

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

FILED
JAN 09 2009
STATE ENGINEER'S OFFICE

In the matter of Application No.: 77573
Filed By: National Department of Wildlife
On November 5, 2008, to appropriate the waters of
Big Onion Reservoir and tributaries, including Alder
Creek and tributaries

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PROTEST

RECORDED
2009 JAN -9 PM 2:18
STATE ENGINEER'S OFFICE

Comes now Julian Marcuerquiaga

Printed or typed name of protestant

whose address is 5255 Palisade Drive, Winnemucca, NV 89445

State No. or PO Box, City, State and Zip Code

whose occupation is Retired Rancher and protests the granting

of Application Number 77573, filed on November 5, 2008

by National Department of Wildlife to appropriate the

waters of Big Onion Reservoir and tributaries, including Alder Creek and tributaries

Underground or name of stream, lake, spring or other source

situated in Washoe County, State of Nevada, for the following reasons and on the following grounds, to wit:

See: ► Exhibit 1, ► Exhibit 2 - Memorandum of Understanding, and ► Exhibit 3 - Memorandum of Agreement.

THEREFORE, the Protestant requests that the application be denied

Denied, issued subject to poor rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Ross E. de Lipkau

By: Ross E. de Lipkau

Printed or typed name, if agent

Address: 50 W. Liberty St., Ste. 750

Street No. or PO Box No.

Address: Reno, NV 89501

City, State and Zip Code

Subscribed and sworn to before me this 8th day of January, 2009


ROSARIO TINNELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 07-1070-2 - Expires December 1, 2010

Rosario Tinnell
Notary Public

County of Washoe

State of Nevada

*\$25 Filing Fee Must Accompany Protest.
Protest Must Be Filed in Duplicate. All Copies Must Contain Original Signature.*

dy

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1
to
Protest to Application 77573 Submitted by National Department of Wildlife

Applicant, National Department of Wildlife, has no legal right to seek to appropriate the waters of Big Onion Reservoir, together with tributaries thereto. The Applicant is attempting to create or appropriate a "minimum pool" consisting of 950 acre-feet. This 950 acre-feet, the subject of Applicant's Application, is owned by the Third Parties. Water impounded within Big Onion Reservoir is fully appropriated by the Third Parties; therefore, no unappropriated water exists in the proposed source of supply. Based upon this element, the State Engineer is required by NRS 533.370(5) to deny the application.

Inasmuch as Third Parties are the lawful owners of the water rights impounded in Big Onion Reservoir and in tributaries thereto, failure to release water would adversely effect such rights. Based upon this element alone, even without other involved factors, the State Engineer is required by the above-quoted statute to deny Applicant's Application.

Unfortunately, the Applicant ignores its contractual obligation pursuant to the MEMORANDUM OF UNDERSTANDING, and MEMORANDUM OF AGREEMENT duly executed by Applicant. Copies of these documents, duly recorded with the Humboldt County Recorder, are attached hereto and incorporated herein by reference. It is most difficult to understand how an agency of the State of Nevada could simply ignore its contractual obligations, and seek to obtain, without compensation, the very rights which it is currently under contract to fulfill.

Based upon the foregoing, all provisions or elements of the above-quoted statute are present, and the State Engineer is mandated by law to deny Application 77573.

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

W. Marcuerquiaga
file 8926

**MEMORANDUM OF UNDERSTANDING
(CONSERVATION EASEMENT PURSUANT TO NRS 111.390-111.440)**

On the _____ day of _____, 2001, the parties listed below entered into this Memorandum of Understanding with regard to the acquisition of a Conservation Easement and Restrictive Covenant evidencing the perpetual right to store a minimum pool of water in the Big Onion Reservoir in Humboldt County, Nevada, by the State of Nevada, Division of State Lands, on behalf of the Division of Wildlife (hereinafter referred to as a conservation easement pursuant to NRS 111.390-111.440, inclusive), and further agree to the dismissal of the consolidated Supreme Court cases entitled JULIAN and EDITH MARCUERQUIAGA, Trustees of the JULIAN W. MARCUERQUAGA and EDITH M. MARCUERQUIAGA 1980 LIVING TRUST vs. STATE OF NEVADA, DIVISION OF WILDLIFE, and JULIAN and EDITH MARCUERQUIAGA, Trustees of the JULIAN W. MARCUERQUAGA and EDITH M. MARCUERQUIAGA 1980 LIVING TRUST, and MANUEL ELIAS vs. STATE OF NEVADA, DIVISION OF WILDLIFE, Supreme Court Case Numbers 33658 and 35628, respectively.

1. The parties to this Agreement are the Julian and Edith Marcuerquiaga Trust, (hereinafter "Marcuerquiaga"), Manuel Elias (hereinafter "Elias"), and the State of Nevada, Division of Wildlife (hereinafter "NDOW").
2. The subject matter of this Agreement is the perpetual right to store water for a permanent minimum water storage pool to sustain a fishery at Big Onion Reservoir, and the dismissal of case numbers 33658 and 35628 filed in the Supreme Court of the State of Nevada.
3. Acquisition of Minimum Pool. NDOW shall have the perpetual right to store 950 acre feet annually ("Minimum Pool") of water rights in Big Onion Reservoir. To create such right, Marcuerquiaga and Elias, their heirs, successors and assigns, agree to execute in favor of

EXHIBIT 2

NDOW an affirmative perpetual covenant to: (i) maintain water storage in Big Onion Reservoir of no less than 950 acre feet, (ii) not to divert or discharge water from Big Onion Reservoir which would reduce the storage of water therein to less than the Minimum Pool; provided, however, NDOW may authorize at any time, or from time to time, the discharge of water below the Minimum Pool and, further provided, the affirmative covenant to maintain the Minimum Pool is subject to refill Big Onion Reservoir from appurtenant water rights. The affirmative covenant and other pertinent matters shall be evidenced by an appropriate recordable document. The parties hereto acknowledge that the dam and related diversion works are located upon real property owned by the United States, as administered by the Department of Interior, Bureau of Land Management.

4. The Minimum Pool shall be marked by NDOW, by a staff gauge which shall be maintained and adjusted by NDOW at the 950 acre-feet level. No discharge or release of water from Big Onion Reservoir will occur unless otherwise permitted by NDOW unless the water level is above the staff gauge.

5. Elias shall provide evidence that he is the lawful owner of necessary dam permits and water rights appurtenant to Big Onion Reservoir, together with storage rights to serve the subject matter of this Agreement. NDOW shall, if applicable, file and obtain all applicable water storage permits with the Nevada State Engineer, which are required to carry out the intentions and purposes of this Memorandum Of Understanding. The parties acknowledge that ownership of all water rights shall remain in the name of Elias, his heirs, successors and assigns and shall not be conveyed to NDOW by this agreement.

6. Appraisal. The parties agree as part of this transaction, an appraisal shall be conducted. NDOW shall be responsible for selecting the appraiser as legally required. The appraisal is also subject to the approval of Federal Aid Authorities.

7. The appraisal will be conducted at NDOW's expense. The appraiser shall appraise the value of 950 acre feet of permitted water rights and the right to perpetually maintain a minimum pool within Big Onion Reservoir.

Terms

8. It is specifically represented by NDOW that it is its intention to acquire the right to permanently and perpetually store approximately 950 acre feet of water in Big Onion Reservoir, which shall be a non-possessory interest in Big Onion Reservoir. Marcuerquiaga and Elias agree not to divert or file applications with the Nevada State Engineer which seek to divert any water upgradient of Big Onion Reservoir. Marcuerquiaga and Elias also agree that their water rights will be subordinated to the perpetual right of NDOW to store 950 acre-feet of water in Big Onion Reservoir. Based upon these facts, this Memorandum of Understanding is entered into by Marcuerquiaga and Elias specifically based upon that representation.

9. NDOW agrees to pay jointly to Marcuerquiaga and to Elias the sum of One Million Dollars (\$1,000,000), plus lease option payments over time, as listed below, for and in consideration of the transfer by restrictive covenants by Marcuerquiaga and Elias of permanent storage rights as described herein.

10. Marcuerquiaga and Elias agree to divide those funds, as received, on a pro rated basis in accordance with the Settlement Agreement reached before the United States Bankruptcy Court on January 13, 1997.

11. The form of the documents for the perpetual right of use of the water rights and right to store shall be a Conservation Agreement and Restrictive Covenants. NDOW has eight (8) years in which to pay the above referenced One Million Dollars (\$1,000,000), plus all annual lease option monies for each successive year it takes NDOW to pay off the balance called for hereunder.

12. NDOW, on an annual basis, will purchase from Marcuerquiaga and Elias a minimum of one-eighth (1/8th) of the perpetual use of the right to store, and have the right to control all water rights, on which that one-eighth (1/8th) of the minimum water rights and the perpetual right to store is based, until the total water rights and the perpetual right to store is acquired. The annual purchase price for one-eighth (1/8th) of the use of the water rights and right to store is One Hundred Twenty-Five Thousand Dollars (\$125,000).

13. NDOW will also pay on an annual basis, a lease option fee of Twenty Thousand Dollars (\$20,000) for each year of the lease option. Each succeeding year, the lease option payment shall remain the same, but shall be consideration for the non-purchased balance of the use of water rights and the perpetual right to store (e.g. as of December 1, 2001, three-fourths (3/4ths) of the use of the water rights and the perpetual right to store).

14. NDOW may prepay all monies, or any portion thereof, in advance and avoid subsequent annual lease option payments. To close this transaction, NDOW agrees to pay Two Hundred Fifty Thousand Dollars (\$250,000) on or before June 1, 2001 (subject to State and Federal approvals), and receive one-fourth (1/4) of the perpetual right to store 950 acre feet (237.5 acre feet). It is fully understood that NDOW shall have the right to maintain the Minimum Pool of 950 acre feet commencing upon payment of the above mentioned \$250,000. On or before December 1, 2001, NDOW agrees to pay One Hundred Twenty-Five Thousand Dollars (\$125,000) for the next 1/8 of the use of the water rights and the perpetual right to store, plus a lease option payment of Twenty Thousand Dollars (\$20,000) on or before each succeeding December 1st, NDOW agrees to pay a minimum of \$125,000 plus a \$20,000 lease option payment until the balance is paid in full.

15. At any time NDOW pays the total purchase price, it will receive a completed transfer of the yet unpaid for perpetual right to store the water rights and thus avoid continued annual lease option payments.

16. If at any time NDOW defaults in its annual payment for acquisition and/or lease option monies for the perpetual right to store water rights due December 1st, and should NDOW continue in default until the following December 1st payment date, NDOW is then required to make a payment of \$125,000 for the purchase of 1/8 of the perpetual right to store water rights, plus two lease option payments, a total of \$40,000, in order to reinstate the default under this Agreement. This will only occur when NDOW fails to make its proper annual payments in a timely fashion, being on or before December 1st of each year. Should a default not be cured, any unpaid for storage right would be terminated, with the 950 acre feet of storage right being reduced in proportion to the principal sum (not including lease payments) paid to One Million Dollars (\$1,000,000).

17. Payments shall be made on or before the 1st day of each December, unless Federal funding is not available, in which event the default provisions in paragraph 17 above, would apply. The first payment is due and payable as described in Paragraph 14 above.

18. Further, in the event of a default and unless otherwise agreed to in writing by all parties, NDOW shall be entitled to retain any portion or rights already paid for and acquired; however, NDOW would lose the opportunity to purchase further unacquired rights after reasonable notice and an opportunity of one (1) year to cure any default in payment.

Maintenance of the Dam

19. The parties have agreed that ownership and maintenance of the dam is the responsibility of Elias. Evidence of that responsibility shall be recorded and shall run with the land. Neither Marcuerquiaga nor NDOW are to concern themselves with maintenance.

20. Elias, as dam owner, shall be fully responsible for all dam maintenance, repair, reconstruction, or other necessary requirements, including replacement upon failure of any portion of the dam which would materially impair the Minimum Pool. Elias shall have the right to decide what repairs and maintenance shall be made. Elias agrees to make all repairs in a timely and reasonable fashion if the required repairs, if not performed, would materially impair the Minimum Pool.

21. Elias agrees to acquire an insurance policy and/or an annuity to insure the dam. Proof of such insurance or proof of an annuity shall be presented to NDOW by Elias upon execution of such document and upon any and all renewals thereof.

21(a). With the permission of responsible representatives of Humboldt County, all moneys that currently exist or any entity that would be willing to contribute/donate shall be utilized for: (1) dam maintenance and its operating equipment; (2) future dam maintenance; (3) the dam/reservoir; (4) the public use of the reservoir for fishing purposes; and (5) associated camping activities. Number 21(a)(1), above, shall have the highest priority and each succeeding number thereafter shall have a lower priority for use of those funds. Annuity funds not expended shall remain in an interest-bearing account and may not be removed by Elias, but must be retained for the above enumerated purposes.

State Liability

22. Elias shall hold the State of Nevada harmless and indemnify it from any liability associated with dam failure or damages resulting therefrom unless such liability arises from the State of Nevada's own acts of negligence or misconduct.

22(a). Should the dam be destroyed, the State of Nevada's responsibility for payments shall be suspended until the dam is replaced and the Minimum Pool restored pursuant to this agreement.

Conditions For Approval

23. Any Agreement entered into between the parties is subject to the approval of the:

- (a) Nevada Division of State Lands;
- (b) Interim Finance Committee of the Nevada Legislature;
- (c) Nevada Board of Examiners; and
- (d) Federal Aid, Approval of Project and Grant Agreements.

24. Approval of all agencies herein is a condition precedence to performance by NDOW.

24(a). Additionally, approval is conditioned upon NDOW review and approval of all subordinate water rights above and below the dam.

Closing

25. Closing shall occur on or before the 30th day of June, 2001, subject to State and Federal approvals.

26. Closing documents shall be drawn consistent with the terms listed above. However, the parties understand and agree to complete the transaction herein. Numerous additional terms not inconsistent with the above shall be added in the permanent closing documents.

27. The parties agree to cooperate in the preparation of those documents and to abide by the terms and conditions listed above until such closing documents are completed.

27(a). Escrow closing costs shall be split equally: NDOW, one half, Julian Marcuerquiaga, Edith Marcuerquiaga and Manuel Elias, one half.

28. Dismissal of the Supreme Court Consolidated Cases. The parties further agree that the Supreme Court cases listed above shall be dismissed with prejudice.

29. Binding Effect. This agreement shall be binding upon the heirs, successors, administrators and assigns of the parties hereto.

DATED this 7 day of April, 2001.

Julian Marcuerquiaga
JULIAN MARCUERQUIAGA

DATED this 7 day of April, 2001.

Edith Marcuerquiaga
EDITH MARCUERQUIAGA

DATED this _____ day of _____, 2001.

MANUEL ELIAS

DATED this _____ day of _____, 2001.

STATE OF NEVADA
DIVISION OF WILDLIFE

DATED this 10 day of April, 2001.

Sam P. Conroy
STATE OF NEVADA
BOARD OF EXAMINERS

Read and Approved by:
GEORGE TAYLOR,
Deputy Attorney General, State of Nevada

_____, 2001.
Date

27(a). Escrow closing costs shall be split equally: NDOW, one half; Julian Marcuerquiaga, Edith Marcuerquiaga and Manuel Elias, one half.

28. Dismissal of the Supreme Court Consolidated Cases. The parties further agree that the Supreme Court cases listed above shall be dismissed with prejudice.

29. Binding Effect. This agreement shall be binding upon the heirs, successors, administrators and assigns of the parties hereto.

DATED this ____ day of _____, 2001.

JULIAN MARCUERQUIAGA

DATED this ____ day of _____, 2001.

EDITH MARCUERQUIAGA

DATED this 4 day of April, 2001.

Manuel Elias
MANUEL ELIAS

DATED this ____ day of _____, 2001.

STATE OF NEVADA
DIVISION OF WILDLIFE

DATED this ____ day of _____, 2001.

STATE OF NEVADA
BOARD OF EXAMINERS

Read and Approved by:
GEORGE TAYLOR,
Deputy Attorney General, State of Nevada

_____, 2001.
Date

27(a). Escrow closing costs shall be split equally: NDOW, one half, Julian Marcuerquiaga, Edith Marcuerquiaga and Manuel Elias, one half.

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29. Binding Effect. This agreement shall be binding upon the heirs, successors, administrators and assigns of the parties hereto.

DATED this _____ day of _____, 2001.

JULIAN MARCUERQUIAGA

DATED this _____ day of _____, 2001.

EDITH MARCUERQUIAGA

DATED this _____ day of _____, 2001.

MANUEL ELIAS

DATED this 13 day of March, 2001.

Terry R. Connerforth

STATE OF NEVADA
DIVISION OF WILDLIFE

DATED this _____ day of _____, 2001.

STATE OF NEVADA
BOARD OF EXAMINERS

George H. Taylor
Read and Approved by as to form only:
GEORGE TAYLOR,
Deputy Attorney General, State of Nevada

March 12, 2001.
Date

All that real property situate in the County of Humboldt, State of Nevada, described as follows:

TOWNSHIP 45 NORTH, RANGE 30 EAST, M.D.B.&M.

Section 25: NW1/4; SW1/4 NE1/4; W1/2 SW1/4

Section 36: W1/2 W1/2

EXCEPTING FROM THE ABOVE DESCRIBED PARCELS any portions thereof lying within the roadways shown on the Assessor's Parcel Maps of said land and any portions thereof lying within the boundaries of the land described in document recorded January 31, 1968, in Book 28, Page 138, Document No. 131094, Official Records, Humboldt County, Nevada.

TOWNSHIP 44 NORTH, RANGE 30 EAST, M.D.B.&M.

Section 1: W1/2 W1/2

Section 4: Lots 3 and 4 (N1/2 NW1/4)

Section 12: W1/2 W1/2

Section 13: W1/2 W1/2

Section 19: S1/2 N1/2; N1/2 S1/2; SW1/4 SW1/4; SE1/4 SW1/4

Section 20: S1/2 N1/2

Section 30: NW1/4

TOWNSHIP 45 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 26: W1/2 SW1/4

Section 27: E1/2 SE1/4

Section 34: E1/2 E1/2

Section 35: W1/2 W1/2

TOWNSHIP 45 NORTH, RANGE 30 EAST, M.D.B.&M.

Section 17: S1/2 S1/2

Section 18: SE1/4 SE1/4

Section 19: NE1/4 NE1/4; SE1/4 NE1/4

Section 20: E1/2 NE1/4; NW1/4; W1/2 NE1/4

TOWNSHIP 44 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 3: E1/2; E1/2 NW1/4; NE1/4 SW1/4

Section 10: N1/2 NE1/4; SW1/4 NE1/4; W1/2 SE1/4

Section 11: SW1/4 NW1/4; S1/2 SE1/4; NW1/4 SW1/4; SE1/4 SW1/4

Section 15: W1/2 NE1/4; N1/2 SE1/4; SW1/4 SE1/4

TOWNSHIP 45 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 22: SW1/4 SE1/4; SE1/4 SW1/4

Section 27: W1/2 E1/2; W1/2

Section 28: E1/2 E1/2

Section 34: W1/2 E1/2; W1/2

TOWNSHIP 45 NORTH, RANGE 30 EAST, M.D.B.&M.

Section 32: SE1/4 SE1/4

Section 33: S1/2 SW1/4

TOWNSHIP 45 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 10: SE1/4 SW1/4; SW1/4 SE1/4

Section 15: E1/2 W1/2; W1/2; E1/2

Section 22: E1/2 NW1/4; W1/2 NE1/4; NE1/4 SW1/4; NW1/4 SE1/4

TOWNSHIP 44 NORTH, RANGE 27 EAST, M.D.B.&M.

Section 12: SW1/4 SW1/4

EXCEPTING THEREFROM all above described property any portions lying within the boundaries of the roadways shown on the Assessor's Parcel Map of said land.

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

*No acknowledgment
send copy to client*

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

ROBERT E. LYLE, ESQ.
201 West Liberty Street, Suite 200
Reno, NV 89501

JM

APN: 02-221-15, 02-291-13, 02-291-02, 02-291-13, 02-291-05, 02-211-02
02-221-03, 02-271-03, 02-271-05, 02-271-06, 02-211-02, 02-221-10
02-211-02, 02-261-03

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, dated this 17th day of May, 2002, is made by JULIAN and EDITH MARCUERQUIAGA, Trustees of the JULIAN W. MARCUERQUIAGA and EDITH M. MARCUERQUIAGA 1980 LIVING TRUST.

The parties identified below made and executed a Memorandum of Understanding (Conservation Easement Pursuant to NRS 111.390-111.440) relating, in part, to the perpetual right to store water for a permanent minimum water storage pool to sustain a fishery at Big Onion Reservoir. A copy of the Memorandum of Understanding is attached hereto as Exhibit A and, by reference, made a part hereof. Reference is hereby made to Exhibit A for further particulars. The parties to the Memorandum of Understanding are:

<u>Parties</u>	<u>Date Executed</u>
State of Nevada, Division of Wildlife	March 13, 2001
Manuel Elias	April 4, 2001
Julian Marcuerquiaga	April 7, 2001
Edith Marcuerquiaga	April 7, 2001
State of Nevada, Board of Examiners	April 10, 2001

The water and water rights which are the subject of the Memorandum of Understanding are appurtenant to the real property located in the County of ~~Booth~~ Humboldt, State of

Humboldt Bay JM

EXHIBIT 3

Nevada, more particularly described on Exhibit B attached hereto and, by reference, made a part hereof.

DATED: May 17th, 2002

Julian Marcuerquiaga
JULIAN MARCUERQUIAGA, Trustee
of the Julian W. Marcuerquiaga and
Edith M. Marcuerquiaga 1980 Living Trust

Edith Marcuerquiaga Power of Attorney
EDITH MARCUERQUIAGA, Trustee
of the Julian W. Marcuerquia and
Edith M. Marcuerquiaga 1980 Living Trust

STATE OF NEVADA)
COUNTY OF HUMBOLDT) ss.

This instruments was acknowledged before me on May 17, 2002, by JULIAN and EDITH MARCUERQUIAGA, Trustees of the JULIAN W. MARCUERQUIAGA and EDITH M. MARCUERQUIAGA 1980 LIVING TRUST.

Karen Forgnone
NOTARY PUBLIC



SENT BY: NV AG CONSERVATION 2-6-2 11:17AM :

RECORDER'S MEMO: Legibility of
writing, typing or printing
UNSATISFACTORY in this
document when received.

2

**MEMORANDUM OF UNDERSTANDING
(CONSERVATION EASEMENT PURSUANT TO NRS 111.390-111.440)**

On the _____ day of _____, 2001, the parties listed below entered into this Memorandum of Understanding with regard to the acquisition of a Conservation Easement and Restrictive Covenant evidencing the perpetual right to store a minimum pool of water in the Big Onion Reservoir in Humboldt County, Nevada, by the State of Nevada, Division of State Lands, on behalf of the Division of Wildlife (hereinafter referred to as a conservation easement pursuant to NRS 111.390-111.440, inclusive), and further agree to the dismissal of the consolidated Supreme Court cases entitled JULIAN and EDITH MARCUERQUIAGA, Trustees of the JULIAN W. MARCUERQUIAGA and EDITH M. MARCUERQUIAGA 1980 LIVING TRUST vs. STATE OF NEVADA, DIVISION OF WILDLIFE, and JULIAN and EDITH MARCUERQUIAGA, Trustees of the JULIAN W. MARCUERQUIAGA and EDITH M. MARCUERQUIAGA 1980 LIVING TRUST, and MANUEL ELIAS vs. STATE OF NEVADA, DIVISION OF WILDLIFE, Supreme Court Case Numbers 33658 and 35628, respectively.

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2. The subject matter of this Agreement is the perpetual right to store water for a permanent minimum water storage pool to sustain a fishery at Big Onion Reservoir, and the dismissal of case numbers 33658 and 35628 filed in the Supreme Court of the State of Nevada.
3. Acquisition of Minimum Pool. NDOW shall have the perpetual right to store 950 acre feet annually ("Minimum Pool") of water rights in Big Onion Reservoir. To create such right, Marcuerquiaga and Elias, their heirs, successors and assigns, agree to execute in favor of

SENT BY: NV AG CONSERVATION : 2- 6- 2 : 11:17AM :

RECORDER'S MEMO: Legibility of writing, typing or printing UNSATISFACTORY in this document when received.

:# 3

NDOW an affirmative perpetual covenant to: (i) maintain water storage in Big Onion Reservoir of no less than 950 acre feet; (ii) not to divert or discharge water from Big Onion Reservoir which would reduce the storage of water therein to less than the Minimum Pool; provided, however, NDOW may authorize at any time, or from time to time, the discharge of water below the Minimum Pool and, further provided, the affirmative covenant to maintain the Minimum Pool is subject to refill Big Onion Reservoir from appurtenant water rights. The affirmative covenant and other pertinent matters shall be evidenced by an appropriate recordable document. The parties hereto acknowledge that the dam and related diversion works are located upon real property owned by the United States, as administered by the Department of Interior, Bureau of Land Management.

4. The Minimum Pool shall be marked by NDOW, by a staff gauge which shall be maintained and adjusted by NDOW at the 950 acre-feet level. No discharge or release of water from Big Onion Reservoir will occur unless otherwise permitted by NDOW unless the water level is above the staff gauge.

5. Elias shall provide evidence that he is the lawful owner of necessary dam permits and water rights appurtenant to Big Onion Reservoir, together with storage rights to serve the subject matter of this Agreement. NDOW shall, if applicable, file and obtain all applicable water storage permits with the Nevada State Engineer, which are required to carry out the intentions and purposes of this Memorandum Of Understanding. The parties acknowledge that ownership of all water rights shall remain in the name of Elias, his heirs, successors and assigns and shall not be conveyed to NDOW by this agreement.

6. Appraisal. The parties agree as part of this transaction, an appraisal shall be conducted. NDOW shall be responsible for selecting the appraiser as legally required. The appraisal is also subject to the approval of Federal Aid Authorities.

SENT BY: NV AG CONSERVATION ; 2- 6- 2 :11:18AM ;

RECORDER'S MEMO: Legibility of
writing, typing or printing
UNSATISFACTORY in this
document when received.

4

7. The appraisal will be conducted at NDOW's expense. The appraiser shall appraise the value of 950 acre feet of permitted water rights and the right to perpetually maintain a minimum pool within Big Onion Reservoir.

Terms

8. It is specifically represented by NDOW that it is its intention to acquire the right to permanently and perpetually store approximately 950 acre feet of water in Big Onion Reservoir, which shall be a non-possessory interest in Big Onion Reservoir. Marcuerquiaga and Elias agree not to divert or file applications with the Nevada State Engineer which seek to divert any water upgradient of Big Onion Reservoir. Marcuerquiaga and Elias also agree that their water rights will be subordinated to the perpetual right of NDOW to store 950 acre-feet of water in Big Onion Reservoir. Based upon these facts, this Memorandum of Understanding is entered into by Marcuerquiaga and Elias specifically based upon that representation.

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RECORDER'S MEMO: Legibility of writing, typing or printing UNSATISFACTORY in this document when received.

12. NDOW, on an annual basis, will purchase from Marcuerquiaga and Elias a minimum of one-eighth (1/8th) of the perpetual use of the right to store, and have the right to control all water rights, on which that one-eighth (1/8th) of the minimum water rights and the perpetual right to store is based, until the total water rights and the perpetual right to store is acquired. The annual purchase price for one-eighth (1/8th) of the use of the water rights and right to store is One Hundred Twenty-Five Thousand Dollars (\$125,000).
13. NDOW will also pay on an annual basis, a lease option fee of Twenty Thousand Dollars (\$20,000) for each year of the lease option. Each succeeding year, the lease option payment shall remain the same, but shall be consideration for the non-purchased balance of the use of water rights and the perpetual right to store (e.g. as of December 1, 2001, three-fourths (3/4ths) of the use of the water rights and the perpetual right to store).
14. NDOW may prepay all monies, or any portion thereof, in advance and avoid subsequent annual lease option payments. To close this transaction, NDOW agrees to pay Two Hundred Fifty Thousand Dollars (\$250,000) on or before June 1, 2001 (subject to State and Federal approvals), and receive one-fourth (1/4) of the perpetual right to store 950 acre feet (237.5 acre feet). It is fully understood that NDOW shall have the right to maintain the Minimum Pool of 950 acre feet commencing upon payment of the above mentioned \$250,000. On or before December 1, 2001, NDOW agrees to pay One Hundred Twenty-Five Thousand Dollars (\$125,000) for the next 1/8 of the use of the water rights and the perpetual right to store, plus a lease option payment of Twenty Thousand Dollars (\$20,000) on or before each succeeding December 1st, NDOW agrees to pay a minimum of \$125,000 plus a \$20,000 lease option payment until the balance is paid in full.

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15. At any time NDOW pays the total purchase price, it will receive a completed transfer of the yet unpaid for perpetual right to store the water rights and thus avoid continued annual lease option payments.

16. If at any time NDOW defaults in its annual payment for acquisition and/or lease option monies for the perpetual right to store water rights due December 1st, and should NDOW continue in default until the following December 1st payment date, NDOW is then required to make a payment of \$125,000 for the purchase of 1/8 of the perpetual right to store water rights, plus two lease option payments, a total of \$40,000, in order to reinstate the default under this Agreement. This will only occur when NDOW fails to make its proper annual payments in a timely fashion, being on or before December 1st of each year. Should a default not be cured, any unpaid for storage right would be terminated, with the 950 acre feet of storage right being reduced in proportion to the principal sum (not including lease payments) paid to One Million Dollars (\$1,000,000).

17. Payments shall be made on or before the 1st day of each December, unless Federal funding is not available, in which event the default provisions in paragraph 17 above, would apply. The first payment is due and payable as described in Paragraph 14 above.

18. Further, in the event of a default and unless otherwise agreed to in writing by all parties, NDOW shall be entitled to retain any portion or rights already paid for and acquired; however, NDOW would lose the opportunity to purchase further unacquired rights after reasonable notice and an opportunity of one (1) year to cure any default in payment.

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document when received.

Maintenance of the Dam

19. The parties have agreed that ownership and maintenance of the dam is the responsibility of Elias. Evidence of that responsibility shall be recorded and shall run with the land. Neither Marcuerquiaga nor NDOW are to concern themselves with maintenance.

20. Elias, as dam owner, shall be fully responsible for all dam maintenance, repair, reconstruction, or other necessary requirements, including replacement upon failure of any portion of the dam which would materially impair the Minimum Pool. Elias shall have the right to decide what repairs and maintenance shall be made. Elias agrees to make all repairs in a timely and reasonable fashion if the required repairs, if not performed, would materially impair the Minimum Pool.

21. Elias agrees to acquire an insurance policy and/or an annuity to insure the dam. Proof of such insurance or proof of an annuity shall be presented to NDOW by Elias upon execution of such document and upon any and all renewals thereof.

21(a). With the permission of responsible representatives of Humboldt County, all moneys that currently exist or any entity that would be willing to contribute/donate shall be utilized for: (1) dam maintenance and its operating equipment; (2) future dam maintenance; (3) the dam/reservoir; (4) the public use of the reservoir for fishing purposes; and (5) associated camping activities. Number 21(a)(1), above, shall have the highest priority and each succeeding number thereafter shall have a lower priority for use of those funds. Annuity funds not expended shall remain in an interest-bearing account and may not be removed by Elias, but must be retained for the above enumerated purposes.

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State Liability

22. Elias shall hold the State of Nevada harmless and indemnify it from any liability associated with dam failure or damages resulting therefrom unless such liability arises from the State of Nevada's own acts of negligence or misconduct.

22(a). Should the dam be destroyed, the State of Nevada's responsibility for payments shall be suspended until the dam is replaced and the Minimum Pool restored pursuant to this agreement.

Conditions For Approval

23. Any Agreement entered into between the parties is subject to the approval of the:

- (a) Nevada Division of State Lands;
- (b) Interim Finance Committee of the Nevada Legislature;
- (c) Nevada Board of Examiners; and
- (d) Federal Aid, Approval of Project and Grant Agreements.

24. Approval of all agencies herein is a condition precedence to performance by NDOW.

24(a). Additionally, approval is conditioned upon NDOW review and approval of all subordinate water rights above and below the dam.

Closing

25. Closing shall occur on or before the 30th day of June, 2001, subject to State and Federal approvals.

26. Closing documents shall be drawn consistent with the terms listed above. However, the parties understand and agree to complete the transaction herein. Numerous additional terms not inconsistent with the above shall be added in the permanent closing documents.

27. The parties agree to cooperate in the preparation of those documents and to abide by the terms and conditions listed above until such closing documents are completed.

#10
02

RECORDER'S MEMO: Legibility of writing, typing or printing UNSATISFACTORY in this document when received.

27(a). Escrow closing costs shall be split equally: NDOW, one half, Julian Marcuerquiaga, Edith Marcuerquiaga and Manuel Elias, one half.

28. ~~Dismissal of the Supreme Court Consolidated Cases~~. The parties further agree that the Supreme Court cases listed above shall be dismissed with prejudice.

29. Binding Effect. This agreement shall be binding upon the heirs, successors, administrators and assigns of the parties hereto.

DATED this 7 day of April, 2001.

Julian Marcuerquiaga
JULIAN MARCUERQUIAGA

COPY

DATED this 7 day of April, 2001.

Edith Marcuerquiaga
EDITH MARCUERQUIAGA

DATED this _____ day of _____, 2001.

MANUEL ELIAS

DATED this _____ day of _____, 2001.

STATE OF NEVADA
DIVISION OF WILDLIFE

DATED this 10 day of April, 2001.

Sam P. Conroy
STATE OF NEVADA
BOARD OF EXAMINERS

Read and Approved by:
GEORGE TAYLOR,
Deputy Attorney General, State of Nevada

Date _____, 2001.

EXHIBIT A

SENT BY: NV AG CONSERVATION : 2- 6- 2 11:20AM :

:#11

RECORDER'S MEMO: Legibility of writing, typing or printing UNSATISFACTORY in this document when received.

27(a). Escrow closing costs shall be split equally: NDOW, one half, Julian Marcuerquiaga, Edith Marcuerquiaga and Manuel Elias, one half.

28. Dismissal of the Supreme Court Consolidated Cases. The parties further agree that the Supreme Court cases listed above shall be dismissed with prejudice.

29. Binding Effect. This agreement shall be binding upon the heirs, successors, administrators and assigns of the parties hereto.

DATED this ____ day of _____, 2001.

JULIAN MARCUERQUIAGA

DATED this ____ day of _____, 2001.

EDITH MARCUERQUIAGA

DATED this 4 day of April, 2001.

MANUEL ELIAS



DATED this ____ day of _____, 2001.

STATE OF NEVADA
DIVISION OF WILDLIFE

DATED this ____ day of _____, 2001.

STATE OF NEVADA
BOARD OF EXAMINERS

Read and Approved by:
GEORGE TAYLOR,
Deputy Attorney General, State of Nevada

_____, 2001.
Date

RECORDER'S MEMO: Legibility of writing, typing or printing UNSATISFACTORY in this document when received.

27(a). Escrow closing costs shall be split equally: NDOW, one half; Julian Marcuerquiaga, Edith Marcuerquiaga and Manuel Elias, one half.

28. Dismissal of the Supreme Court Consolidated Cases. The parties further agree that the Supreme Court cases listed above shall be dismissed with prejudice.

29. Binding Effect. This agreement shall be binding upon the heirs, successors, administrators and assigns of the parties hereto.

DATED this _____ day of _____, 2001.

JULIAN MARCUERQUIAGA

DATED this _____ day of _____, 2001.

EDITH MARCUERQUIAGA

DATED this _____ day of _____, 2001.

MANUEL ELIAS

DATED this 13 day of March, 2001.

Terry R. Connerforth
STATE OF NEVADA
DIVISION OF WILDLIFE



DATED this _____ day of _____, 2001.

STATE OF NEVADA
BOARD OF EXAMINERS

George H. Taylor
Read and Approved by as to form only:
GEORGE TAYLOR,
Deputy Attorney General, State of Nevada

March 12, 2001.
Date

RECORDER'S MEMO: Legibility of writing, typing or printing UNSATISFACTORY in this document when received.

All that real property situate in the County of Humboldt, State of Nevada, described as follows:

TOWNSHIP 45 NORTH, RANGE 30 EAST, M.D.B.&M. APN: 02-221-15

JM

Section 25: NW1/4; SW1/4 NE1/4; W1/2 SW1/4
Section 36: W1/2 W1/2

EXCEPTING FROM THE ABOVE DESCRIBED PARCELS any portions thereof lying within the roadways shown on the Assessor's Parcel Maps of said land and any portions thereof lying within the boundaries of the land described in document recorded January 31, 1968, in Book 28, Page 138, Document No. 131094, Official Records, Humboldt County, Nevada.

TOWNSHIP 44 NORTH, RANGE 30 EAST, M.D.B.&M.

Section 1: W1/2 W1/2 APN 02-291-13
Section 4: Lots 3 and 4 (N1/2 NW1/4) APN 02-291-02
Section 12: W1/2 W1/2 APN 02-291-13
Section 13: W1/2 W1/2 APN 02-291-13
Section 19: S1/2 N1/2; N1/2 S1/2; SW1/4 SW1/4; SE1/4 SW1/4 APN 02-291-05
Section 20: S1/2 N1/2 " " "
Section 30: NW1/4 " " "

JM

JM

TOWNSHIP 45 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 26: W1/2 SW1/4
Section 27: E1/2 SE1/4 APN 02-211-02
Section 34: E1/2 E1/2
Section 35: W1/2 W1/2

JM

TOWNSHIP 45 NORTH, RANGE 30 EAST, M.D.B.&M.

Section 17: S1/2 S1/2
Section 18: SE1/4 SE1/4 APN 02-221-03
Section 19: NE1/4 NE1/4; SE1/4 NE1/4
Section 20: E1/2 NE1/4; NW1/4; W1/2 NE1/4

JM

TOWNSHIP 44 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 3: E1/2; E1/2 NW1/4; NE1/4 SW1/4
Section 10: N1/2 NE1/4; SW1/4 NE1/4; W1/2 SE1/4
Section 11: SW1/4 NW1/4; S1/2 SE1/4; NW1/4 SW1/4; SE1/4 SW1/4
Section 15: W1/2 NE1/4; N1/2 SE1/4; SW1/4 SE1/4

APN'S: 02-271-03
02-271-05
02-271-06

JM

EXHIBIT B

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TOWNSHIP 45 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 22: SW1/4 SE1/4; SE1/4 SW1/4
Section 27: W1/2 E1/2; W1/2
Section 28: E1/2 E1/2
Section 34: W1/2 E1/2; W1/2

APN 02-211-02

JM

TOWNSHIP 45 NORTH, RANGE 30 EAST, M.D.B.&M.

Section 32: SE1/4 SE1/4
Section 33: S1/2 SW1/4

APN 02-221-10

JM

TOWNSHIP 45 NORTH, RANGE 28 EAST, M.D.B.&M.

Section 10: SE1/4 SW1/4; SW1/4 SE1/4
Section 15: E1/2 W1/2; W1/2; E1/2
Section 22: E1/2 NW1/4; W1/2 NE1/4; NE1/4 SW1/4; NW1/4 SE1/4

APN 02-211-02

JM

TOWNSHIP 44 NORTH, RANGE 27 EAST, M.D.B.&M.

Section 12: SW1/4 SW1/4

02-261-03

JM

EXCEPTING THEREFROM all above described property any portions lying within the boundaries of the roadways shown on the Assessor's Parcel Map of said land.

EXHIBIT B

FEES \$27⁰⁰