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October 12, 2014

Mono County Board of Supervisors  
P O Box 644  
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re: FIM Corporation comments concerning the proposed conservation easement contract for Conway Ranch and Mattly Ranch (sometimes spelled Matley) but collectively called Conway Ranch.

We have read with great interest the various documents that support Mono County's proposal to enter into a Conservation Easement in the name of an organization called Eastern Sierra Land Trust (ESLT).

At this time we oppose this arrangement of a conservation easement and we ask the Board of County Supervisors to rescind or withdraw their tentative approval of such a grant of an easement on County owned lands.

In general and discussed in more detail below, there are a number of statements in the ESLT Baseline and the proposed Conservation Easement that are not correct or factual and seem to be biased against sheep grazing. By the same token a number of statements from the current contract with FIM Corp are included directly or by reference in the proposed management plan that are not realistic goals and they are not practical management prescriptions that have a high probability of being successful. Please correct these items before moving any further towards this conservation easement.

FIM Corp is a family owned sheep ranch. Our family owns substantial amounts of land and property rights within Mono County. Please consider that our comments are based largely on our concerns as Mono County business owners. We are also the current lessees of the Conway Ranch property for purpose of pasturing sheep. We depend on the forage that our sheep obtain from the irrigated fields within the Conway Ranch properties and look forward to many more years of grazing these lands with our livestock.

We have a number of comments about inconsistent content, the use of words or phrases that are not carefully defined, and some questions about certain items. Following are a portion of our concerns answers to the following will help us more clearly describe our remaining concerns for a future comment:

Many private land owners are familiar with the concept of conservation easements which involve a payment to the land owner in exchange for a conservation easement

in another party's name. Both California and Nevada have statutes that govern that sort of transaction. It appears that this proposed conservation easement is just the opposite sort of agreement. Mono County is prepared to "grant" an easement to a private party (ESLT) and then the County becomes obligated to pay ESLT money to administer the Conservation Easement that the County is giving them. It seems completely backwards.

1. Is this form of conservation easement a common contractual arrangement for state or county lands? Please give us some examples so we can find out how well this has worked at other locations.
2. Mono County has the lawful authority to implement each of the items listed by ESLT and has the authority to contract with private parties to monitor and direct the management of the lands and resources without surrendering the control of lands under the responsibility of the county. Did the county investigate hiring someone to supervise the existing contracts? What did you learn from that evaluation?
3. Your documents do not specify the laws or other legal basis for the County to relinquish county authority to a private concern. It seems clear that the County will still have full responsibility but less authority for management of the land and resources. Please provide the legal basis for this Conservation Easement to be applied to public (County) owned lands.
4. Please limit the easement to a specific period of time and not in perpetuity
5. In general, we oppose private lands becoming the property of public entities because that is detrimental to the local economy and takes lands off of the tax roles that would otherwise help pay for county services. Please consider selling the Conway/Mattly property with appropriate covenants in place which would provide those benefits that the conservation easement scheme promises. That would return the property to productive uses that benefit the local economy and generate more tax revenue.

Following topics refer to portions of the draft "*GRANT DEED OF CONSERVATION EASEMENT; Conway and Mattly Ranches*" and identified by section letter or page number. This document closely follows the "*Conway and Mattly Ranches Conservation Easement; Baseline Documentation Report*" as prepared by the Eastern Sierra Land Trust. Our discussion applies to the content of the baseline report as well.

**Item C** includes a list of "Conservation Values" many of which are demonstrably the direct result of the historic development as ranches.

1. C(1) Wildlife Species and Habitat describe wildlife uses and vegetation that is present and has thrived during nearly 150 years of irrigation and grazing by livestock, mostly sheep. The historic record includes the diary of Zenas Leonard (1839) as a member of the Walker Party who travelled through Mono County in mid 1830's and crossed the Sierras about at what is now Tioga Pass. They reported no game could be found and they had to eat their horses. If game had been abundant they would have celebrated and written about it.

By the mid 1900's (Twentieth Century) mule deer, sage grouse, and a number of smaller birds and mammals had become abundant in Mono County and

neighboring Lyon County NV. Professionals in natural resource management recognize that with the arrival of livestock grazing changes to plant communities occurred that benefitted wildlife of all types, water developments for livestock and irrigation provided surface water and new meadow like fields, and especially important is the reduction in the numbers of predators of all types which gave the above wildlife a greater opportunity to survive and reproduce. Please include a clear statement that predator control to protect sheep provides direct benefits to wildlife and is fully supported by Mono County and the proposed Conservation Easement.

Please include the historic records of wildlife abundance that followed the establishment of livestock ranches in this area and the historic record of very low numbers of wildlife prior to ranches. That information has been provided to the Board of Supervisors by FIM Corp in earlier presentations but has not been applied to these negotiations.

2. C(2) water resources within the Conway Ranch properties were developed early for irrigation of what now are called "meadows". Diversion of water from each of several streams for agricultural purposes has resulted in the appearance of a large expanse of meadows that can best be maintained by agricultural activities. That was recognized in the original agreements and was the purpose of restrictive covenants which require that the area be irrigated for forage production and grazed by sheep in order to maintain the historic character of the ranches.
3. C(3) open space is most effectively maintained by continued agricultural management. Any sort of industrial development is contrary to open space values and based on comments by your "Funders" that includes buildings proposed for what sounds like an industrial venture in aquaculture.
4. C(4) Historic resources include both recent history and prehistoric artifacts. Please note that the prehistoric artifacts remained in place while the land was privately owned and managed for agriculture.
5. C(5) Public access is consistent with the land being publicly owned and may not be consistent with future restrictions by whoever owns the Conservation Easement.
6. C(6) The listed "values" of neighboring land ownership will not be negatively affected by continued agricultural use of the lands. Commercial development is another matter and for that reason is prohibited in the original restrictive covenants.

**Item E** recognizes the long history of sheep grazing within these ranches and we believe it is in the best interest of the County to continue to do so. Mono Supervisors indicated strong support for sheep grazing and opposed the arbitrary comments by agency officials within "*A Resolution of the Mono County Board of Supervisors Regarding the Proposed Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep by the U.S. Fish and Wildlife Service(2007).*" Biologists failed to convince the

Supervisors that domestic sheep do in fact cause some threat of disease to bighorn sheep. Testimony by FIM Corp, several distinguished Veterinarians, and others should still be a matter of record from 2007 and 2008.

**Item G** identifies a variety of "Funders" who provided the county with grants for over \$2Million to be used to purchase the property from owners who were prepared to develop the property for home sites, golf course, private fishery, and other uses. Receipt of the grants included the declaration of several restrictive covenants which emphasize keeping the Conway and Mattly ranches agricultural in nature as valuable for scenic and historic purposes. See discussion above.

**Item I** sounds ominous at first but finally admits that grazing and irrigation can be beneficial. Please revise your text to reverse the often implied antagonism towards agriculture and instead emphasize that much of the value is at risk of being lost if agriculture including sheep grazing is lost.

**Item J** refers to the tax valuation of the County property. This seems really unusual to be concerned about tax valuation and implies that the County is taxing itself. Please clarify.

**Item J** further fails to state the authority with which the County intends to restrict its own public ownership by imposing a conservation easement in perpetuity.

**Item J on page 6** includes a paragraph about the California Wildlife Protection Act. Please include a statement that the very presence of wildlife is the direct result of development of these ranches for the production of forage for livestock, especially sheep. That includes the alleged mule deer migration corridors that existed in the presence of year round ranching activity at these locations.

**Item K** demands that the County fully concur with all the statements in the ESLT baseline documents. Completion of an objective inventory of the existing conditions is entirely appropriate. However the baseline text goes beyond an objective inventory and exhibits bias against agriculture, including sheep, in several instances but fails to indicate any impairment of values by the proposed commercial aquaculture compound. As Supervisors, please review the Baseline documents and demand that any error or any indication of bias be corrected.

Here are a few examples of contradictions and in some cases foregone conclusions that will be detrimental to continued sheep grazing:

1. Page 6 of the Summary of Significance and Public Benefit, paragraph 2 and 4 highlights the Bi-State sage grouse currently proposed for listing by USFWS which is a subject that Mono County Supervisors are preparing to discuss with federal officials.
2. Page 7, 4.2.ii Current zoning: Mono County is currently working to re-zone Conway Ranch. It is expected that the General Plan will be adopted in 2015
3. Page 9, paragraph 5, states that the Matley ranch had always been leased for sheep grazing but that Forest Service, BLM, and LADWP grazing agreements have been cancelled due to the Sierra Nevada Bighorn sheep being put on the

- endangered list. Mono County disagreed with the conclusions of the bighorn sheep biologists in 2007; please continue to do so.
4. Page 9 section 4.3.iii Current Land uses, sheep grazing: Mentions that sheep grazing is leased to FIM and also refers to the fact that lessee must not allow sheep to be within 100 feet of the fish rearing facility, and must keep sheep away from all springs, wetlands, and creeks. There is no provision for sheep to drink water; please modify these statements so our sheep can drink.
  5. Conway Ranch Conservation easement correctly calls the “meadows” irrigated pastures and this document incorrectly calls them “ ecologically classified as a wet meadow”.
  6. Page 17 paragraph 1 section 5.1.ii, refers again to the sage grouse on the property. Last paragraph also refers to the Bi-State population of sage grouse. They do say however on the following page, that they have not found any leks there. Nesting may occur within the property and brood rearing areas may include the irrigated pastures (meadows). They also refer to the sage grouse as proposed for listing under the ESA by the USFWS. They do not list grazing as a threat in this document.
  7. Page 18, Sierra Nevada Big horn sheep, mentions the Sierra Nevada Bighorn Sheep as an endangered species and includes a CDFW conclusion about the possibility of occurrences close to the Conway and Matley ranches. As FIM Corp has demonstrated our Shepherders are trained to be aware of any approaching bighorn sheep and take actions to move the sheep or otherwise prevent the bighorns from approaching the sheep. We are very concerned that bighorn sheep pose a biological hazard to domestic sheep since the wild sheep harbor a number of diseases and parasites. There is no record of domestic sheep causing disease in wild sheep in natural habitats.
  8. Page 21, paragraph 1, refers to Conditions of the ranch, Cites “ The area surrounding the structure, particularly to the east, consists of bare ground likely used as bedding grounds for the sheep and has become heavily invaded with noxious weeds mustard and ragweed.” If there is a problem caused by bedding the sheep we can discuss and solve that problem, but this statement is a conclusion that is not supported with direct observations.
  9. Page 21 Paragraph 2 says that much of the meadow vegetation is a result of more than 140 years of irrigation and livestock practices. That is an important observation since the Values that are listed in the Conservation Easement are the direct result of agricultural uses.
  10. More items can be listed than we have room for but these should illustrate that the ESLT employees leapt to conclusions based on their observations and included colorful and sometimes dramatic descriptions in their baseline report and yet they failed to find out what happened that resulted in what they observed. At the least they should have included FIM Corp in their field visits and discussed the history of the area with us.

**Page 7** paragraph that begins “Now Therefore” commits the County to grant a Conservation Easement to the Grantee in perpetuity based on the imaginative statements of values and the implication that these values will exist in the absence of managed agricultural production. The hoped for values and the protective

conservation statements are not based on demonstrated land management success and should be rejected by the Board of Supervisors.

**Page 7 item 1(a) to (g)** is an apparent rehash of the values list and still does not recognize that these values exist because of agriculture and will very likely not exist in the absence of irrigation and grazing.

**Page 8** is a statement that extinguishes "development rights". Please explain what development rights the county owns.

**Page 9 item 4(b)** extinguishes geothermal and mineral rights but does not demonstrate that the County owns anything more than the surface rights to these properties. Please provide a statement that the County owns certain rights within the subsurface Mineral Estate and what those rights consist of.

**Page 10 Item 6** is a list of uses to be prohibited by the Grantee on the county lands. Once entered into this Conservation Easement there are no possible exceptions to these prohibitions because this conservation easement will be in perpetuity and not for a discrete period of time.

Item 6(c) For example allows the Grantee to prohibit mining but fails to determine if any mineral rights are owned by private parties.

Item 6(d) prohibits trailers being used on the property but fails to recognize that FIM Corp employees must live on the property in trailers while herding the sheep. Please include an exemption for ranch employees who must live near the sheep to protect them and manage the grazing.

Item 6(g) prohibits the removal of native plants and provides no exception for removal of plants by grazing animals. Plants are what the animals eat and the Supervisors must make a clear statement that removal of plants by foraging animals is an exception to 6(g).

**Page 13 Item 7(n)** can be interpreted to prohibit overnight use by employees of the FIM Corp. Sheep are herded 24 hours a day with the Shepherd sleeping while the sheep are bedded down for the night. Proper management of sheep grazing requires that the herder be present at the location of the sheep. Please correct this statement to clearly allow the herder to stay with the sheep.

**Page 21 item 13** is the statement including enforcement of the proposed management plan by the Grantee. As mentioned above there are a number of items in the existing plan that are not practical and not feasible. They can't be enforced and they won't provide the benefits they are designed for.

1. In general the management plan seems to indicate the County will have some say in how the plan is implemented which is in direct contradiction with the Conservation Easement that specifically calls for the Grantee to undertake all enforcement actions.
2. For example a call for grazing that leaves a 4 inch stubble height provides no benefits to the plants and no known benefits to wildlife. Sage grouse for example have been shown to use meadows for foraging while broods are young that have

- been grazed heavily and avoid the areas where plant height is 4 inches or greater. These stubble height criteria will not provide a desirable habitat for sage grouse broods or most other species of wildlife. Historically, our area had the greatest sage grouse and mule deer numbers when livestock numbers were much higher as well, in the mid-1900s there were no meadow areas that had a 4 inch stubble height and the wildlife did just fine.
3. As another example the management plan prohibits sheep from entering both natural wetlands and creeks by staying 10 feet away such features which at this time have not been identified. Sheep must have water to drink and prohibiting sheep from drinking from surface water sources makes management of grazing nearly impossible. Please keep in mind that the features of these ranches that are attractive and valued in the eyes of the authors are the products of 150 years of irrigation diversions and grazing by much greater numbers of sheep. Continuing the historic grazing patterns will help the continued existence of the very "values" that are being protected by this conservation easement.
  4. Your management plan on page 6 also refers to Best Management Practices and fails to properly defer to the NRCS Conservation Practices.
  5. This Management Plan promises to "consider concerns and recommendations" of federal and state agencies which is a nice thing to say, but the county will not be in a position to consider any other factual or even fanciful recommendations once the County has relinquished authority to the Conservation Easement Grantee.

**Page 17 Items 9 through 26** consist of a long series of paragraphs that provide the Grantee, which is initially ESLT and in the future will probably be some other entity, as owner of the Conservation Easement a number of protections and privileges which includes authority that exceeds the authority of Mono County. Mono County is not protected by these clauses and any lessees are also not protected from any actions taken by the Grantee. The only recourse offered by these statements is litigation by either the County as Grantor or the Lessees and since ESLT wrote the contract they predictably include payment of their attorney fees and costs This sets the stage for permanent loss of control of the land uses within what are presently county owned lands and the citizens of Mono County have already stated their objections to just such an outcome.

Sincerely

BY EMAIL  
/s/Fred Fulstone

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