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4 Attorney for Garry D. Stone, Water Master

5
6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF NEVADA**

8 * * * * *

9 The United States of America,)
10)
Plaintiff,)
11)
ORR WATER DITCH COMPANY, et al.)
12)
Defendant.)
13)

**STIPULATION AND ORDER
REGARDING PLANNING FOR
IMPLEMENTATION OF
TRUCKEE RIVER OPERATING
AGREEMENT**

14 1. The parties to this Stipulation, United States, Pyramid Lake Paiute Tribe, State
15 of Nevada, and Truckee Meadows Water Authority (the "Parties"), negotiated the operating
16 agreement (hereinafter the "Truckee River Operating Agreement") called for by Section 205 of
17 the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, title II of P.L. 101-618 (104
18 Stat. 3289,3294) (1990) ("Settlement Act") in which the Congress of the United States directed
19 the United States Secretary of the Interior ("Secretary") to negotiate an operating agreement
20 with the States of Nevada and California to set forth the manner in which federally owned
21 Truckee River Reservoirs would be operated in the future, including for the purposes stated in
22 Section 204(a)(2) of the Settlement Act. The Truckee River Operating Agreement ("TROA")
23 was executed by the Secretary, the States of California and Nevada, and others on September 6,
24 2008, and was submitted to the Court for any necessary amendments to the Orr Ditch Decree
25 on November 17, 2008.
26
27
28

1 2. In February 1996, and in each consecutive year since, a "Stipulation and Order
2 Regarding Planning for Implementation of TROA" has been entered into by the Parties herein,
3 and approved by the Court. These annual Stipulations have provided a budget for TROA
4 Implementation Planning to develop, test and prepare for administration of the Truckee River
5 Operating Agreement. The last Court order covered the time period ending September 30,
6 2009.
7

8 3. In addition, these annual Stipulations have designated that a TROA
9 Implementation Coordinator, of the Federal Water Master's Office, coordinates development
10 and planning of the TROA administration procedures. The Federal Water Master determined
11 that the TROA Implementation Coordinator would need to establish a separate office with a
12 separate budget within the Federal Water Master's Office to effectively perform these duties,
13 which are separate and apart from the Federal Water Master's responsibilities under the Orr
14 Ditch Decree. The Parties now stipulate that the TROA Implementation Coordinator should
15 continue with this planning effort.
16

17 4. Until such time as the Court acts on amendments to the Orr Ditch Decree
18 necessary to implement TROA, the Parties desire to continue implementation planning to
19 ensure that the necessary accounting, reporting and other operating aspects of the TROA are in
20 place should the Court take such action and orders it into effect and implementation. The
21 budget included herein presents funding which, if necessary, would continue this effort through
22 September 30, 2016, and if favorable action is taken before that time, will be used for
23 implementation of TROA.
24

25 5. California is not a party to this action, and it must follow applicable California
26 law with respect to this matter.

27 6. On May 13, 2002, the Desert Terminal Lakes Program was enacted under Public
28 Law 107-171. This legislation authorized funding to the United States Bureau of Reclamation

1 ("USBR") "to provide water to at-risk natural desert terminal lakes." In 2007, ONE MILLION
2 DOLLARS (\$1,000,000.00) of Desert Terminal Lakes Program funding was obligated to the
3 Federal Water Master for the period October 1, 2007 through September 30, 2012 to assist the
4 Implementation Coordinator with specific projects and expenses of the TROA Implementation
5 Planning effort. In 2009, an additional ONE MILLION DOLLARS (\$1,000,000.00) was
6 allocated to the Federal Water Master under the Desert Terminal Lakes Program to continue the
7 planning effort. The Parties agree that the funding allocated in 2009 should be used for the
8 planning effort, including: (1) additions to the existing United States Geological Survey
9 ("USGS") gauge network, (2) additions of real-time telemetry and improvement of gauging
10 accuracy of important diversions currently monitored by the Federal Water Master, (3)
11 continued development and maintenance of RiverWare models for water accounting and
12 operations, (4) completion of two reservoir evaporation studies, and (5) TROA Implementation
13 Planning operating costs for the two (2) year period October 1, 2009 through September 30,
14 2011. (See Exhibit "A").

17 7. In 2010, an additional FIVE MILLION NINE HUNDRED THOUSAND
18 DOLLARS (\$5,900,000.00) of funding from the Desert Terminal Lakes Program is to be
19 allocated to the Federal Water Master with respect to implementation of the Truckee River
20 Operating Agreement and related matters. The Parties agree that FOUR MILLION FOUR
21 HUNDRED THOUSAND DOLLARS (\$4,400,000.00) of the funding allocated in 2010 should
22 be used for the continuation of TROA Implementation Planning until such time as the Court
23 acts on amendments to the Orr Ditch Decree necessary to implement TROA, up to an
24 additional five (5) year period, if necessary, and if favorable action is taken before that time, to
25 be used for actual implementation of TROA. (See Exhibit "B").

27 8. The Parties agree that ONE MILLION FIVE HUNDRED THOUSAND
28 DOLLARS (\$1,500,000.00) of the funding allocated in 2010 should be used to fund the first

1 year of TROA Administration should the Court authorize implementation of the Truckee River
2 Operating Agreement. The Parties request that these funds be set aside by the Federal Water
3 Master in a special account, and to be used only for costs associated with the first year of
4 TROA Administration commencing with the Court approval of the proposed action and the full
5 implementation of the Truckee River Operating Agreement. (See Exhibit "C").
6

7 NOW, THEREFORE, the Parties to this Stipulation agree as follows:

8 1. Upon the payment by the USBR from the funds available in the Desert Terminal
9 Lakes Program of ONE MILLION DOLLARS (\$1,000,000.00), such amount shall be used by
10 the Federal Water Master's Office and the TROA Implementation Planning office as outlined in
11 the attached budget (see Exhibit "A"). The other ONE MILLION DOLLARS (\$1,000,000.00)
12 described in the budget was previously funded under the Desert Terminal Lakes Program.
13

14 2. The Parties and TROA Implementation Coordinator have identified areas of
15 preparation necessary for effective TROA implementation, which will require a new, more
16 technically demanding river and reservoir decision support system. In this regard, the Parties
17 intend to create a budget for additional planning, until such time as the Court acts on
18 amendments to the Orr Ditch Decree necessary to implement TROA, up to a period from
19 October 1, 2011 to September 30, 2016, if such is necessary to continue implementation
20 planning effort to ensure that water accounting and other operating aspects of the Truckee
21 River Operating Agreement will be in place at such time as TROA enters into effect and is
22 implemented, and if favorable action is taken before that time, to be used for actual
23 implementation of TROA. The budget for such planning is attached hereto as Exhibit "B."
24 Preparations include continued development of RiverWare computer models for water
25 accounting and operations, additional reservoir evaporation studies, costs associated with
26 establishing the TROA Administration Office with necessary staff and related benefits,
27
28

1 establishing necessary office space and equipment, securing necessary professional, audit and
2 legal services, and other related overhead expenses of such an office.

3 3. Upon payment by the USBR from the funds available in the Desert Terminal
4 Lakes Program of FOUR MILLION FOUR HUNDRED THOUSAND DOLLARS
5 (\$4,400,000.00.), such amount shall be used as outlined in the attached budget (*see* Exhibit
6 "B"), and as further described in paragraph 2 immediately above.

7
8 4. The USBR and the State of Nevada have identified additional studies and
9 services for effective TROA implementation. Upon payment by the USBR from the funds
10 available in the Desert Terminal Lakes Program, and in addition to the above amounts, the sum
11 of ONE MILLION THREE HUNDRED SIXTY-THREE THOUSAND DOLLARS
12 (\$1,363,000.00), and upon payment by the State of Nevada the sum of FORTY THOUSAND
13 DOLLARS (\$40,000.00) to the Federal Water Master, the Federal Water Master and the
14 Implementation Coordinator shall be responsible to pay fees approved by USBR and the State
15 of Nevada for those additional studies and services. (*See* Exhibit "D").
16

17 5. The Federal Water Master shall be directed to establish a separate and distinct
18 bank account for TROA Implementation Planning. All monies collected for TROA
19 Implementation Planning pursuant to the order of this Court should be deposited by the Federal
20 Water Master into this account, and revenues collected in connection with establishment of this
21 account shall be used solely for the purpose of TROA Implementation Planning and
22 administration as authorized by this Stipulation.
23

24 6. The Federal Water Master shall be directed to establish a separate and distinct
25 bank account known as the TROA Administration Account. Upon payment by the USBR from
26 funds available in the Desert Terminal Lakes Program, of the amount of ONE MILLION FIVE
27 HUNDRED THOUSAND DOLLARS (\$1,500,000.00) to the Federal Water Master, the
28 Federal Water Master shall immediately set aside such funds in the TROA Administration

1 Account, and monies collected in connection with this account shall be used only for the
2 purpose of costs associated with the first year of TROA Administration commencing with the
3 Court approval and full implementation of the proposed Truckee River Operating Agreement.

4 7. The payments provided for in this Stipulation are contingent upon the
5 availability of funds through the USBR and the State of Nevada.

6 8. The payments from the USBR and the State of Nevada shall be made to the
7 Federal Water Master's Office on a timely basis upon receipt of invoice.

8 9. The TROA Implementation Coordinator will not take direction from the Federal
9 Water Master, and the Federal Water Master will not be responsible for any implementation
10 planning or the cost and expenses thereof, except that the Federal Water Master shall have
11 custody of the funds provided for in this Stipulation and for disbursement in accordance with
12 the budget.

13 10. The participation by the Federal Water Master's Office and the staff of that
14 office in implementation planning for the Truckee River Operating Agreement is not, and shall
15 not be construed as, approval or endorsement of any changes to the Orr Ditch Decree or of any
16 other matter which may be required to implement the proposed Truckee River Operating
17 Agreement.

18 11. The approval by the Court of this Stipulation is not, and shall not be construed
19 as, approval or endorsement of any changes to the Orr Ditch Decree or of any other matter
20 which may be required to implement the proposed Truckee River Operating Agreement.

21 12. This Stipulation shall not enter into effect unless and until it is approved by the
22 Court.

23 13. The Water Master's Office and the TROA Implementation Coordinator shall use
24 the funds appropriated hereunder to complete the necessary projects for effective TROA
25 implementation as provided in this Stipulation, and the Federal Water Master and TROA

1 Implementation Coordinator will be required to file an audit of these funds with the Court on an
2 annual basis on or before January 15 of each year, beginning in the year 2011. Any and all
3 funds remaining after the fiscal year ending September 30, 2016 shall continue to be held by
4 the Federal Water Master's Office in their designated accounts, and used for and applied to
5 subsequent TROA planning, if any, and TROA implementation and administration costs.

6 DATED this ____ day of August, 2010.

7
8 STATE OF NEVADA

TRUCKEE MEADOWS WATER
AUTHORITY

9
10 By: _____
11 Its: _____

By: _____
Its: _____

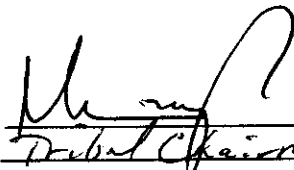
12 Approved as to Form and Content:
13 CATHERINE CORTEZ MASTO
14 Attorney General
15 State of Nevada
16 100 North Carson Street
17 Carson City, Nevada 89701-4717

Approved as to Form and Content:
GORDON H. DePAOLI
DALE E. FERGUSON
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

18
19 JOHN HOFFMAN
20 Special Counsel
21 Hoffman and Test
22 429 West Plumb Lane
23 P.O. Box 187
24 Reno, Nevada 89504

By: _____

PYRAMID LAKE PAIUTE TRIBE

By: 
Its: Tribal Chairman

25 By: _____

Approved as to Form and Content:
DON SPRINGMEYER
Wolf, Rifkin, Shapiro,
Schulman & Rabkin, LLP
3556 East Russell Road., 2nd Floor
Las Vegas, Nevada 89120

26 UNITED STATES OF AMERICA

27
28 By: _____
Its: _____

By: 

1 Implementation Coordinator will be required to file an audit of these funds with the Court on an
2 annual basis on or before January 15 of each year, beginning in the year 2011. Any and all
3 funds remaining after the fiscal year ending September 30, 2016 shall continue to be held by
4 the Federal Water Master's Office in their designated accounts, and used for and applied to
5 subsequent TROA planning, if any, and TROA implementation and administration costs.
6

7 DATED this ____ day of August, 2010.

8 STATE OF NEVADA

TRUCKEE MEADOWS WATER
AUTHORITY

9
10 By: Leo M. Trojoff
11 Its: Acting Director DCNR

By: _____
Its: _____

12 Approved as to Form and Content:
13 CATHERINE CORTEZ MASTO
14 Attorney General
15 State of Nevada
16 100 North Carson Street
17 Carson City, Nevada 89701-4717

Approved as to Form and Content:
GORDON H. DePAOLI
DALE E. FERGUSON
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

18 By: _____

19 JOHN HOFFMAN
20 Special Counsel
21 Hoffman and Test
22 429 West Plumb Lane
23 P.O. Box 187
24 Reno, Nevada 89504

PYRAMID LAKE PAIUTE TRIBE

By: _____
Its: _____

25 By: John W. Hoffman

Approved as to Form and Content:
DON SPRINGMEYER
Wolf, Rifkin, Shapiro,
Schulman & Rabkin, LLP
3556 East Russell Road., 2nd Floor
Las Vegas, Nevada 89120

26 UNITED STATES OF AMERICA

27
28 By: _____
Its: _____

By: _____

1 Implementation Coordinator will be required to file an audit of these funds with the Court on an
2 annual basis on or before January 15 of each year, beginning in the year 2011. Any and all
3 funds remaining after the fiscal year ending September 30, 2016 shall continue to be held by
4 the Federal Water Master's Office in their designated accounts, and used for and applied to
5 subsequent TROA planning, if any, and TROA implementation and administration costs.

6 DATED this 18th day of August, 2010.

7
8 STATE OF NEVADA

TRUCKEE MEADOWS WATER
AUTHORITY

9
10 By: _____
11 Its: _____

By: *Mark Force*
Its: GENERAL MANAGER

12 Approved as to Form and Content:
13 CATHERINE CORTEZ MASTO
14 Attorney General
15 State of Nevada
16 100 North Carson Street
17 Carson City, Nevada 89701-4717

Approved as to Form and Content:
GORDON H. DePAOLI
DALE E. FERGUSON
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

18
19 JOHN HOFFMAN
20 Special Counsel
21 Hoffman and Test
22 429 West Plumb Lane
23 P.O. Box 187
24 Reno, Nevada 89504

By: *Gordon H. DePaoli*

PYRAMID LAKE PAIUTE TRIBE

25 By: _____

By: _____
Its: _____

26 UNITED STATES OF AMERICA

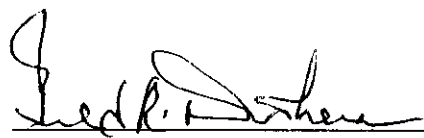
Approved as to Form and Content:
DON SPRINGMEYER
Wolf, Rifkin, Shapiro,
Schulman & Rabkin, LLP
3556 East Russell Road., 2nd Floor
Las Vegas, Nevada 89120

27
28 By: *Med R. Johnson*
Its: Attorney

By: _____

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Approved as to Form and Content:
FRED DISHEROON
Special Litigation Counsel
U.S. Department of Justice
Environmental/Natural Resources Division
P.O. Box 7397 / Ben Franklin Station
Washington, D.C. 20044-7397

By: 

IT IS SO ORDERED.

DATED this 15 day of Sept, 2010.

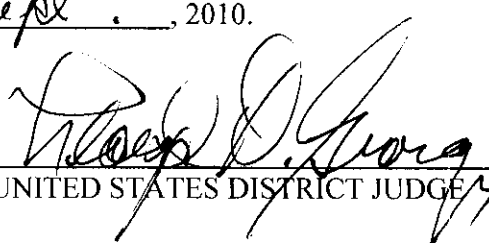

UNITED STATES DISTRICT JUDGE

EXHIBIT "A"

Budget for TROA Implementation Planning & Policy Preparation
Stipulation for Interim Budget Funding by the members of the
Truckee River Operating Agreement (TROA) Administrative Committee

Statement of Budgeted Revenues, Expenses & Retained Earnings for the 2-Year Period
October 1, 2009 through September 30, 2011

	2-Year BUDGET <u>Oct-09 - Sep-11</u>
** Budgeted Operating Revenue	
Revenue -- Administrative Agreement for TROA Implementation Planning under P.L. 107-171 Desert Terminal Lakes Program U.S. Bureau of Reclamation	<u>\$2,000,000</u>
TOTAL BUDGETED OPERATING REVENUE	\$2,000,000
** Budgeted Operating Expenses	
Computer License & Online Services	\$13,200
Payroll Taxes	\$46,195
Professional, Legal & Audit Fees	\$58,700
Rent, Supplies & Overhead	\$40,787
Reservoir Evaporation Studies	\$244,566
RiverWare Modeling & Technical Consulting Support	\$450,000
Stream Gaging & Telemetry Data Retrieval	\$102,400
Travel & Conference	\$26,000
TROA Policy Preparation Salaries & Benefits	<u>\$1,009,860</u>
TOTAL BUDGETED OPERATING EXPENSES	\$1,991,708
Budgeted Net Income (Loss)	\$8,292
Budgeted Working Capital for Office & Field Equipment Acquisitions	<u>(\$8,292)</u>
BUDGETED INCREASE (DECREASE) IN WORKING CAPITAL	\$0

****Note:**

A portion of these revenues (\$225,320) and expenses (\$225,320) were authorized and reported in the TROA Planning Financial Statements for the periods October 1, 2007 through September 30, 2009.

EXHIBIT "B"

Budget for TROA Implementation Planning & Policy Preparation
Stipulation for Interim Budget Funding by the members of the
Truckee River Operating Agreement (TROA) Administrative Committee

Statement of Budgeted Revenues, Expenses & Retained Earnings for the 5-Year Period
October 1, 2011 through September 30, 2016

TROA Planning Budget
5-Year Period
Oct-11 - Sep-16

Budgeted Operating Revenue

Revenue -- Administrative Agreement for TROA Implementation
Planning under P.L. 107-171 Desert Terminal Lakes Program
U.S. Bureau of Reclamation

\$4,400,000

BUDGETED TOTAL OPERATING REVENUE

\$4,400,000

Budgeted Operating Expenses

Computer License & Online Services

\$65,465

Payroll Taxes

\$152,870

Professional, Legal & Audit Fees

\$265,000

Rent, Supplies & Overhead

\$139,090

RiverWare Modeling & Technical Consulting Support

\$85,000

Stream Gaging & Telemetry Data Retrieval

\$102,035

Travel & Conference

\$52,500

TROA Policy Preparation Salaries & Benefits

\$3,493,040

BUDGETED TOTAL OPERATING EXPENSES

\$4,355,000

Budgeted Net Income (Loss)

\$45,000

Budgeted Working Capital for Office & Field Equipment Acquisitions

(\$45,000)

BUDGETED INCREASE (DECREASE) IN WORKING CAPITAL

\$0

EXHIBIT "C"

Budget for TROA Administration -- First Year Operations
Stipulation for Interim Budget Funding by the members of the
Truckee River Operating Agreement (TROA) Administrative Committee

Statement of Budgeted Revenues, Expenses & Retained Earnings for First Year TROA Administration Operations

	TROA ADMINISTRATION <u>Ist Year Operations</u>
Budgeted Operating Revenue	
Revenue -- Administrative Agreement for First Year TROA Administration under P.L. 107-171 Desert Terminal Lakes Program U.S. Bureau of Reclamation	<u>\$1,500,000</u>
BUDGETED TOTAL OPERATING REVENUE	\$1,500,000
Budgeted Operating Expenses	
Computer License & Online Services	\$17,000
Habitat Restoration Fund	\$50,000
Hearing Officer	\$60,000
Payroll Taxes	\$45,510
Professional, Legal & Audit Fees	\$91,000
Rent, Supplies & Overhead	\$33,750
RiverWare Modeling & Technical Consulting Support	\$50,000
Stream Gaging & Telemetry Data Retrieval	\$88,540
Travel & Conference	\$14,500
TROA Administration Salaries & Benefits	<u>\$1,046,200</u>
BUDGETED TOTAL OPERATING EXPENSES	\$1,496,500
Budgeted Net Income (Loss)	\$3,500
Budgeted Working Capital for Office & Field Equipment Acquisitions	<u>(\$3,500)</u>
BUDGETED INCREASE (DECREASE) IN WORKING CAPITAL	\$0

EXHIBIT “D”

Budget for TROA Implementation Planning & Policy Preparation -- Additional Studies & Services Stipulation for Interim Budget Funding by the members of the Truckee River Operating Agreement (TROA) Administrative Committee

Additional Studies & Services under TROA Implementation Planning & Policy Preparation Statement of Budgeted Revenues, Expenses & Retained Earnings for the Fiscal Years October 1, 2009 through September 30, 2014

	<u>FY-2010</u>	<u>FY-2011</u>	<u>FY-2012</u>	<u>FY-2013</u>	<u>FY-2014</u>	<u>TOTAL</u>
Budgeted Operating Revenue						
Studies & Services Fee Income						
U.S. Bureau of Reclamation	\$263,000	\$350,000	\$300,000	\$250,000	\$200,000	\$1,363,000
State of Nevada	\$40,000					\$40,000
BUDGETED TOTAL OPERATING REVENUE	\$303,000	\$350,000	\$300,000	\$250,000	\$200,000	\$1,403,000
Budgeted Operating Expenses						
Studies & Services Expenses	\$303,000	\$350,000	\$260,000	\$250,000	\$200,000	\$1,403,000
BUDGETED TOTAL OPERATING EXPENSES	\$303,000	\$350,000	\$300,000	\$250,000	\$200,000	\$1,403,000
Budgeted Net Income (Loss)	\$0	\$0	\$0	\$0	\$0	\$0