



Mono County General Plan Policies and
Conceptual Water Transaction Program in
the Mono County Portion of the Walker River
Basin

Scoping Summary Report

June 2019

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General Plan Policies and Conceptual Water Transaction Program in the Mono County Portion of the Walker River Basin

Scoping Summary Report

June 2019

Prepared for:
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1 INTRODUCTION

1.1 PROJECT SUMMARY

The Mono County Community Development Department ("the County") is preparing an Environmental Impact Report (EIR) to disclose the environmental impacts associated with General Plan amendments that would regulate water transactions associated with the operation of the Walker Basin Restoration Program (WBRP) in Mono County.

The County has determined that an EIR is required because the water transactions that could be implemented under the proposed amendments may cause significant impacts on the environment. The proposed project consists of the new policies and actions that could amend the General Plan in response to WBRP transactions. If implemented, the amendments would aim to minimize conflicts between the WBRP goals, which would transfer water out of the County, and the County's open space, agriculture, and conservation goals.

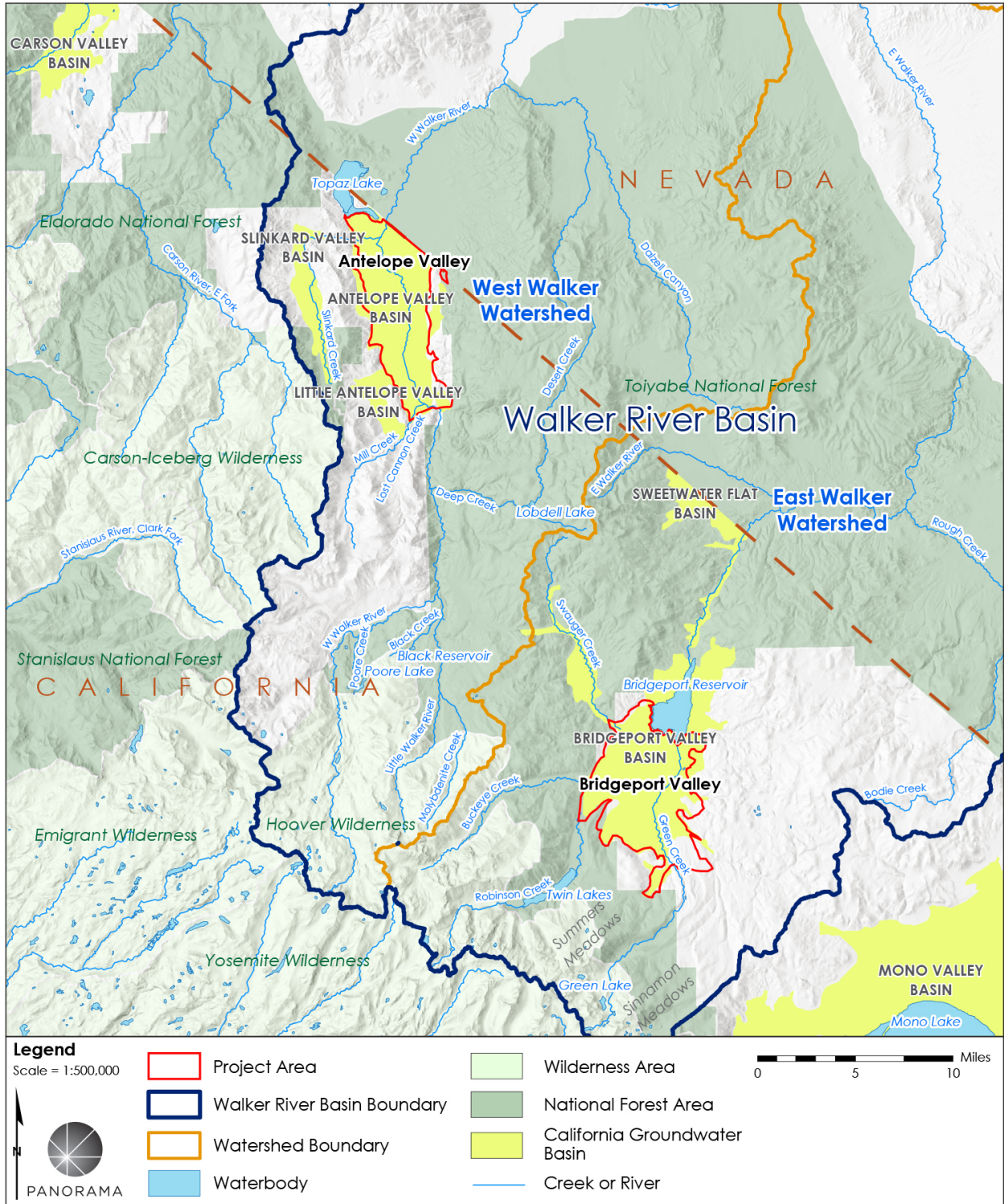
Under Public Law 111-85, the WBRP is charged with restoring and maintaining Walker Lake, a terminal lake in western-central Nevada, as well as protecting agricultural, environmental, and habitat interests consistent with that primary purpose (Figure 1). The WBRP includes priority initiatives for water rights acquisitions from willing sellers, demonstration water leasing, conservation and stewardship, research and evaluation, and implementation support. The program is managed by the Walker Basin Conservancy (WBC), a non-profit organization established in 2014 to further the restoration and conservation of Walker Lake and the wider Walker River Basin. WBRP funds are provided to WBC under a grant agreement with the Bureau of Reclamation (Reclamation) and its Desert Terminal Lakes program.

The following types of water transactions were identified in the Notice of Preparation (NOP) and Initial Study (IS) for Mono County's project:

1. Long-term leasing (2 or more years) of water, and/or permanent transfer of, storage rights or of decree flow rights that include the acquisition of the associated water-righted land;
2. Temporary lease of decree flow rights for no more than 1 year; and
3. Purchase of surplus storage water.

1 INTRODUCTION

Figure 1 Walker River Basin



Sources: (USGS, 2013; USGS, 2016; Tele Atlas North America, Inc., 2018)

1 INTRODUCTION

1.2 SCOPING PROCESS

This scoping report describes the County's process pursuant to the California Environmental Quality Act (CEQA), and contains the comments received on the NOP during the scoping period. The purpose of scoping is to:

- Inform the public and responsible agencies about an upcoming project for which an EIR is being prepared
- Inform the public about the environmental review process
- Solicit input regarding the appropriate scope of issues to be studied in the EIR and potential alternatives to the proposed project
- Identify issues of concern and areas of potential controversy
- Provide the public an opportunity to comment on the proposed project and associated impacts

In particular, the County requested comments on the following aspects of the proposed project:

- **Permits and Approvals:** Permits and approvals that may be required from your agency and CEQA review requirements associated with those approvals
- **Thresholds of Significance and Issues:** Thresholds of significance for assessing impacts on resources and the potentially significant effects to be examined
- **Alternatives:** Alternatives to the proposed General Plan amendment updates that merit evaluation in the forthcoming EIR
- **Related Projects:** Related projects or actions that should be considered in assessing cumulative effects
- **Reference Materials:** Reference materials that should be reviewed to set forth baseline conditions or evaluate potential project impacts or mitigation measures
- **Scope and Content:** The scope and content of planning studies and initiatives to be evaluated in the forthcoming EIR

Comments received during the scoping process are part of the public record as documented in this scoping report. The comments and questions received during the public scoping process have been reviewed and considered by the County in determining the appropriate scope of issues to be addressed in the EIR.

1.3 SCOPING REPORT ORGANIZATION

The scoping report is organized into the following sections:

- **Section 1, Introduction:** An overview of the scoping report
- **Section 2, Project Scoping Process:** The County's CEQA scoping process
- **Section 3, Summary of Public Comments:** Commenters who provided comments during the EIR public review period and a summary of the key issues raised
- **Section 4, Future Steps in the CEQA and Decision Process:** The next steps in the CEQA and County's decision process

1 INTRODUCTION

The appendices to this scoping report contain materials and documents used and received during the Program EIR scoping process. The following appendices are included:

- **Appendix A, Notice of Preparation:** Copy of the April 2019 Notice of Preparation (NOP)
- **Appendix B, Scoping Meeting Materials:** Scoping meeting sign-in sheet, written comment form, and scoping meeting presentation slides
- **Appendix C, Written Comments Received During Scoping:** Written comment letters received during the public review period
- **Appendix D, Meeting Notes:** Meeting notes including a summary of the comments and questions received at each of three scoping meetings

2 PROJECT SCOPING PROCESS

2.1 INTRODUCTION

The CEQA process provides opportunities for agencies, organizations, and individuals to provide input on the environmental review of a project. This section describes the scoping process for the proposed project.

2.2 NOTICE OF PREPARATION

The County issued a NOP on April 23, 2019 to inform agencies and the public of its intent to prepare an EIR (Appendix A). The NOP solicited comments on the scope and content of environmental information to be provided in the EIR.

The 39-day public review period ended on May 31, 2019. Table 1 identifies the CEQA NOP requirements and describes how the County met those requirements.

Table 1 Summary of CEQA NOP Requirements and the County's Noticing

| CEQA Requirement | Noticing Conducted by the County |
|---|--|
| To each responsible ^a and trustee ^b agency advising them of its intention to prepare an EIR (CEQA Guidelines § 15082). | <ol style="list-style-type: none"> 1. Mailed the NOP to: <ol style="list-style-type: none"> a. Federal, State, and local agencies b. Tribal governments |
| Consultation with persons and organizations prior to completing the Draft EIR is optional under CEQA. When such scoping occurs, it should be a part of agency consultation under Section 15082 to the extent that combining agency consultation and public scoping is feasible (CEQA Guidelines § 15083). | <ol style="list-style-type: none"> 1. Posted the NOP on the County's website 2. Mailed the NOP to: <ol style="list-style-type: none"> a. Federal, State, and local agencies b. Private companies, non-profit stakeholders, and community groups who requested project information |
| Notes: | |
| ^a Any public agency, other than the lead agency, which has discretionary approval power over a project (CEQA Guidelines § 15381) | |
| ^b State agency having jurisdiction by law over natural resources affected by a project that are held in trust for the people of California (CEQA Guidelines § 15386) | |

2.3 PUBLIC SCOPING MEETINGS

The County held three public scoping meetings (Table 2). The first meeting was held on May 6, 2019 as a part of the Resource Conservation District of Mono County (RCD) meeting. The meeting was held from 2:00 to 4:00 pm in the Mono County Courthouse in Bridgeport, CA. The

2 PROJECT SCOPING PROCESS

second meeting was held on May 7, 2019 as a part of the Mono County Board of Supervisors (BOS) meeting, from 1:00 to 2:00 pm in the Mono County Courthouse in Bridgeport, CA. The third meeting was held on May 7, 2019 with the Antelope Valley Regional Planning Advisory Committee from 6:00 to 8:00 pm in the Antelope Valley Community Center. The purpose of the three meetings was to:

1. Inform the public and interested agencies about the proposed project; and
2. Solicit public comment on the scope of the environmental issues to be addressed in the EIR. The County accepted verbal and written comments at the scoping meetings.

The scoping meeting presentation is included in Appendix B.

Table 2 Public Scoping Meetings

| Meeting No. | Date and Time | Location | Sign-Ins | Written Comments |
|-------------|-----------------------------|--|----------|------------------|
| 1 | May 6, 2019 2:00-4:00 pm | Mono County Courthouse 278 Main Street Bridgeport, CA 93517 | 10 | 0 |
| 2 | May 7, 2019 1:00-2:00 pm | Mono County Courthouse 278 Main Street Bridgeport, CA 93517 | 4 | 0 |
| 3 | May 7, 2019 6:00-8:00 pm | Antelope Valley Community Center 442 Mule Deer Road Walker, CA 96107 | 10 | 0 |

2.4 TRIBAL GOVERNMENT, AGENCY, ORGANIZATION, AND WATER RIGHTS HOLDERS NOTIFICATIONS

2.4.1 Tribal Notification

The County sent the NOP to 15 tribal government contacts from ten tribes provided by the California Native American Heritage Commission. Two tribes, including the Washoe Tribe of Nevada and California and the Mono Lake Kutzadika Tribe, have requested formal notice of and information on projects within the project area per Assembly Bill 52 (AB 52). All tribes notified, with the exception of the Mono Lake Kutzadika Tribe, require notification through State Bill 18 (SB 18). The tribes that were notified of the proposed project are listed in Table 3

Table 3 Tribes Notified During Project Scoping

| Tribe | SB 18 Notification | AB 52 Consultation |
|---------------------------|--------------------|--------------------|
| Benton Paiute Reservation | Yes | No |

2 PROJECT SCOPING PROCESS

| Tribe | SB 18 Notification | AB 52 Consultation |
|---------------------------------------|--------------------|--------------------|
| Washoe Tribe of Nevada and California | Yes | Yes |
| Big Pine Paiute Tribe of Owens Valley | Yes | No |
| Bishop Paiute Tribe | Yes | No |
| Walker River Paiute Tribe | Yes | No |
| Bridgeport Indian Colony | Yes | No |
| Kern Valley Indian Council | Yes | No |
| Mono Lake Indian Community | Yes | No |
| Bishop Paiute Tribe | Yes | No |
| Mono Lake Kutzadika Tribe | No | Yes |

2.4.2 Agency, Organization, and Water Rights Holders Notification

The County sent project notification letters to federal, state, and local agencies, in addition to local nonprofit organizations and community groups who might be impacted by the proposed project or that have expressed interest in the proposed project environmental review. The County also sent project notification letters to 48 water rights holders within the region. Agencies and organizations that were notified during the scoping process are listed in Table 4.

Table 4 Agencies and Organizations Notified During Project Scoping

| Agencies and Organizations | |
|--|---|
| Federal Agencies | |
| <ul style="list-style-type: none"> • Bureau of Land Management • United States Fish and Wildlife Service | <ul style="list-style-type: none"> • United States Forest Service |
| State Agencies | |
| <ul style="list-style-type: none"> • California Department of Fish and Wildlife | <ul style="list-style-type: none"> • Water Resources Quality Control Board |
| Local Agencies and Organizations | |
| <ul style="list-style-type: none"> • Antelope Valley Mutual Water Company • California Rangeland Trust • Centennial Bridgeport Ranchers Organization • Eastern Sierra Land Trust • Fulstone Bridgeport Ranchers Organization • Hal Curti Ranch | <ul style="list-style-type: none"> • Hunewill Ranch Bridgeport Ranchers Organization • Lacey Ranch Bridgeport Ranchers Organization • Resource Conservation District • Walker Basin Conservancy • Walker River Irrigation District |

2.5 INTERNET WEBSITE

The County publicized information about the three scoping meetings and the proposed project through a project website. The website serves as an additional public venue to learn about the

2 PROJECT SCOPING PROCESS

proposed project. During the public review period, the website included electronic versions of the NOP and other project-related documents. The website will remain a public resource throughout the development of the proposed project. Notices of any future public meetings, and the EIR, will be posted on the website. The website address is:

<https://monocounty.ca.gov/planning/page/walker-basin-water-transfer-program>

3 SUMMARY OF PUBLIC COMMENTS

3.1 INTRODUCTION

Six written comments were received during the scoping process. Oral comments were informally received at all three scoping meetings. The County took notes to consider the general nature of the comments; however, the County does not assume that the notes entirely capture the full intent and depth of each individual's comments. Commenter's were informed that they should submit written comments to represent their interests in the formal record. Copies of the written comments received by the County are provided in Appendix C. Notes on the comments received during the three scoping meetings are provided in Appendix D.

3.2 WRITTEN COMMENTS

A total of six written comments were received by the County during the scoping process. One of the comments was sent from the Wetland and Riparian Area Monitoring Program (WRAMP) Foundation from a representative who attended the second scoping meeting. The other five comments were received from agencies and organizations who received the NOP from the County. The agencies and organizations who sent formal comments include:

- The California Department of Fish and Wildlife (CDFW)
- The Native American Heritage Commission (NAHC)
- The Nature Conservancy
- The State Water Resources Control Board (SWRCB)
- Walker Basin Conservancy (WBC)

3.2.1 California Department of Fish and Wildlife

The California Department of Fish and Wildlife provided a written comment to the County on May 28, 2019 that included remarks and recommendations regarding aspects of the proposed project that the CDFW may be required to carry out or approve under its regulatory authority and the Fish and Game Code. To enable CDFW staff to adequately review and comment on the proposed project, the CDFW suggests that the EIR should include a complete assessment of the flora and fauna within and adjacent to the proposed project footprint, with an emphasis on identifying rare, threatened, or endangered species and their habitats. The CDFW also recommends that the County provides a thorough discussion of the direct, indirect, and cumulative impacts expected to affect the biological resources as a result of the proposed project, in addition to appropriate and adequate avoidance, minimization, and mitigation measures for all expected impacts. Specific recommendations for the California Endangered Species Act and the Lake and Streambed Alteration Program were also provided by the CDFW

3 SUMMARY OF PUBLIC COMMENTS

in the written comment. The CDFW requests that information developed in the EIR be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. For example, special status species and natural communities detected during surveys should be reported to the California Natural Diversity Database (CNDDDB).

3.2.2 The Native American Heritage Commission

The Native American Heritage Commission (NAHC) submitted a written comment to the County on May 17, 2019, which included a summary of the requirements of AB 52 and SB 18 for conducting cultural resource assessments. AB 52 applies to any project for which a NOP, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015. SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult tribes prior to the adoption of amendment of a general plan.

The NAHC recommends consultation with California Native American Tribes that are traditionally and culturally associated with the geographic area of the proposed project as early as possible to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

3.2.3 The Nature Conservancy

The Nature Conservancy submitted a written comment to the County on May 31, 2019 expressing their concern regarding the proposed changes to the Mono County General Plan. The Nature Conservancy is against these proposed changes because the amendments could limit and interfere with the flexibility, regulatory, and legal compliance of collaborative water management efforts used to carry out water transactions. The legal authority of Mono County to limit water rights transactions was questioned in this written comment. Water Code sections 1707 and 1735 give the State Water Resources Control Board (SWRCB) the statutory authority to approve water rights transactions, and the Nature Conservancy highlights the need for the County to avoid potential conflicts with state water rights.

3.2.4 State Water Resources Control Board

The SWRCB submitted a comment to the County of May 30, 2019. The written comment detailed the authority of the SWRCB to regulate the diversion and use of all surface waters in California and to issue water right permits and licenses for surface water appropriations initiated after December 19, 1914. The comments from the SWRCB are based on the project description and alternatives described in the NOP. Specifically, the SWRCB encourages the County to identify and avoid potential conflicts with state water right law when amending the General Plan, as the SWRCB has primary authority over the administration of surface water rights in the state. Questions related to the described No Project Alternative were raised. The SWRCB stated that a No Project would be no changes to the General Plan and thus water transactions would occur through the State Board without County involvement. The NOP incorrectly identified the No Project as no transactions. The SWRCB suggests that the County

3 SUMMARY OF PUBLIC COMMENTS

assess the legal feasibility of the proposed project. The SWRCB also notes that an appropriative water right does not depend on the ownership of land and it may be conveyed separate and apart from the land, thus allowing a water right to be transferred without the transfer of land. Finally, the SWRCB states that there are overly broad statements in Section 2, Project Description, including the discussion of water rights, and that they can assist the County with identifying relevant water right information if needed.

3.2.5 Walker Basin Conservancy

The WBC provided a written comment to the County on May 31, 2019. The WBC provided background on their organization and requested to be included in the EIR process. The WBC emphasized in their written comments that they do not approach or canvas sellers, as they only work with willing water rights sellers. The WBC recommended that impacts to air quality would not be significant as the WBRP mitigates fugitive dust emissions through revegetation and land conservation practices. The WBC identifies several actions that should be included in the EIR that would reduce cumulative effects of the proposed project. These actions include the relinquishment of groundwater rights to mitigate potential impacts from purchases and the work the WBC engages in to protect agricultural use needs. The WBC requests that the interactive mapping application created in partnership with United States Geological Survey Nevada that provides a basin-wide perspective of real-time streamflow and lake and reservoir storage levels for the Walker Basin to be included in the EIR. The WBC also requests that an Economic Impacts Analysis from the Sustainable Agriculture Pilot Project be included in any economic analysis in the EIR.

The WBC provided comments and suggestions for the alternatives. Specifically, the WBC recommends that alternatives that consider water purchases without land, or water purchases with land that the Conservancy would lease back to farmers and ranchers, or revegetate ecologically with appropriate flora be included in the EIR. The WBC provided specific comments to proposed amendments to the General Plan.

3.2.6 Wetland and Riparian Area Monitoring Program Foundation

The WRAMP Foundation submitted a written comment to the County on May 7, 2019. Through this written comment, the WRAMP Foundation proposed that the County add an exception to Action 3.E.5.a which would allow the WBRP to separate water rights from land rights, and allow water rights holders to permanently sell up to 10 percent of their water rights during the months of July through October to benefit the fishery.

3.3 ORAL COMMENTS

3.3.1 Oral Comments Meeting 1: Resource Conservation District of Mono County

Questions related to water storage and surplus storage were brought up during the first scoping meeting. The limitation of 3 years per water lease and how the lease would work in conjunction with a conservation easement were also discussed. Other questions related to the impact the

3 SUMMARY OF PUBLIC COMMENTS

proposed project would have on groundwater, increased fire potential, and increased development were also discussed.

Comments included concerns regarding the feasibility of short-term water leasing, given that changes to a water leases must go through the decree court and the water master. RCD has compared leasing versus sale of water and found that leasing was more difficult to implement because of the higher transaction costs per Acre-foot. Another commenter noted that a permanent separation of water rights from the land was not included in the analysis.

3.3.2 Oral Comments Meeting 2: Mono County Board of Supervisors

Superintendent John Peters asked if there is a geographic information system (GIS) overlay of water rights from senior to junior water holders that junior water rights holders could use to see how they are impacted upstream and downstream.

Superintendent Fred Stump commented that replacing groundwater with surface water would be an issue for the Sustainable Groundwater Management Act (SGMA), and that wildfire should be included in the analysis. Three 9th circuit issued decisions were also bought up that involved the larger suite of the Walker River litigation.

No comments or questions from the public were provided.

3.3.3 Oral Comments Meeting 3: Antelope Valley Regional Planning Advisory Committee (RPAC)

Questions on the impact the proposed project would have on ground water and wells were brought up several times. Questions about Walker Lake and how the salinity would be reduced, and why the separation of land and water was not included as an alternative were also discussed. Members were concerned that the water would not be used for Walker Lake and that it would be sold off in Nevada instead. Additionally, some commenters mentioned that the transition from agriculture to sage scrub habitat would increase the scenic value of the land.

3 SUMMARY OF PUBLIC COMMENTS

3.4 SUMMARY OF COMMENTS BY RESOURCE TOPIC

Comments are summarized by CEQA topic in Table 5.

Table 5 Summary of Scoping Comments by CEQA Topic

| Topic | Agency | Consideration |
|---------------------|------------------------|--|
| Project Description | The Nature Conservancy | <ul style="list-style-type: none"> Water Code sections 1707 and 1735 give the State Water Resources Control Board (SWRCB) the statutory authority to approve water rights transactions – be sure the General Plan amendments as proposed do not conflict with water law |
| | SWRCB | <ul style="list-style-type: none"> Encourages the County to identify and avoid potential conflicts with state water right law when amending the General Plan SWRCB has primary authority over the administration of surface water rights in the state Appropriative water right does not depend on the ownership of land and the option to transfer water without the land should be allowed Identify accurately the State Water Board and other authorizations for transfer of water rights in the Project Description Note that a complete prohibition on water right transactions that may otherwise be approved under state law or the imposition of conditions that effectively mandate particular uses of water, for example, raise questions regarding potential conflicts with state law. |
| | WBC | <ul style="list-style-type: none"> Reference Economic Impacts Analysis from the Sustainable Agriculture Pilot Project in the Project Description, as appropriate |
| | WRAMP | <ul style="list-style-type: none"> Add an exception to Action 3.E.5.a, which would allow the WBRP to separate water rights from land rights, and allow water rights holders to permanently sell up to 10 percent of their water rights during the months of July through October to benefit the fishery |
| | RCD (oral comments) | <ul style="list-style-type: none"> Feasibility of short-term water leases and water storage leasing Allowing separation of water rights and land Leasing is more difficult to implement because of process through decree court and water master. |
| | RPAC (oral comments) | <ul style="list-style-type: none"> Consider separation of land and water |
| Alternatives | SWRCB | <ul style="list-style-type: none"> The No Project Alternative is not no transactions, but no changes to the General Plan and thus transactions would occur through the state process without County oversight |

3 SUMMARY OF PUBLIC COMMENTS

| Topic | Agency | Consideration |
|---|---------------------------------|--|
| | WBC | <ul style="list-style-type: none"> • Consider alternatives for water purchase without land • Alternatives that would not provide water in perpetuity may not meet the feasibility requirements |
| Agriculture | WBC | <ul style="list-style-type: none"> • WBC can lease back purchased land for agriculture to reduce effects associated with loss of ag land. |
| Air Quality | WBC | <ul style="list-style-type: none"> • The WBRP mitigates fugitive dust emissions through revegetation and land conservation practices |
| Biological Resources | CDFW | <ul style="list-style-type: none"> • Identify flora and fauna within and adjacent to the project sites • Identify all rare, threatened or endangered species and their habitats • Address cumulative impacts • Consult appropriate databases |
| | WBC | <ul style="list-style-type: none"> • Revegetate ecologically with appropriate flora and remove weeds |
| Cultural Resources/Native American Concerns | NAHC | <ul style="list-style-type: none"> • Consult with California Native American Tribes that are traditionally and culturally associated with the geographic area • Address potential for inadvertent discoveries |
| Hydrology/Water Quality – Water Rights | WBC | <ul style="list-style-type: none"> • Use the existing interactive mapping application for real-time streamflow and lake and reservoir storage levels for the Walker Basin • Can include relinquishment of groundwater rights to WBC to reduce impacts |
| | Mono County BOS (oral comments) | <ul style="list-style-type: none"> • Address groundwater substitution for surface water and effects |
| | RPAC (oral comments) | <ul style="list-style-type: none"> • Look at indirect impacts on water rights and water wells |
| Wildfire | Mono County BOS (oral comments) | <ul style="list-style-type: none"> • Address increases in wildfire from fallowing and weeds |

4 FUTURE STEPS IN THE CEQA PROCESS

4.1 CEQA PROCESS AFTER SCOPING

Table 4-1 summarizes the completed and upcoming steps in the CEQA process.

Table 6 Steps in the CEQA Process

| Item | Description | Approximate Date |
|---|--|---|
| Completed Events/Documents | | |
| NOP | Notice to inform agencies and the public of the County's intent to prepare an EIR for the proposed project | May 2019 |
| NOP Public Review Period | Opportunity for the agencies and public to submit comments to the County on the scope of the EIR | April 23, 2019 to May 31, 2019 |
| Scoping Meetings | Meetings to provide agencies and the public information about the County's review process, the proposed project, and to hear and accept comments on the scope of the EIR | May 6/7, 2019 |
| Scoping Report | Report that describes the scoping process. Includes public comment opportunities, as well as who commented, and the substance of comments received during scoping | June 2019 |
| Upcoming Events/Documents | | |
| Draft EIR | Document that describes the proposed project, project need, alternatives, impacts and mitigation measures, and other CEQA topics | Late summer/early fall 2019 |
| Draft EIR Public Review Period | Opportunity for the agencies and public to submit comments to the County on the content of the Draft EIR | 45-day review period Late summer/early fall 2019 |
| Draft EIR Public Meetings | Meetings to provide agencies and the public information about the content of the Draft EIR and to hear and accept comments on the content of the Draft EIR | TBD |
| Final EIR | Public comments on the Draft EIR, responses to comments, and any changes to the Draft EIR | Late 2019/early 2020 |
| Certification of Final EIR and Project Decision | The County will certify the EIR as prepared pursuant to CEQA and will issue a Notice of Decision (NOD), triggering a 30-day appeal period | Late 2019/early 2020 |

4 FUTURE STEPS IN THE CEQA AND DECISION PROCESS

4.2 COUNTY DECISION PROCESS

The EIR is an informational document and does not include a decision on whether to approve the proposed project. The County Board of Supervisors will decide whether to proceed with the proposed project, or an alternative to the proposed project, after the completion of the Final EIR. This decision will be informed by the disclosure of environmental impacts provided in the Final EIR.

5 REFERENCES

5 REFERENCES

Tele Atlas North America, Inc. (2018). U.S. and Canada Detailed Streets GIS dataset. *ESRI® Data & Maps: StreetMap™*. ESRI.

United States Geological Survey (USGS). (2013). USGS NED 1/3 Arc Second DEM Raster dataset.

USGS. (2016). National Hydrography Dataset Waterbodies GIS dataset.

APPENDIX A NOTICE OF PREPARATION

NOTICE OF PREPARATION

TO PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR THE
GENERAL PLAN AMENDMENTS FOR THE
WALKER BASIN RESTORATION PROGRAM WATER TRANSACTIONS



LEAD AGENCY:

Mono County Community Development Department
Post Office Box 347 ♦ Mammoth Lakes, California 93546
Contact: Wendy Sugimura 760.924.1814

| | |
|--------------------------|-----------------------|
| NOP ISSUED: | April 23, 2019 |
| NOP COMMENTS DUE: | May 31, 2019 |
| SCOPING MEETING: | May 7, 2019 |

Date: April 23, 2019
To: Interested Parties
Subject: Notice of Preparation of an Environmental Impact Report assessing General Plan Amendments related to a water transaction program

Request for Comments: Consistent with the California Environmental Quality Act (CEQA) § 15082, the County has prepared this Notice of Preparation (NOP) to invite your comments as to the scope and content of environmental information to be provided in the forthcoming EIR. CEQA § 15082 requires that the NOP be sent out as soon as the Lead Agency determines that an EIR is required. The purpose of the NOP is to notify agencies, organizations, and individuals that an EIR will be prepared, and to request input on the scope of the environmental analyses to be provided.

In particular, the County is requesting comments from interested agencies, organizations, and individuals on the following aspects of the project:

- *Permits & Approvals:* Permits & approvals that may be required from your agency & CEQA review requirements associated with those approvals;
- *Thresholds of Significance & Issues:* Thresholds of Significance for assessing impacts on resources and the potentially significant effects to be examined;

1. PURPOSE OF THE NOTICE OF PREPARATION

Plan to Prepare EIR: As Lead Agency, the Mono County Community Development Department ("the County") will prepare an Environmental Impact Report (EIR) to analyze potential environmental impacts associated with the implementation of General Plan amendments that would regulate water transactions associated with the operation of the Walker Basin Restoration Program (WBRP) in Mono County.

The County has determined that an EIR will be required because the water transactions that could be implemented under the proposed amendments may cause potentially significant impacts on the environment.

Notice of Preparation
to Prepare an Environmental Impact Report for the
Walker Basin Water Transaction General Plan Amendments

- *Alternatives:* Alternatives to the proposed General Plan amendment updates that merit evaluation in the forthcoming EIR;
- *Related Projects:* Related projects or actions that should be considered in assessing cumulative effects;
- *Reference Materials:* Reference materials that should be reviewed to set forth baseline conditions or evaluate potential project impacts or mitigation measures; and
- *Scope and Content:* The scope and content of planning studies and initiatives to be evaluated in the forthcoming EIR.

2. NOP CONTENTS

| Section Title | Section Title |
|--|---|
| 1. Purpose of the NOP | 7. Alternative Amendment Strategies |
| 2. NOP Contents | 8. Purpose and Scope of EIR |
| 3. Public Scoping Meeting | 9. Lead and Responsible Agencies |
| 4. Background | 10. Project Location |
| 5. Purpose of General Plan Policy Amendments | 11. How to Provide Comments on this NOP |
| 6. Project Description | 12. Deadline to Submit Comments on this NOP |

3. PUBLIC SCOPING MEETING

NOTICE IS HEREBY GIVEN that the County will hold two public scoping meetings to solicit agency and public input on the scope of the environmental analyses to be included in the EIR. The first meeting will be held on May 7, 2019, as part of the Mono County Board of Supervisors meeting at 1:00 pm in the County Courthouse in Bridgeport, CA. The second meeting will be held on May 7, 2019, with the Antelope Valley Regional Planning Advisory Committee at 6:00- 8:00 pm in the Antelope Valley Community Center at 442 Mule Deer Road in Walker, California. Written comments received in

the public meeting regarding the environmental analysis will be considered in preparing the EIR.

NOTE: Please let us know if you want to receive copies of environmental documents so that your name can be included on the Distribution List. Note that the County plans to use online posting and 'CD' copies of environmental documents as much as possible. If you would prefer to receive a hardbound copy of the EIR (at a nominal charge), please note this in your comments.

4. BACKGROUND

Purpose of Walker Basin Restoration Program: Under Public Law 111-85, the WBRP is charged with restoring and maintaining Walker Lake, a terminal lake in western-central Nevada, as well as protecting agricultural, environmental, and habitat interests consistent with that primary purpose. The WBRP includes priority initiatives in the areas of water rights acquisitions from willing sellers, demonstration water leasing, conservation and stewardship, research and evaluation, and implementation support. The program is managed by the Walker Basin Conservancy (WBC), a non-profit organization established in 2014 to further the restoration and conservation of Walker Lake and the wider Walker River Basin. WBRP funds are provided to WBC under a grant agreement with the Bureau of Reclamation (Reclamation) and its Desert Terminal Lakes program.

Current Water Acquisition Strategies: The WBRP has, so far, acquired approximately 11,000 acres of water-righted land in Mason and Smith Valleys in Nevada. The land has been retired from agricultural use and the consumptive portion of the water right is being returned to Walker Lake. In addition, Walker River Irrigation District (WRID) is tasked with operating a 3-year leasing demonstration program and would acquire surplus storage water to transfer to the lake.

Mono County Role in the Program: In 2012, the County entered into a Memorandum of Understanding (MOU) with National Fish and Wildlife Foundation (NFWF), the predecessor to the WBC, for the management of the WBRP. The MOU gives the County the discretionary right to review

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and approve or deny the implementation of a water transfer transaction program in the Mono County portion of the Walker Basin.

In 2015, as part of the updated Conservation and Open Space Element, the County adopted General Plan Policy 3.E.4, which requires the County to “evaluate participation in the Walker Basin Restoration Program.”

The associated Action 3.E.4.a . requires the County to determine if and how it may be possible for the County to participate in the program and requires a full CEQA review of possible transactions. In addition, Action 3.E.4.b requires that participation is consistent with General Plan policies.

5. PURPOSE OF GENERAL PLAN POLICY AMENDMENTS

In response to the above described County policy, the County has identified potential conflicts between water transactions, including those currently being undertaken as part of the WBRP, and current General Plan polices.

The proposed General Plan amendments would be required to address potential conflicts between WBRP transactions and County policies. The amendments are described in Attachment A.

6. PROJECT DESCRIPTION: ANALYSIS OF GENERAL PLAN AMENDMENTS AND WBRP TRANSACTIONS

The project that will be evaluated in the EIR consists of the new policies and actions that could amend the General Plan (project) in response to WBRP transactions. The amendments would be necessary to avoid or reduce potential conflicts between the transfer of water out of County and the County’s opens space and conservation goals.

The following types of water transactions are being evaluated in the EIR:

1. Long-term leasing (2 or more years), and/or permanent transfer of, storage rights or of decree flow rights that include the acquisition of the associated water-righted land;

2. Temporary lease of decree flow rights for no more than 1 year; and
3. Purchase of surplus storage water.

Following preliminary analysis, the separation of flow rights from the water-righted land is viewed as too risky for the future management of County agricultural, wetland, and biological resources. Consequently, the project would explicitly preclude the WBRP from entering into flow rights only transactions.

7. ALTERNATIVE AMENDMENT STRATEGIES

The County has developed alternative amendment strategies that will be analyzed in the EIR. The alternative amendments consist of General Plan policy amendments related to different combinations of water rights transactions. The text of the alternative amendments are included in Attachment A. The following transaction strategies and their policies and actions will be assessed as alternatives to the project :

- A. Sale of surplus storage water only
- B. Temporary lease of flow rights for no more than 1 year
- C. Prohibit all water transactions

The County conducted a preliminary evaluation of the environmental effects of the different types of water transactions and related policies and actions. The County’s preferred alternative is to adopt the policies and actions that would allow:

- D. Sale of storage water and temporary lease of flow rights for no more than 1 year

All alternatives will be analyzed to the same level as the Project.

8. PURPOSE AND SCOPE OF EIR

Purpose of EIR: Adoption and implementation of the proposed General Plan amendments by the County are considered discretionary actions and are, therefore, subject to analysis under CEQA. The primary purpose of an EIR is to inform decision-makers and the public of the potential significant environmental effects that may be associated with implementation of the Project, and to identify and set forth less damaging alternatives, and possible

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ways to reduce or avoid the possible environmental damage.

Proposed Scope of EIR: The County prepared an Initial Study, pursuant to CEQA, to determine whether, based on substantial evidence, the adoption and implementation of the Project may have a significant adverse effect on the environment. The Initial Study is available on the County website at the following location:

<https://www.monocounty.ca.gov/planning/page/walker-basin-water-leasetransfer>

Based on the analysis in the Initial Study, the County will prepare a Focused EIR to evaluate potentially significant environmental effects of the Project. The environmental review in the EIR will focus on the topics for which potentially significant impacts may occur as a consequence of the Project ; the topics are listed below:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Hydrology and Water Quality
- Land Use and Planning
- Recreation
- Tribal Cultural Resources

The EIR will also identify mitigation measures to reduce effects determined to be significant. Alternatives to the project will also be addressed.

9. LEAD AND RESPONSIBLE AGENCIES

Lead Agency: Mono County is the designated Lead Agency for the project. In order to implement the project, the County will be required to certify that the Final EIR has been prepared in compliance with CEQA, approve the proposed General Plan amendments (Preferred Alternative or another alternative), approve the proposed Mitigation Implementation and Reporting Program, adopt findings, and verify that water supplies are adequate to serve the project.

Responsible Agencies: The General Plan amendments addressed in this EIR would not be subject to permits from responsible or trustee

agencies. Specific transactions that may be implemented if these policies are approved, would require permits from the State Water Resources Control Board and review by the California Department of Fish and Wildlife. Any action that could affect federally-listed species would also require a permit from the U.S. Fish and Wildlife Service.

10. PROJECT LOCATION

The project location encompasses the Walker Basin in Mono County, including Antelope Valley, Bridgeport Valley, and all connected tributaries, lakes, and reservoirs.

The County is located in east-central California, on the eastern slopes of the Sierra Nevada mountains. The county covers approximately 3,030 square miles of land area, but is sparsely settled, with a 2010 population of 14,202. More than half of the County's residents reside in the town of Mammoth Lakes (the only incorporated city). The remaining residents live in unincorporated communities that include Antelope Valley, Swauger Creek/Devil's Gate, Bridgeport Valley, Mono Basin, June Lake, Mammoth vicinity, Upper Owens, Long Valley, Wheeler Crest, Tri-Valley, Benton Hot Springs Valley, and Oasis.

The County shares a long common boundary with the state of Nevada, and also borders four Nevada counties (Douglas, Lyon, Mineral and Esmeralda) and five California counties, including the counties of Inyo, Fresno, Madera, Tuolumne, and Alpine. Bridgeport is the Mono County seat.

11. HOW TO PROVIDE COMMENTS ON THIS NOP

NOTICE IS HEREBY GIVEN that this Notice of Preparation of an EIR is issued on April 23, 2019, beginning a 38-day comment period, ending on May 31, 2019, to solicit input on the scope of the environmental analyses to be included in the EIR. This NOP may be obtained from the County website at:

<https://www.monocounty.ca.gov/planning/page/walker-basin-water-leasetransfer>.

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Please send your responses to this NOP by email, by postal mail, by fax, or by hand delivery. Addresses and contact information are provided below:

Mono County Community Development Department
Post Office Box 347 • Mammoth Lakes, California 93546
Care of: Bentley Regehr
E-Mail: bregehr@mono.ca.gov
Telephone: 760.924.4602 • Fax #: 760.924.1801
For Hand Delivery: 437 Old Mammoth Rd., Suite P
Minaret Village Mall

Comments should be limited to assisting the County in identifying the range of policies, alternatives, mitigation measures, and potential significant environmental effects to be analyzed in the EIR, and to eliminate issues that do not need to be evaluated in depth.

Please include the name, telephone number and address of a contact person so that we can follow up if questions arise. Translation services are available upon request.

12. DEADLINE TO SUBMIT COMMENTS

Due to the time limits mandated by state law, your response to this Notice of Preparation (NOP) must be sent at the earliest possible date and **no later than May 31, 2019** (38 days from posting of this notice). All comments received after the above deadline will not be accepted unless the County determines otherwise.

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Attachment A

PROJECT DESCRIPTION

Mono County proposes to amend the General Plan. The amendments would add new policies and actions to the Conservation/Open Space Element of the General Plan. The amendments would allow water transactions to support the WBRP. The proposed additional policies, actions, and potential transactions are described below.

Project Description: Policy Amendments That Would Allow Long-term Leasing, Permanent Transfer, Temporary Lease, and Purchase of Surplus Storage Water

The Project Description would include General Plan amendments that would allow:

1. Long-term leasing (2 or more years), and permanent transfer of storage rights or of decree flow rights that include the acquisition of the associated water-righted land;
2. Temporary lease of decree flow rights for no more than 1 year; and
3. Purchase of surplus storage water.

This Project Description would prohibit WBRP from entering into water rights only transactions that would separate water rights from land. All other transaction types would be permissible.

Potential Policy and Action Additions to the General Plan Conservation/Open Space Element

Existing Policy Objective: 3.E:

Encourage the beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.

Existing Policy 3.E.4:

Evaluate participation in the Walker Basin Restoration Program (WBRP).

AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.c – Require the following information to help the assessment of potential impacts prior to entering into long-term water transactions including permanent transfer and long-term leasing of decree flow water rights and storage rights:

- a) Quantify consumptive use and complete water budgets based on real flow measurements for both Bridgeport and Antelope Valleys, including diversion and return flow timing, location, and volume.
- b) Investigate shallow groundwater levels, movement, and interactions with existing irrigation regimes in both Bridgeport and Antelope Valleys.
- c) Canvas and identify willing sellers.

Rationale for adding/benefit: This action will ensure that the information informing transactions in Mono County is equivalent to that which has been developed for the Mason and Smith Valleys. Understanding the value, cost and benefits of the water available for transactions, will help ensure that other water users will not be adversely impacted by reduction or cessation of irrigation, or reduction in diverted water.

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AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.d – Prior to permanent transfer or lease of water rights for more than one consecutive year, the project must demonstrate that:

- a. The transaction avoids potential significant impacts to local surface and groundwater resources, or mitigates impacts to a level of non-significance, unless a statement of overriding considerations is made through the EIR process.
- b. Transactions with the potential to significantly impact surface or groundwater resources shall assess any potential impacts prior to project approval.

Examples of potential significant impacts include:

- i. Substantially degrading or depleting surface or groundwater resources; and/or
- ii. Interfering substantially with groundwater recharge.

The analysis shall:

- i. Be funded by the applicant;
- ii. Be prepared by a qualified person under the direction of Mono County;
- iii. Assess existing conditions in the general project vicinity;
- iv. Identify the quantity of water to be used by the project. Quantities shall be estimated for annual totals, monthly averages, and peak day/peak month usage;
- v. Identify the source(s) of water for the project and provide proof of entitlement to that water. If the proposed source is to be a special district or mutual water system, a "will-serve" letter shall be required. If the proposed source is ground or surface water, the application shall indicate that the proponent has entitlement to the source and the quantity of water required;
- vi. Describe the impacts of the proposed development upon water resources within the project site and on surrounding areas, including a drawdown analysis of groundwater (when applicable) through pump test(s); and
- vii. Recommend project alternatives or measures to avoid or mitigate impacts to water resources.

Mitigation measures and associated monitoring programs shall be included in the project plans and specifications and shall be made a condition of approval for the project.

- c. The proposed transaction does not affect reasonable beneficial water uses, including uses in-stream, agricultural operations, and recreational purposes, within the Mono County portion of the Walker Basin; and
- d. The proposed transaction would not adversely affect water quality, in-stream flows, lake levels, riparian areas, vegetation types, sensitive/rare wildlife and habitat, and related resources such as the visual quality and character of the landscape; and is not likely to increase indirect effects such as flooding, wildfire, and/or sedimentation, or reduce groundwater recharge capacity. Transactions that do not adequately protect these resources shall be denied.
- e. The transaction will not lead to substitution of groundwater for surface water in any activities for which surface water is currently used.

Rationale for adding/benefit: This action is designed to ensure that the WBRP does not enter into any transaction without assuring the County that beneficial uses, sensitive resources and groundwater are protected.

AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.e – For each water transfer transaction for Walker Lake, the land owner shall develop an adaptive management plan. The plan shall ensure consistency with General Plan goals and objectives.

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The plan should, at minimum, include baseline assessment of resources, monitoring criteria, and adaptive management measures to ensure the following:

- a. No groundwater substitution will be used to maintain baseline or agreed upon conditions.
- b. Water quality impacts are minimized, avoided, and mitigated.
- c. No net loss of wetland.
- d. No significant loss of non-agricultural sensitive vegetation communities or change from one type of community to a drier community.
- e. No significant loss of habitat for sensitive species.
- f. Invasive and pest species and dust are managed to ensure no increase.

Rationale for adding/benefit: An adaptive management plan would ensure that no unforeseen adverse impacts to protected resources could occur following cessation or reduction in irrigation.

AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.f – Prior to sale of storage water, the applicant must demonstrate that the proposed transaction does not adversely affect existing recreational uses of lakes and reservoirs within the Mono County portion of the Walker Basin.

Rationale for adding/benefit: This action is designed to ensure that the WBRP does not enter into any transaction without assuring the County that beneficial recreational uses associated with existing lakes and reservoirs are protected.

AMENDMENT

Recommended New Policy and Action

Policy 3.E.5. Identify WBRP water rights transactions that are permissible within the County.

Action 3.E.5.a – The risk of water decree flow rights only transactions (i.e., the transfer of flow rights without the transfer of associated land) to County environmental resources is considered too great. The County shall prohibit WBRP from decree flow rights only water acquisitions.

Rationale for adding/benefit: All transfers of water rights without the associated land represent too great a risk or the risk is too unpredictable for County resources.

ALTERNATIVES

The following amendments and related transaction types would be analyzed as alternatives to the Project Description.

Alternative A: Amendments That Would Allow Sale of Surplus Storage Water Only

Alternative A would include General Plan amendments that only allow sale of surplus storage water.

Recommended Policy and Action Amendments to the General Plan Conservation/Open Space Element

Existing Policy Objective: 3.E.

Encourage the beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.

Existing Policy 3.E.4:

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Evaluate participation in the Walker Basin Restoration Program (WBRP).

AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.f – Prior to sale of storage water, the applicant must demonstrate that the proposed transaction does not adversely affect existing recreational uses of lakes and reservoirs within the Mono County portion of the Walker Basin.

Rationale for adding/benefit: This action is designed to ensure that the WBRP does not enter into any transaction without assuring the County that beneficial recreational uses associated with existing lakes and reservoirs are protected.

AMENDMENT

Recommended New Policy and Action

Policy 3.E.5. Identify WBRP water rights transactions that are permissible within the County.

Action 3.E.5.a - The risk of long-term or short-term transfer of water rights out of the County to WBC is considered too great. The County will only permit the WBRP to contract for the acquisition of surplus storage water.

Rationale for adding/benefit: Would require minimal analysis and no further study by the WBRP or the County.

Alternative B: Amendments That Would Allow Temporary Lease of Flow Rights for No More Than One Year

Under Alternative B, the County would define amendments that would only allow one-year leases of flow water rights.

Recommended Policy and Action Additions to the General Plan Conservation/Open Space Element

Existing Policy Objective: 3.E:

Encourage the beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.

Existing Policy 3.E.4:

Evaluate participation in the Walker Basin Restoration Program (WBRP).

AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.e – For each water transfer transaction for Walker Lake, the land owner shall develop an adaptive management plan. The plan shall ensure consistency with General Plan goals and objectives. The plan should, at minimum, include baseline assessment of resources, monitoring criteria, and adaptive management measures to ensure the following:

- a. No groundwater substitution is required to maintain baseline or agreed upon conditions.
- b. Water quality impacts are minimized, avoided, and mitigated.
- c. No net loss of wetland.
- d. No significant loss of non-agricultural sensitive vegetation communities or change from one type of community to a drier community.
- e. No significant loss of habitat for sensitive species.

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f. Invasive and pest species and dust are managed to ensure no increase.

Rationale for adding/benefit: An adaptive management plan would ensure that no unforeseen adverse impacts to protected resources could occur following cessation or reduction in irrigation.

AMENDMENT

Recommended New Policy and Action

Policy 3.E.5. Identify WBRP water rights transactions that are permissible within the County.

Action 3.E.5.a - The County shall prohibit WBRP from leasing flow rights for more than 1 year and permanent acquisitions of water rights and/or land within the County because the risk to County environmental resources is considered too great. Temporary leasing of flow rights shall be permitted provided that the lease is for no more than 1 year, and for no more than 3 non-consecutive years from the same water right.

Rationale for adding/benefit: Would require minimal analysis and no further study by the WBRP or the County.

Alternative C: No Project/Prohibit Water Transactions

The Prohibit Water Transactions alternative would include adding the following General Plan Policy:

Recommended Policy and Action Additions to the General Plan Conservation/Open Space Element

Existing Policy Objective: 3.E:

Encourage the beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.

AMENDMENT

Recommended New Policy and Action

Policy 3.E.5. Identify WBRP water rights transactions that are permissible within the County.

Action 3.E.5.a – The County shall prohibit all WBRP acquisitions of water and water rights because the risk to County environmental resources is considered too great.

Rationale for adding/benefit: All transactions represent unacceptable or unpredictable risks to County resources.

Alternative D: Amendments that would Allow Sale of Storage Water and Temporary Lease of Flow Rights for No More than One Year

The County would define amendments that would allow WBC to enter into temporary transfers of flow rights for one year and/or sale of storage water. No permanent sale of water rights or land to WBC would be approved.

Recommended Policy and Action Amendments to the General Plan Conservation/Open Space Element

Existing Policy Objective: 3.E:

Encourage the beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.

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Existing Policy 3.E.4:

Evaluate participation in the Walker Basin Restoration Program (WBRP).

AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.e – For each water transfer transaction for Walker Lake, the land owner shall develop an adaptive management plan. The plan shall ensure consistency with General Plan goals and objectives. The plan should, at a minimum, include a baseline assessment of resources, monitoring criteria, and adaptive management measures to ensure the following:

- a. No groundwater substitution is required to maintain baseline or agreed upon conditions.
- b. Water quality impacts are minimized, avoided, and mitigated.
- c. No net loss of wetland.
- d. No significant loss of non-agricultural sensitive vegetation communities or change from one type of community to a drier community.
- e. No significant loss of habitat for sensitive species.
- f. Invasive and pest species and dust are managed to ensure no increase.

Rationale for adding/benefit: An adaptive management plan would ensure that no unforeseen adverse impacts to protected resources could occur following cessation or reduction in irrigation.

AMENDMENT

Add to Policy 3.E.4:

Action 3.E.4.f – Prior to sale of storage water, the applicant must demonstrate that the proposed transaction does not adversely affect existing recreational uses of lakes and reservoirs within the Mono County portion of the Walker Basin.

Rationale for adding/benefit: This action is designed to ensure that the WBRP does not enter into any transaction without assuring the County that beneficial recreational uses associated with existing lakes and reservoirs are protected.

Existing Policy Objective: 3.E.:

Encourage the beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.

AMENDMENT

Recommended New Policy and Action

Policy 3.E.5. Identify WBRP water rights transactions that are permissible within the County.

Action 3.E.5.a - The County shall prohibit WBRP from leasing flow rights for more than one year, and from permanent acquisitions of water rights and/or land within the County because the risk to County environmental resources is considered too great. Temporary leasing of flow rights shall be permitted provided that the lease is for no more than 1 year, and for no more than 3 non-consecutive years from the same water right. Sale of storage water shall be permitted.

Rationale for adding/benefit: Permanent transfer of land and/or water rights to the WBC results in unacceptable or unpredictable risks to County resources.

APPENDIX B SCOPING MEETING MATERIALS



Walker Basin Restoration Program General Plan Amendment DEIR Scoping



Mono County


May 6/7, 2019

PANORAMA
ENVIRONMENTAL, INC.



Purpose of the Scoping Meeting

- 1 Provide overview of the Walker Basin Restoration Program
- 2 Describe Mono County's role
- 3 Overview of plan area and water transaction assumptions
- 4 Overview of the polices and actions
- 5 Summarize environmental review process
- 6 Provide overview of environmental resources to be addressed in the EIR
- 7 Solicit comments on scope of the Environmental Impact Report (EIR)

2

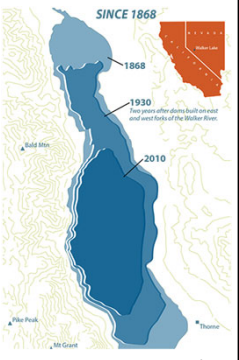


Overview of the Walker Basin Restoration Program

Walker Lake Historic Overview

- Diversions from the river have sustained a strong agricultural economy but dramatically reduced freshwater inflows to Walker Lake, a natural desert terminal lake at the terminus of the Walker River in Nevada.
- 150 years of reduced freshwater inflows have resulted in declines of the lake level and increases in lake salinity, threatening complete ecological collapse.
- The health of Walker Lake is critical to recovery of the threatened Lahontan cutthroat trout, and the lake has long been an important stopover for common loons and other migratory waterfowl.



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Walker Basin Restoration Program

- The WBRP was established by Public Law 111-85 (2009) for the primary purpose of restoring and maintaining Walker Lake
- Walker Basin Conservancy established in 2014, to lead the effort to restore and maintain Walker Lake while protecting the agricultural, environmental, and recreational interests in the Walker Basin
- Restoration achieved through acquiring water decree rights to leave water on the Walker River

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Walker Basin Restoration Program - Mission

The Program seeks to increase instream flows to Walker Lake through a comprehensive basin-wide strategy that relies on:

- voluntary water transactions and water management initiatives;
- community-based conservation and stewardship; and
- applied research and demonstration projects.

The Program is committed to addressing issues of local concern and to developing creative and lasting solutions to sustain the Basin's agricultural nature.

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Walker Basin Conservancy – Objectives

- The Conservancy is seeking to buy or lease 41,000 acre-feet per year of water rights from the whole basin to restore the health of Walker Lake
- Currently achieved about 40% of goal from water transfers in Nevada
- A portion of the Walker Basin is in California
- The Conservancy is exploring participation and additional transfers from California

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Existing Water Rights Transaction Activities under the WBRP

Walker Basin Conservancy – current transaction strategy

- Acquisition of water-righted land in Mason and Smith valleys
- Change diversion of the consumptive portion of the flow water right to Walker Lake
- Place remaining land in trust with State of Nevada for restoration and recreation

Walker River Irrigation District – demonstration program

- Lease surplus storage water from Antelope and Bridgeport reservoirs

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Scope of Mono County Involvement




Overview of Mono County Involvement

- A portion of the Walker Basin is in Mono County and could be part of the program
- Mono County is examining the potential risks, benefits, and procedural considerations involved in establishing a water transactions program within the California portion of the basin
- Participation by California water rights holders will require a General Plan Amendment to allow the transfers



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Project Area – East Walker

- **East Walker River**
 - Bridgeport Valley
 - Swauger Creek
 - Buckeye Creek
 - Green Creek
 - Robinson Creek
- **Storage**
 - Twin Lakes
 - Green Lakes

Legend
Scale: 1:50,000
C-135 Decree Rights Land Waterbody
River or Creek

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Project Area – West Walker

- **West Walker River**
 - Antelope Valley
 - Little Antelope Valley
 - Skinkard Creek
 - Mill Creek
- **Storage**
 - Poore Lake
 - Lobdell Lake
 - Black Reservoir

Legend
Scale: 1:50,000
C-135 Decree Rights Land Waterbody
River or Creek State boundary

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Timeline of Mono County Involvement


- 2012**: MOU between NFWF and Mono County
- 2014**: Mono County RCD preliminary resource assessment
- 2015**: Open Space/Conservation General Plan element update adopts CEQA review of WBRP as a County action
- 2018**: Outreach, policy development
- 2019**: Initiate Draft EIR process

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2012 MOU between NFWF and Mono County

- MOU Mono County and NFWF (2012) -
 - **National Fish and Wildlife Foundation** agreed not to authorize expenditure from Desert Terminal Lake Fund on programs within Mono without concurrence from the County
 - **Mono County** agreed to review and consider approving proposals presented by RCD (or other parties) for implementation of short term lease or other proposals
 - **RCD** is interested in facilitating the development of information related to the California Program to aid design and implementation of programs

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Objectives of Policy Changes and CEQA Analysis

MOU and General Plan CEQA Analysis Requirements

MOU

➔

Transactions to be Analyzed

- Long-term and permanent transfer of water rights (both flow and storage)
- Sale of surplus storage water
- Temporary transfer of water rights (both flow and storage)

2015 General Plan Update

➔

Transactions to be Analyzed

- CEQA and GP update require review of the WBRP transactions

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Water Transaction Definitions

- **Long-term/Permanent Transaction** – Sale or multi-year lease of water rights, including both storage and flow rights
- **Short-term Transaction** – 1 year lease of water rights, including both storage and flow rights*
- **Sale of Surplus Storage Water** – Annual analysis of reservoir water determined to be surplus

* Consecutive yearly leases would be considered long-term, and no more than three leases would be permitted


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CEQA Objectives for the General Plan Amendment



Project Objectives for CEQA Analysis

- Develop guidelines and actions to allow Mono County water rights holders to participate in the NFWF water transfer programs
- Identify feasible program elements that can operate within the County that would be consistent with the County General Plan goals, including
 - Preservation of existing open space and scenic vistas
 - Maintenance and restoration of botanical, aquatic and wildlife habitats in Mono County
 - Protection of the Public Trust values of the resources of Mono County
 - Preservation, maintenance, and enhancement of surface water and groundwater resources to protect Mono County's water quality and water-dependent resources from the adverse effects of development and degradation of water-dependent resources
 - Encourage the retention of agricultural and grazing lands

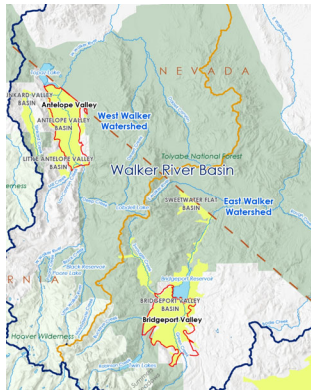
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Project Area and Acquisition Assumptions

Project Area



- **West Walker River in CA**
 - Antelope Valley
 - Little Antelope Valley
 - Skinkard Creek
 - Mill Creek
- **Easter Walker River in CA**
 - Bridgeport Valley
 - Swauger Creek
 - Buckeye Creek
 - Green Creek
 - Robinson Creek
- **Storage**
 - Twin Lakes
 - Poore Lake
 - Lobdell Lake
 - Black Reservoir


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Transaction Scenario: Water Right Target Acquisition Upper Boundary



Equitable Water Acquisition between CA and NV

| | Permanent | Temporary |
|----------------------------------|----------------------|----------------------|
| Assumptions | Water Right Purchase | Water Rights Leasing |
| Remaining as of 2018 | \$108,300,000 | \$ 25,000,000 |
| Remaining as of 2021 | \$ 54,150,000 | \$ 12,500,000 |
| Max Portion to Mono (at 32%) | \$ 8,950,000 | \$ 4,000,000 |
| Purchase Price per Wet Acre-Foot | \$1,800/AF | |
| Lease Price per Acre (\$/acre) | | \$320/acre |
| Wet Duty (AF/acre) | 3.2 AF/acre | |
| Estimated Acquisitions | | |
| Max Acre-Foot Purchased/Leased | AF | |

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General Plan Polices and Actions

Organization of General Plan Polices and Actions

Conservation/Open Space Element

New Actions under Policy 3.E.4

- **Data Gap** – addressing gaps in understanding of East and West Walker
- **Long-term Leasing and Permanent Transactions** – actions required to assess impacts of long-term and permanent transaction prior to transfer of water rights
- **Adaptive Management Plan** – actions required to manage land for which irrigation has been reduced
- **Storage Water** – actions related mitigating potential reduction of storage water in reservoirs

New Policy 3.E.5

- **Transaction-Limiting Policies** – policy limiting the types of transactions that would be permitted

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Potential Transactions and Alternatives

Transactions to be analyzed as part of the Project

- Long-term and permanent transactions
- Short-term transactions
- Surplus storage water

Alternatives to the Project

1. Sale of surplus storage water only
2. Temporary lease of flow rights for no more than 1 year
3. Sale of storage water and temporary lease of flow rights for no more than 1 year ♦
4. Prohibit all water transactions with WBRP
5. No project

♦ Indicates County staff preferred alternative

Community
input on
alternatives

General Plan Actions Applicable to Project and Alternatives

| General Plan Polices and Actions | Project | | Alternatives | | | No Project |
|----------------------------------|---|---|---------------------|----------------------|----------------------------|--|
| | Permanent, Long-term, and Surplus Storage (Project) | 1 year Lease and Surplus Storage Water (County Preferred) | 1 year Leasing Only | Surplus Storage Only | Prohibit Water Transaction | |
| Data Gaps | ☑ | | | | | |
| Long-term Transaction | ☑ | | | | | Transaction could be proposed; CEQA and tech studies would be required to address data gaps for each transaction |
| Adaptive Management | ☑ | ☑ | ☑ | | | |
| Storage | ☑ | ☑ | | ☑ | | |
| Transaction Limiting Policy | ☑ | ☑ | ☑ | ☑ | ☑ | |
| | | | | | | |

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Project - Data Gaps Actions

Action 3.E.4.c – Require the following information to help the assessment of potential impacts prior to entering into long-term water transactions including permanent transfer and long-term leasing of decreed flow water rights and storage rights:

- a. Quantify consumptive use and complete water budgets based on real flow measurements for both Bridgeport and Antelope Valleys, including diversion and return flow timing, location, and volume.
- b. Investigate shallow groundwater levels, movement, and interactions with existing irrigation regimes in both Bridgeport and Antelope Valleys.
- c. Canvas and identify willing sellers.

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Project - Long-term and Permanent Transaction Actions

Action 3.E.4.d – Prior to permanent transfer or lease of flow water rights for 2 or more consecutive years, the project must demonstrate that:

- a. The transaction avoids potential significant impacts to local surface and groundwater resources.
- b. Transactions with the potential to significantly impact surface or groundwater resources shall assess any potential impacts prior to project approval.
- c. The proposed transaction would not adversely affect water quality, in-stream flows, lake levels, riparian areas, vegetation types, sensitive/rare wildlife and habitat, and related resources.
- d. The transaction will not lead to substitution of groundwater for surface water in any activities for which surface water is currently used.

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Project - Adaptive Management Plan Actions


Action 3.E.4.e – For each water transfer or transaction that involves return of irrigation water to instream use, the land owner shall develop an adaptive management plan. The plan shall ensure consistency with General Plan goals and objectives. The plan should, at minimum, include baseline assessment of resources, monitoring criteria, and adaptive management measures to ensure the following:

- a. No groundwater substitution is required to maintain baseline or agreed upon conditions.
- b. Water quality impacts are minimized, avoided, and mitigated.
- c. No net loss of wetland.
- d. No significant loss of non-agricultural sensitive vegetation communities or change from one type of community to a drier community.
- e. No significant loss of habitat for sensitive species.
- f. Invasive and pest species and dust are managed to ensure no increase.

28

Project - Storage Sales and Leases Actions

Action 3.E.4.f – Prior to sale or lease of storage water, the applicant must demonstrate that the proposed transaction does not adversely affect existing recreational uses of lakes and reservoirs within the Mono County portion of the Walker Basin.




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Project - Policy Limiting Transactions

Policy 3.E.5. Identify WBRP water rights transactions that are permissible within the County.

Action 3.E.5.a – The risk of water decree flow rights only transactions (i.e., the transfer of flow rights without the transfer of associated land) to County environmental resources is considered too great. The County shall prohibit WBRP from decree flow rights only water acquisitions; all other transactions would be permitted provided other policies and actions are satisfied.



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Environmental Review Process



PANORAMA ENVIRONMENTAL, INC.

Purpose of Environmental Review

- Inform decision-makers and the public
- Define the proposed project in detail and describe the:
 - Objectives
 - Existing setting
 - Plan approach
- Identify potential environmental effects
- Identify viable mitigation to reduce or eliminate significant effects
- Identify and consider alternatives that may reduce or avoid effects

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Environmental Review Process

CEQA Environmental Review Process

- Define Potential Project
- Scoping (38 days): Initiate Environmental Review and Continue Public Outreach
- Publish Draft Environmental Impact Report (EIR)
- Public Comment Period for Draft EIR (45 days)
- Address Public Comments on Draft and Publish Final EIR

Scoping meeting:

- Scope and Content of EIR
- Permits & Approvals
- Thresholds of Significance and Issues
- Alternatives
- Related Projects
- Reference Materials

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Resource Topics to be Addressed in EIR

CEQA Initial Study Checklist

Initial Study Checklist

- Available on Mono website:
<https://www.monocounty.ca.gov/planning/page/walker-basin-water-lease-transfer>
- Focuses the EIR on key topics listed below

| Resource Topics Addressed in EIR | Resource Topics Covered in Initial Study (will NOT be analyzed in the EIR) |
|--|--|
| <ul style="list-style-type: none"> • Aesthetics • Agriculture and Forestry Resources • Air Quality ♦ • Biological Resources ♦ • Hydrology and Water Quality ♦ • Land Use and Planning • Recreation • Tribal Cultural Resources <p>♦ indicates topics for which additional studies will be undertaken</p> | <ul style="list-style-type: none"> • Geology and Soils • Greenhouse Gases • Hazards and Hazardous Materials • Mineral Resources • Noise • Population and Housing • Public Services • Transportation and Traffic • Utilities and Service Systems • Wildfire |

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Public Comment




Next Steps and Opportunities for Public Comments

| Activity | Purpose | Estimated Timeframe |
|------------------------------------|---|---|
| Scoping Period ♦ | Collect comments from the public | 38 days; April 23 – May 2019 |
| Prepare Draft EIR | Complete the analysis of environmental effects—develop and analyze alternatives | Late summer/early fall 2019 |
| Public Review of Draft EIR ♦ | Public reviews the analysis and provides comments | 45 day review period Late summer/early fall 2019 |
| Response to Comments and Final EIR | Respond to public comments and make any changes to the EIR | Late 2019/early 2020 |
| Final EIR Certification | County will review the EIR findings and certify the EIR | Late 2019/early 2020 |

♦ Indicates public comment opportunity

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County Decision

What happens after the Final EIR is published?

1. Decide whether to Certify EIR
2. If the EIR is certified, County Planning Commission decides whether to:
 - a. Adopt the General Plan policy amendments, or
 - b. Adopt an alternative, or
 - c. Select no project alternative

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How to Comment

- Comments on the scope of the EIR are due by 5:00 pm on **May 31, 2019**
- Written comments on comment card tonight
- Written comments
 - By mail:
 - Mono County Community Development Department
 - Post Office Box 347
 - Mammoth Lakes, California 93546
 - Care of: Bentley Regehr
 - By email: bregehr@mono.ca.gov
 - Subject line: "Water Transfer EIR Scoping Comments"
- NOP and Initial Study can be accessed here: <https://www.monocounty.ca.gov/planning/page/walker-basin-water-lease-transfer>

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General Plan - Conservation and Open Space Element Goals Potentially Affected by a Water Transaction Program

| | |
|---------------|---|
| GOAL 1 | <ul style="list-style-type: none"> • Preserve natural open-space resources which contribute to the general welfare and quality of life for residents and visitors in Mono County and to the maintenance of the county's tourism economy. |
| GOAL 2 | <ul style="list-style-type: none"> • Maintain an abundance and variety of vegetation, aquatic and wildlife types in Mono County for recreational use, natural diversity, scenic value, and economic benefits. |
| GOAL 3 | <ul style="list-style-type: none"> • Ensure the availability of adequate surface and groundwater resources to meet existing and future domestic, agricultural, recreational, and natural resource needs in Mono County. |
| GOAL 4 | <ul style="list-style-type: none"> • Protect the quality of surface and groundwater resources to meet existing and future domestic, agricultural, recreational, and natural resource needs in Mono County. |
| GOAL 5 | <ul style="list-style-type: none"> • Preserve and protect agricultural and grazing lands in order to promote both the economic and open-space values of those lands. |

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**Mono County
Walker Basin Restoration Program**

General Plan Amendment DEIR Scoping Meeting Sign In Sheet

Location: Antelope Valley Community Center

May 6/7, 2019

| Name (Please Print) | Organization (if Applicable) | Would you like to be added to the project mailing list? | Mailing Address (Including City, State and Zip) | Email and/or Mailing Address (Including City, State and Zip) |
|---------------------------|------------------------------|---|---|--|
| Eric Edgerton | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | Eric@tilthfarms.com |
| NEO WELSH | NEO WELSH | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | NEOWELSH@NETCERO.NET |
| Bruce Woodworth | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | WOODWORTH@GMAIL.COM |
| AL LAPP | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | alsoelapp@schot.net |
| MARK LANGNER | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | marklangner@hotmail.com |
| Patti Hamic-Christensen | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | pitenpat@yahoo.com |
| Wendy Ford | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | wjford@yahoo.com |
| JASON CARBOR, Mono County | | <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | janger@mono.co.gov |
| DEBIE BUSH | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | geothdeb1951@outlook.com |
| ARON GERBIG | | <input type="checkbox"/> No <input checked="" type="checkbox"/> Email <input type="checkbox"/> Mail | | grannyg@schot.net |

APPENDIX C WRITTEN COMMENTS RECEIVED DURING SCOPING



WRAMP FOUNDATION
824 Burcham Flat Rd.
Coleville, CA 96107
775-461-6550
wrampfoundation@gmail.com

Existing Policy Objective: 3.E.:

Encourage the beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.

AMENDMENT

Recommended New Policy and Action

Policy 3.E.5. Identify WBRP water rights transactions that are permissible within the County.

Action 3.E.5.a - The County shall prohibit WBRP from leasing flow rights for more than one year, and from permanent acquisitions of water rights and/or land within the County because the risk to County environmental resources is considered too great. Temporary leasing of flow rights shall be permitted provided that the lease is **1. for no more than 1 year, and 2. Does not occur for no more than 3 non-in consecutive years from the same water right and 3. is for no more than 1 year in three consecutive years.** Sale of storage water shall be permitted.

An exception to the prohibition of permanent acquisitions of water rights within the County is a one-time forbearance dedication for instream flow by a water right holder that affects no more than 10% of that holder's right and applies only during the months of July through October when additional water volume benefits the fishery.

Rationale for adding/benefit: Permanent transfer of land and/or water rights to the WBC results in unacceptable or unpredictable risks to County resources, **except as noted above.**

Respectfully,

Bruce Woodworth
Presiding Director

May 31, 2019
Mono County Community Development Department
c/o Bentley Regehr
P.O. Box 347
Mammoth Lakes, CA 93546
bregehr@mono.ca.gov
VIA U.S. Mail and Electronic Mail

Dear Mr. Regehr:

COMMENTS ON APRIL 23, 2019 NOTICE OF PREPARATION OF AN ENVIRONMENTAL
IMPACT REPORT FOR THE GENERAL PLAN AMENDMENTS FOR THE WALKER
BASIN RESTORATION PROGRAM WATER TRANSACTIONS

Thank you for the opportunity to provide comments on the Walker Basin Restoration Program and the proposed Mono County General Plan amendments.

Innovative Agricultural Water Management Practices Fostered by The Nature Conservancy

Starting in the early 1950's The Nature Conservancy (the Conservancy) has been helping agricultural producers to change farming and ranching practices in order to protect important natural areas and to increase the economic and environmental sustainability of agricultural operations across California. The Conservancy has long recognized the importance of identifying creative and collaborative solutions in partnership with California's agricultural community to address environmental resource issues. Our demonstration projects involve local stakeholders – farmers, ranchers and water districts - located on-the-ground and across the state seek to show how to balance the water resource needs of nature with people and has shown how environmental water transactions can be an attractive and alternative approach to further regulation and litigation to address the problem of insufficient flows. It is in this context that we are commenting on the proposed Walker Basin Restoration Program (WBRP) and the proposed Mono County General Plan amendments.

- Our work in the Klamath Basin, in particular, has demonstrated that long-term solutions to delivering water for nature when and where it is both needed and feasible. This work not only applies short-term leases but also includes the permanent acquisition and dedication of water instream.
- Additionally, our work along the Northern California Coast demonstrates how water management can be changed through partnerships that drive durable, collaborative water management solutions that work for people and nature.
- In the Santa Clara River Basin, in Southern California, we are demonstrating how working with agriculture can restore ecological and hydrological floodplain function

while at the same time providing benefits to downstream municipalities by mitigating against the risk of catastrophic floods.

These examples are just a few across the Western United States on how environmental water transactions are being used to address and advance collaborative water resource management solutions.

The Walker Basin Restoration Program

The Walker Basin Restoration Program (the Program) was established by Congress in 2009 with the goal of restoring and maintaining Walker Lake. This includes associated agricultural, environmental and habitat benefits in the Walker River Basin, covering lands in both Nevada and California. Walker Lake is critical to the recovery of threatened species, such as the Lahontan cutthroat trout, serving as an important stopover for common loons and a variety of migratory birds. However, this critical ecological balance is being threatened by decades of depleted freshwater inflows, that have led to declines of lake elevation and increased lake salinity. In order to reverse Walker Lake's decline and promote its long-term recovery, the Program is striving to balance the interests of landowners, water-user organizations, Indian tribes, local governments, state and federal agencies, and non-profit organizations.

This is being achieved through an integrated approach, based on the authority and funding provided by Congress through the Bureau of Reclamation that includes:

- A voluntary water rights acquisition program;
- A water leasing demonstration program;
- Associated research, evaluation, modeling, and decision support activities at the University of Nevada-Reno and the Desert Research Institute; and
- A conservation and stewardship program focused on land stewardship, water conservation, alternative agriculture, and watershed improvement in cooperation with the Walker Basin Conservancy, a local non-profit established in 2014 to hold and manage acquired assets and support other purposes of the program.

The Conservancy stands in support of this integrated approach, specifically recognizing the value of voluntary transfers to work hand-in-hand with landowners to achieve conservation benefits. There are substantial benefits that can be derived from voluntary water transactions by way of leasing (long and short term), sale and water exchanges. The Conservancy's participation in these types of transactions has been for a variety of reasons such as:

- Providing water for refuges
- Encouraging more efficient use of water
- Facilitating mitigation proposals

- Minimizing the impact of drought and water shortages
- Providing water for fish and bird habitat during critical times of the year
- Supporting preservation and enhancement of wetlands
- Supporting instream flows

Proposed Mono County General Plan Amendments

The proposed Mono County General Plan amendments would limit and interfere with the flexibility, regulatory and legal compliance and could harm collaborative water management efforts essential to accomplish many worthwhile environmental water transactions, including the types described above. The proposed restrictions in Mono County will limit the flexibility of water rights holders to benefit from the full range of uses for their water. It is important to not lose sight of the fact that these are voluntary transactions, often satisfying important water quality needs without requiring governmental mandates. Whereas the alternative can be some form of regulatory action. In the Conservancy's experience, voluntary environmental water transactions can be successful and are more readily accepted by the water rights holders. The limitations that are proposed by the county will only reduce flexibility which, in turn, will limit the range of beneficial options that can be served by the types of voluntary transactions the county seeks to curtail.

There is a question as to whether Mono County has the legal authority to limit the exercise of valid water rights as proposed by the proposed General Plan amendments if the transactions are approved by the State Water Resources Control Board, which has statutory authority pursuant to Water Code sections 1707 or 1735. The Conservancy strongly concurs with the comments made by the State Water Resources Control Board, in response to the project description and alternatives described in the Notice of Participation dated April 23, 2019, that highlights the need for the County to identify and avoid potential conflicts with state water right law(s).

The Conservancy appreciates the opportunity to comment on the Walker Basin Restoration Program and Mono County's authority. We look forward to continued engagement with the Mono County Community Development Department on the matter.

Sincerely,

A handwritten signature in black ink that reads "Jay Ziegler". The signature is written in a cursive, flowing style.

Jay Ziegler
Director, External & Policy
The Nature Conservancy

NATIVE AMERICAN HERITAGE COMMISSION
Cultural and Environmental Department

1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691 Phone (916) 373-3710
Email: nahc@nahc.ca.gov
Website: <http://www.nahc.ca.gov>
Twitter: @CA_NAHC

RECEIVED
MAY 24 2019
Mono County CDD



May 17, 2019

Bentley Regehr
Mono County
Post Office Box 347
437 Old Mammoth Rd., Suite P
Mammoth Lakes, CA 93546

RE: SCH# 2019049167 Walker Basin Water Transfer Program, Mono County

Dear Mr. Regehr:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email
address: Gayle.Totton@nahc.ca.gov.

Sincerely,



for
Gayle Totton
Associate Governmental Program Analyst

cc: State Clearinghouse



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MAY 30 2019

Mono County Community Development Department
c/o Bentley Regehr
P.O. Box 347
Mammoth Lakes, CA 93546
bregehr@mono.ca.gov
VIA U.S. Mail and Electronic Mail

Dear Mr. Regehr:

COMMENTS ON APRIL 23, 2019 NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE GENERAL PLAN AMENDMENTS FOR THE WALKER BASIN RESTORATION PROGRAM WATER TRANSACTIONS

The State Water Resources Control Board (State Water Board) appreciates the opportunity to provide comments on Mono County's (County) Notice of Preparation (NOP) to prepare an Environmental Impact Report (EIR) for the General Plan Amendments for the Walker Basin Restoration Program Water Transactions. Our comments provide information regarding the State Water Board's administration of water rights in the California portion of the Walker River Basin and address potential conflicts with state law, the identification of alternatives, and the availability of accurate water right information.

California Water Right Administration

The State Water Board has primary authority to regulate the diversion and use of all surface waters in California. (Wat. Code, § 174.) It also has exclusive authority to issue and administer water right permits and licenses for surface water appropriations initiated after December 19, 1914, the effective date of California's water right permit and license system. (*Id.* §§ 1225, 1250; see *Delta Wetlands Properties v. County of San Joaquin* (2004) 121 Cal.App.4th 128, 145 [the State Water Board "is the permitting authority for the appropriation of water, over which it has exclusive jurisdiction."].) The State Water Board has "'broad,' 'open-ended,' [and] 'expansive' authority to undertake comprehensive planning and allocation of water resources." (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 449, citations omitted.) It "has the duty and expertise to administer water appropriations in the public interest, which includes all beneficial uses, including preserving and enhancing fish and wildlife resources." (*Siskiyou County Farm Bureau v. Dept. of Fish and Wildlife* (2015) 237 Cal. App. 4th 411, 449.) The State Water Board also administers water rights on interstate streams such as the Walker River, and, in carrying out this responsibility, takes into account the water rights laws of other states sharing the stream. (See e.g., Wat. Code § 1231.)

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov



The Walker Basin Restoration Program (WBRP), which was established for the primary purpose of restoring and maintaining Walker Lake, includes voluntary water rights acquisition and leasing strategies to achieve this purpose. Certain changes in water rights require State Water Board approval. With respect to post-1914 water rights, the Legislature has authorized the State Water Board to review changes in the point of diversion, place of use, or purpose of use of water rights (Wat. Code, § 1701), temporary urgency changes (*id.*, § 1435), temporary changes involving the transfer or exchange of water for a period of one year or less (*id.*, § 1725, 1728), and long-term transfers that exceed one year (*id.*, § 1735). Pursuant to Water Code section 1707, the State Water Board may also approve petitions to change existing water rights, including riparian and pre-1914 water rights, for purposes of preserving or enhancing wetlands, protecting fish and wildlife, and recreation. With the exception of temporary transfers (*id.*, § 1729), compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000 et seq.) is required before the State Water Board can approve the requested action.

The United States District Court for the District of Nevada has appointed the State Water Board as Special Master with responsibility for reviewing proposed changes in the point of diversion, place of use, or purpose of use, in the exercise of adjudicated rights in California that have been established by the Walker River Decree, which is administered by the District Court. Thus, the State Water Board may make findings and recommendations regarding requests to change pre-1914 water rights. (*United States v. United States Board of Water Commissioners* (9th Cir. 2018) 893 F.3d 578, 591, fn. 11.)

Project Description and Alternative Amendment Strategies

The State Water Board's comments are based on the project description and alternatives described in the NOP dated April 23, 2019. The NOP describes the following types of water transactions that are being evaluated in the EIR:

1. Long-term leasing (2 or more years), and/or permanent transfer of, storage rights or of decree flow rights that include the acquisition of the associated land for which there are water rights;
2. Temporary lease of decree flow rights for no more than 1 year; and
3. Purchase of surplus storage water.

The project "would explicitly preclude the [Walker Basin Restoration Program] from entering into flow rights only transactions." (NOP, p. 3.)

The NOP also states that the following alternative strategies will be assessed in the EIR:

- A. Sale of surplus storage water only
- B. Temporary lease of flow rights for no more than 1 year
- C. Prohibit all water transactions

The County's preferred alternative is to adopt the policies and actions that would allow the "[s]ale of storage water and temporary lease of flow rights for no more than 1 year." (NOP, p. 3.)

Avoiding Conflict with State Law

As explained above, the State Water Board has primary authority over the administration of surface water rights in the state. As the County considers the development of the General Plan Amendments, the State Water Board encourages the County to identify and avoid potential conflicts with state water right law. (Cal. Const. Art. 11, § 7.) “A conflict exists if the local legislation “ ‘duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.’ “ ‘ [Citations omitted.]’ (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897; see also *id.*, at p. 898 [discussing indicia of legislative intent to fully occupy the area].)

More specifically, with respect to water right transactions that are conducted in support of the WBRP, the State Water Board has exclusive approval authority over requests for water right changes and transfers, including requests for change by riparian and pre-1914 water right holders under Water Code section 1707. Of course, a water project may include broader aspects over which other state and local agencies have discretionary approval power. (*Delta Wetlands Properties v. County of San Joaquin, supra*, 121 Cal.App.4th at p. 145.) Accordingly, the County may act consistent with its jurisdiction and responsibility over water-related projects to regulate land use activities, but it may not intrude into areas over which the State Water Board has exclusive jurisdiction. Indeed, the existing General Plan recognizes the potential for state preemption by providing that a water transfer permit from the Mono County Planning Commission for out-of-basin water transfers is required “[w]here not preempted by state law.” (General Plan Conservation/Open Space Element Action 3.E.1.a.) A complete prohibition on water right transactions that may otherwise be approved under state law or the imposition of conditions that effectively mandate particular uses of water, for example, raise questions regarding potential conflicts with state law.

No Project Alternative

CEQA requires a lead agency to evaluate a “No Project Alternative” “to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” (Cal. Code Regs., tit. 14, § 15126.6, subd. (e)(1).) For a plan, the No Project Alternative generally will be the continuation of the existing plan, policy or operation into the future. (*Id.*, subd. (e)(3)(A).)

The NOP describes “Alternative C: No Project/Prohibit Water Transactions” which would include adding a General Plan policy that prohibits WBRP-related water transactions. (NOP, Att. 1, p. 10.) The existing plan, however, does not prohibit water transactions, but encourages the “beneficial use of water resources while protecting local water users and biological resources from the adverse effects of water transfers.” (*Ibid.*, citing General Plan Conservation/Open Space Element Objective 3.E.) It is unclear how the prohibition would constitute the No Project Alternative, if that is what is intended by the NOP, given that the existing General Plan does not prohibit such water transactions. The State Water Board suggests clearly identifying a No Project Alternative that meets the requirements of CEQA.

Other Alternatives

The EIR must describe a range of reasonable alternatives to the project that will “feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project” (Cal. Code Regs., tit. 14, § 15126.6, subd. (a).) A determination of feasibility involves taking into account various factors, including legal factors. (*Id.*, § 15364.)

The NOP proposes to evaluate other alternatives that limit water transactions. The Project Description includes various limitations, including a prohibition on WBRP-related “water decree flow rights only transactions (i.e., the transfer of flow rights without the transfer of associated land).” (NOP, Att. 1, p. 8, Recommended Action 3.E.5.a.) The alternatives also include only allowing the sale of surplus storage water (Alternative A), only allowing temporary one-year leases (Alternative B), and only allowing the sale of storage rights and temporary one-year leases of flow rights while prohibiting permanent sales of water rights or land to the Walker Basin Conservancy (Alternative D). (NOP, Att. 1, pp. 8-11.)

The discussion of alternatives in an EIR should focus on alternatives that will avoid or substantially lessen the significant adverse environmental effects of the project. (Cal. Code Regs., tit. 14, §15126.6, subd. (b).) All of the alternatives discussed in the NOP have the potential or likelihood of impeding efforts to protect instream beneficial uses of water through voluntary transfers as compared to the existing General Plan. The alternatives should be modified, or new alternatives proposed, to avoid or reduce the potential for interference with transfers to protect instream beneficial uses.

The EIR’s evaluation of reasonable alternatives should include an assessment of legal feasibility. As discussed above, the State Water Board encourages the County to identify and avoid conflicts with state law allowing changes in water rights.

In addition, it merits noting that an appropriate water right does not depend on the ownership of land and it may be conveyed separate and apart from the land. (*Locke v. Yorba Irr. Co.* (1950) 35 Cal.2d 205, 209-210; see also *People v. Shirokow* (1980) 26 Cal.3d 301, 307 [“The appropriation doctrine contemplates the diversion of water and applies to ‘any taking of water for other than riparian or overlying uses.’ ”].) Thus, a water right may be transferred without the transfer of associated land. Moreover, Water Code section 1707 allows any person entitled to the use of water, regardless of the basis of right, to change the right for environmental purposes. Land ownership is irrelevant to the approval of such changes. The use of water for instream beneficial uses, including the preservation and enhancement of fish and wildlife resources, is a beneficial use of water (Wat. Code, § 1243, subd. (a)), and it is the policy of the State of California to facilitate voluntary transfers where consistent with the public welfare. (*Id.*, § 109.)

Accuracy of Information

We understand that the County is requesting comments on the scope and content of information to be provided in the EIR. In reviewing the County’s CEQA Initial Study Checklist, however, we noticed overly broad, inconsistent, and inaccurate statements in Section 2, Project Description, including in the discussion of water rights and environmental laws. As one example, the Initial

Study Checklist at page 2-3 states that “Water rights within the Walker River Basin in Mono County are pre-1914 rights,” while, in contrast, Section 3, Environmental Checklist, at page 3-14, states that *many* of the surface water right rights are pre-1914 rights. According to the State Water Board’s Electronic Water Rights Information Management System (eWRIMS), which provides information on water rights in California, water rights in the East and West Walker River basins in Mono County include riparian, post-1914, and pre-1914 water rights.

The eWRIMS database is available to the public at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/.

The State Water Board can assist the County with identifying relevant water right information if needed. If you have any legal questions regarding California water right administration in the Walker River Basin, please contact Erin Mahaney, Attorney IV, at (916) 341-5187 or erin.mahaney@waterboards.ca.gov. For technical and other questions, please contact Steve Marquez, Water Resource Control Engineer, at (916) 341-5350 or steve.marquez@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY:

Erik Ekdahl, Deputy Director
Division of Water Rights



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
(909) 484-0459
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GAVIN NEWSOM., Governor
CHARLTON H. BONHAM, Director



May 28, 2019
Sent via email

Bentley Regehr, Planning Analyst
Mono County Community Development Department
Post Office Box 347
437 Old Mammoth Rd., Suite P
Mammoth Lakes, CA 93546
bregehr@mono.ca.gov

Subject: Notice of Preparation of a Draft Environmental Impact Report
Walker Basin Water Transfer Program
State Clearinghouse No. 2019049167

Dear Mr. Regehr:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from Mono County for the Walker Basin Water Transfer Program (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project proposes to amend the General Plan to allow new policies and actions to the Conservation/Open Space Element of the General Plan. The amendments would allow water transactions to support the Walker Basin Restoration Program (WBRP). The following types of water transactions will be evaluated in the DEIR:

1. Long-term leasing (two or more years), and/or permanent transfer of, storage rights or of decree flow rights that include the acquisition of the associated water-righted land;
2. Temporary lease of decree flow rights for no more than one year; and
3. Purchase of surplus storage water.

The Project would explicitly preclude the WBRP from entering into flow rights only transactions, because the separation of flow rights from the water-righted land is viewed as too risky for the future management of County agricultural, wetland, and biological resources.

The DEIR will analyze alternative amendment strategies that consist of General Plan policy amendments related to different combinations of water rights transactions.

The following transaction strategies and their policies and actions will be assessed as alternatives to the Project:

- A. Sale of surplus storage water only;
- B. Temporary lease of flow right for no more than one year;
- C. Prohibits all water transactions;

The County's preferred alternative is to adopt the policies and actions that would allow:

- D. Sale of storage water and temporary lease of flow rights for no more than one year.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Mono County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW recommends that the forthcoming DEIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The CDFW recommends that the DEIR specifically include:

1. An assessment of the various habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.
4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following the CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <https://www.wildlife.ca.gov/Conservation/Plants>).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).
6. A full accounting of all mitigation/conservation lands within and adjacent to the Project.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to affect biological resources as a result of the Project. To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

1. A discussion of potential impacts from lighting, noise, human activity (e.g., recreation), defensible space, and wildlife-human interactions created by Project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or conservation/mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).
3. A cumulative effects analysis developed as described under CEQA Guidelines § 15130. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Alternatives Analysis

Note that the DEIR must describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would “feasibly attain most of the basic objectives of the Project,” and would avoid or substantially lessen any of the Project’s significant effects (CEQA Guidelines § 15126.6[a]).

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the Project. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.
2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks

can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.

3. *Mitigation*: CDFW considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail.

The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If sensitive species and/or their habitat may be impacted by the Project, CDFW recommends the inclusion of specific mitigation measures in the DEIR. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

CDFW recommends that the DEIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, in order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions.

4. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in local ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the

plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

5. *Nesting Birds and Migratory Bird Treaty Act*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

CDFW recommends that the DEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The

DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the DEIR, CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

6. *Moving out of Harm's Way:* To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the Project. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. The California Fish and Game Code requires that CDFW comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the DEIR addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of CESA.

Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round).

This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a LSA notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of a DEIR for the Walker Basin Water Transfer Program (SCH No. 2019049167) and recommends that Mono

Notice of Preparation of a Draft Environmental Impact Report
Walker Basin Water Transfer Program
SCH No. 2019049167
Page 10 of 10

County address the CDFW's comments and concerns in the forthcoming DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Rose Banks, Environmental Scientist, at (760) 873-4412 or at Rose.Banks@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California.
<http://vegetation.cnps.org/>

To Whom It May Concern:

Walker Basin Conservancy (The Conservancy) respectfully submits the following comments on the Notice of Preparation.

The Conservancy Background and Request to be Included in Administrative Draft

The Conservancy is responsible for the implementation of the Walker Basin Restoration Program (Program), previously administered by the National Fish and Wildlife Foundation. The Program was established by Public Law 111-85 (2009) for the primary purpose of restoring and maintaining Walker Lake, **and to protect agricultural, environmental and habitat interests** in the Walker Basin consistent with that primary purpose. The Conservancy accepted responsibility in 2017 to administer this Program.

The Conservancy works in partnership with local communities, private landowners, water managers, tribes and a variety of public agencies to restore Walker Lake. Working with **willing sellers** to acquire water rights, and related assets, the Conservancy is on its way to acquiring enough water to reach our restoration goal for Walker Lake (12,000 mg/L TDS). To date, approximately \$82 million of Program funds have been expended to acquire 43.7% of the water needed to restore Walker Lake's fishery.

Program Water is monitored with several USGS gages in the Walker Basin. These gages help the Conservancy monitor the amount of Program Water instream to ensure its protection to Walker Lake and ensure that consumptive and non-consumptive use is clearly monitored (see <https://webapps.usgs.gov/walkerbasinhydromapper/#home>).

After water rights are purchased for Program goals, this water must be legally protected in the river to reliably increase instream flows to Walker Lake. Before acquired water can flow to Walker Lake, the purpose and place of use needs to be changed (change application) through a process set by the Nevada State Engineer and confirmed by the federal Walker River Decree Court. Once the various legal approvals are complete, the acquired water (now monitored as Program Water) will be protected in perpetuity for the instream benefit of Walker River and Walker Lake for ecological purposes.

The first change application, filed in 2011, was confirmed in May 2018 by the United States Court of Appeals for the Ninth Circuit. The ruling from the Ninth Circuit Court and subsequent confirmation at the federal Walker River Decree Court makes it possible for the Conservancy to begin calling on that specific Program Water during the irrigation season when it is in priority. The priority date (which is the date of seniority of a decreed water right) is determined daily by the Federal Water Master and sets which water rights can be fulfilled based on the natural streamflow that day. The Conservancy has since filed additional change applications and will continue to do so to ensure all Program Water can be protected for the benefit of Walker Lake.

Due to the nature of this EIR and The Conservancy's knowledge of the water acquisition processes, Walker Basin Conservancy would respectfully ask to be included in a review of the Administrative Environmental Impact Report to provide additional comment.

General Comments related to Background

- The Conservancy works with **willing** sellers in the Basin to acquire water rights and convey this water use to Walker Lake to benefit native wildlife.

- When the Conservancy acquires water rights, the Conservancy revegetates where needed with active restoration for a period of at least two years in order to ensure that there are no fugitive dust issues. Primary restoration goals for stewardship activities address three main issues: fugitive dust abatement, soil stabilization and noxious weed control. Improved habitat is addressed where appropriate and possible. Establishing arid-land vegetation that can ultimately survive without supplemental irrigation is the long-term goal for the Land Stewardship Program.
- The Conservancy revegetates already fallow agricultural lands with native vegetation and also leases land for agricultural use including grazing, alfalfa, etc.
- In addition to land stewardship, the Conservancy has focused on other conservation efforts, including reducing instream sedimentation, improving irrigation infrastructure, and investigating opportunities to reduce overall water usage while keeping local agricultural economy intact.
- Over 2,000 acres of water-righted land purchased through the program are leased for grazing with four active grazing leases.

Thresholds of Significance & Issues

- Air Quality would not be a significant impact as the Program mitigates fugitive dust emissions through revegetation and land conservation practices.
- *Water and related projects that would reduce cumulative effects*
 - The Program has relinquished groundwater rights to mitigate potential impacts from purchases which needs to be included in the EIR. The Program has relinquished 11,710 acre-feet of supplemental groundwater to benefit the Walker Basin's groundwater table.
 - The Conservancy's work to protect agricultural uses needs to be included in this EIR. While working to legally protect Program water instream to Walker Lake, the Conservancy continues to work with farmers and ranchers by:
 - Leasing 5,760 acre-feet of storage water to 13 different users in 2018
 - Developing 'lease-back' options with sellers for decreed surface water until it can be transferred in-stream to Walker Lake

References

- Through a partnership with USGS Nevada, the Conservancy has developed an interactive mapping application (Hydro Mapper) to provide a Basin-wide perspective of real-time streamflow and lake and reservoir storage levels for the Walker Basin. The Hydro Mapper also provides access to historic streamflow, lake and reservoir data. This tool was developed to create a common operating picture for water users in the Walker Basin and to help monitor changes to instream flows associated with the Program.
<https://webapps.usgs.gov/walkerbasinhydromapper/#home>
- The Conservancy requests that this Economic Impacts Analysis – Sustainable Agriculture Pilot Project be included in any economic analysis in the EIR:
<https://static1.squarespace.com/static/550a1fc8e4b0e1de27f15703/t/5ce4378cdd505d0001042413/1558460303974/Sustainable+Ag+Pilot+Project.pdf>

Alternatives



- The permanent purchase of water is the most effective way to protect water instream to Walker Lake. The Conservancy's mission is to buy, change, and protect water instream in perpetuity. The Program was established by Public Law 111-85 (2009) for "for the primary purpose of restoring and maintaining Walker Lake." Leasing water may not be the most effective way to meet our Program goals and objectives. The Conservancy, however, is working with the Walker River Irrigation District (WRID) on a demonstration storage leasing program to understand the feasibility of this type of Program water leasing.
 - The Program's restoration goal is to increase natural flows in the Walker River to restore and maintain Walker Lake to a **long-term TDS average** between 10,000 mg/L and 12,000 mg/L. Leasing water would not fit this goal.
- Mono County should consider alternatives that include water purchases without land, or water purchases with land that the Conservancy would lease back to farmers and ranchers or revegetate with ecologically appropriate flora.

Amendments

Generally, the Conservancy would like the County to evaluate permanent transfer of decree with mitigative actions to ensure that environmental resources are not impacted.

- *Amendment 3.E.4, Action 3.E.4*
 - A and B have already been litigated. The Conservancy does not believe separate quantification of consumptive and non-consumptive use for Antelope and Bridgeport Valleys would be feasible as the Ninth Circuit Court of Appeals ruling has settled this issue.
 - General comment on C: The Conservancy does not approach or canvas sellers, the Conservancy only works with willing sellers.
- *Amendment 3.E.4, Action 3.E.4.D*
 - The Conservancy already has processes in place for each potential acquisition that evaluate transactions, including an economic analysis done by two consultants.
- *Amendment 3.E.4, Action 3.E.5.A*
 - Decree flow rights only transactions should be considered. There are mitigative actions that would ensure environmental resources are not adversely impacted.

Thank you for accepting these comments and our request for review of the administrative EIR.

Please do not hesitate to call with questions.

Sincerely,

Laura Patten, Land Conservation Director, Walker Basin Conservancy

(O) (775) 463-9887 ext. 112

(C) (415) 902-1233



APPENDIX D MEETING NOTES

MEETING NOTES

Date/Time: 5/6/2019 2:00 pm

Location: Mono County PW

Project: RCD Meeting – NFWF Walker Basin Restoration Program Mono County Policies

Attendees: RCD
Mono County staff
Panorama staff

Subject: Scoping for Policies

Update from Iain on Program and Policies

Questions Asked or Statements Made:

What is meant by surplus storage and is there a legal distinction between storage water and surplus water? What is left after duty-water right holder can decide what to do with the storage water. No one auctions water off in Mono County, it is use the water or lose the water. Surplus storage leasing may not be feasible. The only one that could undertake the program is WRID. There is nothing internally that would stop them from working outside their system. May be a negotiation here.

Why limit to 3 years per leasee? Iain noted that water transfers are exempt from CEQA for one year off. Also only looking to 2024 but think longer term than that timeframe. May not make sense for 3 years total limitation if non-consecutive leases are allowed.

Can users in conservation easements participate? If a water right holder/landowner is in an agricultural easement, agricultural uses take priority. The County should look to see if they can feasibly co-exist (transfer and easement). Many of the agricultural easements stipulate that the water stays with land in the valley in perpetuity. Conservation easements will likely preclude the semi-permanent transfers.

Will decree court issues be addressed in the EIR, especially with regard to short-term leasing? The biggest hurdle is that any change for leasing has to go through a decree court and water master. Decree court issue is the same – all diversions in Mason and Smith Valleys have required going through the decree court. Leasing is a can of worms – you can study it. Trying to get water from A to B is hard to do. Problem is that it's use-it-or-lose-it. So, what you don't use goes to the next junior user. So leasing is basically not the landowner's water.

The County should not pick a preferred alternative until they understand the effects of the transactions. Hold off on the preferential until the County knows the outcome of impacts. The

MEETING NOTES

May 6, 2019

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total amount needed is not a huge percentage of the total water so it may not be detrimental. The RCD did look at leasing versus outright sale. The outcome was that the leasing was going to be tough. The costs involved would be really high unless it was something like Antelope Valley Water Company could run at a 70% and lease the extra but it still affects junior water rights holders.

Think about the groundwater. Following a field would include leaving the water on the river, but also would idle the groundwater that is also used. So, it's more than just the amount into the Walker River, but any groundwater may also contribute to the overall basin and thus, Walker Lake.

What is the enforcement related to adaptive management? The management of the land is with the owner and how do you enforce county stipulations? The County noted that transfers would operate under Use Permit conditions. If not met, a revocation process would be implemented and then not allow the transfer of water. Even permanent transfers would be subject to the permit conditions. The enforcement would be on WBC and not individual permit holders. Leverage is that the County can take away the permit to the transaction, even if it is a quasi-federal agency (WBC).

Include the Fishing Commission as well as RCDs in the notification process.

Address wildfire in the EIR. If drying out land, fire risks could increase. Need to look at it more closely. Will be tied to biology – both the invasive species and any habitat transition will dictate the impacts.

Need to look at cumulative effects. Could the transfers bring on an onslaught of subdivisions? Could it change the nature of the valleys? If water and land stay tied together it becomes essentially a conservation easement. Could be an issue for leasing, but not for permanent transfers. Permanent transfers would require conservation of the land.

What alternatives will be addressed in the EIR? If an alternative comes up later and is not in the Draft EIR, how would it be addressed? Are there other benefits depending on the properties that are in the program? Are there preferential properties to be in the program?

Excluded from analysis is permanent separation of water rights from the land. That's the only scenario that's not being covered as an alternative and perhaps it should be addressed. The County stated that the members of the RCD should submit a comment to that effect if they think this alternative should be included and why. Could the goal still be achieved with the existing options?

MEETING NOTES

Date/Time: 5/7/2019 ~1:20 pm

Location: Mono County Courthouse

Project: BOS – NFWF Walker Basin Restoration Program Mono County Policies

Attendees: Board of Supervisors

Bob Gardiner

Fred Stump

John Peters

Jennifer Halferty

Subject: NOP and Scoping for the Walker Basin Water Transaction and Program and CEQA

Introduction

Mono County attorney gave background from 10 years ago on the Walker Lake Restoration Program and the County's involvement. Congress appropriated hundreds of millions of dollars for acquisition of water rights to restore Walker Lake. Initially the transactions would be between landowners and NFWF – Mono County intervened and negotiated an MOU to be able to oversee how the transactions happen within Mono County.

Overview from Iain on Policies for WBRP, NOP for the Walker Basin Water Transaction Program

Iain gave presentation on background of program, County involvement, what's included in the policies and the transaction types that make up the program, and the CEQA process.

Questions and Comments

Sup Fred Stump:

- Are you aware of SGMA and the status of the Antelope and Bridgeport basins? Supplanting groundwater with surface water would be an issue for these basins. Iain – it is addressed through the policies.
- Include wildfire in the analysis. History of fire in the Antelope Valley – if you don't do that it will be raised anyway. Personally, not in favor of seeing diminishment of County resources.

Sup Gardner:

- No comment but appreciates opportunity and to move forward

MEETING NOTES

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Sup John Peters:

- Is there a GIS overlay of water rights – senior to junior – make available so that junior rights holders can take a look to see how they are impacted upstream and downstream?
- What is the impact if an area is dewatered? What is surplus storage and how that is defined in policy. Extra storage water b/c of a surplus year because of precipitation. What is going on now with decrees being opened up. A lot of unanswered questions.

Update on Lawsuits by County Attorney Jason Canger:

9th circuit issued decisions on three of the cases involved in the larger suite of Walker River litigation.

1. Public trust doctrine – whether or not it applied to decree water rights to be of a certain value, etc.
2. Whether or not the Walker Basin Paiute Tribe should be entitled to a certain water right. Earliest date on system and a GW right
3. A number of procedural matters related to these matters – which parties had standing to maintain the action in federal court.

9th circuit decided and returned to federal district court. Judge removed and parties have standing. Separately the 9th circuit addressed that the Walker Basin Paiute Tribes for surface and GW right could go forward. On issue of whether and how Public Trust Doctrine applied. Court determined that it didn't have enough law in front of it but certified a few questions to the NV Supreme Court – would modification of water rights result in taking of water rights.

Public Comments or Questions

None.

MEETING NOTES

Date/Time: 5/7/2019 6:30 – 8:30 pm

Location: Antelope Valley Community Center

Project: NFWF Walker Basin Restoration Program Mono County Policies

Attendees: See sign-in sheet/RCD notes

Subject: Public Scoping Meeting at the Regional Planning Advisory Committee

Introduction

Iain gave a presentation. Several comments were raised, and discussion points were brought up as summarized below. Jason Canger, Mono County General Counsel, gave an overview of the court cases (see notes from the BOS meeting earlier today).

Questions

- Why did you eliminate the separation of flow rate from the land? Why can't you just look at some percentage of water/flow such as 20%. Iain – because of the risks involved to natural resources and ability to control impacts. A partial separation can be investigated as an alternative.
- Need to state that the water is only used by the WBC for intended purposes, and Mono County should be able to question the proper use of the water and to pull the program if it is misused.
- Consider sage-land – it is still scenic. The change from agriculture to sage shouldn't be considered un-scenic.
- What happens if everyone in the Valley sells 100% of their water rights. Need to address the browning of Antelope Valley, which is a significant change. Everybody is on a well. Wells are replenished through recharge. People in flatlands may not have property but could have wells affected. People in the hills could be affected. As part of this study, do you have the valley's groundwater. Need to also take into the study the repercussions of draught. Iain – 100% would not be sold – the estimated maximum amount is 8%.
- Is Walker lake terminal and at what point will the salinity be reduced? Does the WBC have any plans of creating an outlet? Iain – based on geography, it is terminal lake, or the lowest point in the basin, it's not possible to create an outlet.
- Why do we have to write our comments when we've given the comments. Wendy – we don't have a court recorder, name, and details to put formerly in the record. We are taking notes and considering the general nature of these comments to address. We can provide a summary, but we can't ensure that it exactly represents the commenters intent unless the comment is written up.

MEETING NOTES

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- Why did the County reject the separation of the land and water? Where is that described. Tania – there is a section called Alternatives in the EIR that looks at alternatives considered but rejected. Often, an alternative is rejected if it results in greater environmental impacts than the proposed actions. If comments are received to consider it, we could put it back on the table in the analysis. It's still open.
- The consumptive use is what you sell? Iain, well you sell the whole right, but the 53 percent is the amount that is sent down the river to Walker River. The 47 percent has to be put back in the ditch, based on the outcome of the court case.
- Wendy's clarification: the groundwater model and information is not part of this process. WBC would be responsible to do that analysis.
- Say in 2020 someone finds that their well is drying up. What recourse is there? Iain – there is a monitoring plan to help ensure that impacts are not happening. Wendy – also the WBC will need to monitor
- If everything remains status quo – the County did nothing, left it where it is today. Is there exposure to federal suit to get the water? Wendy – typically the County wouldn't be involved at all, but Mono County got involved through the Memorandum of Understanding. So, if the County doesn't participate it doesn't mean no transactions. The advantage is that the County can control what is considered and goes on to the next level at the state – the water master and the Nevada decree court.

Resource Conservation District of Mono County

Post Office Box 327

Coleville, CA 96107

Phone: 530-208-5404

Web site: monorcd.org

Email: monocountyrcd@gmail.com

MINUTES:

Attending: Hal Curti, Chair/Director, Dwain Chichester, Director Kristie Nelson, Director, Jim Gifford, Natural Resource and Conservation Service (NRCS), Supervisor John Peters, Wendy Sugimura, Justin Nalder and Bentley Regehr with Mono County, Jason Canger, Assistant County Counsel, Tanya Treis and Ian Fisher with Panorama Environmental and Bruce Woodworth, Mono County RCD Coordinator.

(Board Voting, example [Chichester/Bunn 3-1-0] indicating motion by Chichester, second by Bunn, vote 3 ayes, 1 nays, 0 abstentions.)

Discussions:

Fisher & Treis: of Panorama Environmental working for the County for EIR/CEQA purposes, not Nation Fish and Wildlife Foundation (NFWF) nor Walker Basin Conservancy (WBC).

Community Development briefing on WBC proposal for water purchase/lease program in Mono County for the benefit of Walker Lake, Nevada.

Surplus storage water is not legally distinguished from storage water.

That existing conservation easements may tie the water to the land needs clarification.

Enforcing Adaptive Management to be done by WBC through revocable use permit by the County to continue water transfer.

District discussion mentioned: 1. including the Mono Co. Fishing Commission as a scoping session, 2. permanent water transfers, separable from the land fee title should be considered for dedication of water for fishery purposes (in-stream forbearance), 3. Wildfires be included in some fashion as a substantial impact and 4. cumulative impacts (such as subdivision development) should be discussed in the EIR.

“MINUTES 05-06-2019” SP3 RCD3 M 18-02

Canger: Walker River Litigation.

Provided background on the three current, separate lawsuits involving the U.S. government and Tribes vs. Walker River Irrigation District. Mono Co. is involved as a water rights holder.

A foundational question is whether just compensation must be paid for reconsideration of water rights if they are changed by the Court (under the Public Trust Doctrine) in reviewing the federal Decree.

Gifford: Updates.

NRCS: Farm Bill conservation programs - 7 current applications.

Farm Service is in Minden now.

Votes:

1. Changed the fiscal year to begin each year on July 1 and end on June 30 of the following year, starting with July 1, 2019. [Chichester/Nelson 3-0-0].
2. Voted to support work of the Inyo Mono Regional Water Management Group with a donation of \$250. [Nelson/Chichester 3-0-0]. [AE 19101]
3. Voted to continue with officers Hal Curti and Dwain Chichester as Chair and Secretary/Treasurer respectively. [Nelson/Chichester 3-0-0].

Directors Reports: None.

Coordinator's Report: None

Approval of September, 2018 Minutes: [Nelson/Chichester 3-0-0].

Respectfully,



Bruce D. Woodworth