

Memorandum

Date: April 22, 2013

To: Kate Gaffney
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-20000

From: Kimberly Nicol 
Regional Manager
Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764

Subject: Comment on Petitions for Temporary Transfer and Change filed by Walker River
Irrigation District Licenses 6000 and 9407 (Applications 2221 and 1389)

The California Department of Fish and Wildlife (Department) has a vital interest in these petitions to transfer water based on its status as trustee agency for California's fish and wildlife resources. The Department's right to comment is founded on State Water Code section 1726, Title 23, California Code of Regulations (CCR), and other provisions of law. The Department is providing comments on the DEIR as the State agency which has the statutory and common law responsibilities with regard to fish and wildlife resources and habitats. California's fish and wildlife resources, including their habitats, are held in trust for the people of the State by the Department (Fish and Game Code §711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitats necessary for biologically sustainable populations of those species (Fish and Game Code §1802). The Department's fish and wildlife management functions are implemented through its administration and enforcement of Fish and Game Code (Fish and Game Code §702). The Department is a trustee agency for fish and wildlife under the California Environmental Quality Act (see CEQA Guidelines, 14 Cal. Code Regs. §15386(a)). The Department is providing these comments in furtherance of these statutory responsibilities, as well as its common law role as trustee for the public's fish and wildlife.

Project Description

Under Water Right License 6000, Walker River Irrigation District (WRID) proposes to transfer a maximum of 25,000 acre-feet; add a purpose of use for fish and wildlife

preservation and enhancement; add a place of use of the West Walker River from Topaz Reservoir to Walker Lake; and add an instream flow dedication reach extending from Topaz Reservoir to Walker Lake.

Under Water Right License 9407, WRID proposes to transfer a maximum of 25,000 acre-feet; add a purpose of use for fish and wildlife preservation and enhancement; add a place of use of the East Walker River from Bridgeport Reservoir to Walker Lake, and add an instream flow dedication reach extending from Bridgeport Reservoir to Walker Lake.

Department Comments

The proposed water transfer project is intended to benefit fish and wildlife resources in Walker Lake, Nevada. This worthwhile project should be conducted in a manner to minimize and avoid potential impairment to other water bodies in the Walker Lake hydrographic basin, including Bridgeport Reservoir, and the bi-state waters: Topaz Lake, West Fork Walker River, and East Fork Walker River.

Water Code section 1725 requires that a temporary change must involve the amount of water that would have been consumptively used or stored by the licensee in the absence of the proposed temporary change, would not injure any legal user of the water, *and would not unreasonably affect fish, wildlife, or other instream beneficial uses*. Water Code section 1726(c) requires that the petitioner provide a copy of the petition to the Department and subsection (f) affords the Department 30 days after the notice of the petition was published to file a comment. The Notice regarding the petitions was published on March 13, 2013 and listed a comment deadline date of April 22, 2013. Thus, the Department's comments are submitted in a timely manner.

Water Code section 1727 requires the State Water Resources Control Board (Board) to make certain findings regarding the petitions. At this time, the Department believes that the Board does not have sufficient information on which to make those required findings. For example, the Board is required to find that the proposed temporary change would not unreasonably affect fish, wildlife or other instream beneficial uses. The petition currently does not have the information that would be required to make that finding.

The notice is not consistent with the project described in the applications. The notice indicates stored water releases of a maximum of 25,000 acre-feet would be released from Topaz Reservoir and/or Bridgeport Reservoir. The petitions appear to indicate a maximum amount of 25,000 acre feet could be released from each of Topaz and Bridgeport Reservoirs, which could result in a maximum withdrawal of 50,000 acre feet.

The East Fork Walker River flows nine miles through California, seven of which cross the East Walker River State Wildlife Area and are a designated "catch-and-release" trout fishery pursuant to FGC §1727. The 1,367-acre State Wildlife Area was purchased to protect aquatic and wildlife habitat including river, riparian woodland and

meadows, angler access, and to protect the exceptional angling for brown trout. Both Bridgeport Reservoir and Topaz Lake/Reservoir are regionally significant trout fisheries. These productive reservoirs annually receive 54,000 and 25,000 stocked rainbow trout, respectively, which grow and provide quality fishing. Lake Topaz receives additional stocked fish from the Nevada Division of Wildlife, and provides a regionally significant winter fishery for both states. The East Walker River below Bridgeport reservoir also hosts 7 of 8 native fish species, an uncommonly intact fish fauna in comparison to other major California river basins. These native fishes include Lahontan Creek tui chub (*Siphateles bicolor obesa*), Lahontan redband (*Richardsonius egregius*), Lahontan speckled dace (*Rhinichthys osculus* ssp.), mountain sucker (*Catostomus platyrhynchus*), Tahoe sucker (*Catostomus tahoensis*), Mountain whitefish (*Prosopium williamsoni*), and Piute sculpin (*Cottus beldingi*). Flows below Topaz Lake are released in Nevada and do not flow in CA.

Information Necessary to Make Finding Required by Water Code Section 1727(b)(2)

The application should clarify whether the maximum amount of transferred water is 25,000 acre feet as indicated in the Notice of Petitions, or 50,000 acre feet as could be concluded by examination of the petitions themselves.

Information should be provided to indicate the range of possible changes in streamflow magnitude, timing, and rates of change. While additional water in the Walker River could be neutral or beneficial to the environment, unseasonal additions, abnormal quantities, or rapid fluctuations of flow would be harmful. For example, release of flows during spawning season could scour eggs from the gravel, or strand deposited eggs as flows recede after water delivery concludes.

Changes in the amount and duration of reservoir levels need to be identified in order to evaluate potential effects on fish habitat, migratory waterfowl, fishing access, and other resources.

Information to describe the magnitude of the proposed changes relative to reservoir inflow is needed to help ascertain whether the amounts of water proposed for transfer, and their potential effects, are substantial.

The applicant should explain if and how the proposed transfer at Topaz Lake would affect the bypass flow regime in the West Walker River below the Topaz Canal Diversion. Flows below the diversion in California are subject to the provisions of FCG §5937 and 5946.

The applicant should propose environmental safeguards to protect aquatic and riparian resources, including limits to flow and reservoir level alterations to prevent unreasonable effects to fish, wildlife, or other instream beneficial uses.

Clearly, additional information is needed from Petitioner before the Board can make the findings required by Water Code section 1727(b)(2). Any schedule of releases

should be developed in coordination with the Department and other interested parties in California, including Mono County. We believe the forgoing information needs and specific concerns can be timely addressed to the mutual satisfaction of the Department and the applicant, allowing the project to move forward in the anticipated time frame.

California Environmental Quality Act (CEQA) Compliance

The petition submitted to the Board was for a temporary transfer of water of one year or less. Such transfers are exempt from CEQA pursuant to Water Code section 1729. The WRID Stored Water Program, however, is actually a three year water leasing program, as authorized by Congress. Thus, while Water Code 1729 exempts transfers of one year or less, it is likely that WRID intends to implement a three year water transfer program. As such, a three year program is not exempt from CEQA. The Board should ask further questions of WRID to better determine the proper scope of the proposed project.

In conclusion, the Department's primary comment related to the WRID petitions is to urge the Board to require more detailed information regarding the proposed timing, rate, duration and season of the transfers in order to be able to determine if in fact the transfers would not unreasonably affect fish, wildlife, or other instream beneficial uses in California. The Department looks forward to working with WRID and the Board to ensure that the transfers, in the end, do in fact serve to benefit fish and wildlife resources.

If you have questions regarding these comments, please contact Steve Parmenter at 760-872-1123 or in writing at 407 West Line Street, Bishop, CA 93514. Thank you for this opportunity to comment on the proposed water transfers.