

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

IN THE MATTER OF PROTESTED APPLICATION)
80700 FILED BY THE NATIONAL FISH AND)
WILDLIFE FOUNDATION TO CHANGE THE)
PLACE OF USE AND MANNER OF USE OF THE)
DECREED SURFACE WATER OF THE WALKER)
RIVER, MASON VALLEY HYDROGRAPHIC)
BASIN (108), LYON COUNTY, NEVADA.)

**INTERIM ORDER AND
NOTICE OF HEARING**

I.

PRE-HEARING CONFERENCES

On August 31, 2011, pursuant to NAC § 533.170, the State Engineer held a pre-hearing conference in the matter of protested Application 80700. Prior to and during the pre-hearing conference, various parties raised evidentiary and legal issues and argued that several legal issues are threshold matters requiring resolution prior to proceeding any further with consideration of Application 80700. Because of the many issues raised and discussed, the State Engineer ordered the parties to submit an outline of the issues. The deadline for submitting issues was October 21, 2011. On January 24, 2012, the State Engineer held a second pre-hearing conference. The submitted issues were discussed and legal briefing was ordered on selected issues. This interim order addresses some of the issues raised at the pre-hearing conferences and in the legal briefing.

II.

**PARTIES PARTICIPATING IN ADMINISTRATIVE HEARING
AND SERVICE OF PROCESS**

In order to understand how many parties would be presenting formal cases-in-chief at any future administrative hearing, the State Engineer included with the Notice of 2nd Pre-Hearing Conference an intent to participate form that asked Protestants to declare their intent as to their formal participation in the administrative hearing process and to identify if they would be represented by legal counsel or other representative. Only those persons or entities that indicated their intent to present a case-in-chief or to participate in cross-examination are considered parties to the administrative hearing for purposes of service of evidentiary documents, witness lists, outlines of testimony and motions. Concern was also raised that parties were not receiving service of process of documents being filed with the State Engineer; therefore, the Hearing

Interim Order and Notice of Hearing

Page 2

Officer indicated that he would prepare a service list to be used by all parties to the proceeding.

Based on the responses submitted in the intent to participate forms, the Office of the State Engineer by notice dated January 30, 2012, provided the official service list, which the participating parties are required to use for service when submitting documents to the State Engineer in this matter. All parties are required to attach a certificate of service to any document filed with the Office of the State Engineer which is to indicate who was served. Any documents, such as exhibits, motions, correspondence, etc., must be served on all parties on the service list. However, any party who is represented by legal counsel or some other representative will only receive service of process through said legal counsel or representative.

The Office of the State Engineer received two requests to change the service list. Per their respective requests, Linda K. Rhodes and the Nevada Farm Bureau Federation are hereby removed from the service list of January 30, 2012. The Tunnel Ditch Company and D&GW Ditch Company, and Louis Scatena did not submit Intent to Participate forms and did not make an appearance at the pre-hearing conference. The State Engineer finds that through their inaction they are not considered as participating in the administrative hearing process, and are removed from the service list of January 30, 2012. The following parties or entities have indicated that they intend to participate in the administrative hearing process. The legal counsel or representative is in the left-hand column and the represented parties are listed in the right-hand column. Please note that the U.S. Board of Water Commissioners is neither an applicant nor protestant, but is a party in this matter. With the aforementioned changes, the service list of January 30, 2012, is amended as follows.

<u>Legal Counsel or Representative:</u>	<u>Applicant and Protestants:</u>
Don Springmeyer, Esq. Christopher Mixson, Esq. Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP 3556 East Russell Road, Second Floor Las Vegas, Nevada 89120	National Fish and Wildlife Foundation

Interim Order and Notice of Hearing
Page 3

<p>Karen Peterson, Esq. Allison, MacKenzie Law Firm 402 North Division Street Carson City, Nevada 89702</p>	<p>U.S. Board of Water Commissioners</p>
<p>Christopher Watson, Esq. U.S. Department of the Interior Office of the Solicitor 1849 C St., NW, MS 6513 MIB Washington, DC 20240</p>	<p>U.S. Bureau of Indian Affairs</p>
<p>George Benesch, Esq. 190 W. Huffaker Lane, Ste. 408 Reno, Nevada 89511</p>	<p>Lyon County</p>
<p>Wes Williams, Esq. P.O. Box 100 Schurz, Nevada 89427</p>	<p>Walker River Paiute Tribe</p>
<p>Gordon DePaoli, Esq. & Dale Ferguson, Esq. Woodburn and Wedge 6100 Neil Road, Ste. 500 Reno, Nevada 89511</p>	<p>Walker River Irrigation District</p>
<p>Stephen B. Rye, Esq. 215 W. Bridge St., Ste. 3 Yerington, Nevada 89447</p>	<p>Mickey Mutual Ditch Company¹ G&H Mutual Ditch Company Greenwood Mutual Ditch Company</p>

¹ At the pre-hearing conference of January 24, 2012, Mr. Snyder indicated that he was also representing Mickey Mutual Ditch Company, G&H Mutual Ditch Company and Greenwood Mutual Ditch Company. However, the submitted Intent to Participate forms indicated that these entities were going to be represented by Stephen B. Rye.

Interim Order and Notice of Hearing

Page 4

Linda Bowman, Esq.
P.O. Box 10306
Reno, Nevada 89510-0306

Backtrack, LLC
Bale Counter, Inc.
Berrington Custom Hay Hauling & Trans. 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 Snyder
P.O. Box 550
Yerington, Nevada 89447

Jim and Bunny Snyder
Eddie R. and Theresa Snyder Trust
Eddie R. Snyder, Trustee
Eufrazia, LLC
LJ Land, Limited
Snyder Livestock Co.
Spragg-Woodcock Mutual Ditch Co.

Campbell Canal Co.
c/o Rife and Associates
David Sceirine, President
22 Hwy 208
Yerington, Nevada 89447

Campbell Canal Co.

Interim Order and Notice of Hearing
Page 5

Newhall Mutual Ditch Co.
Darrell E. Pursel, President
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Yerington, Nevada 89447

Newhall Mutual Ditch Co.

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

David Sceirine

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

Joseph Sceirine

III.

On October 14, 2011, Lyon County filed a motion to participate as a protestant. The basis of the motion was the failure of the Office of the State Engineer to notice the County of the application as provided in NRS § 533.363. The motion was not opposed by the Applicant. At the pre-hearing conference of January 24, 2012, the State Engineer granted the motion. The protest of Lyon County and the associated filing fee were accepted by the Office of the State Engineer and Lyon County is recognized as a protestant in this matter.

IV.

TIMING OF HEARING AND DECISION

An issue was raised as to the time for decision by the State Engineer on the application. Nevada Revised Statute § 533.370(4) provides that the State Engineer shall approve or reject an application within two years after the final date for filing a protest unless the matter is postponed in accordance with the statute. However, Article VI, Section 6.1 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 and Regarding Compliance with California Fish and Game code Section 5037 and other Provisions of California Law*, which is a provision of the rules of the Walker River Decree Court, requires that the State Engineer approve or reject a change

Interim Order and Notice of Hearing

Page 6

application within one year after the date of the filing of the application, unless the decision is postponed for an additional time period not to exceed two additional years, where the Applicant, Protestant, as well as any interveners jointly agree to an extension.

At the pre-hearing conference of January 24, 2012, no party indicated that they were prepared to go to hearing prior to March 24, 2012, the one-year deadline. All parties consented to extend the period of time for a decision. The State Engineer finds that the decision on Application 80700 will be extended for a period not to exceed two additional years or prior to March 24, 2014.

V.

SUPPLEMENTAL GROUNDWATER RIGHTS

The Walker River Irrigation District (WRID) raised an issue regarding identification of any supplemental groundwater rights to the surface water changed by Application 80700 that the Applicant indicates will be abandoned or retired if and when the transfer is final and the benefits of retiring those water rights. At the prehearing conference of August 31, 2011, the Applicant submitted information (Exhibit No. 4) identifying the supplemental water rights relative to Application 80700. The State Engineer finds that now that the water rights have been identified by the Applicant that any other issue regarding the abandonment or retirement of supplemental groundwater rights is evidentiary and should be addressed during the course of the administrative hearing.

VI.

ADDITIONAL STUDIES PURSUANT TO NRS § 533.368

At the pre-hearing conferences the parties discussed ongoing studies and whether additional studies should be ordered under the provision of NRS § 533.368. Nevada Revised Statute § 533.368 provides that if the State Engineer determines that a hydrological study, an environmental study or any other study is necessary before the State Engineer makes a final determination on an application and the applicant, a governmental agency or other person has not conducted such a study or the required study is not available, the State Engineer shall advise the applicant of the need for the study and the type of study required.

Lyon County indicated that perhaps a study should be directed towards the economic impact to Lyon County of the change of water rights from agriculture to wildlife purposes. The WRID argued that the purpose of NRS § 533.368 was to address inter-county transfers of water

Interim Order and Notice of Hearing

Page 7

and was to be used to protect the county of origin's economic and environmental interests and that perhaps the use of the word "studies" was incorrect regarding the issues it has raised. Its concern is that the statute known as Desert Terminal Lakes 5 requires federal funding be used in specific ways and that substantial federal funds have been allocated for those activities and that the WRID does not have a clear idea as to what activities are actually going on. The WRID indicated that if it had a better idea of those activities, it would be in a better position to indicate if any additional studies are to be suggested. The Applicant indicated it would be receptive to providing an official report to the WRID on activities taking place pursuant to congressional direction, but asserts that those activities do not have much to do with the change application outside of the UNR-DRI model.

The State Engineer finds he is not the appropriate authority to analyze the economic impact of congressional legislation and declines to order a study on the economic impact to Lyon County of Desert Terminal Lakes 5. The State Engineer finds the Applicant agreed to provide the WRID with information on the activities taking place pursuant to the Desert Terminal Lakes legislation, but the State Engineer will not use the provisions of NRS § 533.368 to gather that information. The State Engineer finds no other studies have been suggested at this time for the State Engineer's consideration and based on the discussion in the next section regarding the UNR-DRI Model no additional studies will be ordered at this time.

VII.

UNR-DRI MODEL

During the pre-hearing conferences, discussion primarily focused on the water modeling effort of the University of Nevada, Reno and Desert Research Institute generally referred to as the UNR-DRI Model. This model is federally funded through the Desert Terminal Lakes legislation.

Section 2507 of Public Law 107-171 (2002 Farm Bill) provided \$200,000,000 to be used by the Secretary of the Interior, acting through the Commissioner of Reclamation, to provide water to at-risk natural desert terminal lakes. The bill was later amended under Public Law 108-7, Section 207 to include language "Restoration of fish, wildlife, and associated habitats in watersheds of certain lakes." The amendment specified that only Pyramid, Summit and Walker Lakes in the State of Nevada were to be considered under Section 2507, Public Law 107-171.²

² www.usbr.gov/mp/lbao/desert_terminal/index.html.

Interim Order and Notice of Hearing

Page 8

The National Fish and Wildlife Foundation (NFWF) is the applicant in this matter.

NFWF is a 501(c)(3) non-profit that preserves and restores our nation's native wildlife species and habitats. Created by Congress in 1984, NFWF directs public conservation dollars to the most pressing environmental needs and matches those investments with private funds.³

The NFWF entered into a grant agreement with the University of Nevada, Reno and the Desert Research Institute for Phase II research, which includes the modeling effort. The Applicant indicated that the model is being developed under congressional direction through funding from a grant from the Bureau of Reclamation through the NFWF.⁴

During the pre-hearing conference, the Hearing Officer asked the NFWF how it envisioned the model being brought into the administrative hearing. The NFWF indicated that it does not own the model, that the modelers are not employees or consultants to the Applicant and sees the modeling effort as somewhere between an "outside third-party governmental objective piece of work" and a hired consultant who is asked to produce work, which will be used as advocacy science in the hearing.⁵ The Applicant indicated that it envisioned a report being generated from a model run and that the NFWF would supply the report as part of the evidentiary exchange and then the modelers could be presented as a panel to discuss the report and then questions could be asked by parties to the hearing and by the State Engineer and his staff.

However, other parties to the hearing did not agree with the NFWF idea. The WRID's legal counsel argued that submitting a report is not going to be a substitute for everybody having adequate time to review the model, understand the model, and assess the model assumptions and reliability. The Applicant's legal counsel argued that these are the types of questions that could have been asked and answered at modeling group meetings or a technical workshop and asserted that there is no manual for the model that can be produced and it cannot be produced on a CD or DVD. He indicated that the model is a web of files that work between the UNR and DRI that it is not a "CD thing," but is a "cloud thing."⁶ The WRID's legal counsel asserts that if a party to a

³ <http://www.nfwf.org>.

⁴ Transcript, Pre-hearing Conference, January 24, 2012, p. 28.

⁵ Transcript, Pre-hearing Conference, January 24, 2012, pp. 27-28.

⁶ Transcript, Pre-hearing Conference, January 24, 2012, pp. 37-38.

Interim Order and Notice of Hearing

Page 9

hearing is going to rely on results of a model and ask the State Engineer to rely on the results of a model they cannot assert that they have no control over the people who built the model and assert that no one else can run the model and there is no opportunity to test the model. Legal counsel for Lyon County argued that models in other hearings are produced on a computer disk, that the assumptions are documented and the opposing party must be given the opportunity to run the model and verify the results. Additionally, that the model is being created with public funds and is a public document.

The State Engineer is very concerned with the modeling effort on several levels and is concerned by NFWF's reluctance to submit it as part of their evidence. The NFWF is established by Congress to direct public conservation dollars. The Bureau of Reclamation through the NFWF authorized the spending of significant public dollars in creating this model. It is the responsibility of the NFWF to assure the ability to use the model in the administrative hearing process. The quality and reliability of the model are relevant to consideration of the model and may be challenged in the court. While the model may be useful, the State Engineer is also aware that models can be suspect particularly because of their complexity, extent of data collection, issues regarding calibration and validation and lack of transparency. The UNR-DRI Model provides an additional tool for water managers such as the State Engineer to evaluate the effects of change applications on the hydrologic system. However, the State Engineer recognizes that the administrative hearing on this matter is a quasi-judicial process.

No information has been provided to the State Engineer indicating any consensus as to the appropriate use of the UNR-DRI Model; however, the State Engineer finds that it may provide information that should be evaluated in the context of the review of Application 80700. The legislature declared that it is the policy of this state to encourage the State Engineer to consider the best available science in rendering decisions concerning the available surface and underground sources of water in Nevada.⁷ The UNR-DRI model was funded by the NFWF specifically to evaluate the effectiveness of potential water right acquisitions in the Walker River Basin. Understanding the hydrology of this region is important in evaluating the potential impacts of the change application. The State Engineer will weigh the evidence presented at the administrative hearing and utilize the best available science that has been correctly applied and

⁷ NRS § 533.024(1)(c).

**Interim Order and Notice of Hearing
Page 10**

evaluated for accuracy in rendering his decision on this matter in accordance with stated legislative policies. In furtherance of this goal, the State Engineer orders the Applicant NFWF to present the UNR-DRI Model and its results as evidence during the administrative hearing.

The State Engineer expects the Applicant to provide sufficient information to his office and the other parties on the data, assumptions, guidelines followed in construction and testing, calibration and validation of the model, as well as an expert report addressing the analysis of this specific application. Any expert witness report(s) provided in the evidentiary exchange must be prepared and signed by the expert witness(es), and shall contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions, the data or other information considered by the witness(es) in forming the opinions, any exhibits to be used as a summary of or in support of the opinions, and a statement of qualifications of the witness(es). The expert report will be made available to all parties prior to any administrative hearing by the first evidence exchange date, so that all parties will have an opportunity to submit any desired rebuttal information. The Applicant NFWF must ensure the UNR-DRI Model files and sufficient information are also provided at the same time as the expert report so that a qualified person can run the model.

VIII.

FUTURE CHANGE APPLICATIONS

An issue was brought forth regarding future change applications that may be filed by the Applicant and whether any future applications should be consolidated with Application 80700. The State Engineer ruled on this issue and will not delay action to wait for future applications to be filed.

IX.

POSTPONEMENT DUE TO PENDING LITIGATION

It was pointed out that the Walker Decree Court's administrative rules allow postponement of the consideration of change applications for the pendency of court actions and that there is ongoing litigation on the Walker River and it was suggested that perhaps the consideration of this application should be postponed. The State Engineer ruled that he is not going to postpone action on the application for the pending litigation.

X.

CONSUMPTIVE USE CALCULATION

The Nevada Division of Water Resources has prepared a report on consumptive use.⁸ The question was raised as to whether the State Engineer would rely solely on this report or would hear additional evidence at any administrative hearing. The State Engineer ruled that the report may be used, but that the parties may submit their own evidence on this issue if they choose.

XI.

CONVEYANCE AGREEMENT

Discussion took place regarding a conveyance agreement the Applicant is attempting to reach with the Walker River Paiute Tribe regarding movement of the NFWF water through the Walker River Paiute Tribe Reservation. The State Engineer orders that any conveyance agreement will be made a part of the administrative hearing record through its submission during the first evidentiary exchange in order to allow all parties the opportunity to review it. The State Engineer finds he is not bound by any agreement reached, but may consider it during the course of evaluation of the application and related factors.

XII.

PRELIMINARY LEGAL ISSUES

The United States Board of Water Commissioners (Board) submitted issues for the State Engineer to consider via a letter dated October 21, 2011. The State Engineer ordered the Board to submit a legal brief on items no. 2 and 3 by February 3, 2012, and allowed the Applicant and Protestants to file responding briefs by February 15, 2012. The Applicant and Protestants Bureau of Indian Affairs, WRID, and Walker River Paiute Tribe provided response briefs.

Item No. 2: The Board questions whether the proposed change violates the Walker River Decree (Decree), which provides in pertinent part that no water shall be sold or delivered outside the basin of the Walker River. The argument raised by the Board is that the term "...basin of the Walker River" has never been construed or interpreted by the Federal District Court since the Decree was issued on or about April 15, 1936, and the Board believes that Walker Lake may not

⁸ *Evapotranspiration and Net Irrigation water Requirements for Nevada*, Huntington and Allen, 2010, available online at http://water.nv.gov/mapping/et/et_general.cfm

Interim Order and Notice of Hearing
Page 12

be part of the Walker River basin as contemplated under the Decree. Neither the Applicant nor any Protestant supported the Board in this position. The Applicant NFWF and Protestant Walker River Paiute Tribe both point out that the Board appears to rely heavily on quotes from a litany of attorney arguments from the 1930s, as opposed to witness testimony. The Applicant NFWF further argues that there is not a single statement in any of the material quoted by the Board that could be considered as even weak or circumstantial evidence that the original Decree parties intended that Walker Lake not be considered part of the Walker River basin. Based on a review of the arguments, the State Engineer concludes that Walker Lake is a part of the Walker River Basin.

Item No. 3: The Board asserts that because the Decree was entered to settle the rights of water users of the Walker River for irrigation of the lands for the parties to the suit, the question arises whether a holder of a decreed water right can own only water rights, but not own any land or the place of use for which the water is to be placed for beneficial use. Neither the Applicant nor any Protestant supported the Board in this argument. Protestant WRID argues that it does not appear that the Decree requires an owner of a water right to also own the land and notes that there are many instances within the WRID where the ownership of the land has been severed from the right to use water upon the land. In those instances, the WRID requires the owner of the water to enter into a Water Rights Assessment Agreement with the WRID to ensure receipt of payment for the assessments, tolls and charges. As noted in the response briefs, the Applicant has executed a Water Rights Assessment Agreement with respect to Application 80700 and has agreed to bear its fair share for the administration of the Decree and does not see the Board's concerns as a valid issue. Protestant Walker River Paiute Tribe notes that it is common for water to be used on land leased by a farmer and that the Board apparently has no objection to this practice. The State Engineer concludes 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.

Interim Order and Notice of Hearing
Page 13

XIII.

NOTICE OF HEARING

Please take notice, pursuant to the authority set forth in NRS §§ 533.365, 533.370 and 533.375, the State Engineer hereby sets a hearing to consider the matter of protested Application 80700.

Accordingly, the hearing will begin promptly at **8:30 a.m., on Monday, December 3, 2012, continuing through Friday, December 7, 2012, reconvening at 8:30 a.m. on Monday, December 10, 2012, continuing through Friday, December 14, 2012, if necessary to be held at the Nevada Division of Water Resources Tahoe Hearing Room, 2nd floor, 901 S. Stewart Street, Carson City, Nevada.**

The exchange of documents, witness lists and descriptions of witness testimony will take place in two simultaneous exchanges.

Initial Evidentiary Exchange: The parties are hereby ordered to serve on each other and the State Engineer in Carson City, Nevada, no later than **Friday, September 14, 2012,** an exhibit list, a witness list, a detailed outline of the testimony of each witness, and copies of any documentary evidence intended to be introduced into the hearing record. If a witness is not identified as testifying on direct to a certain topic, the witness will not be allowed to testify to the un-identified topic in his or her direct testimony. If a witness is to be presented to provide expert testimony, the evidentiary exchange shall include a written report prepared and signed by the witness, which shall contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or in support of the opinions and a statement of qualifications of the witness. The parties may choose to exchange documents via computer compact disk in PDF 20x20 dpi format.

Second Evidentiary Exchange: The parties are hereby ordered to serve on each other and the State Engineer in Carson City, Nevada, no later than **Friday, November 9, 2012,** an additional exhibit list, witness list, a detailed outline of the testimony of additional witnesses and copies of any additional documentary evidence intended to be introduced at the administrative hearing that may be necessary in response to the other parties' first evidentiary exchange. This exchange is meant only to provide evidence that becomes necessary in rebuttal to the original exchange. It is not intended to be the first time a party presents evidence as to their case-in-chief.

Interim Order and Notice of Hearing

Page 14

Again, the parties may choose to exchange documents via computer compact disk in PDF 20x20 dpi format.

In addition to the hard copies of the lists, outlines of testimony and evidence to be served on the State Engineer in Carson City, Nevada, the parties are hereby ordered to also file in the Office of the State Engineer in Carson City, Nevada, a computer disk that includes: their exhibit list in Microsoft Word format using the exhibit numbers assigned below, their witness list in Microsoft Word format, their witness summaries in Microsoft Word format and scanned copies of all their exhibits in PDF 20x20 dpi format. The State Engineer will then make these documents available on the Division of Water Resources website at <http://water.nv.gov> where all interested persons can access the information. If the parties choose to exchange documents via computer disk, those arrangements are to be made between the parties themselves.

XIV.

Nevada Administrative Code § 533.290 requires that exhibits introduced into evidence must be in a readily reproducible form, on paper that is 8½" x 11" or foldable to that size. Larger charts, maps, drawings and other material will not be admitted into evidence, but may be used for demonstrative purposes. The submission of exhibits submitted on computer compact disks or any other media, other than paper that is 8½" x 11" or foldable to that size, will be considered on a case-by-case basis recognizing that much of the modeling information will be submitted on disk. An original and one copy of each exhibit must be submitted to the State Engineer with exhibit numbers identified as provided below. Computer presentations, such as power-point slides, must be copied on paper that is 8½" x 11" and may be offered into evidence. Facilities are not available for copying documents during the hearing.

For the presentation of excerpts from large documents, the State Engineer will allow the submission of excerpts, but upon request, the person or entity serving such document must make the entire document available to whomever requests it. If excerpts from a larger document are served and the person upon whom it is served requests to have the entire document in either a hard copy or in a PDF format on a computer compact disk, the person serving said document has 10 days from the date of receipt of the request to place the requested copy in the U.S. Mail or actually provided to the requestor.

**Interim Order and Notice of Hearing
Page 15**

The parties can agree to document receipt in a digital format and the digital standard will be PDF 20 x 20 dpi files. Any document, report, etc. that any participant intends to refer to must be provided as an exhibit during the administrative hearing and served upon the other hearing participants and the State Engineer in advance.

The use of any computer, projector or other type of equipment in the hearing room must be arranged at least one week in advance of the hearing with the information technology staff of the Office of the State Engineer.

XV.

Pursuant to NRS § 533.365(7), the technical rules of evidence do not apply to administrative hearings before the State Engineer.

XVI.

As set forth in Nevada Administrative Code § 533.220, the hearing will be reported by a certified court reporter. The court reporter will file an original and one copy of the transcripts with the State Engineer. Anyone wanting a copy of the transcript should make arrangements with the court reporter. The costs of the transcript will be borne by the Applicant and Protestants as set forth in the Nevada Administrative Code on a pro-rata basis.

XVII.

The following exhibit numbers are hereby assigned.

State Engineer	1-50
NFWF	51-150
WRID	151-250
BIA	251-350
Walker River Paiute Tribe	351-450
Backtrack, LLC, et al. (Linda Bowman)	451-550
Jim and Bunny Snyder, et al. (Jim Snyder)	551-650
Mickey Mutual Ditch Company	651-750
G&H Mutual Ditch Company	
Greenwood Mutual Ditch Company	
Lyon County	751-850
Campbell Canal Co.	851-900

Interim Order and Notice of Hearing
Page 16

Newhall Mutual Ditch Co.	901-950
David Sceirine	951-1000
Joseph Sceirine	1001-1050

If any parties require additional exhibit numbers, please contact the Division prior to the evidence exchange to make arrangements.

XVIII.

The Applicant will present its case first, followed by the Protestants. Any of the Protestants identified as presenting a case-in-chief must confirm with the State Engineer by **Friday, August 10, 2012**, their intention that they will be presenting a case-in-chief. The confirmation of intent to present a case-in-chief must be served on all parties to this proceeding. No party will be required to serve copies of the evidence on any person or party other than those actually presenting a case-in-chief.

The Protestants will present their cases-in-chief in the following order:

WRID, BIA, Walker River Paiute Tribe, Backtrack, LLC, et al. (Linda Bowman), Jim and Bunny Snyder, et al. (Jim Snyder), Mickey Mutual Ditch Company and G&H Mutual Ditch Company and Greenwood Mutual Ditch Company, Lyon County, Campbell Canal Co., Newhall Mutual Ditch Co., David Sceirine, Joseph Sceirine.

XIX.

The order for examining witnesses shall be direct examination, cross-examination, re-direct examination limited to issues raised on cross-examination and re-cross examination limited to issues raised on re-direct. Rebuttal cases will not be permitted because the staggered evidentiary exchange provides for exchange of all information in advance of the administrative hearing.

XX.

You or your designated representative should plan to attend the hearing for the purposes of presenting evidence or testimony in support of your position concerning the protested application. Legal counsel not licensed to practice law in the State of Nevada is required to comply with Supreme Court Rule 42. The Rule 42 Application to Associate Form that needs to be filed with the Nevada State Bar can be found on the Nevada Division of Water Resources website at <http://water.nv.gov> under the Forms Tab - Miscellaneous Forms. Nevada Supreme Court Rule 43 provides an exception for lawyers employed by or representing the United States Government.

Interim Order and Notice of Hearing
Page 17

XXI.

PUBLIC COMMENT

Public comment will be on **Friday, December 7, 2012**, beginning at 8:30 a.m. Public comment may be limited in time to accommodate all persons wishing to speak. **Written public comment will be accepted until Friday, December 21, 2012.**

XXII.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify the Hearings Section of the Nevada Division of Water Resources, 901 South Stewart, 2nd Floor, Carson City, Nevada, 89701, or by calling (775) 684-2800.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 17th day of
July, 2012.

Interim Order and Notice of Hearing
Page 18

**Certificate of Service
Interim Order and Hearing Notice
In the Matter of Protested Application 80700**

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**Interim Order and Notice of Hearing
Page 19**

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