

AGREEMENT CONCERNING APPLICATIONS TO APPROPRIATE
THE WATERS OF THE TRUCKEE RIVER AND ITS TRIBUTARIES

This Agreement Concerning Applications to Appropriate the Waters of the Truckee River and its Tributaries is entered into effective this 31st day of May, 1994, by and among the Pyramid Lake Paiute Tribe of Indians (the "Pyramid Tribe"), Sierra Pacific Power Company ("Sierra"), Washoe County Water Conservation District ("WCWCD"), City of Reno ("Reno"), City of Sparks ("Sparks") and the County of Washoe ("Washoe").

RECITALS

1. Cecil Kearns has pending before the State Engineer Application No. 20998 to appropriate waters of the Truckee River and its tributaries (the "Kearns Application").
2. Robert Leland has pending before the State Engineer Application Nos. 22541 and 22542 to appropriate waters from Deep Creek, a tributary of the Truckee River (the "Leland Applications").
3. Sierra has pending before the State Engineer Application No. 47047 to appropriate waters of the Truckee River and its tributaries (the "Sierra Application") and Application Nos. 50561, 50562 and 50563 to appropriate certain components of effluent from the Truckee Meadows Water Reclamation Facility (formerly known as the Reno-Sparks Wastewater Treatment Facility)(the "Sierra Effluent Applications").
4. Washoe has pending before the State Engineer Application Nos. 47121, 47209 and 47264 to appropriate the waters of the Truckee River and its tributaries (the "Washoe Applications").

EXHIBIT

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5. The Pyramid Tribe has pending before the State Engineer Application Nos. 48061 and 48494 to appropriate waters of the Truckee River and its tributaries (the "Pyramid Tribe Applications").

6. Reno and Sparks have pending before the State Engineer Application Nos. 29973 and 32954 to appropriate effluent from the Truckee Meadows Water Reclamation Facility (formerly known as the Reno-Sparks Wastewater Treatment Facility) (the "Reno-Sparks Applications").

7. Sierra Pacific, WCWCD, Reno and Sparks have protested the Pyramid Tribe Applications, among others, and the Pyramid Tribe has protested the Sierra Application and the Reno-Sparks Applications, among others.

8. The State Engineer has scheduled a hearing on all of the foregoing Applications and on protests thereto for March 29, 30, 31, May 31, June 1, 2 and 3, 1994.

9. Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, Title II of Public Law No. 101-618 (104 Stat. 3324) (hereinafter the "Settlement Act") provides for an operating agreement to be negotiated for the operation of the Truckee River Reservoirs for the purposes set forth in that section (the "Truckee River Operating Agreement").

10. Section 210(a)(2)(B) of the Settlement Act states that the interstate allocation provided for in the Settlement Act, the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Truckee River Operating Agreement shall not enter into effect until the Pyramid Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved

in a manner satisfactory to the State of Nevada and the Pyramid Tribe.

11. The State of Nevada and the Pyramid Tribe have entered into a Memorandum of Understanding providing, among other things, that (i) the Pyramid Tribe's claim as described in Section 210(a)(2)(B) of the Settlement Act will proceed under Nevada State Water Law procedures through the State Engineer pursuant to Application Nos. 48061 and 48494, (ii) if the Pyramid Tribe is granted a water right to the remaining waters of the Truckee River which are not subject to vested or perfected rights, the State of Nevada and the Pyramid Tribe will jointly seek in United States of America v. Orr Water Ditch Company, et al., in Equity Docket No. A-3 in the United States District Court for the District of Nevada (the "Orr Ditch Action") confirmation of such right and a determination that the waters of the Truckee River in Nevada are fully appropriated, (iii) the Pyramid Tribe's claim as described in Section 210(a)(2)(B) of the Settlement Act would be enforced by the Water Master appointed in the Orr Ditch Action and (iv) upon satisfaction of the conditions set forth in the Memorandum of Understanding the requirements of Section 210(a)(2)(B) of the Settlement Act will be deemed satisfied.

12. The parties hereto desire that the above-described Applications and Protests be resolved in a manner which is consistent with the Memorandum of Understanding and in a manner which fully and completely satisfies the requirements of Section 210(a)(2)(B) of the Settlement Act, subject however, to the Truckee River Operating Agreement entering into effect.

NOW, THEREFORE, the parties hereto intending to be legally bound hereby and in consideration of the mutual covenants and promises herein contained, agree as follows:

ARTICLE I

RECITALS PART OF AGREEMENT

The foregoing recitals are incorporated herein by this reference and shall form a part of this Agreement as if recited herein at length.

ARTICLE II

REJECTION OF KEARNS AND LELAND APPLICATIONS

The parties agree that the Kearns Application and the Leland Applications threaten to prove detrimental to the public interest within the meaning of N.R.S. 533.370 and for that reason, among others, should be rejected by the State Engineer.

ARTICLE III

DEFERRAL OF ACTION ON CERTAIN APPLICATIONS

Section 3.1. Deferral of Action. The parties agree that the State Engineer may postpone action on the Sierra Application, the Sierra Effluent Applications and the Washoe Applications until after the Truckee River Operating Agreement enters into effect or until December 31, 1997, whichever occurs first.

Section 3.2. Withdrawal of Applications. If the Truckee River Operating Agreement enters into effect on or before December 31, 1997, then the Sierra Application, the Sierra Effluent Applications and the Washoe Applications shall be deemed by reason of this Agreement to have been withdrawn as of the date the Truckee River Operating Agreement enters into effect, and no further action shall be required by any of the parties hereto or by the State Engineer with respect to said applications.

Section 3.3. Action if Truckee River Operating Agreement Does Not Enter

Into Effect. If the Truckee River Operating Agreement has not entered into effect on or before December 31, 1997, then the parties agree that the State Engineer shall proceed with a hearing on the Sierra Application, the Sierra Effluent Applications and the Washoe Applications as provided in Article VII below.

ARTICLE IV

ISSUANCE OF PERMITS

Section 4.1. Conditional Permit. Subject to the provisions of Article VI, the parties agree that the State Engineer may immediately issue a conditional permit to the Pyramid Tribe based upon the Pyramid Tribe Applications for fish, wildlife and recreational purposes, including maintenance of the level of Pyramid Lake to support use for recreation, preventing the loss of and to conserve the endangered cui-ui and the threatened Lahontan cutthroat trout, improving and maintaining water quality and quantity in Pyramid lake and the Truckee River downstream of Derby Dam, providing flows for the operation of Marble Bluff Dam and Fishway and providing suitable flows at proper temperatures for Lahontan cutthroat trout and cui-ui in the Truckee River downstream of Derby Dam subject to the following terms and conditions:

(a) Said conditional permit shall be junior in priority to all vested or perfected rights to the waters of the Truckee River and its tributaries, which rights vested or were perfected prior to May 25, 1984;

(b) Said conditional permit shall be junior in priority to any permits which may be issued pursuant to the Sierra Application, the Washoe Applications and the Reno-Sparks Applications;

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(c) Said conditional permit shall be subject to the interstate allocation of water provided for in Sections 204(b) and 204(c) of the Settlement Act;

(d) Said conditional permit shall be enforced by the Federal Water Master pursuant to the terms and conditions of the Orr Ditch Decree;

(e) Said conditional permit shall be subject to such additional terms and conditions as are commonly included in similar permits by the Nevada State Engineer; and

(f) If the Truckee River Operating Agreement has not entered into effect by December 31, 1997, the conditional permit shall terminate, provided, however, that the Pyramid Tribe Applications shall be heard and considered as provided in Article VII hereof.

Section 4.2. Final Permit. If the Truckee River Operating Agreement enters into effect on or before December 31, 1997, the conditional permit provided for in Section 4.1 shall by reason of that fact and without further action by any of the parties hereto be considered final; provided, however, that the final permit shall not include the conditions set forth in Sections 4.1(b) (except as to any permits issued pursuant to the Reno-Sparks Applications) and 4.1(f).

Section 4.3 Implementation of Memorandum of Understanding. At or about the time the Truckee River Operating Agreement is submitted to the Orr Ditch Court pursuant to Section 205(a)(4) of the Settlement Act, the Pyramid Tribe and the State of Nevada are expected to proceed to comply with the remaining requirements of the Memorandum of Understanding so that those requirements will be satisfied when the Truckee River Operating Agreement enters into effect.

ARTICLE V

ACTION ON APPLICATIONS OF CITIES

Section 5.1 Issuance of Conditional Permit - Ground Water Component.

Subject to the provisions of Article VI, the parties agree that the State Engineer may issue a conditional permit to the Cities of Reno and Sparks based upon the Reno-Sparks Applications to appropriate the quantity of the effluent from the Truckee Meadows Water Reclamation Facility which is determined by the State Engineer to result from ground water (estimated to be 15% or approximately 6,700 acre feet annually at 40 MGD flow) (the "Ground Water Component") subject to the following conditions:

- (a) The Ground Water Component shall be subject to the exclusive control of the Cities for use in irrigating any public or private lands which have vested or perfected appurtenant Truckee River water rights owned by or under the control of the Cities;
- (b) Although the Ground Water Component shall not have any requirement for direct return flow to the Truckee River, the Cities may not exercise their rights to it unless they also establish Instream Flow and Water Quality Credit Water as provided below;
- (c) The Cities shall have the right to establish Instream Flow and Water Quality Credit Water by storing or retaining in storage a quantity of the vested or perfected appurtenant Truckee River water rights;
- (d) The quantity of vested or perfected appurtenant Truckee River water rights which may be stored or retained in storage as Instream Flow and Water Quality Credit Water and the procedure for regulating the impoundment, storage and release of Instream Flow and Water Quality Credit Water shall be established in the Truckee River Operating

Agreement in a manner that is consistent with the requirements of section 205(a)(2) of the Settlement Act; and

(e) Instream Flow and Water Quality Credit Water may be used by the Cities only for the purposes of maintaining minimum instream flows in the Truckee River from the Reno/Sparks area to Pyramid Lake and/or augmenting flows in the Truckee River between the Reno/Sparks area and Pyramid Lake to meet water quality standards or to improve water quality conditions.

Section 5.2 Final Permit-Surface Water Component. Subject to the provisions of Article VI, the parties agree that the State Engineer may issue a final permit to the Cities of Reno and Sparks based upon the Reno-Sparks Applications to appropriate the quantity of effluent from the Truckee Meadows Water Reclamation Facility which is determined by the State Engineer to result from surface water (the "Surface Water Component") subject to the following conditions:

(a) The Surface Water Component shall be subject to the exclusive control and use by the Cities; and

(b) The Cities shall insure that return flow to the Truckee River is no less than it would have been had the Surface Water Component not been used by the Cities and that the timing of such return flow is not changed.

If the Truckee River Operating Agreement does not enter into effect on or before December 31, 1997, the final permit for the Surface Water Component shall by reason of that fact and without further action of any of the parties hereto be deemed to not include the quantity of effluent which is determined by the State Engineer to result from Privately

Owned Stored Water as defined in the Truckee River Agreement.

Section 5.3 Final Permit - Ground Water Component. If the Truckee River Operating Agreement enters into effect on or before December 31, 1997, the conditional permit provided for in Section 5.1 shall by reason of that fact and without further action by any of the parties hereto be considered final, subject to the conditions set forth in that section and the provisions of the Truckee River Operating Agreement.

Section 5.4 Action If Truckee River Operating Agreement Does Not Enter Into Effect. If the Truckee River Operating Agreement has not entered into effect on or before December 31, 1997, the conditional permit provided for in section 5.1 shall by reason of that fact terminate and the Reno-Sparks Applications with respect to the Ground Water Component shall be heard and considered as provided in Article VII hereof.

ARTICLE VI

STATE ENGINEER ACTION ON TCID APPLICATION AND PROTESTS

Section 6.1 TCID Application. Truckee-Carson Irrigation District ("TCID") has pending before the Nevada State Engineer (the "State Engineer") Application No. 9330 to appropriate the waters of the Truckee River and its tributaries (the "TCID Application"). The parties recognize that the State Engineer may proceed to hear and determine the TCID Application. If the TCID Application is approved, a permit is issued thereon and the approval becomes final, then this Agreement shall be of no further force and effect.

Section 6.2 TCID Protests to Pyramid Tribe Applications. The parties recognize that the State Engineer may proceed to hear the protests, if any, of TCID to the Pyramid Tribe Applications. If any TCID protest to the Pyramid Tribe Applications is

accepted and that decision becomes final, then this Agreement shall be of no further force and effect. If any TCID protest to the Pyramid Tribe Applications is rejected, then the parties request that the State Engineer take action in accordance with Article IV.

Section 6.3 TCID Protest to Reno-Sparks Applications. The parties recognize that the State Engineer may proceed to hear any protest of TCID to the Reno-Sparks Applications. This Agreement shall not be affected by any decision thereon. If the TCID protest to the Reno-Sparks Applications is rejected then the parties request that the State Engineer take action regarding the Reno-Sparks Applications as provided in Article V.

ARTICLE VII

HEARING ON ALL APPLICATIONS

If the Truckee River Operating Agreement has not entered into effect on or before December 31, 1997, the State Engineer shall proceed to hear and decide those Applications and Protests thereto referenced in this Agreement which have not been previously heard and finally decided on dates, at times and at places convenient to the State Engineer and the parties.

ARTICLE VIII

PRESENTATION TO STATE ENGINEER

The parties shall present this Agreement to the State Engineer as a stipulation and order regarding the Applications and the Protests thereto and shall use their best efforts to have the State Engineer issue orders implementing the terms of this Agreement.

ARTICLE IX

SATISFACTION OF CONDITION IN SETTLEMENT ACT

Subject to the provisions of Article VI, acceptance of this Agreement and the issuance of orders by the State Engineer consistent with its terms regarding the Applications and the Protests thereto and satisfaction of the requirements in the Memorandum of Understanding shall constitute a satisfactory resolution of the Pyramid Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights within the meaning and for the purposes of section 210(a)(2)(B) of the Settlement Act.

ARTICLE X

DISAPPROVAL OF AGREEMENT BY STATE ENGINEER

If this Agreement is not implemented by the State Engineer, it shall be of no further force or effect.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Agreement No Admission. This Agreement is intended as a compromise of matters in dispute and to avoid contested hearings and is not and shall not be construed as evidence or an admission by any party hereto with respect to any judicial, administrative or other proceeding. Neither this Agreement nor any of its terms shall be offered or received in evidence in any judicial, administrative or other proceeding, except a proceeding to implement or enforce any or all of the terms hereof.

Section 11.2 Agreement Executed Without Coercion. The parties hereto

acknowledge that each is making this Agreement of its own free will and volition, and acknowledge that no coercion, force, pressure or undue influence has been used against either party in the making of this Agreement either by the other party to this Agreement or by any other person or persons.

Section 11.3 Independent Expert Advice. The parties hereto declare that each of them has had independent expert advice by persons of their own selection, including attorneys and hydrologists, and that each has signed this Agreement freely and voluntarily upon such advice.

Section 11.4 Notices. All notices required or permitted to be given by law or by the terms of this Agreement shall be in writing and shall be considered given upon personal service of a copy on the party to be served or by mailing such notice by certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

- (a) If to the Pyramid Tribe, such notices shall be sent to:

Chairman
Pyramid Lake Paiute Tribe
P.O. Box 256
Nixon, NV 89424

With a required copy to:

Director
Pyramid Lake Water Resources Office
P.O. Box 256
Nixon, NV

and to:

Robert S. Pelcyger
Fredericks, Pelcyger, Hester & White
1881 9th St., Suite 216
Boulder, CO 80302

- (b) If to Sierra, such notices shall be sent to:

Director of Water
Sierra Pacific Power Company
6100 Neil Road
P.O. Box 10100
Reno, Nevada 89520

With a required copy to:

Gordon H. DePaoli, Esq.
Woodburn and Wedge
P.O. Box 2311
Reno, Nevada 89505

- (c) If to District, such notices shall be sent to:

Washoe County Water Conservation District
275 Hill Street
Reno, Nevada 89501

With a required copy to:

George N. Benesch
Benesch & Fermoile
427 Ridge Street
P.O. Box 3197
Reno, Nevada 89505

- (e) If to Reno, such notices shall be sent to:

City Engineer
City of Reno
P.O. Box 1900
Reno, Nevada 89505

With a required copy to:

Bill Isaeff
Chief Deputy City Attorney
490 S. Center Street, Room 206
P.O. Box 1900
Reno, Nevada 89505

(f) If to Sparks, such notices shall be sent to:

Public Works Director
City of Sparks
P.O. Box 857
Sparks, Nevada 89432

With a required copy to:

Bill Isaeff
Chief Deputy City Attorney
490 S. Center Street, Room 206
P.O. Box 1900
Reno, Nevada 89505

(g) If to Washoe, such notices shall be sent to:

David Roundtree
Regional Water Manager
P.O. Box 11130
Reno, Nevada 89520

The parties may change the address to which notices are sent by a notice in writing to the others.

Section 11.5 Consent. Whenever the approval or consent of any party is required for any purpose under this Agreement, that approval or consent will not be unreasonably withheld or delayed.

Section 11.6 Waiver. Neither a course of conduct, nor any waiver by either party with respect to a default or breach of any provision of this Agreement by the other party shall operate or be construed as a waiver of any subsequent default or breach, or as a modification of this Agreement.

Section 11.7 Captions. The captions of this Agreement do not in any way limit or amplify its terms and provisions.


such separate counterparts shall constitute only one and the same instrument.

Section 11.14 Reservation of Rights and Interests. If the State Engineer is called upon to hear and decide the Applications and Protests referenced in this Agreement pursuant to Article VII, the parties reserve all of their respective rights and interests and nothing in this Agreement or in any conditional permit issued pursuant to this Agreement shall be construed to limit or prejudice the rights and interests of the parties with respect to the Applications and Protests. This Agreement shall not be construed as a waiver or relinquishment of any claim the Pyramid Tribe may have under federal law to the waters of the Truckee River which are not subject to vested or perfected rights.


Section 11.15 March 28, 1994 Agreement. This Agreement supersedes that certain Agreement Concerning Applications to Appropriate the Waters of the Truckee River and Its Tributaries dated March 28, 1994 among all of the parties hereto except Washoe.

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

PYRAMID LAKE PAIUTE TRIBE OF INDIANS

By 
ALVIN R. JAMES
Its Chairman

SIERRA PACIFIC POWER COMPANY

By 
WALTER M. HIGGINS
Its Chairman, President and Chief Executive Officer

WASHOE COUNTY WATER CONSERVATION DISTRICT



By George W. Ball, Jr.
GEORGE BALL
Its Director

CITY OF RENO

Attest: Donald J. Cook
Donald J. Cook, City Clerk

By Peter J. Sferazza
PETER J. SFERAZZA
Its Mayor

CITY OF SPARKS

Attest: Deborine Peebles
Deborine Peebles, City Clerk

By Bruce Breslow
BRUCE BRESLOW
Its Mayor

APPROVED AS TO FORM ONLY:

William E. Isaeff
WILLIAM E. ISAEFF
Chief Deputy City Attorney
Attorney for Reno and Sparks

COUNTY OF WASHOE

By Dianne Cornwall
DIANNE CORNWALL

JUDI BAILEY, CLERK

Attest: Judi Bailey
JUDI BAILEY
County Clerk
By Chairman of the Board of County Commissioners