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MEMORANDUM

#19 H

DATE: February 22, 2011
TO: Kenneth E. Mayer, Acting Director
Nevada Department of Wildlife
FROM: Nhu Q. Nguyen, Senior Deputy Attorney General
SUBJECT: Litigation Update

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Senior Deputy Attorney General David Newton will be at the Commission meeting to answer any questions. You can also 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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February 22, 2011

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 held a hearing on the interest issue on May 18, 2010, in Reno, and entered a final ruling on August 4, 2010. The United States filed a Notice of Appeal on October 1, 2010. Amicus Brief was filed on February 14, 2011.

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 requested judicial review from the U.S. District Court, and briefing was completed on October 8, 2008. Awaiting decision.
4. *Russell H. Elms v. Christopher W. Lacey, et al.* (2nd Judicial District, Washoe County) Plaintiff alleges that NDOW wrongfully confiscated the head or antlers of an animal that belongs to Plaintiff and requests that it be returned to him. The Answer was filed on August 12, 2010. On October 8, 2010, the Court dismissed three of the four counts contained in the Complaint.
5. *Brian Christie v. State NDOW, et al.* (Reno Justice Court) Plaintiff alleges that NDOW committed trespass to chattel; breach of contract ;and violated 42 USC, § 1983 in seizing his property. The Answer was filed on May 21, 2010.
6. *Hansen v. NDOW, et al.* (First Judicial District, Carson City) Plaintiff alleges NDOW and its game wardens committed civil conspiracy, abused process and maliciously prosecuted him by alleging that he illegally disturbed a private individual's traps. Plaintiff filed an amended complaint on January 13, 2011. The responsive pleading is on February 2, 2011. Plaintiff amended his complaint on January 13, 2011; the matter was removed to Federal Court with NDOW's responsive pleading due on March 22, 2011.

NQN/rmh