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BOARD OF SUPERVISORS COUNTY OF MONO

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Lynda Roberts, Clerk of the Board

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STATE WATER RESOURCES CONTROL BOARD
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DIV OF WATER RIGHTS SACRAMENTO

April 16, 2013

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

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

Dear Ms. Gaffney:

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

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

Consistent with the above, Mono County entered into a Memorandum of Understanding with the National Fish and Wildlife Foundation (NFWF) last year to facilitate environmental review of any future transfer to Walker Lake involving water used for irrigation purposes within Mono County. And the Mono County Resources Conservation District¹ has secured funding to commission a comprehensive review and analysis of water transfers from California to Walker Lake, in order assist future decision makers in understanding the potential impacts.²

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

¹ The Resources Conservation District is a special district and is not a part of Mono County.

² This analysis will not include impacts associated with the transfer of stored water (such as proposed in the Change Petitions) and is limited to the impacts of transferring water used for irrigation in Mono County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

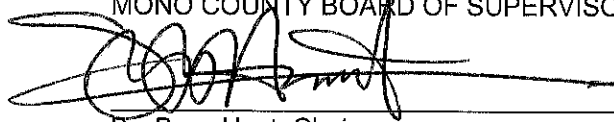
In conclusion, Mono County's primary comment related to the Change Petitions is to urge the State Board to be vigilant in protecting California's fragile natural resources, its recreational assets, and economic backbone by undertaking a thorough environmental review that includes analysis of actual impacts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

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

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

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

Sincerely yours,
MONO COUNTY BOARD OF SUPERVISORS



By: Byng Hunt, Chair

Encl.

Cc: Walker River Irrigation District
c/o Darren Cordova
MBK Engineers
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Sacramento, California 95815

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

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

BODY OF WATER	LOCATION	WHAT YOU'LL CATCH
Topaz Lake	U.S. 395, north of Topaz/Coleville	Either a CA or NV fishing license works here. Catch rainbows and browns from Jan. 1 to Sept. 30.
West Walker River	U.S. 395, South of Walker / Coleville	Designated a "wild and Scenic River," the West Walker River has a reputation for its trophy-sized trout-rainbow, and brown. It's also a favorite river to kayak especially through its winding bends and rocky troughs. Little Walker River runs from Little Walker Campground to the opening of the West Walker River and adds a more challenging day of fishing for fly fishing anglers. Rainbows and Browns are stocked and come up stream from the larger West Walker River.
Little Walker River		
Bridgeport Reservoir	Hwy 182, North of Bridgeport	A thriving population of German browns, rainbows, cutthroat and Sacramento Perch. Anglers come from all over the country each year to try their luck against the wily Browns and Rainbos at this year round fishing destination. The East Walker has special regulations, artificial flies or lures only with barbless hooks. From November 16th to the last Saturday in April the limit is zero, the rest of the year the limit is one fish over 18".
East Walker River		
Twin Lakes	Hwy 420, 14 Miles outside of Bridgeport on Twin Lakes Road	A family vacation favorite with campsites, cabins and lots of fish on two lakes
Virginia Lakes	South of Bridgeport, west of Hwy 395 at the top of Conway Summit	Stocked weekly with rainbows, plus browns and brookies on three picture-perfect alpine lakes.
Lundy Lake	South of Bridgeport, west of U.S. 395 at the base of Conway Summit	Five miles from US 395 up a canyon on a paved road, you'll find a big lake and lots of rainbow, brown and brook trout.
Conway Ranch	Between Lee Vining and Bridgeport, 35 miles north of Mammoth Lakes at U.S. 395 & Hwy 167	The famous Alpers Trout and Lahontan cutthroat trout are raised here and several ponds and streams are open to the public for fishing. Advance reservations are required - (760) 709-6446.
June Lake Loop	A loop from from U.S. 395 at the town of June Lake, north toward Lee Vining	Four lakes: June, Gull, Silver, and Grant are easily reached from the June Lake Loop. The fishing's so good here, the lakes are used to test synthetic baits. Loaded with Alpers, rainbow, brown and brook trout.
	June Lake Loop	

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



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INTERACTIVE MAPS

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

2013 FISHING EVENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

September 2-November 16 - "Ambush at the Lake" Fall Fishing Derby - Convict Lake. Catch a tagged fish at the Convict Lake Fall Fishing Derby Series and win thousands of dollars in cash and prizes! Contact (800) 992-2260 / www.ConvictLakeResort.com

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

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