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

IN THE MATTER OF APPLICATION NUMBER 81704

FILED BY National Fish and Wildlife foundation

ON March 26, 20 12

PROTEST

FILED
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Comes now Walker River Irrigation District
Printed or typed name of protestant

whose post office address is P.O. Box 820, Yerington, Nevada 89447
Street No. or PO Box, City, State and ZIP Code

whose occupation is Irrigation District organized under Nev. Rev. Stat. Chapter 539 and protests the granting

of Application Number 81704, filed on March 26, 20 12

by National Fish and Wildlife Foundation for the

waters of Walker River and its tributaries situated in Lyon
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:
As set forth in Exhibit A attached hereto and by this reference incorporated herein.

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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
Agent or protestant

Kenneth C. Spooner, Manager
Printed or typed name, if agent

Address P.O. Box 820
Street No. or PO Box

Yerington, Nevada 89447
City, State and ZIP Code

775-463-3523
Phone Number

kcspooner@wrid.us
E-mail

Subscribed and sworn to before me this 29th day of May, 20 12

Notary Public

PATRICIA IRVINE
Notary Public, State of Nevada
Appointment No. 05-99952-12
My Appt. Expires Jun 24, 2013

State of Nevada

County of Lyon

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

ADDITIONAL SIGNATURE PAGE TO
PROTEST TO APPLICATION 81704
BY WALKER RIVER IRRIGATION DISTRICT

THEREFORE the Protestant requests that the application be DENIED

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

Signed Robert E Bryan
ROBERT BRYAN, Chairman, Board of Directors,
Walker River Irrigation District

Address P.O. Box 820
Yerington, Nevada 89447
775-463-3523

water@wrid.us
E-mail

Subscribed and sworn to before me this 29th day of May, 2012.

PATRICIA IRVINE
Notary Public, State of Nevada
Appointment No. 05-99952-12
My Appt. Expires Jun 24, 2013

Notary Public

State of Nevada
County of Lyon

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EXHIBIT A TO PROTEST OF WALKER RIVER IRRIGATION DISTRICT TO APPLICATION NO. 81704

I. Background.

A. Application No. 81704 and Application No. 80700

Application No. 81704 was filed on March 26, 2012. With the exception that Application No. 81704 seeks a three year "temporary" change pursuant to N.R.S. 533.0243, it is virtually identical to Application No. 80700 filed on March 24, 2011, as amended on May 10, 2011. Both Applications (the "Applications") seek to change the place of use and manner of use of a portion of certain water rights adjudicated by the United States District Court for the District of Nevada in the certain action entitled "The United States of America, Plaintiff v. Walker River Irrigation District, et al., Defendants, In Equity Docket No. C-125" (the "Walker River Action") pursuant to a final decree entered April 14, 1936, as amended April 24, 1940 (the "Walker River Decree"). The Applications provide that the water will be administered for non-diversion at the Weir Diversion Structure which serves the West Hyland Ditch and other ditches. The water rights proposed to be changed are presently diverted at the Weir Diversion Structure into the West Hyland Ditch.

The Applications seek to change the manner of use of the water rights from their decreed use for irrigation to use for wildlife purposes. The Applications seek to change the place of use of the water rights from 646.126 acres of irrigated land located within the boundaries of the Walker River Irrigation District (the "District") to the Walker River from the Weir Diversion Structure into and including Walker Lake.

The Applications involve water rights with 13 different priority dates ranging from as early as 1874 to as late as 1906. The largest water right is appurtenant to 145.83 acres and has a priority date of 1880, and the smallest water right is appurtenant to 4.0 acres and has a priority

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date of 1904. The Applications seek to change the full flow rate allowed for each water right at the point of diversion from the Walker River by the Walker River Decree.

The Applications provide that the period of use will be "as decreed." The Applications propose that water approved for change be conveyed from the Wabuska Gage to Walker Lake pursuant to an agreement to be negotiated with the Walker River Paiute Tribe and the Bureau of Indian Affairs.

Finally, the Applications state that Applicant will withdraw or temporarily forbear use of 646.16 acres of associated supplemental groundwater rights in the existing places of use as a condition of exercise following approval by the State Engineer and the Court. The specific associated supplemental groundwater rights are not identified in the Applications. However, they appear to include all or portions of Nevada Permit Nos. 58752, 58753, 58755 through 58759, 65262 through 65265, 68003, 68399, 68401 and 71533, and any other permits for supplemental groundwater rights associated with the lands to which the surface water rights being changed are appurtenant.

B. The District and Its Water Rights

The District was formed on April 14, 1919, pursuant to Nevada's Irrigation District Act, which was enacted in that year. There are approximately 246,000 acres of land within the District boundaries. All of these lands are in Lyon County, Nevada. Of the approximately 80,041 water right acres in the District along the East Walker River and in Smith and Mason Valleys in Nevada, the Walker River Decree provides for direct diversion rights from the natural flow of the West, East and Main Walker River for approximately 45,420 acres. Those direct

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diversion rights were appropriated by and are owned by individual farmers. They were established under Nevada law.

The Walker River Decree recognizes the right of the District to store water from the East Walker River in Bridgeport Reservoir in California for distribution to and use upon land within the District. The Decree provides that the District:

> "is hereby adjudged to be the owner of the flow and use of the flood water of East Walker River and its tributaries for storage in the Bridgeport Reservoir situated on the East Walker River, to the amount of forty-two thousand acre feet, such water to be diverted from said river and stored in said reservoir from the first of November to the first of March of each season irrespective of the rights and priorities hereby adjudged and also the right to divert and store at any time an excess of forty-two thousand acre feet up to fifty-seven thousand acre feet when there is in the river a quantity of water in excess of the total amount adjudicated to the parties hereto to the extent of such excess, but water shall not be stored in said reservoir so as to deprive the parties hereto including the plaintiff and the assigns of stock water or water for domestic purposes."

The Walker River Decree provides that the District is also adjudged to be the owner and entitled to the uses of the flood and unappropriated waters of the East Walker River and its tributaries under an application for permit to the State Water Commission of California as follows:

> "Fifteen thousand acre feet per annum of the flood and unappropriated waters of East Walker River for storage in Bridgeport Reservoir, or so much thereof as can be beneficially used, being the excess over the present capacity of said reservoir and the amount allowed under permit No. 2536 of said Commission approved June 18, 1926."

Permit No. 2536 is now California Water Right License No. 9407 which allows the storage of 39,700 acre feet of water in Bridgeport Reservoir from September 1 of each year to about July 20 of the succeeding year with a priority date of August 18, 1919.

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In addition, the Walker River Decree recognizes the right of the District to divert water from the West Walker River in California into Topaz Lake Reservoir, located partly in California

and partly in Nevada, for distribution and use upon lands within the District. The Decree provides that the District:

> "is hereby adjudged to be the owner of the flow and use of flood water of West Walker River and its tributaries for storage in Topaz Lake Reservoir situated near West Walker River, to the amount of fifty thousand acre feet, such water to be diverted and stored in said reservoir from the first of November to the first of March of each season irrespective of the rights and priorities hereby adjudged and also the right to divert and store at any time an excess of fifty thousand acre feet up to eighty-five thousand acre feet when there is in the river a quantity of water in excess of the total amount adjudicated to the parties hereto to the extent of such excess, but water shall not be stored in said reservoir so as to deprive the parties hereto including the plaintiff and its assigns of stock water or water for domestic purposes."

The Walker River Decree provides that the District is also adjudged to be:

> "the owner and entitled to the use of the flood and unappropriated waters of West Walker River and its tributaries under applications for permits for the use of water made to the State Water Commission of the State of California, as follows:
>
> Thirty-five thousand acre feet per annum of the flood and unappropriated water of West Walker River and its tributaries for storage in Topaz Lake Reservoir, or so much thereof as can be beneficially used, being the excess over the present capacity of said reservoir and the amount allowed under permit No. 2537 of said Commission approved June 18, 1926.
>
> Two hundred acre feet per annum of the waters of the unnamed stream flowing into Topaz Lake Reservoir, formerly Alkali Lake, for storage in said reservoir, or so much thereof as can be beneficially used, under permit No. 2538 of said Commission approved June 18, 1926."

Permit No. 2537 is now California Water Right License No. 6000 which allows for the storage of 57,580 acre feet of water in Topaz Lake Reservoir from about October 1 of each year to about July 15 of the succeeding year with a priority date of February 21, 1921. Permit No. 2538 is now California Water Rights License No. 3987 which allows for the storage from an unnamed stream of 200 acre feet of water in Topaz Lake Reservoir from January 1 to December 31 of each year with a priority date of October 28, 1921. The District is also the owner of Nevada Certificate of

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Appropriation No. 4972 which allows for the storage from an unnamed stream of 1,500 acre feet of water in Topaz Lake Reservoir from April 1 to October 31 of each year with a priority date of November 3, 1921.

The District also holds rights to additional water from the West Walker River, East Walker River and Main Walker River pursuant to permits and certificates issued by the Nevada State Engineer. In addition, the District holds rights to underground water pursuant to a permit and certificate issued by the Nevada State Engineer.

Because of their relatively small storage capacity, Bridgeport and Topaz Lake Reservoirs are not large enough to store all of the water of the Walker River. Thus, lands within the boundaries of the District do not have a single priority common water right as do lands within other irrigation districts. Lands within the boundaries of the District retained their appurtenant water rights for the direct diversion of water from the natural flow of the Walker River as recognized by the Walker River Decree. In addition, because of those facts, all but two of the ditches within the District are owned, operated and maintained by private ditch companies or tenant-in-common ditches through private assessments.

C. Economic and Environmental Benefits Within the District.

The lands within the District are the principal agricultural area in Lyon County, and are the most productive agricultural area in Nevada. While containing only 2.1 percent of its total land in farms, "Lyon County's...irrigated farmland [of which approximately 80,000 acres are within the District] accounts for approximately 12 percent of all irrigated farmland in the State. More importantly, Lyon County's 12 percent share of irrigated farmland produces a disproportionate 18.3 percent of the state's farm marketings, attesting to the high agricultural

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productivity of this region and its inherent suitability for agricultural pursuits." Horton, Gary A., Nevada Division of Water Resources, *Walker River Chronology*, http://water.nv.gov/mapping/chronologies/walker/part1.cfm.

Lyon County has enjoyed extensive and pervasive benefits from this agricultural industry since the mid-1800s. *Id.* Farm marketings from the sale of Lyon County's agriculture provide revenues of approximately $40-60 million per year, "making it the most important agricultural-producing county in the State of Nevada." *Id.* "Furthermore, due to the typical export nature of many of these sales...a significant portion of the revenues from Lyon County's farm marketings provide a healthy infusion of new capital and local spending for the County's economy." *Id.* Also, studies undertaken by the Nevada Division of Water Planning have shown that such agricultural economies are relatively insulated from external economic influences, "thereby attesting to the profound and pervasive stabilizing influences afforded by a county's farming sector." *Id.*

The economic benefits of agriculture to Lyon County are apparent even if only the major sectors of crop and animal sales since 1997 are considered (leaving aside dairy sales, etc.). The total market value of farm products sales in Lyon County in 2007 (the 2007 Census of Agriculture is the most recent United States Department of Agriculture national census from which data is available because the National Census of Agriculture is conducted every five years, and 2012 is the next census year) exceeded $62,000,000 in total crop sales and $28,950,000 in total animal sales. In 2002, in Lyon County, the market value of crop sales was approximately $36,000,000 and of animal sales was about $37,000,000. In 1997, crop sales in Lyon County were about $29,000,000 and animal sales were approximately $24,000,000.

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EXHIBIT A TO PROTEST OF WALKER RIVER IRRIGATION DISTRICT TO APPLICATION NO. 81704

A significant percentage of all of the white onions produced in the United States are grown on lands within the District. Moreover, important new crops, lettuce and broccoli, are now being successfully grown within the District.

Although recently agriculture in this and other areas of Nevada has come under criticism for its seemingly disproportionate use of water, what is less well known and recognized is that in addition to the economic contributions detailed above, waters diverted for agriculture within the District, in Smith and Mason Valleys "have, in fact, made important contributions towards habitat creation and preservation in those areas." *Walker River Chronology*, http://water.nv.gov/mapping/chronologies/walker/part1.cfm. The irrigated lands within the District provide extensive habitat and food for eagles, geese, ducks, quail, wild turkeys, deer, and many other birds and animals. The District's reservoirs are prime recreation areas in Mono County, California and Douglas County, Nevada. Bridgeport Reservoir produces the food chain which makes the East Walker River in California and Nevada a world class German brown trout fishery. The District is home to the Nevada Department of Wildlife's ("NDOW") Mason Valley Fish Hatchery and Wildlife Area. NDOW is the single largest water right holder in the District. The Mason Valley Fish Hatchery produces cutthroat, rainbow, cuttbow and brown trout for planting in streams, rivers and lakes throughout Nevada.

D. Administration of Surface Water Rights on the Walker River System.

Because the Walker River is an interstate stream, the right to use water from it necessarily involves Nevada and California law. In addition, because it flows into the Walker River Indian Reservation, the use of water from it also involves federal law.

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EXHIBIT A TO PROTEST OF WALKER RIVER IRRIGATION DISTRICT
TO
APPLICATION NO. 81704

The Court in the Walker River Action retained jurisdiction for regulatory purposes and for the purposes of appointing a water master to apportion and distribute "the waters of the Walker River, its forks and tributaries in the State of Nevada and in the State of California, including water for storage and stored water, in accordance with the provisions of [the] decree." On May 12, 1937, the Court in the Walker River Action, entered an order appointing five persons to perform that function. Two of the persons were from Yerington, one was from Smith, one was from Antelope Valley, and one was from Bridgeport. On June 27, 1940, the Court entered an order adding a representative of the Walker River Indian Reservation to the "Board of Water Commissioners." The orders establishing the Board of Water Commissioners gave that Board the authority to appoint an assistant, Chief Deputy Water Commissioner, who has the day-to-day responsibility of apportioning and distributing the waters of the Walker River, its forks and tributaries in the State of Nevada and in the State of California, including water for storage and stored water, in accordance with the provisions of the Walker River Decree.

The Board of Water Commissioners, with approval of the Court, may make such rules as may be necessary and proper for the enforcement of the Walker River Decree and for carrying out its purposes. In 1953, the Court entered an order approving detailed "Rules and Regulations for Distribution of Water on the Walker River System."

The United States District Court for the District of Nevada, through the United States Board of Water Commissioners, has administered the Walker River in Nevada and California for the last 76 years and continues to do so today.

The Walker River Decree provides that "parties shall be entitled to change the manner, means, place or purpose of use or the point of diversion of [waters of the Walker River] or any

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thereof in the manner provided by law, so far as they may do so without injury to the rights of other parties hereto, as the same are fixed hereby." The Decree also provides that the Court retains jurisdiction for regulatory purposes regarding the point of diversion, manner of use and place of use of waters of the Walker River and its tributaries and that the Court may make such regulations as to notice and form or substance of any application for change, or modification of this Decree, or for change of place or manner of use as it may deem necessary. After numerous hearings and over a period of several years the Court adopted "Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance With California Fish and Code Section 5937 and Other Provisions of California Law" (the "Administrative Rules and Regulations"). Both Applications are subject to the Administrative Rules and Regulations.

II. PROTEST TO APPLICATION NO. 81704 (the "3 Year Application").

In general, the protest grounds are as follows:

1. Because the 3 Year Application essentially duplicates what is requested under Application No. 80704, and because the 3 Year Application must follow all of the requirements of Nevada law and of the Walker River Decree, including the Administrative Rules and Regulations, there is no purpose or benefit to processing both Applications. The Applicant should be required to elect which of the Applications it desires to pursue at this time. In the alternative, both Applications and all Protests thereto should be consolidated for all purposes before the State Engineer.

2. The changes proposed by the 3 Year Application conflict with existing water rights.

3. The changes proposed by the 3 Year Application will adversely affect the cost of water for other holders of water rights within the District.

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4. The changes proposed by the 3 Year Application will lessen the efficiency of the District in the delivery or use of water.

5. Before acting on the 3 Year Application, the State Engineer should exercise his discretion to require hydrological, environmental and other studies pursuant to N.R.S. 533.368.

6. The 3 Year Application does not contain sufficient information necessary for a full understanding of the changes proposed.

7. The State Engineer should consider postponing action on the 3 Year Application until pending court actions become final.

8. The changes proposed by the 3 Year Application threaten to prove detrimental to the public interest.

A. Conflict With Existing Rights

Based upon information presently available, the changes proposed by the 3 Year Application conflict with existing rights in that it seeks to change the full flow rate allowed at the point of diversion from the Walker River by the Walker River Decree. In order to avoid conflict with existing rights and with rights which are claimed, but not yet adjudicated, as described in F below, the amount of water allowed to be changed must be limited to that portion of each water right which is the consumptive use of applied water for its existing decreed irrigation use (the "Consumptive Use Portion"), and the flow rate allowed to be diverted from the river must be allocated between the Consumptive Use Portion and the Non-Consumptive Use Portion. In addition, because the Walker River Decree does not expressly provide for ditch transportation losses from the point of diversion at the river to farm headgates, consideration must be given to allocating the Non-Consumptive Use Portion between ditch transportation losses and return flow. Further, in

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order to avoid conflict with existing rights and with rights which are claimed, but not yet adjudicated, as described in F below, there must be sufficient water at the point of non-diversion to simultaneously satisfy the Consumptive Use Portion and the Non-Consumptive Use Portion of each water right. These allocations of the flow rate allowed to be diverted from the river must be separately made for each of the 13 different priority dates of water rights which are the subject of the 3 Year Application. In addition, in order to avoid conflict with existing rights and with rights which are claimed, but not yet adjudicated, as described in F below, each changed water right must be exercised pursuant to an irrigation schedule.

The changes proposed by the 3 Year Application may conflict with existing rights in ways that are not yet known to the District, but which may arise or become known to the District between the date of filing the Protest and any hearing, and the District reserves the right to present evidence thereon at such hearing even though not expressly stated herein.

B. Adverse Effect on the Cost of Water for Other Holders of Water Rights Within the District.

Pursuant to the provisions of N.R.S. 539.513(6)(b), the District and Applicant have entered into a Water Rights Assessment Agreement pursuant to which Applicant has agreed to pay the District assessments as they relate to the water rights which are the subject of the 3 Year Application. Applicant's obligations under the Water Rights Assessment Agreement are secured by a deed of trust encumbering the water rights.

However, in order to avoid the changes proposed by the 3 Year Application from adversely affecting the cost of water for other holders of water rights in the District, assessments needed to keep ditch companies and tenant-in-common ditches whole and assessments levied by the United States Board of Water Commissioners must continue to be paid. The changes proposed by the 3

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Year Application may adversely affect the cost of water for other holders of water rights in the District in ways that are not yet known to the District, but which may arise or become known to the District between the date of filing this Protest and any hearing, and the District reserves the right to present evidence thereon at any hearing on the 3 Year Application even though not expressly stated herein.

C. Lessen the Efficiency of the District in the Delivery or Use of Water.

Nevada law, N.R.S. 533.075, the Walker River Decree and the Rules and Regulations of the District allow for and encourage holders of water rights under the Decree to rotate the use of water, or to combine or exchange the use thereof, provided it may be done without injury to the rights of other parties. Such rotation, combination or exchange improves the efficiency of the delivery and use of water. The changes proposed by the 3 Year Application will remove water rights from the rotation, combination or exchange process, and potentially lessen the efficiency in the delivery and use of water within the District.

As is discussed below, this 3 Year Application and Application No. 80700 are the first of many to follow pursuant to a program established by a number of public laws, and cannot be considered in isolation. Rather, the cumulative impacts of the program and subsequent change applications must be considered. Approval of this and similar change applications reduces efficiencies for other water users in the District by decreasing the number of users on a ditch, thereby decreasing efficiencies for remaining users. The effect of approval of this change application and the cumulative effect of approval of a cascade of additional similar applications sure to be made if the present change application is approved, may render entire ditches

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untenable by so reducing the number of users upon them that it becomes impracticable to convey water through a ditch to the user or users who continue to irrigate.

The changes proposed by the 3 Year Application may lessen the efficiency of the District in the delivery or use of water in ways not yet known to the District, but which may arise or become known to the District between the date of filing this Protest and the hearing, and the District reserves the right to present evidence thereon at any hearing on the 3 Year Application even though not expressly stated herein.

D. Hydrological, Environmental and Other Studies.

Through a series of public laws, the United States has appropriated funds for restoring and maintaining Walker Lake. Those laws include: (i) Section 2507, Farm and Security Rural Investment Act of 2002, P.L. 107-171 ("Desert Terminal Lake I"), which transferred $200,000,000 from the Secretary of Agriculture to the Bureau of Reclamation to be used "to provide water to at-risk natural desert terminal lakes"; (ii) Section 207 of P.L. 108-7 ("Desert Terminal Lakes II"), which identified the natural desert terminal lakes eligible for benefits from the funding from Desert Terminal Lakes I as Pyramid, Summit and Walker Lakes in Nevada, and authorized the Bureau of Reclamation to provide financial assistance to various governmental and other organizations to carry out the purposes of Desert Terminal Lakes I; (iii) Section 208 of the Energy and Water Development Appropriations Act of 2006, P.L. 109-103 ("Desert Terminal Lakes III"), which authorized the Secretary of the Interior to provide up to $70,000,000 of the desert terminal lakes funding to the University of Nevada (Nevada System of Higher Education (the "NSHE")) to do various things, including acquire "from willing sellers land, water appurtenant to land, and related interests in the Walker River Basin, Nevada" for, among other things, "environmental restoration in

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the Walker River Basin"; (iv) Section 2807 of P.L. 110-246 ("Desert Terminal Lakes IV"), which "replenished" the $200,000,000 by transferring $175,000,000 from the Secretary of Agriculture to the Bureau of Reclamation in 2008 to be used to lease water, or purchase land, water appurtenant to land and related interests in accordance with Section 208(a)(1)(A) of Desert Terminal Lakes III; and (v) Sections 206 through 208 of P.L. 111-851 ("Desert Terminal Lakes V"), which authorized the Bureau of Reclamation to provide $66,200,000 to Applicant for various purposes related to Walker Lake, and authorized Applicant to replace the NSHE in connection with its activities under Desert Terminal Lakes III.

This 3 Year Application and Application No. 80700 is only the first of several applications which will follow. Applicant has already acquired additional water rights both at the Weir Diversion Structure and upstream which it will ultimately seek to change with similar applications. In addition, Applicant will in the future acquire additional water rights within the District for the same purposes and which will require similar changes. Applicant's website, concerning the Walker River Basin Restoration Program, indicates at present it owns water rights under the Walker River Decree which allow for the diversion of 31.072 cubic feet per second from the Walker River (including the rights involved in this Application). The website states that Applicant is exploring new acquisition agreements with "some of the dozens of potential new sellers who have expressed interest in the Program since early 2010." Moreover, in April of 2011, the Bureau of Reclamation committed an additional $88,000,000 of Desert Terminal Lake Funds to Applicant.

In September of 2007, the Bureau of Reclamation ("Reclamation") published notice of intent to prepare an environmental impact statement ("EIS") and notice of public scoping meetings in the Federal Register. The public scoping meetings were held, and a Draft EIS ("DEIS") was

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made available for public comments in July of 2009. In that DEIS, Reclamation stated that it had determined that NEPA compliance was not required because Reclamation had determined that it had no discretion for implementation or control over expenditures of the funds by the recipient. Reclamation relied upon a November, 2008 change in its regulations for that conclusion. Reclamation did not issue a Final EIS ("FEIS"), and did not issue a Record of Decision ("ROD"). Instead, it issued a "Revised DEIS." Reclamation expressly stated that no mitigation measures were developed with respect to adverse impacts.

As a result of the foregoing, parties, like the District, who participated in the EIS process and who will be impacted by the changes to water rights contemplated under the EIS, and who raised substantial issues with both the process for and the content of the DEIS, were arguably left with no ability to challenge either. Thus, the so-called Revised DEIS has not been subjected to any form of review for adequacy. In addition, as noted above, no mitigation measures for the many adverse impacts identified in that document were developed.

Under these unique circumstances, it is appropriate for the State Engineer to exercise his discretion to require hydrological, environmental and other studies pursuant to N.R.S. 533.368 before acting on the 3 Year Application. This 3 Year Application and Application No. 80700 are merely the first of many involved in a specific and focused program to acquire and change water rights within the District for the benefit of Walker Lake. There will be adverse impacts within the District, Lyon County, the City of Yerington and towns within the District.

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E. Information Necessary for a Full Understanding.

As noted above, in the miscellaneous remarks section, the 3 Year Application states that Application will forbear from the use of certain supplemental groundwater rights as a condition of

exercise following the final and unappealable approval by the State Engineer and the Walker River Decree Court. The significance and meaning of that remark in relation to the changes proposed is not explained. In order to fully understand that relationship, the State Engineer should, at a minimum, require Applicant to explain what is meant by "temporary forbearance," how forbearance bears on the merits of the issues raised by the proposed changes, and what is meant by a "condition of exercise." In addition, what is to occur in the event that the 3 Year Application is approved and not stayed, but is subject to appeal, is not clear.

F. Pending Court Actions.

There is currently litigation pending in the United States District Court for the District of Nevada involving claims to water from the Walker River that may impact any analysis concerning the 3 Year Application. The Walker River Paiute Tribe ("Tribe") has claims pending for a right to store water in Weber Reservoir, to use water on lands included in the Reservation in 1936, and for the use of underground water. The United States has claims pending for the use of surface and underground water for numerous federal reservations and facilities throughout the Walker River Basin. Both the United States and the Tribe seek to have the Walker River Court regulate surface and underground water as a single source of supply. Finally, Mineral County, Nevada has moved to intervene in the Walker River Action to assert a claim under the public trust doctrine that seeks "an adjudication and reallocation of the waters of the Walker River to preserve minimum levels in Walker Lake."

There can be no adequate analysis of the changes proposed by the 3 Year Application until this pending litigation has been resolved. The potential reallocations of water and water rights contemplated by the litigation, coupled with the proposal to regulate surface and groundwater as a

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single source of supply, may render meaningless any analysis concerning water right changes made to increase Walker Lake inflows. As a result, the State Engineer should consider exercising his discretion to postpone action on the 3 Year Application until that litigation becomes final, as is allowed by N.R.S. 533.370(3)(b).

If the State Engineer determines not to postpone action until that litigation becomes final, for purposes of satisfying his obligations under Nevada law and the Walker River Decree, the State Engineer must assume the validity of the claims being asserted by the Tribe and the United States in the Walker River Action. The State Engineer must limit and/or restrict the proposed changes in ways to ensure that they will not conflict with existing rights, including, without limitation, rights assumed to exist based upon the claims being asserted.

G. The Changes Proposed Threaten to Prove Detrimental to the Public Interest.

For all of the reasons set forth in paragraphs A through F above, the changes proposed in the 3 Year Application threaten to prove detrimental to the public interest. In addition, the changes proposed will remove the economic and environmental benefits of the use of the water rights as decreed, and therefore the changes proposed by the 3 Year Application threaten to prove detrimental to the public interest. The productivity and economic benefits provided by agriculture within the District as described above are dependent upon the maintenance of the region's high productivity, which in turn is dependent upon use of water for irrigation of lands within the District. Again, the cumulative effect of approval of this 3 Year Application and Application No. 80700 and those which will follow threatens to prove detrimental to the public interest by substantially reducing the productivity of the most productive agricultural region in Nevada, and

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decreasing farm revenues in Lyon County and their attendant economic benefits to the region and the State.

The changes proposed by the 3 Year Application may threaten to prove detrimental to the public interest in ways not yet known to the District, but which may arise or become known to the District between the date of the filing of this Protest and any hearing, and the District reserves the right to present evidence thereon at such hearing even though not expressly stated herein.

H. Responsibility for Delivery of Water to Walker Lake Under Any Approval of the Application.

If the 3 Year Application is approved in whole or in part, the Court, pursuant to the Walker River Decree, with input from the Nevada State Engineer, the District, the Walker River Tribe, the Bureau of Indian Affairs, Applicant and other interested parties, should establish all procedures necessary to ensure that any water right approved for change under the 3 Year Application is administered in accordance with that approval, and so as not to impair existing water rights, including, without limitation, those which must be assumed to exist as a result of any decision to not postpone action on it as a result of pending litigation. Such procedures should address a number of factors, including, but not limited to, allocation of stream channel conveyance losses, including losses within Weber Reservoir, from the original point of diversion to Walker Lake, water accounting and water measurement, and any requirements necessary to regulate surface and underground water as a single source of supply, which also must be assumed as a result of any decision to not postpone action as a result of pending litigation. The Court, through its duly appointed Board of Water Commissioners, must continue to have the authority to regulate the Walker River System, including all headgates and diversion structures on the system to ensure that

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any water right approved for delivery to Walker Lake is in fact delivered in accordance with the approval and with the Walker River Decree.

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