



STAFF REPORT

TO: Chairman and Board Members
THRU: Mark Foree, General Manager
FROM: John Erwin, Dir. Natural Resources-Planning & Management
DATE: August 3, 2015
SUBJECT: **Discussion and Request for Board Adoption of Resolution No. 232: A Resolution Approving the Sale of Up To 2,750 acre feet of Surplus Water Rights to the Pyramid Lake Paiute Tribe To Facilitate Accelerated Implementation of the Truckee River Operating Agreement and Authorizing the General Manager to Negotiate and Execute Documents Necessary to Complete Transaction**

Recommendation

Staff recommends the Board adopt a resolution authorizing the sale of surplus property to the Pyramid Lake Paiute Tribe and authorizing the General Manager to execute the documents to complete the transaction to facilitate the accelerated implementation of the Truckee River Operating Agreement (“TROA”) and drought storage enhancements for TMWA through the partial fulfillment of Reno, Sparks and Washoe County’s 6,700 Acre Foot (“AF”) obligation.

Discussion

The purpose of this agreement is to facilitate and accelerate the implementation of TROA by assisting Reno, Sparks and Washoe County (“RSW”) in satisfying their obligation under Section 1.E.4 of TROA wherein RSW are required to provide 6,700 AF of water rights for water quality purposes by no later than when TROA is implemented. Although significant effort has been made over the past several years by staff of RSW and TMWA to identify and acquire 6,700 AF, RSW are currently short about 2,750 AF. This large shortage has caused the Tribe to be concerned and to delay one of the final steps necessary for TROA implementation. The satisfaction of the 6,700 AF obligation is one of the final steps necessary to facilitate the implementation of TROA and for TMWA to take advantage of the drought storage (and other) benefits that will result from such implementation.

A. TROA Background and Benefits

On May 23, 1989 the Pyramid Lake Paiute Tribe (“PLPT”) and Sierra Pacific Power Company (“Sierra”) entered into a Preliminary Settlement Agreement which proposed the use of federal owned storage reservoirs in the Truckee River Basin in California for storage of water available under water then owned by Sierra. In November 1991, Congress adopted Public Law 101-618 which, among other things, incorporated the terms and conditions outlined in the Preliminary Settlement. PL 101-618 also set out the criteria for the five signatory parties (United States,

California, Nevada, PLPT and TMWA) to negotiate the Truckee River Operating Agreement (“TROA”). After decades of negotiations, TROA was signed by the mandatory signatory parties on September 6, 2008 and was joined and signed by other parties including Reno, Sparks and Washoe County (“RSW”).

While the obligation to acquire water rights is held by RSW, both the Western Regional Water Commission and TMWA have recognized that the acquisition of water quality rights and the satisfaction of the RSW obligation furthers important interests of TMWA and TMWA customers, and is a critical step necessary to the implementation of TROA. Historically, TMWA has provided direct and indirect support and cooperation to assist RSW in satisfying this obligation. For example, on May 16, 2013, WRWC and TMWA entered into an Interlocal Agreement For Acquisition of Water Quality Water Rights pursuant to which WRWC agreed to provide funding to TMWA to secure and develop additional water supplies for water quality purposes ("WQ Water Rights") to support partial satisfaction of the obligations of Reno, Sparks and Washoe County required under Section 1.E.4 of TROA.

Currently, the entities have identified the following quantities of water rights available to satisfy the RSW’ obligation under Section 1.E.4 of TROA:

Total Obligation		6,700.00
Reno	2,069.07	
Sparks	1,089.08	
Washoe County	341.03	
TMWA (WRWC)	<u>452.90</u>	
Total Rights Held:		<u>3,952.08</u>
Deficit		2,747.92

B. Proposed Sale of Surplus Water Rights to Tribe

A \$7 million federal grant from the Desert Terminus Lake Funds has been provided to Great Basin Land and Water (“GBLW”) to be used to purchase water rights for the Pyramid Lake Paiute Tribe (“PLPT”) to be a credit toward the obligations of RSW under Section 1.E.4 of TROA. TMWA holds various amounts of surplus water rights that are ideal for this transaction, as a block of water rights can be aggregated which is comprised of rights TMWA does not otherwise use for municipal supplies or cannot monetize in a normal transaction, but which could be changed through applications to the State Engineer to allow use for water quality purposes under Section 1.E.4 of TROA. Recognizing the delay in TROA implementation that would arise from a lengthy open market purchase process if GBLW were to try to acquire 2,750 AF from private parties, TMWA staff recognized the benefits to TMWA, RSW and its customers from selling this otherwise “dormant” block of water rights.

Under the TMWA Board Policy Regarding Disposal of Surplus TMWA Property, TMWA is authorized to transfer or sell property where the General Manager has certified in writing to the Board that the property has ceased to be necessary for the efficient operation of the Water Systems. Specifically with respect to water rights, the policy provides that “the General Manager or its designee is authorized to sell, exchange or convey water rights with or to any public agency, public utility or the Pyramid Lake Paiute Indian Tribe on such terms deemed in the best

interests of TMWA. Such transfers are exempt from the notice, bidding and appraisal procedures otherwise applicable under the policy.

Attached to this report is a draft Purchase and Sale Agreement between TMWA, the PLPT and GBLW. GBLW is a party to the agreement as they are the recipient of the federal grant being used to fund the purchase for the PLPT. Under the Agreement, TMWA would sell up to 2,750 AF of unexercised, water rights to the Tribe for \$7.0 million. While the purchase price is below market for municipal water rights, the water rights have zero book value, are not part of TMWA's storage rights for TROA, and have great value in the proposed transaction. Additionally, the proposed transfer is to another government and furthers critical public interests in facilitating the accelerated implementation of TROA.

The water rights proposed for transfer consist of permits shown in Exhibits A and B to the agreement, which are blocks of converted irrigation water rights Sierra Pacific Power Company ("Sierra") acquired beginning in the 1950's through the 1970's. These rights were acquired by Sierra, usually at no cost to the utility, and were added to Sierra's large pool of water resources without assignment or commitment to any particular parcel or water service. The total number of rights in this category is over 25,000 acre feet. Beginning in 1982, Rule 7 was implemented by Sierra, which shifted the burden of acquiring water rights from Sierra to individuals who were seeking new water service from Sierra; that practice continues today. With decline in water use over the past decades, a large portion of this pool of water rights is no longer exercised. And since TMWA has met and exceeded its TROA obligations by filing for over 18,000¹ acre feet of water rights to credit store under TROA operations, a significant portion of these older water rights in the original pool will not be exercised for service or storage and will remain in the river for other downstream users to divert. Due to the various TROA constraints on using TMWA's unexercised water rights there is tremendous advantage to selling these rights to PLPT as the transaction: (1) solves the 6,700 AF obligation of RSW; (2) relieves RSW of a potentially significant financial obligation; (3) removes an obstacle which is delaying implementation of TROA; (4) enables TMWA to derive a benefit from water rights which otherwise would remain unexercised and unavailable for future municipal use; and (5) transfers the management obligations of water rights for which the benefit would otherwise accrue to non-TMWA downstream diverters to PLPT for the benefit of RSW's water quality improvement efforts.

The water rights proposed in this transaction are not exercised for service, nor are they part of TMWA's Rule 7 inventory, but rather are excess rights that otherwise will not be monetized and whose transfer will not affect or impair net revenues. These rights are not part of a pledge of property as defined in the Bond Resolutions of the TMWA since only Net Revenues are the basis of monies pledged for payment of bonds. As indicated in the attached certification from the TMWA General Manager, the water rights are not a substantial and useful part of TMWA's Water System required to meet the water demands of TMWA customers nor will the transfer of such water rights to the PLPT impair TMWA's ability to meet its revenue requirements. In accordance with the Property Disposal Policy, TMWA has also conferred with Bond Counsel regarding any potential bond implications and it has been confirmed that the Bond Resolutions would allow TMWA to sell these "surplus water rights" to the Pyramid Lake Paiute Tribe.

¹ Per to TROA, TMWA is obligated to transfer only approximately 9,500 acre feet of irrigation rights for TROA implementation.

**AGREEMENT FOR
PURCHASE AND SALE OF TRUCKEE MEADOWS WATER AUTHORITY
WATER RIGHTS**

THIS AGREEMENT (“Agreement”) is entered into this ___ day of _____, 2015, by and between the TRUCKEE MEADOWS WATER AUTHORITY, a joint powers authority and political subdivision of the State of Nevada (“TMWA”), GREAT BASIN LAND & WATER, a Nevada nonprofit corporation (“GBLW”) and the PYRAMID LAKE PAIUTE TRIBE, a federally recognized Indian Tribe (the “Pyramid Tribe”), collectively referred to herein as the Parties.

RECITALS

A. TMWA, the Pyramid Tribe, the County of Washoe, Nevada (“Washoe County”), the City of Reno, Nevada (“Reno”) and the City of Sparks, Nevada (“Sparks”) are parties to the Truckee River Operating Agreement dated September 6, 2008 (“TROA”).

B. Pursuant to Section 1.E.4 of TROA, Reno, Sparks and Washoe County are obligated to provide 6,700 acre-feet of Truckee River water rights for water quality purposes no later than when TROA takes effect, pursuant to the agreement dated May 2, 2007 between Reno, Sparks, Washoe County and the Tribe (hereinafter the “6,700 Acre-Foot Obligation”).

C. Reno, Sparks and Washoe County will provide the following 3,952.08 acre-feet of Truckee River water rights in partial satisfaction of the 6,700 Acre-Foot Obligation: (1) 3,285.19 acre-feet from street rights-of-way; (2) 213.99 acre-feet that shall be re-conveyed by TMWA to Sparks; and (3) 452.90 acre-feet purchased by TMWA with funds received from the Western Regional Water Commission (“WRWC”) that shall be conveyed by TMWA to Reno, Sparks and Washoe County, as tenants in common each with an one-third undivided interest.

D. In addition to the 3,952.08 acre-feet of Truckee River water rights acquired by Reno, Sparks and Washoe County as set forth in Recital C above, 2,747.92 acre-feet (the “6,700

Acre-Foot Remainder”) are required to fully satisfy the 6,700 Acre-Foot Obligation.

E. The failure to satisfy the 6,700 Acre-Foot Remainder has the potential to delay the implementation of TROA for a substantial period of time.

F. GBLW entered into a Desert Terminal Lakes (“DTL”) Assistance Grant Agreement dated September 19, 2014, with the United States of America, acting through the Department of the Interior, Bureau of Reclamation (the “BOR”), which provides SEVEN MILLION DOLLARS (\$7,000,000.00) for the acquisition of Truckee River water rights to be owned and managed by the Pyramid Tribe as a credit towards the satisfaction of the 6,700 Acre-Foot Obligation (the “DTL Grant Funds”).

G. To further the implementation of TROA, TMWA has offered to sell that certain 2,747.92 acre-feet of Truckee River water rights listed on **Exhibit A** attached hereto and incorporated herein by this reference (the “DTL Water Rights”) to be conveyed directly to the Pyramid Tribe as a credit towards the satisfaction of the 6,700 Acre-Foot Obligation in order to eliminate the 6,700 Acre-Foot Remainder.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TMWA, GBLW and the Pyramid Tribe agree as follows:

TERMS AND CONDITIONS

1. **Purchase and Sale.** Pursuant to the terms and conditions set forth in this Agreement, TMWA agrees to sell and to convey to the Pyramid Tribe the DTL Water Rights listed on **Exhibit A** to this Agreement.

2. **Purchase Terms.**

A. **Purchase Price.** The purchase price for the DTL Water Rights (the “Purchase Price”) shall be equal to SEVEN MILLION DOLLARS (\$7,000,000.00) to be paid

by GBLW from the DTL Grant Funds.

B. **Method of Payment.** The Purchase Price shall be paid to TMWA in cash as follows: (1) one-half at closing, and (2) the remaining one-half upon approval by the State Engineer of the Change Applications (as defined in Section 5 below).

3. **Effective Date.** This Agreement will be in effect as of the date this Agreement is fully signed by the Parties hereto (the “Agreement Date”) following the approval by the Board of Directors of TMWA, the Board of Directors of GBLW, and the Tribal Council of the Pyramid Tribe.

4. **Escrow and Closing.**

A. **Escrow.** Escrow shall be held at the office of Western Title Company located at 2310 S. Carson Street, Suite 5B, Carson City, NV 89701 (the “Escrow Holder”). The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that TMWA, GBLW and the Pyramid Tribe shall mutually execute such additional instructions as may be reasonable and necessary to carry out the provisions of this Agreement.

B. **Conditions Precedent to Closing.** Closing shall be conditioned upon the following conditions precedent:

(1) The Pyramid Tribe has delivered to TMWA, with a copy to GBLW, its written confirmation that (a) the written agreement referenced in Section 9.A. below has been entered into and approved by all parties thereto, and (b) Reno, Sparks and Washoe County have provided the Pyramid Tribe the assignment letters or other proof required by Section 9.B. below.

(2) Counsel for the State of California has provided to TMWA and the Pyramid Tribe, with a copy to GBLW, his written confirmation of the following: (a) receipt of the original Joint Motion of the Pyramid Tribe and the State of California to Dismiss with

Prejudice that certain action entitled *Pyramid Lake Paiute Tribe of Indians v. State of California, et al.*, No. Civil S-81-378, in the United States District Court for the Eastern District of California, that has been executed by counsel for the State of California and counsel for the Pyramid Tribe; and (b) that it is being held by him pursuant to irrevocable instructions from the Pyramid Tribe to file it with the Court on receipt of notice from Escrow Holder that the Closing has occurred, which irrevocable instructions shall terminate when the Agreement Term expires pursuant to Section 11 below should the escrow fail to close; and

(3) GBLW has received written notice from the Pyramid Tribe and TMWA that the Mandatory Signatory Parties to TROA have executed and delivered to the other Mandatory Signatory Parties that certain Stipulation pursuant to which they mutually stipulate and agree that there has been a final resolution, within the meaning of Section 210(a)(1) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Title II of Pub. L. No. 101-618, 104 Stat. 3294 (1990), and within the meaning of Section 12.A.4(g) of TROA of that certain action entitled *United States v. Truckee-Carson Irrigation District, et al.*, No. Civ. R-2987-RCB, in the United States District Court for the District of Nevada, and have filed the Joint Notice of Filing Re: Stipulation of Mandatory Signatory Parties to Truckee River Operating Agreement in that certain action entitled *United States of America, et al. v. The Orr Water Ditch Co., et al., Re: Petition to Modify or Amend Final Decree*, Case No. 3:73-cv-031-LDG, in the United States District Court for the District of Nevada.

C. **Closing Date.** Closing shall occur on or before the first business day which is fifteen (15) days following receipt by GBLW of the written notices set forth in Section 4.B evidencing the satisfaction of the above conditions precedent (the “Closing Date”); provided that the Closing Date shall in no event be later than November 3, 2015, unless the Parties extend the Closing Date by written agreement. If escrow fails to close by November 3,

2015, or by an extended Closing Date, this Agreement shall terminate and the documents and funds deposited into escrow, if any, shall be returned to the depositing party, in which case the Parties shall have no further obligations under this Agreement.

D. **Deliveries into Escrow.** Following the satisfaction of the above conditions precedent, the following shall be delivered into escrow on or before the Closing Date:

(1) **Water Rights Deeds.** GBLW shall prepare and provide to TMWA for execution and delivery into escrow water rights deeds, in the form and substance of Exhibit B attached hereto, conveying the DTL Water Rights directly to the Pyramid Tribe and its successors and assigns, free and clear of all liens, encumbrances and exceptions (the “Water Rights Deeds”). The Water Rights Deeds shall also be executed by and on behalf of the Pyramid Tribe.

(2) **TMWA’s Written Certification.** TMWA shall deposit into escrow its written certification as to the truth and accuracy of the representation set forth below in Section 8.C.

(3) **Funds.** From the DTL Grant Funds, GBLW shall deposit the Purchase Price into escrow, with instructions that Escrow Holder shall hold such funds in a non-interest bearing account.

If for any reason the BOR fails to make the DTL Grant Funds available to GBLW on or before the Closing Date, this Agreement shall terminate and the documents and funds deposited into escrow, if any, shall be returned to the depositing party, in which case the Parties shall have no further obligations under this Agreement.

E. **Closing Costs and Fees.** TMWA and GBLW shall split the cost of the escrow and recording fees. TMWA shall be responsible for transfer taxes, if any. TMWA shall

pay for the State Engineer Fees (pursuant to Section 5.C below). TMWA and GBLW shall each pay its own fees and costs for any special services such as wire transfer fees, overnight mail, certified copies and document preparation. Any other fees or costs shall be allocated between the TMWA and GBLW in accordance with the customary practice of Washoe County, Nevada.

F. **Instructions to Escrow Holder:** Escrow Holder shall be instructed to close escrow as follows:

(1) Record the originals of the Water Rights Deeds and deliver the same to the Pyramid Tribe;

(2) Pay one-half of the Purchase Price to TMWA (less any charges to TMWA, including the State Engineer's Fees pursuant to Section 5 below);

(3) Pay itself its escrow fee; and

(4) Hold the remaining one-half of the Purchase Price in escrow until Escrow Holder is instructed as provided in Section 7 below.

5. **Reports of Conveyance and Change Applications.**

A. GBLW will prepare and file Reports of Conveyance and Applications to Change the Point of Diversion, Place of Use and Manner of Use of the DTL Water Rights to augment instream flows in the Truckee River from their point of diversion to Pyramid Lake for wildlife purposes, including instream flows for fish ("Change Applications") with the Nevada Division of Water Resources ("NDWR") on behalf of the Pyramid Tribe within ten (10) business days of closing.

B. TMWA shall provide information to NDWR as necessary or as may be requested by NDWR, GBLW or the Pyramid Tribe to further the approval of the Change Applications, in a manner consistent with the State Engineer's prior approvals of changes of Orr Ditch Decree water rights with original points of diversion upstream of Derby Dam from

irrigation to instream use.

C. TMWA shall pay for the State Engineer fees to process the Reports of Conveyance and Change Applications (the “State Engineer Fees”) of the DTL Water Rights, which shall be paid from TMWA’s proceeds at closing and disbursed to GBLW by Escrow Holder at the close of escrow.

6. **TMWA’s Obligations to Cure.** In the event that the State Engineer denies or otherwise determines not to approve all or any portion of the DTL Water Rights that are the subject of a Change Application (the “Rejected Water Rights”), GBLW and/or the Pyramid Tribe shall notify TMWA of such denial or determination in accordance with the provisions of Section 12 of this Agreement. TMWA may, upon receipt of such notice, choose to dispute any such denial or disapproval with the State Engineer and pursue approval of such Change Application; provided, however, that if such Change Application has not been approved by the State Engineer within sixty (60) days of TMWA’s receipt of such notice, then TMWA shall replace the Rejected Water Rights with an equal or greater quantity of water rights from those water rights listed on **Exhibit C** attached hereto and by this reference incorporated herein (the “Replacement Water Rights”); provided, however, that if the water rights set forth on **Exhibit C** are insufficient to make up for the Rejected Water Rights, TMWA shall offer other Truckee River water rights with an equal or greater quantity of water rights, which shall be subject to GBLW’s prior independent review and evaluation of their title and equivalent quantity. Concurrently with TMWA’s conveyance of Replacement Water Rights to the Pyramid Tribe, the Pyramid Tribe shall re-convey the Rejected Water Rights to TMWA. GBLW shall prepare and file with the State Engineer Reports of Conveyance and Change Applications on any Replacement Water Rights and TMWA shall pay the State Engineer fees to process such Reports of Conveyance and Change Applications of the Replacement Water Rights. TMWA

shall also be responsible for any fees or costs that may be required for the conveyance of the Replacement Water Rights to the Pyramid Tribe and the re-conveyance of the Rejected Water Rights to TMWA pursuant to the terms of this Agreement.

7. **Release of the Balance of the Purchase Price.** Upon approval by the State Engineer of the Change Applications for the DTL Water Rights, including Change Applications for any Replacement Water Rights, in a manner consistent with the State Engineer's prior approvals of changes of Orr Ditch Decree water rights with original points of diversion upstream of Derby Dam from irrigation to instream use, GBLW shall instruct Escrow Holder to release the balance of the Purchase Price to TMWA less the following amounts to be paid by TMWA therefrom:

- A. The escrow fee for holding the balance of the Purchase Price; and
- B. The amount of the permit fees due to the State Engineer upon approval of the Change Applications, which amount shall be disbursed by Escrow Holder to GBLW.

8. **TMWA's Representations and Warranties.** TMWA represents to GBLW and to the Pyramid Tribe that it has a good faith belief that the following facts and circumstances are true to the best of TMWA's knowledge with the intent that these representations shall survive the close of escrow, but shall expire upon certification by the Nevada State Engineer of the Change Applications.

A. TMWA has full power and authority to enter into this Agreement and to sell, transfer and convey all right, title and interest in and to the DTL Water Rights and the Replacement Water Rights in accordance with this Agreement.

B. TMWA is the legal owner of the DTL Water Rights and the Replacement Water Rights with full right, title and interest therein, and the ability and authority to convey the same to the Pyramid Tribe.

C. There are no banking agreements, will serve letters, or dedications encumbering the DTL Water Rights or the Replacement Water Rights, and the ownership rights to the DTL Water Rights and Replacement Water Rights have not been previously transferred, sold or otherwise assigned by TMWA, and there are no interests of third parties, or claims by third parties to an interest, in the DTL Water Rights or the Replacement Water Rights. Prior to the Closing Date and as a condition precedent to closing, TMWA shall provide to GBLW and the Pyramid Tribe a written certification as to the truth and accuracy of this representation as of the Closing Date.

D. The individual(s) executing this Agreement and the instruments referenced herein on behalf of TMWA have the legal power, right, and actual authority to bind TMWA to the terms and conditions of those documents.

E. Except as to the representations and warranties expressly set forth in this Agreement, and subject to TMWA's obligations to cure set forth in Section 6 of this Agreement, TMWA makes no other representations and warranties as to any aspect of the DTL Water Rights, or Replacement Water Rights, and all such other representations and warranties are expressly excluded.

F. The existence as of the Closing Date of any fact with respect to the DTL Water Rights or the Replacement Water Rights or any portion thereof, which, in GBLW's reasonable discretion, is inconsistent with any of the representations and warranties set forth in A through D, above, shall constitute the failure of a condition precedent to GBLW's and the Pyramid Tribe's obligations under this Agreement as to the purchase of any such DTL Water Rights or Replacement Water Rights.

9. **The Pyramid Tribe's Agreement to Deem Section 1.E.4 of TROA**

Satisfied. Upon recordation of the Water Rights Deeds conveying the DTL Water Rights to Pyramid Tribe, and based upon each of the terms, conditions and obligations of the Parties pursuant to this Agreement, and subject to the following conditions precedent, the Pyramid Tribe deems the 6,700 Acre-Foot Obligation to be fully and completely satisfied for all purposes, including for the implementation of TROA:

A. Reno, Sparks and Washoe County shall have entered into a legally binding and enforceable agreement with the Pyramid Tribe whereby they have agreed to file with the NDWR, on or before December 31, 2015, applications to change the point of diversion, place and manner of use of a minimum of 3,952.08 acre-feet of Truckee River water rights to be used for water quality purposes in accordance with Section 1.E.4 of TROA.

B. Reno, Sparks and Washoe County shall have provided to the Pyramid Tribe copies of assignment letters or other proof from the NDWR showing that Reno, Sparks and Washoe County are the owners of a minimum of 3,952.08 acre-feet of Truckee River water rights that are the subject of such applications to change.

10. **Pyramid Tribe's Obligations Under this Agreement.** The Pyramid Tribe's obligations under this Agreement shall be limited to: delivery of the written confirmation required by Sections 4.B(1) and 4.B(2) and of the written notice required by Section 4.B(3); executing the Water Rights Deeds; taking title to the DTL Water Rights and/or Replacement Water Rights; approving and filing the Change Applications; reconveying any Rejected Water Rights to TMWA pursuant to Section 6; acknowledging satisfaction of the 6,700 Acre-Foot Obligation, subject to the conditions precedent set forth in Section 9 of this Agreement, for purposes of the implementation of TROA; and cooperating in the diligent pursuit of satisfaction

of all of the conditions precedent for TROA to be implemented.

11. **Term.** This Agreement will be in effect as of the Agreement Date and, unless terminated pursuant to the provisions of Section 4.C. or Section 4.D(3) of this Agreement, shall remain in effect until and through that date which is two (2) years from the Closing Date (the “Agreement Term”); provided that, if the State Engineer has not approved the Pyramid Tribe’s Change Applications for the DTL Water Rights or Replacement Water Rights to instream use for the benefit of the lower Truckee River and Pyramid Lake within the Agreement Term, the Parties shall extend the Agreement Term for additional one-year periods until the Change Applications have been approved (the “Extended Term(s)”) by notifying the Escrow Holder in writing of any such extension. The foregoing notwithstanding, except for Sections 8 and 9 of this Agreement, the Agreement Term or any Extended Term shall expire when the Change Applications have been approved and Escrow Holder has released the balance of the Purchase Price to TMWA pursuant to Section 7.

12. **Notices.** Any notices or other communication required or permitted under this Agreement shall be in writing, and shall be (a) personally delivered, (b) sent by certified or registered United States mail, postage prepaid, to the address of the party set forth below, (c) sent by email or facsimile to the email address or fax number of the party set forth below, provided that the executed original thereof is deposited in the mail on the same date as the email or facsimile, or (d) sent by overnight common carrier courier service to the address of the party set forth below. Such notice or communication shall be deemed given when delivered in person, when the email or telecopy is received, in the case of mailed notice it shall be deemed given forty-eight (48) hours following deposit in the United States mail, or, in the case of overnight service, on the business day immediately following the date it was deposited. Notice of change of address shall be given by written notice in the manner detailed in this Section. Such notices

shall be addressed as follows:

GBLW:

Great Basin Land & Water
470 Columbus Ave., Suite 211
San Francisco, CA 94133
Attn: Aaron Peskin, President
Telephone: (415) 986-7070
Facsimile: (415) 296-9533
Email: landh2o@mindspring.com

PYRAMID TRIBE:

Pyramid Lake Paiute Tribe
P.O. Box 256
Nixon, NV 89424
Attn: Tribal Chairman
Telephone: (775) 574-1000
Facsimile: (775) 574-1054
Email: vhawley@plpt.nsn.us

With a copy to:

Don Springmeyer, Esq.
Wolf, Rifkin, Shapiro, Schulman &
Rabkin, LLP
3556 E. Russell Road, 2nd Floor
Las Vegas, NV 89120-2234
Telephone: (702) 341-5200
Facsimile: (702) 341-5300
Email: dspringmeyer@wrslawyers.com

TMWA:

Truckee Meadows Water Authority
1355 Capital Blvd.
P.O. Box 30013
Reno, NV 89520-3013
Attn: General Manager
Telephone: (775) 834-8007
Facsimile: (775) 834-8003
Email: mforee@tmwa.com

With a copy to:

Gordon H. DePaoli
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511
Telephone: (775) 688-3010
Facsimile: (775) 688-3088
Email: gdepaoli@woodburnandwedge.com

13. **No Broker's Commission.** Each party represents to the other that it has not contracted with any broker or finder with regard to this transaction, and each agrees to indemnify and defend the other and hold the other harmless from and against all liability, claims, demands, damages and costs of any kind arising from or connected with any broker's or finder's type of fee, commission or charges claimed to be due any person arising from such party's conduct with respect to this transaction.

14. **Binding on Successors.** This Agreement shall be binding not only upon the

Parties but also upon their heirs, executors, administrators, personal representatives, assigns, and all other successors in interest.

15. **Good Faith and Fair Dealing.** The Parties shall implement the provisions of this Agreement in good faith and shall observe all standards of fair dealing with respect thereto.

16. **Remedies Upon Default.** If TMWA defaults in the performance of any of TMWA's obligations under this Agreement, GBLW and the Pyramid Tribe will, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against TMWA. In addition, and not by limitation, the Pyramid Tribe shall have the right to seek compliance from the Orr Ditch Court.

17. **Miscellaneous.** If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and inoperative, and provided that the fundamental terms and conditions of the Agreement (including without limitation, Sections 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11) remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties. This Agreement represents the entire agreement of the Parties and may not be amended except by a writing signed by each party hereto. The obligations, covenants, indemnifications, representations, warranties and remedies set forth in this Agreement shall not merge with transfer of title but shall remain in effect. Each party shall execute and deliver or cause to be executed and delivered all instruments reasonably required to convey the DTL Water Rights to the Pyramid Tribe, and to vest in each party all rights, interest and benefits intended to be conferred by this Agreement. In the event of a dispute the prevailing party shall be entitled to payment of its reasonable attorneys fees and costs in negotiating, resolving, arbitrating or litigating the dispute. TMWA acknowledges that GBLW is entering into this Agreement in its own right and not as an agent of any governmental agency or entity.

18. **Time of Essence.** Time shall be of the essence with respect to the performance of the Parties' obligations under this Agreement.

19. **Interpretation.** The Parties agree that they were equally influential in preparing and negotiating this Agreement, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Agreement. Therefore, the Parties agree that no presumption should arise construing this Agreement more unfavorably against any one party.

20. **Significance of Recitals.** The Recitals to this Agreement are integral and operative provisions of this Agreement and are incorporated in and made a part of this Agreement.

21. **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

22. **Counterparts.** This Agreement may be executed in counterparts and is binding when all counterpart signatures have been assembled and attached to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement below.

GREAT BASIN LAND AND WATER

By: _____
Aaron Peskin, President

Date: _____

TRUCKEE MEADOWS WATER AUTHORITY

By: _____
Mark Foree, General Manager

Date: _____

PYRAMID LAKE PAIUTE TRIBE

By: _____
Vinton Hawley, Chairman

Date: _____

EXHIBIT A

DTL WATER RIGHTS

The following water and water rights situate in the County of Washoe, State of Nevada, as described in the permits approved by the State Engineer, Nevada Division of Water Resources:

Permit No./Certificate No.	Claim No.	AFA
Permit No. 66161	DTR-319	552.00 AFA
Permit No. 16768 / Cert. No. 4580	DTR-388	106.80 AFA
Permit No. 66671	DTR-522	63.90 AFA
Permit No. 66585	DTR-611	301.60 AFA
Permit No. 66969	DTR-611	5.16 AFA
Permit No. 42729 / Cert. 12599	DTR-614	264.74 AFA
Permit No. 68030	DTR-615	240.00 AFA
Permit No. 66563	DTR-618	95.32 AFA
Permit No. 42734 / Cert. 12798	DTR-618	297.00 AFA
Permit No. 66588	DTR-614	181.20 AFA
Permit No. 66573	DTR-617	160.00 AFA
Permit No. 66565	DTR-608	262.00 AFA
Permit No. 66774	DTR-302 & 303	218.2 AFA
TOTAL:		2,747.92 AFA

EXHIBIT B

FORM OF DEED

NO APN

RECORDING REQUESTED BY:

Western Title Company

Escrow No. _____

WHEN RECORDED MAIL TO:

Pyramid Lake Paiute Tribe

P.O. Box 256

Nixon, NV 89424

Attn: Chairman, Tribal Council

WATER RIGHTS DEED

THIS INDENTURE, made and entered into this ___ day of _____, 201_, by and between TRUCKEE MEADOWS WATER AUTHORITY, a political subdivision of the State of Nevada (hereinafter referred to as “Grantor”) and the PYRAMID LAKE PAIUTE TRIBE, a federally recognized Indian Tribe (hereinafter referred to as “Grantee”).

WITNESSETH:

That said Grantor, in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the Grantee, and to its successors and assigns forever, all right, title and interest of Grantor in and to that certain **Sixty-Three and Nine Tenths (63.9) acre-feet** annually (AFA) of decreed vested water rights in and to the waters of the Truckee River and its tributaries, situate in the County of Washoe, State of Nevada, as described in that certain **Permit No. 66671** approved by the State Engineer, Nevada Division of Water Resources, as such water and water rights are more particularly set forth and described in **EXHIBIT A**, attached hereto and made a part hereof.

To have and to hold the said water and water rights, ditch and ditch rights, together with the tenements, hereditaments and appurtenances thereunto belonging or appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof unto the Grantee, its successors and assigns, forever.

Grantee does hereby assume the payment of all water master fees and charges that may hereafter become due and payable in respect to said rights referred to herein by reason of the Decree in The United States of America, Plaintiff, vs. Orr Water Ditch Company, et al., Defendants, the same in Equity Docket No. A-3 in the District Court of

the United States in and for the District of Nevada.

IN WITNESS WHEREOF, the parties hereto have caused this Water Rights Deed to be executed as of the day and year first above written.

GRANTOR:

TRUCKEE MEADOWS WATER AUTHORITY

By: _____
Mark Foree, General Manager

GRANTEE:

PYRAMID LAKE PAIUTE TRIBE

By: _____
Vinton Hawley, Chairman

STATE OF NEVADA _____)
) **ss.**
COUNTY OF _____)

On this _____ day of _____, 201_, personally appeared before me, a Notary Public, _____, who acknowledged to me that she executed the within instrument freely and voluntarily and for the uses and purposes therein stated.

NOTARY PUBLIC

My commission expires: _____

STATE OF NEVADA _____)
) **ss.**
COUNTY OF _____)

On this _____ day of _____, 201_, personally appeared before me, a Notary Public, _____, who acknowledged to me that she executed the within instrument freely and voluntarily and for the uses and purposes therein stated.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT A TO FORM OF DEED

Permit No. 66671 (Claim No. 522)

All those certain decreed vested water rights in and to the waters of the Truckee River being all of **Permit No. 66671**, amounting to **Sixty-Three and Nine Tenths (63.9) acre-feet per annum**.

Said water being the water and water rights, ditch and ditch rights, heretofore appropriated under **Claim No. 522** (with an 1865 priority date), delivered by the EASTMAN DITCH heretofore allocated to JOHN B. MATLEY, ANNIE M. MATLEY, SUCCESSORS TO MRS. MARTHA STEINBERGER, in that certain action entitled The United States of America, Plaintiff, vs. Orr Water Ditch Company, et al., Defendants, the same in Equity Docket No. A-3 in the District Court of the United States in and for the District of Nevada, formerly appurtenant to 14.2 acres in the NE1/4 NE1/4 of Section 18, T19N, R20E, MDB&M, Washoe County, Nevada.

Permit No. 66671, approved on March 27, 2001, by the State Engineer, Division of Water Resources, State of Nevada, changed the point of diversion and place of use of the waters of the Truckee River as heretofore granted under Permit No. 23639, Certificate No. 6494, which changed the point of diversion of Permit 21023, which changed the point of diversion, place of use and manner of use of a portion of Claim No. 522, Truckee River Decree.

Said rights authorizing delivery of a prorata share of the diversion rate not to exceed **63.9 acre feet** per annum, more or less, together with the right to change the point of diversion, place of use and manner of use thereof.

Said water rights are stipulated on the Nevada Division of Water Resources Drawing No. TR-053 as Permit 21023, being a portion of Truckee River Claim No. 522.

Drawing No. TR-053 was signed on 03/03/99 by the Nevada State Engineer and on 03/05/99 by the Federal Water Master, respectively, and is on file at the State of Nevada Division of Water Resources in Carson City, Nevada.

EXHIBIT C

WATER HELD IN RESERVE FOR REPLACEMENT

Area A on TR-032 Map	DTR-319	26.24 AFA
Permit No. 46363 / Cert. No. 12616	DTR-191	44.27 AFA
Permit No. 66756	DTR-404	29.44 AFA
Permit No. 66692	DTR-510	55.76 AFA
Permit No. 66675	DTR-519	67.00 AFA
Permit No. 68160 (App. 74083)	DTR-74	112.79 AFA
<hr/>		
	TOTAL:	335.50 AFA

TRUCKEE MEADOWS WATER AUTHORITY

RESOLUTION NO. 232

A RESOLUTION APPROVING THE SALE OF UP TO 2,750 ACRE FEET OF SURPLUS WATER RIGHTS TO THE PYRAMID LAKE PAIUTE TRIBE TO FACILITATE ACCELERATED IMPLEMENTATION OF THE TRUCKEE RIVER OPERATING AGREEMENT AND AUTHORIZING THE GENERAL MANAGER TO NEGOTIATE AND EXECUTE DOCUMENTS NECESSARY TO COMPLETE THE TRANSACTION

WHEREAS, On May 23, 1989 the Pyramid Lake Paiute Tribe (“PLPT”) and Sierra Pacific Power Company (“Sierra”) entered into a Preliminary Settlement Agreement which proposed the use of Lake Tahoe and other federal owned storage reservoirs in the Truckee River Basin in California for storage of water available under water rights then owned by Sierra.

WHEREAS, In November 1991, Congress enacted and the President signed the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Title II, Public Law 101-618, 32 Stat. 3294, 3306 (“Settlement Act”) which, among other things, laid a foundation for settlement of long-standing disputes and litigation over the rights and uses of water in the Truckee and Carson River basins, provided for an equitable apportionment of the waters of the Truckee and Carson Rivers and Lake Tahoe between California and Nevada, and authorized modification of the purposes and operation of federal reclamation project facilities. The Settlement Act also set out the criteria for the five Mandatory Signatory Parties (United States, California, Nevada, PLPT and the Truckee Meadows Water Authority (the “Authority”), as successor to Sierra) to negotiate an operating agreement for, among other things, implementation of the terms and conditions of the Preliminary Settlement Agreement.

WHEREAS, after decades of negotiations, on September 6, 2008, the Mandatory Signatory Parties and others, including the County of Washoe, Nevada (“Washoe County”), the City of Reno, Nevada (“Reno”) and the City of Sparks, Nevada (“Sparks”) executed and entered into the operating agreement known as the Truckee River Operating Agreement (“TROA”).

WHEREAS, when implemented, TROA will provide substantial benefits to Authority, including, without limitation, i) recognizing a resource to support an annual demand of 119,000 acre feet; ii) providing a minimum of 39,500 acre feet of enhanced drought year water storage in Stampede and other Truckee River reservoirs that would ensure drought supplies for the Authority; iii) protecting Authority’s existing water supply by resolving interstate allocation of water between Nevada and California and guaranteeing more than 80 percent of water on the Truckee River to Nevada diversions; iv) resolving outstanding litigation; v) providing enhanced Truckee River flows for endangered species; vi) providing protection for Truckee River water rights holders. When TROA is effective a framework will be established which provides flexibility for reservoir operations to allow parties to exchange water to accommodate emerging

issues without injuring the water rights on which they rely and perhaps avoiding future regulatory uncertainties surrounding the use of the Truckee River.

WHEREAS, Pursuant to Section 1.E.4 of TROA, Reno, Sparks and Washoe County are obligated to provide 6,700 acre-feet of Truckee River water rights for water quality purposes no later than when TROA takes effect, pursuant to the agreement dated May 2, 2007 between Reno, Sparks, Washoe County and the Tribe (hereinafter the “6,700 Acre-Foot Obligation”).

WHEREAS, Reno, Sparks and Washoe County hold and are prepared to provide approximately 3,959.78 acre-feet of Truckee River water rights in partial satisfaction of the 6,700 Acre-Foot Obligation, leaving approximately 2,740.22 acre-feet (“6,700 Acre Foot Remainder”) required to fully satisfy the 6,700 Acre-Foot Obligation.

WHEREAS, the inability to secure the remaining 2,740.22 acre feet has the potential to delay the implementation of TROA for a substantial period of time.

WHEREAS, Great Basin Land and Water (“GBLW”) entered into a Desert Terminal Lakes Assistance Grant Agreement dated September 19, 2014, with the United States of America, acting through the Department of the Interior, Bureau of Reclamation which provides Seven Million Dollars (\$7,000,000.00) for the acquisition of Truckee River water rights to be owned and managed by the Pyramid Tribe as a credit towards the satisfaction of the 6,700 Acre-Foot Obligation.

WHEREAS, Authority holds a block of surplus water rights which the Authority cannot make available for new water service commitments, or monetize in a normal transaction but which could be changed through applications to the State Engineer to allow use for water quality purposes to satisfy the Remaining 6,700 Acre-Foot Obligation.

WHEREAS, pursuant to the Authority’s surplus property disposal policy, the General Manager or its designee is authorized to sell and convey water rights not otherwise necessary for the operations of the Water System to the Pyramid Lake Paiute Tribe on such terms deemed in the best interests of TMWA. Such transfers are exempt from the notice, bidding and appraisal procedures otherwise applicable under the policy.

WHEREAS, the General Manager has certified in writing to the Board that the Truckee River water rights listed on **Exhibit A** attached hereto and incorporated herein by this reference (the “DTL Water Rights”) are not necessary for the operation of the system, and that it is in the best interests of the Authority to sell the DTL Water Rights to the Pyramid Lake Paiute Tribe as a credit towards the 6,700 Acre-Foot Obligation in order to facilitate the early implementation of TROA.

WHEREAS, Authority staff has conferred with bond counsel and determined there is no adverse potential bond implications with proceeding with the transfer and disposition of the DTL Water Rights.

WHEREAS, the transfer of the Property is exempt from the bidding procedures set forth in TMWA's property disposal policy and, to the extent applicable, in NRS 268.062 and NRS 244.082.

WHEREAS, to facilitate and accelerate further the implementation of TROA and avoid the delay in TROA implementation if GBLW were to seek to acquire water rights from private parties, and to avoid the impact such an acquisition might have on water supplies which can be available for new service commitments, the Authority desires to sell up to approximately 2,750 acre-feet of the DTL Water Rights to the Pyramid Tribe for \$7,000,000, which DTL Water Rights shall act as a credit towards the satisfaction of the 6,700 Acre-Foot Obligation in order to eliminate the 6,700 Acre-Foot Remainder.

WHEREAS, the sale of the DTL Water Rights to accelerate and facilitate the implementation of TROA on the terms indicated above is in the best interests of Authority and is appropriate and justified.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE TRUCKEE MEADOWS WATER AUTHORITY DOES RESOLVE:

The transfer through sale of the DTL Water Rights to the Pyramid Lake Paiute Tribe to facilitate the accelerated implementation of the Truckee River Operating Agreement, upon the terms and conditions set forth in the staff report presented to the Board is hereby approved. The General Manager is authorized to negotiate and execute an agreement and such other documents reasonably necessary to effectuate the sale consistent with the terms and conditions outlined by staff and as approved by the Board.

Upon motion of _____, seconded by _____, the foregoing Resolution was passed and adopted this 19th day of August, 2015, by the following vote of the Board:

Ayes: _____

Nays: _____

Abstain: _____ Absent: _____

Approved this 19th day of August, 2015

Chairman

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9. Permit No. 42734 / Cert. 12798	DTR-618	297.00
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12. Permit No. 66565	DTR-608	262.00
13. Permit No. 66774	DTR-302 & 303	218.20
TOTAL:		2,747.92

REPLACEMENT RIGHTS, IF NEEDED, FOR LINES 1-13

1. Area A on TR-032 Map	DTR-319	26.24
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3. Permit No. 66756	DTR-404	29.44
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5. Permit No. 66675	DTR-519	67.00
6. Permit No. 68160 (App. 74083)	DTR-74	112.79
TOTAL:		335.50

DTR-Decreed Truckee River water right



TO: TMWA Board of Directors
FROM: Mark Foree, General Manager
DATE: August 3, 2015
SUBJECT: **Certification Pursuant to Surplus Property Disposal Policy
Surplus Water Rights Identified For Sale to Pyramid Lake Paiute Tribe**

In accordance with the “Policy Regarding Disposal of Surplus TMWA Property” originally adopted by the Board on July 10, 2002 as revised through adoption by the Board on June 18, 2014, the General Manager hereby certifies to the Board of the Truckee Meadows Water Authority that the water rights shown in Exhibit A attached hereto are not necessary for the efficient operation of the Water Systems such that they may properly be considered surplus property for purposes of the TMWA disposal policy. The subject water rights consist of historic rights acquired by Sierra Pacific that are and will remain unexercised for service or storage, are not used to support water service or will serve commitments, are not part of TMWA’s Rule 7 inventory for future service, and essentially remain in the river unexercised by TMWA flowing past TMWA diversions for other non-TMWA downstream users to divert.

Dated: _____, 2015

By: _____
Mark Foree, General Manager

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