

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF PROTESTED APPLICATION)
90864 FILED BY MINISTERIO ROCA SOLIDA)
IGLESIA CRISTIANA TO APPROPRIATE THE)
PUBLIC WATERS OF THE STATE OF NEVADA)

RECORDED
2021 NOV -4 PM 4:22
State Engineer's Office of Nevada

RESPONSE TO PROTESTS OF APPLICATION TO APPROPRIATE WATER

On July 2, 2021, Ministerio Roca Solida Iglesia Cristiana (“the Church”) filed Application for Permit to appropriate the Public Waters of the State of Nevada, number 90864 (“Application”), seeking to appropriate 0.07cfs of currently unappropriated water from the Carson Slough, a stream which, prior to an illegal diversionary project by the United States Fish and Wildlife Service (“FWS”) in 2010, had flowed through the Church’s property since time immemorial. *See* Ex. 1, Warning Notice for Alleged Violation Case No. 195 (“Warning Notice”), issued Nov. 4, 2016, at 3 (“...water in the Carson Slough historically traversed the Solida Parcel...”); *id.* at 2 (“...not until after September 2010 has water been completely been redirected from the Carson Slough’s path through the Solida parcel...”). Subsequently, on September 8, 2021, the Center for Biological Diversity (“CBD”) filed a protest, followed by the Barstow Field Office of the Bureau of Land Management (“BLM”) on September 10, and again by the BLM’s Pahrump Field Office on September 13. The BLM protests claim that the Church’s proposed use would prove detrimental to the public interest by degrading the habitat for three threatened or endangered plant species, lacks proper permitting, and interferes with BLM management responsibilities outside the Ash Meadows National Wildlife Refuge (“AMNWR”), thus potentially opening the Nevada State Engineer (“NSE”) up to liability under the Endangered Species Act (“ESA”). CBD’s protest claims

that there is no water available for appropriation, that the Church's proposed use would conflict with FWS's existing rights, and that the Church's proposed use would prove detrimental to the public interest for the same reasons given by the BLM.

All three protests are mistaken in their concerns and fail to provide support for their assertions. The Church has demonstrated that unappropriated water is available, that the potential for conflicts with valid existing water rights is low, and that approval of its Application would be in the public interest.

I. Water is Available for appropriation

CBD's argument that there is no water in the Carson Slough available to appropriate is without support as it relates to the specific source at issue in the Application and is based on multiple erroneous assumptions.¹ In response to the estimated flow rates included in the Church's Application—sourced from United States Geological Survey ("USGS") and FWS data, as well as filings and statements by FWS officials in proceedings before the NSE—CBD provides no measurements or estimates of any kind. CBD instead makes the conclusory statement that the sources the Church cited in its Application are out of date, and that generally observed climate change-induced heat and drought has obviously resulted in reductions in flow from the springs feeding the Carson Slough substantial enough to fall below the amounts appropriated by FWS.

The assumptions underlying this argument are ill-founded. First, FWS has *no* water rights on the Carson Slough itself; all of FWS's water rights on the AMNWR are traceable to specific springs, not the Slough itself. *See* Ex. 1, at 1 n.3 (noting no existing FWS water right on the Carson

¹ Notably, the BLM's protest makes no such assertion. CBD's argument is significantly weakened by the fact that neither the holder of the purportedly conflicting water rights (FWS) nor BLM, FWS's fellow federal agency within the Department of the Interior, protest the Church's Application on the grounds that FWS has fully appropriated the waters of the Carson Slough. *See* Part II, *infra*. *See also* Ex. 1, at 1 n.3 (noting no existing FWS water right on the Carson Slough).

Slough). Second, to the extent that CBD's statement that FWS has appropriated all water in the AMNWR is based on prior such statements by FWS, those statements are based on gross summations of all estimated flow from all sources made in 1963 and the sum of water reflected in FWS service water right permits or certificates, it does not reflect the required source by source analysis. *See* Ex. 2, Excerpt from T. Mayer Hr'g Test., Dec. 3, 2019, at 331; *See* T. Mayer Jan. 5, 2018 Expert Report, Ex. 6 to Application, at 5, 8 (Using Walker & Eakin 1963 estimate of 17,000 acre feet of water provided by all Ash Meadows springs and summing over 50 FWS certificates and permits from such springs to arrive at rights in excess of 17,000 acre feet annually). FWS does not dispute that if there is unappropriated water on a specific spring source, it remains available to be appropriated. *See* Ex. 2, at 332.

Third, despite CBD's complaints about the age of the data cited by the Church, CBD fails to present any evidence—contemporary or otherwise—to contradict it. CBD cites to one study analyzing declining stream flows in the Colorado River (which is not connected to the Carson Slough) and another examining the effects of drought-induced reductions in soil moisture in Europe, which at best provide a basis for theorizing that the Carson Slough's flow has declined over time, but offer no specific insight into the actual status of any of the actual springs feeding into the Slough. Indeed, FWS's hydrological expert has testified that that spring flows at issue are “derived from the regional carbonate aquifer and flows are very constant seasonally and annually.” T. Mayer Expert Report, October 3, 2019, Ex. 1 to Application, at 4.

CBD's theory of hypothetical decreases in available water also runs into trouble when confronted with what contemporary measurements are available. The only spring feeding into the Carson Slough upstream of the Church's property for which flow rate data from the last ten years is publicly available is Fairbanks Spring. In contrast with what CBD would have the NSE believe,

based on its cited studies, the FWS-measured flow rate of Fairbanks Spring has actually *increased* over recent decades, from a maximum flow rate of 1715gpm/3.82cfs (measured as 1,715 gallons per minute) in 1962 to 4.06cfs in 2020.² Note that this 2020 USGS measured flow of 4.06cfs exceeds even the FWS's (incorrectly high) estimate of its water rights on Fairbanks Spring of 4.01cfs, indicating .05cfs is available on this source alone. *See* T. Mayer Jan. 5, 2018 Expert Report, Ex. 6 to Application, at 8 (stating FWS had rights for 4.01cfs water from Fairbanks Spring).³ Given the source of water for the springs feeding Carson Slough, their relatively constant flow, the decrease in irrigation use in the Ash Meadows area since the 1970s, and recent measurements, it cannot be assumed that the flow of the Carson Slough has diminished such that the entirety of its flow from its tributaries has already been appropriated. In the absence of more comprehensive data regarding the current average flow rates of the springs feeding into the Carson Slough—data which, if it exists, is in the possession of FWS, an agency which has conspicuously declined to protest the Church's Application—the best evidence available indicates that there is significantly more than 0.07cfs of unappropriated water flowing through the Carson Slough.

II. The Church's Proposed Use Will Not Conflict with Existing Rights

As demonstrated in its Application and in Part I, *supra*, there is more than 0.07cfs of unappropriated water available in the Carson Slough for the Church to put to beneficial use. Contrary to CBD's assertions, FWS does not already hold claim to the entire flow of the Carson

² USGS, Streamflow Measurements for Fairbanks Spring, https://waterdata.usgs.gov/nwis/measurements/?site_no=362924116203001 (last visited November 4, 2021).

³ Admittedly the measured flow in Five Springs in 2008 was potentially lower than recorded in the 1963 report. *See* NSE Stream and Spring Flow Chart for Five Springs Pool, Site Name 230 S17 E50 23BBC 1, <http://water.nv.gov/SpringAndStreamFlowChart.aspx> (last visited November 4, 2021).

Slough, and there is plenty of water available for both the Church and FWS to share without causing harm to the environment of Ash Meadows.

Nor would the Church's proposed use indirectly interfere or conflict with FWS's existing use. Far from conflicting, the Church's beneficial use would actually complement the use the FWS proposed to the NSE when it changed the manner of use of its existing water rights. After the FWS acquired the previously privately owned lands and water rights in what became AMNWR, FWS applied to the NSE to change the point of diversion, place of use, and manner of use of all or nearly all of the water rights it had acquired. FWS's applications stated that it sought, "[a]s much as practicable, [to] re-establish historical natural drainage patterns and wetlands." *See, e.g.,* Ex. 3, FWS Application 53610, filed June 30, 1989. As discussed above, from the beginning of mapped history until 2010 when the FWS artificially created a new channel, historic natural drainage patterns included the flow of the Carson Slough through the parcel where beneficial use is sought in the current application. *See* Ex. 1. Thus allowing some return of water to its historical place of use will not conflict with FWS rights.

The use to which FWS has put its appropriated water is maintaining the ecosystem that makes up the AMNWR. FWS hopes to protect Ash Meadows as a scenic nature preserve, where respectful visitors can enjoy the beauty of the landscape, secure in the knowledge that the unique local flora and fauna will exist for future generations. The Church hopes to use a relatively minuscule amount of unappropriated water to re-green a portion of its now-desertified property within the AMNWR and fill a small baptismal pool, not put the water to any sort of industrial or otherwise environmentally destructive use. Further, due to FWS's previously expressed concerns about any water from the Church being returned to the Slough, the Application seeks to isolate water on its parcel such that there is no risk of non-native species or other contaminants being

introduced to the Slough from the Church property. Moreover, the Church has a demonstrated history of willingness to cooperate with the government to protect the natural environment surrounding the Patch of Heaven.⁴ The Church decided to establish a camp in Ash Meadows specifically because of the beautiful and verdant wildlife the area provides, and is as strongly motivated to preserve it as Protestants are.

The lack of conflict created by the Church's proposed diversion of water is further supported by the fact that the owner of the water rights the Church's proposed use purportedly conflicts with has not seen fit to protest the Church's Application. Indeed, CBD is the only Protestant asserting that the Church's proposed use would create a conflict. While the applicable provisions of Nevada water law allow "any person interested" to protest an application to appropriate surface waters and do not limit participation to those parties directly and personally likely to be injured by the approval of the application in question, N.R.S. § 533.365, the lack of any protest from the supposedly affected party themselves should weigh against the finding of a conflict. There is a reason why third-party standing is generally prohibited in civil litigation, particularly in circumstances where the allegedly aggrieved party possess both the wherewithal and the resources to protect their own interests, as is the case when the allegedly aggrieved party is a federal agency currently engaged in related litigation with the Church. *See Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) ("We have adhered to the rule that a party 'generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" This is due to a concern that "the courts might be 'called upon to decide abstract questions of wide public significance even though other governmental institutions may be more

⁴ See Cooperative Agreement Between US Fish and Wildlife Service and Ministerio Roca Solida Iglesia Cristiana, Ex. 8 to Application.

competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights”) (quoting *Warth v. Seldin*, 422 U.S. 490, 499, 500 (1975)). *C.f. Barrows v. Jackson*, 346 U.S. 249, 259 (1953) (recognizing narrow exception to prohibition against third-party standing in context of lessor challenging racially restrictive covenants on behalf of prospective African American lessees because the lessor was “the only effective adversary of the unworthy covenant”). FWS is a federal agency tasked with managing the wildlife resources of the AMNWR, it is more than capable of competently asserting its own interests, and its decision not to assert any such interests here is probative.

Finally, CBD provides no evidence for its assertions of an alleged conflict. In fact, the statements and data provided by the BLM Protestants do not support CBD’s allegation. For instance, the places of use and species maps asserted/provided by the BLM do not indicate that any species of interest is found on the Carson Slough downstream of the point of diversion proposed in the Application and upstream of the border of the AMNWR. The permitted place of use for FWS’s certificates and permits is only within the AMNWR, thus any uses alleged to occur outside of AMNWR cannot give rise to a conflict. Nor does CBD provide any data or evidence to support its assertion that removing only .07cfs of water and returning it to a parcel where the water flowed from at least 1881 until 2010 would have an actual negative impact on any species, protected or otherwise.⁵

⁵ Not only has the Carson Slough itself passed through the Church’s parcel since at least 1881, but around seven acres in the northeast corner of the parcel (the proximate area of proposed use under the Church’s Application) was regularly irrigated prior to FWS’s purchase of the associated water rights in the 1980s. *See* Ex. 4, FWS Application 53613, filed June 30, 1989.

III. Granting the Church's Application Is Consistent with the Public Interest

The final bases asserted to protest the Application is that the proposed use is not consistent with the public interest. As with the bases addressed above, here too Protestants rely on overgeneralized assertions and data or issues outside the area at issue and have failed to demonstrate that the Church's proposed use would be contrary to the public interest. First, Protestants fail to provide any evidence to support their allegations that the Church's proposed diversion of water would cause appreciable harm to the natural environment of Ash Meadows generally or to any threatened or endangered species in particular. Second, and perhaps more alarmingly, Protestants argue that the approval of essentially any use or diversion of water upstream of an endangered, threatened, or even potentially-in-danger-of-becoming-threatened species is by definition harmful and potentially in risk of incurring liabilities under the ESA. This overly broad and attenuated conception of environmental harm, if adopted, would justify the prohibition of practically all beneficial uses of water in the entire state of Nevada.

A. Protestants Have Failed to Show That Any Environmental Harm Will Result from the Church's Proposed Beneficial Use of Water

Protestants' assertions that the proposed diversion of 0.07cfs of water from the Carson Slough will harm threatened and endangered species protected under the ESA are conclusory and unfounded. The Carson Slough has travelled through the Church's property since time immemorial (at least, it did before FWS illegally diverted the water in 2010), and the ecosystem Protestants are concerned about developed with that flow in place. And throughout much of the 20th Century, the water within Ash Meadows was put to relatively intensive agricultural use, much more intense than the Church's proposed *de minimus* proposal to fill a baptismal pond and water some grass. The species mentioned by Protestants have managed to survive significantly more disruptive uses of water than anything proposed by the Church. This history makes Protestants' fears regarding a

diversion of 0.07cfs—particularly offered, as they are, without evidence of any specific or imminent risk of harm—ring incredibly hollow. Vague and generalized concerns that an undefined reduction of surface water flow may harm some limited subset of plants and animals, based on little more than the axiom that life requires water, are simply insufficient reason to deny the Church’s Application.

Moreover, as previously stated, the Church has a demonstrated history of willingness to cooperate with government officials to preserve the natural environment that drew the Church to Ash Meadows in the first place. The Church remains willing to work with FWS to ensure its water use does not inadvertently harm threatened or endangered species, particularly since its proposed use is low impact, non-industrial, and completely compatible with FWS’s stated goals in managing the Refuge.

Finally, FWS moved the entire flow of the Upper Carson Slough in 2010 allegedly without material harm to any of the protected species in AMNWR. A FWS expert has testified that if so ordered by the NSE, FWS would find a way to move the Slough back without violating the Endangered Species Act. *See* Ex. 2, at 331–33. Certainly, FWS can deliver .07 cfs without causing harm to its mission or any endangered species.

B. Water from the springs that discharge into the Upper Carson Slough, upstream of the proposed diversion point, does not reach or benefit the populations in California.

Protestants’ claims that the Application should be denied for the benefit of species or populations in California is not supported by evidence or other studies. Indeed, FWS has previously offered expert testimony to the NSE stating that “all spring discharge [from AMNWR] is consumed and none leaves the area and returns to the system.” T. Mayer Jun. 12, 2006 Expert Report, at 2. Thus the spring sources that contribute to the Upper Carson Slough upstream of the proposed point of diversion are likely not available to aid in sustaining species or populations

downstream of AMNWR and certainly not into California. There is no evidence that the proposed beneficial use, which will slightly shift the location of evapotranspiration by less than a quarter of a mile and still within the AMNWR, will cause any detriment to the public interest.

For this same reason, any assertion by BLM of “implied” federal reserve rights related to Wild and Scenic River and Area of Critical Environmental Concern designations of portions of the Amargosa River in California are equally inapposite.⁶

Further, even if water from upstream of the proposed diversion point was flowing all the way through the AMNWR, across state lines into protected lands in California, BLM’s invocation of implied reserve rights here would be misplaced. As recognized by the United States Supreme Court in *Cappaert v. United States*, 426 U.S. 128, 139 (1976), the federal government may reserve by implication no more water than is “necessary to accomplish the purposes for which the reservation was created.” Outside of conclusory assertions that any diversion of water whatsoever by the Church will have a detrimental effect on federal conservation uses external to Ash Meadows and vague threats that granting the Church’s Application might open the state of Nevada up to liability under federal environmental statutes, BLM provides no evidence to support its argument that granting the Church’s Application to appropriate 0.07cfs from the Upper Carson Slough will negatively impact BLM lands in California. Relatedly, to the extent Protestants impliedly rely on the public trust doctrine (as applied to the federal government) to support their argument regarding

⁶ Relatedly, the BLM’s argument that Section 527.250 of the Nevada Administrative Code requires the Church to obtain a permit and pay fees before it may divert the water it has applied for rests on the same faulty assumptions as the rest of the arguments discussed in Part II. A permit is only required “before engaging in any activities that may: 1. Result in the removal or destruction of any plant on the list of fully protected species of native flora; or 2. Disturb any management area established for any such plant.” *Id.* But, as already demonstrated *supra*, the Church’s proposed diversion of water will not cause any appreciable harm to protected species, and Protestants have utterly failed to present evidence to the contrary. The requirements of N.A.C. § 527.250 therefore do not apply.

FWS's use of water within the AMNWR, they have also entirely failed to present evidence supporting their claims of harm. Merely conclusory assertions are not sufficient. *See In re 6305, et al.*, 129 Nev. 1145, 2013 WL 324160, at *2 (Nev. Jan. 25, 2013) (refusing to overturn NSE decision to approve applications because the "[protestant's] own expert failed to quantify any impacts that the approval of the applications would have on the [protestant's] surface water rights to the Truckee River. Instead, [protestant's] expert only testified generally that pumping any groundwater from the Tracy Basin would necessarily impact the Truckee River based on the hydrological connection between the basin and the river."). Currently appropriated waters are more than sufficient to "accomplish the purposes for which [the AMNWR] was created." *Id.*

C. *If a hypothetical environmental impact on threatened species downstream is sufficient to stop all appropriation, that would be the end of beneficial use in Nevada*

Protestants' arguments—that the existence of any endangered or threatened species downstream of a proposed use should prevent an appropriation of water—would have radical negative consequences for private land owners and the State of Nevada. Environmental protection is, of course, an important interest that must be considered whenever considering an application to appropriate water, but it is not the sole interest. *See Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 746–47 (Nev. 1996) (listing 13 different considerations impacting whether a particular use is in the public interest, including whether the use is a beneficial use and the economics at play). Vague and unsubstantiated concerns about hypothetical harms to threatened or endangered species somewhere downstream of a proposed diversion of water, like Protestants' concerns here, cannot possibly be the basis for denying an otherwise valid application to appropriate water. If the NSE were to endorse Protestants' argument, practically all non-federal beneficial uses of water in Nevada would be put in jeopardy, for any water appropriation uphill of a threatened or endangered species that could conceivably reduce the overall amount of water

available to that species could be claimed as a “take” under the ESA. The federal government, and by extension their environmentalist allies like CBD, would essentially have veto power over all uses of water in the State. Protecting the public interest requires solicitude toward entities other than the Amargosa Niterwort, and the NSE cannot manage the waters of the State of Nevada, held in trust for the benefit of the sovereign People of the State, if practical control is wielded by federal agencies and environmental activists.

D. Returning this de minimus amount of water to its historical place of use is in the public interest.

As stated above and previously recognized by the NSE, water flowed through the 40-acre parcel that is the location for the proposed beneficial place of use from the beginning of mapped history until 2010, when FWS diverted the flow of the Carson Slough without the input of the NSE. FWS actions have spurred lawsuits and numerous filings with the NSE as Applicant attempts to recover some amount of the historic water that flowed through its property and that was and could be put to beneficial use on the Church property. While FWS is supposed to provide water to Applicant pursuant to Applicant’s existing permit based on a vested right, the delivery of that water is completely unreliable and Applicant is frequently left with no water. Allowing applicant to receive the .07cfs of unappropriated water it seeks will: (1) relieve the problems created by FWS’s current haphazard water delivery; (2) lessen the harm caused to Applicant by FWS; and (3) potentially avoid the need for additional future NSE filings and litigation as Applicant seeks to prove that FWS’s alleged permitted rights are much less than FWS contends for reasons of historic use, historic abandonment, and errors made over time in the applications, permits, and certificates the form the basis of FWS’s alleged rights. Applicant seeks to reside in peace with the FWS and the wildlife surrounding its land. Granting the Application will further that end.


IV. Conclusion

For the foregoing reasons, Ministerio Roca Solida Iglesia Cristiana's application to appropriate 0.07cfs of the surface waters of the Carson Slough should be granted.

Dated: November 4, 2021

David C. McDonald
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~ and ~

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November 2021, I caused a true and correct copy of
Ministerio Roca Solida Iglesia Cristiana's **Response to Protests to Application to Appropriate
Water** to be mailed via U.S. Mail to the following:

Scott Lake
Nevada Staff Attorney
The Center for Biological Diversity
P.O. Box 6205
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Katrina L. Symons
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4701 N. Torrey Pines Drive
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Nancy Fontenot, Paralegal

EXHIBIT 1

***11/4/2016 DWS Warning Notice to
USFW Re Alleged Violation***



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

November 4, 2016

WARNING NOTICE

United States Fish and Wildlife Service
911 NE 11th Ave.
Portland, Oregon 97232-4181
Certified Mail #7106 7808 0630 0064 6369

Re: Alleged Violation No. 195 Concerning Impairment to Permit 85417

Ladies and Gentlemen:

I. INTRODUCTION

On July 21, 2016, the Nevada Division of Water Resources (Division) received a Request to Investigate an Alleged Violation concerning the United States Fish and Wildlife Service's (USFWS) possible illegal diversion of all the water from the Carson Slough around the point of diversion of Permit 85417 within the Ash Meadows National Wildlife Refuge. Permit 85417 is owned by Ministerio Roco Solida Iglesia (Solida) and was filed to change the point of diversion and manner of use of water claimed under Proof of Appropriation No. V-10092, which claimed an 1887 priority date for stock water.^{1,2}

The USFWS has multiple water rights on file with the Office of the State Engineer that are within the Ash Meadows National Wildlife Refuge (Refuge). These water rights include Permits 53597, 53599 through 53613, 53615, 53617 through 53620, 53623 through 53625, 53636 through 53642, 54249 through 54259, 62294 and 65320.³ The USFWS stated its intent in acquiring the aforementioned permits was, as practicably as possible, to re-establish historic natural drainage patterns and wetlands within the Refuge. All of the permits were issued for wildlife purposes with priority dates between 1886 and 1974.⁴

¹ File No. 84417, official records in the Office of the State Engineer.

² File No. V-10092, official records in the Office of the State Engineer.

³ In addition, USFWS previously held Permit 53643 – its only right on the Carson Slough, which was cancelled on January 31, 1996.

⁴ Where USFWS' permits range in priority dates from 1886 to 1974, all of its rights, except 53636, which changed Proof of Appropriation V-01256 claiming an 1886 priority date, are junior to Solida's Permit 85417.

On September 27, 2016, the Division conducted a field investigation on the claim of upstream diversion around the point of diversion of Permit 85417.⁵ A copy of the field investigation is enclosed. The field investigation observed the redirection of water on Nye County Assessor Parcel Number (APN) 021-301-03, owned by the United States of America. Furthermore, the Carson Slough, which had conveyed water to the point of diversion of Permit 85417, was observed to have been filled in on Nye County APN 021-311-20, owned by the United States of America, near the property line of Nye County APN 021-311-10, owned by Solida (Solida Parcel).

In addition to the observations described above, historical imagery and mapping provides additional support for the historical flow and recent complete redirection of water along the Carson Slough. A survey plat map for Township 17 South, Range 50 East, M.D.B.&M., signed by the Department of the Interior, General Land Office Commissioner on February 18, 1882, identifies a single stream on the map referred to as a "Brook." **Attachment A.** The Brook crosses the SW¼ SW¼ of Section 21, Township 17 South, Range 50 East, M.D.B.&M., the same 40 acres as Nye County APN 021-311-10, the Solida Parcel.

A dependent resurvey plat map by the Department of the Interior, Bureau of Land Management from 1965 shows the Carson Slough, whose source of water shares some of the same sources of water of the Brook referenced on the map from 1882, crossing the Solida Parcel. **Attachment B.** The Carson Slough splits in Section 29 and connects to a water feature referred to as "DAM," and the second split connects to a water course originating from Section 28, which is also referred to as a "DAM." The "DAM" in Section 28 collects water from the Rogers Spring in Section 15 and Longstreet Spring in Section 22. Aerial imagery obtained from Google Earth, the EarthExplorer website of the United States Geological Survey, indicates that since at least 1948, water has been redirected and altered by prior users of the Carson Slough, but not until after September 2010 has water been completely redirected from the Carson Slough's path through the Solida parcel and the point of diversion of Permit 85417.⁶

II. ALLEGED VIOLATION(S)

The State Engineer has determined pursuant to NAC Chapter 532 that the USFWS is in violation of the terms of its permits/certificates as follows:

NRS § 533.085 states: "[N]othing contained in this chapter [533] shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913."

⁵ Field Investigation of Alleged Violation 195, filed in Alleged Violation Case No. 195, official records in the Office of the State Engineer.

⁶ EarthExplorer website can be accessed at <http://earthexplorer.usgs.gov>.

NRS § 533.460 provides that the unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using or diverting it.

NRS § 535.050 provides that the State Engineer has the right, power and authority to order the removal of any dam, diversion works or obstruction that has been placed in any stream channel or watercourse when the dam, diversion works or obstruction has not been legally established and recognized through a valid claim of vested right, by decree of court or by a permit issued by the State of Nevada.

Although the USFWS stated its intention in acquiring its aforementioned permits was to re-establish historic natural drainage courses within the Refuge, Attachments A and B demonstrate that the source of water in the Carson Slough historically traversed the Solida Parcel (APN 021-311-10). The State Engineer concluded in Ruling No. 6348 that Ministerio Roca Solida Iglesia Cristiana has provided evidence sufficient to establish that the claim of vested right under Proof of Appropriation V-10092 on the Solida Parcel is plausible, including diversion and beneficial use of water from the Carson Slough having a priority date of 1887.⁷ The State Engineer approved USFWS's junior permits subject to existing rights, and on the condition that no other rights on the source be affected by USFWS' permits. Considering the observations of the field investigation by the Division and Attachments A and B, the State Engineer has determined that USFWS is in violation of the terms of its permits by failing to ensure a conveyance system that will provide a continuous diversion of 0.003 cfs of water to the point of diversion of Permit 85417.

III. ACTION REQUIRED

The United States Fish and Wildlife Service is hereby ordered to cease the full and complete diversion of surface water to and through Nye County APN 21-331-10 (the Solida Parcel) to ensure the permitted 0.003 cubic feet per second of water with a period of use of January 1 to December 31 of each year can and will be available to be diverted at the point of diversion of Permit 85417.

The goal of the Division of Water Resources is to conserve, protect and manage Nevada's valuable water resources in a fair and equitable manner by administering and enforcing Nevada water law. Failure to take corrective action will result in this matter being referred for additional action available to the State Engineer under Nevada Administrative Code Chapter 532. Possible penalties for noncompliance can include (Nevada Revised Statutes § 534,193):

1. payment of an administrative fine not to exceed \$10,000 per day for each violation;
2. replacement of not more than 200% of the water used, wasted, or diverted; and/or
3. payment of the costs of the proceeding, including investigative costs and attorney's fees.

⁷ Ruling No. 6348, dated June 14, 2016, official records in the Office of the State Engineer.

Re: Alleged Violation Case No. 195

November 4, 2016

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Please advise this office **in writing within 90 days of this notice** when you have taken the above described corrective actions. If you have any questions regarding this letter or need further assistance in how you can correct the alleged violation, please contact me at (775) 684-2862.

Sincerely,



Thomas C. Pyeatte Jr., P.E.
Compliance and Enforcement

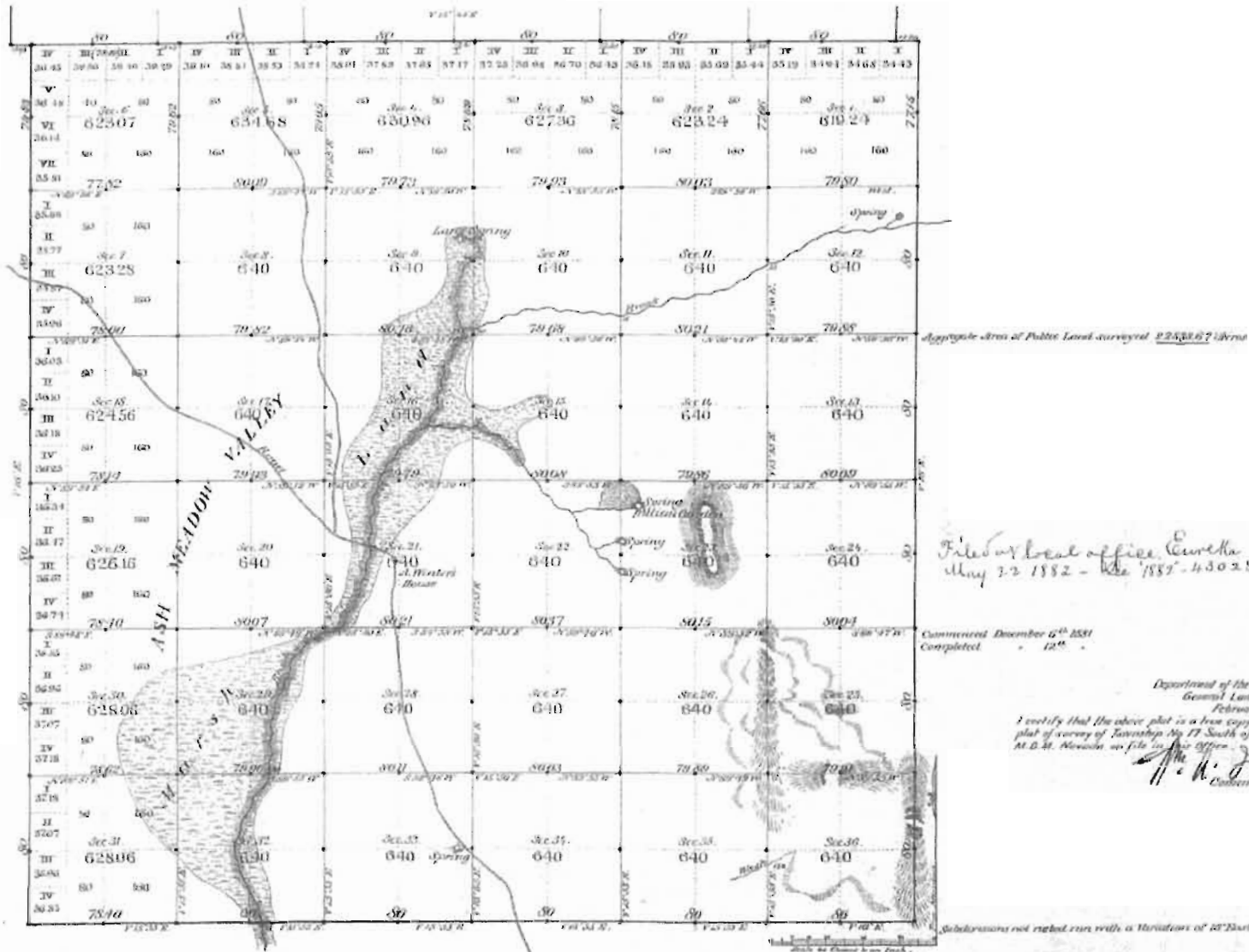
TP/jm

Attachments: *A and B*

Enclosure: *Report of Field Investigation of Alleged Violation 195*

cc: Richard Grimes, Supervisory Realty Specialist, USFWS, E-mail
Pastor Victor Fuentes, Ministerio Roca Solida Iglesia Christiana, E-mail
Tom Driggs, Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, Regular mail
Jason King, E-mail
Rick Felling, E-mail
Kelvin Hickenbottom, E-mail
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Edmund Quaglieri, E-mail
Mark Beutner, E-mail

TOWNSHIP N^o 17 SOUTH RANGE N^o 50 EAST MOUNT DIABLO MERIDIAN



Filed at local office, Eureka
May 22 1882 - No. 1882-43025

Commenced December 6th 1881
Completed " 12th "

Department of the Interior
General Land Office
February 16, 1882
I certify that the above plat is a true copy of the official
plat of survey of Township No. 17 South of Range No. 50 East
At D. M. Meridian on file in this Office.
A. H. J. Parks
Commissioner

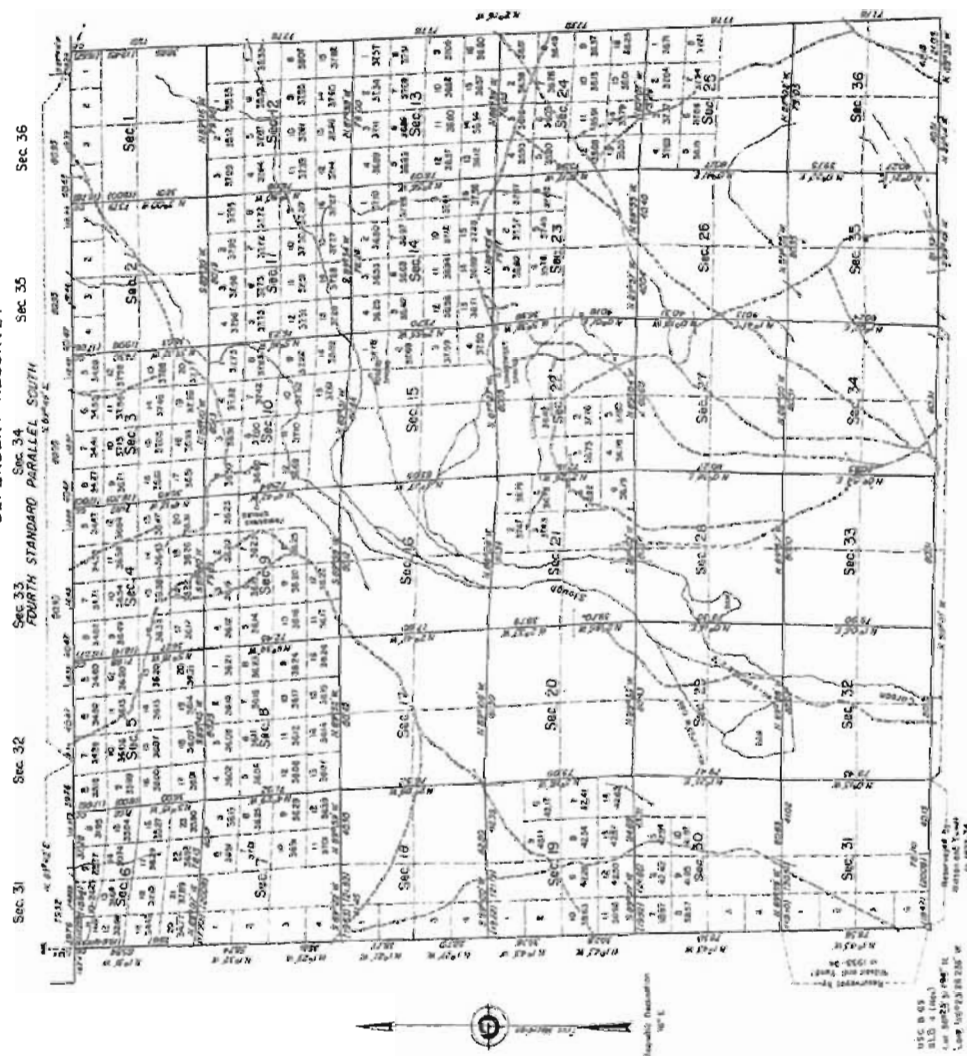
Survey Designated	By Whom Surveyed	Date of Completion	Amount of Survey When Surveyed	Notes
Township Lines	E. A. Carter	April 27 th 1881	66 28 34	1881
Sectional black line			26 67 66	December
Blue line			2 78 34	
Cornering			61 77	

The above map of Township N. 17 South of Range N. 50 East of
Mt. Diablo Meridian is a true copy of the official
plat of survey of Township No. 17 South of Range No. 50 East
At D. M. Meridian on file in this Office which have been examined and approved.
Survey General Office }
Virginia City, Nevada }
Returning 18th 1882
E. A. Parker
Sur. Gen. Nev.

OFFICIALLY FILED
NEVADA LAND OFFICE
10:00 AM 9/20/1965

TOWNSHIP 17 SOUTH, RANGE 50 EAST, OF THE MOUNT DIABLO MERIDIAN, NEVADA

DEPENDENT RESURVEY



history of the earlier survey is contained in the field notes.

This plot represents a dependent recovery of the Fourth Standard Parallel South, through S. 96 E., section boundary, portions of the south and west halves of sections 10 and 11, Township 17 N., Range 18 W., and the subdivisional limits of T. 17 N., R. 20 W.; Mount Diablo Meridian, Nevada, designed to restore the corners in their true original locations according to the best available evidence. Findings and areas (except an initial-based haven) are as shown on the plat approved February 16, 1882.

This railway was exhibited by Mayor G. Parker, Centennial Fairway, March 6, 1903, to April 25, 1903, under Special Instructions dated February 1, 1903, for Gray No. 108, Nevada.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. August 25, 1965

This plot is strictly conformable to the approved field notes and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, in order to protect.

For the Director

Chas. L. Lamm

Acting Chief, Division of Engineering

Attachment B

1946-A.

71788505 -

EXHIBIT 2

*Excerpt from T. Mayer
12.03.2019 Testimony*

1 Q. (By Ms. Brown) Is it your understanding, Dr.
2 Mayer, or do you agree that as the senior vested water right,
3 assuming that Solid Rock has the senior vested water right,
4 they have the right to have the water delivered to their
5 parcel as it had been delivered to their parcel when the
6 right was accumulated?

7 A. Yes.

8 Q. Now, you've testified quite a bit about the Fish
9 and Wildlife rights, permits, flows, et cetera. You would
10 agree, however, that Fish and Wildlife having a right on one
11 stream or spring, for example, Long Street Spring, doesn't
12 give it a right on Fairbanks Spring; correct?

13 A. That's true, yes.

14 Q. So the total amount of volume reflected in the
15 rights or permits and certificates of Fish and Wildlife
16 cannot be taken as a whole against the flow from Ash Meadows
17 to say that all water is appropriated. Each source needs to
18 be evaluated individually; correct?

19 A. I think the statement I made was that Walker and
20 Eakin in 1963 estimated the total spring discharge in the Ash
21 Meadows area was 17,000 acre-feet. And we have slightly more
22 than 17,000 acre-feet of water rights. So I interpret that
23 to mean that we have appropriated the entire spring
24 discharge.

1 Q. So it's Fish and Wildlife's position that, for
2 example, even if fish in the wildlife doesn't have any permit
3 or certificate on Five Springs area that it has the right to
4 appropriate all of that water based on its other permits?

5 A. No. I think there's probably some small springs
6 out there that we don't have water rights on and we don't
7 claim to have water rights on those. So, for instance, if --
8 I think we do have water rights on Five Springs. But if we
9 didn't, we're not claiming we do have water rights on Five
10 Springs.

11 Q. Okay. So you would agree that if there is
12 unappropriated water by the spring source specifically that
13 it's available to be appropriated still?

14 A. Yes. If there's available water at a spring
15 source then it's still available to be appropriated.

16 Q. And you would agree that a person who has a
17 vested interest or a vested right doesn't forfeit that
18 interest by failing to protest other applications; correct?

19 A. That's true.

20 Q. And you agree that vested rights cannot be
21 impaired by statute?

22 A. Yes.

23 Q. If the Nevada State Engineer were to order Fish
24 and Wildlife Service to deliver the water back to Solid Rock

1 parcel, would the Fish and Wildlife Service comply?

2 A. Yes, I believe we would. Yes. We follow the
3 water right law, so.

4 Q. How would they do that?

5 A. I don't know.

6 Q. But they would do it in a way that's consistent
7 with the Endangered Species Act; correct?

8 A. Yes, we would have to.

9 Q. As it relates to some of the historic rights
10 claimed by Fish and Wildlife Service, you would agree that if
11 one of the prior owners had forfeited or abandoned that right
12 then the right did not pass with the land to Fish and
13 Wildlife Service; correct?

14 A. So the -- if the right was forfeited or abandoned
15 that it would not be a right -- it would not be our right?

16 Q. Correct. So, for instance, one of the maps that
17 you showed was a map of an appropriation by Obion Gould;
18 correct?

19 A. Right, right, yeah.

20 Q. So if Obion Gould had actually abandoned his
21 right before it came in to possessory title or title of Fish
22 and Wildlife, then Fish and Wildlife didn't actually acquire
23 a new right; correct?

24 A. Right, that's true.

EXHIBIT 3

App 53610

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE
STATE OF NEVADA HERETOFORE APPROPRIATED**

Date of filing in State Engineer's Office JUN 30 1989

Returned to applicant for correction.....

Corrected application filed SEP 26 1989 Map filed DEC 19 1989 under 53596The applicant U.S. Fish and Wildlife Service1002 N.E. Holladay StreetPortland

Street and No. or P.O. Box No.

City or Town

Oregon 97232-4181

State and Zip Code No.

hereby make^s application for permission to change the

point of diversion, manner of use, and place of use

Point of diversion, manner of use, and/or place of use

of water heretofore appropriated under Certificate Record No. 763 (Permit No. 4119).

(Identify existing right by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and

identify right in Decree.)

1. The source of water is Fairbank's Spring

Name of stream, lake, underground spring or other source.

2. The amount of water to be changed 1.52 c.f.s. or 456 acre-feet per annum

Second feet, acre feet. One second foot equals 448.3 gallons per minute.

3. The water to be used for wildlife purposes

Irrigation, power, mining, industrial, etc. If for stock state number and kind of animals.

4. The water heretofore permitted for irrigation

Irrigation, power, mining, industrial, etc. If for stock state number and kind of animals.

5. The water is to be diverted at the following point SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, T. 17 S., R. 50 E.,

Describe as being within a 40-acre subdivision of public survey and by course and

M.D.B.&M. The $\frac{1}{4}$ corner between Section 9 and 10, same Township and Range,

distance to a section corner. If on unsurveyed land, it should be stated.

bears S. 42° 48' 07" E. at a distance of 746 feet.6. The existing permitted point of diversion is located within the South part SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9,

If point of diversion is not changed, do not answer

T. 17 S., R. 50 E., M.D.B.&M. situated in Nye County, State of Nevada.7. Proposed place of use Ash Meadows National Wildlife Refuge (see Attachment A for
legal description).

Describe by legal subdivisions. If for irrigation state number of acres to be irrigated.

8. Existing place of use 32 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, T. 17 S., R. 50 E., M.D.B.&M.

Describe by legal subdivisions. If permit is for irrigation, state number of acres irrigated. If changing place of use and/or

80 acres in the S $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, T. 17 S., R. 50 E., M.D.B.&M. 40 acres in

manner of use of irrigation permit, describe acreage to be removed from irrigation.

the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T. 17 S., R. 50 E., M.D.B.&M.9. Use will be from January 1 to December 31 of each year.

Month and Day

Month and Day

10. Use was permitted from January 1 to December 31 of each year.

Month and Day

Month and Day

11. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and
specifications of your diversion or storage works.) As much as practicable, re-establish

State manner in which water is to be diverted, i.e., diversion structure, ditches,

historical natural drainage patterns and wetlands.

pipes and flumes, or drilled well, etc.

12. Estimated cost of works \$70,000 for entire refuge system.13. Estimated time required to construct works four years.

14. Estimated time required to complete the application of water to beneficial use five years.
15. Remarks: For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.

Water will be used on Ash Meadows National Wildlife Refuge for wildlife
purposes.

By s/Robert Oser
U.S. FISH AND WILDLIFE SERVICE
1002 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232-4181

Compared bc/ab am/se

Protested _____

APPROVAL OF STATE ENGINEER

This is to certify I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion, manner and place of use of the waters of Fairbanks Spring as heretofore granted under Permit 4119, Certificate 763 is issued subject to the terms and conditions imposed in said Permit 4119, Certificate 763 and with the understanding that no other rights on the source will be affected by the change proposed herein. A measuring device must be installed and measurements of water use kept.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The amount of water to be changed shall be limited to the amount which can be applied to beneficial use, and not to exceed 1.52 cubic feet per second, but not to exceed 456 acre-
feet annually.

Work must be prosecuted with reasonable diligence and be completed on or before September 28, 1992

Proof of completion of work shall be filed before October 28, 1992

Application of water to beneficial use shall be made on or before September 28, 1995

Proof of the application of water to beneficial use shall be filed on or before October 28, 1995

Map in support of proof of beneficial use shall be filed on or before N/A

Completion of work filed JUL 31 1992 IN TESTIMONY WHEREOF, I, R. MICHAEL TURNIPSEED, P.E.
State Engineer of Nevada, have hereunto set my hand and the seal of my
Proof of beneficial use filed OCT 16 1995
office, this 28th day of September

Cultural map filed _____

Certificate No. 14325 Issued JUN 18 1996

A.D. 19 90

[Signature]
State Engineer

Attachment A

ASH MEADOWS NATIONAL WILDLIFE REFUGE
 Nye County, Nevada
 Mount Diablo Meridian
 Lands within Approved Boundary

T. 17 S., R. 50 E.

Section 9 Lots 7 and 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$;
 10 S $\frac{1}{4}$;
 12 NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 15 All;
 16 All;
 17 E $\frac{1}{4}$ E $\frac{1}{4}$;
 19 SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 20 E $\frac{1}{4}$, S $\frac{1}{4}$ SW $\frac{1}{4}$;
 21 All;
 22 All;
 23 Lots 3 and 4, W $\frac{1}{4}$ NW $\frac{1}{4}$;
 26 S $\frac{1}{4}$;
 27 All;
 28 All;
 29 All;
 30 E $\frac{1}{4}$ E $\frac{1}{4}$;
 32 E $\frac{1}{4}$, E $\frac{1}{4}$ W $\frac{1}{4}$;
 33 All;
 34 All;
 35 All;
 36 W $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 17 S., R. 51 E.

Section 31 Lot 4, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 32 S $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;

T. 18 S., R. 50 E.

Section 1 All;
 2 All;
 3 All;
 4 All;
 9 E $\frac{1}{4}$, NW $\frac{1}{4}$;
 10 All;
 11 All;
 12 All;
 13 All;
 14 All;
 15 All;
 16 E $\frac{1}{4}$ E $\frac{1}{4}$;
 23 All;
 24 All;
 25 N $\frac{1}{4}$;
 26 NE $\frac{1}{4}$;

T. 18 S., R. 51 E.

Section 5 All;
 6 All;
 7 All;
 8 All;
 17 W $\frac{1}{4}$ E $\frac{1}{4}$, W $\frac{1}{4}$;
 18 All;
 19 All;
 20 W $\frac{1}{4}$ E $\frac{1}{4}$, W $\frac{1}{4}$;
 29 W $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$;
 30 N $\frac{1}{4}$.

EXHIBIT 4

App 53613

Serial No. **53613**

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE
STATE OF NEVADA HERETOFORE APPROPRIATED**

Date of filing in State Engineer's Office JUN 30 1989

Returned to applicant for correction SEP 26 1989

Corrected application filed DEC 19 1989 under 53596

The applicant U.S. Fish and Wildlife Service
1002 N.E. Holladay Street of Portland
Street and No. or P.O. Box No. City or town
Oregon 97232-4181
State and Zip Code No. hereby make application for permission to change the
point of diversion, manner of use, and place of use
Point of diversion, manner of use, and/or place of use
of water heretofore appropriated under Certificate Record No. 1142 (Application No. 4866)
(Identify existing right by Permit, Certificate, Proof of Claim Nos. If Decreed, give title of Decree and
Identify right in Decree.)

1. The source of water is Pete Rogers Spring
Name of stream, lake, underground spring or other source.
2. The amount of water to be changed 0.3876 c.f.s. or 280.1 acre-feet per annum
Second foot, acre feet. One second foot equals 448.9 gallons per minute.
3. The water to be used for wildlife purposes
Irrigation, power, mining, industrial, etc. If for stock state number and kind of animals
4. The water heretofore permitted for irrigation and domestic
Irrigation, power, mining, industrial, etc. If for stock state number and kind of animals
5. The water is to be diverted at the following point NW¼NE¼ Section 15, T.17S., R.50E., M.D.B.&M.
Describe as being within a 40-acre subdivision of public survey and by course and
distance to a section corner. If on unsurveyed land, it should be stated
The NE corner of Section 15, same Township and Range, bears N. 62° 07' 44" E.
at a distance of 1585 feet.
6. The existing permitted point of diversion is located within the SE corner of the NW¼NE¼ Section 15,
If point of diversion is not changed, do not answer
T.17S., R.50E., M.D.B.&M. situated in Nye County, State of Nevada.
7. Proposed place of use Ash Meadows National Wildlife Refuge (See Attachment A for
legal description).
Describe by legal subdivisions. If for irrigation state number of acres to be irrigated.
8. Existing place of use 10.54 acres in the NE¼ SE¼ Section 20, T. 17 S., R. 50 E.,
Describe by legal subdivisions. If permit is for irrigation, state number of acres irrigated. If changing place of use and/or
M.D.B.&M. 28.22 acres in the NE¼ SE¼ Section 20, T. 17 S., R. 50 E., M.D.B.&M.
manner of use of irrigation permit, describe acreage to be removed from irrigation.
9. Use will be from January 1 to December 31 of each year.
Month and Day Month and Day
10. Use was permitted from January 1 to December 31 of each year.
Month and Day Month and Day
11. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and
specifications of your diversion or storage works.) As much as practicable, re-establish
State manner in which water is to be diverted, i.e., diversion structure, ditches,
pipes and flumes, or drilled well, etc.
historical natural drainage patterns and wetlands.
12. Estimated cost of works \$70,000 for entire refuge system.
13. Estimated time required to construct works four years.

14. Estimated time required to complete the application of water to beneficial use five years.

15. Remarks: For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.

Water will be used on Ash Meadows National Wildlife Refuge for wildlife
purposes.

By s/Robert Oser
U.S. FISH AND WILDLIFE SERVICE
1002 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232-4181

Compared bc/ab am/se

Protested _____

APPROVAL OF STATE ENGINEER

This is to certify I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion, manner and place of use of the waters of Pete Rogers Spring as heretofore granted under Permit 4866, Certificate 1142 is issued subject to the terms and conditions imposed in said Permit 4866, Certificate 1142 and with the understanding that no other rights on the source will be affected by the change proposed herein. A measuring device must be installed and measurements of water use kept.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The amount of water to be changed shall be limited to the amount which can be applied to beneficial use, and not to exceed 0.3876 cubic feet per second, but not to exceed 280.1 acre-
feet annually.

Work must be prosecuted with reasonable diligence and be completed on or before September 28, 1992

Proof of completion of work shall be filed before October 28, 1992

Application of water to beneficial use shall be made on or before September 28, 1995

Proof of the application of water to beneficial use shall be filed on or before October 28, 1995

Map in support of proof of beneficial use shall be filed on or before N/A

Completion of work filed OCT 18 1993 IN TESTIMONY WHEREOF, I, R. MICHAEL TURNIPSEED, P.E.

Proof of beneficial use filed OCT 16 1995 State Engineer of Nevada, have hereunto set my hand and the seal of my

office, this 28th day of September

Cultural map filed _____

Certificate No. 14328 Issued JUN 18 1996 A.D. 1996

[Signature]
State Engineer

Attachment A

ASH MEADOWS NATIONAL WILDLIFE REFUGE
 Nye County, Nevada
 Mount Diablo Meridian
 Lands within Approved Boundary

T. 17 S., R. 50 E.

Section 9 Lots 7 and 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$;
 10 S $\frac{1}{4}$;
 12 NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 15 All;
 16 All;
 17 E $\frac{1}{4}$ E $\frac{1}{4}$;
 19 SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 20 E $\frac{1}{4}$, S $\frac{1}{4}$ SW $\frac{1}{4}$;
 21 All;
 22 All;
 23 Lots 3 and 4, W $\frac{1}{4}$ NW $\frac{1}{4}$;
 26 S $\frac{1}{4}$;
 27 All;
 28 All;
 29 All;
 30 E $\frac{1}{4}$ E $\frac{1}{4}$;
 32 E $\frac{1}{4}$, E $\frac{1}{4}$ W $\frac{1}{4}$;
 33 All;
 34 All;
 35 All;
 36 W $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 17 S., R. 51 E.

Section 31 Lot 4, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 32 S $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;

T. 18 S., R. 50 E.

Section 1 All;
 2 All;
 3 All;
 4 All;
 9 E $\frac{1}{4}$, NW $\frac{1}{4}$;
 10 All;
 11 All;
 12 All;
 13 All;
 14 All;
 15 All;
 16 E $\frac{1}{4}$ E $\frac{1}{4}$;
 23 All;
 24 All;
 25 N $\frac{1}{4}$;
 26 NE $\frac{1}{4}$;

T. 18 S., R. 51 E.

Section 5 All;
 6 All;
 7 All;
 8 All;
 17 W $\frac{1}{4}$ E $\frac{1}{4}$, W $\frac{1}{4}$;
 18 All;
 19 All;
 20 W $\frac{1}{4}$ E $\frac{1}{4}$, W $\frac{1}{4}$;
 29 W $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$;
 30 N $\frac{1}{4}$.

Certificate #8123
Permit #25565

Page 2

14.9 acres in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 9, T.17S., R.50E.
18.1 acres in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 10, T.17S., R.50E.
38.8 acres in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 10, T.17S., R.50E.
39.6 acres in the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 15, T.17S., R.50E.
37.4 acres in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 15, T.17S., R.50E.
5.5 acres in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 15, T.17S., R.50E.
29.6 acres in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 15, T.17S., R.50E.
42.8 acres in the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 15, T.17S., R.50E.
40.0 acres in the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 15, T.17S., R.50E.
38.2 acres in the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 16, T.17S., R.50E.
40.9 acres in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 16, T.17S., R.50E.
38.9 acres in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 16, T.17S., R.50E.
8.8 acres in the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 16, T.17S., R.50E.
10.6 acres in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 16, T.17S., R.50E.
0.2 acres in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 16, T.17S., R.50E.
39.1 acres in the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 16, T.17S., R.50E.
32.1 acres in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 16, T.17S., R.50E.
30.3 acres in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 16, T.17S., R.50E.
14.2 acres in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 16, T.17S., R.50E.
8.5 acres in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 16, T.17S., R.50E.
2.1 acres in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 16, T.17S., R.50E.
39.6 acres in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 20, T.17S., R.50E.
35.8 acres in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 20, T.17S., R.50E.
37.3 acres in the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 20, T.17S., R.50E.
39.2 acres in the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 20, T.17S., R.50E.
29.0 acres in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 20, T.17S., R.50E.
8.5 acres in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 20, T.17S., R.50E.
32.7 acres in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 21, T.17S., R.50E.
33.3 acres in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 21, T.17S., R.50E.
6.9 acres in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 21, T.17S., R.50E.
15.7 acres in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 21, T.17S., R.50E.
36.5 acres in the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 21, T.17S., R.50E.
36.5 acres in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 21, T.17S., R.50E.
20.8 acres in the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 21, T.17S., R.50E.
28.6 acres in the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 21, T.17S., R.50E.
2.1 acres in the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 21, T.17S., R.50E.
933.1 acres total

EXHIBIT 5

June 12, 2006

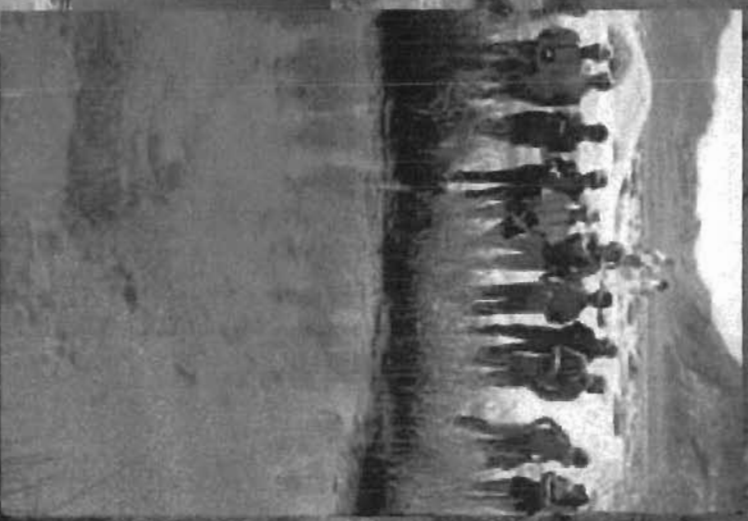
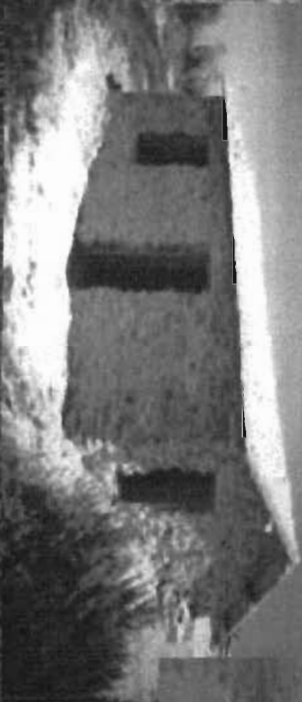
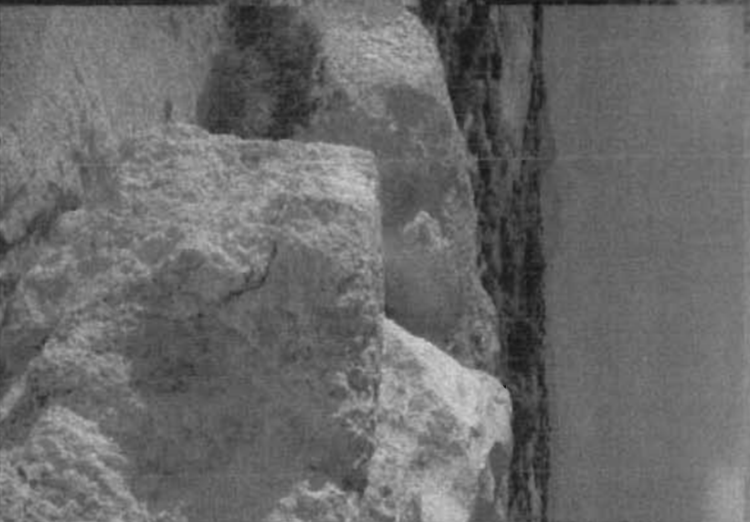
T. Mayer Expert Report

FWS'S EXHIBIT 73
DATE: 6-13-06

Water Monitoring Results at Ash Meadows National Wildlife Refuge

Tim Mayer

Water Resources Branch
US Fish and Wildlife Service



Ash Meadows Hydrology

- Total spring discharge, as measured by FWS, is about 23.5 cfs or **17,000 afy**. This figure is similar to earlier measurements.
- FWS holds state appropriative water rights for 17,675 afy, the entire spring discharge (see Table).
- Total groundwater discharge, based on ET measurements, is 18,000 to 21,000 afy (Laczniak et al., 1999).
- The range of ET estimates exceeds the total spring discharge, indicating that **all spring discharge is consumed** and none leaves the area and returns to the system.