

**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.)

**FOURTH AMENDED
NOTICE OF HEARING**

I.

JULY 8, 2013, HEARING

On July 8, 2013, the Applicant and Protestants identified below, appeared before the State Engineer pursuant to an Amended Notice of Hearing dated August 10, 2012. Prior to the July 8th hearing date, the State Engineer was advised that the Applicant and Protestant Walker River Irrigation District (WRID) had reached a conditional stipulation regarding WRID's protest, which stipulation was filed in the Office of the State Engineer on June 28, 2013 (WRID Stipulation or Stipulation). Several other Protestants joined the WRID Stipulation prior to the hearing; therefore, the July 8, 2013, went forward to the extent the State Engineer desired to determine the intention of the remaining Protestants who had not joined the Stipulation, which additional joinders could resolve the protests filed in this matter.

The following participants and/or their representative appeared at the July 8, 2013, hearing:

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

Counsel or Representative	Representing
Karen Peterson, Esq. Allison, MacKenzie Law Firm 402 North Division Street Carson City, Nevada 89702	<i>U.S. Board of Water Commissioners¹</i>
Christopher Watson, Esq. U.S. Department of the Interior Office of the Solicitor 1849 C St., NW, MS 6513 MIB Washington, DC 20240	<i>U.S. Bureau of Indian Affairs</i>
George Benesch, Esq. 190 W. Huffaker Lane, Ste. 408 Reno, Nevada 89511	<i>Lyon County</i>
Wes Williams, Esq. P.O. Box 100 Schurz, Nevada 89427	<i>Walker River Paiute Tribe</i>
Gordon DePaoli, Esq. Dale Ferguson, Esq. Woodburn and Wedge 6100 Neil Road, Ste. 500 Reno, Nevada 89511	<i>Walker River Irrigation District</i>

¹ On September 14, 2012, the Decree Court ordered that the U.S. Board of Water Commissioners may participate as a party, *i.e.*, as neither the applicant or a protestant, in this proceeding. See *U.S. v. WRID*, 3:73-cv-0125-RCJ-WGC (in equity) (Docket No. 1110).

Counsel or Representative	Representing
Linda Bowman, Esq. P.O. Box 10306 Reno, Nevada 89510-0306	<i>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 ("Bowman Protestants")</i>

II.

NON-ATTENDING PROTESTANTS

The following Protestants or their representative did not attend the hearing:

Counsel or Representative	Representing
Stephen B. Rye, Esq. 215 W. Bridge St., Ste. 3 Yerington, Nevada 89447	<i>Mickey Mutual Ditch Company; G&H Mutual Ditch Company; Greenwood Mutual Ditch Company</i>
Jim Snyder ² P.O. Box 550 Yerington, Nevada 89447	<i>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.</i>
Campbell Canal Co. c/o Rife and Associates David Sceirine, President 22 Hwy 208 Yerington, Nevada 89447	<i>Campbell Canal Co.</i>
Newhall Mutual Ditch Co. Darrell E. Pursel, President 42 McKenzie Lane Yerington, Nevada 89447	<i>Newhall Mutual Ditch Co.</i>

² At the pre-hearing conference held 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.

Counsel or Representative	Representing
David Sceirine P.O. Box 239 Yerington, Nevada 89447	<i>David Sceirine</i>
Joseph Sceirine P.O. Box 1013 Yerington, Nevada 89447	<i>Joseph Sceirine</i>

III.

CONDITIONAL STIPULATION AND JOINDERS THERETO

The State Engineer acknowledged the WRID Stipulation in addition to acknowledging joinders filed by the following Protestants:

1. Greenwood Mutual Ditch Co.;
2. Mickey Mutual Ditch Co.;
3. Newhall Daniel Mutual Ditch Co.;
4. Jim Snyder; Bunny Snyder; Eddie R. and Theresa Snyder Trust, Eddie R. Snyder, Trustee; Eufrazia, LLC/LJ Land, Limited; Snyder Livestock Co.;
5. Spragg-Woodcock Mutual Ditch Co.;
6. G&H Mutual Ditch Co.;
7. Lyon County indicated its intention to file a Joinder. Subsequent to the hearing, Lyon County filed its Joinder on July 10, 2013.

IV.

POSITION OF NON-JOINING PRÓTESTANTS AND PARTY

The State Engineer examined the U.S. Bureau of Indian Affairs (BIA), the Walker River Paiute Tribe (Tribe), the Protestants represented by Linda Bowman, Esq., (Bowman Protestants) and the Board of Water Commissioners (Board), regarding their respective intentions to file a joinder in the Stipulation.

BIA stated while not objecting to the substance of the Stipulation, *per se*, the Stipulation did not address BIA's protest issues, citing its protest issues numbered 1 and 3.

Similarly, the Tribe's position was that the Stipulation did not resolve all of the issues in the Tribe's protest, in addition to the fact that the Tribal Council had not yet reviewed the Stipulation. The Tribe indicated it was amenable to continuing discussions with the Applicant to

determine whether resolution could be reached on its remaining protest issues. In addition, as discussed further in Paragraph VI, the Tribe advised that if a conveyance agreement is reached, it would be willing to join the Stipulation and withdraw its protest.

The Bowman Protestants indicated they were not in total agreement with the Stipulation as they were not involved in the negotiations. The Bowman Protestants indicated they are not convinced that existing rights will not be impaired, that efficiencies will not be lessened, and that the applications will not prove detrimental to the public interest. Nevertheless, the Bowman Protestants indicated their willingness to continue discussions with the Applicant to determine if resolution can be reached, including a possible direct stipulation between the Applicant and Bowman Protestants.

Finally, the State Engineer queried the Board regarding its intent. The Board advised that although it was supportive of the Stipulation, it had voted not to join. The Board stated it had concerns regarding how the terms of the Stipulation would be implemented by the Board.

V.

POSITION OF NON-ATTENDING AND NON-JOINING PROTESTANTS

The State Engineer was unable to examine the intention of Protestants Campbell Canal Co., David Sceirine or Joseph Sceirine, who had not filed joinder, due to their failure to attend the hearing.

VI.

CONVEYANCE AGREEMENT

The State Engineer also inquired as to the status of a conveyance agreement between Applicant and the Tribe. The State Engineer observed that these participants advised the draft agreement has been in progress for over 1 ½ years. The Tribe indicated it is continuing to pursue a conveyance agreement and the State Engineer encouraged the Applicant and the Tribe to continue working to achieve such an agreement.

VII.

FUTURE STATUS REPORTS

In large part, Protestants who had not joined the Stipulation represented that resolution may be achieved through additional discussions with the Applicant; therefore, in order to monitor the progress of the conveyance agreement and/or continued negotiations which may result in additional Protestants joining the Conditional Stipulation; or, resolution of protests by

additional stipulation, the State Engineer ordered that status updates be filed in the Office of the State Engineer as follows:

August 9, 2013 (30-day status report)

September 13, 2013 (60-day status report)

October 11, 2013 (90-day status report and reduced witness/exhibit lists)

The participants may provide status reports sooner than the above-listed dates to report agreement regarding remaining issues or protests.

VIII.

HEARING DATE

To the extent any protests remain after the 90-day period set forth above, the State Engineer set a hearing to consider the matter of protested Application 80700 pursuant to NRS §§ 533.365, 533.370 and 533.375.

The hearing will begin promptly at 8:30 a.m., on Monday, October 28, 2013, continuing through Friday, November 1, 2013, to be held at the Nevada Division of Water Resources Tahoe Hearing Room, 2nd floor, 901 S. Stewart Street, Carson City, Nevada.

IX.

ORDER OF PRESENTATION OF EVIDENCE

The order of presentation of evidence will be as follows:

October 28-29: Bowman Protestants

October 30-31: Tribe; BIA; WRID

November 1: NFWF; Board; Public Comment

X.

ORDER OF EXAMINATION

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.

XI.

REDUCED WITNESS AND EVIDENCE LISTS

The State Engineer determined that no new evidence, witness lists or summaries of witness testimony will be taken at this point, as both evidentiary exchanges previously ordered

have already occurred. Therefore, concurrent with the 90-day status report, *supra*, the participants shall **inform the State Engineer which witnesses and exhibits they intend to use from the information already on file with the State Engineer, by October 11, 2013.**

XII.

RULES OF EVIDENCE

Pursuant to NRS § 533.365(4), the technical rules of evidence do not apply to administrative hearings before the State Engineer.

XIII.

REPORTING OF HEARING

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.

XIV.

ATTENDANCE AND REPRESENTATION

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 Verified 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> Forms - Miscellaneous Forms. Nevada Supreme Court Rule 43 provides an exception for lawyers employed by or representing the United States Government.

XV.

PUBLIC COMMENT

Public comment will be taken at the end of the presentation of evidence by the participants. Public comment may be limited in time to accommodate all persons wishing to speak.

XVI.

REASONABLE ACCOMODATIONS

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,

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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,

A handwritten signature in blue ink, appearing to read 'Kristen Geddes', with a long horizontal flourish extending to the right.

KRISTEN GEDDES
Chief, Hearings Section

KGjm

Dated this 31st day of
July, 2013

**Service List
80700**

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