




McDONALD·CARANO·WILSON^{PC}

TO: Truckee Meadows Water Authority Board of Directors

THRU: Mark Foree

FROM: Michael Pagni, Esq. 

DATE: December 12, 2016

RE: Agenda Item # 6: Discussion and Action on possible settlement of Donner Lake litigation and certain TROA related litigation and purchase of Truckee Carson Irrigation District's interest in the Donner Lake water right and Donner Lake facilities for a purchase price of up to \$17,445,000, and request for Board approval to authorize the General Manager to negotiate and execute an agreement for such purchase and documents necessary to effectuate settlement

RECOMMENDATION

Staff recommends the Board approve the proposed settlement of the Donner Lake litigation and various TROA related litigation with the Truckee Carson Irrigation District ("TCID") and the purchase of TCID's Donner Lake Assets for the appraised value of \$17,445,000, less credits for various dam improvements previously performed by TMWA, and authorize the General Manager to negotiate and execute a purchase agreement and related settlement documents to implement such agreement.

PROPOSED MOTION

Proposed Motion: I move to approve the proposed settlement of the Donner Lake litigation and various TROA related litigation with the Truckee Carson Irrigation District and the purchase of TCID's Donner Lake Assets for the appraised value of \$17,445,000, less credits for various dam improvements previously performed by TMWA on the terms in the proposed Purchase and Sale Agreement, and authorize the General Manager to negotiate and execute a purchase agreement on substantially similar terms and related settlement documents to implement such agreement.

DISCUSSION

After extensive negotiations, TMWA staff and TCID staff have reached mutually agreeable terms for the settlement of long standing litigation over the ownership and operations of Donner Lake, various lawsuits challenging the Truckee River Operating Agreement ("TROA") and the implementation of TROA, the terms of which provide for TMWA's acquisition of TCID's Donner Lake assets in accordance with TMWA's obligations to do so



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under TROA. Background on the outstanding litigation and proposed settlement terms is set forth below.

A. Donner Lake Litigation

This litigation involves disputes between TMWA and TCID over their respective rights and obligations regarding the Donner Lake water rights, easements and related facilities.

In May of 1943, Sierra Pacific Power Company ("Sierra") and TCID acquired from the Donner Lake Company ownership of the dam and reservoir at Donner Lake and the right to store water in Donner Lake, as tenants-in-common. The Donner Lake Water Right allows for the impoundment of approximately 9,500 acre feet of water each year and the right to use Donner Lake as a reservoir for upstream storage. At that same time, Sierra and TCID entered into an agreement for the operation, maintenance, cost-sharing and use of Donner Lake Water, which requires, among other things, Sierra (now TMWA) and TCID to operate the dam and controlling works at Donner Lake.

In 1994, Sierra, the Pyramid Lake Paiute Tribe of Indians, the United States and the Washoe County Water Conservation District executed an Interim Storage Agreement, as allowed by Section 205 (b) (3) of Public Law 101-618, the Truckee- Carson –Pyramanid LakeWater Rights Settlement Act, allowing Sierra to store Donner Lake water not used to meet the demands of its customers in normal years in Boca and Stampede and establish "credit water." The agreement provided that if a drought situation existed in a year, the credit water could be used by TMWA for drought purposes; or, if a drought situation did not exist, then a portion of such credit water could be converted to fish credit water on September 1 to be used by the Tribe for the benefit of the Pyramid Lake Fishery.

The 1989 Preliminary Settlement Agreement between Sierra and the Pyramid Lake Paiute Tribe formed the foundation for Public Law 101-618, the Truckee-Carson/Pyramid Lake Water Rights Settlement Act, and the basis for the Truckee River Operating Agreement. Because the Truckee River Operating Agreement must implement the provisions of the Preliminary Settlement Agreement, it assumes, as did the Preliminary Settlement Agreement, that TMWA has the absolute right to use one-half of the water provided by the Donner Lake storage each year.

In 2001, Sierra conveyed its interest in the 1943 Indenture, the 1943 Operating Agreement, the Interim Storage Agreement, TROA and the Donner Lake Water right to TMWA.

For some time, TCID and Sierra, and now TCID and TMWA, have had differences concerning their respective rights to the Donner Lake Water Right and their respective rights and obligations under the 1943 Indenture and the 1943 Operating Agreement, including whether the 1943 Operating Agreement is presently valid and enforceable. On August 31, 2006, TCID filed an action against Sierra and TMWA in the Superior Court of the State of California, County of Nevada, Case No. T-06-2239C, seeking \$50 million in alleged damages and enforcement of the 1943 Operating Agreement. TMWA filed a cross-complaint seeking partition of the Donner



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Lake Water right and monetary relief related to expenses incurred to comply with certain requirements imposed by the California Division of Safety of Dams. The Nevada County Superior Court bifurcated the litigation into two phases: the partition phase and the breach of contracts/damages phase.

On June 9, 2010, the court entered an Interlocutory Judgment in favor of TMWA, partitioning the Donner Lake Water right. That judgment is now on appeal. Once a ruling is issued on the appeal, the trial court will hear TCID's breach of contract claim against TMWA and TMWA's claims against TCID for breach of contract and contribution damages. TMWA and TCID have made several prior attempts to explore possible settlement over the years, without success.

B. TROA Related Litigation

TMWA is a party to the Truckee River Operating Agreement executed on September 6, 2008. TCID has filed various proceedings and actions against TMWA and other parties to TROA, which challenge actions to implement TROA and TROA itself, including the following litigation:

(1) *Churchill County, City of Fallon, and Truckee-Carson Irrigation District v. United States*, 3:09-CV-00170, in the United States District Court for the District of Nevada. This litigation challenges the TROA final environmental impact statement and promulgation of TROA as a federal regulation.

(2) *Truckee-Carson Irrigation District, et al., Appellants v. Truckee Meadows Water Authority, et al., Appellees*, in the United States Court of Appeals for the Ninth Circuit, Case Nos. 14-17353, 14-17368. This case involves a motion filed on November 17, 2008 by the United States, State of Nevada, State of California, TMWA, the Washoe County Water Conservation District, Pyramid Lake Paiute Tribe, and City of Fernley in federal court in Reno, Nevada seeking to modify the Orr Ditch Decree to accommodate changes required by the TROA. TMWA prevailed in this litigation at the District Court, and the case is currently on appeal to the Ninth Circuit Court of Appeals.

(3) *Truckee-Carson Irrigation District, et al., Appellants v. Truckee Meadows Water Authority, et al., Appellees*, in the United States Court of Appeals for the Ninth Circuit, Case No. 14-16019. This litigation involves disputes over State Engineer Ruling No. 6035, which involves storage of TMWA water rights in upstream reservoirs. TMWA prevailed in this litigation at the District Court, and the case is currently on appeal to the Ninth Circuit Court of Appeals.

(4) *Truckee-Carson Irrigation District, et al., Appellants v. State Water Resources Control Board, Appellee, and Truckee Meadows Water Authority, et al., Real Parties in Interest*, in the Court of Appeal of the State of California, Third Appellate District, Case No.: C076849. This litigation involves appeals of administrative proceedings before the California Water Resources Control Board regarding several change applications and



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petitions filed in 2007 seeking to modify the storage licenses for Boca, Independence, Prosser and Stampede reservoirs necessary to facilitate the implementation of TROA. After several years of litigation, the California Water Resources Control Board issued its final order approving the changes sought by TMWA and other co-parties on October 16, 2012. TCID has appealed that decision, and the appeal is currently pending before the California Court of Appeals.

Although TMWA has been successful at every stage in this litigation to date, the litigation remains ongoing in various appellate courts.

C. TMWA Obligations to Purchase Donner Lake Under TROA.

TROA imposes various requirements on TMWA to develop additional municipal and industrial water supplies for new water service. Among those requirements, TMWA's acquisition of TCID's Donner Lake Assets is explicitly called out under TROA. Section 4.C.1 of TROA provides as follows:

Section 4.C.1 Development of Additional Municipal and Industrial Water Supplies.

Water Authority [TMWA] shall use its best efforts to implement the following measures, to the extent legally, technically and economically feasible, to help meet the water demands of customers:

- (a) The development of up to 15,950 acre-feet annually of groundwater from the Truckee Meadows groundwater basin, which includes the 12,616 acre-feet identified in the PSA.
- (b) The acquisition and utilization of the rights currently owned by 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.

Water Authority may issue new water service commitments based on groundwater rights referenced in this Section 4.C.1 and which were not previously committed, and Donner Lake rights, without acquiring additional surface water rights otherwise required by Section 4.B.2, provided that normal year water use associated with such commitments shall be included within the 119,000 acre-feet referenced in Section 4.B.2(b).

TROA thus requires TMWA to use "its best efforts" to acquire the TCID Donner Lake Assets, and to use such assets for drought storage and new water service commitments. The acquisition of TCID's Donner Lake Assets under the proposed settlement agreement not only provides benefits related to the settlement of long standing, expensive litigation, it provides valuable drought protection and satisfies obligations of TMWA to acquire such assets and develop additional municipal supplies to help meet the water demands of customers as contemplated by TROA.

D. Proposal to Settle the Donner Lake Litigation, TROA Related Litigation, and Acquisition of TCID's Donner Lake Assets.



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In January 2008, there was a significant breach in TCID's Truckee Canal in Fernley, Nevada. Property owners affected by the breach sued TCID in federal and state courts in Nevada, seeking compensation for damages incurred as a result of floodwaters from the TCID canal. Following the breach, the court imposed a restriction upon the flow in the Truckee Canal of 350 cubic feet per second, limiting the amount of water TCID can deliver to its electors.

TCID began exploring options to sell the TCID Donner Lake Assets and use the proceeds of such sale to settle the Canal Breach litigation. In 2014, TCID began exploring a possible sale of the TCID Donner Lake assets to the Pyramid Lake Paiute Tribe. As part of the due diligence in those discussions, an appraisal of the TCID Donner Lake Assets was secured by TCID and the Tribe, as it was contemplated federal funds could be used for all or part of the purchase price and fair market value needed to be established to support the use of any public funds. The appraisal concluded that the fair market value of the TCID Donner Lake assets was \$17,445,000, and TMWA believes that the appraisal remains an accurate representation of the current market value. Given that TMWA owns the other half of the Donner Lake assets, there is an additional inherent value to TMWA in acquiring 100% ownership and control of the assets.

TCID's discussions with the Tribe eventually fell through. In November 2015, TCID and TMWA began exploring terms for a possible settlement of the outstanding litigation between TMWA and TCID, the terms of which would include the transfer of TCID's Donner Lake assets to TMWA. After extensive negotiations, TCID and TMWA staff have reached an agreement in principal on the terms set forth in the proposed Purchase and Sale Agreement, attached to this staff report. Under the proposed settlement:

1. TCID and TMWA will settle and resolve all litigation claims between them with respect to the Donner Lake Action, including the Interlocutory Judgment Appeal, and with respect to the TROA Related Litigation.
2. TCID will engage in a good faith effort to procure the dismissal of TROA Related Litigation by all other remaining parties to those lawsuits, including the City of Fallon and Churchill County.
3. TCID agrees to not file any new litigation or challenges, legal or otherwise, to the adoption, validity, legality or enforceability of any of TROA's provisions.
4. TCID will sell all of TCID's Donner Lake Assets to TMWA for \$17,445,000. TMWA shall receive a \$261,200 credit against the purchase price in consideration for Safety of Dams improvements made by TMWA to the Donner Lake dam from 2004-2005, for a net purchase price of \$17,183,800.
5. TMWA agrees to engage in a good faith effort to procure consents from other TROA parties to allow TCID to become a party to TROA.
6. TMWA agrees TCID may seek to obtain the agreement of the United States and other appropriate TROA parties concerning upstream storage of Newlands Project Credit Water and Other Credit Water pursuant to the provisions of TROA, and modification of release dates of Newlands Project Credit Water. TMWA agrees it will not oppose such requests provided they do not result in injury to or conflict with TMWA's water rights, or TMWA's rights under TROA or the Orr Ditch Decree.



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7. The Agreement is conditional upon the approval of the TMWA Board, TCID Board, and TCID Electors.

The TCID Board of Directors has scheduled a special meeting at 1:00 p.m. on December 16, 2015, to discuss the approval of the proposed settlement agreement with TMWA. TCID has also scheduled a special election of the members of the irrigation district to be held on January 4, 2016 to vote on whether TCID should sell the TCID Donner Lake assets to settle the Canal Breach litigation, Donner Lake litigation and TROA related litigation.

If the agreement is approved by the TMWA Board, TCID Board and TCID electors, a closing on the purchase of the TCID Donner Lake assets is anticipated to occur on or before February 1, 2016.

CONCLUSION

TMWA is authorized under the Cooperative Agreement to acquire water rights, water supplies and water facilities, and to acquire and develop projects for the implementation, development, and storage of water supplies. Staff believes the Agreement is in the best interests of TMWA and its customers and strongly recommends approval. The Agreement provides for the end of long standing, expensive litigation and legal challenges to TROA and TROA's implementation. The Agreement dismisses TCID's claims against TMWA alleging \$50 million in damages relating to Donner Lake operations and resolves long standing disputes over operation, storage and utilization of the Donner Lake assets. The Agreement will make TMWA the owner of 100% of the Donner Lake assets, granting TMWA sole control over operations and avoiding risks and complications of a third party acquiring TCID's interest in those assets. The Agreement facilitates the satisfaction of TMWA's obligations under TROA to acquire the Donner Lake assets from TCID, all while providing the ancillary (but significant) benefits provided by the litigation settlement. Most notably, the Agreement provides enhanced drought protection and facilitates TMWA's development of additional municipal supplies as required by TROA. TMWA staff believes the net purchase price of \$17,183,000 represents a fair value for the assets being acquired.

TMWA will receive a total of approximately \$7 million from the sale of water rights to the Tribe to facilitate the satisfaction of Reno, Sparks and Washoe County's water quality obligations and expedite the implementation of TROA. With those funds and other capital reserves TMWA currently has available, TMWA has sufficient capital to complete this transaction without any adverse effects on its financial position.

- End of Memorandum -

**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

By and Between

**TRUCKEE MEADOWS WATER
AUTHORITY, PURCHASER**

and

**TRUCKEE-CARSON IRRIGATION
DISTRICT, SELLER**

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EXHIBITS:

Exhibit No.	Description
	Stipulation resolving Donner Lake Action and the Interlocutory Judgment Appeal
	Order resolving Donner Lake Action and the Interlocutory Judgment Appeal
	_____ re TROA Related Litigation
	_____ re TROA Related Litigation

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (“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”), and the TRUCKEE-CARSON IRRIGATION DISTRICT, a Nevada irrigation district and political subdivision of the State of Nevada (“TCID”).

RECITALS

A. TMWA is a joint powers authority established under Nevada Revised Statutes, Chapter 277 by a cooperative agreement among the City of Reno, Nevada, the City of Sparks, Nevada, and the County of Washoe, Nevada.

B. TCID is a Nevada irrigation district organized pursuant to and for the purposes provided in Nevada Revised Statutes Chapter 539.

C. By deed dated May 3, 1943, between the Donner Lake Company and Sierra Pacific Power Company ("Sierra") and TCID (the "1943 Indenture"), the Donner Lake Company conveyed to Sierra and TCID as tenants-in-common, among other things and subject to certain limitations, the following:

All of the right, title and interest of the [Donner Lake Company] in and to all waters now or hereafter in, of or pertaining to Donner Lake and its tributaries, situate in Nevada and Placer Counties, in the State of California

The water right conveyed is referred to herein as the "Deeded Donner Lake Water Right."

D. The Deeded Donner Lake Water Right was established and vested before 1914 and allows for the impoundment of approximately 9,500 acre feet of water each year in the Donner Lake Storage.

E. The 1943 Indenture provided that the Deeded Donner Lake Water Right was

conveyed with the express limitation that it was "subject to the right of the [Donner Lake Company], its successors and assigns, to divert and use such amount of said waters as shall be necessary for domestic use upon or in connection with the lands and the Resort now owned by the [Donner Lake Company], its successors, grantees and assigns, adjacent to or in the vicinity of Donner Lake." The rights retained by the above provision are referred to herein as the "Reserved Donner Lake Water Right."

F. The 1943 Indenture also conveyed to Sierra and TCID as tenants-in-common, among other things, the following:

1. The dam and controlling works situate in or on Donner Creek in said County of Nevada, near the lower end of said Donner Lake, together with the dam site appertaining thereto, and the exclusive rights to re-build, reconstruct, alter and/or replace said dam and controlling works (at approximately the present site thereof) either with like or different materials, and to maintain and operate the same, subject to the conditions hereof;

2. All such permanent easements and rights over, upon or across the lands of the [Donner Lake Company], its successors or assigns, surrounding, underlying or adjacent to Donner Lake and/or Donner Creek, in said Counties of Placer and Nevada, as may be necessary or convenient for the construction, maintenance and operation of a channel, both above said dam and controlling works and below the same, (which shall follow the general course of the present channel), to such depth as to allow the proper draining and diverting of the waters of Donner Lake into Donner Creek; and also all such other rights as are or may be necessary for the convenient operation, use and maintenance of said dam and controlling works and channel and the use of said Donner Lake as a reservoir of such capacity as [Sierra and TCID] may determine; and

3. A perpetual easement and right of way for the construction, operation and maintenance of a canal over and through the following described property of the [Donner Lake Company], situate in said Counties of Placer and Nevada, to-wit:

Lot 5, NE 1/4 of SE 1/4 and SE 1/4 of SE 1/4 of Section 18; SW 1/4 of NW 1/4 and NW 1/4 of SW 1/4 of Section 17, all in township 17 North, Range 16 East, M.D.B.&M.,

sufficient, in the judgment of [Sierra and TCID], for use as a diversion canal to divert the waters of Cold Stream into Donner Lake; it being understood that the

location of said easement and right of way shall be selected by [Sierra and TCID], their successors or assigns, and notice thereof shall be given to the [Donner Lake Company], not later than December 31, 1943; provided that the maximum width of said canal, measured at a height of four feet above the bottom thereof, shall be twenty-five (25) feet, together with such additional areas adjacent thereto as may be required for bank slopes, spoil banks and necessary clearance and rights for construction, operation and maintenance thereof, it being understood that [Sierra and TCID], at their own expense, shall, so far as practicable, smooth down said spoil bank.

The facilities, easements and rights referred to in this recital are referred to herein as the "Donner Lake Facilities and Easements."

G. The 1943 Indenture also conveyed to Sierra and TCID as tenants-in-common, among other things, the following:

The right to use said Donner Lake perpetually as a reservoir for the storage of water and to release water therefrom, including such easements of overflow and otherwise as may be necessary or proper to the exercise of such rights.

The right referred to in this recital is referred to herein as the "Donner Lake Storage Reservoir."

H. The 1943 Indenture also included a requirement that Sierra and TCID and their successors and assigns:

operate said dam and controlling works as to prevent, so far as reasonably practicable, the water surface of said Lake from exceeding the elevation of 5,935.80 feet above sea level; and provided further that [Sierra and TCID], their successors and assigns, shall not release any water from said Lake which they control, during the months of June, July and August of any year, if the water surface of said Lake at the time of the proposed release thereof, is less than 5,932.0 feet above sea level

The limitation referred to in this recital is referred to herein as the "Donner Lake Elevation Limitation."

I. The 1943 Indenture also conveyed to Sierra and TCID as tenants-in-common, among other things, the following:

The right to enter upon any of the lands of the [Donner Lake Company]

adjacent to or in the vicinity of said Lake or Donner Creek, in so far as may be necessary for the convenient exercise of the rights granted hereby.

The right referred to in this recital is referred to herein as the "Donner Lake Land Entry Right."

J. On May 3, 1943, Sierra and TCID entered into an agreement providing for the operation and maintenance of the Deeded Donner Lake Water Right, the Donner Lake Facilities and Easements, the Donner Lake Storage Reservoir and the Donner Lake Land Entry Right, which Agreement is referred to herein as the "1943 Operating Agreement."

K. On April 27, 1998, Sierra, TCID and the Donner Lake Water Company ("Water Company") entered into an agreement to settle and dispose of all differences between them with respect to the manner and extent in which the Reserved Donner Lake Water Right will be exercised in relation to the Deeded Donner Lake Water Right and thereby to establish the priority between them for all purposes. Said agreement is referred to herein as the "April 27, 1998 Three Party Agreement."

L. In 2001, Sierra conveyed its interest in the 1943 Indenture, the 1943 Operating Agreement and the April 27, 1998 Three Party Agreement to TMWA.

M. For some time, TCID and Sierra, and now TCID and TMWA, have had differences concerning their respective rights and obligations under the 1943 Indenture, the 1943 Operating Agreement, including whether the 1943 Operating Agreement is presently valid and enforceable at this time, and with respect to the Deeded Donner Lake Water Right.

N. On August 31, 2006, TCID filed an action against Sierra and TMWA in the Superior Court of the State of California, County of Nevada, Case No. T-06-2239C, seeking damages and enforcement of the 1943 Operating Agreement, and TMWA filed a cross-complaint therein seeking partition of the Deeded Donner Lake Water right and monetary relief related to expenses incurred to comply with certain requirements imposed by the California Division of

Safety of Dams. Said action is referred to herein as the “Donner Lake Action.”

O. On June 9, 2010, the court in the Donner Lake Action entered an Interlocutory Judgment partitioning the Deeded Donner Lake Water right, and that judgment is now on appeal. Said appeal is referred to herein as the “Interlocutory Judgment Appeal.”

P. The Donner Lake Action is stayed pending the outcome of the Interlocutory Judgment Appeal.

Q. TMWA is a party to the Truckee River Operating Agreement executed on September 6, 2008 (“TROA”).

R. TCID has filed various proceedings and actions against TMWA and other parties to TROA, which challenge various actions to implement TROA and TROA itself, including the following litigation:

(1) *Churchill County, City of Fallon, and Truckee-Carson Irrigation District v. United States*, 3:09-CV-00170, in the United States District Court for the District of Nevada (challenge to the TROA final environmental impact statement and to TROA as a federal regulation);

(2) *Truckee-Carson Irrigation District, et al., Appellants v. Truckee Meadows Water Authority, et al., Appellees*, in the United States Court of Appeals for the Ninth Circuit, Case Nos. 14-17353, 14-17368 (consolidated) (amendment to Orr Ditch Decree);

(3) *Truckee-Carson Irrigation District, et al., Appellants v. Truckee Meadows Water Authority, et al., Appellees*, in the United States Court of Appeals for the Ninth Circuit, Case No. 14-16019 (State Engineer Ruling No. 6035);

(4) *Truckee-Carson Irrigation District, et al., Appellants v. State Water Resources Control Board, Appellee, and Truckee Meadows Water Authority, et al., Real Parties in Interest*, in the Court of Appeal of the State of California, Third Appellate District, Case No.: C076849 (California Change Petition).

The foregoing actions are collectively referred to as the “TROA Related Litigation.”

S. TCID and others are defendants in that certain action entitled *United States of America, Plaintiff, Pyramid Lake Paiute Tribe of Indians, Intervenor v. Truckee-Carson*

Irrigation District, 3:95-CV-00757, in the United States District Court for the District of Nevada (the “Recoupment Litigation”).

T. Pursuant to an order entered in the Recoupment Litigation on October 26, 2000, TCID is obligated to notice the court and the plaintiffs before any disposition or encumbrance of its interest in water rights in Donner Lake.

U. TCID desires to sell and TMWA desires to buy all of TCID’s interest in the Deeded Donner Lake Water Right, the Donner Lake Facilities and Easements, the Donner Lake Storage Reservoir and the Donner Lake Land Entry Right, collectively referred to herein as the “TCID Donner Lake Assets.”

V. TCID and TMWA also desire to settle and resolve all differences between them with respect to the Donner Lake Action, including the Interlocutory Judgment Appeal and with respect to the TROA Related Litigation.

W. TCID has prior to, or will within two (2) business days of the Effective Date of this Agreement, file a written notice with the Court and serve it on the parties to the Recoupment Litigation of its intended disposition of the TCID Donner Lake Assets, and will obtain an order from the Court directing the plaintiffs in that litigation to respond within fifteen (15) days of the issuance of the order if they have any objection to the disposition, or if such order cannot be obtained after requested by TCID, TCID will secure written confirmation from the plaintiffs in that litigation that they have no objection to the disposition (the “Recoupment Notice”).

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

Escrow Instructions

This Agreement shall constitute escrow instructions to Western Title Company, 5390 Kietzke Lane, Ste. 101, Reno, Nevada 89511, Attn: Don Allen (the “Escrow Agent”), upon acceptance by the Escrow Agent of this Agreement as instructions to it.

ARTICLE III

Purchase and Sale of TCID Donner Lake Assets

Section 3.1 Purchase of TCID Donner Lake Assets. TCID agrees to sell and TMWA agrees to purchase the TCID Donner Lake Assets on the terms and conditions set forth in this Agreement.

Section 3.2 Consideration. The purchase price for the TCID Donner Lake Assets (“Purchase Price”) is Seventeen Million Four Hundred Forty-Five Thousand Dollars (\$17,445,000.00) payable as follows:

(a) TMWA shall receive a Credit on the Purchase Price of Two Hundred Sixty One Thousand Two Hundred Dollars (\$261,200.00), in consideration of a portion of the cost of improvements made to the Donner Lake Dam from October, 2004 through July, 2005; and

(b) The balance of the Purchase Price in the sum of Seventeen Million One Hundred Eighty Three Thousand Eight Hundred Dollars (\$17,183,800.00) shall be paid in cash,

by certified check, or wire transfer deposited with the Escrow Agent on or before the Closing Date.

Section 3.3 Effective Date. The Effective Date of this Agreement shall be the day on which the last signatory affixes its signature to the Agreement, evidencing its approval of the Agreement.

ARTICLE IV

Title

Section 4.1 Title to TCID Donner Lake Assets. Title to the TCID Donner Lake Assets shall be transferred by a Grant, Bargain and Sale Deed conveying good and marketable title to the TCID Donner Lake Assets to TMWA in fee simple, free and clear of all liens and encumbrances except the lien of current taxes and assessments not yet due and payable.

Section 4.2 Title to Personal Property. Title to personal property which is a part of the TCID Donner Lake Assets, if any, shall be transferred by warranty bill of sale, free and clear of all liens and encumbrances.

Section 4.3 No Further Encumbrances. While this Agreement is in effect, TCID shall not do any of the following without the prior written consent of TMWA: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the TCID Donner Lake Assets; (b) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon the TCID Donner Lake Assets; or (c) permit any mortgage, deed of trust or other lien to be foreclosed upon due to TCID's actions or omissions, including failure to make a required payment or failure to obtain the consent of a beneficiary under any deed of trust and/or mortgagee under any mortgage on the

TCID Donner Lake Assets to enter into this Agreement, if such consent is required under the terms of such deed of trust and/or mortgage.

ARTICLE V

Representations and Warranties of TCID

As a material inducement to TMWA to enter into this Agreement to purchase TCID's Donner Lake Assets, TCID represents and warrants that:

Section 5.1 Due Authority. TCID has or shall have the legal right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby. All requisite action has been taken by TCID in connection with entering into this Agreement, the instruments referenced herein, and the consummation of this transaction. The individuals executing this Agreement and the instruments referenced herein on behalf of TCID have the legal power, right and actual authority to bind TCID to the terms and conditions hereof and to consummate the transactions contemplated in this Agreement on behalf of TCID.

Section 5.2 Legal, Valid, Binding and Enforceable. Upon receipt of the Approvals provided for in Article XII, this Agreement and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of TCID, enforceable in accordance with their respective terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general applicability.

Section 5.3 Property, Title and Related Matters. TCID has not previously sold, encumbered, mortgaged, liened, pledged, assigned, conveyed or transferred any of the TCID Donner Lake Assets, and upon receipt of the Approvals shall have and convey to TMWA at Closing good and marketable title to the TCID Donner Lake Assets, free and clear of all liens

and encumbrances. TCID represents that, to the best of its knowledge, subject to receipt of the Approvals, TCID is the owner of all right, title and interest in the TCID Donner Lake Assets.

Section 5.4 Transferability. Other than receipt of the Approvals and the Recoupment Notice, TCID has no actual knowledge of any condition or fact related to the TCID Donner Lake Assets which would or may prevent or impede the sale of the TCID Donner Lake Assets.

Section 5.5 Litigation. Except for the Recoupment Notice and the Donner Lake Action, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the TCID Donner Lake Assets, or any portion thereof, or pending or threatened against TCID which could affect TCID's title to the TCID Donner Lake Assets, or any portion thereof, affect the value of the TCID Donner Lake Assets, or any portion thereof, or subject an owner of the TCID Donner Lake Assets, or any portion thereof, to liability. TCID has further disclosed its intention that the proceeds from the sale of the TCID Donner Lake Assets will be used to settle the pending Canal Breach litigation filed against TCID in state and federal courts in Nevada.

Section 5.6 Notices. To TCID's actual knowledge, there are no uncured notices which have been served directly upon TCID from any governmental agency notifying TCID of any violations of law, ordinance, rule or regulation which would affect the TCID Donner Lake Assets or any portion thereof, or any actual or impending mechanics' or materialmen's liens against the TCID Donner Lake Assets, or any portion thereof. TCID makes no representations with respect to notices that may have been served upon TMWA with respect to the matters set forth in this Section 5.6

ARTICLE VI

Representations and Warranties of TMWA

As an inducement to TCID to enter into this Agreement, TMWA represents and warrants that:

Section 6.1 Due Authority. TMWA has or shall have the legal right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby. All requisite action has been taken by TMWA in connection with entering into this Agreement, the instruments referenced herein, and the consummation of this transaction. The individuals 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 hereof and to consummate the transactions contemplated in this Agreement on behalf of TMWA.

Section 6.2 Legal, Valid, Binding and Enforceable. Upon receipt of the Approval provided for in Article XII, this Agreement and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of TMWA, enforceable in accordance with their respective terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general applicability.

Section 6.3 Litigation. Except for the Donner Lake Action, TMWA is not aware of any suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against or involving TMWA related to the TCID Donner Lake Assets, or any portion thereof, or pending or threatened against TMWA which could affect TCID's title to the TCID Donner Lake Assets, or any portion thereof, affect the value of the TCID Donner Lake Assets, or any portion thereof, or subject an owner of the TCID Donner Lake Assets, or any portion

thereof, to liability.

Section 6.4 Notices. To TMWA's actual knowledge, there are no uncured notices which have been served upon TMWA from any governmental agency notifying TMWA of any violations of law, ordinance, rule or regulation which would affect the TCID Donner Lake Assets or any portion thereof, or any actual or impending mechanics' or materialmen's liens against the TCID or TMWA Donner Lake Assets, or any portion thereof.

ARTICLE VII

Resolution of Litigation

Section 7.1 Resolution of the Donner Lake Action. On or promptly after the Closing Date, the Donner Lake Action and the Interlocutory Judgment Appeal will be resolved by the execution and filing of the Stipulations and Orders attached hereto and by this reference incorporated herein as Exhibit ____ (“Donner Lake Stipulation”) and Exhibit ____ (“Interlocutory Judgment Stipulation”), respectively.

Section 7.2 Resolution of TROA Related Litigation. On or promptly after the Closing Date, TCID will withdraw from and/or dismiss with prejudice its claims in the TROA Related Litigation by the execution and filing of the _____ attached hereto and by this reference incorporated herein as Exhibits ____-____ (collectively, “TROA Dismissals”).

Section 7.3 Covenant to Encourage Others to Dismiss TROA Related Litigation. On receipt of the Approvals and continuing after the Closing Date, TCID shall engage in a good faith effort to procure the dismissal of any and all TROA Related Litigation as referenced above by any and all remaining parties thereto, including TCID Electors, the City of Fallon, Nevada, and Churchill County, Nevada.

Section 7.4 Covenant Not to File New Litigation. From the date of receipt of the Approvals and continuing after the Closing Date, TCID will not pursue or file, and will not encourage others to pursue or file, any further challenges, legal or otherwise, to the adoption, validity, legality or enforceability of the Truckee River Operating Agreement, or to the adoption, validity, legality or enforceability of any of its provisions, including, without limitation, its provisions concerning Donner Lake and Independence Lake, and provisions concerning storage of water by any party as provided in the Truckee River Operating Agreement; provided, however, that TCID reserves the right to challenge, legally or otherwise, any action or decision made or taken after the Effective Date of this Agreement in the administration of the Truckee River Operating Agreement by TMWA, any other TROA party, or the Administrator that, in TCID's reasonable opinion, is in contravention of the Truckee River Operating Agreement or the Orr Ditch Decree and may result in injury to, or conflict with, any water rights for the Newlands Project.

Section 7.5 TCID As a Party to TROA. Upon written request by TCID and from the date of receipt of the Approvals and continuing after the Closing Date, TMWA shall engage in a good faith effort to procure the consents required by TROA for TCID to become a party to TROA.

Section 7.6 TCID Upstream Storage. TMWA agrees that TCID may seek to obtain the agreement of the United States and other appropriate TROA parties concerning upstream storage in the Truckee River Reservoirs related to the Newlands Project Credit Water ("NPCW") and Other Credit Water pursuant to the provisions of Section 7.G and 7.H of the Truckee River Operating Agreement and may seek to obtain the agreement of the United States and Nevada to modify the date of release of NPCW , and TMWA will not oppose such requests provided that

such upstream storage and/or changed release date, in TMWA's reasonable opinion, do not result in injury to or conflict with TMWA's water rights or contradict TMWA's rights under TROA or the Orr Ditch Decree.

ARTICLE VIII

Dispute Resolution

Prior to seeking relief from any court of competent jurisdiction to resolve a dispute under this Agreement, the Parties shall first meet and confer in good faith to informally resolve such dispute. In the event that such informal efforts fail, the Parties agree to follow the procedure for a formal resolution of all such disputes as stated below:

- 8.1 The complaining Party shall serve on the other Parties a written Statement of Position setting that Party's position, and including such data, analysis, or opinion as that Party reasonably believes is necessary to prevail as to the matter in dispute;
- 8.2 Within 20 calendar days of receipt of the Statement of Position, any other Party may serve its written Statement of Position with respect to such dispute;
- 8.3 The Parties shall thereafter meet and confer in an effort to resolve the dispute. If the dispute remains unresolved, the Parties by mutual consent may, but are not required to, select a third-party neutral to assist the Parties in resolving the dispute. In such event, the Parties to the dispute shall share the reasonable costs of the third-party neutral on a *pro-rata* basis. Any proceedings before the third party neutral shall be commenced as expeditiously as possible and shall not involve the taking of discovery. In the event the Parties are unable to resolve the dispute, the complaining Party may pursue legal remedies in a court of competent jurisdiction.

ARTICLE IX
Recoupment Litigation

Section 9.1 Effect of Opposition to Disposition. In the event the Court or any party in the Recoupment Litigation objects to the disposition of the TCID Donner Lake Assets, TMWA shall, in its discretion, elect whether to: i) terminate this Agreement; ii) extend the Closing until such objection is resolved to the satisfaction of TMWA; or iii) proceed to close on the transaction notwithstanding the objection. In the event TMWA elects to extend the closing under ii), then: y) TCID shall use commercially reasonable efforts to fully resolve such disputes, including through litigation if necessary (and including any appeals therein), at TCID's sole expense, which efforts shall seek to remove any legal disputes or other challenges to the consummation of the disposition of the TCID Donner Lake Assets as contemplated herein; and z) TMWA shall reserve the right to terminate this Agreement if such issues are not resolved to TMWA's satisfaction prior to the expiration of the Term (as defined below).

ARTICLE X

Conditions Precedent to Obligations of TMWA

The obligation of TMWA to perform under this Agreement is subject to satisfaction or waiver of each, every, and all of the following conditions at or prior to the Closing Date:

Section 10.1 Accuracy of Warranties and Representations. The representations and warranties of TCID contained in this Agreement shall be true and accurate on and as of the Closing Date.

Section 10.2 Performance of Covenants. TCID shall have duly performed all obligations, covenants and agreements undertaken by it herein, and complied with all terms and conditions applicable to it hereunder.

Section 10.3 Threatened or Pending Litigation. No suit, action or other proceedings shall be threatened or pending before any court or governmental agency which adversely affects the value of TCID Donner Lake Assets or which seek to enjoin TCID's disposition thereof.

Section 10.4 Damage by Casualty. None of the TCID Donner Lake Assets shall have been adversely affected on or prior to the Closing Date in any material respect, including, but not limited to, as a result of any accident or other casualty (whether or not covered by insurance) or any labor disturbance or act of God.

Section 10.5 Approvals. All of the Approvals required by Article XI shall have been obtained and shall not be subject to any proceeding for review thereof.

Section 10.6 Recoupment Litigation. TMWA shall not have exercised its right to terminate under Sections 9.1

ARTICLE XI

Conditions Precedent to Obligations of TCID

The obligation of TCID to perform under this Agreement is subject to satisfaction or waiver of each, every and all of the following conditions at or prior to the Closing Date:

Section 11.1 Performance of Covenants. TMWA shall have duly performed all obligations, covenants and agreements undertaken by it herein, and complied with all terms and conditions applicable to it hereunder.

Section 11.2 Threatened or Pending Litigation. No suit, action or other proceedings shall be threatened or pending before any court or governmental agency which seeks to enjoin TCID's disposition of the TCID Donner Lake Assets or TMWA's acquisition of TCID's Donner Lake Assets.

Section 11.3 Approvals. All of the Approvals required by Article XII shall have been

obtained and shall not be subject to any proceeding for review thereof.

ARTICLE XII

Approvals

This Agreement shall enter into effect (the “Effective Date”) when all of the following conditions have been satisfied:

Section 12.1 Approval by TCID Electors. The electors of TCID shall have approved by a majority vote under NRS Chapter 539 a resolution that TCID, acting through its Board of Directors, shall sell the TCID Donner Lake Assets for the purpose of settling the Donner Lake Action and TROA Related Litigation.

Section 12.2 Approval by TCID Board. The TCID Board of Directors at a properly noticed public meeting shall have approved, and authorized by unanimous vote the appropriate officers and agents of TCID, to execute, acknowledge and deliver this Agreement and all documents required by it.

Section 12.3 Approval by TMWA Board. The TMWA Board of Directors at a properly notice public meeting shall have approved and authorized the appropriate officers and agents of TMWA to execute, acknowledge and deliver this Agreement and all documents required by it.

ARTICLE XIII

Closing Date and Closing Date Obligations

Section 13.1 Closing Date. Unless otherwise extended pursuant to Section 9.1, the Closing Date shall be no later than February 1, 2016, and by that date, all funds and documents set forth herein related to the purchase and sale of the TCID Donner Lake Assets shall have been deposited with the Escrow Agent, and the conditions precedent provided for in Articles X, XI,

and XII shall have been satisfied or waived. If said escrow fails to close by said date, or unless the escrow is continued by mutual agreement of the parties hereto, the documents deposited with the Escrow Agent shall be returned to the depositing party.

Section 13.2 Apportionment of Certain Items. All real and personal property taxes, assessments and utility charges of whatsoever nature shall be apportioned as of the Closing Date. In making apportionments, all property taxes, assessments and similar items will be prorated on the basis of the number of days in the period in question before and after said date. The amounts to be apportioned under the provisions of this Section shall be apportioned and paid as soon as they can be calculated.

Section 13.3 TCID's Closing Deliveries and Closing Costs. On or before the Closing Date, TCID shall deliver to the Escrow Agent the executed Grant, Bargain and Sale Deed to the TCID Donner Lake Assets, the Warranty Bill of Sale of the Personal Property, and the documents required by Article VII concerning the resolution of litigation, duly executed and notarized where applicable.

TCID agrees to pay from its proceeds at close of escrow:

- (a) One half of the escrow fee;
- (b) An amount equal to one-half of the California Real Property Transfer Tax;

and

- (c) An amount equal to TCID's share of items to be apportioned as provided in Section 13.2.

Section 13.4 TMWA's Closing Deliveries and Closing Costs. On or before the Closing Date, TMWA shall deliver to the Escrow Agent the following:

- (a) One-half of the escrow fee;

- (b) Cash, certified check or wire transfer in the amount required by Section 3.2(b);
- (c) One-half of the California Real Property Transfer Tax; and
- (d) An equal amount to TMWA's share of items to be apportioned as provided in Section 13.2.

Section 13.5 Escrow Agent's Obligations. On the Closing Date, the Escrow Agent shall:

- (a) Record the original of the Grant, Bargain and Sale Deed and deliver the same to TMWA;
- (b) Deliver the Warranty Bill of Sale to TMWA;
- (c) Deliver to TMWA all documents required for resolution of litigation;
- (d) Pay to TCID all sums deposited by TMWA, less any charges to TCID;
- (e) Make the apportionment required by Section 13.2 of this Agreement; and
- (f) Pay itself its escrow fee.

Section 13.6 Possession. Possession of the TCID Donner Lake Assets shall be deemed delivered to TMWA on the Closing Date by recordation of the Grant, Bargain and Sale Deed.

ARTICLE XIV

Miscellaneous

Section 14.1 Condemnation. In the event of the taking of all or any part of the TCID Donner Lake Assets by eminent domain proceedings, or the commencement of such proceedings prior to the Closing Date, TMWA shall have the right, at its option, to terminate this Agreement by written notice to TCID. If TMWA does not so terminate the Agreement, then TMWA may, at its option, either (a) proceed to close with the Purchase Price reduced by the total of any awards

or other proceeds received or to be received by TCID as a result of such proceedings; or (b) proceed to close with an assignment by TCID of all TCID's right, title and interest in and to any and all such awards and proceeds. TCID shall notify TMWA in writing of any eminent domain proceedings affecting the TCID Donner Lake Assets within five (5) days after TCID learns of such proceedings.

Section 14.2 Successors and Assigns. This Agreement shall be binding not only upon the parties, but also upon their respective heirs, personal representatives, assigns, and other successors in interest.

Section 14.3 Time. Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

Section 14.4 Execution of Additional Documents. In addition to documents and other matters specifically referenced in this Agreement, TCID and TMWA agree to execute and/or deliver, or cause to be executed and/or delivered, such other documents and/or materials, including additional escrow instructions carrying out the terms and conditions of this Agreement, as may be reasonably necessary to effect the transactions contemplated by this Agreement.

Section 14.5 Notices and Other Communications. Every notice or other communication required or contemplated by this Agreement by any party shall be in writing delivered either by (a) personal delivery, (b) prepaid overnight delivery service, or (c) electronic mail addressed to the party for whom intended at the address specified in this Section.

To TMWA:

Truckee Meadows Water Authority
Attn: General Manager

1355 Capital Boulevard
P.O. Box 30013
Reno, Nevada 89520-3013
Telephone: 775/834-8009
Facsimile: 775/834-8084
Email: mforee@tmwa.com

with a copy to: Gordon H. DePaoli
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511
Telephone: 775/688-3010
Facsimile: 775/688-3088
E-mail: gdepaoli@woodburnandwedge.com

To TCID: Truckee-Carson Irrigation District
Attn: District Manager
2666 Harrigan Road
Fallon, Nevada 89406
Telephone: 775/423-2141
Facsimile: 775/423-5354
E-mail: rusty@tcid.org

with a copy to: Michael J. Van Zandt, Esq,
Hanson Bridgett LLP
425 Market St., 26th Floor
San Francisco, CA 94105
Tel: (415) 777-3200 Main
E-mail: MVanZandt@hansonbridgett.com

Notice by overnight delivery service shall be effective on the date it is officially recorded as delivered to the intended recipient. All notices delivered in person or sent by electronic mail shall be deemed to have been delivered to and received by the addressees, and shall be effective on the date of personal delivery or on the date sent, respectively. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given. Either TMWA or TCID may, by notice to the other given as herein stated, change its address for future notices hereunder.

Section 14.6 Governing Law. This Agreement was negotiated, approved and executed

by the parties in the State of Nevada, which State the parties agree has a substantial relationship to the parties and to the transactions embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance of this Agreement, and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Nevada applicable to contracts made and performed in such State (without regard to principles of conflict of laws), except that at all times the provisions of this Agreement concerning the ownership interests and transfers of the ownership interests of TCID in the Deeded Donner Lake Water Right, the Donner Lake Facilities and Easements, the Donner Lake Storage Reservoir and the Donner Lake Land Entry Right and the resolution of litigation pending in the courts of the State of California shall be governed by and construed according to the laws of the State of California.

Section 14.7 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between TMWA and TCID pertaining to the subject matter contained in it, and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Section 14.8 Counterparts. This Agreement may be executed in one or more counterparts, and each counterpart shall constitute an original instrument, but all such counterparts shall only constitute one and the same instrument.

Section 14.9 Captions. The captions of this Agreement do not in any way limit or

amplify the terms and provisions of this Agreement.

Section 14.10 Merger. The obligations of TCID and TMWA pursuant to this Agreement shall survive the close of escrow contemplated hereunder, and shall not be deemed to merge with the deed of conveyance.

Section 14.11 Attorneys' Fees. In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable attorneys' fees.

Section 14.12 Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

Section 14.13 Real Estate Commission. TMWA and TCID each warrant and represent to the other that it has not retained, nor is it obligated to, any person for brokerage, finder's or similar services in connection with the transaction contemplated by this Agreement, and that no commission, finder's fee or other brokerage or agent's compensation can be properly claimed by any person or entity based upon the acts of such party with regard to the transactions which are the subject matter of this Agreement. TCID shall indemnify and defend TMWA against and hold TMWA harmless from all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, costs of expert witnesses, court costs and other litigation expenses) arising from or relating to any claim for a commission, fee or other compensation made by any brokers or parties with which TCID has dealt in connection with this Agreement or the transaction contemplated hereby. TMWA shall indemnify and defend TCID against and hold TCID harmless from all claims, demands, liabilities, losses, damages, costs and

expenses (including, without limitation, reasonable attorneys' fees, costs of expert witnesses, court costs and other litigation expenses) arising from or related to any claim for a commission, fee or other compensation made by any brokers or parties with which TMWA has dealt in connection with this Agreement or the transaction contemplated hereby.

Section 14.14 Authorship. This Agreement has been reviewed by attorneys representing the respective parties, and therefore shall not be construed in favor of or against any party hereto based on the sole or primary authorship of this Agreement being the work of one party hereto.

ARTICLE XV

Termination

Section 15.1 Termination by Either Party. This Agreement may be terminated and canceled at any time prior to the Closing Date by either TMWA or TCID upon written notice to the other if: (i) any of the representations or warranties of the other party, as the case may be, contained herein shall prove to be inaccurate or untrue in any material respect; or (ii) any obligation, term or condition to be performed, kept or observed by such other party, as the case may be, hereunder has not been performed, kept or observed in any material respect at or prior to the time specified in this Agreement; provided, however, that no such right of termination shall exist if the defaulting party has remedied or can remedy the alleged default, or corrected or satisfied any condition or covenant necessary to the consummation of this Agreement by the earlier to occur of (a) the Closing Date, or (b) within thirty (30) days after being given written notice thereof by the other party. Either party may terminate this Agreement (provided such party is not then in material breach of this Agreement) by giving written notice to the other party in the event that the closing shall not have occurred by the latest date set forth as the Closing

Date.

Section 15.2 Termination by TMWA. This Agreement may be terminated and cancelled at any time prior to the Closing Date by TMWA in the event of a material loss or damage to the TCID Donner Lake Assets, it being understood by the parties that none of the risk of any such loss or damage prior to the closing shall be borne by TMWA.

Section 15.3 Effect of Termination. No termination of this Agreement shall be construed as relieving a party from liability to any other party for breach of this Agreement. The Escrow shall terminate upon fulfillment of all terms and conditions contained in the escrow instructions. If the terms and conditions are not fulfilled within one year from the Effective Date hereinafter referred to as the "Outside Closing Date," then the Escrow shall terminate upon the return of all money to its source, and return of all documents to the party who deposited such documents into Escrow in accordance with the escrow instructions. If the Escrow terminates before closing, the Parties agree that none of the executed, deposited documents shall be filed with any court.

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

TRUCKEE-CARSON IRRIGATION
DISTRICT

TRUCKEE MEADOWS WATER
AUTHORITY

By: _____

By: _____

Its: _____

Its: _____