



Nevada Board of Agriculture

Board Meeting Packet

September 3, 2014
9:00 a.m.



**Nevada Board of Agriculture
Meeting Notice and Agenda
Wednesday, September 3, 2014 9:00 A.M.**

Meeting location: Nevada Department of Agriculture
4780 Idaho St.
Elko, NV 89801-4672
775-738-8067

Via video conference: Nevada Department of Agriculture
405 S. 21st Street
Sparks, NV 89431-5557
775.353.3601

Nevada Department of Agriculture
2300 McLeod Street
Las Vegas, NV 89104
702.668.4590

Public Notice

*Below is an agenda of all items to be considered. **Action may be taken on items preceded by an asterisk (*).** Denotes possible closed session (**). Items on the agenda may be taken out of the posted order, items may be combined for consideration; and items may be pulled or removed from the agenda at any time at the discretion of the Chairperson. Unless noted as an action item, discussion of any item raised during a report or public comment is limited to that necessary for clarification or necessary to decide whether to place the item on a future agenda. Public comment may be limited to three minutes per person at the discretion of the chairperson.*

Reasonable efforts will be made for members of the public who have disabilities and require special accommodations for assistance at the meeting. Please call the Executive Assistant at 775-353-3619.

Notice of this meeting was posted on or before 9:00 a.m. on the third working day before the meeting at the following locations: Nevada Department of Agriculture, 405 S. 21st Street, Sparks, NV 89431, Nevada Department of Agriculture, 2150 Frazer Ave., Sparks, NV 89431, Nevada Department of Agriculture, 4780 E. Idaho Street, Elko, NV 89801, Nevada Department of Agriculture, 2300 McLeod Street, Las Vegas, NV 89104, State of Nevada Capital Building, Carson City NV, State Library and Archives, Carson City.

Copies of the agenda, supporting documentation and meeting minutes are available, at no charge, at the Department of Agriculture website at www.agri.state.nv.us or by visiting Nevada Department of Agriculture, 405 S. 21st St., Sparks, NV 89431.

AGENDA

1. Open meeting-call meeting to order by Chairman Dave Stix, Jr.

- A. Pledge of Allegiance
- B. Roll call

2. Public Comment

3. Minutes

- A. *Approve March 4, 2014 Board meeting minutes *(for possible action)*
- B. *Approve June 4, 2014 Board meeting minutes *(for possible action)*

4. Director's Report

- A. Director's Report – Director Barbee *(for information)*
 - i. Budget
 - ii. Consumer Equitability Administrator search

5. Administration

- A. *Prohibitions and Penalties revised to be aligned with other State agencies – Director Barbee *(for possible action)*
- B. Division Goals – Director Barbee *(for information)*
- C. Board update – Dale Hansen, Administrator *(for information)*
- D. Marketing & Communications update – Bob Conrad, PIO II *(for information)*

6. Plant Industry

- A. Range Ecology position and NDAs engagement on federal land – Director Barbee *(for information)*
- B. Nevada EDD Maps – Director Barbee *(for information)*
- C. Board update – Dawn Rafferty, Administrator *(for information)*
- D. *We request permission to go to workshop and hearing to amend NAC 554 sections 055, 730, 765 to remove the street address of the department (old address listed and no long necessary to have in code); and to update the nomenclature for tomato – Dawn Rafferty, Administrator *(for possible action)*
- E. *We request a change in NAC 588 for the agricultural mineral tonnage fees we suggest charging the same fee charges, no matter how many tons sold or what kind of package used – Dawn Rafferty, Administrator *(for possible action)*
 - a. NAC 588.025 (b) For agricultural minerals:
 - (1) If sold in packages, for quarterly sales or distribution of 20 tons or more, 25 cents per ton; and

(2) If sold in bulk, for quarterly sales or distribution of 100 tons or more, 5 cents per ton.

7. Consumer Equitability

A. Board update – Bart O'Toole, Administrator (*for information*)

8. Food & Nutrition

A. Board update - Donnell Barton, Administrator (*for information*)

9. Animal Industries

- A. Board update – Flint Wright, Administrator (*for information*)
- B. Federal Grazing /resource management plans – Flint Wright (*for information*)

10. Board Member Presentations

- A. *US Bighorn Sheep disease transfer issue – Pete Paris (*for possible action*)
- B. Open Range Issue in the courts (ref. Estate of Adams v. Fallini) - Ramona Morrison (*for information*)
- C. Nevada Cattlemen's Association/NACO – Ramona Morrison (*for information*)

11. Public Comment

12. Adjournment

1

Open Meeting-
Call to order by
Chairman
Stix

1A

Pledge of Allegiance

1B

Roll
Call

2

Public Comment

3

Minutes

3A

March, 2014
Minutes

*Possible Action

Amended Draft

Name of Organization: Nevada Board of Agriculture

Date and Time of Meeting: March 4, 2014, 9:00 a.m.

Place of Meeting: Nevada Department of Agriculture
405 So. 21st. Street
Sparks, NV 89431-5557
775-353-3601

Minutes
March 4, 2014

Board Members Present:

Dave Stix, Jr., Chairman
Paul Anderson, Vice Chairman
Jim Snyder
Boyd Spratling
Paul Noe
Timothy Dufferena
Ramona Morrison
Brian Nakaguchi
Charlie Frey
Alan Perazzo
Pete Paris

Board Members Absent:

None

Guests Present:

Mark Jensen
Audrey Spratling
Cliven Bundy
Carol Bundy
JJ Goicoechea, DVM
Leanne Stitzel

Staff Members Present:

Jim Barbee, Director
Dennis Belcourt, Deputy Attorney General
Gina Breslow
Dale Hansen
Flint Wright
Donnell Barton
Dave Jones
Damon Hernandez
Robert Leavitt
Jeff Sutich
Tatjana Vukovic
Amber Smyer
Jay Ludlow
Shawn McFalls
Robert Little
Dawn Rafferty
Jamie Greer
Ashley Jeppson

1. Open meeting-call to order by Chairman Dave Stix, Jr. at 9:06 am

A. Pledge of Allegiance

B. Roll call

C. Oath of Office for New and Reappointed Board Members:

Ramona Morrison, Member at Large – Reappointed Term: 7/25/2013 to 6/30/2016

Jim Snyder, Row Crops – Reappointed Term: 7/25/2013 to 6/30/2016

Alan Perazzo, Dairy Industry – Reappointed Term: 1/30/2014 to 10/31/2016

Brian Nakaguchi, Pesticides – Reappointed Term – 11/01/2013 to 10/31/2016
Pierre “Pete” Paris – Sheep Industry – Appointed Term: 1/13/2014 to 10/31/2016

2. Public Comment – none

3. Minutes

- A. *Approve December 5, 2013 Board Meeting Minutes *(for possible action)*

Jim Snyder Moves to Approve, Boyd Spratling Seconds; Motion passes unanimously

4. Directors Report

- A. Update to Board – Jim Barbee, Director – Report attached *(for information)*
B. Marketing & Communications Update – Bob Conrad *(for information)* Delayed –see below
C. Ag Report - Tatjana Vukovic – *(for information)*
D. International Marketing Update – Jeff Sutich *(for information)*
E. Introduction of New Agriculture Literacy Coordinator staff member, Amber Smyer

5. Administration

- A. Update to Board – Dale Hansen, Administrator *(for information)*

Item 4.B. Marketing & Communications Update – Bob Conrad *(for information)

6. Plant Industry

- A. Update to Board – Dawn Rafferty, Administrator *(for information)*
B. *Request Board Approval for use of Alfalfa Seed Research and Promotion Account Funds to refund Travel expenses (not to exceed \$5000) for two NV alfalfa seed producers who attended the National Alfalfa and Forage Alliance Washington D.C. Fly-in event on 2/11/14-2/13/14.
(for possible action)

Paul Noe motions to Approve, Jim Snyder Seconds; Motion passes unanimously

- C. *Request Board Approval for payment of the 2014 NAFA dues, when assessed, from the Alfalfa Seed Research and Promotion Account. *(for possible action)*

Ramona Morrison moves to Approve, Paul Anderson Seconds; Motion passes unanimously.

- D. *Adoption of permanent NAC 587.340 change to Certificate of Origin, adding \$25 fee for processing. Board approved Temporary Regulation due to timing with session. The process was repeated to become permanent. No changes to original submission. *(for possible action)*

Ramona Morrison moves to Approve, Paul Noe Seconds; Motion passes unanimously

- E. *Request Permission to go to workshop and hearing for NAC 555 changes related to Pest Control Operator licensing. Presenter, Robert Leavitt, Las Vegas *(for possible action)*

Charlie Frey moves to Approve, Paul Noe Seconds; Motion passes unanimously

- F. *Request Permission to go to workshop and hearing for NAC changes to 555.010 to amend noxious weed list. Presenter, Robert Little *(for possible action)*

Ramona Morrison moves to Approve, Paul Noe Seconds, Motion passes unanimously.

7. Consumer Equitability

- A. Update to Board – Dave Jones, Administrator *(for information)*

B. NAC 581 Public Hearing March 20, 2014 – Notice of Intent to Act *(for information)*

8. Food & Nutrition

A. Update to Board – Donnell Barton, Administrator *(for information)*

9. Animal Industries

A. Update to Board – Flint Wright, Administrator *(for information)*

B. *Nevada Wool Growers Association 12/1/13 Letter of Request for balance of monies

C. 2013-14 Budget- \$36,058.46. *(for possible action)*

Charlie Frey moves to Approve, Boyd Spratling Seconds; Motion passes unanimously

D. *Review of NAC Trichomoniasis Regulations Re: Notification of Neighboring Herds *(for possible action)* State Veterinarian Mike Greenlee Presents. After discussion:

Boyd Spratling Motions to Approve:

“State Veterinarian will notify all Category Two Veterinarians in the State of Nevada of Herds under “HOLD ORDER” and The State will notify all Neighboring Herds of the potential “HOLD ORDER” based on the Epidemiology Investigation”

Ramona Morrison Seconds; Motion passes unanimously

E. Report to Board from Director Barbee and Deputy Attorney General, Dennis Belcourt, on Resource Management Plan as it pertains to Agency Status and Coordination to find if Board has legal standing on this issue

(for information)

F. Report to Board from Deputy Attorney General, Dennis Belcourt, on legal foundation for Documents and Statements presented to Board from Constituents at 12/5/13 meeting regarding BLM Winnemucca Office EOU Grazing Agreements as it pertains to private lands *(for information)*

10. Board Member Presentations

A. *Ramona Morrison – Submission of Letter from N-6 Grazing board Chairman, Hank Filippini to State Bar of Nevada, Re: *Estate of Michael David Adams vs. Susan Fallini*, Case No. CV24539. Ramona requests open discussion and suggestion that Ag Board write letter to State Bar to request Disciplinary Action in this matter regarding “Gross Misrepresentation” of Nevada Open Range Law, and serious violations of rules of ethics. *(for possible action)*
Tabled for Next Meeting

B. **Director’s Evaluation – (for possible action)*

Director Barbee’s evaluation letter was submitted from Chairman David Stix, Jr., giving a vote of confidence from the entire Board, signed and dated by Chairman David Stix, Jr.

Alan Perazzo moves to Approve, Ramona Morrison Seconds; Motion passes unanimously

11. Public Comment

- Email from Paul Tamera to Mike Stremmler entered into record by Jim Barbee
- Cliven Bundy from Las Vegas: Has two Trespass Counts against him & his cattle are being seized and says NDA is cooperating. Is there a Memorandum Of Understanding with the Department of Interior? Does the Board know about the “Service” on NDA?

12. Adjournment

Discussion: Next Meeting is scheduled for Wednesday, June 4, 2014, 9am in Sparks.

Alan Perazzo moves to Adjourn, Jim Snyder Seconds; Motion passes unanimously
Chairman Stix, Jr. adjourns meeting at 3:38pm.

3B

June, 2014
Minutes

*Possible Action

Name of Organization: Nevada Board of Agriculture

Date and Time of Meeting: June 4, 2014

Place of Meeting: Nevada Department of Agriculture
405 S. 21st Street
Sparks, Nevada
775-353-3601

Minutes
June 4, 2014

Board Members Present:

Dave Stix, Jr., Chair
Jim Snyder
Boyd Spratling – via Video
Paul Noe
Ramona Morrison
Charles Frey
Paul Anderson
Brian Nakaguchi
Pete Paris
Alan Perazzo

Board Members Absent:

Tim Dufferena

Staff Members Present:

Jim Barbee, Director
Dennis Belcourt, Dep. Attorney General
Dale Hansen, Administration Div.
Flint Wright, Animal Industry Div.
Donnell Barton, Food and Nutrition Div.
Bob Conrad, Public Information Officer
Jerri Conrad, Assistant to the Director
Dave Jones, Consumer Equitability Div.
Dawn Rafferty, Plant Industry Div.
Bill Striejewske, Consumer Equita. Div.

Guests:

Paul Tomera, Tomera Ranches
Eddyann Filippini, Chiara Ranch
Dan Filippini, Chiara Ranch
Leo Boeglici, Winnemucca Farms
Tim & Margarita DeLong, Flying M Ranch
Jeff Fontaine, Nevada Association of County Officials
JJ Goicoechea, DVM
Desi Seal, Nevada Cattleman's Associa.

1. **Open meeting call to order by Chair David Stix, Jr. at 9:04 a.m.**

- A. Pledge of Allegiance
- B. Roll call

2. **Public Comment**

Tim DeLong, Vice Chairman of Grazing Board – BLM is receiving the Grazing Board fee due to sequester. These funds need to be returned to the counties so the money can benefit the range. Bureau of Land Management (BLM) will take up to 10 years to take horses in checkerboard horse field in Lovelock.

Paul Tomera, Tomera Ranches - BLM district dispute with ranch – general allotment. BLM's Douglas County Mr. Doug Furtado has demonstrated intimidating actions, he cannot manage multiuse allotment and we would like the Board of Agriculture to direct the Nevada Department of Agriculture (NDA) to investigate Mr. Doug Furtado.

Eddyann Filippini, Chiara Ranch - Last May, BLM issued them 10 days to remove cattle from an allotment. We were told they could not use the Argenta allotment due to drought trigger. We took non-use in March, April and 23 days in May. Doug Furtado, of BLM, puts up road blocks and has a history of doing so. We are asking the Board of Agriculture to conduct a hearing.

Tim DeLong

BLM is putting out a new Range Management Plan. In October the Governor said he would protest it but they have not protested. If there are horses on my range I am required to put water out for them. My own water.

3. **Approve March 4, 2014 Board Meeting Minutes (for possible action)**

- A. Minutes are not ready for approval. ***NO ACTION TAKEN***

4. **Director's Report**

- A. Introduction of new Executive Assistant to the Director
- B. Activity report (*for information*)

BREAK FOR TECHNICAL ISSUES IN ELKO 10:00

BREAK COMPLETE 10:10

CALL INTO ELKO OFFICE DUE TO TECHNICAL ISSUES 10:13

RESUME 10:17

- C. *Discussion and possible direction to staff regarding current issues pertaining to the Wild Horse and Burro Act (WHBA) and situations encompassing the current management of WHBA by BLM and US Forest Service. The current lawsuit filed by the Nevada Association of County Officials and the Nevada Farm Bureau *(for possible action)*

Discussion from Jeff Fontaine, Executive Director, Nevada Association of County Officials (NACO) presentation of NACO's lawsuit. Over population of wild horses have a negative impact on environmental issues, ecology of range lands, direct and indirect costs and requires certain services from county and impacts county revenue. After two attempts over the last two years to meet with Secretary Salazar of the Department of the Interior, the NACO Board decided to take legal action. NACO Board would like the Board of Agriculture's support.

Discussion by the Board that all 17 Nevada counties support this lawsuit, providing a letter of support and the question the role of the Board of Agriculture.

Dennis Belcourt, Deputy Attorney General cites NRS 561.105 and advises the NDA Board that they can make a recommendation advising of policy to governor or legislature – this would be an option the board would have.

Charles Frey motions to check with legal and compose a letter to BLM and Department of Interior (DOI) in support of the NACO lawsuit and asking BLM to comply with the WHBA and mention that the lawsuit carries the support of all 17 Nevada counties and copies be sent to AG's Office, Governor's Office and Legislature's Office. Seconded by Perazzo. One abstention from Boyd Spratling who sits on the WHBA committee.

- D. Review of Director's powers and authorities *(for information)*

DISMISSED FOR LUNCH 12:01
CALL TO ORDER 12:35

5. Administration

- A. Update to Board – Dale Hansen, Fiscal Administrator *(for information)*
B. *Department Policy Adoption of ADM Policies 2 and 3:
1) *Policy AG-2-ADM-2 Telephone Use *(for possible action)*
2) *Policy AG-2-ADM-3 Uniforms *(for possible action)*

Paul Noe moves to Approve adoption of Policy AG-2-ADM-2 and Policy AG-2-ADM-3. Ramona Morrison seconds. Motion passes unanimously.

6. Plant Industry

- A. Update to Board – Dawn Rafferty, Administrator *(for information)*
- B. *Request Board approval for adoption of permanent revisions to NAC 555.250 through 555.700 Custom Application of Pesticides and Certified Applicators – Robert Leavitt *(for possible action)*

*Paul Noe moves to accept revisions and Brian Nakaguchi seconds
Motion passes unanimously.*

7. Consumer Equitability

- A. Update to Board – Dave Jones, Administrator *(for information)*
- B. Oil Testing Program Update – Bill Striejewske *(for information)*
- C. *Department Policy Adoption of Policy AG-1-HR-19 Alcohol and Controlled Substances Testing Program Policy *(for possible action)*

Paul Anderson moves to approve and adopt AG-1-HR-19. Seconded by Jim Snyder. Motion passes unanimously.

8. Food and Nutrition Programs

- A. Update to Board – Donnell Barton, Administrator *(for information)*

9. Animal Industries

- A. Update to Board – Flint Wright, Administrator *(for information)*
 - 1) Livestock Inspection Vehicle Stops Report
 - a. Jackpot, NV
 - b. Truckee, CA
 - c. Las Vegas, NV
 - 2) Animal Health Update
 - a. Trich
 - b. West Nile
 - c. Coggins
 - 3) Interstate Livestock Transport Rules Update
 - a. ADT update
 - b. Requirements for Bred Cattle and Stocker Cattle
 - 4) Bundy Gather Report-NDA role only

10. Board Member Comments

Dry milk shipments from Fallon facility are in progress.

11. Public Comment

None

12. Adjournment

Next NDA Board meeting: September 3, 2014 at 9:00 a.m. at NDA office in Elko.

Chair David Stix adjourns meeting at 3:20 p.m.

Alan Perazzo moves to adjourn. Seconded by Ramona Morrison. No objection.

4

Director's Report

4A

Director's
Activity
Report

**Nevada Board of Agriculture
Director's Report – Jim R. Barbee**

June

9 Meal Pattern Program Video
10 Admin Meeting
10 Food Commodity Meeting
11 – 12 WUSATA Meeting, Vancouver, WA
13 Furlough
16 HR Services Meeting, Carson City
16 Admin Meeting
18 Ag Literacy Meeting
19 Food Donation Meeting
20 Annual Leave
23 Sagebrush Ecosystem Program Meeting, Carson City
23 Brand Inspection Project
24 Admin Meeting
24 UNCE Meeting
25 Council on Food Security Meeting, Carson City
26 PARC Account, Carson City
26 Meal Pattern Meeting
27 Wildlife Services & Cattle, Fernley
27 Deputy Chief of Staff Call
30 Wellness Policy Call
30 Budget Meeting
30 Annual Report Discussion

July

1 Sage Grouse Meeting, Carson City
1 Grants Office Meeting, Carson City
1 Rangeland Meeting
2 Strike Force Meeting
3 Admin Meeting
7 School Nutrition Conference Introduction
8 Board of Examiners Meeting, Carson City
8 Budget Planning Meeting, Carson City
9 Presentation Prep
9 Admin Meeting
9 HR Services
9 Ag Literacy Check-in
10 Sagebrush Ecosystem Program Meeting, Carson City
10 Management Academy, Carson City
11 Admin
12 Admin Conference Call
14 HR Services, Carson City
14 Education Committee Prep
14 Governor's Conference on Agriculture Planning

15 Legislative Committee on Education Meeting, Carson City
16 Budget Meeting
17 Reno Livestock Event Center Meeting
17 Governor's Office on Economic Development
18 RACC Executive Committee Conference Call
20-25 WASDA/WUSATA Annual Meeting, Leavenworth, WA
29 Admin, Las Vegas
30-31 Annual Leave

August

1-4 Annual Leave
5 Deputy Chief of Staff Meeting
5 Governor's Conference on Agriculture Planning Meeting
6 USDA NASS State Statistician Meeting
6 Nevada EDDMaps Meeting
7 Rangeland Health Program Update
7 Predatory Animal and Rodent Control Account Meeting, Carson City
11 Southern Nevada Correctional Center Tour, Las Vegas
12 Board of Examiners, Carson City
12 Rangeland Health Meeting
12 Food and Nutrition Meeting
13 USDA FNS Communication Conference Call
13 Nevada EDDMaps Meeting, Eureka
14 PARC Open House, Elko
15 UNR CABNR Meeting and NDA Tour w/Dean
15 Metrology Meeting
18 Division Budget Meeting
19 Division Budget Meeting
19 Communication & Promotion Meeting
19 Division Budget Meeting
20 Interviews
20 Division Budget Meeting
21 Sage Grouse Meeting, Carson City
21 FFA Foundation Conference Call
22 RACC Executive Committee Conference Call
25 CE All Staff Meeting
25 CE Division Administrator Meeting
25 Noxious Weed Regulation and Seed Meeting
25 HR Services Meeting, Carson City
26 AHA Wellness Policy Call
26 CIP Board Meeting, Carson City
27 IFC, Carson City
27 Healthy Habitat Conference Call
27 Internal Audit Meeting, Carson City
28 Plant Industry Meeting

September

2 PARC Meeting, Elko

3 Board of Agriculture Meeting, Elko

4 Clark County School Lunch Program Tour, Las Vegas

BRIAN SANDOVAL
Governor

STATE OF NEVADA

JAMES R. BARBEE
Director

Las Vegas Office:
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Las Vegas NV 89104-4314
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DEPARTMENT OF AGRICULTURE

405 South 21st Street
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
Website: <http://www.agri.nv.gov>

June 26, 2014

Clay McCauley, Executive Vice President
Nevada Farm Bureau Federation
2165 Green Vista Dr., Suite 205
Sparks, NV 89431

Dear Clay McCauley:

RE: Copy of Letter Sent to NACO - Nevada Board of Agriculture Support of NACO WHBA Lawsuit

The Nevada Board of Agriculture is committed to a balanced and healthy ecosystem on our public lands to ensure Nevada's natural resources benefit, and are utilized by our citizens, industries, sportsmen, and visitors.

In that spirit, during our June 4, 2014 board meeting, the Board of Agriculture approved, with one abstention, support of the Nevada Association of County Officials and Nevada Farm Bureau Federation lawsuit. This suit is being brought forward by all 17 counties and the membership of the Nevada Farm Bureau Federation. The Nevada Board of Agriculture agrees and supports the intention of these Nevada stakeholders to ensure the Wild Horse and Burro Act of 1971 is implemented as enacted. The WHBA was enacted to ensure the health of all multiple-users as well as individual rights including and not limited to water and forage.

The Nevada Board of Agriculture supports the WHBA of 1971 as amended in an effort to improve management actions within the boundaries of Nevada, and diminish damages currently being suffered upon our public lands by unmanaged ungulates.

Sincerely,


David Stix, Jr., Chairman
State of Nevada, Board of Agriculture

Enclosure

5

Administration Report

5A

Prohibitions And Penalties

STATE OF NEVADA
DEPARTMENT OF AGRICULTURE



PROHIBITIONS AND PENALTIES
A GUIDE FOR EMPLOYEES OF
THE DEPARTMENT OF AGRICULTURE

Approved by the Board of Agriculture on _____

Approved by the Personnel Commission on _____

INTRODUCTION

Each member of the Nevada Department of Agriculture (NDA) has the responsibility to follow the rules of proper conduct and performance vital to carrying out our Agency's mission. While there may be situations you encounter that are unfamiliar or unexpected and which require you to exercise your judgment, it is important to have a clear understanding of the rules that govern your actions in performing your duties.

Although it would be impossible to address every infraction or violation that could conceivably develop, this Prohibitions and Penalties document should prove to be sufficiently comprehensive to cover the majority of situations that could be a source of concern. Since it covers a wide range of actions and behaviors, it should provide an excellent guide for supervisors and employees on what is expected in the area of proper conduct.

This Prohibitions and Penalties document is intended to clarify existing rules and regulations. It is meant as a supplement and does not attempt to cover all possible infractions and violations of the existing rules; however, it does cover the majority of situations that are important to NDA. All employees of NDA will be issued a copy of the "Prohibitions and Penalties" document.

After receipt of this document, please sign the "Acknowledgement Form," which is the last page of this document and return it to Agency Human Resources Services or to your immediate Supervisor.

AUTHORITY

The authority for management to prescribe behavior and conduct standards derives from Chapter 284 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC).

These standards are in addition to prohibitions and offenses that are listed in NAC 284. This handbook has been approved by the Personnel Commission and thus has the same force and effect as other rules and regulations covering classified employees.

TYPES OF CORRECTIVE ACTIONS AND THE PROGRESSIVE DISCIPLINE PROCESS

Letter of Instruction. A letter of instruction to the employee is typically written by the supervisor(s) responsible for the employee's activities. The letter is intended to provide the employee with information and instruction or training, and establishes documentation that the employee has been made aware of his or her responsibility with regard to a particular situation or set of circumstances. The Letter of Instruction is intended as a coaching tool and is not part of the disciplinary process and, therefore, is not included in the order of disciplinary actions that follow.

Progressive discipline normally follows the sequence outlined below. However, accelerated action may be taken when necessary.

1. Oral Warning. The oral warning typically comes from the supervisor responsible for the employee's activities. The warning may actually be oral or written, or both. Oral warnings issued in writing are maintained in the supervisor's file. Oral warnings may not be forwarded to the employee's departmental personnel file or to the Division of Human Resource Management's Records section.
2. Written Reprimand. The supervisor responsible for the employee's activities also issues written reprimands. This action should be both oral and written. The supervisor and employee must sign it. A copy is given to the employee and copies are sent to the employee's departmental personnel file as well as the Division of Human Resource Management's Records section. Written reprimands must be on the standardized form NPD-52. If the employee refuses to sign the form, the supervisor will state this fact on the NPD-52 form.
3. Suspension. A suspension is without pay and may not exceed 30 calendar days. It requires an NPD-41 form-Specificity of Charges. If the employee refuses to sign the form, the supervisor will state this fact on the NPD-41 form.
4. Demotion. A demotion to a lower class also requires the NPD-41 form-Specificity of Charges. If the employee refuses to sign the form, the supervisor will state this fact on the NPD-41 form.
5. Dismissal. Dismissal from services also requires NPD-41 form-Specificity of Charges. If the employee refuses to sign the form, the supervisor will state this fact on the NPD-41 form.

NOTE: The Division Administrator of the employee's assigned Division will review pending disciplinary actions and grievances and consult with Agency Human Resource Services, and the Attorney General's Office as necessary, to ensure proper documentation, timely processing of disciplinary actions and grievances, and accuracy of employee files. According to NRS section 284.385 the Attorney General must be consulted prior to all disciplinary actions involving a recommendation of suspension (3), demotion (4), or dismissal (5) of a permanent employee.

The attached chart shows recommended minimum and maximum penalties for the first, second, and additional offenses for a wide range of prohibited activities. If disciplinary actions 3, 4 or 5, described at the top of each chart are recommended for a permanent employee, the pre-disciplinary hearing guidelines found in NAC 284.656 must be followed.

NOTE: Appropriate disciplinary or corrective action may also be taken for any causes listed in Section 284.650 of the Nevada Administrative Code, "Causes for Disciplinary Action"

(<http://www.leg.state.nv.us/NAC/NAC-284.html#NAC284Sec650>)

Actions that result in an oral warning or a written reprimand can be grieved through the formal grievance process. Corrective actions resulting in suspension, demotion or dismissal provide for a pre-disciplinary hearing process and a post disciplinary appeal before the Division of Human Resource Management Hearing Officer.

Department of Agriculture (NDA) Prohibitions and Penalties

1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal							
		1st Offense		2nd Offense		Additional	
A.	Fraud In Securing Appointment	Min	Max	Min	Max	Min	Max
1	Falsification of application for employment or other personnel records with respect to a material point relating to education & training or employment history & experience which would have adversely affected selection for appointment.	5					
2	Taking, for another person, or permitting another person to take for you, an examination or a portion thereof.	5					
3	Refusal, upon hire, to sign the Acknowledgement of Receipt of Prohibitions and Penalties.	5					
4	Refusal, upon hire, to sign the Acknowledgement of the Governor's Policy Against Sexual Harassment and Discrimination.	5					
5	Willfully withholding information which may appear when initial background check completed or agencies mandated 3 year background re-check completed.	5					
1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal							
		1 st Offense		2nd Offense		Additional	
B.	Performance On The Job	Min	Max	Min	Max	Min	Max
1	Failure of employee to maintain proper a. Work performance. b. Personal appearance standards. (*after a reasonable period of instruction.)	1	3	2	3	4	5
2	Failure of employee to maintain performance standards after a reasonable period of instruction	1	3	2	3	3	5
3	Failure to prepare or maintain prescribed records or reports.	1	3	2	5	4	5
4	Willfully and/or negligently falsifying prescribed records or reports.	3	5	5			
5	Withholding or concealing information regarding the job from supervisors or other persons having the necessity for such information. a. Negligently withholding or concealing. b. Willfully withholding or concealing.	1 2	3 5	2 3	5 5	4 5	5
6	Failure to cooperate with other employees and/or supervisors.	1	3	2	5	5	
7	Failure of an employee, who is designated as a supervisor and has supervisory authority, to take corrective disciplinary action where such action is needed.	1	2	2	3	4	5

8	Failure to ensure subordinate employees perform required duties.	1	2	2	3	3	5
9	Misconduct of supervisor because of prejudice, anger or other unjustifiable reason, including the unequal or disparate exercise of authority toward an employee.	1	4	2	5	4	5
10	Negligent waste or loss of State material, property or equipment.	1	3	2	5	4	5
11	Negligent destruction of, or damage to, State or Federal property.	1	5	2	5	4	5
12	Willful destruction of, or damage to, State or Federal property.	2	5	3	5	5	
13	Jeopardizing the security of departmental property.	1	3	2	5	3	5
14	Unauthorized and willful destruction, removal, concealing, stealing, tampering, mutilation, and/or alteration of departmental records, public records, book, paper report or document.	2	5	5			
15	Negligent destruction of state or department records	1	4	2	5	5	
16	Soliciting or accepting a bribe or otherwise personally profiting from activities related to the employee's state employment.	5					
17	Embezzlement or misappropriation of State funds or other funds which come into the employee's possession by reason of their official position for personal gain.	5					
18	Negligent falsification of financial records, such as travel, payroll, or purchase vouchers, or their supporting documents: a. Not for personal financial gain; b. For personal financial gain.	1 3	3 5	4 5	5	5	
19	Willful falsification of financial records, such as travel, payroll, or purchase vouchers, or their supporting documents: a. Not for personal financial gain; b. For personal financial gain.	2 5	5	3 5	5	5	
20	Failure to properly account for State or Federal funds where it is a known requirement of the position.	2	5	3	5	5	
21	Negligent falsification of time and attendance records including leave requests, overtime, compensatory time or any leave record.	2	4	3	5	5	
22	Willful falsification of time and attendance records including leave requests, overtime, compensatory time or any leave record.	3	5	4	5	5	

23	Willful concealment of material facts by omission from records.	2	3	4	5	5
24	Theft or misappropriation of property belonging to Federal or State government or fellow employees. a. With value of \$25 or less. b. With value of \$25 or more.	1	5	5		
25	Unauthorized taking or using property belonging to the Federal or State government or fellow employees or any unauthorized person. a. 0 - \$25. b. Over \$25.	2	5	5		
26	Making unauthorized departmental transactions for personal profit.	3	5	5		
27	Disregard and/or deliberate failure to comply with or enforce statewide, Department, Division or office regulations and policies.	2	5	3	5	4 5
28	Unauthorized removal of secure or personal records, correspondence or documents from departmental files. a. Not for personal financial gain. b. For personal financial gain.	2	5	3	5	4 5
29	Endangering self, fellow employees, clients or public through negligent violation of agency or division policy as contained in performance standards, procedures and various federal and state laws, regulations and guidelines.	2	5	3	5	5
30	Endangering self, fellow employees, clients or public through careless or willful violation of agency policy as contained in performance standards, procedures and various federal and state laws, regulations and guidelines.	2	5	3	5	5
31	The suspension, revocation, cancellation or lapsing of any valid license, certificate or permit when the possession of a valid license, certificate, or permit is required as an essential function of the job.	2	5	3	5	5
32	Failure to maintain a valid driver's license when possession of a valid driver's license is a requirement of the job.	2	5	3	5	5
33	Failure to notify the appointing authority within 5 days of the suspension, revocation or cancellation of a professional or occupational license or certification when such possession is a job requirement.	1	5	2	5	3 5

34	Failure of an employee, who is designated as a supervisor to fulfill their supervisory responsibilities, including but not limited to ensuring that employees adhere to the policies and procedures of the department and the actions of all personnel comply with all laws and taking corrective disciplinary action where such action is needed, preparing timely reports of performance, and accounting for employees' time and leave and maintaining current work performance standards.	1	2	2	3	3	5
35	Negligent failure to disclose information related to job duties from official records, from supervisors, or from other persons having necessity for said information.	1	3	2	5	4	5
36	Willful falsification of any public record that involves misuse of state or federal funds.	2	5	5			
37	Failure to wear appropriate clothing consistent with assigned duties.	1	3	2	4	3	5
38	Converting found, recovered or seized property to personal use.	3	5	5			
39	Making personal profit from state transactions or sales.	3	5	5			
40	Negligent falsification of any public record, including biweekly timesheets, leave requests, overtime, compensatory time, travel vouchers, and/or information in client or agency files.	2	3	3	4	5	
41	Failure to handle property or evidence in a manner which preserves the integrity of its use in criminal and/or administrative proceedings: a. Negligently. b. Intentionally.	2	3	3	4	5	
42	Engaging in any investigation or official action which is not part of their assigned duties without the authorization of a supervisor unless the circumstances demand immediate action, where it is a known requirement of the position.	2	3	3	5	4	5
1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal							
		1 st Offense		2nd Offense		Additional	
C.	Neglect Of, or Inexcusable Absence From The Job	Min	Max	Min	Max	Min	Max
1	Negligence in performing official duties including failure to follow instructions or regulations.	1	3	2	5	3	5
2	Carelessness, indifference, and/or inattention to duty that results in reduced productivity.	1	5	2	5	3	5
3	"Loafing" on the job; wasting time; failure to put in a full day's work.	1	3	2	5	3	5
4	Failure to report to work at specified times and in the prescribed manner.	1	3	2	5	3	5

5	Conducting personal business, volunteer duties or work not related to NDA during working hours. a. On State-owned equipment. b. On personal equipment.	1	3	2	4	3	5
6	Frequent or continual tardiness.	1	3	2	4	3	5
7	Failure to notify supervisor or designated representative promptly when unable to report for work. Notification must occur for each shift unless otherwise pre-arranged.	1	3	2	5	3	5
8	Leaving a work area or a job a. Without authorization b. When specifically instructed to remain in work area or at the job.	1	4	2	5	4	5
9	Unauthorized absence from duty or abuse of leave privileges.	1	3	3	5	5	
10	Absence from duty without leave after having been denied permission to take such leave.	3	5	5			
11	Failure to report to work or call supervisor for three (3) consecutive work days without permission or justification.	5					
12	Failure to appear and provide testimony for court or a hearing when duly notified or subpoenaed. Only the court, prosecutor, or other hearing official may grant the authorization to waive court or hearing appearances.	2	3	3	4	4	5
13	Repeated extension of designated lunch periods, or of rest periods beyond the prescribed 15 minutes in NAC 284.524, without supervisor approval.	1		2	3	3	5
14	Use of sick leave for a reason not authorized by NAC 284.554.	2	4	5			
15	Failure to report to duty as ordered during public safety emergencies.	2	5	3	5	4	5
16	Absence from duty without permission or without adequate justification.	1	3	3	5	5	
1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal							
		1 st Offense		2nd Offense		Additional	
D.	Relations With Supervisor, Fellow Employees, and The Public	Min	Max	Min	Max	Min	Max
1	Insubordination: Refusal to comply with order or instruction from a supervisor (or superior in employee's chain of command.)	2	5	3	5	5	
2	Act of violence, unauthorized or unlawful fighting, threatening, including stalking, intimidation, or attempting bodily harm to supervisor, subordinate, the public or fellow employee.	2	5	5			

3	Doing bodily harm to supervisor, public or fellow employee.	2	5	3	5	5
4	Any act of violence in the course of duties, including stalking, threats, intimidation, assault or battery.	2	5	3	5	5
5	Inappropriate gesture or touching.	2	5	3	5	5
6	Using insulting, abusive, intimidating or profane language to a supervisor, a subordinate, the public or fellow employee.	1	5	2	5	3 5
7	Discourteous treatment of the public, supervisor or a fellow employee.	1	5	2	5	3 5
8	Deliberately making false statements to or about supervisor or fellow employee.	2	3	3	4	5
9	Making statements, false or otherwise, intended to demean or disparage supervisor, fellow employees or the public; or intended to disrupt the work environment.	2	3	3	4	4 5
10	Knowingly providing false or misleading statement, either verbally or in written reports or other documents, concerning actions related to the performance of official duties or providing false or misleading statement in response to any question or request for information in any official investigation, interview, hearing or judicial proceeding.	5				
11	Misuse and/or abuse of supervisory authority or privilege.	1	5	2	5	3 5
12	Engaging in romantic/sexual relationship with supervisor.	2	3	3	4	5
13	Engaging in romantic/sexual relationship with any state employee while in the workplace.	2	3	3	4	5
14	Refusal to comply with reasonable or proper instruction from a supervisor and disobeying or refusing to abide to a Statute or regulation.	2	5	3	5	5
15	Threatening, stalking, intimidating, attempting, or doing bodily harm to supervisor, public, or fellow employee; or using insulting, intimidating or abusive language or conduct to supervisor, public or fellow employee.	2	5	3	5	5
16	Failure to conduct oneself in a professional manner while meeting the responsibilities to the public.	2	3	3	4	4 5
17	Failure to represent the Department in a professional manner during any court and/or administrative proceeding.	1	2	2	3	3 5

18	Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm or destroy the reputation, authority or official standing of the Department or members thereof.	3	5	5			
19	Failure to take a complaint from a person in a professional and courteous manner and/or failure to act promptly and judiciously upon receipt of complaint in compliance with Department procedures.	1	2	2	3	3	5
20	The wrongful or unlawful exercise of authority on the part of any employee for malicious purpose, personal gain, willful deceit or any other improper purpose.	4	5	4	5	5	
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		1 st Offense		2nd Offense		Additional	
E.	Use of Alcoholic Beverages, Narcotics, or Habit Forming Drugs	Min	Max	Min	Max	Min	Max
1	Consuming or being under the influence of alcohol, narcotics, drugs or other controlled substances while on duty, to include lunch and work breaks, unless prescribed by a physician and their supervisor has been previously notified in writing.	3	5	5			
2	Appearing for duty or driving while under the influence of alcohol or drugs while on duty	2	4	5			
3	Convicted of driving under the influence or any other offense for which driving under the influence is an element of the offense, and the offense occurred while driving a State vehicle or a privately owned vehicle while on State business.	3	5	5			
4	Failure to complete any rehabilitation program recommended in the evaluation of an employee who is referred to an employee assistance program, who is suspended or demoted pursuant to any intoxicated related offense while driving any state vehicle or privately owned vehicle while on State business.	5					
5	Convicted of violating any State or Federal law prohibiting the sale of a controlled substance.	5					
6	Unlawful manufacture, distribution, dispensing, possession, selling or use of any controlled substance, narcotic, and/or drug or being under the influence of alcohol) at place of work or on State business includes meal or break periods, or while in uniform off-duty.	3	5	3	5	5	
7	Failure to report a conviction of any alcohol or drug related offense violating any State or Federal law prohibiting the sale of a controlled substance to the appointing authority within five (5) working days after it occurs.	5					

8	Refusal to take any drug and/or alcohol test when there is reasonable belief an employee is under the influence of drugs or alcohol.	5			
9	Refusal to submit to a screening test for any drug and/or alcohol test mandated by Federal or State law to include employees holding a commercial driver's license.	2 5	3 5	5	
10	Unlawful possession of a controlled substance at work or while on departmental business.	5			
11	Inability to perform the duties of the position because of being under the influence of an alcoholic beverage, narcotics or drugs, or any other controlled substance (includes prescription medication).	1 5	2 5	3 5	
12	Failure to pass any drug and or alcohol test mandated by Federal or State law.	3 5	5		
13	Failure to notify a supervisor after consuming any drug, alcohol and/or substance which could interfere with the safe and efficient performance of his duties.	3 5	4 5	5	
14	Manufacturing, distributing, selling, giving, or otherwise providing to staff or other persons with intoxicating beverages, or any controlled substances during working hours unless specifically authorized.	3 5	5		
1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal					
		1 st Offense		2nd Offense	
		Min	Max	Min	Max
F.	Misuse of Departmental or State Property				
1	Using Federal, State or departmental owned or leased property without proper authorization.	1 3	2 5	5	
2	Operating State vehicle or equipment in an unsafe or negligent manner, or which results in injury to a person, damage to the equipment, or to the property.	1 5	2 5	5	
3	Speeding or committing other traffic violations while driving a State or federally owned vehicle, or reckless handling of other State equipment, including any personal action contributing to involvement in a preventable traffic collision, or other unsafe or improper driving habits or actions in the course of or impacting employment.	1 3	2 5	3 5	
4	Failure to have State vehicles maintained and or serviced pursuant to Motor Pool Standards resulting in damage to equipment or personal injury	1 5	2 5	5	
5	Operating State vehicles or equipment without a valid or proper license:				
	a. Without knowledge that the license is no longer valid.	2 5	5		
	b. With knowledge that the license is no longer valid.	4 5	5		

6	Operating State vehicles or equipment without proper authorization or credentials.	2 5	5	
7	Failure to report a violation of a traffic law when a driver's license is a requirement of the position.	2 3	3 4	3 5
8	Failure to report an accident involving State equipment or vehicles assigned to the employee within 24 hours.	2 5	3 5	4 5
9	Using or authorizing the use of state owned or leased property for other than official use, including state-issued credit cards.	1 5	2 5	3 5
10	Willfully operating state or federal equipment in violation of state and federal laws, i.e., speeding, reckless driving, etc.	2 5	3 5	4 5
11	Negligently or willfully leaving state equipment or machinery which results in damage to people, the equipment or other property.	1 5	3 5	5
12	Releasing a paycheck or pay advice before the appropriate time.	2 3	3 5	5
13	Requesting, receiving, and cashing a paycheck before the State's designated payday.	2 3	3 4	5
14	Rendering of services or goods to recipients that are not in accordance with departmental or divisional policies.	1 5	3 5	5
15	Refusal to undergo a criminal background check when it is required by law, regulation, or agency policy.	5		
16	Failure to disclose an arrest or a criminal conviction when disclosure is required by law, regulation, or agency policy.	3 5	5	
17	Failure to report an arrest or conviction or any misdemeanor, gross misdemeanor, or felony within 5 working days.	3 5	5	
18	All State issued charge cards are to be used for travel purposes according to the guidelines provided in the State Administrative Manual. No personal expenses are permitted to be charged on this card.	3 5	4 5	5
19	Failure to report an accident involving State equipment or vehicles, state-owned, personal or rental assigned to the employee within 24 hours.	2 5	3 5	5
20	Negligent, willful or inexcusable destruction or damage to state or federal property.	1 4	2 5	3 5
21	Removing property, equipment or documents from the workplace unless approved by the appropriate authority.	1 5	2 5	5
22	Making unauthorized copies such as books, manuals, and computer software in violation of copyright laws or vendor licensing agreements.	1 5	2 5	5

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G.	Misuse of Information Technology	1 st Offense		2nd Offense		Additional	
		Min	Max	Min	Max	Min	Max
1	Use that interferes with employee performance or departmental functions to include downloading and using entertainment software such as games or other non-work related materials, or on-line gambling.	1	5	2	5	3	5
2	Use for activities that are illegal, inappropriate or offensive to fellow employees or the public such as harassment or hate speech to include language that discriminates against others on the basis of race, religion, gender, disability, national origin, sexual orientation, genetic information or gender identity and expression, or any other state or federal anti-discrimination laws.	1	5	2	5	5	
3	Obtaining unauthorized access to another's e-mail or data files or to confidential records maintained by the Department.	2	4	3	4	5	
4	Accessing, displaying and/or printing material or images that are sexually explicit which may or may not have the potential to create a hostile environment in the work place.	1	5	2	5	5	
5	Use that violates copyright laws, software licensing agreements, property rights, the privacy of others, or local, State, or Federal laws.	1	5	3	5	5	
6	Accessing a website that results in a fee being charged to the State. a. For work-related purposes without prior approval of Executive Staff. b. For non-work-related purposes with an amount of \$0 to \$25. c. For non-work-related purposes with an amount over \$25.	1	2	3	4	5	
7	Revealing passwords or using another person's user identification and/or password to access confidential information without authorization.	2	5	3	5	5	
8	Negligent use of information technology that results in the introduction of computer viruses, system monitoring devices or devices that can cause damage or limit access to the equipment, software or data.	1	5	2	5	4	5
9	Knowing and willful sabotage of information technology resources such as the introduction of computer viruses, system monitoring devices, or devices that can cause damage or limit access to the equipment, software or data.	5					

10	The unauthorized use, or manipulation of, production data or information outside the scope of one's job responsibilities, or for non-business or personal reasons, is strictly prohibited and may be subject to prosecution under NRS 205.481.	2	5	3	5	5	
11	Installing or using personal or unauthorized software on state information technology resources without proper authorization and approval.	2	4	3	4	5	
12	Using state information technology resources, including but not limited to, computing and communications equipment, services or facilities for soliciting business, selling products or otherwise engaging in commercial activities.	2	5	3	5	5	
13	Misuse or abuse of the email system; or other violations of the Computer Usage Policies regarding email.	1	3	2	4	3	5
14	Completion of any business transaction for self, friends, family members or co-workers. (a) Without incident. (b) With incident, or with inappropriate data, fees or other elements of the transaction that would not otherwise occur if handled properly.	1	3	2	5	5	
15	Downloading, sharing, or duplicating confidential data either onto a laptop computer, Personal Digital Assistant (PDA), Compact Disc (D), memory stick or similar, or any other portable device without proper authorization.	5					
16	Personal use that could slow down, delay or disrupt computer services such as chain letters, greeting cards and streaming of radio or TV broadcasts or other audio or video material. Installing or using personal or unauthorized software or hardware on state information technology resources without proper authorization and approval.	1	2	3	4	5	
17	Accessing or communicating data not pertaining to official job duties without authorization.	1	4	2	5	5	
18	Malicious and willful alteration, deletion or other destruction of documents, data, information or other materials stored on any Department information technology system.	5					
19	Use to inappropriately seek, distribute, obtain copies of, modify, or distribute information, files, or other data that is private, confidential or not open to public inspection.	5					
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		1 st Offense		2nd Offense		Additional	
H.	Other Acts of Misconduct or Incompatibility	Min	Max	Min	Max	Min	Max
1.	Causing discord among employees to the detriment of morale.	1	3	2	5	3	5
2	Creating an atmosphere not conducive to a professional workplace, including creating discord among employees.	1	4	2	5	5	

3	Engaging in outside employment activity or enterprise: a. Without authorization. b. The appointing authority considers to be inconsistent, incompatible, or a conflict of interest.	1 3	2 4	5
4	Unauthorized or improper disclosure of confidential information or theft of sensitive or confidential information or of written material.	2 5	3 5	5
5	Divulging confidential employer information obtained in the performance of official duties to any person outside the Department except as specified by law or policy. Making public any investigation or proposed action or business of the Department to any unauthorized person.	2 5	5	
6	Unauthorized or improper disclosure of confidential information.	2 5	3 5	5
7	Disgraceful personal conduct which impairs job performance.	1 4	3 5	5
8	Accepting gifts, service, favor, employment, engagement or economic opportunity from any individual, firm or organization doing business with NDA or the State when the employee is responsible for making any recommendations or decisions affecting their business activities.	1 5	2 5	3 5
9	Misrepresentation of official capacity or authority.	2 5	4 5	5
10	Unauthorized bringing into State and/or NDA owned, leased, or occupied buildings, without a current concealed firearm permit, any firearm or implement considered to be a weapon, unless permitted by law to do so.	2 5	3 5	5
11	Accidental discharge of firearm because of negligence no injury or substantial damage.	2 3	3 4	4 5
12	Conviction of any criminal act related to the employee's work activity or conviction of any criminal act involving moral turpitude when it is related to the employee's work activity.	2 5	3 5	5
13	Performing an act in an unofficial capacity which is subject to the control, inspection, review, audit or enforcement by the employee or his agency.	1 5	2 5	5
14	Acting in an official capacity without authorization or not following the proper chain of command, by contacting other state administrators, officers, board members, or elected officials without first expressing concerns and intended purpose to supervisors, excluding contacts made by employees under the provisions of NRS 281.611 through 281.671.	1 2	2 4	5

15	Failure to provide name, identification or display proper ID when requested.	1 2	2 3	3 5
16	Failure to maintain personal appearance appropriate to the job.	1 2	2 3	3 5
17	Allowing unauthorized personnel to enter work areas without approval of appointing authority.	1 2	2 3	5
18	Failure to report promptly and fully misconduct including activities on their own part or the part of any other employee where such activities may result in criminal prosecution or discipline under this policy.	1 5	2 5	3 5
19	Concealing or covering up, attempting to conceal, removing or destroying evidence of incompetent or defective workmanship.	2 3	3 4	4 5
20	Sleeping on duty or failure to remain fully awake while on duty.	1 5	3 5	5
21	Failure to assure safety and security as part of effective job performance, employees remain alert, aware of, attentive, and responsive to their surrounding while on duty.	1 5	2 5	5
22	Concealing, altering, falsifying, destroying, removing, tampering or withholding any property or evidence associated with any alleged misconduct or performance, criminal, or administrative investigation, arrest, or other administrative or enforcement action.	4 5	4 5	5
23	Failure to meet Peace Officer Standards & Training (POST) requirements, where it is a requirement of the position.	5		
24	Improperly identified self, displayed badge or identification, or made improper use of status as a NDA employee that could reasonably be perceived as an attempt to gain influence or authority for non-Department business or activity.	3 5	4 5	5
25	Any conduct whether on or off duty which negatively reflects upon the image of the State or the Department.	1 5	2 5	5
26	Engaging in unlawful or unauthorized electronic surveillance or recording of conversations or actions of persons in facilities owned or leased by the State	3 4	4 5	5
27	The unauthorized use of any badge, uniform, identification card or other department equipment or property for personal gain or any other improper purpose.	3 4	4 5	5

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		1 st Offense		2nd Offense		Additional	
I.	Improper Political Activity	Min	Max	Min	Max	Min	Max
1	Directly or indirectly solicit or be in any manner concerned in soliciting or receiving any assessment, subscription, monetary, or non-monetary contribution for a political purpose from anyone who is in the same Department and who is a subordinate of the solicitor.	1	5	4	5	5	
2	Engaging in political activity during the hours of employment for the purpose of improving the chance of a political party or individual seeking office.	1	3	2	4	3	5
3	Engaging in political activity for the purpose of securing preference for promotion, transfer or salary advancement.	1	5	2	5	5	
4	As an employee in an agency administering federally funded programs, engaging in political activities which are forbidden by federal law.	1	3	2	5	3	5
5	Using or promising to use any official authority or influence for the purpose of influencing the vote or political action of any person for any consideration.	2	3	3	4	5	
6	Engaging in any unauthorized political activity, except for expressing an opinion, while on duty, while in uniform or at public expense or event.	2	4	3	4	5	
7	Soliciting and/or influencing any employee to engage or not engage in any political activities with direct or indirect use of any threat, intimidation or coercion, including threats of discrimination, reprisal, force or any other adverse consequence including loss of benefit, reward, promotion, advancement or compensation.	3	5	5			
1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal							
		1 st Offense		2nd Offense		Additional	
J.	Discrimination and Harassment	Min	Max	Min	Max	Min	Max
1	Discrimination on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin, genetic information, gender identity and expression or other violations of the Title VII of the Civil Rights Act, or any other state or federal anti-discrimination laws.	3	5	4	5	5	
2	Engaging in sexual harassment as defined in Federal and State law, the Governor's policy, or NDA policy against employee, an applicant for employment or any other person or client in the workplace.	2	5	4	5	5	
3	Creating or endorsing a hostile work environment.	2	5	3	5	5	1
4	Making a negative or discriminatory remark based on any Federal or State protected status.	2	3	3	4	5	

5	Failure of a supervisor to report instances of sexual harassment or discrimination as defined and required in Federal and State law, the Governor's policy, or NDA policy.	1	5	3	5	5
1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal						
		1 st Offense		2nd Offense		Additional
K.	Safety and Health	Min	Max	Min	Max	Min Max
1	Willful removal or interference with a safety device or safeguard.	2	3	2	4	3 5
2	Dangerous horseplay or inattention that threatens the life of an individual.	2	5	3	5	5
3	Willfully employing or permitting the use of unnecessary, unauthorized, or excessive force on a person under arrest or any other person.	3	5	4	5	5
4	Disregard of safety rules.	2	3	3	4	4 5
5	Creating a situation where force must be used unnecessarily.	3	5	4	5	5
6	Failing to report any use of force either as a participant or a witness.	4	5	4	5	5
7	Workplace violence, threat of workplace violence, harassment or intimidation.	2	5	3	5	5
8	Failure to follow agency positions when representing the Department or failure to clearly identify that an employee's opinion is being expressed and does not represent the position of NDA, the Governor or the State Board of Agriculture when participating in an advocacy situation related to the Department.	1	3	3	5	5
9	Improper disclosure of protected health information as identified by the Privacy Act of the Health Insurance Portability and Accountability Act (HIPAA.)	1	5	2	5	3 5
10	Stealing of misappropriating any property owned by the state, whether it is located on state property or other such property where state activity is occurring	5				
11	Knowingly failing to appropriately and timely report any on-the-job or work-related accident or injury.	1	2	2	3	3 5
1 = Oral Warning 2 = Written Reprimand 3 = Suspension 4 = Demotion 5 = Dismissal						
		1 st Offense		2nd Offense		Additional
L.	Relations With Clients, Licensees, or Grantees	Min	Max	Min	Max	Min Max
1	Willfully abridging or denying the rights of clients, licensees or grantees as specified in NRS or agency policy.	3	5	3	5	5
2	Negligently abridging or denying the rights of clients, licensees or grantees as specified in NRS or agency policy.	1	4	3	5	5

3	Borrowing items from a client, licensee or grantee, selling to or trading items with a client, licensee or grantee or entering into a transaction with a client, licensee or grantee involving the transfer of the client's, licensee's or grantee's property for personal gain.	2 5	3 5	5
4	Entering into a romantic or sexual relationship with any client of the employee's agency or program when said employee is involved in the delivery of service to the client; or entering into a romantic or sexual relationship with a licensee or grantee and conditioning their licensure on the relationship.	3 5	3 5	5
5	Using insulting, intimidating or abusive language to clients, licensees or grantees; neglecting, threatening or causing bodily harm to clients, licensees or grantees.	3 5	3 5	5
6	Having personal or business relationships with clients, licensees or grantees for the purpose of, or which results in, any program advantages, considerations or benefits to either party which exceeds normal entitlement.	3 5	3 5	5
7	Soliciting clients, licensees, grantees and/or agency contacts for the establishment or maintenance of a private professional practice similar to their work activities.	2 5	3 5	5
8	Soliciting clients, licensees, grantees and/or agency contacts for the establishment or maintenance of a private professional practice while on work duty.	3 5	4 5	5
9	Any willful or reckless act of aggression directed towards a client, including but not limited to, sexual exploitation of a client; grabbing, pushing, tripping, hitting or striking a client in any manner; or willful misuse of physical or chemical restraints not in accordance with an approved treatment plan or in violation of state or federal law.	2 5	3 5	5
10	Failure to report suspected denial of client rights, client abuse, or neglect.	2 5	3 5	5
11	Failure of an employee as mandated by law in their professional or occupational capacity to report animal abuse.	3 5	5	
12	Threatening another person with a person with a deadly weapon on the premise of the workplace or while conducting state business or performing duties of employment.	5		

ACKNOWLEDGMENT FORM

DEPARTMENT OF AGRICULTURE PROHIBITIONS AND PENALTIES

The authority for management to prescribe behavior and conduct standards derives from Chapter 284 of the Nevada Revised Statutes and the *Disciplinary Procedures, Adjustment of Grievances*, and *Prohibitions and Offenses* sections of the State of Nevada Rules for State Personnel Administration. These regulations provide that each appointing authority shall determine and describe in writing activities that are inconsistent, incompatible, or in conflict with the duties and responsibilities of Department of Agriculture employees.

The Department of Agriculture's Prohibitions and Penalties document is a guide that intends to clarify existing rules and regulations, but does not cover all infractions and violations that could conceivably occur. It does however cover the majority of situations that are important to the State of Nevada Department of Agriculture. As a tool, which describes behavior that is subject to discipline, the guide will serve the needs of both supervisory personnel and employees. Additions, deletions or changes to the guide as they are approved by The State Personnel Commission, will be communicated to employees in the same manner as other Department of Agriculture policies and procedures.

The State Personnel Commission approved this guide, thus it has the same force and effect as other rules and regulations covering classified employees.

Once signed, this acknowledgment will be placed in the employee's personnel file.

Acknowledgment of Receipt:

I acknowledge receipt of the Department of Agriculture's Prohibitions and Penalties.

Employee Signature

Date

Print Employee Name

Employee ID

Agency HR Services Representative or
Immediate Supervisor

Date

5B

Division Goals

5C

Administration Update

5D

Marketing
And
Communications

Nevada Board of Agriculture

Communication & Promotion Update

1. Buy Nevada membership and promotions
2. NDA promotions and news - video
3. New fact sheet series
4. School meal campaign — ads and promotions

6

Plant Industry

6A

Range Ecology Position

6B

Nevada
EDD Maps

6C

Plant
Industry
Update

Plant Industry Programs Update

ENVIRONMENTAL SERVICES: Chuck Moses, Sean Gephart, Brett Allen

Core Activities

A regulation change workshop was attended by NDA Environmental Services on April 17. The regulation hearing was scheduled on May 21. The proposed regulations were not revised during the hearing and were approved by the NDA Board of Agriculture.

86 inspections and investigations were conducted by NDA Environmental Services and Pest Control Licensing staff members during the quarter.

An IPM training program was held for Clark County Food Service during the week of August 11. 16-1 hour training sessions were given which averaged 25 attendees per session.

Staff drafted an informative press release which was sent to newspapers in Northern Nevada and placed on the NDA website and Facebook page and a fact sheet was updated and sent out to certified applicators, licensed operators and stakeholders about the container recycling program.

Staff organized a pesticide disposal event with Clean Harbors; 3,536 pounds of waste pesticide were collected.

A total of 67 surface/groundwater samples were collected statewide this quarter and submitted to the NDA pesticide laboratory for analysis.

A certification testing and training program was held in Elko Nevada as part of the Weed Extravaganza sponsored by Cooperative Extension. On June 6, NDA sponsored and participated in a certification training and testing program; the training was held in Sparks and teleconferenced to Elko for BLM staff.

2 Country of Origin Labeling Inspections and 23 USDA-SITC inspections were conducted during the months of April, May and June, 2014

EXPORT CERTIFICATION: Sean Gephart, Lead ACO

From May 1st through August 25th, a total of thirty (30) phytosanitary certificates were issued by NDA staff inspectors hereby assisting seven (7) companies export six (6) different agricultural commodities to nine (9) countries.

Other phytosanitary activities occurred June 26th and July 29th when NDA inspectors collaborated with USDA Export Certification Specialist, Alana Wild, while they conducting inspections at Sylvan America, a mushroom spawn production facility in Dayton, and at Starbuck's Coffee roasting plant in Minden. The collaborative efforts between the two agencies ensure the exporters meet the importing countries specific requires thereby facilitating fluid entry.

GAP: Ashley Jeppson

Good Agriculture Practices outreach was performed to three farms. NDA is partnering with UNCE on a Risk Management Education grant and will be hosting 4 trainings during November-December of 2014.

NOXIOUS WEEDS: Robert Little, Jamie Greer

The Noxious Weed Program has had a successful summer. First, the completion of the development of EDDMaps (of which you will see a presentation today) will allow public and private land managers to map weeds via an smartphone app or website. Each land manager can print their maps, all the while protecting the private landowner data via a secure log in. The mapping program will provide NDA and the ranchers information and data that will have large implications in shaping the conversation around range health and sage grouse.

A portion of the Pesticide Registration Fee that comes to the weed program has been awarded to five local working groups (CWMAs and CDs) for the control of invasive plants, restoration and monitoring in areas that benefit sage grouse and Nevada agriculture. Five groups split a total Of \$85,000.

Robert Little and Jamie Greer attended 16 county commission meetings to discuss the county's role in the regulatory process and to outline the support available by the department. They also unveiled the cost share program and MOU available to counties to conduct abatements. One successful abatement was conducted in conjunction with Douglas County. Pressure from stakeholders concerning noxious weeds on federal land continues to increase. As a result, the Noxious Weed Program is gearing up to address this issue with federal land managers.

The weed free forage program certified less acres in 2014 than 2013 due to dry conditions. However, NDA seasonals and interns were trained in inspection procedures to offer more timely response to inspection requests. This will be important in the future as inspections for non-hay materials (gravel, mulch etc) increases. Jamie Greer is developing an inspection program for these materials due to the increasing demand and NDA being the only recognized certifying body in the state.

The noxious weed program is currently transitioning from solely focused on invasive plants to a broader view of rangeland health. With the transition of Robert Little to the PI Deputy Administrator, Tina Mudd with Manage the Rangeland Health Program, with Jamie Greer functioning as the State Weed Coordinator. They are currently working to staff the regulatory specialist position. This position remains very important due to the momentum gained with the county's and working groups.

NURSERY: Peggy McKie, Xenia Duranovic, Marlea Stout

Nursery inspections in southern Nevada are beginning to slow as the area heats up and shipments decline. Compliance with nursery stock care and condition requirements by Wal-Mart stores in southern Nevada continued to show improvement throughout the summer following a meeting with Wal-Mart's corporate compliance representatives, southern Nevada Wal-Mart store managers and their garden center staff. A noxious weed infestation located in a northern area nursery resulted in the nursery entering into a year-long weed management compliance agreement with NDA. NDA nursery inspector Marlea Stout will be providing continuously monitoring as the nursery eradicates 7 state-listed noxious weeds from the nursery premises.

ORGANIC: Peggy McKie, Ashley Jeppson, Jamie Greer, Lindsay Dixon
The organic program welcomes Lindsay Dixon, hired to fill the Organic Program Officer position created during the restructuring of the organic program. Lindsay comes to NDA with a background in private industry food safety and organic certification. Organic farm and processor inspections are on-going. Program expansion is expected through increased out-reach, educational opportunities, and the greater availability of program staff to respond to industry needs

OTHER GRANTS: Ashley Jeppson

-- Farm to School: One school garden food safety inspection was performed in northern Nevada. A 2.5 day tour was provided to the Western Regional Farm to School Coordinator which highlighted 6 F2S programs in Northern Nevada. Upcoming F2S food safety trainings are being scheduled for Fall 2014.

--Federal State Marketing Improvement Program: The Northern Nevada Hispanic Marketing Initiative project has progressed from the interpretation and analysis of survey results, into the formulation of educational materials aimed at increasing awareness and interest in the local agriculture movement to the Hispanic community. Survey results indicated that there is a distinct interest in local agriculture, and a willingness to attend classes if offered to the Hispanic community. The next phase will be providing agriculture classes and creating Spanish based online resources to assist the Hispanic community with growing crops in Nevada.

PCO LICENSING AND ENFORCEMENT: Robert Leavitt, Scott Cichowlaz, Kathleen Bednarz, Jay Steele, Suzanne Suter

The Pest Control Operator Licensing and Enforcement Program (PCO Program) provided the Department with the information required to comply with Nevada Revised Statute 353c.1965 (SB 21 of 2013) in regards to debts owed to a state agency. This report included required information on all pest control business licenses and individual principal, operator, and agents licenses. Established information security procedures were followed to safeguard sensitive information.

PCO Program personnel are working on several important continuing education events to be held this fall: the Desert Green Conference November 6 and 7 in Henderson, the Pest Control Applicator Structural (C3) Training in Las Vegas October 24, and the CTN Education Services Pesticide Applicator Licensee and Certification School in Reno November 04 and Las Vegas December 15 and 16. The PCO Program works with the Department's Environmental Services Program, the University of Nevada Cooperative Extension and other agencies and organizations to provide training and updates on Nevada pest control laws and regulations, worker safety and personal protective equipment, and new frontiers in pest biology and pest control science and technology. In addition, PCO Program personnel are working with the Department's Environmental Services Program and the U.S. Environmental Protection Agency on hosting a 2015 Pesticide Inspector Residential Training (PIRT) program in Henderson in February.

In 2014, a PCO Program inspector attended a PIRT program in Washington State in April. The PCO Program manager attended the annual meeting of the Association of State Pest Control Regulatory Officials in Montana in August.

The State Board of Agriculture approved changes to Nevada's pesticide regulations for Custom Application of Pesticides and Certified Applicators (Nevada Administrative Code chapter 555) at its June 4th meeting. The new regulations will become effective once approved by the Legislative Commission at their next meeting and then filed with the Secretary of State. Approved changes are to clarify language, unify definitions, stream-line operations, and raise the fee for the Restricted Use Pesticide Certificate.

To assist applicants in passing the examinations and to keep information current, the Program has updated and printed new study manuals for the Industrial and Institutional category and the Structural category. Once the new regulations for Custom Application of Pesticides is filed with the Secretary of State, the program will print new "Core" manuals and "Weed Control" manuals.

In 2014, the Pest Control Operator Licensing and Enforcement program's enforcement actions provided \$17,853 dollars for Integrated Pest Management Programs in schools in six Nevada counties. This was about the average amount provided for the past 15 years.

PLANT PATHOLOGY AND SEED: Shouhua Wang, Rachel Bomberger.

1. We have wrapped up FY12 CAPS and Farm Bill Surveys. Final data and reports are being prepared for submission to APHIS.
2. FY13 CAPS survey and Farm Bill funded *P. ramorum* and potato cyst nematode surveys are in progress. We have screened over 600 soil samples from potato fields (approximately 3,000 pounds) for PCN. All are negative. We detected a number of *Phytophthora* species from nursery stocks through *P. ramorum* survey. Most of them are new records for Nevada. CAPS survey detected pear decline phytoplasma first time in the state.
3. A fungal disease on Screwbean Mesquite trees was detected first time in Nevada and second time in the U.S. The disease was originally found in Shoshone, California (near Death Valley) in 1932. It seems that this disease re-emerged and causes significant damage to mature mesquite trees. The fungus was identified to be *Phleospora prosopidis* through joint efforts of NDA, UC Davis, CDFA and USDA national mycologists.
4. In collaboration with a USDA-ARS scientist, we have confirmed that white rust infecting tall white top in Nevada and California is a unique species based on DNA sequence and bioassay. The fungus is called *Albugo lepidii* and is specific to perennial pepperweed and does not infect cabbage, broccoli and other vegetable crops. This is first report of this species in the North America.
5. A disease outbreak on mint crop was recently noticed in mint production area. This disease appears to kill the plants rapidly. There are 4 fields affected at this time. Investigation is being conducted to find out the pathogen.
6. About 900 acres of garlic fields were inspected for white rot. One field of 120 acres was found to be infected with white rot disease. Treatment method was prescribed and sent to the grower.
7. 120 acres of seed garlic was certified based on white rot inspection, nematode sampling and lab analysis.
8. Over 3,000 acres of onion fields were inspected for white rot disease.

9. 143 acres of seed potatoes including 17 acres of nuclear production passed first inspection according to virus tolerance for each generation.
10. About 800 acres of wheat seed crops were inspected and they all meet standards.
11. About 700 acres of alfalfa fields were inspected for diseases to meet the requirement of importing countries.
12. About 3,300 acres of alfalfa seed fields were inspected as a part of seed certification process.

RODENT CONTROL: Robert Little

We sold out of all strychnine product from our last batch produced in July (174 100oz jugs) and are currently in the process of purchasing the raw product for next spring.

SPECIALTY CROP BLOCK: The 2014 Request for Proposal was released. 21 applications were received and 14 projects were submitted to USDA for potential funding. Awards are anticipated for October of 2014.

ENTOMOLOGY: Jeff Knight

Two seasonal employees continued to assist the entomologist and two full time employees in the entomology programs this summer.

The exotic pest traps that were set out earlier this year were checked several times and so far no target pests have been found. Emerald ash borer traps were picked up and all are negative. The 2014 CAPS projects have been approved and are in place. The 2015 projects are currently being reviewed.

Mormon crickets and grasshopper surveys are continuing. Crickets were found in low numbers in several locations, this is a definite increase from last year. The entomologist gave a lecture to NRCS employees on pollinators. Entomology staff again assisted the ecologist for Great Basin National Park at the park's Bio-blitz. This is the sixth year for the 2 day Bio-blitz. This year's event was attended by about 60 people and the focus area was moths and butterflies. The Department was credited with being a co-sponsor.

The entomologist met with the Utah state entomologist and two other entomologists in S. Utah and S. Nevada for 3 days to discuss survey techniques and sample the area for various insects. This resulted in at least one new state record of a beetle which feeds on black locust.

One of the three entomology interns from CABNR continued through the Summer working on the insect collection and various other projects including digitizing the NDA's herbarium. Conversion of label data from the individual specimen photos continues.

Jeff Knight, Charles Moses and Robert Leavitt put together a press release, fact sheet and conducted a media question and answer session on honey bee health and effects of pesticides. The story ran in the Review Journal in Las Vegas and local television and radio stations in Reno. The entomologist is meeting with Washoe Health District personnel to further discuss the issue of honey bees and pesticides and review the Department's bee protection regulations.

Range Health Program: Tina Mudd

In July, Tina Mudd was hired as the Department's Rangeland Ecologist to lead the Rangeland Health Program. She is currently in the process of developing the program. Currently, she is working on developing (and finding funding for) a series of alternate grazing and monitoring workshops for ranchers, and developing the NDA Resource Management Plan. She is also working on developing the capacity to provide staff to assist landowners/land managers with establishing monitoring plots and programs on their land and allotments. In addition to working with industry one on one, she is also set to discuss the program at upcoming conferences such as cattlemen's, conservation districts and farm bureau.

Most importantly, she is working with Kelly McGowan to represent the agriculture industry in Nevada in regards to shaping the conversation around the Sage-grouse listing. She is active with the Sagebrush Ecosystem Council and its various committees and working groups. She and Kelly will continue to participate in order to make certain Nevada's Agriculture Industries are represented.

6D

Request approval to
go to workshop and
hearing on proposed
changes to
NAC 554

Sections 055, 730, 765

*Possible Action

NAC 554.055 Federal domestic quarantine notices: Adoption by reference; review of amendments. ([NRS 554.020](#), [554.030](#))

1. The State Quarantine Officer hereby adopts by reference the provisions of each domestic quarantine notice set forth in Part 301 of Title 7 of the Code of Federal Regulations, as those provisions existed on January 1, 2001, and any subsequent amendment to those provisions that is approved by the State Quarantine Officer pursuant to subsection 2. A copy of those provisions and any approved amendment to those provisions may be obtained free of charge from the State Department of Agriculture, ~~350 Capitol Hill Avenue, Reno, Nevada 89502~~.

NAC 554.730 Certification. ([NRS 554.020](#), [554.030](#))

1. Except as otherwise provided in subsection 2, no restricted commodity may enter this State from an infested area unless the shipment or lot containing it is accompanied by a certificate signed by an authorized inspector of the state, district or territory in which the commodity was produced and a copy of the certificate is mailed to the State Department of Agriculture, ~~350 Capitol Hill Avenue, Reno, Nevada 89502~~, affirming that all restricted commodities contained in the lot or shipment were grown in and shipped from a geographic locality free from the Colorado potato beetle.

2. Irish potato tubers may enter this State from any point in an infested area if, before entry, the tubers:

(a) Have been washed, screened or otherwise freed of any soil and any host plants or cuttings thereof; and

(b) Are in new or recleaned sacks or in other clean containers.

(Added to NAC by Dep't of Agriculture, eff. 12-3-80)

NAC 554.765 Commodities covered by quarantine. ([NRS 554.020](#), [554.030](#)) The following commodities are under quarantine:

1. Any seed potato or potato plant; and

2. Any plant of ~~the genus *Lycopersicon*~~ *Solanum lycopersicum*, except tomato seeds.

(Added to NAC by St. Quarantine Officer by R032-01, eff. 1-17-2002)

6E

Request a Change
In NAC 588

*Possible Action

NAC 588.025 Tonnage fees for offer to sell, sale or distribution of commercial fertilizers or agricultural minerals. ([NRS 561.105](#), [588.210](#))

1. ~~Except as otherwise provided in [NRS 588.210](#) and [588.215](#) and [NAC 588.030](#), a person who offers for sale, sells or distributes in this State commercial fertilizers or agricultural minerals, or both, shall pay to the Department the following fees:~~

~~(a) For quarterly sales or distribution of commercial fertilizers of 20 tons or more, 25 cents per ton; and~~

~~(b) For agricultural minerals:~~

~~(1) If sold in packages, for quarterly sales or distribution of 20 tons or more, 25 cents per ton; and~~

~~(2) If sold in bulk, for quarterly sales or distribution of 100 tons or more, 5 cents per ton.~~

Suggestion change:

1. Except as otherwise provided in [NRS 588.210](#) and [588.215](#) and [NAC 588.030](#), a person who offers for sale, sells or distributes in this State commercial fertilizers or agricultural minerals, or both, shall pay to the Department the following fees:


For quarterly sales or distribution of commercial fertilizers or agricultural mineral of 20 tons or more, 25 cents per ton.

TO: NEVADA DEPARTMENT OF AGRICULTURE
PLANT INDUSTRY DIVISION
405 SOUTH 21ST STREET
SPARKS, NV 89431

FROM: Attention: REGISTRATION
RAMBRIDGE WHOLESALE SUPPLY
#1-2421 CENTRE AVENUE SE
CALGARY AB T2EOA9
CANADA

get - Mar.
a-2 B-5717

REPORT FOR MONTHS OF: APR 2014 MAY 2014 JUNE 2014
PLEASE REMIT BY THE 15th OF THE FOLLOWING MONTH

BRAND NAME OF FERTILIZER	GRADE OR CHEMICAL	TONNAGE IN PACKAGE	TONNAGE IN BULK	TONNAGE IN LIQUID	FEE REMITTED
TOTALS:					

I hereby certify that this is a true and accurate report of fertilizer sales in the State of Nevada for the months indicated.

SIGNATURE

DATE _____

TITLE

NOTE:	Commercial fertilizer tonnage fee is:	25¢ per ton.
	Agricultural minerals tonnage fee in bulk is:	5¢ per ton.
	Agricultural minerals tonnage fee in packages is:	25¢ per ton.

PAYMENT OF THE TONNAGE TAX ON AMOUNTS LESS THAN \$5.00 FOR THE QUARTER ARE EXEMPT BY REGULATION. HOWEVER, THE REPORT FILING IS STILL REQUIRED.

7

Consumer Equitability

7A

Consumer
Equitability
Update

8

Food and Nutrition

8A

Food and
Nutrition
Update

Nevada Board of Agriculture

Food and Nutrition Update

Development

- Vlot Dairy received county permit to build dairy in Smith Valley
- Sand Hill Dairy installed new vat pasteurizer
- Unilever expanding in Henderson to process Magnum Ice Cream Bars
- NDA Dairy Lab to open officially on November 1, 2014
- Hired Education Program Professional and Quality Assurance Specialist for School Nutrition Unit
- Nevada School Wellness Policy completed to align with federal regulations
- Distribution Survey sent to program participants to collect data for use with the Food Distribution Stakeholders Committee
- Complete move of warehouse operation in southern Nevada
- Nevada selected as a pilot state for unseasoned chicken strips served in the National School Lunch Program
- Reorganization of Food and Nutrition Division
 - Catrina Peters, School Nutrition Program Manager
 - Darren Murphey, Sparks Warehouse Supervisor

Services

- Approved goat dairy farm, Fallon
- Hosted USDA WRO staff on a tour of Farm to School, Northern Nevada
- Conducted program reviews for National School Lunch Program, Child and Adult Care Food Program, and Summer Food Service Program
- Developed outreach materials for the School Meal Pattern
- Developed Public Service Announcements (PSA) featuring Kathleen Sandoval highlighting the School Meal Pattern – currently airing on major television channels in Elko, Las Vegas, and Reno markets
- Social Media campaign launched to promote School Meal Pattern
- Coordinated the donation of MCI Los Cabos burritos, enchiladas, and raw hamburger meat totaling \$197,000 for distribution through Catholic Charities of Northern Nevada, Food Bank of Northern Nevada, Three Squares Food Bank, and Las Vegas Rescue Mission
- Summer Food Service Program had a 54% increase in meal sites from previous year and served approximately 200,000 meals in June
- Senior Farmers Market Nutrition Program will utilize grant funds for bulk purchase of Nevada grown produce and will be distributed to seniors who did not participate in coupon program.

Training and Presentations

- Conducted School Food Service Director Training at the Nevada School Nutrition Association Annual Meeting

- Provided breakout session on Nevada School Wellness Policy at Nevada School Nutrition Association
- Presented Transition Success and Nevada School Wellness Policy at July, 2014 Interim Education Committee Meeting, Nevada State Legislature
- Presented Nevada School Wellness Policy at August, 2014 State Board of Education Meeting and the board endorsed the policy
- Co-presented Nevada School Wellness Policy at Carson City Board of Education, August 2014
- Presented to the Nevada Council on Food Security an overview of the National School Lunch Program and School Breakfast Program

Participation

- Staff participated in the School Nutrition Association Annual Conference, Boston, MA
- Staff participated in Financial Management Training USDA WRO, San Francisco, CA
- Staff participated in 2014 Nutrition & Physical Activity Learning Connections Summit, Arlington, TX

Recognition

- NDA Dairy Lab received FDA certification

9

Animal Industries

9A

Animal
Industry
Update








NEVADA DEPARTMENT OF AGRICULTURE
DIVISION OF LIVESTOCK IDENTIFICATION
4780 E. IDAHO STREET, ELKO, NEVADA 89801
Phone: 775-738-8076 / Fax: 775-738-2639
BRAND INSPECTION CLEARANCE CERTIFICATE

FORM # 457-1	
Return	Print

FROM: LEGAL OWNER OF LIVESTOCK Flint Wright fwright@agri.nv.gov PLACE OF INSPECTION Sparks 110& Longspur Way Sparks, NV 89431	COUNTY Washoe	TO: BUYER OR COSIGNEE David F Stix, Jr. DESTINATION Lovelock 4830 Farm District Road Fernley, NV 89408
---	--------------------------------	--

X Change of Ownership -- Horse Annual -- Horse Lifetime -- Consigned to Sale X In State -- Out Of State -- Pasture to Pasture -- Slaughter -- Other -- Waive 1 st Animal Fee -- Feedlot -- Sale Yard Inspection -- Retained Ownership -- Certified Feedlot	HEALTH CERTIFICATE # 12345 ENTRY PERMIT # 12345	COMMUTER PERMIT #
---	--	--------------------------

FOR TRANSPORT THIS CERTIFICATE EXPIRES 2014-08-26 23:00

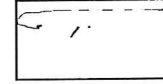
		Age/Description	Brand / Location	Add'l Brand / Location
TOT 300	STEERS:300	0.5-5yrs Black Angus X	 RH	
TOT 300	STEERS:300	0.5-5yrs Black Angus X	 RH	
TOT 300	STEERS:300	0.5-5yrs Black angus X	 RH	
TOT 300	STEERS:300	0.5-5yrs Black Angus X	 RH	
TOT 300	STEERS:300	0.5-5yrs Black Angus X	 RR	

Total Head 1500	Brand Inspection Fee:	1509.00	-- Bill	-- Cash	X Check # 3256
	NV Beef Council:	0.00	-- Cash	-- Check #	
	Hours (if applicable):	0.00	-- Beef Checkoff Fee Non-compliance		
	Mileage (if applicable):	0.00			
	TOTAL AMOUNT DUE:	1509.00			

Ten Animals or Less: -- Brought to inspector -- Premise ID No. -- Extra ordinary permit



SIGNATURE OF OWNER OR AUTHORIZED AGENT

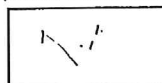


SIGNATURE OF BUYER OR AGENT

NAME OF TRANSPORTER Cow Trans	TRANSPORTER LICENSE # 2j7794	-- Commercial	DEALER'S AND/OR AGENT'S LICENSE # (REQUIRED BY NRS 576.020) 0678-RD
-------------------------------------	------------------------------------	---------------	---

Falsification or altering of this certificate is unlawful and subject to penalties per NRS 205, 206, and 207.
X I hereby certify that I have personally inspected the above livestock and have accurately recorded the brands and marks thereon to the best of my ability.

HOURS: 1.5 MILEAGE: 45 -- Less than 24-hour notice
--



SIGNATURE BRAND INSPECTOR

DATE OF INSPECTION: 8-25-2014 PAPER CERT. BOOK/FORM #: undefined-undefined DISTRICT: Washoe



NEVADA DEPARTMENT OF AGRICULTURE
DIVISION OF LIVESTOCK IDENTIFICATION
4780 E. IDAHO STREET, ELKO, NEVADA 89801
Phone: 775-738-8076 / Fax: 775-738-2639
BRAND INSPECTION CLEARANCE CERTIFICATE

FORM # 449-1	
Return	Print

FROM: LEGAL OWNER OF LIVESTOCK Ellison Ranching Co. PLACE OF INSPECTION Spanish Ranch H C 32 Box 240 Tuscarora, NV 89834 COUNTY Elko	TO: BUYER OR COSIGNEE Ellison Ranching Co. DESTINATION Twin Falls Livestock Commission Co. 630 Railroad Ave Twin Falls, ID 83301
--	--

-- Change of Ownership -- Horse Annual -- Horse Lifetime
 X Consigned to Sale -- In State X Out Of State
 -- Pasture to Pasture -- Slaughter -- Other
 -- Waive 1st Animal Fee -- Feedlot -- Sale Yard Inspection
 -- Retained Ownership -- Certified Feedlot

HEALTH CERTIFICATE #
 ENTRY PERMIT # COMMUTER PERMIT #

FOR TRANSPORT THIS CERTIFICATE EXPIRES 2014-08-22 23:00

		Age/Description	Brand / Location	Add'l Brand / Location
TOT 31	COWS:31	3-20yrs Black, aged, with year iron on LSh	LH	
TOT 3	COWS:3	3-20yrs Black, aged, year iron on L Sh	LH	
TOT 16	HEIFERS:16	1-2yrs Black with year iron on L Sh	LH	
TOT 2	HEIFERS:2	1-2yrs Black with year iron on L Sh	LH	
TOT 1	BULLS:1	0.5yrs Black, slick week old calf	no	

Total Head 53	Brand Inspection Fee:	62.00	-- Bill -- Cash -- Check #
	NV Beef Council:	53.00	-- Cash X Check # 00000
	Hours (if applicable):	0.00	-- Beef Checkoff Fee Non-compliance
	Mileage (if applicable):	0.00	
	TOTAL AMOUNT DUE:	115.00	

Ten Animals or Less:

-- Brought to inspector

-- Premise ID No.

-- Extra ordinary permit

SIGNATURE OF OWNER OR AUTHORIZED AGENT

SIGNATURE OF BUYER OR AGENT

NAME OF TRANSPORTER Ellison	TRANSPORTER LICENSE # NV 42626A	-- Commercial	DEALER'S AND/OR AGENT'S LICENSE # (REQUIRED BY NRS 576.020)
-----------------------------------	---------------------------------------	------------------	--

Falsification or altering of this certificate is unlawful and subject to penalties per NRS 205, 206, and 207.

X I hereby certify that I have personally inspected the above livestock and have accurately recorded the brands and marks thereon to the best of my ability.

HOURS: 2
 MILEAGE: 34
 -- Less than 24-hour notice

SIGNATURE BRAND INSPECTOR

DATE OF INSPECTION: 8-21-2014
 PAPER CERT. BOOK/FORM #: -
 DISTRICT: Elko



NEVADA DEPARTMENT OF AGRICULTURE
DIVISION OF LIVESTOCK IDENTIFICATION
4780 E. IDAHO STREET, ELKO, NEVADA 89801
Phone: 775-738-8076 / Fax: 775-738-2639
BRAND INSPECTION CLEARANCE CERTIFICATE

FORM # 437-1	
Return	Print

FROM: LEGAL OWNER OF LIVESTOCK Tom Merkley PLACE OF INSPECTION Elko Office 400 Unit 17 Jiggs Hwy Spring Creek, NV 89815 COUNTY Elko	TO: BUYER OR COSIGNEE Alan Or Sim Malotte DESTINATION Lee, NV 502 Lee Unit 10 Spring Creek, NV 89815
--	---

☒ Change of Ownership -- Horse Annual -- Horse Lifetime
☐ Consigned to Sale ☒ In State -- Out Of State
☐ Pasture to Pasture -- Slaughter -- Other
☐ Waive 1st Animal Fee -- Feedlot -- Sale Yard Inspection
☐ Retained Ownership -- Certified Feedlot

HEALTH CERTIFICATE #
 ENTRY PERMIT # COMMUTER PERMIT #

FOR TRANSPORT THIS CERTIFICATE EXPIRES 2014-08-20 23:00

		Age/Description	Brand / Location	Add'l Brand / Location
TOT 2	HORSES:2	0.5-7yrs Grey Mare	81 RT	

Total Head 2	Brand Inspection Fee:	6.00	-- Bill	<input checked="" type="checkbox"/> Cash	-- Check #
	NV Beef Council:	0.00	-- Cash	-- Check #	
	Hours (if applicable):	0.00	-- Beef Checkoff Fee	Non-compliance	
	Mileage (if applicable):	0.00			
	TOTAL AMOUNT DUE:	6.00			

Ten Animals or Less:

☒ Brought to inspector

-- Premise ID No.

-- Extra ordinary permit

SIGNATURE OF OWNER OR AUTHORIZED AGENT

SIGNATURE OF BUYER OR AGENT

NAME OF TRANSPORTER Tom Merkley	TRANSPORTER LICENSE # 785-NRO	-- Commercial	DEALER'S AND/OR AGENT'S LICENSE # (REQUIRED BY NRS) 576.020
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Falsification or altering of this certificate is unlawful and subject to penalties per NRS 205, 206, and 207.
X I hereby certify that I have personally inspected the above livestock and have accurately recorded the brands and marks thereon to the best of my ability.

HOURS: 0 MILEAGE: 0 -- Less than 24-hour notice

SIGNATURE BRAND INSPECTOR

DATE OF INSPECTION: 8-19-2014 PAPER CERT. BOOK/FORM #: 210-17 DISTRICT: Elko
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9B

Federal Grazing /
Resource
Management

10

Board
Member
Presentations

10A
US Bighorn
Sheep
Disease Transfer
Issue

*Possible Action



July 9, 2014

The Honorable Tom Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Re: Region 4 Bighorn Sheep Assessment

Dear Secretary Vilsack,

In February 2014, the United States Forest Service ("USFS") released a briefing paper in which it outlined its plan to implement a bighorn sheep and domestic sheep management framework within USFS Region 4. We write today in response to that briefing paper, and to share our concerns regarding the plan.

The states of Idaho, Utah and Wyoming have three primary concerns with the plan for development of the management framework. First, the plan for developing the management framework does not include any role for the states. It is imperative that the states be part of the process, and that a representative from each state's wildlife agency and department of agriculture must be involved in developing the management plan.

Second, and related, the National Forest Management Act (NFMA) provides, in part, that "wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." States such as Idaho, Utah and Wyoming have a critical role in managing wildlife within our respective borders. Unfortunately, USFS's interpretation and implementation of that component of the NFMA ignores the state role.

Third, the alternative allotment analysis must be completed prior to any risk assessment. It is reasonable to assume that if the risk assessment is performed first, anti-grazing groups will immediately pressure USFS to close the allotments upon which the assessments were conducted. Once the allotments are closed, a NEPA analysis will need to be conducted in order to re-open those allotments for grazing. As you well know, such an analysis can take months if not years to complete. If producers are displaced as a result of the bighorn sheep risk assessment, they cannot wait for years for alternative allotments to be analyzed. The burden on those displaced producers in that situation would be simply unreasonable. The alternative allotment analysis must be completed first.

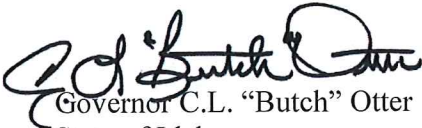
The Honorable Tom Vilsack

July 9, 2014


Page 2

Our states must have a seat at the table in any discussions regarding the management plan. Moreover, the process must take place in such a way as to ensure that displaced livestock producers are not barred from grazing for months or years due to the failure to conduct the alternative allotment analysis.

Thank you for your timely attention to these important issues.


Governor C.L. "Butch" Otter
State of Idaho


Governor Matt Mead
State of Wyoming


Governor Gary R. Herbert
State of Utah

10B

Open Range Issue

AUG 06 2014

NYE COUNTY DEPUTY CLERK
DEPUTY 

CV 24539
Dept. No. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR NYE COUNTY

Estate of MICHAEL DAVID ADAMS,
By and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Plaintiff,

v.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendant.

COURT ORDER

On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to NRCP 60(b), on the grounds of fraud upon the court and "excusable neglect." Defendant alleged that Plaintiff's counsel "knowingly forced fraudulent facts on the court and failed to correct misrepresentations thereby committing fraud upon the court." Plaintiff filed a Countermotion to Strike/Opposition to Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) on June 9, 2014. Plaintiff submits there was no fraud upon the court on the part of Plaintiff's counsel in obtaining the judgment. Defendant filed a Reply on June 17, 2014. A hearing was held on Defendant's Motion on July 28, 2014. At the conclusion of arguments from both parties, the court took the matter into consideration and informed the parties a decision would be rendered shortly thereafter.





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2 After review of the papers and pleadings on file, and in consideration of counsels'
3 statements and arguments at the July 28, 2014 hearing, this court finds, concludes and
4 orders as follows:

5 **FINDINGS OF FACT**

- 6
- 7 1. Plaintiff Judith Adams brought suit against Defendant Susan Fallini for the death
8 of her son Michael Adams after Michael struck one of Fallini's cattle that were on
9 Highway SR 375.
 - 10 2. Adams filed a complaint on January 31, 2007. She was and continues to be
11 represented by Mr. John P. Aldrich, Esq. Fallini filed an answer and counterclaim
12 on March 14, 2007. In her answer, Fallini listed as an affirmative defense NRS
13 568.360(1), which provides that those who own domestic animals do not have a
14 duty to keep those animals off highways located on open range. At this time,
15 Fallini was represented by Mr. Harold Kuehn, Esq.
 - 16 3. A Notice of Early Case Conference was filed on June 14, 2007. On October 23,
17 2007, Adams filed a Case Conference Report. Prior to this Early Case
18 Conference Plaintiff counsel Aldrich obtained the Nevada Highway Patrol Traffic
19 Report number NHP-E2005000779. The investigating officer reports on Page 4
20 that the collision occurred on open range approximately 7 miles past an open
21 range warning sign.
 - 22 4. Prior to serving the Complaint, Adams created a website
23 (www.michaeldavidadams.net) stating the accident occurred in "open range
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2 county and the cows have the right of way." The website also contained links and
3 information advocating against open range laws.

- 4 5. Plaintiff counsel Aldrich sent a request for admissions that included a request that
5 "Fallini's property is not located within an "open range" as it is defined in NRS
6 568.355." Defense counsel Kuehn failed to respond. As a result, Fallini was
7 deemed to have admitted that the accident did not occur on open range, despite
8 already asserting an open range affirmative defense in her March 17, 2007
9 answer.
10
11 6. On April 7, 2008, Adams filed a Motion for Partial Summary Judgment as a result
12 of Fallini's admissions that the accident did not occur on open range. Adams
13 filed another Motion for Partial Summary Judgment on May 16, 2008. Kuehn
14 filed no oppositions to the Motions. A hearing was held on July 14, 2008, and the
15 minutes reflect that only Aldrich appeared. The court granted Partial Summary
16 Judgment because there was no opposition or appearance by Fallini and/or Kuehn.
17
18 7. Beginning in September 2008, Plaintiff filed various Motions regarding
19 discovery. A hearing was held on November 10, 2008 where Kuehn was given
20 more time to produce. Another hearing was held on April 27, 2009. Kuehn was
21 sanctioned \$750 held in abeyance, and an Order granting Motion to Compel
22 Discovery was granted.
23
24 8. On May 5, 2009, Plaintiff filed a demand for a jury trial. On June 30, 2009 the
25 court ordered a trial would be held on August 25, 2010, with a calendar call set
26 for July 19, 2010.
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9. On June 16, 2009, Plaintiff filed a Motion to Strike Fallini's answer and counterclaim, based on Fallini's failure to provide discovery. A hearing on this Motion was scheduled for July 13, 2009 at 1:15 PM. Kuehn submitted an opposition to this motion at 8:35 AM on July 13th. At the hearing, Kuehn requested additional sanctions be imposed for the failure to provide discovery. The Court issued a \$1000 sanction and gave Kuehn 30 days to provide the previously ordered information/discovery regarding insurance to Plaintiff.
10. On November 4, 2009, Plaintiff submitted an Order striking Defendant's answer and counterclaim due to Kuehn's repeated failures to provide discovery. The Court signed the Order. On February 4, 2010, Plaintiff filed for and obtained a Default.
11. On April 7, 2010, Adams filed another Motion for an Order to Show Cause stemming from the failed requests for discovery. An Order was granted on April 26, 2010. A hearing was held on May 24, 2010. Mr. Tom Gibson, Esq. appeared on behalf of Kuehn. Kuehn was sanctioned \$5,000 and \$500 per day until discovery was provided.
12. On or about June 17, 2010, Mr. John Ohlson, Esq. was substituted as counsel of record for Fallini in place of Kuehn.
13. On June 24, 2010 Plaintiff applied for Default Judgment. Defendant filed an Opposition the same day. On July 6, 2010 Defendant filed a Motion for Reconsideration. A hearing was held on both the Default Judgment and the



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2 Motion for Reconsideration on July 19, 2010. The Default was granted, and the
3 Reconsideration was denied.

4 14. Defendant filed an appeal on September 10, 2010. The Nevada Supreme Court
5 issued an Order affirming the District Court, but remanding for a new hearing
6 regarding the calculation of the damages awarded.

7
8 15. After the parties re-calculated and stipulated to the amount of proper damages, the
9 court entered its judgment against Defendant on April 28, 2014 consistent with
10 the ruling from the Supreme Court of Nevada.

11 16. On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to
12 NRCP 60(b). Defendant alleged Aldrich, as an officer of the court, knowingly
13 forced fraudulent facts on the court and failed to correct misrepresentations,
14 thereby committing fraud upon the court in violation of NRCP 60(b). Defendant
15 based this allegation upon belief that Aldrich knew the accident occurred on open
16 range based on the following evidence: Defendant's answer asserted open range
17 as an affirmative defense, Adams website should have put Aldrich on notice that
18 this accident occurred on open range, and a Nevada Highway Patrol Traffic
19 Report (NHP-E2005-00779) on which Page 4 says the collision occurred on open
20 range. Despite this, Defendant alleges Aldrich sent a request for admissions that
21 requested Defendant to admit that the property is not located within an "open
22 range" as it is defined in NRS 568.355. Defendant argues, according to case law
23 and the Nevada Rules of Professional Conduct, Aldrich advanced false facts using
24 the discovery process in a calculated attempt to mislead the court.
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2 17. On June 9, 2014, Plaintiff filed her Countermotion to Strike Defendant's Motion
3 for Relief from Judgment Pursuant to NRCP 60(b) or in the alternative,
4 Opposition to Motion for Relief from Judgment. In the Opposition, Plaintiff
5 argues that this matter was previously litigated and decided in her favor, therefore
6 issue preclusion should apply and Defendant's Motion should be barred.

7
8 18. On June 17, 2014, Defendant filed a Reply stating issue preclusion does not apply
9 because the allegations of Aldrich's fraud upon the court have not been claimed,
10 litigated, or reviewed at any point in a prior proceeding.

11 **CONCLUSIONS OF LAW**

12 Defendant bases her Motion for Relief from Judgment on two separate sections of
13 NRCP 60: fraud upon the court (NRCP 60(b)) and "excusable neglect" (NRCP 60(b)(1)).
14 The court will analyze each separately.

15
16 **I. Fraud Upon The Court under NRCP 60(b)**

17 Under NRCP 60(b), a district court may "set aside a judgment for fraud upon the
18 court." NRCP 60(b). There is no 6-month time limit on bringing a motion for fraud
19 upon the court. NC-DSH, Inc. v. Garner, 218 P.3d 853, 856 (Nev. 2009). Simple
20 dishonesty of any attorney is so damaging on courts and litigants that it is considered
21 fraud upon the court. Id. at 859 citing *United States v. Throckmorton*, 98 U.S. 61, 66
22 (1878); *Damnajuk v. Petrovsky*, 10 F.3d 338, 352 (6th Cir. 1993). An officer of the court
23 perpetrates fraud on the court a) through an act that is calculated to mislead the court or
24 b) by failing to correct a misrepresentation or retract false evidence submitted to the
25 court. See Nevada Rules of Professional Conduct ("NRCP") Rule 3.3.
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Mr. Aldrich, as an officer of the court, had a duty to not mislead the court or fail to correct a misrepresentation. In the case at bar, Mr. Aldrich has denied he knew the accident occurred on open range. However, after consideration of the evidence and arguments, the court finds Mr. Aldrich knew or should have known that the accident occurred on open range. First, Mr. Aldrich was in possession of the Nevada Highway Patrol Accident Report prior to his request for admissions. Page 4 of the Accident Report clearly states that the “collision occurred on open range.” (NHP Accident Report NHP-E2005-00779 at Page 4). Second, Plaintiff Adams created a memorial website advocating against open range laws shortly after the accident in 2005. *See* <http://www.michaeldavidadams.net> (last visited 8/1/14). The website states, “He encountered a cow crossing the road between mile marker 34-33 East side of the road. This is open range country and the cows have the right of way.” *Id.* Finally, Mr. Aldrich received Defendant’s answer that contained an open range affirmative defense. Based on the totality of the circumstances, Mr. Aldrich knew or should have known the accident occurred on open range prior to filing his request for admissions. At the bare minimum, Mr. Aldrich possessed enough information to conduct a reasonable inquiry into the open range status of the location where the accident occurred. At the July 28, 2014 hearing on Defendant’s Motion for Relief from Judgment, Mr. Aldrich stated he hasn’t been to the location to verify it was open range. (Hr’g 7/28/2014).

Despite this, Mr. Aldrich sought an admission from Defendant stating that the area where the accident occurred was not open range. Defendant’s attorney Mr. Kuehn failed to respond to this request, and it was subsequently deemed an admitted fact.



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2 Aldrich may argue that all Kuehn had to do was simply "deny" the request for
3 admissions. However, at this point in the case, Kuehn was failing to respond to various
4 motions and requests to the extent that Aldrich knew or should have known that a
5 response from Kuehn was unlikely. This is not to suggest that Mr. Aldrich is an unethical
6 attorney. For example, the record indicates that on numerous occasions, Mr. Aldrich
7 granted Mr. Kuehn multiple extensions to provide discovery. The court believes that Mr.
8 Aldrich was zealously representing his client. As an officer of the court however, Mr.
9 Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 by
10 utilizing Defendant's denial that the accident occurred on open range to obtain a
11 favorable ruling in the form of an unopposed award of summary judgment. Thus, the
12 court finds Plaintiff violated Rule 60(b) as Plaintiff's request for admission of a known
13 fact, a fact that was a central component of Defendant's case, was done when counsel
14 knew or should have known that the accident did occur on open range, thereby
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17 perpetrating a fraud upon the court.

18 **II. "Excusable Neglect" under NRCP 60(b)(1)**

19 Unlike NRCP 60(b) fraud claims, claims under NRCP 60(b)(1) must be filed
20 within six months of entry of judgment. NRCP 60(b). The Supreme Court of Nevada
21 has established guidelines for lower courts to examine a NRCP 60(b)(1) claim. The
22 district court must analyze whether the movant: "(1) promptly applied to remove the
23 judgment; (2) lacked intent to delay the proceedings; (3) demonstrated good faith; [and]
24 (4) lacked knowledge of procedural requirements." Bauwens v. Evans, 853 P.2d 121
25 (Nev. 1993).
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2 Under the facts of the present case, the court finds Defendant's "Excusable
3 Neglect" claim under NRCP 60(b)(1) fails the first prong of Bauwens. The court entered
4 a default judgment in June 2010. Under NRCP 60(b)(1), Defendant had six months after
5 entry of judgment to file her Motion. NRCP 60(b)(1). The six-month window is not
6 tolled by an appeal of the final appealable judgment. Foster v. Dingwall, 228 P.3d 453
7 (Nev. 1990). Defendant argues her Motion is timely because her Rule 60(b) Motion was
8 filed on May 20, 2014; approximately one month after this court entered an amended
9 judgment on April 28, 2014. The court does not find Defendant's argument persuasive.
10 The April 28, 2014 amended judgment from this court was based on a recalculation of the
11 interest owed to Plaintiff. The actual content, law, and decision of the original judgment
12 did not change. Defendant's Motion would have been timely if it was filed within six
13 months from the July 19, 2010 Default Judgment.
14

15 CONCLUSION

16
17 As a result of Mr. Kuehn's failure to oppose or respond to Plaintiff's Motions,
18 Plaintiff obtained a Default Judgment for over a million dollars against Ms. Fallini. This
19 court followed the law and proper procedure throughout this case, as affirmed by the
20 Supreme Court of Nevada. However, one cannot ignore the apparent injustice that
21 Defendant has suffered throughout this matter. Ms. Fallini is responsible for a multi-
22 million dollar judgment without the merits of the case even being addressed. As stated
23 by the Supreme Court of Nevada, "cases are to be heard on the merits if possible."
24 Passarelli v. J-Mar Dev., Inc., 720 P.2d 1221, 1223 (Nev. 1986).
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2 Mr. Aldrich knew or had reason to know this accident occurred on open range.
3 His client's webpage, the Nevada Highway Patrol Accident Report, and Defendant's
4 answer all referred to the location of the accident as open range. At the bare minimum,
5 counsel should have conducted a reasonable inquiry as to the open range status prior to
6 sending a request for admissions, and perhaps as early as prior to filing his Complaint. If
7 Mr. Aldrich indeed did not know this area was open range in 2007, he likely discovered it
8 was open range afterwards. Instead of correcting this alleged known falsehood, Mr.
9 Aldrich utilized Ms. Fallini's admission that this area was not open range as grounds to
10 obtain a favorable award of summary judgment.
11

12 Finality has a particular importance in our legal system. The Supreme Court of
13 Nevada has described a final judgment as one "that disposes of the issues presented in the
14 case, determines the costs, and leaves nothing for future consideration of the court."
15 Alper v. Posin, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961). In the matter before the bar
16 however, the issues presented in this case were summarily disposed above due to the
17 negligence of Defendant's counsel Mr. Kuehn. The merits of the case were never
18 actually addressed. Had Mr. Kuehn properly denied Mr. Aldrich's request for
19 admissions, the outcome may have been much different.
20

21 Therefore, after consideration of the papers and pleadings on file, the evidence,
22 and the testimony given throughout this proceeding, the court issues the following Order:
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25 **IT IS HEREBY ORDERED** that Defendant's Motion for Relief from Judgment
26 Pursuant to NRCP 60(b) is GRANTED.
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Fifth Judicial District Court
ESMERALDA, MINERAL AND NYE COUNTIES



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DATED this 6th day of August, 2014.

A handwritten signature in blue ink, consisting of stylized initials, is written above a horizontal line.

District Court Judge



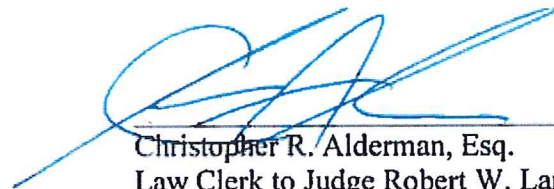
CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 6th day of August 2014, he mailed
copies of the foregoing Court Order to the following:

JOHN OHLSON, ESQ.
275 Hill Street, Suite 230
Reno, NV 89501

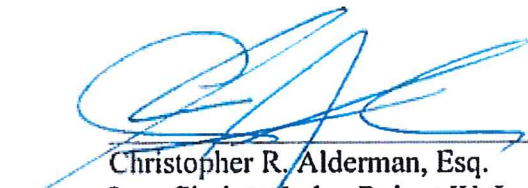
JOHN P. ALDRICH, ESQ.
Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146

DAVID R. HAGUE
Fabian & Clendenin, P.C.
215 South State Street Suite 1200
Salt Lake City, Utah 84111


Christopher R. Alderman, Esq.
Law Clerk to Judge Robert W. Lane

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social
security number of any person.


Christopher R. Alderman, Esq.
Law Clerk to Judge Robert W. Lane

10C

Nevada
Cattlemen's
Association /
NACO

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Public Comment

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Adjournment