



STAFF REPORT

TO: Chairman and Board Members
THRU: Mark Foree, General Manager
FROM: John Enloe, Director, Natural Resources
DATE: 11 October 2016
SUBJECT: **Informational report on TMWA's identified properties within the proposed Washoe County lands bill**

Earlier this year, Reno, Sparks, and Washoe County each passed resolutions supporting comprehensive public lands legislation. In response, Nevada's congressional delegation is developing legislation that would require the U.S. government to convey, for free, certain Federally-managed public lands in Washoe County to various local governments and agencies for economic development and public uses. Text of the legislation has not yet been released and there is no timetable for its release, but it is expected to be similar to legislation passed regarding public lands in Lincoln, Clark, White Pine, Lyon, and Humboldt Counties. TMWA has been requested to identify public lands it wants to hold in fee simple.¹ TMWA's main goal is to obtain land ownership for current facilities, but it has also included land for proposed or contemplated future facilities, such as tanks, wells and pipelines, and a potential groundwater recharge area in Bedell Flat.

TMWA is currently creating a preliminary list and map of public lands TMWA seeks to obtain ownership of through the above-described legislation. Most of the public lands TMWA has identified are managed by the BLM, but one parcel is managed by the U.S. Forest Service. For existing facilities, TMWA currently holds the lands (approximately 250 acres) under leases and rights-of-way from the Bureau of Land Management (BLM). A final version of the list and map will be provided to the Washoe County Community Services Department, which is compiling land ownership requests from the various local governments and agencies.²

Although the land will be conveyed for free without consideration, TMWA will be required to pay for the cost of parceling any lands that are part of a larger Federal parcel. The obvious benefits of holding the lands in fee simple are eliminating the annual holding costs of the leases and rights-of-way and providing a more certain legal interest that is not subject to Federal control.

¹ The conveyance would be subject to valid existing rights and the U.S. government would reserve a possibility of reverter, which would automatically vest title in the U.S. if the lands ever cease to be used for a public purpose, to be defined by the legislation. Additionally, after the legislation is passed, TMWA can elect to acquire less than the entire parcel approved for acquisition.

² In addition to TMWA, this includes Reno, Sparks, Washoe County, Desert Research Institute, Incline Village GID, Pyramid Lake Paiute Tribe, Reno-Sparks Indian Colony, Truckee Meadows Water Reclamation Facility, Truckee Meadows Flood Control, and Washoe County School District.

TMWA has considered and consulted with its General Counsel regarding the potential liability of holding lands in fee simple instead of through a leasehold interest or right-of-way. Generally, the differences in premises liability exposure between owning and leasing lands are not very significant. Whether TMWA owns or leases land, it has possession and some element of control of the land, and would have potential premises liability exposure arising from its acts or omissions arising from improvements or other construction activity of TMWA on the lands.

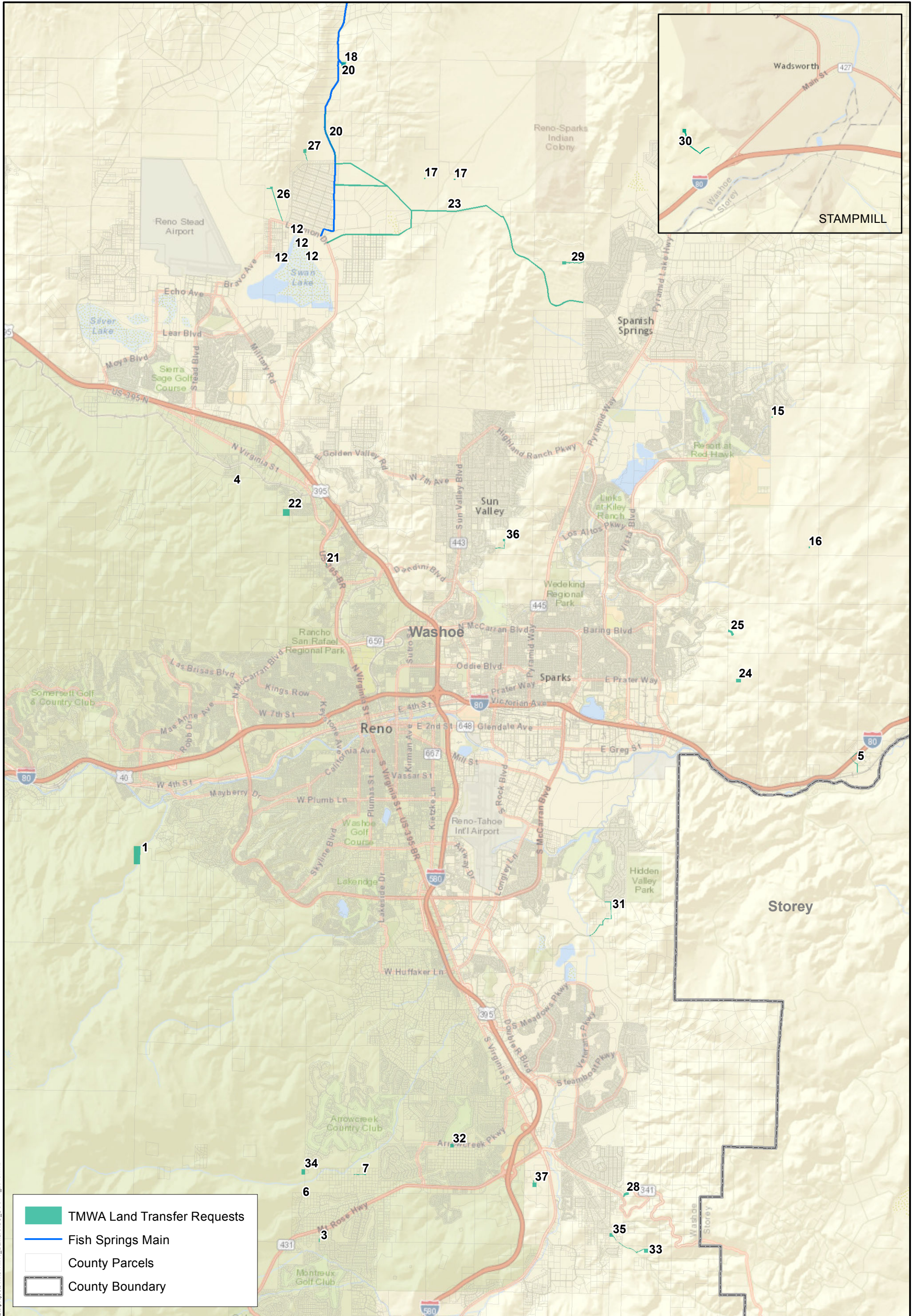
Public agencies may be exposed to premises liability claims for unsafe conditions on property they own, but they also have a number of statutory protections that help reduce that liability risk. The most significant is NRS 41.033, which prohibits any action against TMWA for failing to inspect or discover a hazardous condition on its lands. NRS 41.033 limits claims against public agencies for defective conditions to circumstances where the public agency has actual, express knowledge of the hazard and fails to act reasonably to correct such hazard. TMWA also enjoys discretionary act immunity under NRS 41.032, which bars actions based on the exercise or failure to exercise a discretionary function. This immunity can, in narrow circumstances, provide additional protections for discretionary actions related to land ownership. Finally, TMWA enjoys sovereign damage limitations, which cap damages awardable against public agencies in tort cases to \$100,000.

In addition to these sovereign immunity protections, a number of general statutory protections and limitations also exist which can limit liability for claims arising from recreational activities on lands and injuries to trespassers. NRS 41.510 provides that landowners owe no duty to keep their premises safe for entry or use by others participating in any recreational activity (including hunting, fishing, camping, hiking, riding animals or vehicles) or to provide warnings of any hazardous condition or structure. While NRS 41.510 does not limit liability for malicious conduct, it provides significant liability limitations in addition to sovereign immunity protections relative to recreational activities, protection which may be more significant with respect to large tracts of land where fencing is not practicable. Similarly, NRS 41.515 provides that a landowner owes no duty of care to a trespasser and is not liable to a trespasser for physical harm caused by the failure to put the premises in a condition that is reasonably safe for use.

These statutory protections are significant and important to TMWA because under certain circumstances it may be reasonable to allow existing public use of these lands to continue if they are compatible with TMWA's existing or anticipated use or where restricting access is not practicable or feasible.

TMWA Land Request - PRELIMINARY

Id	APN	ACRES	NAME	DESCRIPTION	STATUS
1	3819045	27.683	HUNTER CREEK	PRODUCTION WELL	PROPOSED
2	7921046	8735.928	BEDELL FLAT	GW RECHARGE/RECOVERY FACILITIES	PROPOSED
3	4909013	0.188	THOMPSON LANE	WATER MAIN	EXISTING
4	8218012	0.006	KIOWA WAY	WATER MAIN	EXISTING
5	8406001	1.867	TRUCKEE CANYON	WATER FACILITIES	EXISTING
6	4906014	0.059	TIMBERLINE DR	WATER MAIN	EXISTING
7	0	0.984	MELARKEY WAY	WATER MAIN	EXISTING
8	7424101	0.057	SAND PASS MW2	MONITORING WELL	EXISTING
9	7424206	0.057	SAND PASS MW1	MONITORING WELL	EXISTING
10	7411201	0.057	NEVERSWAT MW2	MONITORING WELL	EXISTING
11	7411201	0.057	NEVERSWAT MW1	MONITORING WELL	EXISTING
12	8072202	0.009	LEMMON VALLEY	MONITORING WELLS	EXISTING
13	7439019	0.057	ASTOR PASS MW2	MONITORING WELL	EXISTING
14	7439020	0.057	ASTOR PASS MW1	MONITORING WELL	EXISTING
15	8401015	0.237	SPRING CREEK #7 WEST MW	MONITORING WELL	PROPOSED
16	8402009	0.237	SPANISH SPRINGS CANYON AREA	MONITORING WELL	PROPOSED
17	8917001	0.459	HUNGRY VALLEY	MONITORING WELL	PROPOSED
18	8901005	3.963	FISH SPRINGS TERMINAL TANK	WATER TANK	EXISTING
19	7401038	1.004	FORT SAGE SURGE TANK	WATER TANK	EXISTING
20	7401038	150.200	FISH SPRINGS	WATER MAIN	EXISTING
21	8254027	0.211	SECRET PASS RD	WATER MAIN	EXISTING
22	8218005	9.970	RALEIGH HEIGHTS	WATER TANKS	EXISTING
23	0	119.138	LEMMON VALLEY TO SPANISH SPRINGS PIPELINE	WATER MAIN	PROPOSED
24	8406018	3.963	COPPER CANYON	WATER TANK	PROPOSED
25	8402003	3.604	D'ANDREA 2 TANK SITE	WATER TANK	PROPOSED
26	8901014	5.377	LEMMON VALLEY 3 TANK	WATER TANK	EXISTING
27	8901013	2.858	LEMMON VALLEY 4 TANK	WATER TANK	EXISTING
28	1675136	2.958	STMGID 1 TANK	WATER TANK	EXISTING
29	8916002	4.942	DESERT SPRINGS 3 TANK	WATER TANK	EXISTING
30	8415020	2.736	STAMP MILL TANK	WATER TANK	EXISTING
31	0	3.766	HIDDEN VALLEY TO DOUBLE DIAMOND WATERLINE	WATER MAIN	EXISTING
32	14224108	2.502	ARROWCREEK TANK	WATER TANK	PROPOSED
33	5052007	5.100	TOLL RD TANK AND PIPELINE	WATER TANK	PROPOSED
34	4901031	3.974	ARROWCREEK 3 TANK SITE EXPANSION	TANK SITE	PROPOSED
35	1721120	2.159	EASY ST PUMP STATION	FACILITIES AND PIPELINE	PROPOSED
36	8306107	1.735	SUN VALLEY TANK AND PIPELINE	WATER TANK	PROPOSED
37	4945010	3.734	EQUIPMENT YARD	FACILITIES	PROPOSED



- TMWA Land Transfer Requests
- Fish Springs Main
- County Parcels
- County Boundary

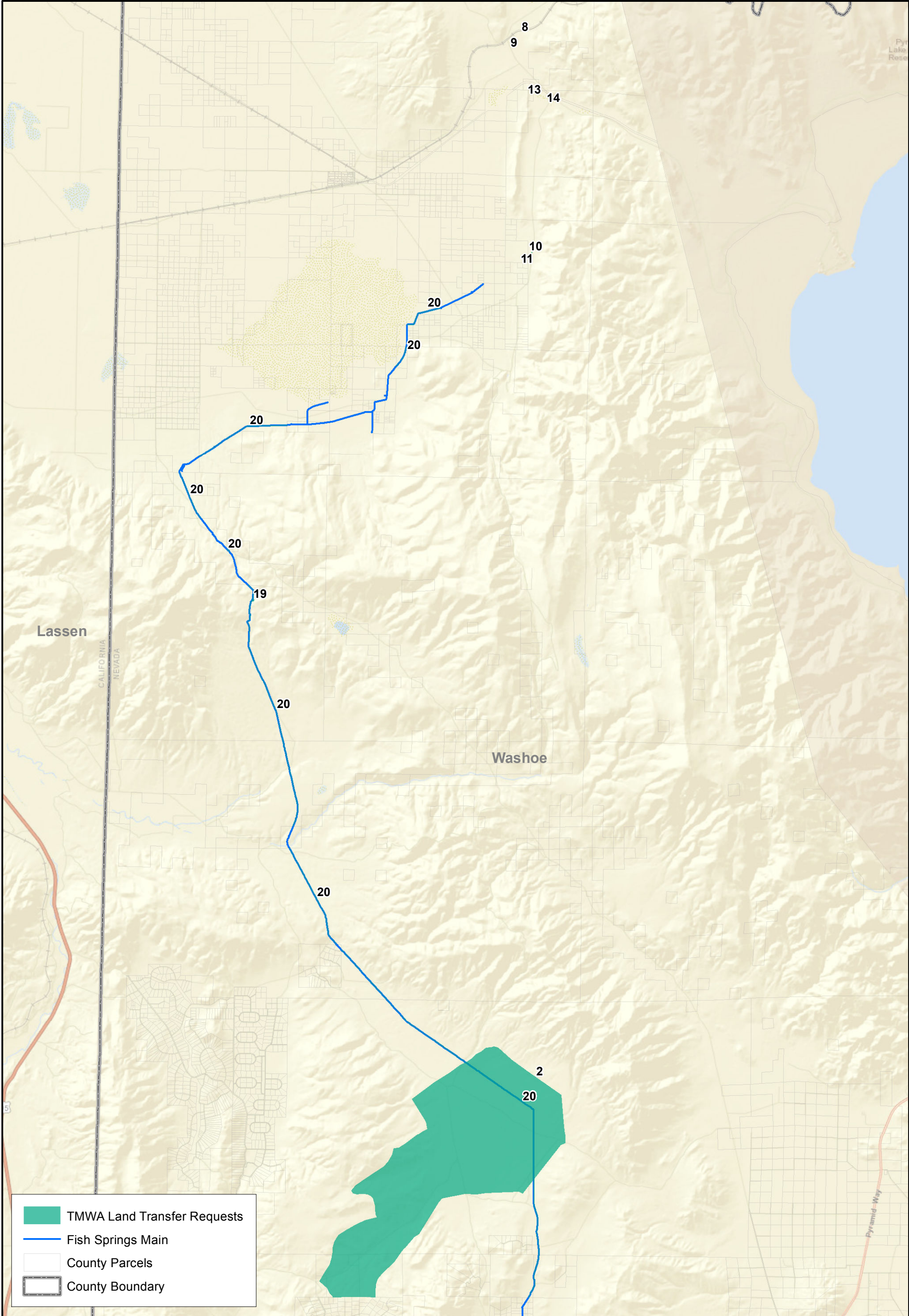


FEDERAL LANDS TRANSFER BILL
Preliminary TMWA Land Transfer Requests

DATE	10/12/2016 <i>DRAFT</i>
MAP BY:	JAK
REQUESTED BY:	JE
SCALE:	1 in = 2 miles



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