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

IN THE MATTER OF APPLICATION 80700
FILED BY THE NATIONAL FISH &
WILDLIFE FOUNDATION

**RESPONSE OF APPLICANT NATIONAL
FISH & WILDLIFE FOUNDATION TO
BRIEF OF U.S. BOARD OF WATER
COMMISSIONERS**

The National Fish & Wildlife Foundation (NFWF), Applicant in the above-captioned matter, by and through its attorneys, the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP, hereby submits its Response to the February 3, 2012 Brief of the United States Board of Water Commissioners (Board) in accordance with the State Engineer's direction at the January 24, 2012 Second Pre-Hearing Conference.

I. INTRODUCTION

NFWF filed Application 80700 to change 7.745 cubic-feet per second (cfs) of decreed Walker River surface water to instream use for wildlife purposes in the Walker River and at Walker Lake. The Board filed a "letter" with the State Engineer in which it asserted various protest grounds to NFWF's change application. The State Engineer subsequently ordered the Board to prepare and file a brief discussing two discreet issues raised in its "letter," and allowed the filing of responses to the Board's brief. The Board filed its Brief on February 3, 2012.

State _____'S EXHIBITS 13
DATE: _____

In its Brief, the Board argues that the Walker River Decree precludes the transfer of NFWF's water rights to instream flows for the benefit of the Walker River and ultimately Walker Lake because the Walker Decree prohibits the use of decreed water rights outside of the Walker River basin. See Brief of the United States Board of Water Commissioners (Board Brief) at 1 (raising "an issue" concerning whether the change requested by App. 80700 violates this prohibition in the Walker Decree). The Board also argues that a decreed water right holder cannot own water rights for wildlife purposes without owning the land or the place of use to which the decree rights will be placed to beneficial use.

Neither of these arguments have merit. Not only does the Board have to convince the State Engineer that the Walker River basin does not include the natural terminus of the Walker River—a notion that goes against any common understanding of what a 'river basin' is—but it also has to convince the State Engineer that this deviation from common understanding and Nevada water law was the *original intent of the Decree Court*. The Board has failed on both accounts. The Board similarly fails to present a convincing or coherent case in support of its position that NFWF cannot own decreed water rights *in situ*, without also owning the appurtenant lands, because NFWF does not literally own the Walker River and Walker Lake.

II. ARGUMENT

A. Walker Lake is in the Walker River Basin.

In order to convince the State Engineer that Walker Lake is not in the Walker River basin, even though there is no dispute that the Walker River terminates into Walker Lake, the Board first invents an alleged "ambiguity" in the terms of the Walker Decree itself. Thus, positing that the term "Walker River basin" is ambiguous, the Board assumes the State Engineer can be swayed by quoting unauthenticated statements from nearly 80 years ago which, it argues,

show that no original party to the Walker Decree intended for any decreed Walker River water rights to ever reach Walker Lake. This line of argument fails at every possible level.

The Board quotes from a litany of attorney arguments, as opposed to witness testimony, from the 1930's during the litigation that culminated in the Walker Decree. This approach by the Board suffers from several fatal defects. First, the Board has not provided to NFWF, and presumably not to the State Engineer or other parties, and has not otherwise authenticated, any copies of any of these statements purportedly made in the course of the litigation or the context in which they were offered. Second, assuming the Board has accurately portrayed the excerpts of arguments of the original parties' attorneys, none of the statements provided in the Board's Brief actually say what the Board would have the State Engineer believe that they say.

The Board appears to hope that by providing various and irrelevant instances of the parties' attorneys describing water that reaches Walker Lake as "wasted," it can persuade the State Engineer that those parties therefore did not consider Walker Lake to be a part of the Walker River basin. **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 Walker Decree parties intended that Walker Lake not be considered part of the Walker River basin.**

How the Board, which, as an administrative arm of the Walker Decree Court, should be impartial and not involved with advocacy of any kind in any proceedings regarding decreed water rights, can argue that this collection of irrelevant material proves "that comments made at the time by the attorneys for various parties acknowledged that there was no beneficial use of water that went to Walker Lake" (Board Brief at 4, fn1), and which somehow further proves that

Walker Lake is not part of the Walker River Basin is, quite frankly, beyond comprehension. The State Engineer should put this silliness to rest.

First, there is no ambiguity regarding the definition or scope of the Walker River basin. A 'river basin' is defined as "the land area drained by a river and its branches." *See e.g.* American Heritage Science Dictionary (Houghton Mifflin, 2002). According to this common definition, the Walker River basin is the land area drained by the Walker River and its branches and tributaries. Second, the Walker River basin is a "closed" basin, meaning that the water drained by the Walker River does not leave the basin. *See e.g.* USGS SIR 2009-5115, "Hydrologic Setting and Conceptual Hydrologic Model of the Walker River Basin, West-Central Nevada" at 1 ("The Walker River is the main source of inflow to Walker Lake, a closed-basin lake in west-central Nevada."). Nevada water law similarly includes a terminus lake as part of a stream system that drains to the lake. *See* NRS 533.020 (definition of 'stream system' includes all bodies of water to which the stream may be tributary.).

The water drained from the Walker River basin by the Walker River ultimately, and under natural conditions, finds its way to Walker Lake, which is also then included as part of the Walker River drainage, and therefore the basin itself. USGS SIR 2009-5115 at 1 ("The hydrology of the lower Walker River basin is considerably different than the upper basin. The upper basin consists of valleys separated by consolidated-rock mountains. [***] The lower Walker River basin is one surface-water/groundwater system of losing and gaining reaches from Wabuska to Walker Lake."). No Walker River water need be "sold or delivered" for it to end up in Walker Lake; quite the contrary, only by diverting that water out of its natural stream course does it *not* flow to Walker Lake. It is by all legal, common and scientific understanding that the Walker River basin includes Walker Lake, the terminus of the river in this closed river basin.

There is no actual ambiguity regarding whether Walker Lake is part of the Walker River basin. The courts have been clear that while external documents may be consulted to resolve ambiguity in contract terms, *a party may not create ambiguity by resort to external documents.* *Kaldi v. Farmers Ins. Exchange*, 117 Nev. 273, 282, 21 P.3d 16, 22 (2001) (rejecting a party's argument "that evidence of a party's intent may be admissible to create ambiguity in an otherwise unambiguous written contract. To do so would be to eviscerate the parol evidence rule," which prevents consideration of external documents when the language of a contract is clear). That is exactly what the Board is attempting to do here.

Notably, no other protestant has raised this protest ground; and particularly not the Walker River Irrigation District, which has been authorized by Congress as part of the Walker Basin Restoration Program "to administer and manage a 3-year water leasing demonstration program *in the Walker River Basin to increase Walker Lake inflows.*" Public Law 111-85, Section 208(b)(1)(B)(i) (emphasis added).¹ There is no ambiguity or "issue" regarding whether the Walker Decree excludes Walker Lake from the Walker River basin, and the Board's attempt to manufacture that ambiguity by resort to benign, even if culturally hidebound, advocacy arguments of attorneys made long ago fails as both a matter of fact and a matter of law.

B. Nevada Law Allows for Instream Water Rights.

Regarding the second protest ground briefed by the Board, the Board argues that "[i]t appears that the Court's intent in shaping the overall provisions of the Decree was upon use of the water on land." Board Brief at 10. The Board makes two points in support of this position.

¹ The Walker River Irrigation District recently passed Regulation 14, to authorize temporary changes of apportioned storage water rights to "temporarily allow for its beneficial use from its reservoir of origin *to and including Walker Lake.*" Section 1.1(f) (emphasis added) (a copy of WRID Reg. 14 is attached hereto).

First, the Board explains that the parties to the original litigation and ultimately the Walker Decree were primarily using water from the Walker River for irrigation of farmlands. This NFWF does not dispute. Second, the Board argues that NFWF cannot own instream water rights if it does not own the place of beneficial use of the rights, and it notes that “it is not clear how NFWF’s assessment for the Water Master’s expenses would be calculated” since such assessments are based upon the acreage of land irrigated. *Id.* at 2, 10.

It is not disputed that the original parties to the Walker Decree overwhelmingly used decreed water rights for irrigation within the Walker River basin. But that is merely a historical fact, not a legal prohibition on any other uses of water. Interestingly, the Board fails to mention that Nevada water law explicitly allows for instream use of water for wildlife purposes. *State v. Morros*, 104 Nev. 709, 715 766 P.2d 263, 267 (1988) (“we hold that Nevada water law recognizes and permits water appropriation *in situ*, without a diversion”); *see also* NRS 533.023 (“‘Wildlife purposes’ includes the watering of wildlife and the establishment and maintenance of wetlands, fisheries and other wildlife habitats.”); NRS 533.0243(1) (“The Legislature hereby finds and declares that it is the policy of this State to allow the temporary conversion of agricultural water rights for wildlife purposes or to improve the quality or flow of water.”); State Engineer Ruling 4863 (Nov. 24, 1998) (granting instream water right for up to 477,851 acre-feet annually). In fact, the Nevada Water Plan, published by the Nevada Dept. of Water Resources, expresses the policy of the State of Nevada in clear terms:

As competition for the state’s limited water intensifies, concern is growing that water supplies for wildlife and environmental purposes, or the minimum instream flow to conserve such resources, have not been fully considered in policy making and planning frameworks. Thus, maintaining minimum instream flows has become an important water use management issue in Nevada.

Nevada Water Plan, Part 3, Section 3.B (<http://water.nv.gov/programs/planning/stateplan/>)

documents/pt3-3b.pdf).

The Board has not identified, and there is not, a clear prohibition in the Walker Decree regarding the use of decreed water for purposes other than irrigation.² Federal water decree courts look to the substantive water law of Nevada (and/or California) when administering their decrees. *United States v. Alpine Land & Reservoir Co.*, 697 F. 2d 851, 858 (9th Cir. 1983) (citing *California v. United States*, 438 U.S. 645 (1978)) (“Fundamental principles of federalism require the national government to consult state processes and weigh state substantive law in shaping and defining a federal water policy.”). Without any true prohibition in the Walker Decree, the Board’s challenge to the policy of the State of Nevada, which not only recognizes but also encourages instream use of water for wildlife purposes, should be rejected outright.

The Board also argues that NFWF’s Application 80700 cannot be granted because NFWF does not own the land on which the water is to be beneficially used. In other words, because NFWF does not own either the Walker River or Walker Lake, or the land under them, then NFWF cannot beneficially use its decreed water rights. Board Brief at 2 (raising the ‘issue’ of “whether a decree holder can own water rights but own no land or the place of use to which the decree rights will be placed to beneficial use.”). First, that argument is utterly invalidated by the fact that it is clearly the law and policy of the State of Nevada to allow and promote instream water rights for wildlife purposes as explained in *State v. Morros*, NRS 533.023 and 533.0243, discussed above.

² In fact, and to the contrary, California approves licenses to divert decreed water into storage (i.e., water originally adjudicated to the Walker River Irrigation District under the Walker River Decree), and there have long been uses of decreed water beyond the irrigation of land including recreational and domestic use and as maintenance of instream flows through minimum reservoir releases.

Second, in light of its glaring impossibility—private ownership of navigable rivers and lakes—this argument has no merit and should be rejected. *See e.g. Utah Div. State Lands v. U.S., et al.*, 482 U.S. 193, 196 (1987) (citing *Pollard’s Lessee v. Hagan*, 3 How. 212 (1845)) (“The equal footing doctrine is deeply rooted in history. . . , all subsequently admitted States enter the Union on an ‘equal footing’ with the original 13 States, [so] they too hold title to the land under navigable waters within their boundaries upon entry into the Union.”).

The Board makes the same argument with regard to payment of Board assessments, which are based upon irrigated acreages. But, NFWF entered into an Assessment Agreement with the Walker River Irrigation District, as part of the process of acquiring the subject rights, under which it will continue to pay assessments to the District (which includes Board assessments) matching those charged to the land from which the water is being moved. *See* Assessment Agreement, Deed of Trust, and 2011–12 Assessment Bill for water rights subject to App. 80700 (attached hereto).

NFWF recognizes that the Board acts in the interest of all holders of decreed Walker River water rights in seeking to protect the status quo as it relates to the payment of Board assessments, which pay for the administration of the Walker Decree. But NFWF has already agreed to bear its fair share in this case, and in all other cases where it has previously acquired water. There is simply no issue here.

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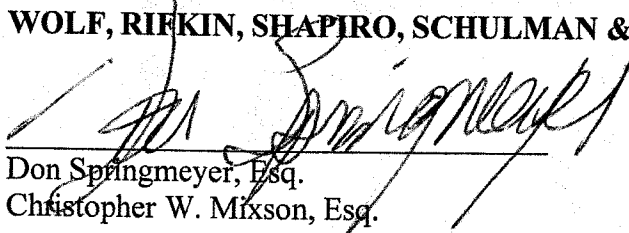
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III. CONCLUSION

The Board has failed entirely to provide any good reasons, either factual or legal, for the State Engineer to deny NFWF's Application 80700 on the grounds that the proposed change is prohibited by the Walker River decree, or that the associated assessment payments are at risk. NFWF urges the State Engineer to overrule the Board's protest grounds discussed herein, and to move expeditiously to hearing on Application 80700 so that the remaining contested issues can be addressed and resolved as soon as possible..

Dated this 14th day of February, 2012.

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP



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Attorneys for Applicant National Fish & Wildlife Foundation

CERTIFICATE OF MAILING

I certify that I am an employee of the law office of Wolf, Rifkin, Shapiro, Schulman and Rabkin, LLP, and that on this date I caused to be served by U.S. mail, postage prepaid, a true and correct copy of the foregoing **RESPONSE OF APPLICANT NATIONAL FISH & WILDLIFE FOUNDATION TO BRIEF OF U.S. BOARD OF WATER**

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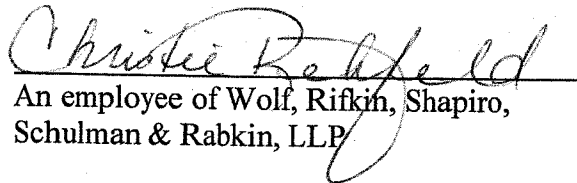
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Dated this 14th day of February, 2012.


An employee of Wolf, Rifkin, Shapiro,
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**RESOLUTION ADOPTING WALKER RIVER IRRIGATION DISTRICT
REGULATION NO. 14**

1. WHEREAS, pursuant to the provisions of N.R.S. 539.230, the Walker River Irrigation District is authorized to appropriate water in accordance with law; and

2. WHEREAS, pursuant to and consistent with the authority granted by N.R.S. 539.230, the Walker River Irrigation District has appropriated, among others, water rights as follows:

(a) the right to store water in Bridgeport Reservoir as set forth in Article VIII of the Final Decree entered April 14, 1936, as amended April 24, 1940, in the United States District Court for the District of Nevada, In Equity No. C-125, entitled *United States of America, Plaintiff, vs. Walker River Irrigation District, et al., Defendants*, (the "Walker River Decree") and as is further represented by California Water Rights License No. 9407;

(b) the right to store water in Topaz Lake Reservoir as recognized by Article VIII of the Walker River Decree, and as is further recognized by California Water Right License Nos. 6000 and 3987; and

3. WHEREAS, pursuant to the provisions of N.R.S. Chapter 539, the District apportioned the benefits of the stored water appropriated for Bridgeport and Topaz Reservoirs to specific lands within the boundaries of the District generally as follows:

(a) Lands with an appurtenant natural flow right under the Walker River Decree having a priority of 1874 and later were allocated a portion of the stored water appropriated by the District, and as a result thereof, such lands have both an appurtenant direct diversion water right recognized by the Walker River Decree and the benefit of a Supplemental Stored Water Right; and

(b) Land with no appurtenant surface water rights at all were allocated a portion of the stored water appropriated by the District and have an appurtenant New Land Stored Water Right; and

4. WHEREAS, pursuant to N.R.S. 539.190, the board of directors of an irrigation district is authorized to do any and every lawful act necessary to be done in order to accomplish things and purposes described in Nevada Revised Statutes Chapter 539, including exercising on behalf of the district the powers that are conferred upon the board of directors of a water conservancy district pursuant to the provisions of N.R.S. 541.140 and 541.145; and

5. WHEREAS, pursuant to N.R.S. 539.230, water appropriated by an irrigation district may be beneficially used and applied to lands anywhere within the described place of use; and

6. WHEREAS, pursuant to N.R.S. 539.233, the board of directors of an irrigation district has the power to establish rules and regulations for the distribution and use of water in the district; and

7. WHEREAS, pursuant to Section 2.4 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 5937 and Other Provisions of California Law as approved by the Court in the Walker River Action by Final Order pursuant to stipulation dated June 3, 1996, (the "Administrative Rules and Regulations") any change in the point of diversion and/or place of use of storage waters adjudicated to the Walker River Irrigation District, which change is entirely within the boundaries of the Walker River Irrigation District, is made pursuant to adopted rules and regulations of the governing body for said District; and

8. WHEREAS, through a series of public laws, the Congress of the United States has appropriated funds for restoring and maintaining Walker Lake as follows:

(a) Section 2507, Farm and Security Rural Investment Act of 2002, P.L. 107-171 ("Desert Terminal Lakes I") transferred \$200,000,000 from the Secretary of Agriculture to the Bureau of Reclamation to be used "to provide water to at-risk natural desert terminal lakes;"

(b) Section 207 of P.L. 108-7 ("Desert Terminal Lakes II") identified the natural desert terminal lakes eligible for benefits from the funding from Desert Terminal Lakes I as Pyramid, Summit and Walker Lakes in Nevada, and authorized the Bureau of Reclamation to provide financial assistance to various governmental and other organizations to carry out the purposes of Desert Terminal Lakes I;

(c) Section 208 of the Energy and Water Development Appropriations Act of 2006, P.L. 109-103 ("Desert Terminal Lakes III") allocated \$70,000,000 of the desert terminal lakes funding to the University of Nevada (Nevada System of Higher Education (the "NSHE")) to do various things, including acquiring "from willing sellers land, water appurtenant to land, and related interests in the Walker River Basin, Nevada" for, among other things, "environmental restoration in the Walker River Basin;"

(d) Section 2807 of P.L. 110-246 ("Desert Terminal Lakes IV") "replenished" the \$200,000,000 amount by \$175,000,000 in 2008 to be used to lease water, or purchase land, water appurtenant to land and related interests in accordance with Section 208(a)(1)(A) of Desert Terminal Lakes III;

(e) Sections 206 through 208 of P.L. 111-851 ("Desert Terminal Lakes V") directed the Bureau of Reclamation to provide \$66,200,000 to the National Fish and Wildlife Foundation ("NFWF") for various purposes which are further described below, and authorized NFWF to replace the NSHE in connection with its activities under Desert Terminal Lakes III; and

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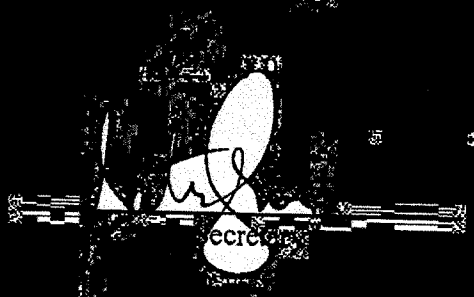
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REGULATION NO. 14
TEMPORARY CHANGES TO STORED WATER RIGHTS
FOR
BENEFICIAL USE AT WALKER LAKE

ARTICLE I

DEFINITIONS

Section 1.1 Unless the context otherwise requires, as used in this Regulation, the following words and phrases shall have the following meanings:

(a) "Acquired New Land Stored Water Right" shall mean and refer to a New Land Stored Water Right owned by NFWF or its successor-in-interest.

(b) "Acquired Supplemental Stored Water Right" shall mean and refer to a Supplemental Stored Water Right owned by NFWF or its successor-in-interest.

(c) "Administrative Rules and Regulations" shall mean and refer to 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 5937 and Other Provisions of California Law as approved by the Court in the Walker River Action.

(d) "Agency" or "agencies" shall mean and refer to either or both of the State Engineer of the State of Nevada or the California State Water Resources Control Board, as appropriate, which has the responsibility for adjudicating a specific Change Application or Change Petition.

(e) "Applicant" shall mean and refer to any person making a Change Application and to the District with respect to a Change Petition.

(f) "Change Application" shall mean and refer to any application filed in accordance with this Regulation to temporarily change the point of rediversion, manner of use and/or place of use of a Supplemental Stored Water Right or a New Land Stored Water Right from its existing point of rediversion, its existing place of use and its existing manner of use to temporarily allow for its beneficial use from its reservoir of origin to and into Walker Lake for fish and wildlife resources.

(g) "Change Petition" shall mean and refer to any petition filed in accordance with this Regulation to temporarily add the East Walker River, West Walker River and/or the Walker River to Walker Lake and Walker Lake as an additional place of use, and to temporarily add fish and wildlife resources as an additional purpose of use to the District's Stored Water Rights.

EXHIBIT A

(h) "Contested Application" shall mean and refer to a Change Application or Change Petition which is protested pursuant to the provisions of N.R.S. § 533.365 or California Water Code § 1703.1.

(i) "District" shall mean and refer to the Walker River Irrigation District.

(j) "District's Stored Water Rights" shall mean and refer to the rights of the District to store water in Bridgeport Reservoir pursuant to the Walker River Decree and California Water Rights License No. 9407 and the Walker River Decree, or to store water in Topaz Lake Reservoir under California Water Rights License Nos. 6000 and 3987 and the Walker River Decree.

(k) "NFWF" shall mean and refer to the National Fish and Wildlife Foundation.

(l) "New Land Stored Water Right" shall mean and refer to benefits of the District's Stored Water Rights apportioned by the District to specific lands within the District with no appurtenant surface water rights adjudicated by the Walker River Decree.

(m) "Party" shall mean and refer to any person who appears or is allowed to appear in an agency proceeding or in a proceeding for approval or judicial review of an agency decision or report.

(n) "Person" shall mean and refer to a corporation, company, partnership, firm, association, society, governmental agency, Indian tribe, or any other entity, as well as a natural person.

(o) "Protestant" shall mean and refer to any person who protests a Change Application pursuant to the provisions of N.R.S. § 533.365 or a Change Petition pursuant to California Water Code § 1703.1.

(p) "State Engineer" shall mean and refer to the state engineer of the State of Nevada.

(q) "Supplemental Stored Water Right" shall mean and refer to benefits of the District's Stored Water Rights apportioned by the District to specific lands within the District with appurtenant surface water rights adjudicated by the Walker River Decree.

(r) "United States Board of Water Commissioners" shall mean and refer to that certain six person board appointed pursuant to the orders of the Court in the Walker River Action dated May 12, 1937, January 28, 1938, and June 27, 1940, to act as a water master or board of commissioners to apportion and distribute the waters of the Walker River, its forks and tributaries in the State of Nevada and in the State of California.

(s) "Walker River Action" shall mean and refer to that certain action entitled "United States of America, Plaintiff v. Walker River Irrigation District, et al., Defendants" in the United States District Court for the District of Nevada, In Equity No. C-125-ECR.

(t) "Walker River Decree" shall mean and refer to that certain final decree entered in the Walker River Action on April 14, 1936, as amended on April 24, 1940.

(u) "Water Resources Control Board" shall mean and refer to the California State Water Resources Control Board.

ARTICLE II

APPLICABILITY

This Regulation shall apply to all Change Applications and to all Change Petitions. This Regulation constitutes the District's limited and conditional consent to the temporary Change Applications and temporary Change Petitions provided for herein, and any such Change Applications and Change Petitions processed and approved hereunder shall be subject to all of its terms and provisions.

ARTICLE III

FILING CHANGE PETITIONS

Section 3.1 The District shall file temporary Change Petitions for the District's Stored Water Rights with the Water Resources Control Board on such forms and in such manner as required by that office and pursuant to the provisions of California Water Code sections 1707 and 1725.

Section 3.2 Each Change Petition filed by the District shall expressly provide that the changes requested will expire on a date which is not later than the one year anniversary of its final approval, provided, however, that the District may seek similar temporary changes for one year at a time for up to five consecutive years.

Section 3.3 Each Change Petition is subject to and shall comply with all of the requirements of the Administrative Rules and Regulations.

ARTICLE IV

FILING CHANGE APPLICATIONS

Section 4.1 A Change Application to change an Acquired Supplemental Stored Water Right shall be filed with the State Engineer.

Section 4.2 A Change Application to change an Acquired New Land Stored Water Right shall be filed with the State Engineer.

Section 4.3 A Change Application to change a Supplemental Stored Water Right or a New Land Stored Water Right for purposes of participation in a 3-year water leasing demonstration program pursuant to the provisions of Section 208(b)(1)(B)(i) of P.L. 111-851 shall be filed with the State Engineer.

Section 4.4 Each Change Application filed with the State Engineer pursuant to this Regulation shall be filed pursuant to the provisions of N.R.S. 533.345, and shall expressly provide that it will expire on a date which is not later than the one year anniversary of its final approval, and that it is subject to the requirement that it will be deemed withdrawn in the circumstances provided for in Section 4.6.

Section 4.5 The District may provide written comments and recommendations to the State Engineer with respect to a Change Application. Any such written comments and recommendations shall be provided within thirty (30) business days after the District receives a copy of a Change Application.

Section 4.6 If the State Engineer determines that he must notice the Change Application as provided in N.R.S. 533.360 and hold a hearing and render a decision as provided in N.R.S. Chapter 533, all as provided in N.R.S. 533.345(3), the District, in a properly noticed meeting, shall consider whether the Change Application should be so processed based upon the same information as was submitted to the State Engineer. If the District's decision is that it should not be so processed, it shall be deemed withdrawn upon notice to the State Engineer by the District of that decision. If the District's decision is that it should be so processed, the State Engineer may thereafter proceed as provided in N.R.S. 533.345(3).

Section 4.7 It shall be a condition of any Change Application processed and approved pursuant to this Regulation that the approval is and shall remain subject to all of the provisions of this Regulation, including without limitation, the terms and provisions of Articles IX and X.

Section 4.8 Change Applications are subject to and shall comply with all of the requirements of the Administrative Rules and Regulations.

ARTICLE V

PROCEEDINGS BEFORE THE AGENCY

Section 5.1 Except as otherwise expressly provided by this Regulation, all proceedings before an agency with respect to Change Petitions and Change Applications shall be in accordance with the practice and procedure of that agency. Protests to Change Applications may be filed in accordance with the provisions of N.R.S. § 533.365, or to Change Petitions in California, in accordance with the relevant provisions of the California Water Code.

Section 5.2 The decision of the Water Resources Control Board with respect to a Change Petition shall be based upon the applicable provisions of California law, including, but

not necessarily limited to, whether the proposed changes will injure any legal user of water, or result in any significant adverse impacts to water quality or the environment.

Section 5.3 The decision of the State Engineer with respect to a Change Application shall be based upon the applicable provisions of Nevada law.

Section 5.4 The preparation of and filing of the agency record of all proceedings concerning a Change Petition or Change Application shall comply with the Administrative Rules and Regulations.

ARTICLE VI

AGENCY DECISION

The decisions of the State Engineer and the District on Change Applications and of the Water Resources Control Board on Change Petitions shall be made, served and filed in accordance with the Administrative Rules and Regulations.

ARTICLE VII

JUDICIAL REVIEW

The decisions of the State Engineer on Change Applications and of the Water Resources Control Board on Change Petitions shall be submitted to, reviewed by and approved by the Court in the Walker River Action as provided in the Administrative Rules and Regulations.

ARTICLE VIII

IMPLEMENTATION, MANAGEMENT, MONITORING AND MITIGATION

Section 8.1 No water from District's Stored Water Rights shall be used for the benefit of Walker Lake unless and until: (1) the required Change Petition has been approved as provided in this Regulation and as provided in the Administrative Rules and Regulations; and (2) one or more related Change Applications have been approved as provided in this Regulation and in the Administrative Rules and Regulations.

Section 8.2 Prior to implementation of any Change Application approved in accordance with this Regulation, the District shall adopt a plan designed to monitor the impacts of all Change Applications which are approved with respect to conflict with existing rights, efficiency of delivery and use of water in the District, including, but not limited to, ditch transportation efficiencies and stream channel conveyance losses, protection of District and ditch company assessments, carry-over storage in Bridgeport Reservoir and Topaz Lake Reservoir, and any other matter or issue relevant to determining whether such Change Applications, if allowed on a long term basis, will interfere with the primary purpose of the District and the interests of those water users who will continue to irrigate lands within its boundaries.

Section 8.3 The District shall cause to be prepared a report on the information obtained by the plan referenced in Section 8.2, along with recommendations, if any, concerning continuation of this Regulation beyond its expiration date, changes to the provisions of this Regulation, and any other matter the District deems relevant.

Section 8.4 The report required by Section 8.3 shall be submitted to the District Board, the Water Resources Control Board and the State Engineer, and shall also be available to the public in general.

ARTICLE IX

EXPIRATION OF REGULATION

This Regulation expires by limitation on a date which is the fifth anniversary of the date of its approval by the District Board, unless on or before that date the Board of Directors of the District adopts a resolution extending its effectiveness for a specific period of time. In the event that such a resolution is adopted, additional Change Petitions and Change Applications may be processed and approved pursuant to the terms of this Regulation as extended and/or as modified.

ARTICLE X

CHANGE PETITIONS AND CHANGE APPLICATIONS REMAIN SUBJECT TO BY-LAWS AND RULES AND REGULATIONS OF THE DISTRICT

Notwithstanding the fact that the effect a Change Petition and Change Application processed and approved pursuant to this Regulation may have the effect of allowing use of Supplemental Stored Water Rights and New Land Stored Water Rights outside the boundaries of the District, it is a condition of this Regulation and a condition of any approved Change Petition and Change Application that such water rights shall continue to be subject to the bylaws, rules and regulations of the District as are now, or may hereafter, be in effect.

DOC# 459037

05/13/2010

12:35PM

Official Record

Requested By
STEWART TITLE OF NEVADA R

Lyon County - NV

Mary C. Milligan - Recorder

Page: 1 of 25

Fee: \$63.00

Recorded By CDL

RPTT: \$0.00

Recording Requested by
And Return To:

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



0459037

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

5
7/13
3rd
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 its 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

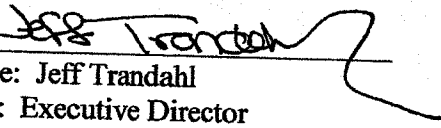


upon and inure to the benefit of the parties named therein and their respective successors, representatives and permitted assigns. The Owner may not assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the District. The recitals 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.

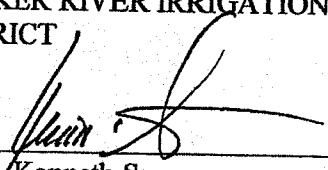
OWNER:

NATIONAL FISH AND WILDLIFE
FOUNDATION

By: 
Name: Jeff Trandahl
Title: Executive Director

DISTRICT:

WALKER RIVER IRRIGATION
DISTRICT

By: 
Name: Kenneth Spooner
Title: General Manager



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CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF District of)
)
COUNTY OF Columbia) ss

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

Donna McHanna
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 3rd, 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
			0.24	20.00	12.830

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
			0.780	65.00	41.460

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
			0.720	60.00	44.250

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
			0.620	51.84	15.420

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
			2.415	201.32	141.451

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			
			0.960	80.00	55.120

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
			2.010	168.00	92.020

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



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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

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: _____



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EXHIBIT "A"

LEGAL DESCRIPTION

(Same as Exhibit "A" to Assessment Agreement)



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EXHIBIT "B"

DESCRIPTION OF WATER RIGHTS

(Same as Exhibit "B" to Assessment Agreement)

Recording Requested By
And When Recorded Return To:

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



0459042

APN: Water Rights

DEED OF TRUST

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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 May 13, 2010, as Document No. 459037.

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: Jeff Trandaahl
Name: JEFF TRANDAHL
Title: Executive Director

STATE OF District of)

: ss.

COUNTY OF Columbia)

This instrument was acknowledged before me on May 7, 2010, by JEFF TRANDAHL, as the Executive Director of National Fish and Wildlife Foundation.

Bonnie McManis
NOTARY PUBLIC
My commission expires: 7/14/2012

**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
			0.24	20.00	12.830

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
			0.780	65.00	41.460

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
			0.720	60.00	44.250

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
				0.620	51.84

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
				2.415	201.32

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			
			0.960	80.00	55.120

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
			2.010	168.00	92.020

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



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14 of 14

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.

<p>Assessment Bill - WRID MAKE CHECKS PAYABLE TO: Walker River Irrigation District REMIT TO: P. O. Box 820 Yerington, NV 89447 ASSESSMENTS FOR PERIOD: July 1, 2011 thru June 30, 2012 Fr. SE 1/4, Sec. 10; Fr. NE 1/4, Fr. NE 1/4 of SE 1/4, Fr. N 1/2 of NW 1/4 of SE 1/4, Sec. 15; T 14 N, R 25 E.</p>	<table border="1"> <thead> <tr> <th></th> <th style="text-align: right;">Amount</th> </tr> </thead> <tbody> <tr> <td>O & M General</td> <td style="text-align: right;">1,260.00</td> </tr> <tr> <td>O & M USBWC</td> <td style="text-align: right;">436.80</td> </tr> <tr> <td>O & M WUA</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>O & M Equipment Rental</td> <td style="text-align: right;">252.00</td> </tr> <tr> <td>O & M Reservoirs</td> <td style="text-align: right;">262.26</td> </tr> <tr> <td>O & M Local # 1</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>O & M Local # 2</td> <td style="text-align: right;">218.40</td> </tr> <tr> <td>O & M Local # 3</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>O & M Local # 4</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>O & M Water Distribution</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>TOTAL DUE</td> <td style="text-align: right;">2,429.46</td> </tr> </tbody> </table>		Amount	O & M General	1,260.00	O & M USBWC	436.80	O & M WUA	.00	O & M Equipment Rental	252.00	O & M Reservoirs	262.26	O & M Local # 1	.00	O & M Local # 2	218.40	O & M Local # 3	.00	O & M Local # 4	.00	O & M Water Distribution	.00	TOTAL DUE	2,429.46	<p>Parcel 014-181-12 LY Roll # 522 Card # 28124 Pay— 607.35 DUE August 15, 2011 MAIL THIS STUB TO WALKER RIVER IRRIGATION DISTRICT; P.O. BOX 820; YERINGTON, NV 89447 WHEN PAYING THE 1ST INSTALLMENT.</p>
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<p>Parcel 014-181-12 Roll # 522</p>	<p>ASSESSED TO: RESERVED WATER RIGHT OWNER: National Fish & Wildlife Founda 1133 Fifteenth Street, NW Suite 1100 Washington, DC 20005</p> <p>PROPERTY OWNER: L & M Family Limited Partnership 11 North Main Street Yerington, NV 89447</p>	<p>Parcel 014-181-12 LY Roll # 522 Card # 28124 Pay— 607.37 DUE October 03, 2011 MAIL THIS STUB TO WALKER RIVER IRRIGATION DISTRICT; P.O. BOX 820; YERINGTON, NV 89447 WHEN PAYING THE 2ND INSTALLMENT.</p>																								
<p>Assessed Values IF YOU HAVE SOLD THIS PROPERTY PLEASE FORWARD TO NEW OWNER OR RETURN TO WRID.</p>	<p>IF YOUR ADDRESS HAS CHANGED PLEASE ENTER CHANGE ON BACK OF STUB</p>	<p>Parcel 014-181-12 LY Roll # 522 Card # 28124 Pay— 607.37 DUE January 02, 2012 MAIL THIS STUB TO WALKER RIVER IRRIGATION DISTRICT; P.O. BOX 820; YERINGTON, NV 89447 WHEN PAYING THE 3RD INSTALLMENT.</p>																								
		<p>Parcel 014-181-12 LY Roll # 522 Card # 28124 Pay— 607.37 DUE March 05, 2012 MAIL THIS STUB TO WALKER RIVER IRRIGATION DISTRICT; P.O. BOX 820; YERINGTON, NV 89447 WHEN PAYING THE 4TH INSTALLMENT.</p>																								