



# Truckee-Carson Irrigation District

## *Newlands Project*

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OCT 21 2012

BUREAU OF RECLAMATION  
Lahontan Basin Area Office

October 10, 2012

Sent via Email and USPS

Kenneth Parr  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza St., Room 320  
Carson City, NV 89701

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Rusty D. Jardine, Esq., District Manager &  
General Counsel

Re: **Newlands Project Planning Study Draft Comments**

Dear Kenneth:

On behalf of the Truckee-Carson Irrigation District, we here congratulate Reclamation, and its contractor, MWH Americas, Inc., for the effort associated with provision of the tentative draft of the Newlands Project Planning Study. We acknowledge, in particular, Jeff, Alex, and Ryan, for their contributions. It is clear that this study was an extraordinary undertaking.

Pursuant to our reading of the tentative draft, and having participated in the stakeholders workshop on October 4, 2012, we here provide the following "draft" comments:

### **Comment 1: Time-Frame for Stakeholder Review.**

On October 4, 2012 a stakeholder meeting was conducted regarding the Preliminary Draft of the Newlands Project. The date of October 10, 2012 was set for the receipt of comments by stakeholders. A preliminary draft of the study was received by TCID on the 27th day of September, 2012. As of the time of the meeting of the Board of Directors of TCID, conducted October 8, 2012, the Directors had not completed a review. Insufficient time has been given for the provision of comprehensive stakeholder review.

### **Comment 2: Upstream Storage.**

In Chapter 3 of the study, under the caption "Newlands Project Water Supply Reliability, we find the following language: "The ability of the Newlands Project to deliver water to water rights holders in a reliable manner is a primary objective for the Study." (Study, p. 3-55). Later, in Chapter 4, the Study then looks at "retained water supply measures". (See, e.g., p. 4-20). Among the supply measures considered was "[m]ulti-[y]ear [u]pstream [s]torage." Id. at p. 4-24. This measure provides for Project water to be stored in upstream reservoirs on the

Truckee Canal during periods when either the Truckee Canal or Lahontan Reservoir are incapable of capturing, storing, or delivering the water supply. In essence, such water in storage would be held as carry-over from year-to-year until such a time that they could be utilized. *Id.* at pgs. 4-24, 25. The intent would be to reduce the impact of the limitations imposed upon the Truckee Canal by providing flexibility to divert Claim 3 water into the Truckee Canal, at Derby Dam, at a time when conveyance to water users is possible. *Id.* at p. 4-25.

This concept of upstream storage is cast as "Retain[ed] in Concept Only." *Id.* The concept is embraced as "physically possible"; but, then, provides that "institutional arrangements do not exist to allow Truckee Canal water rights to remain in Truckee River Reservoirs over multiple years." *Id.* Significantly, the study states: "This Study finds that facilitating multi-year Project storage in upstream Truckee River reservoirs shows promise as the cheapest and most effective method for improving the reliability of Project water supplies, regardless of the Truckee Canal's capacity." *Id.* The Study then cites circumstances that attend the Project water supply:

1. OCAP does not allow for upstream storage;
2. TCID is not a signatory to TROA;
3. That an agreement would need to be had among TCID, Reclamation, and one of the TROA signatories for creation of upstream storage; and,
4. That owing to the on-going lawsuits, it would be difficult to implement such an option.

*Id.*

In view of an express objective associated with the study, i.e., "[t]he ability of the Newlands Project to deliver water to water right holders in a reliable manner. . .". multi-year upstream storage should be deemed both a measure and a preliminary alternative (See, pgs. 4-1 and 4-24-25.). Up-stream storage certainly addresses an important planning consideration -that of reliable water delivery; and, it serves to resolve an identified problem, i.e., limitations imposed upon the Truckee Canal. Moreover, the legal duty to create a reliable water supply for the benefit of water right holders in the Newlands Project does not devolve upon the District. While the District is now engaged in litigation, this status does not create a duty to create nor to supplement the water supply in the Truckee River watershed. The duty of water supply creation is that of the United States. This duty has not been transferred by Reclamation to the District. (See; Contract No. 7-07-20-X0348, the Reclamation Act of 1902, or the Settlement Act, (P.L. 101-618). Accordingly, the study should consider what Reclamation could do to provide storage. A starting point would be to institute the rule-making process and remove any restraints borne by OCAP -so as to allow what has been signaled as "the cheapest and most effective method for improving the reliability of Project water supplies" (See Study, pl. 4-25).

**Comment 3: Key Assumption-a 150 cfs Flow Stage.**

An underlying assumption relating to the study is that the long-term Truckee Canal capacity restriction will be a flow stage of 150 cfs –absent significant modification or rehabilitation. (See Study, p. 3-15). In view of all of the efforts we have made to correct for safety risks on the Canal, the assumption of “substantial risk” is misplaced and belied by the public record. Since the breach of 2008, the District has directly eliminated certain safety risks in the Canal, including the repair of the conduits in the Fernley Reach. The District has provided repair to the same. Moreover, the District has also completed, since 2009, some 30 RO&M recommendations as follows:

RO&M #	TCID WO#	DATE COMPLETED	ANTICIPATED COMPLETION DATE	DESCRIPTION	LOCATION	RO&M CATEGORIES
2009-3-A	54920	9/20/2010	Ongoing	Monitor Gay Seep. RO&M recommendation to add to Truckee Canal SOP.	Truckee Canal	TRUCKEE
2003-2-B	53316	11/17/2010		Gay Seep	Truckee Canal	TRUCKEE
2003-2-D	52812	3/18/2011		Truckee Canal. Repair south bank water holes.	Truckee Canal	TRUCKEE
2009-2-B	53004	3/17/2011		Liner Voids. Repair upstream liner voids at Gay Seep.	Truckee Main Canal	TRUCKEE
2009-3-I	53898	7/10/2011		Derby Spill Seal	Truckee Canal	TRUCKEE
2003-2-K	49732	9/4/2007		Floating Safety Cable	Lahontan Main	TRUCKEE
2006-2-E 2003-2-AD	53910	3/18/2011		Repair embankment/concrete lining upstream of Tunnel #1.	Truckee Main Canal	TRUCKEE
2006-3-G 2009-2-H	53907	12/1/2010		Repair concrete loss on wall areas. Tunnels #1 & #2	Truckee Main Canal	TRUCKEE
2006-3-H		10/19/2010		TC-T39. Fill hole after take-out plugged	Truckee Main Canal	TRUCKEE
2009-3-A	54922	10/19/2011		Repair corrosion under grouted riprap at left downstream bank	Derby Dam	TRUCKEE
2006-3-I 2009-2-A	53011	10/19/2012		Repair erosion beneath grout at end of left d/s wingwall.	Derby Dam	TRUCKEE
2009-2-D	52387	11/17/2010		Liner Void. Repair left canal lining upstream from Pine Tree Seep.	Truckee Main Canal	TRUCKEE
2009-2-C	53905	11/17/2010		Remove tree at left inner canal bank upstream of Dog Kennel Seep near station 159+40.	Truckee Main Canal	TRUCKEE

2006-3-B	52349	12/2/2010		Develop and implement written standard and emergency operations and response plans.	Truckee Main Canal	TRUCKEE
2009-2-E	1107		ONGOING	Establish program to remove, level and compact canal spoil on outer banks of canal.	Truckee Main Canal	TRUCKEE
2009-2-F 2010-1-A	53914	6/5/2012	ONGOING	Establish program to clear vegetation and mow the inner & outer banks of canal.	Truckee Main Canal	TRUCKEE
2009-2-G	52379	5/8/2009		Replace damaged 4x6 timber support at TC6.	Truckee Main Canal	TRUCKEE
2009-2-H	52348	3/25/2011		Restore compacted backfill at turnouts in Fernley Reach between. Structure and canal embankment. TC2 and TC11.	Truckee Main Canal	TRUCKEE
2009-2-J	54924		2013 on five-year plan	Repair structural cracks in footing. Anderson Check.	Truckee Main Canal	TRUCKEE
2009-2-I	52350	7/27/2010		Repair structural cracks in walkway or replace walkway. Anderson Check.	Truckee Main Canal	TRUCKEE
2009-3-B	52381	5/28/2009		Truckee Main Canal. Remove abandoned timber structures on right bank downstream of Derby Dam, and canal side of Derby (Pyramid) Wasteway and Gilpin Spill	Truckee Main Canal	TRUCKEE
2009-3-D	53894	11/19/2010		Truckee Main Canal. Restore missing support bolts for gate No. 3 at Anderson Check.	Truckee Main Canal	TRUCKEE
2009-3-E	52376	5/8/2010		Repair structural crack through the stoplog slot in the rightmost pier of Allendale Check.	Truckee Main Canal	TRUCKEE
2009-3-F	52377	10/19/2010		Reattach the separated electrical conduit at the Allendale Check.	Truckee Main Canal	TRUCKEE
2009-3-G	53009	7/27/2010		Remove abandoned timber guardrail posts at the Allendale Check.	Truckee Main Canal	TRUCKEE
2009-3-I	53898	12/1/2010		Seal leaking lift line above Derby Wasteway gates.	Derby Dam	TRUCKEE
2009-3-J	53021	7/27/2010		Reattach improperly installed wire rope at upstream Derby Wasteway Gate.	Derby Dam	TRUCKEE

2009-3-L	52378	12/17/2010	Truckee Main Canal. Add more earth cover to gas line crossing for the service roads at Station 1488=20 (downstream from Bango Check)	Truckee Main Canal	TRUCKEE
2010-2-K	53623	7/13/2010	Complete the construction of the filter and drainage berm on the left canal embankment at the Farm District Rd. seepage area to the lines and grades provided on the applicable Bureau design drawings.	Truckee Main Canal	TRUCKEE
2006-2-F	53703	11/10/2010	Fill notches between. TC8 & TC9 Hwy. 95 Alt.	Truckee Main Canal	TRUCKEE
2010-2-M	53911	3/25/2011	Perform and record an internal video inspection of the turnout conduits in the Fernley Reach of the Truckee Canal and including turnout TC-1 and the Stix (Farm District Rd.) seep location and have a Registered Professional Engineer (PE) perform a condition assessment of each turnout conduit. Submit these video inspections and condition assessments with any conclusions reached in a report to LBAO for review. Reclamation's independent review of the video inspections and report may not lead to acceptance of the PE's conclusions. 2009-2-K Clear debris from Painted Rock area.	Truckee Main Canal	TRUCKEE
2009-2-K	53003	4/23/2010		Truckee Main Canal	TRUCKEE
2009-3-L	54038	12/17/2010	Truckee Main Canal. Add more earth cover to gas line crossing for the service roads at Station 1488=20 (downstream from Bango Check)	Truckee Main Canal	TRUCKEE

Nevertheless, and notwithstanding the foregoing corrective actions having been taken, the study states: “. . . substantial risks remain within the canal even with the completion of the conduit repair.” Id. at p. 3-14. What are these “substantial risks?”

In May of 2008, the United States District Court entered its “Interim Temporary Restraining Order” in *Kroshus v. United States* (Case No. 3:08-cv-LDG-RAM). Significantly, as we recall, it was evidence presented by the United States that permitted the establishment of a water flow in the Truckee Canal at 350 cfs or less in the first place. (See Order). And, since entry of the order the Canal has been operated safely. We agree that purely from the perspective of risk reduction a flow stage of 150 is “safer” than that of 350. No flow is the safest! But with either a 150 or a 350 stage limitation, the flow stage lies within the foundation of the Canal. That fact is, or should be, dispositive as to any determination not to further restrict the flow stage. How, then, do we say, now, in view of and in despite of all our efforts to repair the Canal, and to have seen its safe operation under the 350 stage limitation, including the replacement of the conduits which were deemed potential failure mechanisms, that we must go back to a 150 cfs flow stage. Having made extensive repairs, including the conduits and seeps in all reaches of the Canal, how is the Canal less safe now than it has been while operated at 350? If the goal is the elimination of ALL risk to public safety then action would include closure of the Canal. We think that a 150 stage flow in the Canal is tantamount to Canal closure. Injury to existing water rights will accrue. The key assumption that a substantial risk to public safety exists, above a 150 cfs flow stage, is unsupported by the facts, and is unwarranted. (See attached photographs of completed conduit project).

#### **Comment 4: Reduction in Agricultural Production**

The study states that “[i]n general, the primary study area is likely to see an overall reduction in agricultural production in response to various existing programs or efforts to acquire and/or retire Newlands Project water rights in both the Truckee and Carson Divisions.” Id. at p. 3-45. Referring to the Carson Division, it was reported that the result of such trends “[was] a reduction in agriculture and an overall shift in water use that increases Project water deliveries to the Lahontan Valley wetlands.” Of the Truckee Division it was said that “agriculture is expected to decrease by nearly 40 percent.” Id.

Local agricultural producers do not agree with the opinion expressed especially regarding the Carson Division. Under construction at Fallon is an \$85 Million dairy products facility. Eric Olsen expresses concern that local dairy farms will not be able to keep pace with the demand for milk production by the new facility; that reliance will be made upon outside producers to sustain both the direct product supply needs to the new production facility and the indirect product including, forage, i.e., “corn silage, hayage, ryeage” needs of our local producers. (Eric Olsen, Dairy Farmer, Director, TCID, personal communication, October 8, 2012, Fallon, Nevada).

**Comment 5: Water Use in the Truckee Division.**

As was made manifest by the stakeholders meeting held October 4, the assumption regarding the leasing of surface water rights, by the City of Fernley to the Pyramid Lake Paiute Tribe is incorrect. The City of Fernley is evaluating other uses associated with their surface water resources. Such uses include a program for the re-watering of lands removed from agricultural production. Future uses may also include the development of a lake area for infiltration purposes.

**Comment 6: 2009 Omnibus Appropriations Act, Public Law 111-8.**

We understand that the express purpose of a study to be performed relating to the Truckee Canal, as authorized by the Omnibus Appropriations Act of 2009 ( Public Law 111-8, 123 Statute 609), was that of determining the full extent of rehabilitation needed for the canal to resume flows above 350 cubic feet per second. The introduction to the Planning Study, at p.1-1, cites the purpose of the appropriation under Public Law 111-8 "to determine the actions necessary to rehabilitate the Truckee Canal so restrictions on its operation can be removed." The Study must advance measures and alternatives necessary for the elimination of restrictions on Canal operations –even that of 350 cfs. Measures and alternatives include a 0 flow in the Canal. Consideration and implementation of contradictory measures and alternatives within the study are ultra vires and it exceeds the scope of authorized analysis.

Thank you for your consideration of these comments. Should you have any questions, please do not hesitate to contact us.

Respectfully,

TRUCKEE-CARSON IRRIGATION DISTRICT

By:   
District Manager

enclosures

cc: TCID Board of Directors

CODE	PERSON RESP	INITIAL & DATE
100	*	10/12/12
101		
110		
400		10/12/12
600		
800		
900		
131* ACTION		
130* 10/12/12		





04/08/2012



04/08/2012



04/08/2012

# ID 7 or TC - T10



# ID 9 or TC – T11



U.S. Fish and Wildlife Service  
Comments on Preliminary Alternatives

Preliminary Alternative Name	Reviewer Name	Reviewer Agency	Reviewer Comment
350.a	Carl Lunderstadt	USFWS	For all Preliminary Alternatives that include Acquiring and Retiring Water Rights, the estimated costs seem extremely low. For example, Acquiring 10% of the Project water rights or 6300 acres (based on 63,000 acres in Project), at the current appraised value of \$5,250/acre, would cost \$33.1 million, not \$0.45 - \$1.35 million.
350.a	Carl Lunderstadt	USFWS	For all Preliminary Alternatives that include Acquiring and Retiring Water Rights, this measure at any percentage will impact the USFWS ability to acquire water rights for wetlands as mandated in Public Law 101-618.
250.c	Carl Lunderstadt	USFWS	For all Preliminary Alternatives that include Importing Dixie Valley Groundwater, even the high estimate seems extremely low. \$11 million will barely cover the planning costs, let alone construction of wells, pumping stations, and pipeline.



## CHURCHILL COUNTY PLANNING

October 12, 2012

Kenneth Parr  
Bureau of Reclamation  
705 N. Plaza St.  
Carson City, NV 89701

Dear Mr. Parr,

The following are comments from Churchill County Planning Department regarding the *Newlands Project Planning Study Draft Special Report*.

**Page 3-60**     *Key Study Assumptions*     "Water demand for agricultural uses within the Project will decrease, and Project efficiency will likely increase..."     Project efficiency may increase but recharge of the aquifer and reliability of domestic wells will decrease. Runoff into drains will also decrease as efficiency increases.

**Appendix E-1 Page 27**     *Measure Name: Purchase and Retire Upper Carson River Rights*  
There is insufficient explanation as to why this measure was not retained. Why are purchases only being considered in the Truckee and Carson Divisions and not upstream?

**Appendix E-1 Page 38**     *Measure Name: Compact the Soil Lining of Main Canals and Laterals*

**Appendix E-1 Page 40**     *Line Main Canals and Laterals*

**Appendix E-1 Page 44**     *Compact Soil Lining of the Truckee Canal*

The three measures above were all retained. The three measures impact only water users in the Carson and Truckee Divisions. If canals and laterals were lined further upstream, more water would reach Lahontan Reservoir, reducing the diversions on the Truckee River.

Many measures were "not retained" "due to low anticipated contributions to meeting water supply objectives" but they all add up and the smaller ones may be less painful to the water users and less costly.

**Appendix E-1 Page 59**     *Measure Name: Acquire and Retire Water Rights*

There may not be much participation in another acquisition program. The most "willing" sellers have probably already sold their water rights. The Dairy Farmers of America plant in Fallon will increase the

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*155 No. Taylor, Suite 194, Fallon, Nevada 89406     phone (775) 423-7627     fax. 428-0259*  
*Churchill County is an Equal Opportunity Employer and Provider*

need for milk, dairies and crop production. So it would seem that the irrigated acreage in Churchill County may increase, not decrease. This is not a reliable alternative.

Funds would be needed for mitigation if acreage is purchased—for weed and dust control and ditch maintenance. Mitigation funds have not been provided in other programs and the abandoned, unmanaged properties have caused a lot of problems for the nearby residents. The cost of \$1285 per acre foot may be too low. Fish & Wildlife Service recently increased the amount they are willing to pay and they generally set the price in the Valley.

**Appendix E-1 Page 61** *Measure Name: Crop Insurance/Fallowing*

If an agricultural producer in the Carson Division does not irrigate, not only does the ag producer receive no income from the property, there is also no recharge of the aquifer due to seepage losses in the delivery of his allocation. So it negatively impacts wells.

The implementation of this program is cumbersome and makes many assumptions.

**Appendix E-1 Page 63** *Measure Name: Partial Season Forbearance Agreements*

The water supply forecast can change daily in the winter and spring depending on weather. It often isn't certain that there will be a water shortage until after irrigation season begins. This measure involves a lot of negotiations which is time consuming and makes a lot of assumptions regarding crop prices, etc.

If an agricultural producer in the Carson Division does not irrigate, not only does the ag producer receive no income from the property, there is also no recharge of the aquifer due to seepage losses in the delivery of his allocation. So it negatively impacts wells.

The “no significant environmental effects” determination is incorrect. There will be dust and weeds just as the other acquisition programs have caused.

**Appendix E-2** None of the estimated costs include mitigation of the environmental effects of the measures. There will be dust and weed issues, ditch maintenance issues, and domestic well recharge issues.

The agricultural community provides more economic benefit than just the purchase of hay. There are other industries that depend upon ag producers for their business. Fewer irrigated acres reduces the need for businesses such as equipment dealers, custom farmers, agricultural lenders, seed dealers, etc etc. The reduction in these businesses and the resulting reduction in employment has not been addressed.

Thank you for the opportunity to comment on the study.

Sincerely,

*Terri Pereira*

Terri Pereira

Associate Planner, Churchill County

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***155 No. Taylor, Suite 194, Fallon, Nevada 89406 phone (775) 423-7627 fax. 428-0259***  
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2171 E. Francisco Blvd., Suite K • San Rafael, California 94901  
Phone: (415) 457-0701 • FAX: (415) 457-1638 • Web site: [www.stetsonengineers.com](http://www.stetsonengineers.com)

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October 31, 2012

Harvey Edwards  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street, Suite 320  
Carson City, Nevada 89701

Subject: Newlands Project Planning Study Draft Material

Dear Mr. Edwards,

Thank you for the opportunity to provide comments on the draft Newlands Project Planning Study (Study), Chapters 1-4 that were made available for an informational review on September 27, 2012. We have reviewed the draft Chapters 1-4 and the associated appendices and also attended the Project Management Team (PMT) meeting on the Newlands Project Study, which was held in Carson City on October 4, 2-12.

As expressed at the meeting of October 4, 2012, it is essential to address some of the fundamental assumptions used in the Planning Study first before providing comments on other elements of the study. The following comments are provided on behalf of the Pyramid Lake Paiute Tribe (Tribe).

1. The Planning Study is based on about 63,600 acres of water rights, which is referred to as "Estimated Current and Potentially Active Newlands Project Water Rights" (Table 3-13). This is contrary to the historical trend. The irrigated acreage in the Newlands Project has been steadily decreasing over the years (Table C-3). Reclamation's preliminary determination of irrigated acreage in the Newlands Project for 2011 irrigation season was about 57,000 acres (USBR, 2012). The potential increase in irrigated acreage in the future is inconsistent with the historical trend in the Newlands Project.

Similarly, water demand under the Planning Study for Carson Division of the Newlands Project is based on about 59,000 acres of "current and potentially active water rights" (Table 3-13). Reclamation's preliminary determination of irrigated

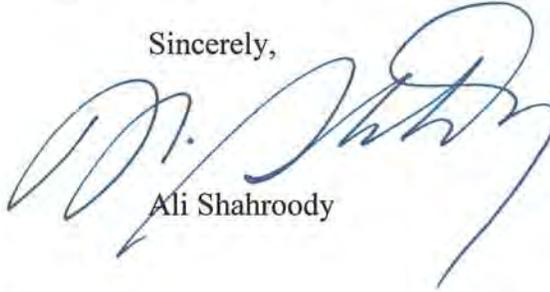
- acreage in the Carson Division for the 2011 irrigation season was about 55,000 acres. The Planning Study does not show or describe the status of these 4,000 acres of land ( $59,000 - 55,000 = 4,000$ ). Most of these lands are in uses other than irrigation (such as roads, buildings, or parking) or have been inactive for a long period of time.
2. The Planning Study assumes that there would be about 2,000 acres of irrigated lands in the Truckee Division of the Newlands Project in the future (Table 3-13). Again, this is inconsistent with the historical trend. According to Table A of the 1997 Operating Criteria and Procedures (OCAP), the Truckee Division acreage served with water was about 4,000 acres (43 CFR Part 418). Reclamation's preliminary determination of irrigated acreage in the Truckee Division for the 2011 irrigation season was less than 2,000 acres. Most of the reduction in acreage is attributed to the purchases under the water quality program and dedications for M&I uses by the City of Fernley. Since 2011, additional irrigated acreages in the Truckee Division have been purchased for water quality improvement in the lower Truckee River. Most likely, the remaining irrigated acreages in the Truckee Division would be converted to M&I and water quality purposes in the future. This is contrary to the assumption in the Planning Study that there would be about 2,000 acres of irrigated lands in the Truckee Division in the future.
  3. Reclamation makes annual determination of water rights and the irrigation status of water rights for the purpose of determining Newlands Project water demand. Reclamation's annual determination of irrigated acreage utilizes information on Newlands Project water rights, water duty, and irrigated acreage – the same three attributes specified in Appendix C, which are assessed independently under the Planning Study using various assumptions and accounting exercises to ultimately estimate currently and potentially active water rights. Reclamation's annual irrigation determination, which utilizes a GIS database (including TCID serial numbers, satellite imagery, and water right data), should be the basis for the analysis in the Planning Study.
  4. It is important to provide a table (comparable to Table 3-13) in the Planning Study, which is based on the Reclamation's determination of current water demand in the Newlands Project. The Planning Study should also include reliability analysis under various scenarios based on the current water demand in the Project.

The Tribe has requested information on the status of lands with “potentially active water rights” that are not currently used for irrigation in the Newlands Project. The Planning Study makes references to the “TCID database” (Appendix C) as the basis for determination of the current and potentially active Newlands Project water rights. The Tribe also requests that the “TCID database” be made available if it is going to be used as the basis for determining

Newlands Project water rights and water demand. Additionally, the Tribe has requested the RiverWare Model used for the analysis of the "Desired Reliability Scenario" and the other scenarios in the Planning Study. We anticipate to provide additional comments once the above information and the RiverWare Model are received.

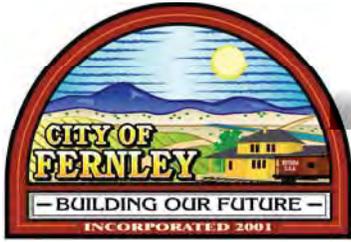
Again, thank you for the opportunity to provide comments on the draft Planning Study.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ali Shahroody", is written over the typed name.

Ali Shahroody

cc: Mervin Wright, Jr., Chairman  
Kenneth Parr  
Fannie Ely  
Don Springmeyer, Esq.  
Chris Mixon



**PUBLIC WORKS &  
GENERAL SERVICES DEPARTMENT**

Shari L. Whalen, P.E.  
City Engineer

Water/Wastewater  
Streets/Storm Drains  
Engineering/GIS  
Parks/Facilities  
Vector Control

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November 19, 2012

Harvey Edwards  
United States Bureau of Reclamation  
705 North Plaza Street  
Carson City, NV 89701

Re: Newlands Project Planning Study Draft Report Comments

Dear Mr. Edwards,

The following comments address issues and concerns that the City of Fernley (“Fernley”) developed in reviewing the recently distributed Newlands Project Planning Study Draft Report (“Draft Report”).

An intended consequence of the Newlands Project was to create agricultural communities like Fernley. Fernley owns 9,739 acre feet of permitted non-supplemental groundwater rights and 9,664 acre feet of Truckee River Claim 3 surface water rights. These are two separate water rights that are dependent on the Truckee Canal and total 19,403 acre feet. These water rights are needed to provide water to Fernley’s population of 19,368 residents. Fernley’s residents rely solely upon the groundwater in Fernley (i.e. recharge from the canal) for their drinking water supply. Because of Fernley’s direct reliance on the Newlands Project for drinking water for its large population, Fernley’s comments to the Draft Report must be given careful consideration prior to issuance of future drafts of the report.

1. On page 3-54, the Draft Report states that the surface water rights owned by Truckee Division municipal and industrial users are currently leased to the Pyramid Lake Paiute Tribe, and are not being diverted at Derby Dam. The Draft Report states that municipal surface water rights currently flow past Derby Dam to Pyramid Lake and will continue to do so, barring a “compelling” circumstance. This claim is incorporated as one of the Draft Report’s assumptions.

Not only is this claim factually inaccurate, it leads to an incorrect conclusion and, as a result, invalidates all Study findings. Although Fernley and the Pyramid Lake Paiute Tribe engaged in surface water leases in 2009 and 2010, there were no water leases in 2011 or 2012. Further, there have been no negotiations to lease water in the immediate

future, distant future, or the planning horizon of the Study. Two prior years in which water flowed past Derby Dam pursuant to a lease agreement cannot be a rational basis on which to base a long-term planning study. Consequently, any study which relies on such an inaccurate premise cannot produce reliable results.

When, pursuant to OCAP, water can be diverted at Derby Dam, Fernley has every intention of diverting it at Derby Dam into the Truckee Canal. Diversions from the Truckee Canal for Fernley's municipal supply are imminent, and will require diversions at Derby Dam. Fernley and Reclamation have entered into a settlement agreement that provides the procedure for Fernley to divert water directly from the canal. Through a Reclamation-funded program, Fernley has developed a plan for an aquifer storage and recovery ("ASR") program which will utilize Project water to store municipal water in the local aquifer. The ASR permitting program is fully funded and will be aggressively pursued. By the time this Study becomes final, Fernley will have completed all required steps to access the canal, and will have submitted an ASR application to the Nevada State Engineer.

In addition, Fernley has state-issued storage permits for storage of its surface water in upstream reservoirs pursuant to the Truckee River Operating Agreement ("TROA"). These permits allow Fernley to store municipal water in Truckee River reservoirs for later diversion at Derby Dam. Also, the TROA EIS/EIR fully analyzed aquifer storage of Fernley's TROA water in Fernley's local aquifer. Fernley has actively litigated TROA storage alongside Reclamation in order to gain the right to upstream storage. The only reason for this effort and expense is that Fernley not only wants to divert and use stored water, it fully intends to do so in the immediate future.

Fernley's use of its approximately 10,000 acre-feet of surface water rights is imminent. Because Fernley plans to divert water before the Draft Report is finalized, the failure of the Study to take this into account will cause the Study to be factually inaccurate at the time of its publication. Therefore, the Draft Report's assumption that Fernley's surface water will continue to bypass Derby Dam and flow downstream results in egregious errors in model predictions for demand and efficiency in each of the future operation scenarios.

2. Throughout the Draft Report, the statement is made that the Project only supplies surface water and that groundwater recharge is "incidental." This is not accurate. The Project has supplied a large amount of groundwater through recharge to the local aquifer since its inception. This purpose for the Project has been reaffirmed throughout its existence, both by Congress and by courts. There have been multiple studies, including one by Stanka Consulting, Ltd., which will be completed before the Newlands Project Study becomes final, which conclusively show that state-permitted groundwater supplies cannot be sustained without recharge from the Project. The following table, included in the Stanka Consulting Draft Canal Seepage Study, illustrates previous estimates of recharge provided by the canal.

Author	Report	Publication Year	Study Section	Truckee Canal Seepage Losses (AFA)
Sinclair, W. C., and Loletz, O. J.	Ground-Water Conditions in the Fernley-Wadsworth Area Churchill, Lyon, Storey, and Washoe Counties, Nevada	1963	Entire Truckee Canal (Derby Dam to Lahontan Reservoir)	35,000
Van Denburgh, Lamke, and Hughes	Water Resources Reconnaissance Series Report 57, A Brief Water-Resources Appraisal of the Truckee River Basin, Western Nevada	1973	Entire Fernley Reach of Truckee Canal (including canal diversions)	55,000
Van Denburgh, A.S., Arteaga, F.E.	Revised Water Budget for the Fernley Area, West-Central Nevada, 1979	1985	Entire Fernley Reach of Truckee Canal <sup>1</sup>	18,000
Mihevc, et. al.	Truckee Canal Seepage Analysis in the Fernley/Wadsworth Area	2002	Fernley Reach (Based on Portion)	19,125
Stevick, Pohll, and Huntington	Evaluation of Groundwater Supplies in the Fernley Area, Nevada	2004	Entire Fernley Reach of Truckee Canal	14,043
Epstein, et. Al.	Regional Groundwater Model Development for the Fernley/Wadsworth Hydrographic Basin, Nevada	2007	Entire Fernley Reach of Truckee Canal	14,151
Shanafield, et. al.	Spatial Variability in Seepage from Unlined, Open Channels	2011	Fernley Reach (Based on First 4 miles of Fernley Reach) <sup>1</sup>	21,862

To state that the Project only supplies surface water is factually inaccurate and discounts one of the important functions of the Project. Webster's Dictionary defines "incidental" as "occurring merely by chance or *without intention or calculation.*" The *Orr Ditch* Court and Congress both clearly stated that the Truckee Canal's intended function is to deliver water to cities and towns for municipal supplies.

The 1944 *Orr Ditch* Decree, which adjudicated the waters of the Truckee River in Nevada, allocated water to the Newlands Project. The *Orr Ditch* Court stated that the water decreed for use in the Truckee Canal was "for supplying the inhabitants of cities and towns on the project and for domestic and other purposes." The *Orr Ditch* Decree never limited the manner of that water delivery to surface water. The Newlands Project supplies the City of Fernley with its water through recharging the local aquifer.

The Truckee-Carson-Pyramid Lake Water Settlement Act (P.L. 101-618 (1990)) reiterates the *Orr Ditch* Decree's mandate. In P.L. 101-618, Congress stated that the Truckee Canal is to be used to provide "municipal and industrial water supply" to Lyon County. Fernley is the only municipality in Lyon County served by the Project. This provision was added specifically to clarify that a purpose of the Project has always been to serve municipal and industrial water to the community of Fernley. The canal is doing precisely that – it delivers surface water to Fernley and recharge water to the local aquifer which is pumped and treated by Fernley and comprises 100% of the municipal water supply. This municipal water supply serves approximately 20,000 residents of Fernley.

By replenishing the local aquifer, the Truckee Canal is delivering municipal water to Fernley, Lyon County, and groundwater users along its entire reach. That delivery is the stated purpose of the Project: there is nothing incidental about it. Fernley has made valid appropriations of groundwater pursuant to state law which are supplied by recharge from the Project. The Study's statement the water delivery mechanism for 20,000 people is "incidental" is shocking, particularly because many scenarios in the Study jeopardize that water supply. If this characterization is maintained in the Study, the Study will be a failure.

3. Public Law 111-8 authorized a study "to determine the full extent of rehabilitation needed for the canal to resume flows above 350 cubic feet per second." Therefore, the baseline for any evaluation of future Truckee Canal operations should be 350 c.f.s., and any study predicated on flows less than that exceeds the authority of the enabling legislation. The Study was authorized to focus on rehabilitation of the Canal and increased flows, not closure or flow reduction alternatives. The current flow of the Canal is 350 c.f.s, and the study was authorized only to determine how to maintain that flow. Alternatives should be compared to the status quo, not a level far below it. Therefore, all alternatives examined should be compared to a 350 c.f.s. baseline, not a 150 c.f.s. baseline.

Reclamation intends to use the Draft Report, once final, to satisfy the scoping requirements of the National Environmental Policy Act (“NEPA”), including identification of the preferred alternative for future Project operations. Therefore, the importance of the Draft Report cannot be overstated as it will influence the future of the Truckee Canal. As such, those who rely on continued canal operations, such as Fernley, have an interest in ensuring that the Draft Report does not stray from the congressional mandate which funded it.

The Draft Report explores numerous canal flows at or below 350 c.f.s., including multiple zero-flow (canal closure) options. These sub-350 c.f.s and zero-flow alternatives stray far beyond the unambiguous language of P.L. 111-8. Therefore, before the final report is issued, the proper scope of the study should be clearly identified and the minimum flow of 350 c.f.s. should be set as the baseline for any future canal operations. If and when the final report is then used to identify a preferred alternative for NEPA review, the alternatives under consideration will be scoped according to congressional mandate.

4. On page 1-15, the Draft Report states that Fernley has not exercised its surface water rights for use within Fernley. This statement is incorrect. Although Fernley has not yet exercised its surface water rights for municipal and industrial use by diverting them to a treatment facility or recharge basin, surface water has been diverted within the city and put to beneficial use. In 2012, Fernley adopted a City Surface Water Use Program, which allows individuals in the municipal service area to lease surface water. In 2012, the inaugural year of the program, over 400 acre-feet of surface water was leased to Fernley residents. This water was diverted and put to beneficial use. Fernley expects this program to continue and increase in scope for the foreseeable future, and cannot predict the volume of surface water that will be requested pursuant to it.

For many years, Fernley surface water rights have also been diverted and placed to beneficial use on its municipal golf course. Clearly, the statement that Fernley has not used its surface water rights is erroneous. Fernley has used and will continue to use surface water. Fernley has the right to divert and use all of its surface water rights. Therefore, any scenario exploring future Project uses should include the full diversion of Fernley’s 9,664 acre-feet of surface water from the Canal.

5. The Draft Report discusses using Fernley effluent from the waste water treatment plant to supplement Truckee Division supplies. However, the Draft Report does not note that this effluent is owned by Fernley. Any use of this asset would require approval and purchase from Fernley. The Study also does not reference the fact this water is currently provided to the Nevada Department of Wildlife for use at the Fernley Wildlife Management Area. Any other use of this water would have an environmental consequence to the wetlands that should be addressed in the Study.

Fernley is not aware of any previous correspondence with Reclamation or any other governmental agency intended to provide a cost estimate or establish availability of effluent. Fernley may not be willing to sell the effluent, and at a minimum would require the buyer to pay market value. The final report must recognize these availability and cost factors for this alternative to be properly explored.

6. On page 3-57, estimates of recharge from the Truckee Canal should consider Stanka Consulting's Draft Canal Loss Report ("Stanka Study"). This report was financed by Reclamation and is the most complete study to date. Attempts to quantify the amount of canal seepage have been addressed in several publications including Sinclair and Loeltz 1963, Van Denburgh, Lamke, and Hughes 1973, Van Denburgh, and Arteaga 1985, Mihevc, et. al. 2002, Stevick, Pohll, and Huntington 2004, Epstein, et. al. 2007, and Shanafield, et. al. 2010. These reports approximate the seepage losses range from roughly 14,000 to 55,000 acre-feet (AF) annually. However, these reports only quantify the total losses between the Wadsworth and Hazen Gauge or only quantify losses in a specific portion of the canal within the Fernley reach.

The determination of losses in the Truckee Canal discussed in the Stanka Study will utilize and expand the study area previously conducted by Shanafield, M., Niswonger, R., Prudic, D., and Pohll, G., and published in *Spatial and Temporal Variability in Seepage from Unlined, Open Channels*, 2011. This method uses a modified version of the United States Geological Surveys (USGS) computer program MODFLOW-2005. The program is used with the Diffusion Wave Package (DFW), developed by Shanafield, et al, 2011, which incorporates the ability to model water moving down an initially dry channel using the diffusion wave analogy.

Once the model was determined to be properly calibrated, a series of model runs were performed. The model runs varied the inflow at the Wadsworth Gauge and the model was run to a steady state condition. Model output files were then used to estimate the total seepage per varying canal flow. The study determined that a nonlinear relationship between flow and seepage existed. Stanka Consulting estimates, based on this study, that a constant flow of 100 c.f.s. will yield canal recharge of 7,611 acre-feet annually, a constant flow of 350 c.f.s. will yield canal recharge of 9,871 acre-feet annually, and a constant flow of 700 c.f.s. will yield canal recharge of 11,671 acre-feet annually within the Fernley Reach as defined by the Stanka Study.

7. Failure to account for 10,000 acre feet of Fernley surface water diversions from the Truckee Canal equates to approximately 21 c.f.s. of reduced flows if Fernley is on an 8-month delivery schedule (minimum flow to utilize 100% of water rights), or 42 c.f.s. if Fernley is on a 4 month delivery schedule (maximum flow to utilize 100% of water rights), as permitted in the Orr Ditch Decree. These flows would displace any water going to Lahontan for storage. Therefore, shortages to the Carson Division will be more severe if the assumption is that Fernley will take their water through the canal. All scenarios considered must include these two more appropriate assumptions based on

Fernley's diversion at Derby Dam. Fernley anticipates that these assumptions will alter the model runs conducted, model results, and potentially any conclusions derived as a result.

We appreciated the opportunity to participate in the Study project meeting last week as a Cooperating Agency and we appreciate the opportunity to provide our final comments on the Study today. Please feel free to contact me at your convenience if you would like more information or if you have questions regarding this initial draft submittal.

Respectfully,

Shari L. Whalen, P.E.  
City Engineer

cc: Daphne Hooper, Interim City Manager  
Paul Taggart, Taggart & Taggart  
Michael Stanka, P.E., Stanka Consulting

## Comments Received in February 2013

Following a series of public meetings and a one-month public review of the Draft Special Report, Reclamation received XX sets of written comments. These commenters are identified in Table H-2-3. All written comments received appear in the following pages.

**Table H-2-3: Sources of Written Comments Received in 2013**

<b>Name</b>	<b>Organization or Affiliation (if given)</b>	<b>Comment Date(s)</b>
Cohen Clements	Water Rights Owner	February 14, 2013
Mike Clements	Water Rights Owner	February 14, 2013
David Wolf	Water Rights Owner	February 14, 2013
John B. Rhodes	Western Regional Water Commission	February 14, 2013
Ernest Schank	Carson Water Subconservancy District	February 20, 2013
Randy Pahl	Nevada Department of Conservation and Natural Resources, Division of Environmental Protection	February 20, 2013
Eleanor Lockwood	Churchill County	February 21, 2013
Rusty Jardine	TCID	February 27, 2013
John W. Jackson	Pyramid Lake Paiute Tribe, Department of Water Resources	February 28, 2013
John Mosely	Pyramid Lake Paiute Tribe, Environmental Department	February 28, 2013
Shari Whalen	City of Fernley Public Works Department	February 28, 2013

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# Public Comment Card

Please use this card to provide the Newlands Project Planning Study team comments and feedback on the information presented today. This card may be returned during the meeting or mailed at your convenience.

Name: Cohen Clements Organization: Water Right owner

Address: 3040 Farm District Rd, Fernley, NV 89408

Email: drumgal@att.net

Comment I Support Alternative 600, it gives best recharge of needed aquifer while supplying the best pressure & volume to irrigation ditches, & feeder lines to irrigated crops. Little water pressure makes it very difficult to get water to flow across dry grounds. Poor pressure in the past has resulted in crop die off at the end of the run. Alternative 600 shows the lowest annual cost & the most volume of needed water. AKA the biggest & best for the buck.

C. Clements

3040 Farm District Rd

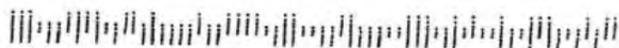
Fernley NV 89408

RENO NV 895



Bureau of Reclamation  
2800 Cottage Way, MP-140  
Sacramento, CA 95825

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# Public Comment Card

Please use this card to provide the Newlands Project Planning Study team comments and feedback on the information presented today. This card may be returned during the meeting or mailed at your convenience.

Name: Mike Clements Organization: Water Rights Owner

Address: 3040 Farm Dist. Road, Fernley, NV. 89408

Email: \_\_\_\_\_

Comment I Support the Alternative 600. It gives the best water pressure to the ditches + furrows that feed the fields. It also gives the best recharge to the aquifer for the local wells. Too little water pressure makes it very hard to get the water all the way down to the bottom of the fields. Over the past few years we have lost some of our fields production because of late water availability + low water pressure, + getting the water to flow over the dry grounds.



ALICE CLEMENTS  
3040 FARM DISTRICT RD.  
FERNLEY NV 89408-8600

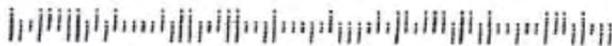
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Bureau of Reclamation  
2800 Cottage Way, MP-140  
Sacramento, CA 95825

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# Public Comment Card

Please use this card to provide the Newlands Project Planning Study team comments and feedback on the information presented today. This card may be returned during the meeting or mailed at your convenience.

Name: David Wolf Organization: Water Rights owner

Address: 3000 Farm District Rd, Fernley, NV 89408

Email: \_\_\_\_\_

Comment I support alternative 600, it will provide the best recharge of the Aquifer while giving the best pressure to ditches and feeder lines for irrigation of crops. Too little water pressure makes it very difficult to get the water to flow across the dry ground, low pressure in past several years resulted in crop die off at the end of the row.

DAVID WOLF

3000 Farm District Rd.

Fernley, NV 89408

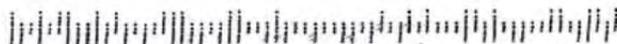
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Bureau of Reclamation  
2800 Cottage Way, MP-140  
Sacramento, CA 95825

541698



# WESTERN REGIONAL WATER COMMISSION

4930 Energy Way, Reno, NV 89502-4106 · Tel: (775) 954-4665 · Fax: (775) 954-4610

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February 14, 2013

RECEIVED

FEB 14 2013

BUREAU OF RECLAMATION  
Lahontan Basin Area Office

## **Hand-Delivered**

Mr. Harvey Edwards  
Bureau of Reclamation  
705 N. Plaza St., Room 320  
Carson City, NV 89701

## **Re: Newlands Project Planning Study -- Draft Special Report**

Dear Mr. Edwards:

I am legal counsel to the Western Regional Water Commission ("WRWC"), a regional water resource planning agency created pursuant to Nevada statute, whose members include the Cities of Reno and Sparks, Washoe County, the Truckee Meadows Water Authority, the Truckee Meadows Water Reclamation Facility, and the Sun Valley and South Truckee Meadows General Improvement Districts. All WRWC members are users of the waters of the Truckee River, and the 2011 Comprehensive Regional Water Management Plan adopted by the WRWC contains extensive and detailed water quality elements relating to the Truckee River. In view of the foregoing background, please consider the following comments on the above Study/Report (the "Report").

Most notably, the Report does not consider how or if modifying the Newlands Project's Truckee River water delivery rates, as described for each alternative, would impact water quality in the Truckee River (both upstream and downstream from the point of diversion). The original Project was designed to be operated under certain conditions. The alternatives evaluated in the Report appear to modify the intent and operating parameters of the Project.

Second, the Report describes the selection and application of an Operation Model (Pre-TROA Planning Model) but, with the exception of the comparison of the model's disaggregated flow to two USGS stations, no model results are presented. Thus, no independent evaluation can be made of the availability of flow in the Truckee River to support the alternatives or how flows in the Truckee River downstream of Derby Dam might be affected by each alternative. Please provide further documentation on model development, assumptions, and simulation results.

Third, the cost models developed for evaluating the alternatives are complex and not all assumptions used in developing the models are clearly stated. Again, independent verification of the results is difficult or not possible. Please provide complete information on the assumptions used to develop the cost models. Additionally, the cost models do not appear to include potential economic benefits for the area associated with alternatives that might increase flows in the Truckee River and to Pyramid Lake. Accordingly, the costs for the alternatives presented are incomplete.



**CARSON WATER SUBCONSERVANCY DISTRICT**  
**777 East William Street, Suite 110A**  
**Carson City, NV 89701**  
**775/887-7450, fax 775/887-7457**

February 20, 2013

**RECEIVED**

FEB 25 2013

BUREAU OF RECLAMATION  
Lahontan Basin Area Office

Kenneth Parr, Area Manager  
Lahontan Regional Office  
U.S. Bureau of Reclamation  
Lahontan Regional Office  
705 N. Plaza Street, Room 320  
Carson City NV 89701

Re: Newlands Project Planning Study Draft Special Report

Dear Mr. Parr:

The Nevada Legislature charged the Carson Water Subconservancy District (CWSD) responsibility for management and development of the water resources in the Carson River to alleviate reductions or loss of water supply, fragmented responsibilities for conservation and supply of water, and protection against threats to the health, safety and welfare of the people of the Carson River Basin. The CWSD was directed by the Nevada Legislature to accomplish the legislative directives with the cooperation of the involved counties. Based on this responsibility, CWSD appreciates the opportunity to comment on the Newlands Project Planning Study for the Truckee Canal.

CWSD strongly believes that any modification or changes to the operation of the Truckee Canal should not impact the current water supply to the Newlands water right owners, nor should it impact the current and future resources on the Carson River Watershed. CWSD is currently developing a Comprehensive Regional Water Management Plan which evaluates future municipal demands. Although the study is not complete, the initial findings indicate that various communities throughout the watershed will need new sources of water to meet their future demands. Based on this need for future water supplies, CWSD reviewed all the different flow alternatives in the Truckee Canal study and has concluded that each alternative will have an impact on the agricultural community, municipalities, and the environment on the Carson River Watershed except for the 600 cfs alternative.

Our comments on the report are broken into two categories, general comments on the study and specific comments on the document.

General comments:

- CWSD has concerns regarding the alternatives that discuss reducing water supply to the Newlands Project by lining the ditches in the Carson Division to reduce the seepage loss. These alternatives require additional evaluation on how the reduction in seepage will

impact the ground water recharge, reduce drainage water to Stillwater Wildlife Refuge, and impact future supply alternatives in the Carson River Watershed.

- Each alternative needs to evaluate possible impacts on recreational activities on Lahontan Reservoir which is one of the most visited state parks in Nevada and is critical to the economic vitality of the Silver Springs and Fallon communities.
- CWSD strongly opposes any alternatives that include the purchase of water rights upstream of Lahontan Reservoir. We appreciate that the study mentioned that purchasing water rights upstream of Lahontan Reservoir would yield marginal benefits during dry years but feel that the study did not go far enough in recognizing that these upper stream water rights are already being used and any transfer will impact the upstream communities.
- This concern also applies to the discussion of purchasing all the upstream storage in the Carson River Watershed. Beside the concerns that these water rights are currently meeting water demands throughout the watershed, the analysis of water availability is flawed. Many of the small reservoirs in the upper Carson River Watershed are not accessible until May or June. The water from some of these high altitude reservoirs may not be available when there is at least 1,000 cfs at the Fort Churchill gage as mentioned on page D-5-4. Many of these upstream reservoirs do not start storing water until the spring runoff occurs. The Alpine Decree recognized this situation when it allowed the upper watershed reservoirs to store water out of priority in the spring. Also the assumption that these reservoirs fill every year is incorrect. Many of these reservoirs have been known not to fill in dry years.
- Another concern with the study is the assumption that using historic hydrology data is a valid reflection of future conditions. As part of the Comprehensive Regional Water Management Plan for the Carson River Watershed, CWSD hired Desert Research Institute (DRI) to evaluate flow water pattern changes on the Carson River. Their study showed that there is a shift in the runoff patterns on the East and West Forks of the Carson River with the runoff occurring earlier in the year and less flow in the early summer months. The DRI study also showed that this trend is likely to continue into the future. Another issue that may influence runoff patterns is changes in land use. Over the last 20 to 30 years irrigation practices have changed and less land is being irrigated.
- CWSD supports the study's statement that further evaluation/investigation into storing water in the upstream Truckee River reservoirs for use in the Newlands Project should be pursued. According to the authors of this study, this may be the cheapest and most effective method for improving the reliability of the Newlands Project.
- In evaluating the various canal flow alternatives it should be noted that, due to maintenance, inspections, and icing concerns in the canal, TCID will not always be able to divert the full alternative amount. This reduction in the actual amount of water available under each alternative needs to be considered when calculating how much water is really available to be diverted. During situations when full diversions cannot be

achieved, saving this water in upstream reservoirs on the Truckee River for later use is a reasonable solution. This would make the Newlands Project water supply more reliable and possibly reduce the capacity needed in the Truckee Canal.

- In reviewing the report we cannot find any reference to the location where the flow rates were established. Are the flow rates for the various alternatives measured at the Derby Dam, Wadsworth gage, or the inlet to Lahontan Reservoir? Please specify where these flow rates are determined.
- The analysis of water available in Dixie Valley seems high compared to some earlier evaluation of the water yield for this area. An inflated water yield from Dixie Valley can distort the amount of water available to the Newlands Project. Until all the studies on the amount of water available from Dixie Valley are completed, we recommend using a conservative figure in calculating available water from this area.
- To achieve the safety level of the Truckee Canal required by the Bureau of Reclamation this will have a financial impact on the water right owners in the Newlands Project. It is important that any alternative ensures the Newlands Project water users are not negatively impacted and any associated costs are spread out over a period of time.

Specific comments:

- Tables 4-10, 4-11, 4-12, and 4-13 which show the estimated costs for each alternative are confusing. These tables can be found on pages 4-48, 4-51, 4-52, 4-56, 4-57, 4-61, and 4-62. If the goal is to show a range in cost, then it may be useful to show the range for each alternative and not try to summarize them in the table.
- When calculating the flows that are shown on Figure 3-15, the amounts do not add up properly. Please revise accordingly.

CWSD appreciates the opportunity to comment on the Newlands Project Planning Study Draft Special Report. The Truckee Canal has been in operation for over 100 years and is an integral component in providing water to the Newlands Project. CWSD cannot support any modification or change to the operation of the Truckee Canal that impacts the current water supply to the Newlands water right owners, or impacts the current and future water resources on the Carson River Watershed. If you have any questions, please contact our General Manager, Edwin James, at 775-887-7456.

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Sincerely,  
  
Ernest Schank  
Chairman

FILE CODE: PRS-3.00  
PROJECT: 29  
CONTROL NO: 13004607  
FOLDER ID: 1229601



# STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

February 20, 2013

**RECEIVED**

FEB 25 2013

BUREAU OF RECLAMATION  
Lahontan Basin Area Office

Mr. Harvey Edwards  
Bureau of Reclamation  
705 N. Plaza Street, Room 320  
Carson City, NV 89701

Re: Comments on "Newlands Project Planning Study – Draft Special Report", January 2013

Dear Mr. Edwards:

Thank you for the opportunity to provide comments on your impressive document. The report provides a significant amount of information in an understandable manner. However, we did find some erroneous statements in Chapter 3 – Study Area Conditions and Chapter 5 - Alternatives of the report. Our comments are as follows:

Chapter 3, Water Quality Section, page 3-61

- 2<sup>nd</sup> paragraph, 3<sup>rd</sup> sentence: This statement should be removed as it is based upon on outdated NDEP document that is no longer valid.
- 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence: This sentence refers to an old TMDL that is no longer considered to be valid. New TMDLs have been established for Total Phosphorus, Turbidity and Total Suspended Solids in the Carson River upstream of Lahontan Reservoir.
- 2<sup>nd</sup> paragraph, 5<sup>th</sup> sentence: This sentence is an incorrect summary of Lahontan Reservoir water quality conditions. Based upon our sampling in 2003-05, turbidity in the reservoir varied from about 5 to 200 NTU, with an average of about 30 NTU. However TDS are generally less than 300 mg/l as stated in the Planning Study.
- 2<sup>nd</sup> paragraph, 6<sup>th</sup> sentence: This sentence incorrectly characterizes Lahontan Reservoir water quality limitations. Lahontan Reservoir currently meets Nevada water quality standards for arsenic (50 ug/l) under the Clean Water Act. However arsenic levels are typically higher than the Safe Drinking Water Act MCL of 10 ug/l. Additionally, there are no trihalomethane limitations that have been identified. However, trihalomethane precursors (algae) are present. Also, the reservoir currently meets Nevada’s pathogen (e. coli) water quality standards for the protection of contact recreation.

File Code	PRJ-3.00
Project	29
Control No	13007610
Folder ID	1229561

Chapter 5, Environmental and Regulatory Considerations Review

- Page 5-8, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence: It is incorrect to broadly state that the Newlands Project is exempt from the Clean Water Act. While 40 CFR § 122.3 and NAC 445A.228 do provide exemptions from discharge permits, they do not provide exemptions from other aspects of the Clean Water Act (CWA) such as the establishment of water quality standards and assessment activities. For example, Lahontan Reservoir is a significant component of the Newlands Project that has been assigned water quality standards under the Clean Water Act, and has been identified as impaired for Nevada’s CWA Section 303(d) List. Also, 40 CFR § 122.3 and NAC 445A.228 do not provide exemptions from the 401/404 process. Recently, a 404 permit and a 401 certification were issued to NDOT in May 2012 for activities in the V-Line Canal associated with bridge replacement.

In addition to any applicable CWA requirements, Nevada has established water quality standards (NAC 445A.070 through 445A.2234) that apply to “waters of the state”. According to NRS 445A.415, “waters of the state” include: 1) all streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems and drainage systems, and 2) all bodies or accumulations of water, surface and underground, natural or artificial. Clearly, the Newlands Project components are considered waters of the state and may be subject to state regulations. The Report should include considerations for working with the Nevada Division of Environmental Protection (NDEP), Bureau of Water Pollution Control to determine the State of Nevada’s requirements for Construction Stormwater permits, Working in Waterways permits, and/or others as necessary.

- Under the discussion of each of the seven Alternatives listed in Chapter 5, the Report should include considerations for working with the Nevada Division of Environmental Protection (NDEP), Bureau of Water Pollution Control to determine the State of Nevada’s requirements for Construction Stormwater permits, Working in Waterways permits, and/or others as necessary.

Please feel free to contact me if you have any questions or need additional information.

Sincerely,



Randy Pahl, P.E.  
Special Projects Coordinator

- Cc: David Gaskin, Deputy Administrator, NDEP  
Kathy Sertic, Chief, Bureau of Water Quality Planning  
Alan Tinney, Chief, Bureau of Water Pollution Control  
My-Linh Nguyen, Bureau of Water Pollution Control  
Jean Stone, Bureau of Water Quality Planning

CODE	PERSON RESP	INITIAL & DATE
100	*	
101		
110		DP 2/25/13
400		
500		
600		
900		
131	*	



# Office of the Churchill County Manager

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February 21, 2013

Harvey Edwards  
Bureau of Reclamation  
705 N. Plaza St., Room 320  
Carson City, NV 89701

**RECEIVED**

FEB 25 2013

BUREAU OF RECLAMATION  
Lahontan Basin Area Office

Dear Mr. Edwards,

Thank you for the opportunity to review the *Newlands Project Planning Study Draft Special Report (Study)* released by the Bureau of Reclamation in January, 2013. The following are the comments submitted by Churchill County:

There is concern regarding the effect to the Carson Division of reduced water flows in the Truckee Canal. If diversions to Lahontan Reservoir are reduced, greater reliance will be placed on the Carson River to meet the needs of irrigators in the Carson Division which will ultimately affect the entire Carson River watershed.

Lahontan Reservoir, according to the Study, is "the heaviest-used camping and boating park in the State system..." and "recreational use of Lahontan Reservoir is strongly tied to water level." Visitors to the area spend money at local businesses and a reduction in the water level will have an economic impact to Lyon and Churchill Counties. There is also the sociological factor of diminishing a recreational site that has been used for generations for summer vacations, weekend outings, and reunions. Many plan their summer recreation around Lahontan Reservoir and are impacted when levels are low. A reliable water level is also important to the health of the wildlife habitat in and around the Reservoir, which includes fish as well as mammals, birds and invertebrates in the ecosystem. Low water levels in the reservoir increase the ability of predators to access the islands, thereby increasing mortality of the species living on the islands. The cottonwood forests surrounding the reservoir are dependent upon a permanent water supply for survival and cottonwood mortality has been witnessed in other parts of Churchill County after water rights have been removed from the site.

According to the Study, hydropower generation contributes one third of Truckee-Carson Irrigation District's (TCID) operating revenue. A reduction in water levels in Lahontan Reservoir will decrease the amount of water to be used for power generation, thereby reducing the revenue to TCID. With the increase in expense for facilities maintenance and anticipated repairs to the Truckee Canal, TCID cannot withstand a reduction in revenue.

Reduced water flows in the Project will affect multiple wildlife refuges in the study area. US Fish & Wildlife Service is the largest water right holder in the Project and they contribute jobs and visitor expenditures to the area. There is a history of waterfowl hunting in the Stillwater area

which may be jeopardized if deliveries are reduced. A reduction in pasture productivity due to reduced irrigation in the Carson Lake and Pasture will reduce the amount of grazing permits issued to ranchers in the area, along with a reduction in waterfowl hunting.

The *Truckee Canal Permanent Repair Special Study* released in 2009 stated that the benefits of increasing efficiency in the Carson Division would not replace the water supply reliability of the Truckee Canal. TCID indicated in personal conversation that the Project has improved its efficiency to 70%. Further improvements in efficiency will be difficult to accomplish without considerable expenditure for canal lining and other practices. According to the Study, increases in efficiencies would likely result in reductions in both groundwater recharge and drain flows to the Stillwater NWR. Reductions in water surface tables will result in an increased demand for water as irrigators would petition for their lands to be classified as bench land which has a higher duty than bottom lands.

The *Truckee Canal Permanent Repair Special Study* stated that the alternative of retiring water rights from the Carson Division to decrease the irrigation needs to the existing supply from Lahontan Reservoir would require retiring more than 40% of current irrigated lands in the Newlands Project. The feasibility of retiring that many acres of agricultural land is questionable, especially with the anticipated increase in milk production in the Lahontan Valley with the arrival of the Dairy Farmers of America dry milk processing plant. There is a concept being heavily promoted around the country that encourages the purchase of locally grown products. Hopefully this trend will also be seen in Churchill County and it seems that a reduction in water righted acres in the Newlands Project is unlikely if more entrepreneurs enter the business of agriculture and dairies increase their herds.

In the Executive Summary on page 2-2 of the Study, it states that “Many of the rights remaining in the Project are being transferred to nonagricultural users or are being retired.” Once again, the use of the word “many” is debatable. It seems there has been very little response to date for participation in the Water Rights Compensation Program administered by Great Basin Land and Water. If water rights are retired by this program or a future program, Churchill County reiterates that there is a dust control ordinance in the County. Dust and weeds are not acceptable consequences of water right transfers and funds for mitigation must be included in any “fallowing” programs instituted by BOR.

The approaches for meeting objectives with a Truckee Canal flow stage of 600 cfs only include safety objectives. There would be no additional measures required to meet the water supply objectives. The estimated annual cost is \$2.10 million, which is the lowest cost of all the flow stages. Reclamation was directed to contribute \$10 million to the Water Rights Compensation Program administered by Great Basin Land and Water. Perhaps those funds would be better used to repair the Truckee Canal rather than attempt to take lands out of production in the Carson Division. According to the Study, “the 600 cfs flow-stage preliminary alternative is likely the most efficient of any preliminary alternative because the safety objective is achieved with the lowest-cost fix for an active canal and the water supply objective is met by the flow stage itself. It includes the fewest and cheapest measures of any preliminary alternative.” Reclamation is encouraged to seriously pursue the 600 cfs alternative, which is less than the historic 900 cfs, and not pursue the lower cfs alternatives which cause irreparable damage.



**CARSON WATER SUBCONSERVANCY DISTRICT**  
**777 East William Street, Suite 110A**  
**Carson City, NV 89701**  
**775/887-7450, fax 775/887-7457**

February 20, 2013

Kenneth Parr, Area Manager  
Lahontan Regional Office  
U.S. Bureau of Reclamation  
Lahontan Regional Office  
705 N. Plaza Street, Room 320  
Carson City NV 89701

Re: Newlands Project Planning Study Draft Special Report

Dear Mr. Parr:

The Nevada Legislature charged the Carson Water Subconservancy District (CWSD) responsibility for management and development of the water resources in the Carson River to alleviate reductions or loss of water supply, fragmented responsibilities for conservation and supply of water, and protection against threats to the health, safety and welfare of the people of the Carson River Basin. The CWSD was directed by the Nevada Legislature to accomplish the legislative directives with the cooperation of the involved counties. Based on this responsibility, CWSD appreciates the opportunity to comment on the Newlands Project Planning Study for the Truckee Canal.

CWSD strongly believes that any modification or changes to the operation of the Truckee Canal should not impact the current water supply to the Newlands water right owners, nor should it impact the current and future resources on the Carson River Watershed. CWSD is currently developing a Comprehensive Regional Water Management Plan which evaluates future municipal demands. Although the study is not complete, the initial findings indicate that various communities throughout the watershed will need new sources of water to meet their future demands. Based on this need for future water supplies, CWSD reviewed all the different flow alternatives in the Truckee Canal study and has concluded that each alternative will have an impact on the agricultural community, municipalities, and the environment on the Carson River Watershed except for the 600 cfs alternative.

Our comments on the report are broken into two categories, general comments on the study and specific comments on the document.

General comments:

- CWSD has concerns regarding the alternatives that discuss reducing water supply to the Newlands Project by lining the ditches in the Carson Division to reduce the seepage loss. These alternatives require additional evaluation on how the reduction in seepage will

impact the ground water recharge, reduce drainage water to Stillwater Wildlife Refuge, and impact future supply alternatives in the Carson River Watershed.

- Each alternative needs to evaluate possible impacts on recreational activities on Lahontan Reservoir which is one of the most visited state parks in Nevada and is critical to the economic vitality of the Silver Springs and Fallon communities.
- CWSD strongly opposes any alternatives that include the purchase of water rights upstream of Lahontan Reservoir. We appreciate that the study mentioned that purchasing water rights upstream of Lahontan Reservoir would yield marginal benefits during dry years but feel that the study did not go far enough in recognizing that these upper stream water rights are already being used and any transfer will impact the upstream communities.
- This concern also applies to the discussion of purchasing all the upstream storage in the Carson River Watershed. Beside the concerns that these water rights are currently meeting water demands throughout the watershed, the analysis of water availability is flawed. Many of the small reservoirs in the upper Carson River Watershed are not accessible until May or June. The water from some of these high altitude reservoirs may not be available when there is at least 1,000 cfs at the Fort Churchill gage as mentioned on page D-5-4. Many of these upstream reservoirs do not start storing water until the spring runoff occurs. The Alpine Decree recognized this situation when it allowed the upper watershed reservoirs to store water out of priority in the spring. Also the assumption that these reservoirs fill every year is incorrect. Many of these reservoirs have been known not to fill in dry years.
- Another concern with the study is the assumption that using historic hydrology data is a valid reflection of future conditions. As part of the Comprehensive Regional Water Management Plan for the Carson River Watershed, CWSD hired Desert Research Institute (DRI) to evaluate flow water pattern changes on the Carson River. Their study showed that there is a shift in the runoff patterns on the East and West Forks of the Carson River with the runoff occurring earlier in the year and less flow in the early summer months. The DRI study also showed that this trend is likely to continue into the future. Another issue that may influence runoff patterns is changes in land use. Over the last 20 to 30 years irrigation practices have changed and less land is being irrigated.
- CWSD supports the study's statement that further evaluation/investigation into storing water in the upstream Truckee River reservoirs for use in the Newlands Project should be pursued. According to the authors of this study, this may be the cheapest and most effective method for improving the reliability of the Newlands Project.
- In evaluating the various canal flow alternatives it should be noted that, due to maintenance, inspections, and icing concerns in the canal, TCID will not always be able to divert the full alternative amount. This reduction in the actual amount of water available under each alternative needs to be considered when calculating how much water is really available to be diverted. During situations when full diversions cannot be

achieved, saving this water in upstream reservoirs on the Truckee River for later use is a reasonable solution. This would make the Newlands Project water supply more reliable and possibly reduce the capacity needed in the Truckee Canal.

- In reviewing the report we cannot find any reference to the location where the flow rates were established. Are the flow rates for the various alternatives measured at the Derby Dam, Wadsworth gage, or the inlet to Lahontan Reservoir? Please specify where these flow rates are determined.
- The analysis of water available in Dixie Valley seems high compared to some earlier evaluation of the water yield for this area. An inflated water yield from Dixie Valley can distort the amount of water available to the Newlands Project. Until all the studies on the amount of water available from Dixie Valley are completed, we recommend using a conservative figure in calculating available water from this area.
- To achieve the safety level of the Truckee Canal required by the Bureau of Reclamation this will have a financial impact on the water right owners in the Newlands Project. It is important that any alternative ensures the Newlands Project water users are not negatively impacted and any associated costs are spread out over a period of time.

Specific comments:

- Tables 4-10, 4-11, 4-12, and 4-13 which show the estimated costs for each alternative are confusing. These tables can be found on pages 4-48, 4-51, 4-52, 4-56, 4-57, 4-61, and 4-62. If the goal is to show a range in cost, then it may be useful to show the range for each alternative and not try to summarize them in the table.
- When calculating the flows that are shown on Figure 3-15, the amounts do not add up properly. Please revise accordingly.

CWSD appreciates the opportunity to comment on the Newlands Project Planning Study Draft Special Report. The Truckee Canal has been in operation for over 100 years and is an integral component in providing water to the Newlands Project. CWSD cannot support any modification or change to the operation of the Truckee Canal that impacts the current water supply to the Newlands water right owners, or impacts the current and future water resources on the Carson River Watershed. If you have any questions, please contact our General Manager, Edwin James, at 775-887-7456.

Sincerely,



Ernest Schank  
Chairman



# Truckee-Carson Irrigation District

## *Newlands Project*

February 27, 2013

Mr. Kenneth Parr  
Area Manager  
Lahontan Basin Area Office  
Bureau of Reclamation  
706 N. Plaza St., Room 320  
Carson City, NV 89701

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Joe Gomes., Director  
Wade Workman, Director

Rusty D. Jardine, Esq., District Manager &  
General Counsel

### Re: Comments on Newlands Project Planning Study Draft Special Report

Dear Kenneth:

On behalf of the Truckee-Carson Irrigation District, we here commend and express appreciation to Reclamation, and to MWH America, Inc., for the creation of the Newlands Project Planning Study. We recognize the extraordinary effort reflected in this study. We commend those who were involved in this undertaking.

I am sure that MWH America would never have appreciated, until the study commenced, the "swirling eddy" in to which they had entered. Life relating to the Truckee River System is earnest. It touches arguably the most beautiful mountain lake in all the world, Tahoe, to what has been "widely described as the most beautiful desert lake in North America [Pyramid]. . ." (See Nevada v. United States, 463 U.S. 110, 115 (1983) citing S. Wheeler, The Desert Lake 90-92(1967)). It touches Reno and Sparks. And, with the passage of the Reclamation Act of 1902 (32 Stat. 388), and through construction of the Truckee Canal, the interests have been extended to Fernley and Fallon The Truckee River and Canal touch concerns of national significance including: Aging Infrastructure; Endangered species; Flood Protection; Terminus lakes; Recharge; Wetlands; The environment; The American Dream; And, the American Farmer! All of these concerns touching water resources, and many-many more, in a state which has, on average, less precipitation (less water) than any other State in the Union! *Id.* Great are the challenges to this and any other study!

Into this remarkable milieu the planning study has been unfurled. To this backdrop we introduce a study that piques our District's anxiety for the future. It evokes what may be our greatest disappointments, including the marginalization of agriculture iand the myth of "low value crops" in the nations food chain. Sadly there exists in our nation a class of consumers

that knows only, and seems not to be bothered by its ignorance, that the food it consumes has been produced by the likes of Raley's, Safeway, or Wal-Mart..

### **Comment 1: Underlying Safe Flow Presumptions.**

The Newlands Project Planning Study is a study conducted ostensibly for the purposes of developing and evaluating alternatives for serving Newlands Project water rights reliably and safely. The study was authorized by the Omnibus Appropriations Act of 2009 (Public Law 111-8, 123 Statute 609). It directed Reclamation to determine the actions necessary to rehabilitate the Truckee Canal so restrictions on its operation could be removed. The study reveals that for any considered alternative above 150 cfs an HDPE cut-off wall or lining should be placed. We believe that the Study improperly presumes that the "without-action" alternative is a 150 cfs Canal flow stage.

The appropriate presumption, the starting point for analysis, is, and must be, that a 350 cfs Canal flow stage. While a 350 cfs flow stage certainly poses a greater risk than a 150 cfs Canal flow stage, the same is a patently objective and reasonable risk. It is based on actual observation: Five years of post-breach operation clearly demonstrate an ability to safely operate the Canal at a flow stage not exceeding 350 cfs. Moreover, no present evidence exists of any condition on the Canal indicative of long-term or short-term failure. No evidence exists, or has ever existed, of any failure under 400 cfs. So, setting the bar at 150 cfs is outcome determinative. It means that any other alternative, 250 cfs. 350 cfs. Or 600 cfs, to comport with safety level of "RR3", must be accompanied by long-term repair to the Canal. We disagree.

The safety level factored into any alternatives other than 150 cfs is excessive. We understand that the potential likelihood of failure of the Canal to be as remote as 1 in 1000! Water users should not be asked to spend Sixty Million Dollars (\$60,000,000.00) or more in an effort to operate the Canal, so as to reduce the odds against failure to almost nothing, particularly where the Canal has already proven itself capable of safe operation at a flow stage not exceeding 350 cfs. We can agree that for the Canal to be returned to "full service", meaning that it is running in the 750 to 800 cfs range, certain measures must be taken, such as an HDPE cut-off wall or lining.

The 150 cfs flow stage, assumes, ostensibly, that all the conditions that existed at the time of the breach, including 20-foot long animal burrow on the Canal side, and a 5-foot long animal burrow on the Canal side, would exist; and, if such conditions persisted, such a flow stage would not result in a breach. But the conditions have changed.

The Truckee Canal has undergone significant rehabilitation, particularly in the Fernley Reach. Gone are the concentrations of animal burrows. Gone, largely, is the habitat for such burrowing animals. The burrowing animals, it seems, have moved on to "greener pastures." We have yet to trap a muskrat in one of our traps this season. Gone are the trees that once existed within the Canal prism. Gone are all the worn-out and leaky takeouts in the Fernley Reach. Gone is the sediment within the prism of the Fernley Reach.

Now present are widened embankments bearing sand filters at Thirty-Four (34) locations in the Fernley Reach. Ironically, the Canal has never been in better condition than it is now; but, it is presumed wrecked above 150 cfs. Many-many of its past weaknesses have been corrected, weaknesses that existed while the Canal was in service ast 750 to 800 cfs. Yet, even after extensive repair, must additional cost prohibitive repairs be now made to make it safe above 150 cfs –despite the fact that it has been operated safely at 350 cfs for the past five (5) years? Could any competent engineer, having performed a field investigation, conclude that the Truckee Canal can be safely operated at 350 cfs without repair? Yes.

Assuming, *arguendo*, that piping due to rodent activity is the most likely cause of the breach of 2008, then the efforts to mitigate against the rodent activity should serve to eliminate the potential for another breach. No reasonable basis exists upon which to presume the presence of hypothetical conditions including 25-foot animal burrows at any place in the Canal. No evidence exists of embankment instability at flows in the range as high as 700 to 800 cfs. No evidence exists of very low strength material either upstream or downstream of the breach site. The embankment within the Fernley Reach is stable. Canal operations have been improved to include a restriction on the ramping rate. The bond between the embankment material and the foundation is excellent. No evidence exists that the contact point between the foundation material and the embankment material is a source of potential failure. The clay content in the embankment is good. No evidence exists of any locations where an obvious and immediate failure could occur. The primordial presumption that repairs must be made under certain flow regimes is, therefore, misplaced.

### **Comment 2: Incorporation of Former Comments**

We previously provided to you comments borne by letter dated October 9, 2012. We here reassert the provisions of the letter commencing with Comment 2 through Comment 6 as the same are, or may be, relevant to the study. The letter is annexed hereto and by reference made a part hereof.

### **Comment 3: Upstream Storage**

The study confirms that which the District has stated repeatedly: That Multi-year Project storage in up-stream reservoirs shows promise as the cheapest and most effective method for improving the reliability of Project water supplies, regardless of the Truckee Canal's capacity. This "recommendation" must be considered the mandate of the study. Let us make it so!

### **Comment 4: Purchase of Up-stream Water Rights**

We oppose any alternative or measure that either directly or indirectly promotes the use of tax-payer dollars for the purchase of water rights, for the purpose of effecting a reduction in demand, within the Newlands Federal Reclamation Project. Have we not seen enough of the strife fomented by such within the entire region?

**Comment 5: Impact on Current Water Supply**

We oppose any measures that result in changes to the operation of the Truckee Canal that impact the current water supply to Newlands water right owners. We further oppose measures that will adversely impact water resources in the Carson River Watershed. We have attained a condition of "critical mass" in our entire region. Any measure calculated to effect some benefit for one interest, either up-stream or down-stream in the Truckee River Watershed or on the Carson, has a baneful impact upon some other important interest elsewhere.

**Comment 6: Impact of Conservation Efforts**

Any measures that include reductions to the water supply, through the lining of certain Canals or ditches, must be accompanied by further study, including impacts upon ground water recharge, reduction in waters to the Stillwater Wildlife Refuge, and impacts upon future supply alternatives in the Carson River Watershed.

**Comment 7: Impact on Recreational Activity**

Any alternative must evaluate any possible impacts upon recreational activity on Lahontan Reservoir. Lahontan is one of the foremost parks in Nevada and is integral to local economies supported thereby.

**Comment 8: Impact on the City of Fernley**

Any alternative involving a lining to the Truckee Canal must be carefully evaluated in so far as the potential for an impact exists upon the City of Fernley.

Thank you for consideration of these comments.

Sincerely,

TRUCKEE-CARSON IRRIGATION DISTRICT

By:   
Rusty D. Jardine, Esq., District Manager

Enclosure



# Truckee-Carson Irrigation District

## *Newlands Project*

October 10, 2012

Sent via Email and USPS

Kenneth Parr  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza St., Room 320  
Carson City, NV 89701

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Eric Olsen, Director  
Joe Gomes., Director  
Wade Workman, Director

Rusty D. Jardine, Esq., District Manager &  
General Counsel

Re: **Newlands Project Planning Study Draft Comments**

Dear Kenneth:

On behalf of the Truckee-Carson Irrigation District, we here congratulate Reclamation, and its contractor, MWH Americas, Inc., for the effort associated with provision of the tentative draft of the Newlands Project Planning Study. We acknowledge, in particular, Jeff, Alex, and Ryan, for their contributions. It is clear that this study was an extraordinary undertaking.

Pursuant to our reading of the tentative draft, and having participated in the stakeholders workshop on October 4, 2012, we here provide the following "draft" comments:

### **Comment 1: Time-Frame for Stakeholder Review.**

On October 4, 2012 a stakeholder meeting was conducted regarding the Preliminary Draft of the Newlands Project. The date of October 10, 2012 was set for the receipt of comments by stakeholders. A preliminary draft of the study was received by TCID on the 27th day of September, 2012. As of the time of the meeting of the Board of Directors of TCID, conducted October 8, 2012, the Directors had not completed a review. Insufficient time has been given for the provision of comprehensive stakeholder review.

### **Comment 2: Upstream Storage.**

In Chapter 3 of the study, under the caption "Newlands Project Water Supply Reliability, we find the following language: "The ability of the Newlands Project to deliver water to water rights holders in a reliable manner is a primary objective for the Study." (Study, p. 3-55). Later, in Chapter 4, the Study then looks at "retained water supply measures". (See, e.g., p. 4-20). Among the supply measures considered was "[m]ulti-[y]ear [u]pstream [s]torage." Id. at p. 4-24. This measure provides for Project water to be stored in upstream reservoirs on the

Truckee Canal during periods when either the Truckee Canal or Lahontan Reservoir are incapable of capturing, storing, or delivering the water supply. In essence, such water in storage would be held as carry-over from year-to-year until such a time that they could be utilized. *Id.* at pgs. 4-24, 25. The intent would be to reduce the impact of the limitations imposed upon the Truckee Canal by providing flexibility to divert Claim 3 water into the Truckee Canal, at Derby Dam, at a time when conveyance to water users is possible. *Id.* at p. 4-25.

This concept of upstream storage is cast as "Retain[ed] in Concept Only." *Id.* The concept is embraced as "physically possible"; but, then, provides that "institutional arrangements do not exist to allow Truckee Canal water rights to remain in Truckee River Reservoirs over multiple years." *Id.* Significantly, the study states: "This Study finds that facilitating multi-year Project storage in upstream Truckee River reservoirs shows promise as the cheapest and most effective method for improving the reliability of Project water supplies, regardless of the Truckee Canal's capacity." *Id.* The Study then cites circumstances that attend the Project water supply:

1. OCAP does not allow for upstream storage;
2. TCID is not a signatory to TROA;
3. That an agreement would need to be had among TCID, Reclamation, and one of the TROA signatories for creation of upstream storage; and,
4. That owing to the on-going lawsuits, it would be difficult to implement such an option.

*Id.*

In view of an express objective associated with the study, i.e., "[t]he ability of the Newlands Project to deliver water to water right holders in a reliable manner. . .". multi-year upstream storage should be deemed both a measure and a preliminary alternative (See, pgs. 4-1 and 4-24-25.). Up-stream storage certainly addresses an important planning consideration -that of reliable water delivery; and, it serves to resolve an identified problem, i.e., limitations imposed upon the Truckee Canal. Moreover, the legal duty to create a reliable water supply for the benefit of water right holders in the Newlands Project does not devolve upon the District. While the District is now engaged in litigation, this status does not create a duty to create nor to supplement the water supply in the Truckee River watershed. The duty of water supply creation is that of the United States. This duty has not been transferred by Reclamation to the District. (See; Contract No. 7-07-20-X0348, the Reclamation Act of 1902, or the Settlement Act, (P.L. 101-618). Accordingly, the study should consider what Reclamation could do to provide storage. A starting point would be to institute the rule-making process and remove any restraints borne by OCAP -so as to allow what has been signaled as "the cheapest and most effective method for improving the reliability of Project water supplies" (See Study, pl. 4-25).

**Comment 3: Key Assumption-a 150 cfs Flow Stage.**

An underlying assumption relating to the study is that the long-term Truckee Canal capacity restriction will be a flow stage of 150 cfs –absent significant modification or rehabilitation. (See Study, p. 3-15). In view of all of the efforts we have made to correct for safety risks on the Canal, the assumption of “substantial risk” is misplaced and belied by the public record. Since the breach of 2008, the District has directly eliminated certain safety risks in the Canal, including the repair of the conduits in the Fernley Reach. The District has provided repair to the same. Moreover, the District has also completed, since 2009, some 30 RO&M recommendations as follows:

RO&M #	TCID WO#	DATE COMPLETED	ANTICIPATED COMPLETION DATE	DESCRIPTION	LOCATION	RO&M CATEGORIES
2009-3-A	54920	9/20/2010	Ongoing	Monitor Gay Seep. RO&M recommendation to add to Truckee Canal SOP.	Truckee Canal	TRUCKEE
2003-2-B	53316	11/17/2010		Gay Seep	Truckee Canal	TRUCKEE
2003-2-D	52812	3/18/2011		Truckee Canal. Repair south bank water holes.	Truckee Canal	TRUCKEE
2009-2-B	53004	3/17/2011		Liner Voids. Repair upstream liner voids at Gay Seep.	Truckee Main Canal	TRUCKEE
2009-3-I	53898	7/10/2011		Derby Spill Seal	Truckee Canal	TRUCKEE
2003-2-K	49732	9/4/2007		Floating Safety Cable	Lahontan Main	TRUCKEE
2006-2-E 2003-2-AD	53910	3/18/2011		Repair embankment/concrete lining upstream of Tunnel #1.	Truckee Main Canal	TRUCKEE
2006-3-G 2009-2-H	53907	12/1/2010		Repair concrete loss on wall areas. Tunnels #1 & #2	Truckee Main Canal	TRUCKEE
2006-3-H		10/19/2010		TC-T39. Fill hole after take-out plugged	Truckee Main Canal	TRUCKEE
2009-3-A	54922	10/19/2011		Repair corrosion under grouted riprap at left downstream bank	Derby Dam	TRUCKEE
2006-3-I 2009-2-A	53011	10/19/2012		Repair erosion beneath grout at end of left d/s wingwall.	Derby Dam	TRUCKEE
2009-2-D	52387	11/17/2010		Liner Void. Repair left canal lining upstream form Pine Tree Seep.	Truckee Main Canal	TRUCKEE
2009-2-C	53905	11/17/2010		Remove tree at left inner canal bank upstream of Dog Kennel Seep near station 159+40.	Truckee Main Canal	TRUCKEE

2006-3-B	52349	12/2/2010		Develop and implement written standard and emergency operations and response plans.	Truckee Main Canal	TRUCKEE
2009-2-E	1107		ONGOING	Establish program to remove, level and compact canal spoil on outer banks of canal.	Truckee Main Canal	TRUCKEE
2009-2-F 2010-1-A	53914	6/5/2012	ONGOING	Establish program to clear vegetation and mow the inner & outer banks of canal.	Truckee Main Canal	TRUCKEE
2009-2-G	52379	5/8/2009		Replace damaged 4x6 timber support at TC6.	Truckee Main Canal	TRUCKEE
2009-2-H	52348	3/25/2011		Restore compacted backfill at turnouts in Fernley Reach between. Structure and canal embankment. TC2 and TC11.	Truckee Main Canal	TRUCKEE
2009-2-J	54924		2013 on five-year plan	Repair structural cracks in footing. Anderson Check.	Truckee Main Canal	TRUCKEE
2009-2-I	52350	7/27/2010		Repair structural cracks in walkway or replace walkway. Anderson Check.	Truckee Main Canal	TRUCKEE
2009-3-B	52381	5/28/2009		Truckee Main Canal. Remove abandoned timber structures on right bank downstream of Derby Dam, and canal side of Derby (Pyramid) Wasteway and Gilpin Spill	Truckee Main Canal	TRUCKEE
2009-3-D	53894	11/19/2010		Truckee Main Canal. Restore missing support bolts for gate No. 3 at Anderson Check.	Truckee Main Canal	TRUCKEE
2009-3-E	52376	5/8/2010		Repair structural crack through the stoplog slot in the rightmost pier of Allendale Check.	Truckee Main Canal	TRUCKEE
2009-3-F	52377	10/19/2010		Reattach the separated electrical conduit at the Allendale Check.	Truckee Main Canal	TRUCKEE
2009-3-G	53009	7/27/2010		Remove abandoned timber guardrail posts at the Allendale Check.	Truckee Main Canal	TRUCKEE
2009-3-I	53898	12/1/2010		Seal leaking lift line above Derby Wasteway gates.	Derby Dam	TRUCKEE
2009-3-J	53021	7/27/2010		Reattach improperly installed wire rope at upstream Derby Wasteway Gate.	Derby Dam	TRUCKEE

2009-3-L	52378	12/17/2010	Truckee Main Canal. Add more earth cover to gas line crossing for the service roads at Station 1488=20 (downstream from Bango Check)	Truckee Main Canal	TRUCKEE
2010-2-K	53623	7/13/2010	Complete the construction of the filter and drainage berm on the left canal embankment at the Farm District Rd. seepage area to the lines and grades provided on the applicable Bureau design drawings.	Truckee Main Canal	TRUCKEE
2006-2-F	53703	11/10/2010	Fill notches between. TC8 & TC9 Hwy. 95 Alt.	Truckee Main Canal	TRUCKEE
2010-2-M	53911	3/25/2011	Perform and record an internal video inspection of the turnout conduits in the Fernley Reach of the Truckee Canal and including turnout TC-1 and the Stix (Farm District Rd.) seep location and have a Registered Professional Engineer (PE) perform a condition assessment of each turnout conduit. Submit these video inspections and condition assessments with any conclusions reached in a report to LBAO for review. Reclamation's independent review of the video inspections and report may not lead to acceptance of the PE's conclusions. 2009-2-K Clear debris from Painted Rock area.	Truckee Main Canal	TRUCKEE
2009-2-K	53003	4/23/2010		Truckee Main Canal	TRUCKEE
2009-3-L	54038	12/17/2010	Truckee Main Canal. Add more earth cover to gas line crossing for the service roads at Station 1488=20 (downstream from Bango Check)	Truckee Main Canal	TRUCKEE

Nevertheless, and notwithstanding the foregoing corrective actions having been taken, the study states: “. . . substantial risks remain within the canal even with the completion of the conduit repair.” Id. at p. 3-14. What are these “substantial risks?”

In May of 2008, the United States District Court entered its “Interim Temporary Restraining Order” in *Kroshus v. United States* (Case No. 3:08-cv-LDG-RAM). Significantly, as we recall, it was evidence presented by the United States that permitted the establishment of a water flow in the Truckee Canal at 350 cfs or less in the first place. (See Order). And, since entry of the order the Canal has been operated safely. We agree that purely from the perspective of risk reduction a flow stage of 150 is “safer” than that of 350. No flow is the safest! But with either a 150 or a 350 stage limitation, the flow stage lies within the foundation of the Canal. That fact is, or should be, dispositive as to any determination not to further restrict the flow stage. How, then, do we say, now, in view of and in despite of all our efforts to repair the Canal, and to have seen its safe operation under the 350 stage limitation, including the replacement of the conduits which were deemed potential failure mechanisms, that we must go back to a 150 cfs flow stage. Having made extensive repairs, including the conduits and seeps in all reaches of the Canal, how is the Canal less safe now than it has been while operated at 350? If the goal is the elimination of ALL risk to public safety then action would include closure of the Canal. We think that a 150 stage flow in the Canal is tantamount to Canal closure. Injury to existing water rights will accrue. The key assumption that a substantial risk to public safety exists, above a 150 cfs flow stage, is unsupported by the facts, and is unwarranted. (See attached photographs of completed conduit project).

#### **Comment 4: Reduction in Agricultural Production**

The study states that “[i]n general, the primary study area is likely to see an overall reduction in agricultural production in response to various existing programs or efforts to acquire and/or retire Newlands Project water rights in both the Truckee and Carson Divisions.” Id. at p. 3-45. Referring to the Carson Division, it was reported that the result of such trends “[was] a reduction in agriculture and an overall shift in water use that increases Project water deliveries to the Lahontan Valley wetlands.” Of the Truckee Division it was said that “agriculture is expected to decrease by nearly 40 percent.” Id.

Local agricultural producers do not agree with the opinion expressed especially regarding the Carson Division. Under construction at Fallon is an \$85 Million dairy products facility. Eric Olsen expresses concern that local dairy farms will not be able to keep pace with the demand for milk production by the new facility; that reliance will be made upon outside producers to sustain both the direct product supply needs to the new production facility and the indirect product including, forage, i.e., “corn silage, hayage, ryeage” needs of our local producers. (Eric Olsen, Dairy Farmer, Director, TCID, personal communication, October 8, 2012, Fallon, Nevada).

**Comment 5: Water Use in the Truckee Division.**

As was made manifest by the stakeholders meeting held October 4, the assumption regarding the leasing of surface water rights, by the City of Fernley to the Pyramid Lake Paiute Tribe is incorrect. The City of Fernley is evaluating other uses associated with their surface water resources. Such uses include a program for the re-watering of lands removed from agricultural production. Future uses may also include the development of a lake area for infiltration purposes.

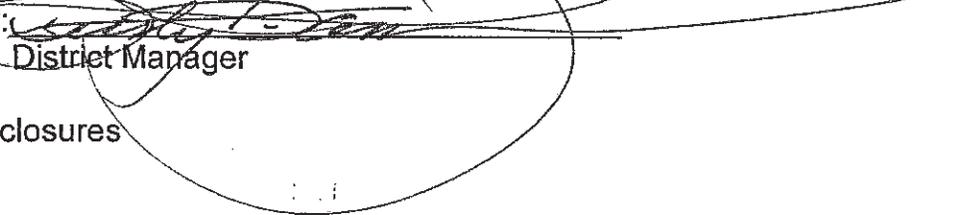
**Comment 6: 2009 Omnibus Appropriations Act, Public Law 111-8.**

We understand that the express purpose of a study to be performed relating to the Truckee Canal, as authorized by the Omnibus Appropriations Act of 2009 ( Public Law 111-8, 123 Statute 609), was that of determining the full extent of rehabilitation needed for the canal to resume flows above 350 cubic feet per second. The introduction to the Planning Study, at p.1-1, cites the purpose of the appropriation under Public Law 111-8 "to determine the actions necessary to rehabilitate the Truckee Canal so restrictions on its operation can be removed." The Study must advance measures and alternatives necessary for the elimination of restrictions on Canal operations –even that of 350 cfs. Measures and alternatives include a 0 flow in the Canal. Consideration and implementation of contradictory measures and alternatives within the study are ultra vires and it exceeds the scope of authorized analysis.

Thank you for your consideration of these comments. Should you have any questions, please do not hesitate to contact us.

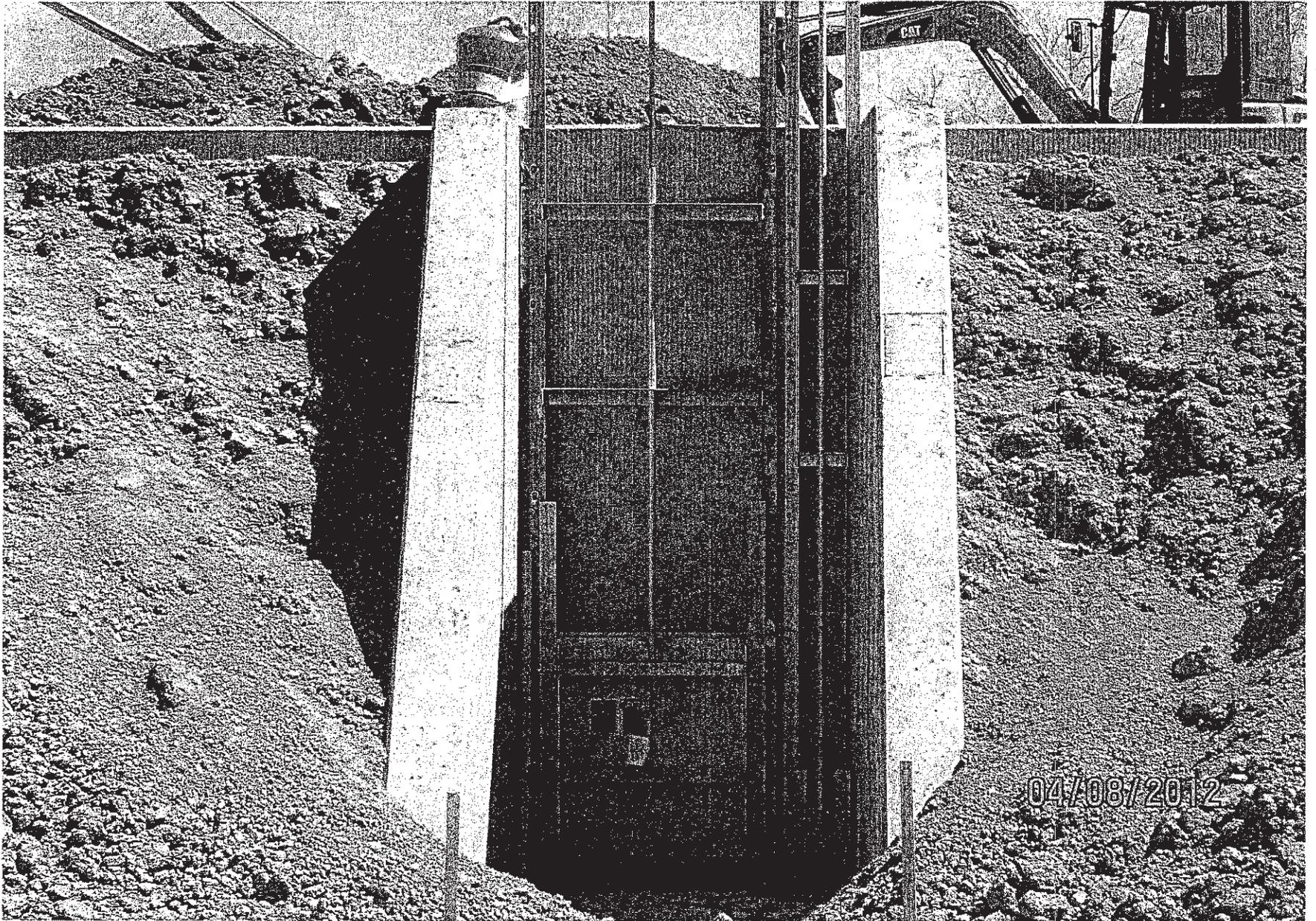
Respectfully,

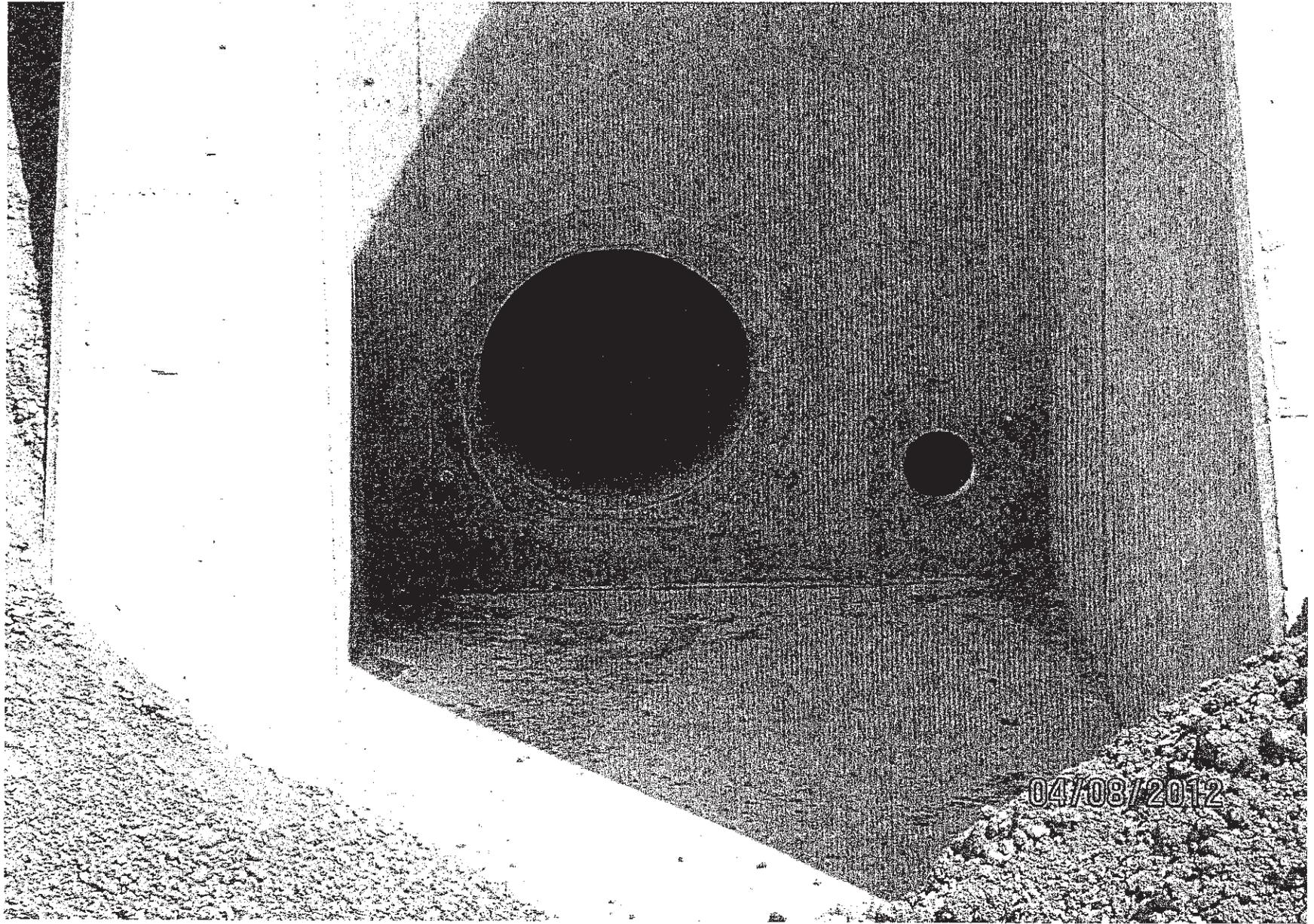
TRUCKEE-CARSON IRRIGATION DISTRICT

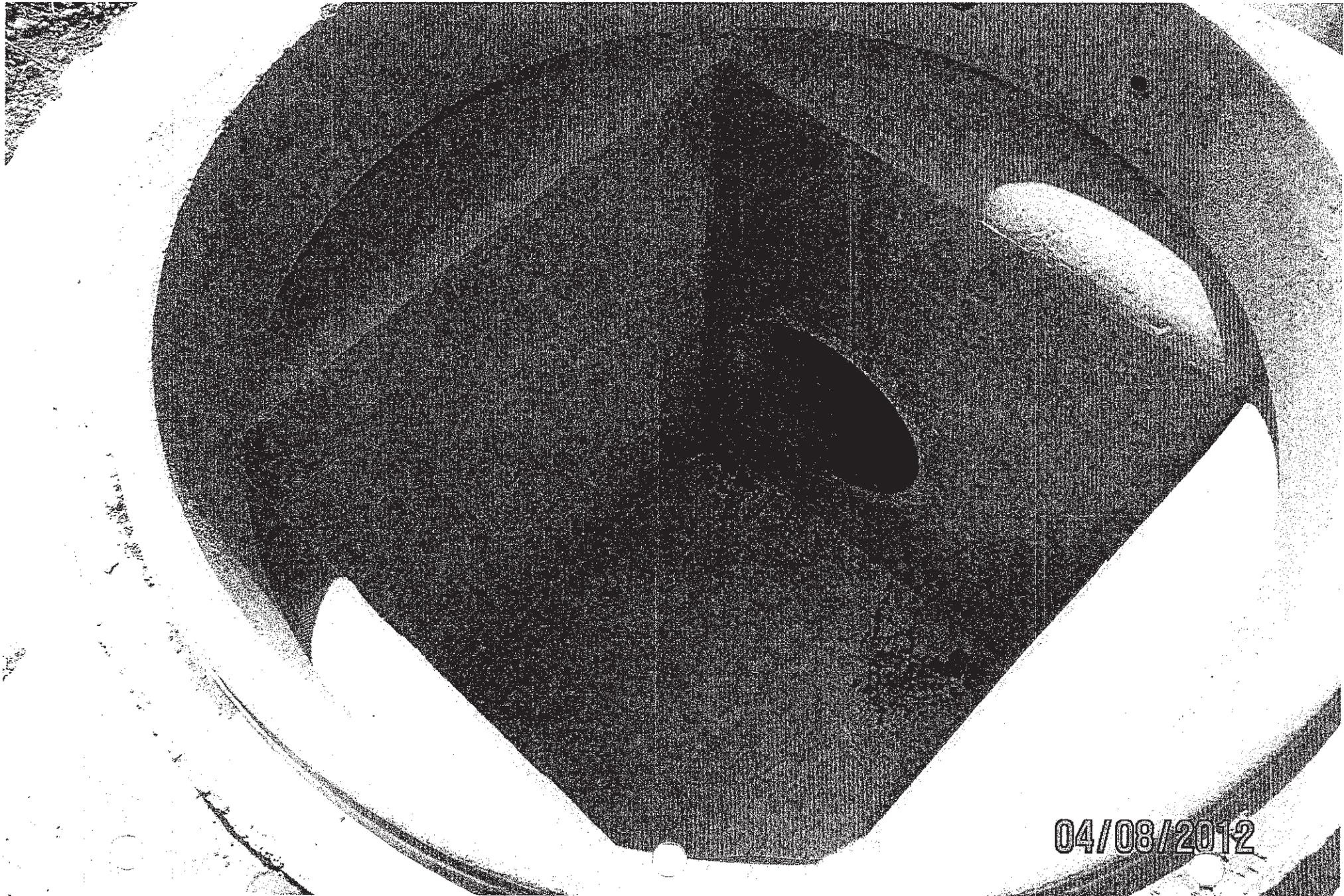
By:   
District Manager

enclosures

cc: TCID Board of Directors



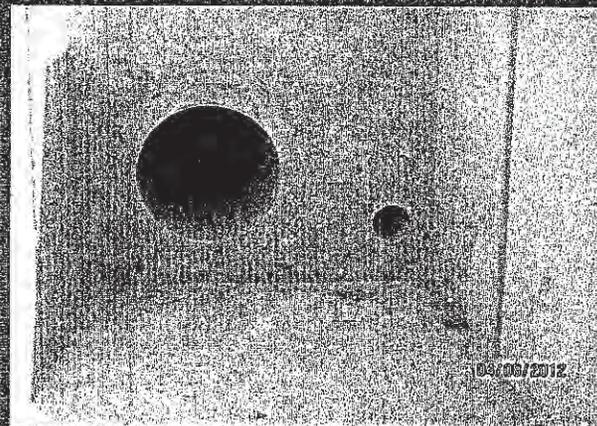
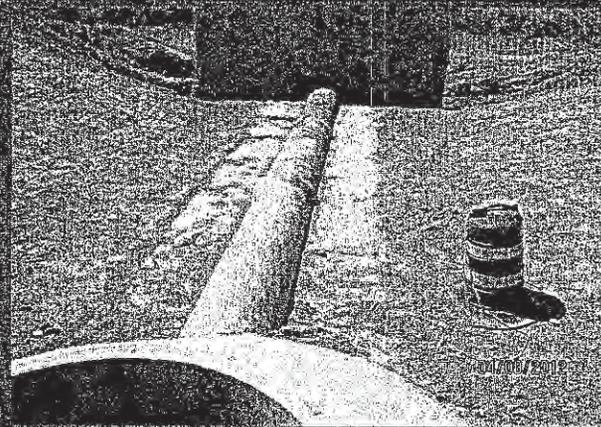
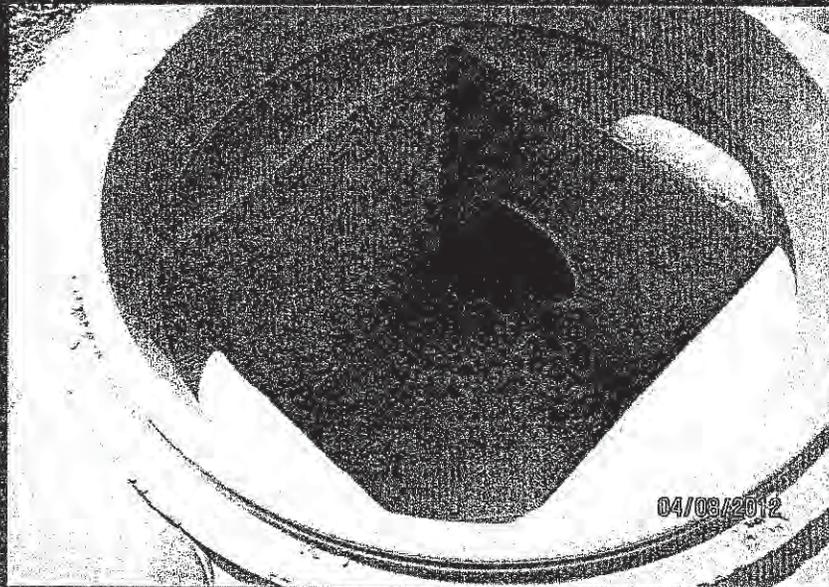




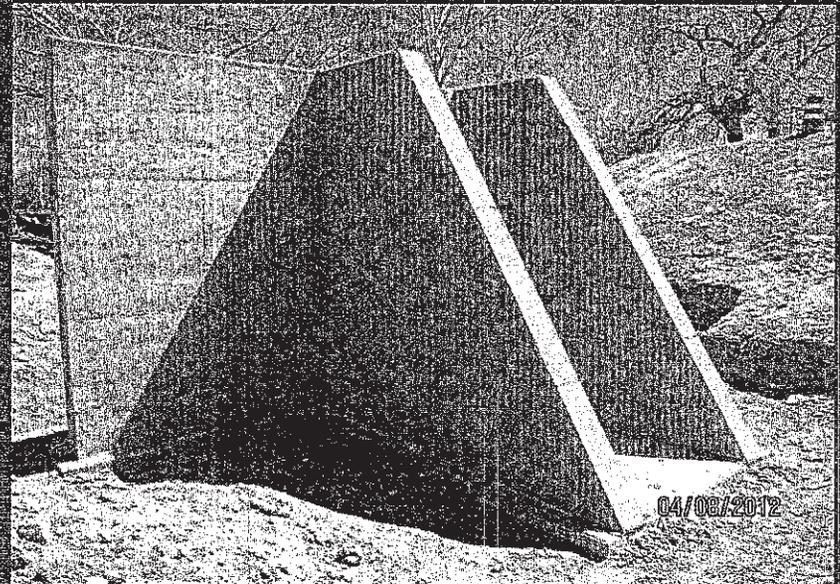
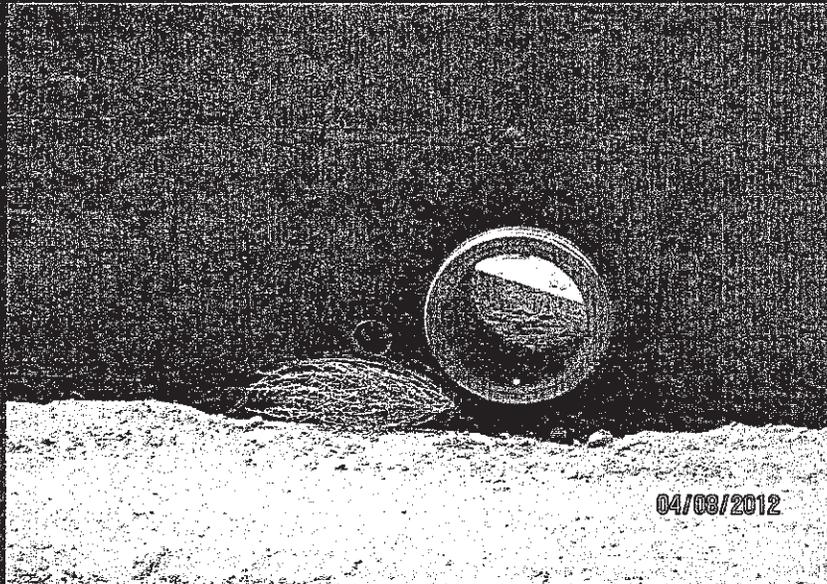
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# ID 7 or TC - T10



# ID 9 or TC - T11





## Pyramid Lake Paiute Tribe Department of Water Resources

P.O. Box 256  
Nixon, Nevada 89424

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

February 28, 2013

Harvey Edwards Bureau of  
Reclamation Lahontan Basin Area  
Office 705 North Plaza Street, Suite  
320 Carson City, Nevada 89701

Subject: Newlands Project Planning Study – Draft Special Report

Dear Mr. Edwards,

This letter provides the Pyramid Lake Paiute Tribe, Department of Water Resources' ("Tribe") comments on the Newlands Project Planning Study – Draft Special Report ("Planning Study") prepared by the U.S. Bureau of Reclamation ("Reclamation") and dated January 2013. The Tribe's consultant (Stetson Engineers) previously provided comments to Reclamation on the September 2012 version of the Draft Planning Study Report. Most of the previous comments on the September 2012 Draft Planning Study Report pertained to questions and concerns regarding the method and assumptions used by Reclamation to determine "current and potentially active water rights" for the Newlands Project – many of those comments are restated herein.

The results of the Planning Study are described by Reclamation as potentially providing context and guidance for Congressional authorization and appropriation of funds in the future for a feasibility study, construction, or other activities associated with the Newlands Project, including repairs to the Truckee Canal and its future operation. With all due respect, the Tribe's review of the Planning Study raises concerns as to whether the current list of select Planning Study Alternatives, which were determined using questionable methods and assumptions, warrants Congressional authorization and appropriation of additional funds, in order to further develop and possibly implement any alternatives from that select list. From the Tribe's perspective, the select list of Planning Study Alternatives, and particularly the methods and assumptions that were used to determine the select list of Planning Study Alternatives, are not adequately protective of the Tribe's trust resources, including recovery of endangered cui-ui and threatened Lahontan cutthroat trout (PL 101-618), and are inconsistent with the intent of the Water Quality Settlement Agreement, which the United States and the Tribe, among others, are parties to.

The Planning Study identifies the Tribe as a potential cost-share partner with Reclamation for implementation of certain Planning Study Alternatives, based on the Tribe's interest in how various Alternatives impact surface water flows in the lower Truckee River and other related issues, such as endangered species recovery and recoupment of water from the Truckee-Carson Irrigation District ("TCID"). This cost-share arrangement comes as a completed surprise to the Tribe, and is illustrative of how disconnected this Planning Study is with the Tribe's interests.

The stated primary objectives of the Planning Study are to:

- 1) Address Truckee Canal Safety Concerns (“Safety Objective”), and
- 2) Satisfy the Exercise of Newlands Project Water Rights (“Water Supply Objective”)

While these primary objectives certainly have a significant potential to impact lower Truckee River flows and the Tribe’s trust resources, the overwhelming beneficiaries of implementing the Planning Study Alternatives are clearly the water users within the Newlands Project. The Tribe understands and appreciates the importance of satisfying both safety concerns associated with deliveries of water through the Truckee Canal and the rights of authorized water users within the Newlands Project. Although the Tribe appreciates the impression that there is a potential for improved flows in the lower Truckee River resulting from physical improvements to Newlands Project facilities in order to reduce canal seepage and other losses within the Newlands Project, the Canal will continue to divert substantial amounts of water from the Truckee River adverse to the listed species in the lower Truckee River and Pyramid Lake.

Again, the Tribe’s review of the Planning Study raises concerns that Reclamation’s methods and assumptions have produced a narrow set of Planning Study Alternatives, now proposed for further evaluation, that are based on unrealistic estimates of current and future demands for Newlands Project water. The unrealistic estimates for current and future water demand have resulted in a select set of alternatives having higher costs than would be expected for alternatives based on more realistic water demand estimates. Additionally, the methods and assumptions utilized by Reclamation for the current Planning Study are in direct conflict with the methods and assumptions utilized for the 1997 Final Adjusted Operating Criteria and Procedures (“OCAP”) and the 2008 Final Environmental Impact Statement/Environmental Impact Report for the Truckee River Operating Agreement (“TROA EIS/EIR”). By utilizing unrealistic methods and assumptions for future demand that conflict with the OCAP and TROA EIS/EIR, the results of the Planning Study, particularly the select set of Planning Study Alternatives, overstate future water supply shortages anticipated to result from implementation of any of the selected set of Planning Study Alternatives. Furthermore, the unrealistic assumptions utilized for current and future water demand have resulted in Reclamation’s elimination of otherwise viable Planning Study Alternatives (and Planning Study “measures”) that would protect the Tribe’s trust resources.

#### Specific Comments

Provided below are specific comments, with page references to the Planning Study shown in brackets.

1. The Planning Study developed the baseline water demand condition (“the Desired Reliability Scenario”) and a select set of seven (7) “Study Alternatives” for future water demand conditions, using the assumption that **all** (100 percent) “Potentially

Active” Newlands Project water rights could be fully exercised for their specified uses (irrigation, municipal and industrial, environmental, etc.) in any given year [pg. C-4]. **This assumption is unrealistic.** For a multitude of reasons (unrelated to Truckee Canal capacity), it is implausible, if not impossible, to irrigate 100 percent of the water-righted acreage in the Newlands Project in any year. It is equally implausible, if not impossible, for all other non-agricultural water users to also fully exercise 100 percent of their water rights concurrently with a 100 percent exercise of the irrigation water rights.

2. The Planning Study states that it is “...*constructing a conservative assumption that all legal water rights will be fully exercised for their specified beneficial uses. This assumption is consistent with the Study objective to satisfy the exercise of Project water rights and to develop methods for maintaining water supply reliability for all Project water right holders in the future*” [pg. C-4]. In addition to being unrealistic from a physical standpoint of exercising 100 percent of all water rights, the assumption that all legal water rights will be fully exercised is inconsistent and conflicts with the Planning Study objective to improve Truckee Canal safety, and has resulted in the development of Truckee Canal improvement alternatives that would be more costly to implement than would be for alternatives that address reasonable, future water demand conditions.

3. The following statement, in the Planning Study [pg. C-8] is of major concern to the Tribe: “*This Study ignores the records of irrigated acres, including records of ongoing special allocations and temporary transfers.*” It makes absolutely no sense to ignore the records of irrigated acres when a primary objective of the Planning Study is to determine current and future water supply reliability for irrigation on the Newlands Project. The statement conflicts with the OCAP, which specifically requires an annual determination of actual irrigated acreage in setting Truckee Canal diversions for delivery to the Newlands Project.

4. Reclamation makes annual determinations of Newlands Project water righted irrigated lands, and the water right status of irrigated lands in the Newlands Project, for the purpose of determining Newlands Project water demand. Reclamation’s annual determination of irrigated acreage utilizes current information for Newlands Project water rights, water duty, and irrigated acreage – the same three attributes specified on page C-1 of the Planning Study, which are assessed independently under the Planning Study using various assumptions and accounting exercises to ultimately estimate currently active water rights and potentially active water rights. Reclamation’s annual irrigation determination, utilizes a GIS (Geographic Information System) database, including TCID Serial Numbers and other TCID data, and satellite imagery to determine water right and irrigation status for each field in the Newlands Project. Reclamation’s GIS database and 2011 Irrigation Determination

should be used as the starting point (and the baseline) for evaluating the currently active Newlands Project water rights and current water demand.

5. Table C-6 of the Planning Study shows **63,596 total acres** of “Current and Potentially Active” Newlands Project Water Rights, whereas Reclamation’s Final Determination of Irrigated Acreage for the 2011 Irrigation Season identified 56,899.7 water-righted and irrigated acres, and 3,212 water-righted but not irrigated fields (Reclamation, September 28, 2012, “Enclosure 9”), for a total of approximately **60,112 acres** of “current and potentially active” water-righted acres. Reclamation’s 2011 Irrigation Determination effectively illustrates the magnitude of the error in the assumptions made by the Planning Study for the active water-righted acreage which amounts to about 6,700 acres (**error = 63,596 – 56,899.7 = 6,696.3 acres**). This is a glaring error in the Planning Study in light of continuous reductions in the Project irrigated acreage over the last ten years. Even “potentially active” water righted acres, which is based on erroneous assumptions in the Planning Study, is erred by 3,484 acres (**error = 63,596 – 60,112 = 3,484 acres**). The Planning Study alludes to the above-noted discrepancies in the following statement found in Appendix C: *“This analysis found that the acreage of water rights that are known to be permanently inactive did not fully account for the differences between the total acreage of rights on record and the historical average water-righted irrigated acreage”* [pg. C-4]. **In the context of what this Planning Study is attempting to accomplish, and the importance of accurately accounting for current and potential Newlands Project water demand, this discrepancy of 6,700 or even 3,484 acres is too large to dismiss from further investigation, and too large to simply assume the unaccounted-for water righted acreage is not permanently inactive and may become potentially active in the future.**

6. Table C-6 of the Planning Study identifies over 58,200 acres of agricultural water rights (non-“M&I” water rights) for the Carson Division and approximately 2,300 acres of agricultural water rights for the Truckee Division, for a total of 60,500 acres of “Current and Potentially Active” agricultural water rights in the Newlands Project. Conflicting with Table C-6, the Planning Study also states *“Currently, the Project delivers water to about 57,000 acres of actively irrigated agricultural land – 2,000 acres and 55,000 acres in the Truckee and Carson Divisions, respectively...”* [pg. 17]. **The difference between the actual current agricultural demand (57,000 acres) and assumed maximum potential current agricultural demand (60,500 acres), is 3,500 acres.** The assumed maximum potential current agricultural demand (60,500 acres) has not been met or exceeded since at least 1985 [Table C-3], irrigated acreage in the Newlands Project has been decreasing historically, and will continue to decrease for the reasons acknowledged in Appendix C of the Planning Study [also see Table C-11]. The Planning Study should use the current actual irrigated acreage for the baseline current water demand condition – anything more is unrealistic and only

acts to complicate and discredit the assessment of Planning Study Alternatives that could meet the Truckee Canal Safety and Water Supply Objectives.

The Planning Study has created a myth under the “current and potentially active” Newlands Project water rights demand based on 63,596 acres. The study is fundamentally flawed by not taking into account the reality of the continued reductions in demand into the future and not using the current 57,000 acres as the baseline. A realistic assessment of the Newlands Project demand based on the recent history would qualify the No Canal Alternative (zero flow) as one of the competing alternatives in the Study.

1 It is stated that the Planning Study “...seeks to provide reliable water supplies for the Project, and reliability will be assessed relative to the maximum future Project demand.” The approach of assessing maximum future demand, when applied to the evaluation of water supply reliability alternatives, unduly results in the elimination of certain alternatives as being cost prohibitive or unable to meet water supply reliability performance objectives. Reliability should not be assessed relative to the maximum potential future demand (particularly when there are unresolved discrepancies in the data used to determine maximum potential demand), but instead on demand assumptions that are realistic and can be compared with actual historical demand and water supply reliability conditions. Again, this maximum potential demand based on 63,596 acres has been created by the authors of the Planning Study and has no grounding in historical trends for water demand within the Project.

2 The Planning Study notes that the City of Fernley has grown through the transition of agricultural lands into residential developments, with the underlying agricultural water rights of previously agricultural lands dedicated to Fernley with the transition to residential development. The Planning Study also notes that Fernley currently does not receive any surface water deliveries from the Truckee Canal and has only recently exercised its surface water rights by leasing them to the Tribe to remain as instream Truckee River flows. Furthermore, the Planning Study correctly notes that Fernley would need to satisfy a number of permitting and other requirements to use Newlands Project water, as well as use the Federal facilities such as the Truckee Canal, for municipal and industrial (“M&I”) purposes [pg. 1-15]. **Regardless of the fact that Fernley has not put any of its M&I water rights to use, and currently is not using its M&I water rights, Reclamation accounts for Fernley’s total Newlands Project water right acquisitions (2,292 acres in the Truckee Division of the Newlands Project) as “current and potentially active” [Table C-6].** Accounting for Fernley’s M&I water rights as current and potentially active for purposes of Truckee Canal and Newlands Project planning is wrong and only acts to inflate Reclamation’s determination of the current capacity needed for the Truckee Canal. Treating Fernley’s unexercised Truckee Division water rights as “current and potentially

active” for purposes of Truckee Canal and Newlands Project planning has contributed to the result that viable Planning Study Alternatives have been wrongly eliminated from further consideration by Reclamation, and casts considerable doubt on the efficacy of the set of Planning Study Alternatives proposed by Reclamation for further consideration.

The City of Fernley may take its surface water directly from the Truckee River without the use of the Truckee Canal. Currently, the City of Fernley is completing the plans for 30% design under Federal grant for a direct diversion of its Newlands Project water rights (intake works and pipelines) from the Truckee River. Alternatively, assuming Fernley was able to secure the necessary permissions to use Newlands Project facilities for delivery of its M&I water, such diversions by Fernley at Derby Dam would only involve a small portion of the Canal (between the USGS gage and TC-1 intake) for capacity improvement for the zero-flow alternative to the Lahontan Reservoir.

9. The primary purpose of the Truckee Canal is to convey Truckee River diversions 32 miles from Derby Dam to Lahontan Reservoir, to supplement Carson River supply, and help meet water demand in the Carson Division of the Newlands Project. As noted by the Planning Study:

- The Truckee Division currently contains less than 5 percent of the Newlands Project’s total acreage [pg. 1-11];

- Under average historic operations, the Truckee Canal has lost around 20,000 acre-feet of water per year to seepage losses [pg. D-2-1]. However, the results of the Truckee Canal seepage analysis in the Planning Study, as discussed later, are questionable (and historical losses have averaged about 20,000-30,000 acre-feet per year);

- The agricultural acreage in the Truckee Division is expected to decrease further in the future as a result of agricultural water rights transitioning to M&I use, water right acquisitions for transfer to the lower Truckee River, and water right retirement programs [Table C-8]. Based on the recent history, the remaining agricultural water rights in the Truckee Division would be acquired for water quality improvements in the lower Truckee River and for M&I use in the City of Fernley. This is consistent with the assumption in the TROA-EIS/EIR.;

- To exercise its M&I surface water rights in the future, Fernley has developed a plan outlining several options for receiving Project water deliveries, including a direct diversion from the Truckee River or potentially from the TC-1 lateral west of Fernley [pg. 3-15];

Given that the Truckee Canal's primary purpose is a water delivery facility to serve Carson Division demand, and the need to utilize the Canal for water deliveries to the Truckee Division is currently relatively insignificant and will continue to diminish into the future, the Planning Study should give greater attention and weight to alternatives that reduce Carson Division demand, increase Carson Division efficiency, and increase Carson Division water supply. For the same reasoning, and for other reasons discussed in the comments to follow, the Planning Study should reassess and give more weight to alternatives that would allow for decommissioning the Truckee Canal in the future.

10. The assessment of the Effects of Acquiring Additional Carson River Storage and Water Rights on Newlands Project Water Supply [Appendix D-7] is inadequate for several reasons, including, but not limited to the following points:

- The assessment compares the effects of acquiring additional Carson River water rights and storage against the "Desired Reliability" scenario which uses unrealistic assumptions for current Newlands Project water demand (as discussed above);

- The assessment does not compare the performance of increasing the Project efficiency in the Carson Division or changing the cropping pattern in combination with any additional measures (such as reduced Carson Division water demand through water rights acquisitions);

- The assessment dismisses the potential beneficial effects of acquiring additional Carson River water rights on the basis that certain OCAP provisions would preclude additional storage in Lahontan Reservoir in excess of that needed to meet Carson Division demand. This is not a correct assumption. Acquisition and storage of Carson River rights is consistent with the OCAP to the extent diversions of Truckee River water to Lahontan Reservoir are reduced accordingly;

- The assessment dismisses the potential beneficial effects of acquiring additional Carson River water rights or storage on the basis that it would be unlikely that OCAP storage targets could be adjusted for the Newlands Project to take advantage of the newly acquired Carson River water rights. However, when considering reductions in Carson Division demand, increased Carson River storage, and increased Carson Division efficiency in combination with decommissioning the Truckee Canal, there would be no need for OCAP.

- The assessment is limited to acquisition and transfer of Carson River Segment 7 water rights to Lahontan Reservoir and acquisition of storage in existing upper Carson River such as Alpine storage facilities. Additional measures previously dismissed by Reclamation should be reassessed and given additional weight.

1. In the assessment of costs for the various Planning Study Alternatives, the cost savings associated with the value of water lost through seepage and evaporation along the 32-mile length of the Truckee Canal was not addressed. The Planning Study should include an assessment of the value of water that would be saved by decommissioning of the Truckee Canal, and should account for that savings when comparing the canal decommissioning alternative against other flow-stage alternatives that involve seepage and other losses associated with conveying Truckee River diversions through the Truckee Canal.
2. Figure 4-9 and Table 4-5 of the Planning Study clearly illustrate how overestimating Newlands Project water demand can significantly affect how one Planning Study Alternative compares to another, in terms of meeting reliability criteria under the "Water Supply Objective." For example, as illustrated in Figure 4-9 and Table 4-5, as little as a 5 percent reduction in Newlands Project water demand (or a 5 percent overestimate for future water demand), would make the 350 cfs flow-stage alternatives comparable to the reliability performance of the 600 cfs flow-stage alternative. Based on this observation alone, and given the unreasonable assumption that 63,596 acres (as opposed to 57,000 acres) of potentially active water rights could be exercised, the 600 cfs flow-stage alternative could and should be dismissed from further consideration. Similarly, all other low flow alternatives, including the zero flow alternative (decommission Truckee Canal), should be re-assessed for their ability to meet higher water reliability performance criteria based on more accurate estimates and assumptions for future Newlands Project water demand.
3. The RiverWare modeling analysis was used in the Planning Study to assess the alternatives on water supply and hydropower. Apart from identifying Newlands Project acreage for the different alternatives, there is no discussion or information provided in the Planning Study regarding other assumptions or model inputs. The Planning Study should describe the assumptions utilized in the model runs and provide assessment of how these assumptions and inputs may or may not affect the modeling results.
4. Two of the seven alternatives in the Planning Study include lining of the Truckee Canal to reduce seepage. An assumption that the canal lining would reduce canal seepage by 85% was used in the Planning Study and modeling; however, no discussion is presented regarding the calculation of canal seepage in the first place.

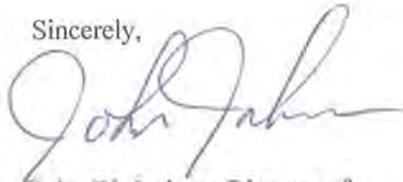
Apparently, the Planning Study uses monthly regression equations to calculate canal losses relying on the Canal flow at Wadsworth as the sole regressor. The most significant issue with this method of calculation is the lack of a good physical relationship between flow and canal loss due to numerous check structures along the canal. Indeed, results of the analysis from which the regression equations were

developed show very poor correlations between flow and canal losses (minimum coefficient of determination value of 0.028 and all monthly values less than 0.5). Given the significance of canal losses on Newland Project operations and related flow impacts for the lower Truckee River, a better method of calculation is required.

1. One metric identified by the Planning Study and used to evaluate alternatives is the impact on Water Quantity and Quality in the Lower Truckee River [pg. 5-7]. However, the only evaluation of this metric in the Planning Study is the average annual flow into Pyramid Lake over a 100-year simulation. This single parameter is insufficient to assess the effects Planning Study alternatives may have on environmental conditions in the Lower Truckee River and Pyramid Lake. Additional information and analyses are needed to properly assess such potential effects. At a minimum the analysis should evaluate how each alternative will: (1) affect lower river flows during drought periods; (2) affect the ability of the Tribe to meet existing lower river flow targets including long-term Fish Water in storage; and (3) impact long-term Pyramid Lake elevation.
2. The analysis performed in the Planning Study is inconsistent with the OCAP determinations. Compared to the past OCAP determinations, Newlands Project agricultural demands were increased significantly in this Planning Study. The increased demand has resulted in the Planning Study showing more years when the Newlands Project would experience shortages compared to OCAP determinations.
3. The Planning Study does not describe the conveyance losses associated with the City of Fernley's diversion and whether water is delivered based on an agricultural or M&I schedule.

Thank you for the opportunity to provide comments on the Planning Study.

Sincerely,



John W. Jackson Director of  
Water Resources

cc: Elwood Lowery, Chairman  
Terrence James  
John Mosley  
Albert John  
Kenneth Parr



Environmental Department  
PO Box 256 • Nixon, NV 89424

Phone: (775) 574-0101 • Fax: (775) 574-1025  
Email: jmosley@plpt.nsn.us

February 28, 2013

Harvey Edwards  
US Bureau of Reclamation  
705 North Plaza St.  
Carson City, NV 89701

RE: Tribal Comments re Newlands Project Planning Study treatment of Clean Water Act compliance

Dear Mr. Edwards,

On behalf of the Environmental Department of the Pyramid Lake Paiute Tribe, I would like to make specific comments regarding the Newlands Project Planning Study released in draft form by the Bureau of Reclamation, particularly regarding the applicability of the Clean Water Act (CWA) to activities in the Truckee Canal. As you are aware, the Pyramid Lake Paiute Tribe has been delegated programmatic authority from the U.S. Environmental Protection Agency to enforce CWA Section 401 (33 U.S.C. § 1341), and the issues regarding CWA compliance for Newlands Project activities are of particular importance to my department and to the Tribe generally. Especially since part of the canal does reside on tribal land and is within tribal jurisdiction, the tribe would be a permitting agency under its delegated authorities to enforce the CWA.

In the Planning Study, on pages 5-8, in the section on "Environmental and Regulatory Considerations Review", Reclamation claims that the Newlands Project is exempt from all CWA permitting requirements, and lists 40 CFR § 122.3 (pertaining to CWA Section 402, National Pollutant Discharge Elimination System permits) and Nev. Admin. Code 445A.228 (pertaining to discharges of pollutants from agricultural runoff) as the stated exemptions. However, this section of the Planning Study does not address any possible exemptions from the requirements of CWA Section 404 (33 U.S.C. § 1344) regarding dredge and fill material. Reclamation should specifically address in the Planning Study whether the activities in the Truckee Canal which result in dredging and filling should be considered for CWA Section 404 permitting.



Environmental Department  
PO Box 256 • Nixon, NV 89424

Phone: (775) 574-0101 • Fax: (775) 574-1025  
Email: jmosley@plpt.nsn.us

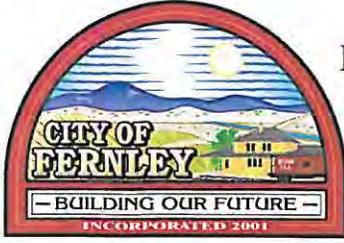
Pursuant to the CWA, Waters of the United States (WOUS) and activities that are permitted in WOUS must have a nexus of chemical, physical, and biological connectivity. In the Truckee Canal, there is a nexus of all three components between the Truckee River and the Lahontan Reservoir, both of which are clearly WOUS, and even further, the importance of the connection affects water quality parameters and biota between those two clearly jurisdictional water bodies. Based on the chemical, physical, and biological nexus between two regulated WOUS, Section 402 of the CWA would likely apply to any dredging and filling activities in the Truckee Canal. In certain instances as mentioned in 40 CFR § 122.3, specifically under part (f), agricultural return flows may be exempt from Section 402 of the CWA; however, the Truckee Canal is not simply a channel for agricultural return flow, it is a major artery for the transfer of prime water between two WOUS with nexus and significant connectivity.

This comment does not argue whether or not the flow of water or irrigation return flows, or transfer of water, should be regulated, but is primarily directed at ensuring that Reclamation determines whether any dredging, filling, or other disturbances within the Truckee Canal during maintenance and construction, may result in activities that are regulated and should be permitted pursuant to the CWA. I suggest that the statement in the draft Planning Study that the Newlands Project and current or future activities is entirely “exempt” from the CWA should be corrected and that this issue be explored further with the U.S. EPA and U.S. Army Corps of Engineers according to their respective authorities and expertise under the CWA.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'John Mosley', with a long, sweeping horizontal line extending to the right.

John Mosley  
Environmental Director



**PUBLIC WORKS/ GENERAL SERVICES  
DEPARTMENT**  
Shari L. Whalen P.E.  
City Engineer

Water/Wastewater  
Streets/Storm Drains  
Engineering  
GIS  
Parks / Facilities  
Vector

February 28, 2013

Harvey Edwards  
United States Bureau of Reclamation  
705 North Plaza Street  
Carson City, NV 89701

Re: Newlands Project Planning Study Draft Report Comments

Dear Mr. Edwards,

The City of Fernley ("Fernley") respectfully submits the following comments to the recently distributed Newlands Project Planning Study Draft Report ("Draft Report"). In a draft letter dated October 10, 2012 and a final letter dated November 19, 2012, Fernley submitted a series of comments to a previous draft of the report. *Attachment "1"*. Fernley sincerely appreciates the extent to which those comments were addressed in the current Draft Report, but continues to have the following comments and concerns. To the extent that Fernley's previous comments were not addressed in the Draft report, please consider them incorporated by reference in this letter.

**Final Selection of Alternatives**

Of the 7 action alternatives which were retained as final options in the Draft Report, the only acceptable alternative is Alternative 600. The purpose of the Newlands Project Planning Study ("Study"), as stated by the authorizing statute (Pub.L.No. 111-8) is "to determine the full extent of rehabilitation needed for the canal to resume flows above 350 cubic feet per second." Because Alternative 600 is the only alternative that considers flows above 350 c.f.s, it is the only alternative that is allowable pursuant to the authorizing statute. The actual baseline for the Study should have been historic flows under the Operating Criteria and Procedures ("OCAP"), or the "desired reliability scenario" of 900 c.f.s., not 150 c.f.s. A baseline of 150 c.f.s. leaves far too much leeway to down-select alternatives. Alternative 600, one of the two lowest cost alternatives, increases Canal flows nearer historic flows than any other alternative, meets the Study goal of increased Canal safety and the reduced potential for failure, and protects the groundwater recharge upon which Fernley's municipal supply relies.

Alternatives 350.d and 250.d are unequivocally unacceptable. Because neither alternative considers flows above 350 c.f.s., they are both beyond the scope of the statutory authorization for the Study. Both alternatives include lining the Canal to prevent infiltration into the aquifer from the Canal, eliminating Fernley's ability to rely on groundwater for its municipal water supply, and would force Fernley to rely on surface water from the Truckee River. While the Study goes to great lengths to address costs to other stakeholders, neither alternative addresses the increased costs to Fernley that diversion from the river, pipeline construction, and upgrades to the municipal water treatment facility would require. Initial estimates place these infrastructure improvement costs in the \$17-25 million dollar range. In addition, Fernley surface water is permitted only for the irrigation season, so Fernley could not service its municipal customers on a year-round basis using only surface water.

Neither alternative addresses how Fernley would be made whole after being deprived of nearly 10,000 acre feet of state-permitted groundwater rights, or how costs that would result from supplying Fernley with an alternative supply of water for its residents would be covered. Without its full permitted groundwater supply, Fernley would be unable to supply existing groundwater commitments to prior dedicators of groundwater rights. In fact, neither of these alternatives should remain in the final 7 in light of the knowledge that lining the Canal would decimate the Fernley municipal water supply.

Alternatives 350.b and 250.b are also unacceptable. The 250.b Alternative contemplates Canal flows under 350 c.f.s, and is therefore beyond the scope of the Study's authorizing statute. These two alternatives are by far the most expensive and therefore, cost prohibitive to Fernley and all other Project water rights holders. Finally, both alternatives are reduced from historic flows under OCAP. The Draft Report states that reduced flows under Alternative 250.b will not negatively impact Fernley's groundwater resources, but Fernley disputes that conclusion. For that conclusion to be correct, it must be assumed that 100% of Canal infiltration will be available for groundwater pumping. This assumption is both unrealistic and unsupported by any peer-reviewed report or study.

Alternative 250.a is also unacceptable. Consideration of Canal flows below 350 c.f.s is beyond the scope of the authorizing statute. This alternative also includes a 25% fallowing of Project croplands, but the Draft Report fails to adequately address the environmental and economic impact of fallowing. Fernley believes that there will be severe air quality impacts due to the creation of airborne dust, as well as increased risk of fire. Finally, the predominant crop in the Project is alfalfa. Alfalfa is a perennial crop, but would be required to be re-planted after a fallow year. The Draft Report does not consider the economic impact on area farmers that would be caused by this re-seeding. The Draft Report only considers the cost of the farms' water rights for fallowing, and neglects to adequately consider its full cost and ramifications.

Alternative 350.a is the same overall cost as Alternative 600, but involves just over half of the Canal flow, leading to more shortage years. It also deviates from the terms of OCAP by significantly restricting flows that would be required under it. It is irrational, when faced with two options of the same cost, to choose the alternative which provides less benefits to Project stakeholders, deviates from deferral regulation, and leads to more shortages. For that reason, Alternative 350.a must be rejected.

## **Fernley's Use of Groundwater**

Currently, Fernley and Reclamation disagree on the nature of Fernley's right to aquifer recharge from the Canal. *See Attachments "2" and "3"*. The Draft Report, in numerous instances, states that Fernley groundwater recharge is "not a valid Project delivery," and that aquifer recharge is "incidental." These statements are unsupported statements of a contested legal conclusion, and are both unnecessary and inappropriate in the Draft report, which is in no way intended to be a legal document. Fernley respectfully requests that the terms be omitted from the final report, or more neutral terms be substituted. Alternatively, it should be identified clearly in the final report that the Canal recharge is a contested issue that may require litigation for resolution. Fernley also notes that Table 6-1, footnote 7 states that spills from the Canal to the Stillwater NWR are not a valid project delivery, yet are included as a benefit to wetlands. This illustrates the inconsistencies in the Draft Report in the treatment of Fernley's groundwater right. The final report should neutralize the language regarding Fernley's groundwater and note a similar benefit derived from aquifer recharge from the Canal.

## **Opportunities Created by the Study**

On Page 2-6 of the Draft Report, two "opportunities" are discussed as secondary beneficial outcomes of the Study. The two secondary "opportunities" are identified as an increase in project efficiency and improvement to water quality and quantity in the Lower Truckee River. These "opportunities" create multiple issues in the Draft report. First, "efficiency" should be qualified as the efficiency goals defined by OCAP, in which Canal losses are not included. OCAP continues to be the regulation governing the Project, and any alternative must comply with it. Therefore, the opportunity for increased efficiency should be in relation to OCAP efficiency, not some other undefined efficiency.

Second, the opportunity for increased water quality and quantity in the Lower Truckee is identified as a secondary benefit of the Study, and not its primary goal. Nonetheless, the Draft Report, in numerous instances, considers the goals of the Pyramid Lake Paiute Tribe ("PLPT") along with the acceptability of any alternatives to the PLPT. Although a secondary goal, Reclamation has elevated PLPT interests in the Lower Truckee River to a primary role in the Study. Reclamation has, in effect, given one group a disproportionate and unacceptable level of influence in the alternative selection process. As long as OCAP is met, the needs of this group are also met.

The stated goal of the Study is to restore the Canal to flows above 350 c.f.s., and should ultimately be the restoration of flows consistent with OCAP permitted flows. The PLPT's goal of "significant reductions in Project diversions in the Truckee River" is therefore antithetical to the goal of the Study, and is a source of tension in the Study, not a determining factor. Reclamation should not allow this Study to be a forum for the PLPT to gain more water than it received under OCAP.

Each of the 7 Alternatives increases the volume of water in the Lower Truckee River in comparison to the desired reliability. However, in Table 6.1, some are identified as "acceptable" to downstream environmental users (read: PLPT) and others are "unacceptable." Alternative 600

is listed as “unacceptable” to the Tribe despite the fact that it satisfies the primary goal of the Study *and* increases Lower Truckee River flows. To allow one party to disproportionately influence the decision making process despite an alternative’s universal satisfaction of all goals of the Study, both primary and secondary, is illogical. The Study ultimately serves to provide the PLPT with a windfall for environmental uses.

Finally, accepting the fact that the opportunities listed in the Draft Report reach far beyond the statutorily permitted scope of the Study, it is unclear to Fernley why the Study limited its “opportunities” to the two listed. Development of a stable long-term municipal water supply for Fernley is arguably closer to the permissible scope of the Study than the other “opportunities,” as Fernley is a prominent Project stakeholder. Therefore, a third “opportunity”— the opportunity to assist a stakeholder in the development of a stable water supply for its 20,000 residents — should be identified and considered as part of the decision-making process.

### **Cost Sharing**

All 7 Alternatives identify “cost sharing” opportunities, and identify Fernley as a potential cost sharing partner. The Draft Report cites the benefit of improved safety and the potential for a continued groundwater supply as support for the inclusion of Fernley as a cost sharing partner. Fernley notes that Reclamation and the Truckee-Carson Irrigation District (“TCID”), as the owner and operator of the Project, are responsible for the maintenance of the Canal and its ensured safety. Fernley and other Project water users have been paying and will continue to pay Operations and Maintenance (“O&M”) Fees to TCID for the privilege of using Project water. As a Project user, Fernley’s reasonable expectation for payment of those O&M fees is a safe, reliable Canal.

Due to its location on the Canal, safety in Canal operations is an important goal to Fernley. However, the need for drastic improvements in safety is a direct result of degradation due to Canal neglect on the part of Reclamation and/or TCID. Fernley refuses to “cost share” in order to have the necessary repairs made to make the Canal safe.

The Draft Report scrutinizes TCID’s ability to pay to share the costs of repairs and improvements, but does not look at Fernley’s ability to do the same prior to including Fernley as a potential partner. Fernley has already invested a substantial amount of money in an infrastructure to treat and deliver groundwater to its customers. It recently adopted a bond repayment charge to help pay for those improvements, and simply cannot raise rates on its customers again. Any such analysis of Fernley’s ability to pay should recognize that Fernley does not have the ability to raise revenue to fund Canal improvements.

Sincerely,



Shari L. Whalen, PE  
City Engineer