

# **EXHIBIT**

## **TMWA 2-9**

**March 26, 1993 Contract for Exchange of  
Non-Project Water Between  
United States and WestPac Utilities**

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Washoe Project, California/Nevada

Contract No.  
3-07-20-W1068

CONTRACT FOR EXCHANGE OF NON-PROJECT WATER  
FOR PROJECT WATER  
BETWEEN THE UNITED STATES AND  
WESTPAC UTILITIES

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Washoe Project, California/Nevada

CONTRACT FOR EXCHANGE OF NON-PROJECT WATER  
FOR PROJECT WATER  
BETWEEN THE UNITED STATES AND  
WESTPAC UTILITIES

THIS CONTRACT, made this 20th day of March, 1993,

pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to, the Act of August 4, 1939 (53 Stat. 1187), as amended, and the Act of August 1, 1956 (70 Stat. 775) all collectively hereinafter referred to as the Federal Reclamation laws, between 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, and WESTPAC UTILITIES, a division of Sierra Pacific Power Company, hereinafter referred to as the Contractor, a public utility of the State of Nevada, duly organized, existing and acting pursuant to the laws thereof, with its principal place of business in Reno, Nevada,

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the United States constructed the Stampede and Prosser Creek Reservoirs of the Washoe Project, California/Nevada hereinafter referred to as the Project, for the purposes, among others, of furnishing water for

1 irrigation, municipal, domestic, and industrial uses, for controlling floods,  
2 providing hydroelectric power, and development of fish and wildlife resources and  
3 other beneficial purposes; and

4 WHEREAS, the United States constructed Boca Dam and Reservoir of  
5 the Truckee Storage Project on the Little Truckee River near Boca, California,  
6 hereinafter referred to as Boca Reservoir, and

7 WHEREAS, the Contractor holds the water rights to store water in  
8 Independence Lake and Donner Lake;

9 WHEREAS, because of the continuing drought in California and  
10 Nevada, the United States is willing to provide Project water currently stored in  
11 Boca Reservoir and/or Project facilities to the Contractor and in exchange the  
12 Contractor is willing to replace such Project water with the Contractor's non-  
13 Project water in accordance with the terms and conditions hereinafter stated;

14 NOW, THEREFORE, in consideration of the covenants herein  
15 contained the parties agree as follows:

16 DEFINITIONS

17 1. When used herein, the term:

18 (a) "Secretary" or "Contracting Officer" shall mean the Secretary of  
19 the Interior or his duly authorized representative;

20 (b) "Project" shall mean the Washoe Project, California/Nevada;

21 (c) "Project water" shall mean water appropriated by the United  
22 States for storage in Washoe Project facilities;

1 (d) "non-Project water" shall mean water acquired by or available to  
2 the Contractor in Independence Lake, Donner Lake or from any other water  
3 source authorized under State laws;

4 (e) "exchange water" shall mean Project water that is released  
5 from Boca Reservoir and/or Project facilities to the Contractor and is  
6 that water that the Contractor agrees to replace with non-Project water  
7 in future years;

8 (f) "replacement water" shall mean non-Project water available to the  
9 Contractor to reimburse the United States for the exchange water released  
10 from Boca Reservoir and/or Project facilities;

11 (g) "municipal and industrial uses" or "M&I uses" shall mean uses  
12 other than the production of agricultural crops or livestock, including  
13 domestic use incidental thereto and the watering of livestock;

14 (h) "drought situation" shall mean a situation under which it appears,  
15 based on the April 1 seasonal Truckee River runoff forecast, as mutually  
16 agreed to by the parties, and assuming median precipitation after April 1,  
17 either that there will not be sufficient unregulated natural runoff and pooled  
18 water in storage in the Truckee River Reservoirs to meet the Floriston Rates  
19 through the following October 31, or that the level of Lake Tahoe will be

1 below 6223.5 feet Lake Tahoe Datum on or before the following  
2 November 15;

3 (i) "Floriston Rates" shall mean the rates of flow of the Truckee-  
4 River at the head of the diversion penstock at Floriston, California (but  
5 measured at the USGS Stream Gaging Station near Farad, California)  
6 consisting of an average flow of 500 cubic feet of water per second each  
7 day during the period commencing March 1 and ending September 30 of  
8 any year and an average flow of 400 cubic feet of water per second each  
9 day during the period commencing October 1 and ending the last day of  
10 the next following February of any year;

11 (j) "Federal Watermaster" shall mean the watermaster appointed by  
12 the United States District Court for the District of Nevada in accordance with  
13 United States v. Orr Water Ditch Co., Equity No. A-3;

14 (k) "next cui-ui spawning run" shall mean a classification declared by  
15 the United States Fish and Wildlife Service which will require no less than  
16 the minimum flow regime identified in the Cui-ui Recovery Plan, Second  
17 Revision;

18 (l) "Truckee River Reservoirs" means the storage provided by the  
19 dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir  
20 and Stampede Reservoir;

21 (m) "Truckee River General Electric Co. Decree" means the Final  
22 Decree entered on June 4, 1915 in the case of United States v. Truckee River

1 General Electric Co., No. 14861, in the United States District court for the  
2 Northern District of California which was transferred on  
3 February 9, 1968 to the United States District Court for the Eastern District  
4 of California and is now designated No. S-643;

5 (n) "Orr Ditch Decree" means the Final Decree entered on  
6 September 8, 1944, in the case of United States v. Orr Water Ditch Co., et al,  
7 Equity No. A-3, in the United States District court for the District of Nevada;  
8 and

9 (o) "hydrologic year" shall mean the period from and including  
10 April 1 of each calendar year through March 31 of the following calendar  
11 year.

#### 12 TERM OF CONTRACT

13 2. This contract shall become effective on the date first hereinabove  
14 written and shall remain in effect for a period not to exceed five years from said  
15 effective date or until all the exchange water released for the Contractor during  
16 the present drought situation is replaced pursuant to Article 3(b) or until the  
17 present drought situation ends without the need for exchange water, whichever  
18 occurs first. If hydrologic conditions preclude the Contractor from replacing all  
19 the exchange water released for the Contractor during the present drought  
20 situation within the term of this contract, the Contractor hereby agrees to enter  
21 into a supplemental agreement with the Contracting Officer for the replacement  
22 of any exchange water remaining.

1                                    EXCHANGE OF NON-PROJECT WATER FOR PROJECT WATER

2            3.    (a)    The United States shall make available to the Contractor in  
3 accordance with the applicable laws of the States of California and Nevada in  
4 Boca Reservoir and/or Project facilities a total in the aggregate of 5,000  
5 acre-feet of Project water which has been or could have been stored in Prosser  
6 Creek Reservoir: Provided, That such water is available. Any Project water  
7 currently stored in Boca Reservoir shall be released first: Provided further, That  
8 the total amount of Project water released from Boca Reservoir shall not exceed  
9 2,000 acre-feet. The Contractor may use up to said 5,000 acre-feet of water  
10 during the present drought situation after it has:

11                            (1)    Used all other alternative sources of groundwater and  
12 surface water then available to the contractor, other than the 7,500 acre-  
13 feet referred to in subdivision (a)(2) below, under the applicable laws of  
14 the States of California and Nevada, including any water derived from  
15 the Contractor using its best efforts to augment its water supply,  
16 including but not limited to, completing one new well in 1993 and  
17 treating water from the Morrill and High Streets wells;

18                            (2)    Used all the water from Independence Lake above  
19 7,500 acre feet above the natural rim between May 15 and July 15 and  
20 all the water from Independence Lake above 4,500 acre-feet above the  
21 natural rim between July 16 and May 14 of each year. (The contractor  
22 shall, in consultation with the California Department of Fish and Game



1 maintain a channel suitable for fish passage through the delta formed by  
2 Independence Creek entering Independence Lake from May 15 to  
3 September 1 whenever the level of Independence Lake is 4,500 or more  
4 acre feet above the rim. ) To the extent exchange water is provided  
5 pursuant to this agreement, the contractor agrees to use that exchange  
6 water prior to drawing Independence Lake below 4,500 acre-feet above  
7 the rim;

8 (3) Certified that a Stage 3 drought emergency condition as  
9 defined by the, "Drought Management Plan for Reno-Sparks  
10 Metropolitan Area," developed by the Regional Water Planning and  
11 Advisory Board of Washoe County, Dated February 1991, has been  
12 declared, or substantially similar or equivalent measures are in place  
13 within the Contractor's service area. The stage 3 or substantially similar  
14 condition shall remain in effect at least until the entire 5,000 acre-feet of  
15 Project water made available under this contract is utilized; and

16 (4) Proceeded with implementation of the provisions of its  
17 Water Conservation Plan developed in satisfaction of the State of  
18 Nevada Revised Statute 704.662 § et. seq. (1991 Senate Bill 360).

19 (b) Except as provided in subdivision (d) below, replacement of  
20 exchange water shall begin when the present drought situation is over and shall be  
21 accomplished as quickly as possible. Replacement water shall become the  
22 property of the United States and shall be equivalent to one point one (1.1)

1 acre-foot for each (1.0) acre-foot of exchange water released by the United States.  
2 All replacement water shall be stored in Stampede Reservoir or provide  
3 equivalent benefits to the cui-ui and/or Lahontan cutthroat trout in Pyramid Lake  
4 pursuant to Endangered Species Act of 1973, as amended.

5 (c) The Contractor shall provide replacement water to the  
6 Contracting Officer either from Independence Lake directly to Stampede  
7 Reservoir or from other sources or methods of delivery of non-Project water  
8 which may be agreed to between the Contractor and the Contracting Officer.  
9 Replacement of exchange water shall include:

10 (1) All non-Project water in Independence Lake in excess of  
11 14,500 acre-feet above the natural rim on September 30 of any year, Provided  
12 that, the accumulation of replacement water from Independence Creek in any  
13 one year shall not result in the Contractor exceeding its claimed pre-1914  
14 water right of 3,000 acre-feet; and

15 (2) Other non-Project water determined by the Contractor to be  
16 available.

17 (d) The Contractor shall provide replacement water to the  
18 Contracting Officer as described under subdivision (c) above until the full amount  
19 of replacement water described in subdivision (b) above is repaid: Provided that,  
20 all exchange water owed to the United States, and determined by the Contracting  
21 Officer to be required for the next cui-ui spawning run, shall be replaced in time

1 for such run even if it would require drawing Independence Lake below the  
2 14,500 acre-feet of storage described in subdivision (c)(1) above.

3 SCHEDULING OF WATER

4 4. Not later than 30 days in advance, the Contractor shall submit to the  
5 Contracting Officer and the Federal Watermaster, separate written schedules,  
6 satisfactory to the Contracting Officer, showing the times and quantities of  
7 exchange water to be released and replacement water to be provided under  
8 Article 3 (b), (c) or (d). Written schedules for the release of exchange water and  
9 replacement water may be adjusted as mutually agreed by the parties.

10 MEASUREMENT OF WATER

11 5. The quantities of all replacement water made available to the  
12 Contracting Officer and all exchange water made available to the Contractor shall  
13 be determined by the Contracting Officer, based upon procedures developed by  
14 the parties to this contract in cooperation with the Federal Watermaster. The  
15 accuracy of such measurements shall be investigated upon request of either party  
16 and any errors shall be corrected promptly.

17 UNITED STATES NOT RESPONSIBLE FOR DELIVERY OF  
18 EXCHANGE WATER

19 6. The United States shall not be responsible for the control, care, storage  
20 or distribution of the exchange water after its release from Boca Reservoir and/or  
21 Project facilities.

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PAYMENT FOR EXCHANGE WATER

7. Upon execution of this contract, the Contractor shall pay the United States an administrative charge of \$5,000. Said payment shall be made by check made out to the Regional Director, Mid-Pacific Region, United States Bureau of Reclamation.

ADDITIONAL CONSIDERATIONS

8. In consideration of the United States' agreeing to make available up to 5,000 acre-feet of Project water pursuant to Article 3, the Contractor agrees to a waiver of its rights to require releases or pass throughs of water from the Truckee River Reservoirs solely for the generation of hydro-electric power pursuant to the Truckee River General Electric Co. Decree and Claim Nos. 5, 6, 7, 8, and 9 of the Orr Ditch Decree for two hydrologic years to be selected by the United States Fish and Wildlife Service and the Pyramid Lake Paiute Tribe of Indians following the execution of this contract and to a temporary transfer of said rights to the United States Department of the Interior for instream flows in the Truckee River below Derby Dam. The Contractor's agreement to waive and transfer its single purpose hydroelectric water rights as described above extends beyond the term of this contract. It is expected that this transfer will occur during the first two hydrologic years in which it is reasonably anticipated that at least 10,000 acre-feet of water will be available for the transfer.

**RENEGOTIATION**

1  
 2           9. The Contractor is responsible under any circumstances for providing  
 3 replacement water to the United States in the amount described under Article  
 4 3(b). The replacement of exchange water shall be accomplished without  
 5 conflicting with the water rights of other users or utilizing water that would have  
 6 been stored and available for release, or from flows otherwise available, for the  
 7 next cui-ui spawning run had this contract not been executed. It is impossible at  
 8 the time of the execution of this contract to determine if the repayment provisions  
 9 contained in Article 3 (c) can or cannot be implemented within the constraints of  
 10 this Article under all possible hydrologic scenarios. If at any time during the term  
 11 of this contract it is determined by the Contracting Officer that the repayment  
 12 provisions contained herein cannot be implemented within the terms of this  
 13 contract, then the Contractor agrees to renegotiate this agreement.

**UNITED STATES NOT LIABLE FOR LOSS**

14  
 15           10. The Contractor hereby releases and agrees to defend and indemnify the  
 16 United States, its officers, agents, and employees from every claim for damage to  
 17 persons or property, direct or indirect, resulting from the Contractor's  
 18 performance of this contract. Nothing contained in this article shall be construed  
 19 as an assumption of liability by the Contractor with respect to such matters.

**DETERMINATIONS**

20  
 21           11. The Contracting Officer shall have the right to make determinations  
 22 necessary to administer this contract that are consistent with the expressed and  
 23 implied provisions of this contract, the laws of the United States and the State,

1 and the rules and regulations promulgated by the Secretary of the Interior. Such  
2 determinations shall be made in consultation with the Contractor.

### 3 WATER AND AIR POLLUTION CONTROL

4 12. The Contractor, in carrying out this contract, shall comply with all  
5 applicable water and air pollution laws and regulations of the United States and  
6 the State of California/Nevada, and shall obtain all required permits or licenses  
7 from the appropriate Federal, State, or local authorities.

### 8 QUALITY OF WATER

9 13. (a) The Contractor shall not provide replacement water to the United  
10 States when it is determined by the Contracting Officer that the quality of said  
11 water will detrimentally affect Project purposes. Any such determination by the  
12 Contracting Officer shall not relieve the Contractor of its obligation to replace all  
13 of the exchange water provided to it under this contract.

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

### 20 EQUAL OPPORTUNITY

21 14. During the performance of this contract, the Contractor agrees as  
22 follows:

23 (1) The Contractor will not discriminate against any employee or  
24 applicant for employment because of race, color, religion, sex, or national  
25 origin. The Contractor will take affirmative action to ensure that applicants  
26 are employed, and that employees are treated during employment, without  
27 regard to their race, color, religion, sex, or national origin. Such action shall  
28 include, but not be limited to, the following: Employment, upgrading,  
29 demotion, or transfer; recruitment or recruitment advertising; layoff or  
30 termination; rates of pay or other forms of compensation; and selection for  
31 training, including apprenticeship. The Contractor agrees to post in  
32 conspicuous places, available to employees and applicants for employment,

1 notices to be provided by the Contracting Officer setting forth the provisions  
2 of this nondiscrimination clause.

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

7 (3) The Contractor will send to each labor union or representative of  
8 workers with which it has a collective bargaining agreement or other contract  
9 or understanding, a notice, to be provided by the Contracting Officer,  
10 advising the said labor union or workers' representative of the Contractor's  
11 commitments under Section 202 of Executive Order 11246 of September 24,  
12 1965, and shall post copies of the notice in conspicuous places available to  
13 employees and applicants for employment.

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

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

23 (6) In the event of the Contractor's noncompliance with the  
24 nondiscrimination clauses of this contract or with any of the said rules,  
25 regulations, or orders, this contract may be canceled, terminated, or  
26 suspended, in whole or in part, and the Contractor may be declared ineligible  
27 for further Government contracts in accordance with procedures authorized  
28 in said amended Executive Order, and such other sanctions may be imposed  
29 and remedies invoked as provided in said Executive Order, or by rule,  
30 regulation, or order of the Secretary of Labor, or as otherwise provided by  
31 law.

32 (7) The Contractor will include the provisions of paragraphs (1)  
33 through (7) in every subcontract or purchase order unless exempted by the  
34 rules, regulations, or orders of the Secretary of Labor issued pursuant to  
35 Section 204 of said amended Executive Order, so that such provisions will be  
36 binding upon each subcontractor or vendor. The Contractor will take such  
37 action with respect to any subcontract or purchase order as may be directed  
38 by the Secretary of Labor as a means of enforcing such provisions, including

1 by the Secretary of Labor as a means of enforcing such provisions, including  
2 sanctions for noncompliance: Provided, however, That in the event the  
3 Contractor becomes involved in, or is threatened with, litigation with a  
4 subcontractor or vendor as a result of such direction, the Contractor may  
5 request the United States to enter into such litigation to protect the interests  
6 of the United States.

#### 7 BOOKS, RECORDS AND REPORTS

8 15. The Contractor shall establish and maintain accounts and other books  
9 and records pertaining to administration of the terms and conditions of this  
10 contract, including: the Contractor's financial transactions, water supply data,  
11 project operation, maintenance and replacement logs, and project land and  
12 right-of-way use agreements; the water users' land-use (crop census),  
13 landownership, land-leasing and water-use data; and other matters that the  
14 Contracting Officer may require. Reports thereon shall be furnished to the  
15 Contracting Officer in such form and on such date or dates as the Contracting  
16 Officer may require. Subject to applicable Federal laws and regulations, each  
17 party to this contract shall have the right during office hours to examine and make  
18 copies of the other party's books and records relating to matters covered by this  
19 contract.

#### 20 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

21 16. The expenditure or advance of any money or the performance of any  
22 obligation of the United States under this contract shall be contingent upon  
23 appropriation or allotment of funds. Absence of appropriation or allotment of  
24 funds shall not relieve the Contractor from any obligations under this contract.  
25 No liability shall accrue to the United States in case funds are not appropriated or  
26 allotted.

#### 27 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

#### 32 OFFICIALS NOT TO BENEFIT

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



1 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

2 19. (a) The Contractor shall comply with Title VI of the Civil Rights Act  
3 of 1964 (42 U.S.C. § 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L.  
4 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. § 6101, et  
5 seq.) and any other applicable civil rights laws, as well as with their respective  
6 implementing regulations and guidelines imposed by the U.S. Department of the  
7 Interior and/or Bureau of Reclamation.

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

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

25 NOTICES

26 20. Any notice, demand, or request authorized or required by this contract  
27 shall be deemed to have been given, on behalf of the Contractor, when mailed,  
28 postage prepaid, or delivered to the Regional Director, Mid-Pacific Region,  
29 Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898,  
30 and on behalf of the United States, when mailed, postage prepaid, or delivered to  
31 the Board of Directors of Westpac Utilities, PO Box 30028, Reno NV  
32 89520-3028. The designation of the addressee or the address may be changed by  
33 notice given in the same manner as provided in this article for other notices.

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

THE UNITED STATES OF AMERICA

By *Paul Patterson*  
*Regional Director*

WESTPAC UTILITIES

(SEAL)

By *Philip Sheperd* *JC*  
Title *President* *dkc*

Attest:

\_\_\_\_\_  
Title

WEST2.CON