Hem# 7A

City of Carson City Agenda Report

Date Submitted: 3-25-08

Agenda Date Requested: 4-3-08

Time Requested: 10 minutes

To: Mayor and Board of Supervisors

From: District Attorney

Subject Title: Discussion and possible action to approve a Settlement Agreement between Andersen Family Associates, Hugh Ricci, P.E., State Engineer, in the matter of permit 68984, Division of Conservation and Natural Resources, State of Nevada, and Carson City, real party in interest, which establishes Andersen Family Associates percentage share of Ash Canyon Creek at 24% and Carson City's percentage share of ownership at 5.8762%.

Staff Summary: On June 23, 2003, Andersen Family Associates filed a Petition for Judicial Review alleging that the State Engineer failed to correctly ascertain the true and correct percent of ownership Carson City has to Ash Canyon Creek. Specifically, Andersen Family Associates alleges that the State Engineer erroneously granted 6.2757% of water rights when it should have only been 2.7% and that this act has affected all water users of Ash Canyon Creek. The State Engineer has reviewed the percentages and believes that it would be in the parties best interests to settle this matter by slightly increasing Andersen Family Associates ownership to 24% and decreasing Carson City's ownership to 5.8762%.

Type of Action Requested: () Resolution (X) Formal Action/Motion	(check one) () Ordinance () Other (Specify)	
Does This Action Require A Busines	ss Impact Statement: () Yes (X) No

Recommended Board Action: I move to approve a Settlement Agreement between Andersen Family Associates, Hugh Ricci, P.E., State Engineer, in the matter of permit 68984, Division of Conservation and Natural Resources, State of Nevada, and Carson City, real party in interest, which establishes Andersen Family Associates percentage share of Ash Canyon Creek at 24% and Carson City's percentage share of ownership at 5.8762%.

Explanation for Recommended Board Action: On May 11, 1983, Ira and Jeanne Andersen owned 29.8762 percent of the Ash Canyon Creek flow which equates to 725.99 acre feet. On that same day, Ira and Jeanne Andersen deeded 152.5 acre feet of water rights to Donald and Willie Andersen. The State Engineer made a determination that the 152.5 acre feet equaled 6.2757% of the Ash Canyon Creek flow.

These rights were passed to the Jimmie Pete Jarrard Children's Trust and the Kae Jarrard Trust and Robert Lorin Andersen Trust. Carson City purchased the 152.5 acre feet on May 28, 2003.

Following the sale, it was subsequently discovered that on March 13, 1983, a judgment was entered in a case involving the Andersens that divided 770 acre feet of water when in fact only 726 acre feet was owned by them. However, as has been noted by the Attorney General, it is likely that the parties only intended to sell to Carson City the amount they owned. The State Engineer has reviewed the percentages and believes that it would be in the parties best interests to settle this matter by slightly increasing Andersen Family Associates ownership to 24% and decreasing Carson City's ownership to 5.8762%.

Supporting Material: Stipulation to Dismiss Appeal

Prepared By: Melanie Bruketta, Chief Deputy D.A.

Reviewed By:			
all films	'wh	Date: 3-25-08	
Mary Teixeira, Mayor Confederate Property (District Attorney)	ty movinager	Date: 3-25-06	
(Finance)	KK .	Date: 3 23 06	
Board Action Taken:			
Motion:	1)		Aye/Nay
	,		
(Vote Recorded By)			

28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

- The matter involves the purchase by Carson City of a portion of the water rights 2. originally owned by Ira and Donald Andersen as predecessors in interest to the current parties. This water right consisted of 29.8762 percent of the flow of Ash Canyon Creek.
- In order to fully and finally resolve this matter, the parties agree that the percentage share 3. of Ash Canyon Creek which was purchased by Carson City shall be set at 5.8762% and the share remaining with the Andersen Family Associates shall be 24%.
- This Stipulation has no precedential effect in any proceeding, involving these parties or any other parties and may not be relied upon as evidence of the policy or practices of the State Engineer. This Stipulation does not limit the State Engineer's authority or discretion as it relates to consideration of any application to appropriate or change the manner of use, place of use, point of diversion, or means of diversion of any water right.
- Each of the parties, for and in consideration of the mutual promises, duties, agreements 5. and consideration, do release, acquit and forever discharge the other parties, their agents, employees, officers, directors, representatives, affiliates, successors and assigns of and from any and all claims, liabilities, demands and causes of action, known or unknown, asserted or unasserted, which they had, may now have, or ever in the future have as a result of or arising out of or by reason of the facts and circumstances surrounding this case.
- It is agreed and understood that this is a compromise of disputed claims, that the 6. agreements shall never be construed as an admission of liability on the part of any of the parties released, by whom liability is expressly denied.
- It is agreed and understood that this Stipulation contains the entire agreement between 7. the parties and that the terms of this Stipulation are contracted and not mere recitals.
- If for any reason this Stipulation does not become effective, no party shall refer to or 8. reference this Stipulation in any legal document or proceeding involved in any future litigation of the issues comprising this matter.
 - This Stipulation will be governed in accordance with the laws of the State of Nevada. 9.

NOW, THEREFORE, based on the foregoing and subject to the approval of the Court, the parties hereby stipulate and agree:

Attorney General's Office

-3-