

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

IN THE MATTER OF APPLICATION)
80700, FILED TO CHANGE THE PLACE)
AND MANNER OF USE OF A PORTION)
OF WALKER RIVER DECREE CLAIMS)
WITHIN THE MASON VALLEY)
HYDROGRAPHIC BASIN (108), LYON)
COUNTY, NEVADA.)

RULING

#6271

GENERAL

I.

Application 80700 was filed by the National Fish and Wildlife Foundation (NFWF) on March 24, 2011, to change the place and manner of use of a portion of Walker River Decree Claims¹ Numbered 23, 23-A, 35, 44, 67 and 89 of the Walker River and its tributaries.² The total amount of water requested to be changed is 7.745 cubic feet per second (cfs) and the requested change in the manner of use is from as decreed (irrigation) to wildlife purposes. The current place of use is described as being located within the Walker River Basin described with particularity in Attachment "A" to Application 80700. The Applicant proposes to not divert the water at the former point of diversion, but rather to leave the water instream at the proposed place of use described in the Application as being "within the Walker River from the Weir Diversion Structure through the USGS Wabuska Gauge [sic], then through Weber Reservoir into and including Walker Lake." In Section 15 of the Application, the Applicant states that it intends to manage the conveyance of water from the Wabuska Gage to Walker Lake under an agreement to be negotiated with the Walker River Paiute Tribe and the Bureau of Indian Affairs that addresses the operation of Weber Dam and the Walker River Indian Irrigation Project. Under Section 16 of the Application entitled "Miscellaneous Remarks," NFWF states it intends

¹ Final Decree in *United States v. Walker River Irrigation District*, In Equity, Docket No. C-125 (D. Nevada 1936, as amended April 24, 1940).

² Article III, Section 3.1 of the *Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and its Tributaries*, as amended through June 3, 1996, ("Administrative Rules and Regulations") require that applications to change claims adjudicated under the *Walker River Decree* in Nevada be first filed with the State Engineer and approved by the U.S. District Court of Nevada.

to withdraw 646.16 acres of supplemental ground water rights in the existing place of use following approval by the State Engineer and the U.S. District Court of Nevada (Decree Court).³

II.

National Fish and Wildlife Foundation is a 501(c)(3) non-profit foundation established by an act of Congress in 1984. NFWF's purpose is to acquire funding through a variety of governmental and private sources to, among other things, protect and restore fish, wildlife habitat and key vegetation.⁴ NFWF oversees the Walker Basin Restoration Program, a program that includes a water rights acquisition program to restore and maintain Walker Lake, a Nevada natural desert terminal lake. Pursuant to several acts of Congress generally referred to as the Desert Terminal Lakes legislation, NFWF acquired the water rights at issue under Application 80700 from willing sellers and now seeks to change these rights to increase the inflows to Walker Lake.⁵ NFWF only acquired the water rights at issue and did not acquire the land to which the water is appurtenant.

As set forth in Application 80700, the claims, diversion rate and priority of each claim sought to be changed is as follows:⁶

Claim No.	Acres	CFS
23	60.00	0.720
23A	201.32	2.415
23A	80.00	0.960
35	20.00	0.240
44	65.00	0.780
67	168.00	2.010
89	51.84	0.620
Total	646.16	7.745

Date of Priority	Decreed Acres	Decreed CFS
1874	33.36	0.400
1877	72.00	0.860
1880	145.83	1.745

³State Engineer (SE) Exhibit No. 17, public administrative hearing before the State Engineer October 28, 29 and November 1, 2013, official records in the Office of the State Engineer. Hereinafter the exhibits and transcripts will be referred to solely by the exhibit number or transcript page.

⁴ Transcript, Vol. II pp. 216:15 to 217:19.

⁵ See generally, NFWF Exhibits 57, 58.

⁶ SE Exhibit 17 at 3.

Date of Priority	Decreed Acres	Decreed CFS
1881	20.00	0.240
1887	32.50	0.390
1888	80.00	0.960
1891	8.93	0.110
1894	7.50	0.090
1896	92.00	1.100
1900	125.04	1.500
1901	15.00	0.180
1904	4.00	0.050
1906	10.00	0.120
Total	646.16	7.745

III.

Application 80700 was timely protested by the following individuals and entities,⁷ including Backtrack, LLC; Bale Counter, Inc.; Gary M. Berrington; Berrington Custom Hay Hauling & Transportation, Inc.; Damian Ltd.; Garmsland Limited, LLC.; Gary G. Garms; Gary J. Garms; GDA Degree Inc.; High Sierra Garlic; Jackaroo, LLC; Kari D. Garms; Peter A. Fenili; Settelmeyer-Rosse Ranch Mgmt., LLC; Richard Nuti for Six-N-Ranch, Inc.; Straggler, LLC; Toni J. Garms on grounds summarized as follows:⁸

1. The proposed change will conflict with existing rights;
2. The proposed change will lessen the efficiency in the use and delivery of water;
3. The proposed change will result in less recharge by leaving the water in the river channel;
4. The proposed change will affect water availability and its cost;
5. The proposed change will threaten to prove detrimental to the public interest;
6. The proposed change will unduly limit growth and prosperity in the basin and limit economic stability;
7. The proposed change will cause negative environmental impacts;
8. The proposed change will cause injury to domestic and irrigation wells;
9. The proposed change will have a negative effect on storage rights;
10. The proposed change will eliminate opportunities to purchase water within the Walker River Irrigation District (WRID) system.

⁷ These Protestants were all represented by Linda Bowman, Esq., and were referred to collectively as the "Bowman Protestants" during the interim activity and the administrative hearing. For ease of reference and continuity, they will be referred to similarly throughout this Ruling.

⁸ SE Exhibit 18.

IV.

Application 80700 was timely protested by other individuals and entities, including Bill Carlson; Campbell Canal Company; D & GW Ditch Company; David Sceirine; Eddie R. and Theresa Snyder Trust; Eufrazia, LLC; G&H Mutual Ditch Company; Greenwood Mutual Ditch Company; Jim and Bunny J. Snyder; Joseph Scierine; LJ Land, Limited; Louis Scatena; Mickey Mutual Ditch Company; Nevada Farm Bureau Federation; Newhall Mutual Ditch Company; Nichol Merritt Ditch Company, Inc.; Paul Sciarani; Sciarani Ditch; Snyder Livestock Company, Inc.; Spragg-Woodcock Mutual Ditch Company and Tunnel Ditch Company on grounds summarized as follows:⁹

1. The proposed manner of use should not be changed from the original intent of irrigation;
2. The Application requests transfer of the full duty rather than the consumptive use amount. The duty must be limited to the consumptive use otherwise, the Application amounts to a request for a new appropriation of water;
3. The proposed change may lessen the efficiency in the use and delivery of water;
4. The proposed change may threaten to prove detrimental to the public interest;
5. The Applicant has not provided enough security to ensure future ditch assessments;
6. The proposed change will conflict with existing rights;
7. Appropriate studies should be undertaken before acting on the application;
8. Adequate mitigation measures for dewatered land has not been provided for;
9. NEPA analysis has not been conducted;
10. The proposed conveyance agreement has not been negotiated with the Tribe so there is no assurance that the water proposed for transfer to Walker Lake will reach its intended destination;
11. The proposed change may negatively affect water quality of Walker Lake;
12. Transfers outside the boundaries of existing ditch companies and the Walker River Irrigation District will diminish the assessment base for the ditch companies, increasing the financial burden on remaining water users in the ditch companies.

V.

Application 80700 was timely protested by the Walker River Irrigation District and Lyon County on grounds summarized as follows:¹⁰

1. The changes proposed by the Application conflict with existing water rights;
2. The changes proposed by the Application will adversely affect the cost of water for other holders of water rights within the District;
3. The changes proposed by the Application will lessen the efficiency of the District in the delivery or use of water;
4. Before acting on the Application, the State Engineer should exercise his discretion to require hydrological, environmental and other studies pursuant to NRS § 533.368;

⁹ SE Exhibit 18.

¹⁰ SE Exhibit 18.

5. The Application does not contain sufficient information necessary for a full understanding of the changes proposed;
6. The State Engineer should consider postponing action on the Application until pending court actions become final;
7. The changes proposed by the Application threaten to prove detrimental to the public interest.

VI.

Application 80700 was timely protested by the Walker River Paiute Tribe (Tribe) on grounds summarized as follows:¹¹

1. The water rights sought to be transferred are junior to the Tribe's rights, and the Application cannot be approved if it will detrimentally harm the Tribe's water rights or ability to fully utilize its water rights;
2. The Application does not state how or where the water from the water rights transferred will be measured, or how losses will be accounted for from the Yerington Weir Diversion to Walker Lake;
3. Granting the Application will detrimentally harm the Tribe's ability to store water in Weber Reservoir;
4. Granting the Application will detrimentally affect water flows on the Reservation during the period before and after the Tribe's 180-day irrigation season, but within the Decreed period of use for the NFWF water rights. These periods of flow have historically supported the river corridor environment through the Reservation, and constitute water that has been historically stored in Weber Reservation;
5. Granting the permit will be detrimental to the public interest if additional groundwater consumptive use occurs in the areas where the water rights proposed to be transferred reduce return flows to the system;
6. Granting the permit will be detrimental to the public interest and will not be environmentally sound if the water that naturally flowed past the Yerington Weir, or otherwise flowed onto the Reservation that was in addition to all of the Tribe's water rights that normally flowed to Walker Lake is in any way designated as NFWF's water;
7. No permit should be granted prior to (1) the availability of technical studies by the United States Geological Survey (USGS) on the lower Walker River, and/or (2) the presentation of NFWF of technical data that supports proper measurement and accounting for the water allowed to flow downstream from the original points of diversion for NFWF's water.
8. No permit should be granted until NFWF submits a detailed management and accounting plan and conveyance plan to deliver additional water to Walker Lake;

¹¹ SE Exhibit 18.

9. Approving the Application, which includes the place of use as the Reservation, shall not be construed as permitting entry onto the Reservation by any party, including NFWF, the State of Nevada, or the Federal Water Master, unless authorized by the Tribe;
10. The Tribe's water rights can be protected through a Conveyance Agreement between the Tribe, the United States and NFWF that properly addresses river flows and measurement upstream of the Reservation. The Conveyance Agreement must be recognized by the State Engineer and Federal Court;
11. The manner of use for the portion of the designated place of use on the Reservation should be clarified to include wildlife purposes in the Walker River including fishery restoration within the Reservation portion of the Walker River;
12. NFWF must develop an accurate and detailed accounting system that will be implemented to quantify the amount of water attributable to NFWF water rights that will reach the Reservation, and that the system must differentiate NFWF's water from the Tribe's water rights;
13. NFWF must develop an appropriate Water Management Plan that specifically addresses flows during periods of use prior to and after the 180-day tribal irrigation season. The Plan must be acknowledged and implemented by the Federal Water Master to ensure that the delivery of NFWF water to the Reservation boundary during these periods will not detrimentally affect the quantity, occurrence or timing of flows that would have otherwise occurred;
14. A Groundwater Management plan must be implemented by the State of Nevada upstream of the Reservation, including regulation of groundwater permits by priority.

VII.

Application 80700 was timely protested by the U.S. Department of Interior, Bureau of Indian Affairs (BIA) on the grounds summarized as follows:¹²

1. The Application does not comply with NRS § 533.345 in that it does not include (a) technical information regarding the administration of the proposed change of use; or (b) a description of how the administration of the water rights at the existing point of diversion and place of use would be different than the administration of the water rights at the proposed point of diversion and place of use;
2. The Application does not comply with NRS § 533.345 in that it lacks precise identification or location of the groundwater wells referenced in the Application, making it impossible to identify how the groundwater rights associated with the wells will be withdrawn;
3. The proposed Application may conflict with the Tribe's water rights;
4. The Application refers to a conveyance agreement with the Tribe and BIA and currently no such agreement exists, although the BIA anticipates working cooperatively with the Applicant on such an Agreement.

¹² SE Exhibit 18.

VIII.

Section XV of the Walker River Decree provides for the appointment of a water master whenever the Decree Court deemed it necessary for the apportionment and distribution of the waters of the Walker River, its forks and tributaries.¹³ Pursuant to Section XV, on May 12, 1937, the Decree Court appointed a five-member board to act as the water master or board of commissioners (U.S. Board of Water Commissioners hereinafter USBWC) for that purpose.¹⁴ The order of appointment provided that the Board had the further authority to appoint a chief deputy or water commissioner and assistant water commissioners.¹⁵ The USBWC has appointed Jim Shaw as the current Chief Deputy Water Commissioner (Water Master).¹⁶

Pursuant to Article V, § 5.4 of the *Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and its Tributaries*,¹⁷ the Board and Water Master served the State Engineer with its recommendations and concerns regarding Application 80700 on July 15, 2011, which are summarized as follows:¹⁸

1. The Applicant requests a change in the full amount of 7.745 cfs, which is not limited to the consumptive use. Return flows from the water would not be available for the Chief Deputy Water Commissioner to use in his computation of the total amount of water available to serve the vested rights under the Decree. The State Engineer should consider the consumptive use of the water rights sought to be changed in relation to Nevada water law;
2. The requested change will conflict with existing rights, as there are multiple owners of the claims of which the Applicant is part owner of. Changing a portion of the claim to non-diversion will impact rotation and efficiency of the ditch, for example, on the West Highland Ditch;
3. The Applicant acknowledges it will not be able to put the water to beneficial use until it can manage the conveyance of water from the Wabuska Gauge to Walker Lake. There is no provision to monitor that others will not use the non-diverted water. The Applicant should not be able to call for the water sought to be changed until it can put the water to beneficial use;
4. The Application states that the estimated time to put the water to beneficial use is ten years to serve all priorities. The proposed manner of use is extremely broad. If that was not the intent, the Application should be amended;
5. Granting the Application would affect the historical administration of the Decree;

¹³ USBWC Exhibit 1051 § XV.

¹⁴ WRID Exhibit 154.

¹⁵ *Id.* at 2.

¹⁶ *See generally*, Transcript, Vol. I.

¹⁷ USBWC Exhibit 1056.

¹⁸ SE Exhibit 2.

6. The Application includes six claims to be changed; a change of each claim must be reviewed individually to determine how the proposed change will impact others under the Decree;
7. There are discrepancies in the legal descriptions of the WRID cards and the existing place of use for Claims 23 and 67;
8. Any storage rights associated with the claims were not included as part of the change application. If they are included the Board may address issues related to storage rights on the Claims in the change application;
9. Non-diversion of the claims requested to be changed will impact the aquifer in the Highland Ditch area;
10. The purpose of the acquisition of water rights appears to be for delivery or increased delivery of water to Walker Lake. The broad manner of use and place of use appears to be inconsistent with the stated purpose of the acquisition program. If not so broadly construed, the Application should be amended;
11. The statement in the Decree that “no water should be sold or delivered outside the Walker River Basin,” may restrict the proposed change application, and that language may be subject to interpretation by the Decree court;
12. The assessment by the Water Master is according to acreage of the lands irrigated under the Decree, it is not clear whether the assessment to NFWF will remain with a change in the manner of use;
13. Article VI, § 6.1 of the Administrative Rules and Regulations provides that the agency may, for good cause, withhold any pending decision on a change application until pending court action is concluded. There is litigation pending, although the Board takes no position on whether action on the Application should be withheld, or not;
14. A question exists as to whether a Decree right holder can own water rights but not own any land for which the water is to be placed to beneficial use.

FINDINGS OF FACT

I.

Stipulations to Resolve Certain Protest Issues

On June 28, 2013, NFWF and WRID filed a *Conditional Stipulation to Resolve Certain Protests Regarding Application No. 80700 (WRID Stipulation)*. Attachment 1.¹⁹ If, after the hearing procedure described above, the *Stipulation* was accepted by the State Engineer, WRID’s protest may be deemed withdrawn pursuant NAC § 533.150. Numerous Protestants joined the *WRID Stipulation* including: Campbell Canal Company,²⁰ Greenwood Mutual Ditch Co.,²¹ Mickey Mutual Ditch Co.,²² Newhall Daniel Mutual Ditch Co.,²³ Jim and Bunny Snyder,²⁴ Eddie

¹⁹ SE Exhibit 41.

²⁰ SE Exhibit 50.

²¹ SE Exhibit 42.

²² SE Exhibit 43.

²³ SE Exhibit 44.

²⁴ SE Exhibit 45.

R. and Theresa Snyder Trust;²⁴ Eufrazia, LLC/LJ Land, Limited;²⁴ Snyder Livestock Co.;²⁴ Spragg-Woodcock Mutual Ditch Co.;²⁵ G&H Mutual Ditch Co.;²⁶ and Lyon County.²⁷

An additional *Stipulation to Resolve Protest Issues Regarding Application No. 80700* was filed between NFWF, the Tribe and the BIA (*Tribe Stipulation*). Attachment 2.²⁸ In the *Tribe Stipulation*, the parties were able to achieve the drafting of a Conveyance Agreement, which Agreement set forth the protocols for conveying NFWF's water instream from the Wabuska Gage (*i.e.*, the entry point to the Reservation) through the Reservation to Walker Lake. As with the *WRID Stipulation*, if the *Tribe Stipulation* was accepted by the State Engineer, the Tribe and BIA's protests may be deemed withdrawn pursuant NAC § 533.150.

Nonetheless, since neither the Bowman Protestants nor the Board joined either of the *Stipulations*²⁹, at a minimum, the following protest grounds were required to be addressed at a hearing, where protests on these issues remained:

1. The requested change would not injure or conflict with existing rights in violation of the Decree or Nevada law;³⁰
2. The Chief Deputy Water Commissioner would administer, for non-diversion, the water rights sought by the application at the full decreed flow rate when such rights were in priority;³¹
3. The Chief Deputy Water Commissioner would administer and protect from diversion by others downstream of the Point of Non-Diversion, the consumptive use portion of the water rights administered pursuant to Paragraph 1(f), when such rights were in priority. The consumptive use portion of the Application was determined to be 3.10 acre-fee per acre during the irrigation season as determined by *Net Irrigation Water Requirements*;³²
4. The remainder of the non-consumptive use portion of the water rights, would be administered by the Water Master at his discretion pursuant to the 1953 Rules, to avoid conflict with and injury to existing water rights at and downstream of the Point of Non-Diversion and to mitigate hydrologic system losses;³³ and,
5. NFWF would continue payment of the operation and maintenance charges, including ditch charges assessed as if the water rights were still appurtenant to the land.³⁴

²⁵ SE Exhibit 46.

²⁶ SE Exhibit 48.

²⁷ SE Exhibit 49.

²⁸ SE Exhibit 200.

²⁹ Protestants D & GW Ditch Company; Tunnel Ditch Company; Paul Sciarani; Nichol Merritt Ditch Company, Inc.; David Scierine; Nevada Farm Bureau Federation; Bill Carlson; Louis Scatena; Sciarani Ditch; and Joseph Scierine did not appear at the administrative hearing, nor did they join either of the Stipulations.

³⁰ SE Exhibit 41 at 3 ¶ 1(e).

³¹ SE Exhibit 41 at 3 ¶ 1(f).

³² SE Exhibit 41 at 4 ¶ 1(g).

³³ SE Exhibit 41 at 5 ¶ 1(h).

³⁴ SE Exhibit 41 at 5 ¶ 1(j).

In addition, the parties stipulated that NFWF could withdraw its proposal to retire the supplemental groundwater rights, as it had proposed to do in Section 16 of Application 80700.³⁵

The State Engineer finds that despite the filing of *Conditional Stipulations* and *Joinders* by nearly all parties, protest issues remained requiring that a public administrative hearing be held to receive evidence concerning the remaining issues and concerns raised by the USBWC.

II.

Administrative Hearing and Hearing Procedure

A public administrative hearing was held pursuant to Nevada Revised Statute (NRS) § 533.365(4) on October 28-29, and November 1, 2013. Prior to the hearing, the State Engineer determined that the hearing would potentially proceed in two phases: the first phase would include the presentation of evidence on the protests by the Bowman Protestants; a presentation by the Board; and the presentation of any information by Applicant as to the *Conditional Stipulations* (discussed *herein*) to resolve protest issues offered by the parties and numerous *Joinders* by Protestants to the *Stipulations*.

The State Engineer determined that after the conclusion of the first phase of the hearing, he would consider the evidence of the Bowman Protestants and of the Board and to consider whether the *Conditional Stipulations* would: (1) be rejected; (2) would be accepted without changes; or (3) would be accepted with changes, in which case the parties had an opportunity to accept or reject the State Engineer's proposed changes to the *Stipulations*.³⁶

In the event the State Engineer proposed changes to the *Stipulations* that the parties deemed material, the parties would be provided an opportunity to amend the *Stipulations* to address the State Engineer's concerns.³⁷ In the event the State Engineer determined the *Stipulations* could be accepted without changes, he would proceed to determine whether he would: (1) issue an interim ruling regarding the stipulations, resulting in a second phase of the hearing to receive evidence by the stipulating parties or (2) issue a final ruling.

The State Engineer finds that sufficient information was presented during the first phase of the administrative hearing to enable him to accept the *Conditional Stipulations* of the parties

³⁵ SE Exhibit 41 at 6 ¶ 2.

³⁶ Transcript, Vol. I pp. 9-10.

³⁷ The procedure for further discussion and/or modification of the *Stipulations* arose as the result of Paragraph 6 of the *WRID Stipulation* and Paragraph 4 of the *Tribe Stipulation*. As written, this provision could be interpreted as binding the State Engineer to adopt the *Stipulations*, as written, which would be contrary to NAC § 533.150(2)(c). The parties clarified that it was not the intention to bind the State Engineer in the event the State Engineer did not agree with any or all of the *Stipulations*.

and to issue a final Ruling. Therefore, the State Engineer finds that an additional second phase of an administrative hearing is unnecessary and issues this final Ruling.

III.

Alleged Impacts to Storage Rights

The Bowman Protestants allege that, if granted, Application 80700 will detrimentally impact their storage rights. The storage rights at issue here arise from two reservoirs constructed by the WRID for the purpose of storing surplus water of Walker River, namely, Bridgeport Reservoir situated on the East Walker River just below the Town of Bridgeport, having a present capacity of 42,000-acre feet, and Topaz Reservoir situated near the West Walker River just below Antelope Valley, having a present capacity of 50,000-acre feet. *See U.S. v. Walker River Irr. Dist.*, 11 F.Supp. 158, 161 (D. Nev. 1935).

Walker River Irrigation District's storage rights in the reservoirs are contained within the Decree³⁸ and state-issued permits, which were incorporated into the Decree. In the Bridgeport Reservoir, WRID was declared to be:

[T]he owner of the flow and use of the flood water of East Walker River and its tributaries for storage in the Bridgeport Reservoir situated on the East Walker River, to the amount of forty-two thousand acre feet, such water to be diverted from said river and stored in said reservoir from the first of November to the first of March of each season irrespective of the rights and priorities hereby adjudged and also the right to divert and store at any time an excess of forty-two thousand acre feet up to fifty-seven thousand acre feet when there is in the river a quantity of water in excess of the total amount adjudicated to the parties hereto to the extent of such excess, but water shall not be stored in said reservoir so as to deprive the parties hereto including the plaintiff and the assigns of stock water or water for domestic purposes.

Regarding the Topaz Reservoir, WRID was declared to be:

[T]he owner of the flow and use of the flood water of West Walker River and its tributaries for storage in the Topaz Lake Reservoir situated near West Walker River, to the amount of fifty thousand acre feet, such water to be diverted and stored in said reservoir from the first of November to the first of March of each season irrespective of the rights and priorities hereby adjudged and also the right to divert and store at any time an excess of fifty thousand acre feet up to eighty-five thousand acre feet when there is in the river a quantity of water in excess of the total amount adjudicated

³⁸ USBWC Exhibit 1051, pp. 64-67.

to the parties hereto to the extent of such excess, but water shall not be stored in said reservoir so as to deprive the parties hereto including the plaintiff and the assigns of stock water or water for domestic purposes.

Walker River Irrigation District's state-issued permits for Bridgeport and Topaz Reservoirs include: California License 9407 for Bridgeport Reservoir having a priority date of August 8, 1919, for storage of up to 39,700 afa, with maximum storage of 42,500 acre-feet and a collection date of about September 1st to about July 20th of the succeeding year.^{39,40}

California License 6000 for Topaz Reservoir, having a priority date of February 21, 1921, for the storage of 57,580 afa from about October 1st of each year to about July 15th of the succeeding year.⁴¹

California License 3987 for Topaz Reservoir, having a priority date of July 21, 1953, for the collection into storage of up to 200 acre-feet (year round) from an unnamed steam tributary to Topaz Reservoir.⁴²

Nevada Certificate 4972 having a priority date of November 3, 1921, for collection into storage of up to 1,500 afa of an unnamed stream tributary to Topaz Reservoir, the collection date of which is April 1st to October 31st each year.⁴³

Three Bowman Protestants who testified during the hearing are all "new land" owners⁴⁴ who receive storage water from WRID pursuant to WRID's storage rights discussed above.⁴⁵ WRID calculates the amount of storage water in the reservoirs each March and allocates a percentage of the storage water among new land owners.⁴⁶ Thus, given annual fluctuations in weather and other factors, there is no guarantee from year-to-year that any particular amount of water will make it to storage; and hence, the storage waters available to new land owners is variable with no guarantee as to how much any owner will receive from WRID each year.

³⁹ WRID Exhibit 171.

⁴⁰ License 9407 also states that the storage rights under the License, in combination with the decreed rights shall not exceed 57,000 acre-fee per year.

⁴¹ WRID Exhibit 172.

⁴² WRID Exhibit 173.

⁴³ WRID Exhibit 174.

⁴⁴ See Transcript, Vol. I pp. 14:6 (Protestant Fenili); 37:19-20 (Protestant Nuti); and 48:16-17 (Protestant Garms).

⁴⁵ "New lands" within the Walker River Irrigation District refers to lands which do not have any rights to natural flow of water, but which receive an allocation of stored water from Bridgeport or Topaz Reservoir. These "new lands" were added to the boundaries of the irrigation district at an early point in time when the District determined it had additional storage water available in excess of what was necessary to serve the lands within the boundaries at that time. These "new lands" should not be confused with the "Newlands Project" which involves the Truckee and Carson Rivers and Decrees on those systems. See, e.g., Transcript, Vol. I at 37:22 to 38:1.

⁴⁶ Transcript, Vol. I pp. 50-51.

The determination by which water becomes stored water is made pursuant to the *Rules and Regulations for the Distribution of Water of the Walker River Stream System Under the Provisions of Paragraph 15 of the Decree in Equity, No. C-125, September 3, 1953* (1953 Rules).⁴⁷ The relevant provision of the 1953 Rules states:

[The Chief Deputy Water Commissioner] shall determine the total amount of water entering the Walker River Stream System through natural channels. He shall add to this accumulated total of natural flow water the amount of return flow he computes to be returning to the stream system through seepage, drain canals or any other sources. The sum total of water from these two sources shall be considered to be the total amount of water available to serve the vested rights under the decree and the year of priority to be served shall be determined daily by the Chief Deputy Water Commissioner from this information. *If at any time the Chief Deputy Water Commissioner determines that there is more water available in the stream than is required to fill the rights of all of the vested users including the rights of the Walker River Irrigation District and others similarly situated to store water, then he shall prorate such excess water to all users in proportion to the rights already established.*⁴⁸ (Emphasis added).

The Water Master testified that he calculates the total amount of flow into the system and then examines any calls for water by decreed rightholders. If there are no calls or if all of the calls can be filled, then the status is “full decree” and any excess waters can be diverted to storage.⁴⁹ The Bowman Protestants assert that historically, senior rightholders might not call for water on March 1st due to variable weather or land conditions affecting an irrigator’s decision to commence his irrigation season.⁵⁰ In that case, the Water Master could divert water to storage until such time irrigators began calling for water.

The Bowman Protestants argue that the granting of the Application would impact their storage rights in a second way, too. Typically, irrigators will curtail or not call for water during harvest, providing opportunities for the Water Master to declare “full decree” status and store water during short periods when cuttings are taking place.⁵¹ Thus, the Bowman Protestants assert that changing the rights from irrigation to instream use would be tantamount to a continuous call by NFWF for the duration of the irrigation season, leaving no short period(s) of curtailment when the Water Master could divert that water to storage. In sum, the Bowman

⁴⁷ USBWC Exhibit 1055.

⁴⁸ USBWC Exhibit 1055 at p. 4 ¶ 4.

⁴⁹ Transcript, Vol. I p. 108:19-22.

⁵⁰ See, e.g., Transcript, Vol. I pp. 17:14-18; 23:4-8; 36:18-23; see also, USBWC Exhibit 1054, *Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc.* (D. Nev. Apr. 24, 1940) (amending the irrigation season along the Walker River, its branches and tributaries, to include March 1st to October 31st each year).

⁵¹ Transcript, Vol. I pp. 23:12-17; 37:4-12.

Protestants argue there will be a reduced ability to divert water to storage between a call by NFWF on March 1st, and its continuous call through the irrigation season to October 31st. NFWF concedes that, if granted, it intends to exercise its rights to the full extent by calling for its water for the full period of use from March 1st to October 31st each year.⁵²

Nevada, like most western states, is a prior appropriation state. An appropriative right "may be described as a state administrative grant that allows the use of a specific quantity of water for a specific beneficial purpose if water is available in the source free from the claims of others with *earlier* appropriations." *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 944 P.2d 835 (1997), fn. 1 (citing Frank J. Trelease & George A. Gould, *Water Law Cases and Materials* 33 (4th ed. 1986)) (emphasis added). The Walker River Decree Court recognized that with one exception, all parties to the decree litigation stipulated that the law of prior appropriation governed the determination of the claims to the waters of the Walker River and its tributaries. *U.S. v. Walker River*, 11 F.Supp. at 168.

It is undisputed that new lands rights are the most junior on the entire system and are therefore junior to NFWF's rights.⁵³ The priority dates of NFWF's claims range from 1874 to 1906; whereas, the priorities of WRID's storage rights are 1919 and 1921. The *Decree* and *Administrative Rules* recognize the right to change decreed rights and the Decree specifically provides that priority of the rights shall be respected with regard to changes to decreed rights.⁵⁴ Application 80700 does not change the decreed season of use, which had always provided NFWF's predecessor rightholders the ability to call for water on March 1st through the entire irrigation season, when in priority. The Water Master and Protestant Nuti agreed that presently, an irrigator holding senior decreed rights has the right to call for water on March 1st, and could use all water decreed to him when in priority, prior to a junior rightholder receiving any water under his storage right.⁵⁵ It is true that historically, there may have been short periods when water could be diverted to storage when, by chance, there were no calls or harvest was occurring; however this happenstance alone does not create a superior right in new lands owners as against senior decreed rights.

⁵² Transcript, Vol. II p.226:4-12.

⁵³ Transcript, Vol. I pp. 26:2-4; 45:1-3; 63:7-10;184:15-22.

⁵⁴ See, USBWC Exhibit 1051 at 72-73 § X.

⁵⁵ Transcript, Vol. I pp. 45:4-7; 153:1-22.

Additionally, where the decreed period of use remains unchanged, the parties to the *WRID Stipulation* also agreed that the Water Master would administer, at the point of non-diversion, the consumptive use portion of the water rights determined to be 3.10 acre-feet per acre, as set forth in the *Evapotranspiration and Net Irrigation Water Requirements for Nevada* (NIWR) for the net irrigation water requirement for alfalfa in Mason Valley.⁵⁶

The NIWR, published by the Nevada Division of Water Resources, establishes an evapotranspiration (ET) and net irrigation requirement for various crop types by different growing regions throughout the State.⁵⁷ Dr. Greg Pohll, an expert hydrologist representing NFWF, testified that he understood the 3.10 acre-feet per acre figure in the NIWR included variable start dates for irrigation in Mason and Smith Valleys, and included simulated cuttings as part of the calculations, which comprise the net irrigation and ET figure for those areas.⁵⁸ As Dr. Pohll pointed out during his testimony, the simulated or actual green up or planting dates for Mason and Smith Valleys are mid to late March or early April.⁵⁹ As well, he stated the NIWR calculations simulate cuttings during the season.⁶⁰ The Applicant testified through David Yardis that although Application 80700 was filed for the full 7.745 cfs (consisting of both consumptive and non-consumptive portions), it was contemplated that at some point, the amount actually transferred would likely be limited to a consumptive use amount.⁶¹ To that end, Yardas' testimony reiterated Dr. Pohll's testimony that the consumptive use figure of 3.10 acre-feet per acre accounted for variable weather situations, ET, and regular cuttings.⁶²

Significantly, Exhibit 199, an excerpt of a joint exhibit submitted by WRID-Lyon County-Bowman (Joint Protestants) concluded that if a transfer were limited to the consumptive portion, it would avoid conflict and injury to other existing water rights.⁶³ As well, in the Board's letter to the State Engineer dated July 15, 2011, the Board observed that NFWF had requested a transfer of the full duty of the decreed rights in the Application, and the Board

⁵⁶ SE Exhibit 41 at 4 ¶ 1(g); *and see also*, NFWF Exhibit 134 at 215.

⁵⁷ NFWF Exhibit 134.

⁵⁸ Transcript, Vol. II p. 275:2-19.

⁵⁹ NFWF Exhibit 134 at 45, Table 4.

⁶⁰ Transcript Vol. II p. 275:12-19; *and see also, e.g.*, NFWF Exhibit 134 at 45, Table 4; p. 38 (discussing simulated irrigations); p. 39 (discussing crop coefficient curves, where the curve is generally constant, or is reduced based on simulated cuttings and harvest); p. 43 (discussing "typical" assumed cutting and harvest dates in calibration of equation values).

⁶¹ Transcript, Vol. II pp. 221:23-25; 225:18 to 226.

⁶² *Id.*

⁶³ Joint Exhibit 199.

requested that the State Engineer consider the consumptive use of the water rights sought to be changed.⁶⁴

The State Engineer finds that Dr. Pohl's interpretation of the methodology of the NIWR is correct, and that the NIWR consumptive use figure of 3.10 acre-feet per acre in the Walker River Basin for alfalfa takes into account a variable irrigation start date and multiple simulated cuttings during the irrigation season. Hence, the arguments made by the Bowman Protestants concerning impacts to new land storage rights are addressed within the calculation of the 3.10 acre-feet per acre consumptive use amount.

The State Engineer finds that the requested change by NFWF is not indifferent from an irrigator who has a decreed right to call for water on March 1st for the duration of the irrigation season. The State Engineer finds that as the holder of claims senior in priority to new lands storage rights, NFWF has the right to seek a change in the manner and place of use, and that the Bowman Protestants' joint exhibit and the Board's July 15, 2011, letter concurred that any change should be limited to the consumptive use figure to avoid impacts to existing rights. The State Engineer finds the bases of the protest ground that there will be impacts to junior storage rights has been addressed by the *WRID Stipulation*, which agrees to limit the change to the consumptive use amount of 3.10 acre-feet per acre, and this protest ground is hereby overruled.

IV.

Lessened Efficiencies and Increased Costs

Nevada Revised Statute § 533.370(1)(b) requires that the State Engineer approve an application submitted in the proper form if the proposed use or change is within an irrigation district and does not adversely affect the cost of water for other holders of water rights in the district, or lessen the efficiency of the district in its delivery or use of water.

Protestants assert that granting the Application will lessen efficiencies within the District and increase the cost of water. NFWF stipulated to continue the payment of operation and maintenance charges, including ditch charges properly assessed, which come due as if the water rights were still appurtenant to the acreage from which the water rights are changed.⁶⁵ The State Engineer finds the *WRID Stipulation* adequately addresses the protest ground concerning increased costs, as the operation and maintenance and ditch assessments will not be shifted to other landowners, but will continue to be paid by NFWF.

⁶⁴ SE Exhibit 2 at 1 ¶ 1.

⁶⁵ SE Exhibit 41, p. 5 ¶ 1(j).

In addition, the *WRID Stipulation* gives the Water Master discretion, according to the 1953 Rules, to use the non-consumptive portion of the changed rights to mitigate any conflict, efficiency loss or to convey the Program Water from the point of non-diversion to the Wabuska Gage.⁶⁶ Hence, even if the Water Master determined the efficiencies were lessened or that a conflict arose, he has discretion through the *WRID Stipulation* to use the non-consumptive portion of the water rights to remedy any such issues.⁶⁷

The State Engineer finds that the *WRID Stipulation* provides the Water Master with sufficient discretion to use the non-consumptive portion of the water rights to mitigate any conflicts or efficiency issues downstream of the point of non-diversion. Therefore, the protest ground that there will be lessened efficiencies within the District is hereby overruled.

V.

Remaining Protest Issues

With regard to the remaining protest issues asserted by the Bowman Protestants, the State Engineer finds that no evidence was presented that the proposed change will cause injury to domestic or irrigation wells, that the proposed change will unduly limit growth and prosperity in the basin, that the proposed change will eliminate opportunities to purchase water in the WRID system, or that the proposed change will cause negative environmental impacts, and these protest grounds are hereby dismissed.

VI.

Tribe Stipulation and Conveyance Agreement

The Tribe holds the earliest decreed right having a priority of 1859. The Tribe's decreed right entitles the Tribe to 26.25 cfs for 180 days each year to irrigate 2,100 acres of land in the Reservation.⁶⁸ The Tribe's water is measured at the Wabuska Gage where the water enters the Reservation, with the Reservation being located at the end of the system, just above where the River enters Walker Lake. For that reason, it was necessary that the Applicant, Tribe and BIA come to an agreement on how Program Water would be conveyed instream through the Reservation to Walker Lake. The parties were able to achieve a Conveyance Agreement, which

⁶⁶ SE Exhibit 41, p. 5 ¶ 1(h).

⁶⁷ Application 80700 was not protested by any Highland Ditch user on the ground that ditch efficiencies would be lessened.

⁶⁸ USBWC Exhibit 1053 p. 2.

was made a part of the *Tribe Stipulation*. The Conveyance Agreement was the product of collaborative effort by a technical team of individuals representing various interests including Paul Hamai representing the BIA, Kipp Allander representing the U.S. Geological Society, Dwight Smith representing the Tribe and Dr. Pohll and Bruce Aylward representing NFWF.⁶⁹ Dr. Pohll explained the collaborative process, which was that equations were presented in a draft protocol document and circulated to the team who would review and test the equations using various flow rates. Questions and issues were worked through by the team and the equations were revised, eventually arriving at the accounting protocols all agreed to in the Conveyance Agreement and accounting protocol spreadsheet.⁷⁰

At the most basic level, Mr. Yardas described the operation of the accounting protocols as at such time any Program Water makes it to the Wabuska Gage when in priority, the accounting protocols account for the conveyance of water through the reservation.⁷¹ In technical terms, Dr. Pohll described that the basis for the accounting was a mass balance approach where various data are input into the accounting spreadsheet, including Program Water at Wabuska Gage, other gage readings and flow rates, Weber Reservoir stage and storage level, temperature, and precipitation, which are then used to calculate several key parameters, including transmission, accretions and/or depletions along the river channel and Weber Reservoir discharge.⁷² For the temperature element, Dr. Pohll stated that the USGS used a linear regression between the maximum temperature and evaporation, which is an appropriate approach in this case; however, he hoped that as more data became available, the calculation could be updated to increase the precision of that figure.⁷³ In accounting terms, the transmission losses are based upon proportional shares of the amount of flow in the river - known as a linear apportionment of loss.⁷⁴

Whereas all of the calculations are based on measurements of discharge or flow rates, Dr. Pohll testified that he reviewed the Wabuska and Little Dam gages prior to the hearing, and determined that these gages were classified by the USGS as good or fair. In quantitative terms good is determined to be that 95 percent of the daily discharges are within 10 percent of the true value, and a fair value is determined to be that 95 percent of daily discharges are within 15

⁶⁹ Transcript, Vol. II p. 276:4-15.

⁷⁰ Transcript, Vol. II p. 277:10-23.

⁷¹ Transcript, Vol. II pp. 230:22 to 231:2; NFWF Exhibit 136.

⁷² Transcript, Vol. II pp. 278-281.

⁷³ Transcript, Vol. II p. 281:6-19.

⁷⁴ Transcript, Vol. II p. 282:5-13.

percent of the true value.⁷⁵ Dr. Pohll stated that he believed that USGS does a good job of regularly visiting the gages to update the rating curve, which defines how much flow is in the river for a given stage. Hence, Dr. Pohll opined that it was unlikely there would be long-term bias in the flow record.⁷⁶

Rob Anderson, P.E., testified as an expert professional engineer with a background in water rights and water right permitting for the Board. Mr. Anderson relayed his findings and concerns over the conveyance protocols in a memorandum to the Board, which he clarified was intended to be a summary of the findings and not a technical review.⁷⁷ In preparing his findings and conclusions, Mr. Anderson reviewed various documents and met with Kip Allander from the USGS. The first concern of Mr. Anderson was that the protocols rely on certain assumptions of historic gage data and uncertainties in the gage data that present a potential for bias.⁷⁸ Mr. Anderson believed that a stream gage analysis would help the USGS and Water Master understand the level of uncertainty or potential for bias.⁷⁹ Next, Mr. Anderson took issue with the fact that the data used to perform the regression analysis had not been made available to the State Engineer or Water Master to confirm the results of the analysis.⁸⁰ Third, the daily gage data was provisional and subject to later adjustment by the USGS, potentially affecting daily values vis-à-vis Program Water downstream.⁸¹ Finally, Mr. Anderson was concerned with the assumption that the amount of evaporation of Program Water through Weber Reservoir was set by default to be negligible, when actual evaporation could be significant if the Program Water were allowed to remain in Weber Reservoir.⁸² To that end, Program Water in Weber Reservoir is not allowed to go negative, which Mr. Anderson opined could be injurious to the Tribe.⁸³ Overall, Mr. Anderson opined that Dr. Pohll's report that he reviewed was well-prepared and accurately described a typical hydrologic process on a river. If Mr. Anderson had any exception to Dr. Pohll's report, it would be that it suggested a level of accuracy that may not be available

⁷⁵ Transcript, Vol. II p. 284:1-16.

⁷⁶ Transcript, Vol. II p. 284:17-23.

⁷⁷ Transcript, Vol. III p. 353:1-18.

⁷⁸ Transcript, Vol. III pp. 356:12-16; 357:18-25.

⁷⁹ Transcript, Vol. III p. 364:24 to 365:4.

⁸⁰ Transcript, Vol. III pp. 358:10-17; 359:6-9.

⁸¹ Transcript, Vol. III p. 362:9-13.

⁸² Transcript, Vol. III pp. 365:12-17; 366:14-24.

⁸³ Transcript, Vol. III p. 367:6-16.

through the present data.⁸⁴ Mr. Anderson offered suggestions in response to his concerns, which include the aforementioned stream gage analysis, installation of a weather station at Weber Reservoir, installation of a gage near the Yerington Weir, and creating storage at the lower end of the basin above the Weir; however, Mr. Anderson conceded on cross-examination that none of those mechanisms currently exist.⁸⁵ As well, he admitted that the Tribe currently does not hold a water right in Weber Reservoir, hence there is no right in the Reservoir that would be injured by evaporation were Program Water to be left in the Reservoir for any length of time.⁸⁶ Finally, Mr. Anderson agreed that a mass balance approach to account for losses in transporting water was a good approach.⁸⁷

The State Engineer concurs with the position of the Applicant that the *Tribe Stipulation*, Conveyance Agreement and accounting protocols represent a collaborative agreement between the Applicant, Tribe and BIA, to endeavor to move junior rights past the Tribe's senior right, while attempting to fairly protect all parties' interests. The State Engineer accepts the use of the USGS regression analysis and linear apportionment of loss, and finds that the *Tribe Stipulation* specifically allows the accounting protocols to be refined once implemented,⁸⁸ however, the State Engineer finds that as presented, the Program Water moved downstream pursuant to the conveyance protocols will not conflict with the Tribe's senior right.

VII.

Board/Water Master Administration

During his testimony, the Water Master testified he did not know how to manage an instream use as proposed by Application 80700; however, the State Engineer observes that other temporary changes have been granted by the State Engineer and approved by the Decree Court for the benefit of the Tribe.⁸⁹ As well, the State Engineer accepts the testimony of the Water Master that the Water Master has historically been able to serve the decreed rights by diverting water at the Highland Ditch, when in priority. Now, the Water Master would be called upon to serve the same decreed rights by leaving them in the river as instream flows. To that end, the Water Master indicated that if the State Engineer and Decree Court approved Application 80700, the Water Master would still administrate the changed rights to the best of his ability.

⁸⁴ Transcript, Vol. III p. 370:2-11.

⁸⁵ Transcript, Vol. III pp. 379-380.

⁸⁶ Transcript, Vol. III p. 384:21-24.

⁸⁷ Transcript, Vol. III p. 376:6-9.

⁸⁸ SE Exhibit 200 at 2 ¶ 1(B).

⁸⁹ See, Transcript, Vol. I p. 134; and see, USBWC Exhibits 1061-1065.

The Board asserts it cannot be known whether measurable Program Water will reach Walker Lake, and analogizes Application 80700 to the applications at issue in State Engineer's Ruling No. 5936. In Ruling No. 5936, the applicant in that case proposed to change the waters of Musgrove Creek to instream flows to the Truckee River; however, the waters sought to be changed had to travel through Washoe Lake, Little Washoe Lake, Steamboat Creek and finally to the Truckee River.⁹⁰ The applications at issue in Ruling No. 5936 were denied when the State Engineer concluded that, among other things, there was no feasible means to account for transmission losses and no feasible means to ensure that the water from Musgrove Creek would actually reach Vista Gage in the Truckee River. In large part, the feasibility issues were premised upon the transmission of Musgrove Creek water through multiple water bodies, which are often not even connected, before reaching the Truckee River. As well, additional feasibility issues were present where the applications proposed to commingle waters under the jurisdiction of the State Engineer with waters under the jurisdiction of the Water Master, potentially impairing the ability of each to manage the waters under their respective jurisdictions.

In contrast, there is no commingling of waters under different jurisdictions in Application 80700, as all of the decreed rights sought to be changed are under the jurisdiction of the Water Master. What's more, the Walker River system, which terminates in Walker Lake, is a closed system and the Water Master is not being requested to administer the changed rights through multiple water sources to the eventual place of use. The State Engineer finds that the facts upon which Ruling No. 5936 was based are inapplicable here and he rejects the comparison of that ruling to the decreed rights in Application 80700.

Along that line, the State Engineer likewise rejects the Water Master's contention that he is required to ensure the Program Water reaches Walker Lake.⁹¹ The place of use identified in Application 80700 includes from below the Yerington Weir into and including Walker Lake.⁹²

As the Board stated in its July 15, 2011, letter to the State Engineer, the mere delivery of water below the Yerington Weir appeared to meet the criteria of beneficial use in the applied for place of use.⁹³ The State Engineer agrees with the Board's observation that the Water Master's delivery of Program Water to the point of non-diversion achieves beneficial use at the place of use by leaving the water in the river at the former point of diversion. To the extent the

⁹⁰ State Engineer's Ruling No. 5936, dated February 10, 2009, official records in the Office of the State Engineer.

⁹¹ See Transcript, Vol. I pp. 127, 136.

⁹² SE Exhibit 17, ¶ 7; Transcript, Vol. I p. 155:6:15; Vol. II pp. 266:15 to 267:4.

⁹³ See Exhibit 2 at p. 3 ¶ 4.

accounting protocols require the Water Master to determine the amount of Program Water at the Wabuska Gage, the Water Master testified that each day, he already completes a worksheet of gage readings, which includes the Wabuska Gage.⁹⁴ Now, the Water Master is asked to determine the amount of Program Water at Wabuska Gage and to transmit this number daily to NFWF, the Tribe and BIA, for their purpose of implementing the accounting protocols.⁹⁵ Absent any dispute that arises among the parties, the Water Master is not requested to perform any additional tasks concerning the Conveyance Agreement beyond determining the amount of Program Water at the Wabuska Gage to implement the accounting protocols.

The State Engineer has considered the issues raised by the Board and finds that the evidence presented is insufficient to cause the State Engineer to deny Application 80700. As to any additional concerns raised by the Board not discussed hereinabove, the State Engineer finds that the issues were resolved prior to the administrative hearing.⁹⁶

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁹⁷

II.

The State Engineer is prohibited by law from granting a change application where:⁹⁸

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

National Fish and Wildlife Foundation has stipulated to continue payment of the operation and maintenance charges, including ditch charges assessed as if the water rights were

⁹⁴ Transcript, Vol. I p. 104:1-8; *and see* USBWC Exhibit 1057 (USBWC Daily Worksheet).

⁹⁵ Transcript, Vol. III p. 368:9-13.

⁹⁶ In its Interim Order dated July 7, 2012, the State Engineer determined: (1) that he would not postpone acting on the Application due to Walker Lake litigation pending in the U.S. District Court of Nevada; (2) that no additional studies would be ordered pursuant to NRS § 533.368; (3) that the parties agreed to extend the time for a decision by the State Engineer to March 24, 2014, pursuant to Art. VI, § 6.1 of the *Administrative Rules*; (4) that Walker Lake is included in the Walker River basin; (5) that the Decree does not require an owner of a water right to also own the land or place of use where the water will be used. SE Exhibit 35; *cf.*, SE Exhibit 2; *and see also*, Transcript, Vol. I pp. 138:22-25; 141:20-25 to 142:1-18.

⁹⁷ NRS Chapter 533.

⁹⁸ NRS § 533.370(2).

still appurtenant to the land. As well, the Water Master retains discretion to administer the non-consumptive portion of the water rights to avoid conflicts or to mitigate hydrologic system losses. Therefore, the State Engineer concludes pursuant to NRS § 533.370(1)(b) that the proposed change will not adversely affect the cost of water to other rightholders within the District, nor will it lessen the efficiency of the District in its delivery of water.

IV.

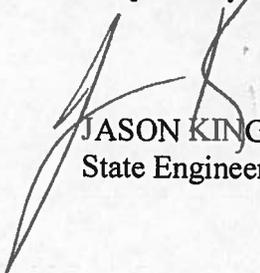
The State Engineer concludes that when limited to the consumptive use amount of 3.10 acre-feet per acre, the proposed change of NFWF's senior decreed rights does not conflict with existing rights in violation of the Decree or Nevada law, and does not threaten to prove detrimental to the public interest.

RULING

The protests to Application 80700 are hereby overruled and Application 80700 is granted subject to:

1. Existing rights;
2. Payment of the statutory permit fees;
3. The stipulated conditions of the parties;
4. The consumptive use of the base rights being changed.

Respectfully submitted,


JASON KING, P.E.
State Engineer



Dated this 20th day of
March, 2014.

ATTACHMENT 1

SE 'S EXHIBITS 41
10-28-13
DATE: 7-8-13

RECEIVED
2013 JUN 28 PM 3:00
STATE ENGINEERS OFFICE

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

IN THE MATTER OF CHANGE)
APPLICATION NO. 80700 FILED BY)
THE NATIONAL FISH AND WILDLIFE)
FOUNDATION)
)
)
)
)

**CONDITIONAL STIPULATION TO
RESOLVE CERTAIN PROTEST
ISSUES REGARDING APPLICATION
NO. 80700**

RECITALS

1. The National Fish and Wildlife Foundation ("NFWF") has pending before the Nevada State Engineer (the "State Engineer") Amended Application No. 80700 ("Application No. 80700") requesting to change the manner of use and place of use of portions of certain water rights adjudicated by that certain Decree (the "Walker River Decree") entered April 14, 1936, and amended April 24, 1940, by the District Court (the "Walker Decree Court") of the United States in and for the District of Nevada in that certain action (the "Walker Decree Action") entitled *The United States of America, Plaintiff, vs. Walker River Irrigation District, et al., Defendants*, In Equity Docket No. C-125.

2. Application No. 80700 was protested by numerous persons and entities, including the Walker River Irrigation District; the United States Bureau of Indian Affairs; Lyon County, Nevada; the Walker River Paiute Tribe; Mickey Mutual Ditch Company; G&H Mutual Ditch Company; Greenwood Mutual Ditch Company; Backtrack, LLC; Bale Counter, Inc.; Berrington Custom Hay Hauling & Transportation, Inc.; Damian, Ltd.; Garmsland Limited, LLC; Gary G. Garms; Gary J. Garms; Gary M. Berrington; GDA Degree, Inc.; High Sierra Garlic; Jackaroo, LLC; Kari D. Garms; Peter A. Fenili; Settelmeyer-Rosse Ranch Management, LLC; Six-N Ranch, Inc.; Straggler, LLC; Toni J. Garms; Jim and Bunny Snyder; Eddie R. and Theresa Snyder Trust,

1 Eddie R. Snyder, Trustee; Eufrazia, LLC; LJ Land, Limited; Snyder Livestock Co.;
2 Spragg-Woodcock Mutual Ditch Co.; Campbell Canal Co.; Newhall Mutual Ditch Co.; David
3 Sceirine; and Joseph Sceirine, all of whom submitted Intent to Participate forms (hereinafter
4 sometimes collectively referred to as "Protestants").

5 3. Pursuant to the Administrative Rules and Regulations Regarding Change of Point
6 of Diversion, Manner of Use or Place of Use (the "Administrative Rules and Regulations") as
7 approved by the Walker Decree Court and the Interim Order of the Hearing Officer in this
8 proceeding the United States Board of Water Commissioners is participating as a party to these
9 proceedings.
10

11 4. Pursuant to portions of several acts of Congress, which are generally referred to as
12 the Desert Terminal Lakes legislation, NFWF is charged with, among other things, the acquisition,
13 from willing sellers, of land, water appurtenant to land and related interests in the Walker River
14 Basin for, among other things, environmental restoration in the Walker River Basin.
15

16 5. The Parties hereto desire that certain issues raised in protests of Application No.
17 80700 by these Parties signatory to this Stipulation be resolved by these Parties in advance of the
18 scheduled administrative hearing on Application No. 80700, and that Application No. 80700 be
19 approved and granted pursuant to the terms and conditions of this Stipulation.
20

21 STIPULATION

22 NOW, THEREFORE, the Parties hereto, acting either individually or by and through their
23 respective counsel, stipulate and agree as follows:

24 1. The State Engineer may issue a permit granting Application No. 80700, subject to
25 the following terms, conditions and limitations:

26 (a) The place of use to include the lower Walker River and Walker Lake as set
27 forth in Attachment A of Application No. 80700 at Item 7.
28

1 (b) The "Point of Non-Diversion" for the changed water rights shall be the
2 Yerington Weir, also referred to as the Weir Diversion Structure, which is identical to the current
3 point of diversion of the water rights proposed for change in Application No. 80700 at Item 6.

4 (c) The manner of use to be wildlife purposes in accordance with Nevada
5 Revised Statutes Chapter 533 as set forth in Application No. 80700 at Item 3.

6 (d) Subject to the continuing jurisdiction and regulation by the State Engineer,
7 the United States Board of Water Commissioners and the Walker Decree Court.

8 (e) Subject to the terms and conditions imposed by the Walker River Decree
9 and with the understanding that the water rights change requested by Application No. 80700 will
10 not injure or conflict with existing water rights in violation of the Walker River Decree and NRS
11 533.370(2).
12

13 (f) The Chief Deputy Water Commissioner of the United States Board of
14 Water Commissioners (the "Chief Deputy Water Commissioner") shall administer at the Point of
15 Non-Diversion the full decreed flow rate for the water rights sought for transfer by Application
16 No. 80700 when such rights are in priority, as set forth in Table 1 below and as provided in
17 subparagraphs (g) and (h) below.
18

19 Table 1: App. No. 80700 Water Rights Administered at Yerington Weir

20

Priority Date	Claim No.	Irrigated Acres	Full Decreed Diversion Rate (cfs)	Sum by Priority (cfs)
1874	89	33.360	0.400	0.400
1877	67	72.000	0.860	0.860
1880	23-A	86.280	1.035	
1880	44	50.000	0.600	
1880	89	9.550	0.110	1.745
1881	35	20.000	0.240	0.240
1887	23	32.500	0.390	0.390
1888	23-A	80.000	0.960	0.960
1891	89	8.930	0.110	0.110

21
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28

Priority Date	Claim No.	Irrigated Acres	Full Decreed Diversion Rate (cfs)	Sum by Priority (cfs)
1894	23	7.500	0.090	0.090
1896	67	91.430	1.100	1.100
1900	23-A	115.040	1.380	
1900	23	10.000	0.120	1.500
1901	44	15.000	0.180	0.180
1904	67	4.570	0.050	0.050
1906	23	10.000	0.120	0.120
TOTALS		646.160	7.745	7.745

(g) The Chief Deputy Water Commissioner shall administer and protect from diversion by others at and downstream of the Point of Non-Diversion the consumptive use portion of the water rights administered pursuant to paragraph 1(f), above, for the new manner of use and new place of use, when such rights are in priority, as set forth in Table 2 below. The consumptive use portion of the Application No. 80700 water rights is determined to be 3.10 acre feet per acre during an irrigation season of March 1 to October 31, as set forth in Nevada Division of Water Resources, *Evapotranspiration and Net Irrigation Water Requirements for Nevada* (Huntington and Allen, Jan. 2010) (p. 215), for the net irrigation water requirement for alfalfa in Mason Valley.

Table 2: App. No. 80700 Water Rights Consumptive Use Portion Administered by Chief Deputy Water Commissioner

Priority Date	Claim No.	Irrigated Acres	Consumptive Use Portion @ 3.1 AFA: Duty (acre-feet)	Consumptive Use Portion @ 3.1 AFA: Flow Rate (cfs)	Sum by Priority (cfs)
1874	89	33.360	103.416	0.212	0.212
1877	67	72.000	223.200	0.459	0.459
1880	23-A	86.280	267.468	0.550	
1880	44	50.000	155.000	0.318	
1880	89	9.550	29.605	0.060	0.928
1881	35	20.000	62.000	0.127	0.127
1887	23	32.500	100.750	0.207	0.207

Priority Date	Claim No.	Irrigated Acres	Consumptive Use Portion @ 3.1 AFA: Duty (acre-feet)	Consumptive Use Portion @ 3.1 AFA: Flow Rate (cfs)	Sum by Priority (cfs)
1888	23-A	80.000	248.000	0.510	0.510
1891	89	8.930	27.683	0.056	0.056
1894	23	7.500	23.250	0.047	0.047
1896	67	91.430	283.433	0.583	0.583
1900	23-A	115.040	356.624	0.733	
1900	23	10.000	31.000	0.063	0.796
1901	44	15.000	46.500	0.095	0.095
1904	67	4.570	14.167	0.029	0.029
1906	23	10.000	31.000	0.063	0.063
TOTALS		646.160	2,003.096	4.112	4.112

(h) The remainder or non-consumptive use portion of the water rights administered pursuant to paragraph 1(f) above when such rights are in priority, shall be administered by the Chief Deputy Water Commissioner in his discretion pursuant to the Walker River Decree and the 1953 Rules and Regulations for the Distribution of Water on the Walker River Stream System, including to avoid conflict with and injury to existing water rights at and downstream of the Point of Non-Diversion and to mitigate hydrologic system losses, from the Point of Non-Diversion to the point or points where the non-consumptive use portion historically returned to the Walker River upstream of the Wabuska Gage.

(i) Each changed Application No. 80700 water right may only be exercised in priority when its full decreed amount (see Table 1, above) is available at the Point of Non-Diversion as determined by the Chief Deputy Water Commissioner.

(j) Payment of operation and maintenance charges, including ditch charges, that are properly assessed and come due as if the water rights were still appurtenant to the agricultural lands from which they are changed.

1 2. Subject to the approval and incorporation into the permit by the State Engineer of
2 the terms of this Stipulation, NFWF withdraws the proposal in Application No. 80700 at item 16 to
3 retire all associated supplemental groundwater rights, and nothing in any final approval of
4 Application No. 80700 shall require NFWF to retire any groundwater rights which were
5 supplemental to the water rights being changed pursuant to Application No. 80700. This provision
6 is an outgrowth of negotiated terms among the Parties herein. It is without prejudice to NFWF's
7 use, withdrawal, or other manner of disposition of such supplemental groundwater rights and to
8 the right of any person, including parties, to this Stipulation, to protest or object to any such use,
9 withdrawal or other manner of disposition in the future. The parties to this Stipulation recognize
10 and acknowledge that changes to such supplemental groundwater rights are subject to the
11 requirements of N.R.S. Chapter 533, including, without limitation, the provisions of N.R.S.
12 533.370(2). Any approval of the terms of this Stipulation by the State Engineer shall not constitute
13 a precedent that the State Engineer in the future may not require retirement of supplemental
14 groundwater rights associated with surface water rights as a condition in connection with action on
15 similar applications to change surface water rights to instream uses.
16

17
18 3. The parties stipulate that a permit subject to the terms and conditions set forth in
19 paragraph 1 above will not injure or conflict with existing water rights in violation of the Walker
20 River Decree and NRS 533.370(2), adversely affect the cost of water for other holders of water
21 rights, lessen the efficiency of the delivery of water within the Walker River Irrigation District, or
22 threaten to prove detrimental to the public interest.

23
24 4. By entering into this Stipulation, no party waives any rights with respect to the
25 content of any future change application, or with respect to any protest thereto, which any of them
26 may file.

27 5. The presently scheduled hearing dates of July 8, 2013 through July 19, 2013, or the
28 portion of them that may be necessary, shall be used first, and in combination with other later

1 hearing dates as the State Engineer may determine, for the State Engineer to either approve or
2 reject this Stipulation, and thereafter to consider the protests or other matters which remain after
3 that approval or rejection, including conveyance of changed instream water rights from the Point
4 of Non-Diversion to Walker Lake. No Party to this Stipulation waives any right to participate fully
5 with respect to any such remaining protest grounds or other matters.

6 6. The provisions of this Stipulation are not severable, and in the event that this
7 Stipulation is not approved by the State Engineer and the Walker Decree Court without changes, it
8 shall be deemed withdrawn without prejudice to any claims or contentions which may have been
9 made or may be made in this proceeding by any Party, and it shall not be admissible as evidence or
10 in any way described or discussed in any proceeding subsequent to any non-approval as described
11 in this paragraph.
12

13 7. The Parties to this Stipulation shall support approval by the Walker Decree Court of
14 Application No. 80700 as provided in this Stipulation.

15 8. If the State Engineer, or the Walker Decree Court, does not approve this Stipulation
16 as provided in Paragraph 6 above, no Party to this Stipulation shall be determined to be bound by
17 any provisions or agreements reached and described herein.
18

19 9. This Stipulation represents a compromise of the Parties. Except as expressly set
20 forth herein, the provisions of this Stipulation shall not be construed as or deemed to be precedent
21 by any Party, the State Engineer or the Walker Decree Court with respect to any issue, principle, or
22 interpretation, or application of law and regulations for any purpose, or in connection with any
23 proceeding before a court of law, or any state or federal government regulatory body.
24

25 ///

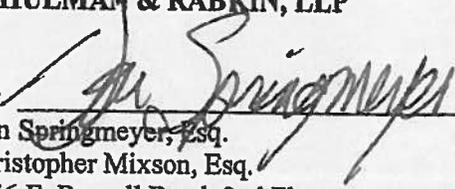
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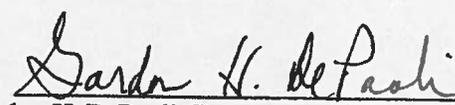
28 ///

1 10. This Stipulation may be executed in counterparts or via facsimile or electronic
2 scanning.

3 **WOLF, RIFKIN, SHAPIRO,
4 SCHULMAN & RABKIN, LLP**

5 By: 
6 Don Springmeyer, Esq.
7 Christopher Mixson, Esq.
8 3556 E. Russell Road, 2nd Floor
9 Las Vegas, Nevada 89120
10 Dated: 6/28/13
11 *Attorneys for Applicant National*
12 *Fish & Wildlife Foundation*

WOODBURN AND WEDGE

By: 
Gordon H. DePaoli, Esq.
Dale E. Ferguson, Esq.
6100 Neil Road, Suite 500
Reno, Nevada 89511
Dated: 6/28/13
Attorneys for Protestant Walker
River Irrigation District

AFFIDAVIT OF SERVICE

1
2 STATE OF NEVADA)
) ss.
3 COUNTY OF WASHOE)

4 Holly Dewar, being first duly sworn, deposes, and states under penalty of perjury, as
5 follows:

6 I am an employee of the law firm of Woodburn and Wedge, a citizen of the United States,
7 over 18 years of age, and not an interested person to the above-entitled matter.

8 On June 28th, 2013, I deposited in sealed envelopes in the United States Mail, postage
9 fully prepaid, a true and correct copy of the *Stipulation to Approve Application No. 80700* filed in
10 the above entitled matter, addressed to each of the names and addresses as follows:

12 George Benesch
13 190 W. Huffaker Lane, Ste. 408
14 Reno, Nevada 89511

 Joseph Sceirine
 P.O. Box 1013
 Yerington, Nevada 89447

15 Linda Bowman
16 P.O. Box 10306
17 Reno, Nevada 89510-0306

 Jim Snyder
 P.O. Box 550
 Yerington, Nevada 89447

18 Campbell Canal Co., David Sceirine, Pres.
19 c/o Rife and Associates
20 22 Highway 208
21 Yerington, Nevada 89447

 Don Springmeyer, Christopher Mixson
 Wolf Rifkin Shapiro Schulman Rabkin
 3556 E. Russell Road, 2nd Floor
 Las Vegas, Nevada 89120

22 Newhall Mutual Ditch Co., Darrel E. Pursel
23 42 McKenzie Lane
24 Yerington, Nevada 89447

 Walker River Irrigation District
 Kenneth Spooner, Manager
 P.O. Box 820
 Yerington, Nevada 89447

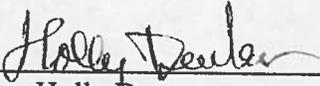
25 Karen Peterson
26 Allison MacKenzie Law Firm
27 402 N. Division Street
28 Carson City, Nevada 89702

 Christopher Watson
 U.S. Dept. of Interior
 Office of the Solicitor
 1849 C St. NW, MS 6513 MIB
 Washington, D.C. 20240

 Steven B. Rye
 215 W. Bridge St., Ste. 3
 Yerington, Nevada 89447

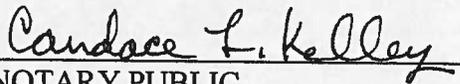
 Wes Williams, Jr.
 P.O. Box 100
 Schurz, Nevada 89427

1 David Sceirine
2 P.O. Box 239
3 Yerington, Nevada 89447

4 
5 _____
6 Holly Dewar

7 SUBSCRIBED and SWORN to before
8 me this 28 day of June, 2013.



10 
11 _____
12 NOTARY PUBLIC

1 Don Springmeyer, Esq.
Nev. Bar No. 1021
2 Christopher W. Mixson, Esq.
Nev. Bar No. 10685
3 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
4 3556 E. Russell Rd.
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5 dspringmeyer@wrslawyers.com
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6 Ph: 702.241.5200/Fx: 702.341.5300

7 *Attorneys for Applicant National Fish & Wildlife Foundation*

8
9 **IN THE OFFICE OF THE STATE ENGINEER**
10 **OF THE STATE OF NEVADA**

11 IN THE MATTER OF CHANGE
12 APPLICATION 80700 FILED BY THE
13 NATIONAL FISH & WILDLIFE
FOUNDATION

**STIPULATION RE CONSUMPTIVE USE
TABLE**

14 Pursuant to the direction of the Office of the Nevada State Engineer, as provided at the
15 July 8, 2013 administrative hearing in this matter, the Applicant National Fish & Wildlife
16 Foundation (NFWF) and Protestant Walker River Irrigation District (WRID), hereby provide to
17 the State Engineer a revised Table 2 with corrected rounding of the consumptive use portion
18 converted flow rate (in cubic feet per second) for the water rights sought for change by NFWF
19 in Application No. 80700.

21 NFWF and WRID, through their undersigned attorneys, hereby stipulate and agree as
22 follows:

23 1. That the Conditional Stipulation to Resolve Certain Protest Issues Regarding
24 Application No. 80700 filed June 28, 2013, be modified by replacing Table 2, at pages 4-5
25 thereof, with the following Table:
26
27
28

Table 2: App. No. 80700 Water Rights Consumptive Use Portion Administered by Chief Deputy Water Commissioner

Priority Date	Claim No.	Irrigated Acres	Consumptive Use Portion @ 3.1 AFA: Duty (acre-feet)	Consumptive Use Portion @ 3.1 AFA: Flow Rate (cfs)	Sum by Priority (cfs)
1874	89	33.360	103.416	0.213	0.213
1877	67	72.000	223.200	0.459	0.459
1880	23-A	86.280	267.468	0.550	
1880	44	50.000	155.000	0.319	
1880	89	9.550	29.605	0.061	0.930
1881	35	20.000	62.000	0.128	0.128
1887	23	32.500	100.750	0.207	0.207
1888	23-A	80.000	248.000	0.510	0.510
1891	89	8.930	27.683	0.057	0.057
1894	23	7.500	23.250	0.048	0.048
1896	67	91.430	283.433	0.583	0.583
1900	23-A	115.040	356.624	0.734	
1900	23	10.000	31.000	0.064	0.798
1901	44	15.000	46.500	0.096	0.096
1904	67	4.570	14.167	0.029	0.029
1906	23	10.000	31.000	0.064	0.064
TOTALS		646.160	2,003.096	4.122	4.122

2. Except as expressly provided herein, the Conditional Stipulation remains in full force and effect.

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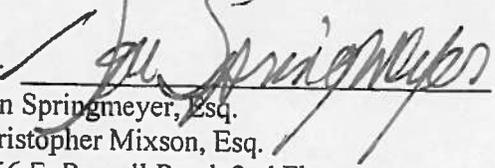
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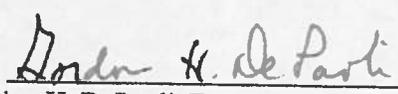
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3. This Stipulation may be executed in counterparts, or by facsimile or electronic scanning.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

WOODBURN AND WEDGE

By: 
Don Springmeyer, Esq.
Christopher Mixson, Esq.
3556 E. Russell Road, 2nd Floor
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Dated: 10/24/13
*Attorneys for Applicant National
Fish & Wildlife Foundation*

By: 
Gordon H. DePaoli, Esq.
Dale E. Ferguson, Esq.
6100 Neil Road, Suite 500
Reno, Nevada 89511
Dated: October 24, 2013
*Attorneys for Protestant Walker
River Irrigation District*

CERTIFICATE OF MAILING

I certify that I am an employee of the law office of Wolf, Rifkin, Shapiro, Schulman and Rabkin, LLP, and that on this date I caused to be served by U.S. mail, postage prepaid, a true and correct copy of the foregoing **STIPULATION RE CONSUMPTIVE USE TABLE** on the following persons and/or entities:

Karen Peterson, Esq.
Allison, MacKenzie Law Firm
402 North Division Street
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Christopher Watson, Esq.
U.S. Department of the Interior
Office of the Solicitor
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christopher.watson@sol.doi.gov
Attorneys for U.S. Bureau of Indian Affairs

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Gary M. Berrington, Settelmeyer-Rosse Ranch
Management, LLC, et al.*

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*Attorney for Mickey Mut. Ditch Co., G&H
Mut. Ditch Co., Greenwood Mut. Ditch Co.,
Campbell Canal Co.*

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Attorney for Lyon County

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wwilliamslaw@gmail.com
Attorneys for Walker River Paiute Tribe

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*for Jim Snyder, Eddie R. Snyder, Eufrazia
LLC, Spragg-Woodcock Mut. Ditch Co., et al.*

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c/o Rife and Associates
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Yerington, Nevada 89447

Joseph Sceirine
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Yerington, Nevada 89447

Louis Scatena
1275 Hwy 208
Yerington, Nevada 89477

D & GW Ditch Co.
Louis Scatena, Secretary
1275 Hwy 208
Yerington, Nevada 89447

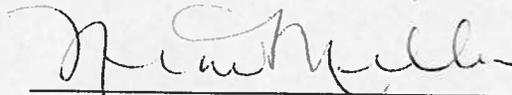
Newhall Mutual Ditch Co.
Darrell E. Pursel, President

Tunnel Ditch Co.
Louis Scatena, Secretary

1 42 McKenzie Lane
2 Yerington, Nevada 89447

984 State Rte. 208
Yerington, Nevada 89447

3 Dated this 24th day of October, 2013.
4

5 

6 An employee of Wolf, Rifkin, Shapiro,
7 Schulman & Rabkin, LLP

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ATTACHMENT 2

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

RECEIVED
2013 OCT -4 AM 10:11
STATE ENGINEERS OFFICE

IN THE MATTER OF CHANGE)
APPLICATION NO. 80700 FILED BY)
THE NATIONAL FISH AND WILDLIFE)
FOUNDATION)
_____)

**STIPULATION TO RESOLVE
CERTAIN PROTESTS REGARDING
APPLICATION NO. 80700**

SE 'S EXHIBITS 200
DATE: 10-29-2013

RECITALS

1. The National Fish and Wildlife Foundation ("NFWF") has pending before the Nevada State Engineer (the "State Engineer") Amended Application No. 80700 (App. 80700) requesting to change the manner of use and place of use of portions of certain water rights adjudicated by that certain Decree (the Walker River Decree) entered April 14, 1936, and amended April 24, 1940, by the District Court (the Walker Decree Court) of the United States in and for the District of Nevada in that certain action (the Walker Decree Action) entitled *The United States of America, Plaintiff, vs. Walker River Irrigation District, et al., Defendants*, In Equity Docket No. C-125.
2. Application No. 80700 was protested by the United States Bureau of Indian Affairs (BIA) and the Walker River Paiute Tribe (WRPT), among others.
4. Pursuant to portions of several acts of Congress, which are generally referred to as the Desert Terminal Lakes legislation, NFWF is charged with, among other things, the acquisition, from willing sellers, of land, water appurtenant to land and related interests in the Walker River Basin for, among other things, environmental restoration in the Walker River Basin.
5. The undersigned parties ("Parties") hereto desire that the protests of Application No. 80700 by BIA and WRPT be resolved by these Parties in advance of the

scheduled administrative hearing on App. 80700, and that App. 80700 be approved and granted pursuant to the terms and conditions of this Stipulation.

STIPULATION

NOW, THEREFORE, the Parties hereto, acting either individually or by and through their respective counsel, stipulate and agree as follows:

1. In the event the State Engineer grants App. 80700 in whole or in part, the Parties request that the State Engineer include this Stipulation and Exhibit 1 as part of the terms and conditions, including the following:

- A. The LOWER WALKER RIVER CONVEYANCE PROTOCOLS, attached as Exhibit 1 ("Protocols"), are adopted for use in accounting for the conveyance of water approved to be changed and administered in priority under App. 80700 ("Changed Water") at the USGS Wabuska Gage, and from there on downstream to the USGS Little Dam Gage as set forth in the Protocols.
- B. The undersigned parties shall consult with the Chief Deputy Water Commissioner regarding the development, provision, and maintenance of a software tool, as may be updated and improved from time to time, to monitor and account for the conveyance of Changed Water as described in A., above. The Parties contemplate that the Protocols shall be operationally carried out by the Parties in cooperation among themselves and the Chief Deputy Water Commissioner, and under the jurisdiction of the Walker River Decree. The Chief Deputy Water Commissioner will be able to monitor the operations called for herein and shall have enforcement authority regarding those operations, if called upon by any of the Parties and otherwise at his/her discretion.

2. The parties stipulate that a permit subject to the terms and conditions set forth in paragraph 1 above will not injure or conflict with existing water rights in violation of the Walker River Decree and NRS 533.370(2), or threaten to prove detrimental to the public interest.

3. By entering into this Stipulation, no party waives any rights with respect to the content of any future change application, or with respect to any protest thereto, which any of them may file.

4. The provisions of this Stipulation are not severable, and in the event that this Stipulation is not approved by the State Engineer and the Walker Decree Court, without changes agreeable to the Parties, it shall be deemed withdrawn without prejudice to any claims or contentions which may have been made or may be made in this proceeding by any Party, and it shall not be admissible as evidence or in any way described or discussed in any proceeding subsequent to any non-approval as described in this paragraph.

5. WRPT and BIA hereby withdraw their protests of App. 80700. The Parties shall support approval by State Engineer and the Walker Decree Court of App. 80700 as provided in this Stipulation.

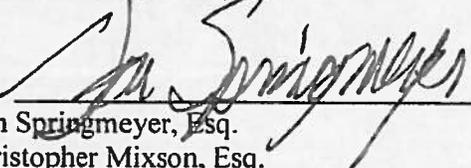
6. If the State Engineer, or the Walker Decree Court, does not approve this Stipulation as provided in Paragraph 1 above, no Party to this Stipulation shall be determined to be bound by any provisions or agreements reached and described herein.

7. This Stipulation represents a compromise of the Parties. Except as expressly set forth herein, the provisions of this Stipulation shall not be construed as or deemed to be precedent by any Party, the State Engineer or the Walker Decree Court with respect to any issue, principle, or interpretation, or application of law and regulations for

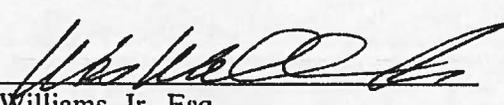
any purpose, or in connection with any proceeding before a court of law, or any state or federal government regulatory body.

8. This Stipulation may be executed in counterparts or via facsimile or electronic scanning.

**Wolf, Rifkin, Shapiro,
Schulman & Rabkin, LLP**

By: 
Don Springmeyer, Esq.
Christopher Mixson, Esq.
3556 E. Russell Road, 2nd Floor
Las Vegas, Nevada 89120
Dated: 10/2/13
*Attorneys for Applicant National
Fish & Wildlife Foundation*

Law Offices of Wes Williams, Jr.

By: 
Wes Williams, Jr., Esq.
P.O. Box 100
Schurz, Nevada 89427
Dated: 9/20/13
*Attorneys for Protestants Walker
River Paiute Tribe*

**U.S. Dept. Of Interior
Office of the Solicitor**

By: _____
Christopher Watson
1849 C St. NW, MS 6513 MIB
Washington, D.C. 20240
Dated: _____
*Attorneys for Protestant Bureau of
Indian Affairs*

any purpose, or in connection with any proceeding before a court of law, or any state or federal government regulatory body.

8. This Stipulation may be executed in counterparts or via facsimile or electronic scanning.

**Wolf, Rifkin, Shapiro,
Schulman & Rabkin, LLP**

Law Offices of Wes Williams, Jr.

By: _____
Don Springmeyer, Esq.
Christopher Mixson, Esq.
3556 E. Russell Road, 2nd Floor
Las Vegas, Nevada 89120
Dated: _____
*Attorneys for Applicant National
Fish & Wildlife Foundation*

By: _____
Wes Williams, Jr., Esq.
P.O. Box 100
Schurz, Nevada 89427
Dated: _____
*Attorneys for Protestant Walker
River Paiute Tribe*

**U.S. Dept. Of Interior
Office of the Solicitor**

By:  _____
Christopher Watson
1849 C St. NW, MS 6513 MIB
Washington, D.C. 20240
Dated: 9/30/13
*Attorneys for Protestant Bureau of
Indian Affairs*

EXHIBIT 1

LOWER WALKER RIVER CONVEYANCE PROTOCOLS

Walker River Paiute Tribe (WRPT), U.S. Bureau of Indian Affairs (BIA),
and National Fish and Wildlife Foundation (NFWF)

September 18, 2013

1. Purpose

This document sets forth protocols for conveyance in the Lower Walker River through the Walker River Indian Reservation (WRIR) to Walker Lake of water acquired and/or secured, by purchase, lease, or otherwise, under authority of the Walker Basin Restoration Program in accordance with all necessary approvals (i.e., Program Water or PW). These "Protocols" are designed to provide transparency for the management and administration of Program Water in the Lower Walker River (i.e. from the USGS Gage at Wabuska down to Little Dam). The Protocols explicitly recognize the authority of the Chief Deputy Water Commissioner (i.e. Federal Watermaster or FWM) of the U.S. Board of Water Commissioners to administer water rights under the Walker River Decree, while providing a transparent set of tracking equations (and companion spreadsheet accounting tool) so that WRPT, BIA and NFWF may cooperatively and collaboratively manage Program Water conjunctively with the WRIR Irrigation Water in the Lower Walker River. The Operator of Weber Dam facilities and the Canal 1 and Canal 2 irrigation works (i.e. Operator) is the BIA.

2. Inputs and Conveyance Reaches

The Protocols require as an initial input the amount of Program Water that is administered in priority at the Wabuska Gage by the FWM. As with any other water right that is ordered and administered on the Walker River system, the FWM will administer and record the amount of Program Water that reaches the Wabuska gage (in mean daily flow) on a daily basis.

Downstream of the Wabuska Gage, the Protocols (as presented below) provide the measurements and equations necessary to account for gains and losses of Program Water through to Little Dam, just below the final point(s) of diversion at Canals 1 and 2. Program Water will be accounted for in two defined reaches of the Lower Walker River:

1. From the Wabuska Gage to the outlet of Weber Dam,
2. From the outlet of Weber Dam to Little Dam.

The Protocols are designed to be implemented on a daily time step using real-time online data from USGS gages to the extent possible and the best available sources for any other information needed in the Protocols. Most data used in the accounting calculations reflect the average daily values recorded from midnight to midnight of the day previous to operation ($t=0$), conforming to standard USGS reporting procedures. Flow, or Q , values in the equations below are converted to total daily quantity of water passing a particular gage or location, or the total quantity of water in Weber Reservoir, expressed in a volumetric unit of acre-feet. The conversion factor between cubic feet per second and acre-feet per day shall be 1 cfs equals 1.9835 acre-feet per day (AF/day). The Protocols are simplified by calculating Program Water at all locations on a same day basis, with an implied transit time through Weber Reservoir of one day. The results of the calculations then inform operations, including releases at Weber Dam and

regulation of flow at Little Dam, monitoring and administration for the day after the data was recorded (t+1).

3. Program Water at the Wabuska Gage

Measurement. Flows are measured by the USGS at the Wabuska Gage (10301500).

Accounting. There are two inputs to the Protocols at the Wabuska Gage:

Q_{wab} = Mean daily flow at the Wabuska Gage

PW_{wab} = Mean daily flow of Program Water at the Wabuska Gage (as provided by the FWM)

4. Program Water at Weber Dam

Measurement. The stage of Weber Reservoir and the amount of water stored are reported by the USGS daily at midnight for the Weber Reservoir gage (10301700). Daily maximum air temperature will be measured by the USGS at or near Weber Dam for estimation of daily evaporation from the water surface of Weber Reservoir. Daily total precipitation at Weber Reservoir will be measured by the USGS from a gage located at or near Weber Dam. Releases from Weber Dam are measured by a USGS gage just downstream of the dam called Walker River at PT site below Weber Reservoir (10301720).

Accounting. The Protocols are designed to simplify the accounting process in the reach from the Wabuska Gage to the release point from Weber Reservoir by applying a water balance to develop a daily estimate of unmeasured losses of flow from both the river channel and the reservoir (i.e. losses equal inflows plus change in storage less all outflows). Inputs to the water balance equation include the flow at the Wabuska Gage, the change in Weber Reservoir storage, releases from Weber Reservoir, evaporation, and precipitation. Losses during conveyance of water through the Walker River channel and seepage losses in Weber Reservoir are not differentiated, but are combined into a single river transmission loss variable. Program Water is assumed to pass from the Wabuska Gage through Weber Reservoir over a 24-hour period. Evaporation from Weber Reservoir is not charged to Program Water as it passes through on this single day. Program Water that does not pass through Weber Reservoir within 1 day is assigned a proportional share of reservoir evaporation.

The water balance equation is as follows:

$$LOSS_{tot} = WEB_{t-1} - WEB + Q_{wab} - Q_{webout} + Precip_{web} \quad \text{Eqn. (1)}$$

where:

$LOSS_{tot}$ = total net loss (if positive) or gain (if negative) in the Wabuska through Weber Reservoir reach, which consists of both river transmission losses (including reservoir seepage) and evaporative losses from Weber Reservoir less any direct precipitation on the reservoir.

WEB_{t-1} = beginning of day storage in Weber Reservoir

WEB = end of day storage in Weber Reservoir

Q_{webout} = total daily outflow from Weber Reservoir

$Precip_{web}$ = total daily precipitation at Weber Reservoir

Precipitation on Weber Reservoir, in acre-feet, is calculated as follows with the unit for WEB_{surf} being acres:

$$\text{Precip}_{\text{web}} = \text{WEB}_{\text{surf}} * \text{PPT}_{\text{web}} / 12 \quad \text{Eqn. (2)}$$

where:

WEB_{surf} = surface area in acres of Weber Reservoir determined based on reservoir stage and published bathymetry

PPT_{web} = daily precipitation at Weber Reservoir, inches

Daily evaporation in acre-feet from Weber Reservoir will be based on the best information available as determined by USGS including the current provisional relationship with air temperature calculated as follows:

$$\text{Evap}_{\text{web}} = \text{WEB}_{\text{surf}} * ((0.0003 * \text{Temp}_{\text{web}}) - 0.0116) \quad \text{Eqn. (3)}$$

where:

Temp_{web} = maximum daily temperature recorded at Weber Reservoir, °F

The river transmission loss, LOSS_{riv}, is then calculated by subtracting Weber Reservoir evaporation from the total reach loss:

$$\text{LOSS}_{\text{riv}} = \text{LOSS}_{\text{tot}} - \text{Evap}_{\text{web}} \quad \text{Eqn. (4)}$$

The net river loss (or gain) derived in Equation (4) is then assigned proportionally to Program Water based on flow percentage at Wabuska in order to compute the Program Water inflow to Weber Reservoir, PW_{webin}.

$$\text{PW}_{\text{webin}} = \text{PW}_{\text{wab}} - (\text{PW}_{\text{wab}} / \text{Q}_{\text{wab}}) * \text{LOSS}_{\text{riv}} \quad \text{Eqn. (5)}$$

where:

PW_{webin} = Program Water inflow to Weber Reservoir after river transmission losses

Under the Protocols, if a daily gain in flow is calculated, represented by a negative value of LOSS_{tot}, then gains are likewise allocated proportionally. The proportional allocation of gains is necessary to prevent introduction of bias into the long-term flow accounting.

The total net loss to Program Water in the Wabuska through Weber Reservoir reach, PW_{loss}, is then calculated by assigning proportional shares of river transmission loss based on flow and evaporative loss based on any Program Water not passed through Weber Reservoir within one day. The evaporative loss is allocated proportionally based on volume of Program Water in Weber Reservoir relative to the total Weber volume at the beginning of the day. The Program Water outflow (PW_{webout}) is subtracted from end of prior day Program Water in Weber (PW_{web t-1}) in the calculation because evaporative loss is not charged to Program Water as it passes through Weber Reservoir nor is it charged to any other Program Water that is released that same day.

$$\text{PW}_{\text{loss}} = \text{PW}_{\text{wab}} / \text{Q}_{\text{wab}} * \text{LOSS}_{\text{riv}} + (\text{PW}_{\text{web t-1}} - \text{PW}_{\text{webout}}) / \text{WEB}_{\text{t-1}} * \text{Evap}_{\text{web}} \quad \text{Eqn. (6)}$$

where:

$PW_{web\ t-1}$ = Program Water in Weber Reservoir at beginning of day

PW_{webout} = Program Water released from Weber Reservoir

PW_{webout} is back calculated based on actual Program Water observed at Little Dam, PW_{ld} , and is discussed in the next section.

The end-of-day Program Water not passed through Weber Reservoir, PW_{web} , is calculated by:

$$PW_{web} = PW_{web\ t-1} + PW_{wab} - PW_{webout} - PW_{loss} \quad \text{Eqn. (7)}$$

Operations. Under pass-through operations for Program Water, which is the default operation under these Protocols, the Operator will release the calculated Program Water inflow (PW_{webin}) on the following day, or on successive days at its discretion, except that NFWF shall always have the right to call for the release of Program Water. If the Operator is also releasing irrigation water then any Program Water release would be added to the irrigation water release.

5. Weber Dam to Little Dam

Measurement. At Little Dam there are three possible outlets, Canal 1 and Canal 2 that serve the WRIR irrigation project and the downstream outlet to the Walker River. The downstream outlet allows water not diverted at Canals 1 or 2 to flow into the Lower Walker River and on to Walker Lake. The USGS has gages on each of these three routes of river flow at Little Dam: Canal No 1 (10301755), Canal No 2 (10301742), and Walker River above Little Dam (10301745).

Accounting. In order to calculate the Program Water released from Weber Reservoir (PW_{webout}), as well as to estimate the next day target release of water from Weber Reservoir ($TPW_{webout\ t+1}$) the loss/gain factor between the gage below Weber Dam and Little Dam is needed. Program Water natural flow loss or gain in the reach of the Walker River downstream from Weber Reservoir to Little Dam will be determined by the gaged difference in flow between the USGS gage below Weber Dam and the sum of gaged flows at Little Dam. This loss/gain factor is derived using the observed loss between the gages as follows:

$$LGF = (Q_{webout} - (Q_{canal1} + Q_{canal2} + Q_{ld})) / Q_{webout} \quad \text{Eqn. (8)}$$

where:

Q_{canal1} = Mean daily flow at WRIR Canal 1

Q_{canal2} = Mean daily flow at WRIR Canal 2

Q_{ld} = Mean daily flow at the Little Dam Gage

A positive LGF signifies losses in the reach and a negative LGF signifies gains in the reach.

The loss/gain derived in this fashion is assigned proportionally to Program Water at Little Dam in order to back-calculate the Program Water released from Weber Reservoir for that day and to estimate Program Water targeted for release over Little Dam the next day (t+1). Program Water remaining in Weber Reservoir cannot be negative.

So, Program Water released from Weber Reservoir is determined as follows:

$$PW_{webout} = PW_{ld}/(1-LGF) \quad \text{Eqn. (9)}$$

where:

$$PW_{ld} = \text{Lesser of: } Q_{ld} \text{ or the Program Water available for release, which is } (PW_{web,t-1})*(1-LGF)$$

Mean daily flow of Program Water at the Little Dam gage would not normally exceed the Program Water available for release. Losses and gains are to be shared proportionally to avoid long-term bias in gage error, and also to proportionally recover upstream seepage losses, to the degree they may reemerge below Weber Reservoir. Program Water (PW_{web}) will not be charged for flows past Little Dam under that circumstance that no Program Water (PW_{webout}) has been released from Weber Reservoir in the previous or current day.

The calculated next day target release of Program Water over Little Dam is determined by:

$$TPW_{ld,t+1} = TPW_{webout,t+1} * (1-LGF) \quad \text{Eqn. (10)}$$

where:

$$TPW_{webout,t+1} = \text{Program Water targeted for release from Weber Reservoir the next day}$$

Operations. The Operator will seek to control diversions down the Canals so as to allow the targeted amount of Program Water ($TPW_{ld,t+1}$) to flow past Little Dam.

Monitoring. NFWF can directly monitor the flow of Program Water over Little Dam and the amount of Program Water as accounted for in Weber Reservoir.

Administration. There are no further water right deliveries or diversions below Little Dam. Little Dam is therefore the last point in the Walker River system for NFWF to call on the FWM for water rights administration. Good faith operations by the Operator, consistent with the intent and content of these Protocols, should obviate the need for active administration at Little Dam.

6. Little Dam to Walker Lake

Measurement. Flows downstream of Little Dam are measured by USGS gages including one located near the mouth of Walker Lake (10302025).

Accounting. Program Water reaching Walker Lake may be calculated by subtracting any observed losses between the Little Dam and Walker River near mouth gages.

Operations, Monitoring and Administration. There is no need for operations by BIA, compliance monitoring by NFWF, or water rights administration by the FWM below Little Dam due to the lack of other water right deliveries or diversions by the WRPT. However, NFWF may monitor flows downstream of Little Dam and account for losses to Program Water and any other water flowing past Little Dam, in order to estimate Program Water contributions to Walker Lake inflow for program evaluation purposes.

CERTIFICATE OF MAILING

I certify that I am an employee of the law office of Wolf, Rifkin, Shapiro, Schulman and Rabkin, LLP, and that on this date I caused to be served on Kristen Geddes with the Nevada State Engineer by express delivery, and the remaining parties via U.S. Mail a true and correct copy, of the foregoing **STIPULATION TO RESOLVE CERTAIN PROTESTS REGARDING APPLICATION NO. 80700** on the following persons

and/or entities:

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