

# **FISH SPRINGS WATER SUPPLY PROJECT**

## **ADDITIONAL ENVIRONMENTAL PERMITS**

1. BLM Right-Of-Way Grant
2. Record of Decision (ROD) - North Valleys Right-Of-Way Project 76800
3. Programmatic Agreement Among The USDI BLM, Nevada; Fish Springs Ranch LLC. And The Nevada State Historic Preservation Officer Regarding the Fish Springs Ranch Waterline Project.
4. Washoe County Community Development Special Use Permit Case No. SW05-009, Fish Springs Ranch, LLC Waterline (SUP)
5. Formal Consultation for Fish Springs LLC Water Pipeline Project, Washoe County, Nevada, US Department of the Interior, Fish and Wildlife Service (BO)
6. US Army Corps of Engineers Section 404 Nationwide Permit
7. NDEP 401 Water Quality Certification
8. NDEP Working in Waterways Permit
9. NDEP Temporary NPDES Permit
10. NDEPS Stormwater Discharge Permit

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**UNITED STATES DEPARTMENT OF THE INTERIOR**

Bureau of Land Management  
5665 Morgan Mill Road  
Carson City, Nevada 89701

**RECORD OF DECISION**

May 31, 2006

**RIGHT-OF WAY N-76800  
NORTH VALLEYS RIGHT-OF-WAY PROJECT  
FISH SPRINGS RANCH, LLC**

**INTRODUCTION**

Fish Springs Ranch (FSR) submitted an application with the (BLM) for a right-of-way (ROW) grant under Title V of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1761), for the construction and operation of a 28 mile water transmission pipeline and associated facilities on private and public land in Washoe County, Nevada (see attached map, Fig. 2-1).

The Bureau of Land Management Carson City Field Office (BLM) received separate water supply and transmission ROW applications from the Fish Springs Ranch LLC (FSR) and Intermountain Water Supply LTD (IWS), two independent water companies, proposing projects in Washoe County, Nevada. The BLM determined the proposed projects would require analysis through an environmental impact statement (EIS) and due to the same timing, geography, and similarity of the types of actions, the two proposals would be analyzed in one EIS, together known as the North Valleys Rights-of-Way Projects EIS. In addition, each proposed project requires a separate, stand-alone record of decision (ROD). This ROD is for the FSR Project.

Cooperating agencies for the EIS are the U.S. Fish and Wildlife Service; U.S. Bureau of Indian Affairs; U.S. Geological Survey; Sierra Army Depot; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; California Department of Water Resources; California Department of Fish and Game; Lassen County, CA; Washoe County, NV; Truckee Meadows Water Authority; Airport Authority of Washoe County; Truckee Meadows Regional Planning Agency; and the Cities of Reno and Sparks. BLM and FSR personnel presented the proposed project and the EIS process at several public venues to solicit comments for the EIS.

**DECISION**

Based upon the analyses in the Draft EIS (DEIS) and the Final EIS (FEIS), I have determined that the implementation of the Agency Preferred Alternative, described in the FEIS as Alternative A – Construct Pipelines within Common Right-of-Way (see attached map, Fig. 2-7), will not cause unnecessary or undue degradation of public land. This alternative is comprised of all components of the Proposed Action but requires that both the FSR and IWS pipelines be constructed inside a common ROW extending from the point of intersection of the IWS and FSR pipeline in Dry Valley to a point in Antelope Valley where each pipeline diverges to their respective terminus sites. By this

decision and as Authorized Officer of the Carson City BLM, I approve issuance of FLPMA ROW grant N-76800 to FSR for the public land portion of the project, for a buried water transmission pipeline and associated facilities as described in Alternative A, subject to compliance with all pertinent Federal, State, and local laws or requirements and the mitigating measures described in this ROD. The ROW grant will have widths varying from 50 feet to 60 feet, with additional temporary construction widths varying from 25 feet to 35 feet. In addition, I approve issuance of a ROW grant within the boundaries of ROW grant N-76800 for the public land portion of the project for electric distribution lines associated with the FSR water transmission pipeline as described in Alternative A, subject to compliance with all pertinent Federal, State, and local laws or requirements and the mitigating measures described in this ROD to a qualified applicant, upon receipt by BLM of a complete ROW application. The ROW grants will be issued for 30-year terms and may be renewed if appropriate and will be subject to the regulations under Title 43, Code of Federal Regulations, Part 2800 (43 CFR 2800). The following Special Use Permit and associated conditions of approval are adopted by the BLM and incorporated into this ROD (see attached):

- Special Use Permit SW05-009 - Washoe County Board of County Commissioners (April 4, 2006)

#### **ALTERNATIVES, INCLUDING THE PROPOSED ACTION AND ENVIRONMENTALLY PREFERABLE ALTERNATIVE**

The analysis of alternatives in the FEIS included the Proposed Action, Alternative A – Construct Pipelines within Common Right-of-Way, and No Action Alternative. A full description of each alternative can be found in Chapter 2 of the FEIS.

**Proposed Action:** The FSR Proposed Action is to construct production wells, water collection and transmission pipelines, pump stations, water storage tanks, a buried telemetry system, electrical substation and electrical distribution lines to convey up to a maximum of 8,000 af/yr of water to the Stead/Lemmon Valley Area. The water transmission pipeline would extend from six production wells in southeastern Honey Lake Valley southward through Dry Valley, Bedell Flat, Antelope Valley, to a terminal storage tank at the divide between Antelope Valley and Lemmon Valley. The 28-mile pipeline would be constructed within a 50-foot-wide permanent ROW with an additional 25-foot-wide temporary construction ROW. Approximately 16 miles of the pipeline will be constructed adjacent to the existing ROW for the Tuscarora Gas Pipeline and a small section of the Alturas Powerline ROW.

**Alternative A – Construct Pipelines within Common Right-of-Way:** Alternative A is comprised of all components of the Proposed Action including installation of production wells, water collection and transmission pipelines, pump stations, water storage tanks, a buried telemetry system, electrical substation and electrical distribution lines, but requires that both FSR and IWS pipelines be constructed within a common ROW for a portion of the route. Alternative A requires that the individual pipelines will be constructed inside a common 60-foot-wide permanent ROW extending from the point of intersection for the IWS and FSR pipeline in Dry Valley to a point in Antelope Valley where each pipeline diverges to their respective terminus sites. Each temporary construction

ROW is 35 feet-wide on each side of the common 60-foot-wide permanent ROW and totals 130-feet. Total linear distance shared is approximately 13.5 miles.

**Environmentally Preferable Alternative:** Although the EIS analyzes the entire route(s) of the pipeline(s), certain portions would occur on private lands and under the authority of Washoe County. The National Environmental Policy Act (NEPA), as interpreted through the regulations promulgated by the Council on Environmental Quality (CEQ), requires that the Record of Decision for any Federal action also identify the “environmentally preferable” alternative. Because construction of any type is disruptive to the resources in the immediate area, none of the “action” alternatives could be described as environmentally preferable. Rather, the No Action Alternative, as described in the FEIS, would result in no disturbance to the environment. Both “action” alternatives would result in approximately the same scope of impacts to the human environment, Alternative A results in 14 acres less surface disturbance each (28 acres total) for FSR and IWS.

### **MANAGEMENT CONSIDERATIONS**

The ROW approved by this ROD provides for the construction of a water pipeline in an area where such construction is in conformance with the *Carson City Field Office Consolidated Resource Management Plan (BLM 2001)* which does not restrict ROWs for underground pipelines to designated corridors. The BLM requires ROWs contain terms and conditions to minimize damage to scenic and aesthetic values, protect fish and wildlife habitat, protect the environment, and assure compliance with applicable air and water quality standards. Land Use Master Plans for the cities of Reno and Sparks, Washoe County, and the Washoe County Regional Open Space Plan, designate natural, visual, and cultural resources important to the community and are major considerations in analyzing utility proposals.

The alternative to the Proposed Action was developed with input from the following:

- The general public through scoping;
- Members of the Washoe County Citizen Advisory Board for the North Valleys;
- Members of the City of Reno Neighborhood Advisory Board for North Valleys;
- Representatives from the cooperating agencies (U.S. Fish and Wildlife Service; U.S. Bureau of Indian Affairs; U.S. Geological Survey; Sierra Army Depot; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; California Department of Water Resources; California Department of Fish and Game; Lassen County, CA; Washoe County, NV; Truckee Meadows Water Authority; Airport Authority of Washoe County; Truckee Meadows Regional Planning Agency; and the Cities of Reno and Sparks.)

Alternative A falls within the jurisdiction of Washoe County and requires a Special Use Permit for construction of the pipeline. In addition, the Truckee Meadows Regional Planning Commission has responsibility for review of projects of regional significance.

### **U.S. Fish and Wildlife Service**

On May 16, 2006 the U.S. Fish and Wildlife Service (USFWS) issued their biological opinion on the FSR pipeline project and its effects on the endangered Carson wandering skipper (CWS) in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). The conclusion states: “After reviewing the current status of the CWS, the environmental

baseline, the effects of the applicant's proposed project, and the cumulative effects, it is the Service's biological opinion that the construction and implementation of the Fish Springs Ranch LLC Water Pipeline Project, as proposed, is not likely to jeopardize the continued existence of the CWS. No critical habitat has been designated for this species, therefore none will be affected."

### **Nevada Division of Water Resources**

Water rights, pumping rates, water quantity, and place of use are under the authority of the Nevada Division of Water Resources, Nevada State Engineer (State Engineer). In March 1991 the State Engineer approved the importation of 13,000 af/yr of existing agricultural use water rights from the Fish Springs Ranch to municipal use for the Stead/Lemmon Valley area. The State Engineer's decision was appealed by Lassen County, California and the Pyramid Lake Paiute Tribe. In 1992 the Second Judicial Court in Reno reversed and remanded the State Engineer's approval. In October 1992, the State Engineer issued a Supplemental Ruling that again approved the inter-basin transfer of 13,000 af/yr. A motion to vacate that ruling was denied by the Second Judicial Court in February 1993. The case was subsequently appealed to the Nevada Supreme Court, which confirmed the Supplemental Rulings on Remand in June 1996.

At the beginning of the North Valleys Rights-of-Way Projects EIS process the Nevada Division of Water Resources was asked by the BLM to participate as a Cooperating Agency. Although the agency chose not to participate, the State Engineer was on the mailing list with the other Cooperating Agencies and was provided all the same information and documents throughout the EIS process. The Forty Most Asked Questions Concerning CEQ's NEPA Regulations (46 Fed. Reg. 18026 [March 23, 1981], as amended, 51 Fed. Reg. 15618 [April 25, 1986]) number 19b. states "All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the ROD's of these agencies."

*A Recommended Water Resources Monitoring and Management Plan for Future Pumping in Honey Lake Valley, Dry Valley, and Bedell Flat, Nevada* (Plan) was included in Appendix D of the Final EIS. The Plan was developed and recommended in coordination with the Cooperating Agencies and consists of four principal components: 1) Monitoring Requirements – related to production wells, monitoring wells, elevation control, spring flow, water quality, precipitation stations, quality of data, and reporting; 2) Management Requirements – related to the creation and role of a Water Advisory Committee (WAC), and a subcommittee of the WAC – the Technical Advisory Committee (TAC); 3) Mitigation Measures; and 4) Modification of Plan. A meeting was held in December 2005 between the BLM Field Office Manager and members of the State Engineer's staff to discuss the Plan. Although the staff members were noncommittal, there was no indication of any objection or opposition to the Plan. The Plan was revised (to incorporate additional comments from the Cooperating Agencies) and sent to the State Engineer for consideration on May 2, 2006 (see attached letter and Revised Plan). Although there has been no communication from that office, it is the opinion of the BLM that the State Engineer is likely to accept the Plan.

### **Truckee Meadows Regional Planning Commission**

A component of the FSR project is construction of a new electrical substation on private land. On February 22, 2006 the Truckee Meadows Regional Planning Commission conducted a public hearing

for a Regional Plan Conformance Review – Project of Regional Significance, Fort Sage Substation, a proposed new electrical substation, located north of the Fort Sage Mountains in the southern portion of Honey Lake Valley. The motion to accept the Fort Sage Substation was carried unanimously by the Truckee Meadows Regional Planning Commission.

#### **Washoe County.**

On November 15, 2005 the Washoe County Planning Commission unanimously denied the Special Use Permit SW05-009 for Fish Springs Ranch, LLC to construct and operate six wells and associated water pipelines and facilities. An appeal of the denial of the special use permit by the Washoe County Planning Commission was filed by FSR and went before the Washoe County Commission on December 13, 2005. The appeal was granted and the denial by the Washoe County Planning Commission of Special Use Permit Case No. SW05-009 for the Fish Springs Water Supply Project was overturned.

### **MITIGATION AND MONITORING**

In conjunction with the BLM required mitigation and monitoring, this ROD incorporates the conditions and stipulations prescribed by the Special Use Permit for Washoe County. Considering all pertinent factors, the Agency Preferred Alternative provides for the construction of a pipeline in the least impacting manner. All practicable methods to avoid or minimize environmental harm from the selected alternative have been adopted.

Prior to startup of the project, a plan of development (POD) will be developed by FSR, and reviewed and approved by the BLM, that outlines the specifics of how the project will be constructed and operated and list monitoring measures to ensure commitments are fulfilled.

The following mitigation and monitoring measures have been developed by the BLM and the Cooperating Agencies to reduce potentially adverse impacts. These measures are virtually the same as those described in Chapter 4 of the FEIS and are summarized in this ROD. These measures are in addition to the FSR proposed construction, ROW preparation, and reclamation activities outlined in Chapter 2 of the FEIS. This ROD expressly incorporates each of the following requirements:

#### **Geology, Minerals, and Paleontology**

If rare plant, vertebrate, or invertebrate fossils are discovered during construction, BLM will be contacted to determine steps necessary to preserve the fossils.

#### **Air Resources**

- Water will be applied to active construction sites during weekends, nights, and holidays especially during windy conditions.
- Vehicles hauling soil or other loose materials that could be a source of dust emissions will be covered with a tarp or other means.
- Soil stabilizers will be applied to soil stockpiles to prevent wind erosion.
- Track-out devices will be used on vehicles before entering paved roads.
- Public road surfaces will be washed or swept to remove track-out.
- Traffic speeds will be limited on access roads and construction areas.
- Soil stabilizers will be applied to disturbed areas within five days of completion of activity at

each site.

- Disturbed areas will be reclaimed as soon as practicable after completion of construction.

### **Water Resources**

- Stream channel crossings will be constructed in accordance with applicable State Stream Alteration Permits, U.S. Army Corps of Engineer requirements, and land management agencies. Soil will be stockpiled approximately 10 feet from the top of channel banks, but within the ROW.
- Where flowing water is encountered during construction, sediment barriers will be installed after initial disturbance of the stream channel or adjacent upland. Sediment barriers will be properly maintained throughout construction and reinstalled as necessary.
- After pipe installation, stockpiled growth media will be used to restore banks of the channel to a stable configuration as close to preconstruction contours as possible.
- Construction in streams and wetlands will be expedited to minimize the duration of turbidity-causing activities.
- An alignment will be selected that minimizes stream crossings.
- Construction in stream crossings will be scheduled during periods of low or no flow.
- BLM will conduct periodic inspections of the ROW during and after construction to identify necessary maintenance activities.
- Chemicals, fuels, and lubricants will be transported in approved containers and will not be stored within 300 feet of a stream crossing. Sorbent material will be maintained on-site to absorb spills of petroleum products that may occur during construction activities.

### **Soil Resources**

Prior to trenching activities, the Washoe County Soil Survey prepared by the Natural Resources Conservation (NRCS) should be referenced to determine the appropriate depth of growth media to salvage. Depth of the growth media will be maximized to assist in successful reclamation. Where possible, topsoil salvage should be no less than 6 inches.

### **Vegetation Resources**

- FSR will use variable seed mixes adapted to slope and aspect, soil depth, and landscape features to reclaim areas disturbed by construction
- Seed and plant shrubs (including sagebrush) in patches rather than uniformly over the area.
- As feasible, FSR will prevent livestock grazing of reclamation until stable and resilient vegetation cover has been established.
- Until desired vegetation is established, monitor disturbed and reclaimed areas for noxious weeds and other undesirable species; if noxious weeds are found, they will be controlled in coordination with BLM.
- Monitor reclamation yearly to assess success of seeding and planting and implement remedial measures if needed.
- Water roads during construction to minimize impacts from dust.
- Conduct searches for cacti and transplant them to suitable habitat undisturbed by construction activities.

To prevent the spread of noxious weeds into previously uninfested areas during construction, FSR will implement the following measures:

- Before construction activities, FSR will apply an acceptable herbicide or employ conventional mechanical or cultural methods of noxious weed removal in construction areas, staging areas, and other areas that would be disturbed by vehicles or equipment.
- Equipment and vehicles will be cleaned at designated high-pressure air or water wash stations away from waterways before they are used in the project area. Once in the project area, equipment and vehicles would be restricted to approved areas unless work requires entry into noxious weed infested areas. If equipment enters an area containing noxious weeds, it would be cleaned after it exits the area immediately.
- Certified weed-free imported materials, such as straw bales and erosion control seed, will be used during construction, reclamation, maintenance, and operations.
- Noxious weed populations will be monitored annually until revegetation and weed abatement criteria have been met.

### **Wildlife Resources**

- Where feasible, land will be cleared outside the avian breeding season. In areas where land is cleared during the avian breeding season, a qualified biologist will survey the area. If active nests are located or other evidence of nesting is observed, a protective buffer will be delineated and the area avoided until nests are no longer active.
- As feasible, FSR will suspend livestock grazing and trampling on the revegetated pipeline corridor until vegetation is established.
- Seed and plant sagebrush and other fire-sensitive species that have been removed or reduced by wildfire and Project implementation.
- Replace topsoil over pipeline trenches to enhance establishment of sagebrush and other native species.
- Implement best management practices to prevent delivery of sediment to drainages and wetlands along the pipeline route.

### **Recreation**

BLM will provide 30-days prior notice to FSR for all permitted recreational events that will occur in the vicinity of the Project Area during construction activities. This may require a temporary modification of the FSR work schedule to accommodate events.

### **Noise**

- High-noise and blasting activities are limited to daytime hours.
- FSR will install high-grade mufflers on diesel-powered equipment.
- FSR will combine noisy operations to occur for short durations during the same time period.
- Night time construction activities are not authorized.

### **Visual Resources**

- FSR will establish clearly defined construction limits that incorporate irregular shapes to reflect existing forms and patterns.
- Plan revegetation so colors and textures blend with undisturbed land.



- Minimize visual contrast of structures with natural forms by using colors that blend with the land; use finishes that have low levels of reflectivity.
- Paint structures slightly darker than the surrounding landscapes to compensate for the effects of shade and shadow.
- Preserve the undeveloped character of the landscape.

### **Cultural Resources**

- Should residual adverse effects occur to cultural resources, a treatment plan to mitigate adverse effects on eligible sites will be developed in consultation with the BLM, State Historic Preservation Office (SHPO), and local Tribes.
- In the event that cultural resources are discovered during project construction, all construction work in the vicinity of the find will be stopped immediately, the area flagged, and the BLM will be contacted.

### **Native American Religious Concerns**

Native American consultation regarding the FSR pipeline project is and continues to be ongoing. The Pyramid Lake Paiute Tribe, Washoe Tribe of Nevada-California, Susanville Indian Rancheria, and Reno-Sparks Indian Colony were invited to participate in the North Valleys Project EIS process as cooperating agencies. The Pyramid Lake Paiute Tribe and the Susanville Indian Rancheria participated fully as cooperating agencies throughout the EIS process, the Tribes: attended and provided input to cooperating agency working meetings and field tour of the project area; provided comments on the preliminary draft EIS prior to issuance of the public Draft EIS; provided comments on the Draft EIS; provided comments on the *Recommended Water Resources Monitoring and Management Plan for Future Pumping in Honey Lake Valley, Dry Valley, and Bedell Flat, Nevada*; and provided comments on the Final EIS.

In May 2006 a field tour of the project area was conducted with representatives from the four Tribes, project applicants, and the CCFO Field Manager and archaeologist. A follow-up meeting to discuss concerns from what the Tribes observed on the field tour was held a week later. The concerns discussed were in regard to the involvement of the Tribes in the concurrence of eligibility for cultural sites and the Tribes request two tribal monitors on site during testing and subsequent data recovery.

### **Fire Suppression**

FSR shall be responsible for all suppression costs for any fire resulting from their operations and practices.

## **PUBLIC INVOLVEMENT**

FSR submitted an application with the BLM for a ROW grant under Title V of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1761), for the construction and operation of a 28-mile water transmission pipeline and associated facilities on private and public land in Washoe County, Nevada. The public scoping period for the EIS was initiated by the publication of a Notice of Intent (NOI) to prepare an EIS on September 15, 2003 by the BLM in the Federal Register and comments were accepted until January 31, 2004. The news media and the public were notified of the public meetings and comment period. Scoping letters describing the Proposed Actions were sent to affected or interested agencies, groups, organizations, and individuals. A public scoping

meeting and eight public presentations were held in the area between October 2, 2003 and January 7, 2004. The BLM received 17 written scoping comments.

The Draft EIS (DEIS) Notice of Availability (NOA) was published by the BLM in the Federal Register and the Environmental Protection Agency (EPA) on May 20, 2005 and the 60-day comment period ended July 20, 2005. A news release was distributed via fax to area media (newspaper, radio, and television outlets) with the announcement that the DEIS was available to the public and notification of public meetings. Two public open houses were held in Reno, Nevada in June and July 2005; a public meeting was held in Susanville, California in June 2005; and public presentations were conducted for Washoe County's North Valleys Citizen Advisory Board and the City of Reno's North Valleys Neighborhood Advisory Board in June 2005. A total of 26 comment letters from individuals, private companies, and federal and state agencies were received.

The NOA for the Final EIS (FEIS) was published by the EPA in the Federal Register on November 10, 2005 with a 30-day review/wait period until December 9, 2005. The BLM received 13 written comment letters, faxes, and e-mails.

### **APPEAL PROCEDURES**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is taken a notice of appeal must be filed at the Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701 and Fish Springs Ranch, 3480 GS Richards Boulevard, Suite 101, Carson City, Nevada 89703 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. This Decision will remain in full force and effect during the appeal unless a written request for a Stay is granted.

If the appellant wishes to file a petition pursuant to regulations at 43 CFR 2801.10 or 43 CFR 2881.10 for a stay of the effectiveness of this decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed in this office. If the appellant requests a stay, the appellant has the burden of proof to demonstrate that a stay should be granted.

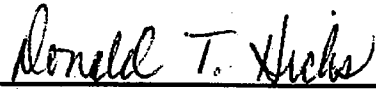
#### **Standards for Obtaining a Stay**

Except as otherwise provided by law or by other pertinent regulation, a Petition for a Stay of a Decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied,
- 2) The likelihood of the appellant's success on the merits,
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors granting the stay.

**RECORD OF DECISION:**

**North Valleys Rights-of-Way Projects EIS, Fish Springs Ranch ROW N-76800**



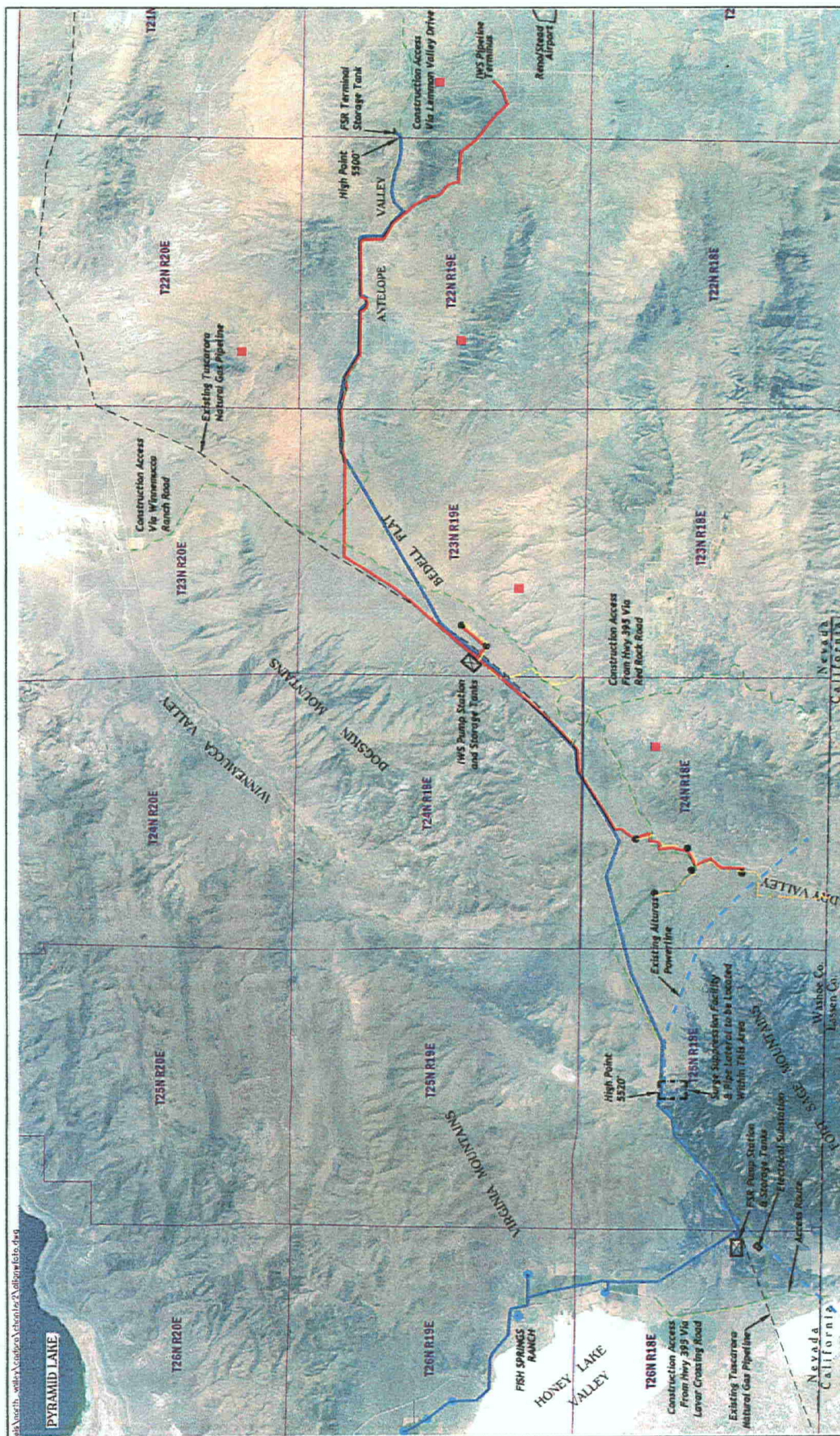
Donald T. Hicks  
Manager,  
Carson City Field Office

**May 31, 2006**

**Attachments (5):**

- Maps (Fig. 2-1 and Fig. 2-7)
- Special Use Permit SW05-009 - Washoe County Board of County Commissioners
- May 2, 2006 Letter to Nevada State Engineer Hugh Ricci and attached *Revised Recommended Water Resources Monitoring and Management Plan for Future Pumping in Honey Lake Valley, Dry Valley, and Bedell Flat, Nevada*
- Form 1842-1, *Information on Taking Appeals to the Board of Land Appeal*



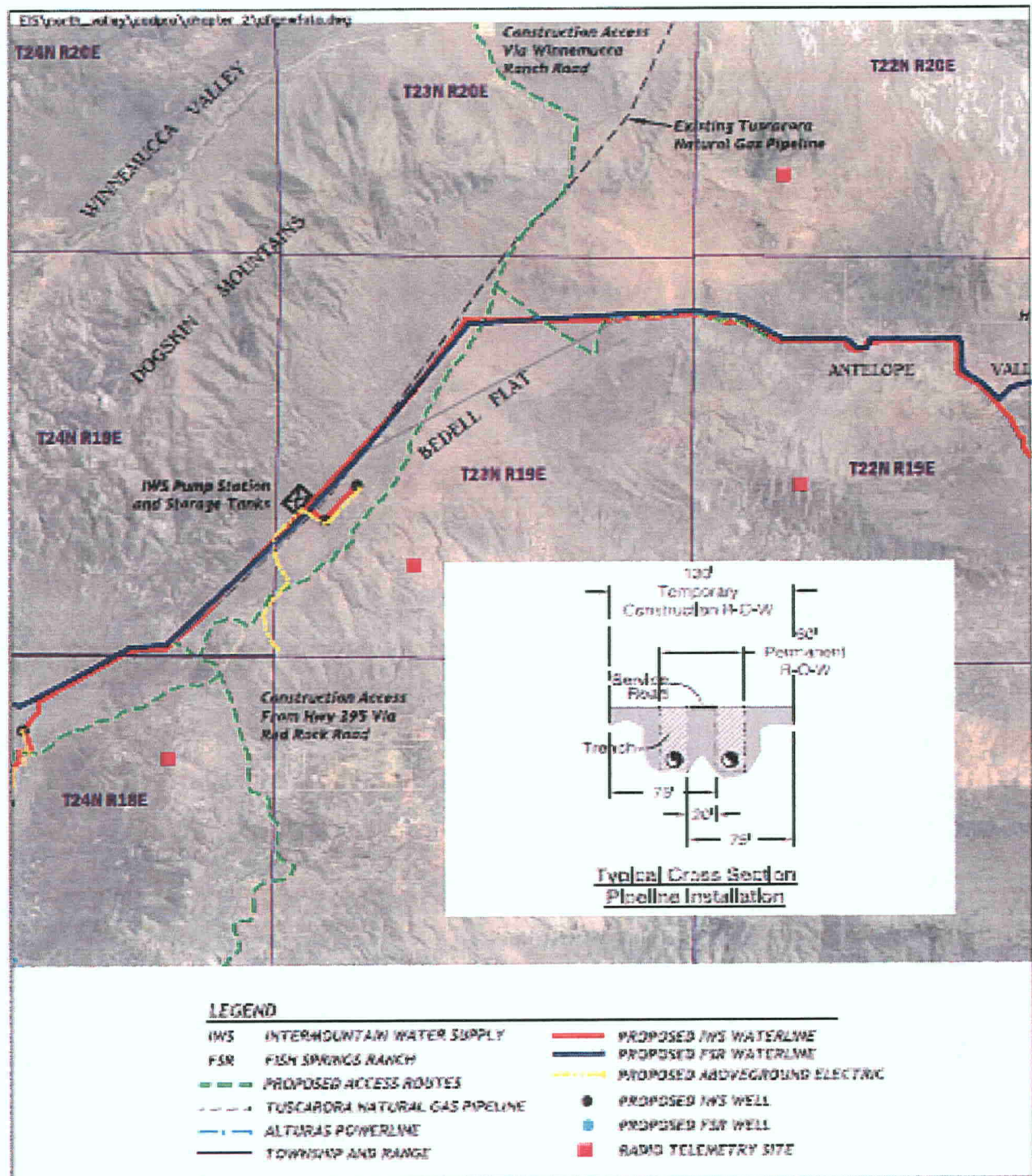


- LEGEND**
- INTERNMOUNTAIN WATER SUPPLY
  - IWS
  - FSR
  - FISH SPRINGS RANCH
  - PROPOSED ACCESS ROUTES
  - TUSCARORA NATURAL GAS PIPELINE
  - ALTURAS POWERLINE
  - TOWNSHIP AND RANGE
  - PROPOSED IWS WATERLINE
  - PROPOSED FSR WATERLINE
  - PROPOSED UNDERGROUND ELECTRIC
  - PROPOSED ABOVEGROUND ELECTRIC
  - PROPOSED IWS WELL
  - PROPOSED FSR WELL
  - RADIO TELEMETRY SITE



Site Map  
North Valleys Rights-of-Way Projects EIS  
Washoe County, Nevada  
FIGURE 2-1





Alternative A  
North Valleys Rights-of-Way Projects EIS  
Washoe County, Nevada  
FIGURE 2-7



OFFICE OF THE WASHOE COUNTY CLERK  
AMY HARVEY, COUNTY CLERK

April 4, 2006

Fish Springs Ranch, LLC  
Attn: Don Pattalock  
704 W. Nye Lane, Suite 201  
Carson city, NV 89703

I, Amy Harvey, County Clerk and Clerk of the Board of County Commissioners, Washoe County, Nevada, do hereby certify that as filed with the County Clerk on this date, the Board of County Commissioners, at its regular meeting on January 24, 2006 issued the following order:

**06-133      APPEAL CASE NO. AX05-014 – SPECIAL USE PERMIT CASE**  
**NO. SW05-009 – COMMUNITY DEVELOPMENT**

Based on the following findings, on motion by Commissioner Weber, seconded by Commissioner Galloway, which motion duly carried with Commissioner Sferrazza absent, Chairman Larkin ordered that the Planning Commission's denial be overturned and Special Use Permit Case No. SW05-009 for the Fish Springs Water Project be approved subject to the following 18 conditions:

**FINDINGS**

1. That the proposed project is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the High Desert Area Plan;
2. That the site is physically suitable for the type of development and for the intensity of development;
3. That the issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
4. That the Washoe County Board of County Commissioners gave due consideration to the information transmitted from the Washoe County Planning Commission and to the information received during the public hearing.

<p><b>CONDITIONS FOR SPECIAL USE PERMIT CASE NO. SW05-009 FISH SPRINGS RANCH, LLC WATERLINE</b></p>
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Unless otherwise specified, all conditions must be met or financial assurances must be provided to satisfy the conditions prior to submittal for a building permit. The agency responsible for determining compliance with a specific condition shall determine whether the condition must be fully completed or whether the applicant shall be offered the option of providing financial assurances. All agreements, easements, or other documentation required by these conditions shall have a copy filed with the County Engineer and the Department of Community Development.

Compliance with the conditions of this special use permit is the responsibility of the applicant, its successor in interest, and all owners, assignees, and occupants of the property and their successors in interest. Failure to comply with any conditions imposed in the issuance of the special use permit may result in the institution of revocation procedures.

Any operations conditions are subject to review by the Department of Community Development prior to the renewal of a business license each year. Failure to adhere to the conditions may result in withholding renewal of the business license until conditions are complied with to the satisfaction of the Department of Community Development.

Washoe County reserves the right to review and revise the conditions of this approval should it determine that a subsequent license or permit issued by Washoe County violates the intent of this approval.

For the purposes of conditions imposed by Washoe County, "may" is permissive and "shall" or "must" is mandatory.

**SPECIFIC CONDITIONS OF APPROVAL**

1. A copy of the Clerk's Order stating conditional approval of this special use permit shall be attached to all applications for administrative permits issued by Washoe County, including the required building permits.
2. The applicant shall demonstrate substantial conformance to the plans approved as part of this special use permit. The Department of Community Development shall determine compliance with this condition.
3. The applicant and any successors shall direct any potential purchaser/operator of the site and/or the special use permit to meet with the Department of Community Development to review conditions of approval before the final sale of the site and/or the special use permit. Any subsequent purchaser/operator of the site and/or

the special use permit shall notify the Department of Community Development of the name, address, telephone number, and contact person of the new purchaser/operator within 30 days of the final sale.

4. The Regional Utility Corridor Report, which is a part of the Regional Plan, must be amended to include the proposed electrical substation. Once the Regional Plan is amended to include the substation, the proposed electrical substation must go before the Regional Planning Commission for conformance review. The County will issue no construction permits until this Regional process is completed, and the electrical substation is found to be in conformance with the Regional Plan. The Department of Community Development shall determine compliance with this condition.
5. The applicant shall submit a written waiver request to the Director of the Department of Community Development to the landscaping and parking standards required by the Development Code for the well, pump stations and related tanks, and the electrical substation. If the parking waiver is granted, at least one graveled parking space shall be provided at each site and shall be shown on the building permits. The Department of Community Development shall determine compliance with this condition.
6. All proposed new roads shall have an all-weather surface as approved by the County Engineer. The Department of Community Development shall determine compliance with this condition.
7. In addition to the requirements contained in Section 412 of the Development Code, the following landscaping and parking requirements shall apply for the terminal tanks located on Matterhorn Boulevard.
  - a. The tank(s) shall be set into the side of the hill as much as possible.
  - b. Landscaping and irrigation plans prepared and wet-stamped by a landscape architect licensed in the State of Nevada shall be submitted to the Department of Community Development for approval before the issuance of a building permit for the tank.
  - c. Native, drought-tolerant landscaping shall be preferred, and shall match the vegetation currently at the site. The Bureau of Land Management or the Washoe-Storey Conservation District shall approve plants and seed mix, which shall be adhered to by the applicant.
  - d. Temporary irrigation shall be provided to all revegetated areas for a minimum of three years to establish the vegetation. At the end of three years, staff of the Department of Community Development shall determine the success of the revegetation effort, and may require replanting or reseeding of failed vegetation.



- e. At least two all-weather parking spaces shall be provided. The Department of Community Development shall determine compliance with this condition.
  - 8. On non-BLM land, native, drought-tolerant landscaping shall be preferred for all areas disturbed by construction activities, and shall match the vegetation of the surrounding area. Cacti protected under Nevada law shall be salvaged and replanted in undisturbed habitats. The BLM or the Washoe-Storey Conservation District shall approve plants and seed mix, which shall be adhered to by the applicant. The Department of Community Development shall determine compliance with this condition.
  - 9. The applicant shall submit an estimate prepared and wet stamped by a landscape architect licensed in the State of Nevada for the revegetation/reseeding of all disturbed area not located on BLM-managed land. A bond or other financial assurance in the amount of 120 percent of this estimate shall be submitted to and held by the Department of Community Development for a period of three years following completion of revegetative efforts to assure reclamation. During these three years, and before the release of the performance bond or other financial assurance, the Department of Community Development may require reseeding/revegetation of those areas where revegetation efforts have failed. The Department of Community Development shall determine compliance with this condition.
  - 10. A site perimeter fence for all facilities shall be constructed and shall be detailed on the plans submitted for the building permit for each facility. The fencing shall be coated Sudan brown or approved equivalent in color. The fence around the terminal tank shall have slats of a similar color to minimize visual appearance. The Department of Community Development shall determine compliance with this condition.
  - 11. The tanks and all associated exposed facilities shall be painted or coated Sudan brown or equivalent approved color. Control buildings will have a similar earth-tone exterior color. The Department of Community Development will determine compliance with this condition.
  - 12. Surplus excavated materials that cannot be used on the project site for backfill or reclamation shall be disposed of either on Fish Springs Ranch property or in an approved landfill. Before material may be deposited at Fish Springs Ranch, plans shall be submitted to the Department of Community Development and the County Engineer for approval outlining the disposition of the materials, and shall detail the methods and/or products that will be taken or used to prevent wind and water erosion. Stockpiling excess material at Fish Springs Ranch for an indefinite period shall not be approved. Applicant shall spread the material over the land at the approved disposal site and shall revegetate the imported material on a continuous
-

basis with a seed mixed approved by the Washoe-Storey Conservation District or the BLM. The Department of Community Development shall determine compliance with this condition.

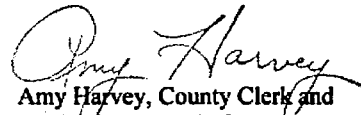
13. The use of straw bales for sedimentation and erosion control is prohibited. Alternative methods complying with the requirements of the Truckee Meadows Best Management Practices Handbook, the County Engineer, and Washoe County Health Department shall be used. The applicant shall prepare a reclamation / noxious weed control plan. The use of topsoil for reclamation obtained where noxious weeds are present shall be in accordance with the reclamation / noxious weed control plan. Growth of noxious weeds on the reclaimed area shall be removed from the pipeline corridor prior to release on the performance bond required in Condition 9. The Department of Community Development and the District Health Department shall determine compliance with this condition.
14. The following conditions shall be completed to the satisfaction of the County Engineer:
  - a. A complete set of construction improvement drawings, including an on-site grading plan, shall be submitted when applying for a building/grading permit. Grading shall comply with best management practices (BMP's) and shall include detailed plans for grading, site drainage, erosion control (including BMP locations and installation details), slope stabilization, and mosquito abatement. Placement or removal of any excavated materials shall be indicated on the grading plan. Silts shall be controlled on-site and not allowed onto adjacent property.
  - b. For construction areas larger than one acre, the developer shall obtain from the Nevada Division of Environmental Protection a Stormwater Discharge Permit or Waiver for construction and submit a copy to the Engineering Division prior to issuance of a grading permit.
  - c. The developer shall complete and submit the Construction Permit Submittal Checklist and pay the Construction Stormwater Inspection Fee prior to obtaining a grading permit. The County Engineer shall determine compliance with this condition.
  - d. A grading bond of \$1,500/acre of disturbed area shall be provided to the Engineering Division prior to any grading.
  - e. Provide documentation of access and easements for the sites to the satisfaction of the County Engineer.

- f. An approved occupancy permit shall be obtained from the Nevada Department of Transportation (NDOT), for access to, from, or under roads and highways maintained by NDOT and a copy of said permit sent to the Engineering Division.
  - g. A U.S. Army Corps of Engineers permit is required for crossing any waters of the U.S.
  - h. All disturbed areas in access easements shall be restored to at least preconstruction condition.
  - i. During construction, access easements shall remain open to allow for local and emergency traffic access.
  - j. The applicant shall obtain a street excavation permit from the Washoe County Engineering Division for all work in the County right-of-way.
15. The following conditions shall be completed to the satisfaction of the Department of Water Resources (DWR):
- a. In accordance with the applicable ordinances, improvement plan checking and construction inspection fees shall be paid with the improvement plan submittal.
  - b. The Applicant shall submit water improvement plans to the DWR for review and approval. A Professional Engineer licensed to practice in the State of Nevada must design the improvement drawings.
  - c. DWR approved improvement plans shall be used for construction. The DWR will be responsible to inspect the construction of the water improvements or appurtenant facilities.
16. Construction activities within 500 feet of residences shall be limited to the hours of 7:00 AM to 6:00 PM Monday through Saturday.
17. Blasting within 1,000 feet of any residence shall require written notification to these residences by the applicant, with a copy of the notice submitted to the Department of Community Development, at least 3 days prior to the scheduled blasting. The Department of Community Development shall determine compliance with this condition.
-

Page 7  
Fish Springs Ranch  
April 4, 2006

18. Pumping and supplying water as described in this application shall not commence until a Water Resources Monitoring and Management Plan is approved by the State Engineer and implemented. The applicant or his successors shall strictly adhere to all requirements and controls contained in the Plan concerning the withdrawal of water and the monitoring program. The applicant shall submit a yearly report demonstrating compliance with this condition. The Department of Community Development shall determine compliance with this condition.

Sincerely,

  
Amy Harvey, County Clerk and  
Clerk of the Board of  
County Commissioners

/jms

cc: ECO:LOGIC  
Attn: John Enloe  
10381 Double R Blvd  
Reno, NV 89521



## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Carson City Field Office  
5665 Morgan Mill Road  
Carson City, Nevada 89701  
<http://www.nv.blm.gov>



**MAY - 2 2006**

In Reply Refer To:  
2800 (NV030)

Nevada Division of Water Resources  
Attn: Hugh Ricci, State Engineer  
901 S. Stewart St., Ste. 2002  
Carson City, NV 89701-5250

Dear Mr. Ricci:

On December 12, 2005, Terri Knutson, of my staff, and I met with Jason King, Robert Martinez, and Richard Felling, of your staff, to discuss the *North Valleys Rights-of-Way Projects Final Environmental Impact Statement - Fish Springs Ranch and Intermountain Water*. Included in Appendix D of this Final EIS is a document called *Recommended Water Resources Monitoring and Management Plan for Future Pumping in Honey Lake Valley, Dry Valley, and Bedell Flat, Nevada* (Plan). As was discussed in the meeting in December, this Plan was developed and recommended in coordination with the Cooperating Agencies for the EIS and for your consideration. The Cooperating Agencies for the North Valleys EIS are: U.S. Fish & Wildlife Service; U.S. Bureau of Indian Affairs; U.S. Geological Survey; Sierra Army Depot; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; California Department of Water Resources; California Department of Fish and Game; Lassen County, CA; Washoe County, NV; Truckee Meadows Water Authority; Truckee Meadows Regional Planning Agency; Airport Authority of Washoe County; City of Reno; and City of Sparks.


The Final EIS was released to the public on November 10, 2005 and the comment period ended on December 30, 2005. A total of 13 comment letters were received and seven of those letters were from Cooperating Agencies (BIA-Western Nevada Agency and Western Regional Office; Lassen County; California Water Resources; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; and Truckee Meadows Regional Planning Agency). All but one of the comment letters from the Cooperating Agencies contained revisions for the Plan. Attached is the revised Plan incorporating all comments received from the Cooperating Agencies.

The BLM Carson City Field Office strongly urges the implementation of the attached Plan. As stated in NRS 534.250(5.) "The State Engineer shall require the holder of a permit to monitor the operation of the project and the effect of the project on users of land and other water within the area of hydrologic effect of the project. In determining any monitoring requirements, the State Engineer shall cooperate with all government entities which regulate or monitor, or both, the quality of water." As described in the document, the BLM would not take a lead role in implementing the Plan but would be happy to help or facilitate in any other way needed. Please notify this office of any decisions you make in this matter. The record of decisions (RODs) for

both the Fish Springs Ranch and Intermountain Water Projects should be issued within the next month.

Thank you for your consideration in review of this document. If you have any questions, please call either myself at 885-6000 or Terri Knutson at 885-6156.

Sincerely,



Donald T. Hicks  
Manager,  
Carson City Field Office

Enclosure: *Revised Recommended Water Resources Monitoring and Management Plan for Future Pumping in Honey Lake Valley, Dry Valley, and Bedell Flat, Nevada*

Cc: U.S. Fish & Wildlife Service; U.S. Bureau of Indian Affairs; U.S. Geological Survey; Sierra Army Depot; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; California Department of Water Resources; California Department of Fish and Game; Lassen County, CA; Washoe County, NV; Truckee Meadows Water Authority; Truckee Meadows Regional Planning Agency; Airport Authority of Washoe County; City of Reno; and City of Sparks.

## REVISED

### RECOMMENDED WATER RESOURCES MONITORING AND MANAGEMENT PLAN

#### FOR FUTURE PUMPING IN HONEY LAKE VALLEY, DRY VALLEY, AND BEDELL FLAT, NEVADA NORTH VALLEYS RIGHTS-OF-WAY PROJECTS

(Submitted to the Nevada State Engineer)

The purpose of this Monitoring and Management Plan (**Plan**) is to describe monitoring and management activities of water resources and related potential impacts due to development of groundwater resources in eastern Honey Lake Valley, Dry Valley, and Bedell Flat associated with the proposed North Valleys Rights-of-Way Projects (**Projects**). This Plan applies to proposed groundwater extraction rates of up to 8,000 acre-feet per year (af/yr) in eastern Honey Lake Valley, 2,000 af/yr in Dry Valley, and 500 af/yr in Bedell Flat. The groundwater would be extracted from these valleys by Fish Springs Ranch and Intermountain Water Supply (**Proponents**) and conveyed via pipelines to the North Valleys Planning Area in Washoe County, Nevada, and also be subject to water right appropriations from the Nevada State Engineer and conformance with Nevada State law concerning adverse impacts to public resources. This Plan is prepared to cover both Proponents; site-specific proposed monitoring activities are presented in **Attachment A** (Honey Lake Valley), **Attachment B** (Dry Valley), and **Attachment C** (Bedell Flat).

It should be recognized that this recommended **Plan** was included in the Final EIS (FEIS) due to the lack of concurrence between Cooperating Agencies and the Project Proponents regarding the adequacy of existing data and hydrologic evaluations (contained in the FEIS) to substantiate sustainable annual groundwater extraction levels in the Project areas. This **Plan** is intended to provide the necessary data, provide an early warning capability and provide safeguards for responsible management of the water resources.

Along with the U.S. Bureau of Land Management (BLM) as lead agency, the following groups are cooperating agencies for the North Valleys Rights-of-Way Projects EIS: U.S. Geological Survey (USGS); U.S. Fish and Wildlife Service (USFWS); U.S. Bureau of Indian Affairs (BIA); Pyramid Lake Paiute Tribe; Sierra Army Depot; California Department of Water Resources; California Department of Fish and Game; Washoe County, Nevada; Lassen County, California; Truckee Meadows Water Authority; Truckee Meadows Regional

Planning Agency; City of Reno; City of Sparks; Airport Authority of Washoe County; and Susanville Indian Rancheria. This group hereinafter is referred to as the “**Cooperating Agencies**”. Because the two project Proponents would eventually be replaced by a local area water purveyor, this potential purveyor should also become a “Cooperating Agency”. The two agencies with primary importance with respect to this Plan are:

- Nevada State Engineer (Nevada Dept. of Conservation and Natural Resources – Division of Water Resources): This state agency has authority to administer the use of water resources in Nevada, including the issuance of water rights.
- U.S. Geological Survey (U.S. Dept. of the Interior): This federal agency is the primary water resources data collection agency in the United States. It is in the process of developing a regional groundwater monitoring program in west-central Nevada and adjoining portions of California.

Because these agencies have the jurisdiction, and over-riding authority and responsibility for the protection of water resources in Nevada and nationwide respectively, they should together provide impartial oversight for development of groundwater for this Project.

This Plan consists of four principal components:

1. Monitoring Requirements, related to production wells, monitoring wells, elevation control, spring flow, water quality, precipitation stations, quality of data, and reporting as proposed in Attachments A, B, and C to this document.

Incorporated in the development of the monitoring plan would be the inclusion of data from *Previous Monitoring*, related to monitoring of surface water and groundwater resources in Honey Lake Valley, Dry Valley, and Bedell Flat, including location of existing supply and monitoring wells, groundwater extraction rates, groundwater level measurements, flow from springs, water quality, precipitation data, and wetland/riparian conditions

2. Management Requirements, related to the creation and role of a Water Advisory Committee (WAC), and a subcommittee of the WAC – the Technical Advisory Committee (TAC), continued use of numerical groundwater flow models, establishment of action criteria, and details of the decision-making process;



3. Mitigation Measures, related to potential mitigation measures that could be implemented if “unreasonable adverse impacts” (to be defined) occur as a result of groundwater extraction associated with the North Valleys Projects; and
4. Modification of Plan, related to procedures that could be followed to modify the Plan if future changing conditions or mitigations warrant modifications.

The common goal of the Proponents, BLM, Cooperating Agencies, and the Nevada State Engineer (all referred to as “**Parties**”) in proposing and adopting this plan is to develop water resources data relating to a better understanding and analysis to assist the Nevada State Engineer in managing development of groundwater resources in Honey Lake Valley, Dry Valley, and Bedell Flat without resulting in unreasonable adverse impacts to public resources and the prior water rights of other appropriators (i.e., receptors). The Parties agree that groundwater extraction and management decisions can be based on data collected and analyzed for these proposed Projects and from the USGS proposed regional monitoring program. The Parties will collaborate via the WAC on technical data collection and analysis provided by the TAC.

The Parties acknowledge that pursuant to NRS 534.110(4) each right to appropriate groundwater in the State of Nevada carries with it the right to make a reasonable lowering of the static groundwater level at the appropriator’s point of diversion and that pursuant to NRS 534.110(5) the Nevada State Engineer may allow, at his discretion, the groundwater level to be lowered at the point of diversion of a prior appropriator with the provision that rights of holders of existing appropriations can be satisfied under such express conditions.

The Parties expressly acknowledge that the Nevada State Engineer has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of Nevada. The Pyramid Lake Reservation is held in Trust by the United States government. The U.S. and its representative, the BIA hold legal authority and jurisdiction over water resources located on the Reservation. Nothing contained in this Plan shall be construed as waiving or diminishing such authorities.

## **MONITORING REQUIREMENTS**

The Final EIS for the North Valleys Rights-of-Way Projects contains information about water resources data in Honey Lake Valley, Dry Valley, Bedell Flat, and surrounding areas. This information includes location of existing supply and monitoring wells, groundwater extraction rates, groundwater level measurements, flow from springs, water quality, precipitation data, and wetland/riparian conditions. This information, as well as data

available from other local, state, and federal agencies, would be compiled into a central database that would be expanded as new data are collected.

Generally, project specific monitoring may be the responsibility of the Proponents as recommended or agreed to by the TAC; however, the USGS is in the process of developing a regional groundwater monitoring program in west-central Nevada and adjoining portions of California (i.e., "Regional Study Area"). Objectives are to develop a network of monitoring wells in the Regional Study Area to monitor and document any regional effects of future groundwater development and management on groundwater levels, water quality, and groundwater discharge.

The USGS regional monitoring network would be designed to supplement rather than replace individual project monitoring programs. For example, Project monitoring would be conducted by the technical agents of the Proponents, while the USGS monitors other wells within Honey Lake Valley, Dry Valley, Bedell Flat, and surrounding basins. The USGS monitoring may include wells in the Project monitoring groups. In addition to the Proponents, Washoe County, Lassen County, and/or other agencies also may volunteer to participate in some monitoring activities.

The term "as is feasible" as used in this Plan shall relate to mechanical failures or other events/reasons outside the control of the Parties, or agreed by the Parties, that do not permit data collection.

### **Production Wells**

- Discharge rates and groundwater levels may be measured in production wells on a continuous or frequent basis, as is feasible, using permanent recording devices. Water levels could be measured during pumping and non-pumping periods.
- The proposed action includes six production wells at the Fish Springs Ranch property in eastern Honey Lake Valley, five wells in Dry Valley, and two wells in Bedell Flat.
- All monitoring data may be entered into a project database recommended by the TAC.

### **Monitoring Wells**

- A network of monitoring wells has been proposed by the Proponents to measure groundwater levels over time. Monitoring wells are located in Honey Lake Valley (**Attachment A**), Dry Valley (**Attachment B**), Bedell Flat (**Attachment C**). These

proposed monitoring networks would be subject to concurrence from the TAC. The USGS likely could establish additional monitoring wells in the Regional Study Area that includes some surrounding valleys that may be affected by groundwater extraction (e.g., Smoke Creek Desert, Pyramid Lake Valley, Warm Springs Valley, Antelope Valley, and/or Long Valley).

- Groundwater levels can be measured, as feasible, using permanent recording devices in selected monitoring wells. For those monitoring wells without continuous monitoring instruments, water levels could be measured initially on a quarterly basis to establish seasonal variations, followed by semi-annual or annual measurements after such seasonal trends have been established.
- The TAC may recommend that new monitoring well(s) be installed in key areas where there are no existing wells available for monitoring. These new wells can be located and constructed in a cost-effective manner, while meeting the objectives of early-warning detection of impacts, if any, from proposed groundwater extraction. Consideration could be given to completing nested wells that monitor individual aquifers at a single location. The Proponent(s) may be responsible for completing new monitoring well(s), unless another member of the Parties or the USGS agrees to complete the well(s).
- Initiation of groundwater level monitoring should commence as soon as possible, recognizing the desire to obtain baseline data prior to groundwater extraction. Groundwater levels should be measured in each aquifer from which ground water is extracted, as is feasible, in basins including and immediately surrounding Honey Lake Valley, Dry Valley, and Bedell Flat.
- Locations and monitoring frequency of the monitoring well network would be reviewed by the TAC on an annual basis, and may be reduced or expanded in scope upon its recommendation to the WAC.
- All groundwater level monitoring data would be entered into the project database on a regular basis, reflecting the monitoring interval chosen.

### **Elevation Control**

- Ground surface and measuring point elevations should be established using survey-grade GPS instrumentation at production and monitoring wells used as part of this Plan. Elevations for surface water and spring monitoring Locations should also be established.

The common datum would allow a comparative base for all elevation associated data; including the possibility of the occurrence of subsidence due to groundwater extraction.

- All elevation measurements would be added to the project database that contains project data.

### **Monitoring Springs and Riparian Areas**

- Selected springs and associated riparian areas could be monitored on a quarterly basis located in Honey Lake Valley (**Attachment A**), Dry Valley (**Attachment B**), Bedell Flat (**Attachment C**), and some surrounding valleys that may be affected by groundwater extraction (e.g., Smoke Creek Desert). Monitoring may consist of measuring flow rate and photo-documenting general site conditions (see attachments for proposed site-specific monitoring activities). Flow can be estimated for low flow conditions or where flow is diffuse on the ground surface. Monitoring frequency may be reduced later as recommended by the TAC to semi-annually or annually.
- Initiation of monitoring for springs and riparian areas could commence as soon as possible, recognizing the desire to obtain baseline data prior to groundwater extraction. Monitoring data may be recorded using a standard format to be used for each monitoring event.

### **Water Quality**

- Groundwater quality samples may be collected from selected production and monitoring wells and analyzed by a laboratory for major ions, trace elements, and/or isotopes. Wells to be sampled, schedule of sample collection, and list of parameters are included in **Attachments A, B, and C**.
- Frequency, sampling location, and water quality parameters may be reviewed by the TAC on an annual basis, and reduced or expanded in scope upon its recommendation to the WAC.

### **Precipitation Stations**

- Precipitation stations would be established in each of the following locations: eastern Honey Lake Valley, western Dry Valley, and central Bedell Flat. Existing precipitation stations may be used where possible. The purpose of collecting precipitation data is to

support conclusions regarding changes in groundwater levels with corresponding changes in precipitation, if it occurs.

- All precipitation data would be entered into the project database.

### **Quality of Data**

- The TAC would ensure that the entity or entities that collect water resources data follow standard protocols of data collection, recording and analysis (e.g., USGS and EPA), unless otherwise agreed to by the Parties.
- The water quality sampling program would include standard field and laboratory quality control procedures.

### **Reporting**

- All data collected under or as described in this Plan, would be fully and cooperatively shared among the Parties, and made available to the public after appropriate QA/QC evaluation procedures have confirmed its accuracy.
- All water resources information collected for the North Valleys Projects would be downloaded to the project database and updated periodically on a website that is accessible to all Parties and the public.
- In addition to updating the water resources project database on a regular basis, an annual summary report would be prepared by the TAC that summarizes all information collected during the previous calendar year, including an analysis of any trends. These reports would be provided to the WAC for annual assessment of potential impacts to water resources resulting from groundwater extraction in Honey Lake Valley, Dry Valley, and Bedell Flat.

## **MANAGEMENT REQUIREMENTS**

### **Water Advisory Committee (WAC) and Technical Advisory Committee (TAC)**

These two committees are to establish and carry out policy (WAC), and to provide the technical scientific expertise (TAC) necessary to impartially develop, evaluate and analyze data. Separation of the roles and responsibilities of these two bodies is crucial to the maintenance of scientific impartiality of the data program.

- The Parties would establish a Water Advisory Committee (WAC) with membership created from representatives from cooperating agencies listed above, BLM, Project Proponents, and Nevada State Engineer. The WAC may also include representatives from the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. A representative of the Nevada State Engineer's Office would be invited to participate as the chair of the WAC.
- The WAC would create a Technical Advisory Committee (TAC) as a subcommittee to the WAC. TAC members would be appointed by the WAC.
- The WAC would meet in the first quarter of each year, or at other times as mutually agreed upon.
- The TAC would meet initially to establish and execute the monitoring plan and, thereafter, at intervals deemed appropriate to review and analyze data.
- Roles and responsibilities of the WAC and TAC would be determined by the Parties under advisement of the Nevada State Engineer's Office.

**Suggested purposes and functions of the WAC would be to:**

1. Provide a forum for discussion of relevant data and analyses.
2. Share information regarding modeling efforts and model results, if used as part of the monitoring and management program.
3. Discuss needs for additional data collection and scientific investigations as recommended by the TAC.
4. Provide status reports and recommendations to the Parties.
5. Form recommendations for groundwater management actions based on reports from the TAC.
6. Recommend values for monitored variables (water levels, spring discharges, etc.) known as "action criteria", which, if exceeded, could be of concern to the parties. The values would be based on evaluations of historic hydrologic conditions and trends reported by the TAC.
7. Determine what constitutes an "unreasonable adverse impact" on a case-by-case basis.
8. Provide the Nevada State Engineer, Washoe County, and other relevant agencies with results of any analyses or technical evaluations, along with recommendations for specific mitigation.

### **Suggested purposes and functions of the TAC would be to:**

1. Review proposed project monitoring plans and recommend implementation as appropriate.
2. Review historic groundwater level trends, spring and creek flows to determine historic hydrologic trends. Where possible identify wet and dry regimes, climate effects on groundwater recharge rates and base flows in surface waters. Where possible identify critical lows for detrimental impacts on habitat and resource sustainability.
3. Develop/refine standards and quality control procedures for data collection, management and analysis.
4. Evaluate monitoring plans and data to determine whether data gaps exist, make appropriate recommendations to the WAC.
5. Evaluate all monitoring data to determine if any action criteria have been exceeded, indicating a possible unreasonable adverse impact, report findings to the WAC.

### **Numerical Ground-Water Flow Models**

- The TAC can recommend if numerical groundwater flow models that have previously been prepared for the North Valleys Projects for each of the three basins could be updated for use by the TAC/WAC for predicting future impacts.
- If deemed appropriate by the TAC/WAC, the full TAC or members of the TAC could update each model at the request of the Nevada State Engineer. Model output could be in the form of drawdown maps at appropriate intervals as requested by the State Engineer, plots of simulated water levels for the aquifer systems, and results of model calibration. The TAC would provide scientific review of modeling updates and hydrogeologic assumptions.

### **Action Criteria**

- Specific quantitative criteria (action criteria) would be developed by the WAC, based on data developed by the TAC, and recommended to the Nevada State Engineer for possible use to “trigger” management actions.
- Action criteria would be developed by the WAC and recommended to the Nevada State Engineer to provide early warning of unreasonable adverse impacts to public

resources and prior water rights of other appropriators. These criteria would be based on changes in groundwater levels, flow of springs, water quality, and/or changes in wetland/riparian habitat that can be attributed to groundwater extraction by the Project(s).

- If and when any action criterion is reached, the following management actions could be triggered:
  1. The WAC would request that the TAC conduct a thorough fact-finding to determine the level and extent of impacts, the TAC would report findings to the WAC;
  2. If WAC members agree that the action criterion exceedance is attributable to groundwater extraction by the Project(s), then the TAC would make recommendations to the WAC for possible mitigation actions to alleviate the impacts;
  3. The WAC members would determine whether or not to implement the recommended mitigation actions. The Nevada State Engineer's Office would determine whether the appropriate actions were implemented to conserve the resource.
- In the event that adverse environmental impacts are found to be unrelated to Project operations, the Nevada State Engineer should consult with the USGS regarding regional hydrologic conditions that may be contributing to the impacts.
- Any member of the WAC may propose a change to any action criterion. Any such change could be presented in writing to other members of the WAC, and accompanied by data and scientific analyses to support the proposed change. If the supporting analyses are found to be technically sound, then the WAC may recommend to the Nevada State Engineer that the action criterion be adjusted, as appropriate.

### **Decision-Making Process**

- If the WAC determines that an action criterion is exceeded and attributed to groundwater extraction by the Project(s), based on reports from the TAC, the WAC can recommend a course-of-action (i.e., management activity or mitigation measure). If within the WAC, there are: (1) different interpretations regarding relationship of an adverse impact to the Project's groundwater extraction; or (2) different opinions on the course-of-action, the Parties may jointly agree to conduct additional data collection and/or data review and analysis directed at resolving the different interpretations or



opinions, if possible. If that is not successful, the Parties could refer the issue to their respective managers and the Nevada State Engineer. Nothing herein limits or changes the Nevada State Engineer's authority, and any Party can petition the State Engineer to consider the issue.

- In the event that any of the Parties disagree as to whether the Proponents' proposed or ongoing groundwater extraction will result in unreasonable adverse impacts, any Party may petition the Nevada State Engineer to request that it determine whether there is or is not adverse impact(s) that require implementation of management or mitigation measures.

## **MITIGATION MEASURES**

- The Project(s) can mitigate unreasonable adverse impacts either as agreed upon by the Parties or after the Nevada State Engineer determines whether there are unreasonable adverse impacts due to Project(s) groundwater extraction. The Parties may take necessary steps to ensure that mitigation actions are feasible and reasonable.
- The mitigation portion of the plan should include a bond or escrow account established by the Project Proponents to fund possible mitigation actions.
- Mitigation measures may include one or more of the following:
  1. Geographic redistribution of groundwater extraction;
  2. Reduction or cessation of groundwater extraction from one or more wells;
  3. Restoration/modification of existing habitat;
  4. Establishment of new habitat;
  5. Augmentation of water resources with groundwater extracted for the Project(s);
  6. Purchase other water rights in the area, if available;
  7. Other measures as agreed to by the Parties and/or required by the Nevada State Engineer.

## **MODIFICATION OF THE PLAN**

- The Parties may modify this Plan by mutual agreement. The Parties also acknowledge that the Nevada State Engineer has authority to modify this Plan. In addition, the Parties may individually or jointly petition the Nevada State Engineer to modify this Plan in the event that mutual agreement cannot be reached. Any such petition shall only be filed

after 90 days written notice to the remaining Party members. Any Party member, including the Proponents, may submit written comments to the Nevada State Engineer regarding the merits of any such petition for modification.

# **ATTACHMENT A**

## **PROPOSED MONITORING PLAN FOR HONEY LAKE VALLEY**

### **ATTACHMENT A PROPOSED WATER RESOURCES MONITORING PLAN FOR HONEY LAKE VALLEY AREA**

This water resources monitoring program is proposed by Fish Springs Ranch for groundwater extraction of up to 8,000 acre-feet per year (af/yr) from six production wells located in eastern Honey Lake Valley, Nevada. The monitoring program would document changes that could be caused by the transition from agricultural pumping to a municipal well field, with groundwater pumped and transported to the Stead/Lemmon Valley areas.

#### **GROUNDWATER LEVELS**

In 2003-04, Fish Springs Ranch equipped 14 wells with pressure transducers that automatically record water levels every hour. These wells are shown on **Figure D-1** and are all located in the Nevada portion of eastern Honey Lake Valley. Most of these wells are completed in valley-fill deposits and/or volcanic bedrock. One of the wells (Jarboe MW-1) is completed in alluvial deposits which overlie the volcanic rock aquifer that is monitored by Jarboe MW-2. The existing monitoring network will be expanded to include a monitoring well near the California-Nevada state line.

The proposed six new production wells for Fish Springs Ranch would each be located near one of the existing monitoring wells. Each production well will be equipped with a flow meter to record cumulative water production. Cumulative well production will be recorded at least once per month along with manual measurements of depth to water table made at least weekly at each production well.

Ground surface and measuring point elevations will be measured at each production and

monitoring well using a survey-grade GPS instrument. Groundwater level data will be downloaded at least semiannually into a project database and the accuracy of the measurements checked with manual measurements using an electronic sounder. Future groundwater monitoring will be performed by the well field operator and USGS.

#### ***Sand and Astor Pass Wells***

The monitoring network includes the Sand and Astor Pass areas. One monitoring well is located in the Sand Pass area (Sand Pass MW-1) and two monitoring wells are located in the Astor Pass area (Astor Pass MW-1 and MW-2) (**Figure D-1**). Each is equipped with a recording pressure transducer.

#### ***Well Field Perimeter Wells***

The monitoring network includes four wells located around the perimeter of the primary well field. These include Neversweat MW-2, Cottonwood MW-2, BB MW-A, and Ferrel Playa Well (**Figure D-1**). Each well is equipped with a recording pressure transducer.

#### ***California-Nevada Border***

The monitoring well network will be expanded to include an existing well located west of the well field near the California-Nevada border. Prospective wells include USGS-1, USGS-4, or LB-2 (**Figure D-1**). These wells are located approximately 1 mile west of the state line. Permission to utilize the well would be sought from the respective owners. The selected well would be equipped with a recording pressure transducer.

#### ***Regional Wells***

The USGS will monitor water levels periodically in regional wells that are located within Honey Lake Valley and in other surrounding basins. Specific well locations will be established by the USGS in the near future and added to this monitoring plan at that time.

### **GROUNDWATER QUALITY**

Groundwater quality samples will be collected from all six production wells and selected monitoring wells and analyzed by a laboratory for major ions, trace elements, and/or isotopes. The wells to be sampled, schedule of sample collection, and list of parameters are described below.

The wells to be sampled for laboratory analysis include all production wells and the following monitoring wells: Neversweat MW-2, Cottonwood MW-2, BB MW-A, Ferrel Playa Well, Schaufus Well, and Wilson MW-1 (**Figure D-1**).

The following parameters will be measured in each water sample:

- **Field Parameters:** Water temperature, pH, and specific conductance.
- **Common Ions:** Calcium, sodium, potassium, magnesium, chloride, fluoride, sulfate, bicarbonate, nitrate, total dissolved solids, and total suspended solids.
- **Trace Elements:** Arsenic, barium, copper, iron, lead, manganese, and zinc.
- **Isotopes:** Oxygen-18 and deuterium.

More extensive water quality analysis will be performed for samples from the production wells to meet Safe Drinking Water requirements. Samples will be collected and analyzed from the selected wells on a quarterly basis for the first two years of production well pumping to establish seasonal variations. Thereafter, the wells will be sampled and analyzed semiannually. An exception is that the isotopes will be analyzed only once per year for the first two years.

Frequency, sampling location, and water quality parameters will be reviewed by the WAC on an annual basis, and may be reduced or expanded in scope upon its recommendation.

## **SPRINGS AND RIPARIAN AREAS**

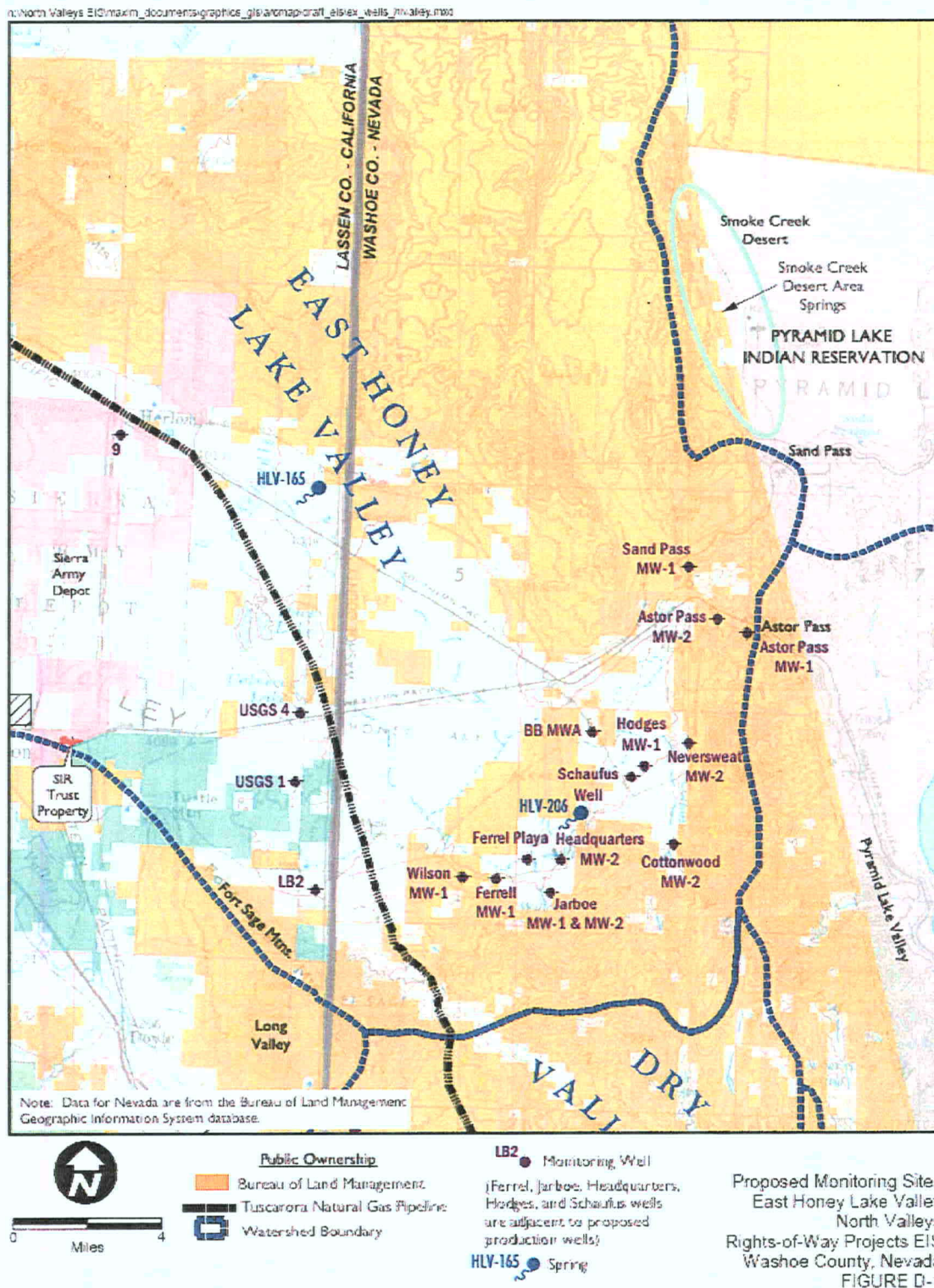
Selected springs and associated riparian areas will be monitored in eastern Honey Lake Valley to determine if pumping from Fish Springs Ranch would have an adverse effect on flow and/or vegetative conditions. The springs selected for monitoring are: HLV-206 (depressional wetland area); HLV-165 (High Rock Spring inside CA border); and one of the springs in Smoke Creek Desert near Sand Pass (HLV-168 through HLV-183) (**Figure D-1**). Monitoring activities will be conducted on a quarterly basis, with information periodically entered into the project database. Monitoring activities will include the following:

- **Flow:** Flow rate of water discharging from the spring will be measured using a flow meter or portable flume. Alternatively, a staff gage can be installed to measure relative changes in water level if the flow is in a well-defined channel. For low flows or dispersed flows on the ground surface, flows can be estimated.
- **Photo-Documentation of Vegetation:** One or more photographs will be taken of the spring site from the same location each time so that relative changes in vegetation and overall site conditions can be evaluated.

## **PRECIPITATION**

A precipitation gage will be installed at Fish Springs Ranch to measure precipitation amount on a daily basis. This information will be recorded weekly by the well field operator, and periodically entered into the project database.

**FIGURE D-1: Proposed Monitoring Wells and Springs in Eastern Honey Lake Valley**



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

- |   |  |
|---|--|
| <b>1. NOTICE OF APPEAL.....</b>   | A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).   |
| <b>2. WHERE TO FILE NOTICE OF APPEAL.....</b><br><br><b>WITH COPY TO SOLICITOR...</b> | U.S. Department of the Interior, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701<br><br>U.S. Department of the Interior, Office of the Solicitor, Pacific Southwest Region, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890   |
| <b>3. STATEMENT OF REASONS</b><br><br><b>WITH COPY TO SOLICITOR.....</b>              | Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).<br><br>U.S. Department of the Interior, Office of the Solicitor, Pacific Southwest Region, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890  |
| <b>4. ADVERSE PARTIES.....</b>  | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240.   |
| <b>5. PROOF OF SERVICE.....</b>   | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).   |
| <b>6. REQUEST FOR STAY.....</b>   | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.<br><br>Standards for Obtaining a Stay. Except as other provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, subpart b for general rules relating to procedures and practice involving appeals.

#### 43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

##### STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2005)



**PROGRAMMATIC AGREEMENT  
AMONG  
THE USDI BUREAU OF LAND MANAGEMENT, NEVADA (BLM);  
FISH SPRINGS RANCH, LLC (FSR)  
AND  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE FISH SPRINGS RANCH WATERLINE PROJECT**

WHEREAS, the BLM has determined that the Fish Springs Ranch Waterline Project (FSRW) proposed by FSR in Washoe County, Nevada may have an effect upon properties eligible for inclusion in the National Register of Historic Places (NRHP), and have consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, BLM will issue right-of-way for the waterline across BLM managed lands; and

WHEREAS, FSR has participated in the consultation and has been invited to concur in this Programmatic Agreement (PA); and

WHEREAS, this Programmatic Agreement covers all aspects of the planning, construction, and installation of the FSRW, including but not limited to, electrical and communication systems, substations, staging areas and access roads, the construction zone, extra work areas, and all ancillary facilities;

NOW THEREFORE, the signatories agree that construction of the FSRW shall be administered in accordance with the following stipulations to ensure that historic properties will be treated to avoid or mitigate effects to the extent practicable, regardless of surface ownership and to satisfy BLM Section 106 responsibilities for all aspects of the undertaking.

## **I. ROLES AND RESPONSIBILITIES**

The signatories agree that BLM will be the Lead Federal Agency for implementing this PA. The signatories agree that the BLM/SHPO Statewide Protocol, dated June 4, 1999, except as amended here, will be used to implement this PA. This Protocol is incorporated by reference.

The BLM is responsible for administering this PA. This includes but is not limited to: ensuring that all signatories carryout their responsibilities; overseeing all cultural resource work; assembling all submissions to the SHPO - including reports, determinations of eligibility and effect, and treatment or data recovery plans; and for seeking SHPO concurrence with all agency compliance decisions.

The BLM will be responsible for reviewing reports and participating in making determinations of eligibility, developing treatment options, and determining effects for the FSRW on private land.

The BLM will be responsible for reviewing reports and participating in making determinations of eligibility, developing treatment options, and determining effects for the FSRW.

## II. AREA OF POTENTIAL EFFECT

FSR proposes to construct a 38-mile waterline from wells located on FSR property in Honey Lake Valley in Washoe County, Nevada, to the terminal tank site located between Lemmon Valley and Antelope Valley in Washoe County, Nevada. The FSRW will convey up to 8,000 acre-feet of water per year, and will consist of installation and operation of wellheads, electrical distribution lines, water pipelines, a pump station, a surge tank, and a terminal storage tank, as well as an electrical substation on private land adjacent to the Alturas 345 kV transmission line in Honey Lake Valley. Some new wells may be drilled, and some existing wells may be converted to municipal standards, including re-drilling to enlarge the bore size. All FSR wells and waterlines will be located within a BLM-designated permanent right-of-way 60 feet wide (100 feet wide during construction), while the tank facilities will have rectangular rights-of-way corresponding to their structural footprints. The electrical substation and the pump station would be constructed on private land. Approximately 23 miles of the FSRW waterline would be on public lands administered by the BLM; approximately 15 miles of the FSRW waterline would be on private lands.

The Area of Potential Effect (APE) shall be defined to include all potential direct and indirect effects to cultural resources and properties of traditional religious and cultural importance from any activities associated with the undertaking without regard for land ownership.

The 100 foot wide temporary waterline corridor for construction, all access roads and all work areas or other facilities for this project will be managed according to the provisions of this PA. The APE for access roads outside of the waterline corridor will be a minimum of 100 feet wide with at least 50 feet on either side of centerline. The minimum APE for any staging areas or other temporary use area will be the footprint of the area plus 100 feet outward in all directions from the perimeter of each area. The APE for assessing indirect effects on historic properties outside of the waterline corridor will extend at least 1 mile in all directions from the perimeter of the direct effects APE.

The BLM may amend the APE as needed or as requested by the SHPO without amending the PA proper.

The initial APE is described and mapped in Appendix A.

### STIPULATIONS

The BLM, in cooperation with the other signatories shall ensure that the following stipulations are carried out:

#### A. Identification

1. The BLM, in consultation with the SHPO, shall ensure that FSR funds all appropriate cultural resource identification activities, including inventory, records research, informant interviews, archaeological, historic, or ethnographic report preparation, and curation based on the APE for all activity areas, or portions thereof, in a manner consistent with the BLM/SHPO Statewide Protocol.
2. Each signatory will identify interested persons, tribes, or affected ethnic groups to the BLM. The BLM will involve identified interested persons, tribes, or affected ethnic groups as appropriate, in all activities associated with the undertaking.

3. Required identification activities shall be completed regardless of the ownership (Federal or private) of the lands involved and FSR shall be responsible for gaining access to privately held lands through applying all reasonable means available including obtaining right of entry through courts. The BLM Authorized Officer may issue a Notice to Proceed for any construction segment as prescribed in Stipulation G.
4. The BLM shall make a good faith effort to consult with tribes, and identified affected ethnic groups, to identify properties of traditional religious and cultural importance and to inform the agencies of their eligibility and suggest appropriate treatment to avoid adverse effects to historic properties. Consultation procedures are specified in Appendix C.

#### B. Eligibility

1. The BLM shall evaluate all cultural resources located within the APE for eligibility to the National Register of Historic Places (NRHP). Eligibility will be determined prior to the initiation of activities that may affect cultural resources. Eligibility will be determined in a manner compatible with the BLM/SHPO Statewide Protocol.
2. The BLM, in consultation with the SHPO, shall consult with appropriate tribes, or identified ethnic groups to evaluate the eligibility of properties of traditional religious and cultural importance.
3. To the extent practicable, eligibility determinations shall be based on inventory information. If the information gathered in the inventory is inadequate to determine eligibility, FSR, through its contractors and subcontractors, shall conduct limited subsurface testing or other evaluative techniques to determine eligibility.

As needed, BLM, in consultation with the other signatories, will develop testing plans and consolidate all testing plans into one submission to the SHPO for concurrence. The BLM shall provide identified interested parties with the same review opportunity as afforded the SHPO. Any proposed testing shall be limited to disturbing no more than 25% of the surface area of the resource being evaluated.

4. If any of the signatories, tribes, or interested parties disagree regarding eligibility, the BLM shall notify all signatories of the dispute and seek a determination of eligibility from the SHPO. If the dispute cannot be resolved, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination will be considered final.

#### C. Treatment

1. In avoiding or mitigating effects, the BLM, in consultation with the SHPO, shall determine the precise nature of effects to historic properties identified in the APE. The BLM shall ensure that FSR, through its contractors, develops a comprehensive treatment or data recovery plan and seek SHPO concurrence on the consolidated plan. The BLM shall provide identified interested parties with the same review opportunity as afforded the SHPO.
2. To the extent practicable, the signatories shall ensure that FSR avoids effects to historic properties through project design, or redesign, relocation of facilities, or by other means in a manner consistent with the BLM/SHPO Statewide Protocol. When avoidance is not feasible, the BLM, in consultation with the signatories, identified interested persons, and appropriate tribes,

shall ensure that FSR develops an appropriate Treatment or Data Recovery Plan designed to lessen or mitigate project-related effects to historic properties.

3. For properties eligible under Criteria (a) through (c), mitigation other than data recovery may be considered in the Treatment Plan (e.g., HABS/HAER recordation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, Treatment Plans shall include provisions (content and number of copies) for a publication for the general public.
4. When data recovery is proposed, the BLM, in consultation with the SHPO, shall ensure that FSR develops a Data Recovery Plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-37) and Treatment of Historic Properties: A Handbook (Advisory Council on Historic Preservation 1980).
5. The BLM shall ensure that FSR, through its contractors, implements and completes the fieldwork portions of any final Treatment or Data Recovery Plan prior to initiating any activities that may affect historic properties located within the area covered by the Plan.
6. The BLM shall ensure that all records and materials resulting from identification and treatment efforts are curated in accordance with 36 CFR 79 in a BLM-approved facility in Nevada. Materials covered by Native American Graves Protection and Repatriation Act (NAGPRA) will be handled in accordance with 43 CFR 10. All materials collected will be maintained in accordance with 36 CFR 79 or 43 CFR 10 until the final treatment report is complete and collections are curated or returned to their owners. BLM will encourage private owners to donate collections from their lands to an appropriate curation facility.
7. The BLM shall ensure that all final archaeological reports resulting from actions pursuant to this PA will be provided to the signatories, tribes, and other interested persons. All such reports shall be consistent with contemporary professional standards and the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (48FR44716-44740).

#### D. Discovery Situations

1. Prior to initiating any activities within the APE, FSR will provide the signatories with a list of, and schedule for, the FSR employees, contractors, and subcontractors empowered to halt all activities in a discovery situation and who will be responsible for notifying BLM of any discoveries. At least one of these employees will be present during all FSR activities.
2. As soon as there is a discovery or unanticipated impact situation, all FSRW-related activities will halt in the immediate vicinity of the discovery and there after be directed away from an area at least 300 feet in all directions from the point of discovery. FSR through its contractors will immediately notify BLM of the situation.
3. The BLM shall notify the SHPO, Federal agencies, tribes, and interested parties as appropriate within one working day of being notified the discovery or unanticipated impact, and consider their initial comments on the situation. BLM will also initiate the procedures outlines on Appendix B. Within two working days after its initial notification, the BLM shall notify all signatories or other parties, of the decision to either allow FSRW activities to proceed or to require further evaluation or mitigation.
4. If, in consultation with the signatories, the BLM determines that mitigation for discoveries or

unanticipated impacts is required, the BLM shall solicit comments from the signatories, tribes, and interested persons, as appropriate, to develop mitigating measures. The signatories, tribes, and interested persons, as appropriate, will be allowed two working days to provide BLM with comments to be considered when BLM decides on the nature and extent of mitigative efforts. Within seven working days of initial SHPO notification, the BLM will inform all signatories of the nature of the mitigation required, and ensure that such mitigative actions are implemented before allowing FSR activities to resume.

5. The BLM shall ensure that reports of mitigation efforts for discovery situations are completed in a timely manner and conform to the Department of Interior's Formal Standards for Final Reports of Data Recovery Program (42 FR 5377-79). Drafts of such reports shall be submitted to the SHPO for review and comment as set forth in Stipulation H.3. of this PA. Final reports shall be submitted to the SHPO, other signatories, and interested persons for informational purposes.
6. Any disputes or objections arising during a discovery situation that cannot be resolved by the BLM Field Office and SHPO shall be referred to the BLM State Office for resolution. The BLM State Office decision will be considered final.
7. FSRW-related activities in the area of the discovery will be halted until FSR is notified by the BLM authorized officer in writing that mitigation is complete and activities can resume.

#### E. Other Considerations

1. The BLM shall ensure that all stipulations of this PA are carried out by the Federal agencies, SHPO, FSR, and all contractors, subcontractors, or other personnel involved with this undertaking.
2. The BLM shall ensure that ethnographic, historic, architectural, and archaeological work conducted pursuant to this PA is carried out by or under the direct supervision of persons meeting qualifications set forth in the Draft Secretary of the Interior's Professional Qualification Standards dated June 20, 1997 (62FR33707-33723) and who have been permitted for such work by the signatories.
3. FSR, in cooperation with the BLM and the SHPO, shall ensure that all its personnel and all the personnel of its contractors and subcontractors are directed not to engage in the illegal collection of historic and prehistoric materials. FSR shall cooperate with the BLM to ensure compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) on Federal lands and with Nevada statute NRS 383 for private lands.
4. FSR shall bear the expense of identification, evaluation, and treatment of all cultural properties directly or indirectly affected by FSRW-related activity. Such costs shall include, but not be limited to, pre-field planning, fieldwork, post-fieldwork analysis, research and report preparation, interim and summary report preparation, publications for the general public, and the cost of curating project documentation and artifact collections.
5. In general, the identification, evaluation, and treatment of cultural properties directly affected by FSRW shall be limited to the project-related rights-of-way, including all temporary rights-of-way for construction. However, identification, evaluation, and treatment efforts may extend beyond the geographic limits of a right-of-way when a resource being considered extends beyond the boundary of a right-of-way. For those cultural properties that extend beyond right-of-way

boundaries, the identification, evaluation, and treatment activities should be necessary, practical, and reasonable, and the associated expenses should be consistent with comparable activities within right-of-way boundaries.

6. Properties of traditional religious and cultural importance will be identified, evaluated, and treated through consultation with appropriate interested persons. FSR may contract for data gathering to assist the BLM in identifying, evaluating, and treating these properties. However, formal consultation, as needed, will be done by the BLM in consultation with the other signatories. Properties of traditional religious and cultural importance identification, evaluation, and treatment efforts shall be consistent with the BLM/SHPO Statewide Protocol.
7. Information on the location and nature of all cultural resources, and all information considered proprietary by tribes, will be held confidential to the extent provided by Federal and state law.
8. The BLM shall ensure that any human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking are treated with the respect due such materials. In coordination with this PA, human remains and associated grave goods found on Federal land will be handled according to the provisions of the NAGPRA and its implementing regulations (43 CFR 10). Human remains and associated grave goods on private land will be handled according to the provisions of Nevada statute NRS 383.

#### F. Monitoring

1. Any signatory may monitor actions carried out pursuant to this PA. To the extent practicable, all monitoring activities will be done so as to minimize the number of monitors involved in the undertaking.
2. Any areas that the BLM, in consultation with the SHPO, appropriate Federal agency, tribe, or interested party identifies as sensitive will be monitored by an appropriate professional or tribal representative during construction activities that may impact the area. Treatment Plans will contain Monitoring Plans as needed. Monitors shall be empowered to stop work in the specific area of concern to protect resources.

#### G. Notices to Proceed

After compliance with Stipulation A.3., the BLM, in consultation with the other signatories, may issue Notices to Proceed (NTP) to FSR for individual construction segments as defined by FSR in its Construction Plan, under any of the following conditions:

- (a) The BLM and SHPO have determined that there are no cultural resources within the APE for the construction segment; or
- (b) The BLM and SHPO have determined that there are no historic properties within the APE for the construction segment; or
- (c) The BLM after consultation with the SHPO and interested persons has implemented an adequate Treatment Plan for the construction segment, and
  - (1) The fieldwork phase of the treatment option has been completed; and

- (2) The BLM has accepted a summary description of the fieldwork performed and a reporting schedule for that work; and
- (3) FSR has posted a surety as set forth in Stipulation I. below for post-fieldwork costs of the Treatment Plan.

#### H. Time Frames

1. Reports: BLM shall review and comment on any report submitted by FSR within 30 calendar days of receipt. BLM will consolidate all comments and send them to FSR or SHPO, as needed.
2. Consultation with Interested Parties: Prior to SHPO consultation, the BLM shall submit the results of all identification and evaluation efforts, including discovery situations, and Treatment Plans to tribes and other identified interested persons for a 30 calendar-day review and comment period.
3. SHPO Consultation: After review by the other signatories, tribes, and interested parties, BLM shall submit the results of all identification, evaluation, and treatment efforts, including discovery situations, and Treatment or Data Recovery Plans to the SHPO for a 30calendar-day review and comment period.
4. If any signatory to this PA or other interested person fails to respond to the BLM within 30 calendar days of the receipt of a submission, the BLM shall presume concurrence with the findings and recommendations as detailed in the submission and proceed accordingly.
5. Reports: A draft final report of all identification, evaluation, treatment or other mitigative activities will be due to the BLM from FSR within nine (9) months after the completion of the fieldwork associated with the activity, unless otherwise negotiated.
6. Curation: All reports, records, photographs, maps, field notes, artifacts, and other materials collected or developed for any identification, evaluation, or treatment activities will be curated in a facility approved by the signatories at the time the final report associated with that activity is accepted by the BLM, unless materials and artifacts must be returned to the owner.

#### I. Surety Bonds

1. FSR will post a surety bond with the BLM in an amount sufficient to cover all post-fieldwork costs associated with inventory; implementing a Treatment Plan; Data Recovery Plan, or other cultural resource management activities, as negotiated by FSR when they contract for services in support of this PA. Such costs may include, but are not limited to post-fieldwork analyses, research and report preparation, interim and summary reports preparation, and the curation of project documentation and artifact collections in an approved curation facility. The surety shall be posted prior to BLM issuing any NTP.
2. The surety bond posted shall be subject to forfeiture if the post-fieldwork tasks are not completed within the time period established by the treatment option selected; provided, however, that the BLM and FSR may agree to extend any such time periods. The BLM shall notify FSR that the surety is subject to forfeiture and shall allow FSR thirty (30) days to respond before action is taken to forfeit the surety.

3. The surety bond shall be released, in whole or in part, as specific post-fieldwork tasks, including final disposition of all collections, are completed and accepted by the BLM, and the contractor has been paid.

**J. Dispute Resolution**

1. If any signatory to this PA, or an interested person, objects to any activities proposed pursuant to the terms of this PA, the BLM Field Office shall consult with the objecting party and the SHPO to resolve the issue. If the BLM Field Office determines that the objection cannot be resolved, it shall request the assistance of the BLM State Office to resolve the objection. The BLM State Office decision will be considered final.
2. The signatories may continue all actions under this PA that are not in dispute.

**K. Amendment**

Any signatory to this PA may request that this PA be amended, whereupon the signatories will consult to consider such amendment.

**L. Termination**

Any signatory to this PA may terminate the PA by providing thirty (30) days advance written notice with cause to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

**M. Execution**

1. Execution and implementation of this PA evidences that the signatories have satisfied their Section 106 responsibilities for all actions associated with the construction and installation of the FSRW.
2. In the event that this PA is terminated, the FSRW will be processed independently by each signatory according to their standard operating procedures.
3. This PA shall become effective on the date of the last signature below, and shall remain in effect until terminated as provided in Stipulation L, or until undertaking is completed, or five (5) years from the effective date.



CONSULTING PARTIES:

BUREAU OF LAND MANAGEMENT,  
CARSON CITY FIELD OFFICE, NEVADA

By: *Donald T. Hicks* Date: *2/9/2006*

Title: *Field Manager, Carson City*

NEVADA STATE HISTORIC PRESERVATION OFFICE

By: *Allen M. Baldwin* Date: *2/27/06*

Title: *Deputy SHPO*

CONCURRING PARTY:

FISH SPRINGS RANCH, LLC

By: *Douglas H. Mims* Date: *2/6/06*

Title: *Chief Operating Officer*

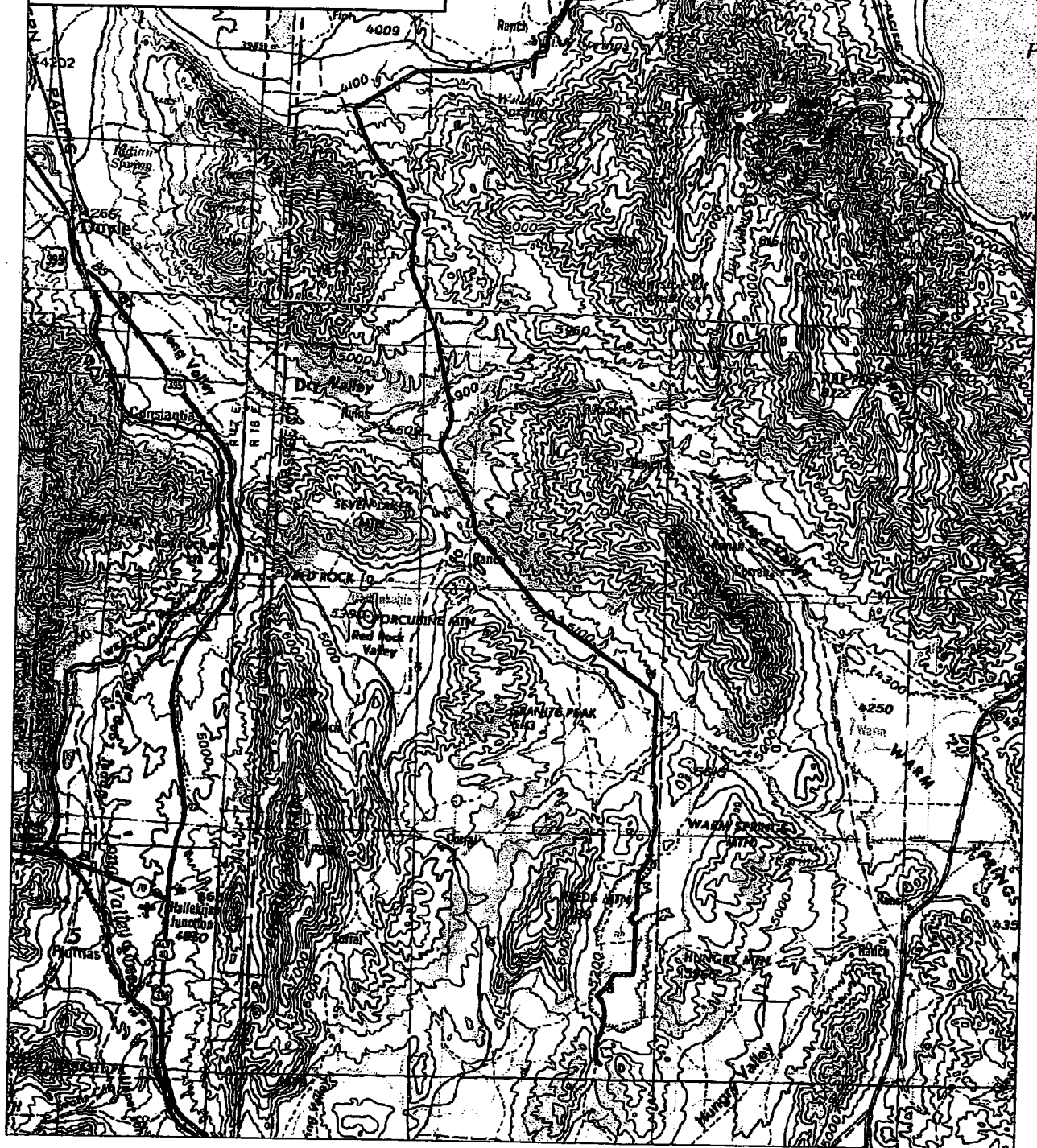
# Appendix A: Area of Potential Effect Fish Springs Ranch Waterline Project Area Overview

— Waterline route

Base maps: USGS 1:250,000 series

Susauville, California Reno, Nevada

Chico, California Lovelock, Nevada



## APPENDIX A: AREA OF POTENTIAL EFFECT

**FISH SPRINGS RANCH WATERLINE  
GENERAL LEGAL DESCRIPTION****Township 26 North, Range 19 East, M.D.M.**

Section 09	SE/4 SE/4
Section 10	N/2 SW/4, SW/4 SW/4
Section 15	W/2 NW/4
Section 16	N/2 NE/4, SE/4 NE/4, NE/4 SW/4, S/2 SW/4, N/2 SE/4
Section 17	S/2 SE/4
Section 20	W/2 NE/4 (Public), E/2 SW/4
Section 29	NW/4
Section 30	S/2 N/2, NW/4 SW/4

**Township 26 North, Range 18 East, M.D.M.**

Section 25	N/2 S/2 (NW/4 SW/4 Public)
Section 26	N/2 S/2 (Public)
Section 27	S/2 SE/4 (Public)
Section 33	SW/4 SE/4, NE/4 SE/4
Section 34	NW/4 NE/4 (Public), NE/4 NW/4 (Public), S/2 NW/4 (Public), NW/4 SW/4 (Public)

**Township 25 North, Range 18 East, M.D.M.**

Section 03	W/2 SW/4 (Public)
Section 04	NW/4 NE/4 (Public), SE/4 NE/4 (Public), NE/4 SE/4 (Public)
Section 10	SW/4 NE/4, N/2 NW/4, SE/4 NW/4, NW/4 SE/4, SE/4 SE/4
Section 14	NW/4 NW/4, S/2 NW/4, E/2 SW/4 (Public)
Section 23	E/2 N/2 (Public)
Section 26	SW/4 NE/4 (Public), E/2 NW/4 (Public), W/2 SE/4 (Public)
Section 35	E/2 NE/4 (Public), NE/4 SE/4 (Public)
Section 36	W/2 SW/4 (Public)

**Township 24 North, Range 18 East, M.D.M.**

Section 01	W/2 W/2 (Public), SE/4 SW/4 (Public)
Section 12	E/2 W/2 (Public)

- Section 13 N/2 NW/4, SW/4 NW/4, E/2 SW/4 (Public), SW/4 SE/4 (Public)  
Section 24 NW/4 NE/4 (Public), S/2 NE/4 (Public), E/2 SE/4 (Public)

**Township 24 North, Range 19 East, M.D.M.**

- Section 19 SW/4 SW/4 (Public)  
Section 30 W/2 NW/4 (Public), N/2 SW/4 (Public), SE/4 SW/4, SW/4 SE/4 (Public)  
Section 31 E/2 NE/4 (Public), NW/4 NE/4 (Public)  
Section 32 SW/4 NW/4 (Public), N/2 SW/4 (Public), SE/4 SW/4 (Public), SW/4 SE/4 (Public)

**Township 23 North, Range 19 East, M.D.M.**

- Section 04 SW/4 NW/4 (Public), N/2 SW/4 (Public), SE/4 SW/4 (Public), SW/4 SE/4 (Public)  
Section 05 E/2 NE/4 (Public), NW/4 NE/4 (Public)  
Section 09 N/2 NE/4 (Public)  
Section 10 W/2 NW/4 (Public), N/2 SW/4 (Public), SE/4 SW/4 (Public)  
Section 15 W/2 NE/4 (Public), NE/4 NW/4 (Public), N/2 SE/4 (Public), SE/4 SE/4 (Public)  
Section 23 NW/4 NW/4 (Public), S/2 NW/4 (Public), E/2 SW/4 (Public), SW/4 SE/4 (Public)  
Section 25 SW/4 SW/4 (Public)  
Section 26 NW/4 NE/4 (Public), S/2 NE/4 (Public), E/2 SE/4 (Public)  
Section 36 W/2 W/2 (Public)

**Township 22 North, Range 19 East, M.D.M.**

- Section 01 W/2 NW/4 (Public), NW/4 SW/4 (Public)  
Section 02 SE/4 SE/4 (Public)  
Section 10 SW/4 NE/4 (Public), N/2 NW/4 (Public), SE/4 NW/4 (Public), N/2 SE/4 (Public), SE/4 SE/4 (Public)  
Section 11 SW/4 SW/4  
Section 14 SW/4 NE/4, W/2 NW/4, NW/4 NW/4, E/2 SE/4  
Section 23 E/2 E/2  
Section 26 E/2 E/2 (E/2 NE/4, NE/4 SE/4 Public)  
Section 35 W/2 W/2

**Township 2 North, Range 19 East, M.D.M.**

- Section 02 NW/4 NW/4 (Public)  
Section 03 NE/4 NE/4

**APPENDIX B: DISCOVERY AND UNANTICIPATED IMPACTS PROCEDURES**

In the event that previously unknown cultural resources are discovered within the area of potential effects of the FSRW, or should the FSRW directly or indirectly impact known resources in an unanticipated manner, the following actions, at a minimum, will be initiated by the BLM in consultation with the signatories:

1. All activities will halt in the immediate vicinity of the discovery and all actions will be directed away from an area at least 300 feet in all directions from the point of discovery.
  - a. BLM and SHPO will be notified immediately and will have a cultural resources specialist, with the proper expertise for the suspected resource type, on-site as soon as possible.
  - b. If there is a cultural resource monitor at that location or in the general area of the discovery, BLM will call that person in to assess the find.
  - c. BLM will initiate consultation with the appropriate parties as set out in Stipulation D of the PA.
  - d. In the event that a cultural resource specialist or other necessary persons are not immediately available, BLM may be required FSR through its contractors to cover and/or otherwise protect the resource until such time that the appropriate parties can be present for inspection and/or evaluation.
2. Upon arriving at the site of the discovery, the cultural resource specialist shall assess the resource. The assessment shall include:
  - a. The nature of the resource (e.g., number and kinds of artifacts, presence/absence of features). This may require screening of already disturbed deposits, photographs of the discovery, and/or other necessary documentation.
  - b. The spatial extent of the resource. This may require additional subsurface testing, mapping or inspection, as is appropriate to the resource.
  - c. The nature of deposition/exposure. This may require interviews with construction personnel, other persons having knowledge concerning the resource or, in rare instances, the expansion of existing disturbances to establish the characteristics of the deposits.
3. Discoveries and unanticipated impacts to known resources will be managed according to the provisions of this PA. After consultation with the appropriate parties, BLM shall then make a determination of eligibility, treatment and effect. If necessary, BLM, in consultation with the appropriate parties, shall ensure that FSR, through its contractor, prepares and implements a treatment plan following the guidance provided in this PA

4. Any items covered by NAGPRA encountered in a discovery, or unanticipated impact situation, will be handled according to 36 CFR 10 or Nevada state laws, as appropriate.
5. All FSRW activities in the area of the discovery, or unanticipated impact, will be halted until FSR is notified by the BLM in writing that mitigation is complete and activities can resume.

## APPENDIX C: TRIBAL CONSULTATION PROCEDURES

**I. Identification of Parties for Consultation**

Within 10 working days of signing this PA, each signatory will provide the BLM, with a list of appropriate Federally-recognized tribes, traditional cultural and religious leaders, and appropriate tribal organizations or interests to be included in the initial consultation efforts for the FSRW. Each signatory will provide the following information when identifying appropriate Federally-recognized tribes, traditional cultural and religious leaders, and appropriate tribal organizations to include in the initial consultation. Other tribes or appropriate parties, identified during this consultation, or by other means, will be included in this consultation. Based on a written request, any Federally recognized tribes will be included in this PA as a concurring party.

Name of Tribe/Interested Party:

Interest in FSRW:

Special Conditions Impacting Consultation:

Tribal Leader:

Office Address:

Phone:

Fax:

E-mail:

Designated Representative:

Office Address:

Phone:

Fax:

E-mail:

**II. Consultation Methods**

The methods of contacting, communicating, and coordinating will include letters, telephone calls, and/or face-to-face meetings, as appropriate and necessary to afford tribes the opportunity for input.

**Letter Contact:** The BLM Authorized Officer or designated party will prepare a letter to the identified Tribes as early as possible in the study process explaining the proposed project or activity and indicating that this will begin a formal government-to-government consultation process. The letter will be prepared to ensure that Tribes are part of the initial contact and scoping process. The letter initiating the consultation will be signed by the BLM Authorized Officer.

The proposed activity will be explained in sufficient detail to allow for the Tribe to determine its level of interest, if any. A scope of work, a proposed schedule, and any significant activities, such as scoping meetings, or a decision date will be included as attachments.

**Follow-up Phone Contact:** The Authorized Officer or designated party will follow-up the initial letter with telephone contacts after 10 working days after the letters have been mailed.

Information from these telephone contacts will be documented using the attached telephone log format. This telephone log will be kept up to date and will become part of the administrative record. Any follow-up action recommended by the Tribe(s) will be noted.

**Planned Meetings:** The Authorized Officer or Designated Party will meet with designated Tribal Leaders and/or designated tribal representatives as soon as possible upon request of the Tribe in order to discuss the proposed project and related issues

Meetings will take place on the reservations or at other mutually agreed upon locations in order to minimize costs to tribal members and to ensure maximum participation.

Meeting dates will be coordinated with designated Tribal points of contact at least 10 working days prior to the meeting date.

The meeting will be confirmed by a letter to the Tribal leadership, with a copy furnished to the designated tribal representative or point of contact. The letter will include a purpose statement, a proposed agenda and a list of agency attendees.

Meeting summaries will be prepared within 5 working days following the meeting and will be distributed to the tribes, other appropriate parties and team members in draft. Comments will be incorporated as appropriate before finalizing the notes. Final meeting notes will be distributed within 10 working days following distribution of the draft notes.

**Concluding Consultation:** After reasonable and good faith efforts to address and resolve issues, the BLM Authorized Officer, in consultation with the signatories, will determine the appropriate point of closure, for the consultation on the proposed action or project and notify the Tribal leadership levels and representatives in writing. If ongoing consultation is productive, the Federal agencies and officially designated Tribal representative will make that determination and outline the appropriate scope, level, and process. (Ongoing consultation may include such things as continued coordination, updated information and/or participation of tribal monitors.)







OFFICE OF THE WASHOE COUNTY CLERK  
AMY HARVEY, COUNTY CLERK

April 4, 2006

Fish Springs Ranch, LLC  
Attn: Don Pattalock  
704 W. Nye Lane, Suite 201  
Carson city, NV 89703

REC'D - RENO

APR 10 2006

RECEIVED

I, Amy Harvey, County Clerk and Clerk of the Board of County Commissioners, Washoe County, Nevada, do hereby certify that as filed with the County Clerk on this date, the Board of County Commissioners, at its regular meeting on January 24, 2006 issued the following order:

**06-133      APPEAL CASE NO. AX05-014 – SPECIAL USE PERMIT CASE**  
**NO. SW05-009 – COMMUNITY DEVELOPMENT**

Based on the following findings, on motion by Commissioner Weber, seconded by Commissioner Galloway, which motion duly carried with Commissioner Sferrazza absent, Chairman Larkin ordered that the Planning Commission's denial be overturned and Special Use Permit Case No. SW05-009 for the Fish Springs Water Project be approved subject to the following 18 conditions:

**FINDINGS**

1. That the proposed project is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the High Desert Area Plan;
2. That the site is physically suitable for the type of development and for the intensity of development;
3. That the issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
4. That the Washoe County Board of County Commissioners gave due consideration to the information transmitted from the Washoe County Planning Commission and to the information received during the public hearing.

<p><b>CONDITIONS FOR SPECIAL USE PERMIT CASE NO. SW05-009</b> <b>FISH SPRINGS RANCH, LLC WATERLINE</b></p>
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Unless otherwise specified, all conditions must be met or financial assurances must be provided to satisfy the conditions prior to submittal for a building permit. The agency responsible for determining compliance with a specific condition shall determine whether the condition must be fully completed or whether the applicant shall be offered the option of providing financial assurances. All agreements, easements, or other documentation required by these conditions shall have a copy filed with the County Engineer and the Department of Community Development.

Compliance with the conditions of this special use permit is the responsibility of the applicant, its successor in interest, and all owners, assignees, and occupants of the property and their successors in interest. Failure to comply with any conditions imposed in the issuance of the special use permit may result in the institution of revocation procedures.

Any operations conditions are subject to review by the Department of Community Development prior to the renewal of a business license each year. Failure to adhere to the conditions may result in withholding renewal of the business license until conditions are complied with to the satisfaction of the Department of Community Development.

Washoe County reserves the right to review and revise the conditions of this approval should it determine that a subsequent license or permit issued by Washoe County violates the intent of this approval.

For the purposes of conditions imposed by Washoe County, "may" is permissive and "shall" or "must" is mandatory.

**SPECIFIC CONDITIONS OF APPROVAL**

1. A copy of the Clerk's Order stating conditional approval of this special use permit shall be attached to all applications for administrative permits issued by Washoe County, including the required building permits.
2. The applicant shall demonstrate substantial conformance to the plans approved as part of this special use permit. The Department of Community Development shall determine compliance with this condition.
3. The applicant and any successors shall direct any potential purchaser/operator of the site and/or the special use permit to meet with the Department of Community Development to review conditions of approval before the final sale of the site and/or the special use permit. Any subsequent purchaser/operator of the site and/or



the special use permit shall notify the Department of Community Development of the name, address, telephone number, and contact person of the new purchaser/operator within 30 days of the final sale.

4. The Regional Utility Corridor Report, which is a part of the Regional Plan, must be amended to include the proposed electrical substation. Once the Regional Plan is amended to include the substation, the proposed electrical substation must go before the Regional Planning Commission for conformance review. The County will issue no construction permits until this Regional process is completed, and the electrical substation is found to be in conformance with the Regional Plan. The Department of Community Development shall determine compliance with this condition.
5. The applicant shall submit a written waiver request to the Director of the Department of Community Development to the landscaping and parking standards required by the Development Code for the well, pump stations and related tanks, and the electrical substation. If the parking waiver is granted, at least one graveled parking space shall be provided at each site and shall be shown on the building permits. The Department of Community Development shall determine compliance with this condition.
6. All proposed new roads shall have an all-weather surface as approved by the County Engineer. The Department of Community Development shall determine compliance with this condition.
7. In addition to the requirements contained in Section 412 of the Development Code, the following landscaping and parking requirements shall apply for the terminal tanks located on Matterhorn Boulevard.
  - a. The tank(s) shall be set into the side of the hill as much as possible.
  - b. Landscaping and irrigation plans prepared and wet-stamped by a landscape architect licensed in the State of Nevada shall be submitted to the Department of Community Development for approval before the issuance of a building permit for the tank.
  - c. Native, drought-tolerant landscaping shall be preferred, and shall match the vegetation currently at the site. The Bureau of Land Management or the Washoe-Storey Conservation District shall approve plants and seed mix, which shall be adhered to by the applicant.
  - d. Temporary irrigation shall be provided to all revegetated areas for a minimum of three years to establish the vegetation. At the end of three years, staff of the Department of Community Development shall determine the success of the revegetation effort, and may require replanting or reseeding of failed vegetation.

- e. At least two all-weather parking spaces shall be provided. The Department of Community Development shall determine compliance with this condition.
- 8. On non-BLM land, native, drought-tolerant landscaping shall be preferred for all areas disturbed by construction activities, and shall match the vegetation of the surrounding area. Cacti protected under Nevada law shall be salvaged and replanted in undisturbed habitats. The BLM or the Washoe-Storey Conservation District shall approve plants and seed mix, which shall be adhered to by the applicant. The Department of Community Development shall determine compliance with this condition.
- 9. The applicant shall submit an estimate prepared and wet stamped by a landscape architect licensed in the State of Nevada for the revegetation/reseeding of all disturbed area not located on BLM-managed land. A bond or other financial assurance in the amount of 120 percent of this estimate shall be submitted to and held by the Department of Community Development for a period of three years following completion of revegetative efforts to assure reclamation. During these three years, and before the release of the performance bond or other financial assurance, the Department of Community Development may require reseeding/revegetation of those areas where revegetation efforts have failed. The Department of Community Development shall determine compliance with this condition.
- 10. A site perimeter fence for all facilities shall be constructed and shall be detailed on the plans submitted for the building permit for each facility. The fencing shall be coated Sudan brown or approved equivalent in color. The fence around the terminal tank shall have slats of a similar color to minimize visual appearance. The Department of Community Development shall determine compliance with this condition.
- 11. The tanks and all associated exposed facilities shall be painted or coated Sudan brown or equivalent approved color. Control buildings will have a similar earth-tone exterior color. The Department of Community Development will determine compliance with this condition.
- 12. Surplus excavated materials that cannot be used on the project site for backfill or reclamation shall be disposed of either on Fish Springs Ranch property or in an approved landfill. Before material may be deposited at Fish Springs Ranch, plans shall be submitted to the Department of Community Development and the County Engineer for approval outlining the disposition of the materials, and shall detail the methods and/or products that will be taken or used to prevent wind and water erosion. Stockpiling excess material at Fish Springs Ranch for an indefinite period shall not be approved. Applicant shall spread the material over the land at the approved disposal site and shall revegetate the imported material on a continuous



basis with a seed mixed approved by the Washoe-Storey Conservation District or the BLM. The Department of Community Development shall determine compliance with this condition.

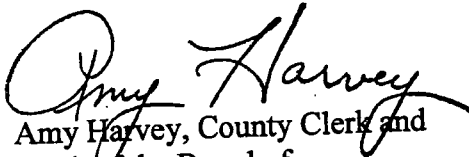
13. The use of straw bales for sedimentation and erosion control is prohibited. Alternative methods complying with the requirements of the Truckee Meadows Best Management Practices Handbook, the County Engineer, and Washoe County Health Department shall be used. The applicant shall prepare a reclamation / noxious weed control plan. The use of topsoil for reclamation obtained where noxious weeds are present shall be in accordance with the reclamation / noxious weed control plan. Growth of noxious weeds on the reclaimed area shall be removed from the pipeline corridor prior to release on the performance bond required in Condition 9. The Department of Community Development and the District Health Department shall determine compliance with this condition.
14. The following conditions shall be completed to the satisfaction of the County Engineer:
  - a. A complete set of construction improvement drawings, including an on-site grading plan, shall be submitted when applying for a building/grading permit. Grading shall comply with best management practices (BMP's) and shall include detailed plans for grading, site drainage, erosion control (including BMP locations and installation details), slope stabilization, and mosquito abatement. Placement or removal of any excavated materials shall be indicated on the grading plan. Silts shall be controlled on-site and not allowed onto adjacent property.
  - b. For construction areas larger than one acre, the developer shall obtain from the Nevada Division of Environmental Protection a Stormwater Discharge Permit or Waiver for construction and submit a copy to the Engineering Division prior to issuance of a grading permit.
  - c. The developer shall complete and submit the Construction Permit Submittal Checklist and pay the Construction Stormwater Inspection Fee prior to obtaining a grading permit. The County Engineer shall determine compliance with this condition.
  - d. A grading bond of \$1,500/acre of disturbed area shall be provided to the Engineering Division prior to any grading.
  - e. Provide documentation of access and easements for the sites to the satisfaction of the County Engineer.

- f. An approved occupancy permit shall be obtained from the Nevada Department of Transportation (NDOT), for access to, from, or under roads and highways maintained by NDOT and a copy of said permit sent to the Engineering Division.
  - g. A U.S. Army Corps of Engineers permit is required for crossing any waters of the U.S.
  - h. All disturbed areas in access easements shall be restored to at least preconstruction condition.
  - i. During construction, access easements shall remain open to allow for local and emergency traffic access.
  - j. The applicant shall obtain a street excavation permit from the Washoe County Engineering Division for all work in the County right-of-way.
15. The following conditions shall be completed to the satisfaction of the Department of Water Resources (DWR):
- a. In accordance with the applicable ordinances, improvement plan checking and construction inspection fees shall be paid with the improvement plan submittal.
  - b. The Applicant shall submit water improvement plans to the DWR for review and approval. A Professional Engineer licensed to practice in the State of Nevada must design the improvement drawings.
  - c. DWR approved improvement plans shall be used for construction. The DWR will be responsible to inspect the construction of the water improvements or appurtenant facilities.
16. Construction activities within 500 feet of residences shall be limited to the hours of 7:00 AM to 6:00 PM Monday through Saturday.
17. Blasting within 1,000 feet of any residence shall require written notification to these residences by the applicant, with a copy of the notice submitted to the Department of Community Development, at least 3 days prior to the scheduled blasting. The Department of Community Development shall determine compliance with this condition.

Page 7  
Fish Springs Ranch  
April 4, 2006

18. Pumping and supplying water as described in this application shall not commence until a Water Resources Monitoring and Management Plan is approved by the State Engineer and implemented. The applicant or his successors shall strictly adhere to all requirements and controls contained in the Plan concerning the withdrawal of water and the monitoring program. The applicant shall submit a yearly report demonstrating compliance with this condition. The Department of Community Development shall determine compliance with this condition.

Sincerely,

  
Amy Harvey, County Clerk and  
Clerk of the Board of  
County Commissioners

/jms

cc: ECO:LOGIC  
Attn: John Enloe  
10381 Double R Blvd  
Reno, NV 89521





# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Nevada Fish and Wildlife Office

1340 Financial Blvd., Suite 234

Reno, Nevada 89502

Ph: (775) 861-6300 ~ Fax: (775) 861-6301

May 16, 2006  
File No. 1-5-06-F-055

### Memorandum

To: Field Manager, Bureau of Land Management, Carson City, Nevada

From: Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada

Subject: Formal Consultation for Fish Springs Ranch, LLC Water Pipeline Project, Washoe County, Nevada

This document transmits the Fish and Wildlife Service's (Service) biological opinion based on our review of the subject action, which has been proposed by the Bureau of Land Management (BLM) and the Fish Springs Ranch, LLC (applicant) and its effects on the endangered Carson wandering skipper (CWS) (*Pseudocopaeodes eunus obscurus*) in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). Your agency's verbal request to initiate formal consultation was accepted on April 3, 2006.

This biological opinion was prepared using information contained in the Amended Fish Springs Ranch Biological Assessment (BA) (Bureau of Land Management 2006) received March 1, 2006; the North Valleys Rights-of-Way Projects Final Environmental Impact Statement (Bureau of Land Management 2005); meetings held on March 6, and March 31, 2006, with BLM and/or applicant representatives; written correspondence received March 14, and March 17, 2006, from the applicant; comments provided on the draft BO received on April 20, 2006, from the applicant, May 2, 2006, from BLM, and May 15, 2006, from Stetson Engineers Inc. on behalf of the Pyramid Lake Paiute Tribe, and telephone conversations with BLM on April 3, 2006, and between the applicant and the Service held on March 7 and 24, and April 3 and 4, 2006, and other documents. A complete administrative record of this consultation is on file at the Service's Nevada Fish and Wildlife Office.

TAKE PRIDE  
IN AMERICA 

Consultation History

This is the first consultation on the subject action. The Service received a threatened and endangered species list request on behalf of BLM for the proposed project on February 19, 2004. The Service responded on March 16, 2004 (File No. 1-5-04-SP-073).

On March 1, 2006, we received the Amended Fish Springs Ranch BA (Bureau of Land Management 2006). BLM requested our concurrence with their may affect, not likely to adversely affect determination for four species including the threatened bald eagle (*Haliaeetus leucocephalus*), threatened Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) (LCT), the endangered cui-ui (*Chasmistes cujus*), and the endangered CWS.

A meeting was held on March 6, 2006, to discuss the proposed project with BLM and the applicant. The applicant has requested section 7 coverage for impacts to non-Federal lands according to BLM's policy (Instruction Memorandum No. 2003-142, dated April 11, 2003) and the Interagency Agreement (U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration 2003) regarding application of the ESA to proposals for access to non-federal lands across lands administered by BLM and the Forest Service.

During telephone discussions with the applicant on March 24, the Service learned that direct impacts may occur to CWS habitat in the vicinity of East Alkali Flat, Washoe County, Nevada. These impacts were not identified in the BA. During a meeting held on March 31, 2006, the Service learned that pipeline construction and utility installation would impact 1.8 acres of salt grass habitat in this area. Subsequently, on April 3, 2006, we discussed the need for formal consultation with BLM and the applicant. Due to the new information regarding this impact to 1.8 acres of CWS habitat, we are unable to concur with the may affect, not likely to adversely affect determination for the CWS originally made by BLM.

We do, however, concur with BLM's may affect, not likely to adversely affect determination for the bald eagle, LCT, and the cui-ui for the following reasons:

1) no project facilities will be constructed within habitats (lakes, streams, wetlands, wintering areas) of the bald eagle, LCT, or cui-ui;

2) project power line construction, whether on public or private land, will follow Standard Stipulations contained in the Consolidated Resource Management Plan (Bureau of Land Management 2001, cited in Bureau of Land Management 2006) related to protecting raptors, including the bald eagle, from electrocution and collision through the use of "Suggested Practices for Raptor Protection On Powerlines", Raptor Research Report No. 4, Raptor Research Foundation, Inc. (1981)" (cited in Bureau of Land Management 2006);

3) temporarily disturbed areas in the project area will be revegetated and a monitoring program will be implemented for a minimum of two years following construction to determine success; remedial measures will be implemented if needed;

4) best management practices would be employed throughout the project area during the construction period;

5) a potential indirect impact to the elevation of Pyramid Lake is estimated to be so slight as to be insignificant. As proposed in Figure D-1, monitoring data from Sand Pass MW-1 and Astor Pass MW-1 and Astor Pass MW-2 are especially important in analyzing potential impacts to Pyramid Lake elevation. The applicants will provide monitoring data for these wells to the Service. Reporting will initially occur quarterly and possibly later on a less frequent basis if requested by the Service to verify that the potential indirect impact is not greater than estimated by the model and discussed in the FEIS [Bureau of Land Management (2005)];

6) monitoring of the ground water withdrawal related to this project will occur as required by Nevada Revised Statutes NRS 534.250 (Bureau of Land Management 2006); and

7) disposition of effluent waters generated by the proposed project is uncertain at this time. Any proposal that involves the use of BLM administered lands will be subject to further environmental analysis and possible consultation with the Service. Any future discharged effluent must be in compliance with existing or future federal and state laws and regulations regarding water quality standards. However, the Service still has concerns that future discharge of effluents may affect future water quality conditions in Pyramid Lake and to LCT and cui-ui. The BLM and the applicant are working with Washoe County and the City of Reno to limit discharges to the Truckee River and have indicated that it is highly probable there will be no discharge to the river associated with this project. Moreover, the City of Reno has indicated their intent to use reclaimed water on "green areas" within the community. Therefore, based on these assumptions and due to the assumption that if, in the future, some amount of discharge does occur this amount would be small in comparison to river flows and would be difficult to quantify and to determine any long-term affect to Pyramid Lake and listed fish.

We are also aware of the recent formation of a mediated group to address the issue of future effluent discharge to the Truckee River. We support this effort and anticipate that the Service and BLM will participate in the process of evaluating future water development and effluent discharge and potential impacts to the River and Pyramid Lake.

Because of these reasons, and our concurrence with BLM's not likely to adversely affect determination, the bald eagle, LCT, and cui-ui will not be discussed further in this consultation.

## DESCRIPTION OF THE PROPOSED ACTION

The action area is located within portions of Honey Lake Valley, Lassen County, California, and Washoe County, Nevada and Dry Valley, Bedell Flat, Antelope Valley and Lemmon Valley,

Field Manager

Washoe County, Nevada as portrayed in Figures 3-6 and 3-7 of the FEIS (Bureau of Land Management 2005).

The following project summary has been taken from the Amended Fish Springs Ranch BA (Bureau of Land Management 2006) and from discussions with the applicant.

This project requires granting of a rights-of-way permit across public land by the BLM to the applicant to allow installation of a pipeline to transport water from wells located north of Reno. The applicant is proposing to construct and operate a water supply and transmission project to convey up to 8,000 acre-feet/year (af/yr) of water to assist in meeting present and future water demands identified in the Washoe County Comprehensive Plan – North Valleys Area Plan which discusses the delivery of water to the Stead/Lemmon Valley Area, located about 15 to 35 miles north of Reno, Nevada.

The proposed project consists of installation and operation of wellheads, electrical distribution lines, water pipelines, pump stations, surge tanks, a terminal water storage tank and construction of an electrical substation in Honey Lake Valley. Operation, maintenance, and termination of the proposed facilities may ultimately become the responsibility of the water purveyor, the Washoe County Department of Water Resources or the Truckee Meadows Water Authority, after project construction is completed and the system is certified. The construction period is anticipated to occur between the summer of 2006 and the summer of 2007. Please refer to the BA (Bureau of Land Management 2006) and the FEIS (Bureau of Land Management 2005) for a detailed description of the proposed activities.

In addition to the above proposed activities and due to the uncertainty of indirect impacts to the CWS in the vicinity of Fish Springs Ranch/East Alkali Flat due to groundwater pumping, the applicant has agreed to several measures to avoid these potential adverse impacts. Based on CWS surveys to be conducted in 2006 using survey guidelines developed by the Service (2006), the applicant will coordinate with the Service on designing and implementing appropriate measures to avoid, maintain and possibly enhance CWS habitat in this area. This will include the commitment of necessary water resources by the applicant to maintain and possibly enhance existing stands of salt grass and nectar plants in this area for the CWS. Other items may include: future access for CWS surveys on private property, seeding of nectar plants, limited pesticide/herbicide use, invasive weed control, ground water monitoring and reporting, and habitat monitoring and reporting. An outline addressing these possible measures and monitoring efforts will be submitted to the Service for review and comment by September 30, 2006. A final outline will be completed shortly thereafter.

#### STATUS OF THE SPECIES

The CWS can be found locally distributed in grassland habitats on alkaline substrates in northeastern California and northwestern Nevada. The CWS can be distinguished from the other subspecies of *P. eunus* by a combination of several characteristics. The CWS is browner and less intensely orange on its dorsal surface, with thicker black coloring along the veins, outer

margin, and on both basal surfaces; and it is duller, overall, with an expanse of bright yellow and orange ground color, especially on the ventral surface, interrupted by broadly darkened veins. Infrequently specimens from other populations approach the less heavily marked extremes of the CWS. However, they do not give the impression of an insect with a dark ventral hindwing, and they lack the dark apex on the ventral forewing (Austin and Emmel 1998).

The CWS was given short-term protection under the Act on November 29, 2001, when the Service published an emergency rule (U.S. Fish and Wildlife Service 2001a) to list the skipper as an endangered species. A proposed rule to list the CWS was published in the Federal Register concurrently with the emergency listing (U.S. Fish and Wildlife Service 2001b). On August 7, 2002, the Service published a final rule listing the CWS as an endangered species (U.S. Fish and Wildlife Service 2002). Critical habitat has not been designated for this subspecies.

### Life History

Carson wandering skipper females lay their cream-colored eggs on salt grass, the larval host plant for the species (Garth and Tilden 1986, Scott 1986). It is a common species in the saltbush-greasewood community of the intermountain west and widely distributed in lowland areas of now dry pluvial lakes. The CWS life cycle is likely similar to other species of Hesperinae. Larvae of the subfamily Hesperinae live in silked-leaf nests, and some species make their nests partially underground. Larvae are usually green or tan and have a dark head and black collar. Pupae generally rest in the nest, and larvae generally hibernate (Scott 1986). Minno (1994) described a last instar (stage between molts) larva and a pupa of *P. eunus*. These descriptions were based on one specimen each collected in California. Some larvae may be able to extend their period of diapause for more than one season depending on the individual and environmental conditions (Dr. Peter Brussard, University of Nevada, Reno, pers. comm., 2001). Carson wandering skippers may differ from other *P. eunus* in producing only one brood per year during June to mid-July (Austin and Emmel 1998). The other subspecies produce a second brood in late July to late September (Austin and Emmel 1998). Additional research is needed to confirm that the CWS produces only one brood per year.

Little is known about the specific habitat requirements of the CWS beyond the similarities recognized among known locations of this subspecies. Based on observations of known, occupied sites, suitable habitat for the skipper in any given year has the following characteristics: elevation of less than 5,000 feet; located east of the Sierra Nevada; presence of green salt grass during March through June with a nectar source. Other characteristics may include open areas near springs or water; and possible geothermal activity (Brussard *et al.* 1999).

There are no data in the literature on the micro-habitat requirements of the CWS (Brussard *et al.* 1999). However, it is likely that suitable larval habitat is related to the water table. Many salt grass areas are inundated in the spring. During wet years, larval survival likely depends on salt grass areas being above standing water. In dry years, survival is probably related to the timing of the host plant senescence. Therefore, micro-topographic variation is probably important for larval survival because it provides a greater variety of appropriate habitat over time (Brussard *et*

*al.* 1999). Since the few historic collections of the CWS have been near hot springs, it is possible this subspecies may require the higher water table or ground temperatures associated with these areas to provide the appropriate temperatures for successful larval development (Brussard *et al.* 1999). More recent nectar sites are not located particularly close to geothermal springs. Larval development may not rely on appropriate temperatures but rather on the presence of good quality salt grass provided by more permanent water source.

Adult CWS require nectar for food. For a salt grass area to be appropriate habitat for the CWS, an appropriate nectar source must be present and in bloom during the flight season. Few plants that can serve as nectar sources grow in the highly alkaline soils occupied by salt grass. Plant species known to be used by the CWS for nectar include mustards (*Thelypodium crispum*, *Sisymbrium altissimum*), racemose golden-weed (*Pyrrcoma racemosus*), and thistles (*Cirsium arvense*, *C. vulgare*), birds-foot trefoil (*Lotus corniculatus*), small-flowered cleomella (*Cleomella parviflora*, *C. plocasperma*), heliotrope (*Heliotropium curassavicum*), cinquefoil (*Potentilla* sp.), and *Sesuvium verrucosum* (Brussard *et al.* 1999, Rebecca Neill, University of Nevada, Reno, *in litt.*, 2003; D. Murphy, pers. comm., 2004; Dr. Alyce Hreha, Michael Baker Jr., Inc., *in litt.*, 2004a and b). If alkaline-tolerant plant species are not present but there is a freshwater source to support alkaline-intolerant nectar sources adjacent to the larval host plant, the area may provide suitable habitat (Brussard *et al.* 1999). Nectar sources depend on various environmental conditions and are likely to be transitory. Thus, nectar sites used by the CWS may change from year to year.

#### Abundance and Distribution

No information is available on historic population numbers of the CWS. It is possible that a fairly large population of the subspecies occurred from the Carson Hot Springs site to the Carson River. Outflow from the springs likely supported a water table high enough to support salt grass and a variety of nectar sources. Urban development, water diversions, and wetland manipulations have eliminated most of the habitat type in this area (Brussard 2000).

Likewise, it is possible that more appropriate habitat once existed for the CWS between the existing populations in Lassen County, California, and Washoe County, Nevada (P. Brussard, pers. comm., 2001). Over time, habitat between these populations has become unsuitable and fragmented due to natural drying and human activities, and they may have become isolated from one another. The population locations are approximately 75 miles apart, and while the dispersal capability of the CWS is unknown, it is unlikely that any current genetic exchange occurs between them. This is because skippers, in general, seldom fly far (Scott 1986). Further surveys are needed to determine if the single CWS sighting near East Alkali Flat in Washoe County in 2004 indicates a population/metapopulation in that area. The subspecies likely represents a remnant of a more widely distributed complex of populations in the western Lahontan basin (Brussard *et al.* 1999).

Surveys conducted in 1998 throughout potential, suitable habitat in Nevada and California found two new nectar sites occupied by the CWS. One site was located in Washoe County, Nevada,

and the other site (two locations) was found in Lassen County, California. The site in Lassen County could be a rediscovery of the area where skippers were collected in the 1970s; however, the collection record is too vague to be certain (P. Brussard, pers. comm., 2001).

Surveys in 2002 and 2003 located four other nectar sites, two of them were in close proximity to the two previously known nectar sites in Honey Lake Valley, California (R. Niell, *in litt.*, 2003, Earth Tech, Inc. 2003).

In 2004, several additional nectar sites were found in Honey Lake Valley, California (A. Hreha, *in litt.*, 2004a and b, M. Sanford, *in litt.*, 2004a). Depending on the distances among these numerous nectar sites, the CWS in Honey Lake Valley may be comprised of one large population rather than a metapopulation. Further research is needed to determine the population structure in Honey Lake Valley, California.

In 2004, one new population was found in Nevada along the Carson River in Douglas County (D. Murphy, *in litt.*, 2004). Two single sightings of CWS were observed in 2004 in Washoe County, one in Spanish Springs Valley and the other near Flanigan (D. Murphy, *in litt.*, 2004, M. Sanford, *in litt.*, 2004a). The Spanish Springs Valley population was confirmed in 2005. To the best of our knowledge, only four populations are extant, one in Lassen County, California, two in Washoe, and one in Douglas Counties, Nevada. The subspecies is considered extirpated from the type locality in Carson City County, Nevada. The last year in which complete survey information for the CWS is available is 2004.

## Populations

### 1. Nevada

#### Carson City, formerly Ormsby County, Site

The CWS was first collected in 1965 at a location north of U.S. Highway 50, Carson City, Nevada. Habitat at this site has been greatly modified over time (Brussard *et al.* 1999). The Carson City site was surveyed for the CWS by the University of Nevada, Reno from 1997 to 2001. Only five individuals (four males and one female) were observed during surveys in June 1997. One possible sighting of a CWS occurred at a project site in 1998 (Brussard *et al.* 1999). No individuals were observed at this site in 1999, 2000, or in 2001 (P. Brussard, pers. comm., 2000; R. Niell, pers. comm., 2001). In 2002, surveys were again conducted with no individuals observed (Marcy Haworth, U.S. Fish and Wildlife Service, pers. obs., 2002a).

Habitat changes resulting from drainage manipulations for residential and commercial development are likely responsible for this probable extirpation (Brussard *et al.* 1999). Furthermore, construction of a freeway bypass will eliminate and fragment the remaining unoccupied habitat (12 acres) of the CWS at this site. Construction began in 2002-03.

Douglas County Site

This nectar site, found and searched in 2004, occurs on BLM administered lands in Douglas County. The potential nectar sources included bird's foot trefoil and the site is about 10 acres in size. Additional habitat likely extends onto adjacent Nevada state lands and City of Incline Village lands. The entire habitat on the three properties combined is estimated to be about 140 acres. Salt grass occurs throughout the entire habitat and is surrounded and interspersed with a sagebrush (*Artemesia* sp.), greasewood (*Sarcobatus vermiculatus*), *Atriplex* sp. overstory. Approximately nine CWS were observed but none were seen on nectar (R. Neill, *in lit.*, 2004).

Washoe County Site #1 (within project area)

This site in Washoe County occurs on BLM and adjacent private lands. The nectar site is estimated to be about 25 to 30 acres, with approximately half of the site occurring on BLM lands and half on private lands (Brussard *et al.* 1999). Because there are different management activities occurring on the public versus the private lands, it will be reported as two nectar sites (BLM; Private). The nectar source, racemose golden-weed is abundant, as is salt grass throughout both sites. Surveys were not conducted in 1999 or 2000 at these nectar sites. In 2001, searches of this area were made to confirm the CWS's presence. Five individuals were found at the nectar site on BLM lands; private lands were not searched (Virginia Rivers, Truckee Meadows Community College, pers. comm., 2001). In 2002 and 2003, searches of the BLM nectar site were made to confirm the CWS's presence and 3 and approximately 15 individuals, respectively, were observed in one day (M. Haworth and Walt Devaurs, Bureau of Land Management, pers. obs., 2002; M. Haworth and W. Devaurs, pers. obs., 2003). In 2004, 1 and 3 CWS were observed during two days of searching the BLM nectar site (M. Haworth and Claudia Funari, Bureau of Land Management, pers. obs., 2004).

In 2005, the private parcel (80 acres), along with 25 acre-feet of ground water rights, was acquired through Southern Nevada Public Lands Management Act funds by BLM and will be managed by BLM. This entire site is now approximately 320 acres in size.

In 2005, 17 individuals (males and females) were observed in the combined area (M. Haworth and Claudia Funari, Bureau of Land Management, pers. obs., 2005).

Washoe County Site #2 (single sighting)

This nectar site was found in 2004. This site is located on private lands in Spanish Springs Valley. One male CWS was observed nectaring on *Cleomella plocasperma* (D. Murphy, pers. comm., 2004). The nectar site where the CWS was seen was less than 5 acres in size but this particular nectar source, along with other known nectar sources such as racemose golden-weed, bird's foot trefoil, and *Sisymbrium altissimum*, occurred in scattered areas over the property. Suitable habitat is estimated at approximately 40 acres. Additional CWS habitat may occur on adjacent private property.



A habitat conservation plan for the CWS was developed in 2005 to address and mitigate the loss of 39 acres of habitat at this site (Lionel Sawyer & Collins 2005). An off-site mitigation area of 39 acres will be acquired by the developers to mitigate for this loss.

In 2005, the adjacent private property was surveyed (M. Haworth and Claudia Funari, Bureau of Land Management, pers. obs., 2005) and 4 individuals (3 males, 1 female) were observed during the survey period. This adjacent parcel is approximately 200 acres in size.

#### Washoe County Site #3 (single sighting) (within project area)

A single male CWS was observed in 2004 on salt grass along the southeastern boundary of an alkali flat south of Flanigan (M. Sanford, *in litt.*, 2004a). Possible nectar sources could have been *Chrysothamnus* sp. *Sisymbrium altissimum*, *Comandra unbellata* or *Medicago sativa*. Approximately 700 acres were surveyed in this area (Sanford, *in litt.*, 2004b, Sanford 2004).

## 2. California

### Lassen County Sites

The two nectar sites found in 1998 in Lassen County, California, occurred on public lands managed by the California Department of Fish and Game (CDFG) and private lands. In 1998, two CWS individuals were observed on the public lands, while several individuals were observed at a nectar site less than 5 acres in size on the private lands. These nectar sites are located approximately 5 miles from each other. Surveys were not conducted at these sites in 1999. Surveys were conducted in 2000, and while several individuals were seen on the private property nectar site, none were seen on the public lands (P. Brussard, pers. comm., 2000). Salt grass is abundant in these areas but the attraction appears to be the nectar source, which is birds-foot trefoil. In 2001, searches were conducted to confirm the CWS's presence. A few CWS sightings (three one day and four on another day) were observed on the private property nectar site, but again, none were observed on the public lands nectar site (V. Rivers, pers. comm., 2001). In 2002, no individuals were observed on the private property nectar site (M. Haworth, pers. obs., 2002b, R. Niell, *in litt.*, 2003). In 2002 two individuals were seen on the CDFG public lands (S. Black, *in litt.*, 2002, M. Vaughn, *in litt.*, 2002; R. Niell, *in litt.*, 2003).

During surveys conducted in the Honey Lake Valley in 2002 and 2003, four more nectar sites were found. In 2002, a new nectar site was found near the Wendel Hot Springs area. On four different days, 1 to 20 individuals were seen nectaring on *Cleomella parviflora*, *Potentilla* sp., and birds-foot trefoil (R. Niell, *in litt.*, 2003). Also in 2002, three individuals were seen on birds-foot trefoil on Mapes Road, approximately 3 miles west of the public/private site, (Peter Epanchin, U.S. Fish and Wildlife Service, *in litt.*, 2002). In 2003, CWS were observed on two parcels of lands (The Island, Cross Depot Access) that have been transferred to the Honey Lake Conservation Team (HLCT) for future deeding to the California State Lands Commission (CSLC). The number of CWS observed nectaring on *Heliotropium curassavicum* ranged from 1 to 33 over 3 survey days at these two sites (Earth Tech, Inc. 2003).

In June of 2004, employees of Michael Baker Jr., Inc., inventoried land around Honey Lake shoreline within the lake's boundary (meander) line. Forty areas were identified, based on data collected (nectar sources, salt grass areas, elevation, soil alkalinity, nearby water sources, etc.), as potential CWS habitat to be surveyed for CWS presence during the flight season. As a result of this effort, 23 nectar sites for the CWS were found (A. Hreha, *in litt.*, 2004a and b) in Honey Lake Valley, California. Most of the surveys occurred on lands immediately around the lake on former military lands, currently held by the HLCT. Other, more upland, areas were surveyed with permission from the landowners.

Due to the number of new occupied nectar sites found (17), they are grouped into 6 general areas around Honey Lake [North Shore (Honey Lake Ranch); North Shore (Dakin Unit); East Shore (Wendel Hot Springs); East Shore (Amedee Hot Springs); Northern Shore Island; Western Shore Island] for reporting purposes.

The six general areas are discussed as follows:

North Shore (Honey Lake Ranch). This general area includes two new nectar sites where one CWS individual was observed on *Heliotropium curassavicum* at each site. Land ownership included HLCT and private lands.

North Shore (Dakin Unit). This general area includes two new nectar sites where 1 and 10 CWS individuals were observed on *Heliotropium curassavicum*. Land ownership included HLCT, private, BLM, and state lands.

East Shore (Wendel Hot Springs). This general area includes four new nectar sites where between 1 and 186 CWS individuals were observed on *Heliotropium curassavicum*, bird's foot trefoil, and *Sesuvium verrocosum*. Land ownership included HLCT, private, and BLM lands.

East Shore (Amedee Hot Springs). This general area includes three new nectar sites where one CWS was observed at each site on *Heliotropium curassavicum*. Land ownership included HLCT and state lands.

Northern Shore Island. This general area includes five new nectar sites where 1 to 25 CWS were observed on *Heliotropium curassavicum*, and *Sesuvium verrocosum*. Land ownership included HLCT, private, and state lands.

Western Shore Island. This general area includes one new nectar site where three CWS were observed on *Heliotropium curassavicum*. Land ownership included HLCT, private, and state lands.

In 2004, known/occupied CWS habitat around Honey Lake was estimated at 4,000 acres (salt grass, nectar, other) (Honey Lake Conservation Team 2005).

To date, an estimated 5,230 acres (salt grass, nectar, other) of known/occupied CWS habitat occurs throughout its range.

## ENVIRONMENTAL BASELINE

As indicated above, the action area is defined as portions of Honey Lake Valley, Lassen County, California, and Washoe County, Nevada, and Dry Valley, Bedell Flat, Antelope Valley and Lemmon Valley, Washoe County, Nevada as portrayed in Figures 3-6 and 3-7 of the FEIS (Bureau of Land Management 2005). Within this area, there are three CWS populations/sites. One occurs at the Washoe County Site #1, also known as the Warm Springs Valley/Winnemucca Ranch Road population, one at Washoe County Site # 3, also referred to as the East Alkali Flat site, and at the Lassen County Sites located around Honey Lake proper in Honey Lake Valley, California. To date, there is an estimated 5,020 acres (salt grass, nectar, other) of known/occupied CWS habitat within the action area.

### 1. Nevada

#### Washoe County Site #1, Warm Springs Valley/Winnemucca Ranch Road Population

As indicated earlier, this CWS population was located in 1998 on BLM and private lands (Brussard *et al.* 1999). Surveys were not conducted in 1999 or 2000. Since 2001, individuals have continued to be observed (V. Rivers, pers. comm., 2001; M. Haworth and Walt Devaurs, Bureau of Land Management, pers. obs., 2002; M. Haworth and W. Devaurs, pers. obs., 2003; M. Haworth and Claudia Funari, Bureau of Land Management, pers. obs., 2004). In 2005, 17 individuals (males and females) were observed in the combined area (M. Haworth and Claudia Funari, Bureau of Land Management, pers. obs., 2005).

Several past and ongoing Federal actions have occurred in or near this CWS population. One action involved the removal of livestock grazing from the original BLM pastureland. This livestock removal is restoring the functioning condition of a few springs located in the pasture as well as removing grazing pressure on CWS (eggs, pupae, larvae, adults) and their habitat (salt grass, nectar source). Improving these springs' functions will improve CWS larval habitat conditions (quality and quantity of salt grass) as well as improving the quality and quantity of the nectar source for CWS adults and egg laying opportunities for adult females.

In 2005, BLM acquired (through Southern Nevada Public Lands Management Act funds) 80 acres of private property, with 25 acre-feet of associated ground water rights, immediately adjacent to the BLM administered lands supporting the CWS. This former private property also supports CWS and habitat. This acquisition provides protections to this CWS population through BLM management. BLM will continue to survey and monitor CWS populations, monitor habitat conditions, and implement appropriate management actions as necessary.

Several other past Federal actions related to recreational activities (off-road rock climbing, endurance horse races, rodeo cattle drive) or grasshopper and cricket suppression on public lands have not adversely impacted this population due to the various avoidance and minimizing measures implemented by the projects.

We are unaware of any past or ongoing state, tribal, or local actions affecting this population. Although domestic well usage by private landowners in this portion of the action area may impact CWS habitat (Brussard *et al.* 1999), we have no specific data to document this impact.

#### Washoe County Site #3, East Alkali Flat

A single male CWS was observed in 2004 on salt grass along the southeastern boundary of East Alkali Flat located south of Flanigan (M. Sanford, *in litt.*, 2004). Possible nectar sources could have been *Chrysothamnus* sp. or *Medicago sativa*. A survey of this area was not conducted in 2005. It is currently unknown whether this area supports a viable CWS population.

We are unaware of any past or ongoing Federal, state, tribal, local or private actions that are affecting this site.

## 2. California

#### Lassen County Sites

As mentioned above, two nectar sites were found in 1998 in Lassen County, California, on public lands managed by the CDFG and private lands. In 1998, two CWS individuals were observed on the public lands, while several individuals were observed on the private lands (Brussard *et al.* 1999). Surveys were not conducted at these sites in 1999. Surveys were conducted in 2000, and individuals were seen on the private property nectar site, but none on the public lands (P. Brussard, pers. comm., 2000). In 2001, a few CWS sightings were observed on the private property nectar site, but again, none were observed on the public lands nectar site (V. Rivers, pers. comm., 2001). In 2002, no individuals were observed on the private property nectar site (M. Haworth, pers. obs., 2002b, R. Niell, *in litt.*, 2003). In 2002, two individuals were seen on the CDFG public lands (S. Black, *in litt.*, 2002, M. Vaughn, *in litt.*, 2002; R. Niell, *in litt.*, 2003).

During surveys conducted in the Honey Lake Valley in 2002 and 2003, additional nectar sites were found (R. Niell, *in litt.*, 2003; Peter Epanchin, U.S. Fish and Wildlife Service, *in litt.*, 2002; Earth Tech, Inc. 2003).

In June of 2004, employees of Michael Baker Jr., Inc., inventoried land around Honey Lake shoreline within the lake's boundary (meander) line. Twenty-three nectar sites for the CWS were found (A. Hreha, *in litt.*, 2004a and b) in Honey Lake Valley, California. Most of the surveys occurred on lands immediately around the lake on former military lands, currently held

by the HLCT. Other, more upland, areas were surveyed with permission from the landowners. Seventeen of these sites appeared to be new locations.

Surveys were conducted around Honey Lake in 2005, with numerous CWS sightings; however, results have not been finalized.

Past and ongoing Federal actions affecting this population/metapopulation include the transfer of Honey Lake ownership from Department of Defense to the State of California. Prior to the State of California accepting these lands, the HLCT will hold title. During this interim period (2003-2008), studying, promoting, and enhancing CWS populations and habitat around the lake will occur with funding provided by the Department of Defense. Development of a CWS conservation plan will also occur. The land transfer and associated actions should provide continued protection of numerous CWS sites around the lake and improve our understanding of this subspecies.

Other past Federal actions (Federal prison construction, other land transfers, ordnance and explosive response, Caltrans wetland bank creation, grasshopper and cricket suppression, Federal Aid to CDFG) have not resulted in adverse affects to this population/metapopulation.

We are unaware of past or ongoing activities by State, tribal, or local entities that are affecting the CWS in this portion of the action area. Although domestic well usage, grazing and recreational activities by private individuals may impact CWS and/or their habitat, we have no specific data to document these impacts.

To date, no adverse impacts to CWS have been permitted within the action area prior to this proposed action.

#### EFFECTS OF THE PROPOSED ACTION

The proposed action involves the granting of a rights-of-way permit by the BLM to the applicant across public land to allow installation of a pipeline to transport water from wells located north of Reno. The applicant is proposing to construct and operate a water supply and transmission project to convey up to 8,000 af/yr of water to assist in meeting present and future water demands to the Stead/Lemmon Valley Area, approximately 15 to 35 miles north of Reno, Nevada. The construction of this water supply and transmission project could have direct and indirect short-term and long-term effects on the CWS at the occupied sites located at East Alkali Flat and Warm Springs Valley/Winnemucca Ranch Road.

Installation of a portion of the proposed pipeline and utilities would temporarily (no more than 3 to 5 years) remove no more than 1.8 acres of occupied/suitable CWS salt grass habitat near East Alkali Flat. This removal would directly affect any CWS egg, larvae, or pupae in this impact area. Any CWS eggs, larvae, or pupae that may exist within these 1.8 acres would likely die as a result of being compacted by construction vehicles, or buried during the removal or side casting of vegetation during trenching activities.

The damage or removal of the salt grass vegetation would result in the loss/reduction of sheltering and feeding areas for any CWS eggs, pupae, and larvae that may remain.

The damage or removal of the salt grass vegetation would result in the loss/reduction of this area for breeding by adults and for egg deposition by females until restoration is complete. Restoration activities will decrease the time necessary for replacement of this loss of salt grass habitat.

The installation of wooden power poles (5 to 6) for the 25 kV power line would permanently impact no more than an estimated 12 square feet within the 1.8 acres of salt grass habitat within the construction corridor.

Carson wandering skippers (eggs, pupae, larvae) may be injured or killed as a result of a contaminant spill (fuels, other liquids), load loss of materials during construction of the pipeline, during transportation of materials, or restoration activities within the 1.8 acres of salt grass habitat.

Carson wandering skippers (eggs, pupae, larvae, adults) may be injured or killed during activities associated with vegetation restoration within the 1.8 acres of salt grass habitat near East Alkali Flat. Restoration activities will decrease the time necessary for replacement of this loss of salt grass habitat.

As indicated above, approximately 5,020 acres of known/occupied CWS habitat occur within the action area. The loss of 1.8 acres represents a loss of 0.04 percent of the available habitat in the action area or a loss of 0.3 percent (1.8/700) of the available habitat surveyed at this site.

By avoiding the late May-mid July adult flight period to conduct these construction activities within the 1.8 acres of salt grass habitat at East Alkali Flat, no adult CWS would be directly impacted. By avoiding the late May-mid July adult flight period to conduct restoration activities within the 1.8 acres of salt grass habitat at East Alkali Flat, no adult CWS would be directly impacted.

Using Winnemucca Ranch Road as an access to the project area could result in direct impacts to CWS (eggs, pupae, larvae, adults) occupying the area immediately adjacent to a portion of this road. Construction vehicles would increase the amount of traffic traveling this road during the adult flight season, resulting in possible vehicle mortality. The portion of the road adjacent to this population has not been paved; therefore, an increase in vehicle truck traffic could increase dust drifting onto the habitat. Any accident along this portion of the road could impact the population due to vehicle presence, fuel or other liquid spills, or material (pipes, etc.) spills. This could result in injury or death to eggs, pupae, larvae, or adults. Damage to the salt grass habitat as well as the nectar source could occur affecting the amount of feeding, sheltering, breeding, and egg deposition areas available.

By avoiding the use of Winnemucca Ranch Road as a construction access for the proposed project, these types of impacts will not occur to CWS eggs, pupae, larvae, or adults in the adjacent population.

No impact to any life stage of the CWS is anticipated for the Lassen County, California, sites as a result of the proposed project.

### CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

Private actions include a proposal to build 8,700 homes on 8,687 acres in Winnemucca and Upper Dry Valleys, Washoe County, Nevada. Currently, the acreage is a mixture of privately owned and BLM administered land. The development proposal includes leaving up to 50 percent of the land as natural areas and avoiding meadows used for pasture and wildlife. A land exchange with BLM would be necessary to consolidate the private land holdings which would result in a future Federal action. If a land exchange is not approved by BLM, a modified development plan may or may not be proposed.

An effort is underway involving officials from various levels of Nevada state government, as well as private individuals and non-governmental organizations, to draft legislation for Washoe County along lines similar to the Southern Nevada Public Lands Management Act. While it is reasonably certain that this will occur, and that it will contain provisions for disposal of public lands within the action area, it is not yet possible to determine the ultimate disposition of those public lands involved in the proposed project.

### CONCLUSION

After reviewing the current status of the CWS, the environmental baseline, the effects of the applicant's proposed project, and the cumulative effects, it is the Service's biological opinion that the construction and implementation of the Fish Springs Ranch LLC Water Pipeline Project, as proposed, is not likely to jeopardize the continued existence of the CWS. No critical habitat has been designated for this species, therefore none will be affected.

The Service reached this conclusion for the following reasons: (1) In July 2004, only one individual (male) was observed in the proposed project's impact area at East Alkali Flat. As a result, the ability of this site to support a viable population is currently unknown; (2) the amount of habitat to be temporarily impacted at East Alkali Flat is small (no more than 1.8 acres). This temporary impact is expected to last no more than 3 to 5 years until the habitat is restored; (3) this 1.8 acre impact represents a small percentage (0.04) of available habitat within the action area which totals 5,020 acres; (4) the amount of habitat to be permanently impacted at East

Alkali Flat is small (no more than 12 square feet); (5) this impact represents a very small percentage of available habitat within the action area; (6) the applicant has committed to developing an outline of measures to promote the continued existence of CWS at East Alkali Flat; and (7) the applicant has committed to providing necessary amount of water resources to avoid potential indirect impacts to the CWS due to ground water drawdown at East Alkali Flat.

#### INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits taking and Federal regulation pursuant to section 4(d) of the Act prohibits the take of endangered and threatened species, respectively, without special exemption. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency/applicant action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of the Incidental Take Statement.

The measures described below are non-discretionary and must be undertaken by BLM so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, in order for the exemption in section 7(o)(2) to apply. BLM has a continuing duty to regulate the activity covered by this Incidental Take Statement. If BLM (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant to adhere to the terms and conditions of the Incidental Take Statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, BLM must report the progress of the action and its impact on the species to the Service as specified in the Incidental Take Statement.

#### Amount or Extent of Take Anticipated

The Service anticipates the following forms of incidental take may occur as a result of actions evaluated in this biological opinion. Incidental take of CWS is expected in the form of harm (injury and death) and harass. All CWS eggs, pupae, or larvae existing within the 1.8 acres of occupied/suitable CWS salt grass habitat that will be impacted by construction of the Fish Springs Ranch LLC Water Pipeline and installation of utilities may be harmed. This direct loss could occur due to crushing by vehicles and construction equipment, compaction of the salt grass habitat due to vehicles and equipment, being buried through trenching and side casting of vegetative materials, placement of power poles (12 square feet), and removal of vegetative materials. Due to the avoidance of the late May-July adult flight period, we do not anticipate



take of adult CWS due to pipeline construction, utility installation, or vegetation restoration within the 1.8 acres of habitat at East Alkali Flat.

An unknown number of CWS (eggs, pupae, larvae, adults) may be harmed (injured or killed) or harassed during activities associated with vegetation restoration within the 1.8 acres of salt grass habitat near East Alkali Flat. There may be a temporary (no more than 3-5 years) loss of egg laying habitat available for an unknown number of adult female CWS in subsequent years until the salt grass habitat (1.8 acres) is restored resulting in harassment. Also there may be a temporary (no more than 3-5 years) loss of feeding and sheltering habitat available for an unknown number of CWS eggs, pupae, and larvae in subsequent years until the salt grass habitat (1.8 acres) is restored, resulting in harm.

Carson wandering skippers may be harmed or harassed as a result of a contaminant spill (fuels, other liquids) during construction and restoration or from a material spill during transportation or construction. Habitat could be destroyed or damaged resulting in harm to an unknown number of eggs, pupae, or larvae within the 1.8 acres of habitat.

Due to the avoidance of using the Winnemucca Ranch Road as an access to any and all construction activities in the project area, we do not anticipate take of any CWS eggs, pupae, larvae, or adults from the Winnemucca Ranch Road population. We are unable to determine the specific number of individual eggs, pupae and larvae of this species that would be taken from the Alkali Flat site because they are small and difficult to detect.

#### Effects of the Take

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species. This level of anticipated take will not result in destruction or adverse modification of critical habitat since critical habitat has not been designated for this species.

#### Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measure is necessary and appropriate to minimize the impact of incidental take of the CWS:

1. Measures shall be taken to minimize mortality, injury, harm and harassment of CWS during the construction of the proposed Fish Springs Ranch LLC Water Pipeline Project.

#### Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, BLM and the applicant must comply with the following terms and conditions which implement the reasonable and prudent measure described above and outline required reporting/ monitoring requirements. These terms and conditions are non-discretionary.

1. To implement Reasonable and Prudent Measure 1, the following terms and conditions shall be implemented:
  - (a) no more than 1.8 acres (0.94 private and 0.85 public) of CWS salt grass habitat will be temporarily impacted (no more than 3 to 5 years) due to the construction of a portion of the pipeline within a 50 foot-wide corridor near East Alkali Flat;
  - (b) no more than 6 power poles will be located within the 1.8 acres of the 50 foot-wide corridor near East Alkali Flat; other necessary utilities will be buried within this corridor;
  - (c) the construction period for the pipeline and utilities trenching activities within the 1.8 acres of the 50 foot-wide corridor near East Alkali Flat will be limited to no more than 21 days;
  - (d) all construction related activities (trenching, surveying, grubbing, etc.) within the 1.8 acres of the 50 foot-wide pipeline corridor near East Alkali Flat will not occur during the late May-July adult CWS flight period;
  - (e) the salt grass habitat within the 1.8 acres of the 50 foot-wide corridor near East Alkali Flat will be restored to salt grass habitat and monitored for a minimum of 2 years following construction to determine success; remedial actions will occur if necessary. Full restoration will be achieved no later than 3 to 5 years from disturbance;
  - (f) restoration activities within the 1.8 acres of the 50 foot-wide corridor near East Alkali Flat will occur outside the late May-July adult CWS flight period;
  - (g) staging of equipment and storage of any liquids will not occur within/near CWS habitat;
  - (h) construction vehicles associated with this project will not use Winnemucca Ranch Road to access any project construction area during the entire construction period; and
  - (i) an outline addressing possible measures for maintenance/enhancement and monitoring and reporting efforts contained in a management plan for the East Alkali Flat area will be submitted to the Service for review and comment by September 30, 2006.

The Service believes that no more than the take previously stated will occur as a result of the proposed actions. The reasonable and prudent measure, with its implementing terms and conditions, is designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, this level of incidental take is exceeded,

such incidental take represents new information requiring reinitiation of consultation and review of the reasonable and prudent measure provided. BLM, working with the applicant, must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measure.

## REPORTING REQUIREMENTS

The applicant will immediately provide the Service a copy of the project's final monitoring plan and permit approved by the State Engineer upon receipt of their permit.

The applicant will provide monitoring data for Sand Pass MW-1 and Astor Pass MW-1 and Astor Pass MW-2 monitoring wells, as indicated in Figure D-1 of the FEIS [Bureau of Land Management (2005)] and as revised on May 2, 2006 (Bureau of Land Management, *in litt.*, 2006), to the Service. The potential impact to the elevation of Pyramid Lake is estimated to be so slight as to be insignificant. Monitoring data from the above mentioned wells are especially important in analyzing potential impacts to Pyramid Lake elevation. Reporting will initially occur quarterly and possibly later on a less frequent basis if requested by the Service to verify that potential impacts are not greater than those estimated by the model and discussed in the FEIS [Bureau of Land Management (2005)].

Upon locating dead or injured skippers, initial notification must be made to the Service's Division of Law Enforcement in Las Vegas, Nevada, at (702) 388-6380, and the Nevada Fish and Wildlife Office within 3 working days. Instructions for proper handling and disposition of such specimens may be obtained from the Service at (775) 861-6300. In conjunction with the preservation of biological materials from a dead individual, BLM and the applicant have the responsibility to ensure that information relative to the date, time, and location of the listed species when found, and possible cause of injury or death of each individual, be recorded and provided to the Service.

## CONSERVATION RECOMMENDATIONS

Section 7(a) (1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

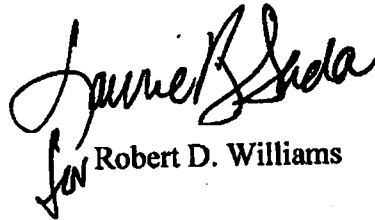
1. Monitoring of the ground water withdrawal related to this project will occur as required by Nevada Revised Statutes NRS 534.250. In addition to monitoring efforts proposed by Fish Springs Ranch LLC under Attachment A of the FEIS (Bureau of Land Management 2005), Appendix D of the FEIS (Bureau of Land Management 2005) and as revised on May 2, 2006 (Bureau of Land Management, *in litt.*, 2006), or a similar regional monitoring plan, could also be implemented as supplemental to Attachment A.

In Appendix D, the monitoring of adjacent hydrologic basins to assist in determining if additional impacts are occurring is mentioned as well as allowing for test pumping to determine if adequate water supplies exist; we encourage the applicants to pursue these actions if Appendix D as revised (Bureau of Land Management, *in litt.*, 2006) or a similar regional monitoring plan is not developed.

#### REINITIATION NOTICE

This concludes formal consultation on the proposed Fish Springs Ranch LLC Water Pipeline project as outlined in BLM's request for formal consultation. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; (4) monitoring efforts indicate that impacts are greater to listed species than predicted by the models; (5) impacts are greater to listed species than estimated; (6) the project is modified at a later date to convey greater than 8,000 af/yr; or (7) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operation resulting in such take must cease pending reinitiation.

Please reference File No. 1-5-06-F-055 in any future correspondence regarding this project. If you have any questions or comments, please contact me or Marcy Haworth at (775) 861-6300.

  
for Robert D. Williams

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