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July 26, 2016

Clark County Department of Air Quality
Desert Conservation Program
4701 W. Russell Road, Suite 200
Las Vegas, NV 89118

Re: Project Number - 2009-BUSCH-805Q
Milestone Number - D17 - Final Project Report
Project Name – 2013 Water Rights Consulting

As stipulated in the above referenced project, the following is a final project report.

Executive Summary:

The work outlined in this report has been conducted by Michael D. Buschelman Consulting, Inc. in partnership with Clark County Desert Conservation Program (DCP), The Nature Conservancy, the Conservation Fund, the Nevada Department of Wildlife (NDOW), the Bureau of Land Management (BLM), the US Fish and Wildlife Service (USFWS) and many public and private parties.

The initial water right consulting contract with the Clark County Desert Conservation Program (DCP) was approved in the year 2000. Clark County acquired numerous stock water right permits and proofs from spring sources and ground water sources as the result of the DCP efforts to retire grazing permits on public lands to benefit the Clark County Multiple Species Habitat Conservation Plan. In cooperation with The Nature Conservancy, the Bureau of Land Management, the Nevada Department of Wildlife and several others, Clark County contracted with Michael D. Buschelman Consulting, Inc. to prepare the necessary documents to change the manner of use of 59 spring fed stock water rights to wildlife watering and habitat preservation purposes. The 19 certificated underground stock water rights also acquired by Clark County continue to be reviewed to determine options that will benefit the Desert Conservation Program.

Spring fed stock water rights:

Copies of each spring fed stock water right, supporting maps and pertinent documents were obtained from the Nevada Division of Water Resources (NDWR). The points of diversion were located on US Geological Survey (USGS) topographical maps to confirm access options and to complete a field investigation. Field investigations were completed to measure and confirm the flow of each located spring. Information was obtained to prepare the necessary documents to support applications to change the manner of use of the spring water from stock water to wildlife purposes. Applications to Change Nos. 67756 through 67814 were filed July 12, 2001. Application to Appropriate No. 76932 was filed on December 16, 2010 for wildlife use from Summit Springs and tributaries.

The NDWR required Clark County to provide water right title documentation confirming Clark County's ownership of the spring fed and underground stock water rights on the public lands. The water right consulting contract was amended to provide water right title verification. Research was completed at the BLM Las Vegas Regional Office and the Clark County Recorder's Office to compile the title documents required by NDWR. Numerous water right title issues were addressed and documentation was provided to the NDWR completing the water right chain of title. Of the 59 original spring fed stock water rights, two stock water rights (Permit Nos. 9829 and 10422) were found to be in the name of the Virgin Valley Water District and one stock water right (Proof No. 02343) in the name of The Nature Conservancy.

Applications to change were approved by the NDWR and the required proofs of completion of work and proofs of beneficial use were filed supporting wildlife uses. Certificates of Appropriation have been issued by the NDWR for 54 wildlife water right permits. Refer to the attached spring fed and underground water right inventories.

One application to change was withdrawn due to the NDWR denial of the spring fed stock water right Permit No. 15024. Water from this spring flows into the Colorado River. The Colorado River system was ruled to be fully allocated resulting in the denial of the stock water right.

Two applications to change were withdrawn because the spring sources were not found during the field investigation. Therefore, water flows could not be measured and the proof of beneficial use cannot be verified. It may be possible to conduct more research to locate the spring sources and confirm the legal description of each spring source. The ownership of original stock water right Proof No. 04213 has been updated into the name of Clark County and Proof No. 02343 has been updated into the name of The Nature Conservancy. These originally filed vested water right proofs remain in good standing.

Summary Table:

Applications to Change Nos. 67756 through 67814 filed to change spring fed stock water right to wildlife purposes and Application to Appropriate No. 76932 (Refer to attached spring fed water right inventory):

Withdrawn due to Virgin Valley Water District ownership

2

Withdrawn due to denial of original stock water right	1
Withdrawn due to inability to locate spring in the field	2
Certified Permits changing stock water right to wildlife purposes	<u>54</u>
Total permits / applications for wildlife purposes	59

Underground certificated stock water rights:

A review of Clark County’s acquired 19 certificated underground stock water right permits for stock water purposes was conducted. Meeting have been held with DCP staff to discuss options for the 19 underground water rights and the potential value to current and future DCP projects. Due to the certificated status of these 19 underground stock water rights, the due dates specified in the permit terms have been satisfied. General options for use of these certificated underground stock water rights to benefit the Desert Conservation Program (DCP) have been outlined under Recommendations below.

Summary Table:

Original certificated underground stock water right permits (Refer to attached underground water right inventory):

Certificated underground stock water rights	19
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Muddy River Restoration Project:

Research was completed to verify 2 additional water right permits acquired by the County. Reports of Conveyance and abstracts of water right title were prepared. A document packet was submitted to the Nevada Division of Water Resources (NDWR) confirming Clark County as the current owner of record of 2 underground irrigation water rights appurtenant to the Muddy River Restoration properties. As a result, Clark County is the current owner of record of 30.00 acre feet per year under Permit No. 50851 and 19.98 acre feet per year under Permit No. 64840.

Mapping:

An overall map was prepared illustrating the location of each of the 54 certificated spring fed water rights, 1 vested spring fed stock water right and 19 certificated underground stock water rights. Refer to attached spring fed and underground water right inventories. This map was provided to DCP staff and will be utilized to identify the subject water sources in the field as well as support planning efforts to utilize these sources to benefit the Desert Conservation Program.

Introduction:

Clark County in cooperation with the Bureau of Land Management (BLM), the Nevada Department of Wildlife (NDOW), The Nature Conservancy, The Conservation Fund, the US Fish and Wildlife Service (USFWS) and numerous public and private interests pursued the retirement of grazing permits on public lands within Clark County. This effort was pursued to accomplish the goals and objectives of the Clark County Multiple Species Habitat Conservation Plan and the Clark County Desert Conservation Program. As a result of the retiring the grazing permits, spring fed and ground water source stock water rights were acquired by Clark County. It is the goal of these two programs to protect the springs for wildlife watering and habitat preservation and to utilize the underground stock water rights to benefit the Desert Conservation Program. To accomplish this goal, Clark County contracted with Michael Buschelman, a water right surveyor and consultant, to pursue applications to change the manner of use of the spring fed sources from stock water to wildlife purposes and to provide options for use of the underground stock water rights.

Methods and Materials:

A list of the 59 acquired spring fed and 19 underground stock water rights was compiled by The Nature Conservancy and provided to Mr. Buschelman in the year 2000. Each permit and proof on this list was further researched at the Nevada Division of Water Resources (NDWR). Copies of pertinent correspondence, maps, proofs of completion of work, proofs of beneficial use and other documents were obtained and assembled into files. This information was utilized to identify each spring source on USGS 7 ½ minute maps and to schedule a field investigation.

The 19 underground stock water rights were not identified in the field during this project. Research was completed to determine the status of each permit for assessment of benefits and options to the Desert Conservation Program. (Refer to the attached spring fed and underground water right inventories.)

Field Investigation and Information Collected to Satisfy Proofs of Completion of Work and Beneficial Use for Conversion of Spring Fed Stock Water Rights to Wildlife Use:

A field investigation was conducted to obtain information related to each spring described on the list of the 59 stock water rights. Water flow measurements were obtained when possible. Notes were taken on the improvements at each spring. Information was collected to prepare the required proofs of completion of work and proofs of beneficial use.

Two springs were not located in the field. This may be the result of the springs being covered up by debris from erosion and flood flow events or lack of sufficient precipitation to support the water flows during the time of the field investigation. No stock water improvements were found at these two points of diversion described on the stock water Proof Nos. 04213 and 02343. These originally filed vested water right proofs remain in good standing in the names of Clark County and The Nature Conservancy, respectfully.

Applications Nos. 67756 through 67814 to Change Spring Fed Stock Water Rights to Wildlife Use:

Applications to change were drafted and supporting documents assembled. Applications Nos. 67756 through 67814 were filed July 12, 2001 to change the manner of use from stock water to wildlife watering and habitat preservation purposes. NDWR requested additional mapping to clarify the legal description for the point of diversion associated with selected stock water rights. Many of the existing maps were prepared during the period of 1930 through 1950 and did not provide sufficient information required by NDWR. Additional mapping was provided to NDWR to support the proposed change from stock water to wildlife uses.

Application to Appropriate No. 76932 was filed for wildlife use from Summit Springs and tributaries. This application was filed to replace Permit No. 40319 which was protested by the BLM and subsequently withdrawn by Clark County. Application No. 76932 was approved to provide an uninterrupted flow of water from Summit Springs and is now certificated for wildlife purposes.

Historical grazing allotments and title to stock water rights:

The 59 base stock water right permits and proofs for spring fed water sources are located on publically owned lands and were filed by ranchers to water animals. Clark County has purchased present day grazing permits which are associated with spring and underground stock water rights. The Bureau of Land Management (BLM) has confirmed Clark County's purchase of numerous grazing permits and associated allotments by their letter dated February 9, 2005. A copy of this letter has been filed with the Nevada Division of Water Resource (NDWR) and incorporated into the base stock spring water right files. The BLM letter included copies of grazing allotment maps depicting the current allotment boundaries. As a result of filing the reports of conveyance and the BLM February 9, 2005 confirmation letter, the spring fed and underground stock water rights have been assigned into the name of Clark County.

However, many of the base spring water rights were not initially assigned into the name of Clark County because the point of diversion of the base spring water right is located outside of current grazing allotment boundaries. Maps were provided to the NDWR office illustrating those base spring water rights that fall within the current Clark County grazing allotments and those outside.

A meeting was held with Everett Bartz of the BLM district office in Las Vegas, Nevada. Mr. Bartz was responsible for the grazing permits associated with the Clark County allotments. He explained that the Las Vegas District BLM office did not establish grazing allotment boundaries until 1976. Prior to 1976, ranchers grazed their animals on public lands within the jurisdiction of the Las Vegas District BLM office without specified boundaries or allotments. Many of the base spring water rights pending

assignment into the name of Clark County were filed from 1930 through the 1950, prior to any established allotment boundaries.

Stock water righted springs located inside and outside the current day grazing allotments were owned by the same rancher. The successor to this rancher conveyed all their interest into their grazing allotment and spring fed and underground stock water rights to Clark County. With the help of Mr. Bartz and the BLM office, NDWR agreed that those stock water rights inside and outside the current gazing allotment boundaries were conveyed to Clark County.

On behalf of Clark County, Reports of Conveyance were filed confirming Clark County as the current owner of record of the spring fed stock water rights under Application to Change Nos. 67756 through 67814. The 19 certificated underground stock water rights were also assigned into the name of Clark County.

Rex Bell challenge to Clark County ownership:

Rex Bell, Sr. was an owner of stock water rights associated with a grazing allotment obtained by Clark County. A representative of the Rex Bell Family challenged Clark County's ownership of stock water Permit Nos. 9850, 9851 and 9852. Additional research was completed at the NDWR and the Clark County Recorder's office confirming Clark County's ownership. Documentation was provided to Clark County representatives for response to the Rex Bell Family challenge. The Rex Bell Family did not continue their challenge after reviewing the water right title documentation.

Gold Butte grazing allotment retirement:

A number of the spring fed stock water rights are located south of Mesquite, Nevada between the Overton Arm of Lake Mead and the Colorado River. A large grazing permit known as the Gold Butte Grazing Allotment was purchased by The Nature Conservancy from the Gold Butte Ranch, Inc., a Utah corporation, on behalf of the Desert Conservation Program. The Nature Conservancy in cooperation with the Desert Conservation Program signed a water right quit claim deed for those stock water rights remaining in their name. As a result of this water right quit claim deed, the Gold Butte grazing permit has been retired for the benefit of the Desert Conservation Program.

The Gold Butte Ranch and associated grazing permit/allotment were owned by the Frei Family. Frei Family members were noted as the current owners of record under the spring fed stock water rights within the Gold Butte allotment. With the assistance of Elizabeth Bickmore of the DCP and members of The Nature Conservancy, a water right deed was recorded on November 29, 2011 conveying the Gold Butte Grazing Allotment stock water rights to Clark County. A report of conveyance along with supporting documentation was submitted to the NDWR to show Clark County as the current owner of record of these stock water rights.

Filing of Proofs of Completion and Beneficial Use for Wildlife Use:

As each of the applications to change were approved by the NDWR, the required proofs of completion of work and proofs of beneficial use were filed supporting the beneficial use for wildlife purposes. Certificates of Appropriation have been issued by the NDWR for 54 wildlife water right permits.

Results and Evidence of the Results:

Attached are two water right inventory spread sheets with a status of each of the filed 59 applications to change to wildlife use and the status of each of the 19 certificated underground stock water rights.

Copies of documents filed on behalf of Clark County have been provided to representatives of the Desert Conservation Program. The status of each water right permit, proof and pending application can be verified by reviewing the NDWR website located at www.water.nv.gov and identifying each application number of interest.

Evaluation and Discussion of Results:

Summary Table:

Applications to Change Nos. 67756 through 67814 filed to change stock water right to wildlife purposes and Application to Appropriate No. 76932:

Withdrawn due to Virgin Valley Water District ownership	2
Withdrawn due to denial of original stock water right	1
Withdrawn due to inability to locate spring in the field	2
Certified Permits changing stock water right to wildlife uses	<u>54</u>
Total permits / applications to change to wildlife purposes	59

Discussion of the Results:

Of the 59 original spring fed stock water rights, two stock water rights (Permit Nos. 9829 and 10422) were found to be in the name of the Virgin Valley Water District and one stock water right (Proof No. 02343) remains in the name of The Nature Conservancy.

One application to change to wildlife uses was withdrawn due to the NDWR denial of the spring fed stock water right Permit No. 15024. Water from this spring flows into the Colorado River. The Colorado River system was ruled to be fully allocated resulting in the denial of the stock water right.

Two applications to change to wildlife uses were withdrawn because the spring sources were not found during the field investigation. Therefore, water flows could not be measured and the proof of beneficial use cannot be verified. It may be possible to conduct more research to locate the spring sources and confirm the legal description of

each spring source. The ownership of one original stock water right (Proof No. 04213) has been updated into the name of Clark County and one stock water right (Proof No. 02343) has been updated into the name of The Nature Conservancy. These originally filed vested water right proofs remain in good standing

As each of the applications to change were approved by the NDWR, the required proofs of completion of work and proofs of beneficial use were filed supporting the beneficial use for wildlife purposes. Certificates of Appropriation have been issued by the NDWR for 54 wildlife water right permits.

Conclusion:

The objectives and goals of the Clark County Desert Conservation Program have been successfully implemented as demonstrated by the Certificates of Appropriation issued for the 54 wildlife water right permits noted on the attached water right inventory.

Additional opportunities are available to the DCP for use of the certificated underground stock water rights updated into the name of Clark County. The underground water allocated under these 19 stock water rights may be utilized to benefit the DCP.

The Certificates of Appropriation for the 54 spring fed wildlife use permits and the 19 underground stock water permits confirm the beneficial use of water allocated by Nevada Water Law. In order to maintain the good standing of these water rights, continued beneficial use is required.

Refer to Evaluation, Discussion of Results and Recommendations for additional discussion.

Recommendations:

Clark County and BLM have separate water rights for the same spring fed source of water:

Clark County has a water right for wildlife uses and the BLM has a water right for stock water uses on the same spring fed water source. There are 8 spring fed sources with this dual water right situation. (Refer to the attached water right inventories for spring fed and underground water sources.)

- The BLM does not own or lease cattle, horses or sheep which is required by Nevada Water Law to place the water allocated from these 8 sources to beneficial use for stock watering purposes.
- Clark County through the Desert Conservation Program has been recognized by the NDWR as a qualified water right permittee for wildlife uses of these spring fed sources. If the DCP is retired or no longer in effect, Clark County may find

they do not have ownership or control of the wildlife which would not allow for continued beneficial use of the certificated spring fed water sources.

Both Clark County and the BLM may consider transferring ownership of the certificated wildlife water rights, vested stock water proofs and stock water permits into the name of the Nevada Department of Wildlife (NDOW). NDOW's can file the necessary applications to change the manner of use from stock water to wildlife uses which in keeping with NDOW's legislative authority. This process would preserve the acquired water rights for wildlife use.

Review ground water stock water rights and prepare an action plan:

Numerous ground water rights have been acquired by Clark County for stock watering purposes as a result of the retirement of the grazing permits. As a ground water source, these stock water rights provide opportunities and consequences that need to be considered. The following is a brief list of considerations related to ground water rights.

- It may be possible to consolidate several ground water stock water rights into one well. The grouping of several acre feet into one well can offer opportunities that may benefit wildlife. The consolidation well must remain within the same ground water basin as approved under the original permits.
- The manner of use can be changed to support a wildlife visitor's center, camping facility, habitat restoration or other wildlife enhancement efforts.
- A well can be drilled in an area or piped to an area to provide reliable wildlife water where surface sources are less dependable or non-existent.
- There are additional expenses related to ground water rights. Should all of the water rights be removed from a well, the well must be plugged in accordance with NDWR regulations.
- Motors, pumps and pipelines will need to be installed and maintained. A power source will be required for each well. Power sources include wind, solar, gasoline, electrical, etc.
- Clark County does not own cattle and therefore cannot retain the beneficial use of a ground water stock water right. Eventually, the NDWR will question the ability of Clark County to maintain the good standing of a stock water right. It will be important to change the manner of use of the ground water stock water right to a purpose capable of continued beneficial use.

Locate, measure and change Proof Nos. 04213 and 02343 from stock water to wildlife uses:

Two applications to change to wildlife uses were withdrawn because the spring sources were not found during the field investigation. Therefore, water flows could not be measured and the proof of beneficial use cannot be verified. It may be possible to conduct more field research to locate the spring sources and confirm the legal description of each spring source. The ownership of one original stock water right (Proof No. 04213) has been updated into the name of Clark County and one stock water right (Proof No.

02343) has been updated into the name of The Nature Conservancy. These originally filed vested water right proofs remain in good standing

Should you have questions, please contact my office. I have appreciated the opportunity to work with you and many others in the Desert Conservation Program.

Sincerely,

Michael D. Buschelman PLS, WRS