

A 18006

AGREEMENT

15 June 1959

By

United States of America
Truckee Carson Irrigation District
Washoe County Water Conservation District
Sierra Pacific Power Company

Re

Agreement for Water Exchange Operations of Lake Tahoe
and Prosser Creek Reservoir.

EXHIBIT

tabbles

TCID-117

Contract No.
14-06-400-957

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

WASHOE PROJECT

AGREEMENT FOR WATER EXCHANGE OPERATIONS
OF LAKE TAHOE AND PROSSER CREEK RESERVOIR

THIS AGREEMENT, made this 15 day of June, 1959, pursuant to the Federal Reclamation laws, between THE UNITED STATES OF AMERICA (hereinafter called the "United States"), TRUCKEE-CARSON IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of Nevada (hereinafter called the "Irrigation District"), WASHOE COUNTY WATER CONSERVATION DISTRICT, an irrigation district organized and existing under the laws of the State of Nevada (hereinafter called the "Conservation District"), and SIERRA PACIFIC POWER COMPANY (Formerly The Truckee River General Electric Company), a corporation organized and existing under the laws of the State of Maine (hereinafter called the "Power Company");

WITNESSETH:

WHEREAS, the following preliminary statements are made in explanation:

a. Pursuant to the Statute of the Congress of the United States enacted August 1, 1956 (70 Stat. 775), as amended, the United States proposes to construct a dam and reservoir on Prosser Creek in Nevada County, California, to impound water for

the control of floods, for the protection of fish and wildlife, and for other beneficial purposes;

b. By Final Judgment and Decree and Order of Condemnation entered on the 4th day of June, 1915, by the District Court of the United States, in and for the Northern District of California, in the cause entitled therein "United States of America, plaintiff, vs. The Truckee River General Electric Company, a corporation, defendant," No. 14, 861 (said Final Judgment and Decree being herein referred to as the "1915 Decree"), the United States acquired a perpetual and exclusive easement and right of possession in and to certain lands at or near the outlet of Lake Tahoe into the Truckee River (including the dam and controlling works at said outlet), subject to the obligation of storing in said Lake by means of said dam and controlling works, or otherwise, certain of the waters that flow into said Lake and of releasing therefrom into said Truckee River, as therein provided, for the satisfaction of the water rights of said defendant therein, a flow of water in said River in said Judgment and Decree defined and termed "Floriston Rates;"

c. By agreement between the United States and the Irrigation District dated December 18, 1926, the United States transferred to the Irrigation District, and the Irrigation District assumed and accepted the care, operation, and maintenance of, (but not the title to) said dam and controlling works, and the Irrigation District undertook and agreed to deliver water therefrom in full compliance with the National Reclamation Laws, Court orders, and decrees, contracts theretofore entered into

by the United States and various persons for the delivery of water, the terms and conditions of said agreement and the rules and regulations of the Secretary of Interior of the United States;

d. By said 1915 Decree and an Agreement between the parties hereto and others dated June 13, 1935, and known and hereinafter referred to as the "Truckee River Agreement" (which Agreement, in and by the Final Decree entered on the 8th day of September 1944, by the District Court of the United States in and for the District of Nevada, in the cause therein entitled "United States of America, plaintiff, vs. Orr Water Ditch Company, et al., defendants," in Equity No. A-3, hereinafter referred to as the "1944 Decree," is recognized and approved), said dam and controlling works at the outlet of Lake Tahoe are required to be operated so as to release water stored therein in specified manners;

e. When and as features of the Washoe Project other than the Prosser Creek Dam and Reservoir are constructed it may be found desirable to modify the agreements hereinafter set out to permit coordination of storage and release of waters of Prosser Creek Reservoir and Lake Tahoe with that of other features of the Project. It is the intention of the parties hereto to consult with each other from time to time concerning the desirability and propriety of any proposed modification of such agreements;

f. When said Prosser Creek Dam and Reservoir are constructed and water is impounded thereby, it will be in the

interests of the public, and of the parties hereto, and of water users on said Truckee River to coordinate storage and release of waters of Prosser Creek Reservoir and Lake Tahoe for the purpose of effecting exchanges of said water as is herein provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

CONSTRUCTION OF PROSSER CREEK DAM AND RESERVOIR

1. The United States will construct, operate and maintain, or cause to be constructed, operated and maintained, a dam and reservoir on Prosser Creek, Nevada County, California, of sufficient size to impound approximately 30,000 acre-feet of water and will obtain such water rights for impoundment and use as are required for the operation of said dam and reservoir and, pursuant to Permit No. 11666 of the California State Water Rights Board, or other permits subsequently secured, will impound water in said reservoir for multiple beneficial purposes, among others, for those hereinafter set forth.

EXCHANGE OF WATER

2. (a) From and after the time when said Prosser Creek Reservoir is completed and in operation, whenever the flow of the Truckee River at the outlet of Lake Tahoe is less than 50 cubic-feet per second during the period from October 1 of any year through the next following March 31, and less than 70 cubic-feet per second during the period from April 1 of any year through September 30 of that year, the United States may

release or cause to be released, but not to exceed, sufficient water from Lake Tahoe to maintain minimum flows at said Lake outlet of 50 cubic-feet per second during the period from October 1 of any year through the next following March 31, and of 70 cubic-feet per second during the period from April 1 of any year through September 30 of that year, provided, however, that the United States may release or cause to be released water from Lake Tahoe for the maintenance of said minimum flows to the following extent and in the following amounts only:

(i) When Lake Tahoe water can be released by gravity flow through the outlet works of Lake Tahoe; and (ii) when an amount of water equal to that so released from Lake Tahoe pursuant to the foregoing provisions of this Subarticle 2(a) is available for later release from Prosser Creek Reservoir for replacement of said water so released from Lake Tahoe consisting of either (A) concurrent flow of Prosser Creek being then stored in Prosser Creek Reservoir, or (B) water in said Prosser Creek Reservoir previously stored therein pursuant to said Permit No. 11666 and not previously credited to and classified as "Tahoe Exchange Water" as defined in paragraph 2(b) hereof, or (C) a combination of the waters defined in (A) and (B) hereof.

(b) When water is released from Lake Tahoe pursuant to Subarticle 2(a) hereof for the purpose of maintaining minimum flows, an equal amount of water stored by the United States in

Prosser Creek Reservoir for the purposes of this agreement shall be credited to and classified as Lake Tahoe Storage and shall be known as "Tahoe Exchange Water." The United States shall release said "Tahoe Exchange Water" stored in Prosser Creek Reservoir, when, and in amounts, necessary to maintain Floriston Rates or Reduced Floriston Rates, as defined herein (whichever are in force) and to make available in the reservoir by the first day of November of each year 20,000 acre-feet of flood storage space or such other amount as the U. S. Army Corps of Engineers may designate from time to time. Any water discharged in excess of Floriston Rates or Reduced Floriston Rates to provide said required flood storage space shall first be charged to "uncommitted water" impounded in Prosser Creek Reservoir under Permit No. 11666. Storage of "Tahoe Exchange Water" in Prosser Creek Reservoir at any one time shall be limited to the amount that may be stored and evacuated to maintain Floriston Rates or Reduced Floriston Rates (whichever is in force), in accordance with the provisions of this Subarticle 2(b). The term "uncommitted water" as used herein means all water stored in Prosser Creek Reservoir under Permit No. 11666 which will not be required as "Tahoe Exchange Water" for delivery as provided herein, including the amount of water necessary to replace all Reservoir losses in accordance with the provisions of Subarticle 2(c).

(c) Water stored in Prosser Creek Reservoir as "Tahoe Exchange Water" shall not be diminished by Prosser Creek Reservoir losses; and the United States shall replace such Reservoir losses from water stored by it in said Reservoir. When

no water in said Reservoir is available to make up for Reservoir losses, then, no further exchange of Lake Tahoe water shall be made until such water is again available for such purpose.

(d) The United States will keep, or cause to be kept, daily records showing for each day the amount of:

(i) All waters released from Lake Tahoe pursuant to this Agreement;

(ii) All "Tahoe Exchange Water" stored in Prosser Creek Reservoir, including additions to replace losses;

(iii) All "Tahoe Exchange Water" released from Prosser Creek Reservoir under this Agreement; and

(iv) All "uncommitted water" as defined in Subarticle 2(b).

The United States will furnish the other parties to this Agreement, at least once a month, or more frequently if requested by any party hereto, consolidated reports of such daily records, and the other parties shall have access to, and the right to examine, such records at any time during normal business hours.

(e) The term "Floriston Rates," as used herein, means the rate of flow in the Truckee River at the Iceland Gage located in the Truckee River between the point of diversion of the former penstock at Floriston, California and the point of confluence of Gray's Creek with the Truckee River, consisting of an average flow of 500 cubic-feet of water per second each day during the period commencing March 1 and ending September 30

of any year, and an average flow of 400 cubic-feet of water per second each day during the period commencing October 1 and ending the last day of the next following February of any year.

The term "Reduced Floriston Rates," as used herein, means the rate of flow in the Truckee River at said Iceland Gage effective and in force during the period commencing November 1 and ending the next following March 31 of each year, determined as follows, viz.:

(i) 350 cubic-feet per second whenever the elevation of the water surface of Lake Tahoe is below 6226.0 and not below 6225.25 feet above sea level, and

(ii) 300 cubic-feet per second whenever the water surface elevation of Lake Tahoe is below 6225.25 feet above sea level.

3. Nothing herein contained is intended, or shall be construed, to supersede or abrogate said Truckee River Agreement, or deprive any water user on the Truckee River of the right to receive the amount of water, with the priority, to which he is entitled thereunder.

4. The Power Company agrees to join the United States in a request for an Order and Decree of the District Court of the United States for the Northern District of California, Second Division, modifying said Judgment and Decree in the case "United States of America vs. The Truckee River General Electric Company," in such manner as to permit the carrying out of this agreement.

5. In connection with the performance of work under this contract, the Irrigation District, Conservation District, and the Power Company agree not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Irrigation District, Conservation District, and Power Company further agree to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

6. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress to so appropriate funds or the failure of an allotment of funds shall not, however, relieve the Irrigation District, Conservation District, or Power Company from any obligations under this contract nor give the Irrigation District, Conservation District, or Power Company the right to terminate this contract or to any of its executory features. No liability shall accrue against the United States in case of such funds not being appropriated or allotted. In the event, however, that said dam and reservoir area are not constructed by the United States and in operation within

ten (10) years after the date hereof, this Agreement may, at the option of any of the other parties hereto, be cancelled.

7. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

8. No exchange of water shall be made hereunder unless and until the United States District Court for the Northern District of California shall enter an Order and Decree in said cause entitled "United States of America vs. The Truckee River General Electric Company," Docket No. 14,861, modifying said 1915 Decree as provided for in Paragraph 4 hereof, but upon entry of such Order and Decree of modification this agreement shall be effective and binding upon all of the parties hereto.

9. This Agreement shall bind the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have signed
this agreement the day and year first above written.

App'd. Sol. Off. THE UNITED STATES OF AMERICA

/s/ Mondell
6-15-59

By s/ E. O. Larson
Regional Director, Region 4
Bureau of Reclamation

ATTEST:

TRUCKEE-CARSON IRRIGATION DISTRICT

Secretary

By s/ Edward A. Dyer
Title President

ATTEST:

WASHOE COUNTY WATER CONSERVATION
DISTRICT

Secretary

By s/ Edward M. Peckham
Title President

ATTEST:

SIERRA PACIFIC POWER COMPANY

Secretary

By s/ B. E. Lowe
Vice President