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MINERAL COUNTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

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CAROL C. FITZGERALD
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UNITED STATES OF AMERICA,)
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Plaintiff,)
)
WALKER RIVER PAIUTE)
TRIBE,)
)
Plaintiff-Intervenor,)
)
vs.)
)
WALKER RIVER IRRIGATION)
DISTRICT, a corporation, et al.)
)
Defendants.)

IN EQUITY NO. C-125-C-ECR

MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM
OF POINTS AND AUTHORITIES;
AFFIDAVIT OF KELVIN J.
BUCHANAN, P.E.; AND
AFFIDAVIT OF GARY L.
VINYARD, Ph.D

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1 NOW COMES, Plaintiff, MINERAL COUNTY, by and through its attorneys,
2 Zeh, Spoo and Hearne, and hereby moves the Court for a preliminary injunction,
3 under the authority of FRCP 65(a), enjoining all Defendant users of the Walker River
4 upstream of Walker Lake, and all those in active concert or participation with them,
5 from retaining and using the entirety of the flows from the Walker River and to allow,
6 specifically, approximately 260,000 acre feet of Walker River flows to reach the
7 Walker Lake at its inlet to raise the Lake to 3,946 feet above mean sea level in cal-
8 endar year 1995 and to allow, specifically, approximately 240,000 acre feet of Walker
9 River flows to reach the Walker Lake at its inlet to raise the Lake to 3,950 feet above
10 mean sea level, and, finally, to allow, specifically, approximately 117,000 acre feet
11 for each year thereafter so that Walker Lake will remain at 3,950 feet above mean sea
12 level until a final decree is entered by the Court in the present adjudication, C-125.

13
14
15
16 Unless Defendants are restrained and enjoined by order of this Court, Plaintiff
17 will suffer immediate and irreparable injury, loss, and damage in that the fishery at
18 Walker Lake will cease to exist without ability to rejuvenate, as more fully described
19 and set forth in the Affidavits of Herman Statt, Marlene Bunch, and Louis Thompson
20 previously filed with the Motion to Intervene dated October 25, 1994, and this Motion
21 for Preliminary Injunction and accompanying Affidavits of Kelvin Buchanan and
22

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1 Dr. Gary Vinyard, attached hereto. This motion is made on the additional ground that
2 Plaintiff has no adequate remedy at law.
3
4

5 DATED this 10th day of March, 1995.

6 LAW OFFICES OF
7 ZEH, SPOO & HEARNE
8

9 By 

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11 450 Marsh Avenue
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14 Attorney for Plaintiff
15 MINERAL COUNTY
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In April or May, the Spring trout-run up the Agai Hoop (Trout River) began. People from throughout the region gathered at the mouth of the river to fish . . . the fish runs were occasions for festivals¹

Since the memory of man, the history of Walker Lake has always included the fishery. Walker Lake has been, until very recently, a destination for those in search of trophy Cutthroat Trout. Today the levels are so low in the Walker Lake that the fishery will be lost if immediate action is not taken.

The essence of this dispute over Walker Lake is whether a lake with its incumbent economic benefits and environmental resources can demand water based on the fact that it exists as a natural resource preserved for the public versus whether irrigation with its incumbent economic benefits and private property rights can continue to exist based upon a law that was adopted over a century ago when agricultural and mining development was the only goal. Can both interests coexist? Not as they are presently managed on the Walker River system. The basic fact is either upstream uses change or Walker Lake ceases to exist as a fishery.

While these timely issues presented in this case (*i.e.*, whether C-125 has been properly enforced, whether irrigation conducted by 1936 methods is still beneficial

¹Johnson, *Walker River Paiutes, A Tribal History*, Walker River Paiute Tribe, 1975, p 9.

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1 use, and whether the public trust allows the Court to allocate in-stream flows to
2 Walker Lake) wait to be resolved, Walker Lake will become a moot issue. Walker
3 Lake's existence as a viable fishery is at critical mass. Walker Lake cannot await the
4 outcome of a decade-long adjudication.
5

6 The Nevada Department of Wildlife has already forecast Walker Lake's fate.
7 Water to raise Walker Lake's levels is desperately needed or, according to nearly
8 every expert's opinion, within one year fish will not be able to survive. Just because
9 snowpack is above normal in 1995 provides no assurance that Walker Lake will
10 receive one drop of water. Without intervention from this Court, the 1995 snowpack
11 will be used to recharge groundwater reserves in Mason Valley, and replenish
12 Bridgeport, Topaz, and Weber reservoirs, but none will reach Walker Lake just as has
13 occurred since 1987.
14
15

16 Mineral County prays this Court to preserve Walker Lake, a natural resource
17 and remnant from the Pleistocene era. It is part of our history, part of our
18 environmental resources, and the mainstay of Mineral County's economy. Without
19 immediate relief, it will no longer be a viable issue in this case.
20
21

22 STATEMENT OF FACTS

23
24 The level of Walker Lake is presently 3,941.2 feet above sea level. The Total
25 Dissolved Solids are approximately 14,000 parts per million (ppm). This is
26 approaching the level at which tui chub eggs die (approximately 15,500 ppm) and
27 close to the level where trout will die (approximately 16,000 ppm). This dramatic
28

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1 scenario is being played out at Walker Lake as evidenced by the 93.3% of stocked
2 fish sampled, which died in 1994. (See, Affidavit of Kelvin J. Buchanan attached.)

3
4 While some geologists debate whether or not Walker Lake did actually dry out
5 nearly 14,000 years ago,² nonetheless if it did, fluvial circumstances existed
6 immediately after that time to allow a rejuvenation of the Lake and it's fishery.
7 Human intervention has since occurred that severs that inherent rejuvenation character
8 of the River from the Lake. Topaz and Weber Reservoirs now exist to impede the
9 ability of fish to reach Walker Lake to reestablish colonies. If Walker Lake ceases to
10 be a viable fishery, no biologist can guarantee that it can ever be rejuvenated. (See,
11 Affidavit of G. Vinyard attached.)
12

13
14 No meaningful flows from Walker River have reached to Walker Lake since
15 1987. (See, Affidavit of Kelvin J. Buchanan attached.) Upstream are three man-made
16 reservoirs, one of which is required by the State of California to retain minimum
17 levels, an allocation not contemplated by C-125. Good and efficient water
18 management is hampered by present irrigation practices and facilities and Walker
19 River Irrigation District (hereinafter "WRID") has not implemented recommended
20 improvement projects. (U.S. Department of Agriculture, *Final Watershed Plan and*
21
22

23
24 ² There is some evidence that the Walker Lake basin held a deep lake between at
25 least 32,000 and 25,000 years ago, and even better evidence that Walker Lake was not
26 a lake at all between about 22,000 and 14,000 years ago, when the basin was occupied
27 by a salt marsh. During this interval, it appears that the Walker river was flowing not
28 into Walker Lake, but instead north into the Carson Basin, where a sizeable lake then
existed....reconstruction has Lake Lahontan so high at 14,000 years ago that it
incorporated the Walker Lake Basin. Grayson, *The Desert's Past*, Smithsonian
Institution, 1993, p. 96.

1 *Environmental Impact Statement, East Walker Watershed*, August 1989.) No one
 2 would contemplate that irrigation practices would not substantially improve since
 3 1936. Many more acres are being irrigated with the granted storage rights than were
 4 contemplated at the time of the earlier decree in C-125. (Headley, *Economic Study of*
 5 *Walker River Irrigation District*, October 1933 [available at UNR library]). The
 6 Walker River Paiute Tribe (hereinafter "Tribe") has constructed a non-permitted
 7 reservoir not contemplated in C-125 that inhibits any remaining waters from flowing
 8 through the reservation to Walker Lake.³

11 LEGAL ARGUMENT

12 **I. Mineral County Can Prove That Grave Irreparable** 13 **Harm, the Loss of Walker Lake as a Viable Fishery,** 14 **Will Occur Unless Preliminary Injunctive Relief Is** 15 **Granted.**

16 **A. Without a Court Ordered Infusion of** 17 **Water from the Walker River, Walker** 18 **Lake Can Not Survive Because Walker** 19 **River Is the Major Source of Water for** 20 **Walker Lake.**

21 The United States Court of Appeals, Ninth Circuit has adopted a
 22 standard employed in deciding whether to grant a preliminary injunction. These two
 23 tests for issuance of a preliminary injunction "are not separate, but rather represent the
 24 outer reaches of a single continuum." Los Angeles Memorial Coliseum v. National
 25 Football League, 634 F.2d 1197, 1201 (9th Cir.1980).

26
 27
 28 ³ Mineral County makes no allegation that the Tribe has retained more than its
 entitlement of reserved water rights.

At one end of the continuum, the moving party is required to show both a probability of success on the merits and the possibility of irreparable injury. Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir. 1983).

The retention of flows upstream have deprived Walker Lake of substantially all of the rejuvenating waters from Walker River. Walker Lake has no other source of sufficient quantity to replenish it.⁴ Walker Lake, presently at a critical level of 3,941.2 feet above sea level, will suffer irreparable harm unless this Court grants Mineral County a preliminary injunction on behalf of Walker Lake mandating that a duty of approximately 260,000 acre feet reach the Lake in 1995 to bring the Lake to 3,946 feet above mean sea level, and approximately 240,000 acre feet in 1996 to bring the Lake to 3,950 feet above mean sea level, the 1992 level, and finally a duty of 117,000 acre feet for each year thereafter so that Walker Lake will survive as a fishery until the reallocation of the waters of Walker River are completed. (See, Affidavit of Kelvin J. Buchanan attached.)

Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e. irreparable. If such injury is sufficiently likely, therefore, the balance of

⁴ As I have mentioned, Walker River provides 83% of the inflow to Walker Lake. Without that source, Walker Lake would be a puddle. Grayson, *The Desert's Past*, *supra*, p. 96.

1 harms will usually favor the issuance of an injunction to
 2 protect the environment. Amoco Prod. v. Village of
 3 Gambell, Alaska, 480 U.S. 531, 545, 107 S.Ct. 1396,
 4 1404, 94 L.Ed.2d 542 (1987); see, also, Seattle Audobon
 5 Society v. Mosley, 798 F.Supp. 1484, 1491 (W.D. Wash.
 6 1992) and Public Interest Research Group of New Jersey v.
 7 Star Enterprise, 71 F.Supp. 655 (D.N.J. 1991).

11 The critical nature of the levels of Walker Lake and its
 12 dependence on the Walker River provide overwhelming evidence of irreparable harm.
 13 The length of the adjudication itself, now in its fourth year, is a factor that must also
 14 be considered. Nothing would be more convenient to the upstream users than a delay
 15 until Walker Lake's fishery is gone and to thus eliminate Walker Lake as a potential
 16 party to any reallocation of the waters of Walker River.

19 Granting the preliminary injunction in this matter will keep the
 20 subject of the plaintiff's request "alive" until the Court has the opportunity to review
 21 important issues in Western water law that have and will continue to be reexamined
 22 based upon the necessary adjustment of an old legal system to changing public
 23 pressures.⁵

25 / / /

28 ⁵ Blumm, *Public Property and the Democratization of Western Water Law: A Modern View of the Public Trust Doctrine*, 19 Environmental Law 573, Summer 1989.

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Thus, this Court must choose the course of action that will minimize the costs of being mistaken. DiDamenico v. Employers Cooperative Industry Trust, 676 F.Supp. 903, 907 (N.D.Ind. 19877).

Allowing Walker Lake to survive is the only means to keep these important issues ripe and for the Court's decision to be meaningful.

In the present matter, it is clear beyond peradventure of doubt that plaintiff has established that he will suffer irreparable harm absent preliminary relief. This is not a case where plaintiff can wait until after trial for a remedy. Simply put, absent some form of preliminary relief plaintiff runs the real risk of dying. DiDomenico v. Employers Cooperative Industry Trust, supra, p. 407.

Just as the patient in DiDomenico, supra, a judgment in favor of Mineral County at the close of the adjudication would be hollow if the Walker Lake fishery was already lost.

Not only would irreparable harm be suffered by the loss of such a historic and scenic remnant of the ice age gracing the Walker Lake Basin, but Mineral County, plaintiff herein, would lose fifty (50) percent of its economic base. (See, "Statement of Bunch", Mineral County's Motion to Intervene, filed 10/25/94.)

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1 Under some circumstances, loss of business threatening the
2 very existence of an enterprise constitutes irreparable injury
3 sufficient to justify the issuance of a preliminary injunction.
4

5 In Doran v. Salem Inn, Inc., 422 U.S. 922,932, 95 S.Ct.
6 2561, 2568, 45 L.Ed.2d 648 (1975), the (U.S. Supreme)
7 Court concluded that the district court had not abused its
8 discretion in granting preliminary injunctive relief: "As
9 required to support such relief, these respondents alleged...
10 that absent preliminary relief they would suffer a substantial
11 loss of business and perhaps even bankruptcy. Certainly,
12 the latter type of injury meets the standards for granting
13 interim relief, for otherwise a favorable final judgment
14 might well be useless. Assoc. Prod. Company v. City of
15 Independence, Missouri, 648 F.Supp. 1255, 1258
16 (W.D.Mo. 1986).
17
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21 Mineral County has a small population, 15,000 residents, and an
22 even smaller economic base. (See, Affidavits of Marlene Bunch and Louis
23 Thompson, in Mineral County's Motion for Intervention, filed 10/25/94). With the
24 considerable downsizing of the Hawthorne depot, Walker Lake has indeed become the
25 mainstay of the economy of the citizens that Mineral County represents. With little
26
27
28

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1 else to develop, Mineral County must have a viable fishery at Walker Lake or suffer
 2 serious economic consequences to the County government.
 3
 4

5 **B. Mineral County Raises Serious Legal**
 6 **Questions and the Balance of Hardships**
 7 **Tips Sharply in Favor of Granting a**
 8 **Preliminary Mandatory Injunction.**

9 Mineral County has shown the requisite irreparable harm and:

10 At the other end of the continuum, the moving party must
 11 demonstrate that serious legal questions are raised so that
 12 the balance of hardships tips sharply in its favor

13 Lopez v. Heckler, supra, p. 1435. (Emphasis added.)
 14

15
 16 Serious legal questions challenge the strict application of prior
 17 appropriation in the allocation of water rights adopted in most Western States. (Beck,
 18 *Waters and Water Rights*, Vol. 2, The Mische Co., 1991). The basis of prior
 19 appropriation is to divert the water and apply it to its most beneficial use.
 20

21 NRS 533.380 Because priorities in national policy in the latter half of the twentieth
 22 century have supported environmental protection and preservation of our natural
 23 resources, conflicts with traditional beneficial uses (i.e. agriculture, mining,
 24 municipal), of prior appropriation are widespread.
 25

26 Those challenging the private rights of appropriation have first
 27 looked to the nature of the water right. Since a party cannot possess certain
 28

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1 identifiable water, the term "usufructuary"⁶ best describes the right incumbent to a
 2 water certificate. The right to use water means it is a usufructuary right rather than a
 3 possessory right. However, for example, no one has a right to use water and return it
 4 so polluted as to cause a degradation to the environment. (33 USC, Section 1251, et.
 5 seq. commonly referred to as the Clean Water Act, which has been adopted by
 6 Nevada as NRS, Section 445.131 et. seq.) Just as the deposition of foreign and toxic
 7 materials causes pollution to the water, so also the excessive withdrawal of natural
 8 flows significantly diminishes the quality of the water. Mineral County will
 9 vigorously argue that but for the excessive withdrawals upstream, Walker Lake would
 10 be a viable fishery into the future.

11
 12 Recently, the United States Supreme Court found that minimum
 13 stream flows could be required in order to enforce a state water quality standard.
 14 PUD No. 1 of Jefferson County and City of Tacoma v. Washington Dept. of Ecology,
 15 114 S.Ct. 1900 (1994). This case officially memorializes the significant link between
 16 water quality as it is affected by water quantity. This concept of protecting water
 17 quality by insuring sufficient quantity is elemental to present interpretations of the
 18 public trust doctrine as it has been judicially imposed in favor of minimum flows.
 19 Some Western States have codified public trust doctrine principles or, at least
 20
 21
 22
 23

24
 25 ⁶Usufructuary - "It is laid down by our law writers, that the right of property in
 26 water is usufructuary, and consists not so much of the fluid itself as the advantage of its
 27 use. (Eddy v. Simpson (1853) 3 Cal. 249, 252) Hence, the cases do not speak of the
 28 ownership of water, but only of the right to its use. (Rancho Santa Margarita v. Vail
 (1938) 11 Cal.2d 501, 554-555 [81 P2d. 553] [cites]. United States v. State Water
Resources Control Board, 182 Cal.App.3d 82, 227 Cal.Rptr. 161, 168 (Cal.App. 1
 Dist. 1986)

1 expanded "beneficial use" definitions to include recreation, preservation of wildlife
2 and minimum stream flows.⁷

3
4 One of the seminal cases upon which the public trust doctrine has
5 developed stated that the beds of navigable water are:

6 . . . held in trust for the people of the State that they may
7 enjoy the navigation of the waters, carry on commerce over
8 them, and have liberty of fishing therein freed from the
9 obstruction or interference of private parties. Illinois
10 Central Railroad v. Illinois, 146 U.S. 387, 452 (1892).
11
12

13
14 Likewise, Nevada has recognized the public's interest in water resources, "The water
15 of all sources of water supply within the boundaries of the state whether above or
16 beneath the surface of the ground, belongs to the public." Bergman v. Kearney, 241
17 F.884, 893 (D.Nev.1917); NRS, 533.025.
18

19
20 This concept of the public right to preservation of water resources has been
21 expanded in many Western States as population and demands on water grew. Both
22 the judiciary and state legislative bodies have turned to the public trust doctrine as
23 protection for non-navigable streams and lakes as well. National Audubon Soc. v.
24 Superior Court, 33 Ca.3d 419, 658 P.2d 709, 189 Cal.Rptr. 346 (Cal.App. 3
25
26

27 ⁷ Cal. Water Code, Section 1243 (1971, 1989); Wash. Rev. Code Ann., Sections
28 90.22 and 90.54; Or. Rev. Stat., Section 537.332(2)(1987); Idaho Code, Section 36-
1601(1977); NRS, Section 501.100(2) and 501.181(3)(c), 533.367.

1 Dist.1981), cert. denied, 464 U.S. 977 (1983). See, also, Montana Coalition for
 2 Stream Access v. Hildreth, 684 P.2d 1085 (Mont.1984), CWC Fisheries v. Bunker,
 3 755 P.2d 1115 (Alaska 1988), Kootenai Env'tl. Alliance v. Panhandle Yacht Club, 105
 4 Idaho 622, 671 P.2d 1088 (1983).

5
 6 The problem is really quite simple, it does not require
 7 mastery of abstruse legal doctrines to appreciate what is
 8 going on. The heart of the matter is that public values have
 9 changed, and the use of water has reached some critical
 10 limits. One result is that we need to retrieve some water
 11 from traditional water users to sustain streams and lakes as
 12 natural systems and to protect water quality. Sax, Joseph
 13 L., *The Limits of Private Rights in Public Waters*, 19
 14 Environmental Law 473 (1989).

15
 16 Both States involved in the present adjudication have begun to
 17 temper the harsh rules of prior appropriation in recognition of their public trust
 18 responsibilities.

19
 20
 21
 22 California:

23
 24 Once the state has approved an appropriation, the public
 25 trust imposes a duty of continuing supervision over the
 26 taking and use of appropriated water. In exercising its
 27 sovereign power to allocate water resources in the public
 28

1 interest, the state is not confined by past allocation decisions
 2 which may be incorrect in light of current knowledge or
 3 inconsistent with current needs. National Audubon Society
 4 v. Superior Court, supra, p. 447.

6 Nevada:

7 Nevada law recognizes the recreational value of wildlife,
 8 NRS 501.100(2) and the need to provide wildlife with
 9 water. See, NRS 501.181(3)(c), 533.367. State v. Morros,
 10 766 P.2d 263, 268 (Nev. 1988).

12 In State v. Morros the court recognized the very heart of the
 13 public trust controversy - what is beneficial use.⁸ The court found that an
 14 appropriation "for public recreation and fishery purposes" was a beneficial use. State
 15 v. Morros, supra, p. 265, 266. Beneficial use is the basis of perfection of a water
 16 right. NRS 533.360 The definition of beneficial use has evolved since prior
 17 appropriation was adopted. In earlier cases and statutes, beneficial use was more or
 18 less the diversion and application of water to agriculture, mining, industrial or
 19 municipal use.

22 ///

24
 25 ⁸One of the primary challenges to agricultural use as "beneficial use" is whether the
 26 challenges can prove that agricultural irrigation is "waste." This is one of the critical
 27 factors in U.S. v. Alpine Land and Reservoir Co., supra at p. 855, "the issue we
 28 review is whether the district court reached a correct determination of beneficial use as
 of 1980." The Court went on to refer to the agricultural use as "relatively inefficient."
 Mineral County will vigorously argue that improved irrigation technology is "beneficial
 use," not outdated, inefficient, and wasteful irrigation methods.

1 The Court of Appeals, Ninth Circuit, determined that although
2 beneficial use is mainly determined by State law, that beneficial use "expresses a
3 dynamic concept, which is a variable according to circumstances," and that " a district
4 court in a quiet title action should determine beneficial use on the best current
5 evidence available." U.S. v. Alpine Land and Reservoir Co., 697 F2d. 851, 855 (9th
6 Cir.1983).
7

8 The best evidence available to the court in the instant case is that
9 beneficial use should include public trust concepts that would allow dedication of
10 water to in-stream flows through Walker River to Walker Lake. Mineral County will
11 be irreparably harmed by the loss of the Walker Lake fishery and that the legal issues
12 are so persuasive that a preliminary mandatory injunction should be granted allowing a
13 water duty in the Walker River in favor of Walker Lake. Mineral County seeks this
14 injunction to preserve the corpus while the parties argue the benefits of imposing a
15 public trust in favor of the Lake.
16
17

18 For the purposes of injunctive relief "serious questions"
19 refers to questions which cannot be resolved one way or the
20 other at the hearing on the injunction.....Serious questions
21 need not promise a certainty of success, nor even present a
22 probability of success, but must involve a fair chance of
23 success on the merits. (citing National Wildlife Fed'n v.
24 Coston, 773 F.2d 1513, 1517 (9th Cir.1985). Republic of
25
26
27

28 ///

1 the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir.
2 1988).

3
4
5 Mineral County has a fair chance of success on the merits of a very complicated issue.
6 (An issue not without successful precedent.) Mineral County has met its burden and
7 shown serious threat of irreparable harm so that the hardship tips very sharply in favor
8 of the grant of the preliminary injunction.
9

10
11 **II. Mineral County Has Satisfied the Criteria for Grant of a**
12 **Preliminary Mandatory Injunction and the Grant Is**
13 **Necessary to Prevent Injury.**

14 Mandatory injunctive relief is "an extraordinary remedy that should be
15 granted only under compelling circumstances and in a limited manner to restore the
16 status quo." Golden State Transit Corp. v. City of Los Angeles, 660 F.Supp. 571,
17 575, (C.D.Cal. 1987). Mineral County has shown the irreparable harm of the loss of
18 flows to Walker Lake and the threat that the fishery may not be capable of
19 rejuvenation.
20

21 A mandatory injunction may be issued if the status quo is a
22 condition not of rest, but of action, and the condition of rest
23 is exactly what will inflict the irreparable injury upon
24 complainant. United States v. Malibu Beach, Inc., 711
25 F.Supp. 1301, 1310 (D.N.J. 1989).
26

27
28 / / /

1 The court in U.S. v. Malibu Beach, supra, granted a preliminary
2 mandatory injunction because of "irreparable harm to the environment." Much like
3 the circumstances in the instant case the court found that "equitable relief is
4 appropriate here because there is no adequate remedy at law to compensate the public
5 for the harm caused" U.S. v. Malibu Beach, Inc., supra, p. 1312, 1313.
6

7 The Court of Appeals, Ninth Circuit, has applied the standards for
8 issuance of a preliminary injunction when the sensitive environment at Lake Tahoe
9 was threatened. "The district court has greater power to fashion equitable relief in
10 defense of the public interest than it has when only private interests are involved."
11 People of the State of California ex rel. Van de Kamp v. Tahoe Regional Planning
12 Agency, 766 F2d 1319, 1324 (9th Cir. 1985).
13

14 The harm to Mineral County far outweighs the harm to defendants.
15 Without the flows to Walker Lake, the Lake will cease to be the long standing fishery
16 it is noted to be. The Defendants on the other hand will merely have to release waters
17 that otherwise would replenish groundwater in Mason Valley and increase storage
18 levels in Bridgeport, Topaz and Weber man-made reservoirs to insure that in the event
19 next year is a low precipitation year that extra water is available. (See particularly,
20 Ex. F. of the Affidavit of K. Buchanan) Loss of insurance for future years is much
21 less critical a burden to bear than the total loss of a substantial economic and
22 environmental resource such as Walker Lake that has existed for a millennium.
23

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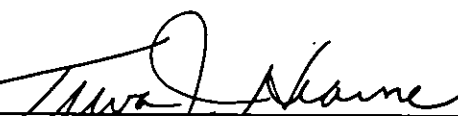
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28 ///

1 The Court has the power to fashion this equitable remedy. The
2 Watermaster can be directed to release flows, a very simple action to administer with
3 little monitoring by the Court and the public interest will be served.
4

5
6 WHEREFORE the above stated reasons Mineral County, plaintiff herein,
7 requests that this Court issue a preliminary injunction that will allow flows to reach
8 Walker Lake to raise the Lake to 1992 levels as set out more fully hereinabove.
9

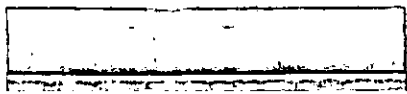
10
11 DATED this 10th day of March, 1995.

12 LAW OFFICES OF
13 ZEH, SPOO & HEARNE

14
15 By 
16 TREVA J. HEARNE, Attorney at Law
17 450 Marsh Avenue
18 Reno, Nevada 89509
19 702/343-4599

20 Attorney for Plaintiff
21 MINERAL COUNTY
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Attorneys for Intervenor-Petitioner
MINERAL COUNTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE
TRIBE,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION
DISTRICT, a corporation, et al.

Defendants.

IN EQUITY NO. C-125-C-ECR

SECOND AFFIDAVIT OF
KELVIN J. BUCHANAN,
P.E.

STATE OF NEVADA

COUNTY OF WASHOE

)
) ss.
)

I, Kelvin J. Buchanan, being duly sworn, hereby state that:

1. I am a Professional Geological Engineer registered in the State of Nevada.

I have practiced in Nevada for twenty (20) years, have worked in groundwater related issues in Nevada and other states and have taken continuing education in groundwater and related subjects from time to time.

2. I have researched and compiled documents and papers authored by the U.S. Geological Survey (USGS), the Nevada Department of Wildlife (NDOW), the U.S.

1 Bureau of Reclamation, the Nevada State Engineers' office, the California Division of
2 Water Resources and the U.S. Department of Agriculture, Soil Conservation Division. I
3 have studied Federal Decree C-125, and prior decree 731 as well as reviewing scientific
4 papers which include, but are not limited to, those authored by Alex Home, limnologist
5 and Mike Sevon, NDOW biologist. I have traversed the East and West Walker River
6 systems from Upper and Lower Twin Lakes to Walker Lake. I have personal knowledge
7 of the facts contained herein and, if called as a witness, I could testify competently hereto.

8 3. I have personally visited USGS gauge station sites on the Walker River
9 system and the WRID reservoirs at Bridgeport and Topaz Lake at various times in 1994
10 and 1995 to familiarize myself with the visual appearance of what the reported volume of
11 river flows at the time were. During a six (6) day period in February, 1995, three visits
12 were made. The terminal gauging station on the Walker River is located at Wabuska, at the
13 boundary of the Walker River Paiute Reservation. I was told (Sam Stegeman, Engineer,
14 Walker River Paiute Tribe, personal communication) that a new gauge was being installed
15 by the USGS on tribal land at the head of Weber Reservoir, but I have not seen it. I was
16 also told by Mr. Stegeman that he had personally supervised the release of 5,100 acre feet
17 of water from Weber Reservoir during November, 1993 and that to his knowledge, no
18 river water other than this release, had to date made it to Walker Lake since 1987. Mr.
19 Stegeman also indicated that unless he could be assured of sufficient deliveries of river
20 water in 1995, he would be unlikely to release any water from Weber Reservoir to the
21 Walker Lake.

22 4. I have personally observed and photographed irrigation (stock ditches)
23 canals in Mason Valley flowing with water diverted from both the East and West Walker
24 Rivers (Attachment C, Ditch Map, USDA). At least two (2) of the canals, the Greenwood
25 and Hall ditches diverted from the East Walker, do not return to the river but terminate east
26 and south of Yerington. A third canal, the Mickey, returns to the main Walker River
27 channel south west of Yerington (Attachment D, Photographs). On February 2, 1995, I
28 observed the Greenwood, Hall and Mickey Ditches running vigorously at a point near the

1 junction of Highway 208 and the East Walker River Road. I proceeded to follow the flow
2 of Greenwood Ditch for approximately two miles. I observed that in addition to flowing
3 alongside fallow fields, it also went through one small stockyard between the house and the
4 barn. On a visit to the USDA Soil Conservation Service office in Yerington later that day, I
5 was told that these stock ditches diverted water from the river and returned to the river
6 (Dick Franklin, USDA Soil Conservation Service, personal communication).

7 On February 5, I observed that while the flow in the Mickey Ditch was not
8 diminished, the flow to the Greenwood Ditch was diminished and the Hall Ditch had pools
9 of standing water. On the same day (see Attachment D), I observed that diversion from the
10 West Walker River were also occurring. The Lee-Sanders Ditch and the Tunnel Ditch had
11 significant flows (see photographs) close to their diversion point where the West Walker
12 River exits from Wilson Canyon. The Lee-Sanders Ditch does not return to the river
13 system; the Tunnel Ditch crosses the south end of Mason Valley and is intercepted by the
14 West Strosnider Ditch just before it reaches the East Walker River.

15 On February 7, 1995 I observed that the flow in both the Greenwood and Hall
16 Ditches had ceased. Indeed, both ditch beds were bone dry including the section through
17 the stock yard noted above. The Mickey, Lee - Sanders and Tunnel Ditches appeared to be
18 contain about the same amount of water and were flowing at the same rate as on February
19 2, 1995. I could not discern any change in the flow of these ditches during this six day
20 period.

21 Divisions of river water which do not return to the river not only serve to deprive
22 the river of stream flow, but will augment the underlying ground water table where these
23 flows occur. Multitude diversions from a river channel, some of which do not return to the
24 river, create a situation analogous to a "braided stream" where groundwater capture,
25 evaporation and phreatophyte growth rob the river of its natural flow. Unless there is
26 equilibrium in the system, surface water will be subject to groundwater capture. Because
27 of significant groundwater pumping over the last eight (8) drought years, no such
28 equilibrium exists. I have been unable to find any mention of specific diversion from the

1 river to individual ditches, other than the general term "stock ditches", that apply from C-
2 125 or 731. There does not appear to be a minimum or maximum amount of water that
3 flows in these ditches or what irrigation ditches are also considered stock ditches. I have
4 no idea why the Hall and Greenwood Ditches should be flowing and then suddenly cease
5 to flow in early February. The livestock I observed still needed water.

6 I conclude that, notwithstanding the purpose of irrigation ditches flowing during the
7 winter months, that water from these ditches, and especially no-return ditches, rob the river
8 of its' natural flow and augment the groundwater table to the ultimate detriment of Walker
9 Lake.

10 5. I concur with the *Office of Assessment Technology Memorandum, August*
11 *1993*, that the diversions in the Walker River Irrigation District (WRID) source areas are
12 not technically efficient and that irrigation ditches should be lined with impervious material
13 to prevent leakage. Despite this assessment, WRID has this year allowed
14 to lapse, a matching funds project authored by the USDA Soil Conservation Service, which
15 would have significantly improved the delivery system of irrigation water (Mark
16 Twyeffort, USDA Soil Conservation Service, personal communication).

17 6. I concur with the finding of the report, *Walker River Basin Water Rights Model,*
18 *Nevada Department of Conservation and Resources, June 1993*, that the readings derived
19 for the inflow into the Walker Lake from the Walker River represent 84% of the lake's
20 recharge during the period 1961-1990 and that if the lake continues to receive less than
21 84% of this recharge from the Walker River, all fish life in the lake will be poisoned by the
22 high levels of total dissolved solids. I also concur with data collected by
23 NDOW that this level of toxicity is imminent and that the level of Total Dissolved Solids
24 (TDS) has reached of 14,000 parts per million (ppm). (see Attachment E, graphics derived
25 from NDOW and personal communication, John Elliot, NDOW). The level of the lake has
26 dropped since this report was authored to a level of 3941.2 feet above sea level in February
27 of 1995. The average amount of water the lake received during the period 1961-1990 was
28 103,000 acre feet, which slowed the overall fall of the lake level, but did not halt it. To

1 maintain the Walker Lake at its present level, the Lake requires an average of 117,000 acre
2 feet of water per annum to counteract yearly evaporation. To reduce the level of TDS to
3 approximately 13,000 ppm TDS, the lake would have to rise about 15 feet to a level of
4 3,955 feet (see Attachment E). The amount of additional acre feet of water the Lake would
5 have to receive in 1995 to bring the Lake to this level from 3941.2 feet is 495,000 acre feet.
6 The total amount of water required to bring the Lake to this level by December 1995 would
7 612,000 acre feet. Only in the flood year of 1983 did the amount of water entering the
8 Walker Lake from the Walker River approach this amount.

9 7. The Walker River has lost a number of gauge stations over the past 20 years
10 through deactivation caused by lack of funding and additionally, there has never been a
11 gauge station within 10 miles of the delta of the Walker Lake (personal communication, Jim
12 Thomas, USGS). It has and will continue to be, very difficult if not impossible, to
13 ascertain the amount of water that reaches the Lake on a yearly basis without adequate
14 gauges. Most scientists agree that rather on relying on a variable flow which is difficult to
15 measure, a minimum guaranteed level such as has been worked out for Mono Lake in
16 California would be more practical to preserve Walker Lakes' viability (personal
17 communication, Gary L. Vinyard, University of Nevada). If the guaranteed level of the
18 Lake were brought back to 1986 levels, it could result in not only a thriving fishery, but in
19 a return of the power boat races which brought tourist revenue to Mineral County until they
20 were canceled three years ago because of high alkalinity in the Lake (personal
21 communication, Lou Thompson, Walker Lake Working Group).

22 8. Storage rights for water on the West Walker River were originally assigned
23 under permit number 5528 on June 6, 1919. Total acreage allowed to be irrigated under
24 this permit is 30,000 acres. Total acre feet allowed stored is 89,612 acre feet. The permit
25 was not issued until April 27, 1971. Certificate number 8859 proving beneficial use was
26 issued on October 15, 1976. Water is controlled and distributed by the Walker River
27 Irrigation District (personal communication, Steve Walmsley, Office of the State Engineer).

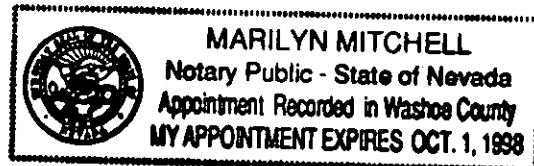
1. Most irrigated land in northwestern Nevada is granted and needs at least 4 acre feet
2 per acre of water rights to grow crops. It is possible to irrigate with 3.5 acre feet of water
3 per acre as is being done in Fallon, Nevada using drip irrigation (personal communication,
4 Mark Twyeffort) on an experimental basis. 89,612 acre feet of water could effectively
5 irrigate 22,400 acres, but could not effectively irrigate 30,000 acres because this would be
6 less than 3 acre feet of water per acre, an amount that is not sufficient to economically
7 irrigate cropland.

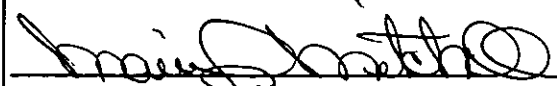
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10 EXECUTED this 8 day of March, 1995, at Reno, Nevada.

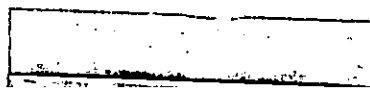
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KELVIN J. BUCHANAN, P.E.

16 SUBSCRIBED and SWORN to before
17 me this 8th day of March, 1995




21 Notary Public in and for said
22 County and State



ZEH, SPOO & HEARNE
 450 Marsh Avenue • Reno, NV 89509
 Phone: (702) 323-4599 • Fax (702) 786-8183

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Attorneys for Intervenor-Petitioner
 MINERAL COUNTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)

Plaintiff,)

IN EQUITY NO. C-125-C-ECR

WALKER RIVER PAIUTE)
 TRIBE,)

Plaintiff-Intervenor,)

**AFFIDAVIT OF GARY L.
 VINYARD, Ph.D**

vs.)

WALKER RIVER IRRIGATION)
 DISTRICT, a corporation, et al.)

Defendants.)

STATE OF NEVADA)
) ss.
 COUNTY OF WASHOE)

I, Dr. Gary L. Vinyard, being duly sworn, hereby state that:

///

ZEI, SPOO & HEARNE
450 Marsh Avenue • Reno, NV 89509
Phone: (702) 323-4599 • Fax (702) 786-8183

1 1. I have a doctorate in Systematics and Ecology. I have taught sixteen
2 (16) years at the University of Nevada, Reno. My special interests and research have
3 been Aquatic Ecology.

4 2. My knowledge of Walker Lake includes study and personal observation.
5 From this information I have formulated the following opinions. I have personal
6 knowledge of the facts stated herein and, if called as a witness, I could testify
7 competently thereto.
8

9 3. Walker Lake is a naturally occurring section of the Lake Lahontan that
10 existed in Pliestocene age. The only other remnants of Lake Lahontan are Pyramid
11 Lake and Honey Lake.
12

13 4. Desert lakes have a very tenuous existence because of the vagaries of
14 climactic change and development. If lake levels drop, the total dissolved solids
15 increase significantly causing high concentrations of alkalinity and salts in the water.
16 Once high concentrations of dissolved materials reach certain levels, all vertebrate fish
17 life ceases to exist. Although the Pyramid cui-cui, Tahoe sucker, tui chub and
18 cuthroat trout are species that tolerate higher levels of alkalinity/salinity, even these
19 species will perish. An indication that this is already occurring in Walker Lake is the
20 reduction in average fish size and longevity.
21

22 5. Walker Lake will shift from a vertebrate dominated community to an
23 invertebrate dominated community. This means that fish will not continue to inhabit
24 the Lake and it will become dominated by certain invertebrates, such as fairy shrimp,
25 tadpole shrimp and clam shrimp.
26
27
28

1 6. Fish are a major food source for numerous bird species, including loons,
2 pelicans, swans, geese, grebs, ducks, etc. These migratory water fowl will cease to
3 visit the Lake and will be forced to find other sustenance. Because these birds utilize
4 Walker Lake as an important rest stop during migration, loss of the fishery resource
5 could adversely affect these bird populations.
6

7 7. Hawthorne has an annual loon festival to celebrate the arrival of the
8 loons in late winter.
9

10 8. It is widely believed that Walker Lake may have totally dried up nearly
11 6,000 years ago because the Walker River changed course for a time and terminated
12 in Carson sink rather than in Walker Lake. Recolonization of Walker Lake vertebrate
13 population was possible after this time because the Walker River, continued to retain
14 viable fish populations necessary for recolonization. These fish then regained access
15 to Walker Lake when the river returned to its' present channel. Recolonization for
16 fluvial populations is no longer possible because of changes which have occurred in
17 the lower Walker River, including construction of Weber Reservoir, dewatering of the
18 river between Weber Reservoir and Walker Lake and alterations of fish populations in
19 the river.
20
21

22 9. If fish populations disappear from the Lake, it will take several years to
23 reestablish populations of tui chub, Tahoe suckers and cutthroat trout in the Lake.
24 Once the existing fish-dominated community in Walker Lake is lost, reestablishment
25 of viable fish populations capable of sustaining a recreational fishery would be
26 dependent on several factors. First, physical and chemical conditions in the Lake
27
28

1 would need to be restored. Subsequently, viable populations of fishes and their food
 2 resources would need to be reestablished. No entity that I am aware of supplies tui
 3 chub or Tahoe suckers for stocking purposes at this time.
 4

5 10. There are no comparable natural resources equivalent to Walker and
 6 Pyramid Lakes. These are geologic remnants of a prehistoric lake that existed over
 7 this area. Once lost, no biologist could guarantee that this Lake can be returned to its
 8 present state.
 9

10
 11 EXECUTED this 6 day of March, 1995, at Reno, Nevada.
 12

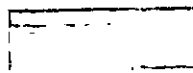
13 G. L. Vinyard
 14 GARY L. VINYARD, Ph.D
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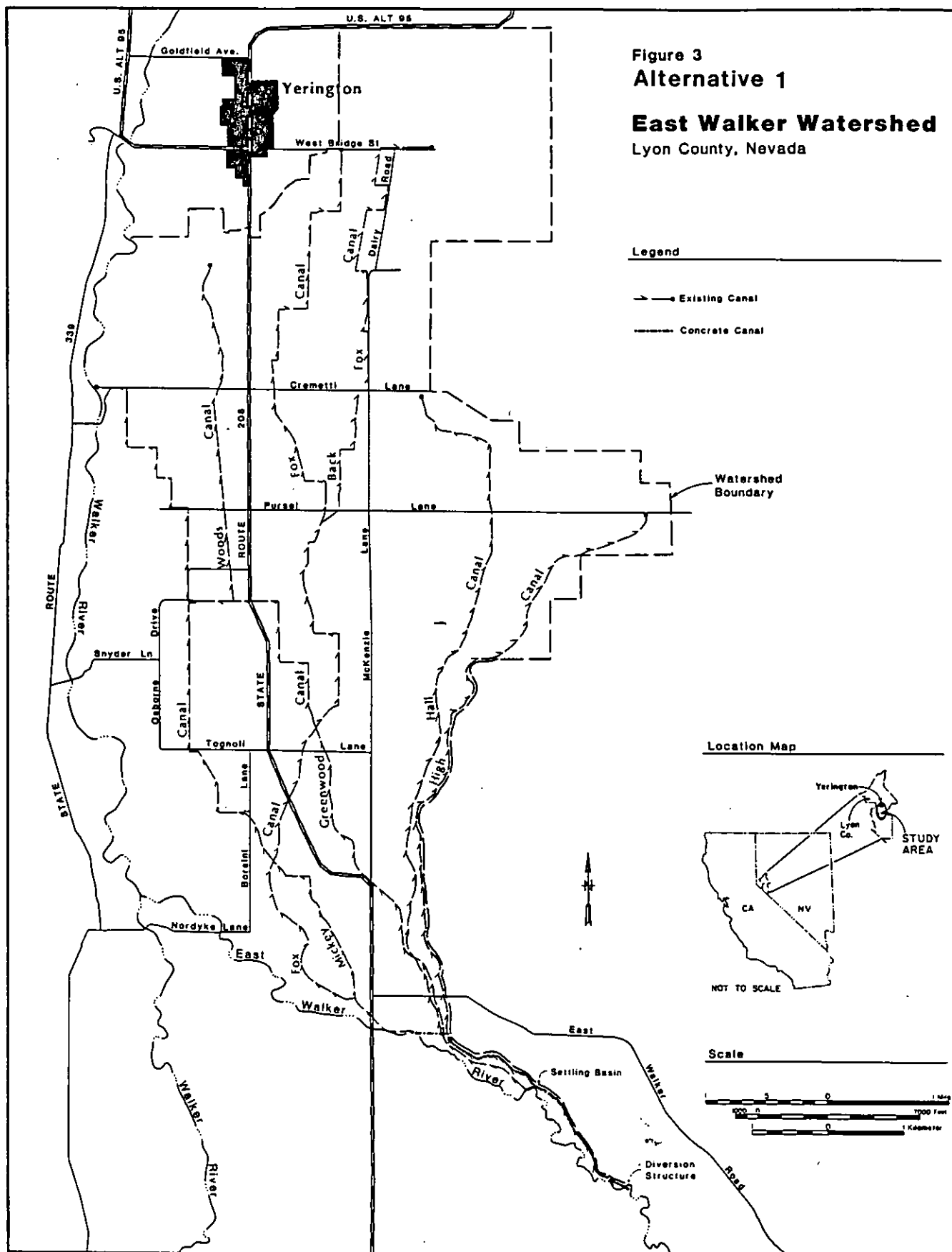
16 SUBSCRIBED and SWORN to before
 17 before me this 6th day of March, 1995
 18

19 [Signature]
 20 Notary Public in and for said
 21 County and State
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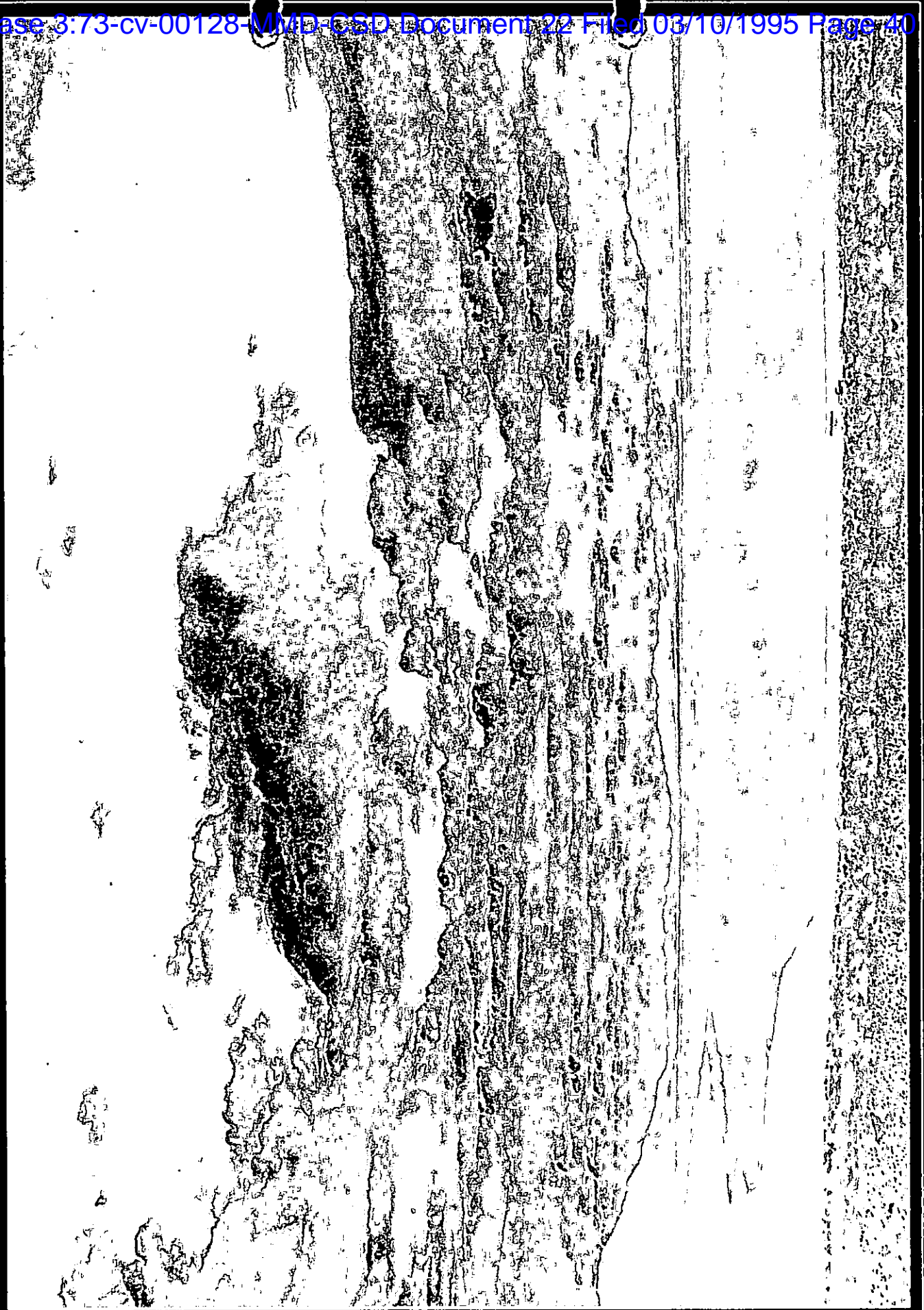


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WAIKER LAKE





Hall Ditch, looking south, East River Road



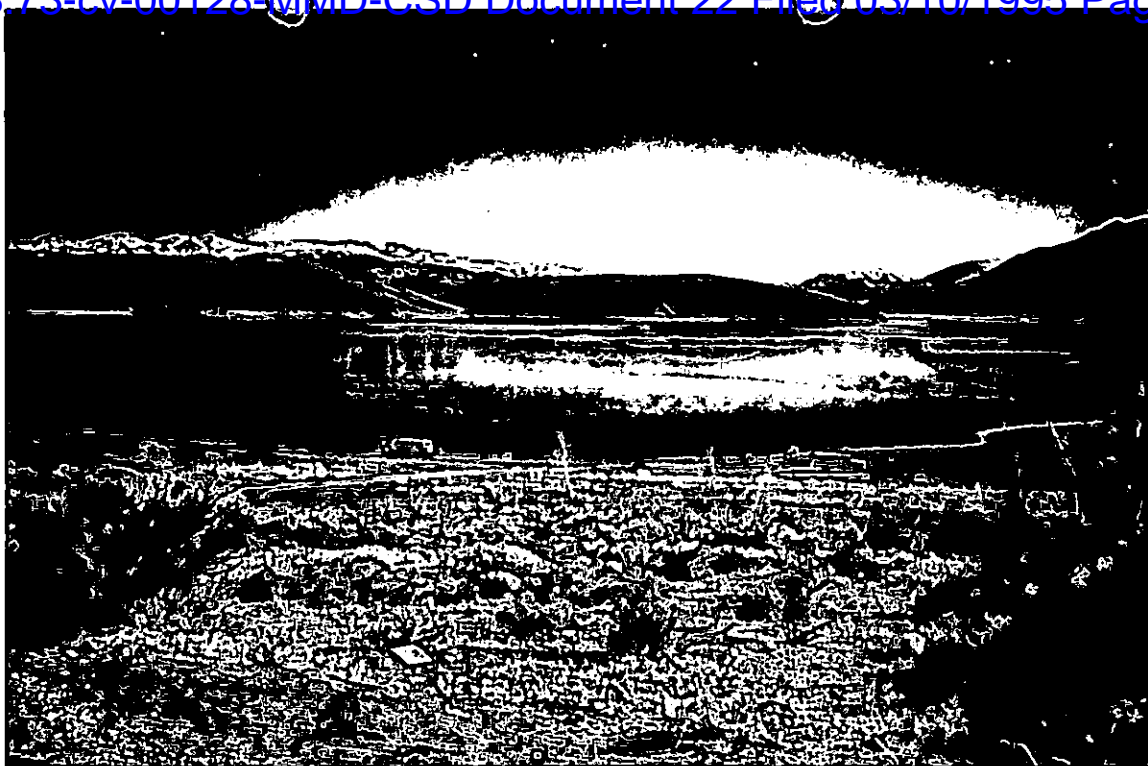
Mickey Ditch, looking east, Highway 208



Greenwood Ditch, looking south, East River Road



Tunnel Ditch, looking east, Highway 208



Topaz Lake, February 5, 1995. Volume is 14,000 acre feet.



Lee Sanders Ditch at Highway 208, looking west



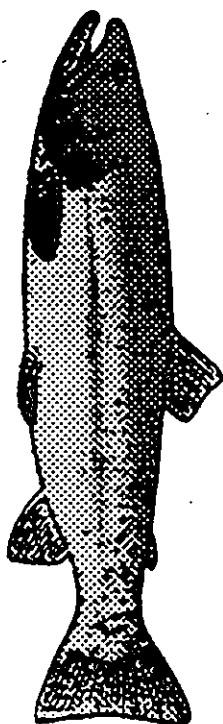
Lee Sanders Ditch looking north, near Highway 208



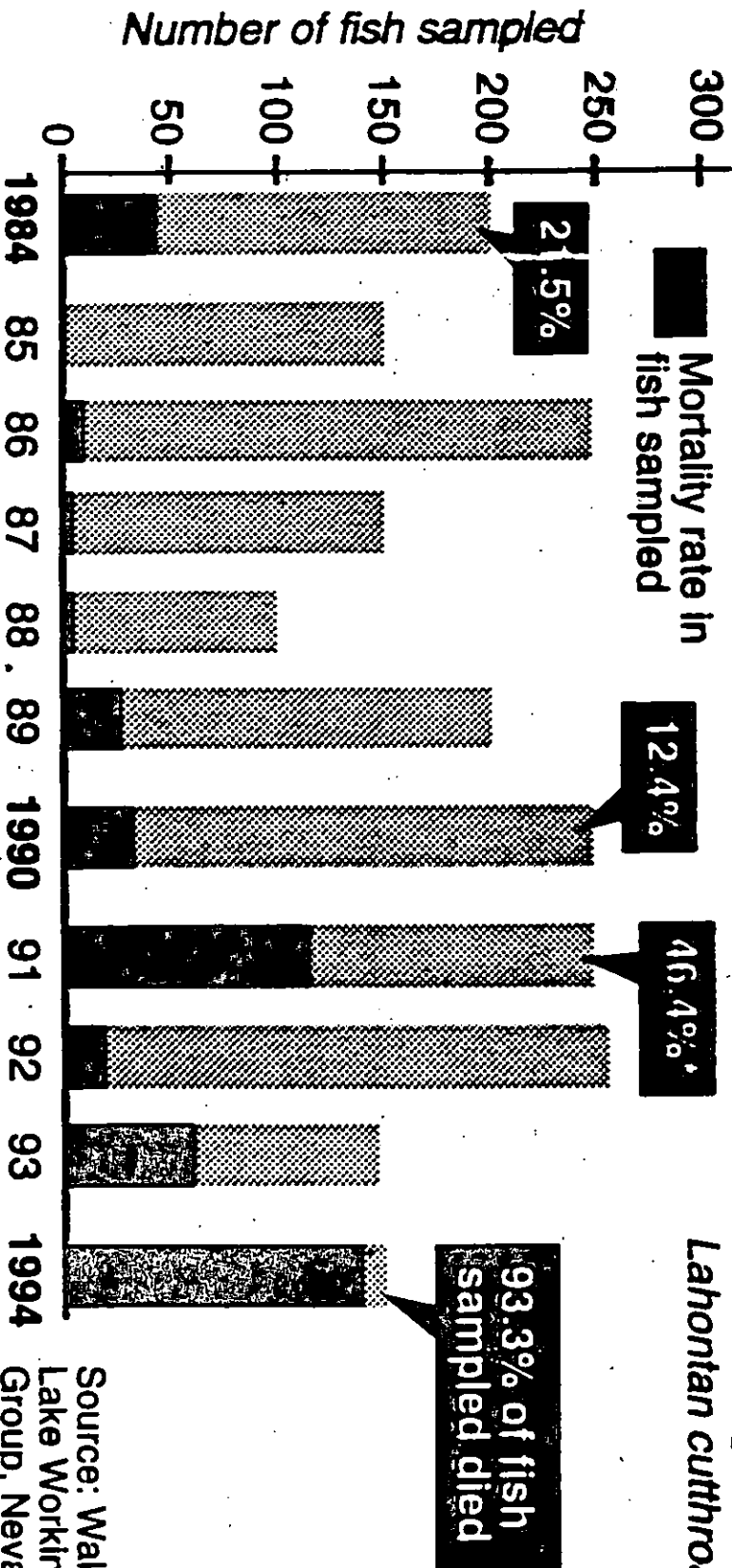
West Walker River near Lee Sanders Ditch



Cutthroat Trout bloassay summary



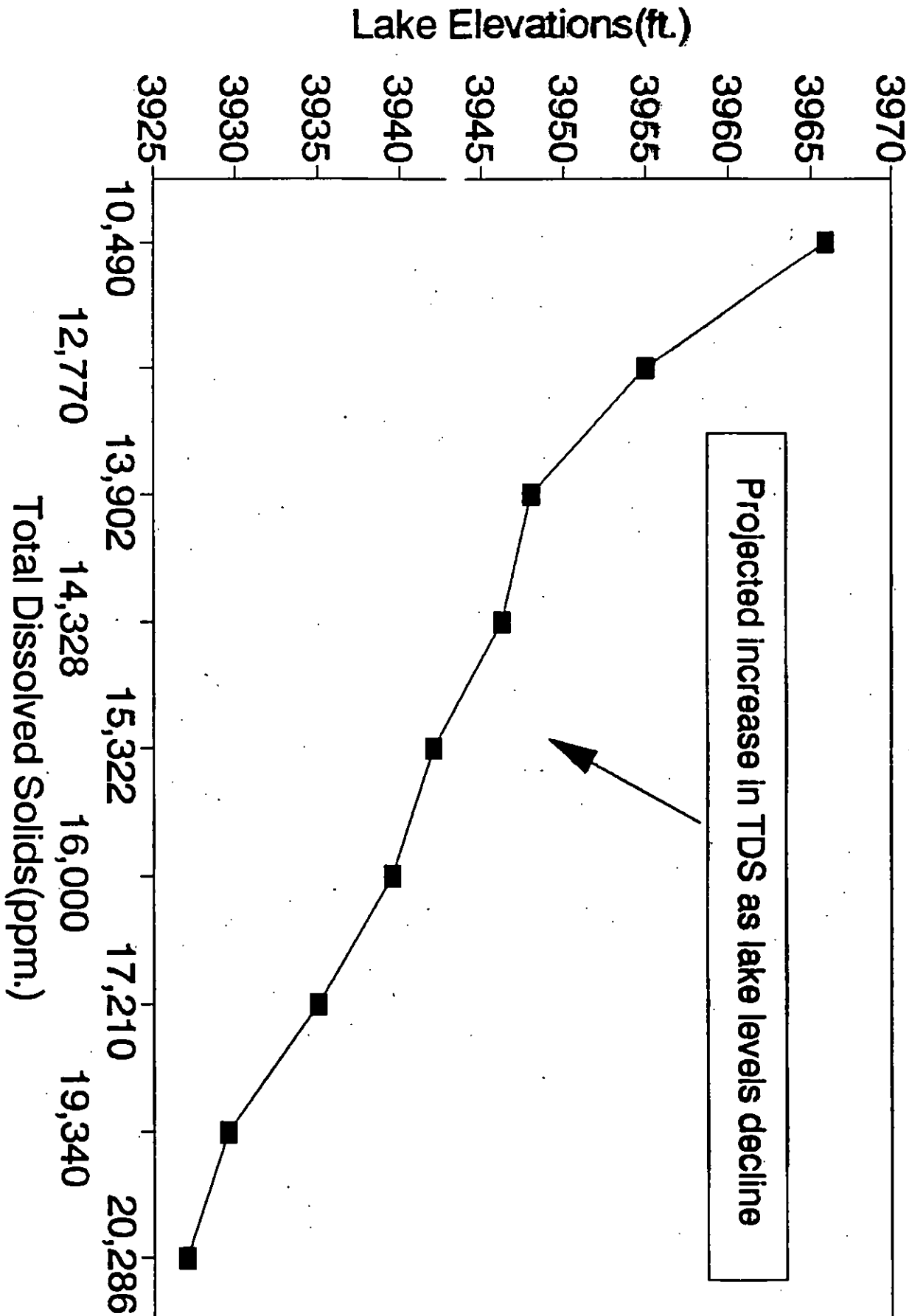
Lahontan cutthroat



*The Heenan strain represented 82.7% of the total mortality. This less salt-tolerant strain is no longer stocked in Walker Lake.

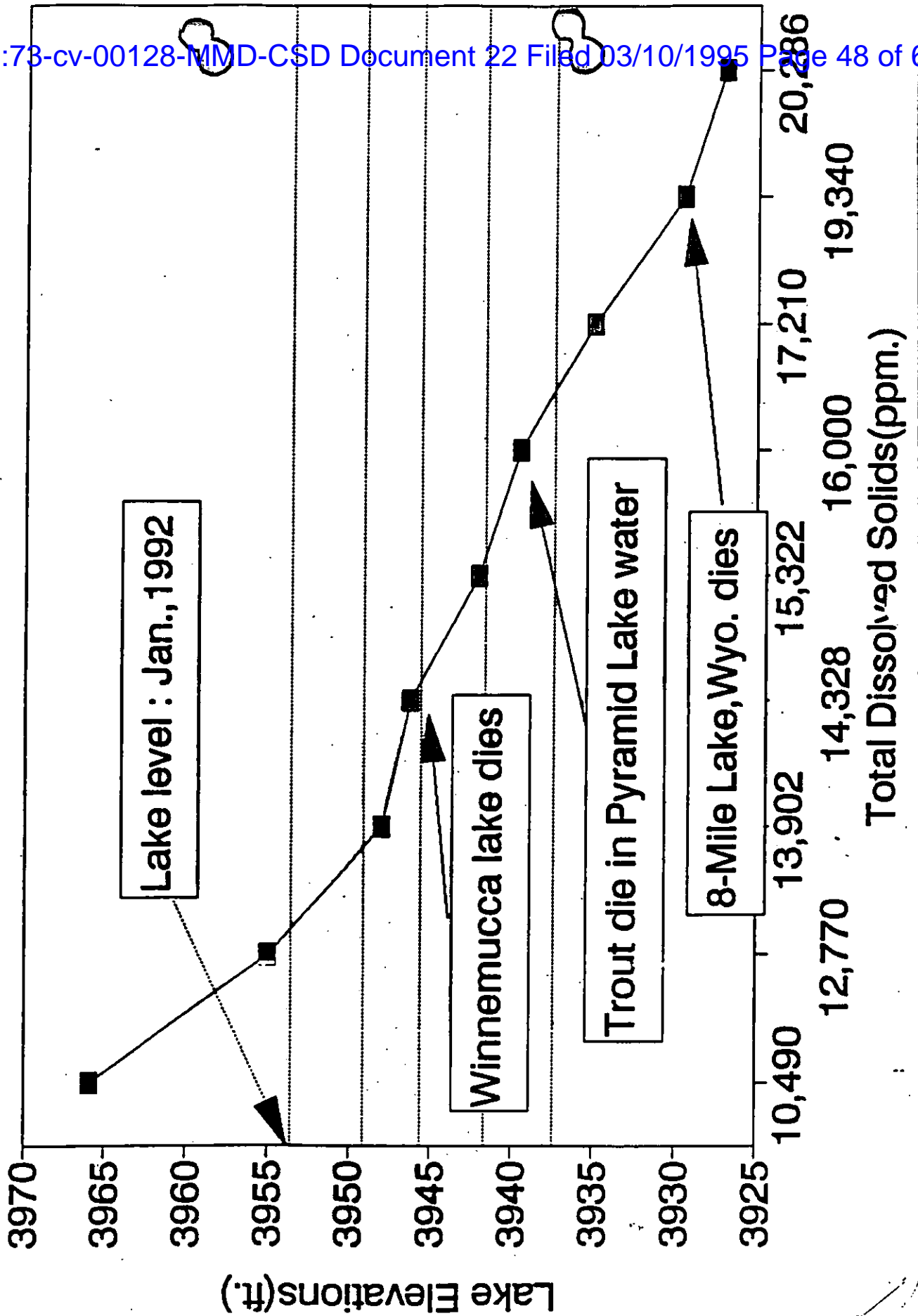
Source: Walker
Lake Working
Group, Nevada
Department of
Wildlife

Walker Lake Mortality Factors



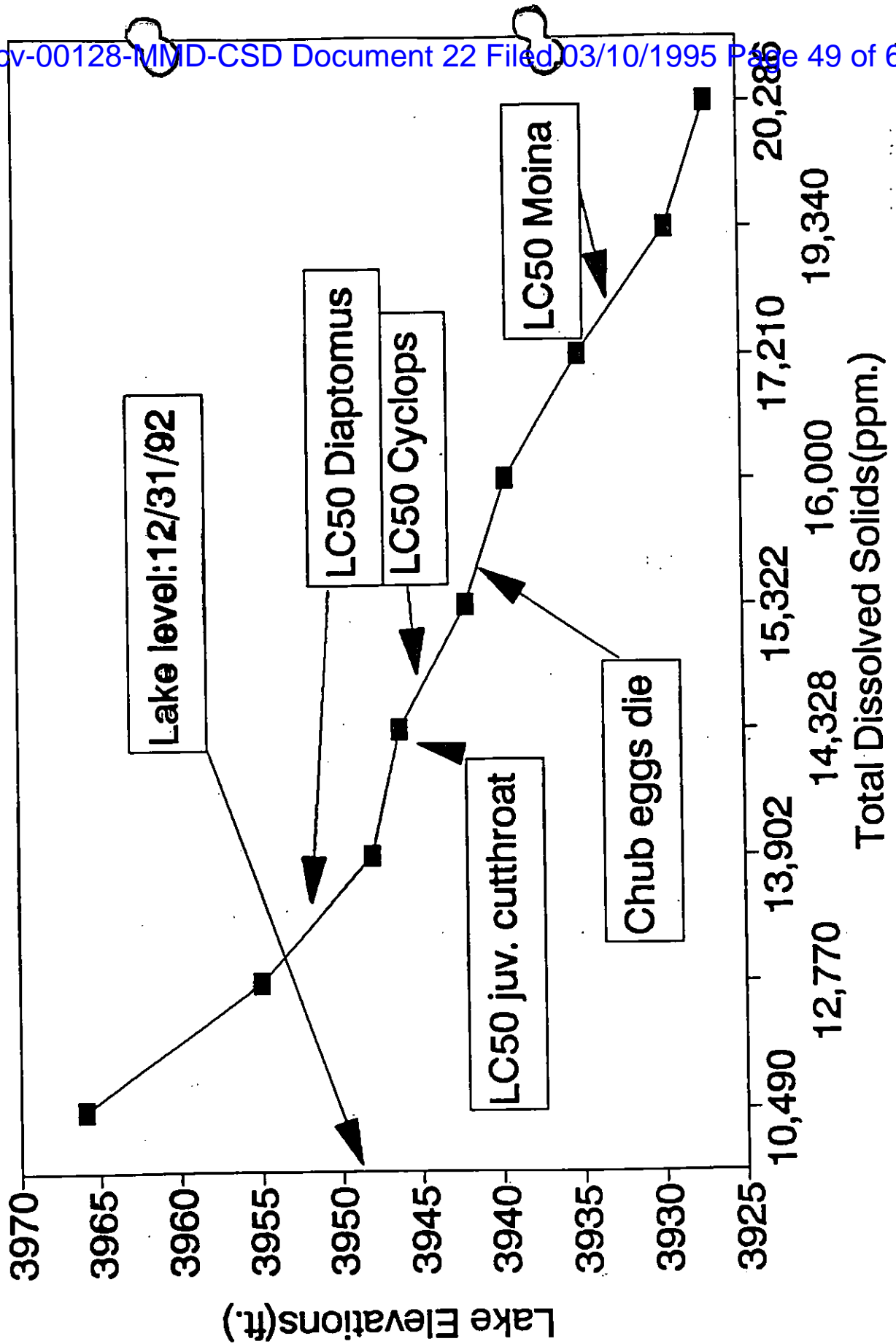
Walker Lake

Mortality Factors



Walker Lake

Mortality Factors





Henkle-Buchanan Group
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WALKER LAKE PROPOSAL

INTRODUCTION

The purpose of this proposal is to provide in excess of 100,000 acre feet to Walker Lake during 1995.

The Walker River watershed is reported to have 113% of the average yearly snowpack water content in data collected by the USDA on February 14, 1995. The average water content of the snowpack as calculated by the USGS in the Walker River Basin in readings taken from their Coleville Gauge (55 year record) on the West Walker River and the Bridgeport Gauge (71 year record) on the East Walker River totals 287,300 acre feet. Even if there was no further precipitation between February 14 and April 1, 1995, the end of the winter season, the run-off would total 324,000 acre feet. Since the possibility of no further significant precipitation is statistically improbable, a more realistic estimation of potential run-off would be to use a model which predicts that the balance of the season would be normal. This model suggests that the Walker River basin would receive an additional 86,000 acre feet by April 1, 1995 for a total snowpack water content of 410,000 acre feet.

Walker Lake has, except for a release of 5,100 acre feet from Webber Reservoir during the spring of 1993¹, received no water from the Walker River since 1988 and is dropping at the rate of 4 feet per year. The total dissolved solids in Walker Lake are approaching toxic levels for fish life (present level 14,000 TDS) and Walker Lake has declined in elevation to 3,941.2 feet ASL. Survival rates for new hatchery fish in 1993 were estimated at less than 7% by NDW. Fish survival rates for fish presently in the lake are estimated at between 2 and 3 years; growth of fish is negligible during this time and if the TDS content rises to a count of 15,000, then all fish life will cease to exist.²

1. Pers. Comm., Sam Stegeman, Engineer, Walker River Paiute Tribe, February 7, 1995
2. Pers. Comm., John Elliot, Nevada Division of Wildlife, February 2, 1995

That Walker Lake is close to dying is not the question. The question is, does any entity other than Mineral County, who has lost 20% of their tax base already due to lake diminution and has potential losses of 50% should the lake die, be the only party concerned with its demise?

The proposal submitted is meant as a rescue package for the year 1995 to stabilize the lake level while having little or no impact on upstream users. Recreational users on Topaz and Bridgeport Reservoirs must be able to enjoy the facilities with no degradation as to launching facilities and sport fishing. Irrigated acres in Smith and Mason valleys should receive their full allotment. The Walker River Paiute Tribe will receive their full allotment, which has not always been the case, and unlike past years, they will release most of this water through to the lake.

A possible benefit to the town of Yerington is the controlled scouring of the Walker River channel in the Mason Valley. The concern of high sudden run-off has prompted WRID and the Lyon County Commissioners to submit a request to the Corps of Engineers requesting that they clear the channel of debris. No response has been received to this date. The last time the channel was cleared, it was by natural causes when the Walker River flooded in 1983. A controlled release could help alleviate these concerns, especially for those living in areas flooded in 1983.

PROPOSED RELEASE SCHEDULE, BRIDGEPORT AND TOPAZ RESERVOIRS

Walker Lake will receive more net water from the Walker River system if the proposed release schedule is followed for two reasons. There will be less water loss to groundwater recharge in Smith and Mason Valleys because some of the water released is prior to the effective date of the irrigation season. Additionally, there will be less water lost to evaporation over the system; the premise is that water evaporation at Walker Lake is more or less constant and there is no point waiting for water to evaporate from Bridgeport, Topaz, Artesia and Webber as well.

The following schedule assumes an average precipitation period from February 14 through April 1, 1995.

TOPAZ RESERVOIR

Storage: 13,500 acre feet as of February 1, 1995³

Month	Proposed Discharge	Reservoir Storage	Acre feet Release(month)
March	200 c.f.s.	13,500 a.f.	12,000
April	250 c.f.s.	14,500 a.f.	15,000
May	850 c.f.s.	20,500 a.f.	51,000
June	850 c.f.s.	48,500 a.f.	51,000
July	750 c.f.s.	46,000 a.f.	45,000
August	400 c.f.s.	30,000 a.f.	24,000
September	300 c.f.s.	16,000 a.f.	18,000
October	150 c.f.s.	11,000 a.f.	9,000

Total acre feet released from reservoirs: 225,000 acre feet

Projected Runoff (March 1-October 31) 223,000 acre feet⁴

Reservoir depletion 2,500 acre feet

Total 225,500 acre feet

3. March 1 reservoir levels estimated at 18,000 acre feet

4. USDA projections adjusted for 1995 snowpack

BRIDGEPORT RESERVOIR

Storage: 10110 acre feet as of January 25, 1995⁵

Month	Proposed Discharge	Reservoir Storage	Acre Feet Release(Month)
March	200 c.f.s.	5,000 a.f.	12,000
April	200 c.f.s.	6,000 a.f.	12,000
May	250 c.f.s.	18,000 a.f.	15,000
June	400 c.f.s.	30,000 a.f.	24,000
July	200 c.f.s.	28,000 a.f.	12,000
August	200 c.f.s.	22,000 a.f.	12,000
September	150 c.f.s.	17,000 a.f.	9,000
October	100 c.f.s.	13,000 a.f.	6,000

Total acre feet released from reservoir	102,000 acre feet
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Projected Run-off (March 1, October 31)	110,000 acre feet ⁶
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Reservoir augmentation	<u>-8,000 acre feet</u>
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Total	102,000 acre feet
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5. March 1 estimated reservoir level 15,000 acre feet

6. USDA projections adjusted for 1995 snowpack

COMBINED RIVER FLOWS

Month	c.f.s.
March	400
April	450
May	1,100
June	1,250
July	950
August	600
September	450
October	250

THE WABUSKA GAUGE

Because of groundwater depletion in Smith and Mason Valleys in 1994, it is unlikely that, at least to begin with, that Walker Rivers flows at the Wabuska Gauge will be substantial, even though some non-return ditches (Hall and Greenwood) have been running during the winter months.

Provided that the ditch diversion is minimal in March, it is possible that 30% of the flow or 130 c.f.s. would reach the Wabuska gauge. This flow will decrease in April with the effective beginning of the irrigation season when water is delivered to the ditches, but should increase to 50% in May because the projected flow of 1,100 c.f.s. is more than double the senior water rights and the remaining flow will move at a speed which will

inhibit groundwater capture. Even if 50 c.f.s. were lost to irrigation and other causes below Wabuska, Walker Lake would still receive 30,000 acre feet in May alone.

THE WATER MASTER

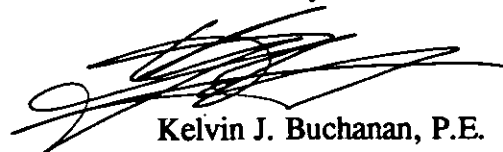
It appears that the water master exercises a considerable amount of leeway in administering water allocation under C-125. Upstream storage in the reservoirs is supposed to begin November 1 and end on March 1, which coincides with the beginning of irrigation season. Water is then released to the senior water rights holders. However, in March, 1993 for example, water storage increased in Bridgeport Reservoir by 10,000 acre feet.

Since this proposal does not violate C-125 in any way, the water master could implement the proposal by using the flood control argument with possible dissenters.

TIME FRAME

Time is of the essence in implementing this proposal to halt the degradation of Walker Lake. The Walker River Paiute Tribe⁷ has agreed to consider releasing water from Webber Reservoir to Walker Lake through the channel cleared in 1993 if they can be assured of this flow schedule.

Submitted by:



Kelvin J. Buchanan, P.E.

7. Pers. Comm., Sam Stegeman, Engineer, Walker River Paiute Tribe



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James Spoo
Zeh, Spoo and Hearne
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March 2, 1995

Re: Walker Lake Proposal

Dear Jim,

As we discussed this morning, the volume of contained water in the snow pack when the proposal was authored on February 14 has decreased by almost 20 % today to where we are at about 91% of the April 1 snowpack for moisture content. Not only did we have no precipitation for two weeks, we had a record warm February. The moisture in the snowpack did not totally disappear of course. Both Bridgeport and Topaz Reservoirs contain 5% more water than I estimated and some has ponded in upland meadows. It is impossible to project average precipitation over any time period and it is not unusual that this particular two week period should have no precipitation. Even in winter, the Sierra weather pattern is dominated by a high pressure dome, penetrated on average by 6-8 very active storm systems. It would be most unfortunate if we were to get discouraged by the previous two week lack of precipitation, not pursue the proposal and then find that March precipitation has increased the snowpack to the predicted level. I have no reason to change my proposal based on the February precipitation totals.

As to your question about groundwater, precipitation this year will have very little impact on groundwater levels in Mason and Smith Valleys. Both Station 6 in Smith Valley and the Yerington weather station had received their normal October 1-April 30 precipitation by January 31, but the warm weather in February minimized the impact of this above normal precipitation (although Yerington has had 0.5 inches of precipitation in first 2 days of March).

It appears likely that a wetter pattern is setting up that will continue through next week. All parties can access the Sno-tel data on a daily basis and the snowpack may, by early next week, show a significant increase. This would provide an opportunity to review current data and perhaps an informal discussion with the parties could commence next week.

Your questions regarding the March 1 storage deadline were sound and I was remiss in writing only one sentence in explanation on this matter. The storage season ends on March 1 if the senior water rights users demand their irrigation water on that date. If they don't, then water can be stored in the reservoirs until such time as they do. When I said the Watermaster had leeway in releasing this water, he needs the approval of various other parties. I think there is a mechanism for early release, but all parties would have to agree. The senior water rights users would have to request the release of this water, knowing full well that the purpose of the release is for Walker Lake. There is an intermediate step in the process and then, additionally, the State Engineer would have to permit a change in beneficial use at the point of diversion so that water could go to Walker Lake. This is not a walk in the park, but it certainly could be achievable through cooperation.

I believe the Watermaster has more leeway in release of storage water if he believes that downstream flooding is a possibility.

The release of water from the reservoirs to accommodate the mixing of the Weed Pit water will also require some agreement between parties. The proposed ratio of ten to one (10/1) pit water to river will require a constant flow which may not necessarily conform with C-125. These are all tough questions.

As to the actual condition of the present snowpack, it is more similar to that of a late April snowpack. Because of January rains and warm February temperatures, it is almost saturated, meaning that a few warm days could cause a significant melt. In some respects this has already happened.

Please call me if you have any further questions.

Sincerely,



Kelvin Buchanan, P.E.

cc: Treva Hearne

CERTIFICATE OF MAILING

Pursuant to FRCP 5(b), I certify that I am an employee of the Law Office of ZEH, SPOO & HEARNE, and that on this date I caused to be mailed a copy of the attached **MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES; AFFIDAVIT OF KELVIN J. BUCHANAN, P.E.; AND AFFIDAVIT OF GARY L. VINYARD, Ph.D**, with postage fully prepaid to:

See attached Service List

DATED this 10th day of March, 1995.


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