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7  
8 **STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF**  
9 **CALIFORNIA**

10  
11 IN THE MATTER OF WATER RIGHT  
APPLICATIONS 31487 LITTLE  
12 TRUCKEE RIVER, and 31488  
PROSSER CREEK AND PETITIONS  
13 TO CHANGE APPLICATION NOS.  
5169 BOCA RESERVOIR, 9247  
14 INDEPENDENCE LAKE, 15673,  
STAMPEDE RESERVOIR, 18006  
15 PROSSER CREEK RESERVOIR,  
FILED BY THE UNITED STATES  
16 DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION,  
17 TRUCKEE MEADOWS WATER  
AUTHORITY, AND WASHOE  
18 COUNTY WATER CONSERVATION  
DISTRICT TO IMPLEMENT THE  
19 TRUCKEE RIVER OPERATING  
AGREEMENT  
20

**DIRECT TESTIMONY OF LYMAN F.  
McCONNELL IN SUPPORT OF PROTEST  
OF TRUCKEE-CARSON IRRIGATION  
DISTRICT**

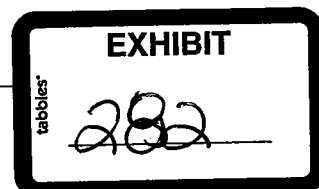
**Date: July 21, 2010**

**Time: 9:00 a.m.**

**Dept.: Coastal Hearing Room**

21  
22 **I. INTRODUCTION**

23 I, Lyman F. McConnell, was the Project Manager for the Truckee Carson  
24 Irrigation District ("TCID") from November 1, 1984 until March 1, 2006. From March 1,  
25 2006 until the present I have acted as counsel for TCID. I hold a Bachelor of Science  
26 degree from San Jose State University (1972) and a Law degree from McGeorge  
27 School of Law (1977). I have lived in Fallon, Nevada for the past 33 years.  
28



1 TCID has a contract with the United States Bureau of Reclamation ("BOR") to  
2 operate and maintain the Newlands Reclamation Project located in Churchill and Lyon  
3 Counties in Nevada. (TCID-161) As TCID Project Manager, I was responsible for the  
4 overall operation and maintenance of the Newlands Project. My responsibilities  
5 included records administration for TCID, and I am familiar with the records kept by  
6 TCID, including historical records of matters occurring before I became Project  
7 Manager. I am familiar with the history of the Newlands Reclamation Project and  
8 TCID's interests in the water stored in the upstream reservoirs on the Truckee River in  
9 California. I have personally reviewed the relevant documents from the State Water  
10 Resources Control Board files discussed in this testimony.

11 My testimony describes the operation and management of the Newlands  
12 Project, the historic utilization by TCID of water stored in the upstream reservoirs in  
13 California. This includes the litigation on the Truckee River and the settlements and  
14 compromises of the parties with interests in water in the Truckee River and its  
15 tributaries leading to the Truckee River Agreement ("TRA") and the *Orr Ditch Decree*  
16 (*U.S. v. Orr Ditch Co., et al., Equity No. A-3 D Nev. (1944)*). The compromises and  
17 agreements of the parties on the Truckee River also shaped the resolution of the  
18 applications for storage in California and the related permit terms and conditions. It is  
19 these applications that the Applicants here propose to change to allow for the  
20 operation of the Truckee River Operating Agreement ("TROA"). (SWRCB-8).

## 21 **II. THE TRUCKEE RIVER AGREEMENT AND THE *ORR DITCH DECREE***

22 In 1902, the United States Congress passed the federal Reclamation Act to  
23 reclaim arid lands of the west in order to establish farming communities. In 1903, the  
24 Secretary of Interior designated the Truckee-Carson Reclamation Project (now called  
25 the Newlands Reclamation Project), near Fallon, Nevada, as one of the first projects  
26 under the new Reclamation Act. Also in 1903, the United States posted notices of its  
27 intent to appropriate water rights from the Truckee River for the Newlands Project. In  
28 1926, the BOR contracted with TCID to operate and maintain the Newlands Project.

1 (TCID-5).

2 In 1913, the United States filed an action to quiet title to the waters of the  
3 Truckee River and its tributaries, including waters flowing in California that entered  
4 Nevada. *United States v. Orr Water Ditch Co.*, CV-N-73-0003 LDG, (D. Nev. 1944)  
5 (“*Orr Ditch Decree*”). (TCID-49) This action was brought primarily on behalf of the  
6 farmers in the Newlands Project for irrigation of lands withdrawn under the  
7 Reclamation Act of 1902, and for the benefit of the Pyramid Lake Paiute Tribe of  
8 Indians for irrigation on the Indian Reservation. *See Nevada v. U.S.*, 463 U.S. 110,  
9 114-117 (1983). This litigation adjudicated water rights not only in Nevada but also in  
10 California, as those rights related to the Newlands Project.

11 In 1935, the parties to the *Orr Ditch* case entered into an agreement, known as  
12 the Truckee River Agreement (“TRA”), to provide for the management of water  
13 resources on the Truckee River. (TCID-19) The TRA was a negotiated settlement of  
14 disputes among the parties to the *Orr Ditch Decree*. After the Temporary Restraining  
15 Order was issued in 1926 and the ensuing drought, the parties were motivated to  
16 finalize the decree. The TRA set forth the principles under which the Truckee River  
17 would be operated and allowed for the stipulated entry of the *Orr Ditch Decree*. The  
18 TRA required the Truckee River to be operated on the basis of Floriston Rates, as  
19 established in the 1915 General Electric Decree. *United States v. The Truckee River*  
20 *General Electric Company*, Case No. 14861 (N.D. Cal. 1915). (TCID-2) The GE  
21 Decree, as it is called, allowed for the condemnation of the Lake Tahoe Dam and the  
22 assumption of rights to store and release water from Lake Tahoe by the United States.  
23 Such rights required the United States to release water from Lake Tahoe in order to  
24 maintain Floriston Rates (500 cubic feet per second (cfs) March 1 to September 30  
25 and 400 cfs from October 1 to February 28). Moreover, all water stored above the low  
26 water mark, up to six feet, was to be used for the purposes described in Claim 4 of the  
27 *Orr Ditch Decree*.

28 The main participants in the negotiation of the TRA were the United States of

1 America, TCID, the Washoe County Water Conservation District ("Conservation  
2 District"), and Sierra Pacific Power Company ("Sierra"). Sierra's water resource  
3 responsibilities have been taken over by the Truckee Meadows Water Authority  
4 ("TMWA") as of the year 2001. Parties of the Fifth Part, or other individuals using  
5 water rights from the Truckee River also signed the agreement. TCID, the  
6 Conservation District and Sierra were assigned responsibilities for managing the river,  
7 since they represented the major owners of water rights. Each party, including the  
8 United States, agreed to abide by the terms of the TRA and stipulated to entry of the  
9 *Orr Ditch* Decree in accordance with the terms set forth in the TRA. There is no  
10 provision in the Agreement that allows a party to withdraw from the TRA.

11 Privately Owned Stored Water ("POSW") under the TRA means water (not  
12 including water impounded in Supplemental Reservoir after its release into the Truckee  
13 River or its tributaries, or water stored in and/or now contributing to water of Lake  
14 Tahoe, after its release into said river) impounded by any person under such  
15 conditions that the right to the use of such water shall be vested in such person, his  
16 successors or assigns. This water includes TCID's interest in Donner Lake, where  
17 TCID has a pre-1914 interest as co-owner of the water stored in Donner Lake. (TCID-  
18 44 and TCID-45) POSW is released in to the Truckee River or its tributaries and  
19 delivered to the point of diversion without a deduction for transportation loss.

20 Article II of the TRA allows for the construction of a "Supplemental Reservoir" by  
21 the Conservation District which became known as Boca Reservoir. Supplemental  
22 Storage Water means the first 25,000 acre feet of water diverted and stored in  
23 Supplemental Reservoir during any year commencing October 1 and ending  
24 September 30, known as "Truckee Canal Water," for diversion into the Newlands  
25 Project. Additional Supplemental Storage Water is any water stored in Supplemental  
26 Reservoir in excess of Supplemental Storage Water.

27 Truckee Canal Water means that part of the flow of the Truckee River to the  
28 extent of 1500 cubic feet per second, decreed to the United States, but owned by the

1 Newlands Project water right owners, under the *Orr Ditch Decree*. The TRA also  
2 provides for an allocation of water between the Conservation District and TCID.  
3 Specifically, TCID has the right to the first 31% of the calculated diverted flows and the  
4 Conservation District has the right to the remaining 69% of the calculated diverted  
5 flows in the Truckee River. If TCID is not getting 31% of the calculated diverted flows,  
6 then the parties of the Fifth part shall be reduced in their flows so that 31% is provided  
7 to TCID. If the Conservation District does not use its 69% of the calculated diverted  
8 flow, then TCID shall have the right to divert such unused water and use it for its own  
9 purposes.

10 There are many important components of the TRA, but the most important ones  
11 are the management of the reservoirs and Lake Tahoe in order to meet Floriston Rates  
12 in the Truckee River. Article III of the TRA addresses maintenance of Floriston Rates  
13 and Reduced Floriston Rates. This article sets limitations on when Floriston Rates can  
14 be changed and requires that before that can occur, the permission of the  
15 Conservation District, TCID and Sierra must be obtained. In such case, the United  
16 States and TCID must be requested to reduce such flows in accordance with the 1915  
17 GE Decree. Privately Owned Stored Water may also be released to make up Floriston  
18 Rates but there is a corresponding reduction in the draft from Lake Tahoe as a result.  
19 Thus, reductions in Floriston Rates result in more storage in Lake Tahoe.

20 Floriston Rates are defined in the TRA as the rate of flow in the Truckee River  
21 as measured at the Iceland Gage, consisting of an average flow of 500 cubic feet per  
22 second (cfs) each day during the year commencing March 1 and ending September 30  
23 of any year and an average flow of 400 cfs each day from October 1 to the last day of  
24 February of the next year. Reduced Floriston Rates means the rates of flow of water in  
25 the Truckee River measured at the Iceland Gage effective and in force during the  
26 period commencing November 1 and ending the following March 31, determined as  
27 follows: 350 cfs whenever the elevation of Lake Tahoe is below 6226.0 feet above sea  
28 level and not below 6225.25 feet, and 300 cfs whenever the water surface elevation of

1 Lake Tahoe is below 6225.25 feet.

2 Three types of water are used to achieve Floriston Rates: (1) project water  
3 stored in Lake Tahoe and Boca Reservoir pursuant to the *Orr Ditch* Decree, (2) water  
4 exchanged under the Tahoe-Prosser Exchange Agreement, and (3) unregulated flow  
5 in the Truckee River. Floriston Rates ensure sufficient flows in the river so that  
6 downstream irrigation, domestic and municipal and industrial (M&I) demands are met,  
7 including the demands of the Newlands Project under Claims 3 and 4 of the *Orr Ditch*  
8 Decree to store water in Lake Tahoe and Lahontan Reservoir and to allow diversions  
9 at Derby Dam for irrigation, domestic and livestock and for carryover storage.

10 In 1944, the Nevada Federal District Court entered the final *Orr Ditch* Decree, in  
11 which the court approved, adopted, and made the TRA a part of the decree. The TRA,  
12 as incorporated by the *Orr Ditch* Decree, has remained as the binding document for  
13 the management of the Truckee River for over 74 years. Without the TRA, the *Orr*  
14 *Ditch* Decree could not have been entered as a final decree. The stipulation entered  
15 into by the parties prohibits withdrawal from the stipulation and makes the stipulation  
16 irrevocable. Any changes, therefore, to the TRA requires the consent of all the parties  
17 to the TRA. TROA §5.A.1(a) specifically states that it supersedes the TRA. TROA  
18 §5.A.3(a) provides for reduced Floriston rates to allow for credit storage.

19 The *Orr Ditch* Decree confirmed and decreed the Newlands Project landowners'  
20 Reclamation Act water rights. Claims 1 and 2 of the *Orr Ditch* Decree secured  
21 irrigation rights for the Pyramid Lake Paiute Tribe of Indians ("Tribe"). Claim 3 of the  
22 *Orr Ditch* Decree secured irrigation, domestic and power generation rights for the  
23 farmers in the Newlands Project, including diversion rights of water for up to 1500 cfs  
24 of Truckee River water at Derby Dam and a right to store 290,000 acre feet of water in  
25 Lahontan Reservoir for the benefit of the Newlands Project. Claim 4 of the *Orr Ditch*  
26 Decree secured the right of the United States to store water in Lake Tahoe for the  
27 benefit of the Newlands Project and other lands under the federal Reclamation Act.  
28 Claim 4 of the *Orr Ditch* Decree also secured the Newlands Project's rights to release

1 water from Lake Tahoe Dam, as set forth in the General Electric Decree. Thus, the *Orr*  
2 *Ditch* Decree adjudicated water rights not only in Nevada, but also in California, as  
3 those rights related to the Newlands Project.

4 The *Orr Ditch* Decree Court has continuing and exclusive jurisdiction over this  
5 water, and the *Orr Ditch* Decree alone governs water rights belonging to the Newlands  
6 Project water right owners in Truckee River water. Moreover, water stored in Lake  
7 Tahoe is subject to Claim 4 of the *Orr Ditch* Decree. The State Water Resources  
8 Control Board ("SWRCB") cannot take any action that deprives the *Orr Ditch* Court of  
9 exclusive jurisdiction, or that violates the existing decree, including, the incorporation of  
10 the TRA and the Floriston Rate management structure. The *Alpine* decree (*United*  
11 *States v. Alpine Land & Reservoir Co.*, 3:73-CV-003 (Nev. 1980) (TCID-134), which  
12 adjudicated water rights on the Carson River and is interpreted in conjunction and  
13 consistent with the *Orr Ditch* Decree, requires that water right changes in California or  
14 Nevada shall be made directly to the decree court. It should be the *Orr Ditch* Court  
15 that acts first on the Applicants attempted change in the management scheme of the  
16 Truckee River to implement TROA before the SWRCB can act on the subject  
17 Applications and Petitions.

18 After the *Orr Ditch* Decree was entered, disputes arose concerning the amount  
19 of water that the United States had allocated for the Tribe. These disputes culminated  
20 in several significant events, including a suit by the Tribe to force the Secretary of  
21 Interior to regulate diversions from the Truckee River to the Newlands Project and an  
22 attempt by the United States to reallocate water in the Truckee River from the  
23 Newlands Project to the Tribe. This attempt was halted by the United States Supreme  
24 Court in the case of *Nevada v. U.S.*, 463 U.S. 110 (1983). The Court ruled that the *Orr*  
25 *Ditch* Decree barred the United States from reallocating the water of the Truckee River  
26 once the decree was final. The Secretary of Interior has continued to regulate  
27 diversions from the Truckee River through the Newlands Project Operating Criteria and  
28 Procedures ("OCAP"), first promulgated in 1967, and amended in 1973, 1988 and

1 modified in 1997. (TCID-222) The OCAP is to comply with all applicable decrees,  
2 including the *Orr Ditch Decree*.

3 For the last 75 years, the Truckee River has been managed by the parties to the  
4 TRA, along with the Federal Water Master. Several new reservoirs have been added  
5 to the Truckee River watershed that did not exist when the TRA was executed. These  
6 reservoirs are part of the Washoe Project and include Prosser Reservoir and  
7 Stampede Reservoir. The Washoe Project was authorized by Congress to provide  
8 upstream storage and drought protection for the Truckee Meadows and the Newlands  
9 Project. See Public Law 858, 84th Congress, Chapter 809, 2nd Session. These  
10 reservoirs are managed in conjunction with the other reservoirs serving the Truckee  
11 River basin; however, as described below, Stampede Reservoir is primarily managed  
12 as storage for water for endangered and threatened fish in Pyramid Lake and the  
13 Lower Truckee River.

14 **III. THE TRA'S RESOLUTION OF CONFLICTING AND COMPETING BOCA,  
15 INDEPENDENCE, AND DONNER CALIFORNIA APPLICATIONS**

16 On November 3, 1938 the Division of Water Resources issued Decision D435.  
17 (TCID-34) This decision was related to the following conflicting and competing water  
18 application for storage of Truckee River water in upstream reservoirs in California:

- 19 • Applications 5169 and 6534 by the Conservation District to appropriate  
20 and store water in Boca Reservoir
- 21 • Application 5170 by Sierra to appropriate and store water in Boca  
22 Reservoir
- 23 • Applications 9247 & 9267 by Sierra appropriate and store water in  
24 Independence Reservoir
- 25 • Application 6131 by TCID to appropriate water from Donner and Cold  
26 Creek for storage in Donner Lake

27 The parties to these applications are the same parties to the TRA. A summary  
28 of these applications is provided in the August 9, 1938 Office Report on these



1 applications located in the SWRCB files. (TCID-29) TCID was a protestant to the  
2 applications filed by the Conservation District and Sierra. Applications 5196, 6534,  
3 9247 and 9267 were granted in D435. Further, Applications 5169 and 9247 are the  
4 subject of the current Petitions for Change to allow for the implementation of TROA  
5 that is the subject of the present hearing.

6 The agreements and compromises of the parties to the TRA was the main  
7 consideration of the Division of Water Resources when resolving the issue and  
8 granting the applications in Decision D435. In fact, based on the parties' requests, the  
9 Division of Water Resources waited for negotiation of the TRA before beginning the  
10 hearing related to these and competing applications. (See TCID-15, 17 ,and 36-38).

11 At the hearing held on October 4, 1938, TCID expressed that its purpose for  
12 entering the TRA was to provide upstream storage for Project bench lands for release  
13 during the irrigation season. (TCID-32 at pp. 9-10) As a result, TCID did not object to  
14 Sierra's application 5170 or the storage in Boca because it did not want to undermine  
15 the TRA. *Id.* at p. 11. It was agreed that application 5170 for power generation would  
16 utilize the same water and would be junior to Application 5169 for irrigation and  
17 domestic use, and would be released under the terms of the TRA, thus satisfying  
18 TCID's protest. *Id.* at pp. 11 and 15 - 16. The parties also agreed not to object to  
19 Sierra storage in Independence Reservoirs under Applications 9247 and 9267. *Id.* at p.  
20 5. Further, TCID requested that the hearing on its Application 6131 for storage in  
21 Donner Lake and diversion in Cold Creek be postponed until the operation of the TRA,  
22 because the concessions made under the TRA will meet TCID's upstream storage  
23 needs. *Id.* at p. 18. However, TCID wanted to preserve the Donner Application in case  
24 the TRA did not go into operation and/or Boca Reservoir was not completed. *Id.* at pp.  
25 18-23 and 29-30.

26 The Division of Water Resources in Decision D435 determined that the TRA  
27 "adjusts the differences between these parties with respect to development proposed  
28 under the group of applications involved in these proceedings." (TCID-34 at p. 5) The

1 relevant effect of the TRA on the proceedings was that:

2 1) Washoe County Conservation District may proceed under  
3 Application 5169 and 6534 to develop Boca reservoir site to a capacity of  
4 not less than 40,000 acre feet,

5 2) Whatever development proceeds under Application 5170 must  
6 be subordinated to diversion and use under Applications 5169 and 6534,

7 3) Development under Application 6131 shall be held in abeyance  
8 pending completion of Boca Reservoir,

9 4) There is no objection to the storage proposed by Sierra Pacific  
10 Power Company under Applications 9247 and 9267.

11 *Id.* at p 5. This was found to be in the common interest of all parties after entering the  
12 TRA. *Id.* at p. 6.

13 Application 5169 for Boca Reservoir indicates that the water is to be applied to  
14 "water users in Washoe, Storey, Lyon and Churchill Counties, Nevada, including the  
15 users in [TCID], or the 'Newlands Project,' of Fallon, Nevada." (TCID-3) The Progress  
16 Reports for Boca from 1949 through 1985 indicate water was released from Boca  
17 Reservoir for the purpose of maintaining required flows as prescribed by the TRA and  
18 allowed to be diverted at Derby Dam.

19 The Petitions for Change related to the same applications proposed to operate  
20 the reservoirs under TROA, superseding the TRA without the consent of TCID. This is  
21 in direct conflict with agreements and concessions made that allowed for the granting  
22 of these applications under Decision D435. See TRA Art. XII (TCID-19) (requiring TCID  
23 withdraw its protest to Applications 5169 and 6534 before the operative date of the  
24 TRA). Further, TCID will not receive the upstream storage under TROA that it  
25 negotiated under the TRA and believed it obtained when it agreed to drop its protests  
26 and disregard Application 6131 at Donner Lake.

27 **IV. THE WASHOE PROJECT AND STAMPEDE RESERVOIR**

28 In 1956, Congress authorized Stampede Reservoir as part of The Washoe

1 Reclamation Project. Congress intended The Washoe Reclamation Project to operate  
2 for the purpose of, *inter alia*, furnishing water for the irrigation of approximately 50,000  
3 acres of land in the Truckee and Carson River Basins in Nevada and California, and  
4 firming the existing water supplies of lands under the Truckee River Storage Project  
5 and the Newlands Project. See Public Law 858, 84<sup>th</sup> Congress, Chapter 809, 2nd  
6 Session, S. 497 (August 1, 1958) (TCID-88). The original permit terms of Stampede  
7 Reservoir provided that, in addition to other uses, water from Stampede should be  
8 used within the Newlands Project for the irrigation of 70,000 acres.

9 On January 7, 1954 the United States Bureau of Reclamation ("BOR") filed two  
10 applications in furtherance of the Washoe Project to appropriate water at Stampede  
11 Reservoir. The Washoe Project, including Stampede Reservoir, was predominately  
12 designed for irrigation and power generation benefits, with a flood secondary emphasis  
13 on flood control.

14 Application 15673, the subject of these proceedings, was to appropriate  
15 unappropriated water from the Little Truckee River at Stampede Dam. The Stampede  
16 Reservoir application echo the intent of the Washoe Project, providing that Stampede  
17 Reservoir water will be used within the Newlands Project for irrigation purposes.  
18 (TCID-80) Application 15673 requests 350 cfs direct diversion between 5/1 and 11/1  
19 and 126,000 af/year storage all year long. The purpose of use is irrigation, flood  
20 control and recreational. The water will irrigate 96,800 acres--26,800 in the Truckee  
21 Meadows near Reno/Sparks and 70,000 in the Newlands Project near Fallon.  
22 Construction was to begin after authorization of Washoe project. Application 15672  
23 was a companion application that included power generation.

24 On September 25, 1958 the California Water Rights Board Decision D913 found  
25 that unappropriated water exists in the Little Truckee River in amounts varying from  
26 134,000 acre-feet and less based upon 34 years of historical data. (TCID-111 at p. 19)  
27 This was not enough to fill the proposed appropriation of 126,000 acre-feet, but carry-  
28 over storage was believed to sometimes fill the reservoir. *Id.* Decision D913 reserves

1 30,000 af/year of Truckee River system water for use by California appropriators, with  
2 a priority equivalent to Applications 15672 and 15673. In D913, the Water Rights  
3 Board recognized that the factors affecting the operation of Stampede reservoir was  
4 not only the amount of unappropriated water, but also how it functions in connection  
5 with the other facilities along the Truckee and Carson Rivers. *Id.* at p. 16.

6 After several BOR requests and orders granting extensions of time, in early  
7 1970 construction of Stampede Dam was substantially completed. The related permit  
8 11605 requires that the water stored in Stampede Reservoir be directly applied to  
9 beneficial use, which use expressly includes the irrigation of the Newlands Project. See  
10 Application 15673, ¶ 11. On January 13, 1971 the BOR requested that  
11 Application 15673 (Permit # 11605) be amended to include fish culture, domestic,  
12 municipal and industrial uses (TCID-126), which was approved in a March 22, 1971  
13 SWRCB Order (TCID-127).

14 The progress reports filed with the State Board by the BOR indicate that  
15 Stampede Reservoir water was used for irrigation in the Newlands Project after the  
16 project was constructed, through at least 1974. For example the Progress Report for  
17 1974 states that 62,744 acres received full or supplemental supply from the Washoe,  
18 Truckee Storage and Newlands Projects. (TCID-130) However, the Progress Report  
19 for 1975 states that Stampede water may only be used for maintaining Truckee River  
20 flows below Derby Dam until the *Pyramid Lake Paiute Tribe of Indians v. Morton* court  
21 action is resolved. (TCID-131) No Petition to Change the permit to alter the manner of  
22 use exclusively for Pyramid Lake has ever been filed by the United States.

23 In 1975, the BOR began operating Stampede Reservoir only for fish  
24 conservation purposes in Pyramid Lake in violation of the Permit terms. Since 1975,  
25 the BOR has not put Stampede Reservoir water to beneficial use in the Newlands  
26 Project or Truckee Meadows, the only places of beneficial use in the Stampede Permit.  
27 An internal State Board memorandum dated June 10, 1980 emphasized that the  
28 BOR's rights for the use of Stampede Reservoir water in California are limited to

1 recreation at the reservoir, and the place of use for the water is limited to Truckee  
2 meadows and the Newlands Project. (TCID-132) In that memorandum, State Board  
3 staff concluded that the BOR's releases of Stampede Reservoir water to aid in  
4 restoration of the Pyramid Lake fishery are not consistent with any water rights in  
5 California. Likewise, an April 3, 1994 SWRCB memo questions whether US Fish &  
6 Wildlife's proposed drawdown of Stampede Reservoir to benefit Pyramid Lake fish may  
7 violate California water law because Stampede water rights are not permitted for this  
8 purpose and place of use. (TCID-139) Finally, a May 13, 1994 letter to the BOR  
9 reiterates that a petition for change must be filed in order to release water from  
10 Stampede to Pyramid Lake. (TCID-141)

11 TCID has never received the benefit of upstream storage in Stampede reservoir  
12 as indicated on the face of the Stampede Reservoir Application and Permit. Further  
13 Pyramid Lake is not a designated place of use according to the application or permit,  
14 making the current operation of Stampede Reservoir in violation of the permit terms  
15 and California law.

#### 16 **V. PROSSER RESERVOIR AND THE EXCHANGE AGREEMENT**

17 In anticipation of construction of the Prosser Creek Reservoir, certain parties  
18 entered an Agreement for Water Exchange Operation of Lake Tahoe and Prosser  
19 Creek Reservoir (Prosser Exchange Agreement) on June 15, 1959. (TCID-119) The  
20 Prosser Exchange Agreement was signed by the United States, TCID, the  
21 Conservation District and Sierra. The Agreement is binding on all signatories as well  
22 as their successors and assigns, and there is no termination clause in the agreement.  
23 It is designed to coordinate storage and releases of waters in Prosser Creek Reservoir  
24 and Lake Tahoe and incorporates the Prosser Creek Reservoir into the current  
25 management scheme of the Truckee River by reference to the GE Decree, Truckee  
26 River Agreement, and the *Orr Ditch* Decree. The Prosser Exchange Agreement  
27 provides for storage in Prosser Creek Reservoir of "Tahoe Exchange Water," which is  
28 credited to and classified as Lake Tahoe Storage. "Tahoe Exchange Water" receives

1 priority and must be released in amounts necessary to maintain Floriston Rates or  
2 Reduced Floriston Rates for the benefit of water users in the Truckee River Basin as  
3 contemplated by the GE Decree, Truckee River Agreement, and the *Orr Ditch* decree.


4 The Prosser Creek Reservoir application (Application 18006) echoes the intent  
5 of the Washoe Project, and provides that Prosser Creek Reservoir water will be used  
6 within the Newlands Project for irrigation purposes. (TCID-102) The State Board  
7 progress reports indicate that Prosser Creek Reservoir water was used for irrigation in  
8 the Newlands Project after the project was constructed, through at least 1970.

9 Currently, Prosser Creek Reservoir is managed in conjunction with the other reservoirs  
10 serving the Truckee River Basin; however, it is primarily used to benefit Pyramid Lake.  
11 This also violates the Prosser Permit and License.

12 TROA contemplates changes to the operation of Prosser Creek Reservoir, and  
13 expressly supersedes the Tahoe-Prosser Exchange Agreement. See TROA § 5.A.1(a).  
14 These waters come directly from Claim 3 and 4 waters adjudicated in the *Orr Ditch*  
15 Decree. The Tahoe-Prosser Exchange Agreement contains no termination clause and  
16 the Agreement is binding on all parties and successors.

17 Respectfully Submitted

18  
19 Dated: June 28, 2010



20 LYMAN F. MCCONNELL  
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