



THE SECRETARY OF THE INTERIOR
WASHINGTON

Record of Decision

Truckee River Operating Agreement

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of the Secretary

AGENCY: United States Department of the Interior, Office of the Secretary

ACTION: Record of Decision for the Proposed Truckee River Operating Agreement (TROA), California and Nevada

SUMMARY: Title II of Public Law 101-618, Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Act) was signed into law on November 16, 1990. The Act provides authorization for numerous measures in the Truckee and Carson River basins to facilitate resolution of long-standing disputes and litigation among multiple parties (including the States of Nevada and California) concerning the rights to use of the waters of those rivers as well as Lake Tahoe. Section 205(a) of the Act authorized and directed the Secretary of the Interior (Secretary) to negotiate an operating agreement for Truckee River reservoirs with at least the States of Nevada and California. Following negotiations among a number of parties, a proposed Truckee River Operating Agreement (TROA), the February 1998 Draft Agreement, was agreed to. That proposed TROA and another action alternative were first analyzed and evaluated by the Department of the Interior and State of California in a combined Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) issued for public review on March 13, 1998. Following subsequent negotiations, proposed TROA (the October 2003 Draft Agreement) and two action alternatives were analyzed and evaluated in a revised DEIS/EIR (RDEIS/EIR) issued for public review on August 23, 2004. Continued negotiations produced a proposed TROA (the February 2007 Draft Agreement), substantively identical to the October 2003 Draft Agreement, which was analyzed and evaluated with two other action alternatives in a Final EIS/EIR (FEIS/EIR), and included with the FEIS/EIR as the August 27, 2007, version, issued for public review on January 25, 2008 (73 FR 4614). The FEIS/EIR analyzed the potential effects of implementing proposed TROA on resources in the study area, encompassing portions of the Truckee River, Lake Tahoe, and Carson River basins, pursuant to the directives of section 205(a) of the Act. With the issuance of this Record of Decision (ROD), the Secretary announces that Alternative 2, proposed TROA, is the preferred alternative and action to be implemented. The Secretary's decision is based on his review of the DEIS/EIR, RDEIS/EIR, FEIS/EIR, and comments received from the public, Federal agencies, State agencies, local government entities, and potentially affected tribes.

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I. Introduction

The United States has been extensively involved in litigation over rights to the use of the waters of the Truckee River in California and Nevada since the early 1900s. In 1913 the United States filed a suit claiming rights to the use of such waters for multiple purposes, including supply for the first Reclamation Project in the nation, and for use on the Pyramid Lake Paiute Indian Reservation. The subject matter of Truckee River litigation over the years has involved Indian rights to water and other natural resources, domestic and municipal uses of water stored in Federal projects, a California/Nevada compact for an interstate allocation of the river's water,¹ Endangered Species Act claims, and rights for use in irrigation projects. Multiple lawsuits concerning those issues became very active in the early 1970s and continued through the early 1990s. By that time, it had become clear that the best hope for resolution of the many conflicts over the use of Truckee River water was through a regional settlement which would provide a framework for cooperative uses of Truckee River reservoirs.

In November 1990, the Congress enacted the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act," Title II of Pub. L. No. 101-618, 104 Stat. 3294 (Act), to provide authorization for measures which, if carried out, would resolve many long-standing disputes and Federal litigation among multiple parties (including the States of Nevada and California) concerning the rights to use of the waters of the Lake Tahoe basin and the Truckee and Carson Rivers in Nevada and California.

Section 205 of the Act requires the Secretary of the Interior (Secretary) to negotiate an operating agreement with the States of California and Nevada, and other appropriate parties as may be designated by the Secretary, to provide rules for the operation of Federally owned reservoirs in the Truckee River Basin to achieve the purposes stated in the Act. Those reservoirs are Lake Tahoe (the top six feet of which is regulated by a dam operated by the Bureau of Reclamation (Reclamation)) and Stampede, Boca, Prosser Creek and Martis Creek reservoirs located on tributaries of the Truckee River in California. This operating agreement (Truckee River Operating Agreement, or TROA) for the operation of Truckee River reservoirs,² would, among other things, accomplish

¹ California and Nevada have been working since the mid 1960s to secure Congressional consent to an interstate compact that includes Truckee River water allocations. Consent to the terms of the proposed interstate compact was finally obtained through the enactment of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act discussed in the next paragraph, section 204 of which incorporates and approves the terms of the interstate compact proposed by the two States. However, as explained on page 2, the interstate allocation has been approved by Congress subject to the condition that the operating agreement discussed in this ROD goes into effect.

² In addition to the Federal reservoirs (Lake Tahoe, and Boca, Stampede, Martis, and Prosser Creek Reservoirs), referred to as "Truckee River reservoirs," the Act also allows TROA to incorporate operations of non-Federal reservoirs (Independence Lake and Donner Lake) to the extent that the owners of such reservoirs are party to the agreement.

two important objectives for the basin: (1) increase the municipal and industrial (M&I) drought supply for the Reno-Sparks metropolitan area; and (2) provide for the enhancement of spawning flows available in the lower Truckee River for the Pyramid Lake fishery (i.e. endangered cui-ui and threatened Lahontan cutthroat trout (LCT) referred to as the “Pyramid Lake fishes”).

Negotiation and approval by the parties of TROA is a key step under the Act because effectiveness of TROA is a precondition to several of the Act’s provisions. Section 204 of the Act provides Congressional approval to interstate allocations of the waters of the Lake Tahoe, Truckee and Carson basins long sought by the States of California and Nevada. Under section 210(a)(2) of the Act, Congressional approval of these interstate allocations is delayed until such time TROA is in effect and certain litigation and legal proceedings have been finally resolved.

In addition to the interstate allocations between Nevada and California, section 210(a) of the Act provides that the following sections of the Act will become effective only after TROA enters into effect: (1) section 206(c), covering the use of water rights from the Naval Air Station at Fallon, Nevada; (2) section 207(c), providing authority for the acquisition of water rights for Pyramid Lake fishes; (3) section 207(d), requiring the use of water stored in Stampede and Prosser Creek Reservoirs to restore and maintain the Pyramid Lake fishery and (4) section 208(a)(3)(d), authorizing disbursement of the Pyramid Lake Paiute Economic Development Fund.

II. Background

The Truckee River originates at the outlet of Lake Tahoe in California and flows to Pyramid Lake in northwestern Nevada, which has no outlet and which lies entirely within the Pyramid Lake Paiute Indian Reservation. The flow of the Truckee River was first regulated in 1870 by construction of a private timber crib dam at the outlet of Lake Tahoe. A number of dams, Federal and private, have since been constructed on tributaries to the Truckee River in California to create water storage reservoirs and regulate river flow. Flows of the river have historically been utilized for diverse purposes, including generation of hydropower, irrigation of agricultural lands, and M&I water supplies.

The reservoirs on the Truckee River were constructed by a mix of Federal and private entities for various authorized purposes. Derby Diversion Dam was constructed on the Truckee River in Nevada in 1905 by the United States to divert water to the Newlands Reclamation Project (Newlands Project), which was authorized in 1902 under the Federal Reclamation Program. Water is diverted for use on lands within the Newlands Project’s Truckee Division, and to supplement Carson River water stored in Lahontan Reservoir in the Carson River basin for use on lands within the Newlands Project’s Carson Division in and near Fallon, Nevada. Boca Reservoir was constructed in 1937 for storage of irrigation water and is operated in conjunction with Lake Tahoe to maintain Floriston Rates.³ Reclamation constructed Prosser Creek Reservoir on Prosser Creek in 1967 and

³ Floriston Rates are explained on the next page in the bullet on the TRGE decree.

Stampede Reservoir on the Little Truckee River in 1970; both streams are tributary to the Truckee River. Both of these tributary reservoirs have been operated to minimize impacts on Pyramid Lake fishes. To ensure that minimum flows immediately downstream from Lake Tahoe are maintained, the Tahoe-Prosser Exchange Agreement (TPEA) provides for an exchange of water between Lake Tahoe and Prosser Creek Reservoir so that water is released from Lake Tahoe when such releases would not otherwise be required. Water in Stampede Reservoir is dedicated by the Secretary for the benefit of Pyramid Lake fishes and is released for spawning flows and other fish habitat requirements. Martis Creek Reservoir, a U.S. Army Corps of Engineers facility, was constructed in 1971 on Martis Creek to provide flood control. Major private water storage is provided by private dams at Donner Lake on Donner Creek and Independence Lake on Independence Creek. The water right for Donner Lake is owned by Truckee-Carson Irrigation District (TCID) as a tenant in common with Truckee Meadows Water Authority (TMWA) which has acquired the water rights and facilities previously owned by Sierra Pacific Power Company (Sierra Pacific). The water rights for Independence Lake are owned by TMWA.

The right to use the water in Lake Tahoe and from the Truckee River and its tributaries, and the manner in which reservoirs on the Truckee River system are operated, have for decades been the subject of extensive and contentious litigation, including litigation involving many of the parties to the negotiated agreement. This litigation history forms an important part of the background to TROA, and is presented in more detail in Chapter 1 of the Final Environmental Impact Statement/Environmental Impact Report, Truckee River Operating Agreement (January 2008). Some of that litigation history is summarized below.

In the early twentieth century, the United States brought three Federal court actions – *United States v. Truckee River General Electric Co. (TRGE)*, *United States v. Orr Water Ditch Co. (Orr Ditch)*, and *United States v. Alpine Land and Reservoir Co. (Alpine)* – generally to confirm a water supply for the Newlands Project and, in the *Orr Ditch* case, to secure water rights for use on the Pyramid Lake Paiute Indian Reservation. Each case resulted in a decree setting forth the relative water rights in the Truckee River and Carson River basins, respectively, as follows:

- The *TRGE* decree in 1915 granted the United States an easement for, and the right to operate, Lake Tahoe Dam and required that releases of water be maintained to satisfy, but not exceed, certain Truckee River flows at Floriston, California (Floriston Rates). Originally, Floriston Rates were negotiated in 1908 between Truckee River General Electric Company (predecessor to Sierra Pacific Power Company) and the Floriston Pulp and Paper Company to maintain instream flows for pulp mill and hydropower generation at Floriston, California. Floriston Rates as specified in that decree are rates of flow at the California-Nevada state border of 400 to 500 cubic feet per second (cfs), depending on month and elevation of water in Lake Tahoe.
- The 1944 *Orr Ditch* decree determined the relative rights to use Lake Tahoe and Truckee River water in Nevada and rights for Sierra Pacific's run-of-the-river hydroelectric power plants on the Truckee River. Water releases sufficient to

maintain Floriston Rates satisfy the water rights confirmed by the *Orr Ditch* decree. The *Orr Ditch* decree also recognized the 1935 Truckee River Agreement (TRA), an operating agreement for the Truckee River among Sierra Pacific, TCID (the operator of the Newlands Project, under contract with Reclamation since 1926), Washoe County Water Conservation District (WCWCD), United States Department of the Interior (Interior), and individual Truckee River water users as binding among those parties. TRA included an agreement among the parties to allow reductions in Floriston Rates to 300 cfs during droughts and low-flow periods.

- The 1980 *Alpine* decree determined the rights, relative priorities, and water duties for all Carson River water users.

Diversions of Truckee River water to the Newlands Project were unregulated until the 1960s, and contributed to a drop in the elevation of Pyramid Lake of approximately 80 feet, creating a delta where the Truckee River entered the Lake. This delta prevented Pyramid Lake fishes (cui-ui and LCT) from accessing spawning areas in the lower Truckee River except in wet years. The strain of LCT in Pyramid Lake became extinct, and cui-ui was listed as an endangered species under a predecessor to the Endangered Species Act (ESA). In 1967, the Secretary first issued regulations called Operating Criteria and Procedures (OCAP) to limit diversion of Truckee River water to the Newlands Project. Pursuant to a Federal court decision in 1973, various versions of OCAP have been in effect since that time. OCAP was the subject of contentious litigation and multiple lawsuits throughout the 1970s and 1980s.

In 1969, the Secretary determined that Stampede Reservoir would be operated only for flood control, recreation, and fish and wildlife benefits, and that no water would be made available from this reservoir for M&I purposes. Sierra Pacific and Carson-Truckee Water Conservancy District challenged this determination, seeking to require the Secretary to enter into water service contracts for the water stored in Stampede Reservoir. In the 1980s, the federal courts upheld the Secretary's determination that the authorizing legislation for Stampede Reservoir did not require that the water in Stampede Reservoir be used for M&I purposes and that this water should be dedicated to the Pyramid Lake fishes until they are no longer endangered or threatened.⁴ In the 1970s, the United States also sought to re-open the *Orr Ditch* Decree to obtain a federal reserved water right for Pyramid Lake and its fishery with an 1859 priority date (the date of the establishment of the Pyramid Lake Paiute Indian Reservation). This effort was ultimately rejected by the United States Supreme Court in *Nevada v. United States* in 1983 on *res judicata* grounds.⁵ The Pyramid Lake Paiute Tribe of Indians (Pyramid Tribe) began a similar lawsuit in 1981, seeking an adjudication and determination of water rights on the Truckee River in California and asserting a claim for a water right for Pyramid Lake and its

⁴ Carson-Truckee Water Conservancy Dist. v. Watt, 549 F. Supp. 704 (D.C. Nev. 1982), *aff'd*, Carson-Truckee Water Conservancy Dist. v. Clark, 741 F.2d 257 (9th Cir. 1984).

⁵ Nev. v. United States, 463 U.S. 110 (U.S. 1983).

fishery. The lawsuit was stayed by the district court in 1985, but no final order or judgment has been entered.⁶

While litigation over the waters of the Truckee River continued in the 1970s and 1980s, the States of California and Nevada sought unsuccessfully to obtain Congressional consent to an interstate compact that would divide between them the waters of Lake Tahoe and the Truckee and Carson River basins. An equitable apportionment of these waters had first been recommended by the California Conservation Commission in 1913. Interest in an interstate compact intensified after the Second World War, and in 1955 Congress gave its consent to the two States to negotiate an interstate compact. In 1968, after 13 years of negotiations, the California-Nevada Interstate Compact Commission approved a provisional Interstate Compact (Compact) for allocation of the waters of the Lake Tahoe, Truckee River, and Carson River basins. The negotiated Compact was ratified by Nevada in 1969 and by California in 1970 with modifications. The modified Compact was ratified again by Nevada in 1971. However, the modified Compact was not consented to by Congress despite repeated attempts to obtain such consent during the 1970s and 1980s. Notwithstanding its incomplete status, the two States have generally agreed to abide by the modified Compact's provisions. Allocations provided for by Congress in section 204 of the Act are similar to those of the modified Compact approved by the two State legislatures. Adoption and implementation of proposed TROA would give reasonable finality to this more than century-old point of contention between the two States.

Two developments in the late 1980s laid the groundwork for the process that culminated in the negotiation of proposed TROA. First, U.S. Senator Harry Reid of Nevada convened negotiations in 1987 among a number of parties, including the State of Nevada, Pyramid Tribe, Sierra Pacific, TCID, Interior, and the State of California to address some longstanding water disputes, with assurances that he would sponsor legislation that would provide the necessary authorizations to implement negotiated settlements. This process led to the introduction, in August 1989, of legislation that would become the Act.

Second, a Preliminary Settlement Agreement (PSA) was entered into in 1989 by Sierra Pacific⁷ and the Pyramid Tribe to provide for more flexible operation of Truckee River

⁶ Pyramid Lake Paiute Tribe v. California, Civ. S- 181-378-RAR-RCB (E.D. Cal.). The Pyramid Tribe has stated it will move to dismiss with prejudice its claims in this lawsuit once all other contingencies to TROA becoming effective have been satisfied.

⁷ Sierra Pacific, until 2001, was the principal water supplier for Truckee Meadows and owned water rights in Donner and Independence Lakes in California. It was also signatory to TRA, and the successor in interest of the Truckee River General Electric Co. under the TRGE decree. On June 11, 2001, Sierra Pacific transferred its water company serving Truckee Meadows to the newly-created municipal entity, TMWA; TMWA is recognized as the principal water purveyor for Truckee Meadows. After receiving required approvals from the California Public Utility Commission and after June 11, 2001, Sierra Pacific conveyed all of its water rights associated with three of its Truckee River hydroelectric power plants to TMWA and now is in the process of transferring title to those plants to TMWA. While transfer of water rights and ownership associated with Farad facilities has been delayed by the process to rebuild Farad Diversion Dam, those actions related to Farad facilities as well are assumed to be completed at some future time, and TMWA will have ownership of water rights and property associated with the four Truckee River hydroelectric power facilities. The United States has recognized and consented to the assignment by Sierra

reservoirs and the exercise of water rights of the parties to (1) improve spawning conditions for the Pyramid Lake fishes and (2) provide additional M&I water for the Reno-Sparks metropolitan area (referred to as “Truckee Meadows”) during drought periods. A portion of the water stored by Sierra Pacific for emergency drought supplies would be re-classified as “Fishery Credit Water” and released for the benefit of Pyramid Lake fishes if drought conditions did not materialize. As part of that agreement, Sierra Pacific also agreed to waive or change its rights to require releases of water from Truckee River reservoirs solely for hydroelectric power generation under the *TRGE* and *Orr Ditch* decrees, and that the water thus retained in storage would be classified as “Fishery Credit Water” and then released for the benefit of Pyramid Lake fishes. The initial agreement was later modified to address concerns of the United States related in part to development of a new operating agreement for Truckee River reservoirs. Section 29(f) of the PSA states that it cannot take effect until an operating agreement (i.e., TROA), which provides for the administration and implementation of PSA, has been executed by at least the United States, Pyramid Tribe, and Sierra Pacific.

In 1990, Congress passed the Act. The Act authorizes numerous measures in the Truckee and Carson River basins to facilitate resolution of long-standing disputes and litigation among multiple parties (including the States of Nevada and California) concerning the rights to use of the waters of those rivers and Lake Tahoe. Section 205(a) of the Act authorizes and directs the Secretary to negotiate an operating agreement with Nevada and California for the operation of Truckee River reservoirs. This section requires that any such operating agreement must include provisions to accomplish the following:

- Carry out the terms, conditions, and contingencies of PSA, and provide for mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the PSA.
- Provide for 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 ESA.
- Ensure that water is stored in and released from Truckee River facilities to satisfy the exercise of water rights in conformance with the *Orr Ditch* and *TRGE* decrees.
- Satisfy all applicable dam safety and flood control requirements.
- Minimize the Secretary’s costs associated with operation and maintenance of Stampede Reservoir.

Such operating agreement may also address other matters, including but not limited to:

- Administration of the agreement.
- Assuring compliance with PSA.
- Operations of Truckee River system facilities that will not be changed.
- Operations and procedures for using Federal reservoirs to ensure compliance with ESA.

Pacific of rights and obligations, under agreements and decrees, to TMWA. Therefore, TMWA is now a mandatory signatory to TROA, and the name “Sierra Pacific” is used primarily in a historical context.

- Methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe under extreme drought situations.
- Procedures for managing and operating Federal reservoirs.
- Procedures for operating Federal reservoirs for in-stream beneficial uses.
- Procedures for operating non-Federal reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the agreement.
- Procedures and criteria for implementing California's allocation of Truckee River water.

On December 10, 1990, Interior conducted an organizational meeting to discuss its obligations and responsibilities – timing, direction, organization, coordination, and cooperation – for implementing the Act, including negotiation of TROA. During February 20-21, 1991, Interior conducted the first of many working meetings to draft a management plan for the preparation of TROA over the next 3-4 years. In addition to the five mandatory signatories, eight other parties – Washoe County, Nevada; City of Reno, Nevada; City of Sparks, Nevada; WCWCD; Town of Fernley, Nevada; Churchill County, Nevada; Fallon Paiute-Shoshone Tribes; and TCID – were identified and invited to participate in the negotiations. Invitations were also extended to other interested parties to attend as observers.

Section 205(a)(9) of the Act directs that “in negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act [NEPA] and regulations to implement the provisions thereof.” It was determined that an Environmental Impact Statement (EIS) would be prepared to comply with this directive and NEPA. Because the California Environmental Quality Act (CEQA) has requirements similar to those of NEPA with a related document, Environmental Impact Report (EIR), California and Interior⁸ concluded that a combined EIS/EIR would be the most cost-effective approach to environmental compliance and ensure coordination and cooperation between the agencies. Formal public scoping as part of the CEQA and NEPA processes began with publication of a Notice of Preparation (California) on June 27, 1991, and a Notice of Intent (Federal) in the *Federal Register* on July 21, 1991. Public scoping meetings were held during July 22-25, 1991, at five locations: Truckee and South Lake Tahoe, California and Reno, Nixon, and Fallon, Nevada. Oral comments were recorded, and written comments were received from 13 individuals. The public was specifically asked to identify the issues, concerns, and alternatives to be addressed in the proposed Draft EIS/EIR (DEIS/EIR).

In February 1998, Interior and California jointly issued a DEIS/EIR evaluating a draft proposed TROA that was based on elements that negotiators tentatively agreed to in May 1996 and a No Action alternative. Because negotiations continued after the DEIS/EIR was released, many elements of that draft of TROA were revised and a new draft proposed TROA was issued by the parties in October 2003. The Notice of Intent for a revised DEIS/EIR (RDEIS/EIR) was published in the *Federal Register* on April 15, 2004, and a

⁸ California was represented by California Department of Water Resources (CDWR) and Interior was represented by Bureau of Indian Affairs (BIA), U.S. Fish and Wildlife Service (FWS), and Reclamation.

Notice of Preparation was published on April 16, 2004. A RDEIS/EIR was prepared and released for public review in August 2004. Further negotiations culminated in 2007 in a draft agreement – substantively identical to the October 2003 Draft Agreement – acceptable to negotiators for all signatories to TROA (herein referred to as “proposed TROA”). Proposed TROA was analyzed as the proposed action and preferred alternative in the Final EIS/EIR (FEIS/EIR) and the August 27, 2007, version was included with the FEIS/EIR which was issued for public review on January 25, 2008 (73 FR 4614). Signing of a Record of Decision (ROD) will complete the NEPA process for TROA.

III. Proposed Federal Action and Purpose and Need

The proposed action is the selection of TROA as the preferred alternative and signing of proposed TROA by the Secretary. TROA was negotiated by and among the Secretary, States of California and Nevada, Pyramid Tribe, and TMWA (as successor to Sierra Pacific’s rights and duties under PSA) and implementation of TROA would provide for improved water management throughout the Truckee river basin.

The primary purpose of the proposed action is to implement section 205(a) of the Act, which directs the Secretary to negotiate an agreement with California and Nevada for the operation of Truckee River reservoirs. The proposed action would provide additional opportunities to store water in existing reservoirs for future M&I demand during periods of drought conditions in Truckee Meadows and enhance spawning flows in the lower Truckee River for the benefit of Pyramid Lake fishes. In addition, it would satisfy all applicable dam safety and flood control requirements, ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the *TRGE* and *Orr Ditch* decrees, and minimize the Secretary’s costs associated with operating and maintaining Stampede Reservoir. It would also enhance the operational flexibility and efficiency of and increase recreational opportunities in the Truckee River reservoirs, enhance stream flow and fish habitat downstream from Truckee River reservoirs and in the mainstem of the Truckee River, improve water quality in the Truckee River, and provide opportunities for other entities to store water for M&I use.

The Secretary’s signing of proposed TROA would provide the basis for the following steps towards full implementation of TROA: (1) the remaining mandatory signatories under the Act, which are the States of California and Nevada, Pyramid Tribe, and TMWA, as well as other interested parties, would be able to sign proposed TROA; (2) signed TROA would be presented to the *TRGE* and *Orr Ditch* decree courts for approval of necessary modifications to the decrees in those cases; (3) after signing TROA, the Secretary would initiate the rulemaking process to promulgate TROA as a Federal regulation; and (4) four specific Truckee River lawsuits and a proceeding before the Federal Energy Regulatory Commission⁹ must be dismissed with prejudice or otherwise

⁹ The cases required be dismissed with prejudice or otherwise finally resolved, and their status as of August 2008, are as follows:

- Pyramid Lake Paiute Tribe v. California, Civ. S- 181-378-RAR-RCB (E.D. Cal.)
Status: The Pyramid Tribe has stated it will move to dismiss with prejudice its claims in this lawsuit once all other contingencies to TROA becoming effective have been satisfied.

finally resolved, pursuant to section 210(a)(1) of the Settlement Act, before TROA and other specified provisions of the Settlement Act become effective. Under the Act, implementation of TROA could begin following completion of these actions. Implementation of TROA will in turn make effective other provisions of the Act that will help to achieve settlement of long-standing water disputes, including approval by Congress of the interstate allocation of the waters of the Truckee River between California and Nevada.

IV. Description of Alternatives

The FEIS/EIR describes current conditions; a No Action Alternative (No Action); a Local Water Supply Alternative (LWSA), an alternative to proposed TROA; and TROA, the proposed action and preferred alternative. The analysis of the impacts of the alternatives is based upon conditions assumed to exist in the study area when the annual demand for TMWA's M&I water in Truckee Meadows is 119,000 acre-feet, the predicted water demand in the year 2033 based upon current population projections. A description of the alternatives follows.

A. Current Conditions

The Truckee River system is highly regulated by dams at the outlet of Lake Tahoe and on several major tributaries in the Truckee River basin, which create reservoirs that can store a total of about a million acre-feet of water. Currently, day-to-day operations of Truckee River reservoirs are governed by the court decrees, agreements, and regulations described in the Background section. In general, reservoir releases are made to meet dam safety, flood control, and fish flow requirements as necessary and to serve water rights when unregulated flow is insufficient to serve those rights. Minimum reservoir releases are maintained as specified in applicable agreements and reservoir licenses or permits.

In general, each reservoir has authorization to serve specific uses. For example, Lake Tahoe and Boca Reservoir are jointly operated to store and release project water solely to maintain Floriston Rates. Prosser Creek and Stampede Reservoirs store and

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- United States v. Truckee-Carson Irrigation Dist., Civ. No. R-2987-RCB (D. Nev.)
Status: In view of several provisions of the Act and implementation of an active water rights purchase program for Lahontan Valley wetlands, Interior no longer recommends pursuing its initial claim and supports the final dismissal of this case.
 - Pyramid Lake Paiute Tribe v. Lujan, Civ. S-87-1281-LKK (E.D. Cal.)
Status: The Pyramid Tribe will execute a release and waiver of all claims in this lawsuit once the mandatory signatory parties to proposed TROA have indicated their approval of the agreement.
 - Pyramid Lake Paiute Tribe v. Dep't of the Navy, Civ. No. R-86-115-BRT (D. Nev.) and Docket No. 88-1650 (9th Cir.)
Status: Decisions by the district court and court of appeals disposed of all claims in the case, and the Pyramid Tribe did not seek rehearing or petition for certiorari; this case has been finally resolved.
 - All pending motions filed by the Pyramid Lake Paiute Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission
Status: FERC entered an order in 1992 terminating the proceeding in this docket; the Pyramid Tribe did not appeal FERC's order of termination.

release project water at specific times to benefit cui-ui and LCT of the lower Truckee River and Pyramid Lake. Project water in Prosser Creek Reservoir is also exchanged with project water in Lake Tahoe to maintain prescribed minimum flows in the Truckee River immediately downstream from Lake Tahoe Dam. Martis Creek Reservoir is operated only for flood control. Independence Lake is operated to supplement water for M&I use in Truckee Meadows, for hydroelectric power generation, and occasionally to assist in achieving Floriston Rates. Donner Lake is operated for lake-related recreation, to supplement water for M&I use in Truckee Meadows, for hydroelectric power generation, occasionally to assist in achieving Floriston Rates, and for irrigation on the Newlands Project when allowed by OCAP.

Consumptive and nonconsumptive water demands from the year 2002 were used in the August 2004 RDEIS/EIR and in the FEIS/EIR to represent current conditions. Consumptive demands include agricultural and M&I uses and exports from the Truckee River basin. Nonconsumptive demands include hydroelectric power generation, flows to provide and maintain fish habitat, and reservoir storage for recreation.

B. No Action

NEPA's implementing regulations require an EIS to include consideration of a No Action Alternative. The No Action Alternative considers Truckee River reservoir operations if neither proposed TROA nor LWSA were implemented. Under No Action, Truckee River reservoir operations would remain unchanged from current operations and would be consistent with existing court decrees, agreements, and regulations that currently govern surface water management (i.e., operating reservoirs and maintaining streamflows) in the Lake Tahoe and Truckee River basins. TMWA's existing programs for surface water rights acquisition and groundwater pumping for M&I use would continue. Groundwater pumping and additional water conservation in Truckee Meadows, however, would be required to satisfy a greater proportion of projected future M&I demand than under current conditions. Groundwater pumping in California also would increase to satisfy a greater projected future M&I demand.

The apportionment of waters of the Lake Tahoe and Truckee River basins conditionally approved by Congress in sections 204(b) and (c), respectively, of the Act would not become effective under No Action; disputes over water supplies between the States would continue or would be revived under conditions of uncertainty. Current surface water administrative policies would likely continue. For California, such administrative policies include the California State Water Resource Control Board's (SWRCB) moratorium on pending water right applications in the Lake Tahoe basin that would exceed the draft Compact allocation or subsequent policy equivalent, which has been in effect since 1972.

C. LWSA

LWSA is an alternative similar to No Action but with water supply options that may be authorized by State and local government agencies. LWSA describes a probable water management approach in the Truckee River basin if proposed TROA were not implemented. As with No Action, the apportionment of waters of the Lake Tahoe and

Truckee River basins conditionally approved by Congress in sections 204(b) and (c), respectively, of the Act would not become effective under LWSA; disputes over the water supplies between the States would continue or be revived under conditions of uncertainty. LWSA may be thought of as a continuation of current trends in the study area for the next 25 years (to 2033), when the annual demand for TMWA's M&I water in Truckee Meadows is projected to reach 119,000 acre-feet. It assumes that surface water management operations and storage facilities would be the same as under No Action, but that groundwater pumping and M&I water conservation in Truckee Meadows and the Truckee River basin in California would differ from No Action. It also assumes that local water authorities would obtain the necessary authorizations to implement various strategies and actions to meet projected demands if proposed TROA were not implemented.

For California, LWSA assumes action by SWRCB to approve some pending applications to appropriate surface water, allowing an estimated 1,200 acre-feet per year of surface water to be used in lieu of groundwater otherwise used in the Truckee River basin in California. Total annual water usage, however, is anticipated to be the same as under No Action.

D. TROA

TROA, the proposed action and preferred alternative, would fulfill the requirements of section 205(a) of the Act. Proposed TROA would satisfy the terms, conditions and contingencies of PSA by providing additional opportunities to store water in existing reservoirs for future M&I demands in Truckee Meadows during periods of drought, and enhance spawning flows in the lower Truckee River for the benefit of Pyramid Lake fishes. In addition, it would satisfy all applicable dam safety and flood control requirements, ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the *Orr Ditch* and *TRGE* decrees, and minimize the Secretary's costs associated with operating and maintaining Stampede Reservoir. It would also increase recreational opportunities in Truckee River reservoirs, improve streamflows and fish habitat downstream from the subject reservoirs in the Truckee River basin, and improve water quality in the Truckee River.¹⁰ Proposed TROA entering into effect would allow certain other provisions of the Act to become effective, including the interstate allocation of waters of the Lake Tahoe and Truckee River basins and confirmation of the interstate allocation of waters of the Carson River and its tributaries represented by the *Alpine* decree.

While section 205(a)(4) of the Act only specifies that TROA be executed by the Secretary, California and Nevada, section 205(a)(1)(C) requires that TROA carry out the

¹⁰ The 1996 Truckee River Water Quality Settlement Agreement (WQSA), in addition to settling certain litigation, established a program to purchase and dedicate water for streamflow by the United States and Truckee Meadows communities (Reno-Sparks metropolitan area in Washoe County) to improve water quality in the Truckee River, particularly downstream from Derby Dam. Water made available to serve the acquired water rights will, to the extent possible, be stored in Truckee River reservoirs and will be managed for water quality purposes by the acquiring parties and by the Pyramid Tribe. Proposed TROA has been negotiated to accommodate WQSA and the storage of Water Quality Credit Water in Truckee River reservoirs.

terms of PSA, which includes additional signatories. The parties have interpreted this provision in conjunction with section 29(f) of PSA to require that TROA be executed by the Pyramid Tribe and Sierra Pacific as well. As a result, these five parties—the Secretary, California, Nevada, Pyramid Tribe, and Sierra Pacific (now TMWA)—are collectively referred to as the “mandatory signatories.” Other likely signatories to TROA are WCWCD, City of Reno, City of Sparks, City of Fernley, Washoe County, Sierra Valley Water Company, Carson-Truckee Water Conservancy District, North Tahoe Public Utility District, Truckee Donner Public Utility District, and Placer County Water Agency. Sierra Pacific, formerly a mandatory signatory (see footnote 7), would execute TROA by signing a Special Joinder document.

Proposed TROA would (1) enhance water management flexibility, water quality, conditions for Pyramid Lake fishes, reservoir recreational opportunities, and reservoir efficiency; (2) increase M&I drought supply, minimum reservoir releases, and available carryover storage in Truckee River reservoirs; (3) provide procedures to implement the allocation of Lake Tahoe and Truckee River basin water between California and Nevada; and (4) avoid water use conflicts associated with No Action and LWSA. To secure these benefits, implementation of proposed TROA would modify operations of Truckee River reservoirs to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and dam safety requirements are met. Proposed TROA would incorporate, modify, or replace certain provisions of TRA and TPEA. Proposed TROA would supersede all requirements of any agreements concerning the operation of Truckee River reservoirs, including those of TRA and TPEA, and become the sole operating agreement for these reservoirs.

Under proposed TROA, all reservoirs would generally continue to be operated for the same project water storage and flood control purposes and would retain the same priorities for storing project water as under current conditions, No Action, and LWSA. TROA would ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the *TRGE* and *Orr Ditch* decrees. In addition, proposed TROA recognizes that OCAP remains in effect and continues to regulate diversions of Truckee River water to the Truckee and Carson Divisions of the Newlands Project. Proposed TROA, in other words, is intended to be neutral with respect to OCAP.

The primary difference between proposed TROA and the other alternatives is that proposed TROA would allow signatories to the agreement to store and manage categories of credit water in excess reservoir storage space – this is in addition to the storage of project water associated with each reservoir’s license or permit. Accumulating and releasing Floriston Rate water to serve *Orr Ditch* decree water rights would continue to be the foundation of Lake Tahoe and Boca Reservoir operations. Proposed TROA would, however, allow flows associated with Floriston Rates to be reduced to create credit water. Parties to TROA holding *Orr Ditch* decree water rights would be allowed to forego releases of Floriston Rate water that would otherwise have been subject to diversion from the Truckee River (or tributaries) to serve those water rights. The owners of these water rights could instead store all or a portion of the water associated with the

exercise of their water rights in Truckee River reservoirs, thereby establishing credit water, and subsequently direct that the credit-stored water be released when the owner of the water rights had need for the beneficial use of the water. The non-consumptive use portion of water rights, as determined by applicable State law, would not be credit-stored, but would remain in the Truckee River as part of Floriston Rates. As a consequence of the establishment of credit water and its release from storage, implementation of proposed TROA would likely affect the timing of flows in the Truckee River, as owners of senior *Orr Ditch* decree water rights take advantage of expanded credit water opportunities in the exercise of their water rights under TROA.

TROA would also allow the coordinated operation of Truckee River reservoirs in the accumulation and management of credit water. In addition to storing water associated with the exercise of *Orr Ditch* decree water rights, credit water could also be accumulated by: (1) trading water that has been released or is in storage for water that is stored in another reservoir or has been released; (2) converting water in storage from one category to another; and (3) using water rights of another party with that party's consent. Imported water and privately owned water could also be used to accumulate credit water. Such credit water storage can take place only in accordance with State water law. Once accumulated, credit water would be classified by category with a record kept of its storage, exchange, and release. Credit water would be retained in storage or exchanged among the reservoirs until needed to satisfy its beneficial use.

Proposed TROA also contains the following provisions for actions that do not occur under current conditions and would not occur as part of No Action or LWSA:

- Creates the positions of Administrator (to oversee implementation of proposed TROA) and Truckee River Special Hearing Officer (to resolve disputes over administration of proposed TROA).
- Allows signatory parties to proposed TROA to exchange credit water and project water among all subject reservoirs.
- Establishes additional rules and priorities for storing, managing, and spilling all categories of water.
- Requires coordinated scheduling of all subject reservoir operations under proposed TROA.
- Satisfies a condition for the implementation of the interstate allocation (section 204 of P.L. 101-618) between California and Nevada.
- Establishes criteria for acquiring water rights to meet a demand up to and exceeding 119,000 acre-feet within TMWA's service area.
- Establishes criteria for new wells in the Truckee River basin in California to minimize short-term reduction of streamflow.
- Increases minimum reservoir releases.
- Provides for Prosser project water and Stampede project water to be used for Pyramid Lake fishes even after the fish are no longer listed under ESA.
- Expands procedures for accumulating Newlands Project credit water.
- Allows full benefits of WQSA to be realized by allowing water acquired pursuant to WQSA to be stored in Truckee River reservoirs.

- Supports an application to SWRCB to increase Stampede Reservoir's California water rights so that the full capacity of the reservoir (226,500 acre-feet) could be used in the event such quantity of water is available from Nevada water rights.
- Supports an application to SWRCB to eliminate the Prosser Creek Reservoir maximum annual release requirement of 20,126 acre-feet of Prosser project water.
- Establishes more strict conditions and approval requirements for pumping or siphoning water from Lake Tahoe.
- Acknowledges the requirement for the dismissal with prejudice or other final resolution of certain litigation.
- Establishes the Habitat Restoration Fund for the Truckee River.
- Provides for termination of the Interim Storage Agreement (section 205(b)(2) of the Act).
- Accommodates California Guidelines provided for under proposed TROA, and encourages water managers to consider the Guidelines in their decision-making.
- Identifies cost sharing among parties (for administering proposed TROA). Costs of administering proposed TROA will be apportioned among the United States (40%), Nevada (40%), and California (20%).

Proposed TROA has also been negotiated, in part, to achieve the settlement of certain litigation and by law cannot become effective until such litigation has been resolved. Section 210(a)(1) of the Act requires the dismissal of five specific Truckee River lawsuits¹¹ before TROA and other specified provisions of the Act become effective. This requirement for the dismissal of these lawsuits before TROA can come into effect sets up a situation where TROA must be a comprehensive agreement that is acceptable to the mandatory signatories so that these signatories will be willing to agree to end their litigation in order to bring TROA into effect.

Proposed TROA (June 2008) identified in this ROD is identical to the August 28, 2007, version of proposed TROA analyzed in the FEIS/EIR with the exception of deletion of the cover sheet, two date changes, deletion of a date reference, four changes relative to Signatory Parties, and one punctuation and several formatting corrections. The Cover Sheet for the Negotiated Agreement, the first page in the August 28, 2007, proposed TROA, was deleted because it was intended only for informational purposes for the FEIS/EIR and not as an operational component of the agreement. Relative to date changes, (1) in section 1.E.4, the date of the agreement among Reno, Sparks, Washoe County, and Pyramid Tribe was changed from February 13, 2007, to the correct date of May 2, 2007, and (2) in section 12.B, the date for terminating TROA if the conditions of section 12.A.4 had not been satisfied by that time was changed from December 31, 2009, to December 31, 2014, to allow sufficient time to satisfy the conditions. Relative to deletion, in section 7.A.6(a) the placeholder for the storage contract date was deleted because reference to the required contract was deemed sufficient. Relative to signatory parties: for Sierra Valley Water Company, the third party beneficiary provision in section 14.H.2 was deleted because the company agreed to be a Signatory Party, and in section 14.P.1(k) the

¹¹ See footnote 9 and accompanying text.

company's mailing address was corrected; for Placer County Water Agency, the agency's name is added to the page R-1 introductory paragraph and the agency's name and address are added to the Notices section as a new section 14.P.1(o). The aforementioned changes were technical edits and updates only and no operational elements of proposed TROA were affected. Hence, these changes would not have any environmental effect or cause any of the conclusions in the FEIS/EIR to be amended.

V. Issues

A. Scoping

A public involvement program, beginning with public scoping meetings, encouraged the general public and governmental agencies to identify issues related to the resources in the Truckee River basin. The primary issues identified during the scoping process were the potential effects of modifying operations of Truckee River reservoirs on the storage in and elevations of lakes and reservoirs; the quantity, quality, timing, and duration of stream flows; and associated resources. Potentially affected resources were grouped into the following categories: water (surface water and groundwater supply, rights, quality, sedimentation, and erosion); biological (fish, wildlife, and plants in and along reservoirs and streams, and endangered, threatened, and other special status species); socio-economic (including recreational resources); cultural; and Indian trust resources. The draft and final EIS/EIR documents identified and evaluated the effects of the action and no action alternatives on these resources in the study area.

B. Summary of comments on RDEIS/EIR and how addressed in FEIS/EIR

During the public comment period on the RDEIS/EIR, 47 comment letters (paper or electronic) were received, and five public hearings were held with nine entities providing oral comments, for a total of 567 individual public comments. Topics covered the range of resources and issues presented in the RDEIS/EIR. Comments requiring response were identified and addressed; a separate Comments and Responses Appendix, including letters received and public hearing transcripts, was prepared for the FEIS/EIR.

Throughout the document, in response to public comments, typographical and formatting errors were corrected and text was revised or expanded as appropriate. Chapter 3 and the Summary of Effects table in the Executive Summary were expanded to include current conditions. Chapter 2 was revised to reflect the latest draft of the negotiated agreement, sections and tables were clarified, and attachments were included to show the differences between proposed TROA and TRA and TPFA.

In chapter 3, information on Nevada water quality standards was added. The section on water rights applications was clarified; the associated appendix was simplified, and a sheet showing the location of text related to SWRCB issues in the RDEIS/EIR was added to the appendix. The section on minimum bypass flow requirements for TMWA's four run-of-the-river hydroelectric diversion dams was clarified. In response to a number of comments on the Newlands Project, additional analyses were conducted on establishment of Newlands Project credit water and on the economic effects (including hydroelectric

power generation) of five shortage years¹² in the Carson Division during drought conditions, and new analyses were conducted on the effects of losses to groundwater from the Truckee Canal. Because no significant effects were identified, no mitigation or monitoring is required. To help track responses of biological resources in the future and guide water management decisions to assist in meeting biological objectives, however, several agencies with jurisdiction over these resources – FWS, Pyramid Tribe, CDWR, California Department of Fish and Game, and Nevada Department of Wildlife – have signed a Memorandum of Understanding for development of a Biological Resources Monitoring Program.

In response to numerous comments on the Truckee River Operations Model, a computer model and major analytical tool for the EIS/EIR process, the section in chapter 3, “Use of the Truckee River Operations Model,” was greatly expanded in the FEIS/EIR as “Truckee River Operations Model” to include development and limitations of the operations model in addition to its use in negotiations as well as in the EIS/EIR process. In the Surface Water (formerly Water Resources) section, two new subsections were added – “Pyramid Lake,” to provide perspective on potential differences in flow in the lower Truckee River and Pyramid Lake elevation, and “Sensitivity Scenarios,” to evaluate expanded Newlands credit water storage and implementation of proposed TROA with current conditions – and the “Certain Credit Waters” subsection was more accurately renamed “Credit Waters Not Modeled.” Also, new exhibits were added to the Water Resources Appendix to further clarify model results and the entire output file was included on the compact disc (CD) containing the FEIS/EIR and appendices.

C. Summary of comments on FEIS/EIR and responses

One individual commented in response to publication of the FEIS/EIR and took issue with the perceived restriction in proposed TROA Article 10 on drilling of wells in California above elevation 8,200 feet and resulting negative economic impact. CDWR responded that no such restriction appears in proposed TROA, an early notification process is provided to avoid potential problems, and this provision in proposed TROA would likely provide economic benefit to the area. No conclusion in the FEIS/EIR relative to environmental effects was required to be amended as a result of this comment.

VI. Environmental Effects

The alternatives are based upon conditions assumed to exist in the study area when the annual demand for TMWA’s M&I water in Truckee Meadows is 119,000 acre-feet, projected to occur in the year 2033. Current conditions are based on documented statistics from the year 2002. Current conditions and the alternatives are characterized in the model according to annual demand and demand pattern for the various water categories and the respective operations for storage and release of those waters.

¹² Generally, a “shortage year” is a year in which a full water supply for a specific purpose is not available. Relative to the Newlands Project (and primarily the Carson Division), it is a year in which the discharge from the Carson River and discharge in the Truckee River available for diversion to the Truckee Canal to Lahontan Reservoir, along with carryover storage in the reservoir, is insufficient to satisfy the full water right demand in that year; such a condition is called a “shortage.” Therefore, a shortage is a function of previous year demand and runoff as well as current year demand and runoff.

The Truckee River Operations Model was used to assist in evaluating current conditions and the alternatives. The model used a 100-year (1901-2000) runoff record of monthly data for the Lake Tahoe, Truckee River, and Carson River basins to simulate monthly reservoir storage, releases, and spills; flows; and diversions and return flows under current conditions and the alternatives. Model results were compared to identify and evaluate the potential effects on resources in the study area.

Surface Water – Operations model results show that the total amount of water stored under proposed TROA is greater than under No Action, LWSA, or current conditions – primarily in Stampede, Boca, and Prosser Creek Reservoirs – because of credit water operations. Flow in the lower Truckee River and discharge to Pyramid Lake would also be greater under proposed TROA because of the requirement for conversion of certain excess M&I credit waters (stored by upstream senior Truckee River water rights owners) to fish credit water and storage of water quality credit water, both of which would be dedicated and released for use in the lower Truckee River and Pyramid Lake; these waters would be in addition to the lower river discharge available under current conditions or the other action alternatives. In dry hydrologic conditions, operations model results show that flows in Independence Creek, Little Truckee River, and Prosser Creek downstream from the reservoirs are appreciably greater under proposed TROA than under the other alternatives, and summer and early fall flows in the Truckee River through and downstream from Truckee Meadows are greater than under current conditions. For the Newlands Project, under current conditions and the three alternatives, Carson Division demands are met in wet, median, and dry hydrologic conditions as defined in the FEIS/EIR; they are not met under conditions drier than the dry hydrologic condition under any of the alternatives. In California, M&I demands in the Lake Tahoe and Truckee River basins are met under current conditions and the alternatives, as is M&I demand in the Lake Tahoe basin in Nevada. In the minimum supply year, Truckee Meadows M&I supply is greater under proposed TROA than under No Action or LWSA; M&I water supply during drought periods is greater under proposed TROA than under No Action and LWSA. In the minimum supply year, Fernley M&I supply is the same under all alternatives. Lower Truckee River agricultural and M&I demands are met under all alternatives and all hydrologic conditions.

Groundwater – Effects on the shallow aquifer in Truckee Meadows and establishment of a new groundwater equilibrium would vary among the alternatives and depend upon many local factors, such as the amount of groundwater pumping, recharge, and the localized groundwater flow gradients. Seepage loss from the Truckee Canal would be similar under all alternatives. With criteria established for new well construction in California under proposed TROA, assumed limitations on groundwater use, and development of surface water drought supplies, proposed TROA likely would have the least effect on future groundwater resources among the alternatives.

Water Quality – Model results show that Truckee River water quality would be better under proposed TROA than under No Action or current conditions because releases of water stored pursuant to proposed TROA would, to the extent possible, be timed to

enhance streamflows during periods of low flow. As a result, under proposed TROA Nevada temperature standards would be met much more often in representative dry years and somewhat more often in median years; dissolved oxygen standards would be met much more often in representative dry years and about as often in median years. While on rare occasions in median years water quality could be worse under proposed TROA, the total water quality benefits realized in representative dry years under proposed TROA would outweigh these effects.

Sedimentation and Erosion – Shoreline erosion at Lake Tahoe would not increase under No Action, LWSA, or proposed TROA; water quality would not be degraded; and the maximum elevation at which the lake is currently operated would not be exceeded. Erosion and sediment transport in the Truckee River and its tributaries would not be significantly affected under any of the alternatives. The higher water surface elevation of Pyramid Lake expected under proposed TROA could improve the connectivity between the Truckee River and Pyramid Lake for fish migration and spawning; connectivity could be adversely affected under No Action and LWSA.

Biological Resources – Conditions for fish in the Truckee River and its tributaries, as well as in Prosser Creek, Stampede, and Boca Reservoirs, would be more beneficial under proposed TROA than under LWSA, No Action, or current conditions. Potential for enhancing riparian vegetation along some reaches of the Truckee River would be greater under proposed TROA than under LWSA or No Action in median hydrologic conditions and along all mainstem and tributary reaches in dry and extremely dry hydrologic conditions. Under proposed TROA, riparian habitat along a few mainstem and tributary reaches would be enhanced in wet and median hydrologic conditions and along most mainstem reaches in dry and extremely dry hydrologic conditions, when compared to LWSA, No Action, or current conditions. Habitat conditions for Pyramid Lake fishes would be better under proposed TROA. No significant, long-term effect would occur to Tahoe yellow cress, a Federal candidate species under ESA, under any of the alternatives. Other special status species would benefit from the riparian enhancement that proposed TROA would provide.

Recreation – Visitation at Prosser Creek, Stampede, and Boca Reservoirs generally would be greater under proposed TROA than under No Action and current conditions because annual average water elevations would be higher under proposed TROA, thus enhancing recreational access and ensuring a higher quality recreational experience. Effects on boat ramp usability would be the same in all hydrologic conditions at Pyramid Lake and at Prosser Creek and Lahontan Reservoirs under proposed TROA, LWSA, and No Action. Effects on flows for fly fishing, rafting, and kayaking would be minimal under No Action, LWSA, and proposed TROA, and none of the effects on flows for anglers under any of the alternatives is considered significant.

Economic Environment – Economic model results show that recreation-based employment and income are about the same under all alternatives. The benefits resulting from the transfer of agricultural water rights to meet future demands for M&I, water quality, recreation, and fish and wildlife habitat should be greater than the

projected reduction in employment and income associated with the reduction of water rights for agricultural production in Truckee Meadows and the Truckee Division of the Newlands Project. Operations model results shows that, under proposed TROA, both hydroelectric power generation and gross revenues for Truckee River run-of-the-river hydroelectric powerplants are slightly less than under No Action and current conditions in wet and median hydrologic conditions, and slightly greater than under No Action and current conditions in dry hydrologic conditions; any reduction in gross revenue would require compensation. For Lahontan Dam hydroelectric powerplants, both generation and gross revenues under proposed TROA are about the same as under No Action and about 3 percent less than under current conditions in all hydrologic conditions. Associated capital, operation, and maintenance costs for groundwater production and recharge are least under proposed TROA, followed by No Action, and LWSA.

Social Environment – Overall, effects on the social environment indicators of population, urbanization of Truckee Meadows, and air quality would be the same under proposed TROA, No Action, and LWSA. In the future, under all alternatives, the study area is projected to experience a steadily increasing population, expansion of M&I water use, and decline in agricultural-based living.

Cultural Resources – Compared to other alternatives, cultural resources at lakes and reservoirs would be affected slightly less under TROA and those along streams would be affected slightly more under TROA. Overall, though, projected effects on cultural resources under proposed TROA would be minimal and depend on location.

Indian Trust Resources and Aesthetic Resources – For the Pyramid Tribe, flow in the lower Truckee River and discharge to Pyramid Lake would be greater under proposed TROA as explained above under Surface Water. With increased flow and the capacity to manage such water, proposed TROA would assist in improving water quality in the lower river; enhance the elevation of Pyramid Lake; enhance the riparian canopy along and assist in stabilizing the lower river; enhance recreational opportunities at Pyramid Lake; enhance spawning opportunities for cui-ui; and enhance river habitat for Pyramid Lake fishes. For Reno-Sparks Indian Colony, implementation of any of the action alternatives would have no effect on the exercise of Truckee River water rights. For the Fallon Paiute-Shoshone Tribe, the Carson Division water supply is minimally affected under any of the action alternatives and the Fallon Tribe would receive a full water supply as frequently under proposed TROA as under No Action; diversion of Truckee River water to the Newlands Project is governed by OCAP, not proposed TROA. For the Washoe Tribe, proposed TROA would not affect flows of the Carson River upstream of Lahontan Reservoir and would have no effect on land and water resources in the Lake Tahoe basin. Also, implementation of TROA would allow disbursement to the Pyramid Tribe of funds contained in the Pyramid Lake Paiute Economic Development Fund (as provided in section 208(a)(3) of the Act).

Growth-Inducing Impacts – Although sources of water or mechanisms to meet water demands might differ among the alternatives, population growth and resulting water demand are projected to be the same under No Action, LWSA, and proposed TROA. The

projected changes are within the parameters of planning for growth within the study area, including land use, transportation, housing, schools, public services, environmental resources, and infrastructure planning; implementation of proposed TROA would not be growth inducing.

Environmental Justice – Because neither LWSA nor proposed TROA involves facility construction, population relocation, health hazards, hazardous waste, property takings, or substantial economic impacts, neither alternative would have adverse human health or environmental effects on minority or low-income populations during the period of analysis.

Newlands Project Operations – The above-described resources were analyzed as applicable for the Newlands Project and results were summarized in a separate section in the FEIS/EIR as discussed below.

The water supply for the Newlands Project is obtained from the Carson and Truckee Rivers. The Carson River is the primary water source for the Carson Division; the Truckee River is only a supplemental source of water for the Carson Division. Truckee River water is diverted into the Truckee Canal at Derby Diversion Dam for irrigation in the Truckee Division and for delivery to Lahontan Reservoir. Water stored in Lahontan Reservoir is released primarily to satisfy the exercise of water rights in the Carson Division. Newlands Project OCAP has been promulgated to meet Newlands Project irrigation requirements consistent with the *Orr Ditch* and *Alpine* decrees while minimizing use of Truckee River water and maximizing use of Carson River water.

Diversion of Truckee River water to satisfy a portion of the future Newlands Project water demand would continue to be regulated by OCAP.¹³ The potential effects of proposed TROA on the Newlands Project were measured by comparing the quantity of Truckee River water available for diversion at Derby Diversion Dam and resulting Truckee Canal inflow to Lahontan Reservoir and Lahontan Reservoir storage and releases to the lower Carson River under the various alternatives.

Operations model results show little difference between proposed TROA and the other alternatives. Slightly less water is available for diversion at Derby Dam under proposed TROA because the holders of upstream senior Truckee River water rights would be able to exercise their water rights more effectively by diverting a portion of their previously-unused water to storage as credit water. Effects on project water use would not be discernible on a long-term basis because average annual releases from Lahontan Reservoir are similar under proposed TROA (303,360 acre-feet/year) and No Action (303,400 acre-feet/year), a difference of 40 acre-feet/year. Operations model results show that Carson Division shortages occur in the same 9 years under No Action and proposed TROA and are of similar magnitude: in one of the years, the shortage under proposed TROA is approximately 7,000 acre-feet (less than 3 percent of annual demand) greater than under No Action; in another year, the shortage under No Action is

¹³ The Truckee Canal breach that occurred on January 5, 2008, does not affect the alternatives considered in this ROD and is not new information pertinent to the Secretary's decision.

approximately 5,000 acre-feet (less than 2 percent of annual demand) greater than under proposed TROA; the shortage values are nearly identical in the other 7 years. For this reason agriculture, wetlands uses, and Indian trust resources on Fallon Indian Reservation would not be affected. Project groundwater resources in the study area would be affected primarily to the extent of and in proportion to differences in the amount of Truckee River water diverted to the Truckee Canal to flow to Lahontan Reservoir. Differences in canal flow would affect slightly the amount of seepage to the shallow aquifer adjacent to the canal and also Lahontan Reservoir releases to the Carson Division. The minor reductions in Truckee Canal discharge and Lahontan Reservoir releases for irrigation on the Carson Division would likely have no measurable effect on groundwater resources on the Newlands Project.

For three representative hydrologic conditions – wet, median, and dry – Lahontan Reservoir elevation and quality of the recreation experience and releases to serve water rights on the Newlands Project are similar for the three alternatives, so there would be little or no economic impact from proposed TROA compared to No Action. For biological resources, proposed TROA would have little or no effect on fish in Lahontan Reservoir relative to minimum pool maintenance or spawning habitat. Proposed TROA would have no measurable effects on Newlands Project operations, summer recreation at Lahontan Reservoir, or on local groundwater recharge linked to the availability of Truckee Canal discharge or Lahontan Reservoir releases.

For TCID's Lahontan Dam hydroelectric powerplants, analysis shows that hydroelectric power generation and gross revenues would be slightly less under proposed TROA than under No Action (less than 1 percent), which should not significantly affect the profitability of TCID's hydroelectric power operations or the regional economy.

The FEIS/EIR includes analysis of a broad range of potential Newlands credit water operations that allow for the retention in Stampede Reservoir of potential diversions to Lahontan Reservoir prior to the end of June (in order to avoid exceeding the OCAP end-of-June storage target for Lahontan Reservoir) for release as necessary through the remainder of the irrigation season. Implementation of Newlands credit water operations in any given year would be discretionary. To the extent that such credit water operations would be implemented, the amount of carryover water in Lahontan Reservoir (i.e., water in excess of monthly storage targets after June) in certain years could be reduced. A shortage would not occur in a year when Newlands credit water storage would be implemented, and the effect on reservoir storage in a subsequent year would depend on the amount and timing of available runoff in that year to achieve monthly storage targets, as currently happens under OCAP. The potential benefits of Newlands credit water operations include greater seasonal storage in Truckee River reservoirs, greater Truckee River flows during the summer to enhance water quality as well as riverine and riparian habitat, and increased flow in the lower Truckee River for Pyramid Lake fishes and inflow to Pyramid Lake.

VII. Environmentally Preferred Alternative

TROA is the Proposed Action and Preferred Alternative for the FEIS/EIR. Analysis showed that proposed TROA would enhance conditions for threatened LCT and endangered cui-ui in the Truckee River basin, increase M&I drought protection for Truckee Meadows, improve Truckee River water quality downstream from Sparks, Nevada, and enhance stream flows and recreational opportunities in the Truckee River basin.

Section 205(a)(9) of the Act specifically provides that “[t]he Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.” Interior elected to use the RDEIS/EIR for proposed TROA as the Biological Assessment to facilitate ESA consultation. Informal Section 7 consultation pursuant to the ESA and the requirements of section 205(a)(9) concluded that the proposed action, approval of TROA, is not likely to adversely affect endangered cui-ui and threatened LCT and, in fact, is likely to directly or indirectly benefit both species. Satisfaction of the requirements of ESA is documented initially in Attachment H of the FEIS/EIR with a memorandum from FWS concluding that proposed TROA is “not likely to adversely affect cui-ui, LCT, and bald eagle” and “formal consultation is not required.” That initial determination has been supplemented by a memorandum dated June 16, 2008, which notes the delisting of bald eagle, reaffirms the initial conclusion that TROA would not likely adversely affect cui-ui and LCT, and further discusses specific elements of TROA which FWS concludes are likely to directly or indirectly benefit cui-ui and/or LCT.

Because (1) stream flows under proposed TROA would be more beneficial for fish and other biological resources in the future than under the other alternatives, (2) proposed TROA operations would result in significant beneficial effects on several of the other environmental resources in the study area, and (3) no significant effects were identified and so no mitigation or monitoring is required, proposed TROA is identified as the Environmentally Preferred Alternative.

VIII. Decision

Section 205(a)(9) of the Act requires that the TROA process satisfy the requirements of NEPA as well as avoid jeopardy under ESA. The Secretary, through the Interior implementation team, has satisfied all steps required to publish a FEIS/EIR for proposed TROA, and completes the NEPA process with preparation and approval of this ROD. Through ESA Section 7 consultation, FWS has advised, and the Secretary has concluded, that proposed TROA would not jeopardize the continued existence of endangered cui-ui or threatened LCT. Accordingly, both requirements of section 205(a)(9) have been satisfied.

For the reasons summarized above, the adoption of the proposed TROA negotiated pursuant to section 205 of the Act is essential to the achievement of the purposes of the

Act, and is also clearly in the best interest of the United States and all other parties. TROA would bring to an end nearly a century of litigation over the operation of the Truckee River and of Lake Tahoe, and would allow a Congressional apportionment of the waters of Lake Tahoe, and the Truckee and Carson Rivers (set forth in section 204 of the Act) to go into effect.

Based on a thorough review of the alternatives, their potential environmental impacts, and comments received from the public, interest groups, and Federal, State, and local agencies, I conclude that, of the action alternatives evaluated, proposed TROA is the preferred alternative; it is the only one that satisfies the requirements of section 205(a) of the Act and its implementation would help to resolve a century of conflict over the Lake Tahoe and Truckee and Carson River basins. Therefore, I have decided to adopt the TROA Alternative as described in this document and sign the proposed TROA.

IX. Implementing the Decision

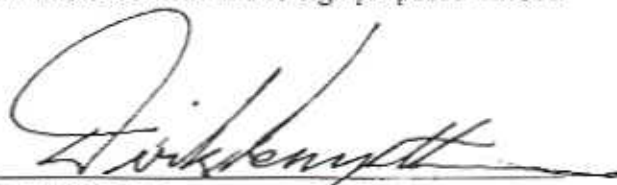
Satisfaction of NEPA and CEQA requirements will enable a final TROA to be signed by the Secretary. Once signed by at least the five mandatory signatory parties, TROA will be submitted to the United States District Court, Eastern District of California (*Truckee River General Electric Court*) and United States District Court, District of Nevada (*Orr Ditch Court*) for approval of changes required in the *TRGE* and *Orr Ditch* decrees. The Act requires the amendment of these two Federal court decrees because the decrees dictate the manner in which the Truckee River reservoirs are operated to meet existing rights confirmed by these decrees. These decrees must be amended to take into account the agreements reached in TROA. Also, to achieve compliance with section 205 of the Act, TROA must be promulgated as a Federal Regulation.

Additionally, completion of the TROA process requires dismissal of five pending legal proceedings, as discussed in footnote 9 and accompanying text, approval of changes in water rights and reservoir licenses and permits in California and water rights in Nevada to carry out the agreement, execution of contracts allowing parties to the agreement to store their water in Truckee River reservoirs, and development of an integrated accounting, forecasting, operations, and planning model. Each of these initiatives is underway.

TROA provides that the costs of administering proposed TROA will be apportioned among the United States (40%), Nevada (40%), and California (20%).

X. Approval

For the reasons set forth above, it is my decision to approve the TROA Alternative as described in this document and to sign proposed TROA.



DIRK KEMPTHORNE
SECRETARY OF THE INTERIOR

SEP 05 2008

Date