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MEMORANDUM

DATE: January 21, 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. If you or any Commissioners have questions about any legal matters before or after the meeting, please contact me at (775) 684-1232 or Senior Deputy Attorney General David Newton at (702) 486-3898. Deputy Attorney General Bryan Stockton will also be at the Commission meeting to answer any questions.

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

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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 reconsideration of its opinion.

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. Individual NDOW employees have been properly served. Motion to Dismiss was granted January 8, 2008. Hardenbrook has appealed to the Ninth Circuit Court of Appeals. Briefing was completed on June 2, 2008. Awaiting decision.
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. An opposition to the motion was filed on January 13, 2009. Awaiting decision on Smith motion to vacate.

NQN/rmh