

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 75917

MINERAL COUNTY; AND
WALKER LAKE WORKING GROUP,

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Appellants,

v.

LYON COUNTY, CENTENNIAL LIVESTOCK;
BRIDGEPORT RANCHES; SCHROEDER GROUP;
WALKER RIVER IRRIGATION DISTRICT;
STATE OF NEVADA DEPARTMENT OF
WILDLIFE; AND COUNTY OF MONO, CALIFORNIA,

Respondents.

On Order From Ninth Circuit Court of Appeals
Certifying Questions

**AMICUS BRIEF OF
TRUCKEE MEADOWS WATER AUTHORITY
IN SUPPORT OF RESPONDENTS**

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STATEMENT OF INTEREST

A. Background on TMWA

The Truckee Meadows Water Authority (“TMWA”) is a joint powers authority created by the City of Reno, City of Sparks and Washoe County pursuant to NRS Chapter 277 to develop, maintain and distribute a reliable municipal water supply. As a municipal water purveyor and political subdivision of the State of Nevada, TMWA is authorized to file this amicus brief pursuant to NRAP 29(a).

TMWA is Northern Nevada’s largest purveyor of residential and commercial water, serving over 385,000 people. In 2014, TMWA acquired the water systems of the Washoe County Department of Water Resources and South Truckee Meadows General Improvement District. As a result, TMWA is the sole municipal water purveyor in the Reno/Sparks metropolitan area. Through population forecasting, TMWA estimates that it will serve 475,000 people by 2035.

TMWA is obligated to provide water to its customers in sufficient quantity and quality pursuant to NRS Chapter 445A and the federal Safe Drinking Water Act, 42 U.S.C. § 300f, et seq. TMWA must develop and manage its water resources in the most efficient, cost-effective manner to satisfy the present and future needs of the Reno/Sparks area in both dry and non-dry years.

To ensure its available water resources are renewable, reliable and sustainable in perpetuity, TMWA employs a long-term planning perspective. TMWA crafts 20-year water resource plans because ramifications from events that affect the delivery of potable water take years to unfold. For example, fluctuations in population and economic conditions, such as dramatic growth through the early 2000's, or stagnation resulting from the 2007-2009 recession, can positively or negatively impact water demand. Careful analysis of economic trends is paramount to making confident projections of future water needs.

Moreover, the goals and objectives set by the community and its elected officials evolve over time. TMWA's water resource planning must accommodate the land use entitlement and planning functions of the cities, county and regional planning agencies. A 20-year plan provides a reasonable timeframe in which to assess potential changes and implement tractable and sustainable solutions. With sufficient long-term water resources planning, TMWA anticipates and prepares for the construction of new water supply projects that can take decades to permit and complete. TMWA's planning process furthers State policy to provide safe drinking water, protect existing water rights and encourage efficient and non-wasteful use of limited water resources.

B. TMWA's Water Rights

The Truckee River is TMWA's primary source of water supply. TMWA holds approximately 119,000 acre feet of Truckee River rights to serve its customers and generate revenue from its hydroelectric facilities. TMWA conjunctively manages its water supplies through a combination of natural river flows, injection of treated surface water into aquifers, groundwater pumping, and releases of its upstream drought reserves. When river flows are available, TMWA maximizes the use of surface water while minimizing the use of groundwater supplies. This approach allows TMWA to recharge wells when enough surface water is available.

TMWA is the successor-in-interest to Sierra Pacific Power Company's ownership in water rights, reservoirs and related facilities on the Truckee River in California and Nevada. TMWA holds all or a portion of Truckee River Claims Nos. 4, 5, 6, 7, 8 and 9 of the final decree entered by the United States District Court of the District of Nevada in 1944 in the case of *United States of America v. Orr Water Ditch Company*, in Equity Docket A3 ("the Orr Ditch Decree"), as amended in 2014 to incorporate the Truckee River Operating Agreement ("TROA"). These decreed rights are for storage and hydroelectric power generation. TMWA has also acquired an additional approximately 80,000 acre feet

of decreed Truckee River rights that were formerly used for irrigation and converted them to municipal use.

To serve the nearly 400,000 people who depend upon TMWA for water service, TMWA relies on its continuing ability to divert, treat, store and deliver its Truckee River rights in the amount and priority specified in the Orr Ditch Decree. TMWA continually assesses the potential impacts to source water supplies due to drought and variable climate conditions and adapts its management strategies accordingly to mitigate against reservoir depletion and unnecessary economic stress to TMWA and its customer base.

C. Surface Water Storage

Surface water sources and storage on the Truckee River system provide between 85 and 90 percent of TMWA's water supply. The upstream storage reservoirs are as follows:

- Lake Tahoe: 744,600 acre feet
- Boca Reservoir: 40,800 acre feet
- Independence Lake: 17,500 acre feet
- Donner Lake: 9,500 acre feet
- Prosser Reservoir: 29,800 acre feet
- Stampede Reservoir: 226,000 acre feet

D. The Truckee River Operating Agreement

Lake Tahoe and the Truckee and Carson Rivers are some of the most heavily litigated waterways in the country. *See, e.g., Nevada v. U.S.*, 463 U.S. 110, 114-18 (1983); *Churchill County v. Norton*, 276 F.3d 1060, 1064-1067 (9th Cir. 2001). The 1944 Orr Ditch Decree, which adjudicated ownership, priority, and relative rights to the beneficial use of all Truckee River water in Nevada, was entered after 31 years of litigation. It established a management framework that allowed water rights to be satisfied from natural flow and releases from upstream reservoirs.

In the years following the Orr Ditch Decree, increased urbanization and adoption of environmental laws and other regulations significantly expanded the demands on Truckee River water. Competing and often-conflicting interests between municipal, irrigation, hydroelectric, recreation, instream, and environmental uses; interstate disputes over the allocation of waters between California and Nevada; and significant decreases in elevations of Pyramid Lake¹ led to over 100 years of controversy and litigation. *See Nevada*, 463 U.S. at 114-18; *United States v. Truckee-Carson Irrig. Dist.*, 649 F.2d 1286, 1292 (9th Cir.

¹ In 1973, the United States filed an action to secure additional rights for the Pyramid Tribe beyond those granted in the 1944 Decree. The action named approximately 17,000 individuals, the State of Nevada, TCID, the Cities of Reno and Sparks, Washoe County, and Sierra Pacific as defendants. It ultimately led to the Supreme Court's decision in *Nevada v. United States*, 463 U.S. 110 (1983), which held that such claims for the Pyramid Tribe were precluded by the *res judicata* effect of the 1944 Orr Ditch Decree.

1981); *United States v. Alpine Land & Reservoir Co.*, 431 F.2d 763, 765 (9th Cir. 1970), *cert. denied*, 401 U.S. 909 (1971); *Truckee-Carson Irrig. Dist. v. United States*, 14 Cl. Ct. 361, 371-72 (1988).

Efforts to resolve the disputes and improve the operation of upstream reservoirs to meet multiple beneficial uses eventually resulted in the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, Pub. L. No. 101-618 (Nov. 16, 1990), Title II, 104 Stat. 3289 (“Settlement Act”). The Settlement Act directed the Secretary of the Interior to negotiate an operating agreement for the Truckee River reservoirs with the States of California and Nevada to accomplish various goals. After 40 years of discussion and debate, the states of Nevada and California, the United States, TMWA and the Pyramid Lake Paiute Tribe signed TROA on September 6, 2008. See https://www.usbr.gov/mp/troa/final/troa_final_09-08_full.pdf. Implementation of TROA began in December 2015.

TROA responds to changed legal and factual circumstances arising since entry of the 1944 Orr Ditch Decree, modifying the Truckee River management framework and flow regimes to provide the follow benefits, among others:

- Equitable apportionment of the waters of the Truckee River and Lake Tahoe between California and Nevada, allocating 90 percent to Nevada;
- More efficient and flexible use of available reservoir storage to provide benefits to fish and wildlife, municipal, industrial, and irrigation water users;

- Permanent upstream storage in federal reservoirs for TMWA customers, including supplies for emergency conditions and worse-than-worst-case droughts;
- Fulfillment of federal trust obligations to Indian tribes;
- Upstream storage and improved timing of river flows to protect and improve water quality, fulfill Endangered Species Act goals and enhance conditions for the endangered Pyramid Lake cui-ui and the threatened Lahontan cutthroat trout;
- Expansion of recreational opportunities, including boating and fishing, by retaining more water in upstream reservoirs;
- Resolution of decades of litigation and promotion of future cooperation through a dispute resolution process;
- Minimum bypass flows for the hydroelectric plants;
- Preservation of water rights seniority under Nevada's prior appropriation doctrine;
- Certainty, reliability and finality with respect to availability, timing and protection of Truckee River rights.

TROA's major innovation is the ability for major stakeholders to establish "credit water" during times when it is not needed, which can then be carried over into subsequent years and released as needed to maintain fisheries, meet the

municipal and industrial demands of the community or improve water quality in the lower Truckee River. TROA provides additional flexibility for parties to use their water rights when they need them most, by changing the timing and manner in which water can be stored in, exchanged between, and released from upstream reservoirs.

LEGAL ARGUMENT

A. Introduction

The State of Nevada has always managed appropriation of its waters for the benefit of the public and consistent with evolving public trust values. As the driest state in the nation, Nevada was founded upon the ability of appropriators to enter the public domain and divert water for mining and irrigation purposes. Mineral development and agriculture were the foremost – if not the exclusive – value that Nevada’s residents urged for the first century of the State’s existence. Indeed, the State would not exist but for the appropriation of water for those uses. Nevada has no heritage of using its scarce surface waters for navigation, commerce or commercial fishing.

As the State’s population has grown, municipal and industrial uses have placed demands on Nevada’s limited water resources. And protection of fish and wildlife, through federal laws and changing societal values, has grown in importance for Nevada’s residents. So too has the maintenance of in-stream flows

for recreation and habitat protection. Importantly, Nevada law has advanced along with those evolving public values.

To answer the certified questions posed by the Ninth Circuit, the Court should look to the State's history of mining and irrigation; numerous statutory provisions the Nevada Legislature has enacted to protect changing trust values; and the law of prior appropriation, as it existed at common law and then was codified at NRS Chapter 533.

Question 1a: “Does the public trust doctrine apply to rights already adjudicated and settled under the doctrine of prior appropriation?”

Answer: Yes, both pre-statutory vested rights and those appropriated pursuant to Nevada's statutory scheme, are use rights that accounted for the public trust values that existed at the time of the appropriation.

Question 1b: To what extent does the public trust doctrine apply to “adjudicated and settled” appropriative rights?

Answer: Public trust values are taken into account at the time of an appropriation to confirm that the appropriation is in the public interest and places the public resource to beneficial use.

Question 2: “If the public trust doctrine applies and allows for reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such

adjudicated or vested rights constitute a ‘taking’ under the Nevada Constitution requiring payment of just compensation?”

Answer: The first part of Question 2 contains an incorrect predicate that simply because the public trust doctrine applies to already-adjudicated or vested rights, it necessarily allows for those rights to be reallocated. Nevada law does not allow a court to engage in “reallocation.”

Whether the law should allow for reallocation to reprioritize public trust values is a policy decision that only the Legislature can make. To the extent the Court concludes that the Legislature is not fulfilling the State’s trust responsibilities, it can so inform the Legislature, but the Court lacks authority to redistribute vested property rights or to direct the Legislature as to how it should do its job. TMWA does not take a position as to what constitutes a taking under the Nevada Constitution.

B. Nevada Water Law Incorporates the Public Trust Doctrine and Accounts for Evolving Public Trust Values

1. Nevada Determined Its Public Trust Priorities Based on its Unique Position as the Most Arid State in the Nation

a. Nevada Would Not Exist Absent the Diversion of Water Out of its Natural Courses for Mining and Irrigation

Nevada receives less precipitation than any other state in the nation. *Nevada v. United States*, 463 U.S. 110, 114 (1983). The state has very limited surface water resources and large tracts of arid lands. A significant percentage of the

state's water is lost to evaporation and evapotranspiration. *See Nevada State Water Plan*, Nevada Division of Water Planning (March 1999) at 4-5, *available at* http://water.nv.gov/programs/planning/stateplan/documents/NV_State_Water_Plan-complete.pdf. “The scarcity of Nevada’s water is the defining circumstance of its water laws.” Sylvia Harrison, *THE HISTORICAL DEVELOPMENT OF NEVADA WATER LAW*, 5 U. Denv. Water L. Rev. 148, 149 (2001).

[The law of prior appropriation] applies forcibly to the state of Nevada. Here the soil is arid, and unfit for cultivation unless irrigated by the waters of running streams. The general surface of the state is table land, traversed by parallel mountain ranges. The great plains of the state afford natural advantages for conducting water, and lands otherwise waste and valueless become productive by artificial irrigation. The condition of the country, and the necessities of the situation, impelled settlers upon the public lands to resort to the diversion and use of waters.

Reno Smelting, Milling & Reduction Works v. Stevenson, 21 P. 317, 321 (Nev. 1889).

Nevada would not exist absent historical diversions of water from natural sources to serve irrigation and mining uses. Only through engineering feats and other efforts to transport water from its natural source could the state’s arid lands be put to a productive use that ultimately sustained the state’s development. *See id.*

**b. Historically and Today, the Diversion of Water for Irrigation
and Mining Has Been Deemed to Serve the Public Trust
Interests**

The public interest in Nevada includes the appropriation of water to serve the irrigation and mining purposes upon which the state was founded. This “follows necessarily from the public character of the property, being held by the whole people for purposes *in which the whole people are interested.*” *Ill. Cent. R. Co. v. State of Illinois*, 146 U.S. 387, 456 (1892) (emphasis added). At the time of its statehood until the present, irrigation and mining have constituted public trust values espoused by the people of Nevada.

Just as Nevada’s adoption of the appropriation doctrine evolved in conjunction with mineral development and the federal statutes governing mineral rights, the next major step in Nevada water law, its codification, evolved as a result of the state’s new emphasis on agricultural development and the need for federal legislation to promote it.

Harrison, *supra*, at 160; *see also In re Manse Spring & Its Tributaries, Nye Cty.*, 60 Nev. 280, 108 P.2d 311, 316 (1940) (“Courts appreciate the necessity of requiring that water be beneficially used, because of its importance to the agricultural industry of the state.”).

Because the vast majority of Nevada lands were historically and remain the public domain, the prior appropriation doctrine was the manner in which minerals were developed and public lands were opened for irrigation. The impetus for the State’s development was primarily federal directive, namely, the 1877 Desert Land

Act and the Reclamation Act of 1902. *See* March 3, 1877, Desert Land Act, Chapter 107, 19 Stat 377; Reclamation Act of 1902, ch. 1093, § 1, 32 Stat. 388 (codified as amended at 43 U.S.C. § 391 (1994)).

In the Desert Land Act, Congress recognized prior appropriation as the basis for use of water on federal lands:

The right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights.

Bergman v. Kearney, 241 F. 884, 893 (D. Nev. 1917), *quoting* 19 Stat. 377, c. 107 (Comp. St. 1916, Sec. 4674).

Nevada enacted its first comprehensive water law in response to the federal Reclamation Act of 1902, noting in the preamble that irrigation from the Truckee, Carson, Walker and Humboldt Rivers could vastly increase Nevada's population and wealth and that "every inducement should be held out to the Secretary of the Interior" to begin construction of federal irrigation projects in Nevada. Act of Feb. 16, 1903 at 22-24, ch. 4, 1903 Nev. Stat. 18 (repealed 1907). In this initial effort to create order from what had been chaos of conflicting water rights, the Legislature laid the broad framework for what is now enshrined in Nevada's water law:

All natural water courses and natural lakes, and the waters thereof which are not held in private ownership, belong to the public, and are subject to appropriation for a beneficial use, and the right to the use of water so appropriated for irrigation shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right. . . .

Id. at §1. These same principles were embodied in Nevada’s 1913 Water Law and remain Nevada law to this day. Act of Mar. 22, 1913, ch. 140, 1913 Nev. Stat. 192 at §1 (codified as amended at NRS 533.025).

As this shows, historically, the public interest in Nevada was to divert and place water to beneficial use for irrigation and mining. These are the purposes in which “the whole people were interested,” and the State would not exist without them. *Ill. Cent. R. Co.*, 146 U.S. at 456. Unlike in Illinois and elsewhere, there is no heritage or history in Nevada of commercial fishing, water-based commerce or “navigation” in the traditional sense to protect for the public.

2. *Lawrence* Establishes That the Public Trust Doctrine Applies in Nevada

As the Court recognized in *Lawrence*, the public trust doctrine is already incorporated into Nevada’s Constitution and statutory scheme. *Lawrence v. Clark Cty.*, 127 Nev. 390, 396, 399, 254 P.3d 606, 611, 612 (2011), *citing* NRS 533.025 and Nevada’s Constitution art. 9, §9. “[T]he public trust doctrine is not simply a common law remnant. Indeed, in addition to ... Nevada caselaw..., public trust principles are contained in Nevada’s Constitution and statutes and are inherent

from inseverable restraints on the state’s sovereign power.” *Id.* at 398, 254 P.3d at 612. “[T]he public land and water of this state do not belong to the state to use for any purpose, but only for those purposes that comport with the public’s interest in the particular property, exemplifying the fiduciary principles at the heart of the public trust doctrine.” *Id.* at 400, 254 P.3d at 613. Because the State’s waters are administered under the prior appropriation doctrine, the answer to the Ninth Circuit’s Question 1a is affirmative.

3. Nevada’s Statutory Scheme Accounts for the Evolution of Public Trust Values

The answer to Question 1b (i.e. “to what extent” does the public trust doctrine apply to water rights appropriated under the doctrine of prior appropriation) is found in Nevada’s numerous laws that address evolving trust values. As Nevada has grown beyond its mining and irrigation roots, the public interest has evolved as well. The Nevada Legislature has adapted to those changing priorities by embedding in Nevada’s water law protections for a myriad of public trust values.

For example, when considering applications to appropriate water or to change existing appropriations, the State Engineer must scrutinize the public’s interest in the water. NRS 533.370(2). “[W]here [the] proposed use or change ... threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit.” *Id.* “[W]hen the

Legislature has found that a given dispensation is in the public's interest, it will be afforded deference." *Lawrence*, 127 Nev. at 406, 254 P.3d at 617. And the Legislature has authorized the State Engineer to evaluate the public interest, which is given deference by the courts. *See* 533.450(10); *Andersen Family Assocs. v. Hugh Ricci, P.E.*, 124 Nev. 182, 186, 179 P.3d 1201, 1203 (2008).

Public trust responsibilities require the balancing of competing interests to scarce resources and permit the granting of usufructuary rights to appropriate water for beneficial use. *See In re Water Use Permit Applications*, 9 P.3d 409, 454 (Haw. 2000). Nevada oversees the public trust by exercising continuous supervision and regulation over use of the State's water. For example, the right to use water is limited to the amount necessary to serve the purpose of the appropriation, and water appropriations are subject to forfeiture, abandonment, or cancellation if the water is not being put to beneficial use. *See* NRS 533.060; NRS 533.380; NRS 534.090. The State also has multiple regulatory tools that allow the State Engineer to protect natural resources, such as the authority to designate critical management areas and to require that an appropriator develop and implement a monitoring, mitigation and management plan to ensure an appropriation is not detrimental to the public interest. NRS 533.353; NRS 533.370; NRS 534.037.

This is also apparent elsewhere in NRS Chapter 533. For example, wildlife and recreation are recognized beneficial uses of water. NRS 533.023; NRS

533.030(2); NRS 533.0243. Additionally, Nevada allows for appropriations to remain in-situ to increase flows for wildlife and recreation. *See State v. Morros*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988) (interpreting NRS 533.035 as not creating an “absolute diversion requirement”). By allowing for adjudicated and settled rights to be converted to wildlife, recreation and in-stream/in-situ uses through the change application process, the Nevada Legislature has recognized and adapted to changing public trust values over time and preserved the public waters for the people of the State. *See* NRS 533.370.

The fact that decreed water rights such as those adjudicated in the Walker River decree may predate Nevada’s water statute does not alter this conclusion. Although “[t]he manner in which one might lawfully proceed to acquire right to use water from the government has been modified by statute, ... the character of the act remains, as ever, an acquisition of a right to use water from the government.” *Application of Filippini*, 66 Nev. 17, 24, 202 P.2d 535, 538 (1949).

The 1913 Water Law left those who had acquired water rights prior to its enactment in the enjoyment of said rights, but did undertake to provide means of ascertaining what those rights were, and also set up other methods of control. Such methods have been held by this Court to be within the constitutionally delegated authority of the Legislature.

In re Manse Spring, 60 Nev. at 280, 108 P.2d at 316. As a result, protection of the public trust existed at the time the Walker River decreed rights were originally

appropriated and continues to be enforced today through express measures enacted by the Nevada Legislature.

4. Governmental and Non-Governmental Entities Have Availed Themselves of Nevada's Statutory Protections and Appropriated Water for the Same Public Trust Values Espoused by Mineral County

To serve newly prioritized public trust values, the State Engineer has approved numerous applications to appropriate or change the manner of use of existing appropriated rights. Since the 1940's, the State, through its Department of Wildlife, has appropriated water for fish, wildlife and recreation purposes throughout Nevada, including in the Walker River basin. The State has also appropriated water through its State Lands and Parks Divisions and the Nevada Department of Transportation. Attached as an addendum are the hydrographic abstracts of the Nevada Division of Water Resources showing the State's appropriations for wildlife and recreation purposes.

Moreover, numerous other government agencies and non-governmental entities hold Nevada water rights for wildlife and recreation uses. These include the United States Forest Service, Park Service, Bureau of Land Management and Fish and Wildlife Service; various Nevada cities and counties; individuals; and non-governmental organizations, such as Nevada Waterfowl Association, the National Fish and Wildlife Foundation, the Nature Conservancy and the Walker Basin Conservancy.

5. Because a Water Right is Usufructuary, the State's Recognition of Vested Water Rights Cannot be Deemed to Have Abdicated the State's Trust Responsibility

The State's recognition and protection of vested appropriated rights cannot be deemed an abdication of its trust responsibility because those rights are usufructuary and remain subject to state regulation. "[T]he owner of a water right does not acquire a property in the water as such, at least while flowing naturally, but a right gained to use water beneficially which will be regarded and protected as real property." *Application of Filippini*, 66 Nev. at 21–22, 202 P.2d at 537. "[T]here is no ownership in the corpus of the water, but that the use thereof may be acquired, and the basis of such acquisition is beneficial use." *In re Manse Spring*, 60 Nev. at 280, 108 P.2d at 314. Because Nevada statutes "recognize that the public land and water of this state do not belong to the state to use for any purpose, but only for those purposes that comport with the public's interest in the particular property, ... [they thereby] effectively statutorily codify the principles behind the public trust doctrine in Nevada." *Lawrence*, 127 Nev. at 400, 254 P.3d at 613.

In *Lawrence*, the Court adopted a test to ensure that the "dispensation" of public property does not run afoul the public trust:

[W]hen assessing such dispensations, courts of this state must consider (1) whether the dispensation was made for a public purpose, (2) whether the state received fair consideration in exchange for the dispensation, and (3) whether the dispensation satisfies "the state's special obligation to maintain the trust for the use and enjoyment of present and future generations."

* * *

[T]he degree of effect of the project on public trust uses, navigation, fishing, recreation and commerce; the impact of the individual project on the public trust resource; the impact of the individual project when examined cumulatively with existing impediments to full use of the public trust resource ...; the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited, i.e. commerce, navigation, fishing or recreation; and the degree to which broad public uses are set aside in favor of more limited or private ones.”

127 Nev. at 405, 254 P.3d at 616, *quoting Arizona Center for Law v. Hassell*, 837 P.2d 158, 170-71 (Ariz. Ct. App.1991). The Court described a “dispensation” as a “gift” or “conveyance.” *Id.* at 396, 399, 405-06, 254 P.3d at 610, 612, 616-17.

But as a usufructuary right, a water appropriation fits neither of those terms because the appropriator’s right persists only as long as the water is put to beneficial use. NRS 533.030(1). Beneficial use is the “preeminent public policy” guiding water appropriation in the State. *Preferred Equities Corp. v. State Eng’r, State of Nevada*, 119 Nev. 384, 389, 75 P.3d 380, 383 (2003). Use of the water subject to ongoing state regulation does not constitute a “dispensation” of which the Court in *Lawrence* was concerned. *See* 127 Nev. at 405, 254 P.3d at 616.

C. The State’s Adoption of the Public Trust Doctrine Does Not Necessitate or Authorize a “Reallocation” of Established Water Rights

1. The Legislature Has Not Authorized the State Engineer to Reallocate Established Water Rights

The second certified question erroneously assumes that simply because Nevada recognizes and incorporates the public trust doctrine into its water law, a “reallocation of rights settled under the doctrine of prior appropriation” necessarily follows if a trust value is alleged to be compromised. This is not a correct assumption because the Legislature has not authorized the State Engineer to continuously weigh the impact of long-established water rights on newly identified public trust values or redistribute rights. *See* NRS 533.0245 (“The State Engineer shall not carry out his or her duties pursuant to this chapter in a manner that conflicts with any applicable provision of a decree or order issued by a state or federal court...”); NRS 533.3703 (prohibiting the State Engineer from authorizing any change in water use that “is inconsistent with any applicable federal or state decree”). The Legislature has directed the State Engineer to evaluate the public interest only when considering new or change applications. *See* NRS 533.370(2).

In this respect, Justice Rose’s concurring opinion in *Mineral County* that the State Engineer has a “continuing responsibility as a public trustee to allocate and supervise water rights so that appropriations do not ‘substantially impair the public interest in the lands and water remaining’” is not an accurate statement of the State

Engineer's authority. *Mineral Cty. v. State, Dep't of Conservation & Nat. Res.*, 117 Nev. 235, 248, 20 P.3d 800, 808 (2001), quoting *Ill. Cent.*, 146 U.S. at 452. The State Engineer can only act according to legislative directive. *See, generally*, NRS 532.110; NRS 532.120.

2. The Public Trust Doctrine Does Not Displace the Prior Appropriation Doctrine

It does not follow from Nevada's adoption of the public trust doctrine in *Lawrence* that the law of prior appropriation gets forsaken. The law does not compel which doctrine takes precedence, only that both must be considered. Indeed, even the *Audubon* case from the California Supreme Court makes clear that the public trust doctrine may have to yield to the doctrine of prior appropriation:

[T]he Legislature, acting directly or through an authorized agency such as the Water Board, has the power to grant usufructuary licenses that will permit an appropriator to take water from flowing streams and use that water in a distant part of the state, even though this taking does not promote, and may unavoidably harm, the trust uses at the source stream.

Nat'l Audubon Soc'y v. Sup. Ct., 658 P.2d 709, 727 (Cal. 1983). As a result, the mere fact that Nevada has adopted the public trust doctrine does not mean that reallocation of the established rights is allowed.

D. Only the Nevada Legislature May Establish How Nevada Implements the Public Trust Doctrine

1. The Separation of Powers Doctrine Prohibits the Court From Taking on the Policy-Making Role Urged by Mineral County

Mineral County’s argument that the Court should determine what amount of water is necessary to satisfy the public trust improperly intrudes on the province of the Legislature. Along with codifying the separation of powers doctrine, Nevada’s Constitution art. 3, § 1(1) expressly “prohibit[s] any one branch of government from impinging on the functions of another.” *State v. Second Judicial Dist. Ct.*, 134 Nev. Adv. Op. 96, 432 P.3d 154, 158 (2018), *quoting Comm’n on Ethics v. Hardy*, 125 Nev. 285, 292, 212 P.3d 1098, 1103-04 (2009). “The Nevada Constitution specifically delineates the power belonging to each branch of government in this state.... The Legislature enacts laws.... On the other hand, [j]udicial [p]ower is the authority to hear and determine justiciable controversies, ...[t]o declare what the law is[,] or has been.” *N. Lake Tahoe Fire v. Washoe Cnty. Comm’rs*, 129 Nev. 682, 687, 310 P.3d 583, 587 (2013) (citations and quotations omitted).

How the Nevada Legislature should implement its public trust obligation is a political question “precluded from judicial review” because it “revolve[s] around policy choices and value determinations constitutionally committed for resolution to the legislative ... branch[.]” *N. Lake Tahoe Fire*, 129 Nev. at 687, 310 P.3d at

587. “Formulating a general rule [regarding resources use] is a suitable task for state legislatures.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 342 (2002). The “lack of judicially discoverable and manageable standards and the impossibility of deciding [a case] without an initial policy determination of a kind clearly for nonjudicial discretion” remove a case from “judicial purview.” *N. Lake Tahoe Fire*, 129 Nev. at 691-92, 310 P.3d at 590 (quotations omitted).

The requirement that the Legislature – not this Court – determine how the public trust doctrine is implemented in the State is underscored by the relief sought by Mineral County. Mineral County asserts that a specific volume of water must reach Walker Lake for the State to satisfy its public trust responsibility and asks the Court to order that to occur. This is precisely the “lack of judicially discoverable and manageable standards” that render the relief sought by Mineral County a nonjusticiable political question. *See N. Lake Tahoe Fire*, 129 Nev. at 691-92, 310 P.3d at 590; *cf. In re Water Use Permit Applications*, 9 P.3d at 459 (noting that “[i]nstream flow standards are an integral part of the regulatory scheme established by the [state’s water] Code”).

The Legislature decides the water policy of the State:

[I]t is the policy of the State of Nevada to continue to recognize the critical nature of the State’s limited water resources. It is acknowledged that many of the State’s surface water resources are committed to existing uses, under existing water rights, and that in

many areas of the State the available groundwater supplies have been appropriated for current uses. It is the policy of the State of Nevada to recognize and provide for the protection of these existing water rights. It is the policy of the State to encourage efficient and nonwasteful use of these limited supplies.

NRS 540.011(1).

If the Legislature concludes that “[t]he objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways” to warrant additional water for Walker Lake, *Nat’l Audubon Soc’y*, 658 P.2d at 719, the Legislature alone gets to decide how to protect newly evolved trust values. *See N. Lake Tahoe Fire*, 129 Nev. at 691-92, 310 P.3d at 590.

The proper balance of the competing values at issue here – i.e. the certainty of rights exercised under the prior appropriation doctrine that allowed Nevada to be settled and grow into the state it is today vs. the requirement that all or some of those rights be foregone so that the lake can achieve the water quality parameters pressed by Mineral County – is a fact-intensive policy decision. To render that decision, the Legislature would hear testimony, consider scientific, economic and other technical evidence, and attempt to reconcile the competing demands on a limited resource according to the policies it seeks to advance. The separation of powers doctrine prevents the Court from usurping this role.

**2. If The Court Does Not Believe The Legislature Is Adequately
Fulfilling Its Duty to Protect Trust Resources, It May Direct
Legislature To Do So, but Not *How* To Do So**

In light of the constitutional limitations placed on the Court by the separation of powers doctrine, to the extent the Court concludes that the State has abrogated its trust responsibilities for Walker Lake, the only appropriate remedy is to so inform the Legislature. There are a number of ways the Legislature could increase water flows into Walker Lake.

For example, it could authorize the State Engineer to do a public interest analysis after rights are established, not just an initial application to appropriate water. *Cf.* NRS 533.370(2). It could prioritize certain uses over others. *See, e.g.*, NRS 534.120(1). It could authorize the State Engineer to employ specific management strategies or establish instream flow standards informed by legislative priorities and legislatively established criteria. *See, e.g.*, NRS 533.364 (establishing criteria for approval of interbasin water transfers); NRS 533.380 (establishing criteria for extensions of time to prove beneficial use); NRS 534.037 (establishing criteria for approval of groundwater management plans for overappropriated basins); *In re Water Use Permit Applications*, 9 P.3d at 460 (noting that agency charged with administering state's water must designate instream flow criteria as directed by legislature). And it could appropriate money for condemnation or acquisition from voluntary sellers. *See, e.g.*, NRS 37.010(1)(b); *Carson City v.*

Lompa's Estate, 88 Nev. 541, 542, 501 P.2d 662, 662 (1972) (“When a right to use water has become fixed either by actual diversion and application to beneficial use or by appropriation as authorized by the state water law, it is a right which is regarded and protected as real property [subject to condemnation].”). As these examples illustrate, the Legislature has the powers and tools to increase water flows into Walker Lake, should it decide that such increased flows are a policy priority.

E. The Court Must Be Aware of Unintended Consequences Arising From How it Answers the Broadly Posed Certified Questions

The Ninth Circuit framed the certified questions to reach beyond the Walker River and encompass all rights “adjudicated and settled under the doctrine of prior appropriation.” The breadth of this question is expansive and includes surface and groundwater rights throughout the State. Of particular concern to TMWA is the effect the Court’s answers to the certified questions may have on TMWA’s water rights and the carefully negotiated benefits afforded by TROA.

The extensive benefits of TROA cannot be understated. Using the innovative “credit water” strategy, TROA significantly increases the amount of upstream drought storage, safeguards TMWA’s run-of-the-river hydroelectric operations, and guarantees the sustainability, availability and priority of municipal water supplies for decades to come. TROA protects Pyramid Lake fisheries, aquatic resources and habitat on the Truckee River, recreation and water quality, by

ensuring releases of water to maintain instream flows for fish and other environmental interests. TROA also facilitates restoration of Pyramid Lake by resolving the Pyramid Tribe's claims to remaining "unappropriated water" of the Truckee River in Nevada, facilitating the State Engineer's approval of up to 477,851 acre feet under Permit Nos. 48061 and 48494 issued to the Tribe, with a final determination that the Truckee River is now fully appropriated. *See* State Engineer Rulings 4683, 4683A and 5792.

TROA furthers environmental interests under the Clean Water Act through the acquisition of \$24 million of water rights and creation of new storage rights that are managed to maintain and enhance water quality of the Truckee River and wildlife instream flows. TROA achieves all these benefits in furtherance of the public trust while mandating that the first-in-time, first-in-right priorities of vested and perfected water rights adjudicated in the Orr Ditch Decree remain fully protected. *See* TROA Sec. 1.C.

These accomplishments could never have been achieved, nor the multitude of public trust benefits TROA enhances implemented, without absolute certainty in the legality and continued enforceability of two bedrock principles: the first-in-time, first-in-right priorities established by Nevada's prior appropriation doctrine and the finality of the relative rights adjudicated by the Orr Ditch Decree. TROA addresses evolving trust values consistent with these principles. Indeed, the Orr

Ditch Decree, as modified to adopt TROA, is a prime example of how Nevada's prior appropriation and public trust doctrines operate in harmony. Under TROA, the appropriation of water for beneficial use furthers, rather than contravenes, the public trust.

Mineral County's position, if accepted, would eviscerate all that TROA has achieved. Opening a back door to unravel the priorities adjudicated in the Orr Ditch Decree obliterates the foundation upon which Nevada, California, the Pyramid Lake Paiute Tribe, the United States Bureau of Reclamation, TMWA and others negotiated TROA's benefits and the very legal principles upon which its implementation relies. The decades of disputes resolved through TROA – the interstate allocation of water between California and Nevada, availability of municipal drought supplies, water quality standards, and environmental storage rights, to name a few – will start anew. Only now, the ensuing decades of new litigation will occur in a legal environment with no clear rules and wholly uncertain outcomes.

Hundreds of millions of dollars have been invested to develop, conserve, divert, protect, store and use Truckee River flows in reliance on the finality of relative rights adjudicated by the Orr Ditch Decree. Hundreds of millions more have been invested in homes, businesses, roads, parks, schools, and communities based on the certainty of available municipal supplies. Tens of millions have been

expended on water rights acquisitions in furtherance of wildlife and environmental interests. Decades of rulings and orders by the State Engineer have established a regulatory environment designed to keep the river whole and protect public interests, even as such evolve over time.

After over a century of controversy, the Orr Ditch Decree, as modified by TROA, has established a framework to ensure the sustainability of water supplies for municipal, environmental, recreational, agricultural, industrial, wildlife and water quality purposes, relying on the certainty and finality of appropriative rights. This framework will be lost if Mineral County's position is accepted.

CONCLUSION

The Nevada Legislature has already weighed the competing demands on Nevada's scarce water resources and implemented statutory mechanisms to protect trust values concurrently with rights settled under the prior appropriation doctrine. To the extent the Court believes the balance struck by the Legislature violates the State's public trust obligations, it cannot usurp the Legislature's role by granting the relief sought by Mineral County. The inability of the Court to create workable standards and the constitutional prohibition on judicial policymaking bar the Court from redistributing vested property rights.

Because the Ninth Circuit's broadly-posed questions reach beyond the Walker River, the Court should be aware of potential unintended consequences

arising from its answers. The effect on TMWA, its Truckee River rights and TROA would be disastrous. For that reason, TMWA submits that the Court should answer the certified questions as follows:

Question 1: Yes, the public trust doctrine applies to vested, adjudicated and otherwise settled rights under the doctrine of prior appropriation but only in the manner the Legislature has provided; namely, the numerous mechanisms the Legislature has adopted to protect fish, wildlife, recreation and other public trust values.

Question 2: Although the public trust doctrine is recognized in Nevada, it does not allow a Court to reallocate rights settled under the doctrine of prior appropriation. TMWA takes no position on whether reallocation constitutes a taking.

Respectfully submitted this 18th day of April, 2019.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 29(e) and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 6,957 words.

Pursuant to NRAP 28.2, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 18th day of April, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP; that on or about April 18, 2019, the foregoing was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system.

I further certify that on this date I served a copy, postage prepaid, by U.S. Mail, as follows:

Dated: April 18, 2019.

/s/ Pamela Miller
An employee of McDonald Carano LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 75917

MINERAL COUNTY; AND
WALKER LAKE WORKING GROUP,

Appellants,

v.

LYON COUNTY, CENTENNIAL LIVESTOCK;
BRIDGEPORT RANCHES; SCHROEDER GROUP;
WALKER RIVER IRRIGATION DISTRICT;
STATE OF NEVADA DEPARTMENT OF
WILDLIFE; AND COUNTY OF MONO, CALIFORNIA,

Respondents.

On Order From Ninth Circuit Court of Appeals
Certifying Questions

**ADDENDUM TO AMICUS BRIEF OF
TRUCKEE MEADOWS WATER AUTHORITY
IN SUPPORT OF RESPONDENTS**

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Hydrographic Abstracts

Hydrographic Abstract Report

Selection Criteria: WHERE owner_type IN ('C','B') AND ms.app_status IN ('CER', 'DEC', 'PER') AND ms.mou IN ('REC', 'WLD') AND o.owner_name LIKE '%nevada-department of wildlife%' Run Date: 4/17/2019 3:36:30 PM

Basin	App	Prev App Change of App	Cert	Filing Date	Status	Source	POINT OF DIVERSION			RNG	Div Rate (CFS)	Manner of Use	Sup?	Priority Date	Duty Bal	County	Owner of Record
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173B	14001		4092	1/17/1952	CER	UG	SW	NW	02	08N	56E	0.43	REC	1/17/1952	311.3092 16	NY	NEVADA-DEPARTMENT OF WILDLIFE
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222	18516		5283	1/11/1960	CER	STR	NE	SE	17	05S	71E	0	REC	1/11/1960	272	LI	NEVADA-DEPARTMENT OF WILDLIFE
207	20466		6663	5/14/1962	CER	STR	NW	SW	10	06N	61E	0	WLD	5/14/1962	3040	NY	NEVADA-DEPARTMENT OF WILDLIFE
201	21622		6400	1/16/1963	CER	STR	NE	NW	24	02N	69E	0	WLD	1/16/1963	825	LI	NEVADA-DEPARTMENT OF WILDLIFE
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Selection Criteria: WHERE owner_type IN ('C','B') AND ms.app_status IN ('CER', 'DEC', 'PER') AND ms.mou IN ('REC', 'WLD') AND o.owner_name LIKE '%nevada-department of wildlife%'

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073	29468			6/26/1975	PER	STR	SW	SE	19	26N	31E	250	WLD		6/26/1975	39393	PE	NEVADA-DEPARTMENT OF WILDLIFE
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179	48118		12205	6/18/1984	CER	STR	NW	NE	35	14N	63E	2.85	REC		6/18/1984	2063.344226	WP	NEVADA-DEPARTMENT OF WILDLIFE
107	49580		13472	12/12/1985	CER	SPR	NW	NW	09	12N	23E	0.001	WLD		11/24/1980	0.797914	LY	NEVADA-DEPARTMENT OF WILDLIFE
107	49581		13473	12/12/1985	CER	SPR	NE	NE	08	12N	23E	0.07199999	WLD		11/24/1980	52.109922	DO	NEVADA-DEPARTMENT OF WILDLIFE
107	49582		13474	12/12/1985	CER	SPR	SE	SE	32	13N	23E	0	WLD		11/24/1980	0.153445	DO	NEVADA-DEPARTMENT OF WILDLIFE
108	50704		13649	3/19/1987	CER	UG	SE	NW	18	14N	26E	1.78	WLD		3/15/1967	108.6	LY	NEVADA-DEPARTMENT OF WILDLIFE

Selection Criteria: WHERE owner_type IN ('C','B') AND ms.app_status IN ('CER', 'DEC', 'PER') AND ms.mou IN ('REC', 'WLD') AND o.owner_name LIKE '%nevada-department of wildlife%'

Run Date: 4/17/2019 3:36:30 PM

Basin	App	Prev App Change of App	Cert	Filing Date	Status	Source	POINT OF DIVERSION				Div Rate (CFS)	Manner of Use	Sup?	Priority Date	Duty Bal	County	Owner of Record
							Qtr-Qtr	Qtr	SEC	TWN	RNG						
092A	52325			7/14/1988	PER	OSW	SW	NE	36	21N	18E	1.381		7/14/1988	1000	WA	NEVADA-DEPARTMENT OF WILDLIFE
108	52430S01		18560	8/9/2002	CER	EFF	SW	SW	11	13N	25E	0.63		7/13/2007	415.95	LY	NEVADA-DEPARTMENT OF WILDLIFE
207	56658			8/9/1991	PER	UG		SW	09	06N	61E	0.1		7/21/2017	14.42	NY	NEVADA-DEPARTMENT OF WILDLIFE
072	58265			10/23/1992	PER	STR	NE	NE	18	30N	33E	0.317			116.73	PE	NEVADA-DEPARTMENT OF WILDLIFE
108	60557		15336	10/4/1994	CER	UG	NE	SW	18	14N	26E	3		3/15/1967	851.5	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	60558		15337	10/4/1994	CER	UG	NE	SW	18	14N	26E	3		3/15/1967	861.5	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	60559		15338	10/4/1994	CER	UG	SE	NW	18	14N	26E	1.63		3/15/1967	1180.07	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	60560		15339	10/4/1994	CER	UG	NE	NW	18	14N	26E	3		6/5/1961	844.76	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	60561		15340	10/4/1994	CER	UG	NE	NW	18	14N	26E	3		6/5/1961	844.76	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	60562		16263	10/4/1994	CER	UG	SE	SW	17	14N	26E	0.185		3/15/1967	133.92	LY	NEVADA-DEPARTMENT OF WILDLIFE
167	60605		15862	10/26/1994	CER	SPR	NW	NE	28	27S	61E	0.25		10/26/1994	3.253034	CL	NEVADA-DEPARTMENT OF WILDLIFE
101	60771		18369	1/12/1995	CER	STR	SW	SE	33	19N	26E	0		7/2/1902	223.35	CH	NEVADA-DEPARTMENT OF WILDLIFE
101	61278		18371	6/1/1995	CER	STR	SW	SE	33	19N	26E	0		7/2/1902	294.81	CH	NEVADA-DEPARTMENT OF WILDLIFE
087	62215			6/14/1996	PER	UG	NE	NE	16	19N	19E	3		3/9/2017	1327	WA	NEVADA-DEPARTMENT OF WILDLIFE
108	64604		17677	11/12/1998	CER	UG	NE	NW	18	14N	26E	0.98		9/11/1958	181.668	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	64606		17678	11/12/1998	CER	UG	SE	NW	18	14N	26E	0.27		9/11/1958	50.04	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	64607		17679	11/12/1998	CER	UG	NE	NW	18	14N	26E	0.98		9/11/1958	181.63	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	64608		17680	11/12/1998	CER	UG	SE	NW	18	14N	26E	0.71		9/11/1958	131.584	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	64609		17681	11/12/1998	CER	UG	SE	SW	17	14N	26E	1.06		8/23/1957	196.45	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	64610		17682	11/12/1998	CER	UG	NE	SW	18	14N	26E	0.865		8/23/1957	160.314	LY	NEVADA-DEPARTMENT OF WILDLIFE
108	64611		17683	11/12/1998	CER	UG	NE	SW	18	14N	26E	0.865		8/23/1957	160.314	LY	NEVADA-DEPARTMENT OF WILDLIFE
124	67726			6/29/2001	PER	SPR	NE	SW	25	15N	32E	0.01		6/29/2001	0.492865 34	CH	NEVADA-DEPARTMENT OF WILDLIFE
124	67727		18413	6/29/2001	CER	SPR	SE	NW	36	15N	32E	0.01		6/29/2001	0.45	CH	NEVADA-DEPARTMENT OF WILDLIFE

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							Qtr-Qtr	Qtr	SEC	TWN	RNG							
179	70192		18870	7/3/2003	CER	STR	NE	NE	36	14N	63E	11.11	WLD		1/1/1885	4442.32	WP	NEVADA-DEPARTMENT OF WILDLIFE
179	70193		18871	7/3/2003	CER	STR	NE	NE	14	15N	64E	20.75	WLD		3/1/1890	8811.23	WP	NEVADA-DEPARTMENT OF WILDLIFE
179	70194		18872	7/3/2003	CER	STR	NE	NE	14	15N	64E	0.9	WLD		6/5/1953	213.184	WP	NEVADA-DEPARTMENT OF WILDLIFE
179	70195		18873	7/3/2003	CER	LAK	NW	SW	17	15N	64E	10	WLD		6/5/1953	1668.432	WP	NEVADA-DEPARTMENT OF WILDLIFE
179	70197		18875	7/3/2003	CER	STR	NE	NE	14	15N	64E	0.9	WLD		7/10/1930	213.184	WP	NEVADA-DEPARTMENT OF WILDLIFE
179	70198			7/3/2003	PER	UG	SW	NW	32	15N	64E	0.01	WLD		5/27/1977	1.81	WP	NEVADA-DEPARTMENT OF WILDLIFE
179	70199		18876	7/3/2003	CER	STR	NE	NE	14	15N	64E	30	WLD		7/3/2003	4500	WP	NEVADA-DEPARTMENT OF WILDLIFE
179	70200		18877	7/3/2003	CER	STR	NE	NE	36	14N	63E	30	WLD		7/3/2003	1628.93	WP	NEVADA-DEPARTMENT OF WILDLIFE
062	71517		17987	7/29/2004	CER	STR	SE	SE	25	37N	46E	1.512	WLD		1/1/1886	558.06	EL	BLM
070	86330			7/14/2016	PER	UG	NE	SE	17	36N	38E	0.2356	REC		4/18/1968	4.2	HU	NEVADA-DEPARTMENT OF WILDLIFE
101	87755			3/9/2018	PER	STR	SW	SE	33	19N	26E	0	WLD		7/2/1902	59.8	CH	NEVADA-DEPARTMENT OF WILDLIFE
108	87925T			5/7/2018	PER	UG	NE	SW	18	14N	26E	0.035	REC	Y	3/15/1967	10	LY	NEVADA-DEPARTMENT OF WILDLIFE
101	88425			10/12/2018	PER	STR	SW	SE	33	19N	26E	0	WLD		7/2/1902	209.3	CH	NEVADA-DEPARTMENT OF WILDLIFE

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Selection Criteria: WHERE owner_type IN ('C','B') AND ms.app_status IN ('CER', 'DEC', 'PER') AND ms.mou IN ('REC', 'WLD') AND o.owner_name LIKE '%nevada-parks division%' Run Date: 4/17/2019 3:43:50 PM

Basin	App	Prev App Change of App	Cert	Filing Date	Status	Source	POINT OF DIVERSION				Div Rate (CFS)	Manner of Use	Sup?	Priority Date	Duty Bal	County	Owner of Record	
							Qtr-Qtr	Qtr	SEC	TWN								RNG
222	21882		6932	3/20/1964	CER	SPR	SW	NE	17	05S	71E	0.01	REC		3/20/1964	7.211915	LI	NEVADA-PARKS DIVISION
222	21883		6933	3/20/1964	CER	SPR	NE	NW	17	05S	71E	0.005	REC		3/20/1964	4.173704	LI	NEVADA-PARKS DIVISION
222	21884		6936	3/20/1964	CER	UG	NE	SW	21	05S	71E	0.01	REC		3/20/1964	7.211915	LI	NEVADA-PARKS DIVISION
222	21885		6937	3/20/1964	CER	UG	NW	NE	17	05S	71E	0.01	REC		3/20/1964	7.212	LI	NEVADA-PARKS DIVISION
090	24699		7340	9/25/1968	CER	UG		LT03	02	15N	18E	0.067	REC	Y	9/25/1968	39.28192	WA	NEVADA-PARKS DIVISION
037	30189		18124	4/23/1976	CER	STR	NE	NW	25	44N	54E	0	REC		4/23/1976	71500	EL	NEVADA-PARKS DIVISION
101	30300		10022	6/3/1976	CER	SPR	NE	SE	33	19N	26E	0.006	REC		6/3/1976	1.012737	CH	NEVADA-PARKS DIVISION
101	30301		10023	6/3/1976	CER	SPR	NE	SE	33	19N	26E	0.031	REC		6/3/1976	5.370575	CH	NEVADA-PARKS DIVISION
101	30302		10024	6/3/1976	CER	SPR	SE	SE	33	19N	26E	0.044	REC		6/3/1976	7.733628	CH	NEVADA-PARKS DIVISION
102	30303		10025	6/3/1976	CER	UG	SW	SW	33	18N	25E	0.412	REC	Y	6/3/1976	27.00632	LY	NEVADA-PARKS DIVISION
102	30305		10026	6/3/1976	CER	UG	SW	SW	33	18N	25E	0.028	REC	Y	6/3/1976	20.16267 3	LY	NEVADA-PARKS DIVISION
201	34093		10058	10/13/1977	CER	UG	NW	NW	24	02N	69E	0.0134	REC	Y	10/13/1977	0.865429 8	LI	NEVADA-PARKS DIVISION
198	34094		10059	10/13/1977	CER	UG	NW	NE	32	01N	69E	0.604	REC	Y	10/13/1977	0.951359	LI	NEVADA-PARKS DIVISION
102	35025		10323	2/23/1978	CER	UG	SE	SE	34	17N	24E	0.022	REC		8/13/1965	8.59292	LY	NEVADA-PARKS DIVISION
102	35987		10616	10/10/1978	CER	UG	NE	SE	29	18N	25E	0.196	REC		10/10/1978	1.22756	LY	NEVADA-PARKS DIVISION
073A	36406		10162	1/10/1979	CER	UG	SE	NE	18	30N	33E	0.067	REC	Y	1/10/1979	0.942	PE	NEVADA-PARKS DIVISION
135	37006		10976	3/13/1979	CER	SPR	NW	SW	27	12N	39E	0.02	REC		9/26/1933	14.42383	NY	NEVADA-PARKS DIVISION
089	38768		10693	8/10/1979	CER	UG	SW	NE	17	16N	20E	0.356	REC	Y	8/10/1979	8.531542	WA	NEVADA-PARKS DIVISION
089	38973		11633	9/7/1979	CER	LAK	SW	SW	19	16N	20E	7.481	REC		3/22/1912	2180	WA	NEVADA-PARKS DIVISION

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							Qtr-Qtr	Qtr	SEC	TWN	RNG							
089	38974		11232	9/7/1979	CER	SPR	NW	NW	30	16N	20E	0.01	REC		9/7/1979	7.2	WA	NEVADA-PARKS DIVISION
089	38975		11136	9/7/1979	CER	UG	NE	SW	25	16N	19E	0.005	REC		9/7/1979	3.56	WA	NEVADA-PARKS DIVISION
090	39990		13549	12/17/1979	CER	UG	SE	NE	02	14N	18E	0.1	REC		12/17/1979	0.214823	DO	NEVADA-PARKS DIVISION
205	40998		14226	4/1/1980	CER	SPR	NE	NE	19	04S	67E	0.003	REC		7/18/1994	2.424431	LI	NEVADA-PARKS DIVISION
205	40999		14903	4/1/1980	CER	SPR	NE	NE	19	04S	67E	0.011	REC		4/1/1980	8.040518	LI	NEVADA-PARKS DIVISION
205	41000		14904	4/1/1980	CER	SPR	NE	NE	19	04S	67E	0.007	REC		4/1/1980	4.848862	LI	NEVADA-PARKS DIVISION
037	42714		12308	10/27/1980	CER	UG	NW	NE	32	44N	55E	0.065	REC		10/27/1980	4.357838	EL	NEVADA-PARKS DIVISION
073	50716		12992	3/20/1987	CER	UG	NW	NE	18	30N	33E	0.12	REC		3/20/1987	1.746	PE	NEVADA-PARKS DIVISION
073A	50717		13622	3/20/1987	CER	UG	SE	NE	18	30N	33E	0.056	REC	Y	3/20/1987	1.6419	PE	NEVADA-PARKS DIVISION
135	51291		12975	9/11/1987	CER	SPR	NE	NE	27	12N	39E	0.037	REC		9/11/1987	0.552402	NY	NEVADA-PARKS DIVISION
179	52449		13915	8/30/1988	CER	SPR	SE	NW	10	15N	65E	0.014	REC		9/10/1982	4.664728	WP	NEVADA-PARKS DIVISION
198	57149		16949	2/5/1992	CER	UG	NW	NE	32	01N	69E	0.604	REC	Y	2/5/1992	9.2067	LI	NEVADA-PARKS DIVISION
089	61611		16153	10/16/1995	CER	UG	NW	NE	25	16N	19E	8.5E-05	REC		9/7/1979	0.061378	WA	NEVADA-PARKS DIVISION
090	61743		16951	12/8/1995	CER	UG	NE	NW	02	15N	18E	0.0085	REC	Y	9/25/1968	6.14	WA	NEVADA-PARKS DIVISION
090	61744		16952	12/8/1995	CER	UG	SE	NW	35	16N	18E	0.0042	REC		9/25/1968	1.735	WA	NEVADA-PARKS DIVISION
179	66113		20517	3/1/2000	CER	UG	SE	SE	26	14N	63E	0.0134	REC		2/17/1998	0.16	WP	NEVADA-PARKS DIVISION
102	68243		19258	11/29/2001	CER	UG	NE	SE	35	17N	24E	0.0223	REC		11/29/2001	1.41	LY	NEVADA-PARKS DIVISION
205	73340		21177	10/17/2005	CER	UG	NW	NE	19	04S	67E	0.067	REC		10/17/2005	3	LI	NEVADA-PARKS DIVISION
105	73984		19527	3/13/2006	CER	UG	NE	SE	09	13N	19E	0.178	REC	Y	3/13/2006	11.32	DO	NEVADA-PARKS DIVISION
105	73985		19528	3/13/2006	CER	UG	NE	SE	09	13N	19E	0.038	REC	Y	9/22/1961	11.32	DO	NEVADA-PARKS DIVISION
089	77540		19885	10/28/2008	CER	UG	NW	SE	06	15N	19E	0.0005	REC		10/18/1957	0.1	WA	NEVADA-PARKS DIVISION
135	77944		18942	1/27/2009	CER	UG	NW	SW	27	12N	39E	0.09	REC		1/27/2009	2.84	NY	NEVADA-PARKS DIVISION
222	81189		21288	9/20/2011	CER	UG	SE	NW	17	05S	71E	0.0095	REC		3/20/1964	0.33	LI	NEVADA-PARKS DIVISION

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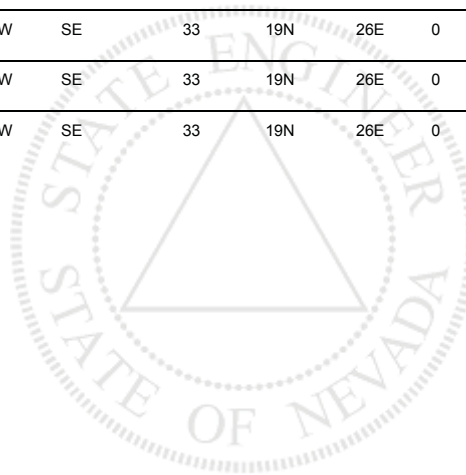
Selection Criteria: WHERE owner_type IN ('C','B') AND ms.app_status IN ('CER', 'DEC', 'PER') AND ms.mou IN ('REC', 'WLD') AND o.owner_name LIKE '%lands division%' Run Date: 4/17/2019 3:45:51 PM

Basin	App	Prev App Change of App	Cert	Filing Date	Status	Source	POINT OF DIVERSION			Div Rate (CFS)	Manner of Use	Sup?	Priority Date	Duty Bal	County	Owner of Record		
							Qtr-Qtr	Qtr	SEC								TWN	RNG
089	21282		6237	5/17/1963	CER	UG	SW	NE	01	16N	19E	0.14	WLD		5/17/1963	100.36	WA	NEVADA-STATE LANDS DIVISION
089	24004		9075	7/14/1967	CER	UG	SE	SE	36	17N	19E	3.54	WLD	Y	7/14/1967	1793	WA	FALCON CAPITAL, LLC
212	46354		12566	11/15/1982	CER	UG	NE	SE	04	19S	60E	0.09	REC	Y	7/24/1944	12	CL	NEVADA-STATE LANDS DIVISION
048	50030			7/24/1986	PER	UG	NW	NE	11	32N	55E	6	REC	Y	5/16/1977	4000	EL	NEVADA-STATE LANDS DIVISION
048	50031			7/24/1986	PER	UG	SW	SW	14	32N	55E	6	REC	Y	5/16/1977	1326.59	EL	NEVADA-STATE LANDS DIVISION
048	50032			7/24/1986	PER	UG	NE	NE	16	32N	55E	0.0312	REC	Y	5/16/1977	22.59	EL	NEVADA-STATE LANDS DIVISION
048	50033			7/24/1986	PER	UG	SW	SW	02	32N	55E	3	REC	Y	5/16/1977	1279.73	EL	NEVADA-STATE LANDS DIVISION
048	50034			7/24/1986	PER	UG	NE	NE	16	32N	55E	0.0312	REC	Y	5/16/1977	22.59	EL	NEVADA-STATE LANDS DIVISION
048	50035			7/24/1986	PER	UG	SW	SW	14	32N	55E	0.669	REC	Y	12/16/1968	169.19	EL	NEVADA-STATE LANDS DIVISION
048	51461		14428	10/27/1987	CER	STR	SW	SE	04	32N	55E	0.91	REC		11/26/1915	276.16	EL	NEVADA-STATE LANDS DIVISION
048	51462		14429	10/27/1987	CER	STR	SW	SE	04	32N	55E	20.146	REC			4450.5	EL	NEVADA-STATE LANDS DIVISION
101	55995		18358	3/15/1991	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	3500	CH	NEVADA-STATE LANDS DIVISION
101	55996		18359	3/15/1991	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	3500	CH	NEVADA-STATE LANDS DIVISION
101	55997		18360	3/15/1991	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	3500	CH	NEVADA-STATE LANDS DIVISION
101	57483		18361	4/21/1992	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	3500	CH	NEVADA-STATE LANDS DIVISION
101	57485		18362	4/21/1992	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	3500	CH	NEVADA-STATE LANDS DIVISION
101	57666		18363	5/18/1992	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	3500	CH	NEVADA-STATE LANDS DIVISION
101	58275		18364	10/29/1992	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	3913.91	CH	NEVADA-STATE LANDS DIVISION
101	58276		18365	10/29/1992	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	216.48	CH	NEVADA-STATE LANDS DIVISION

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							Qtr-Qtr	Qtr	SEC	TWN	RNG							
101	60169		18366	6/28/1994	CER	STR	SW	SE	33	19N	26E	0.254	REC		7/2/1902	38.27	CH	NEVADA-STATE LANDS DIVISION
101	60333		18367	8/8/1994	CER	STR	SW	SE	33	19N	26E	0.41	REC		7/2/1902	62.19	CH	NEVADA-STATE LANDS DIVISION
101	60711		18368	12/20/1994	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	23.32	CH	NEVADA-STATE LANDS DIVISION
101	61254		18370	5/23/1995	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	752.7	CH	NEVADA-STATE LANDS DIVISION
031	61258		18319	5/25/1995	CER	UG	NW	NE	21	40N	35E	1.09	REC		6/24/1985	772.2	HU	NEVADA-STATE LANDS DIVISION
101	61579		18372	9/29/1995	CER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	394.38	CH	NEVADA-STATE LANDS DIVISION
089	64962		16258	3/9/1999	CER	UG	SE	SE	01	16N	19E	0.11	REC		9/4/1985	1.948751 5	WA	NEVADA-STATE LANDS DIVISION
101	71635			9/2/2004	PER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	984.07	CH	NEVADA-STATE LANDS DIVISION
101	71635			9/2/2004	PER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	984.07	CH	NEVADA-STATE LANDS DIVISION
101	71635			9/2/2004	PER	STR	SW	SE	33	19N	26E	0	REC		7/2/1902	984.07	CH	NEVADA-STATE LANDS DIVISION



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Selection Criteria: WHERE owner_type IN ('C','B') AND ms.app_status IN ('CER', 'DEC', 'PER') AND ms.mou IN ('REC', 'WLD') AND o.owner_name LIKE '% transportation%'

Run Date: 4/17/2019 4:50:48 PM

Basin	App	Prev App Change of App	Cert	Filing Date	Status	Source	POINT OF DIVERSION			Div Rate (CFS)	Manner of Use	Sup?	Priority Date	Duty Bal	County	Owner of Record
							Qtr-Qtr	Qtr	SEC	TWN	RNG					
187	12520		3448	7/1/1948	CER	SPR	SE	NW	29	37N	66E	0.004	REC	7/1/1948	EL	NEVADA-DEPARTMENT OF TRANSPORTATION
091	59280		15525	9/24/1993	CER	STR	SE	NE	14	19N	18E	0.247	WLD	4/10/1874	24.12	WA NEVADA-DEPARTMENT OF TRANSPORTATION
091	59280		15525	9/24/1993	CER	STR	SE	NE	14	19N	18E	0.247	WLD	4/10/1874	24.12	WA NEVADA-DEPARTMENT OF TRANSPORTATION
089	59382		15753	11/12/1993	CER	STR	SW	NE	22	16N	19E	0.11	WLD	8/5/1959	31.16	WA NEVADA-DEPARTMENT OF TRANSPORTATION
089	59385		15754	11/12/1993	CER	STR	SW	NW	27	16N	19E	0.181	WLD	8/20/1962	31.16	WA NEVADA-DEPARTMENT OF TRANSPORTATION
087	60167		15526	6/28/1994	CER	STR	NW	SW	08	18N	20E	0.157	WLD	8/5/1859	9.119999 99	WA NEVADA-DEPARTMENT OF TRANSPORTATION
089	62700		15659	12/30/1996	CER	UG	NE	NW	25	16N	19E	0.039	WLD	Y 8/20/1962	28.39	WA NEVADA-DEPARTMENT OF TRANSPORTATION
089	62701		15660	12/30/1996	CER	UG	NE	NW	25	16N	19E	0.967	WLD	Y 7/14/1967	700	WA NEVADA-DEPARTMENT OF TRANSPORTATION
089	62702		15661	12/30/1996	CER	UG	NE	NW	25	16N	19E	0.05	WLD	Y 8/20/1962	31.16	WA NEVADA-DEPARTMENT OF TRANSPORTATION