

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

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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; Settelmeier-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

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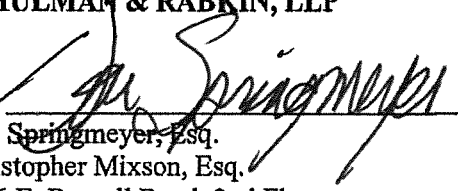
16 8. If the State Engineer, or the Walker Decree Court, does not approve this Stipulation
17 as provided in Paragraph 6 above, no Party to this Stipulation shall be determined to be bound by
18 any provisions or agreements reached and described herein.

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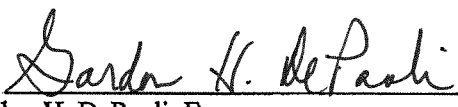
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1 10. This Stipulation may be executed in counterparts or via facsimile or electronic
2 scanning.

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:
11

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

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 Wolf Rifkin Shapiro Schulman Rabkin
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22 Newhall Mutual Ditch Co., Darrel E. Pursel
23 42 McKenzie Lane
24 Yerington, Nevada 89447

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25 Karen Peterson
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27 402 N. Division Street
28 Carson City, Nevada 89702

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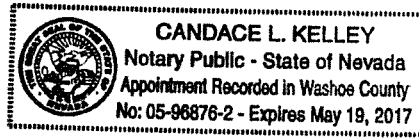
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 Schurz, Nevada 89427

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.



9 
10 _____
11 NOTARY PUBLIC

1 Don Springmeyer, Esq.
Nev. Bar No. 1021
2 Christopher W. Mixson, Esq.
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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.
20

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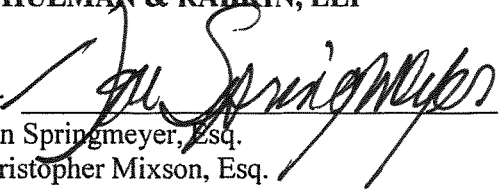
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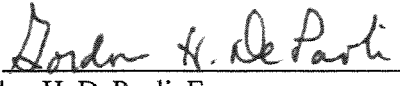
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3. This Stipulation may be executed in counterparts, or by facsimile or electronic scanning.

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

WOODBURN AND WEDGE

By: 
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By: 
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6100 Neil Road, Suite 500
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Dated: October 24, 2013
*Attorneys for Protestant Walker
River Irrigation District*

1 **CERTIFICATE OF MAILING**

2 I certify that I am an employee of the law office of Wolf, Rifkin, Shapiro, Schulman
3 and Rabkin, LLP, and that on this date I caused to be served by U.S. mail, postage prepaid, a
4 true an correct copy of the foregoing **STIPULATION RE CONSUMPTIVE USE TABLE** on
5 the following persons and/or entities:
6

7 Karen Peterson, Esq.
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13 *Commissioners*

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17 *Management, LLC, et al.*

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22 *for Jim Snyder, Eddie R. Snyder, Eufrazia*
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Louis Scatena, Secretary
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28 Newhall Mutual Ditch Co.
Darrell E. Pursel, President

Tunnel Ditch Co.
Louis Scatena, Secretary

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2 Yerington, Nevada 89447

984 State Rte. 208
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3 Dated this 24th day of October, 2013.
4

5 

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