

## NEVADA ASSOCIATION OF COUNTIES (NACO)

Board of Directors' Meeting  
December 18, 2020, 9:30 a.m.  
*Virtual Attendance Only*

### **NOTICE TO THE PUBLIC:**

The State of Nevada is currently in a declared State of Emergency in response to the global pandemic caused by the coronavirus (COVID-19). In accordance with the Governor's Declaration of Emergency Directive 006, which has suspended the provisions of NRS 241.020 requiring the designation of a physical location for meetings of public bodies where members of the public are permitted to attend and participate, public meetings of the Nevada Association of Counties will NOT have a physical location open to the public until such time this Directive is removed.

The public may provide public comment in advance of a meeting by written submission to the following email address: [info@nvnaco.org](mailto:info@nvnaco.org) For inclusion or reference in the minutes of the meeting, your public comment must include your full name and be submitted via email by not later than 3:00 p.m. the day before the meeting.

*The public may also join the meeting via telephone and provide verbal public comment during designated times by calling: (669)900-9128 Meeting ID: 83151833827 Passcode: 470269*

### **AGENDA**

NACO Board members may attend via phone or video from other locations. Items on the agenda may be taken out of order. The NACO Board may combine two or more agenda items for consideration. The NACO Board may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

Call to Order, Roll Call and Pledge of Allegiance

1. Public Comment. Please Limit Comments to 3 Minutes.
2. Approval of Agenda. **For Possible Action**
3. NACO President's Report.
4. NACO Executive Director's Report.
5. Approval of Minutes of the November 19th, 2020 NACO Board of Directors Meeting. **For Possible Action**
6. Discussion and Approval of NACO's 2021 Budget. **For Possible Action**
7. Approval of NACO Board of Director's Meeting Dates for 2021. **For Possible Action**
8. Discussion and Approval of Establishing a New Checking Account at Either Nevada State Bank or Wells Fargo Bank; Transferring NACO Funds into the New Account; and Closing NACO's Checking Account with Bank of America. **For Possible Action.**
9. Approval of NACO Resolution 20-01 Recognizing January as National Radon Action Month. **For Possible Action**

10. Recommendation of a Nominee for Appointment by the Governor for NACO's Seat on the Nevada Commission on Off-Highway Vehicles (NRS 490.067). **For Possible Action**
11. Wrap Up Discussion Regarding the 2020 NACO Annual Conference.
12. Discussion on COVID-19 Response and Related County Activities Including an Update on State and County Vaccination Plans from the Nevada Division of Health and Human Services, Karissa Loper, Deputy Bureau Chief, Division of Public and Behavioral Health, Candice McDaniel, Health Bureau Chief, Nevada Department of Health and Human Services, Julia Peek, Deputy Administrator, Division of Public and Behavioral Health. **For Possible Action**
13. Update on NACO BDRs and Other Policy Issues Affecting Counties Leading into the 2021 Session of the Nevada Legislature. **For Possible Action**
14. **Update and Possible Action** Regarding Natural Resources and Public Lands Issues Affecting Counties Including:
  - a. Approval of Updates to NACO's Public Lands Action Plan
  - b. Discussion of Possible NACO Involvement in Ongoing Litigation Against the U.S. Fish and Wildlife Service Over Decision to Withdraw Possible Listing of the Bi-State Sage-grouse Under the Endangered Species Act
  - c. Fallon Range Training Complex (FRTC) Modernization and Nevada Test and Training Range (NNTR), Including Legislative Status
  - d. Other Updates from the Public Lands and Natural Resources Subcommittee
15. NACO Committee of the Emeritus Update.
16. National Association of Counties Board Member Updates.
17. Western Interstate Region Board Member Updates and Updates from National Association of Counties' Policy Steering Committee Members.
18. NACO Board Member Updates.
19. Public Comment. Please Limit Comments to 3 Minutes.

#### Adjournment.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify NACO in writing at 304 S. Minnesota Street, Carson City, NV 89703, or by calling (775) 883-7863 at least three working days prior to the meeting.

Members of the public can request copies of the supporting material for the meeting by contacting Amanda Evans at (775) 883-7863. Supporting material will be available at the NACO office and on the NACO website at: [www.nvnaco.org](http://www.nvnaco.org)

*This agenda was posted at the following locations:*

NACO Office 304 S. Minnesota Street, Carson City, NV 89703

Washoe County Admin. Building 1001 E. Ninth Street, Reno, NV 89520

Elko County Manager's Office 540 Court Street #101, Elko NV 89801

POOL/PACT 201 S. Roop Street, Carson City, NV 89701

## Agenda Item 5

### NEVADA ASSOCIATION OF COUNTIES (NACO)

Board of Directors' Meeting

November 19, 2020

Immediately Following the Annual Business Meeting

*Virtual Attendance Only*

**ATTENDANCE:** President French, President Elect Kirkpatrick, Vice President Lucey, Past President Waits, Carson City Supervisor Giomi, Churchill County Commissioner Olsen, Clark County Commissioner Weekly, Elko County Commissioner Dahl, Elko County Commissioner Steninger, Esmeralda County Commissioner Keyes, Lincoln County Commissioner Lister, Lyon County Commissioner Keller, Mineral County Commissioner Price, Nye County Commissioner Wichman, Pershing County Commissioner Shank, Storey County Commissioner Gillman, White Pine County Commissioner Carson, NACO Fiscal Officer Kalt and NACO Staff (Dagny Stapleton, Vinson Guthreau, Colby Prout and Amanda Evans)

The meeting was called to order at 10:28 a.m.

1. **Public Comment.** None was given.
2. **Approval of Agenda.** The agenda was approved on a motion by Vice President Lucey with second by Commissioner Shank.
3. **NACO President's Report.** President French referred to the remarks made during the Annual Business meeting.
4. **NACO Executive Director's Report.** Dagny referred to the remarks made during the Annual Business meeting. She also reminded the Board that a meeting for rural Commissioners to meet with Senator Cortez Masto would be held the following day at noon.
5. **Approval of Minutes of the October 23, 2020 NACO Board of Directors Meeting.** The minutes were approved on a motion by Past President Waits with second by Commissioner Shank.
6. **Discussion on December NACO Board Meeting and Proposed NACO Board Meeting Dates for 2021.** Dagny referred to the proposed Board of Directors 2021 calendar that was included in the agenda packet. She recommended that the May meeting be moved from the 28<sup>th</sup> to the 21<sup>st</sup> because the Memorial Day holiday and the end of the legislative session. She also suggested moving the January meeting from the 22<sup>nd</sup> to the 21<sup>st</sup> as it is scheduled for Clark County and their offices are closed on Fridays. She also noted that the January meeting is proposed for the 4<sup>th</sup> week instead of the 5<sup>th</sup> week due the expected start of the Legislative Session. Past President Waits stated that the 21<sup>st</sup> is Lander County's regularly scheduled Commission meeting and it was decided that holding the July meeting in Clark County would accommodate all counties as it is a 5<sup>th</sup> week meeting and after the close of the Legislative Session. Staff was directed to make the changes to the proposed calendar and bring it back to the Board for final approval in December. Dagny also inquired as to the Board's desire to possibly meet in person in December. An afternoon meeting with a Board dinner following was discussed. All members of the Board wish to meet in person but noted the limitations in place and uncertainty due to the pandemic. Staff was directed to monitor the situation and if possible make arrangements for an in person meeting if it could be

conducted safely and within the parameters set forth by the State at that time. No action was taken.

**7. Nomination and Possible Approval of NACO's Two Appointments to the National Association of Counties Western Interstate Region (WIR) Board of Directors.**

President French gave an overview of WIR, its importance as part of the National Association of Counties (NACo) policy platform at the national level, and reminded the group that he and Commissioner Dahl have served on that Board for some time. He informed the Board that he would like to continue serving on the WIR Board, but that Commissioner Dahl would be terming out in January and would no longer be eligible to serve. Commissioner Dahl nominated President French and Elko County Commissioner Steninger for appointment to the WIR Board of Directors. The motion was seconded by Past President Waits; the motion passed unanimously.

**8. Update on County Long Term Care Medicaid Match Contracts and Assessment Bills.**

Dagny gave the Board a brief history of the contracts and assessments, noting that these assessments are the largest of any that counties receive from the State. She reminded the Board of the actuarial study completed earlier in the year that showed the assessments will increase dramatically over time. Dagny also reminded the Board of the actions taken by the Board for the Fund for Accident Care to Indigent Persons (IAF) to help support counties in the payment of those bills. She informed the Board that all 17 counties must participate in the program in order to pull federal dollars into the program. The State is currently working on the contracts which will be negotiated with the counties and a roundtable with Medicaid is being scheduled for January 15<sup>th</sup> to discuss the assessments. Dagny also informed the Board that issues with some bills the counties have received being more than the contract amount had been elevated to the Director of the department. Dagny shared that the FY22/23 projected assessments should be shared soon and reminded that they must be approved by the Legislature. No action was taken.

**9. Update on NACO BDRs and Other Policy Issues Affecting Counties Leading into the 2021 Session of the Nevada Legislature.**

Legislative Subcommittee Chair, Vice President Lucey informed the Board that a discussion on property tax reforms would be taking place later that afternoon. Vinson informed the Board that staff is continuing to monitor Bill Draft Requests (BDRs) and are actively watching the development of the State's budget, noting the recent request by the Governor for all departments to reduce their budget requests by 12% due to COVID-19 repercussions and the uncertainty of future economic impacts. He informed the Board that the next meeting of the Subcommittee will be December 4<sup>th</sup> and all Commissioners are welcome to participate. Vinson also reminded the Board that the group meets weekly during session. Chair Lucey noted the group is identifying the new members of the Legislature and that with no super majority in power there will be much more room for negotiation. He stressed the importance of strengthening relationships with returning Legislators and the development of relationships with new members, as well as educating them on the duties and importance of the counties. Chair Lucey also informed the Board that Legislative Leadership is currently determining the membership on committees and what the session will look like due to the pandemic. President French inquired as to what individual Commissioners and the 17 Boards can do to assist, and Chair Lucey noted that is important for them to participate as much as possible. Dagny concluded the item by reiterating the importance of member participation on the Legislative Subcommittee. She also informed the Board that due to the 12% budget cuts the Community Health Nurse Program in the rural counties could be cut and that she and rural county representatives would be participating in a call on the issue the following day. No action was taken

**10. Update and Possible Action Regarding Natural Resources and Public Lands Issues Affecting Counties Including:**

- a. Updates from the Public Lands and Natural Resources Subcommittee.** Colby informed the Board that the Subcommittee had held substantive discussion on several items but took no action. The Subcommittee discussed legislation proposed by Elko County, and the lawsuit surrounding the Bi-State Sage Grouse listing decision. He requested that any issues regarding broadband connectivity be brought to his attention. Colby also informed the Board that the Nevada Economic Assessment Project (NEAP) is moving forward with the inclusion of an outdoor recreation component. Colby concluded the item by informing the Board that the State Water Engineer had extended the deadline for the submission of testimony on the proposed orders regarding hydrographic basins in the State to December 1. No action was taken.
- 11. NACO Committee of the Emeritus Update.** Past President Waits commented on the success of the few workshops that were able to be held during the year due to the pandemic, as well as the well-attended Newly Elected Officials training held in conjunction with the Annual Conference earlier in the week. Vinson informed the Board that the New Commissioners Handbook update is complete and that the Handbook will be distributed to all newly elected Commissioners. He thanked Past President Waits for her leadership and reiterated that the feedback received regarding the training was positive. Vinson concluded the item by reminding the Board that the Committee is Chaired each year by the Immediate Past President, making the next leader of the group President French.
- 12. National Association of Counties Board Member Updates.** Dagny informed the Board that Commissioner Higbee could not attend the meeting due to a family emergency, but that he had requested she inform the Board that there is a meeting coming up and he will have a report at the next meeting.
- 13. Western Interstate Region Board Member Updates and Updates from National Association of Counties' Policy Steering Committee Members.** Commissioner Dahl also informed the Board that there is an upcoming meeting of the WIR and agenda items include election information, vaccine distribution, the transition from the Trump to the Biden administration and updates on public lands issues and Payment in Lieu of Taxes (PILT) payments and the distribution formula. No Policy Steering Committee updates were given.
- 14. NACO Board Member Updates.** Members of the Board gave updates on activities within their communities
- 15. Public Comment.** Amanda thanked the Board for their support of and participation in the virtual annual conference that week. She also informed the Board that recordings of all educational sessions as well as copies of all presentations given would be posted on the NACO website. Commissioner Keyes informed the Board that, after months as the only County with no COVID-19 cases Esmeralda County had recently had their first diagnosis. Commissioner Wichman stated that after all her years as a Commissioner and member of the NACO Board she will greatly miss the members and group when she terms out in January.

The meeting was adjourned at 11:22 a.m.

# 2021 NACO Dues Schedule With 0.5% PL ASSESSMENT

County	Revenue Component		Population Component <sup>(2)</sup>			Public Lands Component		2021 Dues <sup>(3)</sup>	2020 Dues	Change
	FY 19 <sup>(1)</sup> Audited Revenues	Base Assessment	2019 Certified Population	Per Capita Assessment	Population Assessment	2020 County PILT Payment	Public Lands Assessment (0.5%)			
Carson City	\$116,484,594	\$21,500	55,916	0.06	\$3,355	\$117,542	\$588	\$25,443	\$25,433	\$10
Churchill	\$32,653,153	\$13,000	24,909	0.1	\$2,491	\$2,398,974	\$11,995	\$27,486	\$26,785	\$701
Clark	\$3,642,290,381	\$24,500	2,266,715	0.03	\$68,001	\$3,715,229	\$18,576	\$111,078	\$110,199	\$879
Douglas	\$91,678,685	\$21,500	48,905	0.08	\$3,912	\$718,132	\$3,591	\$29,003	\$28,933	\$70
Elko	\$58,740,616	\$18,000	52,778	0.06	\$3,167	\$3,687,149	\$18,436	\$39,602	\$39,305	\$297
Esmeralda	\$6,796,591	\$6,500	873	0.15	\$131	\$157,167	\$786	\$7,417	\$7,438	-\$21
Eureka	\$22,374,754	\$13,000	2,029	0.15	\$304	\$381,119	\$1,906	\$15,210	\$15,120	\$90
Humboldt	\$33,461,423	\$13,000	16,831	0.1	\$1,683	\$1,881,488	\$9,407	\$24,091	\$23,915	\$176
Lander	\$44,775,513	\$15,500	5,532	0.12	\$664	\$1,069,164	\$5,346	\$21,510	\$21,465	\$45
Lincoln	\$11,386,228	\$8,500	5,183	0.12	\$622	\$951,374	\$4,757	\$13,879	\$13,791	\$88
Lyon	\$52,456,057	\$18,000	57,510	0.06	\$3,451	\$2,317,683	\$11,588	\$33,039	\$32,575	\$464
Mineral	\$11,229,291	\$8,500	4,505	0.15	\$676	\$774,037	\$3,870	\$13,046	\$10,836	\$2,210
Nye	\$63,233,940	\$18,000	46,523	0.08	\$3,722	\$3,416,712	\$17,084	\$38,805	\$38,485	\$320
Pershing	\$14,102,964	\$8,500	6,725	0.12	\$807	\$1,166,649	\$5,833	\$15,140	\$15,010	\$130
Storey	\$27,655,470	\$13,000	4,123	0.15	\$618	\$40,910	\$205	\$13,823	\$13,834	-\$11
Washoe	\$518,689,292	\$24,500	471,519	0.04	\$18,861	\$3,767,957	\$18,840	\$62,201	\$61,322	\$879
White Pine	\$39,715,515	\$15,500	9,580	0.12	\$1,150	\$1,307,604	\$6,538	\$23,188	\$20,590	\$2,598
<b>Total</b>	<b>\$4,787,724,467</b>	<b>\$261,000</b>	<b>3,080,156</b>		<b>\$113,615</b>	<b>\$27,868,890</b>	<b>\$139,344</b>	<b>\$513,959</b>	<b>\$505,036</b>	<b>\$8,923</b>

(1) From Audited S-1 Revenues

(2) Certified by Governor; provided by the State of Nevada Demographer

(3) 2021 Dues = Base Assessment + (2019 Population X Per Capita Assessment) + (2020 County PILT Payment X PILT Assessment)

## 2021 NACO Budget - *approved xx/xx/2021*

BEGINNING NET POSITION                      \$ 1,138,250

### REVENUES

Membership Dues	\$374,615
Public Lands Assessment Dues	\$139,344
Associate Membership	\$18,000
Conference Revenue	\$80,000
IAF Administration Contract	\$70,000
Interest & Investment Income	\$15,000
National Programs	\$2,500

<b>Projected Total Revenues</b>	<b>\$699,459</b>
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<b>Total Available Resources</b>	<b>\$1,837,709</b>
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### EXPENSES

Staff Salaries	\$334,750
Benefits	
PERS	\$98,751
Health/Dental/Vision/Life Insurance	\$33,000
Workers Comp/FICA	\$7,500
Audit	\$8,500
Board Meetings	\$7,500
Building Capital Projects	\$6,000
Building Operating Expenses & Repairs	\$19,000
Conference Expenses	\$38,000
County Leadership Institute	\$3,200
Donations/Sponsorships	\$1,500
Equipment Lease & Maintenance	\$4,500
Equipment Purchases	\$4,500
IT Support	\$2,500
Internet Service	\$9,000
Legislative Expenses	\$15,000
Liability & Auto Insurance	\$5,500
Member Services	\$3,000
Office Supplies	\$3,500
PEHB Liability	\$6,000
Postage	\$500
Printing	\$500
Professional Services	\$15,500
Publications/Dues/Registration Fees	\$3,660
Representative Travel	\$17,000
Special Studies/Litigation/Legal Fees	\$15,000
Staff Travel	\$20,000
Telephone	\$6,000
Vehicle Registration Maintenance	\$3,000
Web-based Hosting & Subscription Software	\$5,000
WIR Dues	\$9,000

<b>Projected Total Expenses</b>	<b>\$706,361</b>
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<b>Net Income (Loss)</b>	<b>-\$6,902</b>
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<b>Estimated Net Position</b>	<b>\$1,131,348</b>
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## 2021 BUDGET DESCRIPTION (approved December xx, 2020)

### NACO REVENUES

**MEMBERSHIP DUES:** The 2021 NACO membership dues for all counties are calculated to be a total of \$374,615. The 2020 membership dues were \$368,788. The NACO Dues Schedule was developed to recognize the various unique characteristics of each county, while at the same time providing a systematic method of assessment that considers the changes occurring yearly in our member county revenues. As such, the 2021 dues are based upon the FY19 audited S-1 revenues for each county and the 2019 certified population figures. The majority of counties saw only a 1% or less increase to their membership dues.

**PUBLIC LANDS ASSESSMENT DUES:** This revenue calculation is based on the equivalent of a percentage, as determined by the Board, of up to .5%, of the most recent federal Payment in Lieu of Taxes (PILT) payment made to each county. The proposed Assessment for 2021 is based on 0.5% and is a total of \$139,344. This assessment pays for the expense of NACO support for counties on natural resources-related issues. This assessment increased by less than 1%.

**ASSOCIATE MEMBERSHIPS:** \$18,000 is anticipated as revenue from Associate Memberships in 2021. Though the 2020 budgeted amount was \$22,000, and in 2019 NACO drew \$22,500 in Associate Membership revenue, due to the economic impact of COVID-19 to some of our members, 2020 Associate Memberships totaled only \$17,250, and so we believe \$18,000 is a reasonable projection for 2021.

**CONFERENCE REVENUE:** Conference revenue for 2020 is projected to be \$80,000, lower than the \$90,000 in revenues that we would otherwise project based on 2018 and 2019 revenues. This lower projection is based on the assumption that we may have fewer sponsorships in 2021 due to the economic impact of COVID-19.

**INDIGENT ACCIDENT FUND (IAF) ADMINISTRATION:** \$70,000 is budgeted by NACO for administration and support of IAF activities and the IAF Board of Directors. The current contract to provide administrative services to the IAF Board and Fund extends through June 2021.

**INTEREST & INVESTMENT INCOME:** \$15,000 has been budgeted for investments that are managed by Moreton Financial Advisors, which is the same amount as 2020. Income for 2020 is projected to be just over \$17,000.

**NATIONAL PROGRAMS:** Through agreements entered into by the Board, the Association receives revenue from the National Association of Counties (NACo) for marketing Nationwide Retirement Services (deferred compensation) and the Caremark Discount Prescription Card Program. The Association also receives royalties based on county participation in Nationwide Retirement Services as well as constituent use of the Caremark Discount Prescription Card. Due to decreased participation in these programs, we have budgeted only \$2,500 for this revenue source in 2021, approximately \$4,000 less than was budgeted for in 2020, but in line with actual revenue received. NACO can generate additional revenue as well as savings for counties by increasing the use of the national programs.

## NACO EXPENSES

**STAFF SALARIES AND BENEFITS:** The 2021 budget calls for continuing with a full-time NACO staff of four: Executive Director, Deputy Director, Office Manager and Natural Resources Manager. Salaries for NACO employees are \$330,894 which includes a 3.0% cost of living increase (COLA) for staff. Salary adjustments will be effective January 1, 2021. All projected staff salaries for 2021 are within the salary ranges for those positions. All employees are members of the employer funded Public Employees Retirement System. The PERS contribution rate is currently 29.25%. NACO employees are also provided life insurance, health, dental and vision insurance. The 2021 budget reflects a decrease in health insurance costs, due to over allocating for this expense in 2020.

**WORKER'S COMP/FICA:** The Workers' Compensation is provided under the Public Agency Insurance Pool. The 2021 budget amount is \$7,500. The budgeted amount for 2019 was \$6,000, but the actual expense is projected to be approximately \$7,000.

**AUDIT:** \$8,500 is budgeted for our independent auditor, Michael Bertrand, to conduct the 2020 NACO Audit. The actual amount for 2019 was \$8,700, and we project the fee for 2021 not to exceed \$8,500.

**BOARD MEETINGS:** \$7,500 is allocated for expenses related to 2021 Board meetings, which includes expenses for staff to travel for two meetings in Clark County, as well as costs for 1-2 annual Board gatherings. This item has been reduced from \$10,000 for 2021.

**BUILDING CAPITAL IMPROVEMENT PROGRAM:** \$6,000 is budgeted for minor improvements and repairs to the historic NACO office building. This is a reduction of \$2,000 from 2020.

**BUILDING OPERATING EXPENSES:** \$19,000 is budgeted for taxes, utilities, landscaping/snow removal, janitorial services, and minor maintenance and repairs. This is the same amount that was budgeted in 2020.

**CONFERENCE EXPENSE:** \$38,000 is allocated for the 2021 NACO Annual Conference which will be in Churchill County. The actual expense in 2018 was \$39,000; and NACO did not have traditional 3-day Conferences in 2019 and 2020. We believe we can manage Conference expenses at that number.

**COUNTY LEADERSHIP INSTITUTE:** \$3,200 is allocated in 2021 to support attendance for one participant in the National Association of Counties, County Leadership Institute training program. This is the same amount that was allocated for this expense in 2020.

**DONATIONS/SPONSORSHIPS:** \$1,500 is being proposed for donations during 2021 to support other groups affiliated with the mission of NACO. This is the same as last year.

**EQUIPMENT LEASES & MAINTENANCE:** \$4,500 is allocated for office equipment leases and maintenance. This figure represents the lease of a copier, scanner and fax machine, as well as maintenance costs for equipment. This is the same amount as was allocated for this budget category in 2020.

**EQUIPMENT PURCHASES:** \$4,500 is allocated for computer and other office equipment including non-subscription software. This is the same amount that was budgeted for in the past four years. We have managed purchases of any new computers or office equipment to stay within budget each year.

**IT SUPPORT:** \$2,500 has been allocated for IT support. This budget category is for a contract that NACO has with an IT expert who assists NACO with hardware and software issues including internet service and routers, NACO file server, and staff computers. This is the same amount that was budgeted for in 2020.

**INTERNET SERVICE:** The cost for internet service for the NACO office, including in the NACO Conference room in 2021 is projected to be \$9,000. This cost has nearly doubled from the 2020

budgeted amount. The NACO office was using a 25mbps speed and was seeing service interruptions along with an increased need to be working online due to COVID-19. The internet speed was updated to 100mbps and the increase in cost reflects the new service level.

**LEGISLATIVE EXPENSES:** \$15,000 is requested for legislative expenses during 2021 to support active dialogue with members of the legislature and lobbying team efforts on behalf of the membership. This is an additional \$8,000 over what was budgeted last year to include a monthly stipend for an intern to assist the NACO team during the 2021 Legislative Session. Other expenses include lobbyist registration fees, the legislative bill tracking service, and costs related to NACO and the League of Cities joint Legislative event. This budget amount in non-legislative years includes the cost of travel to meet with Legislators and so NACO realized savings in this budget item in 2020.

**LIABILITY AND AUTO INSURANCE:** NACO is a member of the Nevada Public Agency Insurance Pool. \$5,500 is allocated for general liability for the office and NACO vehicle, which is the same amount that was budgeted for 2020.

**MEMBER SERVICES:** This budget category is to cover expenses incurred for meetings and events hosted by NACO, and for NACO members, include one for members while they travel annually to Washington D.C., as well as miscellaneous meetings hosted at the NACO offices that may include meals. The amount projected for this expense is \$3,000, the same is in 2020.

**OFFICE SUPPLIES:** \$3,500 is allocated for office supplies. This is the same amount as budgeted in 2020.

**PEHB LIABILITY:** \$6,000 has been budgeted for the prorated subsidy for two former NACO employees from the State who are receiving Public Employee's Health Benefits. This is an increase of approximately \$4,000 over last year as an additional employee is now retired and using this benefit.

**POSTAGE:** \$500 is allocated for postage, which is the same amount budgeted for 2020.

**PRINTING:** \$500 is allocated for general printing, the same amount budgeted in 2020.

**PROFESSIONAL SERVICES:** \$15,500 has been allocated to pay for professional services in 2021. This includes payroll processing and bookkeeping services.

**PUBLICATIONS/DUES/REGISTRATION FEES:** \$3,660 is allocated for newspapers and magazine subscriptions, membership dues in other organizations and registration fees to outside conferences and meetings. This is the same that was budgeted in 2020.

**REPRESENTATIVE TRAVEL:** \$17,000 is allocated for the NACO President, NACo and WIR Board members and other NACO Board members for travel pursuant to NACO's travel policy. This is the same amount that was allocated in 2020.

**SPECIAL STUDIES/LITIGATION/LEGAL FEES:** \$15,000 is allocated for special studies including but not limited to technical studies related to legislative issues and legal research and litigation.

**STAFF TRAVEL:** \$20,000 is allocated for NACO staff travel for 2020, this amount has not increased since 2017. This includes travel to the NACo Legislative Conference, the NACo Annual Conference, the annual NCCAE meeting, and any other travel that may be required of the NACO staff in the course of carrying out the mission of NACO, including visiting and serving our membership in Nevada.

**TELEPHONE:** \$6,000 is allocated for telephone expenses including office phones, NACO conference line and cell phones for NACO staff. This is the same as the amount that was budgeted in 2020.

**VEHICLE REGISTRATION MAINTENANCE:** \$3,000 is budgeted for 2020, this amount has not increased since 2017.

**WEB-BASED HOSTING & SUBSCRIPTION SOFTWARE:** \$5,000 has been budgeted for software subscriptions such as Microsoft Office, cybersecurity software, PayPal, website hosting and domain registration, and the NACO digital newsletter platform. There is not increase in this amount from 2020.

**W.I.R. DUES:** \$9,000 is budgeted for WIR annual dues for 2021. In 2020 total WIR dues were \$8,142.

DRAFT

# 2021

January						
S	M	T	W	T	F	S
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February						
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

March						
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28	29	30	31			

April						
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May						
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Proposed NACO Board of Directors Meeting Calendar
Observed State Holidays – NACO Office Closed
National Association of Counties Conferences
Legislative Conference - February
Western Interstate Region - TBD
Annual Conference - July
NACO Board of Directors Meetings
NACO Board Meetings in Clark County - TBD
NACO Annual Conference
Churchill County – Fallon, NV

# Resolution

## *of the Nevada Association of Counties*

### **20-03**

#### **A RESOLUTION IN SUPPORT OF NATIONAL RADON ACTION MONTH**

**WHEREAS**, many Nevada residents don't know about radon, yet need to know, for the safety and health of their families, as radon is a colorless, odorless, naturally occurring radioactive gas that is the primary cause of lung cancer among nonsmokers; the second leading cause of lung cancer in smokers and

**WHEREAS**, the U.S. EPA estimates 21,000 people in the U.S. die each year from lung cancer caused by indoor radon exposure, and lung and bronchus cancer kill more people in a year than any other cancer; and

**WHEREAS**, radon kills more people than secondhand smoke, drunk driving, choking, drowning or home fires; and

**WHEREAS**, any home in Nevada may have elevated levels of radon, even if neighboring homes do not, and living in a home with an average radon level of 4 picocuries per liter of air poses a similar risk of developing lung cancer as smoking half a pack of cigarettes a day; and

**WHEREAS**, testing is the only way to know if a home has an elevated radon level, and testing is easy and inexpensive, and when identified, homes can be fixed; and

**WHEREAS**, University of Nevada Cooperative Extension, the Nevada Division of Public and Behavioral Health, and the U.S. Environmental Protection Agency support efforts to encourage all Nevada residents to test their homes for radon, mitigate elevated levels of radon, and have new homes built with radon-reducing materials and features.

**NOW, THEREFORE, we, the Nevada Association of Counties**, do hereby proclaim January 2021, as "**NATIONAL RADON ACTION MONTH**" **In all Nevada counties**

**PASSED, APPROVED AND ADOPTED** this 18th day of December, 2020 by the Board of Directors of the Nevada Association of Counties.

**Attests:**

/ \_\_\_\_\_  
Jim French  
President

/ \_\_\_\_\_  
Dagny Stapleton  
Executive Director

## **Agenda Item 10**

<https://ohv.nv.gov/commission>

## **Agenda Item 11**

<http://www.nvnaco.org/wp-content/uploads/Collated-Educational-Sessions.pdf>

**NACO NATURAL RESOURCES AND PUBLIC LANDS ACTION PLAN**

Nearly eighty-seven percent of Nevada’s land is managed by the federal government. That is the largest percentage of any state in the lower forty-eight. Nye, Esmeralda, Lander, Lincoln, Mineral and White Pine have 90 to 98 percent of their total county acreage administered by the federal government, and all but two others have over 50%. Nevada’s counties’ economies, quality of life, and ability to provide mandated county services are considerably impacted by federal land management decisions and regulations.

**GUIDING PRINCIPLES**

Harness the knowledge, ingenuity, and energy of local government through local input that emphasizes cooperation, collaboration and coordination with state, federal and tribal stakeholders.

Ensure that federal and state agency interpretation of laws and regulations are tailored to and fulfill their legislative intent while not interfering with vital county functions, services and administration.

Ensure that counties have input in all agency management decisions including the implementation of new policies or the modification of existing regulations.

Guarantee appropriate funding for counties.

**Advocating for Healthy Lands**

The scale and scope of natural resource and public land management requires coordination, cooperation and collaborative conservation. Moving forward NACO will continue to facilitate and encourage collaborative conservation which has been instrumental in the conservation efforts leading to the Bi-State Sage-grouse no longer being considered a candidate for listing under the ESA, and the conservation of the Greater Sage-grouse.

NACO encourages improving rangelands, forests, and protecting wildlife by advocating for practical, science-based analysis, and solution-oriented policy. Supporting thriving ecosystems means demanding proper management of Nevada’s free-roaming Wild Horses and Burros. Proper management means reducing their population to BLM’s prescribed appropriate management level within 10 years by using fertility control, adoption, and gathers as proposed in “The Path Forward for Management of BLM’s Wild Horses and Burros.”

Nevada is the most arid state in the nation and our counties bear immediate and long-lasting socioeconomic impacts from wildfires in the Great Basin. Counties are often the first to respond when a wildfire breaks out. Wildfires threaten both lives and livelihood, resulting in major negative economic impacts including the cost of first-line response, repairs to county infrastructure, and secondary impact to county economies from damage to resources. For instance, we support the use of targeted grazing, use of non-native, non-invasive vegetation, and other appropriate management tools that aim to restore range resilience and resistance to fire.

Whether through recreation, agriculture, mining or tourism, county economies are deeply connected to the health and vitality of the lands managed by all federal land management agencies including, the Bureau of Land Management (BLM), U.S. Forest Service, and the U.S. Military. NACO supports practical, science-based approaches to protecting, restoring, and prioritizing healthy lands in Nevada.

### **Regulatory Certainty and Local Expertise**

County services that are tied to natural resource decisions include but are not limited to: county roads (75% of Nevada's roads overall), water and sewer systems, landfills, fire protection, emergency response, weed treatment, airports, and public transit. Federal agencies should recognize and understand the importance of county services including that access to roads and infrastructure and the availability of nearby land is critical for land use planning, economic sustainability of rural communities, and to carry out the mandated and critical services counties provide. Counties also provide important services on public lands. It is vital, therefore that Nevada's counties have a strong and durable voice in the development and implementation of federal and state regulations, and designation of public lands. NACO will engage on changes to interpretation or implementation of federal laws, regulations, and policies that impact county authority and the ability of counties to engage as partners with federal agencies. Counties are heard when they participate as cooperating agencies in rulemakings, submit comments, participate in collaborative conservation efforts, or ensure that future laws and policies are consistent with county land use plans.

Counties can contribute crucial knowledge and expertise to help inform and influence agency decision-making. We advocated for modifications to NEPA and the ESA that would recognize and utilize county expertise as well as already-existing data and scientific analyses and will continue to do so in future rulemakings. The use of preexisting analysis, whether conducted by counties or the University of Nevada, should be an early step in the rulemaking process and should help mitigate or eliminate negative impacts to county plans and functions. For example, the University of Nevada Cooperative Extension's Nevada's Economic Assessment Project (NEAP) in which NACO participates, will provide crucial baseline socioeconomic data that should be used for agency rulemaking and reviews going forward.

NACO will always advocate that agencies interpret regulations in a manner that fulfills their legal mandate, such as the BLM's multiple use mandate under the Federal Land Policy and Management Act. National monument designations must be made in consultation with the county government in which the monument is located, and must include adequate funding so that counties can provide services for those who wish to visit. Additionally, a decision should be made regarding the management of Wilderness Study Areas or other special designations and any acres not selected as wilderness or for special designation should be released to their previous multiple use status. Lastly, NACO supports the transfer of some federal land to states, at the state's request and in consultation with the counties and that such disposals be carried out in an efficient and timely manner

**Agenda Item 14b**

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11 *Attorneys for Plaintiffs*

12  
 13 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

14 DESERT SURVIVORS; CENTER FOR  
 15 BIOLOGICAL DIVERSITY; WILDEARTH  
 16 GUARDIANS; and WESTERN  
 WATERSHEDS PROJECT,

17 Plaintiffs,

18 v.

19 UNITED STATES DEPARTMENT OF THE  
 20 INTERIOR; and UNITED STATES FISH  
 21 AND WILDLIFE SERVICE,

22 Defendants.

Case No. 3:20-cv-6787

**COMPLAINT FOR DECLARATORY  
 JUDGMENT AND INJUNCTIVE RELIEF**

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## INTRODUCTION

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2           1.       The Bi-State Sage-Grouse is a small, isolated, and genetically distinct  
3 subpopulation of greater sage-grouse that lives in sagebrush-steppe and meadow habitat straddling  
4 the border between California and Nevada. These iconic birds, well known for their distinctive  
5 mating ritual, have lost over half of their historic population and range due to urbanization,  
6 wildfires, livestock grazing, predation, infrastructure, human disturbance, and habitat  
7 encroachment by invasive species like non-native conifers, among other factors.

8           2.       In 2013, after many years of vigorous advocacy, administrative resistance, lawsuits,  
9 settlements, and further analysis, the U.S. Fish and Wildlife Service (“Service”) finally proposed  
10 listing the Bi-State Sage-Grouse as “threatened” under the Endangered Species Act. In addition to  
11 designating 1.86 million acres of critical habitat, that action would have strengthened  
12 intergovernmental consultation requirements and collaboration efforts, initiated a rigorous long-  
13 term recovery plan, and opened up a citizen-suit enforcement provision for protecting the Bi-State  
14 Sage-Grouse.

15           3.       In 2015, however, the Service withdrew its proposal. The Service concluded, in  
16 part, that various prospective conservation efforts were sufficient to guard against the Bi-State  
17 Sage-Grouse’s continuing decline. Plaintiffs in this action sued, alleging that the Service had  
18 violated the Endangered Species Act and the Administrative Procedure Act when it withdrew its  
19 proposal to list the Bi-State Sage-Grouse. *Desert Survivors et al. v. U.S. Department of the*  
20 *Interior, et al.*, Case No. 3:16-cv-1165-JCS (N.D. Cal.). This Court agreed, holding, among other  
21 things, that the Service relied too heavily on new population modeling, failed to adequately  
22 describe the effects of the conservation efforts, and interpreted the statutory term “significant”  
23 impermissibly. *Desert Survivors v. U.S. Dep’t of the Interior*, 321 F. Supp. 3d 1011, 1074 (N.D.  
24 Cal. 2018). The Court vacated the 2015 Listing Withdrawal, reinstated the 2013 Proposed Listing  
25 Rule, ordered a new public comment period, and vacated the definition of “significant” in the  
26 Service’s Significant Portion of Its Range Policy. *Desert Survivors v. U.S. Dep’t of the Interior*,  
27 336 F. Supp. 3d 1131, 1137 (N.D. Cal. 2018).



**PARTIES**

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8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a California nonprofit 501(c)(3) corporation headquartered in Tucson, Arizona, with offices throughout the country, including in California and Nevada. The Center is dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center has more than 80,000 members, including many who reside in, explore, and enjoy the native species and ecosystems of California and Nevada where the Bi-State Sage-Grouse Distinct Population Segment is located.

9. The Center brings this action on its own institutional behalf and on behalf of its members, many of whom regularly enjoy and will continue to enjoy educational, recreational, and scientific activities regarding the Bi-State Sage-Grouse. The interests of the Center and its members in observing, studying, and otherwise enjoying the Bi-State Sage-Grouse have been harmed by defendants’ actions.

10. Plaintiff DESERT SURVIVORS is a nonprofit corporation based in Oakland, California. Desert Survivors is a conservation organization with more than 400 members, primarily in California and Nevada, that is focused on the protection of desert plants, wildlife, and ecosystems. Desert Survivors also engages in a vigorous program of public education about desert lands and their unique character. Desert Survivors’ primary goals are to protect fragile desert lands and to teach visitors to those lands about their value. Desert Survivors leads educational trips to desert lands. Desert Survivors has led more than 400 such trips to the desert including many to areas inhabited by the Bi-State Sage-Grouse, including in and near Mono Lake, the Bodie Hills, and the White Mountains.

11. Desert Survivors brings this action on its own institutional behalf and on behalf of its members, many of whom regularly enjoy and will continue to enjoy educational, recreational, and scientific activities regarding the Bi-State Sage-Grouse. The interests of Desert Survivors and

1 its members in observing, studying, and otherwise enjoying the Bi-State Sage-Grouse have been  
2 harmed by defendants' actions.

3 12. Plaintiff WESTERN WATERSHEDS PROJECT ("WWP") is an Idaho-based  
4 conservation organization that was founded in 1993 with the mission of protecting and restoring  
5 western watersheds and wildlife on public lands through education, research, public policy  
6 initiatives, and litigation. Headquartered in Hailey, Idaho, WWP has over 12,000 members and  
7 supporters, and it has field offices in California and Nevada that have been actively involved in  
8 sage-grouse matters. Since its formation, WWP has actively advocated for statutory and regulatory  
9 protection of sagebrush-obligate species, including the Bi-State Sage-Grouse.

10 13. WWP brings this action on its own institutional behalf and on behalf of its  
11 members, many of whom regularly enjoy and will continue to enjoy educational, recreational, and  
12 scientific activities regarding the Bi-State Sage-Grouse. The interests of WWP and its members in  
13 observing, studying, and otherwise enjoying the Bi-State Sage-Grouse have been harmed by  
14 defendants' actions.

15 14. Plaintiff WILDEARTH GUARDIANS ("Guardians") is a West-wide non-profit  
16 conservation organization with over 130,000 members and activists dedicated to protecting the  
17 wildlife, wild places, wild rivers, and the health of the American West. Guardians has a  
18 longstanding interest in protecting and restoring the Bi-State Sage-Grouse and its habitat in  
19 California and Nevada. Guardians brings this action on its own institutional behalf and on behalf  
20 of its members, many of whom regularly enjoy and will continue to enjoy educational,  
21 recreational, and scientific activities regarding the Bi-State Sage-Grouse. The interests of  
22 Guardians and its members in observing, studying, and otherwise enjoying the Bi-State Sage-  
23 Grouse have been harmed by defendants' actions.

24 15. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR ("Interior") is  
25 ultimately responsible for the administration and implementation of the ESA with regard to  
26 terrestrial endangered and threatened species and for compliance with all other federal laws  
27 applicable to the Interior.

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1           21.     The Service must make listing determinations “solely on the basis of the best  
2 scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A).

3 **B. Policy for the Evaluation of Conservation Efforts**

4           22.     The ESA requires that the Service make listing decisions “after taking into account  
5 those efforts, if any, being made by any State or foreign nation, or any political subdivision of a  
6 State or foreign nation, to protect such species.” 16 U.S.C. § 1533(b)(1)(A).

7           23.     In 2003, the Service and the National Marine Fisheries Service published a final  
8 policy establishing criteria for “determining whether a formalized conservation effort contributes  
9 to forming a basis for not listing a species, or for listing a species as threatened rather than  
10 endangered.” Policy for Evaluation of Conservation Efforts When Making Listing Decisions, 68  
11 Fed. Reg. 15,100, 15,114 (Mar. 28, 2003) (“PECE”).

12           24.     Under the PECE, “[t]o consider that a formalized conservation effort(s) contributes  
13 to forming a basis for not listing a species or listing a species as threatened rather than endangered,  
14 we must find that the conservation effort is sufficiently certain to be implemented and effective so  
15 as to have contributed to the elimination or adequate reduction of one or more threats to the  
16 species identified through the [16 U.S.C. § 1533(a)(1)] analysis.” 68 Fed. Reg. at 15,115. The  
17 PECE provides nine criteria for evaluating whether a conservation effort is certain to be  
18 implemented and six for evaluating whether it is certain to be effective. 68 Fed. Reg. at 15,114-15.

19           25.     The six certainty-of-effectiveness criteria are (1) “[t]he nature and extent of threats  
20 being addressed by the conservation effort are described, and how the conservation effort reduces  
21 the threats is described;” (2) “[e]xplicit incremental objectives for the conservation effort and  
22 dates for achieving them are stated;” (3) “[t]he steps necessary to implement the conservation  
23 effort are identified in detail;” (4) “[q]uantifiable, scientifically valid parameters that will  
24 demonstrate achievement of objectives, and standards for these parameters by which progress will  
25 be measured, are identified;” (5) “[p]rovisions for monitoring and reporting progress on  
26 implementation (based on compliance with the implementation schedule) and effectiveness (based  
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1 on evaluation of quantifiable parameters) of the conservation effort are provided;” (6) “[p]rinciples  
2 of adaptive management are incorporated.” 68 Fed. Reg. at 15,115.

3 26. The PECE also provides that, “[r]egardless of the adoption of a conservation  
4 agreement or plan, . . . if the best available scientific and commercial data indicate that the species  
5 meets the definition of ‘endangered species’ or ‘threatened species’ on the day of the listing  
6 decision, then we must proceed with appropriate rule-making activity under [16 U.S.C. § 1533].”  
7 68 Fed. Reg. at 15,115.

### 8 **C. Significant Portion of Its Range Policy**

9 27. Under the ESA, the Service must list a species or a DPS if it is endangered or  
10 threatened “throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6) (defining  
11 “endangered species”); *id.* § 1532(20) (defining “threatened species”); *id.* § 1533(a)-(b)  
12 (describing the listing process). A species or a DPS is “endangered” if it is “in danger of  
13 extinction.” *Id.* § 1532(6). A species or a DPS is “threatened” if it is “likely to become an  
14 endangered species within the foreseeable future.” *Id.* § 1532(20).

15 28. In 2014, the Service and the National Marine Fisheries Service published a final  
16 policy interpreting the statutory phrase “significant portion of its range.” Final Policy on  
17 Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s  
18 Definitions of “Endangered Species” and “Threatened Species.” 79 Fed. Reg. 37,578 (July 1,  
19 2014) (“SPR Policy”).

20 29. Under the SPR Policy, “[i]f a species is found to be endangered or threatened  
21 throughout only a significant portion of its range, the entire species is listed as endangered or  
22 threatened, respectively, and the [ESA’s] protections apply to all individuals of the species  
23 wherever found.” 79 Fed. Reg. at 37,609.

24 30. Under the SPR Policy as originally promulgated, “[a] portion of the range of a  
25 species is ‘significant’ if the species is not currently endangered or threatened throughout its range,  
26 but the portion’s contribution to the viability of the species is so important that, without the  
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1 members in that portion, the species would be in danger of extinction, or likely to become so in  
2 the foreseeable future, throughout all of its range.” 79 Fed. Reg. at 37,609.

3 31. In 2017, the Service issued additional guidance for applying the SPR Policy in  
4 listing determinations. *See* Memorandum from the Dir., U.S. Fish & Wildlife Service, to Regional  
5 Dirs., U.S. Fish & Wildlife Service, Doc. FWS/AES/DCC/063503 (Jan. 19, 2017) (“SPR Letter”).  
6 Using the definition of “significant” contained in the SPR Policy, the SPR Letter provides a  
7 stepwise analytical process for determining whether a portion of a range is “significant.” *Id.*

8 32. In 2018, this Court held that the SPR Policy’s definition of “significant” was an  
9 “impermissible interpretation” of the ESA’s statutory language. *Desert Survivors v. U.S. Dep’t of*  
10 *the Interior*, 321 F. Supp. 3d 1011, 1074 (N.D. Cal. 2018). The Court agreed with the plaintiffs’  
11 argument that “the SPR Policy’s definition of ‘significant’ results in a threshold under the  
12 ‘significant portion of its range’ definition that is functionally equivalent to the threshold under the  
13 ‘throughout all’ definition.” *Id.* at 1070-71. In a subsequent order, the Court vacated the SPR  
14 Policy’s definition of “significant” nationwide. *See Desert Survivors v. U.S. Dep’t of the Interior*,  
15 336 F. Supp. 3d 1131, 1133, 1137 (N.D. Cal. 2018).

16 33. Between the time of the 2018 *Desert Survivors* decisions and the 2020 Listing  
17 Withdrawal, the Service did not issue a new final policy or opinion letter filling in the gap created  
18 by the vacatur of the SPR Policy’s definition of “significant.” As a result, the Service did not adopt  
19 a new definition of “significant” before undertaking its SPR analysis in the 2020 Listing  
20 Withdrawal.

#### 21 **D. The Administrative Procedure Act**

22 34. The APA entitles “adversely affected or aggrieved” persons, 5 U.S.C. § 702, to  
23 judicial review of “final agency action,” *id.* § 704.

24 35. The APA compels a court to “hold unlawful and set aside agency action, findings,  
25 and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in  
26 accordance with law.” 5 U.S.C. § 706(2)(A).

**FACTUAL BACKGROUND****A. The Bi-State Sage-Grouse’s Shrinking Habitat and Population**

36. The greater sage-grouse is a large, ground-dwelling bird scattered throughout the Intermountain West. It is well known for its elaborate courtship ritual, which takes place in the springtime on mating sites known as leks. The males puff up their chests, unfurl their plumage, and emit a distinct popping sound. The females watch the performance and select a companion. The sage-grouse then move through a series of seasonal habitats, which consist of and require large, interconnected expanses of sagebrush-steppe and meadow habitat.

37. As a result of various factors, including livestock grazing, mining, development, and wildfires, sagebrush ecosystems have shrunk drastically from their historic range. In the past 30 to 40 years alone, greater sage-grouse populations have declined by 33 percent across their range. Sage-grouse are considered to be a “surrogate” species: Conserving them confers a protective “umbrella” over numerous plant and other animal species that also depend on the sagebrush ecosystem.

38. The Bi-State Distinct Population Segment of Greater Sage-Grouse (“Bi-State Sage-Grouse”) is a small, isolated, and genetically distinct subpopulation of the greater sage-grouse. The Bi-State Sage-Grouse live at the far southwestern reaches of the greater sage-grouse’s range, straddling the border between California and Nevada. They exhibit similar life stages and possess the same habitat needs as the rest of the species. *See* U.S. Fish & Wildlife Service, Species Report: Bi-State Distinct Population Segment of Greater Sage-Grouse at 8-9 (Jan. 17, 2020) (“2020 Species Report”). And like the greater sage-grouse, the Bi-State Sage-Grouse remains critically threatened by livestock grazing, mining, development, wildfires, recreation, and other forces, which deteriorate its habitat and disturb its nesting sites. *Id.* at 39-136.

39. The Bi-State Sage-Grouse’s population and range have each been cut at least in half during the last 150 years. *See* 2020 Species Report at 18. The Service now estimates that the current population consists of just 3,305 birds. *Id.* at 119-20.

1           40.     The Service classifies the Bi-State Sage-Grouse into six population management  
2 units (“PMUs”): Pine Nut, Desert Creek–Fales, Mount Grant, Bodie Hills, South Mono, and White  
3 Mountains. *See Id.* at 18-21. Connectivity between these PMUs has continued to deteriorate. *Id.* at  
4 5. And the Service concedes that four of the six PMUs are “especially small and increasingly  
5 isolated.” *Id.*

6 **B.    The Service’s 2013 Proposed Listing Rule**

7           41.     In 2001 and 2005, two sets of environmental groups petitioned the Service to list  
8 the Bi-State Sage-Grouse (previously known as the “Mono Basin” population) under the ESA.  
9 *Desert Survivors*, 321 F. Supp. 3d at 1025. The Service rejected each of those petitions. *Id.* In  
10 response, the 2001 petitioners filed suit, and the 2005 petitioners sent a sixty-day notice of intent  
11 to sue under the ESA. *Id.* The Service settled both matters in 2006, in part by agreeing to issue  
12 new findings. *Id.* The Service issued new findings later in 2006, once again declining to list the  
13 Bi-State Sage-Grouse under the ESA. *Id.* In response, the Service was sued once again, it signed  
14 yet another settlement agreement, and it committed yet again to issuing new findings. *Id.* at 1025-  
15 26. In 2010, the Service announced that listing the Bi-State Sage-Grouse was warranted but  
16 precluded by higher priority actions. *Id.* at 1026. In 2011, the Service entered into a settlement  
17 agreement in a consolidated case in the District of Columbia, agreeing to issue proposed listing  
18 rules or not-warranted findings for numerous species, including the Bi-State Sage-Grouse. *Id.*

19           42.     In 2013, the Service issued a proposed rule to list the Bi-State Sage-Grouse as  
20 threatened and to designate critical habitat for the population segment. 78 Fed. Reg. 64,358 (“2013  
21 Proposed Listing Rule”). This determination rested on numerous findings. The Service concluded  
22 that the populations of the Bi-State Sage-Grouse and each of the PMUs had fallen “below  
23 theoretical minimum criteria for long-term persistence.” *Id.* at 64,362. That population loss  
24 dovetailed with severe habitat fragmentation, which left the Bi-State Sage-Grouse’s  
25 subpopulations poorly connected and more vulnerable to a variety of threats. The Service found  
26 that “the Bi-State [Sage-Grouse] is likely to become endangered within the foreseeable future  
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1 throughout all or a portion of its range” based on numerous synergistic threats, including  
2 infrastructure, livestock grazing, wildfires, and nonnative and invasive plants. *Id.* at 64,374-75.

### 3 **C. The Service’s 2015 Listing Withdrawal**

4 43. In 2015, despite its findings of disastrous decline, and all the same conditions  
5 justifying its earlier listing proposal remaining in place, the Service withdrew the 2013 Proposed  
6 Listing Rule. *See* 80 Fed. Reg. 22,828 (Apr. 23, 2015) (“2015 Listing Withdrawal”). In doing so,  
7 the Service relied heavily on the promise of conservation measures described in the 2012 Bi-State  
8 Action Plan (“BSAP”), *id.* at 22,849, which had already existed and was fully considered when the  
9 Service issued the 2013 Proposed Listing Rule, *see, e.g.*, 78 Fed. Reg. at 68,359. In its 2015  
10 Listing Withdrawal, the Service also cited new modeling results that it interpreted to mean the Bi-  
11 State Sage-Grouse population was stable. *See, e.g.*, 80 Fed. Reg. at 22,853.

12 44. In 2016, the Conservation Groups filed suit against the Service in the Northern  
13 District of California, alleging that the 2015 Listing Withdrawal violated the ESA. *See* Complaint  
14 for Declaratory and Injunctive Relief, *Desert Survivors*, 321 F. Supp. 3d 1011 (N.D. Cal. 2018)  
15 (No. 3:16-cv-01165-JCS).

16 45. In 2018, the Court agreed with the Conservation Groups and granted summary  
17 judgment in their favor. *Desert Survivors*, 321 F. Supp. 3d at 1076. The Court held, among other  
18 things, that the Service’s reliance on the new population modeling contradicted its own admission  
19 that the results had to be interpreted “with caution,” *id.* at 1045; that the Service’s PECE analysis  
20 failed to provide sufficient details about the effects of conservation efforts, like pinyon-juniper and  
21 cheatgrass removal, on Bi-State Sage-Grouse, *id.* at 1061-66; that the SPR Policy’s definition of  
22 “significant” was impermissibly narrow on its face, *id.* at 1070-74; and that, even if the definition  
23 of “significant” were valid, the Service’s SPR analysis relied on faulty, insufficiently detailed  
24 PECE analysis, *id.* at 1074-76.

25 46. The Court vacated the 2015 Listing Withdrawal, reinstated the 2013 Proposed  
26 Listing Rule, ordered a new public comment period, and vacated the definition of “significant” in  
27 the SPR Policy. *Desert Survivors*, 336 F. Supp. 3d at 1133, 1137.

28

1 **D. The Service’s 2019 Proposed Listing Process and 2020 Listing Withdrawal**

2 47. In April of 2019, the Service announced the court-required reinstatement of the  
3 2013 Proposed Listing Rule and the court-required reopening of public comment. 84 Fed. Reg.  
4 14,909 (Apr. 12, 2019). In October, the Service announced a six-month extension of its final  
5 listing determination. 84 Fed. Reg. 52,058 (Oct. 1, 2019).

6 48. In March 2020, the Service issued the 2020 Listing Withdrawal, doubling down on  
7 its prior decision to withdraw the 2013 Proposed Listing Rule. *See* 85 Fed. Reg. at 18,084, 18,099.  
8 As in the 2015 Listing Withdrawal, in the 2020 Listing Withdrawal the Service concluded that the  
9 Bi-State Sage-Grouse should not be listed as threatened because, in light of ongoing and planned  
10 conservation efforts, the population segment “does not meet the definition of a threatened or  
11 endangered species.” 85 Fed. Reg. at 18,090.

12 **1. 2020 Status of the Bi-State Sage-Grouse**

13 49. The 2020 Listing Withdrawal incorporated new information regarding the status of  
14 the Bi-State Sage-Grouse that had been obtained after the Service issued the 2013 Proposed  
15 Listing Rule. This new information included a population and habitat analysis published by the  
16 U.S. Geological Survey. *See* Peter S. Coates et al., U.S. Geological Survey, Open-File  
17 Report 2019-1149, Population and Habitat Analyses for Greater Sage-Grouse (*Centrocercus*  
18 *urophasianus*) in the Bi-State Distinct Population Segment: 2018 Update (2020) (“2020 Coates  
19 Study”). This new information also included lek count data from the California Department of  
20 Fish and Wildlife (CDFW) showing that declines in Bi-State Sage-Grouse populations have been  
21 ongoing for decades in some areas, indicating that the stressors on the Sage-Grouse and the causes  
22 of those declines have also been ongoing for decades. CDFW 2018 Lek Counts 1953-2018  
23 Spreadsheet.

24 50. **Actual Population Size.** The population estimates for the Bi-State Sage-Grouse  
25 worsened between the time of the 2013 Proposed Listing (when the Service first proposed that the  
26 Bi-State Sage-Grouse was threatened) and the 2020 Listing Withdrawal (when the Service  
27 concluded the opposite).  
28

1           51.     When the Service issued the 2013 Proposed Listing Rule, the Service estimated the  
2 Bi-State Sage-Grouse population to be between 1,833 and 7,416 individuals. *See* 78 Fed. Reg. at  
3 64,362. In light of that estimate, the Service emphasized that the Bi-State Sage-Grouse population  
4 was “below theoretical minimum criteria for long-term persistence”—that is, below the threshold  
5 for avoiding extinction. *Id.*

6           52.     The 2020 Coates Study indicates that, as of 2018, the Bi-State Sage-Grouse’s  
7 population was 3,305. *See* 85 Fed. Reg. at 18,080. This new estimate lies within, and close to the  
8 low end of, the population range that the Service previously considered “below theoretical  
9 minimum criteria for long-term persistence.”

10          53.     When the Service issued the 2013 Proposed Listing Rule, it provided estimated  
11 population ranges for the Pine Nut PMU, Desert Creek–Fales PMU, Mount Grant PMU, Bodie  
12 Hills PMU, and South Mono PMU. (There was insufficient data to provide an estimated  
13 population range for the White Mountains PMU.) *See* 78 Fed. Reg. at 64,362. In light of those  
14 estimated ranges, the Service emphasized that each PMU’s population was “below theoretical  
15 minimum criteria for long-term persistence.” *Id.*

16          54.     The 2020 Coates Study indicates that, as of 2018, the populations of four of these  
17 five PMUs were either below the midpoint or below the low end of the previously estimated  
18 range. *See* 2020 Coates Study at 26. The sole outlier in this respect, the Bodie Hills PMU, has a  
19 population just 4% higher than the midpoint of the previously estimated range.

20          55.     ***Effective Population Size.*** In the 2020 Listing Withdrawal, the Service introduced  
21 the concept of “effective population size,” which it did not use in the 2013 Proposed Listing.

22          56.     The term “effective population size” refers to the “the size of the idealized  
23 population of breeding adults that would experience the same rate of loss of heterozygosity,  
24 change in the average inbreeding coefficient, or change in variance in allele frequency through  
25 genetic drift as the actual 28 population.” 2020 Species Report at 118. As effective population size  
26 decreases, extinction risk increases due in part to “loss of genetic diversity, reduced fitness through  
27 inbreeding depression and reduced adaptive (evolutionary) potential.” *Id.*

28

1           57.       Effective population size is often much lower than a population’s actual size, but  
2 there is no clear consensus on the minimum effective population size that is acceptable. Franklin  
3 (1980, entire) and Soule (1980, entire) indicate that effective population size should exceed 500  
4 birds to avoid long-term extinction risk, but others find that to achieve this threshold, a total  
5 population size of at least 5,000 birds is necessary to retain evolutionary potential—the basic  
6 ability to adapt to environmental change. 2020 Species Report at 118; Lande 1995; Traill et al.  
7 2010; and specific to sage-grouse, Aldridge and Brigham 2003.

8           58.       The effective population size of the Bi-State Sage-Grouse as a whole is estimated  
9 to be between 330 and 661. 2020 Species Report at 120. The total population size is 1,695 birds  
10 below the 5,000-bird threshold required for long-term viability.

11           59.       The Service also considered that the Bi-State Sage-Grouse range contains at least  
12 four isolated, genetically discrete populations. *See* 2020 Species Report at 120. The Service  
13 estimated the effective population sizes in these four clusters to be, respectively, between (1) 234  
14 and 468 (Desert-Creek Fales, Mount Graham, and Bodie Hills), (2) 81 and 163 (Long Valley), (3)  
15 4.5 and 9 (White Mountains), and (4) 3 and 6 (Pine Nut). *See id.* (Table 4). The Service also  
16 explained that “[g]enetic and radio–telemetry studies, however, indicate that some sage-grouse  
17 populations in the Bi-State area are isolated, suggesting that the effective population size is  
18 actually less” than listed in Table 4. *Id.* at 120. Even at the very high end of these ranges, none of  
19 the four genetically discrete population clusters has an effective population size that meets the  
20 minimum number (between 500 and 5,000, depending on the study) that is necessary to protect  
21 evolutionary potential or avoid long-term extinction risk of the Bi-State Sage-Grouse.

22           60.       ***Range-Wide Population Trends.*** The population estimates discussed above provide  
23 further evidence of the Bi-State Sage-Grouse’s long-term population decline.

24           61.       In the 2020 Listing Withdrawal, the Service briefly discussed four different  
25 statistical approaches to measuring Bi-State Sage-Grouse population trends but relied primarily on  
26 the 2020 Coates Study. *See* 85 Fed. Reg. at 18,059-61.

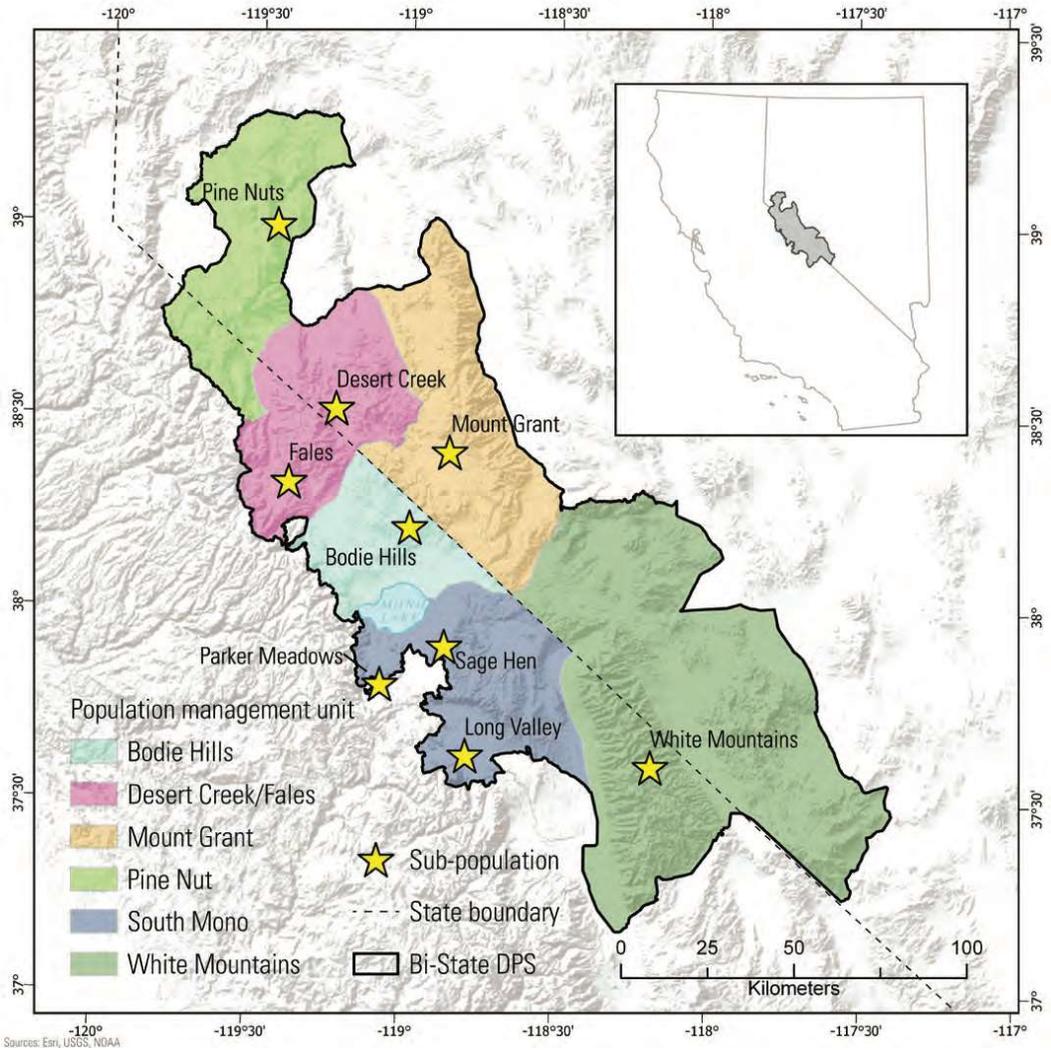
1           62.     The 2020 Coates Study analyzed Bi-State Sage-Grouse population trends across  
2 three successive population cycles: 1995 to 2001, 2001 to 2008, and 2008 to 2018. The 2020  
3 Coates Study found that the Bi-State Sage-Grouse population decreased 15.7% between 2001 and  
4 2018 (two cycles) and decreased 9.6% between 2008 and 2018 (one cycle). 2020 Coates Study at  
5 25. The 2020 Coates Study also described “substantial declines over the past 6 years.” *Id.*

6           63.     Although the 2020 Coates Study analyzed only the period from 1995 to 2018, the  
7 population declines that it described appear to be consistent with broader historical trends: The Bi-  
8 State Sage-Grouse population has decreased at least 50% during the last 150 years, and the species  
9 has been completely extinguished in many parts of its historical range. 2020 Species Report at 18.

10          64.     Inexplicably, the Service interpreted the Coates Study as “suggest[ing] a general  
11 pattern of population cycling within an otherwise stable population across the Bi-State [Sage-  
12 Grouse range].” 85 Fed. Reg. at 18,060.

13          65.     ***PMU-Level Population Trends.*** Looking at the Bi-State Sage-Grouse’s six  
14 individual PMUs and the subpopulations, rather than the population as a whole, also shows  
15 substantial declines across much of the range. Figure 1 shows the geographic distribution of the  
16 PMUs and subpopulation center-points.

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18           *(continued next page)*  
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**Figure 1.** The geographic distribution of PMUs along the California-Nevada border, with stars denoting the approximate center-points of the subpopulations. This Figure appears as Figure 1 in the 2020 Coates Study.

66. The Pine Nut PMU lost, on average, 16.5% of its population each year between 2008 and 2018. (The 2020 Coates Study did not have enough data to calculate losses since 1995 or 2001.) 2020 Coates Study at 27; see also CDFW 2018 Lek Counts 1953-2018 Spreadsheet. The probability that this population will disappear in the next ten years is 69.7%. 2020 Coates Study at 26.

67. The Desert Creek–Fales PMU lost, on average, 5.3% of its population each year between 2001 and 2018, and 4.5% of its population each year between 2008 and 2018. 2020 Coates Study at 27. The probability that this population will be extinguished in the next ten years

1 is 9.0%. *Id.* at 26. The Fales subpopulation, considered on its own, has a 38.4% ten-year  
2 extirpation probability, while the Desert Creek population has a 23.4% ten-year extirpation  
3 probability. *Id.*

4 68. The Mount Grant PMU lost, on average, 1.1% of its population each year between  
5 2008 and 2018. (The 2020 Coates Study did not have enough data to calculate losses since 1995 or  
6 2001.) 2020 Coates Study at 27. The probability that this population will vanish in the next ten  
7 years is 24.6%. *Id.* at 26.

8 69. The South Mono PMU lost, on average, 1.8% of its population each year between  
9 2001 and 2018 and 3.9% of its population each year between 2008 and 2018. 2020 Coates Study  
10 at 27. Although the entire PMU has only a 3.8% ten-year extirpation probability, the Sagehen  
11 subpopulation, considered on its own, has a 74.8% ten-year extirpation probability, and the Parker  
12 Meadows subpopulation, considered on its own, has a 64.3% ten-year extirpation probability. *Id.*  
13 at 26.

14 70. The White Mountains PMU lost, on average, 15% of its population each year  
15 between 2001 and 2018. (The 2020 Coates Study did not have enough data to calculate losses  
16 since 1995 or 2001.) Coates Study at 27. The probability that this population will be extirpated in  
17 the next ten years is 75.1%. *Id.* at 26.

18 71. The population of only one PMU, Bodie Hills, grew either between 2001 and 2018  
19 or between 2008 and 2018. *See* 2020 Coates Study at 27. As the 2020 Coates Report explained,  
20 Bodie Hills differs in material ways from the rest of the Bi-State Sage-Grouse PMUs. For  
21 example, Bodie Hills has a relatively high elevation and high precipitation rates, both of which  
22 buffer it against drought. *Id.* at 34. It has cool, moist soil, which makes it resilient to disturbance  
23 and weed invasion. *Id.* at 35. And compared to the rest of the rest of the Bi-State Sage-Grouse  
24 range, Bodie Hills contains relatively greater amounts of upland riparian springs and meadows,  
25 which provide good brood-rearing habitat. *Id.*

1           72.     **Range Contraction.** The Bodie Hills PMU is anomalous not only in terms of  
2 natural features and population loss but also in terms of range contraction and habitat  
3 fragmentation.

4           73.     The 2020 Coates Study indicates that the annual total distributional area of the Bi-  
5 State Sage-Grouse shrunk by 55,492 hectares (approximately 6.5%) between 2008 and 2018,  
6 despite voluntary conservation measures intended to increase grouse habitat. *See* 2020 Coates  
7 Study at 51-52. Among the subpopulations, Bodie Hills alone increased in distributional area  
8 during this period; all other subpopulations “declined substantially in distributional area and  
9 volume.” 2020 Coates Study at 67. According to the 2020 Coates Study, “[d]eclines were notably  
10 precipitous at Pine Nuts, Fales, Sagehen, and White Mountains.” *Id.* at 54. Multiple “core”  
11 distributional areas (DSAs) in Pine Nuts, Desert Creek, Fales, Sagehen, and White Mountains  
12 became “functionally absent” as of 2018. *Id.* As the 2020 Coates Study concluded, “extirpation of  
13 small periphery subpopulations appear to have disproportionate impacts on overall occupied  
14 habitat.” *Id.* at 67.

15           74.     In the 2020 Listing Withdrawal, the Service understated and largely dismissed this  
16 severe range contraction in across the other subpopulations by repeatedly emphasizing the  
17 minimal range expansion that has taken place in the Bodie Hills PMU. *See* 85 Fed. Reg. at 18,061,  
18 18,094. That expansion, however, has not come close to offsetting the historical and continuing  
19 contraction of the Bi-State Sage-Grouse range. *See, e.g.,* 2020 Coates Study at 45, 52.

20           75.     **Limitations of the 2020 Coates Study.** The 2020 Coates Study has limitations that  
21 lead it to systematically understate the threats faced by the Bi-State Sage-Grouse. For example, the  
22 Study’s model contained incomplete data about some of the smaller, worse-performing areas in  
23 the Bi-State Sage-Grouse range, which biased the modeling outcomes in favor of the more robust  
24 populations like Bodie Hills PMU. Additionally, the model did not account for habitat parameters  
25 such as height, forb diversity, and other field measurements of range quality, which would shed  
26 light greater on the threats causing the continued decline of the Bi-State Sage-Grouse.

1           76.     Even holding aside these limitations, the Service misinterpreted or failed to  
2 properly account for many of the 2020 Coates Study’s key findings regarding the continued,  
3 significant decline of the Bi-State Sage-Grouse.

4           **2.     2020 Listing Withdrawal: PECE Analysis**

5           77.     In the face of overwhelming evidence of the dire condition of the Bi-State Sage-  
6 Grouse, the Service concluded in the 2020 Listing Withdrawal that the population segment did not  
7 qualify for listing as threatened under the ESA. The Service made this decision partly in light of  
8 ongoing and planned conservation efforts that were analyzed using the PECE criteria.

9           78.     As explained above, under the PECE, the Service must apply six “certainty of  
10 effectiveness” criteria before determining that a particular conservation effort “contributes to  
11 forming a basis for not listing a species, or for listing a species as threatened rather than  
12 endangered.” *See* 68 Fed. Reg. at 15,114. The first criterion is “[t]he nature and extent of threats  
13 being addressed by the conservation effort are described, and how the conservation effort reduces  
14 the threats is described.” 68 Fed. Reg. at 15,115.

15           79.     The Court’s 2018 decision held that the PECE analysis in the Service’s 2015  
16 Listing Withdrawal was “arbitrary and capricious because it [did] not offer any basis for  
17 concluding that the conservation efforts described in the 2012 BSAP are sufficiently certain to be  
18 effective.” *Desert Survivors*, 321 F. Supp. 3d at 1065-66. More specifically, the Court held that the  
19 Service’s analysis failed to provide sufficient details about the effects of various conservation  
20 efforts, including pinyon-juniper and cheatgrass removal, on Bi-State Sage-Grouse. *See id.* at  
21 1061-66. Those details included (1) the “magnitude of the impact on the species that the measures  
22 can be expected to achieve,” and (2) the “estimated length of time that it will take for a formalized  
23 conservation effort to produce a positive effect on the species.” *See id.* at 1065. In the 2020 Listing  
24 Withdrawal, the Service did not address these two concerns.

25           80.     The Service did not significantly update its PECE analysis between the 2015 and  
26 the 2020 Listing Withdrawals. *Compare* 2020 PECE Analysis, *with* U.S. Fish & Wildlife Serv.,  
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1 PECE Evaluation for the Bi-State Distinct Population Segment of Greater Sage-Grouse 2012 Bi-  
2 State Action Plan (BSAP) (2015).

3 81. Notably, the recent population losses described in the 2020 Coates Study have  
4 occurred despite numerous conservation efforts aimed at the Bi-State Sage-Grouse during the last  
5 fifteen years. The Service claims that “[c]onservation measures, such as pinyon-juniper removal,  
6 establishment of conservation easements for critical brood-rearing habitat, cheatgrass removal,  
7 permanent and seasonal closure of roads near leks, removal and marking of fencing, and  
8 restoration of riparian/meadow habitat have been completed over the past 15 years.” 85 Fed. Reg.  
9 at 18,083. Yet the Bi-State Sage-Grouse continues to decline.

10 82. Indeed, according to the Service, the conservation efforts that have already been  
11 implemented include the following:

- 12 • 19,800 acres of conservation easements secured between 2002 and 2012;
- 13 • 30,254 acres of conservation easements secured since 2012;
- 14 • 46 projects aimed at, among other things, “maintaining, improving, or restoring  
15 riparian/meadow sites impacted by grazing animals” completed since 2012;
- 16 • 32 projects aimed at, among other things, “maintaining area closures to permitted  
17 livestock, monitoring compliance with permitted terms and conditions, maintenance of  
18 ‘let-down’ fencing, and meadow irrigation” conducted since 2012;
- 19 • 46,400 acres of pinyon-juniper removal;
- 20 • 7,400 acres of non-native conifer treatment maintenance;
- 21 • 1,300 acres of “chemical or mechanical treatments of non-native plant species”;
- 22 • 2,121 acres of weed monitoring;
- 23 • 19,000 acres of fire rehabilitation treatments; and
- 24 • 22 miles of power line and fencing removal projects.

25 *See* U.S. Fish & Wildlife Serv., PECE Evaluation for the Bi-State Distinct Population Segment of  
26 Greater Sage-Grouse 2012 Bi-State Action Plan (BSAP), at 39-47 (2019) (“2020 PECE  
27 Analysis”). Yet the Bi-State Sage-Grouse continues to decline.

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1           83.     Despite the 2018 *Desert Survivors* decision, the Service did not explain with  
2 particularity how, or on what timescale, the various conservation measures will effectively benefit  
3 the Bi-State Sage-Grouse. Instead, most of the additions and changes the Service made in the 2020  
4 PECE Analysis simply provided detail about the extent of conservation efforts that have already  
5 been implemented. As explained above, these efforts include securing tens of thousands of acres of  
6 conservation easements; completing dozens of projects aimed at restoring riparian and meadow  
7 sites degraded by livestock grazing; removing pinyon-juniper from tens of thousands of acres;  
8 applying non-native conifer treatments on thousands of acres; applying anti-invasive treatments on  
9 over 1,000 acres; conducting weed monitoring on over 2,000 acres; implementing almost 20,000  
10 acres of fire rehabilitation treatments; and removing over 20 miles of power lines and fences. 2020  
11 PECE Analysis at 39-47.

12           84.     Notably, the acreage of habitats either treated to improve sage-grouse habitat, or  
13 kept the same through application of conservation easements that limit future habitat destruction,  
14 affects only six percent of the 1.87 million acres the Service proposed to designate as critical  
15 habitat for the species in 2013. 78 Fed. Reg. 64328.

16           85.     The Service did not provide evidence that these already-implemented conservation  
17 measures have been effective in counteracting the threats that are causing the continued decline of  
18 the Bi-State Sage-Grouse population, or in triggering population increases. In fact, as described  
19 above, population losses and range contraction in all PMUs except for Bodie Hills have continued  
20 during the same period that these conservation measures have been implemented.

21           **3.     2020 Listing Withdrawal: SPR Analysis**

22           86.     In the 2020 Listing Withdrawal, the Service concluded not only that the Bi-State  
23 Sage-Grouse is not threatened “throughout all” of its range but also that it is not threatened  
24 “throughout . . . a significant portion” of its range.

25           87.     As explained above, in 2018 this Court vacated the SPR Policy’s definition of  
26 “significant” nationwide. *See Desert Survivors*, 336 F. Supp. 3d at 1133, 1137. The Court agreed  
27 with the plaintiffs that the SPR Policy’s definition of “result[ed] in a threshold under the  
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1 ‘significant portion of its range’ definition that is functionally equivalent to the threshold under the  
2 ‘throughout all’ definition.” *Desert Survivors*, 321 F. Supp. 3d at 1070-71. Because the Service’s  
3 interpretation collapsed the distinction between disjunctive pieces of statutory language, it was  
4 facially invalid. *See Desert Survivors*, 321 F. Supp. 3d at 1072.

5 88. In the 2020 Listing Withdrawal, the Service conceded that the SPR Policy’s  
6 definition of “significant” had been invalidated. 85 Fed. Reg. at 18,908. The Service asserted that  
7 its 2020 SPR analysis accorded with the SPR Policy and SPR Letter “as further refined by  
8 applicable court decisions.” *See* 85 Fed. Reg. at 18,056. However, the 2020 Listing Withdrawal  
9 contained only two sentences that appear to provide a new definition of “significant.” Specifically,  
10 the Service asserted that it “screen[s] for significant portions of the range by applying any  
11 reasonable definition of ‘significant.’” 85 Fed. Reg. at 18,098. And the Service then claimed that  
12 “[b]iological importance/significance is often considered in terms of resiliency, redundancy, or  
13 representation.” 85 Fed. Reg. at 18,098. The Service then proceeded to address resiliency,  
14 redundancy and representation for only the two PMUs with the highest likelihood of extinction  
15 (Pine Nut and White Mountains), ignoring the other PMUs. *See* 85 Fed. Reg. at 18,097-18,099.

16 89. For the Pine Nut PMU, the Service noted that “there is no unique observable  
17 environmental usage or behavioral characteristics attributable to just this area’s population.” 85  
18 Fed. Reg. at 18,098. The Service concluded that it “found no information indicating that the Pine  
19 Nut PMU’s genetic characteristics represent a unique or significant adaptive capacity compared to  
20 the remainder” of the Bi-State Sage-Grouse range. *Id.* For the White Mountains PMU, the Service  
21 noted that “there is no unique observable environmental usage or behavioral characteristics  
22 attributable to just this area’s population.” 85 Fed. Reg. at 18,098. The Service concluded that it  
23 “found no information indicating that the White Mountains PMU’s genetic characteristics  
24 represent a unique or significant adaptive capacity compared to the remainder” of the Bi-State  
25 Sage-Grouse range. *Id.*

26 90. The Service thus only analyzed whether each portion it looked at (Pine Nut PMU  
27 and White Mountains PMU) was “significant” by asking whether the portion had a “unique or  
28

1 significant adaptive capacity” as compared to the Bi-State Sage-Grouse range as a whole. The  
2 Service did not analyze whether any portion of the range was significant on any basis other than  
3 “adaptive capacity.” Notably, considering whether a portion of the range is “significant” by asking  
4 whether some aspect of the species’ characteristics in that area is “significant” is circular and  
5 inadequate.

6 91. The Service did not expressly analyze whether any combinations of PMUs, or any  
7 other configurations of habitat besides the two individual PMUs described above, might constitute  
8 “portions” of the Bi-State Sage-Grouse range. For example, the Service did not consider whether  
9 the Pine Nut PMU and White Mountain PMU together were a significant portion of the range.  
10 Similarly, despite the fact that the Service acknowledged that the Bodie Hills PMU has performed  
11 better than the other five PMUs because of distinct ecological and climatic conditions, the Service  
12 did not analyze the other five PMUs together as a potentially “significant” portion of the range  
13 although the data shows the species is at greater risk of extinction in those other PMUs. *See* 2020  
14 Coates Study at 26.

## 15 CLAIMS FOR RELIEF

### 16 First Cause of Action

#### 17 **The 2020 Listing Withdrawal Is Arbitrary, Capricious, and Contrary to the ESA**

18 92. The Plaintiffs hereby re-allege and incorporate by reference the allegations of  
19 paragraphs 1 through 91 herein as if set forth in full.

20 93. In determining in the 2020 Listing Withdrawal that the Bi-State Sage-Grouse does  
21 not warrant listing as threatened under the ESA, the Service failed to properly apply the ESA’s  
22 listing factors, 16 U.S.C. § 1533(a)(1), failed to adhere to or correctly interpret the best available  
23 science, *id.* § 1533(b)(1)(A), and otherwise acted in an arbitrary and capricious manner, 5 U.S.C.  
24 § 706(2)(A). In particular, the Service erred by doing the following in reaching making its  
25 determination:  
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- 1 a. Failing to adhere to the best available science showing that actual and effective  
2 populations of Bi-State Sage-Grouse populations are almost uniformly below  
3 theoretical minimum criteria for long-term persistence;
- 4 b. Failing to adhere to the best available science showing that Bi-State Sage-Grouse  
5 populations are now estimated to be even lower than when the Service issued the  
6 2013 Proposed Listing, despite the continued implementation of myriad  
7 conservation measures;
- 8 c. Failing to adhere to the best available science showing that multiple PMUs and  
9 subpopulations of Bi-State Sage-Grouse have a high likelihood of extirpation in the  
10 next ten years; and
- 11 d. Improperly interpreting the results of the 2020 Coates Study as indicating that Bi-  
12 State Sage-Grouse populations are stable.

13  
14 **Second Cause of Action**

15 **The Service Misapplied the PECE in Violation of the ESA and APA**

16 94. The Plaintiffs hereby re-allege and incorporate by reference the allegations of  
17 paragraphs 1 through 93 herein as if set forth in full.

18 95. The Service misapplied PECE's certainty-of-effectiveness criteria by failing to  
19 provide detail about (1) the actual impact that conservation measures can have or have had on the  
20 Bi-State Sage-Grouse population, and (2) the timeline on which formalized conservation measures  
21 have, will, or are likely to produce a positive effect on the population.

22 96. To the extent that various conservation measures have already been implemented  
23 and are ongoing, the Service does not provide relevant evidence that they have been effective in  
24 counteracting the continued decline of the Bi-State Sage-Grouse population.

25 97. Because of these defects, the 2020 Listing Withdrawal violates the PECE and its  
26 corresponding statutory provision, 16 U.S.C. § 1533(b)(1)(A).

**Third Cause of Action**

**The Service’s SPR Analysis Violated the ESA and APA**

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3 98. The Plaintiffs hereby re-allege and incorporate by reference the allegations of  
4 paragraphs 1 through 97 herein as if set forth in full.

5 99. The Service has violated the APA by using an unclear definition of “significant” in  
6 considering whether the species was threatened or endangered throughout a significant portion of  
7 its range. The Service asserted that it utilized a new definition of “significant” to replace the SPR  
8 Policy’s definition that was vacated by the Court in 2018 and that it applied an SPR analysis in  
9 accordance with the 2018 court decision. The Service violated the APA by relying on a new  
10 definition of “significant” where it provided no explanation of how it determined the metric it  
11 would use and provided scant detail about its new definition. The Service stated only that it would  
12 apply “any reasonable definition of ‘significant’” and that “[b]iological importance/significance is  
13 often considered in terms of resiliency, redundancy, or representation.” These poorly articulated  
14 and conclusory statements fail meet the baseline standards of clear, reasoned administrative  
15 policymaking, especially given that the scope of the ESA’s protections that hinge on the definition  
16 of “significant.”

17 100. The Service also violated the APA and ESA because it failed to properly address  
18 “significance” in its SPR analysis. The Service’s analysis of whether the Bi-State Sage-Grouse is  
19 threatened in a “significant portion” of its range looked only at whether either of two individual  
20 PMU’s “genetic characteristics represent a unique or significant adaptive capacity compared to the  
21 remainder” of the Bi-State Sage-Grouse range. The Service was concerned only with whether  
22 certain genetic characteristics regarding adaptive capacity found in two individual PMUs could be  
23 found in other areas of the species’ range. The Service failed to adequately explain why  
24 significance was ultimately analyzed with regard to only “unique or significant adaptive capacity,”  
25 rather than other “reasonable” factors of significance. The Service did not address whether either  
26 of those two individual PMUs could be significant for reasons other than adaptive capacity, e.g.,  
27 because they are at the edge of the species’ range or for other reasons.



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