

# EXHIBIT 98



0459037

Recording Requested by  
And Return To:

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

Water Rights / Associated With APNs: 14-201-25; 14-201-04;  
14-201-01; 14-191-02; 14-201-03; 14-181-12

**WATER RIGHTS ASSESSMENT AGREEMENT**

THIS WATER RIGHTS ASSESSMENT AGREEMENT (the "Agreement") is made this 3rd day of May, 2010, by and between NATIONAL FISH AND WILDLIFE FOUNDATION ("Owner"), and the WALKER RIVER IRRIGATION DISTRICT (the "District") as follows:

**RECITALS**

- A. The District is a Nevada irrigation district organized and existing under Chapter 539 of the Nevada Revised Statutes (the "NRS").
- B. Owner is a charitable and nonprofit corporation.
- C. Pursuant to the provisions contained in NRS Chapter 539, the District levies assessments, tolls or charges on lands within it boundaries. Those assessments, tolls or charges are a lien upon all lands within the boundaries of the District entitled to receive water from the District's system of works, as of the date fixed by the Board of Directors for the payment of the assessments, tolls or charges.
- D. Pursuant to the provisions of NRS Chapter 539, if the ownership of land upon which a lien is imposed, as described in Recital C, is severed from the right to use the water, the lien remains in effect on the land until the owner of the right to use the water transfers the right



to other land within the District as provided in NRS 539.513(6)(a) or enters into a written agreement with the District for the payment of assessments, tolls or charges as provided in NRS 539.513 (6)(b).

E. Owner currently holds beneficially and of record those certain water rights which are a portion of the water rights originally allocated to John Dickson, Successor to Mary E. Young; Mary Parker Farrell, Successor to John B. Gallagher; Estate of P.J. Conway, (Rallen Ranch) and (Warren Ranch); Lyon County Bank (N.P. Neilson), Successor to Sarah Jane Rallen, et al.; and Penrose, West and Guild, Successor to John B. Gallagher, in the final decree entered on April 14, 1936, as amended April 24, 1940, in the United States District Court for the District of Nevada, Case in Equity No. C-125, entitled *United States of America, Plaintiff vs. Walker River Irrigation District, et al., Defendants*, which water rights are appurtenant to some or all of the real property described in Exhibit "A" attached to this Agreement and incorporated herein by reference (the "Natural Flow Water Rights").

F. In relation to the Natural Flow Water Rights, Owner currently holds apportioned benefits from those certain water rights allocated to and held by the Walker River Irrigation District in the final decree entered on April 14, 1936, as amended April 24, 1940, in the United States District Court for the District of Nevada, Case in Equity No. C-125, entitled *United States of America, Plaintiff vs. Walker River Irrigation District, et al., Defendants*, for a portion of the real property described in Exhibit A attached to this Agreement and incorporated herein by this reference. These water rights are referred to herein as the "Storage Water Rights."

G. Ownership of the Real Property has been severed from ownership of the Natural Flow Water Rights and from the apportioned benefits of the Storage Water Rights.



H. Pursuant to N.R.S. 539.513 (6)(b), Owner desires to enter into this Agreement with the District for the payment of all assessments, tolls or charges levied by the District in connection with the Natural Flow Water Rights and Storage Water Rights.

I. The Natural Flow Water Rights and Storage Water Rights are collectively referred to herein as the "Water Rights" and are more particularly described in Exhibit "B" attached to this Agreement and incorporated herein by reference.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING and the mutual agreements hereinafter set forth, the District and Owner agree as follows:

1. Obligation to Pay. Owner agrees to pay when due all assessments, tolls and charges levied by the District against and with respect to the Water Rights. Such assessments, tolls and charges shall become due as provided in N.R.S. 539.683, as amended from time to time. Such assessments, tolls and charges shall become delinquent and be subject to the same penalties as provided in N.R.S. 539.683, as amended from time to time. The obligation to pay all assessments, tolls and charges shall be a personal obligation of the Owner and if the Owner consists of more than one person, entity or association, such liability shall be joint and several. The obligation of the Owner to pay all assessments, tolls and charges levied by the District against and with respect to the Water Rights shall be secured by a continuing first priority lien on the Water Rights as set forth in Section 2, below.

2. Security for Obligation. To secure the full and prompt payment and performance of Owner under this Agreement, the Owner does hereby grant to the District an irrevocable, continuing, first priority lien on the Water Rights. Further, contemporaneously with the execution of this Agreement, the Owner shall execute and deliver to the District, a Deed of Trust in the form attached hereto as Exhibit "C" (the "Deed of Trust"). The Deed of Trust shall be



recorded in the Official Records of Lyon County, Nevada and in such other locations as the District may determine. Owner shall execute and deliver from time to time such other and further documents, instruments and certificates as may be requested by the District to perfect, further perfect or continue perfection of the lien and charge against the Water Rights described in this Agreement and Deed of Trust.

3. Representations and Warranties of Owner. The Owner represents and warrants to the District as follows:

a. Organization and Authority. Owner is a charitable and nonprofit corporation established by Public Law No. 98-244, 16 U.S.C. §§ 3701, *et seq.* Owner has the power and authority to enter into this Agreement and the Deed of Trust and to carry out its obligations set forth therein. The undersigned is duly authorized to execute and deliver this Agreement and the Deed of Trust in the name and on behalf of the Owner. The execution, delivery and performance of this Agreement and the Deed of Trust and the consummation of the transactions contemplated thereby have been duly authorized by necessary action of the Owner and this Agreement and the Deed of Trust constitute valid and legally binding agreements of Owner enforceable in accordance with their respective terms. There are no contractual or other limitations upon Owner's power or ability to enter into this Agreement or the Deed of Trust or to complete the transactions contemplated hereby. Neither the execution, delivery or performance of this Agreement or the Deed of Trust conflict with or, with the passage of time or notice constitute a breach or default under (i) any agreement, document or indenture to which the Owner is a party or by which any of the Owner's property, including without limitation the Water Rights, is bound, or (ii) the law under which the Owner is established.



b. Ownership of Water Rights. Owner is the owner of record and beneficially of all right, title and interest in the Natural Flow Water Rights and in the apportioned benefits from the Storage Water Rights.

c. Payment of Assessments. All assessments, charges and tolls levied by the District against and with respect to the Water Rights and which are due and payable as of the date of this Agreement have been paid in full.

d. Priority of Lien and Deed of Trust. The lien of this Agreement and the Deed of Trust is and shall at all times be prior and superior to any other lien, charge or encumbrance on or affecting all or any portion of the Water Rights.

4. Conditions to District's Obligations. The District's obligation to deliver water pursuant to the Water Rights is expressly conditioned upon satisfaction by Owner at all times of all of the following conditions, the satisfaction of which may be waived, in writing, in the District's sole and absolute discretion:

a. Compliance with Agreement and Deed of Trust. There shall be no uncured breach or default of or under any obligation, representation, warranty, promise, covenant or agreement set forth in the Agreement or Deed of Trust.

b. Delivery in Compliance With Applicable Law. Delivery of the Water Rights for diversion and use shall be in accordance with applicable law.

5. Covenants of Owner and District. Owner and District each covenant and agree with the other as follows:

a. Sales, Transfers and Change Applications. Owner shall not sell, transfer, assign, convey or otherwise dispose of all or any portion of the Water Rights, or change the place or manner of use or point of diversion for the Water Rights without, in each case, prior written



notice to the District. Any sale of the Water Rights shall be subject to a requirement that the transferee or new owner assume Owner's obligations under this Agreement and shall be subject to the Deed of Trust unless and until transferee or new owner, as the case may be, executes and delivers to the District the District's then current form of Water Rights Assessment Agreement (and related lien and security documentation), unless such change application or conveyance results in all of the Water Rights becoming appurtenant to other lands within District upon which the lien imposed pursuant to NRS 539.513(5) attaches and becomes perfected in favor of the District.

b. Further Assurances. In addition to documents and other matters specifically referenced in this Agreement and the Deed of Trust, the District and Owner agree to execute and/or deliver, or cause to be executed and/or delivered such other documents and/or materials, as may be reasonably necessary to effect the terms contemplated by this Agreement and the Deed of Trust.

6. Default; Remedies. Upon the occurrence and continuance of a breach or default of or under any obligation, representation, warranty, promise, covenant or agreement set forth in this Agreement or the Deed of Trust, the District may pursue any and all remedies available under this Agreement, the Deed of Trust, at law or in equity, including without limitation, bringing an action to enforce the obligations and/or pursuing foreclosure under the Deed of Trust.

7. Statements and Notices. Every statement for assessments, tolls or charges levied against the Water Rights, notice or other communication required or contemplated by this Agreement or the Deed of Trust shall be in writing and delivered either by personal delivery or United States mail first class, postage pre-paid, at the address specified in this Section.



To District: Walker River Irrigation District  
P. O. Box 820  
Yerington, Nevada 89447  
Attn: General Manager

And Copy to: Woodburn and Wedge  
P.O. Box 2311  
Reno, Nevada 89505  
Attn: Gordon H. DePaoli, Esq.

To Owner: National Fish and Wildlife Foundation  
Attn: Director - Conservation Programs  
1133 15th Street N.W., Suite 1100  
Washington, D.C. 20005

Either the District or Owner may, by notice to the other given as herein stated, change its address for future notices hereunder.

8. Miscellaneous. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument. Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation of Owner under the Agreement and Deed of Trust. None of the covenants, provisions, representations, warranties, obligations, terms or conditions of this Agreement or the Deed of Trust shall in any manner be altered, waived, modified, assigned, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto. This Agreement and the Deed of Trust contain the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind. Any delay of forbearance by Owner in exercising any right under this Agreement or the Deed of Trust shall not be deemed a waiver of that right. This Agreement and the Deed of Trust shall be binding



upon and inure to the benefit of the parties named therein and their respective successors, representatives and permitted assigns. The Owner may not assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the District. The recitals to this Agreement are hereby incorporated into and made a part of this Agreement and shall constitute covenants and representations of Owner enforceable against Owner. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Nevada, without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdictions other than those of the State of Nevada.

IN WITNESS HEREOF, the District and Owner have executed this Agreement to be effective on the date first above written.

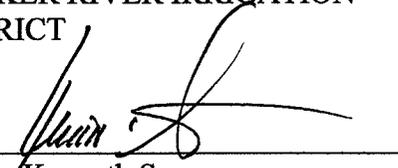
OWNER:

DISTRICT:

NATIONAL FISH AND WILDLIFE  
FOUNDATION

WALKER RIVER IRRIGATION  
DISTRICT

By:   
 Name: Jeff Trandahl  
 Title: Executive Director

By:   
 Name: Kenneth Spooner  
 Title: General Manager



CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF District of )  
 ) ss  
COUNTY OF Columbia )

This instrument was acknowledged before me on May 7, 2010, by JEFF TRANDAHL.

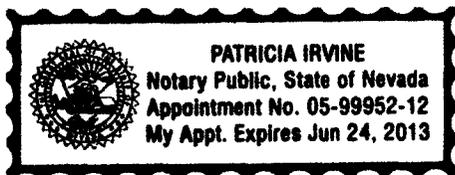
Donna McManan  
NOTARY PUBLIC

My Commission Expires: 7/14/2012

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF NEVADA )  
 ) ss  
COUNTY OF LYON )

This instrument was acknowledged before me on May 3<sup>rd</sup>, 2010, by KENNETH SPOONER.



Patricia Irvine  
NOTARY PUBLIC

My Commission Expires: 6/24/13

**EXHIBIT "A"****REAL PROPERTY DESCRIPTION****APN 014-201-23 and a portion of APN 014-201-25 (WRID Card No. 28102)**

All of Parcel C and that portion of Parcel A within the East one-half of the Southeast one-quarter (E1/2 SE1/4) of Section 3, Township 14 North, Range 25 East, Mount Diablo Meridian, as shown and described on the *PARCEL MAP FOR MARVIN V. AND KATHLEEN M. DYE*, recorded in the Official Records of Lyon County, Nevada, on December 1, 1994, as Document No. 177428.

Reference is made to Document No. 219676 (Parcel C) and Document No. 219683 (Parcel A), both recorded June 3, 1998, Official Records of Lyon County, Nevada.

**Portion of APN 014-201-04 (WRID Card No. 28103)**

The East one-half of the Northeast one-quarter (E1/2 NE1/4) of Section 10; The West one-half of the Northwest one-quarter (W1/2 NW1/4) of Section 11; All in Township 14 North, Range 25 East, Mount Diablo Meridian.

Reference is made to Document No. 221735, recorded July 29, 1998, Official Records of Lyon County, Nevada.

**APN 014-201-01 (WRID Card No. 28107)**

The Southwest one-quarter (SW1/4) of Section 10, Township 14 North, Range 25 East, Mount Diablo Meridian.

EXCEPTING THEREFROM all that certain piece or parcel of land situate in the County of Lyon, State of Nevada, more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest one-quarter of Section 10, Township 14 North, Range 25 East, Mount Diablo Meridian, thence South along a line parallel to the center line of U.S. Highway 95A a distance of 975 feet to the POINT OF BEGINNING; thence East at right angles to the preceding course 225 feet; thence South at right angles to the preceding course a distance of 305 feet; thence West at right angles to the preceding course a distance of 225 feet; thence North at right angles to the preceding course a distance of 305 to the POINT OF BEGINNING, containing 1.5754 acres of land, more or less.

Reference is made to Document No. 221736, recorded July 29, 1998, Official Records of Lyon County, Nevada.



**Portion of APN 014-201-25 (WRID Card No. 28108)**

That portion of Parcel A within the East one-half of the Northwest one-quarter (E1/2 NW1/4) of Section 3, Township 14 North, Range 25 East, Mount Diablo Meridian, as shown and described on the *PARCEL MAP FOR MARVIN V. AND KATHLEEN M. DYE*, recorded in the Official Records of Lyon County, Nevada, on December 1, 1994, as Document No. 177428.

Reference is made to Document No. 219683, recorded June 3, 1998, Official Records of Lyon County, Nevada.

**Portion of APN 014-191-02 (WRID Card No. 28109)**

The Northeast one-quarter (NE1/4) and the East one-half of the Northwest one-quarter (E1/2 NW1/4) of Section 9, Township 14 North, Range 25 East, Mount Diablo Meridian.

EXCEPTING THEREFROM all that certain piece or parcel of land situate in the County of Lyon, State of Nevada, more particularly described as follows:

BEGINNING at the Northeast corner of Section 9, Township 14 North, Range 25 East, M.D.M., thence South 0°20' East 674.00 feet; thence South 89°45' West 594.00 feet; thence North 0°20' West a distance of 674.00 feet to a point on the North line of the Northeast quarter of said Section 9; thence along said line North 89°45' East a distance of 594.00 feet to the POINT OF BEGINNING.

Reference is made to Document No. 219687, recorded June 3, 1998, Official Records of Lyon County, Nevada.

**APN 014-201-03 (WRID Card No. 28112)**

The West one-half of the Northwest one-quarter (W1/2 NW1/4) of Section 10, Township 14 North, Range 25 East, Mount Diablo Meridian.

Reference is made to Document No. 219689, recorded June 3, 1998, Official Records of Lyon County, Nevada.

**APN 014-181-12 (WRID Card No. 28113)**

The Southeast one-quarter (SE1/4) of Section 10; The Northeast one-quarter (NE 1/4), the Northeast one-quarter of the Southeast one-quarter (NE1/4 SE1/4), and the North one-half of the Northwest one-quarter of the Southeast one-quarter (N1/2 NW1/4 SE1/4) of Section 15; All in Township 14 North, Range 25 East, Mount Diablo Meridian.

Reference is made to Document No. 219695, recorded June 3, 1998, Official Records of Lyon County, Nevada.

**EXHIBIT "B"****DESCRIPTION OF WATER RIGHTS****APN 014-201-23 and a portion of APN 014-201-25 (WRID Card No. 28102)**

All rights, title, and interest in and to a portion of Court Claim 35, granted and adjudicated to Dickson, John, Successor to Mary E. Young, as described in the table below.

Court Claim	WRID Ref Card	Date of Priority	Decree Rights		Apportioned Storage AF
			Diversion Rate CFS	Assessed Acres	
35	28102	1881	0.240	20.000	12.830
			<b>0.24</b>	<b>20.00</b>	<b>12.830</b>

And further, as used with, associated with, and/or appurtenant to 20.00 acres within the following:

All of Parcel C and that portion of Parcel A within the East one-half of the Southeast one-quarter (E1/2 SE1/4) of Section 3, Township 14 North, Range 25 East, Mount Diablo Meridian, as shown and described on the *PARCEL MAP FOR MARVIN V. AND KATHLEEN M. DYE*, recorded in the Official Records of Lyon County, Nevada, on December 1, 1994, as Document No. 177428.

Reference is made to Document No. 219676 (Parcel C) and Document No. 219683 (Parcel A), both recorded June 3, 1998, Official Records of Lyon County, Nevada.

**Portion of APN 014-201-04 (WRID Card No. 28103)**

All rights, title, and interest in and to a portion of Court Claim 44, granted and adjudicated to Farrell, Mary Parker, Successor to John B. Gallagher, (per J.O. Parker), as described in the table below.

Court Claim	WRID Ref Card	Date of Priority	Decree Rights		Apportioned Storage AF
			Diversion Rate CFS	Assessed Acres	
44	28103	1880	0.600	50.000	29.700
		1901	0.180	15.000	11.760
			<b>0.780</b>	<b>65.00</b>	<b>41.460</b>

And further, as used with, associated with, and/or appurtenant to 65.00 acres within the following:

The East one-half of the Northeast one-quarter (E1/2 NE1/4) of Section 10; The West one-half of the Northwest one-quarter (W1/2 NW1/4) of Section 11; All in Township 14 North, Range 25 East, Mount Diablo Meridian.



Reference is made to Document No. 221735, recorded July 29, 1998, Official Records of Lyon County, Nevada.

**APN 014-201-01 (WRID Card No. 28107)**

All rights, title, and interest in and to a portion of Court Claim 23, granted and adjudicated to Conway, Estate of P. J., (Rallen Ranch), as described in the table below.

Court Claim	WRID Ref Card	Date of Priority	Decree Rights		Apportioned Storage AF
			Diversion Rate CFS	Assessed Acres	
23	28107	1887	0.390	32.500	22.390
		1894	0.090	7.500	5.700
		1900	0.120	10.000	7.840
		1906	0.120	10.000	8.320
			<b>0.720</b>	<b>60.00</b>	<b>44.250</b>

And further, as used with, associated with, and/or appurtenant to 60.00 acres within the following:

The Southwest one-quarter (SW1/4) of Section 10, Township 14 North, Range 25 East, Mount Diablo Meridian.

EXCEPTING THEREFROM all that certain piece or parcel of land situate in the County of Lyon, State of Nevada, more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest one-quarter of Section 10, Township 14 North, Range 25 East, Mount Diablo Meridian, thence South along a line parallel to the center line of U.S. Highway 95A a distance of 975 feet to the POINT OF BEGINNING; thence East at right angles to the preceding course 225 feet; thence South at right angles to the preceding course a distance of 305 feet; thence West at right angles to the preceding course a distance of 225 feet; thence North at right angles to the preceding course a distance of 305 to the POINT OF BEGINNING, containing 1.5754 acres of land, more or less.

Reference is made to Document No. 221736, recorded July 29, 1998, Official Records of Lyon County, Nevada.

**Portion of APN 014-201-25 (WRID Card No. 28108)**

All rights, title, and interest in and to a portion of Court Claim 89, granted and adjudicated to Lyon County Bank (N. P. Neilson), Successors to Sarah Jane Rallens, et al, as described in the table below.

Court Claim	WRID Ref Card	Date of Priority	Decree Rights		Apportioned Storage AF
			Diversion Rate CFS	Assessed Acres	
89	28108	1874	0.400	33.600	3.169
		1880	0.110	9.550	5.673
		1891	0.110	8.930	6.578
			<b>0.620</b>	<b>51.84</b>	<b>15.420</b>

And further, as used with, associated with, and/or appurtenant to 51.84 acres within the following:

That portion of Parcel A within the East one-half of the Northwest one-quarter (E1/2 NW1/4) of Section 3, Township 14 North, Range 25 East, Mount Diablo Meridian, as shown and described on the *PARCEL MAP FOR MARVIN V. AND KATHLEEN M. DYE*, recorded in the Official Records of Lyon County, Nevada, on December 1, 1994, as Document No. 177428.

Reference is made to Document No. 219683, recorded June 3, 1998, Official Records of Lyon County, Nevada.

**Portion of APN 014-191-02 (WRID Card No. 28109)**

All rights, title, and interest in and to a portion of Court Claim 23a, also referred to as Court Claim 174, granted and adjudicated to Conway, Estate of P.J., (Warren Ranch), as described in the table below.

Court Claim	WRID Ref Card	Date of Priority	Decree Rights		Apportioned Storage AF
			Diversion Rate CFS	Assessed Acres	
23a/174	28109	1880	1.035	86.280	51.250
		1888			
		1900	1.380	115.040	90.201
			<b>2.415</b>	<b>201.32</b>	<b>141.451</b>

And further, as used with, associated with, and/or appurtenant to 201.32 acres within the following:

The Northeast one-quarter (NE1/4) and the East one-half of the Northwest one-quarter (E1/2 NW1/4) of Section 9, Township 14 North, Range 25 East, Mount Diablo Meridian.

EXCEPTING THEREFROM all that certain piece or parcel of land situate in the County of Lyon, State of Nevada, more particularly described as follows:



BEGINNING at the Northeast corner of Section 9, Township 14 North, Range 25 East, M.D.M., thence South 0°20' East 674.00 feet; thence South 89°45' West 594.00 feet; thence North 0°20' West a distance of 674.00 feet to a point on the North line of the Northeast quarter of said Section 9; thence along said line North 89°45' East a distance of 594.00 feet to the POINT OF BEGINNING.

Reference is made to Document No. 219687, recorded June 3, 1998, Official Records of Lyon County, Nevada.

**APN 014-201-03 (WRID Card No. 28112)**

All rights, title, and interest in and to a portion of Court Claim 23a, also referred to as Court Claim 174, granted and adjudicated to Conway, Estate of P. J., (Warren Ranch), as described in the table below.

Court Claim	WRID Ref Card	Date of Priority	Decree Rights		Apportioned Storage AF
			Diversion Rate CFS	Assessed Acres	
23a/174	28112	1880			
		1888	0.960	80.000	55.120
		1900			
			<b>0.960</b>	<b>80.00</b>	<b>55.120</b>

And further, as used with, associated with, and/or appurtenant to 80.00 acres within the following:

The West one-half of the Northwest one-quarter (W1/2 NW1/4) of Section 10, Township 14 North, Range 25 East, Mount Diablo Meridian.

Reference is made to Document No. 219689, recorded June 3, 1998, Official Records of Lyon County, Nevada.

**APN 014-181-12 (WRID Card No. 28113)**

All rights, title, and interest in and to a portion of Court Claim 67, granted and adjudicated to Guild, Penrose and West, Successors to John B. Gallagher (per Lena Roy), as described in the table below.

Court Claim	WRID Ref Card	Date of Priority	Decree Rights		Apportioned Storage AF
			Diversion Rate CFS	Assessed Acres	
67	28113	1877	0.860	72.000	18.820
		1896	1.100	92.000	69.510
		1904	0.050	4.000	3.690
			<b>2.010</b>	<b>168.00</b>	<b>92.020</b>

And further, as used with, associated with, and/or appurtenant to 168.00 acres within the following:

The Southeast one-quarter (SE1/4) of Section 10; The Northeast one-quarter (NE 1/4), the Northeast one-quarter of the Southeast one-quarter (NE1/4 SE1/4), and



the North one-half of the Northwest one-quarter of the Southeast one-quarter (N1/2 NW1/4 SE1/4) of Section 15; All in Township 14 North, Range 25 East, Mount Diablo Meridian.

Reference is made to Document No. 219695, recorded June 3, 1998, Official Records of Lyon County, Nevada.



**EXHIBIT "C"**

Recording Requested By  
And When Recorded Return To:

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

APN: Water Rights

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**DEED OF TRUST**

THIS DEED OF TRUST, herein referred to as "Deed of Trust," is made effective as of May, \_\_\_\_, 2010, by and between NATIONAL FISH AND WILDLIFE FOUNDATION, a charitable and nonprofit corporation established by P.L. 98-244, 16 U.S.C. §§ 3701, *et seq.*, as Trustor, hereinafter referred to as "Trustor," TICOR TITLE OF NEVADA, INC., a Nevada corporation, as Trustee, hereinafter referred to as "Trustee," and WALKER RIVER IRRIGATION DISTRICT, a Nevada irrigation district organized and existing under Nevada Revised Statutes Chapter 539, as Beneficiary, hereinafter referred to as "Beneficiary";

**WITNESSETH:**

Pursuant to the provisions of Nevada Revised Statutes Section 539.513 (6)(b), Trustor and Beneficiary have entered into that certain Water Rights Assessment Agreement of even date herewith (the "Agreement"), with respect to the Trustor's obligation to pay assessments, tolls and charges fixed and levied by the Trustor, which Agreement has been recorded in the Official Records of Lyon County, Nevada on \_\_\_\_\_, 2010, as Document No. \_\_\_\_\_.

NOW, THEREFORE, for good and valuable consideration, and to secure the obligations of Trustor pursuant to the Agreement; and for the purpose of securing the payment and performance of every obligation contained in this Deed of Trust, the Trustor irrevocably grants, bargains, sells, transfers, conveys and assigns to the Trustee, in trust, with power of sale, for the benefit of the Beneficiary, the following described collateral:

**DESCRIPTION OF COLLATERAL**

All of the interest of Trustor in that certain water, water rights, ditch and conveyance rights and all storage rights of any nature whatsoever presently appurtenant to that certain real property, situated in the County of Lyon, State of Nevada, more particularly described as set forth in Exhibit "A" hereto and



which water rights are more particularly described as set forth in Exhibit "B" hereto;

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or appertaining and the reversion and reversions and remainder and remainders, rents, issues and profits thereof; and

The foregoing property is hereinafter referred to as the "Water Rights".

**FOR THE PURPOSE OF SECURING:**

**FIRST:** Timely payment and performance of Trustor's obligations, covenants and agreements under the Agreement;

**SECOND:** Payment and performance of every obligation, covenant and agreement of Trustor herein contained;

**THIRD:** The accuracy of each and every representation and warranty of Owner set forth in the Agreement and this Deed of Trust; and

**FOURTH:** The expenses and costs incurred or paid by Beneficiary in the preservation and enforcement of the rights and remedies of Beneficiary and the duties and the liability of Trustor hereunder including, but not by way of limitation, attorney's fees, court costs, witness fees, expert witness fees, foreclosure costs, collection costs and costs and expenses paid by Beneficiary in performing for Trustor's account any obligation of Trustor;

**TO PROTECT THE SECURITY HEREINABOVE GRANTED, TRUSTOR AGREES:**

A. By the execution and delivery of this Deed of Trust, that Trustor will observe and perform all provisions contained herein and in the Agreement.

B. To appear in and defend at Trustor's own expense the interest of Beneficiary and Trustee in any action or proceeding purporting to affect the security hereof, or any of the Water Rights hereby conveyed, or the rights, powers and duties of Beneficiary and Trustee, including, but not limited to, condemnation proceedings, but excluding any proceeding which would affect all water rights appurtenant to lands within the boundaries of the Walker River Irrigation District in a similar manner.

C. To keep the Water Rights in good standing, and to comply with all laws, ordinances, regulations, policies, conditions and restrictions affecting the Water Rights, the use, sale, transfer or conveyance thereof or which may be imposed from time to time on any user of water.

D. To pay immediately in full and when due, with interest, all liens, encumbrances,



charges, taxes, assessments, levies, impositions and claims on the Water Rights or any part thereof.

E. To pay all costs, fees and expenses of this Trust

F. Should Trustor be in default, after the passage of the applicable notice and cure periods, of any of the obligations or to perform any of the agreements, covenants or conditions contained in the Agreement, Beneficiary or Trustee may, without further notice to or demand upon, and without releasing Trustor from any obligation hereunder, pay any of such obligations or perform or cause to be fulfilled any of such agreements, covenants or conditions, including, but not limited to, paying or compromising any taxes, assessments, liens or encumbrances, charges or claims against the Water Rights hereby conveyed or encumbered or any part thereof. In exercising any of the rights or powers herein granted, Beneficiary and Trustee may employ counsel, and incur and pay necessary costs and expenses and counsel fees in a reasonable amount.

G. As additional security, Trustor gives to and confers upon Beneficiary the right, power and authority during the continuance of this trust, to collect the rents, issues and profits of the Water Rights, reserving unto Trustor the right prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any obligation or agreement secured hereby, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at the time, pursuant to the provisions of applicable law and/or by a receiver to be appointed by a court, cause the rents, issues and profits to be paid to Beneficiary, take possession of the Water Rights, or any part thereof, sue for or otherwise collect such rents, issues and profits including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness and obligation secured hereby, and in such order as Beneficiary may determine. The taking possession of the Water Rights, or any part thereof, the collection of such rents, issues and profits or the application thereof as aforesaid, shall not cure or constitute a waiver of any default or notice of default hereunder or invalidate any act done pursuant to such notice.

**IT IS FURTHER AGREED THAT:**

(1) Trustor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the Water Rights hereby conveyed or any portion thereof, the commencement of negotiations which might result in, or a substantial threat of, any taking under power of eminent domain or sale in lieu thereof, shall notify Trustee and Beneficiary thereof. Trustor will in good faith and with due diligence file, prosecute, negotiate or settle (subject to Beneficiary's right to approve any final settlement) any claim in respect of any such condemnation, taking or sale, and will cause any and all proceeds on account thereof to be paid to the Beneficiary to be applied toward payment of any obligations hereby secured in such order as Beneficiary may determine.



(2) By accepting the performance of any obligation hereby secured after its due date, Beneficiary does not waive its right either to require prompt performance when due of all other obligations hereby secured.

(3) If breach or default be made in the payment or performance of any obligation, representation, warranty, promise, covenant or agreement contained herein or secured hereby, including without limitation any provision of the Agreement, and the passage of any period of notice and right to cure, then, at any time thereafter, but during the continuation of such breach or default, Beneficiary may at its option, declare Trustor to be in default; and Beneficiary or Trustee may record in the office of the Recorder of Lyon County, Nevada, a notice of such default and election to cause the Water Rights to be sold to satisfy the obligations secured hereby, as provided by the laws of the State of Nevada with reference to deeds of trust.

On application of Beneficiary, and after not less than the time then required by law having elapsed following the recordation of said notice of default and election to sell, Trustee shall give notice of the time and place of sale in the manner and for a time not less than that then required by law, and without demand on Trustor, Trustee shall sell said collateral at the time and place of sale fixed on said notice of sale, or such part or parts thereof, or such interests therein, and in such order as Beneficiary may determine, at public auction, to the highest bidder for cash in lawful money of the United States to be paid at the time of sale.

Trustee may postpone sale of all or any portions of said collateral by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by announcement at the time fixed by the preceding postponement and without further notice. Trustee may make such sale at the time to which the same shall be so postponed.

Trustee shall deliver to the Buyer its deed, bill of sale, and other appropriate documents of conveyance or transfer, transferring or conveying the collateral so sold, but without any covenant or warranty, express or implied. The recitals in any such deed or other documents of transfer or conveyance of any matters of fact stated either specifically or in general terms, or as conclusion of law or fact, shall be conclusive proof of the truthfulness thereof and such deed or other documents of transfer or conveyance shall be conclusive evidence against all persons as to all matters of fact therein recited.

Any person may purchase at such sale. Trustor hereby agrees to surrender immediately, and without demand, possession of the Water Rights to any Buyer at any sale held hereunder.

In the conduct of any such sale, Trustee may act itself or through any auctioneer, agent or attorney.

Beneficiary, from time to time before the Trustee's sale, may rescind any such notice of default by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale.



The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demands for sale, notices of default, and of election to cause to be sold the Water Rights to satisfy the obligations hereby secured, nor otherwise affect any provision, covenant or condition to this Deed of Trust, or any of the rights, obligations or remedies of the parties thereunder.

(4) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, including their heirs, legatees, devisees, administrators, executors, successors and assigns.

(5) No delay or omission by Beneficiary in the exercise of any right or remedy accruing upon any default or in the doing of any of the matters and things by it permitted to be done under the terms and provisions of this Deed of Trust shall impair any such right or remedy, or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature; and every such right or remedy may be exercised from time to time and as often as it is deemed expedient by Beneficiary.

(6) The rights and remedies of Beneficiary upon the occurrence of one or more defaults by Trustor (whether such rights and remedies are conferred by statute, by rule of law, by this Deed of Trust, or otherwise) may be exercised by Beneficiary, in the sole discretion of Beneficiary, either alternatively, concurrently or consecutively, in any order. The exercise by Beneficiary, or by Trustee at the express direction of Beneficiary, of any one or more of such rights and remedies shall not be construed to be an election of remedies nor a waiver of any other rights and remedies Beneficiary might have unless, and limited to the extent that, Beneficiary shall so elect or so waive by an instrument in writing delivered to Trustee.

(7) The following covenants, Numbers 1, 3, 4 (10%), 6, 7 (actual), 8 and 9 of the Nevada Revised Statutes 107.030, when not contained in or inconsistent with other covenants and provisions herein contained, are hereby adopted by this reference and made a part of this Deed of Trust.

(8) The words "Beneficiary" and "Trustor" as used herein shall include the plural as well as the singular, and the neuter and masculine shall include the masculine and feminine genders, and if there be more than one Trustor, the obligations hereunder imposed upon the Trustor shall be joint and several.

(9) In the event that any provision of this Deed of Trust is declared invalid or inoperable, said declaration shall not affect the validity of any other provision hereof.

(10) Any notice or demand required or permitted to be given by law or any communication hereunder shall be in writing and shall be considered given (a) upon personal service of a copy on the party to receive the notice, demand or communication, or (b) forty-eight (48) hours after mailing such notice or demand by certified mail, return receipt requested, postage prepaid, addressed as follows:



If to the Trustor: National Fish and Wildlife Foundation  
Attn: Director - Conservation Programs  
1133 15th Street N.W., Suite 1100  
Washington, D.C. 20005

If to the Beneficiary: Walker River Irrigation District  
P.O. Box 820  
Yerington, Nevada 89447  
Attn: General Manager

With a copy to: Woodburn and Wedge  
P.O. Box 2311  
Reno, Nevada 89505  
Attn: Gordon H. DePaoli, Esq.

If to the Trustee: Ticor Title of Nevada, Inc.  
5441 Kietzke Lane, Suite 100  
Reno, Nevada 89511

or to such other address or addresses as the parties shall from time to time give by notice to the other.

(11) This Deed of Trust cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

(12) Sale, transfer or conveyance of Trustor's interest in the Water Rights, or any part thereof, whether by operation of law or otherwise, without notice to the Beneficiary, shall constitute a default hereunder as provided for in the Agreement.

(13) Trustor shall promptly make, execute, acknowledge and deliver, in form and substance satisfactory to Beneficiary, all additional instruments, agreements and other documents,

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and Trustor shall do all other acts, as may at any time hereafter be requested by Beneficiary to effectuate and carry out the purposes of this Deed of Trust and the obligations secured herein.

IN WITNESS WHEREOF, Trustor has executed this instrument the day and year first above written.

TRUSTOR: NATIONAL FISH AND WILDLIFE FOUNDATION

By: \_\_\_\_\_

Name: JEFF TRANDAHL

Title: Executive Director

STATE OF \_\_\_\_\_)

: ss.

COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on May \_\_\_\_, 2010, by JEFF TRANDAHL, as the Executive Director of National Fish and Wildlife Foundation.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

*(Same as Exhibit "A" to Assessment Agreement)*



**EXHIBIT "B"**

**DESCRIPTION OF WATER RIGHTS**

*(Same as Exhibit "B" to Assessment Agreement)*