



Water Resources ♦ Flood Control ♦ Water Rights

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CONSULTANTS:  
DONALD E. KIENLEN, P.E.

January 23, 2023

Mr. Erik Ekdahl, Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Subject: Walker River Irrigation District Petitions for Change Involving  
Water Transfers and Instream Flow Dedication**

Dear Mr. Ekdahl:

Enclosed are the following documents relative to Petitions for Change Involving Water Transfers and Instream Flow Dedication (collectively, Petitions) under Walker River Irrigation District's (District) Licenses 6000 and 9407 (Applications 2221 and 1389, respectively).

1. Petition to License 6000 with Attachment and Exhibits (one original and one copy).
2. Petition to License 9407 with Attachment and Exhibits (one original and one copy).
3. Environmental Information Form with Attachment (one original and one copy per Petition).
4. Check payable to the State Water Resources Control Board in the amount of \$28,990 to cover the Division of Water Rights' (Division) fees associated with the Petitions.
5. Check payable to the Department of Fish and Wildlife (DFW) in the amount of \$850 to cover the fees associated with this project.

The District is petitioning to temporarily include additional places of use and an additional purpose of use to its Licenses 6000 and 9407 in order to transfer up to a total of 25,000 AF for instream flow dedication to assist with increasing the flows into Walker Lake for environmental restoration in the Walker River Basin. The Petitions identify the proposed transfer and instream flow dedication is for a period of up to one year following approval of the Petitions.

Enclosed is a consolidated Environmental Information Form to address the questions and provide the relevant information associated with the Petitions. Time is of the essence to process these Petitions for the implementation of the proposed temporary transfer and instream flow dedication; and we appreciate your attention to these Petitions.

As identified above, enclosed is a check in the amount of \$850, payable to the DFW to cover the relevant fee associated with these Petitions. This single filing fee to DFW is consistent with Public Resources Code Section 10005(e) for a single project.

Please call if you have any questions or require additional information.

Sincerely,  
MBK Engineers



Angela Bezzone

AB/ww  
5280.2/FINAL ERIK EKDAHL 01.23.2023

Enclosures

cc: Bert Bryan, Walker River Irrigation District (via email)  
Gordon DePaoli, Attorney for Walker River Irrigation District (via email)  
Dale Ferguson, Attorney for Walker River Irrigation District (via email)  
Kathryn Gaffney, Division of Water Rights (via email)  
Steve Marquez, Division of Water Rights (via email)  
Patricia Moyer, Department of Fish and Wildlife (via certified mail)  
Michael Plaziak, Regional Water Quality Control Board (via certified mail)  
Board of Supervisors, County of Mono (via certified mail)  
Board of Commissioners, Douglas County (via certified mail)  
Board of Commissioners, Lyon County (via certified mail)  
Board of Commissioners, Mineral County (via certified mail)

Please indicate County where your project is located here:

Mono County

MAIL FORM AND ATTACHMENTS TO:
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
http://www.waterboards.ca.gov/waterrights

PETITION FOR CHANGE INVOLVING WATER TRANSFERS

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

- Point of Diversion, Point of Rediversion, Place of Use, Purpose of Use, Temporary Urgency, Temporary Change, Long-term Transfer, Instream Flow Dedication

Application 1389 Permit 2536 License 9407 Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Present: See Attachment No. 1
Proposed: No Change Requested

Place of Use - Identify area using Public Land Survey System descriptions to 1/4-1/4 level; for irrigation, list number of acres irrigated.

Present: See Attachment No. 1
Proposed: See Attachment No. 1

Purpose of Use

Present: See Attachment No. 1
Proposed: See Attachment No. 1

Instream Flow Dedication - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Upstream Location: See Attachment No. 1
Downstream Location: See Attachment No. 1

Table with 12 columns for months (Jan-Dec) and rows for flow quantities. Includes 'See Attachment No. 1' in the June column.

Will the dedicated flow be diverted for consumptive use at a downstream location? Yes No
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

Proposed New User(s)

Provide the names, addresses, and phone numbers for all proposed new user(s) of the water right.

Not Applicable.

**Amount of Water to be Transferred**

See Att. 1 acre-feet will be transferred. If the basis of right is direct diversion, the average rate of diversion for the maximum 30-day period of use is See Att. 1 cubic feet per second or million gallons per day.

**General Information – Provide the following information, if applicable to your proposed change(s).**

Have you attached an analysis which documents that the amount of water to be transferred or exchanged would have been consumptively used or stored in the absence of the proposed temporary change or long-term transfer?  Yes  No

Have you attached an analysis of any changes to streamflow, water quality, timing of diversion or use, return flows, or effects on legal users from the proposed temporary change or long-term transfer?  Yes  No

Have you attached an analysis that shows the proposed temporary change or long-term transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses?  Yes  No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
 ownership  lease  verbal agreement  written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Not applicable. This Petition involves a proposed water transfer for dedication to instream flow. There is no proposed point of diversion and the proposed place of use includes the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.

Give name and address of any person(s) taking water from the stream between the present point of diversion or redirection and the proposed point of diversion or redirection, as well as any other person(s) known to you who may be affected by the proposed change.

There is no proposed change to the present point of diversion. We believe that no water user will be affected by the proposed change. Water users include those within the Walker River Irrigation District, the Walker River Paiute Tribe, U.S. Bureau of Indian Affairs, and the Nevada Department of Wildlife. Also, see files at the Division of Water Rights, State Water Resources Control Board and files with the Nevada State Engineer.

**All Right Holders Must Sign Below:** I (we) declare under penalty of perjury that this involves only the amount of water which would have been consumptively used or stored in the absence of the proposed temporary change, and that the above is true and correct to the best of my (our) knowledge and belief.

Dated 1/17/2023 at 410 N MAIN ST VERMINGTON, NV 89459

  
Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

**NOTE: All petitions must be accompanied by:**  
(1) the form Environmental Information for Petitions, available at: [http://www.waterboards.ca.gov/waterrights/publications\\_forms/docs/pet\\_info.pdf](http://www.waterboards.ca.gov/waterrights/publications_forms/docs/pet_info.pdf)  
(2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/fees/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/)  
(3) Department of Fish and Wildlife fee of \$850 (Pub. Resources Code, § 10005)

**Attachment No. 1**  
**to Petition for Temporary Transfer and Instream Flow Dedication**  
**License 9407 (Application 1389)**  
**held by Walker River Irrigation District**

**PURPOSE OF PETITION**

Walker River Irrigation District (District) is filing this Petition for Temporary Transfer and Instream Flow Dedication (Petition) to its License 9407 (Application 1389) in order to assist with increasing the flow into Walker Lake for environmental restoration in the Walker River Basin as provided in Public Law 111-85, which established the Walker River Restoration Program. In 2019, 2021, and 2022 the District implemented a Storage Water Leasing Program demonstration effort involving releases of water under License 9407, which increased flows into Walker Lake. Throughout the development and implementation of the first three years of the demonstration, the District engaged stakeholders in order to solicit input, which assisted to develop a robust plan, while providing opportunities to adjust to additional information or changed circumstances. Overall, the releases during 2019, 2021, and 2022 were successful and met all of the terms and conditions contained in the Division of Water Rights' (Division) Order, dated February 21, 2014 (Order), the State Water Resources Control Board's (State Water Board) Order WR 2014-0020-EXEC (Amended Order), dated May 16, 2014, the Division's Order, dated April 27, 2020, and the Division's Order, dated February 23, 2022. For reference, Exhibit A to this Petition is an excerpt of the Order and Amended Order identifying the amended terms and conditions; Exhibit B to this Petition is an excerpt of the 2020 Order identifying the terms and conditions; and Exhibit C to this Petition is an excerpt of the 2022 Order identifying the 2022 terms and conditions. As indicated further below for the proposed releases during the fourth year of the Stored Water Program demonstration, the District anticipates similar terms and conditions to those that were included in the all previous Orders.

The purpose of this Petition is to: (1) add to the existing place of use covered under License 9407 by including the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, and (2) add Fish and Wildlife Preservation and Enhancement as an additional purpose of use for instream dedication to Walker Lake involving surface water that was previously stored or would have otherwise been held in storage at Bridgeport Reservoir absent the proposed transfer, some or all of which would have been released for irrigation purposes within the District. The release plan, which is discussed further below, will describe the proposed schedule and volume of releases to be made from each reservoir during the period of April 1 through October 31, which is generally the irrigation season. The releases by the District for the proposed temporary water transfer would occur during a period of up to one year following final approval by the State Water Board, the Federal District Court, and the Nevada State Engineer (NSE), which is discussed further below. It is the goal of the District for a fourth demonstration to occur in 2023; however, this will depend upon final approval and other factors such as hydrologic conditions.

The District has an agreement with the National Fish and Wildlife Foundation (NFWF), predecessor to the Walker Basin Conservancy (WBC), to administer and manage a "Stored Water Program" in the Walker River Basin. The Stored Water Program has been extended to include a fourth year through a No Cost Amendment. The purpose of the Stored Water Program

is to release surface water from Bridgeport Reservoir for instream dedication to and including Walker Lake. In addition, the Stored Water Program involves releases of surface water by the District from Topaz Reservoir under its License 6000 (Application 2221). For this purpose, the District is filing a separate petition for temporary water transfer and instream flow dedication to its License 6000. Combined, the two petitions are limited to a total of 25,000 AF released from Bridgeport Reservoir and Topaz Reservoir. Surface water will be made available for the proposed transfer by releases from Bridgeport Reservoir and Topaz Reservoir that was previously stored or would have otherwise been held in storage absent the proposed transfer, some or all of which would have been released for irrigation purposes within the District, as described further below in this Petition. Similar to the previous demonstrations of the Stored Water Program during 2019, 2021, and 2022, and to ensure a successful and efficient fourth demonstration, the District will seek additional approvals and will continue to coordinate as necessary with the NSE and other entities in order to obtain the authorizations for the proposed water transfer and instream flow dedication.

### **POINT OF DIVERSION OR REDIVERSION**

#### ***Present Point of Diversion:***

No change in the District's present point of diversion is proposed. The District's existing authorized point of diversion under License 9407 is:

#### **Bridgeport Reservoir**

South 27° 09' West 2,503 feet from NE Corner of Section 34, T6N, R25E, MDB&M, being within SE ¼ of NE ¼ of said Section 34. This present point of diversion is shown on a map filed with the State Water Board for License 9407.

#### ***Proposed Point of Diversion:***

No change in the present point of diversion is proposed.

### **PLACE OF USE**

#### ***Present:***

52,062 acres net within the gross area of the District, as shown on a map filed with the State Water Board for License 9407.

#### ***Proposed:***

No change in the present place of use is proposed. The District proposes to temporarily add the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, which is within the Walker River

Basin. This proposed addition to the authorized place of use is shown on a map filed with the State Water Board for License 9407, together with maps included as Exhibit D, which were prepared by NFWF for the lower reaches of the Walker River to and including Walker Lake.

### **PURPOSE OF USE**

#### ***Present:***

The present purposes of use under License 9407 include Irrigation and Recreation.

#### ***Proposed:***

No changes in the present purposes of use are proposed. The District proposes to temporarily add Fish and Wildlife Preservation and Enhancement as an additional purpose of use to License 9407.

### **INSTREAM FLOW DEDICATION**

The proposed temporary water transfer and instream flow dedication includes adding to the existing place of use the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, as described below. The quantities proposed to be dedicated to instream flows for the transfer are identified in the following section titled "Amount of Water to be Transferred/Dedicated".

#### ***Upstream Location:***

##### **Bridgeport Reservoir**

South 27° 09' West 2,503 feet from NE Corner of Section 34, T6N, R25E, MDB&M, being within SE ¼ of NE ¼ of said Section 34, as shown on a map filed with the State Water Board for License 9407.

#### ***Downstream Location:***

The terminus of the Walker River into and including Walker Lake, as shown on a map filed with the State Water Board for License 9407, together with the attached maps prepared by NFWF for the lower reaches of the Walker River to and including Walker Lake.

### **AMOUNT OF WATER TO BE TRANSFERRED/DEDICATED**

The quantities of water to be released by the District for the temporary 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. The total quantity of surface water proposed for the temporary water transfer is up to 25,000 AF, combined under the District's Licenses 6000 and 9407. The District proposes this total quantity as an upper limit for the Stored Water Program in order to optimize flexibility, recognizing that the actual volume of

water dedicated to instream flows may be less than this quantity. For the purpose of identifying a potential quantity of water dedicated to instream flows under either License 6000 or License 9407, as requested in the petition form, the estimated maximum quantity of water that may be provided by the District from Topaz Reservoir or Bridgeport Reservoir, respectively, over a 30-day period is up to 25,000 AF. The average flow rate associated with this quantity is approximately 420 cfs over a 30-day period; and instantaneous releases from Topaz Reservoir and Bridgeport Reservoir may be up to approximately 750 cfs and 550 cfs, respectively. Note that the proposed total combined releases from Topaz Reservoir and Bridgeport Reservoir are up to 25,000 AF; and thus, the District anticipates these release rates will likely be less.

Similar to the District's approach for the previous demonstrations during 2019, 2021, and 2022, following evaluation of voluntary participation by growers in this demonstration of the Stored Water Program, the District will develop a schedule of releases (release plan) in consultation with the Watermaster for the Walker River, NFWF/WBC, and the Walker River Paiute Tribe for the proposed temporary transfer and instream flow dedication. The release plan will describe the proposed schedule and volume of releases to be made from each reservoir during the period of April 1 through October 31, which is generally the irrigation season. The total release will be within the historic range of releases for each reservoir during the irrigation season. If the District determines that stored water releases will occur in amounts exceeding the historic range of releases, the District will consult with California Department of Fish and Wildlife (CDFW) and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses, and to develop measures to avoid or mitigate any such impacts. Within 30 days following consultation, and at least one month prior to the period of releases for the transfer, the District will provide the release plan and verification of consultation to the Division. In addition, the District will promptly inform the Watermaster, NFWF/WBC, the Walker River Paiute Tribe, and the Division of any changes to the release plan. The District will rely upon existing water measurement gages in the Walker River Basin for the purpose of monitoring flows and accounting for the actual releases separately under the District's Licenses 6000 and 9407. The District is currently coordinating with the Watermaster for the Walker River and other stakeholders to identify opportunities to enhance measurement, accounting, and coordination for potential implementation of the second demonstration of the Stored Water Program.

## **GENERAL INFORMATION**

As a result of this proposed temporary transfer and instream flow dedication, the flow in the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake will increase by up to 25,000 AF during the period of the transfer over what would have occurred absent the proposed transfer. There will be no injury to other legal water users or water quality; in fact, it is anticipated a beneficial effect on fish, wildlife, or other instream beneficial uses will occur as a result of this Petition because the proposed transfer involves the District's existing facilities and will result in increased flows to Walker Lake provided by the District. In addition, the increased flows will result in water quality benefits downstream to and including Walker Lake during and following the period of the releases for the proposed transfer. In the absence



of additional flows provided by the District for the proposed temporary transfer, some or all of these quantities would have been held in storage or would be released from the reservoir and delivered to growers during the irrigation season.

As a result of litigation initiated in 1902, Decree 731 was issued in 1919, by the United States District Court for the District of Nevada, as the first regulatory control on the system as a whole. However, Decree 731 did not include rights for the Walker River Indian Reservation and other irrigators in the Walker River Basin. Decree C-125 (hereinafter referred to as the "Walker River Decree") was issued by the United States District Court for the District of Nevada (Walker River Court) on April 14, 1936 (amended April 24, 1940) as the culmination of the suit *United States of America v. Walker River Irrigation District, et al.* For each water right owner, the Walker River Decree sets forth the source, priority date, the diversion rate at the point of diversion, the number of acres irrigated, and a general description of the place of use of the appropriation.

Water rights for the storage of water in numerous reservoirs are set forth in the Walker River Decree. There are several small reservoirs on the tributaries upstream from Bridgeport and Topaz Reservoirs, used to serve Bridgeport and Antelope Valleys, which are identified in the Walker River Decree. The two major storage facilities and rights documented in the Walker River Decree are for Bridgeport Reservoir and Topaz Reservoir, which are owned and operated by the District. The District uses the available stored water to supplement decreed natural flow rights, and as a primary source of supply for "new lands" (lands with no other surface water right). The Walker River system is a heavily administered and managed system, with coordination between the District, Watermaster for the Walker River, NSE, and other stakeholders. The Walker River Decree defines storage quantities and priorities, but the allocation of the available stored water from Bridgeport Reservoir and Topaz Reservoir is determined by the District. The surface water proposed for temporary transfer and instream flow dedication in this Petition involves previously stored water. It is water which is stored either during the non-irrigation season, or during the irrigation season when all other decreed natural flow rights being exercised are fully satisfied. It is water which was not available when the senior decreed natural flow rights were established by diversion to beneficial use under Nevada and California law.

Stored water right holders have a right to call on their stored water for beneficial use during an irrigation season; however, they do not have an obligation to leave any water in storage at the end of an irrigation season to benefit carryover storage for the subsequent year. There is no set pattern of releases from the reservoirs, and nothing prevents the early drawdown of reservoirs or fluctuating releases during the irrigation season. Similar to the previous demonstrations of the Stored Water Program, it is likely that the water sought to be transferred under the Petition will be released from storage during the latter portion of the irrigation season. As indicated in the Division's Order, this will likely temporarily improve, and will not harm, summer recreation on Bridgeport Reservoir and Topaz Reservoir.

The question of whether the temporary transfer proposed here would injure any other legal user of water was fully litigated as a result of the February 21, 2014 Order as amended May 16, 2014, Exhibits A and B. In *United States v. United States Board of Water Commissioners*,

893 F.3d 578 (9th Cir. 2018), the Ninth Circuit Court of Appeals upheld the Board's conclusion that the proposed changes would not. 893 F.3d at 604.

In addition, the agreement between the District and NFWF requires the District to ensure that lands participating in the Stored Water Program do not receive water from other sources to replace this transferred water. Similar to the previous demonstrations of the Stored Water Program, the District will coordinate with NSE staff prior to, during, and following the proposed transfer to track and account for water use by the District's customers to ensure that the individual allowances of water from all sources is not exceeded by the customers.

The District proposes to release water from Bridgeport Reservoir for the temporary transfer and instream flow dedication. These releases would increase flows downstream to Walker Lake during the transfer period, as compared to the condition absent the transfer, for the purpose of environmental restoration in the Walker River Basin. The proposed releases from Bridgeport Reservoir for the transfer and instream flow dedication would be made in accordance with the District's Bridgeport Reservoir Operations Manual. This includes, but is not limited to, satisfying requirements relative to minimum pool, release ramping, and minimum releases. Absent the proposed temporary transfer by reservoir release, the District would release this water to its growers for irrigation purposes or would retain this volume of surface water in storage pursuant to its water right. Although the instream flows provided by the District could reduce the quantity of water held in storage, the District would not transfer water such that it would adversely impact the District's growers. The District will continue the same stored surface water deliveries to its existing growers not participating in the Stored Water Program with or without the proposed temporary water transfer.

The CDFW and the Lahontan Regional Water Quality Control Board (LRWQCB) have been contacted regarding the Petitions. Copies of the Petitions have been provided to Patricia Moyer (760-835-4304) of CDFW and Michael Plaziak (530-542-5412) of the LRWQCB for review and comment.

The Stored Water Program was originally authorized for three years; however, because there are funds still available the District and NFWF have agreed to implement an additional demonstration of the Stored Water Program during 2023. The implementation of a program each year is dependent upon many factors such as obtaining the necessary regulatory approvals, hydrologic conditions, and the price offered for participation. Therefore, the District and other stakeholders plan to approach each year individually to determine if a lease program is viable and can be implemented. Based on initial review and reactions, the 2019 Stored Water Program has been viewed as a success by stakeholders. The 2021 and 2022 Stored Water Programs occurred during dry hydrologic conditions which resulted in less participation as compared to 2019. Despite the limited participation, the 2021 and 2022 Stored Water Programs were successfully completed and provided valuable lessons for the operation and administration of the Stored Water Program. In addition, the District and other stakeholders did not receive reports of adverse effects resulting from the 2019, 2021, or 2022 Stored Water Programs. For additional information regarding the 2019, 2021, and 2022 Stored Water Programs, see the District's summary reports filed with the Division on January 8, 2020, November 8, 2021, and November 10, 2022, respectively. As indicated in the summary report,

Walker River Irrigation District's License 9407  
Attachment No. 1 to Petition for Temporary Transfer

the District is currently coordinating with the Watermaster for the Walker River and other stakeholders to identify opportunities to enhance coordination and adaptation for potential future implementation. Therefore, the District is submitting this Petition for a fourth demonstration of the Stored Water Program.

AB/ww

5280.2/FINAL ATTACHMENT 1 TO PETITION FOR TEMPORARY TRANSFER-INSTREAM A1389 01.23.2023

# **EXHIBIT A**

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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**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**

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**ORDER APPROVING TEMPORARY CHANGES**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 BACKGROUND**

On February 28, 2013, the Walker River Irrigation District (District) filed petitions for temporary change involving the transfer of water and instream flow dedication under Licenses 6000 and 9407 with the California State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division), pursuant to Water Code section 1725 et seq. and section 1707. The petitions involve the waters of the interstate Walker River stream system. The District holds License 6000 for Topaz Reservoir, which is located on the West Walker River, and License 9407 for Bridgeport Reservoir, which is located on the East Walker River. The West Walker River and East Walker River arise in the Sierra Nevada of California and flow into Nevada where they join to create the main stem of the Walker River, which then flows to Walker Lake, a natural desert terminal lake in Nevada.

The purpose of the proposed temporary changes is to assist in implementation of the Walker Basin Restoration Program (Restoration Program), which is administered by the National Fish and Wildlife Foundation (NFWF). The Restoration Program was established in 2009 by Public Law 111-85 and related authorities for the primary purpose of restoring and maintaining Walker Lake, which is critical to recovery of the threatened Lahontan Cutthroat Trout and is an important stopover for migratory waterfowl. Due to insufficient freshwater inflows, Walker Lake's elevation has been declining since the early 1900s and increased salinity levels threaten its ecology. The Restoration Program seeks to increase instream flows to Walker Lake through various basin-wide initiatives.

The Restoration Program includes a three-year water leasing demonstration program to be administered and managed by the District pursuant to an agreement with NFWF. In 2012 the District entered into an amended grant agreement with NFWF to administer and manage a Stored Water Program (SWP) in the Walker River Basin.<sup>1</sup> Under the SWP, surface water will be released from Topaz and Bridgeport Reservoirs for instream dedication to and including Walker Lake. Through the SWP, individual farmers within the District may voluntarily dedicate a portion of their stored water supply to the SWP for at least one year. The District filed the petitions for temporary change in order to implement the SWP and thereby increase inflows to Walker Lake.

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<sup>1</sup> First Amendment to [NFWF] Grant Agreement (Nov. 2012) for Project 2010-0059-101 (Water Leasing Demonstration Program in the Walker River Basin).

Deputy Director to perform duties related to processing change petitions in the Walker River action. This Order is adopted pursuant to the delegation of authority in sections 4.4.2 and 4.7.3 of Resolution 2012-0029.

## 10.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the determinations required by Water Code sections 1707 and 1725 et seq.

The State Water Board concludes that, based on the available information:

1. The proposed transfers involve only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary changes will neither injure, nor unreasonably affect, any legal user of water, including during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
3. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The proposed temporary changes will not increase the amount of water the District is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

## ORDER

**NOW, THEREFORE, IT IS ORDERED THAT** the District's petitions for temporary transfer and dedication of water for instream purposes of 25,000 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. are approved for a period of one year, which will commence on the date of final approval, as defined below.

All existing terms and conditions of Licenses 6000 and 9407 remain in effect, except as temporarily amended by the following provisions:


1. The temporary change is limited to a one-year period commencing on the date of final approval. Final approval means that all related approvals by the federal District Court have been obtained, including modification of the Walker River Decree by the federal District Court to recognize (i) the State Water Board's approval of the changes under this Order and (ii) approval by the Nevada State Engineer of a change application submitted by an individual within the District to implement the SWP. Within 30 days after receiving the final approval, the District shall notify, and provide copies to, the Deputy Director for Water Rights of the approval. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.
2. In addition to all other purposes of use authorized by Licenses 6000 and 9407, the purpose of use of the licenses is temporarily amended to include preservation and enhancement of fish and wildlife within the following reaches: 1) for License 6000, the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence

the Walker River to and encompassing Walker Lake; and 2) for License 9407, the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.

3. The place of use under License 6000 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Topaz Reservoir being within the SE ¼ of SE ¼ of Section 12, T9N, R22E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9 to 11N, R29 to 30E, MDB&M, as shown on map filed with the State Water Board for License 6000 and maps prepared by NFWF submitted with the petitions as Attachment A.
4. The place of use under License 9407 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Bridgeport Reservoir being within the SE ¼ of the NE ¼ of Section 34, T36N, R25E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9-11N, R29-30E, MDB&M, as shown on map filed with the State Water Board for License 9407 and maps prepared by NFWF submitted with the petitions as Attachment A.
5. Water transferred pursuant to this Order shall be limited to a combined maximum of 25,000 af to be released from either Topaz Reservoir or Bridgeport Reservoir, or both.
6. The District shall develop and operate to a schedule of releases for the transfer in consultation with the Water Master, NFWF, and the Tribe. The District shall promptly inform these parties of any changes to the release schedule.
7. During the transfer period, the District landowners participating in the transfer authorized by this Order to implement the SWP shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water.
8. During the transfer period, the District shall comply with the section F, Annual Monitoring Plan, of Attachment A to First Amendment to [NFWF] Grant Agreement [November 2012] Regarding [District] Lease of Water Demonstration Program, Stored Water Program, and Water Measurement and Control Phase, and the public reporting provisions of section J.3 of that Attachment A. If section F or section J.3 of Attachment A are amended prior to, or during, the transfer period, the District shall promptly inform the Deputy Director for Water Rights.
9. During the transfer period, the District shall 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. The District may release stored water either (i) during the irrigation season in amounts exceeding the historic range of releases during the irrigation season, or (ii) after the irrigation season ends, if the District first consults with DFW and Mono County to avoid harm to fish and wildlife and downstream habitat. Such consultation shall include the establishment of a flow ramping schedule to avoid harm through rapid fluctuations in instream levels.

10. Within 90 days of completion of the transfer period, the District shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The report shall include the following information:
    - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from 1) Topaz Reservoir and from 2) Bridgeport Reservoir pursuant to this Order.
    - b. Documentation that the water transferred did not result in an increase in water diverted to storage in both Topaz Reservoir and Bridgeport Reservoir from the source waters of the District's licenses beyond the quantities that would otherwise have been diverted absent the transfer.
    - c. Documentation of compliance with all other conditions of this order.
  11. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
  12. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change Order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
  13. This order does not authorize any act that results in the taking of an endangered, threatened or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.
- (0000014)
14. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

## STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: FEB 21 2014



STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**ORDER WR 2014-0020-EXEC**

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In the Matter of the Petitions for Reconsideration by  
**United States Board of Water Commissioners for the Walker River  
and  
Mono County**

Regarding Walker River Irrigation District's Petitions for Temporary Transfer and  
Change

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SOURCE: East and West Walker Rivers

COUNTY: Mono

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**ORDER DENYING RECONSIDERATION AND MODIFYING THE DIVISION'S  
ORDER CONDITIONALLY APPROVING THE PETITIONS**

BY THE EXECUTIVE DIRECTOR<sup>1</sup>:

**1.0 INTRODUCTION**

On February 21, 2014, the State Water Resources Control Board's (State Water Board), Division of Water Rights (Division), through its Deputy Director for Water Rights, conditionally approved the Walker River Irrigation District's (District) two petitions for temporary change involving the transfer of water and instream flow dedication under Water Code section 1725 et seq. and section 1707.<sup>2</sup> The District

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<sup>1</sup> State Water Board Resolution 2002-0104 delegates to the Executive Director the authority to conduct and supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the board, the Executive Director's consideration of petitions for reconsideration of a staff decision or order falls within the scope of the authority delegated under Resolution 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider the decision or order, deny the petition, set aside or modify the decision or order, or take other appropriate action. (Cal. Code Regs., tit. 23, § 770.)

<sup>2</sup> The Division's February 21, 2014 Order Approving Temporary Changes is referred to herein as the "Order." Pursuant to authority delegated by the State Water Board in Resolution 2012-0029, the Deputy Director for Water Rights may perform the duties that are the subject of this proceeding.

To the extent that this order does not address all of the issues raised in the petitions for reconsideration, the State Water Board finds either that the requirements for a petition for reconsideration under California Code of Regulations, title 23, section 770 have not been met, the issues raised are insubstantial, or the issues are appropriately addressed in the Division's Order.

## ORDER

**IT IS HEREBY ORDERED THAT,** for the foregoing reasons, the petitions for reconsideration of USBWC and Mono County are denied, and the Division's Order is affirmed except as modified below. Conditions 6 and 9 of the Division's Order are amended as follows:

1. Condition 6 on page 21 is amended as follows:

The District shall develop and operate to a schedule of releases for the transfer in consultation with the Water Master, NFWF, and the Tribe. Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. The District shall promptly inform ~~these parties~~ the Water Master, NFWF, the Tribe, and the Division of Water Rights of any changes to the release schedule.

If any dispute arises during consultation regarding potential injury to legal users of water, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.

2. Condition 9 on page 21 is amended as follows:

During the transfer period, the District shall 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.

The historic range of releases are those releases that have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows, or ramping schedules. At least one month prior to the transfer period, the District must develop a plan that identifies the historic range of releases during the irrigation season and that evaluates whether water to be transferred during the irrigation season is within the historic range of releases. The District shall provide the plan to the Division of Water Rights and make the plan publically available.


In order for ~~T~~the District ~~may~~ to release stored water either (1) during the irrigation season in amounts exceeding the historic range of releases during the irrigation season, or (2) after the irrigation season ends, if the District first shall consults with DFW and Mono County to identify potentially unreasonable impacts ~~avoid harm~~ to fish and wildlife and ~~downstream habitat~~ instream beneficial uses and to develop measures to avoid or mitigate any such impacts. Such consultation shall include (a) development of a schedule of releases for each reservoir; (b) the establishment of a flow ramping rates; (c) establishment of stream flow release limitations, if necessary; and (d) development of a monitoring plan for implementation to ensure that release of stored water under (1) or (2) does not result in unreasonable impacts to fish, wildlife, or instream beneficial uses. ~~schedule to avoid harm through rapid fluctuations in instream levels.~~ The monitoring plan shall focus on specific fisheries concerns during the periods of release under (1) or (2) above. A monthly monitoring report shall be submitted to DFW, Mono County, and the Deputy Director for Water Rights and a

final report of the results of the monitoring submitted no later than 90 days after the transfer period ends.

Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. If any dispute arises during consultation regarding unreasonable impacts to fish, wildlife, and other instream beneficial uses, or measures to avoid or mitigate such impacts, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.

Dated:

5/16/14

  
Thomas Howard  
Executive Director

# **EXHIBIT B**

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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**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**

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**ORDER APPROVING TEMPORARY CHANGES**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

This Order conditionally approves the Walker River Irrigation District's (District) petitions for temporary change involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 (Applications 2221 and 1389), pursuant to Water Code sections 1725 et seq. and 1707. This Order includes substantially similar terms and conditions, revised as appropriate, as those included in the California State Water Resources Control Board's (State Water Board or Board) 2014 approval of similar petitions filed by the District.

**1.0 BACKGROUND**

**1.1 Overview**

On January 16, 2020, the District filed the two petitions for temporary change with the State Water Board's Division of Water Rights (Division). The petitions were accepted as complete on January 27, 2020.

The petitions involve the waters of the interstate Walker River stream system. The District holds License 6000 for Topaz Reservoir, which is located on the West Walker River, and License 9407 for Bridgeport Reservoir, which is located on the East Walker River. The West Walker River and East Walker River arise in the Sierra Nevada of California and flow into Nevada where they join to create the main stem of the Walker River, which then flows to Walker Lake, a natural desert terminal lake in Nevada.

The purpose of the proposed temporary changes is to assist in implementation of the Walker Basin Restoration Program (Restoration Program). The Restoration Program was established by Congress in 2009 by Public Law 111-85 for the primary purpose of restoring and maintaining Walker Lake, which is critical to the recovery of the threatened Lahontan Cutthroat Trout and is an important stopover for migratory waterfowl. Due to insufficient freshwater inflows, Walker Lake's elevation has been

4. The proposed temporary changes will not increase the amount of water the District is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

## ORDER

**NOW, THEREFORE, IT IS ORDERED THAT** the District's petitions for temporary transfer and dedication of water for instream purposes of 25,000 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. are approved for a period of one year, which will commence on the date of final approval, as defined below.

All existing terms and conditions of Licenses 6000 and 9407 remain in effect, except as temporarily amended by the following provisions:

1. The temporary change is limited to a one-year period commencing on the date of final approval. Final approval means that all related approvals by the federal District Court have been obtained, including modification of the Walker River Decree by the federal District Court to recognize (i) the State Water Board's approval of the changes under this Order and (ii) approval by the Nevada State Engineer of a change application submitted by an individual within the District to implement the Stored Water Program. Within 30 days after receiving the final approval, the District shall notify, and provide copies to, the Deputy Director for Water Rights of the approval. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.
2. In addition to all other purposes of use authorized by Licenses 6000 and 9407, the purpose of use of the licenses is temporarily amended to include preservation and enhancement of fish and wildlife within the following reaches: 1) for License 6000, the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; and 2) for License 9407, the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.
3. The place of use under License 6000 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Topaz Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,419,385 feet and East 6,845,209 feet, being within SE  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 12, T9N, R22E, MDB&M; Downstream Limit –

The terminus of Walker River into and including Walker Lake within T9 to 11N, R29 to 30E, MDB&M, as shown on map filed with the State Water Board for License 6000 and maps prepared by the District and NFWF submitted with the petitions as Attachment A.

4. The place of use under License 9407 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Bridgeport Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,307,798 feet and East 6,931,075 feet, being within SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 34, T6N, R25E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9-11N, R29-30E, MDB&M, as shown on map filed with the State Water Board for License 9407 and maps prepared by the District and NFWF submitted with the petitions as Attachment A.
5. Water transferred pursuant to this Order shall be limited to a combined maximum amount of 25,000 af to be released from either Topaz Reservoir or Bridgeport Reservoir, or both, from April 1 through October 31.
6. The District shall develop and operate to a schedule of releases (release plan) for the transfers that describes the proposed schedule and volume of releases to be made from either Topaz Reservoir or Bridgeport Reservoir, or both, during the period of April 1 through October 31.
  - a. The release plan shall be developed in consultation with the Water Master, the WBC/NFWF, and the Tribe. Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. The District shall promptly inform the Water Master, the WBC/NFWF, the Tribe, and the Division of Water Rights of any changes to the release schedule.

If any dispute arises during consultation regarding potential injury to legal users of water, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety. The District shall promptly inform these parties of any changes to the release schedule.

- b. Unless otherwise provided herein, the total release must be within the historic range of releases for each reservoir during the period of April 1 through October 31. The historic range of releases are those releases that



have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows or ramping schedules. The historical range of releases must be based on average daily releases in years with similar hydrology to the period in which the transfer will occur or be based on a comparable method that reflects the relevant hydrology and is approved in advance by the Deputy Director for Water Rights. The release plan must identify the historic range of releases during the irrigation season and evaluate whether water to be transferred during the irrigation season is within the historic range of releases.

- c. At least one month prior to the period of releases for the transfer, the District will provide the release plan to the Deputy Director for Water Rights and make the plan publicly available.
7. In order for the District to release stored water in amounts exceeding the historic range of releases during the period of April 1 through October 31, the District first shall consult with CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses and to develop measures to avoid or mitigate any such impacts. Such consultation shall include (a) development of a schedule of releases for each reservoir; (b) establishment of flow ramping rates; (c) establishment of stream flow release limitations, if necessary; and (d) development of a monitoring plan for implementation to ensure that release of stored water exceeding the historic range of releases does not result in unreasonable impacts to fish, wildlife, or instream beneficial uses. The monitoring plan shall focus on specific fisheries concerns during the periods of release exceeding the historic range of releases. A monthly monitoring report shall be submitted to CDFW, Mono County, and the Deputy Director for Water Rights and a final report of the results of the monitoring submitted no later than 90 days after the transfer period ends.

Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. If any dispute arises during consultation regarding unreasonable impacts to fish, wildlife, and other instream beneficial uses, or measures to avoid or mitigate such impacts, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.

8. During the transfer period, the District landowners participating in the transfer authorized by this Order to implement the Stored Water Program shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water.
9. During the transfer period, the District shall comply with the section F, Annual Monitoring Plan, of Attachment A to First Amendment to [NFWF] Grant Agreement Regarding [District] Lease of Water Demonstration Program, Stored Water Program, and Water Measurement and Control Phase, and the public reporting provisions of section J.3 of that Attachment A. If section F or section J.3 of Attachment A are substantively amended prior to, or during, the transfer period, the District shall promptly inform the Deputy Director for Water Rights.
10. Within 90 days of completion of the transfer period, the District shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The District will also provide notice of availability of the report to the Water Master, the WBC/NFWF, and the Tribe, and, on request, make the report available either by posting it on a public website or by other means. The report shall include the following information:
  - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from 1) Topaz Reservoir and from 2) Bridgeport Reservoir pursuant to this Order.
  - b. Documentation that the water transferred did not result in an increase in water diverted to storage in both Topaz Reservoir and Bridgeport Reservoir from the source waters of the District's licenses beyond the quantities that would otherwise have been diverted absent the transfer.
  - c. Documentation of compliance with all other conditions of this order.
11. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
12. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change Order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

13. This order does not authorize any act that results in the taking of an endangered, threatened or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.
  
14. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director*  
*Division of Water Rights*

Dated: APR 17 2020

# **EXHIBIT C**

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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**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**

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**ORDER APPROVING TEMPORARY CHANGES**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

This Order conditionally approves the Walker River Irrigation District's (District) petitions for temporary change involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 (Applications 2221 and 1389), pursuant to Water Code sections 1725 et seq. and 1707. This Order includes substantially similar terms and conditions, revised as appropriate, as those included in the California State Water Resources Control Board's (State Water Board or Board) 2014 and 2020 approvals of similar petitions filed by the District.

**1.0 BACKGROUND**

**1.1 Overview**

On November 10, 2021, the District filed the two petitions for temporary change with the State Water Board's Division of Water Rights (Division).

The petitions involve the waters of the interstate Walker River stream system. The District holds License 6000 for Topaz Reservoir, which is located on the West Walker River, and License 9407 for Bridgeport Reservoir, which is located on the East Walker River. The West Walker River and East Walker River originate in the Sierra Nevada of California and flow into Nevada where they join to create the main stem of the Walker River, which then flows to Walker Lake, a natural desert terminal lake in Nevada.

The purpose of the proposed temporary changes is to assist in implementation of the Walker Basin Restoration Program (Restoration Program). The Restoration Program was established by Congress in 2009 by Public Law 111-85 for the primary purpose of restoring and maintaining Walker Lake, which is critical to the recovery of the threatened Lahontan Cutthroat Trout and is an important stopover for migratory

waterfowl. Due to insufficient freshwater inflows, Walker Lake's elevation has been declining since the early 1900s and increased salinity levels threaten its ecology. The Restoration Program seeks to increase instream flows to Walker Lake through various basin-wide initiatives.

The Walker Basin Conservancy (WBC) currently administers the Restoration Program. The Restoration Program includes a three-year water leasing demonstration program (Stored Water Program) that is administered and managed by the District pursuant to a grant agreement with the National Fish and Wildlife Foundation (NFWF), the predecessor to the WBC. Under the Stored Water Program, surface water is released from Topaz and Bridgeport Reservoirs for the purpose of increasing inflows to Walker Lake and to obtain information regarding the establishment, budget, and scope of a longer-term leasing program. Through the Stored Water Program, individual farmers within the District may voluntarily dedicate a portion of their stored water supply to the Stored Water Program for at least one year. Although the Stored Water Program is authorized for three years, it is not required to be implemented three times or in three consecutive years.

## **1.2 The District's Previous Transfers Under the Stored Water Program**

In February 2013, the District filed the first set of petitions for temporary changes involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 to assist in the initial implementation of the Restoration Program. The State Water Board approved the petitions in February 2014,<sup>1</sup> but the transfer of water did not occur until August 2019 for various reasons, including the need for additional approvals and resulting litigation.

The Ninth Circuit Court of Appeals ultimately affirmed the State Water Board's approval in *United States v. United States Board of Water Commissioners* (9th Cir. 2018) 893 F.3d 578 (*US v. USBWC*). The court upheld the State Water Board's determination that the proposed changes involved water that would otherwise be stored and thus would not injure any legal user of the water as being consistent with the Walker River Decree and in accord with California law. (*Id.* at p. 604.) The court also concluded that Walker Lake is part of the Walker River Basin and that "dedicating water from the Walker River to Walker Lake does not violate the Decree's prohibition on delivering water 'outside of the basin of the Walker River.'" (*Id.* at p. 606.) It further clarified that state law applies to state agencies' consideration of the changes: "[t]he Decree presupposes state law in its entirety as to both substance and procedure." (*Id.* at p. 595.) The court remanded with

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<sup>1</sup> The Division conditionally approved the change petitions by order dated February 21, 2014, and the State Water Board denied various parties' request for reconsideration and amended the Division's order by Order WR 2014-0020-Exec (May 16, 2014).

instructions to grant the District's petition to modify the Walker River Decree consistent with the State Water Board's report.

The temporary changes ultimately were authorized through July 16, 2020. The District initiated the transfers in 2019 and released approximately 17,664 acre-feet (af) of stored water to the Walker River system and Walker Lake in August through October 2019.

In January 2020 the District filed a similar set of petitions for temporary changes involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 to enable the second year of the Stored Water Program. The Division approved the petitions by order dated April 17, 2020. The District released approximately 703 af of stored water to the Walker River system and Walker Lake in August 2021 for the second year of the Stored Water Program.

With the current change petitions, WRID seeks to implement the third and final demonstration year of the Stored Water Program.

## **2.0 PETITIONS FOR TEMPORARY CHANGE INVOLVING TRANSFER**

### **2.1 The Walker River Action and Related Proceedings**

The proposed changes involve waters of the Walker River that have been adjudicated by the United States District Court for the District of Nevada in *United States of America v. Walker River Irrigation District, et al.*, Case In Equity No. C-125. The federal District Court issued Decree C-125 (the Walker River Decree) on April 14, 1936, and subsequently amended the decree on April 24, 1940. The U.S. Board of Water Commissioners for the Walker River (USBWC) and the Water Master/Chief Deputy Water Commissioner for the Walker River (Water Master) are charged with apportioning and distributing the waters of the Walker River and its tributaries under the Walker River Decree. In administering the Walker River Decree, the Water Master operates under the *Rules and Regulations for the Distribution of Water on the Walker River Stream System under the Provisions of Paragraph 15 of Decree in Equity, No. C-125*, which were approved by the federal District Court on September 3, 1953 (1953 Rules).

Pursuant to the federal District Court's order, the State Water Board is responsible for reviewing proposed changes in the point of diversion, place of use, or purpose of use, in the exercise of federally adjudicated rights in California that have been established by the Walker River Decree. Thus, in addition to applicable California law, the State Water Board has processed the petitions in accordance with the Administrative Rules and Regulations adopted by the federal District Court in Case No. C-125, as amended through June 3, 1996<sup>2</sup> (Administrative Rules) and will continue to comply with those

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<sup>2</sup> *Administrative Rules and Regulations Regarding Change of Point of Diversion*,

rules in this proceeding.<sup>3</sup> Any approval by the State Water Board will not take effect until the federal District Court enters an order modifying the Walker River Decree accordingly.

## **2.2 Description of the Current Proposed Transfer**

The District filed two separate petitions under Licenses 6000 and 9407 with similar proposed changes that seek to transfer up to a total of 25,000 af for instream flow dedication to Walker Lake. Through its petitions, the District seeks to temporarily 1) add to the existing place of use covered under License 6000 by including the West Walker River from the outlet of Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; 2) add to the existing place of use covered under License 9407 by including the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; and 3) add Fish and Wildlife Preservation and Enhancement to both licenses as an additional purpose of use for instream dedication to Walker Lake. The water involved is surface water that was previously stored or would have otherwise been held in storage at Topaz Reservoir or Bridgeport Reservoir absent the transfer, some or all of which would otherwise have been released for irrigation purposes within the District. The proposed releases by the District would occur during a period of up to one year following final approval by the State Water Board, the federal District Court, and the Nevada State Engineer.

The quantities of water proposed to be released by the District are variable and depend upon hydrologic conditions and participation in the Stored Water Program by individual growers within the District. The District indicates that the estimated maximum quantity of water that may be transferred from Topaz or Bridgeport Reservoir over a 30-day period is up to a total of 25,000 af. The average flow rate associated with this quantity is approximately 420 cubic feet per second (cfs) over a 30-day period. The instantaneous releases from Topaz Reservoir and Bridgeport Reservoir may be up to approximately 750 cfs and 550 cfs, respectively. The District proposes to release water

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*Manner of Use or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance with California Fish and Game Code Section 5937 and Other Provisions of California Law (as amended through June 3, 1996).*

<sup>3</sup>“Change applications” under the Administrative Rules (and Nevada law) and “change petitions” under California law involve similar actions. The Administrative Rules defines “change applications,” as applications to change the point of diversion, manner of use, or place of use of water rights under the Walker River Decree. (Administrative Rules, § 1.1(c).) In California, such requests for change are made through a petition process and referred to as “change petitions.” (See, e.g., Wat. Code, § 1726, subd. (a)(1) [a person proposing a temporary change shall submit a petition to the State Water Board].)



from April 1 through October 31, which is generally the irrigation season. Following evaluation of participation by growers in the Stored Water Program, the District will develop and operate to a schedule of releases for the proposed temporary changes that will be coordinated with the Water Master and other entities, including the WBC/NFWF, and the Walker River Paiute Tribe (Tribe).

The District anticipates that the State Water Board's approval will include similar terms and conditions to those included in the Board's 2014 and 2020 approvals.

### **2.3 Summary of Water Right Licenses 6000 and 9407**

#### *License 6000 – Topaz Reservoir*

The District holds water right License 6000 (Application 2221), with a priority date of February 21, 1921, for collection to storage in Topaz Reservoir. License 6000 authorizes the diversion of up to 57,580 acre-feet per annum (afa) of water to off-stream storage in Topaz Reservoir from the West Walker River tributary to Walker River in Mono County. The season of diversion is from about October 1 of each year through about July 15 of the succeeding year. The rate of diversion to off-stream storage is limited to 1,000 cfs. The water can be used for domestic and irrigation purposes on a net area of 79,174 acres within a gross area of 132,573 acres within the boundaries of the District.

#### *License 9407 – Bridgeport Reservoir*

The District holds water right License 9407 (Application 1389), with a priority date of August 8, 1919, for storage in Bridgeport Reservoir. License 9407 allows the diversion of up to 39,700 afa of water to storage in Bridgeport Reservoir from the East Walker River tributary to Walker River in Mono County. The season of diversion to storage is from about September 1 of each year to about July 20 of the succeeding year. The maximum amount of water that can be held in the reservoir at any time cannot exceed 42,500 af and the maximum withdrawal in any one year cannot exceed 36,000 af. The water can be used for irrigation and recreational purposes. Irrigation is allowed on 52,062 acres net within the gross area of the District. Storage rights under License 9407 in combination with the District's other rights confirmed by Federal Decree C-125 cannot exceed 57,000 afa.

### **3.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES**

Water Code section 1707 authorizes the use of the temporary transfer provisions of Water Code section 1725 et seq. for a change for the purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water. Pursuant to Water Code sections 1707 and 1725, the District has applied for a

temporary change involving a transfer for the purpose of preserving and enhancing fish and wildlife resources. The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq. if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd. (e).)

Moreover, before approving the District's petitions, the State Water Board must make the following findings under Water Code section 1707:

- a. The proposed change will not increase the amount of water the District is entitled to use.
- b. The proposed change will not unreasonably affect any legal user of water.
- c. The proposed change otherwise meets the requirements of division 2 (commencing with section 1000) of the Water Code.

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) The -one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out." (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2).

#### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The District filed the petitions for a temporary transfer and change under Water Code sections 1707 and 1725 et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA (Pub. Resources Code, § 21000 et seq.). The State Water Board will file a Notice of Exemption.

#### **5.0 PUBLIC NOTICE OF THE PETITIONS**

On November 22, 2021, the State Water Board issued public notice of the petitions for temporary change, posting the notice on the Division's website and providing the notice via the Board's electronic notification service to the following electronic subscription mailing lists: Walker River Water Right Change Petition, Water Rights Transfers, and Water Rights Petitions. On the same date, the public notice was provided by first class mail to interested persons identified in the Administrative Rules and to downstream water right holders. The November 22, 2021 public notice of the petitions was also published in the following newspapers: the Gardnerville Record-Courier, the Lyon County Leader, and the Mineral County Independent-News. On January 22, 2022, public notice of the petitions was also published in the Mammoth Times.

#### **6.0 COMMENTS ON THE PETITIONS**

The State Water Board received comments on the petitions from 1) the WBC; 2) Mr. Mark Mahan; 3) the USBWC and the Water Master; and 4) the California Department of Fish and Wildlife (CDFW), California's trustee agency for fish and wildlife resources. On January 6, 2022, the District responded to the comments. This section summarizes the comments and the District's responses and, as appropriate, the State Water Board's consideration of the issues raised.

##### **6.1 WBC Comments**

The WBC indicated that it is fully supportive of the District's petitions, which it stated are consistent with the NFWF funding agreement, as well as necessary to implement the Stored Water Program. The WBC noted the importance of monitoring and evaluating the effects of the timing of transferred water releases on river health and other ecological needs as part of the Stored Water Program and that such efforts "can provide important feedback that informs adaptive management and joint learning in support of future operations and longer-term efforts." (WBC Comment Letter (Dec. 7, 2021), p. 2.)

## **6.2 Mark Mahan**

### *Comments:*

Mark Mahan of Santa Margarita Ranch objected to the timing of the release of waters under the District's proposed transfer. Mr. Mahan stated that he works along the East Fork Walker River corridor that runs through the ranch. Citing to low reservoir pools and low allotments the past two years, Mr. Mahan explained that the transfers should not occur during critical low water years. Instead, water should be transferred in years when there are excess flows through the reservoirs. Mr. Mahan stated that the transfer of water and changes should be based on availability of excess water after the water user group has been supplied water pursuant to their water rights or the change of use should have a new priority date set at the time of the change so that water users can still get their water. He further noted that taking water from the two ranches up the canyon has a negative effect on riparian vegetation and increases invasive species.

### *District Response:*

The District stated that availability of stored water to water users within the District is unchanged. The District allocates available stored water to landowners who are entitled to the stored water, and in turn individual landowners within the District may voluntarily dedicate a portion of the allocated stored water supply to the Stored Water Program. Landowners' participation in the Stored Water Program will not change the amount of stored water available to other parties who have an entitlement to the District's stored water. Further, the stored water that is voluntarily dedicated to the Stored Water Program is not excess water and has no impact on the availability of water to other users under their water rights or entitlements.

The District further explained that the situation involving the two ranches upstream from the Santa Margarita Ranch is not related to the Stored Water Program. The ranches previously sold their land and natural flow water rights to the WBC, and the ranches have become part of the Nevada State Park system. The WBC has not applied to the Nevada State Engineer to change those natural flow rights for use at Walker Lake. The WBC and Nevada State Parks are the parties who currently decide whether to irrigate those ranches.

As discussed below, the State Water Board finds that, based on information in the record, the District has met its burden of establishing that the proposed change will not injure any legal user of water. Moreover, the issues related to the two upstream ranches are not related to the proposed changes involving the transfer of water.

### **6.3 USBWC and Water Master Comments**

#### *Comments:*

The USBWC and the Water Master (referred to collectively in this subsection as USBWC) requested that the District be required to provide the USBWC with a copy of the release plan and the summary report or information submitted to the Division pursuant to any condition of approval similar to Condition 10 of the Division's 2014 Order. Condition 10 of the Division's 2014 Order requires the District to submit certain information, including documentation of compliance with all other conditions of the Order, to the Division within 90 days of completion of the transfer period. A similar condition is included in this order as Condition 11.

The USBWC referenced the District's statement in the petitions that the District will rely on existing water measurement gages in the Walker River Basin for monitoring flows and accounting for actual releases. The USBWC believes that, for purposes of monitoring flows and accounting for actual releases by the District for the Stored Water Program, it is critical that the existing water measurement gages in the Walker River Basin, at a minimum, be maintained, including but not limited to the Miller Lane gage. The USBWC stated that it is not clear whether the Miller Lane gage will be maintained during the 2022 agricultural season.

The USBWC commented that there is no information provided in the petitions regarding the management and accounting for stored water transferred under the Stored Water Program past the Wabuska Gage and that the District did not ask that the Lower Walker River Conveyance Protocols<sup>4</sup> govern the conveyance of stored water. The USBWC assumes that the protocols will be in place if the petitions are approved by the State Water Board.

#### *District Response:*

The District stated that it will provide the USBWC a copy of the release plan and summary report or other information submitted to the Division pursuant to any condition of approval of the current petitions that is similar to Condition 10 of the Division's previous orders. The District also indicated it will provide the USBWC a copy of any temporary change applications filed with the Nevada State Engineer and copies of any

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<sup>4</sup> The protocols establish accounting procedures for the conveyance of NFWF's Restoration Program water from Wabuska Gage through the Tribe's Reservation to Walker Lake and are the result of a stipulation between NFWF, the Tribe, and the Bureau of Indian Affairs to resolve protests over NFWF's Nevada Application 80700 to change the manner of use and place of use of decreed water rights to increase inflows to Walker Lake.

monthly reports submitted to the Nevada State Engineer.

The District stated that it is currently coordinating with the U.S. Geological Survey to ensure that the Miller Lane gaging station will be maintained during the 2022 season.<sup>5</sup>

The District also stated that the Lower Walker River Conveyance Protocols will govern the conveyance of the released water under the Stored Water Program in the Lower Walker River including the reach from the Wabuska Gage through the Walker River Indian Reservation and to Walker Lake.

The State Water Board finds that it is reasonable for parties that must be consulted on the release plan, the Water Master, the WBC/NFWF, and the Tribe, also to have an opportunity to review information related to the completion of the transfer. Condition 11 will require the District to provide notice of availability of the report to these parties and, on request, make the report available either by posting it on a website or other means. In addition, the USBWC requested that the District be required to provide the USBWC with copies of any temporary change applications and monthly reports submitted to the Nevada State Engineer as required by any temporary permits issued by the Nevada State Engineer, but does not explain how this information is required under California water right law or otherwise relates to the State Water Board's consideration of the petitions. Approvals by the Nevada State Engineer that fall within the definition of final approval in Condition 1 must be provided to the Deputy Director for Water Rights. As explained below, there is sufficient information in the record to support the State Water Board's approval of the transfer petitions. The USBWC will receive notice of the District's compliance with conditions of this Order pursuant to Condition 11.

#### **6.4 CDFW Comments**

##### *Comments:*

CDFW stated that it is not opposed to the "concept of water transfers if the transfer is structured and timed such that beneficial uses for fish and wildlife resources are not

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<sup>5</sup> Pursuant to a 2019 stipulation between NFWF and the USBWC, the Miller Lane gage is being operated for a trial period of three irrigation seasons for the Water Master's administrative flows under Nevada Permit 80700 within Nevada. At the end of the trial period, the Water Master and NFWF will conduct a technical analysis of the stream flow data to inform the utility of the Miller Lane gage and/or the Yerington Weir gage in the future. At this time, the WBC is awaiting finalized data from the Miller Lane gage for the 2021 irrigation season in order to complete the analysis necessary to determine the effectiveness of the gage to administer instream flows. The State Water Board's conditional approval of the petitions is not dependent on the operation of the Miller Lane gage.



impacted or impaired.” (CDFW Comment Letter (Dec. 22, 2021), p. 2.) CDFW is concerned that the District’s proposed transfer period may occur when high flows may be detrimental to fisheries and recommends that flows in East Walker River should be limited to 20 to 50 cfs from December through February to avoid adverse impacts to overwintering trout and fulfill the requirements of Fish and Game Code section 5937. CDFW also recommended that the District’s transfer releases should be timed to avoid flow increases or decreases in excess of 15 percent per day between January and May to avoid impacts to spawning rainbow and Lahontan cutthroat trout, as well as protecting spawning native mountain sucker and mountain whitefish. CDFW requested that any approval of the petitions include a monitoring and reporting requirement, at least monthly, that provides information detailing the location, timing, and amount of flow releases to ensure compliance with CDFW’s proposed flow conditions.

*District Response:*

The District stated that the Stored Water Program will only be releasing water during irrigation season, consequently no water will be released during the months of December through February. The season of use for stored water is generally from April through October 31, and releases for the Program will be scheduled to be made within the historic range of releases during that period. The District stated that it is highly unlikely that any releases for the Program will be made during April, however those releases would be made within the range of releases for that month.

The District stated that the State Water Board’s previous approvals of the Stored Water Program required the District to provide a monitoring report to the Board within 90 days of completion of the transfer. The District has only been required to submit monthly reports to the Board if the District released stored water in either amounts exceeding the historic range of releases during the irrigation season or following October 31. The District indicated it does not intend to do either, however it will comply with requirements for monthly reporting with respect to any such releases.

The District indicated that it performs monitoring on a daily basis and that information is provided on the District’s website<sup>6</sup>.

To ensure that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses, the State Water Board will require the District to ensure that transfer releases do not contribute to flow increases<sup>7</sup> in the Walker River system in

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<sup>6</sup> Daily monitoring data for WRID’s Stored Water Program is located on the following webpage: <http://www.wrid.us/WRID/SWLP>

<sup>7</sup> In CDFW’s comments, it recommended that the District’s transfer releases should avoid “flow increases *or decreases* in excess of 15% per day between January and May.” (CDFW Comment Letter (Dec. 22, 2021), italics added.) On January 14, 2022, CDFW staff confirmed with Division staff the term ‘decreases’ was inadvertently

excess of 15 percent per day in April or May. If, however, after consultation with CDFW, CDFW agrees in writing that flow increases in excess of 15 percent per day in April or May will not unreasonably affect fish, wildlife, and other instream beneficial uses, the District may make larger releases consistent with the terms of this order. If the District releases stored water in April or May, the District will be required to provide monthly reports to the State Water Board and CDFW documenting compliance with this requirement. The District will also be required to notify CDFW of availability of the summary report as detailed in Condition 11 of this Order.

## **7.0 STATE WATER BOARD FINDINGS**

In considering changes sought to California water rights adjudicated in the Walker River Decree, the State Water Board proceeds under California law and agency practice and procedure. (*US v. USBWC, supra*, 893 F.3d at p. 595; Administrative Rules, § 5.1.)

### **7.1 Availability of Water for Transfer**

Before approving a temporary change involving the transfer of water, the State Water Board must determine that the proposed transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, §§ 1725, 1726, subd. (e).) In addition, before approving a change under section 1707, the State Water Board must find that the proposed change will not increase the amount of water the person is entitled to use. (*Id.*, § 1707, subd. (b)(1).)

The change petitions involve the transfer of stored water. The water that is the subject of the petitions is previously stored water or water that would have otherwise been held in storage at Topaz or Bridgeport Reservoirs absent the proposed transfer, “some or all of which would have been released for irrigation purposes within the District...” (Petition for License 6000, Att. No. 1, p. 2; Petition for License 9407, Att. No. 1, p. 2.) The water would have been stored either during the non-irrigation season or during the irrigation season when all other decreed rights to natural flow are fully satisfied. (Petition for License 6000, Att. No. 1, p. 5; Petition for License 9407, Att. No. 1, p. 5.)

The State Water Board conducted an independent evaluation of its records. The combined annual use under Licenses 6000 and 9407 was 28,930 af, 72,260 af, 68,680 af, and 57,921 af during 2017, 2018, 2019, and 2020, respectively. These data indicate that the District has put the amount proposed to be transferred to recent beneficial use and would, absent the proposed changes, have released water from Topaz and Bridgeport Reservoirs to the landowners within the District for irrigation purposes or would have retained the volume of water in storage pursuant to its water

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included in CDFW’s flow recommendation.



rights. The State Water Board finds that, in accordance with Water Code section 1726, subdivision (e), the water proposed for transfer pursuant to this order would be consumptively used or stored in the absence of the proposed temporary change. This Order includes a term to ensure that District landowners who participate in the Stored Water Program do not receive additional water to offset the water transferred.

Moreover, the District's petitions do not request any changes in the diversion of water to storage; instead they only request changes in the place and purpose of use upon release from storage. Thus, the State Water Board finds that, in accordance with Water Code section 1707, subdivision (b)(1), the proposed change will not increase the amount of water that the District is entitled to use.

## 7.2 No Injury to Other Legal Users of Water

Before approving a temporary change involving the transfer of water, the State Water Board must find that a preponderance of the evidence shows that the proposed temporary change would not injure any legal user of water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) Water Code section 1707, subdivision (b)(2) also requires the State Water Board to determine before approving a change for purposes of instream flow dedication that the change will not unreasonably affect any legal user of water.

Thus, with respect to the “no injury” inquiry under both Water Code sections 1727 and 1707, the State Water Board must evaluate whether the change will injure any legal user of the water involved in the change. The controlling consideration in the State Water Board's inquiry is the effect of the change on the rights of others. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 743, 805.) A person who claims injury from a proposed change “must show the change will interfere with his or her *right* to use the water, whatever the source of that right may be.” (*Id.* at p. 805, italics in original.) It is not enough for a water user to show that it will receive less water as a result of the change. Instead, a water user claiming injury must demonstrate that it has a right to the greater amount of water claimed and that the proposed change will interfere with that right. (*Ibid.*; see also State Water Board Decision 1651 (2012) (D-1651), p. 22.)<sup>8</sup>

Based on the information in the record, the District has met its burden of establishing that the proposed change will not injure any legal user of water. (Wat. Code, § 1727,

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<sup>8</sup> D-1651 can be viewed at [http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1650\\_d1699/wrd1651.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1650_d1699/wrd1651.pdf) (as of February 15, 2022).

subds. (b)(1), (c).) The District holds water rights to storage at Topaz and Bridgeport Reservoirs under Licenses 6000 and 9407. The water subject to the proposed temporary changes will continue to be diverted to storage under the terms and conditions of the two licenses and in accordance with water right priority. The proposed temporary changes only involve the release of water that that was diverted to storage after senior rights had been met. Thus, senior rights cannot be injured by changes in stored water once that water has been stored. Further, a downstream appropriator cannot require the owner of an upstream reservoir to release previously appropriated water. (*State Water Resources Control Bd. Cases, supra*, at p. 743.) “[I]f previously stored water is not available to a water right holder, the water right holder cannot be injured if the water does not arrive at the water right holder’s point of diversion due to a change in the use of the stored water.” (D-1651, at p. 24.) Water previously stored water by the District is only available for use by the District and is not available for other users downstream. (*US v. USBWC, supra*, 893 F.3d at p. 604.)

The Stored Water Program may result in changes in reservoir operations that have the potential to affect return flows or irrigation efficiencies, which in turn could affect the availability of water for junior priority water right holders. But the issue of water availability is distinct from the issue of legal injury. Water being used under an existing right is not available for appropriation. (Wat. Code, § 1202; Cal. Code Regs., tit. 23, § 695.)

Moreover, there is no legal right to return flows from stored water that has not been abandoned. Releases of stored waters are foreign in time—in other words, they would not be present in the stream under natural conditions—and “have no relationship to or conflict with priorities of right to use the flows of another time or season.” (State Water Board Decision 192 (1928),<sup>9</sup> at pp. 23-24; see *Stevens v. Oakdale Irrigation Dist.* (1939) 13 Cal.2d 343, 350-352 [downstream user has no right to continued releases of artificial flow]; *Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450, 457 [downstream riparian user has no right to discharge of stored water]; State Water Board Decision 1602 (1984),<sup>10</sup> at p. 4 [citing *Stevens v. Oakdale Irrigation Dist.*, *supra*, as indicating that “noncontractual rights to the use of foreign water are not a valid basis for claiming injury as a legal user of water”].)

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<sup>9</sup> The State Water Board’s predecessor at the time was the Division of Water Rights in the Department of Public Works. Decision 192 can be viewed at <[http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d0150\\_d0199/wrd192.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d0150_d0199/wrd192.pdf)> (as of February 15, 2022).

<sup>10</sup> Decision 1602 can be viewed at <[http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1600\\_d1649/wrd1602.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1600_d1649/wrd1602.pdf)> (as of February 15, 2022).

Senior water right diverters downstream of Topaz and Bridgeport Reservoirs will not be affected by the transfer. The water under Licenses 6000 and 9407 will be diverted to storage in accordance with water right priority on the stream system. Senior rights cannot be injured by the release of water stored under a junior water right.

To avoid potential injury and to ensure that other water users can identify the waters subject to the temporary changes, the State Water Board will require the District to develop and operate to a schedule of releases set forth in a release plan for the proposed temporary transfer and instream flow dedication, in consultation with the Water Master, the Tribe, and the WBC/NFWF. In part, the release plan will describe the proposed schedule and volume of releases to be made from each reservoir during the period of April 1 through October 31. Further, under the District's grant agreement with NFWF, the District must develop an Annual Monitoring Plan that will monitor the release and delivery of Stored Water Program water and maintain daily records to account for the releases and deliveries of the water.<sup>11</sup> The information must be made publicly available. This Order also makes the development of such a plan and public accounting a requirement of the approved changes. Moreover, as noted above, the District landowners participating in the transfer authorized under this Order to implement the Stored Water Program shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water. After the transfer period ends, an accounting of the volume of water transferred must be submitted to the Deputy Director for Water Rights.

The State Water Board finds that, in accordance with Water Code section 1727, subdivision (b)(1) and Water Code section 1707, subdivision (b)(2), the proposed temporary changes would not injure any legal user of the water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

### **7.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses**

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

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<sup>11</sup> NFWF and the District have executed several amendments to the original grant agreement. The most recent amendment, the fourth amendment to the grant agreement, extends the period of performance but does not alter the terms of the first amendment to the NFWF grant agreement regarding the Annual Monitoring Plan or applicable reporting requirements that are required by this Order.

The District anticipates that the increased flows resulting from releases from Topaz or Bridgeport Reservoirs will result in beneficial effects on fish, wildlife, other instream beneficial uses and water quality downstream to and including Walker Lake. If the District determines that stored water releases will occur in amounts exceeding the historical range of releases, the District proposes to consult with the CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses, and to develop measures to avoid or mitigate any such impacts.

The purpose of the petitions is to assist with increasing flows into Walker Lake for environmental restoration in the Walker River Basin as provided under federal law and the Restoration Program. The change petitions do not propose any physical changes in the District's diversion and conveyance system. Nor do the petitions propose any change in the diversions to storage in Topaz or Bridgeport Reservoirs or existing bypass or minimum pool requirements. Thus, the record supports the conclusion that the proposed temporary changes, as conditioned, will not unreasonably affect fish, wildlife, or other instream beneficial uses.

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 period of April 1 through October 31, which are made pursuant to the temporary changes approved by this Order, to the total historic range of reservoir releases during the irrigation season. The historic range of reservoir releases are those releases that have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows, or ramping schedules. The District may release stored water in amounts exceeding the historic range of releases during the irrigation season if the District first consults with CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses, and to develop measures to avoid or mitigate any such impacts. Such consultation shall include the establishment of a flow ramping schedule to avoid harm through rapid fluctuations in instream levels.

CDFW recommended that the District's transfer releases be timed to avoid flow increases in excess of 15 percent per day in April and May to avoid impacts to spawning rainbow and Lahontan cutthroat trout, as well as protecting spawning native mountain sucker and mountain whitefish. This Order requires that the District's transfer releases do not contribute to flow increases in the Walker River system in excess of 15 percent per day in April or May absent written concurrence by CDFW.

The State Water Board finds that, as conditioned, in accordance with Water Code section 1727, subdivision (b)(2), the proposed changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.

## **8.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY**

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. The Resolution also delegates authority to the Deputy Director to perform duties related to processing change petitions in the Walker River action. This Order is adopted pursuant to the delegation of authority in sections 4.4.2 and 4.7.3 of Resolution 2012-0029.

## **9.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the determinations required by Water Code sections 1707 and 1725 et seq.

The State Water Board concludes that, based on the available information:

1. The proposed transfers involve only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary changes will neither injure, nor unreasonably affect, any legal user of water, including during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
3. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The proposed temporary changes will not increase the amount of water the District is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED THAT** the District's petitions for temporary transfer and dedication of water for instream purposes of 25,000 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. are approved for a period of one year, which will commence on the date of final approval, as defined below.

All existing terms and conditions of Licenses 6000 and 9407 remain in effect, except as temporarily amended by the following provisions:

1. The temporary change is limited to a one-year period commencing on the date of final approval. Final approval means that all related approvals by the federal District Court have been obtained, including modification of the Walker River Decree by the federal District Court to recognize (i) the State Water Board's approval of the changes under this Order and (ii) approval by the Nevada State Engineer of a change application submitted by an individual within the District to implement the Stored Water Program. Within 30 days after receiving the final approval, the District shall notify, and provide copies to, the Deputy Director for Water Rights of the approval. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.
2. In addition to all other purposes of use authorized by Licenses 6000 and 9407, the purpose of use of the licenses is temporarily amended to include preservation and enhancement of fish and wildlife within the following reaches: 1) for License 6000, the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; and 2) for License 9407, the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.
3. The place of use under License 6000 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Topaz Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,419,385 feet and East 6,845,209 feet, being within SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 12, T9N, R22E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9 to 11N, R29 to 30E, MDB&M, as shown on map filed with the State Water Board for License 6000 and maps prepared by the District and NFWF submitted with the petitions as Exhibit C.
4. The place of use under License 9407 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Bridgeport Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,307,798 feet and East 6,931,075 feet, being within SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 34, T6N, R25E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9-11N, R29-30E, MDB&M, as shown on map filed with the State Water Board for License 9407 and maps prepared by the District and NFWF submitted with the petitions as Exhibit C.



5. Water transferred pursuant to this Order shall be limited to a combined maximum amount of 25,000 af to be released from either Topaz Reservoir or Bridgeport Reservoir, or both, from April 1 through October 31.
6. The District shall develop and operate to a schedule of releases (release plan) for the transfers that describes the proposed schedule and volume of releases to be made from either Topaz Reservoir or Bridgeport Reservoir, or both, during the period of April 1 through October 31.
  - a. The release plan shall be developed in consultation with the Water Master, the WBC/NFWF, and the Tribe. Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. The District shall promptly inform the Water Master, the WBC/NFWF, the Tribe, and the Division of Water Rights of any changes to the release schedule.

If any dispute arises during consultation regarding potential injury to legal users of water, the Deputy Director for Water Rights shall decide the matter.

Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety. The District shall promptly inform these parties of any changes to the release schedule.

- b. Unless otherwise provided herein, the total release must be within the historic range of releases for each reservoir during the period of April 1 through October 31. The historic range of releases are those releases that have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows or ramping schedules. The historical range of releases must be based on average daily releases in years with similar hydrology to the period in which the transfer will occur or be based on a comparable method that reflects the relevant hydrology and is approved in advance by the Deputy Director for Water Rights. The release plan must identify the historic range of releases during the irrigation season and evaluate whether water to be transferred during the irrigation season is within the historic range of releases.
    - c. At least one month prior to the period of releases for the transfer, the District will provide the release plan to the Deputy Director for Water Rights and make the plan publicly available.
7. In order for the District to release stored water in amounts exceeding the historic range of releases during the period of April 1 through October 31, the District first

shall consult with CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses and to develop measures to avoid or mitigate any such impacts. Such consultation shall include (a) development of a schedule of releases for each reservoir; (b) establishment of flow ramping rates; (c) establishment of stream flow release limitations, if necessary; and (d) development of a monitoring plan for implementation to ensure that release of stored water exceeding the historic range of releases does not result in unreasonable impacts to fish, wildlife, or instream beneficial uses. The monitoring plan shall focus on specific fisheries concerns during the periods of release exceeding the historic range of releases. A monthly monitoring report shall be submitted to CDFW, Mono County, and the Deputy Director for Water Rights and a final report of the results of the monitoring submitted no later than 90 days after the transfer period ends.

Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. If any dispute arises during consultation regarding unreasonable impacts to fish, wildlife, and other instream beneficial uses, or measures to avoid or mitigate such impacts, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.

8. If the District releases stored water for transfer in April or May, the releases shall not contribute to flow increases in the Walker River system in excess of 15 percent per day. If, after consultation with CDFW, CDFW agrees in writing that flow increases in excess of 15 percent per day in April or May will not unreasonably affect fish, wildlife, and other instream beneficial uses, the District may make larger releases consistent with the terms of this Order. When releasing stored water in April or May, the District shall provide monthly reports to the State Water Board and CDFW documenting compliance with this condition. The monthly reports shall be submitted to the State Water Board and CDFW within 15 days following the month(s) the releases occurred.
9. During the transfer period, the District landowners participating in the transfer authorized by this Order to implement the Stored Water Program shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water.
10. During the transfer period, the District shall comply with the section F, Annual Monitoring Plan, of Attachment A to First Amendment to [NFWF] Grant Agreement Regarding [District] Lease of Water Demonstration Program, Stored Water Program, and Water Measurement and Control Phase, and the public reporting provisions of



section J.3 of that Attachment A. If section F or section J.3 of Attachment A are substantively amended prior to, or during, the transfer period, the District shall promptly inform the Deputy Director for Water Rights.

11. Within 90 days of completion of the transfer period, the District shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The District will also provide notice of availability of the report to the Water Master, the WBC/NFWF, CDFW, and the Tribe, and, on request, make the report available either by posting it on a public website or by other means. The report shall include the following information:
  - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from 1) Topaz Reservoir and from 2) Bridgeport Reservoir pursuant to this Order.
  - b. Documentation that the water transferred did not result in an increase in water diverted to storage in both Topaz Reservoir and Bridgeport Reservoir from the source waters of the District's licenses beyond the quantities that would otherwise have been diverted absent the transfer.
  - c. Documentation of compliance with all other conditions of this order.
12. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
13. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change Order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
14. This order does not authorize any act that results in the taking of an endangered, threatened or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.

Applications 2221 and 1389

Licenses 6000 and 9407

Page 22 of 22

15. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: FEB 23 2022

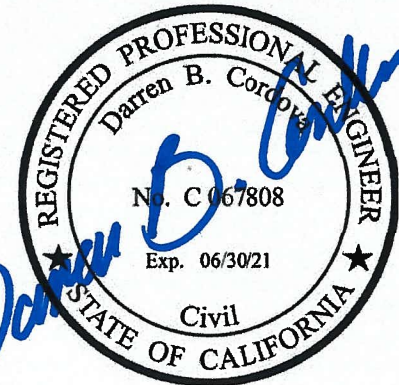
# **EXHIBIT D**



**CERTIFICATE**

I, Darren B. Cordova, 455 University Avenue, Suite 100, Sacramento, California, hereby certify that this map was amended under my supervision on January 27, 2020, from information which I believe to be accurate, and that it correctly represents the items described in the petition submitted on January 16, 2020.

Engineer Certificate No. C-067808  
 January 27, 2020 Expires June 30, 2021



**STATE OF NEVADA  
 COUNTY OF WASHOE**

}SS

I, MICHAEL D. BUSCHELMAN, BEING FIRST ONLY SWORN, DEPOSE AND SAY THAT THIS MAP, CONSISTING OF SIX SHEETS, NUMBERED ONE THROUGH SIX, INCLOSURE, HAS BEEN CORRECTLY DRAWN TO THE DESIGNATED SCALE, ON OR BEFORE MARCH 14, 2011, BASED ON A SURVEY MADE UNDER MY SUPERVISION AND DIRECTION, RELYING UPON ANALYSES OF RECORDED SURVEY DOCUMENTS AND OTHER DOCUMENTS IN THE LYON COUNTY RECORDER'S OFFICE, US BUREAU OF LAND MANAGEMENT, THE WALKER RIVER IRRIGATION DISTRICT, THE US FEDERAL WILDLIFE SERVICE, THE WALKER RIVER AND THE NEVADA DIVISION OF WATER RESOURCES THAT THIS MAP TRULY AND CORRECTLY REPRESENTS THE EXISTING AND PROPOSED POINTS OF DIVERSION AND PLACES OF USE OF A PORTION OF THE WALKER RIVER AND ITS TRIBUTARIES, AS DESCRIBED IN THAT PARTICULAR DOCUMENT ENTITLED UNITED STATES VS. WALKER RIVER IRRIGATION DISTRICT ET AL., DOCKET C-125, CLAIMS 22, 23A, 35, 44, 67, and 89, FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 IN LYON COUNTY, NEVADA.

*Michael D. Buschelman*  
 MICHAEL D. BUSCHELMAN SVRS 1792

SUBSCRIBED AND SWORN TO BEFORE ME  
 THIS 27th DAY OF January 2020  
 NOTARY PUBLIC IN AND FOR WASHOE COUNTY, NEVADA  
 MY COMMISSION EXPIRES July 6, 2021

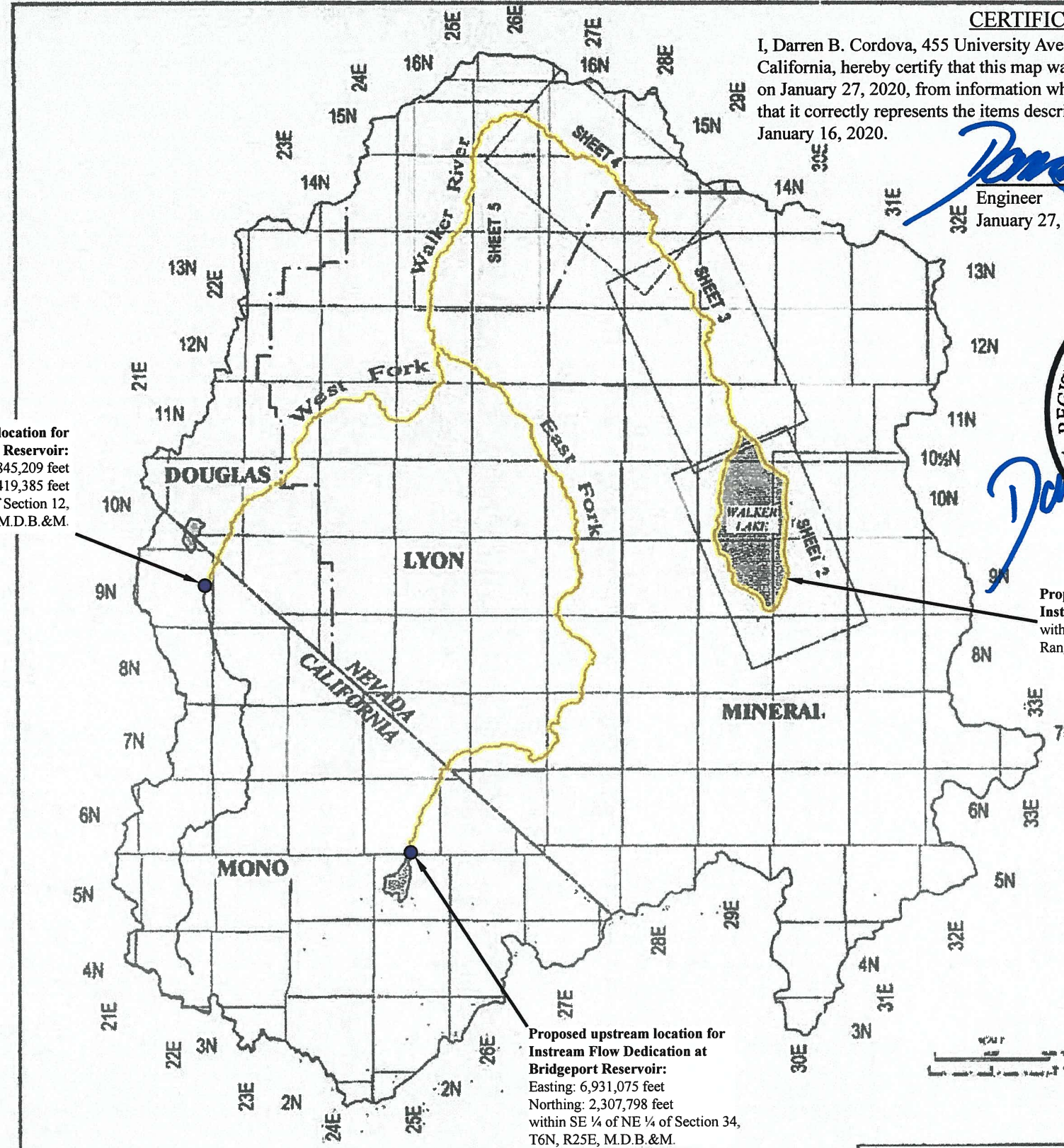


**BASIS OF BEARING**

1. STATE PLANE - NEVADA WEST, RAD 83 (FEET)
2. ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNTAIN DIABLO BASE & MERIDIAN (N.T.S. & M.)

**REFERENCES**

1. PUBLIC LAND SURVEY SYSTEM (PLSS) EXTRACTED FROM THE USBLM GEOGRAPHIC COORDINATE DATABASE (GCDDB), STATE PLANE NEVADA WEST, RAD 83 (FEET)
2. WALKER RIVER BASIN BOUNDARY DERIVED FROM THE GIS DATASET "STATE ENGINEER BASIN BOUNDARIES 30"0", DATED 01/17/2006, PROVIDED BY THE NEVADA DIVISION OF WATER RESOURCES; AND THE CALWATER HYDROGRAPHIC BASIN 1:50,000 GIS DATASET, PROVIDED BY THE NRCS
3. WALKER LAKE, BRIDGEPORT RESERVOIR, TOPAZ LAKE RESERVOIR, AND WEBER RESERVOIR BOUNDARIES TAKEN FROM USGS DIGITAL LINE GRAPHS (DLG) 1:25,000
4. WALKER RIVER (EAST, WEST, AND MAIN FORK) CENTERLINES AND CHANNEL BOUNDARIES DERIVED FROM LYON COUNTY 2007 AERIAL PHOTOGRAPHY (1 FT RESOLUTION), AND USDA 2004 NATIONAL AGRICULTURAL IMAGERY PROGRAM (NAIP) PHOTOGRAPHY (1M RESOLUTION)



Proposed upstream location for Instream Flow Dedication at Topaz Reservoir:  
 Easting: 6,845,209 feet  
 Northing: 2,419,385 feet  
 within SE ¼ of SE ¼ of Section 12,  
 T9N, R22E, M.D.B.&M.

Proposed downstream location for Instream Flow Dedication at Walker Lake:  
 within Townships 9N, 10N & 11N,  
 Ranges 29E & 30E, M.D.B.&M.

Proposed upstream location for Instream Flow Dedication at Bridgeport Reservoir:  
 Easting: 6,931,075 feet  
 Northing: 2,307,798 feet  
 within SE ¼ of NE ¼ of Section 34,  
 T6N, R25E, M.D.B.&M.

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP

Note:  
 Proposed upstream locations for Instream Flow Dedications are referenced to California Coordinate System Zone III NAD 83, based on the CA Division of Water Rights eWRIMS database.



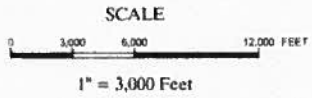
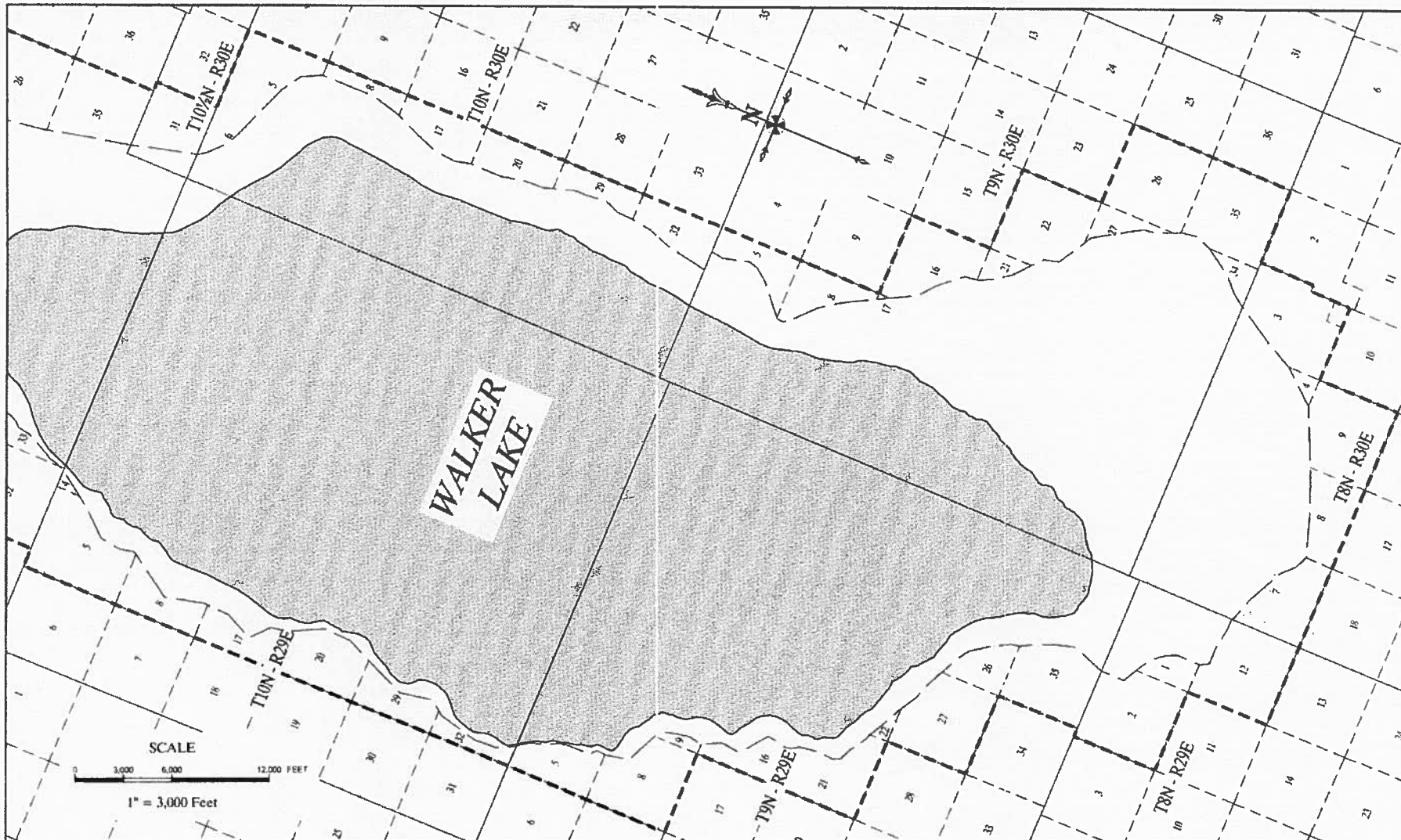
Proposed Place of Use (highlighted in yellow):  
 East Walker River from Bridgeport Reservoir to the confluence with the Walker River, and the West Walker River from Topaz Reservoir to the confluence with the Walker River, thence the Walker River to and encompassing Walker Lake, which is within the Walker River Basin.

Michael D. Buschelman Consulting, Inc.  
 One Office Blvd 11371  
 Sparks, Nevada 89431  
 (775) 325-9424 / Fax: 352-9424 FAX

MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125, CLAIMS 22, 23A, 35, 44, 67, and 89 FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 BY THE NATIONAL FISH AND WILDLIFE FOUNDATION FROM THE WALKER RIVER AND ITS TRIBUTARIES LYON/MINERAL COUNTIES NEVADA

Sheet 1 of 6





**WALKER  
LAKE**

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP
- SECTION
- MEANDER LINES PER BLM
- PROPOSED PLACE OF USE

**BASIS OF BEARING**

1. STATE PLANE - NEVADA WEST, NAD 83 (FEET)
2. ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNT DIABLO BASE & MERIDIAN (M.D.B./M.)

STATE ENGINEER'S USE



Sheet 2 of 6

Michael D. Buschelman Consulting, Inc.

Post Office Box 51371  
 Sparks, Nevada 89418  
 (775) 355-4629 FAX: 355-4629 FAX

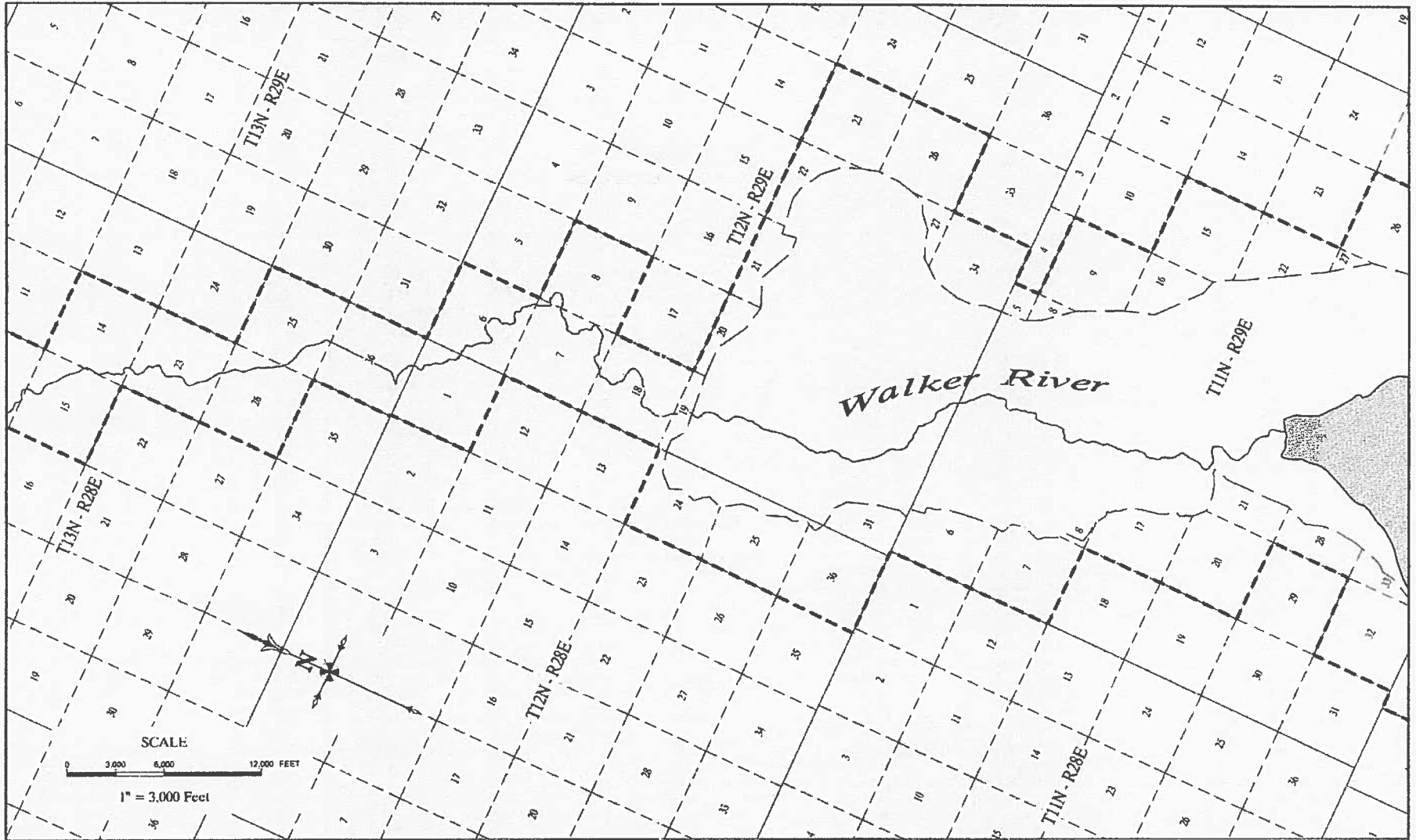
MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125, CLAIMS 23, 23A, 35, 44, 67, and 89

FOR  
 WILDLIFE PURPOSES IN ACCORDANCE WITH  
 NRS CHAPTER 533  
 BY  
 THE NATIONAL FISH and WILDLIFE FOUNDATION  
 FROM  
 THE WALKER RIVER and ITS TRIBUTARIES  
 LYON/MINERAL COUNTIES NEVADA



Exhibit A

81704 80700



Sheet 3 of 6

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP
- SECTION
- MEMBER LINES PER BLM
- PROPOSED PLACE OF USE

**HMS** HISTORY MAPPING SERVICES  
 7414 E  
 Springdale Rd. Sparks  
 NV 89424  
 (775) 315-9228  
 (775) 315-9228 (FAX)  
 © 1997 History Mapping Services

**BASIS OF BEARING**

- STATE PLANE - NEVADA WEST, NAD 83 (FEET)
- ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNTAIN BASE 3 MERIDIAN (M.D.B.M.)

STATE ENGINEER'S USE

**FILLED**  
 NOV 18 2010

Michael D. Buschelmann Consulting, Inc.  
 Post Office Box 51371  
 Sparks, Nevada 89413  
 (775) 315-9228 (FAX) 315-9229 FAX

MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-123, CLAIMS 23, 23A, 35, 44, 67, and 89

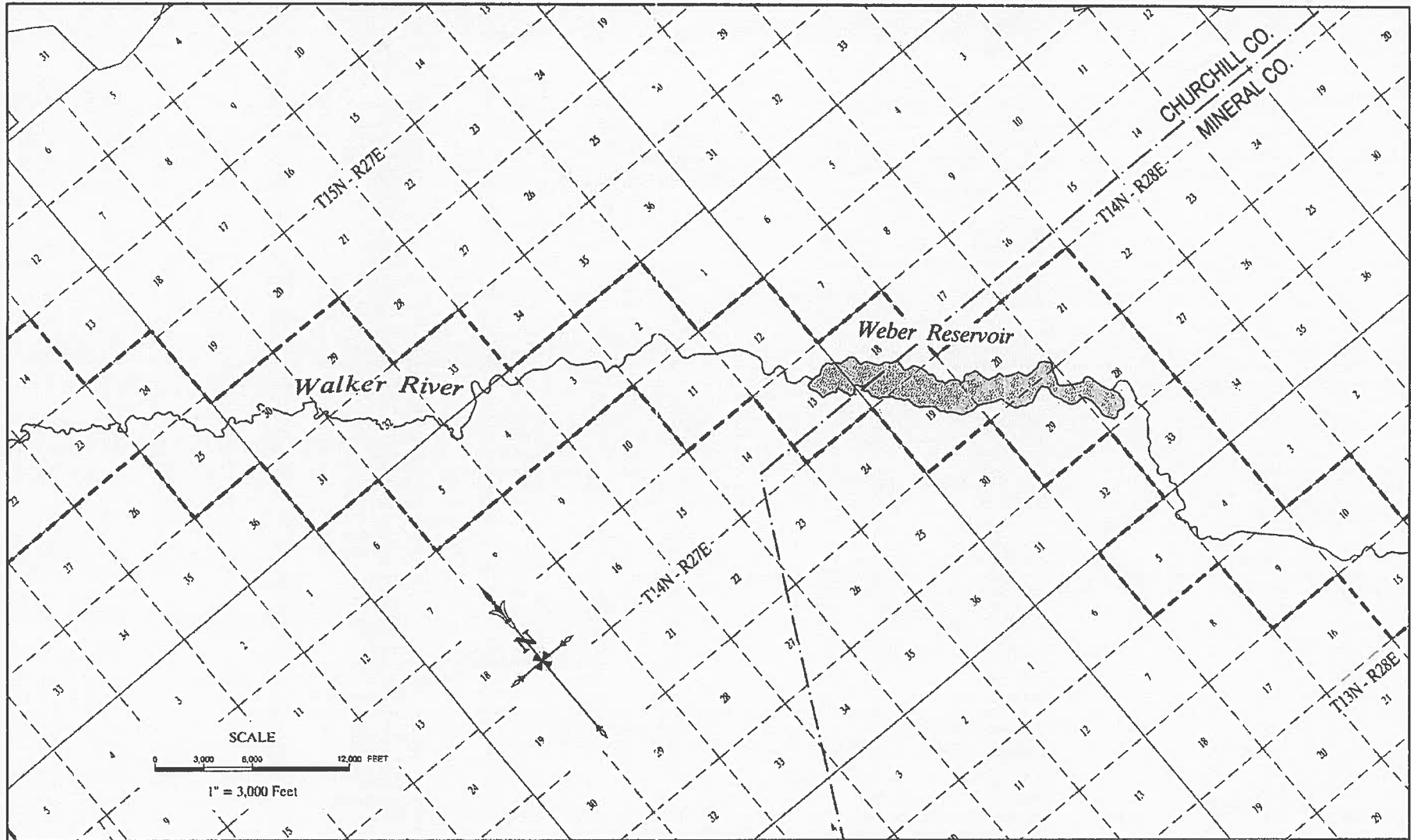
FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533

OF THE NATIONAL FISH AND WILDLIFE FOUNDATION FROM THE WALKER RIVER AND ITS TRIBUTARIES

LYON/MINERAL COUNTIES NEVADA

Exhibit A

81704 80700



Sheet 4 of 6

**BASIS OF BEARING**  
 1. STATE PLANE - NEVADA WEST, NAD 83 (FEET)  
 2. ALL PUBLIC LAND SURVEY DATA SHOWN IN  
 MOUNT Diablo BASIN & BERDMAN (BLD.B.M.)

Michael D. Buschelman Consulting, Inc.  
 P.O. Box 5177  
 Sparks, Nevada 89433  
 (775) 435-9428 Office 435-629 FAX

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- - - COUNTY LINE
- - - STATE LINE
- - - TOWNSHIP
- - - SECTION
- - - PROPOSED PLACE OF USE

STATE ENGINEER'S USE

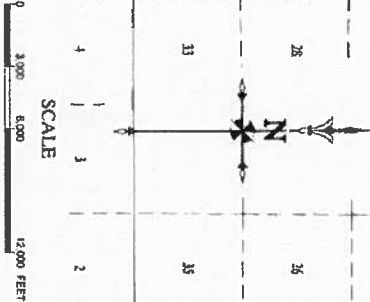
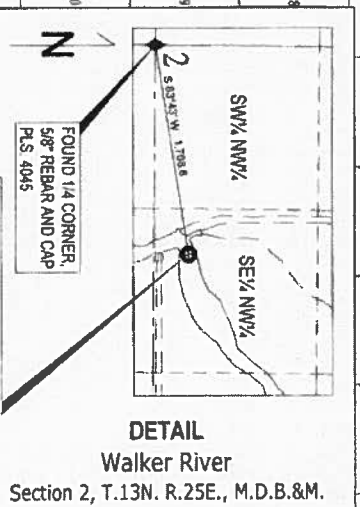
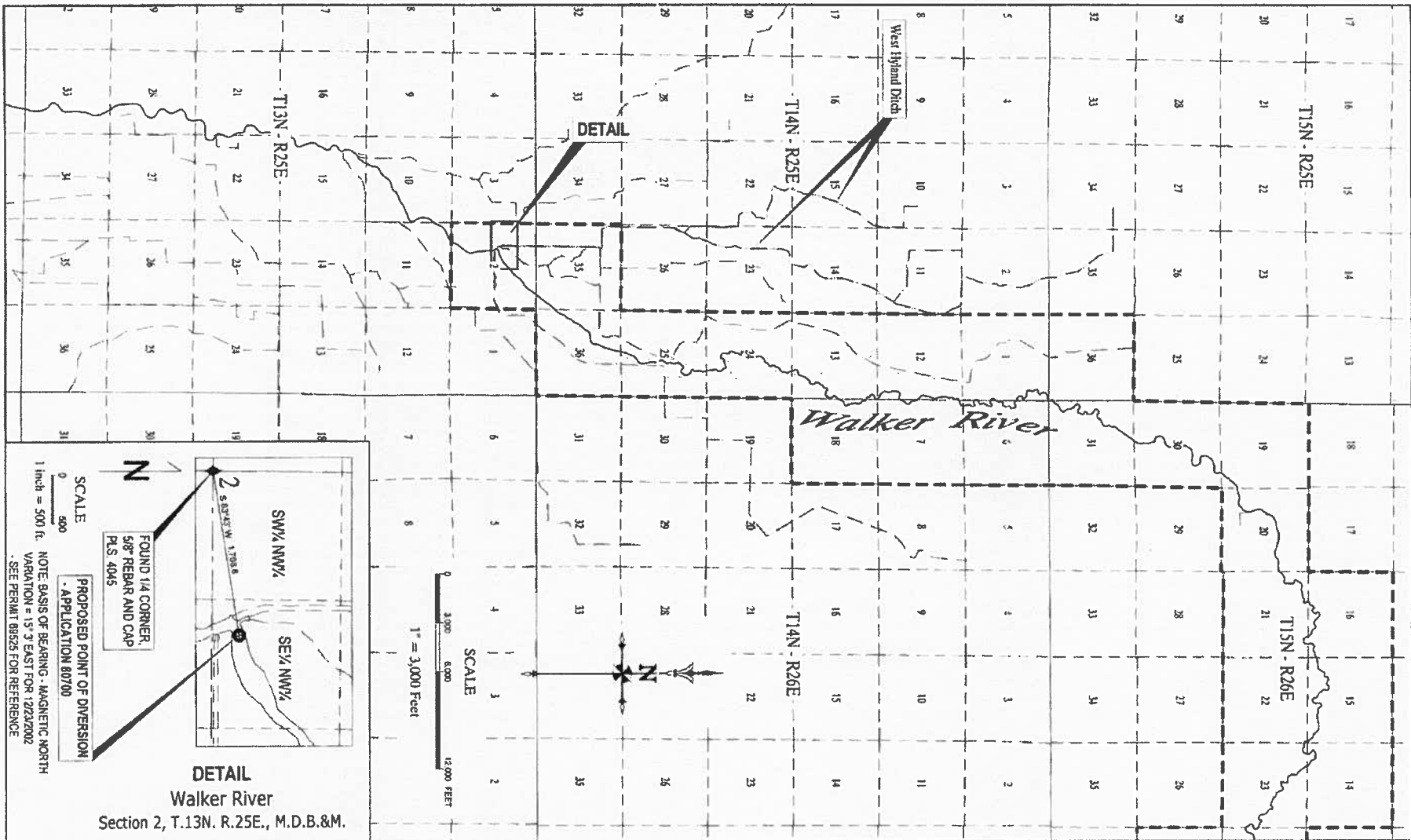


MAP TO ACCOMPANY APPLICATION B0700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125, CLAIMS 23, 25A, 35, 44, 67, and 89 FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 BY THE NATIONAL FISH AND WILDLIFE FOUNDATION FOR THE WALKER RIVER and ITS TRIBUTARIES LYON/MINERAL COUNTIES NEVADA



Exhibit A

81704 80700



SCALE  
1 inch = 500 ft.  
0 500

NOTE: BASIS OF BEARING - MAGNETIC NORTH  
VARIATION = 15° 3' EAST FOR 10/22/2002  
SEE PERMIT 88525 FOR REFERENCE

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP
- SECTION
- DITCH/DRAIN
- PROPOSED PLACE OF USE

**BASIS OF BEARING**  
1. STATE PLANE - NEVADA WEST, NAD 83 (FEET)  
2. ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNT CHARLIE BASE & SHERIDAN (M.D.B.&M.)

STATE ENGINEER'S USE

FILED  
NO. 21 2011

Michael D. Buschelman Consulting, Inc.  
Post Office Box 51371  
Sparks, Nevada 89433  
(775) 359-9425 OFFICE 359-9629 FAX

MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125 CLAIMS 23, 23A, 35, 44, 67, and 88 FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 BY THE NATIONAL FISH AND WILDLIFE FOUNDATION FROM THE WALKER RIVER AND ITS TRIBUTARIES LYON/MINERAL COUNTIES NEVADA





Please indicate County where your project is located here:

Mono County

MAIL FORM AND ATTACHMENTS TO:
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
http://www.waterboards.ca.gov/waterrights

PETITION FOR CHANGE INVOLVING WATER TRANSFERS

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

- Point of Diversion Wat. Code, § 1701
Point of Rediversion Wat. Code, § 1701
Place of Use Wat. Code, § 1701
Purpose of Use Wat. Code, § 1701
Temporary Urgency Wat. Code, § 1435
Temporary Change Wat. Code, § 1725
Long-term Transfer Wat. Code, §§ 382, 1735
Instream Flow Dedication Wat. Code, § 1707

Application 2221 Permit 2537 License 6000 Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Present: See Attachment No. 1
Proposed: No Change Requested

Place of Use - Identify area using Public Land Survey System descriptions to 1/4-1/4 level; for irrigation, list number of acres irrigated.

Present: See Attachment No. 1
Proposed: See Attachment No. 1

Purpose of Use

Present: See Attachment No. 1
Proposed: See Attachment No. 1

Instream Flow Dedication - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Upstream Location: See Attachment No. 1
Downstream Location: See Attachment No. 1

Table with 12 columns for months (Jan-Dec) and rows for flow quantities. Includes a row for 'See Attachment No. 1'.

Will the dedicated flow be diverted for consumptive use at a downstream location? Yes No
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

Proposed New User(s)

Provide the names, addresses, and phone numbers for all proposed new user(s) of the water right.

Not Applicable.

**Amount of Water to be Transferred**

See Att. 1 acre-feet will be transferred. If the basis of right is direct diversion, the average rate of diversion for the maximum 30-day period of use is See Att. 1 cubic feet per second or million gallons per day.

**General Information – Provide the following information, if applicable to your proposed change(s).**

Have you attached an analysis which documents that the amount of water to be transferred or exchanged would have been consumptively used or stored in the absence of the proposed temporary change or long-term transfer?  Yes  No

Have you attached an analysis of any changes to streamflow, water quality, timing of diversion or use, return flows, or effects on legal users from the proposed temporary change or long-term transfer?  Yes  No

Have you attached an analysis that shows the proposed temporary change or long-term transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses?  Yes  No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
 ownership  lease  verbal agreement  written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Not applicable. This Petition involves a proposed water transfer for dedication to instream flow. There is no proposed point of diversion and the proposed place of use includes the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

There is no proposed change to the present point of diversion. We believe that no water user will be affected by the proposed change. Water users include those within the Walker River Irrigation District, the Walker River Paiute Tribe, U.S. Bureau of Indian Affairs, and the Nevada Department of Wildlife. Also, see files at the Division of Water Rights, State Water Resources Control Board and files with the Nevada State Engineer.

**All Right Holders Must Sign Below:** I (we) declare under penalty of perjury that this involves only the amount of water which would have been consumptively used or stored in the absence of the proposed temporary change, and that the above is true and correct to the best of my (our) knowledge and belief.

Dated 11/17/2023 at 410 N MAIN ST YERINGTON, NV 89447

  
Right Holder or Authorized Agent Signature

\_\_\_\_\_  
Right Holder or Authorized Agent Signature

**NOTE: All petitions must be accompanied by:**  
(1) the form Environmental Information for Petitions, available at: [http://www.waterboards.ca.gov/waterrights/publications\\_forms/forms/docs/pet\\_info.pdf](http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf)  
(2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/fees/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/)  
(3) Department of Fish and Wildlife fee of \$850 (Pub. Resources Code, § 10005)

**Attachment No. 1**  
**to Petition for Temporary Transfer and Instream Flow Dedication**  
**License 6000 (Application 2221)**  
**held by Walker River Irrigation District**

**PURPOSE OF PETITION**

Walker River Irrigation District (District) is filing this Petition for Temporary Transfer and Instream Flow Dedication (Petition) to its License 6000 (Application 2221) in order to assist with increasing the flow into Walker Lake for environmental restoration in the Walker River Basin as provided in Public Law 111-85, which established the Walker River Restoration Program. In 2019, the District implemented an initial demonstration effort involving releases of water under License 6000, which increased flows into Walker Lake. Throughout the development and implementation of the first two years of the demonstration, the District engaged stakeholders in order to solicit input, which assisted to develop a robust plan, while providing opportunities to adjust to additional information or changed circumstances. Overall, the releases during 2019 and 2021 were successful and met all of the terms and conditions contained in the Division of Water Rights' (Division) Order, dated February 21, 2014 (Order), the State Water Resources Control Board's (State Water Board) Order WR 2014-0020-EXEC (Amended Order), dated May 16, 2014, the Division's Order, dated April 27, 2020, and the Division's Order, dated February 23, 2022. For reference, Exhibit A to this Petition is an excerpt of the Order and Amended Order identifying the amended terms and conditions; Exhibit B to this Petition is an excerpt of the 2020 Order identifying the terms and conditions; and Exhibit C to this Petition is an excerpt of the 2022 Order identifying the 2022 terms and conditions. As indicated further below for the proposed releases during the fourth year of the Stored Water Program demonstration, the District anticipates similar terms and conditions to those that were included in the all previous Orders.

The purpose of this Petition is to: (1) add to the existing place of use covered under License 6000 by including the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, and (2) add Fish and Wildlife Preservation and Enhancement as an additional purpose of use for instream dedication to Walker Lake involving surface water that was previously stored or would have otherwise been held in storage at Topaz Reservoir absent the proposed transfer, some or all of which would have been released for irrigation purposes within the District. The release plan, which is discussed further below, will describe the proposed schedule and volume of releases to be made from each reservoir during the period of April 1 through October 31, which is generally the irrigation season. The releases by the District for the proposed temporary water transfer would occur during a period of up to one year following final approval by the State Water Board, the Federal District Court, and the Nevada State Engineer (NSE), which is discussed further below. It is the goal of the District for the a fourth demonstration to occur in 2023; however, this will depend upon final approval and other factors such as hydrologic conditions.

The District has an agreement with the National Fish and Wildlife Foundation (NFWF), predecessor to the Walker Basin Conservancy (WBC), to administer and manage a "Stored Water Program" in the Walker River Basin. The Stored Water Program has been extended to include a fourth year through a No Cost Amendment. The purpose of the Stored Water Program

is to release surface water from Topaz Reservoir for instream dedication to and including Walker Lake. In addition, the Stored Water Program involves releases of surface water by the District from Bridgeport Reservoir under its License 9407 (Application 1389). For this purpose, the District is filing a separate petition for temporary water transfer and instream flow dedication to its License 9407. Combined, the two petitions are limited to a total of 25,000 AF released from Bridgeport Reservoir and Topaz Reservoir. Surface water will be made available for the proposed transfer by releases from Bridgeport Reservoir and Topaz Reservoir that was previously stored or would have otherwise been held in storage absent the proposed transfer, some or all of which would have been released for irrigation purposes within the District, as described further below in this Petition. Similar to the previous demonstrations of the Stored Water Program during 2019, 2021, and 2022, and to ensure a successful and efficient second demonstration, the District will seek additional approvals and will continue to coordinate as necessary with the NSE and other entities in order to obtain the authorizations for the proposed water transfer and instream flow dedication.

### **POINT OF DIVERSION OR REDIVERSION**

#### ***Present Point of Diversion:***

No change in the District's present point of diversion is proposed. The District's existing authorized point of diversion under License 6000 is:

#### **Topaz Reservoir**

South 23° 20' East 10,650 feet from the NE Corner of Section 2, T9N, R22E, MDB&M, being within SE ¼ of SE ¼ of Section 12, T9N, R22E, MDB&M. This present point of diversion is shown on a map filed with the State Water Resources Control Board (State Water Board) for License 6000.

#### ***Proposed Point of Diversion:***

No change in the present point of diversion is proposed.

### **PLACE OF USE**

#### ***Present:***

79,174 acres net within the gross area of 132,573 acres, being within the boundaries of the District, as shown on a map filed with the State Water Board for License 6000.

#### ***Proposed:***

No change in the present place of use is proposed. The District proposes to temporarily add the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence

the Walker River to and encompassing Walker Lake, which is within the Walker River Basin. This proposed addition to the authorized place of use is shown on a map filed with the State Water Board for License 6000, together with maps included as Exhibit D, which were prepared by NFWF for the lower reaches of the Walker River to and including Walker Lake.

### **PURPOSE OF USE**

***Present:***

The present purposes of use under License 6000 include Irrigation and Domestic.

***Proposed:***

No changes in the present purposes of use are proposed. The District proposes to temporarily add Fish and Wildlife Preservation and Enhancement as an additional purpose of use to License 6000.

### **INSTREAM FLOW DEDICATION**

The proposed temporary water transfer and instream flow dedication includes adding to the existing place of use the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, as described below. The quantities proposed to be dedicated to instream flows for the transfer are identified in the following section titled "Amount of Water to be Transferred/Dedicated".

***Upstream Location:***

**Topaz Reservoir**

South 23° 20' East 10,650 feet from the NE Corner of Section 2, T9N, R22E, MDB&M, being within SE ¼ of SE ¼ of Section 12, T9N, R22E, MDB&M, as shown on a map filed with the State Water Board for License 6000.

***Downstream Location:***

The terminus of the Walker River into and including Walker Lake, as shown on a map filed with the State Water Board for License 6000, together with the attached maps prepared by NFWF for the lower reaches of the Walker River to and including Walker Lake.

### **AMOUNT OF WATER TO BE TRANSFERRED/DEDICATED**

The quantities of water to be released by the District for the temporary 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. The total quantity of

Walker River Irrigation District's License 6000  
Attachment No. 1 to Petition for Temporary Transfer

surface water proposed for the temporary water transfer is up to 25,000 AF, combined under the District's Licenses 6000 and 9407. The District proposes this total quantity as an upper limit for the Stored Water Program in order to optimize flexibility, recognizing that the actual volume of water dedicated to instream flows may be less than this quantity. For the purpose of identifying a potential quantity of water dedicated to instream flows under either License 6000 or License 9407, as requested in the petition form, the estimated maximum quantity of water that may be provided by the District from Topaz Reservoir or Bridgeport Reservoir, respectively, over a 30-day period is up to 25,000 AF. The average flow rate associated with this quantity is approximately 420 cfs over a 30-day period; and instantaneous releases from Topaz Reservoir and Bridgeport Reservoir may be up to approximately 750 cfs and 550 cfs, respectively. Note that the proposed total combined releases from Topaz Reservoir and Bridgeport Reservoir are up to 25,000 AF; and thus, the District anticipates these release rates will likely be less.

Similar to the District's approach for the previous demonstrations during 2019, 2021, and 2022, following evaluation of voluntary participation by growers in this fourth demonstration of the Stored Water Program, the District will develop a schedule of releases (release plan) in consultation with the Watermaster for the Walker River, NFWF/WBC, and the Walker River Paiute Tribe for the proposed temporary transfer and instream flow dedication. The release plan will describe the proposed schedule and volume of releases to be made from each reservoir during the period of April 1 through October 31, which is generally the irrigation season. The total release will be within the historic range of releases for each reservoir during the irrigation season. If the District determines that stored water releases will occur in amounts exceeding the historic range of releases, the District will consult with California Department of Fish and Wildlife (CDFW) and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses, and to develop measures to avoid or mitigate any such impacts. Within 30 days following consultation, and at least one month prior to the period of releases for the transfer, the District will provide the release plan and verification of consultation to the Division. In addition, the District will promptly inform the Watermaster, NFWF/WBC, the Walker River Paiute Tribe, and the Division of any changes to the release plan. The District will rely upon existing water measurement gages in the Walker River Basin for the purpose of monitoring flows and accounting for the actual releases separately under the District's Licenses 6000 and 9407. The District is currently coordinating with the Watermaster for the Walker River and other stakeholders to identify opportunities to enhance measurement, accounting, and coordination for potential implementation of the second demonstration of the Stored Water Program.

### **GENERAL INFORMATION**

As a result of this proposed temporary transfer and instream flow dedication, the flow in the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake will increase by up to 25,000 AF during the period of the transfer over what would have occurred absent the proposed transfer. There will be no injury to other legal water users or water quality; in fact, it is anticipated a beneficial effect on fish, wildlife, or other instream beneficial uses will occur as a result of this Petition because the proposed transfer involves the District's existing facilities and will result in

Walker River Irrigation District's License 6000  
Attachment No. 1 to Petition for Temporary Transfer

increased flows to Walker Lake provided by the District. In addition, the increased flows will result in water quality benefits downstream to and including Walker Lake during and following the period of the releases for the proposed transfer. In the absence of additional flows provided by the District for the proposed temporary transfer, some or all of these quantities would have been held in storage or would be released from the reservoir and delivered to growers during the irrigation season.

As a result of litigation initiated in 1902, Decree 731 was issued in 1919, by the United States District Court for the District of Nevada, as the first regulatory control on the system as a whole. However, Decree 731 did not include rights for the Walker River Indian Reservation and other irrigators in the Walker River Basin. Decree C-125 (hereinafter referred to as the "Walker River Decree") was issued by the United States District Court for the District of Nevada (Walker River Court) on April 14, 1936 (amended April 24, 1940) as the culmination of the suit *United States of America v. Walker River Irrigation District, et al.* For each water right owner, the Walker River Decree sets forth the source, priority date, the diversion rate at the point of diversion, the number of acres irrigated, and a general description of the place of use of the appropriation.

Water rights for the storage of water in numerous reservoirs are set forth in the Walker River Decree. There are several small reservoirs on the tributaries upstream from Bridgeport and Topaz Reservoirs, used to serve Bridgeport and Antelope Valleys, which are identified in the Walker River Decree. The two major storage facilities and rights documented in the Walker River Decree are for Bridgeport Reservoir and Topaz Reservoir, which are owned and operated by the District. The District uses the available stored water to supplement decreed natural flow rights, and as a primary source of supply for "new lands" (lands with no other surface water right). The Walker River system is a heavily administered and managed system, with coordination between the District, Watermaster for the Walker River, NSE, and other stakeholders. The Walker River Decree defines storage quantities and priorities, but the allocation of the available stored water from Bridgeport Reservoir and Topaz Reservoir is determined by the District. The surface water proposed for temporary transfer and instream flow dedication in this Petition involves previously stored water. It is water which is stored either during the non-irrigation season, or during the irrigation season when all other decreed natural flow rights being exercised are fully satisfied. It is water which was not available when the senior decreed natural flow rights were established by diversion to beneficial use under Nevada and California law.

Stored water right holders have a right to call on their stored water for beneficial use during an irrigation season; however, they do not have an obligation to leave any water in storage at the end of an irrigation season to benefit carryover storage for the subsequent year. There is no set pattern of releases from the reservoirs, and nothing prevents the early drawdown of reservoirs or fluctuating releases during the irrigation season. Similar to the previous demonstrations of the Stored Water Program, it is likely that the water sought to be transferred under the Petition will be released from storage during the latter portion of the irrigation season. As indicated in the Division's Order, this will likely temporarily improve, and will not harm, summer recreation on Bridgeport Reservoir and Topaz Reservoir.

Walker River Irrigation District's License 6000  
Attachment No. 1 to Petition for Temporary Transfer

The question of whether the temporary transfer proposed here would injure any other legal user of water was fully litigated as a result of the February 21, 2014 Order as amended May 16, 2014, Exhibits A and B. In *United States v. United States Board of Water Commissioners*, 893 F.3d 578 (9th Cir. 2018), the Ninth Circuit Court of Appeals upheld the Board's conclusion that the proposed changes would not. 893 F.3d at 604.

In addition, the agreement between the District and NFWF requires the District to ensure that lands participating in the Stored Water Program do not receive water from other sources to replace this transferred water. Similar to the previous demonstrations of the Stored Water Program, the District will coordinate with NSE staff prior to, during, and following the proposed transfer to track and account for water use by the District's customers to ensure that the individual allowances of water from all sources is not exceeded by the customers.

The District proposes to release water from Topaz Reservoir for the temporary transfer and instream flow dedication. These releases would increase flows downstream to Walker Lake during the transfer period, as compared to the condition absent the transfer, for the purpose of environmental restoration in the Walker River Basin. Topaz Reservoir, which is located partly in California and partly in Nevada, has a dead pool of approximately 65,000 acre-feet. The proposed releases under this Petition will not affect the size of the dead pool. In addition, the proposed releases will not adversely impact the West Walker River bypass flow, which relates to when the water is diverted to storage in Topaz Reservoir. Absent the proposed temporary transfer by reservoir release, the District would release this water to its growers for irrigation purposes or would retain this volume of surface water in storage pursuant to its water right. Although the instream flows provided by the District could reduce the quantity of water held in storage, the District would not transfer water such that it would adversely impact the District's growers. The District will continue the same stored surface water deliveries to its existing growers not participating in the Stored Water Program with or without the proposed temporary water transfer.

The CDFW and the Lahontan Regional Water Quality Control Board (LRWQCB) have been contacted regarding the Petitions. Copies of the Petitions have been provided to Patricia Moyer (760-835-4304) of CDFW and Michael Plaziak (530-542-5412) of the LRWQCB for review and comment.

The Stored Water Program was originally authorized for three years; however, because there are funds still available the District and NFWF have agreed to implement an additional demonstration of the Stored Water Program during 2023. The implementation of a program each year is dependent upon many factors such as obtaining the necessary regulatory approvals, hydrologic conditions, and the price offered for participation. Therefore, the District and other stakeholders plan to approach each year individually to determine if a lease program is viable and can be implemented. Based on initial review and reactions, the 2019 Stored Water Program has been viewed as a success by stakeholders. The 2021 and 2022 Stored Water Programs occurred during dry hydrologic conditions which resulted in less participation as compared to 2019. Despite the limited participation, the 2021 and 2022 Stored Water Programs were successfully completed and provided valuable lessons for the operation and administration of the Stored Water Program. In addition, the District and other stakeholders



Walker River Irrigation District's License 6000  
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did not receive reports of adverse effects resulting from the 2019, 2021, or 2022 Stored Water Programs. For additional information regarding the 2019, 2021, and 2022 Stored Water Programs, see the District's summary reports filed with the Division on January 8, 2020, November 8, 2021, and November 10, 2022, respectively. As indicated in the summary report, the District is currently coordinating with the Watermaster for the Walker River and other stakeholders to identify opportunities to enhance coordination and adaptation for potential future implementation. Therefore, the District is submitting this Petition for a fourth demonstration of the Stored Water Program.

AB/ww

5280.2/FINAL ATTACHMENT 1 TO PETITION FOR TEMPORARY TRANSFER-INSTREAM A2221 01.23.2023

# **EXHIBIT A**

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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**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**

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**ORDER APPROVING TEMPORARY CHANGES**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 BACKGROUND**

On February 28, 2013, the Walker River Irrigation District (District) filed petitions for temporary change involving the transfer of water and instream flow dedication under Licenses 6000 and 9407 with the California State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division), pursuant to Water Code section 1725 et seq. and section 1707. The petitions involve the waters of the interstate Walker River stream system. The District holds License 6000 for Topaz Reservoir, which is located on the West Walker River, and License 9407 for Bridgeport Reservoir, which is located on the East Walker River. The West Walker River and East Walker River arise in the Sierra Nevada of California and flow into Nevada where they join to create the main stem of the Walker River, which then flows to Walker Lake, a natural desert terminal lake in Nevada.

The purpose of the proposed temporary changes is to assist in implementation of the Walker Basin Restoration Program (Restoration Program), which is administered by the National Fish and Wildlife Foundation (NFWF). The Restoration Program was established in 2009 by Public Law 111-85 and related authorities for the primary purpose of restoring and maintaining Walker Lake, which is critical to recovery of the threatened Lahontan Cutthroat Trout and is an important stopover for migratory waterfowl. Due to insufficient freshwater inflows, Walker Lake's elevation has been declining since the early 1900s and increased salinity levels threaten its ecology. The Restoration Program seeks to increase instream flows to Walker Lake through various basin-wide initiatives.

The Restoration Program includes a three-year water leasing demonstration program to be administered and managed by the District pursuant to an agreement with NFWF. In 2012 the District entered into an amended grant agreement with NFWF to administer and manage a Stored Water Program (SWP) in the Walker River Basin.<sup>1</sup> Under the SWP, surface water will be released from Topaz and Bridgeport Reservoirs for instream dedication to and including Walker Lake. Through the SWP, individual farmers within the District may voluntarily dedicate a portion of their stored water supply to the SWP for at least one year. The District filed the petitions for temporary change in order to implement the SWP and thereby increase inflows to Walker Lake.

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<sup>1</sup> First Amendment to [NFWF] Grant Agreement (Nov. 2012) for Project 2010-0059-101 (Water Leasing Demonstration Program in the Walker River Basin).

Deputy Director to perform duties related to processing change petitions in the Walker River action. This Order is adopted pursuant to the delegation of authority in sections 4.4.2 and 4.7.3 of Resolution 2012-0029.

## 10.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the determinations required by Water Code sections 1707 and 1725 et seq.

The State Water Board concludes that, based on the available information:

1. The proposed transfers involve only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary changes will neither injure, nor unreasonably affect, any legal user of water, including during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
3. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The proposed temporary changes will not increase the amount of water the District is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

## ORDER

**NOW, THEREFORE, IT IS ORDERED THAT** the District's petitions for temporary transfer and dedication of water for instream purposes of 25,000 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. are approved for a period of one year, which will commence on the date of final approval, as defined below.

All existing terms and conditions of Licenses 6000 and 9407 remain in effect, except as temporarily amended by the following provisions:


1. The temporary change is limited to a one-year period commencing on the date of final approval. Final approval means that all related approvals by the federal District Court have been obtained, including modification of the Walker River Decree by the federal District Court to recognize (i) the State Water Board's approval of the changes under this Order and (ii) approval by the Nevada State Engineer of a change application submitted by an individual within the District to implement the SWP. Within 30 days after receiving the final approval, the District shall notify, and provide copies to, the Deputy Director for Water Rights of the approval. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.
2. In addition to all other purposes of use authorized by Licenses 6000 and 9407, the purpose of use of the licenses is temporarily amended to include preservation and enhancement of fish and wildlife within the following reaches: 1) for License 6000, the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence

the Walker River to and encompassing Walker Lake; and 2) for License 9407, the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.

3. The place of use under License 6000 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Topaz Reservoir being within the SE ¼ of SE ¼ of Section 12, T9N, R22E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9 to 11N, R29 to 30E, MDB&M, as shown on map filed with the State Water Board for License 6000 and maps prepared by NFWF submitted with the petitions as Attachment A.
4. The place of use under License 9407 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Bridgeport Reservoir being within the SE ¼ of the NE ¼ of Section 34, T36N, R25E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9-11N, R29-30E, MDB&M, as shown on map filed with the State Water Board for License 9407 and maps prepared by NFWF submitted with the petitions as Attachment A.
5. Water transferred pursuant to this Order shall be limited to a combined maximum of 25,000 af to be released from either Topaz Reservoir or Bridgeport Reservoir, or both.
6. The District shall develop and operate to a schedule of releases for the transfer in consultation with the Water Master, NFWF, and the Tribe. The District shall promptly inform these parties of any changes to the release schedule.
7. During the transfer period, the District landowners participating in the transfer authorized by this Order to implement the SWP shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water.
8. During the transfer period, the District shall comply with the section F, Annual Monitoring Plan, of Attachment A to First Amendment to [NFWF] Grant Agreement [November 2012] Regarding [District] Lease of Water Demonstration Program, Stored Water Program, and Water Measurement and Control Phase, and the public reporting provisions of section J.3 of that Attachment A. If section F or section J.3 of Attachment A are amended prior to, or during, the transfer period, the District shall promptly inform the Deputy Director for Water Rights.
9. During the transfer period, the District shall 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. The District may release stored water either (i) during the irrigation season in amounts exceeding the historic range of releases during the irrigation season, or (ii) after the irrigation season ends, if the District first consults with DFW and Mono County to avoid harm to fish and wildlife and downstream habitat. Such consultation shall include the establishment of a flow ramping schedule to avoid harm through rapid fluctuations in instream levels.

10. Within 90 days of completion of the transfer period, the District shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The report shall include the following information:
    - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from 1) Topaz Reservoir and from 2) Bridgeport Reservoir pursuant to this Order.
    - b. Documentation that the water transferred did not result in an increase in water diverted to storage in both Topaz Reservoir and Bridgeport Reservoir from the source waters of the District's licenses beyond the quantities that would otherwise have been diverted absent the transfer.
    - c. Documentation of compliance with all other conditions of this order.
  11. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
  12. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change Order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
  13. This order does not authorize any act that results in the taking of an endangered, threatened or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.
- (0000014)
14. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

## STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: FEB 21 2014

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**ORDER WR 2014-0020-EXEC**

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In the Matter of the Petitions for Reconsideration by  
**United States Board of Water Commissioners for the Walker River  
and  
Mono County**

Regarding Walker River Irrigation District's Petitions for Temporary Transfer and  
Change

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SOURCE: East and West Walker Rivers

COUNTY: Mono

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**ORDER DENYING RECONSIDERATION AND MODIFYING THE DIVISION'S  
ORDER CONDITIONALLY APPROVING THE PETITIONS**

BY THE EXECUTIVE DIRECTOR<sup>1</sup>:

**1.0 INTRODUCTION**

On February 21, 2014, the State Water Resources Control Board's (State Water Board), Division of Water Rights (Division), through its Deputy Director for Water Rights, conditionally approved the Walker River Irrigation District's (District) two petitions for temporary change involving the transfer of water and instream flow dedication under Water Code section 1725 et seq. and section 1707.<sup>2</sup> The District

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<sup>1</sup> State Water Board Resolution 2002-0104 delegates to the Executive Director the authority to conduct and supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the board, the Executive Director's consideration of petitions for reconsideration of a staff decision or order falls within the scope of the authority delegated under Resolution 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider the decision or order, deny the petition, set aside or modify the decision or order, or take other appropriate action. (Cal. Code Regs., tit. 23, § 770.)

<sup>2</sup> The Division's February 21, 2014 Order Approving Temporary Changes is referred to herein as the "Order." Pursuant to authority delegated by the State Water Board in Resolution 2012-0029, the Deputy Director for Water Rights may perform the duties that are the subject of this proceeding.

To the extent that this order does not address all of the issues raised in the petitions for reconsideration, the State Water Board finds either that the requirements for a petition for reconsideration under California Code of Regulations, title 23, section 770 have not been met, the issues raised are insubstantial, or the issues are appropriately addressed in the Division's Order.

## ORDER

**IT IS HEREBY ORDERED THAT,** for the foregoing reasons, the petitions for reconsideration of USBWC and Mono County are denied, and the Division's Order is affirmed except as modified below. Conditions 6 and 9 of the Division's Order are amended as follows:

1. Condition 6 on page 21 is amended as follows:

The District shall develop and operate to a schedule of releases for the transfer in consultation with the Water Master, NFWF, and the Tribe. Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. The District shall promptly inform ~~these parties~~ the Water Master, NFWF, the Tribe, and the Division of Water Rights of any changes to the release schedule.

If any dispute arises during consultation regarding potential injury to legal users of water, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.



2. Condition 9 on page 21 is amended as follows:

During the transfer period, the District shall 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.


The historic range of releases are those releases that have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows, or ramping schedules. At least one month prior to the transfer period, the District must develop a plan that identifies the historic range of releases during the irrigation season and that evaluates whether water to be transferred during the irrigation season is within the historic range of releases. The District shall provide the plan to the Division of Water Rights and make the plan publically available.

In order for ~~T~~the District ~~may~~ to release stored water either (1) during the irrigation season in amounts exceeding the historic range of releases during the irrigation season, or (2) after the irrigation season ends, if the District first shall consults with DFW and Mono County to identify potentially unreasonable impacts ~~avoid harm~~ to fish and wildlife and ~~downstream habitat~~ instream beneficial uses and to develop measures to avoid or mitigate any such impacts. Such consultation shall include (a) development of a schedule of releases for each reservoir; (b) the establishment of a flow ramping rates; (c) establishment of stream flow release limitations, if necessary; and (d) development of a monitoring plan for implementation to ensure that release of stored water under (1) or (2) does not result in unreasonable impacts to fish, wildlife, or instream beneficial uses. ~~schedule to avoid harm through rapid fluctuations in instream levels.~~ The monitoring plan shall focus on specific fisheries concerns during the periods of release under (1) or (2) above. A monthly monitoring report shall be submitted to DFW, Mono County, and the Deputy Director for Water Rights and a

final report of the results of the monitoring submitted no later than 90 days after the transfer period ends.

Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. If any dispute arises during consultation regarding unreasonable impacts to fish, wildlife, and other instream beneficial uses, or measures to avoid or mitigate such impacts, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.

Dated: 5/16/14

  
Thomas Howard  
Executive Director

# **EXHIBIT B**

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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**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**

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**ORDER APPROVING TEMPORARY CHANGES**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

This Order conditionally approves the Walker River Irrigation District's (District) petitions for temporary change involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 (Applications 2221 and 1389), pursuant to Water Code sections 1725 et seq. and 1707. This Order includes substantially similar terms and conditions, revised as appropriate, as those included in the California State Water Resources Control Board's (State Water Board or Board) 2014 approval of similar petitions filed by the District.

**1.0 BACKGROUND**

**1.1 Overview**

On January 16, 2020, the District filed the two petitions for temporary change with the State Water Board's Division of Water Rights (Division). The petitions were accepted as complete on January 27, 2020.

The petitions involve the waters of the interstate Walker River stream system. The District holds License 6000 for Topaz Reservoir, which is located on the West Walker River, and License 9407 for Bridgeport Reservoir, which is located on the East Walker River. The West Walker River and East Walker River arise in the Sierra Nevada of California and flow into Nevada where they join to create the main stem of the Walker River, which then flows to Walker Lake, a natural desert terminal lake in Nevada.

The purpose of the proposed temporary changes is to assist in implementation of the Walker Basin Restoration Program (Restoration Program). The Restoration Program was established by Congress in 2009 by Public Law 111-85 for the primary purpose of restoring and maintaining Walker Lake, which is critical to the recovery of the threatened Lahontan Cutthroat Trout and is an important stopover for migratory waterfowl. Due to insufficient freshwater inflows, Walker Lake's elevation has been

4. The proposed temporary changes will not increase the amount of water the District is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

## ORDER

**NOW, THEREFORE, IT IS ORDERED THAT** the District's petitions for temporary transfer and dedication of water for instream purposes of 25,000 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. are approved for a period of one year, which will commence on the date of final approval, as defined below.

All existing terms and conditions of Licenses 6000 and 9407 remain in effect, except as temporarily amended by the following provisions:

1. The temporary change is limited to a one-year period commencing on the date of final approval. Final approval means that all related approvals by the federal District Court have been obtained, including modification of the Walker River Decree by the federal District Court to recognize (i) the State Water Board's approval of the changes under this Order and (ii) approval by the Nevada State Engineer of a change application submitted by an individual within the District to implement the Stored Water Program. Within 30 days after receiving the final approval, the District shall notify, and provide copies to, the Deputy Director for Water Rights of the approval. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.
2. In addition to all other purposes of use authorized by Licenses 6000 and 9407, the purpose of use of the licenses is temporarily amended to include preservation and enhancement of fish and wildlife within the following reaches: 1) for License 6000, the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; and 2) for License 9407, the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.
3. The place of use under License 6000 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Topaz Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,419,385 feet and East 6,845,209 feet, being within SE  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 12, T9N, R22E, MDB&M; Downstream Limit –

The terminus of Walker River into and including Walker Lake within T9 to 11N, R29 to 30E, MDB&M, as shown on map filed with the State Water Board for License 6000 and maps prepared by the District and NFWF submitted with the petitions as Attachment A.

4. The place of use under License 9407 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Bridgeport Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,307,798 feet and East 6,931,075 feet, being within SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 34, T6N, R25E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9-11N, R29-30E, MDB&M, as shown on map filed with the State Water Board for License 9407 and maps prepared by the District and NFWF submitted with the petitions as Attachment A.
5. Water transferred pursuant to this Order shall be limited to a combined maximum amount of 25,000 af to be released from either Topaz Reservoir or Bridgeport Reservoir, or both, from April 1 through October 31.
6. The District shall develop and operate to a schedule of releases (release plan) for the transfers that describes the proposed schedule and volume of releases to be made from either Topaz Reservoir or Bridgeport Reservoir, or both, during the period of April 1 through October 31.
  - a. The release plan shall be developed in consultation with the Water Master, the WBC/NFWF, and the Tribe. Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. The District shall promptly inform the Water Master, the WBC/NFWF, the Tribe, and the Division of Water Rights of any changes to the release schedule.

If any dispute arises during consultation regarding potential injury to legal users of water, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety. The District shall promptly inform these parties of any changes to the release schedule.

- b. Unless otherwise provided herein, the total release must be within the historic range of releases for each reservoir during the period of April 1 through October 31. The historic range of releases are those releases that

have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows or ramping schedules. The historical range of releases must be based on average daily releases in years with similar hydrology to the period in which the transfer will occur or be based on a comparable method that reflects the relevant hydrology and is approved in advance by the Deputy Director for Water Rights. The release plan must identify the historic range of releases during the irrigation season and evaluate whether water to be transferred during the irrigation season is within the historic range of releases.

- c. At least one month prior to the period of releases for the transfer, the District will provide the release plan to the Deputy Director for Water Rights and make the plan publicly available.
7. In order for the District to release stored water in amounts exceeding the historic range of releases during the period of April 1 through October 31, the District first shall consult with CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses and to develop measures to avoid or mitigate any such impacts. Such consultation shall include (a) development of a schedule of releases for each reservoir; (b) establishment of flow ramping rates; (c) establishment of stream flow release limitations, if necessary; and (d) development of a monitoring plan for implementation to ensure that release of stored water exceeding the historic range of releases does not result in unreasonable impacts to fish, wildlife, or instream beneficial uses. The monitoring plan shall focus on specific fisheries concerns during the periods of release exceeding the historic range of releases. A monthly monitoring report shall be submitted to CDFW, Mono County, and the Deputy Director for Water Rights and a final report of the results of the monitoring submitted no later than 90 days after the transfer period ends.

Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. If any dispute arises during consultation regarding unreasonable impacts to fish, wildlife, and other instream beneficial uses, or measures to avoid or mitigate such impacts, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.

8. During the transfer period, the District landowners participating in the transfer authorized by this Order to implement the Stored Water Program shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water.
9. During the transfer period, the District shall comply with the section F, Annual Monitoring Plan, of Attachment A to First Amendment to [NFWF] Grant Agreement Regarding [District] Lease of Water Demonstration Program, Stored Water Program, and Water Measurement and Control Phase, and the public reporting provisions of section J.3 of that Attachment A. If section F or section J.3 of Attachment A are substantively amended prior to, or during, the transfer period, the District shall promptly inform the Deputy Director for Water Rights.
10. Within 90 days of completion of the transfer period, the District shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The District will also provide notice of availability of the report to the Water Master, the WBC/NFWF, and the Tribe, and, on request, make the report available either by posting it on a public website or by other means. The report shall include the following information:
  - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from 1) Topaz Reservoir and from 2) Bridgeport Reservoir pursuant to this Order.
  - b. Documentation that the water transferred did not result in an increase in water diverted to storage in both Topaz Reservoir and Bridgeport Reservoir from the source waters of the District's licenses beyond the quantities that would otherwise have been diverted absent the transfer.
  - c. Documentation of compliance with all other conditions of this order.
11. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
12. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change Order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.



13. This order does not authorize any act that results in the taking of an endangered, threatened or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.
  
14. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director*  
*Division of Water Rights*

Dated: APR 17 2020

# **EXHIBIT C**

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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**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**

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**ORDER APPROVING TEMPORARY CHANGES**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

This Order conditionally approves the Walker River Irrigation District's (District) petitions for temporary change involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 (Applications 2221 and 1389), pursuant to Water Code sections 1725 et seq. and 1707. This Order includes substantially similar terms and conditions, revised as appropriate, as those included in the California State Water Resources Control Board's (State Water Board or Board) 2014 and 2020 approvals of similar petitions filed by the District.

**1.0 BACKGROUND**

**1.1 Overview**

On November 10, 2021, the District filed the two petitions for temporary change with the State Water Board's Division of Water Rights (Division).

The petitions involve the waters of the interstate Walker River stream system. The District holds License 6000 for Topaz Reservoir, which is located on the West Walker River, and License 9407 for Bridgeport Reservoir, which is located on the East Walker River. The West Walker River and East Walker River originate in the Sierra Nevada of California and flow into Nevada where they join to create the main stem of the Walker River, which then flows to Walker Lake, a natural desert terminal lake in Nevada.

The purpose of the proposed temporary changes is to assist in implementation of the Walker Basin Restoration Program (Restoration Program). The Restoration Program was established by Congress in 2009 by Public Law 111-85 for the primary purpose of restoring and maintaining Walker Lake, which is critical to the recovery of the threatened Lahontan Cutthroat Trout and is an important stopover for migratory

waterfowl. Due to insufficient freshwater inflows, Walker Lake's elevation has been declining since the early 1900s and increased salinity levels threaten its ecology. The Restoration Program seeks to increase instream flows to Walker Lake through various basin-wide initiatives.

The Walker Basin Conservancy (WBC) currently administers the Restoration Program. The Restoration Program includes a three-year water leasing demonstration program (Stored Water Program) that is administered and managed by the District pursuant to a grant agreement with the National Fish and Wildlife Foundation (NFWF), the predecessor to the WBC. Under the Stored Water Program, surface water is released from Topaz and Bridgeport Reservoirs for the purpose of increasing inflows to Walker Lake and to obtain information regarding the establishment, budget, and scope of a longer-term leasing program. Through the Stored Water Program, individual farmers within the District may voluntarily dedicate a portion of their stored water supply to the Stored Water Program for at least one year. Although the Stored Water Program is authorized for three years, it is not required to be implemented three times or in three consecutive years.

## **1.2 The District's Previous Transfers Under the Stored Water Program**

In February 2013, the District filed the first set of petitions for temporary changes involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 to assist in the initial implementation of the Restoration Program. The State Water Board approved the petitions in February 2014,<sup>1</sup> but the transfer of water did not occur until August 2019 for various reasons, including the need for additional approvals and resulting litigation.

The Ninth Circuit Court of Appeals ultimately affirmed the State Water Board's approval in *United States v. United States Board of Water Commissioners* (9th Cir. 2018) 893 F.3d 578 (*US v. USBWC*). The court upheld the State Water Board's determination that the proposed changes involved water that would otherwise be stored and thus would not injure any legal user of the water as being consistent with the Walker River Decree and in accord with California law. (*Id.* at p. 604.) The court also concluded that Walker Lake is part of the Walker River Basin and that "dedicating water from the Walker River to Walker Lake does not violate the Decree's prohibition on delivering water 'outside of the basin of the Walker River.'" (*Id.* at p. 606.) It further clarified that state law applies to state agencies' consideration of the changes: "[t]he Decree presupposes state law in its entirety as to both substance and procedure." (*Id.* at p. 595.) The court remanded with

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<sup>1</sup> The Division conditionally approved the change petitions by order dated February 21, 2014, and the State Water Board denied various parties' request for reconsideration and amended the Division's order by Order WR 2014-0020-Exec (May 16, 2014).

instructions to grant the District's petition to modify the Walker River Decree consistent with the State Water Board's report.

The temporary changes ultimately were authorized through July 16, 2020. The District initiated the transfers in 2019 and released approximately 17,664 acre-feet (af) of stored water to the Walker River system and Walker Lake in August through October 2019.

In January 2020 the District filed a similar set of petitions for temporary changes involving the transfer of water and instream flow dedication under water right Licenses 6000 and 9407 to enable the second year of the Stored Water Program. The Division approved the petitions by order dated April 17, 2020. The District released approximately 703 af of stored water to the Walker River system and Walker Lake in August 2021 for the second year of the Stored Water Program.

With the current change petitions, WRID seeks to implement the third and final demonstration year of the Stored Water Program.

## **2.0 PETITIONS FOR TEMPORARY CHANGE INVOLVING TRANSFER**

### **2.1 The Walker River Action and Related Proceedings**

The proposed changes involve waters of the Walker River that have been adjudicated by the United States District Court for the District of Nevada in *United States of America v. Walker River Irrigation District, et al.*, Case In Equity No. C-125. The federal District Court issued Decree C-125 (the Walker River Decree) on April 14, 1936, and subsequently amended the decree on April 24, 1940. The U.S. Board of Water Commissioners for the Walker River (USBWC) and the Water Master/Chief Deputy Water Commissioner for the Walker River (Water Master) are charged with apportioning and distributing the waters of the Walker River and its tributaries under the Walker River Decree. In administering the Walker River Decree, the Water Master operates under the *Rules and Regulations for the Distribution of Water on the Walker River Stream System under the Provisions of Paragraph 15 of Decree in Equity, No. C-125*, which were approved by the federal District Court on September 3, 1953 (1953 Rules).

Pursuant to the federal District Court's order, the State Water Board is responsible for reviewing proposed changes in the point of diversion, place of use, or purpose of use, in the exercise of federally adjudicated rights in California that have been established by the Walker River Decree. Thus, in addition to applicable California law, the State Water Board has processed the petitions in accordance with the Administrative Rules and Regulations adopted by the federal District Court in Case No. C-125, as amended through June 3, 1996<sup>2</sup> (Administrative Rules) and will continue to comply with those

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<sup>2</sup> *Administrative Rules and Regulations Regarding Change of Point of Diversion*,

rules in this proceeding.<sup>3</sup> Any approval by the State Water Board will not take effect until the federal District Court enters an order modifying the Walker River Decree accordingly.

## **2.2 Description of the Current Proposed Transfer**

The District filed two separate petitions under Licenses 6000 and 9407 with similar proposed changes that seek to transfer up to a total of 25,000 af for instream flow dedication to Walker Lake. Through its petitions, the District seeks to temporarily 1) add to the existing place of use covered under License 6000 by including the West Walker River from the outlet of Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; 2) add to the existing place of use covered under License 9407 by including the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; and 3) add Fish and Wildlife Preservation and Enhancement to both licenses as an additional purpose of use for instream dedication to Walker Lake. The water involved is surface water that was previously stored or would have otherwise been held in storage at Topaz Reservoir or Bridgeport Reservoir absent the transfer, some or all of which would otherwise have been released for irrigation purposes within the District. The proposed releases by the District would occur during a period of up to one year following final approval by the State Water Board, the federal District Court, and the Nevada State Engineer.

The quantities of water proposed to be released by the District are variable and depend upon hydrologic conditions and participation in the Stored Water Program by individual growers within the District. The District indicates that the estimated maximum quantity of water that may be transferred from Topaz or Bridgeport Reservoir over a 30-day period is up to a total of 25,000 af. The average flow rate associated with this quantity is approximately 420 cubic feet per second (cfs) over a 30-day period. The instantaneous releases from Topaz Reservoir and Bridgeport Reservoir may be up to approximately 750 cfs and 550 cfs, respectively. The District proposes to release water

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*Manner of Use or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance with California Fish and Game Code Section 5937 and Other Provisions of California Law (as amended through June 3, 1996).*

<sup>3</sup>“Change applications” under the Administrative Rules (and Nevada law) and “change petitions” under California law involve similar actions. The Administrative Rules defines “change applications,” as applications to change the point of diversion, manner of use, or place of use of water rights under the Walker River Decree. (Administrative Rules, § 1.1(c).) In California, such requests for change are made through a petition process and referred to as “change petitions.” (See, e.g., Wat. Code, § 1726, subd. (a)(1) [a person proposing a temporary change shall submit a petition to the State Water Board].)

from April 1 through October 31, which is generally the irrigation season. Following evaluation of participation by growers in the Stored Water Program, the District will develop and operate to a schedule of releases for the proposed temporary changes that will be coordinated with the Water Master and other entities, including the WBC/NFWF, and the Walker River Paiute Tribe (Tribe).

The District anticipates that the State Water Board's approval will include similar terms and conditions to those included in the Board's 2014 and 2020 approvals.

### **2.3 Summary of Water Right Licenses 6000 and 9407**

#### *License 6000 – Topaz Reservoir*

The District holds water right License 6000 (Application 2221), with a priority date of February 21, 1921, for collection to storage in Topaz Reservoir. License 6000 authorizes the diversion of up to 57,580 acre-feet per annum (afa) of water to off-stream storage in Topaz Reservoir from the West Walker River tributary to Walker River in Mono County. The season of diversion is from about October 1 of each year through about July 15 of the succeeding year. The rate of diversion to off-stream storage is limited to 1,000 cfs. The water can be used for domestic and irrigation purposes on a net area of 79,174 acres within a gross area of 132,573 acres within the boundaries of the District.

#### *License 9407 – Bridgeport Reservoir*

The District holds water right License 9407 (Application 1389), with a priority date of August 8, 1919, for storage in Bridgeport Reservoir. License 9407 allows the diversion of up to 39,700 afa of water to storage in Bridgeport Reservoir from the East Walker River tributary to Walker River in Mono County. The season of diversion to storage is from about September 1 of each year to about July 20 of the succeeding year. The maximum amount of water that can be held in the reservoir at any time cannot exceed 42,500 af and the maximum withdrawal in any one year cannot exceed 36,000 af. The water can be used for irrigation and recreational purposes. Irrigation is allowed on 52,062 acres net within the gross area of the District. Storage rights under License 9407 in combination with the District's other rights confirmed by Federal Decree C-125 cannot exceed 57,000 afa.

### **3.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES**

Water Code section 1707 authorizes the use of the temporary transfer provisions of Water Code section 1725 et seq. for a change for the purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water. Pursuant to Water Code sections 1707 and 1725, the District has applied for a

temporary change involving a transfer for the purpose of preserving and enhancing fish and wildlife resources. The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq. if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd. (e).)

Moreover, before approving the District's petitions, the State Water Board must make the following findings under Water Code section 1707:

- a. The proposed change will not increase the amount of water the District is entitled to use.
- b. The proposed change will not unreasonably affect any legal user of water.
- c. The proposed change otherwise meets the requirements of division 2 (commencing with section 1000) of the Water Code.

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) The -one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out." (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2).



#### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The District filed the petitions for a temporary transfer and change under Water Code sections 1707 and 1725 et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA (Pub. Resources Code, § 21000 et seq.). The State Water Board will file a Notice of Exemption.

#### **5.0 PUBLIC NOTICE OF THE PETITIONS**

On November 22, 2021, the State Water Board issued public notice of the petitions for temporary change, posting the notice on the Division's website and providing the notice via the Board's electronic notification service to the following electronic subscription mailing lists: Walker River Water Right Change Petition, Water Rights Transfers, and Water Rights Petitions. On the same date, the public notice was provided by first class mail to interested persons identified in the Administrative Rules and to downstream water right holders. The November 22, 2021 public notice of the petitions was also published in the following newspapers: the Gardnerville Record-Courier, the Lyon County Leader, and the Mineral County Independent-News. On January 22, 2022, public notice of the petitions was also published in the Mammoth Times.

#### **6.0 COMMENTS ON THE PETITIONS**

The State Water Board received comments on the petitions from 1) the WBC; 2) Mr. Mark Mahan; 3) the USBWC and the Water Master; and 4) the California Department of Fish and Wildlife (CDFW), California's trustee agency for fish and wildlife resources. On January 6, 2022, the District responded to the comments. This section summarizes the comments and the District's responses and, as appropriate, the State Water Board's consideration of the issues raised.

##### **6.1 WBC Comments**

The WBC indicated that it is fully supportive of the District's petitions, which it stated are consistent with the NFWF funding agreement, as well as necessary to implement the Stored Water Program. The WBC noted the importance of monitoring and evaluating the effects of the timing of transferred water releases on river health and other ecological needs as part of the Stored Water Program and that such efforts "can provide important feedback that informs adaptive management and joint learning in support of future operations and longer-term efforts." (WBC Comment Letter (Dec. 7, 2021), p. 2.)

## **6.2 Mark Mahan**

### *Comments:*

Mark Mahan of Santa Margarita Ranch objected to the timing of the release of waters under the District's proposed transfer. Mr. Mahan stated that he works along the East Fork Walker River corridor that runs through the ranch. Citing to low reservoir pools and low allotments the past two years, Mr. Mahan explained that the transfers should not occur during critical low water years. Instead, water should be transferred in years when there are excess flows through the reservoirs. Mr. Mahan stated that the transfer of water and changes should be based on availability of excess water after the water user group has been supplied water pursuant to their water rights or the change of use should have a new priority date set at the time of the change so that water users can still get their water. He further noted that taking water from the two ranches up the canyon has a negative effect on riparian vegetation and increases invasive species.

### *District Response:*

The District stated that availability of stored water to water users within the District is unchanged. The District allocates available stored water to landowners who are entitled to the stored water, and in turn individual landowners within the District may voluntarily dedicate a portion of the allocated stored water supply to the Stored Water Program. Landowners' participation in the Stored Water Program will not change the amount of stored water available to other parties who have an entitlement to the District's stored water. Further, the stored water that is voluntarily dedicated to the Stored Water Program is not excess water and has no impact on the availability of water to other users under their water rights or entitlements.

The District further explained that the situation involving the two ranches upstream from the Santa Margarita Ranch is not related to the Stored Water Program. The ranches previously sold their land and natural flow water rights to the WBC, and the ranches have become part of the Nevada State Park system. The WBC has not applied to the Nevada State Engineer to change those natural flow rights for use at Walker Lake. The WBC and Nevada State Parks are the parties who currently decide whether to irrigate those ranches.

As discussed below, the State Water Board finds that, based on information in the record, the District has met its burden of establishing that the proposed change will not injure any legal user of water. Moreover, the issues related to the two upstream ranches are not related to the proposed changes involving the transfer of water.

### **6.3 USBWC and Water Master Comments**

#### *Comments:*

The USBWC and the Water Master (referred to collectively in this subsection as USBWC) requested that the District be required to provide the USBWC with a copy of the release plan and the summary report or information submitted to the Division pursuant to any condition of approval similar to Condition 10 of the Division's 2014 Order. Condition 10 of the Division's 2014 Order requires the District to submit certain information, including documentation of compliance with all other conditions of the Order, to the Division within 90 days of completion of the transfer period. A similar condition is included in this order as Condition 11.

The USBWC referenced the District's statement in the petitions that the District will rely on existing water measurement gages in the Walker River Basin for monitoring flows and accounting for actual releases. The USBWC believes that, for purposes of monitoring flows and accounting for actual releases by the District for the Stored Water Program, it is critical that the existing water measurement gages in the Walker River Basin, at a minimum, be maintained, including but not limited to the Miller Lane gage. The USBWC stated that it is not clear whether the Miller Lane gage will be maintained during the 2022 agricultural season.

The USBWC commented that there is no information provided in the petitions regarding the management and accounting for stored water transferred under the Stored Water Program past the Wabuska Gage and that the District did not ask that the Lower Walker River Conveyance Protocols<sup>4</sup> govern the conveyance of stored water. The USBWC assumes that the protocols will be in place if the petitions are approved by the State Water Board.

#### *District Response:*

The District stated that it will provide the USBWC a copy of the release plan and summary report or other information submitted to the Division pursuant to any condition of approval of the current petitions that is similar to Condition 10 of the Division's previous orders. The District also indicated it will provide the USBWC a copy of any temporary change applications filed with the Nevada State Engineer and copies of any

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<sup>4</sup> The protocols establish accounting procedures for the conveyance of NFWF's Restoration Program water from Wabuska Gage through the Tribe's Reservation to Walker Lake and are the result of a stipulation between NFWF, the Tribe, and the Bureau of Indian Affairs to resolve protests over NFWF's Nevada Application 80700 to change the manner of use and place of use of decreed water rights to increase inflows to Walker Lake.

monthly reports submitted to the Nevada State Engineer.

The District stated that it is currently coordinating with the U.S. Geological Survey to ensure that the Miller Lane gaging station will be maintained during the 2022 season.<sup>5</sup>

The District also stated that the Lower Walker River Conveyance Protocols will govern the conveyance of the released water under the Stored Water Program in the Lower Walker River including the reach from the Wabuska Gage through the Walker River Indian Reservation and to Walker Lake.

The State Water Board finds that it is reasonable for parties that must be consulted on the release plan, the Water Master, the WBC/NFWF, and the Tribe, also to have an opportunity to review information related to the completion of the transfer. Condition 11 will require the District to provide notice of availability of the report to these parties and, on request, make the report available either by posting it on a website or other means. In addition, the USBWC requested that the District be required to provide the USBWC with copies of any temporary change applications and monthly reports submitted to the Nevada State Engineer as required by any temporary permits issued by the Nevada State Engineer, but does not explain how this information is required under California water right law or otherwise relates to the State Water Board's consideration of the petitions. Approvals by the Nevada State Engineer that fall within the definition of final approval in Condition 1 must be provided to the Deputy Director for Water Rights. As explained below, there is sufficient information in the record to support the State Water Board's approval of the transfer petitions. The USBWC will receive notice of the District's compliance with conditions of this Order pursuant to Condition 11.

#### **6.4 CDFW Comments**

*Comments:*

CDFW stated that it is not opposed to the "concept of water transfers if the transfer is structured and timed such that beneficial uses for fish and wildlife resources are not

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<sup>5</sup> Pursuant to a 2019 stipulation between NFWF and the USBWC, the Miller Lane gage is being operated for a trial period of three irrigation seasons for the Water Master's administrative flows under Nevada Permit 80700 within Nevada. At the end of the trial period, the Water Master and NFWF will conduct a technical analysis of the stream flow data to inform the utility of the Miller Lane gage and/or the Yerington Weir gage in the future. At this time, the WBC is awaiting finalized data from the Miller Lane gage for the 2021 irrigation season in order to complete the analysis necessary to determine the effectiveness of the gage to administer instream flows. The State Water Board's conditional approval of the petitions is not dependent on the operation of the Miller Lane gage.

impacted or impaired.” (CDFW Comment Letter (Dec. 22, 2021), p. 2.) CDFW is concerned that the District’s proposed transfer period may occur when high flows may be detrimental to fisheries and recommends that flows in East Walker River should be limited to 20 to 50 cfs from December through February to avoid adverse impacts to overwintering trout and fulfill the requirements of Fish and Game Code section 5937. CDFW also recommended that the District’s transfer releases should be timed to avoid flow increases or decreases in excess of 15 percent per day between January and May to avoid impacts to spawning rainbow and Lahontan cutthroat trout, as well as protecting spawning native mountain sucker and mountain whitefish. CDFW requested that any approval of the petitions include a monitoring and reporting requirement, at least monthly, that provides information detailing the location, timing, and amount of flow releases to ensure compliance with CDFW’s proposed flow conditions.

*District Response:*

The District stated that the Stored Water Program will only be releasing water during irrigation season, consequently no water will be released during the months of December through February. The season of use for stored water is generally from April through October 31, and releases for the Program will be scheduled to be made within the historic range of releases during that period. The District stated that it is highly unlikely that any releases for the Program will be made during April, however those releases would be made within the range of releases for that month.

The District stated that the State Water Board’s previous approvals of the Stored Water Program required the District to provide a monitoring report to the Board within 90 days of completion of the transfer. The District has only been required to submit monthly reports to the Board if the District released stored water in either amounts exceeding the historic range of releases during the irrigation season or following October 31. The District indicated it does not intend to do either, however it will comply with requirements for monthly reporting with respect to any such releases.

The District indicated that it performs monitoring on a daily basis and that information is provided on the District’s website<sup>6</sup>.

To ensure that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses, the State Water Board will require the District to ensure that transfer releases do not contribute to flow increases<sup>7</sup> in the Walker River system in

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<sup>6</sup> Daily monitoring data for WRID’s Stored Water Program is located on the following webpage: <http://www.wrid.us/WRID/SWLP>

<sup>7</sup> In CDFW’s comments, it recommended that the District’s transfer releases should avoid “flow increases *or decreases* in excess of 15% per day between January and May.” (CDFW Comment Letter (Dec. 22, 2021), italics added.) On January 14, 2022, CDFW staff confirmed with Division staff the term ‘decreases’ was inadvertently

excess of 15 percent per day in April or May. If, however, after consultation with CDFW, CDFW agrees in writing that flow increases in excess of 15 percent per day in April or May will not unreasonably affect fish, wildlife, and other instream beneficial uses, the District may make larger releases consistent with the terms of this order. If the District releases stored water in April or May, the District will be required to provide monthly reports to the State Water Board and CDFW documenting compliance with this requirement. The District will also be required to notify CDFW of availability of the summary report as detailed in Condition 11 of this Order.

## **7.0 STATE WATER BOARD FINDINGS**

In considering changes sought to California water rights adjudicated in the Walker River Decree, the State Water Board proceeds under California law and agency practice and procedure. (*US v. USBWC, supra*, 893 F.3d at p. 595; Administrative Rules, § 5.1.)

### **7.1 Availability of Water for Transfer**

Before approving a temporary change involving the transfer of water, the State Water Board must determine that the proposed transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, §§ 1725, 1726, subd. (e).) In addition, before approving a change under section 1707, the State Water Board must find that the proposed change will not increase the amount of water the person is entitled to use. (*Id.*, § 1707, subd. (b)(1).)

The change petitions involve the transfer of stored water. The water that is the subject of the petitions is previously stored water or water that would have otherwise been held in storage at Topaz or Bridgeport Reservoirs absent the proposed transfer, “some or all of which would have been released for irrigation purposes within the District...” (Petition for License 6000, Att. No. 1, p. 2; Petition for License 9407, Att. No. 1, p. 2.) The water would have been stored either during the non-irrigation season or during the irrigation season when all other decreed rights to natural flow are fully satisfied. (Petition for License 6000, Att. No. 1, p. 5; Petition for License 9407, Att. No. 1, p. 5.)

The State Water Board conducted an independent evaluation of its records. The combined annual use under Licenses 6000 and 9407 was 28,930 af, 72,260 af, 68,680 af, and 57,921 af during 2017, 2018, 2019, and 2020, respectively. These data indicate that the District has put the amount proposed to be transferred to recent beneficial use and would, absent the proposed changes, have released water from Topaz and Bridgeport Reservoirs to the landowners within the District for irrigation purposes or would have retained the volume of water in storage pursuant to its water

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included in CDFW’s flow recommendation.



rights. The State Water Board finds that, in accordance with Water Code section 1726, subdivision (e), the water proposed for transfer pursuant to this order would be consumptively used or stored in the absence of the proposed temporary change. This Order includes a term to ensure that District landowners who participate in the Stored Water Program do not receive additional water to offset the water transferred.

Moreover, the District's petitions do not request any changes in the diversion of water to storage; instead they only request changes in the place and purpose of use upon release from storage. Thus, the State Water Board finds that, in accordance with Water Code section 1707, subdivision (b)(1), the proposed change will not increase the amount of water that the District is entitled to use.

## 7.2 No Injury to Other Legal Users of Water

Before approving a temporary change involving the transfer of water, the State Water Board must find that a preponderance of the evidence shows that the proposed temporary change would not injure any legal user of water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) Water Code section 1707, subdivision (b)(2) also requires the State Water Board to determine before approving a change for purposes of instream flow dedication that the change will not unreasonably affect any legal user of water.

Thus, with respect to the “no injury” inquiry under both Water Code sections 1727 and 1707, the State Water Board must evaluate whether the change will injure any legal user of the water involved in the change. The controlling consideration in the State Water Board's inquiry is the effect of the change on the rights of others. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 743, 805.) A person who claims injury from a proposed change “must show the change will interfere with his or her *right* to use the water, whatever the source of that right may be.” (*Id.* at p. 805, italics in original.) It is not enough for a water user to show that it will receive less water as a result of the change. Instead, a water user claiming injury must demonstrate that it has a right to the greater amount of water claimed and that the proposed change will interfere with that right. (*Ibid.*; see also State Water Board Decision 1651 (2012) (D-1651), p. 22.)<sup>8</sup>

Based on the information in the record, the District has met its burden of establishing that the proposed change will not injure any legal user of water. (Wat. Code, § 1727,

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<sup>8</sup> D-1651 can be viewed at [http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1650\\_d1699/wrd1651.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1650_d1699/wrd1651.pdf) (as of February 15, 2022).

subds. (b)(1), (c).) The District holds water rights to storage at Topaz and Bridgeport Reservoirs under Licenses 6000 and 9407. The water subject to the proposed temporary changes will continue to be diverted to storage under the terms and conditions of the two licenses and in accordance with water right priority. The proposed temporary changes only involve the release of water that that was diverted to storage after senior rights had been met. Thus, senior rights cannot be injured by changes in stored water once that water has been stored. Further, a downstream appropriator cannot require the owner of an upstream reservoir to release previously appropriated water. (*State Water Resources Control Bd. Cases, supra*, at p. 743.) “[I]f previously stored water is not available to a water right holder, the water right holder cannot be injured if the water does not arrive at the water right holder’s point of diversion due to a change in the use of the stored water.” (D-1651, at p. 24.) Water previously stored water by the District is only available for use by the District and is not available for other users downstream. (*US v. USBWC, supra*, 893 F.3d at p. 604.)

The Stored Water Program may result in changes in reservoir operations that have the potential to affect return flows or irrigation efficiencies, which in turn could affect the availability of water for junior priority water right holders. But the issue of water availability is distinct from the issue of legal injury. Water being used under an existing right is not available for appropriation. (Wat. Code, § 1202; Cal. Code Regs., tit. 23, § 695.)

Moreover, there is no legal right to return flows from stored water that has not been abandoned. Releases of stored waters are foreign in time—in other words, they would not be present in the stream under natural conditions—and “have no relationship to or conflict with priorities of right to use the flows of another time or season.” (State Water Board Decision 192 (1928),<sup>9</sup> at pp. 23-24; see *Stevens v. Oakdale Irrigation Dist.* (1939) 13 Cal.2d 343, 350-352 [downstream user has no right to continued releases of artificial flow]; *Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450, 457 [downstream riparian user has no right to discharge of stored water]; State Water Board Decision 1602 (1984),<sup>10</sup> at p. 4 [citing *Stevens v. Oakdale Irrigation Dist.*, *supra*, as indicating that “noncontractual rights to the use of foreign water are not a valid basis for claiming injury as a legal user of water”].)

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<sup>9</sup> The State Water Board’s predecessor at the time was the Division of Water Rights in the Department of Public Works. Decision 192 can be viewed at <[http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d0150\\_d0199/wrd192.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d0150_d0199/wrd192.pdf)> (as of February 15, 2022).

<sup>10</sup> Decision 1602 can be viewed at <[http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/decisions/d1600\\_d1649/wrd1602.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1600_d1649/wrd1602.pdf)> (as of February 15, 2022).



Senior water right diverters downstream of Topaz and Bridgeport Reservoirs will not be affected by the transfer. The water under Licenses 6000 and 9407 will be diverted to storage in accordance with water right priority on the stream system. Senior rights cannot be injured by the release of water stored under a junior water right.

To avoid potential injury and to ensure that other water users can identify the waters subject to the temporary changes, the State Water Board will require the District to develop and operate to a schedule of releases set forth in a release plan for the proposed temporary transfer and instream flow dedication, in consultation with the Water Master, the Tribe, and the WBC/NFWF. In part, the release plan will describe the proposed schedule and volume of releases to be made from each reservoir during the period of April 1 through October 31. Further, under the District's grant agreement with NFWF, the District must develop an Annual Monitoring Plan that will monitor the release and delivery of Stored Water Program water and maintain daily records to account for the releases and deliveries of the water.<sup>11</sup> The information must be made publicly available. This Order also makes the development of such a plan and public accounting a requirement of the approved changes. Moreover, as noted above, the District landowners participating in the transfer authorized under this Order to implement the Stored Water Program shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water. After the transfer period ends, an accounting of the volume of water transferred must be submitted to the Deputy Director for Water Rights.

The State Water Board finds that, in accordance with Water Code section 1727, subdivision (b)(1) and Water Code section 1707, subdivision (b)(2), the proposed temporary changes would not injure any legal user of the water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

### **7.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses**

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

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<sup>11</sup> NFWF and the District have executed several amendments to the original grant agreement. The most recent amendment, the fourth amendment to the grant agreement, extends the period of performance but does not alter the terms of the first amendment to the NFWF grant agreement regarding the Annual Monitoring Plan or applicable reporting requirements that are required by this Order.

The District anticipates that the increased flows resulting from releases from Topaz or Bridgeport Reservoirs will result in beneficial effects on fish, wildlife, other instream beneficial uses and water quality downstream to and including Walker Lake. If the District determines that stored water releases will occur in amounts exceeding the historical range of releases, the District proposes to consult with the CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses, and to develop measures to avoid or mitigate any such impacts.

The purpose of the petitions is to assist with increasing flows into Walker Lake for environmental restoration in the Walker River Basin as provided under federal law and the Restoration Program. The change petitions do not propose any physical changes in the District's diversion and conveyance system. Nor do the petitions propose any change in the diversions to storage in Topaz or Bridgeport Reservoirs or existing bypass or minimum pool requirements. Thus, the record supports the conclusion that the proposed temporary changes, as conditioned, will not unreasonably affect fish, wildlife, or other instream beneficial uses.

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 period of April 1 through October 31, which are made pursuant to the temporary changes approved by this Order, to the total historic range of reservoir releases during the irrigation season. The historic range of reservoir releases are those releases that have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows, or ramping schedules. The District may release stored water in amounts exceeding the historic range of releases during the irrigation season if the District first consults with CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses, and to develop measures to avoid or mitigate any such impacts. Such consultation shall include the establishment of a flow ramping schedule to avoid harm through rapid fluctuations in instream levels.

CDFW recommended that the District's transfer releases be timed to avoid flow increases in excess of 15 percent per day in April and May to avoid impacts to spawning rainbow and Lahontan cutthroat trout, as well as protecting spawning native mountain sucker and mountain whitefish. This Order requires that the District's transfer releases do not contribute to flow increases in the Walker River system in excess of 15 percent per day in April or May absent written concurrence by CDFW.

The State Water Board finds that, as conditioned, in accordance with Water Code section 1727, subdivision (b)(2), the proposed changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.

## **8.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY**

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. The Resolution also delegates authority to the Deputy Director to perform duties related to processing change petitions in the Walker River action. This Order is adopted pursuant to the delegation of authority in sections 4.4.2 and 4.7.3 of Resolution 2012-0029.

## **9.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the determinations required by Water Code sections 1707 and 1725 et seq.

The State Water Board concludes that, based on the available information:

1. The proposed transfers involve only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary changes will neither injure, nor unreasonably affect, any legal user of water, including during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
3. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The proposed temporary changes will not increase the amount of water the District is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED THAT** the District's petitions for temporary transfer and dedication of water for instream purposes of 25,000 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. are approved for a period of one year, which will commence on the date of final approval, as defined below.

All existing terms and conditions of Licenses 6000 and 9407 remain in effect, except as temporarily amended by the following provisions:

1. The temporary change is limited to a one-year period commencing on the date of final approval. Final approval means that all related approvals by the federal District Court have been obtained, including modification of the Walker River Decree by the federal District Court to recognize (i) the State Water Board's approval of the changes under this Order and (ii) approval by the Nevada State Engineer of a change application submitted by an individual within the District to implement the Stored Water Program. Within 30 days after receiving the final approval, the District shall notify, and provide copies to, the Deputy Director for Water Rights of the approval. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.
2. In addition to all other purposes of use authorized by Licenses 6000 and 9407, the purpose of use of the licenses is temporarily amended to include preservation and enhancement of fish and wildlife within the following reaches: 1) for License 6000, the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake; and 2) for License 9407, the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake.
3. The place of use under License 6000 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Topaz Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,419,385 feet and East 6,845,209 feet, being within SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 12, T9N, R22E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9 to 11N, R29 to 30E, MDB&M, as shown on map filed with the State Water Board for License 6000 and maps prepared by the District and NFWF submitted with the petitions as Exhibit C.
4. The place of use under License 9407 is temporarily expanded to include preservation and enhancement of fish and wildlife within the reach between East Walker River from Bridgeport Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, within the following boundaries: Upstream Limit – Bridgeport Reservoir located at California Coordinate System, NAD 83, Zone 3, North 2,307,798 feet and East 6,931,075 feet, being within SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 34, T6N, R25E, MDB&M; Downstream Limit – The terminus of Walker River into and including Walker Lake within T9-11N, R29-30E, MDB&M, as shown on map filed with the State Water Board for License 9407 and maps prepared by the District and NFWF submitted with the petitions as Exhibit C.

5. Water transferred pursuant to this Order shall be limited to a combined maximum amount of 25,000 af to be released from either Topaz Reservoir or Bridgeport Reservoir, or both, from April 1 through October 31.
6. The District shall develop and operate to a schedule of releases (release plan) for the transfers that describes the proposed schedule and volume of releases to be made from either Topaz Reservoir or Bridgeport Reservoir, or both, during the period of April 1 through October 31.
  - a. The release plan shall be developed in consultation with the Water Master, the WBC/NFWF, and the Tribe. Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. The District shall promptly inform the Water Master, the WBC/NFWF, the Tribe, and the Division of Water Rights of any changes to the release schedule.

If any dispute arises during consultation regarding potential injury to legal users of water, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety. The District shall promptly inform these parties of any changes to the release schedule.

- b. Unless otherwise provided herein, the total release must be within the historic range of releases for each reservoir during the period of April 1 through October 31. The historic range of releases are those releases that have taken place under existing license conditions, including any requirements for reservoir surface water elevation, minimum pool, bypass flows or ramping schedules. The historical range of releases must be based on average daily releases in years with similar hydrology to the period in which the transfer will occur or be based on a comparable method that reflects the relevant hydrology and is approved in advance by the Deputy Director for Water Rights. The release plan must identify the historic range of releases during the irrigation season and evaluate whether water to be transferred during the irrigation season is within the historic range of releases.
    - c. At least one month prior to the period of releases for the transfer, the District will provide the release plan to the Deputy Director for Water Rights and make the plan publicly available.
7. In order for the District to release stored water in amounts exceeding the historic range of releases during the period of April 1 through October 31, the District first

shall consult with CDFW and Mono County to identify potentially unreasonable impacts to fish and wildlife and instream beneficial uses and to develop measures to avoid or mitigate any such impacts. Such consultation shall include (a) development of a schedule of releases for each reservoir; (b) establishment of flow ramping rates; (c) establishment of stream flow release limitations, if necessary; and (d) development of a monitoring plan for implementation to ensure that release of stored water exceeding the historic range of releases does not result in unreasonable impacts to fish, wildlife, or instream beneficial uses. The monitoring plan shall focus on specific fisheries concerns during the periods of release exceeding the historic range of releases. A monthly monitoring report shall be submitted to CDFW, Mono County, and the Deputy Director for Water Rights and a final report of the results of the monitoring submitted no later than 90 days after the transfer period ends.

Within 30 days after consultation, the District shall provide verification to the Division of Water Rights that such consultation has occurred and information regarding any actions taken or that will be taken as the result of the consultation. If any dispute arises during consultation regarding unreasonable impacts to fish, wildlife, and other instream beneficial uses, or measures to avoid or mitigate such impacts, the Deputy Director for Water Rights shall decide the matter. Consultation is required only when necessary to carry out this transfer; unless otherwise required by law, consultation is not required for releases of stored water for purposes unrelated to the transfer, such as irrigation, flood control, and dam safety.

8. If the District releases stored water for transfer in April or May, the releases shall not contribute to flow increases in the Walker River system in excess of 15 percent per day. If, after consultation with CDFW, CDFW agrees in writing that flow increases in excess of 15 percent per day in April or May will not unreasonably affect fish, wildlife, and other instream beneficial uses, the District may make larger releases consistent with the terms of this Order. When releasing stored water in April or May, the District shall provide monthly reports to the State Water Board and CDFW documenting compliance with this condition. The monthly reports shall be submitted to the State Water Board and CDFW within 15 days following the month(s) the releases occurred.
9. During the transfer period, the District landowners participating in the transfer authorized by this Order to implement the Stored Water Program shall not receive a supplemental or replacement water supply to offset, in any manner, the transferred water.
10. During the transfer period, the District shall comply with the section F, Annual Monitoring Plan, of Attachment A to First Amendment to [NFWF] Grant Agreement Regarding [District] Lease of Water Demonstration Program, Stored Water Program, and Water Measurement and Control Phase, and the public reporting provisions of



section J.3 of that Attachment A. If section F or section J.3 of Attachment A are substantively amended prior to, or during, the transfer period, the District shall promptly inform the Deputy Director for Water Rights.

11. Within 90 days of completion of the transfer period, the District shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The District will also provide notice of availability of the report to the Water Master, the WBC/NFWF, CDFW, and the Tribe, and, on request, make the report available either by posting it on a public website or by other means. The report shall include the following information:
  - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from 1) Topaz Reservoir and from 2) Bridgeport Reservoir pursuant to this Order.
  - b. Documentation that the water transferred did not result in an increase in water diverted to storage in both Topaz Reservoir and Bridgeport Reservoir from the source waters of the District's licenses beyond the quantities that would otherwise have been diverted absent the transfer.
  - c. Documentation of compliance with all other conditions of this order.
12. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
13. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change Order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
14. This order does not authorize any act that results in the taking of an endangered, threatened or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.

Applications 2221 and 1389

Licenses 6000 and 9407

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15. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: FEB 23 2022



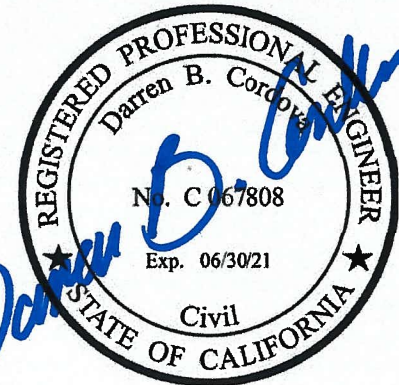
# **EXHIBIT D**



**CERTIFICATE**

I, Darren B. Cordova, 455 University Avenue, Suite 100, Sacramento, California, hereby certify that this map was amended under my supervision on January 27, 2020, from information which I believe to be accurate, and that it correctly represents the items described in the petition submitted on January 16, 2020.

Engineer Certificate No. C-067808  
 January 27, 2020 Expires June 30, 2021



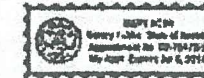
**STATE OF NEVADA  
 COUNTY OF WASHOE**

}SS

I, MICHAEL D. BUSCHELMAN, BEING FIRST ONLY SWORN, DEPOSE AND SAY THAT THIS MAP, CONSISTING OF SIX SHEETS, NUMBERED ONE THROUGH SIX, INCLOSURE, HAS BEEN CORRECTLY DRAWN TO THE DESIGNATED SCALE, ON OR BEFORE MARCH 14, 2011, BASED ON A SURVEY MADE UNDER MY SUPERVISION AND DIRECTION, RELYING UPON ANALYSES OF RECORDED SURVEY DOCUMENTS AND OTHER DOCUMENTS IN THE LYON COUNTY RECORDER'S OFFICE, US BUREAU OF LAND MANAGEMENT, THE WALKER RIVER IRRIGATION DISTRICT, THE US FEDERAL WILDLIFE SERVICE, THE WALKER RIVER AND THE NEVADA DIVISION OF WATER RESOURCES THAT THIS MAP TRULY AND CORRECTLY REPRESENTS THE EXISTING AND PROPOSED POINTS OF DIVERSION AND PLACES OF USE OF A PORTION OF THE WALKER RIVER AND ITS TRIBUTARIES, AS DESCRIBED IN THAT PARTICULAR DOCUMENT ENTITLED UNITED STATES VS. WALKER RIVER IRRIGATION DISTRICT ET AL., DOCKET C-125, CLAIMS 22, 23A, 35, 44, 67, and 89, FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 IN LYON COUNTY, NEVADA.

*Michael D. Buschelman*  
 MICHAEL D. BUSCHELMAN SVRS 1792

SUBSCRIBED AND SWORN TO BEFORE ME  
 THIS 27th DAY OF January 2020  
 NOTARY PUBLIC IN AND FOR WASHOE COUNTY, NEVADA  
 MY COMMISSION EXPIRES July 6, 2021

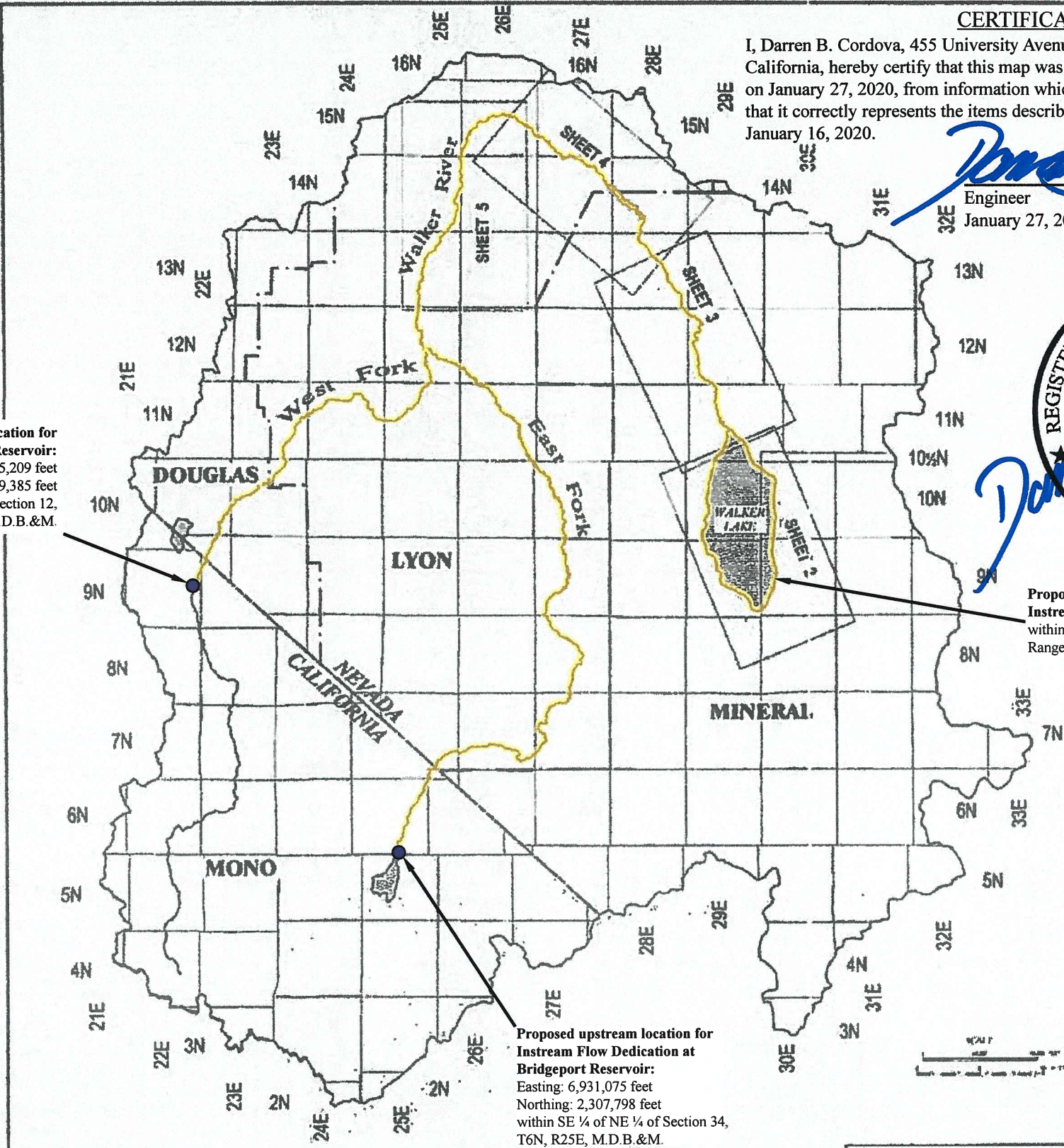


**BASIS OF BEARING**

1. STATE PLANE - NEVADA WEST, RAD 83 (FEET)
2. ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNTAIN DIABLO BASE & MERIDIAN (N.D.B.&M.)

**REFERENCES**

1. PUBLIC LAND SURVEY SYSTEM (PLSS) EXTRACTED FROM THE USBLM GEOGRAPHIC COORDINATE DATABASE (GCDDB), STATE PLANE NEVADA WEST, RAD 83 (FEET)
2. WALKER RIVER BASIN BOUNDARY DERIVED FROM THE GIS DATASET "STATE ENGINEER BASIN BOUNDARIES 30"0", DATED 01/17/2006, PROVIDED BY THE NEVADA DIVISION OF WATER RESOURCES; AND THE CALWATER HYDROGRAPHIC BASIN 1:50,000 GIS DATASET, PROVIDED BY THE NRCS
3. WALKER LAKE, BRIDGEPORT RESERVOIR, TOPAZ LAKE RESERVOIR, AND WEBER RESERVOIR BOUNDARIES TAKEN FROM USGS DIGITAL LINE GRAPHIC (DLG) 1:25,000
4. WALKER RIVER (EAST, WEST, AND MAIN FORKS) CENTERLINES AND CHANNEL BOUNDARIES DERIVED FROM LYON COUNTY 2007 AERIAL PHOTOGRAPHY (1 FT RESOLUTION), AND USDA 2004 NATIONAL AGRICULTURAL IMAGERY PROGRAM (NAIP) PHOTOGRAPHY (1M RESOLUTION)



Proposed upstream location for Instream Flow Dedication at Topaz Reservoir:  
 Easting: 6,845,209 feet  
 Northing: 2,419,385 feet  
 within SE ¼ of SE ¼ of Section 12,  
 T9N, R22E, M.D.B.&M.

Proposed downstream location for Instream Flow Dedication at Walker Lake:  
 within Townships 9N, 10N & 11N,  
 Ranges 29E & 30E, M.D.B.&M.

Proposed upstream location for Instream Flow Dedication at Bridgeport Reservoir:  
 Easting: 6,931,075 feet  
 Northing: 2,307,798 feet  
 within SE ¼ of NE ¼ of Section 34,  
 T6N, R25E, M.D.B.&M.

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP

Note:  
 Proposed upstream locations for Instream Flow Dedications are referenced to California Coordinate System Zone III NAD 83, based on the CA Division of Water Rights eWRIMS database.



Proposed Place of Use (highlighted in yellow):  
 East Walker River from Bridgeport Reservoir to the confluence with the Walker River, and the West Walker River from Topaz Reservoir to the confluence with the Walker River, thence the Walker River to and encompassing Walker Lake, which is within the Walker River Basin.

Sheet 1 of 6

Michael D. Buschelman Consulting, Inc.

Post Office Box 11371  
 Sparks, Nevada 89437  
 (775) 315-9424 / Fax: 315-9424-1421

MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125, CLAIMS 22, 23A, 35, 44, 67, and 89

FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533

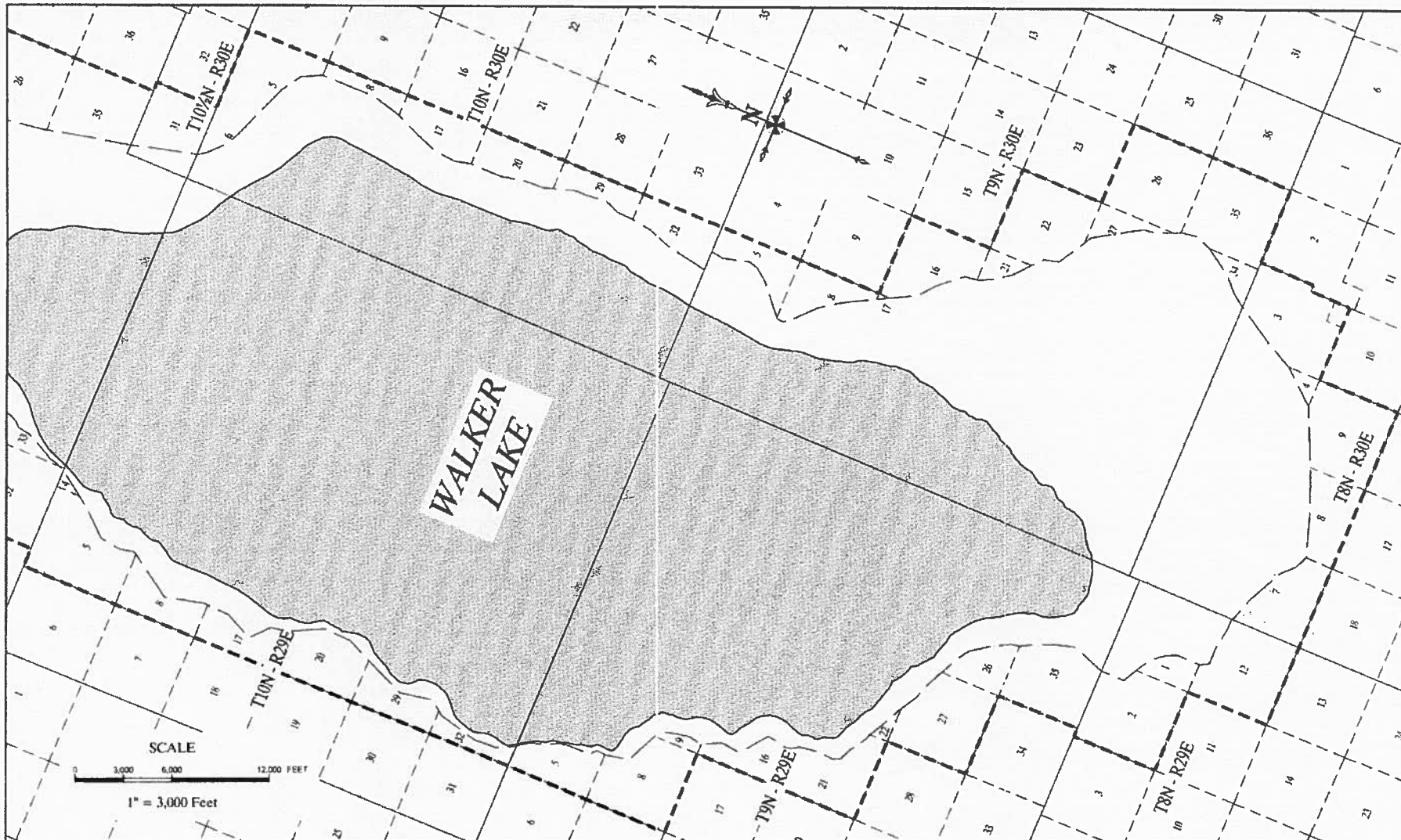
BY THE NATIONAL FISH and WILDLIFE FOUNDATION

FROM THE WALKER RIVER and ITS TRIBUTARIES

LYON/MINERAL COUNTIES

NEVADA





SCALE  
 0 3,000 6,000 12,000 FEET  
 1" = 3,000 Feet

WALKER  
 LAKE

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP
- SECTION
- MEANDER LINES PER BLM
- PROPOSED PLACE OF USE

**BASIS OF BEARING**

1. STATE PLANE - NEVADA WEST, NAD 83 (FEET)
2. ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNT DIABLO BASE & MERIDIAN (M.D.B./M.)

STATE ENGINEER'S USE

FILED  
 MAR 18 2011

Sheet 2 of 6

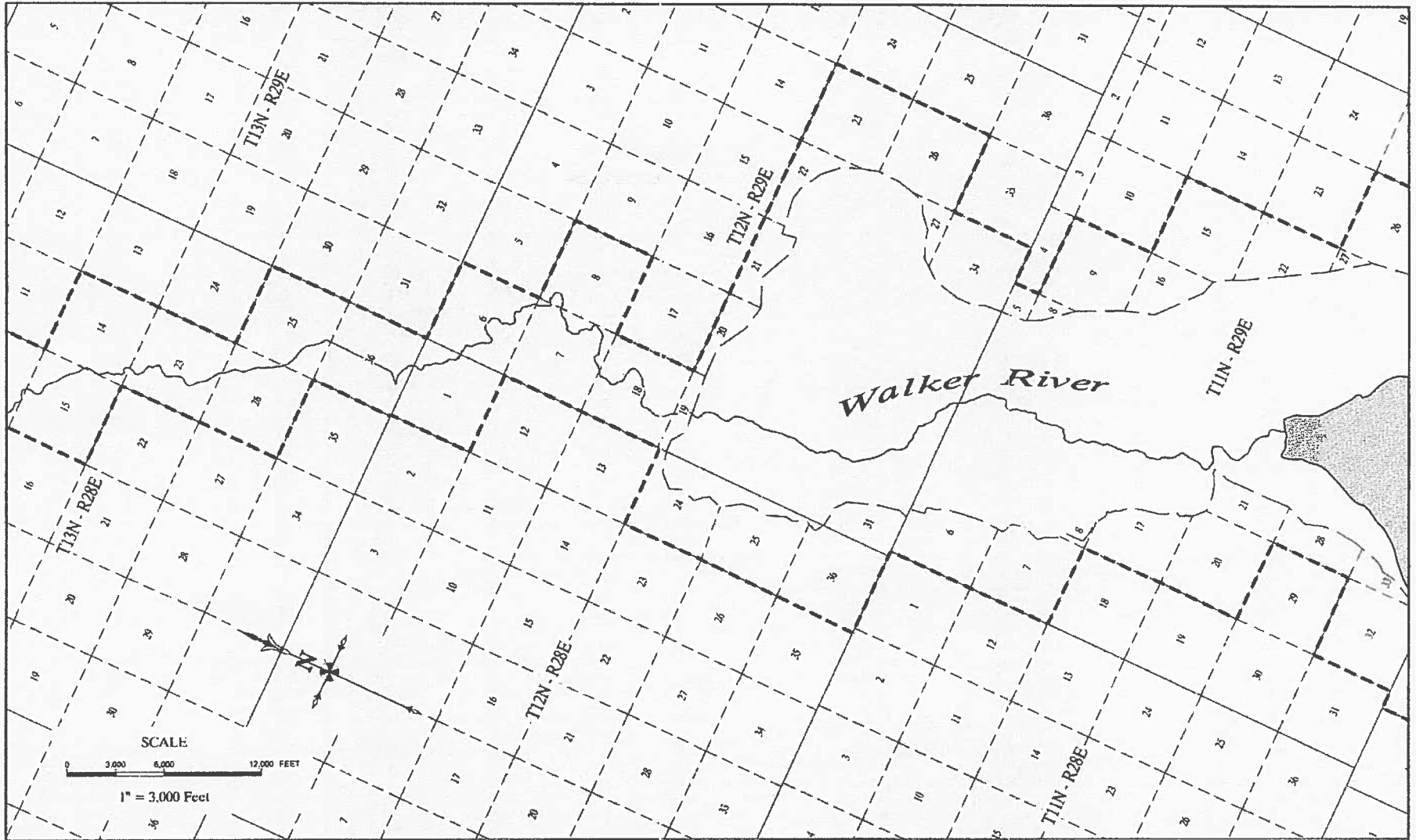
Michael D. Buschelman Consulting, Inc.  
 Post Office Box 51371  
 Sparks, Nevada 89418  
 (775) 355-4629 FAX: 355-4629 FAX

MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125, CLAIMS 23, 23A, 35, 44, 67, and 89 FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 BY THE NATIONAL FISH and WILDLIFE FOUNDATION FROM THE WALKER RIVER and ITS TRIBUTARIES LYON/MINERAL COUNTIES NEVADA



Exhibit A

81704 80700



Sheet 3 of 6

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP
- SECTION
- MEMORIAL LINES PER BLM
- - - PROPOSED PLACE OF USE

**HMS** HISTORY MAPPING SERVICES  
 7414 E  
 Springdale Rd. Sparks, NV 89434  
 (775) 444-7171 FAX (775) 444-7172  
 11000 Highway 109, Sparks, NV 89434

**BASIS OF BEARING**  
 1. STATE PLANE - NEVADA WEST, NAD 83 (FEET)  
 2. ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNTAIN BASE 3 MERIDIAN (M.D.B.M.)

STATE ENGINEER'S USE

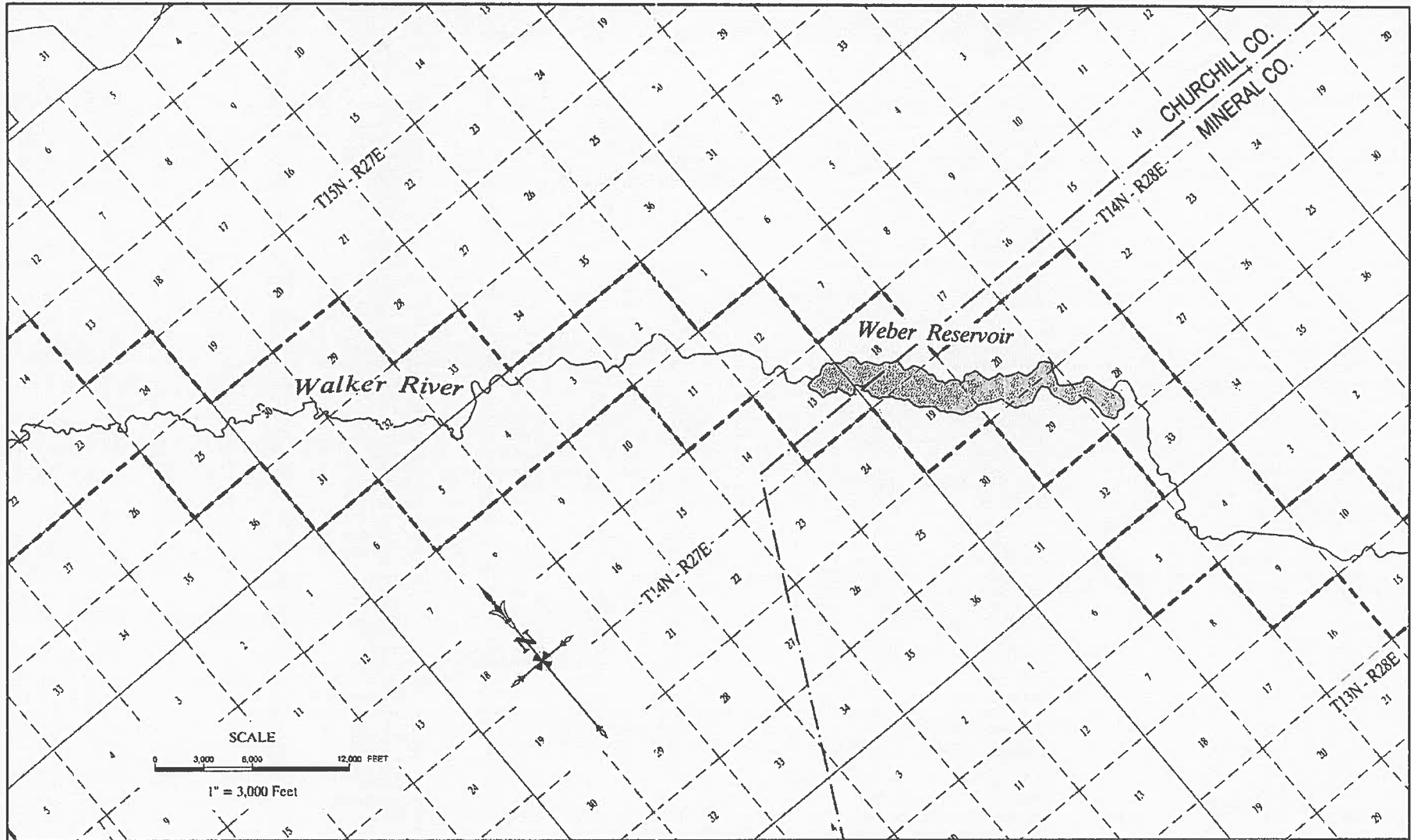
FILED  
 NOV 18 2010

Michael D. Buschelmann Consulting, Inc.  
 Post Office Box 51371  
 Sparks, Nevada 89433  
 (775) 335-9628 (Office) 335-9297 FAX

MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-123, CLAIMS 23, 23A, 35, 44, 67, and 89 FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 OF THE NATIONAL FISH AND WILDLIFE FOUNDATION FROM THE WALKER RIVER and ITS TRIBUTARIES LYON/MINERAL COUNTIES NEVADA

Exhibit A

81704 80700



Sheet 4 of 6

**BASIS OF BEARING**  
 1. STATE PLANE - NEVADA WEST, NAD 83 (FEET)  
 2. ALL PUBLIC LAND SURVEY DATA SHOWN IN  
 MOUNTAIN DIABLO BASIN & BERDMAN (BLD.B.M.)

Michael D. Buschelman Consulting, Inc.  
 P.O. Box 5177  
 Sparks, Nevada 89433  
 (775) 435-9428 Office 435-629 FAX

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- - - COUNTY LINE
- - - STATE LINE
- - - TOWNSHIP
- - - SECTION
- - - PROPOSED PLACE OF USE

STATE ENGINEER'S USE

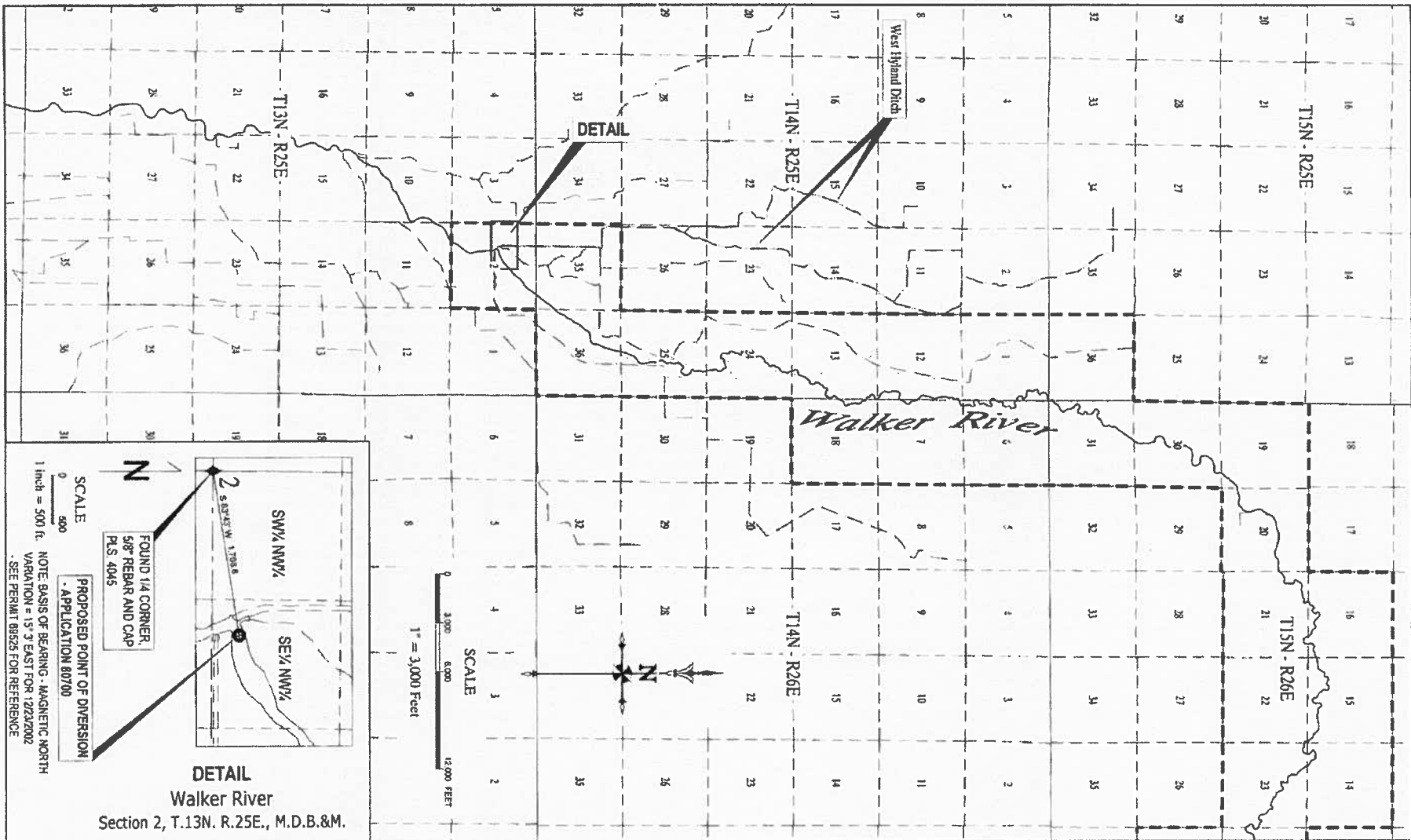


MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125, CLAIMS 23, 25A, 35, 44, 67, and 89 FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 333 BY THE NATIONAL FISH AND WILDLIFE FOUNDATION FOR THE WALKER RIVER and ITS TRIBUTARIES LYON/MINERAL COUNTIES NEVADA



Exhibit A

81704 80700



Sheet 5 of 6

**DETAIL**  
Walker River  
Section 2, T.13N. R.25E., M.D.B.&M.

SCALE  
1 inch = 500 ft.

PROPOSED POINT OF DIVERSION  
APPLICATION 80700

FOUND 1/4 CORNER,  
5/8" REBAR AND CAP  
P.L.S. 4045

SW 1/4 NW 1/4  
SE 1/4 NW 1/4

2 SURVEY MARKERS

NOTE: BASIS OF BEARING - MAGNETIC NORTH  
VARIATION = 15° 3' EAST FOR 10/22/2002  
SEE PERMIT 88525 FOR REFERENCE

**LEGEND**

- WALKER RIVER BASIN BOUNDARY
- COUNTY LINE
- STATE LINE
- TOWNSHIP
- SECTION
- DITCH/DRAIN
- PROPOSED PLACE OF USE

**BASIS OF BEARING**  
1. STATE PLANE - NEVADA WEST, NAD 83 (FEET)  
2. ALL PUBLIC LAND SURVEY DATA SHOWN IN MOUNT CHARLIE BASE & SHERIDAN (M.D.B.&M.)

STATE ENGINEER'S USE

SCALE  
1" = 3,000 FEET

0 3,000 6,000 12,000 FEET

**Michael D. Buschelman Consulting, Inc.**  
Post Office Box 51371  
Sparks, Nevada 89433  
(775) 359-9425 (Office) 359-9629 FAX

MAP TO ACCOMPANY APPLICATION 80700 TO CHANGE THE PLACE AND MANNER OF USE OF PORTIONS OF THE WALKER RIVER DECREE C-125 CLAIMS 23, 23A, 35, 44, 67, and 88 FOR WILDLIFE PURPOSES IN ACCORDANCE WITH NRS CHAPTER 533 BY THE NATIONAL FISH AND WILDLIFE FOUNDATION FROM THE WALKER RIVER AND ITS TRIBUTARIES

LYON/MINERAL COUNTIES NEVADA

FILED  
NO 21 2011



Exhibit A

81704 80700

## ENVIRONMENTAL INFORMATION FOR PETITIONS

This form is required for all petitions.

Before the State Water Resources Control Board (State Water Board) can approve a petition, the State Water Board must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

### DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition for change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

See Attachment No. 1 to Environmental Information.

Insert the attachment number here, if applicable:

1

## Coordination with Regional Water Quality Control Board

For change petitions only, you must request consultation with the Regional Water Quality Control Board regarding the potential effects of your proposed change on water quality and other instream beneficial uses. (Cal. Code Regs., tit. 23, § 794.) In order to determine the appropriate office for consultation, see: [http://www.waterboards.ca.gov/waterboards\\_map.shtml](http://www.waterboards.ca.gov/waterboards_map.shtml). Provide the date you submitted your request for consultation here, then provide the following information.

Date of Request

1/18/2023

Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?

Yes  No

Will a waste discharge permit be required for the project?

Yes  No

If necessary, provide additional information below:

Not Applicable.

Insert the attachment number here, if applicable:

## Local Permits

For temporary transfers only, you must contact the board of supervisors for the county(ies) both for where you currently store or use water and where you propose to transfer the water. (Wat. Code § 1726.) Provide the date you submitted your request for consultation here.

Date of Contact

1/23/2023

For change petitions only, you should contact your local planning or public works department and provide the information below.

Person Contacted:

Date of Contact:

Department:

Phone Number:

County Zoning Designation:

Are any county permits required for your project? If yes, indicate type below.

Yes  No

Grading Permit  Use Permit  Watercourse  Obstruction Permit

Change of Zoning  General Plan Change  Other (explain below)

If applicable, have you obtained any of the permits listed above? If yes, provide copies.

Yes  No

If necessary, provide additional information below:

Not Applicable.

Insert the attachment number here, if applicable:



**Federal and State Permits**

Check any additional agencies that may require permits or other approvals for your project:

- Regional Water Quality Control Board     Department of Fish and Game
- Dept of Water Resources, Division of Safety of Dams     California Coastal Commission
- State Reclamation Board     U.S. Army Corps of Engineers     U.S. Forest Service
- Bureau of Land Management     Federal Energy Regulatory Commission
- Natural Resources Conservation Service

Have you obtained any of the permits listed above? If yes, provide copies.     Yes     No

For each agency from which a permit is required, provide the following information:

Agency	Permit Type	Person(s) Contacted	Contact Date	Phone Number
Not Applicable.				

If necessary, provide additional information below:

Not Applicable.

Insert the attachment number here, if applicable:

**Construction or Grading Activity**

Does the project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed, bank or riparian habitat of any stream or lake?     Yes     No

If necessary, provide additional information below:

Not Applicable.

Insert the attachment number here, if applicable:

**Archeology**

Has an archeological report been prepared for this project? If yes, provide a copy.  Yes  No

Will another public agency be preparing an archeological report?  Yes  No

Do you know of any archeological or historic sites in the area? If yes, explain below.  Yes  No

If necessary, provide additional information below:

Not Applicable.

Insert the attachment number here, if applicable:

**Photographs**

For all petitions other than time extensions, attach complete sets of color photographs, clearly dated and labeled, showing the vegetation that exists at the following three locations:

See Attachment No. 1

- Along the stream channel immediately downstream from each point of diversion
- Along the stream channel immediately upstream from each point of diversion
- At the place where water subject to this water right will be used

**Maps** See Attachment No. 1

For all petitions other than time extensions, attach maps labeled in accordance with the regulations showing all applicable features, both present and proposed, including but not limited to: point of diversion, point of redirection, distribution of storage reservoirs, point of discharge of treated wastewater, place of use, and location of instream flow dedication reach. (Cal. Code Regs., tit. 23, §§ 715 et seq., 794.)

Pursuant to California Code of Regulations, title 23, section 794, petitions for change submitted without maps may not be accepted.

**All Water Right Holders Must Sign This Form:**

I (we) hereby certify that the statements I (we) have furnished above and in the attachments are complete to the best of my (our) ability and that the facts, statements, and information presented are true and correct to the best of my (our) knowledge. Dated 1/17/2023 at 400 N MAIN ST YACONATION, IN.

  
Water Right Holder or Authorized Agent Signature

\_\_\_\_\_  
Water Right Holder or Authorized Agent Signature

**NOTE:**

- **Petitions for Change** may not be accepted unless you include proof that a copy of the petition was served on the Department of Fish and Game. (Cal. Code Regs., tit. 23, § 794.)
- **Petitions for Temporary Transfer** may not be accepted unless you include proof that a copy of the petition was served on the Department of Fish and Game and the board of supervisors for the county(ies) where you currently store or use water and the county(ies) where you propose to transfer the water. (Wat. Code § 1726.)

**Attachment No. 1**  
**to Environmental Information for**  
**Petition for Temporary Transfer and Instream Flow Dedication**  
**by Walker River Irrigation District**

**DESCRIPTION OF PROPOSED CHANGES**

Walker River Irrigation District (District) is filing Petitions for Temporary Transfer and Instream Flow Dedication (Petitions) to its Licenses 6000 and 9407 (Applications 2221 and 1389, respectively) in order to assist with increasing the flow into Walker Lake for environmental restoration in the Walker River Basin as provided in Public Law 111-85, which established the Walker River Restoration Program. The purpose of these Petitions is to add to the existing places of use covered under Licenses 6000 and 9407 by including the downstream river segments of the West Walker River and the East Walker River, respectively, and the Walker River to and encompassing Walker Lake. In addition, the purpose of the Petitions is to add Fish and Wildlife Preservation and Enhancement as an additional purpose of use under Licenses 6000 and 9407. There are no changes to the existing points of diversion, places of use, or purposes of use identified in Licenses 6000 and 9407.

The District has an agreement with the National Fish and Wildlife Foundation (NFWF), predecessor to the Walker Basin Conservancy (WBC), to administer and manage a “Stored Water Program” in the Walker River Basin. The purpose of the Stored Water Program is to release surface water from Topaz Reservoir and Bridgeport Reservoir for instream flow dedication to and including Walker Lake. The District proposes to release up to 25,000 AF for instream dedication to Walker Lake involving surface water that was previously stored or would have otherwise been held in storage at Topaz Reservoir or Bridgeport Reservoir under Licenses 6000 and 9407, respectively, absent the proposed transfer, some or all of which would have been released for irrigation purposes within the District. Combined, the Petitions are limited to a total of 25,000 AF released from Topaz Reservoir and Bridgeport Reservoir. The releases by the District for the proposed temporary water transfer would occur during a period of up to one year following approval of the Petitions.

The Petitions do not involve a physical change to the District’s existing diversion facilities or its existing conveyance system, including the existing Topaz Reservoir and Bridgeport Reservoir. The 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. Following evaluation of participation by growers in the Stored Water Program, the District will develop a schedule of releases (release plan) for the proposed temporary transfer and instream flow dedication, in consultation with the Watermaster for the Walker River, NFWF/WBC, and the Walker River Paiute Tribe. For additional information, refer to Attachment No. 1 to the Petitions.

## **PHOTOGRAPHS**

No changes to the present authorized points of diversion or places of use are proposed. Photographs along the stream channel at the present points of diversion and within the present places of use are included in the State Water Board's files for Licenses 6000 and 9407; and thus, the District respectfully requests that said photographs be made a part of the record for these Petitions. The proposed additional places of use, including the East Walker River from Bridgeport Reservoir to the confluence of the Walker River, and the West Walker River from Topaz Reservoir to the confluence of the Walker River, thence the Walker River to and encompassing Walker Lake, are well known and documented. For reference, see the website for the Walker River Restoration Program < [www.walkerbasin.org](http://www.walkerbasin.org) >, which contains several photographs. Additional photographs may be made available upon request.

## **MAPS**

The present authorized points of diversion and present places of use are shown on a map filed with the State Water Board for Licenses 6000 and 9407. The proposed additional places of use and instream flow dedication reach are shown on a map filed with the State Water Board for Licenses 6000 and 9407, together with maps included as Exhibit D to the Petitions, which were prepared by NFWF for the lower reaches of the Walker River to and including Walker Lake.

AB/ww

5280.2/FINAL ATTACHMENT 1 TO ENVIRONMENTAL FORM WALKER TEMPORARY TRANSFER-INSTREAM 01.23.2023