

Attachments

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Attachment A

P.L. 101-618

Public Law 101-618

An Act to provide for the settlement of water rights claims of the Fallon Paiute Shoshone Indian Tribes and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I—Fallon Paiute Shoshone Tribal Settlement Act

SEC. 101. SHORT TITLE.

This Act may be cited as the “Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990”.

SEC. 102. SETTLEMENT FUND.

(A) There is hereby established within the Treasury of the United States, the “Fallon Paiute Shoshone Tribal Settlement Fund”, hereinafter referred to in the Act as the “Fund”.

(B) There is authorized to be appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund \$3,000,000 in fiscal year 1992, and \$8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996, and 1997 for a total sum of \$43,000,000.

(C) (1) The income of the Fund may be obligated and expended only for the following purposes:

(a) Tribal economic development, including development of long-term profit-making opportunities for the Fallon Paiute Shoshone Tribes (hereinafter referred to in the Act as “Tribes”) and its tribal members, and the development of employment opportunities for tribal members;

(b) Tribal governmental services and facilities;

(c) Per capita distributions to tribal members;

(d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation (hereinafter referred to in the Act as “Reservation”) not including lands added to the Reservation pursuant to the provisions of Public Law 95-337, 92 Stat. 455;

(e) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers, and improvement of such lands;

(f) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers, including those held in trust by the United States.

(2) Except as provided in subsection (C)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subsections (C)(1)(d), (C)(1)(e) and (C)(1)(f) of this section, the Tribes may obligate and expend no more than 20 percent of the principal of the Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subsection, or from income earned on the remaining principal.

(4) In obligating and expending funds for the purpose set forth in subsection (C)(1)(c), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.

(D) The Tribes shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (F) of this section.

(E) Upon the request of the Tribes, the Secretary shall invest the sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(F) (1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use their best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the Fund to serve any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provisions of section 7 of Public Law 93-134, 87 Stat. 468, as amended by section 4 of Public Law 97-458, 96 Stat. 2513, 25 U.S.C. 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section.

SEC. 103. ACQUISITION AND USE OF LANDS AND WATER RIGHTS.

(A) Title to all lands, water rights and related property interests acquired under section 102(C)(1)(e) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribes as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and no more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

(B) Any lands acquired under section 102(C)(1)(e) or (f) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

(C) (1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(a) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(b) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

(2) The requirements of section 103(C)(1) shall not take effect until the Tribes agree to the limitations on annual use of water rights set forth in subsection (1) of this section.

(D) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Reservation under subsection (A) of this section, and to enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(E) Subject to the limitation on the quantum of use set forth in subsection (C) of this section, and applicable state law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada. Nothing in this subsection is intended to affect the jurisdiction of the Tribes or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(F) (1) The Tribes are authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribes, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

- (a) Consolidating Reservation landholdings or water rights, including those held in trust;
- (b) Eliminating fractionated heirship interests in Reservation lands or water rights, including those held in trust;
- (c) Providing land or water rights for any tribal program;
- (d) Improving the economy of the Tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and
- (e) General rehabilitation and enhancement of the total resource potential of the Reservation: Provided, That any water rights shall be transferred in compliance with applicable state law.

(2) Title to any lands or water rights, or interests therein, acquired by the Tribes within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribes.

SEC. 104. RELEASE OF CLAIMS.

(A) (1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met—

(a) the Tribes have released any and all claims they may have against the United States resulting from any failure of the United States to comply with section 7 of Public Law 95-337, 92 Stat. 457;

(b) the Tribes have dismissed with prejudice their claims in Northern Paiute Nation v. United States, Docket No. 87-A, United States Claims Court;

(c) the Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in section 103(C);

(d) the Tribes have dismissed, without prejudice, their claims in Pyramid Lake Paiute Tribe of Indians v. Lujan, No. R-85-197 (D.Nev.) and their objections to the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988, provided that such dismissal shall not prejudice in any respect the Tribes' right to object in any administrative or judicial proceeding to such Operating Criteria and Procedures, or any revisions thereto, or to assert that any Operating Criteria and Procedures should be changed due to new information, changes in environmental circumstance, changes in project descriptions or other relevant considerations, in accordance with the requirements of all applicable court decrees and applicable statutory requirements;

(e) the Tribes agree to be bound by the plan developed and implemented by the Secretary in accordance with section 106 of this title; and

(f) (1) the Tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this title effect an unlawful taking of their rights: Provided, That—

(i) the United States shall defend and resist any such claims at its own expense;

(ii) the Tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

(iii) the United States shall not compromise or settle any such claims without the consent of the Tribes.

(2) The provisions of this section shall not be construed as:

(i) implying that section 103(C) unlawfully takes any water rights;

(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

(iii) waiving any immunities of the United States or the Tribes; or

(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights.

(2) If the appropriations authorized in section 102(B) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this Act have not been satisfied, and the Tribes may rescind their release of claims under this section and its agreement under subsection (c) of this section.

(3) Upon the appropriation of monies authorized in section 102(B) of this Act, and the allocation of such monies to the Fund, section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed.

SEC. 105. LIABILITY OF THE UNITED STATES.

(A) Except with regard to the responsibilities assumed by the United States under section 102(E), and those set forth in section 1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, U.S.C. 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribes.

(B) Except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1), and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of this Act.

SEC. 106. PLAN FOR THE CLOSURE OF TJ DRAIN.

(A) The Secretary, in consultation with the Tribes and in accordance with applicable law, shall develop and implement a plan for the closure, including if appropriate, modification of components, of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

(B) The plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation season that are served by that system, unless the Tribes and the Secretary agree otherwise.

(C) Implementation of the plan shall not interfere with ongoing agricultural operations.

(D) The United States shall bear all costs for developing and implementing the plan.

(E) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 107. DEFINITIONS.

For the purpose of this title, and for no other purposes—

(A) the term “Fallon Paiute Shoshone Tribal Settlement Fund” or “Fund” means the Fund established under section 102A of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this title;

(B) the term “income” means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income;

(C) the term “principal” means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B) of this Act;

(D) the term “Reservation” means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457;

(E) the term “Secretary” means the Secretary of the Department of the Interior;

(F) the term “tribal members” means the enrolled members of the Fallon Paiute Shoshone Tribes; and

(G) the term “Tribe” means the Fallon Paiute–Shoshone Tribe.

Title II—Truckee–Carson–Pyramid Lake Water Settlement

SEC. 201. SHORT TITLE.

This title may be cited as the “Truckee–Carson–Pyramid Lake Water Rights Settlement Act”.

SEC. 202. PURPOSES.

The purposes of this title shall be to—

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation uses, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 203. DEFINITIONS.

For the purposes of this title:

(a) the term “Alpine court” means the court having continuing jurisdiction over the Alpine decree;

(b) the term “Alpine decree” means the final decree of the United States District Court for the District of Nevada in *United States of America v. Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

(c) the term “Carson River basin” means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term “Fallon Tribe” means the Fallon Paiute–Shoshone Tribe;

(e) the term “Lahontan Valley wetlands” means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term “Lake Tahoe basin” means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term “Lower Truckee River” means the Truckee River below Derby Dam;

(h) the term “Operating Agreement” means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 205 of this title;

(i) the term “Orr Ditch court” means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term “Orr Ditch decree” means the decree of the United States District Court for the District of Nevada in *United States of America v. Orr Water Ditch Company, et al.*—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term “Preliminary Settlement Agreement as Modified by the Ratification Agreement” means the document with the title “Ratification Agreement by the United States of America”, including Exhibit “1” attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report of the Committee on Energy and Natural Resources as Appendix 1 to the Committee’s report accompanying S. 1554;

(l) the term “Pyramid Lake fishery” means two fish species found in Pyramid Lake, the cui-ui (*Chasmistes cujus*) and the Lahontan cutthroat trout (*Salmo clarki henshawi*);

(m) the term “Pyramid Lake Tribe” means the Pyramid Lake Paiute Tribe;

(n) the term “Secretary” means the Secretary of the Interior;

(o) the term “Truckee River Agreement” means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee–Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term “Truckee River basin” means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

(q) the term “Truckee River General Electric court” means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term “Truckee River General Electric decree” means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in *United States of America v. Truckee River General Electric Co.*, No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643;

(s) the term “Truckee River reservoirs” means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term “1948 Tripartite Agreement” means the agreement between the Truckee–Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 204. INTERSTATE ALLOCATION.

(a) **CARSON RIVER.—**

(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per year by depletion for use in the State of California and 2,131 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph: Provided, That the augmentation authority by such paragraph shall be used only on lands having appurtenant Alpine decree rights. Use of effluent for the irrigation of lands with appurtenant Alpine decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State law.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

(b) **LAKE TAHOE.—**

(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) the provisions of paragraph 204(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

- (a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;
- (b) identification of conservation measures currently adopted and in practice;
- (c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;
- (d) a schedule of implementation for proposed actions as indicated by the plan;
- (e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;
- (f) an evaluation of management of water system pressures and peak demands;
- (g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;
- (h) an evaluation of public information and educational programs to promote wise use and eliminate waste;
- (i) an evaluation of changes in pricing, rate structure, and regulations; and
- (j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term “water distribution system” means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points: Provided, That the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraph (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or has been perfected.

Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.—

(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000 acre-feet of water per year from all natural sources, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing

method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 204(c)(1)(B) and (D) and shall not be deemed use of Truckee River basin groundwater within the State of Nevada within the meaning of subparagraph 204(c)(1)(D); and

(b) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1000 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provision of subparagraph 204(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1).

(J) Unmetered diversion or extraction of water by residences, shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraph 204(c)(1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

(d) **COMPLIANCE.—**

(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. With the third quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) **FORFEITURE OR ABANDONMENT.—**The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—

(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State law applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 205. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

(a) OPERATING AGREEMENT.—

(1) The Secretary shall negotiate an operating agreement (hereafter “Operating Agreement”) with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provisions of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes

which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 90 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. 706(2)(A)-(D): Provided, That the limits on judicial review in this paragraph shall not apply to any claim based on the provisions of the Endangered Species Act, as amended.

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra Pacific Power Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—

(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of non-project water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 205(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 206(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an interim agreement with the Sierra Pacific Power Company and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Reservoir, except that the amount of such storage shall not exceed 5,000 acre-feet on

September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the Operating Agreement upon the entry into effect of those agreements.

(c) **RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.**—The Secretary is released from any obligation to secure payment for the costs of constructing Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 206. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—

(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 209(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not at all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of the subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 206(c). This study may be conducted in coordination with the studies authorized by paragraph 207(c)(5) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.—

(1) Notwithstanding any other provisions of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled “Stillwater National Wildlife Refuge,” dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 206(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.—

(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 206 and 207 of this title: Provided, That,

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) **STATE COST-SHARING.**—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than \$9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary’s authority under subsection 206(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

(e) **TRANSFER OF CARSON LAKE AND PASTURE.**—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the “Carson Lake and Pasture,” as depicted on the map entitled “Carson Lake Area,” dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(f) **LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.**—

(1) There is hereby established in the Treasury of the United States the “Lahontan Valley and Pyramid Lake Fish and Wildlife Fund” which shall be available for deposit of donations from any source and funds provided under subsections 205(a) and (b), 206(d), and subparagraph 208(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 207(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 208(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) **INDIAN LAKES AREA.**—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled “Indian Lakes Area,” dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 207. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) **RECOVERY PLANS.**—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended,

and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.—

(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta of Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitats for the cui-ui;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the on-going reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in that paragraph.

(c) ACQUISITION OF WATER RIGHTS.—

(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 206(a)(4) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—

(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydro-electric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS.—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 206(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 204 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

SEC. 208. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.

(a) FUNDS ESTABLISHED.—

(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund" and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund \$25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with

and the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at \$25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 206(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund \$40,000,000 in five equal annual installments in the 1993, 1994, 1995, 1996, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 207 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Public Law 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are

requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 210(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 208(a)(2) is appropriated after fiscal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Paiute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Paiute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 208(a)(2) been appropriated in full for fiscal year 1992.

(6) If and to the extent that any portion of the sums authorized to be appropriated in paragraph 208(a)(3) are appropriated after fiscal years 1993, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 208(a)(3), there shall be deposited in the Pyramid Lake Paiute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Paiute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 208(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997.

SEC. 209. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPLANATION OF AUTHORIZED PURPOSES.—

(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) **TRUCKEE RIVER DIVERSIONS.—**The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.—

(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources,

Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) **WATER BANK.**—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) **RECREATION STUDY.**—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) **EFFLUENT REUSE STUDY.**—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

(g) **REPAYMENT CANCELLATION.**—Notwithstanding any other provisions of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 209(h)(2), the term “water conservation measures” shall not include repair, modification, or replacement of Derby Dam.

(h) **SETTLEMENT OF CLAIMS.**—

(1) The provisions of subsections 209(d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 209(g) of this section shall not become effective unless and until the State of Nevada provides not less than \$4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) **FISH AND WILDLIFE.**—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

(j) **OPERATING CRITERIA AND PROCEDURES.**—

(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of Pyramid Lake Paiute Tribe of Indians v. Morton, 354

F.Supp. 252 (D.D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any order in such a proceeding that will result in the expenditure of any funds out of the United States Treasury.

SEC. 210. MISCELLANEOUS PROVISIONS.

(a) CLAIMS SETTLEMENT.—

(1) The effectiveness of section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 208(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the Secretary of California, of the following outstanding litigation and proceedings:

(A) Pyramid Lake Paiute Tribe v. California, Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California.

(B) United States v. Truckee-Carson Irrigation District, Civ. No. R-2987-RCB, United States District Court, District of Nevada.

(C) Pyramid Lake Paiute Tribe v. Lujan, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) Pyramid Lake Paiute Tribe v. Department of the Navy, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 204, subsections 206(c), 207(c) and (d), subparagraph 208(a)(3)(D), and paragraph 210(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 205 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 210(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 207(d) shall not take effect until the funds authorized in paragraph 208(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 204 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 204 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 205 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

(b) GENERAL PROVISIONS.—

(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administration Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the

United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 of the Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Alpine court to ensure that the owners of vested or perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and preferred right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 204, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935, and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended: Provided, That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works: And provided further, That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 205(a)(6).

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights, or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation.

(c) **APPROPRIATIONS AUTHORIZED.**—There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

Attachment B

Preliminary Settlement Agreement

PRELIMINARY SETTLEMENT AGREEMENT

WHEREAS, on May 23, 1989, the Pyramid Lake Paiute Tribe of Indians (Tribe) and Sierra Pacific Power Company (Sierra) entered into a Preliminary Settlement Agreement, which contemplates the use of federally owned storage reservoirs in the Truckee River Basin in California for storage of the waters available under the described water rights for fishery and municipal and industrial purposes;

WHEREAS, a condition of the effectiveness of the Preliminary Settlement Agreement (see paragraph 29(g) of Article III of the Preliminary Settlement Agreement) is that the United States would become a party to the agreement and accept, approve and become bound by all of its terms and conditions to the same extent as the Tribe; and

WHEREAS, the United States has reviewed the terms and conditions of that Preliminary Settlement Agreement and found them to be generally acceptable.

NOW THEREFORE, the United States by its authorized official, ratifies, confirms and agrees by this instrument to become a party to that Agreement, and, subject to the following clarifications and understandings, accepts, approves, and agrees to be bound by said terms and conditions to the same extent as the Tribe:

A. Attached hereto and incorporated herein as Exhibit A is a clarified and revised Preliminary Settlement Agreement which includes the revisions to be made to that Agreement as a result of this ratification. The United States shall be bound only by the terms of Exhibit A and not by any other version of the Preliminary Settlement Agreement.

B. (1) The United States reserves the right to cancel in full and withdraw this Ratification Agreement if either the Tribe or Sierra attempts to rely upon condition (a) of Section 29 of Article III of the Preliminary Settlement in whole or in part.

(2) The Operating Agreement referred to in paragraph 29(f) of Article III of the Preliminary Settlement Agreement shall be construed to refer to the Operating Agreement, if any, required by Title II of the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

(3) As to subsection (j) of Section 29 of Article III of the Preliminary Settlement Agreement, the United States shall not be bound by any of the provisions thereof in any respect unless and until it, through an authorized official, enters into a binding agreement relating to the subject matter thereof, but only to such extent and not otherwise. The discretion of the United States or its officers to enter into any such agreement shall not be impaired or affected in any degree by these provisions, and it shall remain discretionary with the United States as to whether to enter into any such Agreement and which terms such Agreement, if any, shall include, subject to the terms, conditions and limitations of all applicable laws.

C. Sierra Pacific and the Tribe must agree in carrying out the terms and provisions of this Agreement to abide by and comply with all applicable state and federal laws and to abide by all lawful regulations issued by the Secretary.

EXHIBIT "A" PRELIMINARY SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into this 23rd day of May, 1989, between the Pyramid Lake Paiute Tribe of Indians ("Tribe") and Sierra Pacific Power Company ("Sierra").

I. RECITALS

1. The cui-ui (*Chasmistes cujus*) is officially classified as an endangered species. It is the only pure species remaining in its genus, Chasmistes, and is found only in the Pyramid Lake/Lower Truckee River ecosystem in Nevada.

2. The Lahontan cutthroat trout (*Salmo clarki henshawi*) is officially classified as a threatened species. It is found in the Pyramid Lake/Truckee River ecosystem as well as other lakes, streams and rivers in the Great Basin.

3. The Tribe is organized under Section 16 of the Act of June 18, 1934 (25 U.S.C. 476) and governs the Pyramid Lake Indian Reservation which includes Pyramid Lake and a large portion of the Lower Truckee River.

4. The Tribe desires to increase flows in the Lower Truckee River in the spring and early summer months to improve Spawning Flows in the Lower Truckee River for the endangered cui-ui and the threatened Lahontan cutthroat trout.

5. Sierra serves water to the Cities of Reno and Sparks and unincorporated portions of Washoe County and also provides electricity to northern Nevada and portions of east central, California.

6. In addition to its other power generating facilities, Sierra owns and operates four run of the river hydroelectric plants on the Truckee River above Reno. Sierra owns and utilizes water rights for these hydroelectric plants utilizing water which is released from or passed through Lake Tahoe and other Truckee River reservoirs.

7. Sierra owns and utilizes substantial Truckee River water rights to provide water for municipal, industrial and domestic (M&I) purposes within its service area. Sierra also participates with the local governments of Reno, Sparks and Washoe County in an acquisition program approved by the Public Service Commission of Nevada to acquire agricultural water rights in the Truckee River Basin and to change them to M&I purposes.

8. The water rights acquired, owned and utilized by Sierra are sufficient to provide water for M&I use within its service area in most years. Sierra needs additional storage, however, to insure an adequate supply of water under Drought Conditions.

9. The parties hereto and others are involved in negotiations and in supporting enactment of proposed congressional settlement legislation which, if finalized and enacted, will provide for:

(a) Allocation of the waters of the Lake Tahoe, Truckee River and Carson River Basins;

(b) The purchase of water for the wetlands in the Lahontan Valley and possibly other wetlands;

(c) The development and implementation of a mitigation and enhancement program for the cui-ui and Lahontan cutthroat trout;

(d) A fund for the economic development of the Pyramid Lake Indian Reservation;

(e) The resolution of existing litigation and the avoidance of future litigation; and

(f) Authorization and agreement for the operation of the Truckee River Reservoirs, including Lake Tahoe.

10. In order for the negotiations and proposed settlement legislation to progress, it is necessary for the parties hereto to enter into this Preliminary Agreement concerning the utilization of water rights and the operation of the Truckee River Reservoirs to provide greater Spawning Flows in the Lower Truckee River and an adequate supply of water for Sierra's Service Area under Drought Conditions.

II. DEFINITIONS

As used in this Preliminary Agreement:

1. "Critical Drought Period" means a hydrologic period during which the water supplies available from the Truckee River are limited to the same or similar extent as the water supplies available from the Truckee River under a repetition of hydrologic conditions which existed from 1928 to 1935.

2. "Drought Conditions" means conditions under which Sierra's Normal Water Supplies are not sufficient to satisfy Sierra's normal water year demand, but in no event shall Drought Conditions exist when a Drought Situation does not also exist.

3. "Drought Situation" means a situation under which it appears, based on the April 1 seasonal Truckee River runoff forecast and assuming median precipitation after April 1, either that there will not be sufficient unregulated natural runoff and pooled water in storage in the Truckee River Reservoirs to meet the Floriston Rates through the following October 31, or that the level of Lake Tahoe, excluding all Firm M&I, Non-Firm M&I and Fishery Credit Water, will be below 6223.5 feet Lake Tahoe Datum on or before the following November 15.

4. "Emergency or Repair Conditions" means an unexpected circumstance when the demands of Sierra's water customers cannot be met from Sierra's Normal Water Supplies or a scheduled alteration or repair which prevents the use of some

or all of Sierra's Normal Water Supplies to meet the demands of Sierra's water customers.

5. "Firm M&I Credit Water" means the water that is stored in Stampede Reservoir and can be utilized under the terms and conditions of this Agreement for the purpose of providing water under Drought Conditions or Emergency or Repair Conditions for M&I purposes within Sierra's Service Area and which shall not spill or be subject to evaporation losses unless it is the only remaining water in Stampede Reservoir.

6. "Fishery Credit Water" means the water that can be stored and utilized under the terms and conditions of this Agreement for the benefit of the Pyramid Lake Fishery.

7. "Floriston Rates" means the rate of flow of the Truckee River at the head of the diversion penstock at Floriston, California (but measured at the USGS Stream Gaging Station near Farad, California) consisting of an average flow of 500 cubic feet of water per second each day during the period commencing March 1 and ending September 30 of any year and an average flow of 400 cubic feet of water per second each day during the period commencing October 1 and ending the last day of the next following February of any year.

8. "Former Agricultural Water Right" means a water right from the Truckee River and its tributaries which Sierra now has or will acquire as described in Section 2 of Article III of this Agreement and which was originally established for agricultural use and has been or will be acquired or leased and transferred to or otherwise provided for M&I use.

9. "Lower Truckee River" means the Truckee River below Derby Dam.

10. "M&I" means municipal, industrial and domestic.

11. "Non-Firm M&I Credit Water" means any water other than Firm M&I Credit Water that can be stored in any Truckee River Reservoir and utilized under the terms and conditions of this Agreement under Drought Conditions or Emergency or Repair Conditions for M&I purposes within Sierra's Service Area.

12. "Orr Ditch Decree" means the Final Decree entered on September 8, 1944, in the case of *United States v. Orr Water Ditch Co., et al.*, Equity No. A-3, in the United States District Court for the District of Nevada.

13. "Prosser Creek Fishery Water" means the water in Prosser Creek Reservoir that may be committed by the United States for the benefit of the Pyramid Lake Fishery and is not needed to carry out the Tahoe-Prosser Exchange pursuant to the Agreement of June 15, 1959.

14. "Pyramid Lake Fishery" means the two primary species found in Pyramid Lake, the cui-ui (*Chasmistes cujus*) and the Lahontan cutthroat trout (*Salmo Clarki henshawi*).

15. "Remaining Waters of the Truckee River" means the waters of the Truckee River system other than the following: (i) the waters of the Lake Tahoe Basin allocated to California and Nevada; (ii) the waters of the Truckee River and its tributaries allocated to California; and (iii) the waters of the Truckee River and its tributaries allocated to Nevada to which valid and perfected rights attach under applicable law.

16. "Sierra's Normal Water Supplies" means the water sources and supplies Sierra has and would have to meet the M&I needs of its customers in the absence of this Agreement, including the water sources and supplies described in Section 2

of Article III of this Agreement and any supplies obtained or developed pursuant to Section 3 of this Agreement, but excluding all of the water sources and supplies described in Section 21 of Article III of this Agreement and 7,500 acre feet of water above the outlet facilities of Independence Lake.

17. "Sierra's Privately Owned Stored Water" means the stored water which Sierra now has or may hereafter acquire the right to use in Donner Lake and Independence Lake.

18. "Sierra's Service Area" means the retail and wholesale certificated boundaries as may be established from time to time by the Public Service Commission of Nevada as the territory in which Sierra is entitled to sell or to distribute water.

19. "Spawning Flows in the Lower Truckee River" means the water which provides suitable conditions for fish passage, maintaining habitat, attracting, egg-taking, spawning and/or nursing of cui-ui and/or Lahontan cutthroat trout in the Lower Truckee River.

20. "Stampede Project Water" means the water that is currently captured and impounded in Stampede Reservoir and is released to support Spawning Flows in the Lower Truckee River.

21. "Truckee River Agreement" means the Agreement dated July 1, 1935, which was approved, adopted and incorporated in the Orr Ditch Decree.

22. "Truckee River General Electric Co. Decree" means the Final Decree entered on June 4, 1915 in the case of United States v. Truckee River General Electric Co., No. 14861, in the United States District Court for the Northern District of California which was transferred on February 9, 1968 to the United States District Court for the Eastern District of California and is now designated No. S-643.

23. "Truckee River Reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir and Stampede Reservoir.

III. AGREEMENT

Section 1. Waiver of Single Purpose Hydroelectric Water. For purposes of this Agreement only, Sierra agrees to waive its rights to require releases or pass throughs of water from the Truckee River Reservoirs solely for the generation of hydroelectric power pursuant to the Truckee River General Electric Co. Decree and Claim Nos. 5, 6, 7, 8 and 9 of the Orr Ditch Decree. The water to which Sierra's rights are waived pursuant to this Section shall become Fishery Credit Water subject to the limitations set forth in Section 27 of Article III of this Agreement and shall be held in storage in the Truckee River Reservoirs and released for the sole use and benefit of the Pyramid Lake Fishery.

Section 2. Water Rights Required for New Service Commitments. Sierra agrees that it will not issue new service commitments unless such commitments are accompanied by such water rights provided directly to Sierra or through a municipal entity as are necessary to meet the new water service requirement. Sierra shall require new service commitments which rely on surface water rights to provide water rights at the rate of not less than 1.72 acre feet of water rights for every acre foot of commitment until such time as Sierra has committed to the

amount of water needed to meet a normal year demand of 80,000 acre feet within Sierra's Service Area. After the amount of water is provided to meet Sierra's normal year commitment of 80,000 acre feet and until such time as Sierra has committed to the amounts of water required to meet a normal water year demand of 119,000 acre feet within Sierra's Service Area, the water rights provided to meet new service commitments in reliance upon surface water rights may be reduced to not less than 1 acre foot of water rights for every acre foot of new service commitment; provided, however, that if Sierra is able to develop the water supply referred to in Section 3(b) of Article III of this Agreement, then the ratio of new service commitments in reliance on surface water rights shall be not less than 1.11 acre feet of water rights for every acre foot of new service commitment.

Section 3. Development of Additional M&I Water Supplies. Sierra agrees to use its best efforts to implement the following measures on a schedule to be agreed upon in the operating agreement referred to in Section 29(f) of Article III of this Agreement, to the extent legally, technically and economically feasible, to help meet the water supply demands of its customers as Sierra's total normal year water demand increases to a maximum normal year demand of 119,000 acre feet:

(a) Development of the capacity to pump 2,000 acre feet of water annually from the Sparks pit source under Drought Conditions or Emergency or Repair Conditions;

(b) The right to develop an additional 3,000 acre feet annually of groundwater from the Truckee Meadows groundwater basin (over and above the currently approved 12,616 acre feet of groundwater available from the Truckee Meadows groundwater basin); and

(c) Acquisition and utilization of the right of the Truckee-Carson Irrigation District to store and use water in Donner Lake.

The Tribe and the United States waive any and all rights or claims they may have to object to Sierra's implementation and use of the water supply measures described in this Section or Section 21 of Article III.

The measures described in Sections 3(a) and 3(c) of Article III shall not be included in, and shall be in addition to, the water rights Sierra obtains to meet new service commitments pursuant to Section 2 of Article III of this Agreement.

Section 4. Storage of Firm and Non-Firm M&I Credit Water in Truckee River Reservoirs. Sierra shall have the right to establish Firm and Non-Firm M&I Credit Water by utilizing the Truckee River Reservoirs to store or retain its Privately Owned Stored Water and the consumptive use portion of Former Agricultural Water Rights which are not utilized to supply the demands of its customers in any given year for later use under Drought Conditions or Emergency or Repair Conditions for M&I purposes. Such water may be accumulated in those Reservoirs or may be transferred between those Reservoirs through acre foot for acre foot exchanges. Sierra agrees to use the full extent of the consumptive use portion of its Former Agricultural Water Rights which are not utilized to supply the demands of its customers in any given year to establish Firm or Non-Firm M&I Credit Water pursuant to the terms and conditions of this Agreement.

Section 5. Use of Firm and Non-Firm M&I Credit Water. Sierra may use Firm M&I Credit Water and Non-Firm M&I Credit Water to supply the demands of its customers under Drought Conditions to meet its normal water year demand, up to a maximum of 119,000 acre feet, less the sum of the quantities of water actually

conserved through the implementation of the measures required by Section 29(e) of Article III of this Agreement and the additional water supplies described in Section 3 of Article III of this Agreement and implemented in accordance with the operating agreement described in Section 29(f) of Article III of this Agreement. Sierra also may use Firm M&I Credit Water and Non-Firm M&I Credit Water to meet the demands of its customers under Emergency or Repair Conditions.

Section 6. Calculation of Base Amounts of Firm and Non-Firm M&I Credit Water. The base amount of Firm M&I Credit Water Sierra may store pursuant to Section 4 of Article III of this Agreement shall vary from 2,000 acre feet to 12,000 acre feet in relation to the amount of water needed to satisfy the normal water demand of Sierra's customers as shown on Exhibit "A". The base amount of Non-Firm M&I Credit Water Sierra may store pursuant to Section 4 of Article III of this Agreement shall vary from 4,000 acre feet to 20,000 acre feet in relation to the amount of water needed to satisfy the normal water year demand of Sierra's customers as shown on Exhibit "B" and as the amount of water depleted from the Truckee River, its tributaries and groundwater basins within California increases as shown on Exhibit "C". The amount of Non-Firm M&I Credit Water shown on Exhibit "B" shall be multiplied by the percentage factor shown on Exhibit "C" for the amount of water being depleted in a normal year from the Truckee River, its tributaries and groundwater basins within California at the time the calculation is made. The product so obtained shall be the base amount of Non-Firm M&I Credit Water which Sierra may store pursuant to Section 4 of Article III of this Agreement; provided, however, that the base amount of Non-Firm M&I Credit Water which Sierra may store shall not be less than 4,000 acre feet. Sierra may commence storing Firm and Non-Firm M&I Credit Water pursuant to the provisions of this Agreement when this Agreement becomes effective.

Section 7. Status of M&I Credit Water. All of Sierra's M&I Credit Water stored in Stampede Reservoir at any given time up to the base amount of Firm M&I Credit Water determined in accordance with Section 6 of Article III of this Agreement shall be considered Firm M&I Credit Water and shall have all of the attributes of Firm M&I Credit Water. All of Sierra's remaining M&I Credit Water stored in Stampede Reservoir and all of its M&I Credit Water in other Truckee River Reservoirs shall be considered Non-Firm M&I Credit Water.

Section 8. Annual Adjustment of M&I Credit Water. The amounts of Firm and Non-Firm M&I Credit Water in storage in the Truckee River Reservoirs shall be adjusted once annually not later than April 15 of each year based upon whether or not a Drought Situation exists utilizing the April 1 seasonal runoff forecast. Following that annual adjustment, during the ensuing 12 months and whether or not a Drought Situation exists, Sierra shall have the right to utilize the available space in the Truckee River Reservoirs to store its Privately Owned Stored water and the consumptive use portion of Former Agricultural Water Rights which are not needed to supply the demands of its customers to establish additional amounts of M&I Credit Storage in excess of the base amounts of Firm and Non-Firm M&I Credit Water set forth in Section 6 of Article III of this Agreement.

Section 9. Exchanges to Permit Firm M&I Credit Water to be Stored in Stampede Reservoir and to Avoid Unnecessary Spill or Displacement. The Tribe, the United States and Sierra agree to make exchanges and to take such other measures as are necessary to permit Firm M&I Credit Water to be stored in

Stampede Reservoir up to the base amount determined in accordance with Section 6 of Article III and to insure, to the maximum extent possible, that Firm M&I Credit Water, Non-Firm M&I Credit Water, Fishery Credit Water and Stampede Project Water will be available at the appropriate times and will not be displaced or caused to spill.

Section 10. Storage Priorities -- Non-Drought Situation. Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation does not exist, the Tribe and the United States agree as follows: (a) that Sierra shall have the first right to store Firm M&I Credit Water in Stampede Reservoir from the following July 1 through December 31 up to the base amount determined in accordance with Section 6 of Article III of this Agreement; (b) that Sierra may displace Fishery Credit Water in Stampede Reservoir and may displace Stampede Project Water from July 1 through the following December 31 of each year to the extent necessary to achieve and not exceed the base amount of Firm M&I Credit Water in storage; and (c) that Sierra may accumulate additional Non-Firm M&I Credit Water in Truckee River Reservoirs other than Stampede Reservoir to the extent Sierra's total Firm M&I Credit Water is less than the base amount of Firm M&I Credit Water determined pursuant to Section 6 of Article III. Such additional Non-Firm M&I Credit Water may displace Fishery Credit Water from July 1 through the following December 31, shall spill or be reduced for precautionary drawdowns after Fishery Credit Water and shall share the net evaporation losses proportionately with any other water in all such reservoirs except Lake Tahoe.

Section 11. Conversion of M&I Credit Water to Fishery Credit Water -- Non-Drought Situation. Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation does not exist, the amount of Non-Firm M&I Credit Water established in accordance with Section 8 of Article III of this Agreement in excess of the base amount determined in accordance with Section 6 of Article III of this Agreement shall become Fishery Credit Water. Sierra shall have the right to determine and identify the location of the excess Non-Firm M&I Credit Water stored in the Truckee River Reservoirs which shall become Fishery Credit Water.

Section 12. Credit Storage Rules -- Non-Drought Situation. Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation does not exist, then for the ensuing 12 months, the following rules shall apply: (a) the Fishery Credit water and Non-Firm M&I Credit Water shall share the net evaporation losses proportionately with any other water in Truckee River Reservoirs other than Lake Tahoe; (b) Non-Firm M&I Credit Water shall be the first water to spill from Stampede Reservoir; and (c) except as provided in Section 10 of Article III of this Agreement, Non-Firm M&I Credit Water and Fishery Credit Water shall spill or be reduced for precautionary drawdowns proportionately from all other Truckee River Reservoirs.

Section 13. Displacement of Fishery Credit Water and Stampede Project Water -- Drought Situation. Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation exists, the Tribe and the United States agree as follows: (a) to allow Sierra to displace Fishery Credit Water in Stampede Reservoir or Stampede Project Water from April 15 to July 1 to the extent necessary to enable Sierra to store up to 6,000 acre feet of the consumptive use portion of Former Agricultural Water Rights; (b) to allow Sierra to displace Fishery Credit Water in Stampede Reservoir or Stampede Project Water from July 1 to the

following April 1 to the extent necessary to enable Sierra to store the base amounts of Firm and Non-Firm M&I Credit Water determined in accordance with Section 6 of Article III of this Agreement, except that for this purpose only the base amount of Non-Firm M&I Credit Water shall not be adjusted by the Exhibit "C" percentage reduction based upon the amount of water depleted from the Truckee River and its tributaries and groundwater basins in California; and (c) to allow Sierra to displace Fishery Credit Water in Truckee River Reservoirs other than Stampede Reservoir to the extent necessary to enable Sierra to increase the amounts of Firm and Non-Firm M&I Credit Water to the maximum extent possible without regard to the limitations of Section 6 of Article III of this Agreement.

Section 14. Carryover of Firm and Non-Firm M&I Credit Storage -- Drought Situation. Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation exists, Sierra shall have the right to retain and carry over until the following year all of its Firm M&I Credit Water up to the base amount determined in accordance with Section 6 of Article III and all of its Non-Firm M&I Credit Water including the excess Non-Firm M&I Credit Water established in accordance with Sections 8 and 13 of Article III of this Agreement. All such excess Non-Firm M&I Credit Water may be retained and carried over and may continue to be increased pursuant to Sections 8 and 13 of Article III of this Agreement until, based upon a subsequent April 1 seasonal runoff forecast, a Drought Situation no longer exists.

Section 15. Credit Storage Rules -- Drought Situation. Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation exists, for the ensuing 12 months the Fishery Credit Water in all Truckee River Reservoirs in which it is stored shall be the first water to spill or be reduced for precautionary drawdowns. Non-Firm M&I Credit Water and Fishery Credit Water shall share the net evaporation losses proportionately from all Truckee River Reservoirs in which they are stored except Lake Tahoe.

Section 16. Use of Sierra's Privately Owned Stored Water. Sierra's Privately Owned Stored Water may be used to supply the demands of its customers in normal water years, under Drought Conditions and under Emergency or Repair Conditions. Sierra agrees to use all available Donner Lake water and all but 7,500 acre feet of its water above the outlet facilities of Independence Lake before using any Firm M&I or Non-Firm M&I Credit Water or the remaining 7,500 acre feet in Independence Lake to meet the needs of its customers under Drought Conditions or Emergency or Repair Conditions. Except as provided in Section 22 of Article III of this Agreement, all of Sierra's Privately Owned Stored Water that is not carried over or used to meet the demands of its customers in normal water years, under Drought Conditions or under Emergency or Repair Conditions shall be used if legally and physically possible to establish Firm or Non-Firm M&I Credit Water pursuant to the terms and conditions of this Agreement.

Section 17. Sierra to Control Privately Owned Stored Water. The quantities of Firm and Non-Firm M&I Credit Water stored, held and used pursuant to this Agreement shall not include, and shall be in addition to, the quantities of Sierra's Privately Owned Stored Water in Donner Lake and Independence Lake at any given time. Sierra retains the sole right to control and manage Sierra's Privately Owned Stored Water in Donner Lake and Independence Lake subject to all applicable laws, conditions and regulations.

Section 18. Exchanges of Fishery Credit Water and Prosser Creek Fishery Water to Enable Storage of M&I Credit Water in Stampede Reservoir. The Tribe and the United States agree to allow exchanges of their rights to store and use Fishery Credit Water and Prosser Creek Fishery Water for Sierra's right to store and use Non-Firm M&I Credit Water so as to enable Sierra to store the maximum amount of its Firm M&I Credit Water and Non-Firm M&I Credit Water in Stampede Reservoir. When releases of Stampede Project Water would otherwise be made, the Tribe and the United States agree to allow exchanges to enable Sierra to create Firm or Non-Firm M&I Credit Water in Stampede Reservoir.

Section 19. Additional Voluntary Exchanges of Credit Water. The Tribe, the United States and Sierra may agree to additional voluntary exchanges involving their respective rights and their Fishery, Firm M&I and Non-Firm M&I Credit Water as they may deem desirable and in furtherance of the objectives of this Agreement.

Section 20. Use of Fishery Credit Water. Subject to the provisions of Section 22 of Article III, all of the Fishery Credit Water established pursuant to this Agreement shall be stored in Truckee River Reservoirs and shall be utilized to provide Spawning Flows in the Lower Truckee River.

Section 21. Additional Water -- Worse Than Critical Drought Period. To meet the demands of its customers in the event of water supply conditions which are worse than those experienced during the Critical Drought Period, after exhausting Sierra's Normal Water Supplies, the 7,500 acre feet of water above the outlet facilities of Independence Lake to the extent permissible under then applicable law, and all Firm and Non-Firm M&I Credit Water, Sierra shall have the right to obtain sufficient water to meet its normal year water demand, up to a maximum of 119,000 acre feet, less the sum of the quantities of water conserved through the implementation of Section 29(e) of Article III of this Agreement and the additional water supplies described in Section 3 of this Agreement, from the following sources in the following order:

(a) Pump up to 5,000 acre feet of water from below the outlet works of Independence Lake to the extent permitted after making all necessary applications for such use; provided that if such water is not made available at the time required to satisfy the demands of Sierra's customers, Sierra may utilize the water supplies available in Section 21(b) of Article III of this Agreement to the extent required;

(b) Utilize as necessary a maximum of 7,500 acre feet of Fishery Credit Water in Stampede Reservoir; and

(c) Pump water from Lake Tahoe in accordance with, and to the extent permissible under, then applicable law.

Section 22. Establishment of Fishery Credit Water for Worse Than Critical Drought Period. As soon as practicable after this Agreement becomes effective, the Tribe and the United States agree to take all measures necessary to provide and hold in Stampede Reservoir the 7,500 acre feet of Fishery Credit Water referred to in Section 21(b) of Article III of this Agreement subject to the same terms and conditions as Firm M&I Credit Water utilizing the first Fishery Credit Water obtained pursuant to Section 11 of Article III of this Agreement. Once the 7,500 acre feet is in storage, it shall not be used for the benefit of the Pyramid Lake Fishery, and spill and evaporation losses and minimum instream flow requirements shall not be charged against it unless it is the only water in Stampede Reservoir.

Sierra may, at its option, fill the 7,500 acre feet provided in Section 21(b) of Article III directly from Sierra's Privately Owned Stored Water. Any of the water referred to in Section 21(b) of Article III that is used by Sierra shall be replaced by the Tribe and the United States as soon as practicable.

Section 23. Credit Water To Have Attributes of Privately Owned Stored Water. All Fishery Credit Water and Firm and Non-Firm M&I Credit Water stored pursuant to this Agreement shall have all the attributes of privately owned stored water under the Truckee River Agreement.

Section 24. Development of Additional M&I Water Supplies Above 119,000 Acre Feet of Demand. Sierra may obtain additional supplies of water to meet the demands of its customers above 119,000 acre feet per year, either after normal demand reaches 119,000 acre feet or prior thereto, through: (i) the acquisition of water rights in addition to those provided under Sections 2 and 3 of Article III of this Agreement; (ii) the utilization of water from hydrologic basins outside the Truckee River Basin; (iii) the development of Truckee River groundwater basins in Nevada beyond the 15,616 acre foot supply referenced in Section 3 of Article III of this Agreement to the extent that Sierra has added customers through expansion of the boundaries of its Service Area and acquired a water supply adequate to meet full demands of the new Service Area both in normal water years and during Drought Conditions; and (iv) the implementation of other measures. Any supplies developed pursuant to this Section shall not adversely affect the rights secured to the Tribe or the United States under this Agreement, any right of the Tribe or the United States to the Remaining Waters of the Truckee River, any rights secured to the Tribe or the United States under the settlement legislation which may be enacted by the Congress, or any other rights that the United States or the Tribe may claim. Such supplies must also comply with such state, local and federal permits and approvals as may be required under the then existing and applicable laws, rules and regulations. Provided, however, that the water supplies made available to Sierra pursuant to other Sections of this Agreement may only be used to the extent provided in Sections 5, 16 and 21 of Article III of this Agreement.

Section 25. Use of Water Outside Truckee River Basin. Sierra may utilize outside of the Truckee River Basin any of its existing Truckee River water rights or any such rights that it may acquire in the future. For any use of water outside the Truckee River Basin, except the approximately 3,000 acre feet of water committed to the Stead, Silver Lake and Golden Valley areas prior to the date of this Agreement, additional water rights shall be acquired in order to insure that return flows to the Truckee River are no less than they would have been if the water had been used in the Truckee River Basin.

Section 26. Additional Measures to Carry Out Agreement. Sierra, the United States and the Tribe agree to do those things as may be reasonably necessary to carry out the terms and conditions of this Agreement.

Section 27. Protection of Existing Perfected Rights. Nothing in this Agreement shall be construed to:

(a) Alter or conflict with any recognized and perfected right of any other person or entity to use the waters of the Truckee River or its tributaries including, but not limited to, the rights of landowners within the Newlands Project for delivery of the waters of the Truckee River to Derby Dam and for diversion of such waters at Derby Dam pursuant to the Orr Ditch Decree or any applicable law;

(b) Affect the right of Sierra to acquire and use for M&I purposes in accordance with this Agreement any recognized and perfected rights to waters of the Truckee River or its tributaries held by any person or entity;

(c) Affect Sierra's right to generate power at its hydroelectric plants on the Truckee River with any water rights it has or may acquire other than the rights to require releases of water from the Truckee River Reservoirs solely for hydroelectric power generation which are waived pursuant to Section 1 of Article III of this Agreement;

(d) Affect the quantity of water that is retained or carried over in storage in, or released from, the Truckee River Reservoirs pursuant to the Orr Ditch Decree and the Truckee River Agreement to satisfy the non-hydroelectric water rights recognized in the Orr Ditch Decree except for the consumptive use portion of Former Agricultural Water Rights which may be stored pursuant to the provisions of this Agreement;

(e) Affect the operation of any Truckee River Reservoirs to satisfy any applicable dam safety or flood control requirements;

(f) Affect the implementation of the Tahoe-Prosser Exchange Agreement of June 15, 1959;

(g) Result in an abandonment or forfeiture of the water rights of any party hereto; or

(h) Evidence any intention of any party hereto to abandon or forfeit any water rights.

Section 28. Water Master May Require Releases of Credit Water to Protect Existing Perfected Rights. Nothing in this Agreement is intended to affect the power of the Orr Ditch Court and the Water Master under the administrative provisions of the Orr Ditch Decree to ensure that the owners of the recognized and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch Decree. To the extent that implementation of this Agreement results in owners not receiving the amount of water to which they are legally entitled under the Orr Ditch Decree, the United States, the Tribe and Sierra Pacific agree that the owners' water will be made up through releases of water stored in Truckee River Reservoirs pursuant to this Agreement utilizing the water of the party or parties benefitting from such storage.

Section 29. Conditions for Agreement to be Effective and Operative. The provisions of this Agreement shall not take effect and this Agreement shall not be operative unless and until each of the following has occurred:

(a) The Congress of the United States has enacted, and the President of the United States has signed, Pyramid Lake and Truckee River settlement legislation whose terms and provisions are satisfactory to the Tribe and Sierra;

(b) The Legislature of Nevada has enacted, and the Governor of Nevada has signed, legislation which repeals or substantially modifies N.R.S. 704.230 to permit installation of water meters on all old and new residences within Sierra's Service Area, excluding existing unmetered apartments and condominium units or complexes which have all outdoor irrigation use metered, and to permit water rates based on the amount of water delivered to each customer;

(c) A plan for financing and installing water meters in Sierra's Service Area has received required governmental approvals and there are no foreseeable obstacles to its implementation;

(d) Sierra has proposed, and the Nevada Public Service Commission has approved, an inverted block water rate structure which provides financial incentives for the conservation of water by Sierra's residential customers;

(e) All required governmental approvals have been obtained for a mandatory water conservation plan designed to produce annual water savings of 10 percent or more during the ensuing year whenever it appears, based on the April 1 seasonal Truckee River runoff forecast, that a Drought Situation exists;

(f) An operating agreement has been executed at least by the United States, the Tribe and Sierra whose provisions include: (i) all of the necessary details required for the administration and implementation of this Agreement; and (ii) the consequences in the event that any provisions of this Agreement cannot be fulfilled for reasons that are beyond the control of the parties hereto such as, by way of example, final outcomes of administrative proceedings or litigation involving other parties which are not consistent with the terms or conditions of this Agreement;

(g) The United States becomes a party to this Agreement and accepts, approves and becomes bound by all of its terms and conditions to the same extent as the Tribe;

(h) All contracts and governmental approvals required to carry out the terms and provisions of this Agreement and the operating agreement, including, without limitation, contracts for the use of space in Truckee River Reservoirs for purposes of storing and exchanging water as provided in this Agreement have been executed;

(i) This Agreement and the operating agreement referred to in subsection (f) above have been submitted to the Court in United States v. Orr Water Ditch Co., Equity No. A-3, (D.Nev.), and by the Court in United States v. Truckee River General Electric Company, Civil No. 14861 (now S-643) (E.D. Cal.), and found to be consistent with those Decrees or is otherwise approved.

(j) Sierra and the United States have reached agreement on: (i) the compensation Sierra shall pay to the United States for the right to use the storage capacity in the Truckee River Reservoirs; (ii) arrangements to compensate Sierra for the reduction in the amount of hydroelectric power generated at its four run of the river hydroelectric plants on the Truckee River above Reno which will result from the implementation of this Agreement; and (iii) indemnification with respect to water damage resulting from the operation of the dam and controlling works at the outlet of Lake Tahoe; and

(k) All pending litigation or the portions of pending litigation involving the Tribe, Sierra and the United States have been resolved to their mutual satisfaction.

At an appropriate time, the Tribe the United States and Sierra agree to execute a written document which shall either confirm or deny that the conditions set forth in this Section have been satisfied.

Section 30. Notices. All notices and other communications required or permitted to be given by this Agreement must be in writing and will be deemed given on the day when delivered in person or on the third business day after the day on which mailed from within the United States of America by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the Tribe: Pyramid Lake Paiute Tribal
Chairman
P.O. Box 256
Nixon, Nevada 89424

If to Sierra: Philip G. Seges
Senior Vice President
Sierra Pacific Power Company
P.O. Box 10100
Reno, Nevada 89520

If to United States: Lahontan Basin Project Manager
P.O. Box 640
705 North Plaza
Carson City, Nevada 89702

or to such other place as either party may from time to time designate in a written notice to the other.

Section 31. Captions For Convenience Only. The captions of the Sections of this Agreement are for convenience only and shall not in any way affect the construction of the terms and conditions of this Agreement.

Section 32. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between them other than as herein set forth. No change or modification of this Agreement or of any of the provisions hereof shall be valid or effective unless the same is in writing and signed by the parties hereto. No alleged or contended waiver of any of the provisions of this Agreement shall be valid or effective unless signed in writing by the party against whom it is sought to be enforced.

EXHIBIT A

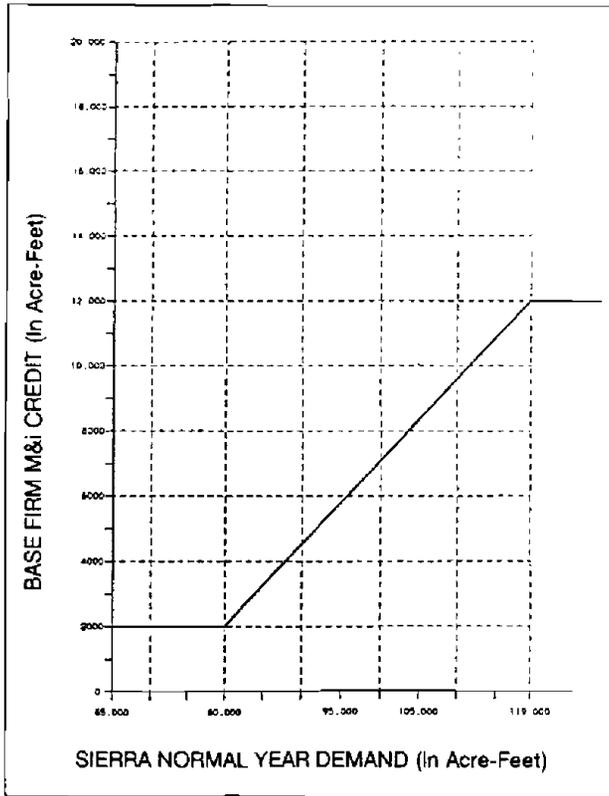


EXHIBIT B

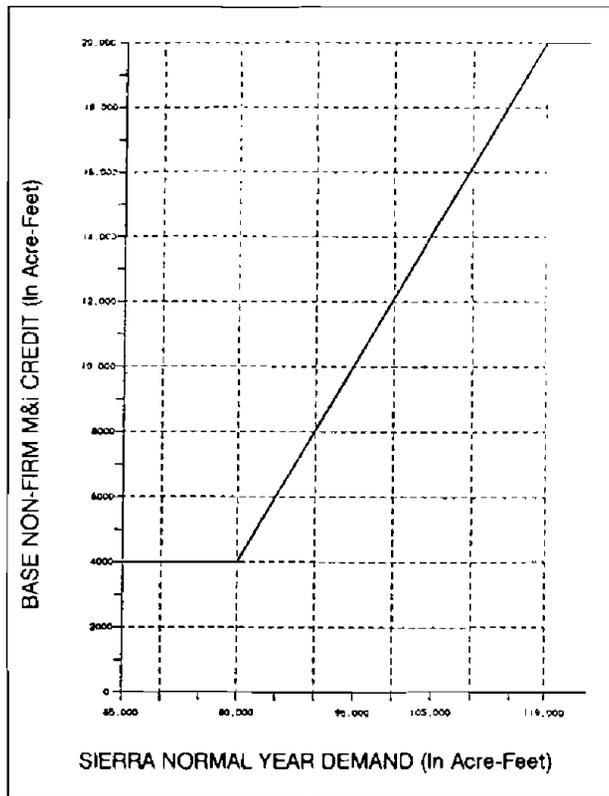
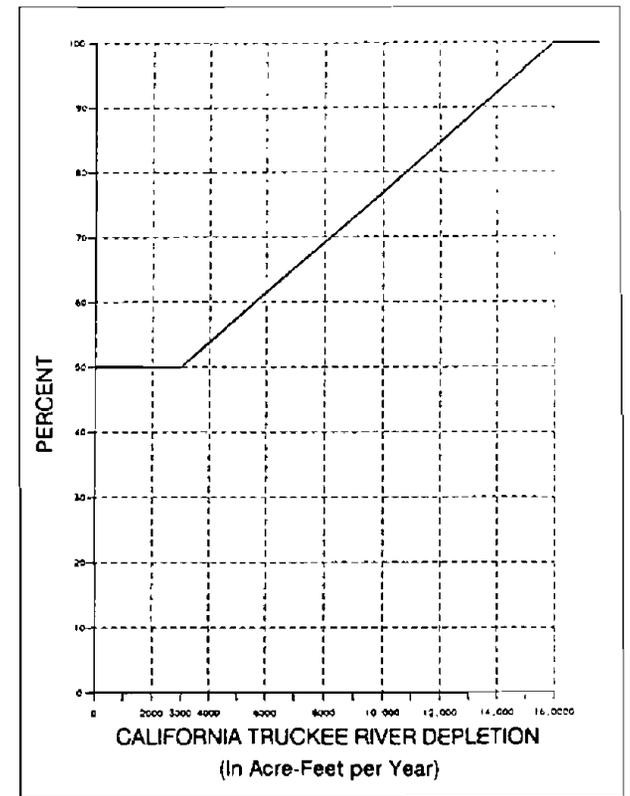


EXHIBIT C



Attachment C

March 12, 2003, letter from the Truckee Meadows
Water Authority: TROA EIS/EIR Planning Assumptions



RECEIVED
WESTERN NEVADA AGENCY
2003 JUL 28 PM 2:45

P.O. Box 30013, Reno, Nevada 89520-3013

12 March 2003

Tom Strekal, Bureau of Indian Affairs
Western Nevada Agency
1677 Hot Springs Road
Carson City, NV 89706

RE: TROA EIS/EIR Planning Assumptions

Dear Tom:

This letter describes local planning and facility assumptions to be used for the Truckee River Operating Agreement (TROA) EIS/EIR. The local governmental entities preparing this letter are responsible for land use, water supply, and wastewater planning and implementation of TROA water supply to be used by the Truckee Meadows Water Authority (TMWA) the successor to the water division of Sierra Pacific Power Company. Three of these entities, Reno, Sparks and Washoe County, are also parties to the Truckee River Water Quality Settlement Agreement (WQSA). Collectively, the undersigned agencies have the responsibility for all of these issues in the Washoe County area and recommend that the following assumptions should be relied upon when developing the EIS/EIR for TROA. This letter describes general conditions applicable to all of the alternatives. It also provides our recommendations concerning water supply and wastewater assumptions to include in the Local Water Supply Alternative (LWSA), as the likely future case without TROA, and the No Action Alternative (NAA).

Population and Water Demand Projections

The population forecast for Washoe County and the TMWA wholesale and retail service areas is presented in the following table along with the TMWA water demand forecast. These forecasts have been developed by TMWA and are incorporated into its November 5, 2002 draft 2005-2025 Water Resource Plan. TMWA will continue to serve much of the growth in Washoe County directly or through its various wholesale arrangements, including utilities managed by Washoe County. The wholesale areas served by TMWA are a combination of systems, some of which are solely supplied by TMWA and others use multiple resources to supply their customers.

Washoe County and TMWA Population Forecast and TMWA Water Demand Forecast

Year	Washoe County Population (persons)	Retail and Wholesale TMWA Service Area Population (persons)	TMWA Water Demand (AF/Year)
2000	339,486	284,147	82,173
2001	347,391	290,763	84,017
2002	355,390	297,458	86,055
2003	363,385	304,150	87,454
2004	370,443	310,058	87,674
2005	377,049	315,587	87,928
2006	383,618	321,085	88,305
2007	390,067	326,483	88,810
2008	396,486	331,855	89,438
2009	402,872	337,201	90,169
2010	409,152	342,457	90,975
2011	415,291	347,595	91,773
2012	421,266	352,596	93,266
2013	427,075	357,458	94,724
2014	432,730	362,192	96,148
2015	438,233	366,798	97,541
2016	443,581	371,273	98,902
2017	448,767	375,614	100,230
2018	453,862	379,879	101,537
2019	458,885	384,083	102,828
2020	463,838	388,229	104,106
2021	468,724	392,318	105,370
2022	473,540	396,349	106,620
2023	478,280	400,316	107,855
2024	482,939	404,216	109,073
2025	487,515	408,046	110,273
2026	492,739	412,419	111,455
2027	497,880	416,721	112,617
2028	502,932	420,950	113,760
2029	507,892	425,101	114,882
2030	512,756	429,172	115,982
2031	517,521	433,160	117,060
2032	522,182	437,062	118,115
2033	526,737	440,874	119,145
2034	531,181	444,594	120,150
2035	535,512	448,219	121,130
2036	539,725	451,745	122,083
2037	543,818	455,171	123,008
2038	547,786	458,493	123,906
2039	551,628	461,708	124,775
2040	555,339	464,814	125,615

The population estimates through 2022 are based upon an econometric model of Washoe County employment with the addition of a constraint upon the availability of developable land. The water demand projections are based upon estimated residential, commercial and industrial development that would correspond to the population and employment projections, using current consumption rates. Adjustments to consumption rates include conservative estimates of water savings to be achieved from conservation measures and water metering. The population and demand estimation procedure is more fully described in the TMWA resource plan that will be published later this year. Following 2022, the population and demand projections are linearly extrapolated.

Recommended Planning Horizon for EIS/EIR

In accordance with the Preliminary Settlement Agreement (PSA) and TROA, the planning horizon applicable for study of the "full implementation" investigations in the TROA EIS/EIR is the year when the projected development and population place a demand upon TMWA's normal-year water supply, as defined in TROA, of 119,000 acre-feet per year. This planning horizon is appropriate for both the TROA and non-TROA conditions. Similar levels of non-drought water conservation are envisioned under both TROA and non-TROA conditions. The TROA Alternative, NAA and LWSA share the same population and demand projection. The alternatives may have differing abilities to meet the projected demands as described later in this letter.

Based upon these population and water demand projections, the planning horizon for the TROA EIS/EIR is approximately the year 2033. The Washoe County population and employment not served by the TMWA retail and wholesale water supply will be served by other water resources and wastewater facilities. The population, land use and employment, and the corresponding water supply and wastewater management for these non-TMWA served areas are not anticipated to vary between the EIS/EIR alternatives.

Wastewater Quantity

Of the 119,000 acre-feet/year of water supply projected to be provided by TMWA to its wholesale and retail service area in the year 2033 (the planning horizon for the EIR/EIS as recommended above), the effluent associated with 3,000 acre-feet of demand to serve a portion of the North Valleys area (outside the Truckee River basin) is not required to be returned to the Truckee River basin. Such 3,000 acre-feet of North Valley's export of water is expected to be approximately the same under each of the alternatives in the EIS/EIR (TROA, LWSA, and NAA) and not subject to any return flow requirements.

Treated wastewater associated with the remaining 116,000 acre-feet of Truckee basin water consumption is estimated as 48% of water supply for all EIS/EIR

alternatives based upon the 10-year (1992-2001) average ratio of effluent to supply. This assumption results in the following:

$$\text{Annual Effluent Quantity} = 48\% \text{ of } 116,000 \text{ ac-ft} = 55,680 \text{ ac-ft/year}$$

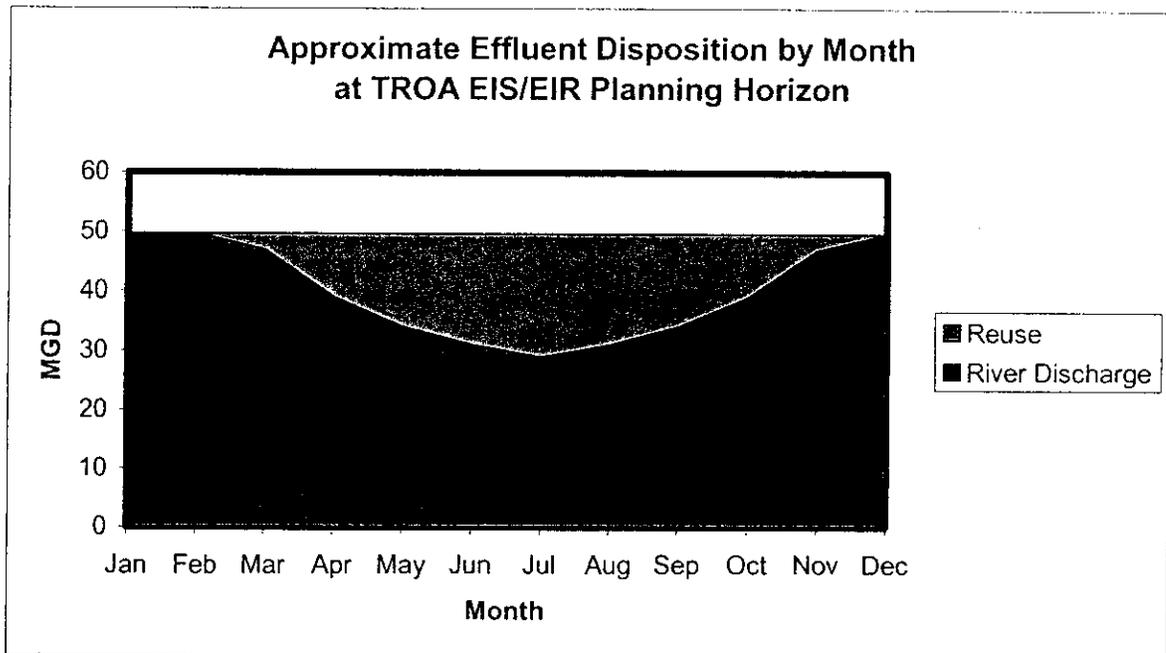
Wastewater Discharge to Truckee River and Reuse

Pursuant to relevant Nevada State Engineer's rulings and other agreements, wastewater effluent generated from the use of groundwater is not required to be returned to the Truckee River under the TROA, LWSA or NAA alternatives. However, pursuant to 1.E.4 of TROA, the Pyramid Lake Paiute Tribe ("PLPT") has reserved its rights to object to the use of groundwater for effluent reuse; if PLPT were successful in its protest of the use of groundwater for effluent reuse by requiring return flow, then the 6700 acre feet of additional water quality water provided under TROA (as described on the next page) would not be used as water quality water, but instead would be part of the flow in the river available to all downstream users.

Based upon 48 percent of the 15,950 acre-feet of groundwater pumping by TMWA, 7,656 acre-feet of effluent is attributable to the use of TMWA groundwater rights and may be reused without providing return flows to the Truckee River.

The present discharge permit for the Truckee Meadows Water Reclamation Facility (TMWRF) allows a monthly average of 40 mgd of effluent to be discharged to the Truckee River. Assuming a constant daily discharge throughout the year for volume calculation purposes, this is equivalent to 44,800 acre-feet per year. Operationally, the TMWRF discharge to the Truckee River is assumed to be approximately 29 to 32 mgd in the summer months and 49.7 mgd in the winter months. The 10,880 acre-feet (55,680 less 44,800) of the effluent not discharged to the Truckee River will be used for landscape irrigation (such as parks, road medians, and golf courses) and agricultural irrigation (such as the UNR experiment station) in the Truckee Meadows and Spanish Springs Valley areas during the irrigation season. The 44,800 acre-foot portion of the effluent not used to meet reuse demands will be discharged to the Truckee River.

The following graph is an approximate representation of the monthly disposition of the wastewater effluent associated with the retail and wholesale water supply provided by TMWA in 2033. River discharge of effluent originating from the TMWA water supply is anticipated to only occur from TMWRF. Effluent reuse will be provided by multiple facilities, including TMWRF.



It is assumed the portion of the effluent reuse that is not associated with the groundwater component of the TMWA water supply (under each of the EIS/EIR alternatives) will require return flow water rights to be acquired and left in the Truckee River to be available to serve downstream water rights. This quantity can be determined as follows assuming a year-round constant discharge:

Annual effluent quantity	55,680 acre-feet
Less 40 mgd river discharge	- 44,800 acre-feet
Total amount of effluent reuse	=10,880 acre-feet
Less groundwater component	- 7,656 acre-feet
Surface water component of reuse water	= 3,224 acre-feet

The 3,224 acre-feet of reuse is to be replaced by an assumed (1 for 1) acquisition of Truckee Meadows water rights in each of the EIS/EIR alternatives. In normal years these replacement water rights will remain in the river and are not required to be stored under any of the alternatives. In dry years, no replacement water is required for effluent reuse because credit water and POSW, which do not require return flow, are used to support water supplies to meet demands. As part of TROA, Reno/Sparks/Washoe County will acquire an additional 6,700 acre-feet of Truckee Meadows water rights to be managed for water quality under the provisions of the WQSA. Under LWSA and NAA, Reno/Sparks/Washoe County would not acquire 6,700 acre-feet of Truckee Meadows water rights.

Water Right Acquisition to Serve TMWA Water Demands

Under TROA, approximately 93,550 acre-feet of irrigation water rights (referred to as "changed diversion rights" in TROA) will be needed to meet a TROA planning horizon demand of 119,000 acre-feet. This amount of acquired and transferred irrigation right is in conformance with TROA Sections 4.B.2, 4.B.3, and 4.B.4. The 93,550 acre-feet include an estimate that between June 30, 2002, and October 20, 2004, approximately 438 acre-feet of irrigation right acquisition will be associated with the Section 4.B.2(a) temporary suspension of the 0.11 acre-foot requirement.

In accordance with the 1989 statutes of Nevada, Chapter 617 ("AB 900"), water rights held by TMWA that are associated with a reduction in customer demand that may result from implementation of the residential water meter retrofit program under TROA cannot be allocated to normal year water service for future customers. Under non-TROA conditions (LWSA and NAA), it is anticipated that the TROA Section 4.B.2(b) requirement to acquire the 0.11 acre-foot component would not be continued when making commitments for new water service. Since the provisions of TROA and AB 900 would not be implemented under LWSA and NAA, conserved resources can be utilized to provide water for additional customers without providing additional water rights.

For these two reasons, LWSA and NAA will require fewer irrigation water rights to be acquired than the TROA alternative. LWSA requires 83,030 acre-feet of irrigation water rights to be acquired and transferred to M&I use by TMWA.

Under each of the alternatives, the water rights acquisitions will be implemented through developer dedications to TMWA or to Washoe County for the benefit of TMWA. The acquired water rights will be derived from a mixture of existing decreed agricultural water rights in the Truckee Meadows, Verdi, Spanish Springs and Tracy areas that may or may not be attached to water righted land. The proportions of water rights from each basin and their present uses will be determined by developer choices in the market place and are not expected to vary among the alternatives.

Presently, TMWA holds and has commitments against 51,206 acre-feet of acquired irrigation rights for the service of its current commitments of 87,173 acre-feet. It also holds 5,970 acre-feet of water rights in reserve for projects that have not yet received "will serve" letters. In each of the alternatives, the TMWA reserved water rights plus developer dedications will be used to reach the respective total irrigation water rights quantities stated in the first and third paragraphs of this section. Because TROA Sections 4.B.3 and 4.B.4 do not apply to NAA and LWSA, water rights associated with such TROA provisions and held by TMWA would be used to develop other drought supply alternatives to meet normal and dry-year water service demands for future customers under NAA and LWSA.

TMWA Water Supply Assumptions

For each alternative, the EIS/EIR operation studies may vary slightly in terms of monthly quantities and timing in the tables that appear in following sections of this letter. Such variations may result from different assumptions regarding water demand and water supply (such as Newlands Project demand, cui-ui operation, etc. that are not yet fully identified and scheduled) that will be used when the EIS/EIR operation studies are conducted.

TROA Alternative

It is assumed under TROA that TMWA's water supplies will also include:

- o Acquisition of TCID's share of Donner Lake
- o TROA credit storage (the Interim Contract is superceded)
- o Groundwater pumping up to 15,950 acre-feet in a year.

Previous investigations assumed that during dry years the TMWA conservation programs would reduce water demand by 10 percent below the normal year demand. However, since the previous EIS/EIR investigations, a normal year conservation program has been developed, approved and is being implemented. This program satisfies the 10 percent conservation commitment included in the Preliminary Settlement Agreement. Because such normal year conservation is greater than previously assumed, it is realistic to assume that dry-year conservation under TROA can be somewhat less than an additional 10 percent. For these studies it is recommended that dry-year conservation range between one percent during the winter and seven percent during the summer. This provides an annual dry-year conservation of less than five percent.

TMWA's demand will be supplied during normal water supply years utilizing 12,570 acre-feet of groundwater pumping, Hunter Creek Orr Ditch decree based diversion rights and Truckee River Orr Ditch decree based diversion rights. During a typical normal year, the TMWA water demand will be served approximately as shown in the following tabulation.

TROA EIS/EIR Planning Assumptions

March 12, 2003

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TROA Alternative – TMWA Normal-Year Water Supplies to Serve Customer Demand
(units in acre-feet)

	Groundwtr Pumping	Groundwtr Recharge Pumping	Hunter Creek	40 cfs M&I Right	Supply From Acquired Irrigation Rights	POSW	Credit Storage	TOTAL SUPPLY
	---a---	---b---	---c---	---d---	---e---	---f---	---g---	---h---
Jan	0	0	350	2,430	3,710	0	0	6,490
Feb	0	0	330	2,220	3,540	0	0	6,090
Mar	0	0	360	2,430	3,930	0	0	6,720
Apr	0	0	510	2,360	6,090	0	0	8,960
May	920	0	750	2,430	8,110	0	0	12,210
Jun	1,800	0	690	2,360	9,070	0	0	13,920
Jul	3,700	0	560	2,430	8,760	0	0	15,450
Aug	3,770	0	420	2,430	8,670	0	0	15,290
Sep	1,830	0	330	2,360	7,480	0	0	12,000
Oct	550	0	340	2,430	5,520	0	0	8,840
Nov	0	0	320	2,360	3,860	0	0	6,540
Dec	0	0	300	2,430	3,760	0	0	6,490
Total	12,570	0	5,260	28,670	72,500	0	0	119,000

During a year when the Truckee River is unable to provide Floriston Rates the entire year, TMWA's customers' demands will be reduced by as much as 5,280 acre-feet of dry-year conservation measures. The normal year sources of supply will be supplemented by pumping additional groundwater, release of Privately Owned Stored Water (POSW) from Donner and Independence Lakes and release of TMWA's M&I Credit. Dry-year TMWA supply and conservation will be approximately as shown in the following tabulation.

TROA Alternative – TMWA Dry-Year Water Supplies to Serve Customer Demand
 (units in acre-feet)

	Groundwtr Pumping	Groundwtr Recharge Pumping	Hunter Creek	40 cfs M&I Right	Supply From Acquired Irrigation Rights	POSW	Credit Storage	TOTAL SUPPLY
	---a---	---b---	---c---	---d---	---e---	---f---	---g---	---h---
Jan	0	0	250	2,430	3,740	0	0	6,420
Feb	0	0	230	2,220	3,580	0	0	6,030
Mar	0	0	250	2,430	3,970	0	0	6,650
Apr	0	0	230	2,360	6,190	0	0	8,780
May	920	0	320	2,430	8,160	0	0	11,830
Jun	2,060	0	290	2,360	2,090	330	5,960	13,090
Jul	4,570	0	200	2,430	440	250	6,480	14,370
Aug	4,660	0	150	2,430	450	200	6,330	14,220
Sep	2,770	0	150	2,360	330	3,060	2,620	11,290
Oct	970	0	190	2,430	980	120	3,710	8,400
Nov	0	0	180	2,360	2,050	230	1,400	6,220
Dec	0	0	140	2,430	3,850	0	0	6,420
Total	15,950	0	2,580	28,670	35,830	4,190	26,500	113,720*

* The total demand of 119,000 acre-feet is reduced by 5,280 acre-feet as a result of dry-year conservation (113,720 + 5,280 = 119,000).

Local Water Supply Alternative (LWSA)

LWSA assumes that additional water supplies are acquired or developed which will substitute for most or all of the water supply provided by TROA credit storage. The development of these new resources would be the most probable approach to providing a non-TROA water supply. It is assumed under LWSA that TMWA's current surface water supplies will also be augmented by:

- o Continuation and renewal of the Interim Contract for storage in Stampede and Boca at the full 5000 acre-foot amount.
- o Groundwater pumping up to 22,000 acre-feet in a year under the Truckee Meadows Groundwater Banking Order.
- o Implementation of an artificial recharge project (described below) to increase firm drought year supply.

TMWA's demand during normal water supply years will be supplied utilizing 12,570 acre-feet per year of groundwater pumping from the Truckee Meadows under the current program for pumping of Truckee Meadows groundwater.

The artificial recharge project is estimated to recharge 1,000 acre-feet each year using well injection in the Truckee Meadows. During recent years, TMWA has

TROA EIS/EIR Planning Assumptions

March 12, 2003

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developed and improved its recharge program to obtain annual recharged amounts of 780 acre-feet (1999), 1720 acre-feet (2000) and 3,080 acre-feet (2001). During January through March of 2002, 1920 acre-feet were recharged and TMWA expects to recharge another 1,000 to 1,500 acre-feet during November and December, resulting in annual recharge between 3,000 and 3,500 acre-feet during 2002. Thus, a program that recharges an average of 1,000 acre-feet each year between the months of November through March is well within TMWA's present capability. TMWA currently has State Engineer approval for underground injection, but the application and subsequent State Engineer approval to increase withdrawal of approximately 4,500 acre-feet groundwater above 22,000 acre-feet has yet to occur.

During a normal year, TMWA water demands will be served approximately as shown in the following tabulation.

LWSA Alternative – TMWA Normal-Year Water Supplies to Serve Customer Demand
(units in acre-feet)

	Groundwtr Pumping	Groundwtr Recharge Pumping	Hunter Creek	40 cfs M&I Right	Supply From Acquired Irrigation Rights	POSW	Credit Storage	TOTAL SUPPLY
	---a---	---b---	---c---	---d---	---e---	---f---	---g---	---h---
Jan	0	0	350	2,430	3,710	0	0	6,490
Feb	0	0	330	2,220	3,540	0	0	6,090
Mar	0	0	360	2,430	3,930	0	0	6,720
Apr	0	0	510	2,360	6,090	0	0	8,960
May	920	0	750	2,430	8,110	0	0	12,210
Jun	1,800	0	690	2,360	9,070	0	0	13,920
Jul	3,700	0	560	2,430	8,760	0	0	15,450
Aug	3,770	0	420	2,430	8,670	0	0	15,290
Sep	1,830	0	330	2,360	7,480	0	0	12,000
Oct	550	0	340	2,430	5,520	0	0	8,840
Nov	0	0	320	2,360	3,860	0	0	6,540
Dec	0	0	300	2,430	3,760	0	0	6,490
Total	12,570	0	5,260	28,670	72,500	0	0	119,000

During a year when the Truckee River is unable to provide Floriston Rates the entire year, TMWA's supply to its water customers will be reduced by as much as 5,630 acre-feet by dry-year conservation measures. The normal year sources of supply will be supplemented by pumping additional groundwater from the Truckee Meadows. Pumping will increase to approximately 26,500 acre-feet, of which up to 22,000 will be associated with Truckee Meadows groundwater pumping in the State Engineer's existing order and approximately 4,500 acre-feet will be associated with the groundwater recharge program.

LWSA Alternative – TMWA Dry-Year Water Supplies to Serve Customer Demand
 (units in acre-feet)

	Groundwtr Pumping	Groundwtr Recharge Pumping	Hunter Creek	40 cfs M&I Right	Supply From Acquired Irrigation Rights	POSW	Credit Storage	TOTAL SUPPLY
	---a---	---b---	---c---	---d---	---e---	---f---	---g---	---h---
Jan	0	0	250	2,430	3,620	0	110	6,410
Feb	0	0	230	2,220	3,640	0	0	6,090
Mar	0	0	250	2,430	4,040	0	0	6,720
Apr	0	0	230	2,360	6,370	0	0	8,960
May	920	0	320	2,430	8,530	0	0	12,200
Jun	1,900	290	290	2,360	1,530	6,400	0	12,770
Jul	5,360	1,110	200	2,430	10	2,610	2,320	14,040
Aug	5,410	1,100	150	2,430	380	450	3,950	13,870
Sep	5,240	1,050	150	2,360	430	680	1,000	10,910
Oct	3,100	900	190	2,430	1,740	10	0	8,370
Nov	0	0	180	2,360	4,000	0	0	6,540
Dec	0	0	140	2,430	3,920	0	0	6,490
Total	21,930	4,450	2,580	28,670	38,210	10,150	7,380	113,370*

* The total demand of 119,000 acre-feet is reduced by 5,630 acre-feet as a result of drought-year conservation (113,370 + 5,630 = 119,000).

No Action Alternative

NAA assumes that TMWA is unsuccessful in its attempts to obtain additional water supplies through TROA or LWSA. Under NAA it is assumed TMWA's current surface water supplies will also be augmented by:

- o Continuation and renewal of the Interim Contract for storage in Stampede and Boca at the full 5000 acre-foot amount.
- o Groundwater pumping up to 22,000 acre-feet in a year under the Truckee Meadows Groundwater Banking Order.

TMWA's demand will be supplied during normal water supply years utilizing 12,570 acre-feet of groundwater pumping, Hunter Creek Orr Ditch decree based diversion rights and Truckee River Orr Ditch decree based diversion rights. During a typical normal year, the TMWA water demand will be served approximately as shown in the following tabulation.

NAA Alternative – TMWA Normal-Year Water Supplies to Serve Customer Demand
 (units in acre-feet)

	Groundwtr Pumping	Groundwtr Recharge Pumping	Hunter Creek	40 cfs M&I Right	Supply From Acquired Irrigation Rights	POSW	Credit Storage	TOTAL SUPPLY
	---a---	---b---	---c---	---d---	---e---	---f---	---g---	---h---
Jan	0	0	350	2,430	3,710	0	0	6,490
Feb	0	0	330	2,220	3,540	0	0	6,090
Mar	0	0	360	2,430	3,930	0	0	6,720
Apr	0	0	510	2,360	6,090	0	0	8,960
May	920	0	750	2,430	8,110	0	0	12,210
Jun	1,800	0	690	2,360	9,070	0	0	13,920
Jul	3,700	0	560	2,430	8,760	0	0	15,450
Aug	3,770	0	420	2,430	8,670	0	0	15,290
Sep	1,830	0	330	2,360	7,480	0	0	12,000
Oct	550	0	340	2,430	5,520	0	0	8,840
Nov	0	0	320	2,360	3,860	0	0	6,540
Dec	0	0	300	2,430	3,760	0	0	6,490
Total	12,570	0	5,260	28,670	72,500	0	0	119,000

During a year when the Truckee River is unable to provide Floriston Rates the entire year, TMWA's customers' demands will be reduced by as much as 11,020 acre-feet by dry-year conservation measures. The normal year sources of supply will be supplemented by pumping additional groundwater from the Truckee Meadows, release of Privately Owned Stored Water from Donner and Independence Lakes and release of TMWA's M&I Credit (available under the Interim Storage Agreement). Dry-year TMWA supply will be served approximately as shown in the following tabulation.

NAA Alternative – TMWA Dry-Year Water Supplies to Serve Customer Demand
(units in acre-feet)

	Groundwtr Pumping	Groundwtr Recharge Pumping	Hunter Creek	40 cfs M&I Right	Supply From Acquired Irrigation Rights	POSW	Credit Storage	TOTAL SUPPLY
	---a---	---b---	---c---	---d---	---e---	---f---	---g---	---h---
Jan	0	0	250	2,430	3,790	0	0	6,470
Feb	0	0	230	2,220	3,640	0	0	6,090
Mar	0	0	250	2,430	4,040	0	0	6,720
Apr	0	0	230	2,360	6,370	0	0	8,960
May	920	0	320	2,430	8,540	0	0	12,210
Jun	1,900	0	290	2,360	1,540	5,710	0	11,800
Jul	5,360	0	200	2,430	0	3,270	1,700	12,960
Aug	5,410	0	150	2,430	380	360	4,070	12,800
Sep	5,240	0	150	2,360	430	1,000	890	10,070
Oct	3,100	0	190	2,430	1,730	10	60	7,520
Nov	0	0	180	2,360	3,350	0	0	5,890
Dec	0	0	140	2,430	3,920	0	0	6,490
Total	21,930	0	2,580	28,670	37,730	10,350	6,720	107,980*

* The total demand of 119,000 acre-feet is reduced by 11,020 acre-feet as a result of dry-year conservation and/or shortage (107,980 + 11,020 = 119,000).

Truckee Meadows Groundwater Usage for LWSA and NAA

The groundwater supply assumed under LWSA and under NAA consists of utilizing the Truckee Meadows groundwater banking order of the Nevada State Engineer which allows for a banking of all groundwater resources owned by TMWA in the Truckee Meadows through the conjunctive use of surface water rights with the 15,950 acre-feet of rights referenced in the TROA alternative and the use of the "capped" groundwater permits owned by TMWA. The State Engineer's order allows for total pumping of no more than 22,000 acre-feet per year of groundwater against the "capped" groundwater rights through the accumulation of credits from reducing normal year groundwater pumping to less than the 15,950 acre-feet per year.

LWSA utilizes groundwater from groundwater recharge in the Truckee Meadows as well as the Truckee Meadows groundwater pumping associated with the groundwater banking order. The artificial recharge project is estimated to recharge 1,000 acre-feet each year using well injection in the Truckee Meadows. The following tabulation lists the LWSA amounts of modeled Truckee Meadows groundwater pumping associated with TMWA's permits and the recharge program during the historic 1987-1994 drought for the years 1985 through 1997.

TROA EIS/EIR Planning Assumptions

March 12, 2003

Page 14 of 16

LWSA-Groundwater Pumping (units in thousands of acre-feet)

Calendar Year	Permitted Pumping	Recharge Pumping	Annual Pumping
1985	12.57	0.00	12.57
1986	12.57	0.00	12.57
1987	12.57	0.00	12.57
1988	21.55	3.05	24.60
1989	12.57	0.00	12.57
1990	20.17	3.05	23.22
1991	18.78	2.15	20.93
1992	21.93	4.45	26.38
1993	12.93	0.00	12.93
1994	21.93	3.89	25.82
1995	12.57	0.00	12.57
1996	12.57	0.00	12.57
1997	12.57	0.00	12.57

The following tabulation lists the NAA amounts of modeled Truckee Meadows groundwater pumping associated with TMWA's permits during the historic 1987-1994 drought for the years 1985 through 1997.

NAA-Groundwater Pumping (units in thousands of acre-feet)

Calendar Year	Permitted Pumping (1000 a-f)	Recharge Pumping (1000 a-f)	Annual Pumping (1000 a-f)
1985	12.57	0.00	12.57
1986	12.57	0.00	12.57
1987	12.57	0.00	12.57
1988	21.00	0.00	21.00
1989	12.57	0.00	12.57
1990	20.17	0.00	20.17
1991	19.47	0.00	19.47
1992	21.93	0.00	21.93
1993	12.93	0.00	12.93
1994	21.65	0.00	21.65
1995	12.57	0.00	12.57
1996	12.57	0.00	12.57
1997	12.57	0.00	12.57

Conservation Measures and Drought Conservation

The undersigned entities are parties to an agreement with the PLPT addressing water conservation measures that are currently in force. That agreement, among other things, provides for normal year water conservation measures to be implemented and replaces the program for drought conservation required by the PSA. In addition to the normal year conservation measures, the local governments have adopted ordinances (cite codes) providing a mechanism to implement incremental levels of drought conservation measures, including placing various predefined limits on outdoor irrigation. Under severe shortages, resulting from extreme drought or other emergencies, outdoor irrigation can be prohibited. The drought and emergency provisions of the existing local ordinances are likely to be continued under LWSA and NAA because each of these alternatives relies upon conservation to address a portion of the demand in the summer months of a drought.

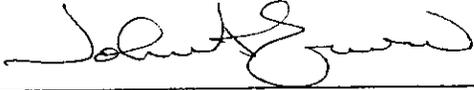
The conservation programs for LWSA are assumed to produce up to 10 percent maximum monthly conservation rate in summer months during droughts. For NAA insufficient water supply results in additional conservation or shortage (up to 17 percent of demand during summer months) will be required. As shown by the previous dry-year water supply tables, dry-year conservation measures play a role in reducing the demand in drought years under each of the three EIS/EIR alternatives. Conservation associated with each alternative water supply indicated with the previous examples of dry-year operation is summarized as shown in the following tabulation.

Month	Dry-year Conservation by Month For Each Alternative						
	Normal	TROA		LWSA		NAA	
	Year	Conservation		Conservation		Conservation/Shortage	
	Demand (acre-feet)	(acre-feet)	Monthly (%)	(acre-feet)	Monthly (%)	(acre-feet)	Monthly (%)
----a----	----b----	----c----	----d----	----e----	----f----	----g----	
January	6,490	70	1.1	80	1.2	20	0.3
February	6,090	60	1.0	0	0.0	0	0.0
March	6,720	70	1.0	0	0.0	0	0.0
April	8,960	180	2.0	0	0.0	0	0.0
May	12,210	380	3.1	0	0.0	0	0.0
June	13,920	830	6.0	1,150	8.3	2,120	15.2
July	15,450	1,080	7.0	1,410	9.1	2,490	16.1
August	15,290	1,070	7.0	1,420	9.3	2,490	16.3
September	12,000	710	5.9	1,090	9.1	1,930	16.1
October	8,840	440	5.0	480	5.3	1,320	14.9
November	6,540	320	4.9	0	0.0	650	9.9
December	6,490	70	1.1	0	0.0	0	0.0
Annual	119,000	5,280	4.4 *	5,630	4.7 *	11,020	9.3*

* These values are the annual percent conservation.

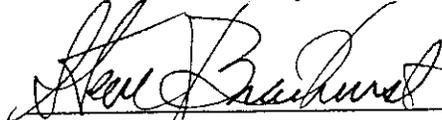
Please feel free to contact Don Mahin or John Erwin as principal members of the TMWA team that generated the assumptions contained herein, or with any other ideas or concerns you may have.

For Truckee Meadows Water Authority



John A. Erwin

For Washoe County



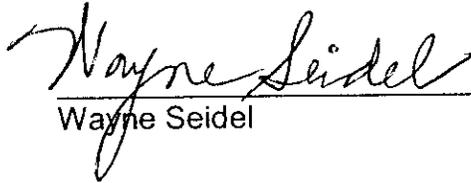
Steve Bradhurst

For City of Reno



Greg Dennis

For City of Sparks



Wayne Seidel

CC:
Gordon Depaoli
Rod Hall
Sue Oldham

Attachment D

June 2, 2003, letter from the California Department
of Water Resources: Water Use Estimates for the
Lake Tahoe and Truckee River Basins

DEPARTMENT OF WATER RESOURCES

CENTRAL DISTRICT
3251 S STREET
SACRAMENTO, CA 95816-7017



JUN 02 2003

RECEIVED

FEB 11 2004

BUREAU OF RECLAMATION
Lahontan Basin Area Office

Mr. Tom Strekal
Western Nevada Agency
1677 Hot Springs Road
Carson City, Nevada 89706

Subject: Water Use Estimates for the Lake Tahoe and Truckee River Basins

Dear Mr. Strekal:

This letter is to transmit information for the Truckee-Carson Water Accounting Model in accordance with the request by the TROA EIS/EIR Management Team. The TROA EIS/EIR Management Team requested further specificity in the updated estimates of water use in the California portions of the Lake Tahoe and Truckee River Basins that we provided in our April 16th letter. These updated estimates were determined from the California Department of Finance's 2000 census numbers. These estimates are used as input parameters in the Truckee-Carson Water Accounting Model for year 2002 and year 2033 alternatives.

The following tables list estimates and projections of water use in the Lake Tahoe and Truckee River Basins in the years 2002 and 2033, the years identified for the current and future TROA EIS/EIR conditions. Estimates are provided for current use and each of the alternatives that will be considered in the TROA EIS/EIR: the No Action Alternative, the Local Water Supply Alternative, and TROA Alternative. The estimates also include both surface and ground water use along with the exercise of U.S. Forest Service and State Parks water rights in the Lake Tahoe Basin.

Table 1 - Lake Tahoe Basin Water Use (AF/year)

		Surface & Ground Water	Forest Service	State Parks	Total Water Use
Current Use	(2002)	17,286	1,103	308	18,697
EIS/EIR Alternatives					
No Action	(2033)	20,090	2,560	350	23,000
Local Water Supply	(2033)	20,090	2,560	350	23,000
TROA	(2033)	20,090	2,560	350	23,000

The following table shows the Truckee River Basin water uses needed for the input to the model. The surface water uses are divided into Municipal and Industrial (M & I), Agricultural (Ag), and Recreational (Rec) water use.

Table 2 - Truckee River Basin Water Use (AF/year)

	Ground Water (2002)	Surface Water Uses				Total Water Use
		M & I	Ag.	Rec.	Total	
Current Use	7,573	1,000	1,500	300	2,800	10,370
EIS/EIR Alternatives						
No Action	(2033) 19,600	1,000	1,500	600	3,100	22,700
Local Water Supply	(2033) 18,400	2,200	1,500	600	4,300	22,700
TROA	(2033) 18,400	2,200	1,500	600	4,300	22,700

We understand that additional information is needed for the Accounting Model on two diversions of water out of the Lake Tahoe and Truckee River Basins. About 7000 AF/year is diverted out of the Little Truckee River for irrigation in Sierra Valley, which is in the Feather River Basin of the Sacramento River Region. About 2000 AF/year is diverted out of the Lake Tahoe Basin from Echo Lake into the South Fork of the American River. We project that both of these will remain relatively unchanged through to the year 2033.

Similarly, the model will also utilize wastewater discharge information. The South Tahoe Public Utility District (STPUD) discharges treated wastewater into holding ponds in the Carson River Basin. The source of this wastewater is water diverted within the Lake Tahoe Basin, which is then used in the STPUD service area and treated at the STPUD wastewater treatment plant. The current year 2002 estimated average annual flow of treated wastewater from the Tahoe Basin to the Carson Basin is 5,000 AF/year. This is projected to increase to 6,500 AF/year by the year 2033.

Another special model requirement is Tahoe-Truckee Sanitation Agency (T-TSA) discharge information. The T-TSA collects wastewater in North Lake Tahoe and Truckee River Basins. After treatment, T-TSA discharges the wastewater onto lands southwest of the confluence of the Truckee River with Martis Creek. The actual discharges can vary significantly due to flood events that produce high infiltration and inflows. The following table shows actual discharges in the year 2002 and projections of average annual discharges from T-TSA for 2033.

Attachment E

Nevada State Engineer's Groundwater Management
Order 1161, Dated May 16, 2000

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

1161

GROUNDWATER BANKING ORDER
TRUCKEE MEADOWS GROUNDWATER BASIN

WHEREAS, under the provisions of Chapter 534 of the Nevada Revised Statutes (NRS) the State Engineer issued Order No. 708 in 1978, which designated the Truckee Meadows Groundwater Basin as a basin in need of additional administration (Hydrographic Basin 87)

WHEREAS, the State Engineer issued sixteen certificates for municipal use of groundwater within the Truckee Meadows Groundwater Basin to Sierra Pacific Power Company ("Sierra") in years prior to 1981 and recognized one claim of vested right (Attachment A). The total diversion rate of these rights is 66.8 cubic feet per second, and in 1986 the State Engineer imposed a pumping limit of 12,000 acre-feet per year on these pre-1981 groundwater certificates and one claim of vested right as being the limit and extent of the beneficial use. Sierra also holds other permits and certificates for groundwater and surface water issued by the State Engineer for municipal purposes.

WHEREAS, under the provisions of Chapter 534 of the Nevada Revised Statutes (NRS) the State Engineer may issue Orders to manage certain groundwater as a "Bank", in which more water is extracted in some years than the stated duty of a groundwater permit, based on reduced extractions in other years.

WHEREAS, the Truckee River, which provides, on average, over 80% of the municipal water supply for customers in Sierra's service area, produces highly variable flows from year to year and endured the most severe drought on record between 1986 and 1994. During and immediately following this drought, Sierra implemented a preliminary conjunctive use operation, with the approval of the State Engineer, in which up to 15,728 acre-feet of groundwater was pumped during a severe drought year (1994), and as little as 7,744 acre-feet was pumped during a post-drought year (1998). The Truckee Meadows groundwater aquifer recovered fully after the drought.

WHEREAS, the total population in Washoe County is projected to grow from 312,000 in 1998 to 418,000 in 2015. Future water demand projections indicate Sierra's water demand will increase from 68,000 acre-feet in 1998 to 85,000 acre-feet in 2015. Sierra's Water Resource Plan approved by the Regional Water Planning Commission and the Public Utilities Commission directs continued reliance on the Truckee River as the primary water supply for Sierra's service area, but recognizes that the River requires supplemental water from other sources during droughts.

WHEREAS, Sierra has implemented management practices that reduce its use of groundwater during non-drought periods, including the construction of a year-round surface water treatment plant at Chalk Bluff to increase the use of Truckee River water during winter months; the execution of a contract for storage of water in Stampede Reservoir with the United States; and continued efforts to complete the Truckee River Operating Agreement, which will triple Sierra's drought reserves

WHEREAS, the State Engineer supports the conjunctive use of groundwater and surface water which allows for optimal use of surface water rights during years when surface water is available thereby allowing the Truckee Meadows Groundwater Basin to rest, in return for pumping additional groundwater during drought years when surface water availability is at a minimum.

NOW THEREFORE, the State Engineer orders and allows as follows:

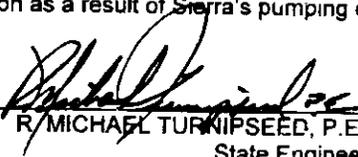
1. Commencing on January 1, 2000, Sierra shall manage its Truckee Meadows Groundwater Basin rights as a banked resource under rules set forth in this Order. The management provisions of this Order shall apply to all Truckee Meadows Groundwater Basin rights held by Sierra, whether from its Vested water rights and certificates listed in Attachment A or by subsequent acquisition or appropriation of ground water rights or domestic well credits. Pumping from other water systems which Sierra may acquire and rights located in other hydrographic basins are not included in this Order.
2. The baseline, or long-term average amount of groundwater Sierra may pump shall be 15,950 acre-feet per year, based on Sierra's 12,000 acre-foot administrative cap, an additional 1,105 acre-feet found by the State Engineer to have been beneficially used by Sierra under its pre-1981 certificates, 200 acre-feet allowance for domestic well credits owned by the Airport Authority, and 2,645 acre-feet of groundwater rights acquired prior to the date of this Order. Any year in which Sierra pumps less than 15,950 acre-feet in the Truckee Meadows Groundwater Basin shall result in a credit to the Bank balance; pumping in excess of 15,950 acre-feet shall result in a debit against the Bank balance. Any amounts of water artificially recharged shall be credited to the Bank balance in accordance with the terms of the recharge permit. A hypothetical illustration of this accounting procedure is found in Attachment B.
3. The Bank set forth in Paragraph 2 shall be administered on a calendar year basis. The beginning balance on January 1, 2000, shall be 1,799 acre-feet, representing the quantity of water Sierra had artificially recharged into the

Truckee Meadows Groundwater Basin under Permit No. 010 prior to that date.

4. Notwithstanding that the Bank balance may be larger than 22,000 acre feet in a future year, Sierra may pump a maximum of 22,000 acre-feet from the Truckee Meadows Groundwater Basin during any calendar year from the bank balance. Such volume of pumping shall not continue for more than three years in succession.
5. To the extent that year-round pumping is required for permitted environmental remediation or dewatering projects, and these projects discharge water into Sierra's system, pumping during the months of June through September shall be counted against Sierra's bank balance. During the remaining months of the year only ground water pumped in excess of that required for permitted environmental remediation or dewatering projects shall also be counted against Sierra's bank balance.
6. Based on 1,105 acre-feet of groundwater rights held by Sierra not previously allowed for pumping and a 200 acre-feet well credit for the Airport Authority, Sierra may issue will-serve commitments up to 1,305 acre-feet against its Truckee Meadows Groundwater Basin rights, pursuant to this Order.
7. The Truckee Meadows Groundwater Basin rights of Sierra Pacific Power Company shall not be subject to forfeiture under NRS 534 090 when operated in accordance with this Order. In the Truckee Meadows Groundwater Basin cumulation and rotation procedures using all Sierra's groundwater rights may be utilized to allow a maximum flow rate greater than the diversion rate for any single water right provided that the total combined diversion rate authorized under all rights is not exceeded.
8. Sierra shall continue to abide by the "Groundwater Management Agreement" dated September 5, 1991 with Truckee-Carson Irrigation District unless it terminates by its terms.
9. Sierra shall continue to monitor water levels and water quality and report to the State Engineer at the end of the calendar year with their results.
10. Sierra may petition the State Engineer to increase the baseline amount under Paragraph 2 and may petition to adjust the 22,000 acre-foot limit in Paragraph

4

11 The State Engineer retains the authority to limit Sierra's pumpage at any given location in the event that unreasonable drawdown or water quality degradation as a result of Sierra's pumping occurs



R/MICHAEL TURNIPSEED, P.E.
State Engineer

Dated at Carson City, Nevada, this

16th day of May, 2000 .

ATTACHMENT A

Sierra Pacific Power Company Pre-1981 Groundwater Rights At Original Point of Diversion¹

Permit	Certificate	Diversion Rate (cfs)	(Well)
V-05533		4.5 ²	Fourth Street
17585	5678	4.0	Stanford Way
17838	5365	4.0	Mill Street
18414	5292	6.0	Popular #1
19185	5677	3.3	Terminal
19909	5802	6.7	High Street
20207	5489	2.5	Mill Street
20371	6116	6.2	Morrill
20372	6573	4.7	Peckham
23847	7627	2.9	Poplar #2
23848	7623	2.9	Greg Street
24758	8274	2.2	S. Virginia
24869	8044	5.6	View Street
25997	8811	1.1	Delucchi Lane
26193	8939	5.5	Kietzke Lane
26310	8767	1.6	Sparks Ave
28055	10641	3.1	Pezzi
TOTAL		66.8 cubic feet per second	

¹ Many rights have been changed to new locations since certified

² Based on 2,000 gpm pump capacity

**ATTACHMENT B
BANK ACCOUNTING ILLUSTRATION**

Year	Description a	Baseline Pumping b	Annual Pumpage c	Recharge d	Credit/Debit (b-c+d) e	Ending Balance f
	Beginning Balance					1799
1	Non-Drought	15950	11000	1000	5950	7749
2	Non-Drought	15950	10500	1500	6950	14699
3	Non-Drought	15950	11000	1700	6650	21349
4	Non-Drought	15950	9000	1500	8450	29799
5	Drought	15950	22000	500	-5550	24249
6	Drought	15950	22000	750	-5300	18949
7	Drought	15950	22000	500	-5550	13399
8	Non-Drought	15950	12000	1700	5650	19049
9	Non-Drought	15950	8000	1000	8950	27999
10	Non-Drought	15950	10000	1200	7150	35149

Attachment F

Donner Lake Evaluation

ATTACHMENT F

Donner Lake Evaluation

The evaluation of the environmental and economic effects of TROA on Donner Lake was based upon several factors. First, a review was conducted of the 1998 draft EIS/EIR and related public comments to determine key issues. Public meetings conducted at that time identified Donner Lake home owner concerns, which combined with input from local area leadership, aided in further defining potential impacts. Local leadership was provided through the Truckee River Basin Water Group. These meetings with home owners, coordination meetings with local leaders, and analytical meetings with representatives from various public agencies, helped to determine evaluation methodologies.

One of the purposes of the activities described above was to clarify the dual objectives of increasing instream flow benefits in Donner Creek and enhancing recreational beneficial uses for both the creek and Donner Lake. Specifically, recreation was evaluated using indicators such as changes in lake levels, aesthetics (the visual effects of lowered water levels), fishing in the lake and creek, visitor days, boat ramp usage and economics. Thresholds values were developed and used in combination with best professional judgment to determine the significance of operational changes at Donner Lake associated with the TROA.

The analytical methods used to evaluate potential changes included mathematical model assessments, statistical comparison, and field surveys, as well as biological, recreation, aesthetic, and economic assessments. The mathematical methods included assessments for operations, economics and visitor days. Key indicators used to compare differences between TROA and the other alternatives specific to hydrologic conditions, included end of month storage, average change in lake and reservoir levels, river and tributary flows, and recreation usage.

In regards to TROA's potential effect on aesthetics when compared to the no action alternative, the model showed that average monthly lake level in Donner Lake was a few inches lower in July, August and October, and was about a foot higher in September. The annual average lake levels will be generally higher with TROA. Generally, significant effects to aesthetic resources would occur if the proposed activity adversely affects a scenic vista or degrades scenic resources. Given that the average differences in lake levels between TROA and the other alternatives are not expected to be discernible, there will be no significant degradation of scenic vistas or resources around the Donner Lake area.

Seasonal recreation visitation and associated expenditures were used as indicators to evaluate the effects of TROA on reservoir recreation at Donner Lake. Variations were evaluated for different hydrologic conditions including wet, dry and median. A recreation model was used to provide input to the economic model to determine differences in visitation and expenditures among alternatives. The analysis showed that for all hydrologic conditions, visitation and expenditures at Donner Lake were, on the average, 0.31% higher with TROA when compared to the no action alternative. When specifically comparing wet and dry periods, visitations and expenditures were .05% to .26% lower, respectively, while visitation and expenditures under TROA were 1.18% higher under median conditions. These variations were considered not to be significant

because the overall differences in average visitation among the alternatives were less than 1.0 percent, and average visitation under TROA, when compared to the other alternatives is expected to be slightly higher.

Another indicator that was used to determine the potential effect of TROA on Donner Lake recreational usage was boat ramp usability during the recreation season. Under TROA, when compared with the no action alternative, boat ramps in Donner Lake will be useable 14% more of the time under median hydrologic conditions and they will be useable 14% less of the time under dry hydrologic conditions. Under wet hydrologic conditions there is no difference among the alternatives. Because of the improvement in boat ramp usability under TROA under median conditions, which represents the majority of the time, TROA will have an overall positive effect on boat ramp usability at Donner Lake and consequently TROA is not expected to have a significant adverse impact on boat ramp usage.

A final indicator that was used to determine the potential effect of TROA on Donner Lake recreational usage was usability of stationary docks at Donner Lake. With TRO would not be significantly affected under any alternative during June, July, or August

An indicator used to evaluate stream-based recreation for Donner Creek was the suitability of flows for fly fishing and spin/lure/bait fishing in the creek during the recreation season. Operations model results showed that flows preferred by fisherman (40-50 cfs) for fly fishing and spin/lure/bait fishing will not be obtained during wet or dry hydrologic conditions either under TROA or the No Action alternative. In median hydrologic years, preferred flows for fly fishing will be obtained 29% of the time under both the TROA and No Action alternative. Because the model results show that there will be no difference in fishing opportunities, between TROA and the No Action alternative, with TROA there would not be expected to have a significant effect on fishing in Donner Creek.

With TROA, study results shows a significant benefit to meeting preferred flows for brown trout in Donner Creek, where TROA meets preferred flows 33% of fall/winter months, while Current Conditions only meet preferred flows 14% of fall/winter months. TROA will also provide a significant benefit to meeting preferred flows for rainbow trout in Donner Creek, where TROA meets preferred flows 31% of spring/summer months, while Current Conditions meet preferred flows 18% of spring/summer months. Finally, the frequencies of the occurrence of flows low enough during winter months to increase the potential for icing conditions under TROA show a significant beneficial effect when compared to Current Conditions in Donner Creek.

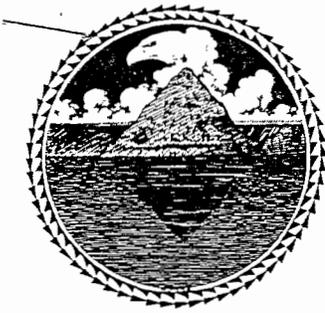
TROA may provide additional benefits not reflected in the model runs used for the above analysis. After TROA is signed and becomes effective, California will annually submit Guidelines for Truckee River Reservoir Operations concerning instream flows in Donner Creek and Donner Lake reservoir levels. These Guidelines will develop specific operational goals and objectives based on the specific hydrology for that year, to help encourage and guide operators in meeting California's objectives, including those for Donner Lake and Donner Creek. During a dry season California will not specify a preferred instream flow in Donner Creek.

Under TROA it is expected that habitat conditions in Donner Creek will improve. Fishery conditions will also be improved by the increased flows made available by TROA. Parties to TROA will provide between \$50,000 and \$100,000 yearly to a Habitat Restoration Fund, which will be distributed to California during the first two years TROA is in effect, and thereafter to Nevada, the Pyramid Tribe, and California who will each receive one-third of the funds each decade TROA is in effect. A portion of California's share of the fund could be made available to plan and implement fish habitat restoration or maintenance projects in Donner Creek

California's minimum storage objective in Donner Lake is 6.3 TAF for the period June through August. To preserve higher lake levels, TROA provides that no scheduling party will be required to exchange water out of Donner Lake when the Lake is below 7.5 TAF in June and July, and 6.5 TAF in August. TROA also allows California to arrange required trades of joint program fish credit water for privately owned stored water in Donner Lake, which may maintain water levels in Donner Lake if circumstances result in high summer releases of water to satisfy downstream needs. Finally, TROA allows for a temporary downward adjustment of enhanced minimum instream flows, which could improve lake levels if conditions warrant. These adjustments will require coordination between the California Department of Fish and Game and local interests. The results of this coordination will be the development of an annual plan for implementing an appropriate balance between the maintaining Lake levels and instream flows.

Attachment G

January 22, 2003, letter from the
Pyramid Lake Paiute Tribe of Indians: TROA EIS/EIR



**Pyramid Lake Paiute Tribe
Department of Water Resources**

P.O. Box 256
Nixon, Nevada 89424

Telephone (775) 574-1050 Fax (775) 574-1025

January 22, 2003

Mr. Tom Strekal
TROA EIS/EIR Team Leader
Bureau of Indian Affairs
Western Nevada Agency
1677 Hot Springs Road
Carson City, Nevada 89706

Subject: TROA EIS/EIR

Dear Tom:

This letter is provided in reference to your letter of January 7, 2003, requesting Pyramid Lake Paiute Tribe's assistance relative to future water use in Truckee River Basin for the purpose of computer modeling for the revised draft EIS/EIR. You identified five scenarios for the Tribe's use of its water under Orr Ditch Claim Nos. 1 and 2 in Year 2033 (when annual Truckee Meadows water demand is projected to be about 119,000 acre-feet, as identified in draft TROA Section 4.B.2).

We have reviewed the five scenarios and we believe the most likely scenario for the use of Tribe's water under the both claims in Year 2033 would be Scenario No. 2. That is, Claim Nos. 1 and 2 would be completely exercised for agriculture/M&I purposes. However, during the period between now and Year 2033, the unused portions of Claim Nos. 1 and 2 are expected to be transferred to instream flows for wildlife purposes in the lower Truckee River. As requested, the monthly demand schedule for Scenario No. 2 is attached.

We trust this will assist you in the analysis for the revised draft EIS/EIR. Please call if additional information is needed.

Sincerely,

A handwritten signature in black ink that reads "John W. Jackson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John Jackson, Director
Pyramid Lake Water Resources Department

Scenario No. 2
Monthly Demand Schedule
for Claim Nos. 1 and 2 in Year 2033

Note: It is assumed that 50% of Tribe's water under both claims would be used for agriculture and the remaining 50% would be used for M&I purposes in Year 2033. The associated demand schedules are assumed to have the following patterns:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Agriculture													
percent	0.0	0.0	0.0	3.0	13.0	20.0	25.0	20.0	13.0	6.0	0.0	0.0	100
acre-feet	0	0	0	451	1,956	3,009	3,761	3,009	1,955	902	0	0	15,043
M&I													
percent	5.7	5.3	5.9	7.5	10.1	11.5	12.8	12.2	10.1	7.5	5.8	5.6	100
acre-feet	858	797	888	1,128	1,519	1,730	1,926	1,835	1,519	1,128	873	842	15,043
Total													
percent	2.9	2.6	3.0	5.2	11.6	15.8	18.9	16.1	11.5	6.7	2.9	2.8	100
acre-feet	858	797	888	1,579	3,475	4,739	5,687	4,844	3,474	2,030	873	842	30,086

Attachment H

April 23, 2007, letter from the
U.S. Fish and Wildlife Service: Informal Consultation



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Nevada Fish and Wildlife Office
1340 Financial Blvd., Suite 234
Reno, Nevada 89502
Ph: (775) 861-6300 ~ Fax: (775) 861-6301

April 23, 2007
File No. 1-5-07-I-108

Memorandum

To: Area Manager, Bureau of Reclamation, Carson City, Nevada

From: Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada

Subject: Informal Consultation for the Administrative Draft Truckee River Operating Agreement Environmental Impact Statement, El Dorado, Placer, Nevada, and Sierra counties, California and Douglas, Carson City, Washoe, Storey, Lyon, Churchill, and Pershing counties, Nevada

We have reviewed your Administrative Draft Truckee River Operating Agreement Environmental Impact Statement (EIS) dated March 2007, and received on March 20, 2007. This project proposes the signature, adoption and implementation of the Truckee River Operating Agreement (TROA) by the Secretary of the Interior and the State of California and to promulgate TROA as a Federal Rule, change California water rights permits and licenses to allow water storage, transfers, and exchanges provided for in TROA, and negotiate storage contracts with owners of credit water created under TROA to store this water in Federal Truckee River reservoirs. You have requested our concurrence with your not likely to adversely affect determination for three species listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act): cui-ui (*Chasmistes cujus*) (endangered), Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) (threatened) (LCT), and bald eagle (*Haliaeetus leucocephalus*) (threatened).

The TROA is intended to: 1) enhance water management flexibility, water quality, conditions for cui-ui and LCT, reservoir recreational opportunities, and reservoir efficiency; 2) increase municipal and industrial water drought supply, minimum reservoir releases, and the capacity for carryover storage; 3) allocate Truckee River water between the States of California and Nevada; and 4) reduce water use conflicts.

Implementation of TROA would modify operations of the Truckee River reservoirs while ensuring that existing water rights are served and flood control and dam safety requirements are met. The TROA would supersede all requirements of any agreements concerning the operation

of the Truckee River reservoirs, including those of the Truckee River Agreement and the Tahoe-Prosser Exchange Agreement, and would become the sole operating agreement for all Federal reservoirs in the Truckee River system. The TROA is not intended to alter other applicable Federal or State laws. The TROA also contains provisions to implement the interstate allocation of Lake Tahoe and Truckee River waters between Nevada and California (section 204 of P.L. 101-618).

Based on a TROA model and assumptions over a 100-year period, impacts to listed species are not anticipated to adversely affect them as it is anticipated that: 1) the average annual inflow to Pyramid Lake would be greater under TROA by 5,240 acre-feet (af) as compared to current conditions. Higher inflows would result in a 1.5 foot increase in Pyramid Lake elevation under TROA compared with current conditions. This would benefit cui-ui and LCT by enhancing lake habitat as well as Truckee River access for spawning and migration;

2) the frequency (number of years) of river flow regimes 1 or 2 occurring in the Truckee River between Numana and Marble Bluff Dams during May and June would be increased under TROA compared with current conditions, enhancing river conditions for cui-ui during spawning;

3) under TROA, the relative amounts of riparian habitat being maintained along the lower river would have no effect during wet years, but would be beneficial during median, dry, and extremely dry hydrologic conditions for cui-ui and LCT providing shade and resultant cooler water temperatures along the lower Truckee River downstream of Derby Dam;

4) the number of times that Independence Lake would fall below 7,500 af would be reduced by one less time (in August) under TROA as compared with current conditions. The number of years was not different compared with current conditions for May, June or July under TROA. This reduced frequency would benefit LCT as access to spawning habitat in the lake during May to August is prevented by a delta when storage is at or below 7,500 af;

5) TROA allows California Department of Fish and Game to direct the Truckee Meadows Water Authority to provide and maintain a fish channel through the delta should storage fall below 7,500 af at Independence Lake;

6) under TROA, minimum storage thresholds at Prosser Creek, Stampede, Boca, and Lahontan Reservoirs would be reached in fewer years, approximately 27 percent, 13 percent, 61 percent, and the same percent for these four reservoirs, respectively, as compared with current conditions. TROA would allow a substantial reduction in the possibility of fish mortality events in these water bodies, thus benefiting bald eagle foraging; and

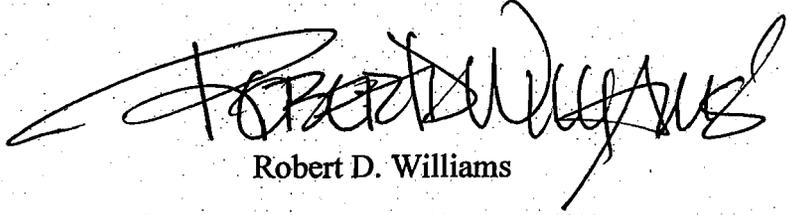
7) under TROA, the average area of shallow water fish spawning habitat in Lake Tahoe, Independence Lake, Pyramid Lake and Lahontan Reservoir, while analyzed differently for each water body, would be the same as under current conditions for both Lake Tahoe and Independence Lake during representative wet and medium hydrologic conditions and about the

same during dry hydrologic conditions (a reduction of 7 acres for Lake Tahoe and a reduction of 1 acre for Independence Lake). For Pyramid Lake, TROA would provide a less than 1 percent reduction in average area of shallow water fish spawning habitat in June. The TROA would allow Lahontan Reservoir to recede below 160,000 af four percent more often than under current conditions. These minor reductions in the average area of shallow water fish spawning habitat would not result in a significant impact to bald eagle foraging.

Based on the information provided in the Administrative Draft EIS, the Service concurs that the proposed project is not likely to adversely affect cui-ui, Lahontan cutthroat trout, or bald eagle. Therefore, formal consultation pursuant to section 7 of the Act is not required.

This response constitutes informal consultation under regulations promulgated in 50 CFR § 402, which established procedures governing interagency consultation under section 7 of the Act. If the proposed action as described is changed, if monitoring efforts as developed under the Biological Resources Monitoring Program Memorandum of Understanding indicate that impacts are affecting listed species other than as predicted by the model, or if new biological information becomes available concerning listed or candidate species which may be affected by the project, your agency should reinitiate consultation with the Service.

If you have any questions, please contact me or Marcy Haworth at (775) 861-6300.


Robert D. Williams

RECEIVED

APR 24 2007

BUREAU OF RECLAMATION
Lahontan Basin Area Office

CODE	PERSON RESP	INITIAL & DATE
100	RP	
101	RP	RP 4/24
105		
110		
400		
700		
800		
900		RP 4/24
900		