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STATE ENGINEERS OFFICE

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
BEFORE JASON KING, STATE ENGINEER

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

**BRIEF OF THE UNITED
STATES BOARD OF
WATER COMMISSIONERS**

The UNITED STATES BOARD OF WATER COMMISSIONERS FOR THE WALKER RIVER ("Board"), by and through its attorneys, ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., submit its brief in accordance with the Hearing Officer's order at the pre-hearing conference held on January 24, 2012.

A. Introduction.

The Hearing Officer requested legal briefs with regard to issues 2 and 3 set forth in the list of issues of the Board dated October 21, 2011 submitted to the STATE ENGINEER with regard to Change Application 80700 filed by the NATIONAL FISH AND WILDLIFE FOUNDATION ("NFWF").

The first issue involves the language of the Walker River Decree ("Decree") in Paragraph XIV which states:

"The Court retains jurisdiction of this cause for the purpose of changing the duty of water or for correcting or modifying this decree; also for regulatory purposes, including a change of point of diversion or of the place of use of any water user, but no water shall be sold or delivered outside of the basin of the Walker River except that appurtenant to the lands of Mrs. J.A. Conway and R.P. Conway referred to in the foregoing tabulation." (emphasis added).

There is an issue concerning whether the proposed change in the place of use for Change Application 80700 violates the above provision of the Walker River Decree. To the undersigned's knowledge, this phrase of the Decree, "but no water shall be sold or delivered outside of the basin of

State _____ 'S EXHIBITS 12
DATE: _____

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1 the Walker River," has never been construed or interpreted by the District Court since the Decree
2 was issued on or about April 15, 1936.

3 The second issue involves whether a decree holder can own water rights but own no land or
4 the place of use to which the decree rights will be placed to beneficial use. NFWF proposes to
5 change the place of use for its water rights to "within the Walker River from the Weir Diversion
6 Structure serving the West Highland and other Ditches through USGS Wabuska Gauge, then through
7 Weber Reservoir into and including Walker Lake ...". See, NFWF Change Application 80700,
8 Question No. 7.

9 B. Rules Governing Interpretation of a Decree.

10 If a judgment or decree is unambiguous, the Court may not consider extraneous evidence to
11 explain it. See, *W.O. Narramore v. United States*, 852 F.2d 485, 490 (9th Cir. 1988), *United States v.*
12 *Gila Valley Irr. Dist.*, 961 F.2d 1432, 1440-1441 (9th Cir. 1992). If a term in a consent decree is
13 ambiguous, then the contemporaneous construction by the parties to the decree may be given weight.
14 *United States v. Gila Valley Irr. Dist.*, 961 F.2d 1432, 1440-1441 (9th Cir. 1992) citing *U. S. v. ITT*
15 *Cont'l Baking Co.*, 420 U.S. 223, 238, 95 S. Ct. 926, 935, nt. 11 (1975)("evidence of events
16 surrounding [a consent decree's] negotiation and tending to explain 'ambiguous' terms would be
17 admissible in evidence"). The fact that the parties may disagree as to a decree's meaning does not in
18 and of itself establish that the decree is ambiguous. (cite omitted). *United States v. Gila Valley Irr.*
19 *Dist.*, 961 F.2d at 1441.

20 The Ninth Circuit Court of Appeals has discussed the rules governing interpretation of
21 decrees of a hybrid nature, that is, decrees involving stipulations incorporated into a litigated decree.
22 See, *Wackerman Dairy Inc. v. Wilson*, 7 F.3d 891 (1993) reversing *U.S. v. Angle*, 760 F.Supp. 1366
23 (1991). The Walker River Decree is such a hybrid because it involves stipulations of the parties
24 incorporated into a litigated decree. The Ninth Circuit Court of Appeals stated in *Wackerman*:
25 "Nevertheless, because the stipulation is incorporated into a litigated decree, it is necessarily of
26 hybrid nature—the stipulation secures the contract rights, but in a manner understood by the Angle
27 court to be consistent with the rights of all the Angle defendants." *Wackerman Dairy Inc. v. Wilson*,
28 7 F.3d at 897 (1993), citing *International Assoc. of Firefighters v. City of Cleveland*, 478 U.S. 501,

1 519, 106 S.Ct. 3063, 3074 (1986) and A. Dan Tarlock, *Law of Water Rights and Resources* §
2 7.08[4], at 7-23 (1992). In *Wackerman*, the Court was reviewing a decree entered after twelve years
3 of litigation and pursuant to several stipulations signed by some, but not all, the parties. *Wackerman*,
4 7 F.3d at 892-896. The Ninth Circuit agreed with the district court's holding that the decree must be
5 interpreted in a way that is consistent with the rights of all the defendants who were subject to the
6 decree and that the court's intention controls. *Wackerman*, 7 F.3d at 897, nts. 12-13 ("Because the
7 litigation adjudicated the claims of numerous defendants, barring some claimants altogether and
8 fixing priorities as between those remaining, the court's intention controls. The stipulations, and
9 whatever extraneous materials considered necessary to understand them, must be interpreted in a
10 manner consistent with the overall decree.") The Court stated that the question of whether evidence
11 extrinsic to the stipulations in interpreting the decree should be considered by the Court depends on
12 whether the Court found ambiguity in the portions of the decree that are critical to its determinations.
13 *Id.* at nt. 13. If the terms of the stipulation as it appears in the overall decree were not ambiguous,
14 there was no need to resort to the extraneous material to interpret them. *Id.*

15 C. Walker River Decree Provision Prohibiting Sale or Delivery of Water Outside of the
16 Basin of the Walker River.

17 1. Stipulation Language in the Decree.

18 Paragraph XIV of the Decree entered on or about April 15, 1936 states:

19 "The Court retains jurisdiction of this cause for the purpose of changing the duty
20 of water or for correcting or modifying this decree; also for regulatory purposes,
21 including a change of point of diversion or of the place of use of any water user,
22 but *no water shall be sold or delivered outside of the basin of the Walker River*
23 except that appurtenant to the lands of Mrs. J.A. Conway and R.P. Conway
24 referred to in the foregoing tabulation." (emphasis added).

25 This language in the Decree was derived from a stipulation of the parties entered into near
26 the close of the hearings before the Special Master in 1932 in order to shorten the time of the trial of
27 the action. The language was part of a broader stipulation with respect to the water rights of the
28 parties to the suit which were not determined by the Decree in the suit in Equity No. 731. *Report of*
the Special Master, pages 8-11, In Equity Case No. C-125, filed December 30, 1932. This
stipulation was also included in the District Court's Findings of Fact and Conclusions of Law

1 entered on or about April 15, 1936, at Paragraph XI, pages 8-11. The undersigned has reviewed the
2 transcript and pleadings in the proceeding from 1932 to the entry of the Decree on or about April 14,
3 1936. The undersigned has not been able to find any discussion in the transcripts or in the pleadings
4 related to this portion of the stipulation of the parties to shorten the time of the trial.

5 2. Stipulation Prior to Decree.

6 Prior to the stipulation agreed to by all the parties as referenced in the Special
7 Master's Report, all the defendants in the action except Sierra Pacific Power Company entered into a
8 written Stipulation filed with the Special Master on March 2, 1932 and filed with the Court on
9 December 30, 1932, for the purpose of settling and adjusting certain controversies concerning
10 questions of fact involved in the action. The March 2, 1932 Stipulation provided at Paragraph 3:
11 "That excepting the adjudicated appropriation rights of Mrs. J.A. Conway and Richard P. Conway,
12 the rights of the several appropriators and users of water who are parties hereto shall be restricted to
13 application and use on lands within the particular water shed or basin of Walker River, East Walker
14 River, West Walker River, respectively, and their respective tributaries where said water is now
15 used."

16 3. Statements by Counsel Regarding Walker River Basin and/or Walker Lake and
17 Maps.

18 Statements were made by attorneys for the parties during various arguments or
19 hearings before the Court and Special Master mentioning the Walker River basin and/or Walker
20 Lake.¹

21 a. Mr. Harwood, the attorney representing the United States of America,
22 in *United States of America v. Walker River Irrigation Dist., et al.*, Case No. C-125, stated to the
23 Court at the beginning of oral argument on Exceptions to Report and Findings of Special Master
24 held before the Hon. A. F. St. Sure, United States District Judge, on Monday, May 22, 1933:

25 THE COURT. The United States of America against the
Walker River Irrigation District.

26 MR. HARWOOD. Plaintiff is ready on the exceptions.

27
28 ¹ The Board's letters to the STATE ENGINEER dated July 15, 2011 and October 21, 2011 noted that comments made at
the time by the attorneys for various parties acknowledged that there was no beneficial use of water that went to Walker
Lake.

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THE COURT. You may proceed.

MR. HARWOOD. This suit, if the Court please, was commenced in 1924, by the United States of America against the Walker River Irrigation District and a large number of individual water users on the Walker River system. First, is your Honor familiar with the **Walker River basin**?²

THE COURT. No, I am not.

MR. HARWOOD. I would like to show you, then, the Walker River rises in California (indicating on map), two forks, the East Fork rises South of Bridgeport, in California. Bridgeport is situated in a large mountain meadow at an elevation of something like sixty-two or sixty-three or sixty-five hundred feet. Bridgeport is located at about this point, and the headwaters come from and beyond a mountain range South of this large mountain meadow. And the East Fork goes along in this direction (indicating), to the junction here with the West Fork.

The West Fork rises also in California in water surrounding this region not far from Sonora Pass, and flows through Pickle Meadows, along down through the canyon by Coleville, Antelope Valley, which is in here on the State line. This is the State line between Nevada and California.

The East Fork crosses the State line along at this point here, about five miles below the Bridgeport Dam, which we will refer to later. The West Fork continues along to this junction, then the streams unite and flow through what is the upper end of Mason Valley, in the meantime having passed through Smith Valley, that is, the West Fork has, by the Town of Yerington, along to the small Town of Wabuska, and then makes a turn and flows back in the direction it came nearly, into **Walker Lake**.

As you see, the State line is here. The Walker River Indian Reservation is indicated by these hatched lines here, commencing at this point and extending along the River to the North shore of **Walker Lake**. Formerly, the reservation was much more extensive and included **Walker Lake** itself.

See, Arguments of Respective Counsel on Exceptions to Report and Findings of Special Master held before the Hon. A. F. St. Sure, United States District Judge, Monday, May 22, 1933, pp. 3-4, ll. 18-28, 1-28.

b. Attached are two maps, Plaintiff's Exhibits 14 and 27 admitted into evidence before the Court entitled "Walker River Basin". The maps have been reduced in size to comply with the STATE ENGINEER's requirements for submission of documents.

² The words "Walker River basin" and "Walker Lake" are set forth in bold in this section for ease of reference.

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1 c. Mr. Kearney, attorney representing various Defendants, including the
2 Walker River Irrigation District, in *United States of America v. Walker River Irrigation Dist., et al.*,
3 Case No. C-125, stated at the May 22, 1933 oral argument:

4 In 1902, when this suit of Miller & Lux against Rickey was
5 commenced, there was about 113,000 acres of land in that entire
6 basin, California and Nevada, irrigated in whole or in part. It was
7 found that they had water in the early part of the year, the snows
8 would melt, the mountains were denuded of timber and that water
9 would come down with a rush and flood over the lands and waste
10 in **Walker Lake**. A large part of it would run through the
11 reservoirs, and for years and years the stream flow records which
12 are in evidence in this case show that large bodies of water during
13 the months of May and June went to waste in **Walker Lake**
14 without any beneficial use whatever being made of such water.
15 However, almost without exception, for sixty years it has been the
16 difficulty that after that flood had passed the waters of Walker
17 River recede rapidly and by July and August there was not
18 sufficient water for the area of land that was then in cultivation.
19 The Bridgeport lands were contracted in their irrigated areas, and
20 the Antelope Valley likewise, and all the way down the river, and
21 that is why the suit which resulted in Decree 731 was filed, to stop
22 the people, Mr. Rickey, who had vast areas of land, from using that
23 low flow of water and drying up the lower end of the river owned
24 by the Pacific Livestock Company.

25 *See*, Arguments of Respective Counsel on Exceptions to Report and Findings of Special Master held
26 before the Hon. A. F. St. Sure, United States District Judge, Monday, May 22, 1933, pp. 108-109, ll.
27 25-28, 1-18.

28 d. Further argument by Mr. Kearney:

THE COURT. I presume that all parties admit that the
reservoirs are a need to every one who is dependent upon irrigation
in the **Walker River Basin**?

MR. KEARNEY. I do not think there is any question about it.

MR. HARWOOD. Yes, as long as they confine it to the use of
flood water.

THE COURT. Is there any testimony showing that it is not
confined to the use of flood water?

MR. HARWOOD. Well, if the Court please, the suit is brought
because of the interference with the natural flow of the stream. I
do not know as to the reservoirs directly, but it is mostly to the
irrigators upstream.

MR. KEARNEY. My recollection is that there is no testimony
of any interference which would warrant an injunction, or even a
judgment except quieting title against the amount of water. There

1 was no testimony offered or attempted to be offered, as I recall it,
2 and I think I speak correctly on that; if I do not, I want to be
3 corrected, that so far as the district is concerned it has not in any
4 way interfered with the rights of the natural flow owners, including
5 the claims to the natural flow set forth by the Government. In
6 other words, the government does not and could not use the flood
7 waters. Those waters have from time immemorial flowed to waste
8 in **Walker Lake** when they existed. During the time that the
9 Government on its Indian Reservation needed water, everybody
10 else on the stream, likewise, was short of water, and obviously the
11 Irrigation District could not store water for months prior to that
12 time, prior to the time that the water was so short that there was not
13 sufficient for irrigation.

14 *See, Arguments of Respective Counsel on Exceptions to Report and Findings of Special Master held*
15 *before the Hon. A. F. St. Sure, United States District Judge, Monday, May 22, 1933, pp. 115-116, ll.*
16 *26-28, 1-26.*

17 e. Mr. Harwood, attorney representing the United States of America, in
18 *United States of America v. Walker River Irrigation Dist., et al.*, Case No. C-125, stated in a
19 proceeding before the Special Master on June 27, 1933:

20 MR. HARWOOD: Certainly there is no objection to storing water
21 if it is going to waste down in the **Walker Lake**, and all vested
22 rights are being supplied. You can save it. Certainly no one can
23 object to it.

24 *See, Transcript of Testimony and Proceedings at hearing held before Robert M. Price, Esq., Special*
25 *Master, under order of Court re-referring certain questions to him, June 26-27, 1933, p. 114, ll. 3-6.*

26 4. District Court 1935 Opinion.

27 Judge St. Sure, the District Judge presiding over the Decree proceedings in the early
28 to mid-1930's, issued an Opinion on June 6, 1935 reported as *United States v. Walker River Irr. Dist.*
29 *et al.*, 11 F. Supp. 158 (D. Nev. 1935) determining certain legal issues with regard to certain
30 claimants. *See also*, Decree, p. 9. The District Court directed the Special Master to submit findings
31 of fact and conclusions of law and a decree giving effect to the June 6, 1935 Opinion. The June 6,
32 1935 Opinion mentions or describes the "Walker River basin" numerous times.³ Excerpts from the
33 June 6, 1935 Opinion are set forth below.

34 The first sentence of the Opinion states:

35 ³ The words "Walker River basin" and "Walker Lake" are set forth in bold in this section for ease of reference.

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1 This is a suit in equity brought by the United States, as plaintiff, hereinafter
2 referred to as the government, against 253 defendants, all appropriators and users
3 of the waters of Walker river, East Walker river, West Walker river, and the
tributaries thereof, in the irrigation of lands in the **Walker river basin** owned or
possessed by defendants.

4 *Id.* at 159.⁴ The government's suit sought to quiet title to 150 cubic feet per second of waters of said
5 rivers and their tributaries "and asks that defendants be restrained from in any manner interfering
6 with the natural flow of said quantity of water to and upon the Walker Indian Reservation in the state
7 of Nevada." *Id.*

8 The District Court described the Walker River and its flow as follows in its June 6,
9 1935 Opinion:

10 Walker river is a nonnavigable, interstate stream. It consists of two main
11 branches, East and West Walker, which are fed by many small streams rising high
12 on the eastern slopes of the Sierra Nevada Mountains in Mono and Alpine
13 counties, Cal. The West Walker in the course of its descent flows through Leavitt
14 and Pickle Meadows, two high mountain valleys, thence through a canyon with
15 practically no cultivated area, thence northerly and northeasterly through
16 Antelope Valley into the state of Nevada, thence through Smith Valley to the head
17 of Mason Valley where it joins the East Walker river. The principal streams
18 forming the East Walker river combine in Bridgeport Meadows, which is a large
19 area devoted to the raising of wild grasses and pasturage at an elevation of 7,000
20 feet above sea level. The East Walker river flows thence northerly and
21 northeasterly through canyons and sparsely populated valleys to Mason Valley
22 where it unites with the West Walker river and forms the main Walker river. This
23 river flow northerly and northeasterly, descends through the latter valley to near
24 the town of Wabuska, where it turns abruptly to the southeast and flows through
25 the Walker River Indian Reservation and thence into **Walker Lake**. The
26 mountains at the source of these streams are sparsely forested and afford little
27 protection for the snows, resulting in a rapid run-off of the water upon the advent
of warm spring days. The distance from the source of the two main branches of
Walker river to the reservation are great, resulting in large losses of the water
through evaporation and seepage. From the source of the East Walker to its
junction with the West Walker, the distance is approximately 70 miles. From the
source of the West Walker to the junction is approximately 67 miles, and from the
junction through Mason Valley and to the point of diversion on the reservation the
distance is approximately 35 miles, and from the latter point to **Walker Lake**
approximately 12 miles. The peak of the flow usually occurs in May or June and
thereafter the water subsides rapidly so that in most years the flow by the middle
of July is insufficient, without storage facilities, to meet the requirements of the
lands along the river which have been brought under cultivation. Even under
natural conditions, that is, in the absence of upstream diversions, the water would
not in some years reach the lands of the Walker River Indian Reservation by the
end of July by reason of seepage and high evaporation loss occurring with the
streams in a depleted condition at their source. Estimates show that the loss in
transit between the lower end of Mason Valley to the diversion point in the

28 ⁴ The Ninth Circuit Court of Appeals indicated in its Opinion issued June 5, 1939 that the factual background of the case
was fully developed in the opinions of the District Court. *United States v. Walker River Irr. Dist. et al.*, 104 F.2d 334,
335 (9th Cir. 1939).

1 reservation, when the flow had diminished to 10 or 12 second feet, would be 100
2 per cent, that is, that the entire flow when reduced to that volume would be lost by
3 evaporation and seepage before reaching the diversion point on the reservation.
4 There is a considerable return flow into the river from the water diverted for the
irrigation of Bridgeport, Antelope, Smith, and Mason Valleys, which in a measure
augments the flow to the Indian Reservation.

5 *Id.* at 160-161.

6 The District Court Opinion noted the proceedings before the Special Master and that
7 arguments by counsel were held. The District Court described the tour it made with counsel of the
8 Walker River basin as:

9 At the close of the argument the court, accompanied by counsel in the case, made
10 a tour of the **Walker River basin** viewing the valleys, meadows, the Walker
11 Indian Reservation, the storage reservoirs, a site of a proposed reservoir, and
points of diversion of waters for irrigation.

12 *Id.* at 162.

13 The District Court described the *Pacific Live Stock Co. v. Rickey et al.* suit
14 which resulted in Decree 731 as:

15 By this suit, the owners of lands in the **Walker River basin** and the appropriators
16 of water from the Walker river and its tributaries for beneficial use upon said
17 lands were desirous of settling for all time the respective rights of all parties
concerned, and though requested to become a party, the government did not
choose to do so.

18 *Id.* at 165.

19 The District Court held the government reserved no rights to water for use on the
20 reservation. *Id.* at 167.⁵ In its holding, the District Court stated:

21 The rights of the government, in its use of the waters of the Walker river and its
22 tributaries for purposes of irrigation, like the rights of all other diverters in the
23 **Walker River basin**, are to be adjudged, measured, and administered in
accordance with the laws of appropriation as established by the state of Nevada.

24 *Id.* at 167.

25 The District Court's Opinion mentioned the Walker River basin again in this
26 statement:

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⁵ This holding was reversed by the Ninth Circuit Court of Appeals. *See, United States v. Walker River Irr. Dist. et al.*,
104 F.2d at 339-340.

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In *Miller & Lux v. Rickey*, supra, and in *Rickey Land & Cattle Co. v. Miller & Lux*, supra, the identical land and waters of the **Walker River basin** here involved were in controversy.

Id. at 169.

5. Argument.

The Stipulation was agreed to by the parties in 1932 and incorporated by the Court into the Decree issued in 1936. It binds all decree water right holders to this day, including NFWF. The parties to the Stipulation and the Court used the words “sold” or “delivered” to describe the prohibited actions. There is no definition or geographical description in the Decree of the phrase “basin of the Walker River”. In the arguments before the Special Master and the District Court, the attorneys stated that water went to waste in Walker Lake. The District Court stated in its 1935 Opinion that even under natural conditions, without upstream diversions, the water in some years would not reach the lands of the Walker River Indian Reservation. 11 F.Supp. at 160-161. The point of diversion on the Walker River Indian Reservoir is 12 miles upstream from Walker Lake. *Id.*

The District Court’s use and description of the words “Walker River basin” in its 1935 Opinion does not include Walker Lake. The District Court’s use of the words “Walker River basin” references land, the river and its tributaries, and beneficial use of the water upon said lands. It does not appear delivery or use of water in Walker Lake was contemplated as part of the Walker River basin, Walker Lake did not comprise land in the basin and thus, Walker Lake would be included within the prohibition in the Decree “but no water shall be sold or delivered outside the basin of the Walker River”.

D. Decree Holder Owning Water Rights But No Land or The Place of Use.

The Decree was entered to settle the rights of water users of the Walker River for irrigation of the lands of the parties to the suit. It appears that the Court’s intent in shaping the overall provisions of the Decree was based upon use of the water on land. In considering the decree, the Court must deduce its meaning not from detached parts of the Decree, but from the whole instrument. *See, Wackerman, supra*, 7 F.3d at 897, nts. 12-13; *Ready Mixed Concrete Co. in Adams County v. Farmers Reservoir and Irrigation Company*, 115 P.3d 638, 642 (Colorado 2005).

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1 Injunctive relief was requested in the quiet title action. Paragraph XI of the Decree provides
2 the injunctive relief granted by the District Court. The decree binds the parties to the suit, all
3 persons claiming by, through or under them, and their successors and assigns "in and to the water
4 rights and lands herein described, ...". Each of the said parties is enjoined and restrained from using
5 or claiming any of the water so allotted to them so as to in any way interfere with the prior rights of
6 other parties to the suit or until such parties having prior rights "have received upon their several
7 lands the waters so adjudicated to them." See, Decree, Paragraph XI, p. 71.

8 The quantity of water granted under the Decree was based upon return flows, thus
9 recognizing that water returned to the system was to be used by other or junior appropriators. *United*
10 *States v. Walker River Irr. Dist. et al.*, 11 F. Supp. at 161 ("There is a considerable return flow into
11 the river from the water diverted for the irrigation of Bridgeport, Antelope, Smith, and Mason
12 Valleys, which in a measure augments the flow to the Indian Reservation.") See, *Ready Mixed*
13 *Concrete Co. in Adams County v. Farmers Reservoir and Irrigation Company*, 115 P. 3d 638, 643-
14 645 (Colorado 2005) (Decree prohibits water right priorities from being created or enlarged free of
15 the call of other water rights granted by the decree.)

16 Paragraph XV of the Decree provides that the compensation and expenses of the Water
17 Master shall be apportioned "according to the acreage of the lands irrigated under this decree,
18 including stored water". See, Decree, Paragraph XV, p. 74.

19 The Court's 1935 Opinion acknowledges that the suit was brought against the defendants, all
20 appropriators and users of the waters in the irrigation of lands in the Walker River basin owned or
21 possessed by the defendants. The other provisions cited above are premised or based upon use of the
22 water upon land.

23 One practical example of not having land designated as the place of use relates to
24 assessments for the Water Master's expenses. If the instant change application is granted, it is not
25 clear how NFWF's assessment for the Water Master's expenses would be calculated since there
26 would be no acreage of lands irrigated under the Decree to calculate an assessment. The new
27 proposed place of use in the Walker River (from the Weir to Walker Lake) is approximately 55
28 miles long and does not include Walker Lake, which is also included in the proposed place of use for

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1 the subject change application. The loss of acreage for assessment caused by a change in a place of
2 use impacts the other decree right water holders because expenses will be apportioned among a
3 smaller number of irrigated acres. Thus, not having land designated as the place of use under the
4 Decree creates issues associated with administering the Decree.


5 E. Conclusion.

6 The Board appreciates this opportunity to provide the above information to the STATE
7 ENGINEER prior to the hearing on Change Application 80700.

8 DATED this 3rd day of February, 2012.

9 **ALLISON, MacKENZIE, PAVLAKIS,**
10 **WRIGHT & FAGAN, LTD.**
11 402 North Division Street
12 Carson City, NV 89703-4168

13 By:

14 
15 KAREN A. PETERSON, ESQ.

16 Attorneys for UNITED STATES BOARD OF
17 WATER COMMISSIONERS FOR THE
18 WALKER RIVER
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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date I caused the foregoing document to be served to all parties to this action by:

- Placing a true copy thereof in a sealed postage prepaid envelope, first class mail, in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- Hand-delivery [NRCP 5(b)(2)(A)]

PLEASE SEE ATTACHED

DATED this 3rd day of February, 2012.



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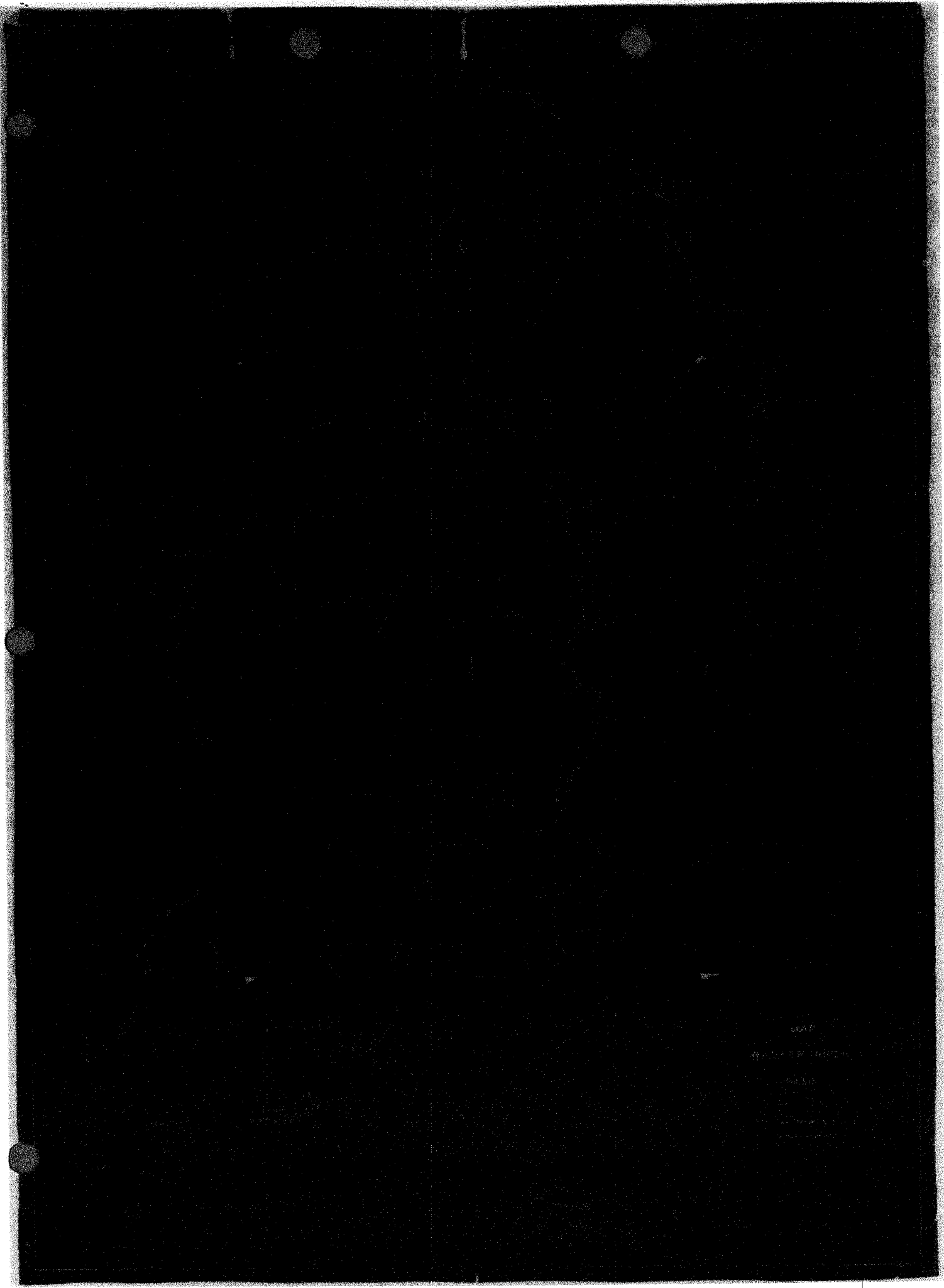
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125
18 Jan

Ex No 14 Admitted subject to
St. Louis objection
Special Master

No. 6125

U. S. District Court, Nevada.

The United States
Plaintiff.

vs.

Walter R. Dyer, Dict, et al.
Defendant.

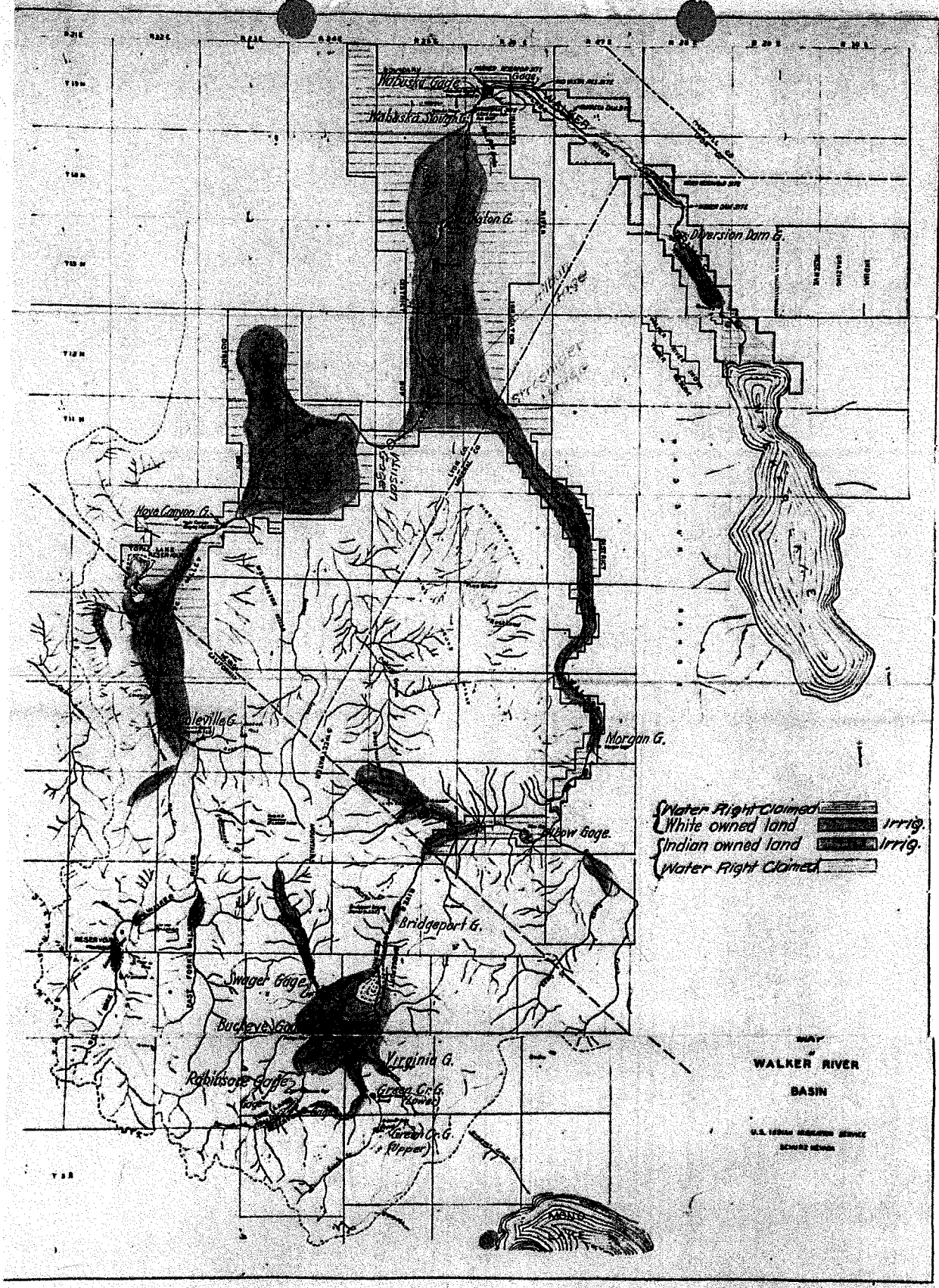
Exhibit No. 14





FILED Dec. 26, 1930

C. O. Patterson
Clerk.

A. J. Beath
Deputy Clerk.

No. 8579
UNITED STATES CIRCUIT COURT OF APPEAL
FOR THE NINTH CIRCUIT
FILED
FEB 26 1938
PAUL P. O'BRIEN
CLERK



Water Right Claimed  Irrig.
 White owned land  Irrig.
 Indian owned land  Irrig.
 Water Right Claimed  Irrig.

MAP
 WALKER RIVER
 BASIN
 U.S. GEOLOGICAL SURVEY
 SANTA FE, N.M.

Pepper No 27 admitted Dec 11, 1929
United States
Court for Dist. of Columbia

Deceyff's Exhibit No 27
admitted Dec 11, 1929

W. J. Brennan
Special Master

No. 6125
U. S. District Court, Nevada

The United States

Walter Seward by Post, et al

Exhibit No 27

FILED Dec 26 1930

E. O. Patterson

A. F. Cratt

Judge Harwood

U. S. DISTRICT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED

FEB 2 1930

PAUL F. O'BRIEN
CLERK