



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO  
*Attorney General*

KEITH G. MUNRO  
*Assistant Attorney General*

JIM SPENCER  
*Chief of Staff*

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## MEMORANDUM

**DATE:** November 18, 2009  
**TO:** Kenneth E. Mayer, Director  
Nevada Department of Wildlife  
**FROM:** Nhu Q. Nguyen, Senior Deputy Attorney General  
**SUBJECT:** Litigation Update

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There are no significant litigation developments to report. Below is a brief summary of the litigation currently pending. Please direct any questions to me at (775) 684-1232.

1. *U.S. and Walker River Paiute Tribe v. Walker River Irrigation Dist., et al. (Walker River Litigation)*, Case No. 3:73-cv-00125-ECR-RAM (United States District Court, Reno). This action involves federal and tribal claims for additional water from Walker River, in addition to those already established by the Walker River Decree. Confidential settlement discussions have ended and litigation strategies are being developed.
2. *E. Wayne Hage v. United States*, Case No. 91-1470L (United States Court of Federal Claims). Hage alleges the USFS affected a taking of his private property when (1) it reduced and ultimately cancelled Hage's grazing privileges on certain USFS grazing allotments, and (2) authorized introduction/reintroduction/augmentation of big game within the allotments. Trial was held in Reno from May 3–21, 2004. Retired NDOW biologist, Jim Lusk was called to testify by the U.S. on the subjects of elk behavior, elk reintroduction on Table Mountain, and other related matters. The Court entered an order against the USFS. On December 10, 2008, the USFS filed a motion asking the Court for

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reconsideration of its opinion. On October 14, 2009, the parties filed a stipulation that they reached a settlement.

3. *Change Application for Carson Lake and Pasture*. The application is protested by the Pyramid Lake Paiute Tribe of Indians (PLPT). On November 1, 2006, the United States District Court denied PLPT's motion to have the change application heard before the Court. A hearing was held before the State Engineer November 14–15, 2006. The State Engineer issued his decision overruling PLPT's protest on August 14, 2007. PLPT has requested judicial review from the U.S. District Court. Briefing was completed on October 8, 2008. Awaiting decision.
4. *Hardenbrook v. State*, Case No. 3:06-cv-0431-ECR-VPC (United States District Court, Reno). Hardenbrook seeks to renew the allegations made in his previous complaint, which was dismissed by the court for failure to state a claim. On January 8, 2008, the district court granted NDOW's motion to dismiss for failure to state a claim upon which relief can be granted. Hardenbrook appealed to the Ninth Circuit Court of Appeals. On May 26, 2009, the Ninth Circuit affirmed the district court's ruling.
5. *Leslie Smith v. Clark, et. al.*, Case No. 3:07-cv-00278-BES-RAM (United States District Court, Reno). Smith commenced action-alleging discrimination. Motion for summary judgment was granted on September 18, 2008; no appeal was taken. On November 7, 2008, Smith filed a motion requesting the court vacate its decision. The Court denied the motion on July 7, 2009.

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