

# **EXHIBIT**

## **TMWA 4-2**

**Truckee River Water Quality Settlement  
Agreement,  
October 10, 1996**

## TRUCKEE RIVER WATER QUALITY SETTLEMENT AGREEMENT

This Truckee River Water Quality Settlement Agreement ("Agreement") is entered into this 10th day of October, 1996 by and among the City of Reno ("Reno"), the City of Sparks ("Sparks"), the County of Washoe ("Washoe"), the United States Department of the Interior ("DOI"), the United States Department of Justice ("DOJ"), the United States Environmental Protection Agency ("EPA"), the Nevada Division of Environmental Protection ("NDEP"), and the Pyramid Lake Paiute Tribe of Indians ("Tribe").

### A. RECITALS

1. The parties to this Agreement have engaged in negotiations concerning issues currently in litigation related to the waters of the Truckee River. The negotiations also were conducted with reference to applicable federal and state laws, the terms and conditions of the National Pollution Discharge Elimination System ("NPDES") permit for the Truckee Meadows Water Reclamation Facility (Facility), and the Cui-ui Recovery Plan.

2. The negotiations were conducted for the purpose of arriving at a settlement of pending litigation brought by the Tribe against Reno, Sparks, EPA, and NDEP, more particularly identified as Pyramid Lake Paiute Tribe of Indians versus the United States Environmental Protection Agency, et al., CV-R-85-025-DWH and Pyramid Lake Paiute Tribe of Indians versus the United States Environmental Protection Agency, et al., CV-R-86-438-DWH, in the United States District Court for the District of Nevada.

3. The negotiations have resulted in an Agreement to settle and dismiss the pending litigation, to improve the water quality of the Truckee River and to increase flows to Pyramid Lake. The parties to this Agreement recognize that the acquisition of Truckee River water rights and augmentation of the flow of the Truckee River pursuant to this Agreement also will improve habitat conditions for the fish of Pyramid Lake and have the potential to increase the nutrient assimilative capacity of the Truckee River and reduce non-point source loadings of pollutants to the Truckee River.

4. In order to fully implement this Agreement, the parties to this Agreement recognize that additional legislative, judicial, administrative or other action may be required.

**B. AGREEMENT**

NOW, THEREFORE, based upon the foregoing, the parties hereto agree as follows:

1. *Water Rights Acquisitions By Reno, Sparks and Washoe.*

a. During the five (5) years following the execution of this Agreement, Reno, Sparks and Washoe, mutually agree to provide a total of twelve million dollars (\$12,000,000.00) for the expeditious acquisition of Truckee River water rights. Reno, Sparks and Washoe agree to use the twelve million dollars (\$12,000,000.00) to acquire Truckee River water rights as nearly as possible at the same rate as DOI acquires water rights pursuant to section 2 of this Agreement. It is the intent of the parties to this Agreement that, to the maximum extent possible, the twelve million dollars (\$12,000,000.00) cover the cost of water rights and their acquisition but not the costs of acquiring land or interests in lands other than water rights. Accordingly, in those cases where lands and interests in lands are acquired incidental to the acquisition of water rights and then later disposed of through sale, the revenue received from such sales shall also be used for the acquisition of water rights to be used in the program described in section 3 until a net of twelve million dollars (\$12,000,000.00) is expended for the purchase of water rights under this section. In those cases where lands and interests in lands are acquired incidental to the acquisition of water rights and then retained or disposed of through exchange, an additional dollar amount equal to the value, reasonably determined, of such lands and interests in lands shall be used for the acquisition of additional water rights for use in the program described in section 3 until a net of twelve million dollars (\$12,000,000.00) is expended for the purchase of water rights under this section.

b. The water rights acquired pursuant to subsection 1a shall be dedicated and used in accordance with the program described in section 3. Reno, Sparks and Washoe agree to use their best efforts to insure that the water rights they acquire will achieve the objectives of section 3 to the maximum possible extent.

c. If at the end of five (5) years from the date of this Agreement, Reno, Sparks and Washoe have not spent twelve million dollars (\$12,000,000.00) to acquire Truckee River water rights in accordance with subsection 1a, Reno, Sparks and Washoe agree that they will cause all unspent funds (i.e., the difference between the total amount appropriated by Congress commencing in federal fiscal year 1995 for acquisition of Truckee River water rights pursuant to section 2, to a maximum of twelve million dollars (\$12,000,000.00) and the total amount expended by Reno, Sparks and Washoe for water rights acquired pursuant to section 1 within the five (5) year period) to be placed in an escrow account

to be used for the acquisition of additional water rights for the program described in section 3. Prior to the end of the fifth year, mutually acceptable escrow instructions will be jointly developed by Reno, Sparks, Washoe, DOI and the Tribe. Such escrow instructions shall include procedures to deposit to the escrow account (i) funds received from the sale of lands or interest in lands, other than water rights, acquired in conjunction with acquisition of Truckee River water rights pursuant to this section when they are sold and (ii) an amount equal to the value, reasonably determined, of any lands and interest in lands, other than water rights, which are not sold but instead retained or exchanged for other assets.

d. Until the dollar amount required by this Agreement is expended, Reno, Sparks and Washoe agree to provide DOI and the Tribe a semiannual statement showing funds made available, funds spent, water rights acquired under subsection 1a, and the status of the escrow account under subsection 1c.

2. Water Rights Acquisitions By DOI.

a. Subject to the availability of appropriations, commencing in federal fiscal year 1995 DOI agrees to provide twelve million dollars (\$12,000,000.00) within five (5) years from the date of this Agreement for the expeditious acquisition of Truckee River water rights. DOI will utilize its best efforts to obtain the full amount of those appropriations no later than October 1, 2000, and will use the appropriated funds to acquire Truckee River water rights. DOI agrees to acquire Truckee River water rights as nearly as possible at the same rate as Reno, Sparks, and Washoe acquire water rights pursuant to section 1 of this Agreement. It is the intent of the parties to this Agreement that, to the extent possible, the twelve million dollars (\$12,000,000.00) cover the cost of water rights and their acquisition but not the costs of acquiring land or interests in lands other than water rights. Accordingly, to the extent authorized by law, in those cases where lands and interests in lands are acquired incidental to the acquisition of water rights and then later disposed of through sale, the revenue received from such sales shall also be used for the acquisition of water rights to be used in the program described in section 3 until a net of twelve million dollars (\$12,000,000.00) is expended for the purchase of water rights under this section. In those cases where lands and interests in lands are acquired incidental to the acquisition of water rights and then retained or disposed of through exchange, an additional dollar amount equal to the value, reasonably determined, of such lands and interests in lands shall be used for the acquisition of additional water rights for use in the program described in section 3 until a net of twelve million dollars (\$12,000,000.00) is expended for the purchase of water rights under this section.

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b. The water rights acquired pursuant to subsection 2a shall be dedicated and used in accordance with the program described in section 3. DOI agrees to use its best efforts to insure that the water rights acquired pursuant to this section will achieve the objectives of section 3 to the maximum possible extent.

c. Until the dollar amount required by this Agreement is expended, DOI agrees to provide to Reno, Sparks, Washoe and the Tribe a semiannual statement showing funds appropriated, funds spent, funds remaining, and water rights acquired under subsection 2a.

### 3. Joint Truckee River Water Quality Program.

a. Water rights acquired by Reno, Sparks, Washoe and DOI pursuant to sections 1 and 2 shall be dedicated, managed and used by them jointly, primarily to augment instream flows in the Truckee River from the Reno/Sparks area to Pyramid Lake to assist in the compliance with water quality standards, and also to improve water quality and to maintain and preserve the lower Truckee River and Pyramid Lake for purposes of fish and wildlife, including threatened and endangered species, and recreation. The parties acquiring water under this Agreement and the Tribe (Joint Program Parties) shall meet at least annually to discuss and develop cooperative management measures to accomplish the purposes of this Agreement. NDEP and EPA may participate in these meetings as consultants.

b. Reno, Sparks, Washoe and DOI shall provide a release schedule, in accordance with the cooperative management measures, in a timely manner to the Federal Water Master and/or to the Truckee River Administrator under the Truckee River Operating Agreement (TROA) currently being negotiated and to the Bureau of Reclamation.

c. In managing the acquired water rights, the Joint Program Parties agree to use their best efforts to achieve the purposes and benefits of Truckee River flow augmentation described in subsection 3a by managing the available water and scheduling releases according to the following priority order:

(i). To meet water quality standards in the river from the Vista gauge to Pyramid Lake.

(ii). To improve water quality in the river from Vista to Pyramid Lake when sufficient water is not available to meet standards.

(iii). To maintain aquatic and riparian habitat in the river downstream from Derby Dam.

(iv). To promote aesthetic and recreational purposes through the Reno/Sparks area and continuing to Pyramid Lake.

d. In determining the timing and amount of releases for the above purposes, the Joint Program Parties recognize that any release of water may provide multiple benefits. The Joint Program Parties recognize that in some years these uses may require release of all water acquired pursuant to sections 1 and 2 of this Agreement. In determining the timing and quantity of releases and storage, the Joint Program Parties will take into consideration, among other matters, the amount of water available, the need to maintain carryover storage, the potential for spill loss, estimates of incremental evaporation loss, the benefits of releasing the water, the need to meet existing or revised NPDES permit conditions, and future water augmentation needs.

e. Water secured by Reno, Sparks and Washoe, in addition to that acquired under section 1, for specific instream flow and water quality purposes different from the priorities set forth in subsection 3b may be accounted for separately, stored and released for the designated purposes as long as there is sufficient reservoir space available pursuant to section 5 to achieve the purposes of subsections 3a, 3b, and 7d.

f. Water acquired pursuant to sections 1 and 2 is not required to be used to compensate for changes in river flow resulting from implementation of the proposed TROA.

g. The Tribe agrees to provide Reno, Sparks and Washoe with reasonable access to the Pyramid Lake Indian Reservation for the purpose of any water quality monitoring program used in connection with this Agreement.

h. In the event the measures in this Agreement are not sufficient for Reno, Sparks, and Washoe County to fully comply with the total dissolved solids requirements of the NPDES permit for the Facility without use of reverse osmosis or similar technology, the Joint Program Parties, EPA and NDEP agree to work cooperatively to identify and encourage solutions to the compliance problem including, but not limited to, examination of reducing non-point source loading to the Truckee River below Wadsworth through pumping saline groundwater to appropriate disposal sites or to industrial users.

#### 4. *Transfers of Water Rights.*

The parties acquiring water rights under this Agreement and the Tribe agree, prior to filing any transfer application regarding such rights, a) to consult among themselves as to whether they will consent to such transfer or transfers and b) to work cooperatively

in seeking to maximize the quantity of water to be secured for storage and use pursuant to this Agreement. No water rights shall be purchased under this Agreement out of the Carson Division of the Newlands Project.

#### 5. Storage

a. In connection with the proposed TROA, DOI agrees to negotiate with Reno, Sparks and Washoe regarding reasonable terms and conditions for storage, including carry-over storage and exchange, for water which accrues from the water rights acquired pursuant to sections 1 and 2 of this Agreement and any additional water rights obtained by Reno, Sparks and Washoe and dedicated to the purposes described in section 3 in available Truckee River reservoirs to carry out the program described in section 3 of this Agreement. In the event TROA does not go into effect, DOI agrees to negotiate for such storage arrangements pursuant to any other applicable authority. The Tribe agrees to support the efforts of Reno, Sparks, Washoe and DOI to negotiate reasonable terms and conditions for the storage of water under the proposed TROA or other lawful authority.

b. During the time period prior to the effective date of TROA, DOI agrees to negotiate with Reno, Sparks and Washoe regarding reasonable terms and conditions for exchanges of water or for storage, including carry-over storage, for water under water rights acquired pursuant to this Agreement in order to implement the programs described in section 3 and subsection 7a of this Agreement.

c. During the period prior to the effective date of TROA, DOI and the Tribe agree not to increase the amount of their water stored in upper Truckee River reservoirs as a result of reducing the release of Floriston rate water during the months of June through September when such storage would cause a violation of water quality standards in the Truckee River.

d. Reasonable terms and conditions for the storage of water pursuant to subsections 5a, 5b, 7a, and 7c shall include coverage by Reno, Sparks and Washoe of an appropriate share of costs that may be incurred by the Water Master and/or Truckee River Administrator under TROA for management, accounting and delivery of such stored water to serve water rights, but shall be otherwise non-reimbursable.

e. The quantity and terms of storage to be provided pursuant to this Agreement will be subject to the terms and conditions of TROA when it goes into effect and may be used only to the extent that the Bureau of Reclamation determines that space is available for that purpose in the federal Truckee River reservoirs.

f. The Joint Program Parties agree that the storage of water pursuant to this Agreement in Truckee River reservoirs will be junior to the storage rights set forth in the Preliminary Settlement Agreement as Modified by the Ratification Agreement, as defined in section 203 of Public Law 101-618, or in the contract for the storage of non-project water among Sierra Pacific Power Company, Washoe County Water Conservation District, the Tribe and the United States dated June 29, 1994 (Contract No. 4-07-20-W1177).

#### 6. *Modification Of NPDES Permit.*

The parties to this Agreement recognize that the acquisition of water rights and the augmentation of the flow of the Truckee River pursuant to this Agreement have the potential to increase the nutrient assimilative capacity of the Truckee River and to reduce the amount, or otherwise lessen the impact, of non-point source pollution to the Truckee River and/or Pyramid Lake. Upon request of the NPDES permittee for the Facility and pursuant to part 1.A.7 of permit number NV0020150, the NPDES permit shall be reopened by NDEP and, to the extent permitted by and in accordance with all applicable state and federal laws and regulations, modified to include appropriate discharge permit provisions, including possible increases in wasteload allocations, for the Facility in recognition of the various water quality benefits of any increased flows and reduced non-point source loadings associated with the acquisition, storage and use of water rights pursuant to this Agreement. The Tribe and DOI will support all reasonable efforts of the permittee to reopen and to seek to modify the NPDES permit for the Facility if the application is in accordance with all applicable state and federal laws and regulations and the terms of this section.

#### 7. *Drought Water Supply for Effluent Reuse Program*

a. For a period not to exceed five (5) years from the date of this Agreement, Reno, Sparks and Washoe may use water available to them from water rights acquired under this Agreement to meet return flow requirements of effluent reuse projects. Amounts of water which may be used for these purposes shall not exceed 1,000 acre feet per year. This water may be stored pursuant to subsection 5b; and, provision of storage space shall be in accordance with subsections 5d, 5e, and 5f.

b. Once "Instream Flow and Water Quality Credit Water" has been established as required in Section 5.1 of the May 30, 1994 Agreement Concerning Applications to Appropriate the Waters of the Truckee River and its Tributaries (appended hereto), then water to meet return flow requirements of effluent reuse projects may be made up in whole or in part with the 6,700 acre feet of groundwater component set forth in that section.



c. When "Instream Flow and Water Quality Credit Water" has been established as defined in section 7b of this Agreement, then storage of the water under water rights appurtenant to land being irrigated with the 6,700 acre feet of effluent shall be in accordance with subsections 5d, 5e, and 5f.

d. After TROA becomes effective, and for the quantity of effluent reuse beyond full utilization of the 6,700 acre feet of groundwater component, DOI agrees to provide storage space for water to be provided by Reno, Sparks and Washoe and used to meet return flow requirements of effluent reuse projects for 50% of the then current M&I storage price. Withdrawals of water from storage for such purposes shall not exceed 5,300 acre feet of water in any one year and shall occur only to the extent needed to meet return flow requirements during drought conditions when there is not sufficient water available in the Truckee River to satisfy the rights of agricultural water users in the Truckee Meadows.

#### 8. Contingency Requirements.

a. Participation by Reno, Sparks and Washoe in the acquisition of water rights for the uses and purposes described herein is contingent upon the following: (i) the availability of federal matching funds from DOI pursuant to section 2 and (ii) an agreement on storage pursuant to sections 5 and 7. The failure of DOI or the Tribe to perform any of their obligations with respect to these contingencies shall release Reno, Sparks and Washoe from any further duties or obligations arising under this Agreement.

b. If Reno, Sparks and Washoe do not acquire the water rights pursuant to section 1 and/or do not use their water and water rights acquired pursuant to this Agreement for the joint Truckee River Water Quality Program described in section 3 or consider that they have no further obligations under this Agreement, then DOI is released from its obligations or duties pursuant to this Agreement.

c. The expenditure or advance of any money by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

#### 9. Tribe's Water Quality Standards.

a. The Tribe agrees that it will provide Reno, Sparks and Washoe a full and fair opportunity to comment on any proposed water quality standards for the lower Truckee river or Pyramid Lake and any proposed revisions to those standards that are being considered by the Tribe prior to their adoption.

b. The Tribe agrees that it will not adopt water quality standards for the lower Truckee River or for Pyramid Lake which have the effect of substantially negating the value of this Agreement to Reno, Sparks or Washoe.

c. If Reno, Sparks or Washoe contend that the Tribe has adopted water quality standards for the lower Truckee River or for Pyramid Lake which have the effect of substantially negating the value of this Agreement to Reno, Sparks or Washoe, then Reno, Sparks or Washoe shall so notify the Tribe in writing within 60 days following the adoption of such standards by the Pyramid Lake Paiute Tribal Council. Reno, Sparks, Washoe and The Tribe agree to use their best efforts to attempt to resolve the dispute within the ensuing 90 days. If those efforts are not successful, Reno, Sparks, Washoe and the Tribe shall select by unanimous agreement a mediator who shall try to resolve their differences through a voluntary agreement. The fees and expenses of the mediator shall be borne equally by Reno, Sparks, Washoe and the Tribe. DOI, DOJ, EPA and NDEP may participate in the mediation to assist Reno, Sparks, Washoe and the Tribe in arriving at a mutually acceptable outcome.

d. If Reno, Sparks, Washoe and the Tribe are unable to select a mediator by unanimous agreement, or if the mediation does not produce an agreement within 120 days after the mediator is selected, Reno, Sparks, Washoe or the Tribe may call for binding arbitration by providing written notice to one another. Reno, Sparks and Washoe collectively shall select one member to serve on the arbitration panel, the Tribe shall select one member to serve on the arbitration panel and those two members shall select a third person to serve as chair of the arbitration panel. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. DOI, DOJ, EPA and NDEP may participate in the arbitration in a capacity similar to an amicus curiae pursuant to rules and procedures established by the arbitration panel.

e. By majority vote, the arbitration panel shall first determine whether the water quality standards adopted by the Tribe for the lower Truckee River and Pyramid Lake have the effect of substantially negating the value of this Agreement to Reno, Sparks and Washoe. If the panel so finds, it shall then determine by majority vote the modifications which must be made to the standards in order to avoid substantially negating the value of this Agreement to Reno, Sparks and Washoe.

f. Within 60 days after a decision of the arbitration panel by majority vote, the Tribe shall decide whether to modify its water quality standards as determined by the arbitration panel. If the Tribe does not modify its water quality standards as

determined by the arbitration panel, the arbitration panel shall reconvene to determine what measures shall be taken and/or implemented in order to avoid substantially negating the value of this Agreement to Reno, Sparks, Washoe. The decisions of the arbitration panel by majority vote shall be final and binding on Reno, Sparks, Washoe and the Tribe.

g. The fees and expenses of the arbitration panel shall be borne equally by Reno, Sparks, Washoe and the Tribe.

h. The time periods set forth in this section may be modified by mutual agreement of Reno, Sparks, Washoe and the Tribe.

i. Nothing in this section shall be construed as limiting EPA's obligation under the Clean Water Act to review and approve water quality standards for the lower Truckee River or in Pyramid Lake.

#### 10. *Dismissal Of Pending Litigation.*

The Tribe agrees to dismiss its pending water quality lawsuits against Reno, Sparks, EPA and NDEP (CV-R-85-025-DWH and CV-R-86-438-DWH) with prejudice by the execution and filing of a stipulation of dismissal with prejudice immediately following the execution of this Agreement.

#### 11. *Informal Dispute Resolution Procedures.*

The parties to this Agreement agree that with respect to any dispute arising under this Agreement, except for a dispute arising under section 9 as to water quality standards adopted by the Tribe, the following dispute resolution procedures shall apply:

a. The parties to a particular dispute, each represented by a designee, may attempt to resolve the dispute within ninety (90) days from the time the dispute arises, or within such additional time as the parties to the particular dispute may mutually agree. A dispute shall be deemed to arise on the date one party sends a written Notice of Dispute to the other party or parties. Such Notice shall contain a concise statement of the matter in dispute and the position of the party sending the Notice.

b. If resolution of the dispute has not been achieved through consultation within the time period agreed to, the parties to the particular dispute may, by unanimous consent, select a mediator who shall attempt to resolve the dispute. The fees and expenses of the mediator shall be borne equally by the parties to the particular dispute.

c. Notwithstanding the other provisions of this section, any party to the dispute may exercise any rights, remedies, or privileges which may be available to them under applicable law, including but not limited to, proceedings through appropriate court action to enforce the terms of this Agreement or to recover damages. The existence of an unresolved dispute shall not be deemed to excuse any party from performance of its obligations under this Agreement.

12. No Admission By Any Party.

This Agreement is not, and shall not be construed as, an admission against interest or of wrongdoing or liability by any party hereto with respect to any fact or issue involved in any pending or future litigation.

13. Good Faith And Fair Dealing.

The parties hereto shall implement the provisions of this Agreement in good faith and shall observe all standards of fair dealing with respect thereto.

14. Modifications To This Agreement.

This Agreement may be modified, in writing, including providing for extensions of time for completion of the tasks described in sections 1, 2 and 7, by agreement of the parties signatory hereto.

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

PYRAMID LAKE PAIUTE TRIBE OF INDIANS

Attest: Gina Wadsworth  
Gina Wadsworth,  
Tribal Secretary

By Norman Harry  
Norman Harry, Chairman

Attest: Junea Gade  
Reno City Clerk

CITY OF RENO  
By Jeff Griffith  
Jeff Griffith, Mayor

Approved as to form:  
Patricia A. Lynch  
Reno City Attorney

CITY OF SPARKS

Attest: [Signature]  
Sparks City Clerk

By [Signature]  
Bruce Breslow, Mayor

Approved as to form:

[Signature]  
Sparks City Attorney

COUNTY OF WASHOE

Attest: [Signature]  
Washoe County Clerk

By [Signature]  
Steve Bradhurst, Chairman of the Board of County Commissioners

Approved as to form:

[Signature]  
Washoe County District Attorney

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

Approved as to form only:


[Signature]  
By [Signature]  
Attorney General,  
State of Nevada

By [Signature]  
L.H. Dodgion, Administrator


UNITED STATES DEPARTMENT OF JUSTICE

By [Signature]  
Lois J. Schiffer, Assistant Attorney  
General, Environment and Natural  
Resources Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By   
Felicia Marcus, Administrator,  
Region 9

UNITED STATES DEPARTMENT OF THE INTERIOR

By   
Ada E. Deer, Assistant Secretary