

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of:)
)
)
Public Hearing to Consider Water Right)
Applications 31487 and 31488 filed by)
the United States Bureau of Reclamation)
and Petitions to Change License 3723)
(Application 5169) of Washoe County)
Water Conservation District, License)
4196 (Application 9247) of Truckee)
Meadows Water Authority, and Permit)
11605 (Application 15673) and License)
10180 (Application 18006) of the United)
States Bureau of Reclamation Truckee)
River Watershed)
~~~~~ )

JOE SERNA JR./CALEPA BUILDING

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COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

VOLUME I

WEDNESDAY, JULY 21, 2010

9:04 A.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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P R O C E E D I N G S

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CO-HEARING OFFICER DODUC: Good morning,  
everyone. Welcome to Sacramento.

This is the time and place for a hearing to receive evidence relevant to determining whether to approve, subject to terms and conditions, Water Right Applications 31487 and 31488 for the United States Bureau of Reclamation and to receive evidence relevant to determining whether the State Water Board should issue an order approving Petitions to Change License 3723, Application 5169 of Washoe County Water Conservation District, License 4196, Application 9247 of Truckee Meadows Water Authority, and Permit 11605, Application 15673 and License 10180, Application 18006 of the United States Bureau of Reclamation.

Also, whether conditions are needed in order to protect the environment, the public interest, and downstream water users.

I'm Tam Doduc, a Member of the State Water Resources Control Board, and to my right is Chairman Charlie Hoppin.

Also present today are the staff assigned to assist us with this hearing, Staff Geologist Paul Murphey, Staff Engineer Jean McCue at the end, and to my

1 left is Senior Staff Counsel Erin Mahaney.

2 We also have assisting us today Larry Lindsay  
3 from the Division of Water Rights.

4 Let me begin with a few announcements. The  
5 first one, the most important one, you've already taken  
6 care of, and that is putting your cell phone on silent  
7 or vibrate.

8 The second one is about the evacuation  
9 procedure. Please look around right now and identify  
10 the exits closest to you. In the event of a fire alarm,  
11 we will evacuate this room immediately.

12 Please take your valuables with you and do not  
13 use the elevators. Please exit down the stairway, and  
14 our relocation site is across the street in Cesar Chavez  
15 Park. Please wait there for the all-clear signal before  
16 returning to this room.

17 Now, back to the hearing.

18 This hearing is being held in accordance with  
19 the Notice of Public Hearing dated April 19, 2010.

20 The purpose of this hearing is to provide the  
21 parties who have filed a Notice of Intent to Appear an  
22 opportunity to present relevant testimony and other  
23 evidence that addresses the two key issues contained in  
24 the hearing notice.

25 I'm not going to repeat those issues. I'm sure

1 you all know what they are.

2 But to summarize, the key issues are whether --  
3 the key issues address whether the proposed changes  
4 would cause injury to any legal user of water or would  
5 in effect initiate a new water right, whether water is  
6 available for appropriation and will be put to  
7 beneficial use, whether the requested approvals result  
8 in significant adverse impacts on water quality and the  
9 environment or public trust. And if the Board approves  
10 the requested action, what conditions if any should the  
11 Board impose?

12 We are broadcasting this hearing on the  
13 internet, and we are also recording it by audio and  
14 video.

15 A court reporter is also present to prepare a  
16 transcript of the proceeding, so anyone who would like a  
17 copy of the transcript please make separate arrangements  
18 with the court reporter.

19 To assist the court reporter, please provide  
20 her with your business card and make sure that you speak  
21 into the microphone when you are providing comments.

22 Let's start with a procedural item. We did  
23 receive a motion from the Truckee Meadows Water  
24 Authority, and your motion proposes to exclude certain  
25 testimony, expert reports and exhibits of the

1 Truckee-Carson Irrigation District.

2           You all should have received a letter dated  
3 July 19, 2010 giving parties an opportunity to file an  
4 opposition to the Authority's motion.

5           The opposition papers are due this Friday,  
6 July 23rd, by 4:00 p.m.

7           If we get to portions of TCID's case-in-chief  
8 that is the subject of the Authority's motion before the  
9 opposition papers are due, we will continue those  
10 portions of the case-in-chief until next week when we  
11 return on July 28th.

12           Is that clear? I see -- okay.

13           So what that means is for TCID, if we got to  
14 your case-in-chief this week, you should prepare to  
15 present portions that is not subject to the Authority's  
16 motion.

17           All right. At this time, I will ask Paul  
18 Murphey to introduce the staff exhibits.

19           ENGINEERING GEOLOGIST MURPHEY: I would like to  
20 offer into evidence by reference the staff exhibits  
21 identified in the April 19, 2010 hearing notice.

22           If there are no objections, I'll dispense with  
23 reading the list of exhibits, and we'll make sure the  
24 court reporter gets the list.

25           I ask that Exhibits SWRCB 1 through SWRCB 10 be

1 accepted into evidence.

2 CO-HEARING OFFICER DODUC: Any objections?  
3 Hearing none, I will take those into evidence.

4 (Whereupon the above-named exhibits were  
5 accepted in evidence.)

6 CO-HEARING OFFICER DODUC: All right. At this  
7 time, before we begin the evidentiary presentation, we  
8 will hear from any speakers who wish to make a  
9 nonevidentiary policy statement.

10 If you wish to make a policy statement and have  
11 not filed a Notice of Intent to Appear, please fill out  
12 a blue card and hand it to staff if you have not already  
13 done so.

14 Do we have any blue cards?

15 CHIEF LINDSAY: No.

16 CO-HEARING OFFICER DODUC: Okay.

17 The Board will also accept written policy  
18 statements. A policy statement is a nonevidentiary  
19 statement. It is subject to the limitations identified  
20 in the hearing notice.

21 Persons making policy statements must not  
22 attempt to use their statements to present factual  
23 evidence, either orally or by introduction of written  
24 exhibits.

25 Policy statements should be limited to five

1 minutes or less.

2           And we will begin with the participants who did  
3 submit Notices of Intent to Appear indicating that they  
4 intend to present a policy statement only.

5           The first three participants requested that  
6 they present their policy statements as a panel, so at  
7 this time, I would welcome Tribal Chairman Mervin Wright  
8 of the Pyramid Lake Paiute Tribe, Mr. John Hoffman  
9 representing the State of Nevada, and Mr. Carroll Hamon  
10 representing the California Department of Water  
11 Resources.

12           Good morning.

13           MR. HAMON: Good morning. My name is Carroll  
14 Hamon. I am a retired Deputy Director for the  
15 California Department of Water Resources working as a  
16 retired annuitant on the Truckee River Operating  
17 Agreement. That's abbreviated T-R-O-A, and you will  
18 hear it referred to as TROA many times in the future,  
19 I'm sure.

20           When I retired at the end of 1994, the Director  
21 of Department of Water Resources, the late David  
22 Kennedy, asked me if I would step into the spot of  
23 negotiating as his special representative to TROA.

24           The Operating Agreement was mandated by Public  
25 Law 101-618 dated November 16, 1990 and commonly known

1 as the Settlement Act.

2 I agreed to take that responsibility and  
3 suggested it would probably take two or three years  
4 before it was completed. And David, having more  
5 knowledge than I did after working personally on the  
6 Settlement Act, suggested it might take five or six  
7 years.

8 Well, we're either eternal optimists, or we  
9 just didn't know much about the road ahead, because TROA  
10 was finally signed September 8, 2008 beside the Truckee  
11 River in Reno.

12 And I stand here -- or I sit here today at 16  
13 years and counting after my discussion with Dave.

14 I have continued as a Director's Special  
15 Representative through three governors and three  
16 subsequent directors.

17 I'm here before you today to state that the  
18 Department of Water Resources on behalf of the State of  
19 California supports the petitioners' request for  
20 modification of their water rights to allow  
21 implementation of the TROA.

22 While the focus of this hearing will be on the  
23 petitions for change and applications, it is important  
24 to realize that this step is vital to realization of the  
25 larger public good that can be derived from the TROA

1 once it is implemented.

2 The TROA is a carefully and comprehensively  
3 crafted agreement which will provide numerous benefits  
4 for the people of California.

5 The foremost benefit will be that the water of  
6 the Truckee River finally will be allocated between the  
7 states of California and Nevada.

8 The interstate waters of Lake Tahoe and the  
9 Truckee River have been the subject of controversy and  
10 litigation for more than 100 years partly because there  
11 is no equitable apportionment of the waters between the  
12 two states.

13 The TROA's implementation will allow for the  
14 interstate allocation as provided for in the Settlement  
15 Act to become effective.

16 The allocation preserves existing water rights  
17 in both California and Nevada and makes high-priority  
18 water available for new water rights in California up to  
19 the specified amounts in the Settlement Act.

20 This is a significant benefit to California by  
21 providing an increased assured and known water supply to  
22 meet future needs.

23 Over the years, lawsuits brought or threatened  
24 by downstream interests in Nevada over new water use in  
25 the California portion of the Truckee River basin have

1 brought issuance of new water rights and therefore new  
2 water use to a virtual stand-still.

3 As part of the agreement, these lawsuits will  
4 be dismissed when TROA is implemented.

5 The TROA also benefits the public's fisheries,  
6 biological and recreational resources.

7 Historically, the Truckee River reservoirs have  
8 been operated in accordance with strict water rights  
9 priorities which have not resulted in the most desirable  
10 regime either for various needs in Nevada or for  
11 instream flows and recreation in California.

12 The TROA changes this through implementing and  
13 promoting flexibility in the operation of the reservoirs  
14 and by requiring exchanges of water among the reservoirs  
15 so long as downstream water rights are not injured.

16 Once TROA is implemented, water currently  
17 released from storage exclusively for operation of power  
18 plants along the river will be held back in storage and  
19 released under specified criteria for municipal and  
20 industrial needs in Nevada.

21 The TROA also authorizes other categories of  
22 credit storage which will increase the amount of storage  
23 in the Truckee River reservoirs. These measures will  
24 benefit California by improving reservoir levels for  
25 recreation and providing release of water for instream

1 flows.

2           Additionally, because of the Settlement Act's  
3 express protection of existing Orr Ditch water rights,  
4 the parties who negotiated TROA decided to take an  
5 innovative approach when establishing how instream flows  
6 would be maintained.

7           Instead of mandatory releases for instream  
8 flows, TROA requires mandatory exchanges of water among  
9 reservoirs and releases to meet downstream needs in a  
10 manner intended to meet minimum and preferred flows  
11 identified by the California Department of Fish and  
12 Game.

13           To help implement this, California will be  
14 charged with providing annual guidelines and criteria  
15 that will enable the Truckee River reservoirs to be  
16 operated in such a way that instream flow targets and  
17 reservoir recreation levels can be met.

18           We believe that TROA, in terms of creative and  
19 efficient allocation of water resources, will allow  
20 California to face the continuing water supply  
21 challenges that are ahead.

22           The TROA is also a good example of integrated  
23 regional water management and negotiated resolution of  
24 water management issues.

25           Numerous California state and local agencies

1 have been involved for many years trying to make the  
2 TROA a reality. In addition to DWR, other California  
3 groups have participated in the TROA process.

4 Those include representatives of the Department  
5 of Fish and Game, the Attorney General's office, the  
6 State Water Resources Control Board, and the Lahontan  
7 Regional Water Quality Board along with several local  
8 communities and agencies that provide municipal and  
9 irrigation water supply and that have interests in  
10 water-based recreation, fishing, and other activities in  
11 the Truckee River Basin of California.

12 I'm pleased to say that to our knowledge the  
13 TROA is supported by all California agencies and  
14 interests. As such, the opportunity before you today is  
15 a unique one to take actions benefitting multiple  
16 interests to set an example of good water policy and  
17 management and to help put an end to the century-long  
18 water disputes regarding the Truckee River.

19 In sum, the Department encourages the State  
20 Water Resources Control Board to approve the Petitions  
21 For Change and Applications that are before you.

22 Once implemented, the TROA will serve as a  
23 positive example of cooperative negotiations and  
24 management as water users in California and Nevada  
25 prepare for a changing hydrologic future.

1 Thank you.

2 CO-HEARING OFFICER DODUC: Thank you.

3 It should be noted that as a panel you had 15  
4 minutes. So for the two remaining speakers, there's  
5 your time.

6 MR. HAMON: Sorry I took extra.

7 CO-HEARING OFFICER DODUC: Please continue.

8 CHAIRMAN WRIGHT: Okay. Good morning. My name  
9 is Mervin Wright. I'm the Tribal Chairman of the  
10 Pyramid Lake Paiute Tribe.

11 And echoing what Mr. Hamon has presented, I'll  
12 try not to reiterate or repeat what was said with regard  
13 to the multiple benefits.

14 Our support for the TROA has been present since  
15 the beginning of the negotiations in about 1991, and  
16 that was about the time I got hired by the tribe to be  
17 involved with the negotiations.

18 The 20 years that have passed clearly  
19 demonstrates the willingness of all the parties to  
20 accept the terms from which we have, one, put on the  
21 table and, secondly, accepted mutually in order to have  
22 an agreement, Truckee operative agreement, before us.

23 I submitted a written statement, and I'll just  
24 summarize some of the points there so I don't get into  
25 too much of -- I mean, there's a lot to say about the

1 history of the Truckee River and our involvement in  
2 litigation and the contention that existed over the last  
3 century.

4           When I first got involved, I heard statements  
5 from some of the TROA parties saying that -- and  
6 primarily I think I remember most distinctly from Pete  
7 Morros from the State of Nevada who said that the  
8 Truckee River is the most litigated river in the  
9 country.

10           I've heard that comment across the western  
11 states with all of the river basins, so I come to  
12 acknowledge the importance of water in the western  
13 states.

14           And I think with regard to the interstate  
15 allocation, you know, this is paramount in seeing this  
16 finally being settled between the states of Nevada and  
17 California.

18           And I'll just say that our effort to recover  
19 our fishery has brought the tribe through many decades  
20 of contention in courts with setbacks, with some  
21 victories, and some continuing as we speak today.

22           But as a fishery people, traditionally for  
23 generations we have depended on our fishery for  
24 survival. Those traditions exist amongst our community  
25 today.

1           And as much as we've seen the criticism of the  
2 threatened and endangered species from some of the  
3 opposition to what we're trying to accomplish, we've  
4 endured that and moved past that, and so I think the  
5 TROA clearly shows the cooperation that was required to  
6 settle this.

7           You know, as difficult as it has been for some  
8 of us -- maybe all of us -- in accepting the terms and  
9 conditions of the compromise that was required to bring  
10 us to where we are today, we embrace that. We've  
11 accepted it.

12           And we're hopeful that the State Water  
13 Resources Control Board will favorably consider the  
14 applications and petitions because, as Mr. Hamon said,  
15 the multiple benefits that are aimed through the TROA,  
16 you know, is what we're hoping to experience, a more  
17 natural flow regime that was taken away from the years  
18 of regulation and the change in the operations that was  
19 placed into the written laws and decrees.

20           So we're hoping that we can get the Truckee  
21 River operating into a more natural flow regime.

22           That's something we see as a benefit to our  
23 Pyramid Lake fishery as well as the benefits to many  
24 other users. The flexibility that it presents will give  
25 us that opportunity.

1           So I don't want to take too much more time. I  
2 know Mr. Hoffman needs to make his statement.

3           But thank you.

4           CO-HEARING OFFICER DODUC: Thank you,  
5 Mr. Chairman. Mr. Hoffman?

6           MR. HOFFMAN: Mr. Chairman, Board Member, and  
7 Board staff. I'm John W. Hoffman. I'm Special Counsel  
8 for the State of Nevada.

9           I've been asked by the State of Nevada to  
10 present its policy statement. I asked that our written  
11 statement that was transmitted be made part of the  
12 record. I'll summarize quickly with the minute and 16  
13 seconds --

14           CO-HEARING OFFICER DODUC: That's fine. Take a  
15 few more minutes if you need, Mr. Hoffman.

16           MR. HOFFMAN: Thank you.

17           The State of Nevada is a mandatory signatory  
18 under TROA, under the Settlement Act, and Nevada has  
19 signed the TROA.

20           Through TROA, there are procedures that provide  
21 for compliance with state law processes and protections  
22 of California law and Nevada law. This Board is meeting  
23 pursuant to some of the required reviews that the  
24 Settlement Act and TROA required.

25           The State of Nevada has had a like proceeding

1 for matters within its prerogatives and has issued its  
2 ruling, the Nevada State Engineer Ruling Number 6035, on  
3 March 19, 2010.

4 TROA has required compliance by the United  
5 States with NEPA, with the Federal Endangered Species  
6 Act. It has required that California comply with CEQA  
7 and has required that California comply with the  
8 California Endangered Species Act.

9 This hearing is another vital process that will  
10 serve to protect and promote many varied and important  
11 interests.

12 Another aspect, very important aspect, as both  
13 of the previous speakers have referred to, is the  
14 interstate allocation.

15 Section 204 of the Settlement Act provides for  
16 the long-awaited allocation of the waters of the Truckee  
17 River, the Carson River, and Lake Tahoe between the  
18 states of Nevada and California, but it does not go into  
19 effect until certain requirements are met including that  
20 TROA has gone into effect.

21 There's a long history, as Mr. Hamon referred  
22 to, in trying to achieve this allocation.

23 The California Nevada Compact -- Interstate  
24 Compact Commission began efforts to reach an allocation  
25 back in 1955. Those efforts resulted in intensive and

1 sometimes contentious negotiations through 1969.

2 In 1970, the Nevada legislature ratified the  
3 compact that had been agreed to by the commission  
4 members of Nevada and California.

5 In 1970, California's legislature also ratified  
6 the compact with minor modifications.

7 In 1971, the Nevada legislature then reratified  
8 with the modifications that California asked for.

9 Nevertheless, the compact did not go into  
10 effect. The United States Congress did not ratify the  
11 compact. This was because of some objections from the  
12 Pyramid Lake Tribe, some local interests, and some  
13 federal agencies.

14 But through the Settlement Act process, there  
15 is now an allocation that has been agreed to by Nevada  
16 and California and through the act of Congress.

17 And it's very, very important that now that we  
18 have all those previous objections resolved and have an  
19 allocation that, though somewhat different than the  
20 original compact, for all intents and purposes serves  
21 all the same objectives and goals.

22 Without intending to improperly address this  
23 Board as a neighboring state, Nevada does wish to make  
24 two policy statements for the record.

25 First, as evidenced by Nevada's participation

1 in the TROA process culminating in Nevada's concurrence  
2 and approval of TROA, it is the established policy of  
3 the State of Nevada to support TROA and its  
4 implementation.

5           Secondly, Nevada has been involved with  
6 California since 1955 in its efforts to conclude an  
7 interstate allocation of the waters of Lake Tahoe, the  
8 Truckee River, and the Carson River.

9           Although the statutory allocation does not  
10 resolve the Walker River, ratification and  
11 implementation of TROA would effect and put into effect  
12 this critical allocation.

13           It is Nevada policy to support resolution and  
14 conclusion of this allocation.

15           And I thank you very much.

16           CO-HEARING OFFICER DODUC: Thank you,  
17 Mr. Hoffman.

18           Any questions for these three speakers?

19           Thank you very much, gentlemen.

20           Our fourth policy statement will be provided by  
21 the California Department of Fish and Game.

22           MS. LYNCH: Good morning. My name is MaryLisa  
23 Lynch. I oversee the water program at the North Central  
24 Region for the Department of Fish and Game. And I'm  
25 here to read our policy statement in support of the

1 Water Right applications filed by the Bureau of Rec and  
2 Petition to Change application submitted by the Bureau  
3 of Reclamation, Truckee Meadows Water Authority, and  
4 Washoe County Water Conservation District to implement  
5 the Truckee River Operating Agreement.

6 As the trustee agency for California's fish and  
7 wildlife resources, the Department of Fish and Game  
8 supports the State Water Resources Control Board's  
9 approval of the Water Right application sought by the  
10 Bureau of Reclamation and the Petition to Change  
11 application sought by the Bureau, Truckee Meadows Water  
12 Authority, and Washoe County Water Conservation District  
13 intended to accommodate the implementation of the  
14 Truckee River Operating Agreement.

15 The Department was an active participant during  
16 parts of the lengthy TROA negotiation process.

17 We maintained from the outset that the Truckee  
18 River Basin public trust resources, particularly the  
19 fisheries resources, must be protected by adequate  
20 minimum flow conditions in all stream reaches and by the  
21 establishment of a habitat restoration program.

22 Both of these elements were included in TROA.

23 The minimum flows referred to as enhanced  
24 minimum flows throughout the TROA are the minimum flows  
25 that were proposed by the Department.

1           The Truckee River Basin is home to many  
2 species, including the federally listed threatened  
3 Lahontan Cutthroat and endangered Cui-ui.

4           The rivers, lakes, and reservoirs provide habit  
5 for waterfowl and other birds as well as recreational  
6 sport fishing opportunities.

7           The riparian areas provide habitat for  
8 diversity of species in an otherwise relatively arid  
9 environment.

10           We believe the TROA will benefit these species  
11 by improving instream flows in the Truckee River and  
12 improving the quality of habitat in the basin.

13           TROA ensures that instream flows will meet the  
14 Department's proposed enhanced minimum flows through  
15 several mechanisms including voluntary releases from  
16 TROA signatories, mandatory exchanges of water between  
17 reservoirs when possible, limitations on the  
18 accumulation of credit water, and the establishment and  
19 release of joint program fish credit water and fish  
20 credit water.

21           In addition, TROA provides for the creation and  
22 use of the California guidelines which identify specific  
23 objectives for instream flows and reservoir levels  
24 designed to meet the instream flows requested by the  
25 Department.

1           We will be an active participant in the  
2 implementation of the California guidelines through  
3 regular meetings with the Truckee River Basin Water  
4 Group.

5           The purposes of these meetings is, among other  
6 things, to improve instream flows by determining when  
7 and where to establish and release joint program fish  
8 credit water and what reservoir operations, including  
9 exchanges, to make or propose.

10           The Department believes that these mechanisms  
11 in total help to ensure that our proposed minimum flow  
12 releases will be implemented pursuant to TROA and that  
13 the releases will be sufficient to protect public  
14 resources, particularly during dry hydrologic  
15 conditions.

16           In addition to higher minimum flow releases,  
17 the Department actively encouraged the inclusion of a  
18 habitat restoration program as a component of TROA.

19           TROA does establish a habitat restoration  
20 program and provides a funding mechanism to ensure that  
21 habitat restoration projects can be completed in the  
22 near future.

23           We believe that habitat restoration is a  
24 necessary component of TROA. Habitat restoration along  
25 with enhanced minimum flows will improve instream

1 resources such as water quality, wildlife habitat, and  
2 recreational opportunities while allowing greater water  
3 supply flexibility.

4 In summary, the Department believes that TROA  
5 is a positive step towards restoring instream flow  
6 resources and habitat conditions in the Truckee River  
7 Basin that have deteriorated over the years due to water  
8 supply project impacts and other stressors.

9 We believe that overall TROA will be beneficial  
10 to public trust resources, and therefore we recommend  
11 that the Board approve the water right application and  
12 change petitions.

13 Thank you.

14 CO-HEARING OFFICER DODUC: Thank you. Any  
15 questions? Okay.

16 Do we have any blue cards at all? All right.  
17 With no other blue cards, we'll now move to the  
18 evidentiary portion of the hearing for presentation of  
19 evidence and related cross-examination by parties who  
20 have submitted Notices of Intent to Appear.

21 We will hear the parties' cases-in-chief in the  
22 following order:

23 First, the joint case presented by the US  
24 Bureau of Reclamation, Truckee Meadows Water Authority,  
25 Washoe County Water Conservation District, California

1 Department of Water Resources, Pyramid Lake Paiute  
2 Tribe, and the City of Fernley.

3 Then we'll hear the joint case presented by  
4 Truckee-Carson Irrigation District followed by Churchill  
5 County, Nevada.

6 At the beginning of each case-in-chief, a  
7 representative of the party may make an opening  
8 statement briefly summarizing the objectives of the  
9 case, the major points the proposed evidence is intended  
10 to establish, and the relationship between the major  
11 points and the key issues.

12 After any opening statement, we will hear  
13 testimony from the parties' witnesses.

14 Before testifying, witnesses should identify  
15 their written testimony as their own and affirm that it  
16 is true and correct.

17 Witnesses should summarize the key points in  
18 their written testimony and should -- this is very  
19 important -- not read their written testimony into the  
20 record.

21 Direct testimony will be followed by  
22 cross-examination by the other parties, Board staff, and  
23 myself or Board Chairman Hoppin.

24 Redirect examination may be permitted followed  
25 by recross-examination.

1           Any redirect examination and  
2 recross-examination is limited to the scope of the  
3 cross-examination and redirect examination respectively.

4           After all the cases-in-chief are completed, the  
5 parties may present rebuttal evidence.

6           Parties are encouraged to be efficient in  
7 presenting your cases and cross-examination.

8           Except where I approve a variation, we will  
9 follow the procedures set forth in the Board's  
10 regulations, the hearing notice, and subsequent rulings.

11           The parties' presentations are subject to the  
12 following time limits:

13           Opening statements are limited to 20 minutes  
14 for each party.

15           Oral presentations of direct testimony of each  
16 witness will be limited to a maximum of 20 minutes.

17           The joint presentation will consist of seven  
18 panels with each panel covering a different topic.  
19 Direct testimony shall not exceed four hours for the  
20 joint presentation.

21           Cross-examination will be limited to one hour  
22 per witness or, in the case of the joint presentation,  
23 per panel of witnesses.

24           Additional time may be allowed upon a showing  
25 of good cause.

1           We do not anticipate having oral closing  
2 arguments, but parties may submit --

3           (Interruption)

4           CO-HEARING OFFICER DODUC: Mr. Chairman.

5           (Laughter)

6           CO-HEARING OFFICER HOPPIN: It's my mother.

7           CO-HEARING OFFICER DODUC: Okay. I guess if my  
8 mother were to call.

9           CO-HEARING OFFICER HOPPIN: Sorry.

10          CO-HEARING OFFICER DODUC: He's the chair.  
11 What can I do?

12          We do not anticipate having oral closing  
13 arguments, but parties may submit written closing  
14 briefs. We will discuss at the end of the hearing page  
15 limits and due date.

16          With that in mind, I will now invite  
17 appearances by the parties who are participating in the  
18 evidentiary portion of the hearing.

19          Those making appearances, please state your  
20 name, address, and whom you represent so that the court  
21 reporter can enter this information into the record.

22          Let's begin with the US Bureau of Reclamation.  
23 Please come up to the podium and speak into the  
24 microphone.

25          MR. PALMER: Thank you. Good morning. My name

1 is Steve Palmer with the Solicitor's Office in  
2 Sacramento representing the US Bureau of Reclamation.  
3 And assisting me today is Rod Smith. He's with the  
4 Solicitor's Office out of Salt Lake City.

5 CO-HEARING OFFICER DODUC: Thank you. Truckee  
6 Meadows Water Authority.

7 MR. DePAOLI: Good morning. My name is Gordon  
8 DePaoli, D-e-P-a-o-l-i, with Woodburn and Wedge in Reno,  
9 Nevada. Address is 6100 Neil, N-e-i-l, Road, Reno,  
10 Nevada 89511. Assisting me is Dale Ferguson from the  
11 same law firm and Stefanie Hedlund from Best Best &  
12 Krieger in Sacramento.

13 CO-HEARING OFFICER DODUC: Thank you.  
14 Washoe County Water Conservation District?

15 MR. PAGNI: Good morning. My name is Michael  
16 Pagni, P-a-g-n-i, on behalf of the Washoe County Water  
17 Conservation District. My address is PO Box 2670, Reno,  
18 Nevada 89505. Thank you.

19 CO-HEARING OFFICER DODUC: Thank you.  
20 California Department of Water Resources.

21 MR. SODERLUND: Good morning. My name is Eric  
22 Soderlund S-o-d-e-r-l-u-n-d, representing the California  
23 Department of Water Resources. Address is 1416 Ninth  
24 Street, Sacramento, California 95814.

25 CO-HEARING OFFICER DODUC: Pyramid Lake Paiute

1 Tribe.

2 MR. SPRINGMEYER: Good morning. My name is Don  
3 Springmeyer, S-p-r-i-n-g-m-e-y-e-r. With me is Mr.  
4 Christopher Mixson from the Wolf Rifkin law firm in Las  
5 Vegas representing the Pyramid Lake Paiute Tribe. I've  
6 given our card to the reporter for the address.

7 CO-HEARING OFFICER DODUC: Thank you.  
8 City of Fernley.

9 MR. TAGGART: Good morning. My name is Paul  
10 Taggart. I'm with the firm of Taggart and Taggart in  
11 Carson City. T-a-g-g-a-r-t. Our address is 108 North  
12 Minnesota Street in Carson City, 89703. I represent the  
13 City of Fernley. Thank you.

14 CO-HEARING OFFICER DODUC: Truckee-Carson  
15 Irrigation District.

16 MR. VAN ZANDT: Good morning, Mr. Chairman,  
17 Board Member Doduc.

18 My name is Michael Van Zandt with the firm of  
19 Hanson Bridgett at 425 Market Street, 26th Floor, San  
20 Francisco 94105 representing the Truckee-Carson  
21 Irrigation District.

22 And today I have assisting with me from my  
23 office Nathan Metcalf. Thank you.

24 CO-HEARING OFFICER DODUC: Churchill County.

25 MR. VAN ZANDT: I am also representing

1 Churchill County; I'm sorry.

2 CO-HEARING OFFICER DODUC: Okay.

3 City of Fallon.

4 MR. MACKEDON: Good morning. My name is  
5 Michael Mackedon, M-a-c-k-e-d-o-n, with the law firm of  
6 Mackedon McCormick & King, 179 South Laverne Street,  
7 Fallon, Nevada. Our firm represents the City of Fallon.  
8 Thank you.

9 CO-HEARING OFFICER DODUC: Thank you.

10 Let me now administer the oath. Will those  
11 persons who may testify during this proceeding please  
12 stand and raise your right hand.

13 Do you promise to tell the truth in this  
14 proceeding? Please say yes.

15 PROSPECTIVE WITNESSES (collectively): Yes.

16 CO-HEARING OFFICER DODUC: Did anyone say no?

17 Thank you. You may be seated.

18 Let me provide a clarification for those  
19 parties presenting a joint case. I misspoke earlier.  
20 You have a maximum of six hours to present your joint  
21 case.

22 All right. With that, we'll start with that  
23 joint presentation. Mr. Palmer, were you intending to  
24 start us off? Or whomever is providing -- okay.

25 MR. DePAOLI: Good morning. Member Doduc,

1 Chairman Hoppin. My name is Gordon DePaoli. I am  
2 appearing on behalf of the Truckee Meadows Water  
3 Authority.

4 John Erwin of the Truckee Meadows Water  
5 Authority will tell you that the Truckee Meadows Water  
6 Authority is a joint powers authority created by a  
7 cooperative agreement between the cities of Reno,  
8 Sparks, and Washoe County, Nevada.

9 TMWA acquired the water utility business of  
10 Sierra Pacific Power Company in 2001 and today is the  
11 largest supplier of water for municipal and industrial  
12 use in Washoe County, Nevada.

13 It provides retail water service to residents  
14 and visitors to the cities of Reno/Sparks and to  
15 adjacent portions of Washoe County.

16 TMWA is a Petitioner with respect to the  
17 Independence change petition but has an important  
18 interest in all of the change petitions and in the  
19 applications.

20 My opening will address only the change  
21 petitions. I expect it is as unusual for you to have  
22 all of us Nevada folks here today as it is for us to be  
23 here.

24 The background on why we are here involves more  
25 than 100 years of history concerning the use of water on

1 the Truckee River and its tributaries.

2 In the joint case-in-chief through documents  
3 and testimony, we will provide a very brief synopsis of  
4 that history in order to place the change petitions  
5 before you today in the context of how the operation of  
6 the Truckee River and its reservoirs has evolved since  
7 the beginning of the last century and as it will evolve  
8 at the beginning of this century.

9 Mr. Chad Blanchard, the Chief Deputy  
10 Watermaster for the United States District Court for the  
11 Orr Ditch Decree on the Truckee River will talk to you  
12 about how the reservoirs are currently operated.

13 The five federal reservoirs on the Truckee  
14 River system have come into being at different times and  
15 for different purposes.

16 Of the five federal reservoirs on the Truckee  
17 River system, Lake Tahoe was the first. Since at least  
18 1908 and through the present, it has been operated to  
19 maintain a constant rate of flow at or near the  
20 California/Nevada state line. The constant rate of flow  
21 is commonly referred to as the Floriston rate or  
22 Floriston rates.

23 Boca was the second reservoir constructed, and  
24 it with Lake Tahoe has also been operated to maintain  
25 the Floriston rate as required by the Orr Ditch Decree.

1           The third reservoir constructed was Prosser  
2 Creek Reservoir, and it has been operated to allow for a  
3 minimum release of water from Lake Tahoe through what is  
4 referred to as the Tahoe-Prosser Exchange and has been  
5 operated for the benefit of threatened and endangered  
6 species of fish at Pyramid Lake.

7           The fourth reservoir, Stampede, constructed in  
8 1970, has also been operated for the benefit of  
9 threatened and endangered species at Pyramid Lake.

10           Martis Creek Reservoir has operated for flood  
11 control only.

12           Since the Orr Ditch Decree was entered in 1944,  
13 a great deal has changed, especially in the area around  
14 Reno and Sparks generally referred to as the Truckee  
15 Meadows.

16           As that area has changed from farmland to urban  
17 uses, so too did the water rights change from irrigation  
18 to municipal use.

19           Janet Carson Phillips and John Erwin will tell  
20 you how those changes resulted in changes in how the  
21 area's water utility managed its water supply and the  
22 need for a drought supply reserve.

23           In the early 1980s, Sierra Pacific Power  
24 Company, TMWA's predecessor in the water utility  
25 business, saw the need for upstream drought storage in

1 order to meet its customers' needs during drought  
2 periods.

3           Initially, it sought that drought storage from  
4 Stampede Reservoir. However, as a result of court  
5 decisions, Stampede Reservoir did not become available  
6 as a source of municipal drought supply.

7           Therefore, Sierra studied many other options,  
8 including reservoirs in the state of Nevada.

9           At the beginning of the 1988 drought which  
10 lasted until 1994, Sierra and the Pyramid Lake Paiute  
11 Tribe negotiated the Preliminary Settlement Agreement.

12           That Preliminary Settlement Agreement laid the  
13 foundation for the Settlement Act which you heard  
14 something about from some of the policy folks who gave  
15 statements.

16           Section 205(a) of the Settlement Act authorizes  
17 the Truckee River Operating Agreement, or TROA.

18           In that section, Congress authorized the  
19 Secretary of the Interior to negotiate an operating  
20 agreement with Nevada and California which, among other  
21 things, would provide for a more flexible and  
22 coordinated operation of the Truckee River reservoirs,  
23 Lake Tahoe, Boca, Prosser Creek, and Stampede, while at  
24 the same time satisfying the exercise of existing water  
25 rights under the Orr Ditch Decree and the Truckee River

1 General Electric Decree.

2 Congress also authorized that other reservoirs  
3 could be part of the operating agreement to the extent  
4 that the owner of affected storage rights signed the  
5 agreement. That is why the Independence change petition  
6 is here today.

7 Although TROA was signed in September of 2008  
8 by the California Secretary of Resources, the Secretary  
9 of the Interior, and the Director of the Nevada  
10 Department of Conservation and Natural Resources, the  
11 Pyramid Tribe, and TMWA, and many others, it is not yet  
12 in effect.

13 In the Settlement Act, Congress recognized that  
14 in part the more flexible and coordinated operation of  
15 the Truckee River reservoirs would require changes to  
16 water rights under state law.

17 The changes to water rights which are needed to  
18 provide that more flexible and coordinated operation of  
19 those reservoirs involve the change petitions before you  
20 in this hearing and changes to Nevada water rights  
21 recognized under the Orr Ditch Decree entered in 1944.

22 The changes related to the Nevada water rights  
23 have been filed, heard, and decided by the Nevada State  
24 Engineer, and that decision is now on appeal before the  
25 Orr Ditch Court.

1           Those changes allow the consumptive use portion  
2 of Orr Ditch Decree water rights to be held in storage  
3 until needed for beneficial use.

4           The nonconsumptive portion of those Orr Ditch  
5 Decree water rights will remain in the stream to help  
6 satisfy other water rights, just as if the consumptive  
7 portion had been used for its original purpose.

8           The change petitions which are the subject of  
9 this hearing relating to the four reservoirs, Stampede  
10 Boca, Prosser, and Independence, seek downstream common  
11 points of diversion, rediversion, places of use, and  
12 purposes of use.

13           For the three reservoirs on the Little Truckee  
14 River system, they also seek some additional changes  
15 related to points of diversion, rediversion, and  
16 redistribution of storage.

17           The change petitions request that they not be  
18 effective until the conditions for the Truckee River  
19 Operating Agreement have been satisfied and that they be  
20 operated in accordance with the applicable license or  
21 permit and the conditions of the Truckee River Operating  
22 Agreement.

23           The evidence will demonstrate that the change  
24 petitions deal with previously stored water which has  
25 been stored in priority. They do not store any

1 additional water from any source.

2           The evidence will demonstrate that if the  
3 change petitions are approved water will continue to be  
4 stored under these water rights in accordance with the  
5 priorities followed today.

6           Any storage space made available in one of the  
7 reservoirs by movement of water to another reservoir  
8 will only be refilled in accordance with the water right  
9 as it exists today and in accordance with the priorities  
10 as they exist today.

11           This evidence shows that approval of the change  
12 petitions will not result in injury to any other legal  
13 user of water.

14           The evidence will also demonstrate that the  
15 change petitions do not seek any change in amount or  
16 quantity of water which may be diverted to storage.

17           In no case will the quantity of water devoted  
18 to storage be enlarged. In no case will the quantity of  
19 water allowed to be withdrawn from storage be enlarged.

20           The diversion season will not be expanded or  
21 changed, and the source of water will not change.

22           The changes will not increase the amount of  
23 water taken from any source at any given time.

24           This evidence will demonstrate that the change  
25 petitions do not initiate a new water right.

1           The evidence will also show that the change  
2 petitions will facilitate the flexible and coordinated  
3 operation of these reservoirs as provided in the TROA  
4 and will provide benefits to fish in the Truckee River  
5 and affected tributaries, benefits to fish in lakes and  
6 reservoirs, benefits to waterfowl and shore birds,  
7 benefits to riparian habitat and associated wildlife,  
8 benefits to endangered, threatened, or other special  
9 status species, and will have either no effect or  
10 beneficial effects with respect to other resources and  
11 species.

12           The evidence will also show that the petitions  
13 will facilitate flexible and coordinated operation of  
14 the reservoirs as provided in the operating agreement  
15 and will provide benefits to Truckee River water quality  
16 both in California and in Nevada, will not increase  
17 shoreline erosion at Lake Tahoe, and will otherwise  
18 improve recreation at these reservoirs.

19           This evidence will establish that approval of  
20 the change petitions will not result in significant  
21 adverse impacts to water quality, environment, or public  
22 trust resources and that conditions to avoid or mitigate  
23 adverse impacts are not needed.

24           The joint case-in-chief as to the change  
25 petitions will demonstrate that the State Board should

1 approve the change petitions subject only to the  
2 conditions requested in the change petitions themselves.

3 Thank you.

4 CO-HEARING OFFICER DODUC: Thank you.

5 Mr. Palmer.

6 MR. PALMER: Thank you. Good morning, Mr.  
7 Chairman, Board Member, and staff.

8 As this is a joint case, this opening will be a  
9 supplement to the opening provided by Mr. DePaoli, and  
10 so I adopt his opening and will just add a few  
11 additional remarks reflecting mostly on the Bureau of  
12 Reclamation, in addition describing briefly the  
13 applications for Stampede and Prosser Creek Reservoir.

14 As Mr. DePaoli mentioned, this particular  
15 proceeding is important to putting TROA into effect. It  
16 is one of the processes under state law that's required  
17 in order to implement the TROA and provide for this  
18 flexible operation of the Truckee River reservoirs.

19 As Mr. DePaoli did mention, the reason that the  
20 Bureau of Reclamation is involved, and for that matter  
21 the US Department of Interior, is the Settlement Act,  
22 Public Law 101-618, Section 205(a) that directed the  
23 Secretary of the Interior to negotiate the Truckee River  
24 Operating Agreement and in that Act set out specific  
25 requirements that must be included in the agreement.

1           The Act also authorized the reservoirs -- and  
2 here I'll speak about the reservoirs that the United  
3 States owns, which is Stampede, Prosser and Boca. Of  
4 course, the water right for Boca is held by the Water  
5 Conservation District.

6           The Settlement Act directed the Secretary to  
7 use Prosser and Stampede Creek Reservoir for the benefit  
8 of the listed fish, the Cui-ui and cutthroat trout,  
9 except as otherwise provided in TROA.

10           In evaluating the TROA, the United States  
11 Department of Interior along with the State of  
12 California developed an Environmental Impact Statement  
13 and Environmental Impact Report.

14           The Resources Agency issued its Notice of  
15 Determination, as you'll hear from the State of  
16 California, in September of 2008, and the federal Record  
17 of Decision was signed by the Secretary of Interior on  
18 September 5th, 2008s.

19           It was also mentioned, TROA was signed shortly  
20 thereafter in September 2008.

21           The CEQA process regarding TROA is now final.  
22 There are no appeals pending.

23           The NEPA process, however, in accordance with  
24 the Settlement Act, is currently before the United  
25 States District Court in the District of Nevada.

1           TROA is also now in federal regulation. That  
2 is also final.

3           The analysis in the EIS/EIR, as mentioned by  
4 Mr. DePaoli, considered many things and did not identify  
5 any significant environmental effects.

6           It in fact identified many benefits for  
7 implementation of TROA, and we are not aware of any  
8 significant new information that would change the  
9 results of that analysis.

10           In putting on this direct case, the Bureau of  
11 Reclamation will present witnesses in addition to those  
12 of TMWA.

13           We will present witnesses that will provide an  
14 overview of the petitions and applications.

15           We will provide a witness along with the Water  
16 Master who will describe to you the geography of the  
17 Truckee River Basin, some of the operations involved in  
18 the reservoirs, and in particular the issue regarding  
19 the OCAP, the operating procedures for the Newlands  
20 Project which dictate how water is diverted from the  
21 Truckee River into the Truckee Canal for the Newlands  
22 Project.

23           We will also provide witnesses in addition to  
24 demonstrate that, in our view, there is no injury for  
25 these water rights. There is water available for

1 appropriation for both of the applications, and that the  
2 petitions will not initiate a new water right.

3 We'll provide witnesses that will describe for  
4 you the environmental review that was conducted, as I  
5 mentioned, demonstrating that there was no significant  
6 effects shown from TROA and in fact many benefits that  
7 we'll have.

8 Last, we'll provide witnesses that will  
9 demonstrate the public interest. As you heard in the  
10 policy statements, we'll have evidence that further  
11 defines the public interest in TROA.

12 And in summary, we recommend the Board approve  
13 these applications, issue the permits for application  
14 for Stampede and Prosser.

15 We've also included a request to replace one  
16 permit term for Prosser, and that will be presented in  
17 our written testimony.

18 There are two terms that we've asked to be  
19 added to these permits and licenses, and those will be  
20 presented in the evidence.

21 We don't believe that any further terms and  
22 conditions are necessary other than the ones we have  
23 presented.

24 And we request -- we think the evidence will  
25 show that the protest raised by the protestants should

1 be overruled.

2 Thank you.

3 CO-HEARING OFFICER DODUC: Thank you.

4 MR. PAGNI: Good morning, Board Members, staff.

5 Michael Pagni on behalf of the Washoe County Water

6 Conservation District.

7 As Mr. DePaoli and Mr. Palmer indicated, the  
8 District will be presenting a joint case together with  
9 the Bureau of Reclamation and the Truckee Meadows Water  
10 Authority in the interest of moving these proceedings  
11 along as efficiently as possible.

12 That means two things. One, if you are lucky  
13 you're not going to hear much from me.

14 But more importantly, two, when the Bureau or  
15 TMWA submits evidence or information, we would ask that  
16 you understand that that is being submitted on behalf of  
17 the District as well.

18 I do not want to repeat some of the statements  
19 they made, but I do have some brief opening remarks on  
20 behalf of the District itself and its petition.

21 The evidence will show that the Washoe County  
22 Water Conservation District is an irrigation district  
23 formed under Nevada law and in that respect is identical  
24 to the protestant, TCID.

25 Mr. Wathen will testify that the District

1 encompasses approximately 29,000 acres of land in  
2 Reno/Sparks and portions of the Truckee Canyon east of  
3 Sparks in Nevada.

4 The District's users are made up primarily of  
5 irrigation water rights holders and domestic water  
6 rights holders.

7 And the evidence will show that the District  
8 holds License 3723 which authorizes it to store 40,850  
9 acre feet of water in Boca Reservoir.

10 It's important to note that the District does  
11 not own the reservoir. It merely operates and maintains  
12 the dam.

13 And Mr. Wathen will testify that it takes  
14 direction from the Federal Water Master's Office as to  
15 when waters are stored or released.

16 The District has filed its petition to change  
17 the points of rediversion and redistribution under its  
18 Boca license, and the purpose of that change is to  
19 facilitate more flexible and coordinated operations of  
20 the five Truckee River reservoirs.

21 One of the benefits of that proposed change, if  
22 approved, is that it will help facilitate the  
23 implementation of TROA of which the District is a party.

24 It is important to note, and I think it's  
25 critical that this Board understand, TROA is not on

1 trial. We are not asking the Board to approve TROA.

2 TROA is the context in which these petitions  
3 are being brought forward. TROA is not the proposed  
4 change.

5 Now admittedly, that TROA context is somewhat  
6 complex. No doubt the petitioners will try to get the  
7 Board to focus on the complexity of that context rather  
8 than the simplicity of the proposed changes.

9 In so doing, we believe they will hope to  
10 convince the Board to not see the forest for the trees.

11 We believe that the evidence will show when you  
12 simply look at what we're doing, when you look at the  
13 proposed changes themselves, you will see that they are  
14 fairly simple, pretty straightforward, and not unlike  
15 those this Board has granted time and again in other  
16 context to improve reservoir operations in this state.

17 The evidence will show that the proposed change  
18 seeks merely to create common places and purposes of  
19 use, common points of diversion and redistribution so  
20 that the waters in the five federal reservoirs can be  
21 exchanged, stored, and diverted in a manner that is more  
22 coordinated, more flexible, and more importantly, more  
23 efficient than is done today, all of which will provide  
24 significant benefits to the District and its water  
25 rights users through enhanced drought protection and

1 more stable Floriston rate deliveries.

2 The Board has raised some questions in its  
3 Notice of Hearing, and in conclusion I would offer three  
4 responses.

5 One, the evidence will show that the proposed  
6 changes will maximize existing water rights, not injure  
7 them.

8 Two, the evidence will show that the proposed  
9 changes will not initiate a new water right nor take  
10 away anyone's existing water rights. Specifically to  
11 the protestants, it will not alter, diminish or in any  
12 way cause injury to the water rights of Newlands Project  
13 users.

14 Three, the evidence will show that the proposed  
15 changes will not adversely impact the environment or  
16 water quality or the public trust. In fact, to the  
17 contrary: If approved, the proposed changes will  
18 significantly improve and enhance those interests  
19 through enhanced drought protection for municipal,  
20 industrial, and irrigation users, through enhanced river  
21 conditions for endangered and threatened species,  
22 improved water quality, enhanced stream flows, and  
23 improved recreational uses through more stable  
24 operations of these reservoirs, all of which will occur  
25 while satisfying existing water rights.

1           We believe that when you focus on the proposed  
2 changes themselves and the simple relief that they  
3 seek -- when you step back and see the forest -- this  
4 Board will see that all these proposed changes really  
5 seek to do is increase the operational efficiency of  
6 existing facilities while maximizing and satisfying  
7 existing water rights, all of which is in the best  
8 interests of the people of the state and the water users  
9 on the Truckee River.

10           We would ask the Board approve the petitions  
11 and the applications.

12           Thank you.

13           CO-HEARING OFFICER DODUC: Mr. Springmeyer.

14           MR. SPRINGMEYER: Good morning, Mr. Chairman,  
15 Board Member, staff. Don Springmeyer on behalf of the  
16 Pyramid Lake Paiute Tribe.

17           I will make two comments that I hope might be  
18 helpful for the Board.

19           The first is to give you an example of how this  
20 all can work because we use catchwords like coordination  
21 and efficiency, but you might think to yourself, what  
22 does that mean? How can you move water around and have  
23 that be beneficial to some and not injurious to others?

24           Here's an example.

25           The fish aren't helped by a little trickle of

1 water going all the time. When the Cui-ui and the  
2 Lahontan Cutthroat Trout need to spawn, they need a big  
3 charge of water coming down that -- a big charge of cold  
4 water coming down that river, and that stimulates them  
5 to go upriver and spawn.

6 The Truckee Meadows, on the other hand, isn't  
7 helped in a severe drought by a little trickle of water  
8 either. They need water to supplant what they're  
9 usually using but they don't have because they're in a  
10 drought.

11 One of the ways this works is that those  
12 parties, with the cooperation of the others you see here  
13 as petitioners, have made arrangements so that the tribe  
14 and the river and the fish can, under the right  
15 conditions, get that big charge of water to go down the  
16 river to aid the spawning run which we couldn't  
17 otherwise get.

18 On the other hand, the tribe has agreed to  
19 allow its fish water to be used by the Truckee Meadows  
20 in a severe drought to protect all the citizens and  
21 water drinkers and users in the Truckee Meadows under  
22 certain specified drought conditions.

23 So we get more of what we need occasionally.  
24 They get more of what they need occasionally. Neither  
25 one of us is helped by a dribble all the time in either

1 case.

2           It's similar, I think, to an irrigation canal.  
3 A little dribble all the time doesn't help you. You  
4 need a head to get enough water in the canal to go over  
5 into the field and irrigate.

6           So that's in a way similar to the fish. You  
7 need the charge. You need the head. And this is an  
8 arrangement so the fish can get the head when they need  
9 it too.

10           Second, let me say that one of the things you  
11 will constantly hear through this hearing you may have  
12 already seen in the written testimony and in the  
13 verbalizations here in the hearing.

14           The proponents say there's no injury to legal  
15 rights. The protestants say we're being harmed. We're  
16 being diminished. The water -- we're not getting what  
17 we've been getting, so we're being harmed.

18           And you might well think to yourself how could  
19 that be? How can there be such a disconnect between the  
20 two sides? I'll suggest the answer to you.

21           The answer is that the protestants have gotten  
22 used to using more water than what they're legally  
23 entitled to.

24           So yes, it's true when they say we'll get less  
25 water. But it's also true they won't get less than

1 they're legally entitled to. They've gotten used to  
2 using more because some of the water rights were not  
3 exercised by the owners.

4 And so that's the difference. What we're  
5 looking to do with TROA and these changes is fully  
6 exercise the water rights which are owned by these  
7 parties.

8 That will diminish the quantity of water the  
9 protestants might get but to which they're not entitled.  
10 They will get every drop to which they are legally  
11 entitled.

12 Thank you.

13 MR. SODERLUND: Good morning, Hearing Officers  
14 Hoppin and Doduc and members of the staff.

15 My name is Eric Soderlund representing the  
16 California Department of Water Resources. The  
17 Department is here to support the petitioners' requested  
18 petitions for change and applications and are  
19 participating in their case-in-chief to do that, to help  
20 with that support.

21 Being the last, I believe, member of this  
22 group, I agree with everything that was stated before  
23 me. If I was smart, I'd probably stop right there. But  
24 since I did prepare an opening statement, I'll go  
25 through it, and I do believe the Department has a unique

1 perspective. With that, I'll begin.

2           Before I begin discussing the object of this  
3 hearing, the petitions for change and application, I'd  
4 first like to briefly describe and potentially restate  
5 what the Department's interest in and purpose for  
6 participating in this proceeding.

7           Uniquely, the Department is not here before the  
8 Board representing its interest as owner and operator of  
9 the State Water Project. Instead, it is here to fulfill  
10 its broader mission as manager of the State's waters.

11           And under that mission, the Department was  
12 tasked by the California Legislature to negotiate and  
13 develop an interstate compact for Truckee River waters  
14 with the State of Nevada nearly 60 years ago.

15           Since that time, the Department has been  
16 actively involved and in many cases has taken the lead  
17 in representing, protecting, and furthering California's  
18 interests in the negotiations that culminated in the  
19 1990 Settlement Act which, among other things, provided  
20 for an equitable allocation between the States of  
21 California and Nevada and the Truckee River Operating  
22 Agreement or TROA.

23           The Department, however, did not act alone in  
24 this process. Many California agencies, both state and  
25 local, and many different stakeholders were involved in

1 the development of the TROA.

2           Ultimately the Department deems the Settlement  
3 Act and the TROA together a success and a benefit to the  
4 State of California.

5           As such, the Department is participating in  
6 this hearing to demonstrate its support of the petitions  
7 for change and applications and to provide testimony  
8 that helps demonstrate that these petitions are  
9 important to California, beneficial to its people and  
10 environment, and in accordance with the California Water  
11 Code.

12           Essentially the point I'm trying to make right  
13 now is that the Department is not participating in this  
14 proceeding to further or promote its interests or water  
15 rights. Instead, it is here to further the interests of  
16 the people of California and the environment that rely  
17 on the waters of the Truckee River.

18           With this perspective in mind, the Department  
19 supports the petitions for change and applications that  
20 are the subject of this proceeding and believes that the  
21 testimony and record will demonstrate that the requested  
22 changes will not harm other legal users of water, will  
23 not unreasonably harm the environment, will protect the  
24 public trust, and is in the public interest.

25           On a personal note, if you'll forgive me, I

1 truly appreciate the opportunity to come before this  
2 Board on an issue other than the Delta.

3 (Laughter)

4 MR. SODERLUND: The key theme that will become  
5 evident during the hearing is flexibility.

6 By requesting the changes at issue here, the  
7 petitioners are seeking flexibility in how water is  
8 stored, released, and what benefits it provides before  
9 it is ultimately consumed by the water users.

10 So as requested by the Board's key issues, the  
11 evidence and testimony that has been submitted and will  
12 be presented during this hearing will demonstrate the  
13 desired flexibility will not result in a new water  
14 right.

15 The evidence will show that the requested  
16 change will not allow the petitioners to receive water  
17 from a new source.

18 They will not allow for greater diversions, the  
19 change petitions, and flexibility will not result in  
20 greater use than is what is already allowed under the  
21 petitioners' water rights.

22 Instead, the evidence will demonstrate that the  
23 desired flexibility will allow the petitioners to  
24 maximize their water rights.

25 Second, the desired flexibility will not injure

1 other legal users of water. As already discussed,  
2 maximization of a water right is not injurious to other  
3 legal users simply by maximizing what you are already  
4 allowed to do.

5 Third, the desired flexibility will result in  
6 increased benefits to the environment, the public trust,  
7 and is in the public interest. And this is where the  
8 Department's testimony will focus on and principally  
9 what our participation in this hearing will provide.

10 The evidence will demonstrate that the  
11 requested flexibility is a win/win situation.

12 Oftentimes, this Board is required and asked to  
13 balance, balance between the public interest and the  
14 public trust. This is a unique situation in the fact  
15 that the public interest -- actually the approval of  
16 these petitions will provide benefits to the public  
17 trust and the environment above that which is already  
18 provided under the status quo or the current regime.

19 Lastly, testimony provided regarding the TROA  
20 and its conditions will demonstrate that the Board need  
21 not provide any conditions to any approval of these  
22 petitions other than those requested by the petitioners,  
23 importantly that these changes not become effective  
24 until the TROA is implemented.

25 As will be demonstrated, the TROA is a

1 comprehensive disagreement, and its conditions are  
2 sufficient to ensure that water rights are protected,  
3 the environment and the public trust are protected, even  
4 benefitted, and the public interest is furthered.

5 With that, I'd like to reiterate the  
6 Department's support of these petitions and thank you  
7 for your time.

8 CO-HEARING OFFICER DODUC: Thank you.

9 Mr. Taggart, did you wish to make an opening  
10 statement?

11 MR. TAGGART: Thank you.

12 For the record, Paul Taggart representing the  
13 City of Fernley.

14 I just want to make a brief statement of why  
15 the City of Fernley is here. The City of Fernley is  
16 included in TROA as a party that has the opportunity to  
17 store water in these upstream reservoirs for municipal  
18 use.

19 Fernley is a city east of Reno. We have about  
20 20,000 people in our city, and we have about 7,000  
21 customers of water that we deliver.

22 Fernley is -- the evidence will show through  
23 our city manager, Greg Evangelatos, that the city is  
24 within the Truckee-Carson Irrigation District. We  
25 receive water under Claim 3 of the Orr Ditch Decree just

1 like other water users in the Truckee-Carson Irrigation  
2 District.

3 And the evidence will show that Fernley  
4 supports the petitions and the applications that are  
5 before you so that Fernley can have the opportunity to  
6 store water upstream for future delivery of municipal  
7 water.

8 Thank you.

9 CO-HEARING OFFICER DODUC: Thank you. I  
10 believe that completes opening statements for the joint  
11 parties, so I'll ask that the speakers for your Topic 1  
12 please come up. Your witnesses for Topic 1.

13 Mr. Palmer, or whomever who is directing these  
14 witnesses, you may take a seat there.

15 --o0o--

16 MARTHA KAISER

17 Called by APPLICANT AND PETITIONERS

18 DIRECT EXAMINATION BY MR. PALMER

19 --o0o--

20 MR. PALMER: Steve Palmer for the Bureau of  
21 Reclamation. I'd like to call as our first witness to  
22 summarize direct Ms. Martha Kaiser.

23 Would you state your name for the record and  
24 where you're employed.

25 MS. KAISER: My name is Martha Kaiser. I'm a

1 Water Rights Specialist for the Bureau of Reclamation.

2 MR. PALMER: What is the purpose of your  
3 testimony today?

4 MS. KAISER: The purpose of my testimony --

5 CO-HEARING OFFICER DODUC: I'm sorry. Let me  
6 ask all speakers to get closer to the microphone. If I  
7 can barely hear you, then those who are watching the  
8 webcast will have a lot of difficulty.

9 MS. KAISER: Okay.

10 The purpose of my testimony is to give a  
11 general description of the change petitions and  
12 applications filed with the State Water Resources  
13 Control Board in 2003 for Boca, Stampede, Prosser, and  
14 Independence Reservoirs.

15 Boca Reservoir water rights are held by Washoe  
16 County Water Conservation District.

17 Independence water rights are held by Truckee  
18 Meadows Water Authority.

19 Stampede and Prosser Creek Reservoir water  
20 rights are held by the US Bureau of Reclamation.

21 The change petitions are requesting additions  
22 to the points of diversion and rediversion enlarging the  
23 place of use, additions to the purposes of use, and  
24 redistribution of storage of Boca, Stampede, and  
25 Independence Reservoirs.

1           In my written testimony, Prosser Creek was  
2 incorrectly listed under Redistribution of Storage.

3           The change petitions do not propose to  
4 eliminate any of the existing points of diversion or  
5 rediversion. Petitioners are requesting that the  
6 licenses and the permits have a common place of use and  
7 common purposes of use with the exception of flood  
8 control which is not a purpose of use for Independence  
9 Reservoir.

10           CO-HEARING OFFICER HOPPIN: Ms. Kaiser, could  
11 you get just a hair closer? It will move toward you, I  
12 hope. I'm not trying to be nitpicky. I'm having a hard  
13 time hearing you.

14           MS. KAISER: Sorry.

15           CO-HEARING OFFICER HOPPIN: That might be my  
16 fault and not yours.

17           MS. KAISER: Petitioners request that a permit  
18 term be eliminated from the Prosser Creek license and  
19 replaced with the following:

20                   The licensee shall operate Prosser Creek  
21                   Reservoir in accordance with the Truckee  
22                   River Operating Agreement, a copy of  
23                   which is on file with the State Board.

24           The two water right applications for Stampede  
25 and Prosser Creek Reservoirs, Applications 31487 and

1 31488, were filed to allow the use of the full capacity  
2 of both the reservoirs.

3 Application 31487 was filed as a companion  
4 right to permit 11605 for Stampede Reservoir and for the  
5 purpose of increasing the maximum diversion of storage  
6 from 126,000 acre feet to 226,500 acre feet.

7 The maximum annual quantity of water diverted  
8 by direct diversion or diversion to storage under  
9 Application 31487 and Permit 11605 is to be limited to  
10 226,500 acre feet.

11 Application 30488 was filed for the purpose of  
12 increasing the existing maximum withdrawal in any one  
13 year above the 20,162 acre feet annually identified in  
14 license 10180.

15 The application seeks a storage season of  
16 October 1 through August 10th and a storage of 30,000  
17 acre feet in Prosser Creek Reservoir.

18 The maximum annual quantity of storage under  
19 this application and license 10180 is limited to 30,000  
20 acre feet.

21 In summary, petitioners and applicants request  
22 the State Board to approve the change petitions, issue  
23 water right permits for 30487 and 31488, replace the  
24 permit term in license 10180 for Prosser Creek  
25 Reservoir, include the conditions identified in the

1 change petitions and applications and in order issued by  
2 the State Board and reject the protest of Truckee-Carson  
3 Irrigation District, Churchill County, the individual  
4 water right holders of the Newlands Project identified  
5 in the protest and the City of Fallon, Nevada.

6 This completes my testimony.

7 MR. PALMER: Ms. Kaiser, just for the record,  
8 would you identify your direct testimony, the exhibit?

9 MS. KAISER: Yes. My direct testimony is  
10 identified as USBR 1.

11 MR. PALMER: Thank you. That concludes the  
12 summary of direct for Ms. Kaiser.

13 CO-HEARING OFFICER DODUC: All right. Next  
14 witness.

15 --o0o--

16 KENNETH PARR

17 Called by APPLICANT AND PETITIONERS

18 DIRECT EXAMINATION BY MR. PALMER

19 --o0o--

20 MR. PALMER: Next witness, Kenneth Parr.

21 State your name and spell your last name and  
22 your employer please.

23 MR. PARR: Hopefully you can hear me. My name  
24 is Kenneth Parr. I'm the area manager for the Bureau of  
25 Reclamation of the Lahontan Basin Area Office in Carson

1 City, Nevada. My last name is spelled P-a-r-r.

2 MR. PALMER: And would you identify your  
3 written testimony, USBR -- is that Exhibit 2?

4 MR. PARR: That is correct. My testimony is  
5 Exhibit USBR 2.

6 MR. PALMER: And is that a true and correct  
7 copy, USBR 2, of your direct testimony?

8 MR. PARR: Yes, it is.

9 MR. PALMER: All right. Please proceed and  
10 summarize your testimony.

11 MR. PARR: Thank you. I will.

12 Again my name is Kenneth Parr. I'm the area  
13 manager for the Bureau of Reclamation in Carson City.

14 During my tenure with the Lahontan Basin Area  
15 Office beginning in December 2002, I was the Reclamation  
16 representative or lead for preparing the Environmental  
17 Impact Statement/Environmental Impact Report for the  
18 Truckee River Operating Agreement.

19 The purpose of my testimony today is basically  
20 to provide an overview of benefits that are associated  
21 with the change petitions and water appropriation  
22 applications that are in front of us today.

23 Other witnesses will provide more detailed  
24 information on these benefits.

25 I'd like to point out to the Board today that

1 the potential effects of TROA were evaluated in the  
2 January 2008 final EIS/EIR which was jointly developed  
3 by the Department of Interior and State of California.

4 Mr. Tom Strekal will later on in his testimony  
5 provide more information on the EIS/EIR.

6 Since the provisions of the change petitions  
7 and applications are integral components of TROA, they  
8 cannot be evaluated separately from the TROA EIS/EIR; so  
9 therefore, that evaluation is integrated between the  
10 change petitions and the water appropriation  
11 applications and the EIS/EIR.

12 Take a couple of moments here just to walk  
13 through the change petitions again without repeating  
14 what Ms. Kaiser has already stated.

15 The change petitions are key to the  
16 implementation of TROA because they would accommodate  
17 common points of diversion, rediversion, and  
18 redistribution of storage amongst the reservoirs in the  
19 upper Truckee River and common places and purposes of  
20 use for Prosser Creek, Boca, and Stampede Reservoirs.

21 As detailed in Mr. Buchanan's testimony,  
22 approval of the change petitions would allow for  
23 integrated reservoir operations that would lead to a  
24 more effective and efficient use of those facilities.

25 Take another moment here just to go over the

1 applications again without repeating what -- well, I'll  
2 just take a moment to discuss the water appropriation  
3 applications.

4 Approval of the Stampede Reservoir application  
5 would allow the total combined amount of water that  
6 could be diverted to storage from January 1st to  
7 December 31 to be 226,000 acre feet of water.

8 Mr. Shahroody, Mr. Van Camp, and Mr. Buchanan  
9 will testify that approval of this application will not  
10 impair the exercise of vested or perfected water rights.

11 Approval of the Prosser Creek Reservoir  
12 application would increase the existing maximum  
13 withdrawal of 2,126 acre feet during a year and would  
14 expand the filling period from October 1 to August 1  
15 while continuing to allow a maximum annual storage of  
16 30,000 acre feet as under the existing license.

17 This would increase potential annual withdrawal  
18 from the reservoir by 9,800 acre feet.

19 Again Messrs. Shahroody, Van Camp and Buchanan  
20 will testify that approval of this application will not  
21 impair the exercise of vested or perfected water rights.

22 As stated in my written testimony, I concur in  
23 the request to the Board as also stated by Ms. Kaiser.

24 MR. PALMER: Mr. Parr, you mentioned the  
25 Environmental Impact Statement/Environmental Impact

1 Report, and I believe that that is State Water Resources  
2 Control Board Exhibit 7; is that your understanding?

3 MR. PARR: That is my understanding.

4 MR. PALMER: All right. So that's been  
5 submitted. Thank you.

6 That's the conclusion of the summary of direct  
7 from Mr. Parr.

8 CO-HEARING OFFICER DODUC: Your next witness,  
9 please.

10 MR. PAGNI: The next witness will be David  
11 Wathen.

12 --o0o--

13 DAVID WATHEN

14 Called by APPLICANT AND PETITIONERS

15 DIRECT EXAMINATION BY MR. PAGNI

16 --o0o--

17 MR. PAGNI: Mr. Wathen, will you state your  
18 name and spell your last name for the record.

19 MR. WATHEN: David Wathen, W-a-t-h-e-n.

20 MR. PAGNI: Mr. Wathen, are you currently  
21 employed by Washoe County Water Conservation District?

22 MR. WATHEN: Yes.

23 MR. PAGNI: And in what position?

24 MR. WATHEN: I am the Dam Tender or operator.

25 MR. PAGNI: Are you also employed by the

1 Federal Water Master?

2 MR. WATHEN: Yes, I am.

3 MR. PAGNI: And are you the person at the  
4 Federal Water Master's Office who is responsible for  
5 reservoir accounting and operations?

6 MR. WATHEN: No. Specifically that would be  
7 the Federal Water Master, Gary Stone, and also the Chief  
8 Hydrologist, Chad Blanchard, who's in charge of river  
9 and reservoir operations, who actually is scheduled to  
10 testify.

11 MR. PAGNI: In terms of your role at the  
12 District, do you take direction from others at the  
13 Federal Water Master's Office?

14 MR. WATHEN: Yes.

15 MR. PAGNI: Can you please provide the Board  
16 with the summary -- actually, strike that.

17 Is Joint Exhibit 21 a true and correct copy of  
18 your direct testimony?

19 MR. WATHEN: Yes, it is.

20 MR. PAGNI: Thank you. And would you provide  
21 the Board with a summary of that testimony.

22 MR. WATHEN: Sure.

23 The purpose of my testimony was to give a  
24 general background on the Washoe County Water  
25 Conservation District and some information on the

1 operation of Boca Reservoir. Other witnesses will be  
2 here to testify on specific details of various  
3 agreements and decrees and release schedules, priorities  
4 of Boca Reservoir.

5           The District is an irrigation district that was  
6 formed in 1929, and it generally includes all irrigable  
7 water-righted lands within the Reno/Sparks or Truckee  
8 Meadows area including some lands in the Truckee Canyon  
9 just east of Sparks, Nevada.

10           The use of the water in Boca is for District  
11 owners, specifically for irrigation and domestic uses.

12           And the purpose of the District was to provide  
13 drought protection -- drought protection and reduce  
14 floods for the benefit of District owners and also to  
15 facilitate the conclusion of litigation on the Truckee  
16 River.

17           The District is responsible for the operation  
18 and maintenance of Boca Reservoir, Boca Dam, and the  
19 District holds License 3723 which grants the rights to  
20 store up to 40,850 acre feet on an annual basis.

21           My job with the District as the Dam Tender is  
22 to coordinate the maintenance and physical operation of  
23 the dam and to communicate with the Federal Water Master  
24 regarding storage of water, release of water, when we  
25 can release, how much we can release, and why.



1 MR. DePAOLI: Is TMWA Exhibit 1-0 a true and  
2 correct copy of your written testimony?

3 MR. ERWIN: Yes.

4 CO-HEARING OFFICER DODUC: I'm sorry. Is your  
5 microphone on?

6 MR. DePAOLI: It is.

7 CO-HEARING OFFICER DODUC: Get closer, please.

8 MR. DePAOLI: Sorry.

9 Do you have any revisions to your testimony?

10 MR. ERWIN: No.

11 MR. DePAOLI: Do you affirm that TMWA  
12 Exhibit 1-0 is true and correct?

13 MR. ERWIN: Yes.

14 MR. DePAOLI: What is your current position  
15 with Truckee Meadows Water Authority?

16 MR. ERWIN: Director of Natural Resources,  
17 Planning and Management.

18 MR. DePAOLI: Does TMWA Exhibit 1-1 accurately  
19 describe your education and professional experience?

20 MR. ERWIN: It does.

21 MR. DePAOLI: By whom were you employed before  
22 TMWA.

23 MR. ERWIN: Sierra Pacific Power Company from  
24 1991 through 2001, just a little over ten years.

25 MR. DePAOLI: Would you please briefly tell the

1 Board who the Truckee Meadows Water Authority is?

2 MR. ERWIN: Certainly.

3 This portion of my summary is to introduce the  
4 Board to what the Truckee Meadows Water Authority is and  
5 its brief history.

6 The Truckee Meadows Water Authority finds its  
7 genesis stemming from an announcement in the fall of  
8 2000 by Sierra Pacific Resources of its intention to  
9 sell the water division of the Sierra Pacific Power  
10 Company.

11 By November and December of 2000, the Cities of  
12 Reno and Sparks and Washoe County had gotten together  
13 and had entered into what's called a joint powers  
14 agreement. They can do that subject to NRS 277 which  
15 allows these entities to get together and form these  
16 cooperative authorities.

17 So by December 2000, they had executed the  
18 agreement. And the purpose or vision for TMWA, Truckee  
19 Meadows Water Authority, was that it would continue to  
20 develop and manage the water resources that Sierra  
21 Pacific had acquired and accumulated up to that time.

22 After its successful creation, TMWA was the  
23 successful bidder to purchase the assets, the water  
24 assets of Sierra Pacific Power Company.

25 And the process of that sale and transfer

1 continued up until June of 2011 (sic) when TMWA was  
2 successful in issuing over \$450 million of bonds to use  
3 part of the proceeds of those bonds to purchase the  
4 assets as well as step into the shoes of all the  
5 agreements and be successor in interest to all the  
6 agreements that Sierra had entered into up to that time.

7           Eventually all title to these assets, related  
8 assets and agreements, were transferred to TMWA. TMWA  
9 opened its doors for business June 11, 2001 with 127  
10 former employees of Sierra Pacific.

11           Just a fun little note, we didn't have any  
12 desks. We didn't have any telephones. It was a swell  
13 time. But we were able to do it with cell phones.

14           TMWA is the largest supplier of municipal and  
15 industrial water in northern Nevada. We serve over  
16 95,000 service connections of a population close to  
17 400,000 residents.

18           We serve the city of Reno, city of Sparks, and  
19 the surrounding valleys through multiple arrangements,  
20 wholesale arrangements, and that sort.

21           And I think that concludes my summary at this  
22 point.

23           MR. DePAOLI: That concludes Mr. Erwin's  
24 summary of this portion of his testimony.

25           CO-HEARING OFFICER DODUC: And does this

1 conclude your direct on this topic?

2 MR. DePAOLI: It includes my direct on this  
3 topic, yes, ma'am.

4 CO-HEARING OFFICER DODUC: Thank you.

5 I'm going to take a ten-minute break. During  
6 that time, the attorneys can join your witnesses and  
7 I'll ask Mr. Van Zandt or whomever is doing cross for  
8 the Truckee-Carson Irrigation District to take this  
9 seat, and we will return at ten before eleven by that  
10 clock.

11 (Recess)

12 CO-HEARING OFFICER DODUC: We're ready to begin  
13 with cross-examination of this panel, this topic, by  
14 Truckee-Carson Irrigation District.

15 MR. VAN ZANDT: Thank you, Board Member Doduc.

16 --o0o--

17 CROSS-EXAMINATION BY MR. VAN ZANDT  
18 FOR TRUCKEE-CARSON IRRIGATION DISTRICT  
19 and CHURCHILL COUNTY

20 --o0o--

21 MR. VAN ZANDT: I'm Mike Van Zandt, and cross  
22 is on behalf of Churchill County and the Truckee-Carson  
23 Irrigation District.

24 Ms. Kaiser, it's true that the Boca Reservoir  
25 that you'd talked about is now operated under the

1 auspices of the Orr Ditch Decree and the Truckee River  
2 Agreement; is that correct?

3 MS. KAISER: I don't know as far as operation.

4 MR. VAN ZANDT: You know that water that  
5 benefits the Newlands Project can be stored in Boca  
6 Reservoir?

7 MS. KAISER: I don't know.

8 MR. VAN ZANDT: You do know that Boca Reservoir  
9 is used to make Floriston rates however, correct?

10 MS. KAISER: Yes, I do.

11 MR. VAN ZANDT: And you also know that Boca  
12 Reservoir can reserve what's called conserved water  
13 under the Truckee River Agreement if the parties to that  
14 agreement agree?

15 MS. KAISER: I'm sorry. I don't know that.

16 MR. VAN ZANDT: You are familiar with the  
17 concept of privately owned stored water?

18 MS. KAISER: Yes.

19 MR. VAN ZANDT: Okay. Are you aware whether or  
20 not Boca Reservoir can receive privately owned stored  
21 water from Independence Lake?

22 MS. KAISER: No, I'm sorry. I don't know that.

23 MR. PALMER: If it helps, we have other  
24 witnesses that are going to discuss operational issues,  
25 if that helps move this along. You'll have someone else

1 to direct questions to.

2 MR. VAN ZANDT: All right.

3 CO-HEARING OFFICER DODUC: Thank you,  
4 Mr. Palmer.

5 MR. VAN ZANDT: Are you familiar with the  
6 current permit for Stampede Reservoir.

7 MS. KAISER: For Stampede, yes.

8 MR. VAN ZANDT: Okay. Isn't it true that the  
9 Newlands Project is a point of rediversion for Stampede  
10 Reservoir as it currently stands?

11 MS. KAISER: A point of rediversion?

12 MR. VAN ZANDT: Yes.

13 MS. KAISER: I believe it is, yes.

14 MR. VAN ZANDT: Okay. Do you know when the  
15 last time that the Newlands Project benefitted from  
16 water out of Stampede Reservoir?

17 MS. KAISER: No, I'm not able to answer that.

18 MR. VAN ZANDT: You testified about Prosser  
19 Reservoir as well. Are you familiar with the license  
20 under Prosser?

21 MS. KAISER: Yes, I am.

22 MR. VAN ZANDT: Isn't it also true that the  
23 Prosser license contains the Newlands Project as a point  
24 of rediversion for its releases?

25 MS. KAISER: I believe it does.

1           MR. VAN ZANDT: And Prosser is also used for  
2 exchanging water with Lake Tahoe. Are you familiar with  
3 that?

4           MS. KAISER: Yes, I believe it does.

5           MR. VAN ZANDT: Okay. And the water that is  
6 exchanged out of Prosser Reservoir, are you aware that  
7 that is water that would otherwise be Claim 4 water  
8 under the Orr Ditch Decree?

9           MS. KAISER: No, I'm sorry.

10          MR. VAN ZANDT: Are you aware whether or not  
11 the Truckee-Carson Irrigation District is a party to the  
12 Prosser-Lake Tahoe exchange agreement?

13          MS. KAISER: No.

14          MR. VAN ZANDT: I think you testified about  
15 eliminating a permit term for the Prosser license. Are  
16 you aware that the current Prosser-Lake Tahoe exchange  
17 agreement was binding on all the parties who signed that  
18 agreement?

19          MS. KAISER: No.

20          MR. VAN ZANDT: Are you aware whether or not  
21 the Truckee-Carson Irrigation District has consented to  
22 any changes to the licensing conditions for Prosser?

23          MS. KAISER: No, I'm not.

24          MR. VAN ZANDT: That's all the questions I have  
25 for Ms. Kaiser.

1 MR. MACKEDON: I have no questions.

2 CO-HEARING OFFICER DODUC: Actually, I was  
3 going to ask Truckee -- Mr. Van Zandt to conduct your  
4 cross-examination of any of the witnesses on this panel.  
5 So do you have questions for other witnesses besides  
6 Ms. Kaiser?

7 MR. VAN ZANDT: Yes.

8 CO-HEARING OFFICER DODUC: Please continue.

9 MR. VAN ZANDT: I was just going through the  
10 list here.

11 CO-HEARING OFFICER DODUC: Finish with TCID  
12 before moving on to the other parties for  
13 cross-examination.

14 MR. VAN ZANDT: All right. Thank you.

15 CO-HEARING OFFICER DODUC: Yeah.

16 MR. VAN ZANDT: Next series of questions for  
17 Mr. Parr. Good morning, Mr. Parr.

18 MR. PARR: Good morning, Mr. Van Zandt. Can  
19 you hear me?

20 MR. VAN ZANDT: I can.

21 MR. PARR: Thank you.

22 MR. VAN ZANDT: Good to see you again.

23 Mr. Parr, you are the Bureau of Reclamation  
24 representative for TROA activities; is that correct?

25 MR. PARR: That is correct.

1           MR. VAN ZANDT:  And you are also the senior  
2 Bureau of Reclamation person testifying at this hearing,  
3 aren't you?

4           MR. PARR:  That is also correct.

5           MR. VAN ZANDT:  Now, as the BOR area manager,  
6 you would agree, wouldn't you, that you have a duty to  
7 protect the water right owners, the water rights of the  
8 water right owners, in the Newlands Project?

9           MR. PARR:  I agree to that.

10          MR. VAN ZANDT:  And that includes water rights  
11 that may be affected by TROA activities, correct?

12          MR. PARR:  That is also correct.

13          MR. VAN ZANDT:  Now you also testified that you  
14 were the lead for the Environmental Impact  
15 Statement/Environmental Impact Report for TROA for the  
16 Bureau of Reclamation.

17          MR. PARR:  For the Bureau of Reclamation.

18          MR. VAN ZANDT:  Now, isn't it true, Mr. Parr,  
19 that the Environmental Impact Statement/Environmental  
20 Impact Report which is a State Water Resources Control  
21 Board exhibit, I believe 7, that that EIS/EIR concludes  
22 that the Truckee River Operating Agreement will cause  
23 shortages in the Newlands Project based on the  
24 methodology that was used by that EIS/EIR.

25          MR. PARR:  That is a conclusion that we drew

1 from the final EIS/EIR.

2 MR. VAN ZANDT: I'd like to submit to the Board  
3 an exhibit. It's an excerpt from the State Water  
4 Resources Control Board Exhibit 7, I believe, the couple  
5 of relevant pages from the Environmental Impact  
6 Statement/Environmental Impact Report that indicate  
7 where the shortages will occur.

8 If we could show the witness a copy of that?

9 MR. PALMER: Are you going to provide that?

10 CO-HEARING OFFICER DODUC: Can you provide --  
11 yeah.

12 MR. VAN ZANDT: So on the -- I believe it's the  
13 third page of the copy of the exhibit that you have  
14 which has been marked TCID 296, you'll see a chart  
15 there.

16 MR. PALMER: Excuse me, Mr. Van Zandt. TCID  
17 296, is this a new exhibit?

18 MR. VAN ZANDT: This is a new exhibit.

19 MR. PALMER: I think it would be better if the  
20 witness would identify the page numbers that are part of  
21 Exhibit 7, the Board Exhibit 7, instead of introducing a  
22 new exhibit.

23 But I'll leave that up to the Board's  
24 discretion.

25 CO-HEARING OFFICER DODUC: I would agree.

1           You began your question, Mr. Van Zandt, by  
2 referring to a Water Board exhibit and section or  
3 excerpts from that exhibit. Could you please clarify  
4 how this handout fits into that?

5           MR. VAN ZANDT: I will.

6           To identify this for the record, this is pages  
7 3 -- it's actually the front page of the final  
8 Environmental Impact Statement/Environmental Impact  
9 Report for the Truckee River Operating Agreement.

10           And it is excerpting a portion of Chapter 3.  
11 And it's pages 3-106 and 3-107 which is in the chapter  
12 entitled Affected Environment and Environmental  
13 Consequences, Surface Water.

14           CO-HEARING OFFICER DODUC: So this is not a new  
15 exhibit but excerpts from State Water Board Exhibit 7.

16           MR. VAN ZANDT: Yes, just for the convenience  
17 of the witness.

18           CO-HEARING OFFICER DODUC: Then I'll go ahead  
19 and accept that and please continue with your questions.

20           MR. VAN ZANDT: Mr. Parr, if you look at page  
21 3-107 -- and you just answered my question that there  
22 would be potential shortages in the Newlands Project  
23 from TROA activities. The chart that is labeled Carson  
24 Division Shortages, is that one of the depictions that  
25 show those shortages?

1 MR. PARR: I believe so, yes.

2 MR. VAN ZANDT: And this chart was -- you are  
3 familiar with this chart, are you not?

4 MR. PARR: I am familiar with it.

5 MR. VAN ZANDT: This chart shows that sometimes  
6 over the years -- and these are mimicking drought years,  
7 essentially, across the 95-year record, is that right?  
8 That was analyzed?

9 MR. PARR: I'm uncertain at this time without  
10 reading this and other sections surrounding this whether  
11 this is actually depicting drought years. These could  
12 be drought years that's being represented.

13 MR. VAN ZANDT: That aside, it does indicate  
14 that the difference between current conditions and the  
15 TROA -- current conditions being marked in green and the  
16 TROA marked in blue -- sometimes as much as 20,000 acre  
17 feet in a single year. Do you see that?

18 MR. PARR: Would you be more specific? Would  
19 you please compare a couple years?

20 MR. VAN ZANDT: Well, if you take, for example,  
21 the 1934 figure.

22 MR. PARR: Yes.

23 MR. VAN ZANDT: Second set of bars there? And  
24 you've got somewhere around 65-, 67,000 acre feet from  
25 current conditions, and the TROA is showing somewhere

1 above 90,000 acre feet.

2 Would you agree with that?

3 MR. PARR: I just -- I'm just having a little  
4 bit of difficulty here recalling the analysis on this.

5 And I guess I want to just say at this time  
6 that I'm not a hydrologist by training, and so I relied  
7 upon hydrologists and hydraulic engineers on our  
8 interdisciplinary team for the Environmental Impact  
9 Statement/Environmental Impact Report to prepare these  
10 charts and do the analysis and present the analysis in  
11 the EIS/EIR.

12 MR. VAN ZANDT: You testified earlier this  
13 morning, Mr. Parr, that you didn't believe that there  
14 was going to be any injury to existing water rights in  
15 the Newlands Project. That information was not from  
16 your own personal knowledge?

17 MR. PARR: That information, my testimony this  
18 morning, was that impacts to water rights would not be  
19 impacted.

20 MR. VAN ZANDT: Let me make sure I understand  
21 what you're saying.

22 You can have a reduction in the amount of water  
23 that's available for delivery, and you don't consider  
24 that to be an injury to water rights?

25 MR. PARR: I do not.

1           MR. VAN ZANDT: Even if it causes a shortage to  
2 a farmer?

3           MR. PARR: I just don't have an answer to that  
4 last statement. I just -- again, I'm going to have to  
5 rely on the expert testimony from my hydrologists and  
6 hydrologic engineers on this analysis.

7           MR. VAN ZANDT: Mr. Parr, would you agree that  
8 the operating criteria and procedures for the Newlands  
9 Project must be administered in compliance with the Orr  
10 Ditch and Alpine decrees?

11          MR. PARR: I believe so.

12          MR. VAN ZANDT: And in fact, that's one of your  
13 responsibilities, isn't it?

14          MR. PARR: That is correct.

15          MR. VAN ZANDT: And you're familiar with the  
16 Settlement Act, Public Law 101-618?

17          MR. PARR: I am familiar with it.

18          MR. VAN ZANDT: Isn't it true that the  
19 Settlement Act also states that nothing in the act is  
20 intended to alter or conflict with vested and perfected  
21 rights of any person or entity to use the water of the  
22 Truckee River or its tributaries including water rights  
23 owners in the Newlands Project?

24          MR. PARR: I am familiar with that.

25          MR. VAN ZANDT: I don't know if this was

1 covered by the portion of your testimony this morning,  
2 but in your written testimony you make a statement about  
3 operations under TROA would not affect flood control and  
4 dam safety criteria. Are you going to testify about  
5 that later?

6 MR. PARR: I did not intend to testify on that.  
7 It's just part of my written testimony.

8 MR. VAN ZANDT: Isn't it true, Mr. Parr, that  
9 the Bureau of Reclamation is in fact making improvements  
10 to Stampede Dam for safety of dams purposes?

11 MR. PARR: At this current time, we're not  
12 making improvements. We're studying the potential for  
13 those improvements.

14 MR. VAN ZANDT: In fact on December 16, 2009,  
15 you sent out a public scoping letter indicating that the  
16 Bureau of Reclamation was proposing to raise Stampede  
17 Dam by 14.2 feet; isn't that correct? I'm sorry, 11.4  
18 feet.

19 MR. PARR: I recall that we sent a scoping  
20 letter, I believe to initiate the correction action  
21 study and to initiate the NEPA process, National  
22 Environmental Policy Act process, basically to start I  
23 think an environmental assessment of that project.

24 MR. VAN ZANDT: And part of the purpose of that  
25 is for a seismic upgrade, isn't it?

1 MR. PARR: I recall seismic, but I think it was  
2 more for hydrologic overtopping.

3 MR. VAN ZANDT: Now Mr. Parr, isn't it true  
4 that the change applications that are before the State  
5 Water Resources Control Board in this hearing, if they  
6 are approved that TROA would allow the stored water to  
7 be transferred to other reservoirs listed in those  
8 change applications without going through any additional  
9 change applications in California?

10 MR. PARR: I don't know about transferred.  
11 Exchanged.

12 MR. VAN ZANDT: Your word, exchanged; but  
13 there's no requirement that you would ever come back to  
14 the State of California with a change application for  
15 those exchanges?

16 MR. PARR: I don't know. I do not know.

17 MR. VAN ZANDT: In your further testimony, are  
18 you going to address some of the benefits such as  
19 drought protection?

20 MR. PARR: Yes. Under a different panel.

21 MR. VAN ZANDT: Okay.

22 So that's all I have for Mr. Parr. I have  
23 Mr. Wathen, if I could.

24 Good morning. How are you?

25 MR. WATHEN: Good morning.

1 MR. VAN ZANDT: Mr. Wathen, I believe Ms.  
2 Kaiser said she couldn't answer some of my operational  
3 questions about Boca. I assume you can.

4 MR. WATHEN: Some.

5 MR. VAN ZANDT: Okay. Isn't it true that under  
6 the operation of Boca Reservoir -- the operation of Boca  
7 Reservoir is controlled both under the auspices of the  
8 Orr Ditch Decree and the Truckee River Agreement?

9 MR. WATHEN: Yes.

10 MR. VAN ZANDT: And it's also true that Truckee  
11 Canal water, water that would benefit the Newlands  
12 Project, can also be stored in Boca?

13 MR. WATHEN: As part of Floriston rate water,  
14 yes.

15 MR. VAN ZANDT: That was my next question. So  
16 Boca does contribute to Floriston rate water.

17 MR. WATHEN: Yes.

18 MR. VAN ZANDT: Along with Lake Tahoe.

19 MR. WATHEN: Yes.

20 MR. VAN ZANDT: And can Boca Reservoir -- it  
21 also can receive what's called conserved water under the  
22 Truckee River Agreement if the parties to the agreement  
23 agree to reduce Floriston rates?

24 MR. WATHEN: I'm not real familiar with  
25 conserved water, no.

1           MR. VAN ZANDT:  And are you familiar with  
2  whether or not Boca can receive privately owned stored  
3  water such as Independence?

4           MR. WATHEN:  I think those questions probably  
5  are best suited for the witness representing the Water  
6  Master's Office, Chad Blanchard.  That's -- his primary  
7  role is for river and reservoir operations.

8           We rely on the Water Master for those, to  
9  direct us on how, when, and how much we can store,  
10 release, et cetera.

11          MR. VAN ZANDT:  Do you have any familiarity,  
12 Mr. Wathen, with the formation of the Truckee River  
13 Agreement and the compromises that were achieved to  
14 allow Boca Reservoir to be constructed?

15          MR. WATHEN:  Limited.  I obviously wasn't  
16 around.  The -- within the charter of the District, it  
17 says specifically to facilitate conclusion of litigation  
18 on the Truckee River.

19          And I know the District is a party to the  
20 Truckee River Agreement and was involved in the Orr  
21 Ditch Decree.  I think -- so to that effect, yes.  But  
22 as far as the details go, no.

23          MR. VAN ZANDT:  So you're not aware that there  
24 was a protest against the Washoe conservancy district  
25 related to the Boca permit?

1 MR. WATHEN: No.

2 MR. VAN ZANDT: You are aware that Washoe  
3 County Water Conservation District is a member or party  
4 to the Truckee River Agreement, right?

5 MR. WATHEN: Yes.

6 MR. VAN ZANDT: Are you aware of any provision  
7 in the Truckee River Agreement that would allow the  
8 Washoe conservancy district to withdraw from that  
9 agreement?

10 MR. WATHEN: No.

11 MR. VAN ZANDT: That's all I have for  
12 Mr. Wathen.

13 Mr. Erwin.

14 MR. ERWIN: Yes, sir.

15 MR. VAN ZANDT: Good morning.

16 MR. ERWIN: Good morning, sir.

17 MR. VAN ZANDT: Good to see you again.

18 MR. ERWIN: Always a pleasure.

19 MR. VAN ZANDT: I think you very much limited  
20 your testimony here to kind of the overarching  
21 background description of the Sierra Pacific-Truckee  
22 Meadows transition. That seemed to be the thrust of  
23 your testimony for this portion; is that right?

24 MR. ERWIN: That's correct.

25 MR. VAN ZANDT: So you're going to come back

1 and testify about some public interest issues later?

2 MR. ERWIN: Yes, sir.

3 MR. VAN ZANDT: Mr. Erwin, can you tell us what  
4 Truckee Meadows Water Authority current annual water  
5 demand is?

6 MR. ERWIN: The annual production average is  
7 somewhere around 80,000, 78- to 80,000 acre feet.

8 MR. VAN ZANDT: And isn't it true that the  
9 Truckee Meadows Water Authority currently has sufficient  
10 water rights to meet that demand?

11 MR. ERWIN: We do have sufficient water rights  
12 to meet that demand.

13 MR. VAN ZANDT: And it's also true that the  
14 Truckee Meadows Water Authority has been storing part of  
15 its water supply in Boca and Stampede for a number of  
16 years; is that right?

17 MR. ERWIN: That's true.

18 MR. VAN ZANDT: Are you aware whether or not  
19 Sierra Pacific or Truckee Meadows Water Authority ever  
20 filed change applications with the State of California  
21 to allow that?

22 MR. ERWIN: I know at TMWA we have not. And I  
23 can't recall if we did when I was at Sierra Pacific.

24 MR. VAN ZANDT: Do you know how many times in  
25 the last 17 years the Sierra Pacific or Truckee Meadows

1 Water Authority has called on water stored in Boca or  
2 Stampede for drought protection?

3 MR. ERWIN: Let me think. At TMWA, I think we  
4 pulled a little bit out in 2005, 2004.

5 And then, stretching it here for me, going back  
6 into '91, '92, '93, '94, we pulled some water out of  
7 Independence. And I can't recall if we pulled out our  
8 ponded water in Boca or not.

9 MR. VAN ZANDT: The water that Truckee Meadows  
10 Water Authority stores in Stampede and Boca, is it  
11 eligible to be transferred under the change applications  
12 that we're contemplating here amongst the three  
13 reservoirs, Boca, Stampede, and Independence?

14 MR. ERWIN: That is the intent of the petition  
15 that we have, so that we can improve that operation by  
16 moving the Independence water between the reservoirs.

17 MR. VAN ZANDT: So you think it would be  
18 limited to Independence water, not water that you had  
19 credit stored in Stampede or Boca?

20 MR. ERWIN: No, it would apply to -- under  
21 TROA, it would apply to the credit waters.

22 MR. VAN ZANDT: I'm sorry, I didn't hear you.

23 MR. ERWIN: It would apply to -- these  
24 petitions look to the Independence water, but under TROA  
25 we can, once we have the credit water in the reservoirs,

1 then part of the operation may be depending on the  
2 conditions to move the water from one reservoir to  
3 another.

4 MR. VAN ZANDT: And that's without having to  
5 file another change application; isn't that right?

6 MR. ERWIN: It's anticipated that these  
7 application petitions will accomplish what we intend to  
8 do under TROA, yes.

9 MR. VAN ZANDT: That's all I have.

10 CO-HEARING OFFICER DODUC: Thank you, Mr. Van  
11 Zandt.

12 Mr. Jardine? If you're representing Churchill  
13 County, does Churchill County wish to conduct any  
14 cross-examination.

15 MR. VAN ZANDT: I was doing joint  
16 cross-examination for them.

17 CO-HEARING OFFICER DODUC: Thank you. You were  
18 very efficient.

19 Does the City of Fallon wish to conduct any  
20 cross-examination of these witnesses?

21 --o0o--

22 CROSS-EXAMINATION BY MR. MACKEDON

23 FOR CITY OF FALLON

24 --o0o--

25 MR. MACKEDON: My questions are very few. I

1 think I'm going to need to direct them to Mr. Parr.

2 Good morning.

3 MR. PARR: Good morning, Mr. Mackedon.

4 MR. MACKEDON: A couple of preliminary  
5 questions, if you can answer them, suitable for this  
6 topic.

7 You've made reference to the Newlands Project,  
8 and would you tell the Board what the purposes of the  
9 Newlands Project were when it was created?

10 MR. PARR: Well, the Newlands Project was  
11 created as one of the first irrigation districts under a  
12 group of five irrigation districts, but it was one of  
13 the first irrigation districts established under the US  
14 Reclamation Services back in 1902 for irrigation of  
15 land.

16 And I think power production may have been one  
17 of the authorities under the Appropriation Act that  
18 authorized the Newlands Project.

19 MR. MACKEDON: Didn't that authorization also  
20 include, in addition to irrigation and power which were  
21 the traditional occupations of the Bureau, didn't it  
22 include as an ancillary benefit drinking water?

23 MR. PARR: I don't recall municipal or  
24 industrial or drinking water being an authorization at  
25 that time.

1           MR. MACKEDON:  Are you aware, generally  
2 speaking, what the -- when Congress decided to create  
3 these Reclamation projects that a part of the benefits  
4 of reclaiming the arid lands of the west was that the  
5 people who might come and settle and homestead there  
6 might have a benefit of drinking water?

7           MR. PARR:  I do not recall that, Mr. Mackedon.

8           MR. MACKEDON:  In anything you've read about  
9 Reclamation projects, or this one in particular?

10          MR. PARR:  I do not recall that drinking water  
11 was a specific authorization under some of the earlier  
12 authorizations.

13          MR. MACKEDON:  How about livestock water?

14          MR. PARR:  I don't recall that.

15          MR. MACKEDON:  You don't recall that either?

16          MR. PARR:  I do not recall specific  
17 authorizations for livestock water under appropriation  
18 bills or authorizations for the Newlands Project.

19          MR. MACKEDON:  Did you -- did the EIS/EIR that  
20 you referred to evaluate the effects of TROA on the  
21 drinking water supply of any of the people within the  
22 Newlands Project?

23          MR. PARR:  I don't -- I believe there was some  
24 analysis on groundwater that was conducted in the  
25 EIS/EIR, and I'm --

1 MR. MACKEDON: Did that analysis or was the  
2 object of the analysis to see what the effect, impact of  
3 the surface irrigation water would have on groundwater?

4 MR. PARR: There was such an analysis in the  
5 EIS/EIR.

6 MR. MACKEDON: And in that EIS/EIR, there is  
7 reference to the -- to individual wells that are used  
8 for drinking water by residents of the valley?

9 MR. PARR: It is my understanding there was a  
10 discussion on -- there was a discussion and analysis of  
11 groundwater and wells in the EIS/EIR.

12 MR. MACKEDON: If the TROA --

13 MR. PARR: Excuse me; I'm sorry. Mr. Mackedon.

14 MR. PARR: You're signaling --

15 CO-HEARING OFFICER DODUC: I was signaling for  
16 the microphone to be turned on louder.

17 MR. PARR: I thought she was signaling me.

18 MR. MACKEDON: I'm just hoping you can hear me.

19 MR. PARR: Mr. Mackedon, I can hear you.

20 MR. MACKEDON: Thank you.

21 If there's a relationship between the surface  
22 irrigation water and the drinking water supply, if that  
23 relationship exists, as I think the EIS/EIR shows, and  
24 the -- that water supply is reduced, that would be an  
25 adverse impact as a consequence of TROA if TROA were to

1 reduce that supply. Would you agree with that?

2 MR. PARR: There was a lot of parts to your  
3 statement there, and I think we need to unpack that here  
4 for a second. I'm confused on whether you're talking  
5 about relationship of -- well, could you please rephrase  
6 your statement?

7 MR. MACKEDON: Let me ask you if you recall, is  
8 there -- according to your understanding of the  
9 Environmental Impact Statement and -- or EIS/EIR, the  
10 relationship between irrigation water supplied to the  
11 water users, let's say in the Carson Division, and we'll  
12 clarify that in a minute, and the drinking water supply,  
13 if there is, and if TROA reduces that source, that would  
14 be an adverse impact, would you agree?

15 MR. PARR: I need to back up again here.

16 If you're talking about the drinking water  
17 sources, should I assume you're talking about the --

18 MR. MACKEDON: You can --

19 MR. PARR: -- groundwater?

20 MR. MACKEDON: You can assume I'm talking about  
21 the groundwater.

22 MR. PARR: So now I need to make -- again, I'm  
23 just trying to unpack this for a second.

24 You're asking me to make some assumption that  
25 there's a relationship between surface water and

1 groundwater as it relates to water being conveyed to the  
2 Newlands Project?

3 MR. MACKEDON: Well, let's -- let me ask it,  
4 and we'll get through this quickly enough.

5 MR. PARR: Okay. Thank you.

6 MR. MACKEDON: There is a -- the -- I believe  
7 the EIS and EIR address this, if only briefly.  
8 Surface -- I'm not talking about water rights.

9 The fact -- the fact that surface, the  
10 irrigation water, also supplies, through seepage into  
11 the ground, serves as a drinking water supply for many  
12 residents of the valley. Are you aware of that?

13 MR. DePAOLI: Hearing Officer Doduc, I'm not  
14 sure if I'm able to do this, but it seems to me that  
15 this cross goes well beyond the scope of the written  
16 direct testimony of this witness and certainly way  
17 beyond the scope of the introductory piece of his  
18 testimony.

19 CO-HEARING OFFICER DODUC: It's beyond the  
20 scope, but could you provide clarification -- scope of  
21 the written testimony -- but would you provide some  
22 explanation as to its relevancy to the issues?

23 And please try to break your questions --

24 MR. MACKEDON: I'll try to --

25 CO-HEARING OFFICER DODUC: -- down into

1 shorter --

2 MR. MACKEDON: -- simplify it for you.

3 CO-HEARING OFFICER DODUC: -- components.

4 MR. MACKEDON: My voice is not good this  
5 morning.

6 Mr. Parr, I believe, said that he would  
7 summarize the benefits from the petitions and the change  
8 applications and that there were no adverse impacts.  
9 And I'm dealing with what I consider to be an adverse  
10 impact or potential adverse impact.

11 CO-HEARING OFFICER DODUC: Okay.

12 MR. MACKEDON: Perhaps this question --

13 CO-HEARING OFFICER DODUC: I see the relevance,  
14 but please keep in mind that there will be other  
15 speakers later on --

16 MR. MACKEDON: I will --

17 CO-HEARING OFFICER DODUC: -- that will be --

18 MR. MACKEDON: I --

19 CO-HEARING OFFICER DODUC: -- able to go into  
20 more detail.

21 MR. MACKEDON: I appreciate that.

22 I won't continue that because perhaps it is a  
23 question that should be asked later from another  
24 witness.

25 Let me ask you what then are the benefits, if

1 any, to the owners of water rights in the Carson  
2 Division of the Newlands Project?

3 And the relevance of that, as I see it, is you  
4 spoke to the Board and said you were going to summarize  
5 the benefits from these petitions or change  
6 applications.

7 What, if any, benefits are there to the owners  
8 of water rights in the Carson Division in the Newlands  
9 Project?

10 MR. PARR: I haven't summarized that yet,  
11 Mr. Mackedon. I was going to do that under a different  
12 panel.

13 MR. MACKEDON: Then I'll ask those questions at  
14 that time.

15 I have no further questions. Thank you.

16 CO-HEARING OFFICER DODUC: Thank you.

17 I believe that concludes the cross-examination  
18 for these witnesses. Is there any redirect?

19 Let's begin with Ms. Kaiser. Is there any  
20 redirect for Ms. Kaiser?

21 MR. PALMER: I have none for Ms. Kaiser.

22 CO-HEARING OFFICER DODUC: Any redirect for Mr.  
23 Parr?

24 MR. PALMER: Yes, I do have a couple for Mr.  
25 Parr.

1 CO-HEARING OFFICER DODUC: Please begin.

2 --o0o--

3 REDIRECT EXAMINATION BY MR. PALMER

4 --o0o--

5 MR. PALMER: Mr. Parr, you were asked by Mr.  
6 Van Zandt about whether the Bureau of Reclamation has a  
7 duty to protect the water right holders in the Newlands  
8 Project. Do you recall that question?

9 MR. PARR: I do.

10 MR. PALMER: Would you explain how you  
11 understand what that duty is?

12 MR. PARR: I think my responsibility -- one of  
13 my responsibilities here to protect the water users of  
14 the Newlands Project is through the administration of  
15 the contract between the Bureau of Reclamation and  
16 Truckee-Carson Irrigation District.

17 MR. PALMER: What is the purpose of that  
18 contract? So that the Board knows what the contract  
19 does, just briefly explain that.

20 MR. PARR: The contract between the United  
21 States government Bureau of Reclamation and  
22 Truckee-Carson Irrigation District is for the operation  
23 and maintenance of the facilities of the Newlands  
24 Project.

25 The TCID, Truckee-Carson Irrigation District,

1 operate and maintain those facilities under a contract  
2 with Reclamation. They operate and maintain those  
3 facilities, and we simply oversee that contract.

4 That's pretty standard through the Bureau of  
5 Reclamation.

6 MR. PALMER: So do you understand your duty to  
7 be through that contract? Is that what you are  
8 referring to?

9 MR. PARR: Yes.

10 MR. PALMER: You were also asked about a couple  
11 of pages from the Environmental Impact Statement. Mr.  
12 Van Zandt referred you to a chart.

13 If you could pull up that piece of paper in  
14 front of you. I believe it's Board Exhibit 7, and it  
15 was identified as page 3-107. And he was referring you  
16 to figure 3.23 on that page. The figure is entitled  
17 Carson Division Shortages.

18 Do you recall that?

19 MR. PARR: Yes, I do.

20 MR. PALMER: Mr. Van Zandt was asking you about  
21 what those shortages meant and whether that was -- if I  
22 got this right; correct me if not -- that shortages  
23 would be a shortage to water rights held by the Newlands  
24 Project water users, and I believe you said it did not.

25 What I want to know: Do you understand or know

1 whether in fact there are senior water right holders on  
2 the Truckee River who may not be fully exercising their  
3 senior water rights today or in the recent past?

4 MR. PARR: I am aware of that. I understand  
5 that.

6 MR. PALMER: And do you know whether under TROA  
7 these senior water right holders hope to exercise their  
8 water rights fully when TROA is implemented?

9 MR. PARR: When TROA is implemented, the senior  
10 water right holders plan on utilizing their water  
11 rights.

12 MR. PALMER: Do you know whether that full  
13 utilization of their senior water rights may in fact  
14 result in a shortage similar to what is displayed in  
15 figure 3.23?

16 MR. PARR: You know, there's a relationship  
17 there. That is correct.

18 MR. PALMER: You were asked by Mr. Mackedon  
19 about drinking water, and I wasn't quite sure where he  
20 was going. I don't know if we identified what drinking  
21 water we're talking about.

22 But maybe just a clarification, if you know:  
23 Does the Truckee-Carson Irrigation District provide  
24 drinking water supplied to the farmers in the project?

25 MR. PARR: To the best of my knowledge, I'm not

1 aware of the Truckee-Carson Irrigation District  
2 providing drinking water to the farmers.

3 MR. PALMER: Do you know if Truckee-Carson  
4 Irrigation District has a water treatment plant for  
5 potable drinking water?

6 MR. PARR: Best of my knowledge, the  
7 Truckee-Carson Irrigation District does not have a water  
8 treatment plant.

9 MR. PALMER: Thank you. That's all the  
10 questions I have for Mr. Parr.

11 CO-HEARING OFFICER DODUC: Okay. Any redirect  
12 for Mr. Wathen?

13 MR. PAGNI: Yes, Madam Chair. I had one  
14 question, clarification.

15 Mr. Wathen, Mr. Van Zandt asked you whether you  
16 were aware of provisions in the Truckee River Agreement  
17 that would allow the Washoe County Water Conservation  
18 District to withdraw, and your answer was no.

19 Can you clarify for me that answer? Was it  
20 your answer that no, there is no such provision in the  
21 Truckee River Agreement? Or was your answer that no,  
22 you're not aware one way or another whether there is any  
23 such provision.

24 MR. WATHEN: The latter. I'm not aware one way  
25 or another whether there is a provision.

1 MR. PAGNI: Thank you.

2 Nothing further.

3 CO-HEARING OFFICER DODUC: Okay. Any redirect  
4 for Mr. Erwin?

5 MR. DePAOLI: No redirect for Mr. Erwin.

6 CO-HEARING OFFICER DODUC: Okay.

7 Mr. Van Zandt, any recross for Mr. Parr and Mr.  
8 Wathen?

9 MR. VAN ZANDT: Just for Mr. Parr, if I could  
10 please.

11 CO-HEARING OFFICER DODUC: Okay.

12 --o0o--

13 RECROSS-EXAMINATION BY MR. VAN ZANDT

14 --o0o--

15 MR. VAN ZANDT: Mr. Parr, Mr. Palmer was asking  
16 you about this figure 3.23. This was derived from the  
17 so-called operations model, isn't that right? What they  
18 call the Truckee River Operations Model?

19 MR. PARR: I believe the Truckee River  
20 Operations Model was utilized for this analysis.

21 MR. VAN ZANDT: And you indicated that it was  
22 your belief there may be some unexercised senior water  
23 rights that may in fact be included in the shortages  
24 that we're seeing on figure 3.23; is that right?

25 MR. PARR: I'm -- all right. State that one

1 more time, please.

2 MR. VAN ZANDT: I think your testimony was that  
3 you thought there may be included in some of the  
4 shortages that we see on figure 3.23 of SWRCB Exhibit 7  
5 some unexercised senior water rights; is that right?

6 MR. PARR: Yes.

7 MR. VAN ZANDT: Okay. And do you know that for  
8 a fact? Do you have personal knowledge of that?

9 MR. PARR: Yes.

10 MR. VAN ZANDT: So you have studied the  
11 operations model and its output files for how shortages  
12 may be caused in the Carson Division of the Newlands  
13 Project as a result of TROA?

14 MR. PALMER: Well, objection in lieu of  
15 clarification. I don't -- the question was aimed at  
16 whether he understood that potential unexercised senior  
17 rights were part of what's showing in that chart, not  
18 whether he engaged in model analysis.

19 I think his answer was more limited.

20 CO-HEARING OFFICER DODUC: Could you rephrase  
21 your question, Mr. Van Zandt?

22 MR. VAN ZANDT: I'm trying to probe the  
23 witness's explanation that he has personal knowledge of  
24 this.

25 My question is, Mr. Parr, have you actually

1 looked at the output files from the Truckee River  
2 Operations Model to determine what the source of the  
3 shortages are that are shown on figure 3.23?

4 MR. PARR: I have not looked at the output of  
5 the model for this analysis.

6 MR. VAN ZANDT: So what is the source of your  
7 personal knowledge?

8 MR. PARR: Just discussions with hydraulic  
9 engineers, engineers, discussion with TROA parties.

10 MR. VAN ZANDT: Okay. So somebody told you  
11 this?

12 MR. PARR: Yes.

13 MR. VAN ZANDT: That's all I have.

14 CO-HEARING OFFICER DODUC: Thank you.

15 Mr. Mackedon, any recross?

16 MR. MACKEDON: Yes, thank you. I have a  
17 question for Mr. Parr.

18 --o0o--

19 RECROSS-EXAMINATION BY MR. MACKEDON

20 --o0o--

21 MR. MACKEDON: Can you hear me?

22 MR. PARR: Yes, I can.

23 MR. MACKEDON: You were asked a question by  
24 Mr. Palmer regarding a contract between the Bureau and  
25 TCID. Do you recall that?

1 MR. PARR: Yes, I do.

2 MR. MACKEDON: And in point of fact, isn't it  
3 true that the TCID, that -- put it this way, the Bureau  
4 has a contract with each individual owner of water right  
5 in the project, and it's the Bureau's responsibility to  
6 deliver the water to the individuals pursuant to those  
7 contracts, correct?

8 MR. PARR: If you're talking about water right  
9 certificates, I am outside of my league there.

10 If we're going to be talking about a contract  
11 between the District and the Bureau of Reclamation,  
12 that's strictly a contract between the Bureau of  
13 Reclamation and basically the board of directors for the  
14 Truckee-Carson Irrigation District.

15 MR. MACKEDON: And the water right owners, that  
16 is the people who own the water rights in the Newlands  
17 Project, have no contract with the TCID. And if the  
18 TCID were -- say that contract was canceled, the Bureau  
19 would be obligated to meet its contract with the owners?

20 MR. PARR: If Truckee-Carson Irrigation  
21 District canceled the contract with the Bureau of  
22 Reclamation, the Bureau of Reclamation would be  
23 responsible for operations of the facilities of the  
24 Newlands Project and delivering water to the water right  
25 holders.

1 MR. MACKEDON: Thank you.

2 CO-HEARING OFFICER DODUC: Thank you.

3 That completes recross. Mr. Chairman, do you  
4 have any questions for these witnesses?

5 CO-HEARING OFFICER HOPPIN: No.

6 CO-HEARING OFFICER DODUC: Staff?

7 --o0o--

8 QUESTIONS FROM BOARD STAFF

9 --o0o--

10 ENGINEERING GEOLOGIST MURPHEY: This is Paul  
11 Murphy. I had a question for Ms. Kaiser.

12 When you testified, you had mentioned that  
13 Prosser Creek Reservoir was incorrectly listed as  
14 redistribution. Could you further explain that?

15 MS. KAISER: In my written testimony at the top  
16 of page 2, one of the items listed is Redistribution of  
17 the Storage. And underneath that, the reservoirs are  
18 listed, and Prosser is listed underneath redistribution  
19 of storage, and there's no redistribution of storage for  
20 Prosser.

21 ENGINEERING GEOLOGIST MURPHEY: So that means  
22 there's a correction in your written testimony?

23 MS. KAISER: Yes.

24 ENGINEERING GEOLOGIST MURPHEY: Okay.

25 SENIOR STAFF COUNSEL MAHANEY: My question is

1 for either Mr. Parr or Ms. Kaiser.

2 In each of your testimony, you suggest  
3 conditions that should be included in any State Water  
4 Board order, and I have a question about one of those  
5 that's included in both of your testimony, so either of  
6 you maybe could address this.

7 Your testimony states that the condition --  
8 that any order issued should include a following  
9 condition requiring that diversions, storage, use of  
10 water, and operations under the permit or license shall  
11 be in accordance with provisions contained of course in  
12 the permit or license and the Truckee River Operating  
13 Agreement.

14 The Truckee River Operating Agreement contains  
15 a number of mandatory terms with respect to, example,  
16 water right permits and change petitions.

17 I just want to clarify whether or not those  
18 terms contained in the Truckee River Agreement are the  
19 ones that you are referencing here as one of the  
20 conditions or whether just general conditions is what  
21 you're looking for.

22 MR. PARR: I think we're just -- I think what  
23 it is we're asking for in that term is just a general  
24 condition.

25 I mean to -- that the petitions and

1 applications are conditioned on approval when the  
2 Truckee River Operating Agreement is able to be  
3 implemented.

4 SENIOR STAFF COUNSEL MAHANEY: And then in turn  
5 on the conditions in the Truckee River Operating  
6 Agreement specific to water right permits or change  
7 petitions?

8 MR. PARR: I believe that is correct.

9 SENIOR STAFF COUNSEL MAHANEY: Okay. Thank  
10 you.

11 CO-HEARING OFFICER DODUC: Thank you. Thank  
12 you to all the witnesses. And I will now ask that the  
13 witnesses for the second topic please come up. While  
14 they're doing that, off the record for a minute.

15 (Discussion off the record)

16 CO-HEARING OFFICER DODUC: Mr. Palmer, you may  
17 begin.

18 MR. PALMER: Steve Palmer for Bureau of  
19 Reclamation. The next witness we'll call is Mr. Jeffrey  
20 Rieker.

21 --o0o--

22 JEFFREY RIEKER

23 Called by APPLICANT AND PETITIONERS

24 DIRECT EXAMINATION BY MR. PALMER

25 --o0o--

1           MR. PALMER:  Would you please state your name  
2 and spell your last name and state your employer for the  
3 record, please.

4           MR. RIEKER:  Sure.  My name is Jeffrey Donald  
5 Rieker, R-i-e-k-e-r.  My employer is United States  
6 Bureau of Reclamation.

7           MR. PALMER:  And do you have a copy of your  
8 written testimony that you could identify the exhibit  
9 number?

10          MR. RIEKER:  I do.  My written testimony is  
11 exhibit USBR No. 3.

12          MR. PALMER:  And before we go to that, would  
13 you please briefly summarize your qualifications?

14          MR. RIEKER:  Sure.  I am currently the Special  
15 Studies Manager for Lahontan Basin Area Office of the  
16 Bureau of Reclamation in Carson City.

17                 In that capacity, I generally oversee most  
18 water resources planning and management-type activities  
19 of our office, including hydrologic and reservoir  
20 operations forecasting and modeling, water-rights-type  
21 issues, and oversight of the administration of the  
22 Newlands Project Operating Criteria and Procedures which  
23 is a federal regulation that our office oversees.

24                 That's generally my background as far as my job  
25 goes.

1           Educationally, I have a bachelor of science in  
2 civil engineering from the University of Missouri at  
3 Rolla, a master of science in civil engineering from  
4 Colorado State University.

5           I'm currently completing my PhD in civil  
6 engineering from Colorado State University.

7           And I'm a Registered Professional Engineer in  
8 the State of Nevada.

9           MR. PALMER: Is your qualification statement  
10 Exhibit USBR 8?

11          MR. RIEKER: It is.

12          MR. PALMER: Is that a true and correct copy of  
13 your qualifications statement?

14          MR. RIEKER: It is.

15          MR. PALMER: Then you identified Exhibit 3 as  
16 your written direct testimony. Is that a true and  
17 correct copy of that?

18          MR. RIEKER: It is a true copy. I have a  
19 couple of minor corrections.

20          MR. PALMER: Go ahead.

21          MR. RIEKER: At the bottom of page 5 on that,  
22 in referring to the natural rim elevations of Donner and  
23 Independence Reservoirs, the elevations listed there are  
24 actually just zero storage elevations, not necessarily  
25 the natural rim as written.

1           And also at the bottom of page 5 --

2           CO-HEARING OFFICER DODUC: I'm sorry. Please  
3 slow down and go back.

4           MR. RIEKER: Okay. Basically under Truckee  
5 River Dams and Reservoirs section at the bottom of page  
6 5, I refer to the natural rim elevations of Independence  
7 and Donner Lake.

8           And those elevations listed are actually just  
9 the zero storage elevation of those reservoirs, not  
10 necessarily just the natural rim.

11           Additionally, just below that, I refer to the  
12 operation of Prosser Creek Dam as being under contract  
13 with the Federal Water Master's Office. That's actually  
14 directly operated by the Bureau of Reclamation.

15           So those are the two corrections there. With  
16 that, this is a true and correct copy.

17           MR. PALMER: Mr. Rieker, go ahead and summarize  
18 your direct testimony.

19           MR. RIEKER: Sure.

20           You know, the purpose of my testimony here  
21 today is simply to provide the Board with an overview of  
22 the geography of the Truckee River Basin and the Lower  
23 Carson River Basin and also to provide a brief overview  
24 as to the water rights and water operations of the  
25 Newlands Project as they relate to the Truckee River.

1           And for my testimony, I'm going to be referring  
2 to exhibit USBR No. 8 which is a map showing the primary  
3 features of that area.

4           MR. PALMER: I believe that's USBR 15.

5           MR. RIEKER: Excuse me. USBR 15.

6           And if possible, it would be nice to bring that  
7 up for the Board as I walk through the basins here.

8           Again, to just provide a brief overview of the  
9 geography, the Truckee River Basin is a hydrographically  
10 closed basin, meaning that water naturally doesn't leave  
11 the basin except through evaporation or seepage into the  
12 ground.

13           It encompasses about 3,060 square miles. The  
14 headwaters of the Truckee River are located in the Lake  
15 Tahoe Basin which straddles the California/Nevada state  
16 line.

17           The lake is a natural alpine lake. It's the  
18 tenth deepest lake in the world at about 1650 feet of  
19 depth, and it's well-known for the clarity of its  
20 waters.

21           It, as you can see on the map, straddles the  
22 California/Nevada state line.

23           Water leaves the lake into the Truckee River  
24 through an outlet at its northwestern shore. At that  
25 location, there's also a small dam which permits

1 additional storage of water in the lake. That dam is  
2 operated by the Bureau of Reclamation.

3           Upon leaving the dam, water flows to the north  
4 through the Truckee River approximately 14 miles before  
5 tributary inflow from Donner Creek enters the Truckee  
6 River.

7           Within the Donner Creek watershed sits Donner  
8 Lake. That's a natural lake that also has a dam that  
9 permits additional storage in the lake. That dam is  
10 owned jointly by the Truckee Meadows Water Authority and  
11 Truckee-Carson Irrigation District.

12           Again, tributary waters come from Donner Creek  
13 into the Truckee River from the west, and at that point  
14 the Truckee River flows to the east through the town of  
15 Truckee, California.

16           Just downstream of Truckee, California it picks  
17 up tributary inflows from the south from the Martis  
18 Creek watershed. In that watershed sit Martis Creek Dam  
19 and Reservoir. That's a United States Army Corps of  
20 Engineers facility shown on the map and listed as  
21 Martis.

22           Just downstream of that along the Truckee  
23 River, the river picks up tributary inflows from the  
24 Prosser Creek watershed. Within that watershed sits  
25 Prosser Creek Dam and Reservoir which is a United States

1 Bureau of Reclamation facility.

2 Just downstream of that point, the Truckee  
3 River also picks up tributary inflows from the Little  
4 Truckee River which is the largest tributary to the  
5 Truckee in California.

6 Within that watershed exists a subwatershed  
7 known as the Independence Creek watershed, and within  
8 that watershed sits Independence Lake which you can see  
9 listed on the map here.

10 That's another natural lake that has a dam  
11 providing additional storage on it, and that is owned  
12 and operated by the Truckee Meadows Water Authority.

13 Also on the Little Truckee River you'll see  
14 Stampede Dam and Reservoir and Boca Dam and Reservoir.  
15 Both of those are Bureau of Reclamation facilities. And  
16 as you heard earlier, Boca is operated by the Washoe  
17 County Water Conservation District.

18 From its confluence with the Little Truckee  
19 River the Truckee River flows just to the east  
20 approaching the California-Nevada state border and then  
21 turns north, finally crosses into Nevada near the small  
22 town of Floriston, California, proceeds north and then  
23 back to the east into an area known as the Truckee  
24 Meadows. And prior to reaching the Truckee Meadows,  
25 there are four run-of-the-river power plants along the

1 river.

2           The Truckee Meadows itself is a large valley  
3 that encompasses the area, municipal areas of Reno and  
4 Sparks which are shown on the map here. There are a  
5 number of diversions and return flows from the river in  
6 that vicinity.

7           Upon exiting the Truckee Meadows, the Truckee  
8 River flows through a canyon approximately 18 miles  
9 before it reaches Derby Dam which is a Bureau of  
10 Reclamation facility that is capable of diverting water  
11 into the Truckee Canal.

12           Flowing through Derby Dam, the Truckee River  
13 continues to the east and then turns north into the  
14 Pyramid Lake Indian Reservation which you see there on  
15 the map, flows near the small towns of Wadsworth and  
16 Nixon on the reservation, passes through Marble Bluff  
17 Dam which is a Bureau of Reclamation grade control  
18 facility, basically, and a fish passage facility.

19           Just beyond that, the Truckee River terminates  
20 in Pyramid Lake which is the terminal lake of the  
21 Truckee River.

22           Moving back upstream to Derby Dam, water that  
23 is diverted into Derby Dam enters the Truckee Canal.  
24 Both of those are Bureau of Reclamation facilities that  
25 are part of the Newlands Project and carry water to the

1 Newlands Project.

2           The Truckee Canal generally flows parallel to  
3 the Truckee River for about nine miles before the river  
4 turns away from it. The canal then enters the City of  
5 Fernley, Nevada.

6           It also enters an area of the Newlands Project  
7 known as the Truckee Division of the Newlands Project.  
8 That's about just over 2,000 irrigated acres of farmland  
9 that's served directly from the Truckee Canal using  
10 Truckee River water.

11           It flows to the east about 12 miles through the  
12 Truckee Division before turning south and into an area  
13 known as Swingle Bench which is another portion of the  
14 Truckee Division and past a small town called Hazen,  
15 Nevada.

16           And finally the Truckee Canal terminates in  
17 Lahontan Reservoir which is another Bureau of  
18 Reclamation facility. Lahontan Dam and Reservoir, there  
19 you see are on the Carson River, primarily designed to  
20 store water from the Carson River for use in the  
21 Newlands Project, but they also receive this  
22 supplementary flow from the Truckee River.

23           Water that's released from Lahontan Reservoir  
24 flows into what's known as the Carson Division of the  
25 Newlands Project. That is that large green area shown

1 on the map.

2 That encompasses approximately in the range of  
3 55,000 irrigated acres of farmland and wetland in a  
4 geographic region known as the Lahontan Valley.

5 Within the Carson Division sit the City of  
6 Fallon, as you can see on the map, the Fallon Naval Air  
7 Station which is listed as Fallon NAS, the Fallon  
8 Paiute-Shoshone Indian Reservation, and Stillwater  
9 National Wildlife Refuge, and several of those receive  
10 water supply from Newlands Project features.

11 So that basically concludes my summary of the  
12 geography of the area.

13 Mr. Blanchard, who sits next to me, will later  
14 go into more detail on the operation of the Truckee  
15 River Reservoirs, but the next portion of my testimony  
16 is going to focus on the Newlands Project and its water  
17 rights and operations as they relate to the Truckee  
18 River.

19 I'll jump right in there.

20 Basically, as you can see from the map and I've  
21 described here, the majority of the water supply for the  
22 Newlands Project comes from the Carson River.

23 The Truckee River provides a supplementary  
24 supply for the Carson Division of the project and a  
25 direct supply for the small Truckee Division of the

1 project.

2           The right to divert water out of the Truckee  
3 River comes from Claim 3 of the Orr Ditch Decree. The  
4 Orr Ditch Decree was the adjudication of water rights up  
5 and down the Truckee River.

6           It's important to note that the Orr Ditch  
7 Decree originally had over 700 claims to water in it.  
8 Claim 3, even though it's a high claim number, is  
9 actually one of the most junior water rights with  
10 respect to priority dates. Approximately 95 percent of  
11 the other claims are senior to Claim 3.

12           Claim 3 allows for up to 1500 cubic feet per  
13 second of diversion from the Truckee River for the  
14 irrigation of up to just over 232,000 acres of land and  
15 other uses.

16           It's important to note that neither of those  
17 figures have ever been fully realized, neither the  
18 acreage nor the flow rate.

19           As I mentioned before, today we see the  
20 Newlands Project fluctuate between about 56- and 58,000  
21 acres of land from year to year, and the Truckee Canal  
22 itself has never flown at that flow rate but even today  
23 is restricted 350 cubic feet per second for safety  
24 reasons by both the Bureau of Reclamation and the courts  
25 as a result of the breach in the City of Fernley in 2008

1 of that canal.

2           Claim 3 has certain limitations to that  
3 diversion from the Truckee River. These include that  
4 it's limited to the beneficial use of the water; and for  
5 irrigation, it's limited to only up to three and a half  
6 acre feet per acre per year applied to bottom lands  
7 within the Newlands Project and four and a half acre  
8 feet per acre annually for bench lands within the  
9 Newlands Project.

10           The claim also puts diversion of that water  
11 subject to the control and regulation of the United  
12 States. And the United States carries out that control  
13 and regulation through the Secretary of Interior.

14           The Secretary of Interior exercises that  
15 through what is a federal regulation known as the  
16 Operating Criteria and Procedures for the Newlands  
17 Project, or OCAP for short.

18           The OCAP was originally promulgated as a  
19 federal rule in 1967 to deal with the issues going on in  
20 the Lower Truckee River as a result of the large-scale  
21 diversion of water out of the Truckee for the Newlands  
22 Project.

23           The courts reissued that OCAP in 1973 and  
24 provided clear direction to the Secretary of Interior  
25 that all water not decreed or under contract with TCID

1 was to remain in the Truckee River.

2           So since that time a number of OCAPs have been  
3 developed that all focus on the primary goal of  
4 maximizing the use of Carson River water to serve the  
5 project and minimizing the use of the Truckee River  
6 water to serve the project.

7           Currently we operate under the 1997 revision of  
8 the OCAP. That's what we administer today. That OCAP  
9 basically restricts diversion from the Truckee River in  
10 a number of ways.

11           It does permit diversion subject to  
12 availability and prior appropriation for water to serve  
13 the Truckee Division.

14           As far as water that may be diverted through  
15 the Lahontan Reservoir, that is limited through a system  
16 of monthly storage targets on Lahontan Reservoir, and  
17 those monthly storage targets are issued every year by  
18 the Bureau of Reclamation.

19           Water can only be diverted through the Truckee  
20 Canal -- from the Truckee River through the Truckee  
21 Canal to Lahontan at times when it's needed to actually  
22 meet those storage targets.

23           If the water surface of Lahontan Reservoir  
24 already exceeds the storage targets or is projected to  
25 exceed them, then water is not permitted to be diverted

1 through the canal to Lahontan Reservoir.

2 Those targets are reissued annually, as I said,  
3 by Reclamation based on anticipated needs of the Carson  
4 Division of the Newlands Project as well as past year  
5 needs, recent needs of the project, to allow for those  
6 to change from year to year.

7 The OCAP also limits the overall diversion of  
8 water out of Reclamation facilities to the -- excuse  
9 me -- the OCAP also limits the overall diversion of  
10 water out of Truckee Canal and out of Lahontan Reservoir  
11 to the Newlands Project to a -- basically an overall  
12 limitation that's applied each year. That is known as  
13 the maximum annual diversion.

14 The OCAP also contains provisions that apply to  
15 Stampede and Prosser Reservoirs, so I'll just give a  
16 brief overview of how those reservoirs -- the  
17 entitlement that the Newlands Project has to water  
18 stored in those reservoirs.

19 Basically, project waters that are stored in  
20 Stampede and Prosser Reservoirs that are not needed for  
21 other purposes have been deemed by the Secretary of  
22 Interior to go to the recovery of threatened and  
23 endangered species in the Truckee River.

24 That operation was reaffirmed by the courts in  
25 the early 1980s, I believe in 1983. And as such, the

1 right or entitlement to any water in those reservoirs of  
2 the Newlands Project is limited to that provided by the  
3 Secretary of Interior through the OCAP, within the OCAP.

4 That means basically several provisions that  
5 provide for something called Newlands Project Credit  
6 Storage which is basically a mechanism to hold back or  
7 exchange water that otherwise would have been diverted  
8 through the Truckee Canal to Lahontan Reservoir.

9 To date under the current OCAP, those  
10 provisions have never been exercised.

11 That basically concludes my summary of that  
12 portion of my testimony.

13 MR. PALMER: I thought it might be helpful at  
14 this point to just identify a couple of the exhibits  
15 that Mr. Rieker referred to.

16 CO-HEARING OFFICER DODUC: Please.

17 MR. PALMER: I can show it to him to be sure  
18 we're talking about the same exhibit.

19 I have Petitioner and Applications Joint  
20 Exhibit 9, and that's what you referred to as the OCAP?

21 MR. RIEKER: That is the 1997 OCAP. It's part  
22 418 of the Code of Federal Regulations, Section 43, I  
23 believe.

24 CO-HEARING OFFICER DODUC: That was Joint  
25 Exhibit 9?

1 MR. PALMER: Yes.

2 You also made reference to Claim 3, and I  
3 believe that is contained in the Orr Ditch Decree. We  
4 have that marked as Joint Exhibit 7. I'll just confirm  
5 that with the witness.

6 MR. RIEKER: That is the Orr Ditch Decree.

7 MR. PALMER: That exhibit, the Orr Ditch  
8 Decree, contains Claim 3 that you were discussing in  
9 your summary.

10 MR. RIEKER: Correct.

11 MR. PALMER: And I believe you also referenced  
12 Joint Exhibit 8 which is the 1973 court decision in  
13 Pyramid Lake Pyramid Lake v Morton. I'll hand you that  
14 to confirm it.

15 MR. RIEKER: This does appear to be that, yes.

16 MR. PALMER: That's all I have for direct.  
17 Thank you.

18 CO-HEARING OFFICER DODUC: Okay. So let's move  
19 on to direct for the next witness.

20 --o0o--

21 CHAD J BLANCHARD

22 Called by APPLICANT AND PETITIONERS

23 DIRECT EXAMINATION BY MR. DePAOLI

24 --o0o--

25 MR. DePAOLI: Mr. Blanchard, would you please

1 state your name and spell it for the record?

2 MR. BLANCHARD: Chad J Blanchard, no period  
3 after J, B-l-a-n-c-h-a-r-d.

4 CO-HEARING OFFICER DODUC: Could you please get  
5 closer to the microphone?

6 MR. BLANCHARD: Chad J Blanchard, no period  
7 after J. B-l-a-n-c-h-a-r-d.

8 MR. DePAOLI: Mr. Blanchard, is  
9 Applicant/Petitioner Joint Exhibit 20 a true and correct  
10 copy of your written testimony?

11 MR. BLANCHARD: Yes.

12 MR. DePAOLI: Do you have any corrections to  
13 that written testimony?

14 MR. BLANCHARD: No.

15 MR. DePAOLI: Do you affirm that the testimony  
16 in Joint Exhibit 20 is true and correct?

17 MR. BLANCHARD: Yes.

18 MR. DePAOLI: Would you briefly summarize your  
19 education and employment history since graduating from  
20 college?

21 MR. BLANCHARD: I graduated from the University  
22 of Nevada, Reno in 1993 with a bachelor of science  
23 degree in resource management and hydrology and a minor  
24 in biology.

25 I began my employment with the US District

1 Court Water Master's Office as a field hydrologist in  
2 January of 1994. I have been with the Water Master's  
3 Office since that time and am currently the Chief Deputy  
4 Water Master.

5 I have continued my education at the University  
6 of Nevada, Reno where I received a master's of science  
7 degree in resource and applied economics in 2004 and a  
8 master's of business administration in 2009.

9 MR. DePAOLI: What is the purpose of your  
10 testimony?

11 MR. BLANCHARD: I'm just going to give a brief  
12 discussion on the current operations of the Truckee  
13 River and reservoirs.

14 I will also mention some of the controlling  
15 decrees and documents and will give a brief discussion  
16 of operations of Derby Dam and distribution of water in  
17 the lower river.

18 MR. DePAOLI: Would you please proceed with  
19 that, starting with the agreements and decrees.

20 MR. BLANCHARD: Sure.

21 I will make brief reference to the 1908  
22 Floriston rates agreement, the 1915 Truckee River  
23 General Electric Decree, the 1935 Truckee River  
24 Agreement, the 1944 Orr Ditch Decree, and the 1959  
25 Tahoe-Prosser Exchange Agreement.

1 Can we see the map again, please?

2 CO-HEARING OFFICER DODUC: Would that be USBR  
3 15?

4 MR. BLANCHARD: Yes.

5 If we look at the map, I'll further discuss the  
6 reservoirs beyond what Jeff went into and discuss their  
7 capacities and their storage priority schedule.

8 Lake Tahoe is, as Jeff mentioned, the largest  
9 reservoir on the system. It stores 744,600 acre feet of  
10 Floriston rate water at its capacity, and it just  
11 consists of a dam impounding 6.1 vertical feet on top of  
12 the natural lake.

13 Moving downstream, we have Donner Lake which is  
14 on Donner Creek. It has a capacity of 9500 acre feet  
15 and stores privately owned stored water jointly owned by  
16 the Truckee Meadows Water Authority and Truckee-Carson  
17 Irrigation District.

18 Moving downstream, we have Martis Creek  
19 Reservoir on Martis Creek. It has a capacity of 20,400  
20 acre feet and stores strictly flood control water and is  
21 owned by the Army Corps of Engineers.

22 On downstream, we have Prosser Creek Reservoir  
23 which is on Prosser Creek. It has a capacity of 29,840  
24 acre feet, stores uncommitted and Tahoe-Prosser Exchange  
25 water.

1           Next we have the Little Truckee River. As Jeff  
2 mentioned, that's the largest tributary in the system.

3 There are three reservoirs on the Little Truckee system.

4           The first one, if we work from the top on our  
5 way down, is Independence Lake which is on Independence  
6 Creek. It has a capacity of 17,500 acre feet and stores  
7 Truckee Meadows Water Authority privately owned stored  
8 water.

9           Downstream is Stampede Reservoir. It's on the  
10 Little Truckee, has a capacity of 226,500 acre feet, and  
11 stores primarily fish water but also stores some TMWA  
12 credit storage.

13           Then just below Stampede, only .3 miles above  
14 the confluence of the Little Truckee and the main  
15 Truckee, is Boca Reservoir. It has a capacity of 40,870  
16 and stores primarily Floriston rate water.

17           And then there's a small amount of pondage in  
18 there which is owned by the Truckee Meadows Water  
19 Authority.

20           Just to give a breakdown of the distribution of  
21 the natural flow in the river below Tahoe City to Farad.  
22 Farad is a USGS gauging station on the Truckee River  
23 near -- just downstream from Floriston which is marked  
24 there, just upstream from the California/Nevada state  
25 line.

1           The source of the natural flow on the Truckee  
2 between Tahoe and Farad is distributed approximately as  
3 follows: 4 percent from Martis Creek, 6 percent from  
4 Donner Creek, approximately 15 percent from Prosser  
5 Creek, 30 percent from the Little Truckee River.

6           And the remaining 45 percent is called side  
7 water, and that is all the water that reaches Farad that  
8 comes from unregulated streams such as Bear Creek and  
9 Alpine Meadows, Squaw Creek, Cold Stream, Bronco, and  
10 Gray and numerous other small tributaries.

11           So the storage of new water in the Truckee  
12 Reservoir is on a priority schedule and may begin only  
13 after specific conditions are met.

14           I will give a quick list of the order in which  
15 priorities are satisfied. However, it's important to  
16 remember that these conditions are not mutually  
17 exclusive; and if natural flow is sufficient, all of the  
18 reservoirs may be storing at the same time.

19           Actually, the first priority in the upper  
20 section of the river is the Sierra Valley diversion.  
21 It's not a storage priority. It's actually an  
22 out-of-basin diversion that takes Little Truckee River  
23 water over to Feather River Basin. And that occurs just  
24 above the confluence of Independence Creek and the  
25 Little Truckee River.

1           They're entitled to divert up to 60 cubic feet  
2 per second.

3           The first reservoir to store would be Donner  
4 Lake, and it has a capacity of 9500 feet, and it may  
5 fill.

6           Independence Lake may then store up to 3,000  
7 acre feet. After that point, the Floriston rates must  
8 be satisfied before any further storage can continue.

9           If the Floriston rate is satisfied, then Lake  
10 Tahoe may release down to the minimum flow and store.  
11 After that, Boca may store up to 25,000 acre feet of  
12 supplemental water per the Truckee River Agreement.

13           At that point, the Truckee Canal demands that  
14 are allowed by OCAP must be satisfied before any further  
15 storage occurs.

16           After the canal demands are satisfied, Boca may  
17 continue storing up to its capacity.

18           At that point, Independence may continue  
19 storing up to its capacity.

20           Then Stampede may store up to its capacity.

21           And finally Prosser may store up to its  
22 capacity.

23           CO-HEARING OFFICER HOPPIN: Mr. Blanchard, can  
24 I ask you just a point of clarity?

25           MR. BLANCHARD: Sure.

1 CO-HEARING OFFICER HOPPIN: On the map here on  
2 Exhibit 15, it almost makes it look like Donner Lake is  
3 an appendage of the Truckee River. Do all --

4 MR. BLANCHARD: All the other reservoirs  
5 besides Lake Tahoe are on tributaries. There is no  
6 reservoir on the mainstem of the Truckee other than Lake  
7 Tahoe.

8 CO-HEARING OFFICER HOPPIN: So at this dam  
9 that's shown on Tahoe, it's strictly an outflow; the  
10 tributaries just aren't shown on this map.

11 MR. BLANCHARD: Well, the tributaries are. If  
12 you can see on the map here, we have Donner Lake on a  
13 tributary. The mainstem of the Truckee follows down  
14 through, and these reservoirs are close to the Truckee  
15 but are not exactly on the mainstem.

16 CO-HEARING OFFICER HOPPIN: Then are you saying  
17 that this dam on the Donner is an ebb-and-flow type of  
18 thing where water goes in both directions?

19 MR. BLANCHARD: No. Water strictly comes from  
20 the Sierras above Donner into Donner where it's  
21 impounded by the dam on top of the natural lake, and  
22 then it is controlled by releases from the dam which  
23 goes into the Truckee River.

24 CO-HEARING OFFICER HOPPIN: There's no control  
25 of inflow; it's strictly --

1           MR. BLANCHARD:  No control of inflow.  It's  
2 strictly outflow.

3           CO-HEARING OFFICER HOPPIN:  Thank you for the  
4 clarity.

5           MR. BLANCHARD:  So the foundation for  
6 operations of the Truckee River are the Floriston rates.

7           The Floriston rates are required rates of flow  
8 that are to be maintained at the Truckee River near  
9 Farad gage.

10           They're called Floriston rates because the  
11 original gage where they were measured was the Iceland  
12 gage near Floriston which is marked on the map.

13           The new gage is just downstream.  I believe  
14 that gage was lost in a flood.  They relocated the  
15 stream -- the gage downstream closer to the  
16 Nevada/California state line, and now it's called Farad.

17           The Floriston rates are intend to meet the  
18 diversion requirements for agriculture, municipal,  
19 industrial, domestic, as well as power generation  
20 demands on the Truckee River within Nevada.

21           The 1908 Floriston Rates Agreement as well as  
22 the 1915 Truckee River General Electric Decree  
23 established the Floriston rates as 500 cfs for March 1st  
24 through September 30th of each year and 400 cfs from  
25 October 1st through the last day of February.

1           The 1944 Orr Ditch Decree, through the Truckee  
2 River Agreement, allowed for lower rates of flow when  
3 Lake Tahoe was low in order to conserve water during the  
4 period November 1st through March 31st.

5           These reduced Floriston rates are as follows:  
6 350 cfs when the water surface elevation of Lake Tahoe  
7 is between 6226.0 and 6225.25, and 300 cfs wherever the  
8 water surface elevation of Lake Tahoe is below 6225.25.

9           If the natural flow of the Truckee River is not  
10 sufficient to meet the Floriston rates, water must be  
11 released from Lake Tahoe or Boca at sufficient quantity  
12 to satisfy the required rate.

13           Likewise, if the Floriston rates are being met  
14 from natural flow, and capacity allows, the releases  
15 from Lake Tahoe and Boca must be reduced and the inflow  
16 stored.

17           The source of the Floriston rate water that is  
18 required from storage will vary between Lake Tahoe and  
19 Boca depending on the elevation of Lake Tahoe per the  
20 Truckee River Agreement.

21           The Truckee River Agreement sets a maximum  
22 elevation of Lake Tahoe of 6229.1 feet to prevent high  
23 water damage from occurring around the lake.

24           The Lake Tahoe dam is operated to prevent the  
25 maximum surface elevation from exceeding 6229.1 insofar

1 as practicable per the Truckee River Agreement.

2 Under the provisions of the controlling  
3 agreements and decrees, water might only be released  
4 from Lake Tahoe for three reasons.

5 One is the maintenance of Floriston rates.

6 Two is to preclude the lake from exceeding the  
7 upper limit of 6229.1.

8 And three is to meet the minimum flow releases.

9 Storage in Lake Tahoe may commence at any time  
10 the Floriston rate is being met by natural flow and  
11 capacity allows.

12 So now we'll move to Stampede. Stampede again  
13 is on the Little Truckee River.

14 The primary function of Stampede Reservoir is  
15 for the storage and release of fish water to benefit the  
16 threatened and endangered species in Pyramid Lake.

17 This water is called upon for use in the Lower  
18 Truckee River by the Pyramid Lake Paiute Tribe in  
19 conjunction with the US Fish and Wildlife Service.

20 When the fish water is called on and released,  
21 it is sent through the system on top of Floriston rates  
22 and is not available for diversion by any other entity.

23 Due to their proximity on the Little Truckee  
24 River, the operations between Stampede and Boca, which  
25 Boca is just downstream from Stampede approximately six

1 miles, the operations of the two reservoirs are  
2 coordinated to accomplish several objectives.

3           Number one is to allow a minimum release from  
4 Stampede for fishery purposes.

5           Number two is to reduce the number of changes  
6 required from Stampede as the inflow comes in.

7           Number three is to limit the impact of large  
8 fluctuations of the Little Truckee River below Stampede.

9           Number four is to preclude releases that exceed  
10 the power generation capacity of Stampede if possible.

11           Number five is to transfer Truckee Meadows  
12 Water Authority credit storage between the two  
13 reservoirs.

14           Now we'll move to Prosser Creek Reservoir which  
15 is on Prosser Creek just upstream from the Little  
16 Truckee River.

17           Prosser was constructed in 1962 for the purpose  
18 of flood control and to facilitate the Tahoe-Prosser  
19 Exchange Agreement.

20           The Tahoe-Prosser Exchange Agreement was signed  
21 in 1959 and modified the Truckee River General Electric  
22 Decree to allow minimum releases from Lake Tahoe when no  
23 water was needed to maintain the Floriston rate.

24           So prior to this agreement, if natural flow was  
25 meeting the Floriston rate, no releases from Tahoe were

1 allowed. Tahoe would be shut off, and basically the  
2 river would dry up essentially from Lake Tahoe down to  
3 the first tributary which would be Bear Creek at Alpine  
4 Meadows.

5 Under the Tahoe-Prosser Exchange Agreement, a  
6 minimum flow is to be maintained from the lake for  
7 benefit of fish and wildlife.

8 When the minimum release is not needed to  
9 maintain the Floriston rate, a like amount of water in  
10 Prosser Creek is captured and later used to maintain the  
11 Floriston rate.

12 This keeps the Floriston rate users whole while  
13 benefitting fish and wildlife.

14 Any project water stored in Prosser other than  
15 the Tahoe-Prosser Exchange water is labelled as  
16 uncommitted water and is used at the discretion of the  
17 Secretary of Interior.

18 At this time, the uncommitted water in Prosser  
19 above the elevation 9840 acre feet is designated as fish  
20 water and is used for the benefit of the threatened and  
21 endangered species in Pyramid Lake.

22 Now I'll discuss a little bit on flood control.

23 The Army Corps of Engineers has flood control  
24 regulations that dictate operational criteria from  
25 Martis, Prosser, Stampede, and Boca Reservoirs.

1           Lake Tahoe is not a flood control reservoir,  
2 and there are no provisions allowing for storage for  
3 flood control purposes.

4           Each of the flood control reservoirs are  
5 required to maintain a specific amount of free space in  
6 the reservoir from November 1st through April 10th of  
7 each year.

8           Under normal conditions, storage into the flood  
9 control reservoir space may begin on April 10th, and the  
10 reservoirs may be full by May 20th. However, during  
11 years with large snow pack, this filling schedule may be  
12 delayed.

13           During flood events, when the Truckee River at  
14 the Reno gage is at 6,000 cfs, the release from the  
15 flood control reservoirs are to be reduced to the  
16 minimum in order to capture the inflow and thus reduce  
17 the flow through Reno and Sparks and downstream.

18           When the flow recedes and drops back below  
19 6,000 cfs, any water that was stored in the flood  
20 control space is evacuated as quickly as possible  
21 without causing the river to again rise above 6,000 cfs.

22           Derby Dam, as Jeff pointed out, Derby Dam was  
23 completed in 1905 and diverts Truckee River water  
24 through the Truckee Canal to the Newlands Project in  
25 both the Truckee and Carson River Basins.

1           The water that reaches Derby Dam is distributed  
2 based on a couple factors. Number one, the allowable  
3 diversions into the Truckee Canal under OCAP; and number  
4 two, the amount of water that is required to stay in the  
5 river and pass over Derby Dam.

6           The allowable diversions into the Truckee Canal  
7 under OCAP consist of either any remaining Floriston  
8 rate water that makes it through the system down to the  
9 dam or natural flow in excess of the Floriston rate when  
10 available.

11           The amount of water that's required to pass  
12 over Derby Dam consists of any irrigation demand in the  
13 lower river, permits for instream flows in the lower  
14 river, fish water released from storage upstream, and  
15 any river water that is in excess of the OCAP allowable  
16 diversions.

17           Finally, I'll discuss the Water Master's  
18 accounting system.

19           The Water Master accounts for the waters of the  
20 Truckee River and Reservoirs on a daily basis. Each  
21 morning, seven days a week, the Water Master's Office  
22 documents the river flows and reservoirs storage and  
23 release values for the Truckee and Carson River system  
24 as well as the weather at Lake Tahoe and Boca Dams.

25           The river, reservoir, and weather data is then

1 compiled and produced in the US District Court Water  
2 Master's daily worksheet.

3           The data from the daily worksheet is used in  
4 conjunction with other information to make management  
5 decisions on the operations of the Truckee River and  
6 Reservoirs.

7           The river and reservoir data is then entered  
8 into the Water Master accounting system which keeps  
9 track of the different categories of water within the  
10 Truckee River system. The output from the accounting  
11 system then may trigger additional management decisions.

12           The categories of water that are accounted for  
13 in the Water Master's accounting system include  
14 Floriston rate water, fish water, fish credit water,  
15 Tahoe-Prosser Exchange water, uncommitted water,  
16 pondage, Truckee Meadows Water Authority privately owned  
17 stored water from Independence and Donner, and  
18 Truckee-Carson Irrigation District privately owned  
19 stored water from Donner Lake.

20           And this concludes my oral testimony.

21           CO-HEARING OFFICER DODUC: Does that conclude  
22 your direct?

23           MR. DePAOLI: That does. Thank you.

24           CO-HEARING OFFICER DODUC: Thank you. Does  
25 staff or the Chairman have any questions at this time?

1 CO-HEARING OFFICER HOPPIN: I do.

2 CO-HEARING OFFICER DODUC: Okay.

3 --o0o--

4 QUESTIONS FROM BOARD and BOARD STAFF

5 --o0o--

6 CO-HEARING OFFICER HOPPIN: I have a question  
7 for Mr. Rieker and one for Mr. Blanchard later on.

8 Mr. Rieker, you mentioned in the Newlands  
9 Project the bottom land, I believe, received three and a  
10 half acre feet of water, and the bench land received  
11 four and a half acre feet of water.

12 In this map, once again on Exhibit 15, is there  
13 any augmentation of that water through other sources,  
14 groundwater or other surface water, or is that the  
15 strict limitation of irrigation in the Newlands Project?

16 MR. RIEKER: That's -- yeah, that's just a  
17 strict limitation based on the sources of water which  
18 are basically the Carson River and Truckee River.

19 CO-HEARING OFFICER HOPPIN: But there's not  
20 groundwater augmentation that goes in, or people don't  
21 pool that water -- you know, they don't take two acres  
22 worth of water rights and irrigate one? Is it pretty  
23 much a static numbers of acres that are irrigated there?

24 MR. RIEKER: Right. Yeah, that's the maximum  
25 amount that's allowed to the land. No more than that

1 may be provided to the land by the surface waters of the  
2 Carson and Truckee River. Hopefully that's clear.  
3 There's no additional augmentation or anything like  
4 that.

5 CO-HEARING OFFICER HOPPIN: Okay.

6 Mr. Blanchard, you may have answered the  
7 question at one point. When natural flows exceed the  
8 Floriston rate, does all of that water go into Pyramid  
9 Lake, or is it distributed between Pyramid and Lahontan?

10 MR. BLANCHARD: It is distributed between  
11 Pyramid and Lahontan, depending on what the OCAP  
12 allowable diversion into the canal is.

13 CO-HEARING OFFICER HOPPIN: And that's what  
14 dictates the balance of distribution, is the OCAP?

15 MR. BLANCHARD: Correct, the OCAP, yes.

16 CO-HEARING OFFICER HOPPIN: Okay. And on  
17 Pyramid, is it a terminal reservoir?

18 MR. BLANCHARD: It is the natural terminus of  
19 the Truckee River.

20 CO-HEARING OFFICER HOPPIN: Is there any  
21 redistribution out of that? Or once it's in there, it's  
22 used for recreation and fisheries?

23 MR. BLANCHARD: Correct.

24 CO-HEARING OFFICER HOPPIN: They get the  
25 brackish or --

1           MR. BLANCHARD: I believe so, yeah. I don't  
2 know of any diversions out of it for municipal reasons.  
3 There are some communities around the lake, but there  
4 are other people that could answer that question better.

5           CO-HEARING OFFICER HOPPIN: And essentially  
6 with Lahontan Reservoir, once it's distributed to the  
7 Newlands Project, there is no significant outflow of  
8 usable water out of Newlands? Is it essentially a  
9 terminal destination as well?

10          MR. BLANCHARD: Yes.

11          CO-HEARING OFFICER HOPPIN: Okay. Thank you  
12 very much.

13          CO-HEARING OFFICER DODUC: Thank you.

14          At this time we'll take a lunch break. Please  
15 return at 1 o'clock, and we'll begin cross-examination  
16 by Mr. Van Zandt.

17                   (Lunch recess)

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AFTERNOON SESSION

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CO-HEARING OFFICER DODUC: Take your  
conversations outside please.

Mr. Van Zandt, you may begin your cross.

MR. VAN ZANDT: Thank you, Board Member Doduc.

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CROSS-EXAMINATION BY MR. VAN ZANDT  
FOR TRUCKEE-CARSON IRRIGATION DISTRICT  
and CHURCHILL COUNTY

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MR. VAN ZANDT: I'll direct my questions first  
to Mr. Rieker, if I could please.

Good afternoon, Mr. Rieker.

MR. RIEKER: Good afternoon.

MR. VAN ZANDT: Mr. Rieker, are you familiar  
with the terms of the Bureau of Reclamation California  
permit for Stampede Reservoir?

MR. RIEKER: I am not, actually.

MR. VAN ZANDT: You're not. You are familiar  
with the operations of Stampede Reservoir, however.

MR. RIEKER: That's correct.

MR. VAN ZANDT: Isn't it true, Mr. Rieker, that  
Stampede Reservoir often exceeds its permitted maximum  
storage of 126,500 acre feet?

1           MR. RIEKER: You know, I'd have to look at the  
2 history of the filling cycles on there, but I do  
3 recognize that the reservoir has filled to its capacity  
4 a number of times, but I am sitting here unaware of any  
5 particular year how much storage was gained in a  
6 particular year.

7           MR. VAN ZANDT: Are you aware of any years  
8 where approximately 200,000 acre feet of carryover  
9 storage was carried over from one year to another in  
10 Stampede Reservoir?

11           MR. RIEKER: I believe -- well, I know that  
12 there was a fairly high level of carryover storage after  
13 the 2006 water year. That was certainly a high water  
14 year, so there was a fair amount of carryover storage  
15 into the 2007 year.

16           Exact number, obviously, I don't have here in  
17 front of me.

18           MR. VAN ZANDT: And I think you testified, as  
19 well as Mr. Blanchard, that all the water in Stampede  
20 except for a small amount of credit water belongs to  
21 Truckee Meadows Water Authority. The vast majority of  
22 the water in Stampede benefits Pyramid Lake and its  
23 fisheries, right?

24           MR. RIEKER: That's correct. The vast  
25 majority, yes.

1           MR. VAN ZANDT: And you would agree that the  
2 maximum storage under the current permit for Stampede  
3 Reservoir is at the 126,500 acre feet, correct?

4           MR. RIEKER: Again, I'm not as familiar with  
5 the exact terms of the permit.

6           MR. VAN ZANDT: You stated that the Secretary  
7 of Interior can regulate Claim 3 water for the Newlands  
8 Project under the Orr Ditch Decree. That was part of  
9 your testimony, correct?

10          MR. RIEKER: That's correct.

11          MR. VAN ZANDT: Isn't it true that the 1997  
12 OCAP and in fact the OCAPs prior to 1997 state that it  
13 must be administered in accordance with the decrees and  
14 decreed water duties?

15          MR. RIEKER: The OCAP does contain a provision  
16 that states it will be administered in -- what was the  
17 word you used?

18          MR. VAN ZANDT: In accordance with the decrees.

19          MR. RIEKER: In accordance with the decrees,  
20 the decrees in that case meaning both the Alpine and Orr  
21 Ditch Decree, I believe.

22          MR. VAN ZANDT: Okay. So I'd like to show you  
23 what's been offered Joint Exhibit 9, which is that 1997  
24 OCAP, if I could.

25          MR. PALMER: If it's appropriate, I could hand

1 him the printed copy.

2 MR. VAN ZANDT: Yes, please.

3 MR. RIEKER: Thank you.

4 MR. VAN ZANDT: And refer you to -- I guess  
5 that's page 3 actually of that joint exhibit. Section  
6 418.3, Joint Exhibit 9.

7 MR. RIEKER: I see that.

8 MR. VAN ZANDT: Is that the provision you are  
9 referring to? That says:

10 This part governs water uses within  
11 existing rights. This part does not in  
12 any way change, amend, modify, abandon,  
13 diminish, or extend existing rights.

14 MR. RIEKER: That is correct.

15 MR. VAN ZANDT: Now would you agree,  
16 Mr. Rieker, that under Claim 3 of the Orr Ditch Decree  
17 there is, in addition to the water duties that you  
18 mentioned, the three and a half and four and a half acre  
19 feet per acre, a storage right in Lahontan Reservoir up  
20 to 290,000 acre feet?

21 MR. RIEKER: You know, I think it would  
22 probably be best to actually bring up the Orr Ditch  
23 Decree and --

24 MR. VAN ZANDT: That's a great idea Joint  
25 Exhibit 7, please.

1           MR. PALMER: I'll hand the witness a copy of  
2 that Joint Exhibit 7.

3           MR. RIEKER: Basically --

4           MR. VAN ZANDT: We'd be referring to, I  
5 believe, page 10.

6           MR. RIEKER: That is correct. Page 10 is where  
7 Claim number 3, the text, begins. It discusses that the  
8 entitlement of the plaintiff, being the United States,  
9 to divert up to 1500 cubic feet per second. And then  
10 proceeding on down, it just says for storage in the  
11 Lahontan Reservoir.

12           MR. VAN ZANDT: And it gives the storage  
13 capacity of 290,000 acre feet. Do you see that first  
14 paragraph?

15           MR. RIEKER: Up above. That's correct, I  
16 believe. Yes. Storage capacity 290,000 acre feet.

17           So to the extent that those words define what  
18 you asked, that's correct.

19           MR. VAN ZANDT: Thank you.

20           And you mentioned, I believe, in your testimony  
21 the wording about the regulations of the Secretary, that  
22 is in that bottom paragraph on page 10 of Joint  
23 Exhibit 7:

24           Under such control, disposal, and  
25           regulation as the plaintiff may make or

1                   desire.

2                   MR. RIEKER: That is correct. I'm not seeing  
3 it at the moment, but those are, I believe, the correct  
4 words.

5                   MR. VAN ZANDT: Right at the bottom of the page  
6 there.

7                   MR. RIEKER: Yes, okay. I do see it now.  
8 Third line from the bottom. That is correct.

9                   MR. VAN ZANDT: Then it talks about:  
10                    Provided that the amount of this water  
11                    allowed or used for irrigation shall not  
12                    exceed after transportation losses --

13                   And then gives the two water duties that you  
14 testified about.

15                   MR. RIEKER: That's correct.

16                   MR. VAN ZANDT: Okay. So my question is: We  
17 talked about the authority of the Secretary to regulate.  
18 Can the Secretary regulate the storage right that was  
19 granted in the Orr Ditch Decree so that it does not  
20 exist in your opinion?

21                   MR. RIEKER: Not in my opinion, no.

22                   But again, the storage right here just says for  
23 storage in Lahontan Reservoir.

24                   MR. VAN ZANDT: What about the water duties  
25 themselves? The Secretary is able to reduce water

1 duties in the Newlands Project to a point where  
2 beneficial use could not be achieved?

3 MR. RIEKER: No. Per both the decree and the  
4 OCAP those are the maximum water allowed to the farmers;  
5 and neither, I believe, change that.

6 MR. VAN ZANDT: I think you mentioned the  
7 maximum allowable diversion in your direct testimony as  
8 well. I think you called it something else, but OCAP  
9 says the maximum allowable diversion. Are you familiar  
10 with that term?

11 MR. RIEKER: Yes, I am.

12 MR. VAN ZANDT: We call it the MAD.

13 MR. RIEKER: Yes, the MAD.

14 MR. VAN ZANDT: The MAD, maximum allowable  
15 diversion, that is calculated by the Bureau at the end  
16 of the year: Isn't it true that that calculation is a  
17 combination of the acres in -- that are bench land; is  
18 that right?

19 MR. RIEKER: Well, to apply a slight  
20 correction, the MAD is generally calculated at the  
21 beginning of the irrigation season for the upcoming  
22 irrigation season, and it's based on both the acres  
23 anticipated to be irrigation in bench and bottom lands.

24 MR. VAN ZANDT: But it's an average of the  
25 anticipated acres and what was irrigated the previous

1 year, right?

2 MR. RIEKER: No. Not in the case of the MAD.  
3 The MAD is based only on the anticipated for the  
4 upcoming year.

5 What you're referring to is this averaging  
6 process that our office carries out to calculate the new  
7 storage targets on Lahontan Reservoir which is the  
8 average of the anticipated -- the irrigated acreage  
9 that's been sent to us by TCID as well as the actual in  
10 the previous year.

11 MR. VAN ZANDT: Well, whether it's the MAD or  
12 anticipated irrigated acres, isn't it true that the  
13 Bureau uses the three and a half and four and a half to  
14 calculate what the potential entitlements are?

15 MR. RIEKER: What the maximum allowable  
16 diversion is as its calculated by the OCAP.

17 That's again just an upper limit to the amount  
18 of water that can be released to the project to serve  
19 the irrigation.

20 MR. VAN ZANDT: It's a little confusing to say  
21 that that water is what's released.

22 Isn't it better to say that what is actually  
23 delivered to the land is three and a half and four and a  
24 half? There's some other number that's released; isn't  
25 that right?

1           MR. RIEKER: Right. The MAD accounts for  
2 efficiency lost through the system, but with the notion  
3 that then you would achieve at a maximum the three and a  
4 half or four and a half acre feet per acre to the land.

5           MR. VAN ZANDT: And isn't it true that if  
6 you're diverting water out of the Truckee River in order  
7 to supply enough water to meet and make deliveries of  
8 three and a half and four and a half from that Truckee  
9 River water, you're going to have to divert an  
10 additional amount of water to deal with those  
11 transportation losses, correct?

12           MR. RIEKER: That's correct.

13           But at this point, it would be good to point  
14 out that the word diversion here may have two different  
15 meanings.

16           Because "diversion" as it's used in the MAD is  
17 the amount of water diverted out of basically the  
18 Truckee Canal or Lahontan Reservoir.

19           You're talking about diversion into the Truckee  
20 Canal. And so yes, it -- obviously the amount that's  
21 diverted in will have to make up for a certain amount of  
22 transportation loss.

23           MR. VAN ZANDT: You testified about the  
24 Prosser-Tahoe Exchange Agreement.

25           Could we have TCID 117 please?

1           You are familiar with this agreement,  
2 Mr. Rieker?

3           MR. RIEKER: I am familiar with it, yes.

4           MR. VAN ZANDT: Okay. And part of the water  
5 that gets stored in Prosser Reservoir is Claim 3 water  
6 under the Orr Ditch Decree, isn't it? Excuse me; Claim  
7 4 water.

8           MR. RIEKER: The -- you know, the relation of  
9 the storage water in Prosser to Claim 4, just at the  
10 moment, I'm not certain of.

11          MR. VAN ZANDT: Now I'd like you to take a look  
12 at -- I believe it's the next to the last page of  
13 Exhibit TCID 117.

14          First, do you know who the signatories were to  
15 the Tahoe-Prosser exchange?

16          MR. RIEKER: If we could scroll back to the top  
17 there, I can just illustrate it on the first page.  
18 Obviously, this is an agreement between the United  
19 States of America, Truckee-Carson Irrigation District,  
20 Washoe County Water Conservation District, and Sierra  
21 Pacific Power Company.

22          MR. VAN ZANDT: And the purpose of this  
23 agreement was to allow for some fish flows in that upper  
24 part of the Truckee River immediately downstream of  
25 Tahoe Dam, right?

1           MR. RIEKER: My understanding is it provided  
2 for the construction of the dam as well as its operation  
3 which included that exchange that Mr. Blanchard  
4 described earlier that I think you're describing now.

5           MR. VAN ZANDT: Okay. If you could look at the  
6 next to the last page of the Tahoe-Prosser Exchange  
7 Agreement.

8           And there's two paragraphs there. One makes  
9 reference to there must be an order in the United States  
10 District Court for Northern District of California to  
11 implement the agreement. Do you see that?

12          MR. RIEKER: Which paragraph number are you  
13 referring --

14          MR. VAN ZANDT: Eight.

15          MR. RIEKER: By my read of it, and obviously I  
16 could read it word-for-word, but it appears that an  
17 order needs to be entered that would modify the 1915  
18 Decree in order for the exchange that's contemplated by  
19 this agreement to begin.

20          MR. VAN ZANDT: Then the paragraph nine, the  
21 last paragraph, says:

22                 This agreement shall bind the parties  
23                 hereto and their successors and assigns.

24                 And that includes the United States, correct?

25          MR. RIEKER: Yeah, from the first page, I

1 believe. That is correct.

2 MR. VAN ZANDT: Could you take a look at TCID  
3 118, which is the very next exhibit?

4 For the record, this is an order and decree  
5 amending injunctive and other provisions of judgment and  
6 decree. Are you familiar with this order, Mr. Rieker?

7 MR. RIEKER: I'm actually not. I don't believe  
8 I've read it.

9 MR. VAN ZANDT: Well, we saw in paragraph eight  
10 of the agreement there was a requirement to go to the  
11 federal district court to get an order.

12 MR. RIEKER: Okay.

13 MR. VAN ZANDT: I'll represent to you that this  
14 is the order.

15 I direct your attention to the last page of the  
16 order. It's the paragraph labeled FOURTH, signed by the  
17 judge:

18 It is further ordered, adjudged and  
19 decreed upon the entry of this Order and  
20 Decree all the provisions of said Prosser  
21 Creek Reservoir Agreement will be, and  
22 are hereby determined and declared to be,  
23 effective and binding upon the parties  
24 hereto.

25 And that would include the United States,

1 correct?

2 MR. RIEKER: That is my understanding based on  
3 what you've read, yes.

4 MR. VAN ZANDT: You talked about as well in  
5 your discussions, I believe, the Truckee River Agreement  
6 and in your written testimony; do you recall that?

7 MR. RIEKER: That is referred to in my written  
8 testimony, yes.

9 MR. VAN ZANDT: Are you familiar with the  
10 Truckee River Agreement, Mr. Rieker?

11 MR. RIEKER: I am familiar with it.

12 MR. VAN ZANDT: Do you actually state in your  
13 written testimony on page 6 of Joint Exhibit -- USBR 3  
14 under Orr Ditch Decree and Truckee River Agreement. Do  
15 you see that? It says:

16 The decree adjudicated Truckee River  
17 water rights and incorporated the 1935  
18 Truckee River Agreement as binding among  
19 the parties to that agreement.

20 Do you see that?

21 MR. RIEKER: That's correct.

22 MR. VAN ZANDT: Okay. Do you have an  
23 understanding who the parties to the Truckee River  
24 Agreement were?

25 MR. RIEKER: I do. Again, it would be useful

1 to pull up the Truckee River Agreement to make sure I  
2 fully spell that out correctly, though.

3 MR. VAN ZANDT: TCID 19, if we could have that?

4 MR. RIEKER: If we scroll down, I believe on  
5 the second page there it -- or perhaps beyond it -- it  
6 states there that the parties to this agreement are the  
7 Truckee-Carson Irrigation District, the United States of  
8 America, Washoe County Water Conservation District,  
9 Sierra Pacific Power Company, and such other users of  
10 the waters of the Truckee River which I believe they  
11 refer to as parties of the fifth part.

12 MR. VAN ZANDT: That's correct. This is the  
13 agreement that was entered into in 1935 amongst these  
14 parties, correct?

15 MR. RIEKER: That's correct.

16 MR. VAN ZANDT: And it also allowed for the  
17 entry of the Orr Ditch Decree, did it not?

18 MR. RIEKER: The specifics of the interaction  
19 between those two decrees is not something I've recently  
20 reviewed.

21 MR. VAN ZANDT: Refer you to page 17 of the  
22 Truckee River Agreement. If we could scroll to there,  
23 under Exhibit A.

24 CHIEF LINDSAY: I'm sorry; say again the page  
25 we're looking for?

1 MR. VAN ZANDT: I believe it's 17. That's it.

2 Thank you.

3 Kind of hard to read that, but it's stipulation  
4 for entry of final decree.

5 MR. RIEKER: Which paragraph would you be  
6 referring to here?

7 MR. VAN ZANDT: It would be the one that begins  
8 with "now therefore" on the bottom left. It is:

9 In consideration of the execution of the  
10 stipulation by the undersigned and of the  
11 mutual promises of the parties herein  
12 contained, is hereby stipulated by the  
13 undersigned parties to said cause as  
14 follows, that a final decree in  
15 substantially the form of the final  
16 decree annexed hereto and marked  
17 Exhibit 1 and made a part hereof may be  
18 entered herein.

19 Do you see that?

20 MR. RIEKER: Yes.

21 MR. VAN ZANDT: So one of the prerequisites for  
22 the entry of the Orr Ditch Decree which has governed the  
23 Truckee River now for over 60 years was the agreement of  
24 the parties to enter into the Truckee River Agreement,  
25 right?

1           MR. RIEKER: That's what it appears from that  
2 reading of it, yes.

3           MR. VAN ZANDT: And Truckee River Agreement is  
4 the document that in essence adopts the Floriston rate  
5 flow regime into the Orr Ditch Decree; isn't that right?

6           MR. RIEKER: In essence, I would say that's  
7 correct.

8           MR. VAN ZANDT: It's not actually mentioned in  
9 the decree, is it?

10          MR. RIEKER: The Floriston rate flow regime?

11          MR. VAN ZANDT: Yes.

12          MR. RIEKER: No. As I understand it, or as I  
13 recall, the Orr Ditch Decree of course adopts the  
14 Truckee River Agreement which itself adopted a modified  
15 version of the Floriston rate flow regime.

16          MR. VAN ZANDT: You also mentioned in your  
17 testimony, I believe, the case of Tribe v Morton. Do  
18 you recall that?

19          MR. RIEKER: I do.

20          MR. VAN ZANDT: That's Pyramid Lake Paiute  
21 Tribe versus Secretary of Interior Morton?

22          MR. RIEKER: That's correct.

23          MR. VAN ZANDT: That's a what, 1973 decision.  
24 Is that right?

25          MR. RIEKER: That is correct.

1 MR. VAN ZANDT: That's Joint Exhibit 8, I  
2 believe.

3 I think you testified, Mr. Rieker, that the  
4 acreage in the Newlands Project that's under irrigation  
5 right now varies from about 56- to 59,000 acres per  
6 year, in that range?

7 MR. RIEKER: Yeah, generally 56- to 58,000  
8 irrigated acres in the past few years.

9 MR. VAN ZANDT: And that 2200 of those are in  
10 the Truckee Division?

11 MR. RIEKER: Yeah, between about 2,000 and  
12 2200.

13 MR. VAN ZANDT: So the vast majority of acreage  
14 we're talking about under irrigation is really in the  
15 Carson Division?

16 MR. RIEKER: That's correct.

17 MR. VAN ZANDT: That's the division that's  
18 below Lahontan Dam?

19 MR. RIEKER: That is correct.

20 MR. VAN ZANDT: And in the Tribe v Morton  
21 decision -- you are familiar with that, right?

22 MR. RIEKER: Relatively speaking, yes.

23 MR. VAN ZANDT: You understood that the maximum  
24 allowable diversion under this case, Tribe v Morton,  
25 that was being adopted by the court 288,000, I believe,

1 129 acre feet?

2 MR. RIEKER: That sounds like it may be in the  
3 right ballpark. I'd have to look to see the exact  
4 number, but that sounds like it may be in the right  
5 ballpark.

6 MR. VAN ZANDT: Do you have any idea of how  
7 much acreage was involved in Tribe v Morton that was  
8 going to be irrigated with that 288,000?

9 MR. RIEKER: Offhand, I do not. Or at least I  
10 couldn't provide the exact response. I believe I have  
11 an idea that it was slightly larger than what's  
12 currently under irrigation.

13 MR. VAN ZANDT: It's larger than 59,000, you  
14 think?

15 MR. RIEKER: That's my recollection. But  
16 again, I'd have to review this in order to get the exact  
17 number, if it is in fact in there.

18 MR. VAN ZANDT: Did you realize, Mr. Rieker,  
19 that when the Bureau evaluated the 288,000 acre feet as  
20 a maximum allowable diversion that they thought in about  
21 1976 that only 47,000 acres could be irrigated from  
22 288,000 acre feet?

23 MR. RIEKER: I did not.

24 MR. VAN ZANDT: Are you familiar with the 1988  
25 OCAP, what they call the final OCAP?

1 MR. RIEKER: I am familiar with it, yes.

2 MR. VAN ZANDT: Were you aware that the final  
3 OCAP in 1988 allowed approximately 392,000 acre feet to  
4 be diverted into the project?

5 MR. RIEKER: Offhand, I'm not aware of that.

6 MR. VAN ZANDT: You testified the idea in *Tribe*  
7 *v Morton* was that the project was to maximize the use of  
8 the Carson River and try to minimize the use of the  
9 Truckee River, correct?

10 MR. RIEKER: That's as I understand the basic  
11 premise or idea as you presented behind that judgment  
12 opinion.

13 MR. VAN ZANDT: Okay. And it's still the  
14 Bureau's position, as expressed even in the 1997 OCAP  
15 which is Joint Exhibit 9, that the use of the Carson  
16 River should be maximized, right?

17 MR. RIEKER: I believe that's correct.

18 MR. VAN ZANDT: But Mr. Rieker, you are aware  
19 of course that at times the Carson River does not supply  
20 the full amount of water that's necessary to irrigate  
21 the Carson Division, correct?

22 MR. RIEKER: That's correct.

23 MR. VAN ZANDT: And in fact, there is a  
24 significant amount of water that's taken out of the  
25 Truckee River on average every year and diverted into

1 the Newlands Project; isn't that right?

2 MR. RIEKER: You know, it depends on what you  
3 consider significant.

4 But there is a volume from year to year that's  
5 diverted certainly for the Truckee Division. There are  
6 years when none at all is diverted to the Carson  
7 Division, and there would be other years when a  
8 significant portion of the Carson Division is served by  
9 that.

10 MR. VAN ZANDT: That number goes up and down  
11 depending on some forecast information and predicted  
12 flows in the Carson River and the existing amount of  
13 water in the Lahontan Reservoir?

14 MR. RIEKER: That is correct. As I testified  
15 to previously, the amount of water that can be diverted  
16 is subject to the storage targets on Lahontan Reservoir.

17 And those storage targets during the spring  
18 months, as you have stated, bring into account the  
19 predicted amount of runoff during the springtime from  
20 snow melt in the Carson Basin as well as that month's  
21 predicted inflow and some other variables.

22 MR. VAN ZANDT: And because most of the runoff  
23 in these rivers occurs in the springtime, in the early  
24 part of the spring isn't it true that the targets in  
25 Lahontan are set lower?

1           MR. RIEKER:  Could you state that one more  
2  time?

3           MR. VAN ZANDT:  I believe the premise of the  
4  OCAP during the spring runoff and especially the early  
5  spring, the targets in Lahontan Reservoir are set  
6  somewhat low, and the idea is to not take a lot of water  
7  into Lahontan during the spring runoff that might spill  
8  later, right?

9           MR. RIEKER:  I don't think I would state it  
10 quite that way, especially as it refers to the  
11 springtime.

12           There are lower targets in the fall, what I  
13 would call the fall and winter prior to January.  But  
14 starting in January, the targets do take into account  
15 the current estimate of how much is projected to be --  
16 how much runoff is projected to come into the system  
17 from the Carson.

18           So I would say actually in the springtime the  
19 answer would be no.  They account for the projected  
20 runoff for that year.  And I have seen it where the  
21 springtime targets are quite high based on low projected  
22 runoff in the Carson River.

23           MR. VAN ZANDT:  Ever see a target, assuming  
24 that the Carson River is not providing any water to  
25 Lahontan Reservoir, a target that would be at or near

1 290,000 acre feet?

2 MR. RIEKER: So to make sure I understand that  
3 right, assuming that the Carson River is not going to  
4 provide any water?

5 MR. VAN ZANDT: Yes.

6 MR. RIEKER: Would we see a target of 290,000  
7 acre feet? You know, I don't know that I can answer  
8 that question because we've never actually had a case  
9 where there wasn't some projected runoff into the  
10 reservoir.

11 So I really don't know an answer to that  
12 question.

13 MR. VAN ZANDT: Okay. Well, let me ask you  
14 this: I think the Bureau has actually published a  
15 number for the average amount of water that the Newlands  
16 Project diverts out of the Truckee River, somewhere in  
17 the range about 96, 97,000 acre feet. Have you heard  
18 that figure?

19 MR. RIEKER: Offhand, no. There's, you know, a  
20 lot of publications out there, so I don't know which one  
21 you would be referring to that. And that number doesn't  
22 ring a bell just offhand.

23 MR. VAN ZANDT: Okay. You had mentioned  
24 there's a limitation on diversions into the project  
25 right now of 350 cfs.

1           MR. RIEKER: Currently, there's a limitation on  
2 the canal that has been placed both by the Bureau of  
3 Reclamation and Federal District Court that limits the  
4 flow in the canal to a level associated with 350 cubic  
5 feet per second.

6           And again, that's a, for the Bureau's part at  
7 least, a stage limitation associated with 350 cubic feet  
8 per second flowing through the canal.

9           MR. VAN ZANDT: And right now as we sit here on  
10 July 21st of 2010, ever since January 1st of this year,  
11 isn't it true that the Newlands Project has been  
12 diverting water into Derby Dam at approximately that 350  
13 cfs every day this year so far?

14           MR. RIEKER: There have been diversions into  
15 the canal every day this year. They have not fully  
16 realized 350 cfs on a vast majority of those days for  
17 operational reasons.

18           MR. VAN ZANDT: Okay. What I'm trying to --  
19 you say for operational reasons it's maybe a little bit  
20 less than the 350, could be in the 320, 300 range?

21           MR. RIEKER: I would say significantly less  
22 lately. Earlier on in the year, I would say in the 300  
23 to 350 cfs range. Lately it has been in the -- anywhere  
24 from the high 100 cfs range up to the mid to high 200  
25 cfs range.

1           MR. VAN ZANDT: But if TCID was able to divert  
2 for the benefit of the Newlands Project at that 350 cfs,  
3 we're talking roughly, what, 22,000 acre feet per month,  
4 in that range?

5           MR. RIEKER: I'd have to calculate that out.  
6 It amounts to again roughly 700 acre feet a day, so  
7 multiply that times 30, and probably in the right  
8 ballpark.

9           MR. VAN ZANDT: That's good math.

10           So at least from a theoretical standpoint,  
11 right now as it stands and under the operation criterion  
12 procedures that we're talking about, the Newlands  
13 Project could theoretically have taken in 21-, 22,000  
14 acre feet of water every month this year, although for  
15 other reasons they did not, right?

16           MR. RIEKER: And again, the -- per the OCAP,  
17 they likely could have taken in more because the OCAP is  
18 not what put the 350 cfs limitation on.

19           So that limitation again is a safety  
20 limitation. The OCAP would have likely allowed more at  
21 certain times when there's greater flow in the river and  
22 so on.

23           MR. VAN ZANDT: In fact, there have been  
24 shortfalls of 60-, 70,000 acre feet this year in  
25 Lahontan Reservoir that have not been met, correct?

1           MR. RIEKER: I don't think that's correct.  
2 Because again, the OCAP goes month-to-month, and so had  
3 that safety limitation not been in place it's possible  
4 that a target would have been met, possible if not  
5 likely, I would say, that a target would have been met  
6 and then diversion would have been cut back or turned  
7 off.

8           So to be able to actually calculate that number  
9 right here, I really don't think I could do it. Because  
10 again, it's a monthly calculation, and it all depends on  
11 whether or not a target is projected to be hit.

12           MR. VAN ZANDT: Well, maybe you misunderstood  
13 my question.

14           My question was: If you -- the Bureau sends  
15 out a letter every month to TCID and tells them what the  
16 target is they can achieve and also tells them how much  
17 water they can divert at Derby Dam, right?

18           MR. RIEKER: That's correct. Well, how much  
19 they would be entitled to divert that month.

20           MR. VAN ZANDT: Correct.

21           MR. RIEKER: Up to.

22           MR. VAN ZANDT: And you're saying that in no  
23 month in this year has TCID diverted water out of the  
24 Truckee River and still been below the target in  
25 Lahontan by say 60,000 acre feet?

1 MR. RIEKER: I'd have to go back and look at  
2 the various targets and what was actually achieved.

3 You know, usually we only look forward to the  
4 next month to see what we need to divert for the next  
5 month, again because it's not a cumulative thing. It's  
6 just a month-by-month calculation.

7 MR. VAN ZANDT: What I think it's important for  
8 the Board to understand here is that when the Bureau  
9 does these calculations and tells TCID you can divert X  
10 number or a thousand acre feet in a particular month  
11 based on the OCAP calculation and looking at what's  
12 going on in the Carson and what's going on in the  
13 Lahontan Reservoir, the whole point of that --

14 CO-HEARING OFFICER DODUC: Mr. Van Zandt, are  
15 you asking a question or making an argument to the  
16 Board?

17 MR. VAN ZANDT: I'm asking a question.

18 CO-HEARING OFFICER DODUC: Please ask him the  
19 question.

20 MR. VAN ZANDT: I am. Thank you.

21 The whole point of that, Mr. Rieker, is to  
22 actually make sure that there's sufficient water in  
23 Lahontan Reservoir to meet irrigation demands in the  
24 Carson Division, correct?

25 MR. RIEKER: The point of that is to divert

1 water subject to availability in prior appropriation in  
2 the Truckee River in order to attempt to meet those  
3 targets that are designed to, again, attempt to meet the  
4 demands, the downstream demands, in the Carson Division.

5 MR. VAN ZANDT: And the calculations that are  
6 done by the Bureau under the OCAP, they do not provide  
7 for any kind of reserve or cushion for Lahontan  
8 Reservoir to have carryover storage for drought  
9 protection; is that correct?

10 MR. RIEKER: Let me address it this way. Those  
11 calculations, the targets do not result in an empty  
12 reservoir at the end of any given irrigation season.  
13 Usually the target's lowest point is in the 50 to 60,000  
14 acre foot range.

15 MR. VAN ZANDT: I'm not sure you answered my  
16 question.

17 There's no actual calculation in the OCAP that  
18 tells TCID that they can divert into Lahontan Reservoir  
19 a supply of water that would be designated for drought  
20 protection?

21 MR. RIEKER: Again, you know, I don't think I  
22 can really answer that question because you have to  
23 basically infer from the OCAP what was intended by  
24 having targets at the end of the irrigation season that  
25 provide for 50- to 60,000 acre feet of water to be

1 rolled into the next season and obviously, again,  
2 continued diversions throughout the winter for the next  
3 season.

4 So hopefully that attempts to answer your  
5 question. You'd have to infer from the OCAP what the  
6 intent was there.

7 MR. VAN ZANDT: So was the answer no? There is  
8 no drought protection built into the OCAP?

9 MR. RIEKER: My inference is that by the fact  
10 that you have targets above zero that there is a certain  
11 amount of drought protection built in.

12 Again, that's what I infer from the OCAP there  
13 and those targets that are above zero.

14 And you know, again, that may be just an  
15 operational point of view by looking at the fact that  
16 water remains in the reservoir that is now going to be  
17 used for a future season.

18 MR. VAN ZANDT: In the group of documents that  
19 you have in your written statement, USBR Exhibit 3, you  
20 mention the General Electric Decree, Orr Ditch, and  
21 Tahoe-Prosser Exchange, and the Carson, Truckee Water  
22 Conservancy District versus Watt.

23 And I didn't see Nevada versus US in there.  
24 Are you familiar with Nevada versus US, Mr. Rieker.

25 MR. RIEKER: I believe I may have read it

1 before, but offhand I'm struggling to recall the exact  
2 purpose of that decision as it relates to the  
3 operations.

4 MR. VAN ZANDT: But you've heard of Nevada  
5 versus US?

6 MR. RIEKER: I've at least heard of it.

7 MR. PALMER: Well, I don't know if this is  
8 going to continue. He just said he didn't know about  
9 it, so --

10 CO-HEARING OFFICER DODUC: Mr. Palmer, do you  
11 have an objection?

12 MR. PALMER: I'm starting to, but then I don't  
13 know if Mr. Van Zandt is going to continue this line of  
14 questioning. But I would object if he continues it  
15 because Mr. Rieker said he's not familiar with the  
16 document that Mr. Van Zandt was referring to.

17 CO-HEARING OFFICER DODUC: Do you plan to  
18 pursue this? And how does it relate to the issues in  
19 this hearing?

20 MR. VAN ZANDT: It does relate to the shortage  
21 calculation of the -- of this witness. And I believe  
22 some other witnesses want to talk about the operating  
23 criteria and procedures that apply to the Newlands  
24 Project as essentially a defense to the shortages that  
25 the Newlands Project is claiming are going to be caused

1 by these applications.

2 And I'm trying to establish with this witness  
3 and others what the parameters of OCAP are and whether  
4 or not it truly can affect or create shortages that  
5 would be included in the calculation of the exchange  
6 applications -- and the new appropriations, for that  
7 matter.

8 MR. PALMER: Just one comment.

9 I'm not -- OCAP, that's a federal regulation  
10 that's been testified to. That document speaks for  
11 itself, if he wants to question further about that  
12 but -- anyway, if he's asking about OCAP, OCAP is  
13 self-contained. Why would you be speaking about  
14 something outside of it, and especially if the witness  
15 isn't familiar with it.

16 CO-HEARING OFFICER DODUC: Okay.

17 Please frame your questions in terms of the  
18 OCAP. The witness has said he's not familiar with this  
19 document, and obviously he can continue to answer in  
20 that manner.

21 And your objection, Mr. Palmer, will be  
22 considered in weighing this portion of Mr. Van Zandt's  
23 cross.

24 Mr. Van Zandt, you may continue.

25 MR. VAN ZANDT: Thank you.

1           Mr. Rieker, are you aware of any attempts by  
2 the Bureau of Reclamation to try to reduce the amount of  
3 water right allocations within the Newlands Project?

4           MR. RIEKER: I'm contemplating what you said,  
5 reduce the amount of water right allocations. I think  
6 my answer is no, I'm not aware of anything like that.

7           MR. VAN ZANDT: That's all the questions I have  
8 of Mr. Rieker.

9           CO-HEARING OFFICER DODUC: Do you have any  
10 questions for the other witness?

11          MR. VAN ZANDT: I do.

12          CO-HEARING OFFICER DODUC: You have 16 minutes  
13 remaining.

14          MR. VAN ZANDT: Okay.

15          Mr. Blanchard, how are you?

16          MR. BLANCHARD: I'm fine, Mr. Van Zandt. Thank  
17 you.

18          MR. VAN ZANDT: Mr. Blanchard, I was interested  
19 in your testimony about Floriston rates.

20                 And you say in your written testimony that any  
21 discussion of operations under the Orr Ditch Decree must  
22 begin with an explanation of Floriston rates, and you  
23 gave us a very eloquent explanation of it.

24                 And you say that on that same page of your  
25 testimony -- and this is joint Exhibit 20, page 6 under

1 the paragraph 13 -- that the Floriston rates are  
2 intended to meet the diversion requirements for power  
3 generation, municipal and industrial, domestic as well  
4 as agriculture rights on the Truckee River in Nevada.

5 Do you see that?

6 MR. BLANCHARD: Correct.

7 MR. VAN ZANDT: So I'm wondering from that  
8 testimony, when you're making Floriston rates at 500  
9 cfs, or reduced rates of 400 cfs after October 1st,  
10 wouldn't you agree that the Orr Ditch Decree and the  
11 Truckee River Agreement, when they incorporated  
12 Floriston rates, they had the same intent, to try to use  
13 Floriston rates to meet all the requirements you list  
14 here for power, M&I, domestic, and agriculture?

15 MR. BLANCHARD: That is my understanding.

16 MR. VAN ZANDT: And the Orr Ditch Decree  
17 adopted those -- that flow regime as part of the decree  
18 to satisfy the rights that were adjudicated in the Orr  
19 Ditch Decree which is Joint Exhibit 7, correct?

20 MR. BLANCHARD: I believe so.

21 MR. VAN ZANDT: Okay. But you said in your  
22 testimony that there are times when there may not be  
23 sufficient water based on Floriston rates to satisfy all  
24 the diversion requirements at Derby Dam for the Newlands  
25 Project?

1           MR. BLANCHARD: Correct. If we are just  
2 meeting Floriston rates, it does not necessarily satisfy  
3 all the potential demand in the Truckee Canal.

4           MR. VAN ZANDT: And what I'm trying to figure  
5 out is if the intention of the decree was to have  
6 Floriston rates meet all those downstream requirements,  
7 how could the diversions at Derby Dam for the benefit of  
8 the Newlands Project not be satisfied out of Floriston  
9 rates?

10          MR. BLANCHARD: I think the way that is stated  
11 maybe is a little bit misleading as far as it doesn't  
12 satisfy necessarily all of the potential rights in the  
13 Truckee Canal.

14          However, it satisfies all the rights that were  
15 set up as far as meeting the Floriston rates at 500 cfs.

16          So I understand your question as far as -- the  
17 Truckee -- or the Floriston rates doesn't always  
18 satisfy, I guess, all of the rights.

19          Maybe I should have worded that a little bit  
20 different as far as satisfying all rights including all  
21 the potential diversion from the Truckee Canal.

22          So that may be a little misleading as far as  
23 all of the rights on the Truckee Canal.

24          MR. VAN ZANDT: We have heard a little bit  
25 earlier today, I think from Mr. Parr, about he thought

1 that there were potential issues with unexercised senior  
2 rights in the river. Do you recall that testimony?

3 MR. BLANCHARD: Yes.

4 MR. VAN ZANDT: Those so-called unexercised  
5 senior rights: They were adjudicated in the Orr Ditch  
6 Decree, were they not?

7 MR. BLANCHARD: Yes.

8 MR. VAN ZANDT: So the expectation was that  
9 they would have been satisfied with Floriston rates?

10 MR. BLANCHARD: Correct.

11 MR. VAN ZANDT: Along with the Claim 3 rights,  
12 correct?

13 MR. BLANCHARD: Correct.

14 MR. VAN ZANDT: I think they told me you had  
15 some knowledge that perhaps some of the other witnesses  
16 could not answer about Boca and Stampede.

17 You are familiar with the operation of Boca  
18 Reservoir, right?

19 MR. BLANCHARD: Yes, I am.

20 MR. VAN ZANDT: And in fact, water is stored in  
21 Boca that benefits the Newlands Project, right?

22 MR. BLANCHARD: As part of the Floriston rate,  
23 yes.

24 MR. VAN ZANDT: Okay. And are you familiar  
25 with the concept of conserved water under the Truckee

1 River Agreement?

2 MR. BLANCHARD: That exact term, I am not, the  
3 way you mentioned the parties being able to reduce the  
4 Floriston rate to conserve water in that. I have not  
5 heard that term directly, as you mentioned.

6 But I believe you are talking about the parties  
7 agreeing to reduce the Floriston rate to conserve water.

8 MR. VAN ZANDT: That's correct, yeah.

9 So are you familiar with Article 3 of the  
10 Truckee River Agreement, the article that does that?

11 MR. BLANCHARD: Somewhat.

12 MR. VAN ZANDT: Okay. You're also familiar  
13 with the fact that Boca can also reserve privately owned  
14 stored water under that same provision, to use privately  
15 owned stored water to make up Floriston rates and then  
16 conserve water in Lake Tahoe and Boca?

17 MR. BLANCHARD: I'm not familiar with using  
18 privately owned stored water for that. Can you restate  
19 that again?

20 MR. VAN ZANDT: In that same article, Article  
21 3, where the parties who own privately owned stored  
22 water, either Truckee Meadows Water Authority or TCID,  
23 would be permitted to release that water as part of  
24 Floriston rates, thus allowing the Federal Water Master  
25 to hold back releases from either Boca or Lake Tahoe,

1 thus saving water.

2 MR. BLANCHARD: I believe, yes, it -- if you're  
3 mentioning something -- if using Floriston -- or Donner  
4 Lake water directly for Floriston rates which is  
5 privately owned water, we have done that, yes.

6 MR. VAN ZANDT: Okay.

7 You said the operation of Stampede Reservoir  
8 was specifically for Pyramid Lake and its fisheries?

9 MR. BLANCHARD: Yes.

10 MR. VAN ZANDT: Except for the TMWA credit  
11 water.

12 MR. BLANCHARD: Correct.

13 MR. VAN ZANDT: Are you aware that the Stampede  
14 permit includes the Newlands Project as a point of  
15 rediversion for Stampede?

16 MR. BLANCHARD: I am not familiar with the  
17 permit.

18 MR. VAN ZANDT: I wanted to ask you about, back  
19 on the Floriston rates and its intent to meet the  
20 demands under the Orr Ditch Decree, if you have a  
21 situation where you are not at able to meet those  
22 demands just using Floriston rates, for whatever reason,  
23 and then you have a situation where an application for  
24 an additional appropriation on the river occurs, from  
25 the Federal Water Master's standpoint, how would that

1 new appropriation be treated in the situation where  
2 there is a shortage to satisfying a water right under  
3 the Orr Ditch Decree using Floriston rates?

4 MR. BLANCHARD: I believe that would pretty  
5 much have to come from the Corps as far as how we would  
6 respond to that.

7 That has not happened, as far as I know, and I  
8 could not respond exactly how we would handle that.

9 MR. VAN ZANDT: The Federal Water Master's  
10 Office has responsibility for distribution of water in  
11 the Truckee River, right?

12 MR. BLANCHARD: Correct.

13 MR. VAN ZANDT: And isn't it true that you can  
14 actually have a water right owner who believes they are  
15 being shorted in their water deliveries come to the  
16 Federal Water Master and have the Federal Water Master  
17 intervene in that situation?

18 MR. BLANCHARD: Yes.

19 MR. VAN ZANDT: I think that's all the  
20 questions I have. Thank you.

21 CO-HEARING OFFICER DODUC: Thank you, Mr. Van  
22 Zandt. That completes your cross for these two  
23 witnesses.

24 City of Fallon, Mr. Mackedon. Any cross?

25 MR. MACKEDON: Thank you. I have a question

1 for Mr. Rieker, and I think just one.

2 --o0o--

3 CROSS-EXAMINATION BY MR. MACKEDON

4 FOR CITY OF FALLON

5 --o0o--

6 MR. MACKEDON: You've indicated in your  
7 testimony today and also what you've provided in writing  
8 that there are limitations on Claim 3. That was your --  
9 that's how you phrased it, correct?

10 MR. RIEKER: That's correct.

11 MR. MACKEDON: And in doing so, you made  
12 reference to what we call the Morton decision which is,  
13 I think, Joint Exhibit amount 8. You are acquainted  
14 with that case?

15 MR. RIEKER: That is --

16 MR. MACKEDON: Tribe v Morton?

17 MR. RIEKER: That is correct.

18 MR. MACKEDON: And you said, I believe, that  
19 Tribe v Morton stood for the proposition or offered the  
20 proposition that we should maximize the use of Carson  
21 River water and minimize the use of Truckee River water;  
22 is that correct?

23 MR. RIEKER: It provides that direction,  
24 although certainly the Secretary of Interior had  
25 promulgated a rule that began to address that prior to

1 the final decision in Tribe v Morton.

2 MR. MACKEDON: In addition to saying -- in  
3 addition to the phrase, the proposition, we should  
4 maximize the use of Carson River and minimize the use of  
5 the Truckee River, the case and the rule you just  
6 referred to both obligate -- or don't -- obligate the  
7 Bureau to meet the terms of the Orr Ditch Decree and  
8 meet the duty, obligation to deliver water, duty of  
9 water, to the project water right owners. The case says  
10 that, does it not?

11 MR. RIEKER: I'm not actually sure if it does  
12 or not.

13 MR. MACKEDON: You've read the case?

14 MR. RIEKER: I've read portions of it.

15 MR. MACKEDON: I guess I'll follow with this  
16 then: It's your understanding the Orr Ditch Decree is  
17 still a valid decree?

18 MR. RIEKER: Yes.

19 MR. MACKEDON: And it's the decree that  
20 governs -- it's the law of the Truckee River, correct?

21 MR. RIEKER: It governs the use of those claims  
22 on the Truckee River water, is my understanding --

23 MR. MACKEDON: It has --

24 MR. RIEKER: -- of it.

25 MR. MACKEDON: -- not been modified.

1 MR. RIEKER: I am not positive of that.

2 MR. MACKEDON: I think that's all I have of  
3 this witness. Thank you.

4 CO-HEARING OFFICER DODUC: Questions for the  
5 other witness?

6 MR. MACKEDON: I have nothing for  
7 Mr. Blanchard.

8 CO-HEARING OFFICER DODUC: All right. That  
9 completes City of Fallon's cross of these two witnesses.

10 Mr. Palmer, any redirect for your witness?

11 MR. PALMER: Yes, thank you.

12 --o0o--

13 REDIRECT EXAMINATION BY MR. PALMER

14 --o0o--

15 MR. PALMER: Mr. Rieker, there was just one  
16 reference. I'm not sure it was clear when you answered,  
17 but Mr. Van Zandt referred you to what he called the  
18 1998 final OCAP. Do you recall him asking you about  
19 that?

20 MR. RIEKER: I think he referred to the 1988  
21 final OCAP, yeah.

22 MR. PALMER: Is that still in effect?

23 MR. RIEKER: No, that -- the 1988 final OCAP  
24 has been revised. In 1997 a new OCAP was promulgated as  
25 a federal rule.

1 MR. PALMER: I understood -- strike that.

2 Mr. Van Zandt had asked you about flows in the  
3 Truckee Canal, and you talked about the current state of  
4 the flows and I believe commented about how those flows  
5 are reduced.

6 Just to make sure it's clear: What's your  
7 understanding of what's causing the flows to be reduced  
8 below what I understood you to say to be the currently  
9 set 350 cfs level or stage level?

10 MR. RIEKER: Right. Basically, as mentioned  
11 before, there is a 350 cubic feet per second maximum  
12 limitation that's put in place by the courts, but the  
13 Bureau's corresponding limitation is to the water level  
14 that's equivalent with 350 cubic feet per second flowing  
15 through the canal unchecked.

16 And we've discovered during the past few years  
17 that that full flow of 350 cubic feet per second can be  
18 achieved, however that seasonal issues arise, we  
19 believe, to be surrounding issues related to aquatic --  
20 aquatic growth of weeds, basically -- that cause the  
21 canal to flow at a higher water level at lower flow  
22 rates.

23 So to the extent that they are not permitted to  
24 go to a higher level of water in the canal, they've had  
25 to cut back their flows more and more to accommodate

1 those issues.

2 MR. PALMER: When you say "they", who are you  
3 referring to?

4 MR. RIEKER: The Truckee-Carson Irrigation  
5 District who operates the canal under contract for us.

6 MR. PALMER: So whose responsibility is it to  
7 take care of that maintenance issue?

8 MR. RIEKER: The Truckee-Carson Irrigation  
9 District per the contract.

10 MR. PALMER: Thank you.

11 I have no further questions of Mr. Rieker.

12 CO-HEARING OFFICER DODUC: Mr. Palmer? Any  
13 redirect?

14 MR. DePAOLI: Thank you.

15 --o0o--

16 REDIRECT EXAMINATION BY MR. DePAOLI

17 --o0o--

18 MR. DePAOLI: Mr. Blanchard, Mr. Van Zandt  
19 asked you some questions about Floriston rates and what  
20 Floriston rates could satisfy.

21 Is the Floriston rate flow, the 500 cfs flow  
22 during the irrigation season, sufficient to meet the  
23 diversion rate that's allowed into the Truckee Canal  
24 under Claim No. 3?

25 MR. RIEKER: Not all the time. It is

1 sufficient to meet all the upstream demands, but the  
2 water that makes it through the system down to the  
3 Truckee Canal is not always sufficient to meet the OCAP  
4 allowable diversions, anyway.

5 MR. DePAOLI: And if it's not sufficient to  
6 meet the OCAP allowable diversions, would it ever have  
7 been sufficient to meet the number that's actually in  
8 Claim No. 3, the 1500 cfs?

9 MR. RIEKER: No, it would not.

10 MR. DePAOLI: No further questions.

11 CO-HEARING OFFICER DODUC: Thank you.

12 Mr. Van Zandt, any recross?

13 MR. VAN ZANDT: Just maybe a couple here for  
14 Mr. Blanchard.

15 --o0o--

16 RE-CROSS-EXAMINATION BY MR. VAN ZANDT

17 --o0o--

18 MR. VAN ZANDT: Following up on what Mr.  
19 DePaoli had just asked you. The rate of diversion for  
20 the Newlands Project, it can vary month-to-month; isn't  
21 that correct under the OCAP?

22 MR. RIEKER: Correct.

23 MR. VAN ZANDT: And though there may be  
24 available water, say in the spring, there may be some  
25 limits on the amount of water that TCID can divert into

1 the project, even though you're making rates but TCID's  
2 only allowed to take, you know, a limited amount of  
3 water into the project, right?

4 MR. RIEKER: Yes.

5 MR. VAN ZANDT: Then later on, say in the late  
6 summer when water availability drops off, you may be  
7 able to make rates; but there's so much demand in the  
8 river, you know, up above or you have to pass water past  
9 Derby Dam, that now there's insufficient water to meet  
10 the OCAP diversions levels, right?

11 MR. RIEKER: Yes, that's correct.

12 MR. VAN ZANDT: Okay. Thank you.

13 CO-HEARING OFFICER DODUC: Thank you.

14 Recross Mr. Mackedon?

15 MR. MACKEDON: No.

16 CO-HEARING OFFICER DODUC: So that completes  
17 the recross for these witnesses. Questions, Chair  
18 Hoppin? Staff? Mr. Murphey.

19 --o0o--

20 QUESTIONS FROM BOARD STAFF

21 --o0o--

22 ENGINEERING GEOLOGIST MURPHEY: I had a  
23 question for Mr. Blanchard about just general operations  
24 of reservoirs and rediversions.

25 I notice there's roughly about 60-some-odd-plus

1 points of rediversion. When water is rediverted, how do  
2 you know it comes from water -- from storage water?

3 MR. BLANCHARD: We don't know exactly which  
4 water comes from storage water versus which water comes  
5 from natural flow at the time.

6 Whenever natural flow is short of the 500 -- or  
7 whatever; during the irrigation season it would be 500  
8 cfs -- we have to release from storage to supplement  
9 that.

10 So we do not account for which diversion takes  
11 the portion that's coming from natural flow versus the  
12 portion that's coming from storage. If that's what --

13 ENGINEERING GEOLOGIST MURPHEY: So do you take  
14 into account carriage loss or conveyance loss through  
15 the channel?

16 MR. BLANCHARD: As far as the individual  
17 diversions into the ditches, delivering that duty to the  
18 land, there is a loss allowed in the ditch from the  
19 diversion point out of the river to the actual point of  
20 use on the ditch.

21 Some of the ditches are extremely long. One of  
22 them's 35 miles long. So there is loss allowances given  
23 in the decree that provide for loss from the point of  
24 diversion from the river to the actual point of use in  
25 the -- off the ditch.

1           ENGINEERING GEOLOGIST MURPHEY:  Now what about  
2  from the point of diversion from the dam to the point of  
3  rediversion?  Is there a conveyance loss along --

4           MR. BLANCHARD:  Our target is actually  
5  downstream right above Stateline which is the Truckee  
6  River Farad gage, and the targets are to be met there.

7           So that would take care of any losses from the  
8  reservoir down to that point; but from that point down  
9  below, there is no adjustment for loss.

10          ENGINEERING GEOLOGIST MURPHEY:  When there is  
11  adjustment for loss, how do you calculate that?  What  
12  sort of criteria do you use?

13          MR. BLANCHARD:  There is not really any  
14  calculations.  It's just if there is some loss in  
15  between the reservoir -- say Tahoe is the furthest  
16  reservoir away for releasing for Floriston rates.

17          If there is loss between the Lake Tahoe dam and  
18  the Farad gage, we just have to release more to  
19  compensate for that.  It is not known exactly what that  
20  loss is.  We just have to target the Floriston rate  
21  flow, be it 500 in the summer or 400, 350, or 300 in the  
22  winter.  We have to target it at that point.

23          So we do not really know what the losses in  
24  between are.  We just do -- meet that targeted flow at  
25  Farad.

1           ENGINEERING GEOLOGIST MURPHEY:  Okay.  I notice  
2  in your testimony you had -- you discussed side water.  
3  Now, is side water available for rediversion?

4           MR. BLANCHARD:  Side water, again, is all the  
5  water that comes down to Farad from uncontrolled  
6  sources.

7           So it's all of the water, the natural flow in  
8  the system, that is not in a controlled stream, so  
9  there's no reservoirs on it.

10          So it's not available for storage into a  
11  reservoir because it's not on a controlled stream.

12          ENGINEERING GEOLOGIST MURPHEY:  But you could  
13  redivert that, even though it's not from storage?

14          MR. BLANCHARD:  Correct.  It goes to make up  
15  part of the Floriston rates.  So whatever natural flow  
16  contributes.

17          Part of that comes from side water which is  
18  uncontrolled.  The other part will come from inflow  
19  pass-through from the reservoirs.

20          And if natural flow, either be it side water or  
21  the inflow to the reservoirs is not sufficient anymore  
22  to meet the Floriston rate, then we go to storage at  
23  either Lake Tahoe or Boca depending on the elevation of  
24  Tahoe.

25          ENGINEERING GEOLOGIST MURPHEY:  Okay.  That's

1 all I have. Thanks.

2 CO-HEARING OFFICER DODUC: Any other questions?

3 All right. My thanks to the witnesses.

4 Let's move on to the two witnesses for Topic  
5 No. 3. The projection for your direct is, I believe,  
6 around ten minutes so we'll take a break after the  
7 direct.

8 Mr. Palmer, whenever you're ready.

9 MR. PALMER: Thank you.

10 --o0o--

11 THOMAS A. STREKAL

12 Called by APPLICANT AND PETITIONERS

13 DIRECT EXAMINATION BY MR. PALMER

14 --o0o--

15 MR. PALMER: Bureau of Reclamation will now  
16 call Tom Strekal as our next witness.

17 Mr. Strekal, please identify yourself, spell  
18 your last name and where you are employed.

19 MR. STREKAL: My name is Thomas A. Strekal. I  
20 go by Tom. And last, S-t-r-e-k-a-l.

21 MR. PALMER: Where are you employed?

22 MR. STREKAL: Oh, sorry. I am a fish and  
23 wildlife biologist employed by the Western Region of the  
24 Bureau of Indian Affairs assigned to the Western Nevada  
25 Agency in Carson City.

1           MR. PALMER:  Could you just briefly state your  
2 background and qualifications.

3           MR. STREKAL:  I have been employed as a  
4 professional biologist for 37 years, since I graduated  
5 from college.

6           I have a bachelor's degree in biology, a  
7 master's in aquatic biology.

8           I have worked for the Office of Endangered  
9 Species in Washington, DC.  And for 28 years, I've been  
10 working in western Nevada for Bureau of Reclamation for  
11 Fish and Wildlife Service and now for the Bureau of  
12 Indian Affairs as a fishery biologist and/or fish and  
13 wildlife biologist dealing primarily with fishery and  
14 water resource issues in Truckee, Carson, and Walker  
15 River Basins.

16           MR. PALMER:  And USBR Exhibit 9 is a statement  
17 of your qualifications.  Do you have that, or I can show  
18 it to you.  Is that a true and correct statement?

19           MR. STREKAL:  Are we talking about -- yes,  
20 that's correct.

21           MR. PALMER:  And then you've submitted written  
22 direct testimony.  That's been marked USBR Exhibit 4.  
23 And do you have any corrections you need to make to that  
24 testimony?

25           MR. STREKAL:  No, I don't.

1           MR. PALMER:  Is that a true and correct  
2 statement?

3           MR. STREKAL:  It is true and correct.

4           MR. PALMER:  Please go ahead and summarize your  
5 direct testimony for this part.

6           MR. STREKAL:  Several of the witnesses have  
7 already talked about Public Law 101-618.  I don't need  
8 to tell you more about that.

9           But to resolve water use and right conflicts in  
10 the Tahoe and Truckee, Carson River Basins Section 20581  
11 directed the Secretary of the Interior to negotiate an  
12 operating agreement for Truckee River reservoirs with  
13 the State of California, State of Nevada, and other  
14 parties.

15           Two additional parties -- those three parties,  
16 the US, California, and Nevada, were the initial  
17 mandatory signatory parties for an agreement that was to  
18 be negotiated.

19           Additionally, because of the Preliminary  
20 Settlement Agreement between the Pyramid Lake Paiute  
21 Tribe and Sierra Pacific Power Company, now Truckee  
22 Meadows Water Authority, those two parties also became  
23 mandatory signatory parties for a TROA that would be  
24 negotiated and signed.

25           In December of 1990, the Department of the

1 Interior, as a follow-up to enactment of Public Law  
2 101-618, conducted an organizational meeting to discuss  
3 its obligations and responsibilities under the Public  
4 Law including negotiation of an operating agreement with  
5 a number of parties who were interested in water rights  
6 and water management in Truckee River, Lake Tahoe,  
7 Carson River Basins and widely announced the meeting and  
8 invited agencies, governments, public and private  
9 representatives to attend.

10 The five mandatory signatory parties were  
11 obviously involved, attended that meeting.

12 In February of 1991, the Department of Interior  
13 conducted the first of many, many meetings that were  
14 held on an operating agreement for the Truckee River,  
15 and it was at that meeting that the operating agreement  
16 was called the Truckee River Operating Agreement,  
17 obviously.

18 A number of parties were invited, the five  
19 mandatory parties, and eight additional parties were  
20 invited to be negotiators.

21 A number of members of the public were also  
22 invited to attend that initial meeting and subsequent  
23 meetings over the years.

24 Of those 13, Truckee-Carson Irrigation District  
25 and Churchill County were invited and attended, but they

1 subsequently did not continue to participate over time.

2 Other parties dropped out. Other parties came  
3 in. And ultimately, 14 parties were negotiating TROA at  
4 the end -- or I should say just prior to it being  
5 signed.

6 The negotiations officially commenced in March  
7 of 1991. And over the 17 years that the agreement was  
8 negotiated, there were plenary sessions attended by  
9 many, many people, 60, 70 people.

10 There were negotiating sessions. There were  
11 technical meetings. There were legal meetings. There  
12 were drafting sessions. There were editing sessions.

13 I can't really tell you how many meetings were  
14 held over the 17 years, but it was widely attended over  
15 the period of time.

16 California was an active participant and  
17 welcomed views of many people in California. And I'm  
18 going to not dwell on that. I'll let Mr. Sarna talk  
19 about that. I know Mr. Hamon has already addressed that  
20 in part, the role that California played in  
21 negotiations.

22 Section 205(a)(9) of Public Law 101-618  
23 directed that the operating agreement should satisfy the  
24 requirements of the National Environmental Policy Act,  
25 so it was decided an Environmental Impact Statement

1 would be prepared to do an analysis of the potential  
2 effects of such an agreement.

3           It was also recognized that California had a  
4 requirement under the California Environmental Quality  
5 Act to prepare a document as well, an Environmental  
6 Impact Report.

7           And so it was decided to save time and money  
8 and to coordinate activities that a joint document would  
9 be prepared, an Environmental Impact Statement/  
10 Environmental Impact Report, done cooperatively between  
11 the Department of the Interior and the State of  
12 California through the Department of Water Resources.

13           At part of, or to begin the NEPA process,  
14 scoping sessions were held in 1991 as the first of many  
15 public involvement efforts under NEPA and CEQA to do the  
16 analysis for the impending or anticipated TROA.

17           During negotiations, a number of scenarios and  
18 options were looked at by the parties, discussed,  
19 evaluated. Those that worked or seemed to work were  
20 accepted. Those that didn't work were rejected.

21           The bottom line is that an operating agreement  
22 was to be negotiated and had to at least have the  
23 concurrence of the five mandatory signatory parties and  
24 obviously the concurrence of any other party who wished  
25 to sign.

1           This created a bit of a dilemma relative to the  
2 NEPA/CEQA process because it wasn't the unilateral  
3 action by any one agency that was coming up with an  
4 operating agreement, let's say a plan for operations for  
5 the basin.

6           Therefore, analysis of a proposed action and  
7 alternatives under NEPA and CEQA had to await certain  
8 decisions by the negotiators, what they thought would be  
9 workable, what they would sign.

10           It made no sense to go forward with actions  
11 that weren't agreeable to all the parties because  
12 nothing could be unilaterally imposed.

13           In May of 1996, the parties completed one of  
14 many draft agreements, and that was considered suitable  
15 for analysis in an EIS and EIR, and a draft EIS/EIR was  
16 issued for public review in February of 1998.

17           A period of time elapsed, negotiations  
18 continued, and the agreement that was the basis of that  
19 initial draft EIS/EIR was modified because there were  
20 modifications to the agreement.

21           Therefore, a different proposed action and a  
22 number of years had passed. It was decided that a  
23 revised EIS/EIR would be prepared. And so in August of  
24 2004 another document was released for public review.

25           That proposed action in that revised draft

1 EIS/EIR essentially stayed the same. It was concluded  
2 that we could go forward then with a final EIS/EIR, and  
3 we released that in January of 2008.

4 Thereafter, a Record of Decision, which is the  
5 final action under NEPA for the federal government, was  
6 signed by Secretary of the Interior Kempthorne on  
7 September 5th, 2008.

8 That completed the NEPA process, and around  
9 that time a Notice of Determination was completed by the  
10 State of California completing the CEQA process.

11 The next day on September 6th, the parties, 15  
12 parties, which included the five mandatory signatory  
13 parties, signed TROA, thereby making the agreement  
14 effective.

15 And in compliance also with Public Law 101-618,  
16 on December 5th the Bureau of Reclamation published TROA  
17 as a final rule in the Federal Register.

18 Even though it was published as a federal rule,  
19 TROA still couldn't be implemented because there were  
20 conditions in TROA in Sections 12.A.4(a) through  
21 12.A.4(g), all of which had to be satisfied before TROA  
22 could be finally implemented.

23 That concludes my testimony.

24 MR. PALMER: I'd just like to identify some of  
25 the exhibits that --

1 CO-HEARING OFFICER DODUC: Go ahead.

2 MR. PALMER: For the record, I'll hand these to  
3 him. I'm going to show you Public Law 101-618. That's  
4 identified as Joint Exhibit 16.

5 MR. STREKAL: I recognize that.

6 MR. PALMER: You also referred to the  
7 Preliminary Settlement Agreement that's been marked as  
8 Joint Exhibit 15. I'll ask you to identify that.

9 MR. STREKAL: I recognize the PSA.

10 MR. PALMER: You also referenced the Record of  
11 Decision. That's joint Exhibit 17.

12 MR. STREKAL: And I certainly recognize that.

13 MR. PALMER: Lastly, you also referred to TROA,  
14 Truckee River Operating Agreement which is I believe  
15 Joint Exhibit 19.

16 MR. STREKAL: And I recognize that.

17 MR. PALMER: This is dated September 2008, and  
18 that's the month it was signed; is that correct?

19 MR. STREKAL: That's correct.

20 MR. PALMER: That's all I have for direct.

21 CO-HEARING OFFICER DODUC: Thank you,  
22 Mr. Palmer. Mr. Soderlund?

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JOHN A. SARNA

Called by DEPARTMENT OF WATER RESOURCES

DIRECT EXAMINATION BY MR. SODERLUND

--o0o--

MR. SODERLUND: Eric Soderlund for California Department of Water Resources. At this time, the Department would like to call John Sarna to testify.

Good afternoon, Mr. Sarna.

MR. SARNA: Good afternoon.

MR. SODERLUND: For the record could you please state your name, spell your last name, and where you are employed.

MR. SARNA: My name is John Sarna, S-a-r-n-a. I'm employed with the Department of Water Resources.

MR. SODERLUND: Thank you.

Mr. Sarna, were you present when the oath was administered to the witnesses this morning?

MR. SARNA: Yes, I was.

MR. SODERLUND: And are you aware or is it your understanding that you are still under oath?

MR. SARNA: Yes, it is.

MR. SODERLUND: Thank you. Do you have a copy of DWR Exhibit 01?

MR. SARNA: Yes, I do.

1           MR. SODERLUND: That exhibit is your written  
2 testimony. Is that a true and correct copy of your  
3 testimony?

4           MR. SARNA: Yes, it is.

5           MR. SODERLUND: Do you have a copy of DWR  
6 Exhibit 02?

7           MR. SARNA: Yes, I do.

8           MR. SODERLUND: And that is the statement of  
9 your qualifications. Is that a true and correct copy of  
10 your qualifications?

11          MR. SARNA: Yes, it is.

12          MR. SODERLUND: Thank you.

13                 For the purposes of this panel, could you  
14 briefly describe or explain the purposes of your  
15 testimony?

16          MR. SARNA: Yes. During this panel, the focus  
17 of my testimony will be to provide a brief background on  
18 the TROA negotiations and DWR's involvement in those  
19 negotiations.

20                 As part of my testimony, I'll also involve some  
21 key issues California wanted to address through the  
22 TROA, and I'll briefly detail key milestones in the CEQA  
23 process.

24          MR. SODERLUND: Thank you. And at this time  
25 with that purpose in mind, could you please summarize

1 your testimony?

2 MR. SARNA: Sure.

3 I'm going to start off to say I'm a senior  
4 engineer, a Registered Civil Engineer in California, and  
5 I'm also Chief of the California-Nevada and Watershed  
6 Assessment Section of the California Department of Water  
7 Resources.

8 I have been assisting in negotiation of the  
9 water issues involved the Truckee River and its  
10 tributaries for the past 17 years; and for the past ten  
11 years, I've been the TROA technical representative for  
12 DWR.

13 We believe the petitions and applications serve  
14 California's interest through implementation of TROA.

15 The TROA represents a collaborative agreement  
16 that resulted from a long and detailed process to  
17 develop an operating agreement for the Truckee River.

18 Our Secretary of Resources, Mike Chrisman,  
19 signed TROA on September 6, 2008 as you've heard several  
20 times before. This was the culmination of a  
21 consultation process with numerous California agencies  
22 where Mr. Chrisman obtained approval to act as designee  
23 of the Governor for all California agencies.

24 That's in one of the exhibits. I believe the  
25 last, DWR 5. Or it's 3. I'm uncertain of that one.

1 California is one of the five mandatory  
2 signatory parties that negotiated the TROA. Tom Strekal  
3 mentioned the other signatory parties, United States,  
4 State of Nevada, Pyramid Lake Paiute Tribe, and Truckee  
5 Meadows Water Authority.

6 Besides California, four other local California  
7 agencies signed the TROA: The North Tahoe Public  
8 Utilities District, Sierra Valley Water Company, Truckee  
9 Donner PUD, and the Placer County Water Agency.

10 To my knowledge, no agency or organization in  
11 California is opposed to implementing TROA.

12 DWR has actually been involved before my time  
13 in Truckee River issues, specifically the interstate  
14 allocation of water, since the 1950s.

15 Dave Kennedy of DWR represented California in  
16 discussions and negotiations leading to Congress passing  
17 the Settlement Act which included an interstate  
18 allocation for the Carson River, Lake Tahoe, and Truckee  
19 River Basin. Again, something you've probably heard a  
20 couple of times before.

21 I want to reiterate that TROA must go into  
22 effect before the interstate allocation may go into  
23 effect. That was one of the conditions that Tom  
24 mentioned in TROA section -- Article 12.

25 And there's a number of -- there's like four or

1 five other conditions that also must be satisfied.

2 In 1994, Dave Kennedy assigned Carroll Hamon  
3 who provided our policy statement earlier to act as a  
4 special representative.

5 DWR actively entered TROA negotiations by  
6 requesting resolution of three issues: Instream flows  
7 coming out of reservoirs in the Truckee River Basin,  
8 water levels in lakes and reservoirs to serve recreation  
9 interests primarily, and water rights in California  
10 versus water rights in Nevada.

11 Over the next several years, DWR continued to  
12 participate in negotiations to revolve these and quite a  
13 few other issues which arose during the negotiations.

14 We did that through meetings with staff from  
15 the State Water Board, Lahontan Regional Water Board,  
16 Department of Fish and Game which you heard a policy  
17 statement from earlier today, and numerous local  
18 California agencies.

19 The Truckee River Basin Water Group was formed,  
20 and we met with them. They're a group of local  
21 stakeholders. And we met with them regularly, monthly,  
22 during TROA negotiations.

23 We still meet with them regularly to keep them  
24 apprised on the status of where we are on TROA and to  
25 help develop better plans for meeting instream flows and

1 recreation objectives -- their recreation objectives in  
2 the Truckee River Basin.

3 In short, DWR's interest in this action before  
4 the State Water Board is to represent California in  
5 obtaining the benefits of implementing the Settlement  
6 Act and TROA.

7 The TROA affects different constituents in  
8 California. As I said before, we've worked with other  
9 state and local agencies to include language in TROA  
10 that provides diverse benefits to California.

11 This is the TROA itself. It's a good half inch  
12 thick, and I'd say probably a good ten or 20 percent of  
13 it involves things that benefit California in one way or  
14 the other.

15 I'll go into these benefits later in my  
16 subsequent testimony. I do want to note that DWR was  
17 the Lead Agency for CEQA -- under CEQA for the TROA --  
18 for development of the TROA EIS/EIR.

19 Secretary of Resources Mike Chrisman certified  
20 the final EIS/EIR on September 5th, and he filed Notice  
21 of Decision -- or he signed a Notice of Decision on  
22 September 10 of 2008.

23 The 30-day period for challenging the final  
24 EIS/EIR has long passed, and there's no active CEQA  
25 litigation, so we accept its conclusions, including that

1 TROA results in no significant adverse impacts.

2 MR. SODERLUND: Thank you.

3 I have no further questions.

4 CO-HEARING OFFICER DODUC: Thank you.

5 So that concludes the direct for these two  
6 witnesses. Any questions so far? Okay.

7 Let's take a short break, and when we return in  
8 five minutes, we'll begin cross-examination by Mr. Van  
9 Zandt of these two witnesses.

10 (Recess)

11 CO-HEARING OFFICER DODUC: It looks like we're  
12 ready to begin. Mr. Van Zandt.

13 MR. VAN ZANDT: Thank you very much.

14 --o0o--

15 CROSS-EXAMINATION BY MR. VAN ZANDT

16 FOR APPLICANT AND PETITIONERS

17 --o0o--

18 MR. VAN ZANDT: Mr. Strekal, how are you?

19 MR. STREKAL: Fine, thank you.

20 MR. VAN ZANDT: Great.

21 So you have been involved in the TROA  
22 negotiations for quite a long time, haven't you?

23 MR. STREKAL: Since the beginning.

24 MR. VAN ZANDT: And even the negotiations over  
25 the Preliminary Settlement Agreement? You were involved

1 in that?

2 MR. STREKAL: I was not.

3 MR. VAN ZANDT: You indicated that the  
4 mandatory signatories were first the United States,  
5 California, and Nevada; and then because of the PSA, the  
6 Tribe and Sierra Pacific were added at some time after  
7 that as mandatory signatories; is that correct?

8 MR. STREKAL: That's correct.

9 MR. VAN ZANDT: And the Truckee-Carson  
10 Irrigation District was not one of those mandatory  
11 signatories?

12 MR. STREKAL: It wasn't identified, no.

13 MR. VAN ZANDT: And you said that there were a  
14 significant number of meetings with various public  
15 entities, political subdivisions, but also members of  
16 the public, correct?

17 MR. STREKAL: That's correct.

18 MR. VAN ZANDT: Okay. But you didn't want to  
19 hazard a guess how many meetings you had?

20 MR. STREKAL: I don't have enough fingers and  
21 toes.

22 MR. VAN ZANDT: You indicated there was one  
23 plenary session where 60 to 70 people showed up. Were  
24 most of those government officials or were they --

25 MR. STREKAL: It varied, depending on the

1 meeting. There were a number of meetings like that, and  
2 you could pick and choose.

3 MR. VAN ZANDT: You indicated there was kind of  
4 a break in the process back in about 1996.

5 There was a draft Environmental Impact  
6 Statement that was prepared -- excuse me. There was a  
7 draft agreement prepared in May of 1996 and a draft  
8 Environmental Impact Statement/Environmental Impact  
9 Report in February of 1998?

10 MR. STREKAL: That's right.

11 MR. VAN ZANDT: Do you have an understanding of  
12 why that draft was not sent to final?

13 MR. STREKAL: Because the negotiators decided  
14 to convene. And I can't tell you what the specific  
15 issues are. I just don't remember.

16 But I do know that there were a number of  
17 changes to that draft agreement, and it was -- they were  
18 considered substantial enough that we couldn't go  
19 forward. It wouldn't be the same proposed action any  
20 more.

21 And because of the intervening time, it just  
22 seemed to make sense to do a new analysis based on what  
23 was the new proposed action.

24 MR. VAN ZANDT: That draft Environmental Impact  
25 Statement was actually sent out for public comment,

1 wasn't it?

2 MR. STREKAL: All draft Environmental Impact  
3 Statements are, yes.

4 MR. VAN ZANDT: Okay.

5 MR. STREKAL: Public review and comment as  
6 parties saw fit.

7 MR. VAN ZANDT: You've indicated that  
8 Truckee-Carson Irrigation District and Churchill County  
9 initially participated in the negotiations over TROA.

10 MR. STREKAL: That's correct.

11 MR. VAN ZANDT: And isn't it true, Mr. Strekal,  
12 that one of the reasons that TCID did not continue  
13 negotiating was because the TROA negotiators would not  
14 allow upstream storage for the Newlands Project in the  
15 Sierra Nevadas?

16 MR. STREKAL: I remember discussions about it.  
17 I remember that there was displeasure at proposals that  
18 TCID had made. But I no longer remember the specifics  
19 of that.

20 But yeah, I think you're correct in saying one  
21 of the issues was upstream storage.

22 MR. VAN ZANDT: That upstream storage that TCID  
23 was seeking, that was for drought protection, wasn't it?

24 MR. STREKAL: I would imagine if -- again, I --  
25 it was a number of years ago. But it would make sense

1 if that were the case, yes.

2 MR. VAN ZANDT: So then the TROA process  
3 concluded some time in the 2008 with the Record of  
4 Decision being signed; is that right?

5 MR. STREKAL: That's right.

6 MR. VAN ZANDT: And then there was an actual  
7 signing ceremony regarding TROA in September 2008,  
8 right?

9 MR. STREKAL: Correct.

10 MR. VAN ZANDT: But TROA can't go into effect  
11 until the Orr Ditch Court rules on a request for  
12 modification of the decree, right?

13 MR. STREKAL: That's one of the conditions,  
14 yes.

15 MR. VAN ZANDT: Okay. And there is a potential  
16 at least that the Orr Ditch Court could modify TROA in  
17 the process of going through that motion to modify the  
18 decree; isn't that correct?

19 MR. STREKAL: I'm not a lawyer. I truly can't  
20 tell you what would happen if the Orr Ditch Court  
21 modifies the agreement.

22 MR. VAN ZANDT: That wasn't my question. My  
23 question was if there was a potential that the court  
24 could modify TROA in terms of its modification of the  
25 Orr Ditch Decree; isn't that right?

1           MR. PALMER: I object; it calls for  
2 speculation. It sounds to me like speculating -- asking  
3 the witness to speculate what might happen if the court  
4 does this or the court does that. That's my objection.

5           CO-HEARING OFFICER DODUC: I would concur,  
6 Mr. Van Zandt. If you could, please rephrase your  
7 question. If you cannot, please move on.

8           MR. VAN ZANDT: Thank you.

9           Well, Mr. Strekal, you know that the Orr Ditch  
10 Court has authority to approve the Truckee River  
11 Operating Agreement, right?

12          MR. STREKAL: Yes.

13          MR. VAN ZANDT: As part of the process for  
14 approving the Truckee River Operating Agreement, the  
15 court has to modify the Orr Ditch Decree; is that your  
16 understanding?

17          MR. STREKAL: That's my understanding.

18          MR. VAN ZANDT: Okay. So isn't it possible  
19 that the court may not modify the Orr Ditch Decree in  
20 exactly the manner that the TROA parties are seeking?

21          MR. PALMER: Same objection; calls for  
22 speculation.

23          CO-HEARING OFFICER DODUC: Same ruling. Please  
24 move on, Mr. Van Zandt.

25          MR. VAN ZANDT: Mr. Strekal, if there was a

1 modification to the Truckee River Operating Agreement at  
2 this point in the process, what are the options that the  
3 TROA parties have?

4 MR. PALMER: I think he needs to clarify what  
5 he means by modification. Modification of what, for  
6 what, by whom?

7 CO-HEARING OFFICER DODUC: Mr. Van Zandt,  
8 please expand or provide clarification on your question.

9 MR. VAN ZANDT: Well, let's say that the court  
10 does not allow some of the credit exchanges that are  
11 included in TROA, for whatever reason. That's not  
12 allowed as a modification to TROA. What's the options  
13 that the TROA parties have at that point?

14 MR. STREKAL: Let me just address this real  
15 quickly, and this is as far as I'll go.

16 There is a requirement in the Public Law that  
17 any changes to the operating agreement have to be made  
18 in the same manner in which the agreement was  
19 negotiated.

20 So if the agreement is going to be changed, my  
21 reading of the Public Law is that the negotiators would  
22 have to reconvene and sign a new document.

23 That's my simple understanding. I can't go  
24 beyond that.

25 MR. VAN ZANDT: Appreciate that. Thank you.

1           And then the TROA would have to be resubmitted  
2 to the Orr Ditch Court at that point for approval, if  
3 there was subsequent renegotiation?

4           MR. STREKAL: I said I wouldn't say any more.

5           I -- I can't go beyond that. I only -- I can  
6 tell you what the Public Law says. I don't know the  
7 rest of the process.

8           MR. VAN ZANDT: All right. That's all the  
9 questions I have.

10          CO-HEARING OFFICER DODUC: Any other questions  
11 on cross, Mr. Van Zandt?

12          MR. VAN ZANDT: For Mr. Sarna, yes.

13          CO-HEARING OFFICER DODUC: Then please.

14          MR. VAN ZANDT: Mr. Sarna, how are you?

15          MR. STREKAL: Very good, thank you.

16          MR. VAN ZANDT: You were involved in TROA  
17 negotiations for quite a long period of time?

18          MR. SARNA: Yes, I was.

19          MR. VAN ZANDT: For the entire length of the  
20 negotiations?

21          MR. SARNA: No. I actually came on board  
22 probably around 1993. And at that point, I was  
23 assisting. And I became directly involved in TROA  
24 negotiations a few years later.

25          MR. VAN ZANDT: Okay. I think you indicated in

1 your direct testimony that one of the things you thought  
2 was very good about the Truckee River Operating  
3 Agreement was it would allow for the final  
4 implementation of the interstate -- allocation of the  
5 interstate compact, correct?

6 MR. SARNA: That is correct.

7 MR. VAN ZANDT: But it is true, Mr. Sarna, that  
8 the interstate allocations under the compact have been  
9 pretty well set since what, about 1969?

10 MR. SARNA: They are not -- they don't have  
11 force of law at this point.

12 There was a compact that was agreed to by  
13 California and Nevada independently back in 1969, 1970.  
14 But that was never ratified by the federal government.

15 MR. VAN ZANDT: But the State of Nevada and  
16 State of California have essentially been abiding by the  
17 compact all this time, right?

18 MR. SARNA: I believe there is an -- there is a  
19 policy. I believe it's a State Water Board policy to  
20 abide by the terms of the compact. To abide by what's  
21 in the California Water Code which is the -- which  
22 represents what is in the interstate compact.

23 MR. VAN ZANDT: Okay. Mr. Sarna, you mentioned  
24 the CEQA process and participation of the Department of  
25 Water Resources in the CEQA process.

1           You participated in that process with DWR  
2 acting as Lead Agency, right?

3           MR. SARNA: I directed -- for the last EIR, I  
4 directed staff. Didn't participate directly in the  
5 process.

6           MR. VAN ZANDT: Mr. Sarna, isn't it true that  
7 in the CEQA process in developing the Environmental  
8 Impact Report there was an operations model that was  
9 used by the parties to help do the analysis?

10          MR. SARNA: Yes, there was an operations model.

11          MR. VAN ZANDT: Okay. And isn't it true that  
12 at one point in this process you characterized the  
13 operations model as having results that were  
14 counter-intuitive and erratic?

15          MR. SODERLUND: Can I object -- or I will  
16 object to this. And I'll do it on the rationale of  
17 outside the scope of his testimony. And if I may, I can  
18 explain a little bit.

19          The purpose, for better or for worse, for Mr.  
20 Sarna to be testifying in this panel was to kind of  
21 conclude the introduction slash contextual background  
22 for these TROA applications and petitions.

23          And in his testimony for this panel, he  
24 provided a brief explanation of the Department's  
25 intervention and participation in the TROA negotiation

1 process. Also talked about what California or the  
2 Department wanted out of that process, and briefly  
3 talked about the CEQA.

4 I understand Mr. Van Zandt's desire to get into  
5 the merits of some of the findings and even some of the  
6 analysis in the EIR/EIS, and we won't necessarily stop  
7 him from doing that.

8 But I believe Mr. Sarna is coming up later in  
9 this hearing and will be going into California's -- or  
10 the Department's beliefs on the benefits of TROA and how  
11 those will be realized and the analysis that supports  
12 that, and I believe some of these questions are maybe  
13 more pertinent to that future testimony.

14 CO-HEARING OFFICER DODUC: Mr. Van Zandt, any  
15 objections to holding onto these questions until -- I  
16 believe that would -- well, we'll have at least three  
17 panels to discuss various issues, including Mr. Sarna  
18 coming back on the seventh panel.

19 MR. VAN ZANDT: That's fine with me. I'll work  
20 on my questions.

21 CO-HEARING OFFICER DODUC: Thank you, Mr. Van  
22 Zandt. And that concludes your cross? All right.

23 We'll move on to Mr. Mackedon for your cross.

24 MR. MACKEDON: Thank you.

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CROSS-EXAMINATION BY MR. MACKEDON  
FOR CITY OF FALLON

--o0o--

MR. MACKEDON: I have questions for  
Mr. Strekal. Good afternoon.

MR. STREKAL: Good afternoon.

MR. MACKEDON: I believe you testified that at  
the -- near the point in time when the TROA was agreed  
upon there were 14 parties negotiating.

MR. STREKAL: That's what I said.

MR. MACKEDON: And eventually more joined or  
more signed.

MR. STREKAL: 15 signed.

MR. MACKEDON: Right. And you testified  
further that there were many, many meetings over the 17  
years, probably hundreds, wouldn't you say?

MR. STREKAL: Undoubtedly.

MR. MACKEDON: How were those meetings noticed?

MR. STREKAL: They were noticed to parties who  
were participating. There were general invitations that  
were sent out for some of the meetings.

But there was nothing exclusive about the  
meetings. People who were participating were generally  
informed of when the next meeting was.

1           And again, with the initial meetings, there was  
2 general notification.

3           MR. MACKEDON: So I'm looking for -- I guess  
4 you're telling me there was no published notice --

5           MR. STREKAL: Nothing in the newspapers, no.

6           MR. MACKEDON: -- for a public meeting.

7           MR. STREKAL: But there was nothing private  
8 about them.

9           MR. MACKEDON: The -- moving away from that for  
10 a second, you didn't participate in the -- or weren't  
11 involved with the negotiation of the Preliminary  
12 Settlement Agreement.

13          MR. STREKAL: No, because that was Sierra  
14 Pacific and the Pyramid Tribe.

15          MR. MACKEDON: But you made reference earlier  
16 in your testimony and in your written testimony to that  
17 agreement. You're acquainted with it?

18          MR. STREKAL: I couldn't hear.

19          MR. MACKEDON: You're acquainted with that  
20 agreement?

21          MR. STREKAL: I am.

22          MR. MACKEDON: And that agreement was intended  
23 to settle litigation, was it not?

24          MR. STREKAL: Let's say it was a springboard  
25 for implementation of the Public Law. It did settle

1 issues between the Pyramid Tribe and Sierra Pacific, but  
2 there -- it was certainly considering implementation of  
3 the Public Law and negotiation of an operating agreement  
4 because PSA notices that it couldn't take effect without  
5 TROA, and TROA says it can't take effect without  
6 PSA.

7 So the two are intimately linked.

8 MR. MACKEDON: I agree with that. Who signed  
9 the PSA?

10 MR. STREKAL: It was signed by Sierra Pacific  
11 and the Pyramid Tribe.

12 MR. MACKEDON: And if -- it anticipated TROA,  
13 and if that was successful, litigation would be  
14 dismissed; is that your recollection?

15 MR. STREKAL: I don't know that PSA was  
16 dismissing litigation. But the ultimate intent of TROA  
17 was to have litigation resolved, in addition to other  
18 disputes.

19 MR. MACKEDON: The -- is it your recollection  
20 or do you know that when the settlement agreement -- the  
21 parties then suspended the litigation that was ongoing  
22 at that time because of the agreement?

23 MR. STREKAL: I'd have to go back and look at  
24 it. I can't speak to that.

25 MR. MACKEDON: You told me you had legal

1 meetings, drafting meetings, negotiating meetings,  
2 plenary sessions; and are you telling me that those were  
3 open meetings?

4 MR. STREKAL: They were generally attended.  
5 People who were interested in negotiating TROA, people  
6 who were interested in being parties to TROA could  
7 attend the larger sessions.

8 The legal meetings, obviously, were more  
9 restricted meetings. Editing meetings were more  
10 restricted. Because these were people who were working  
11 with the agreement to resolve issues on a regular basis.

12 MR. MACKEDON: What are --

13 MR. STREKAL: But they weren't exclusive.

14 MR. MACKEDON: Were they -- you say the legal  
15 or editing sessions were more restricted. By whom?

16 MR. STREKAL: By the people who were discussing  
17 the legal issues or by the people who were editing the  
18 document.

19 Again, these were people --

20 MR. MACKEDON: Well --

21 MR. STREKAL: Excuse me.

22 These were people who were working on the  
23 agreement and working on the document on a regular  
24 basis. People wouldn't come in off the street to say I  
25 would like to edit.

1           MR. MACKEDON:  People wouldn't come in from off  
2 the street to -- as if it were a public meeting.  It  
3 wouldn't be noticed like that, correct?

4           MR. STREKAL:  I already said that there were no  
5 notices -- no public notices the way you're implying --  
6 as to the TROA meetings.

7           MR. MACKEDON:  The -- over the 17 years, you  
8 indicated in your testimony, it's been a long time and  
9 you've forgotten some of the details of the  
10 negotiations.  Is that what you are telling us?

11          MR. STREKAL:  I think that's -- I think we  
12 could all say that.

13          MR. MACKEDON:  Were records kept?

14          MR. STREKAL:  There are a number of documents  
15 that relate to TROA meetings.  There certainly were  
16 attendance lists.  There were agendas that were  
17 prepared.  There were documents that identified topics  
18 for conversation.

19          MR. MACKEDON:  Were there minutes?

20          MR. STREKAL:  I don't know.  If there were  
21 minutes, they weren't kept on a regular basis.  There  
22 was no secretary for the meetings.

23                 They would, though, have been indicated at  
24 times by agenda items, discussions that would have been  
25 carried over or some discussion of resolution of issues

1 over time.

2 MR. MACKEDON: Was it understood that the  
3 discussions as they occurred were confidential?

4 MR. PALMER: I guess I'd interpose an  
5 objection.

6 I think we've already asked and answered this.  
7 He's talked about the meetings were public. They  
8 weren't exclusive. He's said that several times,  
9 Mr. Strekal has. And I'm really losing sight of the  
10 relevance of this cross-examination as well.

11 CO-HEARING OFFICER DODUC: And the point of  
12 your line of questioning?

13 MR. MACKEDON: Well, I -- Mr. Strekal, as I  
14 understood it, gave kind of a triumphalist account --

15 CO-HEARING OFFICER DODUC: Please get closer to  
16 the microphone. I can't hear you.

17 MR. MACKEDON: I'm sorry.

18 The pertinence here, as far as I'm concerned, I  
19 want to understand that there's records available that I  
20 as a representative of the City of Fallon could have at  
21 any time had access to understand the negotiations as  
22 they occurred.

23 CO-HEARING OFFICER DODUC: Is a record  
24 available to which the City of Fallon could have access  
25 to at any time?

1 MR. STREKAL: I'm going to defer to Mr. Palmer.

2 MR. PALMER: Well, currently there's litigation  
3 pending filed by the protestants that's pending before  
4 the US District Court in Nevada, and the United States  
5 has filed an administrative record regarding primarily  
6 the NEPA document, but in that, there's documents  
7 regarding TROA.

8 And they're a party to this. I understand  
9 there will probably be further proceedings regarding the  
10 record. Seems like this is not the appropriate time to  
11 do discovery.

12 CO-HEARING OFFICER DODUC: Thank you.

13 I think your point has been made and your  
14 question has --

15 MR. MACKEDON: I --

16 CO-HEARING OFFICER DODUC: -- been answered.  
17 Please move on.

18 MR. MACKEDON: I appreciate that.

19 Do you recall -- well, I'll -- I don't know  
20 that you would. Do you recall that the City of Fallon  
21 had written a letter to the various parties who were  
22 commencing the TROA discussions indicating that it was  
23 unwilling to participate in confidential meetings?

24 MR. STREKAL: That Fallon was unwilling to  
25 participate?

1 MR. MACKEDON: Do you remember getting a  
2 letter?

3 MR. STREKAL: I don't recall anything like  
4 that.

5 MR. MACKEDON: No further questions.

6 CO-HEARING OFFICER DODUC: Thank you. And do  
7 you have questions for the other witness?

8 MR. MACKEDON: I have no questions.

9 CO-HEARING OFFICER DODUC: All right.  
10 Mr. Palmer, any redirect for your witness?

11 MR. PALMER: Very brief.

12 --o0o--

13 REDIRECT EXAMINATION BY MR. PALMER

14 --o0o--

15 MR. PALMER: You were asked a question about  
16 the Preliminary Settlement Agreement, and you indicated  
17 as I understand that the two parties were TMWA and the  
18 Tribe?

19 MR. STREKAL: Actually Sierra Pacific.

20 MR. PALMER: Yes. Sierra Pacific at that time.

21 MR. STREKAL: Yes.

22 MR. PALMER: Was the United States involved in  
23 this agreement at all?

24 MR. STREKAL: Yes. The United States prepared  
25 a ratification agreement that essentially included the

1 United States then in that agreement; therefore, it made  
2 it binding on all of the parties.

3 So again, it was the United States, the Pyramid  
4 Tribe, Sierra Pacific now TMWA, California, and Nevada.

5 MR. PALMER: Thank you.

6 That's all the questions I have.

7 CO-HEARING OFFICER DODUC: Thank you.

8 Mr. Soderlund, redirect for your witness?

9 MR. SODERLUND: I do, thank you. And they are  
10 more kind of housekeeping questions.

11 --o0o--

12 REDIRECT EXAMINATION BY MR. SODERLUND

13 --o0o--

14 MR. SODERLUND: The first one, Mr. Sarna, is in  
15 your testimony you testified that Mike Chrisman, then  
16 Secretary for Resources, signed the TROA on behalf of  
17 California. And you referenced the designation for  
18 that, and you weren't quite sure what the exhibit was.

19 I have in my hand a copy labeled DWR Exhibit  
20 03. Could you please for the record state what the  
21 title of that exhibit is?

22 MR. SARNA: Designation of Signature Authority.

23 MR. SODERLUND: Thank you.

24 And then also at the same time when you  
25 testified that Mike Chrisman signed -- you stated that

1 Mr. Chrisman signed on behalf of all state agencies; is  
2 that correct?

3 MR. SARNA: That's correct.

4 MR. SODERLUND: I'm going to pass to you a copy  
5 of the Truckee River Operating Agreement which I believe  
6 is joint Exhibit 19. I have opened it up to page 14-9.

7 If you could just silently read to yourself the  
8 section where it has Mr. Chrisman's signatory line.

9 Could you do that please briefly?

10 MR. SARNA: (Reviewing document) I have just  
11 read it, yes.

12 MR. SODERLUND: Upon reading that, could you  
13 clarify on behalf of whom did Secretary Chrisman sign  
14 the TROA?

15 MR. SARNA: I do have a correction. He signed  
16 the agreement on behalf of the California agencies  
17 identified in the agreement, and as designee of the  
18 government for all purposes required by the Settlement  
19 Act.

20 MR. SODERLUND: Thank you.

21 No further questions.

22 CO-HEARING OFFICER DODUC: Mr. Van Zandt?

23 MR. VAN ZANDT: I have nothing, thanks.

24 CO-HEARING OFFICER DODUC: Mr. Mackedon?

25 MR. MACKEDON: No.

1 CO-HEARING OFFICER DODUC: All right.

2 Thank you all. This concludes this particular  
3 panel on this topic. Would the three speakers for Topic  
4 number 4 please come up.

5 I forgot to ask. Any questions from staff or  
6 Chair Hoppin? Okay.

7 Beginning with Mr. DePaoli this time. Whenever  
8 you are ready.

9 --o0o--

10 MARC VAN CAMP

11 Called by APPLICANT AND PETITIONERS

12 DIRECT EXAMINATION BY MR. DePAOLI

13 --o0o--

14 MR. DePAOLI: May I ask a question? Do you  
15 have a preference for when you would like to have  
16 exhibits identified and moved into evidence?

17 CO-HEARING OFFICER DODUC: I would like it to  
18 be done at the end of your case-in-chief.

19 MR. DePAOLI: Thank you.

20 Mr. Van Camp, could you please state your name  
21 and spell it for the record.

22 MR. VAN CAMP: My name is Marc Van Camp.

23 M-a-r-c, V-a-n, C-a-m-p.

24 MR. DePAOLI: Mr. Van Camp, is TMWA Exhibit 3-0  
25 a true and correct copy of your written testimony?

1 MR. VAN CAMP: Yes, it is.

2 MR. DePAOLI: Do you have any revisions or  
3 corrections to that exhibit?

4 MR. VAN CAMP: I do have two.

5 MR. DePAOLI: Please state them.

6 MR. VAN CAMP: The first comes on page 9 under  
7 paragraph 20, the reference to California Code of  
8 Regulations. I have 691. I believe that should be 699.

9 The second correction would be on page 11,  
10 paragraph 27. Under the first sentence, the sentence  
11 reads:

12 The administrator and Federal Water  
13 Master will monitor and account for water  
14 to ensure water is stored in conformance  
15 with --

16 I suggest I need to insert "the priority of"  
17 License 4196.

18 Those are my two corrections.

19 MR. DePAOLI: Do you affirm that that exhibit  
20 as corrected and the oral testimony you will present  
21 today are true and correct?

22 MR. VAN CAMP: Yes.

23 MR. DePAOLI: Does TMWA Exhibit 3-1 accurately  
24 describe your education and professional experience?

25 MR. VAN CAMP: Yes, it does.

1           MR. DePAOLI:  Would you briefly describe that  
2  experience?

3           MR. VAN CAMP:  Yes.  I graduate from California  
4  State University, Sacramento with a BS degree in civil  
5  engineering in 1984.

6           While attending school, I worked for the US  
7  Geological Survey collecting basic data, doing analysis  
8  of stream flows.

9           I went to work for MBK Engineers upon  
10 graduation in 1984 and have been there since.

11           I am a Registered Professional Engineer in the  
12 State of California, Nevada, and Oregon and a Certified  
13 Water Right Examiner in the State of Oregon.

14           MR. DePAOLI:  Briefly provide some examples of  
15 your experience before the California State Water  
16 Resources Control Board.

17           MR. VAN CAMP:  The side of my practice in MBK,  
18 I deal with the water right issues, administration of  
19 water rights, compliance with water rights on a daily  
20 basis for numerous water right holders within the State  
21 of California.

22           I have been in front of this Board and have  
23 recently filed petitions relative to numerous water  
24 transfers.

25           I testified in front of the State Board in

1 regard to Decision 1641 which is the San Joaquin River  
2 Agreement which includes the Vernalis Adaptive  
3 Management Plan which most people refer to it as.

4 MR. DePAOLI: Briefly describe your personal  
5 and your firm's involvement in matters involving the  
6 Truckee River system.

7 MR. VAN CAMP: MBK in 1975 was known as Murray,  
8 Burns & Kienlen. Since 1975, has been involved in the  
9 Truckee River, most specifically with Sierra Pacific  
10 Power Company and now TMWA in developing water resource  
11 plans, various water supply analysis, and other  
12 technical-related work.

13 Personally, since the '80s, 1980s, likely the  
14 late '80s, I gathered basic data, flow measurements on  
15 behalf of Truckee Meadows Water Authority that were  
16 important to their key operations.

17 And most recently, I have provided assistance  
18 with preparing of petitions and the processing of those  
19 petitions.

20 MR. DePAOLI: Please provide a brief  
21 description of TMWA's water rights under License 4196  
22 for Independence Lake.

23 MR. VAN CAMP: License 4196 authorizes the  
24 diversion to storage in Independence Lake of 17,500 acre  
25 feet in each year.

1           It has a season of diversion to storage as  
2 about December 1st to about July 1st.

3           The license contains no limitation on the  
4 quantity which can be withdrawn.

5           MR. DePAOLI: What is your understanding of the  
6 purposes of the change petitions and how these change  
7 petitions will further that purpose?

8           MR. VAN CAMP: It's my understanding the  
9 purpose is to facilitate the coordinated operations as  
10 have been negotiated in the Truckee River Operating  
11 Agreement known as TROA.

12           The change petitions have requested the  
13 addition of points of diversion, points of rediversion,  
14 changes to the place of use and the purpose of use at  
15 downstream locations to facilitate that coordinated  
16 operation.

17           MR. DePAOLI: Could you please summarize and  
18 explain your opinion as to whether any of the change  
19 petitions initiate a new water right?

20           MR. VAN CAMP: It is my opinion that the change  
21 petitions do not initiate a new water right in any of  
22 the cases.

23           The key factors we evaluate, in my opinion, for  
24 initiating a new right are the source of water, the  
25 quantity contained in the existing right, and the

1 season.

2 In none of the petitions are we requesting a  
3 change in the quantity or season.

4 Stampede and Boca and the associated water  
5 rights are on the same source.

6 In the case of Independence, we are requesting  
7 the addition of points of diversion downstream.  
8 Independence is on Independence Creek.

9 We are requesting addition of points of  
10 diversion at Stampede and Boca on the Little Truckee  
11 River; but as I understand, we are not asking for any  
12 additional water that would not have been available at  
13 Independence Lake.

14 In addition, the evaluation of the watershed,  
15 the entire watershed, with Independence being extremely  
16 high in the watershed, and Boca and Stampede also being  
17 high in the watershed, that helps support that we are  
18 not talking about a new source relative to Independence.

19 MR. DePAOLI: Briefly provide and explain your  
20 opinion as to whether any of the change petitions will  
21 injure any other legal user of water.

22 MR. VAN CAMP: It's my opinion that the change  
23 petitions will not injure any other legal user of water.

24 We are dealing with stored water, previously  
25 stored water, which is stored junior to other users of

1 water except for Stampede and Prosser.

2 Stampede and Prosser entities are party to  
3 these -- the TROA which facilitates and requires the need  
4 for these petitions.

5 The previously stored water made available for  
6 use is available for the water right holder and is not  
7 available for other users downstream.

8 Any restorage of water done under the -- will  
9 be done under the existing priority as controlled and  
10 monitored by the Federal Water Master.

11 MR. DePAOLI: Does the Truckee River Operating  
12 Agreement include provisions which provide remedies to a  
13 legal user of water including water right holders in the  
14 Newlands Project should implementation of these change  
15 petitions through TROA result in that user not receiving  
16 an amount of water to which the user is entitled?

17 MR. VAN CAMP: Yes, it does. I believe that  
18 can be found in Article 1, Section 1(c), of TROA.

19 MR. DePAOLI: Are you familiar with TMWA  
20 Exhibit 1-5 which is the Nevada State Engineer ruling  
21 number 6035?

22 MR. VAN CAMP: Yes, generally I am.

23 MR. DePAOLI: What is the nature of that  
24 ruling?

25 MR. VAN CAMP: The nature of that ruling is to

1 authorize the change in water rights and authorizes the  
2 storage in upstream reservoirs of the consumptive use of  
3 that right.

4           Essentially, the State of Nevada authorizes  
5 storage of the consumptive use to avoid the injury to  
6 other legal users of water.

7           MR. DePAOLI: Are those Nevada water rights  
8 that are involved there?

9           MR. VAN CAMP: Yes, those are Nevada water  
10 rights.

11           MR. DePAOLI: Please explain why in your  
12 judgment water stored under those Nevada change  
13 applications should not be considered as water stored as  
14 a result of the reservoir's license or permit issued by  
15 this Board.

16           MR. VAN CAMP: It is my opinion that absent the  
17 changes made in Nevada, in the state of Nevada water  
18 rights, that allow for the change in inflow at  
19 Floriston, Floriston rates, as you heard earlier, absent  
20 those changes, this water would not necessarily have  
21 been available for either storage or release from the  
22 upstream reservoirs to meet those rates.

23           So with Water Code 1231 -- 1230 through 1232,  
24 this is what is being discussed in those code sections,  
25 to account for that water as the change is made to

1 Nevada and not account for it under the California water  
2 rights.

3 MR. DePAOLI: Does that conclude your summary?

4 MR. VAN CAMP: Yes, it does.

5 MR. DePAOLI: That concludes my direct  
6 examination.

7 CO-HEARING OFFICER DODUC: Thank you.

8 Mr. Palmer, your witness.

9 MR. PALMER: Thank you.

10 --o0o--

11 ALI SHAHROODY

12 Called by APPLICANT AND PETITIONERS

13 DIRECT EXAMINATION BY MR. PALMER

14 --o0o--

15 MR. PALMER: Call Mr. Shahroody.

16 And if you would please state your name, spell  
17 your last name and your current employer.

18 CO-HEARING OFFICER DODUC: Mr. Palmer, if you  
19 could move the microphone closer.

20 MR. PALMER: This one doesn't work as well as  
21 the others. I understand why Mr. Mackedon was having  
22 problems.

23 CO-HEARING OFFICER DODUC: Okay.

24 MR. SHAHROODY: Ali Shahroody, A-l-i.

25 S-h-a-h-r-o-o-d-y is my last name.

1 I'm a professional water resource engineer and  
2 agricultural engineer and a licensed agricultural and  
3 civil engineer in the state of California.

4 I'm the president of Stetson Engineers which  
5 has staff of about 60 people in southern California and  
6 northern California in the Bay Area.

7 And I have been consultant for the Pyramid Lake  
8 Paiute Tribe on matters pertaining to Newlands Project  
9 and Truckee Carson River since 1979. That's about 31  
10 years I've spent my time on those river system. I used  
11 to have black hair, but now it's all white.

12 So I have also been consultant and expert  
13 witness for the United States on Truckee and Carson  
14 River matters.

15 MR. PALMER: I don't know if you have a copy of  
16 this. I can hand it to you. But it's marked USBR 12,  
17 and that's your statement of qualifications. Would you  
18 like to confirm that that's true and correct?

19 MR. SHAHROODY: Look -- that is correct. It is  
20 the one.

21 MR. PALMER: You submitted direct testimony  
22 that we have marked USBR Exhibit 7. And do you have any  
23 corrections to make to that testimony?

24 MR. SHAHROODY: I don't.

25 MR. PALMER: So this is a true and correct

1 statement of your direct testimony in USBR 7?

2 MR. SHAHROODY: It is.

3 MR. PALMER: Could you please go ahead and  
4 summarize your testimony for this particular panel  
5 regarding the change petitions and no injury and no  
6 initiation of new water right.

7 MR. SHAHROODY: The purpose of my testimony  
8 this afternoon is to address no injury to other water  
9 rights.

10 As you have heard, everything emanates from  
11 Public Law 1618. Consistent with the provisions of the  
12 Settlement Act, water would be stored and released from  
13 the Truckee River Reservoirs under the TROA without  
14 affecting the exercise of vested or perfected Orr Ditch  
15 Decree water rights.

16 The Settlement Act also further goes on and  
17 says nothing in this title, which is the Title 2 of the  
18 Settlement Act, is intended to alter or conflict with  
19 any vested and perfected rights of any person or entity  
20 to use the water of the Truckee River and its  
21 tributaries, including the farmers on Newlands Project  
22 or diversions made from Truckee River to the Newlands  
23 Project through the Derby Dam and Truckee Canal.

24 Again consistent with the above provisions, as  
25 I stated, of the Settlement Act, TROA makes sure that

1 owners of the vested or perfected Truckee River water  
2 rights are protected, and I think Mr. DePaoli referred  
3 to the protection also.

4 Now again in terms of Pyramid Lake Tribe, that  
5 accumulation of water by the Tribe in Truckee River  
6 reservoirs would be the water that would have otherwise  
7 flowed to the Pyramid Lake. So by itself, it's not  
8 injuring anybody's rights.

9 The storage of such water would not interfere  
10 with any downstream rights or any owners of vested or  
11 perfected Orr Ditch Decree rights.

12 Again, based on provision of TROA, the proposed  
13 applications and change petitions will not injure any  
14 legal users of water. I must emphasize on petitions  
15 because applications really going to be presented to you  
16 on the basis of the availability of water, and  
17 availability of water is analyzed based on water being  
18 available, not impacting any water users. So really, it  
19 is a petition -- change petitions.

20 The proposed change petitions will not initiate  
21 new water rights because the amount of water to be  
22 diverted to storage and the amount of water to be  
23 withdrawn from storage will not change under the  
24 existing permits or licenses.

25 And similarly, the diversion season of the

1 source of water will not change.

2 MR. PALMER: That concludes Mr. Shahroody's  
3 direct summary.

4 CO-HEARING OFFICER DODUC: Please move on to  
5 your next witness.

6 MR. PALMER: The next is Mr. Chet Buchanan.

7 --o0o--

8 CHESTER C. BUCHANAN

9 Called by APPLICANT AND PETITIONERS

10 DIRECT EXAMINATION BY MR. PALMER

11 --o0o--

12 MR. PALMER: State your name, spell your last  
13 name and who you are employed by.

14 MR. BUCHANAN: Chester C. Buchanan  
15 B-u-c-h-a-n-a-n. I'm a self-employed consultant for the  
16 Bureau of Reclamation.

17 MR. PALMER: And I have here USBR 10 which is  
18 your statement of qualifications. Is that a correct  
19 statement of your qualifications?

20 MR. BUCHANAN: From here? Yes, it looks like  
21 it. Yes, I wrote that.

22 MR. PALMER: Please briefly summarize your  
23 qualifications.

24 MR. BUCHANAN: I have worked as a fishery  
25 biologist since earning my master's degree in science

1 from San Diego State University in 1968.

2 I've been employed by US Fish and Wildlife  
3 Service in Reno since 1981 to formulate annual spawning  
4 flows for Cui-ui and Lahontan Cutthroat Trout using  
5 storage from Stampede to augment flows in the Lower  
6 Truckee River.

7 Since 1992, I became the Fish and Wildlife  
8 Services representative on the federal TROA management  
9 team as a technical representative, and I also at that  
10 time joined the EIS/EIR team on the related subject  
11 TROA.

12 Since my retirement from the service in 2003, I  
13 have continued to be active in TROA activities with  
14 Bureau of Reclamation.

15 MR. PALMER: I have what's been marked as USBR  
16 5, and that's your direct testimony. Do you have any  
17 corrections to make to that testimony?

18 MR. BUCHANAN: No.

19 MR. PALMER: So is USBR 5 -- do you have a copy  
20 of that in front of you?

21 MR. BUCHANAN: Right here.

22 MR. PALMER: Is that a true and correct copy of  
23 your written direct testimony?

24 MR. BUCHANAN: Yes.

25 MR. PALMER: Please summarize your direct

1 testimony with regard to this subject of no injury, no  
2 initiation of water rights in the change petitions.

3 MR. BUCHANAN: Okay.

4 The purpose of my testimony is to describe the  
5 linkage of TROA to the change petitions and the  
6 applications and also to talk about the TROA provisions  
7 that address the issues that the Board has raised in  
8 their hearing notice.

9 Today, I'll summarize my testimony by  
10 participating on three panels, this being the first.

11 In reference to protecting existing water  
12 rights, TROA provides a number of safeguards. I'd like  
13 to list those for you.

14 Sections 7.B through 7.G of TROA state that  
15 credit water may be accumulated to the extent allowed by  
16 changes to water rights under applicable state law.

17 Section 1.C.1 recognizes the authority of the  
18 Orr Ditch Decree Court and also recognizes the authority  
19 of the Federal Water Master.

20 In addition, TROA stipulates through Section  
21 1.C.2 that the administrator who is appointed under  
22 TROA, that the administrator shall take corrective  
23 actions to implement -- if implementation of TROA causes  
24 the exercise of an Orr Ditch water right not to have  
25 received the amount of water in which it is entitled.

1           According to Section 2.B, disputes under the  
2 Orr Ditch Decree court will continue to be subject to  
3 the jurisdiction of that court while disputes under  
4 TROA, signatory parties, will be handled first by a  
5 special hearing officer that is defined within TROA, and  
6 his decisions are reviewable by the Orr Ditch Court.

7           Also Section 12.A.4 of TROA requires that the  
8 agreement be approved by the Orr Ditch Court and the  
9 Truckee River General Electric Court before it may be  
10 implemented.

11           And lastly, TROA provides a number of  
12 safeguards for specific waters. To give you an example  
13 of one, is water that is reserved and released to  
14 achieve Floriston rates. These are addressed in  
15 sections 5.A, 8.L, 8.S.

16           As to initiation of new water rights, approval  
17 of the change petitions will not initiate new water  
18 rights but will allow for more flexible reservoir  
19 operations for the storage and use of project water  
20 associated with the existing permits and licenses and  
21 the accumulation of credit water to the extent allowed  
22 by changes to water rights under applicable state law.

23           That concludes mine.

24           CO-HEARING OFFICER DODUC: Does that conclude  
25 your direct?

1 MR. PALMER: Yes, it does.

2 CO-HEARING OFFICER DODUC: Okay. Any  
3 questions? Chair Hoppin? Staff? All right.

4 Let's begin the cross. If you attorneys could  
5 join your witness, I will ask Mr. Van Zandt and  
6 Mr. Mackedon to come up.

7 --o0o--

8 CROSS-EXAMINATION BY MR. VAN ZANDT  
9 FOR TRUCKEE-CARSON IRRIGATION DISTRICT

10 --o0o--

11 MR. VAN ZANDT: Since you spoke up, Mr. Van  
12 Camp, I'll take you first. How is that? Good  
13 afternoon.

14 MR. VAN CAMP: Good afternoon.

15 MR. VAN ZANDT: Your testimony about no injury  
16 and no initiation of a new right: What I didn't hear  
17 and I don't see in your statement, what kind of an  
18 analysis you did to make that determination.

19 In other words -- well, let's talk about injury  
20 to an existing water right. Did you actually do an  
21 analysis of how water will be managed under TROA under  
22 various scenarios in order to arrive at your opinion  
23 with regard to no injury?

24 MR. VAN CAMP: The basis of that opinion is the  
25 fact that the storage of water under the water rights

1 subject to these petitions are junior to the other water  
2 right holders with the exception of Stampede and  
3 Prosser. Once the water is stored, it's the water right  
4 holder's authority to use that water.

5 MR. VAN ZANDT: So what you're saying is that  
6 no one else is necessary. You can just take it based on  
7 the way that the priorities are set for the water and  
8 make a determination that there will not be any demand  
9 for this water that is in priority?

10 MR. VAN CAMP: Once the water is stored by  
11 priority as administered and monitored by the Water  
12 Master, it is stored noninjurious to other water right  
13 holders.

14 So based on the priority and the monitoring by  
15 the Water Master, it is stored in priority and is not  
16 injurious to other water right holders.

17 MR. VAN ZANDT: Now, in doing -- did you do any  
18 kind of analysis of whether or not there would be, for  
19 example, room in Lahontan Reservoir to take some  
20 additional water using OCAP criteria to determine  
21 whether or not this water that you're going to store  
22 under these applications might interfere with diversions  
23 at Derby Dam?

24 MR. VAN CAMP: Try to kind of clarify your  
25 question as I understand it.

1           First of all, I'm speaking to the petitions,  
2 not the applications. And the water rights that are  
3 subject to these petitions are junior to the diversions  
4 of -- the diversions made at Derby Dam for the Newlands  
5 Project.

6           So by storing the water, it is done at a time  
7 based on the Water Master's direction that it's  
8 noninjurious to the Newlands Project.

9           MR. VAN ZANDT: So all of the answers that you  
10 gave with regard to no injury are associated strictly  
11 with the petitions for the new water right  
12 appropriations, not the change applications?

13           MR. VAN CAMP: Again, I think you -- my answer  
14 is to the change petitions. The existing water rights  
15 held for Stampede, Boca, Independence, and Prosser.

16           MR. VAN ZANDT: Let's not get ourselves  
17 confused. It's change applications and the petition for  
18 a new water right. So --

19           MR. VAN CAMP: No. It is -- excuse me. I'll  
20 try to clarify, unless Board staff would prefer to do  
21 that?

22           CO-HEARING OFFICER DODUC: Ms. Mahaney will do  
23 that.

24           SENIOR STAFF COUNSEL MAHANEY: I think there is  
25 a deference between terminology in Nevada and

1 terminology in California.

2 Here it would be a change petition on a water  
3 right permit or license versus a water right application  
4 for unappropriated water.

5 MR. VAN ZANDT: All right. So -- and your  
6 answers were primarily aimed at Independence Lake; is  
7 that right?

8 MR. VAN CAMP: Primarily.

9 MR. VAN ZANDT: Wouldn't you agree, Mr. Van  
10 Camp, that any of these change applications where you're  
11 seeking to have some flexibility with upstream storage,  
12 they have to be done within the existing decrees?

13 MR. VAN CAMP: I believe they are done within  
14 the existing decrees, priorities of water rights, and  
15 the restrictions contained in TROA.

16 MR. VAN ZANDT: And the TROA cannot be  
17 inconsistent with the existing Orr Ditch Decree; is that  
18 correct?

19 MR. VAN CAMP: I believe your question specific  
20 to TROA may be better directed at other witnesses.

21 MR. VAN ZANDT: Now I think you indicated  
22 that -- on your direct -- that you did not believe there  
23 was a new water right created. Now that is based on the  
24 three criteria that you mentioned: Source, quantity,  
25 and season; is that right?

1 MR. VAN CAMP: That is correct.

2 MR. VAN ZANDT: Okay. You would admit,  
3 however, that even if you maintain the quantity and the  
4 season that there is a difference in source between  
5 Independence Creek and the Little Truckee River, right?

6 MR. VAN CAMP: In name, yes.

7 MR. VAN ZANDT: Have you ever done an analysis  
8 of whether Independence Creek has always flowed to the  
9 confluence with the Little Truckee, or has it dried up  
10 on occasion?

11 MR. VAN CAMP: I have not done that specific  
12 analysis.

13 MR. VAN ZANDT: Wouldn't you agree, Mr. Van  
14 Camp, that the watershed around Stampede and Boca  
15 Reservoirs is much larger than the watershed around  
16 Independence Lake?

17 MR. VAN CAMP: Depending on your definition of  
18 much, yes. I would also suggest that those are much  
19 smaller than the watershed available at Derby Dam.

20 MR. VAN ZANDT: I'll come back to that  
21 statement.

22 Isn't it true that the watershed around Boca  
23 and Stampede is about 17 times larger than the  
24 Independence watershed?

25 MR. VAN CAMP: I quickly calculated the numbers

1 or reviewed the numbers in a USGS report. The  
2 Independence watershed is eight square miles. The Boca  
3 watershed is 172 square miles.

4 But as I indicated in my direct, it is not the  
5 intention to store water under the Independence license  
6 that would not have been available had Independence Lake  
7 under the current license.

8 MR. VAN ZANDT: Do you have TMWA Exhibit -- I  
9 think it's 2-0?

10 MR. VAN CAMP: I do not.

11 MR. VAN ZANDT: Maybe we can get that for you.

12 MR. VAN CAMP: I have it in front of me now.

13 MR. VAN ZANDT: It's the statement of Janet  
14 Carson Phillips, and I'd like to turn your attention to  
15 the chart that's on page 13.

16 First of all, I'd like to ask a preliminary  
17 question. Could you explain how water in Boca or  
18 Prosser would be exchanged or transferred into  
19 Independence Lake?

20 MR. VAN CAMP: If it was -- there is  
21 potentially different ways it could be done.

22 If water was flowing past Independence for some  
23 reason, and Boca and Stampede were able to store under  
24 its license, although they -- Stampede is junior to  
25 Independence, could be asked to store that water

1 upstream in Independence which would allow for possibly  
2 later release of that water down to Stampede for  
3 release.

4           The potential exchange of water is the -- just  
5 simply saying that water was originally stored in  
6 Stampede. We have it.

7           Also in Independence under the various water  
8 rights, water could be released from Stampede under  
9 these petitions for use by TMWA, and an equal amount of  
10 water could be held at Independence and later reduced  
11 for fishery purposes, both benefitting fisheries between  
12 Independence and Stampede, and later for the original  
13 intention downstream of Stampede.

14           MR. VAN ZANDT: And I wanted to direct your  
15 attention to that page 13 on Exhibit TMWA 2-0 and it's  
16 at line 15, the one in particular is talking about:

17           TMWA trades its previously stored water  
18 in Independence with California's  
19 previously stored water in Stampede  
20 Reservoir to avoid a large drawdown of  
21 Independence.

22           So would this be an example where water would  
23 be in fact exchanged between Independence and Stampede?

24           MR. VAN CAMP: It would appear that's what this  
25 statement is saying, yes.

1           MR. VAN ZANDT: And the comment about avoiding  
2 a large drawdown of Independence -- there's an inference  
3 there that there will be some drawdown but not a large  
4 drawdown. Is that --

5           MR. VAN CAMP: I find it interesting you asking  
6 me questions about somebody else's testimony. I'm  
7 trying to speak to the petitions in my testimony.

8           To the extent water is being released in this  
9 example, previously stored water in Independence, you  
10 may want to not release it from Independence for use by  
11 TMWA, request a release from Stampede for use by TMWA in  
12 the cities of Reno and Sparks, hold that water that has  
13 now been released from Stampede, hold that water in  
14 Independence, later release it.

15           Instead of releasing it early, hold it, release  
16 it at a steadier flow rate for fishery benefits in the  
17 reach between Independence and Stampede.

18           Now, Stampede has the same volume of water it  
19 did originally, and it can be used later downstream.

20           This is why we filed the petitions in the  
21 coordinated fashion, to allow for the common points of  
22 rediversion and common places of use.

23           MR. VAN ZANDT: Well, let me ask you: If the  
24 water from Independence is released and stored in  
25 Stampede Reservoir, that can be done physically, right?

1 MR. VAN CAMP: Yes.

2 MR. VAN ZANDT: Okay. And if there is a then  
3 credit given in Stampede for that Independence water  
4 that's under Truckee Meadows Water Authority's control,  
5 can another party then ask that water in Independence,  
6 when Independence Lake is refilling, be credited to  
7 them?

8 MR. VAN CAMP: That was a very complicated  
9 question. If you're speaking to provisions of TROA as  
10 far as the exchange and trading of water, I do believe  
11 there's the ability for other parties to request water  
12 to be stored in Independence. Other signatory parties.

13 MR. VAN ZANDT: So it's under -- under TROA,  
14 but also under the exchange application, you could  
15 physically move water down from Independence to  
16 Stampede, and then have another party have an exchange  
17 of water that now has the water that's filling up in  
18 Independence as water that they have exchanged. That's  
19 your understanding?

20 MR. VAN CAMP: If I understand your question  
21 correct, that is true with the clarification that we're  
22 speaking to previously stored water that has already  
23 been stored in the system as a junior water right  
24 holder.

25 So has been stored at a time that all of the

1 downstream water rights were being met pursuant to the  
2 Federal Water Master.

3 MR. VAN ZANDT: And I guess my question is: If  
4 that happens, you know, in the same year, for example,  
5 isn't that refilling of Independence an expansion of the  
6 water right?

7 MR. VAN CAMP: The expansion of a water right  
8 is an interesting term.

9 The Notice refers to initiation of a new water  
10 right or injury to other legal users of water.

11 I do not believe there is any request to expand  
12 the water right, and those key terms are the storage of  
13 17,500 in any one season from the season I identified  
14 before.

15 MR. VAN ZANDT: So the question is -- and we'll  
16 use your term, initiation of a new water right. If a  
17 TROA party is attempting to exchange their water for  
18 water in Independence, but Independence has already  
19 moved its water down in that same season, you're saying  
20 that there's no -- that there is no possibility that  
21 another party could claim the water that is now filling  
22 up in Independence?

23 MR. VAN CAMP: Any party, meaning any TROA  
24 party?

25 MR. VAN ZANDT: Yes.

1           MR. VAN CAMP: I think there needs to be  
2 arrangements between the TROA parties to allow for  
3 storage and exchange of storage.

4           MR. VAN ZANDT: Mr. Van Camp, isn't the fact  
5 that the Boca and Stampede watershed is a much larger  
6 one that you could actually have a situation where you  
7 could move water down from Independence Lake to Stampede  
8 and Boca that otherwise might have spilled out of  
9 Independence Lake?

10          MR. VAN CAMP: That is a possibility.

11          MR. VAN ZANDT: That's water that could be  
12 exchanged under these petitions, right?

13          MR. VAN CAMP: The petitions would facilitate  
14 the addition of the point of diversion such that we  
15 could initially store water at Boca and Stampede up to  
16 17,500, as under the existing water right, and allows  
17 also for the withdrawal of previously stored water in  
18 Independence to be rediverted, restored in Boca and  
19 Stampede.

20          MR. VAN ZANDT: My specific question was having  
21 to do with there's insufficient capacity in Independence  
22 Lake, therefore you have to evacuate it, and you move  
23 that water down to Stampede because you have much larger  
24 storage facility -- right? -- there.

25                 And doesn't that give you the opportunity to do

1 a lot more with Independence Lake than you otherwise  
2 would? You might have lost that water entirely, right?

3 MR. VAN CAMP: The opportunity to have greater  
4 storage capacity is something that's being requested  
5 through these petitions. Does that initiate a new water  
6 right? In my opinion, no.

7 MR. VAN ZANDT: Even if that means you would  
8 have lost that water from Independence if it had  
9 spilled?

10 MR. VAN CAMP: We are able to make changes to  
11 our water right, and I believe the key components are  
12 stated in my testimony as quantity, season, and source.

13 The capacity of the reservoir is not a key  
14 component in these water rights.

15 MR. VAN ZANDT: Now the transfer that you're  
16 talking about from Independence to Stampede Reservoir,  
17 that's already happening, isn't it?

18 MR. VAN CAMP: You use the word transfer.  
19 These are change petitions. Transfers have a little bit  
20 different terminology in the State of California. The  
21 movement of water is occurring under what I understand  
22 to be an interim storage agreement, yes.

23 MR. VAN ZANDT: Okay. And do you know whether  
24 the Truckee Meadows Water Authority has a permit or  
25 license from the State of California to change the

1 storage location of the Independence water to Stampede?

2 MR. VAN CAMP: It is my understanding those  
3 exchanges, movement of water from Independence, is being  
4 done under its pre-1914 claim for storage in  
5 Independence.

6 MR. VAN ZANDT: So that's the 3,000 acre feet  
7 that Truckee Meadows Water Authority claims is pre-1914?

8 MR. VAN CAMP: That's correct.

9 MR. VAN ZANDT: But you move -- TMWA moves more  
10 water than the 3,000 acre feet into Stampede, doesn't  
11 it, on an annual basis?

12 MR. VAN CAMP: I don't know the volumes being  
13 moved.

14 MR. VAN ZANDT: This exchange of water between  
15 Independence and Stampede that is being proposed here,  
16 once that is approved by the State Water Resources  
17 Control Board there is not going to be any additional  
18 application or petitions in this case to come before the  
19 Board for future exchanges, will there?

20 MR. VAN CAMP: Well, I don't know what the  
21 future holds.

22 But certainly for the implementation of TROA, I  
23 believe these petitions and applications will allow for  
24 the implementation of TROA.

25 If there's subsequent changes outside those

1 operations and activities, each individual water right  
2 holder may have to ask for additional changes; but I'm  
3 not aware of any as I sit here today for the purpose of  
4 implementing TROA.

5 MR. VAN ZANDT: Would the Truckee Meadows Water  
6 Authority be obligated to exchange Independence water  
7 into Stampede or Boca every year?

8 MR. VAN CAMP: I can't speak to whether it's an  
9 obligation.

10 MR. VAN ZANDT: Well, let's assume for the  
11 moment that it's not -- not an annual application and  
12 they have the discretion to pass Independence water  
13 through Stampede and Boca and use it in the Truckee  
14 Meadows, right?

15 But then the next year, they decide that  
16 they're going to make the exchange into Stampede.

17 Isn't the nature of that action a temporary  
18 transfer?

19 MR. VAN CAMP: My understanding, the difference  
20 between a transfer and a petition for change is in the  
21 transfer scenario the changes always revert back to the  
22 original water right holder.

23 In this case, we're simply making changes to  
24 facilitate that coordinated use under each of the water  
25 rights as currently held by each of the parties.

1           MR. VAN ZANDT: But you are in fact changing  
2 the point of diversion, are you not, for Independence  
3 when you move it into Stampede?

4           MR. VAN CAMP: And point of rediversion.

5           MR. VAN ZANDT: Correct.

6           MR. VAN CAMP: Yes.

7           MR. VAN ZANDT: So you don't think that is a --  
8 that's a change that might be characterized as a  
9 temporary transfer?

10          MR. VAN CAMP: No. I believe it's a change in  
11 point of diversion. It's a -- possibly could be  
12 considered a redistribution of storage, depending on  
13 your interpretation of that wording.

14          But I would not refer to it as a transfer in  
15 this case. It's a coordinated operation.

16          MR. VAN ZANDT: But the change of the point of  
17 diversion of this water from Independence to Stampede is  
18 not permanent, right?

19          MR. VAN CAMP: We have not put any time frame  
20 on it. It is a permanent request to add these points of  
21 diversion and rediversion to the Independence License  
22 4196 until a future date if somebody elects to petition  
23 to take them off.

24          MR. VAN ZANDT: And every year, there will be  
25 decision made at some point whether or not to change

1 Independence from -- points of diversion from  
2 Independence Lake down to Stampede, right?

3 MR. VAN CAMP: No.

4 The change in the point of diversion is made  
5 through the authorization of this Board under our water  
6 right. The operational decision to be made will be made  
7 by the parties consistent with the Federal Water Master  
8 and the administrator of TROA.

9 MR. VAN ZANDT: So from here on out, you're  
10 going to have two points of diversion for the water in  
11 Independence?

12 MR. VAN CAMP: I believe three. If I recall  
13 the petitions, that would be Independence Lake,  
14 Stampede, and Boca.

15 MR. VAN ZANDT: I wanted to show you an exhibit  
16 that we used this morning which is the TROA  
17 Environmental Impact Statement. I think it's Exhibit 7.  
18 SWRCB Exhibit 7.

19 MR. VAN CAMP: Is this the graphic, Mr. Van  
20 Zandt?

21 MR. VAN ZANDT: Yes. Still have the excerpt  
22 there. You can use that. So I'll be referring you to  
23 page 3-107. SWRCB 7.

24 So Mr. Van Camp, do you have any familiarity  
25 with the Environmental Impact Statement and

1 Environmental Impact Report for Truckee River Operating  
2 Agreement?

3 MR. VAN CAMP: Some.

4 MR. VAN ZANDT: Were you involved in the  
5 process at all?

6 MR. VAN CAMP: Not directly.

7 MR. VAN ZANDT: Have you ever had the  
8 opportunity to look at the Truckee River Operating  
9 Agreement model and its analysis of potential shortages  
10 of the Carson Division of the Newlands Project?

11 MR. VAN CAMP: Not the model, the code, or any  
12 internal workings of the model, no.

13 MR. VAN ZANDT: So the analysis that you did  
14 for injury to existing water rights did not include the  
15 information that was used to create figure 3.23, is it  
16 fair to say?

17 MR. VAN CAMP: Could you restate the question?

18 MR. VAN ZANDT: The analysis that you did to  
19 determine there would be no injury to existing water  
20 rights for purposes of the petition that you're talking  
21 about for Independence did not include any of the  
22 analysis that's generated figure 3.23 of SWRCB 7, right?

23 MR. VAN CAMP: Not specifically.

24 This analysis I understand has -- is a planning  
25 level model for the purpose of the EIR/EIS. It has

1 other activities occurring within it as to evaluate the  
2 overall reoperation of the system.

3 MR. VAN ZANDT: But it would be fair to say  
4 that it also includes an analysis of the petition to  
5 change Independence Lake that we are discussing here,  
6 right?

7 MR. VAN CAMP: It would incorporate that  
8 operation along with the exercise of the Nevada water  
9 rights that I explained have recently been authorized to  
10 allow the storage of consumptive use water from those  
11 Nevada water rights -- along with other activities that  
12 do occur along with future conditions which possibly  
13 other witnesses may speak to more detail.

14 MR. VAN ZANDT: If there was a right, Mr. Van  
15 Camp, for the Newlands Project to store water in  
16 Stampede for the benefit of the Newlands Project as the  
17 permit now states, isn't it true that by putting  
18 Independence water and some of these other waters that  
19 we've been discussing, exchanging those into Stampede or  
20 certainly into Boca has the potential, if they're  
21 carried over from year to year, to displace water that  
22 might otherwise be there for the benefit of the Newlands  
23 Project?

24 MR. VAN CAMP: It's my understanding first to  
25 speak to the fact that that Newlands Project, as you

1 refer to, is currently identified in the place of use.

2 I believe other factors have come into play  
3 with the holder of that water right electing to use that  
4 water for other purposes which were also within the  
5 place of use of the existing water right.

6 I also believe that there are provisions  
7 protecting the existing storage of water under the  
8 existing water rights within TROA; and back to the point  
9 that the Federal Water Master is managing the storage of  
10 water in these reservoirs based on the priorities, the  
11 storage of that water is not injurious to the  
12 Truckee-Carson -- or the Newlands Project, excuse me.

13 MR. VAN ZANDT: That's based on your  
14 understanding of how the priorities of the storage will  
15 occur, right?

16 MR. VAN CAMP: Correct.

17 MR. VAN ZANDT: Looking at your statement, your  
18 direct testimony for a second, paragraph 34 in  
19 particular. Do you have that in front of you?

20 MR. VAN CAMP: I do.

21 MR. VAN ZANDT: You make a statement here  
22 about -- right in the beginning of that paragraph. It's  
23 your summary paragraph of:

24 Change petitions filed by the United  
25 States, Washoe County Water Conservation

1           District, and TMWA have been agreed to by  
2           the major water users within the  
3           watershed and are only being protested by  
4           entities who receive water exported from  
5           the Truckee River Basin.

6           Do you see that statement?

7           MR. VAN CAMP: Yes, I do.

8           MR. VAN ZANDT: So Mr. Van Camp, in your mind,  
9           is there a distinction to be made between water right  
10          owners within a basin and people who -- an entity that  
11          diverts water from one basin to another with regard to  
12          how their water rights should be perceived?

13          MR. VAN CAMP: This was a factual statement.  
14          And it also relates to the OCAP decision to maximize use  
15          from the Carson River, to minimize the use from the  
16          Truckee River.

17          The fact that in this case the majority, except  
18          for the Truckee Division of the TCID, those -- the water  
19          is being diverted and taken away from the Truckee River  
20          watershed.

21          MR. VAN ZANDT: And you understand, don't you,  
22          Mr. Van Camp, that the Newlands Project on average  
23          diverts somewhere around 100,000 acre feet per year from  
24          the Truckee River and sometimes more than 200,000 acre  
25          feet?

1           MR. VAN CAMP: I do not know those numbers off  
2 the top of my head.

3           MR. VAN ZANDT: Well, assuming that they do  
4 100,000 acre feet, how does that rank them with regard  
5 to water users on the Truckee River, do you know?

6           MR. VAN CAMP: I think their water rights speak  
7 for themselves.

8           The water rights allow that water to be  
9 diverted from the Truckee River Basin to the Carson  
10 Basin. I simply made the point that it is a different  
11 basin.

12          MR. VAN ZANDT: That wasn't my question.

13          My question was: Do you know how they rank  
14 with regard to water users on the Truckee River who have  
15 water rights, assuming they -- taking 100,000 acre feet  
16 a year?

17          MR. VAN CAMP: I think we heard that from the  
18 Bureau of Reclamation and Federal Water Master earlier  
19 today, that they rank junior in priority relative to the  
20 Orr Ditch Decree rights, but they are senior to the  
21 other -- several other storage rights as referred to in  
22 my testimony, if you'd like me to refer to that priority  
23 list.

24          MR. VAN ZANDT: That wasn't what I was  
25 referring to. I was referring to the quantity of water,

1 not the priority date.

2 Do you have any idea how they rank in terms of  
3 the quantity of water that would be diverted?

4 MR. VAN CAMP: No.

5 MR. VAN ZANDT: Mr. Shahroody -- thank you, Mr.  
6 Van Camp.

7 MR. VAN CAMP: You're welcome.

8 MR. VAN ZANDT: Good to see you again.

9 MR. SHAHROODY: Good seeing you.

10 MR. VAN ZANDT: I was interested in your  
11 testimony in the way you fashioned the descriptions of  
12 no injury in particular, and I appreciate putting up  
13 101-618.

14 Did you do any actual analysis of potential  
15 injury to existing water rights, or are you basically  
16 relying on provisions of TROA and 101-618 to form your  
17 opinions?

18 MR. SHAHROODY: I have relied primarily on my  
19 experience and operation of the reservoirs and the  
20 priorities and how they take water and also the OCAP  
21 diversions. So based on those, I formulated my opinion  
22 that there would not be an injury.

23 MR. VAN ZANDT: And does that extend to the  
24 applications for the new appropriations as well?

25 MR. SHAHROODY: That definitely extends to

1 applications for the new appropriations because I have  
2 done extensive engineering analysis on that to show the  
3 water availability and set very strict criteria in terms  
4 of water would not be -- an amount of water being  
5 applied to appropriate would not affect anybody's water  
6 rights. And that, I believe, would be presented -- I  
7 don't know about the time, but tomorrow.

8 MR. VAN ZANDT: So you're going to have a  
9 separate panel on the water availability analysis,  
10 right?

11 MR. SHAHROODY: Yes, sir.

12 MR. VAN ZANDT: And we'll ask you about that  
13 when we get there.

14 So you're basing this -- your opinion's based  
15 on your experience and these protective provisions you  
16 see in TROA and in the Public Law?

17 MR. SHAHROODY: Plus the, as I said, the  
18 operation of the river and an analysis -- I've done  
19 extensive analysis of the operation of the river and the  
20 Newlands Project over the years and have a pretty close  
21 knowledge of what affects and what doesn't affect.

22 MR. VAN ZANDT: But isn't it true that in some  
23 years when Lahontan does not have sufficient supply of  
24 water we can actually have shortages in the Newlands  
25 Project, even though there appears to be plenty of water

1 available in the Truckee River? Isn't that true?

2 THE WITNESS: That's not true.

3 MR. VAN ZANDT: That's not true?

4 MR. SHAHROODY: No.

5 MR. VAN ZANDT: Didn't happen last year or the  
6 year before?

7 MR. SHAHROODY: Lahontan had 100 percent water  
8 delivery to the farmers last year, which was -- the  
9 system was relatively short.

10 And Lahontan also this year has 100 percent  
11 deliveries to the farmers. They get their full  
12 entitlements, 3.5 and 4.5 we talked about.

13 MR. VAN ZANDT: But isn't it true, Mr.  
14 Shahroody, that last year in the Truckee Division the  
15 district was not able to make deliveries in the late  
16 summer?

17 MR. SHAHROODY: That is a separate matter. It  
18 is not a matter of the priorities or the matter of issue  
19 of injury that water rights because under the Orr Ditch  
20 Decree the Tribe has got the highest claim, Claim No. 1  
21 and Claim No. 2.

22 The Tribe then filed under the Nevada law  
23 applications to change its agriculture rights  
24 temporarily for the purpose of wildlife instream flows.

25 And exercising that, of course, as

1 Mr. Blanchard has indicated, while Floriston rates  
2 provide water, but then there comes to a certain time  
3 during the year, like for instance in about September,  
4 the Floriston rate was not being met in fact. There was  
5 not enough water.

6 While there were -- Claims 1 and 2 were put in  
7 place for the transfer of water for the purpose of fish,  
8 then there was some problems in the Truckee Division.  
9 That's because of the priority because you're talking  
10 about 1903 priority versus basically a mid 1800  
11 priority.

12 MR. VAN ZANDT: Isn't it true, Mr. Shahroody,  
13 that what happened last year and I believe the year  
14 before as well was that the Tribe was releasing fish  
15 water up until the first of July, then reduced that --  
16 those fish releases and called them Claim 1 and 2 water  
17 right at the time when the available water of the river  
18 was dropping?

19 MR. SHAHROODY: The Tribe was managing its  
20 resources because it has an obligation to manage its  
21 resources in Stampede and Prosser as well as its rights.

22 And then depending on the flow regime the Tribe  
23 was exercising, the flow regime basically required  
24 certain amount of flows. That could be satisfied from  
25 Claims 1 and 2 change for the fish.

1           So basically, you're correct. The Stampede  
2 water then, last year, was then conserved to be used  
3 this year which then they did. They made releases this  
4 spring for the spawning flows, maintaining the spawning  
5 flows for the Stampede Reservoir.

6           MR. VAN ZANDT: And that water in Stampede,  
7 that -- that's based on that -- Stampede's priority,  
8 right?

9           MR. SHAHROODY: That's correct.

10           Stampede has got the lowest priority just  
11 before Prosser. And then that is under its permit which  
12 has stored the water from previous years and of course  
13 some this year.

14           MR. VAN ZANDT: The source of the water in  
15 Stampede that the Tribe controls, is that part of the  
16 Tribe's unappropriated water claim?

17           MR. SHAHROODY: That would be basically  
18 implicitly, although Stampede has gone its own permit.  
19 And the water gets to be stored in the Stampede is the  
20 water that otherwise go -- would be flowing into Pyramid  
21 Lake. So if you want to term it in that sense, yes.

22           MR. VAN ZANDT: Okay. Thank you.

23           Mr. Buchanan, how are you?

24           MR. BUCHANAN: Okay.

25           MR. VAN ZANDT: It's been a while.

1           You also gave us a list of primarily citations  
2 to TROA, I believe, with regard to protections for  
3 existing water rights as the basis for your analysis  
4 about no injury. Is that right?

5           MR. BUCHANAN: That is correct.

6           MR. VAN ZANDT: Okay. And those provisions,  
7 they have a prospective potential effect of preventing  
8 an injury; do they not?

9           MR. BUCHANAN: Yes.

10          MR. VAN ZANDT: So you could have operations  
11 under these applications that are before the Board here  
12 today that could cause an injury, and then there will  
13 have to be some kind of analysis or evaluation under  
14 TROA to see if some adjustment or some correction has to  
15 be made; is that right?

16          MR. BUCHANAN: That's specifically why Section  
17 1.C.2 was written, in case there is something that would  
18 happen inadvertently. Not on purpose, but  
19 inadvertently.

20          And we also have Section 1.C.1 which identifies  
21 that these Orr Ditch Decree water rights are still under  
22 the control of the Federal Water Master. He is the  
23 scheduling party under TROA.

24          MR. VAN ZANDT: But I wanted to emphasize to  
25 the Board that if a certain activity is associated with

1 these applications that are before the Board right now,  
2 those activities themselves could cause a potential  
3 injury, and your testimony is that there's a mechanism  
4 in TROA that can address that and fix it after the fact;  
5 is that right?

6 MR. PALMER: Excuse me. I may have  
7 misunderstood your question. Are you saying that the  
8 operation we've been discussing --

9 CO-HEARING OFFICER DODUC: Mr. Palmer, if you  
10 could address me. What is your objection?

11 MR. PALMER: I didn't understand the question.  
12 It sounded like he was making a statement of fact that  
13 the operation would be causing injury and then asking  
14 the question.

15 I wasn't sure if he was -- we need some  
16 foundation here about how an injury would be caused. Or  
17 if he's asking the witness to speculate again about if  
18 there was an injury, what would happen.

19 CO-HEARING OFFICER DODUC: Mr. Van Zandt,  
20 please clarify your question.

21 MR. VAN ZANDT: Thank you.

22 Well, my question is that: If the applications  
23 that are before the Board today, the petitions, have the  
24 effect of causing an injury, it's your testimony that  
25 there's a mechanism under TROA that can address that and

1 that can correct that, right?

2 MR. BUCHANAN: Yeah. If there's a hypothetical  
3 injury, what you're talking about here, if it's  
4 associated with an Orr Ditch Decree water right, yes.  
5 There is a mechanism. That's the Orr Ditch Court.

6 And the Federal Water Master would definitely  
7 be involved to monitor the protection of those rights.

8 MR. VAN ZANDT: And I think you made the  
9 distinction between disputes that were subject to review  
10 by the court and the disputes under TROA that would go  
11 through a separate dispute resolution mechanism. I  
12 wasn't sure exactly what are you referring --

13 MR. BUCHANAN: Yes. What I'm talking about is  
14 section 2.B in TROA, and that's divided into two  
15 parties.

16 It says that people that are not signatory  
17 parties to TROA, and they suspect that they have an  
18 issue with their Orr Ditch Decree water right, they can  
19 bring this up with the Federal Water Master or they  
20 could appeal -- again, I'm not a lawyer -- they can  
21 appeal it to the Orr Ditch Court.

22 The second part of 2.B addresses the signatory  
23 parties of TROA. And they have agreed to be bound by  
24 TROA, so therefore what the negotiators wanted to do was  
25 have an internal means of resolving disputes.

1           This is why the special hearing officer will be  
2 selected and approved by the court, Orr Ditch Court.

3           Then they will have their trial hearing before  
4 the special hearing officer, the hearing officer will  
5 make a decision.

6           That decision, my understanding of the  
7 provisions in TROA, is then reviewable by the Orr Ditch  
8 Court.

9           MR. VAN ZANDT: I just want to clarify for the  
10 record again that dispute resolution mechanism, whether  
11 you go to the court or you go to the dispute resolver  
12 under -- for the TROA signatories, that's after the  
13 injury has occurred, right?

14          MR. BUCHANAN: I didn't quite understand what  
15 you were getting at there. I mean I can read the  
16 section to you, 2.B.

17          MR. VAN ZANDT: Well, let's say for example  
18 that you have a situation where a planned activity is  
19 going to take place, and a water right owner says I  
20 think that planned activity is going to injure me.

21          Are you saying that under these provisions of  
22 2.B that a person who is not a signatory to TROA could  
23 bring that to the -- immediately to the attention of the  
24 court under Section 2.B?

25          MR. BUCHANAN: Not being a lawyer, but I would

1 assume under 2.B he would take that to the Federal Water  
2 Master and say that the proposal that is scheduled, and  
3 that would be under Article 11, may have an adverse  
4 impact on my Orr Ditch Decree water rights.

5 Then I would assume it would be the Federal  
6 Water Masters responsibility to look into that because  
7 he still has full authority for the Orr Ditch Decree and  
8 those water rights.

9 MR. VAN ZANDT: There is a potential that the  
10 Federal Water Master could also be the TROA  
11 administrator, isn't there?

12 MR. BUCHANAN: Yes. It's specifically stated  
13 in Article 2 where it defines the administrator and says  
14 the administrator and the Federal Water Master will be  
15 one and the same, the initial one.

16 But the court is not bound by that. The Orr  
17 Ditch Court is not bound by that, according to the  
18 provisions in TROA.

19 MR. VAN ZANDT: And who appoints the TROA  
20 administrator?

21 MR. BUCHANAN: The TROA administrator is  
22 nominated by, oh, a nominating committee. And I'd have  
23 to look in TROA to find the exact parties, mandatory  
24 parties, whomever. This is sent to the Orr Ditch Court.  
25 The Orr Ditch Court makes the final decision and selects

1 that person that will become the administrator.

2 There are a number of things that go through,  
3 and if that doesn't work, then it is up to the Orr Ditch  
4 Court to appoint somebody.

5 MR. VAN ZANDT: And do the signatories who are  
6 on this appointing committee, they can also remove the  
7 administrator?

8 MR. BUCHANAN: It is possible to remove the  
9 administrator. I do not remember the provisions --  
10 they're in TROA -- for cause. You can remove an  
11 administrator.

12 Who can remove the administrator, I do not know  
13 if the mandatory signatories can do that. I don't  
14 remember. But I know the Orr Ditch Court could easily  
15 do it.

16 It is spelled out in Article 2, the means of  
17 removing the administrator and when the deputy  
18 administrator would take over.

19 MR. VAN ZANDT: That's all I have. Thank you.

20 CO-HEARING OFFICER DODUC: And this completes  
21 your cross, Mr. Van Zandt?

22 MR. VAN ZANDT: Yes.

23 CO-HEARING OFFICER DODUC: How much time do you  
24 expect you will take, Mr. Mackedon?

25 MR. MACKEDON: I will take less than what's

1 left, I hope.

2 CO-HEARING OFFICER DODUC: Thank you. I was  
3 going to ask the court reporter if she needed a break.  
4 With that, why don't you go ahead and proceed?

5 MR. MACKEDON: I just have a few short  
6 questions for Mr. Shahroody.

7 --o0o--

8 CROSS-EXAMINATION BY MR. MACKEDON

9 FOR CITY OF FALLON

10 --o0o--

11 MR. MACKEDON: I believe I recall from your  
12 testimony that you said and maybe made it a part of the  
13 exhibit that you -- the clerk produced for us today that  
14 the accumulation of water in storage for the Pyramid  
15 Lake Indian Tribe is for water that would have gone to  
16 Pyramid Lake anyway. Is that right?

17 MR. SHAHROODY: That is correct.

18 MR. MACKEDON: That's a paraphrase.

19 Now that water you're talking about is what  
20 we've known, has come to be known to us involved in  
21 this, as the unappropriated water. Is that right?

22 MR. SHAHROODY: That -- in the present-day  
23 term, that is correct.

24 MR. MACKEDON: That means water that has not  
25 previously been appropriated that went to Pyramid Lake

1 when -- in times of flood, when all the other parties on  
2 the system had been satisfied storage was in place,  
3 right?

4 MR. SHAHROODY: That is correct.

5 MR. MACKEDON: Now -- and that would be --  
6 intend that to be stored in Stampede?

7 MR. SHAHROODY: One of the places. Stampede is  
8 one place, yes.

9 MR. MACKEDON: And the Pyramid Lake Tribe made  
10 application for the -- to the State of Nevada, State  
11 Engineer for a permit for that water, correct?

12 MR. SHAHROODY: State of Nevada -- which I'll  
13 cover it again as part of the water availability  
14 analysis -- State of Nevada and Pyramid Lake Tribe,  
15 under the requirements of -- under the direction of,  
16 again, PL 101-618, they did enter into MOU back in 1993.

17 So to follow under Nevada law because for the  
18 Tribe to appropriate the remaining waters of the Truckee  
19 River, which are not vested, which are not senior to any  
20 other rights, and those have been done -- the Tribe  
21 would actually, would then with those approved permits  
22 in hand, which Tribe has it, then Tribe intends to go to  
23 the State Engineer, file application of change, so they  
24 hold -- those waters would be stored in Truckee River  
25 reservoirs.

1           MR. MACKEDON: This might take longer than I  
2 thought. The answer was yes, I think. I appreciate the  
3 background. And you got to the point that I wanted to  
4 make, for what it is worth.

5           And that is that the permit that was granted by  
6 the State Engineer does not include any right to store.

7           MR. SHAHROODY: The permits granted -- two  
8 permits granted for remaining waters of Truckee River  
9 for the Pyramid Tribe, they do not by their own nature  
10 include storage.

11           They just make it that the Truckee River in  
12 Nevada will be fully appropriated as a result of that.

13           MR. MACKEDON: So when you talk about storage  
14 of those waters, that's hypothetical because the State  
15 Engineer has not granted it. And from what you just  
16 told us, it's really impossible to calculate how you  
17 would do that, right?

18           MR. SHAHROODY: I can answer you that. The  
19 fact of the matter, the Tribe has the permits for the  
20 remaining waters of Truckee River at this moment. The  
21 Tribe gives its consent that water to be used by the  
22 applicants, which are the United States for Stampede  
23 Reservoir and Prosser Creek Reservoirs. And the Tribe  
24 then, as a part of the process, will follow through  
25 filing change application with the State of Nevada.

1 MR. PALMER: Excuse me. I -- I don't really  
2 have an objection, but --

3 CO-HEARING OFFICER DODUC: Mr. Palmer.

4 MR. PALMER: I don't have a problem with  
5 Mr. Shahroody answering these questions, but it really  
6 goes to the next panel on water availability, and so  
7 you're -- the foundation hasn't really been presented  
8 yet in his direct testimony.

9 I don't object to this going on. Just noting  
10 that it may be more efficient if this is done subsequent  
11 to the water availability discussion.

12 MR. MACKEDON: I don't agree with that but --  
13 because the reason I don't is Mr. Shahroody --

14 CO-HEARING OFFICER DODUC: Mr. Mackedon, please  
15 get closer to the microphone.

16 MR. MACKEDON: Mr. Shahroody in his testimony  
17 referred to these waters that he said would have gone to  
18 Pyramid Lake anyway, and I'm just getting a definition  
19 of those waters.

20 The matter --

21 CO-HEARING OFFICER DODUC: I'm sorry. Are you  
22 talking about the water for storage as part of the  
23 application?

24 MR. MACKEDON: What I'm referring to is the  
25 waters he referred to when he said that the waters that

1 are going to be accumulated in storage for Pyramid Lake  
2 Indian Tribe is water that would have gone to Pyramid  
3 Lake anyway.

4 He is in fact referring to what we called the  
5 unappropriated waters. The Tribe has a permit for that.  
6 The Tribe does not have a permit to store it.

7 And that point was made clear and brought home  
8 by the Tribe's attorneys, and there's a transcript of --  
9 I think the last hearing on that. It was TCID Exhibit  
10 207 counsel may refer to.

11 And I don't have any further questions.

12 CO-HEARING OFFICER DODUC: Thank you. Do you  
13 need to --

14 (Discussion with court reporter)

15 CO-HEARING OFFICER DODUC: Okay.

16 Mr. DePaoli, any redirect?

17 --o0o--

18 REDIRECT EXAMINATION BY MR. DePAOLI

19 --o0o--

20 MR. DePAOLI: Mr. Van Camp, Mr. Van Zandt asked  
21 you about some storage that takes place today under the  
22 interim storage agreement. Do you recall that line of  
23 questioning?

24 MR. VAN CAMP: Yes, I do.

25 MR. DePAOLI: And one of the things he asked

1 you was about whether storage of more than 3,000 acre  
2 feet occurs under the interim storage agreement today.  
3 Do you recall that?

4 MR. VAN CAMP: I do.

5 MR. DePAOLI: Does the Truckee Meadows Water  
6 Authority have another vested right in California that  
7 it uses as part of that interim storage agreement?

8 MR. VAN CAMP: Yes, it does.

9 It is my understanding that Donner Lake also  
10 has a pre-1914 claim which is at this time held directly  
11 or in partnership with Truckee-Carson Irrigation  
12 District.

13 MR. DePAOLI: Are you not aware of the decision  
14 made in the case in the superior court in the county  
15 of -- Nevada County, California regarding the partition  
16 of that water right?

17 MR. VAN CAMP: I am aware of it, yes.

18 MR. DePAOLI: Are you aware that the  
19 interlocutory judgment partition has been entered?

20 MR. VAN CAMP: I believe that is correct.

21 MR. DePAOLI: So they -- TMWA no longer holds  
22 that as tenants in common with TCID?

23 MR. VAN CAMP: That is correct.

24 I was speaking to the recent water use  
25 statement that was filed with this State Board that was

1 filed jointly.

2 MR. DePAOLI: You were also asked a question by  
3 Mr. Van Zandt regarding whether water from Independence  
4 that perhaps is rediverted into Stampede or Boca could  
5 displace the project water of either of those  
6 reservoirs.

7 You may not know the answer to this question,  
8 but are you familiar with the spill priority provisions  
9 in the Truckee River Operating Agreement?

10 MR. VAN CAMP: I understand those priorities  
11 are in the operating agreement to protect the other  
12 water that's in the existing reservoir.

13 MR. DePAOLI: Do you know the details of those?

14 MR. VAN CAMP: I do not.

15 MR. DePAOLI: Mr. Van Zandt also asked you some  
16 hypotheticals regarding, if I understood the  
17 questioning, something along the lines that through an  
18 approval of these change petitions at some point in time  
19 TMWA might have moved water from Independence Lake to  
20 one of the downstream reservoirs. And the hypothetical  
21 concerned whether then some other party could store  
22 Independence water in the empty space in Independence  
23 Reservoir. Do you recall that line of questioning?

24 MR. VAN CAMP: Yes.

25 MR. DePAOLI: Would -- in any situation like

1 that, would that storage still have to take place, A, in  
2 compliance with the water right that the person or  
3 entity was exercising?

4 MR. VAN CAMP: That is correct. There is no  
5 increase in quantity, season of those existing water  
6 rights.

7 MR. DePAOLI: Would the person exercising that  
8 right have to be in priority to store that water?

9 MR. VAN CAMP: Correct.

10 MR. DePAOLI: I have no other redirect.

11 CO-HEARING OFFICER DODUC: Thank you.

12 Mr. Palmer, redirect.

13 MR. PALMER: Yes, thank you.

14 --o0o--

15 REDIRECT EXAMINATION BY MR. PALMER

16 --o0o--

17 MR. PALMER: Mr. Shahroody, I think just one  
18 clarifying question.

19 You were asked regarding the fish flow and  
20 water in Stampede, and there were some questions  
21 regarding the Tribe's use of that water, release of that  
22 water downstream, the temporary change applications in  
23 Nevada. Do you recall that discussion?

24 MR. VAN CAMP: Yes, I do.

25 MR. PALMER: Is it your understanding that use

1 of that water by the Tribe was done in accordance with  
2 the existing water right priority on the Truckee River?

3 MR. VAN CAMP: Yes, correct.

4 MR. PALMER: Thank you.

5 That's all I have for Mr. Shahroody. I have  
6 one for Mr. Buchanan.

7 CO-HEARING OFFICER DODUC: Please go ahead.

8 MR. PALMER: Again, a clarifying question.

9 There seemed to be a little bit of confusion  
10 regarding the administrator under TROA and about how  
11 they could be removed or not removed. I thought it  
12 would just be easier to do a quick clarification.

13 I've asked Mr. Buchanan to briefly refer to  
14 TROA section, I believe it's 2.A.5. He can read that to  
15 himself, and then I'd ask you to quickly clarify that  
16 issue regarding the removal.

17 MR. BUCHANAN: I have already read it.

18 As I mentioned earlier, the administrator would  
19 be nominated by the nominating committee. The  
20 nominating committee is composed of one representative  
21 from each of the signatory parties.

22 A majority of the signatory parties may  
23 petition Orr Ditch Decree to remove the administrator,  
24 and the administrator may or may not do this. That --  
25 excuse me -- the Orr Ditch Decree may or may not do

1 that.

2 Now, if the Orr Ditch Decree removes the  
3 Federal Water Master, that automatically removes the  
4 administrator.

5 MR. PALMER: You said Orr Ditch Decree. Did  
6 you mean Orr Ditch Court?

7 MR. BUCHANAN: Orr Ditch Court. I'm sorry.

8 MR. PALMER: Thank you. That's all I have.

9 CO-HEARING OFFICER DODUC: Thank you, Mr.  
10 Palmer.

11 Recross, Mr. Van Zandt?

12 MR. VAN ZANDT: I have none.

13 CO-HEARING OFFICER DODUC: Recross, Mr.  
14 Mackedon?

15 MR. MACKEDON: No, thank you.

16 CO-HEARING OFFICER DODUC: Questions, Chair  
17 Hoppin?

18 CO-HEARING OFFICER HOPPIN: No.

19 CO-HEARING OFFICER DODUC: Questions from  
20 staff?

21 ENGINEERING GEOLOGIST MURPHEY: Yes.

22 CO-HEARING OFFICER DODUC: Mr. Murphey.

23 ENGINEERING GEOLOGIST MURPHEY: I had a  
24 question for Mr. Van Camp.

25 The petitions asked for additions of points of

1     rediversion and points of rediversion. A previous  
2     witness, Mr. Blanchard, I believe, stated that they may  
3     divert side water downstream at the points of  
4     rediversion.

5             Do you know if the side water is diverted under  
6     a Nevada water right?

7             MR. VAN CAMP: I believe the side water  
8     accounts towards the Floriston rates which is used for  
9     meeting the Orr Ditch water rights and the Nevada water  
10    rights, yes.

11            ENGINEERING GEOLOGIST MURPHEY: So the side  
12    water would be, since it's at Floriston, it wouldn't be  
13    taken into account under a Nevada water right?

14            MR. VAN CAMP: I believe it is taken into  
15    account through the Nevada water rights and the Orr  
16    Ditch Decree.

17            ENGINEERING GEOLOGIST MURPHEY: Okay. For all  
18    the new points of rediversion that are applied for in  
19    the petition?

20            MR. VAN CAMP: I don't know that I have the  
21    answer for that.

22            ENGINEERING GEOLOGIST MURPHEY: Okay. Thanks.  
23    That's all I have.

24            CO-HEARING OFFICER DODUC: Any other questions?  
25    All right.

1           I want to thank everyone. You were concise in  
2 your testimony today. You were focused in your cross,  
3 somewhat, and redirect and recross.

4           And just for that, I'm going to let you leave  
5 early. We will resume tomorrow at 9 o'clock with Mr.  
6 Shahroody and Mr. Buchanan again for Topic No. 5. Thank  
7 you all.

8                                           \*   \*   \*

9                                           (Thereupon the WATER RESOURCES CONTROL  
10                                          BOARD hearing adjourned at 4:41 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
6 reported in shorthand by me, Linda Kay Rigel, a  
7 Certified Shorthand Reporter of the State of California,  
8 and thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or  
10 attorney for any of the parties to said meeting nor in  
11 any way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 this August 11, 2010.

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LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196

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