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STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Licenses 6000 and 9407 (Applications 2221 and 1389) of Walker River Irrigation District Petitions for Temporary Change Involving the Transfer and Instream Flow Dedication of 25,000 Acre-Feet of Water	**REQUEST FOR RECONSIDERATION** Water Code Section 1122 CCR Title 23 §§ 768 and 769 KMG: A002221 & A001389

The County of Mono ("Petitioner") hereby requests that the State Water Resources Control Board ("State Water Board") reconsider the Order Approving Temporary Changes ("Order") adopted on February 21, 2014, in response to the Walker River Irrigation District's Petitions for Temporary Change Involving the Transfer and Instream Flow Dedication of 25,000 Acre-Feet of Water and prays for the relief set forth below. This Request for Reconsideration is based on the Memorandum of Points and Authorities in support hereof, its attachments, and the record before the State Water Board in this matter.

1. The Petitioner is the County of Mono, a political subdivision of the State of California. Petitioner may be contacted through its County Counsel at the following address:

Office of the Mono County Counsel, Attn: Stacey Simon, 452 Old Mammoth Road, Third Floor, P.O. Box 2415, Mammoth Lakes, CA 93546.

2. Petitioner requests reconsideration of the Order Approving Temporary Changes requested by the Walker River Irrigation District in its Petitions for Temporary Change Involving the Transfer and Instream Flow Dedication of 25,000 Acre-Feet of Water.

3. The Order was made on February 21, 2014.

4. Petitioner asserts that the Order is inappropriate or improper because: 1) the Order is not supported by substantial evidence; 2) the Board committed an error of law in adopting the Order; 3) there is relevant evidence that was incapable of being evaluated by the decision maker and relevant evidence that could not have been produced with the exercise of reasonable diligence that the decision maker should consider before rendering its decision; and 4) Irregularity in the proceedings and the Order, and an abuse of discretion by the decision maker prevented the County from having a fair hearing in this matter.

5. Petitioner requests that the Order be set aside and vacated or, in the alternative, that it be amended as set forth in the attached Memorandum of Points and Authorities in Support of this Petition.

6. Copies of this Petition for Reconsideration, the accompanying Memorandum of Points and Authorities in Support of the Petition for Reconsideration, and its enclosures have been sent to the interested parties contained on the attached list.

Dated: March 19, 2014

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STATE WATER RESOURCES CONTROL BOARD

In the Matter of Licenses 6000 and 9407 (Applications 2221 and 1389) of Walker River Irrigation District Petitions for Temporary Change Involving the Transfer and Instream Flow Dedication of 25,000 Acre-Feet of Water	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR RECONSIDERATION** Water Code Section 1122 CCR Title 23 §§ 768 and 769 KMG: A002221 & A001389

I. INTRODUCTION

Mono County submits the following Memorandum of Points and Authorities in Support of its Request for Reconsideration of the Order Approving Temporary Changes ("Order") adopted by the State Water Resources Control Board on February 21, 2014, in response to the Walker River Irrigation District's Petitions for Temporary Change Involving the Transfer and Instream Flow Dedication of 25,000 Acre-Feet of Water (the "Petitions").

The Order authorizes a temporary change in the place and purpose of use of up to 25,000 acre-feet (AF) of water stored in Topaz and Bridgeport Reservoirs (the "Reservoirs") in

Mono County.[1] The water is stored pursuant to State Board Licenses 6000 and 9407 (collectively, the "Licenses").

As expressed in comment letters on the Petitions submitted by Mono County (the "County") and the California Department of Fish and Wildlife (DFW), various values associated with the Reservoirs and downstream river reaches (e.g., those protected under California Water Code[2] section 1727(b)(2) and California's public trust doctrine) will be unreasonably harmed if the Petitions are approved without an understanding of the scope and nature of the proposed changes to water storage and releases – and the imposition of appropriate mitigations.

On February 21, 2014, the State Water Board adopted the Order, with conditions apparently designed to protect the values described by Mono County and DFW. However, despite the Order's good intentions and responsiveness to the County's and DFW's concerns, it is inadequate to ensure that the changes will not unreasonably affect fish, wildlife, or other instream beneficial uses (including recreational, scenic, and related public trust values), as required by section 1727(b)(2) and the public trust doctrine.[3]

Unfortunately, such an oversight, in this critical first year of the District's demonstration program – as interested parties from all perspectives look on to determine whether water leasing could play a part in resolving issues related to Walker Lake – will have devastating, long-term impacts on the public's perception not just of the District's Stored

[1] Topaz Reservoir is located partially within Douglas County, Nevada.

[2] All statutory references are to the California Water Code, unless otherwise noted.

[3] *See Chowchilla Farms, Inc. v. Martin* (1933) 219 Cal. 1, 18, holding that a water course, although originally constructed artificially, may become a resource over which riparian owners and other affected parties have all the rights applicable to a natural water course. *And see Big Bear Municipal Water Dist. v. Bear Valley Mutual Water Co.*, in which the court assumed without deciding that the public trust doctrine applied to Big Bear Lake, which is an artificial reservoir created by the Bear Valley Dam. ((1989) 207 Cal. App. 3d 363.) Finally, as noted by the trial court in *Environmental Defense Fund v. East Bay Municipal Utility District*, exempting water resources controlled by dams from the public trust would run "counter to strong administrative and judicial trends favoring comprehensive planning in the allocation of those resources." (Statement of Decision at 34.)

Water Program (SWP), but on other similar efforts to provide additional inflow to Walker Lake.[4]

II. STATEMENT OF FACTS

The Walker River Irrigation District (the "District") holds two water rights licenses issued by the State Water Board authorizing it to store water in Bridgeport and Topaz Reservoirs in Mono County. License 6000 allows the District to divert up to 57,580 AF per year from the West Walker River in Mono County to storage in Topaz Reservoir. License 9407 allows the District to store up to 39,700 AF per year from the East Walker River in Bridgeport Reservoir (collectively, "the Stored Water"). The place and purpose of use under the Licenses is to irrigate lands within the boundaries of the District.

On February 28, 2013, the District filed two petitions requesting temporary changes to the purpose and place of use of up to 25,000 AF of the Stored Water, in order to facilitate the implementation of Walker Basin Restoration Program (the "Restoration Program"). The Restoration Program is administered by the National Fish and Wildlife Foundation (NFWF) pursuant to P.L. 111-85, and is designed to restore and protect Walker Lake in Nevada. (Order at p. 1.) The District's requested modifications would enable users of Stored Water who are members of the District to temporarily lease a portion of the Stored Water for the purpose of increasing inflows to Walker Lake under the SWP. (Order at p. 1.)

The Petitions did not include information related to quantities or timing of releases, return flow schedules for stored water, or changes to streamflow regimes as required by subdivision (b)(2) of section 1726 (the "1726 Information"). Instead, the Petitions explain that

[4] Water rights in the Walker River Basin, including the protection of public trust values at Walker Lake, is currently the subject of litigation in the Federal District Court for the Northern District of Nevada (Case No. C-125; subproceedings B and C). The State Water Resources Control Board, Mono County, the District, other public entities from both California and Nevada, the Federal Government, and thousands of individual water rights holders are parties to those proceedings.

"[t]he proposed quantities of water to be released by the District for the water transfer and instream flow dedication are variable and depend upon hydrologic conditions and participation in the Stored Water Program by individual growers within the District." (Petitions, Attachment No. 1.)

Mono County submitted comments to the State Water Board on April 16, 2013, attached to this Request as **Exhibit A**, and on January 7, 2014, attached to this Request as **Exhibit B**, expressing its concern that scenic, recreational, wildlife, and other values (i.e., the values protected under section 1727 and the public trust doctrine) associated with the Reservoirs and downstream river reaches would be unreasonably harmed, should the temporary changes be approved without an understanding of the scope and nature of the proposed changes– and without the imposition of appropriate conditions. By letter dated April 22, 2013, attached to this Request as **Exhibit C**, DFW expressed similar concerns. The County's letters additionally asked the State Water Board to require the District to provide the missing 1726 Information (or develop such information itself) so that the impacts associated with the requested changes could be understood and adequately mitigated.

On November 22, 2013, the District submitted a letter in response to the comments received on its Petitions, including those from the County and DFW. That response did not include the 1726 Information.

On February 21, 2014, without having received the 1726 Information, the State Water Board found that the proposed changes would not unreasonably affect fish, wildlife, or other instream beneficial uses and issued the Order. (Order at pp. 16-17, § 7.3). The Order temporarily amends the purpose of use of up to 25,000 AF of the Stored Water under both Licenses to include preservation and enhancement of fish and wildlife and temporarily expands

the place of use of that same amount of Stored Water to include the East and West Walker River below the Reservoirs, and Walker Lake in Nevada. (Order at p. 21.)

III. STANDARD OF REVIEW

An interested party may petition the State Water Board for reconsideration of a decision or order based on the following grounds: (1) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (2) the decision is not supported by substantial evidence; (3) there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; (4) error in law. (See 23 CCR § 768.) Petitioner requests that the Order be reconsidered on grounds 1, 2, and 4.

IV. DISCUSSION

A. IRREGULARITY IN THE PROCEEDINGS, OR ANY RULING, OR ABUSE OF DISCRETION PREVENTED THE COUNTY'S CONCERNS FROM BEING HEARD

A petition requesting temporary changes to a water right must include, among other things, a description of the changes in water storage, timing, water quality, and release and return flow schedules, as well as information identifying the likely effects of the proposed change on fish, wildlife and other instream beneficial uses. (*See* § 1726(b)(2) and 23 CCR § 794(a).) This "1726 Information" is necessary in order that the State Water Board may fulfill its obligation to determine that the proposed change(s) will not unreasonably affect fish, wildlife or other instream beneficial uses – a finding which must be made before a temporary change may be approved. (*See* § 1727(b)(2).) The 1726 Information is also critical to the State Board's duty, as trustee of the water resources of the State, to weigh and protect public trust

values.[5] (*See National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 444, *and see* Order at p. 4.)

The Petitions do not contain the required 1726 Information. Instead, the District seeks to avoid this requirement with the statement that "[t]he proposed quantities of water to be released by the District for the water transfer and instream flow dedication are variable and depend upon hydrologic conditions and participation in the Stored Water Program by individual growers within the District." (Petitions, Attachment No. 1, at p. 3.) However, the Petitions acknowledge that the temporary changes "could reduce the quantity of water held in storage." (*Id.* at p. 4). A reduction in water stored in the Reservoirs, if not appropriately constrained, will adversely affect fish, wildlife, and other instream beneficial uses, and harm public trust values.

At the request of the Water Board, and in response to comments from Mono County and others pointing to the absence of the 1726 Information from the Petitions, the District provided the following legal argument and conclusions to the State Water Board:

> In order to determine whether the proposed changes will unreasonably affect fish, wildlife, or other instream beneficial uses, what is presently allowed must . . . be compared to what will be allowed if the proposed changes are approved . . . at present, farmers are allowed to call for stored water at any time for irrigation purposes during the period April 1 to October 31. There is no required pattern which limits how that water may be called for. The call is at the discretion of the owner. Today, nothing prevents early drawdown of reservoirs or fluctuating releases during the irrigation season. The Petitions will not alter those facts. (Letter from District to State Water Board, November 22, 2013, at p. 10.)

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[5] These values include scenic, recreational, fishing, commerce, navigation, bathing and swimming, public access, and ecological resources, among others. (*See Center for Biological Diversity v. FPL Group* (2008) 166 Cal.App.4th 1349, 1360.) The application of the public trust doctrine to artificially-created waterways is discussed in footnote 3.

While providing an interesting (and concerning) insight into the District's perception of its authority under the Licenses, the District's argument is incorrect, its legal conclusion wrong, and most significantly, its response ***still*** fails to provide the required 1726 Information. Not only should the Petitions have been rejected by the State Water Board under applicable regulations when they were submitted due to this defect,[6] but as a practical matter, the State Water Board ***never*** received the information or evidence it needed to lawfully approve the Petitions.

Instead of requiring that the 1726 Information be provided prior to approving the temporary changes, the Order requires the District to develop some of the missing information ***after-the-fact*** by developing a schedule of releases in consultation with the Federal Water Master, National Fish and Wildlife Foundation (NFWF), and the Walker River Paiute Tribe ("Tribe"). Specifically, condition #6 of the Order requires the District to "develop and operate to a schedule of releases for the transfer in consultation with the Water Master, NFWF, and the Tribe [and to] . . . promptly inform these parties of any changes to the release schedule."[7]

However, without knowing when and in what quantities the water participating in the SWP will be released, and the resulting impacts on Bridgeport and Topaz Reservoirs and downstream river reaches, the County was unable to meaningfully comment on the proposed changes ***during*** the processing of the Petitions – when such comments could have influenced the outcome. The District's failure to provide the 1726 Information, and the State Water Board's issuance of the Order notwithstanding that failure, constitutes an irregularity in the

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[6] *See* 23 CCR § 794(d):"[t]he petition for change(s) will not be accepted for filing unless it contains all of the information required by subdivision (a) . . .).

[7] Conditions # 8 and 10 require the after-the-fact development of other portions of the 1726 Information.

proceeding and abuse of discretion by the Board, violates sections 1726 and 1727, and has prevented the County's concerns from being heard, thereby depriving the County of a fair hearing.

Condition #6 does not cure the harm resulting from the procedural irregularities just described. While it requires the District to develop operate to a schedule of releases in consultation with the Water Master, NFWF, and the Tribe, no consultation with Mono County is required. Nor can any of these three listed entities adequately represent the County's interests, which are distinct from their interests.[8]

Condition #6 is additionally ineffective because its requirement that the District consult with the three listed entities appears to involve input, but no control, by those entities over the schedule of releases ultimately implemented. Accordingly, even assuming that the Water Master, NFWF, or the Tribe ***was*** concerned with the health of fisheries, wildlife, and other instream beneficial uses within the Reservoirs and (for the Water Master and the Tribe) below the dams, they would be powerless to require a schedule of releases to protect those values. Only the State Water Board could have imposed such a requirement – prior to approving the Order – by demanding the required 1726 Information from the District (or imposing a schedule of releases in the Order which prevents such harm). Because the Order has now been issued, it is too late even for the State Water Board to require such protections, since (within only the parameters described herein) the Order delegates final decision making authority regarding the releases to the District.

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[8] The Water Master's obligation is to ensure the delivery of water for irrigation purposes pursuant to the Walker River Decree. NFWF is charged by Congress with implementing the Walker Basin Restoration Program for the purpose of restoring Walker Lake and the Walker River (the latter being aligned with the County's present interests). The Tribe is a senior water rights holder on the Walker River, interested in preserving its water rights. The Tribe has also historically expressed the additional interest of protecting and restoring Walker Lake and its fishery

The issuance of the Order without the 1726 Information, the requirement that the 1726 Information be developed after-the-fact, and the Order's inadequate attempt to impose conditions to protect beneficial uses constitute irregularities in the proceedings and the Order and an abuse of discretion. These irregularities and abuse of discretion prevented the County from adequately analyzing or understanding the impacts of the proposed changes and, accordingly, prevented the County from providing timely and meaningful input on them to the State Water Board. For all of the above reasons, the County was deprived of a fair hearing.

B. THE ORDER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

Prior to approving a temporary change petition, the State Water Board must find that the proposed changes will not unreasonably affect fish, wildlife, or other instream beneficial uses. (*See* § 1727(b)(2), the "1727 Finding.") The 1727 Finding must be supported by substantial evidence in the record. (*See Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 517.) In addition to its 1727 Finding requirement, the Board maintains an ongoing duty to protect the public trust values of the navigable waters of the State.[9] (*See Nat'l Audubon Society v. Superior Court* (1983) 33 Cal. 3d. 419, 447.)

In recognition of the requirements of section 1727(b)(2), the Order finds that, "as conditioned," the temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses, and lists the following as "evidence" to support that finding:

1. Releases from Topaz and Bridgeport Reservoirs will result in increased flows and water quality benefits downstream to and including Walker Lake as part of the Restoration Program."

2. The District proposes to develop and operate to a schedule of releases for the proposed temporary transfer and instream flow dedication that will be coordinated with the Chief Deputy Water Commissioner under the Walker River Decree and other entities, including NFWF and DFW."

[9] See footnote 3 addressing the applicability of the public trust doctrine to artificially-created waterways.

3. In this first year of the demonstration program, the District does not know which individual landowners will participate in the program or what the exact schedule of releases will be. Any subsequent years' water releases will be informed by monitoring and evaluation of this first year's efforts."

4. To the extent that water is released during the irrigation season, the releases will be made in accordance with historic pattern of release. Although the pattern of releases for irrigation may vary within a season, there is no evidence that water transferred for instream flow purposes during the irrigation season will have an unreasonable effect on fish and wildlife . . . To avoid unreasonably affecting fish, wildlife, or other instream beneficial uses, this Order will require the District to limit releases of stored water during the irrigation season, which are made pursuant to the temporary changes approved by this Order, to the historic range of reservoir releases during the irrigation season."

The County addresses each of these in turn in the following discussion:

1. "Releases from Topaz and Bridgeport Reservoirs will result in increased flows and water quality benefits downstream to and including Walker Lake as part of the Restoration Program."

This "evidence" is too generalized and vague to serve as meaningful support for the 1727 Finding. Vague statements in support of required findings – without discussion and or a defined analytical base – are frequently held inadequate. (*See e.g., Honeysprings Homeowners' Assn. Board of Supervisors* (1984) 157 Cal.App.3d 1122.) In particular, this "evidence" says nothing about how "increased flows" will be managed, how releases will be timed, or in what quantities, nor does it describe *any* anticipated impacts (whether adverse or favorable) in sufficient detail to be understood. Since the Order provides nearly total discretion to the District in making the releases (so long as they are made within the irrigation season, are within the "historic range of releases,"[10] and the District first consults with the Water Master, NFWF,

[10] As described in section IV.B.4, the "historic range of releases" is an undefined term subject to many possible interpretations, several of which would result in unreasonable harm to fish, wildlife, and other instream beneficial uses.

and the Tribe), it is impossible for the State Water Board to have found that no unreasonable impacts to fish, wildlife, or other instream beneficial uses will result from the changes.[11]

Additionally, this "evidence" addresses only impacts to the Walker River downstream from Bridgeport and Topaz Reservoirs, but not potential impacts within the Reservoirs themselves. And the same November 22, 2013, letter from which the statement originated acknowledges that releases pursuant to the temporary changes "could reduce the quantity of water held in storage." (District's November 22, 2013, letter at p. 4.) Accordingly, there is evidence in the record which undermines the Order's 1727 Finding, since a reduction in the quantity of water held in storage will negatively impact water quality, fisheries, other aquatic and avian life, access, scenic and/or recreational values if not properly limited.

For all of the foregoing reasons the above "evidence," whether taken alone or in combination with all of the evidence in the record, does not provide substantial evidence to support the required 1727 Finding.

2. "The District proposes to develop and operate to a schedule of releases for the proposed temporary transfer and instream flow dedication that will be coordinated with the Chief Deputy Water Commissioner under the Walker River Decree and other entities, including NFWF and DFW."

While the District may have proposed to coordinate with DFW to develop a schedule of releases to protect fish and wildlife downstream from the Reservoirs, such coordination was not ultimately required by the Order. (See condition #6, p. 21, requiring consultation in the

[11] The County presumes (but the Order does not state) that the District will comply with the minimum pool and minimum release requirements for Bridgeport Reservoir imposed by WR 90-18. However, the minimum pool of 600 AF during dry and recovery years and the minimum flows of 20 or 30 cfs required by WR 90-18, even when combined with the Stipulation entered into between CDF and the District in 1993 (including the Bridgeport Operations Manual) requiring a minimum pool of 2,000 AF and specified flows below the dam, do not adequately address the County's concerns. These requirements were developed solely to protect fisheries and do not address or protect other instream beneficial uses. The maximum capacity of Bridgeport Reservoir is approximately 40,000 AF. Finally, there is no analogous order or stipulation for Topaz Reservoir and, thus, no minimum protections applicable to it. The documents cited in this footnote were cited by the District either in the Petitions or in its November 22, 2013, letter and are therefore a part of the record.

development of a schedule of releases with the Water Master, NFWF, and the Tribe, but not with DFW.) Further, for the reasons discussed in section IV.A. above (incorporated by this reference as if fully set forth herein) the consultation required by condition #6 is inadequate. Finally, even if consultation with DFW ***was*** required under condition #6, DFW's interests do not extend to all of the "other beneficial uses" encompassed by section 1727 and the public trust doctrine and therefore cannot be relied upon by the State Water Board to fulfill its obligation to weigh and protect each of those resources.

Whether standing alone, or combined with all other evidence in the record, the District's proposal to coordinate with DFW in the development of a schedule of releases is simply not substantial evidence in support of the 1727 Finding – particularly here where such coordination was not ultimately required by the Order.

3. "In this first year of the demonstration program, the District does not know which individual landowners will participate in the program or what the exact schedule of releases will be. Any subsequent years' water releases will be informed by monitoring and evaluation of this first year's efforts."

This "evidence" acknowledges on its face that the 1726 Information was not provided. It also apparently concludes that this deviation from the required procedures is acceptable, since the SWP is in its first year and such information will (it is assumed) be developed during this first year and will inform release schedules in subsequent years of the program. Implicit in this conclusion is the belief that such information is capable of being developed during this first year in a manner that will be beneficial during future years of the SWP and/or that unreasonable harm to the resources at issue will not already have occurred.

However, no deviation from or exception to the requirements of sections 1726 and 1727 is authorized by the Code. In addition, the challenges faced by the District during this

first year of the SWP in providing specificity as to the quantities of water to be released (i.e., the variability in quantities of water based on hydrologic conditions and uncertain participation by individual growers within the District), are challenges which will be present ***each year that the SWP is in effect.*** There is no guarantee that those District members who participate in the SWP during its first year will participate during its second year, or in any subsequent year, much less that they will wish to lease the same quantities of Stored Water as in any other year. There is no requirement in the SWP that participants dedicate the same amount of Stored Water year after year, nor any restriction preventing new individuals from participating from one year to the next. (*See* First Amendment to National Fish and Wildlife Foundation Grant Agreement, at p. 7, describing the terms of such lease agreements, attached in relevant part as **Exhibit D.**) And it goes without saying that there is no guarantee regarding hydrologic conditions in the Walker River Basin. Because variation in levels of participation and hydrologic conditions will be present ***in every year that the SWP operates***, the Order's attempt to justify and excuse the District's failure to provide the 1726 Information in this one year on the basis that such information will be developed based on conditions during this year and then applied to future years is not only contrary to law, but nonsensical.

Variation from year to year is an inherent part of the SWP. Accordingly, the District (or the State Water Board) must develop a schedule of releases now which protects the values set forth in section 1727(b)(2) and the public trust, and ***the SWP must conform to that schedule even in its first year.*** Certainly if additional information is available in future years based on observations from prior years, then such information should be used to refine future schedules of releases. But to allow this first year of the SWP to proceed without a clear understanding of the changes or impacts is not an option the law provides. Finally, if the SWP

results in unreasonable harm to resources of value to the public in its first year, then it risks alienating the public and potential SWP participants from the SWP and other forms of water leasing in the Walker River Basin altogether.

The Order's acknowledgement that the 1726 Information was not provided by the District, but will be developed at a later time, whether taken alone or in combination with all the evidence in the record, does not provide substantial evidence to support the required 1727 Finding.

4. "To the extent that water is released during the irrigation season, the releases will be made in accordance with historic pattern of release. Although the pattern of releases for irrigation may vary within a season, there is no evidence that water transferred for instream flow purposes during the irrigation season will have an unreasonable effect on fish and wildlife . . . To avoid unreasonably affecting fish, wildlife, or other instream beneficial uses, this Order will require the District to limit releases of stored water during the irrigation season, which are made pursuant to the temporary changes approved by this Order, to the historic range of reservoir releases during the irrigation season."

Condition #9 of the Order requires the District to "schedule reservoir releases to be made during the irrigation season (April 1 through October 31) to be within the historic range of releases during the irrigation season." This language is ambiguous and uncertain and does not protect the resources it is intended to benefit.

The District completely dewatered Bridgeport Reservoir in the years 1988, 1977, 1960, 1930, 1929, and 1928, thereby destroying fish populations and all other instream beneficial uses within the Reservoir and within significant portions of the Walker River downstream. "During the September, 1988 draining of the Reservoir, an extensive fish kill occurred as turbidity, suspended sediment concentrations, and water temperatures increased in the river."[12] While these six dewaterings are just the most dramatic examples of harm resulting from

[12] WR 90-18, at p. 22, ¶ 4.2.1.

poorly-timed and unregulated releases,[13] they exemplify one of several problems with the language of the Order.

The term "historic range of reservoir releases" is not defined in the Order and its meaning is subject to multiple interpretations and uncertainty, some of which would result in harm to fisheries, wildlife, and other instream beneficial uses. For example, how will the "historic range of reservoir releases" be determined? If on one occasion in the past a significant amount of water was released from a Reservoir, causing such harm (but within the limits of WR 90-18 as to Bridgeport Reservoir), does this condition allow the District to release that same amount of water as a part of the SWP merely because such a release occurred "historically?" Is the "historic range of releases" based on daily, weekly, or seasonal comparison? Or is it a median, average, or some other type of calculation? What if a "historic release" occurred on one occasion in the past, may it now be repeated as part of the SWP on multiple occasions? There are an almost unlimited number of ways in which the term "within the historic range of releases" can be interpreted.

Finally, the Order's assertion that there is no "evidence that water transferred for instream flow purposes during the irrigation season will have an unreasonable effect on fish and wildlife" improperly shifts the burden of proof from the District to other interested parties. It is the petitioner who has the initial burden of establishing that a proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses (*See* § 1727(c).) That burden shifts only upon the petitioner's establishment of a prima facie case that no unreasonable harm will occur. (*See id.*) The District has not made this prima facie

[13] Such extensive harms could not legally occur today at Bridgeport Reservoir, due to the imposition of conditions both by the State Water Board in its WR 90-18, and through stipulated agreement between DFW (then Fish and Game) and the District entered into in 1993. However, damage need not be as extensive as what occurred in 1988 or previous dewaterings to constitute unreasonable harm.

case and, accordingly, whether there is a "lack of evidence of harm" is not the correct legal standard and should not have been relied upon in the 1727 Finding.

Due to the significant ambiguity in the wording of condition #9, and the improper shifting of the District's burden, this "evidence," whether taken alone or in combination with other evidence in the record, is not substantial evidence in support of the 1727 Finding made in the Order.

C. THE STATE WATER BOARD COMMITTED AN ERROR OF LAW

1. The legal theory pursuant to which the conditions of approval in the Order were developed is incorrect and, as a result, the Order is ineffective to prevent the temporary changes from causing unreasonable harm to fish, wildlife, and other instream beneficial uses.

The argument presented by the District in the Petitions is that its members may impact fishery, wildlife, public trust or other values in the Reservoirs without limitation under the current Licenses (the call for water is "at the discretion of the owner . . . . Today, nothing prevents early drawdown of reservoirs or fluctuating releases during the irrigation season") and, therefore, that the State Water Board is prohibited under subdivision (e) of Water Code section 1727 from placing conditions on the proposed changes to avoid these same types of harms if and when they are caused by the proposed changes.

This is incorrect both factually and legally. Subdivision (e) of Water Code section 1727 provides that the Board may not "deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change." If the District releases water from Bridgeport or Topaz Reservoir pursuant to the SWP, and such releases cause impacts to the Reservoirs or the River downstream, then – as a matter of fact and law – the impacts of those releases ***are caused by the temporary changes***. It is irrelevant that the same types of

harms could theoretically be caused by releases for irrigation purposes under the existing Licenses.

Indeed, if the Licenses are problematic in allowing such impacts to occur (as suggested by the District in its November 22, 2013, letter at p. 11),[14] then subdivision 1727 (e) does not prohibit the State Water Board from addressing those problems as well through other proceedings. "This subdivision does not limit the board, the Department of Fish and Game, or any other state agency, in proceedings pursuant to any provision of law other than this article." (Water Code § 1727(e).) In other words, if there are problems occurring under the existing Licenses, then the State Water Board and/or DFW can and should address those problems through separate proceedings.[15] But the fact that such is the case (or may be the case), does not ***prevent*** the State Water Board from conditioning the temporary changes to avoid similar harms.

Finally, as the County points out in its January 7, 2014, letter to the State Water Board (**Exhibit B**) and in sections IV.B.4 of this Request, releases for the purpose of increasing flows to Walker Lake will not necessarily occur at the same time, or in the same quantities, as releases for irrigation purposes (even if they all occur during the irrigation season and are "within the historic range of releases"). When the place or purpose of use of a water right is changed, the need for the water will frequently be altered because different uses have different demands.

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[14] As discussed elsewhere in this Request, Mono County does not agree that the Licenses are so limited. Fish and Game Code section 5937, WR 90-18, the stipulation between the District and CDF, and the public trust doctrine all provide limitations on the use and management of the Stored Water by the District.

[15] The Licenses are subject to the requirements of California Fish and Game Code section 5937, as well as to the State Water Board's continuing duty to protect the public trust, and may be revised or interpreted by the Board as necessary to address the problems suggested by the District. "Once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs." (*Nat'l Audubon Society v. Superior Court* (1983) 33 Cal. 3d. 419, 447.)

This is precisely why section 1726(b)(2) requires that a licensee petitioning for a change in the purpose or place of use provide information regarding changes in water storage and timing of releases – so that the impacts of such changes can be understood, and mitigated when necessary. This is the very information that was never provided here.

By accepting the District's argument that the Board lacks authority to condition its approval to avoid potential harms resulting from the temporary changes because such (or similar) harms could theoretically also occur today under the Licenses, the State Water Board has improperly allowed the District to avoid providing the 1726 Information and has improperly limited the effectiveness of the conditions imposed in the Order. Specifically, conditions # 6 and 9 allow the District to release Stored Water for the SWP in any manner and at any time, so long as it is "within the historic range of releases during the irrigation season" and the District consults with the three listed entities. The State Water Board has abdicated all other control over the releases.

Besides being ineffective to mitigate harm as discussed in sections IV.A and IV.B.4 of this Request, condition #9's failure to constrain releases pursuant to the SWP beyond what the District has erroneously presented as its members' current "rights" (i.e., to call for water at any time), demonstrates concurrence in the District's misguided legal theory. This error in law is at the heart of the County's concerns. The State Water Board must exercise its authority (and legal obligation) to protect the valuable natural resources provided by Bridgeport and Topaz Reservoirs in Mono County, and in the Walker River below the dams. This is particularly important during this first "demonstration" year of the SWP, where critical judgments and first impressions of the SWP, and water leasing within the Walker River Basin generally, will be formed.

2. The SWP is in reality a three-year water leasing program pursuant to federal law and the District's agreement with NFWF. To treat it as a one-year temporary change for the purpose of avoiding environmental review constitutes improper piecemealing.

Notwithstanding its application for a one-year temporary change, the District's SWP is in reality a three-year water leasing program. Congress has allocated $66,200,000 for the Walker River Restoration Program, of which $25,000,000 is provided to the "Walker River Irrigation District . . . to administer and manage a ***3-year water leasing demonstration program*** in the Walker River Basin to increase Walker Lake inflows." (P.L. 111-85, October 28, 2009, Section 208(b)(1)(B)(i)(I), emphasis added).[16] Both the Petitions and the Order recognize that the request for temporary changes is made pursuant to the Walker River Restoration Program and involves these funds.

While section 1729 exempts temporary changes of one year or less from the application of the California Environmental Quality Act (CEQA), CEQA requires public agencies to consider the "whole of an action" when considering a project, and forbids any agency carrying out, approving, or providing funding for a project from dividing what is in reality a larger undertaking into several smaller projects for the purpose of evading environmental review. "The requirements of CEQA 'cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.'" (*Topanga Beach Renters Assn. v. Dept of General Services* (1976) 578 Cal. App. 3d 188, 195-196, *citing Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal. App. 3d 712, 726, *and see* 14 CCR § 15378.)

[16] The grant agreement between NFWF and the District for the SWP also provides for the program to operate for three years. (*See* First Amendment to National Fish and Wildlife Foundation Grant Agreement at pp. 1 and 4.)

In violation of these requirements, the Order approves temporary changes to the District's Licenses which will be implemented during the ***first year of a three-year water leasing program***. Whether the State Water Board is the lead agency under CEQA, or the District[17] (and the State Water Board therefore a responsible agency), the Order should not have been approved by either without the environmental review required by CEQA.

V. CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the State Water Board vacate the Order and require the District to resubmit its Petitions with the missing 1726 Information. In the alternative, Petitioner requests that the State Water Board:

(1) amend condition #9 to set forth clear parameters for releases pursuant to the SWP which will protect fishery, wildlife, and other instream beneficial uses in the Reservoirs and downstream – including public trust values; and (2) amend condition #6 as follows: (a) to include Mono County and DFW among the entities with which the District must consult in the development of a schedule of releases; (b) to require that the District provide each of the entities listed in condition #6 (including Mono County and DFW) with information regarding historic releases, storage, and reservoir elevations to assist in the consultation; and (c) to provide that no schedule of releases be adopted or implemented by the District over the objection of any the consulting entities (including Mono County and DFW).

/////

[17] Public Resources Code § 21063 defines public agency as "any state agency, board or commission, any county, city and county, city, regional agency, **public district**, redevelopment agency of other political subdivision" without any requirement that such entities be organized pursuant to the laws of the State of California. It is axiomatic that when a public entity or any other entity carries out an activity within the State of California, it is subject to the laws of this State.

Dated: March 19, 2014

Respectfully Submitted,

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Exhibit A

Larry Johnston~District One Fred Stump~ District Two Tim Alpers ~ District Three
Tim Fesko ~ District Four Byng Hunt ~ District Five

BOARD OF SUPERVISORS
COUNTY OF MONO

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5538 • FAX (760) 932-5531
Lynda Roberts, Clerk of the Board

April 16, 2013

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

Re: Petitions for Temporary Transfer and Change; Water Rights Licenses 6000 and 9407

Dear Ms. Gaffney:

Thank you for providing Mono County with an opportunity to comment on the Petitions for Temporary Transfer and Change filed on behalf of the Walker River Irrigation District with respect to water rights licenses 6000 (Topaz Reservoir) and 9407 (Bridgeport Reservoir) (collectively the "Change Petitions").

Mono County is generally supportive of proposals to lease water within the Walker River Basin for the purpose of providing additional inflow to Walker Lake, provided that appropriate protections are in place. Specifically, the County recognizes that the voluntary lease of water within the Walker Basin may provide at least a partial solution to longstanding issues at Walker Lake, which are currently the subject of litigation in the Federal District Court, and that water leasing can provide benefits to the source community not available when water rights are simply purchased.

Consistent with the above, Mono County entered into a Memorandum of Understanding with the National Fish and Wildlife Foundation (NFWF) last year to facilitate environmental review of any future transfer to Walker Lake involving water used for irrigation purposes within Mono County. And the Mono County Resources Conservation District[1] has secured funding to commission a comprehensive review and analysis of water transfers from California to Walker Lake, in order assist future decision makers in understanding the potential impacts.[2]

Similarly, any proposal to change the use of stored water in Bridgeport Reservoir or Topaz Lake must be carefully reviewed and considered – given the significant fishery, wildlife, aesthetic, and other public values afforded by these resources. Such values could be severely and irreversibly impacted if the State Water Board were to approve even a temporary change to Water Rights Licenses 6000 and 9407 without understanding the impacts caused by such a change. To approve a change petition for the purpose of benefitting Walker Lake in Nevada, while causing harm to California's resources within the Walker River Basin, will only undermine efforts to protect Walker Lake, making them synonymous with environmental degradation elsewhere.

[1] The Resources Conservation District is a special district and is not a part of Mono County.
[2] This analysis will not include impacts associated with the transfer of stored water (such as proposed in the Change Petitions) and is limited to the impacts of transferring water used for irrigation in Mono County.

With the foregoing in mind, the following are Mono County's specific comments on the Change Petitions filed on behalf of the Walker River Irrigation District for its Stored Water Program.

1. Releases of stored water must be timed so as to avoid negative impacts to water levels, habitat, and recreational values at Topaz Lake and Bridgeport Reservoir.

The Change Petitions do not describe how the timing of releases would be modified pursuant to the leasing program, but do state that changes to the timing of releases "could reduce the quantity of water held in storage." (Petition for Temporary Transfer and Instream Flow Dedication License 9407 (Application 1389), Attachment No. 1, at p. 4.) This statement causes great concern to Mono County.

Both Bridgeport Reservoir and Topaz Lake provide important fish and wildlife habitat and are central to the economic survival of northern Mono County.[3] As previously recognized by the State Water Board, "The East Walker River currently supports two very productive fisheries, one in the Bridgeport Reservoir itself and the other in the East Walker River downstream of the Bridgeport Dam." (*In the Matter of the Complaint by California Trout, Inc. against the Walker River Irrigation District* WR 90-18, at p. 19.)

At least nine different species of fish have been identified within Bridgeport Reservoir and the East Walker: mountain whitefish (Prosopium williamsoni), Tahoe sucker (Catostomus tahoensis), mountain sucker (Catostomus platyrhynchus), Lahontan redside (Richardsonius egregious), and tui chub (Gila bicolor subspecies), brown trout (Salmo trutta), rainbow trout (Oncorhynhcus mykiss), Sacramento perch (Archoplites interruptus), and carp (Cyprinus carpio). (*See* WR 90-18 at p. 20.)

Topaz Lake supports healthy fisheries of both rainbow and brown trout (Oncorhynhcus mykiss and Salmo trutta, respectively).

Of utmost importance to Mono County, and the thousands of visitors who come here to fish and enjoy the natural environment each year, is the maintenance (and, where possible, enhancement) of water levels, habitat, and recreational values at Bridgeport Reservoir and Topaz Lake – as well as downstream in the East Walker River, as discussed below. Accordingly, Mono County respectfully requests that any modification to the District's Licenses for the purpose of carrying out the Stored Water Program be structured to avoid adverse impacts to reservoir elevations and to associated habitat, fishery, and recreational values.

2. It is not clear from the Change Petitions how stream habitat and fisheries downstream from Bridgeport Reservoir and Topaz Lake will be affected. The State Board should require additional information from the District regarding these impacts so that it may ensure that the proposed temporary changes do not adversely affect fish, wildlife, or other instream beneficial uses.

Water Code section 1726 requires a Petitioner seeking a temporary water right change to describe the changes in water storage and timing that are likely to occur as a result. The information provided must be of sufficient depth and detail to enable the Board to determine whether the proposed temporary change would "unreasonably affect fish, wildlife, or other instream beneficial uses." (Water Code § 1727.) Governing regulations provide further detail on these requirements, specifying that the petition must include, among other things: "the existing and the proposed diversion, release and return flow schedules if stored water is involved or if the streamflow regime will be changed" and "[i]nformation identifying any effects of the proposed change(s) on fish, wildlife, and other instream beneficial uses." (23 CCR § 794(a).)

[3] See web page printouts provided with this letter which highlight fishing opportunities at Topaz Lake, Bridgeport Reservoir and in the East Walker River, as merely two examples of the importance of these resources to Mono County.

The Change Petitions do not provide this information.[4] General statements such as "the instream flows provided by the District *could* reduce the quantity of water held in storage;" "these releases *would increase flows* downstream to Walker Lake during the transfer period;" and "the flow in the East Walker River . . . will increase by *up to 25,000 AF* during the period of the transfer over what would have occurred absent the proposed transfer," (Attachment No. 1 to Change Petition at pp. 3-4, emphasis added) simply do not contain the data needed by the State Board, or interested parties, to understand the possible impacts of the proposed changes, much less ensure that they do not unreasonably affect fish, wildlife, or other instream beneficial uses.[5]

Finally, while the District indicates that, for Bridgeport, it will follow the approved Operations Manual,[6] and "develop and operate a schedule of releases . . . that will be coordinated with the Chief Deputy Water Commissioner under the Walker River Decree and other entities, including NFWF," it is unclear how such coordination will ensure protection of California's valuable natural resources. Moreover, to Mono County's knowledge, there is no operations manual for Topaz Lake and, accordingly, even less is known of the realm of possible variations to flow regimes and lake levels at Topaz.

Clearly additional information is needed from Petitioner before the Board may undertake informed consideration and review of the Change Petitions. And any schedule of releases should be developed in coordination with the California Department of Fish and Wildlife,[7] Mono County, and other interested parties in California.

3. Additional time required by the State Water Board to obtain needed information will not result in undue delay in implementation of the Stored Water Program.

In addition to approval from your Board, the District must obtain approval from the Nevada State Engineer and the United States District Court for the Northern District of Nevada prior to implementing the Stored Water Program. (*See* United States Board of Water Commissioners Administrative Rules, as Amended June 3, 1996, the "Administrative Rules," Articles V-VII.) The processes before each agency (and the court) allow for protest, hearing, and appeal. (*See id.*) And, in addition to administrative and court approvals, the District and NFWF must still agree to a price to be paid for leased water (a discussion which has been ongoing for more than a year), solicit stored-water rights holders interested in participating in the program, and negotiate and execute individual leases with those persons. Accordingly, it is highly unlikely (if not impossible) that the Program will be capable of implementation during the 2013 irrigation season (which is already underway), regardless of any time it may take your Board to obtain the information and specificity it needs to ensure that California's resources are not unreasonably impacted.

Further, the District itself has spent more than four years developing the proposal it now asks the State Board to approve in an expedited manner. Congress established the Walker Basin Restoration Program and allocated twenty five million dollars ($25,000,000) to the District to administer and manage the leasing program in 2009. (*See* P.L. 111-85.) It has taken since 2009 for the District's membership and governing board to agree on the specifics of the leasing program, enter into a grant agreement with NFWF governing the program's terms and, ultimately, to put forward the Change Petitions it now seeks to have your Board approve.

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[4] Indeed, lacking this required information, it is somewhat surprising to Mono County that the Board has accepting the Change Petitions for filing. (*See* 23 CCR §794 (d): "The petitions for change(s) will not be accepted for filing unless it contains all of the information required by subdivision (a) . . .".)

[5] Note that the District informs the State Water Board that it will "not transfer water such that it would adversely impact the District's growers." (Attachment to Change Petition No. 1, at p.4.) There is no similar assurance with respect to fish, wildlife, habitat or other instream beneficial uses in California.

[6] Compliance with the Bridgeport Reservoir Operations Manual is not optional in any event. *See* State Water Resources Control Board's Order WR 90-18 and California Regional Water Quality Control Board's Clean-up and Abatement Order 6-89-154.

[7] Petitioners are required to request consultation with the Department of Fish and Game (now Fish and Wildlife) and the Lahontan Regional Water Quality Control Board and to provide their comments to your Board. (See 23 CCR §794(b) and (c).)

Given the significant involvement of California's natural resources in the Stored Water Program (the District specifically limited the Program to California-stored water, based in part on its own members' concerns regarding potential impacts associated with the leasing of "decree" or "direct flow" rights within Nevada) it behooves the State of California (including the Water Board, Regional Board, and California Fish and Wildlife, among others) to require adequate data from the District to support informed decision making in considering the applications. As previously stated, approving a change petition for the purpose of benefitting Walker Lake, while causing harm to California's resources within the Walker River Basin, would only undermine efforts to protect Walker Lake, making them synonymous with environmental degradation elsewhere.

Mono County supports the lease of water in the Walker River Basin for the purpose of benefitting Walker Lake, but does not support a program to do so that results in environmental or economic harm within California and Mono County.

4. The Stored Water Program is in reality a three-year pilot water leasing program established by federal law and administered by the District. To treat it as a one-year temporary change for the purpose of avoiding environmental review under the California Environmental Quality Act (CEQA) is improper piecemealing which violates the spirit and letter of CEQA.

Notwithstanding its application for a temporary change of one year or less, the District's Stored Water Program is in reality a three-year water leasing program. In 2009, Congress allocated $66,200,000 for the Walker River Restoration Program, of which $25,000,000 is provided to the "Walker River Irrigation District . . . to administer and manage ***a 3-year water leasing demonstration program*** in the Walker River Basin to increase Walker Lake inflows." (P.L. 111-85, October 28, 2009, Section 208(b)(1)(B)(i)(I), emphasis added.) The District acknowledges that its Change Petitions relate to transfers pursuant to that program.

While Water Code section 1729 exempts temporary changes of one year or less from the application of CEQA, CEQA itself requires public agencies to consider the "whole of an action" when considering a project, and forbids a public agency (including any agency carrying out or approving the project) from dividing what is in reality a larger undertaking into several smaller projects for the purpose of evading environmental review. "The requirements of CEQA 'cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.'" (*Topanga Beach Renters Assoc. v. Dept. of General Services* (1976) 58 Cal.App.3d 188, 195-96, *citing Plan for Arcadia, Inc. v. City Council of Arcadia (1974)* 42 Cal.App.3d 712, 726 *and see* 14 CCR § 15378.) Nor may the agency engage in piecemealing in order to avail itself of an exemption applicable to only a portion of the project.

What the Board has before it is an application for temporary change for the first year of a three-year water leasing program.[8] The Board should not be complicit in such piecemealing.

In conclusion, Mono County's primary comment related to the Change Petitions is to urge the State Board to be vigilant in protecting California's fragile natural resources, its recreational assets, and economic backbone by undertaking a thorough environmental review that includes analysis of actual impacts which may occur as a result of the proposed changes.

The Mono County Board of Supervisors appreciates the opportunity to review and comment on the Change Petitions. If your Board, or staff, should have any questions regarding this letter or the

[8] It would appear to be an issue of first impression in California whether an entity, such as the District, meeting CEQA's definition of "public agency" but organized pursuant to the laws of another state is, itself, subject to CEQA when it carries out a project within the State of California. (*See* Cal. Pub. Res. Code § 21063 which defines public agency as "any state agency, board or commission, any county, city and county, city, regional agency, ***public district,*** redevelopment agency or other political subdivision" without specifying that such entities be "of the State of California.") Further, Public Resources Code § 21001.1 expresses the state's policy "that projects ***to be carried out by public agencies*** be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies." (Emphases added.)

County's comments generally, please contact Assistant County Counsel Stacey Simon at ssimon@mono.ca.gov or 760-924-1704. Thank you again for your consideration of these significant issues.

Sincerely yours,
MONO COUNTY BOARD OF SUPERVISORS

By: Byng Hunt, Chair

Encl.

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TOP FISHING SPOTS

A listing of the major fishing areas from north to south in Mono County and what you can expect to catch!

PLUS, check out the new Eastern Sierra Back Country Fishing Guide from our friends at California Department of Fish & Game!

BODY OF WATER	LOCATION	WHAT YOU'LL CATCH
Topaz Lake	U.S. 395, north of Topaz/Coleville	Either a CA or NV fishing license works here. Catch rainbows and browns from Jan. 1 to Sept. 30.
West Walker River **Little Walker River**	U.S. 395, South of Walker / Coleville	Designated a "wild and Scenic River," the West Walker River has a reputation for its trophy-sized trout-rainbow, and brown. It's also a favorite river to kayak especially through its winding bends and rocky troughs. Little Walker River runs from Little Walker Campground to the opening of the West Walker River and adds a more challenging day of fishing for fly fishing anglers. Rainbows and Browns are stocked and come up stream from the larger West Walker River.
Bridgeport Reservoir **East Walker River**	Hwy 182, North of Bridgeport	A thriving population of German browns, rainbows, cutthroat and Sacramento Perch. Anglers come from all over the country each year to try their luck against the wiley Browns and Rainbos at this year round fishing destination. The East Walker has special regulations, artificial flies or lures only with barbless hooks. From November 16th to the last Saturday in April the limit is zero, the rest of the year the limit is one fish over 16".
Twin Lakes	Hwy 420, 14 Miles outside of Bridgeport on Twin Lakes Road	A family vacation favorite with campsites, cabins and lots of fish on two lakes
Virginia Lakes	South of Bridgeport, west of Hwy 395 at the top of Conway Summit	Stocked weekly with rainbows, plus browns and brookies on three picture-perfect alpine lakes.
Lundy Lake	South of Bridgeport, west of U.S. 395 at the base of Conway Summit	Five miles from US 395 up a canyon on a paved road, you'll find a big lake and lots of rainbow, brown and brook trout.
Conway Ranch	Between Lee Vining and Bridgeport, 35 miles north of Mammoth Lakes at U.S. 395 & Hwy 167	The famous Alpers Trout and Lahontan cutthroat trout are raised here and several ponds and streams are open to the public for fishing. Advance reservations are required - (760) 709-6446.
June Lake Loop	A loop from from U.S. 395 at the town of June Lake, north toward Lee Vining	Four lakes: June, Gull, Silver, and Grant are easily reached from the June Lake Loop. The fishing's so good here, the lakes are used to test synthetic baits. Loaded with Alpers, rainbow, brown and brook trout.
	June Lake Loop	

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INTERACTIVE MAPS

Lower Rush Creek		Not for the beginning fly fisherman, it flows from Grant Lake (June Lake Loop) and has cautious, but big brown trout.
Mammoth Lakes Basin	Mammoth Lakes	In the town of Mammoth Lakes are several great lakes for float, boat and shore fishing. Rainbows, Browns and Brookies.
Hot Creek	East of Mammoth Lakes near airport	Some 5,000 to 7,000 rainbow and brown trout per mile live in this popular stream. Ideal for beginning fly fishing, though sure to please anyone.
San Joaquin River	High Sierra, west of Mammoth Lakes	A beautiful area in the backcountry where you can catch rainbows, browns, brooks and golden trout.
Convict Lake	South of Mammoth Lakes off U.S. 395	3 to 7 pounders are pretty common on this big lake. Up to 1000 lbs of trout are stocked each week.
Upper Owens River	East of U.S. 395 between June Lakes and Bishop	Go for big rainbows in spring and browns in fall.
Lower McGee Creek	Near Crowley Lake, off U.S. 395	A gentle, meandering stream near and flowing into Crowley Lake. Lots of oxbows, ideal fly fishing stream.
Crowley Lake	East of U.S. 395, north of Tom's Place	Home of the big rainbow which grow big off Sacramento perch fry and lots of nutrients from streams feeding the lake.
Lower Owens River	In neighboring Inyo County, south of Bishop	Year-round fishing on this designated Brown Trout water, best February to April.

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2013 FISHING EVENTS

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INTERACTIVE MAPS

Something fishy is going on almost everywhere in the Eastern Sierra! Plan your trip to your favorite Mono County fishing spot around this year's derbies, events and festivals.

2013 FISHING EVENTS

Jan. 1 - April 14 - Topaz Lake Fishing Derby - Topaz Lake. The fishing season at Topaz Lake (California-Nevada border) goes from Jan. 1 - Sept. 30, 2011! Topaz Lodge hosts their annual fishing derby from Jan. 1 until April 15 – catch tagged fish for cash and prizes. No entry fee! Contact 800-962-0732 / http://www.topazlodge.com/portfolios/2013-topaz-lodge-fishing-derby/

April 27 - Fishmas Day Celebration at Tom's Place - Tom's Place. A fun-filled fishing derby with cash prizes, 50/50 raffle for cash, and lots of contest categories. Advance registration required. Contact (760) 935-4239 / www.TomsPlaceResort.com

April 27 - Crowley Lake Resort "Big Fish" Contest - Crowley Lake. No entry fee – just bring your opening day catch to Crowley Lake Fish Camp Tackle shop for prizes and fame. Contact 760-935-4301 / http://www.crowleylakefishcamp.com/

April 27 - Monster Fish Contest - June Lake Loop - Prizes will be awarded for biggest trout caught by a local resident, biggest trout caught by a child, biggest trout caught by a woman, and the ugliest trout entered. Contact www.junelakeloop.com

April 27 - 28 - Mono Village Fishing Opener Derby - Upper Twin Lakes, Bridgeport. Cash and merchandise prizes given in several categories. Registration fee required. Contact (760) 932-7071 /www.MonoVillage.com

April 27 through November 15 - Gull Lake Marina "Fish of the Month Club" Derby - June Lake Loop. Cash prizes are awarded for the biggest catch from Gull Lake every month of fishing season! Entry fee is just $5. Plus, rent a boat from the marina and catch a fish over 3lbs., and you get to spin the Wheel of Prizes! For information call Gull Lake Marina at (760) 648-7539 or www.gulllakemarina.com.

April 28- June 13- "Round-up at the Lake" Spring Fishing Derby - Convict Lake. Cash prizes up for grabs; advance registration required. Contact (800) 992-2260 or www.ConvictLakeResort.com

June 7-9 - "Hangman's Bonus Derby" Convict Lake - Convict Lake. Cash prizes up for grabs; adbance registration required. Contact (800) 992-2260 or www.convictlakeresort.com

June 22 - Bridgeport Trout Tournament. An open derby with several categories, funds generated from this event help provide more trout for Bridgeport Reservoir and the East Walker River. Contact (760) 932-7525 / www.BridgeportFishEnhancement.com; or Bridgeport Chamber of Commerce at (760) 932-7500 / www.BridgeportCalifornia.com.

June 29- Trout Fest- Hot Creek Hatchery, Mammoth Lakes 10am-2 pm Bring your family to Trout Fest for free, fun filled day of fishing activities and fascinating facts about California native trout. Contact (559) 765-4824

June 29 - July 7 - Mono Village 4th of July Fishing Derby - Upper Twin Lakes, Bridgeport. Cash and merchandise prizes given in several categories. Registration fee required. Contact (760) 932-7071 /www.MonoVillage.com

July 1-31 - How Big is Big Fishing Derby - West Walker River. Sponsored by the communities of Walker, Coleville and Topaz, and the Northern Mono Chamber of Commerce, the 9th Annual How Big is Big Fishing Derby runs for the entire month of July. No entry fee – just bring your fish in to the Walker General Store, and your catch will be weighed and recorded. Lots of prizes. Contact (530) 208-6078 / www.NorthernMonoChamber.com

July 6 - Free Fishing Day. Come and fish for FREE in Mono County! All regulations still apply and Report Cards are required – but Fishing Licences are waived on this day (and again on September 6, 2010). For more information on Mono County fishing regulations, contact the California Department of Fish & Game at (760) 934-2664 or http://www.dfg.ca.gov/.

July 27 Children's Fishing Festival- Snowcreek Resort Mammoth Lakes - Kids under 12 can catch an Alpers trout at snowcreek ponds. Event T-shirts, prizes. Contact (760) 937-2942 or www.kidsfishfest.com

August 3-11 - Mono Village Summer Fishing Derby - Upper Twin Lakes, Bridgeport. Cash and merchandise prizes given in several categories. Registration fee required. Contact (760) 932-7071 /www.MonoVillage.com

August 31- September 8 - Mono Village Labor Day Fishing Derby - Upper Twin Lakes, Bridgeport. Cash and merchandise prizes given in several categories. Registration fee required. Contact (760) 932-7071 /www.MonoVillage.com

September 1-3 Morrison's Bonus Derby Weekend - Convict Lake. Cash prizes! contact (800) 922-2260 or www.convictlakeresort.com

September 7 - Free Fishing Day. Come and fish for **FREE** in Mono County! All regulations still apply and Report Cards are required – but Fishing Licences are waived on this day. For more information on Mono County fishing regulations, contact the California Department of Fish & Game at 760-934-2664 or http://www.dfg.ca.gov/.

September 2-November 15 - "Ambush at the Lake" Fall Fishing Derby - Convict Lake. Catch a tagged fish at the Convict Lake Fall Fishing Derby Series and win thousands of dollars in cash and prizes! Contact (800) 992-2260 / www.ConvictLakeResort.com

September 20-22 -The Fly Fishing Faire - Four fun filled days of fly casting, fly tying, and lessons for the family. Beginners to advance with great prizes. Contact 951-415-9920 / www.southwestcouncilfff.org

For more information about these fishing events, other sports events, music festivals, and food, beer & wine celebrations, check out our full Calendar of Events.

Exhibit B

Larry Johnston - District One Fred Stump - District Two Tim Alpers - District Three
Tim Fesko - District Four Byng Hunt - District Five

BOARD OF SUPERVISORS
COUNTY OF MONO

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5538 • FAX (760) 932-5531
Lynda Roberts, Clerk of the Board

January 7, 2014

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

Re: Petitions for Temporary Transfer and Change, Water Rights Licenses 6000 (Application 2221) and 9407 (Application 1389)

Dear Ms. Gaffney:

Mono County received the response to comments submitted by the Walker River Irrigation District (the "District") on November 22, 2013, related to the above-referenced change applications. Unfortunately, the District's response fails to address the concerns raised by Mono County in its April 16, 2013, letter, and also does not respond to similar concerns expressed by the California Department of Fish and Wildlife in its April 22 letter. A copy of the County's April 16 letter is included again for your reference.

As Mono County has stated previously, it is critical that any change in California water rights licenses affecting stored water in Bridgeport or Topaz Reservoirs -- or the riparian and stream habitats downstream -- be carried out in a manner which avoids unnecessary harm to those resources and fully complies with the State's environmental laws. While the County had hoped that the District would provide the State Board with the information necessary for the Board to understand, analyze, and avoid those impacts (and which in any event is required by applicable law, including Water Code section 1726) – that has so far not occurred.

The District's suggestion (on pages 10-11 of its letter) that because its farmers are theoretically allowed to call for stored water at any time, any change in the timing of storage or releases from the reservoirs which might result from the change applications is not a change "occasioned by the petitions" is incorrect and ignores the obvious – that farmers, based on their intended use of and need for the water, actually do call for the water at certain, fairly predictable times.

Clearly the relevant questions to be answered are "when do farmers *actually* call for stored water?" and "How will the changes in place and purpose of use proposed by the change applications alter that timing and affect reservoir levels and instream flows?" The District's foreboding statement on page 11 of its response that "early drawdown of reservoirs" and "fluctuating releases" can occur now, and its related conclusion that "the Petitions will not alter those facts" reveals the District's own understanding that such adverse impacts may occur as a result of the change applications it now asks the State Board to approve.

To consider (much less approve) the applications without specific information regarding how the changes would be implemented and the impacts to existing resources, is not acceptable. Accordingly, Mono County respectfully requests that the State Board either reject the District's response and require it to instead provide meaningful information regarding its proposal, or that the State Board itself conduct the required analysis and develop appropriate conditions of approval which will ensure that the resources of the Walker River Basin are not unnecessarily harmed by the proposed changes.

Thank you for your time and consideration of this letter.

Sincerely yours,
MONO COUNTY BOARD OF SUPERVISORS

Chair of the Board of Supervisors

Encl.

Cc: Walker River Irrigation District
Ken Spooner
P.O. Box 820
Yerington, NV 89447

Gordon DePaoli, Esq.
Woodburn and Wedge
6100 Neil Road, Ste. 500
Reno, Nevada 89511

Exhibit C

State of California
Department of Fish and Wildlife

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 redside (*Richardsonius egregious*), 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.

cc: Walker River Irrigation District
c/o Darren Cordova
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

Kenneth Spooner
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Kim Tisdale
Nevada Division of Wildlife
1100 Valley Road
Reno, NV 89512

Ec: Steve Parmenter, CDFW
Nancee Murray, CDFW
Stacey Simon, Mono County

Exhibit D

rights, including as applicable, the approvals set forth in Walker River Irrigation District Regulation No. 14, Temporary Changes to Stored Water for Beneficial Use at Walker Lake ("Regulation No. 14").

Each participant's annual commitment will be met from the stored water rights appurtenant to the land identified and by the amount designated from the annual storage allocation for each year. Stored water committed to the Stored Water Program in a year will be considered as water available for purposes of determining quantities of supplemental groundwater which may be pumped under supplemental groundwater rights in accordance with the Necessary Approvals.

C. Participant Agreements.

1. Form of Agreement.

The District will develop the form of the Participant Agreement. It is anticipated that, for the most part, a single form will be adequate for all participating farmers, however, there will need to be some tailoring of the agreement for each participant. The District intends that, after some training by legal counsel, its internal staff can finalize the agreements with participating farmers.

The Participant Agreement will cover a number of areas. First, it will identify the correct legal owner of the farm, the description and location of the farm, and the stored water rights appurtenant to the farm. It will include the term of the agreement, and provisions for extending that term. It will identify the nature and extent of the water to be committed to the Stored Water Program each year. It will either identify the land involved with that commitment for the entire term of the agreement, or it will establish the process by which that identification would occur after the first year of the agreement and throughout its term. It will specify any restrictions on groundwater pumping and use. It will also specify whether the identified land will be using any of the participant's remaining water to mitigate taking the land out of production or to participate in a program involving low water use alternative

crops. As stated above, use of this remaining water and of associated groundwater must be in accordance with relevant law and pursuant to the Necessary Approvals.

The Participant Agreement will include the price to be paid to the farmer for Stored Program Water. "Stored Program Water" means that quantity of water in acre feet participating in the Stored Water Program. The Participant Agreement will provide for any necessary adjustments each year, and will establish the dates when a participant is to be paid.

The Participant Agreement will authorize the District to apply for the changes to stored water rights necessary to implement it. It will state if, and if so, the extent to which an owner may participate in that process at the owner's expense. The Participant Agreement will include additional authorizations, including authorizations for inspections of land, meters, headgates, pumping records, and anything else necessary to ensure compliance with the Participant Agreement, the Necessary Approvals, and applicable law, including state water law and the Walker River Decree. It will include authorization to identify the owner as a participant in the Stored Water Program, and to report that participation. The Participant Agreement will include other miscellaneous provisions. It will provide for recording a memorandum of the Participant Agreement so that subsequent owners have constructive notice of and must honor its terms.

The District will begin formal recruitment of participants into the Stored Water Program at the same time as it is drafting the Participant Agreement. This will be an ongoing process with new or updated information being provided as it becomes available.

2. Payments for Participating Farmers.

Payments to participating farmers will be made for each acre foot of Stored Program Water enrolled in the program and released from storage based on each year's final storage allocation and the

Certificate of Service

I certify that I am an employee of the Mono County Counsel's Office and that on this 20th day of March, 2014, I served a copy of the foregoing **Request for Reconsideration and Memorandum of Point and Authorities in Support of Request for Reconsideration via overnight mail and electronic mail at the addresses listed below:**

Kathy Mrowka, Senior
Inland Streams Unit
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Electronic Mail: **Kathy.Mrowka@waterboards.ca.gov**

Also via US Postal service to the persons and addresses listed on the attached page.

J.A. Senior — 3-20-2014

Jennifer Senior — **Date**
Legal Assistant
Mono County Counsel

United States Board of Water Commissioners
c/o Karen A. Peterson, Esq
Allison, Mackenzie, Pavlakis
Wright & Fagan, Ltd
402 N Division Street
P.O. Box 646
Carson City, NV 89702

Walker River Irrigation District
c/o Darren Cordova
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

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National Fish and Wildlife Foundation
c/o Don Springmeyer, Esq
Christopher W. Mixson, Esq
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
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David Yardas, Director
Walker Basin Restoration Program
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Gary Garms
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Smith, NV 89430

Walker River Paiute Tribe
c/o Dwight L. Smith
InterFlow Hydrology, Inc.
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Truckee, CA 96161

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

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