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

IN THE MATTER OF APPLICATION NUMBER 80700
FILED BY National Fish and Wildlife Foundation
ON March 24, 20 11

PROTEST

FILED
JUL 15 2011 ML
STATE ENGINEER'S OFFICE

Comes now the Walker River Paiute Tribe
Printed or typed name of protestant

whose post office address is P.O. Box 220, Schurz, Nevada 89427
Street No. or PO Box, City, State and ZIP Code

whose occupation is a Federally recognized Indian tribe and protests the granting

of Application Number 80700, filed on March 24, 20 11

by the National Fish and Wildlife Foundation for the

waters of Walker River situated in Lyon and Mineral
an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:
See attached Exhibit "A"

THEREFORE the Protestant requests that the application be Denied unless issues in Exhibit "A" are properly addressed
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 Melanie I. McFalls
Agent or protestant

Melanie I. McFalls, Tribal Chairperson
Printed or typed name, if agent

Address P.O. Box 220
Street No. or PO Box

Schurz, Nevada 89427
City, State and ZIP Code

(775)773-2306
Phone Number

mmcfalls@wrpt.us
E-mail

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Subscribed and sworn to before me this 14th day of July, 20 11

Laurie B. McMasters
Notary Public

Laurie B. McMasters
Notary Public
State of Nevada
Date Appointment Exp: 6-2-2013
Certificate No: 93-3785-13

State of NEVADA
County of MINERAL

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Exhibit A

PROTEST OF THE WALKER RIVER PAIUTE TRIBE TO APPLICATION 80700

The Walker River Paiute Tribe ("Tribe") hereby submits its protest to Application Number 80700 filed on or about March 24, 2011, by the National Fish and Wildlife Foundation ("NFWF"). The Tribe recognizes that this application will begin a process by NFWF to transfer significant amounts of water from the upper Walker River to Walker Lake. The Tribe supports these efforts to the extent that the Tribe's existing water rights and uses are not detrimentally affected. The Tribe also seeks to ensure that the water purchased by NFWF is properly accounted for and transferred through the river system in a manner that achieves NFWF's Walker Lake restoration goals.

The Tribe is currently working with NFWF on a conveyance agreement to develop and implement a process for ensuring that water purchased by NFWF that flows to the Tribe's Reservation appropriately benefits Walker Lake and its fishery resources and the fishery resources of the Walker River. To complete this agreement, the Tribe and NFWF have initiated technical studies of options to properly account for all water flowing through the Reservation. The Tribe expects that this conveyance agreement will address in detail and resolve many, if not all, of the issues raised in this protest. However the studies and the agreement are not yet completed, so the Tribe must submit this protest at this time to protect its interests.

The Tribe therefore requests that Application No. 80700 not be approved until and unless the following issues are adequately and properly addressed:

1. The United States holds in trust for the Tribe water rights to use 26.25 cfs of water from the Walker River during a 180-day irrigation season with an 1859 priority date. The Application cannot be approved if it will detrimentally harm the Tribe's water rights or its ability to fully utilize its water rights.
2. NFWF's application does not state how or where the water from the water rights transferred will be measured, or how losses will be accounted for from the Yerington Weir Diversion Structure to Walker Lake. As the water rights NFWF seeks to transfer are junior to the Tribe's decreed water rights, any transfer cannot detrimentally affect the Tribe's rights.
3. Granting of the permit will detrimentally harm the Tribe's ability to store water in Weber Reservoir. Weber Reservoir has been used to store water on a continuous basis since Weber Dam was constructed by the United States for the benefit of the Tribe and allottees who irrigate certain lands on the Walker River Paiute Reservation. The allottee lands cannot be properly irrigated without the conveyance provided by the Weber Reservoir water and the lack of such reservoir water would cause immediate harm to Walker River Paiute Reservation allottees and to the Tribe. The Tribe and the United States have filed counterclaims in the Walker River litigation pending in the United States District Court for the District of Nevada to address these water rights, as well as other claims. The Tribe has initiated various discussions with other

interested parties in attempts to settle these claims including with representatives of the states of Nevada and California. The Tribe's rights and use of water for storage in Weber Reservoir must be acknowledged and adequately accounted for in any terms or conditions of a permit that may be granted to prevent any harm to the Tribe's rights, to the Tribe, and to allottees.

4. Granting of the permit will detrimentally affect water flows on the Reservation during the periods before and after the Tribe's 180-day irrigation season, but within the Decreed period of use for the NFWF water rights. These periods of flow have historically supported the river corridor environment through the Reservation, and constitute waters that have been historically stored in Weber Reservoir to provide a functional irrigation system on the Reservation.
5. Granting of the permit will be detrimental to the public interest and will not be environmentally sound if, as a direct or as an indirect consequence, additional groundwater consumptive use occurs in the areas where the water rights proposed to be transferred originally were used, and/or irrigation return flow recharge to the groundwater system will be reduced. This may be mitigated only with an equal and offsetting reduction in groundwater consumptive use without which there will be a long-term adverse impact on base flows in the Walker River downstream of the location of the water rights being transferred.
6. Granting of the permit will be detrimental to the public interest and will not be environmentally sound if the water that naturally flowed past the Yerington Weir, or otherwise flowed onto the Reservation that was in addition to all of the Tribe's water rights and that normally flowed to Walker Lake is in any way designated as NFWF's water.
7. No permit should be granted and no administrative hearing should be held prior to (1) the availability of technical studies by the USGS on the lower Walker River, and/or (2) the presentation by NFWF of technical data that supports proper measurement and accounting for the water allowed to flow downstream from the original points of diversion for NFWF's water. Granting the permit without this information will be detrimental to the understanding of the potential environmental impacts and the effectiveness of the proposed water right transfer to increase flows to Walker Lake. This result could prove detrimental to the public interest, and will detrimentally affect the Tribe's water rights and uses.
8. Granting the permit and holding an administrative hearing prior to submittal by NFWF of a detailed measurement and accounting plan, as well as a conveyance plan to deliver additional water to Walker Lake, could prove detrimental to the public interest and detrimentally affect the Tribe's water rights and uses. These plans must, among other things, properly account for all transit losses and losses in historical augmentation of flows from agricultural operations. The failure to complete these plans prior to considering the application will be detrimental to the understanding of potential environmental impacts and effectiveness of the proposed water right transfer to increase flows to Walker Lake.
9. The application states that the Place of Use will be within the Reservation. Approving this proposed Place of Use shall not to be construed as permitting entry onto the Reservation by any party, including NFWF, the State of Nevada, or the Federal Water Master, unless specifically authorized by the Tribe.
10. The Tribe's water rights can be protected through a Conveyance Agreement between the Tribe, the United States and NFWF that properly addresses river flows and measurement on and

upstream of the Reservation. This Conveyance Agreement must be recognized by the State Engineer and Federal Court as the means to ensure that water proposed to be transferred by NFWF under its water rights will be properly used and accounted for as it passes through the Reservation without having a detrimental effect on the Tribe's water rights and uses.

11. The Manner of Use for the portion of the designated Place of Use on the Reservation should be clarified to include wildlife purposes in the Walker River including fishery restoration within the Walker River Paiute Reservation portion of the Walker River.
12. NFWF must develop an accurate and detailed accounting system that will be implemented to quantify the amount of water attributable to NFWF water rights that will reach the Reservation boundary. This system must clearly differentiate NFWF's water from the Tribe's water rights, including the irrigation water stored in Weber Reservoir, as well as water that historically naturally flowed through the Reservation to Walker Lake. The failure of NFWF to develop this type of system will detrimentally harm the Tribe's water rights.
13. NFWF must develop an appropriate Water Management Plan that specifically addresses flows during periods of use prior to and after the 180-day Tribal irrigation season. This Plan must be acknowledged and implemented by the Federal Water Master to ensure that the delivery of NFWF water to the Reservation boundary during these periods before and after the Tribe's irrigation season will not detrimentally affect the quantity, occurrence, or timing of flows that would have otherwise occurred.
14. A Groundwater Management Plan must be implemented by the State of Nevada upstream of the Reservation, including regulation of groundwater permits by priorities. This Plan must ensure that off-irrigation season natural flows and long-term base flows in the Walker River downstream of the points of diversion are not detrimentally harmed due to the potential for increase in usage of groundwater, or loss of irrigation recharge, as a result of transferring the surface water rights to Walker Lake.
15. Because additional information on the effects of the proposed transfer is likely to become available during the processing of Application 80700, the Tribe reserves the right to present evidence with regard to the transfer at any hearings or in other forums in addition to the issues raised in this protest. The Tribe also incorporates by reference as if fully set forth herein every protest ground set forth in the protest filed against Application 80700 by the United States.

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