

APPENDIX D

**History of Water Right Transfers in the
Walker River Basin**

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CONTENTS

	<u>Page</u>
Purpose	3
Water Right Transfers	3
Decree C-125 Rights	3
Existing Transfers	4
Storage Rights	5
Flood Water Rights	5
A General History of the Federal Adjudications for Walker River Water Rights	
Decree 731	7
Decree C-125	7
References	12
Note on plates	12

TABLES

- A Water Rights Applications Recognized Under Decree C-125
- B Walker River Timeline
- C Water Rights Covered by the Various Walker River Adjudications

PURPOSE

The purpose of this report is to cover the following four topics:

1. Provide an explanation of the existing water rights transfers within the Walker River Basin;
2. Describe the storage waters rights;
3. Provide a history of Decree C-125.

WATER RIGHT TRANSFERS

Decree C-125

The decreed water rights are administered by the Walker River Federal Watermaster and the US Board of Water Commissioners through a set of rules and regulations that were provided by the US Federal District Court in 1953. The provisional rules and regulations involving changes and transfers of water rights were first initiated by the Court on May 17, 1988. After extensive argument the court set forth the rules and regulations on July 7, 1989, with a modification on September 11, 1989. A final amendment was made on May 1, 1996 that included wording to cover compliance applications through the California Water Resource Control Board. Water rights transfers involving Decree C-125 vested rights are filed through the state agencies as with any other transfer, however there is an additional layer of oversight by the US Board of Water Commissioners. Additional requirements include:

1. Within 90 days after filing notice is to be published five times during four consecutive weeks in appropriate newspapers in Mono County CA, Douglas County NV, and Lyon County NV (typically the notice is only published in the county that the Point of Diversion resides);
2. Upon filing the application with the appropriate agency copies are to be sent to the US Board of Water Commissioners, the US Attorney for the District of Nevada, the Walker River Paiute Tribe, and the Nevada Division of Wildlife; and
3. Additional fees can be collected over and above the standard set fees by the state agencies to cover processing costs.

The US Board of Water Commissioners then oversees the transfer through the state agency.

There are 44 water rights transfer filings that were found for Decree C-125 water rights in the Nevada portion of the Walker Basin. (See Exhibit A.) Of these

transfers 16 were for change of Point of Diversion only. The majority of the filings were permitted prior to the institution by the Court of the rules and regulations

Table A Water Rights Applications Recognized Under Decree C-125

C-125 Claim	Application	Certificate
236	1258	79
237	1476	243
238	1619	911
239	1630	364
240	1776	(permit)
241	2040	1800
242	2040	1801
243	2040	1802
244	2040	1803
245	2040	1804
246	2523	664
247	3369	2445
248	3370	2446
249	4381	(cancelled)
250	4391	(denied)
251	4856	3886
252	5052	(cancelled)
253	4246	(abrogated by 4893)
253	4893	737
254	3830	1178

There are 19 applications for the new appropriation of water rights that were recognized by Decree C-125. In the cases of claims 249, 250, and 252, the applications were cancelled or denied due to the applicants failure to comply with state regulations.

Existing Transfers

Three applications were filed by the Nevada Division of Wildlife that were part of a demonstration project to provide information on the efficiency of transferring water rights to the Walker Lake. The first attempt to transfer water rights was Application 69525, filed on 1/31/2003, however it was withdrawn on 3/5/2003. Application 70649 was filed on 11/19/2003 by the Nevada Division of Wildlife to transfer portions of Decree C-125 claims 12, 41, 141, and 229, as well as Permit 23753 to Walker Lake for Wildlife &

Public Recreation purposes. Protests were filed by the Circle Bar "N" Ranch, Edelweiss Farms, Peri Brothers & Sons, Borsini Ranch Inc., L&M Family Limited Partnership, Thomas Bobrick Trust, and Peavine Leasing LLC. These protests were withdrawn by stipulation on 3/4/2004, and the permit was issued on 3/5/2004. Although not issued as a temporary permit, it expired on October 31, 2004 (end of the official irrigation season). Apparently the application was filed as a full permit because, as a Walker Basin application, notices had to be filed regardless of the duration due to the rules and regulations issued by the Walker River Court. (Typically, the advantage in a temporary transfer permit is that the transfer is not required to be noticed in the local newspaper, thus circumventing most of the possible protests.) Application 72055, filed on 12/16/2004 by the Nevada Division of Wildlife, proposed to transfer approximately the same water rights as Permit 70649. This application was withdrawn on 5/25/2005.

Two applications had been permitted, 63325 and 69391, that effect decree water rights. Application 63325 (Jason Corporation) is a change in the place of

use only. Application 69391 (Circle Bar “N” Ranch) changes both place of use and point of diversion. Both of these permits can be considered to be housekeeping measures.

Storage Rights

In Decree C-125 the District Court has provided for storage water rights in the Walker River Basin. The two primary reservoirs include the Topaz Lake Reservoir on the West Fork and the Bridgeport Reservoir on the East Fork. Both of these reservoirs are owned and administrated by WRID. Transfers of storage rights are under the jurisdiction of WRID only, and do not require applications for change through NDWR.

The process to transfer a storage water right is as follows (per Lea Compston – WRID, telephone communication):

1. A petition is filed with the WRID Board;
2. A map has to be submitted that delineates the Existing Place of Use and the Proposed Place of Use;
3. Notices are filed in the local newspaper for two weeks; and
4. The petition is then reviewed at the next monthly WRID board meeting.

The following restrictions are placed on the storage water transfers:

1. The water right must stay in the same hydrographic basin;
2. The water right must be taken from the same reservoir;
3. The water right must be transferred to an area that does not currently have an appurtenant water right;
4. Transfer of the water right must not have an adverse effect either at the EPOU or the PPOU; and
5. Supplemental storage water rights under Decree C-125 cannot be transferred.

Flood Water Rights

Applications were filed by WRID on the West Walker River (Permit 5528, filed in 1919) and the East Walker River (Permit 25017, filed in 1969) for non-storage excess waters (variously referred to as flood or surplus water). Both permits were certificated on 10/15/1976 (8859 and 8860, repectively). A combined duty of 4.0 afa from any and all sources is specified in the permit terms.

Currently there are four applications (58784, 58871, 58872, and 58910) for the transfer of certificated flood water rights. Each of the applications has been filed for the water right holder by WRID. Applications 58784 and 58910 were protested by the BIA as Decree C-125 water right transfers. These protests have been withdrawn because the water rights were not Decree C-125 rights as the protests specified. All four applications have been in Ready for Action (RFA) status since 1993 and are still awaiting permit review. It appears that the purpose of these applications was to move all surface water rights from the land so that there would not be a conflict with stand alone groundwater rights.

A General History of the Federal Adjudications for Walker River Water Rights

Adjudication of the Walker River water rights was a lengthy and difficult process. Because the Walker River is an interstate stream that flows from California to Nevada the problem of setting the water rights has fallen on the federal court system. Filing of the Walker River case predated the creation of the Office of the Nevada State Engineer, which caused obstacles in formulating the adjudication. The Doctrine of Prior Appropriation had begun evolving in the courts of the western states during the 1880's as a rational way to apportion the scarce available water to incoming individuals. By the time that a major conflict occurred that forced the water users to request an adjudication of the Walker River rights the doctrine had not yet been codified by the Nevada Legislature. Passage of the federal 1902 Irrigation Act pushed the Nevada Legislature (which meets bi-annually) to create the State Engineer position in 1903. Once a crude set of state water right laws were passed the federal court placed the responsibility of determining the water rights onto the states. The majority of the irrigation rights were adjudicated by Nevada State Engineer Henry Thurtell, and the balance of the rights were completed by the district court. This resulted in the

TABLE B Walker River Timeline

YEAR	EVENT
1860	First recorded irrigation from the Walker River
1902	Miller & Lux vs. Pacific Land & Livestock filed in federal District Court
1909	Findings filed by Henry Thurtell for Nevada water rights
1919	Decree 731 issued, formation of WRID
1922	Construction of Topaz and Bridgeport reservoirs
1924	USA vs. Walker River Irrigation District filed in federal District Court
1936	Decree C-125 issued, appealed to Ninth Circuit Court of Appeals
1940	Amended Decree C-125 issued
1976	Permits 5528 and 25017 for flood waters certificated by NDWR

1919 Decree 731. In 1924 the Walker River Paiute Tribe pushed for a new adjudication of the Walker River to increase the allocation of water that was established for the reservation. Additional water rights, primarily on the California portion of the basin, were added to the new decree, and the ownership changes from Decree 731 rights were incorporated into the water right descriptions. When Decree C-125 was issued in 1936, despite substantial additions to Decree 731, the allocation for the reservation remained the same. The Tribe filed protest to the new decree, and the case was taken to the Ninth Circuit Court of Appeals. In 1940, an amendment was added to Decree C-125 that increased the diversion of water to the reservation.

Decree 731

In June of 1902 Miller & Lux (later as Pacific Live Stock Co.) filed suit against Thomas B. Rickey (succeeded by Antelope Valley Land & Cattle Co.) to bring about an adjudication of the Walker River water rights. Miller had purchased the Mason Ranch in Yerington, and Rickey had acquired most of the ranch land in Antelope Valley. The primary difficulty with adjudicating the Nevada water rights in 1902 was that the Nevada state legislature had not yet passed comprehensive water laws. The federal court struggled with this issue until 1905, when an amendment was made to the 1903 water laws that delineated a permitting process. The problem was passed on to the then current State Engineer, Henry Thurtell, who was appointed Special Master. The district court specified the use of the 1903 Nevada water laws for this adjudication. There were many meetings between Thurtell and the ranchers, and every effort was made to reach a consensus to the priority dates and amount of water that was used. Thurtell published a preliminary version of the Findings on 7/30/1907. Due to various protests by several individuals and the Walker River Water User's Association the evidence was reassessed and an amended version of the findings was published in 1908. A final agreement was entered on 6/18/1909 by Thurtell, and the plaintiff made a partial withdraw of the protest on 3/30/1910. The case was then returned to US District Court, which proceeded to adjudicate the water rights of the Antelope Valley Land & Cattle Co. and several other ranchers using California water laws. Testimony of the various farmers and ranchers was taken at the Bridgeport courthouse, and also in Antelope Valley, from 1911 to 1913. The case then languished in court during WW I. A special master, Frank Norcross (later as the federal court judge that signed the 1944 Orr Ditch Decree) was appointed to take charge of the case and organize the data. Norcross packaged the Nevada and California portions together, and submitted it to Judge M.J. Dooling, who signed it on March 22, 1919.

Decree C-125

Shortly after Decree 731 was officially signed farmers in the Nevada side of the Walker River Basin created the Walker River Irrigation District to finance the construction of the Topaz and Bridgeport reservoirs. Immediately applications were filed through the state agencies in both Nevada and California for storage rights for flood and previously unappropriated water in the east and west forks of the Walker River, as well as other sites. The Topaz and Bridgeport reservoirs were completed in 1922, however the other reservoirs were never constructed. The Walker River Paiute Tribe became alarmed at the decreased flow to Walker Lake due to the reservoirs, and urged the United States government to intervene in the matter. (In 1907 the United States Attorney for the District of Nevada was notified of the Decree 731 adjudication, however no effort was made to become involved in the proceedings.) On 7/3/1924 the United States filed suit to include the Tribe into a new adjudication, as well as to include other individuals that had been left out of the earlier decree. Two special masters, first Benjamin F. Curler and then Robert M. Price, were appointed to take charge of the proceedings and to formulate the decree. After extensive hearings and several preliminary sets of findings, a final decree was submitted on 4/14/1936. This fixed the Tribe's allocation at 22.93 cfs with priority dates that ranged from 1868 to 1886. These rights had originally been designated by Henry Thurtell in the 1908 findings, and had been included intact in Decree 731. The tribe protested the decree, and the case was taken to the ninth circuit court of appeals. This resulted in an amended decree filed on 4/24/1940 that provided for 26.25 cfs with a single priority date of 1859, thus giving the Tribe the most senior water right.

Decree C-125 established the following water rights:

1. Fixed the vested water rights of the Walker River Indian Reservation at 26.25 cfs for 2,100 acres with a senior priority date of 1859;
2. Included the previously adjudicated water rights under Decree 731 (and consequently Thurtell's Findings) as claims 1 through 180 (with ownership updates from Decree 731);
3. Designated additional vested water rights not previously adjudicated in Decree 731, primarily in California (claims 181 through 232);
4. Designated water rights for Sierra Pacific Power Company for primarily non-consumptive riparian rights;
5. Specified storage rights for the Walker River Irrigation District to be stored in Topaz and Bridgeport reservoirs;
6. Assigned storage rights under applications for the proposed Pickel Meadows and Leavitt Meadows reservoirs, and supplemental storage rights for Bridgeport and Topaz reservoirs;
7. Recognized applications for non-vested water rights (claims 236 through 254); and
8. Established a federal watermaster position to administrate the decree.

Because there were three steps involved in the Walker River adjudication (Thurtell's Findings, Decree 731, and Decree C-125) that occurred at different times (1909, 1919, and 1936/40, respectively) there has been a considerable amount of confusion as to description and form of the water right claims. Since the adjudication of the majority of the water rights was achieved under Thurtell's Findings the actual water right descriptions are located in the original proofs that were filed at the Nevada State Engineer's Office (now Nevada Division of Water Resources) and the Decree 731 source files. In the period between 1909 when Thurtell's Findings fixed the Nevada water rights and 1919 when Decree 731 was issued there were 25 changes in ownership (see Decree 731, page 10). These successor title changes were reflected in the 1919 decree. The later Decree C-125 added additional water rights for the Walker River Paiute Tribe, Sierra Pacific Power Co., miscellaneous ranchers that had been missed in Decree 731 (primarily in Bridgeport Valley), and 19 water rights applications that had been filed with the Nevada State Engineer dating to 1/20/1909. The descriptions for these later claims are in the Decree C-125 source files, and the applications are described in the files located at the Nevada Division of Water Resources. The Decree 731 water right claim owners were researched, and the ownerships were updated to approximately 1933. In the thirteen years between when Decree 731 was signed and 1932 nearly all of the original claims had changed ownership, in large part due to the Great Depression. In some cases the larger ranches had been subdivided into smaller parcels, and in others older ranches were combined. The updated claim ownerships in C-125 reflect these changes, however the base water rights were defined in the earlier decree.

Table C Water Rights Covered by the Various Walker River Adjudications

Adjudication	Date	What Was Covered	Source Documentation
Thurtell's Findings	6/18/1909	Pre-1905 vested rights (NV only)	State Engineer proofs
Decree 731	3/22/1919	Thurtell's Findings, AVLCC vested rights (CA, NV)	Decree 731 source documents
Decree C-125	4/14/1936 (Amended 4/24/1940)	Decree 731 vested rights, Tribal reservation rights, Sierra Pacific rights, miscellaneous additions not included in Decree 731	Decree C-125 source documents, NDWR application files

In Nevada the concept of water rights was still in its infancy when the process started, and was being defined through common law cases. When the US District Court instructed Thurtell to adjudicate the Nevada water rights it specifically stipulated that the 1903 Nevada Statutes, Chapter 4, sections 1-14, be used (see Stipulation as to Trial of Cause, 1907, transcribed into Decree 731 Final Decree, page 5). The 1903 laws essentially established the office of the State Engineer, and provided for a limited definition of a water right for the purposes of establishing vested rights. The definition included the source of the water used, dates of first irrigation (priority date), the amount of water used (set

at 3.0 afa maximum); the dates of construction for the ditches, and the types of crops that were raised. Place of Use, Manner of Use, and Point of Diversion descriptions were not required at that time.

Thurtell made modifications to the assigned duty for each of the claimants. In the Statement of Findings from the original 1907 report Thurtell explained that different diversion rates were applied to the various lands based on the size of the supply ditches and degree of isolation:

“In the case of persons diverting water through small ditches or high up on the river, it will be seen that these persons are allowed by these findings a slightly larger unit of water per acre than is allowed to the users of water on lower ground or through large diverting ditches. The equity of this will be easily seen. The large ditches lose by seepage and evaporation a very much smaller proportion of their water in transit than is the case in the smaller ditches.”

When the findings were published the diversions were either 1.2 cfs or 1.6 cfs per 100 acres of irrigated land.

For the Antelope Valley Land & Cattle Company in California for Decree 731 water rights, the court instructed Special Master Frank Norcross to provide the following information:

- a. *Land irrigated and dates of irrigation, both in California and Nevada, to be in accordance with testimony already taken and the law of appropriation.*
- b. *Priority to be allowed from date of first irrigation although transfer from first person first irrigating was by parole.*
- c. *Eight-tenths of a miner's inch per acre to be allowed.*
- d. *Computation of land irrigated and priorities to be determined from the testimony already taken by a person or persons to be agreed upon by the attorneys of the parties.*
- e. *Water now reservoird by Antelope Valley Land & Cattle Company above Bridgeport, during the winter or during times when all appropriations are supplied, to be used by Antelope Valley Land & Cattle Company, but the same shall not be removed from the watershed of said river and any surplus or waste there from shall be returned to the river and may be used by the other parties thereto.*

(See Memorandum to Agreement, 1913, transcribed into Decree 731 Final Decree, page 31)

An extensive amount of mapping was done from 1905 to 1907 to ascertain the amount of irrigated area that was to be assigned to each farmer. During the summers of 1905 and 1906 the US Reclamation Service (later renamed the US Bureau of Reclamation), in conjunction with the Nevada State Engineer's Office, made detailed planetable maps of the irrigated lands in the valleys and along the

Walker River. At the same time, a private surveyor, William W. Coleman, was also contracted by the Pacific Live Stock Co. and various other ranch owners to make separate surveys of their properties. These maps became the basis for the Proofs of Appropriation that were filed for each ranch. In addition, many ranchers provided sketch maps to accompany the proofs. Typically, it appears that whichever map showed more irrigated land was used to define the areas. The priority dates were extrapolated from proofs, and also from the land patent dates from the General Land Office. An exhibit book, composed of bound color-coded GLO plats showing land patents and dates, was submitted as part of the Decree 731 findings.

REFERENCES

7/30/1907 Abstract of Claims to Waters of the East, West, and Main Walker River and Tributaries, Henry Thurtell

1/27/1908 Amended Statement of Findings, Claims to Water of Walker River and Its Tributaries in Nevada, Henry Thurtell

3/22/1919 Pacific Live Stock Company vs. Antelope Valley Land & Cattle Company, Docket 731, District Court of the United States – District of Nevada

4/14/1936 USA vs. Walker River Irrigation District, Docket C-125, District Court of the United States – District of Nevada (amended filing on 4/24/1940)

1990, Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and its Tributaries, United States Board of Water Commissioners (amended by document entitled “Final Order Pursuant to Stipulation”, filed on 6/3/1996)

1991, Shamberger, Hugh A., Evolution of Nevada’s Water Laws, as Related to the Development and Evaluation of the State’s Water Resources, from 1866 to about 1960, Nevada Division of Water Resources, Water-Resources Bulletin 46

1999, Pahl, Randy, Walker River Basin Water Rights, Volume 1 – An Introduction to Natural Flow Diversion Rights defined in Decree C-125 (as amended 4/24/40), Nevada Division of Water Planning

Note on Plates

The plates for this report were created using a variety of software and data sources. Vector data layers were compiled and digitized using Autocad R2000 Map 4 in State Plane Nevada West NAD 83 (feet) projection. The reference layer was the Public Land Survey System (PLSS) that was created from the BLM Geographic Coordinate Data Base (GCDB) flat files. Political boundaries (state, counties, municipal, WRID) were reconciled to the GCDB base. The WRID boundary and the flood water right areas were taken from the Permit 5528 Proof of Beneficial Use maps, on file at NDWR. Ditches and Points of Diversion were digitized using the 1994 USGS Digital Orthoquads (DOQ) and USFSA NAIP 2006 aerial photography. The Decree C-125 claim boundaries were individually located by legal descriptions as described in the decree tabulations and also reconciled to the GCDB base. The hydrography data layer was taken from the USGS 250k Digital Line Graphs (DLG). Hydrographic divisions (basin boundaries and USBOC divisions) were compiled in part from watershed boundaries generated in Arcview 3.3 using the Hydrographic Delineator module and the 10m digital elevation data, and also by digitizing of boundaries from numerous USGS

7½' topographic quadrangle maps (DRG). Data layers were exported from Autocad into Mapinfo MIF coverages and imported into Manifold 7.1 by Western Engineering and Surveying Services in Carson City. The hillshading backdrop was created using the USGS 10m digital elevation data from the USGS Seamless Data Distribution website:
<http://seamless.usgs.gov/website/seamless/viewer.php>
and reprojected using Global Mapper 7.