



**Toiyabe Chapter
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November 3, 2006

The Honorable Harry Reid
United States Senate
528 Hart Senate Office Building
Washington, D.C. 20510-2803

Via Facsimile Only To: (202) 224-7327

The Honorable John Ensign
United States Senate
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Via Facsimile Only To: (202) 228-2193

The Honorable Jim Gibbons
United States House of Representatives
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Washington, D.C. 20515-2802

Via Facsimile Only To:(202) 225-5679

The Honorable Jon Porter
United States House of Representatives
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Via Facsimile Only To:(202) 225-2185

The Honorable Shelley Berkley
United States House of Representatives
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**RE: S. 3772, White Pine County Conservation, Recreation and
Development Act of 2006**

Dear Nevada Congressional Delegation:

On behalf of the Toiyabe Chapter of the Sierra Club, and our 5,600 members in Nevada, the eastern Sierra, and the Lake Tahoe Basin, I am writing to you regarding S. 3772, the White Pine County Conservation, Recreation and Development Act of 2006, to set forth the reasons why the Sierra Club must reluctantly oppose the bill in its present form, and to request changes that will allow the Sierra Club to support the bill. Members of the Sierra Club want to work with

your staff to achieve an improved S. 3772 that better serves the environment and the people of White Pine County, and protects the values which make Nevada a great state.

The Toiyabe Chapter is also seeking the opportunity to present these reasons and changes in formal testimony before the Senate Public Lands and Forests Subcommittee of the Energy and Natural Resources Committee at its hearing on S. 3772 on November 16, 2006.

First, let me express that the Sierra Club greatly appreciates the efforts of so many people, including Senator Reid and Senator Ensign, their staffs, the people of White Pine County and all the organizations and people of the Nevada Wilderness Coalition, of which the Sierra Club is a part, who have worked so incredibly hard on this bill for so very long. It is a tribute to those efforts that over half a million acres of pristine Nevada wild lands would be permanently protected as wilderness. S. 3772 provides for a major legacy of wilderness protection for habitat and wildlife on the public lands for future generations of Nevadans and all Americans.

S. 3772 is the latest of several Nevada bills to be introduced by the delegation, and Congress is also considering similar bills from other states. The language and terms of this bill, including funding provisions, will be reviewed by other Members of Congress and by other states, and thus could become a prototype for succeeding bills. In this regard we commend the open, inclusive process and the hard work done on the White Pine County portion of S. 3772, but we wish that a similarly open and inclusive process had been used with other provisions of the bill.

After S. 3772 was introduced on August 1, 2006, the Sierra Club learned for the first time of certain elements of the bill which to our knowledge had not been discussed with the Sierra Club or the stakeholders in White Pine County prior to introduction. It is for this reason that the Sierra Club must address these aspects now, after S. 3772 was introduced. We believe that the specific changes we are proposing will result in legislation that better serves the environment, the people of White Pine County and the people of the United States, and will be a bill the Sierra Club can support.

A. Title I – White Pine County Land Disposal Provisions:

Regarding the land disposal provisions of Title I of S. 3772, the Sierra Club generally supports the ability of “public land-locked” communities to have some federal land made available for community expansion. We also support the process of identifying disposal lands through the normal Bureau of Land Management (“BLM”) land use planning process provided for in the Federal Land Policy and Management Act (“FLPMA”). S. 3772 provides for the sale of up to 45,000 acres of federal public land in White Pine County identified by the BLM in the Ely Resource Management Plan.

In his floor comments introducing S. 3772, Senator Reid stated that each year “a portion of the total acreage” would “be made available for sale in reasonable increments” and that this system “will greatly enhance the ability of White Pine County to help plan and shape the long-term growth of its many communities.” The Sierra Club agrees with Senator Reid’s characterization of how this process should unfold gradually and rationally. However, we are unable to locate specific language in S. 3772 which would accomplish these laudable goals. Pacing the sales of these lands over time would protect existing private property values and allow adequate time for long-term land use and water planning by White Pine County.

The rational planning for the development of these lands necessarily requires knowledge of the existing land and water resources and of the impacts that the sales will have on those resources and their existing uses and users, including wildlife and habitat. Since White Pine County is so small and cannot afford its own professional planning department and expertise, the Sierra Club recommends that the sales be limited to 5,000 acres per year, which should be more than adequate to meet the County’s growth needs; and that the BLM be required to provide adequate resource planning information to the County as part of the sale process.

To accomplish these objectives, the Sierra Club requests that the following changes be made in Section 101(b) of Title I:

- **delete** “and” at the end of (b)(1)
- **add** “; and” at the end of (b)(2)
- **add new subsection:** (b)(3) is subject to § 203(e) of the Federal Land Planning and Management Act of 1976 (43 U.S.C. 1713), *provided* that in determining and establishing the size of tracts to be sold, the Secretary shall make available for sale each year a portion of the total acreage in reasonable increments not to exceed a total of 5,000 acres in any one year, and *provided* that the Secretary in determining the land use capabilities and development requirements of the lands shall determine the availability of and the requirements for water on each tract of land to be disposed considering its proposed use, and shall determine that those requirements for water for each tract to be disposed do not impair any prior existing water right or any water use by or water needs of wildlife or other natural resources for which the Secretary or any federal agency has responsibility.

B. Water Resources Model Studies:

The future growth and development of White Pine County will clearly be impacted by the plans of the Southern Nevada Water Authority (“SNWA”) to export up to 141,000 acre-feet of groundwater annually from two of White Pine County’s agriculturally productive valleys which also flank the Great Basin National Park, Nevada’s only national park. Therefore, White Pine

County must have access to independent, third-party scientific information on water resources and estimated impacts of groundwater pumping and exportation for the County to develop long-range planning and proposals for groundwater monitoring, management, and mitigation. The Lincoln County Conservation, Recreation and Development Act of 2004 authorized and funded an initial groundwater resources study by the U.S. Geological Survey (“USGS”). The USGS has proposed additional water resources studies needed to construct a predictive hydrological model.

That USGS proposal was conveyed to the White Pine County Commission and it is our understanding that the Commission requested that funding for the additional studies be included in the White Pine County bill. However, it was not included in S. 3772 as introduced. Therefore, the Sierra Club requests that the following language be added to S. 3772 to incorporate the same kind of provisions as those included in the Lincoln County Conservation, Recreation and Development Act of 2004 to authorize and fund the additional groundwater resources study proposed by the USGS:

Water Resources Study.--

1. IN GENERAL.--The Secretary, acting through the United States Geological Survey, the Desert Research Institute, and a designee from the State of Utah shall conduct a study to develop a hydrological model to predict the hydrologic effects of water-development on the major regional flow systems present in the carbonate aquifer province of the Great Basin in White Pine County, Nevada, and any groundwater basins that are located in White Pine County, Nevada or Lincoln County, Nevada and adjacent areas in Utah. The study shall--

- A. construct a 3D hydrogeologic framework model;
- B. construct a 3D flow model grid (based on the extent of the study area) and input files for the flow modeling programs;
- C. calibrate the flow model by adjusting the parameters that control ground-water flow; and
- D. run predictive simulations of the calibrated flow model to assess future changes in the flow system.

2. TIMING; AVAILABILITY.-- The Secretary shall complete a draft of the water resources report required under paragraph (1) not later than 30 months after the date of the enactment of this Act. The Secretary shall then make the draft report available for public comment for a period of not less than 60 days. The final report shall be submitted to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate and made available to the public not later than 36 months after the date of the enactment of this Act.

3. FUNDING.-- Section 4(e)(3)(A) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2346; 116 Stat. 2007; 117 Stat.1317) is

amended by inserting after clause vii:

“(viii) for development of a water resources study for White Pine and Lincoln Counties, Nevada, in an amount not to exceed \$6,000,000; and”.

C. Objectionable Title VIII Funding Provisions:

Several of the provisions in Title VIII of S. 3772 amend the Southern Nevada Public Land Management Act of 1998 (“SNPLMA”) to apply SNPLMA land sale revenues in ways contrary to the original purpose of SNPLMA. As enacted, the purpose of SNPLMA was “to provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada.” SNPLMA § 2(b).

Federally administered public lands belong to the people of the United States. The public pays for managing those lands and in fact invests many millions more in fighting fires, range restoration, weed control, wildlife management, and working with local governments to provide access to public lands. We, who live in the heart of public lands, benefit from the federal government’s investment and benefit from extensive open space for recreational, aesthetic, and public purposes. We enjoy the use of those lands with minimal restrictions or cost. Therefore, when public land is privatized, the public loses both access to that land and the resources which existed on those lands. At the very least funds acquired from the sale of those lands should be targeted for the acquisition of lands for natural resources and recreation. We continue to support SNPLMA’s original funding allocation which prioritized improved management of the remaining lands via acquisition of inholdings or properties to improve wildlife needs.

Two of our primary objections to S. 3772 are the amendments to SNPLMA that increase SNWA’s percentage of funds under “Cash for Grass” and provide the Clean Water Coalition with statutorily unlimited use of SNPLMA funds for development of the Lake Mead wastewater pipeline. SNWA already receives 10 per cent of the land sales revenue (estimated at about \$270,000,000 to date) which may be used in the “Cash for Grass” program. The intent of public land sales has been, and should continue to be, to provide a benefit to the public lands and to the people who own those lands, that is, the people of the United States. The original purpose of SNPLMA, to acquire sensitive lands and ensure that public agencies can fulfill their responsibilities, needs to have priority. The Sierra Club believes that federal agencies should never rely on sale of public lands to fund the management of other public lands. Nevertheless, when extra funds under SNPLMA become available, we prefer to see more of the funds allocated to meet federal agency responsibilities for recreation management, wild horse management or wildlife protection in addition to the primary purpose of the acquisition of sensitive lands for the purpose of preservation.

1. SNPLMA Revenues Should Not Fund Growth In Clark County Through Excess Funding of The Lake Mead Sewer Pipeline.

Contrary to that stated purpose of SNPLMA, Title VIII of S. 3772 provides, among other things, for the open-ended utilization of SNPLMA funds to subsidize the infrastructure costs of Clark County growth through the funding of the proposed \$751,000,000 wastewater pipeline into Lake Mead. Funding for this project is already available without SNPLMA funds since the fee and rate increases already being put into effect will provide the required revenue for the issuance of bonds to fund the project. Therefore, the use of SNPLMA funds would be not only in excess of such funding, but also an inappropriate use of public land sales revenues in view of the legislative purpose of SNPLMA. Furthermore, the proposed wastewater pipeline into Lake Mead has numerous unresolved technical issues with potentially negative and long-term environmental consequences for the public water supplies drawn from both Lake Mead for Las Vegas and from the Colorado River for communities downstream.

Therefore, the Sierra Club requests that Title VIII be changed to eliminate funding for the wastewater pipeline into Lake Mead by deleting the subparagraph added to SNPLMA by § 803(1)(A)(vi) of S. 3772, namely, “*(xi) payments to a regional governmental entity in Clark County, Nevada, for water quality improvements relating to the Las Vegas Wash, Las Vegas Bay, and Lake Mead through management of wastewater effluent in the Las Vegas Valley known as the ‘Systems Conveyance and Operations Program’; and’; .”*

2. SNPLMA Funding of SNWA’s “Cash for Grass” is Inappropriate.

Another use of SNPLMA funds which is contrary to its legislative purpose is the provision in Title VIII for the open-ended funding of the SNWA’s program to compensate *public institutions* for the permanent removal of turf and other vegetation to conserve water, commonly know as the “Cash for Grass” program. This funding is unnecessary because SNWA already should have adequate funding for such a program. As noted, for the last eight (8) years SNWA has received, and continues to receive, 10% of the total SNPLMA land sale revenues. Therefore, the Sierra Club requests that this funding be deleted from § 803(1)(A)(vi) of S. 3772. If not deleted, a time limit on this funding comparable to the five-year limitation imposed upon the Washoe County regional park and natural area acquisition funding in § 803(2) of S. 3772 should be included in the provision.

D. SNPLMA Revenues Should Not Be Used to Fund “Cost-Effective” Logging.

Title VIII, § 803(1)(A)(vi) of S. 3772 also adds a provision to SNPLMA to provide funds for cost recovery by the Interior or Agriculture agencies for “(ix) development and implementation of a comprehensive, *cost-effective*, multijurisdictional hazardous fuels reduction and wildfire prevention plan (including sustainable biomass and biofuels energy development

and production activities)” [emphasis added] at Lake Tahoe and the Spring Mountains. The Sierra Club recognizes the need to remove the buildup of hazardous forest fuels, particularly surface fuels, to help re-establish more fire resistant forests. SNPLMA funding to cover costs of the plan must focus on the removal of hazardous fuels. Fuels reduction planning must involve citizens in both the planning and implementation processes.

The requirement to make the fuels reduction program “cost effective” could result in an economic justification to remove more profitable large diameter trees which is counter to establishing a more fire-resistant forest and, in the case of Lake Tahoe, to protecting its famed water clarity. The Lake Tahoe Basin is an extremely sensitive area environmentally, and treatments must protect against soil erosion and any damage to water quality and clarity. In addition, air quality impact can degrade water clarity. Since degradation of the Lake would also cause economic damage because of impacts to tourism, it is prudent to ensure that fuels treatments in the Basin recognize the unique nature of this landscape and ensure that appropriate measures are taken to preserve these qualities.

The Sierra Club requests the language in § 803(1)(A)(vi) of S. 3772 be changed to read as follows:

“(ix) development and implementation of a comprehensive, multijurisdictional hazardous fuels reduction and wildfire prevention plan (including treatment of surface and ladder fuels in the Spring Mountains NRA and in the Lake Tahoe Basin; and in the Lake Tahoe Basin, small scale biomass and biofuels energy development and production activities). Recognizing the unique environmental conditions in the Lake Tahoe Basin, treatments within the basin shall be low-impact, limited to removal of trees no greater than 12 inches in diameter, ecologically sustainable, protective of Lake Tahoe’s unique water quality and clarity, flexible in terms of being able to treat available biomass without new roads, and scaled to the supply only after environmental needs are met, such as soil cover and snags for wildlife; and shall not exceed the soil compaction standards of Lahontan RWQCB and the LTBMU Forest Plan.’ ”

Furthermore, we request the following language be added to § 803(1)(A)(vi) of S. 3772 to provide for necessary public input, involvement and review:

“(ix) (III) the Secretaries of Interior and Agriculture shall comply with the National Environmental Policy Act of 1969 (42 U.S.C.4321 et. seq.), including the identification and consideration of potential impacts to water quality, fish and wildlife resources and habitat.’ ”

Conclusion

In conclusion, the Sierra Club very much appreciates the work that has gone into S. 3772, especially the White Pine County portions of the bill. We believe that the specific changes we are proposing will improve the bill and result in legislation which better serves the environment, the people of White Pine County and the people of the United States. As noted, with these changes the Sierra Club will support the legislation.

We look forward to discussing these proposed changes with the Nevada delegation to achieve an S. 3772 that best serves the environment, the people of White Pine County and the people of the United States, and will be a bill the Sierra Club can support because it protects the values which make Nevada a great state.

Most sincerely,

DAVID A. HORNBECK
Vice-Chairman, Executive Committee
Toiyabe Chapter of the Sierra Club

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