

PRELIMINARY SETTLEMENT AGREEMENT

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

I. RECITALS

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

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

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

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

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

6. In addition to its other power generating facilities, Sierra owns and operates four run of the river hydroelectric plants on the Truckee River above Reno. Sierra owns and utilizes

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water rights for these hydroelectric plants utilizing water which is released from or passed through Lake Tahoe and other Truckee River Reservoirs.

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

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

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

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

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

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

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

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

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

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

II. DEFINITIONS

As used in this Preliminary Agreement:

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

2. "Drought Conditions" means conditions under which Sierra's Normal Water Supplies are not sufficient to satisfy Sierra's normal water year demand.

3. "Drought Situation" means a situation under which it appears, based on the April 1 seasonal Truckee River runoff forecast and assuming median precipitation after April 1, either that there will not be sufficient unregulated natural runoff and pooled water in storage in the Truckee River Reservoirs to meet the Floriston Rates through the following October 31, or that the

level of Lake Tahoe, excluding all Firm M&I, Non-Firm M&I and Fishery Credit Water, will be below 6223.5 feet Lake Tahoe Datum on or before the following November 15.

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

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

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

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

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

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

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

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

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

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

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

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

16. "Sierra's Normal Water Supplies" means the water sources and supplies Sierra has and would have to meet the M&I needs of its customers in the absence of this Agreement, including the water sources and supplies described in Section 2 of Article III of this Agreement and any supplies obtained or developed pursuant to Section 3 of this Agreement, but excluding all of the water sources and supplies described in Section 21 of this Agreement and 7,500 acre feet of water above the outlet facilities of Independence Lake.

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

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

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

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

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

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

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

III. AGREEMENT

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

and shall be held in storage in the Truckee River Reservoirs and released for the sole use and benefit of the Pyramid Lake Fishery.

Section 2. Water Rights Required for New Service Commitments.

Sierra agrees that it will not issue new service commitments unless such commitments are accompanied by such water rights provided directly to Sierra or through a municipal entity as are necessary to meet the new water service requirement. Sierra shall require new service commitments which rely on surface water rights to provide water rights at the rate of not less than 1.72 acre feet of water rights for every acre foot of commitment until such time as Sierra has committed to the amount of water needed to meet a normal year demand of 80,000 acre feet within Sierra's Service Area. After the amount of water is provided to meet Sierra's normal year commitment of 80,000 acre feet and until such time as Sierra has committed to the amounts of water required to meet a normal water year demand of 119,000 acre feet within Sierra's Service Area, the water rights provided to meet new service commitments in reliance upon surface water rights may be reduced to not less than 1 acre foot of water rights for every acre foot of new service commitment; provided, however, that if Sierra is able to develop the water supply referred to in Section 3(b) of Article III of this Agreement, then the ratio of new service commitments in reliance on surface water rights shall be not less than 1.11 acre feet of water rights for every acre foot of new service commitment.

Section 3. Development of Additional M&I Water Supplies.

Sierra agrees to use its best efforts to implement the following measures on a schedule to be agreed upon in the operating agree-

ment referred to in Section 29(f) of Article III of this Agreement, to the extent legally, technically and economically feasible, to help meet the water supply demands of its customers as Sierra's total normal year water demand increases to a maximum normal year demand of 119,000 acre feet:

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

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

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

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

~~If, after this Agreement becomes effective, the Tribe actively opposes the implementation and use of the water supply measures described in either Section, Sierra retains the right to terminate the provisions of Section 1 of this Agreement and to fully exercise the water rights referred to in that Section. Prior to exercising its right to terminate, Sierra will give the Tribe sixty (60) days prior written notice to withdraw such opposition and to remove any impediments to implementation caused by such opposition. If the Tribe fails to so withdraw its opposition and to remove impediments caused by its opposition, then Sierra shall have the~~

~~immediate-right-to-terminate-Section-1-of-this-Agreement-and-fully
exercise-the-rights-waived-in-Section-1-of-this-Agreement.~~

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

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

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

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

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

commence storing Firm and Non-Firm M&I Credit Water pursuant to the provisions of this Agreement when this Agreement becomes effective.

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

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

Section 9. Exchanges to Permit Firm M&I Credit Water to be Stored in Stampede Reservoir and to Avoid Unnecessary Spill or Displacement. The Tribe, the United States and Sierra agree to enter-into make such exchanges and to agree-to take other measures to permit Firm M&I Credit Water to be stored in Stampede Reservoir up to the base amount determined in accordance with Section 6 of Article III and to insure, to the maximum extent possible, that Firm M&I Credit Water, Non-Firm M&I Credit Water, Fishery Credit Water and Stampede Project Water will be available at the appropriate times and will not be displaced or caused to spill.

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

precautionary drawdowns after Fishery Credit Water and shall share the net evaporation losses proportionately with any other water in all such reservoirs except Lake Tahoe.

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

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

Section 13. Displacement of Fishery Credit Water and Stampede Project Water - Drought Situation. Whenever, based upon

the April 1 seasonal runoff forecast, a Drought Situation exists, the Tribe and the United States agree as follows: (a) to allow Sierra to displace Fishery Credit Water in Stampede Reservoir or Stampede Project Water from April 15 to July 1 to the extent necessary to enable Sierra to store up to 6,000 acre feet of the consumptive use portion of Former Agricultural Water Rights; (b) to allow Sierra to displace Fishery Credit Water in Stampede Reservoir or Stampede Project Water from July 1 to the following April 1 to the extent necessary to enable Sierra to store the base amounts of Firm and Non-Firm M&I Credit Water determined in accordance with Section 6 of Article III of this Agreement, except that for this purpose only the base amount of Non-Firm M&I Credit Water shall not be adjusted by the Exhibit "C" percentage reduction based upon the amount of water depleted from the Truckee River and its tributaries and groundwater basins in California; and (c) to allow Sierra to displace Fishery Credit Water in Truckee River Reservoirs other than Stampede Reservoir to the extent necessary to enable Sierra to increase the amounts of Firm and Non-Firm M&I Credit Water to the maximum extent possible without regard to the limitations of Section 6 of Article III of this Agreement.

Section 14. Carryover of Firm and Non-Firm M&I Credit Storage - Drought Situation. Whenever, based upon the April 1 seasonal runoff forecast, a Drought Situation exists, Sierra shall have the right to retain and carry over until the following year all of its Firm M&I Credit Water up to the base amount determined in accordance with Section 6 of Article III and all of its Non-Firm M&I Credit Water including the excess Non-Firm M&I Credit

Water established in accordance with Sections 8 and 13 of Article III of this Agreement. All such excess Non-Firm M&I Credit Water may be retained and carried over and may continue to be increased pursuant to Sections 8 and 13 of Article III of this Agreement until, based upon a subsequent April 1 seasonal runoff forecast, a Drought Situation no longer exists.

Section 15. Credit Storage Rules - Drought Situation.

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

Section 16. Use of Sierra's Privately Owned Stored Water.

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

or Repair Conditions shall be used if legally and physically possible to establish Firm or Non-Firm M&I Credit Water pursuant to the terms and conditions of this Agreement.

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

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

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

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

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

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

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

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

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

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

Section 24. Development of Additional M&I Water Supplies Above 119,000 Acre Feet of Demand. Sierra may obtain additional supplies of water to meet the demands of its customers above 119,000 acre feet per year, either after normal demand reaches

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

Section 25. Use of Water Outside Truckee River Basin.

Sierra may utilize outside of the Truckee River Basin any of its existing Truckee River water rights or any such rights that it may

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

Section 26. Additional Measures to Carry Out Agreement.

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

Section 27. Protection of Existing Perfected Rights Unaffected

Nothing in this Agreement shall be construed to:

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

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

(c) Affect Sierra's right to generate power at its hydro-electric plants on the Truckee River with any water rights it has

or may acquire other than the rights to require releases of water from the Truckee River Reservoirs solely for hydroelectric power generation which are waived pursuant to Section 1 of Article III of this Agreement;

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

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

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

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

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

Section 28. Water Master May Require Releases of Credit Water to Protect Existing Perfected Rights. ~~If, for any reason, implementation of this Agreement results in less water being available for diversion to any owners of recognized and perfected Truckee River water rights than the amount to which they are entitled, or in less Truckee River water being available at Derby Dam for diversion to the Newlands Reclamation Project than the amount of Truckee River water which the landowners within the~~

~~Newlands-Project-are-entitled-to-divert-pursuant-to-the-Orr-Ditch Decree-or-any-applicable-regulations,-the-Water-Master-pursuant-to the-administrative-provisions-of-the-Orr-Ditch-Decree-shall-have the-authority-to-make-up-the-full-amount-of-any-such-deficit-by requiring-subsequent-releases-of-the-water-stored-in-the-Truckee River-Reservoirs-pursuant-to-this-Agreement-utilizing-the-water-of the-party-benefitting-from-the-deficit.~~

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

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

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

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

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

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

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

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

or litigation involving other parties which are not consistent with the terms or conditions of this Agreement;

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

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

(i) This Agreement and the operating agreement referred to in subsection (f) above have been ratified, confirmed and approved by the Court in United States v. Orr Water Ditch Co., Equity No. A-3, (D.Nev.), and by the Court in United States v. Truckee River General Electric Company, Civil No. 14861 (now S-643) (E.D. Cal.), and have been incorporated into and made a part of the final judgments in those cases and available appeals from and reviews of such actions by those Courts have been exhausted;

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

operation of the dam and controlling works at the outlet of Lake Tahoe; and

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

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

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

If to the Tribe:	Pyramid Lake Paiute Tribal Chairman P.O. Box 256 Nixon, Nevada 89424
If to Sierra:	Philip G. Seges Senior Vice President Sierra Pacific Power Company P.O. Box 10100 Reno, Nevada 89520
If to <u>United States</u>	<u>Lahontan Basin Project Manager</u> <u>P.O. Box 640</u> <u>705 North Plaza</u> <u>Carson City, Nevada 89702</u>

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

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

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

IN WITNESS WHEREOF, the parties have executed this Preliminary Agreement as of the day and year first above written.

PYRAMID LAKE PAIUTE TRIBE OF
INDIANS

WESTPAC UTILITIES, a division of
Sierra Pacific Power Company

By _____
JOSEPH H. ELY
Tribal Chairman

By _____
PHILIP G. SEGES
Senior Vice President

UNITED STATES OF AMERICA

By _____
on behalf of the Secretary
of the Interior