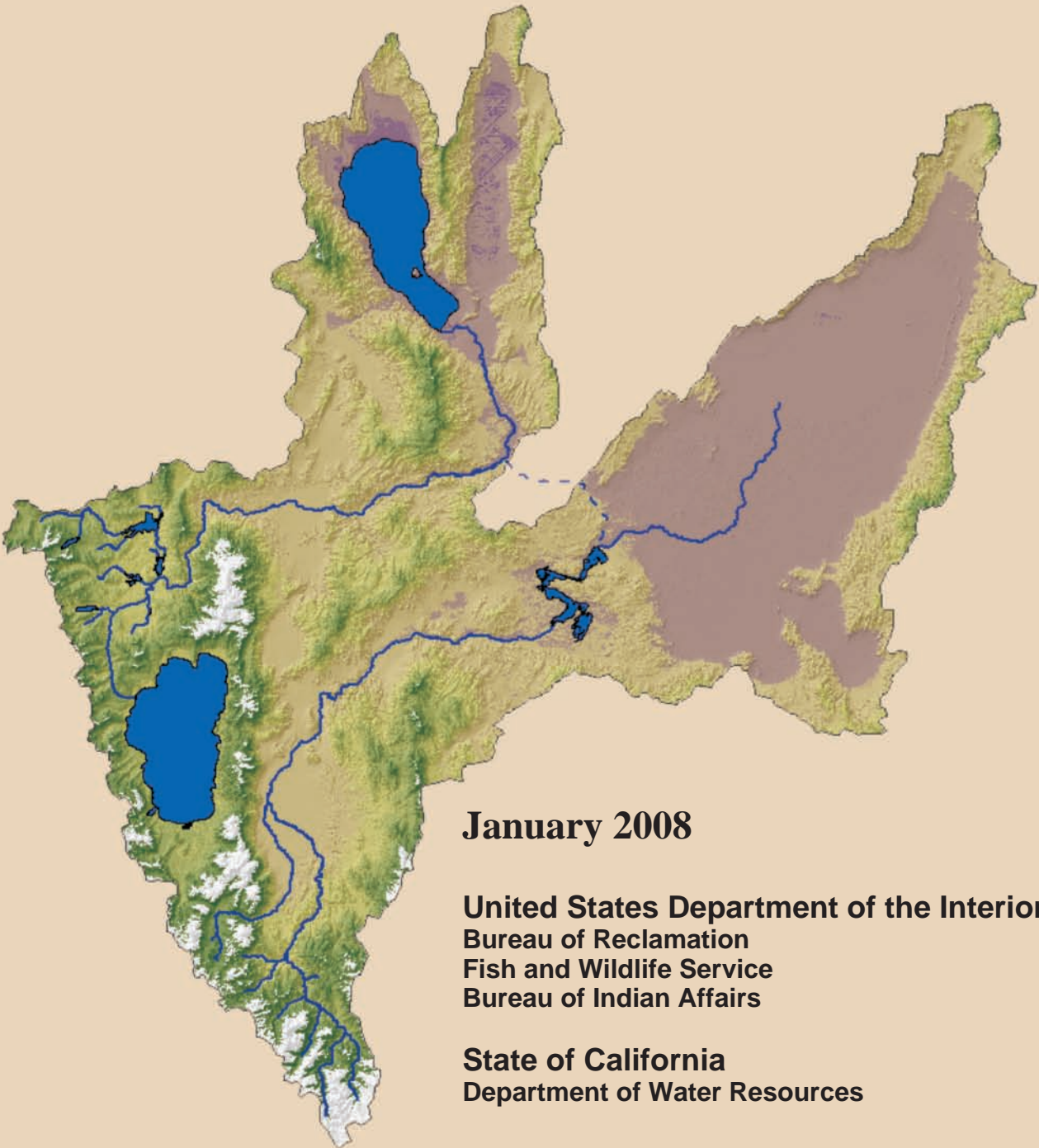


# Truckee River Operating Agreement

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## Comments and Responses Appendix



**January 2008**

**United States Department of the Interior  
Bureau of Reclamation  
Fish and Wildlife Service  
Bureau of Indian Affairs**

**State of California  
Department of Water Resources**

**Final Environmental Impact Statement/Environmental Impact Report**

# **Truckee River Operating Agreement**

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## **Comments and Responses Appendix**

**January 2008**

**United States Department of the Interior  
Bureau of Reclamation  
Fish and Wildlife Service  
Bureau of Indian Affairs**

**State of California  
Department of Water Resources**

## Comments and Responses Appendix

The revised draft environmental impact statement/environmental impact report (DEIS/EIR) for the Truckee River Operating Agreement (TROA) was filed with the Environmental Protection Agency (EPA) on August 23, 2004, and the California State Clearinghouse on August 26, 2004. A Notice of Availability and Public Hearings appeared in the *Federal Register* August 25, 2004. Three news releases announcing availability of the document and dates, times, and locations of open house meetings or public hearings were released on August 25, September 14, and October 14, 2004. Comments were scheduled to be received by October 29, 2004.

Approximately 400 copies of the revised DEIS/EIR were distributed to Nevada and California members of Congress, State senators, and assembly members; Federal, State, and local government agencies; Indian tribes; entities and organizations; power and water purveyors; environmental groups; libraries; and the general public. Open house public information workshops were held in Fernley and Reno, Nevada, on September 21; in Fallon, Nevada, on September 22; in Kings Beach and Truckee, California, on September 23; and in Nixon, Nevada, on October 1, 2004. The original comment period was extended to December 30, 2004, following requests from the public and several entities. A letter announcing the extension was mailed on October 26, 2004, to each recipient of the revised DEIS/EIR. A news release announcing the extension of the comment period also was released on October 26, 2004. Notice of the comment period extension was published in the *Federal Register* on November 10, 2004.

A total of 47 comment letters (paper or electronic) were received during the public comment period.

In addition, during the comment period, five public hearings were held: Monday, October 18, 2004 in Reno, Nevada; Tuesday, October 19, 2004, in Fernley, Nevada, and in Nixon, Nevada; Wednesday, October 20, 2004, in Truckee, California; and Thursday, October 21, 2004, in Fallon, Nevada. Eight speakers gave oral testimony at the first public hearing; one at the second public hearing; two at the third public hearing; none at the fourth hearing; and five at the fifth hearing. A total of 9 entities provided *written* public hearing comments.

A total of 567 individual comments were identified and addressed. The comment letters, transcripts of the public hearing testimony, and the written public hearing comments are reproduced in this appendix. Responses to the individual comments follow the comment documents.

A number of identical or similar comments appeared in many of the comment documents. Where the substance of a comment has already received a response, the reader is referred to a previous response.

The following table provides a list of those who commented on the August 2004 revised DEIS/EIR, the alphanumeric designation of the comment document, and the page number where the comment document and the responses to the comment document appear.

**Table 1—List of commenters and page numbers in this document where each comment document and response to that document begins. Designation code letters identify a category of commenters, while the code number identifies a particular group or individual within that category**

Commenter	Designation	Page No.	
		Comment	Response
<b>Federal Government</b>			
U.S. EPA, Region IX (11-12-04)	FG 01	7	391
Department of the Army, U.S. Army Corps of Engineer District, Sacramento (12-20-04)	FG 02	27	395
<b>Nevada State Government</b>			
State of Nevada, Department of Conservation and Natural Resources (10-14-04)	NSG 01	31	395
State of Nevada, Department of Wildlife (10-18-04)	NSG 02	33	395
State of Nevada, Division of State Lands (10-11-04)	NSG 03	35	396
<b>California State Government</b>			
State of California, Department of Fish and Game (12-20-04)	CSG 01	37	396
State of California, Water Resources Control Board (12-28-04)	CSG 02	41	396
State of California, Lands Commission (12-29-04)	CSG 03	45	397
State of California, Governor's Office of Planning and Research, State Clearinghouse and Planning Unit (12-31-04)	CSG 04	49	397
State of California, Regional Water Quality Control Board, Lahontan Region, (12-24-04)	CSG 05	51	398
<b>Nevada County Government</b>			
Office of the District Attorney of Churchill County, Nevada (09-16-04)	NCG 01	55	399
Office of the Churchill County Manager, Nevada (09-16-04)	NCG 02	59	399
Office of the Churchill County Commissioners (10-11-04)	NCG 03	61	399
Washoe County Department of Water Resources (12-15-05)	NCG 04	63	399
Office of the Churchill County Manager (12-27-04)	NCG 05	65	399

**Table 1— List of commenters and page numbers in this document where each comment document and response to that document begins. Designation code letters identify a category of commenters, while the code numbers identifies a particular group or individual within that category—continued**

Commenter	Designation	Page No.	
		Comment	Response
<b>Nevada Local Government</b>			
City of Fallon, Office of the Mayor (10-26-04)	NLG 01	95	415
City of Fallon, Office of the Mayor (12-22-04)	NLG 02	97	415
<b>California County Government</b>			
Placer County Department of Public Works (10-21-04)	CCG 01	99	415
<b>California Local Government</b>			
Town of Truckee (12-21-04)	CLG 01	101	415
<b>Indian Tribes</b>			
Fredericks, Pelcyger & Hester, LLC, Attorneys at Law on behalf of Pyramid Lake Paiute Tribe (12-30-04)	IT 01	105	416
<b>Entities and Organizations</b>			
Newlands Water Protective Association (10-11-04)	EO 01	113	416
California Fly Fisher Unlimited (11-30-04)	EO 02	115	417
Truckee River Basin Water Group (12-20-04)	EO 03	117	419
Somach, Simmons & Dunn on behalf of Heavenly Valley Ski Resort (12-28-04)	EO 04	121	419
<b>Power and Water Purveyors</b>			
Truckee-Carson Irrigation District (10-07-04)	PW 01	123	419
Truckee-Carson Irrigation District (10-08-04)	PW 02	127	419
Sierra Valley Water Company (11-08-04)	PW 03	131	419
McQuaid Bedford & Van Zandt on behalf of TCID (12-21-04)	PW 04	133	419
Truckee-Carson Irrigation District (12-20-04)	PW 05	137	419
Principia on behalf of TCID (12-27-04)	PW 06	141	421
Binder & Associates Consulting on behalf of TCID, city of Fallon, and Churchill County (12-28-04)	PW 07	149	424
Placer County Water Agency (12-28-04)	PW 08	169	432
Truckee Meadows Water Authority (12-29-04)	PW 09	171	433
McQuaid Bedford & Van Zandt on behalf of TCID (12-30-04)	PW 10	175	433

**Table 1— List of commenters and page numbers in this document where each comment document and response to that document begins. Designation code letters identify a category of commenters, while the code numbers identifies a particular group or individual within that category—continued**

Commenter	Designation	Page No.	
		Comment	Response
<b>Environmental Groups</b>			
Toiyabe Chapter of the Sierra Club	EG 01	215	445
Lahontan Valley Environmental Alliance	EG 02	217	448
<b>Individuals</b>			
Susan Lynn	IND 01	221	448
Brett Kandt	IND 02	223	448
Denny McLeod	IND 03	225	449
Bruce Gescheider	IND 04	227	449
Mike Dillion	IND 05	229	449
James Jeffery	IND 06	231	449
Bob Baiocchi	IND 07	233	449
John A. Schroeder	IND 08	237	449
Paul Stanley	IND 09	239	449
John L. Winther	IND 10	241	449
Charles B. Renfrew	IND 11	243	449
Robert K. Brorsen	IND 12	245	449
Steven K. Buster	IND 13	247	450
James L. Ryan	IND 14	249	450
Ernest C. Voight	IND 15	251	450
John Snyder	IND 16	253	450
Richard B. Madden	IND 17	255	450
David Yardas	IND 18	257	450
David C. Welch	IND 19	259	450
Mervin Wright, Jr.	IND 20	263	450
Peter Towle	IND 21	267	452
Richard Anderson	IND 22	269	452
<b>Public Hearings</b>			
Monday, October 18, 2004: Reno, Nevada	1 PH	271	
Tuesday, October 19, 2004: Fernley, Nevada	2 PH	313	
Tuesday, October 19, 2004: Nixon, Nevada	3 PH	325	

**Table 1— List of commenters and page numbers in this document where each comment document and response to that document begins. Designation code letters identify a category of commenters, while the code numbers identifies a particular group or individual within that category—continued**

Commenter	Designation	Page No.	
		Comment	Response
Wednesday, October 20, 2004: Truckee, California	4 PH	345	
Thursday, October 21, 2004: Fallon, Nevada	5 PH	353	
<b>Commenters at Public Hearings</b>			
Robert Cashell, Mayor, City of Reno	1 PH 01	276	452
Tony Armstrong, Mayor, City of Sparks and Chairman of TMWA Board of Directors	1 PH 02	279	452
James Shaw, Chairman, Washoe County Board of Commissioners	1 PH 03	281	452
Lori Williams, TMWA General Manager	1 PH 04	284	452
Alan Biaggi, Director of Nevada Department of Conservation and Natural Resources	1 PH 05	289	452
Penny Mayer, Reno/Sparks Association of Realtors	1 PH 06	291	452
John Breternitz, Chairman of the Board of Directors of the Reno/Sparks Chamber of Commerce	1 PH 07	292	452
Harry York	1 PH 08	295	452
Daryl Drake	1 PH 09	311	452
Joseph W. Mayer	1 PH 10	312	452
Steve Bradhurst, Director of Washoe County Department of Water Resources	2 PH 01	318	452
Eric Ringelberg, Executive Director of Pyramid Lake Fisheries	3 PH 01	329	452
Mervin Wright, Jr.	3 PH 02	333	452
Michael F. Mackedon, City Attorney for city of Fallon	5 PH 01	357	453
Brad Goetsch, Churchill County	5 PH 02	360	453
Lyman McConnell, Project Manager of TCID	5 PH 03	365	453
Michael Van Zandt	5 PH 04	367	454
Norman Frey	5 PH 05	387	455

## Comment FG 01



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

November 12, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza St.  
Room 320  
Carson City, NV 89701

Subject: EPA Comments on the Revised Draft Environmental Impact Statement for Truckee River Operating Agreement (CEQ. # 040402)

Dear Mr. Parr:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced revised draft environmental impact statement (RDEIS) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

EPA supports the Truckee River Operating Agreement (TROA). TROA will increase the operational flexibility and efficiency of reservoirs in the Lake Tahoe and Truckee River basins and provide opportunities for municipal and industrial (M&I) drought water supplies, improved Truckee River water quality, and enhanced flows in the lower Truckee River for the benefit of Pyramid Lake fish. Implementation of TROA will establish California and Nevada interstate water allocation agreements, new reservoir and flow release operations, and implementation of the Water Quality Settlement Agreement (WQSA). As a signatory to the WQSA, we urge approval and implementation of TROA as soon as feasible. We commend the action agencies for the detailed background summary and historical cumulative effects description.

The RDEIS has limited information on Nevada water quality standards, Total Maximum Daily Loads (TMDLs) development, project monitoring and reporting and water conservation. There is also little information on effects of the proposed action on native fish, water quality in Nevada, and on other regional water supply projects. Therefore, we have concerns regarding potential impacts to water quality, riparian habitat and aquatic resources. We request additional information be included in the final environmental impact statement (FEIS) to expand the limited information and evaluation of the above issues. Due to our concerns, we have rated the preferred alternative, as Environmental Concerns - Insufficient Information (EC-2). Please see the enclosed Rating Factors for a description of EPA's rating system.

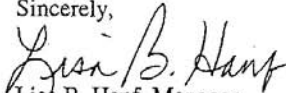


## Comment FG 01 – continued

Our comments on the 2001 Truckee River Water Quality Settlement Agreement RDEIS are relevant to our concerns regarding this FEIS. These comments are incorporated by reference and enclosed.

We appreciate the opportunity to review this RDEIS. When the final EIS is released for public review, please send two copies to the address above (mail code: CMD-2). If you have any questions, please contact me or Laura Fujii, the lead reviewer for this project. Laura can be reached at 415-972-3852 or [fujii.laura@epa.gov](mailto:fujii.laura@epa.gov).

Sincerely,



Lisa B. Hanf, Manager  
Federal Activities Office  
Cross Media Division

Enclosures:

Summary of EPA Rating Definitions  
EPA's Detailed Comments  
EPA Comments on WQSA DEIS, December 19, 2001

RECEIVED NOV 19 2004

## Comment FG 01 – continued

EPA DETAILED COMMENTS FOR THE RDEIS TRUCKEE RIVER OPERATING AGREEMENT, CA AND NV, NOVEMBER 12, 2004

### Water Quality

1. The water quality information in the Revised Draft Environmental Impact Statement (RDEIS) includes very little data regarding water quality in Nevada. However, the water quality benefits from the Truckee River Operating Agreement (TROA) are primarily in the downstream Nevada reaches of the Truckee River. Furthermore, statements in the RDEIS appear to assume that water quality standards set by California apply to the Truckee River from Lake Tahoe all the way to Reno, Nevada (e.g., Summary of Effects, p. 3-117; Cumulative Effects, p. 4-31).

*Recommendations:*

California water quality standards should be used for the analysis of effects from Lake Tahoe and the upper Truckee River Basin Reservoirs to the Nevada state line and Nevada water quality standards for the environmental analysis from the state line to Reno and Pyramid Lake, Nevada. The final environmental impact statement (FEIS) should clearly state which water quality standards are being used in the environmental effects analysis.

01

We recommend a detailed summary of Nevada water quality standards be provided, similar to the information provided in "Summary of Pertinent Water Quality Standards for California Waters" (p. 3-122).

02

Table 3.19 should clearly state that the standard violations are violations of the Nevada water quality standards downstream of Reno, Nevada.

03

2. The Water Quality Overview of Methods of Analysis states that a historical data analysis of the entire Truckee River system was conducted and used to identify water quality concerns throughout the Truckee River basin (p. 3-120). Historical data were compared with water quality standards. It is not clear which water quality standards were utilized in this comparison-- California's, Nevada's, or both. Nor is it clear whether the analysis included a specific evaluation of effects of TROA on water quality standards for Nevada waters. Nevada waters are of specific interest because many of the benefits to water quality will be realized in the Nevada portion of the Truckee River.

*Recommendation:*

The analysis of water quality effects should not be limited to California waters or California water quality standards affected by TROA. We recommend the FEIS clarify whether an evaluation of effects of TROA on water quality standards for Nevada waters was conducted and included in the RDEIS. If not, the FEIS should include such an evaluation.

04

## Comment FG 01 – continued

3. The RDEIS includes evaluations of Truckee River flow effects under both Water Resources (pps. 3-85 to 3-88) and Riparian Habitat and Riparian-Associated Wildlife (pps. 3-220 to 3-223). These evaluations are confusing because they appear to present different and, seemingly contradictory, conclusions and descriptions of flow effects. For example, the riparian habitat flow evaluation states that TROA would have significant beneficial effects due to higher average monthly Truckee River flows in dry years (p. 3-220). The water resources flow evaluation states that higher flows occur in wet years under TROA with lower flows in dry years (p. 3-88).

*Recommendation:*

We recommend the FEIS include a summary of the water resources and riparian habitat flow evaluations which explain how these analyses are consistent. This summary should include a short description of anticipated changes in flows on a monthly basis between No Action, current conditions, and TROA and the effect these flows may have on specific resources (e.g., fish, riparian habitat, water quality, TMDLs).

05

4. The RDEIS provides a description of the Total Maximum Daily Load (TMDL) program within Chapter 4 Cumulative Impacts (p. 4-24). Section 303(d) of the Clean Water Act (CWA) identifies impaired waters. This CWA 303(d) list and the TMDL program, which addresses the water quality impairment in these water, are important factors in resolving water quality issues and should also be included within the analysis and discussion of water quality effects.

*Recommendations:*

We recommend the FEIS include a separate section on Section 303(d) of the CWA and TMDLs within the discussion of potential effects on water quality. Include an evaluation of potential effects of TROA on TMDL development and implementation.

06

The affected environment discussion (for both sections of the Truckee River) (Chapter 3: Water Quality, Affected Environment, p. 3-115) should include a list of the 303(d) listed constituents and describe the TMDLs currently in place for the Truckee River. Although it is true that the TMDL issues are beyond the scope of the water quality analysis (p. 3-117), the TMDLs currently in place on the Truckee River are part of the affected environment and should be included in the discussion.

07

The description of the TMDL Program in Chapter 4 Cumulative Impacts (p. 4-25), does not include the most current information on the 303(d) list or TMDLs for the Truckee River. The State of Nevada prepared a new 303(d) list in 2002 which lists temperature, total phosphorus, and turbidity for the various Truckee River reaches in Nevada. In addition, the TMDLs for the Truckee River were prepared by the State of Nevada in 1994 and were for total dissolved solids (TDS), total phosphorus, and total nitrogen. We recommend the FEIS include the most up to date information available on the 303(d) list and TMDLs.

08

## Comment FG 01 – continued

5. Potential impacts to water quality are addressed in different sections of the RDEIS. As a result, it is difficult to evaluate the overall water quality effects of TROA. For example, dissolved oxygen and temperature effects are evaluated under Water Quality (p. 3-115) while sedimentation and flows are evaluated in other parts of the RDEIS. Conflicting statements are also made, such as the description of Lake Tahoe as a pristine water resource (pg. 3-115) and a later statement that Lake Tahoe is impaired under the Clean Water Act (CWA) for nitrogen, phosphorus, and sedimentation/siltation (p. 3-131).

*Recommendation:*

We recommend the FEIS include a discussion of water quality which incorporates the evaluation of potential effects on all facets of water quality—dissolved oxygen, temperature, sedimentation, flows, nitrogen, and phosphorus.

09

6. We have the following recommendations for clarifications or corrections regarding water quality.

*Recommendations:*

P. 3-115 Lake Tahoe to Reno. The statement regarding Lake Tahoe as a designated Outstanding Natural Resource (ONR) only applies to California. Nevada has not designated Lake Tahoe as an ONR.

10

P. 3-128 Total Dissolved Solids (TDS) and Nutrient Loadings to Pyramid Lake. Paragraph 5. The FEIS should describe how installation of biological nitrogen removal technology at the Tahoe-Truckee Sanitation Agency facility addresses the Pyramid Tribe's concerns regarding high TDS violations.

11

P. 4-21 Wastewater and Stormwater Discharge Permits. Clean Water Act Section 404 Dredge and Fill permits should be addressed in a separate section. Wastewater and stormwater permits are under Section 402 of the Clean Water Act and dredge and fill permits under Section 404.

12

P. 4-22 Nevada Division of Transportation (NDOT). NDOT does not issue stormwater permits. The State of Nevada issues these permits.

13

P. 4-22 Stormwater Control Programs in Nevada. By definition, stormwater and Phase II permits are point source permits. Thus, stating that the program addresses nonpoint source pollution from stormwater while, at the same time, discussing the stormwater permits is confusing and inappropriate.

14

P. 4-31 Potential Cumulative Effects of TROA. The use of TMDLs as examples of water quality standards is incorrect. TMDLs are prepared in response to violations of water quality standards but are not equivalent to water quality standards.

15

## Comment FG 01 – continued

### Alternatives

1. The RDEIS states that water quality, biological resources, and recreation are improved under TROA due to higher Truckee River flows, higher reservoir surface elevations, and flows dedicated to specific beneficial uses. The sources of water to provide these improvements include purchase of agricultural water rights for urban use, increased reservoir operational efficiency, and water conservation.

It is our understanding that there is increasing competition for the acquisition of water rights from willing sellers in the region (Truckee River, Carson River, and Walker River basins). As the number of water purchasing programs has increased (e.g., development of urban water supply, Stillwater National Wildlife Refuge, Walker Lake restoration, Water Quality Settlement Agreement (WQSA)), the cost of water has increased and the practicability of finding sufficient numbers of willing sellers has decreased.

#### *Recommendation:*

The FEIS should provide a description of other water purchasing programs, their relationship to TROA, and their potential effects on the ability to fulfill the goals of TROA. If not already considered, we recommend a regional forum be considered to encourage collaboration and coordination of water purchasing programs. Such a forum could help resolve competition for acquisition of water rights by developing a regional consensus on the priority for transfer of agricultural water rights to other uses.

16

### Biological Resources

1. The Truckee River has both native and non-native fish species (p. 3-153). However, the evaluation of environmental consequences appears to focus only on potential effects to non-native rainbow and brown trout (pg. 3-155, 3-160).

#### *Recommendation:*

The FEIS should include an evaluation of potential effects on native fish: Paiute sculpin, Lahontan redband shiner, Tahoe sucker, speckled dace and mountain sucker, and mountain whitefish.

17

### Cumulative Impacts

1. The Cumulative Effects analysis addresses actions proposed in seven categories: urban development and land use, water rights acquisitions and transfers, municipal and industrial (M&I) water plans, ecosystem restoration, flood control, water quality, and climate. The risk of catastrophic fires and need for extensive fuels management are key issues in the Truckee River basin which could contribute significantly to cumulative effects on water quality and fishery conditions.

## Comment FG 01 – continued

*Recommendation:*

The FEIS should include fire risk, healthy forest fuels management plans, and catastrophic fires in the evaluation of cumulative impacts on water quality, water quantity, and flood control operations.

18

### Water Conservation Plans

1. Although Public Law 101-618, which required negotiation of TROA, promotes conservation (e.g., water banking 209(d); effluent reuse 209 (f), p. 4-6), there is little information in the RDEIS regarding specific regional water conservation plans. Pursuant to PL 101-618, we urge serious consideration of the conservation measures proposed by this law.

*Recommendation:*

The FEIS should describe specific water conservation plans for jurisdictions within the study area. For example, include additional information on the South Truckee Meadows Water Treatment Plant plans to treat poor quality groundwater and water diverted from local creeks (p. 4-17).

19

2. There are other measures that can be taken to increase water availability for all beneficial uses. For instance, the development of sustainable irrigation systems and maximization of conservation and water reuse could provide a significant source of additional water. Conserved water could be utilized for water transfers, emergency drought supplies, and fish and wildlife beneficial uses.

*Recommendation:*

We recommend the FEIS describe possible options for improving existing water use and the process for implementing these options. We understand that the Nevada State Engineer would determine the final use of conserved water in Nevada, thus we do not expect the proposed water right acquisition program to rely upon conserved water sources, nor do we expect the evaluation of potential environmental impacts of water conservation actions. We seek to encourage the identification and evaluation of increased water use efficiency measures which could be implemented by any interested party. For example, describe current and potential urban and industrial water conservation practices in the Reno/Sparks metropolitan area. A list of possible options or measures for improving irrigation water productivity for consideration in the FEIS, are listed in our attached comments on the WQSA DEIS.

20

### Monitoring

1. The RDEIS does not describe monitoring or reporting requirements to validate operational model assumptions or track improvements in operational flexibility and reservoir operation efficiencies. We urge a firm commitment to specific monitoring and reporting measures to validate the operational model and ensure effective implementation of TROA.

## Comment FG 01 – continued

*Recommendations:*

The FEIS should include a detailed monitoring and reporting plan. The plan should include actions to help validate and verify model assumptions and track on-the-ground results of TROA implementation. Example model assumptions to verify include sediment transport capacity due to armored streambacks (p. 3-148) and greater reservoir fish productivity as a result of increased reservoir storage (p. 3-183). Reporting measures should help track benefits of TROA such as the increase in lower Truckee River and Pyramid Lake inflows, Pyramid Lake elevation gains, and increased fish spawning success. The monitoring and reporting plan should also be fully integrated into the adaptive management program recommended below.

21

We recommend development of an adaptive management program to ensure incorporation of changing conditions and new information into water supply management and operational decisions and actions. Change in Truckee River water quantity and quality is likely given continuing urban development, changing land use, proposed water supply developments, waste water treatment plant modifications, and TMDL implementation in the Lake Tahoe and Truckee River basins.

22

### Bypass Flows at Hydroelectric Dams

1. It is not clear from the discussion of bypass flows at Truckee River hydroelectric dams (pps. 3-393 to 3-395) whether or not bypass flows would take place under TROA. We understand the FEIS will include an evaluation of minimum bypass flows in the 8.4 miles of bypass reaches between hydroelectric dam diversions and the discharge back to the river (p. 3-395).

*Recommendation:*

The FEIS should clearly state whether or not minimum bypass flows will be supplemented under TROA. Describe whether model assumptions, resulting from the decision regarding bypass flows, would modify the operation model results. Describe the potential effects on reservoir and Truckee River operations, bypass flows, implementation of TROA, water quality and other resource areas (e.g., riparian habitat, water quantity, and fisheries).

23

### General Comments

1. The first draft Truckee River Operations Agreement was reached in May 1996. This agreement was revised and resulted in the October 2003 Draft Agreement. A description of the changes made between the first and final draft agreement are not provided in the RDEIS.

## Comment FG 01 – continued

*Recommendation:*

In the interest of full disclosure pursuant to the National Environmental Policy Act (NEPA), we recommend the FEIS include a summary of the differences between the May 1996 and October 2003 Draft Agreement and the reasons for these changes. This information will help provide the context for the agreement and a better understanding of the underlying goals of TROA. If appropriate, describe whether negotiations are ongoing and whether they may result in further changes to the October 2003 Draft Agreement.

24

2. Data presented in the analysis of potential effects on the economic environment do not appear consistent. For example, the information on hydropower generation and revenues (p. 3-325) does not match the data provided in Table 3.83 Summary of Effects on Economic Environment.

*Recommendation:*

The FEIS should correct apparent inconsistencies between the narrative description of effects on the economic environment and data provided in Table 3.83. We recommend citing the source of economic information used in the FEIS.

25



## Comment FG 01 – continued

### U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements Definitions and Follow-Up Action\*

#### Environmental Impact of the Action

##### **LO – Lack of Objections**

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

##### **EC – Environmental Concerns**

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

##### **EO – Environmental Objections**

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

##### **EU – Environmentally Unsatisfactory**

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

#### Adequacy of the Impact Statement

##### **Category 1 – Adequate**

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

##### **Category 2 – Insufficient Information**

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

##### **Category 3 – Inadequate**

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

## Comment FG 01 - continued

*Revised*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Mr. Tom Strekal  
Bureau of Indian Affairs  
Western Nevada Agency  
1677 Hot Springs Road  
Carson City, NV 89706

December 19, 2001

Dear Mr. Strekal:

The Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS) for the project entitled **Truckee River Water Quality Settlement Agreement (WQSA), Federal Water Rights Acquisition Program for Washoe, Storey, and Lyon Counties, Nevada.** (CEQ # 010367). Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The WQSA grew from negotiations to resolve litigation brought by the Pyramid Lake Paiute Tribe against Reno, Sparks, the State of Nevada, and the United States over approval and operation of the Truckee Meadows Wastewater Reclamation Facility and its potential adverse effects on the water quality and fisheries of the lower Truckee River and Pyramid Lake. Signatories of the WQSA are Department of Justice, EPA, Department of Interior, Nevada Department of Environmental Protection, Washoe County, Reno, Sparks and the Pyramid Lake Paiute Tribe. The WQSA establishes a joint program to improve Truckee River water quality by increasing flows in the river through the purchase and dedication of Truckee River water rights for instream flow from the Reno/Sparks area to Pyramid Lake. The agreement obligates the U.S. to allocate \$12 million towards this effort. Reno, Sparks, and Washoe County are also obligated to acquire \$12 million of Truckee River water rights. Whenever possible, water associated with the exercise of these rights will be stored in Truckee River reservoirs managed by the Bureau of Reclamation. Stored "water quality water" is anticipated to be released during periods of low flow (normally July, August and September). The resulting flow augmentation is expected to increase the nutrient assimilative capacity of the Truckee River, to dilute pollutants, and improve flows for cottonwood recruitment, riparian habitat, and threatened and endangered fish and birds.

The DEIS evaluates four alternatives: No Action, federal obligations as defined by the WQSA (Alternative 2), acquisition of water rights only from the Truckee Division of the Newlands Project (Alternative 3), and acquisition of water rights only from the Truckee Meadows area (the greater Reno/Sparks metropolitan area, Alternative 4). The quantity of water rights purchased varies between the alternatives due to the availability and cost of water rights from willing sellers. Estimated acquired quantities of water rights are 8,500 acre-feet (af) under Alternative 2, 12,600 af under Alternative 3, and 3,600 af under Alternative 4.

## Comment FG 01 – continued

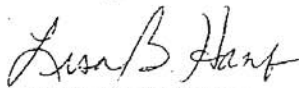
EPA commends the signatories of the WQSA for their work with us in developing a program which will help permanently improve Truckee River water quality and reduce violations of water quality standards. The dedication of water rights for additional instream flows will significantly enhance the ability to meet water quality requirements in the lower Truckee River. While the WQSA will assist in compliance with water quality standards, problems may persist given the multiple causes that contribute to water quality violations (diversions, non-point and point sources of pollution). We encourage the signatories to continue to work with us in achieving full compliance with water quality standards in the Truckee River.

We are also pleased with the establishment, as a condition of water rights permits and voluntary agreements, of minimum instream flow requirements downstream of most Truckee River reservoirs to maintain fish habitat (pg. III-9). Actions such as these will support all of our efforts to improve water quality and improve fish and wildlife habitat.

EPA advocates balancing available water supplies, water supply commitments, and environmental needs. We believe that long-term water supply planning should focus, in part, on a determination of available supplies and bringing water supply commitments and needs into alignment with these supplies. We recommend the Bureau of Reclamation and fellow WQSA signatories consider conducting a water needs analysis which evaluates in detail both the supply and demand side of water management in the Truckee River Basin, including the needs for instream Truckee River and Pyramid Lake beneficial uses. We suggest consideration of all available tools for enhancing water management flexibility and reliability. These tools could include water transfers, conservation, pricing, irrigation efficiencies, operational flexibilities, market-based incentives, water acquisition, conjunctive use, voluntary temporary or permanent land fallowing, and wastewater reclamation and recycling.

While we support the WQSA and believe it will provide important benefits, we have concerns regarding alternatives, monitoring and mitigation, and cumulative impacts. Our detailed comments are enclosed. Because of the above concerns, we have classified this DEIS as category EC-2, Environmental Concerns - Insufficient Information (see attached "Summary of the EPA Rating System"). We appreciate the opportunity to review this DEIS. Please send two copies of the Final EIS (FEIS) to this office at the same time it is officially filed with our Washington, D.C. office. If you have questions or wish to discuss our comments, please call Ms. Laura Fujii, of my staff, at (415) 972-3852.

Sincerely,



Lisa B. Hanf, Manager  
Federal Activities Office

Enclosure: Detailed Comments (4 pages)  
Summary of the EPA Rating System  
Why Smart Growth: A Primer  
Best Development Practices: A Primer for Smart Growth

## Comment FG 01 – continued

Filename: TruckeeRWQSAdeis.wpd  
MI#003790

cc: Steve Alcorn, BOR  
Robert D. Williams, US FWS  
Chairman, Pyramid Lake Paiute Tribe  
Don Christensen, City of Reno  
Manager, City of Sparks  
Nevada Division of Environmental Protection  
Bill Hauck, Truckee Meadows Water Authority  
Chairman, Washoe County Board of Commissioners  
Don Mahin, Washoe County  
Truckee Meadows Regional Planning Agency

## Comment FG 01 – continued

EPA DEIS COMMENTS, BIA, TRUCKEE RIVER WQSA, DEC 2001

### DETAILED COMMENTS

#### Alternatives

1. It is our understanding that there is increasing competition for the acquisition of water rights from willing sellers in the region (Truckee River, Carson River, and Walker River basins). As the number of water purchasing programs has increased (e.g., development of urban water supply, Stillwater National Wildlife Refuge, Walker Lake) the cost of water has increased and the practicability of finding sufficient numbers of willing sellers has decreased. Therefore, we are concerned with the ability to maximize benefits of the Water Quality Settlement Agreement (WQSA).

#### *Recommendation:*

The Final Environmental Impact Statement (FEIS) should provide a description of other water purchasing programs and their potential effects on the ability to fulfill the goals of the WQSA.

2. There are other measures that can be taken to increase water availability for all beneficial uses. For instance, the development of sustainable irrigation systems and maximization of conservation and water reuse could provide a significant source of additional water. This conservation water could be utilized for water transfers, for providing replacement water for Fernley, or to enhance fish and wildlife habitat.

#### *Recommendations:*

We recommend the FEIS describe possible options for improving existing water use and the possible process for implementing these options. We understand that the State Engineer would determine the final use of conserved water, thus we do not expect the current acquisition program to rely upon such water sources or evaluate the potential impacts of such actions. Instead, our goal is to encourage the identification and evaluation of increased water use efficiency measures which could be implemented by any interested party. For example, describe current and potential urban and industrial water conservation practices in the Reno/Sparks metropolitan area. A list of possible options or measures for improving irrigation water productivity for consideration in the FEIS, are listed below<sup>1</sup>:

<u>Category</u>	<u>Option or Measure</u>
Technical	- Land leveling to apply water more uniformly
	- Surge irrigation to improve water distribution
	- Efficient sprinklers to apply water more uniformly

---

<sup>1</sup>Sandra Postel, *Pillar of Sand: Can The Irrigation Miracle Last?*, Worldwatch Institute Book, (W.W. Norton & Company, 1999), pgs 37-39.

## Comment FG 01 – continued

EPA DEIS COMMENTS, BIA, TRUCKEE RIVER WOSA, DEC 2001

- Low energy precision application sprinklers to cut evaporation and wind drift losses
  - Furrow diking to promote soil infiltration and reduce runoff
  - Drip irrigation to cut evaporation and other water losses and to increase crop yields.
- Managerial
- Better irrigation scheduling
  - Improving canal operations for timely deliveries
  - Applying water when most crucial to a crop's yield
  - Water-conserving tillage and field preparation methods
  - Better maintenance of canals and equipment
  - Recycling drainage and tail water
- Institutional
- Reducing irrigation subsidies and/or introducing conservation-oriented pricing
  - Establishing legal framework for efficient and equitable water markets
  - Fostering rural infrastructure for private-sector dissemination of effective technologies
  - Better training and extension efforts
- Agronomic
- Selecting crop varieties with high yields per liter of transpired water
  - Intercropping to maximize use of soil moisture
  - Better matching crops to climate conditions and the quality of water available
  - Sequencing crops to maximize output under conditions of soil and water salinity
  - Selecting drought-tolerant crops where water is scarce or unreliable
  - Breeding water-efficient crop varieties.

3. The DEIS clearly states that rapidly expanding urban development is a contributing factor to direct, indirect, and cumulative impacts to the Truckee River and water quality. As one tool to minimize impacts to water quality, human health, and the environment; EPA advocates planned growth which is town-centered, transit and pedestrian oriented, and has a greater mix of housing, commercial and retail uses (see Smart Growth enclosures).

*Recommendation:*

While we acknowledge that the water rights acquisition program will not change or increase existing expanding urban development, we believe planned growth provides a tool for ensuring such development does not continue to adversely effect water quality or offset the water quality gains made through the water rights acquisition program. Therefore, we recommend the FEIS describe the above principles of planned growth as a means to encourage minimization and mitigation of impacts of expanding urban development on water quality. Again, the intent is to provide information on measures which can be implemented by

## Comment FG 01 – continued

EPA DEIS COMMENTS, BIA, TRUCKEE RIVER WOSA, DEC 2001

any interested parties. For instance, integration of these principles by local governments into regional development plans could provide for habitat corridors, open space, and reduced air and water pollution which would result in significant benefits for both the community and environment. We also suggest a focus on infill opportunities and development near existing infrastructure which would be less costly and would reduce the need to utilize undeveloped lands for new development.

### **Monitoring and Mitigation**

1. While the DEIS describes possible monitoring and mitigation measures, there appears to be no clear commitment to implementation of these measures.

#### *Recommendations:*

We urge a firm commitment be made in the FEIS and Record of Decision, by the WQSA signatories, to specific monitoring and mitigation measures. One means of doing this is inclusion of a detailed monitoring and mitigation implementation plan in the FEIS. The monitoring plan should include actions to help validate and verify model assumptions and predicted results such as the increase in lower Truckee River and Pyramid Lake inflows, Lake elevation gains, and increased fish spawning success. The monitoring plan should also be fully integrated into an adaptive management plan to ensure incorporation of change and new information into management decisions and actions.

2. Although violations of air quality are not anticipated, we are concerned with potential indirect effects of increased fallowing on meeting PM10 requirements (pg. IV-9).

#### *Recommendation:*

We recommend the FEIS address the indirect effects of the water rights acquisition program on PM10 to the extent possible. For instance, we suggest participation in monitoring and mitigation programs to address the PM10 attainment requirements for the region. An example would be contributing to the monitoring effort for region-wide PM10 or supporting expedited revegetation of nonirrigated land.

### **Cumulative Impacts**

1. Although under Nevada state law the groundwater basin is administered by the Nevada State Engineer (pg. III-6), it is not clear whether acquisition of surface water rights from farmers would result in their increased use of groundwater.

## Comment FG 01 – continued

### SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

#### ENVIRONMENTAL IMPACT OF THE ACTION

##### *"LO" (Lack of Objections)*

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

##### *"EC" (Environmental Concerns)*

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

##### *"EO" (Environmental Objections)*

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

##### *"EU" (Environmentally Unsatisfactory)*

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

#### ADEQUACY OF THE IMPACT STATEMENT

##### *Category 1" (Adequate)*

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

##### *"Category 2" (Insufficient Information)*

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

##### *"Category 3" (Inadequate)*

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."



## Comment FG 01 – continued

EPA DEIS COMMENTS, BIA, TRUCKEE RIVER WOSA, DEC 2001

*Recommendation:*

The FEIS should evaluate whether the water rights acquisition program would include purchase of only water rights, without the associated land, and whether farmers would switch over to the use of groundwater. If the program could result in an increased use of groundwater, the potential direct, indirect, and cumulative impacts of this increased groundwater use should be fully evaluated in the FEIS.

## Comment FG 02



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

December 20, 2004

Water Management Section

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

Dear Mr. Parr:

This letter provides our comments on the Draft EIS/EIR for the Truckee River Operating Agreement (TROA). These comments were developed by our Water Management Section, which is responsible for oversight of non-Corps dams with federally owned flood control space. The following comments pertain to TROA impacts on flood control regulation and/or flow frequency on the Truckee River.

The report describes TROA as an attempt to "(1) enhance water management flexibility, water quality, conditions for Pyramid Lake fisheries, reservoir recreational opportunities, and reservoir efficiency; (2) increase municipal and irrigation drought water supply, minimum reservoir releases, and the capacity for carryover storage; (3) allocate Truckee River water between California and Nevada; and (4) avoid water use conflicts as compared to No Action and Local Water Storage Allocation (LWSA) plans" (Ref. 1, page 4). The Corps recognizes these as laudable goals but also notes that some purposes impact other goals (e.g. flood control).

The report states "total amount of water in storage likely would be greater under TROA than under No Action, LWSA, or current conditions, primarily in Prosser Creek, Stampede and Boca Reservoirs" (Ref. 1, page 6). The report also states that TROA would meet flood control and dam safety requirements (ref. 1, page 5). The Corps recognizes that TROA will not impact Martis Creek Dam operations specifically. It is also noted that TROA does not change the amount of allocated flood control space for Prosser, Boca, and Stampede Dams. Since the agreement could increase the amount of storage in the reservoirs (as compared with the No Action Plan), it will reduce the "incidental" flood control benefits that this empty space provides during floods. As an example, Boca Dam was 10,000 ac-ft below the bottom of the flood control pool on December 30<sup>th</sup> of 1996, three days prior to the flood peak that caused an estimated ¾ of billion dollars in damages in the cities of Reno and Sparks. Stampede Dam incurred spillway flow on January 2<sup>nd</sup> and by midnight the same day, Boca Dam was within about 4,000 ac-ft of being at the level where emergency spillway releases were required.

## Comment FG 02 – continued


The possibility of higher water levels in Lake Tahoe during the winter is also a concern. In the January 1997 flood, Lake Tahoe released 2,500 cfs, which is roughly ten percent or more of the peak that flooded the Reno area. Had Lake Tahoe maintained a zero cfs release for 5 days, it would have raised the lake only about 2.5 inches. In the last 90 years, Lake Tahoe has rarely made significant contributions to floods in Reno. Even if this remains true under TROA, an increase of just a few inches could mean the difference between no release or a mandatory 2500 cfs release during a wet year or a flood. It is recommended that the downstream community weigh the benefits of TROA against the increased flood risk.

The Truckee River Operations Model was used to assist in the analysis of the current conditions and alternatives. The model operates on a **monthly** time step. This level of resolution does not appear to provide the details needed to analyze TROA impacts during years with large flood events. A model operating on a daily or even hourly time step is desirable for this type of analysis. It is recognized that historical hourly reservoir operating data is scarce for the four federal dams (January 1997 flood being an exception).

The agreement mentions that Martis Creek Dam provides 20,000 acre-feet of flood space. The Corps believes this can no longer be assumed as true. Since the construction of the dam in the 1970s, the Corps has become aware of and constructed a number of remedial measures to deal with unusual foundation seepage conditions at Martis Creek Dam. Storage in the dam can now be limited to as little as 6,000 ac-ft, depending upon conditions and the assessment of our engineers.

We thank you, the U.S. Bureau of Reclamation, for the chance to comment on the draft EIS/EIR for TROA. If you have any question please contact Mr. John High, Hydrologist, at (916) 557-7136 or Mr. Wayne Johnson, at (916) 557-7139.

Sincerely,

  
Thomas E. Trainer, PE  
Chief, Engineering Division

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# Comment NSG

JEFF G. GUINN  
Governor

STATE OF NEVADA

JOHN P. COMEAUX  
Director



**DEPARTMENT OF ADMINISTRATION**

209 E. Musser Street, Room 200  
Carson City, Nevada 89701-4298  
Fax (775) 684-0260  
(775) 684-0209

COPY

October 21, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street Room 320  
Carson City, Nevada 89701-4015

Re: SAI NV # E2005-052  
Project: Truckee River Operating Agreement (TROA) revised Draft EIS/EIR

Dear Mr. Parr:

Enclosed are the comments from the Nevada Department of Conservation and Natural Resources, the Nevada Department of Wildlife, and the Division of State Lands regarding the above referenced document. These comments constitute the State Clearinghouse review of this proposal as per Executive Order 12372.

Please address these comments or concerns in your final decision. If you have questions, please contact me at (775) 684-0209.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Stafford".

Michael J. Stafford  
Nevada State Clearinghouse Coordinator/SPOC

Enclosure

RECEIVED OCT 25 2004

# Comment NSG 01

ALLEN BIAGGI  
Director

KENNY C. GUINN  
Governor

State of Nevada  
Department of Conservation and Natural Resources  
Office of the Director  
123 W. Nye Lane, Room 230  
Carson City, Nevada 89706-0818  
Telephone (775) 687-4360  
Facsimile (775) 687-6122  
www.dcnr.nv.gov



Division of Conservation Districts  
Division of Environmental Protection  
Division of Forestry  
Division of State Lands  
Division of State Parks  
Division of Water Resources  
Natural Heritage Program  
Wild Horse Program

STATE OF NEVADA  
**Department of Conservation and Natural Resources**  
OFFICE OF THE DIRECTOR

October 14, 2004

**RECEIVED**

OCT 19 2004

DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE DIRECTOR  
BUDGET AND PLANNING DIVISION

Mike Stafford  
Nevada State Clearinghouse  
209 East Musser Street, Room 200  
Carson City, NV 89701

Re: E2005-052, Revised DEIS/EIR – Truckee River Operating Agreement (TROA)

Dear Mr. Stafford:

The Truckee River Operating Agreement Alternative outlined in the DEIS/EIR is the culmination of thousands of hours of active participation by representatives from the Department of Conservation and Natural Resources. Those representatives strived to and I believe, achieved the goal of representing all the impacted citizens of Nevada in the negotiations. As Director of the Department, I am pleased to support this preferred alternative as outlined in the DEIS/EIR with the following two (2) caveats:

1. Water right applications must be filed with and approved by the Division of Water Resources in order to transfer water rights here in Nevada to the upstream reservoirs in California. This is understood by all signatory parties as a necessary step; and
2. The State have the opportunity to comment on any unforeseen issues that may be identified during this DEIS review process by other parties.

01

02

The Department looks forward to the successful implementation of TROA and the benefits it will provide the citizens of Nevada.

Sincerely

Allen Biaggi, Director  
Department of Conservation and Natural Resources

# Comment NSG 02



KENNY C. GUINN  
Governor

STATE OF NEVADA  
**DEPARTMENT OF WILDLIFE**  
1100 Valley Road  
Reno, Nevada 89512  
(775) 688-1500 • Fax (775) 688-1595

TERRY R. CRAWFORTH  
Director

GENE WELLER  
Deputy Director

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza St., Room 320  
Carson City, NV 89701-4015

October 18, 2004

Re: Truckee River Operating Agreement (TROA) revised Draft EIS/EIR

Dear Mr. Parr:

The Nevada Department of Wildlife (NDOW) is pleased to provide comments on the referenced document (Draft EIS/EIR) and supports the stated objectives as spelled out in Section 205(a) of PL 101-618:

1. Increase the operational flexibility and efficiency of certain reservoirs in the Lake Tahoe and Truckee River basins;
2. Provide additional opportunities to store water in existing reservoirs for future M&I demands during periods of draught in the Truckee Meadows;
3. Enhance spawning flows in the lower Truckee River for the benefit of Pyramid Lake fishes;
4. Increase recreational opportunities in the federal reservoirs and improve stream flows and fish habitat throughout the Truckee River basin; and
5. Improve water quality in the Truckee River.

NDOW currently manages wetlands at the Carson Lake and Pasture at the terminus of the Carson Sink under agreement with the Bureau. This valuable wetland is part of the Western Hemispheric Shorebird Network and as such is critical to wetland species migrations. Under TROA the DEIS/EIR states that the operations model shows little difference in TROA based water deliveries to the Newlands Project (approximately 110 acre-feet). NDOW is concerned that the operations model predictions of flow and delivery incorporates "reasonable ... management of Newlands Project Credit Water (NPCW)..." which is not included in the current Operating Criteria and Procedure (OCAP). We believe that the inclusion of NPCW water in the operations model without a provision for this water in OCAP could affect NDOW's ability to receive its allocation of water at Carson Lake. This concern is the basis for a more pressing concern over the operations model itself and any ability for the model to be modified to insure Best Management Practices can be incorporated into the water deliveries. NDOW would like to know if and how the model can be adapted to insure adequate water deliveries and who would be responsible for needed modification.

01
02

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## Comment NSG 02 – continued

NDOW supports the flow recommendations outlined in Table 3.28 but wishes to reemphasize the importance of maintaining flows above the minimum recommendation of 250 cfs in the lower river below Reno/Sparks during July and August. Field observations during the last drought indicated that when flows drop below that level, water temperatures rise resulting in depleted oxygen levels. Not achieving these minimum flow recommendations, even for a short period of time, can result in the loss of the trout fishery in the lower river.

03

NDOW is also concerned that the removal of the Floriston Rates will result in the increased frequency of flow fluctuation during the winter which may negatively impact fall spawning salmonids. Mountain whitefish, a native salmonid to the Truckee River, and brown trout are both fall spawners that use the main stem Truckee River to spawn and incubate their eggs. Both species spawn around October/November and their eggs incubate in the river and hatch out in early spring (temperature dependent). Dramatic changes in flow, both increases and decreases, can have devastating effects on the wild salmonid fishery. Decreased flows can leave the eggs without adequate water to oxygenate the eggs and prevent silt from settling on the eggs and suffocating them, while increased flows can scour eggs from their protective gravel beds. Having consistent instream flows during the winter is very important to the well being of the fall spawning salmonids.

04

Page 3-157 makes mention of the importance of ramping rates when increasing or decreasing flows “to avoid flushing fish downstream or stranding fish on high ground.” Ramping rates are also very important to allowing mobile benthic invertebrates to stay within the wetted channel. These invertebrates make up the majority of the food base for fish existing in the river, therefore the application of ramping rates to benefit benthic invertebrates would also benefit the fishery. There does not appear to be any additional discussion in the DEIS/EIR regarding this practice. Guidelines should be established for acceptable ramping rates and included in the Operating Agreement.

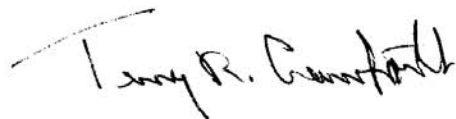
05

06

Page 3-242 discusses the 5-year study that was conducted by NDOW, USFWS and PLPT. A total of 50,000 LCT were stocked *annually* for the study for a total of over 200,000 LCT stocked through the duration of the study.

07

Sincerely,



Terry R. Crawford, Director  
Department of Wildlife

## Comment NSG 03

ALLEN BIAGGI  
*Director*  
Department of Conservation  
and Natural Resources

PAMELA B. WILCOX  
*Administrator*

KENNY C. GUINN  
*Governor*



STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Division of State Lands

State Land Office  
State Land Use Planning Agency

*Address Reply to*

Division of State Lands  
333 W. Nye Lane, Room 118  
Carson City, Nevada 89706-0857  
Phone (775) 687-4363  
Fax (775) 687-3783  
Web [www.lands.nv.gov](http://www.lands.nv.gov)

October 11, 2004

Mike Stafford  
Nevada State Clearinghouse  
209 East Musser Street, Room 200  
Carson City, NV 89701

RE: E2005-052, Revised DEIS/EIR – Truckee River Operating Agreement

Dear Mike:

The Division of State Lands has reviewed this proposal and offers the following comments.

This agency is extremely pleased that the resolution of issues regarding the Truckee River Operating Agreement (TROA) is moving toward conclusion. We concur with the positions stated by both the Nevada Division of Environmental Protection and the Nevada Division of Water Resources. We look forward to TROA being the successful implementation mechanism for Public Law 101-618, the Truckee-Carson Pyramid Lake Water Rights Settlement Act, and providing for certainty in how the Truckee River's resources are managed.

01

Thank you for the opportunity to comment on this proposal. If you have any questions, please feel free to contact me at 775-687-4364 ex 235.

Sincerely,

A handwritten signature in black ink, appearing to read "Don D. Canfield III".

Don D. Canfield III, AICP (Skip)  
Senior Planner

cc: Pamela B. Wilcox, Administrator, Nevada Division of State Lands  
Jim Lawrence, Deputy Administrator, Nevada Division of State Lands  
Jason King, Deputy State Engineer, Nevada Division of Water Resources



## Comment CSG 01



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

Sacramento Valley – Central Sierra Region

1701 Nimbus Road, Suite A

Rancho Cordova, CA 95670

(916) 358-2900

ARNOLD SCHWARZENEGGER, Governor



December 20, 2004

Mr. Kenneth Parr, Natural Resource Specialist Supervisor  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701

Mr. Michael Cooney, Staff Environmental Scientist  
California Department of Water Resources  
Central District  
3251 S Street  
Sacramento, CA 95816

RE: California Department of Fish & Game (Department) comments on revised Draft Environmental Impact Statement /Environmental Impact Report (revised Draft EIS/EIR) for the Truckee River Operating Agreement (TROA), implementing Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990.

Gentlemen:

The primary purpose of the TROA is to modify operation of Federal and selected non-Federal reservoirs in the Truckee River basin, located in northeastern California and northwestern Nevada. The Federal reservoirs are Lake Tahoe and Prosser Creek, Boca, Stampede, and Martis Creek reservoirs. The non-Federal reservoirs are Independence and Donner lakes. The operating constraints of these facilities are defined by the exercise of water rights, court decrees, agreements, and regulation. The modified reservoir operations are intended to conserve the endangered and threatened fishes of Pyramid Lake (cui-ui and Lahontan cutthroat trout) and to provide for future municipal and industrial water demands in the Reno-Sparks area (Truckee Meadows), served primarily by the Truckee Meadows Water Authority, during drought conditions.

Thank you for the opportunity to comment on this revised draft EIS/EIR. The Department has appreciated the opportunity to work closely with the team orchestrating this effort, and we see that many of our issues and comments have been addressed in this draft. We support the Truckee River Operating Agreement. The Department has the following comments on the draft EIS/EIR for the TROA.

*Conserving California's Wildlife Since 1870*

RECEIVED DEC 20 2004

## Comment CSG 01 – continued

Messrs Parr and Cooney  
December 20, 2004  
Page Two

### Fisheries Issues

The Department completed flow studies for the Truckee River, the Little Truckee River, and all tributaries of significance. The results of these studies were used to develop preferred and minimum flows that the Department recommended as necessary to protect and maintain the river system's fish and wildlife resources. Because the models for reservoir operations indicated that implementing these flows would adversely affect existing water and water storage rights in some years, the Department participated in developing a series of mandatory and elective water exchanges as well as the California Guidelines of preferred flows and reservoir levels.

A fund is to be established to provide for habitat enhancements to the river. These enhancements were acknowledged to be necessary before the minimum and preferred flows will be adequate. In other words, without these habitat enhancements, the minimum and preferred flows will not achieve their targets of supplying adequate habitat for fisheries. The Department believes the agencies should work together to ensure that this fund is used effectively. They should also work together to obtain additional funding if necessary.

Use of the exchanges and Guidelines under TROA are expected to produce flow regimes in various stream reaches of the Truckee River Basin that will improve fish habitat over that which exists today without TROA. While the flow model runs do show enhanced flows under many TROA scenarios, the true effects (positive or negative) of TROA will not be known, nor will changes in the river ecosystem be able to be determined, unless initial baseline and continuous monitoring of the ecosystem occurs.

In addition, a commitment to implementing adaptive management strategies must be in effect to ensure that any fisheries and other ecosystem problems are dealt with efficiently and effectively. Adaptive management must be based upon an understanding of the current condition and needs of the resources; again, this requires monitoring data to confirm. TROA requires compliance monitoring of the operations of the river flow control systems (Article 13, Section 13.C). The Department strongly requests that ongoing ecological monitoring be included with the compliance monitoring aspects to meet the obligations of Article 13, since meeting the flow regimes necessary for water rights holders is only one of the requirements of P.L. 101-618. Meeting the other major requirement, enhancing the endangered fisheries of the Truckee River, can only be demonstrated by monitoring the health and progress of the river ecosystems under TROA operations.

01

## Comment CSG 01 – continued

Messrs Parr and Cooney  
December 20, 2004  
Page Three

### Tahoe yellow cress

Tahoe yellow cress is a perennial herb found only on the shores of Lake Tahoe. It is listed by the State of California as an endangered species under the California Endangered Species Act (CESA) (Fish and Game Code Sections 2050 et al). Under the scenarios modeled in the draft EIS/EIR there are situations where water levels will be higher at certain times of the year under TROA operations than Current Conditions or No Action, and times it will be lower – dependent on the wet, median, or dry overall climatic conditions that could prevail. We agree with the analyses that none of these differences is significant, given that the differences are within 1 to 2 percent of total habitat available. In addition, it is the current understanding of the ecology of the species that the populations fluctuate naturally with climatic conditions that influence lake levels, and it is believed that the plants lie dormant under the water until low water occurs again.

Finally, as with the fisheries issues above, the Department requests that biological monitoring be conducted to confirm the effects of TROA on Tahoe yellow cress.

Thank you again for the opportunity to comment on this draft EIS/EIR. If you have any comments or questions, please contact Ms. Susan Levitsky at (916) 358-2943.

Sincerely,



Banky E. Curtis  
Regional Manager

cc: Ms. Susan Levitsky  
Department of Fish and Game  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

01

# Comment CSG 02

## State Water Resources Control Board



Alan C. Lloyd, Ph.D.  
Agency Secretary

**Division of Water Rights**  
1001 I Street, 14th Floor, Sacramento, California 95814  
P.O. Box 2000, Sacramento, California 95812-2000  
(916) 341-5300 • FAX (916) 341-5400 • www.swrcb.ca.gov



Arnold Schwarzenegger  
Governor

DEC 28 2004

Kenneth Parr  
U.S. Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

Dear Mr. Parr:

COMMENTS ON THE TRUCKEE RIVER OPERATING AGREEMENT REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT (CALIFORNIA STATE CLEARINGHOUSE NO. 2004042078)

This letter transmits the State Water Resources Control Board (SWRCB), Division of Water Rights' (Division) comments on the August 2004 Revised Draft Environment Impact Statement/Environmental Impact Report for the Truckee River Operating Agreement (DEIS/EIR) prepared by the U.S. Bureau of Reclamation (USBR) and the California Department of Water Resources (DWR). The SWRCB received the DEIS/EIR on September 7, 2004 and the final comment period for the DEIS/EIR closes on December 30, 2004. The SWRCB is a responsible agency for this project pursuant to the California Environmental Quality Act (CEQA). As such, the SWRCB may use the final EIS/EIR to act on two water right applications filed by USBR (Applications 31487 and 31488) and four petitions to change the points of diversion, places of use, and purposes of use filed by USBR (Licenses 11605 (Application 15673) and 10180 (Application 18006)), Washoe County Conservation District (License 3723 (Application 5169)), and Truckee Meadows Water Authority (License 4196 (Application 9247)). The following comments pertain to the DEIS/EIR's discussion of the California water right applications and petitions.

The DEIS/EIR does not adequately address the project level water right actions under consideration by the SWRCB. USBR/DWR should include a clear description of the applications and petitions in the EIS/EIR. Specifically, the EIS/EIR should include a description of the applications' sources of water (including points of diversion), the quantities requested for appropriation, the seasons of diversion, the availability of water for appropriation, the purposes of use, and places of use. Additionally, USBR/DWR should discuss the impacts associated with the SWRCB's potential approval of the applications or change petitions. For example, the EIS/EIR should include a discussion of any potential impacts to beneficial uses of water and public trust resources associated with approval of the applications. The EIS/EIR should also include a description of the changes sought in the petitions and any potential impacts of those changes on other legal users of water. Further, USBR/DWR should discuss the proposed groundwater recharge component of the applications and change petitions in the EIS/EIR, including potential impacts to the environment and other legal users of water.

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*California Environmental Protection Agency*

Recycled Paper

## Comment CSG 02 – continued

DEC 28 2004

Kenneth Parr

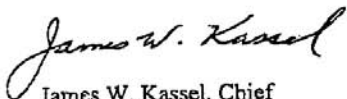
2

In addition to the above, USBR/DWR should specify whether the “transfers” discussed in the DEIS/EIR are proposed to be transfers pursuant to the California Water Code or whether the transfers are proposed to take place through approval of the change petitions discussed above. If transfers outside of the change petitions on file with the SWRCB are proposed, USBR/DWR should discuss the specifics of those transfers, including what section(s) of the California Water Code they will be filed under and any potential impacts to other legal users of water. If the transfers discussed in the DEIS/EIR are not proposed as transfers pursuant to the California Water Code, USBR/DWR should specify that the transfers are proposed to occur through approval of the petitions to change the places of use, purposes of use, and points of diversion.

The Division has not yet accepted the applications and petitions as complete and may require additional information. USBR/DWR should include a discussion of any substantial new information the Division may request in the EIS/EIR. In addition, USBR/DWR should include the final completed applications and petitions as attachments to the final EIS/EIR.

Thank you for the opportunity to comment on the DEIS/EIR. If you have any questions concerning this letter, please contact Diane Riddle, the Environmental Scientist assigned to this matter, at (916) 341-5297.

Sincerely,



James W. Kassel, Chief  
Hearings and Special Projects Section

05

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07

# Comment CSG 02 – continued



**erry Tamminen**  
Secretary for  
Environmental  
Protection

## State Water Resources Control Board

**Division of Water Rights**  
1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • 916.341.5300  
Mailing Address: P.O. Box 2000 • Sacramento, California 95812-2000  
FAX: 916.341.5400 • www.waterrights.ca.gov



**Arnold Schwarzenegger**  
Governor

# Fax

To: Kenneth Parr From: Diane Riddle (916) 341-5297

Fax: 775-862-7592 Date: 12/28/04

Phone: \_\_\_\_\_ Pages: \_\_\_\_\_

Re: IRDA DEIS/EIR CC: \_\_\_\_\_  
comments

Urgent     Per your request     For Review     For Comment

•Comments:

RECEIVED DEC 28 2004

California Environmental Protection Agency

# Comment CSG 03

DEC-29-2004 WED 10:09 AM CA STATE LANDS COMM DEPM FAX NO. 916 574 1885 P. 02

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



**PAUL D. THAYER, Executive Officer**  
(916) 574-1800 FAX (916) 574-1810  
*Relay Service From TDD Phone 1-800-735-2922  
from Voice Phone 1-800-735-2929*

**Contact Phone: (916) 574-1897**  
**Contact FAX: (916) 574-1885**

December 29, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, Nevada 89701

Dear Mr. Parr:

Staff of the California State Lands Commission has reviewed the Draft Environmental Impact Statement/Environmental Impact Report for the Truckee River Operating Agreement (TROA) and submits the following comments.

The 2004 EIS/EIR document has some discrepancies in acreages of beach habitat for Tahoe yellow cress from the 1998 DEIS/EIR. For example, under current conditions of beach habitat in the 1998 document provides that 317 acres (Table 4.37) would be available in the month of September in a wet year. The present EIS/EIR (2004) provides that only 134 acres (Table 3.70) would be available for the same month during a wet condition. This is significantly less than the previous analysis. The acreages for average/median and drought years are also substantially less compared to the 1998 DEIS/EIR analysis. Please provide an explanation of these discrepancies in beach habitat.

01

The impact analysis in the 1998 DEIS/EIR for the TROA alternative also showed a reduction of beach habitat when compared to the No Action alternative (Table 4.38), but the present DEIS/EIR (2004) has no significant change in the amount of affected beach habitat among the alternatives (Table 3.70). Please explain how the TROA alternative has changed, which no longer has a reduction of beach habitat compared the No Action alternative, from the 1998 DEIS/EIR.

02

As indicated in the analysis for Tahoe yellow cress, one of the most critical factors in the persistence of this species is Lake Tahoe's water elevation. Under wet hydrologic conditions, inundation due to high lake levels significantly affects this species. The TROA needs to consider ways to lessen the periods of high lake levels,

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## Comment CSG 03 – continued

DEC-29-2004 WED 10:09 AM CA STATE LANDS COMM DEPM

FAX NO. 916 574 1885

P. 03

Kenneth Parr

2

December 29, 2004

e.g., releasing more water during the April to July period. Although the TROA alternative releases more water at this time compared to the No Action alternative and under current conditions, releasing additional water may be necessary to lower the lake elevation to optimal levels for Tahoe yellow cress, which is at or below 6225 feet.

03

The operation at Lake Tahoe's dam should consider controlling the continual spread of Eurasian water milfoil to downstream reaches of the Truckee River. This can be accomplished by diver assisted removal at the dam when the plant is detected above the dam.

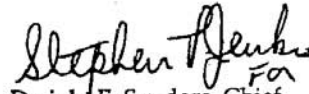
04

The recreation section of Chapter 3 does not provide an analysis of potential impacts to Lake Tahoe. The document only states that potential effects to recreation on Lake Tahoe may be minimal (page 3-270) but does not provide how it draws this conclusion.

05

If you have any questions concerning the above comments, please contact Eric Gillies of my staff at [gilliee@slc.ca.gov](mailto:gilliee@slc.ca.gov), at the above address, or by telephone at (916) 574-1897.

Sincerely,



Dwight E. Sanders, Chief  
Division of Environmental  
Planning and Management

cc: Barbara Dugal  
Judy Brown  
Eric Gillies  
Sarah Mongano



# Comment CSG 03 – continued

DEC-29-2004 WED 10:08 AM CA STATE LANDS COMMISSION

FAX NO. 916 574 1885

P. 01

DATE SENT: 12/29/04

## FAX TRANSMITTAL

**CALIFORNIA STATE LANDS COMMISSION  
DIVISION OF ENVIRONMENTAL  
PLANNING AND MANAGEMENT  
100 HOWE AVE - SUITE 100-SOUTH  
SACRAMENTO CA 95825-8202  
(916) 574-1890**

FAX (916) 574-1885

FROM: Eric Gillies

PHONE NUMBER: 916-574-1897

TO: Kenneth Parr

PHONE NUMBER: 775-882-3436 FAX NUMBER: -7542

TOTAL PAGES: 3

MESSAGE: Comment letter on TROA

RECEIVED DEC 29 2004

## Comment CSG 04



Arnold  
Schwarzenegger  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Jan Boel  
Acting Director

December 31, 2004

Michael Cooney  
Department of Water Resources  
3251 S Street  
Sacramento, CA 95816-7017

Subject: Truckee River Operating Agreement (TROA)  
SCH#: 2004042078

Dear Michael Cooney:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on December 30, 2004, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts  
Director, State Clearinghouse

01

## Comment CSG 04 – continued

### Document Details Report State Clearinghouse Data Base

**SCH#** 2004042078  
**Project Title** Truckee River Operating Agreement (TROA)  
**Lead Agency** Water Resources, Department of

**Type** EIR Draft EIR

**Description** The primary purpose of the proposed action is to implement section 205(a) of Public Law 101-618, which directs the Secretary to negotiate an agreement with California and the State of Nevada to increase the operational flexibility and efficiency of certain reservoirs in the Lake Tahoe and Truckee River basins. The proposed action would provide additional opportunities to store water in existing reservoirs for future M&I demands during periods of drought conditions in Truckee Meadows, and enhance spawning flows in the lower Truckee River for the benefit of Pyramid Lake fishes.

#### Lead Agency Contact

**Name** Michael Cooney  
**Agency** Department of Water Resources  
**Phone** (916) 227-7606 **Fax**  
**email**  
**Address** 3251 S Street  
**City** Sacramento **State** CA **Zip** 95816-7017

#### Project Location

**County** Sierra, Nevada, Placer, El Dorado  
**City**  
**Region**  
**Cross Streets**  
**Parcel No.**  
**Township** **Range** **Section** **Base**

#### Proximity to:

**Highways**  
**Airports**  
**Railways**  
**Waterways** Lake Tahoe and Truckee River Basins  
**Schools**  
**Land Use**

**Project Issues** Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Cumulative Effects; Economics/Jobs; Fiscal Impacts; Flood Plain/Flooding; Geologic/Seismic; Growth Inducing; Landuse; Population/Housing Balance; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife

**Reviewing Agencies** Resources Agency; Regional Water Quality Control Bd., Region 6 (So Lake Tahoe); Department of Parks and Recreation; Native American Heritage Commission; Office of Historic Preservation; Department of Fish and Game, Region 2; Department of Conservation; Caltrans, District 3; Department of Boating and Waterways; Tahoe Regional Planning Agency; State Water Resources Control Board, Division of Water Rights; State Water Resources Control Board, Division of Water Quality; State Lands Commission

**Date Received** 08/27/2004 **Start of Review** 08/27/2004 **End of Review** 12/30/2004

Note: Blanks in data fields result from insufficient information provided by lead agency.

## Comment CSG 05



### California Regional Water Quality Control Board Lahontan Region



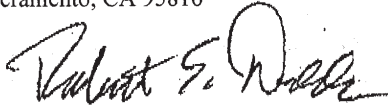
Alan C. Lloyd, Ph.D.  
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
<http://www.waterboards.ca.gov/lahontan>

Arnold Schwarzenegger  
Governor

#### MEMORANDUM

**TO:** Mike Cooney  
Department of Water Resources  
3251 S Street, Room E-12  
Sacramento, CA 95816

**FROM:**   
Robert S. Dodds  
Assistant Executive Officer  
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

**DATE:** DEC 24 2004

**SUBJECT:** COMMENTS ON TRUCKEE RIVER OPERATING AGREEMENT  
DRAFT ENVIRONMENTAL IMPACT  
STATEMENT/ENVIRONMENTAL IMPACT REPORT

Thank you for the opportunity to review the August 2004 Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) on the Truckee River Operating Agreement (TROA). I appreciate the effort that went into developing these environmental documents and ensuring a thorough public review and comment process. Your willingness, approachability, and communication with Regional Board staff have been helpful.

Staff performed a preliminary review and submitted comments to you on the Administrative Draft EIS/EIR on June 10, 2004. Since then, staff reviewed the September 14, 2004 Response to Comments and has reviewed the August 2004 Revised DEIS/EIR. Except for a minor clarification, detailed below in "Specific Comments", you responded adequately to all of our initial comments and addressed them in the Revised DEIS/EIR. In this letter I provide comments on the public Draft EIS/EIR.

#### GENERAL COMMENTS

- Determination of potential environmental significance in several sections is not sufficiently justified or supported.**

In Chapter 3 – *Affected Environment and Environmental Consequences*, certain sections do not contain much, if any, justification supporting the conclusions that there will be no significant or potentially significant environmental effects under each alternative. The *Evaluation of Effects* sections states these conclusions, often without any supporting information. These sections commonly mention an "analysis," or state interpretive data, without actually referring to or citing the analysis or the data source used in the evaluation or interpretation. Specific analyses or models should be cited or referred to in each section to help guide the reader through each evaluation. The analytical methods and evaluation procedures should be thoroughly analyzed and described in the DEIS/EIR.

*California Environmental Protection Agency*



## Comment CSG 05 – continued

Mike Cooney  
Department of Water Resources

- 2 -

Set out below are examples of conclusions that require more thorough analysis and explanation:

- 1.1 Page 3-148, 2<sup>nd</sup> full paragraph, under Subsection ii. Little Truckee River: Stampede Dam to Boca Reservoir, states:

*Sediment transport capacity change exceeds the threshold of significance under TROA, compared to current conditions. However, because this reach is downstream from Stampede Reservoir, the banks are probably armored, and no significant sediment transport or erosion is expected.*

Reference to “probable” conditions lacks adequate specificity. The DEIS/EIR should analyze existing conditions. The DEIS/EIR should include actual calculations and tabulated data. The conclusion that *no significant sediment transport or erosion is expected* is apparently based on an assumption the stream banks are armored. The DEIS/EIR should include an accurate determination of stream bank stability. Page 3-136, last paragraph, stated that a field investigation and aerial photo comparisons revealed little evidence of channel instability. There is no mention of relevant information that supports and validates the conclusion.

- 1.2 Page 3-143, 3<sup>rd</sup> full paragraph, under Subsection C.2. Threshold of Significance, states:

*For stream channel erosion and sediment transport, an effect was considered significant if it would cause widespread and measurable channel erosion or deposition. Based on professional judgment, widespread and measurable channel erosion is expected to occur under alternatives when sediment transport capacity change is more than 10 percent greater than under current conditions.*

There was no discussion on how channel erosion was measured, assessed, and evaluated and no reasoning for choosing the *more than 10 percent greater* value as a threshold of significance. There should be details supporting and validating the conclusions.

If data is not available to support a conclusion of no significance, the reasoning for each conclusion should be sufficiently detailed in each section and properly referenced. If doubt remains about significance, the effect should be listed as potentially significant, appropriate mitigation should be proposed to reduce the level of significance, and mitigation monitoring included. If the impacts cannot be mitigated to any degree of certainty, then findings of overriding considerations will be required

- 2. There are no methods or plans for verifying, tracking, and monitoring the effects under the TROA alternative.**

Though the DEIS/EIR concludes that no significant or potentially significant environmental effects will occur under each alternative, many conclusions indicate that some small negative effects will occur, but each effect is less than significant. The TROA alternative, however, does not contain a plan to verify, track, and monitor these small negative effects, so that you, responsible agencies, and interested members of the public can ensure that the effects remain less than significant, both individually and cumulatively. Also, the DEIS/EIR predicts many beneficial effects under the TROA alternative, especially in fisheries and riparian areas, without plans to record and

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*California Environmental Protection Agency*



## Comment CSG 05 – continued

Mike Cooney  
Department of Water Resources

- 3 -

document when, or if, the benefits actually occur. Monitoring for all of the impacts and effects should be included in the implementation of TROA.

Set out below is an example of conclusions that require more thorough analysis and explanation:

2.2 Page 3-168, Section D.1. Summary of Effects, states:

*Analysis of operations models results for the frequency that preferred flows for rainbow trout are achieved or exceeded without exceeding maximum flows shows that significant beneficial effects would occur under TROA...*

I encourage you to propose and implement a monitoring plan to verify that the anticipated beneficial effects actually occur. I understand that Section 13.C in Article 13 of the Draft TROA requires a report every ten years which evaluates the success of the plan, as set forth in Sections 205(a)(2) and 205(a)(3) of Public Law 101-618. Section 3.C in Article 3 of the Draft TROA requires the TROA Administrator to monitor the operations. I am concerned that neither the TROA Alternative nor the Revised DEIS/EIR specifies the type or methods of data collection to fulfill this need. A properly planned monitoring program to verify the compliance with the requirements and to ensure there are no significant environmental effects from operating under the TROA alternative should be outlined in the DEIS/EIR.

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### SPECIFIC COMMENTS

Only one specific comment (Item 1, below) from Staff's June 10, 2004 submittal was not adequately addressed in the Revised DEIS/EIR:

1. Comment 4, regarding CWA Section 303(d) impairment listings. **RECOMMENDED SOLUTION:** Include a table on page 3-135 or 3-136 showing the actual 303(d) listings for each stream. Trout Creek is listed for iron, nitrogen, phosphorous, and pathogens. Heavenly Valley Creek is listed for Chloride, phosphorous, and sediments/siltation and the Regional Board has approved a TMDL plan. The Upper Truckee River (tributary to Lake Tahoe) is listed for iron, phosphorous, and pathogens. The Truckee River (draining Lake Tahoe) is listed for sediments/siltation.
2. Page 3-143, last paragraph states that five specific *reaches* [of the Truckee River] *were evaluated because they are considered representative of the entire river.* There should be an explanation detailing the reasons and criteria for choosing those particular five reaches as representative of the entire river, and justification that the reaches that were not included do not require inclusion.

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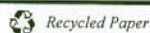
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The Final DEIS/EIR should address the two main concerns discussed above and the two specific comments noted. Should you have any questions about these comments or concerns, please contact Douglas F. Smith, Chief of the Lake Tahoe Watershed Unit, at (530) 542-5453.

cc: Regional Board Members

DFS/car T:\TROA Comments.15dec04.doc  
[General Files-TROA-Truckee River Operating Agreement]

*California Environmental Protection Agency*



# Comment NCG 01

ARTHUR E. MALLORY  
DISTRICT ATTORNEY



Fallon (775) 423-6561  
Reno (775) 323-2522  
Fax (775) 423-6528  
E-mail: amallory@churchillida.org

OFFICE OF THE DISTRICT ATTORNEY  
OF CHURCHILL COUNTY

16 September, 2004

Mr. Kenneth Parr  
Department of the Interior  
Bureau of Reclamation  
705 North Plaza Street, Rm. 320  
Carson City, Nevada 89701

Re: Request for Extension of Time in Which to Provide Written Comments Associated With Revised Draft EIS/EIR Evaluations of Alternatives (Comment Deadline: October 29, 2004): Truckee River Operating Agreement (TROA).

Dear Mr. Parr:

Pursuant to notice given in the Federal Register, dated August 25, 2004 (Volume 69, No. 164), relating to a revised draft environmental statement impact statement/environmental impact report (revised draft EIS/EIR) for the Draft Truckee River Operating Agreement (TROA), serving to implement Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Title II of Public Law 101-618 (Settlement Act), we here request an extension of time in which to provide written comments relating to the revised draft EIS/EIR. We further request that no less than an additional six months be given in which to make such written comments.

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This request is made and based upon the following grounds:

**Grounds for Extension of Comment Period**

1. We now have a copy of the Revised Draft EIS/EIR consisting of approximately one thousand (1,000) pages. We foresee the need to have at least through the end of April, 2005, in which to reasonably examine the draft, and related documents to provide meaningful comment upon the same. The task at hand is to examine the draft and related documents and thereafter contrast the views of other scientists, economists, engineers, hydrologists, community planners, and agronomists. For all such purposes more time is needed.
2. At issue to residents within the Newlands Project is the very future of the Truckee Canal. The Economic basis of the entire Lahontan Valley is inextricably linked to the Newlands Project and diversion criteria that are to be governed, ostensibly, by the Truckee River Operating Agreement (TROA). Our citizens, our farmers, need much more time to view the shape their collective futures will take.

365 SOUTH MAINE STREET • FALLON, NEVADA 89406 • (775) 423-6561

## Comment NCG 01 – continued

Page 2

Truckee River Operating Agreement (TROA)

September 16, 2004

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3. Critically complex legal issues and interests are involved here. All of the following are implicated:

1. The property rights of thousands of citizens;
2. The *Water Settlement Act of 1990* (Public Law 101-618);
3. The *Orr Ditch Decree*;
4. The *Truckee River General Electric Decrees*;
5. The *Alpine Decrees*;
6. The *National Environmental Policy Act*;
7. The *California Environmental Quality Act*;
8. The *Endangered Species Act*;
9. The United States;
10. The State of Nevada;
11. The State of California;
12. The Pyramid Tribe;
13. Washoe County;
14. Sierra Pacific;
15. Truckee Meadows Water Authority;
16. Lyon County;
17. Churchill County;
18. The City of Reno;
19. The City of Sparks;
20. The City of Fernley;
21. The City of Fallon;
22. Federal Reservoirs consisting of Lake Tahoe, Prosser Creek, Stampede, Boca, and Martin Creek Reservoirs;
23. The annual storage of approximately one million acre-feet of water;
24. Groundwater pumping;
25. Groundwater recharge;
26. Water conservation practices in the entire western United States.

These interests and many, many others are present. Future decisions to be made regarding water resources must be deemed to match in weight and scope practically anything else on the domestic agenda. We believe that the importance of such matters cannot be, *must not be*, understated.

In 25 years, who will flourish? Will any communities decline? What will the economic base of our valley be? That of others? What interests will have predominated? The brokers of fortune, in the future of the west, will speak not of price per ounce in reference to precious metals; but, rather, our nation will be moved by the talk of water. And terms like acre-feet will govern our speech. Accordingly, all matters associated with TROA deserve, even *demand* the very best efforts from government as well as the private sector. More time is needed; and,



## Comment NCG 01 – continued

Page 3  
Truckee River Operating Agreement (TROA)  
September 16, 2004

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4. Finally, TROA, an agreement to which governmental entities, such as Churchill County, is not even a party to, holds the future of our county quite literally in "its hands." We request time in which to assist in shaping our future, where, under terms of agreement, we are accorded no voice.

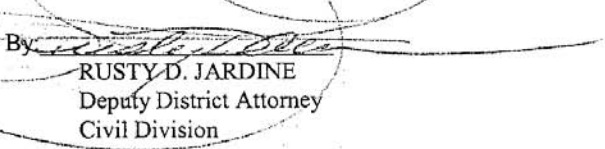
### Conclusion

An extension of time, in which to comment upon the draft EIS/EIR relating to TROA must be given. The future impact of TROA is simply too great not to allow ample time in which to carefully consider the draft's findings and recommendations. We respectfully request an extension of the period for comments through the end of April, 2005.

Thank you for your consideration in this matter.

Sincerely,

ARTHUR E. MALLORY  
Churchill County District Attorney

By:   
RUSTY D. JARDINE  
Deputy District Attorney  
Civil Division

cc:  
Churchill County Board of Commissioners.  
Brad Goetsch, County Manager  
Eleanor Lockwood, Planning Department  
Rex Massey  
Rick Campbell, Esq.  
City of Fallon  
City of Fernley  
Lyon County  
Governor Kenny Guinn  
Senator Harry Reid  
Senator John Ensign  
Congressman Jim Gibbons

## Comment NCG 02



### Office of the Churchill County Manager

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September 16, 2004

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, NV 89701

Dear Mr. Parr:

Churchill County has completed an initial review of the Revised Draft Environmental Impact Statement/Environmental Impact Report TROA. As you are well aware, the revised DEIS is quite lengthy and contains several technical appendices. In addition to the revised DEIS, a comprehensive understanding of the operating agreement itself is critical to the review of the DEIS. Because TROA meetings over the last several years have not been open to the public, Churchill County residents and Newlands Project water rights owners should be afforded an opportunity to obtain adequate information about TROA and thoroughly understand the potential impacts associated with this proposal.

Given the importance of this impact analysis to Churchill County and Newlands Project water right owners, the Bureau of Reclamation needs to extend the comment period to at least six months. This extension is needed in order to adequately review the document and its technical appendices so that the public and water right owners can better understand the TROA's proposed changes to existing laws and regulations governing the Truckee River as well as the potential impacts to Churchill County, the City of Fallon and the Newlands Project.

If you have any questions about the request, please do not hesitate to call me at (775) 423-5136.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad T. Goetsch", is written over a white background.

BRAD T. GOETSCH  
County Manager

BTG:wm

cc: Board of Churchill County Commissioners  
The Honorable Ken Tedford, Jr., Mayor, City of Fallon

01

## Comment NCG 03



Office of the  
Churchill County Commissioners  
155 No. Taylor St. Suite 110  
Fallon, Nevada 89406-2763  
775-423-4092

Gwen Washburn, Chair  
Lynn Pearce, Commissioner  
Norm Frey, Commissioner

October 11, 2004

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, NV 89701

Via Fax (775) 882-7592

Re: Truckee River Operating Agreement DEIS/DEIR  
Request for Extension to April 30, 2005 for Public Comments

01

Dear Mr. Parr:

During the TROA EIS public workshops it became apparent to Churchill County officials that the computer modeling used as the basis for the current Draft Environmental Impact Statement and Environmental Impact Report (DEIS/EIR) was substantially unchanged from the model that was successfully challenged during development of the 1998 DEIS/EIR Report to Congress.

Churchill County requests to be provided with a copy of the model used by the United States in the current analysis of the water supply and demand in the DEIS/EIR along with details and assumptions associated with the model and water flow analysis, as well as any and all sub functions or ancillary routines written to integrate data which did not fit the original model. In addition, request the United States provide operating and running instructions required for the model to function.

Sincerely,

A handwritten signature in cursive script that reads "Gwen Washburn".

Gwen Washburn  
Chair

GW:wm

## Comment NCG 04

**From:** "Mahin, Don" <DMahin@MAIL.co.washoe.nv.us>  
**To:** "Kenneth Parr (E-mail)" <KPARR@mp.usbr.gov>  
**Date:** 12/15/04 5:29PM  
**Subject:** TROA EIS/EIR Comments

The following are the comments of Washoe County regarding the draft TROA EIS/EIR:

Page 3-115 Water Quality Section I subsection A, last paragraph on the page: The phrase "dilution of return flows" in the first line does not reflect a water quality "concern" as implied from the lead-in to the sentence. The phrase should be replaced by the phrase "low flow conditions that do not provide sufficient assimilative capacity for the assimilation of return flows". It is the low flow conditions that are the concern, not the dilution. It is the lack of dilution or more properly the lack of assimilative capacity that is the concern. Assimilation is a better word to use than dilution, since the process is not simply dilution; it also involves temperature, velocity and the turbulence of the water. As you have noted later in the paragraph, diluting with warm water does not help the situation for the fish.

01

Page 3-120 Table 3.20  
 All of the columns in the table need headings.

02

General/Global comment  
 The word "dilution" should be avoided in most instances when describing the use of water acquired under the Truckee River Water Quality Settlement Agreement. This acquired water is used to improve water quality, primarily through improving the assimilative capacity and lowering the temperature of the Truckee River.

03

Donald A. Mahin, P.E.  
 Senior Licensed Engineer  
 Water Resource Planning Division  
 Washoe County Department of Water Resources  
 Phone 775.954.4656  
 Fax 775.954.4610  
 dmahin@mail.co.washoe.nv.us

## Comment NCG 05



### Office of the Churchill County Manager

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December 27, 2004

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, NV 89701

Dear Mr. Parr:

Churchill County would like to thank the Department of the Interior for agreeing to extend the original comment period for the TROA DEIS/DEIR until December 30, 2004. Reviewing a stack of technical documents six to eight inches thick and 14 years in the making, and trying to understand the Truckee River Operating Model (TROM) used to develop the document, without access to the operating/user's manual is a significant challenge. As government officials, we are charged with performing due diligence in making decisions or taking actions which impact our constituency, and due diligence requires that adequate time and expertise be brought to bear. Though Churchill County comments are being submitted now to meet the current December 30, 2004 comment period requirement, it is our position that we have not been afforded sufficient access to, nor time with the TROM to understand and comment adequately on the document.

The following 5 pages contain an executive summary of Churchill County comments on the TROA DEIS/DEIR. Subsequent pages offer more detailed comments addressing specific sections within the document. Any comments on the TROA DEIS/DEIR and requests for further extension of the TROA DEIS/DEIR comment period submitted by the Truckee-Carson Irrigation District (TCID) and/or by the City of Fallon are hereby adopted by Churchill County and incorporated by reference herein as if they were a part of this document.

Churchill County has six major areas of concern with respect to the current TROA DEIS/DEIR which will be generally addressed in this executive summary and further commented upon in the enclosed document. These six areas of concern, in order of significance are: 1) Deficiencies, omission, invalid assumptions and lack of validation of the TROA Operating Model; 2) Lack of established and validated baseline conditions for

## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
December 27, 2004  
Page 2

use in comparative analysis; 3) Lack of analysis of the occurrence and impact of multiple drought years in succession, an event common in the history of the Truckee River; 4) Lack of differentiation between alternatives offered for analysis and of analysis of all reasonable alternatives as required by 40 CFR; 5) Lack of equality or balance in research and analysis of the lower Truckee River as compared to that of the upper Truckee River; 6) Lack of written commitment or stated requirement to follow implementation of TROA with multi year impact monitoring and verification of the DEIS/DEIR conclusions.

Let us briefly address each of the six concerns delineated above.

**TROA Operating Model Deficiencies.** To begin with, any model created and operated by an individual or entity with a vested interest in the outcome deserves special scrutiny.

When the documentation, assumptions and users operating manual are withheld from the public and from governmental agencies who have formally requested access, validity and fairness of the model and entire EIS/EIR process become suspect. Based upon preliminary review of the current model, in depth review of this model when it was presented in 1996, and as confirmed by conversations with Mr. Rod Hall and Mr. Tom Scott, it appears there are several omissions and deficiencies in the TROM. The TROM is not well understood, has not been peer reviewed, has neither been validated nor calibrated, and has not demonstrated repeatable results when operated by outside consultants. Lack of access to a comprehensive user's manual precludes normal and ethical standards for validation and public understanding. The model does not track flow of water by source (the accepted standard) so users cannot account for flows by source output. New code, sub functions and ancillary routines have been and are being added to the model which have not been validated nor shared with the public, interested agencies or other experts.

There seems to be a number of unfounded assumptions built into the TROM and DEIS/DEIR. Assumptions on population growth, change in agriculture, water credit storage and water demands do not match actual historic trends or current events.

The draft DEIS/DEIR makes assumptions concerning Truckee Division demand, Carson Division Demand, Newlands Project Credit Water (NPCW), Donner Lake water, and the Newlands Project Operating Criteria and Procedures (OCAP). Some, but not all of these assumptions are included in the modeling. There does not appear to be a rationale for what is modeled and what is not. Moreover, these assumptions are not based on any reasonably foreseeable events, and in fact, some of the events may not occur for thirty years or more, if at all. Nonetheless, these assumptions are built into the "No Action Alternative." Until we understand the ramifications of the impacts of these assumptions on the overall impact analysis in the Draft EIS/EIR, we find it difficult, if not impossible, to comment meaningfully on the document.

## Comment NCG 05 – continued

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U.S. Department of the Interior  
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Page 3

**Lack of established base line conditions to include consideration of multiple drought years.** Utilizing information contained in the DEIS document there appear to be some overly optimistic projections for end of season carry-over storage at Lahontan Reservoir. Simply taking the prior four-year actual end of season storage at Lahontan Reservoir and comparing that data with the projected storage for the same period in the DEIS, one quickly concludes that Project demand from the Truckee River may be understated and may produce significant long-term shortages for Project water right users. Why weren't the most recent actual year-end storage numbers utilized rather than 2033 assumptions that don't reflect current trends? The use of long-term average values under TROA give the appearance of insignificant impacts on Newlands Project operations in the Carson Division when comparing TROA with the No Action alternative in Table 3.96. This brings into question the reliability of the No Action alternative since there is no baseline for comparison. Long-term drought analysis encompassing more than just one year and including a realistic worst-case scenario as was done in formulating the current decrees, appears to have value and may reveal significant potential impact to the lower portions of the Project.

The cumulative impacts section of the document demonstrates a weakness in adequately quantifying the collective effects of numerous actions that are occurring in the Carson Division of the Newlands Project. Some of these actions include purchase and transfer of water rights to the Stillwater Wildlife Refuge, Operating Criteria and Procedures (OCAP), recoupment and the Water Quality Settlement Agreement. The Churchill County Water Resource Plan quantifies these actions and others that actually add up to more water than is theoretically available in the Lahontan Valley. Given the competing interests for Newlands water, it is not inconceivable that irrigated acreage reduction could approach 80% in the Carson and Truckee Divisions. Water resources on the upper Carson River are coming under increased stress as well. Growth in the Carson corridor all the way from Douglas County to Dayton Valley are sure to further stress this resource increasing required diversions from the Truckee River to meet agricultural and domestic M&I needs. Coupling this with the potential loss of groundwater recharge there is a significant potential impact that would limit redevelopment and use of the fallowed lands in an economically viable manner. The DEIS makes only passing references to USGS studies that have identified these impacts. Given that Title II of P.L. 101-618 authorizing TROA affects primarily the water rights associated with the Newlands Project, cumulative impacts to the lower portion of the Project should have been more thoroughly examined and addressed.

**Lack of analysis of reasonable alternatives.** NEPA requires the complete analysis of all reasonable alternatives, special interests notwithstanding. One of the more reasonable actions that was not addressed in this latest DEIS is the possibility of leasing Project water to maintain flows in drought years in the lower Truckee River. Although this proposal was suggested many years ago during the initial TROA scoping and summarily rejected, the idea seems to have gained new life as witnessed by a similar proposal now

## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
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Page 4

being considered for the Walker River in Nevada. In fact, it is our understanding that the proposal has been favorably received by the prime sponsor of P.L. 101-618. Why was this option not further explored in the most recent TROA DEIS/EIR?

Development of differences in alternatives throughout the TROA DEIS/EIR document that can be fairly and quantitatively measured to afford factual comparisons is lacking. Despite comments submitted on the previous DEIS/EIR resulting from the TROA draft completed in 1996, the authors of the current document do not seem to have expanded their analysis beyond the no action and TROA alternatives to include consideration in depth of all reasonable alternatives. Because of this limited range of alternatives (no action (No Action), Local Water Supply Alternative (LWSA), and the Truckee River Operating Agreement (TROA)), we continue to maintain that the DEIS is not sufficient and therefore lacks validity. In nearly every instance, as illustrated for example in Table 2.1 - A comparison of water management provisions among the alternatives, beginning on page 2-4, the No Action and LWSA are virtually identical in all respects rendering the LWSA superfluous at best. Therefore, it can be said that the DEIS really analyzes only the No Action and TROA alternatives, certainly not in keeping with 40 C.F.R § 1502.14, which requires a detailed consideration of all reasonable alternatives. Shouldn't the DEIS have at least considered, as an alternative, the newly rehabilitated water leasing plan? What about the possibility of a new reservoir on the upper Truckee River with sufficient capacity to meet the multi-purpose demands of water quality, fish flows, and drought supplies for both upstream M&I purposes and the Newlands Project? Are there other "reasonable alternatives" that are viable either individually or in combinations that have been ignored?

**Lack of equality or balance in research and analysis of impacts to lower Truckee River and Newlands Project as compared to that of the upper Truckee River and Truckee Meadows.** Impacts on: 1) Basin 101 groundwater; 2) Lahontan Lake level and recreation; 3) Rapidly growing M&I requirements in Lyon and Churchill Counties; 4) OCAP; 5) Timing of Newlands Project agricultural water demands; 6) Lower river economies; 7) Air quality; 8) Water quality; and 9) Urban development are scarcely addressed while upper river and Truckee Meadows impacts are addressed in detail. Even the way credit water storage is addressed lacks balance.

Since there is really only one source of water available for reallocation among the competing interests on the Truckee River, it stands to reason that the Newlands Project water right holders would be the most affected and therefore be subject to a thorough, detailed analysis of the impacts on decreed water. The TROA DEIS/EIR devotes little opportunity for meaningful analysis of the lower portion of the Newlands Project, specifically the Carson Division. The documents only give cursory mention to impacts and in some sections suggest development of a monitoring strategy to determine the long-term effects resulting from TROA and related actions. Analysis of the impacts of increased demand on surface and groundwater on the upper Carson River resulting in



## Comment NCG 05 – continued

Mr. Kenneth Parr  
 U.S. Department of the Interior  
 December 27, 2004  
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increased demand for supplemental decreed Truckee River water is missing. Such monitoring and analysis should be formalized and undertaken in cooperation with the affected parties to include the local governments on the lower Project such as Churchill County, the City of Fallon and the TCID. Demonstrated losses should be offset with impact aid to the affected parties including local governments sustaining losses to infrastructure capacity or operations and maintenance revenues.

TROA purports to regulate the amount of storage, timing of releases and flows on the Truckee River. Depending on these factors in concert with OCAP, it is highly conceivable that the amount of water available to meet decreed demands for diversion at Derby Dam will not be fully realized more frequently than the TROM simulates due to competing interests reducing the Floriston Rates. Therefore, to state that TROA has no significant impact on the Newlands Project because the change in the average shortage to the Carson Division and releases from Lahontan Reservoir are insignificant comparing TROA with the No Action alternative may be arguable. Perhaps the only way to ensure that the lower Project is kept whole is to limit other demands that would tend to reduce the Floriston Rate at such time that diversions to the Truckee Canal are taking place under OCAP. TCID currently participates in decisions regarding Floriston Rates under the 1935 Truckee River agreement. Is it assumed that TROA eliminates all existing and past agreements and court decisions?

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In conclusion, we recommend the following actions to reduce impact from the implementation of TROA to water right holders on the lower Project, specifically in the Carson Division below Lahontan Reservoir:

- Provide unrestricted access to the TROM and the associated user's manual for four to six months of additional comment period or fund an impartial expert to develop and validate an accurate TROM and enable other experts to operate and comment on the model.
- Develop a detailed evaluation of all reasonable alternatives, or any combination thereof, in keeping with 40 C.F.R § 1502.14. For example, a water leasing plan and/or the possibility of developing additional upstream storage to include capacity for water quality, fish flows, recreation, irrigation and drought protection.
- Develop an analysis of baseline conditions allowing for meaningful comparisons of the proposed alternatives to fully ascertain the true breadth of impacts with equal emphasis on the upper and lower Truckee River.
- Expand the DEIS/EIR to fully analyze the impacts, both direct and indirect (cumulative), upon the lower portion of the Newlands Project, specifically the Carson Division. Such analysis should include: source and reliability of surface

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## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
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irrigation water; groundwater recharge; recreation resources; wildlife requirements and community socio-economic well being.

05

- Limit other demands that serve to reduce Floriston Rates at such time that diversions to the Truckee Canal are taking place under OCAP through incorporation of Newlands Project representation in Floriston Rate adjustments.
- Include a monitoring strategy to determine the long-term effects resulting from TROA and related actions. Such monitoring should be undertaken in cooperation with the affected parties to include the local governments on the lower Project such as Churchill County, the City of Fallon and TCID with financial oversight assistance through the Federal government. The long-term monitoring should require five-year evaluation and reporting and should contain specified data collection requirements, techniques and analysis in compliance and effectiveness. A mechanism and source for impact financial aid (mitigation) should also be identified.

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We appreciate the opportunity to comment on the Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (Revised DEIS/EIR). We are hopeful that our comments will stimulate an ongoing dialogue with the affected downstream parties. Detailed comments to the DEIS/EIR are attached.

Sincerely,



BRAD T. GOETSCH  
County Manager

BTG:wm  
Attachment  
cc: Congressional Delegation  
State Legislative Delegation  
The Honorable Kenny Guinn, Governor  
Nevada State Engineer

## Comment NCG 05 – continued



### Office of the Churchill County Manager

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December 27, 2004

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, NV 89701

Dear Mr. Parr:

Churchill County submits the following comments and questions with respect to the Revised Draft Environmental Impact Statement/Environmental Impact Report, Truckee River Operating Agreement, California and Nevada, August 2004.

**Comments:**

ES - 10 Growth Inducing Impacts - No mention is made as to the limitations upon growth in the absence of water. The only source of water for growth stems from agricultural water rights on the Truckee and Carson Rivers. What will happen after the year 2033, the window of analysis described in this document?

09

ES - 14 - Table 1 - Summary of effects of alternatives on resources - The column summarizing TROA impacts on Lahontan Reservoir makes no mention of the likely reduced inflow to Lahontan Reservoir as a result of multiple dry hydrologic events. The document fails to analyze any long-term dry hydrologic conditions (multi-year events). The model appears to rely on artificially high end of season storage numbers and then utilizes a single-year dry event to predict minimal impacts in the following year. Averaging the dry hydrologic cycles utilizing the 100-year database tends to soften the impact of an abnormally dry period.

10

ES - 15 - Table 1 - Summary of effects of alternatives on resources - The column summarizing impacts to Agriculture with respect to exercise of water rights to meet demand fails to factor anything more than a single-year dry event with an unusually high end-of-year storage level in Lahontan Reservoir thus overstating the percentage of demand met in a minimum supply year.

11

## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
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Page 2

ES - 19 - Table 1 - Summary of effects of alternatives on resources - Recreation - no mention of Lahontan Reservoir with respect to Boat ramp usability. Lahontan Reservoir is the second largest warm water recreational resource in Nevada.

12

ES - 21 - Table 1 - Summary of effects of alternatives on resources - Social Environment - Seems to imply that Air Quality is only an issue in the Truckee Meadows ignoring the dust hazards created due to cumulative effects from actions either authorized under the provisions PL 101-618 (the enabling statute for TROA) or past, present or reasonably foreseeable future actions undertaken by Federal or non-Federal agencies or persons (see 40 CFR 1508.7)

13

Table of Contents-xvi - Chapter 4 - Cumulative Effects III. Actions Authorized by Public Law 101-618 B, there is no mention of Section 210(b)16 addressing domestic groundwater impacts in the Lahontan Valley in the compiled actions.

14

Page 15 Executive Summary - Table 1. Exercise of water rights. The table needs to explain that "much less agricultural demand" is due to assumed wetlands purchases which may or may not occur. A more accurate representation would be Newlands Project Demand which would capture wetland as well as agricultural water right demand.

15

### Chapter 2 - Alternatives

General comments to Chapter 2:

The discussion detailing development of alternatives excessively focuses on the negotiations process to limit the number of options to just three; those being the No Action, LWSA and TROA. Since the No Action and LWSA options are virtually identical, the analysis is severely limited and fails to adequately consider other "reasonable alternatives" as is mandated under the provisions of 40 C.F.R § 1502.14, which requires a detailed consideration of all reasonable alternatives. Failure to adequately address a broad range of alternatives is not in keeping with the requirements of the NEPA process and CEQ guidelines. Several alternatives previously introduced by participating entities include: development of additional upstream storage to allow for water quality, fish flows, irrigation and M&I demands; and, leasing of irrigation water in low water years to meet non-agricultural needs. A water leasing proposal is now being considered for the Walker River and Walker Lake to meet environmental needs and appears to be favorably received by the parties in that watershed. In order to fully meet the requirements of NEPA and CEQ regulations, shouldn't the TROA DEIS/EIR address all reasonable alternatives?

16

Page 2-27 2<sup>nd</sup> para. Needs to state that TROA must ensure that Orr Ditch Decree water rights are met.

17

## Comment NCG 05 – continued

Mr. Kenneth Parr  
 U.S. Department of the Interior  
 December 27, 2004  
 Page 3

Page 2-28 Table 2.6 does not indicate all changes from the no-action. Specifically it does not mention changes to Floriston rates and changes to water storage in Lake Tahoe and Boca. Please include these elements.

18

Page 2-29 If the U.S. District Court maintains authority over the Orr Ditch Decree, why do Orr Ditch water right owners need to bring disputes before the Special Hearing Officer? What authority does the Special Hearing Officer have over the Orr Ditch Court and its jurisdiction? A section on the DEIS needs to be dedicated to better understanding the authority envisioned by two different regulatory bodies. It is not clear legally what is the impact to those who will continue to rely upon the federal water master for Orr Ditch decisions. A more effective implementation of TROA would be for the federal water master to prevent conditions that would lead to reduced water deliveries.

19

Page 2-29 2<sup>nd</sup> para. Suggest that the Orr Ditch Court would not have the ability to take corrective actions with respect to operations that “inadvertently” reduced the delivery amount. Is this consistent with the role of the Orr Ditch Court? The Court would be able to take corrective actions when the delivery amount is adversely affected by TROA operations whether “inadvertently” or otherwise. Please explain. The Orr Ditch Court either maintains jurisdiction or they do not. It appears that TROA is attempting to relegate the court’s role to one that is largely ceremonial.

20

How can the DEIS and TROA contemplate radical changes to an existing court decree (Orr Ditch Decree and Truckee River Agreement inclusive) particularly as it relates to the Newlands Project without a substantial analysis of the water resources. The reader of the DEIS and decisions makers have no real information to rely on in their understanding of the TROA proposal and evaluation of impacts.

21

Pg. 2-34 Table 2.7 Does not include Newlands Project Credit water. The table needs to show how much credit water will be accumulated for each category. How much credit water will be stored and how much credit water will be stored in each reservoir?

22

Pg 2-36 paragraph 1 How can Sierra Pacific’s non-consumptive rights for hydropower generation be utilized for Fish Credit Water? Sierra’s hydropower generation is not the only right served by this water. TROA is only supposed to store the consumptive use portion of water rights. Please explain how Sierra’s non-consumptive use of water for hydropower can now be accumulated as credit water.

23

Pg 2-38 last paragraph. The first sentence does not appear to be an accurate portrayal of TROA intent. Please define the total amount of credit water that will be accumulated and when the reductions in Floriston Rates will occur. What does TROA propose to do and what will be the impacts to all water right holders and their ability to meet demand when Floriston Rates are reduced for credit water accumulation at the margin?

24

## Comment NCG 05 – continued

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U.S. Department of the Interior  
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Page 4

Pg. 2-39 a. i. Lake Tahoe and Boca. What is the average and maximum amount of credit water that will be stored in Lake Tahoe and Boca? Under what hydrologic conditions will this storage accumulate? Please include information in this section to better describe the proposed action.

25

Page 2-47 4<sup>th</sup> paragraph. Why should Sierra Pacific receive compensation for a reduction in Truckee River flows (reduction in Floriston Rates) for the accumulation of credit water? Please explain. Isn't the proposed compensation for Sierra Pacific an admission of adverse impacts from the reduction in Floriston Rate flows? Will other users who depend on Floriston Rate flows receive the opportunity for committed mitigation? If not, why not? Please explain.

26

Page 2-49 Alternatives Considered and Rejected-General Comment. The Truckee River Irrigation District on behalf of Newlands Project Water Right Owners submitted a number of proposals for TROA consideration during the portion of negotiations they were allowed to attend. Please identify the proposals submitted by TCID, the reasons for rejection and the basis for rejections. This section notes that numerous alternatives were evaluated to assist negotiators in developing an operating agreement. There must have been some analysis completed in order to deny TCID requests. Shouldn't there be a complete analysis of the alternatives under the provisions of 40 C.F.R § 1502.14, which requires a detailed consideration of all reasonable alternatives? Please explain. Please include at least a summary of analysis that supports the rejection of Newlands Project proposals.

27

The Report to Negotiators---The federal government made several attempts to issue EISs that were incomplete and did not adequately address all the issues.

It appears for the description on Page 2-50.... Section 205(a) of P.L. 101-618 which states water is to be stored and released from Truckee River Reservoirs to satisfy the exercise of water rights in conformance with both the Orr Ditch and the Truckee River General Electric Decrees is only an important consideration when it is unacceptable to mandatory signature parties. What happens when other actual parties of the Orr Ditch Decree (inclusive of the Truckee River Agreement) and the General Electric Decree find the adverse effects unacceptable? Please explain. Are there acceptable adverse impacts? Please explain. Should adverse effects acceptable to the mandatory signature parties be included as part of TROA? Please explain.

28

Page 2.10 Table 2-55 If the no-action creates lower Lahontan April-September releases than under the current conditions and TROA is the same as the no-action, then doesn't TROA create lower April-September releases from Lahontan Reservoir? Would the lower releases occur if OCAP were not in place? Is the no-action in conformance with the Orr Ditch Decree, Truckee River Agreement and Truckee River General Electric Decree? Please explain how lower April through September releases could be consistent

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## Comment NCG 05 – continued

Mr. Kenneth Parr  
 U.S. Department of the Interior  
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with existing court decrees particularly in light of OCAP's responsibility to minimize diversions.

29

Page 2-59 Table 2.10 There is no mention of Lahontan Reservoir Recreation. Did the DEIS contain such analysis? If not, why not? Should the results be included in the summary?

30

Affected Environment-Why is past cumulative effects included in the Affected Resources?

31

### Chapter 3 - Affected Environment and Environmental Consequences

General comments to Chapter 3:

The Affected Environment Section of the DEIS only provides general descriptions of resources and does not provide the quantitative information for comparison purposes that is needed in the analysis section

32

General Comment. The DEIS fails to analyze impacts to groundwater aquifers in the vicinity of the Truckee and Carson Divisions of the Newlands Project. The TROA DEIS assumes water quality water and Fernley M&I credit water will be stored in upstream reservoirs making the acquisitions of water quality water part of the TROA proposed action. Why did the federal government exclude this analysis? If another EIS was relied upon for the impact analysis, please provide a summary of activities undertaken to investigate this issue.

33

There is little or no baseline description in Chapter 3 regarding water resources of the Newlands Project. The information presented is largely general descriptions which provide the reader with very limited ability to understand the current conditions and how they might be affected by the proposed TROA. There is no ability to understand the current conditions or base line for the Newlands Project and then compare them against the impacts.

34

Page 3-2 - we question the inclusion of Hazen as "small" population center together with Fernley and Fallon. Hazen has not had a significant population since the construction of Lahontan Dam and the Truckee Canal. Further, it is not a "city" as its inclusion with Fernley and Fallon imply.

35

Page 3-5 -typo in 2nd par., last line

36

## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
December 27, 2004  
Page 6

Page 3-5 no mention in 5th par. on historical hydrology regarding prolonged periods of drought such that fully mature trees have been located 200 feet below the surface of Lake Tahoe as well as other alpine lakes serving the Truckee Drainage indicating severe prior drought conditions in the region. Some mention must be made about a longer historical record than the past 100-years utilized for this DEIS. Recent articles such as that appearing in the *Reno Gazette Journal*, Saturday, October 9, 2004 indicate that decades-long droughts are very possible given the current climatological trend.

37

Page 3-9 - first par. refrain from editorializing by the use of the term "reclaim" in quotation marks. Eliminate any references in document that might be construed as editorial comment.

38

Page 3-11 last paragraph blames the Newlands Project solely for the decline in Pyramid Lake elevations when in reality changing hydrologic conditions have affected Lake Levels. How much Truckee River inflow would have been needed to maintain Pyramid Lake and Winnemucca Lake? How much has Lake levels risen since OCAP was implemented?

39

Page 3-12 - b. Groundwater. some reference should be made with respect to the perennial yield in the Lahontan Valley, which has been estimated by USGS at <1500 AFA.

40

Page 3-15 b. Carson River Basin. There is no information on water quality in the Basin. No information on current conditions of ground or surface water quality. Please include.

41

Page 3-16 Carson River Basin 150,000 acres of wetlands could not have existed in the Lahontan Valley unless 750,000 acre-feet entered the Valley. The USFWS estimates that 5 acre-feet of water is needed for each acre of wetlands. Did the Carson River produce 750,000 acre-feet of inflow at Lahontan Valley? Please explain.

42

Page 3-23 - 3rd par. Phrase should be added to indicate that to date very few if any properties purchased with water rights have been returned to the private sector thus reducing the tax base of Churchill County. Additionally, there is some question as to the suitability of these fallowed lands for other development owing to their location away from centralized services such as schools, public safety and other governmental services. Churchill Code adopted in 2000 requires all developments to dedicate surface water rights based on the number of dwellings proposed for construction if the subject property had those surface rights as of the date of adoption of the code amendment. Further, the State Engineer through Order No. 1116 limited the amount of ground water which may be withdrawn under a quasi-municipal permit to not more than 4000 GPD, an amount insufficient to serve more than two dwellings. State Statute allows the appropriation of groundwaters of the State of Nevada in an amount not to exceed 2.02 AFA for domestic purposes to serve a single residence. State Health regulations require at least one acre of

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land for an individual sewage disposal system for a single-family residence. Thus development, if at all possible on fallowed lands, is pretty much limited to single family residences on at least one-acre of land. This results in sprawl and a tax base insufficient to provide services such as schools, public safety, streets and highways and other public functions thereby transferring much of the mitigation costs associated with an assured drought supply in the Truckee Meadows, coupled with OCAP, the WQSA and WRAP, to the residents in the Carson Division of the Newlands project.

43

Page 3-28 Comparative Evaluation of Alternatives- The no-action alternative creates significant adverse impacts to Cui-ui and LCT compared to the current conditions. So the federal government could allow the no-action to be implemented without mitigation or changing the no-action conditions which impact the Cui-ui? The no-action in this EIS is simply not valid nor is it adequately defined. Can the Orr Ditch Court allow shortages to the Newlands Project when water is available to divert or when greater carryover storage would eliminate shortages? Did the DEIS consider these scenarios in its analysis?

44

What are the feasible measures to avoid significant adverse impacts to the Cui-ui and LCT and non-compliance with respect to Orr Ditch Decree water rights in the Newlands Project? There appears to be no discussion of such measures in this document. Please identify the appropriate page numbers where feasible measures are discussed in the DEIS.

Page 3-28 Appears to imply that NEPA may not require mitigation for the no-action. However, other rules, regulations, laws and court decrees do. NEPA is not the only regulatory framework for this EIS. The EIS is required to identify the regulatory framework and address the impacts under each regulatory requirement. Is it enough to say that the No-action Alternative does not require mitigation when existing laws and regulations are either disregarded or even considered by the federal government?

45

The logic throughout the EIS appears to be to establish a no-action alternative that is similar to TROA; claim there is no difference between TROA and the no-action alternative, and then, abrogate responsibility for impacts by saying there is no mitigation required for the No-Action. Mitigation is not required for the no-action alternative but it is required for action proposals. The no-action is used as the basis of comparison. With respect to the Newlands Project, both the no-action and TROA have significant adverse impacts on water resources.

Page 3-28 Use of the Truckee River Operations Model- The water model is not set-up to evaluate the critical conditions for which the alternatives including TROA would impact the Newlands Project. The model appears to be structured in a manner that makes it incapable of evaluating specific hydrologic conditions which are most critical to TROA.

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Page 3-29 4th par. We recommend that the last sentence be modified to read as follows: "Such a short (in natural historical terms) record serves as the only available record in evaluating proposals relative to variability of regional runoff and availability and use of water supplies." This is in deference to the longer historical/paleoclimatological record that indicates much longer periods of extreme drought as evidenced by mature trees several hundred feet below the current level of Lake Tahoe. In fact, it could even be said that the PLT oral history indicating the origin of Pyramid Lake seems to indicate long periods of drought revealing the tufa formation by the edge of the Lake known as "the Stone Mother." Certainly the lake elevation may have been higher in pre-historic times but it is unlikely that the oral history would have been handed down about a rock formation hidden in the depths of Pyramid Lake.

47

Page 3-31 III. Study Assumptions, A. Population and Water Demands - There is no mention of population growth and demands for M&I water for Churchill County and the city of Fallon. In fact there are some 4,907 domestic wells in Churchill County (source: Churchill County Assessor 10/08/2004) mostly located within the Lahontan Valley where the bulk of the Newlands Project irrigated lands are located. All domestic and M&I water is supplied by groundwater resources in Churchill County recharged almost exclusively by the application of surface irrigation water (perennial yield estimated at <1300AFA vs. >10,000AFA current demand). It should also be mentioned that Churchill County is actively pursuing water right dedication as a condition for development.

48

Page 3-32 C. Water Right Transfers-Will approval be needed to store Sierra Pacific's non-consumptive water that is currently be used to generate Hydroelectricity? If not, why not? Is water being used for non-consumptive use available for credit water storage?

49

Table 3.2 Do the historic annual flows consider changes under OCAP in the calculations of the average discharges? If not, why not? This information needs to be included. How are the historic annual flows in this table used in the impact analysis? Please explain.

50

Table 3.2 How will this information be used to understand impacts or changes from TROA? Please explain.

51

The historic annual minimum releases do not accurately portray actual minimum releases from Lahontan Reservoir. Please refer to recent records to provide accurate information. How do changes in OCAP affect the results in Table 3.2? Why does this DEIS ignore real data and opt for what appears to be modeled conditions with improbable assumption?

52

53

The diversions through the Truckee Canal needs to recognize amounts for irrigation in the Truckee Division and amounts for storage in Lahontan Reservoir. Again, historic data is not a good description of baseline operating conditions of Truckee Canal diversions.

54

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Table 3.2 in what year does the maximum diversions through the Truckee Canal occur? Would OCAP allow for a diversion of 287,500 acre-feet from the Truckee? In what year did the minimum releases occur from Lahontan Reservoir?

55

Page 3-33 Water Resources, I Affected Environment, A. Supply, 1. Surface Water - Modify the first introductory sentence to include the word "Carson" following Tahoe...

56

Page 3-38 a. Agriculture - under 2nd par. add language to explain that the 275,700 acre-foot demand in the Carson division is made up of combined Carson and Truckee River water.

57

Page 3-39 no mention is made of M&I demands for city of Fallon, NAS Fallon, FPST and domestic demands for unincorporated areas in Churchill County of which at least a portion results from diversion of water from the Truckee River basin. In so doing, Table 3.3 - Current (2002) annual consumptive demands in the Lake Tahoe and Truckee River basins could be relabeled to indicate inclusion of the Carson Division.

58

Page 3-40 Table 3.4 Current (2002) nonconsumptive water demands (cfs) in the Lake Tahoe and Truckee River basins should be modified to include a reference to the hydropower generation at Lahontan Dam in the Carson Division of the Project since this fact is mentioned on page 3-41.

59

Page. 3-42, 1. Truckee River General Electric Decree. This paragraph is not a complete representation. Floriston Rates are also maintained to provide adequate Truckee River flows for downstream diversions including the Truckee Carson Irrigation District. The paragraph gives the reader the impression that the only function for Floriston Rates was for a pulp and paper mill. Please provide a more thorough discussion for the purpose of Floriston Rates

60

Pages 3-42& -43, 2. Orr Ditch Decree - it should be noted that although the Orr Ditch Decree reduced Floriston Rates the rate set was for the purpose of maintaining adequate flows to ensure that diversions at Derby Dam would allow the full allotment of water to Project irrigators.

61

Page 3-44 Current Operations. General Comment. There is no discussion of storing waters in Lahontan Reservoir. This section needs to include a discussion of Newlands Project storage procedures.

62

Pg 3-45 Changes to the Floriston rates are a key element of the TROA. Yet, the baseline description only provides a general description about the rates. Additional information needs to be included in the DEIS about Floriston rate flows.

63

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There is no information or baseline description of flows available for diversion to the Newlands Project from the Truckee River. This information needs to be included for different hydrologic conditions.

64

Pg 3-49 Please define Carson Division demands under wet, median, and dry hydrologic conditions.

65

3-49 B. - Summary of Effects - 3rd par. insert "single-event" following...and dry...

66

Pg 3-55 Last paragraph states that the period 1993 to 2002 represents a wide range of hydrologic conditions, which can be used to average historic end of September storage. With the exception of 1994, this period can generally be characterized as wet. Even 1994 followed a wet water year 92-93. Were any truly dry periods used to calculate end of September storage? If not, why was this not done?

67

Page 3-56 5<sup>th</sup> paragraph indicates that surplus TMWA rights would be injected through wells into the groundwater. How much would be injected into groundwater? When would the injections occur? At what time of the year? Which groundwater aquifers are capable of storing water and what is the total capacity? Please identify studies or other data which support recharge programs in local aquifers. How much of the M&I credit water storage is assumed stored under the no-action alternative?

68

Page 3-57 Table 3.11. Please describe the reasons for an increase in M&I water demands for Pyramid Lake under the no-action and TROA? How will this water be used? Will the increase in Pyramid Lake consumptive water demand impact the Cui-ui and LCT? Shouldn't this water remain in the River to ensure the survival and habitat for the Cui-ui? Please explain.

69

3-57 - Table 3.11. Modeled annual consumptive demands in study area (acre-feet) - Other M&I demands - no listing of domestic and M&I demands in lower Carson (i.e., city of Fallon, NAS Fallon, FPST, unincorporated area of Churchill County).

70

Page 3-58 Consumptive Demand. This section describes a wetland acquisition program that is unrealistic and has not been seriously considered since a record of decision was implemented for the final EIS. Only a small component of Navy water rights have been transferred.

71

Page 3-58 paragraph 2. How can the model assume increases in agricultural water use under Claims 1 and 2 when the no-action alternative results in significant adverse impacts to the Cui-ui and LCT? Please explain. Is this a valid assumption?

72

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3-58 - 1st par. Is it erroneous to assume that the transfer of water rights under WRAP to the Stillwater Wildlife management area will result in a full credit to the Truckee Basin as a result of lower demand since there is a matter of "fungibility" resulting from the mingling of Carson and Truckee River water in the Carson Division?

73

3-59 - 2nd full par. – There should be a discussion of M&I increases anticipated for the Carson Division (i.e., city of Fallon, NAS Fallon, FPST, and the unincorporated portions of Churchill County experiencing urbanization) since a portion of Truckee River water makes up the total water available in the Lahontan Valley.

74

Page 3-75 Figure 3.15. The figures indicate that under wet conditions January storage remains above 260,000 af.; median conditions about 155,000 af., and dry conditions approximately 105,000 to 110,000 acre-feet for the current conditions and between 85,000 to 90,000 acre-feet under dry conditions. Actual records show that January 04 Lahontan Storage was 112,718; Jan 03, 115,474; Jan 02, 101,468, and Jan 01, 100,718af. It appears that Lahontan Storage over the last 4-years reflects the dry scenario analyzed in the water model. Is the modeled portrayal of the dry storage conditions in Lahontan Reservoir accurate or does the model simply over-inflate storage levels under the dry period for the purpose of ensuring water right demands in the Newland Project are met? Please explain.

75

There is no analysis of Floriston rate reductions and impacts to the Newlands Project during various hydrologic conditions. Why? How can Floriston Rates be reduced to accumulate credit waters when the Newlands Project has the right to divert? Is the amount available for diversions to the Newlands Project impacted? Does the document contain an analysis that answers this question?

76

Water Resources-General Comment. During the review of the last 2 draft EISs produced for the TROA, Churchill County repeatedly asked for an analysis of multiple or sequential dry years. This revised DEIS again ignores the need to provide this type of analysis even when drought periods tend to occur over a 5 to 7 year drought cycle normally in successive years according to TMWA. Why has this analysis been excluded from the DEIS?

77

Page 3-78 - c. TROA. Model results under TROA demonstrate greater upstream storage, which comes at expense of water reliability for agricultural interests in the Project. All other stakeholders achieve greater reliability of supply.

78

Page 3-83 - *viii*. The presence of question marks seems to reinforce the questionable nature of the projections with respect to meeting water demands in the Carson Division. How much of that demand offset from decreased depletions due to water right purchases in the Truckee Meadows has been factored into the model?

79

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Page 3-90 - E. Exercise of Water Rights to Meet Demand - 1. Method of Analysis - while the model results are based upon a determination of a "minimum supply year", defined as the year with the least supply to meet water rights over the 100-year period of simulation, there appears to be no multi-year analysis of the minimum supply year scenario. It is unlikely that the 100-year period of analysis included a prolonged period of drought exceeding five to eight years. Further, averaging drought years in a rolling multi-year scenario softens the one-year supply number. In August 2004, a paper published by researchers from the University of Nevada and Scripps Institution of Oceanography stated "the current drought condition was the seventh worst to affect the Upper Colorado River Basin in the past 500 years." (Source: *Reno Gazette-Journal*, Saturday, October 9, 2004) Surely, the minimum supply year developed for this DEIS needs to develop some additional analysis for a true evaluation of a "worst case scenario." Far too many people, communities and businesses depend upon the limited water resources in our region to ignore the possibility of a decades-long period of drought. How about a multiple drought-year scenario?

80

Page 3-90 - 2. a. Current Conditions - need to include the Carson River basin in the discussion since the bulk of agricultural water demands occur in the Carson Division of the Newlands Project which is discussed in the Evaluation of Effects following.

81

Page 3-95 c. TROA *i*, *Agriculture* (b) Carson Division - the sentence "Timing of Truckee River supplies results in a minimal decrease in diversions to the Newlands Project in some years" is misleading in that it fails to take into account multi-year drought scenarios where water is repeatedly retained as Upper Truckee storage for M&I, in-stream and fish flows to the detriment of agricultural diversions. A snapshot in time is not realistic. Please show the total decrease in demand met between the no-action and current conditions and the TROA and current conditions. Why did the decline in ability to meet demands occur under TROA? Is this consistent with the Orr Ditch Decree and the PL101-618?

82

Page 3-97 - 3. Evaluation of Effects - some sort of statement should be made reflecting that the 100-year period used in the analysis is not reflective of research indicating that there were periods of extreme drought conditions, which may not be descriptive of the period of analysis.

83

Page 3-106 - Groundwater, I. Affected Environment - 4th par. There is no mention of the "reliable small water supply" in and around Fallon and the Carson Division in Churchill County with 4,907 domestic wells (Source: Churchill County Assessor). Groundwater serves 100% of the domestic supply in the Carson Division including the city of Fallon, NAS Fallon, the Fallon Paiute-Shoshone Tribes and the majority of the population in the unincorporated area of Churchill County.

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Page 3-107 - II. Environmental Consequences, A. Introduction - 1st par. - correct 4,500 domestic wells to reflect 4,907 wells as of 2004. While TROA is not a significant determinant, in and of itself, of water supply availability in the Carson Division of the Project, it is never-the-less a factor in the storage and release of water under OCAP, which in turn determines the acquisition of water rights under WRAP for the Stillwater Wildlife Management Area.

85

Page 3-108 - B. Summary of Effects - No mention is made of the impacts to groundwater in the Carson Division. The State Engineer has already determined that changing agricultural practices (i.e., reduced water deliveries to ag. lands) will have an effect upon groundwater in the Lahontan Valley resulting in a moratorium on further drilling of wells with a capacity over 4,000GPD (State Engineer Order No. 1116). Lahontan Reservoir does not lend itself to surface water supply for M&I due to known high concentrations of mercury.

86

Page 3-108 - Table 3.14 Summary of effects on groundwater - "Well pumping in the shallow aquifer" makes no mention of the absolute reliance on groundwater by almost the entire population residing in the Carson Division of the Project.

87

Page 3-110 - D. Recharge of the Shallow Aquifer in the Truckee Meadows, 1. Method of Analysis. - Why was the study limited to the Truckee Meadows? As stated previously, the entire population of Churchill County residing in the Carson Division relies on groundwater for domestic M&I uses. Why should the loss of canal seepage and deep percolation on the irrigated fields in the Truckee Meadows not produce a similar reduction in local groundwater recharge in the Lahontan Valley? In fact, Public Law 101-618 Sec. 210 b (16) contemplates a reduction in groundwater quality and quantity charging that "[T]he Secretary in consultation with the State of Nevada and local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title." To date, no definitive study has taken place cumulatively addressing all of the significant adverse impacts directly resulting from the water purchases authorized by P.L. 101-618. If all of the proposed acquisitions authorized by the Act were to be implemented, they add up to significantly more water than is available in the Lahontan Valley (See Churchill County Water Resource Plan: 25 Year 2000-2025: 50 Year 2000-2050 (Water Research and Development, Inc. 2003)

88

Page 3-111 - D. Recharge of the Shallow Aquifer in the Truckee Meadows, 3 & 4. No mention is made of the approximately 4,900 shallow wells in the Lahontan Valley located in the Carson Division of the Project either as being affected or requiring mitigation due increase to depth of the groundwater table or the loss of quality or both.

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Page 3-112 - Model Results and evaluation of Effects - While TROA purports to produce minimal incremental impacts to groundwater in the Newlands Project; when coupled with the WQSA, OCAP, WRAP and potential recoupment, the potential will likely be significant. Throughout the TROA DEIS document there is minimal acknowledgement of any significant impacts on the Carson Division.

90

Page 3-320 - Economic Environment, I Affected Environment, A. Current Economic Environment, 2. Nevada - 1st par. The Nevada portion of the study mentions all of the Counties and communities lying with in the Truckee and lower segment of the Carson Rivers. Yet the city of Fallon is set apart as an "agricultural community" rather than as a "population center" such Fernley, Reno-Sparks and even Wadsworth, Nixon and Sutcliffe. This gives the reader the impression that Fallon is somehow apart from the other cities and towns subsisting on what has been painted as a dying economic segment (agriculture). In fact, Fallon is a vibrant and growing regional economic hub drawing from most of rural north-central Nevada. The community is economically diverse with retail businesses, manufacturing, energy production, military and agriculture all contributing to our economy. Our local hospital has estimated that there is a population of some 60,000 to 70,000 persons served by their facility from as far away as Austin, Round Mountain, Hawthorne, Gabbs, Lovelock and even Fernley who also take the opportunity to shop and take care of other business while in town for their medical needs. Fallon's role as a population center should not be minimized by implying that it is a single sourced economy.

91

Page 3-320 - Economic Environment, I Affected Environment, A. Current Economic Environment, 2. Nevada - last par. The speculation that the decline in irrigated acreage is most probably due to changing agricultural markets and increasing demand for nonagricultural water is understating the obvious. As the next sentence only delicately hints at, the reduction is primarily due to the ever-increasing burdens placed upon the water right holder. Such burdens stem from legal challenges by the Federal government, the Pyramid Lake Tribe of Indians and upstream interests reaching clear back to such actions as OCAP, recoupment, bench-bottomland duties, transfer challenges and numerous other impediments and measures resulting in a steady erosion in water quantity and reliability to the economic detriment of the agricultural water users in the Newlands Project.

92

Page 3-322 - C. Agricultural and M&I Water Use - why limit the discussion to the Truckee Meadows area where the agricultural production has declined precipitously since 1995, and further, why rely on 1995 agricultural employment and personal income data? For example, in the Carson Division, Churchill County is the largest dairy producer in northern Nevada. Agriculture is a valuable contributor to an export economy bringing dollars into the community. This paragraph should be restated to accurately reflect the overall agricultural picture (utilizing the latest information - it's available on the Internet!!)

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for all of the users of Truckee River water whether in the Truckee Meadows or the lower Carson Division of the Newlands Project, most specifically those in the Carson Division.

93

Page 3-323 - 2. Employment and Income Affected by Changes in Water Use - the section is entirely silent on the effect upon Carson Division economy. Please address this issue.

94

Page 3-325 - 4. Groundwater Pumping Costs - This section is silent with respect to groundwater pumping costs in the Lahontan Valley. There are nearly 5,000 individual wells in the shallow aquifer that may be affected as a result of the combined actions of Public Law 101-618 including TROA. Why isn't the Carson Division more fairly addressed?

95

Page 3-325 - C. Recreation-Related Employment and Income, 1. Method of Analysis - although the last paragraph mentions portions of Churchill County, Nevada as being a part of the study area, no further reference is made in this section on the impacts to the community. For example, if the analysis is only intended to include Donner Lake, Prosser Creek, Stampede and Boca Reservoirs in the analysis, will there be a reduction in recreation-related employment and income due to reduced downstream storage at Lake Lahontan and water availability at the wetlands in the lower Carson Division? Or, did the authors mean to imply an increase in recreation-related employment and income in the lower Carson Division due to some sort of shift away from agriculture to recreation due to wetlands enhancement?

96

Page 3-326 - no mention is made of the inclusion of Churchill, Lyon and Washoe Counties in either the Economic or Recreation Model discussion yet the Method of Analysis ((page 3-325) indicates that the model considered them among others including El Dorado, Nevada, Placer and Sierra Counties in California. Does the model only derive economic benefit to the California counties? If so, what are the economic losses to the affected Nevada counties?

97

Page 3-329 - Table 3.84. - Recreation visitation and expenditures - The compilation is silent with respect to impacts to recreation and visitation expenditures at Lahontan Reservoir in the Carson Division. The cumulative impacts associated with Public Law 101-618 and associated prior actions have already impacted visitor days at Lake Lahontan, the second largest warm water recreation area in Nevada. The State of Nevada has already expended sums to extend boat launch ramps and improve docks in an attempt to accommodate the annual wide fluctuation in lake elevation, which would certainly be exacerbated under TROA as it relates to prolonged drought. Please state what the anticipated loss in recreation expenditures for the Lahontan Reservoir might be in a prolonged drought condition.

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Page 3-330 - D. Employment and Income Affected by Changes in Water Use - Impacts to the Carson Division of the Newlands Project is dismissed as insignificant since a negligible amount of water rights would be transferred as a result of TROA. Yet in the very next sentence at the top of page 3-331, TROA is touted as allowing greater flexibility in the Truckee Meadows to meet future water demand as a result of greater amounts of M&I water stored in the upper basin reservoirs. The scheme will work as long as the conditions are conducive to storage of flows in excess of demands (i.e., high water years). Very little effort is expended on addressing multi-year drought conditions which are likely to worsen if the prospects for precipitation continue to lessen based upon the long-term climatological record and the findings of those respected in the paleoclimatological sciences. In the event there are longer term drought conditions beyond those derived from the 100-year record and minimum end of year storage targets for Lahontan Reservoir coupled with Project delivery demands cannot be met, what is the potential cumulative economic impact to Carson Division employment and income? While water rights may not be "transferred" from the Carson Division, the storage, timing of releases and volume of flows in the upper Truckee River will surely affect the reliability of water available to irrigators in the Carson Division. The model indicates that the greatest impact to Project irrigators is during a dry year condition when Credit Water storage for fish flows and M&I drought protection take precedence. How many years of very dry conditions would it take before the agricultural industry would collapse?

99

Page 3-331 through 3-333 - 4. Evaluation of Effects - is completely silent with respect to impacts to Carson Division employment and income affected by changes in water use. This section (along with other sections) needs to be revised to include those impacts to the Carson Division resulting from the loss of a reliable water supply.

100

Page 3-235 No Action. How does a reduction of 4,490 acre-feet of inflow to Pyramid Lake Result in a significant adverse impact? This amount of water is almost undetectable; it represents less than 1 percent of the total average inflow into the Lake and is within the margin of measurement error. There are inconsistencies throughout the document in the way "significant impact" is defined differently between upstream interests and downstream interests.

101

Page 3-235. Please explain how an additional flow of 9,730 acre-feet on average would result in significant beneficial impacts over the current conditions. Page 3-235 indicates that the greatest benefits would occur in dry and very dry years which are most critical for Cui-ui survival.

102

Page 3-340. Social Environment, I. Affected Environment, 4. Agricultural Lands on the Newlands Project, 1st full par. - it is true that agriculture contributes to the economic vitality of Fallon and Churchill County. However, the paragraph should also be expanded to indicate that agriculture contributes substantially to a rural way of life that includes green open spaces, wildlife habitat and stability that comes from a diverse economy.

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Page 3-342 C. Urbanization of Truckee Meadows - no mention is made with respect to growth in the urban population of Fernley or the city of Fallon and surrounding urbanizing areas of Churchill County. Again, upstream urbanization appears to be valued more greatly by authors than downstream urbanization.

104

Page 3-343 through 3-345 - D. Air Quality - this section is completely silent with respect to air quality impacts in the area of Swingle Bench on the Truckee Division located in Churchill County. Significant wind erosion and resultant air quality impacts have been documented by qualified experts retained by Churchill County. While the AQI may have been stabilized or even improved in the Truckee Meadows, the air quality in Churchill County (specifically in the Swingle Bench area) has been negatively impacted. Perhaps it can be said that TROA and the related actions contemplated under PL 101-618 are simply exporting urban ills to a rural area. Increased fallowing of agricultural lands as a result of WRAP in the lower Carson Division is also coming under increased scrutiny as a contributor to a worsening AQI and noxious weed infestations. This section needs to be fleshed-out to include downstream impacts as a result of actions contemplated under TROA as well as other related measures as set forth in PL 101-618.

105

Page 3-347 - Environmental Consequences - this section simply ignores the effects on the social environment indicators of population, urbanization of the Truckee Meadows, and air quality on surrounding areas impacted by the proposed actions. This section needs to be expanded to include the Truckee Division in the vicinity of Fernley, the Swingle Bench in Churchill County and the cumulative impacts of the proposed action occurring on the Carson Division in the vicinity of Fallon. Growth in the Truckee Meadows is impacting its downstream neighbors on the Truckee and Carson Divisions of the Newlands Project.

106

Page 3-351 - E. Air Quality. This entire section is extremely weak in that it fails to include any consideration of air quality degradation on neighboring communities resulting from growth in the Truckee Meadows enabled by a greater reliability of the M&I water supply. Such growth fuels the need for mitigation such as the WQSA with its purchase of Truckee Division water rights and reduction in irrigation water reliability to meet demands on the Carson Division of the Newlands Project. Other related actions specifically included in the enabling legislation for TROA such as affirmation of OCAP and the resulting WRAP further contribute to potential air quality degradation. There is a serious omission of factual details regarding this element.

107

Page 3-388 1<sup>st</sup> par. Please add "the Newlands Project becomes increasingly dependent upon Truckee Canal Diversions during dry periods."

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Page 3-388 Newlands Project Operations-General Comment. The analysis in this section is misleading at best. Again, the analysis does not consider multiple dry year periods. Beginning storage targets are inflated and do not resemble actual data and the analysis assumes that full and reduced Floriston rates are being met. The averages are not a realistic representation because they smooth out actual impacts that would occur over a one or two year period but not be as impactful over a ten-year period.

109

### Chapter 4 - Cumulative Effects

#### General comments:

Nowhere in the TROA DEIS/EIR document is there any mention of the need to implement a long-range monitoring program to ensure the anticipated outcome resulting from the implementation of TROA is achieved with a minimum amount of impact to the affected areas, both upstream on the Truckee River and in the lower reaches of the Newlands Project, specifically in the Carson Division. Suggest that a long-term periodic study be proposed to ensure that the interests of the affected parties is addressed and that adequate provision be made to provide mitigation for both direct and indirect impacts resulting from TROA.

110

Page 4-5 - Table 4.1 - Status of selected actions authorized by P. L. 101-618 - Section 206(a)(1) WRAP - indicates that CE analysis is not required because EIS authors feel TROA would not affect measures to fully implement WRAP. This position fails to acknowledge that storage, timing and flows of Truckee River water will likely affect water available for Carson Division. Water rights and water available to meet demand are two entirely different concepts.

111

Section 206(d) - regarding cost sharing for protection of Lahontan Valley Wetlands indicates "no CE analysis is required because this is a coordination action only with no effect on acquisitions" assumes that the Department of the Interior will not expend Federal resources to acquire additional water. In the event that Federal dollars will be used to acquire additional water rights, an EA will be required and acquisitions will further affect the total amount of private water available for irrigation possibly increasing O&M for the Truckee-Carson Irrigation District.

112

Section 206(b) - Project Efficiency Study assumes that no CE is required because this was a study only. But, authors have overlooked the outcome which resulted in higher efficiencies that may drive upstream Credit Storage in Truckee Reservoirs for Project irrigation water users, which has not been included in the Draft TROA agreement.

113

Section 210(b)(16) - assumes that no CE required because the authors have overlooked the legislative record for P.L. 101-618 to determine the meaning of the term "address" in the language of this section. While the current studies have not identified any immediate

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Mr. Kenneth Parr  
 U.S. Department of the Interior  
 December 27, 2004  
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negative impacts, the authors have dismissed the long-term impacts and ignored the reasonably foreseeable impacts on groundwater recharge and availability resulting from the modification to timing of storage, timing of releases and flows of the upper Truckee River Reservoirs on the potential availability of irrigation water in the Carson Division. While there may be a number of studies extant on the lower Carson River Basin, there is no study quantifying and analyzing the cumulative impacts all of the actions proposed under Public Law 101-618 will create. Suggest that this entire table be reviewed to reflect the variability of storage, timing and flows on the availability of water to the Carson Division.

114

Page 4-8 through 4-9, actions 1, 3 and 4 - in these three Water Management Elements of P.L. 101-618 under *Potential Impacts* the statement that TROA in combination with WRAP and OCAP would not have a significant impact on the priority of Newlands Project water rights or the ability to divert water from the Truckee River to Lahontan Reservoir is, perhaps, a "half-truth." TROA affects storage, timing of releases and flows, which if managed in a manner adverse to Project water right owners could potentially impact the total amount of water received. This situation is more likely to occur in low-flow drought periods than in times of relative plenty.

115

Page 4-11 - 7. Section 209(j) OCAP, *Potential Impacts* - the potential impacts delineated in this section are downplayed by stating that "TROA would not affect the priority of Newlands Project water rights, calculation of Newlands Project maximum allowable diversions, or the ability to divert water from the Truckee River to Lahontan Reservoir to achieve monthly storage targets" claiming that it would therefore have no cumulative effect on the implementation of OCAP. It is entirely possible that while satisfying the letter of TROA, the spirit and intent of the *Orr Ditch Decree and the Truckee River Agreement* as limited by OCAP could not be met with respect to diversions to meet those allowed forcing Project water right owners to go through a lengthy appeals process and possibly court action built into TROA while foregoing the diversion of the full amount of water to which they might be entitled. Since the model upon which this and other statements, with respect to the protection of Newlands Project water and water rights, is based upon the limited information on flows in the Truckee River for the past 100-years, we feel that the authors of this document overstate the ability to divert water to the Carson Division when the TROA calls for storage in the upper Truckee reservoirs. It's not the high flow water years that give us pause; it is the prolonged drought-periods that do not seem to have been adequately analyzed in the model.

116

Page 4-13 - 1. Urban Development Plans, *Potential Impacts* - We totally reject the statement that TROA would have no effect on community planning activities. By encouraging a FIRM drought supply, Truckee Meadows sprawl proceeds at an unchecked pace consuming ever-greater amounts of natural resources such as land, water and air. Such growth creates ever-growing wastewater discharge problems requiring mitigation through the acquisition of irrigation water to offset increases in TDS and nutrient loading.

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## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
December 27, 2004  
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The WQSA is a prime example of this. The acquisition of water from the Truckee Division of the Newlands Project, in turn, has already created air quality problems arising from fallowed lands on Swingle Bench choking the canals and laterals with sand and increasing costs and otherwise hampering the remaining agricultural water users. We also contend that TROA in conjunction with OCAP has the potential to further limit the amount of water reaching the irrigators in the Carson Division of the Newlands Project. This is based upon the overly optimistic year-end storage target projections in Lahontan Reservoir used for modeling results, which are proving faulty based upon actual storage numbers for the past four years. Coupling the erroneous assumptions in the TROA model with the storage, timing of releases and duration of flows to ensure upstream retention of water for in-stream flows and drought reserves only serve to embolden urban planners who seek to maximize the resources thought to be at hand.

117

Page 4-16 - e. *Churchill County, Nevada, Potential Impacts.* The seemingly innocuous statement that "TROA would have no direct impact on development of local water systems or on water rights on the Newlands Project" begs the relationship of TROA to the storage, timing of releases and duration of flows with potential impact to allowed diversions from the Truckee River under OCAP. 100% of all water for domestic M&I uses in the Lahontan Valley comes from groundwater. USGS studies have determined that the perennial yield in the valley is between 1300 and 2500 AFA with a demand in excess of 10,000 AFA. Yet to date, there has been very little reduction in groundwater elevation except in the vicinity of irrigation canals and laterals on a seasonal basis. As the seeds of Public Law 101-618 bear fruit, the resulting reduction in total water available in the Lahontan Valley will diminish. The State Engineer recognized the relationship of irrigated agriculture and groundwater some time ago when he issued State Engineer Order #1116 limiting the appropriation of groundwater for new quasi-municipal wells to not greater than 4000 GPD (that's less than four households). The near term impact of this order has been to dramatically increase the value of groundwater and the adoption of stringent development standards and water right dedication requirements in the unincorporated areas surrounding the city of Fallon (which we concede are appropriate actions). The long-term impacts are less confidence inspiring. They include the potential of having developed a significantly expanded community (we have a right to grow too) utilizing a steadily decreasing groundwater resource with increased water treatment requirements to meet public health standards, the potential devaluation of property and loss of economic value and viability due to the lack of adequate water resources. Does the document deal equally with and value equally upstream and downstream interests?

118

Page 4-21 - F. Water Quality. It should be noted that without the WQSA, growth in the Truckee Meadows could be severely limited since advanced tertiary wastewater treatment to meet water quality standards on the lower Truckee River would be a financially challenging prospect. Instead, upstream interests have entered into the WQSA utilizing prime irrigation water from the Truckee Division of the Newlands Irrigation Project to supplement flows in the lower Truckee River. The resulting water is used to dilute

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## Comment NCG 05 – continued

Mr. Kenneth Parr  
 U.S. Department of the Interior  
 December 27, 2004  
 Page 21

wastewater to meet discharge standards and mitigate growth impacts resulting from urbanization. In so doing, the environmental consequences of growth have been transferred to the Truckee Division, most specifically Swingle Bench in Churchill County, resulting in air quality degradation and soil erosion. Such impacts have translated into additional operating costs for remaining agricultural operators as well as created dust hazards and at least one traffic accident (due to reduced visibility) on US Highway 50 with resulting injuries. To date, there has been no mitigation of the impacts occurring on the Bench by any party to the agreement. What are the plans to mitigate for the impacts to improve water quality in the lower Truckee caused to the Swingle Bench area of the Project?

119

Page 4-27 - A. Water Resources. The introductory paragraph is overly simplistic in its explanation and extremely optimistic in its outcome. While TROA will likely result in reduced Truckee River flows to create Credit Water, the proposal, based on the model, would only be effective in high runoff years or single season dry cycles. It would not allow for satisfaction of irrigation demands in the Carson Division when TROA calls for Credit Storage in multi-year dry cycles.

120

Pages 4-27 through 4-29 - Table 4.2 Cumulative effects on water resources by action category and alternative. Shouldn't agriculture have its own listing of cumulative effects on water resources by action category and alternative since it contributes substantially to the current ecosystem?

121

Page 4-31 - 2. Potential Cumulative Effects of TROA. We question the statement that TROA would not affect the amount of storm or wastewater treated by a facility, degree of treatment, or quality of (or constituent loading by) its discharge. Growth creates greater areas of pavement and increased stormwater runoff plus wastewater flows and the increased need for dilution or replacement for land application. Doesn't TROA by virtue of creating a FIRM drought supply allow for a lower dedication rate for development thus encouraging growth beyond our current capacity to provide water to urban areas in the Truckee Meadows? Further, conservation efforts to reduce per household water consumption create greater constituent loading because of lower volume? (the solution to pollution is dilution)

122

Page 4-33 - Table 4.5 - Analysis of effects on sedimentation and erosion by action category and alternative. To state that water rights acquisitions and transfers would not affect dynamics of erosion and sedimentation is puzzling. While TROA is not directly responsible for wind erosion of soils at Swingle Bench, it is nevertheless a part of the cumulative impacts resulting from implementation of P.L. 101-618. The use of highly questionable assumptions for the model could make TROA more directly responsible for wind erosion in the Carson Division of the Newlands Project.

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## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
December 27, 2004  
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Page 4-35 through 4-38 - Tables 4.6, 4.7, 4.8 and 4.9 - Water Quality. While reduction in unit loading to water bodies could occur, the increase in population resulting from a FIRM drought water supply for M&I purposes would result in higher total loading. Has total loading to receiving bodies of water been factored, and if so, what will be the ultimate outcome of such loading and when?

124

Page 4-40 - Table 4.10 - Analysis of effects on recreation by action category and alternative - Water rights acquisitions and transfers. We disagree on the effects on Lahontan Reservoir under the TROA alternative as being "minimal." See prior discussions on the assumptions under the model, which overstate carryover storage and fill probability of Lahontan in a multi-year dry condition.

125

Pages 4-41 & 4-42 - Tables 4.11 & 4.12 - Water rights acquisitions and transfers. Why is there no detail under the TROA alternative for this category since fallowed farmlands may not be economically viable for other uses thereby devaluing them and why is there no consideration given to the health related issues relative to dust and soils erosion on Swingle Bench and in the Carson Division?

126

Page 4-43 Conclusion. For the proposed action the DEIS reaches the conclusion that there would be no need for mitigation and therefore none is proposed. Such a statement for a document that took in excess of fourteen years to draft because of its complexity and the controversy surrounding it is inaccurate at best and downright misleading at worse. The fact of the matter is that only a handful of parties were involved in the negotiations leading up to this document leaving in excess of 2,400 water right owners, including a number of local governments, with a cumbersome recourse in the event they are not served when calling upon their water. One of the major faults with this agreement lies with the overly complex and convoluted model used to make decisions with respect to upstream water storage on the Truckee River to the detriment of the water right owners in the Newlands Project. Only a few people seem to have been privy to the model during the initial drafting that resulted in the original agreement in May 1996. At that time, the major problem seemed to be deficient modeling and inability to validate modeling documentation and assumptions to the public. It seems that this issue has not yet been resolved. Another issue manifests itself in inadequate analysis of reasonable alternatives. NEPA and CEQ regulations afford no room for the dismissal of adequate analysis of all reasonable alternatives, negotiated agreements notwithstanding. Legal proceedings on this very issue seem to support the fact that a negotiated set of criteria does not trump 40 C.F.R § 1502.14, which requires a detailed consideration of all reasonable alternatives. This has resulted in a very narrow range of alternatives confined to No Action, LWSA and TROA. The similarity of the No Action and the LWSA alternatives further call into question the validity of the TROA DEIS/EIR conclusions. Coupling that with no baseline conditions to allow for a true comparison of alternatives creates unanswered questions and questionable conclusions.

127

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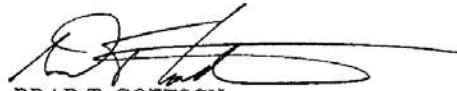


## Comment NCG 05 – continued

Mr. Kenneth Parr  
U.S. Department of the Interior  
December 27, 2004  
Page 23

We appreciate the opportunity to comment on the TROA DEIS/EIR but find that the document falls short of meeting the requirements of NEPA and CEQ regulations even now after years of hard work and effort.

Sincerely,



BRAD T. GOETSCH  
County Manager

BTG:wm

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# Comment NLG 01



CITY OF FALLON  
OFFICE OF THE  
MAYOR

KEN TEDFORD, JR.  
MAYOR

October 26, 2004

VIA FACSIMILE (775)-882-7592 and U.S. MAIL

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street  
Carson City, NV 89701

Re: Truckee River Operating Agreement DEIS/DEIR Request for  
Extension to April 30, 2005 for Public Comments.

Dear Mr. Parr:

The City of Fallon is a political subdivision of the State of Nevada organized under Chapter 266 of the Nevada Revised Statutes. The City is responsible for protecting the safety and welfare of its residents and guarding against any threats to the public's assets. The City owns and operates a municipal water system which provides drinking water to its 9,000 residents and relies upon Nevada water rights, specifically under Permit No. 19859, 19860, 26168, 40869 and 55507 for supply of said water. Because the proposed federal government actions described in the DEIS of the TROA affects the human environment by potentially reducing the drinking water supply for 9,000 residents, the City of Fallon has a direct and substantial interest in ensuring that the DEIS comports with NEPA.

The City also owns Newlands Project water rights that are impacted by the proposed TROA.

The City is aware that the Truckee Carson Irrigation District ("TCID") and Churchill County have requested extended time to file comment to the DEIS. Those requests are based on the long history of the TROA's evolution now proposed for action in the DEIS including the confidential meetings and discussions leading to its creation and the baseline information used to develop the TROA and the DEIS. For these reasons the requests of TCID and Churchill County for relevant information, including all "modeling" information, is absolutely necessary under NEPA for the City to make informed analyses and comments, accordingly the City respectfully requests the following:

1. The comment period for the DEIS be extended for six months to April 30, 2005.

55 W. Williams Avenue ■ Fallon, Nevada 89406 ■ (702) 423-0167

01

## Comment NLG 01 – continued

Letter to Kenneth Parr  
October 26, 2004  
Page 2

2. All foundational and other information concerning a "model" or "models" pursuant to the requests of TCID and Churchill County be furnished to the City at the time such information is provided to said parties.

Assuming that this request is handled by your office in a expeditious and forthright manner we are hopeful that an extension to April 30, 2005 will allow an adequate time frame for our review of the DEIS and TROA to ensure that it complies not only with NEPA but also to ensure that it complies with the underlying act passed by United States Congress, Public Law 101-618, which expressly guarantees that none of the rights or interests of the City of Fallon be harmed in any way and that the Orr Ditch Decree and its Truckee River Agreement be respected and remain in place.

We look forward to your positive cooperation.

Sincerely yours,

CITY OF FALLON



KEN TEDFORD, JR.  
Mayor

KT/rb

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BUREAU

## Comment NLG 02



KEN TEDFORD, JR.  
MAYOR

CITY OF FALLON  
OFFICE OF THE  
MAYOR

December 22, 2004

VIA FACSIMILE (775) 882-7592/ US MAIL

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, NV 89701

Re: Request for Extension of Time/Draft EIS/EIR Truckee  
River Operating Agreement ("TROA").

Dear Mr. Parr:

The City of Fallon by my letter dated October 26, 2004 explained the City's interest in your draft TROA EIS/EIR. Said letter explained the legally protected interests of the City of Fallon and our pledge to maintain the City's municipal drinking water utility. Therein I requested an extension of time to April 30, 2005, to provide meaningful comments to the TROA EIS/EIR.

I am in receipt of a letter to your attention dated December 20, 2004 by Michael J. VanZandt, attorney for the Truckee Carson Irrigation District ("TCID") wherein the TCID requests an extension of time for comments until April 30, 2005. Our Fallon City Attorney has spoken to Mr. VanZandt and I am told that Mr. VanZandt's letter accurately outlines issues pertaining to your draft TROA EIS/EIR.

The City of Fallon is particularly concerned with the obvious speculative nature of the Truckee River Operating Model, which as Mr. VanZandt points out and which you are undoubtedly aware, has not been verified, validated or calibrated. Additionally NEPA requires an honest presentation of the current operating conditions of the Truckee River, including incorporating the continued use by those who own Orr Ditch Decree water rights, specifically historic Claim 3 uses. Yet in spite of this, the draft TROA EIS/EIR is constructed on a fictitious baseline using input data which erroneously

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## Comment NLG 02 – continued

Letter to Ken Parr  
December 22, 2004  
Page 2

depicts upstream interests controlling Claim 3 rights to yield an imaginary "No Action Alternative". These two defects alone are extremely troubling and require serious investigation of the entire TROA drafting process.

For these reasons the City joins in the request by Mr. VanZandt that the comment period be extended to April 30, 2005 (subject to all requested information being timely provided by your agency) in order for the City to be able to make a comprehensive analysis of the TROA EIS/EIR.

01

Sincerely,

CITY OF FALLON



KEN TEDFORD, JR.  
Mayor

KT/rb  
cc. Lyman F. McConnell  
Brad Goetsch  
Michael F. Mackedon  
Charles Binder  
Michael VanZandt

DEC 23 2004

## Comment CCG 01



PLACER COUNTY  
DEPARTMENT OF PUBLIC WORKS

Tim Hackworth, Director  
Ken Grehm, Assistant Director  
Rick Dondro, Deputy Director  
Wes Zicker, Deputy Director

October 21, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

**SUBJECT: TRUCKEE RIVER OPERATING AGREEMENT; REVISED DRAFT  
ENVIRONMENTAL IMPACT STATEMENT / ENVIRONMENTAL IMPACT  
REPORT**

The proposed action is the signing, adoption, and implementation of the draft Truckee River Operating Agreement (TROA) for reservoir operations; including promulgation of TROA as a Federal rule; changing California water rights permits and licenses to allow the water storage, transfers, and exchanges provided for in the TROA; and negotiating contracts with the owners of Credit Water, created pursuant to the TROA, for storage of that water in Federal reservoirs.

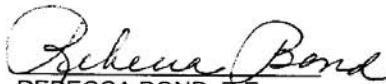
Placer County Department of Public Works has reviewed the above-cited document and has no further comments or concerns at this time.

01

Thank you for the opportunity to comment on this document. If you have any questions, please call me at (530) 889-7538.

Sincerely

COUNTY OF PLACER  
DEPARTMENT OF PUBLIC WORKS  
T. D. HACKWORTH, DIRECTOR

  
REBECCA BOND, P.E.  
ASSOCIATE CIVIL ENGINEER

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## Comment CLG 01

Town Council

Craig F. Threshie, Mayor

Beth Ingalls, Vice Mayor

Joshua J. Susman, Councilmember

Barbara Green, Councilmember

Richard Anderson, Councilmember



Department Heads

Stephen L. Wright, Town Manager

Scott Berry, Chief of Police

J. Dennis Crabb, Town Attorney

Tony Lashbrook, Community Development

David M. Heath, Administrative Services Director

Judy Price, Town Clerk

Alex Terrazas, Assistant to the Town Manager

Daniel Wilkins, Public Works Director/Town Engineer

December 21, 2004

Michael Cooney  
California Department of Water Resources  
3251 S Street, Room E-12  
Sacramento, CA 95816

Kenneth Parr  
US Department of Interior, Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, Nevada 89701

RE: Truckee River Operating Agreement Draft EIS/EIR

Dear Mr. Cooney and Mr. Parr:

The Town of Truckee has been an active participant in the TROA process for the last 11 years. We commented on the 1998 Draft EIR/EIS and see that many of our comments have been addressed in the current Draft. Thank you to the EIR/EIS Development team for this effort.

However, we continue to be very concerned that the new document again finds that the long-term implementation of the TROA results in no potentially significant environmental effects. This conclusion is unprecedented for a project as far-reaching as an operating directive for a major river. We are pleased to see that the analysis leading to the environmental conclusions has been augmented, but it must be noted that these conclusions are based on assumptions, models, and historic information, all of which have limitations relative to accurately projecting future conditions. The Town believes that the State of California and the Federal Government have a legal obligation to monitor and report on the actual

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## Comment CLG 01 – continued

operations that result from the agreement and to compare reality to the assumptions and conclusions provided in the EIR/EIS. If future operations result in environmental impacts not analyzed by the EIR/EIS, adjustments or corrections in the River operations may be necessary. To complete this process without committing to such a program is unacceptable to the Town. Therefore we formally request that the Final EIR/EIS contain specific provisions for monitoring and reporting and for future adjustments if the analysis in the EIR is not accurate based on real life experiences.

01

Specific sections within the legal framework leading to the TROA provide support for our request. They include Public Law 101-618, Section 205a2b Spawning Flows, Section 205a2c In-stream Beneficial Uses (Settlement Act), 205a3g In-stream Beneficial Uses, and Article 13.C – Periodic Reporting on Operations, as more specifically described below:

**Benefit to the Fishes.** Section 205 states that enhancement of spawning flows, support of the Endangered Species Act (for the recovery of the Cui-ui and Lahontan cutthroat trout), and achievement of in-stream beneficial uses are to be met under the TROA (i.e. 205a2b, 205a2c, and 205a3g). The Draft EIR/EIS states the TROA has no negative impact on fishes; however, in order for the TROA Administrator to establish "no negative impact" in the 10-Year Periodic Report (Article 13.C), baseline information must be established and conditions throughout the ten-year period must be monitored. This is the only way to identify trends and specific results, including declines or ameliorations. For California to approve TROA there must be a mechanism to establish ameliorations to the fishery. The Town of Truckee requests that the Final EIR/EIS specify this data collection and analysis process.

02

**Support of the Endangered Species Act (ESA) and Adaptive Management.** Again, the TROA Section 205a2b specifies compliance with the ESA in that the TROA will meet the needs of the Secretary to meet ESA requirements. The Federal Five-Point Policy addendum (USFWS, 2000), recommends adaptive management as the strategy for recovery plans. This five-point adaptive management program is: 1) opportunistic learning, 2) hypothesis testing, 3) management, 4) monitoring, and 5) directing the results and assessment back into the program. Again, we request that the Final EIR/EIS specify this data collection and analysis process.

03

**Periodic Reporting.** Article 13.C requires that the TROA Administrator issue a report every ten years summarizing operations and evaluating the achievement of the purposes of the TROA. In order to adequately compile the report, the TROA Administrator will need to consider annual data for comprehensive monitoring in two categories: compliance monitoring and effectiveness

04

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## Comment CLG 01 – continued

monitoring (see below). This data will be required to evaluate the achievement of the TROA purposes. The Draft EIR/EIS does not specify what data will be collected or how it be will collected. The Town requests that the Final EIR/EIS clearly define the expectations for monitoring.

04

*Compliance Monitoring* tracks the status of the TROA implementation, ensuring that protocols and planned actions are being executed. In this category, we include:

- Implementation of the California Guidelines
- Comparison of actual flows vs. modeled flows
- Availability of credit water
- Application/use of credit water
- Application/use of adaptive management strategies

*Effectiveness Monitoring* evaluates the success of the TROA in meeting the stated biological/ecosystem objectives; that is, is the river a better environment for fish? In this category, we include:

- Stream health, as indicated with bioassessment measures
- Fish counts
- Analysis of flow benefits for fish
- Effects of use of credit water
- Status of trends of resources
- Effects of management actions
- Effects of adaptive management

**Annual Monitoring Report as Part of the 10-Year Periodic Report.** To ensure the 10-Year Periodic Report can summarize the operations and evaluate the achievement of the purposes of the TROA, we recommend the TROA Administrator issue an annual report on Compliance and Effectiveness Monitoring. This report would be used as the basis of the 10-Year Periodic Report, and each year would be issued to all interested parties, including the Truckee River Basin Watershed Group.

05

**Responsibility for Monitoring.** We recognize some aspects of this monitoring program may be part of a given agency's mission or mandate. In fact, we expect this to be the case. We also recognize that other aspects are not claimed at this point by any agency or institution. We believe it is critical to spell out the applicable responsibilities in the Final EIR/EIS, including specifying how they are to be funded.

06

07

**Transparency.** The lack of monitoring and reporting implies a lack of transparency to the public and interested parties about the implementation and effectiveness of the TROA. The Town of Truckee requests that the monitoring

08

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## Comment CLG 01 – continued

and analysis process be specified in the Final EIR/EIS to maintain the public's trust in this critical process.

08

The Town sincerely appreciates the opportunities we have been provided to participate in this critical process. Should you have questions regarding the Town's comments please contact Tony Lashbrook at (530)582-7700.

Sincerely,



Craig F. Threshie  
Mayor

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# Comment IT 01

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## *Fredericks, Pelcyger & Hester, LLC*

THOMAS W. FREDERICKS  
ROBERT S. PELCYGER \*  
DANIEL W. HESTER  
JOHN FREDERICKS III

CHRISTOPHER B. LEAHY  
CARLA J. HOKE  
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TOM W. ECHOHAWK  
(1952 - 1982)

December 30, 2004

**BY FACSIMILE AND REGULAR MAIL**  
(775) 882-7592

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street  
Room 320  
Carson City, NV 89701-4015

Re: Pyramid Lake Paiute Tribe's Comments on Revised Draft TROA EIS/EIR

Dear Mr. Parr:

These comments are provided on behalf of the Pyramid Lake Paiute Tribe (Tribe) on the August 2004 Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) on the October 2003 Draft Truckee River Operating Agreement (TROA). They are the Tribe's official comments.

1. Introduction and Summary - The Tribe generally agrees with the conclusion of the DEIS/EIR that no significant adverse affects are expected to occur under TROA. Executive Summary at 11. The DEIS/EIR thoroughly and comprehensively analyzes and evaluates the environmental impacts of the proposed TROA action and the no action and local water supply alternatives, including the impacts on the economic environment, the social environment, cultural resources and Indian trust resources. The Tribe generally agrees with and endorses the analysis and evaluation of those impacts, which support the conclusion that no significant adverse effects are expected to occur under TROA.

The purpose of the Tribe's comments is to point out aspects of the DEIS/EIR that should be revised, improved and corrected in final EIS/EIR. They do not negate, undermine or detract from the conclusion that no significant adverse effects are expected to occur. To the contrary, as recognized and documented in the DEIS/EIR, the significant impacts of the proposed action are overwhelmingly positive.

Please visit us at our website: [www.fphw.com](http://www.fphw.com)

## Comment IT 01 – continued

12/30/2004 12:00 FAX 3030759639

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2. The Truckee River Operations Model - As stated in the DEIS/EIR (Executive Summary at page 1), the primary purpose of the proposed action is to increase the operational flexibility and efficiency of the reservoirs in the Lake Tahoe and Truckee River basins in order to satisfy needs for water that are not adequately met under existing operations. The Truckee River Operations Model is a tool that was used to assist in evaluating current conditions and the alternatives. The DEIS/EIR should explicitly recognize that the model cannot possibly, and was not intended to, simulate, predict or model all, or even most, operations and impacts that will or may occur under TROA and that it is not intended to limit any operations that may and will occur under TROA. It is simply a tool, the best available tool, that was used to assist in analyzing and evaluating the anticipated impacts of TROA and the alternatives considered in the DEIS/EIR.

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3. Fernley Municipal Credit Water - So far as the Tribe is aware, there has not been any progress in negotiations regarding Fernley Municipal Credit Water. See DEIS/EIR at page 2-35 n.25. Accordingly, Fernley Municipal Credit Water should be dropped from the final EIS/EIR.

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4. The California Guidelines - Under TROA Sections 9.F.2, 11.C.2(h) and 11.C.3(a), the Administrator and the Scheduling Parties are encouraged to schedule and integrate their operations to achieve various flows and storage objectives specified in California Guidelines to the extent practicable and consistent with the exercise of water rights, assurance of water supplies, operational considerations and the requirements of the Settlement Act and TROA. See also, the Draft of Sample California Guidelines, attachment F to the DEIS/EIR at pages 2 and 3. The flows and storage objectives specified in the California Guidelines are voluntary, as opposed to the mandatory minimum and enhanced minimum releases from the various reservoirs specified in TROA sections 9.C. and 9.D. DEIS/EIR at page 2-46.

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The discussion of the California Guidelines in the DEIS/EIR at pages 3-62 to 3-63 should be revised to make clear: (i) that the California Guidelines are voluntary; (ii) that the preferred flows and storage objectives that are "used" in the operations model are based on the sample California Guidelines reproduced in Attachment F that may, and probably will, change from time to time; and (iii) that the preferred flows and storage objectives that are "used" in the operations model are not programmed into the model as mandatory requirements, but rather as benchmarks that enable the model to compare the model outputs to the sample preferred flows and storage objectives.

5. Newlands Project Credit Water - The treatment, modeling and discussion of Newlands Project Credit Water (NPCW) in the DEIS/EIR is unsatisfactory. NPCW is extremely important to the Tribe. The Tribe, the lower Truckee River, Pyramid Lake and Pyramid Lake fishes are the principal beneficiaries of the NPCW. If properly and effectively implemented, NPCW would carry out the longstanding, judicially and statutorily mandated policy of maximizing the use of Carson River water on the Newlands Project, minimizing and preventing the unnecessary diversion of Truckee River water to the Project and thereby augmenting Truckee

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River inflows to Pyramid Lake. Unfortunately, the treatment of NPCW in the DEIS/EIR is seriously deficient in several significant respects.

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- a. For NPCW to be implemented, changes must be made by the Department of the Interior to the Truckee Canal Diversion Criteria, also known as Newlands Project Operating Criteria and Procedures (OCAP). See TROA Definition 94, and TROA Section 7.H; DEIS/EIR at pages 1-7, 12-34 (Table 2.7), 2-36, and 3-391. The DEIS/EIR states (at page 3-391) that “[n]o proposal has been formulated at this time to modify OCAP to accommodate NPCW operations.”

TROA Section 7.A.4 states that “[t]he Signatory Parties shall cooperate in the filing and diligent pursuit of the changes provided for in this Section 7.A.4 to the extent they are consistent with the express provisions of this Agreement.” Among the changes described in Section 7.A.4 are the necessary revisions to the OCAP “to allow for storage of water in Truckee River Reservoirs as NPCW in accordance with Section 7.H.1.” TROA Section 7.A.4(d).

Contrary to the requirement of TROA Section 7.A.4(d), the Department of the Interior has not cooperated with the Tribe in the diligent pursuit and formulation of the necessary changes to OCAP to accommodate NPCW. Those changes should be diligently pursued on a parallel track with the preparation of the final EIS/EIR and the other matters described in TROA Sections 7.A.4 and 12.A, and in the DEIS/EIR (at pages 1-5 to 1-8) so that NPCW is implemented at the same time that TROA becomes effective. The statements in the Cumulative Effects chapter cited and discussed below (in comment 5(b)) should be modified accordingly.

- b. The DEIS/EIR addresses (and should address) the potential environmental impacts of NPCW and of the changes to OCAP that are necessary to implement NPCW. DEIS/EIR at pages 7, 3-388 to 3-391. The conflicting statements in the Cumulative Effects chapter, DEIS/EIR at Table 4.1 (pages 4-5 to 4-6, describing Section 209(j) of the Settlement Act), and pages 4-10 to 4-11, should be modified to state that the final EIS/EIR analyzes and addresses the potential environmental effects of NPCW and of the changes to OCAP necessary to implement NPCW. See also, comments #5(c) and #5(d) below.
- c. The TROA operations model used for the DEIS/EIR does not adequately, accurately, or reasonably simulate or evaluate the storage and release of NPCW as provided in TROA Section 7.H. It is deficient in two important ways.

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First, contrary to the TROA provisions governing the California Guidelines described above (in comment #4), the proposed (or sample) California Guidelines were treated in the Truckee River Operations Model as mandatory limits on the storage and release of NPCW. See DEIS/EIR at page 3-390. So far as the Tribe has been able to determine, no other modeled credit water operations were constrained or limited by any California Guidelines. Making NPCW operations subordinate to California Guidelines is contrary to TROA.

Second, NPCW model operations also were improperly constrained by a mistaken reading of TROA Section 7.H.5(a). That section states that, unless otherwise agreed by the United States and Nevada, NPCW shall be released in accordance with OCAP to the maximum extent possible prior to August 1. Emphasis added. Contrary to this explicit provision, the operations model treated August 1 as an absolute deadline, instead of a flexible target, for releasing all NPCW in storage. In addition, the operations model limited the establishment of NPCW to the amount that could be released in accordance with OCAP and the sample California Guidelines before August 1.

The modeled operations apparently do not provide or allow for releases of NPCW prior to July 1, as soon as it becomes apparent that NPCW will have to be released for diversion to the Newlands Project in order to satisfy the end of June OCAP storage target for Lahontan Reservoir. In actual operations, NPCW releases for diversion to Lahontan Reservoir could begin as early as the March 1 or April 1 forecasts.

The combined effect in the modeled operations of both of these errors, treating the sample California Guidelines as mandatory requirements and August 1 as an inflexible deadline, improperly and drastically limited the amount of NPCW that could be stored and the accompanying benefits to water quality and habitat conditions in the lower Truckee River. Properly modeled, NPCW operations would result in establishing and releasing NPCW more frequently and with maximum storage well in excess of 1,300 acre-feet. See the "reasonable scenario" described in the DEIS/EIR at page 3-390.

- d. The "other possible and reasonable scenario" or "second example" described in the DEIS/EIR (at pages 3-390 to 3-391) far more accurately and reasonably describe NPCW operations that are consistent with TROA Section 7.H and the proper treatment of the California Guidelines. Since those operations augment flows in the lower Truckee River and into Pyramid Lake and enhance water quality and riverine and riparian habitat, they are required under the decree in

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## Comment IT 01 – continued

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Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F.Supp. 252 (D.D.C. 1973), and Section 209(j)(1) of the Settlement Act.

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The final EIS/EIR should include an analysis of modeled NPCW operations conducted in accordance with the “other possible and reasonable scenario” described in the DEIS/EIR (at pages 3-390 to 3-391) without the previously described improper constraints. It should also describe the impacts of those properly modeled operations on other outputs of the Truckee River Operations Model. The Department of the Interior also should formulate a proposal for modifying OCAP to accommodate NPCW operations as required by TROA Section 7.A.4(d), and should diligently pursue the necessary OCAP revisions in cooperation with the Tribe.

e. The following revisions should be made to the paragraph beginning with “other scenarios” at the bottom of page 3-390:

(i) in the fourth sentence, add “unnecessary” between “making” and “diversions”;

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(ii) in the fourth sentence, after “Fish Credit Water,” delete “to the extent not required for higher priority uses.” and substitute after “Fish Credit Water” “and other uses.”;

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(iii) in the last sentence, after “Truckee River,” add “upstream of Derby Diversion Dam” because Truckee River flows below Derby Dam would not be reduced by storing water that otherwise would be diverted at Derby Dam;<sup>1</sup> and

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(iv) in the last sentence, after “during winter and spring;” delete “and tributary flows that fluctuate or exceed maximum flow thresholds” because the preferred flows specified in the sample California Guidelines are not “maximum flow thresholds” and those preferred flows may or may not be exceeded by NPCW operations, just as they may or may not be exceeded by all other TROA operations.<sup>2</sup>

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<sup>1</sup>See the more accurate statement of this potential effect on page 4-11 of the DEIS/EIR.

<sup>2</sup>This comment also applies to the discussion of the potential effect of NPCW on page 4-11 of the DEIS/EIR.

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Mr. Kenneth Parr  
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- f. In the one sentence paragraph beginning with “In any scenario,” on page 3-391, after “water rights” add “and OCAP.” 12
  
- 6. Cumulative Effects - The following revisions should be made to Chapter 4, Cumulative Effects:
  - a. The discussion of the changes to OCAP that are necessary to accommodate NPCW (at Table 4.1, pages 4-5 to 4-6 and 4-10 to 4-11) should be revised as discussed above in comment #5. 13
  
  - b. Table 4.1 should be revised as follows:
    - (i) The discussion of Section 206(c) should be revised to refer to Section 207(e) of the Settlement Act and to state that the additional flows in the Truckee River to Pyramid Lake resulting from the implementation of Section 206(c) are mitigation for the interstate allocations to California and Nevada under Section 204 of the Settlement Act. Read together, Sections 206(c) and 207(e) require that the additional flows resulting from the conservation of Navy water pursuant to Section 206(c) mitigate for the adverse impact on Pyramid Lake’s endangered and threatened species of the interstate allocations. Use of the conserved Navy water for Pyramid Lake fishes also is required by Section 209(j)(1) of the Settlement Act and the decision in Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F.Supp. 252 (D.D.C. 1973). 14
  
    - (ii) The discussion of Section 206(c) also should be revised to refer to Section 210(a)(2)(A) of the Settlement Act, which provides that Section 206(c) shall not take effect until TROA is implemented. The statement that “Pyramid Lake fishes may not use NASF water until TROA is implemented” should be deleted. Section 210(a)(2)(A) applies to all uses of the Navy water conserved pursuant to Section 206(c). 15
  
    - (iii) The discussion of Section 206(d) is not accurate. Section 206(d) provides that the Secretary’s authority to purchase water rights for Lahontan Valley wetlands pursuant to Section 206(a) “is contingent” on the specified cost sharing by the State of Nevada. 16
  
    - (iv) The discussion of Section 206(e) should be updated. 17
  
    - (v) The discussion of Section 207(a) should be modified to include a reference to cui-ui, as well as LCT, in connection with the six flow regimes. 18



# Comment IT 01 – continued

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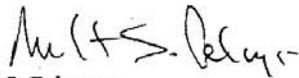
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Page 7

- (vi) The discussion of Section 207(c) should be revised to refer to the water rights acquisition program for cui-ui and LCT under the Water Quality Settlement Agreement. 19
  
- c. On page 4-15, under the discussion of Assembly Bill 380, the last sentence of the first paragraph should be deleted. 20
  
- d. On page 4-23, under the discussion of the South Truckee Meadows Water Reclamation Facility, the reference to "return flow requirements of TROA" should be deleted. Return flows are governed by the Orr Ditch decree and by administrative and judicial decisions approving changes to points of diversion and to the place, means, purpose and use of water rights. 21
  
- e. On page 4-29, in the second sentence under the heading "Potential Cumulative Effects of TROA," after "cumulative effect on," add "the total quantity of". 22
  
- 7. Conclusion - The Tribe supports the conclusion of the DEIS/EIR that no significant adverse effects are expected to occur under TROA. The Tribe's principal concerns are that the Fernley Municipal Credit Water provisions (TROA Section 7.F) be dropped and that the Newlands Project Credit Water provisions be accurately modeled and analyzed and diligently and cooperatively pursued and implemented in accordance with the terms of TROA.

Please feel free to contact me if you have any questions concerning these comments.

Sincerely yours,



Robert S. Pelcyger

cc: Bonnie Akaka-Smith  
John Jackson  
Tribal Council  
Ali Shahroody

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## Comment EO 01

Newlands Water Protective Association, Inc.  
320 North Maine Street  
P. O. Box 2556  
Fallon, NV 89407-2556  
(775) 423-7774 fax (775) 423-5637 email [Newlands@cccomm.net](mailto:Newlands@cccomm.net)

October 11, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza St., Rm. 320  
Carson City, Nevada 89701

Re: Request for Extension of Time Within Which to Submit Written Comments  
Truckee River Operating Agreement, California and Nevada  
Federal Register Notice August 25, 2004, Vol. 69, Number 164.

Dear Mr. Parr:

The Newlands Water Protective Association, Inc. is a Nevada non-profit corporation whose purpose is to protect and defend the water and hydro-power rights of the water right owners of the Newlands Reclamation Project. Our organization represents over 2,000 property owners in Northwestern Nevada.

We appreciate that your team provided us with a copy of the TROA at the open house in Fallon on September 22nd. I had unsuccessfully been trying to get a copy for some time. As you can imagine, it would be impossible for us to analyze the impacts of the various alternatives when we have no idea what the underlying document has to say. Additionally, without full understanding of the modeling used to determine the affects of each of the alternatives discussed, we, again, cannot possibly be asked to submit intelligent comment on the impacts. We would, therefore, respectfully request that the modeling, together with all of the assumptions and finances in conjunction therewith, be released to the Truckee-Carson Irrigation District's expert, Chuck Binder, at Science Applications International Corporation (SAIC) for complete analysis. We expect that analysis to take about six months to complete.

Since we were unable to obtain a copy of the TROA until September 22, 2004, it is unrealistic to expect us to prepare comments on the EIS by the October 29, 2004 deadline as currently established.

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## Comment EO 01 – continued

Without a six month extension and an opportunity to fully analyze the model used, we cannot accurately understand or evaluate the impacts these proposed actions may have on our environment, economy, community health and safety, drinking water availability for both now and into the future, and viability and sustainability of agricultural activities in the Newlands Reclamation Project. We would, therefore, ask that you release the information requested by TCID and grant a six month extension.

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Sincerely,



Jamie Mills  
Executive Director

cc: Mr. Michael Cooney, CA Dept. of Water Resources  
Senator Harry Reid  
Senator John Ensign  
Congressman Jim Gibbons

# Comment EO 02

12/07/2004 TUE 08:57 FAX

002/003



Mail P.O. Box 8535  
Truckee, CA 96162  
Ship 10550 Olympic Blvd.  
Truckee, CA 96161  
Phone 530/587-8702  
530/587-8789 fax

30 November 2004

Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

# COPY

**Re: Comments on the Truckee River Operating Agreement Draft Environmental Impact Report**

Dear Mr. Parr:

In general, the sport fishing community is hopeful with regard to the TROA DEIS/EIR's analyses of potential impacts of TROA to instream and reservoir sport fisheries. Under the assumptions applied in the report, implementation of TROA causes these sport fisheries to suffer less harm than under the No Action alternative. That said, however, there are several troubling aspects to TROA and its environmental consequences that should be discussed in greater detail within the EIS/EIR.

**Loss of State Authority to Protect Public-Trust Resources**

Section 5937 of California's Fish and Game Code, and several recent court decisions (e.g., *California Trout v. State Water Resources Control Board, et al*), require the state of California to keep "in good condition" fish populations that are situated downstream from dams. Under TROA, however, the state cedes this authority to the TROA Administrator, and California's guidelines for streamflow and reservoir-pool targets merely serve as recommendations rather than requirements. Conceivably, the TROA Administrator could ignore these recommendations even when Credit or other water might be available for their fulfillment. The EIS/EIR therefore needs to discuss the following:

- The means by which the state of California will ensure that resources held in the public trust—particularly in-stream fish populations—will indeed be protected if the TROA Administrator ignores California's guidelines for streamflow and pool targets or otherwise approves actions harmful to fish populations in California.
- The severity of impacts that would occur to instream and reservoir sport fisheries if California's guidelines for streamflow and pool targets are ignored after TROA is signed into law. Should we assume these impacts would, in essence, mimic those described by the No Action alternative? Or could they in fact be worse, given the state of California's presumed inability, as a signatory to TROA, to seek redress of public-trust violations under the state Fish and Game Code and case-law precedents?

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**Impact Monitoring and Mitigation**

The analysis of impacts to water quality, riparian habitat, and fishery resources relies upon the modeling of stream flows for different hydrologic conditions, and these projected flows in turn rely upon a host of assumptions regarding the manner by which TROA is implemented and water is traded between reservoirs and released. Needless to say, the reality of implementation may differ, perhaps dramatically so, from the hypothetical scenarios applied by the modelers. The monitoring of TROA-affected stream flows and reservoir levels thus becomes extremely important; otherwise, there is no ability to determine whether the environmental benefits TROA is supposed to bring are actually occurring. Please describe the streamflow and reservoir-level monitoring program expected to be implemented as part of TROA, and please describe the process for making mid-course corrections to TROA if actual impacts differ significantly from EIS/EIR projections. If monitoring or mid-course corrections will not occur under this agreement, then please say so, and explain why.

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The sport angling community believes that publicly-accessible real-time monitoring of instream flows, ramping rates, and reservoir levels, presumably conducted under the auspices of the TROA Administrator, is

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PAGE 2/3 \* RCVD AT 12/7/04 10:05:23 AM [Mountain Standard Time] \* SVR:IBR8MSFAX/11 \* DNIS:602 \* CSID: \* DURATION (mm-ss):01-40

## Comment EO 02 – continued

12/07/2004 TUE 08:58 FAX

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*Comments on TROA EIS/EIR*

30 November 2004

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crucial to 1) determining whether TROA is fulfilling expectations placed upon it by its signatories and other stakeholders, 2) mitigating significant adverse environmental effects as required by Public Law 101-618, and 3) assuring the validity of the TROA EIS/EIR environmental analyses. At the very least, the TROA Administrator needs to document, and make available for public review, all violations of the California guidelines for streamflows and pool targets, specifying, when, where, and why these violations occurred.

Another concern is whether unanticipated TROA-related adverse environmental effects, once identified, will subsequently be mitigated. Please describe the process by which these impacts will be reduced to a less than significant level. If no such enforceable mitigation process will occur under TROA, then please say so, and explain why.

### Additional Concerns

Do the analyses of TROA's impacts to instream and reservoir fisheries take into account the additional diversion and consumption of surface waters that TROA will allow within the Truckee River's California watershed? Please discuss these impacts if indeed they were ignored.

As a related issue, the third paragraph on page 1-7 of the EIS/EIR states: "To effect [TROA's] changes to California water rights, BOR, WCWCD, and Sierra Pacific have filed change petitions and water appropriation applications for Prosser Creek, Stampede and Boca Reservoirs and Independence Lake." What impact will these particular petitions and applications have on instream and reservoir fisheries?

The fourth paragraph on page 2-29 states "California would agree in TROA to be subject to the jurisdiction of the Orr Ditch court for certain limited purposes relating to TROA." Please identify these "limited purposes."

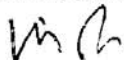
The second paragraph on page 2-35 notes that California Environmental Credit Water and Additional California Environmental Credit Water, once released, would be available for diversion in Nevada. Would this released water be tallied to the flows needed to make Floriston Rates? If not, why not?

The fourth paragraph on page 3-220 states that "in the Truckee River between Lake Tahoe and Donner Creek, flows are 10 percent or more lower under TROA than under No Action only in September in dry hydrologic conditions, a potentially adverse impact that would be offset by substantially higher flows from May through June." In reviewing the Biological Resources Appendix, however, it's not clear why the presumed benefits from these higher flows during springtime offset the impact of adversely low flows during September. Please explain the rationale underlying this EIS/EIR conclusion. (Note that said rationale also applies to similar conclusions drawn elsewhere in the analysis of flow impacts on riparian habitat.)

TROA will establish a Habitat Restoration Fund for the Truckee River. Please indicate which agency has the responsibility for managing expenditures from this fund, and please describe how and to what extent the state of California will direct these expenditures.

I look forward to reviewing a final EIS/EIR that is thorough in its discussion of potential TROA-related impacts to the Truckee region's sport fisheries.

Cordially yours,



Richard Anderson  
Publisher and Editor  
*California Fly Fisher* magazine

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# Comment EO 03



TRUCKEE λ RIVER λ BASIN λ WATER λ GROUP

December 20, 2004

Kenneth Parr  
 Bureau of Reclamation  
 705 North Plaza Street, Rm. 320  
 Carson City, NV 89701

**Chairman**  
 Barbara Green, District 5  
 Supervisor Nevada County

**Local Governments**  
 Nevada County  
 Placer County  
 Sierra County  
 Town of Truckee

**Water Purveyors**  
 Alpine Springs County Water  
 District  
 Northstar CSD  
 North Tahoe PUD  
 Placer County Water Agency  
 Poulsen Land Company  
 Sierra Valley Water Company  
 Squaw Valley Public Service  
 District  
 Squaw Valley Mutual Water  
 Company  
 Tahoe City PUD  
 Tahoe Resource Conservation  
 District  
 Truckee Donner PUD

**Other Agencies**  
 Truckee Donner Recreation & Park  
 District  
 Tahoe Truckee Sanitation Agency

RE: Truckee River Operating Agreement Draft EIS/EIR

Dear Mr. Cooney and Mr. Parr,

We commented on the previous Draft EIR/EIS (see letter dated April 28, 2003) and see that some of our comments have been addressed in the current Draft. Thank you to the EIR/EIS Development team for this effort.

However, some earlier comments have still not been addressed and in particular we have a *remaining and substantial concern regarding monitoring*. As reference for comments in this letter, we cite the Draft Truckee River Operating Agreement, Article 13.C – Periodic Reporting on Operations and Public Law 101-618 Section 205a2b Spawning Flows, Section 205a2c and 205a3g regarding In-stream Beneficial Uses.

**Periodic Reporting.** Article 13.C requires that the TROA Administrator will issue a report every 10 years summarizing operations and evaluating the achievement of the purposes of the TROA. In order to adequately compile the report, the TROA Administrator will necessarily need to consider annual data in two categories: Compliance Monitoring and Effectiveness Monitoring (see below). These data will be required to evaluate the achievement of the purposes of TROA. The Draft EIR/EIS does not specify what data will be collected or how it will be collected.

**Benefit to the Fish.** Section 205 states enhancement of spawning flows, support of the Endangered Species Act (for the recovery of the cui-ui and Lahontan cutthroat trout), and achievement of in-stream beneficial uses are to be met under the TROA (i.e. 205a2c, 205a2b, and 205a3g). The Draft EIR/EIS states the TROA has no negative impact on fishes. However, in order for the TROA Administrator to establish “no negative impact” in the 10-Year Periodic Report (Article 13.C), baseline information must be established and conditions throughout the ten year period must be monitored. This is the only way to identify trends and specific results. Said another way, without baseline data, there is no basis for comparison to determine declines or ameliorations. For the Resources Secretary to sign the TROA, there must be a mechanism to establish ameliorations to the fishery. Yet, the Draft EIR/EIS does not specify what data will be collected or how it will be collected.

**Support of the Endangered Species Act (ESA) and Adaptive Management.** Again, the TROA Section 205a2b specifies compliance with the ESA in that the TROA will meet the needs of the Secretary to meet ESA requirements. The Federal Five-Point Policy addendum (USFWS, 2000), recommends adaptive management as the strategy for recovery plans. This five point adaptive management program is: 1)

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## Comment EO 03 – continued

opportunistic learning, 2) hypothesis testing, 3) management, 4) monitoring, and 5) directing the results and assessment back into the program<sup>1</sup>. Again, we point out that the Draft EIR/EIS does not specify what data will be collected, how it will be collected, who will analyze the data to establish declines or ameliorations, or how the data will be fed into an adaptive management strategy.

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**Transparency.** The lack of monitoring and reporting implies a lack of transparency to the public and interested parties about the implementation and effectiveness of the TROA.

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**Comprehensive Monitoring.** For these reasons, we recommend that a systematic and regular monitoring program be defined. Specifically we recommend a comprehensive monitoring program addressing Compliance and Effectiveness<sup>1</sup>.

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Compliance Monitoring tracks the status of the TROA implementation, ensuring that protocols and planned actions are being executed. In this category, we include:

- Implementation of the California Guidelines (where followed and not followed)
- Comparison of actual flows vs. modeled flows
- Comparison of actual reservoir levels vs. modeled levels
- Availability of credit water
- Application/use of credit water
- Application/use of adaptive management strategies

Effectiveness Monitoring evaluates the success of the TROA in meeting the stated biological and ecosystem objectives, that is, is the river a better environment for fish? In this category, we include:

- Stream health, as indicated with bioassessment measures
- Fish counts
- Analysis of flow benefits for fish
- Effects of use of Credit Water
- Status of trends of resources
- Effects of management actions
- Effects of adaptive management

**Responsibility for Monitoring.** We recognize some aspects of this monitoring program may be part of a given agency's mission or mandate. In fact, we expect this to be the case. But we also recognize that other aspects are not claimed at this point by any agency or institution. Additionally, whether or not an aspect of monitoring will fall under the jurisdiction of a given agency, there is nowhere a provision that the monitoring data to be evaluated in the context of the actions of the TROA. Equally important, there is no mechanism and/or commitment identified to fund the monitoring program. We question the adequacy of the EIR/EIS without the definition of these responsibilities and mechanisms.

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**Annual Monitoring Report as Part of the 10-Year Periodic Report.** To insure the 10-year Periodic Report can summarize the operations and evaluate the achievement of the purposes of the TROA, we recommend TROA Administrator issue an annual

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## Comment EO 03 – continued

report on Compliance and Effectiveness Monitoring. This report would be used as the basis of the 10-year Report and each year would be issued to all interested parties, including the TRBWG.

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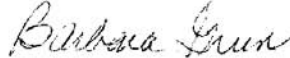
In closing, we reiterate that annual and comprehensive monitoring is required to meet the requirements of:

- The 10-year Periodic Report in summarizing operations and evaluating the achievement of the purposes of the TROA. Summary;
- Establishing decline or ameliorations to fishes;
- Adaptive Management Strategies as part of Recovery Plans under the ESA;
- Transparency and good-will with the public regarding the TROA.

We recommend:

- An annual monitoring program of Compliance and Effectiveness Monitoring;
- A definition of responsibilities for monitoring;
- A definition of funding mechanism for the monitoring program;
- An annual report be issued that summaries the compliance and effectiveness monitoring;
- The annual report be used as the basis for the 10-year Periodic Report.

Sincerely,



Barbara Green, chair  
Truckee River Basin Water Group

<sup>1</sup> *Designing Monitoring Programs in an Adaptive Management Context for Regional Multiple Species Conservation Plans*. US Geological Survey. Sacramento, California. 2004.

RECEIVED DEC 21 2001



# Comment EO 04

DEC-28-2004 TUE 01:54 PM SOMACH SIMMONS & DUNN

FAX NO. 916 446 8199

P. 02

## SOMACH, SIMMONS & DUNN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

813 SIXTH STREET  
THIRD FLOOR  
SACRAMENTO, CA 95814-2403  
TEL 916 446 7979  
FACSIMILE 916 446-8199

December 28, 2004

### VIA FACSIMILE AND FIRST CLASS MAIL

Kenneth Parr  
U.S. Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

Re: Truckee River Operating Agreement - Revised Draft Environmental  
Impact Statement/Environmental Impact Report

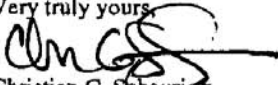
Dear Mr. Parr:

As I stated during public comment at the workshop held in Truckee on October 20, 2004, this firm represents the Heavenly Ski Resort ("Heavenly") in connection with matters related to the Truckee River Operating Agreement ("TROA").

We have appreciated the opportunity to review the Revised Draft Environmental Impact Statement ("EIS")/Environmental Impact Report ("EIR") on behalf of Heavenly. The document confirms our understanding that both Section 204 of Public Law 101-618 (the "Settlement Act") and TROA provide for "grandfathered" rights of 350 acre feet annually for snowmaking on the Nevada side of the Lake Tahoe Basin, and 600 acre feet annually for snowmaking on the California side of the Lake Tahoe Basin. Both of those rights are exempt from the California-Nevada Interstate Allocation which is set forth in the Settlement Act and TROA. Additionally, the Settlement Act and TROA provide for the accounting for snowmaking applications above and beyond those baseline rights at the rate of a 16% consumptive use.

Thank you for allowing Heavenly the opportunity to participate in the public comment process for the TROA Draft EIR/EIS.

Very truly yours,

  
Christian C. Scheuring  
Attorney

CCS:sb

cc: Blaise Carrig  
Martha D. Rehm  
Glenn E. Porzak  
Stuart L. Somach

RECEIVED DEC 28 2004

01

# Comment PW 01



## Truckee-Carson Irrigation District

### *Newlands Project*

October 7, 2004

VIA FAX (775) 882-7592

Mr. Kenneth Parr  
U. S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, Nevada 89701

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Donald R. Travis, Director

Lyman F. McConnell, Project Manager  
David P. Overvold, District Engineer

RE: Truckee River Operating Agreement DEIS/DEIR  
Request for Extension to April 30, 2005 for Public Comments

Dear Mr. Parr:

The Truckee-Carson Irrigation District (TCID), hereby requests a six month extension to the public comment period, until April 30, 2005, for the Truckee River Operating Agreement Draft Environmental Impact Statement/Draft Environmental Impact Report (TROA DEIS/DEIR). I understand that Churchill County has made a similar request and that the City of Fallon will also be requesting an extension. As you know, TCID, through its consultant Science Applications International Corporation (SAIC), has requested certain information regarding the computer model used to conduct extensive analysis in the DEIS/DEIR. So far, our request for information on the model has not been complied with and it is impossible for us to respond meaningfully to the DEIS/DEIR without the requested data even if we receive this data today, it will take some time for our consultants to be able to analyze the model and the output information contained in the draft documents. Therefore, a six month extension to accomplish this analysis is in order.

01

The request for information was first made to you by telephone in mid September, about a week after TCID received its copy of the DEIS/DEIR. Shortly thereafter, you indicated to SAIC that the request must be made under the Freedom of Information Act. Mr. Charles Binder of SAIC obliged your request with a follow-up letter on September 27, 2004. To date, Mr. Binder has not received any of the requested material. You informed Mr. Binder that attorneys for the United States had some issues with release of the model and its documentation. There can be no dispute that the release of the model and its documentation is critical to any understanding of the DEIS/DEIR. Under 40 C.F.R. 1503.1, the DEIS/DEIR must be made available to the public for comment. The opportunity for comment offered by the agency must be meaningful. Under 40 C.F.R. 1506.6(f) the public is entitled to have access to all public comments and underlying documents relied on by the agency.

2666 Harrigan Road, P.O. Box 1356, Fallon, Nevada 89407-1356  
Phone: (775) 423-2141 FAX: (775) 423-5354

## Comment PW 01 – continued

Without this information, there can be no meaningful public comment.

In addition to items identified in the SAIC letter dated September 27, 2004, specific information necessary for the evaluation includes the following:

1. Monthly values for each year for period 1901 through 2000 for the following:

- \* Truckee Canal diversions from Truckee River
- \* Truckee Canal diversions to Truckee Division (Newlands Project, Fernley, and WQSA water)
- \* Truckee Division Shortages
- \* Truckee Canal deliveries to Lahontan Reservoir
- \* Diversions to Carson Division
- \* Carson Division Shortages

2. Monthly values for each year for period 1901 through 2000 for the following:

- \* Truckee River above Derby Dam
- \* Truckee River below Derby Dam
- \* Truckee River at Farad
- \* Storage and release of PLPT unappropriated water
- \* Storage and release of new water included in California water rights applications
- \* Storage and release of TCID portion of Donner Lake

3. Monthly values for each year for period 1901 through 2000 quantifying the establishment of credit water under each category of credit water and further delineated by which method (e.g. exchange of Fish Water, reduction in Floristan Rates, waiver of single purpose hydroelectric releases, utilization of changed diversion rights, privately owned stored water, etc.) the credit water is established including but not limited to:

- \* Water Quality Credit Water
- \* Fish Credit Water
- \* Joint Program Fish Credit Water
- \* Power Company M&I Credit Water
- \* California M&I Credit Water
- \* California Environmental Credit Water
- \* Additional California Environmental Credit Water
- \* Fernley Municipal Credit Water

## Comment PW 01 – continued

- \* Newlands Project Credit Water
- 4. Monthly values for each year showing the utilization, exchange, reclassification, carryover, and use of credit water under each category of credit water listed above.
- 5. Assumptions for Truckee River Operations Model including but not limited to:
  - \* Conversion of Truckee Meadows agricultural use to M&I use
  - \* Criteria used to simulate management decisions to establish, utilize, exchange, reclassify, carryover, and other uses of credit water under each category of credit water listed above.
  - \* Acreages, duty, delivery percentage, and conveyance efficiency for various types of land (bench, bottom, pasture, and wetlands) for Carson and Truckee Divisions for determining demands under existing conditions, no action, and alternative scenarios.
  - \* Breakdown and logic used for Fernley and Water Quality Settlement Agreement uses of Truckee Division demands for no action and alternative scenarios.
  - \* Operating criteria for TMWA and TCID accounts in Donner Lake under existing conditions, no action, and alternative scenarios.

All of this information is absolutely necessary to an understanding of the TROA and its potential environmental impacts. For these reasons, we ask that you expedite the FOIA process and grant the six month extension.

Sincerely,



Lyman F. McConnell,  
Project Manager

cc: Mr. Michael Cooney, CA. Dept. of Water Resources  
Charles Binder, SAIC  
Michael J. Van Zandt, Esq.

# Comment PW 02



## Truckee-Carson Irrigation District

### Newlands Project

COPY

October 8, 2004

VIA FAX AND MAIL  
FAX # 916-227-7600

Mr. Michael Cooney  
State of California  
Department of Water Resources  
3251 "S" Street, Room E-12  
Sacramento, CA 95816

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Donald R. Travis, Director

Lyman F. McConnell, Project Manager  
David P. Overvold, District Engineer

**Re: Truckee River Operating Agreement DEIS/EIR  
Request for Extension to April 30, 2005 for Public Comments**

Dear Mr. Cooney:

The Truckee-Carson Irrigation District (TCID), requests a six-month extension to the public comment period, until April 30, 2005, for the Truckee River Operating Agreement Draft Environmental Impact Statement/Draft Environmental Impact Report (TROA DEIS/DEIR). The draft discusses and summarizes the results of a model used to calculate water demand and supply for the last 100 years. As one of the governmental agencies impacted by the results of this analysis, TCID would like to provide reasoned comments on the data. The draft does not, however, include the data or assumptions that went into the model. Without this data, the DEIS/DEIR is fatally deficient on its face.

01

Leaving out this data effectively deprives TCID a meaningful opportunity to comment on the draft. Faced with a summary, instead of the underlying data, TCID cannot determine if the results of the model reflect actual water supply conditions. For example, substantial periods of drought occurred in the last century, TCID was to know whether those periods were properly accounted for, and how they impact the model's function.

As soon as TCID's experts had a chance to review the draft, we became aware that there was no way to form a reasonable response without this missing data. Thus TCID's consultants, Science Applications International Corporation (SAIC, Inc.) filed an official Freedom of Information Act request with the BOR. As of the date of this letter, however, the Bureau of Reclamation has not complied with the request. On October 7, 2004, TCID's consultant received a letter from the BOR indicating that it would provide some of

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## Comment PW 02 – continued

the requested information on or about October 27, 2004. (See attached letter.) This is two days before the end of the public comment period and does not leave sufficient time to analyze the data that will be provided, let alone determine if all of the necessary data has been released. Churchill County and the City of Fallon are in a similar position, and also require extensions of time.

Release of the model and its documentation is critical to understanding the DEIS/DEIR. As the lead agency under the California Environmental Quality Act, the DWR has the responsibility to ensure that the public is given a reasonable opportunity to comment. 14 C.C.R. § 15201; *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal. App. 3d 813, 820, 176 Cal. Rptr. 342. "A conclusory statement 'unsupported by empirical or experimental data,' not only fails to crystallize issues but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" *Sutter*, 122 Cal. App. 3d at 820, quoting *Silva v. Lynn* (1st Cir. 1973) 482 F.2d 1282, 1285. Therefore, a failure to provide all the information necessary to evaluate the possible impacts of the proposed action renders any public comments received a mere sham. *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal. App. 4th 715, 717 (holding that EIR was invalid for failing to identify water supply for massive housing development in the desert).

To avoid this problem, DWR can extend the comment period to allow for analysis of the missing data. Since the model is complex, and the data voluminous, TCID requests that DWR extend the comment period a further six months. This way TCID, and all interested parties, will have a proper chance to evaluate the missing data. And DWR and BOR will also have a chance, as a result, to add the data into the final version of the current draft.

In addition to the information requested by TCID's consultant, specific information necessary for TCID's evaluation includes:

1. Monthly values for each year for period 1901 through 2000;
2. Monthly values for each year for period 1901 through 2000;
3. Monthly values for each year for period 1901 through 2000 quantifying the establishment of credit water under each category of credit water and further delineated by which method (e.g. exchange of Fish Water, reduction in Floristan Rates, waiver of single purpose hydroelectric releases, utilization of changed diversion rights, privately owned stored water, etc.) the credit water is established;
4. Monthly values for each year showing the utilization, exchange, reclassification, carryover, and use of credit water under each category of credit water listed above.
5. Assumptions for the Truckee River Operations Model

## Comment PW 02 – continued

As you can see, this brief glimpse of the necessary data shows massive amounts of potential information. To ensure the integrity of this EIS/EIR, TCID must have adequate time to evaluate this information. Without it, any comments received will be meaningless, and the resultant EIS/EIR will be subject to immediate challenge as facially inadequate. Therefore, please grant TCID's request to extend the comment period by six months.

Sincerely,



Lyman F. McConnell,  
Project Manager

LFM/mc  
Enclosure

cc: Mr. Kenneth Parr, U.S. Department of the Interior  
Bureau of Reclamation (with enclosure)  
Mr. Charles Binder, SAIC  
Michael J. Van Zandt, Esq.

2666 Harrigan Road, P.O. Box 1356, Fallon, Nevada 89407-1356  
Phone: (775) 423-2141 FAX: (775) 423-5354

## Comment PW 03

COPY

Kent Pascoe- President  
Sierra Valley Water Co.  
Box 33  
Sierraville, CA 96126

Kenneth Parr  
Bureau of Reclamation  
705 N. Plaza Street  
Carson City NV, 89701

Re: Comments as to the TROA revised DEIS/EIR

In section 1.C titled Protection of Water Rights, the Sierra Valley Water Company recognizes the power of the statement that describes, "nothing in this agreement shall be construed to affect the power of the Orr Ditch Decree" and here by restates the importance of the adjudicated water rights to the Sierra Valley.

The Orr Ditch decree, established the water rights that allow water delivery to the Sierra Valley from a tributary of what is ultimately the Truckee River. The agricultural producers that receive water from the Sierra Valley Water Company depend on the delivery that comes from our adjudicated rights. We have participated in the development of the Truckee River Operating Agreement and agree with it's intent.

Attached is the portion of the TROA document that pertains to the Sierra Valley Water Companies entitlement. We are confirming the statement that reads, "The Federal Water Master under the Orr Ditch Decree shall retain the full authority to ensure that such rights are fully enforced". The Sierra Valley Water also acknowledges the ability to comment on the report and appreciates that opportunity. Please contact Susan Haren, secretary for the water company at the above address for more information.

01

*Kent Pascoe 11/8/04*

Kent Pascoe  
President- SVWC.

*Bill Capron is the representative for the Sierra Valley Water Company to TROA. His address is PO Bx 95, Sattley, Ca 96124.*

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## Comment PW 03 – continued

6. Utilize the **Integrated Schedules** developed by the **Administrator** through coordination with the **Scheduling Parties**.
7. Respond to declared federal, state or local water-related emergencies presenting a clear and immediate danger to public health, life, property, or essential public services involving an upset or other unexpected occurrence to facilities and resources addressed in this **Agreement**.

### SECTION 1.C – PROTECTION OF WATER RIGHTS

**Section 1.C.1 Vested and Perfected Rights.** Pursuant to Section 210(b)(13) of the **Settlement Act**, nothing in this **Agreement** shall be construed to (a) affect the power of the **Orr Ditch Court** to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the **Orr Ditch Decree**; or (b) alter or conflict with any vested or perfected right of any **Person** to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the **Newlands Project** for the delivery of Truckee River water to Derby Dam and for the diversion of such water at Derby Dam pursuant to the **Orr Ditch Decree** or any applicable law. The parties agree that such entitlement and rights are subject to the priority of the interstate allocations in Sections 204(b) and 204(c) of the **Settlement Act**. The **Federal Water Master** under the **Orr Ditch Decree** shall retain full authority to ensure that such rights are fully enforced.

**Section 1.C.2 Protection of Water Rights.** If the implementation of any provision or provisions of this **Agreement** would or does result in an owner of an **Exercised Orr Ditch Decree Water Right** not receiving the amount of water to which that owner is legally entitled, the **Administrator** shall, as soon as practicable, (a) implement a remedy mutually acceptable to affected parties, or (b) make up the amount of water to which the owner of the **Exercised Orr Ditch Decree Water Right** is legally entitled, utilizing water of the **Scheduling Party** or **Parties** who benefited as a result of implementation of the provision or provisions of this **Agreement** which caused such result. This Section 1.C.2 does not apply to water which is not available to satisfy **Orr Ditch Decree Water Rights** because of implementation of Section 204(b) and Section 204(c)(1) of the **Settlement Act** or as the result of water rights voluntarily relinquished under this **Agreement**. The **Administrator** shall provide appropriate notice and opportunity to be heard to any **Person** who may be adversely affected before implementing any actions pursuant to this Section 1.C.2.

**Section 1.C.3 Carson River.** This **Agreement** is not intended to affect and does not affect the operation of the Carson River or any of its tributaries or the power of the United States District Court for the District of Nevada or its Federal Water Master under the final decree in the *United States of America v. Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1980, and any amendments or supplements thereto.

## Comment PW 04



221 Main Street 16th Floor  
San Francisco CA 94105-1936  
TEL: 415/905-0200  
FAX: 415/905-0202

December 21, 2004

VIA FACSIMILE AND U.S. MAIL

COPY

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, Nevada 89701

**Re: Request for Further Comment Extension—Draft EIS/EIR Truckee River  
Operating Agreement**

Dear Mr. Parr:

On behalf of the Truckee-Carson Irrigation District (“TCID”), I hereby request an additional four month extension, until April 30, 2005, in order to provide meaningful public comments on the Truckee River Operating Agreement Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR). This extension is necessary due to the volume of material provided to us over the last two months and the need to further investigate and evaluate the Truckee River Operating Model (TROM) and the Draft EIS/EIR.

As you know we have been coordinating with your office to obtain a significant amount of documents and modeling information in order to better understand the Draft EIS/EIR. We very much appreciate your efforts and those of Mr. Tom Scott to retrieve and deliver this information to us. However, both the volume of the material received and the lack of cohesive documentation for the TROM have greatly complicated the task of understanding the model and attempting to duplicate its output.

Based upon our preliminary review of the model and confirmed by conversations with Rod Hall and Tom Scott, it appears that there are several omissions and deficiencies in the TROM that have not been revealed in the Draft EIS/EIR. Some of the more important deficiencies are that the TROM has neither been validated nor calibrated. Moreover, the model lacks a comprehensive user’s manual, although one was originally identified but has been withheld under the Freedom of Information Act. The model also does not track flow of water by

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## Comment PW 04 – continued

Mr. Kenneth Parr  
December 21, 2004  
Page 2

source so that the user cannot account for flows in the river by source of output. We also understand that there is an updated version of the model that the Bureau of Reclamation (BOR) intends to use for the Final EIS/EIR. This version of the model contains an additional 4000 lines of code and since we have just received this version, we have not yet had sufficient time to analyze it, nor do we understand how the BOR intends to use this version in the Final EIS/EIR.

The Draft EIS/EIR makes assumptions concerning Truckee Division demand, Carson Division Demand, Newlands Project Credit Water (NPCW), Donner Lake water, and the Newlands Project Operating Criteria and Procedures (OCAP). Some but not all of these assumptions are included in the modeling. There does not appear to be a rationale for what is modeled and what is not. Moreover, these assumptions are not based on any reasonably foreseeable events, and in fact, some of the events may not occur for thirty years or more, if at all. Nonetheless, these assumptions are built into the "No Action Alternative." Until we understand the ramifications of the impacts of these erroneous assumptions on the overall impact analysis in the Draft EIS/EIR, we find it impossible to comment meaningfully on the document.

More troubling still is the lack of consistent analysis for the proposed action. The TROA alternative does not analyze or model all of the provisions of the agreement as it has been drafted. For example, the TROM does not model all of the credit water that has been created by the agreement, so that it is impossible to know whether the creation and flow of that credit water will have an impact on the overall flow of water throughout the Truckee River basin.

Given the assumptions built into the analysis of the TROA Draft EIS/EIR, the complexity of the proposed action and the number of unknown variables in the decision making process, it would seem prudent to analyze various scenarios under which the TROA would operate. The Draft EIS/EIR assumes that the proposed action will remain static and attempts to model it based on historic water resources conditions. However, this approach does not expose the decision maker or the public to the potential continuum of events that could affect the management of water on the river. Since these various scenarios have neither been analyzed or modeled, the public and the decision maker are left to speculate as to the true impacts of the proposed action under extreme conditions that could either be beneficial or detrimental to the water users on the Truckee River.

Given the number of deficiencies and problems with the TROM and the analysis in the Draft EIS/EIR, it would be prudent to extend the comment period in order for the public to gain a better understanding of the proposal and the accompanying analysis. Therefore, a four month extension for the public comment period is warranted and necessary.


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## Comment PW 04 – continued

Mr. Kenneth Parr  
December 21, 2004  
Page 3

Thank you for your cooperation in these matters. If you have any questions, please call.

Sincerely,



Michael J. Van Zandt  
Attorney for Truckee-Carson Irrigation District

cc: Lyman F. McConnell  
Brad Goetsch  
Michael Mackedon, Esq.  
Charles Binder  
Willem Schreuder, Ph.D.

DEC 23 2004

# Comment PW 05



## Truckee-Carson Irrigation District

### *Newlands Project*

December 20, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

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Lyman F. McConnell, Project Manager  
David P. Overvold, District Engineer

RE: Request for additional time and  
Comments on Revised Draft EIS/EIR

Dear Kenneth Parr,

The Truckee-Carson Irrigation District ("District") had previously requested an extension of six (6) months to comment on the Draft Revised EIS/EIR on the Truckee River Operating Agreement ("TROA") dated August 2004. In response to that request, there was a partial extension granted of two (2) months (the original time allowed for comments from the official release date). This extension was absolutely required as a minimum in light of the fact that data requested was not provided until just before the original deadline was to lapse. In this regard, the District is again requesting the additional four (4) months (original six(6) months requested) to comment as was originally requested.

01

However, in the event that the comment period is not extended, I offer the following comments in response to the Draft EIS/EIR TROA, which was received by the District on August 30, 2004. These comments may not be thorough because of the lack of time to properly respond.

Currently, The Truckee River Agreement ("TRA") and ORR Ditch Decree ("Decree") water rights are managed by the Federal Water Master in conjunction with the Truckee River Basin Committee ("Committee") composed of the Washoe County Water Conservation District, the Sierra Pacific Power Company, who has sold their water rights to the Truckee Meadows Water Authority, and the District. For changes in flow in the Truckee River under the TRA, the Committee meets and by voting reaches agreement. The TROA intends to replace this operational group and intends to do so without the agreement of the District. The legislation did not require the signature of the parties to the TRA/ORR Ditch Decree and the U.S. did not require the District's signature either. Therefore, the changing of the operational authorities without the proper and necessary consent of the parties to the ORR Ditch Decree and TRA is invalid and without precedent.

02

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Phone: (775) 423-2141 FAX: (775) 423-5354

## Comment PW 05 – continued

The TROA has been prepared to replace the ("TRA") which was a negotiated settlement adopted by the Federal District Court in Reno as the basis for the adoption of the ORR Ditch Decree. The Decree established and determined water rights in Nevada on the Truckee River including storage for the Newlands Project ("Project") at Lake Tahoe and diversion rights and storage at Lake Lahontan. The District was a major participant in the negotiations of the TRA and a signator to the settlement of the ORR Ditch Decree.

There are many provisions of the TRA that were negotiated to settle the ORR Ditch Decree. There was the 40 cfs from Project water rights provided to Sierra. There was storage in BOCA that was provided adverse to the project water rights. In exchange, the Project was given rights to unused water upstream. Flow restrictions were imposed and certain percentages of water use were guaranteed. These provisions cannot unilaterally be modified.

The U.S. Supreme Court in Nevada v. U.S., 1983, confirmed the ownership of the water rights on the Project to the landowners and stated that the U.S. cannot move water around like so many bushels of wheat. In addition, PL101-618 prohibits the U.S. from interfering with the Project water rights and their use.

The TROA seems to place extra protection on the Tribe's Claims 1 and 2 under the ORR Ditch Decree as well as Sierra's negotiated 40 cfs under the TRA. **Is this correct?** What is your understanding of the TRA and the parties rights under that negotiated settlement? It is my understanding that only those who voluntarily modify their water rights will have their water rights affected. I also understand that there will not be any unilateral modifications to water rights, only modifications to those who agree to such modifications. **Is this correct?**

I was told the purpose of the Newlands Project Credit Water ("NPCW") was to ensure that the Project never exceeds the target storage in Lake Lahontan. This is not mentioned in the Draft EIS/EIR. See page 3-391 describing the NPCW as beneficial to the Project. This statement in the EIS/EIR is contrary to the real intent of NPCW. In addition, no modeling efforts were undertaken to demonstrate a benefit to the Project from NPCW. In fact, I submit that NPCW will never benefit the Project and will never be released to the Project. **If this is not correct, please explain why and provide data and reliable credible assurances that the water will be released and will benefit the Project.**

An example, to support the above statement, is the credit water that was offered by the U.S. to the Federal District Court in Reno as a credit to the Project in 1987 for reductions in diversions from the Truckee River, when in fact the U.S. had no intentions of that credit ever being released to the Project. The District requested that the credit water be released when it was needed in 1988, a 50 to 60% water allocation year without the credit. The U.S. refused to release the credit water to the Project. The District then had to get a court order over the objections of the U. S. to release that credit water. Then the U.S. appealed the release of the credit water and got a favorable decision from the 9<sup>th</sup> Circuit Court of Appeals that agreed with the U.S. that the credit water should not have been released.

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- 2 -

03

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05

## Comment PW 05 – continued

The U.S. along with the Pyramid Tribe continue their assault on the water rights of the Project that they began some 40 years ago regardless of the U. S. Supreme Courts' clear statement to the contrary. By doing so, the U. S. continues to require the Project and its water right owners to spend millions of dollars in attorney and consultant fees to protect the water rights of the Project.

Other matters of grave concern to the District is the ability of the Pyramid Tribe and the U. S. to have the appointment and removal authority over the Administrator – Water Master. As you may know from the history of the Project, the U. S. and the Pyramid Tribe have been, for forty years, trying to close the Project's diversions from the Truckee River. To have coercive powers over the individual that is given the responsibility to protect the water rights of others, including the Project, is like putting the fox in the hen house or telling the shop owner he needs insurance protection from fires.

06

In addition, there is explicit references to the District's and Sierra's rights to Donner Lake water, some of which indicate that Sierra has a right to 50% of the water therein. That is contrary to the agreement of the parties that was signed in 1943. In addition, there is reference to Sierra acquiring the District's interest in Donner Lake. This is obviously premature since there is no legitimate offer that has been made to acquire our interest. Therefore, any modeling based upon these two assumptions is invalid and defective.

07

In reference to the modeling of the TROA which is the basis for the conclusions of no significant impacts, there was no comparison of current conditions (the real No Action) against the proposed action. The comparison was based upon future assumed actions 30 years in the future (No action scenario as described in the EIS/EIR) with assumptions that are the same as the proposed action (TROA).

08

Obviously, if the same assumptions are used for the No Action and the Proposed Action and that is the only modeled comparison, then there would not be any impacts as you have concluded. **Is this correct? If not, then please explain.**

The TROA will cause a financial and fiscal impact to the District, by reducing the water supply to the Project and increasing the cost to the District. The District will be required to increase staff or hire consultants and attorneys to monitor the TROA operations and be left with the unfavorable and difficult task of having to bring appropriate action in Federal Court to protect the Project water rights as the District will not have a vote in the operations.

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What happened to the proposition that the U. S. government was created to help its people. The U.S. Supreme court is the only reason this Project exists today as the U.S. and the Pyramid Lake Tribe had gotten the 9<sup>th</sup> Circuit Court, prior to the U.S. Supreme Court's decision, to allow them to shut off the Truckee Canal, a result they are still pursuing today.

## Comment PW 05 – continued

As this Revised Draft EIS/EIR is referred to as a revised draft, the revision must be from the 1998 draft EIS/EIR, and therefore, I reference the comments of the District and its attorneys and consultants on the 1998 draft to the extent that they are appropriate and incorporate them into my comments herein.

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Finally, there will be comments from Michael VanZandt, the District's attorney, Chuck Binder, Binder and Associates, and Willem Schreuder, Principia Mathematica, consultants for the District, as well as comments from the County of Churchill and the City of Fallon that the District incorporates and adopts as part of its comments on the Draft EIS/EIR of the TROA.

If you need or want further clarification on my comments herein, please contact me.

Sincerely,



Lyman F. McConnell,  
Project Manager

LFM/mc

RECEIVED DEC 2 2004

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## Comment PW 06

# PRINCIPIA

December 27, 2004

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

Dear Mr. Parr:

Principia Mathematica, Inc. (Principia) has reviewed and evaluated the Truckee River Operating Agreement (TROA) model used in preparing the draft TROA Environmental Impact Statement/Environmental Impact Report (EIS/EIR). On behalf of the Truckee-Carson Irrigation District, Churchill County and the City of Fallon, Principia hereby submits its comments on the Draft EIS/EIR, specifically concentrating on the TROA model upon which this Draft rests.

### 1. Introduction:

A review of the mathematical model upon which the Draft TROA EIS/EIR centrally rests was conducted recently by Principia. This review revealed three major facts that call into serious question the fundamental underpinning of this Draft EIS/EIR. These three facts are presented as follows.

- (1) The model upon which this Draft EIS/EIR rests so heavily is unreliable in critical respects. In any unbiased scientific review by qualified peers, this model would be rejected for the very uses that are reported in the Draft EIS/EIR.
- (2) The model's unreliability is caused by significant, serious and, in some instances, fatal flaws. Such flaws prevent the model from being applied properly to evaluate "what-if" scenarios intended to establish suitable alternatives to or adjustments of planned water allocations.
- (3) Employing a fatally flawed model to plan water allocations and to make decisions that would continue well into the future, when other well-tested and reliable stream flow models are readily available for use, introduces scientific unreliability into the TROA process. It leads inevitably to unsupportable management decisions that may be adopted as a regulation and thereby create unintended and seriously flawed consequences.

These facts lead Principia to urge that the model, in its present form, be rejected for use

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## Comment PW 06 – continued

as the foundation for the Draft EIS/EIR. Furthermore, Principia urges that this model be opened to wider and unhindered scrutiny by practitioners who were not involved in this model's development. Only in this way can the affected public be persuaded that the assumptions and procedural rules that are embedded in it are indeed valid and actually implemented as claimed, let alone be demonstrated as unbiased and in the public interest. The flaws identified by Principia even via its preliminary review are summarized below. This summary provides some indication that such assumptions and rules as embedded in the TROA are seriously flawed.

### 2. Crippling Flaws in the Model:

The specific flaws in the model revealed even by Principia's preliminary review conducted in just a few weeks are identified below. This identification should be viewed as illustrative examples of numerous such flaws that exist and not a comprehensive list of such flaws. Requests for additional time needed for a more comprehensive review were denied, we understand.

(1) The computer program embodying the TROA model consists of more than 72,000 lines of convoluted FORTRAN language contained in 173 subroutines. The sparse comments contained among these lines do not illuminate, amongst other facts, the innumerable quantities that are assigned unexplained values. Such values furthermore are inexplicably altered as the program instruction courses through the many subroutines of the program. This is very poor and antiquated programming practice that could not be further away from current accepted scientific methodology. What makes this practice untenable in this instance is that not even a rudimentary documentation seems available for the program. It is therefore virtually impossible for any independent and unbiased reviewer to follow the steps the program does take, evaluate values embedded as facts into it, and test the logic to evaluate whether the program computations are indeed being performed as intended, and as reported.

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(2) This flaw is compounded further by the fact that the computer program embodying the TROA model has not been provided with adequate output generating features. Such features would at least allow an independent reviewer to evaluate details of water volumes and flow quantities that the program purports to allocate. For instance, the program claims to track water flow quantities throughout the TROA system, but can produce computed output only for a few selected flows at selected locations. These selections of course were made by the program author and do not reflect the quantities and locations that remain of deep interest to the affected public. In order to evaluate just what the program computes in these matters of interest, an independent reviewer is forced to modify the program code in order to obtain output that is clearly contained in the program but is otherwise unattainable. This tedious and cumbersome task is made unnecessarily difficult by the absence of program documentation.

02

(3) The accounting of relevant flow quantities is seriously inadequate in the program. In this program, flow quantities associated with different sources are lumped together, but thereafter the program is not equipped to track each flow quantity according to its source. It is not possible to evaluate whether, or not, this poor programming practice was intentionally adopted. However, it denies any independent reviewer the basic tools

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## Comment PW 06 – continued

needed to understand just why certain results are predicted by this program. This is a serious programming deficiency which makes it impossible to establish just which specific planned action leads to what computed outcome; just the types of basic information essential to manage the TROA system. It is for this very reason that other well-tested and reliable programs such as **Riverware®** are intentionally equipped to keep rigorous track of flow quantities by their “accounts”.

03

(4) The computer program embodying the TROA model employs antiquated FORTRAN-language programming practices and modeling techniques. The ready availability of modern computer models for river systems makes the continued use of the TROA model suspect. The serious consequences stemming from using an outdated model can neither be easily detected nor readily rectified. Consider an example specific to TROA: each planned action taken on the water system is coded within a program subroutine that is found to have complex, undocumented, and sometimes unexpected interactions with different parts of the program that represent other segments of the flow system. It is thus made impossible for any independent reviewer to evaluate whether, or not these interactions were intentional, and if so why, or merely accidental stemming from the manner in which the program has evolved during the past two decades. In direct contrast, modern modeling programs such as **Riverware®** are designed to isolate actions specific to certain “objects,” enabling a user to keep track of intended actions. Further, such programs employ component flow models with relevant physical realism and accounting procedures that keep rigorous track of flow quantities propagating through the system. In reliable programs, complex management decisions may indeed be specified by prescribing “rules”; however, the programming of these rules leaves no room for unintended and thus hidden side effects. Furthermore, the use of generic “objects” in reliable programs simplifies the tasks of program validation and documentation, and makes them transparent.

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(5) Potentially serious differences have been detected between the draft and final versions of the TROA model. The model used in justifying the Draft EIS/EIR is dated June 2003. A review of the model dated as November 3, 2004 indicates that more than 4000 lines of code have been altered involving more than half of the program files, without any documentation being created to establish just why this was done and with what consequences. The unscientific and potentially prejudicial nature of such program alterations suggest that it is futile to expend significant resources in conducting further review of the model used to justify the Draft EIS/EIR since this model has already been substantially changed apparently in preparation for the Final EIS/EIR. It is inconceivable that so many changes to the program would have been done without causing any effect on the predictions made by the model. It would therefore be entirely improper and unprofessional to simply ignore these efforts in commenting on the draft, knowing significant changes are forthcoming in the Final EIS/EIR.

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### 3. Flaws in Demonstrating the Model’s Validity:

(1) The TROA model has not been calibrated to known conditions in the flow system. When a mathematical model is considered valid for application to any physical setting, it is essential to demonstrate that the parameters representing physical properties in it are appropriate to this very setting. For surface water models, such parameters include rates of evaporation, seepage from stream segments and other losses, transit times and return

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## Comment PW 06 – continued

flow delays, among others. The validity and appropriateness of model calibration is typically demonstrated by comparison of quantities predicted by the model against observations as its parameter values are adjusted. In the present instance, it is claimed that some values prescribed as input data to the model, such as the Farad to Derby Dam net change, are based upon some previous (and undocumented) modeling effort. It is further claimed that individual terms such as evaporative losses from reservoirs are based upon observations, that are also unidentified. However, no attempt has apparently been made to check that when all of these estimated quantities are combined in this model, model predictions indeed match physical observations of any recorded stream flow values or similar recorded quantities.

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(2) It is a significant flaw that the TROA model is entirely based upon the central premise that available water resources and stream flows will, in future, remain at precisely their historically recorded values. No attempt seems to have been made to estimate, through appropriate stochastic simulations, the future variations in such quantities which will have significant quantitative consequences upon water planning and allocations. No such variations, which accepted scientific methodology would indicate as real possibilities, were apparently tested for purposes of such planning and allocations which this TROA model was apparently designed to quantify. This flaw is exacerbated by the reliance on long term averages to evaluate the effect of various alternatives, instead of a more detailed evaluation of impacts at a time scale that are relevant to water users.

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(3) The calculation sequences embedded into the TROA model have not been demonstrated to be valid. When a model program is constructed in support of just one project, it is necessary to demonstrate that the model program operates correctly as intended. This is achieved by running the model with a set of input data for which the output results are known, such as from an analytical solution to even a theoretical stream flow problem. This step is usually referred to as model or program validation. In the present instance, while it is claimed, orally of course and not documented, that a mass balance was performed on some reservoirs to “ensure that input minus output equals change in storage,” even such a basic calculation has not been undertaken for the TROA system as a whole. This flaw thus makes it possible for water to be either lost or created in the system simply due to artifacts of mis-programmed complex calculations, because no checks were performed to ensure that the model maintains a valid overall mass balance.

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(4) The TROA model has not been verified following its calibration. In generally accepted modeling practice, it is customary to retain some data not used in making calibration adjustments to evaluate just how well the model predictions compare with such data. This step is frequently achieved by calibrating a model using data collected during some selected time period, and then verifying it with data available to represent a different time period. This is a step that tests the robustness of physical representations embedded in the model in their ability to predict values that have been observed for this period, and which have not been consumed during model calibrations. The serious flaw in the TROA model is that no such verification was even attempted.

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(5) Sensitivity runs have not been conducted with the TROA model to establish just how its predicted results vary when unknown parameter values are adjusted each within

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## Comment PW 06 – continued

its reasonable bounds of variability. After all, it is reasonable to hypothesize that future water availability and stream flow conditions will vary if the past millennia of recorded history of natural phenomena are any guide. It is thus important to test the variability of the model predictions to reasonable variations in physical parameter values. Well known and accepted scientific methodology requires that such sensitivity analyses be undertaken in any modeling effort. This step becomes particularly important when predicted impacts of implementing water allocation plans are anticipated to be small, in order to determine if predicted changes are significant. In the present instance, numerous examples exist wherein conducting such sensitivity analysis would be appropriate. For example, when it is assumed that future changes in water use would occur, it is appropriate to test the sensitivity of the model to different amounts of such changes in order to evaluate the sensitivity of the model predictions to that parameter value, all other conditions being held the same. The serious flaw in the TROA model is that no such sensitivity analysis was performed.

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(6) Not even a basic User's Manual or Program User's Guide has been prepared for the TROA model. Such a lack of basic documentation is unprecedented and represents a serious flaw. Given the complexity of this model, the absence of a user's manual or guide which explains the syntax, meaning and function of input data sets supplied to the model makes it virtually impossible for any independent reviewer to evaluate the model's uses and thereby verify its validity. Under present circumstances it is difficult to establish just how a valid scientific methodology can be followed to allow a proper peer review of the model can be performed.

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#### 4. Flaws in Model Applications:

(1) In order for members of the affected public to apply the TROA model for any valid purpose, the computer program embodying it has to be installed in a computer prior to running it. Principia's preliminary test runs have demonstrated that this model is unreasonably sensitive to the computer architecture and FORTRAN-language compiler routinely used to convert the source code to a usable or executable form. In other words, when used on different computers or with different FORTRAN-language compilers, the TROA model predicts quantitatively different results. This is also unprecedented and represents a serious flaw in the TROA model. Such differences indicate either the use of dangerously poor programming practices or the inherently chaotic behavior of the flow system as modeled, or some combinations of both. The differences in results predicted by the model for identical input data sets are particularly significant and troubling since no model sensitivity runs were performed. Discussions held by Principia with authors of this model reveal that the authors themselves had not studied this behavior but were not even surprised by such differences in results. In this TROA flow system as modeled even one extra drop of water can trigger a sequence of program "decisions" which drastically alter how the system is predicted to operate. This serious flaw in applying the model is dramatically demonstrated by the significant changes in model predicted results for some months, even when using identical data sets, simply by running the program on two different computer systems.

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(2) Results predicted by the TROA model apparently cannot be checked or verified as valid real-life possibilities. One of the reasons cited by authors of this model for not

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## Comment PW 06 – continued

having undertaken model calibrations is that the model is known not to predict any flow quantities that can actually be compared to observed values. This is also unprecedented especially for a model intended to reflect water allocation plans that will affect so many and for so long into the future if adopted. For example, the flow system may historically have been operated according to “rules” that differ from their present form. When used to simulate such historical conditions, the TROA model would cause this flow system to operate not according to such historical rules but differently when applied to the same time period. This failure violates the most basic principles of science that are recognized and widely accepted as valid methodology. It is essential to demonstrate that it is not only possible to undertake such comparisons but that important model results indeed compare favorably with actual observations, even just for selected periods. Without the basic ability to subject the TROA model to valid controlled scientific experiments and to compare the resulting model predictions with observed data, the affected public is forced to accept this model as an article of faith based only upon representations by its authors, and without any opportunity to review its basis in science which is the normal practice.

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(3) It is a deeply disturbing flaw that the TROA model makes predictions that are driven by the results expected by parties to water allocation plans. This model has been so constructed that it fails to consider changes to gains and losses in the flow system as a result of planned changes in operations. Specifically, the TROA as implemented in the model is aimed at finding unappropriated water, storing that water, and then releasing the water when it is deemed beneficial. What the model as constructed fails to account for is the real possibility that at the time of water releases, water may not reach the lower end of the system as a result of increased losses. Therefore, the increased benefit of such releases may not materialize, may be diminished or even cause additional impact to downstream users who may be “charged” the additional transit losses. Consequently, the model will always predict a benefit from the TROA operations whereas in reality the real benefit would be much smaller and the impact on other water users much greater than predicted. This is also a serious flaw of the TROA model and greatly diminishes its validity as a tool for evaluating real changes in water allocations.

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### 5. Summary Findings:

Even this preliminary review of the TROA model illustrates that it is seriously flawed in several significant respects. Some of these flaws prevent a valid model review from being conducted using accepted scientific methodology, given the short time frame allocated for such reviews. Other flaws are more serious and cripple the model from being used in support of the Draft EIS/EIR. Several of the TROA model flaws identified during Principia’s review are fatal and prevent it from being used to evaluate the consequences of water allocation plans for the TROA system and its future operations.

It is Principia’s scientific view based upon this review, and the experiences of its scientists from modeling reviews conducted during the past two decades, that model flaws which have serious consequences must be revealed and then evaluated through a process of wide and unhindered scrutiny by scientific peers. Thereafter, each flaw must be rectified through rational means and then rigorously tested before a model is finalized and used for predictive purposes. The ultimate goal of a scientific computer model is to create confidence in the user that the model will actually predict an outcome that can be relied upon. It is by documenting such efforts in an open and thorough manner that the

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## Comment PW 06 – continued

affected public will be persuaded that such confidence is indeed merited. Principia's opinion of the draft TROA model is that it provides little, if any, confidence in the data it is evaluating and no confidence that the output created by this TROA is either reliable or usable for purposes of decision making.

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Yours Sincerely

Principia Mathematica, Inc.



Dr. Devraj Sharma



Dr. Willem A. Schreüder

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# Comment PW 07

**BINDER & ASSOCIATES CONSULTING, INC.**

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December 28, 2004

Mr. Kenneth Parr  
 U.S. Department of the Interior  
 Bureau of Reclamation  
 705 North Plaza Street, Room 320  
 Carson City, NV 89701-4015

Re: Comments on August 2004 Revised Draft Environmental Impact Statement/Environmental Impact Report for Truckee River Operating Agreement (TROA)

Dear Mr. Parr:

These comments are made on behalf of the Truckee-Carson Irrigation District (TCID), the City of Fallon, and Churchill County and are in addition to any separate comments submitted directly by these parties or their representatives. These comments pertain to the August 2004 Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) and supplemental information provided by the U.S. Bureau of Reclamation (USBR) through oral communication and documents provided in response to my September 27, 2004 Freedom of Information Act (FOIA) request.<sup>1</sup> It is noted that TCID requested a 6-month extension for the comment period but the extension was granted for only two months. Thus the following comments should be regarded as preliminary and are based on limited time for review and analysis of the Truckee River Operations Model (TROM) and supporting information provided in response to the FOIA request. The comments include specific comments referenced to particular sections of the DEIS/EIR followed by general comments.

Page ES-6—The third complete paragraph contains a misleading statement that the Newlands Project Carson Division water demands would be served in wet, median, and dry hydrologic conditions. Analysis of model output data shows that the TROA Alternative results in increased shortages to the Carson Division in seven years of the study period including an increase of approximately 8,000 acre-feet in Water Year 1934.

Page 1-7—The third complete paragraph describes possible changes to OCAP to accommodate Newlands Project Credit Water (NPCW) including the statement that the potential environmental effects of such credit water are addressed in the DEIS/EIR. As discussed in more detail in other comments, the potential environmental effects are not adequately evaluated in the document because constraints included in the modeling analysis of the NPCW operations are so restrictive that the range of potential impacts on Newlands Project Carson Division shortages and Lahontan Reservoir water levels has not been disclosed.

Page 2-36—*vi. Newlands Project Credit Water.* The description of the NPCW program is not consistent with the provisions of TROA nor the modeling analysis used to evaluate NPCW operations. The description indicates that NPCW can be accumulated any time between October

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<sup>1</sup> September 27, 2004 letter from Charles W. Binder to Kenneth Parr regarding Truckee River Operating Agreement DEIS/EIR—Freedom of Information Act Request for Information Related to the Truckee River Operations Model.



## Comment PW 07 – continued

Mr. Kenneth Parr  
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and July. No such time period is specified in TROA and furthermore the modeling analysis restricted the period of accumulation to January through June. The description also states that the credit water would be released (as much as possible before August 1) in time to be used for its authorized purposes. However, the modeling analysis used to evaluate the TROA Alternative restricts the deliveries of NPCW to the Newlands Project to the month of July.

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Page 2-41—iii. *Enhanced Minimum Releases.* The TROA operations call for Credit Water and Project Water to be used to meet increased minimum releases for Donner Lake. Included in the definition for Project Water contained in TROA is Privately Owned Stored Water (POSW) in Donner Lake, apparently including the water in Donner Lake owned by TCID. Under what authority can POSW owned by TCID be used to meet the increased minimum releases specified in Table 2.8?

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Page 2-43, Table 2.9—Why is NPCW the second in order for water to spill from reservoir storage?

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Page 2-49—V. Alternatives Considered and Rejected.

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The alternatives analysis is flawed due to overly restricting the range of possible alternatives and rejecting alternatives without sufficient analysis. The January 1996 Report to the Negotiators evaluated only alternatives that can be described as variations of the Basic TROA Alternative to address four limited aspects of Truckee River operations emphasizing (1) streamflows, (2) recreational pools, (3) threatened and endangered species, and (4) assured storage to serve uses in California. Even the narrow variations within the TROA framework were restricted and did not include a range of alternative operations. Examples include, but are not limited to, storage to assure all existing water rights under the Orr Ditch Decree are not injured and storage to assure Newlands Project shortages are not increased due to TROA operations.

The alternatives analysis should include a broad formulation and detailed evaluation of a range of possible alternatives to TROA including, but not limited to: (1) constructing a new reservoir(s), (2) transbasin importation of surface water and groundwater supplies, and (3) increased utilization of conjunctive use and groundwater banking. Constructing a new reservoir is briefly mentioned in the first full paragraph on Page 2-49 but it is summarily rejected as an alternative because "... it would have exacerbated degradation of riverine fish and riparian habitat as well as created additional cumulative environmental impacts throughout the Truckee River basin." However, there is no analysis contained in the DEIS/EIR to support this claim and the rejection of constructing a new reservoir as an alternative to or a component of TROA.

Page 3-11—B. Past Cumulative Effects on Affected Resources. The third and fifth complete paragraphs improperly attribute the decline in water levels for Pyramid Lake and Winnemucca Lake entirely to the operation of the Newlands Project. There is no basis provided in the DEIS/EIR for this attribution. There are several other potential causes for declining water levels for these lakes including drought conditions and diversions for irrigation purposes in the Truckee Meadows. The DEIS/EIR should include a graph showing the historical water levels for these lakes including the recent recovery of water levels in Pyramid Lake to levels greater than target levels identified in the Cui-ui Recovery Plan.<sup>2</sup>

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Page 3-59—(ii) *Nonconsumptive Demands.* The second paragraph in this section describes current and future estimated acquisitions of water rights under the Water Quality Settlement Agreement (WQSA). The calculations for the estimated acquisitions are referenced as presented in the Water

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<sup>2</sup> U.S. Fish and Wildlife Service, Cui-ui (*Chasmistes cujus*) Recovery Plan, Second Edition, Region 1, Portland, Oregon.

## Comment PW 07 – continued

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Resources Appendix. However, review of the document revealed that such calculations are not included in the appendix. Detailed calculations including location of target water rights, prices, inflation rate, and sources of funding should be provided in the DEIS/EIR.

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Page 3-64—2. Model Results.

The TROM results for reservoir storage and releases are presented for wet, median, and dry hydrologic conditions defined as 10-, 50-, and 90-percent exceedences. This type of comparison provides an interesting overview but is insufficient in evaluating specific impacts on the Newlands Project. Monthly and annual analyses are needed to fully understand the impacts on the Newlands Project. For example, model results show TROA operations increase the Carson Division shortages in seven years including Water Year 1934 when the shortage was increased by approximately 8,000 acre-feet compared to the No Action Alternative.

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In addition to lack of monthly and annual model results described above, it is noted that the DEIS/EIR provides no detailed results for changes in storage and water surface elevations for Pyramid Lake even though it would seem that one of the objectives of TROA would be to increase the water surface elevation of Pyramid Lake to improve fish passage conditions. The DEIS/EIR should include a detailed analysis of changes in storage and water surface elevations for Pyramid Lake including monthly and annual data and graphs similar to those presented for other reservoirs throughout the Truckee River system.

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Page 3-78—c. *TROA*. This section provides a description of the operations model results for the various reservoirs and differences in storage amounts and releases are often attributed to credit water operations under TROA. However, there is insufficient information presented in the DEIS/EIR to establish specific cause and effect relationships between the various credit water operations and the reported changes in storage amounts and releases derived from the operations model results.

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Page 3-83—viii. *Lahontan Reservoir*. This paragraph contains misleading statements and one incomplete sentence containing typographical errors and missing words. The statement is made that “Carson Division demands are met in wet, median, and dry hydrologic conditions” but insufficient information is provided in the DEIS/EIR to reach this conclusion. The cited figures 3.15 and 3.16 are inadequate to evaluate impacts on the Carson Division. Review of backup modeling information provided by the USBR under the FOIA request shows that in fact TROA operations increase the Carson Division shortages in seven years including Water Year 1934 when the shortage was increased by approximately 8,000 acre-feet compared to the No Action Alternative.

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Page 3-88—d. *TROA*. This section provides a description of the operations model results for streamflows at various river locations and differences in flows are often attributed to credit water operations under TROA. However, there is insufficient information presented in the DEIS/EIR to establish specific cause and effect relationships between the various credit water operations and the reported changes in river flows derived from the operations model results.

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Page 3-92—3. Evaluation of Effects. See general comments regarding formulation of the Current Conditions and the No Action and TROA alternatives.

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Page 3-93, second line, first complete paragraph. Change the word “percent” to “percentage points.”

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Page 3-95—(b) Carson Division. This paragraph contrasts percentage of demand met in the minimum year but this comparison is misleading and does not present the true impacts on the Newlands Project. For example, model results show TROA operations increase the Carson Division shortages in seven years including Water Year 1934 when the shortage was increased by approximately 8,000 acre-feet compared to the No Action Alternative.

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Page 3-96—F. Optional Scenarios. The statement is made that TROA was modeled using conditions “most likely” to occur in the future based on the draft agreement. What is the basis for excluding Fernley M&I Credit Water from the base TROA run?

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Page 3-97—b. *Donner-TMWA Scenario.*

Insufficient information and poor graphical representations are presented in this section resulting in an inability to properly evaluate the impacts on TCID operations and Newlands Project water supplies under the scenario of TMWA having 100 percent ownership of Donner Lake. The graphs contained in figures 3.23, 3.24, and 3.25 are presented at an insufficient scale to discern changes in operations. Furthermore, the selected items in the graphs do not include specific points of interest to the Newlands Project such as Truckee Canal inflows to Lahontan Reservoir or Carson Division shortages.

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The third complete paragraph on Page 3-104 summarizes modeling results stating the Truckee Canal diverts 120 acre-feet per year less water to Lahontan Reservoir and that the average annual Carson Divisions shortages would increase by 80 acre-feet per year under the Donner-TMWA Scenario. These statistics are misleading in terms of potential impacts on TCID and Newlands Project water supplies because a long-term average determination masks the impacts in individual months and years, particularly in dry years when Donner Lake water is a critical element of the water supply for TCID. These numbers are also artificially low due to the assumption that 100 percent of the Truckee Division water rights will be acquired for either WQSA or City of Fernley purposes.

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To adequately address the potential impacts on TCID and the Newlands Project, the DEIS/EIR should contain monthly amounts for the entire period of record reported for Current Conditions and the No Action, LWSA, and TROA alternatives. The monthly amounts should be reported for both scenarios: (1) Donner Lake undivided joint ownership by TCID and TMWA as currently in place and (2) 100 percent ownership by TMWA. The TROA falsely assumes that Donner Lake water can be partitioned. Even assuming this is true, the TMWA and TCID points of operation for Donner lake water are not presented. The results should be presented for the following points of operations:

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- Donner Lake Storage reported by separate accounts for TCID and TMWA
- Donner Lake Releases of TCID and TMWA separate accounts
- Donner Lake water diverted at Derby Dam
- Donner Lake water delivered to Lahontan Reservoir
- Donner Lake water as an undivided asset

Insufficient information is currently provided in the DEIS/EIR to understand the future operation of Donner Lake and in particular the future operation of the TCID Donner Lake water rights for Current Conditions and the No Action, LWSA, and TROA alternatives.

Page 3-111—E. Recharge of the Shallow Aquifer near the Truckee Canal. The analysis of potential impacts on groundwater resources in the vicinity of the Newlands Project, including areas adjacent to the Truckee Canal and Lahontan Valley, is inadequate because the analysis presented is qualitative and potential impacts are simply assumed to be insignificant when comparing the TROA and No Action alternatives. One of the problems arises due to the assumptions included in the formulation of the No Action Alternative as described in the general comments. More realistic assumptions including a range of possible actions should be included in the No Action Alternative. Once a more realistic No Action Alternative is formulated, a quantitative analysis should be conducted to

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determine potential impacts on groundwater resources adjacent to the Truckee Canal and within the Lahontan Valley. The DEIS/EIR should also include an expanded description of the number of wells and population dependent upon groundwater resources that are recharged from return flows from the Newlands Project.

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Page 3-157—last paragraph. The DEIS/EIR describes new flow recommendations referred to as the six-flow regime for management of Fish Water and Fish Credit Water releases in order to meet ecosystem requirements along the Truckee River. The new flow recommendations are attributed the Truckee River Basin Recovery Implementation Team under a report<sup>3</sup> to the U.S. Fish and Wildlife Service. The discussion should include a description of the NEPA and ESA compliance procedures and requirements for adopting the six-flow regime as well as analyses showing the stand-alone impacts of the recommended flows on diversions from the Truckee River to the Newlands Project.

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Page 3-235—2. Threshold of Significance. The DEIS/EIR establishes the threshold of significance for Truckee River inflow to Pyramid Lake as “Any change in inflow was considered significant.” What is the scientific basis for considering any change in Pyramid Lake inflows as significant whereas increases in Carson Division shortages for the Newlands Project are not considered significant?

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Page 3-235—c. TROA. This paragraph reports that model results show the average annual increase in inflow to Pyramid Lake is 9,730 acre-feet under TROA compared to the No Action Alternative and concludes this increase is significant. However, this increase in inflow corresponds to only a two percent increase in inflow to Pyramid Lake. What is the scientific basis for considering this change in inflow as significant?

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Page 3-330 thru Page 3-334—D. Employment and Income Affected by Changes in Water Use. This section evaluates the effects of transferring water rights but the analysis was aggregated to such a large scale that the effects on the Newlands Project and in particular the Truckee Division are not discernable. The analysis should be disaggregated to show the specific impacts of purchase of irrigation water rights for the city of Fernley and for Truckee River water quality under the WQSA. The analysis should include impacts on employment and income as well as the economic impacts on TCID operations.

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Page 3-334 thru Page 3-336—E. Hydropower Generation and Revenues. This section is incomplete because the analysis does not include the impacts on hydropower generation and revenues for the Newlands Project and particularly the impacts on TCID operations. The analysis should be expanded to include impacts related to the reduction in hydropower generation for the Lahontan Reservoir Old and New Power Plants and the V-Canal (26-foot Drop) Power Plant.

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Page 3-388 thru 3-391—Newlands Project Operations.

All of the following comments related to this section on the Newlands Project Operations assume for purposes of the comments only that the formulation and assumptions for the No Action Alternative are appropriate; however, as discussed in the general comments there are serious concerns about the formulation and assumptions for the No Action Alternative and the resulting effect of masking the potential impacts of TROA on the Newlands Project and TCID.

The analysis should be expanded as described below to include Carson Division shortages. Also the analysis should evaluate potential impacts on the following resources related to

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<sup>3</sup> Truckee River Basin Recovery Implementation Team, Short-Term Action Plan for Lahontan Cutthroat Trout (*Oncorhynchus clarki henshawi*) in the Truckee River Basin, report prepared for U.S. Fish and Wildlife Service, August 2003.

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Newlands Project operations: (1) groundwater resources dependent upon return flows from the Newlands Project, (2) stock watering and domestic uses under the Newlands Project, and (3) water supplies for wetlands including Fernley Wildlife Management Area, Stillwater Wildlife Management Area, Stillwater National Wildlife Refuge, and Carson Lake Pasture.

Page 3-388, last paragraph. The list of specific operations for evaluating potential impacts on the Newlands Project should be expanded to include Carson Division shortages. In addition, all of the specific operating parameters of interest to the Newlands Project should be evaluated on monthly and annual bases as well as period of record descriptive statistics to include various frequency points, maximum, minimum, average, and median values. Also the analysis should be expanded to include a scenarios analysis for drought conditions assuming worst-case, multi-year drought conditions.

Page 3-389, Table 3.96. The summary table of potential impacts on the Newlands Project is interesting but the results should be supported by detailed tables showing monthly and annual values for the entire study period and all appropriate operating parameters for the project. In addition, the summary table and detailed supporting tables should be expanded to show results for the operating parameters for Current Conditions along with all three alternatives.

Page 3-389, Table 3.96 and following discussion of potential impacts resulting from TROA. The operations model results summarized in the table are inadequate to provide a basis for reaching conclusions on the potential impacts on the Newlands Project. In particular, monthly and annual results for Carson Division shortages are not provided in the DEIS/EIR and such results should be provided in the document. Review of backup modeling information provided by the USBR under the FOIA request shows that in fact TROA operations increase the Carson Division shortages in seven years including Water Year 1934 when the shortage was increased by approximately 8,000 acre-feet compared to the No Action Alternative. The annual increases in Carson Division shortage for seven years are shown below:

<b>Annual Carson Division Shortages Determined From Operations Model Results</b>				
<b>Water Year</b>	<b>Carson Division Shortage</b>		<b>Increase In Shortage (acre-feet)</b>	<b>Percentage Increase In Shortage</b>
	<b>No Action (acre-feet)</b>	<b>TROA (acre-feet)</b>		
1932	14,740	14,750	10	0.1%
1934	71,760	79,720	7,960	11.1%
1961	49,580	53,980	4,400	8.9%
1988	60,630	61,470	840	1.4%
1990	38,830	40,130	1,300	3.3%
1992	156,000	156,440	440	0.3%
1994	54,940	56,490	1,550	2.8%
<b>TOTAL</b>			<b>16,500</b>	

The increases in Carson Division shortages exacerbate the shortages that are incurred by the individual water right holders served by the Newlands Project. For example, in 1934 the water users under the Carson Division would experience a 27 percent shortage in available supplies under the No Action Alternative. The 11.1 percent increase in shortages caused by TROA would increase the Carson Division shortage to 30 percent. It is also noted that these

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shortages would be greater if deliveries are made to the Lahontan Valley wetlands at the full duty of 3.5 or 4.5 acre-feet per acre compared to the current delivery rate of 2.99 acre-feet per acre.

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Page 3-390, first full paragraph. The statement is made that based on the analysis of releases to serve Newlands Project water rights, there should be little to no economic impact from TROA compared to No Action. There is no basis for this conclusion particularly in light of the increases in shortages shown above as a result of TROA. An analysis should be performed to quantify the economic impacts resulting from increases in Carson Division shortages and decreases in Lahontan Reservoir releases. The economic impacts include, but are not limited to, reduction in hydropower generation and revenues, reduction in water delivery fees received by TCID, reduction in crop yields and gross revenues as a result of reduced water supplies, and reduction in net revenue as a result of reduced gross revenues while fixed costs and some variable costs remain the same.

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Page 3-390, fifth paragraph. This paragraph provides a description of the NPCW operations included in the modeling analysis for the TROA alternative. The following comments and questions arise concerning the NPCW analysis:

- What is the scientific basis for the proposed California Guidelines objectives for flows in July for the various stream reaches that are used to limit establishment of NPCW?
- What is the legal authority for imposing the proposed California Guidelines objectives for flows in July?
- The description indicates that NPCW was not released before July 1 but review of supplemental materials provided by USBR shows that releases to the Newlands Project were restricted to the month of July. The analysis should be expanded to allow releases to the Newlands Project throughout the irrigation season as well as scenarios to include carryover storage for releases to the Newlands Project in subsequent years.
- The description includes a summary of the modeling results showing releases in 21 of the 100 years, with a maximum storage of 1,300 acre-feet. First, this sentence is unclear whether the “releases” are diversions at Derby Dam, Truckee Canal inflows to Lahontan Reservoir, or some other operations variable. Second, it appears a typographical error is included in third sentence and the word “recreation” should be either “creation” or “established.” Third, backup data should be presented in the DEIS/EIR showing the monthly and annual amounts for: 1) NPCW established by either exchanges in accordance with TROA Section 7.H.1(a) or retention in storage in accordance with TROA Section 7.H.1(b), 2) NPCW released from individual reservoirs, 3) NPCW diverted at Derby Dam, 4) NPCW delivered to Lahontan Reservoir, 5) reclassification of NPCW by category in accordance with TROA Section 7.H.6, and 6) utilization of any reclassified NPCW including but not limited to flows past Derby Dam classified as Fish Water or Fish Credit Water.

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Page 3-390, sixth paragraph. This paragraph describes two other scenarios for management of NPCW that are characterized as “possible and reasonable” but only a qualitative analysis is provided. Included in the qualitative analysis is an acknowledgement that such operations under the first scenario would increase Carson Division shortages. If such other scenarios are “possible and reasonable,” a full range of possible scenarios should be analyzed to quantify

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the potential impacts on the Newlands Project and to identify mitigation measures to offset any increases in Carson Division shortages.

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References—The references section should be revised to provide consistent format and style. Redundant entries should be eliminated such as Item No. 10 on Page 3 and Item No. 12 on Page 17. Also, Item No. 4 on Page 9 appears to be the same document as Item No. 1 on Page 20. It also appears that the entire body of information available from the U.S. Geological Survey (USGS) was not utilized and cited in the DEIS/EIR. Included in the missing USGS publications are reports related to USGS river and reservoir modeling efforts for the Truckee and Carson River Basins; traveltime characteristics of the Truckee River; groundwater quality and groundwater resources of Lahontan Valley; data on groundwater quality and aquifer conditions for Reno-Sparks area; and irrigation drainage, water supplies, and water quality for Stillwater and Fernley Wildlife Management Areas.

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Water Resources Appendix—Exhibit 2 provides historical monthly streamflow data at key stream gaging stations including stations of particular interest to TCID and the Newlands Project including: (1) Donner Creek at Donner Lake near Truckee, California (USGS 10338500), (2) Truckee River at Farad, California (USGS 10346000), (3) Truckee River at Vista, Nevada (USGS 10350000), (4) Truckee River below Tracy, Nevada (USGS 10350400), (5) Truckee River below Derby Dam near Wadsworth, Nevada (USGS 10351600), (6) Truckee River near Nixon, Nevada (USGS 10351700), and (7) Carson River below Lahontan Reservoir near Fallon, Nevada (USGS 10312150). However, the TROM model output for river flows summarized in subsequent exhibits in the appendix shows river flows for the Current Conditions and the No Action, LWSA, and TROA alternatives for points on the river that are different than the USGS gaging stations for historical streamflows. The model output was apparently post-processed using a separate program to estimate streamflows at these other locations. Displaying the model results at points on the river different than USGS gaging station locations as well as points that are not included in the direct TROM output makes it difficult to analyze model results in comparison to historical conditions. For example, the model output for the closest location to the Farad gage appears to be “Truckee River above Coldron Ditch and Verdi Powerhouse.” No description is provided as to the location of this alternate location nor is any explanation provided on how the streamflows are determined using the model output. Another example in the appendix includes monthly data for the “Truckee River at S-Bar-S Ranch” which appears to be located somewhere between Derby Dam and Pyramid Lake. Again the location is not described nor is an explanation provided on how the TROM output is used to derive flows at this alternate location considering intervening diversions and accretions. Lastly, as described in more detail below, monthly TROM output for Carson River below Lahontan Reservoir is not provided in the DEIS/EIR for the Current Conditions and No Action, LWSA, and TROA alternatives.

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Water Resources Appendix—Exhibit 4 provides input files for the TROM for the various scenarios and included in the input files are demands for the various users. Although some additional information is presented in Exhibit Nos. 14, 15, and 16, insufficient information is provided in the DEIS/EIR to understand the assumptions and calculations used in deriving these demands. For example, the input files require input demands for the Truckee and Carson Divisions under the Newlands Project for the Current Conditions and No Action, LWSA, and TROA alternatives. Information provided by the USBR under the FOIA request included calculations for the demands for the Truckee and Carson Divisions; however, this supporting information should be provided in the DEIS/EIR. Included in the input files are numerous variables and switches for operational parameters that are not defined. The definitions for the variables and switches as well as the selection of the proper switches for the Current Conditions and No Action, LWSA, and TROA alternatives should be provided in the DEIS/EIR.

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Water Resources Appendix—Exhibit 5 provides output file summaries for the TROM for the Current Conditions, and No Action, LWSA, and TROA alternatives. The output summaries are comprised of four pages for each scenario listing monthly values for output variables related to streamflow; diversions; reservoir inflows, outflows, storage, and elevation; exchanges; credit storage; shortages; depletions; and demands for the various users extending from Lake Tahoe and the other upper basin reservoirs to Pyramid Lake on the Truckee River and Lahontan Reservoir on the Carson River. The summaries present the TROM output for the 1901-2000 average values. These output summaries have limited utility because the output is presented for the long-term averages only and thus it is impossible to evaluate output variables of interest during individual years particularly during drought conditions. The full output is necessary and should be included in the DEIS/EIR to fully understand TROA operations and to evaluate potential impacts on Donner Lake operations and the Newlands Project. Also, the information provided in the DEIS/EIR does not include definitions of the output variables. The definitions for the output variables and a description of the interrelationships of the variables are needed to understand the analysis and should be provided in the DEIS/EIR.

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Water Resources Appendix—Exhibit 6 provides TROM 1901-2000 Simulated Monthly Reservoir Data for the Current Conditions and No Action, LWSA, and TROA alternatives. The monthly data are provided for reservoir storage, water surface elevation, water surface area, and shore habitat area. However, the data are provided for only six of the major reservoirs of interest: Boca Reservoir, Donner Lake, Independence Reservoir, Lahontan Reservoir, Stampede Reservoir, and Lake Tahoe. The same information for Prosser Creek Reservoir and Pyramid Lake should also be included in the DEIS/EIR.

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Water Resources Appendix—Exhibit 7 provides TROM Monthly Reservoir Exceedence Frequency Data for the Current Conditions and No Action, LWSA, and TROA alternatives. The frequency tables are provided for reservoir storage, water surface elevation, water surface area, and shore habitat area apparently based on the data provided in Exhibit 6. Frequency tables are provided for Prosser Creek Reservoir but the supporting data are not provided in Exhibit 6. Frequency tables for Pyramid Lake should be included in the DEIS/EIR.

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Water Resources Appendix—Exhibit 8 provides TROM End of August Reservoir Exceedence Frequency Plots for the Current Conditions and No Action, LWSA, and TROA alternatives. The frequency plots are provided for all of the major reservoirs except Pyramid Lake. Also the plots are provided for only reservoir storage and only for the month of August. It is not clear why only August was selected. Frequency plots should be provided for all months for all locations including Pyramid Lake.

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Water Resources Appendix—Exhibit 9 provides TROM 1901-2000 Simulated Monthly Flow Data for the Current Conditions and No Action, LWSA, and TROA alternatives for sixteen locations. As indicated above many of these locations are different than USGS gaging locations and TROM model output. Also it is unclear why these particular locations were selected and more importantly why other locations were not selected for detailed analyses such as Lahontan Reservoir releases.

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Water Resources Appendix—Exhibit 10 provides TROM Monthly and Seasonal Flow Exceedence Frequency Data for the Current Conditions and No Action, LWSA, and TROA alternatives. The exhibit also includes a location key providing some additional information related to the names and specific locations of the sixteen points; however, more detailed information along with a map is necessary to identify the locations of the points.

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Water Resources Appendix—Exhibit 11 provides TROM Monthly and Seasonal Flow Exceedence Frequency Plots for the Current Conditions and No Action, LWSA, and TROA alternatives. The frequency plots are provided for fourteen of the sixteen locations included in Exhibits 9 and 10. The

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two missing locations are Truckee River at S-Bar-S Ranch and Little Truckee River below Sierra Valley Diversion. For each of the fourteen locations, four frequency plots are provided that are actually multiple months: (1) Oct-Jan, (2) Feb-Mar, (3) Apr-Jul, and (4) Aug-Sep. It is not clear why these particular monthly combinations were selected. Frequency plots should be provided for all locations for all individual months and on an annual basis corresponding to the tabular information provided in Exhibit 10.

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Water Resources Appendix—Exhibit 15 provides the TROM Operations Criteria and Analysis for Current Conditions and Alternatives, which is comprised of a general review of assumptions and procedures in TROM to simulate the Current Conditions and No Action, LWSA, and TROA alternatives. The exhibit may be useful for some readers of the DEIS/DEIR in gaining a preliminary understanding of the modeling of the various components of TROA but the exhibit is not a satisfactory substitute for full documentation of the model that is necessary to fully evaluate potential impacts on the Newlands Project and Donner Lake operations. Please recall that included in my September 27, 2004 FOIA request I asked for full documentation of the model as Item No. 7—“Users manual or other documentation of TROM providing descriptions of variables, explanations of model logic, flowcharts, user instructions, and other information for the main program and associated subroutines.” However, the USBR denied the request as explained in the October 27, 2004 letter<sup>4</sup> as being protected pursuant to the Attorney Work Product Doctrine. It is understood that a users manual has been prepared for the TROM. This users manual should be available in order for the public to understand the modeling analysis that is relied upon for conclusions presented in the DEIS/EIR and the decisions that will be reached based upon the DEIS/EIR. Please explain why this information is being withheld.

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Water Resources Appendix—Exhibit 16 provides the TROM Selected TROA Operations, which is comprised of more detailed discussions and examples for the assumptions and procedures in TROM to simulate the Current Conditions and No Action, LWSA, and TROA alternatives. Exhibit 16 is a useful supplement to Exhibit 15 but again the exhibit is not a satisfactory substitute for full documentation of the model that is necessary to fully evaluate potential impacts on the Newlands Project and Donner Lake operations. The exhibit provides more detailed examples of some of the cause and effect relationships for TROA operations for selected years or hypothetical conditions resulting in differences in the exceedence plots between the Current Conditions and No Action, LWSA, and TROA alternatives for the various reservoirs and streamflow locations. However, the exhibit does not provide sufficient information to track all of the various storage credit priorities and operations. Again, please explain why full documentation of the TROM is being withheld.

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General Comment No. 1—Impacts on Current Operations of Newlands Project.

The DEIS/EIR does not provide an evaluation of the potential impacts of the TROA Alternative on the current operations of the Newlands Project. The DEIS/EIR provides information for comparing the TROA Alternative with Current Conditions; however, such a comparison does not show the potential impacts on current operations because the TROA Alternative includes all of the embedded assumptions associated with future conditions for Year 2033. An analysis should be conducted to impose the TROA provisions on the Current Conditions to determine the potential impacts on the current operations of the Newlands Project.

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<sup>4</sup> October 27, 2004 letter from Craig D. Muehlberg (Acting Regional Business Manager, Mid-Pacific Regional Office, Bureau of Reclamation) to Charles W. Binder regarding Freedom of Information Act (FOIA) Request—4MPRO11908.

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### General Comment No. 2—Formulation and Assumptions for No Action Alternative.

The question arises whether the No Action Alternative is realistic or whether potential impacts from the proposed action (TROA Alternative) have been understated as a result of the formulation of the No Action Alternative. The DEIS/EIR should include a more complete description of the assumptions included in the No Action Alternative. In addition the DEIS/EIR should include sensitivity and scenario analyses to demonstrate that the assumptions embedded in the No Action Alternative do not unduly mask any impacts from the proposed action. The DEIS/EIR should report the range of potential impacts associated with reasonable ranges of values for parameters and events assumed to occur in the No Action Alternative. The following assumptions should be reviewed and varied appropriately through sensitivity and scenario analyses to more fully evaluate the No Action Alternative:

1. Assumption that 100 percent of agricultural irrigation in the Truckee Division will be eliminated. There is no demonstration that all of the water rights for the Truckee Division will be acquired for purposes other than irrigation.
2. Assumption that demands used in modeling do not include any stock watering or domestic use (other than City of Fernley) for demands in Truckee Division. This is contrary to current water uses within the Truckee Division such as deliveries from the Hazen Pipeline and other pipelines. This is also inconsistent with the assumptions used in developing demands for the Lower Truckee River wherein stock watering was included in the demands.
3. Assumption that of the 3,815 acres for Truckee Division 2,304 acres (60 percent) would be acquired for water quality purposes and 1,511 acres (40 percent) would be acquired for the City of Fernley. Recent acquisitions and prices of Truckee Division water rights indicate that funding for acquisition of water rights for water quality purposes may be inadequate and a greater percentage of the water may be acquired by the City of Fernley compared to acquisitions for water quality purposes. It is also noted that the DEIS/EIR does not address the environmental impacts of acquisition of Truckee Division water rights for water quality purposes which include dust control and revegetation costs associated with drying up irrigated lands and transferring the water rights to instream flow purposes for the Truckee River.
4. Assumption that water quality water acquired from Truckee Division is acquired at an amount equal to 133 percent of the duty (equivalent to duty divided by efficiency of 75 percent) compared to Fernley water acquired at duty only.
5. Assumption that water quality water acquired from Truckee Division can be stored in upper Truckee Reservoirs.
6. Assumption that 13,889 acres in Carson Division would be acquired for wetlands purposes resulting in a total acreage for wetlands purposes of 21,000 acres.
7. Assumption that wetlands demand is 2.99 acre-feet per acre instead of the full duty of 3.5 or 4.5 acre-feet per acre. Sensitivity and scenario analyses should be conducted for Carson Division demands based on deliveries to Lahontan Valley wetlands at the full duty. It should not be assumed that future wetlands deliveries will be restricted to amounts less than full duty, particularly deliveries associated with water rights acquired by the State of Nevada and others for use at Carson Lake Pasture.

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8. Assumption that delivery efficiency is 65.4 percent for all years irrespective of water supply conditions. Also, the value 65.4 percent may be low for future conditions (Year 2033) considering recent increases in efficiencies reported for the Project. 64
9. Assumption that Carson River inflows to Lahontan Reservoir will not change even though upstream water use practices in year 2033 are likely to be different than the practices that occurred over 1901-2000 period of record. A change in future Carson River inflows to Lahontan Reservoir would impact the Truckee Canal deliveries to Lahontan Reservoir through diversion criteria established in OCAP. Thus the proposed TROA operations and potential impacts on the Newlands Project are dependent upon Carson River inflows to Lahontan Reservoir. 65
10. Assumption that Newlands Project credit storage allowed under the 1997 Adjusted OCAP is not included in the No Action Alternative. Discussions with USBR representatives during the November 23, 2004 conference call confirmed that Project credit storage is not modeled in the No Action run contrary to Table 2.2 in DEIS/EIR indicating that such an operation is included in the No Action Alternative. 66
11. Assumption that Lower Truckee River demands will increase from current annual demand of 12,040 acre-feet per year to future demand of 34,280 acre-feet per year. 67
12. Assumption that water obtained by Pyramid Tribe in the unappropriated water case can be stored in upper Truckee reservoirs. The DEIS/EIR should show the amount of unappropriated water that is stored, released, and delivered past Derby Dam that otherwise under historical conditions would be available for diversion to the Newlands Project, particularly during drought conditions. 68
13. Assumption that in all four model analyses the factors used to calculate monthly accretions to the Truckee River between Derby Dam and Pyramid Lake are the same. 69
14. Assumption that TMWA will be able to acquire agricultural water rights at the assumed levels for conversion to M&I and other uses. As discussed below in General Comment No. 4, the model results appear to be extremely sensitive to this assumption. 70
15. Assumption that Floriston Rates are not adjusted in accordance with either current provisions of the Truckee River Agreement or TROA Section 5.A.3(b). 71

### General Comment No. 3—Formulation and Assumptions for TROA Alternative.

There are several questions and concerns regarding the formulation and assumptions used in analyzing the TROA Alternative including the concerns with the various assumptions that are carried over from the No Action Alternative described above. The DEIS/EIR should include sensitivity and scenario analyses to demonstrate that the assumptions and modeling analyses for the TROA Alternative result in a range of potential impacts associated with reasonable ranges of values for parameters and events assumed to occur in the TROA Alternative. Specific issues that need to be addressed include, but are not limited to, the following:

1. Stream channel conveyance losses are not considered in any of the TROM analyses, which is of particular concern for the TROA Alternative. TROA Section 5.E specifies that conveyance losses shall be determined and allocated to various categories of water in proportion to the total amount of water in each stream reach. When questioned about this concern, individuals responsible for conducting the modeling analysis for the DEIS/EIR responded by first acknowledging that conveyance losses are not considered and then 72

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indicating that the possible errors would tend to cancel one another because such losses are not considered in all of the model runs. Furthermore it was stated that insufficient information is available to characterize stream channel conveyance losses particularly in the Truckee Meadows. Both of these responses are not satisfactory. First, USGS historical streamflow records and studies on river travel times could be used to develop conveyance loss factors or methods for modeling purposes. Second, and of particular importance, any errors associated with not considering conveyance losses will not necessarily cancel one another because of the changes in timing of storage and releases of water associated with the various credit waters under TROA. For example, the consumptive use portion of unused and excess agricultural rights converted to M&I purposes by TMWA will be stored in Truckee River reservoirs as M&I Credit Water for subsequent release to meet M&I demands or if unused converted to Fish Credit Water and released at times different than the historical flow patterns. Subsequent releases of stored credit waters will likely occur during times when Truckee River streamflows are significantly less than the streamflows occurring at the time the water is stored and thus the potential for significant differences in stream conveyance losses. It is also not sufficient to say that the historical return flows will be left in the river at the time such consumptive use is stored in the reservoirs. An analysis needs to be conducted to determine the historical depletions to then determine appropriate depletion and conveyance loss factors for future operations to ensure that downstream water rights holders such as the Newlands Project are not injured.

2. Assumption that TMWA will be able to acquire agricultural water rights at the assumed levels for conversion to M&I and other uses. As discussed below in General Comment No. 4, the model results appear to be extremely sensitive to this assumption.
3. Assumption that Floriston Rates are not adjusted in accordance with either current provisions of the Truckee River Agreement or TROA Section 5.A.3(b).
4. Assumption that credit water can be established through changed diversion rights using a consumptive use factor of 62.5 percent for rights acquired in the Truckee Meadows. It is understood that it is assumed for purposes of the DEIS/EIR analysis only that such establishment of credit water would be restricted to the historical consumptive use of the acquired water rights. However, Mr. Rod Hall indicated in a December 16, 2004 conference call that the actual amount would be determined in future Nevada State Engineer proceedings. Is it the intent of the TROA signatory parties to establish credit water at amounts exceeding the historical consumptive use of the acquired water rights? If not, specific limitations should be provided in the TROA document and assurances provided in the DEIS/EIR. If so, the full amount contemplated for establishment of credit water should be disclosed and included in the model analysis to evaluate potential impacts on the Newlands Project.
5. As discussed in more detail in the above comments referring to specific pages of the DEIS/EIR, the NPCW provision of TROA has been analyzed with overly restrictive constraints resulting in unrealistic impacts on the Newlands Project related to reduction in Lahontan Reservoir water levels, decrease in carryover storage, and increase in Carson Division shortages.
6. Several provisions in TROA are not incorporated into the modeling analysis raising questions whether the analysis provides the full range of potential impacts of the TROA Alternative. The DEIS/EIR should include full disclosure of the omitted provisions including a quantitative analysis showing the effects of the exclusions. Included in the

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omitted provisions are several categories of credit water including Fernley Municipal Credit Water, California Environmental Credit Water, California Additional California Environmental Credit Water, and Other Credit Water. Review of information<sup>5</sup> provided by the USBR under the FOIA request shows all or a portion of the following TROA provisions are not included in the TROA model run. An evaluation needs to be conducted and reported in the DEIS/EIR showing which, if any, of the excluded provisions result in material differences in modeling results. It should be noted that the April 23, 2004 draft paper does not include a description of all provisions in TROA. For example, TROA Section 6.B.2(b)—Calculation of Orr Ditch Decree Irrigation Demand is not described in the draft paper and thus it is unknown whether or not that particular provision is included in the model. The DEIS/EIR should include a full disclosure of all TROA provisions not incorporated into the modeling analysis. Based on the review of information provided by USBR, all or a portion of the following TROA provisions are not included in the TROA model run:

- § 5.A.3—Extension of Floriston Rate Supply
- § 5.B.6—Prosser Creek Reservoir Operations
  - § 5.B.6(a)(3)
  - § 5.B.6(a)(4)
  - § 5.B.6(a)(5)
  - § 5.B.6(c)(6)
  - § 5.B.6(c)(7)
  - § 5.B.6(c)(8)
  - § 5.B.6(d) [Note: apparently corrected after July 2003 runs used for DEIS/EIR.]
  - § 5.B.6(d)(2) [Note: apparently corrected after July 2003 runs used for DEIS/EIR.]
  - § 5.B.6(e)
- § 5.B.7—Independence Lake Operations
  - § 5.B.7(b)
  - § 5.B.7(c)
  - § 5.B.7(f)
  - § 5.B.7(h)
- § 5.B.9—Boca Reservoir Operations
  - § 5.B.9(c)
- § 5.C.1—Accounting for Spill
  - § 5.C.1(a)
  - § 5.C.1(f)
- § 5.E—Stream Channel Conveyance Losses
  - § 5.E.1
  - § 5.E.2
- § 6.B—Sierra Valley Diversion [other than historical input data]
- § 6.C—Diversion of Truckee River Basin Surface Water Allocated to California Pursuant to Section 204(c) of the Settlement Act
  - § 6.C.3
  - § 6.C.4
  - § 6.C.5
  - § 6.C.6
  - § 6.C.7

<sup>5</sup> April 23, 2004 draft paper entitled Incorporation of TROA Provisions into Truckee Operation Model.

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- § 6.D—Lake Tahoe Basin Allocation Procedures [other than historical input data]
- § 6.E—California Truckee River Basin Allocation Procedures
- Appendix 6.A
- Appendix 6.B
- Appendix 6.C
- Appendix 6.D
- § 7.A.3—Establishment of Credit Water Using Changed Diversion Rights
  - § 7.A.3(c)
  - § 7.A.3(d)
- § 7.A.4—Changes to Water Rights and Other Changes
  - § 7.A.4(a)(4)
- § 7.A.5—Restrictions and Limitations on Establishment of Certain Categories of Credit Water to Benefit Water Quality Flows
  - § 7.A.5(c)
  - § 7.A.5(d)
  - § 7.A.5(e)
  - § 7.A.5(f)(ii)
  - § 7.A.5(f)(iii)
- § 7.A.6—Power Company Use of Water for Hydroelectric Generation and Compensation for Reduced Generation
  - § 7.A.6(a)
  - § 7.A.6(b)
  - § 7.A.6(c)
  - § 7.A.6(d)
  - § 7.A.6(e)
  - § 7.A.6(f)
- § 7.B—Power Company M&I Credit Water
  - § 7.B.1
  - § 7.B.4(a) [other than historical input data]
  - § 7.B.4(b) [other than historical input data]
  - § 7.B.4(c) [other than historical input data]
  - § 7.B.4(d) [other than historical input data]
- § 7.C—Fish Credit Water and Joint Program Fish Credit Water
  - § 7.C.4(c)
- § 7.D—California M&I Credit Water, California Environmental Credit Water and Additional California Environmental Credit Water
  - § 7.D.3
  - § 7.D.5
  - § 7.D.6
  - § 7.D.8
  - § 7.D.9
- § 7.F—Fernley Municipal Credit Water
- § 7.G—Other Credit Water
- § 8.E—Priorities Among Credit Water Operations
  - [Note: April 23, 2004 draft paper indicates most provisions under this section are incorporated into the model; however, certain provisions are not incorporated and certain conflicts are identified such as described in item 10 in the draft paper.]
  - § 8.E.4

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- § 8.F—Relation of Power Company M&I Credit Water to Fish Water, Fish Credit Water and Joint Program Fish Credit Water
  - § 8.F.2
  - § 8.F.3(a)
  - § 8.F.3(b)
  - § 8.F.3(d)
  - § 8.F.4
  - § 8.F.7
- § 8.G—Relation Between California M&I Credit Waters and California Environmental Credit Water
- § 8.I—Relation Among Project Waters in Another Reservoir
- § 8.J—Relation Between Additional California Environmental Credit Water and Other Credit Water
- § 8.K—Limitations on Accumulation of Credit Water
  - § 8.K.4
  - § 8.K.5
  - § 8.K.6
- § 8.N—Classification of Project Water Exchanged or Restored
- § 8.O—Classification of Fish Credit Water, Joint Program Fish Credit Water and Fish Water Exchanged to or Re-Stored in Boca Reservoir
- § 8.P—Exchange Rules Regarding Trades
- § 8.Q—Exchange With Donner Lake Storage
  - § 8.Q.2
- § 8.R—Exchanges and Voluntary Operations Proposed By California
- § 8.S—Exchanges of Certain Waters in Stampede Reservoir For Floriston Rate Water in Lake Tahoe
  - § 8.S.1(b)
- § 8.T—Exchanges for Water Quality Credit Water
- § 9.C—Minimum Releases, Enhanced Minimum Releases and Prosser Creek Reservoir Releases for Ice Control
  - § 9.C.1(c)
  - § 9.C.1(h)
  - § 9.C.5(c)
  - § 9.C.5(d)
  - § 9.C.6
  - § 9.C.7
- § 9.F—California Guidelines Concerning Preferred Reservoir Operations for Instream Flows and Recreation  
[Note: April 23, 2004 draft paper entitled Incorporation of TROA Provisions into Truckee Operation Model indicates all provisions under this section are incorporated into the model with the exception of ramping operations.]

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General Comment No. 4—Supplemental Modeling Analysis Regarding TMWA Water Rights Acquisition.

The DEIS/EIR should include a scenarios analysis for the TROA Alternative assuming that TMWA is unable to acquire existing agricultural water rights at the levels assumed for the current analysis of the TROA Alternative. Such an analysis has been performed by Mr. Tom Scott of the USBR and a summary of the results was presented orally to TCID

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representatives at a meeting on December 15, 2004 indicating that the model results are extremely sensitive to this particular assumption. The analysis apparently adopted all of the assumptions and configuration for the current TROA Alternative analysis except the TMWA water rights acquisitions were limited to the same levels assumed for the LWSA Alternative. The analysis showed an increase in the shortages to the Carson Division beyond the shortages shown for the TROA Alternative. These results should be documented and presented in the DEIS/EIR. The DEIS/EIR should also include a complete description of the name, location, amount, existing owner, existing use, priority date, and other pertinent information for all water rights assumed to be acquired by TMWA.

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### General Comment No. 5—Newlands Project Credit Water.

The TROA, the DEIS/EIR, and the modeling analyses all improperly represent the NPCW for the following reasons:

- The provisions for NPCW appear to place the operation and control of NPCW in the hands of the United States with little input and control by TCID.
- The Newlands Project receives relatively small benefits compared to the potential impacts, which will include reduced carryover storage, reduced water levels in Lahontan Reservoir, and increased Carson Division shortages.
- The provisions for NPCW appear to be much more restrictive in terms of actual credit water utilized by the Newlands Project compared to the current credit water provisions of OCAP.
- OCAP would have to be modified to accommodate the NPCW language in TROA.
- The NPCW results provided in the DEIS/EIR should be expanded to show how much NPCW is reclassified and utilized as Fish Credit Water.
- The operations criteria for NPCW provided in TROA are general resulting in arbitrary assumptions used for modeling criteria for NPCW. The modeling criteria appear to be overly restrictive and biased against project utilization of the credit water. Problems with the modeling assumptions are illustrated below:
  - The accumulation months and storage volumes are not specified in TROA. The model uses arbitrary NPCW storage volumes to establish credit storage for the months of January through June. This period conflicts with OCAP wherein accumulation is specified to occur over the months of November through June. The modeling assumptions appear to also conflict with the description of NPCW provided on Page 2-36 of the DEIS/EIR wherein it is stated that accumulation can occur anytime between October and July.
  - The specific months in which credit water can be released are not specified in TROA rather an objective is specified in which credit water would be “Released in accordance with the Truckee Canal Diversion Criteria to a maximum extent possible prior to August 1.” The model assumptions restrict any releases to the single month of July. This is contrary to OCAP wherein releases can be made throughout the irrigation season.
  - The provisions included in TROA in Section 7.H—NEWLANDS PROJECT CREDIT WATER do not specify that NPCW releases would be restricted based on

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CDFG streamflow objectives. However, the model assumptions appear to rely heavily on these streamflow objectives in first determining whether any NPCW is established and then second on actual releases during the month of July.

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### General Comment No. 6—Cause and Effect Relationships.

The DEIS/EIR and underlying TROM results do not provide sufficient information to delineate specific cause and effect relationships of the various elements in the proposed action to determine whether the TROA meets the purpose and need of the project. The impacts section of the DEIS/EIR contains a discussion of increases and decreases of streamflows and lake surface water elevations at various locations and invariably concludes the changes are caused by the various credit water operations. However, there is no demonstration that the specific credit water operations resulted in the changes.

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- The monthly establishment of the various categories of credit water by method such as reduction in Floriston Rates or changed diversion rights is not provided in the DEIS/EIR and based on supplemental information<sup>6</sup> provided by the USBR only limited data regarding various categories are available from the model output.
- The monthly utilization, exchange, reclassification, carryover, and use of the various categories of credit water are not provided in the DEIS/EIR and supplemental information provided by the USBR indicates data regarding various categories are available from the model output but extraction of such data would require significant understanding and effort.
- Monthly supply of water quality water derived from acquisition of Truckee Division water rights and other water rights is not delineated nor is it available from the current model output. Furthermore, a breakdown is not provided for water quality water remaining in the river versus storage for subsequent releases.
- The storage and release of Pyramid Tribe unappropriated water is not reported nor is it available from the current model output.
- The storage and release of TCID Donner Lake water is not reported nor is it available from the current model output. This includes the issue that Donner Lake diversions at Derby Dam are not delineated.

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### General Comment No. 7—Assurances and Mitigation.

The DEIS/EIR does not provide sufficient provisions to assure that operations of the Newlands Project are not impacted by the TROA Alternative. Provisions should be included to ensure that available water supplies for the Newlands Project are not decreased as a result of TROA operations. Also, provisions should be included to modify TROA operations if it is determined that modeling techniques or assumptions are erroneous. For example, provisions should be established in the event TMWA is unable to acquire the level of agricultural water rights assumed for the modeling analysis. A second example would be if actual operations show that stream channel conveyance losses result in a decline in Truckee River streamflows available for diversion at Derby Dam. A third example would be if the TROA parties

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<sup>6</sup> November 16, 2004 memorandum from Rod Hall to Tom Scott regarding Comments on October 7, 2004 Request for Information from TCID.

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establish credit water in amounts greater than the historical consumptive use of acquired water rights to the detriment of downstream water right holders relying upon return flows.

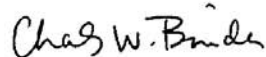
Such provisions could include mitigation measures to protect the water supplies for the Newlands Project. The DEIS/EIR does not provide any such mitigation measures even though the analysis shows the TROA Alternative will result in increased shortages for the Carson Division. Mitigation measures should be developed in consultation with TCID and other affected parties. Possible mitigation measures include, but are not limited to, accounting and reporting procedures; improved modeling of TROA operations through adoption of peer-reviewed and documented models such as RiverWare; and reformulating NPCW to provide a real benefit to the Newlands Project such as increased storage priority, carryover storage, and flexible release provisions.

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I appreciate your efforts in providing information in response to the FOIA request and subsequent inquiries. I look forward to continuing to work with you on resolving the questions and issues provided above. If you have any questions, please do not hesitate to contact me at (916) 984-1470.

Sincerely,

BINDER & ASSOCIATES CONSULTING, INC.



Charles W. Binder, P.E.  
President and Principal Engineer

cc: Lyman F. McConnell  
Michael J. Van Zandt  
Brad T. Goetsch  
Michael F. Mackedon

RECEIVED DEC 29 2004

# Comment PW 08

## Placer County Water Agency

Business Center: 144 Ferguson Rd. • Mail: P.O. Box 6570 • Auburn, California 95604-6570  
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December 28, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701

Subject: Truckee River Operating Agreement Revised Draft Environmental Document

Dear Mr. Parr:

The Placer County Water Agency (Agency) appreciates the opportunity to review the Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report, dated August 2004.

The Agency understands that the following three alternatives were developed for this document: No Action; Local Water Supply Alternative (LWSA) which is an action alternative similar to No Action but with addition of water supply options that may be authorized by State and local government agencies; and TROA. In the Executive Summary, Water Resources Section, it is stated that "California's current M&I demand is satisfied under current conditions, and its future M&I demand would be satisfied under the alternatives". In the Groundwater Section, it states that "with criteria established for new well construction, assumed limitations on groundwater use, and surface water drought supplies, TROA likely would have the least effect on future groundwater resources among the alternatives". Further, it states in the Growth-Inducing Impacts section that the "implementation of TROA would not be growth inducing in the Lake Tahoe or Truckee River Basins".

The Agency offers the following comments:

1. On page 3-106, **GROUNDWATER, I. AFFECTED ENVIRONMENT**, first paragraph, it is stated that "Estimated groundwater recharge is about 18,000 acre-feet per year in the Martis Valley Basin". This amount should be amended to 34,598 acre-feet per year for consistency with that stated on Table 12 of the report entitled "Groundwater Availability in the Martis Valley Ground Water Basin, Nevada and Placer Counties, California".
2. On page 3-114, **GROUNDWATER, 4. Evaluation of Effects**, fourth paragraph, it is stated that "Water budgets presented in Ground Water Availability in the Martis Valley Ground Water Basin, Nevada and Placer Counties, California (Nimbus, 2001) show that the average annual groundwater recharge in the Truckee River Basin in California is about 34,600 acre feet per year, at the current pumping rate of 7,060 acre-feet per year, while about 17,640 acre-feet flows out of the area." This statement appears to summarize some of the data presented in Table 12 entitled "Calculation of Available Groundwater in the

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## Comment PW 08 – continued

Martis Ground Water Basin". The Agency recommends the following sentence be added to improve the understanding of the above sentence and the referenced report's key finding: Approximately 24,700 acre-feet per year of ground water is available in the Martis Valley Ground Water Basin without changing the amount of ground water in storage over the long term.

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If you have any questions regarding the contents of this letter, please call me at 530-823-4889.

Sincerely,  
PLACER COUNTY WATER AGENCY



Mal Toy  
Director of Resource Development

C: Mike Cooney, DWR  
PCWA Board of Directors  
Dave Breninger, PCWA General Manager

## Comment PW 09



1155 Corporate Blvd, Reno, Nevada 89510  
www.tmh2o.com

P.O. Box 30013, Reno, Nevada 89520-3013

29 December 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, #320  
Carson City, Nevada 89701

**Re: Comments on Revised Draft EIS/EIR for Truckee River Operating Agreement**

Dear Kenneth:

This letter is intended to provide the comments of the Truckee Meadows Water Authority ("TMWA") with respect to the Revised Draft EIS/EIR for Truckee River Operating Agreement, which comments supplement those given at the hearing on October 18<sup>th</sup>, 2004 in Reno, Nevada.

We first would like to reiterate that you have done an excellent job of studying and describing a difficult subject. The Truckee River Operating Agreement adds flexibility to a rigidly constrained system and does so in a manner that protects the water rights of all users.

We have two areas which we believe will improve the final document. The first is the study of the lost hydroelectric power and the second is the economic analysis of the cost of the water rights used to provide the M&I water supply.

### **Calculation of Lost Hydroelectric Generation**

We believe the study in the draft EIR/EIS does not accurately show the amount of lost hydroelectric power because of these reasons:

(1) The EIR/EIS may not have fully captured the most probable impact of Newlands Project Credit Water on hydroelectric generation because the maximum flow below Stampede as set forth in the California guidelines was set as a limit on operations. The maximum flow of the California guidelines must be considered and encouraged by the Administrator pursuant to the terms of TROA, but if those guidelines are not "practical, consistent with exercise of water rights, assurance of water supplies, operational considerations, and the requirements of the Settlement Act" they need not be followed. The historic flow rate below Stampede is often greater than the maximum flow set forth in the California guidelines because water must be released from storage for its intended fishery purpose. It therefore seems that a more probable

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operation would not consider the California guideline maximum flow below Stampede Reservoir as a limit on operation, but instead would attempt to limit the maximum flows below Stampede as much as practical by utilizing the provisions of TROA Section 8S. The amount of lost hydroelectric power should change as the result of removing the limit on release of water.

(2) It is unclear to TMWA whether the model properly bypasses releases of fish water in accordance with Article 9.E.2 of TROA.

(3) We understand that since the initial draft EIR/EIS the model has been modified to better reflect the hydroelectric provisions of TROA, we suggest that the final EIR/EIS incorporate these improvements.

### Economic Impact of the Changing Value of Water Right

Although all alternatives evaluated meet the projected demand of 119,000 acre-feet, the number of water rights necessary for the TROA Alternative is approximately 11,000 acre feet more than the other alternatives. The analysis appropriately assumes water rights are acquired for all scenarios via an open, competitive market process. Since the signing of the PSA in May 1989, the price of a water right has more than doubled as indicated in the following table.

1989 \$	2,100
1990 \$	2,185
1991 \$	2,200
1992 \$	2,300
1993 \$	2,400
1994 \$	2,560
1995 \$	2,600
1996 \$	2,656
1997 \$	3,378
1998 \$	3,972
1999 \$	3,540
2000 \$	3,540
2001 \$	3,600
2002 \$	3,760
2003 \$	4,200
2004 \$	5,050

When reviewing available data, the price of a water right has increased approximately 40% since the release of the EIS/EIR. Given these facts, some changes to the economic impact analysis should be considered.

The TROA economic analysis should account for, and project, the cost of the additional 11,000 acre feet of water rights required under TROA implementation and should consider the economic impact of allowing the allocation of conservation pursuant to the terms of Section 4.B.4 of TROA. Given that there is a finite amount of water rights available between Farad and Vista for service commitments and TROA essentially requires the acquisition of most of those rights, the economic impact analysis model should account for increasing future water rights

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prices when the quantity of water rights is declining at rates greater under TROA implementation than under NAA or LWSA. Current trends in water rights prices suggest that the cost of water rights is increasing at a more rapid rate than previously experienced. As the market has experienced this increase along with the recent greater demands for water rights, (which is not limited to the Truckee Meadows demands) this has caused water right holders to be unwilling to sell, anticipating their water rights will increase in value at some future date. Projecting these market conditions into the future when there will be greater competition for even fewer water rights, we believe it will be very difficult to acquire water rights needed to generate the M&I supply projected under TROA. The additional water rights required by the TROA alternative will result in more water being turned over to the fishery pursuant to the TROA document. The value of the water converted to fish credit water as well as the lost hydroelectric generation becomes an offset to the storage fees to be paid by TMWA for M&I storage. We therefore believe it is important to take into account the economic impacts of these higher costs as well as for the EIS/EIR to consider the economic impacts of the option of allowing the allocation (not just the exchange) of water rights associated with conservation pursuant to the terms of TROA Section 4.B.4.

Sincerely yours,



John A. Erwin  
Director Resource Planning and Development

CC:

Gordon Depaoli  
Sue Oldham

04

## Comment PW 10



MCQUAID  
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December 30, 2004

*VIA EMAIL (kparr@mp.usbr.gov)*

Mr. Kenneth Parr  
U.S. Department of the Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, Nevada 89701

**Re: Truckee-Carson Irrigation District's Comments on Draft Truckee River  
Operating Agreement Environmental Impact Statement and Environmental  
Impact Report**

Dear Mr. Parr:

On behalf of the Truckee-Carson Irrigation District (TCID), I hereby submit comments on the Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) for the Truckee River Operating Agreement (TROA). TCID and this firm commented on the 1998 Draft EIS/EIR and those comments still apply. I incorporate those comments by reference and attach them for your convenience. I also adopt the comments of Churchill County and the City of Fallon. I have also attached comments from Mr. Charles Binder, President of Binder & Associates Consulting, Inc. (Binder), a water resources expert, and from Drs. Devraj Sharma and Willem Schreuder, President Emeritus and President of Principia Mathematica, Inc. (Principia), experts in water resources modeling. The comments of these experts are also submitted on behalf of Churchill County and the City of Fallon. I appreciate the opportunity to comment on this very important proposal, one that will affect not only the participants in the TROA negotiations but also all of the water users in the Truckee River Watershed.

These comments are organized as general comments on the Draft EIS/EIR in this letter, a separate attachment addressing page by page comments, a copy of the previous comments from this office on the 1998 Draft EIS/EIR, and the comments of Binder and Principia.

### **BACKGROUND**

The Truckee River and its tributaries supply water to several hundred thousand individuals, to farms, ranches, businesses, and to flora and fauna over a vast area, stretching from



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the Sierra Nevada Mountains to the Stillwater Range in Churchill County. There are several thousand individuals and entities that own water rights from water supplied by the Truckee River and its tributaries. These water rights were adjudicated in the *Orr Ditch Decree, U.S. v. Orr Water Ditch Company*, Case No. Equity A-3 (D.Nev. 1944). The *Orr Ditch Decree* was finalized after the parties agreed to stipulate to its entry after they had entered into the Truckee River Agreement (TRA) in 1935. The TRA was negotiated to settle all remaining disputes concerning the allocation of water from the Truckee River and to establish a scheme for the management of the reservoirs and resources associated with the Truckee River, including Lake Tahoe and what was to become Boca Reservoir.

The main participants in the negotiation of the TRA were the United States of America, TCID, the Washoe County Water Conservation District (Conservation District), and Sierra Pacific Power Company (Sierra). A portion of Sierra's water resource responsibilities have been taken over by the Truckee Meadows Water Authority (TMWA). Parties of the Fifth Part, or other individuals using water rights from the Truckee River also signed the agreement. TCID, the Conservation District and Sierra were assigned responsibilities for managing the river, since they were the major owners of water rights. The United States also was assigned a role since it had a major interest in facilities, including the dam at Lake Tahoe, Derby Dam, Lahontan Reservoir and the Newlands Project. The Federal Water Master, appointed by the *Orr Ditch* court also had a major role to play in the management of the River. There are many important components of the TRA, but the most important ones are the management of the reservoirs and Lake Tahoe in order to meet Floristan Rates in the Truckee River. Floristan Rates are designed to ensure that there is sufficient flow in the river to satisfy power generation requirements under the General Electric Decree of 1915, and to ensure sufficient flows in the river so that downstream irrigation, domestic and municipal and industrial (M&I) demands are met. These would include demands of the Newlands Project under Claims 3 and 4 of the *Orr Ditch Decree* to store water in Lake Tahoe and Lahontan Reservoir and to allow diversions at Derby Dam for irrigation, domestic and livestock and for carryover storage. Without the TRA, the *Orr Ditch Decree* could not have been entered as a final decree. The stipulation entered into by the parties prohibits withdrawal from the stipulation and makes the stipulation irrevocable. Any changes, therefore, to the TRA requires the consent of all the parties to the TRA.

After the *Orr Ditch Decree* was entered, disputes arose concerning the amount of water that the United States had allocated for the Pyramid Lake Paiute Tribe of Indians (PLIT). These disputes culminated in several significant events, including a suit by the PLIT to force the Secretary of Interior to regulate diversions from the Truckee River to the Newlands Project and an attempt by the United States to reallocate water in the Truckee River from the Newlands Project to the PLIT. This attempt was halted by the United States Supreme Court in the case of *Nevada v. U.S.*, 463 U.S. 110 (1983). The Court ruled that the *Orr Ditch Decree* barred the United States from reallocating the water of the Truckee River once the decree was final. The

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Secretary of Interior has continued to regulate diversions from the Truckee River through the Newlands Project Operating Criteria and Procedures (OCAP), first promulgated in 1967, and amended in 1973, 1988 and modified in 1997. The OCAP is intended to ensure that the Newlands Project complies with all applicable decrees, including the *Orr Ditch Decree*.

For the last 69 years, the Truckee River has been managed by the parties to the TRA, along with the Federal Water Master. Several new reservoirs have been added to the Truckee River watershed that did not exist when the TRA was executed. These reservoirs are part of the Washoe Project and include Prosser Reservoir and Stampede Reservoir. These reservoirs are managed in conjunction with the other reservoirs serving the Truckee River basin; however, Stampede Reservoir is primarily managed as storage for water for endangered and threatened fish in Pyramid Lake and the Lower Truckee River.

In 1988, Sierra and PLIT negotiated the Preliminary Settlement Agreement (PSA), which purports to set forth a process to settle disputes between Sierra and PLIT over uses of waters in the Truckee River, but primarily allows for storage of water owned by Sierra in upstream reservoirs for drought protection for the Truckee Meadows. In return, the PLIT would be able to convert this drought protection water into Fish Credit Water if it is not needed by Sierra. The PSA was modified and then ratified by the United States. The PSA also became the foundation for the initiative to settle certain litigation the PLIT had initiated through federal legislation. This was born the Truckee-Carson-Pyramid Lake Settlement Act, P.L. 101-618, 104 Stat. 3289, November 16, 1990 (the Act).

The Act included provisions for congressional approval of the interstate allocations of water between Nevada and California and for the negotiation of the Truckee River Operating Agreement, which would use the PSA as its start point. The TROA provisions of the Act also required that water rights along the Truckee River be protected. Moreover, the Act also contained a reservation that it was not to be construed to alter or conflict with any existing rights to use the Truckee River water in accordance with the applicable decrees, including the right of the Newlands Project to divert water at Derby Dam.

### WATER RIGHTS ISSUES

The TROA purports to supercede all prior agreements regarding the management of the Truckee River. There is a significant question whether any parties to the TRA can unilaterally dispose of the TRA and replace it with a different management scheme without the consent of all parties to the TRA. Moreover, certain allocations of water in the TRA are not preserved in the TROA and the TROA purports to alter the manner in which Floristan Rates are set in the river. As noted above, the major management decisions on the Truckee River revolve around the

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Mr. Kenneth Parr  
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maintenance of Floristan Rated to meet the water right demands of the decree. TROA in many ways dismantles not only the management structure associated with Floristan Rates and storage in reservoirs to meet these rates but also alters the manner in which the rates are reduced and completely alters the characteristics of the water saved through such reductions. The long and short of this is that the water is no longer saved for the benefit of all water users on the river but is saved only for TMWA and/or the PLIT. The water right owners in the Newlands Project are completely cut out of this process and no longer have even a seat at the table to decide how the water in the river will be managed.

TROA purports to create carryover storage rights in the upstream reservoirs and even removes water from storage in Lahontan Reservoir which is then stored in these upstream reservoirs, ostensibly for the purpose of preventing spills at Lahontan. The truth is that this initiative, which is part of TROA but neither analyzed or modeled in the Draft EIS/EIR, is designed to hold water that is part of the Newlands project water right owners carryover storage right in Lahontan, in the upstream reservoirs where it will be converted to fish water for the benefit of the PLIT. This is exactly the type of reallocation that was barred by the U.S. Supreme Court in 1983. In contrast to the carryover storage rights of the Newlands Project, Sierra, TMWA, PLIT and others are allowed to store water in upstream reservoirs and to carryover such storage from year to year by establishing a system of credits.

TROA also claims that the credit waters stored in these upstream reservoirs will attain the characteristics of Privately Owned Stored Water. This means that such waters can be stored in the reservoirs and when released, no transportation losses are applied until the water reaches its new point of diversion. This means that water stored for drought protection by TMWA that normally would be diverted in the Reno/Sparks area will now be stored with no losses and converted into Fish Credit Water. The Fish Credit Water, when it is released, will have no transportation losses applied until it reaches Pyramid Lake. Thus for the distance from Sparks to Pyramid Lake, some fifty miles, there are no transportation losses applied and the water needed to transport such credit waters comes out of the flow in the river that would otherwise be available to divert by others along the river without regard to priority of appropriation. To declare that water that is not even decreed water such as fish water or fish credit water is permitted to have carryover storage and no transportation losses elevates this water above other decreed water with a clearly higher priority and with decreed rights.

TROA also purports to be able to alter the way in which Floristan Rates are reduced without regard to the rights of Newlands Project water right owners, including rights to store water for drought protection. The negotiators of TROA have seen fit to remove TCID as a participant in any of the management decisions and have provided no protection for the rights of Newlands Project water rights owners, other than the State of Nevada. On average, 60,000 to 100,000 acre feet of water is diverted from the Truckee River for the benefit of the Newlands

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Project. This is compared to an average flow of about 600,000 acre feet. Thus water right owners with a significant interest in the waters of the Truckee river are being eliminated from its management. Moreover, in addition to control over Floristan Rates, the TROA purports to include credit storage in Lake Tahoe adverse to Claim 4 of Orr Ditch and to allow Donner Lake water, of which TCID owns and undivided one half, to be divided and credited by TMWA for drought protection and/or converted to fish credit water. This is a direct and substantial impact on the Newlands project. Finally, TMWA and Sierra are permitted to store hydroelectric power generation water, water that has a non consumptive use, and to eliminate that water from flowing in the river by converting it to Fish Credit Water, which requires it to bypass Derby Dam. Normally, this non consumptive use by TMWA or Sierra would continue to flow in the river and would be available for diversion by TCID. This is a direct and substantial impact on the Newlands Project.

### PURPOSE AND NEED FOR THE ACTION

The Draft EIS/EIR states that there are two primary purposes for the proposed action, TROA. First, the action will provide drought protection for the Truckee Meadows. Second, the proposal will provide additional water for fish flows to Pyramid Lake for endangered and threatened species and will better time those flows. All other purposes for TROA appear to be secondary at best, even though the primary purposes of TROA, in addition to those favoring PLIT and TMWA, are to protect all water rights on the Truckee River, to provide for flood protection, and to minimize the costs to the Secretary of operating and maintaining Stampede Reservoir.

When all is said and done, TROA provides for enhanced protection for TMWA's water rights, and elevates water used for fish above all water rights on the Truckee River. As demonstrated in the Draft EIS/EIR, the benefits to Pyramid Lake from TROA are questionable if not negligible. Overall, the flow regimes 1, 2 and 3, favored by PLIT will actually occur less frequently under TROA as compared to No Action, and Most likely will occur less frequently as compared to Current Conditions. Further, TROA only provide an additional 5240 acre feet of water to Pyramid Lake on average, an amount that is within the gage error for the gage at Nixon. Thus, TROA, as compared Current Conditions provides questionable benefits.

In comparison, TROA, if adopted would have significant impacts on the water resources available to the Newlands Project. Although the water resources computer model used to support the analysis in the Draft EIS/EIR we believe is fatally flawed, even that model shows that under extreme drought conditions, an additional 8000 acre feet of shortages will occur in the Newlands Project. See Comments of Principia attached. This is a significant impact since P.L. 101-618 prohibits any alteration or conflict with decreed rights. The flawed Truckee River Operations Model (TROM) has been used to provide long term averages as the output that is

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included in the Draft EIS/EIR. The use of long term averages tends to mask the true impacts on a yearly or even on a monthly basis, as the peaks and valleys tend to flatten out over a 100 year averaging period. A look at individual years reveals that there will be shortages on the river caused by the implementation of TROA.

Moreover, the TROM uses flawed assumptions in order to accomplish its analysis, especially in the No Action Alternative. For example, the No Action Alternative assumes that all irrigation rights in the Truckee Division of the Newlands Project will be eliminated. It also assumes that only a small number of acre feet of M&I water will remain in Fernley. The No Action Alternative also assumes the elimination of a significant demand from the Carson Division to the Newlands Project; it assumes the divided use of Donner Lake water; it assumes that Lahontan Reservoir has no carryover storage right; it assumes that water quality water will be used at 133 percent of its duty; it assumes that wetlands demand is 2.99 acre feet versus 3.5 acre feet; it assumes that efficiencies in the Newlands Project of 65.4 percent regardless of water supply conditions; it assumes that water quality water can be stored upstream; it assumes that PLIT will fully utilize its Claims 1 and 2 water; it assumes that PLIT has obtained rights to all unappropriated water on the Truckee River; it assumes that factors used to calculate monthly accretions are the same always; it does not calculate stream conveyance losses; it does not model Newlands Project incentive credit water; it assumes that inflows from the Carson River to Lahontan will not change. See Comments of Binder attached.

None of these assumptions or omissions are realistic for many reasons, and as explained in the detailed comments attached, many of the assumptions are simply erroneous or are too speculative at this point to assume that they will occur. Since the TROM is based on these faulty assumptions, the output from the model which is the basis for the impacts analysis in the Draft EIS/EIR is highly suspect.

### ALTERNATIVES ANALYSIS

#### **1. The Draft EIS/EIR Fails to Explore and Objectively Evaluate an Adequate Range of Alternatives, and Specifically Failed to Examine Other Viable Alternatives.**

A draft EIS/EIR must consider all reasonable alternatives in depth. This requirement is equally applicable to both a draft and final EIS/EIR. See 40 C.F.R. §§ 1502.9(a) and 1502.14. The specific obligation to consider a range of alternatives is set forth in the regulations as follows:

[The Agency] should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis of choice among options by the decision maker and the public. In this

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section agencies shall: (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits. © Include reasonable alternatives not within the jurisdiction of the lead agency. (d) Include the alternative of no action. (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits such preference.

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*See* 40 C.F.R. § 1502.14. In the present case, only three alternatives were considered: no action, Local Water Supply Alternative (“LWSA”) and TROA. The alternatives analyzed, however, are insufficient to satisfy the obligation to analyze a range of alternatives. The deficiencies in this analysis include the following:

- a. The Draft EIS/EIR failed to consider an adequate number or range of alternatives. Only three alternatives were considered, the No Action alternative, the LWSA, and the TROA. The No Action alternative and the LWSA are virtually identical. *See e.g.* Table 2.1 (Comparison of water management provisions among the alternatives); *see also* Draft EIS/EIR, p. 2-10 - 2-26. Under the LWSA alternative, all elements of Truckee River reservoir operations, river flow management, Truckee River hydroelectric plant operations, minimum reservoir releases, and reservoir spill and precautionary release criteria, and water exportation from Lake Tahoe and upper Truckee River basins are all presumed to be the same as under the No Action alternative. Further, the LWSA is speculative, representing water supply options that may be authorized by State and local governmental agencies if the TROA is not implemented. *See* Draft EIS/EIR p. 2-23. Accordingly, considering only a No Action alternative along with a virtually identical alternative (LWSA) is tantamount to considering no alternatives at all.
- b. The Draft EIS/EIR fails to rigorously explore and objectively evaluate all reasonable alternatives. Alternatives not explored or objectively evaluated include the construction of additional reservoir facilities, use of additional storage capacity in Lahontan reservoir, transbasin importation of surface water and groundwater supplies, conservation measures, increased use of conjunctive use and groundwater banking, and water leasing that would allow water users to temporarily forego the use of water for payment. The existence of these viable but unexamined alternatives renders the Draft EIS/EIR deficient. *See Westlands Water District v. United States*, 376 F.3d 853, 868 (9<sup>th</sup> Cir. 2004); *see also*

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*Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 813 (9<sup>th</sup> Cir. 1999).

- c. The Draft EIS/EIR fails to identify a legitimate basis for dismissing the alternatives considered and rejected and TROA components considered and rejected. *See* Draft EIS/EIR Attachment G; *see also* Draft EIS/EIR, p. 2-3 (other alternatives to TROA rejected during the negotiating process). The public interest in the environment and in ensuring that all alternatives were considered cannot be limited or defeated by agreements between parties. *See e.g. Simmons v. United States Army Corps of Engineers*, 120 F.3d 664, 670 (7<sup>th</sup> Cir. 1997).
- d. The Draft EIS/EIR fails to explore and objectively evaluate all reasonable alternatives, and fails to fully explicate its course of inquiry, its analysis, and its reasoning with respect to these alternatives. In reference to the alternatives which were considered and rejected, all documents and data relating to the alternatives have not been produced. *See* Draft EIS/EIR, Attachment G. Material and underlying data cannot be incorporated by reference in the Draft EIS/EIR unless it is reasonably available for inspection by interested persons within the time allowed by comment. *See* 40 C.F.R. § 1502.21.
- e. The Draft EIS/EIR is biased toward the proposed action, TROA, and has prejudiced the outcome and the selection of alternatives examined. Moreover, action has been initiated, including but not limited to the filing of transfer applications, to give effect to the TROA, which limits through action the choice of other reasonable alternatives available. *See* Draft EIS/EIR, p. 3-396 - 3-402.

### **2. The Draft EIS/EIR Is Deficient Because It Failed To Include a Baseline Alternative.**

In the Binder Comments, Mr. Binder notes that the failure to analyze current conditions, (or a baseline alternative) masks the true impact of the TROA. When compared to the “No Action” alternative that was examined in the Draft EIS/EIR, the impact of TROA appears to be significantly less than when you compare to current conditions. *See* Binder Comments.

In *American Rivers v. Federal Energy Regulatory Commission*, 201 F.3d 1186 (9<sup>th</sup> Cir. 2000), the Court examined this issue, although the reverse problem was presented. In that case, opponents of a hydro power license objected to the use of existing environmental conditions as a baseline for comparing proposed alternatives. The Ninth Circuit, however, concluded that the use of baseline or existing conditions complied with provisions of NEPA. Moreover, the Court noted that such a comparison is necessary. The Court wrote:

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A baseline is not an independent legal requirement, but rather, a practical requirement in environmental analysis often employed to identify the environmental consequences of a proposed agency action. *See* 54 Fed.Reg. 23756 (1989). Although this Court has had few occasions to address this issue, we have stated that “[w]ithout establishing ... baseline conditions ... there is simply no way to determine what effect [an action] will have on the environment and, consequently, no way to comply with NEPA.” ... “The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.”

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*American Rivers*, 201 F.3d at 1195, ft.n. 15 (*internal citations omitted*).

### 3. CEQA Also Requires Analysis of a Reasonable Range of Alternatives.

The Environmental Impact Report (“EIR”) is the heart of the California Environmental Quality Act (“CEQA”), Public Resources Code, § 21050, *et seq.*, as amended. *Planning and Conservation League v. Department of Water Resources*, (App. 3 Dist. 2000) 100 Cal.Rptr. 2d 173, 83 Cal.App.4th 892 (modified on denial of reh’g., rev. denied); *Mann v. Community Redevelopment Agency of the City of Hawthorne (Cloverleaf South Bay, Ltd.)*, (App.2 Dist. 1991) 285 Cal.Rptr 9, 233 Cal.App.3d 1143. The EIR seeks to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. *Marin Mun. Water Dist. v. KG Land California Corp.*, (App. 1 Dist. 1991) 1 Cal.Rptr.2d 767, 235 Cal.App.3d 1652 [main vol.] (reh’g denied). An error in failing to include relevant information in an EIR is prejudicial if the failure to include such information precludes informed decision making and an informed public participation, thereby thwarting the statutory goals of the EIR process. *Save our Peninsula Committee v. Monterey County Board of Supervisors*, (App. 6 Dist. 2000) 104 Cal.Rptr.2d 326, 87 Cal.App.4th 99.

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A major function of the EIR is to preview and ensure that all reasonable alternatives are thoroughly assessed by the responsible official or board. *Inyo County v. City of Los Angeles*, (1977) 71 Cal.App.3d 185.<sup>1</sup> As the California State Legislature has declared:

<sup>1</sup> Public Resources Code, § 21002.1 (a) states that “The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” Section 21061 states that “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” Section 21081 states that “no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless . . . specific economic, legal, social, technological, or other considerations, . . . make



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“The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...”

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Public Resources Code, § 21002. Thus, CEQA sets a much higher standard than NEPA for approval of projects. In order to assess thoroughly whether environmental effects can be alleviated and to fully inform the decision making and the public, the EIR must meaningfully discuss both mitigation and alternatives. *Laurel Heights Improvement Assn v. Regents of the University of California* (1988) 47 Cal.3d 376 at 401-402.

The CEQA guidelines at 14 California Code of Regulations (“CCR”) § 15120 et seq, set out the required content of an EIR. Section 15126.4 states that an EIR shall describe feasible measures which could minimize significant adverse impacts. However, “[i]f the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency’s determination.” (14 CCR §15126.4(a)(5)). An EIR must discuss alternatives to the proposed project and describe

a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.

14 CCR § 15126.6 (a). (See also *Laurel Heights Improvement Assn v. Regents of the University of California* (1988) 47 Cal.3d 376, and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553). The EIR should briefly describe the rationale for selecting the alternatives to be discussed as well as briefly explain the agency’s decision for any alternatives considered by the agency but rejected as infeasible. Factors for eliminating alternatives from detailed consideration

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infeasible the mitigation measures or alternatives identified in the environmental impact report.”

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in the EIR include; 1) failure to meet most of the basic project objectives, 2) infeasibility, or 3) inability to avoid significant environmental impacts. (14 CCR §15126.6 ©). The alternatives analysis should contain sufficient information about each alternative to allow meaningful evaluation and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used for this purpose. (14 CCR §15126.6 (d)). The range of alternatives that must be evaluated is governed by the “rule of reason” that requires only those alternatives necessary to permit a reasoned choice. Additionally, alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making. (14 CCR §15126.6 (f)).

Here, the TROA failed to look at alternatives and potential mitigating actions in the Draft EIS/EIR. Although the document does give some detail on the alternatives selected for analysis, it fails to meet the CEQA requirements in regards to the alternatives considered and rejected. Section 2.V of TROA refers to a Report to Negotiators which is apparently a detailed report given to a select group of stake holders who were given mandatory signature authority, and an opportunity to reject additional alternatives that were not detailed in the Draft EIS/EIR. Numerous alternatives were evaluated to assist the negotiators in developing an operating agreement. The Report to Negotiators was intended to serve as the draft EIS/EIR for TROA, but due to indeterminate issues, it was modified and distribution was restricted to the negotiating parties. It contained a “NEPA-style analysis of five potential project alternatives.” It is unclear the fate of the other alternatives that are not discussed in the Draft EIS/EIR. According to the Draft EIS/EIR Section 2.V, “the projected adverse effects on water resources of each preliminary alternative were unacceptable to one or more of the negotiating parties with mandatory signature authority . . . . Accordingly, the alternatives evaluated in the Report to the Negotiators were rejected, and negotiations continue”, apparently leading to the Draft EIS/EIR. If rejection by interested parties were a criteria for disqualification of alternatives under CEQA, then the analysis of alternatives proscribed by CEQA could not inform the decision maker and would be nothing more than a *post hoc* rationalization to support decisions already made.

The procedure for alternatives analysis described in the Draft EIS/EIR does not follow the procedure provided in CEQA. There is no provision in CEQA to have a selected group of stake holders make a preliminary determination of alternatives and thus circumvent the requirements of a thorough assessment of all alternatives. Additionally, the purpose of a thorough, detailed analysis of alternatives is to inform the decision maker and the public. The pre-Draft EIS/EIR exclusion of alternatives and cursory discussion in the Draft EIS/EIR does not meet the intent of the CEQA alternatives analysis. In addition, the claim that the alternatives were not fully analyzed because they affected water rights appears disingenuous. All of the options, including TROA will interfere with water rights. It just happens that the rejected alternatives interfere with only the negotiator’s water rights. The TROA will interfere with water rights in the Newlands Project (see Binder Comments). If interference with a water right is reason for removal from

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analysis, then the TROA itself is on no better footing than any of the rejected alternatives.

The California Supreme Court has determined that an EIR must contain a meaningful discussion of both mitigation and alternatives. *Laurel Heights Improvement Assn v. Regents of the University of California* (1988) 47 Cal.3d 376, at 401-402. In *Laurel Heights*, alternatives for a university biomedical research facility in a draft EIR were determined to be inadequate. The draft EIR identified three types of alternatives: no project anywhere, alternative sites on campus, and alternative sites off-campus; but gave cursory treatment to these alternatives which received only a small amount of text in the large EIR. The court determined that these brief reviews offered nothing more than inappropriate conclusory statements and provides no information to the public to enable it to understand, evaluate, and respond. The court states that “the key issue is whether the selection and discussion of alternatives fosters informed decision making and *informed public participation*.” *Id.* at 404. The Regents argue that alternatives had already been considered and found to be infeasible during the internal planning processes and that EIR need not discuss a clearly infeasible project alternative. The court rejects a result that would require blind trust by the public, especially in light of CEQA’s fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials. “To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.” *Id.* at 404 (quoting *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935).

As in *Laurel Heights*, the TROA Draft EIS/EIR should not call for blind faith in the negotiating parties to determine the feasibility of alternatives. If the negotiators feel that the alternatives have significant impacts not apparent in TROA, then the Draft EIS/EIR is the place to fully explain the alternatives and the reasons for selecting TROA. The scant 2 paragraph description and conclusory statements regarding impacted water rights in section 2.A. of the Draft EIS/EIR can hardly be said to fully inform the public. The information provided in Attachment G regarding the alternatives basically reiterates the same information in section 2.A., and the computer model used to extrapolate the data in Table 1 is suspect.

Finally, the alternatives considered but rejected do not include a reasonable range of alternatives as required by CEQA. Some alternatives not considered are: 1) construction of additional reservoirs; 2) use of water banking or underground storage for drought protection; 3) use of interbasin transfers that allow pumping of underground aquifers and transmission of the water to the Truckee River or as a substitute for water diverted from the Truckee River; 4) conservation measures financed by the parties seeking to increase their water supply, such as piping of diverted water, additional water metering, installation of low flow devices, channeling of the River to minimize evaporation, planting of shade trees to reduce temperature, etc.; 5) providing a leasing mechanism for times of drought, when water right owners may lease their water to increase the supply needed for M&I or fish flows. The only mention of any of these

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suggested alternatives in the Draft EIS/EIR is a conclusory statement in section 2.V. that “Constructing a new reservoir was not considered as an alternative because it would have exacerbated degradation of riverine fish and riparian habitat as well as created additional cumulative environmental impact throughout the Truckee River basin.” This is not a sufficient discussion designed to inform; it is merely an admission that this alternative was not considered.

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Both the California and the federal courts have declared that the consideration of alternatives must be judged by “the rule of reason”. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 At 565. CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR and each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 at 566 Reasonable or feasible alternatives must be analyzed. The guidelines at Title 14 CCR §15364 define feasible as “means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”

Here, the alternatives accepted require water to be stored and released without permission of the owner, preclude certain storage and release for decreed water rights and users, and provide benefits to non-water-righted uses at the expense of water-righted uses. These actions are in conflict with § 205(a)(2) of P.L.101-618, which states that water is to be stored and released from Truckee River Reservoirs to satisfy exercise of water rights in conformance with both the *Orr Ditch* and *Truckee River General Electric Decree*. If the alternatives are counter to existing law they need not be analyzed (CCR § 15126.4(a)(5)). In addition, § 205(a)(1)© of P.L.101-618 requires TROA to carry out the terms of the Preliminary Settlement Agreement between Pyramid Tribe and Sierra Pacific. The stated justification for rejection of alternatives is that any alternative rejected by a party with mandatory signature authority is not feasible because the TROA requires the approval of these parties. However, P.L. 101-618 requires full compliance with NEPA and state law, including CEQA.

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Here, TROA is the sole proposed document to determine the operation of the Truckee River reservoirs. Potential conflicts with the *Orr Ditch* and *Truckee River General Electric Decrees* are fatal to an alternative to TROA. Section 210 (b)(13) of P.L.101-618 states that the Act shall not be construed to conflict with or alter the *Orr Ditch* or *Alpine Decrees*. Failure to comply with CEQA’s requirements for alternative analysis makes the document inadequate.

### ENVIRONMENTAL SETTING

The Draft EIS/EIR fails to adequately describe the current environmental setting and its baseline conditions. NEPA requires that an environmental impact study adequately consider and disclose the environmental impact of its actions. The only way to fulfill this mandate is to

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examine current baseline conditions against which the various proposed alternatives can be evaluated. As recognized by the Ninth Circuit, without establishing baseline conditions, there is simply no way to determine what effect an action will have on the environment and, consequently, no way to comply with NEPA. *See American Rivers v. Federal Energy Regulatory Commission*, 201 F.3d 1186, 1195 (9<sup>th</sup> Cir. 2000), quoting *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9<sup>th</sup> Cir. 1988). It is, therefore, critical to the NEPA process that the current environmental conditions be fully and accurately defined. *Id.*

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Notwithstanding the above, the Draft EIS/EIR fails to properly describe the current environmental setting, fails to consider or take into effect important aspects of Truckee River management, and fails to fully analyze current conditions as an alternative to the three analyzed alternatives (No Action, LWSA, and TROA). Deficiencies in this regard include but are not limited to the following:

- a. The Draft EIS/EIR does not analyze current conditions as a separate alternative to the No Action, LWSA and TROA alternatives. While comparisons to current conditions are referred to occasionally in the Draft EIS/EIR, use of baseline comparisons is incomplete. By way of example, Table 2.10 describes a Summary of Effects of Alternatives on Resources. The Table compares current conditions to the No Action, LWSA and TROA alternatives in the categories of effects to the economic environment, social environment, and cultural resources. However, a comparison of current conditions to the three alternatives is omitted in the important categories of the effects on water resources, Truckee River flow, exercise of water rights to meet demand, groundwater, water quality, sedimentation and erosion, biological resources, and recreation. *See Draft EIS/EIR*, p. 2-53 - 2-62; *see also Draft EIS/EIR*, Table 3.96, p. 3-389. Analysis should be conducted, and resultant tables and discussion provided, to compare the proposed action to current conditions with consistency throughout the Draft EIS/EIR. In particular, this needs to be provided in reference to the potential impacts, and changes from current conditions and operations, of the Newlands Project. *See Draft EIS/EIR*, p. 3-388 - 3-391.
- b. The Draft EIS/EIR does not adequately describe historic and current management of the Truckee River. It fails to adequately disclose and analyze the TRA and the Orr Ditch Decree nor does it fully analyze the impact the proposed action on the management of the river.

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### GENERAL INADEQUACIES IN THE DRAFT EIS/EIR

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#### 1. The Draft EIS/EIR Is Neither Readable Nor Understandable.

The requirements that an environmental impact statement must be both readable and understandable derive from the goal of ensuring that the statement serve as an effective tool for decision makers and the general public alike. To that end, the applicable regulations require that environmental impact statements be written in plain language so that decision makers and the public can readily understand them. *See* 40 C.F.R. § 1502.8. The statements are to be “concise, clear, and to the point and shall be supported by evidence that the agency has made the necessary environmental analyses.” *See* 40 C.F.R. § 1502.1. The text of the environmental impact statements should be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages. *See* 40 C.F.R. § 1502.7. At the same time, additional materials, in the form of an appendix, should be circulated with the statement and must include material prepared in connection with the statement that substantiates any analysis, that is analytic in nature, or that is relevant to the decision to be made. *See* 40 C.F.R. § 1502.18; *see also Oregon Environmental Counsel v. Kunzman*, 817 F.2d 484, 494 (9<sup>th</sup> Cir. 1987) (“an EIS must be ‘organized and written in language understandable to the general public and at the same time contain sufficient technical and scientific data to alert specialists to particular problems within their expertise’”) (*internal citations omitted*). If not disclosed in the form of an appendix, the technical and scientific data must be readily available on request. *See* 40 C.F.R. § 1502.18(d).

A clear understanding of the Draft EIS/EIR first requires that the public understand TROA and what it is attempting to accomplish. A reading of the appendix containing TROA leaves one with the same feeling that a federal judge had when first encountering the federal Clean Water Act.

The Clean Water Act (“CWA”) is an enigmatical piece of legislation. Filled with more sesquipedalian jargon than a year’s subscription to any trade journal and a byzantine system of cross references; its intricacies are virtually indecipherable.

*Citizens’ Coal Counsel v. Environmental Protection Agency*, \_\_\_ F. 3d \_\_\_ (6th Cir. 2004), No. 02-3628.

The TROA is a complex document, full of cross references and unique definitions, that test the reaches of the human brain. It also leaves one with the feeling that something is happening with the water, you just can never tell what or when. The Draft EIS/EIR does not improve upon the TROA much. It also contains a byzantine collection of definitions and jargon and cross references to other provisions of TROA that leaves one in a whirlwind of concepts.

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Never once in the Draft EIS/EIR does the document attempt to set forth any factual scenarios that would mimic real world conditions that the public can relate to and then attempt to describe how TROA works. This is not too much to ask for so important a proposal.

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In the present case, the Draft EIS/EIR far exceeds the page limitations recommended by the regulations. It is unwieldy, particularly for members of the general public. At the same time, the appendices fail to provide all necessary data required to permit specialists to fully analyze the scientific basis for the conclusions reached in the Draft EIS/EIR. Materials which were prepared in connection with the Draft EIS/EIR that could be used to substantiate or discredit the analysis and that are relevant to the decisions at issue were not fully disclosed in either the body of the Draft EIS/EIR or the appendices thereto, and were not made readily available on request. To the contrary, in an effort to receive the data and information, TCID was required to submit formal requests pursuant to the Freedom of Information Act ("FOIA"). For these reasons, the Draft EIS/EIR fails to satisfy the readability and understandability requirements.

### 2. Bias in the Selection of Alternatives and in the Analysis.

The Draft EIS/EIR evidences impermissible agency bias and an attempt to justify decisions already made. This comment has two components. The first is that you cannot so narrowly define a project so as to dismiss out of hand all other reasonable alternatives. The second is that the DEIS cannot contrive a purpose of a project to be so slender so as to define "reasonable alternatives" out of consideration or out of existence. The second is that agency bias cannot interfere with the obligation to consider and weigh the pros and cons of all alternatives.

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Sometimes, agency bias is evidenced by picking a program or desired outcome, thus forgoing all other reasonable alternatives. See *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 813 (9<sup>th</sup> Cir. 1999). Or, as in the present case, by stating without further explanation that all other alternatives either would not be agreed to by the parties or would conflict with P.L. 101-618. See e.g. *Simmons v. United States Army Corps of Engineers*, 120 F.3d 664, 666 (7<sup>th</sup> Cir. 1997). In our case, if you boil it down, what the Draft EIS/EIR tells us is that the drafters believe that there is only one way, TROA, to comply with or satisfy the requirements of P.L. 101-618. I think a closer look will reveal that this is not the case, and there are viable alternatives that either individually or in combination will satisfy the objectives of P.L. 101-618. If that is the case, then by only considering TROA as an option, the parties involved have effectively engaged in the following tactic:

One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will. If the agency constricts the definition of the project's purpose and

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thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act.

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*Id.*

Administrative bias also was addressed in *Sierra Club v. Forehlke*, 345 F. Supp. 440 (W.D. Wisc. 1972). In that case, plaintiffs sought injunctive relief to restrain defendants from commencement of construction of a flood control dam and reservoir project. Although the court did not find enough evidence of administrative bias to warrant injunctive relief at this stage, the court did go through alleged tactics by which agencies have manipulated the contents of a report to justify a desired end and addressed the manner in which other courts have addressed the problem of administrative bias. In *Sierra Club* it was alleged that the agency used misleading statements, double standards, distortion of benefits, understatement of disadvantages, and partial disclosures evidenced a “total lack of open-minded willingness to consider fairly all alternatives.” The Draft EIS/EIR contains distortions, unsupported assumptions, and a flawed computer model analysis that is evidence of bias.

### 3. The Draft EIS/EIR Impermissibly Incorporates Other Documents.

The Draft EIS/EIR incorporates other documents into the analysis without properly summarizing those documents. Particularly in Attachment G addressing the range of alternatives that were “considered” but rejected, justification for the decision is based on reference to a document and series of underlying studies not produced as part of the Draft EIS/EIR. While under some circumstances, such or incorporation by reference is permitted, there are restrictions. See 40 C.F.R. § 1502.20<sup>2</sup>; see also 40 C.R.F. § 1502.21.<sup>3</sup>

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<sup>2</sup> “Tiering: Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review. . . . Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available Tiering may also be appropriate for different stages of actions.”

<sup>3</sup> “Incorporation by reference: Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding



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Virtually the entire justification for rejecting the alternatives identified in Attachment G is contained not in the document itself, but through reference to the Report to Negotiators and to other “studies” and “extensive computer simulation effort.” See Draft EIS/EIR, p. G1-1. To my knowledge, the Report to Negotiators has not been produced pursuant to our FOIA request, nor has information and data relating to the underlying studies. Such nondisclosure alone, and specifically the failure to make it available for inspection within the time allowed for comment is objectionable. See 40 C.F.R. § 1502.21. Improper tiering and incorporation by reference is a close cousin to another challenge, which is a challenge to the scientific integrity of the EIS and a failure to provide complete information serving as the basis of the decision.

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#### 4. The Preparers Failed to Insure the Scientific Integrity of the Analyses (1502.24)

NEPA requires scientific integrity in the preparation of a detailed statement. See 40 C.F.R. § 1502.24 (“Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analysis in environmental impact statements. They shall identify any methodologies used and shall make explicitly reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.”) NEPA also requires that the public have access to all pertinent information in order to understand the environmental impacts.

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A good discussion of a challenge to the scientific methodology is found in *Public Lands Council v. Powell*, 379 F.3d 738, 749-50 (9<sup>th</sup> Cir. 2004). Of particular import is the Court’s conclusions that the withholding of information relating to the model’s variables as well as the model’s shortcomings violated NEPA. See *Public Lands Council, supra*, p. 750 (“The Forest Service’s heavy reliance on the WATSED model in this case does not meet the regulatory requirements because there was inadequate disclosure that the model’s consideration of relevant variables is incomplete ... We hold that this withholding of information violated NEPA which requires up-front disclosures of relevant shortcomings in the data or models”). Conclusory statements are insufficient, and impact statements should be rejected that “suffer from a serious lack of detail and rely on conclusions that are based on assumptions without supporting objective data. See *Rankin v. Coleman*, 394 F. Supp. 647, 656 (E.D. North Carolina 1975), quoting *Brooks v. Volpe*, 350 F. Supp. 269, 276-277 (W.D. Wash. 1972), *aff’d per curiam*, 487 F.2d 1344 (9<sup>th</sup> Cir. 1973).

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agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested person within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.”

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In the present case, the shortcomings of both the model and data inputted into the model are discussed at length in comments prepared and submitted by Dr. Willem A. Schreuder and Charles W. Binder on behalf of TCID. In sum, the deficiencies include but are not limited to the following:

- a. The Draft Draft EIS/EIR incorporates many assumptions into its analysis and fails to provide sufficient supporting data to back up the assumptions. By way of example, the assumptions included in the No Action alternative and inadequately defined and insufficient data in support of these assumptions is provided. 13
  
- b. The Draft Draft EIS/EIR is based on an outdated and flawed model that cannot be relied up to ensure the scientific integrity of the Draft Draft EIS/EIR. It is premised on theoretical approaches and research methods that are not generally accepted in the scientific community. Accordingly, the true impacts of the alternatives cannot be accurately predicted or analyzed under the current model. 14
  
- c. The data used in the model analysis is flawed and relies upon the use of long-term averages to analyze impacts when annual and monthly analysis would be both more accurate and further reveal additional impacts. *See e.g.* Water Resources Appendix, Exhibit 5. 15
  
- d. The Draft EIR/EIS fails to include analysis of all TROA provisions and, therefore fails to analyze the entire proposed action. Of concern is that in evaluating only segments of the proposed action, masks its true impacts. 16
  
- e. The model uses river flows for points on the Truckee River that are different than the USGS gaging stations for historical streamflows, and model output was processed using a program to estimate streamflows at the other locations. An adequate explanation for the use of estimates as opposed to historic data at the USGS gaging stations was not offered, and the result is that it impedes the ability to accurately analyze model results in comparison to historical conditions. *See e.g.* Water Resources Appendix, Exhibit 2. The use of these estimates, and others, without adequate data and rationale to support the use of the estimates, render the analysis flawed. 17

Under NEPA, all federal agencies have a duty to “insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statements.” 40 C.F.R. § 1502.24; *Utahns for Better Transp. v. United States Dept. of Transp.*, 305 F.3d 1152, 1181-82 (10th Cir. 2002). Similarly, the CEQA requires agencies to rely on precise data when that data is available and the EIR must include facts and analyses sufficient to

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allow for informed decision making. 14 Cal. Code Regs. § 15151; *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990); see also *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs*, 91 Cal. App. 4th 1344, 1370 (lead agency must use every effort to disclose all information about significant impacts).<sup>4</sup>

Agencies can rely on computer models to help make these analyses, but the models must be relevant to the inquiry and updated to reflect current conditions. *Friends of Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1130 (8th Cir. 1999) (upholding use of model that “was fully updated” and relevant); *National Wildlife Federation v. E.P.A.*, 286 F.3d 554, 565 (D.C. Cir. 2002) (upholding use of old model because it was “quite accurate over these last 25 years and remains an objective, established tool”).

Equally important, the model must incorporate all available scientific information, or risk running afoul of NEPA. See 40 C.F.R. § 1502.22; cf. *Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 1005 (D.C. Cir. 1997) (acceptable to proceed with imperfect information but not if information is readily available); *Environmental Defense Fund, Inc. v. Coastside County Water Dist.*, 27 Cal.App.3d 695, 706 (1972) (“It should be understood that whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”). If the agency’s decisions regarding the model were arbitrary or capricious, then the decisions can be overturned. *Public Lands Council*, 379 F.3d 743, n.5; *Lee v. United States Air Force*, 354 F.3d 1229, 1243 (10th Cir. 2004).

Here, BOR and DWR arbitrarily failed to include crucial data in the analysis, data that is readily available. Also, the model used to prepare the Draft EIS had been replaced by an updated version that BOR and DWR chose not to use. Because both of these actions are impermissible under the NEPA, the draft EIS is invalid.

The Draft’s analysis was generated using an outdated version of the model’s software. While it may have been acceptable to use old software if it was still accurate and relevant, the fact that a new version exists obviates this possibility. See *National Wildlife Federation*, 286 F.3d at 565. And, since the software was outdated, it could not qualify as “fully updated,” and thus appropriate for the agency to use. *Friends of Boundary Waters*, 164 F.3d at 1130. Also

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<sup>4</sup>In general, these cases analyzing NEPA play an important role in applying and understanding CEQA. “Recognizing that the California act was modeled on the federal statute, we have consistently treated judicial and administrative interpretation of the latter enactment as persuasive authority in interpreting CEQA.” *Wildlife Alive v. Chickering*, 18 Cal.3d 190, 201 (1976).

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critical was the agencies' failure to include the available scientific information that would allow for the model to make reasonable predictions. *See Commonwealth of Mass. v. Andrus*, 594 F.2d 872, 886-87 (1st Cir. 1979) (upholding use of model that was flawed but could not be updated because "not enough scientific data was available to make the kind of [elaborate] model envisioned by EPA worthwhile").

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Specifically, the Draft fails to discuss many different, and readily obtainable, reasons for possible impacts. These primarily concern water supply issues. Under CEQA, the agencies are required to adequately analyze all water supply issues associated with the project. Cal. Water Code §§ 10910-10915; *Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal. App. 4th 182, 196-97 (1996); *Santiago County Water Dist. v. County of Orange*, 118 Cal. App. 3d 818, 829-30 (1981).

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The Draft EIS/EIR makes many assumptions that are flawed and that when incorporated into the model have the effect of introducing error into the impact analysis.

An example of flawed assumptions and their effect on impact analysis occurs when the Draft fails to account for what would happen during extreme low flow years, nor does the model look at a serious drought or long-term drought. Even if this information is not specifically available, the Draft must contain an acknowledgment that the information is missing, that it would not be economically feasible or practical to obtain the information, and an analysis of the possible impacts flowing from the possible drought scenario. *See* 43 C.F.R. § 1502.22. There is none of this in the Draft. To fail to include any analysis of a drought, when five to seven year droughts are simply part of life in the high desert, is arbitrary on its face.

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Because the Draft fails to properly account for necessary scientific information, it must be revised. The agencies must use a current, accurate version of the model and include the data necessary to make accurate forecasts. Since the Draft fails to do either of these things, it is facially invalid.

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### ENVIRONMENTAL IMPACT ANALYSIS

#### 1. The Draft EIS/EIR Fails to Identify Environmental Impacts and Mitigations

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As demonstrated, the manner in which the Draft EIS/EIR analyzes the proposed action and even the No Action Alternative and the LWSA tends to mask any impacts. The document fails to adequately analyze the impacts from not allowing return flows to the river, from storing Newlands Project Credit Water in Stampede on carryover storage, from looking at long term averages instead of focusing on month to month or year to year impacts, among others. The document has also segmented various proposals, again masking environmental impacts. Because

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the Draft EIS/EIR does not adequately identify the environmental impacts, it also fails to identify feasible mitigations that could reduce or eliminate impacts. This is a requirement of both NEPA and CEQA.

A required component of any environmental impact statement is that it include a detailed statement regarding the environmental impact of the proposed action together with the identification of any and all adverse impacts. *See* 42 U.S.C. § 4332(C). Accordingly, in determining whether an agency complied with NEPA, the courts will consider whether the agency took the requisite “hard look” at the consequences of its proposed action. *See Price Road Neighborhood Association v. U.S. Dept. of Transportation*, 113 F.3d 1505 (9<sup>th</sup> Cir. 1997); *see also* 40 C.F.R. § 1502.16 (requiring the statement to address the various impacts or environmental consequences of both the proposed action and alternatives). NEPA requires that the statements present the environmental impacts of both the proposed action as well as the alternatives, in comparative form. *See* 40 C.F.R. § 1502.14. It also requires an examination of the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and an examination of irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. Examination of both direct and indirect effects are also required. *See* 40 C.F.R. § 1508.8.

To complete the analysis, once impacts of the proposed action and alternatives have been identified, identification and analysis of measures to mitigate the impacts are also required. *See* 40 C.F.R. § 1502.14(f) (the statement must “include appropriate mitigation measures not already included in the proposed action or alternatives”); *see also* 40 C.F.R. § 1502.16 (requiring analysis of means to mitigate adverse environmental impacts). The mere listing of mitigation measures is insufficient. The environmental impact statement must analyze the mitigation measures in detail and explain the effectiveness of the measures considered. *See Northwest Indian Cemetery Protective Ass’n v. Peterson*, 795 F.2d 688, 697 (9<sup>th</sup> Cir. 1986).

In the present case, the Draft EIS/EIR is deficient in its failure to disclose the impacts of its proposed action or the “alternatives” presented, and is deficient in its failure to identify and analyze specific mitigation measures. These deficiencies are particularly acute when considering the impacts of the TROA on the Newlands Project. The problems with the required analysis include each of the following.

- a. The assumptions used in the No Action alternative, as well as the other alternatives, mask the magnitude of the impacts of the proposed action. These assumptions include parameters that have not occurred and may never occur, and the use of long-term averages that mask the impacts of the proposed action.

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- b. Failure to compare current conditions to the proposed action mask the impacts of the proposed action.
- c. The EIS process is continuing to evaluate the impacts of the proposed action, with the findings to be revealed in the Final EIS. Procedurally, this is insufficient.
- d. The models used to evaluate the impacts of the alternatives presented are flawed and are scientifically unreliable, and therefore render unreliable the findings and analysis concerning impacts.
- e. The Draft EIS/EIR inadequately addresses the impacts of the proposed action on the Newlands Project.
- f. The Draft EIS/EIR fails to define and analyze fully developed and finalized plans for the mitigation of the adverse effects that will result if the proposed action is implemented.

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Thus, the Draft EIS/EIR fails to adequately analyze impacts under NEPA.

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The failure of the Draft EIS/EIR to adequately analyze water use and consumption is fatal under CEQA, as well. In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal. App.4th 715 the court finds a EIR inadequate for failure to state accurately the amount of water available for the project. Here, a draft EIR for a housing development stated that the project would have sufficient water for present and future demands based on entitlements to water from the State Water Project (SWP). Despite comments that entitlements do not represent actual delivered water the draft EIR was finalized. In the final EIR dry year entitlements were assumed to be 50%, and each proposed project would be required to demonstrate available water as part of the sub-division approval process. The court was critical of the response given in the final EIR and states that “water is too important to receive such cursory treatment”, and the problems raised by the public and responsible experts require a good faith reasoned analysis in response. *Id.* at 723. (Quoting *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357, 173 Cal.Rptr. 390.). The court determined that the EIR made no attempt to calculate the differences between entitlements and actual supply and “fails to undertake an adequate analysis of how much water the SWP can actually deliver in wet, average and dry years.” *Id.* at 724

TROA Draft EIS/EIR like the EIR in *Santa Clarita Organization for Planning the Environment* fails to adequately analyze water use and supply and is thus fatally flawed. The projected water sources in TROA are equally speculative for numerous reasons (See Comments from Binder and Associates Consulting, Inc. And Principia Mathematica, Inc.). Most of the

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information regarding water consumption and sources of water is derived from a fatally flawed model, making the analysis of TROA as well as the alternative suspect. For example, the model has never been calibrated, verified or validated. Moreover, there are limitations in the FORTRAN model that cause unintended consequences in the output. The model does not address many of the components of TROA. There have never been sensitivity runs on the output of the model and the model assumes that the last 100 years of water resources conditions will repeat without doing any stochastic runs. Additionally, the fact that the Draft EIS/EIR only looks at long term averages (over 100 years) and not at impacts during individual months or years also makes the analysis suspect.

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Additionally, like the situation in *Santa Clarita Organization for Planning the Environment*, the TROA Draft EIS/EIR fails to account for population growth and extended drought conditions. The Draft EIS/EIR study assumptions include one that population growth will occur with or without TROA. However, TROA is what is allegedly providing drought protection for the Truckee Meadows that would allow TMWA to increase the population served. Whether TROA facilitates the population growth or not, it is being used as a mechanism to serve an expanded population so that the growth inducing impacts of TROA on other infrastructure in Reno, Sparks, Fernley, Pyramid Lake Reservation, Fallon and Churchill County should be assessed. Local and state agencies have already planned to grow their populations by the numbers used in the Draft EIS/EIR. Presumably, the main reason that TMWA is involved in TROA is to ensure that its population, if it does grow to 119,000 will have water to serve it in times of drought. If TROA did not provide drought protection to allow this growth to 119,000, then TMWA could not be issued will serve letters for that many households. Consequently, TROA is providing incentives for developers to come to the Truckee Meadows and to build more houses. This is the growth-inducing effect of TROA. Moreover, TROA will allow the Pyramid Lake Reservation population to grow. This Draft EIS/EIR does not address the growth impacts of TROA on highways, schools, hospitals, air and water quality, etc. This is a serious flaw in the document and makes it invalid.

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### 2. The DRAFT EIS/EIR Fails to Analyze Cumulative Impacts

Cumulative effects analysis is required in an EIS. It includes a requirement that the proposed project be analyzed in light of the project's interaction with the effects of past, current, and reasonably foreseeable future projects. See *Lands Council v. Powell*, 379 F.3d 738, 744 (9<sup>th</sup> Cir. 2004), citing 40 C.F.R. § 1508.7. NEPA requires adequate cataloguing of the related projects, including data of time, type, place, and scale of the other projects. *Id.* Further, the significance of the proposed action and likely impacts cannot be avoided by breaking an action into small component parts if it is part of a comprehensive strategy. See *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9<sup>th</sup> Cir. 1998).

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Under CEQA, the agencies are required to adequately analyze all water supply issues associated with the project. Cal. Water Code §§ 10910-10915; Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal. App. 4th 182, 196-97 (1996); Santiago County Water Dist. v. County of Orange, 118 Cal. App. 3d 818, 829-30 (1981).

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In the present case, not all projects which stand to be impacted by the proposed action have been sufficiently analyzed. These include the Lahontan Reservoir, Stillwater Wildlife Refuge, Carson Lake and Pasture, Fernley Wildlife Management Area, the Naval Air Station at Fallon, modification to the OCAP to accommodate Newlands Project Credit Water, and recoupment. In addition, the drafters of the Draft EIS/EIR failed to take the required “hard look” at the following impacts:

- a. Impacts on Newlands Project Operations and, in particular, increased water shortages. See Draft EIS/EIR, p. 3-388 - 3-391;
- b. Economic impacts, in particular stemming from the shifting of water use from agricultural uses to M&I and other uses as well as the economic effects of water shortages on agricultural revenue due to a reduction in crop yields, drop in hydro power generation and revenues, and reduction of water delivery fees received by TCID;
- c. Environmental impacts including adverse impacts on air quality due to a shift in water use from agricultural to non-agricultural uses;
- d. Impacts relating to groundwater and other water resources;
- e. Impacts on water storage and carryover storage;
- f. Impacts relating to increased urban development and growth inducement;
- g. Impacts on Pyramid Lake restoration efforts;
- h. Recreational impacts including impacts on the use of Lahontan Reservoir for recreational purposes.

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For those impacts not analyzed in detail, the Draft Draft EIS/EIR fails to provide an adequate factual basis for the conclusion that there were no significant impacts or that impact analysis was not required.

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Failure to identify these significant environmental impacts means that the Draft EIS/EIR



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has also failed to identify mitigations and to determine if impacts can be overridden under CEQA.

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### 3. The Draft EIS/EIR Segments the Project and Hides Impacts

Both NEPA and CEQA require that the whole project be analyzed in the EIS/EIR and not just portions. Failure to analyze the whole project tends to mask the potential environmental impacts. *Natural Resources Defense Council v. Callaway*, 524 F.2d 79 (2d Cir. 1975); *Cady v. Morton*, 527 F.2d 786 (9th Cir. 1975).

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CEQA defines a "project" as the "whole of an action" that has the potential to result in a physical change to the environment "directly or ultimately." Guidelines § 15378(a). Thus, the term "project" refers to the entire set of activities for which government approval is sought and not just to each separate and distinct government approval necessary for the project activity to occur. Guidelines § 15378(c). Lead agencies may not improperly reach the decision to forego preparation of an EIR by segmenting a project into various stages of approval, focusing on pieces in isolation, and failing to consider the project as a whole. This prevents lead agencies from fragmenting environmental analysis into discrete parts of projects, and thereby avoiding full environmental disclosure. See *Bozung v. Local Agency Formation Commission*, (1975) 13 Cal.3d 263, 283. Piecemeal environmental review that ignores the end result of the entire project is unlawful. See *Christward Ministry v. Superior Court*, (1986) 184 Cal.App.3d 180, 193.

In *Christward Ministry*, the court held that an EIR should have been required for a general plan amendment designating an existing landfill site to permit various waste disposal activities, although an EIR would be required later for the specific use permits for such disposal activities. *Id.* Likewise, in *Citizens Assn. for Sensible Development v. County of Inyo*, *supra*, 172 Cal.App.3d at 167, the court held that a county improperly prepared a negative declaration for a general plan amendment and rezoning for a shopping center followed by another negative declaration for a subdivision map and road abandonment because the county failed to analyze the impacts of the entire development.

In the Draft EIS/EIR does not address the entire "project," but rather segments the project and fails to adequately address future actions necessitated by TROA. Reference is made to the Newlands Project Credit Water but use of this credit water is not modeled or analyzed in the Draft EIS or the Draft TROM. Additionally, reference is made to storage of credit water in Donner Lake. Donner Lake storage rights are owned as an undivided interest between TCID and Sierra Pacific. No use of Donner Lake for credit storage under TROA can be made without permission from TCID. The TROA discussion states that certain provisions of the Truckee River Agreement (TRA) would be changed but nowhere are these provisions identified or described. In fact, nowhere in the Draft EIS/EIR is there a description of the TRA and how it has been used

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in the past to manage the Truckee River for the last 69 years. The section on Reservoir Operations purports to allow TMWA to exchange water in Donner Lake for Fish Credit Water. Since the water in Donner Lake owned by TMWA is an undivided one half interest in common with the TCID, any use of such water as Fish Credit Water can only be done with the express consent of TCID. The reference to Newlands Project Credit Water being removed from Lahontan is unsupported since this is being segmented from the TROA proposal and it cannot be accomplished without permission of the Newlands Project water right owners. Moreover, the Fernley Credit water has also been segmented in the analysis.

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An EIS must include analysis of environmental effects of future activities if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.. *Laurel Heights Improvement Assn v. Regents of the University of California* (1988) 47 Cal.3d 376, at 396. The contents of the EIR must discuss future and commutative environmental effects and an agency must consider the commutative effects of its action before a project gains irreversible momentum, *City of Antioch v. City Council* (1986) 187 Cal. App. 3d 1325 at 1333. Environmental considerations cannot be masked or minimized by chopping a large project into smaller segments cumulatively may have disastrous consequences. *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974, 2<sup>nd</sup> Dist) 117 Cal Rptr 96 at 105. Further, not only must reasonable anticipated future projects be considered in the EIR, but they must be discussed in the cumulative analysis. *Terminal Plaza Corp. v. City and County of San Francisco* (1986, 1<sup>st</sup> Dist) 223 Cal Rptr 379 at 385-386.

The cumulative impacts of the TROA should be analyzed for Lahontan Reservoir, groundwater in Churchill County, impacts on Stillwater Wildlife Refuge, impacts on Carson lake and Pasture, impacts on Fernley Wildlife Management Area, impacts on the Naval Air Station at Fallon, impacts from modification to the OCAP to accommodate Newlands Project Credit Water, impacts from recoupment (since there is a judgment in the case) and impacts from water rights acquisition programs. All of these other actions have the potential to impact TROA and their cumulative impacts should have been analyzed.

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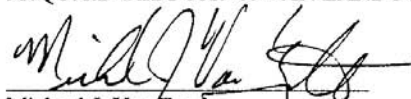
### CONCLUSION

For the foregoing reasons, the Draft EIS/EIR should be withdrawn, substantially revised and recirculated for public comment.

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Sincerely,

McQUAID BEDFORD & VAN ZANDT LLP



Michael J. VanZandt  
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### COMMENTS OF McQUAID BEDFORD & VAN ZANDT LLP ON DRAFT TROA EIS/EIR

#### Chapter 1. Purpose and Need

1. P. 1-7. Change applications filed by the Washoe County Water Conservation District, Sierra Pacific (now Truckee Meadows Water Authority (TMWA)) and the Bureau of Reclamation include two new water right applications for the Little Truckee River. The Little Truckee River is a tributary to the Truckee River and its waters have already been adjudicated under the *Orr Ditch Decree*. See *U.S. v. Orr Water Ditch Company, et al.*, Equity A-3, p. 10 (D. Nev. Sept. 8, 1944). 48
  
2. P. 1-7. The EIS states that changes would be made to the Newlands Project Operating Criteria and Procedures but does not specify what these changes would be or when they would be implemented. No such changes are modeled in the Draft TROM. Reference is made to the Newlands Project Credit Water but use of this credit water is not modeled or analyzed in the Draft EIS or the Draft TROM. The water rights adjudicated to the Newlands Project water right owners includes a 290,000 acre foot storage right in Lahontan Reservoir. Any reduction in the amount of storage right in Lahontan Reservoir would constitute a major change to the *Orr Ditch Decree*. Any change in the place of storage, for example from Lahontan to Stampede Reservoir would require the permission of the Newlands Project water right owners. 49  
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3. P. 1-7. The EIS specifies that TROA will not take effect until certain litigation is settled. All of the lawsuits referred to have been brought by the Pyramid Lake Paiute Tribe of Indians. To our knowledge, none of the litigation is active. Moreover, the action against TCID was dismissed in 1985, almost 20 years ago. The litigation against the Navy is over, as well. Therefore, resolving these cases through TROA provides no benefit to TCID or the other parties. Resolution of the other cases, if still alive, will not affect the resolution of the dispute in *Nevada v. U.S.*, 463 U.S. 110 (1983). 51
  
4. P. 1-8. Reference is made to storage of credit water in Donner Lake. Donner Lake storage rights are owned as an undivided interest between TCID and Sierra Pacific. No use of Donner Lake for credit storage under TROA can be made without permission from TCID. 52
  
5. P. 1-8. Reference is made to the Pyramid Lake Tribe’s interest in water under State Engineer Ruling 4683. This ruling has been appealed by TCID, the City of Fallon and the Corkill Brothers, and the matter is pending in state court in Nevada. There is a stay in effect that prevents the State Engineer from issuing a permit to the Tribe. The State of Nevada has recently moved the court to dismiss the appeal. The court has not ruled on the motion. Therefore, until this matter is resolved, there can be no confirmation of rights to the Tribe. 53
  
6. P. 1-9. The *Orr Ditch* case adjudicated not only the Truckee River but also its tributaries. 54

## Comment PW 10 – continued

### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

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7. P. 1-10. The discussion of the Truckee River Agreement (TRA) speaks only to the operation of Lake Tahoe and Boca, not to river operations which is the main component of the TRA. See general discussion on the TRA.

#### Chapter 2. Alternatives.

8. P. 2-4 to 2-10. The chapter purports to describe the difference between No Action, Local Water Supply Alternative (LWSA) and TROA. The requirements of CEQA and NEPA are that the current conditions or those that will be changed by the proposed action be compared to the various alternatives. Here there is no depiction of current conditions and how they may differ from the No Action alternative. Moreover, the LWSA as depicted here has very minor differences from the No Action Alternative. Under Ninth Circuit case law, an alternative that is not significantly different from another alternative does not meet the requirements for a reasonable range of alternatives. See general comments. The chapter also describes a method for eliminating alternatives and measuring them against P.L. 101-618. However, P.L. 101-618 states in section 210 (b)(9) that nothing in the title shall be construed as waiving or altering any requirements of NEPA. Thus NEPA must be fulfilled in all respects. Having negotiators eliminate reasonable alternatives because they are not acceptable to one or more parties does not comply with NEPA. Eliminating alternatives because they may cause significant environmental impacts does not comply with NEPA. This section does not provide a description of the reasonable range of alternatives.

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9. P. 2-12. The No Action Alternative assumes that the Pyramid lake Tribe's will use its entire decreed water under Claims 1 and 2 of the *Orr Ditch* Decree. This is not possible. The PLIT now only has the ability to irrigate about 1000 acres of farmland, using about 4700 acre feet of its decreed amount. The PLIT must file permanent transfer applications to dedicate this water for instream flows or some other use, something it has not done and has declared it is reluctant to do. Thus some 25,000 acre feet of Claim 1 and 2 water go unused every year and there is no plan or proposal by the PLIT to use the water that can be incorporated into the No Action Alternative. If this water is not used by the PLIT, then it becomes available for other appropriators on the river to divert. Moreover, the 40 cfs claimed by TMWA as a high priority use comes from a compromise struck in the Truckee River Agreement. TMWA has no right to use of the 40 cfs if the underlying compromise reached in the TRA is undermined by TROA. The so-called PLIT Appropriated water has been challenged by TCID, the City of Fallon and Corkill Brothers and no permit for its use has been applied for or issued by the Nevada State Engineer. Thus the inclusion of this water in the No Action alternative is speculative. The amount of water TMWA may divert to clear ice from the Highland Ditch must be returned in like quantities to the river under the TRA.

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10. P. 2-13 and 2-15. The assumption that TMWA and TCID each control a divided one-half of Donner lake water is erroneous. The original intent of the Donner Lake water acquisition by TCID and Sierra Pacific was that Sierra would make non-consumptive use of the water and the

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## Comment PW 10 – continued

COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

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water would be returned to the Truckee River and be available for diversion at Derby Dam for the Newlands Project. The assumption that OCAP or any other restriction can prevent the diversion fo Donner Lake water by TCID is also erroneous. The Donner Lake Water Company no longer owns the 990 acre feet of water rights in Donner Lake. The right was condemned by the Truckee-Donner Public Utility District and the final condemnation decree has been approved by the Nevada County Superior Court.

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11. P. 2-17. Newlands Project Water is not currently being stored in Stampede Reservoir, although such storage is allowed for under the OCAP. Any such change in storage from Lahontan Reservoir to Stampede Reservoir would require a change application to be filed with the Nevada State Engineer and the SWRCB. Only the water right owners in the Newlands Project can file for or request a change in storage for this water. The Newlands Project water right owners have completed their reimbursement for the construction of Newlands Project, including Lahontan Reservoir. This means that the United States has bare legal title to this reservoir and has no claim to the storage of water in Lahontan Reservoir. The No Action Alternative should not contain any component of storage in Stampede for Newlands Project water. Moreover, this feature of No Action has not been modeled in the TROM.

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12. P. 2-10 to 2-22. The description of the No Action alternative is fundamentally flawed. First there is no discussion of the total amount of water available in the Truckee River watershed as compared to the demands that are listed for no action. Second, the assumption that no action will be a continuation of plans and proposals now in place that will increase available water supply is highly speculative and does nothing more than mask the true impacts of the proposed action. For example, the No Action alternative assumes that the Truckee Meadows will gain 25,860 acre feet of additional water from some unknown source. This is highly speculative. Moreover, the no action discussion assumes that between 12,570 and 22,000 acre feet of groundwater will be available for pumping in normal and extremely dry years respectively. This discussion does not acknowledge the safe yield of the aquifer underlying the Truckee Meadows, nor the feasibility of pumping so much groundwater. Finally, the discussion assumes that a savings of ten to nineteen percent can be accomplished through conservation, without any reference as to how this will be accomplished.

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13. P. 2-22. The assumption that the City of Fernley would only acquire approximately 6800 acre feet of total water rights is erroneous. Fernley is one of the fastest growing cities in Nevada. There is plenty of land for expansion for Fernley. It is logical to assume that Fernley and developers will seek more of the existing irrigation rights in the Truckee Division and attempt to convert them to M&I. It is not clear that the Water Quality Settlement Water rights Acquisition water will grow. The purchase of water rights for this purpose has stagnated recently. The more likely scenario for water rights in the Fernley area is that a portion of the water rights will remain in irrigation, and a portion will be dedicated for development. Only a small amount of additional water will be acquired for water quality purposes.

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## Comment PW 10 – continued

### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

14. P. 2-23-24. A review of the LWSA proposal reveals that it is really no different than the No Action alternative.

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15. P. 2-26-27. The TROA discussion states that certain provisions of the Truckee River Agreement (TRA) would be changed but nowhere are these provisions identified or described. In fact, nowhere in the Draft EIS/EIR is there a description of the TRA and how it has been used to manage the Truckee River for the last 69 years.

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16. P. 2-30-31. What is the basis for assigning a priority to certain California uses ahead of Nevada irrigation rights? What is the basis for allowing TMWA priority for its claim to 40 cfs ahead of other Nevada irrigation uses? Water rights in the Truckee River watershed and tributaries to the Truckee River were adjudicated in the *Orr Ditch* Decree. Why were the claims that California purports to assert here not covered in that effort? At the very least, the California claims should be assigned a priority according to the date of appropriation of the respective water rights. Later in this document, it is stated that water available for diversion by the Newlands Project will be less because of PLIT's exercising its Claim 1 and 2 rights and because California is given priority in its allocations. That is determined not to be a significant impact when any reduction to Pyramid Lake is considered significant. This double standard protects only the few who were signatories to TROA.

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17. P. 2-33. The document states that Credit Waters will be made up primarily from Floristan Rates. Floristan Rates were set in the GE Decree, as modified by the TRA, and are designed to ensure that sufficient water is flowing in the river to satisfy decreed rights under both the GE and Orr Ditch Decrees. Floristan Rates also provide sufficient transportation water flowing in the river to ensure that water arrives in sufficient quantity to allow diversions. Currently, any adjustments to Floristan Rates requires the consent of Sierra (TMWA), Washoe County Water Conservation District, and TCID. TROA cannot alter that arrangement.

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18. P. 2-33 to 2-38. This section deals with the various credit waters to be created and recognized under TROA. Credit waters are not recognized under the Orr Ditch Decree or the TRA. The TROA purports to have the authority to unilaterally alter the TRA without the consent of all of the parties to that agreement. Since the TRA was used as a stipulation by the parties to the Orr Ditch Decree to allow the entry of the Final Decree as compromised by those parties, it is presumptuous for the United States and the three Nevada entities involved in TROA to believe they can discard TRA in favor of a management scheme that provides "benefits" to only a few parties.

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19. P. 2-38. As recognized, Floristan Rates drive how Lake Tahoe and Boca Reservoir are operated. TROA purports to alter Floristan Rates without the consent of one of the main parties to the TRA who is most affected, TCID. The creation of Credit Waters in upstream reservoirs that interfere with Floristan Rates undermines the water available in the Truckee River to be diverted at Derby Dam.

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## Comment PW 10 – continued

### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

20. P. 2-38 to 2-41. The section on Reservoir Operations purports to allow TMWA to exchange water in Donner Lake for Fish Credit Water. Since the water in Donner Lake owned by TMWA is an undivided one half interest in common with the TCID, any use of such water as Fish Credit Water can only be done with the express consent of TCID. The reference to Newlands Project Credit Water being removed from Lahontan is unsupportable since this is being segmented from the TROA proposal and it cannot be accomplished without permission of the Newlands Project water right owners.

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21. P. 2-41 to 2-43. Minimum releases from the various reservoirs must always take into account the water rights of downstream irrigators under the Orr Ditch Decree. Releases for fish flow, recreation, water quality, etc. are secondary to releases for decreed rights.

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22. P. 2-44. The reference to TMWA continuing its exercise of water rights compromised and granted to its predecessor under the TRA is contingent upon TMWA agreeing to keep the provisions of the TRA in force that divide waters in the Truckee River among the parties to the TRA. If TMWA does not abide by the TRA, then its right to the 40 cfs (which comes out of Truckee Canal Water) should be forfeited. Reference to TMWA procuring TCID's interest in Donner Lake water is speculative and should not be used as part of No Action, LWSA, or TROA. The parties to the TRA agreed that the rights to the use of Diverted Flow of the Truckee River shall be allocated in accordance with the TRA. The TRA provides that Diverted Flow (essentially all water rights that are diverted along the Truckee River) is allocated thirty-one percent to TCID for use in the Newlands Project and sixty-nine percent to the Washoe County Water Conservation District, subject to the rights of Sierra Pacific Power in Article V of the TRA (40 cfs plus diversions from Hunter Creek). If at any time the right to use the sixty-nine percent is not being exercised and there is water available at Derby Dam, then TCID is given the right under the TRA to divert and use that excess water. TROA makes no provision for this term in the TRA. It would appear that if water is being declared as excess and allowed to be converted to Credit Water that such water is part of the sixty-nine percent allocation and should be managed in accordance with the terms of the TRA. The execution of the TRA is irrevocable.

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23. P. 2-47. There are provisions in TROA to reimburse Sierra Pacific for lost revenues due to conversion of its water rights to Fish Credit Water. TROA also proposes to remove a significant amount of water from Lahontan Reservoir that would be used for hydroelectric generation and store it upstream to ultimately become Fish Credit Water. Why is there no provision for compensating TCID for its lost hydroelectric revenue?

82

24. P. 2-48. The document mentions change petitions to be filed in California but not the ones to be filed in Nevada. Of the six to be filed in California, two are for new appropriations. However, the so-called new appropriations are for tributaries of the Truckee River. Since all tributaries of the Truckee River have already been adjudicated under the Orr Ditch Decree, these claims are barred. Attempts to increase storage in upstream reservoirs located on tributaries to the Truckee River should also be barred because they interfere with waters that are decreed to

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## Comment PW 10 – continued

### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

other water right owners on the Truckee River, namely storage rights for the Newlands Project under Claim 3.

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25. P. 2-49 to 2-51. The Alternatives considered but rejected do not include a reasonable range of alternatives as required by NEPA or CEQA. Some alternatives not considered are: 1) construction of additional reservoirs; 2) use of water banking or underground storage for drought protection; 3) use of interbasin transfers that allow pumping of underground aquifers and transmission of the water to the Truckee River or as a substitute for water diverted from the Truckee River; 4) conservation measures financed by the parties seeking to increase their water supply, such as piping of diverted water, additional water metering, installation of low flow devices, channeling of the River to minimize evaporation, planting of shade trees to reduce temperature, etc.; 5) providing a leasing mechanism for times of drought, when water right owners may lease their water to increase the supply needed for M&I or fish flows.

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26. P. 2-52 to 2-62. The Summary of Effects chart is misleading in several respects but revealing in others. By its own admission, there is little benefit to be gained from TROA when compared to No Action, except in very limited time frames and for limited resources. If the TROA was compared to Current Condition, as the document promised it would, there would be no benefit from TROA and most likely a detriment. By leaving out the Current Conditions column for the summary, the document masks the real information from the public and decision makers. Moreover, the fact that most of the information contained in this summary is derived from a fatally flawed model makes it even more suspect. The fact that the Draft EIS/EIR only looks at long term averages (over 100 years) and not at impacts during individual months or years also makes the summary suspect. [See Comments from Binder and Associates Consulting, Inc. And Principia Mathematica, Inc.]

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### Chapter 3. Affected Environment

27. The description of the affected environment never provides a summary of how the TRA is used today to manage the Truckee River. Without the reader having any idea of how the river is actually managed under current conditions, how can one be expected to understand how the TROA will affect the management, let alone what impacts may result from it? There are very important reasons for why the TRA was set up the way it was, and there were important compromises in the TRA that allowed the Orr Ditch Decree to be entered as a final decree. The Draft EIS/EIR ignores this history and ignores any description of how the current management of the river works and has worked for the last 69 years. The Document does not adequately describe the environmental setting.

86

28. P. 3-28 to 3-31. This section discusses the TROM. The full set of assumptions used in the TROM are not delineated here, nor are the limitations, omissions or deficiencies of the TROM. This is a defect fatal to the Draft EIS/EIR. The details of the assumptions are described in the comments from Binder and Associates, Inc. and the details of the problems with the model are

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## Comment PW 10 – continued

### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

described in the comments from Principia Mathematica, Inc. For example, the model has never been calibrated, verified or validated. Moreover, there are limitations in the FORTRAN model that cause unintended consequences in the output. The model does not address many of the components of TROA. There have never been sensitivity runs on the output of the model and the model assumes that the last 100 years of water resources conditions will repeat without doing any stochastic runs.

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29. P. 3-31 to 3-32. The study assumptions include one that population growth will occur with or without TROA. However, TROA is what is allegedly providing drought protection for the Truckee Meadows that would allow TMWA to increase the population served. Whether TROA facilitates the population growth or not, it is being used as a mechanism to serve an expanded population so that the growth inducing impacts of TROA on other infrastructure in Reno, Sparks, Fernley, Pyramid Lake Reservation, Fallon and Churchill County should be assessed.

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The study also assumes that certain water right transfers will occur, including one for the PLIT to store unappropriated water from the Truckee River in upstream reservoirs. First, the PLIT cannot act on its claim for unappropriated water because approval of its application has been stayed in state court. Second, the water that the PLIT claims is essentially flood waters of the Truckee River; yet the TROA treats these “excess waters” as if the PLIT has a primary right to store them detrimentally to other decreed rights on the river with a higher priority. For example, the PLIT is able to store these waters and provide for carry over storage of these waters in upstream reservoirs, when the Newlands project is prevented from diverting decreed waters from the Truckee River for drought protection and is never allowed to provide carryover storage in Lahontan Reservoir to anywhere near the capacity of the reservoir. The TROA tilts the shortage of water equation firmly toward shortages for the Newlands Project with its decreed rights and tilts the excess water equation firmly in favor of PLIT, which has no decreed rights to the so-called unappropriated water. The Newlands project has significant excess capacity for carryover storage water but is not permitted to use this capacity, even in years where the Carson River is predicted to provide low amounts of water. This management provision of TROA flies in the face of the decreed rights of the Newlands project water right owners.

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Also the study assumptions regarding storage include a provision for the consumptive use portion of the rights to be stored in reservoirs and thereafter released as Credit Water. The problem with this is that at the time the water is being stored there is generally sufficient transportation water to allow the water to flow in the river and reach its normal point of diversion. By delaying its release to the late summer months (when most of this water would be released), there is generally insufficient transportation water in the river to “carry” the Credit Water. This has not been modeled. In fact, the model assumes that there will be such water in the system, when historically this is the major problem in the late summer months. To exacerbate this problem, TROA anoints this Credit Water with the characteristics of Privately Owned Stored Water, which means that it flows in the river without regard to transportation losses. The transportation water has long since flowed and the only way for the Credit Water to reach its destination is by floating

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## Comment PW 10 – continued

### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

it on top of water being released to make Floristan Rates. Since, in the late summer, there may not be enough water to make Floristan Rates, then the other parties with decreed rights may have to forego diversions to allow this Credit Water to flow past to ensure that no transportation losses are counted against such water. The concept of anointing all Credit Water as Privately Owned Stored Water requires consent of all water right owners on the Truckee River and the consent of all parties to the decree. This has not been obtained.

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30. P. 3-36. Table 3.1 illustrates how the baseline conditions might be used to predict whether TROA may actually work. If there had been a mass balance analysis of the Truckee River water supply with all of the demands and uses accounted for, then the Draft EIS/EIR would provide useful information to the public about whether the river is being managed or mismanaged under current conditions. But the document fails to do this. When working with a limited supply of water that on average causes shortages on the river in three out of every ten years, it defies logic to assume that all demands on the river can be met by allowing two entities to store their water and to carry that storage over from year to year without impacting the other water right owners. What these two entities are doing is shifting the balance of shortages away from them and to the remaining water right owners without regard to the consequences. The TROM merely assumes that all water rights will be satisfied without actually proving it.

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31. P. 3-37. To illustrate the problem, many of the downstream rights on the Truckee River depend on return flows for the water that they will divert to satisfy their primary rights on the river. When even the theoretical consumptive use portion of the right is withheld, there remains in the river only the transportation component. For water controlled by TMWA that would be used for hydroelectric power generation, of course, there is no consumptive use portion. None of the water is assumed to be consumed when passing through the power facilities. Yet this water is being stored as Credit Water. Clearly this water would provide return flows and would be sent back to the river as soon as it is used. Under TROA, this water would be converted to Fish Credit Water and must pass all the way to Pyramid Lake without any transportation losses. The loss of the return flows from this water has not been calculated as an impact to downstream users.

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32. P. 3-48. The basis for the six flow regimes for Pyramid lake are unclear. Either there should be a source document referenced for these or this Draft EIS/EIR should, for the first time, analyze the impacts of the six flow regimes on the rest of the Truckee River water resources. The high flow regime results in over 245,000 acre feet of water to Pyramid Lake. On average the lake receives over 425,100 acre feet. See Table 3.1. Thus, the need to release water for the highest flow regime happens less than half the time. Even the lowest flow regime results in the Lake receiving over 75,000 acre feet. Under these conditions, fish spawning is not likely to happen and the water may be needed elsewhere for drought protection.

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33. P. 3-56. Under No Action Modeled Demands, the document mentions that Sierra Pacific looked at a number of options for supplying a reliable water supply to the Truckee Meadows.

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## Comment PW 10 – continued

### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

Sierra even looked at constructing new dams but did not include a new storage reservoir. The Draft EIS/EIR then states that because TMWA has not proposed a new reservoir the Draft EIS/EIR does not include it as an alternative. This is not the test under NEPA or CEQA for considering alternatives, however.

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34. P. 3-95. The Draft EIS/EIR concludes that agricultural demand in the Carson Division is met about the same under TROA as under No Action but there is no comparison to Current Conditions. The document also concludes that average water supply is slightly less under TROA than under No Action. But then does make a comparison in minimum supply years and concludes that TROA will provide six percent less water to the Carson Division in these dry years than current conditions. Since P.L. 101-618 provides that there shall be no impairment of vested or decreed water rights under the Act, any reduction in supply caused by TROA is a significant impact. The document admits that TROA will exacerbate shortages in these dry years. No mitigations are supplied for this impact and the Draft EIR/EIR does not even recognize it as an impact. To contrast the threshold of significance for Pyramid Lake is *any* reduction in inflows. Again the model looks at long term averages and not individual years. The one year impact for 1934 from TROA on the Newlands Project is over 8000 acre feet, if the model can be believed.

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35. P. 3-112. The document admits here that there could be adverse consequences to the shallow aquifer in the vicinity of the Newlands Project since less water will be flowing in the Truckee Canal and released from Lahontan. Again, the Draft EIS/EIR does not believe this is significant, despite the fact that the entire area around Fernley and Fallon relies on the aquifer and the recharge of the aquifer for its drinking water supply.

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36. P. 3-235. The whole purpose of the TROA is presumably to allow management of the water resources in the Truckee River basin to permit more water to flow to Pyramid Lake. Although the information has been developed with a questionable model, the model results show that on average the increased inflow to Pyramid Lake from TROA is less than 10,000 acre feet. The difference compared to Current Conditions is only 5240 acre feet. The Government could have purchased 10,000 acre feet of permanent water right for Pyramid lake and avoided TROA altogether. The Draft EIS/EIR concludes that Pyramid Lake elevation will be higher under TROA but 5240 acre feet over the vast expanse of Pyramid Lake would not raise the lake by any measurable amount. The benefits from the TROA in meeting the purpose and need statement of this EIS/EIR are questionable.

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37. P. 3-236, Table 3.64. Even more telling than the inflow to Pyramid Lake is the frequency that Flow Regimes 1, 2 or 3 are achieved under TROA compared to Current Conditions. Presumably, in order to meet the Purpose and Need for the Proposed Action, the frequency of meeting or exceeding the high flow regimes should increase under TROA. However, this is not the case. As shown in table 3.64 (if the model can be believed), in April, the frequency of flow regime 1 decreases from Current Conditions to TROA by six years, while flow regime 2

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### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

increases by three years and flow regime 3 decreases by one. In May, the frequency of years for flow regime 1 decreases by two years, for flow regime 2 it increases by four years and for regime 3 it decreases by three years. In June, flow regime 1 increases by one year, flow regime 2 increases by six years and flow regime 3 decreases by eight years. Looking at the totals in Table 3.64 the overall number of years of frequency for flow regimes goes down rather than up under TROA.

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38. P. 3-244. Table 3.65 also reveals that only in August on average will there be any effect on Lahontan Cutthroat Trout from TROA when compared to Current Conditions.

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39. P. 3-275 and 3-276 and 3-329. The discussion on Lahontan Reservoir recreation shows there will be a significant impact from TROA since more water will be removed from storage when Newlands Project Credit Water is stored upstream. Why is Lahontan Reservoir not included in this Recreation Visitation and Expenditures chart?

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40. P. 3-334. Here any reduction in hydroelectric generation revenue is considered significant—for Sierra Pacific. However, with the withdrawal of a significant amount of water from Lahontan Reservoir by storing Newlands Project Credit Water upstream, there will be a significant impact on electric power revenues for the New and Old Lahontan Power Plants and the 26 Foot Drop Power Plant. The failure to consider these impacts make the Draft EIS/EIR invalid.

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41. P. 3-388 and 3-389. The discussion of impacts on the Newlands Project is inadequate. First, the analysis relies on a fatally flawed model. Second, the impacts on the project are never compared to Current Conditions. Instead, the analysis looks at No Action, which includes erroneous assumptions about Fernley M&I water, retirement of irrigation rights in the Truckee Division, unsupported reductions in Carson Division demand, and excludes the potential impact of Newlands Project Credit Water. Even with the comparison of TROA to the No Action alternative, the analysis shows a reduction in water supply to the Newlands Project, which means less water available to deliver for decreed rights. P.L. 101-618, section 210(b)(13) prohibits any impairment of vested or decreed rights as a result of TROA; therefore, the reduction in water supply is a significant impact and must be mitigated. This conclusion is also borne out by Table 3.97.

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42. P. 3-404. This section concludes that local and state agencies have already planned to grow their populations by the numbers used in the Draft EIS/EIR. Therefore, TROA is not inducing the growth. This kind of faulty logic stands NEPA and CEQA on their respective heads. Presumably, the main reason that TMWA is involved in TROA is to ensure that its population, if it does grow to 119,000 will have water to serve it in times of drought. If TROA did not provide drought protection to allow this growth to 119,000, then TMWA could not be issued will serve letters for that many households. Consequently, TROA is providing incentives for developers to come to the Truckee Meadows and to build more houses. This is the growth-inducing effect of

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### COMMENTS OF McQUAID BEDFORD & VAN ZANDT ON DRAFT TROA EIS/EIR

TROA. Moreover, TROA will allow the Pyramid Lake Reservation population to grow. This Draft EIS/EIR does not address the growth impacts of TROA on highways, schools, hospitals, air and water quality, etc. This is a serious flaw in the document and makes it invalid.

106

43. P. 4-5 and 4-6, Table 4.1. The cumulative impacts of the TROA should be analyzed for Lahontan Reservoir, groundwater in Churchill County, impacts on Stillwater Wildlife Refuge, impacts on Carson lake and Pasture, impacts on Fernley Wildlife Management Area, impacts on the Naval Air Station at Fallon, impacts from modification to the OCAP to accommodate Newlands Project Credit Water, impacts from recoupment (since there is a judgment in the case) and impacts from water rights acquisition programs. All of these other actions have the potential to impact TROA and their cumulative impacts should have been analyzed.

107

44. P. 4-10 and 4-11. The discussion of impacts of TROA on the Newlands project, and particularly on Lahontan Reservoir is inadequate. First, the document acknowledges that recreation in the spring and summer will be adversely impacted. Second, the document recognizes that there will be less carryover storage in Lahontan. The discussion of this impact concludes that this is a benefit since fewer spills will occur. The document never broaches the subject of how less carry over storage may cause shortages in deliveries, even though this is acknowledged elsewhere in the Draft. This is merely a reflection of shifting the risk of shortages to decreed water right owners as opposed to the PLIT which does not have a water right for its Fish Credit Water or Fish Water.

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#### List of Preparers

45. The List of Preparers does not meet the requirements of either NEPA or CEQA in that the list does not contain the qualifications of the preparers. Expertise, experience, and professional disciplines are not listed as required. Moreover, from the documents we have reviewed, there are many more people outside of government who have participated in the preparation of the Draft EIS/EIR. Rod Hall was the primary person responsible for the model information, for example. Also, Ali Shahroody participated extensively in the preparation of the water resources sections. This list must be corrected.

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# Comment EG 01



## The Toiyabe Chapter of the Sierra Club

Nevada and Eastern California

PO Box 8096, Reno, NV 89507

*One Earth,  
One Chance.*

November 11, 2004

Ken Parr  
BOR  
705 North Plaza St. #320  
Carson City, NV 89701

Re: TROA Revised Draft EIS/EIR

Dear Mr. Parr,

On behalf of the Toiyabe Chapter of the Sierra Club and its 5700+ members in Nevada and the eastern Sierra, I am submitting comments on the draft EIS/EIR for TROA. The Sierra Club has been actively involved in Truckee River, Pyramid Lake, and Lahontan Valley wetlands issues for many decades, attempting to find solutions which benefit multiple interests for both water quantity and water quality problems in our shared water basins. We applaud the TROA and its creators who have negotiated innovative and creative solutions to the many challenges to improving water reservoir management, from Lake Tahoe to Pyramid Lake.

The TROA dEIS is both comprehensive and detailed, a daunting task for you to write and for the public to review and evaluate. The document shows many environmental and socio-economic benefits from implementation of TROA. We strongly support TROA and are looking forward to its full implementation in Nevada and California. We have several concerns, however, with the environmental impact analysis, as follow:

1. Growth-inducing impacts: the assertion that a secure drought supply for the Truckee Meadows has no growth-inducing impacts is counterintuitive. The assumption that growth would occur at the same rate with or without TROA appears non-supportable, especially since the document also claims substantial economic benefits to the Truckee Meadows from having a drought water supply in Stampede. These are contradictory and should be reconciled in the final EIS.

2. No minimum flows for Truckee River in Nevada stretches: while California has negotiated minimum flows to support its Truckee River fisheries and the EIS has documented environmental and economic benefits from these minimum flows, we find no such requirement for Nevada's share of the Truckee River nor resulting environmental/economic benefits. While acknowledging that TROA will dry up the river in some years, the dEIS provides no mitigation for this negative impact. Instead the dEIS appears to gloss over this substantial negative impact by claiming that with TROA, the Truckee River would not dry up as often as without TROA. It apparently makes this assessment based on possible water augmentation resulting from the Water Quality Settlement Agreement. However, details on possible additional flows from this source are totally lacking in the document. Does the WQSA actually require additional flows to meet minimum flow levels in the Truckee River? If there is no such requirement and any additional flows would occur to meet other requirements, then what is the probability, if any, that additional flows under the WQSA will provide minimum flows in the river during the late summer/early fall period when the river is most likely to dry up in and below Reno? We don't believe benefits or positive impacts can be attributed to TROA with little or no likelihood of any additional water. The final EIS should clarify TROA's environmental impacts on Nevada fisheries/economy of reduced flows in the Truckee River as well as propose mitigation for drying up the river in the Reno/Sparks stretch. Any actual additional water available from the WQSA to augment flows should be disclosed, or alternatively the probability that such water would be available, as well as the process for providing WQSA water to keep minimum flows in the Truckee River should be disclosed in the final document.

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- 07
- 08

GREAT BASIN GROUP  
PO Box 8096  
Reno, NV 89507

RANGE OF LIGHT GROUP  
PO Box 1673  
Mammoth Lakes, CA 93546

SOUTHERN NEVADA GROUP  
PO Box 19777  
Las Vegas, NV 89119

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## Comment EG 01 – continued

3. Water model reliability: although we understand that the Truckee River water model is based on the last 100 years of precipitation/flow data, we are concerned that the next 100 years may not follow the historic precedents, in view of global warming. Referring to yet another model, the global warming model, in the dEIS to declare that there will be no significant impacts of global warming in the Truckee River/Carson River basin before 2033 does not leave us with confidence that we are guessing right on our future water supplies. Instead, we would prefer to have model runs in the EIS on potential reductions in water supplies - due to extended droughts exacerbated by global warming - and their environmental impacts, as well as a process set up for dealing with less than modeled future water supplies. While TROA provides for improved flexibility and management of Truckee River water reservoirs, we are not confident that TROA is adequate to deal with the impacts of a long-term drought. Please clarify.

09

4. Lahontan Valley wetlands impacts: we found the sections on environmental impacts, especially cumulative impacts, on Lahontan Valley wetlands to be inadequate.

10

a. Reducing spills and drainwater has already had significant negative impacts on water availability to the wetlands. Mitigation should be developed for these negative impacts.

b. While the document mentions the reduced water duty to wetlands of 2.99 af/a, it implies that this is a permanent reduction. This section should be expanded to more fully explain why the reduced duty was adopted, how long it was supposed to apply, and that the legal status of 2.99 af/a v. full duties of 3.5 or 4.5 af/a for wetlands must be determined in the Alpine Decree court.

c. We were unable to determine whether the dEIS wetlands impacts analysis is based on the 2.99 af/a duty or the full duty. Please explain.

d. Please explain TROA's impacts on Lahontan Valley wetlands water rights and include mitigation for all negative impacts.

4. LVPLFWF: while the dEIS mentions this fund, it remains quite mysterious. How much of Stampede Reservoir storage fees have been deposited annually into this fund, since it was established? Who decides how much of the annual fees are deposited into the Fund? What is the process for determining the amount to be deposited annually? How much of the Fund has actually gone to the Lahontan Valley wetlands and to Pyramid Lake? Is this fund actually providing any funds to mitigate the negative impacts of TROA on Pyramid Lake and the Lahontan Valley wetlands? Please expand this section in the final EIS.

11

Thank you for considering our comments.

Sincerely,



Rose Strickland  
Toiyabe Chapter of the Sierra Club



## Comment EG 02

### LAHONTAN VALLEY ENVIRONMENTAL ALLIANCE

*Willis Swan, Chairman*  
*Richard Harriman, Vice Chairman*  
*Jeannette Dahl, Executive Director*

*446 W. Williams Ave.*  
*Fallon, Nevada 89406*  
*775 423-0525*

---

December 29, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

RE: Truckee River Operating Agreement Revised Draft Environmental Impact  
Statement/Environmental Impact Report Comments

Dear Mr. Parr,

The Lahontan Valley Environmental Alliance (LVEA) was created in 1993 by an interlocal agreement between Churchill County, the City of Fallon, the City of Fernley, Truckee-Carson Irrigation District, and the Stillwater and Lahontan Conservation Districts. This coalition of local governments works to coordinate efforts to protect the natural resources of the communities in the Newlands Project, as well as provide education to that end. The following are the comments offered by LVEA in response to the Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

The TROA document took several years to complete and will ultimately affect thousands of people for many years to come. The comment period deadline is not of sufficient length, especially through the holiday season, for affected parties to make a comprehensive study of the document.

The Truckee-Carson Irrigation District, Churchill County and City of Fallon have previously requested an extension of the comment period for the revised Draft EIS/EIR to six (6) months due to the complexity of the document and the need for additional data that would allow a better understanding and ability to comment. The partial extension of two (2) months was granted and is appreciated. LVEA, however, joins in the request for the additional four (4) month extension to the comment period for the reasons previously stated.

01

## Comment EG 02 – continued

01.43.33 p.m. 12-30-2004 3/4

In the event the comment period is not extended, LVEA offers the following comments in response to the Truckee River Operating Agreement Revised Draft Environmental Impact Statement/Environmental Impact Report based on the information provided.

At this time the Federal Water Master, in conjunction with the Truckee River Basin Committee of which Truckee-Carson Irrigation District is a member, manages the Truckee River Agreement and Orr Ditch Decree water rights. When addressing changes of flow in the Truckee River under the Truckee River Agreement the Committee, through the vote of its members, reaches a decision. The TROA would replace the Truckee River Basin Committee without the concurrence of the Truckee-Carson Irrigation District, a Committee member. Truckee-Carson Irrigation District was a major participant in negotiations of the Truckee River Agreement and a signatory to the settlement of the Orr Ditch Decree. The Orr Ditch Decree legally established water rights in Nevada on the Truckee River including storage for the Newlands Project at Lake Tahoe as well as diversion rights and storage at Lake Lahontan. Thus the TROA changes the operational authority without the consent of the parties to the Truckee River Agreement and the Orr Ditch Decree. How can these provisions be unilaterally modified without the consent of the court and original parties? LVEA's signatories are not in favor of any action that would modify the Orr Ditch Decree.

02

It is likely that Newlands Project Credit Water will never benefit the Project because it will never be released to the Project. No modeling to show benefit to the Project from Newlands Project Credit Water or negative impact if the Credit Water is not delivered was undertaken in the EIS/EIR process. What data and assurances are there that the water will be released and benefit the Project?

03

The Pyramid Lake Paiute Tribe and the U.S. desire to eliminate the Project's diversions from the Truckee River. Churchill County and the City of Fallon are experiencing rapid growth and need an assured water supply to sustain that growth and health economy. Any loss of water to the valley will have a tremendous negative economic impact, as well as an undesirable environmental impact upon the entire community. Nevada Department of Environmental Protection is mandating more and better dust control within Churchill County due to health risks caused by blowing sand from dewatered agricultural land. Swingle Bench area is one prime example of the problem. It will be much worse if Truckee Canal diversions are not allowed to continue. We have grave concerns that the Pyramid Tribe and the U.S. will have ultimate authority to remove and appoint the Administrator/Water Master under the new TROA regulations.

04

Contrary to the agreement signed in 1943, there are references to the Truckee-Carson Irrigation District's and Sierra Pacific Power Company's rights to Donner Lake water that indicate Sierra Pacific has a right to 50% of the water and reference to Sierra Pacific acquiring the Truckee-Carson Irrigation District's interest in Donner Lake. Since no legitimate offer has been made to acquire those interests, we doubt modeling based on these assumptions can be valid. Again, we do not see any proof of consideration for the

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06

## Comment EG 02 – continued

needs of Churchill County for its growth or economic health in the modeling or assumptions.

06

In regards to the conclusion of no significant impacts, it appears that there is no comparison of current conditions which should be the “No Action”. Thus the same assumptions are used for “No Action” as are used for the “Proposed Action”, the only modeled comparison. If modeled in this manner might that not lead to an incorrect conclusion of “No Significant Impacts”? Current conditions, as well as anticipated future conditions should be modeled and considered before a conclusion of “No Significant Impact” is reached. Should the present assumptions being used prove to be invalid, what alternatives are available to make the necessary corrections and to make whole those who were injured?

07

It appears that the TROA will cause significant negative fiscal impacts to the entire Lahontan Valley by reducing the water supply to the Newlands Project. Costs will be increased due to the need for increased staff, consultants, and attorneys to monitor TROA operations as well as possible litigation and other legal costs associated with the protection of Newlands Project water right since the Truckee-Carson Irrigation District and Churchill County will not be allowed to participate in the direction of the agreement.

08

Lahontan Valley Environmental Alliance adopts all separate comments of its signatories as part of these comments on the Draft EIR/EIR.

Thank you for the opportunity to comment and for considering these comments, concerns and questions regarding the Truckee River Operating Agreement Revised Draft Environmental Impact Statement/Environmental Impact Report.

Sincerely,



Jeannette Dahl  
Executive Director

## Comment IND 01

**From:** "Susan Lynn" <sblynn@sbcglobal.net>  
**To:** <kparr@mp.usbr.gov>  
**Date:** 10/20/2004 11:52:29 AM  
**Subject:** Truckee River/TROA EIS comments

October 20, 2004

Dear Mr. Parr:

I have given the TROA EIS some attention and wish to say I support the preferred alternative. After 14+ years, the great minds who have worked on this have covered the pertinent points. You all have done an excellent job. I have no suggestions or comments, preferring to think that each person has done their tasks with more knowledge and ability than I have.

Thanks for the opportunity to send positive comments.  
Susan Lynn  
Executive Director  
Public Resource Associates  
1755 E. Plumb Ln. #170  
Reno, NV 89502  
775-786-9955  
sblynn@sbcglobal.net

01

## Comment IND 02

**BRETT KANDT**  
**Attorney at Law**  
1235 Patrick Avenue  
Reno, NV 89509  
775-232-1896  
[brettkandt@hotmail.com](mailto:brettkandt@hotmail.com)

October 23, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
Department of the Interior  
705 N. Plaza Street, Room 320  
Carson City, NV 89701

Re: Truckee River Operating Agreement

Dear Mr. Parr:

The purpose of this correspondence is to express the strong belief among many residents of the Truckee Meadows that the proposed Truckee River Operating Agreement (TROA) must adequately protect our community from flooding. As you know, the Truckee River has historically experienced major flood events, most recently in 1963, 1986 and 1997. Given the recurrence of flooding, the Truckee River Flood Control Project was undertaken in 1997 to identify all steps necessary to mitigate against future flood events.

The 1997 New Year's Day flood was particularly devastating, causing approximately \$500 million in damages. What is most disconcerting is evidence that the provisions of the 1935 Truckee River Agreement actually exacerbated the flooding by mandating that the Tahoe City floodgates be opened to prevent Lake Tahoe from exceeding permissible levels regardless of the impact on the Truckee Meadows.

Specifically, Article II, Section F of the Truckee River Agreement states in pertinent part that the Tahoe Truckee Irrigation District "shall so operate the dam and controlling works at the outlet of Lake Tahoe to prevent, so far as practicable, the water surface of said lake from exceeding elevation 6,229.1 feet above sea level." The federal water master interpreted this provision to require all 17 floodgates to be opened on December 11, 1996, increasing the flow into the Truckee River to 2,630 cubic feet per second. Since rules imposed by the U.S. Army Corps of Engineers prevented the operation of Boca, Prosser and Stampede Reservoirs to accommodate the increased flows, flooding resulted in the Truckee Meadows. If the Truckee River Agreement had permitted the elevated water surface of Lake Tahoe and increased flows into the Truckee River and downstream reservoirs to be properly managed, the effects on the Tahoe Basin would have been relatively benign, and much of the damage to the Truckee Meadows possibly averted.

***The events of 1997 make it imperative that TROA authorize and direct federal officials to coordinate operation of the floodgates and reservoirs so as to minimize potential flooding in the Truckee Meadows, including extraordinary measures when warranted under certain conditions.*** If TROA fails to adequately protect the Truckee Meadows from a future flood event, federal agencies will likely face legal action from affected local governments, residents and businesses.

Thank you for your consideration.



Brett Kandt

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## Comment IND 03

Page 1 of 1

Subj: **Recreational Fishing, TROA**  
Date: 10/28/2004 9:25:38 PM Pacific Standard Time  
From: Mcleodsierra  
To: kparr@mp.usbr.gov

October 28, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, Nevada 89701

Subject: Recreational Fishing – Truckee River Operating Agreement

Dear Mr. Parr,

The key to best management practices for the Truckee River, from Lake Tahoe to the Boca / Stampede outlet, is entirely in the hands of the Federal Water Master.

I am one of thousands of fly fishermen who enjoy catch and release recreational fishing on the Truckee River. The Federal Water Master typically releases high flows of water from the Lake Tahoe reservoir (300 to 400 cu. ft. / second) during summer months and lets the river go **dry** sometime in September or October. This practice is a disaster for the fish and all aquatic organisms. The amount of “stored” water in Lake Tahoe varies year to year, but its release can be and should be a **more even flow**.

For example, this year the thousands of Lahontan cutthroat trout that the U.S. Fish and Wildlife Service put into the upper section of the river, (between Truckee and Lake Tahoe,) are surely **all dead**, as are most all of the native trout.

Best management practices on the Truckee **must** recognize the sensitivity of aquatic life. This means a more even flow of water releases from Lake Tahoe and Donner Lake. I urge you to use good judgment, along with the DWR and other agencies, to truly enhance year long stream flows that are beneficial to fish life and recreational fishing.

Thank you.

Sincerely,

Denny McLeod  
55 Sierra Avenue  
Piedmont, CA 94611

Copy by e-mail: kparr@mp.usbr.gov

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Thursday, October 28, 2004 America Online: Mcleodsierra

## Comment IND 04

**From:** "Bruce Gescheider" <bruceg@moananursery.com>  
**To:** <kparr@mp.usbr.gov>  
**Date:** 10/28/2004 5:06:08 PM  
**Subject:** Support of TROA

Mr. Kenneth Parr  
Bureau of Land Reclamation

Dear Mr. Parr:

This email is in support of the Truckee River Operating Agreement (TROA). As a business (retail nurseries & landscaping services) very concerned with the availability of water and the proper stewardship of same, Moana Nursery has through both the Reno/Sparks Chamber of Commerce as well as the Builders Association of Northern Nevada been active in its review of the TROA and its alternatives.

We strongly support the implementation of TROA and would appreciate, during this period of public review, inclusion as a vocal advocate along with the other concerned business and community participants.

Thank you.

Bruce Gescheider  
President  
Moana Nursery  
1100 West Moana Lane  
Reno, NV 89509  
775-825-0602 x112  
bruceg@moananursery.com  
775-825-9359 fax  
775-771-4252 mobile  
www.moananursery.com

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## Comment IND 05

**From:** "Mike Dillion" <miked@thebuilders.com>  
**To:** <kparr@mp.usbr.gov>  
**Date:** 10/29/2004 11:10:19 AM  
**Subject:** TROA

Dear Mr. Kenneth Parr,

On behalf of the Builders Association of Northern Nevada, I would like to send our strong support of the recommended Truckee River Operating Agreement.

We support TROA for the obvious reasons mentioned so it would:

- 1) Increase municipal and Industrial drought protection for the Truckee Meadows
- 2) Improve Truckee River water quality downstream from Sparks, Nevada.
- 3) Enhance stream flows and recreational opportunities in the Truckee River basin.
- 4) Provide for a permanent allocation between California and Nevada of water in the Lake Tahoe, Truckee River, and Carson River basins.
- 5) Enhance conditions for the threatened Lahontan cutthroat trout and endangered cui-ui.

This plan is essential and the best solution for every single Northern Nevadan.

Sincerely,

Michael F. Dillon, Jr. - Government Affairs Director  
Builders Association of Northern Nevada  
1400 Wedekind Road - Reno, Nevada 89512  
775-329-4611 ext. 16. Fax 775-329-5689  
MikeD@thebuilders.com

01



## Comment IND 06

**From:** "James Jeffery" <james@hydroturfreno.com>  
**To:** <kparr@mp.usbr.gov>  
**Date:** 10/29/2004 4:14:14 PM  
**Subject:** Environmental Impact Statement

October 29, 2004  
HydroTurf Reno  
Bio Plus Nutrients  
Statement

Our environment and ecological system has been damaged by extreme amounts of salts, nitrates and phosphates (produced by traditional fertilizers.) Our ground water is contaminated, affecting animal, plant and human life. Our fertilizer products have the ability to reverse/repair much of this damage.

Bio Plus Nutrients is an innovative, groundbreaking and revolutionary product being introduced for the first time in the "fertilizer industry. Research shows that when our system is used, you can reduce your water usage by over 50%. At the same time, you will be cleaning up the salinity conditions in the soil, reducing contaminates and restoring plant life to the superior level.

The evidence shows you can use only 10% of the nitrogen, phosphates and potassium that the fertilizer industry normally recommends. In other words, by using our products you can reduce by 90% the harmful chemicals introduced to our water resources.

By implementing the Bio Plus Nutrients Fertilizer, the environment has the chance to return back to its natural state, and the natural functions of the ecosystem can take place, while also cleaning the impurities and toxins out of the environment.

The benefits of maintaining yield, quality and balancing nature in the long-term, sustainable method has never been accomplished until now. As we educate the public on how this unique product works, we anticipate support from environmental groups.

The answers are here. The solutions are here. We have a vision we passionately want to share with you. That vision is to bridge industry and technology, to make the transition economically and to take the environment back to its natural, balanced state.

We anticipate your excitement as you learn more about this revolutionary, sound and state-of-the-art product, the likes of which the world has never seen before.

Working Together for a Better Environment...For a Better Tomorrow.

Sincerely Yours,

HydroTurf Reno  
Bio Plus Nutrients  
429 Reno Avenue  
Reno, NV 89509

01

## **Comment IND 06** – continued

(775) 322-5919  
James@hydroturfreno.com

## Comment IND 07

**From:** "Bob Baiocchi" <baiocchi@psln.com>  
**To:** "Ken Parr" <kparr@mp.usbr.gov>, "Michael Cooney"  
<mikec@water.ca.gov>  
**Date:** 11/1/2004 12:42:51 PM  
**Subject:** Truckee River Operating Agreement

November 1, 2004

Mr. Kenneth Parr

US Department of the Interior

Bureau of Reclamation

Lahontan Basin Area Office

Mr. Michael Cooney

Department of Water Resources

State of California

Re: Revised Draft EIS/EIR for the Truckee River Operating Agreement; State of California and Nevada; Comments by The Baiocchi Family

Via E-Mail

Dear Mr. Parr and Mr. Cooney::

Please find enclosed the comments of The Baiocchi Family. The reason for the delay is my health.

The following are the comments of The Baiocchi Family:

Boca Dam - Little Truckee River

There are no mandatory flow requirements from Boca Dam into the Little Truckee River. Boca Dam and Boca Reservoir are located in California and must be

## Comment IND 07 – continued

operated under California statutes. California Fish and Game Code 5937 requires a mandatory daily flow requirement from Boca Dam into the Little Truckee River to keep fish in good condition below the dam. Fish and Game Code 5937 is mandatory (shall). Most likely all pre-project fish and aquatic species below the dam are no longer present.

Disclose, evaluate, and mitigate in the DEIS/EIR the direct and cumulative effects to all fish species and their habitat, macro invertebrate species and their habitat, and other aquatic species and their habitat in the Little Truckee River below Boca Dam resulting from the lack of mandatory minimum streamflow requirements.

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Martis Dam - Martis Creek

There are no mandatory flow requirements from Martis Dam into the Martis Creek. Martis Dam and Martis Reservoir are located in California and must be operated under California statutes. California Fish and Game Code 5937 requires a mandatory daily flow requirement from Martis Dam into the Martis Creek to keep fish in good condition below the dam. Fish and Game Code 5937 is mandatory (shall). Most likely all pre-project fish and aquatic species below the dam are no longer present.

Disclose, evaluate, and mitigate in the DEIS/EIR the effects to all fish species and their habitat, macro invertebrate species and their habitat, and other aquatic species and their habitat in Martis Creek below Martis Dam resulting from the lack of mandatory minimum streamflow requirements. Also include a mandatory daily streamflow schedule.

02

Streamflows - All Fish Species; Macroinvertebrate Species, and Other Aquatic Species

All river and stream reaches throughout the project area that are effected by the Truckee River Operating Agreement must be monitored to determine whether fish species, macro invertebrate species, and other aquatic species are being kept in good condition at all times for the term of the agreement. The DEIS/EIR must include a monitoring fish and aquatic species plan that includes all river and stream reaches affected by the agreement.

03

## Comment IND 07 – continued

### Whitewater Boating Flows

Short-term whitewater boating flows should not be agreed to by the state and federal agencies for the Truckee River until there is sufficient biological evidence that the short-term whitewater boating flows will not harm and injury any public trust resources and assets such as fish species, macroinvertebrate species, and other aquatic species such as frog species.

04

### Agreement Re-Opener

There should be a "re-opener" in the agreement that allows state and federal agencies, including the public, to re-open the terms and conditions of the agreement when conditions are adversely affecting the public trust resources of the Truckee River Watershed.

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If there are any questions, please advise me. Thank you for the opportunity to comment on the Truckee River Operating Agreement.

Respectfully Submitted

Bob Baiocchi  
The Baiocchi Family  
P.O. Box 1790  
Graeagle, CA 96103

cc: Interested Parties

## Comment IND 07 – continued

CC: "David M" <dpizza61@earthlink.net>, "Frank Pisciotta" <cyberfly@cyberfly.com>, "David Munizza" <david@modcoinc.com>, "Daniel A. McDaniel" <dampic@pacbell.net>, "Doug Patterson" <innatedoc@earthlink.net>, "Brian Kempkes" <troutnut@pacbell.net>, "Brian Marcus" <marcus@psln.com>, "Dale #2 Marsh" <dale@tileartisans.com>

## Comment IND 08



**Ryder Homes of Nevada, Inc.**

290 Gentry Way, Suite 5  
Reno, Nevada 89502  
(775) 823-3788 • (775) 823-3799-Fax  
[www.ryderhomes.com](http://www.ryderhomes.com)  
NV Contractors Lic. # 0038366

November 1, 2004

**FAX: 882-7592**

Mr. Kenneth Parr  
Bureau of Land Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701-4015

RE: Truckee River Operating Agreement

Dear Mr. Parr:

As a local builder here in the Reno/Sparks area, I strongly recommend completing the environmental review process in order to approve/implement the TROA.

If you have any questions, I can be reached at 823-3788 ext. 13. Or, via e-mail at [john@ryderhomes.com](mailto:john@ryderhomes.com)

Very truly yours,

A handwritten signature in black ink, appearing to read 'John A. Schroeder', with a long horizontal flourish extending to the right.

John A. Schroeder  
Vice President

01

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## Comment IND 09

**From:** <Pstan160@aol.com>  
**To:** <kparr@mp.usbr.gov>  
**Date:** 12/6/2004 2:17:48 PM  
**Subject:** Comment--Truckee River

Dear Mr. Parr,

I've fished the Truckee every summer for over thirty years, and have watched the decline of one of America's trout fishing jewels to the point where it is now completely dry from Tahoe City to Truckee. And from Tahoe City to River Ranch it's a swampy garbage dump for those who patronize the rafting companies, who seem to have total control over the river for six miles.

So what's to be done?

I'm a Stewardship Director of Montana Trout Unlimited, which puts me in a position to pay a great deal of attention to the condition of our rivers and streams. We have the same problems with the ongoing drought that California and Nevada have. Reservoirs are drying up, streams are at all-time lows, and fishing and other water-oriented recreational activities increase exponentially. We may not be winning the battle, but with our major emphasis on preserving in-stream flows, we've been successful in maintaining a high quality recreational experience throughout Montana. We do this in many ways, such as reducing irrigation outflows, lowering feeder lake levels, monitoring headgates, reducing unnecessary well permits, cutting fishing hours, adjusting catch limits and especially obtaining great cooperation from both residents and visitors alike.

But one thing we concentrate on is maintaining water in the streams at all times. To allow a river to go dry, when the largest lake in volume of water in

the country supplies the flow, is incomprehensible. Keep the water flowing year round, at any cfs level. Don't let ALL the fish die, along with the insect and plant life. To drive along Highway 89 for thirteen miles, along what was once a sparkling stream and see it in its present state is tragic. Please keep the Truckee alive!

Paul Stanley  
 77777 Gallatin Rd  
 Bozeman, MT 59718

01



## Comment IND 10

John L. Winther

12 El Sereno  
Orinda, CA 94563

December 7, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701

Dear Mr. Parr:

Re: Truckee River Operating Agreement - Aquatic Habitat and Recreational Values

The Bureau of Reclamation and the California Department of Water Resources are considering possible revisions to the operating agreement for the Truckee River. The water agencies are dealing with what is functionally an overappropriated watershed and the usual conflicting demands between water users who have an obvious interest in diverting water from the river and others who are interested in the instream values of that same resource.

The water users, as usual, have a large and very focused economic interest in the outcome of your effort. Those of us who view the Truckee River as an invaluable asset for its instream aquatic resource share a common objective, but lack an organized common voice.

It is important, as you contemplate the tradeoffs in values of these competing interests, that you take into consideration the irreversible adverse effects associated with excessively low river flow rates during the late summer and early autumn period. In addition to the obvious lethal effects that low flows and high temperatures have on fish life in the river, those same low-flow and high-temperature impacts also adversely affect the life cycle of aquatic insects and other organisms that enrich the riverine environment.

01

In addition to considering the potential impacts on the Lahontan cutthroat trout, you need to consider the economic impacts of diminished recreational opportunities along the Truckee River, particularly in California where those impact go well beyond the measurement of fishermen days and extend into the values of real estate and commerce associated with the high recreational values available along the Truckee River corridor.

02

## Comment IND 10 – continued

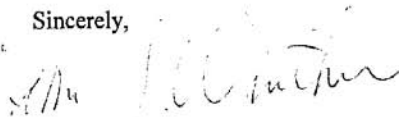
Mr. Kenneth Parr  
December 7, 2004  
Page 2

In my opinion your analysis should take into consideration the water temperature and extent of the wetted river surface during critical times of the year.

03

Thank you for considering these comments.

Sincerely,



John L. Winther

cc: Mr. Michael Cooney, CA Department of Water Resources  
Mr. Richard Anderson, Truckee River Watershed Council

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# Comment IND 11

CHARLES B. RENFREW

710 SANSOME STREET  
SAN FRANCISCO, CA 94111-1704  
TELEPHONE (415) 397-3933  
FAX (415) 397-7188

December 7, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, Nevada 89701

Dear Mr. Parr:

It is my understanding that your responsibilities include the management of the water releases from Lake Tahoe and Donner Lake. I am aware of the many and conflicting claims made for that water which is so vital to that area of the Sierra. In planning your releases, I hope you consider the impact that they have upon the fishery in the Truckee River. I am a recreational fly fisherman engaged in catch and release fishing on that river. During the fall, the releases are so low that the river occasionally goes dry. Survival of the fish and all aquatic life is threatened in these circumstances.

01

While the amount of water stored in Lake Tahoe varies because of factors beyond your control, you do have the ability to control the releases and ensure a more even flow of water. It is essential to maintain the Truckee River fishery.

02

An example of the loss caused by the uneven releases is the adverse affect they have had on the efforts of the U.S. Fish and Wildlife Service to restore the native Lahotan Cutthroat in the Truckee River. They are all surely dead now as well as more of the other trout – browns and rainbows. Coordination with the U.S. Fish and Wildlife Service with respect to water releases could be of benefit to all.

343649.01

## Comment IND 11 – continued

Kenneth Par  
December 7, 2004  
Page 2

I do urge you to give weight to the need of trout for more even water flows. Recreational fishing is more than just a past time, it benefits the economy of the entire Truckee and surrounding areas.

03

Sincerely,



Charles B. Renfrew

CBR/les

RECEIVED DEC 09 2004

343649.01

## Comment IND 12

ROBERT K. BRORSEN  
500 VIRGINIA AVENUE  
SAN MATEO, CA 94402

December 7, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza St. Room 320  
Carson City Nevada 89701.

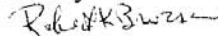
Subject: Recreational Fishing Truckee River Operating Agreement

Dear Mr Parr

My good friend Denny McLeod wrote you in October concerning this subject. I could not improve on his words. I hope you will give matter your support.

01

Sincerely



Robert K. Brorsen

RECEIVED DEC 10 2004

## Comment IND 13



**THE MECHANICS BANK**

A SMARTER WAY TO BANK SINCE 1905.<sup>SM</sup>  
MEMBER FDIC

Steven K. Buster  
President  
Chief Executive Officer

December 8, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza St., Room 320  
Carson City, NV 89701

RE: TRUCKEE RIVER OPERATING AGREEMENT

Dear Mr. Parr:

As an avid fly fisherman who has cast many lines in the Truckee River, I believe it is extremely important that the Bureau of Reclamation consider adopting an "even-flow" practice for the Truckee River Operating Agreement. Restoration, conservation, and classic sport fishing share a fundamental necessity for balanced flows, including during extreme-weather months, to successfully meet their individual goals. Anything short of this equates a wildlife death sentence.

Ecologically sound water management is not a luxury that can be deferred -- it is a practical measure that should be undertaken to preserve the future of sport in the Truckee River.

Thank you for considering well-rounded water flow to maintain and enhance environmental and human livelihoods on the Truckee River.

Sincerely,

RECEIVED DEC 13 2004

3170 Hilltop Mall Road, Richmond, CA 94806-0047

01

## Comment IND 14



December 9, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701

Dear Mr. Parr:

I understand that the management of the water releases from Lake Tahoe and Donner Lake into the Truckee River fall under your jurisdiction.

The Truckee River is an invaluable fishing resource, drawing many vacationers and tourists to the area. I recognize the need for agricultural releases for the Carson Valley. I, however, ask that you give consideration to more stable releases, perhaps of a lesser volume so that the river does not become so low in the fall as to jeopardize the fishery. As you know, when the river gets low, the temperature goes up, making the fish lethargic and more susceptible to predators.

Thank you so much for your consideration of my thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read "James L. Ryan".

James L. Ryan  
Chairman and  
Chief Executive Officer

RECEIVED DEC 13 2004

01



1400 Civic Drive • P.O. Box 8080 • Walnut Creek, CA 94596-8080  
(925) 932-5353 • www.bowc.com

## Comment IND 15



**Orinda Pacific Investment Co., Inc.**

INVESTMENT MANAGEMENT CONSULTING

ERNEST C. VOIGT  
PRESIDENT

December 13, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701

Subject: Recreational Fishing – Truckee River Operating Agreement

Dear Mr. Parr,

The key to best management practices for the Truckee River, from Lake Tahoe to the Boca / Stampede outlet, is entirely in the hands of the Federal Water Master.

I am one of thousands of fly fishermen who enjoy catch and release recreational fishing on the Truckee River. The Federal Water Master typically releases high flows of water from the Lake Tahoe reservoir (300 to 400 cu. ft. / second) during summer months and lets the river go **dry** sometime in September or October. This practice is a disaster for the fish and all aquatic organisms. The amount of “stored” water in Lake Tahoe varies year-to-year, but its release can be and should be a **more even flow**.

For example, this year the thousands of Lahontan cutthroat trout that the U.S. Fish and Wildlife Service put into the upper section of the river (between Truckee and Lake Tahoe), are surely **all dead**, as are most all of the native trout.

Best management practices on the Truckee **must** recognize the sensitivity of aquatic life. This means a **more even flow** of water releases from Lake Tahoe and Donner Lake. I urge you to use good judgment, along with the DWR and other agencies, to truly enhance year long stream flows that are beneficial to fish life and recreational fishing.

Thank you.

Sincerely,

Ernest C. Voigt

Copy by e-mail: [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov)

RECEIVED DEC 15 2004



## Comment IND 16

**From:** John Snyder <cj5snyder@comcast.net>  
**To:** <kparr@mp.usbr.gov>  
**Date:** 12/18/04 1:34PM  
**Subject:** Recreational Fishing-Truckee River

Dear Mr. Parr, In a year with limited water for the Truckee, it has been allowed to fall to historically low levels. This has a devastating effect on the biomass of the river, killing aquatic insects as well as fish. For recreational fishers who practice catch and release fishing, as well as all others who enjoy recreation on the Truckee river, this uneven flow from month to month and year to year is quite harmful to fish life and the recreational fishers who enjoy fishing on the Truckee. I urge you to use good judgement along with the DWR and other agencies, to truly enhance year long stream flows that are beneficial to fish life and recreational fishing. Thank you sincerely, John Snyder

## Comment IND 17

# Potlatch

**Richard B Madden**  
Retired Chairman and  
Chief Executive Officer

**Potlatch Corporation**

100 Larkspur Landing Circle, Suite 210  
Larkspur, California 94939  
Telephone (415) 461-0683  
Fax (415) 461-0684

December 23, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, NV 89701

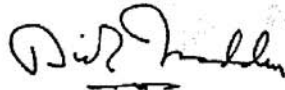
Dear Mr. Parr:

Probably the last letter you need to receive at this holiday season is one more from a very concerned constituent relative to catch and release recreational fishing on the Truckee River. However, I have fished this great river for decades and have become truly concerned about the disaster that is happening to all fish and aquatic organisms on this river. The river, if you can believe it, is actually allowed to go dry sometime in September or October.

I recognize you have many constituencies to please, but I hope that it does not mean that you will forget the thousands of us who so dearly enjoy fishing this beautiful river. The issue, as I am sure you have heard many times, from a fish and aquatic life perspective is simply the issue of recognizing that a more even flow of water release from Lake Tahoe and Donner Lake must occur if we are not to lose the fish and aquatic life in this treasured stream.

I hope you can be of some help on this so that the fish and aquatic life in the Truckee are not forgotten in the inevitable political pressure on you.

Sincerely yours,



Richard B. Madden

01

## Comment IND 18

**From:** David Yardas <dyardas@pacbell.net>  
**To:** <kparr@mp.usbr.gov>  
**Date:** 12/23/04 1:03PM  
**Subject:** TROA DEIS & Truckee River hydros

Dear Mr. Parr,

I understand that the public comment period for the revised draft DEIS/EIR for TROA was recently extended to 12/30 -- to that end, I am concerned about potential over-valuation of the Truckee River hydros owned and/or operated by TMWA/SPPC so I've perused your August 2004 CD for hydro generation summaries and detailed simulation model results but thus far haven't been able to find much that helps

I'm also looking for any discussion or analysis re. the scope & timing of forthcoming storage utilization and hydro waiver compensation payment negotiations, including whether the above modeling results (and/or the key assumptions that drive them) will be used for negotiating purposes and whether there's a chance that future operations could vary in response to the prices and terms negotiated therethru (this seems likely to me, but at a minimum needs to be addressed)

in any case, the best actual information I've seen (from FERC Form 1 data 1988-99) suggests that annual output from the above hydro units averaged 29.1 to 36.3 GWh/year during this period depending on whether the Farad power plant was included (or not) in annual generation summaries -- if TROA simulation results suggest something substantially different from these annual averages (do they?) it will be important to understand why AND to make appropriate adjustments as part of the final EIS

and in the meantime, can you please direct me to the appropriate CD location (or other sources) for detailed simulation model results??

thank you very much,

David Yardas  
Truckee, CA  
dyardas@pacbell.net  
(530) 582-9585 office

01

## Comment IND 19

Via Email  
[kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov) and [mikec@water.ca.gov](mailto:mikec@water.ca.gov)

111 Sandringham Road  
Piedmont, CA 94611

December 30, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
705 North Plaza Street, Room 320  
Carson City, Nevada 89701

Mr. Michael Cooney  
DWR, Central District  
3251 S. Street  
Sacramento, CA 95816

Re: Truckee River Operating Agreement

Dear Messrs. Parr and Cooney:

My wife and I own a residence at Northstar and have followed key planning issues in the Truckee Watershed for the past several years and have some concerns which relate to selected issues which the revised Truckee River Operating Agreement (TROA) is designed to address. We appreciate the opportunity to provide comments on TROA. The draft agreement appears to provide a solution to a number of current water issues. This comment letter briefly discusses some topics which may frustrate the intent of the draft TROA to protect the rights of signatories. As a partial remedy, the letter suggests the signatories agree to implement comprehensive monitoring of actual water usage.

01

### **Expanded Residential Uses of Water**

The projected population growth in the greater Truckee Region (i.e., the area adjacent to the Truckee as it flows from Lake Tahoe to near the California-Nevada state line) may significantly reduce the volume of water flowing in the Truckee as it leaves The Town of Truckee. In recent years there has been a significant expansion of residential, including resort residential, dwelling units in Squaw Valley. This growth has outstripped projected local water supplies and has led to an interruption for selected development projects in Squaw Valley. Growth and development pressures prompted The Town of Truckee to recently revisit and expand its authorized residential development. In December 2003 Placer County approved a massive expansion (almost 7,000 additional dwelling units) for the Martis Valley. The approval of the Martis Valley Community Plan has been challenged in Superior Court on environmental law and state planning law grounds.

## Comment IND 19 – continued

### **Expanded Recreational Uses of Water**

In addition to the growth in water demands associated with the increase in dwelling units noted above, recent experience and the General Plans discussed above point to a dramatic increase in water usage for recreation purposes. In recent years the ski resorts in the Truckee River watershed have installed significant new snowmaking capacity and have announced and filed plans for further increases. Current and projected golf courses are another significant recreation use. The Town of Truckee has recently approved two new golf courses. Placer County has approved additional golf courses at the Hopkins Ranch project and at the Eaglewood project. Additionally, Placer County has “conceptually” approved 27 holes of golf as part of the Siller Ranch project. Beyond the golf sites named, there are other properties in the Placer County portion of Martis Valley which will likely have residential projects with a golf course component.

### **Assessment of Safe Yield**

As part of the environmental review process for the Martis Valley Community Plan Update (MVCP Update), key water agencies including the Placer County Water Agency and the Northstar Community Services District commissioned a safe yield study of the aquifer. Sadly this study did not deal with many of the important supply and demand issues for water in this region. The study focused on the long term average precipitation and concluded that projected supply exceeded the projected requirement for Truckee River flows mandated by TROA and projected usage based on buildout projections. The study concluded that the level of development projected would “fit” within the TROA constraint. The study failed to adequately evaluate historic and potential future variability in usable precipitation. For example, the study failed to evaluate the potential impact of unseasonable warm spells and rain such as the region experienced in the late 1990s. The comment letters on the MVCP Update provide additional detail on other shortcomings of the “study”.

### **Wells**

The water demands associated with the expanded residential and recreational uses noted above will be met with additional wells. Article Ten of the draft TROA expressly covers the design and approval of wells. It does not appear that this section deals with actual usage. Given the potential increase in water demands in the Truckee Watershed based on the expanded residential and recreational uses previously discussed, the TROA should prudentially require well operators to monitor and report their usage.

02

## Comment IND 19 – continued

**Monitoring**

Policymakers will need the information provided by well data to fairly balance competing future claims should the volume of water actually available in the Truckee River fall short of that required for TROA mandated flows and other uses (e.g., impoundments for selected purposes).

Thank you for your attention to this comment letter.

Sincerely,

David C. Welch

## Comment IND 20

Mervin Wright, Jr.  
P.O. Box 79  
Nixon, NV 89424

December 30, 2004

Mr. Kenneth Parr  
U.S. Department of Interior  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 North Plaza Street  
Carson City, NV 89701

RE: Draft TROA EIS/EIR Comments

Dear Ken:

I am hereby submitting my comments to the Draft Environmental Impact Statement/Environmental Impact Report on the Truckee River Operating Agreement. I understand that the closing date for receiving comments is today. I will base my comments on my reading of the Draft EIS/EIR and with these comments that I be corrected if my perception and understanding may be incorrect.

In summary, my interests are focused on the inflow to Pyramid Lake, storage and management of Stampede water, Pyramid Lake Paiute Tribe's exercise of its Orr Ditch Claims, water quality, and Fish Water with the management and execution of credit water in the Truckee River basin.

Inflow to Pyramid Lake:

In tables 1.0, 2.10, 3.9a, 3.9b, and 3.60 each summary table describes that under the TROA alternative, Pyramid Lake elevations would be higher than that compared to the No Action and LWSA alternatives. Under the TROA alternative it is described that on average Pyramid Lake would receive 9,730 acre-feet. This higher flow, according to Table 3.63, is due to the conversion of M&I Credit Water to Fish Credit Water. It reads that TROA provides 500,670 acre-feet based on this assumption. One must assume that the Pyramid Lake Paiute Tribe will utilize Fish Credit Water more likely than anyone utilizing any other credit water affected by the Fish Credit usage.

In Table 3.9b the comparison with the summary of effects on Truckee River flow shows that Truckee River flows at Nixon are the same for TROA alternative and the No Action alternative for dry hydrologic conditions. The Truckee River basin is located in an arid climate and it can be assumed that high water years can easily offset dry conditions and lead people to believe that "on average" water elevation in Pyramid Lake will be higher. One high water year can offset 7 to 9 years of dry conditions. If the assumption declares that the exercise of Fish Credit Water will be greater than the exercise of M&I Credit Water, it should be stated more clearly. This declaration will

01

## Comment IND 20 – continued

Kenneth Parr  
December 30, 2004

2

upset the balance of the Truckee Meadows community and the Pyramid Lake Paiute Tribe is this assumption is true. It would benefit Pyramid Lake more than it would benefit the accumulation of the M&I supply.

In addition, TROA is not intended to create additional water since the Truckee River is entirely adjudicated. To believe that 9,730 acre-feet compared with the 500,670 acre-feet is realistic, can arguably make the table statements true. The model is correct in its assumption that Fish Credit Water will occur more often, but how often before it upsets that likelihood that M&I Credit Water will not be exercised.

### Storage and Management of Stampede Water:

It is true that the Pyramid Lake Paiute Tribe won the use of Stampede Reservoir for the recovery of the threatened and endangered species in Pyramid Lake. It is also true that the Preliminary Settlement Agreement set the stage for further compromise in TROA regarding the storage and utilization of Stampede Reservoir water and storage space.

The EIS/EIR states that 126,000 acre-feet will be declared Stampede Project Water while the remaining balance (100,500 acre-feet) will be declared Fish Credit Water. The Stampede Project Water is a firm supply, while the Fish Credit Water is not. This means that the amount of unsecured water for the recovery of threatened and endangered species is greater than the amount of water that is firm. It could lead managers of the respective parties to issue that the use of water for Pyramid Lake fishes should not be used if the water is securely applied for release. Furthermore, if Fish Water equal to Project Water, the Fish Water is stated as being tangled (“numerous interactions”) with the management of credit waters.

Fish Credit Water will be designated as that water which can be converted to M&I Credit Water under given natural conditions. The EIS/EIR further states that Fish Water will be converted to credit water while in storage in Stampede Reservoir. The manner in which Stampede Reservoir is discussed shows that there is likelihood that there will be more unsecured non-firm water supplies in Stampede versus the current condition. It is acknowledged under current conditions some of the water will eventually flow to meet Newlands water rights. It appears that there will be less secured firm water for Pyramid Lake fishes under the management assumptions that produced the results for the EIS/EIR.

02

### Pyramid Lake Orr Ditch Claims:

Under the EIS/EIR assumption it shows that the Pyramid Lake Paiute Tribe will exercise 16,380 acre-feet under its Orr Ditch Decree claims #1 and #2. This model result does not reflect a total usage of the Orr Ditch claims as the Pyramid Lake Paiute Tribe is currently doing so to instream flows. The EIS/EIR gives an impression that the Pyramid Lake Paiute Tribe will be limited to 16,380 acre-feet. If this assumption is true the Pyramid Lake Paiute Tribe should be made aware of the authority that will conduct such limitation. If this assumption is built to reflect a model run result, it should be done in a manner where the Pyramid Lake Paiute Tribe is a total usage rather than a limited usage.

03

### Water Quality:



## Comment IND 20 – continued

Kenneth Parr  
December 30, 2004

3

Under the water quality section, the EIS/EIR reports that it used averages to come up with its assumptions for addressing water quality. In the instance of wet hydrologic conditions, Pyramid Lake can experience higher loading because of additional volumes makes it obvious that there will higher loadings of water quality constituents. It shows that with TROA, the same violations can occur for Dissolved Oxygen and Temperature standards. In summary the results show that with respective water levels, low median or high, the loadings will be attributed to the level of flow.

04

The section covering Total Daily Maximum Load (TMDL) does nothing more to offer suggestive language rather than applying the constituent requirement specific to the effect of water supplies available. The model run results do not appear to be inclusive of the TMDL requirements for water quality standards. It does specify the matter of the violation, but does not indicate that TMDL limits either with violate or achieve compliance with or without the TROA alternative. The TROA alternative expresses the increase of flows to improve timing to achieve a more “natural” scheme of water management, but without an appropriate application of TMDL analysis, no one will know if TROA is complimentary or adversarial to water quality in the Truckee River.

05

### Fish Water and Credit Water:

It is not clear that Fish Water will not be converted in part or in whole into credit water. The EIS/EIR does indicate that Fish Water will be eligible for conversion into credit water. Fish Water, at least as far as my knowledge can recollect, is intended to be a firm supply. By seeing that it will be subject to conversion, it will likely reduce it as a supply for spawning and rather place into the category to be manipulated to be used as a non-firm supply. It is understood that Fish Credit Water may or may not be converted to M&I Credit Water, but under the EIS/EIR it gives the impression that M&I Firm and M&I Non-Firm Credit water holds the precedent over Fish Credit Water and potentially Fish Water.

06

The EIS/EIR does not indicate how often any conversion will take place, but it does display the likelihoods of M&I Credit Water obtaining water supply through conversions. The storage volume in Stampede is not firm in accordance with the Carson-Truckee Water Conservation District v. Watt, 1982. It is, however, indicative that about ½ of the Stampede Reservoir volume will be subject to be a non-firm supply. In realizing that Stampede Reservoir is at the center of making TROA work effectively, all the pressure appears to be focused on the ability to capture and store non-firm water in Stampede Reservoir.

The impression based on the model results is that the assumptions used may have resulted in the EIS/EIR having Fish Water vulnerable to conversion to credit water. Credit water also is a concept that is not real in terms of physical water that can be used, but rather an accounting term that will shift on a spreadsheet. Credit water is comparable to a credit card; it’s like money but its not and some one has to pay the balance in the end. Credit water is like water, but it’s not and some one will be debited in the end. M&I demands are real, while credit water is created from existing water belonging to a different purpose. M&I supplies will be firmed up by converting credit water into M&I

## Comment IND 20 – continued

Kenneth Parr  
December 30, 2004

4

Credit. There is no way that an M&I supply can be diminished after it is dedicated and confirmed for its use. Credit water in the aspect of M&I supply, will create firm supplies of M&I supply, while at the expense of Fish Credit Water and Fish Water.

06

If you have any questions, please contact me. Thank you for your time and consideration,

Sincerely,

Mervin Wright, Jr.  
Tribal Member  
Pyramid Lake Paiute Tribe

/mw

cc: file

## Comment IND 21

**From:** Peter Towle <ptowle@totality.com>  
**To:** "'kparr@mp.usbr.gov'" <kparr@mp.usbr.gov>  
**Date:** 12/31/04 3:41PM  
**Subject:** TROA

December 30, 2004

Kenneth Parr  
Bureau of Reclamation  
705 North Plaza St. Room 320  
Carson City, NV 89701

Subject: Truckee River Operating Agreement

Dear Mr. Parr,

I am writing to voice my point of view regarding river flows on the Truckee River. I am a long time (>30 years), Lake Tahoe Basin catch and release angler. I have observed that the Federal Water Master Typically releases high flows of water from Lake Tahoe during the summer months and subsequently lets the river go dry in September/October time frame. I am sure that I am not the only "amateur" aquatic biologist that has voiced his/her concern that this practice is an absolute disaster for the aquatic organisms that inhabit the upper reaches of the Truckee River.

When considering best management practices for the Truckee River, we must recognize the sensitivity of aquatic life. This requires a more even flow of water release from Lake Tahoe and Donner Lakes. I urge you, along with the DWR and other agencies, to truly enhance year-long stream flows that are beneficial to aquatic organisms as well as recreational fishing. Thank you.

Sincerely,

Peter R. Towle  
227 Reed Blvd.  
Mill Valley, CA 94941

01

# Comment IND 22

## Comment Sheet for TROA Revised DEIS/EIR

The Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) was released on August 25, 2004.

As part of the public review process, written comments are due to the Bureau of Reclamation by close of business on Friday, October 29, 2004. All comments will become part of the public record.

(Please print clearly)

Name RICHARD ANDERSON

Organization and Address CALIFORNIA FLY FISHER MAGAZINE  
PO Box 8535, TRUCKEE CA 96162

Phone (320) 587-870 FAX ( ) \_\_\_\_\_ E-mail calflyfisher@sbcglobal.com

If you'd like, you may use this form to provide your comments:

I WOULD LIKE TO REQUEST AN EXTENSION OF THE  
OCT 29 DEADLINE FOR COMMENTS. THE DEIS/EIR  
IS EXTREMELY LENGTHY AND COMPLEX, AND THE  
ANGLING COMMUNITY NEEDS TIME TO EXAMINE  
THE DATA/CONCLUSIONS AND GATHER EXISTING  
DATA SETS FOR COMPARATIVE PURPOSES.

01

- Attach additional sheets if necessary -

Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or e-mail your comments to [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov). Thank you.



## Comment PH 01

BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR

-o0o-

TRUCKEE RIVER OPERATING AGREEMENT  
REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL  
IMPACT REPORT

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

Monday, October 18, 2004  
Department of Water Resources  
4930 Energy Way  
Reno, Nevada

COPY

Reported by: DENISE PHIPPS, CCR #234, RDR, CRR

Captions Unlimited of Nevada, Inc. 775-746-3534

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## Comment PH 01 – continued

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A P P E A R A N C E S

HEARING OFFICER: JEFF McCracken

AREA MANAGER: BETSY RIEKE

## Comment PH 01 – continued

1 RENO, NEVADA, MONDAY, OCTOBER 18, 2004, 7:10 P.M.

2 -o0o-

3

4 HEARING OFFICER McCracken: Ladies and gentlemen,  
5 we'd like to get started.

6 Do I need a microphone anymore or can you all  
7 hear me? Can you hear me in the back? You need to speak  
8 up. Probably need to have all the background noise down  
9 so you can speak up.

10 As soon as it's down, can you all hear me now?  
11 Okay.

12 Thank you. Good evening. My name is Jeff  
13 McCracken. I'm the Public Affairs Officer from the Bureau  
14 of Reclamation Mid-Pacific Region in Sacramento. On  
15 behalf of the California Department of Water Resources and  
16 Department of Interior, represented by the Bureau of  
17 Indian Affairs, the Fish and Wildlife Service and  
18 Reclamation, I'd like to welcome you to this public  
19 hearing on the Truckee River Operating Agreement Revised  
20 Draft Impact Statement/Environmental Impact Report. I  
21 will be serving as your hearing officer.

22 At the table with me is Betsy Rieke. Betsy is  
23 the Area Manager for Reclamation's Lahontan Basin area  
24 office in Carson City.

Captions Unlimited of Nevada, Inc. 775-746-3534

3

## Comment PH 01 – continued

1           This hearing is being held in accordance with the  
2 requirements of the National Environmental Policy Act and  
3 the California Environmental Quality Act. A court  
4 reporter is recording all of the proceedings this evening,  
5 and at this hearing we'll be accepting both verbal and  
6 written comments on the Revised Draft EIS/EIR.

7           If you would like to provide verbal comments, you  
8 should have completed and turned in a speaker's card such  
9 as this. And if you want to make verbal comments but have  
10 not done so yet, you can get a card from Louis or Kenneth  
11 back at the registration booth.

12           You may also submit your comments, written  
13 comments, today by filling out a comment sheet. It's also  
14 available at the registration table. I'll steal Betsy's.  
15 That's what this looks like.

16           If you're speaking from your written comments and  
17 you would like to submit them to us, please fill out the  
18 top portion of the comment sheet, attach your comments and  
19 place them in the basket over at the registration table.  
20 That would help us. And please do that before you leave.

21           Please understand that written and verbal  
22 comments are going to receive equal consideration.  
23 Written comments can be submitted at this hearing or to  
24 the address, fax or e-mail that's indicated on the comment



**Comment PH 01** – continued

1 sheet. While the current deadline for submitting your  
2 comments is October the 29th, we anticipate that the  
3 Department of Interior and the State of California will  
4 soon approve an extension to December the 30th of 2004.

5 I would like to take a moment quickly to explain  
6 what's going to happen after the close of the comment  
7 period. The Department of the Interior, basically the  
8 Secretary of the Interior, and the California Department  
9 of Water Resources will review and prepare responses to  
10 all of the comments that we receive. A final EIS and EIR  
11 will be prepared, and it will include responses to all of  
12 the comments.

13 Ultimately, a Record of Decision will be prepared  
14 by the Department of Interior and a Notice of  
15 Determination will be prepared by the State of California.

16 Tonight's hearing is going to proceed in the  
17 following manner: I'm going to call speakers to the  
18 microphone, which is up front, in front of us here in the  
19 order that you signed up. If I call your name and you're  
20 not present, I'm going to move you to the back, but I  
21 think everybody who signed up I can see is here.

22 Each speaker will have about ten minutes to  
23 speak. That should give us sufficient time. If you need  
24 more time, we'll make a judgment at that point. If you

## Comment PH 01 – continued

1 have extensive comments, we do ask that you please submit  
2 them in writing.

3 When it is your turn to speak, please clearly  
4 state your name and your affiliation, if any, and spell  
5 your first and last names.

6 Please remember that these are formal hearings,  
7 and the court reporter is recording all of your comments.

8 It's important that you speak clearly so your  
9 comments can be captured accurately. I'll also be the  
10 time keeper, and, if necessary, I'll indicate when you  
11 have about a minute left or when your time is up. You do  
12 not have to speak for ten minutes, by the way.

13 So, again, if you have not done so, you'd like to  
14 register to speak, please go over and you can sign up. So  
15 with that, I think we're ready to begin. I'm going to go  
16 ahead and call the first speaker. It's Bob Cashell from  
17 the City of Reno. Mr. Cashell will be followed by Tony  
18 Armstrong from Sparks.

19 MR. CASHELL: Thank you very much, Mr. McCracken.  
20 Ms. Rieke, thank you for being here. For the record, my  
21 name is Robert Cashell, R-o-b-e-r-t C-a-s-h-e-l-l. And  
22 I'm the mayor of the City of Reno. And my address is 1  
23 East First Street, 15th Floor, Reno, Nevada 89501.

24 Not everyone on our council can remember a time

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**Comment PH 01** – continued

1 when our efforts to improve our water supply were met with  
2 frustrating and expensive legal battles. But I can. Some  
3 may remember when 17,000 of our residents were sued  
4 individually by the tribe and the U.S., or when expansion  
5 of the TMWARF waste treatment plant was held in limbo by  
6 litigation. Our local governments were quickly running  
7 out of ways to assure drought supplies. Our conservation  
8 efforts were provided no benefits as water flowed  
9 downstream to other users and our waste water treatment  
10 plants were on the edge of not meeting demand. We were in  
11 gridlock, and efforts at negotiations were continuously  
12 falling apart.

13 I, like most other business people, followed the  
14 Truckee River settlement and were pleased to see it  
15 finally pass through Congress and signed in law by  
16 President Bush. We appreciate the efforts of Senator  
17 Harry Reid, Congresswoman Barbara Vucanovich in ensuring  
18 that our local water problems were on the road to  
19 resolution.

20 As the mayor of the City of Reno and a member of  
21 the Truckee Meadows Water Authority Board, I spent many  
22 hours meeting with water experts and attending workshops  
23 about the changes that TROA will bring. And I personally  
24 support the completion of the long process that's been

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## Comment PH 01 – continued

1     undertaken.

2             The Draft TROA EIS and EIR goes a long way to  
3 complete that approval process. I urge you to finalize  
4 the EIS and the EIR process as quickly as possible.

5             I haven't read the entire TROA EIS or EIR, but  
6 the summary confirms what I always believed: That with  
7 small changes in operations we can provide large benefits  
8 to the parties around the table. The Truckee Meadows can  
9 back up its water supplies with drought supplies for new  
10 and existing customers. The interstate allocation of  
11 water is extremely important to assurance of our community  
12 water supply. Water quality on the Truckee River could be  
13 improved by completing the purchases promised by the Water  
14 Quality Settlement Agreement and by storing the water  
15 until needed. The endangered species can be conserved  
16 through storage of water, permitted for the purposes and  
17 releasing the water for the spring spawning runs.

18             There are also benefits to the fishery and the  
19 recreation in California. The Draft EIS and EIR is an  
20 impressive document with a great deal of data to back up  
21 its conclusions. The U.S. and the California have done an  
22 excellent job of simplifying complex information.

23             I commend you for your efforts to date and again  
24 urge completion of this process as quickly as possible.

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## Comment PH 01 – continued

1           And I thank you all very much for letting me  
2 participate. Thank you.

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3           HEARING OFFICER McCracken: Thank you,  
4 Mr. Cashell. Next speaker is Tony Armstrong. He'll be  
5 followed by Jim Shaw.

6           MR. ARMSTRONG: You said 15 minutes, is that what  
7 you said? You know, before I get started I wanted to  
8 recognize a lot of people in this room on both sides that  
9 were involved in the TROA agreement that are here tonight  
10 who spent a lot of hours, a lot of time, not paid time, to  
11 spend going to these meetings and learning all sorts of  
12 things that we eventually made a lot of progress with in  
13 terms of the TROA agreement.

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14           So with that, I've just got a few comments. For  
15 the record, again, my name is Tony Armstrong. It's  
16 T-o-n-y A-r-m-s-t-r-o-n-g. And unlike my counterpart in  
17 Reno, I could say that without looking down here. I love  
18 this guy. He's a great guy.

19           (Laughter)

20           I'm the mayor of the City of Sparks and Chairman  
21 of the Truckee Meadows Water Authority board of directors.  
22 My address is 431 Prater Way, Sparks, Nevada, 89431. We  
23 at the City of Sparks could not be more pleased to finally  
24 see the Draft TROA EIS/EIR moving forward to completion.

## Comment PH 01 – continued

1 We are presently in our fifth year of drought in Truckee  
2 Meadows, and this is the year we have had to draw on water  
3 drought reserves.

4 As you can imagine, water supply improvements are  
5 foremost, are of foremost importance to our community.  
6 TROA would give us the tools to manage our way out of  
7 extended droughts. As one of the owners of the Truckee  
8 Meadows Water Reclamation Facility, the City of Sparks is  
9 also very concerned with the water quality of the Truckee  
10 River, our continued ability to meet water standards while  
11 discharging our highly treated effluent to the river.

12 We have accumulated a large stock of water rights  
13 for water quality purposes. But the key to protecting  
14 water quality is to ensure the more efficient use of this  
15 water by storing and releasing those rights at the proper  
16 times. This is accomplished under the TROA in a matter  
17 that protects the water rights of all users by storing  
18 only the portion of those waters, water quality rights  
19 that would have been consumed historically.

20 The Truckee River Operating Agreement provides  
21 key provisions that improve both water quality, water  
22 supply, while providing for spawning flows for the  
23 endangered species in the lower river, providing enhanced  
24 reservoir releases and recreation and resolving interstate

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**Comment PH 01 – continued**

1 allocation of water. The parties around the table know  
2 now that we all benefit by working together.

3 If we aim to serve only our -- let's forget that,  
4 because it wasn't important and I skipped right over it.  
5 I'm not wearing my glasses tonight.

6 The management team has done a great job on the  
7 Draft EIS/EIR with few possible improvements in the final  
8 document. The community was always indebted to our United  
9 States Senator Harry Reid for his relentless and personal  
10 commitment to the completion of the settlement process.  
11 Without our United States Senator Harry Reid we could not  
12 have reached this important milestone to our communities.

13 The Draft EIS/EIR indicates we are near to the  
14 end of an arduous journey. I'm grateful for all the many  
15 hours numerous experts have spent these past years in  
16 developing an agreement, the Draft EIS/EIR and look  
17 forward to seeing a settlement implemented. Thank you  
18 very much for your time, ladies and gentlemen. And I  
19 appreciate you being here.

20 HEARING OFFICER McCracken: Thank you, Mayor  
21 Armstrong.

22 Our next speaker is Jim Shaw. Mr. Shaw will be  
23 followed by Lori Williams.

24 MR. SHAW: Good evening. And thank you for the

01-02-01

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## Comment PH 01 – continued

1 opportunity to present testimony this evening. For the  
2 record, my name is James M. Shaw, J-a-m-e-s, capital M.,  
3 S-h-a-w. I'm the chairman of the Washoe County Board of  
4 Commissioners. My address is 1001 E. Ninth Street, Reno,  
5 Nevada 89512.

6 On behalf of Washoe County, I would like to thank  
7 the Department of the Interior and the State of California  
8 for preparing a Revised Draft TROA Environmental Impact  
9 Statement/Environmental Impact Report. I would also like  
10 to thank Senator Harry Reid for his continued efforts to  
11 make TROA a reality.

12 TROA is an important agreement for the region and  
13 most definitely for this community. It represents a  
14 regional solution to many of our concerns relating to the  
15 Truckee River water supply and quality.

16 Washoe County has formally supported the purpose  
17 of TROA since the passage of Public Law 101-618 in 1990.  
18 In June of 2001, the Truckee Meadows Water Authority,  
19 known as TMWA, acquired the Sierra Pacific Power Company  
20 water supply business and assumed the power company's role  
21 as a major water purveyor in the Reno/Sparks area.

22 Earlier this year, Reno/Sparks and Washoe County  
23 created TMWA as a joint powers authority by agreement of  
24 the three local governments. TROA was an important

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**Comment PH 01** – continued

1 component of the power company's water supply planning,  
2 and as would be expected, it has the same importance to  
3 TMWA.

4 TROA is also an important part of the Regional  
5 Water Management Plan developed by the Regional Water  
6 Planning Commission earlier this year.

7 I am pleased to say Washoe County staff  
8 participated in the development of the Draft TROA since  
9 its inception in 1990 and that numerous changes were made  
10 in the agreement to accommodate our concerns.

11 We were primarily concerned with the water  
12 quality of the Truckee River and the manner in which  
13 wholesale water supplies are addressed by the TROA. We  
14 are pleased that our comments during the negotiation  
15 process were largely incorporated into the agreement and  
16 the result is one that better protects the environment  
17 while providing benefits to the region through increased  
18 storage opportunities.

19 I have been told by Washoe County staff that the  
20 Department of Interior and the State of California have  
21 done an excellent job in preparing the Draft EIS/EIR, and  
22 the document addresses the impacts of the proposed  
23 agreement.

24 Our staff will be submitting some written

01-03-01

## Comment PH 01 – continued

1 comments regarding the presentation of information as well  
2 as some typographical errors.

3 Finally, we urge you to complete the final  
4 EIS/EIR in a timely and defensible manner so that it can  
5 move forward to implementation for the benefit of the  
6 public and the environment of our region.

7 Thank you very much for your attention and your  
8 time.

9 HEARING OFFICER MCCRACKEN: Thank you,  
10 Commissioner Shaw.

11 Next speaker is Lori Williams. She'll be  
12 followed by Alan Biaggi.

13 MS. WILLIAMS: Thank you very much. For the  
14 record, my name is Lori L. Williams. I'm the general  
15 manager of the Truckee Meadows Water Authority. My  
16 address is 1155 Corporate Boulevard, Reno, Nevada 89502.  
17 The spelling of my first name is L-o-r-i, L. Williams,  
18 W-i-l-l-i-a-m-s.

19 First of all, I'd like to thank everybody who has  
20 worked on this for so many years. In particular, I'd like  
21 to recognize Senator Reid for starting us off on the right  
22 foot with Public Law 101-618, and I'd like to thank the  
23 Truckee Meadows Water Authority team led by Sue Oldham,  
24 who has been in this process before the law was passed and

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14

**Comment PH 01** – continued

1 all the folks who have helped her along from our team at  
2 Sierra Pacific and then moving over to the water  
3 authority.

4 I'd also like to recognize the efforts of the  
5 U.S., the states of Nevada and California and our  
6 partners, the Pyramid Lake Paiute Tribe, who, without all  
7 of them, it could not be possible.

8 We have worked very hard over the years to  
9 negotiate the Truckee River Operating Agreement, and  
10 that's been going on since 1989. We have spent years of  
11 staff time in untold resources on this effort with our  
12 sights set on completing this project which provides,  
13 among other benefits, enhanced drought storage for the  
14 residents of the Truckee Meadows. This is an important  
15 agreement and well worth the effort. It is a complex  
16 agreement founded on very simple principles of storing  
17 water in existing reservoirs when space is available for  
18 retiming releases of those waters in times when it is  
19 needed by its owners.

20 The agreement utilizes the change processes  
21 available to the states of Nevada and California to move  
22 existing water rights to storage, assuring that the rights  
23 of both parties and non-parties to the agreement are  
24 protected.

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## Comment PH 01 – continued

01-04-01

1           In many river systems, exchanges such as these  
2 that would be contemplated by TROA would be implemented as  
3 a routine matter. But on the Truckee River system, a  
4 series of hurdles need to be overcome in order to  
5 accomplish this agreement and the benefit that it brings.

6           We have court decrees to amend, endangered  
7 species issues to negotiate, issues of interstate  
8 allocation of water, minimum reservoir releases,  
9 recreational pools and essentially every conceivable issue  
10 of consequence on a river system.

11           The agreement is complex because the new  
12 operation is added to a complex set of agreements and  
13 decrees associated with the existing operations. The  
14 complexity was necessary to protect the water rights of  
15 all users on the river system.

16           The TROA EIS/EIR management team has done an  
17 excellent job of simplifying the understanding of this  
18 agreement and studying its impact. We realize that it  
19 would be impossible to model all of the possible uses of  
20 the flexibility in this agreement, but the team has done  
21 an excellent job in evaluating the critical opportunities.

22           TMWA staff is pleased with the overall quality of  
23 this draft document. TMWA staff has a few suggestions for  
4 improvements that will be incorporated into the final

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**Comment PH 01** – continued

1 EIS/EIR, and we'll submit those comments in writing prior  
2 to the close of the comment period.

3 We have relied upon the modeling associated with  
4 the Truckee River Operating Agreement model for our  
5 planning purposes for many years. And we feel comfortable  
6 with the methods of analysis used in the document. All of  
7 the major parties on the river system, even those who may  
8 take opposing sides on issues, have used this model from  
9 time to time, which speaks to the quality of the model.

10 TMWA's resource planning efforts have used this  
11 model to identify the yield of various resource options.  
12 We and other river users have used the model to evaluate  
13 the impacts of operational changes to evaluate water  
14 supply options and to support legal positions. In short,  
15 the method of analysis has become a well-accepted and  
16 often-used manner of comparing changes in operation on the  
17 Truckee River.

18 In closing, I would just like to reiterate our  
19 support for the Truckee River Operating Agreement and the  
20 opportunities it provides to benefit users of the river  
21 system.

22 Thank you very much.

23 HEARING OFFICER McCRACKEN: Thank you,  
24 Ms. Williams.

01-04-01

## Comment PH 01 – continued

1                   Our next speaker is Alan Biaggi, followed by  
2 Penny Mayer.

3                   MR. BIAGGI: I'm Alan Biaggi, A-l-a-n  
4 B-i-a-g-g-i. I'm the Director of the Department of  
5 Conservation and Natural Resources. My address is 123  
6 West Nye Lane, Carson City, Nevada.

7                   The Truckee River Operating Agreement alternative  
8 as outlined in the DEIS/EIR is the culmination of  
9 thousands of hours of active participation by  
10 representatives from the Department of Conservation and  
11 Natural Resources. Those representatives strive to and I  
12 believe achieve the goal of representing all of the  
13 impacted citizens of Nevada in the negotiations. This  
14 included not only the urban centers but also our rural  
15 communities, industry and agricultural communities.

16                   We take pride in our involvement in the process  
17 and the representation of all the diverse interests in the  
18 region.

19                   As the director of the department, I am pleased  
20 to support this preferred alternative as outlined in the  
21 DEIS/EIR. As we're all aware, most of the run-off in the  
22 Truckee River Basin originates in the Sierra Nevada  
23 mountain range in California. Most of the water use,  
24 however, occurs in Nevada. A number of court decrees,

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**Comment PH 01** – continued

1 | agreements and regulations govern the day-to-day  
2 | operations of the upstream reservoirs and subsequently the  
3 | water rights associated with that storage downstream here  
4 | in Nevada.

5 |           From day one in the negotiations, it was Nevada's  
6 | resolve that whatever alternative was selected, protecting  
7 | existing water rights had to be the foundation. Not only  
8 | does the TROA alternative accomplish this goal, but it  
9 | also increases the operational flexibility and efficiency  
10 | of certain reservoirs in the Lake Tahoe and Truckee River  
11 | basins. It provides additional opportunities to store  
12 | water in existing reservoirs for future M&I demands during  
13 | periods of drought in the Truckee Meadows. It enhances  
14 | fish spawning flows in the lower Truckee River for the  
15 | benefit of Pyramid Lake fish. It increases recreational  
16 | opportunities in the federal reservoirs, and improves  
17 | stream flows and fish habitat throughout the Truckee River  
18 | basin. And, finally, it improves water quality in the  
19 | Truckee River.

20 |           With that said, we do have two minor comments  
21 | concerning the DEIS/EIR. First, water right applications  
22 | must be filed with and approved by the Division of Water  
23 | Resources in order to transfer water rights here in Nevada  
24 | for storage in the upstream reservoirs in California and

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## Comment PH 01 – continued

1 subsequent use in Nevada. This is understood by all  
2 signatory parties as a necessary step.

3 Second, although the department has been involved  
4 with TROA since 1991, even with the most comprehensive  
5 review and analysis of the subject, it is possible  
6 something could be missed. The state would like to  
7 reserve the right to have the opportunity to comment on  
8 any unforeseen issues that may be identified during this  
9 DEIS review process by the other parties. And to this end  
10 I appreciate the extension of the comment period.

11 It is understood that before TROA is entered into  
12 effect it must be promulgated as a federal regulation and  
13 published in the Federal Register and submitted to the Orr  
14 Ditch court and the Truckee River General Electric court  
15 for approval of any necessary modifications to the decrees  
16 in those courts.

17 Finally, in closing, I'd like to thank all the  
18 people involved in negotiating TROA. It was a truly  
19 collaborative project involving numerous federal and state  
20 local agencies as well as the general public.

21 Thank you.

22 HEARING OFFICER McCracken: Thank you,  
23 Mr. Biaggi.

24 Next speaker is Penny Mayer. She'll be followed

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**Comment PH 01** – continued

1 by John Breternitz.

2 MS. MAYER: Good evening. My name is Penny  
3 Mayer, P-e-n-n-y M-a-y-e-r. And I represent the  
4 Reno/Sparks Association of Realtors, an organization of  
5 over 2,000 members. The address for the association is  
6 5650 Riggins, R-i-g-g-i-n-s, Court, Reno, Nevada 89502.

7 The members of the Reno/Sparks Association of  
8 Realtors live and work in the Truckee River watershed and  
9 are very supportive of the implementation of the Truckee  
10 River Operating Agreement.

11 We recognize we live in a wonderful area and are  
12 grateful for the fact that we enjoy a high quality of  
13 life. The TROA is essential to continuing and improving  
14 that quality of life through better management of our  
15 surface water resources. The most important aspect of  
16 TROA is that it will enhance drought storage for the  
17 Truckee Meadows. In a drought situation, a water right is  
18 only as good as the amount of drought storage that exists.

19 TROA will improve our ability to store water for  
20 a drought, enhancing our community's ability to withstand  
21 a drought. That definitely will improve our quality of  
22 life. We also believe that it is important that TROA will  
23 improve Pyramid Lake and stream fish habitat and  
24 recreation opportunities which will improve the region's

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## Comment PH 01 – continued

1 environment and quality of life.

2 TROA is a smart way to operate the river. The  
3 loss of some hydroelectric power generation is a very  
4 small price to pay for firming up the future water supply  
5 for the Reno/Sparks area and improving the Pyramid Lake  
6 fishery, while ensuring that existing water rights are  
7 served.

8 The allocation of Truckee River water between  
9 Nevada and California in TROA is also important to our  
10 region. In the future, as more demands are placed on the  
11 Truckee's resources, it will become increasingly important  
12 to have a firm allocation of that water.

13 In conclusion, the current operation of the  
14 Truckee River is obsolete in today's environment. The  
15 TROA will operate the Truckee in a manner that meets the  
16 needs of today and tomorrow, improving the environment and  
17 quality of life for our region. It is critically  
18 important that it be adopted.

19 Thank you.

20 HEARING OFFICER McCracken: Thank you, Ms. Mayer.

21 Our next speaker is John Breternitz. He'll be  
22 followed by our final speaker, who has signed up so far,  
23 Harry York.

24 MR. BRETERNITZ: Good evening. My name is John

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01-07-01

**Comment PH 01** – continued

1 Breternitz. I'm here tonight as chairman of the board of  
2 directors of the Reno/Sparks Chamber of Commerce. For the  
3 record, the spelling is J-o-h-n B-r-e-t-e-r-n-i-t-z. And  
4 I live at 2555 Spinnaker Drive, Reno, Nevada 89509.

5 Because water and air do not recognize political  
6 boundaries, the Reno/Sparks Chamber of Commerce has and  
7 will continue to support regional planning for water, air  
8 and flood control. More specific to the hearing tonight,  
9 our region needs a dependable water supply if we're able  
10 to maintain our viability and quality of life.

11 The negotiated settlement is the comprehensive  
12 and responsible solution to our long-term needs, and the  
13 Truckee River Operating Agreement must be approved to  
14 ensure that that settlement becomes reality.

15 It is critical that the Draft Environmental  
16 Impact Statement and Environmental Impact Report be  
17 adopted and TROA finalized in order to ensure both  
18 economic vitality and environmental sensitivity in our  
19 region.

20 TROA in its current form presents many solutions.  
21 Probably the most important ones relate to flexibility in  
22 addressing regional water demands and those aimed at  
23 protecting our natural resources. TROA addresses these  
24 key issues by modifying reservoir and river operations to

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## Comment PH 01 – continued

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1 enhance coordination and flexibility. TROA expands our  
2 ability to plan for periodic droughts. And TROA ensures  
3 that stream flows are preserved and flood control and dam  
4 safety requirements are met.

5 In addition to its flexibility, TROA institutes a  
6 much needed balance, balance to meet the demands for water  
7 supply, water quality, recreational opportunities,  
8 economic vitality and environmental protection over the  
9 entire Truckee River Basin.

10 Reno/Sparks Chamber commends the many agencies  
11 and individuals responsible for getting us to where we are  
12 tonight.

13 We must adopt the Draft EIS/EIR and apply the  
14 tools that TROA provides to ensure that our region  
15 continues to be the special place we love and the special  
16 place we want our children to live, work and play.

17 On behalf of the Reno/Sparks Chamber, I thank you  
18 for the opportunity to speak in favor of the Draft  
19 EIS/EIR. Adoption is critical to our future.

20 HEARING OFFICER McCracken: Thank you,  
21 Mr. Breternitz.

22 Our final speaker is Harry York. And I have now  
23 called the last speaker. So if anyone else would like to  
24 comment, please go back to the table and please fill out a

**Comment PH 01** – continued

1 comment card.

2 MR. YORK: Harry York, CEO of the Reno/Sparks  
3 Chamber of Commerce, 1 East First Street, 17th Floor.  
4 That's one floor above the mayor's.

5 (Laughter)

6 Gotcha.

7 I do not have prepared statement, as we've  
8 submitted one, and I will follow Chairman Breternitz's  
9 statement.

10 I'd like to just kind of give a little personal  
11 history. I arrived in Reno ten years ago. And at that  
12 time the start of the TROA agreement or discussions was  
13 going on, and the chamber had a water committee. They  
14 had just stepped out ahead of themselves in getting really  
15 involved in a public policy issue which they had not done  
16 before and formed this water committee. Many of those  
17 individuals are here tonight, having worked all ten years  
18 on that and doggedly kept moving it forward.

19 There are some people who were very involved in  
20 it who are no longer here, including Virgil Wedge, who I  
21 currently have his office space and feel honored to have  
22 that. But he chaired the chamber's committee for a number  
23 of years with that.

24 I think the important thing -- and let me back

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## Comment PH 01 – continued

1 up. Again, I'd like to thank all those people, the  
2 chamber people involved and the state agencies, and again,  
3 and particularly Senator Reid's office, for continually  
4 working forward and moving this agreement forward.

5 But I think the opportunity I had about a month  
6 ago to come to this room and walk through the open house  
7 and kind of see how all the pieces worked, and then walk  
8 home or walk to the office with this two- or three-inch  
9 thick document, which I also have not read but did read  
10 the summary, and what I found was that you've taken a  
11 very, very complex agreement and situation and simplified  
12 it, and simplified it for the good of all the different  
13 parties and being able to move water around to save  
14 natural resources and wildlife and take care of us in  
15 drought situations and take care of it so that if you were  
16 to go, if you had the agreement right now and you went up  
17 to Boca, it would not look like it does now. It's pretty  
18 ugly and there's hardly any water in it. It's all mud.

19 And it's my understanding, if you had the  
20 agreement, that it would be at some level higher than that  
21 and would be therefore more functional and some of the  
22 wildlife would probably still be alive.

23 So I again echo the chamber's statement. We urge  
24 you to move forward with it, as soon as possible. And we

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**Comment PH 01** – continued

1 can get it implemented. Thank you. Thank you for being  
2 here from Sacramento.

3 HEARING OFFICER McCracken: Thank you, Mr. York.

4 Mr. York was our last speaker who has signed up.  
5 Do we have anybody else who would like to comment this  
6 evening? Okay, if not, we have a couple of other public  
7 hearings scheduled this week. We will be in Fernley  
8 tomorrow from one to four at the city council chambers.  
9 Tomorrow evening we'll be at the Pyramid Lake Tribal  
10 Council Chambers in Nixon. That's from six to nine. On  
11 Wednesday we'll be over in California at Kings Beach from  
12 one to four at the North Tahoe Conference Center. And  
13 then from seven to ten we'll be in Truckee at the Parks  
14 and Recreation Center.

15 And then our final hearing at this point will be  
16 in Fallon on Thursday. It will be at the Fallon  
17 Convention Center from seven to ten p.m.

18 And with that, on behalf of the Department of  
19 Interior, and the California Department of Water  
20 Resources, I'd like to thank you for attending this  
21 hearing. And for those who commented, if you could please  
22 leave the comments in the basket back there, like putting  
23 your candy in a basket instead of taking it out, we'd  
24 appreciate it.

01-08-01

## Comment PH 01 – continued

1           We will now recess until other speakers would  
2 like to speak or until the meeting is over. Thank you  
3 again.

4           (Recess taken.)

5           HEARING OFFICER McCracken: The hearing is  
6 officially closed at 9:00 p.m. Thank you for attending  
7 and good night.

8           (Proceedings concluded at 9:00 p.m.)

9                                 -o0o-

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## Comment PH 01 – continued

1 STATE OF NEVADA, )  
 2 COUNTY OF WASHOE. ) ss.  
 3

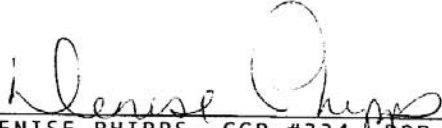
4 I, DENISE PHIPPS, Certified Court Reporter in  
 5 and for the County of Washoe, State of Nevada, do hereby  
 6 certify;

7 That on Monday, October 18, 2004, at the  
 8 Department of Water Resources, 4930 Energy Way, Reno,  
 9 Nevada, I was present and took verbatim stenotype notes of  
 10 the Hearing entitled herein, and thereafter transcribed  
 11 the same into typewriting as herein appears;

12 That said hearing was taken in stenotype notes  
 13 by me, a Certified Court Reporter, and thereafter reduced  
 14 to typewriting under my direction as herein appears;

15 That the foregoing transcript is a full, true  
 16 and correct transcription of my stenotype notes of said  
 17 hearing.

18 Dated at Reno, Nevada, this 22nd day of October,  
 19 2004.

20  
 21   
 22 DENISE PHIPPS, CCR #234, RDR, CRR  
 23  
 24

## Comment PH 01 – continued

Comments Robert A. Cashell Sr.,  
Mayor of the City of Reno  
On the TROA Revised Draft EIS/EIR



For the record my name is Robert A. Cashell, Mayor of the City of Reno and my address is One E 1<sup>st</sup> Street, 15<sup>th</sup> Floor, Reno, Nevada 89501.

Not everyone on our council can remember a time when our efforts to improve our water supply were met with frustrating and expensive legal battles, but I can. Some may remember when 17,000 of our residents were sued individually by the Tribe and US or when expansion of the TMWRF waste treatment plant was held in limbo by litigation. Our local governments were quickly running out of ways to assure drought supplies, our conservation efforts provided no benefit as water flowed downstream to other users and our waste treatment plants were on the edge of not meeting demand. We were in gridlock and efforts at negotiation were continuously falling apart.

I like most local business people followed the Truckee River Settlement and were pleased to see it finally pass through Congress and signed into law by President Bush. We appreciate the efforts of Senator Harry Reid and Congresswoman Barbara Vuchanovich in ensuring that our local water problems were on the road to resolution.

As Mayor of the City of Reno and a member of the Truckee Meadows Water Authority Board I have spent many hours meeting with water experts and attending workshops about the changes that TROA will bring and I personally support the completion of the long process that has been undertaken.

The draft TROA EIS/EIR goes a long way to complete that approval process. I urge you to finalize the EIS/EIR process as quickly as possible. I haven't read the entire draft TROA EIS/EIR but the summary confirms what I always believed...., that with small changes in operations we can provide large benefits to the parties around the table. The Truckee Meadows can back up its water supplies with drought supplies for new and existing customers. The interstate allocation of water is extremely important to assurance of our community water supply. Water quality on the Truckee River could be improved by completing the purchases promised by the Water Quality Settlement agreement and by storing that water until needed. The endangered species can be conserved through storage of water permitted for this purpose and releasing that water for the spring spawning runs. There are also benefits to the fishery and to recreation in California.

The Draft EIS/EIR is an impressive document with a great deal of data to back up its conclusions. The US and California have done an excellent job of simplifying complex information. I commend you for your efforts to date and again urge completion of this process as quickly as possible.

## Comment PH 01 – continued

Comments Tony Armstrong,  
Mayor of the City of Sparks  
On the TROA Revised Draft EIS/EIR

For the record my name is Tony Armstrong, Mayor of the City of Sparks and Chairman of the Truckee Meadows Water Authority Board of Directors. My address is 431 Prater Way, Sparks, Nevada 89431.

We at the city of Sparks could not be more pleased to finally see the Draft TROA EIS/EIR moving toward completion. We are presently in our 5th year of drought in the Truckee Meadows and this is the first year we have had to draw on our drought reserves. As you can imagine, water supply improvements are of foremost importance to our community. TROA would give us the tools to manage our way out of extended droughts.

As one of the owners of the Truckee Meadows Water Reclamation Facility the City of Sparks is also very concerned with the water quality of the Truckee River and our continued ability to meet water quality standards while discharging our highly treated effluent to the river. We have accumulated a large stock of water rights for water quality purposes, but the key to protecting water quality is to ensure the more efficient use of this water by storing and releasing those rights at the proper time. This can be accomplished under TROA in a manner that protects the water rights of all other users by storing only the portion of those water quality water rights that would have been consumed historically.

The Truckee River Operating Agreement provides key provisions that improve both water supply and water quality while providing for spawning flows for the endangered species in the lower river, providing enhanced reservoir releases and recreation, and resolving the interstate allocation of water. The parties around the table now know we can all benefit more by working cooperatively than we can if we aim to serve only our individual purposes.

The Management team has done a good job on the Draft EIS/EIR with a few possible improvements in the final document. This community will always be indebted to Senator Harry Reid for his relentless personal commitment to completion of the Settlement Process. Without the Senator we could not have reached this important milestone for our communities.

The Draft EIS/EIR indicates we are nearing the end of arduous journey. I am grateful for all the many hours numerous experts have spent these past years in developing the agreement and the Draft EIS/EIR and look forward to seeing the settlement implemented.



Tony Armstrong  
Mayor of the City of Sparks and  
Chairman of the Truckee Meadows Water Authority Board of Directors

## Comment PH 01 – continued

Comments of Jim Shaw  
Washoe County Commission Chairman,  
On the TROA Revised Draft EIS/EIR

For the record my name is James M. Shaw, Chairman of the Washoe County Board of Commissioners. My address is 1001 E. 9th Street, Reno, Nevada 89512.

On behalf of Washoe County I would like to thank the Department of the Interior and the State of California for preparing the Revised Draft TROA Environmental Impact Statement/Environmental Impact Report. I would also like to thank Senator Harry Reid for his continued efforts to make TROA a reality. TROA is an important agreement for the region, and most definitely for this community. It represents a regional solution to many of our concerns relating to Truckee River water supply and quality. Washoe County has formally supported the purpose of TROA since the passage of Public Law 101-618 in 1990.

In June of 2001, the Truckee Meadows Water Authority (TMWA) acquired the Sierra Pacific Power Company water supply business and assumed the power company's role as the major water purveyor in the Reno-Sparks area. Earlier that year, Reno, Sparks and Washoe County created TMWA as a joint powers authority by agreement of the three local governments. TROA was an important component of the power company's water supply planning, and as would be expected, it has the same importance to TMWA. TROA is also an important part of the Regional Water Management Plan developed by the Regional Water Planning Commission earlier this year.

I am pleased to say Washoe County staff participated in the development of the draft TROA since its inception in 1990, and that numerous changes were made in the agreement to accommodate our concerns. We were primarily concerned with the water quality of the Truckee River, and the manner in which wholesale water supplies are addressed by

## **Comment PH 01** – continued

TROA. We are pleased that our comments during the negotiation process were largely incorporated into the agreement, and the result is one that better protects the environment while providing benefits to the region through increased storage opportunities.

I have been told by Washoe County staff that the Department of Interior and the State of California have done an excellent job in preparing the Draft EIS/EIR, and the document addresses the impacts of the proposed agreement. Our staff will be submitting some written comments regarding the presentation of information and some typographical errors.

We urge you to complete the Final EIS/EIR in a timely and defensible manner so that it can move forward to implementation for the benefit of the public and environment of the region.

### Comment PH 01 – continued

## Comment Sheet for TROA Revised DEIS/EIR

The Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) was released on August 25, 2004.

As part of the public review process, written comments are due to the Bureau of Reclamation by close of business on Friday, October 29, 2004. All comments will become part of the public record.

(Please print clearly)

Name LORI L. WILLIAMS

Organization and Address TRUCKEE MEADOWS WATER AUTHORITY

1155 CORPORATE BLVD, RENO NV 89502

Phone (775) 834-8110 FAX (775) 831-8034 E-mail williams@tmwa.net

If you'd like, you may use this form to provide your comments:

SEE ATTACHED



LORI WILLIAMS  
General Manager  
775-834-8110

Main: 775-834-8000 Fax: 775-834-8003  
1155 Corporate Blvd. P.O. Box 30013 Reno, NV 89520-3013

- Attach additional sheets if necessary -

Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or e-mail your comments to [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov). Thank you.

## Comment PH 01 – continued

Comments of Lori L. Williams,  
General Manager of the Truckee Meadows Water Authority  
On the TROA Revised Draft EIS/EIR

For the record my name is Lori L. Williams, General Manager of the Truckee Meadows Water Authority and my address is 1155 Corporate Blvd, Reno, Nevada 89502.

My staff and I have worked to negotiate the Truckee River Operating Agreement since 1989. We have spent years of staff time and untold resources on this effort with our sights set on completing this project which provides among other benefits, enhanced drought storage for the residents of the Truckee Meadows. This is an important agreement and well worth the effort.

It is a complex agreement, founded on very simple principles of storing water in existing reservoirs when space is available for retiming releases of those waters in times when it is needed by its owners. The agreement utilizes the change processes available from the two states, Nevada and California, to move existing water rights to storage, assuring that the water rights of both parties, and non-parties, to the agreement are protected. In many river systems the exchanges contemplated by TROA would be implemented as a routine matter, but on the Truckee River System, a series of hurdles needed to be overcome in order to accomplish this agreement and the benefits it brings. We have court decrees to amend, Endangered Species Issues to negotiate, issues of Interstate Allocation of water, minimum reservoir releases, recreation pools and essentially every conceivable issue of consequence on a river system.

The agreement is complex because the new operation is added to the complex set of agreements and decrees associated with the existing operation. The complexity was necessary to protect the water rights of all users on the river system. The TROA EIS/EIR management team has done an excellent job of simplifying the understanding of this agreement and studying its impacts. We realize that it would be impossible to model all of the possible uses of the flexibility in the agreement but the team has done an excellent job evaluating the critical opportunities. TMWA staff is pleased with the overall quality of this draft document. TMWA staff has a few suggestions for improvements to be incorporated into the Final EIS/EIR and will submit those in writing prior to the close of the comment period.

We have relied upon the modeling associated with the Truckee River Operations model for our planning for many years and we feel comfortable with the methods of analysis used in the document. All of the major parties on this river system, even those who may take opposing sides on issues, have used this model from time to time which speaks to the quality of the model. TMWA's resource planning efforts have used the model to identify the yield of various resource options. We and other river users have used the model to evaluate the impacts of operational changes, to evaluate water supply options and to support legal positions. In short, the method of analysis has become a well accepted and often used manner of comparing changes in operation on the Truckee River System.

In closing I would just like to reiterate our support for the Truckee River Operating Agreement and the opportunities it provides to benefit users of the river system.



Lori L. Williams  
General Manager, Truckee Meadows Water Authority

## Comment PH 01 – continued

### Comment Sheet for TROA Revised DEIS/EIR

*The Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) was released on August 25, 2004. As part of the public review process, written comments are due to the Bureau of Reclamation by close of business on Friday, October 29, 2004. All comments will become part of the public record.*

(Please print clearly)

Name Penny Mayer

Organization and Address Reno Sparks Assoc of Realtors  
5650 Riggins Ct  
Reno NV 89502

Phone (775) 626-6255 FAX (775) 626-5946 E-mail penny@mayer-realty.com

If you'd like, you may use this form to provide your comments:

See Attached

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- Attach additional sheets if necessary -

*Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or e-mail your comments to [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov). Thank you.*



## Comment PH 01 – continued

RENO/SPARKS ASSOCIATION OF REALTORS® TESTIMONY ON  
THE EIS/EIR FOR THE TRUCKEE RIVER OPERATING  
AGREEMENT  
October 18, 2004

The members of the Reno/Sparks Association of REALTORS® live and work in the Truckee River Watershed and are very supportive of the implementation of the Truckee River Operating Agreement (TROA). We recognize that we live in a wonderful area and are grateful for the fact that we enjoy a high quality of life. The TROA is essential to continuing and improving that quality of life through better management of our surface water resources.

The most important aspect of TROA is that it will enhance drought storage for the Truckee Meadows. In a drought situation a water right is only as good as the amount of drought storage that exists. TROA will improve our ability to store water for a drought, enhancing our community's ability to withstand a drought. That definitely will improve our quality of life.

We also believe that it is important that TROA will improve Pyramid Lake and stream fish habitat and recreation opportunities, which will improve the region's environment and quality of life.

TROA is a smart way to operate the river. The loss of some hydroelectric power generation is a very small price to pay for firming up the future water supply for the Reno/Sparks area and improving the Pyramid Lake fishery while ensuring that existing water rights are served.

The allocation of Truckee River water between Nevada and California in TROA is important to our region. In the future as more demands are placed on the Truckee's resources it will become increasingly important to have a firm allocation of that water.

In conclusion, the current operation of the Truckee River is obsolete in today's environment. The TROA will operate the Truckee in a manner that meets the needs of today and tomorrow, improving the environment and quality of life for our region. It is critically important that it be adopted.

## Comment PH 01 – continued

WWW.RENO-SPARKSCHAMBER.ORG

October 18, 2004

Mr. Kenneth Parr  
Bureau of Reclamation  
Department of the Interior  
705 N. Plaza Street, Room 320  
Carson City, Nevada 89701

Dear Mr. Parr:

On behalf of the Reno-Sparks Chamber of Commerce, thank you for the opportunity to appear before you tonight. Because water and air do not recognize political boundaries, the Reno-Sparks Chamber of Commerce supports regional planning for water, air and flood control. Our region needs a dependable water supply if we are to maintain our quality of life. The Negotiated Settlement (Public Law 101-618) is the most economic and environmentally responsible future water supply solution. The Truckee River Operating Agreement must be approved to ensure the Negotiated Settlement becomes reality. The Reno-Sparks Chamber of Commerce recognizes this is critical to our future economic prosperity and our quality of life in the Truckee Meadows.

We hope that testimony tonight will allow for the TROA to be finalized. Much work and many years have culminated to reaching tonight's public hearing. The Reno-Sparks Chamber of Commerce has been an active participant in this process. It is vital the Environmental Impact Statement and the Environmental Impact Report be adopted so that economic and environmental vitality in our community can prosper and be preserved.

TROA has met many solutions. But probably the most important one is its flexibility to addressing many concerns and challenges of our regional communities in addressing the demands for water usage and environmental protection. TROA would address these challenges by modifying the reservoir and river operations to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and safety of dam requirements are met as well as planning for periodic drought requirements. Besides flexibility, TROA achieves balance. Balance to meet the demands for water supply, water quality, recreational opportunities, economic vitality and environmental protection both up and down the Truckee River Basin.

It is important for this community and the environment that TROA move forward. As I stated, much time, work and energy has allowed us to reach today. We commend all the participants in getting to this point. We must adopt the TROA EIS/EIR and move forward with these tools to better enhance our communities and surrounding natural benefits that we all love and maintain our region as a special place to live and work.

Again, thank you for the opportunity to share our thoughts with you tonight.

Sincerely,

  
JOHN BREPERNITZ  
Chairman



THE CHAMBER TOWER - FIRST & VIRGINIA

P.O. BOX 3499 RENO, NV 89505 775.337.3030 FX 775.337.3038

Comment PH 01 – continued

Comment Sheet for TROA Revised DEIS/EIR

*The Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) was released on August 25, 2004. As part of the public review process, written comments are due to the Bureau of Reclamation by close of business on Friday, October 29, 2004. All comments will become part of the public record.*

(Please print clearly)

Name JOHN BRETERNITZ  
Organization and Address RENO-SPARKS Chamber of Commerce  
PO Box 3499  
Reno NV 89505  
Phone (775) 337-3030 FAX (775) 337-3038 E-mail \_\_\_\_\_

If you'd like, you may use this form to provide your comments:

Please see attached.

- Attach additional sheets if necessary -

Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or e-mail your comments to [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov). Thank you.

## Comment PH 01 – continued

### Talking Points

TROA Public Hearing – Adoption of EIS/EIR  
By: John Breternitz, Chairman, Reno-Sparks Chamber of Commerce  
October 18, 2004

- Thank you for the opportunity to appear before you tonight. JCB/Chairman ...
- Because water and air do not recognize political boundaries, the Reno-Sparks Chamber of Commerce has and will continue to support regional planning for water, air and flood control. More specific to the hearing tonight, our region needs a dependable water supply if we are to maintain our viability and quality of life.
- The Negotiated Settlement is THE ~~best~~ comprehensive and responsible solution to our long term water needs.
- The Truckee River Operating Agreement must be approved to ensure that the Negotiated Settlement becomes a reality.
- It is critical that the draft Environmental Impact Statement and the Environmental Impact Report be adopted and TROA finalized in order to ensure both economic vitality and environmental sensitivity in our region.
- TROA, in its current form, presents many solutions. Probably the most important ones relate to flexibility in addressing regional water demands and those aimed at protecting our natural resources.
- TROA address these key issues by modifying reservoir and river operations to enhance coordination and flexibility. TROA expands our ability to plan for periodic droughts. And, TROA ensures that ~~existing water rights~~ <sup>stream flows</sup> are preserved and that flood control and dam safety requirements are met.
- In addition to its flexibility, TROA institutes a much needed balance. Balance to meet the demands for water supply, water quality, recreational opportunities, economic vitality and environmental protection over the entire Truckee River Basin.
- The R-S Chamber commends the many agencies and individuals responsible for getting us to where we are tonight. We must adopt the ~~draft~~ draft EIS/EIR and then apply the tools that TROA provides to ensure that our region continues to be the special place we love. The special place we want for our children to live, work and play.
- On behalf of the Reno-Sparks Chamber, I thank you for the opportunity to speak in favor of ~~adopting~~ the draft EIS and EIR. Adoption is critical to our future.

### Comment PH 01 – continued

## Comment Sheet for TROA Revised DEIS/EIR

The Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) was released on August 25, 2004.

As part of the public review process, written comments are due to the Bureau of Reclamation by close of business on Friday, October 29, 2004.

All comments will become part of the public record.

(Please print clearly)

Name Daryl Drake

Organization and Address resident of Reno

1519 Foster Dr

Reno NV 89509

Phone (775) 322-1646 FAX ( ) E-mail

If you'd like, you may use this form to provide your comments:

*I heartily support the acceptance of the DEIS/EIR and the prompt adoption of the TROA*

*Daryl Drake*

01-09-01

- Attach additional sheets if necessary -

Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or e-mail your comments to [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov). Thank you.

### Comment PH 01 – continued

## Comment Sheet for TROA Revised DEIS/EIR

The Truckee River Operating Agreement (TROA) Revised Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) was released on August 25, 2004. As part of the public review process, written comments are due to the Bureau of Reclamation by close of business on Friday, October 29, 2004. All comments will become part of the public record.

(Please print clearly)

Name Joseph W. Mayer  
Organization and Address Washoe Co. Resident  
3304 Peco Dove Ct  
Sparks NV 89436  
Phone (775) 626-6255 FAX (775) 626-5946 E-mail joc@mayer-realty.com

If you'd like, you may use this form to provide your comments:

I participated on the original  
coalition to formulate the  
Agreement 15 years ago. I believe  
the Agreement is critical to our  
Region. I am very supportive of it  
Ratification

01-10-01

Thank You  
*Joe*

- Attach additional sheets if necessary -

Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or e-mail your comments to [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov). Thank you.

## Comment PH 02

Page 1

1 BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR

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5 TRUCKEE RIVER OPERATING AGREEMENT

6 REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL

7 IMPACT REPORT

8

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10 TRANSCRIPT OF PROCEEDINGS

11

12 PUBLIC HEARING

13

14 Tuesday, October 19, 2004

15 City Council Chambers

16 595 Silver Lace Blvd.

17 Fernley, Nevada

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24 Reported By: MARCIA FERRELL, CCR No. 797

## Comment PH 02 – continued

Page 2

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### A P P E A R A N C E S

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HEARING OFFICER: JEFF MCCRACKEN

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AREA MANAGER: BETSY RIEKE

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CAPTIONS UNLIMITED OF NEVADA, INC. 775-746-3534



**Comment PH 02** – continued

Page 3

1 FERNLEY, NEVADA, TUESDAY, OCTOBER 19, 2004

2 1:15 P.M.

3 --o0o--

4 HEARING OFFICER McCRACKEN: Good afternoon,  
5 everybody. My name is Jeff McCracken, and I'm the Public  
6 Affairs Officer for the Bureau of Reclamation Mid-Pacific  
7 Region from Sacramento, California. On behalf of the  
8 California Department of Water Resources and the United  
9 States Department of Interior, represented by the Bureau of  
10 Indian Affairs, the Fish and Wildlife Service, and  
11 Reclamation, I'd like to welcome you to this public hearing  
12 on the Truckee River Operating Agreement, Revised Draft  
13 Environmental Impact Statement/Environmental Impact Report.

14 I will be serving as your hearing officer this  
15 afternoon. And at the table with me is Betsy Rieke, she's  
16 the area manager for the Lahontan Basin area office in Carson  
17 City.

18 This hearing is being held in accordance with the  
19 requirements of the National Environmental Policy Act and the  
20 California Environmental Quality Act. A court reporter is  
21 recording all of the proceedings.

22 At this hearing we are accepting both verbal and  
23 written comments on the Revised Draft EIS/EIR. If you would  
24 like to provide verbal comments, you should have completed

## Comment PH 02 – continued

Page 4

1 and turned in a speakers card, which looks like this. This  
2 speaker has turned one in. If you would like to make verbal  
3 comments but you have not yet submitted a speakers card,  
4 please go to the registration table at the back and do so.

5           You may submit written comments made by filling  
6 out a comment sheet, which is also available at the  
7 registration table. If you're going to be speaking from your  
8 written comments and you'd like to submit them to us, please  
9 fill out the top portion of the comment sheet, attach your  
10 comments, and place them in the basket at the registration  
11 desk by the door.

12           Please understand that written and verbal  
13 comments will receive equal consideration.

14           Written comments can be submitted at this hearing  
15 or to the address, fax or e-mail indicated on the comment  
16 sheet. While the current deadline for submitting comments is  
17 still October the 29th, we do anticipate that the Department  
18 of Interior and the State of California will soon approve an  
19 extension to December the 30th of 2004.

20           I'd like to take a moment to quickly explain what  
21 happens after the close of the comment period. The  
22 Department of the Interior and the California Department of  
23 Water Resources will both review and prepare responses to all  
24 of the comments. A final EIS/EIR will be prepared which will

CAPTIONS UNLIMITED OF NEVADA, INC. 775-746-3534

**Comment PH 02** – continued

Page 5

1 include the responses to your comments.

2           Ultimately a record of decision will be prepared  
3 by the Department of the Interior, and a notice of  
4 determination will be prepared by the State of California.

5           This hearing will proceed in the following  
6 manner: I will call speakers to the microphone which is at  
7 the podium, and if I call your name and you're not present or  
8 you have -- you will be moved to the end of the speakers  
9 list. Each speaker of course will have a maximum of 10  
10 minutes to speak, and if you have extensive comments, you may  
11 please submit them in writing.

12           Please state your name and your affiliation, if  
13 any, and spell your first and last name. Please remember,  
14 these are formal hearings and a court reporter is recording  
15 your comments. It's also important that you speak clearly so  
16 your comments can be captured accurately.

17           I'll also be a timekeeper, and if necessary, will  
18 indicate if you have extended the time necessary.

19           Again, if you wish to provide comments but have  
20 not submitted a speakers card, please go do so at the  
21 registration table. And with that, I'm going to go ahead,  
22 and we're ready to begin. Let me call the first and only  
23 speaker we have so far, it's Steve Bradhurst. Mr. Bradhurst?

24           MR. BRADHURST: Ms. Rieke, Mr. McCracken. For

## Comment PH 02 – continued

Page 6

1 the record, my name is Steve Bradhurst, S-t-e-v-e,  
2 B-r-a-d-h-u-r-s-t, I'm director of Washoe County Department  
3 of Water Resources. My address is 4930 Energy Way, Reno,  
4 Nevada, 89502.

5 My department has represented Washoe County's  
6 interests in the development of TROA, and my comments are  
7 provided on behalf of the Washoe County Board of County  
8 Commissioners.

9 Washoe County would like to thank the Department  
10 of Interior and the State of California for preparing the  
11 Revised Draft TROA Environmental Impact Statement/  
12 Environmental Impact Report. Also, Washoe County would like  
13 to thank Senator Harry Reid for his continued efforts to make  
14 TROA a reality.

15 TROA is an important agreement for this region,  
16 it represents a regional solution to much needed improvements  
17 in Truckee River water supply and water quality. In 2001,  
18 the City's agreement with Sparks, along with Washoe County,  
19 created the Truckee Meadows Water Authority for the purpose  
20 of acquiring Sierra Pacific Power Company's water supply  
21 business. TROA was an important component of water supply  
22 planning for the power company, and it is now an important  
23 part of water supply planning for Truckee Meadows Water  
24 Authority.

02-01-01

**Comment PH 02** – continued

Page 7

1 TROA is also an important part of the Washoe  
2 County Comprehensive Regional Water Management Plan that was  
3 developed by the Regional Water Planning Commission earlier  
4 this year.

5 As I indicated, my staff participated in the  
6 development of TROA, and I'm pleased to say numerous changes  
7 were made to the agreement to accommodate Washoe County's  
8 concerns. Washoe County was primarily concerned with Truckee  
9 River water quality and the matter in which wholesale water  
10 supplies are addressed by TROA. Washoe County is pleased  
11 that its comments during the negotiation process were largely  
12 incorporated into the agreement, and the result is one that  
13 better protects the environment while providing benefits to  
14 the region through increased storage opportunities.

15 TROA provides an expanded opportunity for  
16 regional solutions to the region's water supply and water  
17 quality problems. My department is working with the Pyramid  
18 Lake Tribe on a memorandum of understanding to jointly pursue  
19 regional solutions to the wastewater and water supply needs  
20 of the Wadsworth area. I understand that the tribe has had  
21 discussions with the City of Fernley regarding water supply  
22 solutions. Washoe County stands ready to work with both the  
23 tribe and the City of Fernley to address water and wastewater  
24 problems in the area.

02-01-01

## Comment PH 02 – continued

Page 8

02-01-01

1           By having two or three entities working together  
2 to address the area's water and wastewater needs, it is  
3 possible that each entity may bring to the table their  
4 various benefits under TROA, that in turn could build a  
5 regional solution to some of these problems.

6           My staff tells me that the draft Environmental  
7 Impact Statement and Environmental Impact Report has been  
8 well prepared, and it addresses the impacts of the proposed  
9 agreement. My department will be submitting written comments  
10 on the document in the near future.

11           Washoe County urges you to complete the final  
12 EIS/EIR in a timely, comprehensive manner so that TROA can  
13 move forward to implementation for the benefit of the  
14 region's citizens, environment, and valued quality of life.  
15 We thank you for your attention and opportunity to speak.

16           HEARING OFFICER McCRACKEN: Thank you,  
17 Mr. Bradhurst. Do we have anybody else who would like to  
18 make any comments today?

19           Well, on behalf of the Department of Interior and  
20 the State of California, I'd like to thank you for attending  
21 this hearing and providing your comments.

22           We will now recess until any other speakers  
23 decide to identify themselves if they would like to speak, or  
24 until we decide to conclude the hearing. So with that, we'll

## Comment PH 02 – continued

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1 stand in recess. Thank you.

2 (Recess.)

3 HEARING OFFICER MCCRACKEN: Having no other  
4 people here wanting to comment, I hereby close this hearing  
5 at a quarter to 3:00.

6 (Hearing adjourned 2:45 p.m.)

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## Comment PH 02 – continued

Page 10

1 STATE OF NEVADA, )

2 )

3 COUNTY OF LYON. )

4

5

6 I, MARCIA L. FERRELL, Certified Court Reporter in and  
7 for the County of Lyon, State of Nevada, do hereby certify:

8 That on Tuesday, October 19, 2004, at 595 Silver Lace  
9 Blvd., Fernley, Nevada, I was present and took verbatim  
10 stenotype notes of the hearing entitled herein, and  
11 thereafter transcribed the same into typewriting as herein  
12 appears;

13 That said hearing was taken in stenotype notes by me,  
14 a Certified Court Reporter, and thereafter reduced to  
15 typewriting under my direction as herein appears;

16 That the foregoing transcript is a full, true and  
17 correct transcription of my stenotype notes of said  
18 proceedings.

19 Dated at Fernley, Nevada, this Both day of  
20 October, 2004.

21

22

23

24

Marcia Ferrell  
Marcia L. Ferrell, CSR #797



## Comment PH 02 – continued

Comments of Steve Bradhurst  
Director, Washoe County Department of Water Resources  
On the TROA Revised Draft EIS/EIR

For the record my name is Steve Bradhurst, and I am the Director of the Washoe County Department of Water Resources. My address is 4930 Energy Way, Reno, Nevada 89502. My department has represented Washoe County's interest in the development of TROA, and my comments are provided on behalf of the Washoe County Board of Commissioners.

Washoe County would like to thank the Department of the Interior and the State of California for preparing the Revised Draft TROA Environmental Impact Statement/Environmental Impact Report. Also, Washoe County would like to thank Senator Harry Reid for his continued efforts to make TROA a reality. TROA is an important agreement for this region. It represents a regional solution to much needed improvements in Truckee River water supply and water quality.

In 2001, the Cities of Reno and Sparks along with Washoe County created the Truckee Meadows Water Authority for the purpose of acquiring Sierra Pacific Power Company's water supply business. TROA was an important component of water supply planning for the power company, and it is now an important component of water supply planning for TMWA. TROA is also an important part of the Washoe County Comprehensive Regional Water Management Plan that was developed by the Regional Water Planning Commission earlier this year.

As indicated, my staff participated in the development of TROA, and I am pleased to say numerous changes were made in the agreement to accommodate Washoe County concerns. Washoe County was primarily concerned with Truckee River water quality and the manner in which the wholesale water supplies are addressed by TROA. Washoe County is pleased that its comments during the negotiation process were largely

## Comment PH 02 – continued

incorporated into the agreement, and the result is one that better protects the environment while providing benefits to the region through increased storage opportunities.

TROA provides an expanded opportunity for regional solutions to the region's water supply and water quality problems. My department is working with the Pyramid Lake Paiute Tribe under a memorandum of understanding to jointly pursue regional solutions to the wastewater and water supply needs of the Wadsworth area. I understand that the Tribe has had discussions with the City of Fernley regarding water supply solutions. Washoe County stands ready to work with both the Tribe and the City of Fernley to address water and wastewater problems in the area. By having 2 or 3 entities working together to address the area's water and wastewater needs it is possible each entity may bring to the table their various benefits under TROA that in turn could build a regional solution to some of these problems.

My staff tells me that the Draft EIS/EIR has been well prepared, and it addresses the impacts of the proposed agreement. My Department will be submitting written comments on the document in the near future.

Washoe County urges you to complete the Final EIS/EIR in a timely and defensible manner so that TROA can move forward to implementation for the benefit of the region's citizens, environment and valued quality of life.

Thank you for your attention and the opportunity to speak.

# Comment PH 03

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BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR

-oOo-

TRUCKEE RIVER OPERATING AGREEMENT  
REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL  
IMPACT REPORT

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

Tuesday, October 19, 2004  
Pyramid Lake Tribal Council Chambers  
210 Capital Hill  
Nixon, Nevada

**COPY**

Reported By: MARCIA FERRELL, CCR No. 797

### Comment PH 03 – continued

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A P P E A R A N C E S

HEARING OFFICER: JEFF McCRACKEN

AREA MANAGER: BETSY RIEKE

**Comment PH 03** – continued

Page 3

1 NIXON, NEVADA, TUESDAY, OCTOBER 19, 2004

2 6:15 P.M.

3 --o0o--

4 HEARING OFFICER McCracken: Good evening, ladies  
5 and gentlemen. My name is Jeff McCracken, and I'm the Public  
6 Affairs Director with the Bureau of Reclamation Mid-Pacific  
7 Region, Sacramento, California. And on behalf of the  
8 California Department of Water Resources and United States  
9 Department of the Interior, represented by the Bureau of  
10 Indian Affairs, the U.S. Fish and Wildlife Service, and  
11 Reclamation, I'd like to welcome you to this public hearing  
12 on the Truckee River Operating Agreement, the Revised Draft  
13 Environmental Impact Statement, and the Environmental Impact  
14 Report.

15 I will be serving as your hearing officer this  
16 evening, and at the table with me is Betsy Rieke. Betsy is  
17 the area manager for Reclamation's Lahontan Basin area office  
18 in Carson City.

19 This hearing is being held in accordance with the  
20 requirements of the National Environmental Policy Act and the  
21 California Environmental Quality Act. A court reporter is  
22 recording the proceedings, and at this hearing we are  
23 accepting both verbal and written comments on the revised  
24 draft EIS/EIR. To provide verbal comments, you should have

CAPTIONS UNLIMITED OF NEVADA, INC. 775-746-3534

## Comment PH 03 – continued

Page 4

1 completed and turned in a speakers card, like this. If you'd  
2 like to make some verbal comments but you have not yet  
3 submitted a card, please go to the registration table and  
4 fill one out.

5           You may also submit written comments today or  
6 later on by filling out a comment sheet, which is also  
7 available at the registration desk.

8           If you're speaking from your written comments and  
9 would like to submit them to us, please fill out the top  
10 portion of the comment sheet, attach your comments, and place  
11 them in the basket that we have over at the registration  
12 table. Please understand that written and verbal comments  
13 will receive equal consideration.

14           Written comments can be submitted at this hearing  
15 or to the address, fax or e-mail indicated on the comment  
16 sheet. While the current deadline for submitting comments is  
17 October 29th, we do anticipate that the Department of  
18 Interior and the State of California will soon approve an  
19 extension to December the 30th of 2004.

20           Let me quickly explain what will happen after the  
21 close of the comment period. The Department of Interior and  
22 the California Department of Water Resources will both review  
23 and prepare responses to all of the comments. A final  
24 EIS/EIR will be prepared which will include the responses to

CAPTIONS UNLIMITED OF NEVADA, INC. 775-746-3534

**Comment PH 03** – continued

Page 5

1 the comments.

2           Ultimately, a record of decision will be prepared  
3 by the Department of the Interior, and a notice of  
4 determination will be prepared by the State of California.

5           This evening the hearing will proceed in the  
6 following manner: I will call speakers to the microphone  
7 which is up in the aisle here, in the order that they signed  
8 up. In the order that he signed up, I should say. I'll call  
9 your name, and please, you'll have sufficient amount of time  
10 to speak, if you have extensive comments we ask that you  
11 please submit them in writing.

12           Please clearly state your name, your affiliation,  
13 if any, and spell your first and last names. And remember  
14 that this is a formal hearing, and the court reporter is  
15 recording all of your comments. So please speak clearly so  
16 your comments can be captured accurately.

17           So with that, let me go ahead and call at this  
18 point the only speaker who has signed up, it's Erik  
19 Ringelberg from the Pyramid Lake Fisheries.

20           MR. RINGELBERG: Good evening. My name is Erik  
21 Ringelberg. For the record, E-r-i-k, last name is  
22 Ringelberg, R-i-n-g-e-l-b-e-r-g. I'm the executive director  
23 of Pyramid Lake Fisheries, a subdivision of the Paiute Tribe.  
24 Our address is 603 Sutcliffe, S-u-t-c-l-i-f-f-e Drive,

03-01-01

### Comment PH 03 – continued

Page 6

1 Sutcliffe, Nevada.

2 First of all, I'd like to thank the Department of  
3 Interior. We appreciate you coming down to Nixon and holding  
4 this hearing here. We certainly appreciate the efforts of  
5 the Bureau of Reclamation, Fish and Wildlife Service, Bureau  
6 of Indian Affairs, State of California Department of Water  
7 Resources, and the efforts that the State of Nevada has made  
8 in the meetings.

9 My comments are strictly those of the Pyramid  
10 Lake Fisheries Organization and not those of the tribe.

11 The current system is obviously inefficient, and  
12 to all appearances doesn't work well for anyone. We  
13 certainly support the intended effects of TROA, particularly  
14 the enhancement of water management, flexibility, water  
15 quality, the conditions for Pyramid Lake fishes, and the  
16 reservoir recreational opportunities.

17 We think that the TROA, due to the efforts of our  
18 tremendous congressional staff, has gone a long way to  
19 resolve the very complicated and troublesome disputes that  
20 we've had over the water policy here, certainly, over the  
21 last 12 years. I think this document will go a long way to  
22 resolving those.

23 Obviously, this is projected, based on average  
24 water flows that we've had over in this watershed in the last

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**Comment PH 03** – continued

Page 7

1 100 years. And since it's a modeling effort based on the  
2 very short-term water record, we are pleased that this  
3 program allows a dynamic management, where all the interested  
4 parties can be involved in changing, in storing, water  
5 allocations so that all the uses of the watershed are able to  
6 get their legal water rights maintained, and yet there's  
7 still enough water to maintain the fishery.

8 I guess finally, I want to appreciate the fact  
9 that the EIS/EIR identified the need to protect Indian Trust  
10 resources. The Indian Trust resources are not just those  
11 that we've litigated over the years, but include those of  
12 water users here on the reservation, as well. There are  
13 individuals who, through the tribe leasing program, maintain  
14 and use the water rights that the tribe has for agriculture  
15 and other uses. So we're glad that those people's rights  
16 are -- well, the tribe's rights and the people's use of those  
17 rights are recognized in this document.

18 And that concludes my comments. Thank you.

19 HEARING OFFICER MCCrackEN: Thank you, Erik.  
20 Erik was the only speaker who has signed up. Is there  
21 anybody else who would like to comment this evening? If so,  
22 you need to go fill out a comment card.

23 Well, if no one wants to speak at this point, why  
24 don't we go ahead and we'll just take a short recess, and if

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## Comment PH 03 – continued

Page 8

1 someone would like to, we'll go ahead and reopen the hearing  
2 in a short period of time. So at this point, I will declare  
3 the hearing in recess. Thank you.

4 (Recess.)

5 HEARING OFFICER McCracken: I'm going to go ahead  
6 and reconvene the meeting on the Truckee River Operating  
7 Agreement. We have an additional speaker, Mervin Wright, Jr.  
8 Is that correct?

9 Good evening. Would you please for the record  
10 give your name and spell it for the court reporter, please?

11 MR. WRIGHT: Okay. My name is Mervin Wright, Jr.  
12 M-e-r-v-i-n, W-r-i-g-h-t, J-r. I'm currently a GIS  
13 specialist for the tribe, former tribal chairman, former  
14 vice-chairman, former water resources director. I grew up  
15 here in Nixon, was born in Reno, and I came to work with the  
16 tribe in 1991, was a director of water resources, and became  
17 very familiar with the TROA negotiations.

18 And now looking at the document, there are a lot  
19 of questions that are unanswered to a lot of our people. And  
20 as I was speaking with one of our tribal council members here  
21 tonight, we're here representing our membership, we're here  
22 representing our children and our elders, and if we don't  
23 speak up for the record, then a lot of these things will go  
24 unnoticed.

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**Comment PH 03** – continued

Page 9

1 I'm here tonight not to question the tribal  
2 council's decision to support Public Law 101-618 or the  
3 Truckee River Operating Agreement. I'm not here to advocate  
4 contrary positions, I am here to question the EIS document  
5 with respect to trying to determine not only for the tribal  
6 council or for the tribe what's intended by the wording in  
7 the document, but also to at least reserve for our membership  
8 these questions.

9 To begin, the table one, Summary of Effects of  
10 Alternatives on Resources. For Pyramid Lake, under no  
11 action, it states that the ending elevation and inflow lower  
12 than under current conditions. And for the LWSA, it says the  
13 same thing. And for TROA, it says ending elevation and  
14 inflow higher than under no action under current conditions.

15 I believe that that is misleading. Certainly,  
16 under the no action, we're subject to nature. We're subject  
17 to what's happening outside right now. When Pyramid Lake  
18 receives water, it will be -- in wet water years, it will be  
19 because of the snowpack being very high, because of the  
20 hydrologic condition. So we're pretty much dependent on  
21 that. For elevation increase in Pyramid Lake, as well as  
22 inflow increase in Pyramid Lake. Under TROA, we're going to  
23 be subject to those same conditions.

24 I've asked, since 1991, how much water Pyramid

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## Comment PH 03 – continued

Page 10

1 Lake would receive in a dry year under TROA, and without  
2 TROA. And the same thing -- question applied for the normal  
3 water year as well as a dry water year.

4 This EIS document certainly is making an attempt  
5 to address those questions, and I don't believe that the TROA  
6 will -- certainly it's not intended to create new water for  
7 the river system, that's understood. It is intended to set  
8 up the management system to benefit threatened and endangered  
9 species of Pyramid Lake. And I say that this is misleading  
10 because it's obvious that under TROA, that the inflow will be  
11 higher. Elevation, I don't know if it's going to be higher  
12 under TROA.

13 Pyramid Lake evaporates anywhere from three to  
14 four feet a year, and it has a surface elevation of about 100  
15 to 110,000 acres, so we need about 300,000 to 400,000 acre  
16 feet just to sustain the elevation.

17 I don't think TROA is going to provide that  
18 amount of water. Maybe on average we can say, yeah, on  
19 average it can, based on the model results. But in 1997,  
20 during the New Years flood, Pyramid Lake rose 30 feet. So  
21 that throws the average completely out the window, when  
22 you're trying to compare it to real natural conditions of the  
23 Truckee River Basin.

24 So the question I think from most of our people

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**Comment PH 03** – continued

Page 11

1 on the reservation is going to be focused entirely on Pyramid  
2 Lake. We will be looking at the Truckee River, we will be  
3 looking at spawning, the potential for spawning runs in given  
4 years. But I think for the most part, when we see continual  
5 elevation reduction in Pyramid Lake, we become concerned  
6 about what's happening in the Truckee River Basin.

7 We understand the demands in the Newlands  
8 Project, we understand the circumstances that have led to  
9 Derby Dam, the diversions to Lahontan Reservoir, and we know  
10 that under OCAP and all the efforts that we have pursued  
11 since 1968, more water is in the lower Truckee River.

12 So I just wanted to make that comment about the  
13 table, that I believe it is misleading. I mean, to the point  
14 of knowing the real natural conditions of the river system, I  
15 think your average person on the street, when they look at  
16 that table, they're just looking at the executive summary or  
17 reviewing the table, I think they're going to be misled to  
18 believe that TROA will provide higher elevations in Pyramid  
19 Lake, which I don't know if it will. We don't know if it  
20 will. Hoping that it will, but we don't know.

21 And so my other comment that I had -- and I've  
22 been concerned, is with the credit water. The credit water  
23 accumulation and the credit water exchanges in the Truckee  
24 River reservoirs. When I first -- when I was first

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### Comment PH 03 – continued

Page 12

1 introduced to Public Law 101-618, there was the preliminary  
2 settlement agreement. The preliminary settlement agreement  
3 was approved in 1989 by the tribe, and I had done a little  
4 research on the history of Stampede Reservoir, and I know  
5 that in 1984 the Supreme Court denied to hear an appeal which  
6 granted Stampede Reservoir to the recovery of threatened and  
7 endangered species in Pyramid Lake. So we basically had  
8 Stampede Reservoir to use for the recovery of threatened and  
9 endangered species.

10 In 1989, we compromised that by announcing to the  
11 world that we, you know, were willing to compromise on  
12 Stampede Reservoir. Which we did, and gave the power company  
13 an ability to store up to 40,000 acre feet of water in  
14 Stampede. Their water, of course, as long as the space  
15 existed.

16 My concern with the credit water concept is --  
17 there are several concerns with the credit water concept.  
18 And I'm hoping that we can experience the benefit of the  
19 exercise of the credit water concept of TROA.

20 To me, credit is just that, credit. Whether it's  
21 a credit card, whether it's credit water, whether it's any  
22 kind of credit. It's -- you know, the comparison that I  
23 always made was a credit card. It's like money, but it's  
24 not. You always still have to pay the bill.

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**Comment PH 03** – continued

Page 13

1           So in a sense of credit water, I still hold that  
2 same principle. That it's like water, but it's not. But who  
3 is going to have to pay? Who is going to have to make the  
4 balance equal?

5           I don't understand how the fish credit water,  
6 while there's all these different categories of credit water,  
7 firm M&I, nonfirm M&I, firm fish credit water, nonfirm,  
8 there's all these different categories that apply, it can  
9 become confusing. But I think for the most part, our  
10 concern, or my concern, in reading TROA and understanding  
11 TROA, is the definition considered drought situation.

12           There's a drought condition definition, also, in  
13 TROA. Drought condition is based on real hydrologic  
14 conditions of the system. The drought situation, at least as  
15 I understand it, and maybe it has changed since I've been  
16 involved, but it's going to be based on customer demand for  
17 the water purveyors in the Truckee Meadows. And as long as  
18 they can't meet that supply, we're in a drought situation.

19           How that drought situation affects credit water  
20 conversions and the transfer of credit water from fish to M&I  
21 is a concern. Whether we're looking at a real drought or an  
22 artificial drought, that's basically what I'm asking. Is the  
23 credit water principle going to be creating an artificial  
24 drought condition or situation. And how that credit water

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### Comment PH 03 – continued

Page 14

1 transfer is to occur, given the drought situation.

2 Drought condition is different, we can understand  
3 that. But what the concern is, is if you're going to  
4 transfer fish credit water to M&I credit water under a  
5 drought situation, whenever you have a subdivision, and  
6 whenever you're increasing your customer demand and you're  
7 going to hook up customers, that's almost a permanent,  
8 permanent demand. It's not like an irrigation ditch, you  
9 can't shut it off in June or July like you can in an  
10 irrigation ditch. You can't cut those customers off to the  
11 point where you say I'm sorry, but you don't have your water  
12 to meet your demand.

13 So I think that the customer demand will  
14 certainly outweigh the conditions of what's needed in the  
15 lower river. And if you're going to hook up a customer, to  
16 me that's a permanent -- that's a permanent demand, that  
17 you're not going to tell a subdivision in Spanish Springs or  
18 in South Truckee Meadows, I'm sorry, but you guys can't have  
19 your guys' water because your credit water was just  
20 transferred over to fish credit water.

21 So I don't see how the fish credit water and the  
22 M&I credit water is going to be equally -- detrimental, I  
23 mean, for lack of a better word. To me, it's if you've got  
24 competing interests, and you've got several parties at the

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**Comment PH 03** – continued

Page 14

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24 competing interests, and you've got several parties at the

03-02-02

### Comment PH 03 – continued

Page 15

1 table wanting to share one interest, to me, the best way to  
2 resolve the dispute is to ensure that everybody is equally  
3 unsatisfied, or dissatisfied. So that everybody takes an  
4 equal share of the detriment.

5 I just don't understand if the credit water in  
6 TROA is going to be that way for the fish credit water. But  
7 those are pretty much my comments. I, like I said, I'm not  
8 speaking as an official of the tribe. I am here on behalf of  
9 John Jackson, who is a director of water resources, who  
10 stated that he will be submitting written comments, I guess,  
11 by the deadline. He's in Denver, as we speak, and he did  
12 tell me last week before he left that he was going to try to  
13 get me something in writing by tonight that I could read for  
14 the record, but, you know, he wasn't able to do that.

15 So like I said, the questions that I have, I  
16 don't believe are detrimental to the position of the tribe.  
17 I believe that the questions that I'm raising with respect to  
18 these two issues, Pyramid Lake and the credit water,  
19 certainly I think could use I guess more clarification for  
20 us.

21 We are charged to educate our membership for the  
22 referendum vote, and that will take place I believe next  
23 July. July 2005 I think is when John expected that  
24 referendum vote to take place to approve TROA. And so it's

03-02-02

**Comment PH 03** – continued

Page 16

1 up to us, the staff, to educate our people on these issues.  
2 And if I need to thumb through TROA, find the issues, the  
3 provisions in TROA that address these concerns, certainly  
4 we'll educate our people to that extent. You know, we want  
5 to do the best we can, because five years in, 10 years into  
6 the TROA, you know, we don't want to be standing here  
7 scratching our head wondering what happened. You know, we're  
8 trying to do our best to make sure that -- you know, all of  
9 the questions are heard, and hopefully, answers will be  
10 provided to our questions. Thank you.

11 HEARING OFFICER McCracken: Thank you,  
12 Mr. Wright. Just a reminder that the comment period is going  
13 to be extended through December the 30th of this year,  
14 although most of the documents do say it's through the 29th  
15 of October. So there will be sufficient time to submit any  
16 written comments that you'd like.

17 Again, I've called the last speaker. Is there  
18 anybody else here who would like to comment this evening?

19 Okay, if not, then on behalf of the Department of  
20 the Interior and the California Department of Water  
21 Resources, I would like to thank all of you for attending  
22 this hearing and for providing your comments. And we'll go  
23 ahead and take another recess until some other speakers may  
24 decide to comment, or someone does come in, and then we'll go

03-02-02

### Comment PH 03 – continued

Page 17

1 ahead and conclude this session.

2 So we are again going to be in recess.

3 (Recess.)

4 HEARING OFFICER McCracken: Ladies and gentlemen,  
5 I'm going to go ahead and reconvene the meeting and just once  
6 again say thank you very much for your attendance tonight,  
7 and remind you that written comments will be accepted through  
8 the 30th of December.

9 And also, we have three other meetings, public  
10 hearings, that we'll be holding this week. Tomorrow, weather  
11 permitting, of course, at 1 o'clock in Kings Beach, we'll be  
12 at the North Tahoe Conference Center. Tomorrow evening we'll  
13 be in Truckee at the Parks and Recreation Community Center  
14 from 7 -- starting at 7 o'clock. And then on Thursday, we'll  
15 be in Fallon at 7 o'clock at the Fallon Convention Center.

16 So if you'd like to attend any of those meetings,  
17 you certainly are more than welcome.

18 Then at this point, I'm going to conclude this  
19 public hearing on the Truckee River Operating Agreement  
20 revised EIS/EIR, and thank you very much for your attendance.

21 (Hearing adjourned 7:00 p.m.)

22 --o0o--

23

24

### Comment PH 03 – continued

Page 18

1 STATE OF NEVADA, )  
2 )  
3 COUNTY OF LYON. )  
4  
5

6 I, MARCIA L. FERRELL, Certified Court Reporter in and  
7 for the County of Lyon, State of Nevada, do hereby certify:

8 That on Tuesday, October 19, 2004, at Pyramid Lake  
9 Tribal Council Chambers, 210 Capital Hill, Nixon, Nevada, I  
10 was present and took verbatim stenotype notes of the hearing  
11 entitled herein, and thereafter transcribed the same into  
12 typewriting as herein appears;

13 That said hearing was taken in stenotype notes by me,  
14 a Certified Court Reporter, and thereafter reduced to  
15 typewriting under my direction as herein appears;

16 That the foregoing transcript is a full, true and  
17 correct transcription of my stenotype notes of said  
18 proceedings.

19 Dated at Fernley, Nevada, this 19th day of  
20 October, 2004.

21  
22  
23  
24



Marcia L. Ferrell, CSR #797

## Comment PH 04

BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR

-o0o-

TRUCKEE RIVER OPERATING AGREEMENT  
REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL  
IMPACT REPORT

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

Wednesday, October 20, 2004  
Parks and Recreation Community Center  
10046 Church Street  
Truckee, California

**COPY**

Reported by: DENISE PHIPPS, CCR #234, RDR, CRR

## Comment PH 04 – continued

A P P E A R A N C E S

HEARING OFFICER: JEFF McCRACKEN

AREA MANAGER: BETSY RIEKE

**Comment PH 04** – continued

1 TRUCKEE, CALIFORNIA, WEDNESDAY, OCTOBER 20, 2004,

2 7:00 P.M.

3 -o0o-

4  
5 HEARING OFFICER McCracken: We'll go ahead and  
6 get started, if you can take a seat, including me.

7 Good evening, everybody. My name is Jeff  
8 McCracken. I'm the Public Affairs Director with the  
9 Bureau of Reclamation, the Mid-Pacific region Sacramento,  
10 California. And on behalf of the California Department of  
11 Water Resources and the Department of Interior,  
12 represented by the Bureau of Indian Affairs, the Fish and  
13 Wildlife Service and Reclamation, I'd like to welcome you  
14 to this public hearing on the Truckee River Operating  
15 Agreement, the Revised Draft Environmental Impact  
16 Statement/Environmental Impact Report.

17 I will be serving as your hearing officer this  
18 evening. And at the table with me is Betsy Rieke. Betsy  
19 is the area manager for Reclamation's Lahontan Basin area  
20 office in Carson City.

21 We did have a hearing scheduled for Kings Beach  
22 this afternoon, but unfortunately we had to cancel it due  
23 to the weather. So hopefully those of you who might have  
24 attended that, we can hear your comments this evening.



## Comment PH 04 – continued

1           Tonight's hearing is being held in accordance  
2 with the requirements for the National Environmental  
3 Policy Act and the California Environmental Quality Act.

4           A court reporter is recording the proceedings  
5 this evening. And at the hearing tonight we're accepting  
6 both verbal and written comments on the Revised Draft  
7 EIS/EIR. If you would like to provide verbal comments,  
8 you should have completed and turned in a speaker's card,  
9 such as like this. You can pick one of these up, the  
10 speaker's cards, back at the registration table outside  
11 the door.

12           You may also submit comments tonight by filling  
13 out a comment sheet, which is also available at the  
14 registration table. If you decide to speak from the  
15 written comments and you would like to submit them, please  
16 fill out the top portion of the sheet and attach your  
17 comments to that. Please understand, and this is  
18 important, that verbal comments and written comments will  
19 receive equal consideration. Written comments can be  
20 submitted at this hearing or to the address, fax or e-mail  
21 that's indicated on the comment sheet.

22           While the current deadline for submitting  
23 comments is still October the 29th, we anticipate that the  
24 Department of Interior and the State of California will

**Comment PH 04** – continued

1 soon approve an extension to December the 30th, 2004.

2 Let me take a moment to explain what happens  
3 after the close of the comment period. The Department of  
4 the Interior and the California Department of Water  
5 Resources will both review and prepare responses to the  
6 comments, both written and verbal. A final EIS/EIR will  
7 then be prepared before including responses to those  
8 comments. Ultimately a Record and Decision will be  
9 prepared by the Department of Interior and a Notice of  
10 Determination will be prepared by the State of California.

11 Tonight's hearing will proceed in the following  
12 order: I will call anyone who signs up to speak to the  
13 podium. If you have extensive comments, we ask that you  
14 please submit them in writing. When it's your turn,  
15 please clearly state your name and affiliation, if any,  
16 and spell your first and last names. And please remember  
17 that these are formal hearings and a court reporter is  
18 recording your comments.

19 So with that, we'll go ahead and begin. We have  
20 not received anyone who has officially decided they want  
21 to make any comments. So we ask anyone here, if they  
22 would like to talk to us or tell us what they think of the  
23 document, they'd like to do it verbally, this is your  
4 opportunity to do that. If not, well, I will go ahead and

5

## Comment PH 04 – continued

1 declare this hearing will be in recess for a while until  
2 someone decides they'd like to talk or someone else comes  
3 in.

4           Okay, go ahead.

5           MR. SCHEURING: I'll just stand up and introduce  
6 myself. My name is Chris Scheuring from the law firm of  
7 Somach, Simmons & Dunn in Sacramento. I'm here on behalf  
8 of a couple of ski areas, Northstar and Heavenly, tonight.  
9 We don't have any prepared comments for you tonight. I  
10 understand that the period for public comments has been  
11 extended to December 30th. We do anticipate having  
12 something for you at some point within that period. But  
13 for tonight I came to listen. I'm not sure there's going  
14 to be a whole lot of listening, but anyway.

15           HEARING OFFICER McCracken: Thank you,  
16 Mr. Scheuring.

17           Thank you for your comments. And, again, with  
18 that we'll go ahead and continue to recess until we decide  
19 we're going to go home.

20           (Recess taken.)

21           HEARING OFFICER McCracken: I hereby declare this  
22 hearing as concluded, I'd like to thank everybody for  
23 attending, at 8:10 p.m.

24           (Proceedings concluded at 8:10 p.m.)

### Comment PH 04 – continued

1 STATE OF NEVADA, )  
2 COUNTY OF WASHOE. ) ss.

3

4 I, DENISE PHIPPS, Certified Court Reporter in  
5 and for the County of Washoe, State of Nevada, do hereby  
6 certify;

7 That on Wednesday, October 20, 2004, at the  
8 Parks and Recreation Community Center, 10046 Church  
9 Street, Truckee, California, I was present and took  
10 verbatim stenotype notes of the Hearing entitled herein,  
11 and thereafter transcribed the same into typewriting as  
12 herein appears;

13 That said hearing was taken in stenotype notes  
14 by me, a Certified Court Reporter, and thereafter reduced  
15 to typewriting under my direction as herein appears;

16 That the foregoing transcript is a full, true  
17 and correct transcription of my stenotype notes of said  
18 hearing.

19 Dated at Reno, Nevada, this 22nd day of October,  
20 2004.

21

22   
23 DENISE PHIPPS, CCR #234, RDR, CRR

24

# Comment PH 05

Page 1

1           BEFORE THE UNITED STATES DEPARTMENT OF THE INTERIOR  
2   -oOo-  
3  
4  
5                           TRUCKEE RIVER OPERATING AGREEMENT  
6       REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL  
7   IMPACT REPORT  
8  
9  
10                           TRANSCRIPT OF PROCEEDINGS  
11  
12   PUBLIC HEARING  
13  
14                           Thursday, October 21, 2004  
15   Fallon Convention Center  
16   100 Campus Way  
17   Fallon, Nevada  
18  
19  
20  
21  
22   **COPY**  
23  
24       Reported By:           MARCIA FERRELL, CCR No. 797

## Comment PH 05 – continued

Page 2

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### A P P E A R A N C E S

6

7

HEARING OFFICER: JEFF McCRACKEN

8

9

AREA MANAGER: BETSY RIEKE

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CAPTIONS UNLIMITED OF NEVADA, INC. 775-746-3534

**Comment PH 05** – continued

Page 3

1 FALLON, NEVADA, THURSDAY, OCTOBER 21, 2004

2 7:15 P.M.

3 --o0o--

4 HEARING OFFICER McCracken: Ladies and gentlemen,  
5 let's go ahead and get started, if you can find a seat we'll  
6 go ahead and open the hearing.

7 Good evening, everybody. My name is Jeff  
8 McCracken, and I'm the Public Affairs Officer for the Bureau  
9 of Reclamation's Mid-Pacific region out of Sacramento. On  
10 behalf of the California Department of Water Resources and  
11 the United States Department of the Interior, represented by  
12 the Bureau of Indian Affairs, the U.S. Fish and Wildlife  
13 Service, and the Bureau of Reclamation, I'd like to welcome  
14 all of you to this public hearing on the Truckee River  
15 Operating Agreement and Revised Draft Environmental Impact  
16 Statement/Environmental Impact Report.

17 I will be serving as your hearing officer  
18 tonight, and when I'm done up here I'll be joining Betsy  
19 Rieke at the table. Betsy, as you know, is the area manager  
20 for the Lahontan Basin here in Carson City.

21 This is our fifth and final hearing. Earlier  
22 this week we had hearings in Reno, Fernley, Nixon, and  
23 Truckee. We did have to cancel one hearing in Kings Beach  
24 due to bad weather. Tonight's hearing is being held in

CAPTIONS UNLIMITED OF NEVADA, INC. 775-746-3534

## Comment PH 05 – continued

Page 4

1 accordance with the requirements of the National  
2 Environmental Policy Act and the California Environmental  
3 Quality Act. We have a court reporter with us tonight who  
4 will be recording all of the proceedings.

5           At this hearing we are accepting both verbal and  
6 written comments on the revised EIS and EIR. If you'd like  
7 to provide verbal comments, you need to complete and turn in  
8 a speaker's card, such as these, to the gentleman outside at  
9 the registration desk. And if you'd like to make verbal  
10 comments and have not yet done that, please do so as we move  
11 ahead in this meeting.

12           You may also submit written comments this evening  
13 if you'd like by filling out a comment sheet, which is also  
14 available at the registration table. Please understand that  
15 both written and verbal comments will receive equal  
16 consideration.

17           Written comments can be submitted at this hearing  
18 to the address, fax or e-mail that's indicated on the comment  
19 sheet. While the current deadline for submitting comments is  
20 October 29th, we expect that the Department of Interior and  
21 the State of California will soon approve an extension of  
22 comments to December the 30th of this year.

23           Let me quickly tell you what happens after the  
24 close of the comment period. The Department of Water

CAPTIONS UNLIMITED OF NEVADA, INC. 775-746-3534



**Comment PH 05** – continued

Page 5

1 Resources will review and prepare responses to all of the  
2 comments. A final EIS/EIR will be prepared which will  
3 include responses to those, and the Department of Interior  
4 will do the same thing. Ultimately, the department will sign  
5 a record of decision, and the state will sign a notice of  
6 determination.

7           Tonight's hearing will proceed in the following  
8 manner: I will call the speakers in the order they filled  
9 out their cards, and when I call your name, please come up to  
10 this podium. It will be turned around, and I'll be at the  
11 front table with Mrs. Rieke. Please state your name and your  
12 affiliation. And remember, once again, this is being  
13 recorded as a formal hearing, so please speak clearly so your  
14 comments can be captured accurately.

15           So with that, I think we're ready to begin. The  
16 first speaker tonight is Mike Mackedon, he'll be followed by  
17 Brad Goetsch. Mr. Mackedon?

18           MR. MACKEDON: Thank you, Mr. McCracken,  
19 Ms. Rieke. I'm, for the record, Michael F. Mackedon, I'm  
20 City Attorney for the City of Fallon. And for the record, I  
21 want to say that the City of Fallon operates a water utility  
22 which distributes water, community-wide water system to the  
23 residents of the City of Fallon. It's a fully metered public  
24 water system, and has been in existence, although not in its

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## Comment PH 05 – continued

Page 6

1 complete form that we see today, since the date of  
2 incorporation of the City in 1908.

3           The municipal water supply -- source of municipal  
4 water supply is aquifers which underlie the footprint of the  
5 City of Fallon in its incorporated city limits. All of its  
6 wells are within the incorporated area. And by virtue of  
7 that, the municipal water supply is dependent upon the waters  
8 that enter the valley, either through natural precipitation  
9 or via the Carson River and the irrigation waters that were  
10 combined in the 1902 -- by the 1902 Reclamation when it  
11 created the Newlands Project.

12           And the City of Fallon's water system has been  
13 sustained at least in part, according to even the records  
14 that have been produced, as I read them, and to the extent  
15 that I understand them, in the production of the TROA. So  
16 the municipal water supply is affected potentially by any  
17 change in the water regime that may be anticipated by this  
18 Truckee River Water Agreement.

19           In addition to that, the City of Fallon owns  
20 Newlands water rights as such, in its own right, and so as  
21 the owner of the Newlands water rights, it's a party that has  
22 an interest and will be affected potentially by any change in  
23 the allocation, storage, releases of water that may enter the  
24 valley.

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**Comment PH 05** – continued

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1           And when I refer to interested or affected party,  
2 I'm taking that term from Public Law 101-618, and as an  
3 affected party, by virtue of that act, the affected party  
4 here, by virtue of the plain meaning of the act, cannot be  
5 injured by any upstream reallocation or changes, as we read  
6 the act.

7           Water is vital to the sustainability -- to use an  
8 overworked term, but it's vital to this valley, just as  
9 surely as it is to upstream interests in the Truckee Meadows  
10 or California or anywhere else.

11           In the past, the City has reviewed the models  
12 that have been presented in support of a proposed or  
13 potential TROA and have found them to be inadequate, actually  
14 illegal in our sense, or defective legally. And when I use  
15 that term, I mean defective because the outcome would violate  
16 the plain meaning and spirit of the public law which  
17 authorizes its possibility. That's as we've read the law.

18           In this case, we have not had the opportunity to  
19 review all of the documents that we've been provided, much  
20 less the model or the operations manual for the model, and as  
21 a result, the mayor of the City of Fallon would have to say  
22 it's impossible at this time to make intelligent, meaningful,  
23 responsible and constructive comments on the proposed action.

24           And I can add, I guess, at this point we're

05-01-01

## Comment PH 05 – continued

Page 8

1 grateful to learn that the time within which comments could  
2 be made may be extended to December 30th of this year, is  
3 that correct?

4           The City is preparing now requests for additional  
5 time, I'll meet with the mayor and take into consideration  
6 the fact that additional time is being offered. I don't know  
7 whether that's the final decision or not. But the City  
8 believed it would need more time than an additional 60 days  
9 to comment, to make proper comments. And it would be  
10 essential, certainly, within the time frame that's  
11 anticipated by Mr. McCracken's remark, to have access to the  
12 model so that we can understand the assumptions that went  
13 into it, and arrive at our own educated and informed  
14 understanding of the predictions made by the model, and the  
15 outcome.

16           So thank you for the opportunity to be here.  
17 That closes my comments on behalf of the City.

18           HEARING OFFICER MCCRACKEN: Thank you,  
19 Mr. Mackedon. The next speaker is Brad Goetsch, he'll be  
20 followed by Lyman McConnell.

21           MR. GOETSCH: Good evening. Betsy, I want to say  
22 I appreciate the time and the opportunity that you and your  
23 staff have given to myself and to the community recently in  
24 the multiple meetings and workshops and in this hearing, and

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**Comment PH 05** – continued

Page 9

1 in giving me some time at the office. So for you and for the  
2 folks, I've learned a lot, and you've given us the  
3 opportunity to work with you and to ask questions. I do,  
4 however, want to make a statement, and we've talked about  
5 some of these things before.

6 Water is truly the lifeblood of any desert  
7 community, you'll hear that from all of the speakers tonight.  
8 The Newlands Project was the Bureau's first reclamation  
9 project over 100 years ago, a project that brought about a  
10 growing, thriving community and sustained it at the terminal  
11 end of the Carson, only supplemented by a significant  
12 contribution from the Truckee River.

13 From the previous ordinance decrees, to the 1915  
14 General Electric decree, to the 1935 TRA, were all documents  
15 that were developed over time and worked out through law and  
16 with the community and with different people who worked on  
17 them. And they were all fairly simple, fairly short  
18 documents that were understandable by a common man, by  
19 somebody like me, who could pick those up and read them and  
20 go through them and maybe ask a couple of questions.

21 The current EIS/EIR is a stack of thousands of  
22 pages of papers with documents and annexes and supplements  
23 and other documents that they refer to, and it's based on a  
24 very important and very complicated model which has been

05-02-01

## Comment PH 05 – continued

Page 10

1 previously challenged by a number of experts, and that many  
2 questions have been raised about.

3           And Churchill County feels that the approximate  
4 60 days that were allowed initially between the notification  
5 and the current deadline didn't really allow reasonable  
6 equitable opportunity for the county to digest and really  
7 understand that large document. We haven't been afforded  
8 access to the model so that we could bring our experts in and  
9 understand those models and the engineers that could work on  
10 those, and then could give advice to our elected leaders so  
11 that we could make intelligent or substantive comments at  
12 this time.

13           The county has requested both a six month  
14 extension and an opportunity to have access to all aspects of  
15 the model, and to all supplementary programs that have been  
16 built for the model to help it to work better over time, and  
17 I just respectfully request that you grant those requests  
18 from the county and give the people at the terminal end of  
19 these two rivers the opportunity to truly participate in  
20 this, and to make comments back to your organization so that  
21 you can help to make this agreement or whatever comes out of  
22 this agreement the best possible agreement for all the people  
23 at the top of the river and at the bottom of the river.  
24 Thanks a lot.

05-02-01

**Comment PH 05** – continued

Page 11

1 HEARING OFFICER McCracken: Thank you,  
2 Mr. Goetsch.

3 Our next speaker is Lyman McConnell. He'll be  
4 followed by Michael Van Zandt.

5 MR. McCONNELL: Thank you. My name is Lyman  
6 McConnell, I'm the project manager of the Truckee Carson  
7 Irrigation District. And we, the district, have asked for an  
8 extension of time because of the request for information that  
9 we made in regard to the modeling, which I understand has not  
10 been provided as of yet.

11 So I tried to go through some of this material  
12 and see if I could figure out what was going on, and I found  
13 out that the TROA reads a lot like the IRS code. You start  
14 to read a paragraph, and it refers to about three or four  
15 different terms, and then you have to try to figure out, now,  
16 what do each one of those terms mean.

17 So I really have more questions than I do  
18 statements. So I would just like to know, I'd propose that  
19 if you're going to allow the additional extension, and I hope  
20 that is correct, then we will have at least 60 days more to  
21 go through this, and maybe perhaps you can direct me to the  
22 person that I should sit down with to try to understand a  
23 little more. Because in going through it, all I was able to  
24 do was make comments about the fact that things don't seem to

## Comment PH 05 – continued

Page 12

1 appear as they're stated in some sections as they do in other  
2 sections. And I need to understand a little more about the  
3 document before I can make valid comments.

4           Now, part of that is the need for the modeling.  
5 Because as I was -- it was pointed out to me that some of the  
6 modeling results for current conditions show maybe some of  
7 the USGS gauges on the river systems, but then the modeling  
8 results use different locations for the modeled results  
9 appendix. And then of course we need to understand how the  
10 model works in order to figure out if the information is  
11 correct.

12           I did notice on some of the modeling output that  
13 it didn't really appear that the results of the model showed  
14 what actually happened during the years that indicated this  
15 would be the results of the modeling under the current  
16 conditions or the forward conditions.

17           I also understand that the forward conditions  
18 jump up to 2019, or whatever the date is that's the full use  
19 in the Truckee Meadows, and I notice that in some of the  
20 tables that were provided for the Truckee and the Carson  
21 division of the Newlands Project show that there's very  
22 little impact on those averages. It showed averages for wet,  
23 median and dry conditions, but I was unable to determine what  
24 a wet, median, dry condition was. And what the average was,

05-03-01

05-03-02

05-03-03

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**Comment PH 05 – continued**

1 if the average was over 100 years, and whether the average  
 2 was for a recreational period, which is what period in the  
 3 month. So there's a lot of questions that are unclear to me  
 4 as to what the results of the modeling and the TROA will be.

5 For example, in the TROA, I found paragraphs  
 6 referencing Newlands Project credit water. And then finding  
 7 statements in the back, in the EIS, indicating that Newlands  
 8 Project credit water hasn't been utilized under the OCAP, and  
 9 that the OCAP would have to be modified in order to implement  
 10 the TROA provisions. And then there were examples of how  
 11 that was to be implemented. But I was unable to track,  
 12 within the model results that were in the appendix, what the  
 13 results of that were, or are.

14 And so it leaves a lot of questions to be  
 15 answered in order to specifically address comments as to the  
 16 impacts on the Newlands Project.

17 I understand that the purpose of the TROA was to  
 18 maintain existing water rights, and ensure that those water  
 19 rights are met in accordance with the Orr Ditch Decree, but  
 20 then I also noticed that there was a provision that indicated  
 21 that this was going to be a federal regulation governing the  
 22 operation of the Truckee River reservoirs, and that it was  
 23 going to replace the Truckee River Agreement.

24 And so on one hand, I was under the impression

05-03-03

05-03-04

## Comment PH 05 – continued

Page 14

1 that it would replace some portions; on the other hand, it  
2 appeared in the document that it was going to replace the  
3 Truckee River Agreement entirely, in accordance with the  
4 government's position.

5 So if that's the case, and it was also going to  
6 replace Prosser Creek storage agreement and -- so the  
7 question is, what is the intent of replacing those, and how  
8 is it going to have an impact on the Truckee and the Carson  
9 divisions of the Newlands Project, since the district was a  
10 signatory to those particular agreements, and is not a  
11 signatory to this agreement.

12 Oh, that's a mic down there the paper is hitting.

13 HEARING OFFICER McCracken: You have four inches  
14 of paper on top of it.

15 MS. RIEKE: It's the little bar.

16 MR. McCONNELL: Yeah, okay. And one other  
17 comment in regard to the impacts on the project is that the  
18 premise of course, as I mentioned before, is that it doesn't  
19 affect the water rights of anyone under the Orr Ditch Decree,  
20 but yet there's no provisions or protections for shortages to  
21 the Newlands Project.

22 And I guess I misunderstood, to some extent, what  
23 might happen here today, so I'll leave my questions to  
24 someone else that I can talk to after the meeting, or maybe

05-03-05

**Comment PH 05** – continued

Page 15

1 perhaps schedule some appointments with some people to try to  
2 understand how the terms and provisions are to be  
3 interpreted, and how this process works.

4 And then hopefully we'll have the model and we  
5 can go through that, and try some different scenarios. Thank  
6 you.

7 HEARING OFFICER McCracken: Thank you,  
8 Mr. McConnell.

9 Our next speaker is Michael Van Zandt. He'll be  
10 followed by Norman Frey.

11 MR. VAN ZANDT: Good evening. I'm Michael Van  
12 Zandt appearing on behalf of the Truckee Carson Irrigation  
13 District. Some of the commenters have already noted the  
14 request for extensions that have been filed, and my  
15 understanding is that there may be an indication of perhaps a  
16 60 day extension that may be coming. And that's very much  
17 appreciated.

18 We did ask for a six month extension, and that's  
19 really based on comments that we're getting from consultants  
20 who were assisting us on the time that would be necessary for  
21 them to analyze and understand the modeling information, in  
22 particular, that we've requested. And about a week or so  
23 after we received the environmental impact statement we were  
24 alerted to the fact by our consultants that this model was

05-04-01

## Comment PH 05 – continued

Page 16

1 absolutely critical for a full understanding of how the  
2 impact analysis was done within the Environmental Impact  
3 Statement.

4           And we immediately acted upon that, and had my  
5 consultant communicate directly with Mr. Parr, so that we  
6 could get that process rolling.

7           And there was indication initially that that  
8 request was going to be honored, but some week and a half or  
9 two weeks later there was an indication that we would have to  
10 file a Freedom of Information Act request in order to get  
11 that information.

12           Now, that slowed down the process considerably,  
13 which is unfortunate, but I do appreciate the offer that was  
14 made by Mr. Parr that our consultant could talk directly to  
15 Mr. Tom Scott, and Mr. Scott has been most forthcoming in  
16 trying to cooperate. Of course, he couldn't turn over  
17 materials to us, but he could discuss our issues, answer some  
18 preliminary questions, and that was very helpful.

19           But nonetheless, the FOIA request, we have  
20 submitted the money that was requested, but we are still  
21 waiting for the material to be turned over. The earliest  
22 date we were told was October 27th for a turnover of that  
23 material. So we would have essentially roughly 60 days from  
24 that time in order to analyze that material and understand

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1 it.

2           The issue, of course, is our consultants thought  
3 that a six month period was more appropriate to do that kind  
4 of analysis. But based upon receiving everything that we've  
5 requested, and it's my understanding from the response to the  
6 FOIA request that we have been denied the release of the  
7 operators manual for the model, and in talking to our  
8 consultants, it's kind of like getting -- not receiving the  
9 operators manual for the model was kind of like having the  
10 blind man loose in the factory with broken glass all over the  
11 floor. And there's no way that you can maneuver through the  
12 model without understanding the variables that have been  
13 applied, the assumptions that have been applied, as well as  
14 the selection of subroutines that have been run for this  
15 model.

16           And so we do consider it critical that we get not  
17 only the model itself, but also the operators manual.  
18 And it's my understanding that the reason that we're not  
19 going to get the operators manual is because it's attorney  
20 work product, which is a specific exemption under the Freedom  
21 of Information Act. And for the life of me, I cannot figure  
22 out how in the world an operators manual for a model can be  
23 attorney work product. But nonetheless, that was the  
24 exemption that has been communicated to us.

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1           So we will be filing the FOIA appeal on the  
2 decision to exempt the operators manual from release.  
3 Hopefully, we can come to some accommodation with the Bureau  
4 with regard to that, so that perhaps whatever is in the  
5 operators manual that is sensitive could be redacted, and the  
6 operators manual could be released so that we could get our  
7 consultants working on the model.

8           If we don't have the operators manual, we don't  
9 have it in a timely manner, that is going to considerably  
10 slow down this process, and could result in our inability to  
11 really understand how the impact analysis was done. In  
12 particular with regard to water resources, which seems to be  
13 the critical component within the Environmental Impact  
14 Statement, with the various appendices that are associated  
15 with water resources. And the various scenarios that  
16 presumably were analyzed within the models that reveal, or do  
17 not reveal, the impacts that the Bureau obviously is  
18 obligated under the National Environmental Policy Act to  
19 disclose not only to the public, but also to the  
20 decision-maker who ultimately will sign the record of  
21 decision for the TROA.

22           In order for the public to have any meaningful  
23 opportunity to comment on the Environmental Impact Statement  
24 and the process that the Bureau engaged in, I think it's

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1 absolutely critical and necessary that we receive the  
2 information that we have requested, including the operators  
3 manual, so we understand how the model was actually run and  
4 used to support the very important analysis that was done in  
5 the Environmental Impact Statement.

6           So you're probably not the ones who will make  
7 this decision ultimately, but just for the record, I wanted  
8 to state that that is very important and, you know, kind of  
9 completes the process that the public hearing initiates. And  
10 I understand -- I wasn't here just when you started, but I  
11 understand there was no presentation or anything. Normally  
12 in Environmental Impact Statement hearings there's a short  
13 presentation at least by the agency kind of helping the  
14 public understand what the purpose of the proposed action is,  
15 and the various alternatives that have been analyzed, and so  
16 forth.

17           I guess we didn't have that tonight, and that's  
18 unfortunate, because I think the public and perhaps many  
19 members of the audience who are not steeped in the nuances of  
20 water resources analysis and how the Truckee River Operating  
21 Agreement is proposed to manage the river, probably would be  
22 helpful for them if the Bureau would take the time to put on  
23 a little presentation and describe that.

24           But, you know, it's very important, obviously, as

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1 was mentioned by one of the other speakers, because of the  
2 kind of the density, I guess is the best word I can think of,  
3 of the TROA, in the way it's written, and then trying to  
4 match up the TROA to the Environmental Impact Statement  
5 analysis that has been performed, is a task that might be  
6 described as Herculean, but that would probably be too kind.

7           So I think it is very important for the agency,  
8 especially in a situation like this with a proposal and a  
9 document that affects so many people here in Nevada, a very  
10 important issue, that the public really has a right to fully  
11 understand what the potential implications are for a proposal  
12 by the United States, along with California, obviously  
13 Nevada, the other signatories of the TROA, to propose some  
14 reordering to the way in which the Truckee River is going to  
15 be managed in the future. Especially since we have  
16 significant additional people who have obviously rights in  
17 the Truckee River, and even if we get all the way through  
18 this analysis and we don't reveal any impacts, there is still  
19 going to be some concern about, you know, how is this really  
20 going to affect me, is it really going to change the way the  
21 river is managed, and will it cause shortages, and so forth  
22 and so on.

23           Right now as we sit here, we really can't answer  
24 those questions. And I think it's important for the members

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1 of the public who are reading this document, and are trying  
2 to understand not only the impact analysis, but also the way  
3 the Truckee River Operating Agreement is actually going to  
4 operate, that we have as full a disclosure as we possibly  
5 can.

6 I, like some of the other speakers, feel a little  
7 bit handicapped because we don't really have the full  
8 information that we probably need at this point to make  
9 informed and meaningful comments. That would assist you,  
10 presumably, to get to the point where you can finalize the  
11 document, or make some changes in it that would address some  
12 of the issues that we think are of concern.

13 But given the level of review that we have been  
14 able to accomplish so far without the ability to go through  
15 the model, there are a couple things that I do want to bring  
16 to your attention which I think are very important and need  
17 to be thought about before we ever get to the point where we  
18 finalize this document.

19 Obviously, if we had the advantage of having the  
20 model, these comments could be a little more sophisticated,  
21 but right now they're just going to be general comments based  
22 on my now 25 years of experience dealing with NEPA documents,  
23 and the time that I spent in federal service dealing with  
24 these documents, not only reviewing them, but also writing

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1 them. I think it's obviously an important process, an  
2 important planning process for the Bureau, and it is one  
3 that, you know, has many, many different advantages, not only  
4 for the agency, but for also the public that is going to be  
5 affected by it.

6           So one of the things that struck me when I was  
7 looking at the document, at kind of a top level, is the  
8 discussion of alternatives. And there are some documents  
9 that are referred to that are not in the appendices in which  
10 the negotiators for the Truckee River Operating Agreement  
11 some time ago, I think it was back in 1996, actually made  
12 some early-on determinations for a set of alternatives that  
13 they were looking at but rejected. I believe that is now  
14 summarized in Appendix G for the document. For the  
15 Environmental Impact Statement.

16           But Appendix G is just that, it's a summary. It  
17 would be helpful I think for the public if we saw the  
18 underlying document in which presumably those alternatives  
19 are more fully discussed and analyzed, and then  
20 determinations are made that certain alternatives are not  
21 going to be carried forward, which I clearly understand is a  
22 prerogative of the agency.

23           Nonetheless, it looks to me that essentially we  
24 have denominated in the document now the three alternatives.

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1 No action alternative, obviously, the proposed action, and  
2 then the local water agency alternative. But in looking at  
3 what I understand to be the difference between the proposed  
4 action with regard to adoption of the TROA and the local  
5 water agency option, does not appear to be a significant  
6 difference between those two alternatives. And some might  
7 say in essence they are one and the same alternative with  
8 very, very minor variances.

9           Now, the obligation under the National  
10 Environmental Policy Act is for the agency to develop a range  
11 of reasonable alternatives that would address the issues that  
12 are raised in the proposed action. And this proposed action  
13 seems to be concentrated mainly to fulfill the direction of  
14 the Congress and Public Law 101-618, to provide some drought  
15 protection for Reno, Sparks, Washoe County, Truckee Meadows,  
16 and also to enhance water flows for the recovery of the  
17 fisheries in Pyramid Lake.

18           Those being the primary purposes, I understand in  
19 the purpose and the need there are other requirements that  
20 are mentioned, obviously, in 101-618 that may not be actually  
21 proposals so much as they are perhaps limitations on the way  
22 the proposals are carried out. One of those being the  
23 protection of the water rights under the Orr Ditch Decree.

24           But what I didn't see in the document is I don't

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1 see a range of reasonable alternatives that is really looking  
2 at promoting the proposed action. It essentially comes down  
3 to we have negotiated an agreement over the last presumably  
4 14 years, if you start from 1990, but it probably predates  
5 that going back to the preliminary settlement agreement, so  
6 it might be as long as 16 or 17 years. And there was  
7 momentum, obviously, amongst the five parties that were  
8 negotiating that agreement to reach some kind of an  
9 understanding with regard to how they were going to settle  
10 those issues.

11 But now when you turn this into an agency  
12 proposed action and you carry it forward, the mere fact that  
13 those negotiators and proposed signatories to the Truckee  
14 River Operating Agreement have agreed on a particular course  
15 of action does not mean that there are not other ways to  
16 achieve the same purposes and goals. And the obligation of  
17 the Bureau of Reclamation in this case is to develop those  
18 other reasonable ranges of alternatives.

19 And like I said, we haven't gotten to the point  
20 where we perhaps have a full understanding of the  
21 ramifications of what is being proposed here, but it seems to  
22 me that right off the top of the list, if we are looking at a  
23 situation where we're attempting to achieve drought  
24 protection as part of the proposed action, that there would

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1 be other avenues that might be available to achieve that on  
2 behalf of the people in the Truckee Meadows.

3 But I would submit it seems to me that every  
4 water user on the Truckee River is a victim of drought. Has  
5 been for the last five years. And it would also seem that  
6 the Bureau in narrowing its proposed action -- I realize you  
7 may feel like you're handcuffed a little bit because of the  
8 public law, but NEPA doesn't recognize that. You can't  
9 define your proposed actions so narrowly that there aren't  
10 any possible alternatives that can be analyzed. But that  
11 appears to me to be what's going on.

12 But in point of fact, if you really are thinking  
13 about managing the Truckee River in such a manner that you  
14 can enhance the ability of the river to provide more water  
15 under certain limited circumstances, that goal -- and it is a  
16 laudable goal -- should be one that is applied to all of the  
17 water users on the Truckee River. And not just the ones who  
18 just happen to be signatories to the TROA.

19 And so an alternative I believe should be  
20 developed that would look at managing the river in such a  
21 manner that drought protection can be afforded for all the  
22 users of the water resources in the Truckee River. And there  
23 are quite a number of them, if you've looked at the Orr Ditch  
24 Decree lately.

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1           So that alternative is not one that is discussed.  
2   It is really mentioned more as a limitation on the proposed  
3   action that we have to protect the water rights that have  
4   been decreed under the Orr Ditch Decree, but there's no real  
5   alternative that says let's look at this a little more  
6   globally, and not just be thinking about moving water around  
7   in the reservoirs up in the Sierras for the benefit of two of  
8   the parties to the agreement. Let's think about how we can  
9   enhance the management of water resources in such a manner  
10   that everyone who has a water right on the Truckee River can  
11   benefit from that. I think that is a legitimate alternative  
12   that should be explored in the document.

13           There may be various ways of accomplishing that.  
14   One could be development of additional water resources. Some  
15   water right now is shipped out of the Truckee Meadows to  
16   other users. Perhaps it's time to bring that water back and  
17   try to provide an alternative supply for those other users,  
18   perhaps by ground water wells or some other method.

19           There also has been a significant change in the  
20   way that the federal water master has managed water in the  
21   Truckee Meadows, and this has come up in a number of hearings  
22   that I've been participating in over the last several years.  
23   And what the federal water master has indicated is that there  
24   are opportunities within the Truckee Meadows, in particular,

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1 perhaps to find ways to more efficiently, better use the  
2 water supply that's available. Specific example would be in  
3 some of the ditches, canals, that are off of the Truckee  
4 River in the Truckee Meadows area, there have been water  
5 rights that have been retired or transferred off of those  
6 ditches.

7           Nonetheless, the federal water master is required  
8 to still push a significant amount of water through those  
9 ditches to supply the remaining water right owners. And he  
10 has to do that in such a manner that, in his opinion, I  
11 believe, the ditches have become less efficient, therefore he  
12 must supply additional transportation water to move that  
13 water to the final end user. This may be some opportunities  
14 to look at some of the efficiencies in the manner in which  
15 water is moved around in Truckee Meadows from the Truckee  
16 River, and perhaps achieve some savings through conservation,  
17 lining, pipelines, whatever it is.

18           But that is not an alternative that's really  
19 discussed. There's some mention of it, again, in the  
20 proposed action in the context of the Truckee Meadows Water  
21 Authority and some of the conservation measures that it has  
22 underway, and that's fine. But I think it is a true  
23 alternative that the document, the Environmental Impact  
24 Statement that we're talking about tonight, should have a

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1 more global look at managing the water from the Truckee River  
2 in such a way that it is done efficiently and it is done for  
3 the benefit of all of the water right owners in the Truckee  
4 River.

5           One of the alternatives that's kind of mentioned  
6 in passing, but I didn't see it really talked about in  
7 Appendix G, is the potential construction of additional  
8 storage facilities. And since we are talking about drought  
9 protection, we are talking about perhaps the opportunity for  
10 reordering things so that perhaps everybody can achieve some  
11 relief from drought protection, for drought protection, that  
12 a reasonable alternative would be looking at whether or not  
13 additional storage facilities are in fact in the best  
14 interest of all the beneficiaries of the Truckee River Orr  
15 Ditch decree.

16           And it doesn't necessarily have to be limited to  
17 above-ground reservoirs, which you know always draw a severe  
18 reaction because of the various environmental impacts that  
19 they provide. But there may be some opportunities for  
20 underground water banking in the aquifers up and down the  
21 Truckee River. That may provide us some opportunities to  
22 perhaps store some water.

23           I don't know that the USGS has a good handle on  
24 where areas may be along the Truckee River that would provide

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1 those opportunities, but I think that's an alternative that  
2 probably is long past due in being explored to help a drought  
3 situation. So that we can bank water in an underground  
4 aquifer, and sometime out in the future if the need arises,  
5 droughts continue the way they have for the last several  
6 years, we would have an opportunity to pump that water and  
7 use it as a supplemental supply.

8 So those are just two alternatives that I think  
9 should be explored in this process which have not been.

10 There's one other comment about alternatives, and  
11 has to do with the no action alternative. It appeared to us  
12 in looking at the no action alternative that the no action  
13 alternative -- and it's not really that clear, but I think I  
14 understand that the no action alternative contains actions  
15 that are not yet complete. In other words, there are  
16 proposals within the no action alternative that are assumed  
17 to have taken place already. One of those I believe is the  
18 continuing purchase and transfer of water rights within the  
19 Truckee division of the Newlands Project.

20 Well, that is not a true no action alternative,  
21 then. Because it is looking forward to the future to some  
22 action that has not yet been completed, yet is being treated  
23 as part of the environmental baseline. And what we really  
24 need, obviously, when we're looking at the environmental

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1 baseline is to try to understand what the environmental  
2 impacts are from the proposed action, the TROA, as we sit  
3 here today, with what we know about the condition on the  
4 river as it exists today. So that we have essentially a  
5 status quo with regard to the no action alternative, and we  
6 can develop that environmental baseline, and we can then make  
7 some determinations with regard to how the Truckee River  
8 Operating Agreement, if it is implemented, will have an  
9 impact on the conditions that we know exist today. And not  
10 the ones that we think might happen within, you know, two  
11 years, five years, whatever it is.

12 There are also some suppositions in there with  
13 regard to Donner Lake water that obviously were of concern to  
14 the irrigation district, because Donner Lake water is part of  
15 the drought protection that Truckee Carson Irrigation  
16 District has had and has been using since the 1930s. And so  
17 proposals with regard to the use of Donner Lake water that do  
18 not include the Truckee Carson Irrigation District as a  
19 decision-maker would seem to be a little out of step. And  
20 obviously, we would want -- that is, the district would want  
21 to have full participation in any decisions that are going to  
22 be made with regard to the use of Donner Lake water within  
23 the context of the TROA.

24 Mr. McConnell mentioned the Newlands Project OCAP

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1 credit water, potential credit water that might be stored  
2 upstream. As we indicated, it's not clear to me from looking  
3 at the no action alternative whether that's considered part  
4 of the status quo, or that's considered part of something  
5 that would be in the proposal. It's not something that  
6 appears to be modeled in the Environmental Impact Statement  
7 in its appendices. But obviously that provision of the '97  
8 amended OCAP has never been implemented, and so it might be a  
9 little bit of a stretch to say that would be part of the no  
10 action alternative. That might be something for another day.  
11 Or part and parcel of the proposal that the Bureau has with  
12 regard to the TROA.

13 The other part of that is there's some mention of  
14 a need for amendment to the operating criteria and procedures  
15 in the Environmental Impact Statement that obviously are a  
16 little disturbing, since any amendments to the OCAP always  
17 raise some controversies, as everybody knows.

18 And I think it's very important, it's not really  
19 clear what those proposals are. It's merely mentioned that  
20 the OCAP might have to be modified. Without any specificity  
21 as to how it's going to be modified, what part of it is going  
22 to be modified, when it's going to be modified. And that is  
23 not, I would submit, that is not full disclosure. And if  
24 the -- whatever is going to happen with the OCAP is going to

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1 be part and parcel of implementing the TROA, then there  
2 should be a disclosure not only to the decision-maker, but  
3 also to the public as to what the Bureau's view is with  
4 regard to how the OCAP might be amended in the context of  
5 this Environmental Impact Statement.

6           One last thing has to do I guess with the model,  
7 and obviously what we are looking for in the model is the  
8 information that we need to be able to in some respects  
9 duplicate what the Bureau has done with regard to the  
10 analysis of how the water resources are going to be managed  
11 under the Truckee River Operating Agreement. It obviously is  
12 not clear to me what the relationship will be between the  
13 Truckee River Agreement and the Truckee River Operating  
14 Agreement.

15           We've heard various scenarios as we've gone  
16 through this process that the Truckee River Agreement, as  
17 Mr. McConnell alluded to, would be essentially rescinded, the  
18 Truckee River Operating Agreement would be put in its place.  
19 That is obviously very disturbing, because the Truckee River  
20 agreement was a prerequisite for the entry of the Orr Ditch  
21 Decree, with a large number of people who not only  
22 participated in the negotiation of the Truckee River  
23 Agreement that allowed for the entry of the Orr Ditch Decree,  
24 but the Truckee River Agreement process reached out and

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1 attempted to get as many of the water right owners on the  
2 Truckee River as possible to sign up and agree to that  
3 process for how the water in the Truckee River was going to  
4 be managed.

5           So besides the main parties to the Truckee River  
6 Agreement, which included TCID and Sierra Pacific and  
7 Conservancy District and United States, obviously, there were  
8 what were called the parties of the fifth part who  
9 essentially were the individual water right owners on the  
10 Truckee River.

11           So Truckee River Operating Agreement, to me,  
12 seems like the process for approval of that agreement should  
13 follow essentially the same process that the Truckee River  
14 Agreement followed. And it is interesting that two of the  
15 signatories to the Truckee River Agreement are the only ones  
16 who remain in the Truckee River Operating Agreement amongst  
17 the hundreds of people who signed the original Truckee River  
18 Agreement.

19           So the participation in how the river is managed  
20 is a very important function. It's not just management, it's  
21 not just form. How the river is managed affects a lot of  
22 people's lives. And it is disturbing, I guess is the best  
23 word I could use, to find that management decisions on the  
24 river will be made without participation of a significant

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1 number of water right owners on the Truckee River. Including  
2 the Truckee Carson Irrigation District, but not just them,  
3 there are literally hundreds of other people who will be  
4 affected by the Truckee River Operating Agreement who have  
5 not been invited to the table. And certainly will not be  
6 signatories.

7           So I look forward to receiving the model  
8 information and the operators manual so we can get on with  
9 the analysis. And it may be that obviously if there's a 60  
10 day extension granted, that may give us enough time to tell  
11 you how much longer we need to analyze it. And then just  
12 fair warning, we may be back asking for another extension,  
13 but we'll have more ammunition to tell you why we need that  
14 additional extension. Thank you very much.

15           HEARING OFFICER McCRACKEN: Thank you, Mr. Van  
16 Zandt. And our next speaker is Norman Frey.

17           MR. FREY: I'd like to thank you, I don't have  
18 four inches of paper to put over the top of the microphone  
19 and pound this evening, I'm a rather simple person. I am a  
20 county commissioner here in Churchill County, but I'm also --  
21 and more importantly, I believe -- a water right owner here.

22           In 1913 when President Roosevelt came to Carson  
23 City to speak to the people of Nevada about why this  
24 reclamation project was being formed, he referred to the

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1 farmers that would come here and settle this land as the  
2 homemakers to provide homes for their children. And since  
3 that time, we have continually had a degradation in the  
4 relationship between the United States Reclamation Service,  
5 the Department of Interior, to the point where they are  
6 causing those families, that President Roosevelt was looking  
7 for homes for to raise their children -- we're splitting  
8 those families up and sending them to the far corners of the  
9 earth. And I think this is an egregious breach of contract,  
10 at least a contract of faith, that President Roosevelt had  
11 with the people that came here.

12 This document is so large, I defy any farmer in  
13 this valley who will be so affected by the tentacles that  
14 reach into our community from this document, I defy any  
15 farmer to really and truly understand it, let alone the  
16 model.

17 The time given for allowed for public comment,  
18 even with the extension, is barely enough time to hire  
19 consultants that can help us understand the ramifications on  
20 our community.

21 I don't believe that this model considers such  
22 simple things that could help, as water leasing. Which  
23 Senator Reid stood in this very room on Tuesday morning and  
24 told us that he would support a leasing program, to lease

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1 water from the Newlands Project to help Reno. In exchange  
2 for that, I think it also should include such things as  
3 growth controls for Reno. Ways to bring them off of their  
4 water. They're bringing their big money down here into our  
5 community, purchasing our water rights with Bureau of -- or  
6 Interior money, and leaving us with a dust bowl to create  
7 traffic hazards and to further split our community.

8 I think these are egregious breaches of contract  
9 again that the Bureau and the Department of Interior have  
10 invoked upon what President Roosevelt saw as the homemakers  
11 that would raise the children of our country. Thank you.

12 HEARING OFFICER McCracken: Thank you, Mr. Frey.  
13 I have now called the last speaker who has signed up. Is  
14 there anyone else who would like to make any verbal comments  
15 this evening?

16 Well, on behalf of the Department of Interior and  
17 the California Department of Water Resources, I'd like to  
18 thank you for attending this hearing and for those of you who  
19 did provide your comments. We'll go ahead and take a recess  
20 for awhile until other speakers determine if they would like  
21 to have something to say. So we'll go into a recess for  
22 awhile. Thank you.

23 (Recess.)

24 HEARING OFFICER McCracken: Ladies and gentlemen,

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1 I'm going to go ahead and reconvene this hearing, and once  
2 again ask if there's anyone else who would like to make any  
3 comments. Okay, well, seeing no one wanting to make any  
4 comments, I'm going to again thank you on behalf of the  
5 Department of Interior and the State of California. And one  
6 quick reminder, the State will be publishing tomorrow that  
7 they're going to be extending the comment period through the  
8 30th of December, and Interior is going to make that  
9 announcement on Monday.

10 MR. COONEY: Actually, I'm going to be submitting  
11 that tomorrow. It usually takes -- will probably be Monday  
12 before it posts.

13 HEARING OFFICER McCracken: I stand corrected.  
14 The comment period will be extended, details forthcoming.  
15 And with that, I'm going to go ahead and thank you again, and  
16 we will conclude this public hearing. Good night.

17 (Hearing adjourned 8:30 p.m.)

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### Comment PH 05 – continued

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1 STATE OF NEVADA, )  
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3 COUNTY OF LYON. )  
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6 I, MARCIA L. FERRELL, Certified Court Reporter in and  
7 for the County of Lyon, State of Nevada, do hereby certify:

8 That on Thursday, October 21, 2004, at Fallon  
9 Convention Center, 100 Campus Way, Fallon, Nevada, I was  
10 present and took verbatim stenotype notes of the hearing  
11 entitled herein, and thereafter transcribed the same into  
12 typewriting as herein appears;

13 That said hearing was taken in stenotype notes by me,  
14 a Certified Court Reporter, and thereafter reduced to  
15 typewriting under my direction as herein appears;

16 That the foregoing transcript is a full, true and  
17 correct transcription of my stenotype notes of said  
18 proceedings.

19 Dated at Fernley, Nevada, this 31<sup>st</sup> day of  
20 October, 2004.

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23   
24 Marcia L. Ferrell, CSR #797

## Federal Government

FG 01-01	California water quality standards were used for all California reaches of the Truckee River, and Nevada standards were used for all Nevada reaches of the Truckee River. This information has been added to “Water Quality” in chapter 3 of the final EIS/EIR.
FG 01-02	A summary of the Nevada water quality standards has been extracted from the Nevada Division of Environmental Protection, Bureau of Water Quality Planning Web site at <a href="http://ndep.nv.gov/bwqp/stdsw.htm">http://ndep.nv.gov/bwqp/stdsw.htm</a> and included in a new section, “Summary of Pertinent Water Quality Standards for Nevada Waters,” in “Water Quality” in chapter 3 of the final EIS/EIR. Both California and Nevada beneficial uses are included in the Water Quality Appendix by reference to the Web sites and as table 2.1.
FG 01-03	The title of this table has been changed to “Summary of modeled exceedences of Nevada temperature (T) and dissolved oxygen (DO) standards” in the final EIS/EIR.
FG 01-04	The writeup has been revised to state that the water quality analysis included Nevada as well as California water quality standards. An analysis of the effects of TROA on Nevada waters and Nevada water quality standards was performed, as is now clearly stated. In particular, DSSAMt model results were used to quantitatively compare riverine water quality under current conditions and the alternatives to Nevada water quality standards because DSSAMt modeled Truckee River reaches in Nevada that are downstream from the California/Nevada State line.
FG 01-05	The riparian analysis concludes that TROA would have significant beneficial effects when compared to No Action in most reaches in dry and extremely dry hydrologic conditions. This conclusion is consistent with the conclusion in “Surface Water” in chapter 3 of the final EIS/EIR, which states that operations model results show that flows would be higher in dry hydrologic conditions and lower in wet hydrologic conditions under TROA than under No Action. The lower flows in wet hydrologic conditions would have no significant adverse effect on riparian vegetation.
FG 01-06	The sections of the revised DEIS/EIR that briefly addressed section 303(d) of the Clean Water Act and Total Maximum Daily Loads (TMDL) have been expanded or clarified in the final EIS/EIR. TROA would have no direct effect on TMDL development and implementation. However, it is anticipated that the final EIS/EIR TROA flows will be used as a baseline for future TMDL development or modification to ensure that Federal, State, and local agencies (including Washoe County) are using consistent modeling results.
FG 01-07	“Water Quality,” Section I, “Affected Environment,” has been expanded in chapter 3 of the final EIS/EIR to include a list of 303(d)-listed constituents and to describe the type of TMDLs currently in place.
FG 01-08	Nevada’s current 303(d) list can be viewed at <a href="http://ndep.nv.gov/bwqp/303list.pdf">http://ndep.nv.gov/bwqp/303list.pdf</a> . This 2002 version lists temperature, total phosphorus, and turbidity for the various reaches of the Truckee River in Nevada.  An EPA document (EPA 841-F-94-006, August 1994) that summarizes the Truckee River TMDL for total nitrogen, total phosphorus, and total dissolved solids can be viewed at <a href="http://www.epa.gov/OWOW/tmdl/cs13/cs13.htm">http://www.epa.gov/OWOW/tmdl/cs13/cs13.htm</a> .  Also, see responses to comments FG 01-06 and FG 01-07.
FG 01-09	The EIS/EIR evaluates the effects of TROA and the other alternatives on flows and water quality indicators, including dissolved oxygen, temperature, sedimentation, nitrogen, and phosphorus. The water resources analysis is based on a hydrologic accounting model that determines flows for key reaches in the basin. In the final EIS/EIR, the water quality analysis has been expanded. Also, “Sedimentation and Erosion” Section I.A, “Shoreline Erosion at Lake Tahoe,” in chapter 3 has been revised in the final EIS/EIR in response to the comment. For sedimentation, several key reaches in the Truckee River basin were selected for analysis. These reaches include the Truckee River from Lake Tahoe to Truckee, California, the Little Truckee River from Stampede Reservoir to Boca Reservoir, the Truckee River near Reno, the Truckee River from Reno to Derby Diversion Dam, and the Truckee River from Derby Diversion Dam to Pyramid Lake. With flow

## Federal Government

	estimates for these reaches based on exceedence probabilities, the sediment transport capacity was determined for all of the reaches based on flows in median, wet, and very wet hydrologic conditions. This determination provides a representation of sedimentation throughout the basin. Sedimentation and erosion of Lake Tahoe and Pyramid Lake also were discussed. For Lake Tahoe, a special report was prepared by the Desert Research Institute for sedimentation and erosion by wind and waves. The data for this report is shown in the Sedimentation Appendix. The changes in erosion and sediment transport to the delta of Pyramid Lake are also described in “Sedimentation and Erosion” Section II.E, “Truckee River Delta Formation at Pyramid Lake,” in chapter 3 of the final EIS/EIR.
FG 01-10	The text in the final EIS/EIR has been revised to reflect this fact.
FG 01-11	The following sentence has been added to the final EIS/EIR to address the Tribe’s TDS concerns: “The BNR process does not add TDS and ultimately reduces the TDS concentration discharged to Pyramid Lake.”
FG 01-12	Clean Water Act section 404 dredge and fill permits are now addressed separately from wastewater and stormwater permits.
FG 01-13	The subject text has been revised to indicate that the State of Nevada, Division of Environmental Protection, Bureau of Water Pollution Control, proposes to issue a stormwater permit.
FG 01-14	Phase II addresses the small point sources. The reference to nonpoint source pollution from stormwater has been deleted from the final EIS/EIR.
FG 01-15	The subject text (i.e., TMDLs as examples of water quality standards) has been deleted from the final EIS/EIR.
FG 01-16	<p>TROA is not, nor does it contain, a water right acquisition or water supply program. As stated in TROA section 1.A.1, “[t]his Agreement is intended to satisfy the provisions of sections 205(a)(2) and 205(a)(3) of the Settlement Act [P.L. 101-618] by providing for operation of the Truckee River Reservoirs and such other reservoir operations which are subject to this Agreement.” TROA section 5.A.1(a) clarifies that “[t]his Agreement supersedes all requirements of any agreements concerning the operation of Truckee River Reservoirs, including those of the Truckee River Agreement and the Tahoe-Prosser Exchange Agreement.”</p> <p>TROA would allow for the continuation of TMWA’s water acquisition program (ongoing since 1982). According to TROA section 4.B, “Water Authority requires its customers requesting ‘new water service’ to comply with certain rules under its authority, including Water Authority’s Rule 7, which requires that water rights be provided by a customer in order to receive a ‘new water service commitment’ or ‘will-serve letter.’ Section 4.B continues by relating the portion of Rule 7 concerning water rights for ‘new water service commitments’ to other elements of TROA, and identifies components of TMWA commitments which rely on surface water and storage under TROA. After TROA goes into effect, sections 4.B.1 and 4.B.2 would require TMWA to continue to acquire excess surface water rights (currently set at 1.11 acre-feet) for each acre-foot of new water service commitments that rely on surface water.</p> <p>TROA also would provide for water acquired by TROA parties to be stored as Credit Water. For example, California could store and manage California Environmental Credit Water and Additional California Environmental Credit Water (TROA section 7.D). In addition, TROA would provide procedures for implementing the Truckee River Basin and Lake Tahoe Basin interstate allocations provided in sections 204(b) and 204(c) of P.L. 101-618 (TROA Article Six).</p> <p>Cumulative effects associated with implementation of TROA in regards to water acquisitions plans in the Truckee River and Carson River basins are discussed in Chapter 4, “Cumulative Effects,” in the final EIS/EIR.</p>

**Federal Government**

FG 01-17 Sufficient data on the habitat requirements of most native fish are not available to directly evaluate their response to changes in flow regimes. For this study, the analysis is based on two introduced species, brown, and rainbow trout, for which the habitat requirements are well known. Fish native to the Truckee River are likely adapted to a greater range of habitat conditions than either brown or rainbow trout, so these two species were assumed to be more sensitive indicators of the effects of changes in the magnitude and timing of streamflows.

FG 01-18 The majority of the forested land along the Truckee River is National Forest system land west of Reno. The Truckee River and its tributaries flow through three National Forests: Lake Tahoe Basin Management Unit, Tahoe National Forest, and Humboldt-Toiyabe National Forest. Fire/fuels management on adjacent land is outside the scope of the proposed action, which relates to reservoir management.

FG 01-19 The two “conservation” provisions of P.L. 101-618 mentioned in the comment, more specifically sections 209(d), “Water Bank,” and 209(f), “Effluent Reuse Study,” have not, and cannot now, enter into effect. The statute specifically provides that those sections, among others, “shall not become effective unless and until the Truckee-Carson Irrigation District [“TCID”] has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted under applicable [OCAP].” See section 209(h)(1) of P.L. 101-618.

Negotiations between the Secretary and TCID over several years were not successful in resolving the recoupment issue, resulting in the United States filing suit against TCID in 1995 for recoupment of the improperly diverted water pursuant to the provisions of section 209(j)(3). A month-long trial was held in the United States District Court in Reno, Nevada, in 2002. The court subsequently issued a decision in favor of the United States, finding TCID liable for repayment of water. The case is currently on appeal to the Ninth Circuit Court of Appeals.

Accordingly, because the matter could not be settled and the United States had to resort to litigation, the provisions authorizing a water bank and an effluent reuse study, by express terms of the statute cannot now be implemented.

Article Twelve of TROA sets forth a number of conservation contingencies related to the Sierra Pacific, now Truckee Meadows Water Authority, water service area which are required to be satisfied before TROA can enter into effect. These contingencies include: enactment by the Nevada legislature of water meter legislation; necessary governmental approvals of a plan to finance and install water meters; approval by Nevada Public Service Commission of an inverted block rate water structure; and required governmental approvals of a mandatory water conservation plan. TMWA, the successor to Sierra Pacific, is not subject to the Nevada Public Service Commission. See TROA sections 12.A.2(b) through 12.A.(2)(e).

Finally, Section V, “Effects of Other Water Resource-Related Actions,” in chapter 4 of the final EIS/EIR provides information on, and discussion of, a host of other reasonably foreseeable projects and actions in the study area. A determination has been made regarding the potential impact or effect of each, as set forth at the end of the respective discussion of each project or action. The South Meadows Water Treatment Plant operation is not part of a conservation plan; the referenced section has been updated.

FG 01-20 A number of measures could be implemented on agricultural lands to promote more efficient use of irrigation water and reduce diversions from the Truckee River. These measures could be implemented individually or by irrigation districts depending on scope and cost. Examples are presented in Chapter 4, “Cumulative Effects.”

With respect to options for improving existing domestic, commercial, municipal, and industrial (DCMI) water use, we would note the following:

In P.L. 101-618, Congress directed that any agreement negotiated pursuant to section 205(a), i.e., TROA, shall “carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement [PSA].” The PSA includes a number of water use conservation contingencies, including water meter legislation; approval of a plan to finance and install water meters in Sierra Pacific Power

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	<p>Company's, now Truckee Meadows Water Authority's, service area; approval by TMWA of an inverted block rate water structure to provide incentive for water conservation by residential customers; and approval of a water conservation plan which will provide water savings equal to or better than 10 percent in any year immediately following the existence of a drought situation. These contingencies must be satisfied before TROA can enter into effect. See TROA sections 12.A.2(b) through (e). TROA section 4.B.5 provides that water conserved from the toilet replacement program detailed in TROA section 7.B.4(f) shall not be available for new water service commitments, but must be used as part of TMWA's M&amp;I Credit Water supply to serve existing customers.</p> <p>The possible conservation options for municipal water use in the Truckee Meadows are discussed in chapter 2 of the final EIS/EIR for the various alternatives. See Section II.C.6.a(4), "No Action," Section III.C.6.a(4), "LWSA," and Section IV.C.6.a(4), "TROA," in chapter 2 of the final EIS/EIR.</p>
FG 01-21	<p>Results of the EIS/EIR analysis generally show the following: (1) flows under TROA would be more beneficial for fish and other biological resources in the future, than under the other alternatives and (2) TROA operations would result in significant beneficial effects on several of the other environmental resources in the study area. Because no significant effects were identified, no mitigation or monitoring is required. To help track responses of biological resources in the future, however, several agencies with jurisdiction over these resources have signed a Memorandum of Understanding (MOU) for development of a Biological Resources Monitoring Program (BRMP). The primary goals of BRMP are to identify current biological monitoring efforts in the basin; identify monitoring necessary to document the status of aquatic and riparian biological resources relative to the management objectives of the parties to the MOU; identify and implement procedures for monitoring aquatic and riparian biological resources in stream reaches that are subject to TROA operations (i.e., downstream from Truckee River reservoirs); provide relevant biological data to the TROA parties on a regular basis and identify specific measures that can be implemented, consistent with the provisions of TROA, to assist in meeting biological/ecosystem objectives within the Truckee River basin; and promote public disclosure of the status of the subject biological resources. BRMP will provide the framework to take advantage of TROA's operational flexibility and allow for the greatest range of ecosystem management options under TROA. Additionally, by the terms of the Agreement (sections 3.B and 3.C) the Administrator is directed to prepare daily, monthly, annual, and 10-year reports documenting the operation of the Truckee River under the Agreement, as well as to design, implement, and maintain a data collection program and oversee these monitoring activities.</p>
FG 01-22	<p>See response to comment FG 01-21.</p>
FG 01-23	<p>Bypass flow supplement limitations are presented in Section IV.C.4, "TMWA's Hydroelectric Diversion Dams," in chapter 2 of the final EIS/EIR. The foundation for bypass flow supplementation is TROA section 9.E.2, which gives two conditions for supplementing bypass flows with Fish Water. Since this water category would be managed by FWS and the Pyramid Tribe (TROA sections 11.E. and 11.H), the amount and timing of releases to supplement bypass flows would likely be determined according to a Truckee River fish resource management plan cooperatively developed by the California Department of Fish and Game (CDFG), Nevada Department of Wildlife, FWS, and the Pyramid Tribe. CDFG is committed to the development of this plan.</p> <p>"Surface Water" and "Minimum Bypass Flow Requirements for TMWA's Hydroelectric Diversion Dams on the Truckee River" in chapter 3 of the final EIS/EIR identify assumptions used in the operations model to simulate bypass flow supplementation.</p>
FG 01-24	<p>The difference between the May 1996 and October 2003 versions of Draft TROA is due to the dynamics of the nearly 13-year negotiation effort. The objectives of TROA have not changed during the negotiation effort but are still those stated in section 205(a) of P.L. 101-618 and PSA. These objectives are stated in the Recitals and Article One of TROA and in Chapter 1, "Purpose of and Need for Action," in the final EIS/EIR. Differences between Draft TROA October 2003 and the Negotiated Agreement used in the final EIS/EIR are described in chapter 2.</p>
FG 01-25	<p>Inconsistencies have been corrected in the final EIS/EIR.</p>

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FG 02-01	<p>As noted in the comments, TROA would not change the amount of flood control space in Stampede, Prosser Creek, or Boca Reservoirs. Lake Tahoe is operated by the Federal Water Master to not exceed an elevation of 6229.1 feet. This target would be the same with or without TROA.</p> <p>Section 205(a)(2)(A) of P.L. 101-618 requires TROA to “satisfy all applicable dam safety and flood control requirements.” TROA would not assume flood control authority or operations currently delegated to federal and state agencies, but it would comply with dam safety and flood control requirements established by these agencies (TROA sections 1A.1(f) and 1.B.5). Section 1.F of TROA requires the Administrator to “cooperate with the United States, California and Nevada, the Pyramid Tribe, the affected local governments” during emergency conditions, and authorizes the Administrator to “undertake activities ... as may be necessary to respond to the emergency.”</p>
FG 02-02	<p>The information has been updated in the final EIS/EIR.</p>

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NSG 01-01	<p>Section III, “Decision Process and Decisions Needed,” in chapter 1 of the final EIS/EIR acknowledges the requirement to file water rights applications with the State of Nevada, Division of Water Resources, State Engineer’s Office.</p>
NSG 01-02	<p>The NEPA/CEQA process allows and promotes public comment. As a TROA mandatory signatory, Nevada has had additional opportunity to resolve issues during negotiations for the final agreement.</p>
NSG 02-01	<p>Newlands Project Credit Water (NPCW) provisions are predicated on the authority in OCAP (i.e., Truckee Canal Diversion Criteria) to ensure, to the extent possible, that the water supply for the Carson Division stored in Lahontan Reservoir meets but does not exceed Lahontan Reservoir storage targets. (See “Newlands Project Credit Water” in chapter 2 of the final EIS/EIR and section 7.H and appendix 7.D in the Negotiated Agreement.) The model analysis for NPCW in the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA.</p>
NSG 02-02	<p>The model used for conducting analyses for the EIS/EIR is a monthly accounting model used for planning purposes to make relative comparisons among different alternatives. This model will not be used to manage daily reservoir operations or ensure water deliveries are met.</p> <p>Under TROA, as now, the Federal Water Master will be responsible for ensuring that the exercise of water rights is satisfied. Under TROA, the individual water right holders will be responsible for developing schedules to meet their demands. The TROA Administrator would be responsible for coordinating these schedules, as well as trying to meet various instream flow targets. Reclamation and the mandatory signatories are developing a daily RiverWare model which could be used to help in the administration of TROA. The RiverWare model keeps track of the various water accounts in the system and would be used to coordinate the various schedules among the TROA parties.</p>
NSG 02-03	<p>While TROA would mandate minimum releases from Truckee River reservoirs and enhanced releases under certain conditions, it would not mandate maintenance of minimum flows in the Truckee River because section 205(a)(2)(D) of P.L. 101-618 requires those reservoirs to be operated to satisfy the exercise of water rights in conformance with the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> decrees. Because no water rights have been acquired specifically for the purpose of minimum flow maintenance in the Truckee River, it would not be possible to require releases for minimum flows without potentially interfering with water rights. Minimum reservoir releases are keyed to reservoir permit and license requirements and voluntary releases. TROA would, however, provide many opportunities for water managers to coordinate management of reservoir operations to maintain and enhance flows in the Truckee River to provide environmental benefits, as identified, for example, in the response to comments FG 01-21 and EG 01-02.</p>

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NSG 02-04	<p>The frequency that minimum flows for various life stages of brown trout would be sustained between October and March was analyzed. The results of this analysis show that TROA would have no significant effects in most reaches of the Truckee River. A significant beneficial effect was found under TROA when compared to No Action from the confluence of the Little Truckee River to the Trophy Reach. Also, see response to comment EG 01-02 for opportunities that TROA would provide for water managers to enhance flows in the Truckee River.</p> <p>Maintaining Floriston Rates and Reduced Floriston Rates would continue to be the foundation of Lake Tahoe and Boca Reservoir operations under TROA. However, TROA would allow flows associated with Floriston Rates to be reduced to create Credit Water. See Section IV.C.2, “Floriston Rates,” in chapter 2 of the final EIS/EIR and TROA sections 5.A.2 and 7.A.3.(a).</p>
NSG 02-05	<p>Under current operations, the Federal Water Master follows safety ramping rate criteria (rate at which reservoir releases are changed over a period of time) to protect life and property but does not have ramping rate criteria for biological purposes. However, the Federal Water Master may change releases to conform to biological ramping rates if requested by the owner of such water (e.g., Stampede Project Water). Under TROA, the Administrator would continue to follow safety ramping rate criteria, while biological ramping rate criteria could be suggested through California Guidelines, though they would not be mandatory. Nothing in TROA would prevent an owner of stored water from establishing biological ramping rate criteria for its releases. However, TROA section 9.F.2 states that “[t]o the extent practicable and consistent with the exercise of water rights, assurance of water supplies, operational considerations, the requirements of the Settlement Act and all other requirements of this Agreement, the Administrator shall . . . encourage voluntary Exchanges and re-storage, scheduling of Releases, and other available water management opportunities to limit the rates of increase or decrease (ramping) of reservoir Releases consistent with the California Guidelines.”</p> <p>This provision is necessary to protect water rights. It would not be possible to require an owner of a water right to change the release rate without potentially interfering with the water right. See response to comment 5 PH 03-05 for more detail.</p>
NSG 02-06	See response to comment NSG 02-05.
NSG 02-07	The final EIS/EIR has been revised to reflect the correct number.
NSG 03-01	No response required.

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CSG 01-01	<p>The analysis in chapter 3, in “Tahoe Yellow Cress,” shows that TROA would have no significant impacts, and, therefore, no mitigation or monitoring is required. At the same time, a comprehensive Biological Resources Monitoring Program apart from TROA could provide the framework to take advantage of TROA’s operational flexibility. BRMP would allow for the greatest range of ecosystem management options possible under TROA and allow operations to complement ongoing programs and help improve conditions for biological resources, including Tahoe yellow cress.</p>
CSG 02-01	<p>Complete descriptions of the applications’ sources of water (including points of diversion), quantities requested for appropriation, seasons of diversion, availability of water for appropriation, purposes of use, and places of use are contained in the SWRCB Change Petitions and Water Appropriation Applications Package Appendix of the final EIS/EIR. Summary descriptions are presented in chapter 3 in “Water Right Change Petitions and Applications.”</p>



## California State Government

CSG 02-02	Discussion of the effects associated with SWRCB’s potential approval of the applications or change petitions are presented in chapter 3 in “Water Right Change Petitions and Applications, Summary of Effects.” While new purposes and places of use are being added to the permits, changes are being made to the current operations of the designated Truckee River reservoirs. Under TROA, Truckee River reservoirs would continue to be operated within their current range of operations and the lands affected by the reservoir operations will not change. Because of these factors and because the minimum releases required in Article Nine of TROA would remain in effect, approval of these change petitions and water right applications would not result in any significant adverse environmental effects.
CSG 02-03	A description of the changes sought in the petitions is included in the final EIS/EIR in the SWRCB Change Petitions and Water Appropriation Applications Package Appendix and in chapter 3 in “Water Right Change Petitions and Applications.”
CSG 02-04	Groundwater recharge has been removed from the applications and, consequently, is not discussed.
CSG 02-05	Any currently anticipated water transfers within California will be covered through the change petitions and application package.
CSG 02-06	Additional information will be provided as needed.
CSG 02-07	The change petitions and applications package is included in the SWRCB Notice of Petitions and Water Appropriation Applications Appendix to the final EIS/EIR.
CSG 03-01	The 1998 and 2004 analyses differed in that the earlier Tahoe yellow cress analysis was based on a “representative” year, while the current analysis uses hydrologic conditions based on exceedence values. For example, the 317 acres of habitat identified in the 1998 analysis is the habitat area that would have been available in a particular wet year, 1986. The current analysis is an average of the habitat area that would be available during all of the years that qualify as “wet hydrologic conditions” based on operations model output. The two analyses, therefore, are not directly comparable. In addition, the 1998 analysis was based on acreages reported in 1992, while the 2004 analysis is based on our current knowledge of the biology of the species and its distribution.
CSG 03-02	As stated in the response to comment CSG 03-01, the methods are not directly comparable. The 1998 analysis calculated a reduction in acreage of Tahoe yellow cress habitat under TROA compared to No Action during three specific years when certain conditions were met. The current analysis is a monthly analysis under hydrologic conditions based on exceedence values. Although there are small differences among alternatives and months, these differences are not significant based on our current understanding of the biology of the species.
CSG 03-03	The analysis of Tahoe yellow cress in chapter 3 shows that TROA would have no significant effects on Tahoe yellow cress, and, therefore, no mitigation is required. However, the increased operational flexibility provided by TROA would include opportunities to make releases to promote sound ecosystem management.
CSG 03-04	The increased operational flexibility provided by TROA may include opportunities to manage releases to promote Eurasian water milfoil management. It is possible that this issue could be considered as part of the Habitat Restoration Program or California Guidelines. (See TROA Section 2.C.2(f)(2), “Use of Habitat Restoration Fund,” and section 9.F.)
CSG 03-05	Potential effects on Lake Tahoe were evaluated using results generated from the operations model. Analysis of the results showed no significant effects would occur. The elevation of Lake Tahoe differs only by a few inches among the alternatives. Long-term evaluation shows that such slight fluctuations have little to no effect on visitation to the area or boat ramp usability, the two indicators used to analyze the effects of the alternatives on recreation at lakes and reservoirs.  The text has been clarified in the final EIS/EIR to show how the conclusion was reached.
CSG 04-01	No response required.

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CSG 05-01	<p>While sediment transport capacity in the Little Truckee River between Stampede Reservoir and Boca Reservoir in wet hydrologic conditions exceeds the identified threshold of significance by 1 percent under TROA as compared to current conditions, sediment transport capacity is actually less under TROA than under current conditions in other hydrologic conditions. In addition, sedimentation is not expected to increase in this reach of the Little Truckee River because the bed is armored and the presence of Stampede Reservoir eliminates any upstream sediment. The sediment transport capacity computed for all of the alternatives is similar, and little or no difference could be identified. Small changes in release patterns under TROA or any other alternative should not affect this reach of the river. A complete geomorphic assessment of this reach or the use of a sediment transport model is beyond the scope of this EIS/EIR and would be unnecessary for a set of alternatives that are not structural in nature. Also see revised discussion in “Sedimentation and Erosion” in chapter 3 of the final EIS/EIR for further clarification.</p>
CSG 05-02	<p>Aerial photographs of the Little Truckee River were taken August 31, 1977; fall 1998; July 2002; and December 2005. Geologists from the California Department of Water Resources evaluated the photographs to assess any changes in river plan form and stability of the Little Truckee River (CDWR, 2005). The evaluation revealed only normal changes in river plan form and stability over the 28-year period; no evidence of bank erosion or channel instability was identified. Also see revised discussion in “Sedimentation and Erosion” in chapter 3 of the final EIS/EIR.</p>
CSG 05-03	<p>As for other resources, sedimentation and erosion were evaluated using appropriate indicators. For this evaluation, the indicators of sediment transport capacity change and water surface elevation change were used to evaluate the effects of the alternatives. Flow was assumed to relate to sediment as a function of discharge to the second or third power. The approach to the analysis of sedimentation and erosion was outlined in the section, and professional judgment was used to determine the significance of the effects of the alternatives on the indicators.</p> <p>The analysis of sedimentation and erosion is complete and consistent with other analyses of resources. The proposed action would result in minor differences in flows on a seasonal basis with no change in the management of floodflows. The effects of these changes would be insignificant or negligible when compared to No Action or current conditions.</p>
CSG 05-04	<p>Results of the EIS/EIR analysis generally show that flows under TROA would be more beneficial for fish and other biological resources in the future than under the other alternatives and that TROA operations would result in significant beneficial effects on several of the other environmental resources in the study area. Because no significant effects were identified, no mitigation or monitoring is required. To help track responses of biological resources in the future, however, several agencies with jurisdiction over these resources have signed a Memorandum of Understanding (MOU) for development of a Biological Resources Monitoring Program and have begun the process of implementing elements of the program. The primary goals of BRMP are to: identify current biological monitoring efforts in the basin; identify monitoring necessary to document the status of aquatic and riparian biological resources relative to the management objectives of the parties to the MOU; identify and implement procedures for monitoring aquatic and riparian biological resources in stream reaches that are subject to TROA operations (i.e., downstream from Truckee River reservoirs); provide relevant biological data to the TROA parties on a regular basis and identify specific measures that can be implemented, consistent with the provisions of TROA, to assist in meeting biological/ecosystem objectives within the Truckee River basin; and promote public disclosure of the status of the subject biological resources. BRMP will provide the framework to take advantage of TROA’s operational flexibility and allow for the greatest range of ecosystem management options under TROA. Also, see response to comment FG 01-21.</p>

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CSG 05-05	Under section 303(d) of the 1972 Clean Water Act, States, territories and authorized tribes are required to develop a list of water quality limited segments. These waters on the list do not meet water quality standards, even after point sources of pollution have installed the minimum required levels of pollution control technology. The law requires that these jurisdictions establish priority rankings for water on the lists and develop action plans, called Total Maximum Daily Loads (TMDL), to improve water quality. Waters within the study area that are listed as impaired have been included in the final EIS/EIR
CSG 05-06	The five reaches of the Truckee River were selected for several reasons. The Truckee River reach from Donner Creek to the Little Truckee River shows the influence of the upper portions of the basin, where the slope is steeper. The Little Truckee River reach between Stampede Reservoir and Boca Reservoir was chosen as a representative reach because of the potential for releases from Stampede Reservoir to change in the future. The Truckee River downstream from Reno is important because it reflects inflow from diversions and tributaries. The Nixon reach is important because it shows changes in the channel caused by diversions at Derby Diversion Dam, and the Lockwood reach has experienced many anthropomorphic changes over time.

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NCG 01-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
NCG 02-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
NCG 03-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
NCG 04-01	The text in the final EIS/EIR has been changed. The primary concerns are potential for low riverflows downstream from wastewater treatment plant discharges from the Tahoe-Truckee Sanitation Agency and the Truckee Meadows Water Reclamation Facility. Low flows can increase the potential for warm water temperatures that can cause stagnant water quality conditions.
NCG 04-02	The table has been corrected in the final EIS/EIR.
NCG 04-03	The text has been revised in the final EIS/EIR.
NCG 05-01	TROA, if approved by the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> decree courts, by its terms will supersede all requirements of any agreements concerning operation of Truckee River reservoirs, including those of the Truckee River Agreement and the Tahoe-Prosser Exchange Agreement. See TROA section 5.A.1(a). This follows from Congress's directive, in section 205(a) of P.L. 101-618, that the Secretary negotiate an agreement for the operation of Truckee River reservoirs that must, among other things, implement the provisions of the Preliminary Settlement Agreement. It should be recognized, however, that a number of provisions of the Truckee River Agreement and the Tahoe-Prosser Exchange Agreement are carried forward in TROA, as identified in exhibits B and C of the attachment to chapter 2 in the final EIS/EIR, and that TROA contains provisions for protection of <i>Orr Ditch</i> decree water rights (sections 1.C.1 and 1.C.2).
NCG 05-02	The Bureau of Reclamation provided the model and all available information and reference material on November 18, 2004. The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
NCG 05-03	Section 205(a)(1) of P.L. 101-618 directs the Secretary of the Interior to negotiate TROA through consensus with at least the States of California and Nevada, after consulting with other parties designated by the Secretary or the States, for the operation of Truckee River reservoirs. TMWA and the Pyramid Tribe are included as mandatory signatory parties because of their relation to the PSA. Section 205(a)(2) of P.L. 101-618 directs TROA to: <ul style="list-style-type: none"> <li>• satisfy with all applicable dam safety and flood control requirements;</li> </ul>

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	<ul style="list-style-type: none"> <li>• provide for the enhancement of spawning flows available in the lower Truckee River for the Pyramid Lake fishery (endangered cui-ui, and threatened Lahontan cutthroat trout) in a manner consistent with the Secretary’s responsibilities under the Endangered Species Act, as amended;</li> <li>• carry out the terms, conditions, and contingencies of PSA between the Pyramid Tribe and TMWA (section 29(f) of PSA states that PSA cannot take effect until TROA has been executed by at least the United States, the Pyramid Tribe, and TMWA, which effectively made Pyramid Tribe and TWMA, along with the United States, California, and Nevada, mandatory signatory parties to TROA);</li> <li>• ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> decrees, except for any rights voluntarily relinquished by the parties to the operating agreement; and</li> <li>• minimize the Secretary’s costs associated with operation and maintenance of Stampede Reservoir.</li> </ul> <p>Therefore, a range of alternatives was considered during negotiations, but the only viable alternatives were ones that met the requirements of P.L. 101-618 and were acceptable to at least the mandatory signatories (United States, California, Nevada, Pyramid Tribe, and TMWA). Those viable alternatives are discussed in Section I, “Development of Alternatives” in chapter 2 of the final EIS/EIR. No party participating in the negotiations could impose alternatives or change the agreement without the consent of at least the five mandatory signatories. Also, see Section V, “Alternatives Considered and Rejected,” in chapter 2 of the final EIS/EIR.</p> <p>Because TMWA is responsible for most of the Truckee Meadows water supply and has undertaken a resource planning process to evaluate all alternative water supplies (2005-2025 Water Resource Plan, March, 2003), it identified LWSA as the program it would likely implement if TROA were not implemented (attachment C of the final EIS/EIR). It assumes that State and local government agencies would allow additional water resources to be used.</p>
NCG 05-04	Baseline conditions are described as “current conditions,” which are described and analyzed in chapter 3 of the EIS/EIR. Also, see response to comment PW 10-56.
NCG 05-05	Additional analysis of resources in the Carson Division of the Newlands Project has been conducted for the final EIS/EIR; this information is included in the individual resource sections and summarized in “Newlands Project Operations” in chapter 3 of the final EIS/EIR
NCG 05-06	<p>The limitation proposed by the commenter would restrict the exercise of other <i>Orr Ditch</i> decree water rights, including those water rights senior to the 1902 priority of the Newlands Project. Limiting the exercise of <i>Orr Ditch</i> decree water rights senior to those of Newlands Project water users would be contrary to section 205(a)(2)(D) of P.L. 101-618, which requires Truckee River reservoirs to be operated under the provisions of TROA to “ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the <i>Orr Ditch</i> decree and <i>Truckee River General Electric</i> decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement [PSA], or by any other persons or entities or which are transferred pursuant to State law.” Implementation of TROA, on the other hand, would not adversely affect <i>Orr Ditch</i> decree water rights or the application of OCAP. Note the response to comment 5 PH 03-05 for a more thorough discussion of how <i>Orr Ditch</i> decree water rights are protected under TROA.</p> <p>To extend the supply of Floriston Rate Water during an irrigation season, TROA section 5.A.3(b) would allow TMWA, Conservation District, and Nevada to jointly reduce Floriston Rates during the same irrigation season. This would allow a portion of Floriston Rate Water to be retained in storage for later delivery during the same irrigation season to <i>Orr Ditch</i> decree water right holders.</p>

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NCG 05-07	See response to comment FG 01-21.
NCG 05-08	Analysis shows that implementation of TROA will result in significant beneficial effects on several of the biological resources within the study area. See chapter 3 of the final EIS/EIR: “Riparian Habitat and Riparian Associated Wildlife,” section II, “Environmental Consequences;” “Cui-ui,” section II, “Environmental Consequences;” and “Lahontan Cutthroat Trout,” section II, “Environmental Consequences.” No significant adverse effects were identified and, consequently, no mitigation is required.
NCG 05-09	As explained in detail in chapter 3, TROA is not considered to be growth inducing. All alternatives would meet the same population requirements in both drought and non-drought conditions. For drought conditions, water management activities would differ among alternatives; however, the populations served would be the same. TROA allows for more efficient use of surface water resources than other alternatives for the projected urban populations; TROA does not direct where or how that development will occur. Under all alternatives, once demand which relies on TROA storage exceeds the projected year 2033 levels, additional water sources would have to be addressed. Also, as described in “General Methods and Assumptions” and “Surface Water” in chapter 3 of the final EIS/EIR, water will be provided to the projected population regardless which alternative is implemented.
NCG 05-10	There are two historical multi-year droughts (1928-35 and 1987-94) in the 100-year model runs analyzed. Analysts concluded that the 100-year record, which includes the two drought sequences, is sufficient to make comparisons among the alternatives, and consideration of longer droughts would be speculative.
NCG 05-11	See response to comment NCG 05-10.  Hydrologic conditions in the Truckee-Carson River basins for calendar years 2000 through 2003 were slightly-less-than-median hydrologic conditions. The expected Lahontan Reservoir storage levels for slightly-less-than-median conditions would be within 75,000 acre-feet (dry hydrologic conditions) and 125,000 acre-feet (median hydrologic conditions). The storages noted in the comment are within these expected values for Lahontan Reservoir and are not inflated. It should be noted the figures reflect end-of-month rather than beginning-of-month storage values. December 31 storage values would correspond to December values in the figure.
NCG 05-12	Tables in chapter 3 in “Recreation” provide a summary of the effects of the alternatives on the resource indicators, including boat ramp usability, at the various reservoirs within the study area. When looking specifically at Lahontan Reservoir, there is little to no difference in boat ramp usability among the alternatives as shown in the operation model results; therefore, there was no specific reference to Lahontan Reservoir
NCG 05-13	The air quality information presented in the summary table is described in detail in “Social Environment,” Sections I.D and II.E, “Air Quality” in chapter 3 of the final EIS/EIR. The air quality analysis includes the entire study area. No adverse air quality effects are identified. Cumulative effects associated with P.L. 101-618 are discussed in Chapter 4, “Cumulative Effects,” of the final EIS/EIR.
NCG 05-14	The identified text has been revised to address the issue more fully in the final EIS/EIR.
NCG 05-15	Future Newlands Project demand is assumed to be lower for reasons unrelated to TROA. Acquisition of Truckee Division water rights for water quality or municipal and industrial purposes would reduce Newlands Project demand for Truckee River water, as would the acquisition and transfer of Carson Division water rights to Lahontan Valley wetlands at the current lower water duty of 2.99 acre-feet/acre/year.
NCG 05-16	See response to comment NCG 05-03.

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NCG 05-17	<p>TROA provides greater flexibility in the operation of Truckee River reservoirs while at the same time protecting <i>Orr Ditch</i> decree water rights. Section 205(a)(2)(D) of P.L. 101-618 requires TROA to “ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the <i>Orr Ditch</i> decree and <i>Truckee River General Electric</i> decree, except for those rights that are voluntarily relinquished by the parties to the [PSA], or by any other persons or entities, or which are transferred pursuant to state law.” As stated in Section IV.A, “Overview,” in chapter 2 of the final EIS/EIR, “TROA is prohibited by P.L. 101-618 from adversely affecting <i>Orr Ditch</i> decree water rights.” Compliance with the prohibition of section 205(a)(2)(D) of P.L. 101-618 is reflected in the following provisions of TROA sections 1.A.1, 1.B.2, 1.C.1, 1.C.2, and 13.B. These sections of TROA are abstracted in chapter 1, section II, and chapter 2, section IV, of the final EIS/EIR. Lastly, Section IV.A, “Overview,” in chapter 2 of the final EIS/EIR summarizes the prohibition as an introduction to TROA by stating that, “Implementation of TROA would modify operations of Federal and non-Federal reservoirs to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and dam safety requirements are met.”</p>
NCG 05-18	<p>Table 2.6 was expanded in chapter 2 of the final EIS/EIR in response to the comment.</p>
NCG 05-19	<p>TROA would keep the powers of the Federal Water Master and Administrator separate, though one person would serve both positions. According to TROA section 1.C.1, “[t]he Federal Water Master under the <i>Orr Ditch</i> decree shall retain full authority to ensure that such rights are fully enforced” while section 2.A.1 states, “The Administrator shall be responsible for carrying out the terms and conditions of this Agreement and shall have such powers, duties and responsibilities as are necessary for that purpose, except as otherwise limited by this Agreement.”</p> <p>Disputes under the authorities of the <i>Orr Ditch</i> decree and TROA also would be considered separately. TROA section 2.B.1 states, “[d]isputes arising under the <i>Orr Ditch</i> decree shall remain subject to the jurisdiction of the <i>Orr Ditch</i> Court and the Federal Water Master.” Disputes arising under TROA would be submitted to the Truckee River Special Hearing Officer (TROA section 2.B.2).</p> <p>Text has been revised in Section IV.B, “Interstate Allocation,” in chapter 2 of the final EIS/EIR.</p>
NCG 05-20	<p>This comment raises a legal question concerning the provisions of TROA itself, rather than with the potential environmental effects of TROA as disclosed in the EIS/EIR. TROA must be issued as a Federal regulation before it can become effective, and the public will have an opportunity to comment on the draft regulation at that time. Notwithstanding the foregoing, the brief response to the comment is “Yes.” The <i>Orr Ditch</i> court would retain continuing jurisdiction over the administration of water rights under the <i>Orr Ditch</i> decree, and the establishment of a TROA Administrator would be consistent with that jurisdiction. Section 2.A.3 of TROA provides that the Administrator be appointed by the <i>Orr Ditch</i> court, and the court’s approval of TROA as the operating agreement for Truckee River reservoirs would include approval of the position and responsibilities of the TROA Administrator. Though the Administrator would be responsible for implementing TROA (TROA section 2.A.1) and for taking corrective actions as necessary to assure that such implementation is not adverse to the exercise of <i>Orr Ditch</i> decree water rights (TROA section 1.C.2), the Federal Water Master would continue to have the authority to enforce <i>Orr Ditch</i> decree water rights and the <i>Orr Ditch</i> Court would retain the power to ensure that <i>Orr Ditch</i> decree water right holders receive the amount of water to which they are entitled (TROA 1.C.1). See Section IV.A, “Overview,” in chapter 2 of the final EIS/EIR. The Federal Water Master would be the first Administrator once TROA enters into effect, and it is anticipated that future TROA Administrators and Federal Water Masters for the Truckee River would be the same person. The Truckee River Special Hearing Officer would hear any disputes that may arise from the Administrator taking corrective actions in accordance with TROA section 1.C.2; however, decisions by the Special Hearing Officer could be reviewed by petition to the <i>Orr Ditch</i> court.</p>

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<p>NCG 05-21</p>	<p>“Surface Water” in chapter 3 and the Water Resources Appendix in both the revised DEIS/EIR and final EIS/EIR contain substantial analysis of water resources in the study area. The water resources available for the exercise of <i>Orr Ditch</i> decree water rights are not affected by TROA. Section 205(a)(2)(D) of P.L. 101-618 requires that under the agreement negotiated pursuant to section 205(a) (TROA), Truckee River reservoirs are to be operated to “ensure that water is stored in and released from [those reservoirs] to satisfy the exercise of water rights [including those for the Newlands Project] in conformance with the <i>Orr Ditch</i> Decree and Truckee River General Electric Decree...” Section 205(a)(4) of P.L. 101-618 requires TROA to be presented to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> courts for approval of any modifications to the <i>Orr Ditch</i> decree or <i>Truckee River General Electric</i> decree. In any event, diversions of Truckee River water to the Newlands Project are governed by the Operating Criteria and Procedures for the Newlands Project (OCAP), and OCAP is not affected by TROA. The change if any, in the amount of Truckee River water available for diversion at Derby Diversion Dam would be minimal and would be the consequence of whether upstream water users had fully utilized their senior priority rights. In other words, water which previously has been available for diversion to the Newlands Project resulted from upstream water right holders not fully exercising their water rights. TROA allows for more efficient exercise of those water rights, and, in the future, water right holders will find ways to exercise their valuable rights and put them to use, particularly in dry periods; such future uses of water rights could also occur in the absence of TROA. Also, see response to comment PW 10-96.</p>
<p>NCG 05-22</p>	<p>Newlands Project Credit Water is included in table 2.7. The table does not show the amount of water that could be accumulated in each Credit Water category because the amounts would vary with hydrologic conditions. TROA would set storage limits for certain Credit Water categories and these are discussed in Section IV.C.1.c, “Credit Water Accumulation, Storage, and Use Limitations,” in chapter 2 of the final EIS/EIR. TROA would not limit the amount of Newlands Project Credit Water that could be accumulated, but storage and spill priorities of this water category, along with hydrologic conditions and Lahontan Reservoir storage targets under OCAP, would indirectly limit accumulation. Simulated storage amounts of the various Credit water categories are shown and discussed in “Surface Water” in chapter 3 and in the Water Resources Appendix of the final EIS/EIR.</p>
<p>NCG 05-23</p>	<p>Section 205(a)(2)(C) of P.L. 101-618 requires any operating agreement to carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement. PSA, in turn, provides for the waiver by Sierra Pacific of its single-purpose hydroelectric water right, and the conversion of that right to Fish Credit Water under circumstances agreed to by Sierra Pacific and the Pyramid Tribe. The paragraph referenced by the commenter has been expanded to describe Sierra Pacific’s waiver of its single-purpose hydroelectric water right (<i>Orr Ditch</i> decree Claims Nos. 5-9) when required solely to generate hydroelectric power (TROA section 7.C.1). This means that no other water right holder would have required this water at that time, and so it would have flowed to Pyramid Lake after diversion through the hydroelectric powerplants. In order to implement this waiver, either (1) TMWA’s <i>Orr Ditch</i> decree Claims Nos. 5-9 would be modified to allow Fish Credit Water to be stored (TROA section 7.A.4(b)(3)) or (2) the Pyramid Tribe’s right under State Engineer Ruling 4683 would be changed to allow Fish Credit Water to be stored (TROA sections 7.A.4(b)(2) and 12.A.4(d)) and TMWA would agree not to protest such changes (TROA section 7.C.1).</p>
<p>NCG 05-24</p>	<p>The final EIS/EIR has been modified to read: “Accumulating and releasing Floriston Rate Water to serve <i>Orr Ditch</i> decree water rights would continue to be the foundation of Lake Tahoe and Boca Reservoir operations.” Release of Floriston Rate Water would be reduced as Changed Diversion Rights are exercised to establish Credit Water. The timing and amount of Floriston Rate Water retained in storage as Credit Water due to the exercise of Changed Diversion Rights would depend on the objective of the water right holder and the magnitude of the water year. Likely storage amounts of the various Credit Water categories are discussed in “Surface Water” and in the Water Resources Appendix of the final EIS/EIR.</p> <p>Regarding other waters, there should be no effects, as explained in the response to comment 5 PH 03-05.</p>

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<p>NCG 05-25</p>	<p>Credit Water storage could be established in most hydrologic conditions. The average amount of Credit Water will vary over time according to hydrologic condition, storage, and demand. Operations model results indicate the average amount of Credit Water storage in Boca Reservoir would be approximately 7,000 acre-feet, with a maximum of 30,000 acre-feet, and the average amount of Credit Water storage in Lake Tahoe would be 7,000 acre-feet, with a maximum of 80,000 acre-feet. The maximum amount of Credit Water storage in each reservoir is determined by a number of factors, including the unused storage capacity of that reservoir.</p>
<p>NCG 05-26</p>	<p>TMWA would receive compensation because it owns hydroelectric water rights adjudicated either under <i>Orr Ditch</i> decree Claim Nos. 5-9 or under the <i>Truckee River General Electric</i> decree (TROA section 7.A.4(c)). In exchange for not protesting or objecting to changes to water rights for Credit Water establishment, TMWA would be compensated for any related reduction in hydroelectric generation (TROA section 7.A.6). This complies with P.L. 101-618, section 205(a)(2)(C), which requires TROA to “carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement (PSA) as modified by the Ratification Agreement.” In PSA, Part III, “Agreement,” section 28 (j)(ii) requires TMWA to be compensated “for the reduction in the amount of hydroelectric power generated at its four run of the river hydroelectric powerplants on the Truckee River” because of the implementation of TROA.</p> <p>Compensation for a reduction in hydroelectric power generation is not mitigation, but a provision of TROA negotiated by the parties. No mitigation is required because no potentially significant adverse effects of TROA were identified.</p>
<p>NCG 05-27</p>	<p>The commenter mistakenly implies that there were TROA negotiation sessions which representatives of TCID were not allowed to attend. In fact, all TROA negotiation plenary sessions and most working group and committee meetings were open to any interested persons. If TCID was not represented at any TROA sessions or meetings, it was because it chose not to participate.</p> <p>As a foundational matter, Congress, in section 205(a) of P. L. 101-618, directed the Secretary of the Interior to negotiate an operating agreement for Truckee River reservoirs with California and Nevada. Because Congress also directed that any negotiated agreement must implement the Preliminary Settlement Agreement between the Pyramid Lake Paiute Tribe and Sierra Pacific Power Company as modified by the Ratification Agreement of the United States (PSA), the Pyramid Tribe and Sierra Pacific Power Company (now Truckee Meadows Water Authority), are also deemed to be mandatory signatories to TROA. Congress, further, in section 205(a)(2), set forth specific objectives which TROA, at a minimum, is required to achieve. Consequently, any proposal submitted by any person to the negotiators, would, in order to be considered for inclusion in a draft TROA, have to be consistent with the Congressionally mandated objectives and be acceptable to all five mandatory signatories.</p> <p>TCID did not propose an “alternative” to TROA. It did, however, on a number of occasions, propose provisions or concepts which it wanted to be considered for TROA, including 10,000 acre-feet of upstream storage for the Truckee Division of the Newlands Project, 80,000 acre-feet of upstream storage for the Carson Division (the difference between the capacity of Lahontan Reservoir and the OCAP May/June Lahontan Reservoir storage target, credit storage of Donner Lake water “during full OCAP water years,” and TCID’s providing up to 25,000 acre-feet of its water for “conjunctive use” to “enhance stream flows and water quality in the Truckee Meadows.” The latter proposal was made primarily in the context of the negotiated Truckee River Water Quality Settlement Agreement, rather than TROA per se.</p> <p>With regard to upstream storage for the Newlands Project, section 7.H. of TROA provides for the establishment and storage of Newlands Project Credit Water in upstream Truckee River reservoirs.</p> <p>All of TCID’s written proposals were discussed at one time or another among the participants to the negotiations. A TCID representative was present at and participated in many of those discussions. TCID asserted in writing and in an article in the <i>Lahontan Valley News</i> that it had never received any response -</p>



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	<p>“written, verbal, or electronic” – to its proposals. This is not correct. Verbal responses were provided to any TCID representative attending a TROA meeting where TCID proposals were made or discussed. Because of the “give and take” nature of the negotiation process, no written responses to proposals were generally provided to any party except to the extent a party proposed language or alternative language for a particular provision of TROA or presented analyses or reports to the parties at the negotiating table or in preparation for taking positions on matters to be discussed at the table. To our knowledge, TCID did not propose language or alternative language for any specific provision of TROA.</p> <p>To the extent that any specific TCID proposals or concepts were not accepted for inclusion in a TROA draft, it was because those specific proposals or concepts were not consistent with statutory objectives TROA is required to achieve, were deemed to be contrary to the Secretary’s OCAP, or were not acceptable to one or more of the mandatory signatory parties.</p> <p>TCID did, on numerous occasions, state that TROA could not “unilaterally” alter the Truckee River Agreement without its consent or change either the <i>Orr Ditch</i> or <i>Truckee River General Electric</i> decrees. As is stated in the EIS/EIR, TROA must be submitted to both the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> courts for approval of any necessary modifications to the two decrees. Congress has mandated that after the agreement is negotiated, the Secretary must promulgate it as the exclusive Federal regulation for operation of the Truckee River reservoirs. TCID has also objected to the use of Donner Lake, or Donner Lake water, for any TROA purpose, and the fill priority for Independence Lake. Those matters are for resolution between TCID and TMWA.</p>
<p>NCG 05-28</p>	<p>The protections afforded under section 205(a)(2)(D) of P.L. 101-618 for <i>Orr Ditch</i> decree water rights apply to all owners of such water rights, and not just to those owners who are also parties to TROA. Sections 1.C.1 and 1.C.2 of TROA provide protections for <i>Orr Ditch</i> decree water right owners consistent with this statutory requirement and also provide remedies in the event that implementation of TROA would or does result in an owner of an exercised <i>Orr Ditch</i> decree water right not receiving the amount of water to which that owner is legally entitled. In addition, TROA recognizes the jurisdiction of the <i>Orr Ditch</i> court and the Federal Water Master for the Truckee River with respect to the protection of <i>Orr Ditch</i> decree water rights, and over disputes arising under the decree. See responses to comments 5 PH 03-05 and NCG 05-19 for a detailed discussion. The references to “acceptable adverse impacts” and to “adverse effects acceptable to the mandatory signature parties” in the comment are unclear. TROA is a negotiated agreement, and the parties to TROA agreed to relinquish certain rights that they might otherwise assert in order to obtain the benefits of TROA. Section 2.B of TROA contains dispute resolution procedures which apply to parties to TROA, and which the TROA parties have agreed to use to resolve disputes arising under TROA. The EIS/EIR evaluates and discloses all identifiable potential environmental effects.</p>
<p>NCG 05-29</p>	<p>Future conditions (i.e., No Action, LWSA, and TROA) assume that the current program of acquisition and transfer of Carson Division water rights to Lahontan Valley wetlands (i.e., WRAP) will reduce current Carson Division demand (based on the premise that water rights transferred to wetlands would be exercised at a lower duty). Because WRAP is implemented independent of TROA and OCAP, it was assumed for purposes of analysis in the EIS/EIR documents that future demand would be the same under each of the alternatives and would be less than that under current conditions. Current conditions, No Action, and LWSA assume that existing decrees, agreements, and OCAP are in place; TROA assumes that existing decrees and OCAP and TROA are in place. OCAP is assumed to determine Truckee River diversions to Lahontan Reservoir as well as releases from Lahontan Reservoir based, in part, on Carson Division demand under each of current conditions and the alternatives. The magnitude of releases is directly related and proportional to demand; because Carson Division demand is assumed to be less in the future, releases (monthly, seasonal, and annual) from Lahontan Reservoir during the irrigation season (to include April-September) to meet that demand are also less. See “Surface Water” in chapter 3 of the final EIS/EIR. Also, see chapter 2, sections II, III, and IV, in the final EIS/EIR for a detailed description of alternatives.</p>

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NCG 05-30	Table 2.10 provides a summary of the effects of the alternatives on various resources, including recreation, as measured by changes in seasonal recreation visitation and boat ramp usability. Operation model results for Lahontan Reservoir show that there is little to no difference among the alternatives for both seasonal recreation visitation and boat ramp usability. Therefore, Lahontan Reservoir is not specifically mentioned within the table.
NCG 05-31	The discussion of past cumulative effects was provided at the beginning of chapter 3, “Affected Environment and Environmental Consequences,” to provide background and context for the descriptions of study area resources under current conditions and the effects of the alternatives on these resources. The cumulative effects of other current and reasonably foreseeable future actions are provided in Chapter 4, “Cumulative Effects.”
NCG 05-32	“Past Cumulative Effects” in chapter 3 of the final EIS/EIR provides a qualitative discussion of the past cumulative effects of historical development on the study area’s resources. Individual resources discussions provide quantitative data, whenever available, for current conditions for each indicator of study area resources. For example, figures in “Surface Water” in chapter 3 of the final EIS/EIR provide reservoir storage, releases, and streamflows for current conditions and the three alternatives; tables in “Water Quality” in chapter 3 of the final EIS/EIR show temperature, dissolved oxygen, and loading to Pyramid Lake. Likewise, “Biological Resources,” “Recreation,” and Economic Environment” in chapter 3 of the final EIS/EIR provide tables that quantify the effects on each indicator of each resource. In cases where quantitative information is not available, narrative discussion of current conditions is provided to provide a basis of comparison with the alternatives.
NCG 05-33	TROA does not incorporate a water rights acquisition program, and section 205(a)(2) of P.L.101-618 requires TROA to satisfy the exercise of <i>Orr Ditch</i> decree water rights (except those that are voluntarily relinquished). TROA (in sections 1.C.1 and 1.C.2) recognizes protection of Newlands Project water rights under the <i>Orr Ditch</i> decree. Credit Water operations would not affect this requirement. Groundwater in the Truckee and Carson Divisions would be affected by changes (increases or decreases) in the amount of water conveyed in the canals and laterals. The analysis for groundwater is presented in chapter 3 in “Groundwater.” Results of this analysis show diversions to the Truckee Canal or storage and releases from Lahontan Reservoir are similar under TROA and the other alternatives; therefore, TROA is not expected have a measurable effect on groundwater on the Newlands Project. For current water rights acquisition programs involving the Newlands Project, including the Water Quality Settlement Agreement (WQSA), Water Rights Acquisition Program (WRAP), and Assembly Bill 380, NEPA compliance has been completed. Because analysis for TROA looks at a future condition (the year 2033) and TROA would not affect the implementation of any of those programs, water rights acquisitions under all alternatives are assumed to be identical.
NCG 05-34	The analysis considered Carson River discharge, Newlands Project demand, diversions to the Truckee Canal, Lahontan Reservoir storage and releases, and shortages; the analysis also provides a qualitative description and analysis of groundwater.
NCG 05-35	The text has been modified as suggested in the final EIS/EIR.
NCG 05-36	The text has been corrected as suggested in the final EIS/EIR.
NCG 05-37	See response to comment NCG 05-10.
NCG 05-38	The text has been modified as suggested in the final EIS/EIR.
NCG 05-39	This paragraph has been revised in the final EIS/EIR.
NCG 05-40	The “perennial yield in the Lahontan Valley” is related to the amount of groundwater recharge on a continuing annual basis. This amount of recharge is influenced by many variables, of which irrigation, precipitation, and seepage losses are a part. Text has been revised for the final EIS/EIR to help clarify the relative degree of contribution to groundwater from various identified sources.

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NCG 05-41	An overview of the water quality information on Carson River basin can be found in the Carson River Atlas (1991). A number of studies have investigated water quality downstream from Lahontan Reservoir. However, because there is no significant change due to TROA or the alternatives, an analysis of these studies is beyond the scope of the EIS/EIR. The Carson River basin is outside the primary study area of the Truckee River between Lake Tahoe and Pyramid Lake. Water quality upstream of the Carson River Fort Churchill gauge would not change under any of the alternatives. Therefore, there is no effect on water quality upstream of the Fort Churchill gauge. Operations model results show minimal changes in Lahontan Reservoir storage, water surface elevation, and releases. And, there are no significant changes in water quality downstream from the Fort Churchill gauge due to TROA or the alternatives. The Nevada Division of Environmental Protection is in the process of updating the Carson River TMDL.
NCG 05-42	The 150,000 acres is the estimated average area for the period 1845-60 for wetlands associated with Carson Lake, Stillwater Marsh, and Carson Sink. The source notes that the areal extent in any given year depended primarily on the annual evapotranspiration rate, wetland morphology, and the magnitude of seasonal inflow and provides a range of 25,000 to 238,000 acres. This estimate is based on an unregulated average discharge of the Carson River at Fort Churchill of 410,000 acre-feet. A detailed discussion of the assumptions underlying this estimate can be found in the original citation (Kerley et al., 1993). Carson River flow records at Fort Churchill, based on the 1912-94 period of record, show annual average flows of 262,200 acre-feet; flows range from 26,300 acre-feet in 1977 to 804,300 acre-feet in 1983. The FWS estimate of 5 acre-feet per acre is for the maintenance of managed permanent wetlands, whereas many historical wetlands were seasonal.
NCG 05-43	As confirmed by the U.S. District Court and Ninth Circuit Court of Appeals, the impacts of FWS water acquisitions were adequately considered and analyzed in the 1996 EIS, "Water Rights Acquisitions for Lahontan Valley Wetlands." Under P.L. 105-277, FWS completed several sales of non-water-righted land in the Lahontan Valley during 2004 and 2005. Consultation with county officials took place before each land sale. Comments related to possible impacts of future FWS land sales have been forwarded to the FWS Nevada Realty Office in Fallon, Nevada.
NCG 05-44	The No Action Alternative is valid because it describes water management in the Truckee River basin if TROA or other action alternatives were not implemented. No Action assumes that current reservoir operations and trends would continue into the future (year 2033) if No Action were taken. Potential adverse effects on cui-ui and LCT under No Action as compared to current conditions reflect increased demand for municipal and industrial water in the future, i.e., less water would be available for these fishes. In addition, No Action is consistent with existing court decrees, agreements, and regulations that currently govern surface water management in the Lake Tahoe and Truckee River basins.
NCG 05-45	The No Action Alternative, described in chapter 2, was formulated assuming that Federal and private reservoirs are operated, current water demands are satisfied consistent with current water management procedures, and that the exercise of water rights is satisfied consistent with State law and existing decrees and regulations. The proposed action, TROA, also described in chapter 2 in considerable detail, is analyzed extensively in chapter 3. The principal differences between No Action and TROA are presented in table 2.6. Because neither NEPA nor CEQA require mitigation for status quo operation, no mitigation was proposed for No Action. No mitigation was proposed for TROA because no significant effects were identified, as explained in detail for the various resources in chapter 3.
NCG 05-46	The Negotiations Model has been used for more than 30 years and has been the accepted model by the various parties. The Negotiations Model was specifically set up to evaluate issues on the Truckee-Carson River system. In 1982, in support of settlement negotiations, a Technical Work Group as a part of the Truckee River Technical Committee (TRTC) was charged with "coming up with a computer model and hydrologic data base agreeable to all parties" (General Summary from Harvey Nelson, Projects Manager, Bureau of Reclamation, Carson City, First meeting of Technical Work Group for Hydrologic Studies, dated May 26, 1982). Records of TRTC show that TCID (among other parties) was involved in this process and participated in model verification and a peer review of algorithms used for system operations. In April 1987, TRTC agreed the model was adequate for comparing the effects of various water management assumptions. See "General Methods and Assumptions" in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations.

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NCG 05-47	While the wide climatic variability of prehistoric Great Basin is recognized, the stated purpose of this section is to provide a perspective in terms of recent human habitation and management; the text is unchanged.
NCG 05-48	The operations model does not differentiate sources of Carson Division demand. It is assumed that a municipal and industrial right for surface water in Lahontan Valley would be a former irrigation right and would still be expressed as a component of Carson Division demand. While TROA would not regulate operations on the Newlands Project, storage in and releases from Lahontan Reservoir were modeled. Individual analysts evaluated the operations model results and determined there were no significant effects downstream from Lahontan Reservoir. On the basis of this determination, no listing was made of the individual municipal and industrial demands downstream from Lahontan Reservoir.
NCG 05-49	Approval from the Nevada State Engineer is needed for a change application to store water available from TMWA's hydroelectric water right as Fish Credit Water, and the approval of the <i>Orr Ditch</i> court is required to modify the flows associated with Floriston rates; such water can be made available for credit water storage only to the extent that no other entity has a right to divert and it would otherwise flow to Pyramid Lake. As to storage of other Credit Water categories (TROA section 7.A.4(c)), TMWA would not protest or object to changes to water rights for Credit Water storage, based upon the grounds that the change would conflict with TMWA's single-purpose hydroelectric water rights, as long as it is compensated as provided in TROA section 7.A.6.
NCG 05-50	<p>This information is general background historical information for USGS gauges at the specific location and time period described. This information can be broken down by specific years when various OCAPs were in place but may not be useful because of the short time frame a particular OCAP was in place. If the commenter is interested, visit the USGS Web site at <a href="http://waterdata.usgs.gov/nv/nwis/current/?type=flow">http://waterdata.usgs.gov/nv/nwis/current/?type=flow</a> to obtain various breakdowns for different time periods.</p> <p>In general, historical gauge information was used to create the 100-year natural flow data set used in the operations model. Also see "General Methods and Assumptions" in chapter 3 of the final EIS/EIR.</p>
NCG 05-51	The gauge information is provided to inform the reader of the maximum, minimum, and average historical flows at various USGS gauging stations.
NCG 05-52	Table 3.2 presents official USGS gauge records. Operations resulting from applicable OCAPs are reflected in the historical data.
NCG 05-53	Real, i.e. historic, data were used to develop the hydrologic data used in the analysis. Also see "General Methods and Assumptions" in chapter 3 of the final EIS/EIR.
NCG 05-54	<p>Table 3.13 identifies the assumed demands for Truckee Division and Carson Division for the various alternatives.</p> <p>The operations model determines diversions to the Truckee Canal on the basis of current OCAP (1997 Adjusted OCAP), taking into consideration irrigation demands for the Newlands Project, Lahontan Reservoir storage, and Carson River inflows.</p>
NCG 05-55	For the period 1967-2000, the highest annual discharge in the Truckee Canal at Wadsworth, identified as "Truckee Canal near Wadsworth, NV," was 287,500 acre-feet in water year 1978 and the lowest annual discharge from Lahontan Reservoir, identified as "Carson River downstream from Lahontan Reservoir," was 131,400 acre-feet in water year 1992. OCAP diversions from the Truckee River are based on achieving storage targets in Lahontan Reservoir. Under current OCAP, it is possible, but highly unlikely, that an annual diversion of 287,500 acre-feet from the Truckee River would occur.
NCG 05-56	The text has been modified as suggested in the final EIS/EIR.
NCG 05-57	The text has been revised as suggested in the final EIS/EIR.
NCG 05-58	The title has been corrected in the final EIS/EIR.

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NCG 05-59	The nonconsumptive demands presented in table 3.4 have water rights for diversions. While the United States has an <i>Alpine</i> decree right for generating hydroelectric power at Lahontan Reservoir, there is no required diversion to meet hydroelectric power demands and hydroelectric power is to be generated incidental to reservoir releases. Discussion and analysis of hydroelectric power generation at Lahontan Dam has been added to the final EIS/EIR. See “Economic Environment” in chapter 3 of the final EIS/EIR.
NCG 05-60	A variable portion of Floriston Rate flow is used to satisfy the exercise of Newlands Project water rights, and the referenced text accurately describes the purpose of Floriston Rates as set forth in the <i>Truckee River General Electric</i> decree. Also, see Section II.C.2, “Floriston Rates,” in chapter 2 of the final EIS/EIR; also see “Surface Water,” Section I.D.4, “Floriston Rates,” in chapter 3 in the final EIS/EIR.
NCG 05-61	It is recognized that reduced Floriston Rates as defined in the Truckee River Agreement are implemented to conserve water in Lake Tahoe and Boca Reservoir during the nonirrigation season in order to extend flows during the year, where possible, to satisfy the exercise of <i>Orr Ditch</i> decree water rights, including those on the Newlands Project.
NCG 05-62	Lahontan Reservoir storage procedures are addressed in Section II.C.3.a(7), “Lahontan Reservoir,” in chapter 2 of the final EIS/EIR; also see “Newlands Project Operations” in chapter 3 of the final EIS/EIR.
NCG 05-63	The referenced section provides extensive information about Floriston Rates. See Section IV, “TROA,” in chapter 2 of the final EIS/EIR for an explanation of TROA’s relation to Floriston Rates.
NCG 05-64	See “Newlands Project Operations” in chapter 3 of the final EIS/EIR.
NCG 05-65	Carson Division demand is modeled as a constant 275,720 acre-feet for current conditions and 268,820 acre-feet for alternatives in all years. A percentage of that demand is delivered in years when the water supply is less than 100 percent. A shortage occurs when the full demand is not met. See “General Methods and Assumptions” for a discussion of wet, median, and dry hydrologic conditions and “Surface Water” for a discussion of Carson Division demand in chapter 3 of the final EIS/EIR.
NCG 05-66	Wet, median, and dry refer to percent exceedences, not single events. See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for a discussion of wet, median, and dry hydrologic conditions
NCG 05-67	Yes. The period used to calculate initial storage included two dry years, 1993 and 1994.
NCG 05-68	Assumptions relative to groundwater operations in the TMWA service area are presented in attachment C of the EIS/EIR. The operations model assumes 12,570 acre-feet would be pumped in normal years and 26,500 acre-feet would be pumped in drought years under LWSA, which includes the recharge program.
NCG 05-69	<p>The analyses presented in the EIS/EIR do not limit the exercise of the Pyramid Lake Paiute Tribe’s Federal Indian reserved water rights adjudicated in Claims Nos. 1 and 2 under the <i>Orr Ditch</i> decree. Water usage assumptions for the Pyramid Tribe appear in “Surface Water” in chapter 3 of the final EIS/EIR, as listed in table 3.11, and as described in Sections I.C.1.b.ii(b)(i)(aa), “Agriculture,” and I.C.1.b.ii(b)(i) (bb), “M&amp;I.” The Tribe stated these expectations in its letter of January 22, 2003, to BIA. This letter is included as attachment G to the final EIS/EIR.</p> <p>The analyses are based on the assumption that both Claim Nos. 1 and 2 are fully exercised and that 15,043 acre-feet of Claim Nos. 1 and 2 water rights would be used for municipal and industrial purposes and 15,043 acre-feet would be used for agricultural purposes. Currently, 1,344 acre-feet of existing Tribal water rights are used for municipal and industrial purposes and are assumed to be exercised in addition to the 15,043 acre-feet of Claim Nos. 1 and 2, for a total of 16,377 acre-feet. Also, see response to comment PW 10-59.</p> <p>TROA, as well as the other alternatives, allows water users to fully exercise valid water rights. The assumptions are based on responses received from the various water entities on how they expect to use their water resources in the future. Orr Ditch decree protects the exercise of water rights. Habitat conditions for Pyramid Lake fishes would be better under TROA than under LWSA, No Action, or current conditions. All of the alternatives assumed that the Tribe was fully exercising its water rights; the analyses indicate that cui-ui and LCT would benefit. The analyses of the effects on cui-ui and LCT under the various alternatives can be found in chapter 3, in “Cui-ui” and “Lahontan Cutthroat Trout” in the final EIS/EIR.</p>

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NCG 05-70	See response to comment NCG 05-48.
NCG 05-71	The operations model assumes that, in the future under the alternatives, Water Rights Acquisition for Lahontan Valley wetlands as described in the Record of Decision is fully implemented. Modeling for the alternatives is based on 62,790 acre-feet of Carson Division water rights for wetlands at 2.99 headgate duty. The goal of WRAP is to transfer 125,000 acre-feet of water to the wetlands. Of that 125,000 acre-feet, 60,000 to 64,000 acre-feet of Carson Division water rights would be purchased. The additional water is to be provided by 19,700 acre-feet of drainage, 9,700 acre-feet of spills, and 33,600 acre-feet comprised of upstream Carson River water rights, groundwater, Navy conservation, and other sources.
NCG 05-72	See response to comment to NCG 05-69.
NCG 05-73	The water duty of 2.99 acre-feet/acre/year for Lahontan Valley wetlands is the current duty for water rights acquired and transferred pursuant to WRAP. Keeping this value constant for all alternatives allows a comparison of the effects of TROA rather than the effects of variable headgate duty.
NCG 05-74	See response to comment NCG 05-48.
NCG 05-75	The operations model does not inflate Lahontan Reservoir storage levels in dry hydrologic conditions. The figure reflects end-of-month, rather than beginning-of-month, storage values. The values noted in the comment are for the beginning of January in water years 2001-04. These values should be compared to the end-of-December plots. Water years 2001-04 represent slightly less than median hydrologic conditions. The Federal Water Master records show that end-of-December values for this period ranged from 100,600 to 112,000 acre-feet, which is within the expected values of 125,000 acre-feet in median hydrologic conditions and 75,000 acre-feet in dry hydrologic conditions.
NCG 05-76	Potential effects of TROA on the Newlands Project and its water resources are presented in detail in chapter 3 in “Newlands Project Operations.” EIS/EIR analysis indicates that water rights of Newlands Project users would not be adversely affected, in compliance with section 205(a)(2)(D) of P.L. 101-618 and non-interference with the provisions of OCAP. As explained in detail in the response to comment 5 PH 03-05 while the implementation of TROA may affect the quantity of water in the Truckee River, TROA also provides for the protection of <i>Orr Ditch</i> decree water rights pursuant to the <i>Orr Ditch</i> decree and Newlands Project OCAP. Also, see responses to comments PW 10-75 and PW 10-96 relative to approval and implementation of TROA (with emphasis on establishment of Credit Water).
NCG 05-77	See response to comment NCG 05-10.
NCG 05-78	See response to comment NCG 05-21.
NCG 05-79	The marks in question were a typographical error and in no way reflect on the adequacy or accuracy of the information presented in the EIS/EIR.  As presented in Water Resources Appendix Exhibits 5-4, 5-10, 5-16, and 5-22, the average depletion under current conditions is -500 acre-feet; No Action is 10,710 acre-feet; LWSA is 11,660 acre-feet; and TROA is negative 2,380 acre-feet. This means there is 13,090 acre-feet more water at Derby Diversion Dam under TROA than under No Action, which could be diverted to the Truckee Canal subject to OCAP. The difference in depletion between the alternatives is mainly due to different assumptions for irrigation and groundwater use in Truckee Meadows.
NCG 05-80	See response to comment NCG 05-10.
NCG 05-81	The Carson Division of the Newlands Project (which is in the Carson River basin) is discussed in this section. Further discussion of the Newlands Project and the Carson River basin is found in chapter 3 in “Newlands Project Operations.”
NCG 05-82	See responses to comments 5 PH 03-05, PW 10-77, and, in part, PW 10-96.
NCG 05-83	See response to comment NCG 05-10.

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NCG 05-84	<p>Text has been revised in the final EIS/EIR to 4,814 wells, as shown in the Churchill County database on April 16, 2005.</p> <p>The evaluation of effects has been expanded in the final EIS/EIR. See “Groundwater,” Section II.E, “Recharge of the Shallow Aquifer Near the Truckee Canal,” in chapter 3 of the final EIS/EIR.</p>
NCG 05-85	<p>See responses to comments NCG-05-84 and NCG-05-33. Also, TROA does not affect the implementation of OCAP and does not implement any water rights acquisition program in the Newlands Project.</p>
NCG 05-86	<p>See responses to comments NCG-05-84 and NCG-05-33.</p>
NCG 05-87	<p>This is addressed in “Groundwater,” Section I, “Affected Environment,” in chapter 3 of the final EIS/EIR. Also, see response to comment NCG-05-84.</p>
NCG 05-88	<p>Although the study was not limited to Truckee Meadows, a key point relative to Truckee Meadows is that there are major water purveyors in the area that are developing both surface (through water rights acquisition) and groundwater (through injection) supplies as part of an extensive municipal and industrial water distribution system to serve an expanding urban (and declining rural) population.</p> <p>The study includes the Carson Division; see responses to comments NCG 05-33 and NCG 05-84. The loss of canal seepage and irrigation deep percolation do have an effect on the lands in the Lahontan Valley; however, the water deliveries from Lahontan Reservoir that would support canal seepage and irrigation are not significantly different under any of the action alternatives. The most recent study on the influence of changing irrigation practices is a modeling effort by USGS, which provides an indication of the order of magnitude of change expected in the shallow aquifer. USGS Water Resources Investigation Report 99-4191, prepared in cooperation with the Bureau of Reclamation, <i>Conceptual Evaluation of Ground-Water Flow and Simulated Effects of Changing Irrigation Practices on the Shallow Aquifer in the Fallon and Stillwater Areas, Churchill County, Nevada</i>, indicates changes for various irrigation and seepage reductions. The range of water level decline for the various scenarios modeled, including reductions in irrigated acreage, shows maximums between 2.6 and 10.3 feet. It should be noted that for this EIS/EIR, changes to irrigation and seepage losses are expected to occur between current conditions and No Action, and not between No Action and LWSA or TROA.</p>
NCG 05-89	<p>See responses to comments NCG 05-33 and NCG 05-84.</p>
NCG 05-90	<p>See responses to comments NCG 05-84, NCG 05-115, and NCG 05-125.</p>
NCG 05-91	<p>“[A]gricultural community” has been deleted from the subject text in the final EIS/EIR.</p>
NCG 05-92	<p>The intent of the subject text was to generally describe an increasingly competitive market for nonagricultural water rights, which is one of the factors causing change in irrigated acreage in Churchill County.</p>
NCG 05-93	<p>“Economic Environment” Section II.D, “Employment and Income Affected by Changes in Water Use,” in chapter 3 of the final EIS/EIR has been expanded to better describe the agricultural sectors that are included in the regional impact model, which includes Churchill County. The economic model has been updated to reflect a more current database to estimate regional impacts from changes in water use in the Truckee River basin.</p>
NCG 05-94	<p>See responses to comments NCG 05-93 and, in part, response to comment PW 10-30.</p>
NCG 05-95	<p>TROA would not affect groundwater pumping in Lahontan Valley.</p>
NCG 05-96	<p>For recreation, it was determined early in the study that Lahontan Reservoir would not be significantly affected by changes in reservoir operations under TROA; therefore, Lahontan Reservoir was not included in the recreation model. A separate recreation analysis was conducted using operations model results; these results showed little to no effect on recreation at Lahontan Reservoir.</p>

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NCG 05-97	The recreation model estimates the potential effects on recreation visitation and expenditures for the upper Truckee River basin reservoirs and along the Truckee River. The economic model (regional input-output model) uses the changes in recreation expenditures to estimate economic effects in the region, which includes the five California counties as well as Churchill, Washoe and (a portion of) Lyon Counties.
NCG 05-98	The effects on recreation visitation at Lahontan Reservoir in dry hydrologic conditions indicated a potential for less visitation at Lahontan Reservoir, but it was difficult to determine how much of this, if any, could be attributed to TROA. The regional impact from the potential loss of recreation expenditures at Lahontan Reservoir would not be significant when compared to the regional economy modeled for this study. Also, see response to comment NCG 05-96.
NCG 05-99	<p>The economic analysis considered the effects of water right transfers from irrigation to municipal and industrial use on the regional economy, which includes Churchill County. This analysis was also based on the 100-year hydrologic record, which includes several droughts. Extending drought periods beyond those in the record is speculative and not needed for the analysis. Also, see response to comment PW 10-64.</p> <p>Credit Water operations in dry years do not affect agricultural water rights. The analysis of a potential “collapse” of the agricultural industry based on the number of drought years that might occur ignoring other factors is speculative and beyond the scope of this EIS/EIR.</p>
NCG 05-100	See responses, in part, to comments NCG 05-93, PW 07-26, and PW 10-30.
NCG 05-101	The basis for the significance threshold is both the direction and magnitude of change over time. Operations model results show that both No Action and LWSA result in an average annual reduction of 4,490 acre-feet in Pyramid Lake inflows, which amounts to greater than a 1-foot reduction in lake elevation over the study period compared to current conditions. TROA, however, would result in an average annual increase of 9,730 acre-feet in Pyramid Lake inflows, which amounts to greater than a 2-foot increase in lake elevation over the study period compared to current conditions and an increase of greater than 3 feet in lake elevation compared to either No Action or LWSA. Restricted fish passage across the Truckee River delta creates a critical bottleneck for both cui-ui and LCT spawning. Because the delta has only a slight gradient, even small changes in lake elevation can have a significant effect on fish passage and recruitment. TROA, therefore, would promote fish passage, spawning, and recruitment of Pyramid Lake fishes. Also, see response to PW 07-24.
NCG 05-102	See response to NCG 05-101.
NCG 05-103	The suggested revision has been added to the text in the final EIS/EIR.
NCG 05-104	Discussion of Fernley, Fallon, and Churchill County is included in “Social Environment” in chapter 3 of the final EIS/EIR.
NCG 05-105	<p>Only designated air quality nonattainment areas are identified and discussed. Churchill County and the rest of the study area are in attainment; thus, they are not discussed. A sentence to clarify this point has been added to the final EIS/EIR.</p> <p>LWSA or TROA would not cause population impacts, changes in transportation patterns, or identifiable point source pollution impacts; thus, they would not contribute to any changes in air quality. Cumulative effects associated with P.L. 101-618 are discussed in Chapter 4, “Cumulative Effects.”</p>
NCG 05-106	The study area includes these locations. Future trends for the study area, including a steadily increasing population, expansion of municipal and industrial water use, and a decline in agricultural-based living are identified. No adverse effects on the social environment from implementation of TROA are identified. Cumulative social environment effects are discussed in Chapter 4, “Cumulative Effects.”
NCG 05-107	Existing and future air quality for the study area, including the increasing population, municipal and industrial expansion, and a decline in agricultural-based living are considered and described. LWSA or TROA would not cause population impacts, changes in transportation patterns, or identifiable point source pollution impacts; thus, they would not contribute to any changes in air quality. Actions and cumulative effects associated with P.L. 101-618 are discussed in Chapter 4, “Cumulative Effects.”



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NCG 05-108	The subject paragraph has been revised to address the suggested change in the final EIS/EIR.
NCG 05-109	<p>The assumptions for the hydrologic model, analytical methods, and utility and significance of model results are presented in detail in “General Methods and Assumptions” and “Surface Water” in chapter 3 of the final EIS/EIR.</p> <p>See response to comment NCG 05-10 on multiple dry year periods.</p> <p>OCAP target storages are based, in part, on Carson Division demand. Carson Division demand for current conditions and target storages is discussed in “Surface Water” in chapter 3 of the final EIS/EIR.</p> <p>The operations model assumes that Floriston Rates are met when there is sufficient water from unregulated flow and from stored Floriston Rate water. During a drought period, insufficient water is available from these sources, Floriston Rates are not met and shortages can occur, including to the Newlands Project. As part of the final EIS/EIR, an additional sensitivity analysis was performed on the Newlands Project Credit Water which expands on the shortages which occur in the Newlands Project. See “Surface Water,” Section II.H.1, “Expanded Newlands Credit Water Storage” in chapter 3 of the final EIS/EIR.</p>
NCG 05-110	Analysis found no significant cumulative effects associated with the proposed project and, consequently, no long-range monitoring program is required.
NCG 05-111	The identified text only addresses the water right acquisition component of the Water Rights Acquisition Program. Exercise of Carson Division water rights, which includes local wetlands, is addressed for the various resources, including wetlands, and summarized in “Newlands Project Operations” in chapter 3 of the final EIS/EIR.
NCG 05-112	The future condition incorporated in all action alternatives assumes that the Water Rights Acquisition Program has been fully implemented as described and analyzed in the WRAP NEPA process and analyzed in chapter 3. The identified text has been revised to address the issue more accurately in the final EIS/EIR.
NCG 05-113	The referenced efficiency study appears in section 209(c) of P.L. 101-618. The analysis in this document assumes that Carson Division efficiency, one of the factors used to calculate water demand, does not change under any of the action alternatives. Carson Division demand would not affect the water supply available from the Truckee River but would affect the amount of water that could be diverted via the Truckee Canal in a given year under OCAP. Because TROA would not affect Carson Division efficiency and, therefore, demand, this component is not analyzed separately from other Newlands Project issues.
NCG 05-114	TROA would not affect the exercise of Newlands Project water rights, the capacity to divert Truckee River water via the Truckee Canal or the scheduling or release of water from Lahontan Reservoir to serve Carson Division water rights; TROA also does not include a water rights acquisition program; for these reasons, cumulative effects analysis beyond that included for the Water Rights Acquisition Program and the Water Quality Settlement Agreement was not required.
NCG 05-115	The future condition incorporated in all action alternatives assumes that WRAP has been fully implemented as described and analyzed in the WRAP NEPA process and analyzed in chapter 3. Exercise of Carson Division water rights, which includes local wetlands, is addressed for the various resources, including wetlands, and summarized in “Newlands Project Operations” in chapter 3 of the final EIS/EIR. While the water supply in the Truckee River basin available to the Newlands Project may be reduced because, under TROA, upstream <i>Orr Ditch</i> decree water right owners could more efficiently and effectively exercise their water rights, neither Lahontan Reservoir storage targets nor the priority to divert Truckee River water to the Truckee Canal would be affected by TROA. It is recognized that drought could reduce the water supply, which could affect the exercise of water rights depending on priority.
NCG 05-116	The conclusion relative to Newlands Project water rights is based on the fact that the Federal Water Master for the <i>Orr Ditch</i> decree would continue to manage diversions and satisfy the exercise of water rights consistent with the decree and OCAP. Also, see response to comment NCG 05-115.

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NCG 05-117	While the actual rate may vary among alternatives, projections from local planning agencies suggest that the current trend of urban growth in western Nevada would continue. This trend is evident in Fernley and Fallon as well as in Truckee Meadows. Also, see response to comment NCG 05-115.
NCG 05-118	See, in part, response to comment NCG 05-114. Also, an expanding urban population with higher-density housing likely would require a municipal purveyor to secure a firm water supply, provide treatment to achieve drinking water standards, and develop and maintain a water delivery system; wastewater collection, treatment, and disposal facilities also would likely be required. These issues transcend the scope of TROA.
NCG 05-119	The Water Quality Settlement Agreement would continue to be implemented to completion independent of TROA. Parties to WQSA and Churchill County are investigating options to address dust control issues in the affected area.
NCG 05-120	Credit Water would only be created when streamflows are sufficient and when requested by a storing party. Section 7.A.5 of TROA would prohibit establishment of most Credit Waters that would cause flows to be less than 275/120 cfs at Vista/Nixon. Credit Water would be released at the request of the storing party to the extent of availability and release capacity.
NCG 05-121	The items listed under the Action Category heading are processes that are driving (affecting) rather than reacting to (being affected by) changes in resource status in the study area. Agriculture is assumed to be included in the latter and is addressed as part of “Surface Water” and “Economic Environment” in chapter 3 of the final EIS/EIR.
NCG 05-122	As explained in detail in chapter 3, TROA is not considered to be growth inducing. Water for growth and development beyond that currently projected is outside the scope of the TROA analysis. By integrating Truckee River reservoirs operations and allowing Credit Water storage, TROA would optimize the use of surface water for municipal and industrial drought relief in support of projected urban populations, thereby reducing the need for water rationing and increased groundwater pumping as would be required under No Action and LWSA (chapter 2). TROA does not direct where or how that development would occur. Stormwater discharge would likely increase with increasing population with or without TROA. Relative to wastewater treatment, while the volume of the discharge would depend on per capita use, it can be assumed that loading would relate more directly to population size, which, again, is projected to increase with or without TROA.
NCG 05-123	As addressed in this EIS/EIR, erosion and sedimentation are stream-related processes. TROA would have no effect on wind erosion on the Truckee Division because it would not affect the exercise of Newlands Project water rights or the capacity to divert Truckee River water via the Truckee Canal, and it does not include a water rights acquisition or transfer program.
NCG 05-124	As explained in detail in chapter 3, TROA is not considered to be growth inducing. Loadings due to projected population with or without TROA have been factored into the water quality modeling analysis and are reflected in “Water Quality” in chapter 3 and in the Water Quality Appendix.
NCG 05-125	OCAP, not TROA, regulates Truckee River diversions to Lahontan Reservoir, based, in part, on Carson Division demand and available Carson River flows. Lahontan Reservoir storage targets are directly related to Carson Division demand and so would be influenced to the extent that water right acquisitions and transfers change that demand; storage targets are not based on recreation factors. While upper Truckee River basin water rights may be more fully exercised under TROA, neither the amount of water rights nor annual runoff is affected by TROA. In a given year, there is a greater likelihood that lower, rather than higher, Lahontan Reservoir storage targets would be met. The hydrologic data used for analyses in this EIS/EIR are based on historic data from the past 100 years; the rationale for its use is discussed in detail in “Surface Water” in chapter 3 of the final EIS/EIR.
NCG 05-126	See response to comment NCG 05-123.
NCG 05-127	The conclusion is supported by the analyses in chapter 3.

## Nevada County Government

NCG 05-128	See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR. Note that TROA and the model are not equivalent. The model is only one tool used by the parties in the development and analysis of TROA. In addition to the model, the parties relied on (1) their understanding of water rights and the rules of whether a water right is injured or not from a change application, (2) TROA sections 1.C.1 and 1.C.2 where <i>Orr Ditch</i> decree water rights are protected, (3) enforcement by the Administrator and Water Master, (4) checks and balances that the change application processes provide, (e) consideration for the program that the <i>Orr Ditch</i> court and <i>Truckee River General Electric</i> court will provide, and (5) wording of the TROA agreement.  Also, see responses to comments IT 01-01 and PW 06-02.
NCG 05-129	See response to comment NCG 05-03.
NCG 05-130	Baseline conditions are described as current conditions, which are described and analyzed in chapter 3 of the EIS/EIR. Also, see response to comment PW 10-56.

## Nevada Local Government

NLG 01-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
NLG 02-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.

## California County Government

CCG 01-01	No response required.
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## California Local Government

CLG 01-01	See response to comment FG 01-21.
CLG 01-02	See response to comment FG 01-21.
CLG 01-03	See response to comment FG 01-21.
CLG 01-04	See response to comment FG 01-21.
CLG 01-05	Streamflow and reservoir-level monitoring is the responsibility of the TROA Administrator (TROA section 3.C.1.) The Administrator will be responsible for the design, implementation, and maintenance of a data collection program sufficient for the purposes of administering TROA. Data collected will be the basis for the Administrator’s periodic reports. Data collected by the Administrator can be used in determining if operations need to be modified. See response to comment IND 07-05 for a discussion of adjusting TROA operations and changing TROA.  Also, see response to comment FG 01-2.
CLG 01-06	See response to comment FG 01-21.
CLG 01-07	Each signatory party to the Biological Resources Monitoring Program, as presently considered, would provide funding as available to support its respective monitoring responsibilities.
CLG 01-08	See response to comment FG 01-21.

## Indian Tribes

IT 01-01	Modeled operations under TROA are not intended to be exhaustive. See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations.
IT 01-02	Provisions addressing conditions for establishment of Fernley Municipal Credit Water have been negotiated and agreed to by the TROA parties. This final EIS/EIR evaluates, as did the revised DEIS/EIR, the impacts to resources with and without implementation of such credit water provisions.
IT 01-03	The text has been revised in the final EIS/EIR to clarify the use of California Guidelines preferred flows and recreational pools in the operations model.
IT 01-04	NPCW provisions are predicated on the authority in OCAP (i.e., Truckee Canal Diversion Criteria) to insure, to the extent possible, that the water supply for the Carson Division stored in Lahontan Reservoir meets but does not exceed Lahontan Reservoir storage targets. The mandatory signatories, including the Tribe, have agreed on language in TROA to allow implementation of NPCW consistent with provisions of OCAP. (See TROA section 7.H and appendix 7.D, and chapter 2 section IV.C.1.c.(6) in the final EIS/EIR.)
IT 01-05	See response to comment IT 01-04. The referenced text in chapter 4 has been modified accordingly.
IT 01-06	Analysis of NPCW has been expanded in the final EIS/EIR to evaluate a broad range of possible operations under TROA. See “Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR for this analysis. The expanded analysis recognizes that sample California Guidelines are not mandatory and are included within the range of potential impacts. The model analysis for NPCW in the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA.
IT 01-07	See response to comment IT 01-06.
IT 01-08	The text has been modified in the final EIS/EIR as suggested.
IT 01-09	The text has been modified in the final EIS/EIR as suggested.
IT 01-10	The text has been modified in the final EIS/EIR as suggested.
IT 01-11	The text has been modified in the final EIS/EIR as suggested.
IT 01-12	The identified text has been revised in the final EIS/EIR to address the suggested change.
IT 01-13	The identified text has been revised in the final EIS/EIR to address the suggested change.
IT 01-14	The identified text has been revised in the final EIS/EIR to accommodate the suggested change.
IT 01-15	The identified text has been revised in the final EIS/EIR to accommodate the suggested change.
IT 01-16	The identified text has been revised in the final EIS/EIR to address the suggested change.
IT 01-17	The identified text has been updated in the final EIS/EIR to incorporate the recent agreement.
IT 01-18	The identified text has been revised in the final EIS/EIR to accommodate the suggested change.
IT 01-19	The identified text has been revised in the final EIS/EIR to address the suggested change.
IT 01-20	The identified text has been revised in the final EIS/EIR to accommodate the suggested change.
IT 01-21	The identified text has been revised in the final EIS/EIR to accommodate the suggested change.
IT 01-22	The identified text has been revised in the final EIS/EIR to accommodate the suggested change.

## Entities and Organizations

EO 01-01	The availability of the Draft TROA was announced in press release MP-03-057 on October 20, 2003. The release was mailed to more than 450 individuals and organizations and included a contact name to request a copy and a Web site where Draft TROA could be viewed. Draft TROA was also made available to the public on August 25, 2004, as an appendix to the revised DEIS/EIR.
EO 01-02	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.

## Entities and Organizations

EO 02-01	<p>TROA does not abrogate the public trust doctrine, but application of the doctrine would be subject to the requirements of P.L. 101-618, including the Interstate Allocation. Although the California Guidelines are not mandatory, they are one of the many tools that would be available under TROA to ensure the protection of public trust values. As provided in section 1.A.3 of TROA:</p> <p>Section 1.A.3 California Public Trust: This Agreement is intended to implement California’s responsibilities under the public trust doctrine as set forth in <i>National Audubon Society v. Superior Court of Alpine County</i>, 33 Cal. 3d 419, 189 Cal. Rptr. 346 (1983), by coordinating operation of Truckee River Reservoirs, Donner Lake and Independence Lake, by supporting recreation and instream flows, and by providing for consultation with California, which will aid in balancing among public trust uses while meeting all other requirements of the Settlement Act.</p> <p>TROA would provide many opportunities for water managers to enhance flows in the Truckee River. For example, Article 9 of TROA would require minimum releases from Truckee River reservoirs and enhanced releases under certain conditions. In addition, section 9.F.2 of TROA would require the TROA Administrator to encourage the use of the California Guidelines in scheduling releases. If California or any other party to TROA believes the Administrator is not fulfilling his duties under TROA, they could submit the dispute to the Truckee River Special Hearing Officer, as provided in section 2.B.2.</p> <p>Also, see response to NSG 02-03.</p>
EO 02-02	<p>According to TROA, section 9.F, California Guidelines are not mandatory. Parties to TROA would be encouraged to schedule their operation to accommodate California Guidelines to “the extent practicable and consistent with the exercise of water rights, the requirements of the Settlement Act and all other requirements of this Agreement.” Section 9.F provides for timely submission of revisions to the guidelines to the TROA Administrator, identifies the appropriate management considerations which may be included, provides a process for resolution of conflicts or ambiguity in the guidelines, allows California to request additional adjustments to river operations under specified circumstances, and encourages schedules and voluntary exchanges and re-storage to meet preferred flows, limit maximum flows, and provide for ramping of flows. Also, TROA section 1.A.1 states that Truckee River reservoirs would be operated in a manner to enhance fish, wildlife, and recreational beneficial uses of water. As such, TROA would provide many opportunities for water managers to enhance flows in the Truckee River. Additionally, TROA provides a dispute resolution process (section 2.B.2). None of these opportunities is currently available to California nor would be under No Action or LWSA. See response to NSG 02-03 for more specifics.</p>
EO 02-03	<p>See response to comment FG 01-21.</p>
EO 02-04	<p>The California Guidelines are suggested objectives and, consequently, are not mandatory. Monitoring the progress in meeting the objectives of the California Guidelines would be the responsibility of California. California would share this information with interested parties.</p>
EO 02-05	<p>See response to comment FG 01-21.</p>
EO 02-06	<p>All expected use and consumption of surface and groundwater during the period of analysis have been incorporated into the operations model. Operations model results provided the basis for the fish and fishery analyses.</p>
EO 02-07	<p>The approval of the change petitions and water appropriation applications by SWRCB is necessary to implement TROA. The effects of change petitions and water appropriations for Prosser Creek, Stampede, and Boca Reservoirs and Independence Lake have been incorporated into the operations model. Operations model results provided the basis for the fish and fishery analyses.</p>
EO 02-08	<p>The comment raises a legal issue. As discussed in chapter 2, TROA would allow decisions of the Truckee River Special Hearing Officer to be reviewed by petition to the <i>Orr Ditch</i> court. The negotiators favor this approach because (1) P.L. 101-618 provides that disputes over the interstate allocations be adjudicated in the Federal courts and TROA implements the allocations; (2) TROA would supersede some provisions incorporated in the <i>Orr Ditch</i> decree which is administered in the U.S. District Court for Nevada; (3) TROA involves sovereigns and public agencies, not all of which are amenable to suit in California (or Nevada) State</p>

## Entities and Organizations

	<p>courts (4) the interstate nature of the waters involved, and the fact that they are regulated by Federal facilities makes the Federal courts preferable to California or Nevada State courts; and (5) the Settlement Act and TROA require the settlement of several cases pending in Federal court.</p> <p>Because California is not a party to the litigation pending before the <i>Orr Ditch</i> court, if TROA is approved, California would agree to be subject to the court’s jurisdiction for limited purposes, as provided in section 2.B.5.(c)-(d) of TROA. State law questions and TROA provisions that apply uniquely to California, such as Article 10 that governs design and permitting of groundwater wells in California, would be expressly reserved. Sections 2.B.5.(c)-2.B.5.(d) provide the following:</p> <p>“Section 2.B.5(c) California. By virtue of California’s intervention in the action leading to the <i>Orr Ditch</i> decree for the limited purposes of providing the <i>Orr Ditch</i> Court with jurisdiction to hear and decide: (i) petitions seeking judicial review of decisions by the Truckee River Special Hearing Officer which resolve disputes arising under this Agreement; and (ii) claims that allege failure to comply with the allocations or any other provisions of Section 204(b) and 204 (c) of the Settlement Act, and being bound for those limited purposes by the amendment to the <i>Orr Ditch</i> decree entered by the court pursuant to Section 12.A.4(b), California acknowledges, and the <i>Orr Ditch</i> Court found and declared, that it is not immune from and is subject to the jurisdiction of the <i>Orr Ditch</i> Court over petitions filed against it or its agencies for declaratory and prospective injunctive relief for those two limited purposes. Such jurisdiction does not extend to any claim against California or its agencies arising under state law. Such jurisdiction shall not take effect until this Agreement has entered into effect and becomes operative.</p> <p>Section 2.B.5(d) State Interventions. Except as expressly provided in this Agreement, the interventions by Nevada and California in the action leading to the <i>Orr Ditch</i> decree shall not be construed to: (i) alter the law or procedures applicable to the water allocated in the Settlement Act, (ii) alter the applicability of federal or state law or procedures to the supervisions of safety of dams or to flood control; (iii) alter the applicability of any other federal or state law or procedures as provided in the Settlement Act; or (iv) abrogate the jurisdiction of, or any required approvals by, the Nevada State Engineer, the California State Water Resources Control Board, or the state agencies authorized or directed to implement or carry out such laws and procedures. The law that the Truckee River Special Hearing Officer or the <i>Orr Ditch</i> Court applies in resolving disputes over which they have jurisdiction shall not be affected by the interventions of the State in the action leading to the <i>Orr Ditch</i> decree.”</p>
EO 02-09	<p>TROA section 7.D.9(b) states that California Environmental Credit Water and Additional California Environmental Credit Water flowing in Nevada would be available for use as part of Nevada’s allocation under section 204(c)(3) of P.L. 101-618 if the original place of use was in California. This water category could be considered to be used to achieve Floriston Rates.</p>
EO 02-10	<p>Low flows between Lake Tahoe and Donner Creek in September come toward the end of the growing season, and the likely effect is to induce slightly earlier leaf loss and dormancy in riparian plants. This is not a significant adverse effect. Higher spring flows scour the channel and provide the moist mineral surface that seeds of many riparian plants require for germination. For established plants, higher spring flows provide an abundant supply of water needed to support rapid spring growth. The benefits of higher spring flows, therefore, offset the relatively minor negative effects of lower flows in September. This pattern matches the natural hydrograph to which the native riparian plants are adapted.</p> <p>In contrast, downstream from Derby Diversion Dam, most of the natural flows have been diverted and the river has incised deeply into its flood plain. Much of the original flood plain riparian forest has been lost. In this situation, holding water in storage upstream for release later in the growing season helps to maintain riparian vegetation that might otherwise die from drought in mid-summer. This extension of the hydrograph is necessary for the foreseeable future because of the alterations to the ecosystem.</p>

## Entities and Organizations

EO 02-11	<p>The TROA Administrator would be responsible for managing expenditures from the Habitat Restoration Fund. The States of California and Nevada and the Pyramid Tribe may propose fish habitat restoration or maintenance projects that the Administrator would fund within the limits prescribed by TROA.</p> <p>California will have complete discretion in directing how its share of the Habitat Restoration funds will be expended, as long as it meets the TROA requirements. California will likely designate a representative who would coordinate with the California Department of Fish and Game and local interests in the Truckee River basin to formulate and submit proposals for the TROA habitat funds that serve fish habitat restoration or maintenance needs and objectives. California will also try to obtain matching funds to supplement the Habitat Restoration Funds.</p>
EO 03-01	See response to comment EO 02-03.
EO 03-02	See response to comment FG 01-21.
EO 03-03	See response to comment FG 01-21.
EO 03-04	See response to comment FG 01-21.
EO 03-05	See response to comment FG 01-21.
EO 03-06	See response to comment FG 01-21.
EO 03-07	See response to comment CLG 01-07
EO 03-08	See response to comment FG 01-21.
EO 04-01	No response required.

## Power and Water Purveyors

PW 01-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
PW 02-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
PW 03-01	No response required.
PW 04-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
PW 05-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
PW 05-02	<p>A court may modify a decree to take account of changed circumstances. The Congress of the United States directed the Secretary of the Interior to negotiate an agreement for operation of Truckee River reservoirs (the five Federal reservoirs on the Truckee River system) with the States of California and Nevada. See section 205(a) of P.L. 101-618. The Congress further directed that the negotiated agreement satisfy certain stated purposes, including the implementation of the 1989 Preliminary Settlement Agreement between the Pyramid Lake Paiute Tribe and Sierra Pacific Power Company, as modified by the Ratification Agreement of the United States (PSA). Further, section 205(a)(4) of P.L. 101-618 requires that the negotiated agreement (TROA) be presented to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> courts for approval of any modifications to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> decrees necessary for its implementation. In that regard, P.L. 101-618 also mandates that under the negotiated agreement, Truckee River reservoirs are to be operated to “ensure that water is stored in and released from [those reservoirs] to satisfy the exercise of water rights [including those for the Newlands Project] in conformance with the <i>Orr Ditch</i> decree and [Truckee River General Electric] decree....” See section 205(a)(2)(D) of P.L. 101-618. The provisions of TROA have been negotiated to satisfy the statutory requirements.</p> <p>Also, see response to comment EG 02-02.</p>

## Power and Water Purveyors

PW 05-03	<p>TROA recognizes the priorities of <i>Orr Ditch</i> decree Claim Nos. 1 and 2 and TMWA’s 40 cfs right under the Truckee River Agreement as provided in P.L. 101-618, section 204(c)(1)(A). P.L. 101-618 requires TROA to satisfy the exercise of water rights in conformance with the <i>Orr Ditch</i> decree and <i>Truckee River General Electric</i> decree. The requirements of section 205(a)(2)(D) of P.L. 101-618 are reflected in the following provisions of TROA: sections 1.A.1, 1.B.2, 1.C.1, 1.C.2, and 13.B. In addition, TROA includes elements of the Truckee River Agreement relevant to TMWA’s 40 cfs right and its relation to “diverted flow” (TROA sections 5.A.6 and 5.A.7). Thus, TROA leaves in place the benefits negotiated under Article V and VII of the Truckee River Agreement. These sections of TROA are abstracted in chapter 1, section II, and chapter 2, section IV of the final EIS/EIR. Additionally, chapter 2 states, “Implementation of TROA would modify operations of Federal and non-Federal reservoirs to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and dam safety requirements are met.” This paragraph further states “TROA would supersede all requirements of any agreements concerning the operations of all reservoirs, including those of TRA.” For a more detailed discussion, see response to comment 5 PH 03-05.</p>
PW 05-04	<p>This comment raises a legal question concerning the provisions of TROA itself, rather than with the potential environmental effects of TROA as disclosed in the EIS/EIR.</p> <p>Also, see responses to comments NCG 05-01 and NCG 05-21.</p>
PW 05-05	<p>The purpose of Newlands Project Credit Water is described in Section IV, “TROA,” in chapter 2 of the final EIS/EIR. Certain potential operational benefits to the Newlands Project were identified in chapter 3 of the revised DEIS/EIR in “Newlands Project Operations,” and the analysis was expanded in the final EIS/EIR; the section notes that, consistent with OCAP, spill from Lahontan Reservoir could be reduced and lower Truckee River flows could be increased from implementation of NPCW.</p>
PW 05-06	<p>The Administrator would be an independent entity under the authority of the <i>Orr Ditch</i> court. The first Administrator would be the Federal Water Master in office on the date TROA becomes effective. Thereafter, the signatory parties would select a nominating committee (one per signatory party) to develop and recommend to the <i>Orr Ditch</i> court a list of candidates for the position of Administrator (TROA section 2.A.2). The court would then select someone from the list for appointment, ask for another list, or under certain circumstances, appoint someone who was not on the list(s). The nominating committee, with the majority of its members (including at least three of the four sovereign parties), could petition the <i>Orr Ditch</i> court to remove the Administrator. No sovereign or signatory party would be granted unilateral authority under TROA.</p>
PW 05-07	<p>TROA would not prevent TCID from managing its portion of privately owned water in Donner Lake. This assurance is provided in the following sections of TROA:</p> <p>Section 1.C.5 states that TROA is not intended to alter or change the rights of the Water Authority and Truckee-Carson Irrigation District to the operation of Donner Lake and its storage, and that the parties to TROA will be bound by the results of any litigation.</p> <p>Section 5.B.4 specifically provides for the operation of privately owned water in Donner Lake under the Donner Lake Indenture dated May 3, 1943, among Sierra Pacific Power Company, Truckee-Carson Irrigation District, and Donner Lake Water Company.</p> <p>Section 5.B.4(a) provides for the impoundment of water in Donner Lake that is consistent with existing water rights, and section 5.B.4(b) states that “[w]ater which is Released or Passed-Through Donner Lake by the owner of Privately Owned Stored Water for the purpose of contributing to Minimum Release or Enhanced Minimum Release shall be classified as Privately Owned Stored Water to the extent such classification is requested by such owner.”</p> <p>Section 5.B.4(c) addresses the allocation of privately owned water among the owners by requiring that “[u]nless the owners of Privately Owned Stored Water otherwise agree, the total Donner Lake Privately Owned Stored Water Impounded during a year shall be allocated to each owner in accordance with its ownership interest. Unless the owners otherwise agree, each owner’s schedule must bear its proportionate</p>



## Power and Water Purveyors

	<p>burden associated with complying with the requirement of the Donner Lake Indenture. Except as otherwise provided in this Agreement, an owner may operate its respective share of Donner Lake Privately Owned Stored Water to assist in meeting its respective water supply and operation objectives.”</p> <p>Section 12.A.4(e) would not allow TROA to be implemented until changes to Donner Lake and Independence Lake vested water rights are not subject to challenge or any such challenges have been resolved.</p> <p>In order to evaluate the range of potential effects of TROA, two scenarios were evaluated in the EIS/EIR on the use of privately owned water in Donner Lake. In one scenario, TMWA acquires TCID’s portion of Donner Lake storage. In the other scenario, TMWA and TCID operate their portions of the storage as tenants in common. See “Surface Water,” Section G, “Optional Scenarios,” in chapter 3 of the final EIS/EIR. This was necessary because TROA section 4.C.1 states, “Water Authority shall use its best efforts” to acquire and use “the rights currently owned by the Truckee-Carson Irrigation District to store and use water in Donner Lake on a willing-buyer/willing-seller basis, unless such right is acquired by another party.”TMWA’s acquisition of TCID’s interest in Donner Lake was not part of the TROA Alternative. This acquisition was only included as part of a sensitivity analysis and does not render the analysis invalid or defective.</p>
PW 05-08	In compliance with CEQA, impacts were analyzed by comparing future actions against the existing environmental settings or “current conditions.” See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR.
PW 05-09	The Federal Water Master will still be responsible for implementing the <i>Orr Ditch</i> decree. The TROA Administrator will be responsible for preparing daily, monthly, annual, and ten-year reports documenting the operation of the Truckee River system. No provision of TROA requires TCID to increase costs, staffing, or consulting services as a result of TROA operations. See responses to comments 5 PH 03-05 and NCG 05-76 for a discussion of water protection provisions of TROA and potential impacts to water resources of the Newlands Project. While TROA would allow <i>Orr Ditch</i> decree water rights to be more fully exercised, TROA would not affect the priority of Newlands Project water rights for diversions from the Truckee River. Also, while Newlands credit water operations would reduce the likelihood of over-diversion to Lahontan Reservoir – and, thus, reduce spills and carryover storage in excess of storage targets – such operations are discretionary, and TROA would not affect the quantity of water allowed to be diverted at Derby Diversion Dam to satisfy Lahontan Reservoir storage targets pursuant to OCAP.
PW 05-10	The preparers of the revised DEIS/EIR referred extensively to the comments received on the 1998 DEIS/EIR prior to beginning the document in order to identify issues and develop analytical approaches.
PW 06-01	It is acknowledged that the operations model is complicated. There are two key components to understanding the model: a working knowledge of FORTRAN and a working knowledge of the operations of the Truckee-Carson River system, current and as proposed. Knowing these components, it would be possible for an independent computer modeler to comprehend the model, even though it would be a time-consuming effort.
PW 06-02	The operations model has been used for almost 30 years and has always been available for public review. The basis of the negotiations of PSA and TROA, previous Newlands Project negotiations, OCAP analysis, and Truckee Meadows Water Authority water planning have been based on this model. The output from the operations model has been released based on requests for these various purposes. A list of the outputs, plus memoranda on how to obtain the output, has been provided to the commenter. Also, see response to comment NCG 05-46.
PW 06-03	It would be possible for an independent computer modeler with a working knowledge of the Truckee-Carson River system, current and as proposed, to obtain output that is contained in the program but is not currently displayed. RiverWare had not been developed for this system at the time of the TROA negotiations and preparation of the EIS/EIR.

## Power and Water Purveyors

PW 06-04

Though programming languages newer than FORTRAN are commonly used by the water management community, many still use FORTRAN because of its reliability. Other well-regarded hydrologic computer models programmed with older languages remain in use today. These include the following:

**Streamflow Synthesis and Reservoir Regulation (SSARR) Model: U.S. Army Corps of Engineers:** The SSARR model is application-development software developed by the U.S. Army Corps of Engineers (COE) using FORTRAN programming language for general purpose mathematical modeling of river systems. It was developed to provide hydrologic simulations for the planning, design, and operation of water control works, and has also been used for operational river forecasting and river management. It is a tool for streamflow and runoff forecasting, as well as for long-term studies of the hydrology of a river system. It is a continuous streamflow simulation model that uses lumped parameter representation and has particularly strong verified accuracy. It has been applied by COE for flow forecasting and reservoir operations for the Columbia River basin, and has also been applied by various agencies, organizations, and universities to other river systems within the United States.

COE also uses other FORTRAN models, including Hydrosystem Seasonal Regulation Program (HYSSR), for planning and operations studies. It was developed for use in the Columbia River Basin, and has also been used for the Mekong River basin in Southeast Asia.

**Colorado River Decision Support System (CRDSS): Colorado Water Conservation Board and the Colorado Division of Water Resources:** CRDSS is an application-development software developed by the Colorado Water Conservation Board (CWCB) and Colorado Division of Water Resources. Written in FORTRAN, CRDSS consists of databases and models that provide improved data and decision making capability for many critical Colorado River planning, administrative, and operational issues. It is centered around databases containing historical information on streamflow, climate and water uses, as well as tabulations of water rights and water management policies. This computer-based system allows decision makers to access water resource data and to simulate potential decisions and policies, and examine potential consequences related to the following:

- Interstate Compact Policy, including evaluation of alternative reservoir and river operating policies, determination of available water for development, and maximization of Colorado's apportionment.
- Water Resource Planning, including development and use of a water resource planning model (i.e. new projects, water exchanges, operating plans) and evaluation of impacts of streamflow appropriations (e.g., endangered fish flow, minimum flows).
- Water Rights Administration, including optimization of water rights administration, online sharing of information between water users, and administration of water rights within compact allocations (i.e., alternative strategies of administration which will enable the maximum use of available resource) (CWCB 2005).

**Santa Ynez River Hydrology Model (SYRHM): Santa Barbara County Water Agency:** The Santa Ynez River Hydrology Model (SYRHM) is a specific model-application that was developed as a planning tool to assess California's Santa Ynez River basin and to help evaluate long-term management of the basin's water supply. Facilities in the basin include Cachuma Reservoir (Reclamation project), Gibraltar Reservoir (owned by the city of Santa Barbara), and Jameson Lake (owned by Montecito Water District). SYRHM is written in BASIC (similar to FORTRAN) programming language. Santa Barbara County Water Agency developed SYRHM in response to the need for comprehensive conjunctive use studies of the Santa Ynez River reservoirs and groundwater basins. It was developed using techniques and data from earlier models used by Reclamation. The latest version of the model was used as the basis for numerous studies of releases for fish, water quality, and water rights in preparation of the Lower Santa Ynez River Fish Management Plan Settlement Agreement of 2002, the 2003 draft EIR by CSWRCB, the 2004 final EIR/EIS by Reclamation, as well as the associated biological assessment and biological opinion.

**Hydrologic River Operation Study System (HYDROSS): Reclamation:** HYDROSS is application-

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	<p>development software written in FORTRAN, and consists of a system of computer programs for use in conducting monthly water supply studies. It is considered a hydrologic accounting model. Reclamation developed HYDROSS to assist in planning studies for evaluating existing and proposed demands on a river system. It is designed to operate over a selected period of record, simulating the effects of existing and proposed water rights and projects on the historical pristine “natural” flows. The model operates on a monthly time-step. HYDROSS is widely used by Federal agencies, including Reclamation and FWS, for simulation of small- and large-scale water resource activities.</p> <p><b>Hydrologic Simulation Program-Fortran (HSPF): USGS/EPA:</b> HSPF is FORTRAN-based application-development software developed under EPA sponsorship to simulate hydrologic and water quality processes in natural and manmade water systems. It has application in the planning, design, and operation of water resources systems (Aqua Terra, 2005). The HSPF package has been applied to hundreds of river basins around the world, including the entire tributary area to the Chesapeake Bay and basins in Seattle, Chicago, and Pennsylvania (USGS, 2005). As of the writing of this document, a site-specific application of the model to the Truckee River was being developed by Limno-Tech Consultants for the cities of Reno and Sparks. The Truckee River HSPF (TrHSPF) model is intended to help the cities simulate Truckee River water quality from Reno to Pyramid Lake.</p> <p><b>CALSIM: California Department of Water Resources:</b> CALSIM is FORTRAN-based application-development software used to evaluate operational alternatives of large, complex river basins. CALSIM was originally designed, and has been successfully implemented, to replace CDWR’s existing planning model of the State Water Project/Central Valley Project system, DWRSIM (CDWR 2005). The CALSIM software is currently used as a model-application by CDWR and Reclamation for ongoing documentation and planning studies involving the Central Valley and State Water Projects in California. CALSIM has been applied to other basins as well, such as the Klamath River basin in northern California and southern Oregon.</p> <p>Implementation of TROA and daily operations and decision making will be based on information provided by various sources, primarily the daily RiverWare model which is currently under development and is expected to be completed in 2007.</p>
PW 06-05	<p>The version of the operations model used for the revised DEIS/EIR is dated June 24, 2003. Because of comments received from interested parties, particularly on Newlands Project Credit Water and the hydroelectric power bypass at the hydroelectric powerplants, proposed changes were tested in the model code to evaluate these conditions. This preliminary test effort referred to as “final” by the commenter is based on a document received in response to the commenter’s October 2004 FOIA request. That test effort was in a directory incorrectly noted as “final model.” This is not the version of the model used for the final EIS/EIR.</p>
PW 06-06	<p>Truckee Meadows depletions are based on the Truckee Meadows Model (TMM), a proprietary model developed by Murray, Burns, and Kienlen and Sierra Hydrotech. TMM was not reviewed by the Technical Committee. In the mid-1990s, the Bureau of Reclamation conducted a preliminary review of TMM and concluded that the results matched current conditions. While the future depletions data set produced reasonable values, future depletions required further investigation but, due to limited time and resources, this issue was not pursued further. For the EIS/EIR, because all of the alternatives used the same Truckee Meadows depletion data set and the values were reasonable, the lack of clear documentation of TMM was not considered a negative factor in comparing the relative differences among the various alternatives for this parameter.</p>
PW 06-07	<p>The operations model is not intended to be predictive. It is an accepted practice when comparing alternatives to keep the hydrologic record and demands constant.</p> <p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on operations model development, use, and limitations.</p>

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PW 06-08	<p>A check for mass balance is incorporated in the operations model. Also, see response to comment PW 06-03.</p> <p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on operations model development, use, and limitations.</p>
PW 06-09	<p>See response to comment PW 06-06.</p> <p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on operations model development, use, and limitations.</p>
PW 06-10	<p>Most of the input values for the alternatives are held constant (such as Newlands Project demand, use of Claim Nos. 1 and 2, TMWA monthly demand, OCAP, etc.) to allow for a comparison of alternatives. The purpose of the analysis was not to test the efficacy of the operations model—it’s a proven analytical tool—but rather variable demands and operational elements of the various alternatives.</p>
PW 06-11	<p>An official or formal Users’ Manual for the TROA Negotiations Model is being prepared and will be released when it is completed. There is, however, a brief summary of how to use the model in a document styled 1993 Truckee-Carson Water Operation Model User’s Manual prepared by Reclamation staff in Carson City and Sacramento. Also, a description of the input files is presented in Exhibit 4 of the Water Resources Appendix.</p>
PW 06-12	<p>The operations model used for the EIS/EIR was compiled on GNU compiler, g77 on a SunBlade 100 (Unix). Because all of the runs were made from this compiled version on the SunBlade 100, the use of different compilers was not an issue for this analysis.</p>
PW 06-13	<p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on operations model development, use, and limitations. See responses to comments PW 06-01, PW 06-02, and PW 06-06.</p>
PW 06-14	<p>The assertions that the operations model output is result driven and that the operations model is predictive are not correct. The parties who use the operations model have a vested interest to see the operations model function as accurately as possible. The parties use the operations model as just one tool to evaluate possible changes to the system. In addition, the parties use their own expert knowledge of the Truckee-Carson River system to evaluate potential effects of alternative actions. One major evaluation relates to operations model inputs as well as the outputs to see if the results are reasonable. If the results are not as expected, then more analysis is done to determine why a certain result occurs.</p> <p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on operations model development, use, and limitations.</p>
PW 06-15	<p>The operations model is used for comparisons, not for predictive purposes. See responses to comments PW 06-01 through 06-14.</p> <p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on operations model development, use, and limitations.</p>
PW 06-16	<p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on operations model development, use, and limitations.</p> <p>See responses to comments PW 06-01 through 06-14.</p>
PW 07-01	<p>The referenced statement is accurate. Discussion has been expanded to address Carson Division shortages in “Surface Water” and “Newlands Project Operations” in chapter 3 of the final EIS/EIR.</p>
PW 07-02	<p>Analysis of NPCW has been expanded in the final EIS/EIR to evaluate a broad range of possible operations under TROA. See “Surface Water,” Section H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR for this analysis. The model analysis for NPCW in the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA. The referenced text has been modified accordingly.</p>

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PW 07-03	<p>Though the revised DEIS/EIR correctly described and modeled NPCW according to the Draft Agreement, the final EIS/EIR reflects NPCW operations in the Negotiated Agreement (see TROA section 7.H and Appendix 7.D). Though the Negotiated Agreement would not interfere with the accumulation and management NPCW as provide by OCAP, it would provide additional opportunities for accumulating and managing NPCW.</p> <p>The description in the revised DEIS/EIR as to when Newlands Project Credit Water could be accumulated under the Draft Agreement is correct. The second sentence of the Newlands Project Credit Water section on page 2-36 of the revised DEIS/EIR correctly states that “[a]ny time between October and July, a portion of Truckee River flow scheduled to be diverted to the Newlands Project could be accumulated as Newlands Project Credit Water.” This complies with the Draft Agreement section 7.H which would allow Newlands Project Credit Water to be accumulated before July if Truckee River water were scheduled to be diverted to the Newlands Project, while OCAP could allow Truckee River water to be diverted to the Newlands Project as early in the water year as November. Therefore, the phrase in question, “between October and July,” is correct. The phrase, however, was changed in the final EIS to “from November through June” to be more precise. In addition, the NPCW section (IV.C.1.c(6)) in chapter 2 of the final EIS/EIR was updated for changes in NPCW accumulation and management procedures negotiated since the revised DEIS/EIR.</p> <p>Newlands Project Credit Water modeled operations for the revised DEIS/EIR is just one possible option for Newlands Project Credit Water; as stated on DEIS/EIR pages 3-390 and 3-391. In response to the comments, an analysis of Newlands Project Credit Water has been expanded in the final EIS/EIR to evaluate a broad range of possible operations under TROA. See “Surface Water,” Section H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR for this analysis. The expanded analysis recognizes that sample California Guidelines are not mandatory and are included within the range of potential impacts. The model analysis for Newlands Project Credit Water in the revised DEIS/EIR and the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA.</p>
PW 07-04	<p>Section IV.C.3.d(3), “Enhanced Minimum Releases,” in chapter 2 has been corrected in the final EIS/EIR. The following footnote was added to the term Project Water: “The owner of Private Water who is not a signatory party to TROA could choose, but is not required, to use such water to maintain enhanced minimum releases.” The change complies with TROA section 9.C.3.</p>
PW 07-05	<p>TROA is a negotiated agreement. The spill priority of Newlands Project Credit Water was negotiated by the TROA parties. Spills could be used by the owner of the spilled water, exchanged, or restored in another reservoir (TROA section 5.C.3). Spilled Newlands Project Credit Water could be available for diversion to the Newlands Project in accordance with OCAP. The rationale for NPCW’s spill priority is that there is little likelihood of impact to the Newlands Project water supply from spill, either because there is so much water that NPCW would likely convert, it could be re-stored or exchanged, or there is sufficient capacity in the Truckee Canal to permit its diversion for storage in Lahontan Reservoir.</p>
PW 07-06	<p>See response to comment NCG 05-03.</p>
PW 07-07	<p>The subject text has been modified in the final EIS/EIR to provide a more objective perspective.</p>
PW 07-08	<p>The requested information is now presented in the Water Resources Appendix of the final EIS/EIR.</p>
PW 07-09	<p>Lahontan Reservoir end-of-month storage data are presented in the Water Resources Appendix, Exhibit 6. Lahontan Reservoir average monthly release data was inadvertently omitted from the Water Resources Appendix, Exhibit 9, and have been included in the final EIS/EIR. Individual analysts were provided these monthly data for use in their analyses. Carson Division supply is addressed in “Surface Water,” Section II.F, “Exercise of Water Rights to Meet Demands,” and Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR.</p>
PW 07-10	<p>Pyramid Lake end-of-month storage and elevation data were inadvertently omitted from the Water Resources Appendix, Exhibit 6, and have been included in the final EIS/EIR. Individual analysts were provided these monthly data for use in their analyses.</p>

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PW 07-11	<p>Various Credit Water storages at each reservoir are presented in the output, and this information was provided to the commenter. Additional information on Credit Water operations is in the Water Resources Appendix, Exhibit 14, “Truckee River Operations Model, Lower Truckee Flow Regime Criteria,” Exhibit 15, “Truckee River Operations Model Operations Criteria and Analysis for Current Conditions and Alternatives,” and Exhibit 16, “Truckee River Operations Model, Selected TROA Operations.”</p> <p>Also see response to comment PW 07-86.</p>
PW 07-12	<p>The incomplete sentence has been corrected, and the discussion has been expanded in the final EIS/EIR. A detailed discussion of Carson Division supply is presented in “Surface Water” Section II.F, “Exercise of Water Rights to Meet Demands,” and Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR.</p>
PW 07-13	<p>See response to comment PW 07-11.</p>
PW 07-14	<p>See general comments regarding formulation of current conditions, No Action, and TROA.</p> <p>See responses to comments PW 07-56 through PW 07-77.</p>
PW 07-15	<p>“(P)ercent” is in the correct context.</p>
PW 07-16	<p>See response to comment PW 07-01.</p>
PW 07-17	<p>See response to comment IT 01-02.</p>
PW 07-18	<p>The information is provided in “Surface Water,” Section II.I, “Credit Waters Not Modeled,” in chapter 3 of the final EIS/EIR.</p>
PW 07-19	<p>The figures have been slightly enlarged in the final EIS/EIR.</p>
PW 07-20	<p>The assumptions for 100-percent acquisition of the Truckee Division rights by Fernley and for the requirements of the WQSA are based on letters from Fernley and on the WQSA EIS. Combined, the intended acquisition programs exceed the total available water rights in the Truckee Division. See response to comment PW 07-12. A detailed discussion of Carson Division supply, with emphasis on shortage years, is presented in “Surface Water” Section II.F, “Exercise of Water Rights to Meet Demands,” and Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR.</p>
PW 07-21	<p>The following assumptions for Donner Lake operations are included in the operations model used for the revised DEIS/EIR and final EIS/EIR:</p> <ul style="list-style-type: none"> <li>• For Donner Lake privately owned stored water (POSW), half of the storage is owned by TMWA and half by TCID, which is how Donner Lake is currently being operated. (To manage the water differently would require code changes in the model and the operation criteria, and no information has been provided on how this undivided joint ownership would be operated differently.)</li> <li>• For all alternatives, Donner Lake is operated to achieve summer lake elevation as required by the Donner Lake Indenture and water is released from storage by November to meet California Dam Safety Requirements.</li> <li>• For TMWA POSW water, under TROA it is released during the season to meet instream flows and to be credit stored in other Truckee River reservoirs (no credit water is stored in Donner Lake); under the other alternatives, TMWA POSW is released during the season to meet minimum instream flows and to credit store TMWA’s POSW into Boca and Stampede Reservoirs under the interim storage agreement.</li> </ul>

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PW 07-22	<p>This section was revised in the final EIS/EIR. Also see responses to comments NCG 05-33 and NCG 05-84.</p> <p>The analysis included consideration of the effects on water levels as predicted in the USGS 2000 study. The results show a range of water level decline associated with various degrees of irrigated acreage reduction and associated seepage loss reduction. The range of simulated water table decline varies from 7.1 foot maximum in the Fallon area, when all recharge from applied irrigation is eliminated, to 4.1 feet in the Stillwater area. These simulated declines are a weighted average of all declines during the fifth year of model simulation. In combination with successive drought years, greater declines may be expected due to the lack of precipitation recharge.</p>
PW 07-23	<p>The lower river flow regimes provide latitude in managing releases from Stampede Reservoir to maximize benefit to the Truckee River ecosystem in a given year based on forecasted inflow of the Little Truckee River into Stampede Reservoir from March through July and the amount of dedicated Fish Credit Water in storage in Stampede on March 1. These recommendations append an adaptive management process to the 1995 Recovery Plan for Lahontan cutthroat trout. Recovery plans are categorically exempt from NEPA and require no specific ESA compliance. FWS and the Pyramid Tribe jointly manage Stampede Project Water consistent with the U.S. District Court’s opinion in <i>Carson-Truckee Water Conservancy District, et al., v. Watt</i>, 1982. When the runoff forecast indicates that unregulated flows in the lower Truckee River are not likely to be sufficient for the management objective for Pyramid Lake fishes, Stampede Project Water may be released to supplement lower Truckee River flows. Because dedicated fish waters cannot be diverted from the river and so flow to Pyramid Lake, the timing of Stampede Project Water releases has no impact on diversions to the Newlands Project.</p>
PW 07-24	<p>Paragraph 205(a)(2) of P.L. 101-618 requires TROA to provide for enhancement of spawning flows available in the lower Truckee River for the Pyramid Lake fishes (i.e., federally endangered cui-ui and threatened Lahontan cutthroat trout), in a manner consistent with the Secretary’s responsibilities under the Endangered Species Act. Therefore, any change that furthers or hinders the achievement of that objective is a significant effect. The threshold of significance for Pyramid Lake directly addresses the purpose and need of the proposed action, including the Secretary’s responsibilities under ESA. See response to comment NCG 05-101 for a more detailed discussion of the assumptions underlying this analysis.</p>
PW 07-25	<p>See responses to comments PW 07-24 and NCG 05-101.</p>
PW 07-26	<p>The economic model used to estimate the effects to the economy is a regional model, incorporating portions of five California counties and three Nevada counties within the Truckee River basin and addressing regional impacts from changes in resource output, i.e., Truckee River water for municipal and industrial and agricultural water use. While a reduction in agricultural water rights in the Truckee Division would result in a loss of agricultural income in the Fernley area, that loss would be compensated by jobs and income supported by an increased municipal and industrial water supply. TROA, however, does not include a water rights acquisition program nor does it address urban expansion. Also see, in part, the response to comment NCG 05-114.</p>
PW 07-27	<p>Hydroelectric power generation at Lahontan Dam was analyzed, and the results are included in the final EIS/EIR. See “Economic Environment” in chapter 3 of the final EIS/EIR. The analysis uses a methodology similar to that used for the Truckee River run-of-the-river hydroelectric powerplants.</p>
PW 07-28	<p>Analysis of NPCW has been expanded in the final EIS/EIR to evaluate a broad range of possible operations under TROA. The model analysis for NPCW in the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA. Effects on resources on the Newlands Project are presented under the various resource categories and summarized in “Newlands Project Operations” in chapter 3 of the final EIS/EIR. “Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR addresses Carson Division shortages.</p>
PW 07-29	<p>See response to comment PW 07-28.</p>
PW 07-30	<p>The operations model is a monthly model. Monthly and annual values generated from the operations model were available to the individual analysts. In response to this comment, additional background output for monthly and yearly values have been added to the Water Resources Appendix.</p>

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PW 07-31	See response to comment NCG 05-10.
PW 07-32	Additional discussion on shortages to the Newlands Project is provided in “Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR. Additional background output for monthly and yearly values have been added to the Water Resources Appendix.
PW 07-33	A detailed discussion of Carson Division supply, with emphasis on shortage years, is presented in “Surface Water,” Section II.F, “Exercise of Water Rights to Meet Demands,” and additional discussion on shortages to the Newlands Project is provided in “Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR. Additional background output for monthly and yearly values has been added to the Water Resources Appendix.”
PW 07-34	See “Economic Environment” in chapter 3 of the final EIS/EIR for revised analysis.
PW 07-35	Flows identified in proposed California Guidelines used in the analysis are based upon streamflow studies conducted by California Department of Fish and Game.
PW 07-36	No flow objectives are imposed by California Guidelines. As presented in section 9.F.2 of TROA, proposed California Guidelines are voluntary measures that may be implemented to promote desired streamflows and reservoir recreation; section 9.F.1 states that these guidelines would be subject to revision.
PW 07-37	NPCW provisions are predicated on the authority in OCAP (i.e., Truckee Canal Diversion Criteria) to insure, to the extent possible, that the water supply for the Carson Division stored in Lahontan Reservoir meets but does not exceed Lahontan Reservoir storage targets. The model analysis for NPCW in the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA.
PW 07-38	The reference for releases in the paragraph is to “Truckee River reservoirs.”
PW 07-39	The appropriate word is “creation,” and the text has been corrected in the final EIS/EIR.
PW 07-40	Information related to these questions was provided to the commenter in reply to a Freedom of Information Act (FOIA) request submitted by the commenter during the public comment period. Because of the volume and detailed technical nature of the material, the data were not included in the final EIS/EIR.
PW 07-41	See responses to IT 01-06 and PW 10-96.
PW 07-42	Relevant text has been corrected, and redundancies have been eliminated in the final EIS/EIR.
PW 07-43	<p>The USGS model was not considered because substantial modifications would have been necessary for use in this analysis. A discussion on use of Truckee River operations model is provided in chapter 3, in “General Methods and Assumptions.”</p> <p>The referenced report on travel time characteristics of the Truckee River was not taken into account because the operations model is a monthly model.</p> <p>Other referenced reports were not necessary for this analysis.</p>
PW 07-44	<p>In the Water Resources Appendix, the location key at the beginning of Exhibit 10 lists the locations for output from the operations model, including corresponding USGS gauge locations. Map 3.1 corresponds to the location key in Exhibit 10.</p> <p>Monthly output from the operations model has been provided in the final EIS/EIR for releases from Lahontan Reservoir. Modeled releases from Lahontan Reservoir are equivalent to the USGS gauge location, “Carson River below Lahontan Reservoir.”</p>
PW 07-45	During the public comment period, a FOIA request was received and information was provided to commenter. The data were not provided in the EIS/EIR because of the volume and the detailed technical nature of the data; it would have limited utility to the public.
PW 07-46	See response to comment PW 07-45.
PW 07-47	The information for Prosser Creek Reservoir and Pyramid Lake has been included in the Water Resources Appendix, Exhibit 6, of the final EIS/EIR.



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PW 07-48	See response to comment PW 07-47 with reference to Prosser Creek supporting data. Frequency tables for Pyramid Lake storage or elevation are not appropriate. Analysis shows that because of changes in the operating criteria in the Truckee-Carson River system, Pyramid Lake is not at equilibrium. A statistical analysis of data, which is trending upward over time, would not correlate to wet, median, or dry hydrologic conditions. Inflow to Pyramid Lake (i.e., Truckee River flows measured at the Nixon gauge) is a more appropriate statistical measure of the status of Pyramid Lake in wet, median, and dry hydrologic conditions. These data are presented in the Water Resources Appendix, Exhibit 10, and discussed in “Surface Water,” Section II.D, “Flows,” in chapter 3 of the final EIS/EIR.
PW 07-49	See response to comment PW 07-45.
PW 07-50	These locations were identified by the analysts in the 1998 DEIS/EIR to provide a comprehensive analysis of potentially affected resources; they were again selected for this analysis.  The releases for Lahontan Reservoir have been added to Water Resources Appendix, Exhibit 9, of the final EIS/EIR.
PW 07-51	Map 3.1 is the corresponding map for the location key.
PW 07-52	See response to comment PW 07-45.
PW 07-53	It should be noted that Exhibit 15 in the Water Resources Appendix is not intended to be, or to represent, documentation of the operations model. It is included simply to provide a general overview of the assumptions used in the model. Formal documentation of the model is still in preparation, and is being prepared under contract for the United States Department of Justice.  Also, we are not aware of any official or formal “User’s Manual” for the operations model. There is, however, a brief summary of how to use the model in a document styled 1993 Truckee-Carson Water Operation Model User’s Manual prepared by Reclamation staff in Carson City and Sacramento. A copy of that document was previously provided to the commenter in response to a 2004 request under the Freedom of Information Act.
PW 07-54	See response to comment PW 07-53.
PW 07-55	“Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR includes the requested analysis.
PW 07-56	See response to comment PW 07-55.
PW 07-57	Most of the input values for the various alternatives are held constant (such as Truckee Division and Carson Division demands, lower Truckee River demands and accretions, TMWA monthly demand, amount of water purchased for water quality, 100 years of hydrologic data, etc.) to allow for a comparison of relative differences between the alternatives. Varying constant values for sensitivity runs when making relative comparisons between the alternatives would likely have very little, if any, effect on the analysis. The purpose of the analysis is not to test the efficacy of the model—it is a proven analytical tool—but rather to evaluate the demands and operations unique to the various alternatives. The rapid urban expansion of, and the demonstrated need for a reliable M&I supply for, the Fernley area suggest that this is a reasonable assumption upon which to base an analysis of future conditions.
PW 07-58	See response to comment PW 07-57.  It is acknowledged there is currently stock water use on the Truckee Division; status of stock water in the future is speculative. If stock water demand is held constant in the model (whether 0 or a positive number), there would be little or no relative difference among the alternatives.
PW 07-59	See response to comment PW 07-57.
PW 07-60	See response to comment PW 07-57.

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PW 07-61	See response to comment PW 07-57. Also, see response to comment PW 10-75 for a discussion of establishing Credit Water by reducing flows associated with Floriston Rates and to TROA, section 7.E, which allows for establishment of Water Quality Credit Water through the reduction of flows associated with Floriston Rates.
PW 07-62	See response to comment PW 07-57.
PW 07-63	See response to comment PW 07-57.
PW 07-64	See response to comment PW 07-57.
PW 07-65	See response to comment PW 07-57.
PW 07-66	“Surface Water,” Section IIIH, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR includes the requested analysis.
PW 07-67	See responses to comment PW 07-57 for a discussion of sensitivity analyses and response to comment IND 20-03 for a discussion of fully exercising Claim Nos. 1 and 2.
PW 07-68	See response to comment PW 07-57.  The unappropriated water is water that would not be diverted and consumed and, thus, would flow to Pyramid Lake. All <i>Orr Ditch</i> decree water rights are met, including Claim No. 3, before there is any unappropriated water. By allowing storage of this water, no <i>Orr Ditch</i> decree water right is affected, while water dedicated for Pyramid Lake would be stored and released at a more beneficial time.
PW 07-69	See response to comment PW 07-57.
PW 07-70	See response to comment PW 07-57.
PW 07-71	The operations model does not adjust Floriston Rates for this condition. This provision is normally enacted to conserve Floriston Rates during a drought condition to extend the amount of time Floriston Rate water is available. The exact timing and conditions for reducing Floriston Rates is determined by the parties to the Truckee River Agreement and TROA. Incorporating these criteria into the operations model would be speculative and would have little to no effect on the analysis.
PW 07-72	TROA section 5.E.1 specifies conveyance losses shall be calculated by the Administrator using procedures developed by the Administrator. In determining conveyance losses, the Administrator must comply with section 205(a)(2) of P.L. 101-618, which requires TROA to satisfy the exercise of <i>Orr Ditch</i> decree water rights (this includes Newlands Project water rights, but exempts those that are voluntarily relinquished). Credit Water operations would not affect this requirement.  It is acknowledged that the operations model does not include conveyance losses as determined by the Administrator. The determination of losses is expected to be small but cannot be quantified at this time.
PW 07-73	See response to comment PW 07-57.
PW 07-74	See response to comment PW 07-71.
PW 07-75	See response to comment PW 07-57.
PW 07-76	See response to comment PW 07-28.
PW 07-77	Certain provisions of TROA are not modeled because they do not involve reservoir operations and, instead, relate to scheduling or reporting requirements, compensation, or model input values. Examples of these include reporting of <i>Orr Ditch</i> decree irrigation demand by the Federal Water Master, compensation for hydropower, and calculation of model input values for base amounts of Non-Firm and Firm M&I Water. Certain other provisions of TROA are not modeled because specific operations addressed by those provisions have not been sufficiently identified, approvals have not been secured, or implementation would depend on uncertain environmental variables, and, therefore, a quantitative analysis cannot be conducted at this time. Additional environmental documentation may be required for those future operations that have not been modeled. Examples of such operations are pumping of Lake Tahoe, pumping of Independence Lake, construction of new facilities in California, and establishment of Other Credit Water.

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PW 07-78	<p>See “Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR for this analysis.</p> <p>See attachment C, page 6 of 16, Letter from Truckee Meadows Water Authority, for assumptions related to water right purchases in the Truckee Meadows. This letter is from the local governmental entities responsible for land use, water supply, and water planning in Truckee Meadows. For specific detailed information such as name, location, amounts, and other pertinent information, the commenter should contact the responsible local governmental entity.</p> <p>On the basis of TROA Article 4 and 1989 statutes of Nevada, Chapter 617 (“AB 900”), in which 1.11 acre-feet needs to be committed toward each 1.0 acre-foot of “will serve,” and that the savings from water meters would only be dedicated to drought storage, the assumptions on the amount of water rights purchased in Truckee Meadows are reasonable. Comparing current conditions with TROA to the TROA alternative provides an indication of the range of effects related to water demand and exercise of water rights.</p> <p>A sensitivity analysis has been conducted for current conditions with TROA (“Surface Water,” Section II.H, “Sensitivity Scenarios” in chapter 3 of the final EIS/EIR) which assumes the purchase of the same number of water rights by TMWA as under current conditions. The sensitivity analysis still has a difference in the number of water rights purchased and the amount of depletion under TROA because of the requirement for Reno, Sparks, and Washoe County to provide 6,700 acre-feet of water rights to be used for water quality when TROA takes effect. Comparing current conditions with TROA to the TROA alternative provides an indication of the range of expected shortages to the Carson Division related to the implementation of TROA.</p>
PW 07-79	<p>Section 7.H of the Draft Agreement stated that, “United States agrees that it will consult with Nevada and the irrigation district...for the Newlands Project...with regard to Establishment of Newlands Project Credit Water.” This was changed in section 7.H of the Negotiated Agreement to read, “United States, through Bureau of Reclamation, shall consult in accordance with Truckee Canal Diversion Criteria [OCAP] with Federal Water Master, Truckee-Carson Irrigation District, Bureau of Indian Affairs, Fish and Wildlife Service, Pyramid Tribe, Nevada, Water Authority, California, Fallon Paiute-Shoshone Tribes, and other parties as appropriate on the Establishment and Release of Newlands Project Credit Water.” The description of NPCW in chapter 2 has been modified in the final EIS/EIR to incorporate this information.</p>
PW 07-80	<p>See response to comment PW 05-05.</p>
PW 07-81	<p>NPCW provisions are predicated on the authority in OCAP (i.e., Truckee Canal Diversion Criteria) to ensure, to the extent possible, that the water supply for the Carson Division stored in Lahontan Reservoir meets but does not exceed Lahontan Reservoir storage targets. The model analysis for NPCW in the final EIS/EIR incorporates operations that are consistent with both OCAP and TROA. Also, analysis of NPCW has been expanded in the final EIS/EIR to evaluate a broad range of possible operations under TROA. See “Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR for this analysis.</p>
PW 07-82	<p>The revised DEIS/EIR assumed that OCAP would be modified to accommodate NPCW as provided in the Draft Agreement. This assumption was not necessary in the final EIS/EIR because the Negotiated Agreement accommodates establishment and management of NPCW according to OCAP. (See section 7.H and Appendix 7.D of the Negotiated Agreement.)</p> <p>Though the Negotiated Agreement would not interfere with the accumulation and management NPCW as provided by OCAP, it would provide additional opportunities for accumulating and managing NPCW. If credit water elements of OCAP were to be repealed or modified so as to impair achieving the purpose of credit water, TROA would provide procedures for the continued accumulation and management of NPCW.</p>
PW 07-83	<p>See response to comment PW 07-40.</p>
PW 07-84	<p>See response comments PW 07-03 and PW 07-81.</p>

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PW 07-85	<p>The analysis in chapter 3 provides a description of operations under TROA and the effects on certain resources. Information derived from the operations model, combined with other scientific information, allowed analysts to evaluate effects. The evaluation methods are described in chapter 3 for each resource indicator under “Method of Analysis.” A major element affecting reservoir storage and releases is storage, exchange, and release of Credit Waters. Examples of specific interaction of Credit Waters are presented in Exhibits 15 and 16 of the Water Resources Appendix.</p> <p>See response to comment PW 06-01.</p>
PW 07-86	<p>Operations model output used in the analyses focused on flows, storages, demands, diversions, shortages, releases, Credit Water storages, Credit Water releases, exchanges, depletions, groundwater use, irrigation use, reservoir elevations, reservoir habitat, frequency data, energy production, and bypass flows at hydroelectric powerplants at various locations throughout the Truckee and Carson Rivers. These outputs allow for the evaluation of fish populations, riverine and riparian habitat, water supply, and other factors.</p> <p>Despite the multitude of output, this does not include all the information available from the model. Exhibit 16 in the Water Resources Appendix gives examples of how the model computes selected TROA operations. Example 4, “Establishment of Power Company M&amp;I Credit Water Storage” and Example 6, “Establishment of Fish Credit Water Waiver of Single Purpose Hydroelectric Waiver” are examples of how Credit Water is established through reduction of Floriston Rates and changed diversion rights. Providing the specific amounts for this operation was not necessary for the analysis in the EIS/EIR. These data would have limited utility to the analysts and the public because of their sheer volume and detailed technical nature.</p>
PW 07-87	See response to comment PW 07-86.
PW 07-88	See response to comment PW 07-86.
PW 07-89	See response to comment PW 07-86.
PW 07-90	<p>See responses to comments PW 05-07 and 5 PH 04-04.</p> <p>The operations model releases TCID Donner Lake Water from storage to achieve fall drawdown required by California Division of Safety of Dams. The operation model uses this water to support Floriston Rates and does not delineate Donner Lake Water at Derby Diversion Dam.</p>
PW 07-91	<p>OCAP, not TROA, regulates Truckee River diversions to Lahontan Reservoir, based, in part, on Carson Division demand and available flow. Lahontan storage targets are directly related to Carson Division demand and so would be influenced to the extent that water right acquisitions and transfers change that demand; storage targets are not based on recreation factors. While upper basin water rights may be more fully exercised under TROA, neither the amount of water rights nor annual runoff is affected by TROA. While the water supply in the Truckee River basin available to the Newlands Project may be reduced by expanded exercise of <i>Orr Ditch</i> decree water rights, neither Lahontan Reservoir storage targets nor the priority to divert Truckee River water to the Truckee Canal would be affected by TROA. The conclusion relative to Newland Project water rights is based on the fact that the Federal Water Master for the <i>Orr Ditch</i> decree would continue to manage diversions and satisfy the exercise of water rights consistent with the decree and OCAP.</p> <p>Also see response to comment NCG 05-76.</p>
PW 07-92	Accounting and reporting procedures will be developed as provided in Article Three of TROA. The current model will be replaced by an updated model of TROA for implementation through adoption of <i>RiverWare</i> , and NPCW will be reformulated to address Newlands Project issues such as increased storage priority, carryover storage, and flexible release provisions. See response to comment IND 07-05 for a discussion of adjustments to TROA operations and changing TROA. Also response to comments PW 07-81 and PW 07-91.
PW 08-01	The text has been modified in the final EIS/EIR as suggested.
PW 08-02	The text has been modified in the final EIS/EIR as suggested.

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PW 09-01	We acknowledge TMWA’s point that sample California Guidelines are not mandatory. The matter of compensation for hydroelectric power generation will be addressed in negotiations.
PW 09-02	The operations model has been reviewed, and it does bypass Fish Water in accordance with 9.E.2.
PW 09-03	Additional analysis was conducted on bypass flows at hydroelectric powerplants in chapter 3 in “Minimum Bypass Flow Requirements for TMWA’s Hydroelectric Diversion Dams on the Truckee River.”
PW 09-04	As discussed in “Economic Environment,” Section II.D, “Employment and Income Affected by Changes in Water Use,” in chapter 3, the decision by TMWA to purchase water rights and the timing of the purchase may influence the price of water. This analysis would be speculative and assume a level of control beyond the scope of the action proposed in the EIS/EIR.
PW 10-01	See response to comment NCG 05-03.
PW 10-02	See response to comment NCG 05-03.
PW 10-03	The U.S. Department of the Interior and California Department of Water Resources have jointly issued a draft environmental impact statement/ environmental impact report, revised DEIS/EIR, and final EIS/EIR evaluating a draft Truckee River Operating Agreement and alternatives in compliance with the Federal National Environmental Policy Act (NEPA) and state California Environmental Quality Act (CEQA). Both NEPA and CEQA require that a proposed action and alternatives be compared against a standard to allow an objective evaluation and analysis. While CEQA does not require a baseline alternative, it does require an analysis of all reasonable alternatives that would meet project objectives, but current conditions were not considered to be a reasonable alternative because current conditions are not adequate to serve future demands. Because current conditions do not meet the purpose and need of the proposed action to implement P.L. 101-618, it was not considered to be a reasonable or feasible alternative. The document did, however, use “current conditions” as the “existing environmental setting” for comparison with conditions that would exist in the future under the other alternatives. Furthermore, NEPA requires that a proposed action and alternatives be compared to No Action, i.e., conditions that would exist in the absence of the proposed action or alternatives. The revised DEIS/EIR and final EIS/EIR have included both current conditions and No Action in the analytical process in order to comply with both NEPA and CEQA.
PW 10-04	A reasonable range of alternatives was considered during TROA negotiations. Viable alternatives were those that met the requirements of P.L. 101-618 and were acceptable to at least the mandatory signatories (United States, California, Nevada, Pyramid Tribe, and TMWA), as discussed in Section I, “Development of Alternatives,” in chapter 2 of the final EIS/EIR. No party participating in the negotiations could impose alternatives or change the agreement without the consent of at least the five mandatory signatories. Also, see Section V, “Alternatives Considered and Rejected” in chapter 2 of the final EIS/EIR for additional discussion of a component of the planning and evaluation process for this EIS/EIR. Because TMWA is responsible for most of the Truckee Meadows water supply and has undertaken a resource planning process to evaluate all alternative water supplies (2005-2025 Water Resource Plan, March, 2003), it identified LWSA as the program it would likely implement if TROA were not implemented (attachment C), assuming that State and local government agencies would allow additional water resources to be used. Absent the congressional direction in P.L. 101-618, there is currently no other initiative proposed or authority requiring the implementation of a new operating agreement or change in reservoir operations. Also see response to comment PW 10-03.
PW 10-05	<p>The comment appears to refer to discussion in the last paragraph on page 2-49 of the revised DEIS/EIR. The paragraph states that four alternatives in the Report to the Negotiators were <u>rejected</u> because they “would have required water to be stored and released without permission of the owners, precluded certain storage and release for decreed water rights and use, and provided benefits to non-water-righted uses at the expense of water-righted uses.” The same paragraph continues, “[s]uch actions were in conflict with section 205(a)(2) of P.L. 101-618, which states [that] water is to be stored and released from Truckee River Reservoirs to satisfy the exercise of water rights in conformance with both the <i>Orr Ditch</i> decree and the <i>Truckee River General Electric</i> decree.” Section 205(a)(2)(D) of P.L. 101-618 allows adverse operations if the water rights were voluntarily relinquished. Since that was not the case, the negotiators correctly rejected these alternatives.</p> <p>The commenter is correct in stating that “[i]f the alternatives are counter to existing law they need not be analyzed (CCR 15126.4(a)(5));” for this reason they were not analyzed.</p>

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PW 10-06	<p>The model was extensively tested by the Truckee River Technical Committee in the 1980's. Since that time, the model has been used for numerous studies varying a number of parameters. Stochastic runs composed of 200 iterations with a 200-year time series were made to test the viability of cui-ui for various flow regimes. Extensive runs varying streamflows, recreational pools, and California storage alternatives were run for the Report to the Negotiators. A broad range of runs was made to identify enhanced and preferred flows for the TROA negotiations. A wide range of flows was run to determine the six-flow regime used by the Fish and Wildlife Service to determine the best management of Fish Water. Numerous runs varying OCAP demands and target storages were made in evaluating various scenarios for the 1997 Adjusted OCAP. TMWA has conducted extensive runs and studies using the model for its water resource plans. From these and other studies, there has been a wide range of different parameters within the model that have been varied and evaluated by experts representing the various parties who have an interest in operations of the Truckee and Carson River systems.</p>
PW 10-07	<p>See response to comment PW 10-03.</p>
PW 10-08	<p>(1) Historic and current management of the Truckee River is covered thoroughly in chapter 1, Section V, "Background and History," and in chapter 3, "Background," Section II, "Past Cumulative Effects."</p> <p>(2) See responses to comments NCG 05-20 and PW 10-43 for a discussion of the relation of the Truckee River Agreement and <i>Orr Ditch</i> decree to TROA.</p> <p>(3) The EIS/EIR compares effects on resource indicators under the action alternatives to the No Action Alternative, in compliance with NEPA and CEQA. Effects on resource indicators under the action alternatives, as well as under the No Action Alternative, also are compared to current conditions in compliance with CEQA. These comparisons are provided in summary form in tables in the Executive Summary, at the end of the chapter 2, and in chapter 3 in the "Summary of Effects" section for each resource. Narrative comparisons also are provided for each resource indicator. Quantitative information is provided whenever possible; otherwise, an appropriate qualitative comparison is provided.</p>
PW 10-09	<p>Although large, the EIS/EIR contains a brief (20-page) Executive Summary with a table summarizing the effects of the alternatives on study area resources. Chapter 2 contains narrative summaries and tables to succinctly describe the alternatives and effects of the alternatives on study area resources. Chapter 3 contains narrative summaries and individual tables summarizing the effects of the alternatives on each resource. In addition, a detailed table of contents and consistent headings and subheadings guide the reader through the document. Uncommon terms are defined, and every effort has been made to ensure that, even when the document addresses complex topics, the language is plain so that it is understandable to decisionmakers and the public.</p> <p>The appendices, often technical in nature, consist of material that substantiates the analyses contained in the main text, including operations model results.</p>
PW 10-10	<p>See response to comment NCG 05-03.</p>
PW 10-11	<p>The Report to the Negotiators was summarized and incorporated in chapter 2 in Section V, "Alternatives Considered and Rejected." Tiering under 40 CFR section 1502.20 does not apply because the Report to the Negotiators is not a NEPA document, but a NEPA-style analysis of five potential project alternatives. The summary of the Report to the Negotiators provided in chapter 2 and exhibit E in the Chapter 2 Appendix of the final EIS/EIR complies with summary requirements of 40 CFR section 1502.21. A copy of this report was provided to the commenter by the California Department of Water Resources in response to a request under the California Public Records Act. In addition, the report is available for inspection and will become part of an administrative record compiled in support of a decision by the Secretary to approve TROA, should such a decision be made.</p>

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PW 10-12	The preparers of the EIS/EIR have been very careful to preserve and ensure, insofar as possible, the scientific integrity of the analyses detailed in the document. Each analyst involved in the process is skilled in his or her individual discipline, and used the best available information or data in constructing his or her analysis. To the extent results or output from the operations model were used in constructing any particular analysis, such use was tempered by the individual analyst's recognition of the operation model's limitations, and his or her professional judgment in making appropriate use of the output in light of those known limitations. For a discussion of the model's recognized limitations, see "General Methods and Assumptions" in chapter 3 of the final EIS/EIR.
PW 10-13	Baseline conditions are described as "current conditions" throughout chapter 3 of the EIS/EIR. Also see "General Methods and Assumptions" in chapter 3 of the final EIS/EIR.
PW 10-14	See responses to comments PW 06-01, PW 06-02, PW 06-03, and PW 06-06. Also see "General Methods and Assumptions" in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations.
PW 10-15	See "General Methods and Assumptions" in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations.  See response to comment PW 07-30.
PW 10-16	The EIS/EIR presents a comprehensive analysis of the TROA alternative as the proposed action. The principal elements of TROA that differ from No Action and LWSA are presented in table 2.6, while table 2.1 provides a comparison of water management provisions among the alternatives. Though certain provisions of TROA could not be modeled (see response to comment PW 07-77, p. 450), the analysis is comprehensive and satisfies the requirements of NEPA/CEQA.
PW 10-17	See responses to comments PW 07-44 and PW 07-50.
PW 10-18	All relevant data were included to enable detailed impact analysis for the purposes of this EIS/EIR. These data are provided in the Water Resources Appendix. Detailed output files for each alternative have been added to this appendix.  Also see response to comment PW 07-30.
PW 10-19	See response to comment PW 06-05.
PW 10-20	At the time the revised DEIS/EIR was being prepared, the most current version of the operations model was used. This version of the model was dated June 24, 2003. Since that time, the operations model has been updated to conduct sensitivity runs for expanding NPCW storage, implementing TROA with current conditions, and hydroelectric power bypass flows. See "Surface Water," Section II.H, "Sensitivity Scenarios" in chapter 3 of the final EIS/EIR. In addition to these changes related to the EIS/EIR, TMWA has updated the model on issues related to Donner Lake and Independence Lake.  Also, see response to comment PW 06-05.
PW 10-21	As described in chapter 2, TROA is essentially a proposal to modify operations of all Truckee River reservoirs to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and dam safety requirements are met. Accordingly, the cases and statute referenced in the comment are inappropriate in the context of TROA. Chapter 3 contains a thorough analysis of the water resources aspects of the proposed action and the various alternatives.
PW 10-22	See response to comment NCG 05-10.
PW 10-23	See responses to comments PW 10-12, PW 10-20, and PW 10-47.

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PW 10-24	<p>The EIS/EIR compares effects on resource indicators under the action alternatives to the No Action Alternative, in compliance with NEPA and CEQA. Effects on resource indicators under the action alternatives, as well as the No Action Alternative, also are compared to current conditions in compliance with CEQA. These comparisons are provided in summary form in tables in the Executive Summary, at the end of chapter 2, and in chapter 3 in the “Summary of Impacts” section for each resource. Narrative comparisons also are provided for each resource indicator. Quantitative information is provided whenever possible; otherwise, an appropriate qualitative comparison is provided.</p>
PW 10-25	<p>Unlike the example in the case cited and referred to in the comment, TROA is not a new “project” that will place new demands on the existing water supply. Rather, it is an operational agreement negotiated pursuant to an Act of Congress, section 205(a) of Title II of Public Law 101-618, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, for operation of certain Truckee River reservoirs. A principal objective of the TROA Alternative is to provide for more flexible operation of the reservoirs, resulting in a more effective and efficient use of the existing water supply to meet existing as well as anticipated future demands than can be achieved under the current operational scheme.</p> <p>Analysis of the various alternatives, including the TROA Alternative, was aided by use of the Truckee River operations model, a mass balance accounting model that adds “inputs” and subtracts “outputs” to the river basins on a monthly basis to calculate riverflows and reservoir storage at specific locations. The purpose of the operations model is to take identified demands on the Truckee and lower Carson River systems and simulate the information to facilitate comparisons among the alternatives and to current conditions. The operations model does not assume that all water rights are met in all years; rather, it takes the past 100 years of natural flow data and distributes it among the various demands consistent with specified operating criteria and priorities of the various water rights. The future municipal and industrial demand constant in the various analyses is based on projected use and demand information furnished by the local planning agencies and water purveyors. Future irrigation demand is based on the agricultural water rights assumed to remain active after the projected water right acquisitions and transfers necessary to satisfy the projected municipal and industrial demand.</p>
PW 10-26	<p>See responses to comment PW 10-25.</p>
PW 10-27	<p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations.</p> <p>See response to comment PW 10-25.</p>
PW 10-28	<p>See Section II.D, “Assumptions for Use and Limitations of the Model” in “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations. Also see response to comment PW 06-07.</p>
PW 10-29	<p>See response to comment NCG 05-09.</p> <p>The 119,000 relates to Truckee Meadows normal year water demand (in acre-feet), not population as implied by this comment.</p>
PW 10-30	<p>The document presents an extensive analysis of a number of Newlands Project resources based on assumed future water demand. Lahontan Reservoir, which supplies water to the Carson Division, is analyzed in detail relative to storage and releases to satisfy the exercise of water rights served by the Newlands Project. Impacts to wetlands are considered similar to irrigated lands for convenience because of numerous options for obtaining benefits from available supply. The effects of recoupment cannot be analyzed because that matter remains in litigation.</p>
PW 10-31	<p>The Newlands Project Operations section summarizes information on effects on resources on the Newlands Project that are presented under the various resource categories and summarized in the Newlands Project Operations section. Also, analysis of NPCW has been expanded in the final EIS/EIR to evaluate a broad range of possible operations under TROA (“Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR) and that information has been summarized in the subject section as well.</p>



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PW 10-32	See “Economic Environment” as well “Social Environment” in chapter 3 of the final EIS/EIR for discussion of analysis of impacts.
PW 10-33	The detailed analysis of air quality appears in “Social Environment,” Section II.E, “Air Quality,” in chapter 3. When compared to current conditions and No Action, there are no adverse air quality impacts associated with implementation of TROA or LWSA.
PW 10-34	The groundwater analysis presented in chapter 3 is adequate because it considers all available data, current research and analysis, and modeling conducted by the U.S. Geological Survey and Desert Research Institute. Because no significant adverse effects were identified, no further analyses were needed.
PW 10-35	The effects on water storage and carryover storage are analyzed for each reservoir and alternative in “Surface Water,” Section II.C, “Reservoir Storage and Releases” in chapter 3 of the final EIS/EIR. All reservoir storage data generated by the operations model for the 100 years of hydrologic data are presented in the Water Resources Appendix.
PW 10-36	See response to comment NCG 05-09.
PW 10-37	Evaluations of both cui-ui and LCT include indicators specific to Pyramid Lake restoration efforts, specifically, average annual inflow to Pyramid Lake and the frequency that flow regimes are achieved in the lower Truckee River from April through June. In addition, a third indicator, the relative amount of riparian habitat along the lower Truckee River, also is directly relevant to restoration efforts for Pyramid Lake. Because no significant adverse effects were identified, no further analyses were needed.
PW 10-38	The foundation of the recreation analysis was the recreational user survey which is, to date, the most comprehensive survey completed on the Truckee River and associated reservoirs. It is included in the Economics and Recreation Appendix. Additionally, indicators were identified that encapsulated the major issues and concerns regarding effects of water operations on recreational resources. An analysis of effects on recreational resources as measured by the indicators was then completed by incorporating model results with user survey findings and presented in the EIS/EIR. Reservoirs and lakes addressed were Donner and Pyramid Lakes and Prosser Creek, Stampede, Boca, and Lahontan Reservoirs. Additionally, the Truckee River was studied in detail from Lake Tahoe to Pyramid Lake.
PW 10-39	Without specific reference to “impacts not analyzed in detail,” only a general response is possible. In chapter 3 beginning with “General Methods and Assumptions” and continuing to the end of the chapter, each resource area, indicator, method of analysis, and results are explained. Potential effects were analyzed to the extent necessary, and the conclusions are documented and presented. No significant effects were identified. In some cases, the absence of impact for one indicator precluded the need for analysis of secondary indicators for which a causal link or nexus could not be established without a change in the initial indicator. These analytical details are discussed in each of the resource areas for each indicator. All results are presented in detail.  Because no significant effects were identified, no mitigation is required. Consequently, there are no significant effects to be overridden under CEQA.  Also, see responses to comments NCG 05-05, NCG 05-127, and PW 10-24.
PW 10-40	The proposed action is whether TROA should be approved and implemented by the Secretary of the Interior and the State of California, whether certain California water right permits, licenses, and appropriations should be changed to be consistent with TROA, and whether contracts with the owners of Credit Water, which would allow for the storage of water in Truckee River reservoirs, should be approved. The EIS/EIR thoroughly considers and discloses the potential environmental effects of this proposed action. With respect to the commenter’s examples of alleged segmentation of the project, see responses to PW 10-41, PW 10-42, PW 10-43, PW 10-44 and PW 10-45.
PW 10-41	The relative ownership interests in Donner Lake water is an issue currently in litigation between Truckee-Carson Irrigation District and Truckee Meadows Water Authority (TMWA); section 1.C.5 of TROA states that the parties will be bound by any mutual agreement or the result of any litigation.

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PW 10-42	The relative ownership interests in Donner Lake water is a subject currently under discussion between Truckee-Carson Irrigation District and Truckee Meadows Water Authority.
PW 10-43	TROA supersedes all requirements of any agreements concerning the operation of Truckee River reservoirs, including those of the Truckee River Agreement. See TROA section 5.A.1(a). Exhibit B in the attachment to chapter 2 of the final EIS/EIR shows where certain subjects addressed in provisions of the Truckee River Agreement may be located in TROA. Also, see response to comment PW 10-42.
PW 10-44	Newlands Project Water Credit would only be established in Truckee River reservoirs and converted to other categories of water to the extent the water is not needed to achieve Lahontan Reservoir storage targets in accordance with OCAP. Authority for Newlands Project operations is OCAP, which governs how the Newlands Project water users may use water, deliveries to satisfy exercise of water rights by users of the Newlands Project, and diversions from the Truckee River through the Truckee Canal to achieve Lahontan Reservoir storage targets.
PW 10-45	The initial analysis assumed that Fernley Municipal Credit Water was not included in the Draft Agreement. An additional scenario modeled storage of Fernley Municipal Credit Water. See “Surface Water,” Section II.G, “Optional Scenarios,” in chapter 3 of the final EIS/EIR.
PW 10-46	See responses to comments PW 10-30 and NCG 05-114.
PW 10-47	Comments have been carefully considered and responses provided. This analysis supports the conclusion that the EIS/EIR is thorough and comprehensive. Therefore, there is no basis to withdraw, substantially revise, and recirculate the document for public comment.  Also see responses to comments PW 10-1 through PW 10-46.
PW 10-48	The <i>Orr Ditch</i> decree did not adjudicate all water rights on the Truckee River system, including in California, and does not preclude the filing of these applications. The applications are for the purposes of filling Stampede Reservoir to capacity and eliminating the release limit on Prosser Creek Reservoir, and <i>Orr Ditch</i> decree water rights will be recognized as senior to these applications.” See “Water Right Change Petitions and Applications” in chapter 3 and the SWRCB Change Petitions and Water Appropriations Applications Package Appendix of the final EIS/EIR.
PW 10-49	See response to comment IT 01-04.
PW 10-50	Analysis of NPCW is presented in detail in chapter 3, Newlands Project Operations. Implementation of NPCW would not change allowable diversions from the Truckee River to the Newlands Project, which are regulated by OCAP, as noted in that section.
PW 10-51	The referenced text identifies provisions of section 210(a) of P.L.101-618 (“Claims Settlement”) which are repeated in Article Twelve of TROA relative to litigation which must be dismissed or finally resolved before TROA enters into effect. Also, see response to comment PW 10-42.
PW 10-52	See response to comment PW 10-42.
PW 10-53	While it is recognized that this matter is under appeal and no rights have been finally granted, the proposed action assumes that rights to the unappropriated water have been granted to the Tribe because a favorable resolution of this issue is one of the conditions identified in P.L.101-618 (section 210(a)(2)(B)) to be satisfied before TROA enters into effect.
PW 10-54	The subject text has been modified in the final EIS/EIR with the addition of “and its tributaries” following “Truckee River.”
PW 10-55	The discussion in chapter 1 provides general background information. At the time the Truckee River Agreement was negotiated, Lake Tahoe Dam was the only major water control facility and Boca Dam the only proposed facility in the upper Truckee River basin; coordinated operation of both facilities controlled river operations to the extent possible and allowed. The No Action Alternative recognizes that the Truckee River Agreement is the current operating agreement for the Truckee River to satisfy the exercise of <i>Orr Ditch</i> decree water rights and also recognizes that other dams and reservoirs have been built since that time and describes relevant current facility and river operations in greater detail.

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PW 10-56	<p>No Action describes current reservoir operations and future (year 2033) municipal and industrial and agricultural water demands. It describes water management in the Truckee River basin if TROA or other action alternatives were not implemented to change current reservoir operations. This assumption is not unreasonable because no plans or proposals, other than TROA, exist to change reservoir operations. Municipal and industrial and agricultural water demands differ between No Action and current conditions because No Action reflects a projected future condition. In addition, No Action is consistent with existing court decrees, agreements, and regulations that currently govern surface water management in the Lake Tahoe and Truckee River basins.</p> <p>LWSA is similar to No Action, but it assumes State and local government agencies will allow additional water resources to be used. TMWA states in its letter of March 12, 2003, (on page 1 of attachment C) that the Local Water Supply Alternative is “the likely future case without TROA.” As stated in chapter 2, Section II, “No Action,” “Because TMWA is responsible for [most of the] Truckee Meadows water supply and has undertaken a resource planning process to evaluate all alternative water supplies (2005-2025 Water Resource Plan: Working Draft Volume 2, November 5, 2002), these projections [of additional water supplies] were included in the alternatives.” The alternatives and current conditions are described and analyzed in chapter 3 of the EIS/EIR.</p>
PW 10-57	See response to comment NCG 05-03.
PW 10-58	See response to comment NCG 05-03.
PW 10-59	<p>The Tribe’s Federal Indian reserved water rights adjudicated in Claim Nos. 1 and 2 may be transferred under the <i>Orr Ditch</i> decree, which provides that the point of diversion, and the place, means, manner or purpose of use of water rights adjudicated in the decree may be changed “in the manner provided by law.” In the past, the Pyramid Tribe has sought temporary transfer of its water rights under Claim Nos. 1 and 2, and the State Engineer and the <i>Orr Ditch</i> court have approved these transfers. There are reasonable grounds to anticipate, therefore, that, under a No Action Alternative, the Tribe might seek similar transfers in the future. Whether, under a transfer, the Tribe may use the entire quantity of water adjudicated under Claim Nos. 1 and 2 is a question currently before the United States Court of Appeals for the Ninth Circuit. Water usage assumptions for the Pyramid Lake Indian Reservation are described in “Surface Water” in table 3.11 and Section II.C.b.ii(b)(i), “Consumptive Demands,” in chapter 3 of the final EIS/EIR. The Pyramid Tribe stated this expectation in its letter of January 22, 2003, to BIA. Because the Nevada State Engineer commonly approves transfer applications for converting agricultural water rights to municipal and industrial water rights, it was reasonable to assume for the purpose of modeling and analysis that the Pyramid Tribe would be granted approval in the future to use part of its agricultural water right under Claim Nos. 1 and 2 for municipal and industrial use on the Reservation. Also, it is reasonable to assume that the Tribe would expand its agricultural activities as stated in its letter to accommodate increasing demand. The Pyramid Tribe’s letter is included as attachment G to the final EIS/EIR.</p>
PW 10-60	<p>This comment raises a legal question concerning the provisions of TROA itself, rather than the potential environmental effects of TROA as disclosed in the EIS/EIR. TROA must be issued as a Federal regulation before it can become effective, and the public will have an opportunity to comment on the draft regulation at that time. Notwithstanding the foregoing, the commenter incorrectly assumes that the Truckee River Agreement may not be modified and superseded by TROA. The Congress directed the Secretary in section 205(a)(1) of P.L. 101-618 to negotiate an agreement for the operation of Truckee River reservoirs that includes the required provisions set forth in section 205(a)(2) of the Act.</p>
PW 10-61	See response to comment PW 10-42.
PW 10-62	<p>The statement in the EIS/EIR that TCID would continue to manage its Donner Lake water to serve irrigation rights on the Newlands Project as allowed by OCAP, while a correct assumption under the current OCAP, is not at issue in TROA. Whether or not OCAP affects TCID’s use of Donner Lake water to serve irrigation rights on the Newlands Project does not factor into any effects from TROA. The release of TCID’s Donner Lake water for use in the Newlands Project is not affected by TROA; rather it is subject to existing law which requires a separate contract to transport and store this water in Federal facilities.</p>

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PW 10-63	Under the No Action Alternative, Truckee River reservoir operations remain unchanged from current operations and are consistent with existing court decrees, agreements, and regulations that currently govern surface water management in the Lake Tahoe and Truckee River basins. Because Newlands Project Credit Storage is permissible under OCAP, it was included in the No Action Alternative. See chapter 3, “Surface Water,” Section II.H.1, “Expanded Newlands Credit Water Storage” in chapter 3 of the final EIS/EIR for discussion on how NPCW is modeled.
PW 10-64	Chapter 2 provides an overview and a description of water operations and facilities under the No Action Alternative. The total amount of water available, compared to the demands, is described in “Surface Water” in chapter 3 of the final EIS/EIR. For example, table 3.13 presents operations model input for annual consumptive demands in the study area.
PW 10-65	Without adoption of TROA, it was assumed that reservoir operations in the Truckee River basin would be the same under the No Action Alternative as under current operations. This assumption is reasonable because no plans or proposals, other than TROA, exist to change reservoir operations. TMWA (the agency responsible for supplying water to the Truckee Meadows), along with the city of Reno, city of Sparks, and Washoe County, concur with this assumption in its March 12, 2003, letter to the Bureau of Indian Affairs. (See Section I.C, “Alternatives Considered,” in chapter 2 and attachment C.)
PW 10-66	See response to comment PW 10-64. The groundwater pumping values in No Action are reasonable assumptions because they reflect values in the Nevada State Engineer’s Groundwater Management Order 1161, dated May 16, 2000, and TMWA’s letter of March 12, 2003, letter to the Bureau of Indian Affairs. (See Section II.C.6, “Municipal and Industrial Water Resources,” in chapter 2 and attachments C and E.) The State agency has the authority to grant and manage the exercise of groundwater rights throughout the state, while TMWA owns the groundwater rights in question.
PW 10-67	Page 15 of TMWA’s letter of March 12, 2003 (attachment C) addresses current and potential conservation measures and drought conservation in the Truckee Meadows. It states, “In addition to the normal year conservation measures, the local governments have adopted ordinances (cite codes) [sic] providing a mechanism to implement incremental levels of drought conservation measures, including placing various predefined limits on outdoor irrigation. Under severe shortages, resulting from extreme drought or other emergencies, outdoor irrigation can be prohibited. The drought and emergency provisions of the existing local ordinances are likely to be continued under LWSA and No Action Alternative because each of these alternatives relies upon conservation to address a portion of the demand in the summer months of a drought.” TMWA’s letter is cited in Section I.C, “Alternatives Considered,” in chapter 2 as a source document and is provided as attachment C to the final EIS/EIR.
PW 10-68	<p>As shown by the escalating water right prices in the Truckee Division since publication of the draft EIS/EIR, it is difficult to estimate the amount of water to be used in the Truckee Division in the future for irrigation, water quality, and Fernley municipal and industrial water use. However, the analysis is based on comparison of the alternatives related to differences in operation and different demands. Some factors that change demand under the alternatives include the amount of irrigation water rights purchased in Truckee Meadows, groundwater use in the Truckee Meadows, instream flow requirements, and recreation storage targets in upstream reservoirs. The amount of Truckee Division water rights purchased in the future do not change; it is held constant under all the alternatives. Because this demand is the same under all of the alternatives, variations in the amounts of irrigation, water quality, or municipal and industrial use in the Truckee Division would have little difference in the relative comparison of the alternatives because the effects would still be essentially the same.</p> <p>Should the assumptions change, the effects would still be essentially the same.</p>
PW 10-69	While LWSA is similar to No Action, it assumes that State and local government agencies will allow additional water resources to be used. TMWA states in its letter of March 12, 2003 (attachment C to the final EIS/EIR) that LWSA is “the likely future case without TROA.” As stated in Section I.C, “Alternatives Considered,” in chapter 2 of the final EIS/EIR, “Because TMWA is responsible for [most of the] Truckee Meadows water supply and has undertaken a resource planning process to evaluate all alternative water supplies (2005-2025 Water Resource Plan: Working Draft Volume 2, November 5, 2002), these

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	<p>projections [of additional water supplies] were included in the alternatives.” Differences between the LWSA and No Action Alternative are presented in the “Municipal and Industrial Water Resources” sections in chapter 2. The final EIS/EIR was updated to include a reference to the final version, 2005-2025 Water Resource Plan, dated March 2003</p>
PW 10-70	<p>See response to comment PW 10-43.</p>
PW 10-71	<p>The comment raises a legal question concerning the provisions of P.L. 101-618 and TROA itself rather than the potential environmental impacts of TROA as disclosed in the EIS/EIR.</p> <p>The priorities for California water use to which the comment refers are those established by Congress in section 204 of P.L. 101-618, which provides for an interstate allocation of water to California, including surface water from the Truckee River. Specifically, section 204(c)(1)(A) provides: “[the] maximum annual diversion of surface [water] shall not exceed 10,000 acre-feet; except that all diversions...for use within California shall be subject to...Claim Nos. 1 and 2 of the <i>Orr Ditch</i> decree, and all diversions initiated after the date of enactment of [P.L. 101-618] shall be subject to the right of Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for...use in the Truckee Meadows in Nevada...” Section 204(c)(1)(H) provides that “[a]ll uses of water for commercial irrigated agriculture within the Truckee River Basin within California after the date of enactment of [P.L. 101-618] shall not impair and shall be junior and subordinate to all beneficial uses in Nevada...”</p> <p>In other words, it is clearly the intent of Congress that up to 10,000 acre-feet of Truckee River surface water can be diverted for use in California, and, with the exception of water for commercial irrigated agriculture within the Truckee River Basin in California, can be diverted without regard to priorities in Nevada, subject only to <i>Orr Ditch</i> Claims 1 and 2, and Power Company’s (now Truckee Meadow Water Authority’s) 40 cfs right.</p> <p>Contrary to the implication in the comment, the <i>Orr Ditch</i> decree, with the exception of certain flows for the generation of hydropower, did not adjudicate the rights to use of water from the Truckee River or its tributaries in California.</p> <p>Other than the phrase “later in this document,” the commenter does not identify the source of the statement that “water available for diversion by the Newlands Project will be less because of PLIT’s (the Pyramid Lake Tribe) exercising its Claim Nos. 1 and 2 rights and because California is given priority in its allocations.” There are statements in “Surface Water” in chapter 3 of the EIS/EIR pertaining to conditions under “No Action” which make reference to future development and increased water use in California and exercise of the Pyramid Tribe’s <i>Orr Ditch</i> decree water rights relative to less water being available for the Newlands Project. These references, however, have no relationship to conditions under TROA or the interstate allocation provided for in section 204 of P.L. 101-618.</p> <p>Under TROA, the change, if any, in the amount of Truckee River water available for diversion at Derby Dam would be minimal and would be the consequence of the ability of upstream water right owners to store water which, without the Credit Water provisions of TROA, they might otherwise have to forego and let flow downstream for use by others. In other words, water which may have previously been available for diversion to the Newlands Project because upstream water right owners could not fully exercise their water rights may no longer be available to downstream users.</p> <p>As explained in detail in the response to comment 5 PH 03-05, while the implementation of TROA may affect the quantity of water in the Truckee River at a particular time, TROA also provides for the protection of <i>Orr Ditch</i> Decree water rights, including the water which may be legally diverted at Derby Dam pursuant to the <i>Orr Ditch</i> Decree and Newlands Project OCAP.</p> <p>Because the reduction in water available to the Newlands Project is minimal, and the protection of <i>Orr Ditch</i> decree water rights provided for in TROA is consistent with the requirements of section 205(a)(2)(D) of P.L. 101-618, the impact is not deemed significant. Reduced inflow to Pyramid Lake, on the other hand, is deemed significant because of the potential adverse impacts on threatened and endangered species.</p>

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PW 10-72	See response to comment PW 10-71.
PW 10-73	See response to comment PW 10-71.
PW 10-74	See response to comment PW 10-71.
PW 10-75	<p>The comment raises a legal question concerning the provisions of TROA itself rather than the potential environmental impacts of TROA as disclosed in the EIS/EIR.</p> <p>Under TROA, Floriston Rates and Reduced Floriston Rates remain the basic foundation for operation of Truckee River reservoirs. However, a party that would otherwise be entitled to divert water from Floriston Rates may elect to withhold all or a portion of the water which that party would be entitled to divert, and store it upstream in Truckee River reservoirs for use at a later time. While this modifies the Floriston Rate regime, it should be noted that TROA must be promulgated as a Federal regulation before it can become effective, and will be subject to an opportunity for public comment. Further, section 205(a)(4) of P.L. 101-618 requires that TROA be submitted to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> courts for approval of any necessary modifications to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> decrees. The two courts certainly have authority to modify the operational regimen of the Truckee River reservoirs incorporated into their respective decrees. Moreover, section 205(a)(2)(D) of P.L. 101-618 requires that any TROA “ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the <i>Orr Ditch</i> decree and <i>Truckee River General Electric</i> decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law.” Section 1.C.2 of TROA expressly provides for the protection of exercised <i>Orr Ditch</i> decree water rights.</p>
PW 10-76	See response to comment PW 10-75.
PW 10-77	As explained in the response to comment PW 10-75, TCID’s consent would not be required in order to modify flows associated with Floriston Rates or the operational regime for Truckee River reservoirs if TROA were approved by the courts. As explained in detail in the response to comment 5 PH 03-05, while the implementation of TROA may affect the quantity of water in the Truckee River, TROA also provides for the protection of <i>Orr Ditch</i> decree water rights, including the water that may be legally diverted at Derby Diversion Dam pursuant to the <i>Orr Ditch</i> decree and Newlands Project OCAP.
PW 10-78	See response to comment PW 10-42.
PW 10-79	See response to comment PW 10-44.
PW 10-80	<p>TROA would not affect the exercise of water rights, except for those voluntarily relinquished by parties to TROA (section 205(a)(2)(D) of P.L. 101-618). In general, minimum releases from all reservoirs would be the same under TROA as under No Action (i.e., current operations). There are four exceptions to this general rule, to which the owners of such released water would agree to be bound under TROA:</p> <ol style="list-style-type: none"> <li>1. Stampede Reservoir Project Water would be used to maintain mandatory minimum releases (only an informal agreement exists today).</li> <li>2. Prosser Creek Project Water would be used to assure minimum releases even when inflow was less than the minimum release.</li> <li>3. TMWA’s private water in Independence Lake would be used to maintain greater minimum releases than under current operations.</li> <li>4. Credit Water releases could be substituted for scheduled releases of Floriston Rate Water from Lake Tahoe to maintain the minimum releases required by the Tahoe-Prosser Exchange Agreement under No Action.</li> </ol>
PW 10-81	<p>The comment asserts arguments in support of a legal position rather than commenting on the potential environmental analysis presented in the EIS/EIR.</p> <p>Also see response to comment PW 10-75.</p>

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PW 10-82	While the United States has an <i>Alpine</i> decree right for generating hydroelectric power at Lahontan Reservoir, there is no required diversion to meet hydroelectric power demands and hydroelectric power is to be generated incidental to reservoir releases; therefore, no compensation is required. Also see, in part, response to comment NCG 05-26.
PW 10-83	The commenter mistakenly asserts that all tributaries of the Truckee River have been adjudicated in the <i>Orr Ditch</i> decree. In fact, with the exception of certain flows for generation of hydroelectric power, the <i>Orr Ditch</i> decree did not adjudicate the rights to use the water of the Truckee River or its tributaries in California. The “appropriations” of water which are the subject of the two referenced applications are actually (1) the storage in Stampede Reservoir of an additional 100,000 acre-feet of water from Nevada water rights, when available, which would otherwise flow to Pyramid Lake and which no other party would be entitled to divert, and (2) the elimination of the current release limit on Prosser Creek Reservoir. These “new appropriations” would be subject to all prior rights, and would not interfere with or adversely affect the exercise of any <i>Orr Ditch</i> or <i>Truckee River General Electric</i> decree water rights, consistent with the requirements of section 205(a)(2)(D) of P.L. 101-618.
PW 10-84	See response to comment NCG 05-03.
PW 10-85	See response to comment to PW 10-24 regarding comparison to current conditions. See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations.  Summary tables in the final EIS/EIR have been revised to include current conditions.
PW 10-86	Current river operations (i.e., under the Truckee River Agreement) are described in considerable detail in Section II, “No Action,” in chapter 2.
PW 10-87	See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations. Also see response to comment PW 10-28.
PW 10-88	See response to comment NCG 05-09.
PW 10-89	By definition, unappropriated water is water to which there is no right and that cannot be diverted for beneficial use. Diversion of Truckee River water to Lahontan Reservoir is governed by OCAP. See response to comment PW 10-53 for additional explanation.
PW 10-90	Procedures for determining transportation losses for Credit Water would be developed by the TROA Administrator and were not available to be modeled. Also see response to comment PW 10-91.
PW 10-91	According to TROA section 5.E., Credit Water shares conveyance loss proportionally with other water categories in the river. The two exceptions are Privately Owned Stored Water and Newlands Project Credit Water. Privately Owned Stored Water does not suffer losses unless it is the only category in the river, and loss of Newlands Project Credit Water is allocated to Fish Water and Fish Credit Water. In addition, a person’s right to <i>Orr Ditch</i> decree water is protected by TROA section 1.C.2.
PW 10-92	The purpose of the analyses in the EIS/EIR is not to “provide information...about whether the river is being managed or mismanaged under current conditions.” Rather, the analyses are for the purpose of evaluating the potential effects of the various alternatives on hydrologic, biological, socioeconomic, cultural, and other resources of the study area.  Also see response to comment PW 10-25.
PW 10-93	See response to comment NCG 05-23.  As noted by the commenter, there is no consumptive use associated with TMWA’s hydroelectric power generation water. The hydroelectric waiver only allows for the unappropriated water which would have gone to Pyramid Lake to be stored. All <i>Orr Ditch</i> decree water rights must be satisfied, including Claim No. 3, before this unappropriated water can be stored. If this water is stored, it is stored as Fish Credit Water and would be subject to losses as determined by the Administrator.

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PW 10-94	Lower Truckee River flow regimes are discussed in “Surface Water” Section I.D.6, “Truckee River Operations for Pyramid Lake Fishes;” in “Fish in Truckee River and Affected Tributaries,” in Section II.A, “Introduction;” and in “Cui-ui” in Section I.C.1, “Flow Regimes for Stampede Reservoir Storage” in chapter 3 of the final EIS/EIR. The source document for the flow regimes was also cited (TRIT, 2003) and is available on request from FWS in Reno. While the flow regime selection procedure, which has already been implemented, is not part of TROA, the flexibility of reservoir operations inherent in TROA would allow certain flow regimes to be met more frequently than under current conditions, No Action, or LWSA.
PW 10-95	TMWA did not propose new dam construction in its 1995-2015 Water Resources Plan but recommended reconnaissance-level studies for 18 potential sites; no construction was included in the recommendation. TMWA’s 2005-2025 Water Resource Plan (March 2003) narrowed the list to two small sites (Bull Ranch Creek and the Virginia Range) for consideration. Though no construction proposal was presented in the plan or elsewhere, it was stated in the plan that the “reliability benefits that justify building a small local storage reservoir should be also be considered with the Negotiated Settlement [TROA] in place.” Because TMWA did not propose dam construction in its March 12, 2003, TROA EIS/EIR Planning Assumption letter to the Bureau of Indian Affairs (attachment C to the final EIS/EIR), no facilities were included in the alternatives considered in the revised DEIS/EIR. These potential dam sites, however, are discussed in the Cumulative Effects section of the final EIS/EIR.
PW 10-96	No mitigation is required. As explained in the response to comment NCG 05-76, the detailed analysis in chapter 3 concluded that the Newlands Project would not be significantly affected by TROA. Section 205(a)(2)(D) of P.L. 101-618, requires that under the agreement negotiated pursuant to section 205(a) (TROA), Truckee River reservoirs are to be operated to “ensure that water is stored in and released from [those reservoirs] to satisfy the exercise of water rights [including those for the Newlands Project] in conformance with the <i>Orr Ditch</i> decree and <i>Truckee River General Electric</i> decree....” Section 205(a)(4) of P.L. 101-618 requires presentation of TROA to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> courts for approval of any modifications to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> decrees. In any event, diversions of Truckee River water to the Newlands Project are governed by Newlands Project OCAP, which is not affected by TROA. The change, if any, in the amount of Truckee River water available for diversion at Derby Diversion Dam would be minimal and would be the consequence of upstream water right owners being able to store water which, without the Credit Water storage provisions of TROA, they might otherwise have to forego and let flow downstream. Therefore, water that may previously have been available for diversion to the Newlands Project because upstream water right owners could not fully exercise their water rights may no longer be available because, under TROA, those upstream parties can more efficiently and effectively exercise their water rights. As explained in detail in the response to comment 5 PH 03-05, while the implementation of TROA may affect the quantity of water in the Truckee River, TROA also provides for the protection of <i>Orr Ditch</i> decree water rights, including the water which may be legally diverted at Derby Diversion Dam pursuant to the <i>Orr Ditch</i> decree and Newlands Project OCAP. Also see, in part, response to comment NCG 05-21.
PW 10-97	See response to comment PW 10-96.
PW 10-98	See response to comment NCG 05-10 on multiple dry year periods and “Surface Water,” Section II.H, “Sensitivity Scenarios” in chapter 3 of the final EIS/EIR for expanded discussion on individual years related to Carson and Truckee Division demands.
PW 10-99	The analysis did not identify significant effects on the shallow aquifer as a result of TROA. See responses to comments NCG 05-33, NCG 05-84, and PW 10-34.
PW 10-100	One of the five mandatory provisions for TROA as prescribed in section 205(a) of P.L. 101-618 is that it “provide for enhancement of spawning flows available in the lower Truckee River for the Pyramid Lake fishes.” This purpose is met in TROA primarily by the storage and release of Fish Credit Water, a new category of water managed specifically for Pyramid Lake fishes, and secondarily by an increase in inflow to Pyramid Lake.



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PW 10-101	One of the purposes of TROA, as stated in section 205(a)(2)(B) of P.L. 101-618, is to enhance conditions for Pyramid Lake fishes. The evaluation presented in “Cui-ui” in Section II.D, “Frequency that Flow Regime 1, 2, or 3 is Achieved in the Lower Truckee River from April through June,” in chapter 3 of the final EIS/EIR documents the benefits of this flow management for cui-ui. The benefits for LCT are described in “Lahontan Cutthroat Trout” in Section II.E, “Access to Independence Creek for Spawning LCT” in chapter 3 of the final EIS/EIR
PW 10-102	The referenced table only summarizes Lahontan cutthroat trout spawning access to Independence Creek in dry and extremely dry hydrologic conditions. The table shows that TROA has a significant beneficial effect in August compared to current conditions, and in both July and August when compared to No Action. Other aspects of the benefits of TROA for Lahontan cutthroat trout are referenced in “Lahontan Cutthroat Trout” in Section II.C, “Average Annual Inflow to Pyramid Lake” and Section II.D, “Relative Amounts of Riparian Vegetation Along the Lower Truckee River” in chapter 3 of the final EIS/EIR.
PW 10-103	A separate recreation analysis was conducted on Lahontan Reservoir, and it did not reveal a significant effect on recreation under TROA. See “Lahontan Reservoir” discussions in “Recreation” in chapter 3. Tables in “Economic Environment” do not include Lahontan Reservoir recreation visitation because early in the development of the recreation model, operations model results indicated that Lahontan Reservoir elevations would not be significantly affected under TROA. A similar conclusion can be made on the potential effects on the regional economy.  Also see response to comment PW 10-38.
PW 10-104	Hydroelectric power generation at Lahontan Dam was analyzed, and the results are included in the final EIS/EIR in “Economic Environment” in chapter 3. The analysis uses a methodology similar to that used for the analysis of the Truckee River run-of-the-river hydroelectric powerplants. As explained in response to comment PW 10-82, hydroelectric power generation on the Newlands Project is a run-of-the-river operation.
PW 10-105	See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR regarding the adequacy of the operations model. Also see response to comment PW 07-91.
PW 10-106	See response to comment NCG 05-09.
PW 10-107	See responses to comments NCG 05-114 and PW 10-30.
PW 10-108	The EIS/EIR presents an extensive analysis of a number of Newlands Project resources based on assumed future water demand. Lahontan Reservoir, which supplies water to the Carson Division, is analyzed in detail relative to storage and releases to satisfy the exercise of water rights served by the Newlands Project. Also, see response to comment NCG 05-125. Fish Water is Project Water in Stampede Reservoir, a recognized right, dedicated to benefit Pyramid Lake fishes; Fish Credit Water, when created through implementation of TROA, also would have a recognized right.
PW 10-109	The List of Preparers has been revised in the final EIS/EIR.
PW 10-110	See response to comment PW 10-109.

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EG 01-01	See response to comment NCG 05-09.
EG 01-02	Though TROA would mandate minimum releases from Truckee River reservoirs, and enhanced releases under certain conditions, it would not mandate maintenance of minimum flows in the Truckee River because (1) section 205(a)(2)(D) of P.L. 101-618 prohibits TROA from interfering with the exercise of <i>Orr Ditch</i> decree and <i>Truckee River General Electric</i> decree water rights and (2) Nevada has not reserved water nor mandated the release of water for minimum flows in the river for environmental purposes (other than minimum bypass flows at TMWA’s run-of-the-river hydroelectric powerplants). Because the Truckee River

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is fully appropriated, it would not be possible to require releases for minimum flows without potentially interfering with a person’s water right. Minimum reservoir releases are keyed to reservoir permit and license requirements and voluntary releases. TROA, however, would provide many opportunities for water managers to enhance flows in the Truckee River, such as:

Section 1.B.3: One of the general operating principles of TROA is to “[m]aintain the Minimum Releases and, to the extent practicable consistent with existing water rights and this Agreement, maintain Enhanced Minimum Releases, preferred instream flows and reservoir recreation levels as described in Article Nine” as long as such operations are consistent with P.L. 101-618, section 205(a)(2)(D).

Section 7.A.5: In general, TROA would restrict establishment of Credit Waters if such action would reduce flows at the Sparks gauge to less than 275 cfs from June through October, or less than 120 cfs from November through May.

Section 7.C: This section addresses creation of additional water dedicated to Pyramid Lake fishes and the regulation of such water. Similar to Fish Water and Fish Credit Water, once Joint Program Fish Credit Water could no longer be stored, it would flow to Pyramid Lake.

Section 7.D: Once California Environmental Credit Water and Additional California Environmental Credit Water could no longer be used for its intended environmental purposes, it would flow to Pyramid Lake if its original place of use had been in Nevada.

Section 7.E: Provides for the storage of Water Quality Credit Water under the Truckee River Water Quality Settlement Agreement. Once such water is released from storage, it would flow through the entire reach of the Truckee River in Nevada to Pyramid Lake.

Section 8.K.4: This section establishes release thresholds against which the accumulation of certain categories of Credit Waters could not reduce the discharge from a reservoir.

Section 9.C: This section institutionalizes minimum and enhanced minimum releases from Truckee River reservoirs, except Boca Reservoir.

Section 9E: Assures minimum bypass flows of 50 cfs at all hydroelectric power plants on the Truckee River and provides opportunities to enhance bypass flows.

Section 9F: Allows California to establish non-mandatory guidelines for reservoir release ramping rates, reservoir recreational storage targets, and maximum and preferred stream flows. Parties to TROA would be encouraged to schedule their operations to accommodate California Guidelines “[t]o the extent practicable and consistent with the exercise of water rights, assurance of water supplies, operational considerations, the requirements of the Settlement Act and all other requirements of this Agreement.”

EG 01-03

TROA must satisfy the exercise of water rights in conformance with the *Orr Ditch* decree and the *Truckee River General Electric* decree, except for those rights that are voluntarily relinquished. Truckee River flows ultimately are a function of regional hydrology, and TROA cannot guarantee that the reaches of the river would not be depleted in certain years. TROA would allow more operational flexibility than the current Truckee River Agreement and, with the cooperation of the various TROA parties, it would be less likely that the river would be dry.

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EG 01-04	<p>See response to comment to EG 01-03.</p> <p>Water augmentation from the acquisition of water rights under the 1996 Water Quality Settlement Agreement would occur with or without TROA, though amount and timing would be different based on the ability to store water in upstream reservoirs. WQSA states “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) ...” The purpose of the augmentation, in order of priority, is to meet or improve water quality from Vista to Pyramid Lake, maintain aquatic and riparian habitat downstream from Derby Diversion Dam, and promote aesthetic and recreational purposes through the Reno/Sparks area and continuing to Pyramid Lake.</p>
EG 01-05	<p>Though there is no minimum flow requirement in Nevada under the Water Quality Settlement Agreement or TROA (see response to comment EG 01-02, p. 444), TROA prevents the establishment of most categories of Credit Water if it would cause flows at the Sparks gauge to be less than 275 cfs during the summer and 120 cfs during the winter (TROA section 7.A.5). Also see response to comment EG 01-04.</p>
EG 01-06	<p>See response to comment EG 01-04.</p> <p>The owners of Water Quality Water would schedule releases on the basis of Truckee River flows, amount of water quality water available, effect of augmenting flows on water quality, and potential for carryover water in reservoirs for future years. See Example 1, “Release of Water Quality Credit Water to Meet Water Quality Flow Targets” in Water Resources Appendix, Exhibit 16, for an explanation of how the model operates release of Water Quality Water.</p>
EG 01-07	<p>See response to comment EG 01-03 and, in part, comment FG 01-05.</p> <p>The riparian analysis shows that TROA would have significant beneficial effects when compared to No Action in most reaches of the Truckee River in dry and extremely dry hydrologic conditions. This analysis is consistent with the conclusion in “Surface Water” that flows would be higher in dry hydrologic conditions and lower in wet hydrologic conditions under TROA than under No Action. The lower flows in wet hydrologic conditions would have no significant adverse effect on riparian vegetation.</p>
EG 01-08	<p>See responses to comments EG 01-03, EG 01-04, and EG 01-05.</p>
EG 01-09	<p>See response to comment NCG 05-10.</p>
EG 01-10	<p>No mitigation for reductions in spills or drain water is required. TROA would not affect the exercise of Newlands Project water rights; diversions from the Truckee River to the Carson Division of the Newlands Project are regulated by OCAP. For model analysis, Lahontan Valley wetlands demand, as part of Carson Division demand, is calculated based on a water duty of 2.99 acre-feet per acre, which is the currently accepted duty for Newlands Project water rights transferred to terminal wetlands. Irrigation water rights have been acquired and transferred to protect, maintain, and promote Lahontan Valley wetlands. However, these water rights do not include rights to drain water or spills from Lahontan Reservoir. Although some accommodation is made to distribute spill water to wetlands—and so no delivery of such water is required—it is provided as it becomes available. The water rights acquisition for Lahontan Valley wetlands is intended to compensate, in part, for changes in water availability to those terminal wetlands.</p>
EG 01-11	<p>Since 1994, Reclamation has collected fees from Sierra Pacific/TMWA for storage of Municipal and Industrial Credit Water through an Interim Storage Agreement as authorized by section 205 (b)(3) of P.L. 101-618. These fees are first used to cover U.S. operation and maintenance expenses of Stampede Reservoir; the remaining balance, if any, is deposited into Lahontan Valley and Pyramid Lake Fish and Wildlife Fund (LVPLFWF) that is managed by FWS. As of July 2005, a total of \$2,255,297 had been collected, of which \$1,791,885 had been reimbursed to the U.S. for Stampede Reservoir operation and maintenance and \$463,412 had been deposited into LVPLFWF. Under agreement between the Pyramid Tribe and FWS, LVPLFWF currently goes to Lahontan Valley wetland restoration. The EIS/EIR does not identify significant effects to wetlands under TROA. Because no mitigation is required, LVPLFWF will not be used for mitigation. See “Water Management Elements of P.L. 101-618 Actions” in Chapter 4, “Cumulative Effects.”</p>

## Environmental Groups

EG 02-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004.
EG 02-02	The approval of the <i>Orr Ditch</i> court must be obtained in order for TROA to become effective. Section 205(a) of P.L. 101-618 directs the Secretary of the Interior to negotiate, with the States of California and Nevada, an agreement for the operation of Truckee River reservoirs. Section 205(a)(4) of P.L. 101-618 requires that the agreement negotiated pursuant to section 205(a) (TROA) be presented to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> courts for approval of any modifications to the <i>Orr Ditch</i> and <i>Truckee River General Electric</i> decrees necessary to implement TROA. Thus, TROA cannot change the “operational authority” of the affected reservoirs or modify any provisions of the <i>Orr Ditch</i> decree unless and until any changes and modifications are first approved by the court which has jurisdiction over and administers the <i>Orr Ditch</i> decree.
EG 02-03	The concept of Newlands Project Credit Water is neither intended to benefit nor adversely affect the Newlands Project. Rather, it would allow the United States, in consultation with the State of Nevada, Pyramid Tribe, and the irrigation district responsible for operation of the Newlands Project, currently the Truckee-Carson Irrigation District, to hold in upstream reservoirs Truckee River water that would not otherwise be needed to be diverted at Derby Diversion Dam to Lahontan Reservoir. If, thereafter, a determination is made that the water is necessary to meet the storage target for Lahontan Reservoir under Newlands Project OCAP, TROA provides that the amount of water determined to be necessary “shall be [r]eleased for diversion to the Truckee Canal in sufficient time to be used for its authorized purposes...”, and unless otherwise agreed to by the United States and Nevada, shall be released to the maximum extent possible before August 1 of that year. In making a decision to otherwise agree, Nevada may consult with the irrigation district. See TROA section 7.H.
EG 02-04	See response to comment PW 05-06.
EG 02-05	See response to comment PW 07-21.
EG 02-06	See responses to comments EG 02-03 and PW 07-91.
EG 02-07	<p>(a) The purpose of modeling is to compare the proposed action to likely future scenarios, including the No Action Alternative. To make this comparison, the water demands, supplies, and hydrology in the system were kept constant among the alternatives unless a specific action related to that alternative needed to be changed, such as more groundwater use in the local water supply; this allows the analysis to make relative comparisons of the changed actions related to the various alternatives.</p> <p>(b) If implementation of TROA adversely affects a party’s water right, then according to TROA section 1.C.2, the Administrator would implement a remedy acceptable to the party or replace the amount of water the party was entitled to receive.</p> <p>See response to comment 5 PH 03-05 for more detail.</p>
EG 02-08	See response to comment PW 05-09.

## Individuals

IND 01-01	No response required.
IND 02-01	Section 205(a)(2)(A) of P.L. 101-618 requires TROA to “satisfy all applicable dam safety and flood control requirements.” TROA would not assume flood control authority or operations currently delegated to Federal and State agencies, but it would comply with dam safety and flood control requirements established by these agencies. Section 1.F of TROA requires the Administrator to “cooperate with the United States, California and Nevada, the Pyramid Tribe, the affected local governments” during emergency conditions, and authorizes the Administrator to “undertake activities ... as may be necessary to respond to the emergency.”

## Individuals

IND 03-01	There is a general agreement among riverine and riparian ecologists that flows in regulated rivers should be managed, to the extent practicable, to resemble the natural hydrograph; that is, unregulated flows. The scientific studies supporting this strategy are discussed briefly in chapter 3 in “Riparian Habitat and Riparian-Associated Wildlife,” and numerous citations are provided. Citations from 1997 through 2000 are of particular value in understanding recent concepts in river management. Copies of these papers are available on request from FWS in Reno. Not cited in the EIS/EIR, but more readable than much of the scientific literature is <i>Rivers for Life</i> by Sandra Postel and Brian Richter, published by Island Press in 2003. Response to comment EG 01-02 also applies to maintenance of even flows.
IND 04-01	No response required.
IND 05-01	No response required.
IND 06-01	No response required.
IND 07-01	The potential effects of TROA do not differ from those of No Action or current conditions; therefore, no mitigation is required. Moreover, the reach of the Little Truckee River downstream from Boca Reservoir is only about 0.25 mile long, so any potential effects to fish, macroinvertebrates, or other aquatic species would be local and not significant to the Truckee River.
IND 07-02	TROA would not change the operation of Martis Creek Reservoir or flows in Martis Creek.
IND 07-03	See response to comment FG 01-21.
IND 07-04	Short-term whitewater boating flows are not proposed or recommended in the EIS/EIR but are used as criteria for comparing projected flows under each alternative.
IND 07-05	TROA is a negotiated agreement pursuant to P.L. 101-618. TROA provides processes in Article Thirteen for adjustments to operations and changes to TROA. Changes to TROA must also be made in accordance with P.L. 101-618.  Also see response to comment EO 02-01.
IND 08-01	No response required.
IND 09-01	No response required.
IND 10-01	Low flows are a naturally occurring event and the effects are not irreversible. Native organisms in the Truckee River are adapted to highly variable environmental conditions, including flood events as well as extended droughts. If only certain reaches experience low flows, aquatic fauna may move to reaches with higher flows, or seek refuge in deeper pools. Riparian plants may lose their leaves and/or enter dormancy earlier in dry periods and may even tolerate successive years of drought. All flows under current conditions, No Action, LWSA, and TROA have been analyzed to the extent possible based on the existing data. There are no significant adverse effects under TROA.
IND 10-02	Economic effects of recreational opportunities along the Truckee River were analyzed using the recreation model. The analysis is presented in detail in “Economic Environment,” Section II.C, “Recreation-Related Employment and Income,” in chapter 3 of the final EIS/EIR.
IND 10-03	Existing data are not adequate to assess the effects of changes in water temperature or wetted surface for the entire river at any time of year. The operations model provides average monthly flow data, for which there is no direct correlation to either water temperature or wetted surface at critical times of the year.
IND 11-01	See response to comment IND 10-01.
IND 11-02	See response to comment IND 03-01.
IND 11-03	See response to comment EO 02-02 and IND 03-01.  Regarding recreational fishing, analysis shows that TROA would be slightly more beneficial than the other alternatives.
IND 12-01	No response required.

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IND 13-01	See response to comment IND 03-01.
IND 14-01	See response to comment IND 03-01.
IND 15-01	See response to comment IND 03-01.
IND 16-01	See response to comment IND 03-01.
IND 17-01	See response to comment IND 03-01.
IND 18-01	The economic analysis of hydroelectric power generation from the four run-of-the-river hydroelectric powerplants is based on the annual generation estimated from operations model. An annual energy value was calculated using the California-Oregon Border (COB) Electricity Price Index (2004 data). A weighted annual average value based on firm daily peak and off peak power demand was estimated to be \$47.25 per megawatt (MWh) hour or \$0.047 per kilowatt-hour. (It is recognized that TMWA charged a higher rate (\$56 MWh) based on the market conditions in 2002, but the COB Price Index was used to be consistent with the methodology defined in the Draft Agreement). The annual energy value was multiplied by the hydroelectric power generation to calculate a gross annual hydroelectric power revenue value. Hydroelectric power production and hydroelectric powerplant discharge can be found in the Water Resources Appendix, Exhibits 12 and 13. Hydroelectric power compensation will be part of the negotiations between Interior and TMWA.
IND 19-01	See response to comment FG 01-21 for a discussion of a Biological Resources Monitoring Program and potential signatories.
IND 19-02	Most production wells in the Truckee River basin are owned and operated by water districts. California is required under TROA to conduct a water use study and produce an annual water use report for the Lake Tahoe and Truckee River basins. To produce these reports, California will need the well information along with other pertinent water use data. Also, groundwater use is not anticipated to affect surface water usage, because section 204(c)(1)(B) of P.L. 101-618 and TROA Article 10 require that "...all new wells drilled after the date of enactment of this title [P.L. 101-618] shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible."
IND 20-01	Fish Credit Water and M&I Credit Water are both exercised to meet their respective demands. M&I Credit Water is used to meet municipal and industrial demands during a drought year. If there is not a drought, a certain portion of M&I Credit Water is converted to Fish Credit Water. The operations model assumes that Fish Credit Water is used to achieve the lower Truckee River flow regime selected for that year. As required by TROA, the operations model ensures that all Fish Credit Water flows to Pyramid Lake.
IND 20-02	See responses to comments IND 20-01 and IND 20-06 for a discussion on the establishment and use of Fish Credit Water and Fish Water. In addition to Fish Water (Stampede Project Water) and Fish Credit Water established from previously unappropriated water (that would flow to Pyramid Lake) which could be considered firm sources of water for the benefit of Pyramid Lake fishes, TROA also contains provisions for the conversion of a portion of certain municipal Credit Waters (i.e., Non-Firm M&I Credit Water and Fernley Municipal Credit Water) to Fish Credit Water and for establishment of credit water associated with water rights acquired for the purpose of Truckee River water quality, both of which would benefit Pyramid Lake fishes and lower Truckee River and Pyramid Lake biological resources.
IND 20-03	<p>The analyses presented in the EIS/EIR do not limit the exercise of the Pyramid Lake Paiute Tribe's Federal Indian reserved water rights adjudicated in Claims Nos. 1 and 2 under the <i>Orr Ditch</i> decree. Water usage assumptions for the Tribe are presented in "Surface Water" in table 3.13 and in Section II.C.1.b.(2)(b)(i)(bb), "M&amp;I," in chapter 3 of the final EIS/EIR. The Tribe stated these expectations in its letter of January 22, 2003, to Bureau of Indian Affairs. This letter is included as attachment G to the final EIS/EIR.</p> <p>The analyses are based on the assumption that both Claim Nos. 1 and 2 are fully exercised, that 15,043 acre-feet of Claim Nos. 1 and 2 water rights would be used for municipal and industrial purposes, and that 15,043 acre-feet would be used for agricultural purposes. Currently, 1,344 acre-feet of existing Tribal water rights are used for municipal and industrial purposes and are assumed to be exercised in addition to the 15,043 acre-feet of Claim Nos. 1 and 2, for a total of 16,377 acre-feet.</p>

**Individuals**

<p>IND 20-04</p>	<p>Table 3.27 presents average monthly flows for selected months and river reaches to provide a comparison of flows among alternatives and to point out the overall improvements in flows under TROA in low-flow (i.e., dry and very dry hydrologic) conditions. Information presented in table 3.27 was derived from the operations model, not the DSSAMt model. Averages allow for statistical analysis of long periods of flow record and miss peak inflow storm events with high concentrations. Therefore, for analysis of temperature and DO exceedences (table 3.28) and loadings to Pyramid Lake (table 3.29), the DSSAMt model (which uses hourly input) was run for representative wet (1986), median (1989), and dry (1992) years, and “hourly” DSSAMt output was used to quantify water quality results in tables 3.28 and 3.29 for those representative wet, median, and dry years.</p> <p>Operations model results show that Pyramid Lake water levels are statistically higher under TROA than under No Action. Operations model results also show that less water enters Pyramid Lake in wet hydrologic conditions and more enters in dry hydrologic conditions under TROA than under No Action. Under TROA, modeling shows that less loading is delivered to Pyramid Lake in the representative wet year (1986), and more loading is delivered in the representative dry year (1992), as shown in table 3.29. Overall, Truckee River water quality would be better under TROA as indicated by the fewer instances in which temperature and DO standards would be exceeded (table 3.28) in the Lockwood to Derby Diversion Dam reach. These results were verified for the Numana Dam to Pyramid Lake reach by comparing DSSAMt results in summary tables in the Water Quality Appendix. For the Numana Dam to Pyramid Lake reach, temperatures would be better under TROA than under No Action in wet and dry years and about the same in median years. DO would be better under TROA than under No Action in wet and median years in this reach and about the same in dry years. Therefore, modeling indicates that water quality in the lower Truckee River and Pyramid Lake would be better under TROA because of greater flows in dry years and greater flows to Pyramid Lake over many years of record. Greater flows would raise the level of Pyramid Lake, which is consistent with the Pyramid Lake Paiute Tribe Water Quality Control Plan (June 18, 2004, page 45) which states, “Water management in the Truckee River watershed should focus on providing as much water as possible to the lake.”</p> <p>Additionally, Martin Lebo and Charles Goldman (2004) stated, “Differences in lake characteristics for TROA and the No Action Alternative were relatively small but generally benefited the coldwater fishery of Pyramid Lake.”</p>
<p>IND 20-05</p>	<p>Modeling shows that Truckee River water quality would be better and the level of Pyramid Lake would be higher under TROA than under No Action. Total maximum daily loads (TMDLs) for total nitrogen, total phosphorus, and total dissolved solids were set at Lockwood in 1993 and are noted in the text. Lockwood TMDLs may be exceeded during an extreme watershed flushing event, such as the 1997 flood, under any alternative, including TROA and No Action. Water quality standards are rarely exceeded in wet hydrologic conditions, as indicated in table 3.28 and the Water Quality Appendix, because of greater flows. Water quality standards are exceeded more often in dry hydrologic conditions because of low flows, even though loadings are minimal due to minimal flushing from the watershed. In dry hydrologic conditions, water quality standards are achieved more often under TROA than under No Action. Also, the long-term additional flows and higher Pyramid Lake level under TROA are beneficial to water quality and Pyramid Lake. There are no TMDLs at Pyramid Lake; however, table 3.29 summarizes loading to Pyramid Lake in representative wet, average, and dry years for this important tribal and fishery water resource.</p> <p>Also see response to comment IND 20-04.</p>

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IND 20-06	<p>Fish Water would not convert to M&amp;I Credit Water, but, in certain instances, it would be reclassified as Fish Credit Water or Project Water in Another Reservoir (TROA sections 8.N and 8.O). Fish Credit Water would rarely be used as M&amp;I Credit Water. See response to comment 3 PH 02-02 for more detail.</p> <p>Spill and establishment priorities among M&amp;I Credit Water, Fish Water, and Fish Credit Water vary with hydrologic conditions (TROA sections 5.C, 7.A.3(a)(2)(ii) and 8.F). Though Firm M&amp;I Credit Water and Emergency Credit Water would not spill, they would not substantially diminish the security of Fish Water because their storage would be small (up to 19,500 acre-feet) in comparison to the storage capacity of Stampede Reservoir (226,500 acre-feet). When a Drought Situation does not exist, Fish Water would continue to be stored as is done today; when it does exist, however, selected parties would have priority to use inflow to Stampede and Prosser Creek Reservoirs to establish their Credit Waters.</p> <p>When a Drought Situation does not exist, Non-Firm M&amp;I Credit Water would spill before Fish Credit Water from Stampede Reservoir, and spills would be shared proportionally from other reservoirs; when it does exist, however, Fish Credit Water would spill before Non-Firm M&amp;I Credit Water.</p>
IND 21-01	See response to comment IND 03-01.
IND 22-01	The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004

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1 PH 01-01	No response required.
1 PH 02-01	No response required.
1 PH 03-01	No response required.
1 PH 04-01	No response required.
1 PH 05-01	Section III, "Decision Process and Decisions Needed," in chapter 1 of the final EIS/EIR acknowledges the requirement to file water rights applications with the State of Nevada, Division of Water Resources, State Engineer's Office. Also see response to comments NSG 01-01 and PW 10-83.
1 PH 05-02	See response to comment NSG 01-02.
1 PH 06-01	No response required.
1 PH 07-01	No response required.
1 PH 08-01	No response required.
1 PH 09-01	No response required.
1 PH 10-01	No response required.
2 PH 01-01	No response required.
3 PH 01-01	No response required.
3 PH 02-01	The operations model is used to make relative comparisons among alternatives. Based on the assumptions for the different alternatives and using the same hydrologic record for each, model results show inflow to Pyramid Lake would be greater, and, so, Pyramid Lake would be higher under TROA than under the No Action Alternative. The actual water level of Pyramid Lake at some future time is conjectural.



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<p>3 PH 02-02</p>	<p>Drought situation is a defined term in TROA that is based on hydrologic conditions (i.e., runoff), and not on demand for M&amp;I Credit Water in Truckee Meadows.</p> <p>When certain storage thresholds are reached, portions of M&amp;I Credit Water, Fernley Municipal Credit Water, and Newlands Project Credit Water would be converted to Fish Credit Water; with two exceptions, the reverse is not permissible. The first exception, TROA section 8.F.6, requires that a small amount of Fish Credit Water be temporarily reserved for municipal and industrial use by TMWA when Fish Water accumulation in Stampede Reservoir causes Fish Water, Fish Credit Water, and Non-Firm M&amp;I Credit Water to spill during specific hydrologic conditions and there is insufficient space to store Non-Firm M&amp;I Credit Water up to its base amount.</p> <p>The second exception, TROA section 7.B.5(a), requires the first 7,500 acre-feet of Fish Credit Water to be converted from M&amp;I Credit Water in Stampede Reservoir to Power Company Emergency Credit Water.</p> <p>Operations model results presented in “Surface Water” in table 3.16 indicate the potential benefits to Pyramid Lake under TROA. Average annual Truckee River inflow to Pyramid Lake under the municipal and industrial demand forecasted for year 2033 and full exercise of <i>Orr Ditch</i> Claims Nos. 1 and 2 for irrigation (table 3.16) would be slightly greater under TROA than under No Action and LWSA in all three hydrologic conditions. Inflow would be greater because of (1) the storage and release of Fish Credit Water and Water Quality Credit Water and (2) the TROA requirement that TMWA buy 1.11 acre-feet of water rights for each acre-foot of new service commitment, install water meters, and store excess water for use during a drought situation. Inflow to Pyramid Lake would be greater under TROA in wet and dry hydrologic conditions than with the lower municipal and industrial demand under current conditions. This improvement under TROA is due to the release of Fish Credit Water and Water Quality Credit Water, while the reduction in flows in median hydrologic conditions reflects the storage of Credit Waters.</p>
<p>5 PH 01-01</p>	<p>No response required.</p>
<p>5 PH 02-01</p>	<p>See Chapter 5, “Consultation and Coordination,” in the final EIS/EIR for information on responses to FOIA requests for information.</p>
<p>5 PH 03-01</p>	<p>See response to comments PW 07-44 and PW 07-50.</p>
<p>5 PH 03-02</p>	<p>See “General Methods and Assumptions” in chapter 3 of the final EIS/EIR for additional information on model development, use, and limitations.</p>
<p>5 PH 03-03</p>	<p>Definitions of wet, median, and dry hydrologic conditions are provided in “General Methods and Assumptions” in chapter 3 of the final EIS/EIR.</p>
<p>5 PH 03-04</p>	<p>Effects on the Newlands Project are specifically addressed in “Newlands Project Operations” in chapter 3 of the final EIS/EIR.</p>
<p>5 PH 03-05</p>	<p>Because Floriston Rates may be reduced and Credit Water storage may be exercised under TROA, implementation of TROA may affect the amount of water flowing in the Truckee River at any particular time. However, the legal entitlements of <i>Orr Ditch</i> decree water right owners, including those with <i>Orr Ditch</i> decree water rights held for the benefit of the Newlands Project, would be protected under TROA. Implementation of TROA would not affect the exercise of <i>Orr Ditch</i> decree water rights, except for those voluntarily relinquished by parties to TROA. TROA complies with section 205(a)(2)(D) of P.L. 101-618, which requires that Truckee River reservoirs be operated under the provisions of TROA to “ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the <i>Orr Ditch</i> decree and <i>Truckee River General Electric</i> decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement [PSA], or by any other persons or entities or which are transferred pursuant to State law.”</p> <p>TROA also complies with section 210(b)(13) of P.L. 101-618, which expressly recognizes the authority of the <i>Orr Ditch</i> court “to ensure that the owners of vested and perfected Truckee River water rights receive the amount</p>

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	<p>of water to which they are entitled under the <i>Orr Ditch</i> decree or the <i>Alpine</i> decree.” Section 1.C.1 of TROA expressly recognizes and incorporates this provision of P.L. 101-618, and further recognizes that “[t]he Federal Water Master under the <i>Orr Ditch</i> decree shall retain full authority to ensure that such rights are fully enforced.”</p> <p>In addition to recognizing the authority of the Federal Water Master, TROA provides for the appointment of an Administrator, whose authority would include protection of <i>Orr Ditch</i> decree water rights. If the implementation of any provision of TROA results, or would result, in an owner of exercised <i>Orr Ditch</i> decree water rights not receiving an amount of water to which that owner is legally entitled, section 1.C.2 of TROA provides that the Administrator take specific measures to remedy such deficiency. TROA provides in section 2.A.2 that the first TROA Administrator shall be the Federal Water Master, and that subsequent TROA Administrators shall be appointed by the <i>Orr Ditch</i> court.</p> <p><i>Orr Ditch</i> decree water rights also would be protected by the court review requirement of section 205(a)(4) of P.L. 101-618. This section requires that for TROA to enter into effect, it “shall be submitted to the <i>Orr Ditch</i> court and the <i>Truckee River General Electric</i> court for approval of any necessary modifications in the provisions of the <i>Orr Ditch</i> decree or the <i>Truckee River General Electric</i> decree.”</p> <p>These provisions of P.L. 101-618 protecting <i>Orr Ditch</i> decree water rights are reflected in TROA sections 1.A.1, 1.B.2, 1.C.1, 1.C.2, 2.B.1, 12.A.4(b), 12.A.(c) and 13.B. These sections of TROA are abstracted in chapter 1, section II, and chapter 2, section IV of the final EIS/EIR. Lastly, chapter 2 summarizes the prohibition as an introduction to TROA by stating, “Implementation of TROA would modify operations of all Truckee River reservoirs to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and dam safety requirements are met.” The phrase “all Truckee River reservoirs” in the revised DEIS/EIR was changed to “Federal and non-Federal reservoirs” in the final EIS/EIR.</p> <p>Also see responses to comments NCG 05-115 and NCG 05-116.</p>
5 PH 04-01	<p>The comment period was scheduled to end October 31, 2004, and was extended to December 30, 2004. See Chapter 5, “Consultation and Coordination,” for information on responses to FOIA requests for additional information.</p>
5 PH 04-02	<p>See response to comment PW 10-11.</p>
5 PH 04-03	<p>LWSA is similar to the No Action Alternative, but it assumes that State and local government agencies would authorize the use of additional water resources (e.g., groundwater). TMWA stated in its letter of March 12, 2003, (page 1 of attachment C) that LWSA is “the likely future case without TROA.” As stated in Section I.C, “Alternatives Considered,” in chapter 2 of the final EIS/EIR, “Because TMWA is responsible for [most of the] Truckee Meadows water supply and has undertaken a resource planning process to evaluate all alternative water supplies (2005-2025 Water Resource Plan: Working Draft Volume 2, November 5, 2002), these projections [of additional water supplies] were included in the alternatives.” The final EIS/EIR was updated to include TMWA’s final version of the 2005-2025 Water Resource Plan, dated March 2003.</p> <p>Also see responses to comments NCG 05-03 and PW 10-95.</p>
5 PH 04-04	<p>TROA would not prevent TCID from managing its portion of privately owned water in Donner Lake. This assurance is provided in the following sections of TROA:</p> <p>Section 1.C.5 states that TROA is not intended to alter or change the rights of the Water Authority and Truckee-Carson Irrigation District to the operation of Donner Lake and its storage, and that the parties to TROA will be bound by the results of any litigation.</p> <p>Section 5.B.4 specifically provides for the operation of privately owned water in Donner Lake under the Donner Lake Indenture dated May 3, 1943, among Sierra Pacific Power Company, Truckee-Carson Irrigation District, and Donner Lake Water Company.</p>

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	<p>Section 5.B.4(a) provides for the impoundment of water in Donner Lake that is consistent with existing water rights, and section 5.B.4(b) states that “[w]ater which is Released or Passed-Through Donner Lake by the owner of Privately Owned Stored Water for the purpose of contributing to Minimum Release or Enhanced Minimum Release shall be classified as Privately Owned Stored Water to the extent such classification is requested by such owner.”</p> <p>Section 5.B.4(c) addresses the allocation of privately owned water among the owners by requiring that “[u]nless the owners of Privately Owned Stored Water otherwise agree, the total Donner Lake Privately Owned Stored Water Impounded during a year shall be allocated to each owner in accordance with its ownership interest. Unless the owners otherwise agree, each owner’s schedule must bear its proportionate burden associated with complying with the requirement of the Donner Lake Indenture. Except as otherwise provided in this Agreement, an owner may operate its respective share of Donner Lake Privately Owned Stored Water to assist in meeting its respective water supply and operation objectives.”</p> <p>Section 12.A.4(e) would not allow TROA to be implemented until changes to Donner Lake and Independence Lake vested water rights are not subject to challenge or any such challenges have been resolved.</p> <p>In order to evaluate the range of potential effects of TROA, two scenarios were evaluated in the EIS/EIR on the use of privately owned water in Donner Lake. In one scenario, TMWA acquires TCID’s portion of Donner Lake storage. In the other scenario, TMWA and TCID operate their portions of the storage as tenants in common. See “Surface Water,” Section G, “Optional Scenarios,” in chapter 3 of the final EIS/EIR. This was necessary because TROA section 4.C.1 states, “Water Authority shall use its best efforts” to acquire and use “the rights currently owned by the Truckee-Carson Irrigation District to store and use water in Donner Lake on a willing-buyer/willing-seller basis, unless such right is acquired by another party.”</p>
5 PH 04-05	OCAP has a Newlands Project credit storage provision. However, because it has never been implemented, it was not modeled for the revised DEIS/EIR analysis. A further analysis is provided in “Surface Water,” Section II.H, “Sensitivity Scenarios,” in chapter 3 of the final EIS/EIR.
5 PH 04-06	See response to comment NSG 02-01.
5 PH 04-07	See responses to comments NCG 05-01, NCG 05-02, and PW 07-53.
5 PH 05-01	See response to comment PW 10-09.
5 PH 05-02	See response to comment NCG 05-03.