



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

MEMORANDUM

#16 G

DATE: April 29, 2010
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 reconsideration of its opinion. On November 3, 2009, the Court rejected the USFS'

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request and modified its original order to include \$151,924 for the value of ditches and pipelines that were constructed or maintained by Hage, which brings the amount of the award to \$4,372,355.20, plus interest. The Court has also set a hearing on the interest issue to be on May 18, at 2:00 p.m. in the Second Judicial District Court in Reno.

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. *In Defense of Animals v. Salazar.* (USDC, Washington, D.C.) NDOW's unopposed motion to intervene was granted. The parties are in the process of briefing the court and NDOW's dispositive motion is due on March 17, 2010. Oral argument is set for May 6, 2010, in Washington, D.C.

NQN/rmh