

STIPULATION REGARDING PROTEST ISSUES

This Stipulation is made and entered into between Las Vegas Valley Water District (“LVVWD”), the Southern Nevada Water Authority (“SNWA”), and the United States Fish and Wildlife Service (the “USFWS”), (hereinafter these entities are referred to as the “Parties”).

RECITALS

A. Currently pending before the State Engineer of Nevada are water right applications filed by LVVWD/SNWA for water rights in North Tikaboo and South Tikaboo Valleys, and Three Lakes North and South Valleys, all or portions of which are located within the Desert National Wildlife Refuge Complex. A hearing has been scheduled by the State Engineer to consider these applications for March 22-26, 2004. The application numbers are 53948, 53950, 53951, 54062, 54066, 54068 and 54069 (hereinafter referred to as “the Applications”).

B. The USFWS filed timely protests to the granting of the applications pursuant to the USFWS’ responsibility to protect its State and Federal water rights and other water-dependent resources. A number of these Federal rights and resources occur within the Desert National Wildlife Refuge Complex. The Federal Bureaus assert that groundwater withdrawals from North Tikaboo and South Tikaboo Valleys, and Three Lakes North and South Valleys pose a risk of adversely impacting federal rights and resources and are desirous of working in a cooperative manner with the LVVWD/SNWA to protect these resources.

C. LVVWD/SNWA has identified certain water development options for these applications that include the possible need by LVVWD/SNWA to have use of and access to Federal lands that are included in the Desert National Wildlife Refuge, a part

of the National Wildlife Refuge System. The ability to access and use Refuge Lands for any purpose, including water development, is governed by Federal law. One protest issued raised by the USFWS involves access and use of refuge lands.

D. Rights to access and use of Refuge System lands are governed by the National Wildlife Refuge System Administration Act, as amended.

E. The USFWS administers the National Wildlife Refuge System and is responsible for determining whether proposed uses of a refuge are compatible as defined in the Refuge Administration Act and regulation and policies of the USFWS. As part of its administration of the National Wildlife Refuge System, the USFWS has determined that certain uses of and access to Desert National Wildlife Refuge lands that support the purposes of the Desert National Wildlife Refuge and/or the mission of the USFWS may be authorized outside the context of compatibility as a “refuge management activity.” These activities can involve the participation of non-Service entities when they serve in the roles of USFWS-authorized agents.

F. LVVWD/SNWA has submitted for USFWS consideration an application for the development of a groundwater testing and monitoring system on the Desert National Wildlife Refuge. USFWS has expressed concerns regarding the purpose and scope of this proposal and has made no determination whether such use of the Desert National Wildlife Refuge would be a “compatible” use under the Refuge Administration Act.

G. The Parties recognize they share interests in gaining a better understanding of the hydrologic and hydrogeologic system within or adjacent to the Desert National Wildlife Refuge, and that it is in their best interests to cooperate in the collection and

analysis of additional hydrologic and hydrogeologic information within or adjacent to the Desert National Wildlife Refuge.

H. The Parties desire to conduct the hearing before the State Engineer to inform the State Engineer regarding the issue of use and access to the Desert National Wildlife Refuge as addressed by this Agreement, and to inform the State Engineer of the federal process required to permit use of Desert National Wildlife Refuge lands. The Parties have agreed that the issue of use and access to Desert National Wildlife Refuge lands will be decided through the federal process, and that they do not intend to seek a determination by the State Engineer of access. Further, the Parties desire the State Engineer to condition any grant of water rights under the subject applications which require points of diversion or any other infrastructure on Desert National Wildlife Refuge lands as set forth in paragraph 6 of this agreement, recognizing that any such use and access is subject to approval by USFWS.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. The Parties agree that additional data will better define the groundwater resource on Desert National Wildlife Refuge Complex.
 2. The USFWS agrees that additional study and data collection can provide benefits to the future management of the Desert National Wildlife Refuge Complex and the National Wildlife Refuge System.
 3. USFWS will allow access and use of Desert National Wildlife Refuge lands for the purpose of completing the study described in paragraph 4 below.
- LVVWD/SNWA and the USFWS agree that any use or access issue regarding the

Desert National Wildlife Refuge must be handled by the USFWS pursuant to its Federal authorities, and that the State Engineer cannot grant such access or use through the water right application process. To the extent the study described in paragraph 4 below fulfills one or more purposes of the Desert National Wildlife Refuge or the National Wildlife Refuge System mission, the USFWS has determined this effort to be “refuge management activity.” For the above purposes, LVVWD/SNWA is considered an USFWS-authorized agent. Thus, USFWS has made a determination that this study does not require completion of a compatibility determination, however, this study is subject to other federal laws such as NEPA and the ESA. The USFWS has not, however, made a decision whether the access or use of Desert National Wildlife Refuge lands for any purpose other than the study, would be a “compatible use” under the Refuge Act.

4. The Parties agree to cooperate in the gathering of scientific information in the Desert National Wildlife Refuge Complex to better define the groundwater resource. The Parties will cooperate to jointly develop a study plan (the groundwater study plan) that will include goals and objectives of the study, the desired data to be collected, (which may include but is not limited to potentiometric surface elevations, depths to water, geologic logs from wells, and geochemistry), the required period of study, mutually agreeable monitoring well locations and specifications and other information as agreed to by the parties. The Parties agree to include the National Park Service and the U.S. Geological Survey in the development and analysis of the above-referenced study and invite participation by the Nevada State Engineer and the Department of Defense. The groundwater study plan will be completed within 90 days of execution of this Agreement unless extended or as agreed to by the parties. Upon

completion of and agreement to the groundwater study plan, the Parties shall, to the extent of their respective responsibilities thereunder, promptly begin the study.

5. LVVWD/SNWA agrees that any future use and or access to the Desert National Wildlife Refuge lands for any purpose, other than expressly provided in accordance with this Agreement, will be subject to all applicable federal laws, regulations and policies. Further, LVVWD/SNWA agrees that should the State Engineer grant any of the subject applications that include a point of diversion or any infrastructure on Desert National Wildlife Refuge lands, LVVWD/SNWA shall request that the State Engineer include in such a ruling a condition that access and use on Desert National Wildlife Refuge lands is subject to USFWS decisions regarding such access and use.

6. The Parties also agree to hold in abeyance any formal request for other access or use of Desert National Wildlife Refuge lands involving the groundwater resource, until the conclusion of the study period for the ground water study plan specified in paragraph 4 above or 18 months from the date of execution of this stipulation, whichever is sooner. If as a result of review under applicable environmental laws or otherwise the study cannot be promptly implemented, the LVVWD/SNWA is free to submit an application to pursue groundwater development activities on Desert National Wildlife Refuge lands, provided that the LVVWD/SNWA shall make a good faith effort to further this study by cooperating in addressing any such applicable requirement pursuant to environmental laws or otherwise. Furthermore, if the Parties are unable to reach agreement on the groundwater study plan within the specified 90 day period (or any extension agreed to by the Parties), the

LVVWD/SNWA is free to submit an application to pursue groundwater development activities on Desert National Wildlife Refuge lands.

7. This Stipulation does not waive any authorities of the USFWS or the United States, including any other agency or bureau not specified in this Stipulation, nor relieve LVVWD/SNWA from complying with any federal laws, including, but not limited to, the National Wildlife Refuge System Administration Act, the National Environmental Policy Act, the Endangered Species Act, the Wilderness Act, and the National Historic Preservation Act and any and all rules and regulation there under. It is the expressed intention of the Parties that by entering into this Stipulation, the USFWS and the United States are waiving no legal rights of any kind.

8. The Parties expressly acknowledge that the Nevada State Engineer has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of Nevada and, furthermore, that nothing contained in this Stipulation shall be construed as waiving or in any manner diminishing such authority.

9. The Parties agree that a copy of this Stipulation shall be submitted to the Nevada State Engineer prior to the commencement of the administrative proceedings scheduled to begin on March 22, 2004. At that time, the Parties shall request, either in writing, or on the record at the beginning of the scheduled proceeding, that the State Engineer include **paragraph 5 of** this Stipulation as part of the permit terms and conditions, in the event that he grants Application Nos. 53948, 53950, 53951, 54062, 54066, 54068 and 654069, in total or in part. In addition, the Parties will request that the State Engineer state in writing, prior to the hearing, that he will incorporate **paragraph 5 of** the Stipulation into the permit terms in the event that he grants the Applications, in total or in part.

10. Notices. If notice is required to be sent by the Parties, the addresses are as follows:

If to USFWS:

Manager
California Nevada Operations Office
Fish and Wildlife Service
2800 Cottage Way Suite W-2606
Sacramento, CA 95825

If to LVVWD/SNWA:

General Manager
Las Vegas Valley Water District
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153

General Manager
Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153

11. Assigning. Any party hereto may transfer or assign its interest in the water rights here involved. Any and all transferees and assignees shall be bound by the terms and conditions of this Stipulation. As a condition to any such transfer or assignment, the transferee and/or assignee shall execute a stipulation expressly stating it is bound to all of the terms and conditions of this Stipulation.

12. Choice of Law. This Stipulation shall be governed in accordance with the laws of the State of Nevada to the extent not inconsistent with Federal law.

13. Copies of all correspondence between and data gathered by the Parties pertinent to the Desert National Wildlife Refuge Complex may be submitted to the State Engineer. It is the intention of the Parties hereto that the State Engineer should be kept informed of all activities in the same fashion as are the Parties hereto.

14. By entering into this Stipulation, the USFWS does not become a party to any proceeding other than the protest proceeding referenced above or waive its immunity from suit or consent to or acknowledge the jurisdiction of any Court or tribunal. Nothing in the Stipulation shall affect any Federal reserved water rights of the USFWS or the United States on behalf of any Indian tribe and the USFWS by entering into this Stipulation does not waive or prejudice any such rights. The USFWS reserves all legal rights of any kind it possesses pursuant to or derived from Executive Orders, acts of Congress, judicial decisions, or regulations promulgated pursuant thereto. Neither party waives its rights to seek relief in any appropriate forum of its choice not expressly prohibited by this Stipulation.

15. Any commitment of funding by the USFWS or the LVVWD/SNWA in this Stipulation or otherwise is subject to appropriations by Congress or the governing bodies of the LVVWD/SNWA as appropriate.

16. This Stipulation may be amended by mutual agreement of the Parties.

17. This Stipulation sets forth the entire agreement of the Parties and supercedes all prior discussions, negotiations, understandings or agreements. No alteration or variation of this Stipulation shall be valid or binding unless contained in an amendment in accordance with paragraph 16.

18. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respect personal representatives, successors, transferees and assigns.

19. This Stipulation will become effective as between the Parties upon all Parties signing this Stipulation. The Parties may execute this Stipulation in two or

more counterparts, which shall, in the aggregate, be signed by all Parties, each counterpart shall be deemed an original as against any party who has signed it.

20. Other entities may become Parties to this Stipulation by mutual assent of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Stipulation as of
the dates written below.

Dated this 22nd day of March, 2004.

U.S. FISH AND WILDLIFE SERVICE

By: Steve Thompson

Title CNO MANAGER

LAS VEGAS VALLEY WATER DISTRICT

By: Paul Roy

Title GENERAL MANAGER

SOUTHERN NEVADA WATER
AUTHORITY

By: Paul Roy

Title GENERAL MANAGER

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