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Truckee River Operating Agreement

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PREFACE

This draft of the Truckee River Operating Agreement (TROA) is the preferred alternative for analysis in the Draft Environmental Impact Statement/Environmental Impact Report to which it is an appendix. This Draft TROA is the result of negotiations among representatives of the United States Departments of the Interior and Justice, the State of California, the State of Nevada, the Pyramid Lake Paiute Tribe of Indians, Sierra Pacific Power Company, and other entities in the State of California and the State of Nevada. This Draft TROA represents agreement among its negotiators that it is a draft and it constitutes the preferred alternative for operating Truckee River Reservoirs in a manner which will carry out terms of Public Law No. 101-618, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Settlement Act). Section 205(a)(9) of the Settlement Act requires that the Secretary of the United States Department of the Interior satisfy the requirements of the National Environmental Policy Act in negotiating TROA. Although not a requirement of the Settlement Act, the State of California must comply with the requirements of the California Environmental Quality Act (CEQA).

TROA may only be signed following completion of a Final Environmental Impact Statement/Environmental Impact Report, consideration of its information, incorporation of any modifications to TROA made in response to such information, and completion of a Record of Decision and other notices and decision documents required by federal and California law, including CEQA. Additionally, the Pyramid Lake Paiute Tribe will sign TROA only if it is approved by a referendum vote of tribal members.

If signed, a number of prerequisites must be satisfied before TROA becomes effective. One prerequisite is that it be promulgated as a federal regulation [Section 205(a)(5) of the Settlement Act]. Another is that it be submitted to the U.S. District Courts which administer the Orr Ditch and Truckee River General Electric Decrees [Section 205(a)(4) of the Settlement Act] for approval of any necessary modifications in the provisions of those Decrees. Once it enters into effect, TROA will serve as the operating agreement called for in Section 205(a) of the Settlement Act.

TRUCKEE RIVER OPERATING AGREEMENT

This **Agreement** is made this ___ day of _____, 200__ by and among United States of America (hereinafter "United States"), State of California (hereinafter "California"), State of Nevada (hereinafter "Nevada"), Sierra Pacific Power Company (hereinafter "Power Company"), Truckee Meadows Water Authority (hereinafter "Water Authority"), Pyramid Lake Paiute Tribe of Indians (hereinafter "Pyramid Tribe"), Washoe County Water Conservation District (hereinafter "Conservation District"), City of Reno, Nevada (hereinafter "Reno"), City of Sparks, Nevada (hereinafter "Sparks"), City of Fernley, Nevada (hereinafter "Fernley"), Washoe County, Nevada (hereinafter "Washoe County"), Sierra Valley Water Company, Carson-Truckee Water Conservancy District, Donner Lake Water Company and North Tahoe Public Utility District.

RECITALS

1. Entitlement to the waters stored in Lake Tahoe, and from the Truckee River and its tributaries, and the manner in which **Truckee River Reservoirs** are operated, have for decades been the subjects of extensive litigation involving many of the **Signatory Parties** to this **Agreement** and others.

2. In 1990 Congress enacted, and on November 16, 1990, the President signed into law, the **Settlement Act**.

3. Section 205 of the **Settlement Act** directs the **Secretary** to negotiate an operating agreement, for operation of **Truckee River Reservoirs**, among at least California, Nevada, Power Company, Pyramid Tribe, and United States. Section 205 further provides that the **Truckee River Reservoirs** shall be operated to accomplish certain specified objectives, including implementing the provisions of the Preliminary Settlement Agreement between Power Company and Pyramid Tribe, as modified by the Ratification Agreement of the United States, and may be operated to realize additional benefits and objectives. The Preliminary Settlement Agreement, as modified by the Ratification Agreement, provides for changes in the exercise of Power Company's existing water rights to benefit threatened and endangered **Pyramid Lake Fishes**, and to provide an adequate supply of water for Reno and Sparks and surrounding areas during periods of drought.

4. This **Agreement** is negotiated pursuant to Section 205 of the **Settlement Act**. Portions of this **Agreement** must be submitted to the Courts in *United States v. Orr Water Ditch Company, et al.*, in Equity, Docket No. A 3 (D. Nev.) (Sept. 8, 1944), and *United States v. Truckee River General Electric Company*, now No. S-643 (E.D. Calif.), originally entered in No. 14861 (N.D. Calif.) (1915) for approval of any necessary modifications in the provisions of the **Orr Ditch Decree** and the **Truckee River General Electric Decree**.

5. Section 204 of the **Settlement Act** provides for allocation of the waters of Lake Tahoe, and of the Truckee and Carson Rivers, between California and Nevada. A California-Nevada Interstate Compact providing for the allocation of these waters was approved in 1971 by California and Nevada, but was never ratified by Congress. Section 204 of the **Settlement Act** becomes effective only when this **Agreement** enters into effect. This **Agreement** establishes certain procedures for implementing Section 204 of the **Settlement Act**.

6. Pursuant to the **Truckee River General Electric Decree**, and the **Orr Ditch Decree**, including the **Truckee River Agreement**, **Releases** from Lake Tahoe and Boca Reservoir have been managed to maintain **Floriston Rates** and **Reduced Floriston Rates**, as applicable. In addition, water has been **Passed-Through Truckee River Reservoirs** to contribute to the maintenance of **Floriston Rates** and **Reduced Floriston Rates**, and to conserve **Floriston Rate Water** in Lake Tahoe and Boca Reservoir.

7. There have been material changes to many of the conditions extant at the time the **Orr Ditch Decree** was entered, including, but not limited to, the following:

(a) Irrigation of farmlands within the Truckee Meadows has been reduced from approximately 28,500 acres in 1944 to approximately 7,100 acres in 2000, and **Orr Ditch Decree Water Rights** formerly used to irrigate farmlands in the Truckee Meadows have been changed in accordance with the provisions of the **Orr Ditch Decree** to allow for their diversion for **Municipal and Industrial Uses**;

(b) The combined population of Reno and Sparks and surrounding areas of Washoe County has increased from approximately 39,600 in 1944 to approximately 300,000 in 2000;

(c) Power Company's reliance on hydroelectric facilities dependent on water from Lake Tahoe and the Truckee River has decreased substantially;

(d) Power Company's use of water stored in Lake Tahoe and from the Truckee River and its tributaries for **Municipal and Industrial Uses** within Reno and Sparks and surrounding areas of Washoe County has increased from approximately 20,000 acre-feet in 1944 to approximately 70,000 acre-feet in 2000;

(e) United States has constructed additional conservation and flood control storage facilities on tributaries of the Truckee River, including Martis Creek Reservoir, Prosser Creek Reservoir, and Stampede Reservoir;

(f) United States, by regulations known as Operating Criteria and Procedures (referred to in this **Agreement** as **Truckee Canal Diversion Criteria**), has limited diversions from the Truckee River to the **Newlands Project**;

(g) Congress has enacted the Endangered Species Act, **Pyramid Lake Fishes** have been listed pursuant to that Act, and the **Settlement Act** conditionally authorizes the use of Stampede and Prosser Creek Reservoirs for the primary benefit of **Pyramid Lake Fishes**;

(h) Prosser Creek Reservoir has been operated under the **Tahoe-Prosser Exchange Agreement** in part to coordinate its storage and release of water to allow for minimum releases of water from Lake Tahoe, when releases from Lake Tahoe would not otherwise be required;

(i) Power Company and Pyramid Tribe have entered into the Preliminary Settlement Agreement which provides for changes in Power Company's existing water rights to benefit threatened and endangered species of fish in Pyramid Lake and for an adequate supply of water in Reno and Sparks and surrounding areas during periods of drought;

(j) Pursuant to the settlement of the case brought by Pyramid Tribe against Reno and Sparks, Nevada and United States Environmental Protection Agency, the **Truckee River Water Quality Settlement Agreement** was executed providing for the purchase of substantial quantities of Truckee River water rights to enhance water quality and to help achieve water quality standards in the Truckee River and Pyramid Lake.

8. The changed conditions enumerated in Recital 7, and the recognition that conditions will continue to change in the future, make it desirable to operate the reservoirs in the **Lake Tahoe Basin** and **Truckee River Basin** in the more flexible and coordinated manner contemplated in this **Agreement**, that will, to the maximum extent practicable and without interfering with **Orr Ditch Decree Water Rights**, meet the multiple water use objectives contemplated in the **Settlement Act**, including reliable water supply and drought protection for **Municipal and Industrial Uses**, instream flows for fish and wildlife including threatened and endangered species, water quality, and recreation. This **Agreement** has been negotiated and executed by the **Signatory Parties** with the intent to accomplish the objectives and meet the requirements of Section 205 of the **Settlement Act**.

9. This **Agreement**, negotiated pursuant to Section 205 of the **Settlement Act**, will become, pursuant to that Section, the exclusive federal regulation governing operation of **Truckee River Reservoirs**.

NOW, THEREFORE, the **Signatory Parties** agree as follows:

DEFINITIONS

For purposes of this **Agreement**, words which appear in bold face and with the first letter capitalized have specially defined meanings as set forth in this definitions section. Where not used in bold face and capitalized, words shall connote their ordinary meaning. In addition, words which may or may not be capitalized, but which do not appear in bold face in the **Agreement** shall be construed and interpreted as follows:

(a) Place names which are not specifically defined terms shall be as identified in Figure D-1;

(b) The words "simultaneously" and "concurrently" are used interchangeably. An allowance for water travel time may be included if deemed appropriate by the **Administrator**;

(c) When a period of time is identified as "Date 1 through Date 2" the second date identified shall be the first occurrence immediately following the first date, whether during the same calendar year or the following calendar year;

(d) References to section numbers, unless specifically designated as part of another agreement, regulation, law or document, shall be construed to refer to this **Agreement**, and unless otherwise specified, shall be construed to include subsections, if any;

(e) Year means a calendar year, unless specifically designated otherwise;

(f) Day means a calendar day, unless specifically designated otherwise; and

(g) The word "and" may be interpreted as "and/or" where appropriate.

For purposes of Article Ten, certain terms are defined in Section 10.A.2 and when in bold face and with the first letter capitalized have special meanings for that Article only. Elsewhere in this **Agreement** they connote their ordinary meaning.

The terms **Accumulation**, **Discharge**, **Displacement**, **Spill**, **Exchange**, **Establishment**, **Release,** and **Impoundment** may be used in context as a noun or verb, in singular or plural form, and in past, present or future tense.

For purposes of this **Agreement,** the following terms shall have the following meanings:

(1) **"Accumulation"** means an increase in the quantity of a water category stored in a given reservoir by **Establishment, Exchange,** and re-storage, but does not include **Impoundment**;

(2) **"Administrator"** means the individual appointed in accordance with Sections 2.A.–2 through 2.A.3;

(3) **"Additional Boca Storage Water"** means all water diverted to storage pursuant to Section 5.B.9(b) and California Water Right License No. 3723 and changes to that License, in excess of **Boca Storage Water**, but does not include **Credit Water** stored pursuant to Section 7.A.2(d);

(4) **"Additional California Environmental Credit Water"** means water stored pursuant to Section 7.D.3 in excess of **California Environmental Credit Water**;

(5) **"Agreement"** means this **Truckee River Operating Agreement**;

(6) **"Base Amount"** means the amount of **Firm M&I Credit Water** or **Non-Firm M&I Credit Water** determined in accordance with Section 7.B.4;

(7) **"Boca Floriston Rate Water"** means **Boca Storage Water**, **Additional Boca Storage Water**, and water in **Power Company Boca Storage** to the extent designated as **Floriston Rate Water** by Power Company;

(8) **"Boca Project Water"** means **Boca Storage Water**, **Additional Boca Storage Water** and water in **Power Company Boca Storage**;

(9) **"Boca Storage Water"** means up to 25,000 acre-feet per year of water diverted to storage pursuant to Section 5.B.9(a) and California Water Right License No. 3723 and changes to that License. **Boca Storage Water** does not include **Credit Water** stored pursuant to Section 7.A.2(d);

(10) **"California Environmental Credit Water"** means water stored pursuant to Section 7.D.2, but does not include **Additional California Environmental Credit Water**;

(11) **"California Guidelines"** means the most recent guidelines prepared by California as provided in Section 9.F.1 and transmitted pursuant to Section 11.C.2(b);

(12) **"California M&I Credit Water"** means surface water stored pursuant to Section 7.D.1;

(13) **"California Truckee River Basin Supply"** means all surface water which, if not diverted in California, would flow in the Truckee River across the state line, including surface water diverted to storage in California and excluding all **Releases** from Lake Tahoe, **Releases** of previously and lawfully appropriated water from storage in reservoirs, **Imported Water**, and water which is diverted to beneficial use pursuant to the **Sierra Valley Decree**;

(14) **"California Truckee River Total Depletion"** means the amount of water which, after diversion, is consumed and therefore does not return to surface or groundwater in the **Truckee River Basin**;

(15) **"California Water Use Factor"** means the value described in Section 7.B.4(d) that is used to calculate the **Base Amounts** of Power Company's **Non-Firm M&I Credit Water**;

(16) **"Changed Diversion Right"** means a right to water from the Truckee River or its tributaries, excluding **Privately Owned Stored Water**, for which the point of diversion, place of use or manner of use has been or will be changed in accordance with applicable state law, any applicable court decree and this **Agreement**;

(17) **"Corps of Engineers"** means United States Army Corps of Engineers;

(18) **"Credit Water"** means **Additional California Environmental Credit Water**, **California Environmental Credit Water**, **California M&I Credit Water**, **Fernley Municipal Credit Water**, **Fish Credit Water, Joint Program Fish Credit Water**, **Newlands Project Credit Water**, **Other Credit Water**, **Power Company M&I Credit Water**, **Project Water in Another Reservoir**, and **Water Quality Credit Water**;

(19) **"Credit Water Operations"** means any operation involving (a) **Credit Water**, (b) **Project Water Released** to **Establish Credit Water**, or (c) **Project Water** converted to **Credit Water**. **Credit Water Operations** do not include **Spill** or **Displacement**;

(20) **"Critical Drought Period"** means a hydrologic period during which the water supplies available from the Truckee River are limited to the same or similar extent as the water supplies which would be available from the Truckee River under a repetition of hydrologic conditions which existed from 1928 to 1935;

(21) **"Dead and Inactive Storage"** means a category of water in the bottom of Prosser Creek Reservoir and Stampede Reservoir in the amounts of 1,200 acre-feet and 4,600 acre-feet, respectively, which either cannot or will not be withdrawn;

(22) **"Discharge"** means all water that passes through the outlet facilities of a lake or reservoir, passes over the spillway, is pumped from the reservoir, seeps through the dam or foundation into the stream or, in any other fashion, flows from the lake or reservoir into a stream channel downstream or into some other conveyance facility;

(23) **"Displacement"** means the right of **Project Water** in its own reservoir and water of a higher priority or water otherwise permitted under this **Agreement** to force another category of water to be **Released**, **Spilled** or **Exchanged** from a reservoir to the extent that both categories cannot be stored in that reservoir. Any such displaced water which is not **Exchanged, Released,** or re-stored in another reservoir shall **Spill**;

(24) **"Division of Safety of Dams"** means the Division of Safety of Dams within the California Department of Water Resources or its successor in this function;

(25) **"Donner Lake Indenture"** means the Indenture dated May 3, 1943 among Power Company, Truckee-Carson Irrigation District and Donner Lake Company;

(26) **"Drought Situation"** means a situation under which it is determined by April 15, based on procedures set forth in Section 3.D, either that there will not be sufficient **Floriston Rate Water** to maintain **Floriston Rates** through October 31, or the projected amount of **Lake Tahoe Floriston Rate Water** in Lake Tahoe, and including **Lake Tahoe Floriston Rate Water** in other **Truckee River Reservoirs** as if it were in Lake Tahoe, on or before the following November 15 will be equivalent to an elevation less than 6,223.5 feet Lake Tahoe Datum;

(27) **"Dry Season"** means a condition identified pursuant to Section 9.B for purposes of determining **Minimum Releases** and **Enhanced Minimum Releases** specified by Section 9.C;

(28) **"Emergency or Repair Condition"** means any circumstance, other than that described in Section 7.B.3(b)(1), when the water demands of Power Company's wholesale and retail water customers cannot be met from **Power Company Normal Water Supplies,** or a scheduled alteration or repair prevents the use of some or all of **Power Company Normal Water Supplies** to meet the water demands of Power Company's wholesale and retail water customers;

(29) **"Enhanced Minimum Release"** means a specified rate of flow which is usually greater than the **Minimum Release**, that, if not otherwise provided, must be **Released** from or **Passed-Through** a reservoir from specified categories of water in accordance with Section 9.C;

(30) **"Establishment"** means the initial storage of, reclassification as, or conversion to, a category of **Credit Water** which may be accomplished by operations including, but not limited to, the following:

(a) storing water under **Changed Diversion Rights**;
(b) storing **Fish Credit Water** pursuant to Sections 7.C.1, 7.C.2, 7.C.3 or 7.C.4;
(c) **Exchanging**, storing or re-storing **Privately Owned Stored Water** or **Project Water** to or in another reservoir when it becomes **Credit Water**;
(d) converting **Non-Firm M&I Credit Water** and **Fernley Municipal Credit Water** to **Fish Credit Water**, and **California Environmental Credit Water** to **Additional California Environmental Credit Water**; or
(e) designating **Joint Program Fish Credit Water** pursuant to Section 7.C.6(a).

(31) **"Exchange"** means the transfer of water from one category to another by **Trade**, **In-Lieu Release**, retaining water in accordance with Section 8.K.2(a), diverting water and replacing the water with a compensating **Release** pursuant to Section 6.C.1(c), or foregoing the right to divert water from a stream and replacing that water by converting an equal amount of water in a reservoir pursuant to Section 7.A.3(a)(3);

(32) "**Exercised**", when referring a specific water right, or "**Exercised Water Right**", means a water right which is being used as authorized by law, by an applicable court decree, or by an applicable permit, certificate or license issued by the Nevada State Engineer or the California State Water Resources Control Board, including for the **Establishment** of **Credit Water**;

(33) **"Farad Gage"** means the **U.S.G.S**. gaging station on the Truckee River approximately 3.5 miles upstream of the California-Nevada state line;

(34) **"Federal Water Master"** means the Water Master appointed by the **Orr Ditch Court**;

(35) **"Fernley Municipal Credit Water"** means water stored pursuant to Section 7.F;

(36) **"Firm M&I Credit Water"** means water stored in Stampede Reservoir pursuant to Section 7.B.4 ;

(37) **"Fish Credit Water"** means water **Established** pursuant to Sections 7.C.1 through 7.C.4;

(38) **"Fish Water"** means **Stampede Project Water** and **Prosser Fish Water**;

(39) **"Floriston Rate Water"** means water available pursuant to Section 5.A.1(d) to maintain **Floriston Rates** or **Reduced Floriston Rates**;

(40) **"Floriston Rates"** means rates of flow of **Floriston Rate Water** in the Truckee River measured at the **Farad Gage**, consisting of average flows of 500 cubic feet per second each day from March 1 through September 30, and 400 cubic feet per second each day from October 1 through the last day of February. When the phrase "**Floriston Rates** or **Reduced Floriston Rates**" is used, it shall mean whichever of these flow rates is then in effect in accordance with this **Agreement**;

(41) **"Imported Water"** means water which originates in a watershed other than the **Lake Tahoe Basin** and the **Truckee River Basin**;

(42) **"Impoundment"** means the initial diversion of inflow to storage as **Project Water** in the reservoir identified for that category of water in the definition of **Project Water**, and in accordance with Article Five;

(43) **"In-Lieu Release"** means retention of all or a portion of a scheduled **Release** or **Pass-Through** from a reservoir by replacing such scheduled **Release** or **Pass-Through** with a concurrent **Release** or **Pass-Through** of a like amount of water from another reservoir in accordance with Section 8.K.2(b);

(44) **"Integrated Schedule"** means the schedule or schedules developed by the **Administrator** in accordance with Section 11.C;

(45) **"Joint Program Fish Credit Water"** means that portion of **Fish Credit Water** designated pursuant to Section 7.C.6;

(46) **"Lake Tahoe Basin"** means the area which naturally drains into Lake Tahoe, including that Lake and the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(47) **"Lake Tahoe Floriston Rate Water"** means that portion of **Floriston Rate Water** initially stored in Lake Tahoe pursuant to Section 5.B.3 or **Discharged** from Lake Tahoe, including that **Exchanged** to other **Truckee River Reservoirs**, and **Tahoe-Prosser Exchange Water**;

(48) **"Lake Tahoe Reservoir"** means the reservoir formed by the dam at Lake Tahoe for storage and **Release** of water above elevation 6,223.0 feet Lake Tahoe Datum;

(49) **"Lower Truckee River"** means the Truckee River downstream from Derby Dam;

(50) **"Mandatory Signatory Parties"** means, collectively, the **Sovereign Parties** and either Power Company or an assignee approved pursuant to Section 14.F and who controls the supply of water under this **Agreement** for **M&I Use** in **Power Company's Service Area**;

(51) **"Minimum Release"** means a specified rate of flow, which, if not otherwise provided, must be **Released** from or **Passed-Through** a reservoir from specified categories of water in accordance with Section 9.C;

(52) **"Municipal and Industrial Use"** or **"M&I Use,"** means domestic use; use of water for the supply of a city, town or similar population group, together with uses incidental thereto; use of water for the purposes of commerce, trade or industry; and if the use is in California, such other uses as are recognized by California law or, if the use is in Nevada, such other uses as are recognized by Nevada law; however, such uses in California do not include use of water for commercial, irrigated agriculture specified in Section 204(c)(1)(H) of the **Settlement Act**;

(53) **"Newlands Project"** means the federal reclamation project in the vicinity of Fernley and Fallon, Nevada, authorized pursuant to the Reclamation Act of June 17, 1902, (32 Stat. 388) as amended;

(54) **"Newlands Project Credit Water"** means water stored pursuant to Section 7.H;

(55) **"Non-Firm M&I Credit Water"** means any **Power Company M&I Credit Water** other than **Firm M&I Credit Water** and **Power Company Emergency Drought Supply** stored pursuant to Section 7.B.4;

(56) **"Normal Season"** means a condition identified pursuant to Section 9.B for purposes of determining **Minimum Releases** and **Enhanced Minimum Releases** specified by Section 9.C;

(57) **"Orr Ditch Court"** means the court having continuing jurisdiction over the **Orr Ditch Decree**;

(58) **"Orr Ditch Decree"** means the decree of the United States District Court for the District of Nevada in *United States of America v. Orr Water Ditch Company, et al.*, in Equity, Docket No. A3, dated September 8, 1944, as amended prior to the date of execution of this **Agreement**;

(59) **"Orr Ditch Decree Water Right"** means a right to the use of water which is recognized by the **Orr Ditch Decree** but excluding Pyramid Tribe's right to the use of water referenced in Section 1.E;

(60) **"Other Credit Water"** means water **Established** pursuant to Section 7.G;

(61) **"Pass-Through**" means any portion of inflow to a reservoir which is not applied to reservoir losses pursuant to Section 5.D and is not stored, whether or not it could have been lawfully stored;

(62) **"Person"** and "**Persons"** means United States, Nevada, California, and agencies and political subdivisions thereof, and recognized Indian tribes, individuals, partnerships, associations and/or corporations, both public and private and any other entity recognized by law;

(63) **"Power Company Boca Storage"** means that portion of Boca Reservoir which provides 800 acre-feet of storage capacity and is operated pursuant to Section 5.A.5(b);

(64) **"Power Company Emergency Drought Supply"** means water stored in Stampede Reservoir pursuant to Section 7.B.5 and/or Prosser Creek Reservoir pursuant to Section 5.B.6(c)(5);

(65) **"Power Company Hydroelectric Plants"** means Power Company's four run-of-the-river hydroelectric power generating plants associated with its diversions under Claims 5-9 of the **Orr Ditch Decree** at Farad, Fleish, Verdi and Washoe dams;

(66) **"Power Company M&I Credit Water"** means **Firm M&I Credit Water, Non-Firm M&I Credit Water** and **Power Company Emergency Drought Supply**;

(67) **"Power Company Normal Demand"** means the reported demands of Power Company's wholesale and retail water customers, less the demands of customers with commitments that meet the requirements of Section 4.F;

(68) **"Power Company Normal Water Supplies"** means the water sources and supplies Power Company ordinarily utilizes, when a **Drought Situation** does not exist, to meet the **Municipal and Industrial Use** of its customers; and does not include **Power Company M&I Credit Water** and 7,500 acre feet of water above elevation 6921.0 feet in Independence Lake;

(69) **"Power Company Service Area"** means the retail and wholesale boundaries as may be established from time to time as the area in which Power Company is entitled to sell or to distribute water;

(70) **"Privately Owned Stored Water"** means water stored pursuant to the water rights of Power Company in Independence Lake, and the water rights of Power Company and Truckee-Carson Irrigation District in Donner Lake, or their respective successors in interest;

(71) **"Project Water"** means (a) **Boca Project Water** in Boca Reservoir; (b) **Floriston Rate Water** in Lake Tahoe; (c) **Privately Owned Stored Water** in Donner Lake or Independence Lake; (d) **Prosser Project Water** and **Tahoe-Prosser Exchange Water** in Prosser Creek Reservoir; (e) **Stampede Project Water** in Stampede Reservoir; and (f) water deemed to remain **Project Water** as identified in Sections 8.N, 8.O.3 and 8.Q.1. Text in this **Agreement** stating "**Project Water** in its own reservoir" shall be construed to mean the subject category of water is in the reservoir identified in this definition;

(72) **"Project Water in Another Reservoir"** means certain water in storage which was **Impounded** as **Project Water**, and subsequently **Exchanged** to or re-stored in another reservoir and which will continue to be used for purposes of such **Project Water** as provided in this **Agreement**, except as otherwise provided in Sections 5.B.6(b)(3), and except water considered to remain **Project Water** as identified in Sections 8.N, 8.O.3, and 8.Q.1;

(73) **"Project Water Operations"** means any operation involving only **Project Water**, but does not include **Credit Water Operations**, **Spill**, or **Displacement**;

(74) **"Prosser Fish Water"** means that portion of **Prosser Project Water** which is not **Prosser Reserved Water** or **Tahoe-Prosser Exchange Water**;

(75) **"Prosser Project Water"** means water diverted to storage in Prosser Creek Reservoir pursuant to Section 5.B.6(a)(1) and California License No. 10180 and changes to that License, but does not include **Credit Water** stored pursuant to Section 7.A.2(d);

(76) **"Prosser Reserved Water"** means that portion of **Prosser Project Water** that may be **Exchanged** to maintain the **Minimum Release** from Lake Tahoe, or that may be used to maintain the **Minimum Release** from Prosser Creek Reservoir;

(77) **"Pyramid Lake Fish Flows"** means water **Released** to flow to Pyramid Lake for the purpose of enhancing and maintaining **Pyramid Lake Fishes** and the ecosystem on which they depend in the Truckee River, Pyramid Lake and Truckee River tributaries downstream from Donner Lake and Prosser Creek Reservoir;

(78) **"Pyramid Lake Fishes"** means cui-ui (*Chasmistes cujus*) in Pyramid Lake and the **Lower Truckee River** and Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) in the **Truckee River Basin** and that portion of the **Lake Tahoe Basin** downstream from Tahoe Dam;

(79) **"Reduced Floriston Rates"** means rates of flow of **Floriston Rate Water** in the Truckee River, measured at the **Farad Gage**, effective and in force from November 1 through March 31, determined as follows:

(a) An average flow of 350 cubic feet per second each day whenever the elevation of the water surface of Lake Tahoe is below 6,226.0 feet Lake Tahoe Datum and not below 6,225.25 feet Lake Tahoe Datum; and

(b) An average flow of 300 cubic feet per second each day whenever the water surface elevation of Lake Tahoe is below 6,225.25 feet Lake Tahoe Datum.

When the phrase "**Floriston Rates** or **Reduced Floriston Rates**" is used, it shall mean whichever of these flow rates is then in effect in accordance with Section 5.A.2;

(80) "**Release"** means the portion of stored water **Discharged** from a lake or reservoir in a controlled manner, or any water **Discharged** from Lake Tahoe that supplies, and only to the extent required to supply, identified demands, including re-diversion to beneficial use, maintenance of **Floriston Rates** or **Reduced Floriston Rates**, re-storage, and instream flow;

(81) **"Release Thresholds"** mean benchmarks for **Releases** as set forth in the table in Section 8.K.4 for instream purposes and are often used with other components to calculate the portion of **Discharge** from a reservoir that is unavailable for the **Accumulation** of **Credit Water**;

(82) **"Scheduling Party"** means a **Person** identified in Section 11.E who schedules one or more water management operations pursuant to Article Eleven;

(83) **"Secretary"** means the Secretary of the Department of the Interior;

(84) **"Settlement Act"** means the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, Title II of Public Law 101-618 [104 Stat. 3289, 3294], November 16, 1990;

(85) **"Sierra Valley Decree"** means the decree of the United States District Court for the Northern District of California in *United States of America v. Sierra Valley Water Company*, Civil No. 5597, October 24, 1958;

(86) **"Signatory Parties"** means the **Mandatory Signatory Parties**, each other **Person** who executed this **Agreement** at its inception, each other **Person** who is a successor to a **Person** who executed this **Agreement** by assignment approved pursuant to Section 14.F, and each other **Person** who is approved as a new party pursuant to Section 14.E;

(87) **"Sovereign Parties"** means, collectively, United States, California, Nevada and the Pyramid Tribe;

(88) **"Sparks Gage"** means the **U.S.G.S.** gaging station known in publications of that agency as the "Truckee River Near Sparks, Nevada" and located in the Truckee River 2.5 miles upstream of its confluence with Steamboat Creek;

(89) **"Spill"** means water **Discharged** from a reservoir in an uncontrolled manner, or **Discharged** in a controlled manner only for compliance with flood control criteria, standard operating procedures relating to maximum reservoir levels, or precautionary release procedures related to anticipated future high reservoir levels and downstream channel capacity;

(90) **"Stampede Project Water"** means up to 126,000 acre-feet per year of water diverted to storage pursuant to Section 5.B.8(a) and California Water Right Permit No. 11605 changes to that permit, and any license issued on that permit, but does not include **Credit Water** stored pursuant to Section 7.A.2(d);

(91) **"Tahoe-Prosser Exchange Agreement"** means the agreement dated June 15, 1959, entered into by United States, Truckee-Carson Irrigation District, Conservation District, and Power Company;

(92) **"Tahoe-Prosser Exchange Water"** means that portion of **Prosser Reserved Water** or Prosser Creek inflow **Exchanged** for **Floriston Rate Water Released** solely to maintain the **Minimum Release** from Lake Tahoe;

(93) **"Trade"** means a transaction among two or more **Scheduling Parties** involving no physical movement of water pursuant to which one party's ownership of a quantity of water in a category is conveyed to another party and vice versa, but does not include operations pursuant to Section 8.K.2, even if such operations are offsetting, or **Establishment** using **Changed Diversion Rights**;

(94) **"Truckee Canal Diversion Criteria"** means the applicable criteria and procedures which determine the timing and extent of diversions from the Truckee River to the **Newlands Project**;

(95) **"Truckee River Agreement"** means the agreement dated July 1, 1935, entered into by the **Secretary**, Truckee-Carson Irrigation District, Conservation District, Power Company and other users of the waters of the Truckee River;

(96) **"Truckee River Basin"** means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the **Lake Tahoe Basin**;

(97) **"Truckee River General Electric Court"** means United States District Court in California having continuing jurisdiction over the **Truckee River General Electric Decree**;

(98) **"Truckee River General Electric Decree"** means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in *United States of America v. Truckee River General Electric Co.*, No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643, as amended prior to the date of execution of this **Agreement**;

(99) **"Truckee River Reservoirs"** means Boca Reservoir, Prosser Creek Reservoir, Martis Creek Reservoir, Stampede Reservoir and the storage provided by the dam at the outlet of Lake Tahoe;

(100) **"Truckee River Special Hearing Officer"** means the individual appointed to hear and decide disputes arising under this **Agreement** pursuant to the provisions of Article Two;

(101) **"Truckee River Water Quality Settlement Agreement"** means the agreement dated October 10, 1996, among Reno, Sparks, Washoe County, United States Department of Interior, United States Department of Justice, United States Environmental Protection Agency, Nevada Division of Environmental Protection and Pyramid Tribe;

(102) **"TTSA"** means the Tahoe-Truckee Sanitation Agency, or its successor;

(103) **"U.S.G.S."** means United States Geological Survey, an agency of the Department of the Interior;

(104) **"Vista Gage"** means the **U.S.G.S.** gaging station located in the Truckee River 600 feet downstream from its confluence with Steamboat Creek; and

(105) **"Water Quality Credit Water"** means water stored pursuant to Section 7.E.

ARTICLE ONE

SATISFACTION OF SETTLEMENT ACT PROVISIONS AND OTHER PROVISIONS OF LAW, STATEMENT OF GENERAL OPERATIONAL PRINCIPLES, PROVISIONS FOR PROTECTION OF WATER RIGHTS, IMPORTED WATER, REMAINING WATER OF THE TRUCKEE RIVER AND EMERGENCIES

SECTION 1.A – SATISFACTION OF SETTLEMENT ACT PROVISIONS AND OTHER PROVISIONS OF LAW

Section 1.A.1 General. This **Agreement** is intended to satisfy the provisions of Sections 205(a)(2) and 205(a)(3) of the **Settlement Act** by providing for operation of the **Truckee River Reservoirs** and such other reservoir operations which are subject to this **Agreement** in a manner which will:

(a) Implement California's allocation of **Truckee River Basin** water and the Nevada and California allocations of **Lake Tahoe Basin** water;

(b) Enhance fish, wildlife and recreational beneficial uses of water within the **Truckee River Basin**;

(c) Carry out the terms, conditions and contingencies of the Preliminary Settlement Agreement, as modified by the Ratification Agreement ("PSA");

(d) Ensure that water is stored in, **Released** from and **Passed-Through Truckee River Reservoirs** to satisfy **Exercised Orr Ditch Decree Water Rights** in conformance with the **Orr Ditch Decree** and **Truckee River General Electric Decree**, except for those rights that are voluntarily relinquished by the parties to the PSA or by any other **Persons**, or which are transferred pursuant to state law;

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

(f) Satisfy all applicable dam safety and flood control requirements; and

(g) Minimize the **Secretary**'s costs associated with operation and maintenance of Stampede Reservoir.

[Note: This Section 1.A.2 is a placeholder until the environmental review process has been completed and any required mitigation has been incorporated into the Agreement.]

Section 1.A.2 Environmental Impact Avoidance. This **Agreement** is intended to satisfy the provisions of Sections 205(a)(2)(C) and 205(a)(5) of the **Settlement Act** by including measures to reduce or avoid significant adverse environmental effects, if any, resulting from implementation of this **Agreement**. These measures include, but are not limited to, measures intended to reduce or avoid significant adverse environmental effects to instream beneficial uses of water within the **Truckee River Basin**, including the provisions of Article Nine governing instream flows and reservoir recreation, the provisions governing riparian habitat restoration, and the augmentation of stream flows during dry years through the use of several categories of **Credit Water.**

Section 1.A.3 California Public Trust. This **Agreement** is intended to implement California's responsibilities under the public trust doctrine as set forth in *National Audubon Society v. Superior Court of Alpine County***,** 33 Cal. 3d 419, 189 Cal. Rptr. 346 (1983), by coordinating operation of **Truckee River Reservoirs**, Donner Lake and Independence Lake, by supporting recreation and instream flows, and by providing for consultation with California, which will aid in balancing among public trust uses while meeting all other requirements of the **Settlement Act**.

SECTION 1.B – STATEMENT OF GENERAL OPERATIONAL PRINCIPLES

The following are general operational principles which provide a framework for the **Administrator** in implementing this **Agreement**. These general principles are intended to be consistent with the specific provisions of this **Agreement**, but if they conflict with those specific provisions, the specific provisions control. Operations should:

1. Be conducted, consistent with this **Agreement** and applicable legal requirements, so that the available water supply in the **Truckee River Basin** satisfies, to the maximum extent possible, multiple beneficial purposes, including municipal and industrial, irrigation, fish, wildlife, water quality and recreation purposes.

2. Satisfy, to the extent scheduled as **Exercised Water Rights** and to the extent that water is lawfully available, vested and perfected rights to use the water of the Truckee River and its tributaries, including, but not limited to, those **Exercised Water Rights** pursuant to the provisions of the **Orr Ditch Decree**, except as expressly provided in the **Settlement Act** and this **Agreement**.

3. Maintain the **Minimum Releases** and, to the extent practicable consistent with existing water rights and this **Agreement**, maintain **Enhanced Minimum Releases**, preferred instream flows and reservoir recreation levels as described in Article Nine.

4. Comply with applicable flood control requirements for Prosser Creek, Stampede, Boca and Martis Creek Reservoirs.

5. Comply with all applicable dam safety requirements.

6. Utilize the **Integrated Schedules** developed by the **Administrator** through coordination with the **Scheduling Parties**.

7. Respond to declared federal, state or local water-related emergencies presenting a clear and immediate danger to public health, life, property, or essential public services involving an upset or other unexpected occurrence to facilities and resources addressed in this **Agreement**.

SECTION 1.C – PROTECTION OF WATER RIGHTS

Section 1.C.1 Vested and Perfected Rights. Pursuant to Section 210(b)(13) of the **Settlement Act**, nothing in this **Agreement** shall be construed to (a) affect the power of the **Orr Ditch Court** to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the **Orr Ditch Decree**; or (b) alter or conflict with any vested or perfected right of any **Person** to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the **Newlands Project** for the delivery of Truckee River water to Derby Dam and for the diversion of such water at Derby Dam pursuant to the **Orr Ditch Decree** or any applicable law. The parties agree that such entitlement and rights are subject to the priority of the interstate allocations in Sections 204(b) and 204(c) of the Settlement Act. The **Federal Water Master** under the **Orr Ditch Decree** shall retain full authority to ensure that such rights are fully enforced.

Section 1.C.2 Protection of Water Rights. If the implementation of any provision or provisions of this **Agreement** would or does result in an owner of an **Exercised Orr Ditch Decree Water Right** not receiving the amount of water to which that owner is legally entitled, the **Administrator** shall, as soon as practicable, (a) implement a remedy mutually acceptable to affected parties, or (b) make up the amount of water to which the owner of the **Exercised Orr Ditch Decree Water Right** is legally entitled, utilizing water of the **Scheduling Party** or **Parties** who benefited as a result of implementation of the provision or provisions of this **Agreement** which caused such result. This Section 1.C.2 does not apply to water which is not available to satisfy **Orr Ditch Decree Water Rights** because of implementation of Section 204(b) and Section 204(c)(1) of the **Settlement Act** or as the result of water rights voluntarily relinquished under this **Agreement**. The **Administrator** shall provide appropriate notice and opportunity to be heard to any **Person** who may be adversely affected before implementing any actions pursuant to this Section 1.C.2.

Section 1.C.3 Carson River. This **Agreement** is not intended to affect and does not affect the operation of the Carson River or any of its tributaries or the power of the United States District Court for the District of Nevada or its Federal Water Master under the final decree in the *United States of America v. Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1980, and any amendments or supplements thereto.

Section 1.C.4 Agricultural Diversion of Water under Orr Ditch Decree Water Rights. In the event that the **Establishment** of **Credit Water** results in a reduction of flows at the **Farad Gage** and flows at the **Farad Gage** are less than 400 cubic feet per second during April through September when a **Drought Situation** does not exist, the **Administrator** shall provide assistance as provided in this Section 1.C.4 in the diversion of water from the **Truckee River** to **Persons** using **Orr Ditch Decree Water Rights** in Nevada for purposes of agriculture to the extent needed and as limited by this Section 1.C.4.

Section 1.C.4(a) Demonstration of Need for Assistance. In order to provide assistance under this Section 1.C.4, the **Administrator** must determine that the conditions described in Section 1.C.4 above exist, that a holder or holders of **Exercised Orr Ditch Decree Water Rights** used for purposes of agriculture are unable to divert water flowing in the Truckee River to which they are entitled, that such holder or holders have performed customary maintenance on their works of diversion and conveyance facilities, and that **Establishment** of **Credit Water** is the cause of such inability.

Section 1.C.4(b) Manner of Assistance. Upon a determination by the **Administrator** that the conditions of Section 1.C.4(a) are satisfied, and that assistance is warranted, the **Administrator** shall either assist the water right holder or holders in enhancing the diversion facility through channel work, debris removal, embankment placement or other similar measures; or identify and assist with an alternative method of water delivery to the affected properties, such as by pump or other conveyance. The assistance shall be limited to that necessary to provide a flow of water sufficient to satisfy the affected water rights, and shall use techniques comparable to the historic structure, unless a more cost-effective alternative is identified. If the cost of the assistance is within the existing annual budget, the **Administrator** may authorize the necessary measures and oversee their implementation. However, if the cost is such that additional funding will be necessary, the **Administrator** shall first consult with California, Nevada and United States before proceeding.

SECTION 1.D – IMPORTED WATER

Imported Water may be used without regard to the requirements of the **Settlement Act** or this **Agreement**, except that **Imported Water** may only be stored in a **Truckee River Reservoir** as **Other Credit Water** or in accordance with Section 6.C.7.

SECTION 1.E – REMAINING WATER OF THE TRUCKEE RIVER

[NOTE: Section 1.E.1 is written assuming these permits will have been issued by the time TROA is executed.]

Section 1.E.1 State of Nevada Permits Number 48061 and 48494. The remaining water of the Truckee River allocated to Nevada pursuant to Section 204(c)(3) of the **Settlement Act** which is not subject to vested or perfected rights under the applicable statutory law in existence as of July 1, 1999, has been appropriated by Pyramid Tribe pursuant to the law of the

State of Nevada in Permits Number 48061 and 48494 issued by the Nevada State Engineer and as confirmed by the amendment to the **Orr Ditch Decree** described in Section 12.A.4(f). The **Signatory Parties** agree that water under Permits Number 48061 and 48494 shall flow to Pyramid Lake for the purposes described therein and that the Truckee River and its tributaries, in Nevada, is fully appropriated and therefore closed to any new appropriations.

Section 1.E.2 Certain Effluent Not Included in Remaining Water of the Truckee River. The Truckee River water to which Pyramid Tribe is entitled under Section 1.E.1 does not include effluent from wastewater treatment facilities which effluent is attributable to the use of:

(a) groundwater, except as provided in Section 1.E.3 and Section 1.E.4,

(b) **Privately Owned Stored Water,**

(c) **Power Company M&I Credit Water,**

(d) water diverted utilizing only the consumptive use fraction of **Changed Diversion Rights**, or

(e) Power Company's water right under Section 5.A.6 only to the extent of the difference between the maximum amount of groundwater pumped in a year from Pleasant Valley (Basin Number 88), Truckee Canyon (Basin Number 91), Truckee Meadows (Basin Number 87), Spanish Springs (Basin Number 85), Sun Valley (Basin Number 86), and Lemon Valley (Basin Number 92) pursuant to applicable law and the actual amount of groundwater pumped by Power Company and Washoe County under their respective rights for M&I purposes during a year.

Except as provided in Section 1.E.3 and Section 1.E.4, effluent from such categories of water may be utilized without providing water rights for return flow to the Truckee River. With respect to effluent attributable to categories of water other than those set forth above, nothing herein shall prevent the utilization of such effluent where the State Engineer allows a change of the full duty of a **Changed Diversion Right** to **Municipal and Industrial Use,** but only to the extent that additional water rights are acquired to make up for the return flows that would have accrued to the Truckee River from wastewater treatment facilities returning water to the Truckee River or to its tributaries.

Section 1.E.3 No Waiver of Any Rights to Protest Utilization of Nevada Groundwater. Pyramid Tribe does not by this section 1.E, waive any rights it may have to protest the right to the utilization of Nevada groundwater that is not returned to the Truckee River or a tributary to the Truckee River or to protest applications for new or changes to existing appropriations of groundwater in Nevada.

Section 1.E.4 6,700 Acre Feet of Truckee Meadows Water Rights to be Provided. Reno, Sparks and Washoe County agree to provide 6,700 acre feet of Truckee

Meadows water rights no later than when this **Agreement** takes effect. All such water rights shall be used as Water Quality Water in accordance with the **Truckee River Water Quality Settlement Agreement** and this **Agreement** and the **Water Quality Credit Water Established** with such rights shall be managed for the purposes of water quality in accordance with the criteria in section 3(c) of **Truckee River Water Quality Settlement Agreement**. All water rights provided under this Section 1.E.4 shall be owned by Reno, Sparks and Washoe County and shall be entitled to the same treatment provided under section 6 of the **Truckee River Water Quality Settlement Agreement** for the water rights acquired pursuant to the **Truckee River Water Quality Settlement Agreement**. "Truckee Meadows water rights" when used in this Section 1.E.4 means: (a) water rights with original points of diversion from the Truckee River between Farad and Vista, and (b) water rights from Truckee River tributaries which reach the Truckee River upstream of Derby Dam and water rights with original points of diversion between Vista and Derby Dam excluding any contribution of effluent from the Truckee Meadows Water Reclamation Facility in such amounts that the yield for water quality purposes (including the ability to establish **Water Quality Credit Water** under this **Agreement**) is not less than water rights with original points of diversion from the Truckee River between Farad and Vista. The water rights provided pursuant to this Section 1.E.4 may be utilized by Reno, Sparks and Washoe County to fulfill any requirement that may be imposed to replace any groundwater component of effluent that is not returned to the Truckee River or a tributary of the Truckee River.

SECTION 1.F – EMERGENCY AND RELATED PROVISIONS

Section 1.F.1 Cooperation in Water-Related Emergencies Not Involving Flood Control Operations. When a federal, state or local emergency involving an upset or other unexpected occurrence to facilities and resources addressed in this **Agreement** and presenting a clear and immediate danger to public health, life, property or essential public services and affecting surface water in the **Truckee River Basin** arises, the **Administrator** shall cooperate with the United States, California and Nevada, the Pyramid Tribe, the affected local governments and the owners and operators of the dams associated with the **Truckee River Reservoirs**, the dam at the outlet of Independence Lake and the dam at the outlet of Donner Lake in responding to such an emergency condition. During an emergency, the **Administrator** is authorized to undertake activities, including scheduling dam or reservoir operations that are inconsistent with the terms of this **Agreement**, as may be necessary to respond to the emergency. The **Administrator** shall consult with the dam owners and operators as soon as practicable and shall conduct an accounting for the emergency operations under Article Three and consistent with this **Agreement** as soon as practicable after the cancellation of the emergency condition. This Section 1.F.1 does not apply to an emergency involving flood control or dam safety operations or the provisions of Section 5.A.3(d) relating to precautionary drawdown of Lake Tahoe.

Section 1.F.2 Maintenance and Modification of Water and Power Facilities.

Section 1.F.2(a) Performance of Certain Acts Not Prevented. Nothing in this **Agreement** shall prevent the owners or operators of the dams associated with the **Truckee**

River Reservoirs, the dam at the outlet of Independence Lake or the dam at the outlet of Donner Lake from performing such acts at such time and in such a manner as the owner or operator considers appropriate in order to:

(1) Perform scheduled or unscheduled maintenance on a dam or other water or power facility;

(2) Comply with applicable dam safety or flood control requirements;

(3) Respond to safety or emergency conditions; or

(4) Modify or reconstruct such facilities.

Section 1.F.2(b) Avoidance of Loss of Water. Any **Person** having authority to perform the acts set forth in Section 1.F.2(a) shall use its best efforts to schedule and perform such acts in a manner that will avoid, to the extent practicable, loss of water stored pursuant to the terms of this **Agreement,** and dam and reservoir operations inconsistent with the terms of this **Agreement**. Such **Person** shall also use its best efforts to notify the **Administrator**, the **Scheduling Parties** and **Signatory Parties** prior to undertaking any such acts. Subject to the availability of appropriations or unless otherwise required by applicable law or by dam safety requirements, any modification, maintenance or reconstruction of such facility shall be designed to allow operations pursuant to this **Agreement** at least to the same extent such operations could have been accomplished prior to the modification, maintenance or reconstruction. The modification, maintenance or reconstruction shall be performed in a manner to allow operations under this **Agreement** to resume as soon as practicable.

Section 1.F.2(c) Accounting for Reservoir Discharges. If **Discharges** from **Truckee River Reservoirs**, Independence Lake or Donner Lake are required to enable a **Person** having authority to modify, maintain or reconstruct such dams to perform one or more of the acts described in Section 1.F.2(a), any water **Discharged** shall be accounted for under Article Three in a manner that is consistent with this **Agreement**.

ARTICLE TWO
ADMINISTRATIVE PROVISIONS

SECTION 2.A - THE ADMINISTRATOR

Section 2.A.1 Office, Powers and Duties. Pursuant to Section 205(a)(3)(A) of the **Settlement Act**, the office of **Administrator** is hereby established as an independent entity funded in accordance with Section 2.C, for purposes of administering this **Agreement**. The office of **Administrator** and the office of **Federal Water Master** under the **Orr Ditch Decree** shall be filled by the same person, provided, however, that this requirement is not intended to require and does not require that the office of **Administrator** and the office of Federal Water Master under the final decree of the United States District Court for the District of Nevada in *United States v. Alpine Land and Reservoir Company*, Civ. No. D-183 entered December 18, 1980, and any supplements thereto (the "Alpine Decree"), be filled by the same person. If the office of **Administrator** and the office of Federal Water Master under the Alpine Decree are filled by the same person, that person shall have no authority under this **Agreement** with respect to the Carson River and its tributaries. The **Administrator** shall be responsible for carrying out the terms and conditions of this **Agreement**, and shall have such powers, duties and responsibilities as are necessary for that purpose except as otherwise limited by this **Agreement**. In discharging this responsibility, the **Administrator** shall at all times, consistent with the terms and conditions of this **Agreement**, consider the preservation and enhancement of the biological resources of the **Lake Tahoe Basin** and the **Truckee River Basin**.

Section 2.A.2 Selection of Administrator. The **Federal Water Master** in office on the date this **Agreement** enters into effect shall be the first **Administrator**. Within 60 days from the date on which a vacancy in the office of **Administrator** occurs, for any reason, a nominating committee composed of one representative duly appointed by each **Signatory Party** to this **Agreement** shall recommend to the **Orr Ditch Court** the names of no more than three individuals for appointment as **Administrator**. Prior to submitting those names to the **Orr Ditch Court**, the nominating committee shall consult with interested entities regarding qualifications of individuals being considered for recommendation and to suggest other names for consideration. In order to submit a name for consideration by the **Orr Ditch Court**, a majority of the nominating committee, which majority must include each of the representatives of the **Sovereign Parties**, must vote in favor of the person whose name is submitted.

Section 2.A.3 Appointment By the Orr Ditch Court. Within 60 days from receipt of the names of the nominees for **Administrator** from the nominating committee, the **Orr Ditch Court** shall appoint one individual from the list of nominees to serve as **Administrator**. If the **Orr Ditch Court** determines that none of the nominees is appropriate for appointment, it shall issue a written statement setting forth its reasons for declining to appoint. Thereafter, the nominating committee, under the same process set forth in Section 2.A.2, shall submit a revised list of recommended persons which may include names on the original list with any explanatory comments. This process shall continue for a period not to exceed 240 days from the date on which the vacancy in the office of **Administrator** occurred. If an **Administrator** is not

appointed by the end of that period, the **Orr Ditch Court** shall appoint the **Administrator**, who may or may not be a nominee of the nominating committee.

Section 2.A.4 Deputy Administrator. The **Administrator** shall appoint a Deputy Administrator, subject to approval by the **Orr Ditch Court**. The Deputy Administrator shall assume the duties of the **Administrator** during his or her absence and serve as interim **Administrator** in the event of a vacancy in the position of **Administrator**. The Deputy Administrator shall not assume the duties of the **Administrator** for continuous periods exceeding 90 days. In the absence of the **Administrator**, the **Orr Ditch Court** may extend the authority of the Deputy Administrator for additional 90-day periods or select another Deputy Administrator to serve for such 90-day periods. The **Orr Ditch Court** may authorize the Deputy Administrator to serve as interim **Administrator** until the vacancy in the office of **Administrator** is filled in accordance with Sections 2.A.2 and 2.A.3 above or may select another Deputy Administrator to so serve until such vacancy is filled. The **Orr Ditch Court** may appoint a Deputy Administrator to serve until the vacancy in the office of **Administrator** is filled if the offices of **Administrator** and Deputy Administrator are both vacant.

Section 2.A.5 Removal of Administrator and Deputy Administrator. Upon the filing of a petition for the removal of the **Administrator**, which petition may also request the removal of the Deputy Administrator, by a majority of the Nominating Committee, which majority must include each of the **Sovereign Parties**, the **Orr Ditch Court** may order removal of the **Administrator** and also the Deputy Administrator. The removal of the **Administrator** under this Section 2.A.5 constitutes a vacancy to which the provisions of Sections 2.A.2 and 2.A.3 apply. If both the **Administrator** and the Deputy Administrator are removed, the **Orr Ditch Court** may appoint another Deputy Administrator to serve until the vacancy in the office of **Administrator** is filled.

Section 2.A.6 Removal of Federal Water Master Constitutes Removal of Administrator. The removal of the **Federal Water Master** by the **Orr Ditch Court** pursuant to the **Orr Ditch Decree** shall also constitute removal of the **Administrator** for the purposes of this **Agreement**, and shall result in a vacancy to which the provisions of Sections 2.A.2 and 2.A.3 apply.

Section 2.A.7 Truckee River Operations Coordinating Committee. The Truckee River Operations Coordinating Committee is hereby established. The Truckee River Operations Coordinating Committee shall consist of one representative designated by each **Signatory Party**. The representatives of the **Sovereign Parties** shall elect the chair by a majority vote, who shall serve until a replacement is designated pursuant to another such vote. The **Administrator** shall be an ex-officio member of the Committee and shall be responsible for providing notice of meetings and maintaining files and records. Meetings of the Committee shall be open to the public. The Truckee River Operations Coordinating Committee shall act as a non-decisional, non-voting forum. The Committee shall meet periodically to review and discuss implementation of this **Agreement**, scheduling, forecasting and other issues related to planning for and coordinating the operation of **Truckee River Reservoirs**, Donner Lake and Independence Lake.

Section 2.A.8 Appointment of Staff and Compensation. The **Administrator** may appoint such person or persons as staff to assist the **Administrator** and Deputy Administrator in carrying out the provisions of this **Agreement**. The compensation and expenses of the **Administrator**, Deputy Administrator and any other staff employed by the **Administrator**, shall be borne as provided in Section 2.C.2, and shall be submitted for review and approval as provided in Section 2.C.3.

SECTION 2.B - DISPUTE RESOLUTION

Section 2.B.1 Disputes Arising Under the Orr Ditch Decree. Disputes arising under the **Orr Ditch Decree** shall remain subject to the jurisdiction of the **Orr Ditch Court** and the **Federal Water Master**.

Section 2.B.2 Disputes Arising Under this Agreement. Except as otherwise provided under this **Agreement**, all disputes arising under this **Agreement** shall be submitted for resolution to the **Truckee River Special Hearing Officer**. No person may commence a judicial action involving a dispute arising under this **Agreement** without first having exhausted procedures for resolution of disputes as set forth in this **Agreement**. The petition filed with the **Truckee River Special Hearing Officer** shall be styled in the name of the parties to the dispute. If the dispute stems from a decision made by the **Administrator**, the **Administrator** shall be named as respondent, with the parties to the dispute named as petitioner and real party in interest.

Section 2.B.2(a) Appointment of Truckee River Special Hearing Officer. The **Truckee River Special Hearing Officer** shall be appointed by a four-member appointing committee comprised of one representative appointed by each of the **Sovereign Parties**. The appointment shall be only by unanimous agreement of all members of the appointing committee, and shall be for a four-year term. An incumbent may be re-appointed to successive four-year terms by unanimous agreement of all members of the appointing committee. If a **Truckee River Special Hearing Officer** is not appointed within one year from the date this **Agreement** enters into effect, the **Orr Ditch Court** may, if necessary, appoint an interim **Truckee River Special Hearing Officer** to serve until such time as the **Truckee River Special Hearing Officer** is appointed by the appointing committee as provided in this Section 2.B.2. The **Truckee River Special Hearing Officer** shall be subject to removal for cause at any time by agreement of any three members of the appointing committee and a successor shall be appointed only as provided in this Section 2.B.2(a).

Section 2.B.2(b) Process of Truckee River Special Hearing Officer. The **Truckee River Special Hearing Officer** is authorized to resolve disputes arising under this **Agreement**.

(1) The **Truckee River Special Hearing Officer** may hold hearings which shall be public and on the record.

(2) The **Truckee River Special Hearing Officer** shall, within six months of appointment, propose rules and procedures for notice and the conduct of

hearings which shall become the rules and procedures of the **Truckee River Special Hearing Officer** if approved by the **Sovereign Parties**. The rules and procedures may be modified at any time upon proposal of the **Truckee River Special Hearing Officer** or any **Sovereign Party**, and with the approval of all the **Sovereign Parties** and the **Truckee River Special Hearing Officer**.

(3) All **Scheduling Parties** and **Signatory Parties**, and all other **Persons** having standing, may appear at all hearings before the **Truckee River Special Hearing Officer**.

(4) Decisions of the **Truckee River Special Hearing Officer** shall be final for purposes of judicial review and, subject to the provisions of any interim or final order of a court reviewing such decisions, shall be implemented by the **Administrator** or other appropriate party. Parties to the dispute are bound by the decision of the **Truckee River Special Hearing Officer** unless the decision is stayed or reversed.

(5) Decisions of the **Truckee River Special Hearing Officer** are reviewable by the **Orr Ditch Court** upon petition, by any aggrieved party who participated in the hearing before the **Truckee River Special Hearing Officer**, to the **Orr Ditch Court**. Any petitions for review of a decision of the **Truckee River Special Hearing Officer** must be filed within 30 days following the decision. No such petition shall be heard unless notice thereof has been served, personally or by registered or certified mail or overnight delivery within 30 days following the decision in question, on the **Truckee River Special Hearing Officer** and on any other party affected by the decision and who participated in the proceedings before the **Truckee River Special Hearing Officer**. Such notice shall contain a statement of the substance of the decision appealed from, and of the manner in which the decision adversely affects or aggrieves the petitioner's interests. The decision of the **Truckee River Special Hearing Officer** shall be prima facie correct, and shall be upheld unless the petitioner establishes that the decision is arbitrary and capricious, is unsupported by substantial evidence on the record, or is not in accordance with the provisions of this **Agreement** or other law.

(6) The parties agree that any remedies ordered by the **Administrator**, the **Truckee River Special Hearing Officer**, and the court are limited to declaratory and prospective injunctive relief to carry out and enforce the provisions of this **Agreement**; and that neither the **Administrator**, the **Truckee River Special Hearing Officer**, nor the court is empowered to grant any monetary relief. The parties shall bear their own costs and fees in any dispute, and at all stages of the dispute. The cost of preparing the administrative record shall be borne by the petitioner; provided, however,

that if the petitioner substantially prevails, the cost may be apportioned equally among all the parties to the dispute. Expenses associated with the hearings by the **Administrator** and the **Truckee River Special Hearing Officer** shall be determined and assessed as set forth in Section 2.C.

(7) To the extent an issue concerning a state water right law is properly before the **Truckee River Special Hearing Officer** or the court as part of a dispute arising under this **Agreement**, and to aid in understanding state law, the **Truckee River Special Hearing Officer** or the court may request the Nevada State Engineer or the California State Water Resources Control Board to accept a reference as may be authorized by state law. For purposes of this Section 2.B.2(b)(7), such a reference may be requested pursuant to California Water Code Sections 2075 and 2076. All costs and fees for any such reference shall be determined and assessed as provided in state law.

Section 2.B.3 Expenses. Costs of hearings before the **Truckee River Special Hearing Officer** shall be apportioned as set forth in Section 2.C.4. Costs, if any, of retaining a **Truckee River Special Hearing Officer** not associated with hearings shall be included in the **Administrator's** budget as provided in Section 2.C.3.

Section 2.B.4 Performance of Certain Acts After Expiration of Term, Resignation or Removal. A **Truckee River Special Hearing Officer** removed from office for cause as provided in Section 2.B.2(a) shall not execute any powers under this **Agreement**. The **Truckee River Special Hearing Officer** about to retire from office by reason of resignation or the expiration of term, shall, before such retirement, decide all disputes on which hearings have been concluded and may for a period of six months or such longer period of time as may be agreed to by the parties to the proceeding following such retirement make determinations and rulings as may be authorized by law and such determinations and rulings shall be treated for all purposes as if done prior to retirement from office.

Section 2.B.5 Sovereign Immunity.

Section 2.B.5(a) United States and Pyramid Tribe. By virtue of United States' commencement of the action leading to the **Orr Ditch Decree** and by virtue of Pyramid Tribe's intervention as plaintiff in that action for all purposes, and both sovereigns being bound by the **Orr Ditch Decree** and the amendments thereto, the sovereigns each acknowledge, and the **Orr Ditch Court** found and declared, that they are not immune from and are subject to the jurisdiction of the **Orr Ditch Court** over petitions filed against them concerning disputes arising under the **Orr Ditch Decree**, including petitions filed against the sovereigns for declaratory and prospective injunctive relief for disputes arising under this **Agreement**. Such jurisdiction does not extend to any claim for money damages. Nothing in this **Agreement** abrogates any claim or cause of action that may be available under the Administrative Procedure Act, 5 U.S.C. § 702 et seq.

Section 2.B.5(b) Nevada. Although Nevada was not a party to the action leading to the **Orr Ditch Decree** on the date of entry of the **Final Decree**, its water rights were set forth therein, and by virtue of Nevada's subsequent intervention in the action for all purposes, and being bound by the **Orr Ditch Decree** and amendments thereto, Nevada acknowledges, and the **Orr Ditch Court** found and declared, that it is not immune from and is subject to the jurisdiction of the **Orr Ditch Court** over petitions filed against it or its agencies concerning disputes arising under the **Orr Ditch Decree**. Such jurisdiction shall include petitions filed against Nevada or its agencies for declaratory and prospective injunctive relief for: (i) disputes arising under this **Agreement**, and (ii) claims by any aggrieved party where such claims allege failure to comply with the allocations or any other provisions of Section 204(b) and (c) of the **Settlement Act**. Such jurisdiction does not extend to any claim against Nevada or its agencies for money damages, nor to any claim against Nevada or its agencies arising under state law, except that jurisdiction continues for appeals from decisions by the Nevada State Engineer relating to changes in the point of diversion and place, means, manner or purpose of use of the water rights adjudicated under the Orr Ditch Decree. Such jurisdiction shall not take effect until this **Agreement** has entered into effect and becomes operative.

Section 2.B.5(c) California. By virtue of California's intervention in the action leading to the **Orr Ditch Decree** for the limited purposes of providing the **Orr Ditch Court** with jurisdiction to hear and decide: (i) petitions seeking judicial review of decisions by the **Truckee River Special Hearing Officer** which resolve disputes arising under this **Agreement**, and (ii) claims that allege failure to comply with the allocations or any other provisions of Section 204(b) and (c) of the **Settlement Act**, and being bound by the amendment to the **Orr Ditch Decree** approved on ___[*insert date that the court approves the amendment to the Orr Ditch Decree*] for those limited purposes, California acknowledges, and the **Orr Ditch Court** found and declared, that it is not immune from and is subject to the jurisdiction of the **Orr Ditch Court** over petitions filed against it or its agencies for declaratory and prospective injunctive relief for those two limited purposes. Such jurisdiction does not extend to any claim against California or its agencies for money damages, nor to any claim against California or its agencies arising under state law. Such jurisdiction shall not take effect until this **Agreement** has entered into effect and becomes operative.

Section 2.B.5(d) State Interventions. Except as expressly provided in this **Agreement**, the interventions by Nevada and California in the action leading to the **Orr Ditch Decree** shall not be construed to: (i) alter the law or procedures applicable to the water allocated in the Settlement Act, (ii) alter the applicability of federal or state law or procedures to the supervision of safety of dams or to flood control; (iii) alter the applicability of any other federal or state law or procedures as provided in the Settlement Act; or (iv) abrogate the jurisdiction of, or any required approvals by, the Nevada State Engineer, the California State Water Resources Control Board, or the state agencies authorized or directed to implement or carry out such laws and procedures. The law that the **Truckee River Special Hearing Officer** or the **Orr Ditch Court** applies in resolving disputes over which they have jurisdiction shall not be affected by the interventions of the States in the action leading to the **Orr Ditch Decree**.

SECTION 2.C - FINANCIAL RESPONSIBILITIES

Section 2.C.1 Orr Ditch Decree Administration. Expenses of administration of water rights set forth in the **Orr Ditch Decree** shall remain subject to the jurisdiction of the **Orr Ditch Court** and shall continue to be apportioned in the manner determined by that Court.

Section 2.C.2 Administration of this Agreement. Expenses of administration of this **Agreement**, which expenses shall not include those expenses apportioned pursuant to Section 2.C.1, shall be apportioned among United States, California and Nevada as provided in this Section 2.C.2.

Section 2.C.2(a) United States Share. United States' share of the expenses of administration of this **Agreement** shall be 40 percent. United States shall not assess on, or charge such expenses to, any other **Signatory Party,** nor to holders of **Orr Ditch Decree Water Rights**.

Section 2.C.2(b) California Share. California's share of the expenses of administration of this **Agreement** shall be 20 percent. If California funds a portion of its share of the expenses of administering this **Agreement** from charges to, or assessments or fees on, holders of water rights or on contracts for storage of water, such charges, assessments, or fees shall not be levied on the holders of water rights or on contracts where the water is stored in California primarily for beneficial use in Nevada; provided, that nothing in this Section 2.C.2(b) shall be construed as preventing California from levying charges, assessments or fees on water right applicants, on petitioners, or on holders of water rights, where such charges, assessments, or fees are made pursuant to state law uniformly applicable on a statewide basis. If California funds a portion of its share of the expenses of administration of this **Agreement** by charges, assessments or fees on or to **Persons** doing business within its jurisdiction, such charges, assessments or fees must be made pursuant to state law uniformly applicable on a statewide basis to all entities doing business within its jurisdiction.

Section 2.C.2(c) Nevada Share. Nevada's share of the expenses of administration of this **Agreement** shall be 40 percent. Nevada shall not assess on, or charge such expenses to, Pyramid Tribe or the Fallon Paiute-Shoshone Tribes.

Section 2.C.2(d) Appropriation of Funds. Any payments due under this Section 2.C.2 are necessarily subject to such legislation as the Congress of the United States or the Legislatures of Nevada and California shall hereafter enact; the payments provided for in this Section 2.C.2 are contingent upon such appropriations as the Congress or the appropriate Legislature may hereafter provide that are available for such purpose and the amount of such payments must necessarily be within the limits finally determined by such appropriations.

Section 2.C.2(e) Failure to Make Payments. When any **Sovereign Party** fails to pay its share of the costs of administration of this **Agreement** apportioned pursuant to Sections 2.C.2(a) through 2.C.2(c), the **Administrator**, or any **Sovereign Party**, may petition the **Orr Ditch Court** for an order to make payments or for any relief the Court deems

appropriate, taking into account the provisions of the **Settlement Act**. If payments were not made by a **Sovereign Party** because funds were not appropriated for that purpose, the **Orr Ditch Court** may order such other relief as may be available.

Section 2.C.2(f) Habitat Restoration Fund.

Section 2.C.2(f)(1) Funds For Habitat Restoration. The expenses of administering this **Agreement** shall include a **Truckee River Basin** habitat restoration fund. This fund shall be initiated in the second year following the entering into effect of this **Agreement** and shall total $50,000 for that year. In succeeding years the annual amount set aside for this fund shall be increased or decreased to account for changes in the gross national product implicit price deflator but shall not exceed $100,000 nor be less than $50,000. This fund shall be a part of the expenses of administering this **Agreement** for a period of 30 years, and deposits made to the fund during that period may continue to be used thereafter for the purposes of the fund until expended.

Section 2.C.2(f)(2) Use of the Habitat Restoration Fund. The habitat restoration fund shall be used to plan and implement fish habitat restoration or maintenance projects proposed by each of California, Nevada and Pyramid Tribe. This fund shall be allocated to result in one-third of the money being distributed to each of the three proposing parties each decade; provided that moneys made available by this fund during the first two years shall be distributed to California. Thereafter, the moneys shall be distributed as agreed to by the three proposing parties, subject to the one-third per decade limitation. In the event that the proposing parties do not in any year agree upon a distribution, the **Administrator** shall make the distribution consistent with the one-third per decade limitation. The proposing parties are encouraged to leverage their distributions with any other funds under their control, and with donations and grants.

Section 2.C.3 Preparation of Budget. The **Administrator** shall prepare and distribute to the **Scheduling Parties** and **Signatory Parties** an annual budget for funding requirements of Section 2.C.2. Such budget shall include any requests for funding for the hiring, compensation, and expenses of staff to assist the **Administrator** in carrying out the **Administrator's** duties under this **Agreement**. The budget may include a retainer for the **Truckee River Special Hearing Officer** pursuant to Section 2.B.3, and a reserve fund to adjust timing of payments to timing of expenditures. After distribution of the annual budget and consultation with the **Scheduling Parties** and **Signatory Parties**, a majority of Nevada, California and United States shall either approve the annual budget as submitted or modify it, and thereafter, the **Administrator** shall submit it as approved or modified to the **Orr Ditch Court** for ratification. The **Administrator** shall distribute a financial report prepared by an independent auditor that accounts for the expenditures for the previous budget period. Any money not expended in a budget year may be carried over to ensuing years.

Section 2.C.4 Truckee River Special Hearing Officer. All expenses associated with hearings by the **Truckee River Special Hearing Officer** shall be determined and assessed

by the **Truckee River Special Hearing Officer** in the same manner as expenses of a special master are established by the Court pursuant to Rule 53 of the Federal Rules of Civil Procedure.

Section 2.C.5 Nominating Committee. Expenses of a member of the nominating committee established in Section 2.A.2 shall be borne by the **Signatory Party** appointing said member.

Section 2.C.6 Appointing Committee. Expenses of a member of the appointing committee established in Section 2.B.2(a) shall be borne by the **Sovereign Party** appointing said member.

Section 2.C.7 Truckee River Operations Coordinating Committee. Each **Signatory Party** to this **Agreement** shall bear the expenses of its representative on the Truckee River Operations Coordinating Committee.

ARTICLE THREE
ACCOUNTING, REPORTING, FORECASTING AND MONITORING

SECTION 3.A – WATER ACCOUNTING

Section 3.A.1 Development of Water Accounting System. In consultation with the **Scheduling Parties** and **Signatory Parties**, the **Administrator** shall develop for use in administering this **Agreement** a water accounting system, including procedures for reconciliation of records, which is adequate to account for water in accordance with this **Agreement**. The water accounting system shall be the official record of operations for this **Agreement**.

Section 3.A.2 Scheduling Parties To Make Records Available. The **Scheduling Parties** shall keep and make available to the **Administrator**, at all reasonable times and places, records and data documenting their operations under this **Agreement** as may be required to carry out this **Agreement** or as may be necessary or useful in order for the **Administrator** to implement the water accounting system referenced in Section 3.A.1.

SECTION 3.B - REPORTS

The **Administrator** shall prepare daily, monthly, annual and ten-year reports documenting the operation of the Truckee River system carried out under this **Agreement**. Additional reports may also be prepared and distributed as deemed necessary by the **Administrator**. Daily reports shall be retained for not less than seven (7) years. Monthly, annual and ten-year reports shall be retained permanently.

Section 3.B.1 Daily Report. The daily report shall be prepared and made available each working day to the **Scheduling Parties**. It shall be available in written form in the **Administrator's** office and shall be available through the transmittable electronic system maintained by the **Administrator** pursuant to Section 3.C.3. The daily report shall provide the current status of all water accounts provided for in this **Agreement** and streamflow, reservoir levels and other hydro-meteorological data used for operations.

Section 3.B.2 Monthly Report. The monthly report shall include the daily and monthly accounting information and evaluate and summarize operations.

Section 3.B.3 Annual Report. The annual report shall cover a calendar year and incorporate monthly reports and evaluate and summarize operations, including special conditions occurring during the year which will assist in understanding that year's operations, and shall include data reflecting water use and information provided by California and Nevada. The annual report for a year shall be available by March 15 of the following year.

Section 3.B.4 Ten-Year Report. A ten-year report shall be prepared pursuant to Section 13.C and shall be available by June 15 of the year following the end of the tenth year.

SECTION 3.C - MONITORING OF OPERATIONS

Section 3.C.1 Data Collection. The **Administrator** shall be responsible for design, implementation and maintenance of a data collection program sufficient for the purposes of this **Agreement**, including appropriate policies for the retention of data. The **Administrator** shall review the existing data collection equipment and sites and assess the need for new equipment and sites in consultation with the **Scheduling Parties** and **Signatory Parties** and with the appropriate agencies or **Scheduling Parties** and **Signatory Parties** responsible for data collection equipment and facilities. In consultation with **Scheduling Parties** and **Signatory Parties,** the **Administrator** shall determine which monitoring gages, telemeters and data sources are to be the official monitoring points for implementing this **Agreement.** The **Administrator** may cooperate or contract with other agencies or entities for monitoring operations provided those operations are consistent with the requirements of this **Agreement**.

Section 3.C.2 Oversight of Monitoring Activities. The **Administrator** shall have responsibility for oversight of required monitoring activities to ensure long-term consistency of operations, site-to-site compatibility of data and adjustment of data to correct for anomalies or disturbances in real-time monitor readings. The **Administrator** shall identify any adjustments made to recorded data.

Section 3.C.3 Database System. The information and data from the monitoring program shall be accessible through a transmittable electronic system.

[NOTE: This Section 3.C.4 is a placeholder until the environmental review process has been completed and any required mitigation has been incorporated into the Agreement.]

Section 3.C.4 Mitigation Monitoring Requirements.

SECTION 3.D – DETERMINING A DROUGHT SITUATION

No later than April 15 of any year, for the purpose of determining whether a **Drought Situation** exists, the **Administrator** shall project operation of the Truckee River system, considering all relevant operations criteria and utilizing the April 1 Natural Resources Conservation Service median forecast in combination with runoff forecasts based upon median climatic conditions for basins and periods not included in the Natural Resources Conservation Service median forecast. If a **Drought Situation** has been determined to exist, such determination shall remain in effect until April 15 of the following year.

SECTION 3.E – ADJUSTMENTS AND ADDITIONAL INFORMATION

If published forecasts and data do not provide adequate information to implement this **Agreement** or if forecasts and data are no longer available from persons not party to this **Agreement**, the **Administrator** shall secure additional data and make reasonable adjustments to such data and forecasts as may be necessary to satisfy the implementation requirements of this **Agreement**.

ARTICLE FOUR
INCORPORATION OF CERTAIN PROVISIONS OF PRELIMINARY SETTLEMENT AGREEMENT

SECTION 4.A – PRELIMINARY SETTLEMENT AGREEMENT PROVISIONS SUPERSEDED

This **Agreement** supersedes all provisions and requirements of the Preliminary Settlement Agreement, as modified by the Ratification Agreement ("PSA"), and this Article Four, together with other provisions of this **Agreement**, comply with the **Settlement Act** with respect to the PSA. The provisions of this Article Four are based upon certain provisions of the PSA which are not included or addressed elsewhere in this **Agreement**. The provisions of this Article Four are binding only upon United States, Pyramid Tribe, and Power Company, and not on any other **Signatory Party**.

SECTION 4.B - WATER RIGHT REQUIREMENT FOR POWER COMPANY SERVICE COMMITMENTS UP TO 119,000 ACRE-FEET

The Public Utilities Commission of Nevada requires Power Company customers requesting "new water service" to comply with certain rules under its authority, including Power Company's water Rule 17, which requires that water rights be provided by a customer in order to receive a "new water service commitment" or "will-serve letter". This Section 4.B relates the portion of Rule 17 concerning water rights for "new water service commitments" to this **Agreement**, and identifies components of Power Company commitments which rely on surface water and storage under this **Agreement**.

Section 4.B.1 Excess Water Rights for Past Power Company Commitments.

Section 4.B.1(a) Excess Water Rights Required from 1982 to 1995. From 1982 through February 21, 1995, Power Company required new water service commitments which relied on surface water to provide surface water rights at the rate of 1.72 acre-feet for every acre-foot of such commitment, reflecting 0.72 acre-foot of excess water right for drought purposes for each acre-foot of new water service commitment. For purposes of this **Agreement**, these commitments shall be designated as relying on storage under this **Agreement**. The total of such excess water rights obtained from 1982 through February 21, 1995, was approximately 7,800 acre-feet.

Section 4.B.1(b) Excess Water Rights Required from 1995 to 1999. From February 22, 1995, through October 20, 1999, Power Company required new water service commitments which relied on surface water to provide surface water rights at the rate of 1.11 acre-feet for each acre-foot of new water service commitment, reflecting 0.11 acre-foot of excess water right for drought purposes for each acre-foot of new water service commitment. For purposes of this **Agreement**, these commitments are designated as relying on storage under this

Agreement. The total of such excess water rights obtained from February 22, 1995, through October 20, 1999, was approximately 960 acre-feet.

Section 4.B.2 Excess Water Rights Required for Future Power Company Commitments.

Section 4.B.2(a) Temporary Suspension of 0.11 Acre-Foot Requirement. The requirement for an excess 0.11 acre-foot of surface water rights to be provided for each acre-foot of new water service commitment set forth in Section 4.B.1(b) has been suspended from October 21, 1999, through October 20, 2004.

Section 4.B.2(b) Resumption of 0.11 Acre-Foot Requirement. Unless otherwise agreed by each of Power Company, Pyramid Tribe and United States, new water service commitments which are designated as relying on surface water and storage under this **Agreement** shall resume providing 1.11 acre-feet of surface water rights for each acre-foot of new water service commitment on October 21, 2004, and shall continue at least until all **Power Company Normal Demand** totals 119,000 acre-feet per year.

Section 4.B.2(c) Total Water Rights to be Obtained through 0.11 Acre-Foot Requirement. The total amount of excess water rights to be obtained under this Section 4.B.2 shall be calculated by adding all new water service commitments issued after October 20, 2004, which rely on surface water and storage under this **Agreement**, except those which provide groundwater rights or Donner Lake water rights in accordance with Section 4.C.1, and multiplying the net total by 0.11. Water rights provided for new service commitments pursuant to Section 4.F shall not be included in the total calculation.

Section 4.B.2(d) Water Rights to Yield Sufficient Supply. If water rights other than **Changed Diversion Rights** are utilized for new water service commitments under this Section 4.B.2, the water rights provided must be in sufficient quantity to yield at least the same water supply for diversion to **Power Company Service Area** as that provided during a **Critical Drought Period** by **Changed Diversion Rights** having an original place of use within the Truckee Meadows. **Changed Diversion Rights** having an original place of use within the **Newlands Project** may replace the rights obtained in accordance with Section 4.B, provided they are in sufficient quantity to yield at least the same water supply for diversion to **Power Company Service Area** as that provided by **Changed Diversion Rights** having an original place of use within the Truckee Meadows.

Section 4.B.3 Excess Water Rights Not to Be Used for New Service Commitments. Unless otherwise agreed by each of Power Company, Pyramid Tribe and United States, the excess water rights identified in Sections 4.B.1 and 4.B.2 shall not be available for water service commitments beyond those identified in Sections 4.B.1 and 4.B.2. The consumptive use portion of such excess water rights shall, to the extent physically and legally feasible, be utilized by Power Company to **Establish Power Company M&I Credit Water**.

Section 4.B.4 Adjustment of Commitments and Replacement of Excess Water Rights. The purpose of this Section 4.B.4 is to carry out the purpose of Section 2 of 1989 Statutes of Nevada Ch 617 pages 1393 to 1396 by preventing the allocation of the water conserved pursuant to that provision to new water service commitments, thereby insuring that such conserved water is stored and used pursuant to this **Agreement**. Power Company may adjust the amount of water service committed to the amount of water actually utilized by a customer for commercial purposes or for wholesale customers. If such wholesale customer is located inside Power Company's retail boundaries existing as of October 1, 2000, such commitment may only be adjusted for commercial usage, and if such wholesale customer is located outside Power Company's retail boundaries existing as of October 1, 2000, such commitment may be adjusted to actual usage. Unless otherwise agreed by each of the United States, Pyramid Tribe and Power Company, Power Company may only adjust water service commitments to residential customers located inside Power Company's retail boundaries existing as of October 1, 2000, when the residence is removed or the property is reverted to acreage, and if so adjusted, a new water service commitment would be required if new water service is requested. Power Company may also replace or exchange excess water rights for other water rights of equal or better yield.

Section 4.B.5 Water Conserved from Toilet Replacement Programs Not to Be Used for New Water Service Commitments. All water conserved as the result of the toilet replacement program described in Section 7.B.4(f) shall be, to the extent physically and legally feasible, utilized by Power Company to **Establish Power Company M&I Credit Water** pursuant to Section 7.B.1. Such conserved water shall not be available for new water service commitments, and shall be deemed part of the water utilized to serve existing customers.

SECTION 4.C - DEVELOPMENT OF ADDITIONAL MUNICIPAL AND INDUSTRIAL WATER SUPPLIES TO HELP MEET A DEMAND OF 119,000 ACRE-FEET

Section 4.C.1 Development of Additional Municipal and Industrial Water Supplies. Power Company shall use its best efforts to implement the following measures, to the extent legally, technically and economically feasible, to help meet the water demands of its customers:

(a) The development of up to 15,950 acre-feet annually of groundwater from the Truckee Meadows groundwater basin, which includes the 12,616 acre-feet identified in the PSA.

(b) The acquisition and utilization of the rights currently owned by the Truckee-Carson Irrigation District to store and use water in Donner Lake on a willing-buyer/ willing-seller basis, unless such right is acquired by another party.

Power Company may issue new water service commitments based on groundwater rights referenced in this Section 4.C.1 and which were not previously committed, and Donner Lake rights, without acquiring additional surface water rights otherwise required by Section 4.B.2,

provided that normal year water use associated with such commitments shall be included within the 119,000 acre-feet referenced in Section 4.B.2(b).

Section 4.C.2 Good Faith Efforts. Power Company has made good faith efforts with respect to the measures identified in Section 4.C.1. Power Company shall not be in default of its best efforts obligation unless it fails to meet that obligation and any such failure continues for a period of one year after Power Company is notified in writing by Pyramid Tribe, except that if any failure cannot be cured within the one-year period, Power Company will not be in default if, within that one-year period, Power Company begins to cure any failure and, thereafter, proceeds diligently to cure it.

SECTION 4.D - WAIVER OF RIGHT TO OBJECT

Pyramid Tribe and the United States waive any and all rights or claims they may have to protest or object to Power Company's implementation and use in **Power Company Service Area** of the water supplies described in Sections 4.C and 4.E and to any changes to water rights made consistent with Sections 4.A. and 4.B.

SECTION 4.E - SPARKS MARINA LAKE

During a **Drought Situation** or **Emergency or Repair Condition,** Power Company may, pursuant to applicable law, pump up to 2,000 acre-feet per year directly from Sparks Marina Lake or adjacent wells for **Municipal and Industrial Use**. Additional quantities of water may be pumped, pursuant to applicable law, if agreed to by Pyramid Tribe.

SECTION 4.F - DEVELOPMENT OF ADDITIONAL MUNICIPAL AND INDUSTRIAL WATER SUPPLIES WHICH DO NOT RELY ON STORAGE UNDER THIS AGREEMENT

Section 4.F.1 Additional Power Company Water Supplies. **Power Company** may obtain water supplies which do not rely on storage under this **Agreement** to meet the demands of its customers either after **Power Company Normal Demand** reaches 119,000 acre-feet per year or prior thereto, through:

(a) the acquisition of **Truckee River Basin** water rights in addition to those identified in Sections 4.B and 4.C;

(b) the utilization of water from hydrologic basins outside the **Truckee River Basin**;

(c) the development of Truckee River groundwater basins in Nevada including any pumping of Truckee Meadows groundwater in excess of the 15,950 acre-feet annually as identified in Section 4.C.1(a);

[NOTE: The list of water systems in (d) will be updated before TROA becomes effective.]

(d) the addition of customers with their associated water supply, provided that such associated water supply is adequate to meet full demands of those customers, including Silver Lake Water Company to the extent of its groundwater supply, Mogul Water Company, Hidden Valley Water System to the extent of its pre-1996 supply, _____, _____, _____; and

(e) the implementation of other measures.

Section 4.F.2 Power Company Notification of Additional Water Supplies. Until **Power Company Normal Demand** reaches 119,000 acre-feet, Power Company shall notify each of United States and Pyramid Tribe before relying on any additional water supplies under this Section 4.F. Such notice shall specify the amount of demand to be served by such water supplies which is in addition to the 119,000 acre-feet identified in Sections 4.B. and 4.C.

Section 4.F.3 Additional Power Company Water Supplies Shall Not Be Adverse to Rights of Pyramid Tribe and United States. Any water supplies developed pursuant to this Section 4.F shall not adversely affect any water rights secured to Pyramid Tribe or United States under the **Settlement Act** or this **Agreement**, any rights of Pyramid Tribe or United States under Section 1.E., or any other water rights of United States or the Pyramid Tribe. In acquiring such additional water supplies, Power Company must comply with such state, local and federal permits and approvals as may be required under then-existing laws, rules and regulations.

Section 4.F.4 Integration of All Power Company Water Supplies. Nothing in this Article Four shall be construed to prevent Power Company from integrating all water supplies in a manner which efficiently meets the needs of its customers.

SECTION 4.G - USE OF WATER RIGHTS IN AREAS WHICH DO NOT DISCHARGE EFFLUENT TO THE TRUCKEE RIVER

Power Company may utilize any of its Truckee River water rights for its service areas outside of the **Truckee River Basin** provided that:

1. Except for the 3,000 acre-feet referenced in Section 4.G.2, when an **Orr Ditch Decree Water Right** is used to provide water to its service areas outside of the **Truckee River Basin**, additional water rights shall be utilized to provide water in the Truckee River in an amount and location equivalent to the wastewater treatment facility return flows which would have accrued to the Truckee River if the water rights usage outside the **Truckee River Basin** had been within an area served by a wastewater treatment facility discharging effluent to the Truckee River. If the additional water rights proposed to be utilized for providing the above-referenced return flows are from **Orr Ditch Decree Water Rights** that are junior in priority to water rights to be used outside of the **Truckee River Basin** and either have an original place of use downstream from the **Vista Gage** or are not directly served by

Floriston Rate Water, then each of Pyramid Tribe or United States may protest change applications for such water rights filed with the Nevada State Engineer.

2. Power Company may deliver 3,000 acre-feet of Truckee River water to wholesale and retail customers in the Stead, Silver Lake and Golden Valley areas without obtaining water rights for return flows to the Truckee River. If and to the extent that the water supply for Stead, Silver Lake or Golden Valley is provided from sources outside the **Truckee River Basin**, Power Company may use such 3,000 acre-feet of Truckee River water in other areas which do not return effluent to the **Truckee River Basin** without obtaining water rights for return flows.

3. For any Truckee River water rights other than those set forth in Sections 4.G.1 and 4.G.2, water under such rights may be utilized to supply water outside the **Truckee River Basin** to the extent of their right to consumptive use.

ARTICLE FIVE
OPERATIONS OF FLORISTON RATE WATER
AND
PROJECT WATER

SECTION 5.A – OPERATION OF FLORISTON RATE WATER

Nothing in this Section 5.A shall be construed to prohibit the **Accumulation** of **Credit Water** through retention in storage of **Floriston Rate Water** pursuant to this **Agreement**.

Section 5.A.1 Introduction. The foundation for operations under this **Agreement** is the maintenance of **Floriston Rates** or **Reduced Floriston Rates**. This **Agreement** also provides for **Credit Water Operations**, including those which will allow for the retention in storage of water which would have been **Released** from or **Passed-Through** a reservoir for **Floriston Rates** or **Reduced Floriston Rates**, and as a result, the rate of flow of **Floriston Rate Water** in the Truckee River at the **Farad Gage** will be reduced accordingly.

Section 5.A.1(a) Prior Agreements. This **Agreement** supersedes all requirements of the **Truckee River Agreement** and **Tahoe-Prosser Exchange Agreement** concerning the operations of **Truckee River Reservoirs**.

[*Note: The United States considers the above language insufficiently broad to assure that the Truckee River Operating Agreement (TROA) cannot be contravened at some future date by other, incompatible, operational agreement requirements – even though no such incompatible agreement requirements have been identified to date. The United States' view is that the provisions of TROA must supersede all other requirements of any agreements for operation of Truckee River Reservoirs not explicitly protected in TROA. For this reason, the United States proposes alternative language, such as that provided below:*]

Section 5.A.1(a) Prior Agreements. This **Agreement** supersedes all requirements of any agreements concerning the operation of **Truckee River Reservoirs,** including those of the **Truckee River Agreement** and the **Tahoe-Prosser Exchange Agreement.**

Section 5.A.1(b) Lake Tahoe Elevations. For the purpose of this **Agreement**, all Lake Tahoe water surface elevations mentioned are referenced to Lake Tahoe Datum which is measured from that certain benchmark identified as the top surface of a hexagonal brass bolt 7/8-inch diameter projecting one inch from the vertical face of the left hand or southerly concrete abutment wall of the present existing Lake Tahoe dam, at approximately 3.2 feet below the top thereof and approximately in line, both horizontally and vertically, with the upstream ends or "cutwaters" of the concrete piers between the sluiceways of dam, which benchmark shall be conclusively presumed to be 6,230.00 feet.

United States, with the approval of Nevada, California, Pyramid Tribe, and Power Company, shall establish and maintain a secondary benchmark for re-establishing the benchmark associated with the hexagonal brass bolt described in this Section 5.A.1(b) in the event that the same hexagonal brass bolt is not available for measuring the Lake Tahoe Datum.

Section 5.A.1(c) Calculation of Lake Tahoe Elevation. For purposes of Sections 5.A.2 and 5.A.4, the water surface elevation of Lake Tahoe shall be a calculated value which shall include all **Lake Tahoe Floriston Rate Water** in **Truckee River Reservoirs**, except **Tahoe-Prosser Exchange Water** in Prosser Creek Reservoir, and shall not include any other category of water in Lake Tahoe.

Section 5.A.1(d) Water Available for Maintaining Floriston Rates. Water available for maintaining **Floriston Rates** or **Reduced Floriston Rates** shall consist of:

(1) **Boca Storage Water, Additional Boca Storage Water** and **Lake Tahoe Floriston Rate Water**, including any such waters classified as **Project Water in Another Reservoir**, in or **Discharged** from any reservoir; and

(2) All other water in the Truckee River and in tributaries located upstream of the **Farad Gage**, except:

(i) Water diverted in California in accordance with Section 204(c)(1) of the **Settlement Act**;

(ii) Water diverted in California in accordance with Section 204(c)(2) of the **Settlement Act** and Section 6.B;

(iii) Water **Impounded** in Donner Lake and Independence Lake as **Privately Owned Stored Water** pursuant to Sections 5.B.4 and 5.B.7;

(iv) Water **Impounded** in Donner Lake for the Donner Lake Water Company pursuant to Section 6.C.5(a)(2)(i);

(v) **Credit Water** other than **Project Water In Another Reservoir** as provided in Section 5.A.1(d)(1); **California M&I Credit Water** which is **Discharged**, not re-diverted, and flows into Nevada; and **California Environmental Credit Water** and **Additional California Environmental Credit Water** in accordance with Section 7.D.9(b);

(vi) **Fish Water**;

(vii) Water stored in **Power Company Boca Storage** which Power Company does not **Release** as **Floriston Rate Water**; and

(viii) **Privately Owned Stored Water** except as provided in Section 5.A.2(b).

Section 5.A.1(e) Use of Floriston Rate Water. **Floriston Rate Water** shall be used to serve **Orr Ditch Decree Water Rights**, including changes to such rights, and to the extent not needed to serve such rights, may be used to serve Pyramid Tribe's rights under Nevada State Engineer Ruling No. 4683 and other Truckee River water rights under permits issued by the Nevada State Engineer prior to 1983. Such **Orr Ditch Decree Water Rights** may also be served by water from tributaries and return flows entering the Truckee River downstream from the **Farad Gage**.

Section 5.A.2 Floriston Rates and Reduced Floriston Rates.

Section 5.A.2(a) Maintenance of Floriston Rates and Reduced Floriston Rates. Except as otherwise provided in this **Agreement**, **Floriston Rates** and **Reduced Floriston Rates** shall be maintained as follows:

(1) **Floriston Rates** shall be maintained whenever **Reduced Floriston Rates** are not in effect.

(2) **Reduced Floriston Rates** shall be in effect and shall be maintained to the extent possible from November 1 through March 31, whenever the water surface elevation of Lake Tahoe is lower than 6,226.0 feet Lake Tahoe Datum.

(3) **Discharges** of **Floriston Rate Water** shall not be made at any time at a rate which will result in flows at the **Farad Gage** in excess of **Floriston Rates** or **Reduced Floriston Rates**.

Section 5.A.2(b) Owner Release of Privately Owned Stored Water for Purpose of Maintaining Floriston Rates or Reduced Floriston Rates. Whenever **Floriston Rates** or **Reduced Floriston Rates** are being maintained in whole or in part by **Release** from Lake Tahoe, an owner of **Privately Owned Stored Water** may schedule a **Release** of its **Privately Owned Stored Water** for the purpose of maintaining all or a portion of **Floriston Rates** or **Reduced Floriston Rates.** At such times, the **Release** from Lake Tahoe shall be reduced to the extent possible equivalent to the **Release** of **Privately Owned Stored Water** and any such **Privately Owned Stored Water** equivalent to the change in **Release** from Lake Tahoe shall be classified as **Floriston Rate Water**. This Section 5.A.2(b) is not intended to prevent and shall not be construed as preventing a **Release** of **Privately Owned Stored Water** for purposes of **Establishing Credit Water** in Lake Tahoe as provided in Article Seven, nor to prevent the **Accumulation** of **Credit Water** in Donner Lake.

Section 5.A.2(c) Elimination of Certain Exceptions to Maintenance of Floriston Rates and Reduced Floriston Rates. From and after the date when this **Agreement**

enters into effect, Power Company shall not exercise any rights it would have had under Articles III(B)(2), III(B)(4), and III(D) of the **Truckee River Agreement**.

Section 5.A.3 Adjustments to Floriston Rates and Reduced Floriston Rates.

Section 5.A.3(a) Establishment of Credit Water. To the extent allowed pursuant to the provisions of this **Agreement**, the rate of flow in the Truckee River for **Floriston Rates** or **Reduced Floriston Rates**, shall be reduced in order to allow for the **Establishment** of **Credit Water**.

Section 5.A.3(b) Provision for Extension of Floriston Rate Supply During Current Irrigation Season. Power Company, the Conservation District and Nevada may agree to a reduction in **Floriston Rates** during an irrigation season for purposes of retaining **Floriston Rate Water** in storage and the rate of flow in the Truckee River resulting from **Floriston Rate Water** shall be reduced in accordance with such agreement; provided, however, that from and after the date this **Agreement** enters into effect, prior to agreeing to such a reduction, Power Company shall obtain the written consent of each of United States, Pyramid Tribe, and the operator of the **Newlands Project**, unless the proposed reduction occurs in a **Drought Situation** and results in a flow of **Floriston Rate Water** at the **Farad Gage** of 250 cfs or more. The **Establishment** of **Credit Water** to the extent allowed under this **Agreement** may continue using the remaining **Release** or **Pass-Through** of **Floriston Rate Water** after adjustment under this Section 5.A.3(b).

Section 5.A.3(c) Removing Ice from Power Company Hydroelectric Plant Facilities. Whenever during December, January and February Power Company determines that there is a need for additional flow, in addition to that diverted for hydropower generation, to remove ice that is interfering with the operation of one or more of **Power Company Hydroelectric Plants**, the following provisions shall apply.

Section 5.A.3(c)(1) Preventing Floating Ice from Entering Hydroelectric Plant Flume. In order to minimize implementation of Sections 5.A.3(c)(2) and 5.A.3(c)(3), Power Company shall make a good faith attempt to maintain ice booms to the extent reasonably practical to prevent floating ice from entering a flume that delivers water to a **Power Company Hydroelectric Plant**.

Section 5.A.3(c)(2) Curtailing Credit Water Establishment. When **Power Company** makes the determination that additional water must be diverted pursuant to this Section 5.A.3(c), then **Establishment** of **Credit Water** pursuant to Sections 7.A.3(a)(1) and 7.A.3(a)(2) shall be governed by the following provisions.

(i) Curtailment pursuant to this Section 5.A.3(c)(2) shall not apply to the **Establishment** of **Fish Credit Water**.

(ii) **Establishment** of **Credit Water** shall be terminated or curtailed in the reverse order of the sequence provided in

Sections 8.E.2(c) through (h) to the extent necessary to remove ice that is interfering with the operation of one or more **Power Company Hydroelectric Plants**.

(iii) If termination of **Credit Water Establishment** pursuant to Section 5.A.3(c)(2)(ii) is insufficient to remove ice that is interfering with the operation of one or more **Power Company Hydroelectric Plants**, then Power Company may elect to curtail **Establishment** of **Power Company M&I Credit Water** for the purpose of ice removal.

(iv) To the extent that curtailing **Establishment** of **Credit Water** other than **Fish Credit Water** results in additional water flowing to Pyramid Lake, Pyramid Tribe and United States shall not utilize such additional water to **Establish Fish Credit Water**.

Section 5.A.3(c)(3) Release of Floriston Rate Water. When Power Company makes the determination that additional water must be diverted pursuant to this Section 5.A.3(c) for ice removal, and no **Credit Water** is being **Established** pursuant to Sections 7.A.3(a)(1), 7.A.3(a)(2), and 7.C.1, then **Floriston Rate Water** from Lake Tahoe or **Boca Storage Water Impounded** prior to the preceding October 1 shall be **Released** for the purpose of ice removal. Such **Releases** shall not be more water than is sufficient to maintain a flow for the generation of power at the Fleish Plant in excess of **Floriston Rates** or **Reduced Floriston Rates** and in no event shall the resulting flow of **Floriston Rate Water** at the **Farad Gage** exceed 500 cfs.

Section 5.A. 3(c)(4) Scheduling Ice Removal Operations. Power Company shall schedule ice removal operations, including curtailment and the cessation of curtailment, under Section 5.A.3(c)(2) and 5.A.3(c)(3) pursuant to Section 11.C.

Section 5.A.3(d) Release of Water from Lake Tahoe to Prevent High Water Damage. The dam and controlling works at the outlet of Lake Tahoe shall be operated to prevent, insofar as practicable, the water surface of Lake Tahoe from exceeding elevation 6,229.1 feet Lake Tahoe Datum. The procedure for regulating Lake Tahoe for this purpose is set forth in this Section 5.A.3(d). For purposes of this Section 5.A.3(d), the water surface elevation of Lake Tahoe shall include all water in Lake Tahoe, and shall not include **Lake Tahoe Floriston Rate Water** in other reservoirs. To the extent **Floriston Rate Water** is not required to maintain **Floriston Rates**, the sequence of water categories **Discharged** from Lake Tahoe pursuant to this Section 5.A.3(d) shall be in accordance with Section 5.C.

Section 5.A.3(d)(1) Projection of Maximum Water Surface Elevation. Projections of the maximum elevation which the water surface of Lake Tahoe would reach at any time shall be made on or about March 1 and April 1 of each year and at such other

times as may be determined by the **Administrator**. Such projection of maximum water surface elevation shall include consideration of the following:

(i) The water content of snow in the **Lake Tahoe Basin** as determined from data available from sources deemed reliable by the **Administrator**.

(ii) The normal **Lake Tahoe Basin** precipitation between the date of any such snow data and the following July 1st.

(iii) The scheduled **Release** of water from Lake Tahoe after the date of any such snow data and prior to the date of the estimated maximum water surface elevation for the current calendar year.

(iv) Existing physical and climatic conditions affecting the run-off into Lake Tahoe.

Section 5.A.3(d)(2) Discharges When Lake Tahoe Elevation is Forecast to Exceed 6,230.0 Feet. Whenever the water surface elevation of Lake Tahoe is projected to exceed 6,230.0 feet Lake Tahoe Datum, determined as provided in Section 5.A.3(d)(1), based on the assumption that the gates at Lake Tahoe are closed, and notwithstanding the actual elevation of Lake Tahoe at such time, the **Administrator** shall **Discharge** water, in addition to scheduled **Releases**, sufficient to prevent, insofar as practicable, the water surface elevation of Lake Tahoe from exceeding elevation 6,229.1 feet Lake Tahoe Datum.

Section 5.A.3(d)(3) Discharges When Lake Tahoe Elevation Exceeds 6,228.0 Feet. Whenever the water surface elevation of Lake Tahoe exceeds 6,228.0 feet Lake Tahoe Datum, the **Administrator** shall **Discharge**, in addition to scheduled **Releases**, sufficient water from Lake Tahoe so that the maximum projected water surface elevation will not exceed 6,229.1 feet Lake Tahoe Datum.

Section 5.A.3(d)(4) Administrator to Consult with Parties. In making the projections and in determining the rate and duration of **Discharges** allowed by this Section 5.A.3(d), the **Administrator** shall, to the extent practicable under the circumstances, consult with the **Mandatory Signatory Parties** and any **Person** having water in storage in Lake Tahoe at that time.

Section 5.A.4 Coordination of Releases of Floriston Rate Water from Lake Tahoe and Boca Reservoir. For purposes of maintaining **Floriston Rates** and **Reduced Floriston Rates** as provided in Sections 5.A.2 and 5.A.3, **Floriston Rate Water** shall be **Released** or **Passed-Through** to the extent possible or necessary in accordance with this Section 5.A.4, except as otherwise provided in this **Agreement**.

Section 5.A.4(a) Releases When Lake Tahoe Elevation Exceeds 6225.5 Feet. At all times from April 1 through October 31 that the calculated water surface elevation of Lake Tahoe exceeds 6,225.5 feet Lake Tahoe Datum, **Releases** of **Floriston Rate Water** from Lake Tahoe shall be reduced to the maximum extent permissible under this **Agreement** and **Boca Storage Water** shall be **Released**, to the extent possible, to maintain **Floriston Rates**, except that 4,000 acre-feet of **Boca Storage Water** subject to **Release** under the provisions of Section 5.A.5 shall be retained in Boca Reservoir for the purpose provided in Section 5.A.5(b). If such **Releases** are insufficient to maintain **Floriston Rates**, then any combination of **Lake Tahoe Floriston Rate Water** which is stored as **Project Water in Another Reservoir** in Stampede Reservoir and **Lake Tahoe Floriston Rate Water** in Lake Tahoe shall be **Released** to the extent available and necessary to maintain **Floriston Rates**. **Tahoe-Prosser Exchange Water** shall be used to maintain **Floriston Rates** in accordance with Section 5.B.6(a)(3).

Section 5.A.4(b) Releases When Lake Tahoe Elevation Does Not Exceed 6225.5 feet. At all times from April 1 through October 31 when the calculated water surface elevation of Lake Tahoe does not exceed 6,225.5 feet Lake Tahoe Datum, **Floriston Rate Water** shall be **Released** from Lake Tahoe, in an amount that the **Administrator** determines could have been released in the absence of **Credit Water** in Lake Tahoe, to maintain **Floriston Rates**; provided if the **Federal Water Master** deems it necessary in order to protect **Floriston Rate Water**, **Floriston Rate Water** stored as **Project Water in Another Reservoir** in Stampede Reservoir may be **Released** in a blended manner with Lake Tahoe **Release**. If such **Releases** are insufficient to maintain **Floriston Rates,** then any combination of **Tahoe-Prosser Exchange Water, Floriston Rate Water** which is stored as **Project Water in Another Reservoir** in Stampede Reservoir, **Boca Storage Water** and **Additional Boca Storage Water** subject to the provisions of Sections 5.A.4(d)(1) and 5.A.4(d)(2), shall be **Released** to the maximum extent possible up to the amount required to make up such deficit in **Floriston Rates**.

Section 5.A.4(c) Operation of Boca Storage Water.

Section 5.A.4(c)(1) Operation of Boca Storage Water Impounded Prior to October 1. From October 31 through March 31, all **Boca Storage Water** which had been diverted to storage prior to October 1, and which remains in Boca Reservoir or any other **Truckee River Reservoir** on October 31, shall be **Released** for the purpose of maintaining **Floriston Rates** or **Reduced Floriston Rates**, subject to the provisions of Section 5.A.4(c)(2).

Section 5.A.4(c)(2) Operation of Boca Storage Water Impounded from October 1 through March 31. Boca Storage Water diverted to storage from October 1 through March 31 shall not be **Released** during that period, except at the option of the Conservation District.

Section 5.A.4(d) Operation of Additional Boca Storage Water.

Section 5.A.4(d)(1) Operation from April 1 through September 10. From April 1 through September 10, provided all **Boca Storage Water** shall have been first **Released**, **Additional Boca Storage Water** shall be **Released** for the same purposes and under

the same conditions specified in this Article Five for the **Release** and use of **Boca Storage Water**.

Section 5.A.4(d)(2) Operation from September 11 through January 31. From September 11 through January 31, provided all **Boca Storage Water** diverted to storage prior to October 1 of this period shall have been first **Released**, all **Additional Boca Storage Water** diverted to storage prior to October 1 and remaining in Boca Reservoir or any other **Truckee River Reservoir** shall be **Released** for the purpose of maintaining **Floriston Rates** or **Reduced Floriston Rates**. The amount of water which would otherwise have been **Released** from Lake Tahoe shall be reduced during such period by an amount equal, as nearly as practicable, to the amount of **Additional Boca Storage Water** so **Released** during such period.

Section 5.A.4(d)(3) Operation from February 1 through March 31. From February 1 through March 31, **Additional Boca Storage Water** which had been diverted to storage prior to October 1 and remaining in Boca Reservoir or any other **Truckee River Reservoir** may be **Released** or retained as **Floriston Rate Water** at the option of the Conservation District. If the Conservation District **Releases** such water in whole or in part, it shall, insofar as may be reasonably practicable, regulate the rates and periods of flow of such **Releases** to result in the greatest possible retention of **Lake Tahoe Floriston Rate Water**.

Section 5.A.4(d)(4) Operation after March 31. Additional Boca Storage Water retained in Boca Reservoir or any other **Truckee River Reservoir** after March 31 shall retain its classification as **Additional Boca Storage Water** and only be **Released** under the provisions of this Section 5.A.4(d) applicable to **Release** of **Additional Boca Storage Water**.

Section 5.A.4(e) Coordination of Floriston Rate Water Release to Maintain Minimum Release from Lake Tahoe and for Floriston Rates or Reduced Floriston Rates. Nothing in this Section 5.A.4 shall preclude the historic practice of **Releasing Lake Tahoe Floriston Rate Water** to provide **Minimum Releases** from Lake Tahoe to the extent that **Release** of **Floriston Rate Water** would otherwise be made from a reservoir other than Lake Tahoe or there is **Pass-Through** of **Floriston Rate Water** which could be stored as **Floriston Rate Water** in Boca Reservoir.

Section 5.A.5 Exceptions to Provisions for Water Sources for Floriston Rates

Section 5.A.5(a) Exception to Rules for Release of Floriston Rate Water. Prior to implementing the provisions of Section 8.S, the **Administrator** may propose **Releases** of **Floriston Rate Water** for maintaining **Floriston Rates** or **Reduced Floriston Rates** in a manner which is different from the requirements of Sections 5.A.4(a) through 5.A.4(d). Before making such differing **Releases**, the **Administrator** shall give written notice to each of Power Company, Conservation District, Nevada, United States and California, and shall specify a reasonable period of time for an objection to be lodged. If none of the noticed parties objects in writing to the proposed **Release** within the time specified by the **Administrator**, the **Release** shall take place as proposed. Written objections to such proposed **Release** shall be filed with the

Administrator and served on each of the other parties who received the notice. The **Administrator** shall promptly discuss any objections with the objecting party or parties and encourage a timely resolution of the objections. If an objection is not voluntarily resolved, such proposed **Release** shall not take place and the objection shall not be subject to review by the **Administrator**, the **Special Hearing Officer**, any administrative agency or any court.

To the extent that the operation proposed under this Section 5.A.5(a) is consistent with the **California Guidelines** and would provide **Releases** from Lake Tahoe equivalent to those attainable under an **Exchange** in accordance with Section 8.S, California and United States shall not object to the operation proposed under this Section 5.A.5(a).

Section 5.A.5(b) Operation of Power Company Boca Storage. From April 1 through October 31, upon request of Power Company, an amount up to but not exceeding a total of 4,000 acre-feet of **Boca Storage Water** during any such period may be used for the purpose of regulating the flow of the Truckee River by the operation of **Power Company Boca Storage** as provided in this Section 5.A.5(b); provided, however, that if **Floriston Rates** cannot be maintained at any time during such period with other water available for that purpose, the 4,000 acre-feet or any part thereof shall be used to maintain **Floriston Rates** to the extent possible or necessary. Power Company shall operate, at Power Company's expense, **Power Company Boca Storage** for the purpose of storing and conserving water in Lake Tahoe or other reservoirs, and water flowing in the Truckee River, by regulating the flow of the river when the flow thereof does not exceed **Floriston Rates** in accordance with this Section 5.A.5(b), so as to create a uniform rate of flow at the **Farad Gage**. At all times from April 1 through October 31, when the flow of the Truckee River at the **Farad Gage** does not exceed **Floriston Rates**, **Power Company Boca Storage** shall be operated to maintain, insofar as practicable, a uniform rate of flow at the **Farad Gage**. From November 1 through March 31, Power Company may operate **Power Company Boca Storage** to fluctuate the flow of the Truckee River at the **Farad Gage**, and/or at any other point selected by it, to such extent as it may deem desirable in connection with the operation of **Power Company Hydroelectric Plants**. For purposes of this Section 5.A.5(b), the calculation of the rate of flow at the **Farad Gage** for purposes of determining whether **Floriston Rates** are being maintained or exceeded shall include flows which would have resulted at the **Farad Gage** if **Accumulation** of **Credit Water** pursuant to this **Agreement** were not taking place.

Section 5.A.6 Articles V and VII of the Truckee River Agreement. Except as provided in Sections 5.A.7 and 5.A.8, the provisions of Articles V and VII of the **Truckee River Agreement** and, solely for purposes of their interpretation, all definitions in the **Truckee River Agreement** which are relevant to the application of those Articles shall remain in effect.

Section 5.A.7 Determination of Diverted Flow. The allocation of "diverted flow" as provided in Article VII of the **Truckee River Agreement** shall apply only (a) when **Truckee Canal Diversion Criteria** allows diversions to the Truckee Canal, or (b) when necessary for purposes of implementing the provisions that were contained in Article V(A) of the **Truckee River Agreement.** For these purposes, any calculation of "diverted flow" shall include the **Establishment** of **Credit Water** by reductions in the rate of flow in the Truckee River for

Floriston Rates or **Reduced Floriston Rates** through the storage of water pursuant to water rights which had original points of diversion under the **Orr Ditch Decree** at points between **Farad Gage** to and including Derby Dam, but shall not include **Fish Water, Privately Owned Stored Water,** or **Credit Water** diverted downstream from **Farad Gage** or remaining in the Truckee River downstream from Derby Dam.

Section 5.A.8 Highland Ditch Ice Removal During December, January, and February. When exercising rights under Section 5.A.6 Power Company shall schedule diversions for ice removal under this Section 5.A.8 pursuant to Section 11.C. Such diversion under this Section 5.A.8 shall be in compliance with Section 9.E.1, shall exclude **Fish Water Released** pursuant to Section 9.E.2, and shall not:

(a) Diminish the instream flow of **Fish Credit Water** and **Fish Water Released** specifically to compensate for diversions made in accordance with this Section 5.A.8; or,

(b) Interfere with **Establishment** of **Fish Credit Water**.

SECTION 5.B - IMPOUNDING OF WATER IN AND OPERATION OF TRUCKEE RIVER RESERVOIRS, DONNER LAKE AND INDEPENDENCE LAKE

Section 5.B.1 Reservoir Operations. This Section 5.B provides rules and procedures for the operation of **Truckee River Reservoirs**, Donner Lake and Independence Lake in a manner consistent with the requirements of Section 205(a)(2) of the **Settlement Act**. The **Administrator** shall maintain current information describing each facility, its ownership and its operator.

Section 5.B.2 4,000 Acre-feet for Power Use. From and after the date when this **Agreement** enters into effect, Power Company shall not exercise any rights to the 4,000 acre-feet of water it would have had under the provisions of Article VI of the **Truckee River Agreement**.

Section 5.B.3 Lake Tahoe Operations. Except as otherwise expressly provided in this **Agreement**, water shall be **Impounded** in Lake Tahoe and **Discharged** from Lake Tahoe for maintaining **Floriston Rates** or **Reduced Floriston Rates** in accordance with Section 5.A. Nothing in this Section 5.B.3 affects the diversion of water pursuant to Section 204(b) of the **Settlement Act.**

Section 5.B.3(a) Impoundment of Water in Lake Tahoe. Except as otherwise provided in Section 5.A, **Impoundment** of water in Lake Tahoe shall not be constrained or limited by **Impoundment** in other **Truckee River Reservoirs**.

Section 5.B.3(b) Discharge of Water from Lake Tahoe by Means Other Than Gravity. Water, including without limitation **Credit Water**, that cannot be **Discharged** from Lake Tahoe by gravity may be withdrawn from Lake Tahoe to the Truckee River by other

means only for **Municipal and Industrial Use**, only in a period that is worse than a **Critical Drought Period**, and only upon the condition that the **Secretary** and the Governors of California and Nevada concur that a necessity for withdrawal exists. Removal of water from Lake Tahoe to the Truckee River by pumping or means other than gravity must be in accordance with, and to the extent permissible under, then applicable Federal and California law, including but not limited to the following: (1) Section 404 of the Clean Water Act (33 U.S.C. § 1344), (2) The National Environmental Policy Act (42 U.S.C. § 4321 *et seq*.), (3) The Porter-Cologne Water Quality Control Act (Calif. Water Code § 13000 *et seq*.), (4) The California Environmental Quality Act (Calif. Public Resources Code § 21000 *et seq*.), (5) California law governing the lease or other authorization to use sovereign lands, including California Resources Code Section 6401 *et seq*., and (6) California law applicable to the use of water and water rights.

Section 5.B.4 Donner Lake Operations. The provisions of this Section 5.B.4 shall only bind owners of Donner Lake **Privately Owned Stored Water** who are **Signatory Parties** or **Scheduling Parties** and those who agree to be bound under Section 7.A.2(b). Donner Lake shall be operated in accordance with the Donner Lake vested water right and changes thereto consistent with this **Agreement**, applicable requirements of the **Division of Safety of Dams**, the **Donner Lake Indenture**, the agreement dated April 27, 1998, among Power Company, Truckee-Carson Irrigation District and the Donner Lake Water Company for so long as it remains in effect, and this **Agreement**. To the extent that **Privately Owned Stored Water** in Donner Lake owned by a **Person** other than a **Signatory Party** is **Exchanged** with water of, or acquired by, a **Signatory Party**, operation of the resulting category of water in Donner Lake shall be in accordance with the provisions of this **Agreement**.

Section 5.B.4(a) Impoundment of Water in Donner Lake. Water may be **Impounded** in Donner Lake as **Privately Owned Stored Water** and, to the extent provided in Section 6.C.5(a)(2)(i), as water of the Donner Lake Water Company, pursuant to a schedule intended to obtain an annual **Impoundment** of 9,500 acre-feet. Water may be **Impounded** in Donner Lake adverse to **Floriston Rates, Reduced Floriston Rates,** junior water rights in California, and **Orr Ditch Decree Water Rights,** but not adverse to any appropriative water rights established under the law of California prior to October 1, 1877, nor to the 40 acre-feet per year provided in Section 6.C.5(a)(2)(ii). **Impoundment** of water in Donner Lake shall not be constrained or limited by the operation of **Truckee River Reservoirs** or Independence Lake. Water temporarily stored as a result of high runoff events and then **Discharged**, but not **Exchanged** or used as **Privately Owned Stored Water**, shall not be counted toward the annual **Impoundment** in Donner Lake.

Section 5.B.4(b) Water Discharged from Donner Lake. Water which is **Released** or **Passed-Through** Donner Lake by the owner of **Privately Owned Stored Water** for the purpose of contributing to **Minimum Release** or **Enhanced Minimum Release** shall be classified as **Privately Owned Stored Water** to the extent such classification is requested by such owner.

Section 5.B.4(c) Allocation of Privately Owned Stored Water Among Owners. Unless the owners of **Privately Owned Stored Water** otherwise agree, the total

Donner Lake **Privately Owned Stored Water Impounded** during a year shall be allocated to each owner in accordance with its ownership interest. Unless the owners otherwise agree, each owner's schedule must bear its proportionate burden associated with complying with the requirements of the **Donner Lake Indenture**. Except as otherwise provided in this **Agreement**, an owner may operate its respective share of Donner Lake **Privately Owned Stored Water** to assist in meeting its respective water supply and operation objectives.

Section 5.B.4(d) Conflicts in Release Schedules. To the extent that scheduled **Releases** of **Privately Owned Stored Waters** from Donner Lake conflict, the conflict shall be resolved by allocating available water and release capacity in proportion to the amount of water each owner has in storage in Donner Lake. To the extent all or a portion of **Privately Owned Stored Water** is **Exchanged** with water of another entity, the water **Exchanged** into Donner Lake shall be allocated a portion of release capacity in accordance with Article Eight.

Section 5.B.5 Martis Creek Reservoir Operations. At the time of execution of this **Agreement**, Martis Creek Reservoir is operated exclusively for flood control. To the extent that flood control operation of Martis Creek Reservoir results in the temporary storage of water which would otherwise flow to Pyramid Lake, such water when **Discharged** shall flow to Pyramid Lake. Use of Martis Creek Reservoir for any other purpose, including conservation storage and **Credit Water Operations** pursuant to Articles Seven and Eight, shall require a written agreement with the **Corps of Engineers** and compliance with applicable law.

Section 5.B.6 Prosser Creek Reservoir Operations. Prosser Creek Reservoir shall be operated in accordance with California Water Right License No. 10180, changes to that license as may result from the process identified in Sections 7.A.4(a)(3), any new appropriation which may result from the application process identified in Section 7.A.4(a)(7), and this **Agreement**.

Section 5.B.6(a) Impoundment, Classification, and Use of Prosser Project Water, Tahoe-Prosser Exchange Water, Prosser Fish Water, and Prosser Reserved Water.

Section 5.B.6(a)(1) Impoundment of Water in Prosser Creek Reservoir. Water may be **Impounded** in Prosser Creek Reservoir as **Prosser Project Water** in priority and not adverse to **Orr Ditch Decree Water Rights**, **Floriston Rates** or **Reduced Floriston Rates**. Water may also be stored as **Tahoe-Prosser Exchange Water** in accordance with Section 5.B.6(b)(3). **Impoundment** of water in Prosser Creek Reservoir shall not constrain or limit the operation of other **Truckee River Reservoirs,** Donner Lake, or Independence Lake, except diversions to storage in excess of 126,000 acre-feet per year in Stampede Reservoir pursuant to Section 5.B.8(a). Water temporarily stored as a result of high runoff events, and then **Discharged** in accordance with flood control criteria and not **Exchanged**, shall not be counted toward the annual diversion to storage in Prosser Creek Reservoir.

Section 5.B.6(a)(2) Classification of Prosser Project Water. All or part of **Prosser Project Water** shall be classified as **Prosser Reserved Water** in accordance with this Section 5.B.6(a)(2), and any remaining **Prosser Project Water** shall be classified as **Prosser Fish Water**.

Section 5.B.6(a)(2)(i) Estimate of Prosser Reserved Water Required. On or about April 10, the **Federal Water Master** shall initially estimate the amount of **Prosser Project Water** needed during the following 12 months to offset projected losses of such water, for anticipated classification as **Tahoe-Prosser Exchange Water**, and for maintenance of **Minimum Releases** from Prosser Creek Reservoir. The **Federal Water Master** may revise this estimate at any time.

Section 5.B.6(a)(2)(ii) Classification of Prosser Project Water as Prosser Reserved Water or Prosser Fish Water. The **Administrator** shall classify the amount of **Prosser Project Water** estimated by the **Federal Water Master** in accordance with 5.B.6(a)(2)(i) as **Prosser Reserved Water**. If there is insufficient **Prosser Project Water** to classify as **Prosser Reserved Water** pursuant to this Section 5.B.6(a)(2)(ii), then, to the extent necessary, **Prosser Fish Water**, **Fish Credit Water** in Prosser Creek Reservoir, or the next **Impoundment** of **Prosser Project Water** shall be classified as **Prosser Reserved Water**. If the amount of **Prosser Reserved Water** in storage exceeds the **Federal Water Master's** estimate, then the excess shall be classified as **Prosser Fish Water**.

Section 5.B.6(a)(3) Purpose of Tahoe-Prosser Exchange Water. **Tahoe-Prosser Exchange Water** shall compensate for **Floriston Rate Water Released** from Lake Tahoe for the sole purpose of maintaining the **Minimum Release** from Lake Tahoe in accordance with Section 5.B.6(b)(3). **Tahoe-Prosser Exchange Water** shall be **Released** as **Floriston Rate Water**, which **Release** shall conform to the following:

(i) **Release** of **Tahoe-Prosser Exchange Water** shall not produce a flow of **Floriston Rate Water** at the **Farad Gage** in excess of **Floriston Rates**, unless such **Release** is necessary to assure that the storage of **Tahoe-Prosser Exchange Water** on November 1 does not exceed the quantity allowed by Section 5.B.6(a)(3)(ii); and

(ii) Maximum storage of **Tahoe-Prosser Exchange Water** on November 1, in combination with **Dead and Inactive Storage**, shall not exceed applicable flood control criteria for that date, currently 9,800 acre-feet.

Tahoe-Prosser Exchange Water scheduled for **Release** as **Floriston Rate Water** may also be retained for the **Accumulation** of **Credit Water** in accordance with this **Agreement**. **Tahoe-Prosser Exchange Water** may not be **Exchanged** to any other reservoir except to Lake Tahoe as a **Trade** in accordance with Section 8.P.2. The water so **Traded** to Lake Tahoe shall be classified as **Lake Tahoe Floriston Rate Water**.

Section 5.B.6(a)(4) Use of Prosser Reserved Water. Prosser Reserved Water shall be used in accordance with Sections 5.B.6(b)(1), 5.B.6(b)(3), and 9.C.5(d). **Prosser Reserved Water** shall also be **Released** as **Prosser Fish Water** to maintain **Minimum Releases** from Prosser Creek Reservoir in accordance with Section 9.C.5(a).

Section 5.B.6(a)(5) Use of Prosser Fish Water. Prosser Fish Water shall be: (i) stored and **Exchanged** as provided in this **Agreement** for the benefit of **Pyramid Lake Fishes**; (ii) used for operations required to be performed under this **Agreement**; (iii) **Released** to provide **Pyramid Lake Fish Flows**; or (iv) classified as **Prosser Reserved Water** pursuant to Section 5.B.6(a)(2)(ii). **Prosser Fish Water** may also be **Exchanged** or re-stored as otherwise allowed by this **Agreement** if not detrimental to **Pyramid Lake Fishes**.

Section 5.B.6(b) Maintaining Minimum Release from Lake Tahoe. To the extent that **Discharge** from Lake Tahoe is possible by gravity, but scheduled **Releases**, including any **Releases** being made in accordance with Section 5.A.4(e), are insufficient to maintain the **Minimum Release** from Lake Tahoe as specified in Section 9.C.2(a), water shall be **Released** for the **Minimum Release** in accordance with this Section 5.B.6(b) and in the order of priority in Sections 5.B.6(b)(1) through 5.B.6(b)(4).

Section 5.B.6(b)(1) Release of Credit Water from Lake Tahoe. Subject to and in accordance with the priority provisions of Section 8.E, any **Scheduling Party** with **Credit Water** in Lake Tahoe may **Release** such **Credit Water** to maintain all or part of the **Minimum Release** from Lake Tahoe. If any part of such **Released Credit Water** is scheduled to flow and flows to Pyramid Lake, then an equal amount of **Prosser Reserved Water** shall be classified as such **Credit Water** owned by such **Scheduling Party** in Prosser Creek Reservoir.

Section 5.B.6(b)(2) Release of Floriston Rate Water Pursuant to Section 8.S. When **Release** of **Credit Water** pursuant to Section 5.B.6(b)(1) is not sufficient to maintain the **Minimum Release** from Lake Tahoe, an **Exchange** may be implemented in accordance with Section 8.S to maintain the **Minimum Release**.

Section 5.B.6(b)(3) Release of Floriston Rate Water for Tahoe-Prosser Exchange. When **Releases** pursuant to Sections 5.B.6(b)(1) and 5.B.6(b)(2) are not sufficient to maintain the **Minimum Release** from Lake Tahoe, or if the **Federal Water Master** decides not to implement an **Exchange** in accordance with Section 8.S, an increment of **Floriston Rate Water** that would not otherwise have been **Released** from Lake Tahoe to support **Floriston Rates** shall be **Traded** for a concurrent and equal quantity of water to be classified as **Tahoe-Prosser Exchange Water** from first, Prosser Creek inflow that is concurrently stored in Prosser Creek Reservoir and then, to the extent necessary, from **Prosser Reserved Water** available for such **Exchange**. The water for which said **Floriston Rate Water** is **Traded** shall be concurrently **Released** from Lake Tahoe to maintain the **Minimum Release**.

Section 5.B.6(b)(4) Release of Fish Credit Water from Lake Tahoe When Prosser Reserved Water Is Insufficient for the Tahoe-Prosser Exchange. If operations under Sections 5.B.6(b)(1) through 5.B.6(b)(3) are not sufficient to maintain the

Minimum Release from Lake Tahoe, and there is not sufficient **Prosser Fish Water** or **Fish Credit Water** in Prosser Creek Reservoir for classification as **Prosser Reserved Water**, then **Fish Credit Water** in Lake Tahoe shall be **Released** from Lake Tahoe, as necessary, to maintain the **Minimum Release**. United States and Pyramid Tribe shall not be required to reserve **Fish Credit Water** in Lake Tahoe to accommodate this Section 5.B.6(b)(4).

Section 5.B.6(c) Maintaining a Pool for Recreation and Fish in Prosser Creek Reservoir. This Section 5.B.6(c) establishes criteria for the management of Prosser Creek Reservoir for the purpose of providing for recreation and fish benefits.

Section 5.B.6(c)(1) Desired Reservoir Pool. To the extent practicable and consistent with the requirements of this Section 5.B.6 and Section 7.C.5, United States and Pyramid Tribe shall in good faith attempt to manage **Prosser Fish Water** and **Fish Credit Water** in Prosser Creek Reservoir so that the total storage of all water in the reservoir from the beginning of Memorial Day weekend to the end of Labor Day weekend is at least 19,000 acre-feet or such lesser amount as may be set forth in the **California Guidelines**.

Section 5.B.6(c)(2) Minimum Summer Pool. United States and Pyramid Tribe shall manage **Prosser Fish Water** and **Fish Credit Water** to maintain a total storage of all water in Prosser Creek Reservoir of at least 9,800 acre-feet or such lesser amount as may be set forth in the **California Guidelines**, exclusive of **Power Company Emergency Drought Supply** and the water required for **Minimum Release**, from the beginning of Memorial Day weekend to the end of Labor Day weekend.

Section 5.B.6(c)(3) Total Storage in Prosser Creek Reservoir on November 1. To the extent practicable and consistent with the requirements of Section 5.B.6(a)(5), **Release** and **Exchange** of **Prosser Fish Water** shall be managed so that the total storage of all water in Prosser Creek Reservoir on November 1 is approximately 9,800 acre-feet or such lesser amount as may be required by applicable flood control criteria.

Section 5.B.6(c)(4) Minimum Pool for Fish. United States and Pyramid Tribe shall manage **Prosser Fish Water** and **Fish Credit Water** to maintain a total storage of all water in Prosser Creek Reservoir of at least 5,000 acre-feet as a minimum pool for fish at all times, or such lesser amount as may be determined by California Department of Fish and Game to better serve the fishery throughout the **Truckee River Basin**.

Section 5.B.6(c)(5) Required Trade of Power Company Emergency Drought Supply to Prosser Creek Reservoir. To the extent total storage of all water in Prosser Creek Reservoir is scheduled to be drawn below the recreational pool identified in Section 5.B.6(c)(1) from Memorial Day Weekend through Labor Day Weekend, California may schedule, and in which case, United States, Pyramid Tribe and Power Company shall **Trade**, up to 7,500 acre-feet of **Prosser Fish Water** and **Fish Credit Water** in Prosser Creek Reservoir for an equal amount of **Power Company Emergency Drought Supply** in Stampede Reservoir, unless Power Company reasonably concludes the **Power Company Emergency Drought**

Supply may be used in accordance with Sections 7.B.3(a) and 7.B.5(b) before March of the next year. In no case, however, shall such **Trade** take place if it would:

(i) cause **Power Company Emergency Drought Supply** to **Spill** from **Prosser Creek Reservoir**; or

(ii) impair the quantity or availability of **Power Company Emergency Drought Supply** for use consistent with Sections 7.B.3(a) and 7.B.5(b)**.**

Section 5.B.6(c)(6) Recovery of any Loss of Power Company Emergency Drought Supply. If the **Administrator** determines that **Power Company Emergency Drought Supply** is incurring greater daily losses or evaporation pursuant to the provisions of Sections 5.C and 5.D and Article Eight as a result of being stored in Prosser Creek Reservoir instead of Stampede Reservoir pursuant to Section 5.B.6(c)(5), Power Company may request and Pyramid Tribe and United States shall compensate for the increased loss by classifying an equal amount of **Fish Water** or **Fish Credit Water** in Stampede Reservoir as **Power Company Emergency Drought Supply**. To the extent that any **Power Company Emergency Drought Supply Spills** from Prosser Creek Reservoir, it shall be replaced through an **Exchange** with **Prosser Fish Water**, **Fish Credit Water** or **Fish Water** in Stampede Reservoir.

Section 5.B.6(c)(7) Conditions for Release of Power Company Emergency Drought Supply. To the extent Power Company **Releases Power Company Emergency Drought Supply** stored in Prosser Creek Reservoir in accordance with Sections 7.B.3(a) and 7.B.5(b), and such **Release** would reduce the total storage of all water in Prosser Creek Reservoir below the minimum pool designated in Section 5.B.6(c)(3), Pyramid Tribe and United States shall conduct an **In-Lieu Release** of sufficient **Fish Water** or **Fish Credit Water** from another reservoir in **Exchange** for **Power Company Emergency Drought Supply** scheduled to be **Released**, in order to maintain the minimum pool in Prosser Creek Reservoir provided:

(i) Power Company shall not be precluded from making such **Releases** if the quantity of **Fish Water** and **Fish Credit Water** is insufficient to fully implement such **Exchange** pursuant to this Section 5.B.6(c)(7);

(ii) If California Department of Fish and Game determines that not maintaining the minimum pool in **Prosser Creek Reservoir** in any one year would better serve the fishery throughout the **Truckee River Basin**, United States and Pyramid Tribe shall not be required to make such **Exchange** pursuant to this Section 5.B.6(c)(7); and

(iii) United States and Pyramid Tribe shall not be required to reserve water in any **Truckee River Reservoir** to accommodate such **Exchange** pursuant to this Section 5.B.6(c)(7).

Section 5.B.6(c)(8) Exchanging Power Company Emergency Drought Supply Back to Stampede Reservoir. After the end of Labor Day weekend, United States and Pyramid Tribe may **Exchange** any portion of the **Power Company Emergency Drought Supply** which was stored in Prosser Creek Reservoir pursuant to Section 5.B.6(c)(5), back to Stampede Reservoir utilizing available **Fish Water** or **Fish Credit Water** in Stampede Reservoir. If the full amount is not **Exchanged** by November 1 of any year, Power Company may request and United States and Pyramid Tribe shall **Trade** first any remaining **Fish Water** or **Fish Credit Water** in Stampede Reservoir, and second, if necessary, the next **Fish Water Impounded** or **Fish Credit Water Accumulated** in Stampede Reservoir for any remaining **Power Company Emergency Drought Supply** in Prosser Creek Reservoir. United States and Pyramid Tribe shall not be required to reserve water in Stampede Reservoir to accommodate the **Exchange** of **Power Company Emergency Drought Supply** back to Stampede Reservoir pursuant to this Section 5.B.6(c)(8).

Section 5.B.6(d) Scheduling Requirements and Restrictions. So that United States and Pyramid Tribe may satisfy their obligations under Sections 5.B.6(c)(1) through 5.B.6(c)(4), the following provisions apply to **Credit Water** stored in Prosser Creek Reservoir.

(1) In accordance with the scheduling provisions of Article Eleven, all **Scheduling Parties** shall notify United States and Pyramid Tribe:

(i) By Memorial Day, when and how much **Credit Water** they propose to **Accumulate** in Prosser Creek Reservoir between Memorial Day and Labor Day, and when and how much of such **Credit Water** they will **Release** or **Exchange** and with whom during this period; and

(ii) By Labor Day, when and how much **Credit Water** they propose to **Accumulate** in Prosser Creek Reservoir between Labor Day and November 1 and when and how much of such **Credit Water** they propose to **Release** or **Exchange** and with whom during this period.

(2) Any **Credit Water** retained in Prosser Creek Reservoir after November 1, or **Accumulated** between November 1 and April 10, other than **Power Company Emergency Drought Supply,** shall not be **Released** from Prosser Creek Reservoir until at least the following April 10, except to the extent that:

(i) The minimum storage identified in Section 5.B.6(c)(4) will be maintained or exceeded and the **Credit Water** is in priority for **Release** pursuant to Article Eight;

(ii) It would otherwise be **Displaced** or **Spilled** in accordance with Section 5.C and Article Eight;

(iii) It is **Released** as otherwise agreed to by United States and Pyramid Tribe;

(iv) It is required to be **Released** for ice control in accordance with Section 9.C.5(d);

(v) It is **Released** for **Minimum Release**; or

(vi) It is required to be **Released** for **Enhanced Minimum Release** in accordance with Section 9.C.5.

Section 5.B.6(e) Exchange of Fish Water and Fish Credit Water to Prosser Creek Reservoir to Replace Certain Releases. The purpose of this Section 5.B.6(e) is to replenish water in Prosser Creek Reservoir which had been **Released** from storage from November 1 through April 10.

Section 5.B.6(e)(1) Amount of Fish Water and Fish Credit Water Subject to Exchange. Unless a lesser amount is specified in the **California Guidelines**, the amount of **Fish Water** and **Fish Credit Water** that shall be **Exchanged** to accomplish such replenishment pursuant to this Section 5.B.6(e) shall be the lesser of:

(i) the maximum storage set by the **Corps of Engineers** for flood control operation on April 10 less the amount of water stored in Prosser Creek Reservoir on April 10;

(ii) the maximum storage set by the **Corps of Engineers** for flood control operation on June 1 less the amount of water stored in Prosser Creek Reservoir on June 1;

(iii) the amount of water **Released** from Prosser Creek Reservoir between the prior November 1 and April 10; or

(iv) the difference between the total storage described in Section 5.B.6(c)(3) and 5,000 acre-feet.

Section 5.B.6(e)(2) Implementation of Exchange. On or about April 10 of each year, United States and Pyramid Tribe shall reserve sufficient water to implement the **Exchanges** required in this Section 5.B.6(e). These **Exchanges** shall be in accordance with

Article Eight and shall, unless otherwise agreed to by United States, Pyramid Tribe and California, be scheduled to be completed prior to Memorial Day Weekend, or as soon as possible thereafter. The United States and Pyramid Tribe shall consult with California Department of Fish and Game on California ramping and instream flow objectives, and use their best efforts to schedule these **Exchanges** in accordance with those objectives.

Section 5.B.7 Independence Lake Operations. Independence Lake shall be operated in accordance with the Independence Lake vested water right, and changes thereto consistent with this **Agreement**, California Water Right Licenses 4196 and 2607, and changes to those licenses as may result from the process identified in Section 7.A.4(a)(2), applicable requirements of the **Division of Safety of Dams**, and this **Agreement**.

Section 5.B.7(a) Impoundment of Water in Independence Lake. Power Company may **Impound** as **Privately Owned Stored Water** 3,000 acre-feet of water annually in Independence Lake adverse to **Floriston Rates, Reduced Floriston Rates,** junior California water rights and **Orr Ditch Decree Water Rights**, but not adverse to any appropriative water rights established under the law of California prior to October 1, 1879, nor to the 50 acre-feet per year provided in Section 6.C.5(b)(2)(i).

In addition, whenever (1) all **Exercised Orr Ditch Decree Water Rights** can be fully supplied and (2) **Boca Project Water** storage equals or exceeds its current flood control criteria limit or Boca Reservoir is forecast to fill with **Boca Project Water**, Power Company may **Impound Privately Owned Stored Water** from water in excess of **Floriston Rates** or **Reduced Floriston Rates**, pursuant to a schedule intended to obtain a total annual **Impoundment** of 17,500 acre-feet, including the 3,000 acre-feet provided above.

Except as provided in this Section 5.B.7(a), **Impoundment** of water in Independence Lake shall not be constrained or limited by the operation of **Truckee River Reservoirs** or Donner Lake. Water temporarily stored as a result of high runoff events and then **Discharged**, but not **Exchanged** or used as **Privately Owned Stored Water**, shall not be counted toward the annual **Impoundment** in Independence Lake.

Section 5.B.7(b) No Detriment to Independence Lake Impoundment. Any **Signatory Party** or **Scheduling Party** that obtains the right to use a Carson Division water right under Claim 3 of the **Orr Ditch Decree,** and does not divert water under such right into the Truckee Canal, agrees not to exercise such right to the detriment of the **Impoundment** of **Privately Owned Stored Water** in Independence Lake.

Section 5.B.7(c) Discharge from Independence Lake. Water which is **Released** from or **Passed-Through** Independence Lake by the owner of Independence Lake for the purpose of contributing to **Minimum Releases** shall be classified as **Privately Owned Stored Water** to the extent such classification is requested by such owner.

Section 5.B.7(d) Use of Privately Owned Stored Water. Except as otherwise provided in this **Agreement**, Power Company may operate its Independence Lake **Privately Owned Stored Water** to assist in meeting its water supply and operation objectives.

Section 5.B.7(e) Additional Release Limitation and Allocation. When Independence Lake storage is less than 7,500 acre-feet, a **Release** of **Privately Owned Stored Water** from Independence Lake shall only be made for:

(1) **Emergency or Repair Conditions**;

(2) Power Company **Municipal and Industrial Use** scheduled within the current calendar year when water from Donner Lake or **Power Company M&I Credit Water**, other than **Power Company Emergency Drought Supply**, is insufficient or otherwise unavailable; or

(3) **Minimum Releases** as required by Section 9.C.6.

Section 5.B.7(f) Criteria for Pumping of Independence Lake Privately Owned Stored Water. Power Company may pump water from Independence Lake when the following conditions are met:

(1) Lake elevation is too low to provide adequate **Release** of **Privately Owned Stored Water** without pumping;

(2) Permits required for pumping, if any, have been acquired by the Power Company; and

(3) A **Drought Situation** or an **Emergency or Repair Condition** exists.

Section 5.B.7(g) Annual Impoundment after Pumping. Whenever pumping from Independence Lake under Section 5.B.7(f) results in more than 17,500 acre-feet of available space for storage in Independence Lake, **Impoundment** of **Privately Owned Stored Water** during the following year and each subsequent year shall be limited to a maximum of 17,500 acre-feet per year.

Section 5.B.7(h) Providing Spawning Access for Lahontan Cutthroat Trout of Independence Lake. When requested by the California Department of Fish and Game, for purposes of promoting spawning access for Lahontan cutthroat trout upstream of Independence Lake, Power Company, United States, Pyramid Tribe and California shall participate in **Exchanges** of Power Company's **Privately Owned Stored Water** scheduled for **Release** from Independence Lake for **Joint Program Fish Credit Water**, **Fish Credit Water** and **Fish Water** in Stampede and Boca Reservoirs, or shall **Establish Joint Program Fish Credit Water** or **Fish Credit Water** in Independence Lake. Such required operations shall be subject to the provisions of Article Eight and shall:

(1) Not involve, in the aggregate, amounts of **Privately Owned Stored Water** exceeding amounts scheduled to be **Released** from Independence Lake from May 1 through August 31;

(2) Be implemented only when storage in Independence Lake is below 10,500 acre-feet or, absent such **Exchange** or **Establishment**, is forecast to be below 10,500 acre-feet on or before September 1;

(3) Not involve a total combined amount exceeding 3,000 acre-feet, of which any available **Joint Program Fish Credit Water** and **Fish Credit Water** shall first be **Exchanged** in equal amounts to the extent both are available, and any available **Fish Credit Water** or **Fish Water** will next be **Exchanged** up to the total combined amount of 3,000 acre-feet;

(4) Provide that **Fish Credit Water** or **Joint Program Fish Credit Water** in Independence Lake be **Exchanged** by November 1 with water owned by Power Company in a **Truckee River Reservoir** or be **Discharged** from Independence Lake;

(5) Not cause any participating party to incur any fee for such storage or **Exchange**;

(6) Provide compensating water in storage to the Power Company to the extent that Power Company incurs or will incur a total amount of loss or evaporation of water greater than it otherwise would have incurred; and

(7) Not interfere with storage, re-storage or use of **Privately Owned Stored Water** by Power Company or with the operation or maintenance of Independence Lake facilities by Power Company.

If, after implementing the operations specified in this Section 5.B.7(h), Independence Lake contains or is forecast to contain between 4,500 and 7,500 acre-feet of water from May 15 through August 31, and California Department of Fish and Game determines that additional measures are necessary to provide spawning access for Lahontan cutthroat trout to Independence Creek, California Department of Fish and Game may direct Power Company to take reasonable measures to develop and maintain, from May 15 through July 15, a channel below the high water line of Independence Lake that is suitable for fish passage through the delta formed by Independence Creek entering Independence Lake. Any such work shall not interfere with storage, re-storage or use of **Privately Owned Stored Water** by Power Company or with the operation or maintenance of Independence Lake facilities by Power Company.

Section 5.B.8 Stampede Reservoir Operations. Stampede Reservoir shall be operated in accordance with California Water Right Permits 11605 and 18320, the licenses which may be issued on those permits, changes to those permits or licenses identified in Section

7.A.4(a)(4), any new appropriation which may result from the application process identified in Section 7.A.4(a)(5), and this **Agreement**.

Section 5.B.8(a) Impoundment of Water in Stampede Reservoir. During any year up to 126,000 acre-feet of water under California Water Right Permits 11605 and 18320, and, subject to the issuance of an additional permit by the California State Water Resources Control Board, up to 226,500 acre-feet per year of water, may be diverted to storage in Stampede Reservoir in accordance with this Section 5.B.8(a), in priority and not adverse to **Orr Ditch Decree Water Rights, Floriston Rates** nor **Reduced Floriston Rates**. Diversion to storage of water in Stampede Reservoir shall not constrain or limit the operation of other **Truckee River Reservoirs,** Donner Lake, or Independence Lake, except that the first 126,000 acre-feet per year diverted to storage in Stampede Reservoir may constrain or limit the **Impoundment** of **Prosser Project Water** in Prosser Creek Reservoir. For purposes of this **Agreement,** the first 126,000 acre-feet of water may be **Impounded** as **Stampede Project Water,** and if **Impounded** shall be classified as **Fish Water.** Any amount diverted to storage by United States and Pyramid Tribe under any new appropriation which may result from the application process identified in Section 7.A.4(a)(5) in excess of 126,000 acre-feet in any year shall be **Fish Credit Water** for all purposes under this **Agreement**. Water temporarily stored as a result of high runoff events and then **Discharged** in accordance with flood control criteria and not **Exchanged** shall not be counted toward the annual diversion to storage in Stampede Reservoir**.**

Section 5.B.8(b) Hydroelectric Power Generation by United States Incidental. Management and use of water from Stampede Reservoir for the generation of hydroelectric power by the United States shall be incidental to other Stampede Reservoir operations under this **Agreement** and shall not conflict with the allocation and management of water under this **Agreement** or with the **California Guidelines** or the **Administrator's Integrated Schedules** developed pursuant to Article Eleven.

Section 5.B.8(c) Uses of Stampede Project Water. Stampede Project Water shall be: (1) Stored and **Exchanged** as provided in this **Agreement** for the benefit of **Pyramid Lake Fishes,** (2) used for operations required to be performed under this **Agreement,** or (3) **Released** to provide **Pyramid Lake Fish Flows. Stampede Project Water** may also be **Exchanged** or re-stored as otherwise allowed by this **Agreement** if not detrimental to **Pyramid Lake Fishes.**

Section 5.B.9 Boca Reservoir Operations. Boca Reservoir shall be operated in accordance with California Water Right License 3723, changes to that license as may result from the process identified in Section 7.A.4(a)(1), and this **Agreement**.

Section 5.B.9(a) Impoundment of Boca Storage Water. From October 1 through September 30, a maximum of 25,000 acre-feet of **Boca Storage Water** may be **Impounded** in Boca Reservoir and **Accumulated** in Stampede Reservoir in priority and adverse to Claim No. 3 of the **Orr Ditch Decree**; provided that such **Impoundment** is not adverse to the rate of flow at the **Farad Gage** required for **Floriston Rates** or **Reduced Floriston Rates**,

exclusive of **Releases** from Lake Tahoe. For the purpose of this Section 5.B.9(a), the amount of **Boca Storage Water** calculated at any time to have been **Impounded** or **Accumulated** during such period shall be the total of:

(1) the amount of **Boca Storage Water Impounded** or **Accumulated** during that period and then remaining in storage as **Boca Project Water** or **Project Water in Another Reservoir**;

(2) the amount of water referred to in Section 5.B.9(a)(1) **Released** after March 31 for the purpose of maintaining **Floriston Rates** or **Reduced Floriston Rates**; and

(3) any **Credit Water Accumulated** by retaining water referred to in Section 5.B.9(a)(1) in Boca Reservoir or Stampede Reservoir that had been scheduled for **Release** after March 31 to maintain **Floriston Rates** or **Reduced Floriston Rates**.

Section 5.B.9(b) Impoundment of Additional Boca Storage Water. Water may be **Impounded** in Boca Reservoir as **Additional Boca Storage Water** in addition to the water **Impounded** under Section 5.B.9(a), up to the 40,800 acre-foot capacity of the reservoir, provided:

(1) Such **Impoundment** shall not reduce the water available for diversion at Derby Dam into the Truckee Canal below its then-existing carrying capacity (limited, however, to the maximum diversion of 1,200 cfs at the intake of that canal) or that quantity of water which is diverted into the Truckee Canal under applicable **Truckee Canal Diversion Criteria**, whichever is less.

(2) Such **Impoundment** shall not be adverse to **Floriston Rates** or **Reduced Floriston Rates**, exclusive of **Releases** from Lake Tahoe.

Section 5.B.9(c) No Detriment to Impoundment of Additional Boca Storage Water. Any **Signatory Party** or **Scheduling Party** that obtains the right to use a Carson Division water right under Claim 3 of the **Orr Ditch Decree,** and does not divert water under such right into the Truckee Canal, agrees not to exercise such right to the detriment of the **Impoundment** of **Additional Boca Storage Water**.

Section 5.B.9(d) Other Provisions for Boca Project Water. **Impoundment** of **Boca Project Water** shall not be constrained or limited by the operation of Prosser Creek Reservoir, Stampede Reservoir, or storage in excess of 3,000 acre-feet in Independence Lake, and shall not constrain or limit the operation of Lake Tahoe, Donner Lake, or the first 3,000 acre-feet of **Impoundment** in Independence Lake. Nothing herein shall preclude the historic practice of retaining **Boca Project Water** in Stampede Reservoir on a temporary basis, and such water shall be classified as **Project Water in Another Reservoir**

while in Stampede Reservoir. Water temporarily stored in Boca Reservoir as a result of high runoff events, and then **Discharged** in accordance with flood control criteria and not **Exchanged**, shall not be counted toward the annual **Impoundment** in Boca Reservoir.

Section 5.B.9(e) Operation of Power Company Boca Storage. **Power Company Boca Storage** shall be operated in accordance with the provisions of Section 5.A.5(b).

Section 5.B.9(f) General. Boca Reservoir shall be operated under this Section 5.B.9 to permit the maximum possible diversion pursuant to Claim No. 3 of the **Orr Ditch Decree**, subject to applicable **Truckee Canal Diversion Criteria**, insofar as in the judgment of the Conservation District can be done without detriment to the **Impoundment** of **Boca Project Water** in accordance with this **Agreement.** Boca Reservoir shall be operated at all times so as to **Impound** the greatest quantity of **Boca Project Water** possible under the provisions of this **Agreement**.

SECTION 5.C – SPILL

Section 5.C.1 Accounting for Spill. The **Administrator** shall account for **Spill** from a reservoir by debiting the applicable categories of water in the reservoir in accordance with the provisions of this Section 5.C. A category of water must be fully depleted before the next priority category of water is debited.

Section 5.C.1(a) Additional California Environmental Credit Water and Other Credit Water. Additional California Environmental Credit Water and **Other Credit Water** shall be the first categories of water to **Spill** from any reservoir pursuant to Section 5.C.2.

Section 5.C.1(b) Newlands Project Credit Water. Newlands Project Credit Water shall be the second category of water to **Spill** from any reservoir.

Section 5.C.1(c) Project Water in Another Reservoir. Project Water in Another Reservoir which is not **Floriston Rate Water**, and water treated as **Project Water in Another Reservoir** pursuant to Section 8.O, shall be the third category of water to **Spill** from any reservoir, and if there is more than one such category in storage, then in inverse order of their storage right priority.

Section 5.C.1(d) Floriston Rate Water in Another Reservoir. Project Water in Another Reservoir which is **Floriston Rate Water** shall be the fourth category of water to **Spill** from any reservoir.

Section 5.C.1(e) Water Quality Credit Water and Fernley Municipal Credit Water. Water Quality Credit Water and **Fernley Municipal Credit Water** shall be the fifth categories of water to **Spill** from any reservoir pursuant to Section 5.C.2.

Section 5.C.1(f) California Environmental Credit Water. California Environmental Credit Water shall be the sixth category of water to **Spill** from any reservoir.

California Environmental Credit Water, identified as convertible to **Additional California Environmental Credit Water** in Section 7.D.6, shall **Spill** before any **California Environmental Credit Water** that is not convertible.

Section 5.C.1(g) California M&I Credit Water. California M&I Credit Water shall be the seventh category of water to **Spill** from any reservoir.

Section 5.C.1(h) Fish Credit Water, Joint Program Fish Credit Water and Non-Firm M&I Credit Water. Fish Credit Water, **Joint Program Fish Credit Water**, and **Non-Firm M&I Credit Water** shall be the eighth categories of water to **Spill** from any reservoir. Except as provided in Sections 8.F.3(c), 8.F.4(a), 8.F.4(b), 8.F.5, 8.F.6, and 8.F.7 such **Spill** shall be allocated among **Fish Credit Water**, **Joint Program Fish Credit Water**, and Power Company's **Non-Firm M&I Credit Water** as provided in Section 5.C.1(h)(1) or 5.C.1(h)(2).

Section 5.C.1(h)(1) Drought Situation. During a **Drought Situation**, **Fish Credit Water** and **Joint Program Fish Credit Water** shall **Spill** pursuant to Section 5.C.2 before **Non-Firm M&I Credit Water**.

Section 5.C.1(h)(2) Non-Drought Situation. When a **Drought Situation** does not exist, (A) from Stampede Reservoir, **Non-Firm M&I Credit Water** shall **Spill** first, and **Fish Credit Water** and **Joint Program Fish Credit Water** shall **Spill** second pursuant to Section 5.C.2, and (B) from all other reservoirs, **Fish Credit Water, Joint Program Fish Credit Water**, and **Non-Firm M&I Credit Water** shall **Spill** proportionately pursuant to Section 5.C.2, except that additional **Non-Firm M&I Credit Water** identified in Section 8.F.4(a) shall **Spill** after **Fish Credit Water** and **Joint Program Fish Credit Water**.

Section 5.C.1(i) Floriston Rate Water in Lake Tahoe. Floriston Rate Water in Lake Tahoe shall be the ninth and last category of water to **Spill** from that reservoir.

Section 5.C.1(j) Privately Owned Stored Water in Donner Lake and Independence Lake. Privately Owned Stored Water in Donner Lake and **Privately Owned Stored Water** in Independence Lake shall be the ninth and last categories of water to **Spill** from those reservoirs.

Section 5.C.1(k) Project Water in Martis Creek Reservoir. Subject to compliance with the requirements of Section 5.B.5, **Project Water** in Martis Creek Reservoir shall be the ninth and last category of water to **Spill** from that reservoir.

Section 5.C.1(l) Waters in Prosser Creek Reservoir. In Prosser Creek Reservoir, **Prosser Fish Water** shall be the ninth category, **Prosser Reserved Water** shall be tenth, **Power Company Emergency Drought Supply** shall be eleventh, and **Tahoe-Prosser Exchange Water** shall be the twelfth and last category of water to **Spill** from that reservoir.

Section 5.C.1(m) Privately Owned Stored Water and Stampede Project Water in Stampede Reservoir. Except as provided in Section 8.F.3(c) and 8.F.5, **Privately Owned Stored Water** in Stampede Reservoir in accordance with Section 8.N.3 shall be ninth to **Spill**, and **Stampede Project Water** shall be the tenth and last water to **Spill** from that reservoir. Power Company **Firm M&I Credit Water** and **Power Company Emergency Drought Supply** shall not **Spill** from Stampede Reservoir.

Section 5.C.1(n) Waters in Boca Reservoir. Privately Owned Stored Water in Boca Reservoir in accordance with Section 8.N.3, and **Stampede Project Water** in Boca Reservoir pursuant to Section 8.O.3, if any, shall be ninth to **Spill**; **Boca Storage Water** shall be the tenth; and **Additional Boca Storage Water** shall be the eleventh and last category of water to **Spill** from that reservoir.

Section 5.C.2 Proportional Contribution. When a **Spill** priority is comprised of more than one category of water, or there is more than one owner within a category, or both, each category or owner shall contribute to the **Spill** in proportion to its quantity in storage in the **Spilling** reservoir, except: (a) if a category of water has more water in storage than is allowed under this **Agreement**, the excess shall **Spill** first; (b) as provided in Section 5.C.1(h); (c) with respect to categories of **Other Credit Water**, in accordance with Section 7.G.2; or (d) as provided in Section 5.C.1(c).

Section 5.C.3 Utilization of Spill. Water **Spilled** may be used by its owner in accordance with this **Agreement** or it may be **Exchanged** to or re-stored in another reservoir, provided that any such **Exchange** is offered to other categories of water in accordance with Section 8.E. Where provisions of Sections 7.B.3 or 7.F.2 constrain the **Release** of **Credit Water**, an owner of such water may **Release** it for instream flows where a reasonably imminent **Spill** of such water has been forecasted to occur, and where the prior consent of United States and Pyramid Tribe has been obtained.

SECTION 5.D - RESERVOIR LOSS DETERMINATION AND ALLOCATION

Section 5.D.1 General. The water storage accounts referenced in this **Agreement** shall be adjusted based on net evaporation (lake evaporation after allowing for precipitation) from water surfaces of **Truckee River Reservoirs**, Donner Lake and Independence Lake. Lake and reservoir net evaporation losses shall be calculated for each day.

Section 5.D.2 Lake Tahoe. The **Administrator** shall allocate a portion of Lake Tahoe's daily net evaporation loss to **Credit Water** in Lake Tahoe. The portion allocated to **Credit Water** shall be calculated by multiplying the total daily net evaporation loss by the increase in average lake surface area for the day attributable to **Credit Water**, and then dividing by the average total lake surface area for the day. Lake Tahoe daily net evaporation loss allocated to **Credit Water** shall be allocated to each category in proportion to its respective amount of water in Lake Tahoe.

Section 5.D.3 Donner Lake. Net evaporation loss for Donner Lake shall be allocated first to Donner Lake inflow. A portion of Donner Lake net evaporation loss remaining after allocation to inflow shall be allocated to **Credit Water** in Donner Lake. That portion shall be equal to the remaining daily net evaporation loss multiplied by the increase in average lake water surface area attributable to **Credit Water** and divided by the average total lake surface area for the day. Each category of **Credit Water** shall contribute to the daily net evaporation loss allocated to **Credit Water** in proportion to its respective amount of water in Donner Lake. Donner Lake net evaporation that is not allocated to inflow or **Credit Water** shall be allocated to **Privately Owned Stored Water** in Donner Lake.

Section 5.D.4 Martis Creek Reservoir. Subject to compliance with the requirements of Section 5.B.5, each category of water in Martis Creek Reservoir shall be allocated a share of Martis Creek Reservoir daily net evaporation loss in proportion to its respective amount of water in Martis Creek Reservoir.

Section 5.D.5 Prosser Creek Reservoir. Each category of water in Prosser Creek Reservoir, except **Tahoe-Prosser Exchange Water**, **Power Company Emergency Drought Supply**, and **Dead, and Inactive Storage,** shall be allocated a share of Prosser Creek Reservoir daily net evaporation loss in proportion to its respective amount of water in Prosser Creek Reservoir. If **Tahoe-Prosser Exchange Water, Dead and Inactive Storage,** and **Power Company Emergency Drought Supply** are the only categories of water in storage, then net evaporation loss shall be allocated first to **Power Company Emergency Drought Supply,** second to **Tahoe-Prosser Exchange Water**, and last to **Dead and Inactive Storage.**

Section 5.D.6 Independence Lake. Net evaporation loss for Independence Lake shall be allocated first to Independence Lake inflow. A portion of Independence Lake net evaporation loss remaining after allocation to inflow shall be allocated to **Credit Water** in Independence Lake. That portion shall be equal to the remaining daily net evaporation loss multiplied by the increase in average lake water surface area attributable to **Credit Water** and divided by the average total lake surface area for the day. Each category of **Credit Water** shall contribute to the daily net evaporation loss allocated to **Credit Water** in proportion to its respective amount of water in Independence Lake. Independence Lake net evaporation that is not allocated to inflow or to **Credit Water** shall be allocated to **Privately Owned Stored Water** in Independence Lake.

Section 5.D.7 Stampede Reservoir. Each category of water in Stampede Reservoir, except **Power Company Emergency Drought Supply**, **Firm M&I Credit Water**, **Project Water in Another Reservoir** that is **Lake Tahoe Floriston Rate Water**, and **Dead and Inactive Storage**, shall be allocated a share of Stampede Reservoir daily net evaporation loss in proportion to its respective amount of water in Stampede Reservoir. If **Power Company Emergency Drought Supply**, **Firm M&I Credit Water**, **Project Water in Another Reservoir** that is **Lake Tahoe Floriston Rate Water**, and **Dead and Inactive Storage** are the only categories of water in storage, then net evaporation loss shall be allocated first to **Firm M&I Credit Water**, second to **Power Company Emergency Drought Supply**, third to **Project**

Water in Another Reservoir that is **Lake Tahoe Floriston Rate Water**, and last to **Dead and Inactive Storage**.

Section 5.D.8 Boca Reservoir. Net evaporation loss for Boca Reservoir shall be allocated to each category of water in storage in Boca Reservoir and each category shall share daily net evaporation loss in proportion to its respective amount of water in Boca Reservoir.

SECTION 5.E - STREAM CHANNEL CONVEYANCE LOSSES

Section 5.E.1 Conveyance Loss Determination. Conveyance losses shall be calculated by the **Administrator** using procedures developed by the **Administrator**. Conveyance losses for each stream reach identified by the **Administrator** shall be allocated for each day based on the amount of water that each category supplies in proportion to the total flow entering the upstream end of the reach during that day.

Section 5.E.2 Allocation of Conveyance Loss During Release. When **Project Water** or **Credit Water** is **Released,** a portion of conveyance loss shall be allocated to each **Release** using the proportion that each category of water in the channel bears to the total flow in the channel, except that **Privately Owned Stored Water** shall not be allocated any conveyance loss when **Released** for use in Nevada.

ARTICLE SIX
TRUCKEE RIVER AND LAKE TAHOE BASIN
ALLOCATION AND ACCOUNTING

SECTIONS 6.A - PURPOSE

Section 6.A.1 Purpose. This Article Six provides procedures to implement the **Truckee River Basin** and **Lake Tahoe Basin** allocations, including the priority of California's allocation of the surface water from the **Truckee River Basin** in California relative to Nevada's allocation of the surface water from the **Truckee River Basin** in accordance with Section 204(c) of the **Settlement Act,** and criteria for storage of California's **Truckee River Basin** surface water allocation.

Section 6.A.2 Surface Water Use Pursuant to All Water Right Doctrines Included. Surface water diverted and used in California pursuant to California's doctrines of prior appropriation, riparian water rights, or any other legal basis for the diversion and use of surface water recognized by California law, excluding water directly diverted solely for hydroelectric generation and promptly returned to the stream, shall be charged to California's allocations of water under the **Settlement Act.** Surface water diverted to storage in California pursuant to water rights existing on the date of the **Settlement Act** and **Released** from storage for the generation of hydroelectric power and promptly **Released** or returned to the stream shall not be charged to California's allocation of water under the **Settlement Act**. As used in this Article Six, any reference to the diversion and use of surface water shall be deemed to include any diversion and use made under California's prior appropriation, riparian, or other water right doctrine, but not including waters which are classified as groundwater pursuant to California law, except where the context clearly indicates otherwise.

SECTION 6.B - SIERRA VALLEY DIVERSION

Section 6.B.1 Priority. The surface water allocation to California under Section 204(c)(2) of the **Settlement Act** of the amount of water decreed to the Sierra Valley Water Company by the **Sierra Valley Decree** shall be deemed to have a priority date of 1870 under the **Orr Ditch Decree** for the purposes of administering Truckee River water rights. The water allocated to California pursuant to Section 204(c)(2) of the **Settlement Act** shall be in addition to, and not a part of, the water allocated to California pursuant to Section 204(c)(1) of the **Settlement Act**.

Section 6.B.2 Implementation of Sierra Valley Priority. The **Administrator** shall administer the Sierra Valley diversion in accordance with this Section 6.B.

Section 6.B.2(a) Calculation of Unregulated Flow at Farad. The unregulated flow at **Farad Gage** that will be used to determine when diversions under the **Sierra**

Valley Decree will cease shall be calculated as the 3-day running average of the daily unregulated flow using the following equation:

$Q = Q_F + S_D + S_P + S_I + S_S + S_B + D_{sv} + E_P + E_S + E_B$, where

Q is the calculation of unregulated flow at **Farad Gage** in cfs,
Q_F is the measured flow at **Farad Gage** in cfs,
S_D is the change in storage in Donner Lake in cfs,
S_P is the change in storage in Prosser Creek Reservoir in cfs,
S_I is the change in storage in Independence Lake in cfs,
S_S is the change in storage in Stampede Reservoir in cfs,
S_B is the change in storage in Boca Reservoir in cfs,
D_{sv} is the Sierra Valley diversion in cfs,
E_P is the evaporation from Prosser Creek Reservoir in cfs,
E_S is the evaporation from Stampede Reservoir in cfs,
E_B is the evaporation from Boca Reservoir in cfs.

"Change in storage" in the above equation may be either a positive number for an increase in storage or a negative number for a decrease in storage. The evaporation values used in the above equation shall be calculated using pan evaporation measurements made for the National Oceanic and Atmospheric Administration at the Boca climatological station, or an appropriate substitute technique if such measurements are no longer available. Such measured pan evaporation shall be multiplied by the standard pan coefficient of 0.7.

Section 6.B.2(b) Calculation of Orr Ditch Decree Irrigation Demand. On or as near as practicable to April 1 of each year the **Federal Water Master** shall determine the quantity of **Orr Ditch Decree Water Rights** with a priority date senior to 1870 which will be **Exercised Water Rights** for irrigation in the upcoming irrigation season. These rights shall be converted to a rate of flow based on the expected length of the irrigation season and the efficiency of each ditch or other means used to deliver water pursuant to the exercise of such water rights. Appendix 6.A provides an example of this procedure, which example is not intended to foreclose consideration of any other **Orr Ditch Decree Water Rights** used for irrigation with priorities senior to 1870.

Section 6.B.2(c) Calculation of Municipal and Industrial Use and Credit Water Demand. When the **Federal Water Master** determines that it is necessary, the **Federal Water Master** shall make a projection of total river diversions for **Municipal and Industrial Use** and for **Establishment** of **Credit Water** for the next seven days. The **Administrator** shall provide the **Federal Water Master** with a listing of **Orr Ditch Decree Water Rights** with a priority senior to 1870 being used to **Establish Credit Water**. The **Federal Water Master** shall verify this listing. **Orr Ditch Decree Water Rights** senior to 1870 which have an original point of diversion downstream from **Vista Gage** and which at that original point of diversion would have been wholly or partially satisfied by return flow will not be included in this calculation to the extent they would have been so satisfied.

Section 6.B.2(d) Total Orr Ditch Decree Demand. The total **Orr Ditch Decree** demand to satisfy water rights with priority senior to 1870 shall be the sum of the irrigation, **Municipal and Industrial Use** and **Credit Water Establishment** calculated in accordance with Sections 6.B.2(b) and 6.B.2(c).

Section 6.B.2(e) Determination of Sierra Valley Diversion Cessation. When the unregulated flow at **Farad Gage** as calculated in Section 6.B.2(a) is less than that required to satisfy the demands of **Orr Ditch Decree Water Right** holders as set forth in Section 6.B.2(d), the **Administrator** shall require that diversions under the **Sierra Valley Decree** cease. Cessation of diversion will not be required until the **Federal Water Master** verifies calculated diversions and unregulated flows. Diversions under the **Sierra Valley Decree** shall thereupon cease as soon as reasonably practicable on notice from the **Administrator**, but in no event later than twelve (12) daytime hours after receipt of such notice.

SECTION 6.C - DIVERSION OF TRUCKEE RIVER BASIN SURFACE WATER ALLOCATED TO CALIFORNIA PURSUANT TO SECTION 204(c) OF THE SETTLEMENT ACT

The provisions of this Section 6.C are intended to implement the allocation of **Truckee River Basin** surface water to California pursuant to Sections 204(c)(1) and 204(c)(1)(A) of the **Settlement Act**. Surface water available for diversion under the provisions of this Section 6.C but not diverted for use or to storage for use in California shall be available for use under Nevada's allocation under Section 204(c)(3) of the **Settlement Act**. The annual **Establishment** of **Joint Program Fish Credit Water** as limited by Section 7.C.6, and any portion of the California surface water allocation diverted to storage, whether to **Truckee River Reservoirs**, existing or new California storage facilities, or underground, shall be charged to the surface water portion of California's **Truckee River Basin** allocation specified in Sections 204(c)(1) and 204(c)(1)(A) of the **Settlement Act** in the year in which it is diverted to storage. No additional charge to the California allocation shall be made: (i) when water diverted under such allocation is subsequently **Released** from storage and re-diverted to beneficial use; (ii) when the water is **Exchanged** or re-stored; (iii) when surface water previously diverted to storage underground is extracted; or (iv) when either surface water or groundwater previously diverted or extracted is reused subject to accounting for depletion pursuant to Section 6.E.2.

Section 6.C.1 Diversion of Surface Water Directly to Use or to Storage. Unless specified otherwise in this **Agreement**, the provisions of this Section 6.C.1 apply both to direct diversions of water to use and to diversions of water to storage.

Section 6.C.1(a) Priority and Relation of California Allocation to Nevada Allocation. The surface water allocation to California pursuant to Section 204(c)(1) of the **Settlement Act,** for the purposes of its priority and relation with respect to the allocation to Nevada pursuant to Section 204(c)(3) of the **Settlement Act,** shall be subject to the rights set forth in Section 204(c)(1)(A) and the restrictions set forth in the **Settlement Act**. Diversions

within the Donner Lake watershed and Independence Lake watershed shall be implemented in accordance with the provisions of Sections 6.C.5(a) and 6.C.5(b).

Section 6.C.1(b) Water Available for Direct Diversion to Use. Subject to implementation in accordance with the provisions of Sections 6.C.5(a) and 6.C.5(b), and for the purposes of Section 6.C, **California Truckee River Basin Supply** shall be available for direct diversion to beneficial use within the **Truckee River Basin** in California.

Section 6.C.1(c) Direct Diversion to Use Permitted by a Compensating Release. California or its designee may directly divert to **Municipal and Industrial Use** in California water **Released** by another **Scheduling Party** provided it compensates for such diversion by **Exchanging** to that **Scheduling Party** a **Release** of **California M&I Credit Water** that provides the same amount of water at the same delivery point and time as originally scheduled, unless otherwise agreed to by that **Scheduling Party**. **Releases** of **Fish Credit Water**, **Joint Program Fish Credit Water**, **California Environmental Credit Water**, and **Additional California Environmental Credit Water** at or below applicable **Release Thresholds** may not be diverted under this Section 6.C.1(c) unless otherwise agreed to by the respective **Scheduling Party**. The priority for the operations under this Section 6.C.1(c) shall be the same as Section 8.E.2(c).

Section 6.C.1(d) Beneficial Use. Subject to limitations set forth in the **Settlement Act** and to applicable criteria contained in this **Agreement**, surface water may be diverted to any reasonable and beneficial use in accordance with the requirements of California law. Provided, however, that the diversion and use of water in California for the generation of hydropower shall be incidental to another beneficial use in California, unless such diversion and use is pursuant to water right for the generation of hydroelectric power or changes to such water right existing on the date of the **Settlement Act**.

Section 6.C.1(e) Maximum Monthly Diversions. In each water right permit issued after May 1, 1996, and any license subsequently issued for such a permit, for use of water in the **Truckee River Basin**, the California State Water Resources Control Board shall include a condition which limits the maximum diversion in any one month to no more than 25 percent of the total amount of water allowed to be diverted each year under such permit or license.

Section 6.C.1(f) Enforcement of Rights Set Forth in Section 204(c)(1)(A) of the Settlement Act. The **Administrator** shall notify the California State Water Resources Control Board as early as practicable if at some future time it is anticipated that any or all of the water rights recognized by **Orr Ditch Decree** Claim Numbers 1 and 2 and Power Company's 40 cubic feet per second diversion right described under Section 5.A.6 cannot be fully satisfied. The California State Water Resources Control Board shall, in coordination with the **Administrator**, timely order cessation of surface water diversions from sources within the **Truckee River Basin** in California for use or storage for use in California or issue other orders,

to the extent and at the time required to satisfy the requirements of Section 204(c)(1)(A) of the **Settlement Act**.

Section 6.C.1(g) Release or Pass-Through of Floriston Rate Water to Replace Water Diverted to Use Under the California Allocation. When a direct diversion to beneficial use is made under the provisions of this Section 6.C.1, the **Administrator** shall increase the **Release** or **Pass-Through** of **Floriston Rate Water** but only to the extent necessary to serve **Exercised Orr Ditch Decree Water Rights**, even though such increase may be simultaneously reduced by **Establishment** of **Credit Water** utilizing **Exercised Orr Ditch Decree Water Rights**.

Section 6.C.1(h) Incidental Use for Power in California. Except for management and use under existing water rights or water rights changed in conformity with applicable state law, all management and use of water charged to California's allocation under Section 6.A.2 for the generation of hydroelectric power shall be incidental to all other uses.

Section 6.C.2 Storage of California's Truckee River Surface Allocation in Truckee River Reservoirs, Donner Lake and Independence Lake. This Section 6.C.2 provides for diversion to storage of a portion of California's Truckee River surface water allocation pursuant to Section 204(c)(1) of the **Settlement Act** using **Changed Diversion Rights** having an original place of use in California, and new California rights to appropriate water pursuant to Section 7.D. Water which may be diverted to storage in accordance with this Section 6.C.2 shall be the **California Truckee River Basin Supply**.

Section 6.C.2(a) Limitation on Amount of Storage. The amount of such surface water allocation which may be in storage shall be limited in accordance with Section 7.D.4.

Section 6.C.2(b) Priority, Maximum Monthly Diversion, and Cessation of Diversion. The priority for diversion of such allocated surface water to storage in **Truckee River Reservoirs** shall be the same as California's priority specified in Section 6.C.1(a).

Section 6.C.2(b)(1) Conditions on Water Rights. For water rights set forth in Section 6.C.2(b)(2), and except as otherwise provided therein, the California State Water Resources Control Board shall include the following conditions:

(i) limit the maximum diversion in any one month to 25 percent of the total amount of water allowed to be diverted each year under a permit or license; and

(ii) require that when insufficient **Floriston Rate Water** is available to maintain **Floriston Rates** or **Reduced Floriston Rates**, diversions to storage under this Section 6.C.2 shall cease, provided that not less than 30 days notice

has been given to California by the **Administrator** that such insufficiency is anticipated. If the **Administrator** has failed to provide 30 days prior notice, diversions to storage under this Section 6.C.2 shall cease no later than 30 days after receipt of such notice. California shall file the name and address of the **Person** to receive such notice with the **Administrator**.

Section 6.C.2(b)(2) Applicability of Conditions on Water Rights. Both conditions (i) and (ii) under Section 6.C.2(b)(1) shall be included in:

(i) each water permit for storage issued after May 1, 1996, and any license subsequently issued thereon;

(ii) each **Changed Diversion Right** for which the original permit was issued after May 1, 1996; and

(iii) if the right referred to in (ii) is a water right permit, each license subsequently issued thereon.

Condition (i), but not condition (ii), under Section 6.C.2(b)(1) shall be included in each **Changed Diversion Right** permit or subsequent license where the original water right permit was issued on or before May 1, 1996, and the original permit authorized the diversion of water in more than four months of each year.

Section 6.C.2(c) Establishing California M&I Credit Water and California Environmental Credit Water in Lake Tahoe. California or its designee may **Establish California M&I Credit Water** and California may **Establish California Environmental Credit Water** in Lake Tahoe by retaining a portion of **Lake Tahoe Floriston Rate Water** in Lake Tahoe which had been scheduled for **Release** in lieu of **Exercising** by direct diversion either a new California right to appropriate water or a **Changed Diversion Right** with an original place of use in California.

For the purpose of this Section 6.C.2(c) only, the **Release** of **Lake Tahoe Floriston Rate Water** from Lake Tahoe is the **Release** which would have been required to maintain **Floriston Rates** or **Reduced Floriston Rates**, as adjusted pursuant to the provisions of Section 5.A but exclusive of Section 5.A.3(a), had the **Exchange** of water into Lake Tahoe pursuant to this Section 6.C.2(c) not taken place.

Section 6.C.2(c)(1) Conditions for Establishment in Lake Tahoe. California M&I Credit Water and **California Environmental Credit Water** may only be **Established** under this Section 6.C.2(c) when:

(i) The **Release** of **Lake Tahoe Floriston Rate Water** from Lake Tahoe exceeds the **Release** required for maintaining the **Minimum Release** or **Enhanced Minimum Release**; and

(ii) The rate at which **Lake Tahoe Floriston Rate Water** would be required to be **Released** from Lake Tahoe to supply **Exercised Orr Ditch Decree Water Rights** is less than the maximum release capacity of Lake Tahoe Dam at that time.

Section 6.C.2(c)(2) Rates of Establishment in Lake Tahoe. When the provisions of Section 6.C.2(c)(1) have been satisfied and the **Release** of **Lake Tahoe Floriston Rate Water** from Lake Tahoe necessary to serve **Exercised Orr Ditch Decree Water Rights** is:

(i) less than or equal to the **Release** required to maintain the **Minimum Release** or **Enhanced Minimum Release**, the rate at which California or its designee may **Establish** in Lake Tahoe under this Section 6.C.2(c) shall not exceed the **Release** of **Lake Tahoe Floriston Rate Water** from Lake Tahoe less the **Release** required to maintain the **Minimum Release** or **Enhanced Minimum Release**; or

(ii) greater than the **Release** required to maintain the **Minimum Release** or **Enhanced Minimum Release**, the rate at which California or its designee may **Establish** in Lake Tahoe under this Section 6.C.2(c) shall not exceed the maximum release capacity of Lake Tahoe Dam at that time, less the **Release** of **Lake Tahoe Floriston Rate Water** from Lake Tahoe.

Section 6.C.2(d) Establishing Credit Water in Donner Lake, Independence Lake and Truckee River Reservoirs. California or its designee may **Establish California M&I Credit Water** and California may **Establish California Environmental Credit Water** and **Additional California Environmental Credit Water** in Donner Lake, Independence Lake, and **Truckee River Reservoirs** using **Changed Diversion Rights** associated with a water right issued on or before May 1, 1996, and with an original place of use in California

Section 6.C.2(e) Release of Floriston Rate Water to Replace Water Established Under the California Allocation. When California or its designee diverts water to storage in accordance with Sections 6.C.2(c) or 6.C.2(d), the **Administrator** shall increase the remaining **Release** or **Pass-Through** of **Floriston Rate Water** by an amount equal to the amount of water California or its designee diverts or is diverting to storage, but only to the extent necessary to serve **Exercised Orr Ditch Decree Water Rights**, notwithstanding that such

increase may be simultaneously reduced by **Establishment** of **Credit Water** utilizing **Exercised Orr Ditch Decree Water Rights**.

Section 6.C.2(f) Operations Not Adverse to Project Water Operations. Operations in accordance with this Section 6.C.2 shall not be deemed adverse to or in conflict with **Project Water Operations**.

Section 6.C.3 Surface Allocation in New Facilities.

Section 6.C.3(a) Authorization for Storage in New Storage Facilities--Priority and Maximum Amount. In addition to storage of any water pursuant to Sections 6.C.6(c)(2) and 6.C.7, the California State Water Resources Control Board may permit diversion of California's surface water allocation under Section 204(c)(1) of the **Settlement Act** to storage in the **Truckee River Basin** in new facilities constructed after May 1, 1996, only if consistent with the following provisions and other criteria of this Section 6.C.3:

(1) The **California Truckee River Basin Supply** shall be available for diversion to storage under this Section 6.C.3.

(2) Diversions of water from California's **Truckee River Basin** surface water allocation to new facilities shall have the priority specified in Section 6.C.1(a).

(3) The cumulative total amount of water in storage in any new facility or facilities at any one time shall not exceed 10,500 acre-feet, provided, however, that there shall be excluded from the cumulative total any water stored using only the consumptive use component of water rights in use on or before May 1, 1996.

(4) Diversions associated with the following actions shall be deemed to be direct diversions to use under Section 6.C.1 and not diversions to storage subject to the provisions of this Section 6.C.3: (i) filling of storage tanks in a municipal and industrial system, (ii) addition of treated water to distribution system storage, (iii) replacement of water previously diverted but subsequently used for fire suppression purposes, and (iv) diversion of water to storage in new facilities to be held for regulatory purposes for less than 30 days.

Section 6.C.3(b) Limitations on New Storage in California. Any permit or license or changes to existing permits or licenses granted by the California State Water Resources Control Board for storage in new facilities constructed after May 1, 1996, shall include terms and conditions which require each of the following:

(1) Storage shall be permitted or licensed only for **Municipal and Industrial Use**, and fish and wildlife preservation and enhancement; provided, however, this limitation shall not prevent or preclude incidental recreation or hydroelectric power generation use resulting therefrom;

(2) Diversions to storage shall not be made when there is insufficient **Floriston Rate Water** to maintain **Floriston Rates** or **Reduced Floriston Rates**, except for: (i) diversions made from November 1 through May 15 solely for the purpose of snowmaking, or (ii) diversions for replenishment of water previously diverted, but subsequently used for fire suppression purposes;

(3) The maximum diversion to storage in any one month shall be limited to no more than 25 percent of the total amount of water permitted to be diverted each year under such permit, unless the total annual diversion permitted for a facility is 200 acre-feet or less, in which case diversion to storage may be made without regard to the 25 percent limitation;

(4) Diversions to storage and re-diversion of stored water to beneficial use shall not adversely affect maintenance of **Minimum Releases** or **Enhanced Minimum Releases** from reservoirs as provided in Article Nine; and

(5) The 10,500 acre-foot cumulative limitation set forth in Section 6.C.3(a) shall be complied with.

Section 6.C.3(c) Reduction in Storage in Truckee River Reservoirs. Up to 2,500 acre-feet of water may be diverted to storage under this Section 6.C.3. without diminishing the amount of water California may store under Section 6.C.2(a). To the extent that the constructed capacity of new facilities in accordance with this Section 6.C.3 is permitted for beneficial use (excluding capacity used only for flood control and dead storage) in excess of 2,500 acre-feet, there shall be an equal reduction in California's allowable storage in Lake Tahoe. For each acre-foot of such constructed capacity permitted for beneficial use (excluding capacity used only for flood control and dead storage) in new reservoirs in excess of 2,500 acre-feet, California's allowable storage in **Truckee River Reservoirs** other than Lake Tahoe shall be reduced by three-eighths of an acre-foot.

Section 6.C.3(d) Release of Floriston Rate Water to Replace Water Diverted to Storage Under the California Allocation. When water is diverted to storage in accordance with this Section 6.C.3, the **Administrator** shall increase the remaining **Release** or **Pass-Through** of **Floriston Rate Water** by an amount equal to the amount of water diverted to storage, but only to the extent necessary to serve **Exercised Orr Ditch Decree Water Rights**, notwithstanding that such increase may be simultaneously reduced by **Establishment** of **Credit Water** utilizing **Exercised Orr Ditch Decree Water Rights**.

Section 6.C.4 Storage of California's Surface Allocation Underground.

Section 6.C.4(a) Underground Storage of Surface Water. Surface water allocated to California for use in the **Truckee River Basin** may be appropriated by diversion to underground storage pursuant to applicable California law, including, but not limited to, California Water Code Section 1242. The **California Truckee River Basin Supply** shall be available for diversion under this Section 6.C.4. This water shall be diverted subject to the rights and restrictions specified in Section 6.C.1 and shall be deemed appropriated by diversion to underground storage only if physically diverted and placed in underground storage by means of works intended for that purpose. When water is diverted to storage in accordance with this Section 6.C.4, the **Administrator** shall increase the remaining **Release** or **Pass-Through** of **Floriston Rate Water** by an amount equal to the amount of water diverted to storage, but only to the extent necessary to serve **Exercised Orr Ditch Decree Water Rights**, notwithstanding that such increase may be simultaneously reduced by **Establishment** of **Credit Water** utilizing **Exercised Orr Ditch Decree Water Rights**.

Section 6.C.4(b) Permit from State Water Resources Control Board Required. Subject to the requirements of California law, surface water shall be diverted to underground storage as authorized by a water right permit or license, or changes to existing permits or licenses, issued by the California State Water Resources Control Board after May 1, 1996, which includes each of the following terms and conditions:

(1) The amount which can be diverted to storage each year;

(2) Accounting and reporting procedures;

(3) The maximum diversion in any one month shall be limited to no more than 25 percent of the total amount of water allowed to be diverted each year under such permit; and

(4) When insufficient **Floriston Rate Water** is available to maintain **Floriston Rates** or **Reduced Floriston Rates** diversions to storage under this Section 6.C.4 shall cease, provided that not less than 30 days notice has been given to California by the **Administrator** that such insufficiency is anticipated. If the **Administrator** has failed to provide 30 days prior notice, diversions to storage under this Section 6.C.4. shall cease no later than 30 days after receipt of such notice. California shall file the name and address of the **Person** to receive such notice with the **Administrator**.

Section 6.C.4(c) Charge to California's Truckee River Basin Allocation. Surface water diverted to underground storage shall be charged to California's annual surface water allocation under Sections 204(c)(1) and 204(c)(1)(A) of the **Settlement Act** when the

diversion is made. Subject to the accounting and reporting requirements in Section 6.C.4(b), subsequent extraction of this water shall not be charged against California's diversion allocation.

Augmentation of flows in the Truckee River resulting from inflow of surface water previously diverted for underground storage shall not reduce any applicable charge to California's surface water diversion allocation. Water extracted from underground storage and conveyed in any natural channel or watercourse within the **Truckee River Basin** in California in accordance with California law shall not increase any applicable charge to California's surface water diversion allocation when diverted from the stream. Water extracted from underground storage reaching the Truckee River and not diverted to use in California shall be available for use in Nevada under applicable water rights.

Section 6.C.5 Diversions Within Donner Creek and Independence Creek Watersheds.

Section 6.C.5(a) Diversions Within Donner Creek Watershed.

Section 6.C.5(a)(1) Conditions on Water Right Permits or Licenses. The provisions of this Section 6.C.5(a)(1) shall apply to issuance by the California State Water Resources Control Board after May 1, 1996, of any appropriative water rights permits or licenses, or approval of any changes thereto, which rights have a priority which is later than October 1, 1877, and which would involve either a new or existing point of diversion within the Donner Lake watershed to the confluence of Donner Creek with the Truckee River, or a point of diversion within the Truckee River itself, to the extent that exercise of the right would be adverse to the **Impoundment** of **Privately Owned Stored Water** in Donner Lake. The provisions of this Section 6.C.5(a)(1) shall also apply to any approval by the California State Water Resources Control Board after May 1, 1996, of changes to the point of diversion of any permits or licenses with a priority earlier than October 1, 1877, where the change in the point of diversion would move it into the watershed above Donner Lake. The California State Water Resources Control Board shall condition any such permits, licenses or changes thereto to either:

(i) Require that, if such permitted or licensed rights have a priority date which is later than October 1, 1877, the **Exercise** of such permitted or licensed rights shall not be adverse to the **Impoundment** of **Privately Owned Stored Water** in Donner Lake in accordance with Section 5.B.4(a), or

(ii) Require the permittee or licensee to:

(A) Acquire storage capacity in one or more **Truckee River Reservoirs** (excluding Lake Tahoe) or construct new storage facilities, and

(B) Assure that such storage can be continuously operated, both as to timing and amount so that the water supply available to the owners of **Privately Owned Stored Water** in Donner Lake through the **Exercise** of such water rights will not be diminished.

If the conditions specified in Section 6.C.5(a)(1)(ii) are included in a water right permit, license or change thereto, it shall also specify that no diversions otherwise adverse to the rights to **Privately Owned Stored Water** in Donner Lake may occur until the storage capacity has been acquired, is operational and sufficient water is stored to provide water at the time and in the amount required by Section 6.C.5(a)(1)(ii)(B).

Section 6.C.5(a)(2) Diversions to which Section 6.C.5(a)(1) Does Not Apply.

Section 6.C.5(a)(2)(i) Diversions of the Donner Lake Water Company. The provisions of Section 6.C.5(a)(1) notwithstanding, present and future diversions of water from Donner Lake or from elsewhere in the Donner Creek watershed by the Donner Lake Water Company up to an annual amount of 990 acre-feet, shall be governed by the provisions of the Agreement among Power Company, the Truckee Carson Irrigation District and the Donner Lake Water Company dated April 27, 1998.

Section 6.C.5(a)(2)(ii) Reservation of 40 Acre-Feet for New Appropriations. Notwithstanding the provisions of Section 6.C.5(a)(1), the California State Water Resources Control Board may issue new water right permits, and accept small domestic use registrations filed pursuant to California Water Code Section 1228 *et seq.*, for appropriation for **Municipal and Industrial Uses**, not to exceed a total annual diversion of 40 acre-feet per year even though such permits or registrations may be adverse to the **Impoundment** of **Privately Owned Stored Water** in Donner Lake.

(A) The provisions of this Section 6.C.5(a)(2)(ii) shall apply to diversions from Donner Creek or its tributaries at any point above its confluence with the Truckee River or from Donner Lake.

(B) The permits or acceptance of small domestic use registrations shall specify whether the appropriation may be adverse to the **Impoundment** of **Privately Owned Stored Water** in Donner Lake.

At such time as the water reserved herein for new appropriations has been fully appropriated, the California State Water Resources Control Board may approve the transfer and use of up to 20 acre-feet of the annual reservation specified for Independence Creek in Section

6.C.5(b)(2)(i), to the extent that water reserved by the Independence Creek reservation has not been appropriated. Any such transfer shall be deemed an augmentation of the water reserved herein and correspondingly a diminution of the amount of water reserved by the Independence Creek reservation provided in Section 6.C.5(b)(2)(i).

Section 6.C.5(a)(2)(iii) Small Domestic Use Registrations. At such time as the amount of water reserved pursuant to Section 6.C.5(a)(2)(ii), including any augmentation thereof, has been fully appropriated in accordance with California law, small domestic registrations, having a point of diversion at Donner Creek or its tributaries above its confluence with the Truckee River or at Donner Lake, filed in accordance with California Water Code Section 1228 *et seq*. shall be subject to the rights to **Impound Privately Owned Stored Water** in Donner Lake. The California State Water Resources Control Board shall give appropriate notice of the subordination of rights herein to any such small domestic user registering the water use after a determination that the water use reserved pursuant to this Section 6.C.5(a)(2) has been fully appropriated.

Section 6.C.5(b) Diversions within Independence Creek Watershed.

Section 6.C.5(b)(1) Conditions on Water Right Permits or Licenses. The provisions of this Section 6.C.5(b)(1) shall apply to issuance by the California State Water Resources Control Board after May 1, 1996, of any appropriative water rights permits or licenses or approvals of any changes thereto which rights have a priority which is later than October 1, 1879, and which would involve either a new or existing point of diversion within the Independence Lake watershed to the confluence of Independence Creek with the Little Truckee River, or a point of diversion within the Little Truckee River or Truckee River, to the extent that exercise of the right would be adverse to the **Impoundment** of **Privately Owned Stored Water** in Independence Lake. The provisions of this Section 6.C.5(b)(1) shall also apply to any approval by the California State Water Resources Control Board after May 1, 1996, of changes to the point of diversion of any permits or licenses with a priority date earlier than February 24, 1938, where the change in the point of diversion would move it into the watershed above Independence Lake. The California State Water Resources Control Board shall condition any such permits, licenses, or changes to either:

(i) Require that, if such permitted or licensed rights have a priority date which is later than October 1, 1879, but earlier than February 24, 1938, the exercise of such rights shall not be adverse to the **Impoundment** of 3,000 acre-feet of **Privately Owned Stored Water** in Independence Lake in accordance with Section 5.B.7(a), or

(ii) Require that, if such permitted or licensed rights have a priority date which is later than February 24, 1938, the exercise of such rights shall not be adverse to the **Impoundment** of all **Privately Owned Stored Water** in Independence Lake, or

(iii) As an alternative to (i) and (ii) above, require the permittee or licensee to:

(A) Acquire storage capacity in one or more **Truckee River Reservoirs** (excluding Lake Tahoe) or construct new storage facilities, and

(B) Assure that such storage can be continuously operated, both as to timing and amount so that the water supply available to Power Company for **Privately Owned Stored Water** through the exercise of its existing water rights in Independence Lake will not be diminished.

If the conditions specified in Section 6.C.5(b)(1)(iii) are included in a water right permit, license or change thereto, it shall also specify that no diversions otherwise adverse to the specified rights of Power Company may occur until the storage capacity has been acquired, is operational and sufficient water is stored to provide water at the time and in the amount required by Section 6.C.5(b)(1)(iii)(B).

Section 6.C.5(b)(2) Diversions to Which Section 6.C.5(b)(1) does not Apply.

Section 6.C.5(b)(2)(i) Reservation of 50 Acre-Feet for New Appropriations. Notwithstanding the provisions of Section 6.C.5(b)(1), the California State Water Resources Control Board may issue new water right permits, and accept small domestic use registrations filed pursuant to California Water Code Section 1228 *et seq.*, for appropriation for **Municipal and Industrial Uses**, not to exceed a total annual diversion of 50 acre-feet per year, even though such permits or registrations may be adverse to the **Impoundment** of **Privately Owned Stored Water** in Independence Lake.

(A) The provisions of this Section 6.C.5(b)(2)(i) shall apply to diversions from Independence Creek or its tributaries at a point above its confluence with the Little Truckee River or from the Little Truckee River itself upstream from Stampede Reservoir.

(B) The permits or acceptance of small domestic use registrations shall specify whether the appropriation may be adverse to the **Impoundment** of **Privately Owned Stored Water** in Independence Lake.

Section 6.C.5(b)(2)(ii) Small Domestic Use Registrations. At such time as the amount of water reserved pursuant to Section 6.C.5.(b)(2)(i), including any

diminution thereof, has been fully appropriated in accordance with California law, small domestic registrations having a point of diversion from Independence Creek or its tributaries at a point above its confluence with the Little Truckee River or at Independence Lake, filed in accordance with California Water Code Section 1228 *et seq.*, shall be subject to the rights to **Impound Privately Owned Stored Water** in Independence Lake. The California State Water Resources Control Board shall give appropriate notice of the subordination of rights herein to any such small domestic user registering the water use after a determination that the water use reserved pursuant to this Section 6.C.5(b)(2) has been fully appropriated.

Section 6.C.6 Transfer of Sierra Valley Decree Water Right.

Section 6.C.6(a) Transfer of Sierra Valley Decree Water Right. All or any portion of the water right adjudicated under the **Sierra Valley Decree** may be transferred in accordance with applicable law.

Section 6.C.6(b) Use of Transferred Sierra Valley Decree Water Right In California. In the event that all or any portion of the water right adjudicated under the **Sierra Valley Decree** is transferred to a place of use within the **Truckee River Basin** in California, it may be put to beneficial use in addition to the amount of water allocated to California under Section 204(c)(1) of the **Settlement Act**.

Section 6.C.6(c) Storage of Sierra Valley Decree Water Right.

Section 6.C.6(c)(1) Storage in Donner Lake, Independence Lake, and Truckee River Reservoirs. California may store **Sierra Valley Decree** water transferred to a place of use within the **Truckee River Basin** in California as **California M&I Credit Water** and **California Environmental Credit Water** in Donner Lake, Independence Lake, and **Truckee River Reservoirs** other than Lake Tahoe, subject to the 3,000 acre-foot limitation in Section 6.C.2(a). Any such water stored by California in excess of 3,000 acre-feet may be stored as **Additional California Environmental Credit Water** or **Other Credit Water.**

Section 6.C.6(c)(2) Storage in New Reservoirs. California may store **Sierra Valley Decree** water transferred to a place of use within the **Truckee River Basin** in California in new facilities in addition to any water stored pursuant to Section 6.C.3. Storage of such transferred water shall not be subject to the limitations of Section 6.C.3 or limit in any way the water which may be stored pursuant to Section 6.C.3.

Section 6.C.7 Storage of Imported Water. California may store **Imported Water** in Donner Lake, Independence Lake, and **Truckee River Reservoirs** as **Additional Environmental Credit Water** and as **Other Credit Water.** California may also store **Imported Water** in new facilities in addition to any water stored pursuant to Section 6.C.3. Storage of such **Imported Water** shall not be subject to the limitations of Section 6.C.3 or limit in any way the water which may be stored in new facilities pursuant to Section 6.C.3, nor shall

such storage limit the amount of **California M&I Credit Water** or **California Environmental Credit Water** which may be stored pursuant to Section 6.C.2(a).

SECTION 6.D - LAKE TAHOE BASIN ALLOCATION PROCEDURES

Section 6.D.1 Lake Tahoe Basin. Accounting for diversion of water within the **Lake Tahoe Basin** shall be made exclusively in accordance with Section 204(b) of the **Settlement Act** and this Section 6.D. All information collected and maintained pursuant to this Section 6.D shall be provided to the **Administrator**. Section 204(b) of the **Settlement Act** does not, and this Section 6.D is not intended to, restrict reuse within the **Lake Tahoe Basin** of water diverted within the **Lake Tahoe Basin**. Section 6.E.2 is intended solely to limit depletion in the **Truckee River Basin** in California and is not intended to apply to water diverted and used within the **Lake Tahoe Basin** nor to aid in interpreting the provisions of Section 204(b) of the **Settlement Act**.

Section 6.D.2 Measurement Required. Water purveyors, public agencies and snowmaking operators shall measure all water they divert from surface and groundwater.

Section 6.D.3 Unmeasured Residential Uses. Unmeasured water used for residential purposes shall be conclusively presumed to divert four-tenths of one acre-foot per residential unit per year as provided in Section 204(b)(2)(B) of the **Settlement Act**.

Section 6.D.4 Unmeasured Non-Residential Uses. Unmeasured water used for non-residential purposes shall be conclusively presumed to utilize the expected water use specified in the State permit or license to divert the water. If such a permit or license does not exist or if an expected water use is not specified in the State permit or license, unmeasured water used for non-residential purposes shall be determined from appropriate procedures jointly developed by California and Nevada using water use records and statistics that are most likely to represent the purpose and the location of the non-residential use.

Section 6.D.5 Diversions into a Distribution System. Where water is diverted into a distribution system, as defined in Section 204(b)(2)(C)(iii) of the **Settlement Act**, the gross diversion shall be measured and charged to the gross diversion of California or Nevada as provided in Sections 204(b)(2)(C)(i) and (ii) of the **Settlement Act**.

Section 6.D.6 Snowmaking - Lake Tahoe Basin. All water diverted from the **Lake Tahoe Basin** and used for making snow shall be measured and reported to the **Administrator**. As required by Sections 204(b)(2)(A)(ii) and (iii) of the **Settlement Act**, the following provisions shall be used to determine charges to the gross diversion allocation of the State of California and the State of Nevada for use of water diverted from the **Lake Tahoe Basin** and used for the purpose of making snow in excess of 600 acre-feet in California each year and 350 acre-feet in Nevada each year as specified in Section 204(b)(2)(A)(i) of the **Settlement Act.** The following provisions shall also be used to determine incidental runoff into the Carson River Basin and **Truckee River Basin**.

Water used to make snow shall be charged to the **Lake Tahoe Basin** allocation of California or Nevada as follows:

(a) Sixteen percent of water which is diverted directly and used to make snow which is deposited into the **Lake Tahoe Basin** shall be charged to the Lake Tahoe allocation of the state where the snow is deposited.

(b) Sixteen percent of water which is diverted directly and used to make snow which is unintentionally deposited outside the **Lake Tahoe Basin** as the result of wind action or other natural phenomena shall be charged to the Lake Tahoe allocation of the state where the deposit takes place.

(c) Except to the extent occurring on or before May 1, 1996, or for use on ski runs or within ski areas in existence but not to exceed the capacity of wells and pumping facilities constructed on or before May 1, 1996, water may not be diverted in the **Lake Tahoe Basin** for the purpose of making snow which is intentionally deposited outside the **Lake Tahoe Basin**. Sixteen percent of the water which is diverted directly in the **Lake Tahoe Basin** and used to make snow which is intentionally deposited outside the **Lake Tahoe Basin** pursuant to the foregoing exception shall be charged to the Lake Tahoe allocation of the state where the intentional deposit takes place.

(d) The full amount of water diverted to storage for later use in snowmaking shall be initially charged to the Lake Tahoe allocation of the state where the water is diverted to storage. Water which is diverted from storage or from a municipal water system to make snow shall be measured, and (1) the Lake Tahoe allocation of the state where the water was diverted to storage shall receive a credit to its Lake Tahoe allocation equal to the amount of water measured, and (2) the state where the snow was deposited shall be charged pursuant to this section in the same manner as if the amount of water measured had been directly diverted for snowmaking.

SECTION 6.E - CALIFORNIA TRUCKEE RIVER BASIN ALLOCATION PROCEDURES

Section 6.E.1 Truckee River Basin in California. This Section 6.E applies only to the **Truckee River Basin** in California and provides procedures for determination of and accounting for diversions and return flows. Such diversions shall be consistent with the provisions of Section 204(c) of the **Settlement Act**. All information collected and maintained pursuant to this Section 6.E shall be provided to the **Administrator**.

Section 6.E.1(a) Measurement Required. Water purveyors, public agencies and snowmaking operators shall measure all water they divert from surface and

groundwater. Suppliers of domestic water with 25 or more connections or who divert more than 10 acre-feet per year shall also measure their diversions.

Section 6.E.1(b) Unmeasured Residential Uses. Unmeasured water used for residential purposes shall be conclusively presumed to divert four-tenths of one acre-foot per residential unit per year as provided in Section 204(c)(1)(J) of the **Settlement Act**.

Section 6.E.1(c) Unmeasured Non-Residential Uses. Unmeasured water used for non-residential purposes shall be conclusively presumed to utilize the expected water use specified in the State permit or license to divert the water. If such a permit or license does not exist or if an expected water use is not specified in the State permit or license, unmeasured water used for non-residential purposes shall be determined from appropriate procedures jointly developed by California and Nevada using water use records and statistics that are most likely to represent the purpose and the location of the non-residential use.

Section 6.E.1(d) Responsibility for Determination. Irrigated acreage and the number and types of unmeasured water uses in the **Truckee River Basin** within California shall be determined annually by California and reported to the **Administrator**.

Section 6.E.1(e) Snowmaking - Truckee River Basin. All water diverted from the **Truckee River Basin** in California and used for snowmaking shall be measured and reported to the **Administrator**. As required by Section 204(c)(1)(I)(ii) and (iii) of the **Settlement Act**, the following provisions shall be used to determine charges to the gross diversion allocation of California for use of water diverted from the **Truckee River Basin** in California and used for the purpose of making snow in excess of 225 acre-feet in California each year as specified in Section 204(c)(1)(I)(i) of the **Settlement Act**. The following provisions shall also be used for determining incidental runoff into the **Lake Tahoe Basin**.

Water used to make snow shall be charged to California's **Truckee River Basin** allocation as follows:

(1) Sixteen percent of water which is diverted directly and used to make snow which is deposited into the **Truckee River Basin** in California shall be charged to the California **Truckee River Basin** allocation.

(2) Sixteen percent of water which is diverted directly and used to make snow which is unintentionally deposited into any basin other than the **Truckee River Basin** as the result of wind action or other natural phenomena shall be charged to the California **Truckee River Basin** allocation.

(3) Water may not be diverted in the **Truckee River Basin** in California for the purpose of making snow which is intentionally deposited into the **Lake Tahoe Basin** except for 100 acre-feet per year for the Alpine Meadows ski area and 20 acre-feet per year for the Northstar ski area.

Sixteen percent of the water which is diverted directly in the **Truckee River Basin** in California and used to make snow which is intentionally deposited in the **Lake Tahoe Basin** pursuant to the foregoing exception shall be charged to the California **Truckee River Basin** allocation.

(4) The full amount of water diverted to storage for later use in snowmaking shall be initially charged to the California **Truckee River Basin** allocation. Water which is diverted from storage or from a municipal water system to make snow shall be measured and California shall receive a credit to its **Truckee River Basin** allocation equal to the product of the amount of water measured multiplied by the difference between one hundred percent and the percentage which would have been charged pursuant to this section had the water been directly diverted for snowmaking.

Section 6.E.1(f) Sierra Valley Diversion. Diversion of water from the Little Truckee River to Sierra Valley shall be subject to the provisions of Section 6.B and the **Sierra Valley Decree**. Diversion under such rights from the Little Truckee River shall be measured at the diversion point. In addition, water diverted under the **Sierra Valley Decree** shall be measured in accordance with the **Sierra Valley Decree**.

Section 6.E.1(g) Groundwater Discharged to Truckee River. All extractions of groundwater in the **Truckee River Basin** in California for **Discharge** into the Truckee River or its tributaries shall be measured.

Section 6.E.1(h) Information to Implement Priorities. For the purpose of implementing the priority set forth in Section 204(c)(1) of the **Settlement Act**, California shall identify the location, use, and annual quantity of each California surface water diversion and shall distinguish between those initiated on or before November 16, 1990 and those initiated after November 16, 1990. California shall provide this information to the **Administrator** as of the date this **Agreement** enters into effect and each year thereafter.

Section 6.E.2 Depletion Limitation on California's 32,000 Acre-foot Per Year Gross Diversion Allocation in the Truckee River Basin. Pursuant to Section 205(a)(3)(I) of the **Settlement Act**, to implement the interstate allocations made by Sections 204(c)(1) and 204(c)(3), and the provisions of Sections 210(b)(13) and 210(b)(14) of the **Settlement Act**, as they relate to the interstate allocations, diversion and use of water by California pursuant to the interstate allocation of water to California made by Section 204(c)(1) of the **Settlement Act** shall not result in a **California Truckee River Total Depletion** of more than 17,600 acre-feet per year, subject to the terms and conditions of this Section 6.E.2.

Section 6.E.2(a) Calculation of California Truckee River Total Depletion. The **California Truckee River Total Depletion** shall be calculated by California pursuant to the depletion equation set forth in Appendix 6.B, definitions of equation parameters

provided in Appendix 6.C, and initial depletion equation constants provided in Appendix 6.D, or future adjusted values which may be determined in accordance with Sections 6.E.2(f) and 6.E.2(g). The procedures provided in this Section 6.E.2 shall be the exclusive means of determining compliance with the 17,600 acre-feet per year limitation on **California Truckee River Total Depletion.**

Section 6.E.2(b) Calculation Procedure for Certain Categories of Water.

Section 6.E.2(b)(1) Procedure for Water Reuse. For the purposes of this calculation, any reuse of water shall be deemed an additional diversion of water and included in the appropriate category of water use. **TTSA** effluent disposed of or used in a manner defined in the **Settlement Act** shall not be deemed reuse or subject to depletion. Such effluent not disposed of or used in such a manner shall be deemed subject to depletion and included in the appropriate category of water use.

Section 6.E.2(b)(2) Procedure for Diversions to Storage. For the purposes of this calculation, any water diverted to storage shall be included in the appropriate category of water use in the year it is used rather than in the year it is stored for future intended use.

Section 6.E.2(b)(3) Procedure for Unmeasured Water Use. Where water use is unmeasured, it shall be estimated in accordance with Sections 6.E.1(b) and 6.E.1(c).

Section 6.E.2(c) Initial Values of Depletion Equation Constants. The initial values for the constants in the depletion equation shall be those amounts set forth in Appendix 6.D. The initial values of the depletion equation constants shall be used for all calculations made during the first ten years of the effectiveness of this **Agreement**, except for constant "D_U" which shall be subject to earlier change as set forth in Sections 6.E.2(f) and (g).

Section 6.E.2(d) Gathering of Information and Calculation of Total Depletion. California shall gather the best available information and shall calculate the **California Truckee River Total Depletion** on an annual basis. California shall not be required, or obligated to require others, to initiate new monitoring or data gathering programs or system modifications not otherwise required by law. All information gathered by or provided to California shall be supplied to the **Administrator** and **Signatory Parties**.

Section 6.E.2(e) Reporting of Total Depletion Information. California shall include its calculation of **California Truckee River Total Depletion** as part of its annual report on water use required under Section 204(d)(1) of the **Settlement Act** and shall make it available for purposes of Section 3.B.3 of this **Agreement**.

Section 6.E.2(f) Time of Adjustment of Depletion Equation Constants. Depletion equation constants shall be subject to adjustment beginning in the year 2010 and every ten years thereafter until the average calculated **California Truckee River Total Depletion** over

the three years just preceding any such time exceeds 15,000 acre-feet per year, at which time the depletion equation constants shall be subject to adjustment every five years thereafter. Notwithstanding the preceding, the value for depletion equation constant "D_U" may be adjusted five years following each initiation of a new water use for this category.

Section 6.E.2(g) Procedure for Adjustment of Depletion Equation Constants. Adjustments in depletion equation constants may be made pursuant to the following criteria, which shall be the sole and exclusive means for their adjustment:

(1) At any time when depletion equation constants are subject to adjustment pursuant to Section 6.E.2(f), any **Mandatory Signatory Party**, including California, may request a change in any of the depletion equation constants. The request shall be accompanied by the data upon which the requesting party relies to support the change. Such data shall be directly applicable to the **Truckee River Basin** in California and relevant to the constant or constants sought to be changed.

(2) Upon receipt of a request for a change in any depletion equation constant, California shall provide a copy of such request to the other **Mandatory Signatory Parties**. Other **Mandatory Signatory Parties** shall have the opportunity to join in the request and provide additional data. If none of the **Mandatory Signatory Parties** requests a hearing on a request within 60 days of receipt of a copy of the request, the change may be adopted by California without a hearing. If any **Mandatory Signatory Party** requests a hearing, California shall hold the hearing pursuant to this Section 6.E.2(g).

(3) California shall notice and hold any hearing on the matter of the requested change in a depletion equation constant before a Hearing Officer who shall be the Director of the California Department of Water Resources, or a **Person** appointed by the Director for that purpose. Notice of any hearing shall be provided to all **Mandatory Signatory Parties** and to interested **Persons** requesting such notice. A copy of the request for a change of a depletion equation constant, and any supporting data and information shall be provided to all **Mandatory Signatory Parties** and interested **Persons** with an opportunity for the submission of statements and information on such request. **Mandatory Signatory Parties** shall be entitled to submit the testimony of witnesses at such hearing, and interested **Persons** may, upon good cause shown, also present witnesses and testimony. The Hearing Officer shall have discretion in the determination of facts. A record of such hearing shall be made, and written findings based on the weight of evidence presented at the hearing and a decision shall be made by the Hearing Officer. The Hearing Officer's decision shall be deemed a final administrative action for the purposes of

exhaustion of administrative remedies and may not be submitted to the **Truckee River Special Hearing Officer** pursuant to Section 2.B.2.

(4) Challenges to a change in a depletion equation constant shall be in any court of competent jurisdiction and standing shall be limited to any **Mandatory Signatory Party** which participated in a hearing held pursuant to Sections 6.E.2(g)(2) and 6.E.2(g)(3). Challenges must be filed within 60 days of the date of the decision. The entire record of the proceedings before the Department of Water Resources shall be filed with the court. The cost of preparing the record shall be borne by the parties to the action in accordance with applicable law and rules of court.

(5) The standard for review of such a challenge shall be whether the Hearing Officer's findings are supported by substantial evidence in the record. In any such proceeding, the Hearing Officer's findings and decision shall be presumed to be correct.

Section 6.E.2(h) Allocation to Nevada Subject to California Depletion. Water allocated to Nevada by Section 204(c)(3) of the **Settlement Act** is subject to extraction and use of groundwater within the **Truckee River Basin** in California which, together with diversion and use of surface water within the **Truckee River Basin** in California, does not exceed an annual depletion of 17,600 acre-feet.

Section 6.E.2(i) Applicability of Settlement Act. Nothing in this Section 6.E.2 is intended to affect or modify Sections 204(c)(1)(C), (D) or (E) of the **Settlement Act** as applied to the extraction of groundwater within the **Truckee River Basin** in California.

APPENDIX 6.A
Example of Parameters Used for the Calculation of Demand

Ditch	Year of Priority	Volume (ac-ft)	Efficiency	Flow Rate (cfs) 120-day [1]	160-day[2]
Pioneer	1861	4331	0.85	21.4	16.1
Cochran	1862	1055	0.76	5.8	4.4
Steamboat	1862	161	0.61	1.1	0.8
Lake	1865	3467	0.70	20.8	15.6
North Truckee	1865	445	0.60	3.1	2.3
Steamboat	1867	1690	0.80	8.8	6.6
			Total:	61.0	45.8

[1]120-day Season: Rate in cfs = volume in ac-ft/(1.98347 x 120 x efficiency)
[2]160-day Season: Rate in cfs = volume in ac-ft/(1.98347 x 160 x efficiency)

APPENDIX 6.B
CALIFORNIA TRUCKEE RIVER TOTAL DEPLETION EQUATION

The **California Truckee River Total Depletion** shall be calculated using the following equation:

$$
\begin{aligned}
\text{Total Depletion} = \; & D_{M1A}*C_{M1A}*T*M_1 \\
& + D_{M2A}*C_{M2A}*T*M_2 \\
& + D_{M2B}*C_{M2B}*T*M_2 \\
& + D_{M3A}*C_{M3A}*T*M_3 \\
& + D_{M3B}*C_{M3B}*T*M_3 \\
& + E_1 \\
& + E_{2SA}*E_{2PE}*E_{2PC} \\
& + E_{3SA}*E_{3PE}*E_{3PC} \\
& + D_S*S \\
& + D_{I1}*I_1 \\
& + D_{I2}*I_2 \\
& + D_{I3}*I_3 \\
& + D_{B1A}*C_{B1A}*T*B_1 \\
& + D_{B1B}*C_{B1B}*T*B_1 \\
& + D_{B2}*C_{B2}*T*B_2 \\
& + D_U*U
\end{aligned}
$$

where

* is a symbol for multiplication.

$C_{subscript}$ is a number between 0 and 1 representing the proportion of a category of water use which falls into a specific subcategory, such as outdoor versus indoor use. This number is a constant for the purpose of the calculation, whose initial value is set in Section 6.E.2(c), time of adjustment is set in Section 6.E.2(f), and procedure for adjustment is set in Section 6.E.2(g).

$D_{subscript}$ is a number between 0 and 1 representing the proportion of a category or subcategory of water use which is depleted. This number is a constant for the purpose of the calculation, whose initial value is set in Section 6.E.2(c), time of adjustment is set in Section 6.E.2(f), and procedure for adjustment is set in Section 6.E.2(g).

M_i, S, I_i, and B_i represent the sum of water diversions for a category of water use. Each of these and the miscellaneous category of water use, "U", shall be in the same units, such as acre-feet.

E_1, E_{2SA} and E_{3SA} are evaporation-related parameters.

E_{iPE} and E_{iPC} are evaporation-related constants. These numbers are constants for the purpose of the calculation, whose initial values are set in Section 6.E.2(c), time of adjustment is set in Section 6.E.2(f), and procedure for adjustment is set in Section 6.E.2(g).

LL is a number between 0 and 1 representing the proportion of water lost in a water distribution system as it is transported between the point of diversion and point of use. This number is a constant for the purpose of the calculation, whose initial value is set in Section 6.E.2(c), time of adjustment is set in Section 6.E.2(f), and procedure for adjustment is set in Section 6.E.2(g).

T is a number between 0 and 1 representing the proportion of water diverted into a water distribution system which arrives at the point of use. T is numerically equal to (1-LL).

APPENDIX 6.C
DEFINITION OF PARAMETERS FOR
CALIFORNIA TRUCKEE RIVER TOTAL DEPLETION EQUATION

Appendix Section 6.C.1 Domestic/Residential Water Use Components

M_1 is the amount of water diverted for domestic use in the California portion of the **Truckee River Basin** by residences connected to the **TTSA** sewage treatment facility.

C_{M1A} is the average proportion of water applied outdoors at M_1-type residences.

D_{M1A} is the average proportion of water used outdoors by M_1-type residences which is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

M_2 is the amount of water diverted for domestic use in the California portion of the **Truckee River Basin** by residences that have individual waste disposal systems.

C_{M2A} is the average proportion of water applied outdoors at M_2-type residences.

D_{M2A} is the average proportion of outdoor water use at M_2-type residences which is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

C_{M2B} is the average proportion of water used indoors at M_2-type residences.

D_{M2B} is the average proportion of indoor water use at M_2-type residences which, after being disposed of outdoors such as into a leach field, is taken up by plants.

M_3 is the amount of water diverted for domestic use in the California portion of the **Truckee River Basin** by residences that are served by multiple-residence waste disposal systems other than **TTSA**.

C_{M3A} is the average proportion of water applied outdoors at M_3-type residences.

D_{M3A} is the average proportion of outdoor water use at M_3-type residences which is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

C_{M3B} is the average proportion of water used indoors at M_3-type residences.

D_{M3B} is the average proportion of indoor water use at M_3-type residences which, at the multi-residence waste water disposal facility, is disposed of outdoors such as into a leach field to be taken up by plants or to run off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

Appendix Section 6.C.2 Reservoir Evaporation Component

E_1 is the evaporation of water which has been diverted to storage in **Truckee River Reservoirs**, Donner Lake and Independence Lake, which evaporation is charged to the California **Truckee River Basin** allocation as specified in Section 5.D.

E_2 is the amount of water which (i) is in storage in reservoirs other than **Truckee River Reservoirs**, Donner Lake and Independence Lake, and (ii) was charged to the

California **Truckee River Basin** allocation. This does not include small domestic use registrations.

E_{2SA} is the average surface area of the reservoirs identified under E_2 during the summer months.

E_{2PE} is the annual pan evaporation value for the station nearest the reservoirs identified under E_2.

E_{2PC} is the pan evaporation coefficient for the station nearest the reservoirs identified under E_2.

Appendix Section 6.C.3 Groundwater Recharge Component

E_{3SA} is the average surface area of the water in percolation ponds used for groundwater recharge of surface water diverted and charged to the California **Truckee River Basin** allocation over the time period of calculation. The average surface area shall be calculated by summing the surface area of the water in percolation ponds for each month they are in use and contain diverted water, rather than being dry or containing runoff or rain water, and dividing said sum by the number of months in the time period; otherwise, an area of zero shall be used in the calculation. Injection wells shall have no surface area associated with them.

E_{3PE} is the annual pan evaporation value for the station nearest the percolation ponds identified under E_{3SA} .

E_{3PC} is the pan evaporation coefficient for the station nearest the percolation ponds identified under E_{3SA}.

Appendix Section 6.C.4 Snowmaking Water Use Component

S is the amount of water diverted for snowmaking in the California portion of the **Truckee River Basin.**

D_S is the average proportion of water which is diverted for snowmaking in the California portion of the **Truckee River Basin** which either sublimates or evaporates before entering the river, streams, lakes, or groundwater.

Appendix Section 6.C.5 Irrigation Water Use Components

I_1 is the amount of water diverted for irrigated agriculture in the California portion of the **Truckee River Basin**.

D_{I1} is the average proportion of water diverted for "I_1" purposes which is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

I_2 is the amount of water diverted to irrigate slopes for erosion control in the California portion of the **Truckee River Basin**.

D_{I2} is the average proportion of water diverted for "I_2" purposes which is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

I_3 is the amount of water diverted to irrigate non-agricultural land, including golf courses, parks and green-belts, but exclusive of erosion control

D_{I3} is the average proportion of water diverted for "I_3" purposes which is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

Appendix Section 6.C.6 Commercial/Industrial Water Use Components

B_1 is the amount of water diverted for business, commercial, or industrial facilities in the California portion of the **Truckee River Basin** including both facilities connected to **TTSA** and those not connected to **TTSA**.

C_{B1A} is the average proportion of water applied for landscaping at B_1-type facilities.

D_{B1A} is the average proportion of water diverted for "B_1" purposes which is used for landscaping at B_1-type facilities and is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

C_{B1B} is the average proportion of water which is used at B_1-type facilities and is incorporated into the industrial process or is subject to evaporation other than from landscaping.

D_{B1B} is the average proportion of water used at B_1-type facilities that is depleted by the industrial process or is evaporated.

B_2 is the amount of water diverted for business, commercial, or industrial facilities in the California portion of the **Truckee River Basin** which are not connected to **TTSA**. B_2 is part of the water diverted under B_1.

C_{B2} is the average proportion of water used indoors at B_2-type facilities.

D_{B2} is the average proportion of indoor water use at B_2-type facilities which, after being disposed of outdoors such as into a leach field, is taken up by plants or runs off as surface water to evaporate before entering the river, streams, lakes, or groundwater.

Appendix Section 6.C.7 Miscellaneous Water Use Components

U is the sum of diversions that do not fit into one of the categories represented above.

D_U is the average proportion of water diverted for "U" purposes which is consumed and therefore does not return to surface or groundwater in the **Truckee River Basin**.

APPENDIX 6.D
INITIAL DEPLETION EQUATION CONSTANTS

The initial values for the constants in the depletion equation shall be as follows:

D_{M1A}	=	0.85
C_{M1A}	=	0.4
LL	=	0.1
T	=	(1-LL) = 0.9
D_{M2A}	=	0.85
C_{M2A}	=	0.4
D_{M2B}	=	0.15
C_{M2B}	=	0.6
D_{M3A}	=	0.85
C_{M3A}	=	0.4
D_{M3B}	=	0.15
C_{M3B}	=	0.6
E_{2PE}	=	53 inches per year
E_{2PC}	=	0.69
E_{3PE}	=	53 inches per year
E_{3PC}	=	0.69
D_S	=	0.16
D_{I1}	=	0.75
D_{I2}	=	0.8
D_{I3}	=	0.8
D_{B1A}	=	0.8
C_{B1A}	=	0.1
D_{B1B}	=	0.1
C_{B1B}	=	0.9
D_{B2}	=	0.15
C_{B2}	=	0.6
D_U	=	0.42

ARTICLE SEVEN
CREDIT WATER ESTABLISHMENT, STORAGE AND CONVERSION

[Note: There are still several issues to resolve and tasks to do:

- *Discussions are underway to address O&M costs noted in Section 7.A.2(b)(3). The Draft EIS/EIR analysis will assume O&M costs are in place.*
- *The United States, Sierra Pacific Power Company or Truckee Meadows Water Authority may wish to revisit the language of 7.A.6 regarding monetary compensation for lost hydropower generation.*
- *Not all parties are in agreement on the terms for storage of Fernley Municipal Credit Water in Section 7.F, so the TROA Draft EIS/EIR will consider potential effects associated with such storage and without such storage.]*

SECTION 7.A - GENERAL PROVISIONS, STORAGE, ESTABLISHMENT, CHANGES TO WATER RIGHTS, RESTRICTIONS AND LIMITATIONS, AND COMPENSATION PROVISIONS

Section 7.A.1 General. The **Signatory Parties** recognize that the ability of the **Scheduling Parties** to **Establish**, **Accumulate** and **Release** various categories of **Credit Water** is a cornerstone of this **Agreement**. This Article Seven provides general and specific rules, procedures, restrictions, and limitations relating to the **Establishment** and storage of the various categories of **Credit Water**, including general provisions for the **Establishment** of all categories of **Credit Water** and specific provisions which apply to each category of **Credit Water.**

Section 7.A.2 Storage of Credit Water. This Section 7.A.2 identifies the participating reservoirs and the general requirements for storage of **Credit Water**.

Section 7.A.2(a) Participating Reservoirs. Lake Tahoe, Prosser Creek Reservoir, Stampede Reservoir, Boca Reservoir, Independence Lake and Donner Lake shall be available for and may be used for operations involving **Credit Water** as provided in this **Agreement**. Martis Creek Reservoir may be used for operations involving **Credit Water** subject to the provisions of Section 5.B.5.

Section 7.A.2(b) Storage Contracts Required. Except for storage of **Fish Credit Water** and **Joint Program Fish Credit Water** in **Truckee River Reservoirs** pursuant to Section 7.C, to **Accumulate Credit Water** in a reservoir a **Person** must be a **Signatory Party** or be contractually bound to comply with the provisions of this **Agreement** to the same extent required for a **Signatory Party**; and either own the subject reservoir or have a storage contract with the owner of the subject reservoir and, in the case of Boca Reservoir, a joint storage contract with United States and Conservation District. If the subject reservoir is formed by a dam at the outlet of a natural lake, the **Person** controlling the portion of storage to be utilized in that reservoir shall be deemed its owner for purposes of this Section 7.A.2(b).

Section 7.A.2(b)(1) Authority for Storage Contracts in Truckee River Reservoirs. Contracts for storage in **Truckee River Reservoirs** other than Martis Creek Reservoir shall be entered into pursuant to the authority granted to the **Secretary** by Sections 205(b)(1), 205(b)(2) and 207(d)(3) of the **Settlement Act** and this **Agreement**.

Section 7.A.2(b)(2) Storage Contracts Consistent with this Agreement. The provisions of any such storage contract shall be consistent with the provisions of this **Agreement**. Storage contracts with United States shall incorporate the following provisions:

(i) The term of the storage contracts for Power Company, Reno, Sparks, Washoe County, California, and Fernley for **Truckee River Reservoirs** owned by United States and under the jurisdiction of the Bureau of Reclamation shall commence no earlier than the effective date of this **Agreement**, shall be 40 years in duration, and shall be renewable for additional 40-year periods as long as this **Agreement** is in effect. The storage contracts shall terminate immediately upon the termination of this **Agreement**. This term provision shall be included as a provision of the initial and all subsequent storage contacts for Power Company, Reno, Sparks, Washoe County, California and Fernley.

(ii) Renewal of the storage contracts shall be conditional only on the renegotiation of the storage charge. The criteria for renegotiation of the charge shall be developed under the Bureau of Reclamation's basis of negotiation process and set forth in each initial storage contract for Power Company, Reno, Sparks, Washoe County, California and Fernley.

Section 7.A.2(b)(3) Conservation District Operation and Maintenance Fees for Boca Dam and Reservoir. In addition to any fees that may be charged by United States, Conservation District may impose fees for its calculated annual cost of operation and maintenance of Boca Dam and Reservoir performed in accordance with this **Agreement**. Such annual fee shall be considered an expense of administration of this **Agreement** apportioned among United States, California and Nevada as provided in Section 2.C.2, and shall be calculated using the following equation:

Annual Fee = APF * (FYAAE + AOE + FYAMME + ALTME), where

APF is Average Proportion of Flow, the percentage of the 10-year running average of total **Discharge** from Boca Reservoir that is the **Release** of **Credit Water** and **Stampede Project Water**, as calculated by the **Administrator**.

FYAAE is Five-Year Average of Administrative Expenses, the five-year running average of total administrative expenses for Conservation District, as determined by Conservation District based on its annual audit reports.

AOE is Annual Operating Expenses, the most recent fiscal year's operating expenses for Boca Dam and Reservoir, as determined by Conservation District based on its annual audit reports.

FYAMME is Five-Year Average of Miscellaneous Maintenance Expenses, the five-year running average of maintenance expenses for Boca Dam and Reservoir that are not long-term maintenance expenses, as determined by Conservation District based on its annual audit reports.

ALTME is Amortized Long-Term Maintenance Expenses, the sum of the maintenance expenses for maintenance projects for Boca Dam and Reservoir that have a useful life of greater than five years amortized at a fixed percentage over the life of each such project as determined by Conservation District based on its annual audit reports; the fixed percentage for amortization shall be the then-current rate utilized by the Nevada Bureau of Health Protection Services for State Revolving Fund water project loans.

If a dispute arises with respect to the calculation of any of the components of the equation, it shall be considered a dispute under this **Agreement** and subject to Section 2.B.2.

Section 7.A.2(b)(4) Power Company Storage Fees. Power Company may impose fees for storage in Independence Lake and its portion of Donner Lake. Such fees shall be identified in the storage contracts developed consistent with this **Agreement**.

Section 7.A.2(c) Notice Requirement for Storage of Certain Credit Water. United States shall advise all **Signatory Parties** and **Scheduling Parties** at least 30 days prior to entering into, or declining to enter into, an agreement for the storage of **California M&I Credit Water** or **Other Credit Water** in **Truckee River Reservoirs**.

Section 7.A.2(d) Consent to Accumulate Credit Water Under Reservoir Water Rights. Each **Signatory Party** holding rights under California law to store water in **Truckee River Reservoirs**, Donner Lake and Independence Lake consents to the **Accumulation** of **Credit Water** based upon those rights by **Persons** exercising **Changed Diversion Rights** having an original place of use in Nevada. Such **Accumulation** shall be consistent with all of the terms and provisions of this **Agreement** and shall not result in reducing the amount of **Project Water** which could otherwise be **Impounded** pursuant to Section 5.A.

Section 7.A.3 Establishment of Credit Water Using Changed Diversion Rights. If and to the extent that Sections 7.B through 7.G provide that **Credit Water** may be **Established** by storing water under **Changed Diversion Rights** in lieu of diverting such water, then the procedures of this Section 7.A.3 shall apply, in addition to other procedures and limitations for **Establishing Credit Water** set forth in this **Agreement**, including without limitation the provisions of Section 1.C.1.

Section 7.A.3(a) Procedures for Establishing Certain Categories of Credit Water. To the extent that **Credit Water** is **Established** pursuant to this Section 7.A.3(a), such **Establishment** may be adverse to **Project Water Operations** and shall be subject to the limitations set forth in Sections 7.A.3(a)(2)(i), 7.A.3(a)(2)(ii), 8.K.3 and 8.K.4. **Credit Water** other than **Joint Program Fish Credit Water** and **Fish Credit Water** may be **Established** with **Changed Diversion Rights** by any of the following:

(1) Through retention in storage of water which would otherwise have been **Released** from, or through diversion to storage of water which would otherwise have been **Passed-Through**, any **Truckee River Reservoir**, Donner Lake, and Independence Lake to maintain **Floriston Rates** or **Reduced Floriston Rates**.

(2) Through diversion of Little Truckee River or Prosser Creek flows to storage, provided that:

(i) if such flows were not stored, they would result in flows at the **Farad Gage** in excess of **Floriston Rates** or **Reduced Floriston Rates**, to the extent that such excess flows are needed to satisfy **Exercised Water Rights**, excluding therefrom the water right of Pyramid Tribe referenced in Section 1.E; or

(ii) a **Drought Situation** exists and such flows otherwise would have been stored as either **Prosser Project Water** or **Stampede Project Water**, or such flows would have been **Passed-Through** Prosser Creek Reservoir or Stampede Reservoir to flow to Pyramid Lake.

(3) Through **Exchange** of **Fish Water** or **Fish Credit Water** in storage for an equal amount of water associated with the **Exercise** of **Changed Diversion Rights** which then is allowed to flow to Pyramid Lake. Such **Establishment** may only occur when and to the extent that:

(i) a **Drought Situation** does not exist and water could be **Impounded** as **Project Water** or **Established** as **Fish Credit Water** in Stampede Reservoir or Prosser Creek Reservoir but is being **Passed-Through** to flow to Pyramid Lake; or

(ii) **Fish Water** or **Fish Credit Water** is being **Released** to flow to Pyramid Lake.

The combined amount of such **Exchanges** shall not exceed the amount of water that is being **Passed-Through** and **Released** pursuant to Sections 7.A.3(a)(3)(i) and 7.A.3(a)(3)(ii) at the time of such **Exchanges**.

Exchanges under this Section 7.A.3(a)(3) are available only to the following categories:

(A) **California Environmental Credit Water Established** with **Changed Diversion Rights** having an original place of use in Nevada;

(B) **Additional California Environmental Credit Water**;

(C) **Fernley Municipal Credit Water;**

(D) **Water Quality Credit Water;** and

(E) **Power Company M&I Credit Water** to the extent allowed pursuant to Sections 7.A.5(f), 8.F.3(c)(1), 8.K.3 and 8.P.4.

United States and Pyramid Tribe may require that **Establishment** of **Credit Water** in categories (A) through (D) under this Section 7.A.3(a)(3) only be allowed to the extent that scheduled **Credit Water Establishment** cannot be accomplished by Sections 7.A.3(a)(1) and 7.A.3(a)(2).

Truckee River flow equal to the amount of **Credit Water** concurrently being **Established** pursuant to this Section 7.A.3(a)(3) shall be treated as flow of **Fish Credit Water** for calculation of impacts on hydroelectric generation conducted in accordance with Section 7.A.6.

Section 7.A.3(b) Credit Water Establishment When Exercise of Truckee River Water Rights is Limited. When the **Exercise** of Truckee River water rights is being limited based on water right priority or based on Section 6.B, **Credit Water** may be **Established** only to the extent that water rights scheduled to **Establish** such **Credit Water** are in priority to receive water.

Section 7.A.3(c) Credit Water Establishment Using Tributary Water Rights. In addition to **Credit Water Establishment** using other sources of **Changed Diversion Rights**, **Credit Water** may be **Established** using **Changed Diversion Rights** with an original point of diversion from a tributary whose confluence with the Truckee River is downstream from the **Farad Gage** and upstream of the **Vista Gage**, utilizing the procedures of Section 7.A.3(a) at such times when water is available under such tributary right to satisfy downstream rights which would otherwise have been satisfied by **Release** or **Pass-Through** from **Truckee River Reservoirs**, Donner Lake and Independence Lake.

Section 7.A.3(d) Credit Water Establishment Not to Use Return Flows. **Credit Water** may be **Established** using **Changed Diversion Rights** with an original point of diversion downstream from the **Vista Gage** under this Section 7.A.3 only to the extent that water would be available to serve such water rights at their original point of diversion (1) in excess of

return flow from diversions in the Truckee Meadows, and (2) in excess of flow from tributaries which discharge to the Truckee River at or downstream from the **Sparks Gage**.

Section 7.A.3(e) Portion to be Established. Except as provided in Sections 7.C.1 and 7.C.2, **Credit Water Establishment** by using **Changed Diversion Rights** that had been **Exercised** for consumptive purposes shall be limited to the portion of the water which would not otherwise have returned to the Truckee River. That portion shall be as follows:

(1) For **Changed Diversion Rights** having an original place of use in Nevada, such portion shall be determined by the Nevada State Engineer pursuant to an application or applications filed to change the point of diversion and the place, means, manner or purpose of use of such rights. The procedures for relating the consumptive use component to an equivalent diversion amount shall be subject to approval of the **Orr Ditch Court** in the proceeding required by Section 12.A.4(b).

(2) For **Changed Diversion Rights** having an original place of use in California such portion shall be determined pursuant to California law.

(3) For water under water rights which historically has been exported out of the **Truckee River Basin**, the consumptive use portion shall be 100 percent of the **Changed Diversion Rights**.

Section 7.A.3(f) Flexible 12-Month Diversion Schedule. The **Signatory Parties** will not protest or object to inclusion in an application for a change to an existing water right with an original place of use in Nevada of a flexible 12-month diversion schedule for the **Establishment** of **Credit Water** utilizing water from **Changed Diversion Rights**. The **Signatory Parties** reserve the right to protest or object to the inclusion of such a schedule if the **Changed Diversion Right** being used for such **Establishment** is supplemental to another water right.

Section 7.A.4 Changes to Water Rights and Other Changes. The **Signatory Parties** shall cooperate in the filing and diligent pursuit of the changes provided for in this Section 7.A.4 to the extent they are consistent with the express provisions of this **Agreement**.

Section 7.A.4(a) Changes to Water Storage Rights for Operations. This Section 7.A.4(a) sets forth changes to water storage rights which the **Signatory Parties** agree are necessary or useful for operations provided for in this **Agreement**. Section 12.A.4(d) sets forth certain changes for which approvals are necessary for this **Agreement** to take effect and are therefore conditions precedent. All other water right changes identified in this Section 7.A.4(a) are deemed to be useful, but not necessary, for this **Agreement** to take effect. Changes to add points of diversion and re-diversion, places of use and purpose of use identified in this Section 7.A.4(a) are only for the purpose of accommodating implementation of provisions of this **Agreement**. The **Signatory Parties** agree not to seek additional changes to California Water

Right Licenses or Permits beyond those described in this Section 7.A.4(a) without the written consent of the **Mandatory Signatory Parties**.

Section 7.A.4(a)(1) Changes to Boca Reservoir License. Changes to Boca Reservoir's California Water Right License No. 3723 consist of:

(i) Adding Stampede Reservoir as an additional point of diversion.

(ii) Adding points of re-diversion between Boca Reservoir and Pyramid Lake.

(iii) Adding places of use consistent with this **Agreement.**

(iv) Adding all purposes of use consistent with this **Agreement**.

Section 7.A.4(a)(2) Changes to Independence Lake Licenses. Changes to Independence Lake's California Water Right Licenses No. 4196 and 2607 consist of:

(i) Adding Stampede Reservoir and Boca Reservoir as additional points of diversion.

(ii) Adding points of re-diversion between Independence Lake and Pyramid Lake.

(iii) Adding places of use consistent with this **Agreement**.

(iv) Adding all purposes of use consistent with this **Agreement**.

Section 7.A.4(a)(3) Changes to Prosser Creek Reservoir License. Changes to Prosser Creek Reservoir's California Water Right License No. 10180 consist of:

(i) Adding points of re-diversion between Prosser Creek Reservoir and Pyramid Lake.

(ii) Adding places of use consistent with this **Agreement**.

(iii) Adding all purposes of use consistent with this **Agreement**.

Section 7.A.4(a)(4) Changes to Stampede Reservoir Permit. Changes to Stampede Reservoir's California Water Right Permit No. 11605 consist of:

(i) Adding Boca Reservoir as an additional point of diversion.

(ii) Adding points of re-diversion between Stampede Reservoir and Pyramid Lake.

(iii) Adding places of use consistent with this **Agreement**.

(iv) Adding all purposes of use consistent with this **Agreement**.

Section 7.A.4(a)(5) Application for New Appropriation at Stampede Reservoir. In addition to changes identified in Section 7.A.4(a)(4), an application may be filed by United States with the California State Water Resources Control Board to increase Stampede Reservoir's California Water Right to a maximum diversion to storage of 226,500 acre-feet annually, consistent with Section 5.B.8 and this **Agreement**.

Section 7.A.4(a)(6) Changes to Vested Rights of Donner Lake and Independence Lake. Changes to the vested water rights for Donner Lake and Independence Lake consist of changes to allow Power Company to **Establish M&I Credit Water** using water under those rights.

Section 7.A.4(a)(7) Application for New Appropriation at Prosser Creek Reservoir. In addition to changes identified in Section 7.A.4(a)(3), an application may be filed by United States with the California State Water Resources Control Board to eliminate the 20,162 acre-foot per year limit on **Releases** from Prosser Creek Reservoir, and to commence the filling season for Prosser Creek Reservoir on October 1.

Section 7.A.4(b) Changes to Changed Diversion Rights for Credit Water Operations. This Section 7.A.4(b) sets forth changes to **Changed Diversion Rights** which the **Signatory Parties** agree are necessary or useful for the operations provided for in this **Agreement**. Section 12.A.4(d) sets forth certain changes for which approvals are necessary for this **Agreement** to take effect and are therefore conditions precedent. All other water right changes identified in this Section 7.A.4(b) are deemed to be useful, but not necessary, for this **Agreement** to take effect.

Section 7.A.4(b)(1) Changes by Power Company for Power Company M&I Credit Water. Change Power Company **Changed Diversion Rights** to allow storage in **Truckee River Reservoirs** as **Power Company M&I Credit Water** pursuant to a flexible 12-month diversion schedule in accordance with Sections 7.A.3 and 7.B.1, and as **Fish Credit Water** pursuant to Sections 7.B.4(e) and 7.C.4(b).

Section 7.A.4(b)(2) Changes by Pyramid Tribe for Fish Credit Water and Water Quality Credit Water. Change Pyramid Tribe water right under State Engineer Ruling 4683 to allow water under that right to be stored in **Truckee River Reservoirs** as **Fish Credit Water** pursuant to Sections 7.C and 7.H.6 and as **Water Quality Credit Water** pursuant to Sections 7.B.4(f) and 7.E.3.

Section 7.A.4(b)(3) Changes by Power Company for Fish Credit Water. Change the hydroelectric water rights granted to Power Company under Claims 5

through 9 of the **Orr Ditch Decree** to allow water under those rights to be stored in **Truckee River Reservoirs** as **Fish Credit Water** pursuant to Section 7.C.1.

Section 7.A.4(b)(4) Changes by Reno, Sparks, Washoe County, Pyramid Tribe and United States for Water Quality Credit Water. Change the **Changed Diversion Rights** acquired by Joint Program Parties as identified in Section 3 of the **Truckee River Water Quality Settlement Agreement** to allow water under such rights to be stored in **Truckee River Reservoirs** as **Water Quality Credit Water** pursuant to a flexible 12-month diversion schedule in accordance with Sections 7.A.3 and 7.E.

Section 7.A.4(b)(5) Changes by Fernley for Fernley Municipal Credit Water. Change Fernley's **Changed Diversion Rights** to allow water under such rights to be stored in **Truckee River Reservoirs** as **Fernley Municipal Credit Water** pursuant to a flexible 12-month diversion schedule in accordance with Sections 7.A.3 and 7.F.1, and as **Fish Credit Water** pursuant to Sections 7.F.3 and 7.C.4(c).

Section 7.A.4(b)(6) Changes by California for California M&I Credit Water. Change, through appropriate State procedures, California's **Changed Diversion Rights** to allow water under such rights to be stored in **Truckee River Reservoirs** as **California M&I Credit Water** and to be used for **Municipal and Industrial Uses** in California in accordance with Section 7.D.7.

Section 7.A.4(b)(7) Changes by California for California Environmental Credit Water. Change, through appropriate State procedures, California's **Changed Diversion Rights** to allow water under such rights to be stored in **Truckee River Reservoirs** as **California Environmental Credit Water** pursuant to a flexible 12-month diversion schedule pursuant to Sections 7.A.3 and 7.D.2, for **Changed Diversion Rights** having had an original place of use in Nevada and to be used for water quality and instream flow purposes pursuant to Section 7.D.8.

Section 7.A.4(b)(8) Changes by California for Additional California Environmental Credit Water. Change, through appropriate State procedures, California's **Changed Diversion Rights** to allow water under such rights to be stored in **Truckee River Reservoirs** as **Additional California Environmental Credit Water** pursuant to a flexible 12-month diversion schedule pursuant to Sections 7.A.3 and 7.D.3 for **Changed Diversion Rights** having had an original place of use in Nevada and to be used for water quality and instream flow purposes pursuant to Section 7.D.8.

Section 7.A.4(b)(9) Changes by Pyramid Tribe for Joint Program Fish Credit Water. Change Pyramid Tribe water right under State Engineer Ruling 4683 to allow water under that right and the provisions of this **Agreement** stored in **Truckee River Reservoirs** as **Fish Credit Water** to be converted to and used as **Joint Program Fish Credit Water** pursuant to Section 7.C.6.

Section 7.A.4(c) Changes Which Conflict With Power Company's Hydroelectric Water Rights. Power Company waives its right to protest or object to changes to water rights for **Credit Water Establishment**, based upon the grounds that the change will conflict with Power Company's hydroelectric water rights adjudicated either under Claim Numbers 5 through 9 of the **Orr Ditch Decree** or under the **Truckee River General Electric Decree**, to the extent that the applicable requirement for compensation provided for in Section 7.A.6 has been satisfied.

Section 7.A.4(d) Changes to Truckee Canal Diversion Criteria. Change **Truckee Canal Diversion Criteria** to allow for storage of water in **Truckee River Reservoirs** as **Newlands Project Credit Water** in accordance with Section 7.H.1.

Section 7.A.5 Restrictions and Limitations on Establishment of Certain Categories of Credit Water to Benefit Water Quality Flows.

Section 7.A.5(a) Limitations on Certain Credit Water Establishment Adverse to Flows at Sparks Gage. Except as otherwise provided in this Section 7.A.5, no **Person** shall **Establish California Environmental Credit Water** using **Changed Diversion Rights** having an original place of use in Nevada, **Water Quality Credit Water**, **Fish Credit Water**, **Newlands Project Credit Water**, **Additional California Environmental Credit Water** or **Other Credit Water** in **Truckee River Reservoirs** if Truckee River flows provided by **Floriston Rate Water** measured at the **Sparks Gage** are less than 275 cubic feet per second from June through October or less than 120 cubic feet per second from November through May or if such **Establishment** would concurrently cause such flows to be less than those amounts during the applicable time periods.

Section 7.A.5(b) Limitations on Power Company M&I Credit Water Establishment Adverse to Flows at Sparks Gage. Changed Diversion Rights that were originally appurtenant to lands downstream from the **Vista Gage** shall not be used to **Establish Power Company M&I Credit Water**, if Truckee River flows provided by **Floriston Rate Water** measured at the **Sparks Gage** are less than 275 cubic feet per second from June through October of the current year or if such **Establishment** would concurrently cause such flows to be less than those amounts during the applicable time periods.

Section 7.A.5(c) Conditions When Credit Water Establishment Limitations Do Not Apply. If the Joint Program Parties as identified in Section 3 of the **Truckee River Water Quality Settlement Agreement** agree, then restrictions set forth in Sections 7.A.5(a) and 7.A.5(b) shall not apply when all of the following conditions exist:

(1) Based on the April 1 seasonal Truckee River runoff forecast and assuming median precipitation after April 1, there would not be sufficient **Floriston Rate Water** to maintain **Floriston Rates** through August of the same year;

(2) **Credit Water** could be **Established** without causing the Truckee River flow at the **Sparks Gage** to be less than 50 cfs;

(3) **Credit Water**, if **Established**, is scheduled to be **Released** in the same year and in a manner to augment flows at the **Sparks Gage** from May through October to benefit water quality and riparian habitat; and

(4) Nevada has not objected to such operation.

Section 7.A.5(d) Waiver of Limitations on Credit Water Establishment. The threshold flows in this Section 7.A.5 may be reduced for designated periods by agreement among the Joint Program Parties as identified in Section 3 of the **Truckee River Water Quality Settlement Agreement**.

Section 7.A.5(e) Establishment Using Imported Water and Water Under Tributary Rights Not Limited. Nothing in this Section 7.A.5 shall limit **Establishment** of **Power Company M&I Credit Water**, **Water Quality Credit Water**, **Fernley Municipal Credit Water**, **California Environmental Credit Water**, **Additional California Environmental Credit Water**, or **Other Credit Water** using **Imported Water** or **Changed Diversion Rights** associated with tributaries to the Truckee River between the **Farad Gage** and **Vista Gage**, if such **Establishment** is otherwise accomplished in accordance with this **Agreement.**

Section 7.A.5(f) Actions to Maintain Flows at Sparks Gage. When a **Drought Situation** does not exist and flows provided by **Floriston Rate Water** are, or upon **Establishment** of **Power Company M&I Credit Water** would be, less than 275 cubic feet per second from June through October or less than 120 cubic feet per second from November through May at the **Sparks Gage**, then Pyramid Tribe and United States may take one or more of the following actions to maintain 275 or 120 cubic feet per second, whichever is applicable, or such lesser flow existing absent any Power Company **Establishment**, respectively:

(i) Allow Power Company to **Establish** its **Credit Water** in accordance with its schedule under the provisions of Section 7.A.3(a)(3);

(ii) Allow Power Company to **Establish** its **Credit Water** in accordance with its schedule in Stampede Reservoir or Prosser Creek Reservoir notwithstanding the provisions of Section 8.C and adverse to the **Impoundment** of the **Project Water** of those reservoirs; or

(iii) Allow Power Company to **Establish** its **Credit Water** in accordance with its schedule through **Trades** pursuant to Section 8.P.4.

If no action is taken or if the actions taken under (i), (ii) and (iii) above have not maintained the appropriate flow, then the Pyramid Tribe and the United States shall **Release Fish Credit Water** and **Fish Water** to the extent necessary to offset the quantity of **Power**

Company M&I Credit Water then being **Established**, provided that such **Release** need not exceed the amount which would provide a total flow, when combined with such **Floriston Rate Water**, of 275 or 120 cubic feet per second at the **Sparks Gage**.

Section 7.A.5(g) Flows in the Truckee River Downstream from Derby Dam. To the extent practicable and consistent with the exercise of water rights, assurance of water supplies, operational considerations, the requirements of the **Settlement Act** and all other requirements of this **Agreement** and the **Truckee Canal Diversion Criteria**, the **Administrator** shall encourage and the **Scheduling Parties** shall attempt to schedule operations involving **Credit Water** and **Fish Water** and other water management options to avoid reducing the flows downstream of Derby Dam to a rate of less than 50 cubic feet per second from November through May and 135 cubic feet per second from June through October. This provision shall not be construed as conflicting with any operations under this **Agreement**, including, without limitation, those under Sections 8.F, 8.R, and 9.F.2.

Section 7.A.6 Power Company Use of Water for Hydroelectric Generation and Compensation for Reduced Generation. Except as provided in Sections 9.E and 5.A.8(a), Power Company may divert any water flowing in the Truckee River, including without limitation **Floriston Rate Water, Fish Water** and **Credit Water**, for the generation of electric power at **Power Company Hydroelectric Plants** referenced in Section 210(b)(17) of the **Settlement Act**, provided that water so used shall be returned to the Truckee River immediately after such use. Power Company shall be compensated for reduced hydroelectric generation, if any, arising from the implementation of this **Agreement** as provided in this Section 7.A.6.

Section 7.A.6(a) Compensation for Fish Credit Water, Newlands Project Credit Water, and Fish Water. Power Company shall be compensated for the net reduction, if any, in the amount of hydroelectric generation from operations involving **Fish Credit Water**, including Truckee River flow to be treated as **Fish Credit Water** pursuant to Section 7.A.3(a)(3); operations involving **Newlands Project Credit Water**; operations involving **Fish Water** bypass pursuant to Section 9.E.2; and operations when no other **Credit Water** is being **Established** pursuant to Section 7.A.3(a)(1) and 7.A.3(a)(2) that involve the **Establishment** of **Fish Credit Water** pursuant to Section 7.C.1 during ice removal pursuant to Section 5.A.3(c). Compensation, if any, shall produce an offset to Power Company's storage fees for the use of federal reservoirs under this **Agreement** and shall be based on the following:

(1) The monthly average change in hydroelectric generation in megawatt-hours shall be calculated by the modeling analysis used by United States and California in preparation of the Draft Environmental Impact Statement/Environmental Impact Report for this **Agreement**, which model is based on provisions of this **Agreement** and the **Truckee Canal Diversion Criteria** in effect at the time of execution of this **Agreement**. The monthly change shall be deemed to occur uniformly throughout a month. Unless adjusted in accordance with Section 7.A.6(a)(2), and until such time as this quantity is re-calculated in accordance with Section

7.A.6(a)(3), the monthly average change in hydroelectric generation in megawatt-hours shall be deemed to be those indicated in Table 7.A.6.

Table 7.A.6—Monthly Hydroelectric Generation Change*
(megawatt-hours)

Month	Farad	Fleish	Verdi	Washoe	Total
Jan					
Feb					
Mar					
Apr					
May					
Jun					
Jul					
Aug					
Sep					
Oct					
Nov					
Dec					
Total					

* to be determined in accordance with 7.A.6(a)(1) – see note page 7.1.

(2) The monthly average change in hydroelectric generation for each plant indicated in Section 7.A.6(a)(1) shall be adjusted for periods in which any of **Power Company Hydroelectric Plants** is not in operational condition for a period lasting one month or more for reasons other than insufficient flow.

(3) If requested by Power Company or United States, the amount calculated under Section 7.A.6(a)(1) shall be re-calculated, and compensation adjusted if **Truckee Canal Diversion Criteria** change, or significant changes are made to the management of **Fish Credit Water, Newlands Project Credit Water** or bypass of **Fish Water** under Section 9.E.2 compared to the management modeled in paragraph (1). Such future re-calculation shall be based on an operations model having the capability of calculating monthly changes in hydroelectric generation, as agreed to by Power Company and United States, using standard industry formulation that takes into account change in flow, productive head, and plant efficiency. Productive head, maximum flow and plant efficiency shall be the same as those used in Section 7.A.6(a)(1), and for purposes of future re-calculation, shall remain constant.

(4) The economic value of the net change in generation shall be determined for the past year, based on the daily firm valuation listed in the California-

Oregon Border (COB) Index published by Dow Jones, weighted by peak and off-peak hours reported by that publication, and shall be used to offset the current year's storage fee. If the economic value of the net change in generation for the year calculated by this Section 7.A.6(a) is a positive number, it shall be deemed to be zero for the purpose of offsetting Power Company storage fees.

(5) If the manner in which the COB Index is determined is substantially revised, an adjustment shall be made in such revised index which would produce results equivalent, as nearly as possible, to those which would have been obtained if the COB Index had not been so revised. If the COB Index shall become unavailable to the public because publication is discontinued, or otherwise, a comparable index published by a comparable entity or, if no such index shall be available, then a comparable index published by a recognized financial institution or publisher, and agreed to by Power Company and United States, shall be used to calculate the economic value required in this Section 7.A.6.

Section 7.A.6(b) Compensation for Water Quality Credit Water, Fernley Municipal Credit Water, California M&I Credit Water. Power Company waives any claims it may have for compensation for reduced hydroelectric generation arising from the **Establishment** of **Water Quality Credit Water** to the extent of water purchased under the $24 million program set forth in the **Truckee River Water Quality Settlement Agreement**, **Fernley Municipal Credit Water** and **California M&I Credit Water**, provided however, that Power Company may utilize, without compensation to any **Person**, all such **Credit Waters** for generation at **Power Company Hydroelectric Plants** upon subsequent **Release** from storage.

Section 7.A.6(c) Compensation for California Environmental Credit Water from California Water Rights. Power Company waives any claims it may have for compensation for reduced hydroelectric generation arising from the **Establishment** of **California Environmental Credit Water** and **Additional California Environmental Credit Water** to the extent that the water stored originated under a California water right, provided however, that Power Company may utilize, without compensation to any **Person**, such **Credit Water** for generation at **Power Company Hydroelectric Plants** upon subsequent **Release** from storage. In the event that California desires Power Company to bypass such **Credit Water** upon **Release** from storage, California agrees to compensate Power Company at that time using a comparable methodology as that set forth in Section 7.A.6(a), adjusted to reflect such California bypass operation.

Section 7.A.6(d) Compensation for California Environmental Credit Water and Additional California Environmental Credit Water from Nevada Water Rights. Any reduction in economic value of hydroelectric generation arising from the **Establishment** of **California Environmental Credit Water** or **Additional California Environmental Credit Water** originating from a water right having had an original place of use in Nevada shall be

compensated to Power Company by California using a comparable methodology as set forth in Section 7.A.6(a), adjusted to reflect such California operations.

Section 7.A.6(e) Compensation for Other Credit Water. Power Company shall be compensated for reduced economic value of hydroelectric generation which may arise from operation of future categories of **Other Credit Water** which United States may implement under Section 7.G. The manner and amount of such compensation shall be by mutual agreement between Power Company and United States, using a comparable methodology as set forth in Section 7.A.6(a), adjusted to reflect such operation. United States shall not enter an agreement for storage of **Other Credit Water** under Section 7.A.2(b) unless the requirements of this Section 7.A.6(e) have been satisfied.

Section 7.A.6(f) Waiver of Right to Protest Conditional. Power Company's obligation to waive its right to protest a change in a water right for **Establishment** of **Credit Water**, on the basis set forth in Section 7.A.4(c) is conditioned on an agreement for compensation having been reached between Power Company and the **Person** whose water is to be stored, or United States in the case of **Other Credit Water,** as required in this Section 7.A.6.

Section 7.A.7 Credit Water Not Established by River Operation Imprecision. Credit Water Establishment shall not include retention in storage of water that is the incidental result of inherently imprecise operation of the Truckee River for maintaining **Floriston Rates** or **Reduced Floriston Rates**.

SECTION 7.B - POWER COMPANY M&I CREDIT WATER

Section 7.B.1 Power Company M&I Credit Water. To the extent allowed by changes to water rights under applicable state law, and subject to the provisions of this Section 7.B and Article Eight, Power Company may **Establish Power Company M&I Credit Water** in **Truckee River Reservoirs** with its **Privately Owned Stored Water**, and in **Truckee River Reservoirs**, Donner Lake and Independence Lake with its **Changed Diversion Rights** pursuant to a flexible 12-month diversion schedule in accordance with Section 7.A.3. Power Company shall use water from excess water rights described in Section 4.B, which is not otherwise utilized to supply the demands of its wholesale and retail customers to **Establish Power Company M&I Credit Water** pursuant to this **Agreement**. To the extent that water rights are not being used to **Establish Power Company M&I Credit Water** because of limitations imposed under applicable law, physical conditions or by this **Agreement**, Power Company may use such water for any other lawful purpose.

The quantities of **Power Company M&I Credit Water** stored, held and used pursuant to this **Agreement** shall not include, and shall be in addition to, the quantities of Power Company's **Privately Owned Stored Water** in Donner Lake, Independence Lake and **Truckee River Reservoirs** at any given time.

Section 7.B.2 Accumulating Power Company M&I Credit Water Using Privately Owned Stored Water. To the extent allowed by changes to its water rights under

applicable state law, Power Company may **Establish Power Company M&I Credit Water** by **Accumulating Privately Owned Stored Water Released** from Independence Lake or through an **Exchange** or re-storage of **Privately Owned Stored Water** from Donner Lake or Independence Lake pursuant to Article Eight. All of Power Company's **Privately Owned Stored Water** that is not carried over, re-stored, or used to meet the demands of its wholesale and retail customers pursuant to this **Agreement**, shall be used to the extent legally and physically possible to **Establish Power Company M&I Credit Water** pursuant to this **Agreement**.

Section 7.B.3 Power Company M&I Credit Water Use.

Section 7.B.3(a) Use of Power Company M&I Credit Water During Emergency or Repair Situation. When an **Emergency or Repair Condition** exists, **Power Company M&I Credit Water** may be used to supply the demands of Power Company's wholesale and retail customers and to facilitate a more expedient return to the use of **Power Company Normal Water Supplies.**

Section 7.B.3(b) Use of Power Company M&I Credit Water During a Drought Situation. Firm M&I Credit Water and **Non-Firm M&I Credit Water** may be used to supply the demands of Power Company's wholesale and retail customers up to a maximum of 119,000 acre-feet per year when the following conditions exist:

(1) There is a **Drought Situation** and **Power Company Normal Water Supplies** are not sufficient to satisfy **Power Company Normal Demand**;

(2) **Privately Owned Stored Water** in Independence Lake is equal to or less than 7,500 acre-feet when such storage is measured above elevation 6,921.0 feet, or such storage is otherwise unavailable to meet demand; and

(3) **Release** of Power Company's **Privately Owned Stored Water** from Donner Lake is insufficient to meet Power Company's demand because either Power Company has no **Privately Owned Stored Water** in Donner Lake, Donner Lake **Release** is limited by the capacity of the outlet facilities, water must be held in Donner Lake in accordance with the **Donner Lake Indenture**, or the water is otherwise unavailable to meet demand.

Section 7.B.3(c) Use of Power Company M&I Credit Water During the Year Established. Notwithstanding the limitations in Sections 7.B.3(a) and 7.B.3(b), **Firm M&I Credit Water** and **Non-Firm M&I Credit Water** may also be used during the year in which it was **Established** to the extent necessary to meet the demands of Power Company's wholesale and retail customers in that year. When **Power Company M&I Credit Water** is used under this Section 7.B.3(c), the **Administrator** shall determine the quantity of **Power Company M&I Credit Water** attributable to conservation under Section 7.B.4(f).

Section 7.B.3(d) Use of Power Company M&I Credit Water for Exchanges, Restorage, and Operations Required to be Performed Under This Agreement. Nothing in this Section 7.B.3 shall prevent **Power Company M&I Credit Water** from being used for **Exchanges**, restorage and for operations required to be performed under this **Agreement**.

Section 7.B.4 Categories and Amounts of Power Company M&I Credit Water. Except for **Power Company Emergency Drought Supply**, all **Power Company M&I Credit Water** stored in Stampede Reservoir up to the **Base Amount** of **Firm M&I Credit Water** shall be deemed **Firm M&I Credit Water**; and all **Power Company M&I Credit Water** stored in Stampede Reservoir above the **Base Amount** of **Firm M&I Credit Water** and **Power Company Emergency Drought Supply**, and all **Power Company M&I Credit Water** in other **Truckee River Reservoirs**, and Donner and Independence Lakes shall be deemed **Non-Firm M&I Credit Water**.

Section 7.B.4(a) Calculation of Base Amount of Firm M&I Credit Water. The **Base Amount** of **Firm M&I Credit Water** shall increase as shown in Appendix 7.A from a minimum of 2,000 acre-feet to 12,000 acre-feet in relation to **Power Company Normal Demand** as adjusted in Section 7.B.4(c), but in no case be less than 2,000 acre-feet.

Section 7.B.4(b) Calculation of Base Amount of Non-Firm M&I Credit Water. The **Base Amount** of **Non-Firm M&I Credit Water** shall increase as shown in Appendix 7.B from a minimum of 4,000 acre-feet to 20,000 acre-feet in relation to the amount of **Power Company Normal Demand** as adjusted in Section 7.B.4(c) and the **California Water Use Factor.** The amount of **Non-Firm M&I Credit Water** in Appendix 7.B which corresponds to the applicable **Power Company Normal Demand** as adjusted in Section 7.B.4(c) shall be multiplied by the non-firm credit multiplier in Appendix 7.C which corresponds to the applicable **California Water Use Factor**. The product so obtained shall be the **Base Amount** of **Non-Firm M&I Credit Water**, but in no case shall the **Base Amount** be less than 4,000 acre-feet.

Section 7.B.4(c) Adjustment of Power Company Normal Demand. For purposes of determining Power Company **Base Amounts**, **Power Company Normal Demand** for a particular year shall be adjusted as follows:

(1) **Power Company Normal Demand** shall be that reported for the most recent year which was not a **Drought Situation.**

(2) **Power Company Normal Demand** reported under 7.B.4(c)(1) shall be multiplied by 1.06.

(3) If the current year is a **Drought Situation**, the value resulting from Section 7.B.4(c)(2) shall also be multiplied by 1.02 for the current year and also by 1.02 for each preceding **Drought Situation** year following the most recent year which is not a **Drought Situation**.

In any year in which the value resulting from this Section 7.B.4(c) is less than the prior year's value, the prior year's value shall remain in effect for that year.

Section 7.B.4(d) Calculation of California Water Use Factor. In order to calculate the **California Water Use Factor** to be applied in Appendix 7.C, the three most recent years of California water diversions in the **Truckee River Basin** as reported in accordance with Section 204(d)(1) of the **Settlement Act,** excluding quantities **Established** as **Joint Program Fish Credit Water,** shall be added together and divided by three, and the average so obtained shall be multiplied by 0.50 (the product is 50 percent of the three year average). That product shall then be increased by adding to it an amount equal to six percent of the average obtained above for the California diversions and the amount so obtained shall be the **California Water Use Factor** to be used in Appendix 7.C.

In any year in which the resulting calculation results in a **California Water Use Factor** which is less than the prior year's calculation, the prior year's **California Water Use Factor** shall remain in effect for that year.

Section 7.B.4(e) Conversion of Excess Non-Firm M&I Credit Water to Fish Credit Water. No later than April 15 of any year, whenever:

(1) A **Drought Situation** does not exist, the amount of **Non-Firm M&I Credit Water** in storage on April 1, in excess of the **Base Amount** of **Non-Firm M&I Credit Water** shall be converted to **Fish Credit Water**. Power Company shall have the right to determine and identify the location of the excess **Non-Firm M&I Credit Water** which shall be converted to **Fish Credit Water**. The timing and quantity of such conversion may be adjusted by mutual agreement of Power Company, Pyramid Tribe and United States**.**

(2) A **Drought Situation** exists, Power Company shall have the right to retain and to **Accumulate Power Company M&I Credit Water**, pursuant to this **Agreement**.

Section 7.B.4(f) Conversion of a Portion of Non-Firm M&I Credit Water Attributed to Toilet Replacement to Water Quality Credit Water. An amount of **Non-Firm M&I Credit Water Established** annually shall be designated as "conserved water" in accordance with this Section 7.B.4(f). Such conserved water shall be used to increase the supply of **Non-Firm M&I Credit Water** for use in **Drought Situations** and to increase the supply of **Water Quality Credit Water**.

Section 7.B.4(f)(1) Conditions for Implementation. This Section 7.B.4(f) shall only be effective when and to the extent that a toilet replacement program has been implemented within Power Company retail service area boundaries, existing as of October 1, 2000, to replace toilets which use more than 1.6 gallons per flush with units that use 1.6 gallons per flush or less, and that records of such toilet replacement programs are made available for

public inspection. Only toilet replacements made after October 1, 2000, shall be considered under this Section 7.B.4(f).

Section 7.B.4(f)(2) Establishment and Management. The toilet replacement program identified in Section 7.B.4(f)(1) shall be presumed to conserve 35 acre-feet per year per one-thousand replaced toilets, to a maximum of 4,000 acre-feet per year. The annual amount of conserved water shall be calculated based upon the cumulative number of toilets that have been replaced under the toilet replacement programs as of July 1 of the prior year, as certified by Washoe County. **Non-Firm M&I Credit Water** shall be **Established** with water attributed to the toilet replacement program. The portion of **Non-Firm M&I Credit Water** attributed to conserved water shall be accounted for as a subcategory of **Non-Firm M&I Credit Water** until it is converted to **Fish Credit Water** as provided in Section 7.B.4(f)(4), and such conserved water shall not be used when a **Drought Situation** does not exist pursuant to Section 7.B.3(c).

Section 7.B.4(f)(3) Accounting for Conservation from Toilet Replacement. No later than April 15 of each year, the **Administrator** shall calculate the amount of conserved water in storage on April 1. The accounting procedures for conserved water shall be developed by the **Administrator** after consulting with the Joint Program Parties as identified in Section 3 of the **Truckee River Water Quality Settlement Agreement** and shall reflect the following characteristics of conserved water:

(i) Conserved water that is not otherwise used, **Released** as **Non-Firm M&I Credit Water**, converted to **Fish Credit Water**, evaporated, or **Spilled** shall remain in storage from year to year as a subcategory of **Non-Firm M&I Credit Water**;

(ii) Conserved water shall be the first **Non-Firm M&I Credit Water** that is used in a **Drought Situation** or **Emergency or Repair Condition**;

(iii) Conserved water shall not be used for **Municipal and Industrial** purposes when a **Drought Situation** does not exist;

(iv) Conserved water shall be subject to a proportionate share of the evaporation loss that is attributed to **Non-Firm M&I Credit Water**;

(v) Conserved water shall be the first **Non-Firm M&I Credit Water** to **Spill** from a reservoir; and

(vi) Conserved water shall be the first portion of the **Non-Firm M&I Credit Water** to convert to **Fish Credit Water** pursuant to Section 7.B.4(e).

The calculated quantity of conserved water in storage determined by this Section 7.B.4(f)(3) shall be used in determining the amount of **Fish Credit Water** that may be converted to **Water Quality Credit Water** pursuant to Section 7.B.4(f)(4).

Section 7.B.4(f)(4) Procedure for Conversion to Water Quality Credit Water. Whenever a conversion of **Non-Firm M&I Credit Water** to **Fish Credit Water** occurs pursuant to Section 7.B.4(e), the quantity of such conversion that is provided by conserved water shall be instantaneously converted from **Fish Credit Water** to **Water Quality Credit Water** managed by Reno, Sparks and Washoe County consistent with the Joint Truckee River Water Quality Program under the **Truckee River Water Quality Settlement Agreement**. The distribution among reservoirs of such **Water Quality Credit Water** shall be selected by United States and Pyramid Tribe. The quantity of such conversion from **Fish Credit Water** to **Water Quality Credit Water** shall be the lesser of:

(i) The quantity of conserved water in storage on April 1 calculated pursuant to Section 7.B.4(f)(3); or

(ii) The quantity of **Non-Firm M&I Credit Water** converted to **Fish Credit Water** pursuant to Section 7.B.4(e).

Non-Firm M&I Credit Water remaining in storage after April 15 shall continue to be attributable to conserved water under this Section 7.B.4(f) to the extent determined by the accounting procedures established under Section 7.B.4(f)(3).

Section 7.B.5 Power Company Emergency Drought Supply.

Section 7.B.5(a) Establishment of Power Company Emergency Drought Supply. The first 7,500 acre-feet of **Power Company M&I Credit Water** in Stampede Reservoir converted to **Fish Credit Water** as provided in Section 7.B.4(e) shall become **Power Company Emergency Drought Supply**. At its option, Power Company may fill and, after **Release** in accordance with Section 7.B.5(b), replace this 7,500 acre-feet directly from **Changed Diversion Rights** or Power Company's **Privately Owned Stored Water**. Once the 7,500 acre-feet is in storage, it shall be used only as specified in Section 7.B.5(b), shall not **Spill,** shall incur evaporation losses in accordance with Section 5.D.7, and shall not be required to provide **Minimum Releases** unless it is the only water in Stampede Reservoir. **Power Company Emergency Drought Supply** may also be **Exchanged** to Prosser Creek Reservoir pursuant to Section 5.B.6(d)(4).

Section 7.B.5(b) Use of Power Company Emergency Drought Supply. Power Company may use **Power Company Emergency Drought Supply** to meet the demand of its wholesale and retail customers in the event of water supply conditions which are worse than those experienced during the **Critical Drought Period**, after Power Company exhausts or is otherwise prevented from using the following supplies:

(1) **Power Company Normal Water Supplies**;

(2) 7,500 acre-feet of **Privately Owned Stored Water** above elevation 6,921.0 feet in Independence Lake to the extent permissible under then applicable law;

(3) all of Power Company's **Firm M&I Credit Water** and **Non-Firm M&I Credit Water** in accordance with Section 7.B.3, to the extent available;

(4) supplies identified under Section 4.C.1 to the extent such supplies are available; and

(5) to the extent Power Company is allowed to pump in accordance with Section 5.B.7(f), Power Company has pumped up to 5,000 acre-feet of **Privately Owned Stored Water** from below elevation 6,921.0 feet in Independence Lake; provided that if such water is not made available at the time required to satisfy the demands of Power Company's customers, Power Company may utilize **Power Company Emergency Drought Supply** to the extent required.

Nothing in this Section 7.B.5(b) shall prevent the use of **Power Company Emergency Drought Supply** for **Exchanges** and operations required to be performed under this **Agreement**.

SECTION 7.C - FISH CREDIT WATER AND JOINT PROGRAM FISH CREDIT WATER

Section 7.C.1 Establishment of Fish Credit Water By Waiver of Single Purpose Hydroelectric Water. To the extent that all or a portion of the rate of flow in the Truckee River required or allowed by Section 5.A is required solely for hydroelectric power generation pursuant to Claim Nos. 5 through 9 of the **Orr Ditch Decree** and is not required to supply the **Exercise** of other **Orr Ditch Decree Water Rights**, including their **Exercise** for the purpose of **Establishing Credit Water**, Power Company shall take all necessary action including changing or applying to change those water rights to allow retention of **Floriston Rate Water** to **Establish Fish Credit Water** in **Truckee River Reservoirs**, or in the alternative will not protest based upon those water right claim numbers a change in the water right referenced in Section 7.C.2 intended to allow a portion of such rights to be **Established** in **Truckee River Reservoirs** as **Fish Credit Water**. Any changes in Power Company's hydroelectric rights under Claims 5-9 of the **Orr Ditch Decree** will be limited to water which may be retained in storage as **Fish Credit Water**.

Section 7.C.2 Establishment of Fish Credit Water In Lieu of Inflows to Pyramid Lake. To the extent allowed by changes under applicable Nevada law to the water right under Nevada State Engineer Ruling No. 4683, the water available to satisfy that right may be retained in **Truckee River Reservoirs** for **Establishment** only as **Fish Credit Water**.

Section 7.C.3 Establishment of Fish Credit Water Using Stampede Reservoir Permit/License. Upon issuance of a permit for additional storage by the California State Water Resources Control Board, **Fish Credit Water** may be **Established** in Stampede Reservoir by diverting water to storage under Stampede Reservoir's Permit/License in excess of the 126,000 acre-feet of **Stampede Project Water** diverted to storage in any one year in accordance with Section 5.B.8(a).

Section 7.C.4 Other Procedures for Establishment of Fish Credit Water. Fish Credit Water may also be **Established** as follows:

(a) By **Exchange**, re-classification, or re-storage of **Fish Water** as provided in Sections 8.N.1 and 8.O.3;

(b) By conversion of excess **Non-Firm M&I Credit Water** as provided in Section 7.B.4(e); and conversion of **Non-Firm M&I Credit Water** pursuant to Section 8.L;

(c) By conversion of excess **Fernley Municipal Credit Water** as provided in Section 7.F.3;

(d) By reclassification of **Newlands Project Credit Water** as provided in Section 7.H.5.

Section 7.C.5 Use of Fish Credit Water. Fish Credit Water Established pursuant to this **Agreement** shall be: (a) Stored and **Exchanged** as provided in this **Agreement** for the benefit of **Pyramid Lake Fishes**, (b) used for operations required to be performed under this **Agreement**, (c) **Released** to provide **Pyramid Lake Fish Flows**, (d) converted to **Water Quality Credit Water** pursuant to Section 7.B.4(f)(4) or (e) designated as **Joint Program Fish Credit Water** pursuant to Section 7.C.6. It may also be **Exchanged** or re-stored as otherwise allowed by this **Agreement** if not detrimental to **Pyramid Lake Fishes**.

Section 7.C.6 Designation, Storage and Management of Joint Program Fish Credit Water.

Section 7.C.6(a) Joint Program Fish Credit Water Characteristics. A portion of **Fish Credit Water Accumulated** annually in **Truckee River Reservoirs** under Sections 7.C.1 and 7.C.2 shall be designated as **Joint Program Fish Credit Water** pursuant to this Section 7.C.6 by United States and Pyramid Tribe for a joint program with California for instream flows and recreation as specified in this **Agreement**. Such water shall:

(1) be accounted for in the same manner as **Fish Credit Water**;

(2) share proportionately with **Fish Credit Water** in the priorities for operations specified in Sections 5.C, 8.E, and 8.O, but shall not share in

any additional benefits or burdens of **Fish Credit Water** unless expressly stated otherwise in this **Agreement**; and

(3) flow to **Pyramid Lake** after being **Spilled** or **Released,** unless it is **Exchanged** or re-stored in another reservoir.

Nothing in this Section 7.C.6(a) shall prevent the use of **Joint Program Fish Credit Water** for **Exchanges** and operations required to be performed under this **Agreement**.

Section 7.C.6(b) Designation of Joint Program Fish Credit Water. Subject to the annual limitations of Section 7.C.6(c), up to 50 percent of any **Fish Credit Water Established** each day pursuant to Sections 7.C.1 and 7.C.2, or such lesser percentage as California may specify, shall then be designated as **Joint Program Fish Credit Water**.

Section 7.C.6(c) Limits on Annual Designation and Storage of Joint Program Fish Credit Water. The amount of **Fish Credit Water** designated as **Joint Program Fish Credit Water** in a year shall not exceed the difference between (1) amounts of surface water allocated to California annually under Sections 204(c)(1) and 204(c)(1)(A) of the **Settlement Act** and (2) the surface water charged to California's annual allocation for **Truckee River Basin** pursuant to the provisions of this **Agreement,** not including **Joint Program Fish Credit Water**. The total amount of **Joint Program Fish Credit Water** in storage at any time in **Truckee River Reservoirs** shall not exceed 20,000 acre-feet.

Section 7.C.6(d) No Storage Fee for Joint Program Fish Credit Water. The **Secretary** shall not charge a fee for the storage and management of **Joint Program Fish Credit Water**.

SECTION 7.D - CALIFORNIA M&I CREDIT WATER, CALIFORNIA ENVIRONMENTAL CREDIT WATER AND ADDITIONAL CALIFORNIA ENVIRONMENTAL CREDIT WATER

Section 7.D.1 Establishment of California M&I Credit Water. To the extent allowed under a water right or change to a water right recognized under applicable state law, California or its designee may **Establish California M&I Credit Water** by one or more of the following operations:

(a) by storing in Lake Tahoe all or a portion of California's Truckee River surface water allocation not derived from **Changed Diversion Rights** as provided in Section 6.C.2(c);

(b) by storing in Lake Tahoe water derived from **Changed Diversion Rights** with an original place of use in California as provided in Section 6.C.2(c);

(c) by storing in Donner Lake, Independence Lake and **Truckee River Reservoirs** other than Lake Tahoe water derived from **Changed Diversion Rights** with an

original place of use in California as provided in Sections 6.C.2(c) and 6.C.2(d); and

(d) by storing in Donner Lake, Independence Lake and **Truckee River Reservoirs** other than Lake Tahoe water derived from water rights adjudicated under the **Sierra Valley Decree** as provided in Section 6.C.6(c).

Section 7.D.2 Establishment of California Environmental Credit Water. To the extent allowed under a water right or change to a water right recognized under applicable state law, California may **Establish California Environmental Credit Water** by one or more of the following operations:

(a) by storing in Lake Tahoe all or a portion of California's Truckee River surface water allocation not derived from **Changed Diversion Rights** as provided in Section 6.C.2(c);

(b) by storing in Lake Tahoe water derived from **Changed Diversion Rights** with an original place of use in California as provided in Section 6.C.2(c);

(c) by storing in Donner Lake, Independence Lake and **Truckee River Reservoirs** other than Lake Tahoe water derived from **Changed Diversion Rights** with an original place of use in California as provided in Sections 6.C.2(c) and 6.C.2(d);

(d) by storing in Donner Lake, Independence Lake and **Truckee River Reservoirs** water derived from **Changed Diversion Rights** with an original place of use in Nevada pursuant to a flexible 12-month diversion schedule as provided in Section 7.A.3; and

(e) by storing in Donner Lake, Independence Lake and **Truckee River Reservoirs** other than Lake Tahoe water derived from water rights adjudicated under the **Sierra Valley Decree** as provided in Section 6.C.6(c).

Section 7.D.3 Establishment of Additional California Environmental Credit Water. To the extent allowed under a water right or change to a water right recognized under applicable state law, California may **Establish Additional California Environmental Credit Water** by one or more of the following operations:

(a) by storing in Donner Lake, Independence Lake, and **Truckee River Reservoirs** water derived from **Changed Diversion Rights** with an original place of use in California as provided in Section 6.C.2(d);

(b) by storing in Donner Lake, Independence Lake and **Truckee River Reservoirs** water derived from **Changed Diversion Rights** with an original place of use in Nevada pursuant to a flexible 12-month diversion schedule as provided in Section 7.A.3;

(c) by storing in Donner Lake, Independence Lake and **Truckee River Reservoirs** other than Lake Tahoe water derived from water rights adjudicated under the **Sierra Valley Decree** as provided in Section 6.C.6(c); and

(d) by storing **Imported Water** in Donner Lake, Independence Lake and **Truckee River Reservoirs** as provided in Section 6.C.7.

Section 7.D.4 Storage Limits. The total combined amount of **California M&I Credit Water** and **California Environmental Credit Water** in storage at any time in **Truckee River Reservoirs,** Independence Lake, or Donner Lake shall not exceed 8,000 acre-feet, of which no more than 3,000 acre-feet may be stored in reservoirs other than Lake Tahoe. This amount shall be reduced to the extent new facilities are constructed in excess of the 2,500 acre-feet of capacity pursuant to Section 6.C.3(c). The total amount of **Additional California Environmental Credit Water** in storage shall not exceed 10,000 acre-feet at any time.

Section 7.D.5 Displacement of California Environmental Credit Water by Fernley Municipal Credit Water. Accumulation and retention of **Fernley Municipal Credit Water** may cause **Displacement** of any **California Environmental Credit Water** which has been **Established** using **Changed Diversion Rights** with an original place of use in Nevada. **Displacement** shall not be required for **California Environmental Credit Water** which has been **Established** using surface water with an original place of use in California or using water rights adjudicated under the **Sierra Valley Decree**. **Displacement** shall be required pursuant to this Section 7.D.5 only after the following conditions have been met:

(a) Fernley shall make reasonable efforts to utilize the storage capacity of **Truckee River Reservoirs** in such a manner as to avoid the necessity to cause **Displacement** of **California Environmental Credit Water**, and

(b) Fernley shall provide timely notice to California and the **Administrator** in advance of any **Displacement** of **California Environmental Credit Water**. Such notice shall (1) identify the specific **Truckee River Reservoir** in which Fernley proposes to store water necessitating **Displacement** of **California Environmental Credit Water**, (2) provide a schedule, (3) state why the **Displacement** is necessary, and (4) describe Fernley's efforts to **Exchange** into or re-store water in other reservoirs that would avoid the necessity to cause **Displacement** of **California Environmental Credit Water**.

California may schedule **Exchanges** or re-storage in accordance with Article Eight or implement other operations as are available to avoid any **Displacement** of **California Environmental Credit Water** authorized by this Section 7.D.5.

Section 7.D.6 Conversion of California Environmental Credit Water to Additional California Environmental Credit Water. Any **California Environmental Credit Water** which, at the time it is stored, could also have been stored as **Additional California**

Environmental Credit Water shall be designated by the **Administrator** as eligible for later conversion to **Additional California Environmental Credit Water**. Such **California Environmental Credit Water** shall retain this designation when the water is **Exchanged** or restored pursuant to this **Agreement**. If an **Accumulation** of **California M&I Credit Water,** taking into account **California Environmental Credit Water** in storage, would cause the storage limit in Section 6.C.2(a) to be exceeded, the **Administrator** shall convert eligible **California Environmental Credit Water** in reservoirs specified by California to **Additional California Environmental Credit Water** to the extent necessary and available to avoid exceeding the storage limit in Section 6.C.2(a), provided such conversion does not result in the total amount of **Additional California Environmental Credit Water** in storage exceeding 10,000 acre-feet. **Additional California Environmental Credit Water** may not be reclassified as **California Environmental Credit Water**.

Section 7.D.7 Use of California M&I Credit Water. California M&I Credit Water may be used only to serve **Municipal and Industrial Uses** in California.

Section 7.D.8 Management and Use in California of California Environmental Credit Water and Additional California Environmental Credit Water. California Environmental Credit Water and **Additional California Environmental Credit Water** shall be managed by California in accordance with this **Agreement** and may only be used for the following environmental purposes: (a) maintaining instream flows, (b) restoring, maintaining or enhancing riparian vegetation areas along the Truckee River or its tributaries, or (c) maintaining or enhancing instream water quality. Storage of such water in reservoirs for recreation and the use of such water for implementation of any mitigation measures to substantially lessen or avoid any significant effects to the environment identified in the Final Environmental Impact Statement/Environmental Impact Report on this **Agreement** may be incidental to such environmental uses, but the water shall not be released or otherwise managed primarily for such recreation or mitigation. The intent of establishing these categories of **Credit Water** is to make water available for future environmental uses that arise out of currently unforeseen circumstances.

Section 7.D.9 Use in Nevada of California Environmental Credit Water and Additional California Environmental Credit Water. California Environmental Credit Water and **Additional California Environmental Credit Water** which is **Discharged** and flows into Nevada shall be used as follows:

(a) if **Established** using water rights having an original place of use within Nevada, such water shall be used for instream flows for water quality purposes in Nevada from the state line to Pyramid Lake.

(b) if **Established** using water rights having an original place of use within California, such water shall be available for use under Nevada's allocation under Section 204(c)(3) of the **Settlement Act**.

Nothing in this **Agreement** shall be construed to limit or preclude the Nevada State Engineer's discretion to bifurcate any proceeding to consider California's application for a change to the point of diversion, place of use, or purpose of use of water rights having an original place of use in Nevada, if such an application is challenged concerning use of the water for instream flow or water quality purposes once it flows into Nevada, where such a bifurcation is made to consider the **Establishment** of such water separately from its use within Nevada.

Section 7.D.10 No Charge for Storage. The **Secretary** shall not charge a fee for storage of **California Environmental Credit Water** or **Additional California Environmental Credit Water** in **Truckee River Reservoirs**.

SECTION 7.E - WATER QUALITY CREDIT WATER

Section 7.E.1 Establishment of Water Quality Credit Water. To the extent allowed by changes to water rights under applicable state law, Joint Program Parties as identified in Section 3 of the **Truckee River Water Quality Settlement Agreement** may **Establish Water Quality Credit Water** by utilizing water from **Changed Diversion Rights** pursuant to a flexible 12-month diversion schedule in accordance with Section 7.A.3. **Water Quality Credit Water** may also be **Established** through conversion of **Fish Credit Water** in accordance with Section 7.B.4(f)(4).

Section 7.E.2 Uses of Water Quality Credit Water. **Water Quality Credit Water Established** pursuant to this Section 7.E and by conversion pursuant to Section 7.B.4(f) shall be used in accordance with the terms of the **Truckee River Water Quality Settlement Agreement**. Nothing in this Section 7.E.2 shall prevent the use of **Water Quality Credit Water** for **Exchanges** and operations required to be performed under this **Agreement**.

Section 7.E.3 Storage of Conserved Water. To the extent that water is conserved from reduced transmission and conveyance losses and the elimination of out-of-basin tailwater flow as the result of water rights acquired for water quality purposes and such water would become inflow to Pyramid Lake, United States and Pyramid Tribe agree that such conserved water shall be available for storage as **Water Quality Credit Water**. If the conserved water is determined by the Nevada State Engineer to revert to the source, and the reversion results in an incremental increase in inflow to Pyramid Lake, United States and Pyramid Tribe shall take such actions as are necessary to allow the incremental increase due to this reversion to be stored and used as **Water Quality Credit Water**.

Section 7.E.4 Storage Contract. Any contract for the storage of **Water Quality Credit Water** shall be consistent with the terms of the **Truckee River Water Quality Settlement Agreement** and Section 7.A.2(b).

SECTION 7.F - FERNLEY MUNICIPAL CREDIT WATER

Section 7.F.1 Fernley Municipal Credit Water. To the extent allowed by changes to water rights under applicable state law, Fernley may **Establish Fernley Municipal Credit Water** by utilizing the **Truckee River Reservoirs** to **Accumulate** water from any Donner Lake **Privately Owned Stored Water** made available to Fernley and from **Changed Diversion Rights** pursuant to a flexible 12-month diversion schedule in accordance with Section 7.A.3, provided that Fernley shall use its best efforts to **Establish** its **Fernley Municipal Credit Water** from November through June.

Section 7.F.2 Uses of Fernley Municipal Credit Water. Fernley Municipal Credit Water may be used only for one or more of the following: **Municipal and Industrial Use**, temporary use for re-vegetation of former agricultural lands, dilution flows or other measures to satisfy the water quality standards for effluent-based wetlands, and for purposes of a project for recharge, storage and recovery of water permitted pursuant to Nevada Revised Statutes Section 534.260, et seq. **Fernley Municipal Credit Water** may also be used, at the sole discretion of Fernley, for **Pyramid Lake Fish Flows**. Nothing in this Section 7.F.2 shall prevent the use of **Fernley Municipal Credit Water** for **Exchanges** and operations required to be performed under this **Agreement**.

Section 7.F.3 Accumulation of Water in Storage and Conversion to Fish Credit Water. All Truckee River surface water rights which are the basis of Fernley's M&I service commitments shall be used to **Accumulate Fernley Municipal Credit Water** to the extent they are not directly diverted and utilized for the purposes described in Section 7.F.2. No later than April 15 of any year, whenever a **Drought Situation** does not exist, the amount of **Fernley Municipal Credit Water** in storage on April 1 in excess of 10,000 acre-feet shall be converted to **Fish Credit Water**. Fernley shall have the right to determine and identify the location of the excess **Fernley Municipal Credit Water** stored in the **Truckee River Reservoirs** which shall be converted to **Fish Credit Water**; provided, however, that whenever a **Drought Situation** exists, Fernley shall have the right to retain all of its **Fernley Municipal Credit Water,** including any amounts in excess of 10,000 acre-feet, and including amounts which may be **Established** after April 1, until a **Drought Situation** no longer exists. Nothing in this Section 7.F.3 shall limit Fernley's ability to **Accumulate**, store, or otherwise manage its **Credit Water** beyond the requirement to convert a portion of its April 1 water in storage to **Fish Credit Water**.

Section 7.F.4 Contracts for Storage. [NOTE: *Storage contracts will be negotiated with all parties wishing to store water in federal reservoirs. The basic provisions of such contracts (storage location, storage volume, storage priority, release priority) are identified in this draft of TROA and will be assessed in the EIS/EIR .]*

SECTION 7.G - OTHER CREDIT WATER

To the extent allowed by changes to water rights under applicable state law and this **Agreement**, United States may **Establish Other Credit Water** in **Truckee River Reservoirs** using water it acquires for purposes other than the **Truckee River Water Quality Settlement**

Agreement, from **Changed Diversion Rights**, **Privately Owned Stored Water** or **Imported Water** or allow other **Persons** to **Establish Other Credit Water** with water from **Changed Diversion Rights**, **Privately Owned Stored Water** or **Imported Water.**

Section 7.G.1 Non-Interference With Other Categories of Credit Water. Operations involving **Other Credit Water** shall:

(a) have the same priority as **Additional California Environmental Credit Water** operations, except the **Establishment** of **Additional California Environmental Credit Water** which is senior;

(b) be junior to all other operations; and

(c) not interfere with **Exchanges** required under Article Nine.

Section 7.G.2 Operations Priorities within Other Credit Water. Operations priorities among categories of **Other Credit Water** shall be set forth in the storage agreements required under Section 7.A.2(b).

Section 7.G.3 Limitations on the Accumulation and Management of Other Credit Water. Other Credit Water shall be **Accumulated** and managed in a manner consistent with the provisions of Sections 209(b) and 209(j)(1) of the **Settlement Act** and this **Agreement,** and shall not adversely affect the timing or decrease the volume of Truckee River inflows to Pyramid Lake without the written consent of Pyramid Tribe, and shall be subject to the negotiation of compensation pursuant to Section 7.A.6(e).

SECTION 7.H - NEWLANDS PROJECT CREDIT WATER

To the extent **Truckee Canal Diversion Criteria** promulgated by the **Secretary** for the diversion of water from the Truckee River to the **Newlands Project**, in compliance with the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and other applicable laws, allow for the storage of water in **Truckee River Reservoirs** in lieu of diversion into the Truckee Canal, United States may **Establish** and manage **Newlands Project Credit Water** in **Truckee River Reservoirs** consistent with this Section 7.H. United States agrees that it will consult with Nevada and the irrigation district organized pursuant to Nevada Revised Statutes Chapter 539 and having responsibility under Nevada law for the **Newlands Project**, currently the Truckee-Carson Irrigation District, with regard to the **Establishment** of **Newlands Project Credit Water**.

Section 7.H.1 Establishment of Newlands Project Credit Water. Notwithstanding any other provisions of this Article Seven, **Newlands Project Credit Water** may be **Established** by:

(a) **Exchanging** an amount of:

(1) **Floriston Rate Water** or

(2) Truckee River flow in excess of **Floriston Rates** or **Reduced Floriston Rates**,

when either would have otherwise been diverted to the **Newlands Project** in accordance with **Truckee Canal Diversion Criteria**, with an equal amount of **Fish Water** or **Fish Credit Water** in **Truckee River Reservoirs** as long as such **Floriston Rate Water** or Truckee River flow once **Exchanged** is then allowed to flow to Pyramid Lake; and

(b) Retaining in storage an amount of:

(1) **Floriston Rate Water** or

(2) Truckee River flow in excess of **Floriston Rates** or **Reduced Floriston Rates**,

when either would have otherwise been diverted to the **Newlands Project** in accordance with **Truckee Canal Diversion Criteria**. When **Newlands Project Credit Water** is **Established** by retaining **Floriston Rate Water** in storage in accordance with Section 7.H.1(b)(1) and subject to the compensation provision of Section 7.A.6(a), the rate of flow in the Truckee River for **Floriston Rates** or **Reduced Floriston Rates** shall be reduced by the amount of **Newlands Project Credit Water Established**.

Section 7.H.2 Establishment Limited to Water Availability. **Newlands Project Credit Water** may be **Established** under Section 7.H.1 only when the water rights scheduled to **Establish** such **Credit Water** are in priority to receive water and only to the extent that such water rights would not have been satisfied by return flow from water rights having a point of diversion upstream of the Truckee Canal.

Section 7.H.3 Non-Interference with Other Categories of Credit Water. Operations involving **Newlands Project Credit Water** shall not interfere with **Exchanges** required under Article Nine and shall be junior to all other operations except they shall be senior to:

(a) **Additional California Environmental Credit Water operations** other than **Establishment**; and

(b) **Other Credit Water** operations pursuant to Article Seven and Article Eight.

Section 7.H.4 Exchange or Re-Storage of Newlands Project Credit Water. Newlands Project Credit Water may be **Exchanged** to or re-stored in other **Truckee River Reservoirs** by United States after consultation with Nevada, and provided such operations do not diminish the amount of **Newlands Project Credit Water** available for its intended purpose.

Section 7.H.5 Release of Newlands Project Credit Water for Newlands Project. The amount of **Newlands Project Credit Water** required for diversion to the **Newlands Project** pursuant to **Truckee Canal Diversion Criteria**, and taking into consideration delivery system losses, shall be **Released** for diversion to the Truckee Canal in sufficient time to be used for its authorized purposes and, unless otherwise agreed to by United States and Nevada (which may consult with the irrigation district referenced in the opening paragraph of this Section 7.H), shall be:

(a) **Released** in accordance with the **Truckee Canal Diversion Criteria** to the maximum extent possible prior to August 1; and

(b) Within this time period, coordinated with other **Releases** and diversions to the extent possible to achieve water quality objectives downstream from the **Sparks Gage** and to limit water losses in the Truckee Canal.

Section 7.H.6 Reclassification of Newlands Project Credit Water. Newlands Project Credit Water not required for diversion to the **Newlands Project** pursuant to **Truckee Canal Diversion Criteria**, shall be reclassified as follows:

(a) If **Established** in accordance with Section 7.H.1(b)(2) by retention of water which would otherwise have augmented Truckee River flow above **Floriston Rates** or above **Reduced Floriston Rates** and would have become **Project Water**, it shall first be reclassified as **Additional Boca Storage Water** to the extent provided by Section 5.B.9(b) or Independence Lake **Privately Owned Stored Water** to the extent provided by Section 5.B.7(a), and any such water remaining shall be reclassified as **Fish Water** or **Fish Credit Water** to the extent provided by Sections 5.B.6(a)(1) and 5.B.8.

(b) If **Established** in accordance with Section 7.H.1(a)(2) by **Exchange** when Truckee River flow is above **Floriston Rates** or above **Reduced Floriston Rates** and such **Floriston Rate Water** once **Exchanged** flows to Pyramid Lake, it shall be reclassified as **Additional Boca Storage Water** to the extent provided by Section 5.B.9(b) or Independence Lake **Privately Owned Stored Water** to the extent provided by Section 5.B.7(a) and any such water remaining shall revert to its classification prior to the **Exchange**.

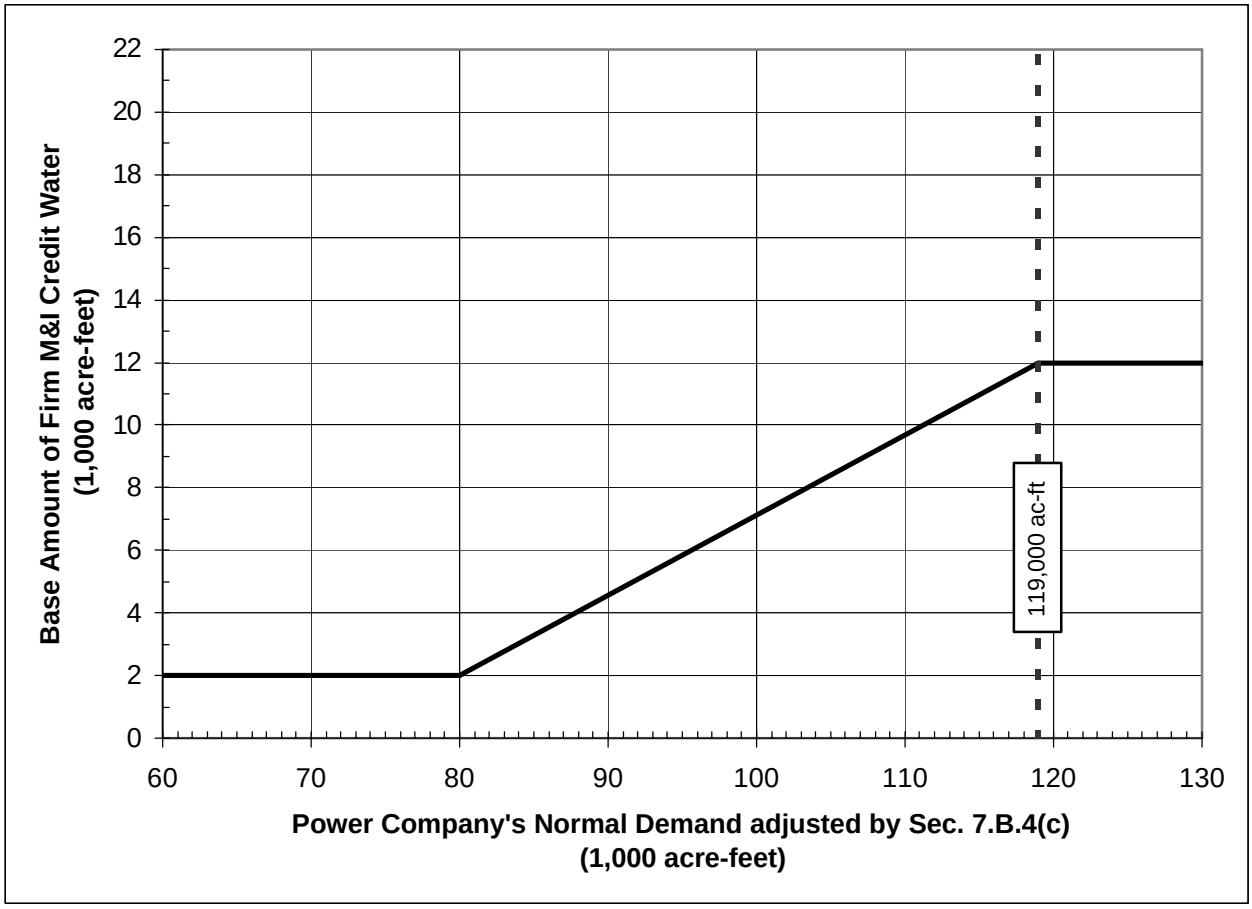
(c) If **Established** in accordance with Section 7.H.1(b)(1) by retention of **Floriston Rate Water** in storage, it shall be reclassified as **Fish Credit Water.**

(d) If **Established** in accordance with Section 7.H.1(a)(1) by **Exchange** of **Floriston Rate Water** in storage, it shall revert to its classification prior to the **Exchange**.

If **Newlands Project Credit Water** is **Established** in accordance with more than one of the subsections of Section 7.H.1, it shall be reclassified sequentially beginning with subsection (a) of this Section 7.H.6, provided that no more water shall be reclassified under a particular

subsection than was originally used to **Establish Newlands Project Credit Water** under that subsection.

APPENDIX 7.A
Base Amount of Firm M&I Credit Water

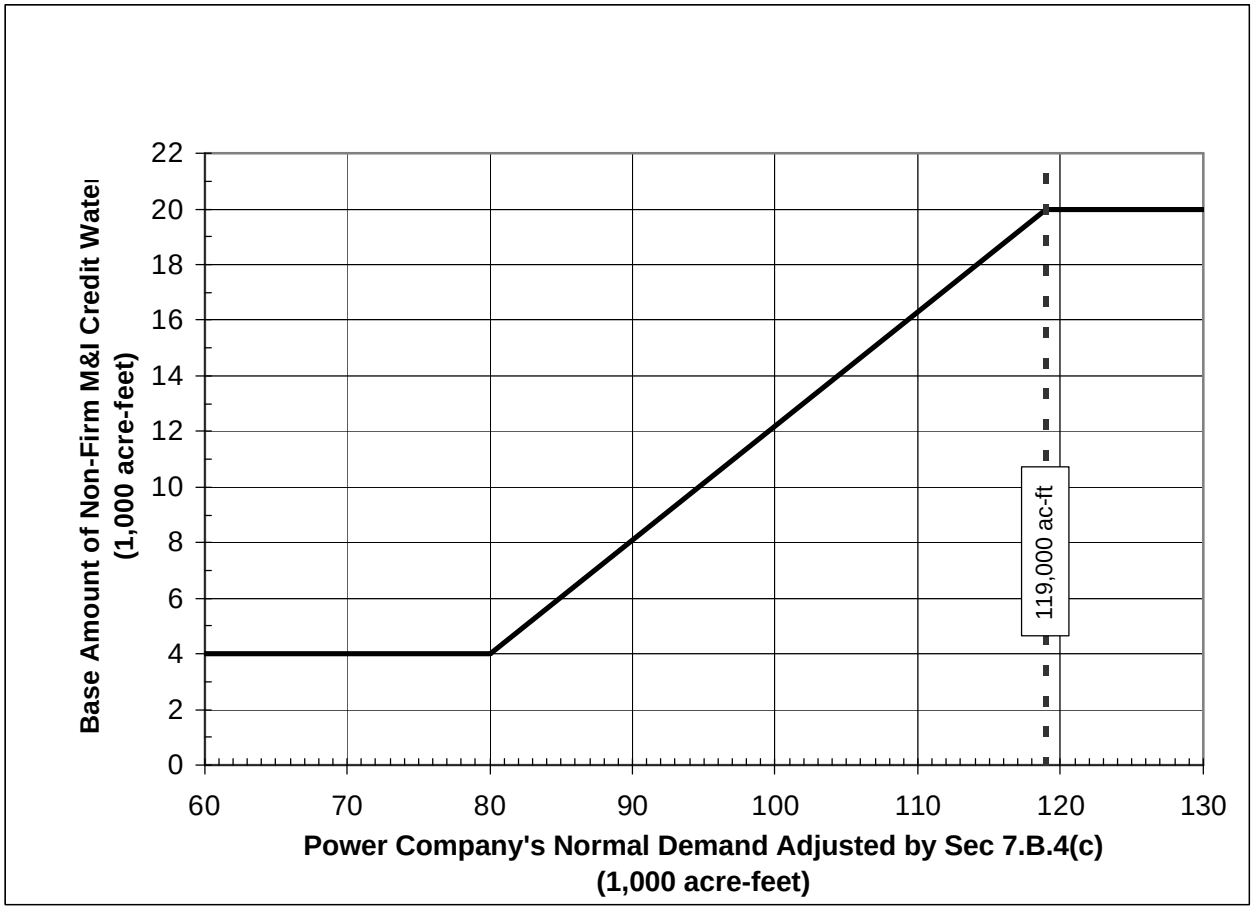


Base Amount of **Firm M&I Credit Water** may be computed over the range of adjusted **Power Company Normal Demand** between 80,000 and 119,000 as follows:

Base Amount of **Firm M&I Credit Water** = 2,000 +.26 (adjusted **Power Company Normal Demand** – 80,000)

For adjusted **Power Company Normal Demand** less than or equal to 80,000 acre-feet, the **Base Amount** of **Firm M&I Credit Water** shall be 2,000 acre-feet; for values greater than or equal to 119,000 acre-feet, it shall be 12,000 acre-feet.

APPENDIX 7.B
Base Amount of Non-Firm M&I Credit Water

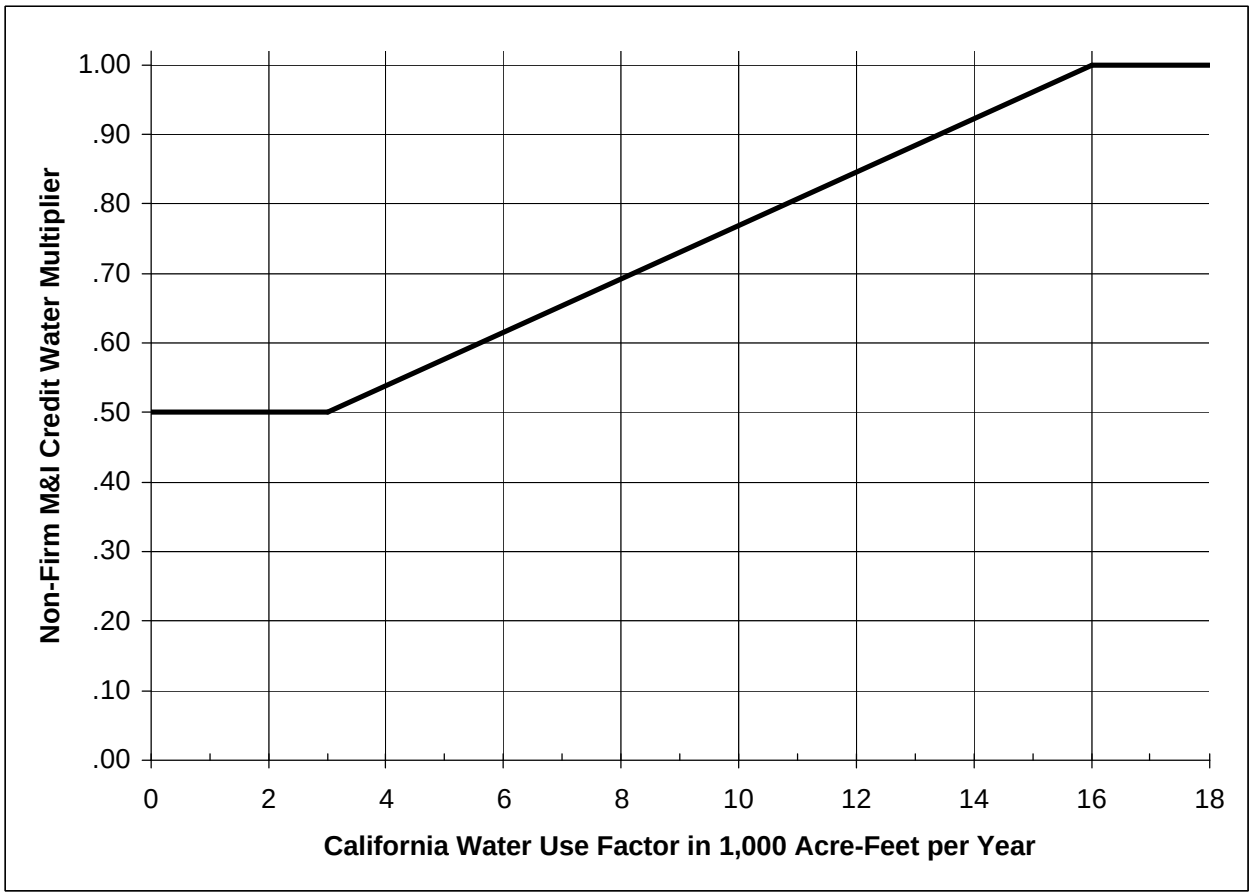


Base Amount of **Non-Firm M&I Credit Water**, before adjustment by Appendix 7.C, may be computed over the range of adjusted **Power Company Normal Demand** between 80,000 and 119,000 acre-feet as follows:

Base Amount of **Non-Firm M&I Credit Water** = 4,000 + .41 (adjusted **Power Company Normal Demand** – 80,000)

For adjusted **Power Company Normal Demand** less than or equal to 80,000 acre-feet, the **Base Amount** of **Non-Firm M&I Credit Water**, before adjustment by Appendix 7.C, shall be 4,000 acre-feet; for values greater than or equal to 119,000 acre-feet, it shall be 20,000 acre-feet.

APPENDIX 7.C
California Water Use Factor



The **Non-Firm M&I Credit Water** multiplier may be computed over the range of **California Water Use Factor** between 3,000 acre-feet and 16,000 acre-feet as follows:

Non-Firm M&I Credit Water = 0.50 + .0000385 (**California Water Use Factor** – 3,000)

For **California Water Use Factor** less than or equal to 3,000 acre-feet, the multiplier shall be 0.50; for values greater than or equal to 16,000 acre-feet, it shall be 1.00.

ARTICLE EIGHT
PRIORITIES AND RULES FOR OPERATIONS FOLLOWING IMPOUNDMENT OR ACCUMULATION OF WATER IN RESERVOIRS

SECTION 8.A – PURPOSE

This **Agreement** provides for operations involving several reservoirs and numerous categories of water, including **Credit Water Operations**, **Project Water Operations**, **Spill** and **Displacement**. This Article Eight establishes priorities when operations cannot be concurrently implemented. It also sets limitations on certain operations. More than one operation may be implemented simultaneously, including **Impoundment** or **Establishment** of one category of water during the **Release** or **Spill** of another category of water from a reservoir, provided that each operation individually meets the applicable requirements of this Article Eight. The provisions of this Article Eight shall be implemented in accordance with the scheduling procedures in Article Eleven.

SECTION 8.B – PRIORITY BETWEEN CREDIT WATER OPERATIONS AND MINIMUM AND ENHANCED MINIMUM RELEASE REQUIREMENTS

Credit Water Operations shall not interfere with a concurrent **Discharge** required to satisfy the applicable **Minimum Release** and **Enhanced Minimum Release** requirements as provided in Article Nine.

SECTION 8.C – PRIORITY BETWEEN CREDIT WATER OPERATIONS AND PROJECT WATER OPERATIONS

Except as otherwise provided in this **Agreement**, **Credit Water Operations** shall not adversely affect **Project Water Operations** or use of **Project Water**. An **Impoundment** of **Project Water** in its own reservoir may cause **Credit Water** to **Spill** pursuant to the priorities set forth in Section 5.C. The **Administrator** shall determine the amount of **Floriston Rate Water** that could have been **Released** from Lake Tahoe in the absence of **Credit Water** storage, and the amount of excess **Floriston Rate Water** release capacity from Lake Tahoe because of **Credit Water** storage. The **Federal Water Master** may use this excess release capacity to **Release Floriston Rate Water** if the excess capacity is not used for the **Release** of **Credit Water,** and the **Federal Water Master** determines there is no injury to **Orr Ditch Decree** water rights holders. Such **Release** of **Floriston Rate Water** may not reduce the amount of **Credit Water** stored in Lake Tahoe nor the amount of water that may be classified and allocated as **Credit Water** in accordance with Section 8.L.

SECTION 8.D – PRIORITY BETWEEN VOLUNTARY AND REQUIRED OPERATIONS

Credit Water Operations that are required to be performed under this **Agreement** by one or more **Scheduling Parties**, except those provided in Section 7.A.3(a)(3), shall only be

implemented if voluntary operations as scheduled would not achieve the objectives of such operations required to be performed under this Agreement.

SECTION 8.E – PRIORITIES AMONG CREDIT WATER OPERATIONS

Section 8.E.1 Purpose. This Section 8.E sets forth rules regarding the priority of each **Credit Water Operation** when all scheduled **Credit Water Operations** cannot be concurrently implemented. This Section 8.E also sets forth rules regarding the relation between **Credit Water Operations** and certain **Fish Water Operations**, and for **Displacement** in accordance with Section 8.E.4.

Section 8.E.2 Priority for Credit Water Operations and Certain Project Water Operations. When it is necessary for any reason to implement **Credit Water Operations** and certain **Project Water Operations** based upon priority, including when all submitted schedules for **Credit Water Operations** cannot be concurrently implemented consistent with this **Agreement,** and this **Agreement** does not otherwise prescribe a specific sequence for implementation, the priority for implementation shall be in accordance with this Section 8.E., except that **Trades** pursuant to Section 8.P.3, and conversions or designations resulting in reclassification of water in storage pursuant to Sections 7.B.4(e), 7.B.4(f), 7.C.6, 7.D.6, 7.F.3 and 7.H.6, need not follow the provisions of this Section 8.E.. The order of priority shall be:

(a) First, to **Establishment** in Lake Tahoe of **California M&I Credit Water** or **California Environmental Credit Water**, in accordance with Section 6.C.2(c). Between these categories, priorities shall be in accordance with Section 8.G;

(b) Second, to operations involving **Power Company M&I Credit Water, Fish Credit Water**, **Joint Program Fish Credit Water** or certain operations involving **Fish Water**, including **Exchanges** or re-storage of **Fish Water** which becomes **Fish Credit Water**. Among these categories, priorities shall be in accordance with Sections 8.F and 8.V;

(c) Third, to operations, excluding **Establishment** in Lake Tahoe in accordance with Section 6.C.2(c), involving **California M&I Credit Water** or **California Environmental Credit Water**. Between these categories, priorities shall be in accordance with Section 8.G;

(d) Fourth, to operations involving **Water Quality Credit Water** or **Fernley Municipal Credit Water**. Between these categories, priorities shall be in accordance with Section 8.H;

(e) Fifth, to operations involving **Project Water in Another Reservoir**, including **Exchanges**, storage or re-storage of **Project Water** which becomes **Project Water in Another Reservoir**. Among such categories, priority shall be in accordance with Section 8.I;

(f) Sixth, to **Establishment** of **Additional California Environmental Credit Water**;

(g) Seventh, to operations involving **Newlands Project Credit Water**; and

(h) Eighth and last, to operations involving **Other Credit Water** and **Additional California Environmental Credit Water** excluding **Establishment** of **Additional California Environmental Credit Water**. Between **Additional California Environmental Credit Water** and **Other Credit Water**, priority shall be in accordance with Section 8.J.

Section 8.E.3 Priority Between Credit Water Establishment and Fish Credit Water Accumulation. With respect to **Credit Water Establishment**:

(a) **Establishment** of any **Credit Water**, other than **Fish Credit Water**, by the **Exercise** of a **Changed Diversion Right** shall have priority over simultaneous **Establishment** of **Fish Credit Water** pursuant to Sections 7.C.1, 7.C.2, 7.C.3 and 7.C.4(a).

(b) **Establishment** of **California M&I Credit Water, California Environmental Credit Water** in Lake Tahoe, **Power Company M&I Credit Water, Water Quality Credit Water** and **Fernley Municipal Credit Water** by the exercise of a **Changed Diversion Right** shall have priority over simultaneous **Accumulation** of **Fish Credit Water** and **Joint Program Fish Credit Water**.

Section 8.E.4 Accumulation Causing Displacement. Except as prohibited by Section 8.O.5, **Accumulation** of a category of **Credit Water** may result in **Displacement** of a lower priority category of **Credit Water** in a reservoir. The sequence of categories being **Displaced** shall be in the same order specified for **Spill** in Section 5.C, except that: (a) **Displacement** involving **Power Company M&I Credit Water** with **Fish Credit Water** and **Joint Program Fish Credit Water** shall only occur in accordance with Sections 8.F and 8.O, and (b) **Displacement** of **California Environmental Credit Water Established** using **Changed Diversion Rights** having an original place of use in Nevada by **Fernley Municipal Credit Water** shall only occur in accordance with Section 7.D.5.

Water which is **Displaced** may be classified as a **Release** or it may **Spill** and such water may be used by its owner in accordance with this **Agreement**, or it may be **Exchanged** to or restored in another reservoir, provided that any such **Exchange** is offered to other categories of water in accordance with this Section 8.E.

SECTION 8.F – RELATION OF POWER COMPANY M&I CREDIT WATER TO FISH WATER, FISH CREDIT WATER AND JOINT PROGRAM FISH CREDIT WATER

This Section 8.F sets forth the rules for operation priorities of **Power Company M&I Credit Water** in relation to operations of **Fish Water, Fish Credit Water** and **Joint Program**

Fish Credit Water. Unless otherwise agreed to among United States, Pyramid Tribe and California, a **Credit Water Operation** provided for in this Section 8.F which involves both **Fish Credit Water** and **Joint Program Fish Credit Water** shall be allocated between such water in storage in proportion to: (i) the amount of those categories of water in storage in all reservoirs for **Credit Water Operations** required pursuant to Section 8.F.3(d); or (ii) the amount of those categories of water in storage in the reservoir where the operation is limited for all other **Credit Water Operations** under this Section 8.F. The portion of any operation provided for in this Section 8.F which is allocated to but not used by one of these categories of **Credit Water** may be used by the other. Operations in accordance with this Section 8.F shall not be deemed to be adverse to or in conflict with **Project Water Operations**.

Section 8.F.1 Displacement Rules Among Non-Firm M&I Credit Water, Fish Credit Water and Joint Program Fish Credit Water. Except as otherwise expressly provided in this Section 8.F and Section 8.O, **Non-Firm M&I Credit Water** may not be **Accumulated** if its **Accumulation** would concurrently result in **Displacement** of **Fish Credit Water** or **Joint Program Fish Credit Water.** In addition, **Fish Credit Water** and **Joint Program Fish Credit Water** may not be **Accumulated** if their **Accumulation** would concurrently result in **Displacement** of **Non-Firm M&I Credit Water**.

Section 8.F.2 Allocation of Release Capacity, Storage Space and Exchanges. Except as otherwise expressly provided in this Section 8.F and 8.O, **Fish Credit Water**, **Joint Program Fish Credit Water** and **Power Company M&I Credit Water** shall share release capacity, storage space and **Exchange** availability as follows. For purposes of a **Release** where release capacity is limited, and for purposes of an **Accumulation** where available space is limited, the release capacity of, and space available in, a **Truckee River Reservoir** available to **Fish Credit Water**, **Joint Program Fish Credit Water** and **Power Company M&I Credit Water** shall be allocated first to **Power Company Emergency Drought Supply** and **Firm M&I Credit Water**, then, with respect to any remaining release capacity or available space, one-half to **Fish Credit Water** and **Joint Program Fish Credit Water** and one-half to **Non-Firm M&I Credit Water**. The portion of **Exchange** available to **Fish Credit Water**, **Joint Program Fish Credit Water** and **Power Company M&I Credit Water** shall be allocated one-half to **Fish Credit Water** and **Joint Program Fish Credit Water** and one-half to **Power Company M&I Credit Water**.

Section 8.F.3 Special Rules and Implementation Priorities with Respect to Stampede Reservoir. This Section 8.F.3 sets forth special rules and implementation priorities for **Power Company M&I Credit Water**, **Fish Credit Water**, **Joint Program Fish Credit Water** and **Fish Water** with respect to Stampede Reservoir. The 6,000 acre-foot amounts specified in Sections 8.F.3(b)(1) and 8.F.3(c)(1) are distinct and neither is inclusive of the other.

Section 8.F.3(a) Non-Drought Situation. Whenever a **Drought Situation** does not exist, then from July 1 through December 31, Power Company shall have the first right to **Accumulate Firm M&I Credit Water** and **Power Company Emergency Drought Supply** in Stampede Reservoir and such **Accumulation** may result in **Displacement** of **Fish Credit Water, Joint Program Fish Credit Water** and **Fish Water** in Stampede Reservoir to the extent

necessary to **Accumulate Firm M&I Credit Water** and **Power Company Emergency Drought Supply**.

Section 8.F.3(b) Drought Situation. Whenever a **Drought Situation** exists, Power Company may **Accumulate Power Company M&I Credit Water** in a manner which results in **Displacement** of **Fish Water**, **Fish Credit Water** and **Joint Program Fish Credit Water** in Stampede Reservoir as follows: (1) from April 15 through June 30, to the extent necessary to allow the **Accumulation** of 6,000 acre-feet of **Power Company M&I Credit Water** using **Changed Diversion Rights,** and (2) from July 1 through April 1 to the extent necessary to allow the **Accumulation** of **Power Company Emergency Drought Supply**, **Base Amounts** of **Firm M&I Credit Water** and **Non-Firm M&I Credit Water** determined in accordance with Section 7.B.4(b), except that for the purpose of this determination only, the **Base Amount** of **Non-Firm M&I Credit Water** shall not be adjusted based upon the **California Water Use Factor** described in Section 7.B.4(d).

Section 8.F.3(c) Rules For Stampede Reservoir Under Certain Conditions. The provisions of Sections 7.A.3(a)(1) and 7.A.3(a)(2) notwithstanding, when, based upon the April 1 runoff forecast, the sum of 50 percent of the April through July runoff forecast for the Little Truckee River at the gaging station upstream of Boca Reservoir and 11 percent of the total amount of **Lake Tahoe Floriston Rate Water** which is forecasted to be in storage in **Truckee River Reservoirs** on June 30 is less than 95,000 acre-feet, California with respect to **Joint Program Fish Credit Water**, Pyramid Tribe and United States shall:

(1) Implement such operations as may be necessary from April 15 through June 30 to allow Power Company, using **Changed Diversion Rights**, Independence Lake **Privately Owned Stored Water**, **Power Company M&I Credit Water**, or **Privately Owned Stored Water** in Boca Reservoir, to **Accumulate** and retain up to 6,000 acre-feet of **Non-Firm M&I Credit Water** in Stampede Reservoir in addition to **Power Company M&I Credit Water** already stored in Stampede Reservoir, or to be **Exchanged** into Stampede Reservoir under other provisions of this **Agreement**; and

(2) **Exchange** or **Release Fish Credit Water**, **Joint Program Fish Credit Water** and **Fish Water** from Stampede Reservoir in sufficient amounts to reduce the sum of the following categories of water in Stampede Reservoir to 200,000 acre-feet by August 31, and to 185,000 acre-feet by October 31: **Boca Project Water**, **Fish Water**, **Fish Credit Water**, **Joint Program Fish Credit Water**, **Firm M&I Credit Water**, **Power Company Emergency Drought Supply**, **Non-Firm M&I Credit Water** in Stampede Reservoir due to the implementation of Section 8.F.5, and **Dead and Inactive Storage**.

The provisions of Sections 5.C.1(h) and 5.C.1(m) notwithstanding, **Non-Firm M&I Credit Water** stored in Stampede Reservoir within space made available under this Section

8.F.3(c) shall **Spill** after **Fish Credit Water, Joint Program Fish Credit Water** and **Fish Water** until a subsequent April 1 determination is made that the sum of the forecasts under this Section 8.F.3(c) is greater than or equal to 95,000 acre-feet, at which time the categories shall follow the **Spill** priorities set forth in Section 5.C.. During this period when such sum is below 95,000 acre-feet and **Drought Situation** does not exist, **Non-Firm M&I Credit Water Accumulated** under this Section 8.F.3(c) in Stampede Reservoir in excess of 19,000 acre-feet shall be subject to **Spill** provisions in Sections 5.C.1(h) and 5.C.1(m).

Section 8.F.3(d) Additional Operations to Facilitate Accumulation. California, with respect to **Joint Program Fish Credit Water**, Pyramid Tribe and United States shall enter into **Exchanges** and shall implement other operations to facilitate **Accumulation** in Stampede Reservoir of **Firm M&I Credit Water** up to the **Base Amount** and of **Power Company Emergency Drought Supply**.

Section 8.F.4 Special Rules and Implementation Priorities with Respect to Truckee River Reservoirs Other Than Stampede Reservoir. This Section 8.F.4 sets forth special rules and implementation priorities for **Power Company M&I Credit Water, Fish Credit Water** and **Joint Program Fish Credit Water** with respect to **Truckee River Reservoirs** other than Stampede Reservoir.

Section 8.F.4(a) Non-Drought Situation. From July 1 through December 31, whenever a **Drought Situation** does not exist, Power Company may **Accumulate** additional **Non-Firm M&I Credit Water** in **Truckee River Reservoirs** other than Stampede Reservoir, to the extent that Power Company's total **Firm M&I Credit Water** is less than the **Base Amount**, in a manner which causes **Displacement** of **Fish Credit Water** and **Joint Program Fish Credit Water** in **Truckee River Reservoirs** other than Stampede Reservoir. The provisions of Section 5.C.1(h) notwithstanding, such additional **Non-Firm M&I Credit Water** shall **Spill** after **Fish Credit Water** and **Joint Program Fish Credit Water** in such reservoirs, to the extent that Power Company has not reached its **Base Amount** and until such **Base Amount** is reached.

Section 8.F.4(b) Drought Situation. Whenever a **Drought Situation** exists, **Accumulation** of **Power Company M&I Credit Water** or **Privately Owned Stored Water** may cause **Displacement** of **Fish Credit Water** and **Joint Program Fish Credit Water** in **Truckee River Reservoirs** other than Stampede Reservoir to the extent necessary to allow Power Company to increase the amount of **Power Company M&I Credit Water** to the maximum extent possible, without regard to the **Base Amounts**.

Section 8.F.5 Power Company M&I Credit Water Exchanges When Lake Tahoe is Low. For purposes of this Section 8.F.5 and Section 8.F.6, the water surface elevation of Lake Tahoe shall be a calculation based on the sum of all water categories in Lake Tahoe, and Stampede Reservoir storage shall be a calculation based only on the sum of **Fish Water**, **Fish Credit Water**, **Joint Program Fish Credit Water** and **Power Company M&I Credit Water** in Stampede Reservoir.

Section 8.F.5(a) Spill Protection in Stampede Reservoir. The provisions of Section 5.C notwithstanding, whenever this Section 8.F.5 requires that **Non-Firm M&I Credit Water Exchanged** from Lake Tahoe to Stampede Reservoir be protected against **Spill**, the following criteria shall apply:

(1) The portion of **Non-Firm M&I Credit Water Exchanged** to Stampede Reservoir pursuant to this Section 8.F.5 which is stored when Stampede Reservoir storage is greater than 160,000 acre-feet shall **Spill** after all other water in Stampede Reservoir. Such protection against **Spill** shall apply until Lake Tahoe has been above elevation 6,225.5 feet Lake Tahoe Datum for thirty (30) consecutive days and a **Drought Situation** does not exist, but in no event sooner than July 1 of the year following the **Exchange**.

(2) The portion of **Non-Firm M&I Credit Water Exchanged** to Stampede Reservoir pursuant to this Section 8.F.5 which is stored when Stampede Reservoir storage is less than or equal to 160,000 acre-feet shall **Spill** after all other water in Stampede Reservoir. Such protection against **Spill** shall apply until July 1 of the year following the **Exchange**.

Section 8.F.5(b) Exchanges When Lake Tahoe Elevation Exceeds 6,225.0 Feet and is Forecast to Fall Below 6224.0 Feet or When Lake Tahoe is Below 6225.0 Feet When a Drought Situation Does Not Exist. Whenever from April 1 through May 31:

(1) the water surface elevation of Lake Tahoe is above 6,225.0 feet Lake Tahoe Datum and it is forecasted to be less than 6,224.0 feet Lake Tahoe Datum on or before the end of the year; or

(2) a **Drought Situation** does not exist and the water surface elevation of Lake Tahoe is less than or equal to 6,225.0 feet Lake Tahoe Datum but greater than 6,223.0 feet Lake Tahoe Datum,

United States and Pyramid Tribe may offer **Exchanges** to allow Power Company to move **Non-Firm M&I Credit Water** and water reserved under Section 8.F.6 from Lake Tahoe to Stampede Reservoir. Such **Exchanges** shall include provisions to protect such water against **Spill** when it is in Stampede Reservoir. Power Company may accept or reject such offers.

Section 8.F.5(c) Exchange When Lake Tahoe is Between 6,225.0 Feet and 6,223.0 Feet During a Drought Situation. Whenever a **Drought Situation** exists and the water surface elevation of Lake Tahoe is less than or equal to 6,225.0 feet Lake Tahoe Datum but greater than 6,223.0 feet Lake Tahoe Datum, at the request of Power Company, Pyramid Tribe and United States shall **Exchange Prosser Fish Water** and **Fish Credit Water** to allow Power Company to move from Lake Tahoe to Stampede Reservoir **Non-Firm M&I Credit Water** and water reserved under Section 8.F.6 up to but not exceeding the amount of such waters

that could be **Discharged** from Lake Tahoe by gravity. Any such water **Exchanged** to Stampede Reservoir shall be protected against **Spill**, as provided in Section 8.F.5(a).

Section 8.F.5(c)(1) California Exchange Precedes Power Company Exchange. California shall have the right to implement the provisions of Section 8.U before Power Company implements an **Exchange** under this Section 8.F.5(c), provided that such subordination of Power Company's opportunity under this Section 8.F.5 shall not be deemed evidence that Power Company failed to implement an **Exchange** as required under Section 8.F.5(d).

Section 8.F.5(c)(2) Water Quality Exchange Precedes Power Company Exchange. If and to the extent agreed to and scheduled by the Joint Program Parties as identified in Section 3 of the **Truckee River Water Quality Settlement Agreement** and in accordance with Section 8.T, an **Exchange** of **Water Quality Credit Water** may be implemented before Power Company implements an **Exchange** under this Section 8.F.5(c), provided that such subordination of Power Company's opportunity under this Section 8.F.5 shall not be deemed evidence that Power Company failed to implement an **Exchange** as required under Section 8.F.5(d).

Section 8.F.5(c)(3) Prosser Reservoir Exchange Qualified. To the extent that Power Company does not schedule an **Exchange** of its **Non-Firm M&I Credit Water** in Lake Tahoe for **Fish Credit Water** in Prosser Creek Reservoir or **Prosser Fish Water** at times when such water cannot be **Exchanged** to Stampede Reservoir because of the provisions of Section 5.B.6(d), absence of such scheduled exchange shall not be deemed evidence that Power Company failed to implement an **Exchange** as required under Section 8.F.5(d).

Section 8.F.5(d) Failure to Exchange Under Section 8.F.5(c). If it is determined that Power Company has not implemented the provisions of Section 8.F.5(c) so that, to the maximum extent possible, **Non-Firm M&I Credit Water** and the **Credit Water** of Pyramid Tribe and United States can be **Released** for use from Lake Tahoe by gravity; and so that **Non-Firm M&I Credit Water** and the **Credit Water** and **Project Water** of Pyramid Tribe and United States will not **Spill** from a **Truckee River Reservoir**, then the quantity of water available to Power Company for **Exchange** under Section 8.F.5(e) shall be reduced as described therein.

Section 8.F.5(e) Water Made Available When Lake Tahoe Elevation is at or Below 6,223.0 Feet. In addition to the amounts **Released** or **Exchanged** as provided in Sections 8.F.5(b) and (c) above and to the extent consistent with Section 8.F.5(e)(8), in any year when a **Drought Situation** exists and Lake Tahoe elevation is at or below 6,223.0 feet Lake Tahoe Datum, and Power Company so requests, Pyramid Tribe and United States shall convert an amount of **Fish Credit Water** from other reservoirs or **Fish Water** to **Non-Firm M&I Credit Water.** An equal amount of **Non-Firm M&I Credit Water** forecast by the **Administrator** pursuant to Section 8.F.5(e)(1) shall be converted to **Fish Credit Water** in **Lake Tahoe Reservoir** immediately after Lake Tahoe elevation next rises above 6,223.0 feet Lake Tahoe Datum. Pyramid Tribe and United States shall not be required to reserve **Fish Water** or

Fish Credit Water for implementation of this Section 8.F.5(e). The conversion of these waters shall be governed by the following terms and conditions:

(1) **Amount of Credit Water to be Made Available by Pyramid Tribe and United States.** At the request of Power Company in accordance with this Section 8.F.5(e), when Lake Tahoe elevation is at or below 6,223.0 feet Lake Tahoe Datum, the **Administrator** shall provide, using accounting procedures pursuant to Section 8.L., a forecast of the amount of **Non-Firm M&I Credit Water** reasonably expected to be allocated when Lake Tahoe surface water elevation next rises above 6,223.0 feet Lake Tahoe Datum. This forecast shall include net evaporation loss for **Non-Firm M&I Credit Water** as calculated in accordance with Section 5.D.2, up to and including the day **Fish Credit Water** in another reservoir or **Fish Water** is converted to **M&I Credit Water** in accordance with this Section 8.F.5(e), but shall not include evaporation loss after such date. The amount of **Fish Credit Water** or **Fish Water** converted to **M&I Credit Water** pursuant to Section 8.F.5(e) shall be the lesser of this forecast amount or the amounts specified in Section 8.F.5(e)(2) or 8.F.5(e)(5).

(2) A maximum of 5,000 acre-feet per year of **Fish Credit Water** in other reservoirs or **Prosser Fish Water,** shall be converted to **Non-Firm M&I Credit Water**, up to a maximum total of 15,000 acre-feet during consecutive **Drought Situation** years, but shall not exceed the amount of **Non-Firm M&I Credit Water** forecast by the **Administrator** to be available for conversion in **Lake Tahoe Reservoir** in accordance with Section 8.F.5(e)(1).

(3) The 15,000 acre-feet maximum identified in Section 8.F.5(e)(2) shall be reduced by the amount determined in accordance with Section 8.F.5(d).

(4) If there is insufficient **Fish Credit Water** in other reservoirs or **Prosser Fish Water** to convert the full amount allowable in the first three consecutive **Drought Situation** years if requested by Power Company, Pyramid Tribe and United States shall, during the continuation of the same **Drought Situation**, continue to convert **Fish Credit Water** in other reservoirs or **Prosser Fish Water,** as they become available, until the amount specified in Section 8.F.5(e)(3) has been made available, or Power Company withdraws its request, whichever comes first.

(5) If Power Company, in its discretion, requests less than 5,000 acre-feet of **Fish Credit Water** or **Prosser Fish Water** be converted in any of the first three consecutive **Drought Situation** years, it may thereafter, during the continuation of the same **Drought Situation**, request the difference between the amount actually converted and 15,000 acre-feet, or lesser

amount as provided under Section 8.F.5(e)(3), and Pyramid Tribe and United States shall convert **Fish Credit Water** in other reservoirs, and **Fish Water**, provided, however, after the first three consecutive years of a **Drought Situation**, Pyramid Tribe and United States shall not be required to convert more than 5,000 acre-feet of water in any one year.

(6) Pyramid Tribe and United States shall choose the categories and locations of the water to be converted under this Section 8.F.5(e), provided if Pyramid Tribe and United States initially convert **Prosser Fish Water** or **Fish Credit Water** in Prosser Creek Reservoir to **Non-Firm M&I Credit Water** in Prosser Creek Reservoir, then at the request of Power Company, and by the next November 15, Pyramid Tribe and United States shall **Trade Fish Water** and **Fish Credit Water** in Stampede Reservoir for the balance of any such **Non-Firm M&I Credit Water** remaining in Prosser Creek Reservoir.

(7) If agreed by each of Pyramid Tribe, United States, and Power Company, the quantities of waters to be converted and timing of such conversion pursuant to this Section 8.F.5(e) may be adjusted.

(8) The process of converting **Fish Credit Water** or **Fish Water** to **Non-Firm M&I Credit Water** in this Section 8.F.5(e) may only be reinitiated when the hydrologic conditions under this Section 8.F.5(e) are satisfied and after an equal amount of **Fish Credit Water** has been fully repaid in a year that is not a **Drought Situation** by conversion from **Non-Firm M&I Credit Water** pursuant to Section 8.F.5(e) and **Lake Tahoe Reservoir** has had sufficient release capacity to **Release** such **Fish Credit Water**.

Section 8.F.5(f) Exchanges May Be Repeated. To the extent that **Non-Firm M&I Credit Water** and water reserved under Section 8.F.6 is **Exchanged** out of Lake Tahoe pursuant to the provisions of this Section 8.F.5, and is subsequently **Exchanged** back to Lake Tahoe pursuant to any provision of this **Agreement** following the end of consecutive **Drought Situation** years, the provisions of Section 8.F.5 shall apply to such water as if such prior **Exchange** had not taken place.

Section 8.F.6 Reservation and Use of Fish Credit Water as Power Company M&I Credit Water. If, on November 15 of any year, (i) the water surface elevation of Lake Tahoe is at or below 6,227.0 feet and (ii) **Non-Firm M&I Credit Water**, **Fish Credit Water** and **Fish Water** have **Spilled** from Stampede Reservoir during the previous 12-month period in an amount not greater than 20,000 acre-feet, United States and Pyramid Tribe shall reserve in **Truckee River Reservoirs, Fish Credit Water** in an amount equal to the lesser of the shortfall in the **Base Amount** of **Non-Firm M&I Credit Water** as of the immediately previous July 15th, or the total amount of **Non-Firm M&I Credit Water** which had either **Spilled** and flowed to Pyramid Lake or was converted pursuant to Section 7.B.4(e) during the previous 24-month period. The **Fish Credit Water** reserved pursuant to this Section 8.F.6 shall:

(a) Be used by Power Company in a **Drought Situation** as if it were Power Company **Non-Firm M&I Credit Water**;

(b) Not be reduced by the subsequent **Accumulation** of **Power Company M&I Credit Water**;

(c) Unless the reservation is terminated, be included within subsequent determinations of the shortfall identified in this Section 8.F.6, and any **Spill** of such reserved **Fish Credit Water** shall be included within the total amount of water **Spilled** to Pyramid Lake under this Section 8.F.6; and

(d) Be managed by Power Company pursuant to the rules for **Non-Firm M&I Credit Water.**

The reservation designated under this Section 8.F.6 shall terminate on April 15 of a year which is not a **Drought Situation** and Power Company has in storage the **Base Amounts** of **Firm M&I Credit Water** and **Non-Firm M&I Credit Water**.

Section 8.F.7 Displacement of Joint Program Fish Credit Water by Power Company M&I Credit Water. To the extent Power Company deems it necessary to **Accumulate** and maintain **Power Company M&I Credit Water** and to re-store **Privately Owned Stored Water Released** for **Minimum Releases** from reservoirs as provided in Article Nine, Power Company may, by **Accumulation** of **Power Company M&I Credit Water** or **Privately Owned Stored Water**, cause **Displacement** of **Joint Program Fish Credit Water**. The quantity of **Joint Program Fish Credit Water** which shall be **Displaced** shall not exceed the quantity of **Fish Water** and **Fish Credit Water** which has been **Released** from or **Passed-Through Truckee River Reservoirs** during the current year, together with the quantity of **Fish Water** and **Fish Credit Water** which, at the time the **Displacement** takes place, is scheduled to be **Released** from or **Passed-Through Truckee River Reservoirs** during the remainder of the year. Any such **Displacement** shall be required by this Section 8.F.7 only after the following conditions have been met:

(a) Power Company shall make reasonable efforts to utilize the storage capacity of **Truckee River Reservoirs** in a manner to avoid the necessity to cause **Displacement** of **Joint Program Fish Credit Water**; and

(b) Power Company shall provide notice to California, Pyramid Tribe, United States and the **Administrator** at least 30 days in advance of any **Displacement** of **Joint Program Fish Credit Water**. Such notice shall (1) identify the specific **Truckee River Reservoir** in which Power Company proposes to **Accumulate** water which may result in **Displacement** of **Joint Program Fish Credit Water**, (2) provide a schedule, (3) explain why such **Displacement** is necessary, and (4) describe Power Company's efforts to **Exchange** water into other reservoirs that avoid the necessity to cause **Displacement** of **Joint Program Fish Credit Water**.

California may schedule **Exchanges** in accordance with Article Eight or implement other operations as are available to avoid any **Displacement** of **Joint Program Fish Credit Water** authorized by this Section 8.F.7. All **Joint Program Fish Credit Water Displaced** under this Section 8.F.7 that is not **Exchanged** to or re-stored in another reservoir shall flow to Pyramid Lake.

SECTION 8.G – RELATION BETWEEN CALIFORNIA M&I CREDIT WATERS AND CALIFORNIA ENVIRONMENTAL CREDIT WATER

When there is a conflict between scheduled **Credit Water Operations** involving **California M&I Credit Water** and **California Environmental Credit Water, California M&I Credit Water** shall have the higher priority. The portion of any **Credit Water Operation** not used by one of these categories shall be available for use by the other.

SECTION 8.H – RELATION BETWEEN WATER QUALITY CREDIT WATER AND FERNLEY MUNICIPAL CREDIT WATER

When there is a conflict between scheduled **Credit Water Operations** involving **Water Quality Credit Water** and **Fernley Municipal Credit Water**, the portion of the **Credit Water Operation** available shall be allocated 75% and 25% respectively. The portion of any **Credit Water Operation** not used by one of these categories shall be available for use by the other.

SECTION 8.I – RELATION AMONG PROJECT WATERS IN ANOTHER RESERVOIR

When there is a conflict among scheduled **Credit Water Operations** involving categories of **Project Water in Another Reservoir** from more than one source, then **Project Water in Another Reservoir** which is **Floriston Rate Water** shall have the most senior priority, followed by water from other sources in accordance with the priority of each source's storage right. The portion of any **Credit Water Operation** not used by one of these categories shall be available for use by the other.

SECTION 8.J - RELATION BETWEEN ADDITIONAL CALIFORNIA ENVIRONMENTAL CREDIT WATER AND OTHER CREDIT WATER

When there is a conflict between scheduled **Credit Water Operations** involving **Other Credit Water** and **Additional California Environmental Credit Water**, other than **Establishment** of **Additional California Environmental Credit Water**, the portion of the operation available to each shall be proportional to the amount of water in each category which is available for the operation. The portion of any **Credit Water Operation** not used by one of these categories shall be available for use by the other.

SECTION 8.K - LIMITATIONS ON ACCUMULATION OF CREDIT WATER

Section 8.K.1 Credit Water Establishment Using Changed Diversion Rights. Scheduled **Releases** of **Credit Water** and **Fish Water** may be reduced for the purpose of

Establishing Credit Water using **Changed Diversion Rights** only when conducted pursuant to Sections 7.A.3(a)(3) or 8.K.3. In addition, such **Credit Water** may only be **Established** within the limits of Section 8.K.4, and may not be **Established** using **Fish Water Released** pursuant to Section 9.E.2 or using **Fish Credit Water** and **Fish Water Released** to compensate for diversions made in accordance with Section 5.A.8. For purposes of allocating and accounting for **Credit Water Establishment** in Lake Tahoe using **Changed Diversion Rights**, the **Administrator** shall first allocate water from **Floriston Rate Water**, and then from **Fish Credit Water** pursuant to Section 8.K.3.

Section 8.K.2 Accumulation by Retention of Water and In-Lieu Release. **Discharge** from all reservoirs shall be available for the **Accumulation** of **Credit Water**. A **Scheduling Party** may **Accumulate Credit Water** using the scheduled **Release** or **Pass-Through** of another **Scheduling Party's** water without the agreement of that **Scheduling Party** by:

(a) Retaining water in storage if the initial **Release** or **Pass-Through** was scheduled for re-storage in a downstream reservoir, provided the **Scheduling Party** proposing such retention provides water in the same reservoir, in the same quantity, and at the same time as designated for the initially scheduled **Release** or **Pass-Through**; or

(b) **In-Lieu Release** if the initial **Release** or **Pass-Through** was not scheduled for re-storage in a downstream reservoir, provided the **Scheduling Party** proposing such **In-Lieu Release** provides water at the same quantity, flow rate and timing at the **Farad Gage** as designated for the initially scheduled **Release** or **Pass-Through**, except if the water **Released** is **California M&I Credit Water**, then at the furthest upstream point of direct diversion for use in California.

An **Accumulation** by retention of water or by **In-Lieu Release** shall be in accordance with the priorities of this Article Eight and the limitations of Section 8.K.4, and shall not be deemed adverse to or in conflict with **Project Water Operations**.

Section 8.K.3 Establishment of Credit Water Through Reductions In Release of Fish Credit Water from Lake Tahoe. Subject to the limitations set forth in Section 8.K.4, all categories of **Credit Water**, except **Fish Credit Water**, **Newlands Project Credit Water**, **California M&I Credit Water** and **Other Credit Water**, may be **Established** through a reduction in the **Release** of **Fish Credit Water** from Lake Tahoe, which is then replaced by an equal amount of water under **Changed Diversion Rights** or **Privately Owned Stored Water** which is allowed to flow to Pyramid Lake. To the extent practicable, consistent with the exercise of water rights, assurance of water supplies, operational considerations, the requirements of the **Settlement Act** and all other requirements of this **Agreement**, to the extent that Section 8.K.4 limits the **Establishment** through reductions in **Release** of **Fish Credit Water** from Lake Tahoe:

(a) All **Scheduling Parties**, except Power Company, shall attempt, and the **Administrator** shall encourage, **Credit Water Establishment** in a manner which avoids **Establishment** in Lake Tahoe pursuant to this Section 8.K.3; and

(b) All **Scheduling Parties**, including Power Company, shall attempt, and the **Administrator** shall encourage, **Credit Water Establishment** in Lake Tahoe pursuant to this Section 8.K.3 in a manner which extends the **Establishment** over the time available for such party to **Establish Credit Water**.

Section 8.K.4 Portion of Discharge Not Available for Credit Water Accumulation. This Section 8.K.4 limits the portion of **Discharge** from a reservoir that may be used to **Accumulate Credit Water**, except such limitation shall not apply to an **Exchange** by which Power Company's **Privately Owned Stored Water** previously **Released** from or **Passed-Through** Independence Lake for purposes described in Sections 8.N.3(a) and 8.N.3(b) is subsequently **Accumulated** in Independence Lake. For purposes of this Section 8.K and Sections 6.C.1(c) and 8.S only, **Release Thresholds** for specified reservoirs shall be as set forth in the following Table8-1:

TABLE 8-1Release Thresholds

Reservoir	January (cfs)	Feb-Mar (cfs)	April-July (cfs)	Aug-Sep (cfs)	Oct-Dec (cfs)
Lake Tahoe	250	150	300	150	250
Donner Lake	50	20	50	10	50
Prosser Creek Reservoir	50	35	75	30	50
Independence Lake	20	10	20	10	20
Stampede Reservoir	125	100	125	100	125
Boca Reservoir	0	0	0	0	0

Section 8.K.4(a) Accounting for Minimum Releases and Enhanced Minimum Releases. For purposes of calculating the portion of **Discharge** from a reservoir contributing to a **Minimum Release** under Section 8.K.4(b)(1) and the portion of **Discharge** from a reservoir contributing to **Minimum Release** and **Enhanced Minimum Release** under Section 8.K.4(c)(1) that is unavailable for **Credit Water Accumulation**, **Discharge** shall be comprised of the categories of water scheduled for **Release** or **Pass-Through** in the following order: first, **Floriston Rate Water**; second, **Project Water** other than **Floriston Rate Water**; third, **Fish Credit Water**; fourth, categories not otherwise listed in this sequence; and last, **Joint Program Fish Credit Water**, **California Environmental Credit Water** and **Additional California Environmental Credit Water**.

Section 8.K.4(b) Amount of Lake Tahoe Discharge Unavailable for Accumulation. A portion of the **Discharge** from Lake Tahoe shall be unavailable for **Accumulation** of **Credit Water**. The amount which is unavailable shall be calculated as the sum of the following components in the following order: (1) the **Minimum Release** specified under Section 9.C.2, plus, (2) one-half of the rate of flow of **Fish Credit Water** scheduled for **Release** which contributes to flow between the **Minimum Release** and the Lake Tahoe **Release Threshold**, plus (3) the rate of flow of **Joint Program Fish Credit Water, California Environmental Credit Water** and **Additional California Environmental Credit Water** scheduled for **Release** which contributes to flow between the **Minimum Release** and the Lake Tahoe **Release Threshold**. The quantity of each category of water under (2) and (3) above shall not include any **Release** of water which is contributing to the **Minimum Release** under (1) above, if any. In addition to the amount calculated above, compensating **Releases** pursuant to Section 8.K.5 shall also be unavailable for **Accumulation**.

Section 8.K.4(c) Amount of Donner Lake, Prosser Creek Reservoir, Independence Lake and Stampede Reservoir Discharges Unavailable for Accumulation. A portion of the **Discharge** from Donner Lake, Prosser Creek Reservoir, Independence Lake and Stampede Reservoir shall be unavailable for **Accumulation** of **Credit Water.** The amount which is unavailable shall be calculated as the sum of the following components in the following order: (1) the **Minimum Release** or **Enhanced Minimum Release**, whichever is greater, specified for those reservoirs under Sections 9.C.3, 9.C.5, 9.C.6 and 9.C.7, respectively, plus (2) the rate of flow of **Joint Program Fish Credit Water, California Environmental Credit Water** and **Additional California Environmental Credit Water** scheduled for **Release**, which contributes to the flow between the **Minimum Release** or **Enhanced Minimum Release** and the applicable **Release Threshold**. The quantity under (2) above shall not include any **Release** of these categories of water which is contributing to the **Minimum Release** or **Enhanced Minimum Release** under (1) above, if any.

Section 8.K.4(d) Limitation on Amount of Additional California Environmental Credit Water Which is Unavailable for Accumulation. The amount of **Additional California Environmental Credit Water** which is unavailable for **Accumulation** of **Credit Water** by reason of this Section 8.K.4 shall not exceed 10,000 acre-feet in any one year for all reservoirs combined, including any **Releases** accounted for as **Fish Credit Water** pursuant to Section 8.K.6 and excluding any **Additional California Environmental Credit Water Established** through changes to water rights adjudicated under the **Sierra Valley Decree**.

Section 8.K.5 Compensating Releases Unavailable for Accumulation. If Pyramid Tribe and United States elect to **Release** additional **Fish Credit Water** from a reservoir, or if California elects to **Release** more **Joint Program Fish Credit Water, California Environmental Credit Water** or **Additional California Environmental Credit Water** from a reservoir to compensate for the reductions in scheduled **Releases** caused by **Accumulation** of **Credit Water** as limited by Section 8.K.4, no additional **Credit Water** may be **Accumulated** adverse to such additional **Release**, to the extent that **Releases**, including compensating **Releases,** are less than the applicable **Release Threshold**. **Releases** provided in accordance with

this Section 8.K.5 shall not be included in the calculation of **Discharge** portions that are unavailable for **Credit Water Accumulation** under Section 8.K.4.

Section 8.K.6 Limited Protection of Joint Program Fish Credit Water, California Environmental Credit Water and Additional California Environmental Credit Water. If **Joint Program Fish Credit Water, California Environmental Credit Water** and **Additional California Environmental Credit Water** are **Traded** back to a reservoir from which they were previously **Released** and were unavailable for **Accumulation** by reason of the provisions of Section 8.K.4, and that same water is subsequently **Released** again from that same reservoir, such **Release** shall be treated as if it were **Fish Credit Water** for purposes of determining the amount of water that is unavailable for **Accumulation** pursuant to Sections 8.K.4(b) and 8.K.4(c).

Section 8.K.7 Waiver of Limitations. United States and Pyramid Tribe with respect to **Fish Credit Water** and **Fish Water**, and California with respect to **Joint Program Fish Credit Water, California Environmental Credit Water** and **Additional California Environmental Credit Water,** may waive any limitation on the amount of **Credit Water** which is unavailable for **Accumulation** as set forth in Section 8.K.4.

SECTION 8.L – DETERMINATION OF CREDIT WATER IN LAKE TAHOE AFTER THE ELEVATION OF LAKE TAHOE RISES ABOVE 6,223.0 FEET LAKE TAHOE DATUM.

When **Credit Water** in Lake Tahoe has not been removed before Lake Tahoe elevation recedes to or below 6,223.0 feet Lake Tahoe Datum, and after Lake Tahoe surface water elevation rises above 6,223.0 feet Lake Tahoe Datum, the **Administrator** shall classify as **Credit Water** that portion of the water in **Lake Tahoe Reservoir** attributable to the storage of **Credit Water** in Lake Tahoe before Lake Tahoe receded below 6,223.0 feet Lake Tahoe Datum. The **Administrator** shall develop a method for determining the amount of, and shall account for, **Credit Water** so classified. In making such determination, the **Administrator** shall assure that the allocation of **Credit Water** to be credited in **Lake Tahoe Reservoir** does not affect the amount of **Floriston Rate Water** that would otherwise have been available from **Lake Tahoe Reservoir** for **Floriston Rates** and **Reduced Floriston Rates** if **Credit Water** had not been stored in Lake Tahoe immediately prior to Lake Tahoe elevation receding to or below 6,223.0 feet Lake Tahoe Datum, and shall insure that **Floriston Rate Water** is not adversely affected. When Lake Tahoe surface water elevation rises above 6,223.0 feet Lake Tahoe Datum, the **Administrator** shall classify and allocate to each **Credit Water** account in proportion to the amount of **Credit Water** in that category that was not removed prior to Lake Tahoe elevation receding to or below 6,223.0 feet Lake Tahoe Datum.

Section 8.L.1 Status of Credit Water Determined to be in Lake Tahoe Reservoir after Lake Tahoe Elevation Rises Above 6,223.0 Feet Lake Tahoe Datum. After Lake Tahoe elevation next rises above 6,223.0 feet Lake Tahoe Datum, **Credit Water** determined and accounted for by the **Administrator** pursuant to the provisions of this Section 8.L, shall retain all priorities and characteristics of its individual category pursuant to this **Agreement**.

SECTION 8.M – CLASSIFICATION OF CREDIT WATER EXCHANGED OR RE-STORED

Except as otherwise specifically provided in this **Agreement**, **Credit Water** that is **Exchanged** or re-stored under this **Agreement** shall retain its original classification in its new location for all purposes.

SECTION 8.N – CLASSIFICATION OF PROJECT WATER EXCHANGED OR RE-STORED

Project Water in Another Reservoir subsequently **Exchanged** to or re-stored in its own reservoir shall be reclassified as **Project Water**. Operations under this Section 8.N shall not be deemed adverse to or in conflict with **Project Water Operations**.

Section 8.N.1 Exchanged Fish Water Becomes Fish Credit Water-General Rule. Except as provided in Section 8.O.3, to the extent that **Fish Water** is **Exchanged** to or re-stored in another reservoir, such **Exchange** or re-storage shall result in the **Establishment** of **Fish Credit Water** in that reservoir and such **Fish Credit Water**, when **Exchanged** to any reservoir, remains **Fish Credit Water.**

Section 8.N.2 Exchanged Power Company Privately Owned Stored Water Becomes Power Company M&I Credit Water-General Rule. Except as provided in Sections 8.N.3 and 8.Q, to the extent that Power Company's **Privately Owned Stored Water** is **Exchanged** to or re-stored in another reservoir, such **Exchange** or re-storage shall result in the **Establishment** of **Power Company M&I Credit Water** in that reservoir, and such **Power Company M&I Credit Water** when **Exchanged** to any reservoir remains **Power Company M&I Credit Water**.

Section 8.N.3 Certain Independence Lake Privately Owned Stored Water Remains Project Water. Power Company's **Privately Owned Stored Water Released** from or **Passed-Through** Independence Lake to (a) maintain **Minimum Releases** in Independence Creek; (b) maintain preferred instream flows encouraged by the **Administrator** pursuant to Section 9.F.2(b); or (c) deliver water to **Power Company Service Area**; and which is stored in Stampede Reservoir or Boca Reservoir shall, at the option of Power Company, retain its classification as **Privately Owned Stored Water** only until December 31 of that year, after which time it shall be converted to **Power Company M&I Credit Water**. Notwithstanding the provisions of Section 5.C, **Privately Owned Stored Water** in Stampede Reservoir pursuant to this Section 8.N.3 shall **Spill** after all other categories of water in Stampede Reservoir except **Power Company Emergency Drought Supply**, **Firm M&I Credit Water** and **Fish Water**, provided however, that during any period in which **Project Water** is being diverted to storage in Stampede Reservoir pursuant to Section 5.B.8(a), Power Company shall either convert its **Privately Owned Stored Water** in Stampede Reservoir to **Power Company M&I Credit Water** or **Exchange** it out of Stampede Reservoir as necessary to avoid impairing the diversion of **Project Water** to storage pursuant to Section 5.B.8(a).

Privately Owned Stored Water in Boca Reservoir shall **Spill** proportionately with **Stampede Project Water** in Boca Reservoir pursuant to Section 8.O.3, if any, and after all other categories of water in Boca Reservoir except **Boca Project Water**. **Privately Owned Stored Water**, if **Exchanged** from Boca Reservoir or Stampede Reservoir back to Independence Lake, shall retain its classification as **Privately Owned Stored Water**.

SECTION 8.O – CLASSIFICATION OF FISH CREDIT WATER, JOINT PROGRAM FISH CREDIT WATER AND FISH WATER EXCHANGED TO OR RE-STORED IN BOCA RESERVOIR

Operations pursuant to this Section 8.O shall not be deemed adverse to or in conflict with **Project Water Operations**.

Section 8.O.1 Treatment of Fish Credit Water and Joint Program Fish Credit Water as Project Water in Another Reservoir is Limited. Whenever in this Section 8.O **Fish Credit Water** or **Joint Program Fish Credit Water** stored in Boca Reservoir is "treated as" **Project Water In Another Reservoir,** such treatment shall be limited to the **Spill** and **Displacement** provisions associated with **Project Water in Another Reservoir**. Such water shall retain the priority of **Fish Credit Water** or **Joint Program Fish Credit Water** respectively for all operations other than **Spill** and **Displacement**. When such water is **Exchanged** to a reservoir other than Boca Reservoir, such water shall assume the **Spill** and **Displacement** priority of **Fish Credit Water** and **Joint Program Fish Credit Water**, respectively.

Section 8.O.2 Fish Credit Water and Joint Program Fish Credit Water Accumulated in Boca Reservoir. Fish Credit Water and **Joint Program Fish Credit Water Accumulated** in Boca Reservoir shall be treated as follows:

(a) **Fish Credit Water** and **Joint Program Fish Credit Water Exchanged** to or re-stored in Boca Reservoir from April 1 through August 31 and remaining in Boca Reservoir on September 1, shall be treated as **Project Water In Another Reservoir**.

(b) **Fish Credit Water** and **Joint Program Fish Credit Water Exchanged** to or re-stored in Boca Reservoir from September 1 through March 31 shall be treated as **Project Water In Another Reservoir**.

(c) **Fish Credit Water** and **Joint Program Fish Credit Water Established** in Boca Reservoir pursuant to Sections 7.C.1, 7.C.2, 7.C.6, and 8.O.3(a) and remaining in Boca Reservoir on the following September 1, shall be treated as **Project Water In Another Reservoir**.

Section 8.O.3 Stampede Project Water Stored in Boca Reservoir. **Stampede Project Water** stored in Boca Reservoir shall be classified as follows:

(a) **Stampede Project Water Released** for the purpose of **Minimum Releases** from Stampede Reservoir and re-stored in Boca Reservoir shall be **Established** as **Fish Credit Water**.

(b) **Stampede Project Water Released** from Stampede Reservoir from March 1 through August 31 for **Pyramid Lake Fish Flows** and stored in Boca Reservoir for subsequent **Release** shall, at the option of Pyramid Tribe and United States, retain its classification as **Project Water** only until September 1, at which time any such water remaining in Boca Reservoir shall be converted to **Project Water In Another Reservoir** for all purposes. **Stampede Project Water** stored in Boca Reservoir pursuant to this Section 8.O.3(b) shall **Spill** proportionately with Power Company's **Privately Owned Stored Water** in Boca Reservoir pursuant to Section 8.N.3, if any, and after all other categories of water in Boca Reservoir except **Boca Project Water**.

(c) **Stampede Project Water** stored in Boca Reservoir from March 1 through August 31 in excess of the amounts required for the purposes set forth in Sections 8.O.3(a) and 8.O.3(b) shall be **Established** as and remain **Fish Credit Water** until September 1, and any such water remaining in Boca Reservoir on September 1 shall be classified as **Project Water In Another Reservoir** for all purposes.

(d) Except as provided in Section 8.O.3(a), **Stampede Project Water Released** from Stampede Reservoir from September 1 through the end of February, and held in Boca Reservoir shall be classified as **Project Water In Another Reservoir** for all purposes.

Section 8.O.4 United States, Pyramid Tribe and California to Minimize Their Storage in Boca Reservoir. United States and Pyramid Tribe shall use best efforts to minimize the storage of **Fish Water** or **Fish Credit Water** in Boca Reservoir and California shall use best efforts to minimize the storage of **Joint Program Fish Credit Water** in Boca Reservoir for the purposes set forth in Section 8.O.3.

Section 8.O.5 Accumulation Causing Displacement Prohibited. The **Accumulation** of **Fish Water, Fish Credit Water**, and **Joint Program Fish Credit Water** in Boca Reservoir is prohibited to the extent that such **Accumulation** would simultaneously result in any other water in Boca Reservoir being **Displaced** or **Spilled** except that **Fish Credit Water Establishment** in Boca Reservoir by retaining **Boca Floriston Rate Water** pursuant to Sections 7.C.1 and 7.C.2, and any associated designation of **Joint Program Fish Credit Water**, may result in **Displacement** of **Credit Water** in accordance with Section 8.E.4.

SECTION 8.P – EXCHANGE RULES REGARDING TRADES

Trades may be conducted only in accordance with Section 8.S or one of the three approval standards set forth in Sections 8.P.1 through 8.P.3.

Section 8.P.1 Trades Which Do Not Require Approval. To the extent that operations under Sections 5.B.6(c)(5), 5.B.6(c)(8), 7.D.5, 8.F.3(c), 8.F.3(d), 8.F.5, 8.F.7, 8.Q, 8.T, and 8.U may be accomplished in whole or in part by **Trade**, any such **Trade** may take place without the approval of the **Administrator**, provided priorities in accordance with Sections 8.D and 8.E, and scheduling procedures in accordance with Article Eleven, are followed.

Section 8.P.2 Trades Requiring Administrator Approval but No Notice. Trades which are not referenced in Section 8.P.1, which are offered to categories of **Credit Water** in accordance with the priorities set forth in Section 8.E., which are for equal amounts of water, and which do not involve **Project Water** must be scheduled in accordance with Article Eleven and be approved by the **Administrator** before they may be implemented. In considering any such **Trade**, the **Administrator** is not required to provide notification to the **Scheduling Parties** or **Signatory Parties** outside the normal scheduling process.

Section 8.P.3 Trades Requiring Approval and Notice. Trades not undertaken pursuant to Sections 8.P.1 or 8.P.2 must be scheduled and approved by the **Administrator** before they may be implemented. Before approving a **Trade** pursuant to this Section 8.P.3, the **Administrator** shall timely notify all **Scheduling Parties** and **Signatory Parties** of the proposal and shall specify the time by which any objection to the proposal should be filed with the **Administrator**.

Section 8.P.4 Trades Involving Seasonal Operation Between Scheduling Parties. A **Trade** pursuant to Section 8.P.3 may include two **Scheduling Parties** submitting a proposal to the **Administrator** to coordinate the seasonal operation of their water as part of the scheduling process. If mutually agreed to by such **Scheduling Parties**, such operation would result in certain water in storage belonging to one **Scheduling Party** being assigned to the second **Scheduling Party**. In return, the second **Scheduling Party** would assign a designated portion of its water in storage or a portion of the season's water supply provided by its direct diversion water rights as set forth in Section 7.A.3(e) to the first **Scheduling Party**. The **Administrator** shall provide notice as required under Section 8.P.3, and shall disapprove such proposed operation if required by Section 8.P.5.

Section 8.P.5 Administrator Disapproval of Trades. The **Administrator** shall disapprove a **Trade** requiring **Administrator** approval under Sections 8.P.2 through 8.P.4 if the **Trade** will result in insufficient **Project Water** in a reservoir to satisfy **Minimum Release** requirements for that season to the same extent as they would have been satisfied had the **Trade** not been made. Unless all affected parties agree otherwise, the **Administrator** shall disapprove a **Trade** under Sections 8.P.2 through 8.P.4 if the **Administrator** determines it would interfere with or adversely affect previously scheduled operations, satisfaction of **Enhanced Minimum Release** requirements, or the security of water in storage of **Scheduling Parties** not involved in the **Trade.**

SECTION 8.Q - EXCHANGES WITH DONNER LAKE STORAGE

Section 8.Q.1 Required Trade with Power Company's Donner Lake Storage. From June through September, if California proposes a **Trade** of **Joint Program Fish Credit Water** for Power Company's **Privately Owned Stored Water** in Donner Lake, or if California arranges a **Trade** of another **Scheduling Party's** water for Power Company's **Privately Owned Stored Water** in Donner Lake in accordance with Section 8.E, Power Company shall make the **Trade** provided all of the following conditions are satisfied:

(a) The **Trade** must be for an equal amount of water in a **Truckee River Reservoir**;

(b) The reservoir to which Power Company's **Privately Owned Stored Water** will be **Traded** must be within the elevation or storage thresholds set forth in Section 9.D.;

(c) The **Trade** must not interfere with or prevent Power Company from **Accumulating Power Company M&I Credit Water** or utilizing its water in accordance with its scheduled operation of Donner Lake;

(d) The **Scheduling Party** whose water is **Traded** into Donner Lake shall comply with the provisions of Section 5.B.4 and all other requirements and regulations which affect the operation of Donner Lake;

(e) The water **Traded** into Donner Lake must provide any required **Minimum Release** in proportion to the total water in storage available for **Minimum Release**; and

(f) Any fees charged by Power Company for a **Scheduling Party** to store water in Donner Lake in accordance with this Section 8.Q.1 shall not be greater than any reasonable additional operating costs incurred as a result of the **Trade**, where such costs would not have been incurred absent the **Trade**.

(g) Any water **Traded** into Donner Lake pursuant to this Section 8.Q.1 shall be **Released** from Donner Lake by December 31.

At the time of a **Trade** under this Section 8.Q.1, Power Company shall notify the **Administrator** as to whether its water **Traded** to a **Truckee River Reservoir** under this Section 8.Q.1 will retain its classification as **Privately Owned Stored Water** or be converted to **Power Company M&I Credit Water**. Water **Traded** into another reservoir which remains **Privately Owned Stored Water** shall retain its classification as **Privately Owned Stored Water** only until November 15 of that year, after which time it shall be converted to **Power Company M&I Credit Water**. A **Trade** pursuant to this Section 8.Q.1 shall not be deemed adverse to or in conflict with **Project Water Operations**.

The provisions of Section 5.C notwithstanding, Power Company **Privately Owned Stored Water** stored in **Truckee River Reservoirs**, other than Boca Reservoir, pursuant to this Section 8.Q shall **Spill** after all other categories of water except **Project Water**, **Power Company Emergency Drought Supply**, and **Firm M&I Credit Water**, provided, however, that during any period in which **Project Water** is being diverted to storage in Stampede Reservoir in accordance with Section 5.B.8(a), Power Company shall either convert its **Privately Owned Stored Water** in Stampede Reservoir to **Power Company M&I Credit Water** or **Exchange** it out of Stampede Reservoir as necessary to avoid impairing the diversion of water to storage under Section 5.B.8(a). **Privately Owned Stored Water** in Boca Reservoir pursuant to this Section 8.Q shall **Spill** proportionately with **Stampede Project Water** in Boca Reservoir pursuant to Section 8.O.3(b), if any, and after all other categories of water in Boca Reservoir except **Boca Project Water**. **Privately Owned Stored Water**, if **Exchanged** back to Donner Lake, shall retain its classification as **Privately Owned Stored Water**.

Nothing in this Section 8.Q.1 shall prevent Power Company from conducting its own **Exchange** of Donner Lake **Privately Owned Stored Water** to maintain **Minimum Releases** or **Enhanced Minimum Releases** pursuant to Sections 9.C.3(a) and 9.C.3(b); or prevent Power Company from making **Exchanges** of **Privately Owned Stored Water** for which California has not scheduled a **Trade** by June 1.

Section 8.Q.2 Exchange and Storage of Donner Lake Water Owned by a Non-Signatory Party. For the purposes of maintaining **Enhanced Minimum Releases** in Donner Creek and for recreation on Donner Lake, California may **Exchange** Donner Lake **Privately Owned Stored Water** which is owned by a **Person** who is not a **Signatory Party** with the agreement of said **Person,** with one or more of (a) **Joint Program Fish Credit Water,** (b) **California Environmental Credit Water**, and (c) **Additional California Environmental Credit Water**. Such **Exchange** may be either a **Trade** or an **In-Lieu Release** from **Truckee River Reservoirs**. The **Privately Owned Stored Water** so **Exchanged** to **Truckee River Reservoirs** shall be **Project Water In Another Reservoir** and subject to the applicable provisions of this **Agreement**, and shall be **Released** therefrom by December 31 of the year **Exchanged**. California shall have a storage contract with United States to store such **Project Water In Another Reservoir**, and neither California nor the **Person** owning the Donner Lake **Privately Owned Stored Water** shall be charged a fee for the storage of this water. California shall **Release** such **Project Water In Another Reservoir** at the request of the owner of the **Privately Owned Stored Water**, but in no case later than December 31 of the year stored, and such **Release** shall be deemed a **Release** of Donner Lake **Privately Owned Stored Water**.

SECTION 8.R – EXCHANGES AND VOLUNTARY OPERATIONS PROPOSED BY CALIFORNIA

Whenever California, pursuant to this Section 8.R, proposes a voluntary **Exchange**, **Release** or any other operations involving categories of **Credit Water, Fish Water**, or **Privately Owned Stored Water** owned or controlled by a **Signatory Party** or **Scheduling Party**, but not **Floriston Rate Water** nor categories of **Credit Water** for which California is a **Scheduling Party**:

(1) Such proposals shall be made in writing to the **Administrator** and shall specify that they are made pursuant to this Section 8.R. No proposal shall be implemented by the **Administrator** unless and until the **Administrator** provides a reasonable opportunity and time period for comments or objections by **Signatory Parties** and **Scheduling Parties**. Proposals shall not be implemented unless they are consistent with the exercise of water rights, assurance of water supplies, operational considerations, the requirements of the **Settlement Act** and all other requirements of this **Agreement**;

(2) **Signatory Parties** and **Scheduling Parties** shall consider the proposal in good faith with regard to the effect of the proposal on the **Signatory Party's** or **Scheduling Party's** exercise of water rights, assurance of water supply or other operational considerations; and

(3) Any **Signatory Party** or **Scheduling Party** claiming an adverse effect of such proposal on exercise of water rights, assurance of water supply or other operational considerations may file a written objection to such proposal with the **Administrator**, which written objection shall briefly summarize the adverse effect upon which such objection is based.

The **Administrator** shall promptly discuss the objections with California and such party or parties objecting and encourage a timely resolution of the objections. If an objection is not voluntarily resolved, the objection to the proposal shall be final and the proposal shall not be implemented.

SECTION 8.S - EXCHANGES OF CERTAIN WATERS IN STAMPEDE RESERVOIR FOR FLORISTON RATE WATER IN LAKE TAHOE

Section 8.S.1 Proposals to the Administrator. California, with respect to **Joint Program Fish Credit Water**, **Fish Water**, and **Fish Credit Water** in Stampede Reservoir; and Pyramid Tribe and United States, with respect to **Fish Water** and **Fish Credit Water** in Stampede Reservoir, may propose to the **Administrator** an **Exchange** of such water categories with **Floriston Rate Water** stored in Lake Tahoe for the following purposes:

(a) To maintain the **Minimum Releases** from Lake Tahoe;

(b) To maintain a **Release** from Lake Tahoe which is greater than the **Minimum Release** from Lake Tahoe but not greater than the **Release Threshold** as set forth in the table in Section 8.K.4; or

(c) To avoid exceeding the maximum flow in the Little Truckee River downstream from Stampede Reservoir as provided in the **California Guidelines** whenever **Fish Credit Water** or **Fish Water** is scheduled for **Release** from Stampede Reservoir.

An **Exchange** proposed under Section 8.S.1(b) shall take precedence over an **Exchange** pursuant to Section 8.S.1(c), unless California, United States and Pyramid Tribe otherwise agree. Such proposal shall specify the category or categories of **Fish Water**, **Fish Credit Water** or **Joint Program Fish Credit Water** that will make up losses pursuant to Section 8.S.6.

An **Exchange** proposed under this Section 8.S shall only be allowed to the extent that the availability of **Fish Water** and **Fish Credit Water** for the purposes described in Sections 5.B.6(a)(5)(i), 5.B.6(a)(5)(iii), 5.B.6(a)(5)(iv), 5.B.8(c)(1), 5.B.8(c)(3), 7.C.5(a) and 7.C.5(c) is not infringed; and if the **Federal Water Master** determines that the requirements of Sections 8.S.3, 8.S.4, and 8.S.6 have been or will be satisfied. An **Exchange** proposed under Section 8.S.1(a) shall only be allowed as provided for in Section 5.B.6(b). An **Exchange** proposed under Sections 8.S.1(b) and (c) may be allowed only after all **Scheduling Parties** have scheduled their operations and only if such other scheduled operations are insufficient to achieve the purposes set forth in Sections 8.S.1(b) and (c). Operations pursuant to this Section 8.S shall not interfere with **Accumulation** of **Credit Water** in Lake Tahoe. To the extent that an **Exchange** meets the requirements of this Section 8.S, such an **Exchange** shall not be deemed adverse to or in conflict with **Project Water Operations**.

Section 8.S.2 Transmittal of Proposal to Federal Water Master. Upon receipt of a proposal for an **Exchange** pursuant to the provisions of Section 8.S.1, the **Administrator** shall transmit the proposal to the **Federal Water Master** for review and action pursuant to the provisions of Sections 8.S.3 and 8.S.4.

Section 8.S.3 Notice of and Objections to Exchange. Before allowing an **Exchange** pursuant to this Section 8.S, the **Federal Water Master** shall give written notice to each of Power Company, Conservation District, Nevada, United States and Pyramid Tribe and shall specify a reasonable period of time for an objection to be lodged, taking into account the time during which the water would be available for an **Exchange** and the time reasonably necessary for response to the notice. If none of the notified parties objects in writing to the proposed **Exchange** within the time specified by the **Federal Water Master** and the provisions of Section 8.S.4 are satisfied, the **Exchange** shall take place as proposed, unless it is limited by the **Administrator** or prohibited as provided in Section 8.S.5. Written objections to the proposed **Exchange** shall be filed with the **Federal Water Master**, served on each of the other parties who received the notice, and provided to California. The **Federal Water Master** shall promptly discuss the objections with the objecting party or parties and encourage a timely resolution of the objections that allows some or all of the **Exchange** to take place. The **Federal Water Master** may allow an **Exchange** under this Section 8.S even if all objections are not resolved. The **Federal Water Master's** decision shall be subject to review by the **Orr Ditch Court** pursuant to the provisions of the **Orr Ditch Decree**.

Section 8.S.4 Protection of Lake Tahoe Floriston Rate Water. The **Federal Water Master** shall not allow an **Exchange** under this Section 8.S unless:

(a) the **Lake Tahoe Floriston Rate Water** which will be in Stampede Reservoir as **Project Water in Another Reservoir** as a result thereof shall not incur losses,

calculated as provided in Sections 5.C and 5.D, greater than would have occurred had the **Exchange** not taken place, however, if such greater losses are incurred they shall be compensated by **Joint Program Fish Credit Water**, **Fish Credit Water** or **Fish Water**;

(b) the **Lake Tahoe Floriston Rate Water** which will be in Stampede Reservoir as **Project Water in Another Reservoir** can either (1) be **Released** to support **Floriston Rates** or **Reduced Floriston Rates** in accordance with Section 5.A.4, or (2) be used to **Accumulate** other categories of **Credit Water**; and

(c) by November 1 of the year in which such **Exchange** occurred, the amount of **Floriston Rate Water** in Lake Tahoe will be the same as it would have been had an **Exchange** pursuant to this Section 8.S not occurred.

Section 8.S.5 Scheduling of Exchange. If the **Federal Water Master** allows an **Exchange** proposed under Section 8.S.1, the **Administrator** shall schedule the **Exchange** unless United States determines that an **Exchange** of **Fish Water** or **Fish Credit Water** proposed by California would be detrimental to **Pyramid Lake Fishes**.

Section 8.S.6 Implementation. The **Exchange** allowed under Section 8.S.1 shall be deemed a **Trade** of **Floriston Rate Water** for an equal amount of **Joint Program Fish Credit Water**, **Fish Credit Water** or **Fish Water**. The water for which such **Floriston Rate Water** is **Traded** shall be concurrently **Released** from Lake Tahoe as **Fish Credit Water** or **Joint Program Fish Credit Water** as the case may be.

SECTION 8.T – EXCHANGES FOR WATER QUALITY CREDIT WATER

To the extent that the availability of **Fish Water** and **Fish Credit Water** for the purposes described in Sections 5.B.6(a)(5)(i), 5.B.6(a)(5)(iii), 5.B.6(a)(5)(iv), 5.B.8(c)(1), 5.B.8(c)(3), 7.C.5(a) and 7.C.5(c) is not infringed, Pyramid Tribe and United States shall perform water operations in accordance with this Article Eight to allow **Water Quality Credit Water** to be available at times identified by the Joint Program Parties as identified in Section 3 of the **Truckee River Water Quality Settlement Agreement**. Operations under this Section 8.T shall not be deemed adverse to or in conflict with **Project Water Operations**. United States and Pyramid Tribe shall not be required to reserve **Fish Water** or **Fish Credit Water** for operations under this Section 8.T.

SECTION 8.U –REQUIRED TRADE OF CALIFORNIA M&I CREDIT WATER FROM LAKE TAHOE TO OTHER TRUCKEE RIVER RESERVOIRS

Section 8.U.1 Conditions for Required Trade. If scheduled by California, United States and Pyramid Tribe shall **Trade Fish Credit Water** and **Fish Water** in **Truckee River Reservoirs** other than Lake Tahoe for **California M&I Credit Water** in Lake Tahoe when the following conditions are met:

(a) The water surface elevation of Lake Tahoe, consisting of all water in Lake Tahoe, is above 6,223.0 feet Lake Tahoe Datum.

(b) California is unable, despite best efforts, to **Accumulate** the 3,000 acre-feet of **California M&I Credit Water** in Donner Lake, Independence Lake and **Truckee River Reservoirs** other than Lake Tahoe, as provided in Section 6.C.2(a), through one or more of the following operations:

(1) **Exchanges** with **Joint Program Fish Credit Water** in accordance with Section 8.E; and

(2) Voluntary **Exchanges** with other categories of **Credit Water** in accordance with Section 8.E.

(c) The maximum amount of water that may be **Traded** at any one time under this Section 8.U.1 shall not exceed 3,000 acre-feet less the combined amount of **California M&I Credit Water** and **California Environmental Credit Water** in Donner Lake, Independence Lake and **Truckee River Reservoirs** other than Lake Tahoe.

(d) The maximum amount of water that may be **Traded** in a year under this Section 8.U shall not exceed 3,000 acre-feet.

A **Trade** under this Section 8.U shall not be deemed adverse to or in conflict with **Project Water Operations**. United States and Pyramid Tribe shall not be required to reserve **Fish Water** or **Fish Credit Water** for **Trades** under this Section 8.U.

Section 8.U.2 Implementation of Required Trade. To carry out a **Trade** under this Section 8.U, California shall provide notice to United States, the Pyramid Tribe and the **Administrator**, identifying its efforts to **Accumulate** water pursuant to Section 8.U.1(b), the amount of **California M&I Credit Water** to be **Traded** out of Lake Tahoe pursuant to Section 8.U.1, and the date on which such **Trade** shall take place. California shall, to the extent practicable, provide reasonable advance notice of the proposed **Trade**. Within seven days after such notice, United States and the Pyramid Tribe shall respond to California's notice by proposing an amount and location of each category of **Fish Credit Water** and **Fish Water** in **Truckee River Reservoirs** other than Lake Tahoe to be **Traded** for an equal amount of **California M&I Credit Water**. If California concurs within seven days, the **Administrator** shall implement the proposed **Trade**. If California does not concur, the proposed **Trade** shall not be implemented.

SECTION 8.V—EXCHANGE INVOLVING FISH CREDIT WATER AND JOINT PROGRAM FISH CREDIT WATER.

When scheduled **Exchanges** of **Fish Credit Water** and **Joint Program Fish Credit Water** conflict, and to the extent that the availability of **Fish Credit Water** for the purposes

described in Sections 5.B.6(a)(5)(i), 5.B.6(a)(5)(iii), 7.C.5(a) and 7.C.5(c) is not infringed, they shall share the **Exchange** opportunity proportionally to the amount of such **Credit Waters** proposed to be **Exchanged**, unless otherwise agreed to by California, United States and Pyramid Tribe. If United States and Pyramid Tribe determine that the availability of **Fish Credit Water** for the purposes of Sections 5.B.6(a)(5)(i), 5.B.6(a)(5)(iii), 7.C.5(a) and 7.C.5(c) will be infringed, then **Fish Credit Water** shall have priority over **Joint Program Fish Credit Water**.

ARTICLE NINE
BENEFICIAL USES OF WATER
FOR INSTREAM FLOWS AND RECREATION IN CALIFORNIA

SECTION 9.A – PURPOSE

This Article Nine establishes criteria for **Releases** of water from reservoirs to maintain instream flows for fish and other biological resources in California and for **Power Company Hydroelectric Plant** bypass flows. Nothing in this Article Nine shall require water to be reserved in reservoir storage for **Minimum Releases** or **Enhanced Minimum Releases.** Article Nine specifies the following:

1. Methodology for determining whether **Minimum Releases** or **Enhanced Minimum Releases** are to be based on a **Normal Season** or **Dry Season** regime;

2. **Minimum Releases,** which are to be maintained with specified categories of water, whether or not the water used to maintain them can be re-stored in or **Exchanged** to another reservoir;

3. Criteria under which additional water shall be **Released** to maintain **Enhanced Minimum Releases**, which are only required to the extent that the water so **Released** can be re-stored in or **Exchanged** to another reservoir;

4. Provisions concerning bypass flows at **Power Company Hydroelectric Plants**;

5. The means, including the use of voluntary **Exchanges**, toward maintaining preferred instream flows, desired reservoir levels for recreation and other objectives as set forth in the **California Guidelines**; and

6. Provisions for the content and utilization of the **California Guidelines**, which California will submit to the **Administrator.**

SECTION 9.B – DETERMINATION OF DRY OR NORMAL SEASON

Section 9.B.1 Minimum Releases and Enhanced Minimum Releases to be Based on Normal Season and Dry Season Criteria. Minimum Releases and **Enhanced Minimum Releases** for reservoirs specified in Section 9.C vary, depending on whether a **Normal Season** or **Dry Season** exists, as determined by the **Administrator** in accordance with this Section 9.B. In general, the determination depends upon the amount of **Lake Tahoe Floriston Rate Water** in storage in **Truckee River Reservoirs** and the current forecast of **California Truckee River Basin Supply** during the months of April through July.

Section 9.B.1(a) Determination of Normal Season or Dry Season For February through June. The **Administrator** shall determine whether a **Normal Season** or

Dry Season exists for each day from February 1 through June 30 using Figures 9-1 through 9-10 as applicable, based upon the following:

(1) The amount of **Lake Tahoe Floriston Rate Water** in storage in **Truckee River Reservoirs**; and

(2) The current forecast of **California Truckee River Basin Supply** developed by the **Administrator** from the current year's most recently prepared median forecast issued by the Natural Resources Conservation Service for the streamflow period of April 1 through July 31. Each forecast of **California Truckee River Basin Supply** developed by the **Administrator** shall be updated monthly and shall cover the entire April 1 through July 31 period. Forecasts prepared after April 1 shall include the actual **California Truckee River Basin Supply** beginning April 1.

If the information shows that the day falls within a **Normal Season** or **Dry Season** as shown on the applicable Figure, that season shall be the determination for that day. If the information shows that the day falls within "No Change" as shown on the applicable Figure, the determination for that day shall be the determination of the previous day. Figures 9-1 through 9-5 shall be used to determine **Releases** from Lake Tahoe and Figures 9-6 through 9-10 shall be used to determine **Releases** from reservoirs in the **Truckee River Basin**.

Section 9.B.1(b) Determination of Normal Season or Dry Season For July through September and November through January. From July 1 through September 30, the season shall remain the same as was determined by the **Administrator** for the immediately previous June 30. From November 1 through January 31, the season shall remain the same as was determined by the **Administrator** for the immediately previous October 31.

Section 9.B.1(c) Determination of Normal Season or Dry Season For October. From October 1 through October 31, the season shall remain the same as was determined for the immediately previous September 30, except for the following:

(1) The season shall be a **Dry Season** for **Releases** from Lake Tahoe on any day in October that the amount of **Lake Tahoe Floriston Rate Water** in storage in **Truckee River Reservoirs** is less than 150,000 acre-feet, and it shall remain a **Dry Season** for the remainder of the month.

(2) The season shall be a **Dry Season** for **Releases** from reservoirs in the **Truckee River Basin** on any day in October that the amount of **Lake Tahoe Floriston Rate Water** in storage in **Truckee River Reservoirs** is less than 50,000 acre-feet, and it shall remain a **Dry Season** for the remainder of the month.

Section 9.B.2 Information to Be Distributed by the Administrator. The determinations of season in accordance with Section 9.B.1 and the resulting **Minimum Releases**

and **Enhanced Minimum Releases** in accordance with Section 9.C shall be distributed to **Scheduling Parties** by the **Administrator** for use in the schedules to be provided pursuant to Article Eleven.

SECTION 9.C - MINIMUM RELEASES, ENHANCED MINIMUM RELEASES AND PROSSER CREEK RESERVOIR RELEASES FOR ICE CONTROL

This Section 9.C. defines and provides rules for the maintenance of **Minimum Releases** from Lake Tahoe, Donner Lake, Prosser Creek Reservoir, Stampede Reservoir, and Independence Lake, and **Enhanced Minimum Releases** for the same reservoirs except Independence Lake.

Section 9.C.1 General Provisions for Minimum Releases and Enhanced Minimum Releases.

Section 9.C.1(a) Supplemental Releases of Water for Minimum Releases or Enhanced Minimum Releases. To the extent that the **Minimum Release** or **Enhanced Minimum Release** is not satisfied by any scheduled **Release** or **Pass-Through** of water, supplemental **Releases** of water from categories identified for each reservoir in Sections 9.C.2 through 9.C.8 shall be required for the **Minimum Release** or **Enhanced Minimum Release** only in accordance with this Section 9.C.

Section 9.C.1(b) Relation between Minimum Releases and Enhanced Minimum Releases. When the **Enhanced Minimum Release** is greater than the **Minimum Release** for a reservoir, it is inclusive of and not in addition to the **Minimum Release**. When the water categories designated for the **Minimum Release** are insufficient for that purpose, water categories designated for the **Enhanced Minimum Release** shall be used for the maintenance of the **Minimum Release**, subject to the provisions of Section 9.C.1(f).

Section 9.C.1(c) Temporary Suspension or Downward Adjustment of Minimum Releases or Enhanced Minimum Releases. California or any **Scheduling Party** having water in storage may request that the **Administrator** temporarily suspend or adjust downward the **Minimum Release** or **Enhanced Minimum Release** specified for a particular reservoir, including, without limitation, when water is, or is projected to be, unavailable for such **Releases**. Such requested temporary suspension or downward adjustment shall only be made if California, Nevada and all **Scheduling Parties** having water in storage in the particular reservoir consent thereto, including agreeing to observe any conditions of the proposal or consent to the proposal. Nothing in this section shall be construed as relieving California, or any agency thereof, from compliance with any California law applicable to a decision to temporarily suspend or to adjust downward a **Minimum Release** or **Enhanced Minimum Release**. A temporary suspension or downward adjustment of a **Minimum Release** or **Enhanced Minimum Release** shall not be construed as a waiver or suspension beyond the period of the request, and shall not prevent operations which provide more **Discharge** than the modified **Minimum Release** and **Enhanced Minimum Release**.

Section 9.C.1(d) Determination of Water that Shall Be Released To Maintain Minimum Releases and Enhanced Minimum Releases. Unless specifically provided otherwise in this **Agreement**, if more than one category of water is available and designated by this Section 9.C to supplement a scheduled **Release** or **Pass-Through** from a reservoir, each designated category of water in storage in that reservoir shall contribute to the **Minimum Release** or **Enhanced Minimum Release** in proportion to the amount that each category's water in storage in that reservoir bears to the total of all categories which must contribute to such **Minimum Release** or **Enhanced Minimum Release**. If, pursuant to Section 7.H.4, **Newlands Project Credit Water** will not be used in a manner which contributes to **Minimum Release** or **Enhanced Minimum Release**, then the **Minimum Release** or **Enhanced Minimum Release** shall be shared proportionately by the remaining designated categories of water.

Section 9.C.1(e) Release Requirements Are Limited by Existence of Storage and Discharge Capacity. Nothing in this Section 9.C.1 shall be construed to require a **Release** of water in excess of the amount of water in storage of the category assigned to provide the **Release,** or in excess of the release capacity of the facility. When these or any other constraints limit maintaining such **Minimum Release** or **Enhanced Minimum Release**, the **Release** shall be reduced only to the extent of such constraints, except as provided in Section 9.C.1(c).

Section 9.C.1(f) Enhanced Minimum Releases Are Limited By Criteria For Exchange and Re-storage. Releases of additional water for **Enhanced Minimum Releases** shall be required pursuant to this Section 9.C from storage in Lake Tahoe, Donner Lake, Prosser Creek Reservoir and Stampede Reservoir only to the extent that the category of water designated for such **Enhanced Minimum Release** can be **Exchanged** to or re-stored in a **Truckee River Reservoir**, except no **Scheduling Party** shall be required to make an **Exchange** as set forth in Section 9.D.

Section 9.C.1(g) Relation to Project Water Operations. Operations in accordance with this Section 9.C shall not be deemed to be adverse to or conflict with **Project Water Operations** pursuant to Section 8.C.

Section 9.C.1(h) Maintaining Enhanced Minimum Release from Multiple Reservoirs. When the **Administrator** cannot maintain an **Enhanced Minimum Release** pursuant to Section 9.C.1(f) without reducing the flow available to maintain **Enhanced Minimum Release** from another reservoir or reservoirs, the **Administrator** shall resolve the matter by reference to the **California Guidelines**.

Section 9.C.2 Minimum and Enhanced Minimum Releases from Lake Tahoe.

Section 9.C.2(a) Minimum Releases. Minimum Releases from Lake Tahoe shall be 50 cfs from October 1 through March 31, and 70 cfs from April 1 through September 30 each year, to the extent such **Releases** are in accordance with Section 5.B.6(b).

Section 9.C.2(b) Enhanced Minimum Releases. During a **Normal Season**, the **Enhanced Minimum Release** from Lake Tahoe shall be 75 cfs. During a **Dry Season**, when the **Release** provided in accordance with Section 5.B.6(b) is less than the **Minimum Release**, the **Enhanced Minimum Release** from Lake Tahoe shall be the greater of 37.5 cfs or the Lake Tahoe **Release** that is provided by Section 5.B.6(b). Subject to the provisions of Section 9.C.1, sufficient water from all categories, except **Floriston Rate Water**, shall be **Released** from Lake Tahoe to provide the additional flow required to maintain the **Enhanced Minimum Release**.

Section 9.C.3 Minimum and Enhanced Minimum Releases from Donner Lake.

Section 9.C.3(a) Minimum Releases. Except to the extent limited by the requirements of the **Donner Lake Indenture**, consistent with accepted practice, the **Minimum Release** from Donner Lake shall be two cfs, except, if the flow below the confluence of Donner Creek and Cold Creek is less than five cfs, the **Minimum Release** from Donner Lake shall be three cfs, which if not provided by other operations shall be provided by **Privately Owned Stored Water.** Each owner of **Privately Owned Stored Water** shall be charged in proportion to their ownership interests for **Releases** of **Privately Owned Stored Water** made to satisfy the **Minimum Release**.

Section 9.C.3(b) Enhanced Minimum Releases. Except to the extent limited by the requirements of the **Donner Lake Indenture**, the **Enhanced Minimum Release** from Donner Lake shall be eight cfs during a **Normal Season** and four cfs during a **Dry Season**.

Section 9.C.3(c) Sources of Water for Donner Lake Enhanced Minimum Releases. Release from Donner Lake for the purpose of providing the portion of the **Enhanced Minimum Release** not supplied under 9.C.3(a) and which, but for the requirements of this **Agreement**, would not otherwise be **Released** from Donner Lake, shall be provided as follows:

(1) First, by owners of Donner Lake **Privately Owned Stored Water** to the extent that each owner may choose to specify a contribution to such **Release** in proportion to their ownership interest;

(2) Second, to the extent that an owner did not choose to specify a contribution to such **Release**, by **Privately Owned Stored Water** or **Power Company M&I Credit Water** to the extent that another owner may specify all or part of the remaining contribution to such **Release**;

(3) Third, by any **Credit Water** other than **Power Company M&I Credit Water** proportionately to the amount of such storage in Donner Lake;

(4) Fourth, by **Power Company M&I Credit Water**; and

(5) Fifth and last, by owners who are also **Signatory Parties** to the extent of their percentage share of ownership of **Privately Owned Stored Water** in **Donner Lake.**

Section 9.C.4 No Minimum Releases and Enhanced Minimum Releases from Martis Creek Reservoir. This **Agreement** does not specify **Minimum Releases** or **Enhanced Minimum Releases** for Martis Creek Reservoir.

Section 9.C.5 Minimum Releases, Enhanced Minimum Releases and Releases for Ice Control from Prosser Creek Reservoir.

Section 9.C.5(a) Minimum Releases. The **Minimum Release** from Prosser Creek Reservoir shall be five cfs which, if not provided by other operations, shall be provided by **Prosser Reserved Water.**

Section 9.C.5(b) Enhanced Minimum Releases. Unless Prosser Creek Dam outlet works are modified to allow a **Release** of 16 cfs, the **Enhanced Minimum Release** from Prosser Creek Reservoir during a **Normal Season** shall be 12 cfs from March 1 through August 31 and 25 cfs from September 1 through February. If the outlet works have been modified, the **Enhanced Minimum Release** shall be 16 cfs during a **Normal Season**. The **Enhanced Minimum Release** from Prosser Creek Reservoir shall be eight cfs during a **Dry Season**. Unless otherwise specified in the **California Guidelines**, the **Enhanced Minimum Release** shall not be required from Prosser Creek Reservoir when total storage of all water is less than 9,800 acre-feet.

Section 9.C.5(c) Sources of Water for Prosser Creek Reservoir Enhanced Minimum Releases. To the extent that operations do not otherwise maintain the **Enhanced Minimum Release** for Prosser Creek Reservoir:

(1) A maximum of 10 cfs during a **Normal Season** and a maximum of eight cfs during a **Dry Season** shall be **Released** from Prosser Creek Reservoir, as needed, from the following categories, in the following order:

(i) **Prosser Fish Water** in accordance with Section 9.C.1(f);

(ii) To the extent the **Release** of **Prosser Fish Water** is insufficient, then **Fish Credit Water** as an **In-Lieu Release** for an equal amount of water from another reservoir without regard to Section 9.C.1(f); or

(iii) To the extent the **Release** of **Fish Credit Water** is insufficient, **Prosser Fish Water** as an **In-Lieu Release** for an equal amount of water from another reservoir without regard to Section 9.C.1(f).

(2) If the **Releases** in accordance with Section 9.C.5(c)(1) are insufficient to maintain the **Enhanced Minimum Release** during a **Normal Season**, then additional water categories, except **Floriston Rate Water**, **Tahoe-Prosser Exchange Water, Prosser Reserved Water** and **Power Company**

Emergency Drought Supply, shall be **Released** as needed and in accordance with Section 9.C.1(f) to maintain the **Enhanced Minimum Release**. No category other than **Prosser Fish Water** and **Fish Credit Water** shall be required to be **Released** to maintain the **Enhanced Minimum Release** during a **Dry Season**.

Section 9.C.5(d) Ice Control. In addition to flows provided in accordance with Section 9.C.5(b), from December 1 through February, the **Administrator** shall **Release** up to a total of 300 acre-feet each year from all categories of water in Prosser Creek Reservoir, except **Floriston Rate Water**, **Tahoe-Prosser Exchange Water** and **Power Company Emergency Drought Supply**, with each category contributing in proportion to the quantity of water stored in that category in Prosser Creek Reservoir, as necessary to prevent the formation of ice, such as anchor ice, in Prosser Creek, notwithstanding the limitations of Section 9.C.1(f). The **Administrator** shall develop any criteria needed for such **Releases** and schedule **Releases** in accordance with the **California Guidelines** and in consultation with the **Scheduling Parties** storing water in Prosser Creek Reservoir.

Section 9.C.6 Minimum Releases from Independence Lake.

Section 9.C.6(a) Minimum Releases. The **Minimum Release** flow regimes for Independence Lake are as follows:

Regime	**January (cfs)**	**Feb-March (cfs)**	**April-July (cfs)**	**Aug-Sep (cfs)**	**Oct-Dec (cfs)**
1	2	2	2	2	2
2	3.5	2	4	2	3.5
3	7	4	8	4	7

The **Minimum Release** flow regimes for Independence Lake shall be determined as follows:

Season (as determined in Section 9.B)	**When Storage Is**		
	Less Than or Equal to 7,500 Acre-feet	**Greater Than 7,500 and Less Than or Equal to 12,500 Acre-feet**	**Greater Than 12,500 Acre-feet**
Dry	Regime 1	Regime 2	Regime 2
Normal	Regime 1	Regime 2 or 3	Regime 3

Where "Regime 2 or 3" is specified, the **Minimum Release** from Independence Lake shall be the greater of Regime 2, or an amount equal to Regime 3 less one-half the sum of all inflow into Independence Creek between Independence Lake and its confluence with the Little Truckee River.

Section 9.C.6(b) No Enhanced Minimum Releases from Independence Lake. Because of the **Minimum Releases** required in Section 9.C.6(a), this **Agreement** does not specify **Enhanced Minimum Releases** for Independence Lake.

Section 9.C.6(c) Sources of Water for Independence Lake Minimum Release. Privately Owned Stored Water shall provide **Minimum Release** equal to two cfs to the extent Independence Lake **Release** would otherwise be less than two cfs. Additional **Release** from Independence Lake for the purpose of providing the **Minimum Release** corresponding to Regimes 2 or 3 and which, but for the requirements of this **Agreement**, would not otherwise be **Released** from Independence Lake, shall first be provided by Power Company **Release** of **Privately Owned Stored Water** to the extent specified by Power Company, second by **Credit Water** other than **Power Company M&I Credit Water**, third by **Power Company M&I Credit Water**, and finally by Power Company **Privately Owned Stored Water** in Independence Lake.

Section 9.C.6(d) Exchange, Storage, or Re-Storage. Water **Released** from Independence Lake to satisfy the provisions of this Section 9.C.6 shall be **Exchanged**, stored, or re-stored in **Truckee River Reservoirs** in accordance with the provisions of Article Eight, if and to the extent such **Exchange**, storage or re-storage is requested by the **Scheduling Party** who owns the category of water **Released** from Independence Lake.

Section 9.C.7 Minimum and Enhanced Minimum Releases from Stampede Reservoir.

Section 9.C.7(a) Minimum Releases. The **Minimum Release** from Stampede Reservoir shall be 30 cfs, which, if not provided from other operations, shall be provided by **Release** of **Stampede Project Water**. California may, notwithstanding Section 9.C.1(c) and as directed by **California Guidelines** or additional measures pursuant to Section 9.F.1(c), reduce the **Minimum Release** and **Enhanced Minimum Release** from Stampede Reservoir by as much as five cfs, provided that an increased **Release** of an equal amount of a combination of **Fish Credit Water** and **Prosser Fish Water** is made from Prosser Creek Reservoir, in accordance with Section 9.C.5(c)(1).

Section 9.C.7(b) Enhanced Minimum Releases. During a **Normal Season**, the **Enhanced Minimum Release** from Stampede Reservoir shall be 45 cfs. During a **Dry Season**, when the **Minimum Release** cannot be provided in accordance with Section 9.C.7(a), the **Enhanced Minimum Release** from Stampede Reservoir shall be the greater of 22.5 cfs or the Stampede Reservoir **Release** that is provided by Section 9.C.7(a).

Section 9.C.7(c) Sources of Water for Enhanced Minimum Release. Subject to the provisions of Sections 9.C.1, sufficient water of all categories, except **Firm M&I Credit Water, Project Water in Another Reservoir** and **Power Company Emergency Drought Supply**, shall be **Released** to provide the additional flow required to maintain the **Enhanced Minimum Release**.

Section 9.C.8 Minimum Releases and Enhanced Minimum Releases Not Required from Boca Reservoir. No **Minimum Release** or **Enhanced Minimum Release** is required from Boca Reservoir; however, recommendations for **Releases** or operations to maintain instream flows downstream from Boca Reservoir may be made in the **California Guidelines** pursuant to Section 9.F.1, or in additional proposals for adjustments to river operations pursuant to Section 8.R.

SECTION 9.D – EXCHANGE CRITERIA FOR ENHANCED AND DRY SEASON MINIMUM RELEASES

Section 9.D.1 Purpose and General Provision. This Section 9.D sets forth criteria under which an **Exchange** otherwise required by Sections 9.C or 8.Q.1 shall not be required, even though the **Released** water could be **Exchanged** to or re-stored in a **Truckee River Reservoir**. For purposes of Sections 9.D.2 through Section 9.D.7, daily values shall be determined based upon linear interpolation of end-of-month storage or elevation thresholds.

Section 9.D.2 Lake Tahoe Criteria. No **Scheduling Party** shall be required to **Exchange** water into Lake Tahoe if (a) the amount of **Floriston Rate Water** stored in Lake Tahoe is at or below the low elevation thresholds set forth in Table 9-1, or (b) the elevation of Lake Tahoe, after subtracting the total amount of **Newlands Project Credit Water, Additional California Environmental Credit Water** and **Other Credit Water** in Lake Tahoe, is at or above the high elevation thresholds set forth in Table 9-1.

Table 9-1--Lake Tahoe End-of-Month Elevation Thresholds
(Elevation above 6,220.0 Feet, Lake Tahoe Datum)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
High Elevation Thresholds											
7.11	7.11	7.27	7.43	8.01	8.49	8.74	7.49	7.92	7.43	7.11	7.11
Low Elevation Thresholds											
3.41	3.41	3.49	3.58	3.87	4.11	4.24	4.11	3.82	3.58	3.41	3.41

Section 9.D.3 Donner Lake Criteria. No **Scheduling Party** shall be required to **Exchange** water out of Donner Lake when the amount of water in Donner Lake is at or below the storage thresholds set forth in Table 9-2. No **Scheduling Party** shall be required to

Exchange water into Donner Lake for the purpose of maintaining **Enhanced Minimum Releases**.

Table 9-2--Donner Lake End-of-Month Storage Thresholds
(thousand acre-feet)

Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
4.0	4.0	8.0	7.5	7.5	6.5	3.5	3.0

Section 9.D.4 Prosser Creek Reservoir Criteria. No **Scheduling Party** shall be required to **Exchange** water into Prosser Creek Reservoir when total storage, after subtracting the total amount of **Newlands Project Credit Water, Additional California Environmental Credit Water** and **Other Credit Water** in Prosser Creek Reservoir, is at or above the storage thresholds set forth in Table 9-3.

Table 9-3--Prosser Creek Reservoir End-of-Month Storage Thresholds
(thousand acre-feet)

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Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7.8	7.8	7.8	85% COE*	85% COE*	85% COE*	23.8	23.8	9.8	7.8	7.8	7.8

* 85% COE means 85 percent of the maximum storage in thousand acre-feet set by the **Corps of Engineers** for flood control for any date within the specified month.

Section 9.D.5 Independence Lake Criteria. No **Scheduling Party** shall be required to **Exchange** water into Independence Lake for the purpose of maintaining **Enhanced Minimum Releases**.

Section 9.D.6 Stampede Reservoir Criteria. No **Scheduling Party** shall be required to **Exchange** into or re-store water in Stampede Reservoir when the total storage in Stampede Reservoir, after subtracting the total amount of **Newlands Project Credit Water, Additional California Environmental Credit Water** and **Other Credit Water** in Stampede Reservoir, is at or above the storage thresholds set forth in Table 9-4.

Table 9-4--Stampede Reservoir End-of-Month Storage Thresholds
(thousand acre-feet)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
195	195	195	90% COE*	90% COE*	90% COE*	215	200	195	195	195	195

* 90% COE means 90 percent of the maximum storage in thousand acre-feet set by the **Corps of Engineers** for flood control operations for any date within the specified month.

Section 9.D.7 Boca Reservoir Criteria. No **Scheduling Party** shall be required to **Exchange** into or re-store water in Boca Reservoir when the total storage in Boca Reservoir, after subtracting the total amount of **Newlands Project Credit Water, Additional California Environmental Credit Water** and **Other Credit Water** in Boca Reservoir, is at or above the storage thresholds set forth in Table 9-5.

Table 9-5--Boca Reservoir End-of-Month Storage Thresholds
(thousand acre-feet)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
26.3	26.3	26.3	85% COE*	85% COE*	85% COE*	32.7	32.7	32.7	26.3	26.3	26.3

* 85% COE means 85 percent of the maximum storage in thousand acre-feet set by the **Corps of Engineers** for flood control operations for any date within the specified month.

SECTION 9.E - MINIMUM INSTREAM FLOWS AT POWER COMPANY HYDROELECTRIC PLANT DIVERSIONS

Section 9.E.1 Bypass Flow at Power Company Hydroelectric Facilities. This Section 9.E.1 only limits diversions for Power Company hydroelectric facilities operations for the purpose of providing bypass flows and shall not limit diversions for other beneficial uses. All references to bypass flow requirements in this Section 9.E.1 are exclusive of **Fish Water Released** pursuant to Section 9.E.2, and **Fish Credit Water** and **Fish Water Released** to compensate for diversions made in accordance with Section 5.A.8.

Section 9.E.1(a) If total Truckee River flow immediately upstream of a **Power Company Hydroelectric Plant** diversion dam is greater than or equal to 55 cfs, Power Company shall operate that **Power Company Hydroelectric Plant's** diversion works to bypass 50 cfs over or through such diversion dam for instream flow immediately downstream from the diversion dam. If total Truckee River flow immediately upstream of a **Power Company Hydroelectric Plant's** diversion dam is less than 55 cfs, then Power Company shall divert no more than five cfs into the flume for hydroelectric facility operations.

Section 9.E.1(b) If the scheduled combined diversion for Highland Ditch and Washoe Ditch at Washoe Diversion Dam would otherwise cause the respective bypass flow to be less than 50 cfs, Power Company shall reduce diversion to the Washoe Ditch for hydroelectric facility operations to the extent required under this Section 9.E.1

Section 9.E.1(c) Power Company shall not be required to bypass water in excess of that specified in this Section 9.E.1 if other water users divert water from the river between a **Power Company Hydroelectric Plant** diversion dam and its hydroelectric facilities return point.

Section 9.E.1(d) Nothing in this Section 9.E.1 shall preclude Power Company from bypassing additional water if it so chooses.

Section 9.E.2 Instream Flow Maintenance at Power Company Hydroelectric Plants Using Fish Water. In addition to the bypass flow required by Section 9.E.1, Power Company shall operate **Power Company Hydroelectric Plant** diversion works to bypass additional flow in accordance with Sections 5.A.8(a), 9.E.2(a), and 9.E.2(b). For purposes of this Section 9.E.2 only, **Establishment** of **Fish Credit Water**, **Other Credit Water,** and **Newlands Project Credit Water** shall only include such **Credit Water Establishment** through retention of **Floriston Rate Water**.

Section 9.E.2(a) Flow at Farad Gage Equal to or Greater than Floriston Rates or Reduced Floriston Rates. Whenever Truckee River flow at **Farad Gage**, exclusive of (1) **Fish Water** scheduled and **Released** pursuant to this Section 9.E.2 for maintenance of instream flows between the **Power Company Hydroelectric Plant** diversion works and return points and (2) **Fish Water** and **Fish Credit Water** at Washoe/Highland ditch diversion facility **Released** to compensate for diversions made in accordance with Section 5.A.8, is equal to or greater than flow equivalent to **Floriston Rates** or **Reduced Floriston Rates**, Power Company shall operate **Power Company Hydroelectric Plant** diversion works to bypass such **Fish Water**, and shall also operate Washoe/Highland ditch diversion facility to bypass **Fish Water** and **Fish Credit Water Released** pursuant to Section 5.A.8(a).

Section 9.E.2(b) Flow at Farad Gage Less than Floriston Rates or Reduced Floriston Rates. Whenever Truckee River flow at **Farad Gage**, exclusive of **Fish Water** scheduled and **Released** pursuant to this Section 9.E.2 for maintenance of instream flows between the **Power Company Hydroelectric Plant** diversion works and return points, and exclusive of **Fish Water** and **Fish Credit Water** at Washoe/Highland ditch diversion facility that was **Released** pursuant to Section 5.A.8(a), is less than flow equivalent to **Floriston Rates** or **Reduced Floriston Rates**, and:

(1) When **Fish Credit Water**, **Other Credit Water** owned by United States or Pyramid Tribe, and **Newlands Project Credit Water** are not being concurrently **Established**, Power Company shall bypass such **Fish Water Released** for instream flow as follows:

(i) 50 cfs from October through April, and

(ii) 150 cfs from May through September; or

(2) When **Fish Credit Water**, **Other Credit Water** owned by United States or Pyramid Tribe, and **Newlands Project Credit Water**, in any combination, are being concurrently **Established**, Power Company shall operate **Power Company Hydroelectric Plant** diversion works to bypass such **Fish Water Released** for instream flow according to the following schedule:

Period	Establishment Rate (cfs) of Fish Credit Water, Other Credit Water owned by the United States or Pyramid Tribe, and Newlands Project Credit Water	Fish Water Released for Instream Flow to be bypassed by Hydroelectric Plant at the following rate (cfs)
Oct-April	greater than 50	0
	less than or equal to 50	50 minus Establishment Rate
May-Sept	greater than 50	0
	41-50	10
	31-40	30
	21-30	50
	11-20	80
	1-10	120

SECTION 9.F – CALIFORNIA GUIDELINES CONCERNING PREFERRED RESERVOIR OPERATIONS FOR INSTREAM FLOWS AND RECREATION

Section 9.F.1 California Guidelines. California shall timely submit operating guidelines including any revisions to the **Administrator** for instream flow, reservoir level and other environmental objectives. California shall transmit the **California Guidelines** to the **Administrator** and others in accordance with Section 11.C.2(b).

Section 9.F.1(a) Content of California Guidelines. The following are appropriate resource management considerations which may be included in the **California Guidelines**: (1) preferred instream flows downstream from reservoirs; (2) reservoir storage targets (for recreation, resident fish, or other environmental objectives); (3) other environmental objectives including, but not limited to, restoring, maintaining and enhancing riparian vegetation, fish habitat, and water quality; (4) priorities to be followed by the **Administrator**, insofar as practicable, in the event that not all preferred instream flow and reservoir storage targets can be attained; and (5) recommendations for voluntary **Exchanges**, maximum instream flows, ramping rates, scheduling of **Releases,** and other adjustments to river operations for instream flow and reservoir-based recreation. The **California Guidelines** shall not specify a preferred instream flow below Donner Lake during a **Dry Season**.

Section 9.F.1(b) Resolution of Conflict or Ambiguity in California Guidelines. In the event that the **Administrator** finds a conflict or ambiguity in the **California Guidelines**, the **Administrator** shall, as appropriate, request that California clarify the **California Guidelines**, or consult with California and other affected parties to resolve the conflict.

Section 9.F.1(c) Additional Proposals for Adjustments to River Operations. In addition to transmittal of the **California Guidelines** pursuant to Section 11.C.2(b) California may request adjustments to river operations in accordance with Section 8.R.

Section 9.F.2 Use of California Guidelines for Preferred Instream Flows, for Recreation, to Limit Maximum Flows, and to Provide Ramping of Flows. To the extent practicable and consistent with the exercise of water rights, assurance of water supplies, operational considerations, the requirements of the **Settlement Act** and all other requirements of this **Agreement**, the **Administrator** shall:

(a) encourage **Scheduling Parties** to schedule in accordance with the **California Guidelines**;

(b) encourage voluntary **Exchanges** and re-storage, scheduling of **Releases**, and other available water management opportunities to increase reservoir **Releases** to help maintain the preferred instream flows specified in the **California Guidelines**;

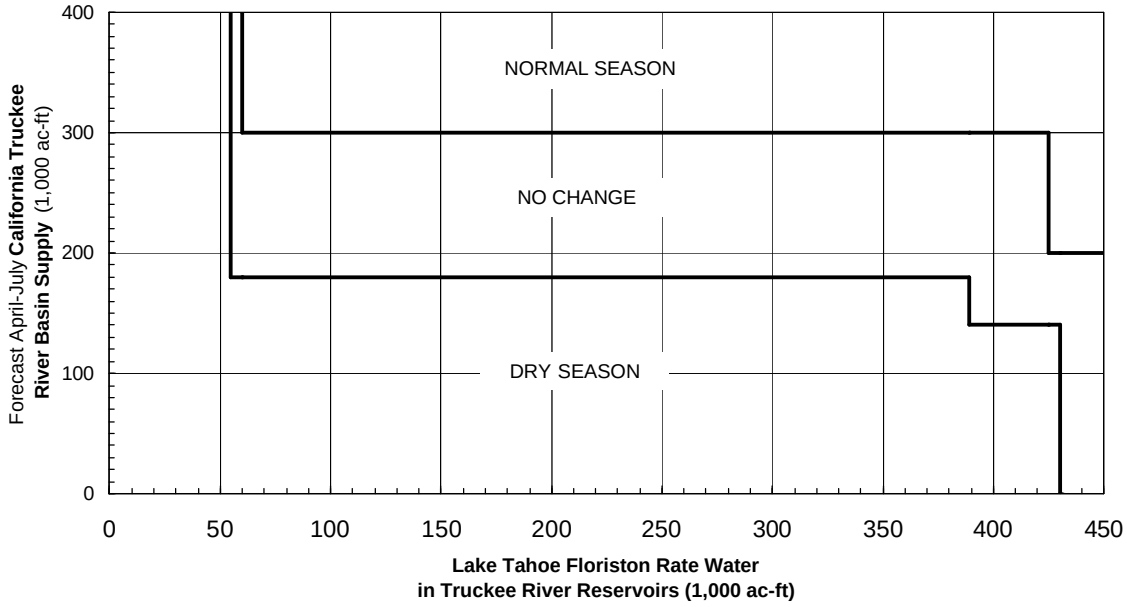
(c) encourage voluntary **Exchanges** and re-storage, scheduling of **Releases**, and other available water management opportunities to meet the recreation-based reservoir storage objectives specified in the **California Guidelines**;

(d) encourage voluntary **Exchanges** and re-storage, scheduling of **Releases**, and other available water management opportunities to prevent or minimize **Releases** which result in any maximum flow criteria in the **California Guidelines** being exceeded; and

(e) encourage voluntary **Exchanges** and re-storage, scheduling of **Releases**, and other available water management opportunities to limit the rates of increase or decrease (ramping) of reservoir **Releases** consistent with the **California Guidelines**.

Figure 9-1. Season Type Determination for Minimum and Enhanced Minimum Releases

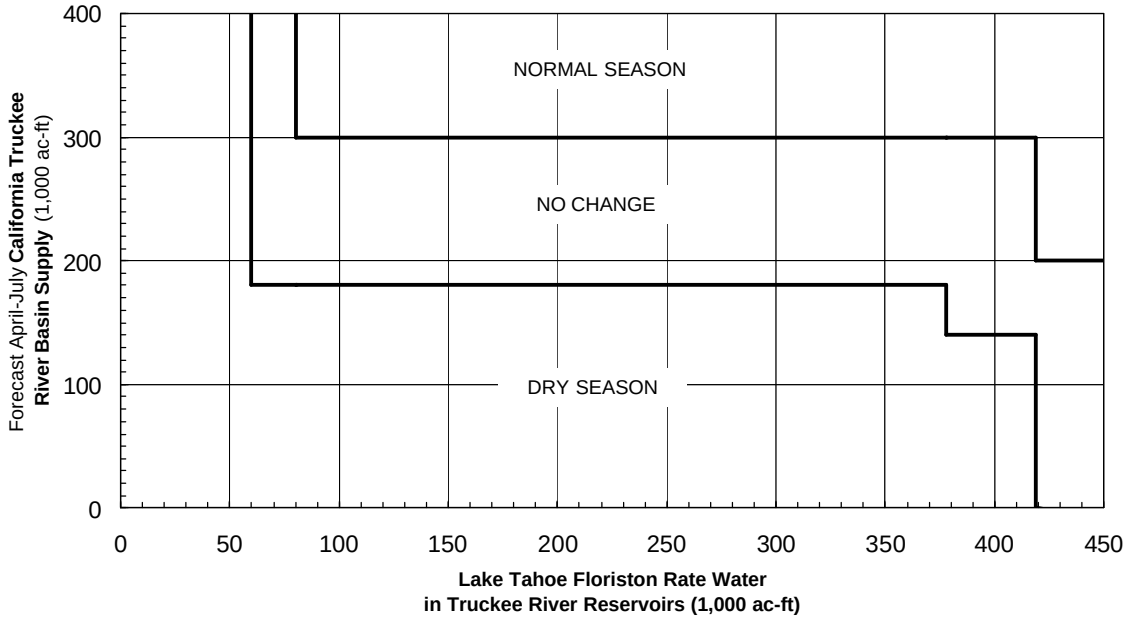
TAHOE BASIN -- FEBRUARY



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than 55	All	Dry
Greater than or equal to 55 and less than or equal to 60	Less than or equal to 180	Dry
	Greater than 180	No Change
Greater than 60 and less than or equal to 389	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 389 and less than or equal to 425	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 425 and less than or equal to 430	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 200	No Change
	Greater than 200	Normal
Greater than 430	Less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-2. Season Type Determination for Minimum and Enhanced Minimum Releases

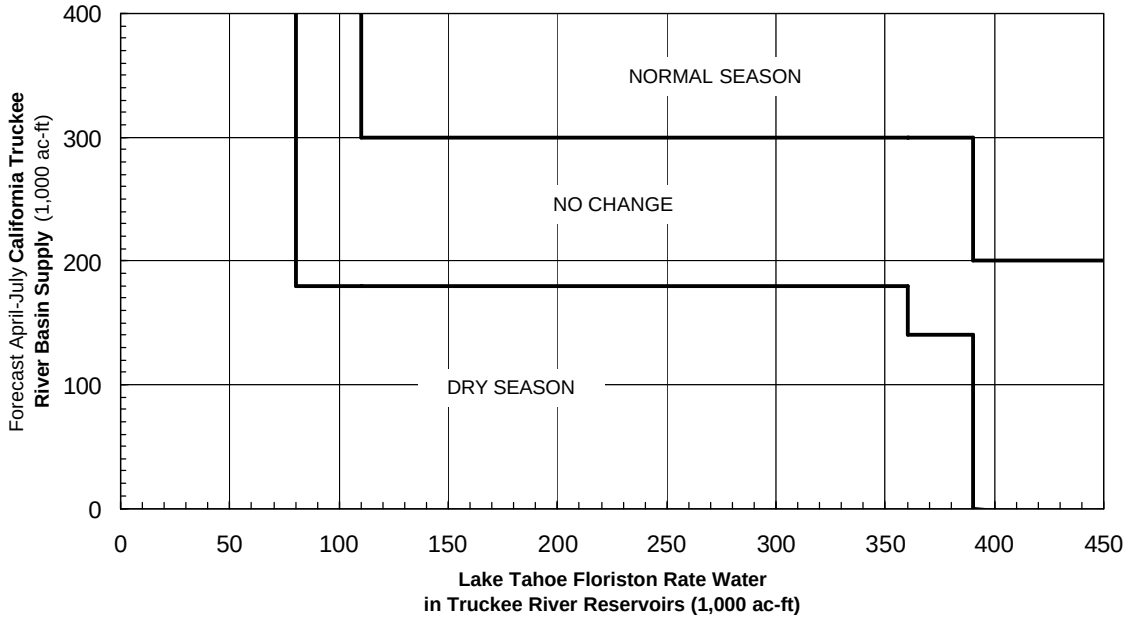
TAHOE BASIN -- MARCH



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than 60	All	Dry
Greater than or equal to 60 and less than or equal to 80	Less than or equal to 180	Dry
	Greater than 180	No Change
Greater than 80 and less than or equal to 378	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 378 and less than or equal to 419	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 419	Less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-3. Season Type Determination for Minimum and Enhanced Minimum Releases

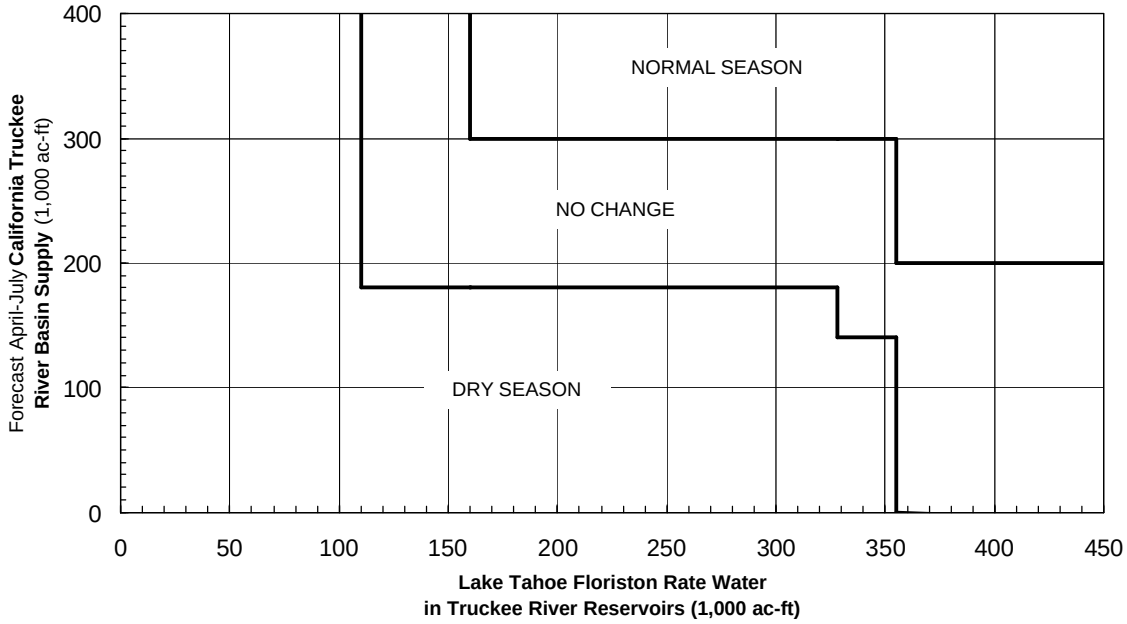
TAHOE BASIN -- APRIL



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than 80	All	Dry
Greater than or equal to 80 and less than or equal to 110	Less than or equal to 180	Dry
	Greater than 180	No Change
Greater than 110 and less than or equal to 360	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 360 and less than or equal to 390	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 390	Less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-4. Season Type Determination for Minimum and Enhanced Minimum Releases

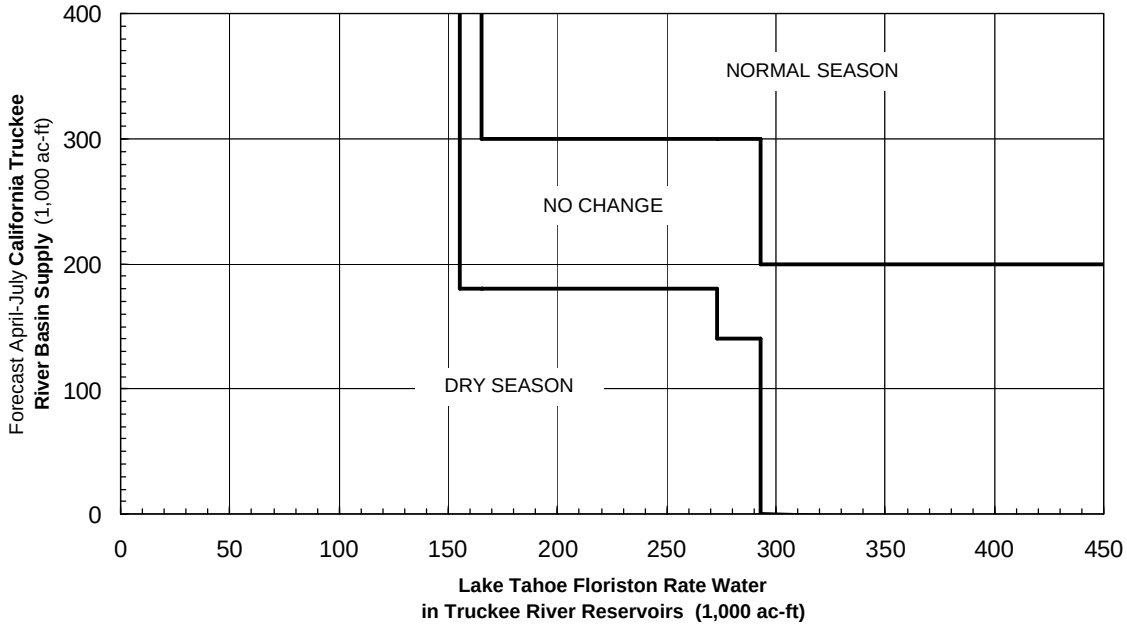
TAHOE BASIN -- MAY



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than 110	All	Dry
Greater than or equal to 110 and less than or equal to 160	Less than or equal to 180	Dry
	Greater than 180	No Change
Greater than 160 and less than or equal to 328	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 328 and less than or equal to 355	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 355	Less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-5. Season Type Determination for Minimum and Enhanced Minimum Releases

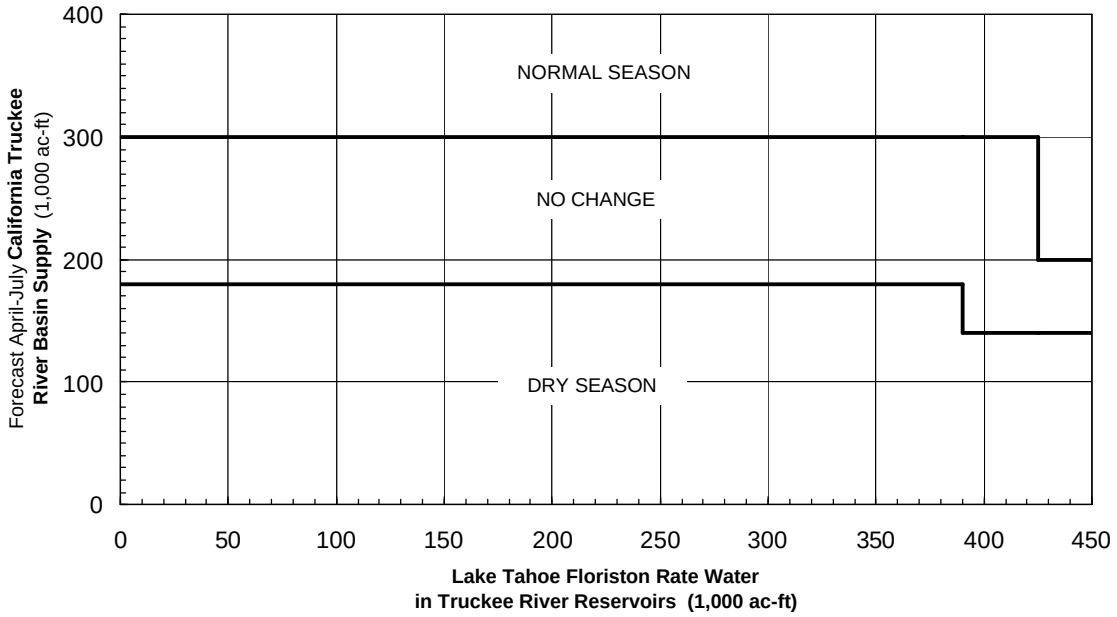
TAHOE BASIN -- JUNE



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than 155	All	Dry
Greater than or equal to 155 and less than or equal to 165	Less than or equal to 180	Dry
	Greater than 180	No Change
Greater than 165 and less than or equal to 273	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 273 and less than or equal to 293	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 293	Less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-6. Season Type Determination for Minimum and Enhanced Minimum Releases

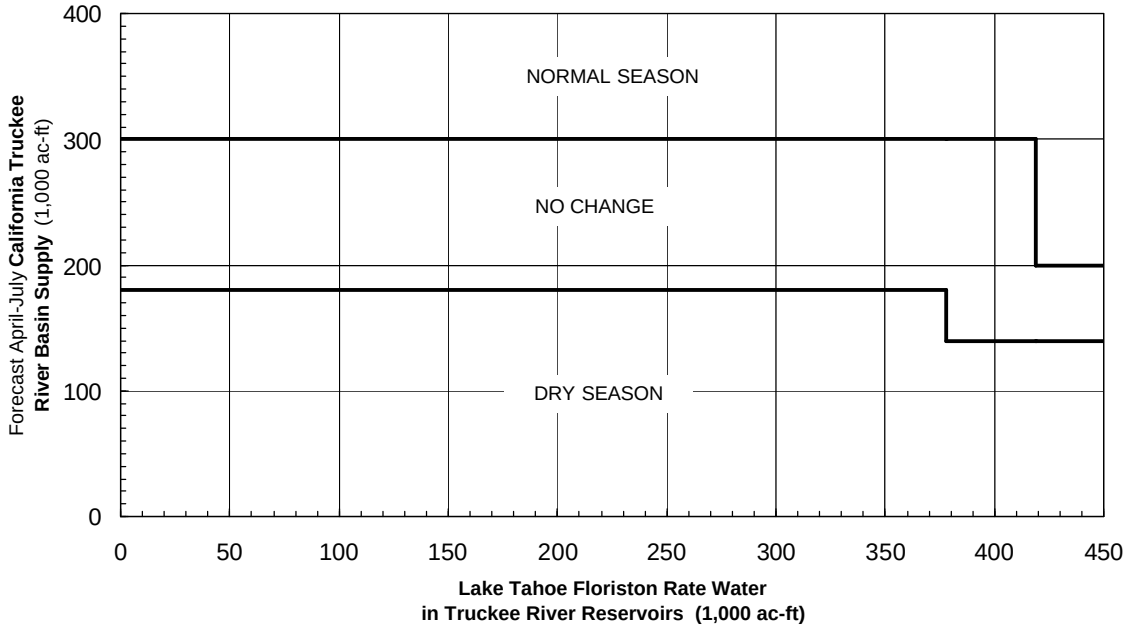
TRUCKEE BASIN -- FEBRUARY



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than or equal to 390	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 390 and less than or equal to 425	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 425	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-7. Season Type Determination for Minimum and Enhanced Minimum Releases

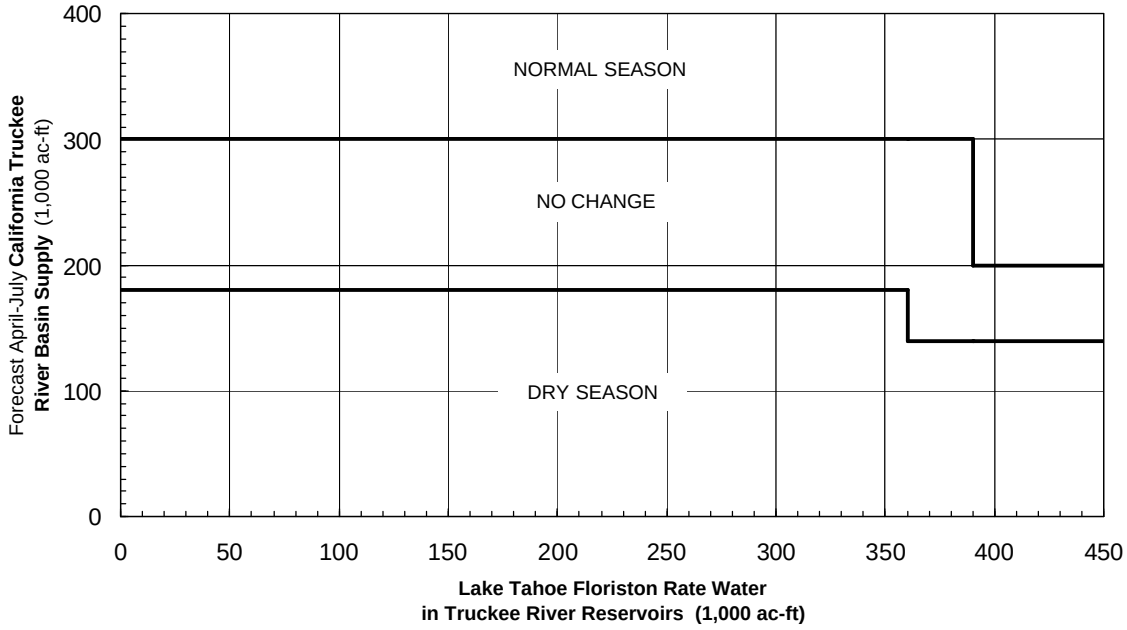
TRUCKEE BASIN -- MARCH



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than or equal to 378	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 378 and less than or equal to 419	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 419	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-8. Season Type Determination for Minimum and Enhanced Minimum Releases

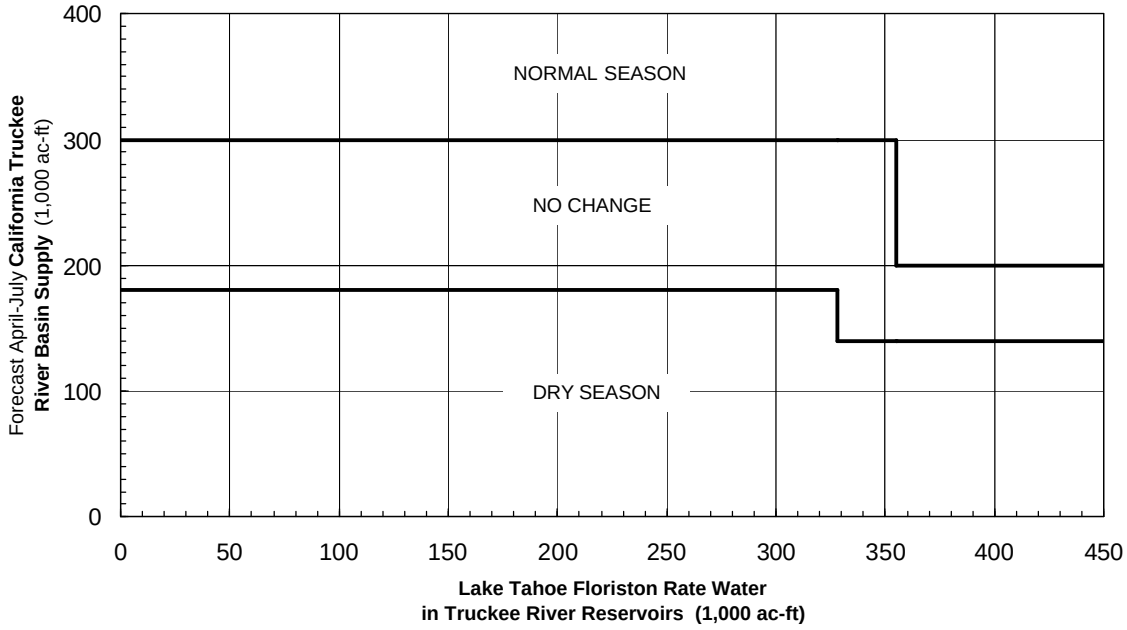
TRUCKEE BASIN -- APRIL



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than or equal to 360	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 360 and less than or equal to 390	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 390	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-9. Season Type Determination for Minimum and Enhanced Minimum Releases

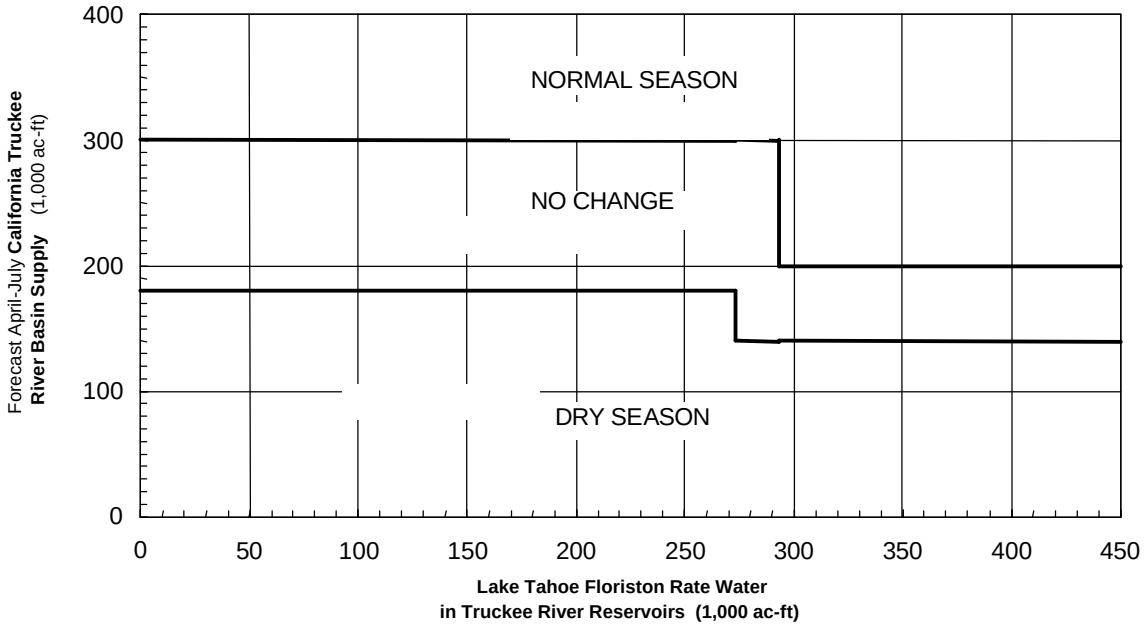
TRUCKEE BASIN -- MAY



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than or equal to 328	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 328 and less than or equal to 355	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 355	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 200	No Change
	Greater than 200	Normal

Figure 9-10. Season Type Determination for Minimum and Enhanced Minimum Releases

TRUCKEE BASIN -- JUNE



Lake Tahoe Floriston Rate Water in Truckee River Reservoirs (1,000 ac-ft)	Forecast April-July **California Truckee River Basin Supply** (1,000 ac-ft)	Season Type
Less than or equal to 273	Less than or equal to 180	Dry
	Greater than 180 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 273 and less than or equal to 293	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 300	No Change
	Greater than 300	Normal
Greater than 293	Less than or equal to 140	Dry
	Greater than 140 and less than or equal to 200	No Change
	Greater than 200	Normal

ARTICLE TEN
DESIGN OF WATER WELLS IN THE TRUCKEE RIVER BASIN IN CALIFORNIA

[NOTE: There are two tasks to be done before signing TROA:

1. The "Initial Set of Geographic Features Maps" specified in Section 10.A.4(a) may be updated before signing TROA.

2. The list of wells specified in Section 10.B.1(e) will include all wells that have been "approved" by the Mandatory Signatory Parties. The "approval" process is: (1) California will compile a list of wells drilled since May 1, 1996, with locations and relevant design features, from water supply agencies, county permitting authorities and well owners; (2) California, or an individual well owner if they deem it appropriate, will send this information to each of the Mandatory Signatory Parties and request approval that the wells are consistent with the intent of TROA Article Ten; (3) wells not objected to within 90 days will be listed in Section 10.B.1(e); and (4) California will periodically repeat steps (1) through (3) for other wells up to the date TROA is executed so retroactive notices do not become an issue.]

SECTION 10.A - GENERAL PROVISIONS

Section 10.A.1 Purpose. The purpose of this Article Ten is to provide a means for complying with Section 204(c)(1)(B) of the **Settlement Act,** which requires that new water wells be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible. This Article Ten shall apply to waters which are classified as ground water pursuant to California law. It shall not apply to the diversion or extraction of waters which are classified as surface waters pursuant to Division 2 Part 2 of the California Water Code (commencing with section 1200), as amended, or otherwise so classified under California law, and which may be put to beneficial use under California law applicable to surface water rights. The definitions, and the provisions of this Article Ten only apply to water wells and water bodies within the **Truckee River Basin** in California.

Section 10.A.2 Definitions. For purposes of this Article Ten, the following terms shall have the meanings specified when appearing in this Article Ten in bold face and capitalized.

Section 10.A.2(a) Abandon or Abandonment. The terms "**Abandon**", in any tense, and "**Abandonment**" include "destroy" or "destruction" as that term is used in California Water Code Section 13800 et seq., as amended, and California Well Standards (Department of Water Resources Bulletin 74-81 as supplemented by Bulletin 74-90).

Section 10.A.2(b) Domestic Well. "**Domestic Well**" means a well which is constructed for and serves domestic water to a single-family residence and, regardless of the size of the parcel on which the residence is located, water for the irrigation of not more than one acre.

Section 10.A.2(c) Geographic Features Map. "**Geographic Features Map**" means a set of maps maintained and updated by the **Administrator** pursuant to Section 10.A.4 used in the implementation of this Article Ten.

Section 10.A.2(d) Independent Consultant. "**Independent Consultant**" means a consultant qualified to review the construction of wells to determine whether they meet the criteria of Sections 10.B.1(c) and (d), and 10.B.2 of this **Agreement** and Section 204(c)(1)(B) of the **Settlement Act**. Such consultant shall not have a financial interest or existing contractual relationship with the **Person** constructing the well in question or with the well project, and shall not have a financial interest or existing contractual relationship with any **Signatory Party** or **Scheduling Party**, or with any project undertaken by such party, provided that nothing in this Section 10.A.2(d) shall be construed as prohibiting subsequent contracts to review the construction of other wells. Such a consultant may have a financial interest or contractual relationship with United States, California, or Nevada, so long as the interest or relationship does not involve any of the geographic areas or matters included in the **Settlement Act**.

Section 10.A.2(e) Intermittent Stream. "**Intermittent stream**" means a stream shown on a map adopted or modified pursuant to Section 10.A.4. For the purpose of updating such maps, an **Intermittent Stream**: (1) is not perennial; (2) flows in a definite channel or watercourse seasonally in most years and less often during infrequent periods of severe drought; and (3) has as its source rain, snow or a spring.

Section 10.A.2(f) Lake. "**Lake**" means a lake which: (1) is shown on a map adopted or modified pursuant to Section 10.A.4; (2) is more than three acres in surface area at maximum volume; and (3) is located on the Truckee River, Little Truckee River, a **Perennial Stream** or an **Intermittent Stream**. For the purpose of updating such maps, a **Lake** must be more than three acres in surface area at maximum volume and located on the Truckee River, Little Truckee River, a **Perennial Stream** or an **Intermittent Stream**. For the purposes of Section 10.B only, Martis Creek Reservoir is not a Lake and is governed by rules in Section 10.B.2(k).

Section 10.A.2(g) Local Well Ordinance. "**Local Well Ordinance**" means a water well ordinance adopted by a city, county, or water agency pursuant to the requirements of Division 7, Chapter 10, Article 4 (commencing with section 13800) of the California Water Code.

Section 10.A.2(h) Notice of Intent to Construct a Well. "**Notice of Intent to Construct a Well**", sometimes herein referred to as "Notice", means a notice to be filed with the **Administrator** pursuant to Section 10.C when a **Person** plans to drill a well in the **Truckee River Basin** in California.

Section 10.A.2(i) Perennial Stream. "**Perennial Stream**" means a stream shown on a map adopted or modified pursuant to Section 10.A.4. For the purpose of updating such maps, a **Perennial Stream**: (1) flows in a definite channel or watercourse, (2) flows throughout the year except for infrequent periods of severe drought when the stream may not flow, and (3) has as its source rain, snow or a spring.

Section 10.A.2(j) Pond. "**Pond**" means a pond which: (1) is shown on a map adopted or modified pursuant to Section 10.A.4; (2) is three acres or less in surface area at maximum volume; and (3) is located on the Truckee River, Little Truckee River, a **Perennial Stream** or an **Intermittent Stream**. For the purpose of updating such maps, a **Pond** must be equal to or less than three acres in surface area at maximum volume and located on the Truckee River, Little Truckee River, a **Perennial Stream** or an **Intermittent Stream**.

Section 10.A.2(k) Special Zone. "**Special Zone**" means an area described in Section 10.B.2 in which wells meeting specified criteria are presumed to comply with Section 204(c)(1)(b) of the **Settlement Act**.

Section 10.A.2(l) Spring. "**Spring**" means a spring shown on a map adopted or modified pursuant to Section 10.A.4. For the purpose of updating such maps, a **Spring**: (1) is tributary to an **Intermittent Stream**, a **Perennial Stream**, a **Lake, Pond**, the Little Truckee River or the Truckee River; (2) has as its source ground water; and (3) flows throughout the year except for infrequent periods of severe drought when the **Spring** may not flow.

Section 10.A.3 Measurement of Distance. For purposes of determining the distance between a well and the Truckee River, the Little Truckee River, a stream, lake, pond or spring as set forth in Section 10.B, only the horizontal component of the distance shall be used, and the measurement shall be from the centerline of a river or a stream, from the ordinary high water line of a lake or a pond, and from the center of a spring to the closest unsealed portion of the well below ground level into which water may flow.

Section 10.A.4 Location of Rivers, Streams, Lakes and Other Geographic Features. For purposes of determining compliance with the criteria in Section 10.B and the requirements in Section 10.C, the location of the Little Truckee River, **Perennial Streams, Intermittent Streams, Springs, Lakes** and **Ponds** are as shown on the **Geographic Features Maps** as described in Section 10.A.4(a) with all updates pursuant to Section 10.A.4(b) made before the **Notice of Intent to Construct a Water Well** is submitted pursuant to Section 10.C. The **Administrator** shall maintain the official set of **Geographic Features Maps** as public records and allow access to them, including making copies upon request. The **Administrator** shall update the **Geographic Features Maps** pursuant to the procedure set forth in Section 10.A.4(b).

Section 10.A.4(a) Initial Set of Geographic Features Maps. The initial set of **Geographic Features Maps** shall be the following 1:24,000 scale, USGS, topographic maps:

(1) Boca, Calif-Nev, 1955, Photo-revised 1969, AMS 1962
(2) Dog Valley, Calif-Nev, 1981, DMA 1963

(3) Granite Chief, Calif, 1953, Photo-revised 1979, DMA 1962

(4) Kings Beach, CA-NV, 1992, DMA 1962

(5) Martis Peak, CA-NV, 1992, DMA 1962

(6) Norden, Calif., 1955, Photo-revised 1979, DMA 1962

(7) Hobart Mills, Calif, 1981, DMA 1962

(8) Tahoe City, CA 1992, DMA 1962

(9) Truckee, CA, 1992, DMA 1962

and, for areas not covered by these maps, the latest, 1:24,000 scale, USGS, topographic map which was published prior to the date of execution of this **Agreement**.

Section 10.A.4(b) Criteria for Updating the Geographic Features Maps. The **Geographic Features Maps** may be updated only as specified in this Section 10.A.4(b).

Section 10.A.4(b)(1) Request for an Update to the Geographic Features Map. The **Administrator** or any **Signatory Party** may at any time request that the current set of **Geographic Features Maps** be updated, including substitution of a more recent version of a USGS topographic map. The request shall include: (i) the geographic feature or features that should be added, deleted or redrawn; (ii) a published map or a drawing which is signed by a registered engineer, a registered land surveyor, a certified engineering geologist, a certified hydrogeologist or a registered geologist and shows the location of the geographic feature with a precision sufficient to update the **Geographic Features Maps**; and (iii) the rationale for the requested update. The **Administrator** shall timely determine if the request is complete and shall notify the party making the request of this determination. If the request for the update is complete, the **Administrator** shall: (A) timely transmit a copy of the request to each **Signatory Party** who has filed with the **Administrator** a request that it be furnished such requests and (B) update the official maps with any new geographic features, deleted geographic features, or revisions to existing geographic features, identifying each such update as tentative. All tentative geographic features identified by a request shall be used for the purposes of determining compliance with the criteria in Section 10.B and the requirements of Section 10.C until such tentative features have been withdrawn or other final resolution attained pursuant to Sections 10.A.4(b)(3) through 10.A.4(b)(6). Features shown on a sketch provided pursuant to Section 10.C.1(c)(15) shall not modify the official set of **Geographic Features Maps** absent compliance with the procedure set forth in this Section 10.A.4(b) to update **Geographic Features Maps**.

Section 10.A.4(b)(2) California Approvals for Construction of a Lake or Pond. When the California State Water Resources Control Board approves an application to appropriate surface water, or the California Department of Fish and Game enters into a streambed modification agreement pursuant to California Fish and Game Code Section 1601 or 1603, for a project involving the construction of an impoundment or diversion facilities which creates a **Lake** or a **Pond** which is not already shown on a **Geographic Features Map**, it shall notify the **Administrator** of such approval, and the notification shall be treated as a request for an update pursuant to Section 10.A.4(b)(1).

Section 10.A.4(b)(3) Objection to a Request for an Update. Any **Mandatory Signatory Party** may file an objection to a request for an update with the **Administrator**. The objection shall identify its originator and provide an explanation of why the update should not be made. The **Administrator** shall timely transmit a copy of each objection to the party filing the request and each **Signatory Party** who has filed with the **Administrator** a request that it be furnished requests for an update. Objections are due within 60 days of the request unless an extension of time is granted by the **Administrator** to the **Mandatory Signatory Party** based on an inability to conduct an on-site investigation due to time of year, climatic condition or other physical on-site conditions which prevent inspection.

Section 10.A.4(b)(4) Incorporation of an Update without Objection. If no **Mandatory Signatory Party** files an objection to a request within 60 days of the original request or within an extended period of time granted by the **Administrator** pursuant to Section 10.A.4(b)(3), the **Administrator** shall update the **Geographic Features Maps** as specified in the request.

Section 10.A.4(b)(5) Incorporation of an Update with a Compromise. In response to an objection to a request, the party filing a request and each **Mandatory Signatory Party** who has filed an objection to that request, which objection was filed within the time limits set forth in Section 10.A.4(b)(3), may jointly submit a compromise update to the **Administrator**. If: (i) the compromise update was filed within 90 days of the original request or within 30 days after the period of time for incorporation of an update without objection pursuant to Section 10.A.4(b)(4), and (ii) the **Administrator** determines that the compromise update is within the scope of the original request, the **Administrator** shall update the **Geographic Features Maps** as specified in the compromise update. The **Administrator** shall timely transmit a copy of the compromise update and its determination to the party filing a request, each **Mandatory Signatory Party** who has filed an objection to that request and each **Signatory Party** who has filed with the **Administrator** a request that it be furnished such copies.

Section 10.A.4(b)(6) Dispute Resolution. If a request is not incorporated into the **Geographic Features Maps**, the **Administrator** shall, upon request of the party seeking the update and within 30 days from when the party is notified of denial of the request by the **Administrator**, refer the request, all objections and any proposed compromise to the **Truckee River Special Hearing Officer** for dispute resolution pursuant to Section 2.B.

Section 10.A.5 Well Construction Standards. All new wells shall be constructed in accordance with the applicable well standards developed and established pursuant to the provisions of Division 7, Chapter 10, Article 4 (commencing with section 13800) of the California Water Code.

SECTION 10.B - CRITERIA AND SPECIAL ZONES

This Section 10.B provides criteria for establishing a conclusive presumption for compliance with Section 204(c)(1)(B) of the **Settlement Act**. Where a **Notice of Intent to Construct a Well** provided pursuant to Section 10.C indicates that the well meets applicable criteria in this Section 10.B, the well is entitled to the conclusive presumption of having been designed to minimize any short-term reductions of surface flows to the maximum extent feasible as required by Section 204(c)(1)(B) of the **Settlement Act**. Where a **Notice of Intent to Construct a Well** provided pursuant to Section 10.C indicates that the well does not meet the criteria in Sections 10.B.1(c), 10.B.1(d) or 10.B.2 for entitlement to the conclusive presumption of having been designed to minimize any short-term reductions of surface flows to the maximum extent feasible as required by Section 204(c)(1)(B) of the **Settlement Act**, the additional criteria and procedures specified in Sections 10.D, 10.E and 10.F shall apply. A well shall not be entitled to the conclusive presumption pursuant to Sections 10.B.1(c) and 10.B.2 unless it also meets applicable setback distances from all features shown on the sketch provided with a **Notice of Intent to Construct a Well** pursuant to Section 10.C.1(c)(15), notwithstanding that such features may not appear in that location on **Geographic Features Maps** adopted pursuant to Section 10.A.4, provided that the inclusion of features shown on the sketch in one **Notice of Intent to Construct a Well** shall not be applicable to any other **Notice of Intent to Construct a Well** unless such feature is also shown on the **Geographic Features Maps**.

Section 10.B.1 Criteria for Wells Conclusively Presumed to Comply with the Settlement Act Regardless of Location. Wells identified in this Section 10.B.1, including routine maintenance of all such wells, shall be conclusively presumed to have been designed and constructed to minimize any short-term reductions of surface stream flows to the maximum extent feasible, as required by Section 204(c)(1)(B) of the **Settlement Act**.

(a) Wells drilled or under construction before May 1, 1996;

(b) Domestic wells;

(c) Wells which serve a public transient non-community water system (public campgrounds and trailheads) and are located: (1) more than 500 feet from the centerline of the Truckee River, and (2) more than 500 feet from the centerline of the Little Truckee River, and (3) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River or the Little Truckee River, and (4) more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River or the Little Truckee River, and (5) more than 200 feet from the centerline of any **Perennial Stream**, and (6) more than 100 feet from any **Spring**, and (7) more than 200 feet from the ordinary high water line of any **Lake** located on a **Perennial**

Stream, and (8) more than 100 feet from the ordinary high water line of any **Pond** located on a **Perennial Stream**, and (9) more than 50 feet from the centerline of any **Intermittent Stream**, and (10) more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream**, (11) and more than 25 feet from the ordinary high water line of any **Pond** on an **Intermittent Stream** , and (12) outside the existing federal boundary of the Martis Creek Lake National Recreation Area;

(d) Wells which serve a transient non-community water system where physical constraints make it infeasible to meet the criteria in Section 10.B.1(c) so long as all such wells do not cumulatively withdraw more than 20 acre-feet of water per annum; and

(e) The following wells: Well #2 at Northstar Golf Course in the Northstar/Placer County Special Zone, _____, and _____, which were constructed after May 1, 1996.

Section 10.B.2 Criteria for Wells Within Special Zones Conclusively Presumed To Comply with the Settlement Act. All wells, including routine maintenance of all such wells, located within any of the following **Special Zones** identified in the following Sections 10.B.2(a) through Section 10.B.2(j) and any well located within any new **Special Zone** which has been established pursuant to Section 10.B.3, as such zones are shown on the set of maps attached as appendices to this Article 10, or on maps drawn pursuant to Section 10.B.3, which meet each of the zone-specific criteria specified therein except for criteria specified in the alternative shall be conclusively presumed to have been designed to minimize any short-term reductions of surface stream flows to the maximum extent feasible, as required by Section 204(c)(1)(B) of the **Settlement Act**. Except for the purpose of determining compliance with the requirements of Sections 10.C, 10.D, 10.E, or 10.F, any well drilled within an area not shown within a **Special Zone** or any well drilled within a **Special Zone** but not meeting each of the applicable zone-specific criteria shall be solely subject to the criteria required by Section 204(c)(1)(B) of the **Settlement Act** and applicable requirements of California law.

Section 10.B.2(a) Alpine Meadows Special Zone. The zone-specific criteria applicable to wells located within the Alpine Meadows **Special Zone** are the following: (1) more than 500 feet from the centerline of the Truckee River, and (2) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River, and (3) more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River, and (4) more than 200 feet from the centerline of any **Perennial Stream**, and (5) more than 100 feet from any **Spring**, and (6) more than 200 feet from the ordinary high water line of any **Lake** located on any **Perennial Stream**, and (7) more than 100 feet from the ordinary high water line of any **Pond** located on any **Perennial Stream**, and (8) more than 50 feet from the centerline of any **Intermittent Stream**, and (9) more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream**, and (10) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream**.

Section 10.B.2(b) Olympic Valley Special Zone. The conclusive presumption created by Section 10.B.2 shall apply only to wells located within the Olympic Valley **Special Zone** which provide water to be used exclusively within the Olympic Valley Zone or which provide water to be used for snowmaking exclusively within the Olympic Valley watershed. The zone-specific criteria applicable to such wells are the following: (1) more than 500 feet from the centerline of the Truckee River, and (2) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River, and (3) more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River, and (4) more than 200 feet from the centerline of Deer Creek, and (5) more than 200 feet from the ordinary high water line of any **Lake** located on Deer Creek, and (6) more than 100 feet from the ordinary high water line of any **Pond** located on Deer Creek.

Section 10.B.2(c) Truckee Donner Public Utility District /Martis Valley Special Zone. The zone-specific criteria applicable to wells located within the Truckee Donner Public Utility District /Martis Valley **Special Zone** are the following: (1) more than 500 feet from the centerline of the Truckee River, and (2) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River, and (3) more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River, and (4) more than 500 feet from the ordinary high water line of Prosser Creek Reservoir, and (5) more than 200 feet from the centerline of any **Perennial Stream**, and (6) more than 100 feet from any **Spring**, and (7) more than 200 feet from the ordinary high water line of any **Lake** located on a **Perennial Stream**, and (8) more than 100 feet from the ordinary high water line of any **Pond** located on any **Perennial Stream**, and (9) more than 50 feet from the centerline of any **Intermittent Stream**, and (10) more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream** and (11) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream**. In addition, to meet the zone-specific criteria within this **Special Zone**, wells which are located between 500 feet and ¼ mile from the centerline of the Truckee River shall be sealed to the first impervious layer or 100 feet, whichever is less.

Section 10.B.2(d) Verdi Special Zone. The zone-specific criteria applicable to wells located within the Verdi **Special Zone** are the following: (1) more than 500 feet from the centerline of the Truckee River, and (2) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River, and (3) more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River, and (4) more than 200 feet from the centerline of any **Perennial Stream**, and (5) more than 100 feet from any **Spring**, and (6) more than 200 feet from the ordinary high water line of any **Lake** located on any **Perennial Stream**, and (7) more than 100 feet from the ordinary high water line of any **Pond** located on any **Perennial Stream**, and (8) more than 50 feet from the centerline of any **Intermittent Stream**, and (9) more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream** and (10) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream**.

Section 10.B.2(e) Donner Lake Special Zone. The zone-specific criteria applicable to wells located within the Donner Lake **Special Zone** are the following: (1) more than 500 feet from the ordinary high water line of Donner Lake, and (2) more than 200 feet from the centerline

of any **Perennial Stream**, and (3) more than 100 feet from any **Spring**, and (4) more than 200 feet from the ordinary high water line of any **Lake** (except Donner Lake) located on any **Perennial Stream**, and (5) more than 100 feet from the ordinary high water line of any **Pond** located on a **Perennial Stream**, and (6) more than 50 feet from the centerline of any **Intermittent Stream**, and (7) more than 50 feet from the ordinary high water line of any **Lake** (except Donner Lake) located on an **Intermittent Stream**, and (8) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream.**

Section 10.B.2(f) Glenshire Special Zone. The zone-specific criteria applicable to wells located within the Glenshire **Special Zone** are the following: (1) more than 500 feet from the centerline of the Truckee River, and (2) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River, and (3) more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River, and (4) more than 200 feet from the centerline of any **Perennial Stream**, and (5) more than 100 feet from any **Spring**, and (6) more than 200 feet from the ordinary high water line of any **Lake** located on any **Perennial Stream**, and (7) more than 100 feet from the ordinary high water line of any **Pond** located on any **Perennial Stream**, and (8) more than 50 feet from the centerline of any **Intermittent Stream**, and more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream**, and (10) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream**. In addition, to meet the zone-specific criteria within this **Special Zone**, wells which are located between 500 feet and ¼ mile from the centerline of the Truckee River shall be sealed to the first impervious layer or 100 feet, whichever is less.

Section 10.B.2(g) Northstar/Placer County Special Zone. The zone-specific criteria applicable to wells located within the Northstar/Placer County **Special Zone** are the following: (1) more than 200 feet from the centerline of any **Perennial Stream,** and (2) more than 100 feet from any **Spring**, and (3) more than 200 feet from the ordinary high water line of any **Lake** located on any **Perennial Stream**, and (4) more than 100 feet from the ordinary high water line of any **Pond** located on any **Perennial Stream**, and (5) more than 50 feet from the centerline of any **Intermittent Stream**, and (6) more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream** and (7) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream**.

Section 10.B.2(h) Tahoe City Public Utility District Special Zone 1. The zone-specific criteria applicable to wells located within the Tahoe City Public Utility District **Special Zone** 1 are the following:(1) serves single-family residences only, and (2) does not serve more than a total of 15 such residences and (3) construction and use of which will not result in more than a total of 39 such residences being served from all wells within the zone.

Section 10.B.2(i) Tahoe City Public Utility District Special Zone 2. The zone-specific criteria applicable to wells located within the Tahoe City Public Utility District **Special Zone** 2 are the following: (1) more than 500 feet from the centerline of the Truckee River, and (2) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River, and (3)

more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River, and (4) more than 200 feet from the centerline of any **Perennial Stream**, and (5) more than 100 feet from any **Spring**, and (6) more than 200 feet from the ordinary high water line of any **Lake** located on any **Perennial Stream**, and (7) more than 100 feet from the ordinary high water line of any **Pond** located on a **Perennial Stream**, and (8) more than 50 feet from the centerline of any **Intermittent Stream**, and (9) more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream**, and (10) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream.**

Section 10.B.2(j) Tahoe-Truckee Sanitation Agency (TTSA) Special Zone. The zone-specific criteria applicable to wells located within the Tahoe-Truckee Sanitation Agency (TTSA) **Special Zone** are the following:

(1) Utilized by **TTSA** for the purpose of managing the disposal of its treated wastewater; provided, that any water extracted from such wells is disposed of within the **TTSA Special Zone** in accordance with the **Settlement Act**; and provided further, that on a monthly basis, with respect to any water extracted for the purpose of surface application, the amount so extracted and applied, together with the amount of treated wastewater from the **TTSA** treatment facility that is initially disposed of by surface spray or sprinkler infiltration, shall be less than or equal to the amount of wastewater that is received at such treatment facility; or

(2) Located: (i) more than 500 feet from the centerline of the Truckee River, and (ii) more than 500 feet from the ordinary high water line of any **Lake** located on the Truckee River, and (iii) more than 250 feet from the ordinary high water line of any **Pond** located on the Truckee River, and (iv) more than 200 feet from the centerline of any **Perennial Stream**, and (v) more than 100 feet from any **Spring**, and (vi) more than 200 feet from the ordinary high water line of any **Lake** located on any **Perennial Stream**, and (vii) more than 100 feet from the ordinary high water line of any **Pond** located on any **Perennial Stream**, and (viii) more than 50 feet from the centerline of any **Intermittent Stream**, and (ix) more than 50 feet from the ordinary high water line of any **Lake** located on an **Intermittent Stream**, and (x) more than 25 feet from the ordinary high water line of any **Pond** located on an **Intermittent Stream**, and (xi) sealed to the aquitard that separates the upper aquifer from the underlying aquifer.

Section 10.B.2(k) Martis Creek Lake National Recreation Area Special Zone. Notwithstanding the conclusive presumption applicable to other **Special Zones** in this Section 10.B.2, no wells located within the Martis Creek Lake National Recreation Area **Special Zone** are entitled to the conclusive presumption of compliance with Section 204(c)(1)(b) of the **Settlement Act** based solely on their location within this **Special Zone**.

Section 10.B.2(l) Other Special Zones. The zone-specific criteria applicable to wells located within any new **Special Zone** that may be established pursuant to Section 10.B.3 shall be developed in accordance with Section 10.B.3.

Section 10.B.3 Criteria for Establishment of New Special Zones Within Which Wells are Conclusively Presumed to Comply with the Settlement Act. New **Special Zones** may be established pursuant to this Section 10.B.3.

Section 10.B.3(a) Request for Establishment of a New Special Zone. California may at any time request that a new **Special Zone** be established. The request shall describe the location and zone-specific criteria in a manner consistent with the description of other **Special Zones** specified in Section 10.B.2. Additional information shall be included that justifies the request. The **Administrator** shall timely transmit a copy of each such request to each **Signatory Party** who has filed with the **Administrator** a request that it be furnished such copies.

Section 10.B.3(b) Objections to the Establishment of a New Special Zone. Any **Sovereign Party** to this **Agreement** may file an objection to the establishment of any new **Special Zone** with the **Administrator**. The objection shall identify its originator and provide an explanation of why the new **Special Zone** should not be established.

Section 10.B.3(c) Establishment or Non-Establishment of a New Special Zone over Objection. If any **Sovereign Party** files an objection to the establishment of a new **Special Zone** within 120 days of the date of filing by California of a request that a new **Special Zone** be established, the **Administrator** shall timely transmit a copy of the objection to California and all **Signatory Parties** who have filed with the **Administrator** a request to be furnished with such copies. Any objection may be withdrawn by the originator thereof, and the **Administrator** shall thereafter transmit a copy of the withdrawal to California and all **Signatory Parties** who have filed such request with the **Administrator**. If no **Sovereign Party** has filed an objection with the **Administrator** within 120 days after the request by California, or has filed an objection which has been subsequently withdrawn within 150 days after the request by California, the new **Special Zone** shall be deemed established and shall have the same force and effect as if fully set forth in this **Agreement** at the time of original execution of this **Agreement**. If any such objection is not resolved or withdrawn by the end of the 120 day period, the new **Special Zone** shall not be so established. The failure to so establish a **Special Zone** shall be final, and not subject to dispute resolution pursuant to Section 2.B.

Section 10.B.4 Effect of Special Zone Criteria.

Section 10.B.4(a) Criteria Not Exclusive. The criteria set forth in this Section 10.B are not intended to represent all means by which a well may be designed to comply with the requirement of Section 204(c)(1)(B) of the **Settlement Act**.

Section 10.B.4(b) Non-Evidentiary Nature of Criteria. Except for the purpose of determining compliance with the criteria by an **Independent Consultant** and a court pursuant to Sections 10.D.2, 10.E and 10.F, construction of a well in a manner or location contrary to any of the criteria set forth in this Section 10.B shall not be evidence of noncompliance with Section 204(c)(1)(B) of the **Settlement Act** and shall not be admissible as evidence or considered by the trier of fact in any claim, grievance or action brought by any **Person** pursuant to any provision of law, including but not limited to provisions of this **Agreement** and provisions of the **Settlement Act**, Section 204(c)(1)(B) or otherwise.

SECTION 10.C - NOTICE OF INTENT TO CONSTRUCT A WELL

Section 10.C.1 Criteria and Procedures for Notice of Intent to Construct a Well. This Section 10.C.1 establishes criteria and procedures for a **Notice of Intent to Construct a Well** in the **Truckee River Basin** in California.

Section 10.C.1(a) Exclusion of Previously Drilled Wells and Domestic Wells. The requirements for **Notice** under this Section 10.C shall not apply to wells meeting the criteria of Section 10.B.1(a) or 10.B.1(b). Nothing in this Section 10.C shall affect the jurisdiction of any local agency under its **Local Well Ordinance** to impose additional requirements or to regulate in any manner consistent with the requirements of this Article Ten.

Section 10.C.1(b) TROA Notice of Intent to Construct a Well Required. Any **Person** proposing to drill a well in the **Truckee River Basin** in California shall provide **Notice** pursuant to Section 10.C.1(b)(1) or 10.C.1(b)(2), whichever is applicable. Any **Person** who has drilled a well in the **Truckee River Basin** in California after May 1, 1996 or later if agreed to by the **Mandatory Signatory Parties**, and which well is not a **Domestic Well** nor a well listed in Section 10.B.1(e) shall, within 30 days of the date this **Agreement** enters into effect, provide **Notice** pursuant to Section 10.C.1(b)(1) or 10.C.1(b)(2), whichever is applicable.

Section 10.C.1(b)(1) Notice of Intent to Construct a Well and Local Well Ordinances. In addition to any notice or application required by a **Local Well Ordinance**, **a Notice of Intent to Construct a Well** shall be required for all wells proposed to be drilled in the **Truckee River Basin** in California, except for those wells identified by Section 10.B.1(a), (b) and (e). The **Administrator** may develop a form including the information specified in Section 10.C.1(c) for the convenience of applicants. The public agency administering a **Local Ordinance** shall provide a **Person** proposing to drill such a well with any **Notice** forms developed by the **Administrator**, information on the requirements of Section 10.C.1(c) which must be included in a **Notice**, or a combined Application/**Notice** developed under a Memorandum of Understanding with the **Administrator** pursuant to Section 10.C.2. The public agency shall return a completed **Notice** to the **Administrator** on receipt from the applicant.

Section 10.C.1(b)(2) Notice to Administrator where Local Well Ordinance Does Not Apply. Where wells are proposed to be drilled by an agency of California, the agency shall

submit the **Notice of Intent to Construct a Well** directly to the **Administrator**. Where any local public agency's well construction is regulated directly by an agency of California and is not subject to the jurisdiction of the regulating agency under the applicable **Local Well Ordinance**, such local public agency shall submit **the Notice of Intent to Construct a Well** directly to the **Administrator**. Any such California or local agency shall design and construct a well in compliance with Section 204(c)(1)(B) of the **Settlement Act** and the criteria in this Article Ten.

Section 10.C.1(c) Content of Notice. The **Notice of Intent to Construct a Well** shall consist of the following information:

(1) the name, address and telephone number of the owner of the well;

(2) the name, address and telephone number of the agent for the owner of the well, if any;

(3) the name, address and telephone number of the **Person** which will drill the well;

(4) the location of the well, including the 1/4 1/4 Section, Township and Range or Global Positioning System coordinates which characterize its location;

(5) the estimated capacity of the well;

(6) whether the well meets the applicable **Special Zone** criteria and/or has been designed to minimize any short-term reductions of surface flows to the maximum extent feasible;

(7) if the well is located within a **Special Zone**,

(i) the name of the **Special Zone**;

(ii) data needed to determine compliance with any unique **Special Zone** criteria,

(iii) the distance of the well from the Truckee River or the Little Truckee River unless the well is located in a **Special Zone** not requiring setbacks from either;

(iv) a list of the distances of the well from, and the names, if any, of all streams, **Springs, Lakes** and **Ponds** which are shown on the official set of **Geographic Features Maps**, are applicable to the **Special Zone** criteria and are within 500 feet of the proposed well;

(8) if the well has been designed to minimize any short-term reductions of surface flows to the maximum extent feasible, information supporting this;

(9) the proposed depth of the well and, if applicable to the **Special Zone** criteria, the depth to the first impervious layer or aquitard;

(10) the depth to which the well will be sealed and the type of seal;

(11) the location of the well on the **Geographic Features Map** described in Section 10.A.4 and a circle drawn around the well to a scale of 500 foot radius to show the location of the well with regard to geographic features identified on the map; and

(12) a sketch drawn on an 8-1/2 x 11 inch sheet of paper showing the location of and the distance from any **Perennial Steam**, **Intermittent Stream**, **Spring, Lake** or **Pond** within 200 feet of the proposed well which is not shown on the official set of **Geographic Features Maps** but is apparent to the owner or person signing the **Notice** through a reasonable visual inspection of the area, notwithstanding that such feature may not appear in that location on **Geographic Features Maps** defined in Section 10.A.4, provided that such features would be applicable to the **Special Zone** criteria if they were identified on the **Geographic Features Maps**, and further provided that no special expertise shall be required of the owner or person signing the **Notice** in making a visual inspection.

Section 10.C.1(d) Who Shall Sign Notice. The **Notice of Intent to Construct a Well** shall be signed by: (1) the owner of the property upon which the well is proposed, or the owner of an easement in the case of construction upon an easement, and (2) the holder of the California C-57 Well Contractor's License or equivalent who will be responsible for the drilling of the well. In the case of a well being drilled by a public agency with its own forces, the **Notice** shall be signed by the person responsible for supervision of construction of the well. The signatories shall certify that they have reviewed the information contained in the **Notice** and that such information is true and correct to the best of their knowledge.

Section 10.C.2 Authority of Administrator to Enter into Memoranda of Understanding and Responsibilities of Administrator and Officials of Local Jurisdictions. The **Administrator** may enter into a memorandum of understanding with each of those officials who are designated by a **Local Well Ordinance**. Such memorandum of understanding, at a minimum, shall provide for the form of the **Notice of Intent to Construct a Well** specified in Section 10.C.1(c) and procedures for the review, processing and submission of the **Notice** to the **Administrator**. The **Administrator** shall timely transmit a copy of each such **Notice** to any **Signatory Party** who has filed with the **Administrator** a request that it be furnished such copies. In addition, the **Administrator** shall maintain a list of **Independent Consultants** as provided in Section 10.E.2(a). The **Administrator** and the agency administering the **Local Well Ordinance** may agree on specific

modifications to the form of the **Notice** to simplify procedures and combine the **Administrator**'s **Notice** and local requirements into a single, coordinated process for review of the design and construction of wells.

Section 10.C.3 Where Notice Indicates that Well Is Entitled to Conclusive Presumption of Compliance. Where the **Notice of Intent to Construct a Well** indicates that the well is entitled to be conclusively presumed to comply with the requirement of Section 204(c)(1)(B) of the **Settlement Act** pursuant to the provisions of Section 10.B.1(c), 10.B.1(d) or 10.B.2, construction thereof may be commenced upon compliance with regulations of the appropriate local jurisdiction.

Section 10.C.4 No Challenge to Well Entitled to Conclusive Presumption of Compliance. No action shall be taken under Section 204(c)(1)(B) or this Article Ten with respect to the existence, design, or manner of construction of any well constructed pursuant to the criteria in Sections 10.B.1(c), 10.B.1(d) or 10.B.2, which well is entitled to a conclusive presumption of compliance with such Section 204(c)(1)(B), unless such well was constructed without **Notice** or pursuant to a void **Notice** as defined in Section 10.E. Nothing in this Section 10.C.4 shall be construed to prevent the State of California or local California jurisdictions from enforcing any state or local regulation regarding wells constructed without permit.

SECTION 10.D - WHERE NOTICE INDICATES THAT WELL IS CONSTRUCTED OUTSIDE A SPECIAL ZONE OR OTHERWISE IS NOT ENTITLED TO CONCLUSIVE PRESUMPTION OF COMPLIANCE

Section 10.D.1 Construction not to Commence for 45 Days. Where the **Notice of Intent to Construct a Well** indicates that the well is not entitled to be conclusively presumed to comply with the requirement of Section 204(c)(1)(B) of the **Settlement Act** pursuant to the provisions of Sections 10.B.1(c), 10.B.1(d) or 10.B.2, construction thereof shall not be commenced for a period of 45 days from the date the **Notice** was received by the **Administrator** and, if any **Signatory Party** files an objection with the **Administrator** within such initial 45 day period, for an additional period of 45 days. Such an objection shall include the name, address and telephone number of the person representing the **Signatory Party** so objecting and the basis for their objection.

Section 10.D.2 Enjoining Construction of Proposed Well. At any time during the 90-day total period set forth in Section 10.D.1, any **Signatory Party** which filed an objection within the initial 45-day period set forth in Section 10.D.1 may petition the appropriate federal district court, pursuant to Section 204(d)(2) of the **Settlement Act**, for an order enjoining the construction of such well upon the ground that it does not comply with the requirement of Section 204(c)(1)(B) of the **Settlement Act**. Any well which has not had an objection filed against it within the initial 45-day period or which has had an objection filed, but has not had a petition filed against it within the total 90-day period, shall be conclusively presumed to comply with the requirement of Section 204(c)(1)(B) of the **Settlement Act**, provided that the well was not constructed without **Notice** or was not constructed pursuant to a void **Notice** as described in Section 10.E.1. In the event the court finds the **Notice** indicates that a proposed well is not entitled to be conclusively presumed to comply with the requirement of Section 204(c)(1)(B) of the **Settlement Act** the court may enjoin

construction of said well pending a determination of whether it complies with Section 204(c)(1)(B) of the **Settlement Act**. In the event the court finds the **Notice** indicates that a well already constructed is not entitled to be conclusively presumed to comply with the requirement of Section 204(c)(1)(B) of the **Settlement Act** the court may order that the well either be brought into compliance with such requirements or be **Abandoned**.

SECTION 10.E - CONSTRUCTION OF WELL WITHOUT NOTICE OR PURSUANT TO VOID NOTICE

Section 10.E.1 Void Notice. Any well constructed pursuant to **Notice of Intent to Construct a Well** which contains a material error or misrepresentation which has a bearing on the criteria of Sections 10.B.1(c), 10.B.1(d) or 10.B.2 shall be deemed constructed pursuant to a void **Notice**. Any well constructed in variance to information contained in a **Notice of Intent to Construct a Well** resulting in a material error or misrepresentation which has a bearing on the criteria of Sections 10.B.1(c), 10.B.1(d) or 10.B.2 shall be deemed constructed pursuant to a void **Notice**.

Section 10.E.2 Corrective Procedures for Well Constructed Without Notice or Pursuant to Void Notice. Any **Person** who causes a well to be constructed without first providing **Notice** as required in Sections 10.C.1(b) and 10.C.1(c) or who causes a well to be constructed pursuant to a void **Notice** shall be subject to the corrective procedures set forth in this Section 10.E.2.

Section 10.E.2(a) Administrator to Maintain a List of Independent Consultants. The **Administrator** shall prepare and maintain a list of **Independent Consultants** qualified to verify the location of and setbacks for wells, to inspect such wells, and to review available well construction data to determine compliance with the provisions of Sections 10.B.1(c), 10.B.1(d) and 10.B.2 of this **Agreement** and Section 204(c)(1)(B) of the **Settlement Act** and to provide verification of whether a well constructed without **Notice** or pursuant to a void **Notice** meets such criteria.

Section 10.E.2(b) Persons Entitled to Initiate Process. Only a **Signatory Party** is entitled to initiate the corrective procedures described in this Section 10.E.2 as an objecting party.

Section 10.E.2(c) Commencement of Process. The process must be commenced by delivery of a challenge to the **Administrator** within one year of the discovery of the well constructed without **Notice** or one year of discovery that the well was constructed pursuant to a void **Notice**. The challenge shall contain a statement of the facts upon which the challenge is based.

Section 10.E.2(d) Response of Owner of Well. The **Administrator** shall forward the challenge and the list of **Independent Consultants** to the owner of the well by personal delivery or certified mail with return receipt requested. Within 90 days of receipt of the challenge, the owner shall retain an **Independent Consultant** from the list and notify the **Administrator** and the party making the challenge of the selection. The **Independent Consultant** shall verify the location of and setbacks for the well relative to the Truckee River, the Little Truckee River, the nearest **Perennial**

Steam, **Intermittent Stream**, **Lake, Pond** or **Spring**, including any such features shown on a sketch submitted pursuant to Section 10.C.1(c)(12), inspect such well, and review available well construction data to determine compliance with the provisions of Sections 10.B.1(c), 10.B.1(d) or 10.B.2 and prepare a report pursuant to Section 10.E.2(f). Payment of the fee of the **Independent Consultant** shall be the sole responsibility of the owner.

Section 10.E.2(e) Effect of Failure to Retain Independent Consultant. Failure of the owner to retain the **Independent Consultant** pursuant to Section 10.E.2(d) shall constitute conclusive evidence that the well does not conform to the provisions of Section 204(c)(1)(B) of the **Settlement Act** and shall authorize the objecting party to apply to the appropriate federal district court, pursuant to Section 204(d)(2) of the **Settlement Act**, for issuance of an order that the well either be brought into compliance before any further use or be **Abandoned** provided such an order is sought within 90 days of the owner's failure to retain the **Independent Consultant**. The court shall order that the well either be brought into compliance before any further use or be **Abandoned** if it finds that: (1) the well was constructed either without the **Notice** required by Section 10.C.1(b) or pursuant to a void **Notice** and (2) that the owner of the well has not retained an **Independent Consultant**.

Section 10.E.2(f) Responsibility of Independent Consultant. Within 90 days of being retained, the **Independent Consultant** shall verify the location of and setbacks for the well relative to the nearest river, stream, **Lake, Pond** or **Spring**, inspect such well, and review available well construction data, to make the following determinations as soon as practical:

(1) If the well is located within a **Special Zone** designated in Section 10.B.2, whether the well complies with the criteria for such **Special Zone**, and

(2) Whether or not the well conforms to the provisions in Sections 10.B.1(c) or 10.B.1(d), and

(3) If the well is located outside a **Special Zone**: (i) the impact of the well, if any, on such river, stream, **Lake, Pond** or **Spring** and (ii) whether there are feasible alternative methods of design which would minimize short-term reductions of surface stream flows to the maximum extent feasible, and if so, what such methods would be.

The **Independent Consultant** shall prepare a comprehensive report, copies of which shall be delivered to the objecting party, the owner and the **Administrator**.

Section 10.E.2(g) Effect of Independent Consultant's Determination of Compliance.

Section 10.E.2(g)(1) No Action Required by Owner after Consultant's Determination of Compliance. In the event that the **Independent Consultant** determines either:

(i) that the well is located within a **Special Zone** designated in Section 10.B.2 and complies with the criteria for such **Special Zone**, or

(ii) that the well conforms to the provisions of Sections 10.B.1(c) or 10.B.1(d), or

(iii) that the well is located outside a **Special Zone** and has no short-term impact on the river, **Lake, Pond**, stream or **Spring**, or that there are no feasible alternative methods of design for the well which would minimize short-term reductions of surface stream flows to the maximum extent feasible;

the Owner may continue to use the well without further action.

Section 10.E.2(g)(2) Judicial Action Challenging Consultant's Determination of Compliance. If the objecting party is not satisfied with the Consultant's determination of compliance, the objecting party shall have 60 days to apply to the appropriate federal district court pursuant to Section 204(d)(2) of the **Settlement Act**, requesting that the Consultant's determination be reversed and for issuance of an order that the well be **Abandoned** or an alternative order that it be brought into compliance with the applicable criteria. If the objecting party prevails, the Court may order appropriate relief as follows:

(i) if the well is in a **Special Zone**, the Court may order that the well be brought into compliance with the provisions of Section 10.B.2 before any further use, or that the well be **Abandoned**, or

(ii) if the well is intended to serve the uses set forth in Sections 10.B.1(c) or 10.B.1(d) regardless of its location, the Court may order that the well be brought into compliance with the provisions of Sections 10.B.1(c) or 10.B.1(d) before any further use, or that the well be **Abandoned**, or

(iii) if the well is located outside a **Special Zone** and the Court finds that it does not comply with Section 204(c)(1)(B) of the **Settlement Act**, the Court may order that the well be re-designed in accordance with feasible alternative methods of design to minimize short-term reductions of surface stream flows to the maximum extent feasible, or that the well be **Abandoned**.

Section 10.E.2(h) Effect of Independent Consultant's Determination of Non-Compliance.

Section 10.E.2(h)(1) Owner's Voluntary Action Based Upon Consultant's Determination of Non-Compliance. In the event that the **Independent Consultant** determines either:

(i) that the well is located within a **Special Zone** designated in Section 10.B.2 and does not comply with the criteria for such **Special Zone**, or

(ii) that the well does not conform to the provisions of Sections 10.B.1(c) or 10.B.1(d), or

(iii) that the well is located outside a **Special Zone** and has a short-term impact on the river, **Lake**, **Pond**, stream or **Spring**, and that there are feasible alternative methods of design for the well which would minimize short-term reductions of surface stream flows to the maximum extent feasible;

the owner shall have 30 continuous days from receipt of the **Independent Consultant's** determination, not including the time period from October 15 through April 30, to voluntarily **Abandon** the well or bring the well into compliance with applicable criteria and inform the **Administrator** of their action.

Section 10.E.2(h)(2) Judicial Action Based Upon Owner's Failure to Take Voluntary Action. If the well is not voluntarily **Abandoned** or brought into compliance with the zone-specific criteria if the well is in a **Special Zone**, brought into compliance with the provisions of Sections 10.B.1(c) or 10.B.1(d), or brought into compliance with Section 204(c)(1)(B) of the **Settlement Act** if it is not in a **Special Zone**, within the 30 day time period set forth in Section 10.E.2(h)(1), the objecting party shall have 60 days thereafter to apply to the appropriate federal district court, pursuant to Section 204(d)(2) of the **Settlement Act**, for issuance of an order that the well be **Abandoned** or an alternative order that it be brought into compliance with the applicable criteria. If the objecting party prevails, the Court may order appropriate relief as follows:

(i) if the well is in a **Special Zone**, the Court may order that the well be brought into compliance with the provisions of Section 10.B.2 before any further use, or that the well be **Abandoned,** or

(ii) if the well is intended to serve the uses set forth in Sections 10.B.1(c) or 10.B.1(d) regardless of its location, the Court may order that the well be brought into compliance with the provisions of Sections 10.B.1(c) or 10.B.1(d) before any further use, or that the well be **Abandoned**, or

(iii) if the well is located outside a **Special Zone** and the Court finds that it does not comply with Section 204(c)(1)(B) of the **Settlement Act**, the Court may order that the well be re-designed in accordance with feasible alternative methods of design to minimize short-term reductions of surface stream flows to the maximum extent feasible, or that the well be **Abandoned**.

SECTION 10.F - CONDUCT OF COURT PROCESS

In any proceeding pursuant to this Article Ten, a court may issue in the interests of justice such interlocutory orders as are available to the court, including, without limitation, an order to compel inspection of designated land pursuant to Rules 34 and 37 of the Federal Rules of Civil Procedure. Nothing in this Article Ten shall be construed as modifying the burden of proof applicable under the **Settlement Act** or any other law. When submitted, the report of the **Independent Consultant** retained pursuant to Section 10.E.2(f) shall not be conclusive but shall be prima facie evidence of the physical facts therein found, and the court shall hear such evidence as may be offered by any party to the proceeding to rebut the report, and thereafter the court shall determine the facts based upon all of the evidence and without regard to the presumption.

SECTION 10.G - CALIFORNIA MODEL WELL ORDINANCE

Pursuant to Division 7, Chapter 10, Article 4 (commencing with section 13800) of the California Water Code , as amended, and other applicable California law, the California Department of Water Resources shall propose appropriate revisions to its *Water Well Standards: State of California* (Bulletin 74-81, as supplemented by Bulletin 74-90) to incorporate the criteria of Sections 10.B. and 10.C. Any such revisions shall be applicable only to the cities, counties or water agencies in the **Truckee River Basin** in California which are required to adopt **Local Well Ordinances** pursuant to the provisions of California Water Code Section 13801 and the Model Well Ordinance adopted pursuant thereto. Such revisions shall assure that the *Water Well Standards* and the **Local Well Ordinances** which incorporate them are consistent with the applicable **Notice** requirements, design criteria and inspection requirements of Sections 10.B and 10.C.

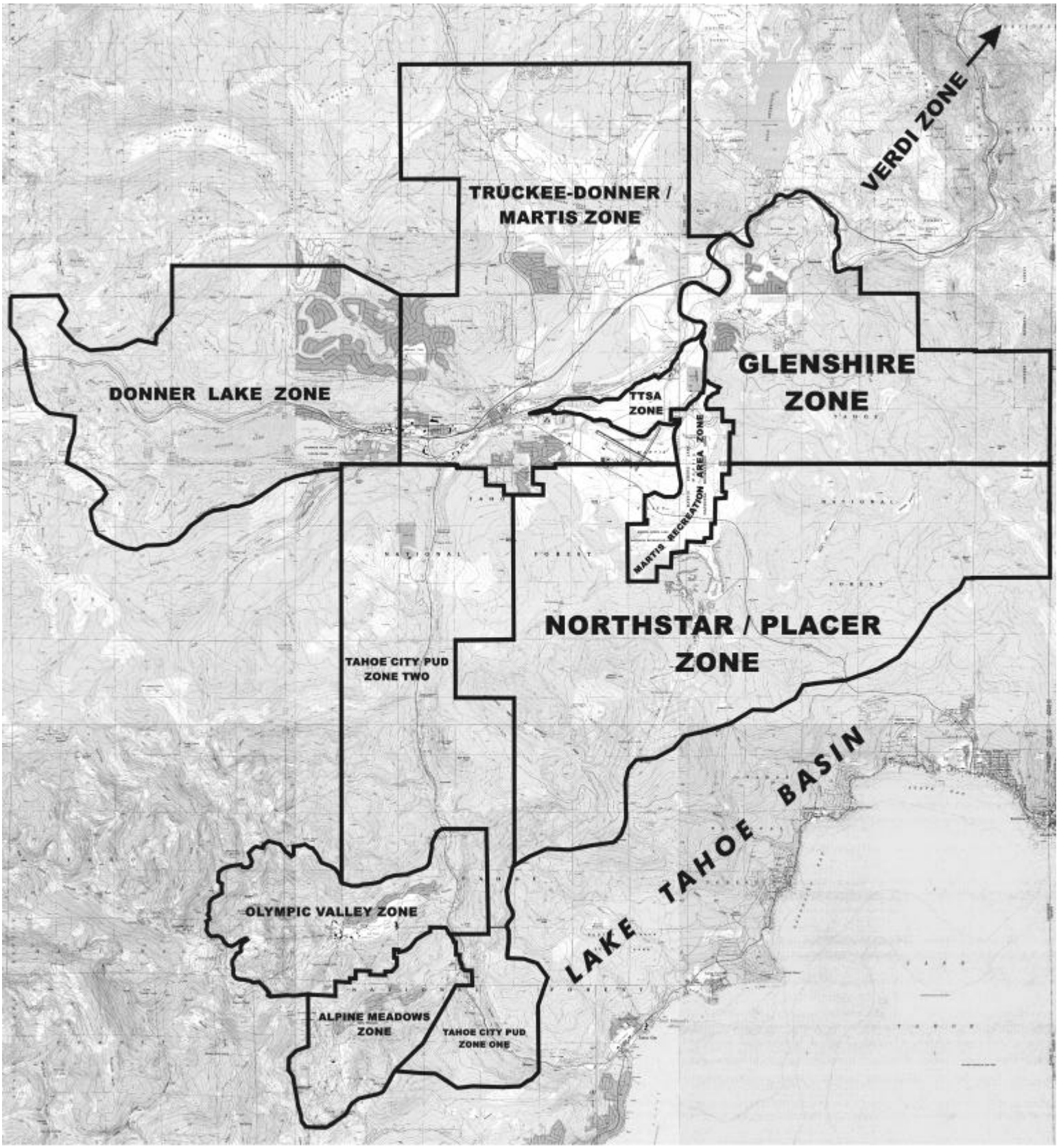
Any water agency not subject to the permitting requirements of **Local Well Ordinances** adopted pursuant to California Water Code Section 13800 et seq. may adopt its own criteria and procedures consistent with the applicable requirements of this Article Ten for submission of information to the **Administrator**. Nothing in this Article Ten shall be construed as limiting the ability or jurisdiction of the State of California or any city, county or water agency to establish and enforce any other requirements and criteria for wells in any manner not inconsistent with the requirements of this Article Ten as authorized by California law.

SECTION 10.H - REPORTING REQUIREMENT

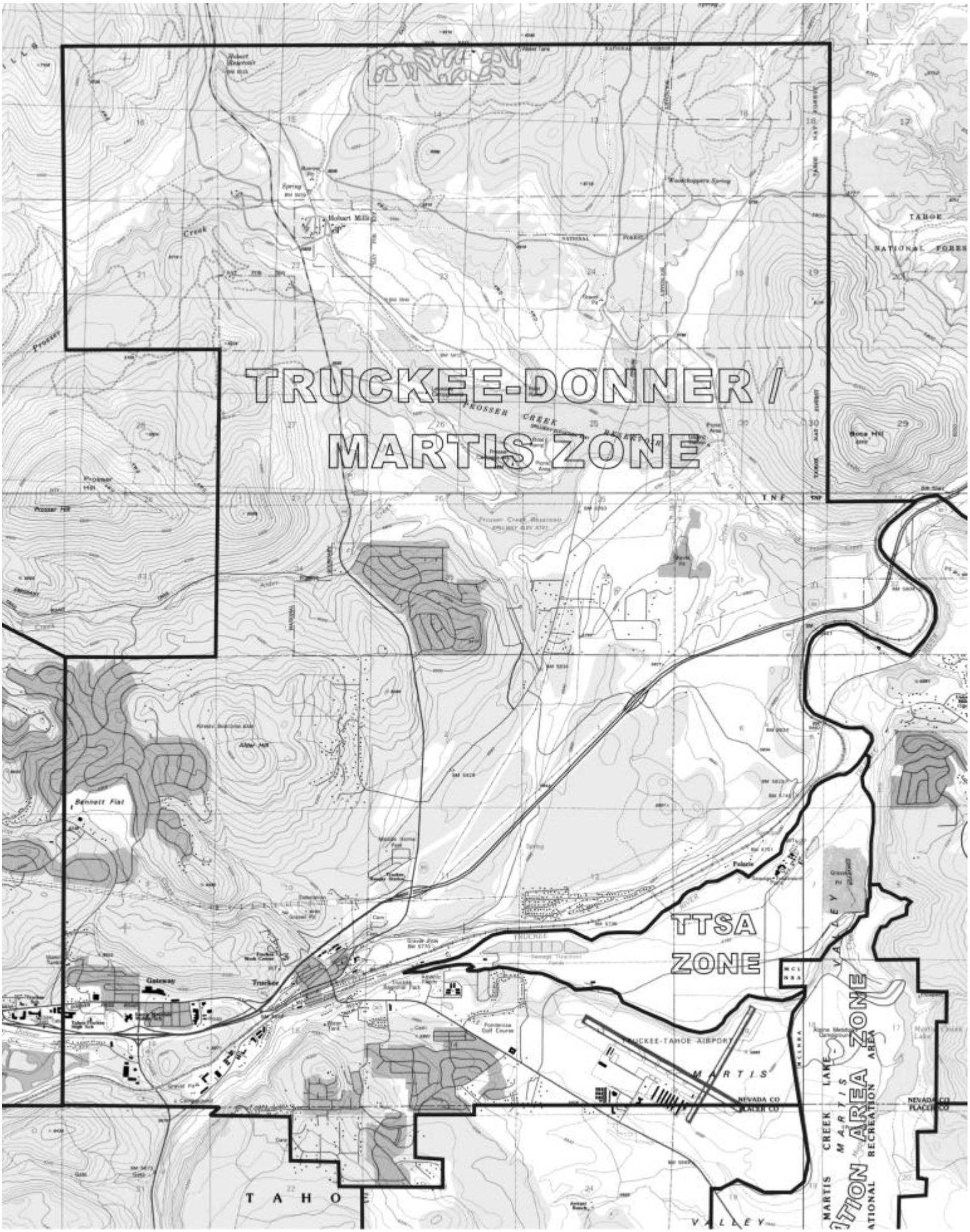
California shall provide information to the **Administrator** on the location and number of new wells related to the implementation of this Article Ten in its annual report required by Section 204(d)(1) of the **Settlement Act**.

Appendix 10

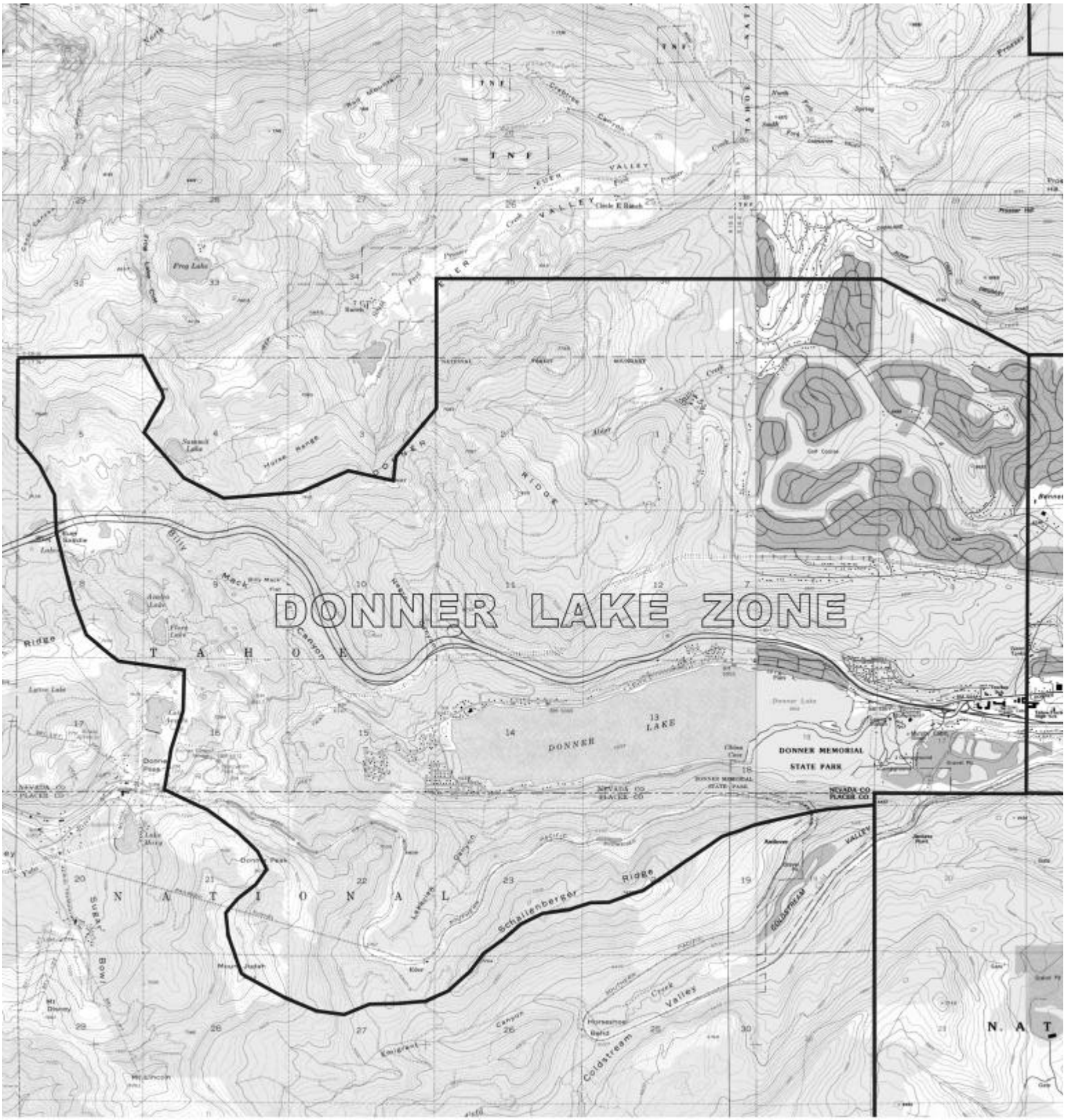
Maps of the Special Zones



APPENDIX 10.A: SPECIAL ZONE LOCATION MAP



APPENDIX 10.B: TRUCKEE DONNER PUBLIC UTILITY DISTRICT/MARTIS VALLEY AND TAHOE-TRUCKEE SANITATION AGENCY SPECIAL ZONES


DONNER LAKE ZONE
DONNER LAKE
DONNER MEMORIAL STATE PARK
NEVADA CO
PLACER CO
Schallenberger Ridge
Coldstream Valley
Donner Pass
Frog Lake
Summit Lake
Horse Range
Billy Mack Canyon
Donner Ridge
Donner Creek
Donner Lake
Mount Judah
Mt Disney
Lake Mary
Lake Angela
Lake Anna
Lake Jessie
Lake Sarah
Lake Lucile
Lake Eileen
Lake Ruth
Lake Marie
Lake Dorothy
Lake Catherine
Lake Ella
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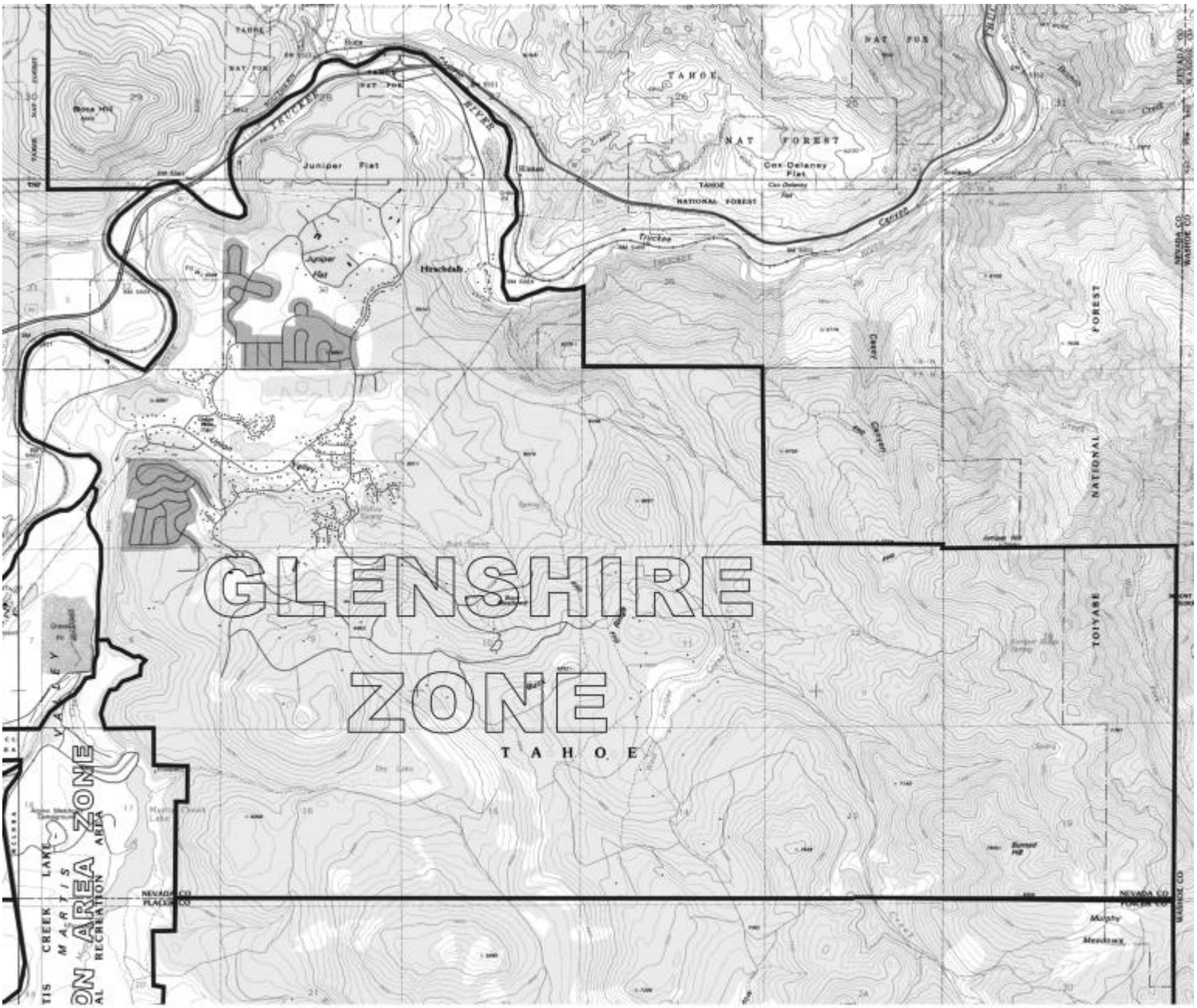
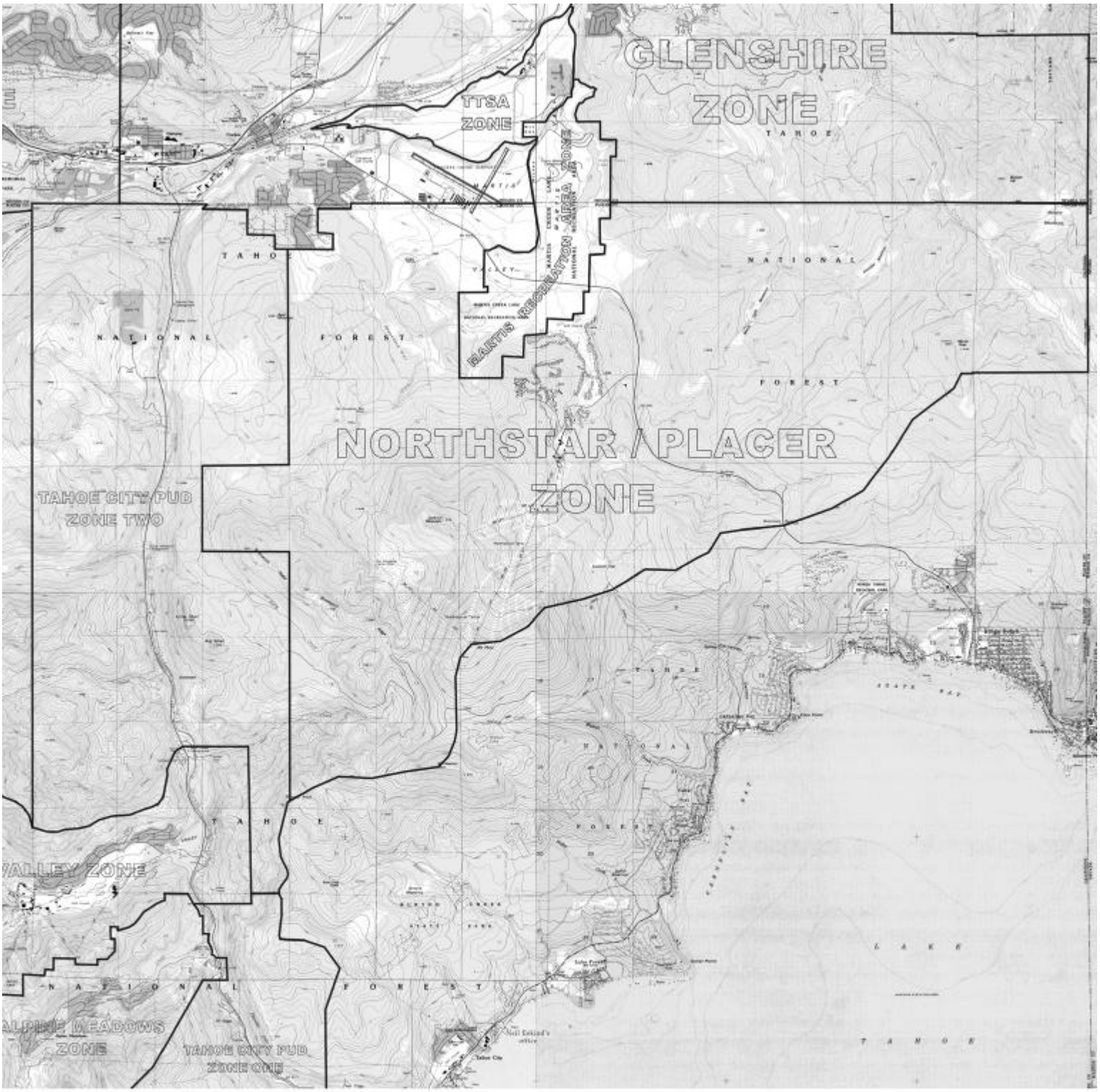
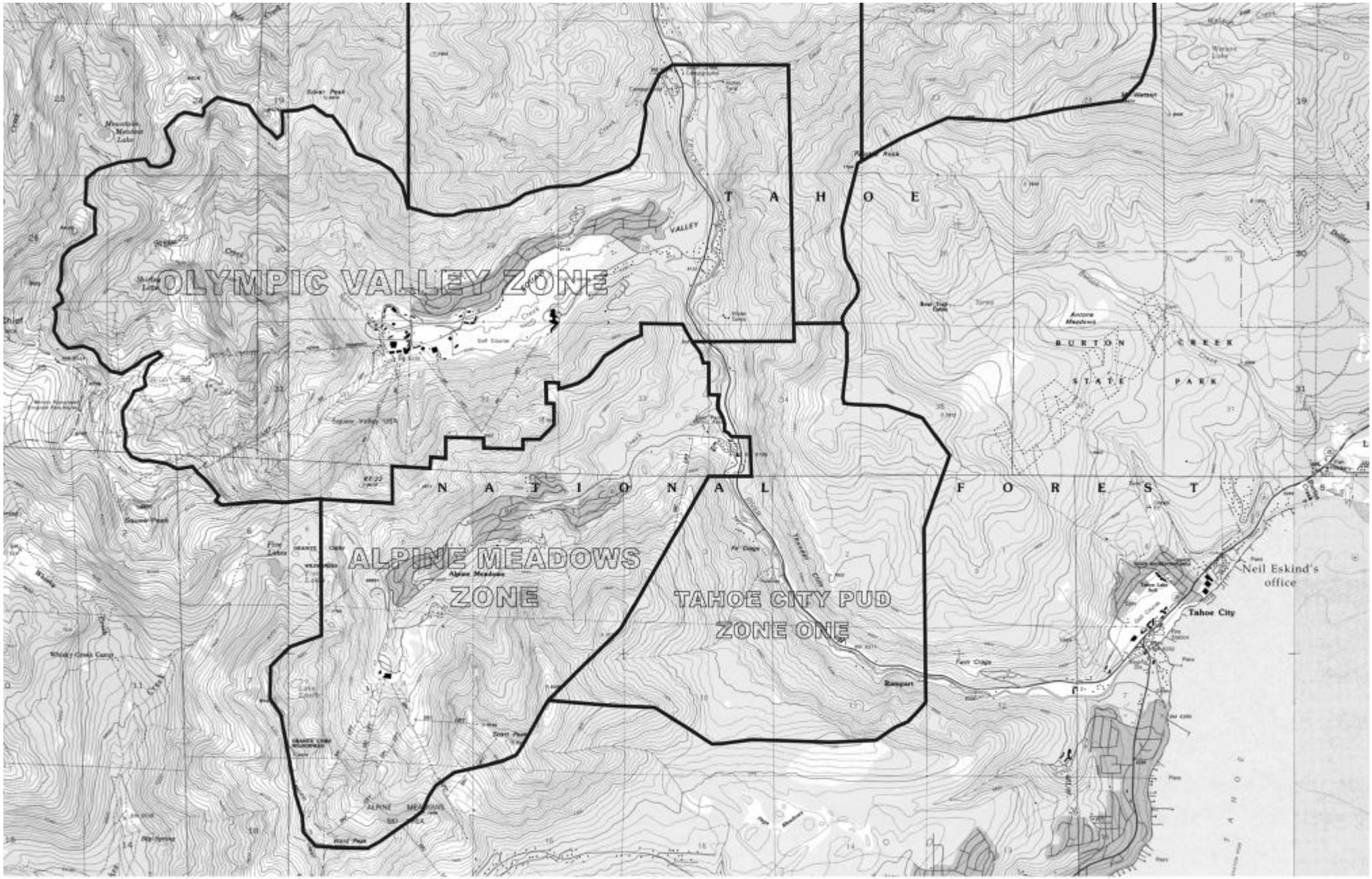
Lake Mae
Lake Jane
Lake Lola
Lake Lorna
Lake Ida



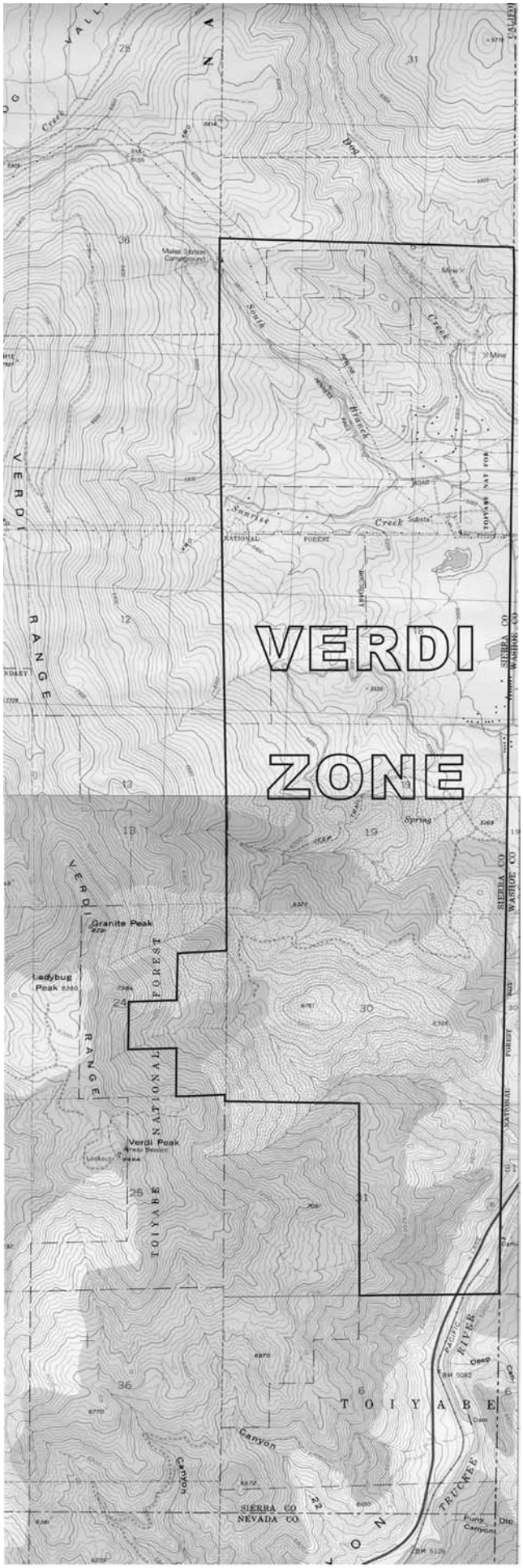
APPENDIX 10.D: GLENSHIRE SPECIAL ZONE



APPENDIX 10.E: NORTHSTAR/PLACER COUNTY SPECIAL ZONE, MARTIS CREEK LAKE NATIONAL RECREATION AREA SPECIAL ZONE, AND TAHOE CITY PUBLIC UTILITY DISTRICT SPECIAL ZONE 2



APPENDIX 10.F: ALPINE MEADOWS SPECIAL ZONE, OLYMPIC VALLEY SPECIAL ZONE, AND TAHOE CITY PUBLIC UTILITY DISTRICT SPECIAL ZONE 1



APPENDIX 10.G: VERDI SPECIAL ZONE

ARTICLE ELEVEN
SCHEDULING

SECTION 11.A - PURPOSE

This Article Eleven provides the framework for development of **Integrated Schedules** for Truckee River operations, which meet the objectives and requirements of this **Agreement**.

SECTION 11.B – INFORMATION COLLECTION AND ANALYSIS

The **Administrator** shall collect, review, analyze and develop information necessary to prepare **Integrated Schedules** and to conduct operations under this **Agreement**, including information collected by the **Federal Water Master**. The **Administrator** shall collect, verify, organize and analyze data necessary for operations, including, but not limited to, climatologic data, hydrologic data, reservoir elevations and operational status of facilities; routinely receive, organize and analyze facility operation reports and **Scheduling Parties'** submittals; and receive and analyze information and data associated with unscheduled events that may require changes to the operation of, or desirability of operating, the Truckee River and facilities as scheduled.

SECTION 11.C- SCHEDULES AND SCHEDULING ACTIVITIES

Scheduling Parties shall develop and submit to the **Administrator** operational plans that contain annual goals, seasonal objectives, and operations schedules for managing their water, and the **Administrator** shall use these plans to develop scheduling procedures and prepare **Integrated Schedules** in accordance with this Section 11.C.

Section 11.C.1 Scheduling Procedures. The **Administrator** shall develop and implement scheduling procedures which include, among other things, the content and duration of **Scheduling Parties'** operational plans, when such plans are due, and when and how elements of previously submitted operational plans may be changed. Scheduling procedures shall allow opportunities for changes at least: (a) monthly for annual goals; (b) weekly for seasonal objectives; and (c) daily for operation schedules, provided such changes to operation schedules are consistent with the **Scheduling Party's** stated annual goals and seasonal objectives and this **Agreement**.

If a dispute arises as to whether a **Scheduling Party's** operation schedule is consistent with its stated annual goals and seasonal objectives, and the dispute cannot be resolved by the **Administrator** and the **Scheduling Party**, or by the **Scheduling Party** modifying its goals and objectives, then the dispute shall be resolved in accordance with Section 2.B.2.

Section 11.C.2 Contents of Operational Plans. Scheduling Parties' operational plans shall include a statement of the annual goals and seasonal objectives intended to be achieved by the **Scheduling Party** with respect to its operations schedule. In addition,

Scheduling Parties' operational plans shall specify the **Project Water Operations** or **Credit Water Operations** requested by the **Scheduling Party,** including any **Exchanges** or re-storage, the timing, quantity and location of any requested **Accumulation** and whether such operation is required pursuant to this **Agreement.**

Section 11.C.2(a) Scheduling Establishment of Credit Water. A **Scheduling Party** intending to **Establish Credit Water** shall identify any water rights to be used for that purpose. **Scheduling Parties** may identify the total number of acre-feet of water rights assigned to a combination of direct use and to use for **Establishing Credit Water**. The quantity of water used for **Establishing Credit Water** may be changed pursuant to subsequent schedules submitted in accordance with this Section 11.C.

Section 11.C.2(b) Transmittal and Review of California Guidelines. As part of the scheduling process, insofar as practicable, California shall annually transmit the **California Guidelines** to the **Administrator** and each **Scheduling Party** in a timely manner such that the **Administrator** can encourage implementation of the **California Guidelines** in scheduling activities and integration of schedules pursuant to Section 11.C.3. Upon receipt of the **California Guidelines**, the **Administrator** shall timely review and transmit any comments on the **California Guidelines** to each **Scheduling Party**. California may revise and resubmit the **California Guidelines** to the **Administrator** and each **Scheduling Party** as necessary based on: (1) comments and recommendations by the **Administrator** and **Scheduling Parties**, (2) changes in schedules for reservoir operations or (3) changes in hydrologic conditions.

Section 11.C.2(c) Management of Joint Program Fish Credit Water. As part of the scheduling process**,** California shall provide instructions to the **Administrator** with a copy to each of the United States and the Pyramid Tribe on the management of **Joint Program Fish Credit Water.** Such instructions shall take into account the **California Guidelines.**

Section 11.C.3 Administrator's Schedule Integration Process. Using **Scheduling Parties'** operational plans and other adjustments to river operations as provided in this **Agreement**, the **Administrator** shall timely prepare, issue, administer, and oversee daily, weekly, monthly and annual **Integrated Schedules** which coordinate operations of water supply, storage, control and diversion facilities on the Truckee River and its tributaries in accordance with this **Agreement**.

Section 11.C.3(a) Activities During Schedule Integration Process. During the schedule integration process, the **Administrator** shall consult with the **Scheduling Parties** regarding the objectives of each with respect to their submitted schedule. To the extent practicable and consistent with exercise of water rights, assurance of water supplies, operational considerations, the requirements of the **Settlement Act** and all other requirements of this **Agreement**, the **Administrator** shall recommend and encourage changes to submitted schedules, including voluntary **Exchanges,** to reduce or avoid conflicts in submitted schedules and to improve instream flows and reservoir operations in accordance with the **California Guidelines** and proposed adjustments to river operations pursuant to Section 9.F, while still

meeting the objectives of the **Scheduling Parties**. Any proposed change to a **Scheduling Party's** submittal agreed to by the **Scheduling Party** shall be resubmitted by such **Scheduling Party** and included in the integration process by the **Administrator**. Accompanying each **Integrated Schedule** will be a statement by the **Administrator** describing the extent to which the schedule meets or fails to meet the objectives of each **Scheduling Party**.

Section 11.C.3(b) Conflicts among Submitted Schedules. In the event of a conflict between or among schedules submitted by **Scheduling Parties**, the **Administrator** shall resolve the conflict by applying the express provisions of this **Agreement**, including, without limitation, the provisions of Article Eight. If a **Scheduling Party** disputes the **Administrator's** decision, it may be subject to further review pursuant to Section 2.B.

SECTION 11.D - FACILITIES TO BE SCHEDULED

The **Administrator** shall determine the facilities for which operations shall be scheduled pursuant to this Article Eleven. Subject to and in accordance with Section 1.F each entity operating one or more scheduled facility shall promptly notify the **Administrator** and the **Signatory Parties** if any condition impairs the ability of the facility to function as anticipated.

SECTION 11.E - SCHEDULING PARTIES

The following **Scheduling Parties** shall submit schedules to the **Administrator** in accordance with this Article Eleven, with respect to the categories of water and types of operations listed below, and any other waters available to them. Each **Scheduling Party** shall designate a person to be its scheduling representative with the **Administrator**.

1. The **Administrator** is a **Scheduling Party**, to the extent possible, for the flood control operation of Martis Creek Reservoir, Prosser Creek Reservoir, Stampede Reservoir and Boca Reservoir under authority granted and regulations prepared by the **Corps of Engineers** and for control of high lake levels in Lake Tahoe in accordance with Section 5.A.3(d).

2. Except as otherwise provided herein, the **Federal Water Master** is a **Scheduling Party** for operations involving **Floriston Rate Water**, for diversions under **Orr Ditch Decree Water Rights**, and for **Exchanges** pursuant to Sections 5.B.6(b) and 8.S.

3. United States is a **Scheduling Party** for diversions into the Truckee Canal and for **Newlands Project Credit Water.** United States is also a **Scheduling Party** for **Other Credit Water** to the extent such **Other Credit Water** is derived from water rights owned by United States.

4. California is a **Scheduling Party** for **Joint Program Fish Credit Water, California Environmental Credit Water,** and **Additional California**

Environmental Credit Water. California is also responsible for submitting the **California Guidelines** pursuant to Section 11.C.2(b).

5. Pyramid Tribe is a **Scheduling Party** for its **Orr Ditch Decree Water Rights** and for **Other Credit Water** to the extent such **Other Credit Water** is derived from water rights owned by the Pyramid Tribe or owned by United States for the benefit of Pyramid Tribe.

6. Subject to the provisions of Section 11.H, United States and Pyramid Tribe are **Scheduling Parties** for **Fish Water**, for **Fish Credit Water**, for any other water held or owned by Pyramid Tribe or United States to provide **Pyramid Lake Fish Flows**, for their **Orr Ditch Decree Water Rights** held for water quality purposes, and for their **Water Quality Credit Water**.

7. Power Company is a **Scheduling Party** for its **Orr Ditch Decree Water Rights**, its **Privately Owned Stored Water, Power Company Boca Storage, Power Company M&I Credit Water**, and water reserved in accordance with Section 8.F.6.

8. Reno, Sparks and Washoe County jointly are a **Scheduling Party** for their **Orr Ditch Decree Water Rights** held for water quality and reuse program purposes, and for their **Water Quality Credit Water**.

9. Fernley is a **Scheduling Party** for its **Orr Ditch Decree Water Rights** and **Fernley Municipal Credit Water**.

10. Any **Person** designated by California to store **California M&I Credit Water** pursuant to Section 7.D.1 or **Other Credit Water** pursuant to Section 7.G is a **Scheduling Party** for such water.

SECTION 11.F – PARTICIPATION BY DISTRICTS

The Conservation District may participate in scheduling **Boca Floriston Rate Water**. The Carson-Truckee Water Conservancy District may consult with the Administrator concerning flood control activities under Section 11.E.1.

SECTION 11.G – PARTICIPATION IN SCHEDULING BY OTHER PERSONS

Nothing in this **Agreement** shall affect the ability of **Persons** who are not **Scheduling Parties** to manage the water to which they are entitled, including participating in the scheduling process.

SECTION 11.H – JOINT OPERATIONS BY UNITED STATES AND PYRAMID TRIBE

Waters scheduled and managed jointly by United States and Pyramid Tribe shall be scheduled and managed by Pyramid Tribe or by United States in accordance with the Memorandum of Agreement dated November 29, 1999 (Appendix 11.A), or successor agreements, or, in the absence of any future agreement, by United States. Whenever in this **Agreement** the phrase "each of" appears with regard to a decision to be made, *inter alia*, by United Stated and Pyramid Tribe, or a decision is to be made by United States without reference to Pyramid Tribe, the decision of United States shall not be governed by the Memorandum of Agreement entered into by United States and Pyramid Tribe and dated November 29, 1999. Whenever United States or Secretary is authorized to make a decision regarding the management of **Fish Water**, **Fish Credit Water**, **Water Quality Credit Water**, or any other category of water that is designed to protect and conserve cui-ui and Lahontan cutthroat trout of Pyramid Lake, any such decision shall comply with Section 209(j)(1) of the Act and be consistent with the Endangered Species Act as applied to threatened and endangered species of Pyramid Lake.

APPENDIX 11.A

MEMORANDUM OF AGREEMENT
TRUCKEE RIVER WATER MANAGEMENT

I. PURPOSE

The purpose of this Memorandum of Agreement (Agreement) is to delineate the roles and responsibilities of the Fish and Wildlife Service (Service), Pyramid Lake Paiute Tribe (Tribe), Bureau of Reclamation (Reclamation), and Bureau of Indian Affairs (Indian Affairs) [collectively referenced as parties] in the management of Truckee River water designated (Designated Waters) to protect and conserve cui-ui and Lahontan cutthroat trout of Pyramid Lake, which are protected species under the Endangered Species Act of 1973 and subsequent amendments (16USC 1531 et. Seq.) (Act).

It is the intent of the Parties to this Agreement, that the Tribe, in collaboration with the other Parties and in the framework of an Interagency Team, manage the Designated Waters in accordance with an Annual Water Management Plan, which is consistent with the terms of an approved Conservation and Management Plan that provides for the protection and conservation of the protected species under the Act. It is also the intent of this Agreement and Parties, that all laws, regulations, and orders, are complied with to the fullest extent, including but not limited to, consultation procedures under section 7 of the Act.

II. AUTHORITY

This Agreement is made and entered into by and between the Service, the Tribe, Reclamation, and Indian Affairs under the authority of the Act, its implementing regulations, Title II of Public Law 101-618, and Secretarial Order 3206.

III. FEDERAL RESPONSIBILITIES

A. The Service, Reclamation and Indian Affairs, as bureaus of the Department of the Interior, shall coordinate with tribes in order to fulfill trust responsibilities and encourage meaningful tribal participation in programs administered under the Act, and shall carry out their responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and the statutory missions of the Department (Secretarial Order 3206).

B. The primary authority and responsibility for administering the Act has been delegated by the Secretary of the Interior to the Service. In order to protect and conserve protected species under the Act, the Service is currently managing the Designated Waters. The Service, as a federal agency, is directed by Congress to seek to conserve protected species under the Act and to utilize its authorities in furtherance of the purposes of the Act. The Service has the responsibility for conducting section 7 consultation with federal agencies or their applicants on actions that may

affect species or critical habitat protected by the Act. The Service has a fiduciary obligation to protect and preserve trust resources for the benefit of the Tribe, including Pyramid Lake fishes, and an obligation to promote self-determination of the Tribe in exercising its sovereign powers and rights.

C. Reclamation has the authority and responsibility for managing the principal water storage facilities on the Truckee River system, including implementing scheduled releases, implementing dam safety and flood control requirements, administration of water storage contracts, forecasting inflows and releases, and development of operation plans. Reclamation, as a federal agency, is directed by Congress to seek to conserve protected species under the Act and to utilize its authorities in furtherance of the purposes of the Act. Reclamation has a fiduciary obligation to protect and preserve trust resources for the benefit of tribes, and an obligation to promote self-determination of tribes in exercising its sovereign powers and rights.

D. Indian Affairs has a fiduciary obligation to protect and preserve trust resources for the benefit of tribes, and an obligation to promote self-determination of tribes in exercising their sovereign powers and rights. As a federal agency, Indian Affairs is directed by Congress to seek to conserve protected species under the Act and to utilize its authorities in furtherance of the purposes of the Act.

IV. INTERDISCIPLINARY TEAM

A. An Interdisciplinary Team (Team) shall be formed and composed of technical representatives from each party to this Agreement that have sufficient knowledge and expertise to provide assistance and guidance for the management of the waters of the Truckee River and formulation of the annual Water Management Plan. The Water Management Plan will delineate objectives to use available water in accordance with the Conservation and Management Plan, the Pyramid Lake Fishery Conservation Plan and applicable recovery plans. This Team will be established upon signature by all parties to this Agreement. Team Lead will remain with the Service until the Tribe completes a Conservation and Management Plan and section 7 consultation is completed on the plan.

B. The Team will meet monthly to discuss current Natural Resource Conservation Service (NRCS) snowpack forecasts, and Reclamation's runoff and reservoir storage projections, as well as forecasts of Truckee River water conditions provided by other agencies. These meetings will be scheduled by the Team Lead. Reclamation will provide for runoff forecasts through the calendar year. Since snowpack levels and forecasts change frequently, these data will be requested, analyzed and reviewed at least monthly by the Team through mid-April. This collaborative analysis will be used to update and refine the runoff and reservoir storage projections and to develop the Water Management Plan for the current water year.

C. The Interdisciplinary Team will have a Team Lead who shall:

1. Work collaboratively with the other Parties to develop an annual Water Management Plan for the Truckee River, incorporating all information that will affect flow regimes and storage opportunities, including current snowpack conditions, runoff projections, reservoir levels and potential for water exchanges.

2. Make a formal request to implement the annual Water Management Plan through Reclamation and the Federal Water Master.

3. Be responsible for daily water management decisions.

4. Work directly with the Federal Water Master to make adjustments to the flow regime to accomplish the objectives in the annual Water Management Plan.

5. Communicate with the Team regularly on implementation of the annual Water Management Plan.

6. Ensure that the Water Management Plan and its implementation does not interfere with the effective operation or integrity of Marble Bluff Fish Facility.

7. Ensure that substantial deviations from the annual Water Management Plan will be developed collaboratively and reviewed by the Team.

8. Ensure that the annual Water Management Plan is drafted to satisfy the goals and objectives of applicable recovery plans, the Conservation and Management Plan, and the Pyramid Lake Fishery Conservation Plan.

9. Coordinates the implementation of the Water Management Plan with the scheduling parties under Article 11 of TROA; fishery resource managers with Nevada Division of Wildlife; and other affected or interested public.

10. Update the Water Management Plan regularly and as often as necessary in coordination with the Team to reflect changes in cui-ui and Lahontan cutthroat trout responses to habitat conditions, runoff forecasts, actual runoff, or other circumstances.

11. Coordinate with the Tahoe/Truckee River Restoration Team to ensure that water management strategies developed by the two teams are consistent and meet restoration goals.

12. Participate in the Truckee River Operations Forum to represent the Interdisciplinary Team and to discuss the runoff and reservoir projections with other interested or affected agencies and entities.

V. PREPARATION OF MANAGEMENT PLANS

Two documents, a Conservation and Management Plan and an Annual Water Management Plan, will form the basis of this Agreement.

A. A Conservation and Management Plan is a strategic document that will be developed to protect and conserve Pyramid Lake fishes. This Plan shall be consistent with the Pyramid Lake Fishery Conservation Plan, applicable recovery plans, and the Biological Opinion issued as a result of consultation on the Plan, and shall address the long-range approach for management of the Designated Waters, including:

1. Meeting the needs of the species protected under the Act, is consistent with the goals identified in the Pyramid Lake Fishery Conservation Plan and outlines methods and procedures that will recover the species to the point that protection under the Act is no longer required.

2. Using appropriate hydrologic modeling to develop flow regimes that will recover and maintain both cui-ui and Lahontan cutthroat trout;

3. The storage, exchange, and release of Designated Waters consistent with applicable reservoir management regulations (e.g., TROA, and flood control criteria);

4. The storage and release of Water Quality Credit Water in accordance with the Truckee River Water Quality Settlement Agreement.

5. The storage and release of the Designated Waters in accordance with the goals identified in the Pyramid Lake Fishery Conservation Plan and in accordance applicable recovery plans.

6. The storage and release of water for recruitment and maintenance of the cottonwood/willow riparian forest during above normal water years.

B. The Annual Water Management Plan will be developed for each water year and updated as necessary, to detail the use of the Designated Waters for the benefit of Pyramid Lake fishes consistent with the Conservation and Management Plan.

VI. PARTY COMMITMENTS

A. The Tribe shall:

1. Develop, in collaboration with the Parties to this Agreement, a Conservation and Management Plan that meets the needs of Pyramid Lake fishes, is consistent with the goals identified in the Pyramid Lake Fishery Conservation Plan and outlines methods and

procedures that will recover the species to the point that protection under the Act is no longer required, and addresses the following:

a. Use of appropriate hydrologic modeling to develop flow regimes that will recover and maintain the listed species under the Act.

b. Storage, exchange, and release of Designated Waters for the benefit of the listed species under the Act, in accordance with applicable recovery plans, the Pyramid Lake Fishery Conservation Plan, and pursuant to applicable reservoir management regulations.

2. Modify or amend the Conservation and Management Plan as required to incorporate the best available science, to enhance the implementation of a Tahoe/Truckee River Restoration Recovery Plan, to ensure consistency with the Pyramid Lake Fishery Conservation Plan, and comply with the Biological Opinion issued as a result of consultation on the Plan.

3. Assume the role of Team Lead, upon completion of a Conservation and Management Plan and the Intra-Service section 7 on the Conservation and Management Plan.

B. The Service shall:

1. Provide technical assistance to the Tribe in the development of Annual Water Management Plans.

2. Collaborate with the Tribe as necessary in development of the Conservation and Management Plan and provide expert and peer review of the Conservation and Management Plan.

3. Complete Intra-Service consultation on the Conservation and Management Plan.

4. Retain delegated administrative authority to protect and conserve protected species under the Act.

5. Assist the Tribe in assuming the role of Team Lead.

C. Reclamation shall:

1. Provide technical assistance to the Tribe in the development of annual Water Management Plans.

2. Manage the principal water storage facilities on the Truckee River system, including implementing scheduled releases, implementing dam safety and flood control

requirements, administration of water storage contracts, forecasting inflows and releases, and development of operation plans.

3. Assist the Tribe in assuming the role of Team Lead.

D. Indian Affairs shall:

1. Provide technical assistance to the Tribe in the development of annual Water Management Plans.

2. Assist the Tribe in assuming the role of Team Lead.

VII. SECTION 7 CONSULTATION

The Act requires every federal agency to insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Formal consultation is required for any federal action which may affect listed species or critical habitat.

The transfer of Team Lead for water management role from the Service to the Tribe is a discretionary federal action which may affect listed species and requires section 7 consultation. The transfer of management responsibilities can occur only upon conclusion of intra-Service consultation and approval of a Conservation and Management Plan that is consistent with the Pyramid Lake Fishery Conservation Plan and provides for conservation and recovery of protected species under the Act.

A. To the extent the following concerns are not addressed in the Conservation and Management Plan, reasonable and prudent measures will be developed within the Intra-Service Biological Opinion to the extent that they minimize the impacts of anticipated incidental Atake@. These concerns include:

1. Hydrologic modeling that evaluates the opportunities for the use of Designated Waters in the development of flow regimes that will recover and maintain both species;

2. Storage and release of Designated Waters established under TROA only for the benefit of cui-ui and Lahontan cutthroat trout.

3. Storage and release of Water Quality Credit Water in accordance with the Truckee River Water Quality Settlement Agreement.

4. Storage and release of Designated Waters in accordance with the goals identified in the Pyramid Lake Fishery Conservation Plan and in accordance with applicable recovery plans.

5. Storage and release of water for recruitment and maintenance of the cottonwood/willow riparian forest during above normal water years.

6. Coordination of fishery management and flow management activities with State and Federal management agencies and the public.

B. If the Tribe proposes an action that the Service believes is inconsistent with the Biological Opinion, the issue will be raised to the Project Officers (listed below) for discussion and resolution, or informal consultation.

If during informal consultation, the Service determines that an unresolved issue(s) is not likely to adversely affect listed species, the consultation process will be terminated via a letter to the Tribe and no further action will be necessary.

If during informal consultation, the Service determines that any one of the four circumstances listed in VII. C. below occur, reinitiation of formal consultation will be required.

C. Reinitiation of formal consultation is required under the following circumstances:

1. If the amount or extent of Atake@ authorized in the Biological Opinion is exceeded.

2. If new information reveals effects of the action that may affect listed species in a manner or to an extent not previously considered.

3. If the identified action is subsequently modified in a manner that causes an effect to the listed species that was not considered in the Biological Opinion.

4. If a new species is listed that may be affected by the identified action.

D. If through reinitiation of the consultation process described in paragraph VII. C, the Service determines that the Tribe=s proposed action is likely to jeopardize the continued existence of either species, the Service will identify reasonable and prudent alternatives to avoid jeopardy. If the Tribe fails to accept the new reasonable and prudent alternative of the Biological Opinion, Team Lead will revert to the Service.

If the Tribe takes an action without first coordinating with the Service and that action results in a level of take not authorized in the Biological Opinion or jeopardizes the continued existence of either species, Team Lead will revert back to the Service.

VIII. PROJECT OFFICERS:

A. Service: Nevada Field Supervisor
1340 Financial Blvd., Suite 234
Reno, Nevada 89502
Tel: (775) 861-6300

B. Tribe: Tribal Chairman
Post Office Box 256
Nixon, Nevada 89424
Tel: (775) 574-1000

C. Reclamation: Area Manager
Post Office Box 640
Carson City, Nevada 89702
Tel: (775) 882-3436

D. Indian Affairs: Superintendent
Western Nevada Agency
1677 Hot Springs Road
Carson City, Nevada 89706
Tel: (775) 887-3500

IX. MODIFICATIONS

Modifications to this agreement may be proposed by any party and shall be effective when agreed upon in writing by all parties to this agreement.

X. TERMINATION

The Service and the Tribe may mutually agree to terminate this agreement at any time with 30 days written notice to the Parties.

XI. SCOPE AND LIMITATIONS

This Agreement shall not be construed to grant, expand, create or diminish any legally enforceable rights, benefits, or trust responsibilities otherwise found under existing law. This Agreement does not modify existing statutory authority or the authority of the Tribe. Nothing in this Agreement authorizes the "take" of listed species under the Endangered Species Act. This Agreement is subject to the requirements of the Anti-Deficiency Act.

Nothing in this agreement shall be construed as an acknowledgment or admission by the Tribe that it would lack management authority over the waters covered by this Agreement in the absence of this Agreement.

Signed this day, Monday, November 29, 1999

_____\S_____
Elizabeth Stevens
Deputy Manager, California/Nevada Office
U.S. Fish and Wildlife Service
U.S. Department of the Interior

_____\S_____
Norman Harry
Chairman
0Pyramid Lake Paiute Tribe

_____\S_____
Elizabeth Ann Rieke
Area Manager, Lahontan Basin Area Office
U.S. Bureau of Reclamation
U.S. Department of the Interior

_____\S_____
Robert Hunter
Superintendent
Western Nevada Agencies
U.S. Bureau of Indian Affairs
U.S. Department of the Interior

ARTICLE TWELVE
EFFECTIVENESS OF AGREEMENT

SECTION 12.A - GENERAL PROVISIONS

Section 12.A.1 Purpose. The purpose of this Article Twelve is to establish the conditions which have been or must be satisfied for this **Agreement** to enter into effect, to identify the provisions of the **Settlement Act** which enter into effect when this **Agreement** enters into effect, and to establish a time by which this **Agreement** and the provisions of the **Settlement Act** contingent on the effectiveness of this **Agreement**, must enter into effect.

Section 12.A.2 Preliminary Settlement Agreement Conditions Deemed Satisfied at Time of Execution of this Agreement. The **Signatory Parties** agree that each of the following conditions set forth in Sections 12.A.2(a) through (e), which were conditions precedent to the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement, have been completely and finally satisfied at or prior to the date of execution of this **Agreement**.

Section 12.A.2(a) Settlement Legislation. The Congress of the United States has enacted, and the President of the United States has signed, the **Settlement Act** which terms and provisions are satisfactory to Pyramid Tribe and Power Company**.**

Section 12.A.2(b) Water Meter Legislation. The Legislature of Nevada has enacted, and the Governor of Nevada has signed, legislation which repeals or substantially modifies N.R.S. 704.230 to permit installation of water meters on all old and new residences within **Power Company Service Area**, excluding existing unmetered apartments and condominium units or complexes which have all outdoor irrigation use metered, and to permit water rates based on the amount of water delivered to each customer.

Section 12.A.2(c) Plan to Finance and Install Water Meters. A plan for financing and installing water meters in **Power Company Service Area** has received required governmental approvals and there are no foreseeable obstacles to its implementation.

Section 12.A.2(d) Inverted Block Rate Water Structure. Power Company has proposed, and the Nevada Public Service Commission has approved, an inverted block water rate structure which provides financial incentives for the conservation of water by Power Company's residential customers.

Section 12.A.2(e) Water Conservation Plan. All required governmental approvals have been obtained for a mandatory water conservation plan designed to produce water savings each year which is equal to or better than a plan requiring water savings of 10 percent or more during the ensuing year whenever it appears, based on the April 1 seasonal Truckee River

runoff forecast, that a **Drought Situation** exists.

Section 12.A.3 Other Conditions Deemed Satisfied at Time of Execution of this Agreement. Pyramid Tribe shall have conducted a referendum of tribal members prior to the date of execution of this **Agreement**. In addition, the **Signatory Parties** agree that each of the following conditions, which are conditions precedent to the entry into effect of this **Agreement**, have been completely and finally satisfied at or prior to the date of execution of this **Agreement**.

Section 12.A.3(a) Appropriation of Funds. The funds authorized to be appropriated under Section 208(a)(3) of the **Settlement Act** have been appropriated, as required by the **Settlement Act** as a condition precedent to this **Agreement** taking effect.

[NOTE: Sections 12.A.3(b), (c) and (d) are written as though the EIS/EIR on this Draft TROA has been completed.]

Section 12.A.3(b) Compliance with National Environmental Policy Act and Endangered Species Act. The **Secretary** has satisfied the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The **Secretary** has also determined for purposes of the Endangered Species Act that the potential effect of implementing this **Agreement**, together with cumulative effects, are not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of any designated critical habitat of such species.

Section 12.A.3(c) Compliance with California Environmental Quality Act. California's lead agency has taken all actions required of it by the California Environmental Quality Act (Calif. Public Resources Code Section 21000 et seq.), and the lead agency has entered into any agreements it finds to be necessary to implement or carry out measures to mitigate or avoid any significant effects to the environment, which measures are found by the lead agency to be feasible.

Section 12.A.3(d) Compliance with California Endangered Species Act. California has complied with the requirements of the California Endangered Species Act (Calif. Fish and Game Code Section 2050 et seq.), including, but not limited to provision of feasible mitigation measures or alternatives to address a particular impact on any endangered, threatened or candidate species identified in the Environmental Impact Statement/Environmental Impact Report for this **Agreement**.

Section 12.A.3(e) Lake Tahoe Indemnification Agreement. United States has acknowledged that the indemnity agreement executed by Power Company, the Conservation District and the Truckee Carson Irrigation District dated July 1, 1935, is no longer of any force or effect.

[NOTE: The following language is subject to approval by the Commissioner of Reclamation or the Secretary of Interior.]

Section 12.A.3(f) Power Company Contract to Store Water in Federal Reservoirs. A contract has been entered between Power Company and the **Secretary** providing storage of **Power Company M&I Credit Water** and **Privately Owned Stored Water** in **Truckee River Reservoirs** in accordance with this **Agreement**, and containing the following provisions:

(1) The duration of such contract shall be consistent with the provisions of Section 7.A.2(b)(2); and

(2) Power Company payments for storage shall be related to the **Base Amounts** of **Power Company M&I Credit Water**, as calculated in Section 7.B.4, and shall not vary monthly, seasonally, or annually based on actual quantities of water stored, **Exchanged**, converted to **Fish Credit Water** or subjected to other operations, and without regard to which **Truckee River Reservoir** is used.

[NOTE: Further information is needed to complete this section.]

Section 12.A.3(g) Previously Resolved Litigation. The following litigation and proceedings have been finally resolved:

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

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

Section 12.A.4 Entry Into Effect of this Agreement. Unless the entry into effect of this **Agreement** is delayed pursuant to the provisions of Section 12.A.6, it shall enter into effect and become operative within one (1) year of the date on which the last of the following conditions set forth in Sections 12.A.4(a) through (g) is satisfied.

Section 12.A.4(a) Promulgation as Exclusive Federal Regulation. The **Secretary** shall have promulgated this **Agreement** as the exclusive Federal regulation governing it.

Section 12.A.4(b) Modifications to Orr Ditch Decree. This **Agreement** shall have been submitted to the **Orr Ditch Court** for approval of any necessary modifications in the provisions of the **Orr Ditch Decree**, including a satisfactory confirmation of the consumptive use portion of **Changed Diversion Rights**, and the **Orr Ditch Court**'s approval thereof shall have been obtained.

Section 12.A.4(c) Modifications to Truckee River General Electric Decree. This **Agreement** shall have been submitted to the **Truckee River General Electric Court** for approval of any necessary modifications in the **Truckee River General Electric Decree**, and the **Truckee River General Electric Court**'s approval thereof shall have been obtained.

Section 12.A.4(d) Water Right Changes Have Been Approved. The following changes to water rights, which the **Signatory Parties** deem are necessary to accomplish the purposes of this **Agreement**, either have been approved, or are approved conditioned on this **Agreement** entering into effect:

(1) Changes for Boca Reservoir identified in Section 7.A.4(a)(1)(ii) through (iv), unless the **Mandatory Signatory Parties** agree that such contingency has been otherwise satisfied or is not required for this **Agreement** to take effect, and provided that no **Mandatory Signatory Party** has identified any condition of such approval that would make the approval required under this Section 12.A.4(d)(1) inoperative.

(2) Changes for Independence Lake identified in Section 7.A.4(a)(2)(ii) through (iv), unless Power Company determines that such contingency has been otherwise satisfied or is not required for this **Agreement** to take effect, and provided that Power Company has not identified any condition of such approval that would make the approval required under this Section 12.A.4(d)(2) inoperative.

(3) Changes for Prosser Creek Reservoir identified in Section 7.A.4(a)(3), unless the **Mandatory Signatory Parties** agree that such contingency has been otherwise satisfied or is not required for this **Agreement** to take effect, and provided that no **Mandatory Signatory Party** has identified any condition of such approval that would make the approval required under this Section 12.A.4(d)(3) inoperative.

(4) Changes for Stampede Reservoir identified in Section 7.A.4(a)(4)(ii) through (iv), unless the **Mandatory Signatory Parties** agree that such contingency has been otherwise satisfied or is not required for this **Agreement** to take effect, and provided that no **Mandatory Signatory Party** has identified any condition of such approval that would make the approval required under this Section 12.A.4(d)(4) inoperative.

(5) A minimum of 12,000 acre-feet of changes to **Changed Diversion Rights** identified in Section 7.A.4(b)(1), with a consumptive use fraction of not less than 2.5 acre-feet per acre and a flexible 12-month diversion schedule; unless each of Power Company, Pyramid Tribe and United States agree that such

contingency has been otherwise satisfied or is not required for this **Agreement** to take effect, and provided that each of Power Company, Pyramid Tribe, and United States have not identified any condition of such approval that would make the approval required under this Section 12.A.4(d)(5) inoperative.

(6) Changes to Pyramid Tribe's right granted under State Engineer Ruling 4683 identified in Section 7.A.4(b)(2), unless each of Pyramid Tribe, United States, and Power Company agree that such contingency has been otherwise satisfied or is not required for this **Agreement** to take effect, and provided that each of Pyramid Tribe, United States, and Power Company have not identified any condition of such approval that would make the approval required under this Section 12.A.4(d)(6) inoperative.

Section 12.A.4(e) Vested Water Rights for Donner and Independence Lakes. Changes to the vested water rights for Donner Lake and Independence Lake allowing Power Company to **Establish M&I Credit Water** shall not be subject to challenge, or any such challenge shall have been finally resolved.

Section 12.A.4(f) Unappropriated Water. The Nevada State Engineer shall have issued permits to Pyramid Tribe based upon Ruling No. 4683 and the **Orr Ditch Court** shall have confirmed the water right evidenced by those permits and shall have amended the **Orr Ditch Decree** to provide that the Truckee River and its tributaries, in Nevada, is fully appropriated and therefore closed to any new appropriations.

Section 12.A.4(g) Resolution of Litigation. The following litigation and proceedings shall have been dismissed with prejudice or otherwise finally resolved with respect to the **Mandatory Signatory Parties**:

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

(2) *United States v. Truckee-Carson Irrigation District*, Civ. No. 4-2987-RCB, United States District Court, District of Nevada; and

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

Section 12.A.5 Writing Concerning Status of Conditions. Each year on the anniversary date of their execution of this **Agreement**, and continuing until this **Agreement** has taken effect, the **Mandatory Signatory Parties** shall execute a written document in which each shall state its then position on the status of satisfaction of the conditions set forth in Section 12.A.4. A copy of the

written document shall be provided to all **Signatory Parties.**

Section 12.A.6 Delay of Entry Into Effect of Agreement. If a challenge to any of the actions taken to satisfy the conditions set forth in Section 12.A.4(a) through Section 12.A.4(h) is pending before any administrative agency or court within one year after the last to be satisfied of those conditions has been satisfied then, at any time within said one-year period, any **Mandatory Signatory Party** may delay the time when this **Agreement** shall enter into effect and become operative by giving written notice of its election to delay the operative effect of this **Agreement** to the **Signatory Parties** in accordance with the notice provisions of Article Fourteen. If one or more such notices of delay are given, this **Agreement** shall not enter into effect or become operative until the actions required to satisfy the conditions set forth in Section 12.A.4(a) through 12.A.4(h) have become final and are not subject to further appeal before any administrative agency or court, or the **Mandatory Signatory Party** requesting the delay waives its objection.

Section 12.A.7 Provisions of Settlement Act Which Enter into Effect When this Agreement Enters into Effect. When this **Agreement** enters into effect, the provisions of Section 204, subsections 206(c), 207(c) and (d), paragraph 208(a)(3)(D) and paragraph 210(a)(3) of the **Settlement Act** shall enter into effect and remain in effect as provided in the **Settlement Act**.

Section 12.A.8 Waiver of Certain Conditions by Benefited Party. United States and Pyramid Tribe may jointly waive satisfaction of the condition identified in Section 12.A.4(f), in whole or in part. The provisions of Section 12.A.6 notwithstanding, any **Mandatory Signatory Party** which has given notice of delay pursuant to Section 12.A.6 may waive and withdraw that notice at any time. Such waivers must be in writing and must be given as provided in Section 14.P. Upon such waiver, the condition waived shall no longer be required to be satisfied for the provisions of this **Agreement** to enter into or remain in effect.

SECTION 12.B – TIME AND CONSEQUENCES OF TERMINATION

If the conditions set forth in Section 12.A.4 shall not have been satisfied or if this **Agreement** shall not have entered into effect by December 31, 2009, or such later date as may be agreed to by the **Mandatory Signatory Parties**, this **Agreement** shall terminate and, in such case, each of the **Signatory Parties** shall be restored to its respective rights and positions as the same existed at the date hereof (and, in the case of Pyramid Tribe and Power Company, as of May 23, 1989) unaffected by the provisions of this **Agreement** (and, in the case of Pyramid Tribe and Power Company, unaffected by the provisions of this **Agreement** and the Preliminary Settlement Agreement.)

The foregoing notwithstanding and unless otherwise ordered by a court with jurisdiction, any **Storing Party** with **Credit Water** in storage may leave its water in storage until it is used or **Spilled** consistent with the provisions of this **Agreement**.

ARTICLE THIRTEEN
RELATION OF AGREEMENT TO SETTLEMENT ACT, ADJUSTMENTS TO OPERATIONS AND CHANGES TO AGREEMENT

SECTION 13.A – PURPOSE

This Article Thirteen specifies a process for reviewing implementation of this **Agreement**, for considering adjustments to operations and operational policies, and for considering changes to this **Agreement**.

SECTION 13.B – AGREEMENT CONSTITUTES THE OPERATIONAL CRITERIA REQUIRED BY SECTION 205(A) OF THE SETTLEMENT ACT

This **Agreement** shall be the basis for operation of **Truckee River Reservoirs** to comply with the requirements of Section 205(a)(2) of the **Settlement Act** and to implement those matters specified in subdivisions (A) through (I) of Section 205(a)(3) of the **Settlement Act**. The **Signatory Parties** have executed this **Agreement** with the awareness of, and an intention to be bound by, the provisions of Section 210(a)(3) of the **Settlement Act**, and they shall not assert claims barred by that section. The **Signatory Parties** and **Scheduling Parties** shall act consistent with this **Agreement** and shall cooperate in carrying out its provisions and the related provisions of the **Settlement Act**.

SECTION 13.C - PERIODIC REPORT ON OPERATIONS

Following each ten-year period of operations under this **Agreement**, the initial period commencing with the year in which this **Agreement** enters into effect, the **Administrator** shall prepare and distribute to the **Signatory Parties** and **Scheduling Parties** a report summarizing the previous ten years of operations pursuant to this **Agreement**. The report shall include an evaluation of such operations in achieving the purposes set forth in Section 205(a)(2) of the **Settlement Act** and, insofar as purposes are specifically identified by this **Agreement**, in Section 205(a)(3) of the **Settlement Act**.

SECTION 13.D – ADJUSTMENTS TO OPERATIONS

Section 13.D.1 Recognition that Changes May Affect Implementation of Agreement. The **Signatory Parties** recognize the following:

(a) Hydrologic, physical, technical, legal and cultural conditions in the **Truckee River Basin** may change over time, which changed conditions cannot reasonably be foreseen at the time of this **Agreement**.

(b) Changes in the manner of implementation of this **Agreement** with regard to operation of the **Truckee River Reservoirs** may require either adjustments to

operations or to operational policies pursuant to this **Agreement** or changes to the **Agreement** as contemplated by Section 205(a)(5) of the **Settlement Act**.

(c) Changes referenced in this Section 13.D.1(a) and (b) may cause a **Sovereign Party** to request the **Administrator** to convene a proceeding to review implementation of this **Agreement**, to comply with the requirements of Section 205(a)(2) of the **Settlement Act**, or to implement those matters specified in subdivisions (A) through (I) of Section 205(a)(3) of the **Settlement Act**.

Section 13.D.2 Cooperative Process for Adjustment to Implementation of Agreement. At any time, any one or more of the **Sovereign Parties** may request the **Administrator** to convene a proceeding to review implementation of this **Agreement** including, but not limited to, consideration of adjustments to operations or operational policies. Any such request shall contain a statement specifying the manner in which implementation of this **Agreement** has failed to achieve the purposes set forth in Section 205(a)(2) of the **Settlement Act** and, insofar as purposes are specifically identified by this **Agreement**, in Section 205(a)(3) of the **Settlement Act**.

Section 13.D.3 Notice of Cooperative Proceeding. Upon receipt of any such request, the **Administrator** shall convene a proceeding of all the **Signatory Parties** by providing written notice thereof. The notice shall specify a time and place for an initial meeting of all **Signatory Parties**, which time shall be within 30 days of receipt by the **Administrator** of the request and shall include a copy of the request.

Section 13.D.4 Signatory Parties to Meet and Confer. At the time and place specified in the notice, the **Signatory Parties** shall meet and confer in good faith regarding disposition of the request.

Section 13.D.5 Duration of Proceedings. If the issues raised are not resolved by the cooperative process described in this Section 13.D, the **Administrator** shall continue the proceeding to mediation and may utilize the services of a disinterested person or persons with expertise and experience in matters related to the issue or issues raised by the request. Any such mediator shall assist the **Signatory Parties** in reaching agreement. The duration of the mediation proceeding shall be reasonable in light of the scope of the issues under consideration. In the event that at least three of the **Sovereign Parties** report to the **Administrator** and to the **Signatory Parties** that the proceeding is unlikely to result in agreement being reached, the proceeding shall be terminated.

SECTION 13.E - CONSIDERATION OF CHANGES TO THIS AGREEMENT

Section 205(a)(5) of the **Settlement Act** provides that any changes to this **Agreement** must be adopted and promulgated in the same manner as this **Agreement**.

Section 13.E.1 Process for Changes to this Agreement. At any time, any one or more of the **Sovereign Parties** may petition the **Administrator** to convene a proceeding for the

purpose of negotiating a change or changes to this **Agreement**. Any such petition shall contain a statement specifying the changes to this **Agreement** proposed by the petitioner and the reasons therefor.

Section 13.E.2 Notice of Negotiation. Upon receipt of any such petition, the **Administrator** shall issue a notice of negotiation. The notice shall include a copy of the petition and specify a time and place for an initial negotiation meeting of all **Signatory Parties**, which time shall, unless otherwise agreed to by the **Signatory Parties**, be within 30 days of receipt by the **Administrator** of the petition.

Section 13.E.3 Signatory Parties to Meet and Confer. At the time and place specified in the notice, the **Signatory Parties** shall meet and confer in good faith regarding the disposition of the petition.

Section 13.E.4 Duration of the Proceedings. The **Administrator** may continue the negotiation proceeding from time to time, may continue the proceeding to mediation, and may utilize the services of a disinterested person or persons with expertise and experience in matters related to the issue or issues raised by the petition. Any such mediator shall assist the **Signatory Parties** in reaching agreement. The duration of the negotiation and mediation shall be reasonable in light of the scope of the issues under consideration. In the event that at least three of the **Sovereign Parties** report to the Administrator and to the **Signatory Parties** that the proceeding is unlikely to result in agreement being reached, the proceeding shall be terminated.

Section 13.E.5 Adoption of Changes to this Agreement. In the event that agreement is reached on changes to this **Agreement**, such changes shall be adopted and promulgated pursuant to the provisions of Section 205(a)(5) of the **Settlement Act**.

ARTICLE FOURTEEN
MISCELLANEOUS

SECTION 14.A - PROVISIONS REQUIRED IN AGREEMENTS WITH UNITED STATES

During the performance of this **Agreement**, each **Signatory Party** agrees as follows:

1. It will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. It will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruiting or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. It agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by United States setting forth the provisions of this equal opportunity clause. Nothing in this Section 14.A shall affect any tribal or federal authority providing for employment preferences for Tribal members.

2. It will, in all solicitations or advertisements for employees placed by or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. It will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by United States, advising the labor union or workers' representative of its commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. It will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. It will furnish all information and reports required by said Executive Order, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by United States for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of a **Signatory Party**'s noncompliance with the equal opportunity clause of this **Agreement** or with any of the said rules, regulations, or orders, it

may be declared ineligible for further government contracts in accordance with procedures authorized in said Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. It will include the provisions of Sections 14.A.1 through 14.A.6 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 112465, so that such provisions will be binding upon each subcontractor or vendor. It will take such actions with respect to any subcontractor or purchase order as United States may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the **Signatory Party** becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by United States, it may request United States to enter into such litigation to protect the interests of United States.

SECTION 14.B - PROVISIONS REQUIRED IN AGREEMENTS WITH THE STATE OF CALIFORNIA

The following provisions shall apply to United States to the extent provided by federal laws, rules and regulations. The following provisions shall apply to the State of Nevada and other **Signatory Parties** organized under or subject to Nevada law only to the extent applicable and consistent with Nevada law, rules and regulations. The following provisions shall apply to Pyramid Tribe to the extent provided by applicable federal or tribal laws or regulations.

1. Each **Signatory Party** affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and each **Signatory Party** affirms that it will comply with such provisions before commencing the performance of the work under this **Agreement**.

2. During the performance of this **Agreement** each **Signatory Party** and its subcontractors shall not deny the benefits of this **Agreement** to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. Each **Signatory Party** shall ensure that evaluation and treatment of employees and applicants for employment are free of such discrimination. Each **Signatory Party** shall comply with the provisions of the Fair Employment and Housing Act (See Government Code Section 12900 et seq.), the regulations promulgated thereunder (See California Code of Regulations, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (See Government

Code Sections 11135-11139.3), and the regulations or standards adopted by the awarding State agency to implement such article. Each **Signatory Party** shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Each **Signatory Party** and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Each **Signatory Party** shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this **Agreement**.

3. By executing this **Agreement**, each **Signatory Party** hereby certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (See Calif. Government Code Section 8350 et seq.), and will provide a drug-free workplace by taking the following actions:

   (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against an employee for violations.

   (b) Establish a drug-free awareness program to inform employees about the following:

      (i) The dangers of drug use in the workplace.

      (ii) The person's or organizations' policy of maintaining a drug-free workplace.

      (iii) Any available counseling, rehabilitation, and employee assistance programs, and

      (iv) Penalties that may be imposed on employees for drug abuse violations.

   (c) Every employee who works on the performance of this **Agreement**:

      (i) Will receive a copy of the **Signatory Party**'s drug-free policy statement, and

(ii) Will agree to abide by the terms of the **Signatory Party**'s statement as a condition of employment on activities involving the performance of this **Agreement**.

4. Records of the **Signatory Parties** pertaining to the performance of this **Agreement** shall be subject to the examination and audit of the California State Auditor or the California Bureau of State Audits or any successor thereto. All **Signatory Parties** agree to maintain records concerning performance of this **Agreement** for a period of three years following the calendar year in which the record was created, or such longer period as may be required by applicable law, and to make such records available for audit. (Calif. Government Code Section 8546.7)

5. Where software usage is an essential element of performance under this **Agreement**, each **Signatory Party** certifies that it has appropriate systems and controls in place to ensure that funds made available by the State of California will not be used in the performance of this **Agreement** for acquisition, operation, or maintenance of computer software in violation of copyright laws.

SECTION 14.C - OFFICIALS NOT TO BENEFIT

No member of, or delegate to, Congress shall be admitted to any share or part of this **Agreement** or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this **Agreement** if made with a corporation for its general benefit. No official of California or Nevada shall receive any benefit that may arise by reason of this **Agreement** other than that as a citizen of California or Nevada and in the same manner as other citizens of California or Nevada**.**

SECTION 14.D – AUDITS OF ADMINISTRATOR

The Inspector General of the United States Department of the Interior, the California State Auditor, the California Bureau of State Audits, and/or the Nevada State Auditor or any successors thereto shall have the right to review and copy the records of the **Administrator** pertaining to the performance of this **Agreement**. The **Administrator** shall maintain such records for a period of not less than ten years following the calendar year in which such record was created. The **Administrator** shall allow access to such records during normal business hours and allow interviews of any employees who might reasonably have information relating to such records. The **Administrator** shall include a similar right to audit records and interview employees in any contracts relating to performance of this **Agreement**.

SECTION 14.E – NEW PARTIES TO THIS AGREEMENT

With the prior unanimous agreement of the **Mandatory Signatory Parties**, **Persons** in addition to the initial **Signatory Parties** may sign this **Agreement** and become a **Signatory Party** hereto.

SECTION 14.F – ASSIGNMENT

Rights and obligations under this **Agreemen**t may be assigned by a **Signatory Party** only with the prior written approval of the United States. Such approval shall not be unreasonably withheld. In determining whether to grant such approval, United States shall consult with California and Nevada. The approval of United States to any such assignment is not intended to substitute for or otherwise preempt other approvals of the assignment which may be required under applicable law. Any assignment of rights and obligations under this **Agreement** made without the prior written approval of United States shall be ineffective, but shall not void this **Agreement** or the rights and obligations of the **Signatory Parties**. Once an assignment is approved, the assignee shall have all the rights and obligations of, and shall be considered as, a **Signatory Party**. If **Mandatory Signatory Party** status is assigned and approved pursuant to this Section 14.F, such assignment shall not result in more than one **Mandatory Signatory Party**.

SECTION 14.G - AGREEMENT BINDING ON SUCCESSORS AND NEW PARTIES

Subject to the provisions of Sections 14.E and 14.F, this **Agreement** and all of its provisions shall apply to and bind all parties to this **Agreement** and the successors or assigns of the parties hereto.

SECTION 14.H – LIMITATION ON THIRD PARTY BENEFICIARY RIGHTS

The terms and conditions of this **Agreement** are intended for the benefit of **Signatory Parties**, their successors or assigns, and for other **Persons** upon signing this **Agreement** pursuant to its terms. This **Agreement** is not intended nor shall it be construed to create any third party beneficiary rights to enforce the terms of this **Agreement** in any **Person** that is not a **Signatory Party**, a successor or assign to a **Signatory Party**, or one of the following intended third party beneficiaries:

1. Those owners of water rights in Nevada identified under Section 1.C who **Exercise** such water rights through diversion of water from the Truckee River, only to the extent provided under Section 1.C;

2. *[NOTE: if Sierra Valley Water Company is Signatory, this item will be deleted.]* The Sierra Valley Water Company, solely with respect to the implementation of the Sierra Valley diversion, only to the extent set forth in Section 6.B.;

3. A **Person** who owns a well or who is proposing to construct a well in the **Truckee River Basin** in California, but only to the extent set forth in Sections 10.B.1, 10.B.2, 10.C.4, and 10.D.2 and other provisions of this **Agreement** applicable thereto.

SECTION 14.I - RELIANCE AND MISTAKE OF FACT

Each **Signatory Party** warrants, represents, and agrees that there is no reliance upon, and there has been no reliance upon, any representation or statement made by any of them with respect to the facts involved in any matters referred to in this **Agreement**, or with respect to any rights or asserted rights of any of them. In that connection, each of the **Signatory Parties** hereby assumes the risk of any mistake of fact in connection with the true facts involved in said matters, or with regard to any of the facts which are now unknown to them relating to any of such matters.

SECTION 14.J - NO JOINT VENTURE

The **Signatory Parties** specifically acknowledge that no **Signatory Party** is acting as the agent of any other **Signatory Party** in any respect, and that each **Signatory Party** is an independent entity with respect to the terms, covenants and conditions contained in this **Agreement**. None of the terms or provisions of this **Agreement** shall be deemed to create a partnership between or among the **Signatory Parties** in their businesses, operations, affairs or otherwise; nor shall it cause them to be considered joint venturers or members of any joint enterprise.

SECTION 14.K – CONSTRUCTION

Each of the **Signatory Parties** acknowledges that it has had an opportunity to review this **Agreement** with its legal counsel, and that this **Agreement** has been jointly drafted by all initial **Signatory Parties**.

SECTION 14.L – AUTHORITY

Each undersigned representative of a **Signatory Party** certifies that he or she is fully authorized to enter into the terms and conditions of this **Agreement**, and to execute and legally bind such **Signatory Party** to this **Agreement**.

SECTION 14.M - WAIVER OF BREACH

The waiver of a breach of any of the provisions of this **Agreement** shall not be deemed to be a waiver of any other provisions hereof, or of a subsequent breach of such provisions.

SECTION 14.N – SEVERABILITY

If any portion of this **Agreement** is held invalid or unenforceable in whole or in part, this entire **Agreement** shall be likewise invalid and unenforceable, unless the **Mandatory Signatory Parties** unanimously agree otherwise.

SECTION 14.O – CAPTIONS

Captions, headings and recitals used in this **Agreement** are for convenience only and do not in any way affect, limit, amplify, or modify the terms or provisions thereof.

SECTION 14.P – NOTICES

Section 14.P.1 Officials of Signatory Parties. When a document or notice is required for the purposes of administering this **Agreement**, it shall be sent personally or by registered or certified mail, overnight delivery, facsimile or electronic mail to the following officials, or to alternate officials as may be designated by **Signatory Party** in writing to the **Administrator** and all other **Signatory Parties**:

(a) Notices to United States shall be sent to:

Secretary
Department of the Interior
Office of the Secretary
1849 "C" Street, NW
Mail Stop 2279
Washington D.C. 20240

Deputy Attorney General
Department of Justice
1000 Constitution Ave.
Washington, D.C. 20530

(b) Notices to State of California shall be sent to:

Director
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001

Director
Department of Fish and Game
1416 Ninth St., 13th Floor
Sacramento, CA 95814-5511

(c) Notices to State of Nevada shall be sent to:

Director
Department of Conservation and Natural Resources
123 West Nye Street, Room 230
Carson City, NV 89706-0818

(d) Notices to Pyramid Lake Paiute Tribe of Indians shall be sent to:

Tribal Chairman
Pyramid Lake Paiute Tribe of Indians
P.O. Box 256
Nixon, NV 89424

(e) Notices to Sierra Pacific Power Company shall be sent to:
President
Sierra Pacific Power Company
6100 Neil Road
P.O. Box 10100
Reno, NV 89520-0024

(f) Notices to Truckee Meadows Water Authority shall be sent to:
General Manager
Truckee Meadows Water Authority
1155 Corporate Boulevard
Reno Nevada 89502

(g) Notices to Washoe County shall be sent to:

Director of Water Resources	District Attorney
P.O. Box 11130	P.O. Box 11130
Reno, NV 89520-0027	Reno, NV 89520-0027

(h) Notices to City of Reno shall be sent to:
Sanitary Engineer
City of Reno
P.O. Box 1900
Reno, NV 89505

(i) Notices to City of Sparks shall be sent to:
Public Works Director
431 Prater Way
Sparks, NV 89431

(j) Notices to City of Fernley shall be sent to:
Public Works Director
595 Silver Lace Blvd.
Fernley, NV 89408

(k) Notices to Washoe County Water Conservation District shall be sent to:
Board President
275 Hill Street
Reno, NV 89501

(l) Notices to Sierra Valley Water Company shall be sent to:
President
Sierra Valley Water Company
P.O. Box 33
Sierraville, CA 96126

(m) Notices to Carson-Truckee Water Conservancy District shall be sent to:
Board President
275 Hill Street
Reno, NV 89501

(n) Notices to Donner Lake Water Company shall be sent to:
President
c/o Del Oro Water Company
Drawer 5172
Chico, CA 95927

General Manager
Truckee-Donner Public Utility District
11570 Donner Pass Road
Truckee, CA 96160

(o) Notices to North Tahoe Public Utility District shall be sent to:
General Manager
North Tahoe Public Utility District
Post Office Box 139
Tahoe Vista, CA 96148

Section 14.P.2 Designation of Person or Persons to Receive Notice. Each official identified in Section 14.P.1 may designate one or more persons to receive specific types of notice, and may designate a different person or persons to receive notice of operations, scheduling, financial matters, policy matters, or other distinct matters arising from administration of this **Agreement**. Any such designation shall be sent to the **Administrator** and each of the officials identified in Section 14.P.1. The **Administrator** shall maintain and distribute a list of such designated persons. Any such designation shall remain in affect until specifically modified or revoked.

Section 14.P.3 Notice Pursuant to Other Provisions of this Agreement. Where specific procedures for notice are set forth in other provisions of this **Agreement**, those procedures shall be followed, if different from those set forth in this Section 14.P, provided that the **Administrator** may also specify that notice be given pursuant to this Section 14.P, if the **Administrator** finds that such notice will assist in the orderly administration of this **Agreement**.

Section 14.Q Tribal Immunity. Nothing in this **Agreement** waives or diminishes any immunity from state jurisdiction or regulation that Pyramid Tribe otherwise would have.

IN WITNESS WHEREOF, the **Parties** hereto have executed this **Agreement** the date first above written.

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