

18

1 GORDON H. DePAOLI
Nevada State Bar No. 0195
2 DALE E. FERGUSON
Nevada State Bar No. 4986
3 DOMENICO R. DePAOLI
4 Nevada State Bar No. 11553
Woodburn and Wedge
5 6100 Neil Road, Suite 500
Reno, Nevada 89511
6 Telephone: 775/688-3000

2012 FEB 15 PM 12: 38

7 Attorneys for Walker River Irrigation District
8

9
10 IN THE OFFICE OF THE STATE ENGINEER

11 OF THE STATE OF NEVADA

State	'S EXHIBITS 15
DATE: _____	

13 IN THE MATTER OF CHANGE)	
14 APPLICATION NO. 80700 FILED BY)	WALKER RIVER IRRIGATION
15 THE NATIONAL FISH AND WILDLIFE)	DISTRICT'S RESPONSE TO BRIEF OF
FOUNDATION)	THE UNITED STATES BOARD OF
_____)	WATER COMMISSIONERS

16
17 **I. INTRODUCTION.**

18 At the January 24, 2012 Prehearing Conference, the Hearing Officer requested legal
19 briefing on the following two issues raised by the United States Board of Water Commissioners
20 (the "U.S. Board"):

21 1. Whether the proposed change in the place of use for Change
22 Application No. 80700 violates the Walker River Decree, which provides in
23 pertinent part that no water shall be sold or delivered outside of the basin of the
Walker River; and

24 2. Because the Decree was entered to settle the rights of water users
25 of the Walker River for irrigation of lands of the parties to the suit, the question
26 arises whether a Decree holder can own water rights but not own any land or the
place of use for which the water is to be placed to beneficial use.

27
28 See U.S. Board List of Issues filed October 21, 2011 at 1,2; Transcript of January 24, 2012
Prehearing Conference at 84, 85. The U.S. Board filed its *Brief of the United States Board of*

1 *Water Commissioners* (the U.S. Board's Brief") to address these two issues on February 3, 2012.
2 The response of the Walker River Irrigation District (the "District") to the issues addressed in the
3 U.S. Board's Brief is set forth below.

4 **II. THE ISSUE OF WHETHER WALKER RIVER DECREE WATER RIGHTS MAY**
5 **BE CHANGED TO INCLUDE WALKER LAKE AS A PLACE OF USE MUST BE**
6 **RAISED BEFORE AND CONSIDERED AND DECIDED BY THE WALKER**
7 **RIVER DECREE COURT.**

8 This issue involves an interpretation of the language of the Walker River Decree. To frame
9 the issue, the U.S. Board cites provisions of the Walker River Decree, a stipulation entered into
10 prior to the Court's entry of the Decree, and statements made in hearings before the Court prior to
11 the entry of the Decree. Under these circumstances, the issue should be raised before and decided
12 by the Walker River Decree Court at an appropriate time. *See Nehmer v. U.S. Dept. of Veterans*
13 *Affairs*, 494 F.3d 846, 860 (9th Cir. 2007) (district court has inherent authority to interpret its decree
14 and parties, whether private or public entities, cannot dictate the meaning of the decree without the
15 district court's approval).

16 **III. THE WALKER RIVER DECREE DOES NOT PROHIBIT THE OWNERSHIP OF**
17 **WALKER RIVER DECREE WATER RIGHTS INDEPENDENT OF**
18 **OWNERSHIP OF THE LAND TO WHICH THOSE WATER RIGHTS ARE**
19 **APPURTENANT OR THE PROPERTY WHERE THEY ARE USED.**

20 It does not appear that the Walker River Decree requires an owner of water rights to also
21 own the land to which those water rights are appurtenant and/or their place of use. In fact, there
22 are many instances within the District where the ownership of land has been severed from the
23 right to use water upon that land. In those instances, the District requires the owner of water
24 rights to enter into a Water Rights Assessment Agreement with the District, pursuant to the
25 provisions found in NRS Chapter 539, to ensure that the District continues to receive payment
26 for the assessments, tolls and charges levied with respect to the land. The Water Rights
27 Assessment Agreement also requires the water right owner to execute a Deed of Trust as security
28 for the payment of assessments. With respect to the water rights sought to be changed by

1 Application No. 80700, NFWF has executed a Water Rights Assessment Agreement and Deed of
2 Trust that requires the continued payment of assessments levied by the District, including
3 assessments related to the operations of the U.S. Board.¹
4

5 Dated this 15th day of February, 2012.

6 WOODBURN AND WEDGE

7
8 By: DALE E. FERGUSON
9 GORDON H. DePAOLIC
10 DALE E. FERGUSON
11 DOMENICO R. DePAOLI
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27
28 ¹ The State Engineer has previously ruled that the owner of Orr Ditch Decree water rights may
change the point of diversion, place and manner of use of those water rights without owning the
proposed new place of use. See State Engineer Ruling No. 5760 at 22 – 24, Ruling No. 6035 at
15 through 17.

1 AFFIDAVIT OF SERVICE

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

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

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

9 On February 15, 2012, I deposited in sealed envelopes in the United States Mail, postage
10 fully prepaid, a true and correct copy of *Walker River Irrigation District's Response to Brief of*
11 *the United States Board of Water Commissioners* filed in the above entitled matter, addressed to
12 each of the names and addresses as follows:

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

David Sceirine
P.O. Box 239
Yerington, Nevada 89447

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

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

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

Glenn Sciarani, Nichol Merritt Ditch Co.,
Inc.
150 Densmore Lane
Yerington, Nevada 89447

23 D & GW Ditch Co., Louis Scatena
24 1275 Hwy. 208
25 Yerington, Nevada 89447

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

26 Nevada Farm Bureau Federation
27 Doug Busselman
28 2165 Green Vista Dr., #205
Sparks, Nevada 89431

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

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

Tunnel Ditch Co., Louis Scatena
984 State Rte. 208
Yerington, Nevada 89447

1 Karen Peterson
2 Allison MacKenzie Law Firm
3 402 N. Division Street
4 Carson City, Nevada 89702

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

4 Linda K. Rhodes
5 3320 Sandra Drive
6 Reno, Nevada 89503-3835

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

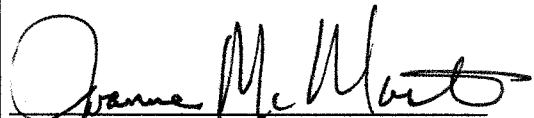
7 Steven B. Rye
8 215 W. Bridge St., Ste. 3
9 Yerington, Nevada 89447

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

10 Louis Scatena
11 1275 Hwy. 208
12 Yerington, Nevada 89447

13 
14 Holly Dewar

15 SUBSCRIBED and SWORN to before
16 me this 15th day of February, 2012.

17 
18 NOTARY PUBLIC
19

