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MEMORANDUM

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DATE: September 8, 2011
TO: Kenneth E. Mayer, Director
Nevada Department of Wildlife
FROM: Nhu Q. Nguyen, Senior Deputy Attorney General
SUBJECT: Litigation Update

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1. *U.S. and Walker River Paiute Tribe v. Walker River Irrigation Dist., et al. (Walker River Litigation)*, (US District Court, Reno). This action involves federal, tribal and Mineral County 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. Recently, the Tribe initiated and is pursuing additional confidential settlement discussions.
 2. *E. Wayne Hage v. United States*, Case No. 91-1470L (United States Court of Federal Claims). Hage alleges the United States 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. Specifically, Hage alleged the introduction of elk by NDOW constituted a taking. The trial was held in Reno from May 3–21, 2004. NDOW sought to intervene as a defendant in the lawsuit, but was denied by the court. The court, however, granted NDOW amicus status so that it could file a brief in support of the United States. NDOW biologist (now retired) testified for 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 United States, and denied its request for reconsideration. The court entered a final ruling on August 4, 2010, awarding Hage \$4,372,355.20. The United States filed a Notice of Appeal on October 1, 2010, with the appellate

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court. NDOW's amicus brief in support of the United States was filed on February 14, 2011.

3. *Change Application for Carson Lake and Pasture.* (US District Court, Reno) NDOW's application to change the place of use of water to the Carson Lake and Pasture at the full duty of 3.50 afa was protested by the Pyramid Lake Paiute Tribe of Indians (PLPT). The PLPT protested on the basis that water applied to the wetlands was not an irrigation use of the water. The State Engineer held a hearing on November 14–15, 2006, and issued his decision overruling PLPT's protest on August 14, 2007. The district court reversed the State Engineer's decision holding among other things that, irrigation is only for cash crops under the Alpine Decree. NDOW appealed to the Ninth Circuit Court of Appeals on June 10, 2011. The parties are in mandatory mediation.
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; the Motion for Judgment on the Pleadings was filed on August 17, 2011.
6. *The Cloud Foundation, et al. v. Salazar, et al.* (9th Circuit Court of Appeals). This is an appeal of the district court's denial of a preliminary injunction against the BLM's gather of the excess horses in the Triple B Complex. The Court granted NDOW's motion to intervene on August 12, 2011. On September 7, 2011, the Cloud Foundation filed a motion to voluntarily dismiss its appeal.
7. *Herndon v. NDOW* (8th Judicial District Court, Las Vegas) A petition for judicial review of a disciplinary action taken by NDOW. The disciplinary action was upheld by the hearing officer. The parties are briefing this matter for the Court.

NQN/rmh