaps our regional safety officer and the Nevada State Highway Patrol obtained as to whether the signs are actually needed on this type of road. If so, I suggest we follow the example set by Region 7, utilizing metal signs identical to state traffic control signs except for the addition of the Forest Service shield.
4. The supervisor and rangers are well aware of the continuing existence of several old Nevada National Forest signs and plans are being made to replace them at first opportunity. This, I understand, is scheduled for correction this winter.
5. Only the White Pine District on this forest was noticeably lacking in adequate signing. The road system is not marked except for numbers in a few places. Directions and distances to historical places of interest, prominent mines, named springs, campgrounds, etc., should be given at road intersections. The ranger on this district should take immediate steps to program preparation and installation of signs according to plan.

F. Maps and Photography

1. The aerial photography available to personnel on the Humboldt is of varying ages, scales, and condition. Only the Jarbri

area can be considered adequately covered. The rest of the forest will be photographed in F.Y. 1961 at 1:15,840 scale. At the present time the rangers at Mahoney and Wells Ranger Stations are making extensive use of their photos to locate property lines, developed springs, administrative sites, campgrounds, corrals, and other features of administrative interest. All rangers should be encouraged to carry their photos (regardless of age and scale) with them in their field activities. Photos bought and kept in the office will prove to be a useless expenditure of funds. A regional policy has been established to obtain complete aerial photo coverage of the region and to carry on a continued annual training program in the use of aerial photos for administrative operations. A lack of interest and effort on the part of the rangers to utilize this basic working tool will reduce the effectiveness of the program. Constant reminder and encouragement by R.O. and S.O. personnel are required for the next year or two if rangers and other field-going people are expected to make maximum use of it.

2. On December 3, 1959 the inspector visited the supervisor's office in Elko to review and summarize the mapping program for the staff. At that time a complete atlas of existing maps and a record of mapping and photography status were left for the supervisor's reference. At the present time, good maps of the forest are limited and scattered. Our field crews are working on the Humboldt this season to establish control for the planimetric series (2" equals 1 mile) maps. The manuscripts are expected to be completed by the end of F.Y. 1962. At that time, we can expect the forest personnel to make thorough and intensive use of adequate photo and map coverage.

#### G. Buildings and Improvements

1. The dwelling just recently completed for the assistant ranger at Lamcille is presenting a problem in subsurface drainage. Apparently no site study was made to determine subsurface soil conditions, drainage, and water table conditions, etc. The forest is now engaged in installing drain tile around the house and out to the roadside ditch to carry away subsurface water. Estimated cost of this work was \$215.00, however, the supervisor states that actual cost will be something near \$500.00. This points to the need for careful consideration of site studies which should be carried out as instructed in the Forest Service Handbook.

2. The grounds at the Lamaille Ranger Station are cluttered by numerous small buildings which have been moved and accumulated over a period of years. Tools and equipment are stacked in various buildings and vehicles are not garaged. It is suggested that the existing plat be revised to show the location of all buildings and their uses, and another developed to indicate what needs to be done to provide adequate warehouse and garage facilities. From this a rough cost estimate can be made and consideration given to programming construction of adequate buildings.
3. Photos Nos. 26 through 28 show the general outside condition of the Gold Creek Ranger Station. It is on the 5 year program for replacement and a request will be made to schedule it for F.Y. 1963. The front view shows clearly the condition of the porch. Photo No. 28 reveals the make-shift construction that went into the building and the wood structure in contact with the soil. The replacement of this building is urgently needed. Another problem is presented by the Mahoney Ranger Station and office near Jarbridge. A recent improvement job has been done on the interior of the dwelling costing \$1500.00 but it is still short of being adequate. No positive recommendation is given regarding these buildings. The station cannot be occupied the year around because of snow conditions. No other alternative location has been recommended because of the remoteness of the district. Perhaps a future GII will provide the answer as to whether new construction should be planned at the present site or some alternative approach be devised. It seems to me that a cost estimate should be obtained from a local contractor for the construction of a new summer station. This will be highly useful in determining the most practical answer to this question.
4. Fire extinguishers were checked as a routine point of concern during the inspection. Almost all extinguishers had received their last weight test in 1957 and 1958. All district personnel should be reminded to take care of this matter at regular intervals.

V. SUMMARY OF COMMENDATIONS

A. Roads and Trails

1. Continue and enlarge on the use of dips to cross dry streambeds in place of installing culverts. This practice has been used to good advantage by Mr. Gardner and has an excellent application on the Humboldt (See photo No. 10).
2. Supervisor Dremolski has obtained assistance in road work from the Nevada State Fish and Game Commission in the form of cattle guard materials. The arrangements were made by negotiation with the County Game Commissioner who serves as a member of the State Commission. This is the first such cooperation provided by a State Fish and Game Commission of which I have learned and represents a major step in developing their further participation in providing good roads for hunter traffic in the fall. It is hoped that the supervisor continues his efforts along this line.
3. Outstanding examples of force account road construction and maintenance were observed on routes 447, 425, 424, and many others. Little needs to be said other than to give adequate recognition to Mr. Gardner, who has performed so well with almost no professional engineering counsel.
4. Cattle guard installations are excellent. (See photo No. 11.) In some locations where a firm support of coarse gravel exists (this is a common occurrence in Nevada) the guard has been installed without foundation. After over 5 years of use, these guards are still in excellent condition.
5. The forest is commended for the complete and up-to-date condition of their bridge inventory records. The supervisor has taken a personal interest in this management tool.

B. Water Improvements

The development work just completed by Mr. Gardner on the spring serving the Baker Creek Campground is an outstanding job. An excavation in the spring was made, a layer of coarse gravel laid, three lines of tile installed leading to a central pipe, more gravel placed over the tile and finally the top soil restored as before. The area is now being seeded and fenced for protection. Rate of Flow is 7-1/2 gallons per minute. This source should be active for many years to come.

C. Equipment Management - NoneD. Land Line Location - NoneE. Signs

The greater portion of the forest is exceptionally well signed. Good design of the structure and conformity to lettering standards is evident. Examples are shown by photos Nos. 15 and 16. Most districts have good sign plans and records to guide their operations.

F. Maps and Photography

It was noted that the ranger district offices have on file the DLM township survey plats for their respective areas. These are necessary for reference by anyone carrying out boundary posting activities. Their use at present is limited but there is good reason to believe that the forest will, during the next few years, be engaged in much of this work.

G. Buildings and Improvements

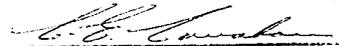
1. The supervisor is keeping a comprehensive building maintenance plan and record of all administrative sites on his forest. It is an excellent reference except for the lack of records regarding sewage disposal systems (See Appendix 3).
2. Campground facilities are generally good. Examples of tables, footbridges, fireplaces, etc., are shown by photos Nos. 19 through 25. It has been our general policy to recommend removal of children's playground equipment from campgrounds. The swings and teeter-toters shown by photo No. 24 were installed by Kennecott Copper Company, constructed of steel and set in concrete. They are in excellent condition and there should be no objection to their presence.

VI. FOLLOWUP ON PREVIOUS INSPECTIONS

No previous General Functional Inspection in Engineering on the Humboldt National Forest has been made.

VII. APPRECIATION

I wish to express my sincere appreciation for the attention and courtesy extended by Supervisor Bremolski and his staff during this inspection.

  
C. E. CARMAN, Inspector  
Division of Engineering





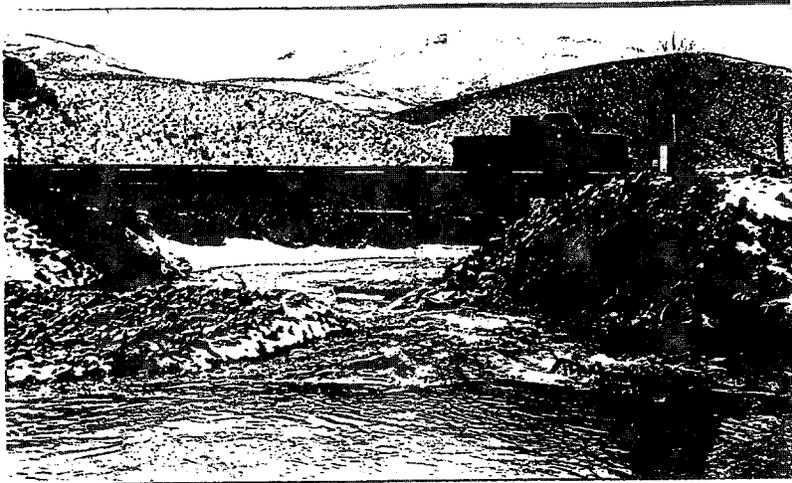


Photo No. 1  
Upper Branca Bridge  
Outstanding example of force account construction.



Photo No. 2  
Thomas Janney and Bridge  
Outstanding example of force account construction.



Photo No. 3  
Martin Creek Bridge No. 1  
Showing lack of fill behind wing wall.



Photo No. 4  
Bluster Bridge  
Showing error in location.



Photo No. 5  
Bluster Bridge  
Showing erosion around wing wall.

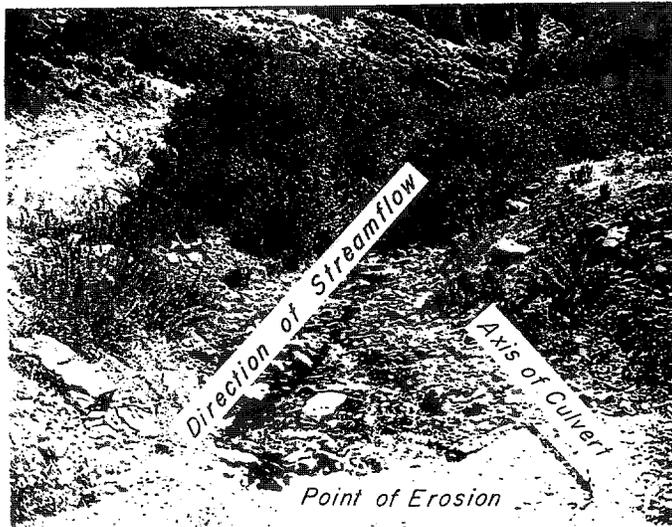


Photo No. 6  
Jack Creek Culvert  
Showing stream flow and erosion action.



Photo No. 1  
Jack Creek Culvert  
Showing limited depth of fill.

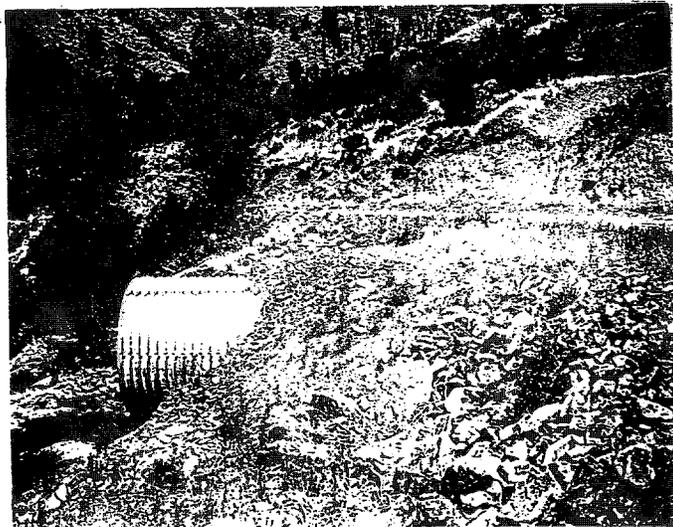


Photo No. 2  
Jack Creek Culvert  
Showing condition of culvert and surrounding area of  
fill. Edge of embankment is visible.



Photo No. 9  
F.R. 21 in Lambille Canyon  
Showing condition of the road surface.



Photo No. 10  
Disposal of dr. streambed crossing.  
(Extensively used on southern part of Humboldt National Forest)

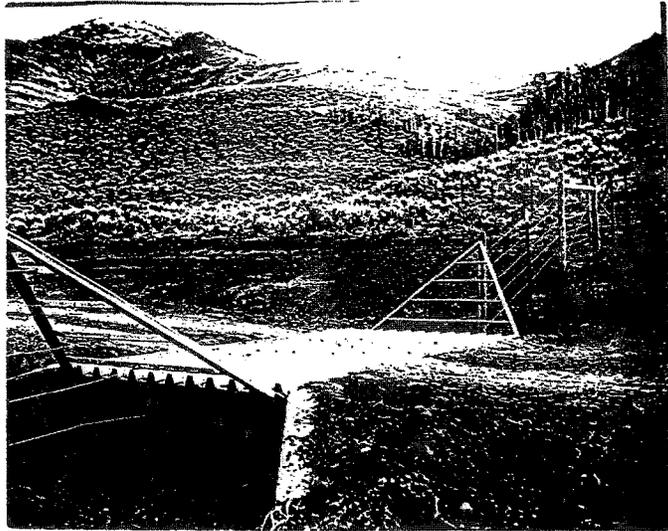


Photo No. 11  
Typical Cattle Guard Installation

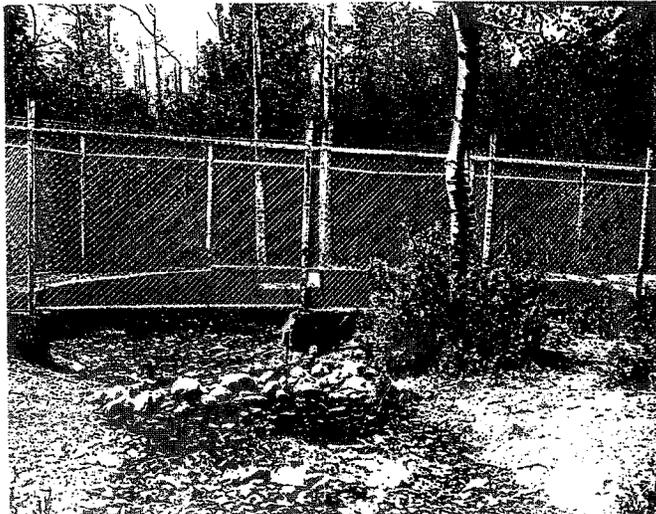


Photo No. 12  
Kennecott Copper Company Intake  
for Water Lines at Timber Creek Campground.

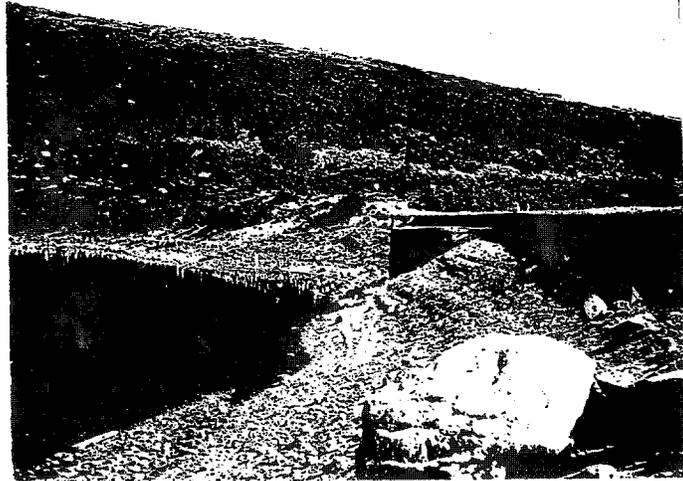


Photo No. 13  
Inner Surface of Angel Lake Dam



Photo No. 14  
Spillway at Angel Lake Dam



Photo No. 15  
Typical of Signs Found  
on the Humboldt National Forest



Photo No. 16  
Typical of Signs Found  
on the Humboldt National Forest

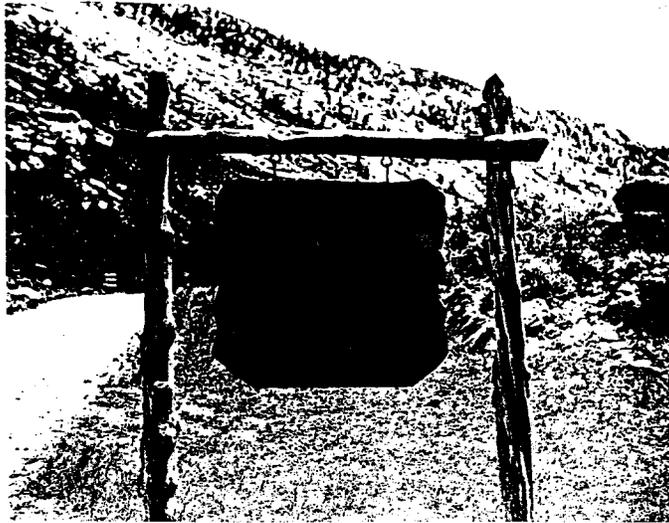


Photo No. 17  
Sign at Terraces Administrative Site  
There is no ranger station here.



Photo No. 18  
Example of Traffic Control Signs  
on the Dick Creek-Steppe Road, El, District



Photo No. 19  
Permanent type of picnic table  
with cinder block base.



Photo No. 20  
Permanent type of picnic table  
with poured concrete base.



Photo No. 23  
Example of foot bridge  
used extensively in Humboldt campgrounds.

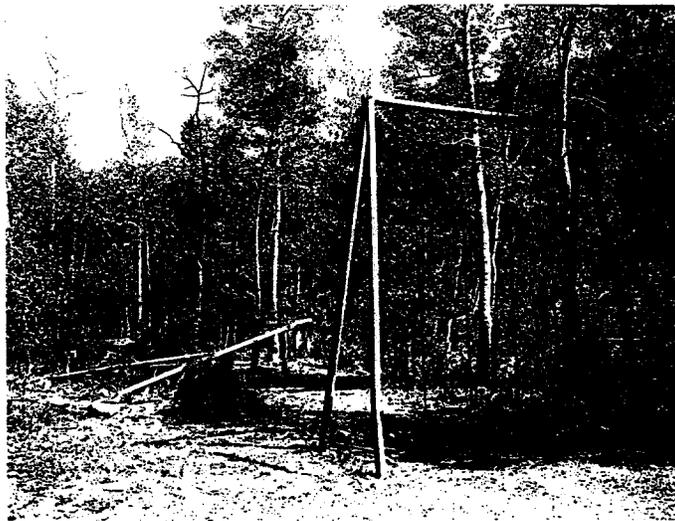


Photo No. 24  
Campground equipment installed by Kennecott Copper  
Company at Timber Creek Campground.

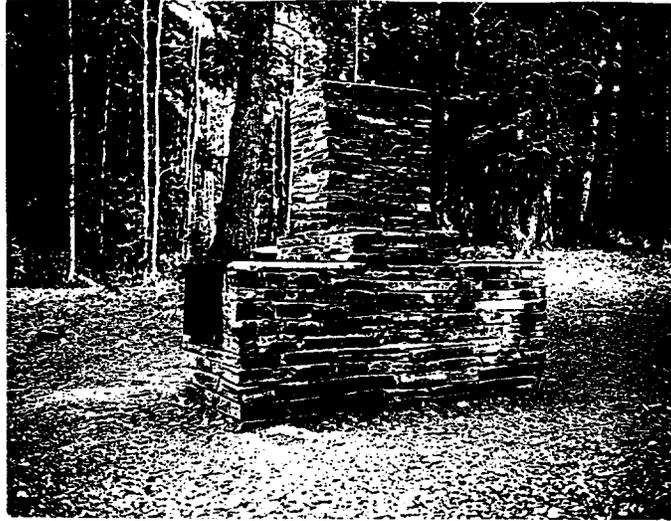


Photo No. 29  
Community Fire Place  
Constructed by the Forest Service  
at Fisher Creek Campground.

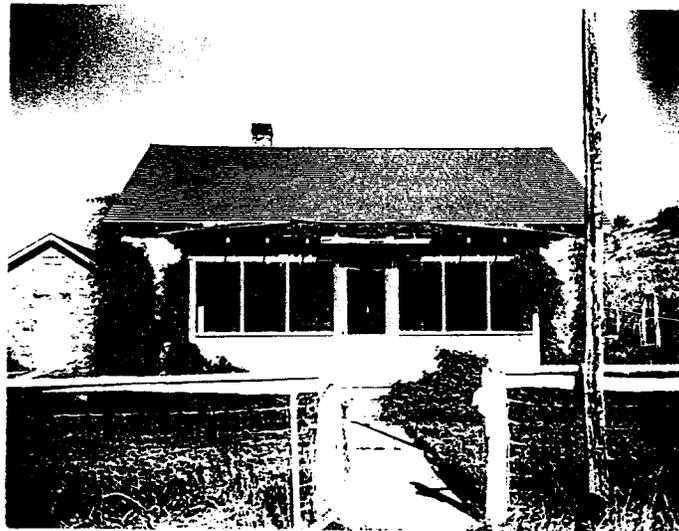


Photo No. 31  
Front view of Gold Creek Camp, which  
is a Forest Service camp.



Photo No. 21  
Side view of Gold Creek Ranger Station  
illustrating "add-on" type of construction.

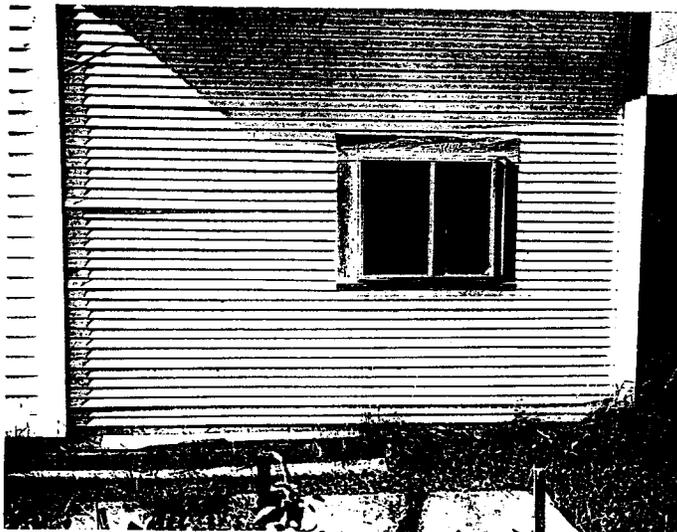


Photo No. 23  
Northwest corner of Gold Creek Ranger Station  
showing foundation, corner of northwest corner and patch and  
vegetation above the level of the foundation.



C O P Y

5610

To: Files September 12, 1960

From: Harry E. Tullis

Subject: Transportation System

Reference is made to Mr. Huckeby's 5610 memo of August 23, 1960.

The Forest Highway program conference was held on Friday, September 2, at the New Mint Building in San Francisco.

Those in attendance were:

Mr. S. E. Farin, Regional Engineer, B.P.R.  
 Mr. Forrest Hall, District Engineer, B.P.R.  
 Mr. W. C. Jackson, Engineer, B.P.R.  
 Mr. H. C. Clausen, Federal Highway Projects Engineer, B.P.R.  
 Mr. W. O. Wright, State Engineer, Nevada State Highway Dept.  
 Mr. James Usher, Chief, Roads & Trails R4 - USFS  
 Mr. H. Tullis, Forest Engineer, Toiyabe N.F.

The work plan as proposed by Mr. Clausen to the group is attached, and is as follows:

FY 1961 - Deer Creek 22-1 (1) Jct. Mt. Charleston F.H. near East Forest  
 Bdry, North 6.2 miles grading. F.D.R. money, \$200,000.00  
 \$535,000.00 - Mt. Charleston Road 11-1 (1) - Beginning of  
 Route 22-1 (1) - Junction - grading - \$15,000.00  
 (These sections to be rushed and let as soon as possible, yet  
 this fall) - Total \$850,000.00

FY 1962 - Deer Creek 22-1 (2) 6.2 miles North Mt. Charleston Hwy, Northerly  
 to Jct. with Lee Canyon FH grading only - 2.7 miles \$450,000.00  
 (This section to be let as soon as design will allow after  
 Jan. 1, 1961, or at least by spring, of 1961.

|                 |               |
|-----------------|---------------|
| Survey Fund     | \$40,000      |
| Contingent Fund | <u>70,000</u> |
| Total           | \$560,000     |

FY 1963 - Deer Creek 22-1 (3) Jct. Mt. Charleston and Lee Canyon Road  
 Base and Bit Surf. 8.9 miles - \$270,000  
 11-1 (2) Mt. Charleston Road, Base and Bit surfacing 0.4 miles  
 \$15,000  
 15-1 (1) Ruby Valley - Beginning of Route to Entrance to Canyon  
 Grading and bit surf. 3.5 Miles \$300,000  
 Surveys 40,000  
 Contingent Fund 35,000  
 \$660,000

|  |               |
|--|---------------|
| FY 1964 - Ruby Valley 15-1(2) Engrance to Canyon to 2.6 mi. East |               |
| Grading & Bit Surf 2.6 miles                                     | \$540,000     |
| Surveys  | 40,000        |
| Contingent Fund  | <u>50,000</u> |
| Total  | \$630,000     |

|   |               |
|---|---------------|
| FY 1965 - Kingsbury 16 - Section to be determined but probably from |               |
| the summit to the East about 5.0 miles                              | \$500,000     |
| Surveys   | 40,000        |
| Contingent  | <u>50,000</u> |
| Total   | \$590,000     |

In general the meeting was short with all parties in agreement. There was some discussion on the way to handle the connecting link of 22 and 11, since 0.4 miles was outside the boundary and outside F.H. It was decided to leave it up to BPR to do what they considered best, which was probably to call it a connecting link, and not change any boundaries of FH 11.

The delay on Deer Creek contract was discussed, and BPR stated they would rush and let the first section yet this fall.

There was nothing else that occurred. The meeting was in session from 10:15 a.m. until 11:30 a.m.

/s/ HET



OPTIONAL FORM NO. 10

FOREST SUPERVISOR, HUMBOLDT NATIONAL FOREST, ELKO, NEVADA

UNITED STATES GOVERNMENT

*Memorandum*

TO : Regional Forester

1200 (5500)  
DATE: 8/16/60

FROM : L. A. Dremolski, P.S., By

SUBJECT: Organization

PERSONAL - CLARENCE E. CARMAN

Following is the information you requested while on your General Functional Inspection of the Humboldt N. F. The jobs listed are those which would be assigned an engineer. We believe they fully justify this position year-

1. Supervise two forest road crews. To include construction and maintenance of roads, bridges and trails. Prepare plans, reports and maintain records. The forest trail system includes 896 miles; the road system includes 1,513 miles.
2. Supervise equipment maintenance.
3. Supervise maintenance of administrative buildings. Buildings on forest: 8 office buildings, 38 dwellings and 16 utility buildings.
4. Engineering surveys connected with acquiring road rights-of-way. Approximately fifty needed - three per year.
5. Engineering surveys connected with land exchanges. Two cases per year.
6. Water right surveys. Two cases per year.
7. Safety and driver training officer.
8. Engineering surveys connected with special use road locations, fences, etc. Approximately fifty applications received per year. Special uses on forest - 251.
9. Forest S&W projects. One per year.
10. Boundary survey and posting. Approximately 171,000 acres alienated land in forest not adequately surveyed, marked or posted.
11. Maintain land status records.
12. Forest mining claims including gas and oil leases, determination of surface rights, etc.

*L. A. Dremolski*



BUILDING MAINTENANCE PLAN

Nevada National Forest 4/5/54 Date  
 Ely Administrative Site Supervisor's Office, Plan PA-54  
 Station Name Building Name and Plan Number

Brief Description of Building:

Plans Plan PA-54A revised office building. Inside walls of scissored wallboard painted to match woodwork.

Brief Description of Maintenance Work Required:

Repaint outside walls, roof and trim every four years. Repaint inside walls and trim every four - five years. Miscellaneous maintenance of hardware, plumbing fixtures and heating plant.

Record of Maintenance Work Done:

Outside Walls & Trim:

| when done            | 1950-1954                                   | 1955-1959  | 1960-1964 | 1965-1969 |
|----------------------|---|------------|-----------|-----------|
| Paint Required       | 12 Gal. Paint<br>1 Gal. Supp. Contract      | 1 Gal. Oil |           |           |
| Roof:                |   |            |           |           |
| when done            | 1945-1954                                   |            |           |           |
| Paint required       | 15 Gal. Paint<br>3 Gal. Supp.<br>1 Gal. Oil |            |           |           |
| Inside Walls & Trim: |   |            |           |           |
| when done            |   | 1958       |           |           |
| Paint Required       |   | 2          |           |           |
| Other Maintenance:   |   |            |           |           |
| (Describe)           | 1954  |            |           |           |
| when done            | 1 Gal. Brown                                |            |           |           |
| Mat'l. Reqs.         | 6   |            |           |           |

Remarks:

1954 Outside base painted. Labor - 1000.00  
 1958  
 1958

El. Ewing and the Supervisor's Office, Plan E. - A Revised

Michigan State University      October 1955



BUILDING MAINTENANCE PLAN

Nevada National Forest Date 4/5/54 ~~XXX~~  
Ely Administrative Site G's & Oil House, Plan R4-95A  
 Station Name Building Name and Plan Number

Brief Description of Building:  
 Frame building mounted on high concrete foundation. Plan R4-95A.

Brief Description of Maintenance Work Required:  
 Repaint outside walls, roof, trim and foundation every five years.

Record of Maintenance Work Done:

|                                  |      |               |  |  |  |  |
|----------------------------------|------|---------------|--|--|--|--|
| Outside Walls & Trim:            |      |               |  |  |  |  |
| When done                        | 1950 | 1958          |  |  |  |  |
| Paint Required                   | 2    | 2             |  |  |  |  |
| Roof:                            |      |               |  |  |  |  |
| When done                        | 1945 | 1950          |  |  |  |  |
| Paint required                   |      | 2             |  |  |  |  |
| Inside Walls & Trim:             |      |               |  |  |  |  |
| When done                        |      |               |  |  |  |  |
| Paint Required                   |      |               |  |  |  |  |
| Other Maintenance:<br>(Describe) |      |               |  |  |  |  |
| Foundation Painted               |      | 1954          |  |  |  |  |
| When done                        |      |               |  |  |  |  |
| Mat'l. Req'd                     |      | 1/2 Gal Paint |  |  |  |  |
|                                  |      | 1/2 Gal Turp. |  |  |  |  |

Remarks:

1955 to be painted  
19  
19

11. Tully, Warren Gas and Oil House Plan P - 95-A

Plan P - 95-A \_\_\_\_\_



BUILDING MAINTENANCE PLAN

Nevada National Forest 4/5/54 Date

Ely Administrative Site Warehouse, Plan R4-37  
 Station Name Building Name and Plan Number

Brief Description of Building:

Frame building, Plan R4-37 with special storage bins, seed room, and non-expendable property room.

Brief Description of Maintenance Work Required:

Repaint outside walls, roof, and trim every five years. Inside unpainted.

Record of Maintenance Work Done:

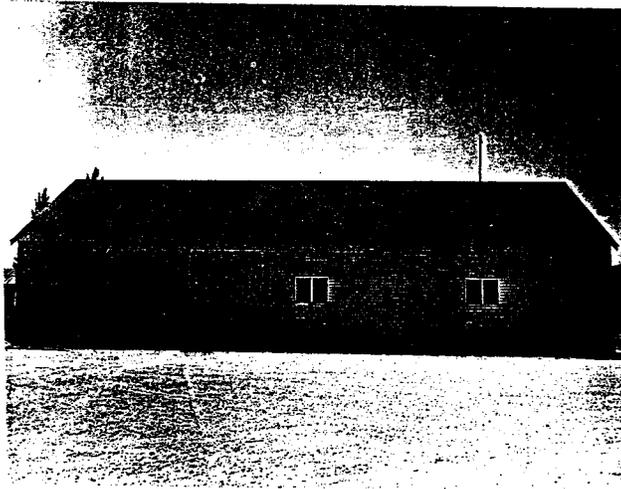
|                                  |                 |      |  |  |  |
|----------------------------------|-----------------|------|--|--|--|
| Outside Walls & Trim:            |                 |      |  |  |  |
| When done                        | 1950            | 1953 |  |  |  |
| Paint Required                   |                 | 8    |  |  |  |
| Roof:                            |                 |      |  |  |  |
| when done                        | 1945            |      |  |  |  |
| Paint required                   |                 |      |  |  |  |
| Inside Walls & Trim:             |                 |      |  |  |  |
| When done                        | none            |      |  |  |  |
|                                  | <del>1945</del> |      |  |  |  |
| Paint Required                   |                 |      |  |  |  |
| Other Maintenance:<br>(Describe) |                 |      |  |  |  |
| When done                        |                 |      |  |  |  |
| Nat'l. Req'd                     |                 |      |  |  |  |

Remarks:

19 53 Paint outside walls and roof.  
19  
19

Ely Headquarters Warehouse, Plan R-103

Picture taken \_\_\_\_\_ October 1953 \_\_\_\_\_



BUILDING MAINTENANCE PLAN

Nevada                      National Forest                      4/5/54                      Date  
Elly Administrative Site                      Garage and shop, Plan RA-358  
Station Name                      Building Name and Plan Number

Brief Description of Building:

Frame Building, Plan RA-358

Brief Description of Maintenance Work Required:

Repaint outside walls, roof, and trim every five years

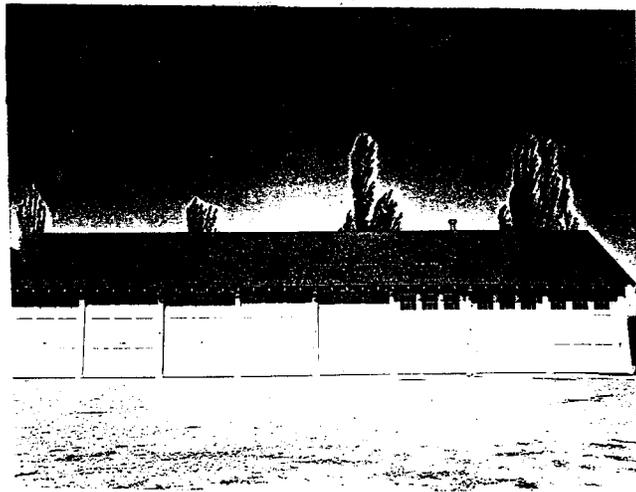
Record of Maintenance Work Done:

| Outside Walls & Trim:            |  | 1950     | 1955 | 1960 | 1965 | 1970 |
|----------------------------------|--|----------|------|------|------|------|
| When done                        |  |          |      |      |      |      |
| Paint Required                   |  | Contract |      |      |      |      |
| Roof:                            |  |          |      |      |      |      |
| When done                        |  | 1950     |      |      |      |      |
| Paint required                   |  |          |      |      |      |      |
| Inside Walls & Trim:             |  |          |      |      |      |      |
| When done                        |  | none     |      |      |      |      |
| Paint Required                   |  |          |      |      |      |      |
| Other Maintenance:<br>(Describe) |  |          |      |      |      |      |
| When done                        |  |          |      |      |      |      |
| Next. Rec'd                      |  |          |      |      |      |      |

Remarks:  
11-53    repaint outside walls and roof  
12  
13

Ely Headquarters Garage and Shop, Plan R-4 35B

Picture taken \_\_\_\_\_ October 1953 \_\_\_\_\_



BUILDING MAINTENANCE PLAN

Nevada National Forest 4/5/51 Date

Ely Administrative Site Yard and grounds  
 Station Name Building Name and Plan Number

site:  
 Brief Description of ~~Building~~

Wire fence around complete yard.  
 Lumber fence around horse yard.  
 Lawn around office and balance of yard mowed.  
 Landscaping and water system.

Brief Description of Maintenance Work Required:

Annually clean yard and maintain shrubs. Weekly during summer, cut and water lawn.

Record of Maintenance Work Done:

|  |      |  |  |  |  |
|--|------|--|--|--|--|
| Outside walls & Trim:                              |      |  |  |  |  |
| When done  |      |  |  |  |  |
| Paint Required                                     |      |  |  |  |  |
| Roof:  |      |  |  |  |  |
| When done  |      |  |  |  |  |
| Paint required                                     |      |  |  |  |  |
| Inside walls & Trim:                               |      |  |  |  |  |
| When done  |      |  |  |  |  |
| Paint Required                                     |      |  |  |  |  |
| Other Maintenance:<br>(Describe)                   |      |  |  |  |  |
| Maintain and trim shrubs and clean up<br>when done | 1954 |  |  |  |  |
| Mat'l. Req'd                                       | 2 MP |  |  |  |  |

Remarks:

10-51 See 1st water main to shut-off valve in street.  
 10  
 10



## C O P Y

COOPERATIVE AGREEMENT

THIS AGREEMENT made this 6th day of February, 1951, by and between the (Board) of County Commissioners of Elko County, State of Nevada, hereinafter called the County, and the United States Department of Agriculture, Humboldt National Forest, hereinafter called the Government, WITNESSETH; That,

WHEREAS the County and the Government have joint responsibility for maintenance of roads described below, which are also shown on the attached map, through their dual use as "Farm to Market" and "Forest Utilization" roads, and

WHEREAS, a better understanding as to specific responsibilities of each agency is desirable, both by the cooperating agencies and the public, and

WHEREAS, it is expected a better job of road maintenance will result with the same or smaller expenditure of public funds,

NOW THEREFORE, in consideration of the several promises to be faithfully performed by each as hereinafter set forth, the County and Government do hereby mutually agree as follows:

ARTICLE I

ELKO COUNTY will be responsible for maintenance of the following projects:

| Map Number | Road Name          | Terminus  | Length Miles<br>Inside Forest |
|------------|--------------------|---|-------------------------------|
| 2          | Harrison Pass      | County roads on each side of Ruby Mountains     | 8.5                           |
| 2          | Lamoille Canyon    |   | 10.8                          |
| 2          | Secret Pass        | County roads on each side of Pass               | 2.2                           |
| 2          | Angel Lake*        | Forest boundary - Angel Lake                    | *1.0                          |
| 1          | Ruby Guard Station | County road - Ruby Guard Station                | 1.0                           |
| 1          | Mountain City-Aura | Mountain City highway-county road near Columbia | 10.0                          |
| 1          | Jarbridge Canyon   | County road and head of Jarbridge Canyon        | 5.0                           |
| 1          | Eruneau River      | County road near Charleston-old M. Prunty Ranch | 14.0                          |
| 1          | Jack Creek         |   | 10.0                          |
|            |                    |   | <u>65.5</u>                   |

FOREST SERVICE will be responsible for maintenance of following projects:

|   |  |   |             |
|---|--|---|-------------|
| 1 | Elko Jarbridge w/spur to Highway #1 near Wild Horse State Line N. W. of Rowland State Line in Jack Creek |   | 60.2        |
| 1 | Penrod Mountain City   | Elko Jarbridge road - Highway #13 above Mountain City | 22.5        |
|   |  |   | <u>82.7</u> |

ARTICLE II

It is mutually understood and agreed that nothing in this agreement shall be construed as obligating the Government to expend or as involving the United States in any obligation for the future payment of money in excess of appropriations authorized by law.

ARTICLE III

No member or delegate of Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefits.

IN WITNESS WHEREOF the parties hereto have affixed their signatures, and official seals, the County on the 6th day of February, 1951, and the Government by the Forest Supervisor on the 6th day of February, 1951.

/s/ Archie J. Devan  
George F. Ogilvie  
W. W. Kane  
\*  
\*  
(BOARD) COUNTY COMMISSIONERS

/s/ A. R. Torgerson  
FOREST SUPERVISOR  
HUMBOLDT NATIONAL FOREST

\*Last two names not legible.



COOPER  
CONTINUANCE PLAN

HIDEPOUC NATIONAL FOREST  
SMALL WATERWAY PLAN  
WASCO DISTRICT 1-7-3-4, 6

| Mile  | Year | Remarks  | Year Period |      |      |      |
|-------|------|--|-------------|------|------|------|
|       |      |  | 1958        | 1959 | 1960 | 1961 |
| 167.1 | 29   | Work to be done  |             |      |      |      |
| 167.1 |      | Check & drainage at least every 2nd year.  |             |      |      |      |
| 169   | 10   | Retreatment work needed. Keep possible.  |             |      |      |      |
| 177   | 10   | Retreatment work needed. Keep possible.  |             |      |      |      |
| 177   | 9    | Retreatment work needed. Keep possible.  |             |      |      |      |
| 167.4 | 13   | Retreatment work needed. Keep possible.  |             |      |      |      |
| 167.8 | 7    | Retreatment work needed. Keep possible.  |             |      |      |      |
| 167.2 | 13   | Retreatment needed.<br>Grade & improve standard from 167.1 to Alaska.            |             |      |      |      |
| 167.4 | 19   | Retreatment work needed.<br>Grade & improve standard.                            |             |      |      |      |
| 167.4 | 14   | Retreatment work needed.<br>Grade & improve drainage. Bridge & culvert for small |             |      |      |      |
| 167.4 | 17   | Retreatment work needed.<br>Grade as needed.                                     |             |      |      |      |

ROADS  
Maintenance Plans  
HUMBOLDT NATIONAL FOREST

| Project Name and Number     | Miles | Mark to be Done  | Year Covered |             |             |
|-----------------------------|-------|--|--------------|-------------|-------------|
|                             |       |  | 1958         | 1959 - 1960 | 1961 - 1962 |
| 119<br>Marvitt Cr.          | 8     | Grade as needed & improve drainage.                                    |              |             |             |
| 125<br>McDonald Cr.         | 24    | Grade as needed & improve drainage.                                    |              |             |             |
| 146.1<br>Gold Cr.-Jarbridge | 5     | Needs improvement & drainage.  |              |             |             |
| 150.2<br>Branson River      | 4     | Needs improvement & drainage.  |              |             |             |
| 176.6<br>Jarbridge Dam      | 5     | Grade as needed. Bridge replacement needed.                            |              |             |             |
| 157<br>Pole Cr.-Canyon Cr.  | 15    | Grade as needed. Improve drainage. Retention work needed on Canyon Cr. |              |             |             |
| 143.1<br>Shawnee Flat       | 6     | Improve drainage. Retention work needed along reservoir.               |              |             |             |
| 169<br>Ramp Cr.             | 3     | Blade & make passable for pickup.                                      |              |             |             |
| 158C<br>Unimproved Cr.      | 5     | Will need some cut work when funds are available.                      |              |             |             |
| 158<br>Pole Cr.-Spring Cr.  | 15    | Blade & make passable.   |              |             |             |
| 164<br>Yates Cr.            | 10    | Blade & improve standard.  |              |             |             |

ROADS  
 Maintenance Plans  
 HUSBOLDT NATIONAL FOREST  
 Road Maintenance Plan, R. De. 6 & 7

| Project Name and Number | Miles | Work to be Done                                | Year Worked |      |      |      |      |
|-------------------------|-------|--|-------------|------|------|------|------|
|                         |       |  | 1958        | 1959 | 1960 | 1961 | 1962 |
| #421 - Teptoe           | 25    | Grade each season - clean drainage & brush out |             |      |      |      |      |
| #424 - Berry Cr.        | 13    | Grade each season - betterment work needed     |             |      |      |      |      |
| #425 - Timber Cr.       | 9     | Grade as needed - some graveling on upper end  |             |      |      |      |      |
| #426 - Bird Cr.         | 6     | Grade as needed - add surfacing                |             |      |      |      |      |
| #427A - East Cr.        | 4     | " " "  |             |      |      |      |      |
| #427 - Klamazoo         | 15    | Grade each season. Betterment needed           |             |      |      |      |      |
| #428 - Big Indian       | 19    | Grade & clean out as needed                    |             |      |      |      |      |
| #432 - Piermont         | 8     | Betterment needed.                             |             |      |      |      |      |
| #435 - Clave Cr.        | 14    | Grade as needed. Add surfacing                 |             |      |      |      |      |
| #436 - Cave-Cooper      | 20    | Grade as needed.                               |             |      |      |      |      |
| #460 - Four Mile        | 12    | Grade every 3rd year.                          |             |      |      |      |      |
| #457 - Miller Basin     | 7     | Work as needed.                                |             |      |      |      |      |

3  
ROADS  
Maintenance Plans

| Project Name and Number | Miles | Work to be Done                              | Year Worked |      |      |      |
|-------------------------|-------|--|-------------|------|------|------|
|                         |       |  | 1958        | 1959 | 1960 | 1961 |
| #436 - Strawberry       | 12    | Grade 1958 - Betterment needed.              |             |      |      |      |
| #446 - Leman Cr.        | 10    | Grade each season - add surfacing as needed. |             |      |      |      |
| #447 - Baker Cr.        | 6     | Grade as needed.                             |             |      |      |      |
| #448 - Saska Cr.        | 12    | Work as needed - Betterment needed.          |             |      |      |      |
| #449 - Big Wash         | 9     | Work as needed.                              |             |      |      |      |
| #450 - Lexington        | 17    | " " "  |             |      |      |      |
| #451 - Boundary         | 45    | " " "  |             |      |      |      |
| #451C - Murphy Wash     | 12    | " " "  |             |      |      |      |
| #407 - Current Cr.      | 12    | Grade over other year - Betterment needed.   |             |      |      |      |
| #440 - Ski Hill         | 3     | Cooperate with County.                       |             |      |      |      |
| #439 - Ward Hm.         | 3     | Grade each season - Blacktop surface needed. |             |      |      |      |
| #430 - Liberty Cr.      | 11    | Grade 1958 & as required.                    |             |      |      |      |





C O P Y

Date: May 27, 1959

To : M. G. Hiett, R.E.E.  
From : D. G. Rose, Shop Supt. /s/ D. G. Rose  
Subject : INSPECTIONS, Limited Functional (Humboldt, D.G. Rose, May 11-14, 1959)

#### I. Introduction

This is a report of a limited Functional Equipment Management and Driver Training inspection made of the Humboldt National Forest. Three ranger districts, the road crew, and the Supervisor's Headquarters were inspected.

Inspector: D. G. Rose, Shop Supt.

Inspectee: Louie A. Dremolski, Forest Supervisor

Previous Inspection: Made by Ray B. Ross, Boise Shop Foreman, March 9-13, 1959. His inspection included annual 808, 809 and 809A checks.

#### II. Appraisal of Equipment Management Program

This inspection revealed items worthy of commendation and items where improvement can be made. The supervisor and his staff are conscientious and are striving to redeem their responsibilities, to use and maintain their equipment to R-4 standards.

#### III. Summary of Recommendations

1. Give forest personnel more training on 808, 809 and 809A driver preventative maintenance and safety checks, and on log book preparation.
2. Correct deficiencies found on equipment as soon as practical after the above checks are made.
3. Take equipment needing repair to a dependable commercial shop.
4. Have drivers towing trailers, tested, and certified on reverse side of operator's identification card, Form S.F. 46.
5. Rotate tires on 4x4 vehicles and utilize spare tires.
6. Analyze the need for two 10-ton tilt bed trailers.

#### IV. Summary of Commendations

1. All equipment inspected was in very good condition. It is above average.

(Page 2 of 3)

2. Gasoline and oil facilities at the Supervisor's Headquarters, Lemole R.D. and Mt. City R.D. were very good. Oil houses were clean and neat.
3. Purchasing of materials, oils, greases and repairs has been good, indicating that care and good judgment is used. About 80% of all gasoline used is from bulk purchases.
4. There were no excessive stocks of operating supplies or tires, either new or used, on hand.

V. Analysis of Recommendations

1. Personnel who have equipment assigned to them should see that all drivers are properly instructed on the correct way to make log book entries, and how to make the 808, 809 and 809A preventative maintenance and safety checks. Equipment service will assist with this at ranger or other meetings if the supervisor desires. 808 checks are to be made monthly, and 809 and 809A checks every two weeks.
2. There were no 808's in the files on the following equipment: FS-44, FS-174, FS-552, FS-562, FS-1904 and FS-1919.  
  
Only six units were making 808's as required. On the balance of the equipment, 808's were made intermittently. A majority of the 808's did not show tire pressures, or plans to have deficiencies corrected. In some instances the same deficiencies were listed for two or more months. If tire gauges are needed to test tire pressures, they may be ordered from the Boise Shop.
3. Several log books checked were not completely filled out. When a new log book is made up for a unit it is necessary to fill out the information page (first page in the log book) by entering all the information requested from the old log book. Daily entries of mileage, gas, oil, lube jobs and monthly 808 inspections must be entered on page 802A. At the end of the month, gas, oil and contributed lube jobs must be posted to page 802B (tear sheet). If these items are neglected, we cannot obtain correct costs, and equipment inspections and mechanics will show a deficiency on their inspections.
4. None of the Humboldt personnel have been tested or qualified for trailer towing. Mr. Gerald Horton, Staff Assistant, Amos Gardner and Vic Gardner, C&M Foremen, are qualified testers. This program should be started at once.
5. Tires on 4x4 vehicles should be rotated, using the spare tire, to keep wear even and prevent "cupping" of the front tires.
6. The mileage that the two tilt bed trailers are used is very low. FS-562 was used only 387 miles from May 1, 1958 to May 1, 1959.

(page 3 of 3)

The possibility of releasing this trailer should be thoroughly explored; unless there is some exceptional reason for having this unit at Ely, it should be released.

VI. Appendix and Comments

My purpose in visiting the forest was to:

1. Make a sample LFI of equipment maintenance and use.
2. Inspect driver training program.
3. Assist forest personnel in furthering their equipment maintenance and use program.

Supervisor Dremolski and his staff were very cooperative and interested in the program. All of the personnel I contacted, during the inspection, were conscious of their responsibility and eager to do a first class job of caring for and using their equipment. It is a pleasure to work with them.

cc: Salt Lake Shop

Attachments:

- List of equipment inspected during this inspection.
- Copy of D. Rose's inspection report.

## Humboldt National Forest Equipment Inspection May 11-14, 1959:

- FS-174 Chev. 1956 1-ton, 23705 miles - Supervisor's Office:  
Leak in heater.  
Log book not properly maintained.  
Lube jobs not frequent enough.  
Front page of log book not filled in.  
No initials for monthly 808 inspections.
- FS-169 Chev. 1953, 3/4-ton, 37908 miles - Gold Cr. Ranger District:  
Emergency brake needs adjusting. (D.F.R. George Zueger)
- FS-501 Ford 1953, 3/4-ton, 37130 miles - Road Crew:  
Dimmer switch defective.  
No initials in log book for monthly 808 inspections.  
1100 miles since last lube job.
- FS-262 Chev. 1953, 3/4-ton, 37870 miles - Mt. City Ranger District:  
OK (D.F.R. Frank Baitia)
- FS-648 Ford 1956, 4-ton dump, 21734 miles - Road Crew:  
1500 miles since last lube job.  
Log book not properly maintained.  
No initials for monthly 808 inspections.
- FS-1224 Warco Motor Patrol - 697 hours - Road Crew:  
Log book not properly maintained.  
No initials for bi-monthly 809A inspection.
- FS-8722 International 1958 1-ton 4x4 pickup, 9151 miles - Mt. City R.D.:  
OK (D.F.R. Frank Baitia)
- FS-1092 Caterpillar D-4 end loader, 704 hours - Road Crew:  
OK
- FS-9535 Chev. 1959, 3/4-ton, 960 miles - Wells R.D., D.F.R. Dwight Kinney:  
OK
- FS-1919 Arc Welder - Road Crew:  
OK
- FS-1094 Caterpillar D-6, 1410 hours - Road Crew:  
New Log book - no information on information page of log book.  
No initials for 809 bi-monthly inspections.  
Otherwise OK.
- FS-44 Chev. Sedan, 1956, 34345 miles - Supervisor's Office:  
Rear tires low, 18 lbs. pressure.  
New Log book - no information on front page of log book  
No initials for 808 inspections.  
Otherwise OK.

FS-385 Chev. 1954 3/4-ton, 36170 miles - Paradise Valley R.D. :  
OK (D.F.R. Gene Hoffman)

FS-552 Trailer, 10-ton, 9527 miles - Road Crew:  
OK

Mrs. CHENOWETH-HAGE. I want to thank the witnesses for your very, very interesting testimony. And at this time I recognize Congressman Gibbons for his questions.

Mr. GIBBONS. Thank you very much, Madam Chairman. I appreciate that. What I would like to do, first of all, is turn to Mr. Bedford and have him distill for us, for those of us who aren't as eloquent in our legalese as you have presented with the fundamental findings of your analysis, who actually—let's back up and start with—are these RS 2477 roadways rights-of-way that fall under property rights as determined by courts in jurisdiction in common law?

Mr. BEDFORD. I think the courts on many, many occasions have recognized a right-of-way as a property right. I don't think there's any question about that.

Mr. GIBBONS. These would be easements that were granted by the Federal Government for commerce, so to speak, between cities as a developing area of the west took place? These would be corridors of commerce? And even before that, as Mr. Mose had talked about, for tribal communication as well and transport? They would be considered then a highway or roadway that would fall under the purview of an easement of a 2477 right-of-way?

Mr. BEDFORD. That's correct.

Mr. GIBBONS. This South Canyon Road, who owns it?

Mr. BEDFORD. Well, from my understanding—you know, I was asked to comment primarily on the law in general. But based upon my understanding, it's owned by the county.

Mr. GIBBONS. Elko County would be the owner of the right-of-way and the easement of the South Canyon Road?

Mr. BEDFORD. Under RS 2477, that's correct.

Mr. GIBBONS. Now, if you're the owner of an easement and someone comes in and blocks your access, what recourses are available to you?

Mr. BEDFORD. Well, your recourse would normally be with the court system. You would go in, you would get a decree ordering the person to remove whatever was blocking the access and perhaps also assess damages for your loss of use for the interim period.

Mr. GIBBONS. OK. Mr. Mose, if I could just briefly, you presented a very eloquent statement about the heritage of the Shoshone Indians in the area, their use of the land as well. I would presume, is it not your interpretation that this roadway or some avenue similar—it would not have been called the South Canyon Road roadway—would have been used by the Shoshones also as a means of communication or commerce traversing the area?

Mr. MOSE. Yes, in prehistoric times and historic times there are various places, Indian roads that ran all up and down northeast Nevada. For example, to get from here to Camas Prairies in Idaho, the easiest way is up the water course such as Mary's River, up over the pass and down the Jarbidge Canyon. We are not going to go and hike out in the desert. Following water was the easiest course.

Mr. GIBBONS. These were normal courses that any person would have followed, whether you be Native American or a European who has immigrated here seeking commerce, either exploring the coun-

try, communicating back and forth as well? It is a long-established history of use, is what we're getting at here, in this area?

Mr. MOSE. Absolutely.

Mr. GIBBONS. Mr. Price, you've done a great deal of research, as you said, into the history of this area. I will stipulate that I will ask some similar questions to the Forest Service along this area. Does your record or any research that you have done indicate that no one was in the Jarbidge area before the Forest Service was established?

Mr. PRICE. Well, it's just the opposite. The reason the Forest Service was established is because the Jarbidge area was overrun.

Mr. GIBBONS. Were any of these individuals or any of your records reveal that people that were in the Jarbidge area were precluded at any point in time from using this South Canyon area?

Mr. PRICE. Again, it's just the opposite. They would have had a compelling need to access the resources, the grazing resources that are available in the South Canyon. That would not have been their first choice. They are not ideal grazing resources, but with that number of sheep in there, you have to look for every green blade of grass you can find.

In addition, the county records shows that there was a relationship between the people in the Jarbidge area and the entries in the Mary's River Basin. The only way you can get between Mary's River and Jarbidge without going quite a ways around, adds as many as 5 miles to the trip, is to go up over the saddle between Mary's River and Jarbidge into the South Canyon and on into Jarbidge, or vice versa.

Mr. GIBBONS. So people did enter the South Canyon area as a means of being able to communicate or converse between the Mary's River area and the Jarbidge area?

Mr. PRICE. It's extremely logical. We don't have a document that says they did, but it's illogical to assume otherwise.

Mr. GIBBONS. You are a land surveyor and understand topography and the nature of terrain. Is the South Canyon particularly difficult or easy to traverse? What is the surrounding area like? Would there have been alternatives immediately available to use of the South Canyon area?

Mr. PRICE. It is particularly easy to traverse when compared to the surrounding area. In fact, in 1896, the U.S. Government survey party crossed the Jarbidge Mountains perpendicular to the South Canyon. And the travails of that party are written in their notes. It's quite amusing reading, actually. They just about didn't make it.

Mr. GIBBONS. Historically, are there any signs of commerce? Are there cabins, mines, sawmills, whatever, preexisting structures, that may have been in the area which would have led one to believe that this may have been used as a route either for some sort of commerce or access to the areas?

Mr. PRICE. The one cabin that there's documentation on as a preexisting cabin is the Mahoney cabin. That's situated where the forest headquarters is. It's just north of Jarbidge now. There are facilities that were constructed by Mr. Mahoney in the Mary's River Basin. He constructed shearing corrals and that kind of thing. Those are still there today.

The Perkins cabin at the head of the Jarbidge River is really interesting because Mr. Perkins had been in the area for years. Frank Winters, a former Nevada State Assemblyman, I believe, wrote in a letter that he had met William Perkins in the Jarbidge Canyon in 1892. In 1902, William Perkins filed a document in the courthouse claiming a chunk of land just in the vicinity of present day Jarbidge. William Perkins was a prospector. Some of the prospective gravels in the Jarbidge Canyon are located approximately at the head of Snowslide Gulch.

Schrader found them, and found the people working them when he went there in 1910. The idea or the notion, for example, that William Perkins would not have prospected up and down the Jarbidge River when he came to be living there with the first ever survey in the district, that would take quite a leap, I think, to make that, that he would have somehow precluded himself from ever entering there before the Forest Service was established.

Mr. GIBBONS. I take it it would be your conclusion, based on what Mr. Mose has said and what your research has done, what you presented here today, that there was indeed a great deal of activity in the area along the South Canyon Road, with significant commerce and access requirements before the Forest Service and the National Jarbidge Area was established under the Forest Service? Is that correct?

Mr. PRICE. Well, the word would be "tremendous." That comes out of the Forest Service's report, 1906, R.B. Wilson. The activity that he described was sheep activity, which requires a very systematic and organized means of ingress and egress. There's one sheepherder with each flock. Those sheepherders are serviced by camp tenders who have to have improved trails and they are all overseen by owners. So, absolutely, that would be the case.

Mr. GIBBONS. So, the word is "tremendous"?

Mr. PRICE. Tremendous activity, from R.B. Wilson himself.

Mr. GIBBONS. Did you research Elko County documents as well as other documents that you've done in this regard on this activity?

Mr. PRICE. Yes, sir. We found extensive evidence in Elko County records. In your Exhibit 1 of the, it's the binder, the white binder that is sitting in front of you there, We've mapped a selective number of the entries that were found in Elko County records. And the relationship between entries and the modern routes is very compelling. It essentially illustrates what we have just been discussing.

The easiest one to see is this light-colored one. You have 4 there all together; one on the back of each other. So it's easy to find it. The very back would be this. I have removed the shaded relief so you can see the entries and the trails easier in this particular exhibit.

And if you'll notice up north in the Jarbidge area, we have the Jarbidge Placer claim established by Warren Williams in 1901. You have the Mahoney cabin. You have William Perkins laying claim in 1904. You have a lot of activity here that's associated not just with Mahoney and Williams, but there were 43 other owners recorded by R.B. Wilson in this vicinity at the same time.

Now, if you go to the south end of the map, you'll notice there are several entries in the Mary's River Basin. Each of those were surveyed by Elko County surveyor E.C. McClelland around 1904.

And you'll notice the entrant there in red in the Mary's River Basin, William Mahoney, 1903. There is a very large structure there, sheep shearing corrals and this kind of thing. We have Mahoney reported by the Forest Service to be living in the Mahoney cabin.

The most interesting thing of all, if you look at again the north end of the top of your map and a little bit to the east to the right, over toward the Wilkins Island area, you'll notice that Pearl Mahoney, who is William Mahoney's wife, had an entry in the Wilkins Island area.

Every one of the entries, whether it's this particular group or some of the other groups listed on the left-hand side of your map such as the Dunns, the Bradleys, the Clemons, all have established themselves on the modern network of trails. Well, the modern network of trails follows the most logical corridors through the Jarbidge mountains.

Now, it would be quite a stretch for anyone to say that those trails didn't—weren't developed at this time. And in fact, we believe they were developed between 1897 and 1902 or 3 when the sheep activity became tremendous, as Wilson described.

Mr. GIBBONS. Thank you very much. Madam Chairman, I have a number of serious questions and I would like to ask if it's the will of the Chairman to allow us to submit written questions for the witnesses to answer so that we can save time and move forward? I would be happy to yield.

Mrs. CHENOWETH-HAGE. Mr. Gibbons, I would be happy to extend your time if you wish to ask them now. If not, we would be, of course, willing to take them in written form.

Mr. GIBBONS. I wanted to give you an opportunity to also develop a line of questioning that may be helpful to your understanding as well. Certainly if you're going to—

Mrs. CHENOWETH-HAGE. Why don't we do a second round?

Mr. GIBBONS. Happy to.

Mrs. CHENOWETH-HAGE. Is that OK? I have some questions for Mr. Bedford that I would like to ask. Mr. Bedford, can the closure of RS 2477 right of way subject the United States to liability for the taking of private property?

Mr. BEDFORD. That certainly is a possibility. The fifth amendment to the Constitution of the United States of America states that the United States cannot take private property without just compensation. For those private lands where access is only by an RS 2477 right-of-way, the loss of right of access to that property is a taking of the economic value of that property.

Mrs. CHENOWETH-HAGE. Of the entire holding? The entire property?

Mr. BEDFORD. That's right. If you can't get to it, you can't make any use of it.

Mrs. CHENOWETH-HAGE. The value of the property would include its future yield, right?

Mr. BEDFORD. That would certainly be one of the factors that a court would look at in determining the value of the taking.

Mrs. CHENOWETH-HAGE. How large does a road have to be to qualify as an RS 2477 right-of-way?

Mr. BEDFORD. It can be as small as a trail or a foot path. The understanding of the term highway in 1866 embraced all manner of public and private roads, provided they were open to all persons that wanted to use them without discrimination. This included all modes of transport from horse-drawn carriage to someone on foot.

Any beaten path open to the public between two locations constitutes a highway within the meaning of RS 2477. This includes basically roads built for any purpose, including miner-built roads and those that led not only to cities, towns, and buildings, but also those that led to other roads, to mines, to water holes, to springs, to streams; and roads that led to hunting, prospecting, livestock grazing, and woodcutting areas.

Mrs. CHENOWETH-HAGE. And it's my understanding that concept has been recently upheld in the Ninth Circuit Court of Appeals, in a decision I think issued in 1996 or 1997?

Mr. BEDFORD. That's correct.

Mrs. CHENOWETH-HAGE. And so what you're telling us for the record is that a road doesn't have to have two tracks in it? Two wheel tracks? It doesn't have to have a certain width and be maintained up to a certain standard to be considered an RS 2477 roadway?

Mr. BEDFORD. That's correct.

Mrs. CHENOWETH-HAGE. OK. Are you familiar with the Forest Service handbook? With regard to how they advised their employees in dealing with RS 2477 roadways?

Mr. BEDFORD. I think what you may be referring to is the Forest Service Manual which relates to special use permits.

Mrs. CHENOWETH-HAGE. Yes.

Mr. BEDFORD. It's been awhile since I read that. Please, I would like leave to lodge that within 10 days so that—or the applicable portions. My recollection last time I read it is that historical rights-of-way such as we're talking about are more or less grandfathered in and are exempt from the automatic requirement of the special use permit.

Mrs. CHENOWETH-HAGE. Now, in this case, if the Forest Service were asking the county for a special use permit of the Jarbidge Road, and I don't know whether they were or not—but, Mr. Bedford, according to your testimony, a special use permit issued by the Forest Service is not required, not needed for them to maintain and use the road?

Mr. BEDFORD. Assuming it qualifies as an RS 2477 right-of-way, that's correct.

Mrs. CHENOWETH-HAGE. When an assertion is made by a county, where must the evidence lie? In other words, who must they prove to and how must they prove that the assertion is viable and that the ownership is truly theirs?

Mr. BEDFORD. Well, I think there has to be the presentation of adequate historic evidence. In many cases I've found that this evidence is often in the Forest Service's own files.

Mrs. CHENOWETH-HAGE. Can you tell me, Mr. Bedford, what is the difference between the concept of jurisdiction and the concept of ownership? What is the difference between those two?

Mr. BEDFORD. Well, certainly ownership obviously is who has title to, you know, a particular property right, whether it's fee sim-

ple, whether it's a right-of-way, whether it's an easement, whether it's some other property interest.

The concept of jurisdiction is who has the power, and the power to regulate and exercise both civil and criminal jurisdiction over a particular piece of property.

Mrs. CHENOWETH-HAGE. So if one party owns, holds title to a piece of property, but others assert that they have the jurisdiction over that property, what happens then? What happens to the ownership rights? What happens to the property rights?

Mr. BEDFORD. It depends on what the circumstance is. I mean, for example, if someone commits a murder or a crime on a piece of BLM land, the BLM does not have jurisdiction to prosecute that person. The jurisdiction is clearly within the State and local authorities.

Mrs. CHENOWETH-HAGE. Now, the Federal Government has exclusive, joint, and concurrent jurisdiction. Would you please explain for the record what is the difference? And for this Member, what is the difference?

Mr. BEDFORD. You know, that's actually a pretty complicated question. I mean, even, for instance, military reservations such as military posts and military bases, there is often concurrent jurisdiction there with both the Federal Government and the local governments exercising jurisdiction together over certain issues.

On the other hand, there are certain Federal enclaves where because of the way they were established, the Federal Government has exclusive jurisdiction there. So it just depends on the circumstance.

Mrs. CHENOWETH-HAGE. Well, does the United States have a general grant of jurisdiction over National Forest Service lands?

Mr. BEDFORD. No, that's not true at all. They don't have a general grant of jurisdiction. They have jurisdiction over some issues, but certainly it is not a general blanket grant of jurisdiction. In fact, as I pointed out in my example, much of the jurisdiction is concurrent with the State and the local authorities.

Mrs. CHENOWETH-HAGE. Interesting. Well, Mr. Bedford, you've piqued my curiosity. I have many more questions I would like to submit to you in writing, if you wouldn't mind.

Mr. BEDFORD. I would be glad to.

Mrs. CHENOWETH-HAGE. We will be sending those questions to you within 10 working days.

Mr. BEDFORD. That's fine.

Mrs. CHENOWETH-HAGE. Mr. Mose, I want to thank you very much for your testimony. It was fascinating. And your comments remind me of a statement that was made by Sitting Bull, the great—well, I guess he was a medicine man and certainly was so highly regarded in the Sioux Nation. And when Sitting Bull addressed a joint session of the House and the Senate, he made the statement in concluding his remarks before that joint body, he said to the Congress, "You, the Federal Government, have made us many promises and you never kept but one. You promised to take our land and you took it."

And I want to say, Mr. Mose, I surely understand what you're saying. I think everyone in this audience understands it. And so it is an honor and a privilege to have you here and having you share

with us about your people and your concerns about the future of the Jarbidge Road.

And you stated that the Federal Government hasn't kept its promises. Concerning the South Canyon Road, what does the Federal Government need to do to keep its promises to you?

Mr. MOSE. The promises the Federal Government made to my people in 1863 is that they would, first of all, establish a reservation within the territory of the Shoshone country. They have never done that.

The second promise that they made was to pay us \$100,000 in compensation for the driving away of game. That was at \$5,000 a year. The General Accounting Office did a study in the 1960's and determined that an Indian agent had to account for \$79,000 of Indian money with which he was entrusted, including some \$13,000 of money from the Shoshone. They could never account for that and the Indian people have never—as I said, we never received a penny of money for anything other than the government saying well, we own the land; you have to take our word for it.

And we say, well, if we can go down here to the county recorder's office and find that title that transferred ownership of the land from us to you, or if we can go to your title plant in Albuquerque, New Mexico, and find it there in your records, the title where we transferred the land to you, we will shut up. We'll go away. We'll move to Mexico or Canada or somewhere. You know, we've never found that.

And the government makes all kinds of representations, but the government for the most part just says it. It sort of takes it that it's got unlimited power to do what it wants to do whenever it wants to do it and regardless of any due process.

It reminds me of the old saw about what is due process? Due process, I think according to the government, is a process that's due. That's not due process.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Mose.

Mr. Price, your historical analysis of the South Canyon Road was priceless, exceptional. Has the Forest Service disputed any of your analyses?

Mr. PRICE. Well, I don't know the answer to that because they haven't really communicated with us very much. We have several information requests. Some have been outstanding for well more than a year. We have no response on them.

I have heard their public statements and if I can construe those correctly, I think they dispute all my findings. In other words, to make the public statements that they have been making, it seems to me they have to believe that no one was ever in there before the Forest Service was established.

Mrs. CHENOWETH-HAGE. Well, you mentioned that plate number 2 was missing from the report. Can you tell me, why is plate number 2 significant?

Mr. PRICE. Plate number 2 is significant. I have a copy of the bound report we got from the University of Nevada. It shows a portion of the South Canyon route.

Now, this document is significant because the Forest Service sent it to Elko County as ostensible proof that the road, the route did not exist.

Not only does it show the portion of the route that they buried recently, but when you go and do the research that we all do in this profession, you go to the USGS archives in Denver, Colorado, and you get the field notes of F.C. Schrader, he mentions not only two trails in the South Canyon, maps several cabins in the vicinity of Snowslide Gulch, which is the portion of the road in contention, and he stated, he acknowledged Mr. William Perkins, that's even farther up the canyon. That's at the very head of the Jarbidge River.

So the significance has to do with whether the road was there the first time a scientist actually looked and recorded what was there, and absolutely it was there. And it shows on plate 2. That's my favorite part because that's the part they buried.

Mrs. CHENOWETH-HAGE. Well, I want to thank the witnesses for their testimony. I do want to say before we end this series that the addendum Mr. Price has presented I don't think was presented as part of his testimony. So we will add that to the record, without objection.

[The information referred to follows:]

## **Jarbidge River - South Canyon Route**

*Elko County, Nevada*

*A synopsis of historical information*

**Bill Price, PLS**  
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Elko, NV 89801

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**Black Rock Resource Company**

*Natural Resource Services*  
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November 12, 1999

Representative Helen Chenoweth-Hage  
Representative Jim Gibbons  
United States House of Representatives  
Public Hearing on the Jarbidge South Canyon Road  
Elko Convention Center - November 13, 1999  
Elko, Nevada 89801

Dear Representatives Chenoweth-Hage and Gibbons:

I'm Bill Price, Professional Land Surveyor and Registered Professional Landman. I specialize in historic land research (Exhibit A, résumé). I've worked on four cases similar to this.

In 1998, Elko County asked me whether the South Canyon Route was used regularly by Elko County residents before the series of Forest Reserves beginning about 1905. They believed this would establish the route as a nineteenth century "highway."

We reviewed books, publications, Forest Service reports, USGS data, and Elko County records, indicated on Exhibit B (Materials Examined, including Maps). We constructed maps and 3-D models. We examined the area by helicopter with Dr. Wayne Burkhardt, noted expert on agriculture and western history (Exhibit C, résumé).

We made several observations:

The Jarbidge Mountains host plant, animal, and mineral resources and have been used seasonally by humans for millennia.

Modern European activity began about 1825, and intensified. This activity included trapping, hunting, fishing, prospecting, and grazing. By the late 1890's sheep numbers reached "tremendous" levels, according to a 1906 Forest Service report by R. B. Wilson (Exhibit D, Wilson report). Wilson reported 392,350 sheep amongst 43 owners competing for forage in his study area. The Jarbidge Mountains would have been a veritable "beehive" of organized activity.

**Black Rock Resource Company**  
*Natural Resource Services*

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In fact, the desire to preserve the mountains from the impact of this overgrazing was the impetus behind the Forest Reserve movement. Wilson made several observations about available trails and roads, and ease of access to timber in the Jarbidge Mountains. Much of that timber was and still is accessible only through the South Canyon.

The Jarbidge South Canyon is a natural corridor, as illustrated on Plates 1-4, Exhibit I, (3-D views, plan views of Jarbidge Mountains circa 1904). It provides access to resources in the South Canyon. It is the most logical route for individuals with pack animals to communicate or commute between the Jarbidge area and the Marys River Basin.

We found evidence of just this activity in the Elko County Records (Exhibit E, Mining Records, Land Claims), as illustrated on Plates 3 and 4 (plan view of Jarbidge mountains, circa 1904). William Mahoney and his wife Pearl, for example, in concert with prominent Nevada pioneer Warren W. Williams of Fallon, established facilities in Marys River Basin, Jarbidge, and at Wilkins Island. Mahoney was reported to be in the Jarbidge area as early as 1892 (Exhibit F, excerpts from USFS reports), as was another entrant, William Perkins (Exhibit G, Winters Letter).

The first detailed survey of the South Canyon was by the USGS in 1910. F. C. Schrader mapped an upper and a lower trail, two cabins near Snowslide Gulch, and spent the night at Perkins Cabin at the head of the Jarbidge River (Exhibit H, excerpts from notes, Plate II). Literary and county records indicate that Perkins had been in the area for years (Exhibit G, Winters Letter, Exhibit E, Land Claims).

Between 1910 and 1923, the nineteenth century highway evolved into a twentieth century road complete with bridges, capable of hauling industrial forest products from the mill at Sawmill Creek. (Recall Wilson's observations about accessibility of timber). This road has been in regular use, and is depicted on the myriad of twentieth century maps from that time to the present.

When you objectively consider the preponderance of this evidence, it's hard not to acknowledge that the County has a compelling claim. RS 2477 is an act of Congress, too.

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Much of the information and nearly all the leads came directly from Forest Service reports. The agency's recalcitrance, then should beg a simple question: Is it oversight, or is it obfuscation? I can't tell you that. I can tell you, though, that the impact on your citizens is just as serious.

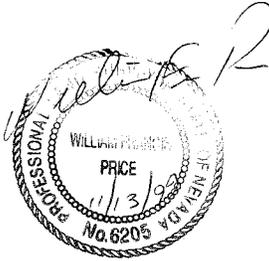
I can tell you what the agency sent Elko County as their ostensible proof that the road did not exist. They sent this copy of Schrader's report. I've already indicated to you that Plate II shows a portion of the South Canyon Route, the portion that the agency buried recently. Schrader's field notes show most of the rest. Interestingly, Plate II is missing from this copy of the report.

I've worked on four similar cases, listed in Appendix I. I've encountered similar disturbing things. As one example, in the interest of housekeeping, agencies have destroyed a great number of historical documents. In one instance, the agency failed to retract a report even after it learned that it was based on a map of a different road. That report also included this affidavit, that was apparently written in 1995. The man who ostensibly wrote it died in 1988.

I'm also concerned about the acrimony and mistrust described in recent public statements by agency employees. I hope this committee can foster an atmosphere of openness that will assuage some of these misunderstandings. Thank you for your time.

Respectfully submitted,

Bill Price, PLS



Jarbidge Materials List B - Elko County Recorder Documents

| Year | Month | Day | Book          | Type             | Page                          | First Party              | Second Party                                      | Remarks                              |
|------|-------|-----|---------------|------------------|-------------------------------|--------------------------|---|--------------------------------------|
| 1900 | 9     | 22  | 5             | Mining Locations | 472                           | John P. Williams         | Peter Johnson, Eugene Williams, W.D. Martin       | Jeanette Placer - Jaw Bridge         |
| 1901 | 12    | 2   | 6             | Mining Locations | 580                           | W.W. Williams            |   | at confluence East Fork along stream |
| 1903 | 7     | 18  | 2             | Land Claims      | 173                           | Richard H. Dunn          | Mary's River                                      | East Fork "76" Creek                 |
| 1903 | 7     | 18  | 2             | Land Claims      | 174                           | Nellie T. Dunn           | stream not named                                  | Mary's River                         |
| 1903 | 7     | 18  | 2             | Land Claims      | 175                           | Lee Goddard              | East Fork "76" Creek                              |                                      |
| 1903 | 7     | 20  | 2             | Land Claims      | 176                           | Lewis L. Bradley         | Mary's River                                      |                                      |
| 1903 | 7     | 20  | 2             | Land Claims      | 177                           | May H. Bradley           | East Fork Copper Creek                            | East Fork Copper Creek               |
| 1903 | 7     | 20  | 2             | Land Claims      | 180                           | Maud B. Clemens          | East Fork of Mary's River                         | East Fork of Mary's River            |
| 1903 | 7     | 21  | 2             | Land Claims      | 178                           | Jay H. Clemens           | East Fork Copper Creek                            | East Fork Copper Creek               |
| 1903 | 7     | 21  | 2             | Land Claims      | 179                           | William F. Mahoney       | Branch of Mary's River                            | Branch of Mary's River               |
| 1903 | 7     | 28  | 28            | Deeds            | 132                           | Aztec Land & Cattle      | James O'Neil                                      |                                      |
| 1903 | 7     | 28  | 28            | Deeds            | 133                           | Aztec Land & Cattle      | James O'Neil                                      | T44N R59E                            |
| 1903 | 7     | 28  | 28            | Deeds            | 133                           | Aztec Land & Cattle      | James O'Neil                                      | T44N R59E                            |
| 1903 | 8     | 8   | 2             | Land Claims      | 181                           | Lee Goddard              | "76 Creek"  | "76 Creek"                           |
| 1903 | 8     | 8   | 2             | Land Claims      | 181                           | Lee Goddard              | "76 Creek"  | "76 Creek"                           |
| 1903 | 9     | 24  | 2             | Land Claims      | 186                           | John T. Neilson          | Annie Creek                                       | Annie Creek                          |
| 1903 | 9     | 24  | 2             | Land Claims      | 187                           | Violet C. Pearson        | Annie Creek                                       | Annie Creek                          |
| 1903 | 11    | 13  | 4             | Miscellaneous    | 517                           | B. W. Stewart            | W. F. Mahoney                                     | lease of 2,650 sheep                 |
| 1903 | 11    | 23  | 7             | Mining Locations | 410                           | G.B. Williams            | H. Arendt, H.B. Austin, A. Alerberg, C.E. Coltri  | Argenta Placer                       |
| 1903 | 11    | 23  | 7             | Mining Locations | 410                           | W.W. Williams            | rs, J.P. Williams, J. Williams, E.J. Danielson D. | Still Water Placer                   |
| 1903 | 11    | 23  | 7             | Mining Locations | 410                           | G.B. Williams            | V.W. Sanford, M.E. Sanford, F. Brine, T. Kenyon   | Fallon Placer                        |
| 1903 | 11    | 23  | 7             | Mining Locations | 411                           | G.B. Williams            | M.E. Sanford, Ton Canyon, W.H.A. Pike, J.M. S     | Stillwater Placer                    |
| 1903 | 11    | 30  | 7             | Mining Locations | 413                           | William F. Mahoney       | R.H. Dunn, Charles Hill                           | Badger Lodge                         |
| 1903 | 11    | 30  | 7             | Mining Locations | 414                           | William F. Mahoney       | R.H. Dunn, Charles Hill                           | Chip Munk Lodge                      |
| 1904 | 1     | 6   | 28            | Deeds            | 134                           | Aztec Land & Cattle      | James O'Neil                                      | T44N R59E                            |
| 1904 | 1     | 6   | 28            | Deeds            | 135                           | Aztec Land & Cattle      | James O'Neil                                      | T44N R59E                            |
| 1904 | 1     | 6   | 28            | Deeds            | 136                           | Aztec Land & Cattle      | James O'Neil                                      | T44N R59E                            |
| 1904 | 1     | 6   | 28            | Deeds            | 136                           | Aztec Land & Cattle      | James O'Neil                                      | T44N R59E                            |
| 1904 | 1     | 6   | 28            | Deeds            | 137                           | Aztec Land & Cattle      | James O'Neil                                      | T44N R59E                            |
| 1904 | 7     | 30  | Civil Actions | 1628             | Nellie Dunn and Richard Dunn  | Golconda Cattle Company  |   | trespass on Nellie Dunn Land         |
| 1904 | 7     | 30  | Civil Actions | 1629             | by H. Bradley and L. L. Bradl | Golconda Cattle Company  |   | trespass on May Bradley Land         |
| 1904 | 8     | 31  | Civil Actions | 1649             | Lewis L. Bradley              | Golconda Cattle Company  |   | sheep trespass                       |
| 1904 | 8     | 31  | Civil Actions | 1650             | Lewis L. Bradley              | Golconda Cattle Company  |   | sheep trespass                       |
| 1904 | 8     | 31  | Civil Actions | 1651             | Lewis L. Bradley              | Golconda Cattle Company  |   | sheep trespass                       |
| 1904 | 9     | 3   | 2             | Land Claims      | 188                           | William Perkins          | Jarbidge Creek                                    | Jarbidge Creek                       |
| 1904 | 9     | 5   | 2             | Land Claims      | 189                           | Charles M. Howard        | on stream   | on stream                            |
| 1904 | 9     | 5   | 2             | Land Claims      | 189                           | Pearl Mahoney            | Bull Pen Bench                                    | Bull Pen Bench                       |
| 1904 | 9     | 14  | Civil Actions | 1652             | Lewis L. Bradley              | Charles E. Kaiser, et al |   | sheep trespass NE4 Sec 6, T44N R     |

Jarbidge Materials List B - Elko County Recorder Documents

| Year | Mon | Day | Boo | Type             | Page | First Party                | Second Party                                   | Remarks                            |
|------|-----|-----|-----|------------------|------|----------------------------|--|------------------------------------|
| 1904 | 9   | 14  | 2   | Land Claims      | 192  | R. H. Mallett              | Jarbidge Crossing                              | Rear Canon                         |
| 1904 | 9   | 15  | 2   | Land Claims      | 191  | Bert L. Smith              | East Fork Bruneau Creek                        | East Fork Bruneau Creek            |
| 1904 | 11  | 8   | 2   | Land Claims      | 197  | E. L. Davis                | East Fork Bruneau Creek                        | East Fork Bruneau Creek            |
| 1904 | 11  | 9   | 2   | Land Claims      | 194  | Leland F. Rice             | Swamp Dave Creek                               | Swamp Dave Creek                   |
| 1904 | 11  | 9   | 2   | Land Claims      | 195  | Nicholas Hoffman           | East Fork Bruneau Creek                        | East Fork Bruneau Creek            |
| 1904 | 11  | 9   | 2   | Land Claims      | 196  | William Graham             | East Fork Bruneau Creek                        | East Fork Bruneau Creek            |
| 1905 | 4   | 11  |     | Civil Actions    | 1661 | B. W. Stewart              | William F. Mahoney                             | on-payment of lease? (not legible) |
| 1905 | 11  | 6   | 28  | Deeds            | 544  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T43N R59E                          |
| 1905 | 11  | 6   | 28  | Deeds            | 544  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T44N R59E                          |
| 1905 | 11  | 6   | 28  | Deeds            | 545  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T44N R59E                          |
| 1905 | 11  | 6   | 28  | Deeds            | 546  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T43N R58E                          |
| 1905 | 11  | 6   | 28  | Deeds            | 547  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T42N R56E                          |
| 1905 | 11  | 6   | 28  | Deeds            | 548  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T44N R59E, T43N R58E               |
| 1905 | 11  | 6   | 28  | Deeds            | 549  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T43N R58E                          |
| 1905 | 11  | 6   | 28  | Deeds            | 550  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T44N R59E                          |
| 1905 | 11  | 6   | 28  | Deeds            | 551  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T42N R58E                          |
| 1905 | 11  | 11  | 28  | Deeds            | 557  | Mary's River Land & Cattle | Santa Barbara Water Co                         | T43N R58E                          |
| 1905 | 11  | 11  | 28  | Deeds            | 557  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T44N R59E                          |
| 1905 | 11  | 11  | 28  | Deeds            | 558  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T43N R58E                          |
| 1905 | 11  | 11  | 28  | Deeds            | 559  | Mary's River Land & Cattle | Aztec Land & Cattle                            | T43N R59E                          |
| 1905 | 11  | 11  | 28  | Deeds            | 560  | Mary's River Land & Cattle | Edward B. Perrin                               | T43N R58E                          |
| 1906 | 7   | 7   |     | Civil Actions    | 1713 | The Elkolla Live Stock Co. | Dunn, as Sheep Inspector in and for Elko Coney | impounded on Wilkins Islar         |
| 1907 | 4   | 26  | 9   | Mining Locations | 485  | W.M. Howeth                | Howard Freeman, C.W. Howeth                    | Black Hawk                         |
| 1907 | 5   | 16  | 11  | Mining Locations | 76   | Wm. Perkins                |  | Gold Rose                          |
| 1907 | 6   | 6   | 9   | Mining Locations | 278  | Wm. Perkins                |  | Old Timer Lode                     |
| 1907 | 6   | 12  | 10  | Mining Locations | 713  | Wm. Perkins                |  | Gold Rose No.1                     |
| 1907 | 7   | 10  | 9   | Mining Locations | 484  | W.M. Howeth                |  | Los Angeles Lode                   |
| 1907 | 7   | 10  | 9   | Mining Locations | 484  | W.M. Howeth                |  | Yellow Jacket Lode                 |
| 1907 | 7   | 10  | 9   | Mining Locations | 485  | W.M. Howeth                |  | Little Emma Mine Lode              |
| 1907 | 7   | 10  | 9   | Mining Locations | 485  | W.M. Howeth                |  | May Flower Lode                    |
| 1907 | 7   | 10  | 9   | Mining Locations | 485  | W.M. Howeth                |  | Little Emma Mine Lode              |
| 1907 | 7   | 10  | 9   | Mining Locations | 486  | W.M. Howeth                |  | Sopha                              |
| 1907 | 9   | 18  | 11  | Mining Locations | 257  | D.A. Bourne                | Howard Freeman, C.W. Howeth                    | Glendale Mine No.1                 |
| 1907 | 9   | 18  | 11  | Mining Locations | 257  | D.A. Bourne                | Ralph Herbert                                  | Glendale Mine                      |
| 1907 | 9   | 25  | 11  | Mining Locations | 258  | D.A. Bourne                | Ralph Herbert                                  | Glendale Mine No.2                 |
| 1908 | 7   | 28  | 12  | Mining Locations | 345  | D.A. Bourne                | Ralph Herbert, W.S. Enslow                     | Lucky Bourne                       |

Jarbidge Materials List B - Elko County Recorder Documents

| Year | Mont | Day | Book | Type             | Page | First Party              | Second Party               | Remarks            |
|------|------|-----|------|------------------|------|--------------------------|----------------------------|--------------------|
| 1908 | 7    | 28  | 12   | Mining Locations | 345  | D.A. Bourne              | Ralph Herbert, W.S. Enslow | Lucky Bourne #1.   |
| 1908 | 9    | 12  | 12   | Mining Locations | 364  | Ralph Herbert            | Mrs. Lou L. Herbert        | Golden Badger #1   |
| 1908 | 9    | 15  | 12   | Mining Locations | 365  | Ralph Herbert            | Mrs. Lou L. Herbert        | Golden Badger No.2 |
| 1909 | 6    | 29  | 13   | Mining Locations | 130  | D.A. Bourne              | B.F. Collins               | North Star No.1    |
| 1909 | 6    | 29  | 13   | Mining Locations | 131  | D.A. Bourne              | B.F. Collins               | North Star No.2    |
| 1909 | 8    | 21  | 13   | Mining Locations | 192  | D.A. Bourne              | M.E. Reynolds              | Minnie B           |
| 1909 | 9    | 27  | 13   | Mining Locations | 130  | D.A. Bourne              | B.F. Collins               | North Star         |
| 1909 | 9    | 27  | 13   | Mining Locations | 131  | D.A. Bourne              | B.F. Collins               | North Star No.3    |
| 1909 | 9    | 27  | 13   | Mining Locations | 132  | D.A. Bourne              | John Cleme                 | Reliance           |
| 1909 | 9    | 27  | 13   | Mining Locations | 132  | D.A. Bourne              | John Cleme                 | Reliance No.1      |
| 1909 | 11   | 9   | 13   | Mining Locations | 193  | D.A. Bourne              | M.E. Reynolds              | Minnie B. No.3     |
| 1909 | 11   | 9   | 13   | Mining Locations | 193  | D.A. Bourne              | M.E. Reynolds              | Minnie B. No.1     |
| 1910 | 3    | 2   | 2    | Water Rights     | 505  | East Fork Brunseau River | Jarbidge Mining District   | water right filing |
| 1910 | 6    | 4   | 32   | Deeds            | 192  | Nevada Land & Livestock  | Aztec Land & Cattle        | T43N R58E          |
| 1910 | 12   | 28  | 32   | Deeds            | 504  | Nevada Land & Livestock  | L.L. Bradley               |                    |
| 1921 | 6    | 21  | 39   | Deeds            | 183  | Andrew Tourreuil         | Manuel Bastida             |                    |
| 1921 | 10   | 13  | 39   | Deeds            | 278  | Andrew Tourreuil         | Manuel Bastida             |                    |

| Title   | Author                  | Year      |
|---|-------------------------|-----------|
| Mining Locations Book 9   | Elko County Recorder    |           |
| Humboldt National Forest and Cattle Numbers                       | Sid Tremwan             |           |
| Early Day Range, Livestock and Wildlife Observations              | Sid Tremwan             |           |
| Water Rights 2  | Elko County Recorder    |           |
| Water Rights Map  | Nevada State Engineer   |           |
| Nevada State Journal  | Nevada State Journal    |           |
| Master Title Plat and Historical Index                            | Bureau of Land Manage   |           |
| Miscellaneous Book 4  | Elko County Recorder    |           |
| Elko County Deeds, Book 32  | Elko County Recorder    |           |
| Mining Locations Book 6   | Elko County Recorder    |           |
| Victor Goodwin  | Edna Patterson          |           |
| Mining Locations Book 7   | Elko County Recorder    |           |
| Mining Locations Book 5   | Elko County Recorder    |           |
| GLO Survey Plats and Notes  | General Land Office     |           |
| Mining Locations Book 13  | Elko County Recorder    |           |
| Mining Locations Book 12  | Elko County Recorder    |           |
| Mining Locations Book 11  | Elko County Recorder    |           |
| Mining Locations Book 10  | Elko County Recorder    |           |
| Metropolis Chronicle  | Metropolis Chronicle    |           |
| Land Claims Book 2  | Elko County Recorder    |           |
| Humboldt Star   |                         |           |
| Mining Locations Book 15  | Elko County Recorder    |           |
| Elko County Deeds, Book 28  | Elko County Recorder    |           |
| Miscellaneous Book 2  | Elko County Recorder    |           |
| Civil Actions   | Elko County Clerk       |           |
| Bancroft's History of Nevada                                      | H. H. Bancroft          |           |
| Elko Free Press   | Elko Free Press         | 1890-1910 |
| Wadsworth Dispatch  | Wadsworth Dispatch      | 1892-1904 |
| Gold Creek News   |                         | 1897      |
| Nevada State Herald   | Nevada State Herald     | 1897-1909 |
| Mountain City Times   | Mountain City Newspaper | 1898      |
| Tuscarora Times   | Tuscarora Times         | 1900-1903 |
| Summer Ranges of Eastern Nevada Sheep                             | P.B. Kennedy            | 1903      |
| A Favorable Report on the Proposed Bruneau Addition to Indepe     | R. B. Wilson            | 1906      |
| Elko County and its Vast Mineral Wealth                           | Elko Chamber of Comm    | 1907      |
| Williams Family Files   | Keddie                  | 1909      |
| 1910 Jarbidge Mining District Geologic Records                    | F.C. Schrader           | 1910      |
| The History and Development of Elko County                        | Lulu Belle Hurley       | 1910      |
| A Reconnaissance of the Jarbidge, Contact, and Elko Mountain      | M.F.C. Schrader         | 1912      |
| History of Nevada, 2 Vols   | Sam P. Davis            | 1913      |
| The Jarbidge Mining District, Nevada with a note on the Charlesto | Frank C. Schrader       | 1923      |
| Winter Letter   | Frank Winter            | 1925      |
| Grazing Rights Map  | NV State Engineer       | 1929      |
| Sheep migration routes  | US Forest Service       | 1938      |
| Peter Skene Ogden's Snake Country Journals                        | E.E. Rich, M.A.         | 1950      |
| The Humboldt - Nevada's Desert River and Thoroughfare of the A    | Victor O. Goodwin       | 1966      |
| El 2-13-1966 Patterson's File Humboldt Forest                     | Patterson               | 1966      |

| Title  | Author                 | Year |
|--|------------------------|------|
| Technical report-Archeological Survey Eastern NV No. 2           | Don D. Fowler          | 1966 |
| Nevada's Northeast Frontier                                      | Edna B. Patterson      | 1969 |
| Basque Tree Carvings   | Richard Lane           | 1971 |
| Nevada nomads; a story of the sheep industry                     | Byrd Fanita Wall Sawye | 1971 |
| Golden fleece in Nevada  | Ciel Georgetta         | 1972 |
| History of Nevada  | Russel R. Elliot       | 1973 |
| The Cultural Ecology of Sheep Nomadism: Northeast Nevada, 18     | Richard Harris Lane    | 1974 |
| Gold Fever   | Helen E. Wilson        | 1974 |
| Nevada   | Robert Laxalt          | 1977 |
| Story of the Great American West                                 | Reader's Digest        | 1977 |
| Northeastern Nevada Historical Society Quarterly 78-2            | Howard Hickson         | 1978 |
| Owyhee Outpost Quarterly   | Lola Blossom           | 1978 |
| Prehistory, Ethnohistory, and History of Eastern Nevada          | Steven R. James        | 1981 |
| Basque Shepherders of the American West                          | Richard Harris Lane    | 1985 |
| Elko County Land Exchange  | US Forest Service      | 1988 |
| Centennial Reflections of the Three Creek Area                   | Desert Gold Cattlewome | 1990 |
| Archaeological Investigations in the Jarbidge Mountains Humboldt | Steven R. James        | 1992 |
| History of the Humboldt National Forest                          | Fred P. Frampton       | 1992 |
| Hoofprints on Nevada Land  | Louie A. Gardella      | 1994 |
| Norman Mines   | Emil C. Anderson       | 1994 |
| Northeastern Nevada Historical Society Quarterly 96-1            | Marcia Barker          | 1995 |
| Cultural Resource Narrative Report HM-96-682                     | Humboldt-Toiyabe Natio | 1996 |
| A Class III Cultural Inventory of the Proposed Ruggeri Land Exch | Anna M. Rago           | 1996 |
| A Place Called Jarbidge  | Donald E. Mathias      | 1997 |
| Northeastern Nevada Historical Society Quarterly 98-4            | George E. Gruell       | 1998 |
| Old Heart of Nevada  | Shawn Hall             | 1998 |
| A Travel Guide to Basque America                                 | Nancy Zubiri           | 1998 |
| Let the Cowboy Ride  | Paul F. Starrs         | 1998 |

Jarbridge - Maps

| Year | Name1   | Name2   | Comments   |
|------|---|---|--|
| 1855 | From Great Salt Lake to the Humboldt Mountains                |   | Survey for a Railroad Route<br>Scale 1 inch = 24 miles         |
| 1871 | Preliminary Topographical Map                                 | Explorations and Surveys South of Central Pacific | E. C. McClellan  |
| 1894 | Elko County, Nevada   |   | Scale 1 inch = 12 miles  |
| 1903 | State Of Nevada   | Department of the Interior General Land Office    | Scale 1 inch = 24 miles  |
| 1909 | State Of Nevada   | Enlarged Homestead Act                            | Scale 1 inch = 24 miles  |
| 1911 | Economic Map of Jarbridge Mining District                     | Elko County, Nevada                               | Scale 2 inches = 1 mile River Road<br>Scale 1 inch = 1000 feet |
| 1911 | Jarbridge Mining District                                     |   | Scale 1 inch = 200 feet  |
| 1921 | Geologic Map Elko Mines Co. Claims, Jarbridge, Nevada         |   | Scale 1 inch = 200 feet  |
| 1926 | Surface Geology Elko Mines Company Property, Jarbridge Nevada |   | Scale 1 inch = 200 feet  |
| 1937 | Humboldt National Forest                                      | Humboldt Division                                 | User Map   |
| 1938 | Grazing Allotment Map   |   |  |
| 1939 | Nevada-Physical Conditions and Forage Resources               | Northeastern Nevada Cooperative Land Use Study    | Jarbridge and Gold Creek Quads                                 |
| 1941 | Northeastern Nevada Cooperative Land Use Study                | Location Map                                      | Approximate 1 inch = 6 miles                                   |
| 1942 | Humboldt National Forest                                      | Humboldt Division                                 | User Map   |
| 1942 | Mt. Velma, NEV.   | Mt. Velma Quadrangle                              | USGS 15-Minute Series  |
| 1943 | Jarbridge, Nev.-Idaho   |   | USGS 15-Minute Series  |
| 1953 | Humboldt National Forest                                      | Humboldt Division                                 | User Map   |
| 1968 | Marys River Basin NE Quadrangle                               | Nevada-Elko Co.                                   | USGS 7.5 Minute Series   |
| 1968 | Marys River Basin NW Quadrangle                               | Nevada-Elko Co.                                   | USGS 7.5 Minute Series   |
| 1981 | Jarbridge Mts.  | Nevada-Idaho                                      | Scale 1:100,000  |
| 1986 | Arnie Creek Quadrangle  | Nevada-Elko Co.                                   | USGS 7.5 Minute Series   |
| 1986 | Bearpaw Mountain Quadrangle                                   | Nevada-Idaho                                      | USGS 7.5 Minute Series   |
| 1986 | Coon Creek Quadrangle   | Nevada-Idaho                                      | USGS 7.5 Minute Series   |
| 1986 | Gods Pocket Peak Quadrangle                                   | Nevada-Elko Co.                                   | USGS 7.5 Minute Series   |
| 1986 | Jarbridge North Quadrangle                                    | Nevada-Idaho                                      | USGS 7.5 Minute Series   |
| 1986 | Jarbridge South Quadrangle                                    | Nevada-Idaho                                      | USGS 7.5 Minute Series   |
| 1986 | Robinson Creek Quadrangle                                     | Nevada-Idaho                                      | USGS 7.5 Minute Series   |
| 1990 | Humboldt National Forest                                      | Mountain City and Jarbridge Ranger Districts      | User Map   |

## RESUME

**J. Wayne Burkhardt Ph.D.**  
**Associate Professor Emeritus Range Science**  
**Range Consultant**

PO Box 74  
Indian Valley, ID 83632  
(208) 256 - 4437

## Experience

Twenty years teaching the following courses at University of Nevada, Reno and University of Idaho: Principles of Range Management, Range and Forest Plants, Range Agrostology, Range Improvements, Range Methods, Rangeland Management and Rangeland Grazing.

Thirty-one years conducting research projects in pinyon-juniper ecology, livestock food habits in the Mojave Desert, mule deer-livestock relationships, methods of measuring range forage production, condition and trend, and evaluating vegetation changes since settlement times.

Twenty years experience in range extension focusing on grazing management and monitoring, coordinated management planning and public land grazing policies.

Served on numerous advisory groups and technical committees for Bureau of Land Management, U.S. Forest Service and U.S. Fish & Wildlife Service working on coordinated resource management planning and resources conflict resolution. Appointed by the Secretary of Interior to serve on the National Wild Horse and Burro Advisory Board and the Blue Ribbon Task Group on Range of Our Vision. A charter member of the Experimental Stewardship Program. Provided Congressional testimony on western rangelands.

Provided range management consulting services and expert testimony for private consulting firms and government agencies on numerous environmental issues, several of which materially effected national land management programs. Specialist in rangeland riparian and wetland systems, functional assessments and restoration. Worked with the National Riparian Team on issues related to grazing on public and private riparian areas.

Eight years managing grazing and cropland permits and leases for the Idaho Department of Public Lands.

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**J. WAYNE BURKHARDT**

Range Consultant and Associate Professor Emeritus, Range Management, Department of Range Wildlife and Forestry, University of Nevada, Reno; Affiliate Faculty College of Forestry, Wildlife and Range Sciences, University of Idaho

**ACADEMIC BACKGROUND:**

| <u>Date</u> | <u>Degree</u> | <u>Institution</u>       | <u>Subject Area</u> |
|-------------|---------------|--------------------------|---------------------|
| 1964        | B.S.          | University of Idaho      | Forestry            |
| 1967        | M.S.          | University of Idaho      | Range Management    |
| 1969        | Ph.D.         | University of Idaho      | Range Ecology       |
| 1970        | Certificate   | Farm and Ranch Appraisal |                     |

**PROFESSIONAL EXPERIENCE:**

| <u>Date</u>    | <u>Rank</u>       | <u>Institution</u>         |
|----------------|-------------------|----------------------------|
| 1964-1969      | Research Fellow   | University of Idaho        |
| 1966           | Instructor        | University of Idaho        |
| 1969-1976      | District Manager  | Idaho Dept. of Lands       |
| 1976-1982      | Assist. Professor | University of Nevada, Reno |
| 1982-1994      | Assoc. Professor  | University of Nevada, Reno |
| 1994 - Present | Range Consultant  |                            |

**PROFESSIONAL INTEREST:**

Over 30 years of field experience with range and forest resources and grazing management in the sagebrush-grass, salt desert shrub, pinyon-juniper, Mojave Desert and coniferous forest ecosystems. Knowledgeable in public land policies and politics.

**AWARDS:**

1980 - Outstanding Teacher Award School of Agriculture, University of Nevada Reno  
 1983 - Certificate of Appreciation from Secretary of Interior and Agriculture  
 1990 - National Teaching Award from the Range Science Education Council and the Society for Range Management  
 1992 - Rangeman of the Year - Nevada Section, Society for Range Management  
 1992 - President's Award - Nevada Cattlemen's Association  
 1993 - Outstanding Teaching Award, College of Agriculture, University of Nevada, Reno

## PUBLICATIONS:

## In Refereed Journals:

- Burkhardt, J.W. 1997. Grazing Utilization Limits: An ineffective management tool. *Rangelands* 19 (3)
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**Other Professional Publications:**

- Burkhardt, J.W., L. Krysi, S. Saare and K. Sanders. 1988. Condition assessment of selected Nevada wild horse herds and herd areas. Special report to the Director, Bureau of Land Management, Washington, D.C.
- Burkhardt, J.W. and P.T. Tueller. 1986. Range assessment-IL Ranch. Final report on Grant 663 to Roaring Springs Assoc., Boise, Idaho.
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- Kiebenow, D.A. and J.W. Burkhardt. 1982. Sage grouse of the Sheldon National Wildlife Refuge. Final Report. Fish and Wildlife Service.
- Young, J., J. McCormick and J.W. Burkhardt. 1978. Making hay. Rangenman's Journal.

**Extension Teaching Publications:**

- Burkhardt, J.W. 1993. How the desert blooms in the absence of livestock grazing. Range Magazine 2(1).
- Burkhardt, J.W. and F.W. Obermiller. 1992. The price of grass. Range Magazine 1(1)36-37.
- Burkhardt, J.W. 1992. Steppes in time. Range Magazine 1(2)31.
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- Burkhardt, J.W. 1988. Range livestock - low input agriculture. Ag. Forum: Fall 1988.
- Burkhardt, J.W. and I. Hackett. 1987. Monitoring rangeland grazing. UNR Fact Sheet 87-50.
- Davison, J., I. Hackett and J.W. Burkhardt. 1987. Fertilizing crested wheatgrass on northern Nevada rangelands. UNR Fact Sheet 87-48.

**Extension Teaching Publications (Cont'd)**

Swanson, S., J.W. Burkhardt and J. Young. 1987. Great Basin annual rangeland. UNR Fact Sheet 87-45.

Burkhardt, J.W. and B. Templeton. 1987. Monitoring rangeland grazing. BLM Information Service.

Burkhardt, J.W. and L. Minter. 1987. Rangeland management: confrontation to cooperation. Ag. Forum 3:2.

Burkhardt, J.W. 1987. Managing grazing on rangeland. BLM Rangeland Monitoring Workshop Proceedings.

Burkhardt, J.W. 1987. Guidelines for agency involvement in CRMP. Task Group Publication.

Davison, J., J.W. Burkhardt, I. Hackett and D. Tomel. 1986. Poisonous range plants. Special Publication (narrated slide set with written text).

Burkhardt, J.W. 1985. Range management 1984: State-of-the-Art. Proceedings Taylor Grazing Conference, Grand Junction, Colorado. Bureau of Land Management.

Burkhardt, J.W., et al. 1984. Nevada rangeland monitoring handbook. Special joint publication by Extension Service, Bureau of Land Management, Forest Service and Soil Conservation Service.

Burkhardt, J.W. 1984. Changing range condition in northern Nevada. Press News Release.

Burkhardt, J.W. 1984. Rangeland fires - good and bad. Press News Release.

Burkhardt, J.W. and J.E. Butcher. 1984. Managing rangeland grazing. Published in 11 western states Cattleman Association's Trade Journals and the Intermountain Farmer-Stockman Journal.

## RANGE CONSULTING REFERENCES

|  |   |   |
|--|---|---|
| Mountain Springs Ranch                 | Dave Nelson<br>208-588-2805                   | Mackay, Idaho                             |
| Resource Concepts, Inc.                | John McLain<br>775-883-1600                   | Carson City, Nevada                       |
| Owyhee Cattlemens Assoc.               | Chad Gibson<br>208-869-4104                   | Marsing, Idaho                            |
| Prairie Wind Consulting                | Dick Loper<br>307-332-2601                    | Lander, Wyoming                           |
| Budd-Falen Law Offices                 | Karen Budd-Falen<br>307-632-5105              | Cheyenne, Wyoming                         |
| Keyhole Ranch                          | Weldon Branch<br>208-355-3235                 | Midvale, Idaho                            |
| Sweetwater Ranches                     | Benny Romero<br>819-932-7019                  | Bridgeport, California                    |
| Byington Ranches                       | Jim Connelly<br>775-763-6644                  | Mountain City, Nevada                     |
| Raftopolous Brothers Livestock         | Steve Raftopolous<br>970-824-4555             | Craig, Colorado                           |
| Marty & Ragsdale Law Office            | Calvin Ragsdale<br>307-875-3235               | Green River, Wyoming                      |
| Hillberry Ranch                        | Darwin Hillberry<br>307-856-3322              | Riverton, Wyoming                         |
| Gund Ranch                             | Ken Conley<br>775-964-2828                    | Grass Valley, Nevada                      |
| Rocking M Ranch                        | Charlie Moore<br>1-800-497-2624               | Denver, Colorado                          |
| Uinta Grazing Partnership              | Ed Bown<br>801-461-0599                       | Salt Lake City, Utah                      |
| Vermillion Ranch<br>Douglas Lake Ranch | Mark Dickinson<br>307-350-3060<br>Joe Gardner | Rock Springs, Wyoming<br>Douglas Lake, BC |

**Allotment Management Planning Experience**

For the past several years I have been developing cooperative allotment management plans for a number of large public land ranches in southern Wyoming and northwest Colorado. In each case the ranch grazing operations involved Bureau of Land Management permits, state and railroad leases and private lands.

**Cumberland/ Uinta Grazing Partnership** - Evanston, Wyoming

Contact - Simeon Weston or Ed Bown

400,000 acres

25 members

**Vermillion Ranches** - Maybelle, Colorado

Contact - Wright Dickinson

300,000 acres

**Overland Trail Cattle Company** - Saratoga, Wyoming

Contact - Glen Alameda or John Parker, Anschutz Corporation

280,000 acres

**Smithfork Grazing Association** - Cokeville, Wyoming

Contact - Fred Roberts or Bruce Bauman

90,000 acres

23 members

A FAVORABLE REPORT  
ON THE  
PROPOSED BRUNEAU ADDITION  
TO INDEPENDENCE NATIONAL FOREST  
NEVADA

----

By  
R. E. WILSON  
Forest Assistant, Forest Service  
June, 1906

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A FAVORABLE REPORT OF THE PROPOSED BRUNEAU ADDITION  
TO INDEPENDENCE NATIONAL FOREST  
NEVADA

----

By R. B. Wilson  
Forest Assistant, Forest Service

----

Location and Area

The country to be described under the above name lies in Elko County, northeastern Nevada. It comprises the high mountain region of that part of the State and extends north to the State line and south to where the mountains drop away toward the heads of Owyhee and Bruneau rivers. The high range of mountains at the head of the North Fork of Humboldt River was examined in the fall of 1904, and comprises the northwest arm of the proposed reserve. On the west is the Owyhee desert, on the north the deserts in Idaho, and on the east the high, broken Salmon River grazing country. The area, including the North Fork addition is 650,960 acres.

Topography

A curious feature about the State of Nevada is that nearly all the important water systems either arise outside the State or arising inside, flow through the State and sink in the tremendous stretches of desert in the interior. Three exceptions to

this rule are the Bruneau, Owyhee, and Salmon rivers. These streams rise in the northern part of the State and flowing north, finally reach the Snake River in Idaho.

The country in the proposed reserve has a general altitude of 6,000 to 7,000 feet and the surrounding country except in the northwest and north is mountainous as far as the eye can reach. Three groups of mountains are worthy of special attention because they bear the only considerable growth of coniferous timber in the whole northern part of the State. The South Fork of Owyhee River and the North Fork of Humboldt River, Bull Run Creek, and the western part of the East or Middle Fork of Owyhee River watershed all head together in a group of mountains over 9,000 feet high. This range has a general north and south trend of forty to forty-five miles with an extreme altitude of over 10,000 feet. The mountains are very rugged and broken from a point near the extreme head of the South Fork of the Owyhee River northward to the head of Bull Run Creek. North of the latter point the mountains slope off more gradually to Duck Valley in the Indian Reservation.

The second group of mountains is much lower in altitude and lies between the East Fork of Owyhee and Bruneau rivers, culminating in Merritt Mountain in Township 46 north, Range 54 east. Five important tributaries of the Bruneau and Owyhee rivers arise at Merritt Mountain, the country sloping off southerly to Sunflower Flat, a high mountain basin at the head of Alleghany Creek and thence southward to the Owyhee

River. On the north the mountains extend in practically the same range down to Silver City, Idaho. Merritt Mountain is above 9,000 feet high.

The third and last group of mountains may be taken as all one range, the separate parts being known as the Bruneau, Jarbidge, or Coon Creek mountains, according to the local preference in names. This group lies in the shape of a rough letter "L", the top of the L extending between Bruneau and Jarbidge rivers from the State line to Marys River and the horizontal portion running east and west between Marys River on the south, the western prongs of Salmon River on the east, and the different forks of Jarbidge River on the north. These mountains are rougher and higher than the North Fork mountains, the highest point (probably one of the highest points in the State) being Jarbidge Peak between the forks of Jarbidge River. It reaches an estimated altitude of over 11,000 feet.

The country between the three mountain systems is a mass of smooth-topped, grass-covered mountains opening only at rare intervals into narrow stretches of valley less than a half mile wide and seldom over two miles long. The northeastern part of the withdrawal as well as the country extending north into Idaho is a large, high plateau. Jarbidge River and its tributaries cut this plateau into parallel strips, the streams having cut for themselves deep narrow canyons to a depth of 200 feet in places. This country is a desert fit only for stock range as there is no way of getting water out of the

canyons onto the bench lands and the canyons are merely rocky ledges wide enough for the streams themselves to pass through and only in a few places allowing the stock to get down to water.

Neither Bruneau nor the East Fork of the Owyhee rivers have their headwaters within the proposed reserve. They rise in somewhat low, irregular groups of mountains at the south and southeast of the proposed boundary. These hills are devoid of tree growth and unsuited in every way for forest reserve purposes.

Note: The Duck Valley Indian Reservation consists of a horseshoe-shaped mass of rolling grass-covered mountains with Duck Valley on the East Fork of the Owyhee River, within the shoe. This valley is one of the largest, best situated, and most fertile valleys in all of northern Nevada or southern Idaho. The whole reservation is devoid of timber except at the extreme southeast end. The high portions of the White Rock mountains extend down at this point for three or four miles into the Indian Reservation. The proposed boundary of the Bruneau Forest Reserve includes the balsam fir and aspen on these higher slopes.

#### Climate

Official weather records are unobtainable. The points of observation are San Jacinto (the home ranch of the "Shoesole" outfit) and the towns along the Southern Pacific Railway, none of these records being complete or applying to

conditions in the mountains proper. San Jacinto has 43.9 degrees for the mean annual temperature, 100 degrees for the highest, and -17 degrees for the lowest. The annual rainfall is 9.19 inches. The country within the proposed reserve is at a greater altitude, hence the climate is more severe.

The Bruneau country has the reputation of having as heavy a snowfall as any part of the State. At the settlements on the river the snow falls in October and remains off and on until June. On the 5th and 6th of June, 1906, it snowed about six inches at the post offices of Gold Creek and Rowland. From November until some time in March the mail between Gold Creek and Rowland has to be carried across the Meadow Creek divide on snow shoes. Snow also blocks the mail route between Tuscarora via Columbia to Mountain City.

#### The Forest

The northern part of Nevada generally speaking is as treeless as the plains region, the higher mountain ranges alone of all this region providing moisture enough for a scanty growth of aspen, some balsam fir, scrub pine, juniper, and mahogany. The rest of the country is sagebrush and grass. The proposed reserve has less than 25 per cent of its area in forest cover of any kind and only some 5 per cent of this 25 per cent is classed as commercial forest, the trees being used for mining timbers at the mines around White Rock and Edgemont. The aspen and mahogany are used by the ranchmen for fence posts and fuel.

A slightly different classification has been used for this country; balsam fir (Abies lasiocarpa) has been considered as commercial forest, while aspen (Populus tremuloides) has been distinguished from the other classes of woodland such as mahogany and scrub oak brush. A brief description of the three classifications follows.

#### Commercial Forest

This type comprises balsam fir with aspen in mixture and is found only on the north slopes of the higher mountains above an altitude of 3,500 to 9,000 feet. In a few places such as Pine Mountain in Township 45 north, Range 36 east and Pine Mountain between the forks of Deer Creek, there are scrubby weather-beaten clumps of mountain pine (Pinus flexilis). Balsam reproduces well and trees of all sizes are found from small seedlings up to trees 2.5 feet in diameter breasthigh. Pine reproduction is poor.

#### Aspen Type

Aspen is the prevalent species on the proposed reserve and when timber is spoken of this makeshift for fence posts and fuel is generally meant. It is found in dense, narrow streaks along the gulches and creek bottoms above an altitude of 7,000 feet, also on some of the higher slopes. Aspen needs a certain amount of moisture in the ground and the influence of the underground snow drainage is seen in the pockets and depressions where it is found. Nearly all the young aspen is bent and crooked from the snow but the mature trees are as

rule straight and fairly tall. It would seem that this tree has the power of straightening itself after reaching a height above the danger from snow. The snow is probably the natural selective influence that keeps the aspen within its present restricted limits.

Mahogany Type:

Extending down the east slope of Merritt Mountain six to eight miles and for eight to ten miles parallel to the mountain north and south is a stretch of country known as "The Mahoganies." The north and south slopes of the network of draws, gulches, and canyons comprising this country is covered with a heavy growth of mountain mahogany (Cercocarpus ledifolius) with some patches of Ceanothus velutinus as undergrowth. This species of the Rosaceae reaches a maximum development in the Bruneau River country. The trees are seldom over fifteen feet in height but often reach a stump diameter of 8 to 12 inches and grow so close together in places that like the juniper brakes in parts of Colorado and Utah, they are a great nuisance in riding after stock. Mahogany is found also in some quantity on the south slopes of main Jarbidge River above the forks. Here the trees are even larger than in the so-called "Mahoganies," some trees being over a foot at diameter, breasthigh and having a clear length of 10 to 15 feet.

In addition to what have been designated as tree species, there is the usual growth of willow and choke cherry near the creek beds and Ceanothus velutinus brush on some of

the slopes. The last is an annoyance to the sheepmen as will be discussed later on.

The balsam fir type will average 3,000 feet to the acre, the trees being limby and the ones sought for mining timbers extremely scattering. The best of it on the North Fork mountains has been cut already for the mines at Edgemont and other places in the Bull Run Mining District. That on Merritt Mountain is used to some extent by the mine on McDonald Creek, while that on the Bruneau or Jarbidge mountains is untouched excepting what was cut for the old Martis Mining District. Most of it is accessible for logging by trail.

Stumpage is of course unknown and no precedent for stumpage valuation can be ascertained except in the few cases where the mines were forced to settle for their cutting by the agents of the General Land Office. The timber is very valuable to the mines and they contract with the ranchmen to get it in for them, thereby saving an expensive seventy-mile haul from the railroad. A fair stumpage price would seem to be \$3. a thousand.

The groups of fir contain trees of all sizes and ages, the old trees being in the middle and the younger generations descending by concentric rings to the outside. Only the large trees are salable which leaves plenty of seed-bearing trees for reforestation. The trees for cutting must be marked and the marking done with sufficient care to be sure that the small area of commercial forest does not become smaller.

The Forest as a Protection Cover

The larger streams as well as the smaller ones that flow throughout the dry season arise in the higher mountains where the watersheds are more or less covered with fir, aspen, or brush. But the country is so high and the snowfall so great that the influence of tree growth on the water run-off is not so apparent as it would be in a lower country.

The small amount of land fit for farming is practically all "under water" at the present time and no large irrigating schemes are being promoted. Should the time come when it would seem feasible to put large stretches of the desert under water, Bruneau and Jarbidge river canyons afford ideal locations for storing the flood waters. It is claimed by some of the settlers that the water supply is visibly decreasing because of the heavy sheep grazing. This statement is merely quoted for what it is worth. There were no signs of gullying on the grass-covered mountain sides noticed in the spring of 1906 nor any streams dry that used to run a fair head of water. Undoubtedly the country was seen at its most favorable time and assertions that the water supply is becoming less because of the sheep must be laid to range jealousy. The proposed reserve and its attendant problems is above everything else a range question and will be discussed fully under its proper head.

Industries

The industries are sheep and cattle raising, ranching, the raising of hay to feed the cattle, and mining. The sheep and cattle industry will be discussed under the head of grazing.

Ranching

Nearly all the ranches in the proposed reserve are on Brumeau River, Meadow, and McDonald creeks tributary to the post office of Rowland. On these streams the hills open up into narrow stretches of level ground and here sixteen ranches are situated. They raise vegetables for their own use and alfalfa for wintering the cattle and horses in the stormy months. These small ranches in the pockets of the canyons are sheltered from the severe winter weather and the warm southern exposure keeps the surrounding ridges comparatively free from snow. Two crops of alfalfa are raised and stock would do very well if it was not for the sheep crowding the outside range. Hay is worth about \$6. a ton and everyone is able on his twenty or forty-acre field to raise enough to take the weak and young stock through the winter. However, since the sheep have been coming in in such tremendous numbers in the last five years, the cattlemen complain that they can not get their stock fat enough during the summer to winter out hence they are forced to bring in a greater number for feeding than their hay will allow. The nature of the country is such that they can never get water on more than a small percentage of their ground so

unless the outside range is at its best there is a distinct loss of money involved. Cattle-raising is the only form of ranching possible unless they should go in for sheep or goats which require a greater initial outlay and an increase of running capital. They are so far removed from a market that growing oats is not possible as is the case in the North Fork and White Rock valleys, where they have a comparatively good road to the railway.

On Trail Creek, a tributary of the East Fork of the Owyhee River, rising in the Bull Run or White Rock mountains, are three more ranchers. They have the same complaint to make about the decreased carrying capacity of the range due to the sheep. There are also a few small ranches near Mountain City and the mouth of California Creek. All of these ranchmen are squatters on unsurveyed ground and the location of their places on the map can be only approximate. Bull Run Basin at the foot of the Bull Run mountains is another small cattle-raising community.

East of the Bruneau or Jarbidge mountains are some six or seven more ranchers on unsurveyed land near the proposed boundary. Their water is scarce and they rely on the large stretches of desert between the different prongs of Jarbidge River to bring their stock through the winter. This desert has for a long time been a famous horse country and they raise a good many horses as a consequence. North Fork and the upper Owyhee valleys are outside the reserve on the southeast

while White Rock Valley is on the west. Some of the best ranches in the county lie in these valleys for the land is at a lower altitude, lies in better shape for cultivation, and has been settled for a long time.

On the east and south are the large outfits that get possession in the early days by State selection and forest reserve script of all the available springs and land. Marys River on the south is entirely controlled by the Marys River Land and Cattle Company, a corporation with headquarters at the town of Deeth. Sun Creek, Camp Creek, Cottonwood Creek, and Canyon Creek headwaters of Salmon River within the reserve are completely controlled by O'Neill Brothers. Large sheep, cattle, and horse men of Wells. Lower Salmon River and the country eastward to the State line are almost exclusively the property of Sparks and Harrold, one of the old-time stock outfits.

#### Mining

Elko County like all the other counties in Nevada had its brief mining day only to receive the customary setback from which it has never recovered in the last twenty or thirty years. The last four or five years, however, has seen a renaissance in mining activity in the State, beginning at the Tonopah region and extending in every direction. Now even in the extreme northern counties old abandoned properties are being reestablished by new capital. The North Fork or White Rock Mountains are highly impregnated with mineral and have been worked periodically since Tuscarora was a flourishing mining camp. Columbia, Edgemont, Martis, and Gold Creek have

all in their day been more or less prosperous. At the present time the new activity has struck the Bull Run Mining District and in June, 1906, there were 100 men working in the mines at Edgemont, a smaller force at the McDonald Creek mine on the north slope of Merritt Mountain and a few men doing development work around Mountain City, Bull Run, Blue Jacket, and California creeks, also Gold Creek and the Martis. The ore is a lead and silver-bearing quartz, carrying fairly good values in gold. There was at one time a little placer mining on California, Bull Run, Upper Bruneau, etc., but Elko County was never famous as a placer country. About a half mile from the mouth of California Creek is a quartz mill that is not working because of some legal difficulty among the stockholders. It looked to be about a ten-stamp mill. The need for reserve timber in the mines has already been discussed.

#### Settlements

North Fork and the Upper Owyhee valleys are cattle-raising communities, 50 to 60 miles from the railroad at Elko. This valley (for it is really all one) is well settled and has its small ranch post offices at Butler, North Fork, etc., a small hotel and saloon being at the latter. Gold Creek, 70 miles from Elko is a sheep-outfitting point with a store, post office, hotel, and saloon. Rowland is merely a ranch post office, 90 miles from Elko and 90 miles from Mountain Home, Idaho. The desert ranches 15 miles distant on the Jarbidge

come to Rowland for their mail. Twenty-five miles east and a trifle north of the desert settlement is Three Creeks, Idaho. This is also a sheep outfitting point with a store, hotel, post office, and saloon, getting the mail by stage from Mountain Home. The post office of O'Neill, outside the southeast boundary of the proposed reserve is O'Neill Brothers' home ranch. The mail comes once a week in summer from Wells on the Southern Pacific Railway.

Within the proposed reserve on the northwest side is Mountain City, a town of about thirty inhabitants with a store, saloons, hotel, post office, etc. It is 30 miles from Tuscarora and 80 miles from Elko, depending on the mines and to some extent on the sheepmen for its existence. White Rock is the ranch post office for White Rock Valley; Columbia and Edgemont are mining post offices. The Trail Creek ranches get their mail from the mail route between Tuscarora and Mountain City.

Elko is the outfitting point for practically the whole region, the freight coming in and out that way because the roads are so much better than northward into Idaho.

The table of alienated lands follows:

|                    |              |
|--------------------|--------------|
| Patented lands     | 320 acres.   |
| Homestead entry    | 1,760 "      |
| Squatters          | 1,760 "      |
| Patented lieu land | <u>240</u> " |
| Total              | 4,080 acres  |

In addition there are about 400 acres in Township 45 north, Range 55 east (unsurveyed) held by Jenkins, a sheepman, and

several hundred acres of so-called placer ground along the creek bottoms held by the other large sheepmen. These "sneep mines" as they are called are a bare-faced fraud.

#### Roads

The whole country is covered with roads, passable at any rate to sheep wagons in summer and equal to mountain roads in like localities of equal altitude and scant settlement.

The grass-covered ridges offer no difficulty anywhere to horseback travel, the only parts inaccessible to horses being the barren tops of the higher mountains. No immediate work will be required from the Forest Service in either road or trail building.

The distances from the railroads are very great and the country shows a corresponding lack of development. The main line of the Southern Pacific is about 75 miles south of the reserve and the Oregon Short Line about the same distance to the north in Idaho. The Minidoka Branch of the latter is even nearer to the northeast end of the proposed reserve. But, as already mentioned, the main outlet is southward to the Southern Pacific and the wagon roads across the Idaho deserts are seldom traveled because the lava rock renders them so extremely rough. In addition there is practically no settlement on the way or any water during the summer season.

Lumbering

There is not enough timber to cause any activity in the lumbering line and scarcely enough to provide for the growing local demand. The mines are the principal consumers of timber, their consumption being confined entirely to timbers in the rough. There is one sawmill in the White Rock Mountains cutting for the local demand in the valley. The patented land on Silver Creek was patented for its timber under the Timber and Stone Act for use by the settlers and mines. This was a good investment as their only competitor is the coast lumber hauled in by the railroad, costing from \$50 to \$40 a thousand by the time it is delivered.

White fir, the only lumber tree in the whole region, probably makes as worthless lumber as can be found anywhere for it is subject to decay and full of knots besides being high-priced. The buildings on nearly all the newer and smaller ranches are made of cottonwood logs covered over with sod roofs.

Grazing

The proposed Bruneau Reserve is a grazing reserve with greater difficulties and problems present than is usually the case in like areas. The stretch of country locally known as "The Bruneau" throughout the State, four-fifths of which is included in the proposed reserve is the newest, best, and largest stretch of summer sheep range in this part of the United States. Its only rivals are the mountain ranges in northern Humboldt

county and the Stein Mountains in Harney County, Oregon. But these latter have been used longer than the Bruneau and are correspondingly more fed off. After shearing in late spring when the sheep are all heading northward, questioning as to their destination will nearly always bring from the herder an answer of "The Bruneau."

The pioneers in the stock business were the enormous old-time outfits with their ranches in the North Fork and Upper Owyhee valleys, White Rock Valley, etc. They ran their cattle on the deserts in winter and on the high grass-covered ridges in summer and the little cattleman was almost unknown. The hard winters about 1890 and the immediately subsequent period of hard times caused a reorganization in the cattle business. The small owners came in with their better grades of winter-fed stock, the expense of winter-feeding being less than the annual loss on the deserts under the old way.

At present the cattle business is the sole means of support for the small settlers within the proposed reserve and of those in the valleys near the reserve. The settlers on the Bruneau River all have from 20 to 100 head which they run on the reserve throughout the entire year, merely feeding some of the cows and young stuff for three or four months in the winter. The peculiar topographic conditions that enable them to do this in a region of such heavy snowfall has already been mentioned. The desert ranches in the northeast end will be dependent on the reserve for their summer range as will also a large part of the

ranchmen in White Rock and North Fork valleys. About 18,000 cattle and horses, all told, will be affected by the proposed reserve and no distinction should be made between those using the range only in summer and those using it the year round. This is a large number of cattle and horses but not anywhere near what the range is capable of supporting if it were not for the sheep.

A great many cattle still run out in winter on the Owyhee Desert and the large deserts to the north in Idaho, cattle from as far distant as Paradise Valley on the Little Humboldt River using the former range. They are rounded up in the spring and the larger portion driven back for the summer on the mountains in the proposed reserve.

The Bruneau country is an ideal horse range and formerly a great many horses were raised. After the break in the horse market a few years ago the horse owners did not go to the expense of rounding up their horses for a long time. The result on the "Diamond A" Desert especially was hundreds of head of wild horses, many of them unbranded and all inbred and undersized. The last two or three years have brought such an unusual demand for horses of all descriptions, even for what are known on the market as "western horses" that the supply of wild horses is almost exhausted. Horses bred at present are ten to twelve-hundred-pound animals as the demand for heavy horses is just beginning to be taken into consideration by the ranchmen.

The Bruneau country is a summer sheep range, the sheep wintering out for the most part of the deserts to the south in Lander, southern Humboldt, Churchill, Eureka, and even White Pine and Nye counties. The owners all live at a distance from the proposed reserve, nearly all the small owners being nomadic "Bascos" with no ranches of their own and paying no taxes.

There is an interstate tax on sheep between Idaho and Nevada, also a quarantine law that causes sheep coming from one State to the other to be inspected for scab and other diseases. Sheep are now very free from scab. According to the list of the Scab Inspector of Elko County, there are 392,350 sheep using the proposed Bruneau Forest Reserve for some part or all of the time between the first of June and the last of September. Their names and the number of sheep owned by each as passed on by the inspector is as follows:

|                    |        |
|--------------------|--------|
| C. H. Duberg       | 11,000 |
| Noble, Smith & Co. | 8,100  |
| J. S. Martin       | 3,800  |
| M. J. Triguero     | 5,500  |
| Joe Pence          | 3,000  |
| Arthur Pence       | 4,500  |
| A. Rogerson        | 3,200  |
| T. Higgins         | 800    |
| J. T. Pinkston     | 1,950  |
| John Etchevery     | 3,800  |
| Armosby            | 4,000  |

|                    |        |
|--------------------|--------|
| Frank Triguerra    | 3,000  |
| L. L. Bradley      | 23,750 |
| Neil and Capell    | 6,600  |
| J. Bengelcher      | 11,600 |
| J. G. Taylor       | 22,400 |
| A. Forlund         | 9,000  |
| W. W. Williams     | 60,000 |
| J. B. Williams     | 9,500  |
| J. Altube          | 11,250 |
| T. Nelson          | 24,900 |
| C. Tellerforo      | 4,700  |
| G. Kaiser          | 16,500 |
| A. Motta           | 3,400  |
| R. J. Jenkins      | 50,000 |
| Bicente and Co.    | 4,000  |
| Elko Livestock Co. | 4,000  |
| C. Howard          | 3,300  |
| H. Dunn            | 10,000 |
| P. Laca            | 3,900  |
| M. Hasquette       | 5,800  |
| Othalepo and Co.   | 3,100  |
| P. Corta           | 2,500  |
| Irigoyen           | 2,500  |
| Lemaire and Co.    | 3,400  |
| J. Eyrar           | 4,000  |
| F. Capdeville      | 3,000  |

|                 |              |
|-----------------|--------------|
| M. Amarel       | 4,500        |
| G. Sabala       | 12,900       |
| M. Satica       | 2,900        |
| J. Bentaverg    | 2,600        |
| Lopex Brothers  | 4,600        |
| Stewart and Co. | <u>4,000</u> |

392,350

In addition, O'Neil Brothers from Sun and Camp creeks also run some of their sheep within the limits of the proposed reserve. Keogh and Co. from over by the Ruby Mountains, and Ramsey from Idaho used to run sheep on the Bruneau country.

Nearly all the sheepmen come from the central part of the State and very few of them pay taxes in Elko County. Williams and Jenkins the two largest owners come from Fallon and Battle Mountain respectively. The Pence Brothers and several others whose names were not ascertained come from Idaho and already pay the State of Nevada license for outside sheep. Williams is the only one that has any kind of a legitimate title to land within the proposed reserve having bought out a squatter's right to a homestead on Meadow Creek. The other large owners all hold alleged placers land on the creek bottoms for sorting corrals and to protect themselves from the others. This placer ground will be discussed more fully under its proper head.

The sheep lamb in late May and are sheared soon afterward. As soon as the lambs are able to travel the flocks are driven to the summer range, arriving at the Bruneau country

feeling in general between the cattlemen and the sheepmen and also among the sheepmen themselves, the large owners uniting against the small ones. It has so far resulted in one shooting affray. The state of affairs as pleaded by the cattlemen is that they are eaten out by the enormous number of sheep whose owners have no interest in the country except as summer range to be used when the lower country is all dried up, that the range is being spoiled to such a degree that they can not get their cattle fat enough to ship and that unless the Government introduces some kind of control they will be forced out of business. A forest reserve seems to them to be the solution of the difficulty.

The sheepmen fear the consequences of a reserve, knowing as they do that the range is overstocked and that the whole business is merely a struggle while the market is high to make all they can and get out. The Bruneau country is nearly all unsurveyed, largely because it is only in the last five to eight years that the attention of the sheepmen has been turned that way. Previous to that time there were less sheep in the country and other ranges were nearer at hand, the cattlemen using the country were thus undisturbed in its use and the settlers were not numerous enough to call for a survey.

These are the only reasons that strategic points have not been taken up by the sheepmen with script and State selections as they have in other parts of the country, the Salmon River Mountains for instance. Now that the State has got rid of all its school lands and other grants, it is no longer possible to obtain land in that way for \$1.50 an acre. Script is worth over \$5 an acre and moreover the surveyed townships were not accepted for filing until after they were withdrawn from entry. Should the large sheepmen be given an opportunity to put script on the land it will force both the small cattlemen and sheepmen out of business. The small sheepmen are nearly all tramp owners, nine-tenths of them being ex-herders from the Basque Provinces in the Pyrenees Mountains in Europe who have saved enough money to buy or rent a flock. The majority are not citizens of the United States and only intend to live here until they have made enough money to go back home. A cut in the number of sheep on the proposed reserve will fall largely on this class.

Allowing for partisan feeling and exaggeration in statements, the cattlemen undoubtedly have right on their side of the controversy. They were first on the ground, they are the actual settlers owning ranches on or near the reserve, and are the ones directly dependent on the near-by range for their livelihood. Only the extremists among them desire the sheep shut out entirely, the others realizing that there is plenty of range for both provided the number of sheep

The Bruneau country as previously stated is the best stretch of range in this part of the United States. Its carrying capacity is diminishing all the time but has not yet reached that point where it is beyond the power of nature to bring it back to its former condition. Two divisions in the range were shown on the map, differing more because of the topography than because of any marked change in vegetation. The winter or desert range comprises the big scope of plateau country on the lower Jarbidge and Bruneau rivers. This country is without water except for the almost inaccessible and canyon-enclosed streams and the principal ground covering is short and scrubby sagebrush. Scattered through the sagebrush are grasses and other forage plants. Snow does not cover the ground to any depth in winter in this part of the country and the south slopes of the innumerable small draws and gulches remain open all through the winter. The lower mountains around the settlement on Bruneau River and Meadow Creek within the reserve are on the same order. Above an altitude of 5,000 to 5,500 feet and below timber line there is a difference. Deep snow covers the ground for six months of the year at the least and the vegetation shows the affect of increased moisture, there being more grass and less sagebrush. In this typical summer range the canyon bottoms and most of the tops of the ridges are covered with mountain grasses,

and sunflowers, and other weeds, while the slopes are sagebrush covered. This country makes an ideal summer sheep or cattle range, the groves of aspen along the bottoms affording the necessary shade in the heat of the day.

The examination was made in early June when the snow had just disappeared after an unusually wet spring. It was a bad time to judge of the condition of the range as the sheep were not yet on the ground in any numbers and the evil effects of crowding, trampling feed, etc., were not apparent. The grass was long and fairly thick and there were no signs of gullying or erosion as is often the case in badly overgrazed regions. Probably the fall condition of the range might show otherwise but the impression gathered was of a range in the first process of being ruined rather than of one already so.

On this account as well as because a cut in the number of stock in the first year of a reserve is an injustice to the stockmen and inevitably accompanied with dissatisfaction, it is recommended that the full number of sheep and cattle using the country be given permits for the first season and that at the time permits are issued the stockmen be warned to expect a cut next season. Individual ranges or any sharp distinction between sheep and cattle range are not practical until the people have adjusted themselves to reserve conditions. An effort should be made, however, the first year to keep the sheep off the local cattle ranges of the settlers within and near the reserve. Permits for sorting

errands, at least one dipping plant, and perhaps some fencing should be issued. The importance of having a reliable and thoroughly experienced grazing man in charge of the reserve can not be over emphasized for every conceivable phase of the grazing question is present. The grazing season should be from June 1 to December 15.

#### Fire

The fire situation is commensurate with the limited amount of timber. What few fires there are occur in the fall and are directly attributable to the sheep herders setting out fires in the brush and timber on leaving the range at the end of the season. They do this in a desire to increase the feed area and the object lesson of arresting one or two of them should be sufficient to eliminate completely the danger from fire.

#### Sentiment

The local inhabitants, the ranchmen in Owyhee, North Fork, and White Rock valleys are unanimous in wanting a forest reserve. The miners generally commend the idea as do the inhabitants of Mountain City and nearly all the other towns, in fact every class and every interest except the sheepmen and those directly dependent on them is favorable. The community about the postoffice at Three Creeks, Idaho, are an exception to the rule because they are dependent on the sheep for their living and also because they have heard all of

the complaints and none of the praises of the Cassia Reserve in Idaho.

The arguments of those wishing a reserve may be summed up in the statement that they believe it to be either a question of a reserve or leaving the country. There is a strong feeling in Elko County originating from a very few men that the future of the cattle business depends entirely on the government control of the range. The question of timber and water conservation are only partially understood and merely advanced as convenient and well-sounding arguments to strengthen the main idea of range conservation.

The sheepmen with the exception of some few of the smaller owners who are far-sighted enough to see that under present conditions they will be soon driven to the wall, take a directly opposite view. They do not want to pay the razing fee and they say so but above everything else they fear any change of conditions that may affect their business by cutting down the number of stock, limiting the season, etc. They are openly hostile to the whole idea and give out as the principal reason of their opposition that they fear governmental favoritism, incompetence, and graft.

#### Situation

The large sheepmen by their affiliation with the moneyed and political interests of the State represent quite a powerful organization. A great deal of pressure and opposition to the Pruneau Forest Reserve will be brought to bear

them but the idea of forest reserves in Nevada is so new and so little known that it has its advantages as well as disadvantages. There can be no organized opposition nor have they the past abuses and mistakes in the reserves to cite as precedent.

The placer ground used by the sheepmen for corrals, etc., has been alluded to several times in this report. The more desirable stretches of bottomland in the gulches are taken off as placer ground, holes being dug at intervals to cover the necessary assessment work and thus comply with the law. Nearly all the larger sheepmen have these "Sheep mines" to control the springs and the surrounding range against their neighbors. The idea of mining is absurd. One man paid by the largest sheepman of all has openly boasted that in three years' work he has never found a color. The whole question will have to be investigated and stopped.

The price of labor is the same as for all this part of the western country. Grangers in haying time are paid \$2 to \$2.50 a day, sheep herders and camp tenders \$30 to \$40 a month, "Buccaroos" (vaqueros) \$30 to \$35. All this is with board. A man can be hired ordinarily, if the work is not hard, for \$1.50 a day; \$2 for almost any kind of work. Living is high as the country is so distant from the railroad.

Conclusion and Recommendations

It is recommended that the area under discussion be created a forest reserve as a protection to the stock interests of the settlers and the entire State; that it be known as the Bruneau Forest Reserve; that the area examined in the fall of 1905 and known as the North Fork Forest Reserve be incorporated with it, all under the name of Bruneau; that action be taken immediately in its creation and the administration started before the grazing season of 1907. It is absolutely essential to have this reserve under administration at the same time as the Ruby Forest Reserve, created in May, 1906.

Administration

The Ruby Mountain Forest Reserve created last May with approximately 600,000 acres, will also have to be put under administration in the spring of 1907. This reserve and the Bruneau are near each other and are the only two reserves in this part of the State. It is recommended that the two be started at one time under the same Supervisor with headquarters at Elko. There is no one of any reserve experience native to Nevada so a temporary man will have to be brought from the outside. This should be a man of long experience in grazing organization on the forest reserves, one who is both fair and firm and who will make a good impression on the ranchers from the start. Both of these reserves are

primarily grazing reserves so outside of the grazing season there will be comparatively little to do and the acting Supervisor need only be a man of administrative ability who is thoroughly up on grazing.

Elko is the proper place for headquarters. This town is on the railroad between the two reserves. On the Bruneau Reserve there is telephone and stage communication to Tuscarora and from there to White Rock, Edgemont, Columbia, and Mountain City, also on the other side to Gold Creek. The only part of the reserve not conveniently connected with Elko is the northeastern end.

As already stated the Bruneau Reserve is easy of access so the number of Rangers need not be very great. A man can make the complete round of the reserve in summer in four or five days riding, provided, of course, he does not stop for anything on the way. Four Rangers are required during the grazing season, the number to be increased as the working administration finds the need for additional men. One of the Rangers should have field control over the other three, his district being the whole reserve with mail headquarters at Gold Creek. The three assistant Ranger districts should be as follows:

Ranger District No. 1.--The North Fork Addition with headquarters at the post office of the North Fork. (For the duties of this Ranger, consult the North Fork Forest Reserve report).

Ranger District No. 2-From the west line of the reserve on the west, the township line between Townships 43 and 44, Ranges 53 and 54, on the south, the State line on the north and a line on the east extending up Bruneau River to Meadow Creek, up Meadow Creek to the divide and down the Rowland and Gold Creek wagon road to the south line of the reserve; in other words, following the Rowland and Gold Creek wagon road on the east. The headquarters should be at Mountain City. This district is a large one containing the bulk of the business of the whole reserve comprised in the free-use and timber-sale work and a large part of the grazing, trespass, and special privilege business. The deputy Ranger has his headquarters on the southeast end of this district and a large part of his time will be spent in helping Ranger No. 2.

Ranger District No. 3 has the remaining country east of District 2. District No. 3 is also a large district with a rough country, plenty of grazing, trespass, and free-use business.

When the grazing season is over, three of the Rangers will have to be laid off as there is nothing for them to do. No work is necessary on roads or trails and besides it would be impossible to do anything of that kind in the winter months. One man can attend to the free-use and timber-sale work for the mines in the northwest end. There is no immediate need of work on Ranger cabins or pastures. In fact the best places for these improvements can not be chosen until a season's work has shown the best locations. The sites for pastures are very important and should be picked out with a view to having plenty of good, fairly open winter range as well as

summer range. During the sheep-grazing season the riding will be very hard and each Ranger will need at least four good horses. The outside range already has all that it can conveniently bear, so for the good of the Service to avoid loss of time in looking for horses and in common justice to the ranger to allow him place where his surplus stock can regain flesh, the question of pastures can not be overemphasized. They should also be chosen with the view of plenty of water or raising a little alfalfa for winter. Special privileges or fencing pastures, sorting corrals, etc., should only be given when it is decided that the land will not be needed by the Ranger force.

It is suggested that the acting Supervisor be someone on the order of Mr. D. E. Sheller and that he be left in charge until one of the local men has proved himself capable for the place. The Civil Service examination held last May in Elko provides two very good men. They are C. Sydney Tremewan of Rowland and Louis Sharp from near Elko. Tremewan owns cattle and lives within the proposed Bruneau Addition, being the leading spirit in the agitation for its creation. He is a man of considerable education who would have no trouble with the office work of a supervisor, stands well in the community, is apparently thoroughly honest but is somewhat young for the position yet awhile. Moreover, the fact that he owns cattle and can not see anything good in a sheepman is very

much against him. He should receive an appointment and will be very useful as the deputy Ranger in charge of the other three Rangers.

Sharp is an older man with less education but with much more experience in handling men. He knows the Ruby Mountain country but not the Bruneau and will make an excellent man for deputy ranger on the former.

A man named Short who also tried the examination at the same time will do for a guard on the Ruby Mountain Reserve.

George Arent of Rowland is interested in the horse business in a small way. He is an ex-deputy scab inspector of Elko County, knows all the stock and its owners using the proposed Bruneau Reserve and stands well in the community. He is also apparently an honest and fair-minded man. An effort should be made to get him into the Service as he is in many ways just what is wanted in handling the grazing situation.

Scott Curry, post-office address Bruneau, Idaho, who has a homestead near the northeast end of the reserve and runs a few horses is another possibility. He is also an ex-scab inspector and a man thoroughly used to handling sheep but might be inclined to err by over-leniency to the sheepmen. Both Arent and Curry are men used to good wages and it is extremely doubtful if their services can be secured on this account.

The greatest possible care was exercised in drawing the boundary but as almost the whole country is unsurveyed,

there is no doubt but what many changes will be found necessary. They can be made without any trouble at the time of the first inspection.

{ D. J. Reilly 1/6  
J. F. Thompson 1/6  
Nelle Kotts 1/6 }

Filed for record at request of D. J. Reilly on this day of Dec. 1901 at 9 o'clock A.M.

C. W. Grover  
County Recorder

Law Bridge Mining District  
Notice of Location

That Law Bridge placer mining claims situated in Law Bridge canyon where old trail crosses the creek in Yucca cañon to Sulkin Island. This claim extends 1/2 mile north and one mile south from the north 1/2 mile wide. Has a work having been done on said claim shaft dug about 1/4 mile south of shaft. Also one ditch 200 yards long south of the shaft.

Names of Locators

- Geo. B. Williams
- A. W. Stenberg
- H. W. Williams
- E. L. Williams
- D. M. Conick
- William Goodale
- Wm. D. Leonard
- Wm. Williams

Located September 12, 1901 situated in Law Bridge

Mining Locations BR 6 PG 580  
WAE 10/26/98



Hand Claimed Bkd. 19 173 WAE 11/01/77

RICHARD H. DUNN POSSESSORY CLAIM No. 3-03

STATE OF NEVADA (ss. COUNTY OF ELKO)

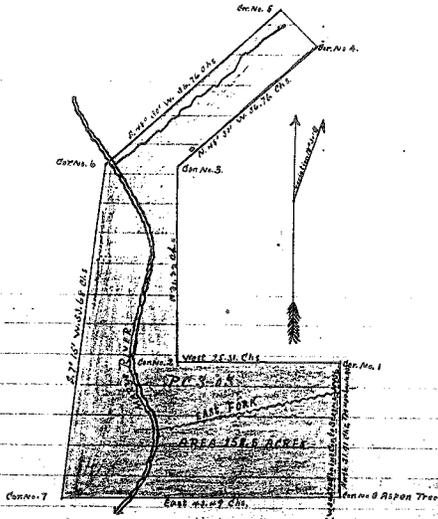
Richard H. Dunn, being duly sworn according to law, deposes and says that he claims the following described public lands, situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in the State", approved March 9, 1865, to-wit:

Commencing at a post marked "P.C. 3-03, Cor. No. 1"; from whence the corner to Sections 14-35 and 36, Townships 43 and 44 North, Range 35 East bears S. 2° 34' W., 223 Chains distant; and running thence; 1st course, West, 23.51 Chains, to a post marked "P.C. 3-03 Cor., No. 2"; 2nd course, North 31.23 Chains, to a post marked "P.C. 3-03 Cor., No. 3"; 3rd course, N. 48° 30' E., 55.68 Chains, to a post marked "P.C. 3-03, Cor., No. 4"; 4th course, N. 41° 30' W., 30.00 Chains, to a post marked "P.C. 3-03 Cor. No. 5"; 5th course, S 50° W., 36.76 Chains, to a post marked "P.C. 3-03, Cor. No. 6"; 6th course S. 7° 15' W., 53.68 Chains, to a post marked "P.C. 3-03 Cor. No. 7"; 7th course, East, 43.49 Chains, to Aspen tree marked "P.C. 3-03, Cor. No. 8"; 8th course, North, 21.41 Chains, to place of beginning, containing 158.5 acres of land.

That he has taken no other land under this Act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

Subscribed and Sworn to before me this 16th day of July, 1903. E. C. McGlellan. (Notarial Seal) Notary Public.

Plat of Possessory Claim No. 3-03, Surveyed For Richard H. Dunn July 3rd, 1903.



Filed for Record at Request of E. C. McGlellan on this 16th day of July, 1903 at 10:00 AM. E. C. McGlellan County Recorder

Certificate of County Surveyor. I hereby certify that I made the survey of Possessory Claim No. 3-03 for Richard H. Dunn on July 3rd, 1903; that the same is marked by stakes and bounds, so that the boundaries can be readily traced, according to law; and that the accompanying plat herewith is a true and correct copy of said survey.

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NELLIE T. DUMM.

POSSESSORY CLAIM No. 7-03

-Affidavit for Possessory Claim-

STATE OF NEVADA

(ss.)

COUNTY OF ELKO

Nellie T. Dumm, being duly sworn according to law, deposes and says that she claims the following described public lands situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State" approved March 9, 1866, to-wit:-

Commencing at an Aspen tree, marked "P.C.7-03, Cor. No. 1", from whence she corner to Townships 44 and 45 North, Ranges 57 and 58 East bears S. 30° 24' W., 67.62 chains distant; and running thence, 1st course, N. 5° 12' W., 22.10 chains, to a post marked "P.C.7-03, Cor. No. 2"; 2nd course, S. 69° 27' W., 42.72 chains, to a post marked "P.C.7-03, Cor. No. 3"; 3rd course, S. 63° 26' W., 33.54 chains, to a post marked "P.C.7-03, Cor. No. 4"; 4th course, West, 20.00 chains, to a post marked "P.C.7-03, Cor. No. 5"; 5th course, South, 7.00 chains, to an Aspen tree, marked "P.C.7-03, Cor. No. 6"; 6th course, East 50.00 chains, to a post marked "P.C.7-03, Cor. No. 7"; 7th course, N. 70° 21' E., 44.00 chains, to the place of beginning; containing 149.20 acres.

That she has taken no other land under this Act, and that, to the best of her knowledge and belief, the said lands are not claimed under any existing title.

Subscribed and sworn to before me

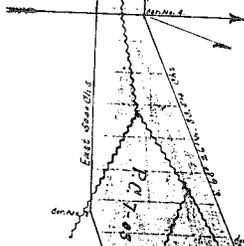
this 18th day of July, 1903.

(Signature)  
(Notarial Seal)  
(000333-99)

E. C. McClellan,  
Notary Public.

Nellie T. Dumm.

Plat of Possessory Claim No. 7-03, surveyed for  
Nellie T. Dumm, July 8th., 1903.



Certificate of County Surveyor.

I hereby certify that I made the survey of Possessory Claim No. 7-03, for Nellie T. Dumm, on July 8th, 1903; and that the same is marked by notes and bounds, so that the boundaries can be readily traced, according to law; and that the accompanying plat herewith is a true and correct plat of said survey.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of July, 1903.

E. C. McClellan,  
County Surveyor.

Filed for record at request of  
E. C. McClellan on the 18 day of  
July, 1903 at 3 o'Clock P. M.

County Recorder

Lead Claims Bk 2 Pg 174 WAE 115149



176

LEWIS L. BRADLEY. Affidavit of Possessory Claim. P.O. 2-03.

STATE OF NEVADA ) (ss. ) COUNTY OF ELKO )

Lewis L. Bradley, being duly sworn according to law, deposes and says that he claims the following described lands, situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled 'An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State' approved March 9, 1865, to-wit:

Commencing at an Aspen tree, marked "P.O. 2-03, Cor. No. 1"; from whence the corner to Sections 2-0-35 and 36, Townships 43 and 44 North, Range 25 East, bears S. 33° 45' E 107.00 chains distant; and running thence 1st course; West, 14.14 chains, to a post marked "P.O. 2-03, Cor. No. 2"; 2nd course; N. 19° 15' E, 120.00 chains to a post marked "P.O. 2-03, Cor. No. 3"; 3rd course; East, 14.14 chains, to a post marked "P.O. 2-03, Cor. No. 4"; 4th course; S. 19° 15' West., 120.00 chains to the place of beginning containing 160.00 acres.

That he has taken no other claim under this Act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

Subscribed and sworn to before me this 20th day of July, 1903. Lewis L. Bradley.

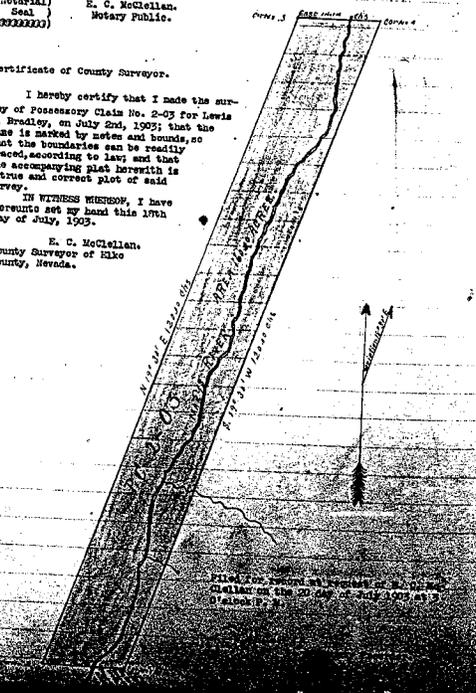
(Notarial Seal) E. C. McClellan, Notary Public.

Certificate of County Surveyor.

I hereby certify that I made the survey of Possessory Claim No. 2-03 for Lewis L. Bradley, on July 2nd, 1903; that the same is marked by notes and bounds, so that the boundaries can be readily traced, according to law; and that the accompanying plat herewith is a true and correct plot of said survey.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of July, 1903.

E. C. McClellan, County Surveyor of Elko County, Nevada.



Land claims Bkd 25176 WAG 11/5/99

MAY 11 1903  
STATE OF NEVADA  
COUNTY OF ELKO  
Subscribed and sworn to before me this 20th day of July, 1903.  
E. C. McClellan, Notary Public.  
Filed for record with original of affidavit on the 20th day of July 1903 at 5 0'





Land Claims BK 2, WAE 76/3/98

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WILLIAM F. MAHONEY. POSSESSORY CLAIM No. 1-03.  
-AFFIDAVIT FOR POSSESSORY CLAIM-

STATE OF NEVADA)  
(ss.  
COUNTY OF ELKO)

William F. Mahoney, being duly sworn according to law, deposes and says that he claims the following described public land, situated in Elko County, under the act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State," approved March 9, 1903, to-wit:

Commencing at a post, set in a mound of stone, marked "P.C. 1-03, Cor No. 1" from whence the corner to Sections 1-2-33 and 34, Township 43 and 44 North, Range 58 East, bears S. 25° 15' W., 120.00 chains distant; and running thence: First course; N. 64° 15' W. 25.10 chains; to a post marked "P.C. 1-03, Cor No. 2"; thence; second course; S. 71° 12' W. 72.75 chains; to a post marked "P.C. 1-03, Cor No. 3"; 3rd course; N. 70° 30' W. 5.00 chains; to a post marked "P.C. 1-03, Cor No. 4"; 4th course; 15° 30' E., 22.00 chains to a post marked "P.C. 1-03, Cor No. 5"; 5th course; S. 88° 21' E., 12.25 chains; to a post marked "P.C. 1-03, Cor No. 6"; 6th course; N. 64° 45' E., 26.90 chains; to a post marked "P.C. 1-03, Cor No. 7"; 7th course; N. 24° E., 40.00 chains to a post marked "P.C. 1-03, Cor No. 8"; 8th course; N. 25° E., 14.00 chains to a post marked "P.C. 1-03, Cor No. 9"; 9th course; S. 42° 40' W., 53.50 chains to a post marked "P.C. 1-03, Cor No. 10"; 10th course; South, 19.00 chains to a post marked "P.C. 1-03, Cor No. 11"; 11th course; N. 45° E., 26.00 chains to a post marked "P.C. 1-03, Cor No. 12"; 12th course; S. 31° 11' E., 28.10 chains; to a post marked "P.C. 1-03, Cor No. 1", the place of beginning; containing 159.32 acres of land; that he has taken no other claim under this Act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

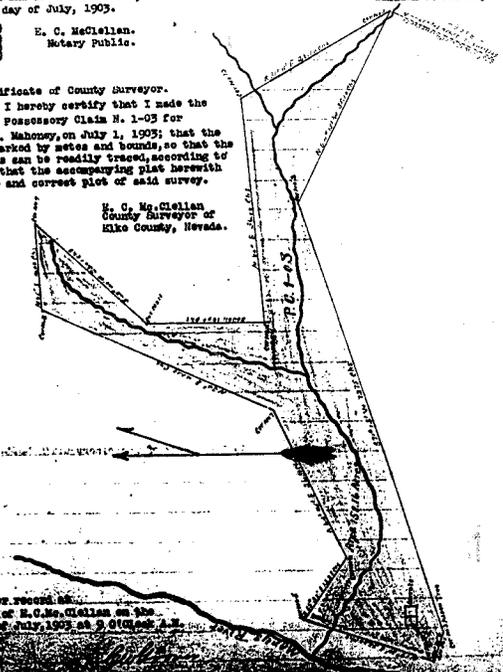
Subscribed and sworn to before me this 21st day of July, 1903.

William F. Mahoney.

(2333333) E. C. McClellan,  
(Notarial) Notary Public.  
(3333333)

Certificate of County Surveyor.  
I hereby certify that I made the survey of Possessory Claim N. 1-03 for William F. Mahoney, on July 1, 1903; that the same is marked by stakes and bounds, so that the boundaries can be readily traced, according to law; and that the accompanying plat herewith is a true and correct plot of said survey.

E. C. McClellan  
County Surveyor of  
Elko County, Nevada.



Filed for record in the office of E. C. McClellan on the 22 day of July, 1903 at 9 O'clock A.M.

Land Claims Bk 2 '19 180 WAE 115/197

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MAUD B. CLEMONS

POSSESSORY CLAIM No. 4-05

Affidavit for Possessory Claim

Maud B. Clemons being duly sworn, according to law, deposes and says that she claims the following described public lands, situated in Elko County, under the act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State", approved March 5, 1905, to-wit:

Commencing at a post marked "P. C. 4-05, Cor. No. 1" from whence the course to Section 1-0-35 and 36, Township 45 and 46 North, Range 52 East, Twp. S. 17 & 18 N., 252.26 chains distant; and running thence; 1st course, S. 62° 22' 19" E., 256.36 chains, to a post marked "P. C. 4-05, Cor. No. 2"; 2nd course, North, 11.00 chains, to a post marked "P. C. 4-05, Cor. No. 3"; 3rd course, West, 23.00 chains, to a post marked "P. C. 4-05, Cor. No. 4"; 4th course, South, 35.00 chains, to a post marked "P. C. 4-05, Cor. No. 5"; 5th course, N. 75° 20' E., 41.25 chains to a post marked "P. C. 4-05, Cor. No. 6"; 6th course, S 45° E., 42.42 chains, to a post marked "P. C. 4-05, Cor. No. 7"; 7th course, North, 10.00 chains, to the place of beginning; Containing 160 acres.

That she has taken no other claim under this act, and that, to the best of her knowledge and belief, the said lands are not claimed under any existing title.

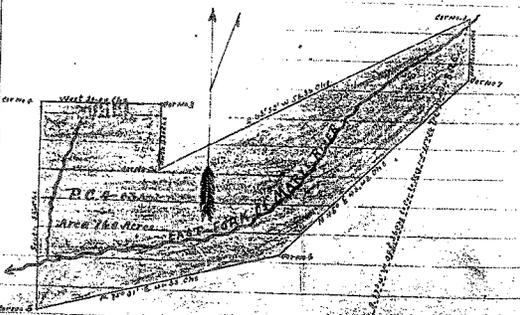
Subscribed and sworn to before me this 20th day of July, 1905

Notary Public in and for the County of Elko, State of Nevada

W. H. Gardner

Maud B. Clemons

Plot of Possessory Claim No. 4-05, Surveyed for Maud B. Clemons July 3rd, 1905



Certificate of County Surveyor

I, the undersigned, County Surveyor of Elko County, Nevada, do hereby certify that Maud B. Clemons has caused to be surveyed and plotted the above described lands, and that the same are situated as shown on the above plat, and that the same are not claimed under any existing title.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office this 20th day of July, 1905.

County Surveyor of Elko County, Nevada

STATE OF NEVADA  
 COUNTY OF ELKO )  
 I, Leo Goddard, being duly sworn, according to law, deposes and says: That he claims the following described public lands, situated in Elko County, State of Nevada, under the act of the Legislature of the State of Nevada, entitled, "An Act prescribing the mode of withdrawing and defending possessory claims on public lands in this State", approved March 9, 1905, to-wit:

Commencing at an Aspen tree, marked "P.C. 8-05, Cor. No. 1"; from thence the corner to Townships 44 and 45 North, Range 57 and 58 East, bearing S. 79° 29' E., 92.35 chains distant; and running thence; 1st course, S. 62° 30' E., 32 chains, to an Aspen tree marked "P.C. 8-05, Cor. No. 2"; 2nd course, S. 60° E., 9.00 chains, to an Aspen tree marked "P.C. 8-05, Cor. No. 3"; 3rd course, S. 29° 15' E., 52.00 chains, to a post marked "P.C. 8-05, Cor. No. 4"; 4th course, S. 27° 30' E., 30.00 chains to a post marked "P.C. 8-05, Cor. No. 5"; 5th course, S. 35° E., 34.00 chains, to a post marked "P.C. 8-05, Cor. No. 6"; 6th course, S. 42° W., 21.00 chains, to a post marked "P.C. 8-05, Cor. No. 7"; 7th course, N. 12° W., 64.25 chains, to a post marked "P.C. 8-05, Cor. No. 8"; 8th course, N. 9° 45' E., 22.00 chains, to the place of beginning, containing 159.16 acres.

That he has taken no other claim under this act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

Witnesses:  
 David Casper, his  
 H. M. Reed, Notary.  
 Subscribed and sworn to before me  
 this 7th day of August, 1905. Charles B. Henderson,  
 Notary Public.

STATE OF NEVADA  
 (SS.)  
 COUNTY OF ELKO )  
 On this eighth day of August, 1905, before me, Charles B. Henderson, a Notary Public in and for said County of Elko, personally appeared David Casper and H. M. Reed, personally known to me to be the same persons whose names are subscribed to the within affidavit of Leo Goddard as witnesses thereto; who being by me duly sworn depose and say each for himself and not one for the other, that he resides in the town and County of Elko; that he was present and saw Leo Goddard make his mark to the within affidavit and declare that that was his mark; and that the said Leo Goddard duly acknowledged in the presence of said witnesses that he executed the same, and that they, the said witnesses, thereupon, at his request, subscribed their names as witnesses thereto.

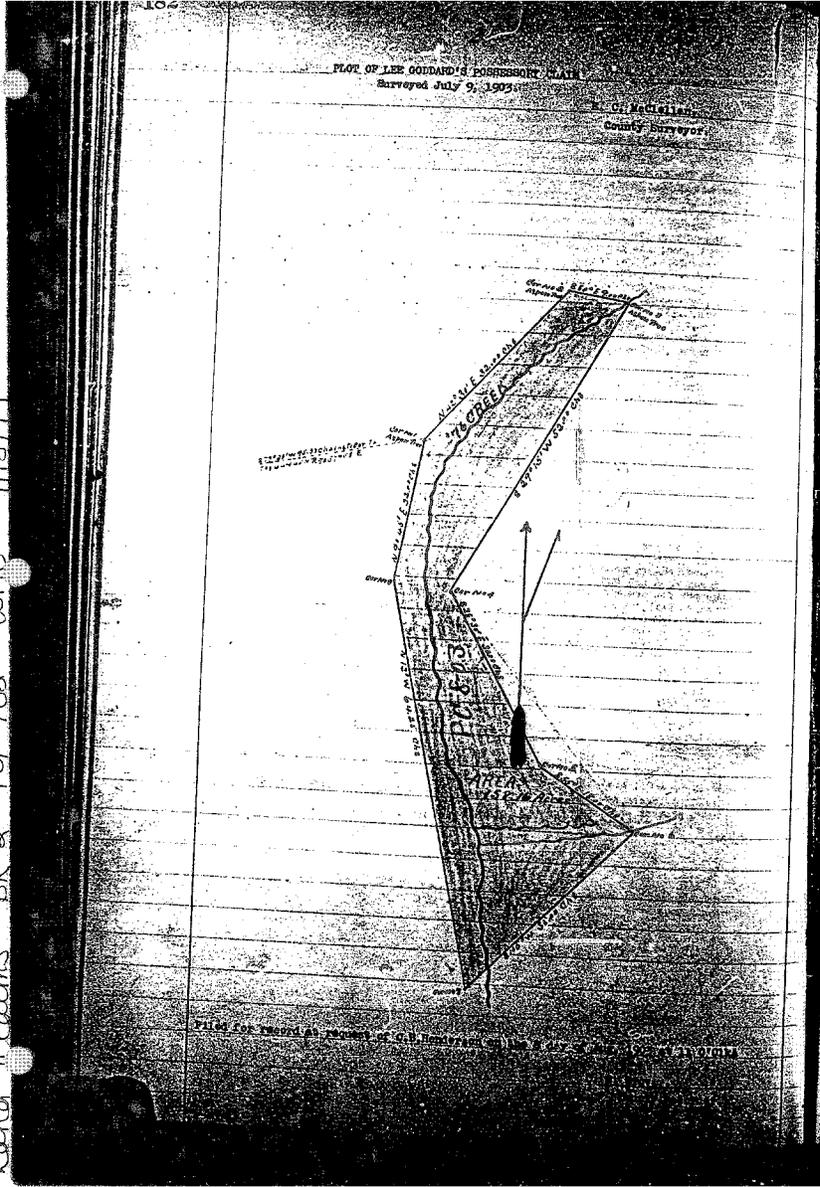
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this Certificate first above written.  
 Charles B. Henderson,  
 Notary Public.

--- CERTIFICATE OF COUNTY SURVEYOR ---  
 I hereby certify that I made the survey of Possessory Claim, No. 8-05, for Leo Goddard, on July 5, 1905; that the same is marked by notes and bounds, so that the boundaries can be readily traced, according to law; and that the accompanying plot herewith is a true and correct plot of said survey.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of July, 1905.  
 R. C. McLellan,  
 County Surveyor.

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Land Claims BK 2 PG 182 WAF 11/5/94



JOHN T. NEILSON.

POSSESSORY CLAIM No., 13-03.

-Affidavit for Possessory Claim:-

STATE OF NEVADA)

(In)

COUNTY OF ELKO )

John T. Neilson, being duly sworn, according to law, deposes and says, that he claims the following described public lands, situated in Elko County, under an Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State", approved March 9, 1865, to-wit:-

Commencing at a post, marked "P.C.13-03, Cor No., 1", set at the Cor. to Tps. 45 & 46 N., Rgs. 56 & 57., and running thence; 1st course, North 30.00 cns., to a post marked "P.C.13-03, Cor No., 2"; 2nd course, N. 63° 30' W., 22.70 cns., to a post marked "P.C.13-03 Cor., No., 3"; 3rd course, S. 45° W., 14.14 cns., to a post marked "P.C.13-03, Cor., No., 4"; 4th course, S. 0° 30' W., 50.75 cns., to a post marked "P.C.13-03, Cor., No., 5"; 5th course N. 77° 30' E., 37.00 cns., to the place of beginning.

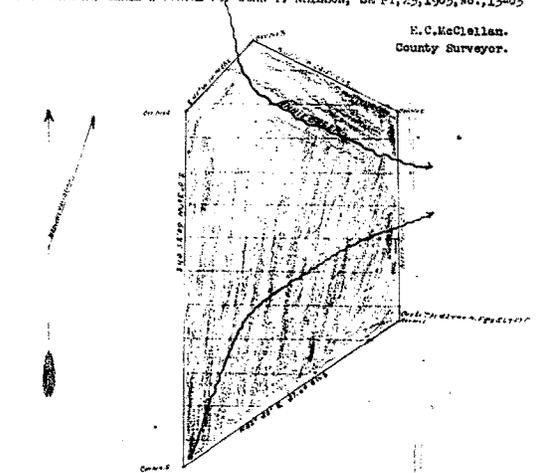
That he has taken no other claim under this Act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

Subscribed and sworn to before me  
this 24th day of September, 1903.

[Signature] E. C. McClellan.  
[Notary Seal] Notary Public.

PLAT OF POSSESSORY CLAIM EMPLOYED BY JOHN T. NEILSON, SR. PT. 23, 1903, No., 13-03

E. C. McClellan.  
County Surveyor.



Certificate of County Surveyor

I hereby certify that I made the survey of Possessory Claim No., 13-03, for John T. Neilson, on September 23, 1903; that the same is marked by notes and bounds so that the boundaries can be readily traced, according to law; and that the accompanying plat herewith is a true and correct plot of said survey.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September 1903

E. C. McClellan.  
County Surveyor of Elko County Nevada.

Filed for record at request of C.E. Pearson on the 24 day of Sept. 1903, at 90' Clerk A.

G. W. Grayer.

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VIOLET. C. PEARSON. POSSESSORY CLAIM No., 12-03.  
-:AFFidavit for Possessory Claim:-

STATE OF NEVADA)  
(SS.  
COUNTY OF ELKO )

Violet C. Pearson, being duly sworn, according to law, deposes and says; that she claims the following described public lands, situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State", approved March 9, 1865, to-wit:-

Commencing at a post marked "P.C.12-03, Cor., No., 1;" from whence the 1/4 Sec. Cor. on West boundary of Sec. 31, T. 44, N., R. 57 E. Bears East 20.00 chains distant; and running thence; 1st course, North 20.00 chs, to a post marked "P.C.12-03 Cor., No., 2;" 2nd course, N. 45° W., 42.42 chs., to a post marked "P.C.12-03 Cor., No., 3"; 3rd course, N. 70° 10' W., 46.55 chs to a post marked "P.C.12-03, Cor., No., 4"; 4th course, South, 10.00 chs., to a post marked "P.C.12-03, Cor. No., 5"; 5th course, S. 70° 24' E., 43.90 chs., to a post marked "P.C.12-03, Cor., No., 6"; 6th course, S. 95° E., 35.35 chs., to a post marked "P.C.12-03, Cor. No., 7"; 7th course, South, 20.00 chs., to a post marked "P.C.12-03, Cor. No., 8"; 8th course, N. 45° E., 14.14 chs., to the place of beginning.

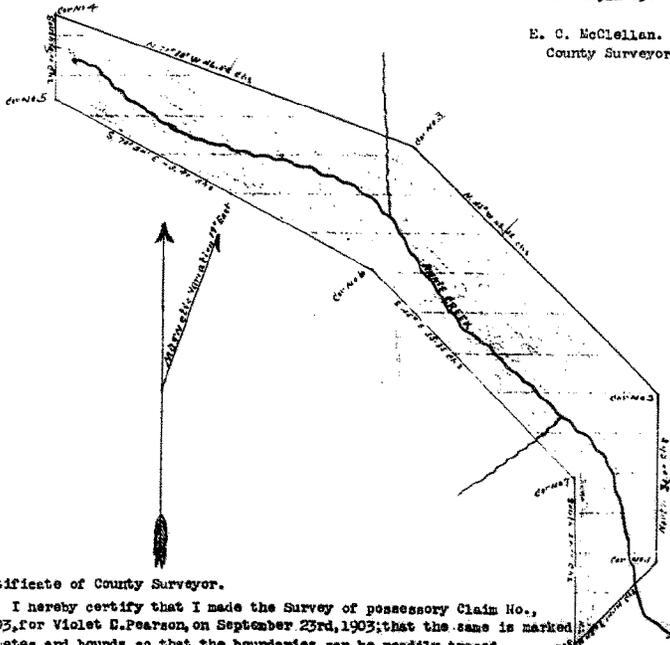
That she has taken no other claim under this Act, and that, to the best of her knowledge and belief, the said lands are not claimed under any existing title.

Subscribed and sworn to before me Violet C. Pearson.  
this 24th day of September, 1903.

(333333) E.C. McClellan.  
(Notarial) Notary Public.  
(Seal)  
(333333)

PLAT OF POSSESSORY CLAIM SURVEYED FOR VIOLET C. PEARSON, SEPT. 23, 1903. No., 12-03.

E. C. McClellan.  
County Surveyor.



Certificate of County Surveyor.

I hereby certify that I made the Survey of possessory Claim No., 12-03, for Violet C. Pearson, on September 23rd, 1903; that the same is marked by notes and bounds, so that the boundaries can be readily traced, according to law; and that the accompanying plat herewith is a true and correct plot of said Survey.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 1903.

E.C. McClellan, County Surveyor for Elko County.  
Filed for record at request of G.E. Pearson on the 24th day of Sept. 1903 at 9:00 Clock A.M.  
County Recorder.

Land Claims BK 2 WAE 10/5/98

WILLIAM PERKINS

POSSESSORY CLAIM No. 8-04.

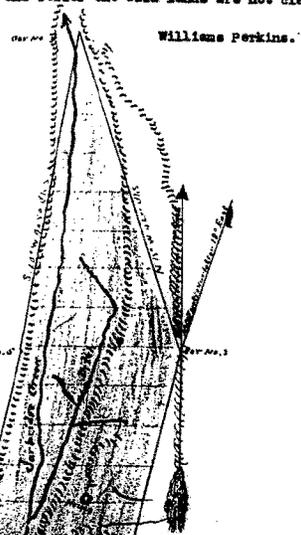
STATE OF NEVADA)  
(SS.  
COUNTY OF ELKO )

William Perkins, being duly sworn, according to law, deposes and says that he claims the following described public lands situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled, "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State" approved March 9, 1875, to-wit:-

Commencing at a post on the East side of what is known as the Sawbridge crossing, set in a mound of stones, marked "P.C.8-04, Cor No. 1" from whence the section corner on the 9th standard North, between Ranges 57 & 58 East, bears S. 30° 2' W. 369.60 chains distant, and running thence; 1st course East 20.00 chains to a post marked "P.C.8-04, Cor No. 2"; 2nd course, N. 14° E. 61.50 chains to a post marked "P.C.8-04, Cor No. 3"; 3rd course, N. 18° W. 42.00 chains to a post in bottom of the Canon, and about one chain East of the Creek, marked "P.C.8-04, Cor No. 4"; 4th course, S. 10° W. 40.50 chains to a post marked "P.C.8-04, Cor No. 5"; 5th course S. 14° W. 61.70 chains to the place of beginning.

He has had possession of the said lands since Dec. 1st. 1902 and has placed improvements upon it to the value of \$700.00 consisting of a house, ditches, and land cleared and sown to timothy and alfalfa. That he has taken no other claim under this Act, and that, to the best of his knowledge and belief the said lands are not claimed under any existing title.

Subscribed and sworn to before me this 3rd day of September, 1904.  
(Notarial) Edward C. McClellan,  
(Seal) Notary Public.  
(Signature)



STATE OF NEVADA)  
(SS.  
COUNTY OF ELKO )

I, Edward C. McClellan, County Surveyor of Elko County, Nevada, hereby certify that this is a true and correct Plot of the survey of Possessory Claim No. 8-04, duly surveyed by me, and marked by notes and bounds on the 2nd day of September, 1904, for William Perkins. In Witness whereof I have hereunto set my hand this 3rd day of September, 1904.  
Edward C. McClellan,  
County Surveyor.

Filed for record at request of E. C. McClellan on the 6 day of Sept. 1904, at 9 O'Clock A.M.

C. W. Grover,  
County Recorder.



PEARL MAHONEY POSSESSORY CLAIM No. 3-04  
 --:Affidavit for Possessory Claim:--

STATE OF NEVADA)  
 (SS.  
 COUNTY OF ELKO )

PEARL MAHONEY, being duly sworn, according to law, deposes and says that she intends to occupy and hold the following described public lands situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State", approved March 9, 1865, to-wit:--

Commencing at a post marked "P.C. 3-04, Cor. No. 1"; from whence the Starting corner between Ranges 58 and 59 East, on the Ninth Standard North, bears S. 17° 24' W., 395.00 chains distant; and running thence:-- 1st course N. 9° W., 44.25 chains to a post marked "P.C. 3-04, Cor. No. 2"; 2nd course, N. 59° 11' W., 46.57 chains, to a post marked "P.C. 3-04, Cor. No. 3"; 3rd course, N. 79° 18' E., 56.77 chains, to a post marked "P.C. 3-04, Cor. No. 4"; 4th course, S. 23° 18' E., 44.25 chains, to a post marked "P.C. 3-04, Cor. No. 5"; 5th course, S. 9° E., 44.25 chains, to a post marked "P.C. 3-04, Cor. No. 6"; 6th course, West 12.00 chains, to the place of beginning.

This land is situated on what is known as Wilkin's Island, and at a place called the "Bull Pen Bench". That she has taken no other claim under this Act, and that, to the best of her knowledge and belief, the said lands are not claimed under any existing title.

Pearl Mahoney,

Subscribed and sworn to before me  
 this 5th day of September, 1904.  
 (SEAL) Edward C. McClellan,  
 (SEAL) Notary Public.

STATE OF NEVADA)  
 (SS.  
 COUNTY OF ELKO )

I, Edward C. McClellan, County Surveyor of Elko County, Nevada, hereby certify that this is a true and correct Plot of Possessory Claim No. 3-04, surveyed by me, and duly marked by notes and bounds, in accordance with law, on August 25th, 1904.

In Witness whereof, I have hereunto set my hand this 5th day of September, 1904.

Edward C. McClellan,  
 County Surveyor.

Filed for record at request of E.H. Mallory on the  
 15 day of Sept. 1904, at 10 O'Clock A.M.  
 C. E. Gentry,  
 County Recorder.

BERT L. SMITH POSSESSORY CLAIM No. 5-04

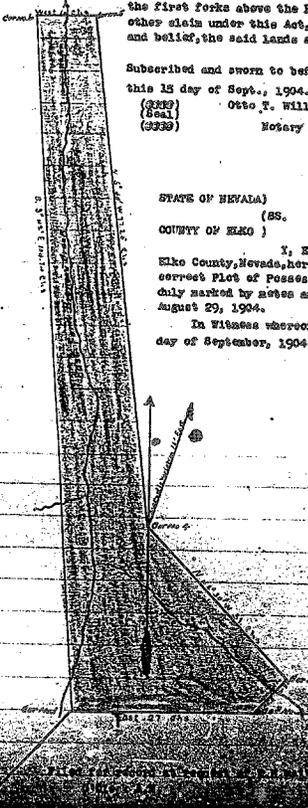
Affidavit for Possessory Claim: STATE OF NEVADA (SS. COUNTY OF ELKO) Bert L. Smith, being duly sworn, according to law, deposes and says that he intends to occupy and hold the following described public lands, situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State", approved March 9, 1865, to-wit:-

Commencing at a post marked "P.C.5-04, Cor. No. 1"; from whence the starting corner between Ranges 58 and 59 East, on the Ninth Standard North bears S.40°42'W., 275.00 chains distant; and running thence:- 1st course, East, 27.00 chains, to a post marked "P.C.5-04, Cor. No. 2"; 2nd course, N.45°E., 6.50 chains, to a post marked "P.C.5-04, Cor. No. 3"; 3rd course, N.42°20'W., 51.00 chains, to a post marked "P.C.5-04, Cor. No. 4"; 4th course, N.5°44'W., 77.28 chains, to a post marked "P.C.5-04, Cor. No. 5"; 5th course, West, 10.00 chains, to a post marked "P.C.5-04, Cor. No. 6"; 6th course, S.7°42'E., 104.74 chains, to the place of beginning.

This claim is located on the East Fork of Brunson Creek, and takes in what is known as the first forks above the Bull-pen Bench. That he has taken no other claim under this Act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

Subscribed and sworn to before me this 15 day of Sept., 1904. Otto F. Williams, (Seal) Notary Public.

STATE OF NEVADA (SS. COUNTY OF ELKO) I, Edward C. McClellan, County Surveyor of Elko County, Nevada, hereby certify that this is a true and correct Plot of Possessory Claim No 5-04, surveyed by me, and duly marked by notes and bounds, in accordance with law, on August 29, 1904. In Witness whereof I have hereunto set my hand this 7th day of September, 1904. Edward C. McClellan, County Surveyor.



and claims BL 2 PG 191 WHE 11/5/99

Land Claims BK 2 Pg 192 WAE 11/4/99

R. H. MALLETT. POSSESSORY CLAIM No. 9-04-  
-Affidavit for Possessory Claim-

STATE OF NEVADA)  
(SS.  
COUNTY OF ELKO )

R. H. Mallett, being duly sworn, according to law, deposes and says that he intends to occupy and hold the following described public lands, situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State", approved March 9, 1863, to-wit:-

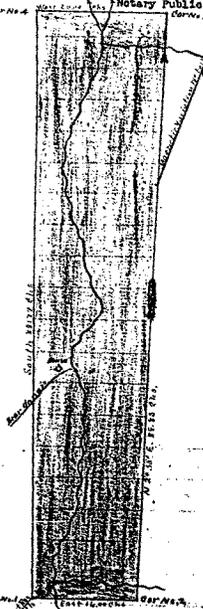
Commencing at a post marked "P.C.9-04, Cor. No. 1"; from whence the Starting Corner between Ranges 57 and 58 East, on the Ninth Standard North, bears S. 37° 7' W., 290.00 chains distant; and running thence:- 1st course, East, 16.00 chains, to a post marked "P.C.9-04, Cor. No. 2"; 2nd course, N. 2° 35' E., 89.79 chains, to a post marked "P.C.9-04, Cor. No. 3"; identical with cor. No. 2 of P.C. 8-04.- 3rd course West, 20.00 chains to a post marked "P.C.9-04, Cor. No. 4"; identical with Cor. No. 1 of P.C. 8-04. 4th course, South, 89.79 chains to the place of beginning.

This claim is located at the South end of what is known as the "Jarbridge Crossing". That he has taken no other claim under this Act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

Subscribed and sworn to before me this 14th day of September, 1904.

(322)  
(Seal) Webster Patterson,  
(3099) Notary Public.

Richard Henry Mallett,  
R. H. Mallett.



STATE OF NEVADA)  
(SS.  
COUNTY OF ELKO )

I, Edward C. McClellan  
County Surveyor of Elko County, Nevada,  
hereby certify that this is a true and  
Correct Plot of Possessor Claim No. 9-  
04, surveyed by me, and duly marked by  
me, and bounds, in accordance with  
law, on September 2nd, 1904.

In Witness Whereof, I have hereunto set my hands this 7th day of September, 1904.

Edward C. McClellan,  
County Surveyor.

Filed for Record at Elko, Nevada, on the 14th day of Sept. 1904. at 10:30 A.M. E. C. McClellan, County Recorder.

Land Claims Bk 2 Pg 194 WA 11/13/94

LELAND F. RICE.

POSSESSORY CLAIM No. 2-04.

-Affidavit for Possessory Claim-

STATE OF NEVADA)

(SS.

COUNTY OF ELKO )

I, Leland F. Rice, being duly sworn, according to law, depose and say that he intends to occupy and hold the following described public lands, situated in Elko County, under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State", approved March 9, 1866, to-wit:-

Commencing at a post, identical with Cor. No 6, of P.C.1-04, marked "P.C.2-04 Cor. No. 1"; from whence the starting corner between Ranges 58 and 59 East, on the Ninth Standard North, bears S. 2°21' W., 322.13 chains distant; and running thence;- 1st course, N. 17°30' E., 22.70 chains; to a post marked "P.C.2-04, Cor. No. 2; 2nd course, West, 20.74 chains, to a post marked "P.C.2-04, Cor. No. 3"; 3rd course, S. 4°45' E., 77.68 chains, to a post marked "P.C.2-04, Cor. No. 4"; 4th course, S. 20°44' E., 72.08 chains, to a post marked "P.C.2-04, Cor. No. 5"; 5th course, S. 6°10' W., 32.84 chains, to a post marked "P.C.2-04, Cor. No. 6"; 6th course, West, 15.00 chains, to the place of beginning.

This claim is situated on Wilkin's Island, on what is known as Dave, or Swamp Creek. That he has taken no other claim under this Act, and that, to the best of his knowledge and belief, the said lands are not claimed under any existing title.

L. F. Rice.

Subscribed and sworn to before me this 9 day of November, 1904.

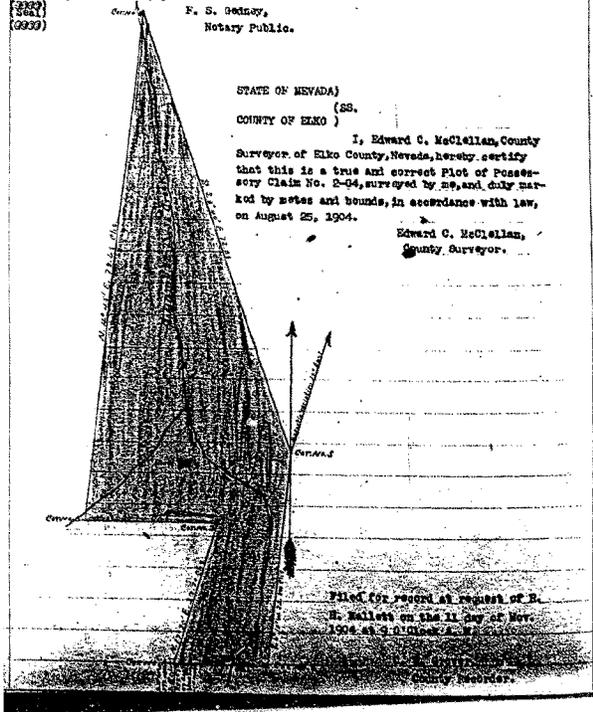
(222)  
(221)  
(220)

F. S. GILROY,  
Notary Public.

STATE OF NEVADA)  
(SS.  
COUNTY OF ELKO )

I, Edward C. McClellan, County Surveyor of Elko County, Nevada, hereby certify that this is a true and correct Plot of Possessory Claim No. 2-04, surveyed by me, and duly marked by stakes and bounds, in accordance with law, on August 25, 1904.

Edward C. McClellan,  
County Surveyor.



Filed for record at request of P. H. Mallon on the 11 day of Nov. 1904 at 3 o'clock P.M.



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Land claim Bx 2 Feb 1910 WAF 1899

WILLIAM GRAHAM

POSSESSORY CLAIM No. 6-04

-Affidavit for Possessory Claim-

STATE OF NEVADA)

(SS.

COUNTY OF ELKO )

William Graham, being duly sworn, according to law, deposes and says that he intends to occupy and hold the following described public lands, situated in Elko County, under an Act of the Legislature of the State of Nevada, entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this State," approved March 9, 1866, to-wit:-

Commencing at a post, marked "P.C. 6-04, Cor. No. 1", from whence the Starting Corner between Ranges 58 and 59 East, on the Ninth Standard North bears S. 25° 43' W., 396.00 chains distant; and running thence:- 1st course, East, 13.00 chains, to a post marked "P.C. 6-04, Cor. No. 2"; 2nd course, N. 14° 4' W., 94.11 chains, to a post marked "P.C. 6-04, Cor. No. 3"; 3rd course, West, 22.00 chains, to a post marked "P.C. 6-04, Cor. No. 4"; 4th course, S. 19° 15' E., 96.70 chains, to the place of beginning.

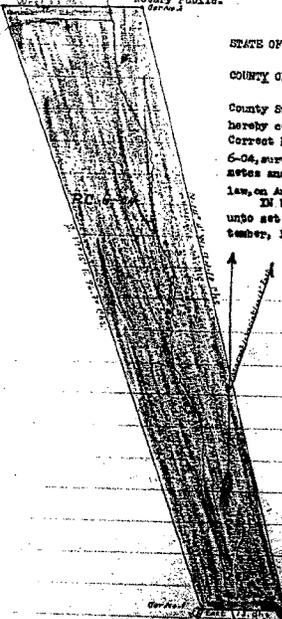
This claim is located on the East Fork of the Brunson Creek, and Southeast of the "Bull-pen Bench". That he has taken no other claim under this Act, and that, to the best of his knowledge and belief, the said lands are claimed under any existing title

Subscribed and sworn to before me this 9 day of November, 1904.

W. A. Graham,

(3003)  
(Seal)  
(3002)

F. S. Godsey,  
Notary Public.



STATE OF NEVADA)  
(SS.  
COUNTY OF ELKO )

I, Edward C. McClellan, County Surveyor of Elko County, Nevada, hereby certify that this is a true and Correct Plot of Possessory Claim No. 6-04, surveyed by me, and duly marked by notes and bounds, in accordance with law, on August 29, 1904.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of September, 1904.

Edward C. McClellan,  
County Surveyor.

Filed for record at request of W. A. Graham, on the 11th day of November, 1904.

6-04

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11/13/94  
Land Claims Bk 2 Pg 197 was

E. L. DAVIS. POSSESSORY CLAIM No. 7-04  
-AFFIDAVIT for Possessory Claim-

STATE OF NEVADA)  
(SS. )  
COUNTY OF ELKO )

E. L. Davis, being duly sworn, according to law, deposes and says that he  
intends to occupy and hold the following described public lands, situated in Elko County,  
under the Act of the Legislature of the State of Nevada, entitled "An Act prescribing the  
mode of maintaining and defending possessory actions on public lands in this State", app-  
roved March 9, 1902, to-wit:-  
Commencing at a post marked "P.C. 7-04, Cor. No. 1"; from whence the Starting Corner  
between ranges 38 and 39 East, on the Ninth Standard North bears S. 73° 33' W., 141.00 chains  
distant; an using thence:- 1st course, East, 15.00 chains, to a post marked "P.C. 7-04, Cor. No. 2";  
2nd course, N. 14° 53' E., 102.47 chains, to a post marked "P.C. 7-04, Cor. No. 3"; 3rd course,  
West, 17.00 chains, to a post marked "P.V. 7-04, Cor. No. 4"; 4th course, S. 23° 45' W., 102.97  
chains, to the place of beginning.

This claim is located on the East fork of the Brunson Creek, in the mountains, and about  
one mile above possessory claim No. 5. That he has taken no other claim under this Act,  
and to the best of his knowledge and belief, the said lands are not claimed under any ex-  
isting title.

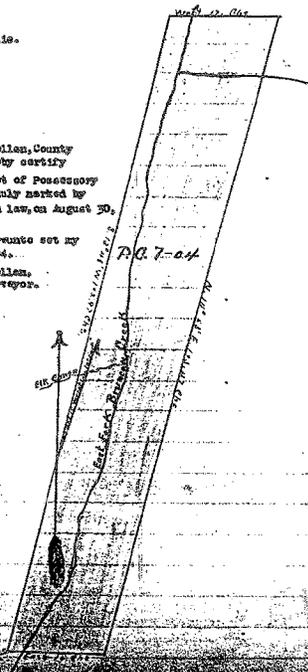
Subscribed and sworn to before me  
this 7 day of Nov'r, 1904.  
(8238)  
(Seal) Otto T. Williams,  
(8238) Notary Public.

E. L. Davis,

STATE OF NEVADA)  
(SS. )  
COUNTY OF ELKO )

I, Edward C. McClellan, County  
Surveyor of Elko County, Nevada, hereby certify  
that this is a true and correct Plot of Possessory  
Claim No. 7-04, surveyed by me, and duly marked by  
notes and bounds, in accordance with law, on August 30,  
1904.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 7th day of September, 1904.  
Edward C. McClellan,  
County Surveyor.



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HISTORY OF THE HUMBOLDT NATIONAL  
FOREST

By  
Fred P. Frampton

June 1992

edited by Judith Frampton  
cover design by Robin Nunez

HUMBOLDT NF - CULTURAL RESOURCE SERIES No. 1

Residents of Elko and Lamoille petitioned the Humboldt National Forest in the early 1920's to construct a road into Lamoille Canyon. No progress was made to this end until the late 1930's when the Lamoille CCC camp constructed a road and campgrounds. The road was widened and paved in the early 1960's.

The Civilian Conservation Corps was active on this District building roads, fences and campgrounds, fighting fires as well as Mormon Crickets, and constructing numerous Forest facilities. The Lamoille Guard Station, formerly the Ruby and Lamoille Ranger District Office, was constructed and landscaped by the CCC in the mid to late 1930's. The Lamoille Guard Station is one of the most picturesque on the Forest, if not in all of Nevada. They also constructed a Guard Station at the Terraces in Lamoille Canyon and another in Clover Valley. The Terraces structures were removed, probably because of avalanche danger, and the house is now at the Supervisor's Compound in Elko. The building from Clover Station was moved to Ruby Guard Station.

The Lions Camp, formerly Camp Lamoille, a youth organization camp, was constructed in the 1940's with funds donated by Max C. Fleischmann of yeast and brewery fortune. It has been used by Boy Scouts, church groups, 4-H Clubs and others. Currently it is administered under special use permit to the Lions Club.

Numerous streams on the Ruby Mountains District support Lahontan Cutthroat Trout, a threatened species. Bighorn sheep were reintroduced to the District in the late 1980's, their population having been decimated by disease from domestic livestock before 1920. Until the late 1880's there were a few black bears found on the East Humboldt Mountains. Antelope were considerably more plentiful than deer until after the creation of the Forest. Rocky Mountain goats and Himalayan snow partridges, exotic species, have been introduced.

Because of the unexcelled beauty of the Ruby Mountains, the Ruby Mountain Scenic Area was established on January 19, 1965. The scenic area covered 40,720 acres in the heart of the Ruby Mountains from Ruby Dome and Verdi Peak on the north to the heads of Long Canyon and Mayhew Creek on the south.

On December 15, 1989, the Nevada Wilderness Bill created the East Humboldt Wilderness of 36,900 acres and the Ruby Mountain Wilderness of 90,000 acres. These two areas account for approximately 33% of the Ranger District. The unparalleled hiking in the Wilderness areas, as well as campgrounds and easy access in Lamoille Canyon, make the Ruby Mountains Ranger District the most heavily used recreation area on the Forest.

The road through Lamoille Canyon has been included as a Scenic Byway in the National Forest Systems.

#### **D-3. JARBIDGE DISTRICT.**

Jarbidge is an anglicization of a Shoshoni word. Legend has it that a man-eating monster lives in Jarbidge Canyon and that the Paiute and Shoshoni did not enter the canyon for fear of their lives. Syd Tremewan, first Humboldt Forest Supervisor, said that an Indian woman told him that her father's father and several others had chased the Devil from the Owyhee River, across the Bruneau and into Jarbidge Canyon, where they walled him up in a cave. There are innumerable prehistoric and historic sites in the area which, while not destroying the legend, do indicate that the area was used by Indians.

The early history of the Jarbidge District is related primarily to the livestock and mining industries. The earliest livestock men ran cattle. The Diamond A Desert was named from the brand worn by the first

cattle to use this area, while O'Neil Basin was named for the O'Neil brothers who were the first white settlers in that area.

What is now the Mahoney Ranger Station was first used as a sheep base camp by the Williams Estate Co. A cabin was constructed there in 1892 and was occupied by Bill Mahoney, an employee of the company. Mahoney and his Indian wife diverted water from Cottonwood Springs and raised most of the produce used by their shepherders. The present cabin at Mahoney is partially that of the original.

Kitty's Hot Hole was first settled by the Wilkins family. Upon the retirement of Mr. Wilkins, his only daughter Kitty took on the role of raising horses and had large horse contracts with the army. Her fame at raising horses grew, and Kitty became known as "the Horse Queen of Idaho." The hot hole is now named Murphy's Hot Hole after its second owner Pat Murphy.

A portion of the District was included in the creation of the Independence Forest Reserve on November 5, 1906. On January 20, 1909, Owyhee (on the Mountain City District), Mary's River, and Pole Creek were added to the Forest, and at that time the Jarbidge Ranger District split to become the Pole Creek and the Jarbidge Districts. These were numbered Districts 9 and 7, respectively. On June 19, 1912, Elk Mountain was added to the District; and Rowland, Diamond A, and Charleston were deleted from the Forest. Elk Mountain during that time was separated from the Pole Creek District by a two-mile strip that was utilized as a livestock driveline. The Pole Creek bench was added to the District on June 12, 1919, which closed the driveline. In the same year, the Jarbidge, Pole Creek, and Elk Mountain Districts were all combined. The districts remained in that arrangement until the spring of 1940, when Forest Supervisor A.R. Torgerson recommended to the Regional Forester that the Districts be changed, and the Bruneau River was placed in the Gold Creek Ranger District, now Mountain City.

When the Forest Service took over management of the land, much of the area had been overgrazed to the point that some places, such as that around Pole Creek, were considered "dust bowls". A large part of the early Rangers' duties was dividing grazing allotments and counting livestock numbers. This task was not an easy one, as local ranchers considered it a game, rather than an illegal act, to run more stock than was paid for or permitted.

In 1908 Dave Bourne discovered gold in Jarbidge Canyon, and a gold rush ensued. A brief boom saw 1500 miners move into the canyon, living mainly in tents, but a business district with two- and three-story buildings lined the main street and included a restaurant in a house constructed of bottles. Within only a few months, the population had diminished and, thereafter, rarely exceeded a few hundred people.

The townsite was situated on the Forest, and miners built homes on the land through special use permits. By presidential order, on March 8, 1911, the townsite was removed from the Forest, allowing for private ownership of land and for the sale of liquor, which previously had been prohibited on the Forest.

While individual prospectors did poorly, a few large mining companies turned good profits. During 1918 and 1919 the area's gold production led the state in volume. When the mines closed in the 1930's, more than \$10,000,000 had been recovered. Fire leveled most of the business district in 1919. The Elkoro Mill, situated on the east side of town, was intact until 1991 when its owner had it demolished.

Jarbidge claims the dubious but historic distinction of witnessing the last stagecoach robbery in the United States, in 1916. The court case in this incident was also the first to use fingerprints as evidence.

Jarbidge continues today as a quaint, historic-looking town that survives as summer homes and a jumping-off point for recreationists in the Jarbidge Wilderness, as well as for hunters and fishermen.

Pavlak, a small town about two miles south of Jarbidge, has all but disappeared. The Pavlak Mill stood at this site with the Bluster Mill a short distance to the south.

According to Karl Wilkinson, Ranger from 1938 until his death in a snow slide in 1941, a major duty of the Ranger between 1911 and 1930 was in managing timber sales. While the timber was not well suited to home construction, it was used in Jarbidge not only for homes and businesses but extensively for mining timbers. The Jarbidge District planted a few trees in various areas, and a few ponderosa pines planted in 1932 in the vicinity of the Jarbidge cemetery are now beginning to mature.

Prior to the 1920's there were few deer in the Jarbidge area or, for that matter, on the entire Forest. There were many antelope and some bighorn sheep still to be found in the high country, but only one elk was reported in the Elk Mountain area. These animals disappeared after about 1920. In 1989 elk were reintroduced into the Robinson Hole area on the north end of the District. Recently a few moose and an occasional bear have been seen on the District.

In 1956 Ranger Thomas Phillips and Supervisor Torgerson proposed that an area encompassing the headwaters of the East Fork of the Jarbidge River and Mary's River be set aside and maintained in a near natural condition. Accordingly, the Chief of the Forest Service signed a proclamation creating the Jarbidge Wild Area in 1958. This 64,667 acre area became the Jarbidge Wilderness on April 9, 1964. It remained Nevada's only Wilderness until others were added on December 5, 1989. With additions in 1989, the Jarbidge Wilderness now comprises an area of 113,167 acres or approximately 47% of the District. For this reason outdoor recreation is an important aspect of the District.

#### **D-4. ELY DISTRICT.**

Containing nearly half the acreage of the Humboldt National Forest, the Ely Ranger District has a tremendous degree of cultural and biological diversity. Prehistoric use of the District was intensive, and an abundance of prehistoric sites are found throughout. A prehistoric, wickiup site called the Bustos Wickiups, located near Currant Mountain, has been excavated and a report published. It is believed that there are other wickiup sites and camps as well as prehistoric, game hunting traps and corrals. There is an urgency in the need to record sites constructed of wood, as wood is perishable and decomposes upon exposure to the elements or is subject to destruction by fire.

In the 1920's archaeologists from the Southwest Museum in Los Angeles spent a considerable amount of time excavating caves on Mount Moriah and Wheeler Peak, as some of the oldest known prehistoric sites in Nevada occur in this area. While a number of the caves did yield prehistoric, Native American resources, it was discovered that some also had outstanding cave formations. Lehman Caves National Monument, carved out of the Nevada National Forest on Wheeler Peak on January 24, 1922, also contained traces of prehistoric habitation near the cave entrance.

The Ely Colony, established in 1931, and the Duckwater Reservation, established in 1940, are situated near or adjoining the District. Residents utilize the District for procurement of natural resources, such as medicinal plants, game, and pine nuts. These Native American groups also maintain religious and secular sites within the District.

Prior to the establishment of the Forest, the Ely Ranger District was heavily impacted in the 19th Century by mining activity on several of its mountain ranges. In the early development of mining in

**HUMBOLDT-TOIYABE NATIONAL FORESTS  
NORTHEAST NEVADA ECOSYSTEM  
ELKO, NEVADA**

**A CLASS III CULTURAL INVENTORY  
OF THE PROPOSED  
RUGGERI LAND EXCHANGE**

**REPORT #HM-95-714**

**BY**

Anna M. Rago

November, 1996

pottery, Desert Side-notched projectile points, and ground stone (ibid). It is evident that the Shoshoni placed greater emphasis on plant gathering than the former occupants of the area and visited the cave less frequently (ibid). The first systematic surveys were conducted by Utah State University documenting numerous scatters of stone tools and debris, as well as hunting blinds and traps (Fawcett and Hart Mangan 1995; Simms 1993). Human occupation of the Jarbidge mountains during the early periods was limited to brief visits during the summer, attracted by abundant game and plant resources (ibid). These occupations appear to be uniform throughout the mountain ranges, but of low intensity (ibid). Numerous local sources of ignimbrite were frequently visited in order to acquire raw material to manufacture stone tools (ibid). Most of the chipped stone artifacts were manufactured from cobbles transported from these quarries (ibid).

#### Euro-American Discovery, Early Exploration, and Colonization

The Euro-American occupation of Jarbidge scarcely begins before 1909. There are reports that Jack Sinclair, a prospector from Silver City, visited the region in the late sixties. As early as 1880, the Wilkins brothers from Idaho, included the Jarbidge Mountains in their ranching operations (Schrader 1912). In 1892, William Mahoney built a cabin to be used as a sheep base camp for the Williams Estate Company, and on January of 1909 the area came under management of the U.S. Forest Service (Frampton 1992). The first ore discovered in the district was circa 1904 by Vishim, a shepherd and former placer miner, but it was not followed by any developments.

The discovery that led to the founding of the camp and district was by David A. Bourne, a miner's son, who grew up in Wells, Nevada, and also owned a house in Boise, Idaho. He and his wife came to Jarbidge in 1908 prospecting for gold (Mathias and Berry n.d). In 1909, Bourne slowly ascended the Jarbidge River, prospecting and panning the gravels of the river and its tributaries. Minor amounts of placer gold were recovered, probably from residual soils adjacent to the lode mines located between Snowslide and Jack Gulches (Schrader 1912). However, the gold in these placers was very fine grained and never formed economic concentrations for large scale mining (Johnson 1973). Bourne obtained the best prospects from outcropping ledges located at the mouth and half a mile up the stream that bears his name, which shortly after became the Bourne mine (Schrader 1912).

At the same time, John Escalon entering the canyon from the south, also discovered a valuable deposit of gold and staked the Bluster claim (soon to become a famous mine and mill), the pick and shovel claim, and others (Mathias and Berry n.d). J. P. Duncan reported that by September 1909, there were six or seven prospectors in Jarbidge Canyon, including Michael Pavlak and Peter Thurot, who claimed the Arizona group which later turned into the Pavlak mine and mill (ibid).

The mineral deposits that led to the discovery of the Jarbidge district occur as tabular gold-bearing quartz fissure veins or lodes in rhyolite forming the west and east vein systems (Schrader 1923). The western part of the mineral

Manuscript of Frank Wenters  
written from  
Jarvis Nevada  
Jan. 16, 1924  
Edna B. Patterson file

NE NV MUSEUM  
MANUSCRIPT  
# 5-2769

NOV-05-99 FRI 12:28 PM

P. 01

Miss Emma Dove  
Elko, Nev.

Jarbridge Nev.  
Jan 16<sup>th</sup> 24

Dear Miss Dove

Your letter of Nov 2<sup>nd</sup> was duly received some time ago. As I was busy then and wanted to give this matter some thought and to refresh my memory I delayed answering it. I will endeavor to give you the facts of our camps history as well as my memory permits.

The first prospecting I know of was done in a small way in <sup>August</sup> 1891 by Leo Knapp, Ernest Bingham, Leon Plunkett, Ed Allen, and F. H. Winton. we climbed the high peaks and hunted, and fished the streams, saw Bear, Cougar, Mountain sheep, and Deer in abundance, saw Elk tracks of which there was quite a lot. we were here for about ten days but only found a little placer gold. On April 18<sup>th</sup> 1892 myself and F. Lancaster, came in here again and located some placer claims on the Jarbridge River and Pine Creek, which was prospected later by Lytle Owens, H. Lauer, W. Thomas, Arthur Green and myself. we did not find sufficient gold to pay after sinking as deep as the water permitted us. But then and since have always thought good placer would be found if a large pump would be

Jarbidge Mountains of Winters 1824  
 he used and bedrock reached and prospected  
 About this time Wm Perkins came in and  
 prospected for several years with but small  
 results. Always finding some results but  
 not in paying quantities. In the fall of 1904  
 I met at Mt. City, Steve Bourne and told him  
 of finding some places in a gulch which is  
 now named after him. In the spring of 1908  
 he came in here and started sluicing the  
 gravel and in following some tail streaks  
 out from the creek discovered a ledge of gold  
 ore of pay value. Later that summer he found  
 the outcrop of the Bourne mine near his  
 original claim, which showed very rich ore  
 and was the cause of the stampede into Jarbidge  
 of hundreds of miners. During the summer of 1908  
 John Escallon crossed the range from Charleston  
 and found the outcrop of the Pick & Shovel ledge  
 about two miles distant from the Bourne mine.  
 Neither one knew the other was in Jarbidge for  
 several weeks, the country and river bottoms  
 were so rough and heavily covered with timber  
 and brush between the two properties. The camp  
 became the Mecca of hundreds of prospectors  
 and was located for miles in each direction  
 by sheep man Ranches Merchants mostly ahead of

-3

the real prospector, who had to take what was left or became open for location as the various claims ran out. The Bowron and Pind and Shovel were the only outcrops of ore in the district, all the other mines being opened up by trenching, and panning the dirt, by which means the real prospector opened up the Long Hike the Klaxie, Alpha, Blustin, Success, Starlight. The Jarbidge Gold was discovered to be a big mine last year by the deep tunnel of the Long Hike and Klaxie companies of the Elkboro Mining Co which has been producing more gold per year than any gold mine in Nevada and at present bids fair to last for many years. There is room for many prospectors and a big mineral zone to work out that is as yet virgin ground our values being principally gold, of exceptional fine milling qualities, as I would think the Alpha company has struck the Sulphides which is far richer than is the Free Milling ore and running from \$600 to \$2500 per ton in strata through a 6 foot vein. The whole width of vein being high grade shipping ore. Now as to the legend of Jarbidge from an Indian who told me its story when I first came here

4

A long time ago when the Buffalo came down from the North in the fall and came to the big mountains of the Bannock, Salmon, and Clearwater Rivers. The snow was generally deep by the time the Big herds got that far South the Indians used to stampede them over the river routes and kill hundreds for their winter's meat and built rock and brush fences to drive the herds of deer into natural traps under the cliffs, some of which are visible today. It was then that Isaw-haw-bills a great evil Spirit roamed the Canyons and Mountains of the headwaters of the Bannock and made his home up in what resembles a crater. He was of gigantic size and carried an enormous basket on his back and would catch an Indian and drop him in this big basket and when he had caught enough he went up to his camp and made big fires cooked and ate the Indians he could slip across the rivers at one step and when he saw an Indian and wanted him there was no escape and to day no Indians will camp overnight in the Justice Canyon. But there are many indications that the Indians have at and during the Stone or Flint age camped and

and made flint arrow and spear heads near  
 the mountains and even dug chert and  
 flint and Volcanic glass on the icebridge Mts  
 as well as hunted all over it. But I have  
 never seen evidence of camp sites near the  
 supposed home of the Evil Spirit Tsawhanpilla  
 or Jarbice as the white man has called it.

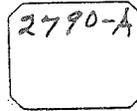
The elevation of the high peaks is about 11250 ft.  
 the camp of Jarbidge is 6200 above sea level  
 I am enclosing a view taken from a point about  
 2000 to 3000 feet showing the higher peaks in June

I have given you about all I can call to mind  
 and you may use this as you see fit cutting it  
 down or placing it in a more fitting manner  
 for your records, wishing you all success

Please remember me to your parents

yours truly  
 J. H. Winter

SCHRAEDER 1910



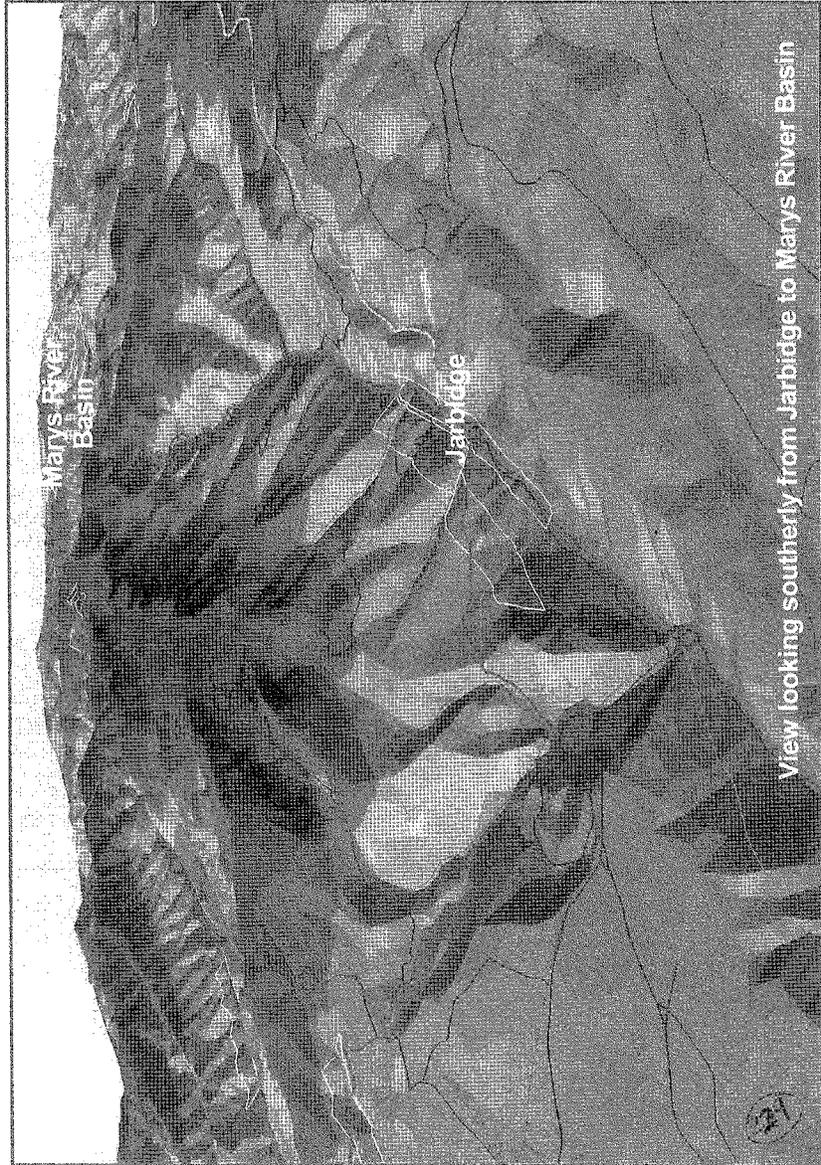
| DEPARTMENT OF THE INTERIOR<br>UNITED STATES GEOLOGICAL SURVEY<br>GEOLOGIC RECORDS |  |           |
|---|--|-----------|
| ACCESSION   |  |           |
| No. ....  | 2790-A   | Year 1910 |
| Quad. ....  | Jarvis Mining District<br><small>(District or quadrangle name)</small>     |           |
| Author .....  | Schrader, F. C. Field Records file   |           |
| Index No. ....  | U. S. Geological Survey  |           |
| Locality .....  | K-11 Geological Division<br><small>(Index map coordinates)</small>         |           |
| State .....   | Nevada Denver  |           |
| Notes by .....  | F. C. Schrader   |           |
| Form 9-728  | Field Records Library<br>U. S. Geological Survey<br>Denver, Colorado In c' |           |



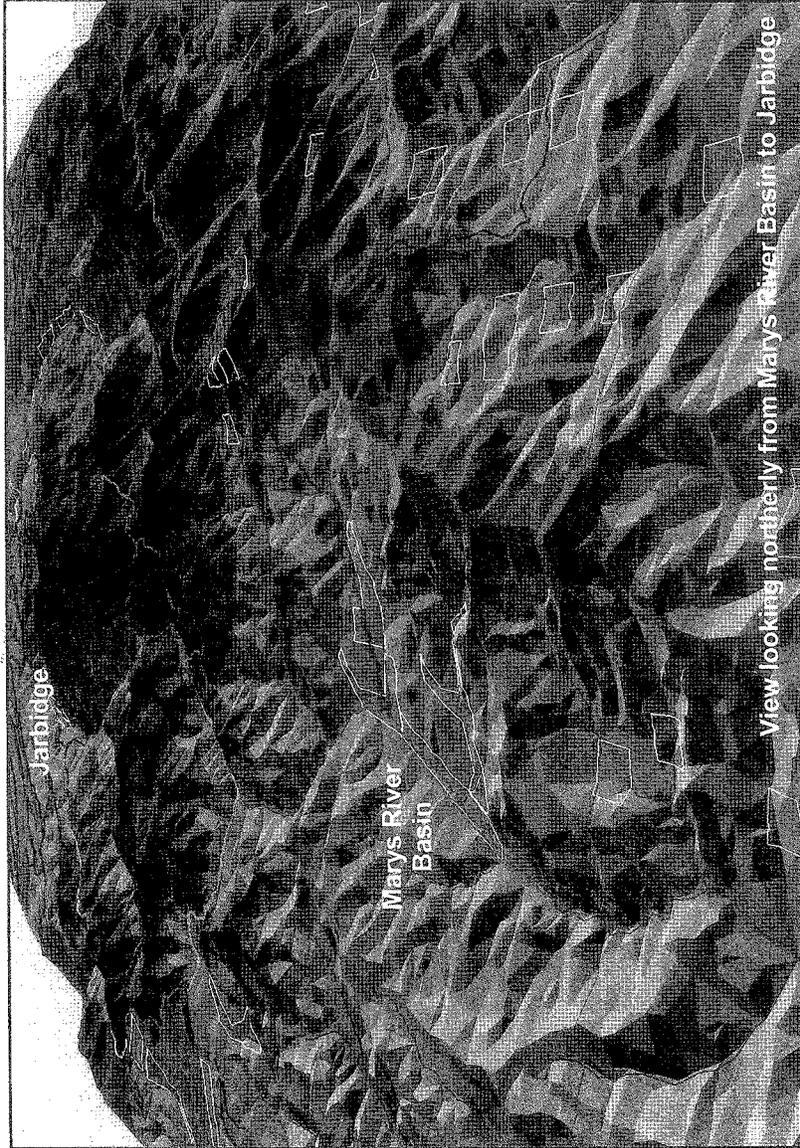
some by  $\frac{1}{2}$  mile or so + some by road all the way to the  
 of iron  $\frac{1}{2}$  mile or so from a  $\frac{1}{2}$  mile from the  
 this is the most locality on road. also the  
~~some by road~~ found along some of the  
 creek, but as much and the enclosing  
 black stone is cutting very much in gold  
 of a size in  $\frac{1}{2}$  mile from = Geo. Wash. is  
 found granites at Partridge, South  
 On the top of the  $\frac{1}{2}$  mile from the  
 the Partridge beds & might be called to 3 M. from  
 of apt.  $\frac{1}{2}$  mile = 150 to 200 ft. = 3 inches to 3 feet  
 but also a  $\frac{1}{2}$  mile from over a few 1/2 miles  
 dollars. = 1/2 mile = 150 ft. = 10-12 feet of  
 in the  $\frac{1}{2}$  mile.  $\frac{1}{2}$  mile = 150 ft. = 10-12 feet of  
 are in  $\frac{1}{2}$  mile.  $\frac{1}{2}$  mile = 150 ft. = 10-12 feet of  
 free gold ore.  
 from of J. S. & Trail B = 6450  $\frac{1}{2}$  = 6250 D = 200  
 (small)  $\frac{1}{2}$  mile from Partridge B = 6520  $\frac{1}{2}$  = 6300  
 (small)  $\frac{1}{2}$  mile from Partridge B = 6570  $\frac{1}{2}$  = 6370  
 County through all granite for miles. And at no point the  
 of rock found in the Pine Creek gravel here,  $\frac{1}{2}$  mile =  
 N. 12° W. dip  $\frac{1}{2}$  mile.  $\frac{1}{2}$  mile = 150 ft. = 10-12 feet of  
 1/2 mile.  $\frac{1}{2}$  mile = 150 ft. = 10-12 feet of  
 Mass.  $\frac{1}{2}$  mile = 150 ft. = 10-12 feet of  
 on west side of  
 about 230 feet BN Co of Partridge from  
 B = 6820  $\frac{1}{2}$  = 6600 = 10-12 feet of upper and  
 Park Place  $\frac{1}{2}$  mile B = 6780  $\frac{1}{2}$  = 6560 Small  $\frac{1}{2}$  mile from  
 Brown  $\frac{1}{2}$  mile B = 6880  $\frac{1}{2}$  = 6730 opposite  $\frac{1}{2}$  mile from  
 ledge = high & steep,  $\frac{1}{2}$  mile from Partridge  
 good  $\frac{1}{2}$  mile  $\frac{1}{2}$  mile about 20 feet wide of  $\frac{1}{2}$  mile from Partridge  
 about  $\frac{1}{2}$  mile a little below Scotts - Power Place  
 Partridge works B = 7400'  $\frac{1}{2}$  = 7250  
 about  $\frac{1}{2}$  mile B = 7200'  
 West  $\frac{1}{2}$  mile = 150 ft. = 10-12 feet of  
 Partridge Camp 4300 ft. B = 7500'  $\frac{1}{2}$  = 7350 \*

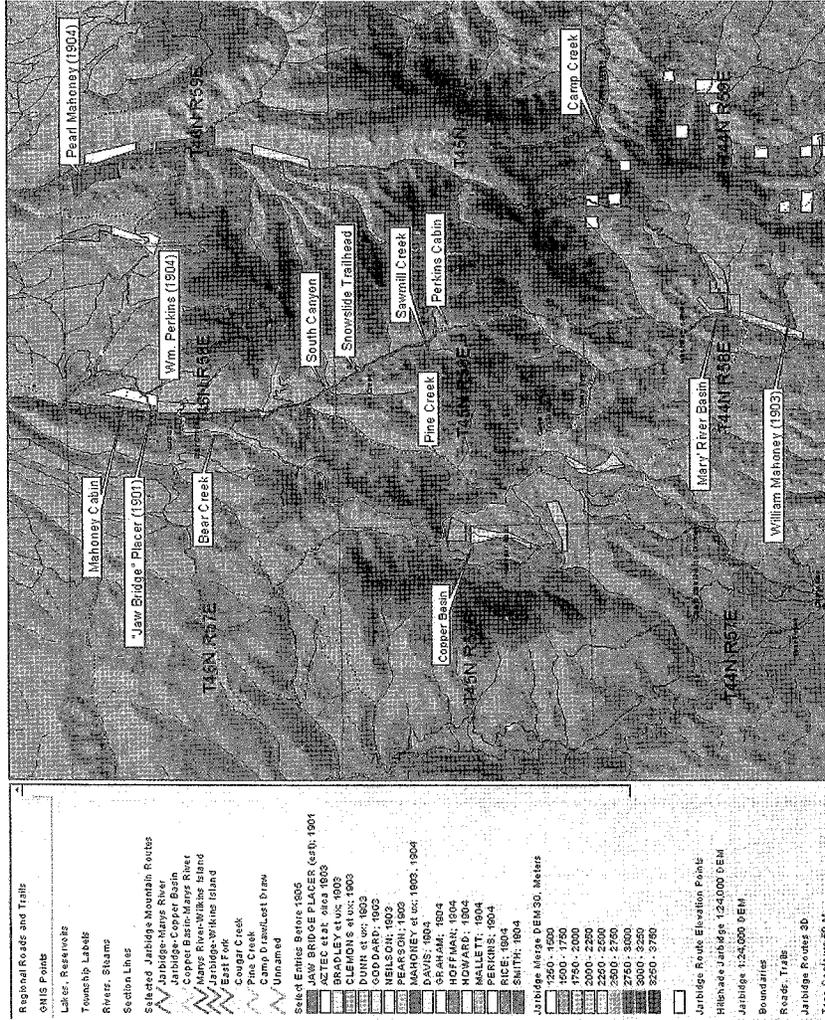






View looking southerly from Jarbridge to Marys River Basin





Regional Roads and Trails  
 ONIS Points  
 Lake, Reservoirs  
 Township Labels  
 Rivers, Streams  
 Section Lines  
 Schematic Jarbidge Mountain Ranges  
 Jarbidge-Marys River  
 Jarbidge-Copper Basin  
 Copper Basin-Marys River  
 Marys River-Walkers Island  
 Walkers Island  
 East Fork  
 Coward Creek  
 Pine Creek  
 Camp Dismounted Draw  
 Unnamed

Sketch Entires Before 1905  
 JAW BRIDGE PLACER (est. 1901)  
 CLEMONS H US: 1903  
 BRADLEY H US: 1903  
 CLEMONS H US: 1903  
 DURR et al: 1903  
 GODDARD: 1903  
 PERKINS: 1904  
 PERKINS: 1904  
 MAHONEY et al: 1903, 1904  
 PAVIS: 1904  
 GRAHAM: 1904  
 HOWARD: 1904  
 HOWARD: 1904  
 MALLETT: 1904  
 PERKINS: 1904  
 RICE: 1904  
 SMITH: 1904

Jarbidge Mags DEM 3D, Meters  
 750 - 1500  
 1500 - 2000  
 2000 - 2500  
 2500 - 3000  
 3000 - 3500  
 3500 - 4000  
 4000 - 4500  
 4500 - 5000

Jarbidge Bank Elevation Points  
 Jarbidge Jarbidge 124,000 DEM  
 Boundaries  
 Roads, Trails  
 Jarbidge Roads 3D  
 Topo Contour 50 M



**Black Rock Resource Company**  
*Natural Resource Services*  
Pub 164 455 Railroad Street, Elko, NV 89801  
(775) 738-3381

November 13, 1999

**Appendix A - Excerpts from Cases involving the US Forest Service**

Representative Helen Chenoweth-Hage  
Representative Jim Gibbons  
United States House of Representatives  
Public Hearing on the Jarbidge South Canyon Road  
Elko Convention Center - November 13, 1999  
Elko, Nevada 89801

Dear Representatives Chenoweth-Hage and Gibbons:

Over the past ten years, I have been involved to one degree or another with the following cases:

- 1) R.O. Livestock, Nye County, Nevada.
- 2) Emilly Cabin, Curry County, Oregon.
- 3) Blue Jacket Road, Elko County, Nevada.
- 4) Jarbidge South Canyon Road, Elko County, Nevada.

The following is a summary of some items encountered during these investigations. It is presented to this committee in the hope that a dialogue with the agency might lead to a higher level of objectivity in future cases. Tens of thousands (in some cases, hundreds) of taxpayer and client dollars are involved:

- 1) Destruction of Historical Records

About 10 or 15 years ago, a concerted effort to clean out government records was initiated at the USGS repository in Denver, Colorado. The purpose was to save valuable floor space at the consolidated repository. While this is laudable, the data destroyed was irreplaceable - original field sheets from surveys beginning in the early nineteenth century. These records are useful not just for posterity, but in establishing fact in cases similar to this one. This brings up two points:

- A) Private individuals are working with personnel in several federal agencies in an effort to preserve the data that is left. There are costs involved, so Congress needs

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to support this effort. Attached is an information package from Mr. Steve Parrish, former Chief of Cadastral Surveys in Nevada. Mr. Parrish is coordinating an interagency effort to save whatever information remains.

- B) Citizens are defending themselves against various agency claims. In some cases, the agencies attempt to leverage the absence of this data into "proof" that the citizen's facilities never existed. In light of this destruction, it might be appropriate for agencies to be more flexible evaluating the citizen's claims.
- 2) "Six Canyons ditches" portion of the R.O. Livestock case - agency recalcitrance, critical survey records removed from San Bruno, California.
- A) In this case, Mr. Carl V. Haas of Smoky Valley was able to establish that the US Forest Service had conducted a survey of its boundary about 1910, and that these records were stored in San Bruno, California. This survey disclosed material facts about R.O.'s rights. The critical notebook, however, was missing from the set. It later materialized in the Forest Headquarters in Sparks, Nevada. The books did contain several entries that corroborated R.O.'s claim.
  - B) R.O. had a compelling claim, even without the missing Forest Service records. General Land Office Records clearly showed the features in dispute existed as early as 1869. The issue is still outstanding, however, after many years hundreds of thousands of dollars.
  - C) The contact on the R.O. case is Mr. Carl V. Haas, Haas and Associates, Round Mountain, Nevada, (775) 738-3381.
- 3) Emilly Cabin case - Agency recalcitrance, USGS records no longer available.
- A) The Emilly Cabin is an historic property situated in the Kalamiopsis Wilderness in Curry County, Oregon. The history of the property is obvious to all parties, and is elaborated on in a multitude of reports, including Forest Service reports. Agency historians have even stayed at a cabin and chronicled the property, guests of the client's predecessor.
  - B) We were able to establish that USGS surveyors had surveyed the area about 1880. That survey would have disclosed the cabin, in fact the party might have even stayed at the cabin as it is the only accommodation for several miles. When we attempted to recover the field sheets and geographers record for the survey at the USGS in Denver, however, we were informed that the data had been destroyed.
  - C) As with the South Canyon case, the agency has been remarkably recalcitrant in light of its own information that supports the client's highly plausible claim.
  - D) The contact for the Emilly Cabin case is James R. Dole, Esq., of Schultz, Salisbury, Cauble & Dole, (541) 476-8825.

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- 4) Blue Jacket Case - Map of different road (not retracted), Affidavit of Dead Person
- A) About 1997, the agency produced a three-inch thick report claiming an easement across private land in Elko County.
  - B) Only a handful of the 75+ Exhibits were germane. Two were critical. One was a nineteenth century General Land Office map that purported to show the road in question. We established that the road shown was not the disputed road, but a different road farther east. Agency technicians agreed this was more likely, and notified their management. Rather than retracting the report, or at least the Exhibit, agency management instructed their technicians to break off communication on the subject.
  - C) This same report contains an affidavit ostensibly from a member of a prominent Elko County pioneer family. The affidavit mentions a date of 1995. The ostensible man's name is misspelled and his father is described as "grandfather." Most disturbing, however, is that fact that the man died in 1988 (Affidavit and excerpts from family history attached).
- 5) South Canyon Route
- A) The agency has made somewhat remarkable public statements regarding its extensive research and the virtues of its case. With the exception of a copy of the 1912 USGS report by F. C. Schrader, none of this information has been provided Elko County. This did not contain some of the maps that were published with the original report, notably Plate II. This plate showed a portion of the South Canyon Route, the section the agency buried with non-native fill. The field notes disclose the remainder of the route that is in contention. It is not known whether agency researchers ever looked at these, or what effect that might have had on their apparent adamancy.
  - B) Elko County records contains nearly one hundred documents that substantiate or corroborate the county's claim. It is believed that the county can establish that lead researchers from the agency never asked about these records before October of 1999.
  - C) Elko County has made several of Freedom of Information Act requests to the agency since 1998. As of November of 1999, only a handful of these requests have been fulfilled. In a recent letter to Elko County (copy attached), the agency denied the remaining requests.

Thank you for your interest.

Respectfully submitted,



Bill Price, PLS

SCHRODER 1910

2790-A

| DEPARTMENT OF THE INTERIOR<br>UNITED STATES GEOLOGICAL SURVEY<br>GEOLOGIC RECORDS |  |          |
|---|--|----------|
| ACCESSION   |  |          |
| No.   | 2790-A   | Year #10 |
| Quad.   | Jarvison Mining District<br><small>(District or geologic name)</small> |          |
| Author  | Schröder, F. C.<br><small>Field Records of</small>                     |          |
| Index No.   | U. S. Geological Service   |          |
| Locality  | K-11<br><small>(Indic. map location)</small>                           |          |
| State   | Nevada   | Denver   |
| Notes by  | F. C. Schröder   |          |
|   | Field Records Library<br>U. S. Geological Survey<br>Denver, Colorado   |          |
| Form 1-128  | 4-25   | 16 2'    |

OCTOBER 27, 1999

**TO:** DON BUHLER - CADASTRAL SURVEYS, USDI-BLM  
PATRICK CARROLL - CADASTRAL SURVEYS, USDI-FWS  
GREG ASHER - CADASTRAL SURVEYS, UDDA-USFS

**FROM:** STEVE PARRISH, LAND SURVEYOR

**SUBJECT:** RETENTION OF CERTAIN USGS BASE MAPPING PRODUCTS

**SITUATION HISTORY:**

Historically, the USGS has gathered a variety of field information in support of their topographic mapping program. They customarily searched for GLO/BLM corners of the metes-and-bounds and rectangular system to more accurately portray a survey grid on their topographic maps. Though private ownership boundaries are seldom shown, federal/county/state boundaries are regularly shown thereby inferring ownership lines between these and private adjoiners.

There were two primary products used to record field ties and information about recovered corner monuments. Photo-identifications were made on the mapping photography and/or ties were sketched on plane-table sheets (sometimes called compilation sheets) during the field investigation portion of the mapping process.

Over time, many of the corner monuments have been destroyed by natural causes, logging/mining operations, fencing projects, reclamation projects, transportation system development, and the continued growth of urban/rural development – both commercial and private, etc. These "verified" corner locations are a valuable resource for anyone involved in boundary location and of utmost importance to land surveyors and their clients.

I have personally pursued documented information, from the USGS, for corner monuments that have been destroyed by one form or the other. On three specific inquiries I have been fortunate enough to communicate with the right persons, within the USGS, who have a knowledge of the location of said information and a keen sense of the importance of retaining and providing this information for other agencies and the general surveying community.

**PERSONAL EXPERIENCES:**

In the late 1980's, in connection with a boundary dispute between the BLM and a private landowner in Southern California, I personally visited the Denver office of the USGS. We were politely received, professionally supported and able to acquire certified copies of the "field compilation sheets" (plane-table sheets) confirming the existence and description of critical key section corners being disputed in the lawsuit. We were elated to know this valuable information had been retained by the USGS – but – discouraged by the fact that most, if not all, of this historic mapping information was scheduled for disposal.

We were informed that "upper management" felt such information could be a "legal liability" to the USGS. At that time we expressed our concern over the loss of this critical mapping information and suggested permanent retention.

I recently had a need for similar information in connection with section corners and rancho corners that are shown as "found monuments" on a Central California USGS topographic map. Commercial development and road construction has resulted in the destruction of several critical corners since the 1948-1951 USGS mapping project at this site.

My contacts with the USGS found that the "compilation sheets" had been destroyed several years ago but the 1948 aerial photography was still in existence. These photographs contain written information and photo-identified locations for several critical corner monuments controlling land ownership in the subject area. The employee I conversed with informed me that a fellow employee had received an "award" for proposing the plan of disposal for the valuable "compilation sheets" several years ago.

**OBSERVATION & COMMENT:**

Having been a federal employee for over 30 years (20 with USFS and 10+ with BLM) I have an understanding of the cost and burden of retaining "physical documents". Space equates to dollars and unnecessary document storage often robs employee-working space and reduces available project funds. Most agencies have "record management" specialists who periodically review agency documents and make recommendations as to disposal or retention. Unfortunately, unless valuable documents are managed by agency users, record managers determine these documents have outlived their usefulness and should be disposed of.

There is a need for more oversight/input, by end-user specialists, prior to a final decision for disposal or retention of critical (historic) documents. Every national resource agency must recognize the fact that the information they generate has been paid for by "public funds" and said information is often valuable to many "other" users.

Surveying and mapping information is the support infrastructure of our land title, land ownership, land occupancy, and land development industries. Continued loss of GLO/BLM corner information costs all users – private and federal. It is logical, and professionally ethical, that we preserve all existing corner information – regardless of what agency (private or federal) houses it.

**RECOMMENDATION:**

I recommend that the three key cadastral program leaders, listed above, assess the real value of the remaining USGS "historic" mapping products and urge the USGS, through the Secretary of Interior, to either permanently protect and retain said documents internally, or archive same within the National Archives. I recognize that archiving within the National Archives would make retrieval more difficult, in both time and dollars, but would at least insure preservation of such records.

**PROPOSED MEMORANDUM TO THE SECRETARY OF INTERIOR:**

Immediate attention is needed to stop the periodic disposal of critical "historic" land corner information presently housed by the United States Geological Survey (USGS) at all field locations and most specifically at the Denver, Colorado facility. Historic plane-table sheets (compilation sheets) and mapping photography contain valuable General Land Office (GLO) and Bureau of Land Management (BLM) corner information often critical to determination of local land boundaries.

USGS topographic maps are one of the most informative and useful products ever generated by a public agency. A typical 7-1/2' topographic quadrangle map may have several dozen "found corner" locations that are extremely valuable to surveyors (federal and private) and their clients. Though the topographic maps are not of the scale and accuracy needed to "pin-point" a corner location on the ground, they serve as an excellent source for determining general land ownership and isolation of large survey differences.

USGS topographic surveys date from the early 1800's and have graphically documented countless corner monument locations. The unbiased USGS field mapping crews frequently field tied corner locations on plane-table sheets and/or photo-identified corner locations on their mapping photography. Until recent years, these historic sheets and aerial photographs have been stored by the USGS at various field stations. In recent years most, if not all, of these historic mapping documents have been shipped to the Denver area USGS mapping facility. It is recognized that storage space is expensive and cumbersome.

It is suggested that a team of multi-agency experts, specifically from the cadastral survey programs of the Bureau of Land Management, U.S. Forest Service, and Fish and Wildlife Service meet with USGS mapping staff in Denver, Colorado. Meeting participants should review the remaining historic mapping documents, assess the present and future value, and make recommendations as to the most feasible and "user-friendly" storage for said documents.

Additional questions, comments, and/or suggested changes can be forwarded to:

Steve Parrish

Res: 775-882-7837 e-mail: [stave@spanish.carson-city.nv.us](mailto:stave@spanish.carson-city.nv.us)

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Respectfully Submitted,

Steve Parrish



**HUMBOLDT NATIONAL FOREST**

**BLUE JACKET ROAD NO. 729**

**2477 REPORT**

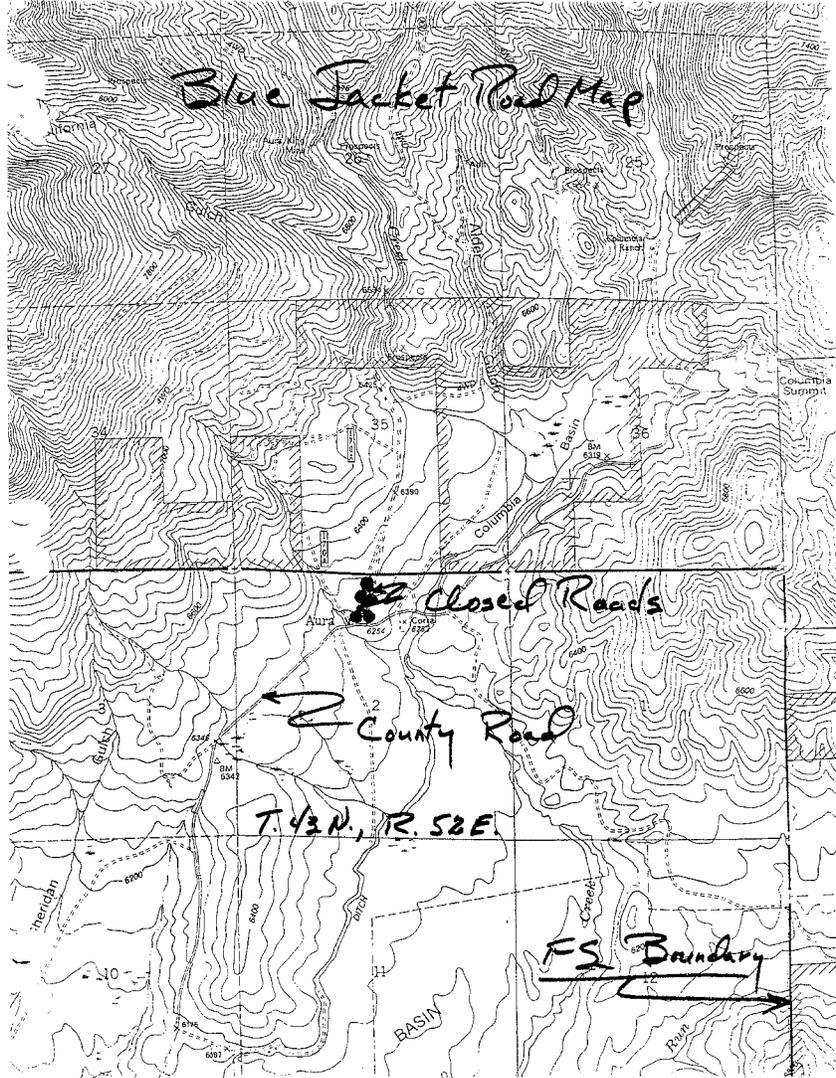
261

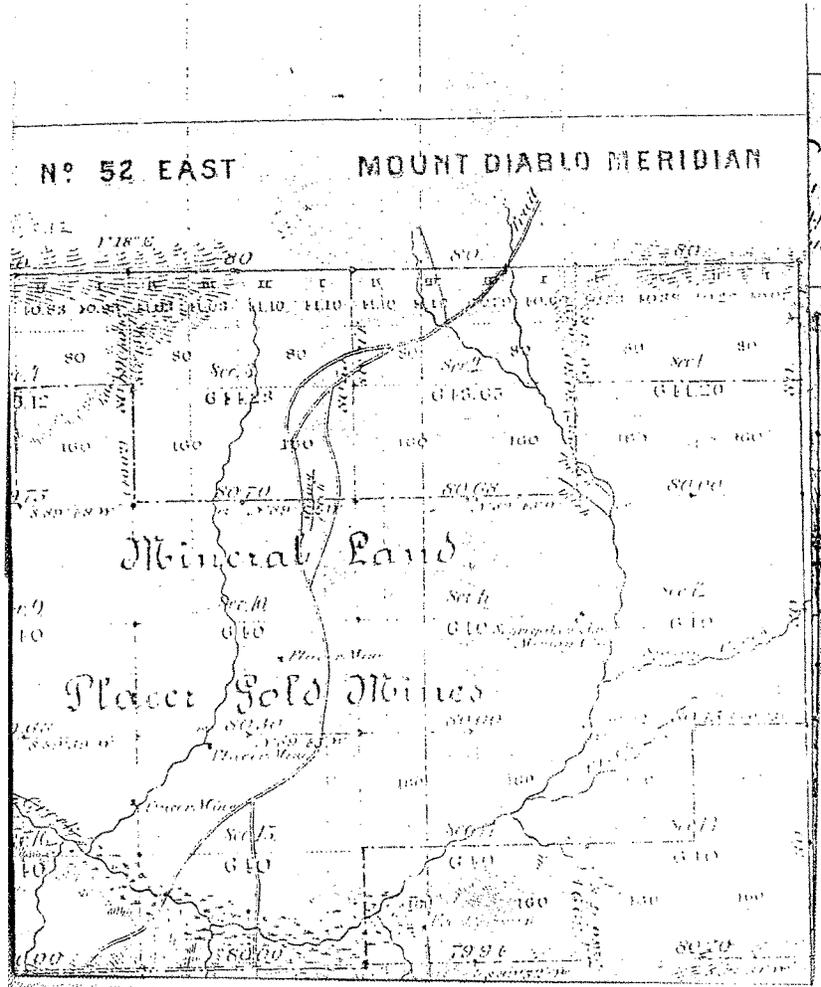


**HUMBOLDT TOIYABE NATIONAL  
FORESTS**

**BLUE JACKET ROAD NO. 170**

**2477 REPORT**





02/10/76 11:20 SHELTON 1162110000

1-

(To whom it may concern)  
 use of Blue Jacket Road - 1869  
 to 1995.

Louie Bruner; Grandfather Bruner  
 Hauled By wagon, freight & mail  
 to the Blue Jacket mine & mill.  
 from Trasnova gold district.

In 1869 placer gold was found  
 in Columbia, Blue Jacket Creek and  
 Sheidans creek, called the Centennial  
 mining district.

From 1870 to 1995 lode mining  
 was the more productive than  
 placer. though the years lode  
 mines were worked sporadically.  
 all mining claims were general in  
 good standing.

The old saying of the Bull Run  
 mountains (the Mother Riddle Backbone)<sup>15</sup>  
 because the mountains are highly  
 mineralized. Mine Systems are one  
 rich enough to make a living, then  
 and now and years to come.

Blue Jacket mine produces a  
 sum of \$1, 700, 000. This was on the  
 company's Book. Still has many  
 dollars to be made.

Bluett Brothers, George Ed., Haray

worked the Espaleroza mine about  
 1/4 mile below Blue Jacket mine. They  
 mine gold and made money also  
 worked the Burns mine in White  
 Canyon about 2 miles on the Bull  
 Run mt. Sold out to Twin Falls Co.  
 they produce silver, gold, and lead.  
 They move to Elba, established Resident,  
 and expired in Elba.

Blue Jacket mine was leased by  
 Boise Business man for years after  
 world war II. about 1946 to 1960.

The property was sold to a group of  
 Boise people. by owner Maida Faber.  
 They milled some ore from Blue  
 Jacket in White Rock mill.

Some Drilling was Done by in  
 1993-94- by Bannick and also  
 Independence mining.

Some Families lived in Blue  
 Jacket canyon, The Potters & Company  
 from 1940 to 1965-

Dillman lived and mined in the  
 Blue Jacket canyon. 1970 to present.

It used to the Blue Jacket mine  
 and canyon is in constant use  
 by miners, sheepmen, cattlemen, and sportsmen  
 from 1869 to 1995.

BURNER-1

AA-18

VICTOR BURNER REMMINISCENCES  
OF EARLY ELKO AND ELKO COUNTY, NEVADA  
RECORDED JULY 12, 1955 by  
EDNA. B. PATTERSON

VICTOR BURNER  
INTERVIEWED JULY 12, 1955  
EARLY ELKO AND ELKO COUNTY

I was born in Virginia in 1868 and came to Elko with my parents in 1872. I had an Uncle who had come to Elko a few years earlier, and it was because he lived here that my family came to Elko. Uncle Elijah Burner was a bachelor and he had an 80 acre ranch along the Humboldt River in the part of Elko that is now known as the Riverside Addition. He also owned ground on the Lamoille Summit and ranged cattle in the Burner Basin Territory which was named for him. There were six in our family, my having four sisters and a brother. I was the eldest.

My father also acquired land along the Humboldt River near the Riverside Addition in Elko and made a good living for his family renting pasture to teamsters and individuals for their horses and oxen. He used to pasture a lot of Oxen teams which were used in freighting to Eureka, Nevada. I remember how the oxen would hide in the willows that grew in this territory, and what a hard time we used to have in finding them. At times he would pasture several hundred head of these animals that were used on the freighting teams. There was a large stage stable on Fifth Street and the Humboldt River in the approximate location of Doby Doc's (WM. F. CAUDILL) place. It was run by a man by the name of Fred Wilson. The freight wagons that were used in freighting to Eureka were usually pulled by ten or twelve oxen(5 or 6 teams).

When my mother and father came to Elko from Virginia, we came on an Emigrant Train, run by the Central Pacific Railroad. An Emigrant Train was a train composed chiefly of freight cars, on which three or four passenger cars were attached at the end. The travel was slow and the cars crowded and uncomfortable. People tried to sleep as best they could on the hard seats, and they usually carried the food with them that they planned to eat on the trip. Most of the people traveling on these trains were poor and had little money for anything other than railroad fare. The people could make coffee on the stove that heated the railroad car. Sometimes, I remember, we would get off the train and eat a meal at some place where the train had stopped for meals.

I can remember Shepherd's Station located at Twin Bridges on the South Fork. It was an excellent eating place and hotel on the Stage line to Hamilton and the southern mines. The recreation area for the people of Elko and surrounding country was Lamcille. We used to always go there for picnics. It was the play place of Elko County. Usually the Fourth of July Celebrations were held there. It was always cool and green in the grove. We used to play for dances at these and other places in the county. Both my father and I used to play. I played a violin and the most popular tunes were the Bonaparte Retreat and the Mississippi Sawyer. I also played an accordion. In the real early 1870's and 80's the dance music was all Brass- and it was not until the 90's that the violin, piano and strings were used for dance music.

My father gave up the pasturing of oxen and moved to Cornucopia, a town or mines twenty-five miles to the north of Tuscuroma. My father worked in the mines and the pay was \$ 4.00 per day. The mines were silver and gold, and the principal mines of Cornucopia were the Huzzy and the Le Gard. The town was located two miles down in a deep canyon. Most of the mine construction was made of lumber and were erected about 1879 Or 80.

My family moved from Cornucopia to Tuscurora when the mines of Cornucopia declined. The first job that I had in Tuscurora was as janitor of the school and I was paid \$20.00 per month. Tuscurora was a large place and they had a large school. When my family came to Tuscurora they bought a lodging house which they ran. In Cornucopia they kept a store as well as working in the mines.

I used to freight between Elko and the northern country. Usually we used oxen but sometimes for light loads we used mares and a spring wagon. My father and I used to prospect in the Good Hope and Burner Hills mining districts. It lies west of Cornucopia and north of Midas. In the Deep Creek and Whiterock country there is more ranching than mining activity. Deep Creek is about two miles from Cornucopia. The Bull Run Basin is north from Cornucopia. It was a pretty little place and had a few buildings. Off from Bull Run Basin and to the north is Columbia. It was a mining town in the Whiterock Mountains. It's famous mine was the Blue Jacket. My father used to peddle fruit and vegetables in Columbia. It was located high on the mountain. I used to go with my father because I was the oldest boy. They had a tramway that brought the ore down the mountain. The cable must have been close to a mile long. It was too steep for a road. I drove the team and my father walked. It was so steep that one could not pull a wagon. Over this summit and down on the other side is Whiterock. The mines in Cornucopia were owned and worked by white people. In Tuscurora much of the mining was done by the Chinese. Usually they made a rocker of lumber- then they would use their hands and an old tin can, and with these implements they were able to pan for gold. The Blue Jacket mine of Columbia was a place that I freighted from a few years later. We used three teamsters and we used to haul the rich ore to Elko. This place had a deep canyon and the mining company used to haul the ore part way out of the canyon. We had three wagons and they had eight horses each. We went down into the canyon with the "lead Wagon", which is lighter and hauled the ore part way out with it- and then re-loaded

on to the other wagons. It was all the teams could do to pull the wagons up the hill. We hauled around five tons at a trip. The trail wagon hauled smaller and lighter loads. Going to the mines from Elko we hauled salt and lumber and on the return trip we hauled the ore from Columbia to Elko. The pay we got for hauling common freight was \$15.00 a ton and we got \$17.50 a thousand feet for hauling lumber. Most of the lumber came from the W.T. Smith Co. It took five and one half days for a round trip-three and one-half days to go up-one-half day to unload- and one and one-half days to come down to Elko. One could certainly tell when he was on the down grade. My brother and I freighted together and we hauled all through the winter months. I remember the winter of 1889-90. We teamed all that year, but could not haul but half a load as the snow was so deep. The snow on the level that year was about thirty inches deep. We used four horse teams and sleighs and would go to 'Doane Station, Dinner Station, Weiland's Station and Reads Station which was about three miles beyond Weiland's. All of these people were the best of cooks and everyone used to enjoy stopping and eating at their places. This route is now served by an oiled road, which is a much easier ascent than the old freight road used to be.

The ranchers used the Shoshone and Piute Indians as ranch help. The Indians did little work around the mines. The Chinamen were in great numbers in Tuscorora and some of them used to peddle vegetables for a living. They wore a neck-yoke made of wood, not unlike an oxen-yoke, from which was suspended two large baskets or buckets, one hanging from the yoke over each shoulder, and they carried their vegetables in these. Horses were expensive in those days and cost between \$75.00 and \$100.00. Hi Stoker was a man that did a lot of freighting in and around Elko. He used to use two teams to his wagons. Hi Stoker later moved to Fallon. An old freight wagon had rear wheels that were six feet high- with the front wheels being lower than the rear ones. The shape of the wagon body was that of a "spread U".

The first church in Elko was the Presbyterian Church, and is located at Fifth and Pine Streets on the site where the Presbyterian Parsonage now stands. The old church was sold for \$65.00 and was torn down and lumber hauled to Lamaille. Reverend Byers was the minister in Elko when I first came there. My parents and I were and are members of the Presbyterian Church. Reverend George H. Greenfield was the minister of the Presbyterian church who was instrumental in building the church in Lamaille and the present Presbyterian church located at Sixth and Idaho Sts. Rev. and Mrs. Greenfield were a good looking couple. He was a very smart man in fact he was smart enough that he did not have to be a minister- he was smart enough he could have been a Lawyer. (Mr. Greenfield was an excellent speaker and organizer. After he left Elko he was outspoken in his criticism of the United States Government, and in sympathy with Germany during World War One. He was put in jail for a short time because of his Pro-German feelings.

There used to be more saloons for the size of the town than there are now. The first school was located on the north side of Court St. between 4th and 5th streets on the site of the present Knights of Pythias Hall. The second grammar school was built on the site of the place where Elko Grammar School now stands. The first school house was a two room school and the second was a larger two story building. They were both made of a red brick that was made in Elko. I remember a Miss Katy and a Miss Hallist used to teach there. E.S. Farrington also taught this school. There was a stable between 5th and 6th streets on Court St where people coming in from the country used to keep their horses. This is the Elko County that I remember

Recorded by Edna B. Patterson July 12, 1955.

DAVID R. BURNER

OUR FAMILY TREE



Carroll Harry Burner  
1891 - 1984



My Father  
Frank Victor Burner  
1908 - 1999



My Mother  
Martha (Mattie) Maude Clemons  
1874 - 1935



My Grandfather  
Jacob Franklin Burner  
1849 - 1901



My Grandmother  
Priscilla Dovel  
1845 - 1894

Jacob Franklin  
Burner  
1840 - 1891

*My grandfather, Jacob Franklin Burner. History shows (from Census records) that his wife, Priscilla Dovel and family resided in Nevada while he spent most all of his time traveling around the country eventually winding up in Oroville, California where he died, and is buried.*



*#2 child of Jacob Franklin,  
VIOLA VIRGINIA BURNER  
(1867 - 1963)  
and her husband,  
CHARLES HENRY KLECKNER  
on their wedding day, January 6,  
1886 in Elko, Nevada.*

| Family Group Record — MRIN 29                 |                                    |  |                        |             |  |
|---|------------------------------------|--|------------------------|-------------|--|
| Husband: John Rhodes BURNER -95               |                                    |  | Year of Birth: 1788    |             |  |
| Wife: (1) Elizabeth STRICKLER -96             |                                    |  | Year of Birth: 1788    |             |  |
| Sex Children (continued)                      |                                    |  | LDS Ordinance Data     |             |  |
| 9.  | Name: Elizabeth BURNER -794        | Spouse: Isaac F. GANDER -842               |                        |             |  |
| F   | Bom: 2 MAY 1828                    | Place: Shenandoah Co., VA                  | Bap.:                  | 8 JUN       |  |
|   | Chr.:                              | Place:                                     | End.:                  | 26 MAR      |  |
|   | Marr: 15 FEB 1855                  | Place: Page Co., VA                        | Sig S:                 |             |  |
|   | Died: 26 JUL 1907                  | Place: Cooper Co., MO                      | Sig P:                 | 23 JAN      |  |
| 10.   | Name: Elisha BURNER (Twin) -795    | Spouse: Frances Margaret LIONBERGER -854   |                        |             |  |
| M   | Bom: 19 MAR 1830                   | Place: Massanutten, Page Co., VA           | Bap.:                  | 14 JUN      |  |
|   | Chr.:                              | Place:                                     | End.:                  | 18 SEP      |  |
|   | Marr: 17 SEP 1857                  | Place: Hancock Co., IL                     | Sig S:                 |             |  |
|   | Died: 28 JAN 1873                  | Place:                                     | Sig P:                 | 23 JAN      |  |
| 11.   | Name: Elijah BURNER (Twin) -796    | Spouse:                                    |                        |             |  |
| M   | Bom: 19 MAR 1830                   | Place: Shenandoah Co., VA                  | Bap.:                  | 14 JUN      |  |
|   | Chr.:                              | Place:                                     | End.:                  | 18 SEP      |  |
|   | Marr:                              | Place: (Never married)                     | Sig S:                 |             |  |
|   | Died: 24 OCT 1881                  | Place: Elko, Elko Co., NV                  | Sig P:                 | 23 JAN      |  |
| 12.   | Name: (1) Isabel Ellen BURNER -797 | Spouse: Isaac KOONTZ Jr. -863              |                        |             |  |
| F   | Bom: 30 APR 1832                   | Place: Massanutten, Page Co., VA           | Bap.:                  | 8 JUN       |  |
|   | Chr.:                              | Place:                                     | End.:                  | 26 MAR      |  |
|   | Marr: 25 OCT 1849                  | Place: Page Co., VA                        | Sig S:                 |             |  |
|   | Died: 8 MAR 1868                   | Place: Newport, Page Co., VA               | Sig P:                 | 23 JAN      |  |
| Family Group Record — MRIN 30                 |                                    |  |                        |             |  |
| Husband: John Rhodes BURNER -95               |                                    |  |                        |             |  |
| Bom: 30 AUG 1788                              |                                    | Place: Shenandoah Co., VA                  | Bap.:                  | 14 JUN 184  |  |
| Chr.:   |                                    | Place:                                     | End.:                  | 18 SEP 194  |  |
| Marr: 17 MAR 1839                             |                                    | Place: Page Co., VA                        | Sig S:                 | 23 JAN 190  |  |
| Died: 4 OCT 1860                              |                                    | Place: Page Co., VA                        | Sig P:                 |             |  |
| Bur.:   |                                    | Place: Evergreen Cem., Luray, Page Co., VA |                        |             |  |
| Father: Joseph BURNER -10                     |                                    |  | Mother: Ann RHODES -24 |             |  |
| Other Wives: (1) Elizabeth STRICKLER          |                                    |  |                        |             |  |
| Wife: (2) Susannah (Brumbach) HERSHBERGER -97 |                                    |  |                        |             |  |
| Bom: ABT 1818                                 |                                    | Place: Locust Dale, Madison Co., VA        | Bap.:                  | 9 JUN 194   |  |
| Chr.:   |                                    | Place:                                     | End.:                  | 7 MAR 194   |  |
| Died: 23 OCT 1838                             |                                    | Place: Page Co., VA                        | Sig P:                 |             |  |
| Bur.:   |                                    | Place: Evergreen Cem., Luray, Page Co., VA |                        |             |  |
| Father:                                       |                                    |  | Mother:                |             |  |
| Other Husbands:                               |                                    |  |                        |             |  |
| Sex   | Children                           | List each child (living or dead)           | LDS Ordinance Data     |             |  |
| M/F   |                                    | in order of birth                          | for Children           |             |  |
| 13.   | Name: Jacob Franklin BURNER -242   | Spouse: Priscilla DOVEL -243               |                        |             |  |
| M   | Bom: 10 JUL 1840                   | Place: Locust Dale, Madison Co., VA        | Bap.:                  | 14 JUN 1943 |  |
|   | Chr.:                              | Place:                                     | End.:                  | 18 SEP 1945 |  |
|   | Marr: 3 AUG 1863                   | Place: Locust Dale, Madison Co., VA        | Sig S:                 | 4 FEB 1953  |  |
|   | Died: 24 AUG 1891                  | Place: Oroville, Butte Co., CA             | Sig P:                 |             |  |
| 14.   | Name: Frances Virginia BURNER -244 | Spouse: Alfre KOONTZ -245                  |                        |             |  |
| F   | Bom: 13 APR 1842                   | Place: Page Co., VA                        | Bap.:                  |             |  |
|   | Chr.:                              | Place:                                     | End.:                  |             |  |
|   | Marr: 16 OCT 1859                  | Place: Page Co., VA                        | Sig S:                 |             |  |
|   | Died: 6 OCT 1876                   | Place: Honeyville, Page Co., VA            | Sig P:                 |             |  |

THE BURNER ANCESTRAL FILE

| Family Group Record — MRIN 64       |                                       |   |                    |
|-------------------------------------|---------------------------------------|---|--------------------|
|                                     |                                       |   | Page 1             |
| Husband: Jacob Franklin BURNER -242 |                                       |   |                    |
| Born:                               | 10 JUL 1840                           | Place: Locust Dale, Madison Co., VA             | Bap.: 14 JUN 1943  |
| Chr.:                               |                                       | Place:  | End.: 18 SEP 1945  |
| Marr:                               | 3 AUG 1863                            | Place: Locust Dale, Madison Co., VA             | Slg S: 4 FEB 1953  |
| Died:                               | 24 AUG 1891                           | Place: Oroville, Butte Co., CA                  | Slg P:             |
| Bur.:                               |                                       | Place:  |                    |
| Father: John Rhodes BURNER -95      |                                       | Mother: (2) Susannah (Brumbach) HERSHBERGER -97 |                    |
| Other Wives:                        |                                       |   |                    |
| Wife: Priscilla DOVEL -243          |                                       |   |                    |
| Born:                               | 24 AUG 1845                           | Place: Locust Dale, Madison Co., VA             | Bap.: 8 JUN 1943   |
| Chr.:                               |                                       | Place:  | End.: 7 MAR 1947   |
| Died:                               | 17 SEP 1894                           | Place: Reno, Washoe Co., NV                     | Slg S:             |
| Bur.:                               | 19 SEP 1894                           | Place: Reno, Washoe Co., NV                     | Slg P:             |
| Father: Charles C. DOVEL -3317      |                                       | Mother: Elizabeth KOONTZ -3318                  |                    |
| Other Husbands:                     |                                       |   |                    |
| Sex                                 | Children                              | List each child (living or dead)                | LDS Ordinance Data |
| M/F                                 |                                       | in order of birth                               | for Children       |
| 1.                                  | Name: Carroll BURNER -506             | Spouse:   |                    |
| M                                   | Born: 3 MAR 1865                      | Place: Alma, Page Co., VA                       | Bap.: CHILD        |
|                                     | Chr.:                                 | Place:  | End.: CHILD        |
|                                     | Marr:                                 | Place:  | Slg S:             |
|                                     | Died: 24 NOV 1868                     | Place: Leaksville, Page Co., VA                 | Slg P: 4 FEB 1953  |
| 2.                                  | Name: Viola Virginia BURNER -507      | Spouse: Charles Henry KLECKNER -508             |                    |
| F                                   | Born: 26 MAR 1867                     | Place: Alma, Page Co., VA                       | Bap.:              |
|                                     | Chr.:                                 | Place:  | End.:              |
|                                     | Marr: 6 JAN 1886                      | Place: Elko, Elko Co., NV                       | Slg S:             |
|                                     | Died: 21 AUG 1963                     | Place: Elko, Elko Co., NV                       | Slg P:             |
| 3.                                  | Name: Frank Victor BURNER -509        | Spouse: Martha Maude "Mattie" CLEMMONS -510     |                    |
| M                                   | Born: 14 JUN 1868                     | Place: Alma, Page Co., VA                       | Bap.: 9 APR 1960   |
|                                     | Chr.:                                 | Place:  | End.: 15 APR 1960  |
|                                     | Marr: 10 MAR 1892                     | Place: Elko, Elko Co., NV                       | Slg S: 13 APR 1961 |
|                                     | Died: 19 JUL 1959                     | Place: Elko, Elko Co., NV                       | Slg P:             |
| 4.                                  | Name: Jacob Junia BURNER -511         | Spouse: (1) Elizabeth Bessie Belle WEDDLE -512  |                    |
| M                                   | Born: 24 AUG 1871                     | Place: Alma, Page Co., VA                       | Bap.:              |
|                                     | Chr.:                                 | Place:  | End.:              |
|                                     | Marr: AUG 1891                        | Place: Elko, Elko Co., NV                       | Slg S:             |
|                                     | Died: 7 APR 1956                      | Place: Brea, Orange Co., CA                     | Slg P:             |
| 5.                                  | Name: Nevada May BURNER -513          | Spouse: George J. SMITH -514                    |                    |
| F                                   | Born: 5 MAY 1873                      | Place: Elko, Elko Co., NV                       | Bap.:              |
|                                     | Chr.:                                 | Place:  | End.:              |
|                                     | Marr:                                 | Place:  | Slg S:             |
|                                     | Died: 11 MAR 1954                     | Place: Oakland, Alameda Co., CA                 | Slg P:             |
| 6.                                  | Name: John BURNER (Twin) -515         | Spouse:   |                    |
| M                                   | Born: 2 FEB 1875                      | Place: Elko, Elko Co., NV                       | Bap.: CHILD        |
|                                     | Chr.:                                 | Place:  | End.: CHILD        |
|                                     | Marr:                                 | Place:  | Slg S:             |
|                                     | Died: 2 JUL 1875                      | Place: Elko, Elko Co., NV                       | Slg P: 4 FEB 1953  |
| 7.                                  | Name: Charles BURNER (Twin) -516      | Spouse:   |                    |
| M                                   | Born: 2 FEB 1875                      | Place: Elko, Elko Co., NV                       | Bap.: CHILD        |
|                                     | Chr.:                                 | Place:  | End.: CHILD        |
|                                     | Marr:                                 | Place:  | Slg S:             |
|                                     | Died: 13 AUG 1875                     | Place: Elko, Elko Co., NV                       | Slg P: 4 FEB 1953  |
| 8.                                  | Name: Grace Susan Darling BURNER -517 | Spouse: James Patrick KELLEY -518               |                    |
| F                                   | Born: 26 MAY 1876                     | Place: Elko, Elko Co., NV                       | Bap.:              |
|                                     | Chr.:                                 | Place:  | End.:              |
|                                     | Marr: 22 JAN 1892                     | Place:  | Slg S:             |
|                                     | Died:                                 | Place:  | Slg P:             |

|                                   |   |                                |               |
|-----------------------------------|---|--------------------------------|---------------|
| Jacob Franklin BURNER -242        |   | Year of Birth: 1840            |               |
| Priscilla DOVEL -243              |   | Year of Birth: 1845            |               |
| Children (continued)              |   | LDS Ordinance Data             |               |
| Name: Elizabeth BURNER -519       |   | Spouse:                        |               |
| Born:                             | Place:                                      | Bap.:                          |               |
| Chr.:                             | Place:                                      | End.:                          |               |
| Marr.:                            | Place:                                      | Sig S:                         |               |
| Died:                             | Place:                                      | Sig P:                         |               |
| Name: Hallie Bessie BURNER -520   |   | Spouse: Nobel STREETER -521    |               |
| Born:                             | Place: Comucopla, Elko Co., NV              | Bap.:                          | 5 JUN 1943    |
| Chr.:                             | Place:                                      | End.:                          | 7 MAR 1947    |
| Marr.:                            | Place:                                      | Sig S:                         |               |
| Died:                             | Place: Berkeley, Contra Costa Co., CA       | Sig P:                         | 4 FEB 1963 SL |
| Name: Priscilla Janet BURNER -522 |   | Spouse: James P. MC ALPIN -523 |               |
| Born:                             | Place: Elko, Elko Co., NV                   | Bap.:                          |               |
| Chr.:                             | Place:                                      | End.:                          |               |
| Marr.:                            | Place:                                      | Sig S:                         |               |
| Died:                             | Place: San Francisco, San Francisco Co., CA | Sig P:                         |               |

## Notes for JACOB FRANKLIN BURNER - 242

## Data source:

Personal Records of Rose Burner in possession of Verlie R. Harmon, Palo Alto, CA.

## Documentation:

Census records -- Page Co., VA -- 1870 and Elko Co., NV -- 1880.  
The marriage license for Jacob and Priscilla is recorded in Page Co., VA records.

## L.D.S. Endowment Information:

Personal Records of Rose Burner in possession of Verlie R. Harmon, Palo Alto, CA.

## BAB I. D. Nos:

Jacob Franklin BURNER, 1-9-1-13  
Priscilla DOVEL, 1-9-1-13s

## Children:

|                  |             |  |
|------------------|-------------|--|
| Carroll,         | 1-9-1-13-1  |  |
| Viola Virginia,  | 1-9-1-13-2  | (Viola and Charles had 11 children)      |
| Frank Victor,    | 1-9-1-13-3  | (Frank and Mattie Maude had 14 children) |
| Jacob Junia,     | 1-9-1-13-4  |  |
| Nevada May,      | 1-9-1-13-5  |  |
| John,            | 1-9-1-13-6  |  |
| Charles,         | 1-9-1-13-7  |  |
| Grace Darling,   | 1-9-1-13-8  |  |
| Elizabeth,       | 1-9-1-13-9  |  |
| Hallie Bessie,   | 1-9-1-13-10 |  |
| Priscilla Janet, | 1-9-1-13-11 |  |

| Family Group Record — MRJN 129                                       |                                  |  |                                  |        |                    |       |
|--|----------------------------------|--|----------------------------------|--------|--------------------|-------|
| Husband: Frank Victor BURNER -609                                    |                                  |  |                                  |        |                    |       |
| Boa:   | 14 JUN 1868                      | Place:                                 | Alma, Page Co., VA               | Bap.:  | 9 APR 1868         |       |
| Chr.:  |                                  | Place:                                 |                                  | End.:  | 15 APR 1868        |       |
| Marr:  | 10 MAR 1892                      | Place:                                 | Elko, Elko Co., NV               | Slg S: | 13 APR 1901        |       |
| Died:  | 19 JUL 1959                      | Place:                                 | Elko, Elko Co., NV               | Slg P: |                    |       |
| Bur.:  | 22 JUL 1959                      | Place:                                 | Elko, Elko Co., NV               |        |                    |       |
| Father: Jacob Franklin BURNER -242      Mother: Priscilla DOVEL -243 |                                  |  |                                  |        |                    |       |
| Other Wives:   |                                  |  |                                  |        |                    |       |
| Wife: Martha Maude "Mattie" CLEMMONS -610                            |                                  |  |                                  |        |                    |       |
| Boa:   | 31 OCT 1874                      | Place:                                 | Marysville, Marion Co., OH       | Bap.:  | 9 APR 1901         |       |
| Chr.:  |                                  | Place:                                 |                                  | End.:  | 26 APR 1901        |       |
| Died:  | 14 APR 1955                      | Place:                                 | Elko, Elko Co., NV               | Slg S: |                    |       |
| Bur.:  |                                  | Place:                                 | Elko, Elko Co., NV               |        |                    |       |
| Father: Munson Lewis CLEMONS -717      Mother: Nancy Ellen BURK -718 |                                  |  |                                  |        |                    |       |
| Other Husbands:  |                                  |  |                                  |        |                    |       |
| Sex:   | Children                         | List each child (living or dead)       |                                  |        | LDS Ordinance Data |       |
| M/F  |                                  | in order of birth                      |                                  |        | for Children       |       |
| 1.   | Name: Victor Junia BURNER -591   | Spouse:                                |                                  |        |                    |       |
| M  | Boa:                             | 14 MAR 1893                            | Place: Lee, Elko Co., NV         | Bap.:  |                    | CHILD |
|  | Chr.:                            |  | Place:                           | End.:  |                    | CHILD |
|  | Marr:                            |  | Place:                           | Slg S: |                    |       |
|  | Died:                            | 23 MAY 1893                            | Place:                           | Slg P: | 13 APR 1961        |       |
| 2.   | Name: Carroll Harry BURNER -592  | Spouse: Rose (or Rosa) HUTCHINSON -593 |                                  |        |                    |       |
| M  | Boa:                             | 6 DEC 1894                             | Place: Elko, Elko Co., NV        | Bap.:  | 4 APR 1901         |       |
|  | Chr.:                            |  | Place:                           | End.:  | 19 MAR 1901        |       |
|  | Marr:                            | 25 APR 1923                            | Place: Elko, Elko Co., NV        | Slg S: | 19 MAR 1901        |       |
|  | Died:                            | 14 APR 1984                            | Place: Elko, Elko Co., NV        | Slg P: |                    |       |
| 3.   | Name: Bertha May BURNER -594     | Spouse: Earl Quinton PRUNTY -595       |                                  |        |                    |       |
| F  | Boa:                             | 12 NOV 1896                            | Place: Elko, Elko Co., NV        | Bap.:  |                    |       |
|  | Chr.:                            |  | Place:                           | End.:  |                    |       |
|  | Marr:                            | 6 JUN 1916                             | Place:                           | Slg S: |                    |       |
|  | Died:                            | 11 FEB 1972                            | Place: Elko, Elko Co., NV        | Slg P: |                    |       |
| 4.   | Name: Gracie BURNER -596         | Spouse:                                |                                  |        |                    |       |
| F  | Boa:                             | 3 AUG 1898                             | Place: Lamolite, Elko Co., NV    | Bap.:  |                    | CHILD |
|  | Chr.:                            |  | Place:                           | End.:  |                    | CHILD |
|  | Marr:                            |  | Place:                           | Slg S: |                    |       |
|  | Died:                            | 10 FEB 1901                            | Place: Lee, Elko Co., NV         | Slg P: | 13 APR 1961        |       |
| 5.   | Name: Ellen BURNER -597          | Spouse:                                |                                  |        |                    |       |
| F  | Boa:                             | 26 JUN 1900                            | Place: Lee, Elko Co., NV         | Bap.:  |                    | CHILD |
|  | Chr.:                            |  | Place:                           | End.:  |                    | CHILD |
|  | Marr:                            |  | Place:                           | Slg S: |                    |       |
|  | Died:                            | 24 FEB 1901                            | Place: Lee, Elko Co., NV         | Slg P: | 13 APR 1961        |       |
| 6.   | Name: Paul Dovel BURNER -598     | Spouse: Frances Esther KELLY -599      |                                  |        |                    |       |
| M  | Boa:                             | 4 MAR 1902                             | Place: Elko, Elko Co., NV        | Bap.:  |                    |       |
|  | Chr.:                            |  | Place:                           | End.:  |                    |       |
|  | Marr:                            | 7 SEP 1929                             | Place: Elko, Elko, NV            | Slg S: |                    |       |
|  | Died:                            | 9 JAN 1986                             | Place: Oakland, Alameda Co., CA  | Slg P: |                    |       |
| 7.   | Name: Louise BURNER -600         | Spouse:                                |                                  |        |                    |       |
| F  | Boa:                             | ABT DEC 1903                           | Place: Elko, Elko Co., NV        | Bap.:  |                    | CHILD |
|  | Chr.:                            |  | Place:                           | End.:  |                    | CHILD |
|  | Marr:                            |  | Place:                           | Slg S: |                    |       |
|  | Died:                            | 27 JUN 1904                            | Place: Elko, Elko Co., NV        | Slg P: | 13 APR 1961        |       |
| 8.   | Name: Jacob Munson BURNER -601   | Spouse: (2) Mary Ann BROWN -602        |                                  |        |                    |       |
| M  | Boa:                             | 9 FEB 1905                             | Place: Elko, Elko Co., NV        | Bap.:  |                    |       |
|  | Chr.:                            |  | Place:                           | End.:  |                    |       |
|  | Marr:                            | (div)                                  | Place:                           | Slg S: |                    |       |
|  | Died:                            | 20 JUN 1976                            | Place: Murray, Salt Lake Co., UT | Slg P: |                    |       |
| 9.   | Name: Lewis Afen BURNER -603     | Spouse:                                |                                  |        |                    |       |
| M  | Boa:                             | 3 JAN 1907                             | Place: Elko, Elko Co., NV        | Bap.:  |                    |       |
|  | Chr.:                            |  | Place:                           | End.:  |                    |       |
|  | Marr:                            |  | Place: (Never married)           | Slg S: |                    |       |
|  | Died:                            | 22 JUN 1988                            | Place: Elko, Elko Co., NV        | Slg P: |                    |       |
| 10.  | Name: Virginia Matie BURNER -604 | Spouse: Orr Brown JOHNS -605           |                                  |        |                    |       |
| F  | Boa:                             | 1 NOV 1909                             | Place: Elko, Elko Co., NV        | Bap.:  |                    |       |
|  | Chr.:                            |  | Place:                           | End.:  |                    |       |
|  | Marr:                            | 6 OCT 1928                             | Place: Elko, Elko Co., NV        | Slg S: |                    |       |
|  | Died:                            |  | Place:                           | Slg P: |                    |       |

## Family Group Record — MRIN 129

Page 2

| Victor BURNER -509           |   | Year of Birth: 1866                |  |
|------------------------------|---|------------------------------------|--|
| Maude "Mattie" CLEMMONS -510 |   | Year of Birth: 1874                |  |
| (continued)                  |   |                                    |  |
| Frank Averil BURNER -606     |   | Spouse: Gracie KUHN -607           |  |
| 9 JAN 1911                   | Place: Elko, Elko Co., NV               | Bap.:                              |  |
|                              | Place:                                  | End.:                              |  |
| 13 SEP 1952                  | Place: Elko, Elko Co., NV               | Sig. S.:                           |  |
| 6 JAN 1980                   | Place: Los Angeles, Los Angeles Co., CA | Sig. P.:                           |  |
| Lella Charloa BURNER -608    |   | Spouse: (1) Hyrum Earl ARGYLE -609 |  |
| 8 FEB 1913                   | Place: Leo, Elko Co., NV                | Bap.:                              |  |
|                              | Place:                                  | End.:                              |  |
| 30 JUL 1929                  | Place: Elko, Elko NV                    | Sig. S.:                           |  |
| 27 SEP 1976                  | Place:                                  | Sig. P.:                           |  |
| Priscilla Viola BURNER -610  |   | Spouse: Chester Harper REED -611   |  |
| 31 JAN 1915                  | Place:                                  | Bap.:                              |  |
|                              | Place:                                  | End.:                              |  |
| 28 MAR 1947                  | Place: Elko, Elko Co., NV               | Sig. S.:                           |  |
|                              | Place:                                  | Sig. P.:                           |  |
| John Jewell BURNER -612      |   | Spouse: Mary Frances AHERN -613    |  |
| 10 OCT 1918                  | Place: Leo, Elko Co., NV                | Bap.:                              |  |
|                              | Place:                                  | End.:                              |  |
| 5 DEC 1942                   | Place: Reno, Washoe Co., NV             | Sig. S.:                           |  |
|                              | Place:                                  | Sig. P.:                           |  |

## Notes for FRANK VICTOR BURNER - 509

- Source: Personal records of Rose Burner and Edith Burner Bogdon — in possession of Verlie R. Harmon.  
 Documentation: L.D.S. Endowment Information:  
 Personal Records of Rose Burner in possession of Verlie R. Harmon, Palo Alto, CA.  
 Occupation: Farmer, Rancher, Carpenter, Gardener, Teamster, Penman.
- Child, Victor Junia buried at Leo, Elko Co., Nevada
- Child, Gracie; #5, Ellen; and #7, Louise death dates obtained from Viola Virginia Burner Kleckner's Bible. \* Gracie and Ellen buried at Leo, Elko Co., Nevada. Louise is buried in Elko, Elko Co., Nevada.
- Child, Jacob Munson m. (1) Mary Ann Browa (Div.) - b. May 1906 in Riverside, Fresno Co., California. Her father: George Washington Brown; Mother: Minnie Mamie Bridges. A previous husband was Jack Jones (dissolution unknown). She was also married to Joseph Martin and they had 2 children: Ilene Lauretta Martin who m. Charles Guereza; and Joseph Stanley Martin.
- Child, Jacob Munson also married: (2) Ethel (?) - (Div.)  
 (3) Ethel's sister, Mary - (Div.)  
 (4) Merel Butterfield (about 1958)
- Child, Jacob Munson had no children. His death date — mortuary program (Jenkins-Soffee Mort., Murray, Utah) in possession of Verlie R. Harmon, Palo Alto, CA.
- Child, Paul Dovel has no children.
- Child, Lewie Allen - Obituary notice of in possession of Verlie R. Harmon.
- Child, Frank Averil spouse, Gracie Kuhn was previously married and she had one daughter. Frank has no children.
- Child, Lella Charloa m. (2) Melvin Gayman of Marianna, PA - 16 Dec 1951 in Elko, Elko Co., NV. They had no children.
- Child, Priscilla Viola has no children.
- According to the life history of Carroll Harry Burner, Child #4 and #5 were buried in a shallow, rocky grove at the Charles Kleckner ranch at Leo, Elko Co., NV.

SAB I. D. Not:  
 Frank Victor BURNER, 1-9-1-13-3  
 Martha "Mattie" Maude Clemmons, 1-9-1-13-3s

Children:

|                |              |                  |               |                  |               |
|----------------|--------------|------------------|---------------|------------------|---------------|
| Victor Junia,  | 1-9-1-13-3-1 | Paul Dovel,      | 1-9-1-13-3-6  | Frank Averil,    | 1-9-1-13-3-11 |
| Carroll Harry, | 1-9-1-13-3-2 | Louise,          | 1-9-1-13-3-7  | Lella Charloa,   | 1-9-1-13-3-12 |
| Martha May,    | 1-9-1-13-3-3 | Jacob Munson,    | 1-9-1-13-3-8  | Priscilla Viola, | 1-9-1-13-3-13 |
| Gracie,        | 1-9-1-13-3-4 | Lewie Allen,     | 1-9-1-13-3-9  | John Jewell,     | 1-9-1-13-3-14 |
| Ellen,         | 1-9-1-13-3-5 | Virginia Mattie, | 1-9-1-13-3-10 |                  |               |

THE BURNER ANCESTRAL FILE

## Family Group Record — MRIN 154

Page 1

| Husband: Carroll Harry BURNER -592   |             |  |  |
|--------------------------------------|-------------|--|--|
| Born:                                | 6 DEC 1894  | Place: Elko, Elko Co., NV  | Bap.: 4 APR 1926   |
| Chr.:                                |             | Place:   | End.: 19 MAR 1931 SL   |
| Marr:                                | 25 APR 1923 | Place: Elko, Elko Co., NV  | Slg S: 19 MAR 1931 SL  |
| Died:                                | 14 APR 1984 | Place: Elko, Elko Co., NV  | Slg P:   |
| Bur.:                                | 17 APR 1984 | Place: Elko, Elko Co., NV  |  |
| Father: Frank Victor BURNER -509     |             | Mother: Martha Maude "Mattie" CLEMMONS -510  |  |
| Other Wives:                         |             |  |  |
| Wife: Rose (or Rosa) HUTCHINSON -593 |             |  |  |
| Born:                                | 21 MAR 1904 | Place: Monroe, Sevier Co., UT  | Bap.: 3 AUG 1912   |
| Chr.:                                |             | Place:   | End.: 19 MAR 1931  |
| Died:                                | 27 SEP 1985 | Place: Elko, Elko Co., NV  | Slg P: BIC   |
| Bur.:                                | 1 OCT 1985  | Place: Elko, Elko Co., NV  |  |
| Father: Joseph HUTCHINSON -3842      |             | Mother: Mary Elizabeth MORTENSEN -3843   |  |
| Other Husbands:                      |             |  |  |
| Sex                                  | Children    | List each child (living or dead)<br>in order of birth  | LDS Ordinance Data<br>for Children   |
| M/F                                  |             |  |  |
| 1.                                   | F           | Name: Verlie Rose "Pat" BURNER -617<br>Born: 23 FEB 1924 Place: Elko, Elko Co., NV<br>Chr.: 6 JUL 1924 Place: Elko, Elko Co., NV<br>Marr: 28 DEC 1947 Place: Phoenix, Maricopa Co., AZ<br>Died:                  | Spouse: John Ray "Jack" HARMON -618<br>Bap.: 1 MAY 1932<br>End.: 31 JAN 1987 OK<br>Slg S:<br>Slg P: 19 MAR 1931 SL |
| 2.                                   | M           | Name: Carroll Lind "Bud" BURNER -619<br>Born: 18 DEC 1925 Place: Elko, Elko Co., NV<br>Chr.: Place:<br>Marr: Place:<br>Died: 29 JUL 1939 Place: Elko, Elko Co., NV   | Spouse:<br>Bap.: 7 JAN 1934<br>End.: 13 JUL 1942 SL<br>Slg S:<br>Slg P: 19 MAR 1931 SL                             |
| 3.                                   | F           | Name: (2) Dorothy May "Tooty" BURNER -620<br>Born: 19 NOV 1927 Place: Elko, Elko Co., NV<br>Chr.: 25 DEC 1927 Place: Elko, Elko Co., NV<br>Marr: 14 SEP 1946 Place: Reno, Washoe Co., NV<br>Died:                | Spouse: Vincil Henry HOWERTON -621<br>Bap.: 30 NOV 1935<br>End.:<br>Slg S:<br>Slg P: 19 MAR 1931 SL                |
| 4.                                   | M           | Name: Harry Herbert "Bink" BURNER -622<br>Born: 12 SEP 1929 Place: Elko, Elko Co., NV<br>Chr.: 20 OCT 1929 Place: Elko, Elko Co., NV<br>Marr: 27 MAR 1954 Place: Jerome, Jerome Co., ID<br>Died:                 | Spouse: Mary Alice WESTFALL -623<br>Bap.: 6 FEB 1938<br>End.:<br>Slg S:<br>Slg P: 19 MAR 1931 SL                   |
| 5.                                   | F           | Name: (2) Edith Mary "Kitty" BURNER -624<br>Born: 6 JAN 1932 Place: Elko, Elko Co., NV<br>Chr.: 6 MAR 1932 Place: Elko, Elko Co., NV<br>Marr: 23 OCT 1948 Place: Winnemucca, Humboldt Co., NV<br>Died:           | Spouse: Charles Frederick "Chuck" BOGDON -625<br>Bap.: 4 FEB 1940<br>End.:<br>Slg S:<br>Slg P: BIC                 |
| 6.                                   | M           | Name: Gerald Rodney "Jerry" BURNER -626<br>Born: 23 SEP 1933 Place: Elko, Elko Co., NV<br>Chr.: 5 NOV 1933 Place: Elko, Elko Co., NV<br>Marr: 17 MAR 1962 Place: Carson City, Carson Co., NV<br>Died:            | Spouse: Carole Rae FISHER -627<br>Bap.: 1 NOV 1941<br>End.:<br>Slg S:<br>Slg P: BIC                                |
| 7.                                   | F           | Name: (1) Genevieve "Tweety or Geni" BURNER -628<br>Born: 25 SEP 1935 Place: Elko, Elko Co., NV<br>Chr.: 3 NOV 1935 Place: Elko, Elko Co., NV<br>Marr: 24 MAR 1956(div) Place: Las Vegas, Clark Co., NV<br>Died: | Spouse: Barry Carl YOUNG -629<br>Bap.: 2 JAN 1944<br>End.:<br>Slg S:<br>Slg P: BIC                                 |
| 8.                                   | M           | Name: Victor Joseph BURNER -630<br>Born: 3 DEC 1937 Place: Elko, Elko Co., NV<br>Chr.: 6 FEB 1938 Place: Elko, Elko Co., NV<br>Marr: 13 JUN 1964(div) Place: Madison, Dane, WI<br>Died:                          | Spouse: Mary Margaret HERMAN -631<br>Bap.: 12 JAN 1946<br>End.: 9 SEP 1958 SL<br>Slg S:<br>Slg P: BIC              |

|   |                 |  |                             | Page 2              |                |
|---|-----------------|--|-----------------------------|---------------------|----------------|
| Husband: Carroll Harry BURNER -592      |                 |  |                             | Year of Birth: 1894 |                |
| Wife: Rose (or Rosa) HUTCHINSON -593    |                 |  |                             | Year of Birth: 1904 |                |
| Children (continued)                    |                 |  |                             | LDS Ordinance Data  |                |
| Name: George Marshall BURNER -632       |                 | Spouse:                                  |                             |                     |                |
| Born:                                   | 22 APR 1940     | Place:                                   | Elko, Elko Co., NV          | Bap.:               | 1 MAY 1948     |
| Chr.:                                   |                 | Place:                                   |                             | End.:               |                |
| Marr.:                                  |                 | Place:                                   | (Never married)             | Slg S.:             |                |
| Died:                                   | 12 JUL 1987     | Place:                                   | Elko, Elko Co., NV          | Slg P.:             | BIC            |
| Name: David Travis "Ted" BURNER -633    |                 | Spouse: Cheryl Lynn BASTIEN -634         |                             |                     |                |
| Born:                                   | 3 SEP 1942      | Place:                                   | Elko, Elko Co., NV          | Bap.:               | 4 NOV 1950     |
| Chr.:                                   |                 | Place:                                   |                             | End.:               |                |
| Marr.:                                  | 26 AUG 1962     | Place:                                   | Elko, Elko Co., NV          | Slg S.:             |                |
| Died:                                   |                 | Place:                                   |                             | Slg P.:             | BIC            |
| Name: Robert Russell "Buzz" BURNER -635 |                 | Spouse: (1) Debra Vickie HUDSON -636     |                             |                     |                |
| Born:                                   | 24 OCT 1944     | Place:                                   | Elko, Elko Co., NV          | Bap.:               | 1 NOV 1952     |
| Chr.:                                   |                 | Place:                                   |                             | End.:               |                |
| Marr.:                                  | 3 JUL 1965(dlv) | Place:                                   | Lake Tahoe, , CA            | Slg S.:             |                |
| Died:                                   |                 | Place:                                   |                             | Slg P.:             | BIC            |
| Name: (3) Donna Lorraine BURNER -638    |                 | Spouse: John Leslie SHREWSBURY -639      |                             |                     |                |
| Born:                                   | 30 DEC 1946     | Place:                                   | Elko, Elko Co., NV          | Bap.:               | 2 JAN 1954     |
| Chr.:                                   |                 | Place:                                   |                             | End.:               | 27 APR 1970 SL |
| Marr.:                                  | 19 OCT 1965     | Place:                                   | Elko, Elko Co., NV          | Slg S.:             |                |
| Died:                                   | 13 OCT 1968     | Place:                                   | Olympia, Thurston Co., WA   | Slg P.:             | BIC            |
| Name: Harold Glenn "Bucky" BURNER -640  |                 | Spouse: Sandra "Sandy" Diane MILLER -641 |                             |                     |                |
| Born:                                   | 13 MAR 1949     | Place:                                   | Elko, Elko Co., NV          | Bap.:               | 6 APR 1957     |
| Chr.:                                   |                 | Place:                                   |                             | End.:               | 1 OCT 1974 OK  |
| Marr.:                                  | 29 AUG 1970     | Place:                                   | Alamo, Contra Costa Co., CA | Slg S.:             | 1 OCT 1974 OK  |
| Died:                                   |                 | Place:                                   |                             | Slg P.:             | BIC            |

## Notes for Carroll Harry BURNER - 592

Data source: Personal records of Verlie R. (Burner) Harmon — 1990

Documentation:

L.D.S. Endowment Information: Personal records of Rose Burner

Carroll Harry Burner was born in Elko, Nevada but grew up in Lee, Nevada, just a few miles west of Elko on a ranch established by his father, Frank Victor. Carroll worked on ranches during his youth but as the "motor age" began, his interest in trucking took hold and eventually became his life's work.

He served with the Army's 104th Ammunition Train Division in France, and upon returning to the United States, invested in property and trucks to further his career. He married Rose Hutchinson in 1923 and together, they bore and raised thirteen children, all of whom are distinguished in their own right.

Both he and Rose were well-respected members of their community serving in both civic and church affairs throughout their lives. Rose was born into The Church of Jesus Christ of Latter-day Saints, and Carroll joined the Church following their fourth child at which time they were sealed in the Salt Lake Temple.

#2 child, Carroll Lind died from Meckel's Diverticulum at age 14.

#9 child, George Marshall died of cancer at age 47. He never married.

#12 child, Donna Lorraine died of a rare blood disease (PNH) in 1968.

CHB I. D. Nos:

CARROLL HARRY BURNER, 1

Rose (Rosa) HUTCHINSON, 1s

Children:

|                       |     |                        |     |                        |      |
|-----------------------|-----|------------------------|-----|------------------------|------|
| Verlie Rose "Pat",    | 1-1 | Edith Mary "Kitty",    | 1-5 | George Marshall,       | 1-9  |
| Carroll Lind "Bud",   | 1-2 | Gerald Rodney "Gerry", | 1-6 | David Travis "Ted",    | 1-10 |
| Dorothy May "Tooty",  | 1-3 | Genevieve "Tweety",    | 1-7 | Robert Russell "Buzz", | 1-11 |
| Harry Herbert "Bink", | 1-4 | Victor Joseph,         | 1-8 | Donna Lorraine,        | 1-12 |
|                       |     |                        |     | Harold Glenn "Bucky",  | 1-13 |

BURNER-3

# Lewie Burner dies at age 81 at hospital

Lewie A. Burner, a native of Elko, died this morning at Elko General Hospital at age 81.

He was born Jan. 7, 1907, to Mattie Clemens and Frank Victor Burner.

He attended Elko schools and was a veteran of service with the Army in Germany in World War II. He had worked as a rancher, painter and prospector and had been retired for the past 20 years.

Survivors include two sisters, Virginia Johns of Lamoille and Priscilla Reed of Elko; a brother, John J. Burner of San Jose, Calif.; and several nephews and nieces.

Funeral services will be conducted at 2 p.m. Friday at Burns Funeral Chapel. The Rev. Sharon Smith of the First Presbyterian Church will officiate. The services will include military honors.

Private interment is planned in the Garden of Prayer, Burns Memorial Gardens.

22 June 1988 Wed

BURNER LEWIE A. WED. 22 JUNE 1988  
CIVILIAN BURIAL

Buavia-4

ELKO COUNTY—Continued.

| Name of owner   | Age | Sex | Color | Description | Profession, occupation, or trade of each person, male or female. | Value of Real Estate Owned |                          | Price of birth, marriage, State of country, if of foreign birth. | Parent's age | Father of foreign birth | If imported within the year state month (January, February, etc.) If born within the year, state month (January, February, etc.) | If born within the year, state month (January, February, etc.) | Allocated within this year | Election | County | State |
|-----------------|-----|-----|-------|-------------|--|----------------------------|--------------------------|--|--------------|-------------------------|--|--|----------------------------|----------|--------|-------|
|                 |     |     |       |             |  | Value of real estate       | Value of personal estate |  |              |                         |  |  |                            |          |        |       |
| J. Hoffman      | 27  | M   | W     | Baker       |  |                            |                          |  |              | Germany                 | 1  | 1  |                            |          |        |       |
| E. De Young     | 53  | M   |       | Merchant    |  |                            |                          |  |              | Pennsylvania            |  |  |                            |          |        |       |
| A. K. Smith     | 46  | M   |       | Clerk       |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| A. Foster       | 46  | M   |       | Saloon      |  |                            |                          |  |              | Indiana                 |  |  |                            |          |        |       |
| H. Kuhn         | 23  | M   |       | Merchant    |  |                            |                          |  |              | Germany                 | 1  | 1  |                            |          |        |       |
| P. Keating      | 32  | M   |       | Laborer     |  |                            |                          |  |              | Ireland                 | 1  | 1  |                            |          |        |       |
| J. Keating      | 32  | M   |       | Laborer     |  |                            |                          |  |              | Ireland                 | 1  | 1  |                            |          |        |       |
| J. Newfield     | 19  | M   |       |             |  |                            |                          |  |              | England                 | 1  | 1  |                            |          |        |       |
| J. Clark        | 48  | M   |       | Hotel       |  |                            |                          |  |              | Pennsylvania            |  |  |                            |          |        |       |
| R. A. Clark     | 34  | M   |       | Hotel       |  |                            |                          |  |              | Vermont                 |  |  |                            |          |        |       |
| H. C. Vaughn    | 29  | M   |       | Blacksmith  |  |                            |                          |  |              | Oregon                  |  |  |                            |          |        |       |
| M. V. Halby     | 34  | M   |       | Miner       |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| M. G. Sexton    | 32  | M   |       | Wagon maker |  |                            |                          |  |              | Canada                  |  |  |                            |          |        |       |
| J. E. Henderson | 39  | M   |       | Blacksmith  |  |                            |                          |  |              | New York                |  |  |                            |          |        |       |
| M. W. Parsons   | 49  | M   |       | Dentist     |  |                            |                          |  |              | Pennsylvania            |  |  |                            |          |        |       |
| J. H. Taylor    | 42  | M   |       | Rancher     |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| F. K. Davis     | 39  | M   |       | Steward     |  |                            |                          |  |              | England                 | 1  | 1  |                            |          |        |       |
| J. Moberg       | 34  | M   |       | Saloon      |  |                            |                          |  |              | Switzerland             | 1  | 1  |                            |          |        |       |
| W. Hildge       | 30  | M   |       | Miner       |  |                            |                          |  |              | Switzerland             | 1  | 1  |                            |          |        |       |
| L. Thilge       | 23  | M   |       | Miner       |  |                            |                          |  |              | Switzerland             | 1  | 1  |                            |          |        |       |
| G. Pruehl       | 43  | M   |       | Miner       |  |                            |                          |  |              | Switzerland             | 1  | 1  |                            |          |        |       |
| M. H. Lewis     | 40  | F   |       |             |  |                            |                          |  |              | Kentucky                |  |  |                            |          |        |       |
| H. C. Lewis     | 39  | M   |       |             |  |                            |                          |  |              | Kentucky                |  |  |                            |          |        |       |
| M. M. Lewis     | 35  | M   |       |             |  |                            |                          |  |              | Missouri                |  |  |                            |          |        |       |
| R. A. Lewis     | 32  | M   |       | Student     |  |                            |                          |  |              | Missouri                |  |  |                            |          |        |       |
| R. E. Fooks     | 32  | M   |       | Lawyer      |  |                            |                          |  |              | Mississippi             |  |  |                            |          |        |       |
| P. Wood         | 45  | M   |       | Laborer     |  |                            |                          |  |              | New York                |  |  |                            |          |        |       |
| T. J. LeFurney  | 29  | M   |       | Druggist    |  |                            |                          |  |              | Canada                  | 1  | 1  |                            |          |        |       |
| L. A. McBurney  | 23  | M   |       |             |  |                            |                          |  |              | Kentucky                |  |  |                            |          |        |       |
| F. Ferguson     | 23  | M   |       | Teamster    |  |                            |                          |  |              | Denmark                 | 1  | 1  |                            |          |        |       |
| F. Minner       | 34  | M   |       | Teamster    |  |                            |                          |  |              | Pennsylvania            |  |  |                            |          |        |       |
| R. G. Hadsch    | 34  | M   |       | Teamster    |  |                            |                          |  |              | New York                |  |  |                            |          |        |       |
| W. Hiss         | 22  | M   |       | Teamster    |  |                            |                          |  |              | Utah                    |  |  |                            |          |        |       |
| W. H. Andrews   | 61  | M   |       | Miner       |  |                            |                          |  |              | New York                |  |  |                            |          |        |       |
| A. H. Cole      | 24  | M   |       | Teamster    |  |                            |                          |  |              | Kentucky                |  |  |                            |          |        |       |
| F. Hollbrook    | 39  | M   |       | Wagon maker |  |                            |                          |  |              | Ohio                    |  |  |                            |          |        |       |
| J. Davis        | 35  | M   |       | Drayman     |  |                            |                          |  |              | England                 | 1  | 1  |                            |          |        |       |
| G. Duxler       | 43  | M   |       | Laborer     |  |                            |                          |  |              | England                 | 1  | 1  |                            |          |        |       |
| C. Stewart      | 34  | M   |       | Laborer     |  |                            |                          |  |              | Iowa                    |  |  |                            |          |        |       |
| J. Simpson      | 30  | M   |       | Drayman     |  |                            |                          |  |              | England                 | 1  | 1  |                            |          |        |       |
| L. Mosser       | 24  | M   |       | Clerk       |  |                            |                          |  |              | Ireland                 |  |  |                            |          |        |       |
| J. N. Mason     | 20  | M   |       | Clerk       |  |                            |                          |  |              | Michigan                |  |  |                            |          |        |       |
| J. L. Keyser    | 26  | M   |       | Clerk       |  |                            |                          |  |              | Missouri                |  |  |                            |          |        |       |
| M. A. Helt      | 32  | M   |       | Laundress   |  |                            |                          |  |              | Michigan                |  |  |                            |          |        |       |
| K. J. Helt      | 29  | M   |       | Laundress   |  |                            |                          |  |              | Michigan                |  |  |                            |          |        |       |
| J. P. Gray      | 35  | M   |       | Laundress   |  |                            |                          |  |              | Ohio                    |  |  |                            |          |        |       |
| W. Garard       | 63  | M   |       | Miner       |  |                            |                          |  |              | Kentucky                |  |  |                            |          |        |       |
| M. R. Garard    | 50  | M   |       | Miner       |  |                            |                          |  |              | Kentucky                |  |  |                            |          |        |       |
| T. Garard       | 28  | M   |       | Miner       |  |                            |                          |  |              | Kentucky                |  |  |                            |          |        |       |
| D. Garard       | 18  | M   |       | Miner       |  |                            |                          |  |              | California              |  |  |                            |          |        |       |
| K. Garard       | 11  | M   |       | Miner       |  |                            |                          |  |              | California              |  |  |                            |          |        |       |
| J. F. Burner    | 24  | M   |       | Miner       |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| P. Burner       | 23  | M   |       | Miner       |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| V. D. Burner    | 6   | M   |       | Miner       |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| F. V. Burner    | 5   | M   |       | Miner       |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| J. J. Burner    | 4   | M   |       | Miner       |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| N. M. Burner    | 1   | M   |       | Miner       |  |                            |                          |  |              | Nevada                  |  |  |                            |          |        |       |
| J. Burner       | 1   | M   |       | Miner       |  |                            |                          |  |              | Nevada                  |  |  |                            |          |        |       |
| M. A. Banks     | 37  | M   |       | Drassmaker  |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| J. Hoss         | 14  | M   |       | Drassmaker  |  |                            |                          |  |              | Virginia                |  |  |                            |          |        |       |
| G. M. Banks     | 41  | M   |       | Police      |  |                            |                          |  |              | California              |  |  |                            |          |        |       |
| J. English      | 29  | M   |       | Teamster    |  |                            |                          |  |              | Indiana                 |  |  |                            |          |        |       |
| C. Hall         | 25  | M   |       | Teamster    |  |                            |                          |  |              | Indiana                 |  |  |                            |          |        |       |
| L. Ford         | 20  | M   |       | Teamster    |  |                            |                          |  |              | Indiana                 |  |  |                            |          |        |       |





United States come two beauty. The 22-year-old fashion model is more than "Miss Late Show." She's She's from Melbourne, Victoria.

**THE WEATHER**  
By the United States  
Weather Bureau

For north and central Nevada:  
Except for scattered afternoon  
and evening thunderstorms, mostly  
fair tonight and Tuesday.  
Low 50-60, highs 90-100.  
Five-day Outlook: No precipi-  
tation except scattered thunder-  
storms at times. Temperatures  
above normal. Elko normal, max.  
92, min. 50.

|                | Max. | Min. | popn. |
|----------------|------|------|-------|
| Boise          | 97   | 64   |       |
| Elko           | 95   | 61   | T     |
| Fly            | 92   | 55   |       |
| Las Vegas      | 110  | 82   |       |
| Reno           | 102  | 59   |       |
| San Francisco  | 69   | 54   |       |
| Salt Lake City | 98   | 65   |       |
| Wapovuteca     | 95   | 56   |       |

There are more than 200 lakes  
two miles or more above sea lev-  
el in Colorado's Grand Mesa, near  
Grand Junction.

**HERNIA**  
hurting your game?  
Get an OIC Truss



**QUINN**  
Drug Company  
415 Idaho St.

**Elko County Pioneer Dies Sunday**

(Continued from Page 1)  
to join Elijah Burner, brother of  
Jacob Burner, and owner of  
many acres of land along the  
Humboldt River.

Elijah owned what is known as  
Burner Basin about 6 miles east  
of Elko on the south side of the  
Humboldt River when he raised  
considerable cattle.

Mr. Burner's father Jacob was  
an artist and taught penman-  
ship. It was from him that Mr.  
Burner learned to paint. He has  
done a number of pencil draw-  
ings and several paintings, some  
of which have been entered in  
the Elko County Fair.

When he grew into manhood,  
Mr. Burner became a carpenter  
and a lover of the outdoors. He  
loved to landscape and became  
interested in a nursery business.  
One of his early landscaping ef-  
forts was the planting of the  
lawn at the Elko county court  
house.

In addition to his carpentry  
skill and knack for landscaping,  
Mr. Burner also had a flair for  
inventing. He had a patent on a  
gate invention, and also invented  
the first hay press and baler.

During the mining boom days  
in Elko county, Mr. Burner was  
a teamster working in the min-  
ing towns of Tuscarora, Cornu-  
copia, and Midas as well as oth-  
ers.

It was in 1892 that he married  
Mattie Maude Clemons and set-  
tled down at Lee. He later bought  
a ranch near Elko known as the  
McKennon ranch which he sold  
a short time later and bought  
a ranch at Lee.

AT LEE, Victor and Mattie  
Burner raised their family. In

later years they moved to Reno  
where he began to travel to a  
certain extent to visit brothers  
and sisters in Los Angeles and  
San Francisco, Calif.

Mrs. Burner passed away on  
April 14 of 1955 after helping  
him raise ten children. They have  
20 grandchildren and 22 great-  
children.

Mr. Burner was an active mem-  
ber of the First Presbyterian  
Church of Elko and recently was  
honored with a life membership  
as an elder of the church. He  
joined the church in 1893.

**Western Railroads  
Given Go Ahead  
On Fare Hikes**

WASHINGTON, July 20 (UPI)—  
The Interstate Commerce Com-  
mission today authorized 16 rail-  
roads to increase their interstate  
coach fares by 5 per cent on se-  
lected routes in the west.

The ICC said the increases now  
may be made on one day's no-  
tice. The 5 per cent coach fare  
boost also were authorized for  
intra-state coach fares in Iowa  
and Arkansas where such fares  
are not subject to state regula-  
tion.

THE AUTHORIZATION ap-  
plies to both one-way and round-  
trip fares.

The railroads affected are the  
Santa Fe Southern Pacific, Rock  
Island, St. Louis Southwestern, Il-  
linois Central, The Missouri Kan-  
sas-Texas, Northwestern Pacific,  
Western Pacific, the San Diego  
& Arizona Eastern and the Tex-  
as-New Orleans.



Tuesday, July 21  
**Commercial Hotel**

Honors  
**George Rippon**  
338 Maple Street

Guest Businessman of the Day  
Employee—Purity Dairy

EFP 7/20/1959 WAE 12/10/97

Mrs. CHENOWETH-HAGE. And is there anything else that you used in your testimony that you would like to see entered into the record? Everything you had there at the witness table, is it in your addendum?

Mr. PRICE. Yes. And this report that you have is basically a copy of my testimony with the exhibits that substantiate the observations; plus the appendix which I hope you will have time to visit some day that talks about the experiences I have had in these other cases.

Mrs. CHENOWETH-HAGE. Very interesting.

Mr. Gibbons, do you have any further questions?

Mr. GIBBONS. Madam Chairman, I have just one for Mr. Bedford, if I could.

Mr. Bedford, we hear a lot of reliance on the October 21, 1976 enactment of FLPMA, Federal Land Policy Management Act. What effect did that act have on RS 2477 roads?

Mr. BEDFORD. It had no effect in that the act specifically protected the RS 2477 roads as they existed as of October 21, 1976. Specifically, the congressional intent is very clear. The intent is with respect to those roads or rights-of-way that had already gained recognition under 2477, that those would be protected and are not subject to FLPMA.

Mr. GIBBONS. Has there been any other congressional or legislative act passed by Congress which would have superseded RS 2477 rights-of-way?

Mr. BEDFORD. Well, FLPMA itself abolished 2477, but everything that had already been established before that was protected.

Mr. GIBBONS. But since that time there has been no Federal act, no Federal legislation that has superseded these rights-of-way that were in existence prior to October 21, 1976?

Mr. BEDFORD. They are still protected.

Mr. GIBBONS. Still protected. That's all I have, Madam Chairman.

Mrs. CHENOWETH-HAGE. Now you prompted a question from me. Mr. Bedford, FLPMA is generally considered to be a law that applies to the Interior. Therefore, you were referencing FLPMA. Does that apply to roads on Forest Service land also?

Mr. BEDFORD. Yes, it applies to both.

Mrs. CHENOWETH-HAGE. So the 1976 date then, the date that FLPMA was enacted, is a date that roads that were constructed up to 1976 should be recognized under RS 2477?

Mr. BEDFORD. Roads constructed prior to that date, assuming that they were constructed across unreserved Federal lands.

Mrs. CHENOWETH-HAGE. And had—OK, and had been asserted by the county under their ownership?

Mr. BEDFORD. By the county, by the State. I mean, the state has plenty of highways, too, across Federal lands.

Mrs. CHENOWETH-HAGE. Mr. Bedford, I just have to tell you, there is another law that we enacted in the 105th Congress where I was a cosponsor of it and where we reasserted our rights under RS 2477. That was one of the first things we did for the 104th Congress. So I was real happy with that.

I do want to thank these witnesses for your fine testimony. It was interesting, colorful, informative, and I thank you very much.

Now I would like to introduce our second panel. Our next panel will consist of Ms. Kristin McQueary, Deputy District Attorney of Elko County; Mr. Anthony Lesperance, Chairman of the Elko County Commission; Mr. John Carpenter, Assemblyman, District 33, Nevada Assembly; and Mr. Charles Nannini, Elko County Commissioner.

**STATEMENT OF MS. KRISTIN MCQUEARY, DEPUTY DISTRICT ATTORNEY, ELKO COUNTY; MR. ANTHONY LESPERANCE, CHAIRMAN, ELKO COUNTY COMMISSION; MR. JOHN CARPENTER, ASSEMBLYMAN, DISTRICT 33, NEVADA ASSEMBLY; AND MR. CHARLES NANNINI, ELKO COUNTY COMMISSIONER**

Mrs. CHENOWETH-HAGE. I want to welcome our witnesses and explain, as with the first panel, it is the intention of the Chair to place all witnesses under the oath. I believe that you received a copy of our committee rules involving this procedure. So if you would please stand and raise your hand to the square.

[witnesses sworn.]

Mrs. CHENOWETH-HAGE. Thank you. The Chair recognizes Ms. McQueary for her testimony.

**STATEMENT OF KRISTIN MCQUEARY**

Ms. MCQUEARY. Thank you, Madam Chairman and Congressman Gibbons. I'm an Elko County deputy district attorney.

Mrs. CHENOWETH-HAGE. She's my kind of girl. Just go ahead and take that mike off. It's giving everybody a bad time. Take it off the stand.

Ms. MCQUEARY. Can you hear me now?

Mrs. CHENOWETH-HAGE. Yes.

Ms. MCQUEARY. I'm an Elko County district attorney. I have represented Elko County on the Jarbidge South Canyon issue for more than a year. Elko County is deeply appreciative of this opportunity to talk to you about what is going on out here.

From my perspective, the Forest Service has lost the trust of the people of Elko County. If the real issue were the bull trout, the county and the Forest Service could work out an agreement protecting all interests. It seems that the real interest is reducing access to public land.

There are three reasons why I feel this way: one, the Federal Government has not kept its promise to fix the road; two, the bull trout, if you look at the issue, are red herrings used to divert attention away from reducing public access; and, three, the Forest Service administrative process is simply unfair.

What is so frustrating is that the Forest Service promised Elko County that it would repair the road after the devastating 1995 flood. The county and the Forest Service had worked together on the Jack Creek Road project for the benefit of the bull trout. The county and the Forest Service had worked together on the Lamoille Campground restoration after its 1995 flood. The county, based upon that history, had no reason to doubt the Forest Service promises in 1995, 1996, and 1997 that it was going to fix the road.

The county believed the Forest Service because the Forest Service documents right here showed what the county already knows, that the road and the bull trout can peacefully coexist. A Forest

Service study indicates that economically the preferred alternative for the tiny town of Jarbidge is to fix the road. The Forest Service applied for and received ERFO funds to fix the road.

The Forest Service has estimated that to fix the whole 1.5 mile section of the road would cost \$462,000. The Forest Service spent an estimated \$420,000 in its so-called repair of the road on the area that the county was never allowed to finish. That stretch of the road was only 900 to 1,000 feet long.

The Forest Service spent not only the \$420,000; it has spent the money for the original engineering and survey, the Environmental Assessments, the economic surveys, the biological surveys. The Federal Government has spent money on listing the bull trout as threatened, spent money on the litigation proposed against Elko County. It has spent money on the Carpenter lawsuit, to which a Federal judge has joined Elko County.

The Federal Government has spent money on salaries of the assistant U.S. Attorneys that have been assigned the task of punishing Elko County for daring to assert its right to its road. Now Congress has to spend the money to hold this hearing, which could have been avoided if the Forest Service had kept its promises in the first place.

Elko County has spent money for experts and expenses for field trips to Jarbidge to explain the situation to everyone who would care to listen. We spent money for trips to Reno to talk to the U.S. Attorney's office. And we have spent much money and staff salaries with attorney time, engineer time, surveyor time, road supervisor time, county manager time, clerical time, and of course the time of our county commissioners.

For all the money spent arguing over this road, the road could have been fixed to a standard to protect even the most sensitive bull trout. Ironically enough, the county originally agreed to the Forest Service fixing the road to save county taxpayers money.

The bull trout are really red herrings. If they were the real issue, the Forest Service would fix the sections of the road where the river has captured the roadway and is now eroding the hillside. If the Forest Service report says that water temperatures would be better if the river were put back in its pre-1995 channel, if the bull trout has survived the sheep, the mining boom, the damming of the Snake River, if the bull trout survived the 1995 flood, the road's impact is truly negligible.

The real issue is cutting off public access to public property. About 1987 when the Jarbidge Wilderness Area was created, the South Canyon Road went even farther up the canyon at least to Perkins Cabin. The Forest Service closed the road down to the Snowslide Trailhead. Now the road is closed from the Snowslide Trailhead down to the Pine Creek Campground. We wonder, what is next? The road into downtown Jarbidge?

The third point is that the Forest Service administrative process is simply unfair. The problem is striking a rational balance between environmental concerns for the forest and the economic and social impact of those resulting decisions. Traditionally, those disputes have been addressed within the administrative process of the public land management agencies.

Unfortunately, as you can see by the statements from Gloria Flora and others, the agency is staffed by people with their own radical environmental agendas. The process of resolving disputes between administrative hearings presupposes impartiality by the agencies. As you can see, there has been no impartiality by Ms. Flora's statements. The cards are unfairly stacked against anyone who finds himself fighting an agency decision. The decision is almost final before the fight begins.

Somehow the process to challenge an agency decision has to be removed from being decided by the very people who make the decision in the first place. Somehow the standard of review in a judicial review has to be changed from showing that the agency has been arbitrary and capricious, which means totally unreasonable, to simply showing that the agency is probably wrong.

And that is the heart of the problem. There is no place to go for fair resolutions of disputes of these sorts, and certainly not any agency whose stated position is in opposition to Elko County's. In this dispute, the Federal Government lawyers have not reciprocated in giving this county evidence supporting the Forest Service's view that the South Canyon Road is not a public road. The government's proper role is to be an advocate for open and fair discussions of issues, not by playing its cards close to the vest.

The Forest Service has lost the trust of Elko County by not keeping its promises, by using red herrings, and by demonstrating that the administrative process is unfair to us. Thank you.

Mrs. CHENOWETH-HAGE. Thank you, Ms. McQueary.

[The prepared statement of Ms. McQueary follows:]



United States  
Department of  
Agriculture

Forest  
Service

Intermountain  
Region

324 25th Street  
Ogden, UT 84401-2310

File Code: 6270-1  
FOIA R4 687-99

Date: FEB 23 1999

Ms. Kristin A. McQueary  
Chief Civil Deputy District Attorney  
575 Court Street  
Elko, Nevada 89801

Dear Ms. McQueary:

On January 25, we received a copy of your December 21, 1998 Freedom of Information Act (FOIA) request from the Humboldt-Toiyabe National Forests (NF). Specifically, you requested "all documents, files, reports, and correspondence to and from, or involving, or regarding, the Jarbridge Ranger Station or the Mahoney Cabin."

We have enclosed 69 pages on which some information has not been disclosed under Exemption 3 of the FOIA. The Archaeological Resources Protection Act of 1979 provides that "information concerning the nature and location of any archaeological resource . . . may not be made available to the public under Subchapter II of Chapter 5 of Title 5 or under any other provision of Federal law unless the Federal Land Manager concerned determines that such disclosure would" . . . (1) Further the purposes of the Archaeological Resource Protection Act; (2) Not create a risk of harm to such resources or to the site of which the resources are located. The Federal Land Manager has not made the determination that release of site-specific information contained in the Cultural Resource Report for Elko County meets the criteria. Because the ARPA prohibits such release under these circumstances, that information has been deleted from the enclosed documents.

You will also note that within the 69 pages of the enclosed documents some information was not disclosed, specifically in the authorization column. The information in the authorization column is in a Privacy Act System of Records and disclosure of personal information requires prior written consent from the parties whose names and other personal information appear in the enclosed documents. As a result, your request must be considered under FOIA Exemption 6.

Under Exemption 6 of the FOIA, personal privacy interests must be weighed very carefully against any countervailing public interest in disclosure. Striking this careful balance, in order to ensure proper privacy protection while serving the goal of maximum responsible disclosure, is a vital part of administering FOIA requests. Exemption 6 of the FOIA provides for the protection of personal privacy interests when disclosure would constitute an invasion of privacy. The criteria we apply when considering invoking this exemption includes:

- Is the document identifiable to a specific individual;
- A balancing of the privacy rights of the individual against the public interest; and



McQueary

2

- Does it shed light on the Forest Service's performance of its statutory duties.

One of the basic purposes of the FOIA is to ensure that official information that sheds light on an agency's performance of its statutory duties is made available to the public.

In balancing the privacy rights of individuals against the public interest, we believe the release of their names and other personal information would constitute an invasion of personal privacy. Furthermore, we do not believe that the release of this information sheds light on the Forest Service's performance of its statutory duties. Therefore, we have deleted this information from the enclosed documents as provided for in Exemption 6.

Because a portion of your request has been denied, the Freedom of Information Act provides you the right to appeal our decision. If you choose to exercise that right, your appeal must be made in writing within 45 days of the date of this letter, to the Chief of the Forest Service. That address is PO Box 96090, Washington, DC 20090-6090. Please write "FOIA APPEAL" on the front of the envelope.

The Forest Service is happy to announce that our manuals and handbooks are now on-line at [www.fs.fed.us/im/directives/](http://www.fs.fed.us/im/directives/). The implementation of the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA"), Pub. L. No. 104-231, involves the development and use of agency World Wide Web site for FOIA purposes including FOIA "homepages" maintained by federal agencies and major agency components.

If you have any questions please contact our Regional FOIA Officer Shirley McDonald at 801/625-5537.

Sincerely,

  
JACK A. BLACKWELL  
Regional Forester

Enclosure

**ELKO COUNTY DISTRICT ATTORNEY**

**MARY D. WOODBURY**  
District Attorney

**JOHN S. MCGIMSEY**  
Chief Criminal Deputy

**KRISTIN A. MCQUEARY**  
Chief Civil Deputy

**ROBERT J. LOVE**  
**LAURA LOUISE GRANT**  
**KAY MARION MACI II**  
**ALVIN R. KACIN**  
Deputy District Attorneys

**NOVEMBER 13, 1999**  
**SUBMITTED FOR THE RECORD**

**HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH**  
**UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES**  
**THE HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN**

**STATEMENT SUBMITTED BY: Kristin A. McQueary**  
**Deputy District Attorney**  
**Elko County, State of Nevada**

November 13, 1999

House Resources Subcommittee on Forests and Forest Health

Madam Chairman, Honorable Members:

I am an Elko County Deputy District Attorney and I represent the County on this issue. Elko County is deeply appreciative of the opportunity to let the Congress know what is happening here.

From my perspective, the Forest Service has lost the trust of the people of Elko County. If the real issue were the bull trout the County and the Forest Service could work out an agreement protecting all interests. But it seems that the real issue reducing access to public lands.

There are three reasons why the Forest Service has lost the people's trust here:

1. The federal government won't keep its promise to fix the road.
2. The bull trout are really red herring, used to divert attention from reduced access.
3. The Forest Service administrative process is unfair.

What is frustrating is that the Forest Service promised Elko County that it would fix the South Canyon Road after the devastating 1995 flood. The County and the Forest Service had worked together on the Jack Creek Bridge project for the benefit of the bull trout. The County and the Forest Service had worked together to fix the campgrounds in Lamoille Canyon after its 1995 flood. The County, based on that history, had no reason to doubt the Forest Service's promises in 1995, 1996, and 1997 that it was going to fix the road.

The County believed the Forest Service because the Forest Service documents showed what the County already knew: that the road and the fish could peacefully co-exist. A Forest Service study indicates that economically, the preferred alternative for the tiny town of Jarbidge is to fix the road. The Forest Service applied for and received for ERFO funds to fix the road.

The Forest Service estimated to fix the whole 1.5 mile road would cost \$462,000. The Forest Service spent an estimated \$417,000 in its so-called repair of the work that the County was never allowed to finish. That stretch of the road was only about 900 to 1,000 feet long.

The Forest Service has not only spent the \$417,000, it has spent money for the original engineering and surveying, the environmental assessments, the economic survey, the biological surveys. The federal government has spent money on the listing of the bull trout as threatened, it has spent money on the litigation proposed against Elko County, it has spent money on the Carpenter lawsuit to which a federal judge has joined Elko County.

The federal government has spent money on the salaries of the assistant US attorneys which have been assigned the task of punishing Elko County for daring to assert its rights to its road.

Now Congress has to spend money to hold this hearing, which could have been saved if the Forest Service had kept its promises in the first place.

Elko County has spent money for several experts, and expenses for field trips to Jarbidge to explain the situation to everyone who would listen, and for trips to Reno to talk to the US Attorney's Office. The County has spent at least as much in staff salaries, with attorney time, county engineer time, county surveyor time, county road supervisor time, county manager time, and clerical time and county commissioner times.

For all the money spent on arguing over the road, the road could have been fixed to a standard to protect even the most sensitive bull trout.

Ironically enough, the County originally agreed to the Forest Service fixing the road to save the county taxpayers the cost.

2. The bull trout are really red herrings. If they were the real issue, the Forest Service would fix the sections where the river has captured the roadway and is now eroding the hillside. The bull trout have survived up to 500,000 sheep in the area at the turn of the century, the 1909 Jarbidge mining boom which brought in thousands of people, the damming of the Snake River which cut the bull trout from their salmon egg feasts. And the bull trout survived the 1995 flood. The road's impact is negligible.

The real issue is cutting off public access to public property. About 1987, when the Jarbidge Wilderness was created, the South Canyon Road went even further up the Canyon, at least to Perkins Cabin. The Forest Service closed the road down to the Snowslide Trail head. Now the road is closed from the Snowslide Trail head to the Pine Creek Campground. We wonder what is next – closing the road into Jarbidge itself?

The third point is that the Forest Service administrative process is unfair. The problem is striking a rational balance between environmental concerns for the forest, and the economic and social impact of the resulting decisions.

Traditionally those disputes have been addressed within the administrative processes of the public land management agencies. Unfortunately, as you can see by the public statements of Gloria Flora and others, the agencies are staffed by people with their own radical environmentalist agenda.

The process of resolving disputes through administrative hearings presupposes impartiality within the agency. Without impartiality, the cards are unfairly stacked against anyone who finds himself fighting an agency decision. The decision is final almost before the fight begins.

Somehow the process to challenge an agency decision has to be removed from being decided by the very people who make the decision in the first place. Somehow the standard of review in a judicial review has to be changed from showing that the agency has been arbitrary and capricious, i.e., totally unreasonable, to simply showing that the agency is probably wrong.

At that is the problem – there is no place to go for fair resolutions of disputes of these sorts. Certainly not in the agency who's stated position is in opposition to the County's.

In this dispute, the federal government lawyers have not reciprocated in giving this county evidence supporting the Forest Service's view that the South Canyon Road is not a public road. Government's proper role is be an advocate for open and fair discussion of issues, not playing its cards close to its vest.

The Forest Service has lost the trust of Elko County – by not keeping its promises, by using red herrings and by demonstrating that the administrative hearing process is unfair.

Thank you.

**ATTACHMENTS TO MY STATEMENT**



United States  
Department of  
Agriculture

Forest  
Service

Humboldt, N. F.  
Toiyabe N. F.

---

FILE CODE: 1950

Date: 10/28/97

SUBJECT: UPDATED COST ESTIMATES FOR ALTERNATIVES

TO: DAVE AICHER

Gary Campbell updated costs of the alternatives on 10/28/97.

Here is summary:

Alt 1. - No Action = \$107,000.

Alt. 2 - Trail = \$217,000

Alt. 3 - Road = \$462,000

Worksheets are in the project file.

A handwritten signature in cursive script that reads "Doug Clarke".

DOUG CLARKE



*Doug - FYI*



US Department  
of Transportation  
**Federal Highway  
Administration**

Central Federal Lands  
Highway Division

555 Zang Street  
P.O. Box 25246  
Denver, Colorado 80225-0246

SEP 8 1997

In Reply Refer To:  
HPA-16

Mr. Dale N. Bosworth  
Regional Forester, Intermountain Region  
USDA, Forest Service  
324 25th Street  
Ogden, UT 84401-2310

Dear Mr. Bosworth:

This is to acknowledge receipt of your August 26, 1997, letter requesting that funding for the Jarbridge Canyon Road project (NV95-1FS) on the Humboldt NF be carried over into fiscal year 1998. After review of your letter and supporting information I have determined the justification provided is suitable to warrant extending the two year time limit into fiscal year 1998.

The ERFO Program Manual states "If a permanent repair project has not been advanced to construction obligation stage by the end of the second fiscal year following the fiscal year in which the disaster occurred, it will be considered "non-emergency permanent repair" and will be removed from the approved program unless suitable justification to warrant extending the two year limit is provided to the FLHDE." On a project of this magnitude, the normal two year timeframe is usually adequate, but not generous. The additional time needed to address the appeal to the FONSI is suitable justification, for a large project such as this.

If you have any questions, please contact Mr. Norman Hyndman, the Division ERFO Coordinator, at (303) 969-5932.

Sincerely yours,

Larry C. Smith, P.E.  
Division Engineer

RECEIVED  
SEP 19 1997  
Toiyabe National Forest

F.S. RECEIVED  
SEP 12 1997  
REGIONAL FORESTER

Section 4 - ENVIRONMENTAL CONSEQUENCES**Alternative 1 - Restoration with No Reconstruction (No Action)****Number of Visitors to Town**

The fewest number of visitors is expected under this Alternative compared to Alternatives 2 and 3. Reasons for this include limited recreation opportunities in the canyon, the additional time and effort it takes to get to the Wilderness and destinations therein, limited access above Pine Creek, and the lack of developed facilities (i.e., a trailhead and trail).

**Revenue Generated from Visitors**

With the fewest visitors, the least amount of revenue would be generated under this Alternative than either Alternatives 2 or 3. The local economy would sustain the greatest adverse effects under Alternative 1.

**Alternative 2 - Trail Construction****Number of Visitors to Town**

It is expected that there would be a slight increase in the number of visitors under this Alternative compared to Alternative 1. Reasons for this include improved access above Pine Creek, and the development of facilities (i.e., a trailhead and trail). However, recreation opportunities would remain limited, access above Pine Creek would exclude passenger vehicles, and additional time and effort would be needed to reach the Wilderness. The number of visitors is still expected to be less than those expected under Alternative 3.

**Revenue Generated from Visitors**

With a slight increase in the number of visitors, more revenue would be generated under this Alternative than Alternative 1; however, less revenue would be generated than under Alternative 3. It is expected that the local economy would do better under this Alternative than Alternative 1, but not as well compared to Alternative 3.

**Alternative 3 - Proposed Action (Road Reconstruction)****Number of Visitors to Town**

The greatest number of visitors is expected under this Alternative than either Alternatives 1 or 2. The reasons for this include increased recreation opportunities, less time and effort to reach the Wilderness, the easiest access above Pine Creek for camping and other recreation pursuits, and the availability of developed facilities (i.e., trailhead and a road). Overall, these factors would make participating in recreation activities more attractive to forest visitors, and consequently, this would contribute to the most number of visitors to town.

**Revenue Generated from Visitors**

With the greatest number of visitors, the most revenue would be generated under this Alternative than either Alternatives 1 or 2. The local economy would do best under this Alternative.

JSCK

| Jarblidge Restoration and Associated Costs |                             |
|--|-----------------------------|
| <b>Direct Costs</b>                        |                             |
| Personnel Costs                            | 94,586.90                   |
| Equipment Costs                            | 33,058.49                   |
| Supplies Costs                             | 34,387.60                   |
| Contract Costs                             | 131,537.13                  |
|  | <b>Total Direct Costs</b>   |
|  | 293,570.12                  |
| <b>Indirect Costs</b>                      |                             |
| Federal Agencies Overhead/Admin            | 127,005.00                  |
|  | <b>Total Indirect Costs</b> |
|  | 127,005.00                  |
|  | <b>Total Costs</b>          |
|  | 420,575.12                  |

ELKO COUNTY DISTRICT ATTORNEY

CARY D. WOODBURY  
District Attorney

JOHN S. MCGIMSEY  
Chief Criminal Deputy

KRISTIN A. MCQUEARY  
Chief Civil Deputy

ROBERT J. LOWE  
LAURA LOUISE GRANT  
KAY MARION MACIUL  
ALVIN R. KACIN  
Deputy District Attorneys

SUPPLEMENTAL SHEET

Kristin A. McQueary  
Deputy District Attorney  
575 Court Street  
Elko, Nevada 89801  
(775) 738-3101  
Fax (775) 738-0160

**Outline of Comments:**

- I. The Forest Service has lost the trust of the people of Elko County.
  - A. The Forest Service won't keep its promise.
  - B. The Forest Service uses red herrings.
  - C. The administrative process is unfair.

**STATEMENT OF ANTHONY LESPERANCE**

Mrs. CHENOWETH-HAGE. Chairman recognizes Commissioner Lesperance.

Mr. LESPERANCE. Thank you, Madam Chairman, my good friend Congressman Gibbons. Welcome to Elko County.

Elko County has long since established its position of control over rural roads by a number of legal processes. More recently the Elko County Board passed Resolution 14-98, which further established law and policy on road access and that said right-of-road access shall not be interfered with or impeded by any agency acting beyond its authority. The resolution further established that all roads in question are duly recorded, all roads in question are defined under a certain set of maps which are duly recorded and held for public agency scrutiny by the office of the Elko County recorder. For the record, the South Canyon Road is clearly part of those maps.

I will not go into a great deal of detail about the information about which you've already heard concerning the history of the road. You will hear more about the biology of the bull trout. I would like instead to go and review some basic facts which occurred.

On June 2, 1995, environmental conditions in Elko County were such that a warm rain on a near record-breaking snowpack caused a deluge of near biblical proportions to cascade down South Canyon, destroying four segments of the South Canyon Road. Due to the fact this was a county-wide disaster, the road crews were unable to immediately repair the road.

Shortly thereafter, the Forest Service requested that the county wait so they might obtain funding to help the county, as Ms. McQueary just recently recounted. Due to the extent of flood damage throughout the county, the Board of Commissioners agreed to allow the Forest Service to participate by obtaining emergency funding.

Although a number of bureaucratic actions occurred over the next few years, to make a long story short, no road reconstruction occurred. During 1997, Trout Unlimited appealed the Forest Service decision, which was to rebuild the road; the reconstruction would not harm the bull trout population. And after considerable rhetoric, the Forest Service determined that more analysis would be required before any reconstruction could occur.

On June 28, 1998, the Forest Service issued an updated environmental analysis which incorporated new information, quote unquote, basically stating that any road work reconstruction would seriously degrade the situation with the bull trout. In an informal visit to Jarbidge, a Forest Service representative indicated that the responding action would be to replace the road with a narrow walking trail. No other public hearing or comment concerning this matter ever occurred.

On July 15, 1998, in reaction to this, the Board of County Commissioners passed Resolution 74-98 which more thoroughly established the county's legal standing on the issue. Briefly, that resolution clearly established that the South Canyon Road was of immense safety, economic, and environmental importance to the citizens of Elko County and, in particular, the citizens of Jarbidge.

Further, Resolution 74-98 also established that South Canyon Road was a fully recognized part of the county road network. The resolution ordered the county road department to immediately implement action to fully restore the South Canyon Road.

Board of County Commissioners is charged with public trust and thus obligated to protect the right-of-way and access of county roads and to protect the economic and environmental health and general welfare of the county for its citizens. Consequently, when the county determines through legislative findings that an emergency exists, which it certainly did, it is indeed questionable that there is any higher authority in this land that can overrule that action at a county level.

The county took the correct legal position and began the reconstruction of the road. The rest is obviously now history.

One can legitimately ask: Is the condition of the bull trout really the issue? I offer a picture of the Jarbidge River taken 3 days after the peak flood, showing the extent of the volume of water, mud, and debris that flowed down that canyon. In this photograph, you are witnessing an event that produced a flow greatly in excess of any normal spring peak flow. In addition, boulders, trees, and other debris, countless tons of sediment washed down the channel for many days thereafter.

But strangely enough, by every piece of evidence available, the bull trout not only survived this cataclysmic event, but have since prospered. It is indeed strange to me that the minute amount of silt introduced by the county could have ever been conceived to be so detrimental.

No, the fight in South Canyon Road is not over bull trout or anything remotely associated with it. It's a fight between Elko County and the Forest Service as to who really controls the land and water and all the wealth associated with those resources.

I'm sure you as Congressmen bear a significant burden of public trust at certain times. That burden rests on my shoulders as chairman of this commission. And it is with great difficulty that I conclude my comments.

As far as Elko County is concerned, the South Canyon Road will be rebuilt. This county has the legal authority to do just that. And further, we have clearly stated our intention by resolution and action. Not being allowed to carry out that fiduciary responsibility of county government by any branch of the Federal Government will place in jeopardy every rural road in the West, and ultimately every blade of grass, every tree, every deposit of mineral wealth, every drop of water, and essentially every other property right as we know them today.

The potential economic impact to the community of Jarbidge and, ultimately, the County of Elko, the State of Nevada, and the West in general, is beyond my wildest comprehension. No, this fight is not over the bull trout. In fact, it's over the very future of this great Nation. Thank you.

Mrs. CHENOWETH-HAGE. Thank you very much, Commissioner.  
[The prepared statement of Mr. Lesperance follows:]

COMMISSIONERS  
ANTHONY L. LESPERANCE  
NOLAN W. LLOYD  
MIKE NANNINI  
BRAD ROBERTS  
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GEORGE R.E. BOUCHER  
ELKO COUNTY MANAGER  
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elkocojw@sierra.net

*Board of County Commissioners*  
COUNTY OF ELKO  
569 COURT STREET • ELKO, NEVADA 89801

November 13, 1999  
SUBMITTED FOR THE RECORD

HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN

STATEMENT SUBMITTED BY: ANTHONY L. LESPERANCE, CHAIRMAN  
ELKO COUNTY BOARD OF COMMISSIONERS

November 13, 1990  
SUBMITTED FOR THE RECORD

**HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN**

Madam Chairman, Honorable Members:

The Elko County Board of Commissioners has long since established its position of control over rural roads by a number of legal processes. More recently the Board passed Elko County Resolution 14-98 which further established law and policy on road access, and that said right of road access shall not be interfered with or impeded by any agency acting beyond its authority. The resolution further established that all roads in question are defined in a certain set of maps which are duly recorded and held for public and agency scrutiny by the Office of the Elko County Recorder.

Recently, the Elko County road, commonly known as the South Canyon Road, has been the center of considerable attention and possible legal confrontation between the County and the federal government. Today, you will hear testimony concerning the history of the South Canyon Road, the biology of the bull trout, potential economic impacts and many other related items. It is not my position to review that information, experts far more knowledgeable than I will do that. Instead, I would like to take a moment and briefly review certain recent facts concerning the South Canyon Road.

On June 2, 1995, environmental conditions in Elko County were such that a warm rain on a near record breaking snow pack caused a deluge of near biblical proportions to cascade down South Canyon destroying four segments of the South Canyon Road. Due to the fact that this was a county wide disaster, county road crews were unable to immediately repair this road.

Shortly thereafter the Forest Service (FS) requested that the County wait, so that they might obtain funding to help the County. Due to the extent of flood damage throughout the County, the Board of Commissioners agreed to allow the FS to participate by obtaining emergency funding. A number of bureaucratic actions occurred during the next two years, including the development of a favorable Environmental Analyses (EA) and a determination by the Fish and Wildlife Service that the Jarbidge population of the Bull Trout was not warranted for listing under the Endangered Species Act. However, throughout this period no actual road reconstruction occurred. During 1997, Trout Unlimited appealed the FS decision that reconstruction would not harm the bull trout population, and after considerable rhetoric, the FS determined that more analysis would be required before any reconstruction occurred.

On June 28, 1998, the FS issued an updated EA which incorporated "new information" basically stating that any road reconstruction would seriously degrade the situation with the bull trout. In an informal visit to Jarbidge, FS

HON. H. CHENOWETH-HAGE, 11/13/99  
PAGE 2

representatives indicated that the responding action would be to replace the road with a narrow walking trail. No other public hearing or comment concerning this matter has ever occurred.

On July 15, 1998, the Board of Commissioners passed Resolution 74-98 which more thoroughly established the County's legal standing on this issue. Briefly, that resolution clearly established that the South Canyon Road was of immense safety, economic and environmental importance to the citizens of Elko County and in particular the citizens of Jarbidge. Further, Resolution 74-98 also established that the South Canyon Road was a fully recognized and integral part of the County road network. The Resolution ordered its County Road Department to "immediately implement action to fully repair the South Canyon Road ---".

The Board of County Commissioners is charged with the fiduciary public trust, and thus obligated to protect the right of way and access of county roads and to protect the economic and environmental health and general welfare of Elko County for its Citizens. Consequently, when the County determines through legislative findings that an emergency exists, which it did, it is indeed questionable that any higher authority can overrule that action. The County took a totally correct legal position and began reconstruction of the South Canyon Road. The rest is now history.

One can legitimately ask "Is the welfare of the bull trout really the issue here? Or is this a blatant attempt by the FS to bring the County of Elko to its knees, a county which has had both the "audacity" and perhaps the courage to stand face to face with the FS on matters of this nature?" I offer a picture of the Jarbidge River taken 3 days after the peak flood, showing the extent of the volume of water, mud and debris that flowed down the canyon. In this photograph you are witnessing an event that produced a flow greatly in excess of normal peak spring flows. In addition to the rolling boulders, trees and other debris, countless tons of sediment washed down this channel for many days thereafter. But strangely enough by every piece of evidence available, the bull trout not only survived this cataclysmic event, but have since prospered. It is indeed strange that the minute amount of silt introduced by the County could ever have been conceived to be so detrimental.

No, the fight in South Canyon is not over bull trout, or anything remotely associated with it. It is a fight between Elko County and the FS as to who really controls the land and water, *and the wealth associated with those resources.*

As far as Elko County is concerned the South Canyon Road will be rebuilt. This County has the legal authority to do just that, and further, we have clearly stated our intent by resolution and action. Not being allowed to carry out the fiduciary responsibilities of county government, by any branch of the federal government, will place in jeopardy every rural road, as well as every blade of grass, every tree, every deposit of mineral wealth, every drop of water and essentially every other property right as we know them today. The potential economic impact to the community of Jarbidge, and ultimately the County of Elko, the State of Nevada and the West in general is beyond

HON. H. CHENOWETH-HAGE, 11/13/99  
PAGE 3

comprehension. No, this fight is not over bull trout; it is in fact over the very future of this great nation.

Respectfully submitted,



Anthony L. Lesperance, Chairman  
Elko County Board of Commissioners

COMMISSIONERS  
ANTHONY L. LESPERANCE  
NOLAN W. LLOYD  
MIKE NANNINI  
BRAD ROBERTS  
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elkocojw@rabbitbrush.com

*Board of County Commissioners*  
COUNTY OF ELKO  
369 COURT STREET • ELKO, NEVADA 89801

NOVEMBER 13, 1999  
SUBMITTED FOR THE RECORD

**HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
THE HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN**

**STATEMENT SUBMITTED BY:     Anthony L. Lesperance, Ph.D.  
County Commission Chairman  
Elko County, State of Nevada**

NOVEMBER 13, 1999  
SUBMITTED FOR THE RECORD

**HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
THE HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN**

Madam Chairman, Honorable Members:

During recent years the Citizens of Elko County have expressed concerns that their right of road access was under attack, and consequently, have petitioned the Commission that the county take action to secure legal road access. This concern resulted in the passage of Elko County Resolution 14-98 on February 4, 1998. That resolution established the law and policy on road access within Elko County and that said right of road access shall not be interfered with or impeded by any agency acting beyond its authority. The Resolution clearly established that all roads in question are defined in a certain set of maps, more commonly known as the "Gardner Maps", which are duly recorded and held for public and agency scrutiny by the Office of the Elko County Recorder. Further, Resolution No. 14-98 identified the fact that Nevada achieved statehood in 1864 and that neither the County nor its citizens are necessarily bound by the decisions of any agency attempting to redefine roads and/or right of access under the Act of 1866 (RS2477). Thus, the Board of Commissioners has clearly established Elko County's legal position concerning roads.

More recently the Elko County road commonly known as the "South Canyon Road" has been the center of considerable attention and possible legal confrontation between the County and the Federal Government as represented by the United States Forest Service and the Department of Justice. You will hear considerable information today concerning the history of the South Canyon Road, the biology of the closely related bull trout and many other related items concerning this entire situation. It is not my position to review that information; experts far more knowledgeable than I will provide that. Instead, I would like to take a moment and briefly review certain recent facts concerning the South Canyon Road. On approximately June 2, 1995, environmental conditions in Elko County were such that a warm rain on a near record-breaking snow pack caused a deluge of biblical proportions to cascade down South Canyon. The resulting flood destroyed four segments of the South Canyon Road, as well as other segments of the road accessing the community of Jarbidge further to the north. Due to the fact that this was a county wide disaster, county road crews were unable to immediately repair the South Canyon Road.

*Lesperance Testimony/11/13/99*  
*p. 2*

On assessing the overall damage to mountain roads within the County, the Forest Service (FS) requested that the County wait on this project, so that the FS might obtain funding to help the County. Due to the extent of flood damage throughout the County, the Board of Commissioners agreed to allow the FS to obtain the necessary funding. Although a number of bureaucratic actions occurred during the next two years, including the development of a favorable Environmental Assessment (EA) and a determination by the Fish and Wildlife Service that the Jarbidge population of the Bull Trout was not warranted for listing under the Endangered Species Act, no actual road reconstruction occurred. During 1997, Trout Unlimited appealed the FS decision that reconstruction would not harm the bull trout population. After considerable rhetoric by all parties, the FS determined that more analysis would be required before any reconstruction occurred.

On June 28, 1998, the FS issued an updated EA which incorporated "new information" basically stating that any road reconstruction would seriously degrade the situation with the bull trout. In an informal visit to Jarbidge, FS representatives indicated that the responding action would be to replace the road with a narrow walking trail. No other public hearing or comment concerning this matter has ever occurred.

On July 15, 1998, the Board of Commissioners passed Resolution 74-98 which more thoroughly established the County's legal standing on the "South Canyon Road", as well as all Elko County roads. Briefly, that resolution clearly established that the "South Canyon Road" was of immense importance to the Citizens of Elko County and in particular the Citizens of Jarbidge. Further, Resolution 74-98 also established that the "South Canyon Road" was a fully recognized and integral part of the County road network due to its presence on the "Gardner Maps". Thus, in Resolution 74-98, the Board of Commissioners took both a totally correct legal position and subsequent action when it ordered its County Road Department to "immediately implement action to fully repair the South Canyon Road ---". The County through its Board of County Commissioners is charged with the fiduciary public trust obligation to protect the right of way and access of county roads and to protect the economic, environmental, health and general welfare of Elko County for its Citizens. Consequently, when the County determines through legislative findings that an emergency exists, which it did, it is indeed questionable that any higher authority can overrule that action. Consequently, the County took action and began the reconstruction of the South Canyon Road. The rest is history.

One can legitimately ask, is the welfare of the bull trout really the issue here or is this a blatant attempt by the FS to bring the County of Elko to its knees, a county which has had both the "audacity" and perhaps the courage to stand face to face with the FS on

*Lesperance Testimony- 11/13/99*  
*p. 3*

matters of this nature? As support I offer a picture of the Jarbidge River taken sometime after the peak of the 1995 flood showing the extent of the volume of water, mud and debris that flowed down the canyon. Although flow data for the river is limited, we think the average year long flow is about 50 cubic feet per second (CFS), which suggest that under normal conditions spring flows probably peak between 500 and 1,000 CFS. I would suggest that in this photograph you are witnessing an event that produced many thousands of CFS per second, perhaps between 10,000 to 50,000 CFS. In addition to the rolling boulders, trees and other debris, countless tons of sediment washed down this channel for many days thereafter. But strangely enough by every piece of evidence available, the bull trout not only survived this cataclysmic event, they have even since prospered. It seems strange that the minute amount of silt introduced by the County could ever have been conceived to be so detrimental.

I would suggest that you consider on a broader scale what has happened throughout northern Nevada during the summer of 1999. This state has suffered the greatest environmental disaster it has ever been subjected to brought about by the fiery destruction of nearly two million acres of one of this nation's crown jewels, the rangelands of the Great Basin. This disaster will in all likelihood place several species on the threatened and endangered list, including the sage hen. Additionally, essentially all informed people, including certain agency individuals, seem to agree on one very basic point. These fires were essentially the result of years of agency mismanagement. Do protectors of the sage hen, the Rocky Mountain Elk Foundation, Big Horns Unlimited, or any of a vast number of other environmental groups bring charges against the government through its land management agencies about destruction of habitat or other charges similar to what Elko County faces? The answer is obviously, no!

No, the fight in South Canyon is not over bull trout. It is a fight between Elko County and the United States Forest Service as to who really controls the land. Elko County stands directly in the path of the FS attempt to gain total control over the lands they are charged to manage for multiple use by Congress. Once that control is gained, multiple use concepts as we have known them will seem somewhat incidental.

Consequently, as far as Elko County is concerned, the South Canyon Road will be rebuilt. This County has the legal authority to do just that. And further, we have clearly stated our intent by resolution and action. Not being allowed to carry out the fiduciary responsibilities of county government will place in jeopardy every rural road throughout the west to name but a few of the ultimate consequences.

ATTACHMENT TO MY STATEMENT



Picture taken June 5, 1995  
South Canyon, West Fork of the Jarbidge River  
Elko County, Nevada

SUPPLEMENTAL SHEET

Anthony L. Lesperance  
Elko County Commission Chairman  
569 Court Street  
Elko, Nevada 89801  
(775) 738-5398  
(775) 753-8535

**Outline of Comments:**

- I. Recent facts regarding Jarbidge South Canyon Road.
  - A. South Canyon flooded June 2, 1995, damaging the road.
  - B. The Forest Service offered to obtain funding to repair the road.
  - C. The County passed resolutions establishing legal standing on roads.

**STATEMENT OF JOHN CARPENTER**

Mrs. CHENOWETH-HAGE. Now the Chair recognizes Assemblyman John Carpenter.

Mr. CARPENTER. Madam Chairman, my good friend Jim Gibbons, my name is John Carpenter. I represent Assembly District 33 of the Nevada Legislature. District 33 is basically Elko County.

I would like to go away from my prepared remarks and read to you what I think was a very blatant statement against the citizens of Nevada and especially Elko County. That was a statement—it was an open letter to the employees of the Humboldt-Toiyabe National Forest by Gloria Flora. I will read this to you to refresh your memory.

“This is the United States of America. All people have a right to speak and all people have the right to be protected from discrimination. However, I learned that in Nevada as a Federal employee you have no right to speak, no right to do your job, and certainly no right to be treated with respect.

“I could go on and on with examples of those of you who have been castigated in public, shunned in your communities, refused service in restaurants, kicked out of motels, just because of who you work for. And we cannot forget those who have been harassed, called before kangaroo courts, or had their very lives threatened.”

Now, I submit to you that we need to find out the truth here. We need to find out if any of these accusations are true. And I think it rests with you people that have the right to find out whether anyone was threatened, their lives were threatened, whether they have been kicked out of any motels, or have not been able to be served in a restaurant.

Now, you know we can talk; we have the constitutional right to disagree. Jim and I know that on many times people did not agree with us and they gave us the devil. But that's what we accept when we get into political office.

And so our right to speak against what we think is wrong is an inherent value of the United States of America. But we do not have the right to discriminate against anybody or to threaten them. And if these things are happening in our town, I want to know so that we can correct it. I did a little investigation on myself, by myself through myself, to these people and found very little. But I think that if any of these things are true, we need to find out about it.

I am here to represent all of those who will not be able to testify today. It would be much better if the people in the audience were to testify, not just the bureaucrats and the politicians. It is the ordinary citizen and the legitimate users of the forest who have the horror stories to tell. I will do my best to cover for them.

We are here today because of the frustration and distrust in the Federal Government. This frustration and distrust runs deep, all the way from the district judge in Las Vegas who wrote, “The Federal Government through its various bureaucracies have unrelentingly and systematically sought to close out the residents of the State of Nevada from Federal lands. This is sought to be accomplished through a myriad of excuses, mostly environmental, few if any being valid in my opinion.”

All the way to my neighbor who asked, "What is going on with the Forest Service? What is wrong with them, destroying roads and denying access?"

This level of mistrust and frustration is reaching the boiling point. Ranchers have been subject to one more reduction in grazing permits. Snowmobilers can no longer use their favorite canyon.

Another case in point: the Forest Service was actually going to stop the flow of one of our springs and cover it with black dirt. The Kelly Springs Work Party was organized to prevent this from happening. Today, the water is running cold and clear for wildlife and livestock.

The goshawk was a species that was going to shut down one of our great mines. Never mind that a few hundred people would be thrown out of work. It took a congressional hearing, undisputed scientific evidence, and people power to derail this debacle.

Now we have the South Canyon Road. What is behind the closing of this road? The Forest Service cannot stand for someone to disagree with them. I ask you what is the use to have public input when they are going to do what they want to anyway? Another roadless area puts a feather in their cap with the Clinton administration. The Clintonites say the public wants more roadless areas. Scientific polls completed since Clinton announced his roadless public lands indicate just the opposite.

The Paragon Foundation, a public nonprofit organization in New Mexico, released the results of a nationwide poll which indicates 67 percent of the people believe that we have enough protected wilderness and 68 percent thought protecting jobs, communities, and industries was more important than wilderness areas.

When they close roads, they create more wilderness; one more way to deny access to the elderly, the disabled, and young families. The Federal Fish & Wildlife Service gets a chance to flex their people-control muscles. The NDOW report proves the bull trout are not threatened. The Endangered Species Act is not about helping species. It's about property and people control. The bull trout listing is as flagrant a violation of the Endangered Species Act as has ever been fabricated.

I'm out of time. I hope you will ask me some questions about what went on in regard to the listing of the bull trout. I thank you for being here.

Mrs. CHENOWETH-HAGE. Thank you.

Mr. CARPENTER. Good to see you, Jim.

Mrs. CHENOWETH-HAGE. I thank you, Assemblyman Carpenter. I want to let you know without objection your entire testimony will be entered into the Record. If you have further comments, the record will remain open for 10 working days for you to submit them for the Record. Thank you very much.

[The prepared statement of Mr. Carpenter follows:]

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NOVEMBER 13, 1999  
SUBMITTED FOR THE RECORD

HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
THE HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN

STATEMENT SUBMITTED BY: John C. Carpenter  
Assemblyman, District No. 33  
Elko County, State of Nevada

JOHN C. CARPENTER  
ASSEMBLYMAN  
District No. 33

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State of Nevada  
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Sixty-Ninth Session

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November 13, 1999

Madam Chairperson, and my good friend Congressman Jim Gibbons, my name is John Carpenter, I represent Assembly District #33 in the Nevada Legislature. District 33 is basically Elko County.

I am here to represent all of those who will not be able to testify today. It would be much better if the people in the audience were to testify, not just the Bureaucrats and Politicians. It is the ordinary citizens and legitimate users of the Forest who have the horror stories to tell. I will do my best to cover for them.

We are here today because of the frustration and distrust of the Federal Government. This frustration and distrust runs deep all the way from the District Judge in Las Vegas who wrote, "The federal government through its various bureaucracies have unrelentingly and systematically sought to "close out" the residents of the State of Nevada from federal lands. This is sought to be accomplished through a myriad of excuses (mostly environmental), few if any being valid in my opinion." To my neighbor who asked the question, what is going on with the Forest Service? What is wrong with them?; Destroying roads and denying access. This level of mistrust and frustration is reaching the boiling point. Ranchers have been subject to unwarranted reductions in grazing permits, snowmobilers can no longer use their favorite canyon. Another case in point, the Forest Service was actually going to stop the flow of one of our springs and cover it with black dirt. The Kelly Springs work party was organized to prevent this from happening. Today the water is running cold and clear for wildlife and livestock.

The Goshawk was the species that was going to shut down one of our great mines, never mind that a few hundred people would be thrown out of work. It took a Congressional hearing, undisputed scientific evidence and people power to derail this debacle.

Now we have the South Canyon road. What is behind the closing of this road? The Forest Service cannot stand for someone to disagree with them. I ask you what is the use to have public input when they are going to do what they want anyway.

Page Two

Another roadless area puts a feather in their cap with the Clinton administration. The "Clintonites" say the public wants more roadless areas. Scientific polls completed since Clinton announced his "roadless public lands" indicate just the opposite. The Paragon Foundations, a public education non-profit organization in Alamogordo, New Mexico, recently released the results of a nationwide poll which indicated 67% think the U.S. has enough protected Wilderness and 68% thought protecting jobs, communities and industries was more important than wilderness area. Interestingly enough, 69% would not support a proposal which prohibits livestock from grazing on public lands. The results of this poll in regard to livestock grazing are very similar to a poll taken in Nevada last year.

When they close the road they create more Wilderness. One more way to deny access to the elderly, the disabled and young families. The Federal Fish and Wildlife Service get a chance to flex their "people control" muscles. The NDOW report proves the Bull Trout are not threatened. The Endangered Species Act is not about helping species. It is about property and people control. The Bull Trout listing is as flagrant of a violation of the Endangered Species Act as has ever been fabricated. Because of the listing, NDOW is not going to stock the stream with Rainbow Trout. NDOW has been doing this for many years so the occasional "fisherman and participants in a family outing could enjoy the thrill of catching a fish. The Forest Service, Trout Unlimited, (I call them Trout Eliminated) and the Fish and Wildlife Service should be proud of themselves as they clamp down further on the recreational experience of the ordinary citizens and help to stifle the economy of Jarbidge.

Why must we endure the suffering inflicted by our federal agencies? We are good citizens, we pay our taxes, and we send our sons and daughters to war. It is most discouraging to spend a lifetime improving the land, advancing multiple use and then have some Politician and Bureaucrat lock it up.

What are we going to do about the mistrust and frustration? If the Feds do not change their ways and begin to listen to the local people, there is going to be a lot more tea thrown overboard. As one peace loving person told me, a little tea in the harbor prevents many uprisings on the shore.

We have no intention of losing over lifestyle, our freedoms and most important our self esteem. The South Canyon road is absolutely a county road and the citizens are going to repair it. At the next work party you will see 10,000 people. The Forest Service knew it was a county road when they prepared the environmental assessment and recommended repairing the road. Local Forest Service officials used their own good judgement and listened to the local people as they prepared the report. However, some "Greenies" higher up decided otherwise and now we are embroiled in

Page three

an unnecessary fiasco. As a sidelight to the whole South Canyon mess, the Forest Service would not even repair the water line to the Pine Creek Campground. They are not interested in making camping facilities more user friendly.

What brought the South Canyon Fiasco to a head? We were pushed to far. It was not enough that the Forest Service destroyed our road. They then wanted the tax payers of this county to pay for it again. The Forest Service has already used a portion of our tax monies to destroy the road and kill the trees. Now they have the gall to want the tax payers of Elko County to pay for their destruction one more time. Enough is enough.

It is simple to solve the situation in South Canyon. Ceaser Salicchi, 94 year old Mrs. Wilson, and many others want to be able to drive to the Wilderness Trailhead. The citizens will respond to their request and will repair the road.

The Forest Service and "Trout Eliminated" can return the stream to its original channel. Federal Fish and Wildlife can de-list the Bull Trout. Anything less is unacceptable and a slap in the face to the people of this County. If the Regional Forester wants to work in a constructive manner and improve relationships, this is his chance. We are a reasonable people but will not be pushed around.

*Assemblyman John C. Carpenter*

**STATEMENT OF CHARLES M. NANNINI**

Mrs. CHENOWETH-HAGE. The Chair recognizes Commissioner Nannini.

Mr. NANNINI. Thank you, Madam Chairman, Congressman Gibbons. For the record, my name is Mike Nannini. For the past 7 years I have represented District One in Elko County as a County commissioner, in which the community of Jarbidge is located.

Since 1993 I have been the liaison member for the commissioners to the local U.S. Forest Service, along with Commissioner Skelton and County Manager George Boucher. Our affiliation with the Forest Service has been one of professionalism of which we have had a great working relationship, taking on several projects together. We accomplished many assignments during this timeframe, some that we are still working on, although the relationship between us has been severed.

About a year and a half ago, the Forest Service closed the South Canyon Road, which is approximately one mile and a half before the start of the wilderness area. They did so without any notification to myself or any other officials at the county level. I will mention at this time that under no circumstances has the Forest Service ever indicated during our liaison meetings that the South Canyon Road did not belong to Elko County.

In 1995 the South Canyon Road was devastated by one of the worst floods in its history, which also caused extreme damage to roads leading into the Jarbidge community. The county immediately traveled to Jarbidge to open the roads so that community members could have access to their property and community lands. While we were there with the men and equipment, we also began making plans to repair the South Canyon Road. During one of our planning meetings, the Forest Service approached us with an offer to help fix and restore the road. They added that they had the means to qualify for a \$462,000 grant and, furthermore, could obtain additional funding throughout the road building process.

Due to the fact that commissioners felt we had an excellent working relationship with the Forest Service, we agreed we would cooperate to repair the road and get it back to a normal state. Needless to say, we appreciated their concern and their willingness to help during these trying times.

The people of Jarbidge have relied on the South Canyon Road for access to recreational areas, in addition to depending on it for safety reasons. They have used the road to keep in contact with fire crews and to help stage a fire line when a huge fire in 1992 crested the ridge and threatened the small community.

Moreover, the South Canyon Road had been a very popular fishing spot with its serene and picturesque beauty, as well as providing the closest access to wilderness areas for seniors, special needs individuals, and others that are unable to do a lot of hiking. It also provides an entry to the wilderness trailhead, which is economically beneficial to the Jarbidge community.

After the Forest Service closed the road, the Elko County Commissioners attempted to reopen it. Under no circumstances did we ever feel that we were operating under an emergency—that we were not operating under an emergency situation. The Forest Service had proceeded with renovation of a road up to the first 900-foot

wash-out. At each of the meetings they had indicated they had filled out all the necessary paperwork to obtain a rolling stock permit and had entered essential permits with the U.S. Army Corps of Engineers to enter the waters of the U.S. During the time we were under construction on the South Canyon Road, a Federal judge in Reno issued a restraining order and insisted that construction be terminated.

As law abiding citizens, we followed his orders. I felt that we tried to discuss the situation in an honorable manner. And my personal perception on the matter was that it could be resolved diplomatically. With this sensibility, I was able to convince Senator Harry Reid into sitting with us as a mediator while all parties concerned could air their differences, express their viewpoints, and attempt to come to compromise.

We seemed to be in agreement and to have a good understanding. It was perceived that we were able to make some progress. However, at our third and final meeting on April 19, 1999, it became apparent that the Forest Service and Trout Unlimited were unwilling to reopen the South Canyon Road. At one point during the heated conversation, there was a glimmer of hope that ATV travel would be allowed up the old road to the Snowslide Gulch with river crossings and a mountainside trail to the wilderness trailhead.

Hope faded when the Forest Service insisted on a 40-inch mountainside trail. Additional alternatives laid out on the table actually had nothing to do with the South Canyon Road. Nevertheless, we took the proposal back to the full Board of Commissioners and it was denied. As far as we were concerned, there is no alternative to road replacement.

We feel that the South Canyon Road, also called an RS 2477 road, is a county road. It was in place during the early 1900's, which was before the Forest Service was in place. The county has used men and equipment to maintain the South Canyon Road on a yearly or an as-needed basis since the early 1950's.

I will mention once again that there has never been a time when the Forest Service has ever indicated that the South Canyon Road did not belong to Elko County. Furthermore, they have never discouraged us from maintaining our road. I feel that the South Canyon Road debate has been a pawn in a much bigger issue of who has the power to control.

The day after the Forest Service closed the South Canyon Road, the sign that marked the start of the wilderness area was placed in front of a dirt barricade that closed the road, which is evidence to us that the Forest Service wanted to extend the wilderness area. This action by the Forest Service implied that they had no concern for the citizens of Jarbidge, the people of Elko County, and certainly no interest in the hundreds of individuals that have visited this area during the past several years.

On a year-round average basis, Jarbidge is a community of about 30 people, although in the summer months its inhabitants number approximately 100 people. Seniors and retired persons make up the majority of the population of this small town. The South Canyon Road provides an access for individuals that may have limited recreational abilities. Furthermore, the ability to forewarn citizens of

a pending fire is nonexistent due to the road closure, in addition to placing a damper on the economic future of Jarbidge.

At the time of the flood, Elko County was in position to restore the South Canyon Road. However, we put our trust in the Forest Service to honor their word and, with our willingness to cooperate, we thought the process would go smoothly. Had the Forest Service done what they said they were going to do, we would not be here today discussing this issue.

Obviously, it is impossible to enlighten you with firsthand information in its entirety. However, I'm willing to field any questions you may have regarding this situation. I appreciate your willingness to come to our county to listen to our concerns, and I hope you can relate to our travesty that we have endured. I thank you for your time and cooperation.

Mrs. CHENOWETH-HAGE. Thank you, Commissioner, for your testimony.

[The prepared statement of Mr. Nannini follows:]

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NOLAN W. LLOYL  
MIKE NANNINI  
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*Board of County Commissioners*  
COUNTY OF ELKO

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NOVEMBER 13, 1999  
SUBMITTED FOR THE RECORD

HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
THE HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN

STATEMENT SUBMITTED BY: Mike Nannini  
County Commissioner  
Elko County, State of Nevada

NOVEMBER 13, 1999  
SUBMITTED FOR THE RECORD

**HOUSE SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
THE HONORABLE HELEN CHENOWETH-HAGE, CHAIRMAN**

Madam Chairman, Honorable Members:

My name is Mike Nannini. For the past seven years, I have represented District One in Elko County as a County Commissioner, in which the community of Jarbidge is located. Since 1993, I have been the liaison member for the Commissioners to the local U.S. Forest Service, along with Commissioner Skelton and County Manager George Boucher. Our affiliation with the Forest Service has been one of professionalism, of which we have had a great working relationship taking on several projects together. We accomplished many assignments during this time frame, some that we are still working on, although the relationship between us has been severed.

About a year and a half ago, the Forest Service closed the South Canyon Road, which is approximately one mile and a half before the start of the wilderness area. They did so without any notification to myself or any other officials at the county level. I will mention at this time that under no circumstances has the Forest Service ever indicated during our liaison meetings that the South Canyon Road did not belong to Elko County.

In 1995, the South Canyon Road was devastated by one of the worst floods in its history, which also caused extreme damage to the roads leading into the Jarbidge community. The county immediately traveled to Jarbidge to open the roads so that the community members could have access to their property and community lands. While we were there with men and equipment, we also began making plans to repair the South Canyon Road. During one of our planning meetings, the Forest Service approached us with an offer to help fix and restore the road. They added that they had the means to qualify for a \$486,000 grant and, furthermore, could obtain additional funding throughout the road building process. Due to the fact that the commissioners felt we had an excellent working relationship with the Forest Service, we agreed we would cooperate to repair the road and get it back to its normal state. Needless to say, we appreciated their concern and their willingness to help during those trying times.

The people of Jarbidge have relied on the South Canyon Road for access to recreational areas, in addition to depending on it for safety reasons. They have used the,

*Nannini Testimony - 11/13/99*

*p. 2*

road to keep in contact with fire crews and to help stage a fire line when a huge fire in 1992 crested the ridge and threatened the small community. Moreover, the South Canyon Road has been a very popular fishing spot with its serene and picturesque beauty, as well as providing the closest access to the wilderness area for seniors, special needs individuals, and others that are unable to do a lot of hiking. It also provides an entry to the wilderness trailhead, which is economically beneficial to the Jarbidge community.

After the Forest Service closed the road, the Elko County Commissioners attempted to reopen it. Under no circumstances did we ever feel that we were not operating under an emergency situation. The Forest Service had proceeded with renovation of the road up to the first 900-foot washout. At each of the meetings they had indicated they had filled out all the necessary paperwork to obtain a rolling stock permit and had also entered essential permits with the U.S. Army Corps of Engineers to enter the waters of the United States. During the time we were under construction on the South Canyon Road, a federal judge in Reno issued a restraining order and insisted that construction be terminated. As law-abiding citizens, we followed his orders. I felt that we tried to discuss this situation in an honorable manner and my personal perception on the matter was that it could be resolved diplomatically. With this sensibility, I was able to convince Senator Harry Reid into sitting with us as a mediator, where all parties concerned could air their differences, express their viewpoints, and attempt to come to a compromise. We seemed to be in agreement and to have a good understanding; it was perceived that we were able to make some progress. However, at our third and final meeting on April 19, 1999, it became apparent that the Forest Service and Trout Unlimited were unwilling to reopen the South Canyon Road. At one point during the heated conversation, there was a glimmer of hope that ATV travel would be allowed up the old road to the Snow Slide Gulch with river crossings, and then a mountainside trail to the wilderness trailhead. Hope faded when the forest service insisted on a forty-inch mountainside trail. The additional alternatives laid out on the table actually had nothing to do with the South Canyon Road, nevertheless, we took the proposal back to the full board of Commissioners and it was denied. As far as we were concerned, there was no alternative to road replacement.

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*Nannini Testimony - 11/13/99*  
*p. 3*

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On a year-round average basis, Jarbidge is a community of about thirty people, although in the summer months its inhabitants number approximately one hundred people. Seniors and retired persons make up the majority of the population of this small town. The South Canyon Road provides an access for individuals that may have limited recreational abilities. Furthermore, the ability to forewarn citizens of a pending fire is non-existent due to the road closure, in addition to placing a damper on the economic future of Jarbidge.

At the time of the flood, Elko County was in a position to restore the South Canyon Road, however, we put our trust in the Forest Service to honor their word and with our willingness to cooperate, we thought the process would go smoothly. Had the forest service done what they said they were going to do, we would not be here today discussing this issue.

Obviously, it is impossible to enlighten you with the first-hand information in its entirety; however, I am willing to field any of the questions you may have regarding the situation. I appreciate your willingness to come to our county to listen to our concerns and I hope you can relate to the travesty that we have endured. I thank you for your time and cooperation.

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*Board of County Commissioners*  
COUNTY OF ELKO  
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**SUPPLEMENTAL SHEET**

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**Outline of Comments:**

1. Jarbidge South Canyon Road was closed without notification.
  - A. The people of Jarbidge rely on the road.
  - B. The Forest Service won't keep its promise.
  - C. The road has been maintained by Elko County.

Mrs. CHENOWETH-HAGE. I want to thank all the witnesses for their testimony. Now I recognize Congressman Gibbons for his questions.

Mr. GIBBONS. Thank you very much, Madam Chairman. I would first like to turn to Ms. McQueary. In your testimony earlier, you mentioned that there was a closure along the South Canyon Road from Snowslide Gulch to Perkins Cabin, I think sometime in the 1980's?

Ms. MCQUEARY. Yes.

Mr. GIBBONS. Could you tell us what the reasons were for that closure? What regulatory authorities or citations were given for the closure of that portion of the road then?

Ms. MCQUEARY. The wilderness area in the Jarbidge was enlarged at that point in time. When they closed the road, they ripped it and reseeded it. It was under a wilderness, it was under an act of Congress, not an administrative decision by the Forest Service.

Mr. GIBBONS. OK. You indicated also that the cost of repair of the 900-foot to 1,000-foot section of this road was approximately \$426,000?

Ms. MCQUEARY. \$420,000. That figure was provided to us when we met with the U.S. Attorney's office for mediation in the proposed litigation against Elko County. The copy of that spread sheet was attached as one of the exhibits to my testimony that was provided to you.

Mr. GIBBONS. With that in mind, if the Forest Service were to repair the full 17—the full mile and a half, I believe you said, of road that needs to be repaired in that area, is it your belief that would be about \$3.6 million for a mile and a half of dirt road?

Ms. MCQUEARY. Actually, it wouldn't be quite that bad. There are significant portions of the road that are still impacted. There are four bad spots, I would say. You have over a million, I guess. 1.2 million, approximately, if you use Forest Service construction techniques.

Mr. NANNINI. Let's hope they don't.

Mr. GIBBONS. A million here, a million there. We've forgotten how to build a dirt road.

Commissioner Lesperance, let me ask you a question as well. During the 1995 flood of this river in the South Canyon area, there was also one in Lamoille.

Mr. LESPERANCE. Correct. It was a county-wide situation, but the two hardest hits were the South Canyon and Lamoille.

Mr. GIBBONS. The road was washed out in Lamoille, was it not?

Mr. LESPERANCE. Pretty severely damaged. A lot of boulders came off the mountain. It was closed in several places. Several cabins destroyed. Fair amount of damage.

Mr. GIBBONS. Was that road on public land?

Mr. LESPERANCE. Yes. Well, it was Forest Service land, but that road was fixed very quickly.

Mr. GIBBONS. It would be under the same situation? In other words, it was a county road on Forest Service-managed property?

Mr. LESPERANCE. I believe it is not. I think the Forest Service has control of that road at this point in time.

Mr. GIBBONS. But they did repair it?

Mr. LESPERANCE. It was repaired as rapidly as it could be.

Mr. GIBBONS. After the county had made an effort to stabilize the South Canyon Road, are you aware of any efforts by the Forest Service to go back in there and undo what the county had attempted to do?

Mr. LESPERANCE. Very definitely. It is probably remiss on my part; there is an excellent video the county has obtained. I think under your 10-day rule I can still submit that.

Mr. GIBBONS. I ask you for the record to submit that to our committee.

Mr. LESPERANCE. That video clearly shows what the Forest Service did to, in their minds, restore the canyon to a condition somewhat similar to what they must have viewed it to be before the county decimated the situation.

I will remind you the only thing the county did was to move a piece of heavy equipment in there to divert the channel from the road back to the original channel. The only piece of equipment that ever touched the water under any circumstance was the end teeth on a backhoe. And that simply breached the side where the stream washed out, placed it back into the original channel.

Furthermore, we have documentation that despite the tremendous amount of silt the county placed in the river at that point in time, which we hear swept clear to Idaho, that in fact a camper was fishing at the termination of the construction of approximately a thousand feet and readily caught fish that afternoon in rather clear water.

The amount of sediment the county put in the road as compared to what actually happened or what is clearly visible on our video of the Forest Service activity is inconsequential. The amount of sediment even that the Forest Service put into the river in their construction activity, which was very, very significant, was many, many times whatever the county did.

As far as construction of the road, it is my opinion that the county could easily go back there and fix the road clear to the trailhead, and we are prepared to do so. And it would not cost a great deal of money. We would not use, as my good friend Kristin McQueary said, we will not use Forest Service techniques, however.

Mr. GIBBONS. The issue becomes one of whether or not the remedial efforts of the Forest Service were in fact of greater damage to the habitat at the time than the efforts of the county.

Mr. LESPERANCE. The county, to my knowledge, did not knock down a single tree. The county simply removed the stream from the road bed and put the stream back into the channel and then reconstructed the road bed where the stream had removed the top soil.

The Forest Service came in and, much like a mine reclamation project, completely reclaimed the road, placed it back. The side of the mountain was now contoured down over the road. And I cannot tell you how many trees were knocked down in the process. The area is scattered with downed trees at this point in time. It's difficult to walk in a straight line because you have to walk under the downed trees or step over them or whatever.

What is of significance and what is totally amazing to me—and you may or may not have testimony today—but again I believe our

video will document this. One of the concerns about the bull trout is the shading effect of the canopy being very critical on water temperature. The area that the Forest Service restored no longer has a canopy. All the trees were removed.

Mr. GIBBONS. Assemblyman Carpenter, John, it's always good to see you, and I appreciate your testimony. Did you in your investigation ever hear of anyone disparaging the Forest Service? In other words, kicking them out of a hotel, or a restaurant, et cetera, that's been set forth by Ms. Flora?

Mr. CARPENTER. I went and talked to Ben Siminoe, who is here today, and asked him directly if he knew of any such events. He said that he had never heard of anyone being physically threatened with harm. He said that he had heard that some people were asked to leave, some government employees—I suppose they were Forest Service employees—asked to leave the Shiloh Inn.

I went to the Shiloh Inn, and I talked to the lady who is now the manager. She said that she had been the manager since April. Before that she had worked on the desk for about 3 years. She did not absolutely remember of any incident like this happening. But she said if the time and the name could be given, they would investigate it.

Mr. Siminoe also said that maybe there was an event happened at one of our pizza places. We got a few pizza places in Elko, and I didn't have time to go around and ask them if there was somebody who was not served at one of our pizza places.

I think there was a couple of situations in our schools, but I think that they were handled quite effectively. I don't know what it entailed, you know. But that's the only thing that I could find out.

But as far as anybody being threatened with physical harm, Mr. Siminoe did not know of any. This is a small community, and you usually hear of those kinds of incidents. I have never heard of any in my time here in Elko.

Mr. GIBBONS. Well, let me say that I agree with you wholeheartedly that if these incidents occur, we need to find out about them and we need to put an end to that type of thing. I will ask then for specific documentation. Because if anybody is threatened with bodily harm or injury, there should be a police report; there should have been a filing of some sort, some documentation around that we will have access to.

It is our interest to make sure that the laws of this state, the laws of this county and the community of Elko are indeed followed and all people are treated equally under the law. No one is either above or beneath the law in Elko or anywhere else in this country, as I've said.

Mr. NANNINI, thank you very much for being here as well. Let me reaffirm your comments that you indicated where apparently Elko has contributed resources to the repair and the maintenance of the South Canyon Road for at least the last 40 or 50 years. Is that what you indicated?

Mr. NANNINI. For several years, yeah. You know, I have been involved for the last 7 years. I just would like to mention just a few because we did have a good working relationship up to this situation with the South Canyon. We worked on the Powder House

Campground, and it was at the bottom of the Lamoille Canyon. And the commissioners threw in \$100,000. During heavy budget times, that's—I think that's significant, you know.

We had a partnership where we developed a campground and put in restroom areas, stuff like that. We worked with the Forest Service on the Lamoille Grove restrooms, which is county property; and they worked with us. We worked with the Forest Service on the Harrison Pass. It's an ongoing project. They paved part of it, and then we're going over the top of the hill and paving all the way into the Ruby Valley area.

We are working with them on the Blue Jacket Road, and we worked with them on the Jarbidge Road project, Jack Creek Bridge project, the North Fork Jack Creek Road. And we, of course, worked with them for title to try to give us a graveyard in the Jarbidge area, which we are all aware of.

We worked with them consistently with the legal access to the private grounds, the Bald Mountain Road, Mountain City grant to upgrade the water system up there. We were working with them in the helipad for the Jarbidge area. We worked with them on the law enforcement agreement where it's a cooperative deal with the sheriff.

And we have actually moved Forest Service equipment with Elko County equipment; Worked with Forest Ranger Dave Aicher on the Three Creek and the Bull Creek upgrade on the road situation over there.

So you know, when I hear all these statements, you know, I have to laugh because that kind of atmosphere in Elko County is not happening. It's wild statements, and I think if you talk to the local forest people that they will tell you the same thing if they were allowed to speak.

Mr. GIBBONS. Madam Chairman, I have been asked by the Cattlemen's Association, not to have a stampede in the room here, but your 3 o'clock policy meeting is about to begin. They would appreciate any of you who are involved in that attending the Cattlemen's Association 3 o'clock policy meeting which will take place right now.

Mrs. CHENOWETH-HAGE. I guess that's become part of the Record, too.

Mr. GIBBONS. When you're a public servant, you have to do what you have to do.

The followup to all of that is that you have had a working relationship, cordial working relationship where there has been a great deal of support both from the Forest Service and the county over the years. So can I take it from your comments that you're surprised at some of the comments of the Forest Service about the intransigence of Elko County in this regard?

Mr. NANNINI. I'm just appalled at those kind of statements. I don't think that she even knows what has been going on. I don't think she has a handle on it. I don't think she cares and hasn't taken the time to find out.

Mr. GIBBONS. The fact that they moved the sign regarding the Jarbidge Wilderness Area to the end of the road, or to the end of the existing road now, does that indicate to you that the boundary of the wilderness area begins there?

Mr. NANNINI. That's correct. We felt that was the whole purpose, you know, is to extend the wilderness area. And when they put those two signs up and moved them in front of the berm that closed the Jarbidge Canyon Road, it was a definite significant situation there that we felt that was a statement saying that this is where we are going to start the wilderness area from now on.

Mr. GIBBONS. Is that a different area than has been identified as the boundary of the wilderness area?

Mr. NANNINI. Oh, yes, it is. It's the start of the South Canyon Road, which is a mile and a half from where the wilderness trail-head begins.

Mr. GIBBONS. Now, let me ask Commissioner Lesperance one final question. With the fires that have taken place in Elko County over the last year, there's been a great deal of concern about the safety of the people. I think you mentioned that earlier. Does that concern you, the ability to access these areas? To stop or put fires out or to ensure the safety of people who may be in the area to be able to egress certain areas?

Mr. LESPERANCE. Absolutely. As part of my testimony—you have two different testimonies, I believe. With the original one I do make reference to the fire. I make reference to the fires that have occurred not only in Elko County but in Northern Nevada.

And what probably none of us have really come to grips with yet is that the greatest ecological disaster that has ever occurred in this State occurred this last year. We destroyed by fire nearly two million acres of land. Those fires were going as late as this week. We lost nearly 10,000 more acres of what I call one of the Nation's great jewels, and that's the range lands of the Great Basin. We lost nearly 10,000 more acres just this last week in Elko County.

We have agency mismanagement occurring at a level that has created a fire state throughout northern Nevada that is unacceptable for the safety and the welfare of the people. Nowhere in my knowledge—nowhere is a community more trapped by a potential fire than the community of Jarbidge, Nevada.

I shudder to think what would really happen if a fire storm occurred there. I suspect lives would be lost. Without proper access to get to those fires, we are placing those individuals or certainly those up in the mountains in the summertime, campers, fisherman, or whatever, in great peril. I can't stress that point enough.

In that situation, as long as the mismanagement that we are dealing with at this point in time continues, this situation will only get worse. It will not get better at this point in time.

Mr. GIBBONS. Madam Chairman, I see my time has lapsed. Thank you for the opportunity.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Gibbons.

Ms. McQueary, I wanted to ask you, or Commissioner Lesperance or Commissioner Nannini, either one of you. First, Ms. McQueary, when you negotiated with the Forest Service a couple years ago, or 3 years ago to maintain that road, did you have any idea or was there any indication you may be abrogating any rights the county may have under your 2477 right-of-way?

Ms. MCQUEARY. As I was not counsel for the county at that time, I would turn that question over to Commissioner Nannini, who was there.

Mr. NANNINI. Well, I think—I don't know that we were aware we were giving up any rights. It was a situation where we felt it was our road. We—since the early 1950's, we were maintaining that road. We were—we had our blades on there. We had our equipment on there. We—there was never a mention that it wasn't our road, you know? All they did is, they came in and offered help to rebuild the road so that we could get it back to where the citizens of the area and the outside citizens could use that camp, those campsites and travel to the trailhead so they can get into the wilderness area.

You know, one thing that has never been mentioned and I would like to bring out is there's a restroom facility at this trailhead at the top of the trailhead that is plumb full. And nobody has figured out yet how they are going to empty that. It doesn't sound like much, but when it overflows and gets into the Jarbidge River, I'm a little bit nervous about that whole situation.

Mrs. CHENOWETH-HAGE. That would endanger the bull trout habitat.

Mr. NANNINI. Yes, they might not be very good eating.

Mrs. CHENOWETH-HAGE. Ms. McQueary, in today's Elko Daily Free Press, Chris Fotheringham wrote about \$1.3 million in unspent ERFO funds received by the Forest Service. What do you know of these funds and the Forest Service use and/or plans for these funds?

Ms. MCQUEARY. The Forest Service as part of the road reconstruction project applied for and received ERFO funds. The road construction got put off, and they received an extension from—I have a copy of their extension letter in here. I do not know what money that they used when they went and allegedly tried to stabilize the 1,000 feet last winter. I don't know where they found that money.

Mrs. CHENOWETH-HAGE. Do you know if this money was used for the contract that they let to do the earth work that has been referred to?

Ms. MCQUEARY. I don't know the answer to that one either.

Mrs. CHENOWETH-HAGE. Have you seen the contract?

Ms. MCQUEARY. I have not seen the contract.

Mrs. CHENOWETH-HAGE. OK. I want to ask you, at any time has the Forest Service denied the early heavy use of the South Canyon Road as testified by Bill Price?

Ms. MCQUEARY. Madam Chairman, I didn't catch the first part of your question.

Mrs. CHENOWETH-HAGE. At any time has the Forest Service denied to you or the commissioners the early heavy use of the South Canyon Road as testified to by Mr. Price?

Ms. MCQUEARY. The only response we have received from the Government on whether—their evidence that it was not an RS 2477 road is the Schrader Report which Mr. Price told you about. When we went into the mediation in September with the U.S. Attorney's office, we made an agreement that we would share our evidence showing that it was an RS 2477 road so they could reevaluate their position. We asked that they also provide us their evidence that it was not an RS 2477 road. They sent us the incomplete copy of the Schrader Report.

We have repeatedly asked them for any additional information that they may have. And they have not been in contact with us at all.

Mrs. CHENOWETH-HAGE. That's unfortunate. If Mr. Price's analysis is correct, what would keep the county from just going ahead and asserting your rights to maintain the road?

Ms. MCQUEARY. That's what Elko County did on July 21, 1998, when they sent the road crew up there to reopen the road.

Mrs. CHENOWETH-HAGE. OK. Commissioner Lesperance, that's a very impressive picture that you show, the point that you made about the amount of sedimentation in the stream as compared to the minor maintenance work that the county was doing.

Mr. LESPERANCE. I might add that picture is taken very close to the present termination of the road. That gives you an idea of the significance of the road as it was. And that bridge did not wash out. It looks like it's perilously close to washing out, but the damage occurred above there.

I might add when you look at that road we hear how difficult roads are to build in canyons by the Forest Service and everything else. That road is quite passable and always was quite passable.

I will remind the committee that I have enjoyed Elko County in one form or another nearly all my life. As a young man having a young family in the 1960's, I routinely camped in the Jarbidge area. We climbed all the mountains. I was successful in getting all of my family to the top of the Matterhorn.

To make a long story short, I routinely drove a two-wheel drive Falcon station wagon with my entire family in it to Perkins Cabin, where I always camped.

Mrs. CHENOWETH-HAGE. Interesting. I want to get back to you with some questions regarding economic impact, but I want to ask Mr. Carpenter first, what was the scientific proof used by the Federal Government to permanently list the bull trout?

Mr. CARPENTER. Thank you, Madam Chairman. By profession I'm a cowboy and shepherd. And I suddenly became embroiled in this bull trout issue. And when the Fish and Wildlife people had a hearing in Jackpot, I went up there just to see what was going on because I have been very disturbed about what I read about what is happening under the Endangered Species Act.

So I tried to do some research on this subject. And in 1994 the bull trout were recognized as a candidate for listing under the Endangered Species Act. Further review by the U.S. Fish and Wildlife Service has resulted in the finding that the Jarbidge River population segment of the bull trout is not warranted for listing. This finding was made on March 13, 1977.

Why was it subsequently listed? In my research, the best thing that I could find is that there was a series of court cases filed by environmental groups that when the judge would come back and say use your best science, which they must under the Endangered Species Act, they finally got to the point that they thought: we need to list this to get the court off our back.

On March 28 of 1997 or May 1997, the first Environmental Assessment was released for the completed, for the reconstruction of the road. And on June 2, the Forest Ranger, he made his decision which was to reconstruct the four sections of the Jarbidge Canyon

Road. And there are about six or eight things listed here, why they felt that road needed to be reconstructed. And this is in their Environmental Assessment that they spent thousands of dollars upon. If you go up there today, you'll find pins in the ground where the road was to go. You'll find ribbons on the trees. They've done a great deal of work.

That work was done by the Forest Service people here in Elko in cooperation with the county, with no outside influence from Trout Unlimited or the higher-ups in the Forest Service. They concluded we must rebuild this road. This was appealed by Trout Unlimited.

So on June 10, 1998, there was a proposal by the Fish and Wildlife Service to list the bull trout as threatened. And on June 29, 1998, the preferred alternative at that time under the new Environmental Assessment was to construct a trail.

Now, this decision sounds a little fishy to me, especially when these fish have been around for centuries. How in 1 year can things change if it is not political? The only scientific evidence which has been presented is the March 30, 1999, report by our own Nevada Department of Wildlife which maintains the fish are not threatened.

And the first Environmental Assessment contains the statement, "The probability is very low that the river between Snowslide and Pine Creek are used for spawning, rearing, or adult resident trout. The primary reason for this are a lack of spawning gravels and excessively high temperatures in the late summer. Recent surveys indicate that most if not all spawning by bull trout occurs in the headwaters of the Jarbidge River above the Snowslide Gulch."

So in reality, the fish are up there in the wilderness area where it's cool enough for them to live. This fact is substantiated in the NDOW report. I thought that Terry Crawford was going to be here, but I haven't seen him, to present his findings. Their findings say that the bull trout are occupying all the habitat suited to them.

I think that the chief problem with the fish is because they are eating each other. And this is substantiated in the Fish and Wildlife, in their final rulemaking to list the fish. And it says, "Bull trout are opportunistic feeders with food habitats primarily a function of size and life history strategy. Resident and juvenile bull trout prey on terrestrial and aquatic insects," another word I never heard of; a few other things, but something I do understand, "and small fish."

So, the adult migratory bull trout, which is some bull trout that would go down from the areas high in the wilderness, they are known to feed on various trout and salmon species. So I think they are eating each other.

Mrs. CHENOWETH-HAGE. I think you're right. I want to say that is very interesting testimony. And if you have a report there, I wonder if we can enter the entire report into the record?

Mr. CARPENTER. Yes, I will be glad to.

[The information referred to follows:]

THE STATUS OF THE BULL TROUT IN NEVADA

September, 1994

Presented to the

USDI - United States Fish and Wildlife Service

Nevada Ecological Services State Office

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## The Status of the Bull Trout in Nevada

### Abstract

Bull trout, identified as Dolly Varden until 1978, are not known to have held more than a limited presence in the Jarbidge River system of Nevada. Their current status is not unlike that which might be inferred from the first recorded surveys in the 1950's, low fish densities with a disjunct distribution. Currently, best densities of bull trout are found in six headwater locations above 7200 feet elevation where they are often the only species present despite the absence of fish migration barriers. Coincident to finding more than one bull trout within a sample area were stream temperatures of  $< 51^{\circ}\text{F}$ , and streamflows  $> 1.0$  cfs. One or both of these stream characteristics was absent at 10 other electrofished sites in the drainage located above 7200 feet that were found to have wild rainbow/redband trout but no bull trout. General aquatic habitat conditions in the drainage are good due to the inherent stability of the streams, with the exception of those streams within the Buck Creek drainage and two other streams that are tributary to the Jarbidge River in Idaho, even though they originate on the Humboldt National Forest. As the majority of the bull trout habitat in Nevada is located within the Jarbidge Wilderness Area, the streams should remain in good habitat condition.

### Introduction

Until 1978, bull trout were considered by fish taxonomists to be Dolly Varden (*Salvelinus malma*). In 1978, it was recognized that Dolly Varden and bull trout are separate and distinct species.<sup>1</sup> The fish species found in Nevada is bull trout (*Salvelinus confluentus*), even though historic records in Nevada most often refer to the fish as Dolly Varden. All historical accounts of bull trout in Nevada have come from the Jarbidge River

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<sup>1</sup>Cavender, T. 1978. California Fish and Game 64(3): 139.

drainage waters. They were first collected in Dave Creek (EFJRD) in 1934 (Miller, 1952)<sup>2</sup>.

The most current compendium of knowledge of the bull trout in Nevada as well as the proposed future management of the species is contained in the Bull Trout Species Management Plan (hereafter referred to as the SMP), which was drafted in December, 1990. The plan has not been finalized nor formally adopted. Since development of the SMP, however, Division of Wildlife program emphasis has been directed by it. Prescribed programs include stream habitat and fish population surveys within the Jarbidge River drainage basin.

#### Historical Distribution

Bull trout were first collected by employees of the precursor to the Nevada Division of Wildlife, on July 5, 1951, when three specimens were obtained from the East Fork Jarbidge River. With the advent of the Dingell-Johnson Federal Aid Program, the Nevada Fish and Game Commission conducted the initial survey of many of Nevada's fishable waters during the 1950's. Two bull trout were electroshocked at the uppermost of five sample stations on the West Fork of the Jarbidge River on August 15, 1954. Similarly, four sample stations were electroshocked on the East Fork Jarbidge River on August 26 and 28, 1958. One bull trout was caught at each of the two highest elevation sample stations. The dominant wild game fish in both the West Fork and East Fork was rainbow trout followed by mountain whitefish and bull trout. In addition, the West Fork catch data indicated the presence of hatchery brook trout and cutthroat trout that together comprised 45.3% of the total catch. Excluding the hatchery trout in the West Fork samples, bull trout comprised about 7.0% of the game fish catch in both streams. Estimated minimum numbers of bull trout present in Nevada at the time of the original surveys of both the West Fork and East Fork of the Jarbidge River are presented below:

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<sup>2</sup> Miller, R. R. 1952. First record of the Dolly Varden, Salvelinus malma from Nevada. Copeia Vol. 3:207-208.

Jarbidge River  
Initial Bull Trout Abundance Estimates  
1958

| Stream    | Miles | Number/Mile | Total Number |
|-----------|-------|-------------|--------------|
| West Fork | 1.3   | 105.60      | 137          |
| East Fork | 9.4   | 34.32       | 323          |

The West Fork was extensively electrofished on several other occasions from which inferences to the abundance of bull trout can be drawn as is indicated below:

West Fork Jarbidge River  
Fish Population Survey Results  
1961 through 1979

| Date  | Sample Total | Sites w/BT | Mean BT/Mile | Occupied Miles | Estimated Total No. |
|-------|--------------|------------|--------------|----------------|---------------------|
| 10/61 | 7            | 1          | 580.80       | 1.6            | 929                 |
| 08/72 | 4            | 1          | 35.20        | 2.0            | 70                  |
| 11/74 | 6            | 0          | --           | --             | --                  |
| 09/75 | 7            | 0          | --           | --             | --                  |
| 10/79 | 10           | 2          | 5.75         | 5.9            | 34                  |

The bull trout electrofished in 1961 were collected at what was later determined to be the upper distribution of bull trout in the West Fork. This location was about one-half mile upstream of the 1954 collection site. The 1979 fish population sampling was conducted within and immediately above recently channelized river segments located between Mahoney Ranger Station and Pine Creek Campground, hence, sampling was not conducted near the 1954 or 1961

collection sites. Neither did the surveys conducted in the early to mid 1970's include sampling within the upper one-mile of salmonid distribution in the West Fork. As a result, the estimates of total bull trout numbers during those years that the headwater reach was not sampled would have to be considered low and thus not good for trend analysis.

One bull trout was electrofished from a single 100 foot sample site in Jack Creek (WFJRD) on August 16, 1974. A 350 foot section of river on the East Fork at Robinson Hole was electrofished on October 16, 1984, revealing one 209 mm (FL) bull trout (15.09 BT/mile), five rainbow trout, one mountain whitefish, and 34 sculpin.

#### Angler Use

Both forks of the Jarbidge River are popular fishing waters for both resident and non-resident anglers. The Nevada Division of Wildlife tracks angler use by water fished through returns from an angler questionnaire that is mailed to 10% of the licensed resident anglers and 10% of the non-resident anglers. In the past 20+ years, angler use has generally decreased in the West Fork and increased in the East Fork (see below).

#### ANGLER USE TRENDS

| Jarbidge River | <u>Average Number of Angler Days</u> |        |           |
|----------------|--------------------------------------|--------|-----------|
|                | 1970's                               | 1980's | 1990-1992 |
| East Fork      | 643                                  | 1425   | 590       |
| West Fork      | 3440                                 | 1666   | 2106      |

Annual catchable rainbow trout stocking in the West Fork averaged 4242 fish during the 1970's and 3287 fish in the 1980's. The West Fork has received 3000 catchable trout per year since 1986 except in 1991 when no trout were available for stocking. All trout stocked since 1960 have been hatchery reared rainbow trout. Angler use of tributary streams to both rivers has always remained minimal according to angler questionnaire return data.

### Angler Harvest

Random angler creel checks on the East Fork during the 1970's and 1980's indicate that rainbow trout, bull trout and mountain whitefish comprised 94.7%, 3.5% and 1.8% of the fish harvested, respectively. Likewise, in the West Fork the creel was comprised of 96% rainbow trout, 2% bull trout, 1% mountain whitefish and 1% brook trout during the 1960's thru the 1980's. Hatchery stocking of rainbow trout and brook trout in the West Fork contributed to the creel which would tend to underestimate the contribution of bull trout. Angler caught bull trout were reported from the Humboldt National Forest portion of Dave Creek (EFJRD) in both 1975 and 1976, and from Jack Creek in 1976.

### Current Bull Trout Status

#### West Fork Jarbidge River Drainage

The latest and most extensive fish population surveys in the Jarbidge River drainage were conducted in conjunction with stream habitat assessments. The West Fork Jarbidge River was surveyed in 1985 and the major tributaries on the Humboldt National Forest were surveyed in 1992. All fish population sampling consisted of one upstream pass with a backpack electroshocker. A downstream block net was usually put in place to prevent fish loss. The length of stream electrofished was usually 100 feet except in the West Fork where sample stations with fish varied between 90 and 235 feet and averaged 138 feet. A total length of 900 feet was sampled at the fishless uppermost sample site on the West Fork. Rainbow trout and sculpin were the most plentiful and widely distributed species found in the West Fork.

The highest density of bull trout in the West Fork was sampled near the upper limit of fish distribution. The average bull trout density within the 1.5 mile section of stream below the two headwater forks was 4.8 bull trout per 100 m<sup>2</sup>. Bull trout and rainbow trout comprised 67% and 33% respectively of the catch at the uppermost sample site with fish. There were four year classes of bull trout represented in the West Fork of the Jarbidge River electrofished samples.

West Fork Jarbidge River  
Fish Population Inventory  
1985

| Species* | Size (mm) |      | Occupied<br>Miles | Fish per Mile |      | Estimated<br>Population |
|----------|-----------|------|-------------------|---------------|------|-------------------------|
|          | Range     | Mean |                   | Range         | Mean |                         |
| BT       | 73-266    | 132  | 5.5               | 0- 225        | 53   | 292                     |
| RBT      | 27-278    | 97   | 15.5              | 106-1877      | 978  | 15,156                  |
| MWF      | 90-315    | 208  | 10.5              | 0- 225        | 37   | 383                     |
| SU       | 37-199    | 112  | 6.5               | 0- 127        | 43   | 280                     |
| SC       | 20-119    | 62   | 14.5              | 158-6735      | 3188 | 46,219                  |

\* BT-Bull Trout; RBT-Rainbow Trout; MWF-Mountain Whitefish  
SU-Sucker; SC-Sculpin

The bull trout captured in Jack Creek only represented 6% of the total trout captured at Sample Site R1S2. Rainbow trout represented 97.8% of the fish shocked and seen but miscaptured in all of Jack Creek. The one bull trout capture in Pine Creek represented only 2.6% of the total trout captured or seen but missed while electroshocking. Rainbow trout were the only other salmonid found in Pine Creek. The Forest portion of the Buck Creek drainage, Deer Creek, Bear Creek, Fox Creek and Sawmill Creek were all inhabited by only rainbow trout.

East Fork Jarbidge River Drainage

The entire Humboldt National Forest portion of the East Fork Jarbidge River drainage was surveyed in 1993. This survey found bull trout inhabiting the two uppermost sample sites on the river. Rainbow trout were the most plentiful and widely distributed species found in the East Fork of the Jarbidge River. Only bull trout were found at the uppermost Sample Site R3S3 whereas, downstream 0.8 miles at Sample Site R3S2, a single bull trout was collected along with three rainbow trout and seven sculpin. The river sample of four bull trout appeared to represent three different age classes, none of which were young-of-year fish.

East Fork Jarbidge River \*  
Fish Population Inventory  
1993

| Species** | Size (mm) |      | Occupied<br>Miles | Fish per Mile |      | Estimated<br>Population |
|-----------|-----------|------|-------------------|---------------|------|-------------------------|
|           | Range     | Mean |                   | Range         | Mean |                         |
| BT        | 115-165   | 155  | 1.7               | 53 - 317      | 185  | 314                     |
| RBT       | 32-220    | 122  | 13.3              | 105 - 792     | 317  | 4213                    |
| SC        | 21-114    | 74   | 12.5              | 53 - 3221     | 1302 | 16280                   |
| DA        | 27- 70    | 48   | 1.8               | 264 - 739     | 502  | 903                     |

\* Humboldt National Forest portion only.

\*\* BT-Bull Trout; RBT-Rainbow Trout; SC-Sculpin and DA-Dace

Contemporary surveys conducted on the East Fork tributaries found bull trout in upper Dave Creek and within the Slide Creek drainage. No evidence of bull trout was discovered in the Robinson Creek or Cougar Creek drainages, however, two adult trout observed in a deep pool at Sample Site 1 on Fall Creek were thought to be bull trout. Bull trout encountered in Slide Creek consisted of a single adult specimen at SS-3 and juvenile fish at the lowest elevation sample site in each of two unnamed tributary streams to Slide Creek. An estimated 361 bull trout inhabit the Slide Creek drainage. Bull trout in Dave Creek were collected at the two highest elevation sample sites but not at the Forest Boundary. An estimated 251 bull trout (132 bull trout per mile) inhabit 1.9 miles of Dave Creek on the National Forest. The uppermost Sample Site R1S3 catch was composed of 100% bull trout while about 0.5 mile downstream, R1S2 contained 50% bull trout and 50% rainbow trout. The five captured bull trout in Dave Creek ranged in length from 122 mm to 231 mm and averaged 167 mm (FL). Five collected rainbow trout averaged 125 mm (FL). Both rainbow trout and sculpin were sampled in Fall Creek and only rainbow trout were found inhabiting Cougar, Robinson and lower Jim Bob Creeks.

#### Stream Habitat Conditions

The most extensive stream habitat survey of the West Fork was completed in October, 1985. There were 17 sample sites located

throughout the Nevada portion of river from the stateline upstream to above the headwater forks. This stream habitat survey was conducted using a modification of the U.S. Forest Service transect method (Dunham and Collotzi, 1975). The tributaries of the West Fork and the entire East Fork drainage above the U.S. Forest Service Boundary were intensively surveyed in 1992 and 1993, respectively. These stream habitat surveys were conducted using the Level 3 Survey in the U.S. Forest Service - Region 4 Fisheries Habitat Surveys Handbook - FSH 2609.23 (March, 1989). Both survey methods consist of five cross-stream transects per station and thus, most stream attributes can be directly compared.

Both the West Fork and East Fork drainages lie within a basaltic flow geologic zone. Stable stream channels are characteristic of the drainage type as evidenced by "good" stream channel stability scores for both the West Fork and East Fork. A 1979 U.S. Forest Service stream channelization project straightened 3104 feet of the West Fork at seven areas ranging in length from less than 50 feet to 1621 feet located between Mahoney Ranger Station and Pine Creek Campground. Both river forks have a moderate stream gradient averaging under 3%. Stream bottom substrate composition in the forks is composed primarily of rubble sized particles.

Jarbidge River  
Stream Bottom Substrate Composition  
1985, 1992 and 1993 Surveys

| Stream    | <u>Substrate Percent Composition</u> |         |        |        |           |       | Percent Embeddedness |
|-----------|--------------------------------------|---------|--------|--------|-----------|-------|----------------------|
|           | Bedrock                              | Boulder | Rubble | Gravel | Sand/Silt | Other |                      |
| West Fork | 1                                    | 20      | 50     | 16     | 7         | 7     | 12.5                 |
| East Fork | 3                                    | 21      | 51     | 21     | 4         | Trace | 16.0                 |

Each stream bottom was evaluated as being moderately packed with some overlapping. Mean substrate embeddedness ratings were considered "light" (gravel, rubble, and boulder particles have less than 25 percent of their surface surrounded by fine sediment) in both streams.

A comparison of the East Fork and West Fork stream habitat condition index (HCI) using the average of the five parameters of pool measure (PM), pool structure (PS), streambottom (SB), bank cover (BC), and streambank soil stability (BSS) is presented below:

Jarbidge River  
Stream Habitat Characteristics  
1985, 1992 and 1993 Surveys

| Stream     | Percent of Optimum |      |      |      |      | HCI  |
|------------|--------------------|------|------|------|------|------|
|            | PM                 | PS   | SB   | BC   | BSS  |      |
| East Fork  | 80.6               | 40.8 | 72.0 | 73.6 | 91.0 | 71.6 |
| West Fork. | 47.2               | 49.5 | 65.0 | 70.0 | 78.0 | 61.9 |

The major habitat differences between the two streams was the paucity of pools in the West Fork and somewhat less stable streambanks in the West Fork. The dominant pool forming features in both streams was boulder and/or rubble substrate. Features including logs, limbs, root wads, and overhanging banks accounted for 15% of the noted pool features in the East Fork and 16% in the West Fork. Deep water as a pool feature was present 13% of the time in the West Fork but only 1% of the time in the East Fork.

Stream discharge on the National Forest portion of the West Fork and East Fork was similar at the time each river was surveyed.

Jarbidge River  
Stream Discharge  
1985, 1992 and 1993 Surveys

| Stream    | Stream Discharge (cfs) |      |
|-----------|------------------------|------|
|           | Range                  | Mean |
| West Fork | 1.7 - 8.8              | 5.7  |
| East Fork | 1.3 - 10.2             | 5.5  |

The mean water depth at ten West Fork survey sites located on the National Forest was 0.48 feet compared to 0.35 feet on the East Fork. Likewise, the mean water width on the Forest portion of the West Fork and East Fork was 15.9 feet and 19.9 feet, respectively. It would appear that the West Fork is somewhat narrower and deeper than the East Fork under low to medium flow regimens despite a similar channel width that averaged 39.2 feet on the West Fork and 39.9 feet on the East Fork. The fact that a road parallels much of the West Fork and that stream channelization has occurred in several areas could help explain the narrower and hence, deeper West Fork.

#### Tributary Stream Conditions

The National Forest portion of the tributaries entering the East and West Forks of the Jarbidge River within Nevada are above 5850 feet and are primarily first or second order, Rosgen A2 type stream channels. Tributaries on the Forest that eventually drain into Idaho from the Double Diamond Desert are steep to moderate gradient, gravel-rubble or gravel-fines, Rosgen B type stream channels. Streams of like character include East Fork Jarbidge River tributaries, West Fork Jarbidge River tributaries within Nevada, and streams originating on National Forest in Nevada and ending in the Idaho portion of the West Fork or Jarbidge River proper. Stream flows present during the East Fork Jarbidge River drainage surveys in 1993 were 98% of average in the Snake River drainage, whereas, West Fork tributary streamflows were only about 30% of normal in 1992.

The East Fork and West Fork tributary streams being of similar character, greatest differences were associated with stream discharge and its affect on formation of pool habitat and pool quality. Habitat parameters of bank soil stability and bank vegetative stability were rated good to excellent in both the East Fork and West Fork tributaries. The Buck Creek drainage and headwaters of Columbet and Dorsey Creeks were collectively only moderately stable however. Stream bottom composition was good in the East Fork and West Fork tributaries. Less than desirable substrates (silt and sand) prevented attainment of even a fair stream bottom rating in the Buck Creek Area where stream bottom embeddedness rated 49% and ungulate streambank damage was rated moderate at 42%. Both stream bottom embeddedness and ungulate

damage ratings were acceptable in the tributaries of the East Fork and West Fork.

Stream temperatures taken at the time of the stream surveys within the Forest portion of the Jarbidge River system were characteristic of summertime conditions. The highest temperatures recorded were from the Buck Creek Area where the mean high temperature for the six streams was 67.5°F. The eight other West Fork tributaries had a mean recorded high temperature of 58.6°F. The lower reach of Pine Creek had a recorded high of 66°F, however, the recorded high in the upper reach where the bull trout was found was 59°F. The bull trout captured in Jack Creek was in 53°F water in the evening. The mean high temperature in the East Fork tributaries was only 50.7°F. The highest recorded temperature in the East Fork tributaries was taken at SS-7 in Robinson Creek, 59°F.

#### Bull Trout Habitat Characteristics

There were six electrofished sites having a minimum of two bull trout present (105.6 fish/mile) and all were located at the uppermost trout inhabited area of the stream in which they were found. These sites could be considered Focal Habitat<sup>3</sup> or the last remaining strongholds for bull trout. All six sample sites were located in the fir-aspen-mountain brush upland vegetation zone at stream elevations above 7200 feet. The associated riparian zone at all sites consisted of a composite of aspen, fir, grass and forbs, and willow and/or alder. All the sites were representative of a Rosgen A2 type stream channel. Consistent conditions across all six sample sites included the following: (1) clear, cold water (40°-51°F); (2) an elevation above 7200 feet; and (3) a base discharge of at least 1 cfs. There were ten other sampled sites located in the Jarbidge River drainage in Nevada above 7200 feet that were inhabited by only rainbow/redband trout. Based on the aforementioned stream characteristics present in occupied bull trout habitat, none of the ten sites is potential bull trout habitat; either stream temperature and/or minimum discharge

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<sup>3</sup>Terminology as used in the Draft, Bull Trout Conservation Agreement - State of Idaho (including Nevada). April 4, 1994.

criteria were not met during the time each of the ten sites was sampled. If the two trout seen but not shocked at Station 1 in Fall Creek were indeed bull trout as thought, they were at a location with a discharge of 14.66 cfs, a water temperature of 53°F and at an elevation of 6450 feet. Because the two trout were resting on the bottom of a deep, quality pool, the temperature where they were may have actually been cooler than the recorded temperature taken just beneath the stream surface.

The current and past distribution of bull trout should be considered Focal Habitat. This includes the headwaters of the East Fork and West Fork of the Jarbidge River, the headwaters of Dave Creek, the headwaters of Pine Creek, and all of Fall Creek, Jack Creek and Slide Creek. The majority of the East Fork and West Fork of the Jarbidge River can also be considered Nodal Habitat<sup>4</sup>, or those habitats adjacent to focal areas which support trout during periods of high population and distribution. Critical Contributing Areas<sup>5</sup> that could conceivably be used at times by bull trout or, at a minimum, provide clear, cold water to the river system include the following areas: Sawmill Creek, Fox Creek, Bear Creek, and Deer Creek in the West Fork Jarbidge River; and Cougar Creek and Robinson Creek in the East Fork Jarbidge River drainage. Due to current habitat problems and direct link to West Fork Nodal Habitat, the Buck Creek drainage could be considered an Adjunct Habitat<sup>6</sup> (adjacent habitats unsuitable for sustained occupancy).

#### Conclusion

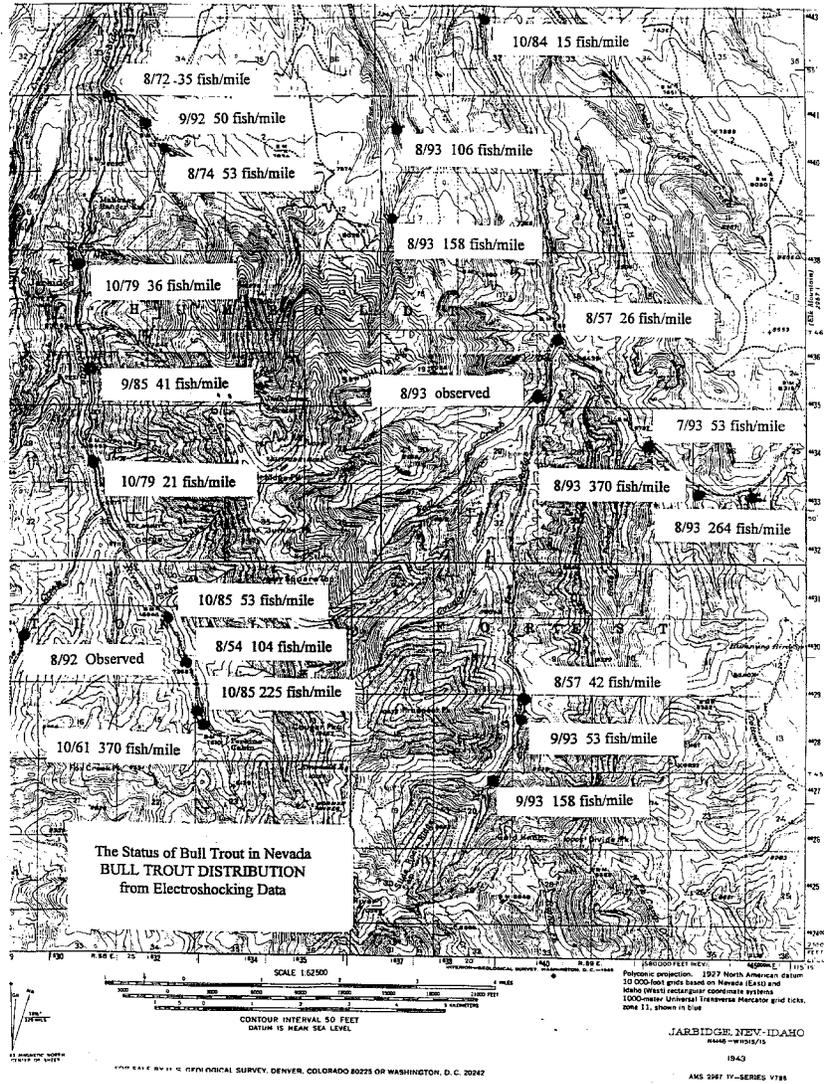
Based on the first stream survey records for the Jarbidge River drainage system and the most current survey results, bull trout continue to maintain a limited presence in the same locations. Given the present habitat condition of focal habitats, the current land management practices, negligible exploitation, and wilderness land status, bull trout are expected to persist.

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<sup>4</sup> ibid

<sup>5</sup> ibid

<sup>6</sup> ibid



**ORDER FOR SUPPLIES OR SERVICES**

1 DATE OF ORDER: **SEPTEMBER 14, 1993**      2 REQUESTING OFFICE: **NV ES STATE OFC**      3 CONTRACT NO. if any: **OPEN MARKET**      4 ORDER NO: **14320-3-1189**

5 SNIP TO: **U.S. FISH AND WILDLIFE SERVICE  
NEVADA ECOLOGICAL SERVICES STATE OFFICE  
4600 KIETZKE LANE, BLDG. C-125  
RENO, NEVADA 89502**

6 MAIL INVOICE IN TRIPLICATE TO: **SAME AS BLOCK #5**

7 ATTENTION: **DONNA WITHERS (702) 784-5227**

8 TO CONTRACTOR (Name, address and ZIP code):  
**NEVADA DEPARTMENT OF WILDLIFE  
(DIRECTOR, WILLIAM MOLINI)  
POST OFFICE BOX 10678  
RENO, NEVADA 89520-0022  
ATTENTION: JIM CURRAN**

9 DISCOUNT TERMS: **NET**

10 TYPE OF ORDER:  A PURCHASE - Reference your **QUOTE**

11 DELIVER TO: **7/1/94**  
FOB POINT ON OR BEFORE (date): **9/1/94**

12 GOVERNMENT BY/END: **N/A**      13 PLACE OF INSPECTION AND ACCEPTANCE: **RENO, NEVADA**

14 SCHEDULE (See reverse for Rejections)

| ITEM NO (A) | SUPPLIES OR SERVICES (B)   | QUANTITY ORDERED (C) | UNIT (D) | UNIT PRICE (E) | AMOUNT (F) | QUANTITY ACCEPTED (G) |
|-------------|--|----------------------|----------|----------------|------------|-----------------------|
| 1.          | Purchase of status report on Nevada's populations of Bull Trout ( <i>Salvelinus confluentus</i> ). Report shall include narrative on current status and distribution and accompanying map(s); statement on habitat condition and raw GAWS III field data. Draft report for review is due July 1, 1994. Final Report due September 1, 1994. Payment will be processed upon written request upon delivery of final report. | 1                    | Rpt      | \$4,950.00     | \$4,950.00 |                       |

15 BUSINESS CLASSIFICATION (Check appropriate box(es))  
 SMALL     OTHER THAN SMALL     DISADVANTAGED (DBA)     MINORITY     WOMAN-OWNED     LABOR SURPLUS     INTER-AGENCY

16 ISSUING OFFICE (Address correspondence to U.S. FISH AND WILDLIFE SERVICE)  
**NV ES STATE OFFICE, 4600 KIETZKE LANE, BLDG. C-125, RENO, NV 89502**      \$4,950.00

17 NAME AND WARRANT NUMBER OF CONTRACTING OFFICER (Type)  
**GLORIA L. MOORE, FWS# 19019**

18 UNITED STATES OF AMERICA (Signature)

**FOR GOVERNMENT USE ONLY (See Note on Reverse)**

| ACCOUNTING LINE NO | ORGN  | FUND | BY | SUB-ACTIVITY | PROJECT | OBJECT CLASS | DESCRIPTION ITEM NO (Book 148) | AMOUNT     |
|--------------------|-------|------|----|--------------|---------|--------------|--------------------------------|------------|
| 1                  | 14320 |      | 93 | 1122         | 1017    | 262J         | REPORT ON BULL TROUT           | \$4,500.00 |

Form No. 3-2103  
 Modified for FWS USE (12/85)

1- ORIGINAL

Mrs. CHENOWETH-HAGE. You know, it's very interesting. In Idaho they listed the bull trout in certain areas, too, that are streams where salmon return to spawn. So that's a raging debate. I thank you for bringing it to our attention.

I do want to ask Mr. Nannini, Commissioner Nannini, apparently during the flood in 1995, the nearby Lamoille Canyon suffered the same kind of damage as did Canyon Springs. And the Lamoille Road was repaired so quickly. Why wasn't the road in question, South Canyon Road, repaired?

Mr. NANNINI. Lamoille Canyon probably averages 2,000 people a day during the summertime for usage. Somewhere around there; a thousand. They have heavy traffic in that area and a lot of people, and it's well-known. And had it not been repaired, it would have really had a lot of people here in this room today. South Canyon probably numbers in the hundreds during the summer season.

So I think just notoriety of the area, accessibility to the area, and that's probably the reason.

Mrs. CHENOWETH-HAGE. What you're telling us is it was public pressure from recreation and tourism?

Mr. NANNINI. That's correct.

Mrs. CHENOWETH-HAGE. Let me ask Commissioner Lesperance, the South Canyon Road doesn't have the same demand for tourism, obviously. But are there property rights up there?

Mr. LESPERANCE. There certainly are. I think we ought to back up a little bit and talk about property rights in general that are being infringed upon by the current philosophy of the Forest Service, which undoubtedly will be followed by a similar philosophy in the Bureau of Land Management in a matter of time. That philosophy is—it was clearly described a number of years ago when I was a young professor at the university attending many of these meetings and trying to draw attention to the fact that the government of the United States was insisting that they have full control over the public lands.

And I have attended many, many seminars where the technique of obtaining title to all property within the boundaries of the Federal property was discussed. The No. 1 item is always to obtain the water. No. 2 item is to close the roads.

Mrs. CHENOWETH-HAGE. Very interesting.

Mr. LESPERANCE. When that happens, we must remember that the ability to take those resources and produce them into wealth becomes extremely limited and perhaps totally stopped. You must never forget, all wealth ultimately only comes from the land and the waters associated with it.

Mrs. CHENOWETH-HAGE. No, we can't be reminded of that too often. And ultimately the focus of this whole issue really isn't the bull trout, is it?

Mr. LESPERANCE. Absolutely not.

Mrs. CHENOWETH-HAGE. The focus is the road.

Mr. LESPERANCE. The focus of this issue is: Who will control the future of this country, the Federal Government or the people that made it what it is?

Mrs. CHENOWETH-HAGE. Well, I wanted to ask you, what impact will not rebuilding the road have on the local economy in Jarbidge?

Mr. LESPERANCE. It will definitely hurt the local economy. It's a great tourist-focused community. Many of us like to go up there. It will have an impact on me. It will have an impact on my grandchildren and every person in this room in one form or another. But it won't stop there, that's the problem, because the impact will grow and grow and grow.

This is a battle line. This is a line in the sand. Do we allow this to happen and lose one more freedom? Or do we finally say enough is enough? And this County Commission is saying enough is enough and we will rebuild that road and we will put it back to where it was, come hell or high water.

Mrs. CHENOWETH-HAGE. The hearing will come to order, please. I want to ask Commissioner Nannini, what do you believe the cost of rebuilding that road will be? And the future maintenance, if you were to do the rebuilding?

Mr. NANNINI. You know, the maintenance on the road is insignificant. I think the numbers that we have is around a million-and-a-half to two million dollars to rebuild the road. That's if we go all the way up to the trailhead.

You've got to understand, and it doesn't seem like everybody does, this road wasn't wiped out. There's only, there was a 900-foot stretch that we built, and the Forest Service unbuilt. It was wiped out. And then the rest of the areas, the other two areas there was about an 80-foot stretch; and there was about a 90-foot stretch. At the very top where the trailhead is, a whole mountain of rocks came down on top of the road, you know. That's the area that will require lots of funds and lots of equipment to redo.

But it wasn't totally devastated, the road. It was just in areas where the water was bunched up and crossed over.

Mrs. CHENOWETH-HAGE. Were the Commissioners consulted before the reconstruction of the road was done under contract by the Forest Service?

Mr. NANNINI. Absolutely not. That decision was given to the people in Jarbidge. It was actually delivered to them on a Commissioner day. None of us were notified. Dave Aicher, who is the Forest Ranger for that area, took a trip up into the area, met with the people of Jarbidge in their community hall, and told them at that time that that road would not be rebuilt.

Nothing like that was ever mentioned in all these meetings that we were having with them. There was never any indication of that up to this point. It was all: We were working together; things were great; we were getting the funds; we were going forward.

There was never an indication of a change. Not one of us were notified beforehand of the final decision until it was announced.

Mrs. CHENOWETH-HAGE. Ms. McQueary, was there NEPA compliance by the Forest Service in this? Was there an Environmental Impact Statement?

Ms. MCQUEARY. I have not seen one. Certainly in the time that they took, they didn't have time to go through all the process. We haven't gotten any documentation of NEPA compliance. We haven't had a comment period to my knowledge.

Commissioner Lesperance, you want to make a comment on that?

Mr. LESPERANCE. No, I would be happy to.

Mrs. CHENOWETH-HAGE. Commissioner?

Mr. LESPERANCE. There has been no compliance. And I might add, NEPA calls for the best method. And I can assure you, what the Forest Service did in Jarbidge and South Canyon was not the best method. It was the most devastating kind of action they could have possibly have taken. It was as if it was to us as County Commissioners: This is in your face. And that is precisely what my feeling as chairman of the Elko County Commission has been and is and will continue to be until the Forest Service officially apologizes for the actions they took.

Mrs. CHENOWETH-HAGE. That's very interesting. In your opinion, was that—

Mr. LESPERANCE. Madam Chairman, yes, that is my opinion, in case you doubted it.

Mrs. CHENOWETH-HAGE. Was there an environmental impact that occurred as a result of their actions?

Mr. LESPERANCE. I've already indicated that the canopy of trees was removed. There is downed timber everywhere in this 900-foot section. And realize I'm in the reclamation business, and I evaluate reclamation projects all the time. I might add that their reclamation project is a total failure.

Mrs. CHENOWETH-HAGE. Was increased sedimentation there?

Mr. LESPERANCE. Again I'm totally remiss for not having documented that with the video we have, but that video clearly shows the amount of sedimentation that Forest Service project placed in the river.

Mrs. CHENOWETH-HAGE. Would you be willing to, would you please send a copy of the video to the committee?

Mr. LESPERANCE. I'll even bring myself with it if you wish.

Mrs. CHENOWETH-HAGE. I wanted to ask two final questions of Mr. Nannini, and we will excuse this panel.

Mr. Nannini, are there mining claims up above the South Canyon Road? And are they active? Or what is the state of the mining claims? And do you have any evaluation on them or numbers?

Mr. NANNINI. I don't know if we have the numbers. It was my understanding through the people of Jarbidge, the old-timers that have been there a long time that there were two mining claims, known mining claims up in that area; but I don't have that information.

Mrs. CHENOWETH-HAGE. What about the impact on real estate values in Jarbidge with this road being closed?

Mr. NANNINI. Well, the real estate value would be hindered. The amount of traffic that flows up there during the summertime, of course, now that they've taken the South Canyon Road. You've got to understand that's where a lot of the people that visited that area went up there and did their camping. You know, you can picture a family spending the night or the weekend and cooking out and then going down to the river and fishing and doing some hiking, stuff like that. I think there was like four, five campground areas.

Then for the folks that like to hike, it was a trail. There was a road up to the trailhead, and they parked their cars there. There was a nice parking area. As I mentioned, there was a restroom facility. All of those folks that like to do that kind of thing, are in shape to do that kind of thing, parked their vehicles and walked

the mountains in the wilderness area. That was the easiest and best way to go.

Mrs. CHENOWETH-HAGE. I want to ask one final question. This really is my final question. Do any of you on the panel remember the exact words on the sign that said this is the beginning of the wilderness area? Or do you have a copy of that sign? Or a picture of it?

Mr. NANNINI. I think we have a picture of that.

Mrs. CHENOWETH-HAGE. Would you be willing to submit it for the record, please?

Mr. LESPERANCE. I will make sure that you get all documentation of that nature. And we will go back and review all of our files and prepare a copy of this video as well and have that formally submitted to the committee as rapidly as we possibly can.

Mrs. CHENOWETH-HAGE. Thank you.

Ms. MCQUEARY. Madam Chairwoman, for the committee's reading pleasure I have compiled a number of Forest Service documents regarding the South Canyon Road issue. In this it has biological assessments regarding the benefit of having the road replaced to not only the bull trout but to the administration of the Forest Service. It also has the economic specialist report indicating that road reconstruction would help the economy of Jarbidge.

It talks about that only 1.2 percent of the watershed would be disturbed with road reconstruction. It talks about—these are all Forest Service documents. It talks about the whole road issue in perspective. I think it is important that you, as a committee, review these documents and see that this road can be put back in place with Elko County's interests and the bull trout interests both taken into consideration.

Mrs. CHENOWETH-HAGE. Without objection, the full notebook will be entered into the record.

Mrs. CHENOWETH-HAGE. I want to ask Mr. Gibbons if he has any further questions.

Mr. GIBBONS. No, I don't, Madam Chairman. Thank you very much.

Mrs. CHENOWETH-HAGE. I want to thank this panel for your very, very interesting testimony. We may be asking you further questions.

Mr. GIBBONS. Mr. Carpenter?

Mr. CARPENTER. Madam Chairman, I don't believe that our head of the Division of Wildlife is here today. I would like to submit this for the record and—.

Mrs. CHENOWETH-HAGE. Would you read the title of it?

Mr. CARPENTER. It's the Status of the Bull Trout in Nevada.

Mrs. CHENOWETH-HAGE. And it's produced by?

Mr. CARPENTER. The Nevada Department of Conservation and Natural Resources, Division of Wildlife.

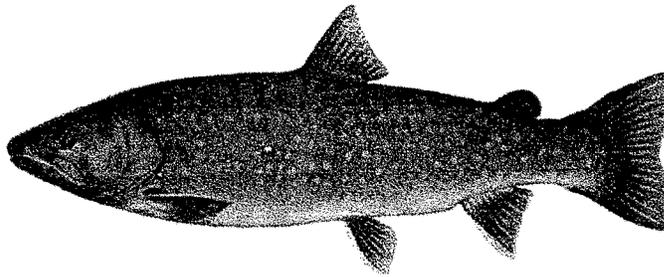
Mrs. CHENOWETH-HAGE. And the date is?

Mr. CARPENTER. March 30, 1999.

Mrs. CHENOWETH-HAGE. Thank you. And without objection, it will be entered into the record.

[The information referred to follows:]

THE STATUS OF THE BULL TROUT IN NEVADA



Prepared by:

Gary Lee Johnson  
Fisheries Biologist

Nevada Department of Conservation and Natural Resources  
Division of Wildlife  
1100 Valley Road  
P. O. Box 10678  
Reno, Nevada 89520

March 30, 1999

**RECEIVED**

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ELKO COUNTY,  
COMMISSIONERS OFFICE

## The Status of the Bull Trout in Nevada

### Abstract

In late summer and fall, 1998, an intensive survey of all bull trout, *Salvelinus confluentus*, habitats in Northeastern Nevada was conducted. The information collected was intended to supplement population status work completed in 1994 and reported in The Status of The Bull Trout in Nevada (Johnson et. al. 1994). The Jarbidge River system is the southern-most distribution of bull trout and has been designated as a Distinct Population Segment (DPS) by the U.S. Fish and Wildlife Service in rule making processes associated with the Endangered Species Act of 1973 as amended. Currently the bull trout of the Jarbidge River DPS are classified as emergency endangered. Results from these 1998 studies show that bull trout in the Jarbidge River System are distributed in all suitable habitats, albeit at low densities. These low densities are commensurate with available habitat, which is based upon deterministic habitat factors of gradient, temperature and stream flow. The bull trout, a glacial relict, is dependent upon cold, clear water (40° - 51°F), moderate gradient (<12%), and suitable stream flow ( $\geq 1$  cfs) for spawning and rearing. These habitat conditions are limited in the Jarbidge River system, however, 1998 studies reiterate that where these suitable conditions exist, bull trout persist. Furthermore, these critical spawning and rearing areas are free from external threat other than stochastic events. Additionally, genetic evaluations also completed in 1998 reveal the presence of at least three distinct subpopulations in the system with adequate genetic diversity and metapopulation potential to counter the threat of stochasticism. Adult resident and migratory habitat in the main forks of the Jarbidge River are also occupied, again at the low densities characteristic of the species. Threats to these less critical habitats are minimal. Associated fish species in the Jarbidge River environs such as redband trout are also represented by proliferating populations, further corroborating stable habitat conditions and the absence of substantial threat. Listing bull trout will not increase in-stream flows, decrease water temperatures, modify stream gradients, or attenuate the effects of stochastic events. We believe the results of this study support the contention that the Jarbidge River bull trout population is neither threatened nor endangered, but instead is secure in a limited distribution due to a paucity of suitable habitat.

### Introduction

Since 1992, the status of bull trout across its range has been either under review due to petitions filed under provisions of the Endangered Species Act of 1973 (ESA), or the subject of lawsuits filed by various concerned conservation groups. In 1994, the Division of Wildlife completed The Status Report Of The Bull Trout In Nevada (Johnson et. al. 1994) with partial funding from a contract with the U.S. Fish and Wildlife Service (USFWS). The conclusion of that report stated: "Based on the first stream survey records for the Jarbidge River drainage system and the most current survey results, bull trout continue to maintain a limited presence in the same locations. Given the present habitat condition of focal habitats, the current land management practices, negligible exploitation,

and wilderness land status, bull trout are expected to persist." That report contains a significant amount of historical data, including habitat survey data which is not duplicated in this report.

On June 10, 1998, the USFWS published a proposed rule to list the Jarbidge River Distinct Population Segment (DPS) of bull trout as threatened with a special rule. The bull trout was under a 120-day public review and comment period under the proposed rule when on August 11, 1998, the USFWS exercised its emergency authority to determine the Jarbidge River population segment to be endangered pursuant to the ESA. According to the USFWS, "The listing was prompted by the unauthorized disturbance of portions of the West Fork of the Jarbidge River by Elko County Road Department on July 21, 1998." In a letter sent to the USFWS on October 5, 1998, NDOW stated that the emergency listing was inappropriate based on the level of threat posed by the "unpermitted activities" and that a threatened status is not supportable based on information presented in the listing package. A final determination on the June 10, 1998 proposal will be made by the USFWS prior to expiration of the emergency rule on April 7, 1999.

The goal of this report is to present the findings of the 1998 survey of the Jarbidge River system, and to compare these findings to those of previous surveys. The result of this process, we believe, is the most accurate depiction of the status of the bull trout in the Jarbidge River system of Nevada.

### Procedures

Sample site (SS) locations from previous surveys were determined from available records (Maps 1 - 2). The West Fork Jarbidge River, lower Jack Creek, Jenny Creek, Pine Creek, Sawmill Creek, Dave Creek, Fall Creek, and middle and upper Slide Creek were all surveyed on August 5, 1998.

A total of fourteen survey crews comprised of attendees to the *Salvelinus confluentus* Curiosity Society Workshop at Pole Creek Ranger Station assisted with the survey. A single pass survey technique utilizing backpack electrofishing gear sampled a minimum of 100 feet of stream at each station, with a range of 100 to 250 feet. Spot-shocking outside of sample areas was conducted by some groups searching for bull trout. All captured gamefish were identified and measured. All bull trout fork and/or total lengths are recorded in Appendix I. Some groups collected weights from these fish. Nongame fish were identified, enumerated and a sample measured. A fin clip tissue sample from each captured bull trout was collected and preserved according to provided instructions. Tissue samples were provided to Paul Spruell, Montana State University geneticist, for genetic analysis. Stream temperatures were recorded at each survey site. Prior to electrofishing at eleven lower West Fork Jarbidge River sample sites, two person snorkel teams recorded underwater counts of game fish seen through the sample site.

Later in August, a Division of Wildlife stream survey crew completed survey efforts of the Forest portion of the East Fork Jarbidge River, Cougar Creek and the lower two sample sites on Slide Creek. Fox Creek and the upper two sample sites on Jack Creek were surveyed in mid-September. A single pass electrofishing survey technique was used through the 100 ft. sample sites. All captured fish were measured and gamefish were weighed. Spot-shocking was used in some areas to determine the presence/absence of bull trout. One fin clip from a bull trout caught in Cougar Creek was preserved for biogenetic analysis. Both air and stream temperatures were recorded at each sample site.

Minimum fish density estimates (fish/mile) at each sample site were determined from the number of each species captured and/or the number of each species that were seen but missed during electrofishing surveys. Minimum species population estimates were calculated from the average of individual sample site density estimates through the occupied range of the species.

On July 30-31, 1998, Onset® thermographs were set in upper West Fork Jarbidge River, Jack Creek, Slide Creek, and in an unnamed, Tributary B of Slide Creek. The thermographs were set to determine the suitability of these streams as juvenile bull trout rearing habitat. These thermographs were pulled on October 26-27, 1998.

The redband trout referred to in this report is putatively *Oncorhynchus mykiss gairdneri*, referred to as the interior redband trout. Sculpin are not easily identified to species in the field, so the common name sculpin for the genus *Cottus spp.* is used. Two species of dace are known to the system, the longnose dace, *Rhinichthys cataractae*, and the speckled dace, *Rhinichthys osculus*. Where ever possible these two species were recorded separately. The single recovery of a sucker was noted as *Catostomus spp.*

Maps of the Jarbidge River system were prepared to show occupied and unoccupied stream reaches. These maps were based on 1992, 1993, and 1998, population surveys. Suitable and unsuitable stream reaches for bull trout occupation are also depicted. These determinations were based on observed and measured habitat parameters, including water flows, water temperatures and stream gradient (Maps 1-2).

## Results

### West Fork Jarbidge River

A total of 19 sites were sampled in Nevada (17) and Idaho (2), (Map 1). Game fish were found inhabiting all sample sites except SS-13 which happened to be within the recently (July 21, 1998) channelized reach of stream located above the confluence of Pine Creek. It should be noted that a NDOW crew subsequently cleared this site of fish prior to U.S. Forest Service rehabilitation efforts on November 20, 1998, and found 31 redband trout and 2 bull trout.

Bull trout were found at the three sample sites within the Jarbidge Wilderness Area and at 2 of 14 sample sites outside the wilderness area. An additional bull trout was seen by a snorkel team at the upstream of two sites in Idaho.

The mean bull trout density in the 1.9 miles of occupied stream within the wilderness area was calculated at 258.7 fish per mile. Bull trout density at an added sample site (S-17), located immediately above the confluence of Sawmill Creek, was 316.8 fish per mile. This added sample site was excluded from the mean bull trout density calculation because of its close proximity to the established sample site located 250 feet below the confluence of Sawmill Creek. Length frequency analysis separates the fish collected in the wilderness area into the following age classes: Age I (n=8); Age II (n=12); and Age IV (n=1). The bull trout seen by snorkelers or collected during electrofishing outside the wilderness area were of two age classes: Age III (n=3) and Age IV (n=2). The largest bull trout captured was 239 mm (TL) and the largest seen by snorkelers was approximately 229 mm (TL).

Calculated minimum bull trout densities and distribution was similar to what was found in past surveys of the West Fork Jarbidge River (Appendix II). The highest elevation sample sites have always had the greatest bull trout densities. The most favorable juvenile rearing and spawning habitat lies within the wilderness area. Densities of bull trout outside the wilderness area have always been low. The upper West Fork is a bull trout focal area, habitat where resident bull trout live year around and migratory bull trout use for spawning and early rearing.

Redband trout were the more numerous game fish at all except the upper most two sample sites where bull trout were most common. Thirty-five percent of the redband trout captured and seen by snorklers were 152 mm or larger in fork length. The largest redband trout was 239 mm total length. There appeared to be five age classes of redband trout.

Mountain whitefish were collected at 7 of 12 sample sites below Pine Creek to the state line and at both sample sites in Idaho. The minimum fish density estimate of mountain whitefish in Nevada was 54.2 fish per mile. Snorkelers saw an average of 204.9 mountain whitefish per mile at the two sample sites in Idaho. There were no Age 0 or Age I mountain whitefish seen or captured at any of the sample sites. The mean total length of six measured specimens was 264 mm, with a range of 175 - 325 mm. Deep pools are the preferred resting habitat for mountain whitefish, hence their occupation of the river below the confluence of Pine Creek and into Idaho where such habitat is available.

Hatchery rainbow trout were identified below the confluence of Pine Creek to the sample site just downstream of the confluence of Jack Creek. There were trout from 279 - 356 mm seen by snorkelers at the two Idaho sample sites and at two of three snorkeled sites between the confluence of Deer Creek and the confluence of Freighters Draw that were likely planted rainbow trout.

Nongame fish species found in the river included sculpin, longnose dace, and suckers. Sculpin were found within the channelized reach above Pine Creek confluence and at all downstream sample sites. Captured sculpin ranged in total length from 24 mm to 101 mm. Length frequency analysis indicated at least four age groups: Age-I (40 mm); Age-II (65 mm); Age-III (85 mm); and Age-IV (100 mm). Longnose dace were captured at the three sample sites immediately above the state line and at the sample site 0.8 mile upstream of Jack Creek confluence. The five longnose dace captured represent the first record of the species in the Nevada portion of the river. Unidentified dace found at Idaho sample sites may have been longnose or speckled dace. A single unidentified sucker was captured at the state line sample site.

| Species | Size Range | Mean (mm) | Occupied Miles | Fish per Mile Range | Mean | Minimum Population Estimate |
|---------|------------|-----------|----------------|---------------------|------|-----------------------------|
| BT      | 96-225     | 128       | 1.9            | 148-370             | 259  | 492                         |
|         | 172-215    | 188       | 12.1           | 0-70                | 7    | 87                          |
| RB      | 52-210     | 126       | 14             | 106-2270            | 1054 | 14759                       |
| HRB     | 210-313    | 243       | 16.0**         | 0-196               | 66   | 1056                        |
| MWF     | 195-310    | 271       | 12             | 0-188               | 54   | 650                         |
| SU      |            | 205       | 0.5            |                     | 53   | 27                          |
| LD      | 66-110     | 92        | 8              | 0-53                | 19   | 151                         |

\* BT = bull trout; RB = redband trout; HRB = hatchery rainbow trout; MWF = mountain whitefish; SU = unidentified sucker; and LD = longnose dace  
 \*\* Includes Idaho portion of river and Nevada below Pine Creek confluence.

#### Jack Creek and Jenny Creek

There were four sample sites in Jack Creek and one sample site up from the mouth of Jenny Creek (Map 1). No bull trout were seen or captured in either stream. Fish access into Jack Creek was restored in November, 1997 with the removal of a culvert barrier and replacement with a bridge.

The August daily maximum temperature average in Jack Creek below the confluence of Jenny Creek was 55.7°F in 1998. The peak August reading of 57.5°F, came on three dates. The maximum weekly and biweekly high temperatures were 57.5°F and 57.1°F, respectively. The warmest mean daily temperature in August was 54.1°F. The warmest mean daily temperature averaged over a week in early September was 55.4°F. In the Flathead River drainage of Montana, the highest densities of juvenile bull trout were found in reaches where maximum temperatures were 53.6°F or less.<sup>1</sup>

Redband trout were present at all four sample sites. Greatest densities were found at the lower three sample sites. The upper station was the upper limit of fish occupation due to a steep gradient (13%). Including both the number of trout caught and the number of trout seen but missed during electroshocking surveys, the number of fish per mile at SS-2 and SS-3 was each 1108.8. Redband trout densities at SS-1 and SS-4 were 422.4 and 105.6 fish per mile, respectively. The expanded redband trout population estimate over the 2.7 miles of occupied stream was 1853 trout or an average of 686.4 fish per mile. Redband trout density at SS-1 in Jenny Creek was 580.8 fish per mile. Redband trout occupy about 0.1 mile in Jenny Creek. Length frequency analysis of 31 captured trout indicated five age groups: Age I - 90 mm; Age II - 125 mm; Age III - 160 mm; Age IV - 215 mm; and Age V - 250 mm.

Sculpin were captured at S-1 and were present at a calculated density of 1320.0 fish per mile. Sculpin may have only recently been able to enter lower Jack Creek. Sculpin will probably only be able to inhabit 0.1 mile of Jack Creek due to gradient barriers.

#### Pine Creek

There were five sample sites in Pine Creek (Map 1). A single juvenile bull trout (110 mm TL) was captured in a small tributary located at SS-5.5. The lone occupant of the tributary was residing in 57.2°F water when the adjoining Pine Creek was 61.0°F. Survey efforts conducted in August, 1992 (a drought year), contacted a single adult bull trout downstream of SS-5. The recorded temperature was 59°F at 1140 hours.

Redband trout were captured at all five sample sites. The mean number of redband trout per mile was calculated at 640 and the expanded population estimate over the 3.7 miles of occupied stream was 2369. Length frequency analysis of 58 redband trout indicates four age classes (Age I through IV). No young-of-year fry were noted.

Sculpin were only found at SS-1 where there were 1584 fish per mile over an estimated 0.5 mile of occupied habitat.

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<sup>1</sup>Shipyard, B., K. Pratt, and P. Graham 1984. Life histories of westslope cutthroat and bull trout in the upper Flathead River Basin, Montana. Montana Dept. Fish, Wildlife, and Parks, Kalispell, Montana. 85p.

## Fox Creek

There were four sample sites in Fox Creek (Map 1). No bull trout were captured in Fox Creek in either 1992 or 1998. Redband trout were found only at the lower two sample sites. Fox Creek is a steep ( $\geq 10\%$ ), Rosgen A2 type channel. The mean number of redband trout per mile through the 0.7 mile of occupied stream was calculated at 448.8. The mean fork length of eight captured fish was 99.6 mm. Using both captures and numbers of trout seen but missed during electroshocking surveys, the total estimated population was 314 redband trout.

## Sawmill Creek

There was only one sample site in Sawmill Creek (Map 1). The lower 100 feet of Sawmill Creek was sampled and the only fish seen was a juvenile bull trout that was estimated to be 120 mm long. The afternoon water temperature were 54°F. Sawmill Creek has very little suitable habitat for fish due to the steep gradient of the channel. In 1954, only redband trout were electrofished in lower Sawmill Creek and no fish were sampled in 1992.

## East Fork Jarbidge River

There were 12 sample sites along the Forest portion of the East Fork Jarbidge River (Map 2). Bull trout were only found at the uppermost sample site located just below the headwater forks.

There were an estimated 688.8 bull trout per mile at the uppermost sample site. Two bull trout were spot-shocked from above the confluence of the two headwater forks in the lower reach of the fork emanating from the East Fork and West Fork Jarbidge River drainage divide. The occupied range of bull trout was about 1.4 miles. This headwater area is a focal area for bull trout. The water temperature was 45°F at mid-morning. Downstream 0.9 mile the noon stream temperature was 54°F and although no bull trout were captured in 1998, there was one captured in 1993. The stream temperature was 57°F in mid-afternoon, less than 2 miles below the headwater forks. At 4 miles below the headwater forks the early afternoon stream temperature was 62°F. Water temperatures above 59°F are thought to limit bull trout distribution<sup>2</sup>. A survey high temperature of 65°F was recorded in mid-afternoon between the confluences of Slide Creek and Robinson Creek. The mean total length of eight captured bull trout was 187 mm (142 - 262 mm). These fish most probably represent four age groups, only the smallest of which might be considered a sub-adult.

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<sup>2</sup>Rieman B. E. and McIntyre J. D. 1993. Demographic and Habitat Requirements for Conservation of Bull Trout. General Technical Report-302, Boise, ID: USDA, Forest Service, Intermountain Research Station, 31p.

Redband trout and sculpin were found at all sample sites except the uppermost site in the drainage where bull trout were the only fish species present. An average of 75.0 % of the trout within a sample site were captured as determined by the number of trout that were seen but missed. Length frequency analysis indicates, that there were at least five year classes of redband trout in the sample of fish captured. Four captured young-of-year redband trout were from 18 mm to 40 mm. Redband trout YOY were seen or captured at four different sample sites.

The longnose dace capture represents the first recorded presence of the species in the portion of river on the Humboldt National Forest.

The surveyed sites outside the wilderness had minimal pool and no quality pool habitat and a limited amount of cover. Sample sites within the wilderness contained more pool and quality pool habitat and mostly a moderate amount of instream cover.

| Species | Size Range | Mean (mm) | Occupied Miles | Fish per Mile |      | Minimum Population Estimate |
|---------|------------|-----------|----------------|---------------|------|-----------------------------|
|         |            |           |                | Range         | Mean |                             |
| BT      | 97-258     | 198       | 1.2            | 0-634         | 317  | 380                         |
| RB*     | 63-237     | 134       | 11.8           | 196-1162      | 522  | 5883                        |
| SC      | 38-115     | 77        | 11.8           | 53-2693       | 1384 | 15634                       |
| LD      |            | 68        | 2              | 0-53          | 26   | 53                          |

\* Redband trout data includes Age I and older fish.

#### Dave Creek

There were three survey sites on the Forest portion of Dave Creek (Map 2). Within the 1.9 miles of fish occupied stream on the Forest, redband trout were found at SS-1 and SS-2 and bull trout were present at SS-2 and SS-3. The uppermost 1.4 miles of Dave Creek can be considered a focal area for bull trout. Stream temperatures ranged from a mid-afternoon high of 50°F at SS-3 to an early-afternoon high of 56°F at SS-2. Including both captures and known misses, there were an average of 132.2 redband trout per mile and 237.6 bull trout per mile of occupied stream on the Forest. The estimated number of bull trout and redband trout on the Forest was 301 and 159, respectively. Spot-shocking between SS-2 and SS-3 and above SS-3 resulted in the capture of eight bull trout. A fin

clip tissue sample was collected from these eight bull trout along with five collected at SS-2 and SS-3 for genetic analysis. The mean fork length of the 13 bull trout was 168.3 mm, with a range of 140 - 213 mm. The mean fork length of three captured redband trout was 133.3 mm, with a range of 105 - 155 mm.

#### Slide Creek

There were six sample sites along Slide Creek and one sample site on each of the main tributaries of Slide Creek (Map 2). Bull trout were found at SS-4 in Slide Creek. Redband trout were common in Slide Creek and in the lowest reach of three tributary streams. Sculpin were present only in the lower reach of Slide Creek encompassing SS-1 through SS-3.

There was an average of 83 bull trout per mile at SS-4. The two captured juvenile bull trout averaged 112 mm TL. Fin-clip tissue samples were taken from both specimens for genetic analysis. The stream temperature at SS-4 in mid-afternoon was 55.4°F. On July 28, 1993, there was a single bull trout captured at SS-3. The afternoon stream temperature at SS-5 located in upper Slide Creek was 57°F. Late morning to noon stream temperatures at SS-1 in the three tributaries ranged from 49°F to 53°F. There were juvenile bull trout in both Tributary A and Tributary B during the 1993 summer survey of Slide Creek. The peak August stream temperature in 1998 within Tributary B and at a site located in Slide Creek below the confluence with Tributary A was 55.9°F and 56.7°F, respectively. The mean maximum weekly and biweekly temperatures in Tributary B were 54.5°F and 54.1°F, respectively. The mean maximum weekly and biweekly temperatures in Slide Creek were 55.5°F and 55.3°F, respectively. The mean daily average temperature in Slide Creek during the warmest week in Slide Creek was only 51.4°F.

There was an average of 506 redband trout per mile in Slide Creek. Lower God's Pocket Creek had 140 redband trout per mile and unnamed Tributary A and Tributary B had 264 and 158 redband trout per mile, respectively. An average of 14% of the redband trout seen were not caught. Length frequency analysis of 61 captured redband trout indicates five Age I and older age classes. Young-of-year trout were not evident in the stream during the early August survey period. There were an estimated 2,530 redband trout within the 5.0 miles of occupied habitat in Slide Creek. The fish inhabited portion of each tributary extends less than .25 miles, due to steep gradients.

There was an average of 282 sculpin per mile in the 2.0 miles of occupied stream. Eleven measured sculpin averaged 76 mm TL with a range of 43 - 100 mm.

#### Fall Creek

There were four areas of Fall Creek surveyed (Map 2). Both redband trout and bull trout inhabit Fall Creek and the two unnamed tributaries. Sculpin were found only in Fall Creek proper.

Bull trout were found at SS-2 in Fall Creek and at SS-1 in both tributaries. The density of bull trout at SS-2 in Fall Creek was 8.0 fish per mile. Bull trout density in the lower tributary (Tributary A) and upper tributary (Tributary B) was 141 and 53 fish per mile, respectively. Five captured bull trout averaged 137 mm TL with a range of 94 - 162 mm. Fin clips were taken from all captured bull trout for genetic analysis. The bull trout captured represented at least two age classes. The expanded bull trout minimum population estimate in the Fall Creek drainage was 92 fish.

Only redband trout were sampled in the tributaries in 1993. The upstream distribution of fish in the tributaries and in the main stem of Fall Creek above the confluence of Tributary B is limited by steep gradients. There are about 1.5 miles of suitable habitat in the main stem, 0.5 miles in Tributary A, and 0.3 miles in Tributary B. Afternoon stream temperature in the Tributary A and Tributary B was 51°F and 56°F, respectively. Redband trout were present at all four sample sites in the drainage at an average density of 51 redband trout per mile. The mean total length of seven captured redband trout was 114 mm with a range of 59 - 200 mm. The expanded redband trout population in the drainage was 106 fish.

There was an average of 170.8 sculpin per mile in Fall Creek and none were found in the tributaries.

#### Cougar Creek

There were three sample sites in Cougar Creek (Map 2). The two original sample sites having fish that were first surveyed in 1993 were resurveyed plus an additional sample site (SS-1.5) was surveyed in order to discern fish species distribution. This survey marks the first record of bull trout in Cougar Creek. During the August 24-25, 1993, survey of Cougar Creek only redband trout were found occupying the two lowest elevation sample sites.

Bull trout were collected at SS-2 where two young-of-year bull trout (45 and 49 mm TL) were collected within the sample area. An adult bull trout (180 mm TL) was spotted above the end of SS-2 and a fin-clip was taken for genetic analysis. Steep gradient above SS-2 limits fish occupation (no fish were found at SS-3, 4, or 5 in 1993). There were an estimated 53 bull trout in the 1.5 miles of Cougar Creek that is suitable for fish occupation.

Redband trout were found at all three sample sites at an average density of 598.4 redband trout per mile. The mean size of 30 captured redband trout was 98 mm TL, with a range of 65 - 230 mm. Length frequency analysis indicated five age classes of redband trout. There were an estimated 898 redband trout in the 1.5 miles of Cougar Creek that is suitable for fish occupation.

The average total length of 13 sculpins was 64 mm (38 - 95 mm). There were 275 sculpin in the 1.5 miles of Cougar Creek that is suitable for fish occupation.

## Discussion

The results of the fish population surveys conducted in 1998 are similar to the results of previous surveys of the Jarbidge River drainage, see Appendix III and IV. Bull trout continue to occupy headwater reaches of both forks of the Jarbidge River and Dave Creek, in densities similar to those found in previous surveys. Within the Jarbidge Wilderness, portions of the East Fork tributaries of Fall Creek, Slide Creek, and Cougar Creek provide resident habitat for bull trout. The West Fork tributaries of Pine Creek and Sawmill Creek, also within the Jarbidge Wilderness, have reaches suitable for bull trout. The Jarbidge River system also continues to support a robust population of native redband trout and other native species.

Bull trout have been documented in Dave Creek since 1934; East Fork Jarbidge River since 1951; and West Fork Jarbidge River since 1954. Bull trout were first documented in Pine Creek in 1992, and in Slide Creek and Fall Creek in 1993. The 1998 surveys found bull trout in Cougar Creek (only redband trout were found in 1993). There is no historical evidence that suggests that the Jarbidge River bull trout population was ever more widely distributed than the contemporary distribution. Records as early as 1934 and 1957 for Dave Creek, 1954 for the West Fork Jarbidge River, and 1958 for the East Fork Jarbidge River, all suggest that bull trout have been limited primarily to the headwaters of each of the three systems, and were never common as compared to the abundant redband trout populations. This distribution pattern has remained stable throughout recent times. However, evidence shows bull trout will exploit suitable cold water habitats when conditions allow. Intermittent flows in the headwaters reach of the East Fork Jarbidge River were devoid of fish in 1993, however with improved conditions in 1998, fish had repopulated this area.

The average density of bull trout in the West Fork below the wilderness boundary to the state line was 7.2 bull trout per mile in 1998, compared to 2.9 bull trout per mile in 1985. Adult bull trout are able to tolerate warmer temperatures than juvenile fish, explaining the presence of a low density population of adults in the lower West Fork Jarbidge River. The 1998 survey failed to document bull trout in Jack Creek even though bull trout have historically inhabited this creek. A culvert fish barrier which was removed in 1997 may have prevented upstream migrations of bull trout into Jack Creek<sup>3</sup>, as snorkelers counted six adult bull trout which appeared to be staged in the pool below the Jack Creek culvert in July, 1994<sup>4</sup>. Some question as to the thermal suitability of Jack Creek for bull trout habitation also exists, as summer water temperature data collected in August and September, 1998, recorded maximum weekly and biweekly temperatures which exceeded by 5°F those temperatures found in juvenile bull trout summer rearing habitat

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<sup>3</sup>Unpublished BLM Stream Survey Form. 1981. Boise District, Idaho. 1p.

<sup>4</sup>Zoellick, B.W., R. Armstrong, and J. Klott. Status of the Migratory Bull Trout Population in the Jarbidge River Drainage. Technical Bulletin No. 96-5, Idaho Bureau of Land Management, April, 1996

in the upper West Fork Jarbidge River. Jack Creek might still support a limited number of bull trout, but significant surveys will be required to document this.

As was the case in 1993, bull trout were only recovered in the cold headwaters of the East Fork Jarbidge River in 1998. Sampling failed to contact any bull trout in the middle and lower East Fork which is a relatively unaltered watershed that provides no better or worse habitat for native fishes than the reportedly "impacted" West Fork Jarbidge River. Further, more extensive, investigations should show a similar distribution of migratory adult bull trout considering the comparable redband populations in both forks. Redband densities showed a similar pattern between forks with the average number of redband trout in the East Fork Jarbidge River (11 sites excluding the uppermost site) at 521.8 fish per mile, and estimates for the West Fork at comparable elevations (SS-7 to SS-15) at an average of 614.3 redband trout per mile (excludes the channelized SS-13 where no gamefish were found). The 1998 surveys also revealed bull trout in increased numbers in the Fall Creek drainage, a heretofore undocumented population in Cougar Creek, and decreased numbers in the Slide Creek drainage. Slide Creek, which has a limited number of bull trout, had water temperatures which were only a couple degrees cooler than what was recorded in Jack Creek, indicating this too is marginal bull trout habitat.

Cold water habitat ( $\leq 51^{\circ}\text{F}$ ) for juvenile bull trout rearing is naturally limited in the Jarbidge River drainage. The paucity of the cold water habitat best explains the summer distribution pattern in the Jarbidge River drainage. Water temperatures in excess of  $59^{\circ}\text{F}$  limit bull trout distribution. Surveys show that summer and fall concentrations of bull trout are found in the cold water headwater habitats, and all available cold water habitats in the drainage are utilized by the bull trout. Bull trout have always been rare in the warmer downstream areas of both river forks and major tributaries in the drainage. However, these downstream reaches are considered nodal habitat for the migratory element of these bull trout populations. Upstream resident adults may also descend some distance from their headwater focal habitat when habitat conditions and fish densities allow.

Genetic evidence suggests there are a minimum of three subpopulations in the Jarbidge River drainage: West Fork Jarbidge River, East Fork Jarbidge River and Dave Creek. This is based on preliminary determinations made by Paul Spruell of Montana State University using tissue samples collected during the 1998 population surveys. Further sampling may reveal additional genetic diversity within the Jarbidge River system. We propose that the Jarbidge River bull trout population fits the definition of a metapopulation. A metapopulation is an interacting network of local subpopulations with varying frequencies of migration and gene flow among them. Local subpopulations may become extinct, but can be reestablished by individuals from other subpopulations. Metapopulations provide a mechanism for reducing risk because the simultaneous loss of all subpopulations is unlikely. The genetic diversity evident within this metapopulation helps insure adaptability of the population and insures its persistence.

### Conclusion

Bull trout in the Jarbidge River system were found to occupy all suitable habitats available at the time of the survey in numbers comparable to past population surveys. There is no evidence that the Jarbidge River bull trout population was ever more extensive than what current fishery data suggests. Bull trout are known to have persisted in the same locales in the Jarbidge River system during historic times, with the possible exception of Jack Creek where the current distribution is in question. The West Fork Jarbidge River fishery has recovered from a period of mining pollution that from all historical accounts rendered the lower river unfit for fish.

The limited bull trout population of the Jarbidge River system appears stable and will continue in perpetuity as long as cold water habitats persist for bull trout spawning and rearing. The fact that most of the bull trout occupied cold water habitats are remote and in the Jarbidge Wilderness, leaves nature to maintain these areas in suitable condition for bull trout. Man related impacts in these remote stream reaches are non-existent, as are other non-stochastic threats. The metapopulation characteristics of the drainage would potentially mitigate site specific stochastic events by providing a source of fish to recolonize. Nor do significant threats to the population exist in main stem reaches of each river. No brook trout were found in this survey or any of the recent surveys, alleviating any concern of hybridization. Harvest is no longer an issue as current fishing regulations in both Idaho and Nevada prevent the take of bull trout. Essentially, the Jarbidge River bull trout population is stable, distributed to the extent natural habitat conditions allow, and free from imminent threat.

### Acknowledgments

A special thanks is due the *Salvelinus confluentus* Curiosity Society for assistance in the completion of the 1998 survey. This group provided some fourteen skilled survey teams. In return they were afforded the opportunity to experience the rugged beauty of the Jarbidge Wilderness Area.

## APPENDIX I

Bull Trout Length By Sample Site  
August, 98

| Stream              | Sample Site | Bull Trout Lengths (mm) FL or TL |
|---------------------|-------------|----------------------------------|
| W.F. Jarbidge River | 17          | 120, 130, 130, 135, 135, 140     |
|                     | 16          | 95, 125, 135, 135, 145, 150, 225 |
|                     | 15          | 96, 106, 107, 109, 110, 117, 123 |
|                     | 8           | 172, 176                         |
|                     | 3           | 210                              |
| Pine Creek          | 5.5 Trib.   | 110                              |
| E.F. Jarbidge River | 12          | 97, 182, 212, 212, 230, 258      |
|                     | Above 12    | 142, 262                         |
| Dave Creek          | 2           | 158, 170, 172                    |
|                     | 2 - 3       | 157, 213                         |
|                     | 3           | 147, 192                         |
|                     | Above 3     | 140, 145, 152, 153, 171, 198     |
| Fall Creek          | 2           | 134                              |
| Trib. A             | 1           | 135, 150, 155                    |
| Trib. B             | 1           | 98                               |
| Slide Creek         | 4           | 101, 112                         |
| Cougar Creek        | 2           | 49, 45                           |
|                     | Above 2     | 170                              |
| Total Lengths       |             |                                  |

## APPENDIX II

West Fork Jarbidge River  
Fish Surveys and Bull Trout Site Location Comparisons

| Mo/Yr | Sample Sites | Site I.D. w/ BT | Reach | Elevation (Feet) | Mean BT/Mi |
|-------|--------------|-----------------|-------|------------------|------------|
| 08/54 | 5            | B               | upper | 7268             | 105.6      |
| 08/72 | 4            | 4               | lower | 5910             | 35.2       |
| 11/74 | 6            | 0               | lower |                  | -          |
| 09/75 | 7            | 0               | lower |                  | -          |
| 10/79 | 10*          | Natural A       | lower | 6600             | 21.1       |
|       |              | Channelized F   | lower | 6160             | 36.4       |
| 10/80 | 6*           | Channelized A   | lower | 6600             | 2.9        |
|       |              | Natural E       | lower | 6250             | 81.2       |
| 10/61 | 7            | G               | upper | 7400             | 528.0      |
| 10/85 | 16           | 16              | upper | 7360             | 224.7      |
|       |              | 15              | upper | 7120             | 105.6      |
|       |              | 11              | lower | 6320             | 40.6       |
| 08/98 | 17           | 17              | upper | 7400             | 316.8      |
|       |              | 16              | upper | 7360             | 369.6      |
|       |              | 15              | upper | 7120             | 147.8      |
|       |              | 8               | lower | 5980             | 70.4       |
|       |              | 3               | lower | 5520             | 29.8       |

\* The 1979 and 1980 surveys were initiated to evaluate fish population response to USFS sanctioned channelization that was completed on 3,104 feet of river located between Pine Creek Campground and Mahoney Range Station during August-September, 1979.

## APPENDIX III

## Jarbidge River Drainage Bull Trout Trend Data

| Stream                   | Year      | SS's<br>W/ Fish  | SS's with<br>Bull Trout | Mean No.<br>per Mile | Occupied<br>Miles | Total<br>Number |
|--------------------------|-----------|--|-------------------------|----------------------|-------------------|-----------------|
| West Fork Jarbidge River | 1954      | * Minimum population estimate due to the fact there was no sampling in the headwaters. |                         |                      |                   |                 |
| Above Snowslide Gulch    |           | 2  | 1                       | 52.8                 | 1.9               | 100             |
| Below Snowslide Gulch    |           | 3  | 0                       | 0                    | 0                 | 0               |
| West Fork Jarbidge River | 1961      |  |                         |                      |                   |                 |
| Above Snowslide Gulch    |           | 1  | 1                       | 369.6                | 1.9               | 702             |
| Below Snowslide Gulch    |           | 6  | 0                       | 0                    | 0                 | 0               |
| West Fork Jarbidge River | 1985      |  |                         |                      |                   |                 |
| Above the Wilderness     |           | 2  | 2                       | 164.95               | 1.9               | 313             |
| Below the Wilderness     |           | 14   | 1                       | 2.9                  | 13.1              | 38              |
| West Fork Jarbidge River | 1998      |  |                         |                      |                   |                 |
| Above the Wilderness     |           | 3  | 3                       | 278.08               | 1.9               | 528             |
| Below the Wilderness     |           | 14   | 2                       | 7.16                 | 13.1              | 94              |
| Jack Creek               | 1992      | 4  | 1                       | 52.8                 | 1                 | 53              |
|                          | 1997&1998 | 4  | 0                       | 0                    | 0                 | 0               |
| Sawmill Creek            | 1954      | 1  | 0                       | 0                    | 0                 | 0               |
|                          | 1992      | 1  | 0                       | 0                    | 0                 | 0               |
|                          | 1998      | 1  | 1                       | 52.8                 | 0.1               | 5               |
| Pine Creek               | 1992      | 4  | 0                       |                      |                   | Obs. 1          |
|                          | 1998      | 4  | 0                       |                      |                   | Obs. 1          |
| East Fork Jarbidge River | 1957      | 3  | 2                       | 22.88                | 13.1              | 300             |
| East Fork Jarbidge River | 1993      | 13   | 2                       | 184.8                | 1.4               | 180             |
| East Fork Jarbidge River | 1998      | 12   | 1                       | 316.8                | 1.4               | 444             |
| Dave Creek               | 1993      | 3  | 2                       | 132                  | 1.4               | 172             |
| Dave Creek               | 1998      | 3  | 2                       | 237.6                | 1.4               | 333             |
| Fall Creek               | 1993      | 2  | 1                       | 105.6                | 0.5               | 53              |
| Unnamed tributaries      |           | 2  | 0                       | 0                    | 0                 | 0               |
| Fall Creek               | 1998      | 2  | 1                       | 8.1                  | 0.5               | 4               |
| Unnamed tributaries      |           | 2  | 2                       | 96.8                 | 0.5               | 48              |
| Slide Creek              | 1993      | 6  | 1                       | 52.8                 | 1                 | 53              |
| Unnamed tributaries      |           | 3  | 2                       | 316.8                | 0.5               | 158             |
| Slide Creek              | 1998      | 6  | 1                       | 83.15                | 1                 | 83              |
| Unnamed tributaries      |           | 3  | 0                       | 0                    | 0                 | 0               |
| Cougar Creek             | 1993      | 2  | 0                       | 0                    | 0                 | 0               |
| Cougar Creek             | 1998      | 3  | 1                       | 105.6                | 0.5               | 53              |

APPENDIX IV

BULL TROUT ENCOUNTERS DURING THE 1998 SURVEY OF JARBIDGE RIVER STREAMS

| STREAM              | DATE  | STATION   | ELEVATION | CAUGHT | MISSED | TOTAL | LENGTH (ft) | BT/MI |
|---------------------|-------|-----------|-----------|--------|--------|-------|-------------|-------|
| W.F. Jarbidge River | 08/05 | ID 2      | 5120      | 0      | 1      | 1     | 145         | 38.4  |
|                     | 08/05 | NV 1      | 5360      | 1      | ?      | 1     | 200         | 26.4  |
|                     | 08/05 | NV 8      | 6000      | 2      | 1      | 3     | 225         | 70.4  |
|                     | 08/05 | NV 15     | 7080      | 7      | ?      | 7     | 250         | 147.8 |
|                     | 08/05 | NV 16     | 7400      | 7      | ?      | 7     | 100         | 369.6 |
|                     | 08/05 | NV 17 *   | 7440      | 6      | ?      | 6     | 100         | 316.8 |
| Sawmill Creek       | 08/05 | 1         | 7400      | 0      | 1      | 1     | 100         | 52.8  |
| Pine Creek          | 08/05 | 5.5 trib. | 7560      | 1      | 0      | 1     | 0           | 0     |
| Dave Creek          | 08/05 | 2         | 7280      | 3      | 2      | 5     | 100         | 264   |
|                     | 08/05 | 3         | 7560      | 2      | 2      | 4     | 100         | 211.2 |
| Fall Creek          | 08/05 | Above 2   | 6640      | 1      | ?      | 1     | spot-shoek  |       |
| Tributary A         | 08/05 | 1         | 6840      | 3      | 1      | 4     | 150         | 140.8 |
| Tributary B         | 08/05 | 1         | 6840      | 1      | 0      | 1     | 100         | 52.8  |
| E.F. Jarbidge River | 08/12 | 12        | 7600      | 6      | 6      | 12    | 100         | 633.6 |
| Cougar Creek        | 08/25 | 2         | 6960      | 2      | 0      | 2     | 100         | 105.6 |
| TOTALS              |       |           |           | 42     |        | 56    | 1770        |       |

\* This sample site was just upstream of S-16 and was not surveyed in 1985.

BULL TROUT ENCOUNTERS DURING THE MOST RECENT PAST SURVEYS IN JARBIDGE RIVER STREAMS

| STREAM              | DATE  | STATION | ELEVATION | CAUGHT | MISSED | TOTAL | LENGTH (ft) | BT/MI |
|---------------------|-------|---------|-----------|--------|--------|-------|-------------|-------|
| W.F. Jarbidge River | 09/85 | 11      | 6300      | 1      | 0      | 1     | 130         | 40.6  |
|                     | 09/85 | 15      | 7080      | 2      | 0      | 2     | 100         | 105.2 |
|                     | 10/85 | 16      | 7400      | 9      | 1      | 10    | 235         | 224.7 |
| Jack Creek          | 09/92 | 2       | 6200      | 1      | 0      | 1     | 100         | 52.8  |
| Pine Creek          | 08/92 | Below 5 | 7400      | 1      | 0      | 1     |             |       |
| Dave Creek          | 08/93 | 2       | 7280      | 2      | 0      | 2     | 100         | 105.6 |
|                     | 08/93 | 3       | 7540      | 3      | 0      | 3     | 100         | 158.4 |
| Fall Creek          | 08/93 | 2       | 6640      | 0      | 2      | 2     | 100         | 105.6 |
| Slide Creek         | 07/93 | 3       | 6830      | 1      | 0      | 1     | 100         | 52.8  |
| Tributary A         | 08/93 | 1       | 7240      | 4      | 3      | 7     | 100         | 369.6 |
| Tributary B         | 08/93 | 1       | 7390      | 5      | 0      | 5     | 100         | 264   |
| E.F. Jarbidge River | 09/93 | 11      | 7280      | 1      | 0      | 1     | 100         | 52.8  |
|                     | 09/93 | 12      | 7600      | 3      | 3      | 6     | 100         | 316.8 |
| TOTALS              |       |         |           | 33     |        | 42    | 1365        |       |

Mr. CARPENTER. I would also like to say it won't cost very much to rebuild that road. I think we can organize a work party to do most of it.

Mrs. CHENOWETH-HAGE. Next on the panel we have Mr. Caesar Salicchi, the Treasurer of Elko County; Mr. Matthew Holford, Nevada Chairman of Trout Unlimited; Mr. Terry Crawford, Nevada Department of Wildlife; and Mr. Dick Carver, Nye County Commissioner.

The hearing will come to order. I want to welcome our new panel of witnesses. And as has been explained to previous panels, it is the intention of the Chair to place all witnesses under the oath. If you would stand and raise your hand to the square.

[witnesses sworn.]

**STATEMENT OF CAESAR SALICCHI, TREASURER OF ELKO COUNTY; MATTHEW HOLFORD, NEVADA CHAIRMAN OF TROUT UNLIMITED; TERRY CRAWFORTH, NEVADA DEPARTMENT OF WILDLIFE; AND DICK CARVER, NYE COUNTY COMMISSIONER**

Mrs. CHENOWETH-HAGE. The Chair recognizes Mr. Ceasar Salicchi for his testimony.

**STATEMENT OF CEASAR SALICCHI**

Mr. SALICCHI. Thank you, Madam Chairman. I am Ceasar E. Salicchi. I reside at 91 Skyline Drive, Elko, Nevada. I am a life-long resident of Elko County for 72 years. I was raised on the family ranch in Lamoille, Nevada. As a young fellow, I had the pleasure to ride and hunt horseback in many mountains in Elko County.

I have ridden or walked to most of the lakes in the Ruby Mountains. I also have ridden and hunted in the Jack Creek area, including Copper Basin. I have also ridden the Pequop Range. To me that was a joyous adventure to be in the beautiful mountains.

In 1952, I contracted polio. This left me unable to walk without crutches and braces. Since then I have not been able to ride horseback or walk in the mountains. I have driven over many roads and jeep trails in my vehicle. I have always and will always enjoy the mountains in Elko County. I have taken many trips to Lamoille Canyon, Angel Lake, and the Jarbidge area.

As time passes, I find it more difficult to go into many areas because of the management of the Forest Service. Many of the areas are shut off without regard for the physically challenged. And many of the roads in the Ruby Mountains have been shut off.

The South Fork Canyon Road to Jarbidge has been shut off because of a washout. This road could be repaired and opened without any damage to the bull trout. A little common sense would go a long way to repair the road. There would not be near as much damage repairing the road now than in the spring runoffs. The spring runoffs cause rivers to jam, with rocks and sand running down the rivers. This would not be the case with repairing the road.

I have also, all the parks I have visited provide for the physically challenged and are a pleasure to visit. There is no reason the roads going into the wilderness area and the camping areas of Elko County should be closed without regard to the physically chal-

lenged. I see no reason why the South Canyon Road cannot be opened to the benefit of the physically challenged.

I thank you for the opportunity to present my testimony.

Mrs. CHENOWETH-HAGE. Thank you very much, Mr. Salicchi, for your testimony.

[The prepared statement of Mr. Salicchi follows:]

**Cesar E. Salicchi**  
191 Skyline Drive  
Elko, NV 89801

SUMMARY FOR LEGISLATIVE HEARING

I am Cesar E. Salicchi. I reside at 191 Skyline Dr. Elko, Nevada 89801. My telephone number is 775 738 4778. I am a life long resident of Elko County for 72 years. I was raised on the family ranch at Lamoille, Nevada.

As a young fellow I had the pleasure to ride and hunt horse back in many mountains in Elko County. I have ridden or walked to most of the lakes in the Ruby Mountains. I have also ridden and hunted in the Jack Creek area including Copper Basin. I have also ridden the Pequop range. To me this was a joyous adventure to be in these beautiful mountains.

In 1952 I contacted Polio. This left me unable to walk without crutches and braces. Since then I have not been able to ride horse back or walk in the mountains. I have driven over many roads, and jeep trails in my vehicle. I have always and will always enjoy the mountains in Elko County. I have taken many trips to Lamoille Canyon, Angel Lake, and the Jarbidge area.

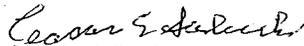
As time passes I am finding it more difficult to go in to many areas because of the management of Forest Service or the BLM. Many of the areas are shut off with out regard of the physically challenged. Many of the roads in the Ruby Mountains have been shut off.

The South Canyon road in Jarbidge has been shut off due to a wash out. This road could be repaired and opened with out any damage to the Bull trout. A little common sense would go a long way to repair the road. I know there would not be near as much damage repairing the road now than the spring run-offs. The spring run-offs cause the river to jam, the rocks and sand running down the river. This would not be the case with repairing the road.

All parks I have visited provide for the physically challenged and are a pleasure to visit. There is no reason that the roads going to the wilderness areas and camping areas in Elko County should be closed without regard to the physically challenged.

I see no reason that the South Canyon Road cannot be opened to the benefit of the physically challenged.

Thank you for the opportunity to present my testimony.

  
Cesar E. Salicchi

**STATEMENT OF MATTHEW HOLFORD**

Mrs. CHENOWETH-HAGE. Now the Chair recognizes Mr. Holford.

Mr. HOLFORD. Madam Chairman, Members of the Committee, I appreciate the opportunity to testify before this committee on this important matter.

Trout Unlimited is a national organization dedicated to the protection and restoration of trout and salmon and their habitat. In Nevada alone, over 650 members volunteer their time and resources to protect and enhance the State's streams, rivers, and watersheds. We have a long track record of working with local communities, State, and Federal agencies to seek sound solutions to environmental challenges.

The Jarbidge River is of particular concern to T.U. Members in Elko County and the rest of Nevada. The river is home to the southernmost population of bull trout in North America, and T.U. Has worked hard on the ground to improve the conditions for the fish.

Two years ago, the Northeastern Nevada T.U. Chapter raised \$10,000 to help build a bridge that replaced an ill-placed culvert on Jack Creek, a tributary of the Jarbidge. The old culvert had been a barrier to fish passage, and the project has reopened spawning habitat for the bull trout. Bull trout have since begun to repopulate Jack Creek.

T.U. Has also sponsored a spring fencing project to protect Jack Creek and devoted hundreds of volunteer hours improving the habitat and management of Jarbidge watershed. As you can see, T.U. Members have dedicated a tremendous amount of time, energy, and resources to protect and improve the river for everyone's enjoyment.

On a personal level, I'm a long-term resident of Nevada and of this area. I have been going to Jarbidge to fish and hunt since I was a teenager. Some of my first fishing experiences were on the East and West Forks of the Jarbidge River.

T.U. Has long opposed the rebuilding the 1.5 miles of road from the Pine Creek campground to the trailhead. We have taken this position for two reasons. First, every scientist who looked at the issue has concluded that the road is bad for bull trout, bull and redband trout that live in the river. Second, the road has washed out repeatedly over the years, and the costs of repairing and maintaining the road probably outweigh the economic benefits.

T.U. Has consistently played by the rules and effectively voiced its opposition by using the well-established appeal process to challenge the Forest Service's initial decision to rebuild the road. Unfortunately, the County Commissioners and their supporters choose not to pursue administrative or legal actions, or indeed negotiations, to resolve this issue.

Instead, they sent road crews up the South Canyon to rebuild the road. They did this despite being warned that working on the road and in the river would violate State and Federal law. The road crews channelized a 900-foot stretch of the Jarbidge River, damaging the aquatic habitat while stabilizing the site.

The refusal of the proponents of the road to participate in the administrative and legal processes available to them, but rather to take or threaten actions outside the established legal framework

has imposed significant costs on the county. The county's roadwork, which achieved nothing once it was abandoned in the face of the cease and desist order from the Nevada Division of Environmental Protection, almost certainly cost county taxpayers hundreds of thousands of dollars.

The county has always claimed that the road belongs to the U.S. Forest Service. Excuse me, the county has always claimed that the road belongs to it and not the U.S. Forest Service. T.U. Repeatedly reminded road-building proponents that there is a simple well-accepted method of asserting that claim. The county could simply file a lawsuit arguing the road belongs to it. If the county proves its claim was correct, it would win the lawsuit and its rights to the road would be established. To do so would short-circuit all the current controversy and resolve this issue at far less cost than the path that the County Commissioners have apparently chosen.

One of the claims that has been made by the proponents of the road is that the bull trout is not really in trouble. They cite the recent work of the Nevada Division of Wildlife in this regard. Fisheries biologists on T.U. Staff have reviewed the work of the NDOW biologist. And our biologists, based on their review, our biologists disagree with the primary conclusions of the NDOW study. Our biologists assert, as I believe, the Jarbidge bull trout does warrant listing under the Federal Endangered Species Act. While you may reject this analysis, we would also like to point out that there has been no peer review of the NDOW study. We suggest that it may, we suggest that it be subjected to scientific peer review.

In conclusion, the insistence of some of Elko County's elected officials to ignore the rules of law with respect to South Canyon Road has accomplished nothing but a waste of time, effort, and taxpayer dollars. Unfortunately, the rebellion represents one of the serious inflammatory actions by Elko County politicians, preventing any meaningful discussion on a very difficult issue. Lost in all of the posturing is the opportunity to pursue alternatives that could bring much greater benefits to Jarbidge than 1.5 miles of dead-end road and recognition of the value of a healthy bull trout fishery.

Thank you for this opportunity to testify today.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Holford.

[The prepared statement of Mr. Holford follows:]

Matthew Holford  
Nevada Chairman, Trout Unlimited

Testimony prepared for  
November 13, 1999  
Subcommittee on Forests and Forest Health  
United States House of Representatives  
Elko, Nevada

Matthew Holford  
Nevada Chairman, Trout Unlimited  
P.O. Box 5882  
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(775) 778-3159

Madam Chairwoman and Members of the Committee, I appreciate the opportunity to testify before this committee on this important matter. Trout Unlimited is a national organization dedicated to the protection and restoration of trout and salmon and their habitats. In Nevada alone, over 650 Trout Unlimited members volunteer their time and resources to protect and enhance the state's streams, rivers and watersheds. Nationally, we have over 100,000 members and 500 chapters with a long track record of working with local communities, states and federal agencies to seek sound solutions to environmental challenges.

First, allow me to briefly describe our membership's connection to this hearing today. The Jarbidge River is of particular concern to Trout Unlimited members in Elko County and the rest of Nevada. The river is home to the southernmost population of bull trout in North America, and TU has worked hard on the ground to improve conditions for the fish. Two years ago, the Northeastern Nevada TU Chapter obtained a \$10,000 Trout Unlimited Embrace A Stream grant to help build a bridge that replaced an ill-placed culvert on Jack Creek, a tributary of the Jarbidge. The old culvert had been a barrier to fish passage, and the project has opened up new spawning habitat for bull trout. According to a 1999 survey by the NV Division of Wildlife bull trout have since begun to repopulate Jack Creek. TU has also sponsored a spring fencing project to protect Jack Creek, and has devoted hundreds of volunteer hours to improving the habitat in and management of the Jarbidge watershed. As you can see, TU members have demonstrated a tremendous amount of time, energy and resources to protect and improve the river for everyone's enjoyment.

On a personal level, I am a long-time resident of Nevada and this area and have been going to the Jarbidge to fish and hunt since I was a teenager, some of my first fishing experiences were on the East and West forks of the Jarbidge river and its tributaries.

Trout Unlimited has long opposed rebuilding the 1.5 miles of road from Pine Creek campground to the Snowslide Gulch trail head. We have taken this position for two reasons. First, every scientist who has looked at the issue has concluded that the road is bad for the bull trout and redband trout that live in the river. Second, the road has washed out repeatedly over the years, and the costs of repairing and maintaining the road probably outweigh any of its economic benefits.

The Elko County Commission, various elected officials and residents have taken a vigorous stand in favor of rebuilding the road. Despite our differences in opinion, Trout Unlimited has consistently respected this point of view and welcomed an open discussion of the issues. TU has consistently played by the rules and effectively voiced our opposition by using the well-established appeal process to challenge the Forest Service's initial decision to rebuild the road. As a result of our appeal, a draft assessment concluded that the road should be replaced by a hiking trail covering the last 1.5 miles to the Jarbidge Wilderness portal.

Unfortunately, the county commissioners and their supporters chose not to pursue the administrative or legal actions - or indeed negotiations - to resolve this issue. Instead, they sent road crews up the South Canyon to rebuild the road. They did this despite being warned that working on the road and in the river would violate state and federal law. Their road crews channelized a 900-foot stretch of the Jarbidge River, damaging aquatic habitat and destabilizing the site.

The refusal of proponents of the road to participate in the administrative and legal processes available to them, but rather to take or threaten actions outside the established legal framework, has imposed significant costs on the County. The County's work last summer, which achieved nothing once it was abandoned in the face of a cease and desist order from the Nevada Division of Environmental Protection (NDEP), almost certainly cost County taxpayers tens of thousands of dollars. The work needed to repair the damage done by the County cost hundreds of thousands of dollars (*\$400,000*), and is now the subject of potential litigation between the County and the federal government.

Despite the wide array of arguments offered by proponents of rebuilding the road, they have not once validated their arguments by proving them in court. The fact of the matter is that at the heart of these arguments has always been the claim that the road belongs to the County and not the U.S. Forest Service. TU has repeatedly reminded road-rebuilding proponents that there is a simple and well-accepted method for asserting that claim: the County could simply file a lawsuit arguing that the road belongs to it. If the County could prove its claim was correct, it would win the lawsuit, and its rights to the road would be established. Doing so would short-circuit all of the current controversy and resolve the issues at far less cost than the path the Commissioners have apparently chosen.

Perhaps the most troubling result of the actions of the road's proponents is that any dialogue about alternatives is being drowned out by the storm. Options are available to the people of Jarbidge that might bring far greater benefits than the last 1.5 miles of the South Canyon Road. One option might be to improve road access to the town of Jarbidge itself. The current roads make winter access difficult, and require constant maintenance that places road material in the river. Improved roads to Jarbidge might provide economic benefits while reducing the costs associated with road maintenance. In addition, new campsites might be built to replace those impossible to access by vehicle now.

There are several other side issues that we should address. One of the claims that has been made by the proponents of the road is that the bull trout is not really in trouble. They cite the recent work of the Nevada Division of Wildlife in this regard. Fisheries biologists on Trout Unlimited's national staff have reviewed the work of NDOW biologist Gary Lee Johnson. Based on their review of Mr. Johnson's analysis and other relevant information pertaining to Jarbidge bull trout populations, our biologists disagree with the primary conclusions of the NDOW study. Our biologists assert, as I believe, that the Jarbidge bull trout population does warrant listing under the federal Endangered Species Act. While you may reject this analysis, we would point out that there has been no other peer review of Mr. Johnson's work. We suggest that it be subjected to scientific peer review.

Another claim of the road proponents is that the Forest Service stream rehabilitation work harmed the stream. To the contrary, stream rehabilitation experts from TU - and I would point out that we do a lot of work on rehabilitating streams around the country - have visited the area and believe the Forest Service did an excellent job of correcting the damage done by the county road crews.

Finally, our country is, and always has been, based soundly on the rule of law. In order to testify before your committee today, we all had to comply with a process that required the advanced submission of 100 copies of our testimony and disclosure of any federal grants among other things. I am pleased to see the county and some of the 'Jarbidge rebellion' leaders have decided to comply with these simple steps and might suggest that if they put the same simple effort into the court process we might not have to be here today.

In conclusion, the insistence of some of Elko County's elected officials to ignore the rule of law with respect to the South Canyon road has accomplished nothing but the wasting of time, effort, and taxpayer dollars. Fortunately, for the river, its fish, and taxpayers, state cease and desist and a federal temporary restraining order have stopped further destruction of an already vulnerable riverbed. Unfortunately, the "rebellion" represents one in a series of inflammatory actions by Elko County politicians preventing any meaningful discussion of a very difficult issue. Lost in all of the posturing is the opportunity to pursue alternatives that could bring much greater benefits to Jarbidge than 1.5 miles of dead-end road and recognition of the value of a healthy bull trout fishery.

Thank you for the opportunity to testify today.

**STATEMENT OF TERRY CRAWFORTH**

Mrs. CHENOWETH-HAGE. The Chair recognizes Mr. Crawford.

Mr. CRAWFORTH. Thank you, Madam Chair. My name is Terry Crawford. I'm the administrator of the Nevada Division of Wildlife. I am hopeful that during the next legislative session when our budget is being reviewed, Assemblyman Carpenter can't spot me then either.

By Nevada statute, fish and wildlife in its natural state is part of the natural resource belonging to the people of the State of Nevada. The Division of Wildlife is charged with the preservation and protection, management, and restoration of that wildlife and its habitat. In accordance with this legislative mandate, the Division is responsible for fish populations in the Jarbidge River system, which is under consideration here today.

As early as 1954, the then Nevada Fish and Game Commission was monitoring and actively managing fish populations in the Jarbidge River system. In 1992, in direct response to growing concern about the range-wide status of the bull trout, the Department of Wildlife embarked upon an exhaustive inventory of the trout in the Jarbidge system, with specific emphasis on bull trout. This study was completed in 1994, and the results of that study are in the support material in the package I submitted to you today.

Beginning in 1998, another exhaustive survey of the Jarbidge River fish population was undertaken by the Nevada Division of Wildlife. Those results are also in your packet that you have received today. My additional comments, especially technical information, comes from those reports.

As was previously mentioned, there has been a number of listing actions regarding the bull trout in its entire range in recent years. Initially the United States Fish and Wildlife Service felt that that listing was not warranted for the Jarbidge population.

On August 11, 1998, as a direct result of work by Elko County to reconstruct the South Canyon Road on the West Fork of the Jarbidge River, the bull trout was listed as emergency endangered under the authority of the Endangered Species Act. The emergency endangered classification is a temporary one, normally used only when a species is in immediate peril of extinction.

The Division of Wildlife disagreed with the emergency listing because the area of the Jarbidge River immediately affected by Elko County's actions on the South Canyon Road is not critical to survival of the Jarbidge River population of the bull trout. In April 1999, when the emergency endangered listing expired, the bull trout was listed by the Fish and Wildlife Service as threatened. The Division of Wildlife has disagreed with that listing also.

There are five criteria for listing of endangered species. I won't read those to you. They are in my statement. We don't feel that any of the five criteria nor the specific threats enumerated in the ruling support the ruling.

Virtually all of the essential bull trout habitat in Nevada is located deep within the Jarbidge Wilderness Area where impacts by man are virtually nonexistent. There are currently no existing impacts from grazing, mining, recreation, or any other land use on bull trout populations or their habitats within the wilderness area.

Some adult Jarbidge bull trout are migratory and seasonally may inhabit lower reaches of the Jarbidge River, such as the South Canyon Road site. However, naturally higher water temperatures in these areas discourage year-round bull trout habitat.

Bull trout are a glacial relic and are dependent upon cold clear water between 40 degrees and 51 degrees Fahrenheit, moderate stream gradients of less than 12 percent, and stream flows of more than one cubic foot per second for spawning and rearing. These exacting habitat conditions are naturally limited in the Jarbidge River. However, the Division study shows that where these habitat conditions prevail, bull trout exist in reasonable and viable numbers.

Bull trout are classified as a game fish in the State of Nevada. However, to maintain consistency with neighboring States such as Idaho, a regulation prohibits the angler harvest of bull trout. Fish disease testing in the drainage has revealed no harmful or threatening pathogens.

The Division no longer stocks hatchery trout in the Jarbidge River. There are no competitive or hybridizing species in the river. Evidence collected by the Division suggests there are a minimum of three genetic subpopulations in the Jarbidge system. This mitigates threats to the population from natural disasters and ensures genetic diversity.

I am very proud of the efforts of our fisheries personnel to document the biology of the bull trout. I believe that the reports that you have on the status of the bull trout in Nevada are the very best science concerning this species. The Division has further argued that even if the threats defined in the listing rule were real, there are virtually no practical management actions which could be applied to remedy them. This is due to the protected nature of the existing populations and the near pristine condition of their primary habitats.

There are no significant threats to the Jarbidge River population of bull trout. Forest health is good. We currently have a listed species in the Jarbidge River with no conceivable means to delist it. Yet the Division is now obligated to divert significant resources from sport fish management to the recovery efforts of the bull trout.

The Division has determined through extensive biological investigations of the Jarbidge River system that bull trout are well distributed through the system. It has been mentioned that from historical data, this canyon was well used in the early part of this century.

There is a picture in your support material from Stanley Pahers' "Ghost Towns of Nevada." I think if you look at that picture, you'll see that 70 years ago it was not a nice place to live. In fact, if we had an Endangered Species Act in 1917, we probably would have requested a listing of the bull trout and our recovery plan would have been made, designed to make that canyon look like it looks today.

I'm not criticizing anybody here for past actions on the river. But I believe that at this point in time the use of the Endangered Species Act at this point in time was an unfortunate action. The river, the bull trout and the river, the road on the South Canyon are sep-

arate issues; should have been maintained that way. And the Nevada Division of Wildlife stands ready to continue to do its part for Nevada citizens and their resources. And however we can help to resolve this issue, it would be our pleasure.

Thank you, Madam Chairman.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Crawforth.

[The prepared statement of Mr. Crawforth follows:]

TESTIMONY OF TERRY CRAWFORTH, ADMINISTRATOR  
NEVADA DIVISION OF WILDLIFE  
THE HOUSE COMMITTEE ON RESOURCES,  
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH  
Elko, Nevada -- November 13, 1999

My name is Terry Crawford, I am a native Nevadan, a thirty year employee with the Nevada Division of Wildlife, and have been the Agency Administrator for the past year. I am also a member of the Nevada Environmental Commission which has policy and regulatory authority for the Nevada Department of Environmental Protection. I have been invited to speak to you today regarding the Jarbidge River population of bull trout.

By Nevada statute, fish and wildlife in its natural habitat is part of the natural resources belonging to the people of the State of Nevada. The Division of Wildlife is charged with the preservation, protection, management and restoration of that wildlife and its habitat. In accordance with this legislative mandate, the Division is responsible for the fish populations of the Jarbidge River system which is under consideration here today. As early as 1954, the then Nevada Fish and Game Commission was monitoring and actively managing the fish populations in the Jarbidge River system. In 1992, in direct response to growing concern about the range-wide status of bull trout, the Department of Wildlife embarked upon an exhaustive inventory of the trout in the Jarbidge River system in Nevada with specific emphasis on bull trout. This study was completed in 1994, and results were made public in an unpublished Department report entitled The Status of Bull Trout in Nevada (Johnson and Weller 1994). Beginning in 1998, another exhaustive survey of the Jarbidge River fish populations was undertaken by the Division of Wildlife. The results of this study are summarized in yet another Division publication entitled The Status of Bull Trout in Nevada (Johnson 1999). I have included copies of each report in my testimony support materials. The technical information I am providing you today is drawn primarily from those reports.

On August 11, 1998, as a direct result of the work by Elko County to reconstruct the

South Canyon road on the West Fork of the Jarbidge River, the Jarbidge River bull trout was listed as an "emergency endangered" species under the authority of the Endangered Species Act. The "emergency endangered" classification is a temporary one, normally used only when a species is in immediate peril of extinction. The Division of Wildlife disagreed with the emergency listing because the area of the Jarbidge River immediately affected by the County's actions is not critical to the survival of the Jarbidge River Distinct Population Segment of bull trout. In April, 1999, when the "emergency endangered" listing expired, the bull trout was listed by the US Fish and Wildlife Service as a "threatened" species. The Division of Wildlife, after careful consideration of the biological status of the species, opposed this "threatened" listing because in our opinion the five criteria defined in the Act for listing a species are not supported. Those five criteria are:

1. The presence or threatened destruction, modification, or curtailment of its habitat or range;
2. Overutilization for commercial, recreational, scientific, or educational purposes;
3. Disease and predation;
4. The inadequacy of existing regulatory mechanisms; and
5. Other natural or manmade factors affecting its continued existence.

None of the five criteria, nor the specific threats enumerated in the ruling to support each, is valid.

Virtually all the essential bull trout habitat in Nevada is located deep within the Jarbidge Wilderness Area where impacts by man are virtually non-existent. There are currently no significant impacts from grazing, mining, recreation or any other land use on bull trout populations or their habitats within the wilderness area. Some adult Jarbidge bull trout are migratory, and seasonally may inhabit lower reaches of the Jarbidge River such as the South Canyon Road site, however, naturally higher water temperatures in these areas discourage year around bull trout habitation. Bull trout are a glacial relict, and are dependent upon cold, clear water between 40° and 51° F, moderate stream gradients of less than 12%, and stream flows of more than one cubic foot per second for spawning and rearing. These exacting habitat conditions are naturally limited in the Jarbidge River

system in Nevada, however, Division studies show that where these habitat conditions prevail, bull trout exist in reasonable and viable numbers.

Bull trout are classified as a game fish in the State, however to maintain consistency with neighboring states, a regulation prohibits angler harvest. Fish disease testing in the drainage has revealed no harmful or threatening pathogens. The Division no longer stocks hatchery trout in the Jarbidge River. There are no competitive or hybridizing species in the river. Evidence collected by the Division suggests there are a minimum of three genetic subpopulations in the Jarbidge system, which mitigates threats to the population from natural disasters, and insures genetic diversity within the population as a whole. I am very proud of the efforts of our fisheries personnel to document the biology of the Jarbidge bull trout. I believe that our reports on the status of bull trout in Nevada reflect the very best science concerning this species.

The Division has further argued that even if the threats defined in the listing rule were real, there are virtually no practical management actions which could be applied to remedy them, due to the protected nature of the existing populations and the near pristine condition of their primary habitats. There are no significant threats to the Jarbidge River Distinct Population Segment of bull trout. We currently have a listed species in the Jarbidge River with no conceivable means to delist it. Yet the Division is now obligated to divert significant resources from sport fish management to recovery efforts for the bull trout.

The Division has determined from extensive biological investigations that bull trout in the Jarbidge River system are well distributed throughout the system and are secure in all suitable habitats available. Historical data indicates bull trout have always maintained a limited presence in this system, however, where there is adequate habitat, primarily water temperature related, there are bull trout. Studies also document that current habitat conditions are infinitely better than those of recorded history when the Jarbidge River environs were subjected to severe degradation from livestock grazing and mining. The records conclusively show that the Jarbidge River system was severely over-grazed by livestock between the mid-1880's and about 1930. Gold was discovered in Jarbidge

nor is the threat of that redevelopment grounds for a listing of the bull trout as a threatened species under the auspices of the Endangered Species Act of 1973. We object strenuously to the use of the Endangered Species Act and in this case the bull trout, to control an unrelated land use practice.

In conclusion, I believe that the Endangered Species Act and the bull trout are not the appropriate way to address the South Canyon road issue. I am hopeful that the presence of the Committee in Elko today will help to resolve the South Canyon road dispute. The Nevada Division of Wildlife stands ready to continue to do its part for the benefit of Nevada's citizens and their natural resources. Thank you for this opportunity to testify. I will gladly entertain your questions.

Support Materials:

1. The Status of Bull Trout in Nevada (Johnson, Weller 1994)
2. The Status of Bull Trout in Nevada (Johnson 1999)
3. Internal NDOW Memorandum depicting an historical account of the Jarbidge area.
4. Copy of Jarbidge photograph from *Ghost Towns of Nevada* by Stanley Paher.
5. Copy of Division letter to US Fish and Wildlife Service opposing the ESA listing of bull trout

**STATEMENT OF DICK CARVER**

Mrs. CHENOWETH-HAGE. The Chairman recognizes Mr. Carver.

Mr. CARVER. Thank you. Before you start the green light, I think I've got a little possible conflict I would like to resolve with you. First I would like to congratulate you on your marriage to Wayne. If you realize, he's a neighbor of mine. But maybe the conflict rests more with Wayne than it does with you.

The first time I met you, I think we were in Boise. I was just about to make a presentation. You were just about to run for Congress. And you walked up to give me a big hug. I wondered if you hugged me first or Wayne first.

The second thing I would like to say is that I'm really looking forward to trying to get you to move to Nye County. Wayne has a big ranch in Nye County. I'm going to run for Commissioner one more time. When I go out of office, maybe we can get you to run for Commissioner and take my place so we can keep this battle up.

Mrs. CHENOWETH-HAGE. I want to remind the Commissioner this is all on the record.

Mr. CARVER. With that—

Mrs. CHENOWETH-HAGE. We look forward to your testimony, sir.

Mr. CARVER. With that, my name is Dick Carver. I'm chairman of the Nye County Commissioners. I'm here today representing Nye County because what happens here in Elko County will spill over to Nye County. The problem we have, we have a double standard with the Forest Service. They treat Nye County one way and are treating Elko County another.

As you know, we opened Jefferson Canyon Road, a very similar issue, in 1994. It's gone to court. What's the difference between what happened in Jefferson and what happened here? It's already been settled.

We've got the road issue in Broad Canyon, which is in Smoky Valley, that was brought to my attention. The Forest Service sent me a letter in August. They were going to close about 150 feet of that road. I went up to the district ranger's office during the Commissioner meeting. I said, Tony, I'm here to remind you that's a county road. You have to have an encroachment permit.

He said, Dick, we don't need an encroachment permit.

I said, Tony, I'm reminding you, you have to have the encroachment permit to work on the county road.

He said, What happens if we don't?

I said, I'll notify the Sheriff's Office to arrest your people and impound your equipment, just like you did Bob Wilson up in South Twin a few years ago.

A month went by and he called me up on a Saturday night and he said, Dick, we're going to drop closure of Broad Canyon Road because there's too many issues.

I think the real issue here that we need to look at is, and this has been brought to my attention by the Forest Service employees, that the Forest Reserve Act of 1906 repealed RS 2477. Before I get to the bottom line, I would like to say that Nye County in 1993 passed Resolution 93-49 that claimed virtually every road on public lands in Nye County, whether in the past, present, or the future.

On July 4, 1994, we reopened the road up Jefferson Canyon without the Forest Service permit, permission. Again on October 15, 1994, along with fellow Commissioner Ray Williams, who is in the audience, him and I reopened the San Juan Canyon Road, again without the Forest Service permission. The reason was because we did our homework and we knew we had a valid existing right of both of those roads.

That led to the U.S. Versus Nye County court case, where the Attorney General of the State of Nevada agreed in a stipulation with the Justice Department, and the judge had no recourse to go except to rule that the Federal Government owned and had the right to manage those lands. But he did not invalidate Nye County's resolution or say that that Jefferson Canyon Road belonged to the Forest Service. He said he invalidated our resolution to the effect and to the extent only it has no valid existing rights.

I want you to know that I believe that every road out there on these public lands, whether it's a trail, whatever, leads to a valid existing right.

That Nye County lawsuit led to the tri-party framework. I handed that to you a little bit earlier. In the resolution it's got the, it's right in the middle as an amendment to that, or appendage to that. You can read it.

What that tri-party framework is is a contract with the Forest Service and the BLM that we'll sit down and resolve issues at the table rather than going through the Court. That also led to the Resolution 99-01 where we agreed with the Justice Department we would rewrite resolution 93-49. And we did rewrite it.

Before we rewrote it, we took it to the Forest Service and the BLM and got them to concur that they could live with it. We did not ask them to sign it, because they have no jurisdiction in signing county resolutions. And I'll get to, hopefully in answering questions, about how we define a county road in Nye County. But on the 18th of October, I had five staff people with me and we went to the Forest Supervisor's office in Sparks. On a conference call with legal counsel in Ogden, Utah, we asked them to provide us the law that shows that the Forest Reserve Act of 1906 repealed RS 2477. A week ago yesterday, we had staff in Ogden, Utah; and again we did not get that law.

So what I would like to do now, and just the day before yesterday I was in Reno testifying in a Forest Service hearing. I would like to read to you—I'll wait and do it during the questions.

I want to present a solution. Courts are not going to resolve this issue. The only people that can resolve this issue is you. So what I'm going to ask is that you require the Secretary of Agriculture and the Secretary of Interior to develop a pilot project with Nye County and Elko County, and come back in 1 year with a program to resolve which roads are county roads, which roads are Forest Service roads, and which roads are BLM roads. And you people pass the legislature that resolves this issue forever.

The second thing I would like to present to you right now, too, before the red light comes on. I would like to invite you representatives, Elko County Commissioners, Regional Forester, the Assistant Forest Supervisor, and Nye County to sit down and resolve this tomorrow. Because the cost of fixing that road is not that great.

I am a professional blade dozer operator. The Chairman of the Elko County Board can run a dozer. I will bring my dozer up here, and it will not cost you anything. We will pass the hat among the audience right out here to cover the cost. That's all it will cost.

With that, I'll wait and answer some questions. But I want to get into the FLPMA law; that lays it out.

Mrs. CHENOWETH-HAGE. Thank you, Commissioner.

And the Chair turns to Congressman Gibbons for his questions.

Mr. GIBBONS. Thank you very much, Madam Chairman. Mr. Salicchi, today with the status of the South Canyon Road in its current condition, are you able or is it possible for you to access this area in a vehicle?

Mr. SALICCHI. No, I can't. I can go to—I can just go part of the way, but I cannot go all the way up there. Because of the reconstruction that has been done, it's nothing but rocks and no way you can drive over it with a vehicle.

Mr. GIBBONS. You, with your physical condition, are denied access to this area under the current condition?

Mr. SALICCHI. Yes, I am.

Mr. GIBBONS. Mr. Holford, thank you for being here today. Let me say right off, no one here in this committee or I'm sure in the audience or the area denies that the conservation of our wildlife is the benefit of all Americans. What I would ask you basically is: Do you feel, is there absolutely no way to have this road and have good habitat for the bull trout?

Mr. HOLFORD. I'm not quite sure. We have never been able to get through any of the processes that have been put in place. Every time we get an environmental analysis, there's some other action that leads us into some stoppage through processes from other factions. We've never been able to take the E.A. To a final conclusion.

Mr. GIBBONS. If I ask you the question then, Trout Unlimited biologists according to your testimony disagree apparently with the Nevada Department of Wildlife. Have you worked with the or have they worked with the U.S. Forest Service on this issue?

Mr. HOLFORD. Has the State worked—

Mr. GIBBONS. No, Trout Unlimited biologists worked with the Forest Service or the Fish and Wildlife on this bull trout issue?

Mr. HOLFORD. No, our biologists have not worked together on this issue.

Mr. GIBBONS. Even though your biologists disagree with the State's conclusion, what is the basis of their disagreement?

Mr. HOLFORD. From my understanding, the basis of the disagreement was the requirements for the fish to be threatened. We feel that the, or from what I have been told, we feel that the information that was provided by the State leads to listing. The information that they had is two snapshots in time, one in 1998 and one in 1994.

Mr. GIBBONS. And your biologists have had a more extensive experience with the bull trout than the State of Nevada?

Mr. HOLFORD. I'm not saying that they have. What we're asking for is peer review, scientific peer review just like 3809. We came out with a scientific peer review, and I think it's very fair.

Mr. GIBBONS. The road you indicated, South Canyon Road, belongs to the Forest Service. Is that your testimony?

Mr. HOLFORD. It is, and I base that on—I've never seen on the county road map, even during the time this issue was going on, that the county had detailed that road as a county road. They detailed the other roads around it as county roads, and they didn't write the E.A. To repair the road. It appears to me the road belongs to the Forest Service.

Mr. GIBBONS. Your interpretation of the ownership of the road is based on its location on Forest Service land and not on legal precedent?

Mr. HOLFORD. I think the legal precedent is a great question. I think it needs to be decided in court. I don't know the legal precedents. I'm not a lawyer. This situation keeps on going around and keeps on following it back and forth in this county. It's time to take it to the court and find out who owns this road and get together and come to a resolution and go forward.

Mr. GIBBONS. Would it be your interpretation also that any highway, any roadway crossing Federal BLM land, Forest Service land if it were washed out would be an issue of ownership of the road or a question of maintenance of that road across that Federal land?

Mr. HOLFORD. The issue that Trout Unlimited is interested in is: How does that road affect aquatic habitat and the fisheries that are associated with that road? So to say a road that crossed all Federal land is unfair, I think.

Mr. GIBBONS. That goes back to my original question that I asked. In your opinion, can this road co-exist with the habitat for the bull trout?

Mr. HOLFORD. Not under the analysis that has been done. When Senator Harry Reid was here, they sat down and went through that whole process and the analysis said that the road couldn't be built.

Mr. GIBBONS. Mr. Crawforth, what information has the, either the Fish and Wildlife Service or the Forest Service, for that matter, shared with you regarding, over the past year regarding the bull trout?

Mr. CRAWFORTH. Congressman Gibbons, my knowledge, I think most of the information on the bull trout back to our work clear back to 1954, is the chapter and verse on bull trout in the Jarbidge River. And we have been in the mode of sharing our information with them. We have been the people on the scene.

We have regularly consulted with the Forest Service on their various land management practices. And more recently the Fish and Wildlife Service, I think, has reviewed our information extensively.

Mr. GIBBONS. The Fish and Wildlife have relied on the Department of Wildlife from the State of Nevada to make any decisions based on bull trout and the habitat?

Mr. CRAWFORTH. That's correct.

Mr. GIBBONS. Have the biologists for Trout Unlimited shared any information with you regarding their assessment or their work on the bull trout with you?

Mr. CRAWFORTH. Other than a statement similar to Mr. Holford's, not to my knowledge.

Mr. GIBBONS. Mr. Carver, welcome. You are the first person that we have had testify here who has actually suggested a solution.

While we all debate the facts and debate what has gone on and whether or not this person or that entity was right or wrong in all this, may I say you're the first one who has suggested a solution, getting together to find what would work for the interests of the people of Elko County, the management of our forest, the habitat for the wildlife in the area as well. I laud you for coming forward with that solution.

You indicated you had something you wanted to read to us prior to the 5-minute light expiring. If there is a short statement you want to read to us, I permit you to do that now.

Mr. CARVER. Thank you. Jim, I want to thank you for inviting me here today. As you see, you had one cancel out, and you let me fill in. I feel very honored. In fact, I feel more honored than I did on July 4 of 1944. You ought to feel my little heart pounding.

I want to tell you, Nye County has got a definition that we think is very strong. It's been held up in court. It's based on law and court decisions. The basic law it was based on was Public Law 94-579, passed on October 21 of 1976. I will read it.

"Repeal of laws relating to right-of-ways." I'm going to answer the question, did the Forest Service Reserve Act of 1906 repeal RS 2477?

"Section 706A. Effective on and after the date of approval of this act, RS 2477, 43 USC 932, is repealed in its entirety and the following statutes or part of statutes are repealed insofar as they apply to the issuance of right-of-ways over, upon, under, and through the public lands and lands in the National Forest Systems."

And it's got a big long list of other repeals. You've got it. It's the third page from the last that I handed you in my handout. I'm going to go on and read to you Section 509. It says "Existing Right-of-Ways."

A, "Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned," Secretary of Agriculture or Secretary of Interior, "may cancel such a right-of-way or right-of-use and instead issue a right-of-way pursuant to the provisions of this title."

And I'm going on to Section 701 of Public Law 94-597, effective on existing—"Effect on Existing Rights."

Section 701A, "Nothing in this act or in any amendment made by this act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date or approval of this act."

And on Section 701H, it says, "All actions by the Secretary concerned"—again, Secretary of Agriculture or Secretary of the Interior, "under this act shall be subject to valid existing rights."

Mr. GIBBONS. Thank you very much.

Mr. Crawforth, let me ask you a question. With your experience in wildlife habitat, the East Fork of the Jarbidge River is similar in nature, gradient, topography, morphology, et cetera, to the West Fork of the Jarbidge River. They both support a bull trout population.

The East Fork of the Jarbidge River does not, however, have a road next to it. Is the bull trout population recovering faster in the

East Fork of the Jarbidge River as compared to the bull trout population in the West Fork which has a road next to it?

Mr. CRAWFORTH. No. Our surveys indicate that where bull trout habitat is appropriate, whether for temperature, stream gradient, et cetera, bull trout populations are equal. They are reestablishing in some areas. But the natural factors are the limiting. And most of the critical habitat for bull trout in the West Fork are above the South Canyon roadside.

Mr. GIBBONS. Mr. Holford, would you be willing to submit your biologist, Trout Unlimited biologist research to this committee on the bull trout so that we may also have the privilege and the benefit of their analysis and their study to make our determination in this?

Mr. HOLFORD. Yes.

[The information referred to follows:]

BIOLOGICAL EVALUATION FOR BULL TROUT

Jarbidge Canyon Road Reconstruction Proposal and Alternatives

by

Katherine J. Ramsey  
Fishery Biologist  
Humboldt and Toiyabe National Forests

Elko, Nevada  
December 11, 1997

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United States                      Forest                      Humboldt National Forest  
Department of                      Service                      Toiyabe National Forest  
Agriculture

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File Code: 1950, 2670

Date: December 11, 1997

Subject: Biological Evaluation for Bull Trout, Jarbidge Canyon Road  
Reconstruction Proposal and Alternatives

To: Dave Aicher, District Ranger

Introduction:

Bull Trout (*Salvelinus confluentus*): Category 1 (USFWS); , Sensitive (USFS). Identified by U.S. Fish and Wildlife Service as "Warranted" for listing as a Threatened or Endangered Species on March 13, 1997 in the Klamath and Columbia/Snake River basins. Bull trout in the Jarbidge system of Nevada, while technically part of the Columbia/Snake basin, are separated from all other populations in the basin by 150 miles of unsuitable habitat, are considered a separate population segment from the Columbia/Snake populations which are warranted for listing. The Jarbidge population is not warranted for listing at this time. (USFWS, 1997).

Technical Assistance:

In April 1995, priority watersheds for Bull trout conservation were identified throughout the species' range, by Forest Service biologists working together with biologists from other agencies. On-going activities on Forest Service lands were screened for the risk they posed to bull trout within these priority watersheds. U.S. Fish and Wildlife Service biologists worked together with Forest Service biologists in arriving at these assessments of risk from on-going projects, and assessed overall population viability using the publication by Rieman and McIntyre (1993).

As part of the priority watershed/screening process which occurred earlier in 1995, the East and West Forks Jarbidge River watersheds were both identified as priority watersheds for bull trout conservation. The U.S. Fish and Wildlife Service office in Reno assisted in evaluations of activities on-going in these two watersheds and concurred with risks posed by individual activities, and with the assessment that the East Fork and West Fork populations each comprised 2 moderate-risk metapopulations and more likely a single moderate-risk metapopulation (Ramsey, unpubl.).

A species list was provided by U.S. Fish and Wildlife Service for the Inland Native Fish Strategy EA. It identified bull trout as occurring in the Nevada portion of the INFISH analysis area. Recent surveys by Nevada Division of Fish and Wildlife and by the U.S. Forest Service reveal the presence of bull trout within the West Fork Jarbidge River watershed.

or activities that are in conflict with Conservation Strategies or Conservation Agreements will receive this conclusion". [that the Action "Will Impact individuals or habitat with a consequence that the action will contribute to a trend towards Federal Listing or cause a loss of viability to the population or species."]

INFISH revised Forest Plan Direction for the Humboldt National Forest in 1995, to provide increased protection particularly for bull trout, but for other inland native fish species as well, and thereby reduce risks to continued population viability of these species as required under the Endangered Species Act and as required under NFMA. INFISH was developed as the Conservation Strategy established for bull trout in Regions 1, 4 and 6 of the Forest Service.

INFISH applies to that portion of the Humboldt National Forest whose waters drain northward into the Snake River basin. The West and East Forks of the Jarbidge drain north into the mainstem Jarbidge which is just over the border in Idaho. The Jarbidge River empties into the Bruneau River, a major tributary to the middle reaches of the Snake.

INFISH direction is in the form of riparian goals, riparian management objectives (RMOs), Riparian Habitat Conservation Areas (RHCAs), standards and guidelines and monitoring requirements. The Decision Notice (USFS, 1995a) and Environmental Analysis (USFS, 1995b) for the Inland Native Fish Strategy are hereby incorporated by reference.

The intent described below:

The intent of the Inland Native Fish Strategy is to:

"protect habitat and populations of resident native fish", "to maintain future options for inland native fish by reducing the risk of loss of populations and reducing potential negative impacts to aquatic habitat" and "will ...conserve management options for all inland native fish species until longer term direction is provided..." (USFS, 1995a; Abstract, pages 1, 9).

Expectations for outcomes when INFISH is applied are:

"will mitigate current and future effects", and therefore, "the indirect physical consequences are expected to be beneficial. No adverse indirect physical effects should occur. There may be indirect adverse social and economic effects." (USFS 1995a, page 13).

The section describing RMOs in the Decision Notice states that "Actions that reduce habitat quality, whether existing conditions are better or worse than objective values, would be inconsistent with the purpose of this interim direction" and that "the intent of interim RMOs is not to establish a ceiling for what constitutes good habitat conditions." (USFS 1995a, page A-3).

4. A road management program will be established to develop and maintain a safe, economical, functional and environmentally sound transportation system that serves the resource elements (goal 48, page IV-13).
5. The Jarbidge Canyon Road project area is located in the Jarbidge Management Area. Management direction in the Humboldt National Forest Land and Resource Management Plan states that, for the Jarbidge Management Area:
  - a. Roads for public and administrative use will be maintained (page IV-132).
  - b. Roads to trailhead facilities will be provided (page IV-132).

INFISH DIRECTION:

During the time INFISH is in effect, INFISH "...interim standards and guidelines replace existing conflicting direction described in these 22 Forest Plans, except where Forest Plan direction provides more protection for inland native fish habitat." (USFS 1995a, page 4). This statement is further supported by discussions in the NFMA Finding of Non-significance in the Decision Notice and FONSI.

Changes to RMOs and RHCA's

The interim direction in INFISH "can be modified by the watershed analysis procedures described in Attachment A [of the Decision Notice]. Direction can also be modified in the absence of watershed analysis where watershed or stream reach specific data support the change. In all cases, the rationale supporting the changes will be documented", (USDA FS 1995a, page 3).

"Interim RMOs may be modified by amendment in the absence of watershed analysis where watershed or stream reach specific data support the change. In all cases, the rationale supporting RMO's and their effects would be documented." (USDA FS 1995a, page A-2).

"Interim RHCA's may be modified by amendment in the absence of watershed analysis where stream reach or site-specific data support the change. In all cases, the rationale supporting RHCA widths and their effects would be documented." (USDA FS 1995a, page A-5).

INFISH Riparian Goals (applicable to this project):

Goals for watershed, riparian and stream channel conditions are to maintain or restore:

- 1) water quality, to a degree that provides for stable and productive riparian and aquatic ecosystems.

|                    |  |
|--------------------|--|
| Water Temperature  | No measurable increase in maximum water temperature (7-day moving average of daily maximum temperature measured as the average of the maximum daily temperature of the warmest consecutive 7-day period). Maximum water temperatures below 59°F within adult holding period and below 48°F within spawning and rearing habitats. |
| Large Woody Debris | >20 pieces per mile; >12-inch diameter; >35-foot length  |
| Width/Depth Ratio  | <10, mean wetted width divided by mean depth   |

The section describing RMOs in the Decision Notice states that "Actions that reduce habitat quality, whether existing conditions are better or worse than objective values, would be inconsistent with the purpose of this interim

direction" and that "the intent of interim RMOs is not to establish a ceiling for what constitutes good habitat conditions." (USFS 1995a, page A-3).

INFISH Standards and Guides:

The Standards and Guides deemed appropriate to the project, by alternative, were identified through an interdisciplinary process. The S&Gs applied to each alternative are contained within the section of this document entitled Description of Alternatives.

ISSUES AND INDICATORS CARRIED FORWARD INTO THE ENVIRONMENTAL ASSESSMENT

Fish Habitat:

What effect would the proposed action have on fish habitat in the Jarbidge River Watershed? INDICATORS for this issue question are: 1.) amount of large woody debris, 2.) number of pools, 3.) width:depth ratio at low flow, 4.) water temperature,

What effect would the proposed action have on bull trout population viability in the Jarbidge River Watershed? Indicators found to be appropriate concerning the bull trout population are: 1) changes in fish habitat, 2) prey base, 3) fish passage.

What effect would future road failures have on bull trout viability? Indicators for this issue question are 1) changes in fish habitat, 2) prey base, 3) fish passage.

Sediment control measures would be implemented and natural drainage would be provided for during restoration activities. Measures would be implemented in accordance with the State of Nevada Handbook of Best Management Practices.

A public information sign would be installed at Pine Creek Campground and/or near the permanent road closure device, explaining the decision to close the road. Information to be included on the sign should be developed by recreation, fisheries, and hydrology personnel.

#### Safety Measures

A spill prevention and control plan would be developed in accordance with state law, prior to implementation.

#### Cultural Resources

All known significant and unevaluated historic properties would be avoided during restoration activities.

If new sites are discovered, restoration work would stop immediately, and the Forest Archaeologist would be notified. Work would not resume until surveys are completed, any additional mitigation work is completed, and approval to proceed is given.

#### Fisheries

To avoid adverse impacts on fish, work within the active channel would only be allowed between July 15 to September 30. Incidental stream crossing by equipment would be allowed outside of this on a case-by-case basis.

#### Hydrology

Best Management Practices specified by the State of Nevada would be adhered to per the 402 permit (rolling stock permit). Best Management Practices specified by the U.S. Army Corps of Engineers would be adhered to per the 404 permit.

#### Inland Native Fish (INFISH) Strategy

The S&Gs (standards and guidelines) of the INFISH strategy which apply to Alternative 1 are discussed below. Items in parentheses were developed by the ID Team and are not part of the S&G.

RF-3 - Determine the influence of each road on the Riparian Management Objectives and avoid adverse effects on inland native fish by:

(The ID Team recommended the exclusion of the first two paragraphs of this S&G as they were not applicable to this Alternative. This S&G can be read in its entirety in this document, under Alternative 3, page 2-10, item RF-3.)

RM-2. This would be done to determine effects on RMO's and inland native fish from recreationists. This monitoring would include vehicle counters, trail registers, visitor surveys, campground inspections, etc. Monitoring results would be used to determine the need to adjust recreation practices. Adjustments would be done as needed to avoid adverse effects to inland native fish and meet RMO's.)

#### ALTERNATIVE 2 - TRAIL

No road reconstruction or repair would occur above Pine Creek Campground. The Jarbidge Canyon road would terminate near the campground, and a permanent road closure device would be installed. Trailhead parking with horse facilities would be built near the campground, and may include an additional toilet. A trail would be constructed to connect the new trailhead to the former trailhead at Snowslide Gulch. This trail would cross the river using fords or footbridges. There could be up to seven crossings; the exact number would be determined by the trail location. Bridges, culverts, and toilets at SnowslideTrailhead and Urdahl camp area, and the trailhead bulletin board would be removed. Trail construction would include:

Construction of a trail suitable for foot, horse, motorcycle and ATV (All-Terrain Vehicle) travel.

The estimated cost of implementing this alternative is \$65,000 to \$185,000. A request for emergency relief funds would be made to rip and seed the road, remove the bridges and culverts, and to install a trailhead parking area. Emergency relief dollars would not fund the removal of the toilets or bulletin board, the installation of a toilet at the new trailhead, or a trail facility. These costs would need to be funded by the Forest Service, or cost-share partnerships and grants. Implementation of emergency relief funded work would be targeted to take place by 1998. Implementation of the remaining project work would take three to ten years, depending upon the availability of funds.

#### MITIGATION MEASURES

##### Engineering Design and Project Oversight

The design of the trail and all other facilities and structures would be done by an interdisciplinary team of experienced specialists.

Project oversight during layout and implementation would also be done by an interdisciplinary team with the same skills as the design team.

If new sites are discovered, construction work would stop immediately and the Forest Archaeologist would be notified. Work would not resume until surveys are completed, any additional mitigation work is completed, and approval to proceed is given.

#### Fisheries

To avoid adverse impacts on fish, work within the active channel would only be allowed between July 15 to September 30. Incidental stream crossing by equipment would be allowed outside of this on a case-by-case basis.

If a redd (fish nest) is found in the area where the river is being diverted, Nevada Division of Wildlife would be contacted prior to diversion.

Permanent fords would be located to minimize impacts to potential or existing redds. All ford crossings would be monitored annually, between August 30 and November 15, for presence of spawning fish and/or redds in the vicinity of fords. If redds are observed, measures would be implemented to protect spawning fish and the redds from disturbance. These measures would be determined on a site-specific basis and may include, but not be limited to the following: seasonal closures, ford relocation, and construction of bridges to replace fords.

#### Hydrology

Tree removal within 300 feet of the active channel would be allowed, but only to the extent that adverse impacts on fish would be avoided. All trees which provide shade between 10 a.m. and 3 p.m., would be retained, unless removal is absolutely necessary.

If any trees 12-inch diameter or greater are removed, they would be placed and anchored in suitable locations within the channel to serve as large woody debris. Suitable locations would include sites for pool formation, or

sites where stable undercut bank retention or restoration would be encouraged or desired.

Best Management Practices specified by the State of Nevada would be adhered to per the 402 permit (rolling stock permit). Best Management Practices specified by the U.S. Army Corps of Engineers would be adhered to per the 404 permit.

#### Inland Native Fish (INFISH) Strategy

The standard and guidelines (S&Gs) of the INFISH strategy which apply to Alternative 2 are discussed below. Items in parentheses were developed by the ID Team and are not part of the S&G.

RF-3 - Determine the influence of each road on the Riparian Management Objectives and avoid adverse effects on inland native fish by:

RM-2 - Adjust dispersed and developed recreation practices that retard or prevent attainment of Riparian Management Objectives or adversely affect inland native fish. Where adjustment measures such as education, use limitations, traffic control devices, increased maintenance, relocation of facilities, and/or specific site closures are not effective in meeting Riparian Management Objectives and avoiding adverse effects on inland native fish, eliminate the practice or occupancy. (Monitoring of recreation practices would be conducted as a first step in implementing both RM-1 and RM-2. This would be done to determine effects on RMO's and inland native fish from recreationists. This monitoring would include vehicle counters, trail registers, visitor surveys, campground inspections, etc. Monitoring results would be used to determine the need to adjust recreation practices. Adjustments would be done as needed to avoid adverse effects to inland native fish and meet RMO's.)

#### ALTERNATIVE 3 - PROPOSED ACTION

The road would be reconstructed and repaired within the Jarbidge Canyon corridor from Pine Creek Campground to Snowslide Trailhead. Reconstruction within the corridor would include:

- reconstructing four sections of road that total approximately 2650 feet. These four sections are:
  - Section A - reconstruct 950 feet,
  - Section B - reconstruct 100 feet,
  - Section C - reconstruct or relocate 100 feet, and
  - Section D - relocate 1500 feet of new road (refer to attached map for the location of these sections);
- resurfacing with gravel or native material those sections of road that have been damaged;
- slope stabilization (includes cuts, fills, and streambanks) treatment where needed;
- make minor repairs to the North Fox Creek bridge, that was damaged during the 1995 flood event.
- relocation of 1000 feet of stream channel that presently flows down Section A of the road.
- relocation of 100 feet of stream channel that presently flows down Section B of the road.
- relocation of 100 feet of stream channel that presently flows down Section C of the road.
- relocation of 1250 feet of stream channel that presently flows down Section D of the road.

Design of the channel would include a survey of the existing channel location and the proposed channel location. Design would include representative sinuosity, wetted perimeter, width/depth ratio, and substrate size.

**Road Reconstruction Measures**

Disturbance of vegetation along the banks would be minimized.

Damage to existing overhanging banks would be avoided to the extent practicable.

Small woody material (less than 12 inches in diameter) removed would be placed in the channel under the direction of the fish biologist and hydrologist, or left on the floodplain.

Trees and shrubs would be planted as needed and as funding is available.

All road cut banks and fill slopes would be seeded.

Road building on unstable slopes would be prohibited.

Sediment control measures would be implemented and natural drainage would be provided for during restoration activities. Measures would be implemented in accordance with the State of Nevada Best Management Practices.

**Safety Measures**

A spill prevention and control plan would be developed in accordance with state law, prior to implementation.

All vehicles associated with road construction activities would observe posted speed limits.

Warning signs would be posted where needed to warn people of construction activities.

Dust abatement and/or watering would be done to control dust along roadways and construction sites.

**Cultural Resources**

All known significant and unevaluated historic properties would be avoided during construction.

If new sites are discovered, construction work would stop immediately and the Forest Archaeologist would be notified. Work would not resume until surveys are completed, any additional mitigation work is completed, and approval to proceed is given.

## Inland Native Fish (INFISH) Strategy

The standards and guidelines (S&Gs) of the INFISH strategy which apply to Alternative 3 are discussed below. Items in parentheses were developed by the ID Team and are not part of the S&G.

RF-1 - Cooperate with Federal, Tribal, State and county agencies and cost-share partners to achieve consistency in road design, operation and maintenance necessary to attain Riparian Management Objectives.

RF-2 - For each existing or planned road, meet the Riparian Management Objectives and avoid adverse effects to inland native fish by:

Completing watershed analyses prior to construction of new roads or landings in Riparian Habitat Conservation Areas within priority watersheds.

Minimizing road and landing location areas in Riparian Habitat Conservation Areas.

Initiate development and implementation of a Road Management Plan or a Transportation Management Plan. At a minimum, address the following items in the plan:

1. Road design criteria, elements and standards that govern construction and reconstruction.
2. Road management objectives for each road.
3. Criteria that govern road operation, maintenance and management.
4. Requirements for pre-, during-, and post-storm inspections and maintenance.
5. Regulation of traffic during wet periods to minimize erosion and sediment delivery and accomplish objectives.
6. Implementation and Effectiveness monitoring plans for road stability, drainage, and erosion control.
7. Mitigation plans for road failures.

(Mitigation measures listed in this EA would be included in the Transportation Plan developed for the Jarbidge Watershed.)

Avoiding sediment delivery to streams from the road surface.

1. Outsloping of the roadway surface is preferred, except in cases where outsloping would increase sediment delivery to streams or where outsloping is infeasible or unsafe.
2. Route road drainage away from potentially unstable stream channels, fills and hillslopes.

RM-1 - Design, construct and operate facilities, including trails and dispersed sites, in a manner that does not retard or prevent attainment of the Riparian Management Objectives and avoids adverse effects on inland native fish. Complete watershed analysis prior to construction of new facilities in Riparian Habitat Conservation Areas within priority watersheds. For existing recreation facilities inside Riparian Habitat Conservation Areas, assure that the facilities or use of the facilities would not prevent attainment of Riparian Management Objectives or adversely affect inland native fish. Relocate or close recreation facilities where Riparian Management Objectives cannot be met or adverse effects on inland native fish cannot be avoided.

RM-2 - Adjust dispersed and developed recreation practices that retard or prevent attainment of Riparian Management Objectives or adversely affect inland native fish. Where adjustment measures such as education, use limitations, traffic control devices, increased maintenance, relocation of facilities, and/or specific site closures are not effective in meeting Riparian Management Objectives and avoiding adverse effects on inland native fish, eliminate the practice or occupancy. (Monitoring of recreation practices would be conducted as a first step in implementing both RM-1 and RM-2. This would be done to determine effects on RMO's and inland native fish from recreationists. This monitoring would include vehicle counters, trail registers, visitor surveys, campground inspections, etc. Monitoring results would be used to determine the need to adjust recreation practices. Adjustments would be done as needed to avoid adverse effects to inland native fish and meet RMO's.)

MM-5 - Permit sand and gravel mining and extraction within Riparian Habitat Conservation Areas only if no alternatives exist, if the action(s) would not retard or prevent attainment of riparian Management Objectives, and adverse effects to inland native fish can be avoided.

evolutionary and geologic time. Appendix F integrates the literature on bull trout biology and habitat requirements with information specific to the Jarbidge River watershed, regarding existing and historic conditions, processes and activities in the Jarbidge watershed.

#### Habitat in the Project Area:

The first four topics covered under this section are those carried forward into the EA as Issue Indicators for Habitat. These 4 topics were selected because they are habitat elements with quantified Riparian Management Objectives (RMOs) as directed by the Humboldt National Forest Management Plan now amended by the Inland Native Fish Strategy (INFISH). Additional indicators for habitat include fine sediment. Discussions on spawning, rearing and adult summer holding habitat integrate these habitat elements so that RMOs and sediment can be more easily tied to discussions on population viability.

In 1996 and 1997, Forest Service personnel undertook reach-specific surveys of fish habitat and channel conditions in the West Fork, assessing overhanging banks, large woody debris quantities and distribution, pool frequencies, channel morphologies, flow volumes, potential barriers to fish passage, and presence/absence of bull trout and other fish species. A limited survey of the East Fork Jarbidge River was conducted in 1997 by Forest Service biologists for comparability with the West Fork Jarbidge River for pools, large wood, existing fish passage, spawning gravel availability, fine sediments, and presence/absence of bull trout and other species.

INFISH Riparian Management Objectives deemed applicable to the project and discussed here are the following: Large Woody Debris, Pool Frequencies, Width-Depth Ratios and Temperature. Additional habitat factors evaluated for the project area include: fine sediment, spawning habitat, rearing habitat, adult holding (summer) habitat, prey base and fish passage.

#### Large Woody Debris:

Appendix A shows the results of 1996 woody debris surveys at slightly less than bankfull runoff. Appendix B shows the results of 1997 low-flow surveys for both woody debris and for pools. Reaches were sampled within the Wilderness in 1996 and in the project area below the Wilderness in 1996 and 1997.

Based on these sample reaches, as of 1996, there were 5 pieces/mile between Pine Creek campground and the Wilderness boundary. As of 1997, there are roughly 20 pieces/mile below the wilderness, indicating a large pulse of freshly-recruited Large Wood entering the watted channel from newly dead and dying grand fir observed throughout the project area floodplain in 1996 and 1997, and from aspen and cottonwoods undercut in peak flows between 1995-1997.

Approximately 27-28 pieces/mile within the Wilderness were sampled in 1996. Woody debris frequencies are currently meeting INFISH Riparian Management Objectives in the project area. In the Wilderness upstream of the project area, INFISH RMOs are currently met and exceeded for Large Woody Debris.

1b) Restoration of desired quantities of Large Wood in the middle and lower reaches of the West Fork Jarbidge River is a slow process ordinarily. Wood entering headwater reaches may be held in the headwaters for long periods of time due to lack of sufficient river/creek flows to pick them up and carry them downstream (Montgomery and Buffington 1993).

These headwater channels are narrower, and floodplain complexity with live trees may trap and hold downed wood in place more effectively than wider channels downstream. Mass-wasting events from hillslopes and colluvial

tributaries may carry wood down into the river but these events may only occur once every 50-100 years in a given location. The 1995 event has been calculated to possess a 100-year return interval (C. Butler, pers. comm.).

Pulses of delayed mortality among vulnerable conifers, may occur within a few years following an event of this magnitude, based on observations on grand fir over the past 3 years in the project area. Subsequent infrequent flood events would then have to redistribute the wood down through the channel over a potentially lengthy period of time.

1c) A channel and floodplain already simplified by lack of large wood is less likely to retain large wood entering the area, since there are fewer physical obstructions present to snag, entangle and prevent the large wood from being floated away by flood waters. Thus some Large Wood may have been entering the middle and lower reaches over time but has not been retained, instead moving downriver into the mainstem Jarbidge and down toward the Snake River. This has direct implications for pool frequencies.

2) Areas accessible by road below the Wilderness boundary have not been administratively closed to wood-gathering to date, but there appears to be little demand. Any woodcutting would require authorization through a woodcutting permit. Areas above the Wilderness boundary have not been accessible by road since 1966 and wood-gathering above the boundary has not been authorized since 1986 when this area was added to the Jarbidge Wilderness.

Evidence suggests woodcutting and removal of Large Wood today is a minor impact relative to the residual effects of historic cutting. Field reviews throughout 1996 found no recent evidence of wood cutting above Pine Creek Campground. Most local firewood cutting in recent years occurs outside the main canyon of the West Fork, in the Buck Creek drainage to the west (see map), where a large fire burned in 1992 (C. Josaitis, pers. comm.). Some rooted downed cottonwood trees in Pine Creek campground were removed from the floodplain in spring 1996 by unknown persons.

distinguish between forested streams and non-forested streams, as far as pool potentials. The October 1997 river width of 12 feet in the project area between Pine Creek and Fox Creek falls into Width Class 2 as defined in Appendix D. The October 1997 channel width of 9.98 feet between Fox Creek and Snowslide Gulch falls into Width Class 1 as defined in Appendix D.

Stream width increases with Width Class. Class 1 is the narrowest.

Stream Width Class 1 = 5-10 feet.  
 Stream Width Class 2 = 10-15 feet.  
 Stream Width Class 3 = 15-20 feet.  
 Stream Width Class 4 = 20-25 feet.  
 Stream Width Class 5 = 25-30 feet.

Between Pine Creek and Fox Creek (Not channelized in 1979)

**Natural Channel-Expected:**

- Channel types A (Width Class 2):  
can provide 19-53 pools/mile.
- Channel type B (width class 2):  
can provide 48-70 pools/mile.
- Channel type A (width class 3)<sup>\*</sup>:  
can provide 16-33 pools/mile.

\* The number of pools expected for a Natural Condition "A" channel (Width Class 3) was drawn from an average across all geologies. Overton et al (1995) only found 1 A-type stream of this size to sample in volcanic geology, hence it was judged that a broader sample across geologies, would better represent pool potentials for a stream of this size and morphology.

**Recent Historical-Complete Inventory:**

1997- Channel types A3, B3 (Width Class 2):  
currently providing 27-28 pools/mile, based on 3485 feet of stream consecutively sampled (R1/R4 protocols)

**Recent Historical-Estimated:**

1985- Channel type A3 (width class 3)<sup>\*</sup>:  
provided 0 pools/mile, based on 690 feet of stream sampled (1 reach; 5 transects each reach, transects 138 feet apart)

1971- Channel type B3 (width class 2):  
provided 18-19 pools/mile, based on 1500 feet of stream sampled (3 reaches; 5 transects each reach, transects 100 ft. apart.)

From Bonanza Gulch to Pine Creek (portions channelized in 1979).

Recent Historical-Estimated (cont.):

1971- Channel type B3: (width class 3):

provided 0 pools/mile, based on 500 feet of stream sampled (natural unchannelized in 1979); 1 reach (#17); 5 transects; transects 100 ft. apart.

From below Dry Gulch upstream to 0.5 miles below Snowslide Gulch: Not channelized in 1979.

Natural Channel-Expected:

Channel type B (width class 1):  
can provide 10-47 pools/mile

Channel type A (width class 1) \*\*:  
can provide 5-16 pools/mile

Channel type A (width class 2):  
can provide 14-53 pools/mile.

\*\* The number of pools Expected for a Natural Condition "A" channel 5-10 feet wide was drawn from an average across all geologies. Overton et al (1995) found no A-type channels of this size to sample in volcanic geology, hence it was judged that a broader sample across geology, would better represent pool potentials for a stream of this size and morphology.

Recent Historical-Estimated:

1985- Channel type B3 (width class 1):

provided 7-8 pools/mile, based on 690 feet of stream sampled (1 reach; 5 transects; transects 138 feet apart)

1971- Channel type A3 (width class 2):

provided 21-22 pools/mile, based on 500 feet of stream sampled (1 reach; 5 transects; transects 100 feet apart) (Below Snowslide).

1971 Channel type A3 (width class 2):

provided 0 pools/mile, based on 1000 feet of stream represented (2 reaches; 5 transects each reach, transects 100 feet apart) (Above Snowslide, below Dry Gulch).

Channel morphology in a given location can be dynamic over time, due to normal hydrologic processes. In this data, locations in and near the project area appear to have ranged between A3 and B3 channel morphologies over the past 15 years. Actual changes in channel morphology, where they have occurred, could, partially explain true changes in pool frequencies (Overton 1995; Smith 1996).

There was an apparent overall increase in number of quality pools between 1971 and 1985, following 1979 channelization between Bonanza and Pine Creek, with a short term loss of quality pools for up to 6 years between 1979 and 1985 in the affected reach. Surveys and photos of 1979 results indicate that impacted channels were indeed completely voided of pool structure, therefore it is certain that pools did actually redevelop within the 6 years following channelization.

It is less certain, but definitely possible that more pools developed as of 1985 than were present in 1971 in these reaches. The river would have more ability to dig into a riverbed loosened by the 1979 work. The 1971 streambed was likely relatively stable, due to bed-armoring processes which tend to settle and interlock channel substrate in the absence of extreme disturbance. Bed armoring tends to make the substrate less movable with normal water action, maintaining pools present but making it more difficult to create additional pools solely through natural water action.

Summary for Pools:

The low frequency of pools in this geology and among these channel sizes and types is generally consistent with comparable findings by Overton et al (1995) in pristine channels of similar geology/channel morphology and channel widths, in Idaho. With these channel types and sizes, and with the limited forest-capable areas in the canyon to provide Large Wood to aid in pool formation, it is doubtful that an RMO of 76 pools per mile is realistic in the middle and upper reaches of this dynamic river. A more realistically range of values is offered in the Recommendations Section following the section on Risk Determination.

Reviewing Appendix D for historical pool frequencies vs. expected pool frequencies in this geology, for these channel sizes and types, it appears that a few reaches along the length of the river are matching expected pool densities for "natural condition channels", per Overton et al (1995). Pool densities from Bonanza Gulch upstream are less than expected or within the low end of natural variation, including reaches within the Wilderness. As of 1985, highest pool frequencies were found in the Wilderness. As of 1997, the highest pool frequencies are in the reach between Pine Creek and Fox Creek, which was impacted by rain-on-snow flooding and debris flows in 1995.

The 1985 habitat surveys noted the prevalence of wood as a factor in pool formation and/or pool quality throughout the river. Apparently wood in various sizes, including wood associated with beaver dams, is essential for establishment and maintenance of INFISH-style pools in this river system, as well as being essential for the formation of pocket pools throughout the system. The lag in restoration of large wood below Sawmill Creek probably is

width:depth ratios commonly of 20 and greater, up to 45:1. B-channels possessed wetted width:depth ratios varying between 33 and 66:1. This includes reaches above Snowslide, in the wilderness.

Historically. A-type reaches above Pine Creek, possess wetted width-depth ratios ranging from 5-28.

B-type reaches above Pine Creek, possess wetted width-depth ratios ranging from 34-57.

Presently. The A/B reaches from Pine Creek to Snowslide Gulch possess wetted width-depth ratios of 26:1 and 28:1.

Gradient was the primary criterion used to identify 1971, 1979, and 1985 reaches as either A, B or C/D type channels. Exceptional wetted width:depth ratios and/or presence of mid-channel bars was the criterion used to further distinguish between C and D-type channels, along with probability based on valley morphology (Rosgen, 1996). The 1997 survey team visually identified A and B channel types in the project area.

#### Restoration Processes and Limitations:

Heede (1985) found that when Large Wood was removed from an A-type gravel-cobble channel, gravel bars developed in the place of the absent large wood. The bars formed steps similar to those formed by large wood, removing energy and maintaining channel morphology similar to that previously recorded.

It is probable that most of the West Fork Jarbidge River once naturally possessed considerably wider wetted width:depth ratios than those espoused by INFISH, due to the former presence of C-type reaches throughout the river, prior to the dates for which quantified data is available, based on historic photographs (C. Butler, pers. comm.). Most B-, C-, D-type channels may be expected to possess wider wetted width:depth ratios than A-type channels or G-type channels. Based on quantified data throughout the river, for A and B-channels, it is doubtful that even these types in the Jarbidge system could achieve an INFISH RMO of < 10:1 under natural conditions. Smith (1996) found that Large Wood had the ability to either widen or narrow a channel, depending upon its placement and complexity.

Given the ability of Large Wood to narrow a channel to some degree, in some cases, the deficiency of Large Wood in the West Fork Jarbidge system, especially below the Wilderness, may be a contributing factor to the observed width-depths throughout the system which are generally much wider than INFISH RMOs, both within the wilderness, and in unchanneled reaches below the Wilderness, in A, B, C and D-type reaches all.

Limitations on restoration of Large Wood to the system are discussed in the section on Large Woody Debris earlier in this chapter. Temperatures as influenced by width:depth ratios are discussed in the next section.

The maximum nightly temperature recorded during the 1997 sampling period was 12.3°C. Nightly low temperatures were generally 10.5°C (51°F.) and lower. Daily high temperatures began to drop noticeably around September 10, nightly low temperatures began to drop noticeably at the same time, maintaining a daily temperature differential of 5-6 degrees C. Maximum daily temperature on September 18 and 20 was less than 11°C. Temperatures again rose and exceeded 11°C. between September 21 and October 2, dropping and remaining below 11°C. from October 3 onward.

Very little temperature data from middle and upper reaches of the West Fork Jarbidge River are available for July. Reaches between Pine Creek and Snowslide Gulch have had temperatures recorded over the years, which indicate that mid-late August and possibly mid-late July water temperatures in these reaches and those downstream, may reach or exceed bull trout tolerances on a regular basis, particularly in drought years.

Typically fish population and habitat surveys in the East and West Forks have been conducted between August and October. Past surveys indicate that most if not all mature resident-sized bull trout have already moved into the reaches above the Wilderness by August. Bull trout seasonal movement within a river or tributary is very strongly tied to changes and thresholds in water temperatures.

There are no indications from temperature data or bull trout presence/absence data in Appendix E, that reaches directly affected by the proposed road reconstruction between Pine Creek and Snowslide Trailhead, were used by bull trout for spawning or rearing habitat between 1954 and 1985. There are no indications (based on recorded presence) that migratory or resident adults used these reaches for summer holding habitat other than temporarily if at all, between 1954 and 1985, as they moved upstream toward the headwaters, reaching the headwaters above Snowslide Gulch by August in most years.

Temperatures in the river from Mahoney down into the mainstem Jarbidge may exceed tolerance limits for bull trout in some drought years, even though average monthly reach-scale temperatures from a scattered data set over 40 years, indicates that in average flow years at least, the entire West Fork above the confluence with the East Fork, likely remains thermally tolerable (McNeill et al, unpubl.)

Temperatures in drought years however, may force large migratory bull trout in particular in the lower river to move into the middle and upper reaches of the East and West Forks as early as early July, based on angler reports and BLM surveys of the lower and middle reaches of the system in July.

Deep pools in the lower river, noted in 1954 surveys, along with a few possible groundwater inflow areas tentatively identified in the middle and lower river are probable microhabitats that allow larger fish to hold through the late summer and early fall in the river below Pine Creek, even when surrounding water temperatures may be at the upper margins of bull trout tolerance. During a project field review in July 1997, temperature in a deep pool below Gorge Gulch recorded a 4°F cooler temperature relative to the riffle immediately upstream from the pool.

(5.5°C.), whereas temperatures in the East Fork remained within spawning temperature ranges (8-11°C.). Temperatures on the East Fork were measured relatively lower in the system, at flows noticeably higher than were present in the project area on these dates. The possible redds observed in October 1997 appeared to have been formed perhaps a couple weeks prior to the survey (D. Duffield, pers. comm.).

Flows at the Stowaway site were comparable to flows in the East Fork, and temperatures derived from the Stowaway matched temperatures recorded on the East Fork at comparable flows during the same timeframe. If areas in the West Fork below Pine Creek are used for spawning at all, temperatures became suitable downstream of Bluster bridge on September 18th and 20th, and again around the 3d of October in 1997, and likely became suitable upstream prior to this date. In drought years, these temperatures may occur relatively earlier or later in the year in these locations, depending on interactions between flow volumes and air temperatures.

Rearing Habitat: Substrate in the project area consists of cobbles and boulders. The interstitial spaces between materials of this size can be used by juvenile bull trout as hiding cover. Pocket pools, another preferred habitat occur in limited quantities throughout the area, based on visual assessments. Instream Large Wood has increased over the two years since 1995 events, but availability of coarse wood (<12 inch diameter), cover preferred by juvenile bull trout, has not been quantified.

Physical habitat for juveniles is probably not limiting in the project area. Based on past temperature records for these reaches, occupancy by juvenile bull trout is most likely limited 1) by limited spawning areas, and 2) by temperatures. Juvenile bull trout have not been documented in the literature or in the Jarbidge River watershed where temperatures exceed 12°C. Juvenile bull trout tend to rear near where they are spawned unless forced downstream by lack of visual isolation from other juveniles and/or by vulnerability to larger predators due to lack of cover. As stated in the above section, spawning gravel deposits in the project area, as throughout much of the Jarbidge watershed, tend to be scarce and situated in less-than ideal sites for successful spawning to occur.

Temperatures in the project area in August of 1954 and 1971 were documented exceeding 12°C. Although 1954 was a drought year, 1971 did not appear to be a drought year, from flow volume comparisons with the same reaches in known drought years. The river above Snowslide Gulch recorded a temperature exceeding 12°C at noon in August 1954, implying temperatures at this site became progressively warmer through the afternoon.

The river below Pine Creek is likely to seldom provide temperatures suitable for rearing habitat in summer and early fall, for the foreseeable future, considering 1997 was not a drought year. This conclusion is based on Stowaway temperatures recorded between August 15 and September 14, 1997. Temperatures exceeded 12°C. on all but 2 days during that time.

provided either that overall river temperatures improved in this section, and/or that deep pool thermal refugia developed in association with woody inputs.

Preybase:

Thurston concluded the West Fork Jarbidge could support either a "large supply of small fish or a small supply of large fish" based on available chemical fertility of the water and the associated macroinvertebrate food supply levels.

More recently, macroinvertebrate analysis (USFS, 1988) indicated that the stream was near its potential, and that its 1.4 g/m<sup>2</sup> of invertebrate biomass would likely support a good fishery. The location of this sample is uncertain, but was taken in September, and was likely taken upstream of Pine Creek Campground.

Mature resident bull trout generally are more dependant upon the insect prey base and are less likely to feed on other fish (McPhail and Murray 1979; Armstrong and Morrow 1980, Aquatico 1976), compared to larger fluvial fish, which are relatively more dependant upon fish prey. Bull trout generally do not develop fish-eating behavior until they reach about 10-inch lengths.

Strong populations of sculpin and redband are present throughout the river below the wilderness, and whitefish have moderate to strong populations from Pine Creek downstream. Whitefish are a favored prey item for fluvial bull trout (Hanzel 1985; McPhail and Murray 1979, Pratt 1984).

Redband and particularly sculpin, may compete to a certain degree with resident bull trout for available insect prey, and for cover (Aquatico 1976). Sculpin may be a favored prey item for larger resident fish (Hanzel 1985).

Redband and sculpin are both spring-spawning species. Whitefish spawn in the fall. Redband prefer surface and drift feeding on insects, whereas both sculpin and whitefish prefer feeding on bottom-dwelling macroinvertebrates, as do resident bull trout. There may be some inter-species competition for macroinvertebrate prey between sculpin, whitefish and resident bull trout, where the species coexist. Past research indicates that whitefish tend to avoid living in waters smaller than 16 feet width and 4 feet depth at low flow (Sigler 1951), which may explain their absence in the West Fork upstream of Pine Creek. Larger fluvial bull trout may winter near denser whitefish populations providing preferred prey opportunities, and it is possible they winter anywhere in the river below Pine Creek where deeper pools would attract sufficient numbers of wintering prey fish species.

Redband and sculpin, as spring spawners, are likely to have more spawning habitat available to them than do bull trout, whitefish and sculpin. The river tends to deposit suitable-sized gravels along high-water margins, where they would be available for spring-spawners, but not available for low-flow fall spawning whitefish and bull trout. Whitefish and bull trout may compete for the limited spawning areas available at low flows in the fall, in river reaches downstream of Pine Creek, once September/October temperatures fall to less than 11°C in these reaches. This relative seasonal availability of spawning sites

Thermal Barriers:

Thermal barriers are defined as water temperatures 18°C (65°F) or higher, with respect to bull trout tolerances. Within the project area, in some drought years the river from Fox Creek downstream may pose daytime thermal barriers for an unknown seasonal duration. This assessment is partly based on recorded temperatures in middle and lower Pine Creek between August 12-18, 1992 in mid-afternoons and early evenings of 16.5 to 18.6°C, and partly based on a main river temperature of 14.4°C at noon on the River below Fox Creek in 1954, with probability of additional heating having occurred throughout that afternoon. Both of these years were identified in the records as drought years.

There is current debate among fishery biologists about the significance of daytime thermal barriers, since passage can occur at night when waters have cooled. This subject was an informal topic of discussion during a session attended by most participants at the Redband/Inland Rainbow Workshop held at Malheur Field Station in eastern Oregon in September 1996, which I attended. Given nighttime temperatures recorded from mid-August and late October in 1997 dropped to 12°C or less each night, bull trout primarily move upstream at night, a majority of bull trout move upstream before temperatures have exceeded 11.5°C, August-September night temperatures in 1997 did not appear to impose a thermal barrier to upstream movement from the sample point upstream.

Drought years are likely to be associated with somewhat higher daily peak temperatures. The daily 6-7°C drop in temperatures recorded each night during the hottest period in 1997, is likely to occur in drought years as well. Daily minimums in a drought year are likely to remain slightly elevated compared to average years, if this 6-7°C daily rise and fall in temperature holds constant across both drought and non-drought years. Chemical barriers:

The vault toilet at Snowslide Trailhead is currently filled to maximum. Contents may begin to leak into the soil between the river and the facility at any time. Bacterial and chemical interactions in the soil may or may not detoxify nitrogenous compounds before they seep into the river. If toxic nitrogenous compounds enter flowing water, the degree of toxicity will depend upon the volume of river flow available at any given time to dilute these pollutants at their point of entry. If river flow is insufficient to adequately dilute nitrogenous compounds seeping from the vault, a chemical barrier is likely to result. Such a barrier would prevent fish from moving past the pollution zone until flows increase again and sufficiently dilute this pollution enough such that fish will not avoid exposure by remaining either up or downstream in cleaner water.

Human fecal material seeping from the vault could carry microorganisms able to infect fish and cause disease in exposed fish of any species, whether redband, bull trout or sculpin. The significance would depend upon the ability of the microorganisms to spread between fish and reproduce themselves, the ability of the fish to resist the microorganisms and associated diseases, and the degree of exposure.

Because recent research has revealed that resident salmonids are far more mobile than previously believed, resident bull trout may or may not be nearly as mobile as the migratory form in a system the size of the Jarbidge watershed. They may or may not be distributed throughout the Jarbidge system, with some seasonal differences in distribution between large migratory fish and smaller migratory and/or resident fish. Seasonal distribution of bull trout relative to the timing of surveys must be considered when attempting to determine population status in the West Fork, the East Fork, and the entire Jarbidge watershed overall.

Migratory Life History:

Small adult migratory bull trout in the Jarbidge system overlap in size with the largest of the resident fish (11-12 inches) and are difficult to tell apart. Fish of similar size will spawn together. Larger migratory fish, greater than 11-12 inches, seem very rare in the Jarbidge system. None have been observed in any of the electroshocking and snorkel surveys between 1954 and 1995. Only 4 individuals larger than 12 inches have been reported from this system over the past 100 years. Three of those records date from 1976-1985 (Appendix E). All 4 records came from anglers who caught and presumably kept the fish, which were all 17-22 inches.

A Jarbidge resident has reported that size has declined for bull trout observed in a plunge pool in the mouth of Jack Creek at the Forest boundary with the West Fork, over the past 16-18 years since a large culvert there began to block upstream passage. Fish observed here over the past 5 years have generally been resident-sized, and may either be resident fish or fluvial fish. These observations are one of the strongest indications that the culvert has had a negative effect on the migratory bull trout historically spawning in Jack Creek.

Most of the population sampling in the East and West Fork subwatersheds has been performed by Nevada Division of Wildlife, between 1954 and 1985 for the West Fork, and between 1958 and 1993 for the East Fork. West Fork tributaries were sampled in 1992, East Fork tributaries in 1993. Those surveys occurred in August-October. Most of the bull trout captured were found in the headwaters during these late-summer and fall sampling periods. No large migratory fish have been observed in official surveys.

Idaho Fish and Game personnel in 1992 and Idaho Bureau of Land Management personnel in 1994 and 1995 surveyed the lower portions of the East and West Forks and also surveyed accessible portions of the mainstem down to its confluence with the Bruneau River far downstream in Idaho. IDFG surveys were done in early July on the 5 miles of the West Fork below the state line and on the East Fork near the confluence with the West Fork. Additional sampling was done on the East Fork just below the state line in early August.

BLM personnel also performed surveys up to the Forest boundary in Nevada and spot checked on-Forest up to the Wilderness boundary at Snowslide. Their surveys were performed in March and July. 1994 surveys followed 6 years of drought over the previous 8 years. 1992 was one of the 8 lowest-flow years on record.

past 30-40 years at low numbers and predicted they would persist throughout the Jarbidge River watershed, considering good habitat in the headwater areas he identified as Focal Habitat, and considering the limited amount of human activities on-going throughout the East and West Forks of the Jarbidge River watershed.

Cumulative effects up to 1994 in the West Fork and East Fork drainages, including 100 years of human activities, some of which were still on-going in 1994, some of which had been discontinued prior to 1994, resulted in the metapopulation that Johnson declared low but persistent, with no over-riding threats or concerns related to habitat, as of 1994.

Results of the 1994 survey by the Idaho BLM were not available to Johnson and Weller when they wrote the Population Status report for the Nevada portion of the drainage. The Idaho BLM surveyed the system in Nevada up to the Forest Service boundary, and performed spot checks on Forest lands up to the Wilderness boundary at Snowslide Gulch between spring and July, finding few fish in the lower river. Zoellick et al (1996) noted that 1994 population numbers may have been depressed more than in other years, since 6 of the previous 8 years had been drought years, including 1992 which was one of the driest years on record in this region.

In October of 1996, Forest Service personnel conducted field surveys of bull trout populations and habitat in headwaters of the West Fork, above the Wilderness boundary at Snowslide Gulch. These surveys took place 2 breeding seasons (for bull trout) following flooding combined with debris flows from side canyons into the West Fork. This flood/debris flow event resulted from a rain-on-snow event in mid-June 1995, and noticeably impacted the West Fork from the Wilderness boundary downstream to below the town of Jarbidge, a distance of approximately 6 miles.

In the October 96 surveys, 4 adult and 1 juvenile bull trout were visually identified in the river's headwaters by the Humboldt National Forest's fishery biologist, from Dry Gulch (above Snowslide) up to .25 miles above Sawmill Creek confluence, in shallow clear pools. The number and age composition observed were consistent with numbers and age composition of bull trout sampled in these reaches between 1954 and 1985 by NDOW using electroshocking equipment.

The results of the 96 visual surveys would appear to indicate that numbers and age composition of bull trout in the headwaters during breeding season have not been noticeably affected by highwater/debris flow events in 1995 or spring 1996 high flows below the Wilderness, with their associated channel adjustments. Results appear to bear out Johnson's 1994 conclusions.

Again in October 1997, Forest Service fishery biologists conducted visual surveys for bull trout and bull trout redds, in both the East and West Forks (Ramsey, unpubl.). No bull trout nor redds were observed in the East Fork. Three resident-sized bull trout were observed in the West Fork, within the Wilderness above Dry Gulch. The 1997 survey of the West Fork did not extend as far upstream as had the 1996 survey, therefore results are not strictly comparable. Two possible bull trout redds were observed in the West Fork in 1997.

To adequately assess project impacts to bull trout population viability in the Jarbidge River Watershed, this BE evaluates RMO's and other habitat and population factors relevant to bull trout population viability, at the watershed scale. Historic and Current Conditions at watershed-scale are discussed in the Appendices.

Watershed-scale integration is the essential context for assessing direct, indirect and cumulative effects of the project to bull trout inhabiting the Jarbidge system. A BE addresses all project-related factors potentially cumulatively affecting population viability. All potential impacts from the project must be considered together with other known on-going and historic impacts in the drainage, to adequately assess effects of the project as they relate to continued viability of the metapopulation inhabiting the Jarbidge River watershed. In the current context the Jarbidge River watershed refers to the bull trout metapopulation inhabiting the East and West Forks and mainstem Jarbidge River downstream of the confluence of the two forks.

Discussions in the Current Condition Section, in Appendices to this BE, and in the Watershed Analysis for the West Fork Jarbidge River together form the foundation for analysis of project effects in this discussion of effects of the project.

Habitat factors related to the RMOs were considered in this Biological Evaluation (BE). The habitat, prey base and fish passage factors evaluated here provide an index to impacts on most other habitat and population factors potentially affected by this project which could affect population viability of bull trout and other fish species in this watershed. Factors which are not adequately indexed by factors considered here are considered to be adequately addressed through federal mitigation measures, such that they are either not a concern, only minor effects are expected to occur, or are mitigable through state regulations on fisheries management.

A BE addresses all project-related factors potentially affecting population viability. Combined probable impacts from the project must be considered together with estimated current watershed-wide population status and distribution, habitat condition throughout the watershed, and along with other known on-going impacts in the drainage, to adequately assess effects of the project as they relate to continued viability of the metapopulation inhabiting the Jarbidge River watershed.

Potential effects associated with fuel haul to the project area via the road from Rogerson, Idaho, were considered under all alternatives in this BE. Fuel will be transported into the project area along approximately 4.5 miles of the East Fork (BLM and private lands), and along approximately 17 miles of the West Fork. The access road crosses from the East Fork into the West Fork at their confluence with the mainstem Jarbidge River. The route described is entirely within RHCA boundaries on Forest lands, and within unofficial RHCA boundaries on BLM and private lands. The attached map displays the route relative to the river, with land ownership and topographic features. Travel along both the East Fork and West Forks comes within 30 feet of the river in many places. The road is gravelled and very narrow. Once down on the valley floor off the canyon wall of the East Fork, the road possesses many blind corners.

Large Wood:

Removal of unmaintained bridges and culverts will help avoid unnatural development of debris jams. Thus Large Wood which enters the reach is more likely to be more equitably distributed through natural distribution processes; aid in the development of pools and storage of gravels, lead to narrower width:depth ratios (Dose and Roper 1994; Fausch and Northcote 1992; Montgomery and Buffington 1993), consequently leading to reduced heat-loading of the water's surface.

New local recruitment of seedling cottonwoods is likely to stop indefinitely, as long as the river stays entrenched in the 700-foot long gulley upstream of the campground. Cottonwood regeneration requires overbank flooding and shallow depths to groundwater throughout the growing season for seedlings to establish and survive. Eventually, the river may adjust again and either fill this gulley, or shift away from the gulley into a less-entrenched channel form. Cottonwood seedlings will be more likely to regenerate in this reach when this occurs, but time for this channel transformation is unknown.

Since the channel in the gulley reach is continuing to adjust at present, and trees are continuing to be undercut and fall into the channel as of February 1997, the river may naturally regain access to a wider floodplain soon enough to avoid development of a sizable gap in age distribution of cottonwoods through this 700-foot section, and ward off a gap in recruitment of Large Wood here decades in the future.

Future Large Wood inputs should be minimally retarded since recreational use would not be allowed to damage young trees and other vegetation on the floodplain to the point that RMOs would be retarded, provided that monitoring is timely and corrective action taken promptly when resource damage begins to occur.

Some Large Wood may be naturally recruited slowly from the floodplain upstream, into the project area. This is likely to only occur during infrequent high-water events. Progress toward Large Wood RMOs is likely to be achieved more quickly from natural processes recruiting trees growing within the project area.

Progress toward pool development, narrowed width:depth ratios and subsequent reductions in water temperature, is so extremely dependent upon Large Wood in this system, that effects associated with rate of restoration of Large Wood to the middle and lower reaches of the river must be a primary basis for comparisons of overall effects to bull trout between alternatives.

Pools:

Removal of bridges and culverts will help avoid unnatural development of debris jams, and thus Large Wood which enters the reach is more likely to be more equitably distributed through natural distribution processes and contribute to the development of pools.

project area, pools in the project area and downstream are likely to increase overall, and width:depth ratios should generally decrease.

Water Temperature:

Removal of bridges and culverts will help avoid unnatural development of debris jams, and thus Large Wood which enters the reach is more likely to be more equitably distributed through natural distribution processes; aid in the development of pools, lead to narrower width:depth ratios (Heede, 1985) and associated reduced heat-loading of the water's surface, resulting in lower maximum water temperatures.

Crossing areas are the areas where impacts to fish habitat are most likely to occur. Potential point-source impacts from off-road vehicles that could occur include destabilization of riverbed substrate and riverbanks, pools filled with coarse substrate from destabilized banks and disrupted substrate armoring which would otherwise hold pools in place. The combination of these impacts could slightly increase temperatures at these locations. Even minor temperature increases would be maintained downstream during the day unless offset by an input of cooler water downstream. Impacts are expected to be so localized that RMOs are expected to be only slightly retarded, provided that monitoring of impacts is done and prompt action is taken to avoid allowing impacts to levels that would retard RMOs or have adverse effects on bull trout.

Temperature RMOs should be minimally retarded since principal impacts affecting temperature are expected to occur only from chronic use of fords, provided that monitoring of impacts is timely and prompt action is taken to avoid allowing impacts to levels that would retard RMOs or have adverse effects on bull trout.

The channel is likely to continue redevelopment of habitat toward RMOs at close to natural rates. A G-channel such as the reach above Pine Creek, is not a stable channel, is continuing to adjust toward a new equilibrium morphology at present, and could become an A or B-type channel such as have existed here in the past. A B-type channel would naturally possess a wider width:depth ratio than the present G-channel. As Large Wood is recruited into the channel from upstream or from within the project area, pools in the project area and downstream are likely to increase overall, and width:depth ratios should generally decrease.

Channel morphology, shade, large wood, pools and width:depth ratios would continue to change at natural rates, and interact such that longterm changes to temperature may be either naturally cooler or warmer than at present through the 700-foot gulley section of river just above Pine Creek campground.

Water Quality (Chemical):

Chronic toxicity concerns may arise when the toilet facility at the trailhead fills from infiltration by groundwater and begins leaking. Since funds to remove this facility may not become available for 3-10 years, the toilet may create chronic water pollution problems for the fishery downstream of the facility until it can be removed. Because leaking waste would have to

wider width:depth ratio than the present G-channel. As Large Wood is recruited into the channel from upstream or from within the project area, pools in the project area and downstream are likely to increase overall, and width:depth ratios should generally decrease.

By allowing the river to cut into the downstream side of Pine Creek campground as it is currently doing, the channel is likely to naturally stay away from the newly repaired road segment below the campground and make it easier to maintain economical access to the upper part of the campground, and maintain channel integrity and channel processes through this area.

#### Fine Sediment:

Sediment inputs to the channel may be elevated while equipment is working in and around the channel, and remain above background at crossing areas due to subsequent off-road vehicle use.

Chronic inputs of fine sediment are likely to be locally elevated above natural background rates where the river has cut laterally into the road base between Pine Creek and Snowslide Gulch, and where the river is working against the lower portion of Pine Creek Campground at present. The effects of such localized inputs are likely to be minor. Fine sediment appears to be a minor concern throughout this system, given apparent channel transport capabilities.

Long-term inputs of fine sediment may be reduced somewhat, since erosion from road surface and fill slopes would be stabilized by ripping, seeding and planting. This mitigation is likely to be only marginally effective, due to probability that the former road would continue to be the primary route for an unofficial trail.

Reductions in fine sediment from a fisheries standpoint are always desirable except when needed as a substrate on upper banks and floodplain for stabilizing vegetation to establish. Cottonwoods in particular are important stabilizing floodplain species in this system and require overbank flooding for regeneration, therefore some overbank deposition and storage of fine sediment is desirable.

#### Spawning Habitat:

Removal of unmaintained bridges and culverts will help avoid unnatural development of debris jams, and thus Large Wood which enters the reach is more likely to be more equitably distributed through natural distribution processes; aid in the development of pools and storage of gravels, lead to narrower width:depth ratios (Heede, 1985) and associated reduced heat-loading of the water's surface.

Spawning gravels are scarce in reaches affected by this project, as well as in reaches downstream. Embeddedness of in-stream substrate by fines has historically been a minor concern in this system, based on past habitat surveys. Both fines and gravels appear to be carried rapidly out of this cobble-dominated system, probably partially due to lack of Large Woody structure which would otherwise create microsites where gravels could be

macroinvertebrate populations and prevent their recolonization of several small localized areas of disturbed in-channel habitat.

Numbers of individuals able to remain in a stream chronically contaminated with leakage from the toilet would depend upon the chemical concentrations to which they would be exposed, their physiological tolerance and the duration of exposure. Ammonia may be detoxified by soil microorganisms before it ever reaches the channel.

Holding off on in-channel work until July 15 should allow fry of spring-spawning fish (e.g. redband and sculpins) to emerge from the limited gravels present in the area before being damaged by heavy equipment activity in the channel.

#### Fish Passage:

Indirectly and cumulatively, removal of unmaintained bridges and culverts will eliminate the risk of unnatural debris jams developing against unmaintained structures and possibly blocking fish passage as Large Wood enters the reach from upstream over time.

Fish Passage could be negatively affected in 3 ways: 1) through chronic water pollution from a leaking toilet, 2) by direct behavioral disruption due to in-channel habitat disturbance by heavy equipment or off-trail motorized vehicles through crossing areas.. 3) Aggradation resulting in intermittent channel late-season, due to chronically destabilized crossing areas interacting with natural high water and/or mass-wasting events.

the primary chronic chemical barrier would be ammonia in the form of  $\text{NH}_3$ , or nitrites resulting from biological conversions of ammonia (Willingham et al 1979; Patrick et al 1979). Fish have the ability to avoid upstream pollutants by slowing their rate of movement upstream (Baker et al 1996b), but a chronic source from a leaking toilet could create a partial or total barrier to upstream migration of adult bull trout into spawning areas, depending upon the volume and rate of leakage vs. receiving river flow, particularly as water temperatures become warmer through the summer and the Biological Oxygen Demand becomes elevated (Willingham et al 1979).

Migrating bull trout resting in the lower end of the project area may be disturbed by off-road vehicle traffic or by the timing of in-channel work with heavy equipment, causing them to delay movement upstream past disturbances. The probability is moderate, since bull trout generally travel upstream during night hours, resting during the day. They are most likely to be moving upstream through the area particularly before maximum daily water temperatures begin to exceed 53°F. The probable peak time of upstream movement would coincide with project work during July and early August.

The channel is unlikely to change its morphology or shift location more than in minor ways as a result of user impacts interacting with annual high flows, provided that monitoring of impacts is done and prompt action is

Large Wood:

For the first 3-10 years, until the trail and trailhead parking areas are built, effects would be similar to Alternative 1.

Effects associated with completed implementation of the alternative would be similar to Alternative 1, with the following exceptions:

Accelerated inputs of Large Wood to the floodplain would result from trees cut during the construction of the parking area. These would be placed in the channel in the project area to the extent that suitable sites are available and funds are available for this work. Otherwise they would be left on the floodplain to be recruited to the channel in future high-water events.

Intensified use by vehicles, people and horses at Pine Creek campground and parking area is likely to lead to localized destruction of understory vegetation, including young cottonwoods. There is a strong possibility that older trees may die indirectly from soil compaction combined with direct effects of mechanical injury from vehicles and horses. Resultant hazard trees would be cut and left on the floodplain, available to become Large Wood recruited in future into the channel through natural processes.

A deficit in supply of Large Wood in future decades could result from lack of local tree regeneration around the trailhead, retarding future longterm progress toward RMOs for Large Wood entering the river from within the project area. Both the campground and the potential parking area would be within the 100-year floodplain, and perhaps within the 50 year floodplain.

Pools:

For 3-10 years, until the trail and trailhead parking areas are built, effects will be similar to Alternative 1:

Effects associated with completed implementation of the alternative would be similar to Alternative 1, with the following exceptions:

Pool development would be locally accelerated near the parking area due to slightly increased short-term rates of Large Wood inputs, but may be offset by possible pool deterioration near fords upstream.

Width:Depth Ratios:

For 3-10 years, until the trail and trailhead parking areas are built, effects will be similar to Alternative 1:

Effects associated with completed implementation of the alternative would be similar to Alternative 1, with the following exceptions:

Width:depth ratios could locally become narrower faster near the parking area due to local slightly increased rates of Large Wood inputs, but would

Ford crossings would likely slightly retard improvement in width:depth ratios at these localized points, and create localized point-sources of sediment inputs, resulting both from ford/trail construction, and from subsequent use. If fords are located where the de facto trail currently crosses, the situation would likely remain static but not become worse than without the official trail. Sediment inputs are likely to be chronic but minor, provided all mitigation is implemented fully.

Spawning Habitat:

For 3-10 years, until the trail and trailhead parking areas are built, effects will be similar to Alternative 1.

Effects associated with completed implementation of the alternative would be similar to Alternative 1, with the following exceptions:

Channel crossings are intended to be sited at relatively stable riffle areas. Armoring and use would prevent a narrower width:depth ratio from developing at designated crossings. Progress toward RMOs may be retarded or prevented at these localized points, but generally, habitat should improve throughout the project area as generalized impacts throughout the floodplain are eliminated, provided that mitigation is fully implemented in a timely manner.

As habitat improves, the risk increases that spawning and rearing habitat may develop and eventually be affected by ford crossings, and user-behavior at these crossings. Effects should be minor, provided all mitigation is fully implemented in a timely manner.

Annual monitoring for redds or spawning fish near fords is expected to identify the first year that habitat has become suitable enough to instigate spawning activity below Snowslide.

Rearing Habitat:

For 3-10 years, until the trail and trailhead parking areas are built, effects will be similar to Alternative 1.

Effects associated with completed implementation of the alternative would be similar to Alternative 1, with the following exceptions:

Channel crossings are intended to be sited at relatively stable riffle areas. Armoring and use will prevent a narrower width:depth ratio from developing at designated crossings. Progress toward RMOs may be retarded or prevented at these localized points, but generally habitat should continue improving at relatively natural rates above the campground, provided that all mitigation is fully implemented in a timely manner.

Fishing:

For 3-10 years, until the trail and trailhead parking areas are built, effects will be similar to Alternative 1.

Effects associated with completed implementation of the alternative would be similar to Alternative 1, with the following exceptions:

Establishment of a formal trail may slightly increase visitor traffic along the river upstream of Pine Creek campground, relative to present use.

Alternative 3 (Proposed Action):

While not described in Description of Alternatives, the following are operational details which must be considered when evaluating potential effects of Alternative 3:

Mixed boulder, cobble, gravel and fine sediment would be used to build and armor the road embankment in Sections A and D. This material would be derived from borrow sources on the north side of the mouth of Fox Creek, from a large talus slope downstream of Snowslide Gulch on the west side of the river and from a source upslope from the road midway between Gorge and Snowslide Gulches.

Channel substrate excavated from the newly constructed channel sections A and D between Pine and Fox Creeks would necessarily be stored between the current and future channels on the floodplain, which is currently partially occupied by mature cottonwood trees. Substrate would be stockpiled roughly parallel to the valley length in Section A, in an area relatively clear of trees at the present time. Once water is diverted into the new channel, stored substrate would be moved to fill the 700-foot gully in Section A and rebuild a roadbase for the reconstructed road segment.

Final deposition of debris flow material at Snowslide Gulch where another road segment was obliterated, and for material excavated from the old channel in Section D, will be stored temporarily in the adjacent floodplain, and subsequently used to build the new roadbase in this section.

Stabilization treatment along a very narrow portion of the canyon in Section A between Pine and Fox Creeks would likely occur, based on preliminary team discussions. This would occur to protect the roadbase when the road is replaced, after the channel segment (Section A) is constructed. Wood and/or boulder deflectors along the base of the armoring would create habitat diversity along the margins of the road base, and provide resting places for fish, per team discussions about operational details of design.

The road base in Section D would consist of angular boulders and cobbles primarily, with some smaller-sized material filling interspaces. The road base would be covered with filter cloth and designed to allow lateral movement of river water through the roadbase, enabling the roadbase to function as part of the river's floodplain. These design methods would render it unlikely in most future high water events, that the river would move and carve a new channel down through the roadbase as it did in 1995 in Section A.

construction method would minimize the effects of channel constriction associated with road reconstruction in section D, which already possesses a much wider valley floor than section A.

Another above-bankful high water/mass-wasting event may recur within 10 years based on past historical frequency of similar events. A 1986 photographic slide of area above Gorge Guich, in Jarbidge District files, shows the river flowing down the road in that section in 1986. Since the 1995 event has recently been estimated to have had a 100-year recurrence interval, it is unlikely that this magnitude of event will recur in the near future. Such future events may redistribute wood present in the channel and floodplain at that time.

Pool quality/quantity:

Some loss of pools as defined by INFISH would occur immediately as a result of river relocation into Sections A, B and D. Progress toward this RMO would be retarded for 3-5 years, possibly longer (Myers and Swanson, 1996).

Pocket (small) pools, which do not meet INFISH definitions, would begin to naturally redevelop within one year (NDOW, 1980 unpubl.). Pocket pools would provide structural rearing habitat, which may still be unuseable due to high temperatures. The number of INFISH-quality pools present six years after a previous "flood-control" channelization project in this river, were greater than were present before the channelization occurred, based on comparisons between 1971 and 1985 GAWS data for reaches between Pine Creek and the former Jarbidge Campground.

Trees removed during the project would be put into the river to serve as Large Wood. In sections A and D, quantities placed as fish habitat and meeting INFISH definitions for Large Wood, are likely to be similar or greater than quantities currently present in sections A and D, per the project hydrologist (C. Butler, pers. comm.). They would primarily be used to help create the intended channel morphology, and serve secondarily to help with pool formation. Fewer pools and lower-quality pools are likely to result in the near-term, than exist at present. A few INFISH-quality pools would be directly created during channel construction, formed by boulder weirs used to step the channel gradient down gradually. Within 1 year, some pocket pools are expected to develop; within 5-6 years, some INFISH-quality pools should redevelop in sections A and D. With dying and dead subalpine firs continuing to enter the channel through natural processes during ensuing years, pools may or may not develop concurrently. It is unknown how long it would be before pool frequencies again resemble present conditions. While pools are likely to be retarded from current condition under this alternative, they would resemble frequencies estimated from surveys prior to 1995 for this area of the river.

Neither A nor B natural channels in this geology, with these wetted widths, are expected to ever approach INFISH RMOs for pools (Appendix D). An RMO of 76 appears to be unnatural for this system, in A and B channels of potential width in this reach, based on Appendix C. A more appropriate RMO for the reach between the lower Fox Creek bridge and Pine Creek is proposed in the Recommendations Section at the back of this Biological Evaluation. Achievable

the project area, and the channel has not recovered from 1995-1998 events, the length of time for recovery of these reaches would be longer than otherwise. Channel width could increase, creating a shallower channel with fewer pools, potentially increasing temperatures on-site and downstream. Aggradation in the vicinity of Pine Creek confluence could result in an intermittent river channel at low flow through natural processes, with or without a road present. No records exist to indicate the channel in the project area has gone intermittent since Caucasians settled in the watershed.

Temperature:

August maximum temperatures in Section A are expected to decrease approximately 1° F relative to maximum temperatures in Section A as it exists today, if this alternative is implemented. In Section D, temperatures resulting from implementation of this alternative, should decrease approximately 1° F., relative to maximum temperatures in this section as it exists currently, based on calculations performed by the project hydrologist (C. Butler, unpubl.).

This 2° F relative decrease in daily high temperatures at the bottom end of the project area is due to an increase in shade in the proposed relocation sites for these river segments, compared to the degree of shade available in present locations for these two segments. Based on this modelling, progress toward temperature RMO's would be accelerated faster than with natural processes, as a direct result of project implementation.

Loss of deep pools cannot be taken into account with the temperature model used (Brown, 1983), but are already so limited in the project area that they likely do not create any detectable impacts on overall temperatures here, mainly providing thermal microhabitats within the actual pools themselves.

Progress toward Temperature RMOs would correspond to the degree that shade trees continue to regenerate and grow between here and the headwaters relative to existing quantities, and to the extent that Large Wood accumulates, is retained, narrows width:depth ratios and increases pool frequencies.

Deeper pools which tend to stratify thermally, with cooler subsurface water than upstream riffles (Matthews et al 1994) would be eliminated for at least 5-6 years following project implementation. Any loss of shade could offset temperature decreases obtained by detouring the river into former channel locations, resulting in temperatures similar to existing conditions until deep pools, younger trees and Large Wood inputs again modify the river's morphology and thermal characteristics.

While pools may be retarded from current condition under this alternative, thermal effects would be offset by increased shade availability in the relocated sections for section D, and particularly for section A. Both pools and channel morphology would resemble frequencies and dimensions recorded prior to 1995 for this area of the river, and would contribute comparable amounts of thermoregulation. Temperatures have tended to be elevated from Gorge Gulch downstream historically in drought years, to levels above bull trout comfort levels when the channel was previously configured as a B-type channel with few or no pools.

End results could be both positive and/or negative for physical habitat and associated temperature responses. Direct short-term impacts, death or displacement, would occur to those fish present at the time such an event occurs. There is a good probability that whitefish, sculpin and redband would all be present in these reaches at the time of year that these events are likely to occur. Probability is moderate that bull trout would be present during the season that such events could occur. Effects from the 1979 channelization cannot be directly compared to a spring flood event, since that impact occurred in September when a majority of bull trout were likely to have already moved into the headwaters. Research has shown that wood inputs associated with natural landslides tend to periodically increase aquatic system productivity in years following such infrequent events (Appendices F and G).

#### Fine Sediment:

Development of borrow sources for fine and mixed-size gravel/rock material around Fox Creek and Gorge Gulch are unlikely to disrupt natural flow paths for ground water. They will be backfilled with residual material. These shallow sources will be dug laterally into stable hillsides, and will not be dug deep enough to intercept groundwater. Coarse material not used from these sources will be backfilled into the diggings. These sources are unlikely to generate fine sediment that would impact the tributaries or river.

Sediment would be mobilized downstream from reworked channel segments for a few days at a time, when water is diverted sequentially into each of the new channel segments. Sediment traps mandated by state water quality law will prevent mass quantities of fines from entering the downstream water column at any one time. Until spring flows flush fine sediment the following year, any existing spawning gravels could be more or less embedded during the first spawning season following in-channel operations. The probability is very low that reaches below the confluence with Pine Creek are used for bull trout spawning. Probability is low that the project area is used for bull trout spawning. No evidence can be found for spawning or rearing use by bull trout in these reaches, based on past surveys. The primary chronic factor limiting use of these reaches for spawning or rearing would appear to be temperature, followed secondarily by lack of spawning gravels.

When the river experiences a 10-year or greater event, it is entirely probable that the river will move out of its banks again. Another above-bankful high water/mass-wasting event may recur within 10 years based on past historical frequency of similar events. A 1986 photographic slide of area above Gorge Gulch, in Jarbidge District files, shows the river flowing down the road in that section in 1986. Since the 1995 event has recently been estimated to have had a 100-year recurrence interval, it is unlikely that this magnitude of event will recur in the near future. The river will use the road in section D as a part of its natural floodplain during highwater events, due to road construction design. In the event that the river rises sufficiently to flow onto the road surface in section D, surface fines are expected to be removed, but larger material in the roadbase would be expected to remain stable.

In any event (100 year+) that causes the river to cover the road surface in Section D, the potential exists for fine sediments to be mobilized into the

Loosening the streambed armor and building Large Wood into the channel design will allow the redevelopment of new pocket pools within 1 year, replacing this facet of rearing habitat directly removed by the project.

The road surface in sections A and D will be above the 100-year flood elevation. In the event that a 100+-year flood washed over the road in these sections, removing surface fines, most of these fines would likely be carried far downstream or deposited outside normal bankful water levels. Any additional cobble embeddedness that resulted from such an event would retard development of the project area toward suitable rearing habitat. The project area is currently deemed unsuitable for rearing due to lack of spawning habitat and due to problematic high temperatures during late summer and early fall.

Owing to high temperatures recorded as high up as Gorge Gulch, any increase in physical amount of suitable rearing habitat may still be unavailable to juvenile bull trout due to temperature limitations in these reaches that may remain even if temperatures decrease slightly relative to present temperatures, as predicted by the project hydrologist (C. Butler, pers. comm.).

Rearing use of these reaches will be retarded as long as progress toward RMOs for temperature are retarded, even when physically suitable structure is present and/or increasing. Even in a recovered state, these reaches may never provide suitable water temperatures for spawning and rearing habitat, due to north-south orientation of the drainage, high elevation dryland river habitat, small late season water volumes and naturally fragmented riverine forest limiting potential degree of shade and structure associated with Large Wood.

Adult summer habitat:

These reaches are likely tolerable if not optimal, in non-drought years for adult summer holding waters, based on temperatures recorded in 1997, one half-mile below Pine Creek. Provided that temperatures are likely to demonstrate slightly lower maximums as a result of project implementation, these reaches should become more suitable than at present, in the absence of other changes.

Since adults inhabit slow-water habitat units and prefer holding areas associated with Large Wood, these reaches may remain no more attractive post-project than at present, due to loss of pools. Relative numbers of main channel pools will be mostly eliminated for several years, even though existing quantities of in-channel Large Wood are likely to be retained. Slight temperature improvements associated with project implementation are unlikely to completely offset loss of pool habitat for several years.

If adult bull trout are present during a high-water event that removes road surface material from Sections A or D, these fish are likely to be killed or displaced. It is possible that bull trout would be present in June in this section of river, but the probability is only moderate. The road surface should be elevated above the 100 year floodplain, therefore it is unlikely such an event would occur in the near future. In the interim, habitat may have improved sufficiently through natural processes, with corresponding increases

completed, since these fish move rapidly downstream and would be unlikely to linger here until channel structure and suitable stream temperatures are restored.

Fish Passage:

Effects from chronic pollution associated with an unmaintained trailhead toilet at Snowslide would not be a factor under this alternative. Potential streambed destabilization and disturbance from in-channel vehicles and associated impacts to fish passage detailed under Alternative 1 would not be factors in this alternative either.

Large Wood which enters the reach is unlikely to create serious logjams which would inhibit fish passage. Wood does not move very quickly through this system, being captured by standing trees within short distances after mobilization, based on observations by the project hydrologist (C. Butler, pers. comm.). Wood is therefore more likely equitably distributed through natural distribution processes; aiding in the development of additional pools and storage of gravels, leading to narrower width:depth ratios (Heede, 1985) and associated reduced heat-loading of the water's surface.

Sediment traps, required by Nevada Department of Environmental Quality to prevent legally unacceptable increases in turbidity created by the project, are unlikely to pose barriers to fish passage through the project area. Since they are expected to be quite low relative to water levels, and since they would be laid down each afternoon at the end of the day's work. Filter cloth fences would be employed, if planned alternative non-fish barrier methods prove ineffective at meeting state water quality standards.

Since the project will move sequentially upstream over the course of approximately 6 weeks, fish should be able to move through the project area at their normal pace. Heavy equipment would cross the existing channel to reach the channel excavation areas. Recrossing the existing channel would occur on a very infrequent basis if at all until the project is completed. It is unlikely that heavy equipment activity during the day on the floodplain will cause fish to modify nighttime migration behavior, given minimal in-channel disturbance throughout the duration of the project.

It is likely that water temperatures near or exceeding the upper end of bull trout preferences would motivate migrating fish to continue upstream seeking cooler waters, and that water temperature would prove a greater motivating factor than daytime floodplain disturbance from equipment, for fish moving upstream at night.

Channel diversion of flow into the new channel in each detoured segment would sequentially prevent fish passage during rework operations, for 1-3 nights for each section, while the diversion from current channel to new channel is accomplished. By blocking upstream movement into the project area for 2 nights prior to channel diversion, adult bull trout would be prevented from moving into the diversion sections right before diversion is accomplished. Bull trout already in the sections to be diverted would have 2 nights to move upstream out

given night and take slightly longer to complete their journey to the headwaters in the face of a slight decrease in water temperatures within and below the project area. This would have a greater cumulative effect on smaller fish, since their cruising swimming rates are slower than those of larger fish (Watts 1976; Bell 1986). Bull trout generally exhibit the strongest upstream movement as water is seasonally warming up, and peak movement occurs when maximum daily temperatures are between 50 and 53°F. The effects of smaller bull trout moving upstream slightly more slowly because of lower water temperatures once the project is completed, is unknown.

In other systems, smaller fish migrate upstream earlier than larger fish. In this system, it is suspected that large fish go upstream in July, therefore it may be possible that migration upstream is nearly completed through the affected reaches before the hottest part of the year. Peak movement may come slightly later than at present, if water temperatures warm up slightly slower post-project below the Wilderness.

These fish survived high temperatures in the project area downstream to Mahoney in the years following the 1979 channelization project and 1992 record drought year, and have maintained a population in the drainage in the face of these conditions, up to the present time (Johnson, 1994). It is possible that this metapopulation has evolutionarily adapted to temperatures not normally preferred by the species (Jensen and Johnsen 1986). Even so, bull trout in this system have only been found where water temperatures were within their normal preferred range (Johnson and Weller 1994). Trend for bull trout population numbers in the Jarbidge cannot be accurately determined from available data between 1954 and 1985.

#### Fishing:

Past Forest Service assessments of visitor use at Snowslide trailhead indicates the primary purpose is access to interior portions of the Wilderness, and that fishing is a minor motive for accessing the upper reaches of the river (C. Josaitis, pers. comm.). However, at least one scoping letter for this project indicated fishing activity has been reduced above Pine Creek campground since 1995, due to lack of road access. With the implementation of new 1997 catch-and-release regulations for bull trout, restoration of road access to Snowslide Gulch, should pose minor impacts to the fishery.

#### SUMMARY OF EFFECTS:

##### ALTERNATIVE 1:

Progress toward RMOs is expected to proceed at natural rates, with slight retardation at channel crossing areas.

Water quality impacts from human waste leaking from an unmaintained sealed-vault toilet would remain a moderate concern to fish passage for 3-10 years.

Recreational fishing may be lower than it was prior to 1995 due to lack of

Successful implementation of Alternative 1 would likely allow habitat recovery at natural or close to natural rates

RISK DETERMINATION for Alternative 1:

Based on the above discussions of expected effects, outlook for population viability and expected compliance with INFISH, it is probable that...

Alternative 1 may impact individuals or habitat, but will not likely contribute to a trend towards Federal Listing or cause a loss of viability to the population or species. Alternative 1 would result in a trend toward Desired Future Condition.

This determination is based on the assumptions that all mitigation would be fully implemented, timely and effective. If any of these assumptions are invalidated, Alternative 1 could impact individuals and could result in a trend toward Federal Listing or cause a loss of viability to the population or species, and would result in a trend away from Desired Future Condition.

ALTERNATIVE 2:

All of the expected effects in the Summary for Alternative 1 would hold true for Alternative 2. Additional expected effects would include:

Regeneration of replacement trees for future Large Wood inputs would locally be retarded at the campground and trailhead due to trampling and soil compaction. These effects would be carried downstream, in that longer-term RMO recovery would be delayed downstream slightly due to these upstream impacts.

Temperature progress may be either slightly retarded or slightly accelerated from the campground and parking area downstream, due to tradeoffs between possible immediate benefits of shade in standing trees, versus definite beneficial changes to channel morphology and instream structure, which take longer to respond to accelerated inputs of Large Wood.

Delayed regeneration may or may not retard longer-term progress toward temperature RMOs, depending upon the system's temperature responses to minor loss of shade for several decades vs. positive changes in channel morphology and instream structure which would occur over 5 years or longer as a result of accelerated inputs of Large Wood.

Population Viability

The bull trout population has persisted and appears to have maintained a small population with a relatively constant age structure in the face of a long history of habitat manipulation retarding attainment of RMOs in the middle and lower reaches of the river, and in the face of 70+ years of fishing pressure associated with full road access to above Sawmill Creek prior to establishment of the Wilderness, and continued road access to the Wilderness boundary up to 1995.

toward Federal Listing or cause a loss of viability to the population or species, and would result in a trend away from Desired Future Condition.

ALTERNATIVE 3:

The project as implemented would retard progress toward width:depth RMOs relative to present conditions, and retard recent progress toward pool development accomplished in the past 2 years via natural processes. Pool and width:depth ratios initially resulting from project implementation are likely to resemble conditions present in 1985, prior to the 1995 "blowout".

Alternative 3 is likely to create conditions similar to or slightly better than habitat conditions existing in 1985 for Large Wood and pools, provided implementation of all mitigation is timely and effective. Width:depth ratios are likely to be similar to 1985 conditions, provided implementation of all mitigation is timely and effective. Shade would be increased somewhat relative to present conditions, and would contribute to a 2<sup>o</sup>F. decrease in maximum temperatures relative to 1997 conditions. Temperatures are likely to be within the range of historic (pre-1995) values for the project area.

Project implementation would necessitate cutting some existing trees on the valley floor within the project area. Quantities of Large Wood actually functioning in the channel would be similar to those present under current conditions as a direct end result of project implementation.

Large Wood not used as in-channel structure would be placed on the floodplain near the active bankful channel to allow future recruitment into the channel through natural processes. It is anticipated that ongoing mortality among subalpine firs in the project area will add Large Wood to the floodplain in coming years for longer-term recruitment.

Structural habitat conditions resulting from channel modifications throughout the project area would improve over existing conditions for temperature, maintain existing conditions for Large Wood, retard progress toward pools and width:depth ratios. Conditions for wetted width:depth would resemble pre-1995 conditions, which are within range of variability for pristine streams in this type of system. The improvement in habitat quality for pools, width:depth, and Large Wood between 1985 and 1997 probably resulted primarily from 1995 flooding and mass-wasting that brought new amounts of Large Wood into the project area, narrowed width:depths toward RMOs, increased the number of pools. The detrimental change in stream maximum temperatures in the project area between 1995 and 1997 resulted from the channel moving into less shaded areas of the floodplain in 1995. The timeframe for the engineered reach to regain pool frequencies resembling current condition is likely to be 3-5 years or possibly longer. The channel is unlikely to regain wetted width:depth ratios resembling current condition without the recurrence of low-frequency, large volume mass-wasting and flood events.

Habitat conditions and recreational fishing accessibility above Pine Creek would resemble the circumstances assessed by Nevada Division of Wildlife in 1994 when Johnson and Weller declared the Jarbidge metapopulation low but likely to persist. Restoration of fish passage at the Jack Creek confluence as

COMPLIANCE WITH INFISH:

Alternative 3 is consistent with the intent of INFISH, in that the intent of INFISH, according to the Decision Notice is to:

"protect habitat and populations of resident native fish", "to maintain future options for inland native fish by reducing the risk of loss of populations and reducing potential negative impacts to aquatic habitat" and "will ...conserve management options for all inland native fish species until longer term direction is provided..." (USFS, 1995a; Abstract, pages 1, 9).

Alternative 3 also complies with all Standards and Guides deemed applicable to the alternative, provided that implementation is fully successful, including timely monitoring, and timely, effective changes to recreation practices and use of facilities as needed, based on monitoring.

While this alternative both meets the intent of INFISH and complies with applicable standards and guides, it does not completely live up to INFISH expectations for outcomes, described in the Management Direction section at the beginning of this document, in that:

habitat quality would be reduced immediately in terms of RMOs for pools, and width:depth ratios compared to current conditions in the project area as a consequence of successful implementation.

The timeframe for the engineered reach to regain pool and width:depth attributes resembling current condition is likely to be 3-5 years or possibly longer.

Another high-magnitude event resembling the one which occurred in 1995, remains a very low probability for the foreseeable future. Lesser events are likely to recur within 10 years. Their primary effects may be to add Large Wood from the floodplain into the channel. Adult bull trout may be displaced if they are present. Habitat downstream may not be measurably negatively impacted by inputs of fine sediment, since it may be carried through and downstream of bull trout-occupied river sections of the mainstem Jarbidge River. Such an event may add spawning-sized gravel to river sections where boulder weir structures can trap and accumulate them, improving physical habitat for spawning that fall and beyond.

Any resultant road reconstruction that would be necessary, may retard any progress made toward RMO's during the interval between this project and such an event.

RISK DETERMINATION for Alternative 3:Starting Point:

The Programmatic Biological Evaluation of the INFISH EA for sensitive fish species bull trout within Nevada and other involved states, based on a species list provided by the U.S. Fish and Wildlife Service for INFISH. The

RECOMMENDATIONS

These recommendations are primarily suggested for incorporation into Operational Plans (including Spill, Erosion, Transportation and other Implementation Plans), and Monitoring Plans, and for incorporation into the Watershed Analysis as appropriate.

## GENERAL PROJECT-RELATED

- 1) Update the Management Plan for the Jarbidge Wilderness, to verify consistency with the intent of INFISH and compliance with INFISH Standards and Guides, specifically RM-3, and the Forest's ability under the Jarbidge Wilderness Management Plan to achieve RMO's at natural rates or faster, prior to implementation of a selected alternative for this project.

This recommendation comes from concerns identified through development of this project, for ease of recreational fishing access, restoration of maintenance for capital investment facilities at the Wilderness Trailhead, ease of access to the Trailhead, ease of access to dispersed undeveloped campsites between Pine Creek Campground and the Wilderness Trailhead.

RM-3 states: "Address attainment of Riparian Management Objectives and potential effect on inland native fish in...Wilderness, and other Recreation Management plans."

- 2) If possible, delay active in-channel work until maximum daily water temperatures at the site first exceed 12°C. (53°F.), or until the beginning of August, whichever comes earlier. Allow incidental stream crossing by equipment as approved by the fish biologist, prior to this time, at locations pre-approved by the fish biologist or hydrologist. Permit in-channel work any time temperatures are higher than 53°F. If work is scheduled based on temperatures, generally, in-channel work would be allowed based on maximum temperatures recorded the day before in the area where next days work is desired. This mitigation measure would apply to either the current or the relocated channel, whichever is carrying flow during the time in-channel work is desired.

Temperatures higher than 53°F may first be reached by mid-July, but probability is that these temperatures do not occur upstream of Pine Creek campground until early August or later during high snowpack/slow runoff years, above the town of Jarbidge.

- 3) Any trees to be removed should be clearly marked with paint, including stumpmarks, prior to any ground-disturbance.
- 4) Concurrence should be received from the hydrologist or fish biologist that removal of specific trees is absolutely necessary, prior to removal of any trees providing shade to the channel between 10am and 3pm, and/or any cottonwoods on the floodplain between the current and future channel location.

In the event that Alternative 3 is selected and a B-type channel is constructed with:

- a) a resultant low-flow channel width of 10-15 feet, then  
#pools for site-specific RMO should be 70 per mile.  
lowflow width:depth ratio < 30:1 but as close to 12:1 as possible,  
taking other design factors into account.
- b) a resultant low-flow channel width of 15-20 feet, then  
#pools for site-specific RMO should be 32 per mile.  
lowflow width:depth ratio < 30:1 but as close to 12:1 as possible,  
taking other design factors into account.

In the event that Alternative 3 is selected and an A-type channel is constructed with:

- a) a resultant low-flow channel width of 10-15 feet, then  
#pools for site-specific RMO should be 52 per mile.  
lowflow width:depth ratio < 30:1.
- b) a resultant low-flow channel width of 15-20 feet, then  
#pools for site-specific RMO should be 32 per mile.  
lowflow width:depth ratio < 30:1.

These values were selected since 75% of all natural condition streams in volcanic (rhyolite) geology, can achieve these values for these stream sizes and morphologies.

In the event that Alternative 1 or 2 is selected, no changes to RMOs are recommended, since the channel type would remain a G until natural processes convert the channel into a different morphology.

No other changes to RMOs are proposed.

RECOMMENDATIONS SPECIFIC TO ALTERNATIVE 1:

- 1) Develop Challenge Cost-Share partnerships for sign development and installation. This would be an opportunity for non-federal partner to assist in providing public education on watershed and geologic processes in the Jarbidge River system, and habitat needs for a rare species of fish, unique in Nevada.
- 3) If motorized traffic is permitted under this alternative, designate crossing areas to be used. Allow motorized traffic in river channel and within 20 feet of stream channel, only at designated crossings.
- 4) Develop a new trail accessing the west side of the Wilderness, outside RHCAs in the Jarbidge watershed. Incorporate this proposal into an updated Management Plan for the Jarbidge Wilderness, to comply with RM-3.

- 2) Bank/channel stabilization structures should consist of anchored Large Wood and/or boulder deflectors. The largest available material that equipment can handle should be used. Gabions and other man-made structures should not be used as the outer point of contact with the water's edge, but may be used if deflector boulder and/or log structures are placed as a buffer between gabions and water action.
- 3) Modify INFISH RMOs for Wetted width:depth based on data contained within this document, described under General Recommendations. Exclude areas channelized since 1979, unless data shows areas within range shown by similar undisturbed channel types. Adjacent reaches are not necessarily appropriate if dissimilar channel type. (Apples and oranges).
- 4) Amend RMOs for pools in West Fork Jarbidge subwatershed to within the range of the above expected values for rhyolite geologies and channel types, per wetted width classes. Reaches above Snowslide would thus exceed local RMO's, probably due to storage of woody material, which must eventually be redistributed more equitably downstream via natural processes, to help downstream reaches move toward appropriate RMOs based on width classes, channel types and geology (See Recommendation #9 for specifics).

Adopt these pool densities/channel width:depth ratios for similar Rosgen-type reaches in the West Fork, as more appropriate RMO's for the West Fork Jarbidge River subwatershed (from appendix C).

- 5) build a new Lower Fox Creek bridge to INFISH specifications in a more appropriate location. Remove the existing bridge. Do not move the river from its present location above the existing bridge.
- 6) Revise project reach-specific RMOs for Large Wood based on Watershed Analysis and Overton et al's (1995) findings on capabilities in Natural Condition streams, of this size, morphology and geology. (see related recommendation #19 under Watershed Analysis Recommendations).
- 7) When diverting river from existing gully-channel segment into newly constructed channel segment-divert water slowly, over several hours. This will allow congregation of fish in existing areas of deeper water and facilitate probability of capture and removal of extant fish without mortality. Record water temperatures throughout the day.
- 8) Snorkel the reach to be diverted, prior to diversion. Set block nets place at downstream end of diversion section 2-3 days prior to date that channel section is diverted, to prevent upstream migrating fish from entering the section to be dewatered. This will increase probability that any migrating bull trout already present in the to-be-dewatered sections will have moved upstream out of the section before dewatering occurs, and minimize the probability that adult bull trout would be electroshocked and handled during salvage operations, maximizing the probability of a successful spawning run for adult bull trout moving through the project area during operations. Salvage any adult bull trout still in the project area on dewatering days by gentlest means possible to avoid disrupting spawning behavior and/or physiology.

catch of hatchery fish is very low compared to Z catch of native fish, and hatchery fish may compete with bull trout and redband trout for habitat elements such as shallower pools or overhanging banks, and may also compete for limited insect prey with smaller bull trout which have not yet become predominantly fish-eaters.

- 7) Assess whether water still drains the Norman Mine adit. If so, obtain water samples at low flow, and during spring snowmelt if possible. Run tests for pH, Al, Cu, Fe.
- 8) Close the RHCA area from County Road upstream administratively to firewood-cutting and other activities including use of Developed Campground and/or motorized use of trail or road, if use is identified as resulting in Large-Wood Removal within the RHCA, until RMOs have been achieved. Post signs, both administrative and public-education, to explain value of large wood for flood control and fisheries.
- 9) Provide firewood at Pine Creek campground, or encourage Jarbidge businesses to provide commercial firewood for recreational visitors to the campground, if recreational demand for firewood creates problems for retaining Large Wood along the river.
- 10) Include on public information sign at Pine Creek Campground, a request that recreational visitors who construct river-spanning small dams in vicinity of campground, please remove them prior to leaving, since they are a barrier to fish passage at low flows. Have sign explain significance of blockage to passage of fish. Coordinate w/NDOW on info to include on sign.
- 11) Develop Environmental Assessment, out-year budget proposals and Partnership Proposals for new campground downstream of Jarbidge which could replace Pine Creek Campground possibly within 10 years, when river/canyon dynamics are likely to again instigate re-evaluations of appropriate site location for a developed campground in the West Fork subwatershed.
- 12) Revise Humboldt Forest Plan for Jarbidge and Jarbidge Wilderness Management Areas as needed, to incorporate revisions from Upper Columbia River EIS Record of Decision when signed, and add goals and objectives for the East and West Forks Jarbidge River Watersheds pertaining to Conservation and/or Recovery of Bull Trout.
- 13) Recommend development and implementation of comprehensive Public Education program in Jarbidge area re Bull Trout and habitat needs in the Jarbidge watershed, in cooperation with interested non-Federal partners.
- 14) Identify possible locations for development of a new trail accessing the west side of the Wilderness, outside RHCAs in the Jarbidge watershed.

Incorporate this proposal into an updated Management Plan for the Jarbidge Wilderness, to comply with RM-3.

Mr. GIBBONS. OK. Madam Chairman, I see that the stop light is on. Like you, when I see the green light, I go. Yellow light comes on, I slow down, not speed up. Red light comes on, I stop.

Mrs. CHENOWETH-HAGE. Thank you, Congressman.

Mr. Salicchi, I wanted to ask you, has the Forest Service ever really acknowledged that access for the handicapped was abridged when the reconstruction occurred on the road?

Mr. SALICCHI. No. It wasn't an issue that I think was even thought of at the time. There's so many other issues going on, handicapped people were just kind of ignored, and nobody has ever presented it to the Forest Service to see just what could be done about it.

Mrs. CHENOWETH-HAGE. I would be interested in the county's followup on that. There are definite Federal laws involved there in access for the handicapped.

Mr. SALICCHI. Yes.

Mrs. CHENOWETH-HAGE. Mr. Crawforth, did the Fish and Wildlife Service provide input into your March 1999 report on the bull trout, or did they make comments to you after the report was issued?

Mr. CRAWFORTH. The conversations that I am personally aware of, the Fish and Wildlife Service supports our data and has never questioned the quantity or quality of that data.

Mrs. CHENOWETH-HAGE. Have they submitted to you any reports that they have generated on the bull trout?

Mr. CRAWFORTH. Only in relation to the listing itself.

Mrs. CHENOWETH-HAGE. I see. Mr. Holford, you're representing Trout Unlimited here. Do you work full-time for Trout Unlimited?

Mr. HOLFORD. No, I don't.

Mrs. CHENOWETH-HAGE. What do you do in your other life?

Mr. HOLFORD. I worked for Newmont Gold for 7 years. I broke my back 2 years ago and right now I'm returning to the work force, not with Newmont. I'm looking for a job.

Mrs. CHENOWETH-HAGE. The work that you do with Trout Unlimited is voluntary?

Mr. HOLFORD. Voluntary.

Mrs. CHENOWETH-HAGE. Let me ask you, from your point of view does it matter really who owns the road, since the Endangered Species Act applies regardless? In your opinion?

Mr. HOLFORD. I'm hearing a radio in the background. It's repeating what you're saying. Could you ask the question again, please?

Mrs. CHENOWETH-HAGE. Yes. From your point of view, does it really matter who owns the road with regard to the application of the Endangered Species Act?

Mr. HOLFORD. I think our point has always been that we were concerned with the fish and it wouldn't matter who owned the road as long as they worked in an ethical manner that didn't push this situation to where it is today. We have never been able to get that far.

Mrs. CHENOWETH-HAGE. Commissioner Lesperance has entered this picture into the record. That's pretty dramatic. There's an awful lot of sedimentation there. It defies common sense to understand why the entry of the county into a very small portion of that river in repairing the road would justify this kind of activity on the

part of your organization as compared to what mother nature actually did. Would you care to comment on that?

Mr. HOLFORD. Yes. Our, Trout Unlimited from the very beginning has been in all the public process comments. We've made the comments. We were there in Jackpot when there was a public hearing on bull trout. And the next day we find that the county enters the road and bulldozes, bulldozes the river.

That was out of the process. That was out of the box. If we're supposed to work together and we're supposed to work together in the processes that were set up by Congress with the Forest Service and with the BLM and other officials in the State, and we are all working together and someone jumps out of the box and does something, you know, it just is detrimental to the process.

We never have been able to sit down and talk. When Harry Reid came out and we were going to talk about this situation and mediate it, Elko County made sure that Trout Unlimited members and myself were excluded. They asked for a national representative to come in to represent Trout Unlimited.

We have been trying to get through this situation, but we never have been able to keep it in a mediation or in a negotiation or any, you know, anything that would end up with the resolution at the end.

Mrs. CHENOWETH-HAGE. Well, it may have been that Trout Unlimited didn't oppose the restoration of the Lamoille Canyon Road, and so it would just logically follow that you wouldn't oppose the restoration of the South Canyon Road. In fact, why didn't Trout Unlimited oppose the restoration and repair of the Lamoille Canyon Road?

Mr. HOLFORD. The Lamoille Canyon Road above where they were working on the campground and the areas that were damaged do not have a native trout population. They are planted by NDOW. There's a fish barrier or fishfall. There's a waterfall down below that blocks fish from going up. That is a planted fishery. It's not a native fishery.

Mrs. CHENOWETH-HAGE. Mr. Crawforth, do you agree with that statement?

Mr. CARVER. What's that? I'm hard of hearing. I couldn't hear you.

Mrs. CHENOWETH-HAGE. I was asking Mr. Crawforth if he agreed with the statement by Mr. Holford.

Mr. CRAWFORTH. Regarding Lamoille Canyon?

Mrs. CHENOWETH-HAGE. Yes, with the impact on—would the impact be similar on the Lamoille Canyon restoration and repair of that road as it would the South Canyon Road on any alleged bull trout habitat?

Mr. CRAWFORTH. I don't think they are similar situations.

Mrs. CHENOWETH-HAGE. What do you see is the difference?

Mr. CRAWFORTH. The width of the canyon. Mr. Holford is correct, the type of fish that are in that canyon. We do not have a native fish population in the Lamoille Canyon. There is fish movement there, but we do stock rainbow trout in there. There are brook trout.

Mrs. CHENOWETH-HAGE. All right. Thank you.

Mr. Carver, I want to thank you very much for your testimony and for coming to our hearing today. Without objection, I would like to enter your exhibit into the record. We are going to move along now. I do want to wish you the very best in your negotiations with the county. But since we are from the Congress, we are trying to stay out of that except oversight on the issue. So, I want to thank you very much. It's always enjoyable to hear from you.

[The prepared statement of Mr. Carver follows:]

To: Representative Helen Chenoweth-Hage, Chairman  
House Resources Subcommittee on Forests and Forest Health  
  
Representative Jim Gibbons

From: Richard "Dick" Carver, Chairman  
Board of Nye County Commissioners

Re: "County Roads"  
  
Congressional Hearing  
Elko, Nevada  
November 13, 1999

Honorable Representatives:

Thank you for coming to Elko County for a Congressional Hearing on a subject that is so near and dear to my heart, "county roads".

For the record, my name is Dick Carver, a rancher in Nye County, Nevada and chairman of the Board of Nye County Commissioners.

The testimony that I am giving today was compiled from my research over the past ten years or so.

It may or may not be the feelings of the Board of Nye County Commissioners even though many of the facts were taken out of Nye County Resolution No. 99-01.

The issue before us today is, "Is the Jarbidge Road in Elko County, Nevada a county road or a United States Forest Service Road?"

The answer to that question can be answered by addressing this issue; "Did the congressional act that created the Forest Reserve repeal in its entirety RS 2477 (43 USC 93) and/or the pre-existing rights that a county held at the time the Forest Reserve was created?"

I have a hard time believing that RS 2477 or any other pre-existing right was repealed when the Humboldt or Toiyabe National Forest was created in 1906 and 1907 respectively. I have attached a copy of two pages out of the first USDA Forest Service Manual issued on June 14, 1907 which states the following:

"Page 13, "*How can the land itself be used?* ...railroads, wagon roads, trail, canal, flumes, reservoirs and telephone and power lines may be constructed whenever and wherever they are needed, as long as they do no unnecessary damage to the forest..."

Page 32, "IMPROVEMENT WORK. Nothing will do more toward giving the National Forest the best kind of protection against fire, and nothing will help more to open up their resources for everybody's use than the construction of a great many well-built trails, roads, bridges, and telephone lines. Easy and quick communication to all parts of a forest must be had if fire is to be kept down. The settlers, prospectors, miners, lumbermen, and stockmen profit directly from all work of this kind and can be of great assistance in pushing it through."

To resolve the road concerns of today across the public domain we must first understand the history of access in America.

Before the original colonies were settled, the area was inhabited by Native Americans and there were no roads or highways as known today but there were single track ways, pathways and other trails connecting two points.

The people of the original thirteen colonies on July 4, 1776 declared themselves as free and independent States and that they may do all acts and things which independent States may of right do. There was no federal government at this time so the States were in control of access corridors.

In 1783, at the end of the Revolutionary War, through the Treaty of Paris, the King of England ceded, to each individual State, as a separate nation, all powers of government and all of the unappropriated land, commonly referred to as public domain. Again, there was no federal government at that time, so the States were in control of all road within their borders.

The people of the original thirteen States realized that to survive as individual States, for defense and to provide for trade among the States they should form a union of states. But before each state would agree to uniting to form that union of States, they collectively agreed that each State would retain its sovereignty, freedom and independence and every power, jurisdiction and right which was not expressly delegated to Congress. This agreement was incorporated in the Articles of Confederation in Article II.

When the Constitution of the United States of America was framed in 1787, one of the most important parts was included in the States rights section of the Constitution. Article IV reads in part, "that all engagements entered into before the adoption of Constitution would be valid against the United States under the Constitution, as under the Confederation.

Roads were of importance in framing the Constitution, but not "public roads". Congress was only given the power to establish post offices and post roads. Nowhere in the Constitution did the people of the original thirteen States cede to the federal government the power to establish "public roads". This is a power and jurisdiction that the States retained.

Over the past several months, some of the Forest Service personnel now have claimed that the Forest Reserve Act that created the Humbolt and Toiyabe national forests repealed the RS 2477 right(s)-of-way.

The Mining Act of July 26, 1866, codified at 43 USC 932 (commonly known as RS 2477) is a law of the land which was enacted for the purpose of memorializing the right of access to the public lands by the people of the United States and establishing the express right to construct highways (roads) and the implied right to access, by there and then granting self-establishing /self-authenticating rights-of-way for all roads previously or thereafter located, established and/or developed, whether by usage or by mechanical means, to allow travel from one point to another, across or through public lands, to encourage the settlement of the West; and the federal courts have interpreted RS 2477 to provide a public right-of-way for all roads across or through public lands, so long as those roads were established and "accepted" by general public use and enjoyment before October 21 1976 (the effective date of the Federal Land Policy and Management Act) and served to connect two points of societal importance (towns, stage stops, mines, ranches, water sources, etc.), whether by constant alignment or alignment subject to seasonal, weather, economic or other adjustment.

The federal courts also have held the following:

- (1) "The scope of a RS 2477 right-of-way is defined by the use of State law"
- (2) "A RS 2477 right-of-way comes into existence automatically when a highway is established across public lands in accordance with the law of the State"
- (3) "Whether a right-of-way has been established is a question of State law"

Nevada Revised Statutes 405.191 defines the term "public road" to include all roads existing on RS 2477 rights-of-way and "accepted by general public use and enjoyment...", and endues every board of commissioners with the authority to "locate and determine the width of such rights-of-way and locate, open for public use and establish thereon county roads or highways".

The definition of a "public road," pursuant to NRS 405.191, also includes roads designated by the county board of commissioners as major, general and minor roads (pursuant to NRS 403.170) and "[a]ny way which is shown upon any plat, subdivision, addition, parcel map or record of survey of any county city, town or portion thereof duly recorded or filed in the office of the county recorder and which is not specifically therein designated as a private road or a nonpublic road, and any way which is described in a duly recorded conveyance as a public road or is reserved thereby for public road purposes of which is described by words of similar import."

There is also the continuing validity of other -common law- authority for the establishment of roads for the good of the citizenry, including but not limited to the authority set forth in the doctrine of easement by necessity and the doctrine of implied easement, authority which we believe has not been preempted, superseded or otherwise set aside by RS 2477 or other statutory scheme.

Before the Territory of Nevada was settled the area now comprising the Great Basin was inhabited by Native Americans and descendants of Spanish explorers and there were no roads or

highways as known today but there were single track ways, pathways and other trails connecting two points.

The federal circuit courts have held that an existing right-of-way recognized as such, primitive at its conception, may evolve from a trail to road as frontier conditions give way to modernization. The route was used first as a trail, later by horse-drawn vehicles, and went through a gradual process of occasional improvement and use until it becomes a road suitable for automobiles and trucks. The condition of the highway -- whether paved and wagon worthy or simply a "minor footpath" is irrelevant if the claimant can show that a right-of-way was used no matter for what purpose.

While settling the Great Basin, miners, ranchers, trappers, hunters, fishermen and other members of the public established, re-established, developed and/or maintained by usage numerous roads and similar public travel corridors across the public lands connecting two points.

In more recent years, in the part of the Great Basin known as the state of Nevada, miners, ranchers, recreationists and other members of the public, together with federal, state and county government(s) also have established, re-established, developed, constructed and/or maintained, by mechanical means, roads and highways across the public lands within the borders of Nevada.

On December 7, 1993, the Board of Nye County Commissioners adopted Resolution 93-49, entitled "A Resolution declaring certain public travel corridors across public lands within Nye County as Nye County public roads. Elko County has passed a similar resolution or ordinance.

As you clearly remember on July 4, 1994 Nye County woke up the nation when we re-opened a road within the national forest at Jefferson Canyon without USFS permission. Did Nye County violate any law?

Federal Courts have held that "the right to make reasonable and necessary improvement within the boundaries of the right-of-way is part of the county's valid existing rights, as long as the project stays within the county's right-of-way, no authorization is needed for construction to proceed.

On March 8, 1995, the United States Justice Department filed suit against Nye County, in part because Nye County resolution 93-49 claimed ownership of virtually every road on public lands within the county boundaries.

On March 14, 1996, Judge Lloyd D. George, U. S. District Court for the District of Nevada, issued an order in the case of *U.S. v. Nye County*, case number CV-S-95-232-LDG(RJJ), which in pertinent part provided that: "It is declared the Nye County Resolution 93-49 is invalid and unenforceable to the extent, and only to the extent, it applies to ways, pathways, trails, roads, county highways and similar public travel corridors across public lands in Nye County, Nevada, for which no valid right-of-way exists or is recognized under federal law."

Nye County Resolution 93-49 claimed all roads built in the past, present or in the future.

In settlement conference with the Justice Dept., we all concurred that roads built after the passage of FLPMA on October 21, 1976, must have a right-of-way granted by the land management agency.

The Justice Dept. also wanted Nye County to rewrite Resolution 93-49 to reflect the judges decision. Nye County agreed to do just that, but the request was dropped by the Justice Dept. before final settlement.

Several months ago, while the United States Forest Service (USFS) was doing a roadless inventory in Central Nevada, I asked an assistant forest supervisor if the county definition of a "road" differs from the USFS definition what definition must be used. Her reply was that the county's definition had to be used.

On January 19, 1999, Nye County passed Resolution 99-01 (attached) that defines a Nye County public road.

The term "Nye County Public Road" is and shall be defined as each and every way, pathway, trail, stock trail and driveway, road, county highway, railbed and other similar public travel corridor across public lands in Nye County, connecting two points of societal importance (regardless of whether the points so connected are located inside or outside the boundaries of Nye County), whether established and maintained by usage or mechanical means, whether passable by foot, beast of burden, carts or wagons, or motorized/mechanized vehicles of each and every sort, whether currently passable or impassable, that was established and accepted by public use and enjoyment under common law doctrines of property rights; under R.S. 2477, but only if established and accepted by public use and enjoyment before October 21, 1976; or under other statutory authority, except as follows: State Highways 160, 361, 372, 373, 374, 375, 376, 377, 378, 379 and 844 and U.S. Highways 6 and 95 are not Nye County Public Roads.

Equally important is that Nye County Resolution 99-01 establishes the guidelines in determining a "county road." A county road must meet three criteria to determine if a right-of-way exists.

- (1) Was the "road" used by the public?
- (2) Does the "road" tie two points together?
- (3) Was the "road" in existence prior to October 21, 1976?

This resolution was presented to the USFS and BLM months prior to passage for their concurrence. Both the district ranger of the USFS and the field station manager of the BLM agreed they had no problems with the resolution prior to passage by the board of Nye County Commissioners.

Now let us get to the bottom of the issue. "Did the forest reserve act that created the Humbolt and Toiyabe national forests repeal in its entirety RS 2477 and/or any other prior existing right in 1906/1907?"

RS 2477 was repealed by the Federal Land Policy and Management Act dated October 21, 1976. It reads as follows:

Section 706(a) effective on and after the date of approval of this Act, R.S. 2477 (43USC 932) is repealed in its entirety and the following statutes or parts are repealed insofar as they apply to the issuance of right-of-way over, upon, under, and through the public lands and lands in the National Forest System. (attached)

Additionally, Section (701)(a) of FLPMA of 1976 states: Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way or other land use right or authorization existing on the date of approval of this Act. (attached)

Additionally, Section 701 (h) of FLPMA of 1976 reads as follows:

“All actions by the Secretary concerned under this Act shall be subject to valid existing rights.” (attached)

Section 509 (a) of FLPMA of 1976 reads as follows:

“Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title. (attached)

Again, the courts have held that RS 2477 comes into existence automatically when a highway is established across public lands in accordance with the law of the state.

It is quite clear to me that there was a valid existing right to the road in the South Canyon at Jarbidge prior to October 21, 1976 when RS 2477 was repealed just as there was in Jefferson Canyon.

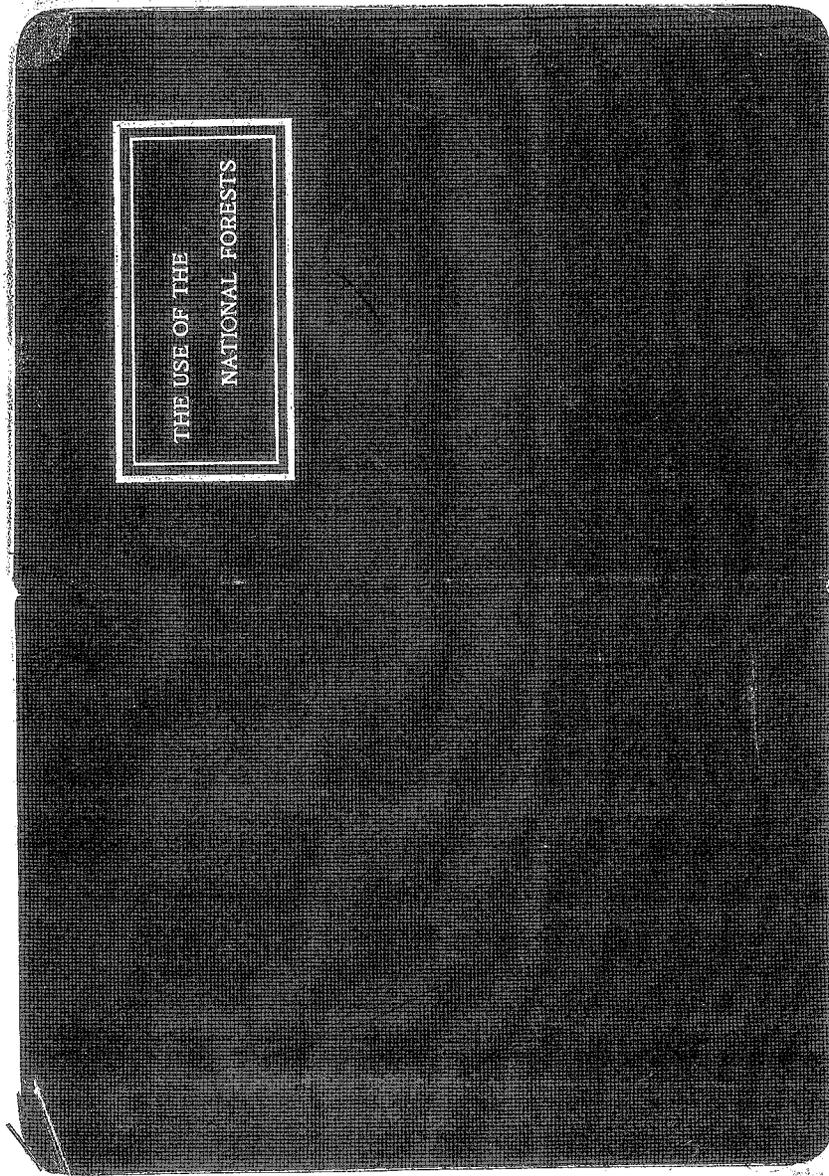
The Jefferson Canyon road opening has gone to Federal Court, resulting in the Forest Service treating Nye County one way and treating Elko County another way. We cannot have a double standard within the Forest Service.

The courts will never resolve this issue. So, I propose the only solution to you Honorable Chair of the House Resource Subcommittee on Forest and Forest Health, as follows:

That you direct the Secretary of Agriculture and the Secretary of Interior to establish a pilot project with the Board of Nye County Commissioners to develop a policy to determine which roads within Nye County are Forest Service roads, BLM roads and which are Nye County roads and the Secretaries and Nye County Commissioners report back to your Subcommittee on Forest and Forest Health within one year on recommended legislation that will resolve the road issue.

Our local Forest Service and BLM want to do a pilot project but we need the assurance that someone higher up in the agency(s) will not stop the project later on and all of our time and resources are wasted.

Thank you for giving me the opportunity to present this testimony and I look forward to working with you in the future.



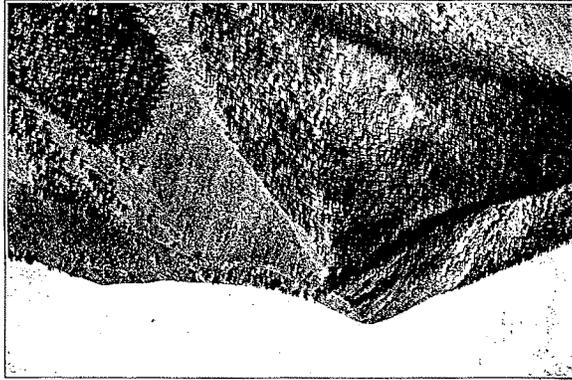
Revised June 14, 1907.

U. S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
CLIFFORD PINCHOT, Forester

THE USE OF THE NATIONAL  
FORESTS

1907

Use of the National Forests.



A NATIONAL FOREST WHICH REGULATES WATER FLOW, HOLDS THE SOIL, AND FURNISHES TIMBER AND WOOD FOR MINING.

FRONTSPRING.

WHAT THEY MEAN. 13

and 6,000,000 sheep. The Government protects it from being burned up or from being overcrowded and overgrazed, prevents disputes between the owners of stock, and sees that each owner gets the use of that range to which he has the best right. The small man with a home in or near a National Forest always gets the first chance.

TO THE USER OF WATER.

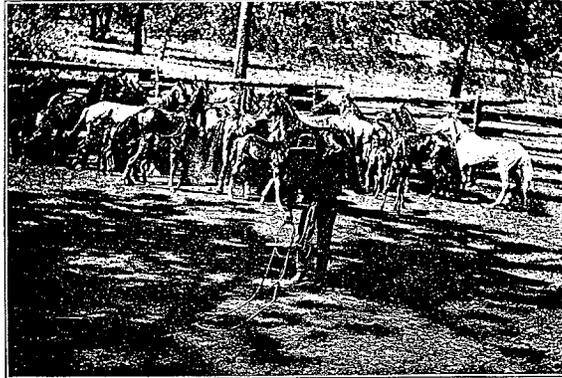
*What happens to the water?* Nothing, except that the flow is steadier. The creation of a National Forest has no effect whatever on the laws which govern the appropriation of water. This is a matter governed entirely by State and Territorial laws.

TO THE OTHER USERS.

*How can the land itself be used?* The land itself can be used for all purposes. The main thing is that the land, as well as what grows upon it, must be used for the purpose for which it is most valuable. On it may be built stores, hotels, residences, power plants, mills, and many other things. All these are advantages to National Forests, because they help to get the fullest use out of the land and its resources. Railroads, wagon roads, trails, canals, flumes, reservoirs, and telephone and power lines may be constructed whenever and wherever they are needed, as long as they do no unnecessary damage to the Forest. Improvements of this kind help to open up the country, and that is what is wanted.

PLATE VI.

Use of the National Forests.



FOREST RANGER ROPING HIS SADDLE HORSE.

### 32 USE OF THE NATIONAL FORESTS.

#### IMPROVEMENT WORK.

Nothing will do more toward giving the National Forests the best kind of protection against fire, and nothing will help more to open up their resources for everybody's use than the construction of a great many well-built trails, roads, bridges, and telephone lines. Easy and quick communication to all parts of a Forest must be had if fire is to be kept down. The settlers, prospectors, miners, lumbermen, and stockmen profit directly from all work of this kind and can be of great assistance in pushing it through.

#### FOREST OFFICERS.

Most of the Forest officers in the National Forests are Supervisors, Rangers, or Guards.

The Supervisor has direct charge of a National Forest. He runs all the business upon it and is responsible for the work and the efficiency of the force under him. From training and experience he must be thoroughly familiar with western conditions. To do the work he must be sound in body, fit to endure a hard and rough outdoor life. He must be able to handle men well and deal wisely with all kinds of people. The business requires him to have a good working knowledge of timber and lumbering, the live-stock industry, the land laws, and ordinary office work. His position is a very responsible one, for he manages a public estate worth many millions of dollars. At present Supervisors are paid from \$1,500 to \$3,000 a year, and are reimbursed for actual living expenses when on field duty away from their headquarters.

APPENDIX. 41

40 USE OF THE NATIONAL FORESTS.  
Location, date of latest proclamation, and area of the National Forests in the United States, Alaska, and Porto Rico—Cont'd.

| State or Territory | Forest           | Date of latest proclamation | Area, Acres. | Total.    |
|--------------------|------------------|-----------------------------|--------------|-----------|
| Montana            | Big Belt         | Mar. 1, 1897                | 1,614,960    |           |
|                    | Big Hole         | Mar. 1, 1897                | 1,614,960    |           |
|                    | Cabinet          | Mar. 1, 1897                | 1,614,960    |           |
|                    | Energy Mountains | May 15, 1896                | 38,268       |           |
|                    | Enghien          | Nov. 5, 1896                | 38,268       |           |
|                    | Frederick        | Apr. 1, 1896                | 783,166      |           |
|                    | Highland         | Apr. 1, 1896                | 1,548,000    |           |
|                    | High Mountains   | Apr. 1, 1896                | 887,566      |           |
|                    | Kootenai         | Feb. 15, 1897               | 1,634,166    |           |
|                    | Little Belt      | Sept. 26, 1896              | 1,114,466    |           |
|                    | Long Pine        | Sept. 26, 1896              | 31,000       |           |
|                    | Little Rockies   | Mar. 2, 1897                | 31,000       |           |
|                    | Missoula         | Nov. 5, 1896                | 194,420      |           |
| Prery Mountains    | Nov. 5, 1896     | 284,320                     |              |           |
| Sperry Mountains   | Nov. 5, 1896     | 1,124,000                   |              |           |
| Yellowstone        | Mar. 2, 1897     | 6,724,466                   | 20,528,265   |           |
| Nebraska           | Nebraska         | Apr. 16, 1894               | 377,119      | 556,072   |
|                    | North Platte     | Mar. 19, 1896               | 149,145      |           |
| Nevada             | Charleston       | Nov. 5, 1896                | 423,666      |           |
|                    | Ruby Mountains   | May 5, 1896                 | 423,666      |           |
|                    | Truckee          | Mar. 1, 1897                | 628,400      |           |
|                    | Truckee          | Mar. 1, 1897                | 628,400      |           |
|                    | Truckee          | Mar. 1, 1897                | 628,400      | 1,391,999 |
| New Mexico         | Big Dunes        | Nov. 5, 1896                | 152,466      |           |
|                    | Galinas          | Nov. 5, 1896                | 238,212      |           |
|                    | Granger          | Nov. 7, 1896                | 4,420,245    |           |
|                    | Lincoln          | June 25, 1896               | 545,420      |           |
|                    | Magdalena        | Nov. 5, 1896                | 146,240      |           |
|                    | Mount Taylor     | Oct. 5, 1896                | 176,215      |           |
|                    | Pecos River      | Nov. 7, 1896                | 158,897      |           |
|                    | Pecos River      | Nov. 7, 1896                | 424,665      |           |
|                    | San Marco        | Nov. 5, 1896                | 424,665      |           |
|                    | San Marco        | Nov. 5, 1896                | 424,665      | 7,997,614 |

† Total of Big Hole in Idaho and Montana = 6,719,000 acres.  
‡ Total of Cabinet in Idaho and Montana = 6,719,000 acres.  
§ Total of National in Idaho and Montana = 6,719,000 acres.  
¶ Total of Three in Nevada and California = 453,897 acres.  
\* Minor modification by Executive order since date listed.

41 Location, date of latest proclamation, and area of the National Forests in the United States, Alaska, and Porto Rico—Cont'd.

| State or Territory | Forest       | Date of latest proclamation | Area, Acres.  | Total.    |
|--------------------|--------------|-----------------------------|---------------|-----------|
| Oklahoma           | Wichita      | May 29, 1896                | 66,800        | 66,800    |
|                    | Ashtland     | Mar. 2, 1897                | 172,800       |           |
|                    | Ball Run     | June 17, 1894               | 142,000       |           |
|                    | Capitol      | Mar. 2, 1897                | 5,460,317     |           |
|                    | Freeman      | Sept. 1, 1896               | 1,435,700     |           |
|                    | Heppner      | July 18, 1896               | 299,176       |           |
|                    | Stockton     | Mar. 1, 1897                | 1,129,448     |           |
|                    | Tillamook    | Mar. 2, 1897                | 178,218       |           |
|                    | Wenahah      | Mar. 1, 1897                | 494,912       |           |
|                    | Black Hills  | Sept. 19, 1894              | 1,163,156     | 1,460,535 |
|                    | Shave Pine   | May 2, 1894                 | 13,300        |           |
|                    | Stim Butte   | Mar. 5, 1894                | 58,166        |           |
|                    | South Dakota | Aquarius                    | Oct. 24, 1893 | 659,000   |
| Beaver River       |              | May 24, 1896                | 267,200       |           |
| Dixie              |              | Sept. 25, 1893              | 465,200       |           |
| Fish Lake          |              | Mar. 27, 1896               | 288,800       |           |
| Grass Valley       |              | May 7, 1894                 | 58,200        |           |
| La Salle           |              | Jan. 18, 1896               | 172,000       |           |
| Monticello         |              | Feb. 6, 1897                | 214,776       |           |
| Raft River         |              | Nov. 3, 1896                | 175,800       |           |
| Sawyer             |              | Oct. 7, 1896                | 750,200       |           |
| Union              |              | Oct. 7, 1896                | 2,162,300     |           |
| Wassatch           |              | Aug. 16, 1896               | 85,448        |           |
| Colville           |              | Mar. 1, 1897                | 869,200       | 7,119,477 |
| Freeman            |              | Mar. 2, 1897                | 1,624,200     |           |
| Hammer             | Mar. 2, 1897 | 2,595,700                   |               |           |
| Wenahah            | Mar. 1, 1897 | 318,400                     | 21,065,590    |           |
| Utah               | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Wasatch      | Aug. 16, 1896               | 85,448        |           |
|                    | Washington   | Wenahah                     | Mar. 1, 1897  | 318,400   |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |
| Wenahah            |              | Mar. 1, 1897                | 318,400       |           |

† Reserve preserve created in the Wichita National Forest by proclamation.  
‡ Total of Wenahah in Oregon and Washington = 613,200 acres.  
§ Total of Wenahah in Oregon and Washington = 613,200 acres.  
¶ Total of Bear River in Utah and Idaho = 691,200 acres.  
\* Total of Bear River in Utah and Idaho = 691,200 acres.  
† Total of Klamath in Oregon and California = 410,242 acres.  
‡ Total of Union in Utah and Wyoming = 1,161,216 acres.  
§ Total of Union in Utah and Wyoming = 1,161,216 acres.  
¶ Minor modification by act of Congress since date listed.

Public Law 94-579  
94th Congress

An Act

To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes. Oct. 21, 1976  
[S. 507]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Federal Land  
Policy and  
Management  
Act of 1976.

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TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

43 USC 1701  
 note.

SEC. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976".

DECLARATION OF POLICY

43 USC 1701.

SEC. 102. (a) The Congress declares that it is the policy of the United States that—

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis

| Act of                        | Chapter          | Section                              | Statute at Large       | 43 U.S. Code           |
|-------------------------------|------------------|--------------------------------------|------------------------|------------------------|
| 1. Mar. 2, 1835.....          | 174.....         |                                      | 28: 744.....           | 176.                   |
| 2. June 28, 1894.....         | 865.....         | 8.....                               | 43: 1272.....          | 315g.                  |
| June 28, 1936.....            | 842.....         | 3.....                               | 49: 1976, title I..... |                        |
| June 19, 1946.....            | 548.....         | 1.....                               | 62: 533.....           |                        |
| July 8, 1882.....             | P.L. 87-824..... |                                      | 76: 140.....           | 315g-1.                |
| 3. Aug. 24, 1837.....         | 744.....         |                                      | 56: 748.....           | 315p.                  |
| 4. Mar. 3, 1909.....          | 271.....         | 2d proviso only.....                 | 35: 845.....           | 772.                   |
| June 25, 1910.....            | J. Res. 40.....  |                                      | 36: 884.....           |                        |
| 5. June 21, 1894.....         | 689.....         |                                      | 48: 1185.....          | 871a.                  |
| 6. Revised Statute 2447.....  |                  |                                      |                        | 1151.                  |
| Revised Statute 2448.....     |                  |                                      |                        | 1152.                  |
| 7. June 6, 1874.....          | 225.....         |                                      | 18: 62.....            | 1153; 1154.            |
| 8. Jan. 28, 1879.....         | 33.....          |                                      | 20: 274.....           | 1155.                  |
| 9. May 30, 1894.....          | 87.....          |                                      | 23: 84.....            | 1156.                  |
| 10. Revised Statute 2471..... |                  |                                      |                        | 1191.                  |
| Revised Statute 2472.....     |                  |                                      |                        | 1192.                  |
| Revised Statute 2473.....     |                  |                                      |                        | 1193.                  |
| 11. July 14, 1960.....        | P.L. 89-649..... | 101-202(a), 203-204(a), 301-303..... | 74: 606.....           | 1361, 1362, 1363-1383. |
| 12. Sept. 23, 1979.....       | P.L. 91-429..... |                                      | 94: 885.....           | 1382a.                 |
| 13. July 31, 1938.....        | 401.....         | 1, 2.....                            | 53: 1144.....          |                        |

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

SEC. 706. (a) Effective on and after the date of approval of this Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System: Effective date.

| Act of   | Chapter                | Section     | Statute at Large | 43 U.S. Code                 |
|--|------------------------|-------------|------------------|------------------------------|
| Revised Statutes 2339.....   |                        |             |                  | 661.                         |
| The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damages shall be liable to the party injured for such injury or damage." |                        |             |                  |                              |
| Revised Statutes 2340.....   |                        |             |                  | 661.                         |
| The following words only: " , or rights to ditches and reservoirs used in connection with such water rights."  |                        |             |                  |                              |
| Feb. 26, 1897.....   | 335.....               |             | 28: 599.....     | 664.                         |
| Mar. 3, 1899.....  | 427.....               | 1.....      | 30: 1233.....    | 665, 958, (16 U.S.C. 525).   |
| The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."   |                        |             |                  |                              |
| Mar. 3, 1873.....  | 152.....               |             | 18: 482.....     | 934-939.                     |
| May 14, 1898.....  | 299.....               | 2-6.....    | 30: 469.....     | 942-1 to 942-9.              |
| Feb. 27, 1901.....   | 614.....               |             | 31: 815.....     | 943.                         |
| June 26, 1906.....   | 3548.....              |             | 34: 491.....     | 944.                         |
| Mar. 3, 1891.....  | 561.....               | 18-21.....  | 26: 1101.....    | 946-949.                     |
| Mar. 4, 1917.....  | 194.....               | 1.....      | 39: 1197.....    |                              |
| May 28, 1926.....  | 409.....               |             | 44: 668.....     |                              |
| Mar. 1, 1921.....  | 94.....                |             | 41: 1194.....    | 980.                         |
| Jan. 13, 1897.....   | 11.....                |             | 25: 484.....     | 982-985.                     |
| Mar. 3, 1923.....  | 219.....               |             | 42: 1437.....    |                              |
| Jan. 21, 1885.....   | 37.....                |             | 28: 635.....     | 951, 956, 957.               |
| May 14, 1896.....  | 179.....               |             | 29: 120.....     |                              |
| May 11, 1898.....  | 292.....               |             | 30: 404.....     |                              |
| Mar. 4, 1917.....  | 184.....               | 2.....      | 38: 1197.....    |                              |
| Feb. 15, 1901.....   | 372.....               |             | 31: 790.....     | 959 (16 U.S.C. 79, 522).     |
| Mar. 4, 1911.....  | 238.....               |             | 30: 1253.....    | 961 (16 U.S.C. 5, 420, 525). |
| Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."  |                        |             |                  |                              |
| May 27, 1892.....  | 338.....               |             | 66: 95.....      |                              |
| May 21, 1898.....  | 212.....               |             | 29: 127.....     | 963-965.                     |
| Apr. 12, 1910.....   | 155.....               |             | 38: 298.....     | 966-970.                     |
| June 4, 1897.....  | 2.....                 | 1.....      | 30: 35.....      | 16 U.S.C. 551.               |
| Only the eleventh paragraph under Surveying the public lands.  |                        |             |                  |                              |
| July 23, 1937.....   | 517.....               | 51, 52..... | 50: 525.....     | 7 U.S.C. 1010-1012.          |
| Sept. 3, 1954.....   | 1255.....              | 1.....      | 68: 1146.....    | 931c.                        |
| July 7, 1960.....  | Public Law 89-408..... |             | 74: 383.....     | 40 U.S.C. 345c.              |
| Oct. 23, 1967.....   | Public Law 87-852..... | 1-3.....    | 76: 1129.....    | 40 U.S.C. 319-319c.          |
| Feb. 1, 1903.....  | 288.....               | 4.....      | 33: 628.....     | 16 U.S.C. 524.               |

the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way.

#### RIGHTS-OF-WAY FOR FEDERAL AGENCIES

SEC. 507. (a) The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose. 43 USC 1767.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

#### CONVEYANCE OF LANDS

SEC. 508. If under applicable law the Secretary concerned decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents. 43 USC 1768.

#### EXISTING RIGHTS-OF-WAY

SEC. 509. (a) Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title. 43 USC 1769.

(b) When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realignment of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this title, provide in the new right-of-way the same terms and conditions as applied to the por-

Cancellation.

TITLE VII—EFFECT ON EXISTING RIGHTS; REPEAL OF  
EXISTING LAWS; SEVERABILITY

## EFFECT ON EXISTING RIGHTS

43 USC 1701  
note.

SEC. 701. (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

**Resolution No. 99-01**

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF NYE, STATE OF NEVADA**

**RESOLUTION DECLARING  
NYE COUNTY'S POLICY REGARDING PUBLIC ROADS**

WHEREAS, the County of Nye, Nevada is vast, sprawling and mostly rural, having more than 18,000 square miles and fewer than 35,000 residents within its borders; and

WHEREAS, before the Territory of Nevada was settled, the area now comprising Nye County was inhabited by Native Americans and descendants of Spanish explorers, and there were no roads or highways, as known today, but there were single-track ways, pathways, and other trails connecting two points; and

WHEREAS, since the creation of Nye County, miners, ranchers, hunters, fishermen, recreationists and other members of the public have established, reestablished, developed and/or maintained, by usage, numerous roads and similar public travel corridors across the public lands of the County; and

WHEREAS, in more recent years, miners, ranchers and other members of the public, together with federal, state and local governments also have established, reestablished, developed, constructed and/or maintained, by mechanical means, roads and highways across the public lands of the County; and

WHEREAS, the ways, pathways, trails, roads, highways and other public corridors (hereinafter, collectively, "Roads") established within Nye County, whether by usage or by mechanical means, have a public purpose, e.g., to allow travel from one point to another within the hinterlands of Nye County, and thereby permit and enable all of the economic and social components of life in the County, including but not limited to mining, ranching, logging and wood-harvesting, hunting, fishing, water acquisition, and all types of recreation; and

WHEREAS, the Mining Act of July 26, 1866, codified at 43 United States Code § 932 (commonly known as R.S. 2477) is a law of the land which was enacted for the purpose of memorializing the right of access to the public lands by the people of the United States, and establishing the express right to construct highways (roads) and the implied right to access, by there and then granting self-establishing/self-authenticating rights-of-way for all Roads previously or thereafter located, established and/or developed, whether by usage or by

mechanical means, to allow travel from one point to another, across or through public lands, to encourage the settlement of the West; and

WHEREAS, the federal courts have interpreted R.S. 2477 to provide a public right-of-way for all Roads across or through public lands, so long as those Roads were established and "accepted" by general public use and enjoyment before October 21, 1976 (the effective date of the Federal Land Policy and Management Act) and served to connect two points of societal importance (towns, stage stops, mines, ranches, water sources, etc.), whether by constant alignment or alignment subject to seasonal, weather, economic or other adjustment ; and

WHEREAS, Nevada Revised Statutes § 405.191 defines the term "public road" to include all roads existing on R.S. 2477 rights-of-way and "accepted by general public use and enjoyment . . .", and endues every board of commissioners with the authority to "locate and determine the width of such rights-of-way and locate, open for public use and establish thereon county roads or highways"; and

WHEREAS, the definition of a "public road," pursuant to NRS § 405.191, also includes roads designated by the Nye County Board of Commissioners ("Board") as major, general and minor roads (pursuant to NRS § 403.170), and "[a]ny way which is shown upon any plat, subdivision, addition, parcel map or record of survey of any county, city, town or portion thereof duly recorded or filed in the office of the county recorder, and which is not specifically therein designated as a private road or a nonpublic road, and any way which is described in a duly recorded conveyance as a public road or is reserved thereby for public road purposes or which is described by words of similar import"; and

WHEREAS, the Board recognizes the continuing validity of other--common law-- authority for the establishment of roads for the good of the citizenry, including but not limited to the authority set forth in the doctrine of easement by necessity and the doctrine of implied easement, authority which the Board believes has not been preempted, superseded or otherwise set aside by R.S. 2477 or other statutory scheme; and

WHEREAS, that Nye County's survival, economically and socially, is dependent upon access to its public lands, which comprise more than ninety-three percent (93%) of the whole of the County's land mass, and upon the Roads which allow that access; and

WHEREAS, the Board recognizes that in exercising its authority to locate, lay out, open, construct, rehabilitate, maintain and/or close public Roads, it has a duty act in a manner which will result in a benefit to the general public; will avoid or mitigate, to the fullest extent reasonably possible, any significant impairment of the environment or natural resources; and, unless unavoidable for purposes of the greater good, will not result in a significant reduction in the value of public or private property; and

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WHEREAS, on December 7, 1993, the Board adopted Resolution No. 93-49, entitled "A Resolution declaring certain Public Travel corridors across Public Lands within Nye County as Nye County Public roads," attached hereto as Exhibit "A"; and

WHEREAS, on March 14, 1996, Judge Lloyd D. George, U.S. District Court for the District of Nevada, issued an order in the case of *U.S. v. Nye County*, case number CV-S-95-232-LDG(RJJ), which in pertinent part provided that: "It is declared that Nye County Resolution 93-49 is invalid and unenforceable to the extent, *and only to the extent*, it applies to ways, pathways, trails, roads, county highways and similar public travel corridors across public lands in Nye County, Nevada, for which no valid right-of-way exists or is recognized under federal law" [Emphasis added]; and

WHEREAS, in December 1996, as a part of the settlement of the above-referenced case, Nye County, the U.S. Department of Agriculture--Forest Service ("USFS") and the U.S. Department of Interior--Bureau of Land Management ("BLM") executed an agreement entitled *Tri-Party Framework for Interactions to Address Public Land Issues in Nye County, Nevada* ("Tri-Party Agreement," attached hereto as Exhibit "B"), setting out a dynamic, collaborative process for addressing and resolving issues of contention related to public land management in Nye County, and the Board is committed to carrying out Nye County's obligations under that Tri-Party Agreement; and

WHEREAS, the Board desires to resolve any and all issues and concerns relating to its designation of roads as Nye County Public Roads in accord with the processes set forth in the Tri-Party Agreement; and

WHEREAS, this Resolution has been submitted to the USFS and the BLM, for review through the Tri-Party Agreement process; and

WHEREAS, the Board, due to its continuing review of the issue of public roads believes that it is desirable and necessary that its declaration regarding public Roads, as expressed in Resolution No. 93-49, be amended for clarity and legal sufficiency, and to take due notice of the evolving symbiotic relationship between Nye County, the USFS and the BLM, relating to the management of the public lands within the County,

NOW THEREFORE, it hereby is resolved as follows:

1. Nye County Resolution No. 93-49 shall be and is superseded by this Resolution; and this Resolution is adopted as Nye County's policy statement relating to public Roads within Nye County and shall be the basis upon which the Board and/or the Board acting as the Nye County Board of County Highway Commissioners ("Highway Commissioners"), can and will locate, determine the width of the rights-of-way, lay out, open, construct, rehabilitate, maintain and/or close public Roads within the County.

2. The term "Nye County Public Road" is and shall be defined as each and every way, pathway, trail, stock trail and driveway, road, county highway, railbed and other similar public travel corridor across public lands in Nye County, connecting two points of societal importance (regardless of whether the points so connected are located inside or outside the boundaries of Nye County), whether established and maintained by usage or mechanical means, whether passable by foot, beast of burden, carts or wagons, or motorized/mechanized vehicles of each and every sort, whether currently passable or impassable, that was established and accepted by public use and enjoyment under common law doctrines of property rights; under R.S. 2477, but only if established and accepted by public use and enjoyment before October 21, 1976; or under other statutory authority, except as follows: State Highways 160, 361, 372, 373, 374, 375, 376, 377, 378, 379 and 844, and U.S. Highways 6 and 95 are not Nye County Public Roads.

3. Roads across private lands within Nye County not otherwise established by other law or authority are or shall be designated as Nye County Public Roads only if they are offered to, accepted by and dedicated to Nye County, according to the roads policies and regulations which then are in effect.

4. All Nye County Public Roads are the property of Nye County, as trustee for the public users thereof, and the Board and/or the Board acting as Highway Commissioners, shall have the authority, from time to time, to locate and determine the alignment and width of such rights of way and open, reopen, establish, construct, rehabilitate, maintain and/or close thereon county roads or highways, subject to applicable federal laws and regulations; provided, however, that pursuant to its commitment to full implementation of the letter and spirit of the Tri-Party Agreement, and the Road Maintenance Protocol (attached hereto as Exhibit "C") which has been executed by the parties thereunder, the Board covenants that excepting in the event of an emergency which requires immediate action, it will not make or implement decisions pursuant to the authority described in this paragraph without first having advised the USFS and/or the BLM of its proposed decision or action and, by and through the Tri-Party Agreement processes, attempted to resolve any challenge or opposition to such decision or action by the federal agency(ies).

5. The Board and/or the Board acting as Highway Commissioners, hereafter, by ordinance or resolution, will adopt all rules and regulations necessary and proper to assure that decisions made and actions taken under its authority to locate, lay out, open, construct, rehabilitate, maintain and/or close public Roads are made upon sufficient findings that such decisions and actions will result in a benefit to the general public; will avoid or mitigate, to the fullest extent reasonably possible, any significant impairment of the environment or natural resources; and, unless unavoidable for purposes of the greater good, will not result in a significant reduction in the value of public or private property.

6. For each road established on or after October 21, 1976 and proposed for designation as a Nye County Public Road, and for each road which is established by Nye County

in the future, the Board and/or the Board acting as the Highway Commissioners, will acquire all rights-of-way necessary for the establishment and management of the road from the appropriate federal land managing agency or other person or governmental entity prior to designation as a Nye County Public Road (if already established) or establishment by Nye County (if not already established).

7. The Board ratifies historic practices in Nye County allowing for maintenance of county roads by usage or mechanical means; and the Board's decision to not mechanically maintain any one or more of the Roads shall not terminate, or affect in any way, the status of such Roads as Nye County Public Roads.

8. Pursuant to NRS § 405.193(2), no action may be brought against Nye County, its officers, or employees for damage suffered by a person solely as a result of the unmaintained condition of a Road made public by the Board pursuant to NRS § 405.195; and, pursuant to NRS § 403.170, Nye County is immune from liability for damages suffered by persons as a result of using any road designated by the Board as a minor County road.

9. Abandonment or road closure of any Nye County Public Road must follow the procedures provided in NRS 405.195, including but not limited to public hearings.

10. Attached hereto and incorporated herein are maps which specify and designate those Roads located within Nye County which the Board, and/or the Board acting as the Highway Commissioners, preliminarily has/have determined are Nye County Public Roads, pursuant to the definition given herein-above and all applicable federal and state law. The Board expressly notes that the process of designation of such Roads is not complete; thus, the maps are not and shall not be deemed a comprehensive or exhaustive listing or designation of those Roads which are or may be Nye County Public Roads. It is intended that these maps will be revised and reissued periodically, as other or additional Roads are determined to be Nye County Public Roads or Roads preliminarily so designated are determined, upon further review, not to be appropriately or lawfully designated as Nye County Public Roads.

11. The Board expressly recognizes that the USFS and the BLM have the authority and duty to challenge the designation of Roads as Nye County Public Roads, when and if they believe that such designation is inappropriate and/or unlawful, based upon applicable federal and state law and the history of the Road(s). Accordingly, the Nye County Clerk, as Clerk of this Board, is directed to forthwith send copies of this Resolution and attached maps to the USFS and the BLM, specifically for their review of the preliminary designation of Nye County Public Roads. The Board invites and urges the USFS and the BLM to initiate the resolution process set forth in the Tri-Party Agreement for any and all Roads preliminarily

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designated as Nye County Public Roads for which it or they have reason to believe such designation is/are inappropriate or unlawful.

DATED this 19th day of January, 1999.

PROPOSED on the 19th day of January, 1999 by McRae.

|             |                |       |       |
|-------------|----------------|-------|-------|
| VOTE: AYES: | <u>McRae</u>   | NAYS: | _____ |
|             | <u>Copass</u>  |       | _____ |
|             | <u>Carver</u>  |       | _____ |
|             | <u>Taguchi</u> |       | _____ |
|             | <u>Davis</u>   |       | _____ |

ABSENT: Ø \_\_\_\_\_

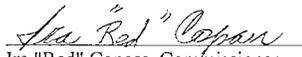
ABSTENTIONS: Ø \_\_\_\_\_

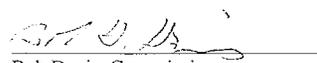
EFFECTIVE this 19th day of January, 1999.

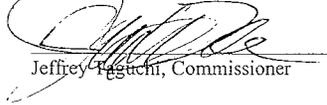
**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF NYE, STATE OF NEVADA**

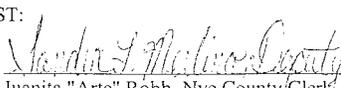
By:   
Richard L. Carver, Chairman

By:   
Cameron McRae, Vice-Chairman

By:   
Ira "Red" Copass, Commissioner

By:   
Bob Davis, Commissioner

By:   
Jeffrey Taguchi, Commissioner

ATTEST:  
By:   
Juanita "Arte" Robb, Nye County Clerk  
and Ex-Officio Clerk of the Board



**RESOLUTION 93-49**

**Nye County Public Roads**

**A Resolution declaring certain Public Travel corridors across Public Lands within Nye County as Nye County Public Roads:**

Whereas, before the Territory of Nevada was settled, the area was inhabited by Native Americans and decedents of Spanish explorers, and;

Whereas, there were no roads or highways as we know them today, but there were single track ways, pathways, and trails connecting two points, and;

Whereas, since that time, miners, ranchers, sportsmen, and other members of the public have established numerous roads and similar public travel corridors by usage across public lands, and;

Whereas, in recent years, local and state governments and others have been constructing and maintaining roads and highways by mechanical means across public lands, and;

Whereas, these ways, pathways, trails, roads, highways, and similar public travel corridors have a public purpose such as, but not limited to, mining, ranching, recreation, water, timber, utilities, wood gathering, hunting, fishing, sight seeing, camping, to name a few, and;

Whereas, the title to the public lands passed to the State of Nevada under the equal footing doctrine upon Nevada's admission into the Union in 1864, and;

Whereas, the Act of Congress of July 26, 1866, (RS2477), is evidence that Congress executed the Quitclaim of any right, title or interest in any road, right of way, ditches, etc, Now;

Therefore, be it Resolved that the Board of Nye County Commissioners hereby declares, on the 7th day of December, 1993, that:

Excluding all roads across private lands, and excluding all state highways in Nye County 160, 361, 372, 373, 374, 375, 376, 377, 378, 379, and 844, and excluding all Federal Highways - US 6 and US 95;

All ways, pathways, trails, roads, county highways, and similar public travel corridors across public lands in Nye County, Nevada, whether established and maintained by usage or mechanical means, whether passable by foot, beast of burden, carts or wagons, or motorized vehicles of each and every sort, whether currently passable or impassable, that was established in the past, present, or may be established in the future, on public lands in Nye County, are hereby declared Nye County Public Roads;

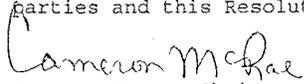
All rights of way to all ways, pathways, trails, roads, county highways and similar public travel corridors across public lands that are declared Nye County Public Roads are the property of Nye County as trustee for public users thereof, and will consist of the same width as required in other Nye County ordinances;

Nye County hereby ratifies historic practices in the County that public roads have been maintained either by usage or mechanical means and the County will continue this practice in the future. The County's decision to not mechanically maintain any way, pathway, trail, road, county highway or similar public travel corridor across public lands shall not terminate, or affect in any way, such roads status as a Nye County Public Road;

No action may be brought against Nye County, its officers, or employees for damage suffered by a person solely as a result of the unmaintained condition of a Nye County Public Road on Public Lands in Nye County, NRS 405.193(2);

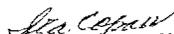
Abandonment or road closure of any Nye County Public Road across Public Lands must follow procedure in accordance with Nevada Revised Statutes and only after public hearings, NRS 405.195;

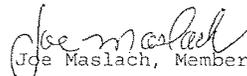
That a copy of this Resolution be forwarded to all interested parties and this Resolution shall be followed by an ordinance.

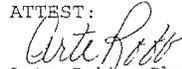
  
Cameron McRae, Chairman  
Nye County Board of Commissioners

  
Richard Carver, Vice Chairman

  
Dave Hannigan, Member

  
Ira Copass, Member

  
Joe Maslach, Member

ATTEST:  
  
Arte Robb, Clerk

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**TRI-PARTY FRAMEWORK FOR INTERACTIONS  
TO ADDRESS PUBLIC LAND ISSUES  
IN NYE COUNTY, NEVADA**

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**Nye County, Nevada**

**U.S. Department of Interior  
Bureau of Land Management**

**U.S. Department of Agriculture  
Forest Service**

**December, 1996**

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**I. PURPOSE:**

A process of formal interactions—in which a good-faith effort is made to resolve differences and facilitate interactions at both the policy and the program levels—is essential for ensuring that needs and concerns of governmental entities with overlapping jurisdictions and authorities are effectively addressed. In all cases, each party’s involvement in this Framework for Interactions is governed by respective federal, state, and local legal authorities. Nothing in this document shall diminish or expand any existing rights or obligations of the parties under federal, state or local law. Any alleged breach of this document shall not be actionable.

The purpose of this Framework for Interactions is to define the process within which Nye County, Nevada (“County”), the U.S. Department of Interior, Bureau of Land Management/Nevada State Office (“Bureau”), and the U.S. Department of Agriculture, Forest Service/Humboldt-Toiyabe National Forests (“Service”) can enhance our working relationships and means of communication, and can resolve issues of concern effectively and in a timely manner. It is in our best interest to join together in a coordinated effort to: 1) develop and implement plans and activities that will protect the public’s health and safety; 2) maintain a sustainable environment; 3) maintain a vital local economy; and 4) enhance the quality of life of public land visitors, users and neighbors. These goals will be accomplished by achieving a balance among competing interests for the multiple uses and potential benefits of the public lands and resources.

Under State law, the County is responsible for protecting the public health and safety, the environment, and the economic stability of the County, and for providing a quality of life and related economic activity at a level desired by County residents. Decisions made by the County can have an impact on public lands, public services, community planning and infrastructure.

Under Federal law, the Bureau and Service are responsible for managing lands under their respective jurisdictions in a manner that will protect the public’s health and safety and the environment and will best meet present and future needs of the American public. Decisions made by the Bureau and Service can affect issues for which the County has responsibility.

**II. OBJECTIVES FOR FORMAL INTERACTIONS:**

- A. To establish a process that will guide future interactions among the parties;
- B. To develop a dynamic, collaborative approach to land management planning that promotes trusting relationships and achieves common goals;
- C. To clarify the roles and responsibilities of the parties in land management decision-making processes;

D. To ensure that all parties are accorded full opportunity for timely participation and consultation on decisions and activities that may affect them and, in particular, cooperate in land use planning processes to be undertaken in the future, including consultation and participation in preparation of land use plans, County master plans, County public lands policy plans, land and resource management plans, and significant amendments to these plans;

E. To integrate, to the greatest extent possible, respective roles, responsibilities, and planning processes so that each party can effectively perform them in a timely manner;

F. To encourage uniform application of respective policies and standards throughout the County and at the interface among multiple jurisdictions;

G. To develop protocols (as described below), as needed, that address issues of interest or concern to one or all of the parties; and

H. To define mechanisms for sharing resources, expertise and non-proprietary land use information, with particular emphasis on land use data collection and electronic storage and retrieval, and cooperating with training, workshops, and technical interactions.

**III. PROCESS, ORGANIZATION AND LOGISTICS:**

**A. Formal Interactions and Regular Coordination**

1. Formal interactions will entail a continuing series of regularly scheduled meetings called "formal interactions." Interactions will occur three times a year, or more often, as mutually agreed to by the parties.

2. Informal coordination and exchanges between County, Bureau, and Service staff on public lands issues will continue on a regular basis.

3. Formal interactions will address policy or program-level concerns or those concerns that cannot be resolved through regular coordination and exchanges.

**B. Designation of Core Teams**

1. Each party will name a core team with sufficient delegated authority to effectively represent the respective parties.

2. Each core team will have a designated chief spokesperson. The Chairman of the Nye County Board of Commissioners will act as chief spokesperson for the County. The Battle Mountain District Manager will act as chief spokesperson for the Bureau

during interactions. An Assistant Forest Supervisor for the Humboldt-Toiyabe National Forests will act as chief spokesperson for the Service during interactions. A District Ranger may also participate depending on the subject under consideration. Each chief spokesperson will be able to appoint a designee to represent him/her during these meetings.

3. The team sizes and members may vary depending on the subject under review. The respective parties will appoint personnel to participate in the interaction process who will subsequently have direct responsibility for ensuring that approved protocols or memoranda are implemented at the State, district, area or County level, as appropriate.

**C. Reaching and Documenting Agreements**

1. The parties will develop and present proposals for resolving issues of concern.

2. Agreements on major issues will be documented in formal "Protocols." Letters, cooperative agreements, or other appropriate mechanisms will be used for less significant issues.

3. The parties will alternate as host and chair for the interactions. Hosting will include identifying the meeting location, finalizing the agenda, and documenting the discussions by preparing the meeting minutes that will be reviewed and approved by all parties.

4. Parties will submit agenda proposals in writing on respective issues of concern, as they desire, and the timing for proposal consideration will be jointly agreed to through the agenda-setting process. If necessary, an interim meeting on the agenda and potential milestones for resolving disputed issues may be established.

5. Should the parties reach an impasse in their efforts to resolve an issue of importance: a) the County can pursue resolution through negotiations with the Bureau and Service's next higher administrative level; and b) the Bureau and Service can pursue resolution through negotiations with the County Commission.

6. The interactions among the parties are tri-lateral; additional parties will be included upon the agreement of the County, the Bureau, and the Service.

7. Public review of, and comment on, formal agreements reached by the parties may be dictated by federal statutes and their accompanying regulations. To the extent the parties have discretion, all parties will work together to define the mechanism by which such public review and consideration will be accomplished.

8. In the event that members of the public request an opportunity to observe the formal interactions as they occur, the parties will mutually review the request and jointly decide on the extent of the public involvement.

9. The respective parties will commit to expedited and timely consideration of issues of concern, with responses or comments forthcoming within a target time frame of thirty (30) days from the work session in which the issue is formally presented. It is recognized that other workload levels by any of the parties will affect this thirty (30) day response period. A good-faith effort will be made by all parties to work toward timely decisions.

10. Each party agrees not to speak for the other parties and will direct any inquiry to the appropriate spokesperson for each party.

**D. Modifications and Review**

1. Modification of this Framework, or subsequent agreements reached within this Framework, shall be made upon the formal approval of the Bureau, Service and County as appropriate.

2. This Framework shall be reviewed at least every five (5) years.

3. The parties hereto are committed to the process of interactions provided in this Framework. In recognition of the need for a continuing commitment to the process, the Parties agree that in the event that any Party determines that termination of the Framework is in its best interest, the following steps will be taken before termination of the Framework will be effective:

a) Written notice of the Party's intent to termination shall be given to the other Parties hereto, and such notice shall include explicit reasons for the decision to terminate and shall be signed by all the Party's signatories to the Framework.

b) Termination of the Framework shall not be effective until at least one hundred and twenty (120) days after service of the written notice; nor shall the termination be effective until the Parties have met at least one (1) time in an effort to resolve the problems specified in the written notice.

c) The termination of this Framework shall not void, set aside or otherwise invalidate any Protocols, MOUs or other agreements between or among the Parties which are drafted and/or effected pursuant to this Framework.

**IV. PROTOCOLS:****A. Key Protocols**

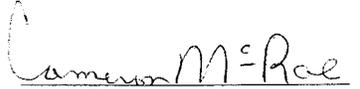
Interactions may be initiated that could lead to the execution of protocols, letters, or memoranda of understanding on, but not limited to, the following subjects:

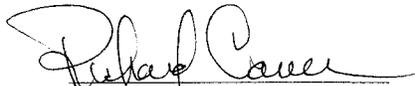
1. **PRINCIPLES AND PROCEDURES FOR INTERACTION**
2. **IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**
  - a) "Cooperating agency" status for Nye County.
  - b) Integration of data bases.
3. **PUBLIC LANDS ACCESS AND UTILIZATION**
  - a) Recreation and wilderness.
  - b) Range and grazing allotment management.
  - c) Road construction, maintenance, use, restrictions, rights-of-way, relocations, abandonments, and closures.
  - d) Mineral exploration, mining, and reclamation.
  - e) Water resources.
4. **LAND USE PLANNING AND LAND DISPOSALS**
  - a) Consistency with Nye County comprehensive planning.
  - b) Development of land use planning decision documents.
  - c) Amending land use planning decision documents.
  - d) Subdivision of lands.
  - 3) Desert land entries.
  - f) Land exchanges, purchases, sales, and town sites, including resultant revenue consequences for the County.
5. **PUBLIC SAFETY**
  - a) Law Enforcement.
  - b) Fire Suppression.
  - c) Emergency Management.
  - d) Communication Planning.
6. **COLLABORATION**
  - a) Electronic data bases and information systems.
  - b) Collaborative learning and intergovernmental training.

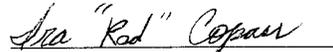
**B. Additional Protocols or Agreements**

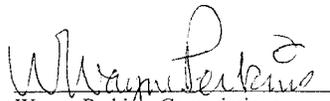
Other protocols or other means for documenting agreement on issues, such as memoranda or letters of understanding, may be developed, as warranted.

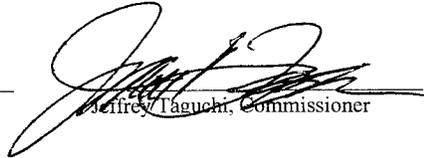
**NYE COUNTY, NEVADA**  
**Board of Commissioners**

  
Cameron McRae, Chairman

  
Richard Carver, Commissioner

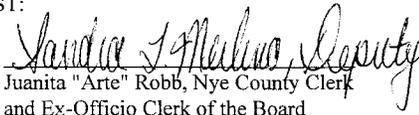
  
Ira "Red" Copass, Commissioner

  
Wayne Perkins, Commissioner

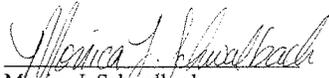
  
Jeffrey Taguchi, Commissioner

December 17, 1996  
Date

ATTEST:

By:   
Juanita "Arie" Robb, Nye County Clerk  
and Ex-Officio Clerk of the Board

U.S.D.A. FOREST SERVICE



Monica J. Schwalbach  
Assistant Forest Supervisor  
Humboldt-Toiyabe National Forest  
Central Nevada Ecosystem

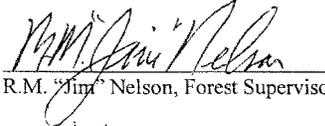
March 12, 1997  
Date



Alan Pinkerton  
Assistant Forest Supervisor  
Humboldt-Toiyabe National Forest  
Spring Mountains National Recreation Area

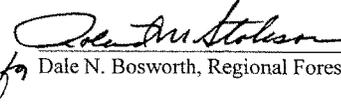
3/13/97  
Date

CONCURRENCE:



R.M. Jim Nelson, Forest Supervisor

4/1/97  
Date



for Dale N. Bosworth, Regional Forester

4/8/97  
Date

U.S.D.I. BUREAU OF LAND MANAGEMENT

Ronald G. Huntsinger  
Ronald G. Huntsinger  
Tonopah Field Station Manager

December 19, 1996  
Date

Gene A. Kolkman  
Gene A. Kolkman  
Ely District Manager

12/29/96  
Date

Mike F. Dwyer  
Mike F. Dwyer  
Las Vegas District Manager

12/30/96  
Date

John O. Singlaub  
John O. Singlaub  
Carson City District Manager

12-31-96  
Date

Gerald M. Smith  
Gerald M. Smith  
Battle Mountain District Manager

1/8/97  
Date

CONCURRENCE:

Ann J. Morgan  
Ann J. Morgan, Nevada State Director

1-21-97  
Date

**APPENDIX I****TRI-PARTY INTERACTIONS PRINCIPLES AND PRACTICES PROTOCOL****I. PURPOSE**

To define principles and general practices that will guide the routine implementation of the spirit of the Tri-party Framework for Interactions among Nye County, Nevada, (“the County”), the U.S. Forest Service (“the Service”), and the U.S. Bureau of Land Management (“the Bureau”) [or collectively “the parties”].

**II. PRINCIPLES**

A. The parties have roles and responsibilities for protecting the public health and safety; maintaining a sustainable environment, maintaining a vital local economy, including maintaining a viable tax base; and enhancing the quality of life of public land visitors, users, and neighbors.

B. Most issues of concern among the parties result from overlapping roles and responsibilities and can range between the significant and the mundane.

C. Most matters between Nye County and the Service and/or the Bureau can be resolved through routine communication, consultation, and coordination.

D. Only those issues of concern that cannot be resolved through routine communication, consultation and coordination will be considered within a formal process of deliberation and interaction.

E. Routine and formal interactions will only be effective if they are undertaken in a good-faith effort to reach an agreement that address the concerns of all parties.

F. Active and early participation in each others respective planning processes will be essential.

**III. TRI-PARTY PRACTICES**

A. Communication. Written or verbal communication for this protocol is defined as a request for or provision of, information. It is also the expression of comments or concerns from one party; and the response, comment and/or subsequent action by the other party. General communication procedures between Nye County and the Service and Bureau will include, but not be limited to, the following:

1. The Service and Bureau will keep Nye County informed of their respective activities that are likely to be of concern to the County, with particular importance being those activities that could have an impact on the County’s tax base or economy. Nye County will, in turn, keep the Service and Bureau informed on those activities of interest and concern to them.

2. Requests for information will be responded to expeditiously, within a target time frame of two weeks. If this target cannot be met, the requesting party will be so informed, with rationale, and a new target date will be jointly established.

3. Verbal comments or concerns will be responded to verbally, unless otherwise requested or desired by the interested party.

4. Similarly, written comments or concerns will be responded to in writing.

5. Each of the three parties will designate one individual who will be responsible for facilitating routine communication for his/her respective organization by a) being a clearinghouse for all routine reports and formal written communications; b) forwarding materials to the appropriate officials; c) performing as an "ombudsman" for ensuring that informal communication and access-to-information problems are resolved expeditiously; and d) monitoring the quality of the communications among the respective parties.

6. The Service and Bureau will periodically offer briefing to the County's Board of Commissioners on current issues and planning activities.

B. Consultation. Consultation is defined for this protocol as the process by which one party solicits the opinion or advice of the party; explicitly considers the opinion or advice; and applies it or explains, formally if requested, the reason the opinion or advice was not applied.

1. The parties will consult with each other during developmental stages of decisions and actions that potentially will affect each other, particularly as relates to access and utilization of public lands.

2. The parties will consult with each other in the development of environmental impact statements and land use plans, including County master plans and public land management plans, land and resource management plans, and significant amendments to these plans.

C. Coordination. Coordination is defined as the process by which the parties determine which elements of their respective programs would benefit from the direct contribution of the other, ultimately meeting the needs of all parties.

1. The Service and Bureau will coordinate with Nye County on all NEPA activities related to public lands in which the County expresses an interest. The Service and Bureau will periodically inform the County of planned NEPA activities in sufficient time to become involved should it believe the activity warrants its participation.

2. The parties will coordinate public safety activities on public lands, including law enforcement, fire suppression, emergency communication and management.

NYE COUNTY, NEVADA  
Board of Commissioners

Richard Carver  
Richard Carver, Chairman

absent  
Bob Revert, Vice-Chairman

Cameron McRae  
Cameron McRae, Commissioner

Bob Davis  
Bob Davis, Commissioner

Ira "Red" Copass  
Ira "Red" Copass, Commissioner

3-4-97  
Date  
attest: Arte Robb

U.S.D.A. FOREST SERVICE

Monica J. Schwalbach  
Monica J. Schwalbach  
Assistant Forest Supervisor  
Humbolt-Toiyabe National Forest  
Central Nevada Ecosystem

Alan Pinkerton  
Alan Pinkerton  
Assistant Forest Supervisor  
Humbolt-Toiyabe National Forest  
Spring Mountains National  
Recreation Area

March 23, 1997  
Date

U.S.D.I. BUREAU OF LAND MANAGEMENT

Gerald M. Smith  
Gerald M. Smith  
Battle Mountain District Manager

4-7-97  
Date

August 14, 1997

## APPENDIX II

## TRI-PARTY ROAD MANAGEMENT PROTOCOL

## I. PURPOSE

The purpose for this protocol is to set forth the general terms and conditions acceptable to Nye County, the U.S. Forest Service and the U.S. Bureau of Land Management [hereinafter "the parties", unless otherwise noted] for the cooperative management of certain roads on public lands in Nye County, State of Nevada. The parties agree that cooperation can achieve optimal benefits and efficiencies for the Nation, the State, and Nye County and is, therefore, in the public interest. The parties are committed to making a good-faith effort to resolve all issues of concern regarding road management on public lands effectively and in a timely manner.

## II. SCOPE

A. Intent to Cooperate

1. Each party exercises jurisdiction over certain roads within Nye County.
2. The parties agree to work toward determining appropriate jurisdictional status of roads on public lands within Nye County. A separate protocol(s) will be developed to address jurisdictional status.
3. Cooperative management by the respective parties is necessary to maintain and improve, if necessary, public roads to a standard appropriate to the use agreed to by all parties.
4. The parties agree to identify the roads or road segments referred to above by developing a listing and appropriate maps, per Section B, including design standards.
5. The parties will meet for formal and informal consultation on a regular basis to discuss and agree on actions with respect to the roads identified pursuant to item "4" above.
6. The parties agree to provide for maintenance of the roads identified in item "4", including the identification of maintenance responsibilities.
7. The parties agree to enter into "project agreements" per Section D when major improvements to a road under the jurisdiction of one party would benefit from assistance of the other party or parties.

<sup>1</sup> The foundation document for this Protocol is the *Tri-Party Framework for Interactions to Address Public Land Issues in Nye County, Nevada (Tri-Party Agreement)*, dated December, 1996. The authorities to enter into this Protocol are cited in the Tri-Party Agreement.

August 14, 1997

**B. Identification of Roads**

1. A list of roads and segments of roads that are referred to in item "A.4" will be agreed upon and will be marked "Schedule A" and attached as part of this protocol.
2. Schedule A may be modified by agreement between the parties, as necessary.
3. All such modifications shall be noted by hand-marking the changes on Schedule A, and by each party initialing and dating the handwritten changes. Otherwise, Schedule A shall be updated on an annual basis.

**C. Maintenance Plans**

1. At the annual meeting provided for in F below, a plan for maintaining the roads listed in Schedule A shall be agreed upon. Such plan(s) shall include assignment of responsibility for maintenance or particular elements of maintenance to the respective parties responsible for each road or segment of road listed in Schedule A.
2. The maintenance plan will identify the level and extent of the road maintenance that is appropriate for each identified road.

**D. Project Agreements**

1. When a major improvement is planned for a road listed in Schedule A, the parties may enter into a project agreement that provides for performing the work. A project agreement is not required for improvement of a road or a road segment over which the party performing such improvements has jurisdiction.
2. Project agreements shall be subject to the agreements, provisions, and conditions below:
  - a. A project agreement shall be entered into prior to beginning of improvement or construction work.
  - b. The project agreement shall include the following elements:
    - (1) Identification of road segment to be improved or constructed.
    - (2) Plans and specifications for the project or provision for their development and subsequent agreement thereon.
    - (3) Schedule of construction or improvement work and designation of the party or parties to perform the work.
    - (4) Estimate of cost of improvement or construction.

August 14, 1997

(5) A description of how the project costs are to be borne by the parties, including arrangements for sharing in the work to be performed. As necessary and appropriate, this description will include arrangements for depositing funds with the performing party when costs-sharing has been established.

3. Project agreements will identify recommended or necessary changes to existing road prisms, rights-of-way, and/or alignments.

**E. Right of Way [New or Future Acquisition for Projects Referenced in "D"]**

1. Easement or other interests in land acquired by either party shall be adequate to serve the road needs of both parties. The party having jurisdiction of a road to be constructed shall obtain the needed rights-of-way in its name.

2. There shall be no provisions in any easement document that will prevent any party from using or authorizing the use of the road to be constructed.

3. The party acquiring the easement or other interest in land shall obtain such title evidence and title approval as required in its acquisitions for roads of comparable standards.

4. The cost of such easements or other interests in land are to be at the expense of the acquiring party.

5. The Bureau and the Service shall cooperate to support Nye County in the acquisition of rights-of-way over land administrated by agencies of the United States required for any project included under this agreement and shall furnish Nye County copies of survey notes, maps, and other records.

6. To the extent possible under available authority, each party agrees to convey easements over lands or interests in lands it owns or administers to the other party in order to provide jurisdiction by the appropriate party as may be agreed to for any road or road segment listed on Schedule A.

**F. Annual Meeting and Continuing Consultation**

1. The parties shall meet at least once each year to review matters covered by this Protocol and to agree on implementation steps. These steps include, but are not limited to, the following:

- a) Approval of changes in the listing of roads on Schedule A.
- b) Approval of the annual maintenance plan;
- c) Approval of project agreements for construction or reconstruction;
- d) Approval of transfer of jurisdiction of particular roads by easement conveyance.
- e) On-the-ground inspection/review of ongoing activities.

2. It is also the intent of the parties to arrange for continuing consultation between their representatives with the objective of reaching timely agreement by the parties on all matters of mutual concern that are covered by this agreement.

3. The parties shall rotate responsibility for making the arrangements for formal meetings.

4. Continuing consultation will be accomplished within the procedures defined by the Tri-Party Framework for Formal Interactions.

**G. Modification and Termination**

1. This agreement may be modified according to the procedures defined by the Tri-Party Framework for Formal Interactions.

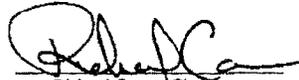
2. If this agreement is terminated by any party after following the procedures specified in the Tri-Party Framework for Formal Interactions, such termination shall not affect or change any commitment made authorizing the use of roads or rights-of-way for purposes for which federal funds were expended, or any operation in progress at time of notice, and provided that such termination shall in no way affect the agreement of the parties hereto with respect to any obligations incurred under the agreement until a full settlement has been made.

**H. Effect of Protocol**

Nothing in this Protocol, or in any amendment made hereto, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Protocol.

August 14, 1997

NYE COUNTY, NEVADA  
Board of Commissioners



Richard Carver, Chairman

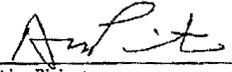
9-2-97

Date

U.S.D.A. FOREST SERVICE



Monica J. Schwabach  
Assistant Forest Supervisor  
Humbolt-Toiyabe National Forest  
Central Nevada Ecosystem

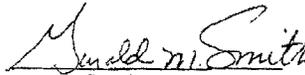


Alan Pinkerton  
Assistant Forest Supervisor  
Humbolt-Toiyabe National Forest  
Spring Mountains National Recreation Area

10/14/97

Date

U.S.D.I. BUREAU OF LAND MANAGEMENT



Gerald M. Smith  
Battle Mountain District Manager

10/28/97

Date

## Appendix III

## TRI-PARTY RANGE MANAGEMENT PROTOCOL

## 1. INTRODUCTION AND PURPOSE

The purpose for this protocol is to set forth the general terms and conditions acceptable to Nye County, the U.S. Bureau of Land Management (BLM), and the U.S. Forest Service as collaborators [hereinafter “the parties”, unless otherwise noted] for the purpose of allotment monitoring, evaluations, analysis, and implementation of multiple-use decisions/NEPA decisions on public lands within Nye County, State of Nevada. The parties agree that collaboration can achieve optimal benefits for parties, permittees, and the land, and is, therefore, in the public interest. The parties are committed to making a good-faith effort to resolve all issues of concern regarding management of rangeland vegetation, evaluation/analysis, and multiple-use/NEPA decisions on public lands effectively and in a timely manner.

The BLM and U.S. Forest Service are the lead agencies for the collection of monitoring data and writing evaluations/analyses, and retain sole responsibility for making multiple-use/NEPA/administrative decisions.

Nye County will have an opportunity to collaborate in the evaluations or implementation of multiple use decisions/NEPA processes. When there is a NEPA process, Nye County may be designated as a cooperating agency. As a collaborator, Nye County may assist in the collection of monitoring data, allotment inspections, input to and preparation of evaluations, implementations of multiple-use/NEPA decisions, and range management projects.

## II. SCOPE

A. Intent to Collaborate

1. Collaborative management by the respective parties is necessary to maintain and improve, if necessary, public rangelands to a condition as described in the Forest Land and Resource Management Plans/Resource Management Plans, in order to maintain a sustainable livestock industry and to sustain healthy ecosystems in Nye County.<sup>1</sup>

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<sup>1</sup> The foundation document for this protocol is the *Tri-Party Framework for Interactions to Address Public Land Issues in Nye County, Nevada (Tri-Party Agreement)*, dated December, 1996. The authorities to enter into this Protocol are cited in the *Tri-Party Agreement*.

2. The parties will follow formal and informal interactions as described in the *Tri-Party Framework for Interactions* described in Section III.A, Formal Interactions and Regular Coordination.
3. The parties may enter into “project agreements” per Section E when major improvements to public rangelands under the jurisdiction of one party would benefit from assistance of the other party or parties.

B. **BLM/U.S. FOREST SERVICE PARTICIPATION**

1. The BLM and the U.S. Forest Service will provide the Nye County Commissions an annual letter each December and/or a quarterly NEPA report informing them of monitoring/evaluations and multiple-use/NEPA decisions that are scheduled to begin each fiscal year, and as activities occur. BLM and U.S. Forest Service will apprise a designated county staff representative, on an as-needed basis, of ongoing and planned actions. BLM and U.S. Forest Service will provide prior notification to Nye County of emergency situations in Nye County that may require some type of immediate action. Emergency Actions will be a recurrent agenda item during regularly scheduled “formal interactions” meetings.
2. The BLM and the U.S. Forest Service will meet with Nye County following the annual letter/quarterly NEPA report to discuss which activities Nye County wants to collaborate; discussion will include, but not be limited to, what monitoring data the BLM and U.S. Forest Service have, what additional data are needed, and the schedule for completion of the evaluation/decision process.
3. The BLM or the U.S. Forest Service, will be the lead Federal agency for the collection of monitoring data, preparing allotment evaluations/inspections, and issuing multiple-use/NEPA decisions on respectively administered public rangelands. As the lead agency, the BLM or U.S. Forest Service shall conform to their respective laws, regulations, policies, and directives.
4. The BLM, U.S. Forest Service, and Nye County representatives will meet as necessary to review monitoring standards, including those conducted through a third party by Nye County.
5. The BLM and the U.S. Forest Service will designate a representative for activities described in the annual and quarterly NEPA reports, and other activities as they occur.

6. The BLM and the U.S. Forest Service will meet with Nye County to discuss the findings of the preliminary draft evaluation/analysis on those allotments for which they have requested to be a participant/collaborator. The BLM and U.S. Forest Service may meet with other State agencies having responsibility for managing resources within the area, interested publics, and the affected permittee(s) to discuss these findings.
7. The BLM, and the U.S. Forest Service will make available any evaluations/analysis, proposed multiple-use/pre-decisional NEPA documents, and the final multiple-use/NEPA decision documents to the Nye County Commissioners to assist where possible to make these documents available to the public on those allotments for which they have requested to be a participant/collaborator.
8. The BLM/US Forest Service will retain responsibility to determine which information is needed to make sound decisions.

C. **NYE COUNTY RESPONSIBILITIES**

1. Nye County will designate a staff representative for each activity for which they request to participate/collaborate.
2. Nye County will provide in a timely manner any input to the respective activity through meetings, direct correspondence, or other means as appropriate.
3. Nye County as a collaborator will actively participate in all phases of the evaluation/analyses and multiple-use/NEPA decision processes as they occur. Nye County may provide information it feels necessary in order for the BLM/U.S. Forest Service to make a sound decision. Nye County will review and respond to all evaluations/analyses, draft and final documents, and other activities for which they have expressed an interest in a timely manner.
4. Nye County will bear no financial responsibilities to the BLM, U.S. Forest Service, or any other private or governmental agency for its participation as a collaborator.

**D. JOINT BLM, U.S. FOREST SERVICE, AND NYE COUNTY PARTICIPATION<sup>2</sup>**

The Parties will:

1. Identify public, resource, and agency and county economic issues related to specific range management activities.
2. Develop a range of feasible or viable alternatives to be included in the evaluations/analyses.
3. Attend meetings as identified in the *Tri-Party Frameworks for Interactions* for the purposes of facilitating communication and receiving comments prior to and during the development of the allotment evaluation.
4. Identify critical resources that each participant will contribute to the evaluation/analysis and multiple-use/NEPA decision processes.
5. Participate in the collection of monitoring data, and provide comment on analysis and interpretation of the data.
6. Monitor and evaluate implemented decisions on a continuing basis.

**E. PROJECT AGREEMENTS**

1. When a major improvement is planned for an allotment, the parties may enter into a project agreement that provides for performing the work.
2. Project agreements may be subject to the agreements, provisions, and conditions below:
  - a. A project agreement shall be entered into prior to the beginning of an improvement or construction work on those projects where Nye County requested they be granted participant or collaborator status.
  - b. The project agreement shall include the following elements:
    - (1) Identification of project to be improved or constructed.

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<sup>2</sup> This is applicable when the parties are acting as collaborators.

- (2) Plans and specifications for the project or provision for their development and subsequent agreement thereon.
- (3) Schedule of construction or improvement work and designation of the party or parties to perform the work.
- (4) Estimate of cost of improvement or construction.
- (5) A description of how the project costs are to be borne by the parties, including arrangements for sharing in the work to be performed. As necessary and appropriate, this description will include arrangements for depositing funds with the performing party when cost-sharing has been established.
- (6) Delineation of the ownership of interests in completed improvements on BLM-administered public lands.

**F. MODIFICATION AND TERMINATION**

1. This agreement may be modified according to the procedures defined by the *Tri-Party Framework for Interactions*.
2. If this agreement is terminated by any party after following the procedures specified in the *Tri-Party Framework for Interactions*, such termination shall not affect or change any commitment made concerning evaluations/decisions or other activities in progress at the time of the notice.
3. This agreement shall not limit or affect in any way the authority or legal responsibilities of Nye County, the BLM, or the U.S. Forest Service.

**G. EFFECT OF PROTOCOL**

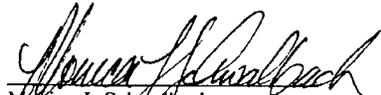
Nothing in this Protocol, or in any amendment made hereto, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land-use right or authorizations existing on the date of approval of this Protocol.

NYE COUNTY, NEVADA  
Board of Commissioners

  
Richard Carver, Chairman

09/01/98  
Date

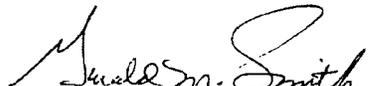
U.S.D.A. FOREST SERVICE

  
Monica J. Schwabach  
Assistant Forest Supervisor  
Humbolt-Toiyabe National Forest  
Central Nevada

  
Alan Pinkerton  
Assistant Forest Supervisor  
Humbolt-Toiyabe National Forest  
Spring Mountains National Recreation Area

\_\_\_\_\_  
Date

U.S.D.I. BUREAU OF LAND MANAGEMENT

  
Gerald M. Smith  
Battle Mountain District Manager

10/6/98  
Date

Mrs. CHENOWETH-HAGE. I want to thank all the witnesses for their testimony. At this time we will excuse this panel.

Committee will come to order. I will now introduce our final panel. Final panel consists of Mr. Jack Blackwell, Regional Forester, Intermountain Region, U.S. Forest Service in Ogden, Utah. Mr. Blackwell is accompanied by Mr. Ben Siminoe, Assistant Forest Supervisor, Humboldt-Toiyabe National Forest; and Mr. Robert Williams, Field Supervisor for the U.S. Fish and Wildlife Service.

Gentlemen, as explained to the previous panels, we will be placing you under the oath. If you would stand and raise your arm to the square.

[Witnesses sworn.]

Mrs. CHENOWETH-HAGE. Thank you. The Chair recognizes Mr. Blackwell for his testimony.

**STATEMENT OF JACK BLACKWELL, REGIONAL FORESTER, INTERMOUNTAIN REGION, U.S. FOREST SERVICE, ACCOMPANIED BY BEN SIMINOE, ASSISTANT FOREST SUPERVISOR, HUMBOLDT-TOIYABE NATIONAL FOREST; AND ROBERT D. WILLIAMS, FIELD SUPERVISOR, NEVADA FISH AND WILDLIFE OFFICE, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF INTERIOR**

**STATEMENT OF JACK BLACKWELL**

Mr. BLACKWELL. Madam Chairman and Congressman Gibbons, thank you for the opportunity to be with you today and discussing management of the South Jarbidge Canyon on the Humboldt-Toiyabe National Forest. I'm accompanied by the Assistant Forest Supervisor, Ben Siminoe.

The Forest Service faced a dilemma in providing public access in South Jarbidge Canyon while maintaining fisheries habitat and properly functioning condition of the watershed. The alternative of rebuilding the Forest Road Number 64, known as the South Canyon Road, has been analyzed extensively and the Forest Service does not believe this is a feasible option. In my testimony, I will summarize the analysis of South Jarbidge Canyon and the events that have affected the management of this canyon and its aquatic resources.

South Canyon Road is a narrow canyon with steep slopes prone to periodic and brief flows. Forest Road Number 64 is located adjacent to the West Fork of the Jarbidge River in the bottom of the canyon. Records since the 1950's indicate that floods have washed out portions of this road about once every 10 years.

Prior to 1995, the Forest Road Number 64 was roughly two miles long and terminated at a parking area at the Snowslide Trailhead that includes an outhouse and a horse loading ramp. Along the road about one-half mile from the parking area is another outhouse and four primitive campsites. In 1995, the flood washed out portions of the upper 1.5 miles of the road.

In 1997, the Humboldt-Toiyabe National Forest prepared an environmental assessment and the District Ranger issued the decision to rebuild the forest road. I reviewed that 1997 decision as part of an administrative appeal, and I remanded it to the Humboldt-Toiyabe National Forest for further analysis on the effects to

the bull trout and other aquatic species from road construction and from possible future road failure.

The West Fork of the Jarbidge River is home to a unique population of bull trout through its isolation and its location on the southern boundary of bull trout habitat. On June 13, 1998, the Fish and Wildlife Service proposed listing the Jarbidge River bull trout under the ESA. In April 1999 the bull trout were formally listed as a threatened species. The listing requires the Forest Service to consult with the U.S. Fish and Wildlife Service on agency actions such as construction to ensure the trout survival is not jeopardized.

In late June 1998, the Humboldt-Toiyabe National Forest released the second EA for public comment. Although this environmental assessment included alternatives for rebuilding the road, the preferred alternative was a 1.5 mile lofted trail to access the Snowslide Trailhead. The Forest Service has not made a final decision regarding reconstruction of the road or trail and when it does, it also will be subject to administrative appeal and possible judicial review.

While the Forest Service continued to evaluate the environmental effects of the various alternatives for the forest road, the Elko County Commission directed its county road department to reconstruct the road. This reconstruction work began on July 21 but was halted on July 22, 1998 when the Nevada Department of Environmental Protection and U.S. Army Corps of Engineers issued cease and desist orders.

The section of the South Jarbidge Canyon altered by the construction activity was extremely unstable and at risk for failure. To prevent further damage to the aquatic habitat of the Jarbidge River, stabilization work on the river channel and surrounding floodplain was necessary before the onset of winter.

In November and December 1998, the Forest Service and contracted crews rehabilitated the damaged area, stabilized the site before spring. Had the site been left in an unstable condition there could have been severe damage during the spring snowmelt and runoff. As we've heard, the rehabilitation cost was about \$400,000.

On August 27, 1999, the U.S. Attorney's Office, District of Nevada, notified Elko County that it intended to file suit against the county to recover the cost of the 1998 stabilization work and to address violations of the Clean Water Act unless some resolution of this dispute could be negotiated. Negotiations are ongoing.

Two months ago, three individuals announced they were organizing a work party to reopen Forest Road Number 64. If this event had gone forward as planned, damage could have occurred to the bull trout and its habitat.

On October 7, 1999, the United States filed suit against the three individuals and the work party. In connection with the lawsuit, a U.S. District Court judge issued a temporary restraining order enjoining the work party, due to likely violations of the Endangered Species Act. Subsequently on October 21, 1999, the same district judge joined Elko County in the lawsuit against the work party and directed all parties to participate in settlement negotiations to be mediated by the U.S. Institute for Environmental Conflict Resolu-

tion. We hope that a settlement at this time can be reached to resolve the matter once and for all.

In conclusion, the Forest Service and the other involved State and Federal agencies look forward to bringing this issue to closure. NEPA analysis of Forest Road Number 64 is ongoing. The District Ranger will issue another decision for public review and comment in the near future. We sincerely hope that Elko County will actively participate in this established planning process.

Madam Chairman, this concludes my statement and I would be happy to answer any questions you may have.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Blackwell.

[The prepared statement of Mr. Blackwell follows:]

STATEMENT OF  
JACK A. BLACKWELL  
REGIONAL FORESTER, INTERMOUNTAIN REGION  
USDA FOREST SERVICE

Before the Subcommittee on Forests and Forest Health  
U.S. House of Representatives Committee on Resources  
Concerning  
MANAGEMENT OF SOUTH JARBIDGE CANYON  
ON THE  
HUMBOLDT-TOIYABE NATIONAL FOREST

Saturday, November 13, 1999  
Elko, Nevada

MADAM CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to be with you today to discuss management of the South Jarbidge Canyon in the Jarbidge Ranger District of the Humboldt-Toiyabe National Forest. Today I am accompanied by Ben Siminoe, Assistant Forest Supervisor of the Humboldt-Toiyabe National Forest.

The Forest Service faces the dilemma of providing public access in South Jarbidge Canyon, while maintaining fisheries habitat and proper functioning condition of the watershed. The alternative of rebuilding the Forest Road #64, known as the South Canyon road, has been analyzed extensively, and the Forest Service does not believe this is a feasible option.

In my testimony, I will summarize the analysis of South Jarbidge Canyon and the events that have affected the management of this canyon and its aquatic resources.

South Jarbidge Canyon is a narrow canyon with steep slopes prone to periodic debris flows. Forest Road #64 is located adjacent to the west fork of the Jarbidge River in the bottom of the canyon. The road is owned by the United States, and managed by the Forest Service. The road was built around 1910 or 1911 by miners accessing their claims. Over the years, local residents, Elko County, and the Forest Service have maintained the road. Records since the 1950's indicate that floods have washed out portions of this road about once every 10 years. Prior to 1995, Forest Road #64 was

roughly two miles long and terminated at a parking area that includes an outhouse and a horse loading ramp. Along the road, about one-half mile from the parking area, is another outhouse and four primitive campsites. In 1995, a flood washed out portions of the upper 1.5 miles of Forest Road #64.

In 1997, the Humboldt-Toiyabe National Forest prepared an environmental assessment (EA) and the District Ranger issued a decision to rebuild Forest Road #64. The Regional Forester reviewed the 1997 decision as part of an administrative appeal and remanded it to the Humboldt-Toiyabe National Forest for further analysis on the effects to bull trout and other aquatic species from road construction and from possible future road failure. The west fork of the Jarbidge River is home to a unique population of bull trout due to its isolation and its location on the southern boundary of bull trout habitat.

On June 13, 1998, the Fish and Wildlife Service proposed listing the Jarbidge River bull trout under the Endangered Species Act. In April, 1999, the bull trout were formally listed as a threatened species. The listing requires the Forest Service to consult with the U.S. Fish and Wildlife Service on agency actions, such as construction or reconstruction, to ensure the trout's survival is not jeopardized.

In late June, 1998, the Humboldt-Toiyabe National Forest released the second EA for public comment. Although this EA included alternatives for rebuilding the road, the preferred alternative was a 1.5 mile lofted trail to access Snowslide Trailhead. In the EA, the Humboldt-Toiyabe National Forest proposed to provide access to the area in a way that would allow for management of the watershed and associated fisheries while addressing the economic needs of the town of Jarbidge. The Forest Service has not made a final decision regarding reconstruction of the road and when it does, it will be subject to administrative appeal and judicial review.

Elko County did not submit comments during the 30 day comment period for the EA. However, the County did make public statements claiming that Forest Road #64 was needed for emergency fire protection, to help provide camping and picnicking opportunities, and to provide access to the elderly and handicapped. The Forest Service suggested that campsites could be developed in other locations to meet this need. A trail alternative that would allow access for all-terrain vehicles has been added to the analysis and is being considered in the ongoing National Environmental Policy Act

(NEPA) process. Only recently has Elko County claimed ownership of Forest Road #64 under RS2477.

While the Forest Service continued to evaluate the environmental effects of the various alternatives for Forest Road #64, Elko County Commission directed its county road department to reconstruct Forest Road #64. This reconstruction work began on July 21 but was halted on July 22, 1998, when Nevada Department of Environmental Protection and U.S. Army Corps of Engineers issued cease and desist orders.

The section of South Jarbidge Canyon altered by the County's construction activities was extremely unstable and at risk for failure. To prevent further damage to the aquatic habitat of the Jarbidge River, stabilization work on the river channel and surrounding floodplain was necessary before the onset of winter. In November and December 1998, Forest Service and contracted crews rehabilitated the damaged area. To stabilize the site before the spring because had the site been left in a unstable condition, there could have been severe damage during spring snowmelt and runoff. The rehabilitation cost was about \$400,000.

Senator Harry Reid formed a working group consisting of representatives from Elko County, the U.S. Fish and Wildlife Service, the Forest Service, Trout Unlimited, Nevada Department of Wildlife, Congressman Gibbons' office, and several fisheries experts to discuss whether Forest Road #64 could be rebuilt without harm to the aquatic habitat. In April of 1999, the group consensus was that, if rebuilt, Forest Road #64 would adversely impact the aquatic habitat and the bull trout.

On August 27, 1999, the U.S. Attorney's Office, District of Nevada, notified Elko County that it intended to file suit against the County to recover the cost of the 1998 stabilization work and to address violations of the Clean Water Act unless some resolution of this dispute could be negotiated. Negotiations are ongoing.

Two months ago, three individuals announced that they were organizing a work party to re-open Forest Road #64. If this event had gone forward as planned, damage could have occurred to the bull trout and its habitat. On October 7, 1999, the United States filed suit against the three individuals and the work party. In connection with the lawsuit, a U.S. district court judge

issued a temporary restraining order enjoining the "work party" due to likely violations of the Endangered Species Act that would occur.

Subsequently, on October 21, 1999, the same district judge joined Elko County in the lawsuit against the "work party" and directed all parties to participate in settlement negotiations to be mediated by the U.S. Institute for Environmental Conflict Resolution. We hope that a settlement at this time can be reached to resolve the matter once and for all.

**SUMMARY:**

In conclusion, the Forest Service and the other involved state and federal agencies look forward to bringing this issue to closure. The NEPA analysis of Forest Road #64 is ongoing and the District Ranger will issue another decision for public review and comment in the near future. We sincerely hope that Elko County will actively participate in this established planning process.

Madam Chairman, this concludes my statement. I will be happy to answer questions you may have.

Mrs. CHENOWETH-HAGE. The Chair recognizes Mr. Williams.

**STATEMENT OF ROBERT D. WILLIAMS**

Mr. WILLIAMS. Thank you, Madam Chairman and Congressman Gibbons, for the opportunity to meet with you today to discuss the bull trout and the South Canyon Road. My name is Bob Williams. I'm the Field Supervisor for the U.S. Fish and Wildlife Service, Nevada Field Office.

The Fish and Wildlife Service's mission is working with others to conserve, protect, and enhance fish and wildlife and plants and their habitats for the continuing benefit of the American people. The actions taken by the Fish and Wildlife Service for the bull trout and the Jarbidge River system of Nevada and Idaho are consistent with that mission.

Since 1995 the Fish and Wildlife Service has at the request of the U.S. Forest Service provided comments and professional opinions with respect to the reconstruction of the South Canyon Road and its effects on bull trout. From the spring of 1995 when flooding washed out the one and a half miles of dirt road until today, the Service has provided consistent input with respect to the effects of road reconstruction on the Jarbidge River bull trout population.

However, because of the range-wide listing of bull trout during this same period, the Service's biological opinion has been elevated in importance and the Forest Service is now required to consult on any alternatives selected. For the record, the Fish and Wildlife Service considered listing bull trout long before the 1995 flood event. The Service in 1994 found the Jarbidge River population warranted for listing as a result of a 1992 petition, but precluded the listing of that population as well as the other populations in the coterminous United States due to other workload.

In 1996, the Service was ordered or directed by the Oregon Federal court to reconsider the warranted but precluded finding. The Service in March 1997 found the Jarbidge population not warranted based solely on the information that was in the 1994 administrative record. In December 1997, the same court ordered us to reconsider our March 1997 finding. But the court allowed us to use all available information rather than limiting it to the administrative record in 1994. All of the information was available in our decision to list. Our analysis, which included information from the Nevada Division of Wildlife as well as other sources, led us to propose the species as threatened in June 1998.

As I stated earlier, since 1995 Service staff, Fish and Wildlife Service staff have participated in numerous reviews with the Forest Service and State and local agencies with regard to the South Canyon Road. Through the NEPA process in 1997, the Service recommended the Forest Service close this section of road in order to minimize the impacts to bull trout and the aquatic environment. This is before we were ordered to reconsider our listing decision in December 1997 and long before we proposed the species as threatened.

In the spring of 1998 the bull trout was proposed for listing. We conferred with the Forest Service on their alternatives, once again providing comments supporting closure of the road. Again this was before the bull trout was actually listed.

However, as we know, the bull trout was emergency listed as endangered in August 1998 as a result of unauthorized reconstruction of the South Canyon Road that occurred in July 1998. The Service concluded that continued reconstruction of the South Canyon Road would impact bull trout in the West Fork of the Jarbidge River and the aquatic environment.

In the fall of 1998, at the request of Senator Reid, the Fish and Wildlife Service in partnership with the Forest Service and others met to evaluate alternatives to the South Canyon Road reconstruction that would not affect or impact bull trout. This effort in our opinion failed to identify an alternative that was acceptable to everyone.

In October 1999, the Service requested the U.S. Attorney to issue a temporary restraining order against a group of local citizens who intended to reopen the South Canyon Road because proposed activities would likely result in harm and harassment of bull trout and would constitute a violation of Section 9 under the Endangered Species Act. It is the Service's position that any unpermitted action which has not undergone Section 7 consultation wherein the Service can identify means to minimize the adverse effects to a listed species such as bull trout would constitute a taking under the Endangered Species Act.

The Service will continue to participate in the NEPA process with the Forest Service and their decision to provide access to the Jarbidge Wilderness. We are prepared to complete a biological opinion as required under Section 7 of the Endangered Species Act once a preferred alternative is identified.

The Service is presently forming a recovery team to prepare a recovery plan for the Jarbidge River bull trout population along with the other distinct population segments. We hope that representatives from the State, local, and Federal agencies, environmental and recreational organizations and concerned citizens will actively participate. We recognize that the bull trout cannot be recovered without the participation and support of local governments and citizens.

The Service will also be working with the Nevada Division of Wildlife and Idaho Department of Fish and Game to develop the bull trout conservation and management plan for the Jarbidge River under the authority of the special rule that was identified in the final rule.

Thank you, Madam Chairman, for the opportunity to comment.  
[The prepared statement of Mr. Williams follows:]

**TESTIMONY OF ROBERT D. WILLIAMS, FIELD SUPERVISOR, NEVADA FISH AND WILDLIFE OFFICE, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE RESOURCES COMMITTEE, SUBCOMMITTEE ON FORESTS AND FOREST HEALTH, FIELD HEARING IN ELKO, NEVADA ON THE SOUTH JARBIDGE CANYON ROAD**

November 13, 1999

Madam Chairman and members of the subcommittee, thank you for the opportunity to meet with you here today to discuss bull trout and the South Jarbidge Canyon Road. My name is Bob Williams, I am the Field Supervisor for the U.S. Fish and Wildlife Service's (Service) Nevada Office.

During June 1995, portions of the upper 1.5 miles of a U.S. Forest Service (USFS) road, known as the South Canyon Road, leading to the Jarbidge Wilderness Area were washed out during a rain flood on the West Fork of the Jarbidge River. The West Fork of the Jarbidge River contains a large proportion of the Jarbidge River bull trout population. At the time, the bull trout was a species we were evaluating for possible listing under the Endangered Species Act (ESA).

In June 1998, the USFS released for public comment an environmental assessment under the National Environmental Policy Act (NEPA) on options for restoring public access to the Snowslide wilderness trail head via the South Canyon area. Service staff participated in numerous reviews with the USFS and state and local agencies on what actions to take with regards to rebuilding the road. To minimize impacts to bull trout the Service recommended the USFS close the 1.5 mile section of this road, which dead ends into the Jarbidge Wilderness, to vehicles in favor of a trail.

On June 10, 1998, the Service proposed to list the Jarbidge River population of bull trout as threatened under the ESA. It is the opinion of the Service and other recognized bull trout experts that the Jarbidge population is small, isolated, and vulnerable to extinction. This opinion is supported by the information in the record to date, which documents that this population is currently characterized by low numbers of resident fish that are isolated in headwater tributaries with restricted distribution and very few remaining migratory fish present in the larger streams. The Jarbidge population is isolated from other bull trout populations by more than 150 miles of unsuitable habitat. It is also the southernmost population of bull trout in the United States, which means it occupies a unique ecological niche, and its loss would result in a substantial modification of the species' range. Threats to the Jarbidge River bull trout population (identified from the information in the record) were habitat degradation from past and ongoing land management activities such as mining, road construction, road maintenance, grazing, angling, competition with non-native fish species, and chance events such as the debris torrents that occurred in 1995. Past and, to some extent, continuing habitat degradation continues to limit and adversely affect the population.

Following the publication of the proposed rule, the USFS requested to confer with the Service under section 7 of the ESA regarding the preferred alternative (an enhanced foot trail) identified in the USFS environmental assessment. The ESA requires action agencies to confer with the Service on any agency action likely to jeopardize the continued existence of any species

proposed to be listed. During the USFS's ongoing NEPA public comment period, the Service provided preliminary comments on the preferred alternative. Both the section 7 conference proceedings and NEPA review were suspended due to activities that occurred on the West Fork of the Jarbidge River in July 1998.

In July 1998, Elko County, at the direction of the Elko County Commissioners, initiated reconstruction of the South Canyon Road without Federal or State authorization. This activity was halted shortly after its initiation; after the Nevada Department of Environmental Protection and the U.S. Army Corps of Engineers expressed concern to the County that the activity violated the Clean Water Act. The continued reconstruction of 1.5 miles of the South Jarbidge Canyon Road would have resulted in direct and indirect impacts to known occupied bull trout habitat in the West Fork of the Jarbidge River, and aquatic habitat farther downstream in the mainstem Jarbidge River. Direct and indirect impacts identified included the potential take of juvenile and adult bull trout and eggs, alteration of stream flow and water temperature, increased sediment transport, decreased invertebrate food production, and disruption of bull trout migration and spawning. This combination of impacts had the potential to affect the future survival and recovery of the Jarbidge River bull trout population. For these reasons, the Service emergency listed the Jarbidge River bull trout population on August 11, 1998.

During multiple agency field reviews of the South Canyon area, the Service documented concerns regarding stability of the river channel and road bed created by the reconstruction effort. Specific concern was raised about bull trout passage during the remainder of the spawning season. In November and December 1998, restoration was carried out in the river channel and flood plain along the impacted area of the Jarbidge River. These restoration activities were fully coordinated with and authorized by the Service through formal consultation under section 7 of the ESA.

On April 8, 1999, the Service published a final rule to list the Jarbidge River population of bull trout as threatened under the ESA. The published final rule included a 4(d) special rule applicable to the listing of the Jarbidge River population. This special rule allows for incidental take of bull trout, until April 9, 2001, for educational, conservation or scientific measures, as well as for recreational fishing activities. Publication of the special rule was possible because of existing angling regulations and other bull trout conservation measures developed by the States of Idaho and Nevada which effectively regulate take of bull trout in the Jarbidge River system. The special rule also provides the possibility of extending the exceptions to the take prohibitions if the States develop a conservation plan the Service approves.

In April 1999, the working group formed in the fall of 1998 by Senator Reid to identify and review access alternatives met for a single-day workshop. The group, consisting of the USFS, the Service, representatives from Elko County, Trout Unlimited, and staff from Congressman Gibbon's and Senator Reid's offices, had previously met several times. The April 1999 meeting included the participation of several bull trout experts and focused on various access alternatives and their potential impact on aquatic habitat and bull trout. The bull trout experts were selected based on their technical or scientific experience with bull trout or effects of roads on watersheds. The panel of experts reviewed several alternatives and reached the consensus that a road located in the area of the South Canyon would have adverse effects on aquatic habitat and bull trout. A second alternative was discussed and agreed upon by representatives from Elko County Commission but later rejected by the full County Commission.

In September 1999, a group of local citizens announced their intention to reopen the South Canyon Road using manual labor and horse-drawn equipment. On October 7, 1999, a U.S. District Court in Nevada issued a Temporary Restraining Order (TRO) under section 9 of the ESA. The TRO stated that the "threatened acts could impair the bull trout ability to breed, feed or have adequate shelter and would constitute a "take" under the Endangered Species Act."

The Service will continue to participate in the NEPA process with the USFS and will prepare a biological opinion once a preferred access alternative has been identified.

The Service is forming a local Recovery Unit Team to prepare a recovery plan for the Jarbidge River bull trout population, as required by the ESA. We encourage and will welcome the participation of representatives from state, local and Federal agencies, environmental and recreational organizations, and concerned individuals in the recovery planning process.

The Service also will be working with the Nevada Division of Wildlife and Idaho Department of Fish and Game in the development of a bull trout conservation and fishery management plan as identified in the April 8, 1999, final rule.

Madam Chairman, this concludes my testimony. I will be happy to answer any questions that you or members of the Subcommittee may have. Again, I thank you for giving the Fish and Wildlife Service the opportunity to testify.

Mrs. CHENOWETH-HAGE. I want to thank the witnesses for their testimony. I recognize Mr. Gibbons for his questions.

Mr. GIBBONS. Thank you very much, Madam Chairman.

Mr. Blackwell, it's awfully encouraging to sit here and listen to your remarks and know that, contrary to recent news reports, that the United States Forest Service is looking forward to working with the citizens of Elko County to put this issue behind us in what the chairman of the committee says, in a rationally responsible manner. So I thank you for your comments along with that.

Mr. Blackwell, are you familiar with the repair efforts that the Forest Service undertook with regard to the road in question?

Mr. BLACKWELL. Yes, I am, Congressman.

Mr. GIBBONS. Were you there present when they undertook those efforts?

Mr. BLACKWELL. No, I was not. Subsequent to them I've personally walked every inch of that washed out mile-and-a-half section.

Mr. GIBBONS. Did you see any reports as to how they accomplished their repair work?

Mr. BLACKWELL. Well, the reports I had were verbal. I haven't seen any of the film that has been referred to today. I have seen some pictures. I stand corrected, I have seen pictures as well.

Mr. GIBBONS. Did the Forest Service put any equipment into the stream?

Mr. BLACKWELL. I believe so. Mr. Siminoe can answer more accurately, but I believe we did, yes.

Mr. GIBBONS. Now, let me ask another question. Did the Forest Service do a full Section 7 consultation before they went in and entered into the repair work?

Mr. BLACKWELL. It is my understanding we did, yes.

Mr. GIBBONS. Let me ask another question. How do you plan to handle the full outhouse?

Mr. BLACKWELL. Congressman, I used the outhouse and I can testify it's full. It looks like it's surface runoff that is getting into that outhouse and supposedly the sealed vault is full of what appears to be rainwater and surface runoff mostly. We haven't finalized what we are going to do about that. We will have to consult over it.

What we talked about when I was up there, and I asked the same question you did, we will try to get permission to pump most of the liquid, which appears to be mostly water, out on the hillside and then we will have to remove that more solid stuff to a treatment facility.

Mr. GIBBONS. Mr. Blackwell, what is the Forest Service position regarding access to the forest for the disabled?

Mr. BLACKWELL. The Forest Service always tries to work with access so that we make it as easy as possible for the physically disabled.

Mr. GIBBONS. Now, you have personally walked this area that you have repaired?

Mr. BLACKWELL. Correct.

Mr. GIBBONS. Can a person access that area, like Mr. Salicchi, who just testified, and access the forest using that same trail that you've now walked?

Mr. BLACKWELL. No. And I would like to expand, though, and point out it's my understanding that there are approximately 12 to 14 other motorized access points to the Jarbidge Wilderness.

Mr. GIBBONS. To that area?

Mr. BLACKWELL. To that area, I would say no.

Mr. GIBBONS. Who did you contract with to do the repair on the South Canyon Road?

Mr. BLACKWELL. I would have to refer that question to Mr. Siminoe.

Mr. GIBBONS. Mr. Siminoe?

Mr. SIMINOE. Congressman Gibbons, we contracted with a firm in Bozeman, Montana; Confluence, Inc. They provided project oversight. It was a mixture of their crews and forest camp crews that did the work.

Mr. GIBBONS. You were obviously there during the work?

Mr. SIMINOE. Yes.

Mr. GIBBONS. Did they put equipment into the stream?

Mr. SIMINOE. Yes, they did.

Mr. GIBBONS. Their equipment in the stream, was that of any more egregious nature than what the county did?

Mr. SIMINOE. They spent a period of time in the stream that was permitted, I might say, by Army Corps of Engineers, Nevada Department of Environmental Protection.

Mr. GIBBONS. Did you note any sediment or sedimentation of the river caused by their activity?

Mr. SIMINOE. There was sediment produced during the rehabilitation activities.

Mr. GIBBONS. What impact did that have to the bull trout?

Mr. SIMINOE. We don't know. We had our fish management practices in place. But again there was sediment produced.

Mr. GIBBONS. Mr. Blackwell, why did it cost \$420,000 to repair 900 feet of dirt road?

Mr. BLACKWELL. I, Congressman, do not have all the answers. I can tell you that the design of that involved, the design of that and repair involved one of the best firms that we could find in the country, and I think that because of that it didn't come cheap.

Mr. GIBBONS. You couldn't find somebody here in Elko County to do the work?

Mr. BLACKWELL. Not that design work, no, sir.

Mr. GIBBONS. Did you cut down trees?

Mr. BLACKWELL. Did we cut down trees?

Mr. GIBBONS. In your repair work?

Mr. BLACKWELL. I don't know that trees were cut down.

Mr. GIBBONS. Were they knocked down? Were they felled by some manner?

Mr. BLACKWELL. I believe they were. Again, I refer that answer to Mr. Siminoe.

Mr. GIBBONS. Mr. Siminoe?

Mr. SIMINOE. During reconstruction activities there were some trees that were removed. However, there was every effort made to maintain the tree cover there. The fact is, we had hand crews go in and rake the dirt and gravel from around existing trees that had been damaged during the county's activities.

Mr. GIBBONS. I guess the issue gets down to the ownership of the road, Mr. Blackwell. Do you maintain that the Forest Service owns the road?

Mr. BLACKWELL. The Forest Service as an agency doesn't own any roads. The Federal Government where applicable owns roads. We manage the land and the improvements like roads within the National Forests.

Our position is that the Federal Government does indeed own that road.

Mr. GIBBONS. Did the Forest Service or the Federal Government pay for its construction?

Mr. BLACKWELL. It's my understanding that that road was constructed around 1910 or 1911. I don't know who paid for the construction of that road. I do know that based on my walk of it, I was told about several major bridges where the Forest Service has contributed greatly to the expense of constructing that road.

Mr. GIBBONS. Mr. Blackwell, you moved the sign on the wilderness area to the end of the now existing road. Does that literally move the boundary of the wilderness area?

Mr. BLACKWELL. The boundary of the wilderness area has not been moved and we have no intention to move it. When I heard the testimony today, that was new news to me. I have no knowledge of that sign being moved. I would like to look into that and get an answer back to you.

Mr. GIBBONS. Maybe Mr. Siminoe can tell us if he moved the sign.

Mr. SIMINOE. I would like to address that. The wilderness boundary sign is still at the Snowslide Trailhead. There is a road closure sign at the Pine Creek Campground when the road washed out, just from a public safety standpoint. We have no intention to move the wilderness boundary sign down to Pine Creek.

Mr. GIBBONS. Mr. Blackwell, over the last several months the State of Nevada in particular and many other States have endured a great number of fires, wild land fires. There is a problem in our community with these fires and the number of acres that have burned. What is the Forest Service policy now with accessing these fires without roads, the problems that that is going to cause in terms of fire suppression, management of fires in these Forest Service areas?

Mr. BLACKWELL. Congressman, I refer you to, which I would be glad to supply for the record, to a Nevada Division of Forestry assessment of Forest Road Number 64 at South Canyon, and I would like to read just a couple of passages from that, if I could, from this state assessment.

"In the event of a fire start in the area of Forest Road 64, local initial attack personnel and equipment could access the area, size up the situation, and make initial attack provided personnel arrive while the fire was still small, close to the road, and fire conditions were not too high. With the topography of the area it is unlikely that there would be a fire start from natural causes"; that is, lightning, "close to the road or at the bottom of the canyon."

"A fire above the canyon's bottom would require fire personnel to walk into the scene, provided the fire behavior was light. As the fuels in the area become dry and the fire danger increases, the fire

has the potential to become large and uncontrolled. In the event of a catastrophic fire in the area, it would be extremely unsafe to place any fire personnel or equipment in the vicinity of the Forest Road Number 64. In my opinion, the closure of Forest Road 64 is not an immediate threat to the community of Jarbidge in the event of a large fire.”

This is signed by the local fire official for the Division of Forestry, and is accompanied by a cover letter from the regional manager saying he concurs with this report.

Mr. GIBBONS. So you feel that the closure of this road would have no impact on the ability of the Forest Service or the State of Nevada to fight a fire in the area provided that it was close to the road and it's small in size when it was in its early stages?

Mr. BLACKWELL. Yes, I wouldn't say no impact. To paraphrase what I just read, if there was a start in the bottom and you got there quickly, the road would help. Of course, the road would also provide access to humans that cause the human-started fires. If it's a lightning start, it's going to be high on the ridge. Lightning rarely strikes in the bottom of a canyon.

If the fire behavior is light, the road could still contribute some toward the initial attack. If it's catastrophic fire conditions, firefighters don't belong anywhere near that road because of the danger of entrapment.

Mr. GIBBONS. I would say that would be true in any fire. Unfortunately, we can't predict or preempt the actions of Mother Nature. Nor can we accurately project where we are going to be at any one given time with regard to where she may have an effect.

This road had been washed out in the past and it was repaired.

Mr. BLACKWELL. Correct.

Mr. GIBBONS. What impact did it have then on the bull trout?

Mr. BLACKWELL. Well, it undoubtedly had some effect on the bull trout, both negative and positive, I would say.

Mr. GIBBONS. What information do you base that on?

Mr. BLACKWELL. I base that strictly on my own field reconnaissance of that area.

Mr. GIBBONS. In between all these periods when it was washed out over a period of 10 years at a time or once each decade, basing your opinion on that?

Mr. BLACKWELL. Yes, Congressman. I can look at the topography of that canyon and visualize these periodic storm events that contribute enormous amounts of runoff and sediment into the canyon bottom. And to repair that, I believe, would have been both beneficial and have some short-term negative effects to the bull trout.

Mr. GIBBONS. Have you studied the bull trout in the East Fork of the Jarbidge River?

Mr. BLACKWELL. No, sir, I have not.

Mr. GIBBONS. Have you looked at that canyon?

Mr. BLACKWELL. Only from the confluence of where the two rivers come together along the road. I have looked at that, that's all.

Mr. GIBBONS. Perhaps Mr. Williams has looked at the population of bull trout in the East Fork of the Jarbidge and compared that to the bull trout in the West Fork. Would you tell us what your findings are?

Mr. WILLIAMS. The Fish and Wildlife Service doesn't have specific findings. We would rely on the Division of Wildlife information for those findings.

Mr. GIBBONS. As we heard from Mr. Crawforth, that the Fish and Wildlife Service gets its information from the State of Nevada with regard to the bull trout population, which he indicated through his studies did not indicate a need or basis by which it should have been listed; or that the road, or the repair of the road would have had an impact on the bull trout?

Mr. WILLIAMS. Well, I guess—.

Mr. GIBBONS. You were here sitting in the audience for his testimony?

Mr. WILLIAMS. I was.

Mr. GIBBONS. Did you hear him?

Mr. WILLIAMS. I did.

Mr. GIBBONS. Do you disagree with him?

Mr. WILLIAMS. With respect to the Division of Wildlife data, we have used other information in terms of our listing actions. I don't disagree, you know, with the information that has been presented by the Division of Wildlife in 1994 or, you know, the report that we received in 1999. The use of conclusions of the data is what we do not agree with.

Mr. GIBBONS. OK. Madam Chairwoman, my time has elapsed. I certainly thank you for this opportunity and turn it back to you.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Gibbons.

Mr. Blackwell, I wanted to ask you, why did it take the Forest Service 6 weeks to fix the damage that was supposedly done by the county in 1½ days?

Mr. BLACKWELL. I can repeat some of the information Mr. Siminoe gave you, but it might be better if you allow him to answer that.

Mrs. CHENOWETH-HAGE. All right. Mr. Siminoe?

Mr. SIMINOE. Madam Chairman, thank you. Our approach to the situation was entirely different. The county's desire was to go in and reestablish the road through the washed out section. When we went in to rehabilitate it, we went in with a desire to rehabilitate the watershed, not just the road. So our objectives were different.

We totally rebuilt the stream channel, adding the complexity necessary to support healthy aquatic life in that section of the stream. It was a much larger job than if we had just gone in and put the road to bed, so to speak.

Mrs. CHENOWETH-HAGE. I've got to say with all due respect that last September I sent my staff out to meet with you, Mr. Siminoe, Mr. Gibbons sent his staff in for an on-the-ground meeting at the site, and you refused to meet with the Congressional staff. Could you tell me why?

Mr. SIMINOE. Yes, definitely. That was on advice of the U.S. Attorney's Office. Because we are in litigation, they felt it would not be proper for me to meet. As I expressed to your staffer on the telephone, had I been able to I would have enjoyed meeting with them, being out on the ground. That invitation holds to deal with any issue that is not tied up in litigation.

Mrs. CHENOWETH-HAGE. Who was the attorney that worked, gave you this advice?

Mr. SIMINOE. Which U.S. Attorney?

Mrs. CHENOWETH-HAGE. Yes.

Mr. SIMINOE. Steve Meyrey, Chief of Civil in the Las Vegas office.

Mrs. CHENOWETH-HAGE. Did he give you a written opinion?

Mr. SIMINOE. He did not.

Mrs. CHENOWETH-HAGE. He didn't give you a written opinion?

Mr. SIMINOE. He did not. That was verbal.

Mrs. CHENOWETH-HAGE. That's unfortunate.

I want to get back to this issue about the sign. You heard it testified to by an attorney, member of the bar, and county commissioners under oath there was a sign placed at the point of reconstruction that indicated this was the beginning of the wilderness area. You indicate there was no sign.

I want to give you a chance again to rethink that. Are you sure there was no sign placed there? It's been testified there's pictures of the sign that has been placed at that point.

Mr. SIMINOE. The way I understood the question was whether or not the wilderness boundary sign had been moved to Pine Creek. My reply was it had not been. I also replied that there was a road closed sign at the end of Pine Creek Campground where the road washed out.

Mrs. CHENOWETH-HAGE. That road closed sign indicated this was the beginning of the wilderness?

Mr. SIMINOE. It did not.

Mrs. CHENOWETH-HAGE. All right. I will look forward to seeing your pictures and maybe we can communicate further on that.

Mr. SIMINOE. I would look forward to that.

Mrs. CHENOWETH-HAGE. Your contractor out of Bozeman, Montana, how was he awarded the contract? Was it a unit price contract or was it hourly? Or what?

Mr. SIMINOE. You know, I don't recall exactly how that contract was handled. We have a contracting office in Boise, Idaho, that handled it for us.

Mrs. CHENOWETH-HAGE. In Boise?

Mr. SIMINOE. Yes, uh-huh.

Mrs. CHENOWETH-HAGE. So you don't know, was it let out with competitive bid? Public notice?

Mr. SIMINOE. I think it was a primary source contract. We had gone out and looked at a number of firms that had that skill and experience in doing those type of jobs. But I would have to defer. And if you would put your question in writing, I would be glad to find you an answer and provide it to the committee.

Mrs. CHENOWETH-HAGE. If it will help you, I will put it in writing. I will also ask you how much was the contract for?

Mr. SIMINOE. Again, this is a matter of litigation and I can't go into that kind of specifics. Plus I honestly do not remember.

Mrs. CHENOWETH-HAGE. Mr. Siminoe, in working with the Forest Service in Washington, DC., they assured me you would be very open to my questions.

Mr. SIMINOE. That would be my preference.

Mrs. CHENOWETH-HAGE. I would not issue subpoenas in believing that they told me you would be open to the questions and answer the questions. It should be a simple matter of record about the con-

tract and what the price of the contract was. That is something that should never be withheld from the public, whether I'm asking or any citizen is.

Let me ask you again: What was the cost of the contract?

Mr. SIMINOE. And my reply is the same. I really don't recall. I will be glad to provide that information to you through the U.S. Attorney's Office.

Mrs. CHENOWETH-HAGE. Would you please provide us a copy of the contract?

Mr. SIMINOE. Yes.

Mrs. CHENOWETH-HAGE. Mr. Blackwell, in your testimony you state that the South Canyon Road was built around 1910 or 1911. Do you dispute Bill Price's testimony which states that the route has been in use by Native Americans since prehistoric times and by trappers and miners and grazers since as early as 1825?

Mr. BLACKWELL. Madam Chairman, there is nothing I would like to do better than to talk about the merits of this case. But once again, under direct orders from the U.S. Attorney, because this matter is in litigation, I am prohibited from discussing the merits of the case.

Now, I can tell you generally if that case, if that information that we heard holds up in the legal dispute, then I think there's a strong case for the county. The Forest Service believes that the U.S. Government has made an equally strong case and the courts will resolve this.

The reason I can talk about direct orders from the U.S. Attorney is because I tried to bring that material here with me today, the material provided by the Forest Service to the U.S. Attorney and the courts, and I was prohibited from doing that. I am told that that will be provided sometime next week.

As fast as that's provided, we will get it to you for inclusion in the record. Through the U.S. Attorney, I might add.

Mr. GIBBONS. Would the Chairman yield for 1 second?

Mrs. CHENOWETH-HAGE. Yes, I may.

Mr. GIBBONS. Madam Chairman, let me indicate that the U.S. Congress is not a party to any litigation the Forest Service is involved in. I would find it unusual and highly improper for the U.S. Attorney's Office to deny Congress access to information based on any litigation that it's involved with that is not bringing the U.S. Congress in as a party. Congress has an oversight role to play.

Whether or not that information is part of evidence that is used in behalf of one party or the other is immaterial to an oversight hearing at the behest of Congress. It is improper for the United States Attorney's Office, and unless you can show us the legal authority to deny Congress access to information based on a judicial proceeding that does not involve the U.S. Congress as a party, I would be surprised to find it upheld that you could deny Congress that kind of information at this point in time.

Madam Chairman, I'll yield it back to you.

Mrs. CHENOWETH-HAGE. Thank you. I would like the name of the attorney who gave you that advice.

Mr. BLACKWELL. This advice was provided on a telephone conference to our office's General Counsel and Mr. Siminoe, who re-

laid it to me, and I think Mr. Siminoe may know the name of the individual. Is it the same Steve Meyrey?

Mr. SIMINOE. Yes.

Mr. BLACKWELL. Chief of the Civil Division for the U.S. Attorney's Office in Nevada.

Mrs. CHENOWETH-HAGE. As indicated by my colleague, that is not a small matter, especially since your chief has personally assured us that you would answer our questions.

Mr. BLACKWELL. Madam Chairman, if I could, this is not the first time that this has come up before this subcommittee, as you may remember, and the position of the U.S. Government, as far as I know, has been consistent, that matters in current litigation cannot be discussed in an open public forum and the merits of these civil suits discussed. There may be alternatives where we can go into closed session with the U.S. Attorney, I don't know. But I do know that the policy of the Federal Government is to prohibit its employees from discussing the merits of these cases.

Mrs. CHENOWETH-HAGE. Well, the fact is that the Forest Service policy is different than the law, and if you don't answer the questions of Congress, that's a serious matter.

Mr. Blackwell, we will have to subpoena the information if you're unwilling to abide by what your chief has personally told us, and I'm very sorry about that.

To date \$930,000 of a \$2.3 million ERFO fund was received by the Forest Service and has been spent. But approximately another \$1.3 million hasn't been spent for road repair.

Now, No. 1, can all of the \$930,000 already spent be accounted for?

Mr. BLACKWELL. Well, I believe it can.

Mrs. CHENOWETH-HAGE. What is the status of the remaining \$1.3 million and where are the funds now?

Mr. BLACKWELL. The ERFO dollars—let me back up. We requested ERFO dollars for every major flooding event. So the sum that you have just referred to I am not sure if it applies to the 1995 storm event in the State of Nevada only or if it's some others.

For example, in Idaho we applied for and received numerous amounts of ERFO money, authority to spend ERFO money. In many of these cases where we have not spent all of the money that was authorized, it's returned to the Federal Government and available for other projects in other parts of the Nation.

That's my understanding of where this Nevada money has gone. As I understand it, it was extended at least once and then the unexpended funds were returned to the U.S. Treasury.

Mrs. CHENOWETH-HAGE. Were ERFO funds used to pay the contractor from Bozeman, Montana?

Mr. BLACKWELL. I don't think so, but I want to hear Mr. Siminoe's answer.

Mrs. CHENOWETH-HAGE. Mr. Siminoe?

Mr. SIMINOE. Yes. They were not. We used watershed rehabilitation funds to do the rehabilitation work in the South Canyon. If you, with your permission I'll address the ERFO question a little bit further.

Mrs. CHENOWETH-HAGE. Yes, please do.

Mr. SIMINOE. In 1995 after the flood events which caused substantial damage, as we heard earlier, in other places in Elko County, and also in White Pine County, the Ely area, we applied to the Federal Highway Administration for emergency funds to rehabilitate those.

I may say that what we actually get is the authorization. We do not get the funds. We set up an account that we spend against. Once the work is done, then we are reimbursed. Sometimes there is a lag of several years before we are reimbursed.

In the case of South Canyon, we did apply for that authorization. We received it. Because the road was not constructed in the first construction period, we carried it over. We lost that authorization at the end of the last fiscal year.

Mrs. CHENOWETH-HAGE. I have many more questions that I was prepared to ask you. But I think you probably are prepared not to answer them, based on the advice from Justice, and that is unfortunate. So I am going to turn to Mr. Gibbons for any final questions or any final comments.

Mr. GIBBONS. Madam Chairman, I want to thank you. I have no further questions of this panel. I just want to thank you for your leadership on this issue, for bringing the committee here to Elko County to open this forum up so that we can get the information out on this very, very important, very sensitive issue.

You can tell by the tenor of the audience, you can tell by the tenor of the witnesses who have been before us that we have actually brought the process out into the open. We have discussed it in an open, humane, and I think civilized fashion.

I think the record is clear there is the legal precedent that was established on the ownership of the road. The record is somewhat less clear about the effort of the Forest Service in their work after the county has gone in. We will expect to hear more and see more about that issue later on.

I think from this point we certainly have our work cut out for us, because there are some solutions and some issues that we have to address, and it is clear to say that without your leadership, without your willingness to be here, to have this forum, to have the information brought out, that we would still be dealing with serious unknown issues.

And I want to thank you. I'm sure that the people from Nevada want to thank you for this effort. And with that, Madam Chairman, I look forward to the rest of our work in resolving this issue.

Mrs. CHENOWETH-HAGE. Thank you, Congressman Gibbons. And thank you for your invitation to join you in your district. When I first came to Congress in the 104th Congress, I made the statement several times—I think Mr. Blackwell heard me—that I was afraid the Forest Service was too broken to fix. And then I became chairman of the very committee of the agency that I thought was too broken to fix, and I put my shoulder to the wheel and worked with this agency and tried to see if we still couldn't make it work.

I want to say that this is one of the most discouraging issues that I have been faced with. It's a little road. The whole universe of problems we deal with in the forest jurisdiction that we have from the East Coast to the West Coast, it would seem like a tiny problem, but it indicates so much more than a tiny problem.

It indicates that maybe I was right, and I know that in the State of Idaho our legislature has put together a resolution and a bill to study the ability of the States to manage the National Forests that are in distress. And most of our forests are either in distress or near a state of near collapse or quickly becoming that way.

You know, going beyond what people are asked to do under certain administrations, I guess common sense solutions could be reached on the ground; that congressional staff would not be ignored when they come into someone's area; that questions would be answered.

I look forward to the day when we have that openness again. It is not here now, and I will have to ask the chairman to issue subpoenas for the rest of the information. I regret that.

This is a situation that shows some of the most high-handed, arbitrary, and capricious actions I have seen in a long time. I guess the tank traps in southern Idaho come kind of close to it. But this is not the way to treat a small community. The Forest Service was established to enhance communities, to enhance human activity, and developing the rest.

And more than just bridges on the South Canyon Road need to be repaired and mended. The bridges between local communities and the Federal Government need to be mended. The bridges between you and the local county commissioners need to be mended.

I'm sure it comes as a surprise to the Forest Service that the communities are upset. I would ask you, Mr. Blackwell, to ask your people to turn the volume down on the rhetoric. The rhetoric has been quite subdued, I think, from the local county people who have been absolutely insulted, and I think they have been quite restrained.

Mr. Blackwell, I would ask you again to ask your people to keep the volume turned down on this kind of rhetoric because that only serves to inflame the situation.

I know that both you and Mr. Siminoe have come to the Forest Service when it was a different agency. Although you can't say much now, I think that there are common sense solutions that you still can bring to the table, to this community, in spite of the fact that we do have a different boss in Washington. I would expect to see very quickly, within the next weeks or days, some real resolution to this problem and that the flames of the conflict have been turned down.

We are going to go ahead with our investigation. We are going to go ahead and subpoena information. We may need to subpoena you again to come back to Washington, DC. I do hope that this serves to open doors instead of causing more problems. I do hope that this hearing will bring resolution to the people of Elko County on this road. They have a right to rely on a road that has provided access for them, for their parents, for their grandparents, and we as Americans have a right to rely on the fact that those who have been entrusted to take care of our culture and our history will take that trust to heart. Because by closing the roads and submitting our forest to one use only, we are literally destroying the very culture of this great West.

So I want to, I would like to be able to thank you for your time and I think probably, gentlemen, all three of you learned some-

thing by listening to all of the witnesses, as I did, and I look forward to working with you on this and looking for a very quick resolution.

With that, I would like to say again that the hearing record will remain open for 10 working days. If you wish to make any changes, additions to your testimony, you are welcome to do so.

I do want to remind you and anyone in the audience who wants to submit testimony that our address is 1337 Longworth Building, H.O.B., Washington, DC. 20515.

With that, this hearing is adjourned.

[Whereupon, at 5:10 p.m., the subcommittee was adjourned.]

[Chairman's Final Report follows:]

**CHAIRMAN'S FINAL REPORT**  
**HEARING ON THE JARBIDGE ROAD, ELKO COUNTY, NEVADA**  
**SUBCOMMITTEE ON FORESTS AND FOREST HEALTH**

*Preface*

By invitation of Congressman Jim Gibbons of Nevada, the Subcommittee on Forests and Forest Health held an oversight hearing in Elko Nevada on November 13th, 1999, on a dispute between Elko County and the United States Forest Service (USFS). The County of Elko claimed ownership of a road known as the Jarbidge South Canyon Road by virtue of their assertion of rights under a statute commonly referred to as RS 2477. The USFS asserted they do not recognize the county's ownership rights and claimed jurisdiction over the road under the Treaty of Guadalupe Hidalgo, the proclamation creating the Humboldt National Forest, the Wilderness Act, the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act, and the Clean Water Act. This issue came to a head when the USFS directed its contractor to destroy approximately a one-fourth mile section of the Road, thus preventing its use by parties claiming private rights of use which could be accessed only by the Road. Also, access to the Jarbidge Wilderness Area was closed off by the action of the USFS.

Chairman Chenoweth-Hage submits this final report to members based on the testimony given and records available to the Subcommittee. Representatives of the USFS failed to defend their position from a legal standpoint, submitting no legal analysis that justified their position. Instead, they simply "ruled" that they did not recognize the validity of the County's assertion to the road.

The investment of time in the historic perspective leading up to the County's assertion was fruitful, yielding numerous clearly worded acts of Congress, backed up in a plethora of case law. I have attempted to bring that historic perspective to this report, because the Congressional and legal background cannot be ignored if we are to view the western lands issues in the framework Congress and the courts have intended.

I therefore submit my final report on the hearing on the Jarbidge Road.

**Summary: The Basic Questions of Ownership and Jurisdiction**

The dispute over the Jarbidge South Canyon Road (Road) between Elko County, Nevada and the United States Forest Service (USFS) involves two basic questions:

1. Who has ownership of the road?
2. Who has jurisdiction over the road?

**Ownership** is defined as control of property rights.<sup>1</sup>

**Jurisdiction** is defined as the right to exercise civil and criminal process.<sup>2</sup>

The UNITED STATES argues that when the Humboldt National Forest was created in 1909, the road in question became part of the Humboldt National Forest. The UNITED STATES argues that the Humboldt National Forest is public land owned by the UNITED STATES and the USFS, as agent for the UNITED STATES, has both ownership and jurisdiction. The UNITED STATES has responded to the RS 2477 issue (Section 8, Act of July 26, 1866) by arguing that no RS 2477 road which was established in a national forest after the creation of the national forests, was valid, and all roads within the national forest fall under USFS jurisdiction after passage of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

Evidence was presented by Elko County in an effort to establish proof of ownership of the Jarbidge South Canyon Road. This evidence includes documents and oral testimony, showing that the road was established in the late 1800s on what had been a pre-existing Indian trail used by the native Shoshone for an unknown period of time prior to any white settlement in the area.

Elko County claims jurisdiction over the Jarbidge South Canyon Road by virtue of evidence that the road was created to serve the private property interests of the settlers in the area. Elko County cites various private right claims to water, minerals, and grazing which the road was constructed to serve.

The crucial factor in determining which argument is correct is to determine whether the federal land upon which the Road exists is "public land" subject to federal ownership and jurisdiction or whether the federal land upon which the Road exists is encumbered with private property rights over

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<sup>1</sup> Collection of rights to use and enjoy property, including the right to transmit to others. Blacks Law Dictionary, 5th Edition

<sup>2</sup> A power introduced for the public good, on account of the necessity of dispensing justice. Blacks Law Dictionary, 5th Edition

which the state of Nevada and private citizens exercise ownership and jurisdiction.

In any dispute of this kind, it is essential to review, not only prior history, but also the public policy of the United States as expressed in acts of Congress and relevant court decisions.

### I. Breaking Down the Principles of Ownership

#### A. The law prior to Nevada Statehood.

##### 1. The Mexican cession and "Kearney's Code."

Nevada became a state on October 30, 1864. Prior to that time the area in question was part of the territory of Nevada. The territory of Nevada had been created out of the western portion of the territory of Utah. Utah Territory had been a portion of the Mexican cession resulting from the Mexican War of 1845-46. U.S. Brigadier General of the Army of the West, Stephen Watts Kearney, instituted an interim rule, commonly referred to as "Kearney's Code," over the ceded area pending formal treaty arrangement between the U.S. and Mexico. The Mexican cession was formalized two years later with the Treaty of Guadalupe Hildago, February 2, 1848.<sup>3</sup>

Mexico recognized title of the peaceful/Pueblo (or "civilized") Indians (either tribally or as individuals) to the lands actually occupied or possessed by them, unless abandoned or extinguished by legal process (i.e. treaty agreements).<sup>4</sup> The Mexican policy of inducing Indians to give up their wandering "nomadic, uncivilized" life in favor of a settled "pastoral, civilized" life, was continued by Congress after the 1846 session and was the very basis of the government's Indian allotment and reservation policy.<sup>5</sup> Mexico and Spain retained the mineral estate under both private grants and public lands as a sovereign asset obtainable only by express language in the grant or under the provisions of the Mining Ordinance.<sup>6</sup>

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<sup>3</sup> 9 Stat. 922

<sup>4</sup> See Northwestern Bands of Shoshone Indians v United States, 324 US 335, (1945); United States v Candelaria, 271 US 432, (1926); Barker v Harvey, 181 US 481 (1901); United States v Ritchie, 58 US 525 (1854)

<sup>5</sup> Cramer v United States, 261 US 219 (1923); Winters v United States, 207 US 564 (1907)

<sup>6</sup> Boggs v Merced Mining Co., 14 Cal 279, Error dismissed, 70 US 304 (1865); Fossat or Quicksilver Mine Case, 69 US 649 (1864); Castillero v United States, 67 US 17 (1862); Freemont v United States, 58 US 542 (1854)

## 2. The acquisition by the U.S.

When the area was ceded to the U.S., the U.S. acquired all ownership rights in the lands which had been previously held by the Mexican government. This included the mineral estate and the then unappropriated surface rights. Indian title, where it existed, remained with the respective Indian tribes.<sup>7</sup> All other private property existing at the time of the cession, was also recognized and protected.<sup>8</sup> Kearney's Code also recognized all existing Mexican property law and continued, in force, the laws "concerning water courses, stock marks and brands, horses, enclosures, commons and arbitrations", except where such laws would be repugnant to the Constitution of the United States.<sup>9</sup> The Supreme Court of the United States, has upheld the validity of Kearney's Code, stating that Congress alone could have repealed it, and this it has never done.<sup>10</sup>

In 1846, the area where the the Jarbidge South Canyon Road presently exists was acquired by the United States. The United States, like Mexico, retained the mineral estate, while the surface estate was open to settlement. Settlement of the surface estate continued under United States jurisdiction in much the same way it had proceeded under Mexican jurisdiction. Towns, cities and communities grew up around agricultural and mining areas.

## 3. The characteristics of the land and custom of settlement under Mexican law.

The Mexican cession, which is today the southwestern portion of the United States, consisted primarily of arid lands, interspersed with rugged mountain ranges. These mountain ranges were the primary source of water supply for the arid region. The water courses were part of the surface estate. Control or development of the land by settlers for either agricultural uses or mining depended on control of the water courses.

The most expansive (and most common) method of settlement under the Mexican "colonization" law was for the individual settler to establish a cattle and horse (*ganado de mejor*) or sheep and goat (*ganado de menor*) farm, known as a "*rancho*" or ranch. These ranches were large, eleven square leagues or "*sitios*" (approximately one-hundred square miles). The individual settler (under local authorization) would acquire a portion of irrigable crop land and an additional allotment of nearby seasonal/arid (*temporal or agostadero*) land and mountainous land containing water sources (*canadas*

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<sup>7</sup> Northwestern Bands of Shoshone Indians, supra

<sup>8</sup> Whitney v United States, 181 US 104 (1901); Leitensdorfer v Webb, 61 US 176 (1897); Astiazaran v Santa Rita L & M Co., 148 US 80 (1893)

<sup>9</sup> Whitney, supra; Leitensdorfer, supra; United States v Santa Fe, 165 US 675 (1897)

<sup>10</sup> Leitensdorfer, supra.

or *abrevaderos*) as a "cattle range" or "range for pasturage." Four years of actual possession gave the *ranchero* a vested property right that could be sold (even before final federal confirmation or approval of the survey map (*diseno*). Control of livestock ranges depended on lawful control of the various springs, seeps and other water sources for livestock pasturage and watering purposes. Arbitration of disputes over water rights and range boundaries (*rodeo* or "round-up" boundaries) were adjudicated by local authorities (*jueces del campo* or "judges of the plains").<sup>11</sup>

#### 4. Mexican customs of settlement were maintained under U.S. rule.

This same settlement pattern of appropriating servitudes or rights (*servidumbres*) for pasturage adjacent to water courses, continued after the area was ceded to the United States in 1846. One of the first acts of the California legislature after the Mexican cession was to re-enact, as state law, the previous Mexican "*jueces del campo*" or "*rodeo*" laws governing the acquisition and adjudication of range (or pasturage) rights on the lands within the state.<sup>12</sup>

The new settlers on lands in the Mexican cession after 1846, were not trespassers on the lands of the U.S., since Kearney's Code had continued in effect all the previous laws pertaining to water courses, livestock, enclosures and commons (stock ranges). Under Mexican law, water rights, possessory pasturage rights, and right-of-ways were easement rights.<sup>13</sup> Mexican land law was based on a split-estate system (surface/mineral titles and easements) which the United States Courts were unfamiliar with and for which no federal equivalent law existed. Problems in sorting agricultural (*rancho*) titles/rights from mining titles/rights quickly became apparent when the courts began the adjudication of Spanish and Mexican land claims.<sup>14</sup> Congress (like Spain and Mexico) had previously followed a policy of retaining mineral lands and valuable mines as a national asset.<sup>15</sup>

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<sup>11</sup> United States v Elder, 177 US 104 20 (1900); Whitney v United States, 167 US 529 (1897); United States v Hartnell, 63 US 286 (1859); United States v Fossat, 61 US 413 (1858); United States v Southerland, 60 US 363 (1856); Boyreau v Campbell, 3 Fed. Cas. 1112 (C.C.A. 1856); Arguello v United States, 59 US 539 (1855)

<sup>12</sup> Boyreau v Campbell, *supra*; Waters v Moss, 12 Cal. 535 (1959); Walden v Murdock, 23 Cal 540 (1863); Logan v Gedney, 38 Cal 579 (1869); Griffith v Godey, 113 US 89, (1885)

<sup>13</sup> 2 White, New Recop. 129 et seq

<sup>14</sup> Freemont, *supra*; Boggs, *supra*; Fossat-Quicksilver, *supra*; Castillero, *supra*

<sup>15</sup> United States v Gratiot, 39 US 526 (1840)

**5. Congress further defines and codifies settlement customs through the Act of 1866 with the establishment of mineral and surface estate rights.**

There was no law passed by Congress to define the settlement process for the western mineral lands until Congress addressed this problem by a series of acts beginning in the 1860's. Key among the split-estate mining/settlement laws was the Act of July 26, 1866. Congress established a lawful procedure whereby the mineral estate of the United States could pass into the possession of private miners. Private mining operations could then turn the dormant resource wealth of these lands into active resource wealth for the benefit of a growing nation.<sup>16</sup>

The 1866 Act also dealt with the surface estate of the mineral lands. The act clearly recognized local law and custom and decisions of the court, which had been operating relative to these lands and extended these existing laws and customs into the future.<sup>17</sup> The 1866 Act created a general right-of-way for settlers to cross these lands at will. It also allowed for the establishment of easements.<sup>18</sup>

At this point, it is important to note the definitions of these key terms:

A *right-of-way* is defined as the right to cross the lands of another.<sup>19</sup>

An *easement* is defined as the rights to use the lands of another.<sup>20</sup>

Sections 8 and 9 of the 1866 Act are the seminal U.S. law defining the rights of ownership in the Jarbidge South Canyon Road. Section 8, which was later codified as Revised Statute 2477, deals with the establishment of "highways" across the land. The term *highways* as used in the 1866 Act refers to *any road or trail used for travel*. The right-of-way portion of this act was an absolute grant for the establishment of general crossing routes over these lands at any point and by whatever means was recognized under local rules and customs.<sup>21</sup>

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<sup>16</sup> United States v Sweet, 245 US 563 (1918); United States v Union Pac. Ry. Co., 353 US 112 (1957)

<sup>17</sup> Cal. Ore. Power Co. v Beaver Portland Cement Co., 295 US 142 (1935); Central Pac Ry. Co. v Alameda County Cal., 284 US 463 (1932)

<sup>18</sup> Alameda County, supra;

<sup>19</sup> A right belonging to a party to pass over land of another. Words and Phrases

<sup>20</sup> A right of use over the property of another. Words and Phrases

<sup>21</sup> United States v 9,947.71 Acres, 220 F. Supp. 328 (1963); Alameda County, supra; Colorado v Toll, 268 US 228 (1925); McKelvey v United States, 260 US 353 (1922);

Section 9 of the Act of July 26, 1866, "acknowledged and confirmed" the right-of-way for the construction of ditches, canals, pipelines, reservoirs and other water conveyance/storage easements. Section 9 also guaranteed that water rights and associated rights of "possession" for the purpose of mining and agriculture (farming or stock grazing) would be maintained and protected.<sup>22</sup>

## B. The Law After Nevada Statehood.

### 1. The states adopt Mexican settlement customs, as affirmed by Kearney's Code and 1866 Act.

Once settlers in an area had exercised the general right-of-way provisions of the 1866 Act to establish permanent roads or trails, those roads or trails then, by operation of law, became easements (which is the right to use the lands of another). The general right-of-way provisions of the 1866 Act gave Congressional sanction and approval to the authorization of Kearney's Code respecting water courses, livestock enclosures and commons, and local arbitrations respecting possessory rights. All of the states and territories, west of the 98th meridian ultimately adopted water right-of-way related range/trail property laws similar to the former Mexican laws in California, New Mexico, and Arizona. These range rights were "property" recognized by the Supreme Court.<sup>23</sup>

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Curtin v Benson, 222 US 78 (1911); United States v Andrews, 179 US 96 (1900); Buford v Houtz, 18 P 633 (Utah 1888); Wells v Pennington Cnty., 48 N.W. 305 (S.Dak. (1891)); Montgomery v Somers, 90 P.674 (Ore.1907); MacKay v Uinta Dev. Co., 219 F116 (8th Cir. 1914); Hatch Bros. Co. v Black, 165 P. 518 (Wyo. 1917); Jastro v Francis, 172 P 1139 (N. Mex. 1918); State ex rel Dansie v Nolan, 191 P. 150 (Mont. 1920); Bishop v Haweley, 238 P 284 (Wyo. 1925); Nicholas v Grassle, 267 P 196 (Colo. 1928); Lindsay Land and Livstck. Co. v Churnos, 285 P 646 (Utah 1930); Leach v Manhart, 77 P 2d 652 (Colo. 1938).

<sup>22</sup> Atchison v Peterson, 87 US 507 (1874); Basey v Gallagher, 87 US 670 (1875); Jennison v Kirk, 98 US 453 (1879); Broder v Water Co., 101 US 174 (1879); San Jose L& W Co. v San Jose Ranch, 189 US 177 (1903); Cal. Ore. Power Co. v Beaver Portland Cement Co., supra; California v United States, 438 US 645 (1978); United States v New Mexico, 438 US 696 (1978).

<sup>23</sup> Griffith v Godey, supra; Wilson v Everett, 139 US 616 (1891); Loneragan v Buford, 148 US 581 (1893); Swan Land and Cattle Company v Frank, 148 US 603 (1893); Grayson v Lynch, 163 US 468 (1896); Ward v Sherman, 192 US 168 (1904); Bacon v Walker, 204 US 311 (1907).

**2. The Supreme Court upholds states' adoption of settlement customs and attached range rights.**

In Omachevarria v Idaho,<sup>24</sup> it was held that all Western states had adopted range law similar to Idaho's, that those laws were a valid exercise of the state's constitutional police power and did not infringe on the government's underlying property interest. Grazers took possession and control of certain range areas primarily by gaining lawful control of water courses. The water courses were under the jurisdiction of State and Territorial government by authority of Kearney's Code and the 1866 Act. The general right-of-way provision of the 1866 Act became an easement for grazing, the bounds of the easement being determined by the exterior boundaries of the area the grazer could effectively possess and control.<sup>25</sup>

**3. Only the states possess the authority to define property.**

As a general proposition, the United States, as opposed to the several states, is not possessed of a residual authority enabling it to define property in the first instance.<sup>26</sup> The United States has performed the role of agent over lands which are lawfully owned by the union of states, or the United States. Individual States in the southwest, established laws deriving from local custom and court decisions (common law) for determining property rights. These were the local laws, customs, and decisions of the court affirmed by Congress in the Act of July 26, 1866. The Act extended this principle to all the western states and conferred a license on settlers to develop property rights in both the mineral estates and surface estate of the mineral lands of the United States.<sup>27</sup>

**C. Congress Affirmation of Local Laws and Customs Regarding Ownership.**

**1. Congress has passed numerous Acts recognizing surface and mineral estate rights.**

The argument of the UNITED STATES claiming ownership of the Jarbidge South Canyon Road raises a perplexing question. To arrive at the conclusion that the United States Forest Service owns the Road based on the Mexican cession to the United States in 1846, is to ignore local law, custom, court decisions, and the Congressional Act that confirmed those local laws, customs, and court decisions in 1866. The UNITED STATES in its reach to claim all title to the lands in question must

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<sup>24</sup> Omachevarria v Idaho, 246 US 343 (1918)

<sup>25</sup> Boyreau v Campbell, supra; Curtin v Benson, supra; US v McKelvey, supra

<sup>26</sup> Pruneyard Shopping Center v Robins, 447 US 74 (1980)

<sup>27</sup> Forbes v Gracey, 94 US 762 (1877); Broder v Water Co., supra; Central Pac. Ry. Co. v Alameda County Cal. Supra

ignore the subsequent acts of Congress which are predicated on the Act of July 26, 1866 as well as voluminous case law which have consistently upheld the acts of Congress in the disposal of the surface estate and/or mineral estate into private hands. The acts and their relevant case law include, but are not limited to:

1. The Mining Act of 1872, confirming lawful procedure for citizens to acquire property rights in the mineral estate of federal lands;
2. The Act of August 30, 1890, which confirmed private rights and settlement then existing on the surface estate of federal lands;
3. The General Land Law Revision Act of March 3, 1891, which further confirmed existing private rights (settlement) on the land;
4. The Act for Surveying Public Lands of June 4, 1897, also known as the Forest Reserve Organic Act) which excluded all lands within Forest Reserves more valuable for agriculture and mining and guaranteed rights to access, the right to construct roads and improvements, the right to acquire water rights under state law, and continued state jurisdiction over all persons and property within forest reserves.

**2. The courts insist that these laws must be read in *pari materia* (all together).**

The courts have stated repeatedly that laws relating to the same subject (such as land disposal laws) must be read in *pari materia* (all together). In other words, FLPMA or any other land disposal act cannot be read as if it stands alone. It must be read together with all its parts and with every other prior land disposal act of Congress if the true intent of the act is to be known.<sup>28</sup>

**3. Each of these Acts contain “savings” clauses protecting existing rights, including FLPMA.**

All acts of Congress, relating to land disposal contain a savings clause protecting prior existing rights. FLPMA contains a savings clause protecting prior existing property rights.<sup>29</sup> There is an obvious reason for this. Any land disposal law passed by Congress without a savings clause would amount to a “taking” of private property without compensation. This could trigger litigation against the United States and monetary liability on the part of the U.S.

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<sup>28</sup> *Kohlsaat v Murphy*, 96 US 153 (1877)

<sup>29</sup> 43 U.C.S.A. 1701(b)

## II. Determining the Ownership of Jarbidge South Canyon Road

### A. Executive order creating Humboldt National Forest, Where the Road Resides, and relevant Congressional acts contain a savings clause protecting Preexisting rights.

The Presidential Executive Order which created the Humboldt National Forest contained a savings clause, protecting all existing rights and excluding all land more valuable for agriculture and mining.<sup>30</sup> The Road was in existence long before there was a Humboldt National Forest. The Road was a prior existing right, having been confirmed by the Act of 1866 and related subsequent acts of Congress as well as court decisions.<sup>31</sup> The Road was never a part of the Humboldt National Forest, and could not be made a part of the Humboldt National Forest without triggering the Fifth Amendment of the Constitution of the United States dealing with “takings” and “compensation.”<sup>32</sup>

The Wilderness Act which created the Jarbidge Wilderness Area also contained a savings clause protecting prior existing rights.<sup>33</sup>

### B. The UNITED STATES makes errant arguments claiming ownership of the Road.

#### 1. The U.S. argument regarding “public lands” resulting from Mexican cession logically fails on its face.

The U.S. argues that the Mexican cession of 1846, ratified in the Treaty of Guadalupe Hidalgo in 1848, conveyed the Road and the land the Road crosses to the UNITED STATES, which some 150 years later remain “public land” unencumbered by private rights. If this argument is valid, the myriad other roads, highways, towns, cities, ranches, farms, mines and other private property which did not exist in the southwest in 1846 but which exists today also remain the sole property of the UNITED STATES. One cannot logically reach the first conclusion without accepting the later.

#### 2. The true nature of “public lands.”

“Public Lands” are “lands open to sale or other dispositions under general laws, lands to which

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<sup>30</sup> Proclamation 832 (35 Stat 2215) January 20, 1909

<sup>31</sup> Colorado v Toll, supra

<sup>32</sup> Id.

<sup>33</sup> (78 Stat. 890)

no claim or rights of others have attached.”<sup>34</sup> The United States Supreme Court has stated: “It is well settled that all land to which any claim or rights of others has attached does not fall within the designation of public lands.”<sup>35</sup> FLPMA defines “public lands” to mean any land and interest in land owned by the United States within the several states and administered by the Secretary of Interior through the Bureau of Land Management,<sup>36</sup> The mineral estate of lands within the exterior boundaries of National Forests are administered by the Secretary of Interior through the Bureau of Land Management.

The mineral estate in the Humboldt National Forest where no claims or rights have attached is “public land” according to FLPMA. The mineral estate in these lands is still open to disposition under the mining laws of the United States. Private agricultural and patented mineral lands, as well as surface estate rights in grazing allotments or subsurface rights in unpatented mining claims are not public lands within the definition set forth in FLPMA.

The Road is bounded on both sides by mining claims and lawfully adjudicated grazing allotments.<sup>37</sup> This fact is clear from the testimony and the evidence presented to the Subcommittee. The record shows that mining, grazing rights and water rights as well as general access right-of-ways were established on these lands in the late 1800’s and preceded the establishment of the Humboldt National Forest and the Jarbidge Wilderness Area by many years.<sup>38</sup> No evidence has been submitted to the record showing any lawful extinguishment of these rights which would effect a return of the area in question to “public land” status, giving rise to a trespass against the United States.

### 3. The UNITED STATES errantly cites FLPMA as extinguishing RS 2477 rights.

The UNITED STATES has also argued that no RS 2477 road could be created in a national forest after the date of creation of the national forest. They cite FLPMA as authority for this argument. This does, however, ignore the fact that FLPMA applies to all federal lands. FLPMA itself confirms all prior existing roads, whose origins predate October 21, 1976.<sup>39</sup>

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<sup>34</sup> Northern Pac. Ry. Co. v Wismer, C.C.A. Wash. 230 F. 591, 593

<sup>35</sup> Bardon v Northern Pac R. Co. 12 S Ct. 856, 145 US 535, 538, 36 L. Ed 806

<sup>36</sup> 43 U.S.C.A. 1702(e)

<sup>37</sup> Testimony of Hearing Record

<sup>38</sup> Id.

<sup>39</sup> 43 U.S.C.A. 1701(b)

The UNITED STATES claims that FLPMA allows the USFS to permit right-of-ways, and thus gives them the right to exercise control over existing roads in the national forest. However, FLPMA was amended in 1985 to clarify that the USFS has no authority to impose regulations on prior existing roads that would diminish the scope and extent of the original grant.<sup>40</sup> Any regulatory control of an existing RS 2477 road diminishes the scope and extent of an existing right. The regulatory control of right-of-ways cited by the UNITED STATES only applies to right-of-ways created after October 21, 1976.<sup>41</sup>

Nothing in the law allows the USFS to usurp control over right-of-ways, existing prior to October 21, 1976, or to change the definition of a road which had existed prior to 1976. Congress clarified this issue in Section 198 of the Department of Interior Appropriations Bill for 1996: "No final rule or regulation of any agency of the federal government pertaining to the recognition, management, or validity of a right-of-way, pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an act of Congress subsequent to the date of enactment of this act."

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

### III. Establishing Jurisdiction

#### A. Determining whether State or Federal Government has jurisdiction is key

The USFS has threatened arrest and criminal prosecution of various individuals in the road dispute. The USFS has threatened litigation against Elko County for Elko County's attempt to defend against a "taking" of its property and jurisdiction. The UNITED STATES and its agency, the USFS claims to have jurisdiction over the matter involved in this dispute. Jurisdiction differs from ownership, in that ownership is the control of property rights and usually vests in individuals and corporate entities, while jurisdiction is the right to exercise civil and criminal process, a right which usually vests in government. The question in this dispute is: does the UNITED STATES have jurisdiction? Or does have Elko County as a subdivision of the state of Nevada have jurisdiction?

#### B. The establishment of jurisdiction depends on proper use of the term "Public Lands."

The UNITED STATES makes its claim to jurisdiction on the premise that the national forests are public lands subject to the jurisdiction of the UNITED STATES. The term "public lands" has a lawful definition. When used in a dispute over lawful rights, the lawful definition of "public lands" must be used. In recent years, this term has been widely misused by the government to encompass all lands for which the federal government has a management responsibility. In reality, the lawful definition of "public lands" are "lands available to the public for purchase and/or settlement." The courts have repeatedly held that when a lawful possession of the public lands has been taken, these lands are no longer available to the public and are therefore no longer public lands.<sup>42</sup>

Possession of the mineral estate in public lands could be lawfully taken under the mining acts. Where valid mining claims exist, that land is no longer public land.<sup>43</sup> Possession of the surface estate could be lawfully taken under various pre-emption and homestead acts of Congress. Possession and settlement of the surface estate for grazing areas on the mineral lands of the United States derived from the general right-of-way provisions of the Act of July 26, 1866 and was confirmed by the Act of August 30, 1890.<sup>44</sup> Congress revised the land laws to conform to the intent of the Act of August 30, 1890 with the passage of the General Land Law Revision Act of March 3, 1891.<sup>45</sup>

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<sup>42</sup> Newhall v Sanger, 92 US 761 (1875); Atherton v Fowler 96 US 513 ; Hosmer v Wallace, 97 US 575 (1879); Noyes v Mantle, 127 US 348 (1888); Union Pac. Ry. Co. v Harris, 215 US 386 (1910).

<sup>43</sup> Hedenfeldt v Daney Gold & Silver Min. Co., 93 US 634 (1876)

<sup>44</sup> United States v Ide, 263 US 497 (1923)

<sup>45</sup> United States v Minidoka & S. W. R. Co., 176 F 762 aff'd 235 U.S. 211 (1914)

### 1. Congress has withdrawn the lands from the public domain through various Acts.

Congress provided for the withdrawal of lands from the public domain as forest reserves in Section 24 of the Act of March 3, 1891. The intent of Congress as expressed in the 1891 and 1897 Acts was to protect timber stands (from exploitation by large, rapacious timber and mining corporations) in order to provide a continued supply of wood for settlers and by so doing improving watershed yields to provide a continuous water supply for appropriation by settlers.<sup>46</sup> These Acts also contained numerous survey and administrative provisions providing for the identification and adjudication of prior existing private property rights within the exterior boundaries of the reserves.<sup>47</sup> When the forest reserves were withdrawn from the public lands, the lands within the reserves were only available to the public for purchase or settlement after the date of the withdrawal if they were more valuable for agricultural (stock grazing) or mining purposes, and if they were not already occupied by prior possession.<sup>48</sup>

### 2. The adjudicatory process.

The adjudications applied to rights established, whether for homesteads, roads, ditches, or range easements, prior to their withdrawal as forest reserves.<sup>49</sup> Adjudication of the prior rights on the forest reserves resulted in lawful recognition of rights to lands within the exterior boundaries of the forest reserves (later renamed as national forests after 1907). For example, homesteads in fee simple, absolute title, and water right and right-of-way related surface estate rights in the form of grazing allotments were some of the lawful rights recognized. Homesteads, grazing allotments, and mining claims ceased being public lands upon their adjudication by proper authority.<sup>50</sup>

On national forest/reserves being established for a split-estate purpose of providing timber for settlers (and enhancing water yield),<sup>51</sup> miners and ranchers could only cut or clear timber for fuel,

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<sup>46</sup> United States v New Mexico, supra

<sup>47</sup> Cosmos Ex. Co. v Gray Eagle Oil Co., 190 US 301 (1903)

<sup>48</sup> Olive Land & Dev. Co. v Olmstead, 103 F.568 (9th C.C.A. 1900)

<sup>49</sup> Light v United States, 220 US 523 (1911); Curtin v Benson, supra

<sup>50</sup> Union Pac. Ry. Co. v Harris, supra; Curtin v Benson, supra; Teller v United States, 113 F.273 (8th C.C.A. 1901)

<sup>51</sup> US v New Mexico, supra

fences, buildings and developments related to the mining or agricultural use of the claims or allotments.<sup>52</sup>

**D. The proper jurisdiction of the Humboldt National Forest belongs to the State.**

**1. Grazing allotments cover the entire forest.**

The Humboldt National Forest was adjudicated prior to 1920. The grazing allotments were identified and confirmed as a private property right to the surface estate of the forest reserves. These grazing allotments cover the entire Humboldt National Forest, including the area traversed by the Road.<sup>53</sup> The Road traverses the lawfully adjudicated Jarbidge Canyon allotment.

**2. The Supreme Court has confirmed state jurisdiction.**

On May 19, 1907, the U.S. Supreme Court held in the case of Kansas v Colorado<sup>54</sup> that the United States was only an ordinary proprietor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the doctrine of exclusive legislative jurisdiction of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not law enforcement officers unless designated as such by state authority. The USFS had no general grant of law enforcement authority within a sovereign State.<sup>55</sup> The court has also held that a right-of-way and related improvements (as well as vehicles on the right-of-way) within a federal reservation were private interests separate from the government's title to the underlying land and that the United States had no legislative (civil or criminal) jurisdiction without an express cession from the state.<sup>56</sup>

The Court has held that when the United States disposes of any interest in federal lands that

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<sup>52</sup> Shiver v United States, 159 US 491 (1895); Stone v United States, 167 US 178 (1897)

<sup>53</sup> Allotment maps can be located at Humboldt Tioyabe National Forest Headquarters, Reno, Nevada.

<sup>54</sup> Kansas v Colorado, 206 US 46 (1907)

<sup>55</sup> Adams v United States, 319 US 312 (1943); Arizona v Many Penny, 445 F Supp. 1123 (1997); State v Dykes, 562 P.2d 1090 (Ariz 1977); People v Brown, 159 P.2d 686 (Cal.945); State ex rel Parker v District Court, 410 P.2d 459 (Mont. 1966); Pendelton v State, 734 P.2d 693 (Nev. 1987); State v Aguilar, 736 P.2d 620 (Ore 1987); Rogers v Squire, 157 F.2d 948 (Utah 1946); State v Williams, 598 P.2d 731 (Wash. 1979); (90 Stat. 2786); P.L. 94-579 § 701(g)(6).

<sup>56</sup> Fort Leavenworth Ry. Co. v Lowe, 114 US 525 (1885); Colorado v Toll, supra

there is an automatic relinquishment of federal jurisdiction over that property.<sup>57</sup> By clear and identical language, Congress has stated in the Organic Act of June 4, 1897, the Eastern Forests (Week's) Act of 1911, and the Taylor Grazing Act of 1934, that there was no intention to retain federal jurisdiction over private interests within national forests.<sup>58</sup> The courts have consistently upheld the ruling in Kansas v Colorado since 1907. Even standing timber within a national forest (once sold under a timber contract) ceases to be federal property subject to federal jurisdiction.<sup>59</sup>

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<sup>57</sup> S.R.A. v Minnesota, 327 US 558 (1946)

<sup>58</sup> Wilson v Cook, 327 US 474 (1946)

<sup>59</sup> Id.

**Conclusion**

As laid out in this report and in the hearing record, un-rebutted evidence presented in the Road dispute clearly demonstrates that the UNITED STATES and its agent, the US Forest Service, have no claim to ownership of the Road. Control of property rights to the road clearly vests in the state of Nevada and Elko County on behalf of the public who created the road under the general right-of-way provisions of the Act of 1866. Even if Elko County disclaimed any interest in the road, the individual owners whose mines, ranches and other property are accessed by the road may have a compensable property right in the road.

Further, the state of Nevada and its subdivision (Elko County) have lawfully exercised jurisdiction over the Road. This jurisdiction would appear to include the right to maintain the road under the laws of the state of Nevada.

Federal rules and regulations cannot extinguish property which derives from state law.<sup>60</sup> For the USFS to implement regulations under the Endangered Species Act, Clean Water Act or any other federal authority, which would divest citizens of their property is to trigger claims for compensation by the affected citizens. For the USFS to institute criminal action against Elko County for exercising its lawful jurisdiction over the road and the land adjacent to the Road is a usurpation of power upon which the US Supreme Court has long since conclusively ruled.

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<sup>60</sup> Hage v. U.S., 35 Fed. Cl. 147 (Cl. Ct. Mar. 8, 1996).