

EXHIBIT

TMWA 2-10

**October 8, 1993 Contract Among
United States, Sierra Pacific Power
Company and Washoe County Water
Conservation District,
and Amendment Thereto**

Amendatory to
Contract No.
4-07-20-W1129

AMENDATORY AGREEMENT FOR THE
STORAGE OF NON-PROJECT WATER
AMONG WESTPAC UTILITIES
WASHOE COUNTY WATER CONSERVATION DISTRICT
AND
THE UNITED STATES OF AMERICA

THIS AMENDATORY AGREEMENT is entered into this third day of October 1994, among WESTPAC UTILITIES, a division of Sierra Pacific Power Company, hereinafter referred to as the Company, WASHOE COUNTY WATER CONSERVATION DISTRICT, hereinafter referred to as the District, and THE UNITED STATES OF AMERICA, hereinafter referred to as the United States;

EXPLANATORY RECITALS

WHEREAS, the United States, the Company, and the District entered into Contract No. 4-07-20-W1129 (Contract) dated October 8, 1993, to enable the Company to store up to a maximum of 3,050 acre-feet of non-project water when space is available in Supplemental Reservoir during the term of this contract; and

WHEREAS, Article 3(a) of the Contract provides that 400 acre-feet of non-project water in Supplemental Reservoir shall be transferred to the United States for the ultimate benefit of endangered and threatened fish species at Pyramid Lake if an interim agreement is not executed by May 31, 1994; and

WHEREAS, the U.S. Fish and Wildlife has determined that said 400 acre-feet of water is not essential to the 1994 cui-ui fish run; and

WHEREAS, the Company desires to extend the May 31, 1994 date to July 31, 1994; and,

WHEREAS, the United States is willing to so amend the Contract.

NOW, THEREFORE, in consideration of the mutual and dependant covenants herein contained it is hereby agreed as follows:

1. Article 3(a) of the Contract is hereby revised by substituting "July 31, 1994" for "May 31, 1994".
2. All other terms and conditions of the Contract shall remain in effect as currently written.

IN WITNESS WHEREOF, the parties hereto have executed this amendatory agreement as of the day and year first written above.

THE UNITED STATES OF AMERICA

Franklin E. Dimick
Acting For Regional Director, Mid-Pacific Region
Bureau of Reclamation

WESTPAC UTILITIES , a division of
SIERRA PACIFIC POWER COMPANY

Reeve Fagg
Director of Water
Vice President, Utility Services Division

Attest:

Frank Salazar

WASHOE COUNTY WATER CONSERVATION DISTRICT

Paul Casazza
President

Attest:

Wagner W. Reynolds

**CONTRACT FOR THE
STORAGE OF NON-PROJECT WATER
AMONG WESTPAC UTILITIES
WASHOE COUNTY WATER CONSERVATION DISTRICT
AND
THE UNITED STATES OF AMERICA**

THIS CONTRACT, entered into on this ____ day of _____, 1993, among WESTPAC UTILITIES, a division of Sierra Pacific Power Company, hereinafter referred to as the Company, WASHOE COUNTY WATER CONSERVATION DISTRICT, hereinafter referred to as the District, and THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer executing this contract, hereinafter referred to as the Contracting Officer,

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the Company had a supply of water, previously stored in Donner Lake, which it released in exchange for water stored in Boca Reservoir of the Truckee Storage Project; and

WHEREAS, the United States constructed and holds legal title to Boca Reservoir of the Truckee Storage Project; and

WHEREAS, the District holds a license for water rights in Boca under California State Law and operates the storage and release of waters in and from Boca Reservoir; and

WHEREAS, the Company is a public utility which provides domestic water service to the cities of Reno and Sparks and portions of unincorporated Washoe County,

Nevada; and

WHEREAS, pursuant to the Act of February 21, 1911 (36 Stat. 923) as amended by Section 305 of the Reclamation States Emergency Drought Act of 1991 (106 Stat. 504), the Secretary of the Interior is authorized to enter into contracts with public utilities for the impounding, storage and carriage of non-project water for domestic, municipal and other beneficial purposes using facilities associated with the Truckee Storage Project; and

WHEREAS, on July 18, 1988, the Company and the District entered into a contract for the storage of non-project water in Boca Reservoir; and

WHEREAS, the United States contends and the Company disputes that the Company cannot store its non-project water in Boca Reservoir except pursuant to a contract to which the United States is a party; and

WHEREAS, this contract is entered into in order to temporarily resolve that dispute and time to allow the parties to complete negotiations on the interim agreement.

NOW, THEREFORE, based upon the foregoing and in consideration of the covenants herein contained, the parties agree as follows:

DEFINITIONS

1. When used herein, the term:
 - (a) "Secretary" or "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative;
 - (b) "Project" shall mean the Truckee Storage Project, consisting of Boca Dam and Reservoir, located in Nevada-California;

(c) "Project water" shall mean water appropriated by the District for storage in Boca Reservoir;

(d) The term "non-project water" shall mean the Company's Privately Owned Stored Water in Donner and Independence Lakes which will be stored in Supplemental Reservoir under the terms of this contract;

(e) The term "municipal and industrial uses" or "M&I uses" shall mean uses of water for municipal, industrial and domestic use;

(f) The term "storage or store" shall mean the retention of water in a reservoir for a period in excess of 30 days;

(g) The term "spill" shall mean releases made to comply with flood control or Standing Operating Procedures requirements for maximum reservoir storage levels;

(h) "Federal Watermaster" means the watermaster appointed by the United States District Court for the District of Nevada pursuant to United States v. Orr Water Ditch Co., Civil No. A3;

(i) "Truckee River Agreement" means the agreement dated July 1, 1935, which was approved, adopted and incorporated into the Orr Ditch Decree;

(j) "interim agreement" means the agreement presently being negotiated pursuant to Section 205(b)(3) of Public Law 101-618 (104 Stat. 3324), between the United States, the Company, the District and the Pyramid Lake Tribe to store water owned by the Company in Stampede and Boca Reservoirs;

(k) "Supplemental Reservoir" means that portion of Boca Reservoir

having a capacity of 40,000 acre feet paid for by the District to meet its obligations under the Truckee River Agreement.

TERM OF CONTRACT

2. This Contract shall become effective September 11, 1993 and shall remain in effect until September 10, 1994 or until such time as the interim agreement enters into effect, whichever comes first.

STORAGE OF NON-PROJECT WATER

3. The United States shall permit the Company to store up to a maximum of 3,050 acre feet of non-project water when space is available in Supplemental Reservoir during the term of this contract under the following conditions:

(a) If an interim agreement has not entered into effect by May 31, 1994, then 400 acre feet of non-project water in Supplemental Reservoir shall be transferred to the United States for the ultimate benefit of endangered and threatened fish species at Pyramid Lake and if the interim agreement has not entered into effect by September 10, 1994, then the balance of non-project water which then remains in Supplemental Reservoir will be considered Project water. Subject to the provisions of paragraph 5(f) of this contract, any water of the Company remaining in Supplemental Reservoir when the interim agreement enters into effect shall on that date become subject to the terms and conditions of the interim agreement.

(b) The quantity of non-project water available to the Company in Supplemental Reservoir shall be subject to its incremental share of seepage and evaporation loss beginning September 11, 1993. The incremental share of seepage and

evaporation for the non-project water in Supplemental Reservoir shall be determined by the Federal Water Master after consultation with the Contracting Officer, the Company and the District.

(c) Storage of the non-project water shall not interfere with the flood control or normal release requirements of Boca Reservoir. In cases of flood control releases or spillage, non-project water will be the first to be released for flood control purposes or the first to spill. Provided, however, that the United States will use its best efforts to transfer its Stampede and Prosser water currently held in Boca Reservoir to Stampede Reservoir prior to any such flood control release or spill from Boca.

(d) Releases of non-project water stored pursuant to this contract for M&I uses shall be pursuant to instructions given by the Company to the Federal Watermaster.

MEASUREMENT OF NON-PROJECT WATER

4. For purposes of this Contract the quantity of non-project water stored in Supplemental Reservoir at any point in time shall be computed by the Federal Watermaster after consultation with the Contracting Officer, the Company and the District. The accuracy of such a determination shall be investigated upon the request of any party to this contract and any errors shall be corrected promptly.

PAYMENT

5. (a) Upon execution of this contract, the Company shall pay the United States \$500.00 which shall constitute an administrative charge hereunder and \$13,725.00 which shall constitute a prepayment of any charges due under paragraph (c)

hereof for the period from October 1, 1993 through December 31, 1993.

(b) There shall be no storage charge for the period September 11, 1993 through September 30, 1993.

(c) For the period October 1, 1993 through August 31, 1994, the Company shall pay the United States an amount each month which shall be the product of \$1.50 multiplied by the maximum quantity in acre feet of non-project water stored in Supplemental Reservoir during each month as determined in accordance with paragraph 4 above. Any amount due for the period October 1, 1993 through December 31, 1993 has been prepaid. Amounts due for the months of January through August, 1994, shall be paid within 15 days after the amount for each month has been calculated as provided herein, provided, however, that any overpayments for the period October 1, 1993 through December 31, 1993 shall be credited against payments due for subsequent periods.

(d) For the period September 1, 1994 through September 10, 1994, the Company shall pay the United States an amount which shall be the product of \$.50 multiplied by the quantity of non-project water stored in Supplemental Reservoir as of September 1, 1994. Said amount shall be paid on September 15, 1994.

(e) In addition to the charges identified in subdivisions (a) through (d) above, the Company shall pay the District in accordance with the July 18, 1988 agreement between the District and the Company.

(f) The foregoing notwithstanding, if the interim agreement enters into effect on or before September 10, 1994, the charges for storage under this contract shall

be calculated as if said interim agreement had been in effect throughout the term of this Agreement and the United States and/or the District shall reimburse the Company as required or the Company shall make such additional payments to the United States and/or the District as required. Such reimbursement and/or additional payments shall be made within 15 days after the interim agreement enters into effect or reimbursement due the Company may be carried as a credit against payments due in the future on the interim agreement.

(g) The Contracting Officer shall advise the Company of the method by which the Company shall submit payments to the United States. The method could be by check, lock-box arrangement, or wire transfer directly to the Treasury Financial Communications System (TFCS).

**UNITED STATES NOT RESPONSIBLE FOR DELIVERY OF
NON-PROJECT WATER**

6. The United States shall not be responsible for the control, care, or distribution of the non-project water after release from Project facilities.

UNITED STATES NOT LIABLE

7. The Company hereby releases and agrees to defend and indemnify the United States and the District, their officers, agents, and employees from every claim for damage to persons or property, direct or indirect, including court costs, settlement costs, document preparation costs, and attorneys' fees, resulting from the storage and release of non-project water under this contract or from any determinations made by the Contracting Officer hereunder. Nothing contained in this article shall be construed as preventing the Company from contesting liability with respect to any claim or claims

that the storage and release of non-project water under this contract resulted in damage to persons or property.

MISCELLANEOUS

8. (a) The charges contained in this contract are not intended to be and shall not be construed as precedent setting for any future charges for the storage of Company water in facilities owned by the United States pursuant to the interim agreement or any other future agreement.

(b) The parties agree that this contract involves only the storage in and not the delivery of water from a Federal facility.

(c) This contract effects a temporary resolution of a matter in dispute among the parties hereto and nothing contained herein shall be construed as an admission by any party hereto.

CHARGES FOR DELINQUENT PAYMENTS

9. (a) The Company shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Company shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Company shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Company shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Company shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

RULES, REGULATIONS, AND DETERMINATIONS

10. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Company.

WATER AND AIR POLLUTION CONTROL

11. The Company, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the

State of California, and shall obtain all required permits or licenses from the appropriate Federal, State or local authorities.

QUALITY OF WATER

12. The operation and maintenance of the Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water stored and/or conveyed through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

EQUAL OPPORTUNITY

13. During the performance of this contract, the Company agrees as follows:

(1) The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Company will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Company will, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(3) The Company will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Company's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Company will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Company will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Company's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules,

regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Company may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Company will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Company will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Company becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Company may request the United States to enter into such litigation to protect the interests of the United States.

BOOKS, RECORDS AND REPORTS

14. The Company shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Company's financial transactions, water supply data, project operation, maintenance and replacement logs, and project land and right-of-way use agreements;

the water users' land-use (crop census), landownership, land-leasing and water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

15. The expenditure or advance of any money or the performance of any obligation to the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Company from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

16. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

OFFICIALS NOT TO BENEFIT

17. No Member of or Delegate to Congress, Resident Commissioner or official of the Company shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

18. (a) The Company shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Company agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Company makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Company by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Company recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

FUTURE AGREEMENTS

19. This contract shall not be regarded as a precedent for terms and conditions of future contracts, agreements or arrangements among the parties.

NOTICES

20. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Company, when mailed, postage prepaid, or delivered to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of Westpac Utilities, P.O. Box 30028, Reno NV 89520-3028 and Washoe County Water Conservation District, 275 Hill Street, Room 2300, Reno NV 89501. The designation of the addressee or the address may be changed by notice given in the same manner as

provided in this article for other notices.

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

THE UNITED STATES OF AMERICA

(SEAL)

By Franklin E. Dimick
ACTING REGIONAL DIRECTOR

WESTPAC UTILITIES

By Susan J. Oldham

Its Director of Water

WASHOE COUNTY WATER CONSERVATION DISTRICT

By D. Parago

Its Pres.