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STATE WATER RESOURCES
CONTROL BOARD

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DIV OF WATER RIGHTS
SACRAMENTO

April 22, 2013

Ms. Kate Gaffney
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
P.O. Box 2000
Sacramento, CA 95812-2000

RE: Walker River Irrigation District Temporary (WRID) Transfer Applications

Dear Ms. Gaffney:

Please find attached comments regarding the pending WRID temporary transfer applications for portions of decreed storage rights in Bridgeport and Topaz Reservoirs, Licenses 6000 and 9407. These comments are being submitted by Interflow Hydrology on behalf of the Walker River Paiute Tribe. The Walker River Paiute Tribe is supportive of overall efforts to restore Walker Lake, but as you will note in the provided comments, we believe that some precautions are warranted to both prevent unintended harm to down-stream decreed water users and to assure that the intent of the applications is achieved.

We appreciate the opportunity to provide comments and will be available to answer questions as needed.

Sincerely,
InterFlow Hydrology, Inc.

Dwight L. Smith, PG, CHG
Principal Hydrogeologist
CA Certified Hydrogeologist # 194

cc: Mr. Jon McMasters, Walker River Paiute Tribe (via email)
Mr. Wes Williams, Walker River Paiute Tribe (via email)
Mr. Gene Franzoy, PE, Franzoy Consulting, Inc. (via email)
Mr. Bill Bettenberg, Homer Law (via email)
Mr. Ken Spooner, Walker River Irrigation District (via fax)
Mr. Darren Cordova, MBK Engineers (via fax)

**Walker River Paiute Tribe's Comments Regarding the
Walker River Irrigation District's Petitions for Temporary Changes for
Bridgeport and Topaz Storage Water Under Licenses 6000 and 9407**

The Walker River Paiute Tribe ("Tribe") hereby submits the following comments to the Walker River Irrigation District's ("WRID") petitions for temporary change under Licenses 6000 and 9407 filed on or about March 13, 2013 with the California State Water Resources Control Board. The Tribe is in general support of efforts to convey additional water to Walker Lake, for fisheries recovery and environmental restoration efforts. However, precautions and accurate flow accounting are necessary for issuance of any temporary change permit for up-stream storage water to prevent an unintended occurrence of additional water draws on the system, and to avoid the occurrence of detrimental impacts to the Tribe's irrigation rights and historic irrigation practices. If appropriate accounting and safeguards are implemented, then down-river conflicts with the Tribe's irrigation project can be avoided and intended benefits to Walker Lake realized, and the Tribe respectfully requests that California consider and properly address the following comments in its review of the temporary change petitions:

1. The United States holds in trust for the Tribe water rights to use 26.25 cfs of water from the Walker River during a 180-day irrigation season with an 1859 priority date. The petitions cannot be approved if they will detrimentally harm the Tribe's water rights or the Tribe's ability to fully utilize its water rights.
2. WRID's petitions do not state with specificity how or where the water from the water rights will be measured, or how losses will be determined. As the water rights WRID seeks to transfer are junior to the Tribe's decreed water rights, any transfer cannot detrimentally affect the Tribe's rights.
3. Granting of the petitions will detrimentally harm the Tribe's ability to store water in Weber Reservoir. Weber Reservoir has been used to store water on a continuous basis since Weber Dam was constructed by the United States for the benefit of the Tribe and allottees who irrigate certain lands on the Walker River Paiute Reservation ("Reservation"). The allottee lands cannot be properly irrigated without the conveyance provided by the Weber Reservoir water and the lack of such reservoir water would cause immediate harm to allottees and to the Tribe. The Tribe and the United States have filed counterclaims in the Walker River litigation pending in the United States District Court for the District of Nevada to address these water rights, as well as other claims. The Tribe has initiated various discussions with other interested parties in attempts to settle these claims including with representatives of the states of Nevada and California. The Tribe's rights and use of water for storage in Weber Reservoir must be acknowledged and adequately accounted for in any terms or conditions of a permit that may be granted to prevent any harm to the Tribe's rights, to the Tribe, and to allottees.
4. Granting of the permit will be detrimental to the public interest and will not be environmentally sound if the water that naturally flowed past the Yerington Weir, or otherwise flowed onto the Reservation that was in addition to all of the Tribe's water rights and that normally flowed to Walker Lake is in any way designated as WRID's storage water.

5. The petitions state that portions of the new Place of Use will be within the Reservation. Approving this proposed Place of Use shall not to be construed as permitting entry onto the Reservation by any party, including WRID, the State of California or the Federal Water Master, unless specifically authorized by the Tribe.
6. An accurate and detailed accounting system must be developed and implemented to quantify the amount of water attributable to WRID water rights that will reach the Reservation boundary. This system must clearly differentiate WRID's water from the Tribe's water rights, including the irrigation water stored in Weber Reservoir, as well as water that historically naturally flowed through the Reservation to Walker Lake. The failure to develop this type of system will detrimentally harm the Tribe's water rights.
7. Clear, accurate, and publically available accounting is needed of WRID farmlands relinquishing use of storage water for each year under any temporary change permit.
8. Consideration of whether the lands relinquishing use of storage rights have been actively utilizing storage water, or if the storage right was not exercised on the land and has been effectively dormant over a sustained period of time. In the dormant scenario, transfers of storage rights should be subject to additional management criteria to avoid creating an added draw upon the river over current conditions, which would effectively dissolve the intended benefit derived from the transfer. For example, a management criteria may be linked to expectations of flow for the water-year, i.e., change of storage rights on dormant lands would not be permitted, or appropriately curtailed in dry years, to maintain the intent of the change application to deliver *additional* flow to Walker Lake.
9. It is our understanding that under the temporary permit, water may be stored until the end of the irrigation season and then released for conveyance to Walker Lake. Clear, accurate, and publically available accounting is needed for the volume of storage water lost to reservoir seepage and evaporation, if longer retention times of water in Bridgeport and Topaz Reservoirs occur, as compared to storage water releases under decreed irrigation uses.
10. Clear, accurate, and publically available accounting is needed to determine the portion of the historically diverted storage water that would have been returned to the river under normal irrigation practices, for example, via the Wabuska Drain. This water should not be counted as new flows to under the Temporary Change application.
11. Related to the above, the decrease in total flow through the WRID system due to lower volumes of storage water use for irrigation can be expected to diminish drain return flows to the river, and could subsequently result in changes to available decreed water rights, especially in a dry year, such as the 2012 irrigation season, when the Tribe's 1859 senior water right could not be sustained over the course of the Tribe's decreed irrigation season.
12. Additional to Item 11, segments of the Walker River tend to lose flow at a higher percentage by volume under progressive lower flow regimes. Again raising concern that less flow in the river

during the irrigation season, should storage water be retained in the reservoirs until the end of the irrigation season, will result in impact to down-stream delivery of the Tribe's decreed water right in drought years.

13. Regarding Items 11 and 12, we suggest that special provisions are necessary during dry year conditions. Volumes of allowable storage water transferred in dry years should be curtailed, depending on the severity of the year. Under dry year conditions, the timing of the release of storage water should be required to be consistent with historic practices, to avoid down-stream impact to senior water rights, which in part depend on drain return flows generated from up-stream use of storage water during the irrigation season, and would additionally experience incrementally higher percentages of river flow loss under progressively lower flow conditions during the irrigation season.
14. Should the temporary change petitions and the terms of approval be extended for many years, additional consideration is needed for the deep percolation portion of the heretofore diverted storage water, and whether that deep percolation was returning to the Walker River or supporting supplemental groundwater pumping.
15. The terms of the temporary permit should reference the Conveyance Agreement being executed between the Tribe, Bureau of Indian Affairs, and the National Fish and Wildlife Foundation ("NFWF"), for all NFWF Program water conveyance and accounting for flows through the Reservation to Walker Lake. Under the Conveyance Agreement, clear, accurate and publically available data collection and accounting will be implemented through the Reservation.
16. Clear, accurate and publically available accounting must be undertaken to quantify the daily volume of released storage water arriving at the Wabuska gage, even if the releases are occurring during the non-irrigation season on the Reservation. The storage water must be differentiated from the volume of otherwise naturally occurring flow in the river, i.e., the volume of additional flow produced by storage water release must be quantified. To the degree that natural flow has historically occurred, and should continue to occur to the Reservation, it has been historically available to the Tribe, if desired, to fill and be retained in Weber Reservoir.
17. The accounting methods, hydrologic data, and any tools used for the accounting of storage, releases, and conveyance to the Wabuska gage must be agreed upon by the Tribe and BIA, as they will be the affected down-stream parties.