

March 11, 2014
Regular Meeting
CAO Report
Written Overview of
Trip to Washington,
D.C. for NACO on
March 1-5, 2014
with
Supervisor Fesko

Mono County, California - Washington, DC Itinerary
March 1-5, 2014



Mono County Board of Supervisors Vice Chair Tim Fesko
Jim Leddy, County Administrative Officer
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Overview:

Mono County Board of Supervisors Vice Chair and National Association of Counties alternate appointment, Tim Fesko and County Administrator Jim Leddy attended the 2014 National Association of Counties Annual Legislative Conference in Washington DC. This Conference has over 2,000 attendees from across the country and offered opportunities for educational sessions, presentations from federal policy makers and the critical chance to meet with members of Congress.

Beyond the two days of meetings at the National Association of Counties, Mono County Board of Supervisors Vice Chair Tim Fesko and County Administrative Officer Jim Leddy had 8 meetings on Capitol Hill.

The primary focus of the meetings was seeking support for the locally developed Bi-State Sage Grouse Preservation Plan. This Plan was developed thanks to Mono County staff working with federal agencies and stakeholders to come up with a five year plan that would prevent a listing of the Bi-State Sage Grouse and all of the impacts, most of which would be felt by Mono County.

The meetings included with the offices of:

Senator Dianne Feinstein (D-California)
Senator Barbara Boxer (D-California)
Senator Harry Reid (D-Nevada)
Senator Dean Heller (R-Nevada)
Congressman Paul Cook (R-California)
Congressman Buck McKeon (R-California)
Congressman Steve Horsford (D-Nevada)

The schedule below was put together by CAO staff and with free support from Paul Schlesinger of the firm Alcalde and Fay which represent dozens of counties from across the Country.

Saturday, March 1st

1:00 - 4:00 NACo Western Interstate Board of Directors

CAO Leddy attended multi-state meeting. Presentation by Pam Haze, Assistant Secretary for Policy Management on Payment in Lieu of Issues (PILT). She urged ongoing support for a permanent funding source.

Future advocacy by Mono, CSAC and RCRC will be on creating long-term stability for program.

Sunday, March 2nd

8:00-9:00 am NACo Western Regional Caucus Meeting

Vice Chair Fesko and CAO Leddy attended. 60 plus people (standing room only) from across western states including a few California Board members. Focus on PILT, multi-state sage grouse listing and focus on transportation funding (MAP-21, etc).

9:00 -12:00 NACo Public Lands Steering Committee

CAO Leddy attended the NACo Public Lands Steering committee and received update from Undersecretary for Natural resources and Environment, US Department of Agriculture Robert Bonnie.

After his presentation, Mono County's Plan was presented to him. Staff will follow up.

Another issue of import to Mono County discussed with the property In Lieu of Tax (PILT) program. Federal land is not taxable by counties. PILT provides payments to counties as an offset. 1,850 counties receive payments for these lands. Mono County receives approximately over \$1.5 million annually for the federal lands in the county.

Chief of Staff to Congressman Rob Bishop, Fred Ferguson, presented on the issue. CAO spoke with Chief of Staff Ferguson about supporting these efforts. Congressman Bishop is working with a multi-state delegation of legislators to create a long term funding stream for the program. Mono Staff will follow up.

9:00-10:00 am Agriculture and Rural Affairs Steering Committee: Agriculture Subcommittee Meeting

Vice Chair Fesko attended the session. Speakers included Elise Golan (Director, Sustainable Development, Office of the Chief Economist) and Jennifer Yezak (Director, Office of External and Internal Government Affairs), both from the Dept. of Agriculture. Discussion revolved around Particulate Matter.

10:00-11:00 am Agriculture and Rural Affairs Steering Committee: Rural Development Subcommittee Meeting

Vice Chair Fesko attended the session. Two speakers today were Mike Dunlap (Senior Professional Staff, House Committee on Agriculture) and Dr Emilia Istrate (Director of Research, National Association of Counties).

Dr Emilia Istrate spoke about the "NACo County Tracker 2013" (<http://www.uscounties.org/countytracker/>). A website that shows, County by County, Patterns of Economic Recovery across Rural Counties. A website full of data from 2002 to 2013.

11:00-12:00pm Agriculture and Rural Affairs Steering Committee

Vice Chair Fesko attended this session with topics that included: Proposed resolution on Particulate Matter Regulations, Bringing 21st Century Education to America's Counties and Criticality of Access to Broadband Internet and Cellular Phone Technology in Rural Areas.

1:00-3:45 pm Environment, Energy and Land Use Steering Committee Meeting

Vice Chair Fesko attended this meeting. Chair was Hon. Victoria Reinhardt, Commissioner, Ramsey County, Minn.

Items discussed and voted on were: Ensuring Energy Remains Affordable by using Existing Resources, Improving Quality Planning thru Regional Watershed(s) Protection, Regulations regarding Particular Matter, Greater Sage Grouse request for no-listing.

1:30-5:00 pm National Association of County Administrators General Membership and Idea Exchange

CAO Leddy attended the session with CAOs from across country. Received presentations on Affordable care Act implementations;

alternative to Self Insurance; transportation bill funding; and Veterans healthcare funding.

Monday, March 3rd

Note: Due to a snow storm that blew in on Sunday evening, Monday morning D.C. was treated to ~5 inches of snow that literally shut down all of D.C. All of the meetings on the hill were cancelled due to the snow. Several of the meetings were re-scheduled to Tuesday.

9:00 – 10:15 Educational workshop: Communicating effectively with members of Congress

Vice Chair Fesko attended this workshop. This workshop focused on effective approaches to grassroots advocacy for county officials, including tips for tailoring messages to specific members of Congress. How to make the most of NACo's "On the Hill" day, and other communications with members of Congress. (Staff Liaison: Deborah Cox, 202/942-4286). Many of these strategies will be used on the Hill meetings.

9:00 – 10:15 Affordable Care Act: Outlook from Capitol Hill

CAO Leddy attended. Heard from congressional staff on any major changes expected to ACA.

J.P. Paluskiewicz, Deputy Chief Of Staff for Congressman Michael Burgess (R-TX) Matthew Siegler, Counsel from U.S. House Energy and Commerce Committee Minority Staff presented and bottom line nothing major expected in this year (2014) but could see changes after new Congress elected.

10:30-?? 30 years of the State and Local Legal: Why Counties should Care about the Supreme Court

Vice Chair Fesko attend this workshop. For 30 years, the State and Local Legal Center (SLLC - www.statelocal.org) has provided critical support for state and local governments with Supreme Court litigation. Filing over 300 amicus briefs in the Supreme Court, the SLLC ensures that the voices of state and local governments are heard in cases that could dramatically alter the landscape within which they govern. In this session, attendees will get a historical perspective of the SLLC's work and what it means for counties.

10:45 -12:00 Educational workshop – Communicating clearly in a crisis

Jessica Beyer, communications manager and business analyst from Blue Earth County, MN and Lori Hudson, Communication And Digital Media Services Director from Hillsborough County, Florida presented on “dos and don’ts” for how to best share information during a crisis.

CAO Leddy attended workshop with several case studies of examples of effective county communication during natural disasters.

12:00 – 3:30 pm NACo General Session

Vice Chair Fesko and CAO Leddy attended – presentation from former Governor John Huntsman and former Senator Evan Bayh on the NoLabels.org effort to find members of congress who are problem solvers vs. being purely partisan.

4:00-5:00pm California Caucus meeting

Vice Chair Fesko and CAO Leddy attended along with California County Board members who received a presentation from Joe Krahn, Waterman Associates including updates on PILT efforts, Transportation funding and the emergency drought funding bill that would get California \$650 million to support drought stricken California communities.

Tuesday, March 4th

9:30 am James Peterson, Legislative Assistant
Office of Senator Dianne Feinstein
331 Hart Senate Office Building
(202) 224-3841

Vice Chair Fesko and CAO Leddy met with James Peterson to present the County’s proposal to prevent the listing of the Bi-state Sage Grouse. Mr. Peterson is Senator Feinstein’s lead environmental staff person and specializes in public lands.

Vice Chair Fesko explained that Mono County staff, US Fish and Wildlife and members of the State Local Area Working Group developed the Bi-state Sage Grouse Habitat Conservation Plan. The Plan would call for \$37.9 million over five years and would, if fully implemented, could prevent an endangered species listing of the Bi-State Sage Grouse.

Vice Chair Fesko explained in detail the impacts that a listing would cause on the County's local economy and on use of private land. Mr. Peterson understood the potential impact a Listing could have on California and Nevada and will be presenting the proposal to Senator Feinstein. Mr. Peterson understood the need to prevent the listing and expressed support.

Vice Chair Fesko also discussed with Mr. Peterson the Mammoth Mountain Ski Area Land Exchange bill (H.R. 1241) and reiterated that the Mono County Board was in support. Mr. Peterson said Senator Feinstein would be carrying the bill in the Senate.

11:00 am **Sara Moffat, Legislative Assistant**
Office of Senator Harry Reid
522 Hart Senate Office Building
(202) 224-3542

Vice Chair Fesko and CAO Leddy met with Ms. Moffat and presented the Bi-State Sage Grouse proposal. Ms. Reid stated Senator Reid is supportive of the proposal as it is a proactive effort. She further recommended touching base with Senator Barbara Mikulski's Office, as she is Chair of Appropriations.

Ms. Moffat also recommended seeking House Republican support (see meeting with Congressman Paul Cook below as well as meeting with Robert Yavor of Congressman Buck McKeon's office).

Ms. Moffat directed the County to review the recently passed Farm Bill stating there may be funding opportunities within the Bill for preservation. Staff will research this option as well as follow up with USDA staff.

11:15 am **Andrew Dohrmann,**
Majority Professional Staff
Committee on Environment and Public Works
410 Dirksen Senate Office Building
(202) 224-8832

Vice Chair Fesko and CAO Leddy met with Mr. Dohrmann to discuss MAP 21 (The federal transportation bill and its successor which is under development). Concerns were recently raised that future transportation bills might move to a funding formula which is based on population

versus road miles. This would deeply hurt Mono County and the MOU Mono County currently has with Inyo and Kern Counties.

Mr. Dohrmann stated Senator Boxer, who chairs the committee, would never allow that to occur at the federal level. There was discussion that the California State Legislature might seek this change for funds received by the state. Staff will follow up with CSAC and RCRC as well as state legislators to ensure this does not occur.

2:00 pm **Ryan Leavitt, Legislative Correspondent**
Office of Senator Dean Heller
342 Hart Senate Office Building
(202) 224-6244

Vice Chair Fesko and CAO Leddy met with Mr. Leavitt who sat in for Jeremy Harrell on behalf of Senator Heller and received information expressly on the Bi-State Sage Grouse issue. Mr. Leavitt was very enthusiastic about the County's proposal and stated he would be an advocate for its support with the Senator.

Senator Heller's state will be impacted by the Bi-State Grouse listing and is looking for any efforts to prevent listing. Staff will follow up with Mr. Leavitt.

3:00 pm **Robert Yavor, Legislative Assistant**
Office of Congressman Buck McKeon
2310 Rayburn House Office Building
(202) 225-1956

Mr. Yavor works for Congressman Buck McKeon who used to represent Mono County. Vice Chair Fesko presented the Bi-State Sage Grouse Plan and Mr. Yavor said that he would present to Congressman McKeon and ask him to support the effort.

Mr. Yavor also said he would be coordinating with James Peterson in Senator Feinstein's office to work together on this issue. Per Mr. Yavor, Congressman McKeon will defer to Congressman Cook as lead on this effort but would be an advocate for Mono County.

3:30 pm **Congressman Paul Cook**
1222 Longworth House Office Building
(202) 225-5861

Vice Chair Fesko and CAO Leddy met with Congressman Cook, his Chief of Staff, John Sobel, and Congressman Cook's Legislative Director Tim Itnyre and presented the Sage Grouse Plan. Congressman Cook said he would take on the county's effort whole-heartedly.

Congressman Cook directed his staff to work with Mono County Staff to put together a meeting with USFW in DC (via phone for Mono staff) to move the Plan forward. Congressman Cook also requested Mono staff to work with his staff to develop a letter of support for the funding for the House Appropriations Committee Chair, Congressman Ken Calvert.

Congressman Cook's enthusiastic support is the lynch pin to moving this effort forward. With his meeting, the County has attained its most important advocate, Congressman Cook, who will help us move forward the proactive Bi-State Plan effort. Staff has already begun working with Tim Itnyre on next steps.

4:15 pm

Amelia Jenkins, Deputy Staff Director, Minority Staff
Subcommittee on Public Lands and Environmental Regulation
House Committee on Natural Resources
186 Ford House Office Building
(202) 225-2761

Vice Chair Fesko and CAO Leddy met with Ms. Jenkins and another member of the Subcommittee staff to seek out leads to support county efforts on the Bi-State Sage Grouse plan.

Ms. Jenkins recommended the following options might be pursued in addition to effort with Congressman Cook, Senator Feinstein, Senators Heller and Reid:

- US Marine Mountain warfare Training facility could be impacted by the listing – seek out Department of Defense authorization or funding for some of the mitigation work (namely the Juniper/Pinions mitigation);
- Request Congressman Steve Horsford (who is on Natural Resources Committee) during April Hearings with Secretary of the Interior to ask for support of the Sage Grouse preservation Plan in public hearing.
- Under the Department of Interior's Office of Policy Program (Climate Adaptation program) seek possible funding.

Wednesday, March 5th

10:30 am **John Brodtke, Legislative Director**
Office of Congressman Steven Horsford
1330 Longworth House Office Building
(202) 225-9894

Vice Chair Fesko and Paul Schlesinger (of the firm Alcalde and Fay and at no charge to the County) met with John Brodtke to present the County's proposal to prevent the listing of the Bi-State Sage Grouse. Mr. Brodtke is Congressman Horsford's legislative director.

The proposal to prevent the listing was well received and support was indicated. John was happy to hear that we have already spoken with Congressman's Reid and Feinstein's office. He stresses the need to get these two on board and indicated that Congressman Horsford would be willing to support the plan.

March 11, 2014

Regular Meeting

Item #9a

Probation and

Various Depts.

Mono Realignment

ITEM #9A – MONO REALIGNMENT SLIDE PRESENTATION

A link to the actual presentation is also available separately on the Board of Supervisors Website due to different formatting.

Slide 1 cover

Slide 2

Brief Overview of Realignment

Slide 3

In 2011, Assembly Bill 109 and 117 were signed to close the revolving door of low-level inmates cycling through prisons.

Overall, the diversion of low-level offenders and parole violators to county jail and/or supervision instead of state prison since 10/2011 has resulted in a population decrease of about 25,000.

Slide 4

3 NONs

non-violent

non-serious

non-sex offender

Slide 5

On October 5, 2011, Mono County Board of Supervisors approved the Local Implementation and Post Release Supervision Plan submitted by the Community Corrections Partnership (CCP).

Slide 6

Behavioral Health

Slide 7

Provides services on a weekly basis in the County Jail via AB 109

Behavioral Health shares an employee part time with the Probation Department as a way to provide services county-wide and promote collaboration

Group and individual services provided by Rich Bonneau and Debra Stewart

Rich has provided weekly groups in three communities and the jail. On an average, he provides the following clinical hours weekly: 2 at the jail, 3 in Mammoth, and 3.5 in Benton. Rich just began a group in Bridgeport. Rich's work was honored by Probation for his work and received a Service Medal.

Moral Reconciliation Therapy training, an evidence based nationally acclaimed program, is being provided to probation and behavioral health

AOD, mental health and crisis intervention

Slide 8 Photo

Slide 9

NEEDS

Transition House

Life Skills

Slide 10 District Attorney

Slide 11

Increase to staff time and case preparation

Prepares parole hearings (3) and added victim/witness services

With many violators, treatment offered in lieu of custody

Repeat probation violators (38) would have gone to prison

Public safety

Focus of rehabilitation over punishment

Slide 12

Victim Advocate

Slide 13

Shorter Custody Terms

Slide 14 Picture

Slide 15 Social Services

Slide 16 Picture of Lobby

Slide 17

While Social Services received no money from AB 109, we have provided the following services to date for realigned adults:

9 receiving CAL Fresh

1 receiving CAL Works

2 receiving MediCAL

4 receiving County Medical Service

Slide 18

Community Re-entry Services for incarcerated realignment offenders:

- o Benefits Eligibility Assistance
- o Employment and Training Services

Slide 19

Benefits Eligibility Assistance

- o Offenders will meet with eligibility worker (EW) upon release
- o EW assists with referral to proper assistive program
- o Eligibility for emergency assistance determined
- o Access to emergency food pantry

Slide 20

Employment and Training

Slide 21

- o In jail Employment Orientation, upon request
- o On release meet with Case Worker, conduct intake
- o Skills assessment; job search assistance
- o Case Management and individualized activity plan
- o Referrals to adult basic education, GED assessment, alcohol/drug services, behavioral health, SSI application assistance

Slide 22 Mammoth PD

Slide 23 – chart – Staffing

Slide 24 – chart – Part One Crime

Slide 25 – chart – Arrests

Slide 26 – chart - Number of Incidents by year

Slide 27

Factors Impacting Crime?

- o economy
- o police presence and strategies
- o demographic changes
- o tourism
- o weather

Slide 28 – Public Health

Slide 29

Poster

Slide 30

Public health is available for health education and can provide STI/HIV and Hepatitis C testing

Slide 31

Poster

Slide 32

Bridgeport clinic...

Slide 33

Public Health can also provide:

Health education

Tobacco Cessation

Pregnancy testing/referral

WIC Well Infant & Children

Adult Immunizations

Slide 34

Poster

Slide 35

Mono County of Education

Slide 36

As a CCP partner, MCOE has committed to providing the following services:

Slide 37

o Services through the library

(in custody and out)

o Conduct transcript evaluation and individual educational plan development

o Facilitate GED preparation instruction and/or coursework to complete High School Diploma

o Facilitate access to adult education, career technical education and other continuing course work

Slide 38

Wild Iris

Slide 39 Picture

Slide 40

Wild Iris is a Victim Service Organization providing:

Slide 41

Services while in custody:

Parenting/co-parenting

Support Groups

Counseling related to victims of sexual assault, domestic violence and/or child abuse

Services after release:

Parenting/co-parenting

Support Groups

Counseling related to domestic violence and/or child abuse

Family Preservation and support

Slide 42

Victim Only Services (after release):

Assistance with restraining orders

Emergency shelter

Safety planning

Legal/medical/personal advocacy & accompaniment

Information and referrals

Emergency food & clothing

Housing Establishment & relocation

Counseling for victims of sexual assault

Supervised visitation for non-custodial parent

Slide 43

Public Defender

Slide 44

The Public Defender provides:

- o Representation and defense of probation violators
- o Representation and defense of violations of mandatory supervision
- o Representation and defense of parole violations

Slide 45

picture

Slide 46

Public Defenders have seen a substantial increase in time dedicated to realignment

Slide 47

Sheriff's Office

Slide 48

Realignment involves offenders to serve their sentence in county jail if convicted under 1170(h) resulting in:

Slide 49

- o Increased inmate population
(28 have been sentenced to date) up to 8 years
- o Increased overcrowding (it's inevitable)
- o Increased cost to house long term inmates
(must now provide medical, dental and eye)
- o Increased need for programming

Slide 50

Increased need of programming

Slide 51

Currently offer religious services, group substance abuse counseling and AA

Work Detail October 21st week -

work crews are on the average six inmates/day with a total of 333 work hours per week saving \$5000 if county had supplied labor

Work Detail November 3rd week -

work crews are on the average five inmates/day with a total of 442 work hours per week saving \$6600 if county had supplied labor

Slide 52 – 55 Photos of work crews

Slide 56

Increased need for Space

Slide 57

The jail was constructed in the 1980's with no thought to programs

Plan is to use the EOC room for programming, groups and education

Slide 58

Average Daily Population from 10/1/2011 to 10/1/2013 was 27 males and 2 females

Slide 59

Funding was provided by the CCP for the redesign and ORBOCOM project to bring electronic infrastructure to industry and need level

Slide 60 - 63

photos

Slide 64

Increased possibility in confrontations between inmates and/or staff

Slide 65

Common penological knowledge that stressed space either through design or numbers of offenders are related to high numbers of conflict

Offenders with extended sentences without constructive activities will increase in sophistication and stress

This alone is reason for increased programs, education and activities are paramount in the jail

Slide 66

photo

Slide 67

photo

Slide 68

Probation

Slide 69

photo

Slide 70

Probation provides supervision of probationers (adult and juveniles) PRCS, Mandatory Supervision, pre-trial, and PC1000 (drug/alcohol diversion).

Slide 71

photo

Slide 72

In order to more effectively supervise, Probation re-organized and turned our attention to supervision in the field

Slide 73 - 75

photo

Slide 76

Demographics

Slide 77

Male v Female by probation

Slide 78

Age by Probationer

Slide 79

Risk by gender

Slide 80

Ethnicity by risk

Slide 81

Risk score by felony

Slide 82

Felony/Misdemeanor

Slide 83

Caseload Offense, Low

Slide 84

Caseload Offense, Moderate

Slide 85

Caseload Offense, High

Slide 86

Caseload by Offense, Juvenile

Slide 87

Caseload by Offense, Court Lead

Slide 88

Caseload by Offense, Juvenile Lead

Slide 89

Profile of Mono Offender

Slide 90

Probation Violations have increased

Slide 91

Many reasons could be affecting the probation violations but some variables may be:

- o Increase in number of probationers being supervised
- o Change in type of offenses
- o With low numbers, an increase could be statistically irrelevant in a 5, 10, 20 year study
- o There has been a rise in drug diversion (PC 1000) thereby changing the caseloads with higher risk scores
- o The organizational structure changed allowing for more supervision especially in the field
- o Most probation violations have been new charges - not technical violations

In retrospect, we are watching this change but mindful that our sample is low and should be interpreted with caution.

Slide 92

PC 1170 (h) Split Sentences ("Split")

- o Since October 2011, Mono County has received 5 Split Sentences
- o Four are drug offenses, and one receiving stolen property
- o Probation is actively supervising two (2) in the community with three (3) in custody completing their time
- o The jail received 28 offenders since October 2011 involved in AB 109 as well as two instances of Flash Incarceration

Slide 93

Post Release Community Supervision (PRCS)

- o Mono received seven (7) PRCS Offenders
- o BSCC projected Mono would receive four (4)
- o Of the seven received, 4 are males, 3 females, 4 Caucasian, 2 Hispanic and 1 Native American
- o Offenses of PRCS were theft (4), DUI with prior (1) and drug offenses (2)

Slide 94

No PRCS' are currently being supervised. There have been five (5) successful releases (no new offenses during supervision nor additional charges), one ordered to 1170 (h) Split and is currently in the community under supervision and one PRCS who was scheduled to be released however was pending a sex offense in Nevada before being released on PRCS.

Slide 95

Probation, while using Evidence Based Practices (EBP), is now evolving to Integrated Management (IM), a management approach to EBP.

Staff first received training in leadership and change paradigms. The training was provided under EBT-TIPS grant and included Justice Partners.

The next step is strategic planning which is scheduled in April.

Slide 96-98

Photos

Slide 99

CCP

Slide 100

Members of CCP, Executive Committee is in BLUE

Slide 101

On October 5, 2011, the CCP outlined the Proposed Outcomes in their Local Implementation Plan (LIP):

1. Implementation of a streamlined and efficient system to manage our additional responsibilities under realignment.
2. Implementation of a system that protects public safety and utilizes best practices in recidivism reduction.
3. Implementation of a system that effectively utilizes alternatives to pretrial and post-conviction incarceration where appropriate.

Slide 102

Outcome Measure

Slide 103

1. CCP partner feedback in 2013 measuring effectiveness of mechanisms in place to collaboratively address realignment issues as they arise.

RESULTS

Implementation of a streamlined and efficient system in Mono County to manage our additional responsibilities

- o Most members agree to strongly agree

Implementation of a system that protects public safety and utilizes best practices in recidivism reduction.

- o Most members agree to strongly agree with 25% disagreeing

Implementation of a system that effectively utilizes alternatives to pre-trial and post conviction incarceration where appropriate.

- o The average agree with 12.5 % disagreeing.

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2. Implementation of a system that protects public safety and utilizes best practices in recidivism reduction.

The CCP is in the process of refining the transition program. Included will be those evidence based practices found to be most effective in working with transitioning offenders.

Since October 2011, probation and behavioral health have been using evidence based practices to include cognitive-behavioral therapy, risk and needs assessments, journaling using cognitive approaches through the change company, training staff in both departments in Moral Reconciliation Therapy, Anger Reduction groups and many other EBP based approaches.

Further, probation has increased the number of compliance visits in the community with technical probation violations dropping substantially.

Slide 105

Curtis Hill just presented several descriptive statistics regarding the type of offender probation is seeing providing:

- o recidivism for the 3 Nons
- o recidivism for parolees (awaiting data as began in July 2013)
- o number and types of offenders sentenced to probation and alternative programs
- o Offenders receiving straight jail time (1170) consist of the following offenses: Drug, Vandalism, DUI and Theft
- o Offenders receiving prison time consist of the following offenses: Drug, Aggravated DUI and Sex Offenses

Slide 106

3. Implementation of a system that effectively utilizes alternatives to pretrial and post-conviction incarceration where appropriate.

No pre-trial alternatives and/or post-conviction incarceration alternatives were used with realignment.

Slide 107

How do we compare with the state?

Slide 108

Chart of state

Slide 109

Chart of Mono

Slide 110

Trends in the State since October 2011

18,000 offenders have been diverted from the prisons or roughly 9% of overall reduction

From 10/2011 - 12/2012, violent crime went up 3.4%. The rise in violent crimes have been unrelated to realignment although the nation is seeing this same rise. Also, violent crimes are seen more in the top ten largest counties in California.

From 10/2011 - 12/2012, property crimes went up 7.6%. While too soon to tell, there seems to be a modest relationship in realignment and robbery. However, related to vehicle thefts which rose 14.6%, there appears to be robust evidence between realignment and vehicle theft (with California experiencing the biggest increase in comparison to other states). For Mono, we have had one vehicle theft.

Crime rates in California remain at a historical low.

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Three Judge Panel

Slide 112

On February 10, 2014, the panel released an opinion in part approving and in part denying the state's request for the extension of the December 31, 2013 deadline. The state was to operate the prison system at 137.5% design capacity by that date.

The panel, while acknowledging that realignment had been executed, believed that the state executed no durable solution or "remedy" to prison overcrowding. They are; however, ready to proceed now.

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The State will be granted a two-year extension

The population will be reduced in three stage "benchmarks" - June 2014, February 2015 and February 2016

A Compliance Officer will be appointed who has the authority to release prisoners if the State does not meet a benchmark date.

Further, the State has agreed to develop comprehensive and sustainable prison population reforms such as establishing a commission to recommend reforms of state penal and sentencing laws.

The State has agreed to immediately implement various population reduction measures, such as increasing good time credits for non-violent second-strike offenders and minimum custody inmates, implementing a new parole determination process by which second-striker offenders will be eligible for parole after serving only 50% of their sentence, and expanding parole for the elderly and medically infirm.

This extension and agreement will allow for hundreds of millions of dollars to be allocated to a Recidivism Reduction Fund

Slide 114

Not sure how this will be disbursed

Slide 115

Mono's CCP Future?

The CCP will continue work in:

Transition Services

Transition House

Increased Programming in both inside the jail and the community

Slide 116

QUESTIONS

March 11, 2014

Regular Meeting

Item #9c

Community Develop.

Comments on Draft

Economic Analysis

for Sierra Nevada

Yellow-Legged Frog

and Yosemite Toad

SUGGESTED
CHANGES

In short, the DEA's overly-narrow construction of section 4(b)(2) is contrary to the law and has resulted in the omission from the document of a significant amount of information which the Service is legally obligated to consider.

2. The Service can no longer segregate and then disregard probable economic impacts on the basis that they are not quantifiable.

Prior court decisions within the Ninth Circuit have allowed the Service to meet its obligation to consider probable economic impacts by analyzing only those impacts that the Service, in its discretion, deemed to be certain and quantifiable (historically, the costs of section 7 consultation). Deference was given to the Service's determination that other types of impacts were "unquantifiable" and therefore uncertain and excludable. "Those costs that were uncertain or speculative . . . were not included in the total potential incremental economic impact. The uncertain costs were deemed unquantifiable by the Service and were dealt with on a qualitative level . . ." (See *Alaska Oil and Gas*, *supra*, at p. 993.)

The limitations of this past approach are obvious. As noted by the *Alaska Oil* Court itself (even while affirming the Service's actions): "It is arguably misleading for the Service to represent that the total potential incremental cost of the designation actually includes a complete picture of all the costs that could be incurred as a result of the designation." (*Id.*) In other words, according to the court, to quantify the economic impact of critical habitat designation by including only the costs to federal agencies of section 7 consultation is misleading and does not provide a complete picture of all of the costs which could result from the designation. The court further notes that "[t]he way in which the analysis was used is far from ideal or even the most reasonable." (*Id.*)

It is perhaps with these limitations in mind that the revised 50 CFR § 424.19, which took effect on October 30, 2013, specifically provides that economic analyses may be performed *on a qualitative or quantitative* level. The language of the revised rule explicitly recognizes that impacts which may only be (or may be better) analyzed qualitatively are properly addressed in an economic analysis. Under the revised rule, impacts may no longer be excluded from the final determination of potential incremental economic impact merely because they are not capable of being analyzed quantitatively.²

3. The Service cannot avoid consideration of probable economic impacts by declining to identify what restrictions or changes are likely to result from the designation.

The proposed critical habitat designation for the three amphibians would cover *more than two million acres* of land across *seventeen different counties* throughout California. In Mono County, where the primary economic, cultural, and social drivers are tourism and recreation,³ and the majority of those uses occur on federal lands (e.g. ~~US Forest Service lands~~), which themselves make up approximately ~~6283~~% of the county's total land base, the designation will have profound

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Based on this information, a qualitative analysis concludes that the majority of these economic activities, revenues, and employment opportunities are generated by front-country activities in proposed critical habitat for the Sierra Nevada yellow-legged frog (e.g., Saddlebag Lake, Ellery Lake, Tioga Lake, Lee Vining Creek, and Rock Creek Lake and Eastern Brook Lakes in Inyo County) and the Yosemite toad (Lake Mary, Lake George, and Virginia Lakes). Thus, an initial qualitative impact analysis could assume significant impacts generated by potential restrictions or even uncertainty related to activities at these front-country recreation locations. A second scenario could identify a lesser impact if front-country lakes were excluded, and very highly utilized day use wilderness corridors such as Twenty Lakes Basin, Coldwater Canyon, and Gem/Waugh lakes, and Little Lakes Valley in Inyo County, remained in critical habitat. A third scenario of critical habitat only in designated wilderness with very highly utilized day use corridors excluded represents the least amount of economic impact, and probably the greatest benefit to the species. The California Department of Fish and Wildlife Region 6 is not proposing any Sierra Nevada yellow-legged frog Native Species Restoration (NSR) sites in front-country areas or very highly utilized day use corridors (J. Erdman, pers. comm., 2/14/14).⁹

The information provided is from existing sources, extracted and focused in order to inform the economic impact discussion of these potential critical habitat designations. Should the Service recognize its obligation to identify restrictions or changes likely to result from the designation and consider the economic impacts of those changes on non-federal entities, then the County would be willing to pursue more site specific data assuming sufficient time is given and the data would be utilized in the decision making process.

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⁹ James Erdman, California Department of Fish and Wildlife, Region 6, Fisheries Biologist, Bishop.
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In short, the DEA's overly-narrow construction of section 4(b)(2) is contrary to the law and has resulted in the omission from the document of a significant amount of information which the Service is legally obligated to consider.

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Prior court decisions within the Ninth Circuit have allowed the Service to meet its obligation to consider probable economic impacts by analyzing only those impacts that the Service, in its discretion, deemed to be certain and quantifiable (historically, the costs of section 7 consultation). Deference was given to the Service's determination that other types of impacts were "unquantifiable" and therefore uncertain and excludable. "Those costs that were uncertain or speculative . . . were not included in the total potential incremental economic impact. The uncertain costs were deemed unquantifiable by the Service and were dealt with on a qualitative level" (See *Alaska Oil and Gas*, *supra*, at p. 993.)

The limitations of this past approach are obvious. As noted by the *Alaska Oil* Court itself (even while affirming the Service's actions): "It is arguably misleading for the Service to represent that the total potential incremental cost of the designation actually includes a complete picture of all the costs that could be incurred as a result of the designation." (*Id.*) In other words, according to the court, to quantify the economic impact of critical habitat designation by including only the costs to federal agencies of section 7 consultation is misleading and does not provide a complete picture of all of the costs which could result from the designation. The court further notes that "[t]he way in which the analysis was used is far from ideal or even the most reasonable." (*Id.*)

It is perhaps with these limitations in mind that the revised 50 CFR § 424.19, which took effect on October 30, 2013, specifically provides that economic analyses may be performed **on a qualitative or quantitative** level. The language of the revised rule explicitly recognizes that impacts which may only be (or may be better) analyzed qualitatively are properly addressed in an economic analysis. Under the revised rule, impacts may no longer be excluded from the final determination of potential incremental economic impact merely because they are not capable of being analyzed quantitatively.²

3. The Service cannot avoid consideration of probable economic impacts by declining to identify what restrictions or changes are likely to result from the designation.

The proposed critical habitat designation for the three amphibians would cover **more than two million acres** of land across **seventeen different counties** throughout California. In Mono County, where the primary economic, cultural, and social drivers are tourism and recreation,³ and the majority of those uses occur on federal lands (e.g. US Forest Service lands), which themselves make up approximately **62.83%** of the county's total land base, the designation will have profound

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Board of Supervisors, County of Mono



Larry Johnston ~ District One Fred Stump ~ District Two Tim Alpers ~ District Three
Tim Fesko ~ District Four Byng Hunt ~ District Five

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COUNTY OF MONO**

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March 11, 2014

Public Comments Processing
Attn: FWS -R8-ES-2012-0100 or FWS-R8-ES-2012-0074
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RE: Mono County's Comments on the Draft Economic Analysis of Critical Habitat Designation for Three Sierra Nevada California Amphibians

The Mono County Board of Supervisors appreciates the opportunity to comment on the *Draft Economic Analysis of Critical Habitat Designation for Three Sierra Nevada California Amphibians* released for public review on January 10, 2014 (the "DEA" or "the Draft Economic Analysis"). Section A of this letter focuses primarily on legal issues raised by the DEA, while Section B provides the Service with specific information regarding economic impacts within Mono County which was excluded from the DEA and outlines additional omissions and/or errors that further call into question the document's legal adequacy.

A. LEGAL ISSUES RAISED BY THE DRAFT ECONOMIC ANALYSIS

- 1. The Draft Economic Analysis does not provide the Service with the information necessary to meet its legal obligations under the Endangered Species Act— impacts of the designation on non-Federal activities must also be considered.**

Most strikingly, the *Draft Economic Analysis* addresses **only one** potential economic impact associated with the designation of **more than two million acres¹** of land across seventeen different counties throughout California. However, that impact - increased costs to federal agencies (and to a limited number of small entities) resulting from mandatory section 7 consultation - is not the only probable economic impact which the Service is legally obligated to consider under section 4(b)(2) of the Endangered Species Act (the "Act").

Under the Act, the Service must consider all economic impacts of its action on proposed or ongoing activities prior to designating critical habitat. "Prior to finalizing the designation of critical habitat, the Secretary will consider the probable economic . . . impacts of the designation upon

¹ 1,105,400 acres for the Sierra Nevada yellow-legged frog, 221,498 acres for the DPS of mountain yellow-legged frog and 750,926 acres for the Yosemite toad, for a total of 2,077,824 million acres.

proposed or ongoing activities.” (50 CFR § 424.19 (b); *see also* 16 U.S.C. § 1533(b)(2).) Such consideration must include *all* probable economic impacts. “The Service must show ... that it *considered all* potential economic impacts of the designation.” (*Alaska Oil and Gas Assoc. v. Salazar*, 916 F.Supp.2d 974, 993 (D. Alaska. 2013), *emphasis in original, bold type added.*)

Contrary to what is presented in the DEA, probable economic impacts include both impacts to federal activities resulting from the designation of critical habitat and ***impacts to non-federal activities that would be affected by the resulting constraints imposed on federal activities:***

The activities in question are of two kinds: (1) they are the federal activities that, if the designation is made, would be subject to the section 7 requirement that they be conducted in such a way as to avoid placing the species in jeopardy or destroying or adversely modifying critical habitat; and (2) ***they are the non-federal activities that would be affected by the section 7 constraints on the federal activities*** (DOI Solicitor General Memorandum-37016, Oct. 30, 2008, pp. 15-16, *emphasis added, hereinafter “DOI 2008”*).

Interestingly, the same mistaken description of impacts required to be considered under 4(b)(2) and, as a result, actually considered in the DEA, is repeated in the Federal Register notice of revisions to 50 CFR § 424.19. (*See* 78 FR 53058-13, 2013, hereinafter the “Notice”.) Specifically citing DOI 2008, the Notice describes the economic impacts which must be considered under section 4(b)(2) of the Act as limited to the cost to federal agencies of mandatory section 7 consultations. “The activities at issue are only those that would require consultation under section 7 of the Act. *See* DOI 2008 at 10-12 . . . [f]or the purpose of the impacts analysis required by the first sentence of section 4(b)(2) of the Act, the incremental impacts are those probable economic, national security, and other relevant impacts of the proposed critical habitat designation on ongoing or potential ***Federal*** actions.” (78 FR 53058-01, 2013, 53061-62, *emphasis added.*)

However (as previously indicated) DOI 2008, which is the source cited by the Notice, in reality says something different. It specifically provides that non-federal activities which would be affected by section 7 constraints on federal activities are within the range of activities to be analyzed. And DOI 2008 is consistent with a long line of case law on this point. (*See e.g., Cape Hatteras Access Preservation Alliance v. U.S. Dept. of Interior*, 731 F.Supp.2d 15, 31 (D.C.C. 2010): economic analysis considered impacts of lost trips due to beach closures; *Alaska Oil and Gas Assoc., supra*, at p. 993: Service considered *all* economic evidence provided by Plaintiffs and other sources; *Arizona Cattle Growers’ Assoc. v. Salazar*, 606 F.3d 1160, 1174 (9th Cir. 2010): discussing Service’s duty to perform a thorough economic analysis; and *Middle Rio Grande Conservancy District v. Babbitt*, 206 F.Supp.2d 1156 (D. NM. 2000): rejecting the Service’s draft economic analysis and critical habitat designation for failing to consider impacts of the designation of farming and other private interests.)

Further, the DEA’s claim that under a “strict interpretation of the Regulatory Flexibility Act (RFA) only Federal agencies are directly regulated by the designation of critical habitat” (DEA at p. ES-14, ¶ 29) is not only a strained and unlikely reading of the RFA, but also does not excuse the Service from consideration of economic impacts to small entities (and others) under section 4(b)(2).

In short, the DEA's overly-narrow construction of section 4(b)(2) is contrary to the law and has resulted in the omission from the document of a significant amount of information which the Service is legally obligated to consider.

2. The Service can no longer segregate and then disregard probable economic impacts on the basis that they are not quantifiable.

Prior court decisions within the Ninth Circuit have allowed the Service to meet its obligation to consider probable economic impacts by analyzing only those impacts that the Service, in its discretion, deemed to be certain and quantifiable (historically, the costs of section 7 consultation). Deference was given to the Service's determination that other types of impacts were "unquantifiable" and therefore uncertain and excludable. "Those costs that were uncertain or speculative . . . were not included in the total potential incremental economic impact. The uncertain costs were deemed unquantifiable by the Service and were dealt with on a qualitative level . . ." (See *Alaska Oil and Gas, supra*, at p. 993.)

The limitations of this past approach are obvious. As noted by the *Alaska Oil* Court itself (even while affirming the Service's actions): "It is arguably misleading for the Service to represent that the total potential incremental cost of the designation actually includes a complete picture of all the costs that could be incurred as a result of the designation." (*Id.*) In other words, according to the court, to quantify the economic impact of critical habitat designation by including only the costs to federal agencies of section 7 consultation is misleading and does not provide a complete picture of all of the costs which could result from the designation. The court further notes that "[t]he way in which the analysis was used is far from ideal or even the most reasonable." (*Id.*)

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3. The Service cannot avoid consideration of probable economic impacts by declining to identify what restrictions or changes are likely to result from the designation.

The proposed critical habitat designation for the three amphibians would cover **more than two million acres** of land across **seventeen different counties** throughout California. In Mono County, where the primary economic, cultural, and social drivers are tourism and recreation,³ and the majority of those uses occur on federal lands, which themselves make up approximately 83% of the county's total land base, the designation will have profound and far reaching impacts. Yet

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restrictions on activities on federal lands within and adjacent to Mono County which will result from the designation – and their effects on the local economy, businesses, agriculture, and people – are simply not addressed in the DEA.

Any such impacts are dismissed as either too speculative or uncertain, are found to be zero, or are otherwise excluded from review. The Service cannot evade economic review merely by claiming that impacts cannot be predicted, yet this is precisely what it does. The DEA explains that “[a]t this time . . . the Service is unable to predict the types of projects that may require different conservation efforts. Thus impacts occurring under such circumstances are not quantified in this analysis. We focus on quantifying incremental impacts associated with the additional administrative effort required when addressing potential adverse modification of critical habitat in section 7 consultation.” (DEA p. ES-6.)

In *Middle Rio Grande Conservancy District v. Babbitt*, the Service’s designation of critical habitat was struck down because it had failed to adequately acknowledge and consider probable economic impacts. Specifically, the draft economic analysis did not acknowledge the impacts to irrigators and other users of water from the river resulting from the critical habitat designation. “. . . [F]arming in the Middle Rio Grande Valley is put at serious risk by designating the entire middle river as critical habitat and requiring a continuous flow through its 163 miles . . . [but] . . . FWS dismiss[es] the probability of a vast shift in New Mexico’s economy, culture, ecology and social life as wholly unremarkable.” (*Middle Rio Grande Cons. Dist. v. Babbitt*, 206 F.Supp.2d 1156, 1180 (D.NM 2000).)

In rejecting the Service’s draft economic analysis, the *Middle Rio Grande* court noted that “completely ignoring human and economic impact directly counters the intent of the Endangered Species Act and is an unacceptable approach to fulfilling ESA responsibilities.” (*Id.*). The court additionally faulted the Service for failing to “demonstrate any careful identification or weighing of pertinent facts, any meaningful consideration of the concerns and opinions of state and federal authorities or any regard for the several entities with direct involvement with the issues to be decided . . . even as to subject matter which is within another agency’s expertise and not its own.” (*Id.*)

Ignoring such impacts with the simple statement that they are “unpredictable” does not make this DEA any less infirm than the one struck down in *Middle Rio Grande* and other cases. While the critical habitat designation in *Middle Rio Grande* was accompanied by flow requirements restricting use of water from the river, the solution here is not to disclaim knowledge of likely future restrictions or delay determining what those restrictions may be so as to avoid considering them. If the law allowed such a sleight of hand, then the Act’s requirement that an economic analysis be conducted prior to designation would be completely meaningless.

Finally, in those instances where the DEA actually does attempt to analyze an impact, its conclusion is that there is no impact (other than the costs of section 7 consultation), because there will be no modification to activities resulting from the designation. While this may be a convenient way to streamline (or avoid) analysis, it belies the very need to designate critical habitat in the first instance. If no changes to proposed or ongoing activities will result from the designation and/or the section 7 consultation (i.e., if no changes are necessary to protect the species), then why make the

designation? ⁴ And given that the Secretary's ultimate decision to exclude or include land as critical habitat involves a weighing of benefits and impacts, wouldn't the lack of a benefit be outweighed even by the cost (and inconvenience) of a section 7 consultation which, by the DEA's own admission, results in no alteration to the activities at issue? As the DEA states, "Because project modifications are not anticipated at this time, in this instance, critical habitat designation will likely add minimal incremental conservation benefits to those provided by baseline conservation actions." (DEA p. ES-14.)

4. The DEA fails to include costs associated with additional reviews required by the California Environmental Quality Act for lands designated as critical habitat.

Under the California Environmental Quality Act (CEQA) whenever a public agency authorizes, approves, funds, or carries out an activity that will result in a physical change to the environment, it is required to undertake an environmental review. (See Cal. Pub. Res. Code §§ 21000 et seq.) An Environmental Impact Report (EIR) is required whenever a "fair argument" can be made based on substantial evidence in light of the whole record, that the project may have a significant effect on the environment. (See *County Sanitation District No. 2 of Los Angeles County v. County of Kern* 127 Cal. App. 4th 1554.) Accordingly, CEQA sets a very low bar for when an in-depth EIR (with its attendant public and agency comment and review procedures) must be prepared. Even when the bar is not reached, a negative declaration, which also requires circulation, agency and public comment and environmental analysis, will frequently be required.

As recently noted by the Service in the Federal Register Notice, costs subject to consideration under section 4(b)(2) "can result if the designation triggers compliance with separate authorities that are exercised in part as a result of the Federal critical habitat designation (e.g., additional reviews, procedures, or protections under legal authorities of States or local jurisdictions (see DOI 2008 at 22-23.))" (78 FR 53058-01, 2013.)

Under CEQA, the presence of critical habitat will often trigger (or require higher levels of) environmental review than would have been required absent the designation (see e.g., 14 CCR § 15065, describing mandatory findings of significance under CEQA requiring the preparation of an EIR). And even where there is no mandatory finding of significance, in actual practice the fact that a proposed project involves critical habitat elevates the level of review. For example, additional studies will generally be prepared to demonstrate that the species is not present at the site of the proposed project or, if it is, that it would not be impacted by the proposed activities. Finally, it is not uncommon for projects subject to CEQA under state law to involve federal funds, approvals, or agencies – thereby impacting the federal government. Recent examples in Mono County include the Rock Creek Road and Convict Road Rehabilitation Projects, both of which involved federal highway funds and Forest Service lands and both of which required review under CEQA as well as NEPA.

⁴ See e.g., DEA at p. 4-5, explaining that CDFW has indicated that "its fish stocking activities are not likely to affect the species or its habitat" and therefore concluding that, if the Service concurs with CDFW's position, then "the incremental costs of critical habitat designation are limited to the administrative costs of the additional effort to address adverse modification through consultation." In other words, the critical habitat designation will have no benefit and will not engender any changes to the CDFW's current activities, but it will still cost CDFW and the Service because they will have to go through a section 7 consultation. Is this a good use of public dollars?

The DEA improperly excludes a discussion of the additional costs of processing projects under CEQA due to the designation.

B. ECONOMIC IMPACTS WITHIN MONO COUNTY AND OTHER OMISSIONS/INFIRMITIES OF THE DEA

1. Significant economic impacts to Mono County and its residents and businesses will result from the proposed critical habitat designation.

The lack of identification of potential restrictions likely to result from the designation causes significant economic uncertainty for Mono County, its residents and businesses, and other entities. At stake for Mono County is \$4.8 million annually in sales and transient occupancy taxes,⁵ primarily generated by activities and businesses related to tourism and recreation on Federal lands. This fiscal year alone, the County budgeted \$125,950 specifically for the enhancement of fish stocking in front-country lakes; \$42,634 for the operation of Lundy Canyon Campground, adjacent to and an access point for the Twenty Lakes Basin in Subunit 2M of Sierra Nevada yellow-legged frog proposed critical habitat; and \$349,440 to support and promote tourism. In the next 17 years, these investments carried forward total \$8.81 million that could be jeopardized or at least made less effective. For local businesses, the tourism and recreation industry generates \$517.4 million annually in direct and indirect spending (Mono County, 2009).⁶ Hiking is the top activity at about a 45% participation rate, and fishing is the second most popular activity at a participation rate of just under 40%.⁷

Hiking and fishing are just two of the many recreational activities that attract visitors to Mono County, and access to our public lands is of paramount importance to tourism, the county's primary economic driver. The three dominant employment sectors of Mono County include Tourism, Professional Services and the Social/Public sectors and, when combined, these sectors account for **83% of total employment** within the county. All three are directly or indirectly impacted by the tourism economy: Tourism-related businesses (arts, entertainment, recreation, accommodation, and food service) represent a full 38% of employment in Mono County. The Professional Services sector (23%) is closely affiliated with tourism and benefits when visitor spending is strong, as demand is thereby created for real estate, financial services, insurance, housing rentals, and many other services. The Social/Public sector (21.5%) is correlated with local government spending, local population growth, and property values and taxes, and again is directly and indirectly impacted by the strength of the tourism economy.

Quantifiable visitor data is available for specific areas in the proposed critical habitats for both amphibians which must be taken into consideration. According to The Economic & Fiscal Impacts and Visitor Profile of Mono County Tourism in 2008 (2009),⁸ conducted by an independent

⁵ Forecasted in the Fiscal Year (FY) 13-14 budget.

⁶ The Economic & Fiscal Impacts and Visitor Profile of Mono County Tourism in 2008 (2009), available from the Mono County Economic Development Department or at <http://monocounty.ca.gov/economic/page/mono-county-economic-impact-tourism-visitor-profile-study>.

⁷ Activity percentages total more than 100% as multiple activities could be selected.

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consulting firm, 8.2 percent of visitors surveyed said their destination specifically within Mono County was **Rock Creek /Little Lakes Valley** which equates to approximately 93,400 visitors to this region annually, generating spending of over \$1.9 million, based on the average daily spend per person calculated in the study. Just over 17 percent of visitors surveyed said their destination within Mono County was specifically **Mammoth Lakes Basin** (Lake Mary and Lake George), which translates to 256,500 visitors annually, and over \$20 million dollars in visitor spending. Finally, 2.7 percent of visitors surveyed indicated their primary destination was **Virginia Lakes**, which equates to 40,500 visitors annually, and \$2.3 million in spending. The small businesses located specifically in these regions – pack stations, lodging properties, restaurants, retail shops, and marinas – rely completely on tourism for their livelihoods; anything that impacts or restricts access to recreational pursuits will directly affect the ability for these services to stay in business.

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The critical habitat units are generally large, and while at least one population may exist in each unit, the vast majority of acreage, water bodies, and meadows in any given subunit is likely to be unoccupied. Thus, assigning an "occupied" status to the entire unit misrepresents the extent of species distribution and is indefensible. For example, within Mono County, 15 extant populations of the Sierra Nevada yellow-legged frog are included in the proposed critical habitat designation and 22 single-site Native Species Restoration (NSRs) sites are proposed (J. Erdman, pers. comm., 2/14/14).¹⁰ About six of these populations occupy multiple sites (five to many), and yet all the extant populations combined occupy only a tiny fraction of the approximately 48,600 acres of proposed critical habitat in Mono County. The same situation is true for the Yosemite toad, of which approximately 73,900 acres of critical habitat is identified and extant populations only cover a small percentage of this area. These large areas that are truly unoccupied cannot be included in "baseline protections," and instead must be extracted and evaluated in the DEA. The cost of any activities in these currently unoccupied areas, including work at proposed NSRs to restore the primary constituent elements of critical habitat necessary for species recovery, must be evaluated and considered.

3. The DEA contains data errors and omissions.

Information in Chapter 4 relating to Mono County is inaccurate or missing. As documented in the County's November 5, 2013 letter, the Humboldt-Toiyabe National Forest (HTNF) manages the following livestock grazing allotments that are not included in Exhibit 4-5:¹¹

- Silver Creek allotment: 9,245 acres of Sierra Nevada yellow-legged frog proposed critical habitat of the total 19,365-acre allotment, currently permitted for 810 ewe/lamb pair from August 16 to October 31 for 2051 total head months and 615 animal unit months.
- Sardine allotment: 9,403 acres of Yosemite Toad proposed critical habitat of the total 16,851-acre allotment, currently permitted for 125 cow/calf pairs from July 16 to September 15 for 255 total head months and 336 animal unit months.
- Piute allotment: 8,720 acres of Yosemite Toad proposed critical habitat and 12,603 acres of Sierra Nevada yellow-legged frog proposed critical habitat (overlap of 7,385 acres), currently permitted with various numbers of sheep on temporary permits from 500-1,000 ewe/lamb pairs for 1-1.5 months during the grazing season. Total head months and animal unit months average around 750 and 225, respectively.
- Virginia Creek allotment: 15 acres of Yosemite Toad proposed critical habitat of the 2,258-acre allotment, which is currently vacant.

Other missing information previously submitted¹² may include packstock operations in the Humboldt-Toiyabe (HTNF) and Inyo National Forests (INF). It is unclear whether the following pack operations are considered:

- Virginia Lakes Pack Outfit (HTNF): 1,195 service days

¹⁰ James Erdman, California Department of Fish and Wildlife, Region 6, Fisheries Biologist, Bishop.

¹¹ Aaron. C. Coogan and Rixey Jenkins, U.S.D.A. Forest Service, Humboldt-Toiyabe National Forest Bridgeport Ranger District, Rangeland Management Specialists, Bridgeport. Emails last dated September 20, 2013.

¹² Mono County comment letter dated November 5, 2013: personal communications with M. Bonesteel (9/25/13) and C. John (10/1/13).

- Leavitt Meadows Pack Station (HTNF): 1,214 service days
- Frontier Pack Train (INF): 1,068 overnight service days
- Reds & Agnew Meadows Pack Stations (INF): 1,368 overnight service days
- Mammoth Lakes Pack Outfit (INF): 754 overnight service days
- McGee Creek Pack Station (INF): 415 overnight service days

Finally, an error is identified in Exhibit 4-3, which shows the Big Creek ALP Projects in Yosemite Toad Unit 4, which is almost entirely located in Mono County. This project is not located in Mono County, and is more likely located in Unit 14. This error is then carried through to the economic impact calculations in Exhibit 4-21.

4. The cumulative impacts of proposed Endangered Species Act listings and critical habitat designations should be considered.

Mono County is also faced with proposals for the Bi-State Distinct Population Segment of the Greater Sage Grouse, and the Service has stated that consideration of cumulative effects would be the responsibility of Washington, D.C. staff. The public process does not provide a direct commenting venue to these decision makers, preventing the ability to consider and analyze a very serious potential impact. Mono County could be impacted with new regulations from the highest mountain peaks to lowland valleys, covering 82% of private properties and key locations critical to the County's tourism and recreation economy. Between these actions, a \$517.4 million annual recreation economy is at stake, along with sales, transient occupancy, and property taxes that generate 58% of the County's general fund budget.

C. CONCLUSION

The draft DEA does not provide the Service with the information necessary to meet its legal obligations under the Act. A revised DEA must disclose all activities, including non-federal activities that would be affected by the section 7 constraints on federal activities and CEQA implications. In addition, the Service must identify potential restrictions so that probable economic impacts to these activities may be disclosed and considered. If no modifications to any of these activities are truly the expected outcome, then the need for the critical habitat designation is prominently called into question. Mono County reiterates its support of the California Department of Fish and Wildlife's position that the designation of critical habitat is not prudent as it provides no additional benefits, which is now further supported by this DEA.¹³ Finally, Mono County concludes that the unoccupied locations within critical habitat units must be extracted and analyzed separate from baseline protections, data error and omissions must be rectified, and cumulative impacts should be considered.

A simple qualitative analysis reveals significant economic impacts if front-country lakes are included in critical habitat, a lesser impact if only wilderness areas are included, and a relatively minor impact if wilderness areas excluding very highly utilized day use corridors are included. As the DEA itself recognizes that the critical habitat designation will add only minimal incremental conservation benefits over those provided by baseline conservation actions, Mono County reiterates our request to exclude front-country lakes and highly utilized day use wilderness

¹³ Mono County comment letter submitted at the January 30, 2014 public hearing in Sacramento.
Board of Supervisors, County of Mono

corridors under Section 4(b)(2) as submitted in our November comment and January public hearing letter.¹⁴ The reduction of properly considered economic impacts will certainly outweigh the minimal incremental benefits provided by these unoccupied locations lacking proposed Native Species Restoration sites. In addition, Mono County has submitted biological evidence that these front-country sites and wilderness corridors do not contain the primary constituent elements necessary for critical habitat.¹⁵

Thank you for taking the time to consider Mono County's comments on the draft DEA. The County appreciates the challenging political, environmental and social position of the Service, and hopes this information will assist the Service with weighing the benefits against the potential economic impacts of designating critical habitat.

Respectfully,

MONO COUNTY BOARD OF SUPERVISORS


By: Larry K. Johnston, Chairman

CC: Congressman Paul Cook
Senator Dianne Feinstein
Senator Barbara Boxer
Rural County Representatives of California (RCRC)
California State Association of Counties (CSAC)

Town of Mammoth Lakes
County of Inyo
County of Alpine
CDFW Region 6

¹⁴ Letters dated November 5, 2013, and letter submitted at the January 30, 2014 public hearing in Sacramento.

¹⁵ Mono County comment letter submitted at the January 30, 2014 public hearing in Sacramento.
Board of Supervisors, County of Mono