# IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

FILED
FEB 20 2009

2009 FEB 20 AM 10: 50

IN THE MATTER OF APPLICATION NUMBER.....**77682**.....,

FILED BY....**Circle Bar N Ranch, LLC**.....,

ON...**December 12**.....,2008...., TO TRANSFER

THE WATERS OF ...**underground**.....

} PROTEST

Comes now.....**Mineral County, NV**.....
Printed or typed name of protestant

whose post office address is.....**P.O. Box 1450, Hawthorne, NV 89415-1450**.....
Street No. Or P.O. Box, City, State and Zip Code.

whose occupation is .....**County Government**..... and protests the granting

of Application Number .....**77682**....., filed on .....**December 12**....., 2008.....

by .....**Circle Bar N Ranch, LLC**.....to transfer the

waters of ...**underground**.....situated in .....**Lyon**.....
Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

.....**Please see attachment**.....

THEREFORE the Protestant requests that the application be .....**Denied**.....
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Jerrie Tipton
Agent or protestant

Jerrie Tipton, Mineral Co. Commissioner Chairman
Printed or typed name, if agent

Address P.O. Box 1450
Street No. or P.O. Box No.

Hawthorne, NV 89415
City, State and Zip Code No.

Subscribed and sworn to before me this 19 day of February, 2009

Mary Stroud
Notary Public

MARY L. STROUD
Notary Public - State of Nevada
Appointment Recorded in Mineral County
No: 05-100976-13 - Expires October 19, 2009

State of Nevada

County of Mineral

**✚ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.**

**ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

**ATTACHMENT TO PROTEST OF APPLICATION NO. 77682**
**FILED DECEMBER 12, 2008**
**BY CIRCLE BAR N RANCH, LLC**

Circle Bar N Ranch, LLC seeks to transfer 3.3 cfs of groundwater associated with Permit No. 72135 to a new point of diversion. Mineral County is a political subdivision of the State of Nevada. Mineral County's economy, tax base, and residents depend on the health of downstream Walker Lake. Mineral County stands to be significantly and adversely affected by Circle Bar N Ranch, LLC's proposed transfer. Therefore, Mineral County protests Application No. 77682 on the following grounds:

1. The State Engineer should deny Application 77682 pursuant to NRS § 533.370(5) because there is no unappropriated water at the proposed point of diversion. The Walker River Basin, which is composed of hydrographic basin nos. 106, 107, 108, 109, 110A, 110B, and 110C, is currently overappropriated as indicated by falling water levels in Walker Lake as described in detail below.
2. The SE should deny Application No. 77682 pursuant to NRS § 533.370(5) on the ground that the transfer would conflict with or impair existing water rights in Mason Valley and hydrologically connected downstream basins, including water rights within Mineral County. The source of Application 77682's proposed point of diversion is hydrologically connected to groundwater that has already been appropriated by senior water rights holders in Mason Valley and hydrologically connected downstream basins. Because Mason Valley and at least one hydrologically connected downstream basin already are overappropriated, the transfer to a new point of diversion will likely impact these senior water rights.
3. The State Engineer should deny Application 77682 pursuant to NRS § 533.370(5) because the proposed transfer is contrary to the public interest as described in detail below.
4. Walker Lake is a rare terminal desert lake located in Mineral County, Nevada. The primary source of water for Walker Lake is inflow of surface water and underground water from Walker River and the hydrologically connected groundwater system in the Walker River Basin, with additional inflow from other local groundwater sources, local surface water runoff, and precipitation on the lake surface. Walker Lake supports a fragile balance of algae, zooplankton, small crustaceans, insects, and two endemic fish species: the Tui chub and Lahontan cutthroat trout. The Lahontan cutthroat trout is listed as threatened under the federal Endangered Species Act. The Tui chub is identified as a "subspecies of concern" by the American Fisheries Society because of a lack of spawning habitat and high total dissolved solids ("TDS") in Walker Lake. Walker Lake provides rare and valuable habitat for a variety of migratory birds, including American white pelicans, common loons, snowy plovers, long-billed curlews, double crested cormorants, white-faced ibis, gulls, herons, terns, grebes, avocets, and many others. The region around the lake has been named a "Globally Important Bird Area" by the National Audubon Society, acting as the United States partner of Birdlife International.

5. Overappropriation of water from the Walker River Basin has caused water levels in Walker Lake to decline drastically. As water levels decrease, salinity and total dissolved solids in the Lake increase. The Nevada Division of Wildlife has estimated that without far greater inflows of fresh water the Walker Lake ecosystem will cease to function in the near future. If the fish that reside in Walker Lake die out, the birds that feed on them will be forced to relocate or perish. Studies by National Geographic at Walker Lake indicate that relocation of the migratory paths is devastating to bird populations.

6. Since the late 1800s, the state has authorized the appropriation of water from the Walker River system above Walker Lake for use in irrigated agriculture. Currently, approximately 143% of the water in the Walker River system is appropriated to out-of-stream uses. Since the 1960s, groundwater pumping in the Walker River Basin has dramatically increased, thereby increasing the draw on an already over-allocated system. Since 1960, groundwater pumping in the Smith and Mason Valleys has diminished flows in the Walker River by at least 10%. Due to the increased development of groundwater, the State Engineer has classified four valleys within the Walker River Basin as "designated" under state law.

7. As a result of over-appropriation, in the past century, the surface elevation of Walker Lake has declined by over 100 feet, its depth has decreased from 224 feet to 90 feet, and its total volume has shrunk to approximately 2 million acre-feet from over 9 million acre-feet in 1882. Between 1986 and 1993, groundwater elevations dropped as much as 80 feet in Smith Valley and 40 feet in Mason Valley. River flows further decreased as a result of the groundwater pumping, as 161,000 acre feet of water were removed from the Walker River to replenish groundwater drawdown areas in Smith and Mason Valleys. During many years over the past two decades virtually no water has flowed from the Walker River Basin into Walker Lake.

8. The decline in Walker Lake's volume has produced pronounced effects on the Lake's water quality. Over the past 100 years, the concentration of total dissolved solids in Walker Lake has increased sevenfold, from approximately 2,500 mg/liter to about 16,000 mg/liter in September of 2008. This increase in total dissolved solids has caused the extinction of Walker Lake's Sacramento Perch population and seriously threatens the Lake's Lahontan cutthroat trout and Tui chub populations. Lahontan cutthroat trout can no longer reproduce in the lake, and hatchery-raised fish now make up the lake's entire Lahontan cutthroat trout fishery. As the TDS level in Walker Lake has approached and surpassed 16,000 mg/liter even hatchery-raised Lahontan cutthroat trout have suffered very high mortality rates and may not be able to survive. A fisheries biologist with the Nevada Division of Wildlife predicted that without substantial increased inflows of fresh water, Walker Lake's Lahontan cutthroat trout fishery would be lost in the imminent future.

9. The decimation of Walker Lake's water quality and ecological health due to the over-appropriation of surface and groundwater in the Walker River Basin have, in turn, devastated the economic base and quality of life for Mineral County and its residents, which have always been predicated on the vitality of Walker Lake.

10. Thus, the granting of Circle Bar N Ranch, LLC's transfer application would clearly be contrary to the public interest as the entire ecosystem and economy downstream of the proposed diversion is in a state of serious decline due to such transfers and appropriations. As a result, communities that depend on the lake and the citizens of Nevada who recreate at Walker Lake would be adversely affected by the proposed transfer.

11. The State Engineer and State of Nevada have a clear public trust duty to ensure adequate levels of water in Walker Lake to protect its economic and ecological viability. The state cannot abdicate the public's interest in Walker Lake, to the use and control of private parties, and cannot authorize or allow the substantial impairment of the public uses and values in Walker Lake, such as navigation, fishing, recreation, and wildlife habitat. In an effort to enforce that duty, Mineral County has filed a Motion to Intervene in the Walker River Decree case, currently pending in the Federal District Court of Nevada, 3:73-cv-00128-ECR-RAM, seeking a reallocation of water, pursuant to the public trust doctrine, for the benefit of Walker Lake. That motion is currently pending before the court, and until such time as Mineral County's pending public trust claim has been ruled on by the Federal District Court, it would be premature for the State Engineer to approve Circle Bar N Ranch, LLC's proposed transfer and risk further violating the State's public trust obligations to protect Walker Lake.

For the above reasons, Mineral County protests Circle Bar N Ranch, LLC Application 77682.