

**PROJECT D: SCIENCE, POLITICS, AND WATER POLICY:  
RESOLVING CONFLICT IN THE WALKER RIVER BASIN**

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## CHAPTER ONE: CHANGING CONTEXTS IN WESTERN WATER POLICY

### INTRODUCTION

*History is primarily a record of the tug-of-war between people and their environment. Half of their environment—the social milieu—humans construct themselves. The other half they come to accept after settling in a particular locale.... The elemental components of the Nevada heritage are land, water, and the habitat that nature has provided. Since the days when Jedediah Smith and Peter Skene Ogden first probed the edges of this region in 1826, our predecessors cursed the desert and mountain terrain; they feared the blistering heat of summer and the blizzards of winter. But also, by steps as slow as those of the earliest pioneers, Nevadans have come to realize that the geology, the ecology, and the atmosphere of Nevada and the surrounding area are, in combination, greater treasures than all the precious metal of the Comstock Lode or the wealth of the gambling casinos (Hulse, 2004: 1).*

There is a saying in the western part of the United States: Whiskey is for drinkin' and water is for fightin'.<sup>1</sup> Those living west of the 100<sup>th</sup> meridian know the truth behind this saying all too well. From the beginning of settlement of the American West, “wars” have been waged over this scarce and precious resource. The Great Basin, in which most of the state of Nevada is located, is a vast expanse of land that includes most of northern Nevada, half of Utah, and parts of California, Oregon, Idaho, and Wyoming. The Great Basin is the “land of interior drainage” because the rivers run inland toward lakes or sinks—none of its mostly snow-fed surface waters ever make it to the ocean or the sea (Hulse, 2004: 3).<sup>2</sup> The Sierra Nevada mountain range, with peaks reaching 10,000-12,000 feet, blocks storms from the Pacific Coast. Horton calls this damper on precipitation a “rain shadow” over the Great Basin (1996: i-iii).

Most western states receive less than 20 inches of precipitation each year. The state of Nevada receives less than 10 inches of precipitation, making it the driest state in the union. In west central Nevada, which is the location of the Walker River, average annual precipitation is less than five inches (Horton, 1996a:i-iii).

A key feature of three of Nevada's major river systems—Truckee, Carson, and Walker—is that each originates in California. The Truckee River rises from Lake Tahoe—its major water source—and flows about 120 miles, through the Truckee Meadows (Houghton, 1996a:61). The Truckee historically terminated in Pyramid Lake, but since completion of Derby Dam in 1905 to 1968, an average of 250,000 acre-feet-year (a-f-y) was diverted from the Truckee River to Churchill County, where it has been

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<sup>1</sup> This saying purportedly originated in the state of Texas.

<sup>2</sup> Geologists describe the region of which the Great Basin is a part, as the “Basin and Range province”; this province also includes part of Southern Nevada, Arizona, New Mexico, western Texas, and Mexico (Hulse, 2004: 3).

used, along with Carson River water, to support irrigated agriculture in the area (Horton, 1996:1-7).<sup>3</sup>

The Carson River rises in the high Sierra Nevada in Alpine County, California. Its east fork originates on the slopes of Sonora Peak, at 11,000 feet; the west fork originates near Carson Pass. The two forks flow north to cross the Nevada border and merge in the Carson Valley, where it has been used to irrigate farmlands in Churchill and Douglas Counties (Hulse, 2000: 12). The Carson River naturally flowed 180 miles into the Carson Sink. However, starting in 1915, the waters of the Carson River have been captured and stored in Lahontan Reservoir, which is part of the Newlands Project,<sup>4</sup> for distribution to project farmers (Houghton, 1994: 85).

The Walker River originates on the Sierra Crest's western boundary of Yosemite National Park. Through its two forks, the East and the West, it winds through mountain valleys and canyons along the California [Mono County]-Nevada border to Smith and Mason valleys, where a significant portion of the surface waters are used to support irrigated agriculture. The two forks merge five miles south of Yerington, becoming the mainstem Walker River. By the time the two forks merge, the volume of each has been greatly diminished, having been used to support extensive irrigated agriculture in Mason and Smith Valleys, in Lyon County, Nevada. The river then passes by ranches and farms surrounding Yerington, through a state of Nevada wildlife refuge and Lahontan cutthroat trout hatchery, across the boundary of the Walker River Paiute Reservation, and eventually into Walker Lake (Horton, 1996b).<sup>5</sup> The reservation and the lake are located in Mineral—not Lyon—County. Besides sharing these three rivers, California and Nevada also share Lake Tahoe. One-third of the lake lies on the Nevada side of the border; the other two-thirds are in California.

These circumstances ignited competition for water in the mid-20<sup>th</sup> century, not only between the two states, but between users within each state. For over a century, attempts have been made to resolve conflicts over these shared water resources (Jackson and Pisani, 1972, 1973, 1974).

### **Managing Western Water: The Early Years**

The management of underground and surface water resource systems in the United States is achieved through a complex arrangement of case law, judicial decrees, doctrines, statutes, regulations, and permit systems—and is carried out by a diverse set of organizations at all three governmental levels (federal, state, local). The federal government has long been “the most important single player” (Reisner and Bates,

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<sup>3</sup> This translates to about half the flow of the Truckee River, on average. According to Joe Gremban, President of the Sierra Pacific Power Company in the late 1980s, the diversion took, at time, ALL of the water in the Truckee at Derby Dam, leaving nothing to flow to Pyramid Lake.

<sup>4</sup> The Newlands Project was the first reclamation project constructed by the Bureau of Reclamation. Located in Churchill County, this project has been the focus of more than 150 years of conflict and litigation. For more information on this project, see Wilds, et al., 1994; Wilds and Acton, 1997; and Wilds and Acton, 2005.

<sup>5</sup> The Humboldt River, contained wholly within the state of Nevada, flows out of the Ruby, Jarbidge, Independence, and East Humboldt mountains. It empties, 265 miles later, into the Humboldt Sink (Horton, 1996b: iii). Because California and Nevada do not share this resource, it is not discussed here. The Colorado River, the major source of water in southern Nevada, is also outside our scope.

1990:8) in water policy in the West, largely through the policies and activities of the US Army Corps of Engineers (COE) and the Bureau of Reclamation (Reclamation). Mechanisms for control also exist in all three branches of the federal government. States have developed their own mechanisms for regulation and control, which tend to reflect wide variation in supply, demand, public attitudes, and historical precedent. At the local level, water management officials must adapt to changes in state and federal policies. At the bottom of this tier are the actual water users. It is not surprising, then, that conflict among managers and users at all levels is as old as the history of western settlement.

The first major Anglo use of water in the West was for mining, followed by agriculture.<sup>6</sup> Both uses require the removal of water from the streambed, applying the water, and then returning to the river the small portion that remains. The reality of water uses in the early West gave rise to the three major principles of the “prior appropriation doctrine”: the priority rule, the diversionary requirement, and the beneficial use requirement<sup>7</sup> (Welden, 2003).

The priority rule states that the first person to divert water on a stream has the prior right to use the water: “first in time, first in right.” Thus, users of appropriated water are assigned priority according to the verifiable dates on which each began to use the water. The amount of the first priority must be satisfied, or “made whole,” before the next claimant can use any water. In times of shortage, the junior users may be required to reduce operations—or to cease them altogether. Water must be diverted from rivers and streams; the date the water was diverted often serves as the priority date for use of that water. Appropriated water must also be put to a “beneficial” use within a given amount of time. Failure to do so may result in a challenge to or loss of the right to use the water. Beneficial uses were based in common law, and initial western uses, such as mining and irrigation, were eventually incorporated into statutory law as beneficial uses.

The ultimate result of these principles has been the development of a “consumptive” ideology, which historically perpetuated the notions that (1) water not used is wasted or lost; (2) only economic, diversionary uses are beneficial; and (3) individuals have the right, if all other requirements are met, to use the allotted amount of water no matter what conditions prevail—even to the detriment of other, subordinate users or the surrounding environment. Moreover, if a water-rights-holder does not continuously use the water for defined beneficial purposes, those rights may, under certain specified conditions, be considered abandoned or forfeited (Houghton, 1994:66). The prior appropriation doctrine being the dominant water allocation and use principle in the West has contributed greatly to the conflicts that have arisen over water.

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<sup>6</sup> To be sure, Native peoples relied on the same waters in situ for much of their sustenance. Those waters were also a source of cultural identity for the tribes. This is discussed in more detail in a later chapter.

<sup>7</sup> All 17 western states adopted the appropriation doctrine. Nine western states also apply the riparian doctrine to lands adjacent to surface waters. This doctrine was developed in England and adopted by eastern states, where water was relatively abundant. Under this doctrine, those who own land abutting a body of water have the right to reasonable use of that water. The rights are not fixed and exist in perpetuity. No administrative mechanisms, therefore, were needed to administer these rights (Welden, 2003).

## Emerging Conflicts and the Search for Solutions

The first major series of water disputes between the states of California and Nevada arose in the mid-19<sup>th</sup> century, when Nevada questioned the right of private interests to draw off the waters of Lake Tahoe to encourage and support growth in northern California. Although each state controlled individual water rights within its borders, who had the right to determine allocation of the three river systems (the Carson, Truckee and Walker) shared between the two states? What role would or should the federal government play in making these determinations? The courts eventually became involved in attempting to answer these questions, resulting in a number of agreements and decrees to govern the use of the waters of Lake Tahoe and the Truckee, Carson, and Walker River systems.<sup>8</sup> None of these provided any definitive, long-term solutions to water allocation and use issues in either state, however.

By the early 1950s, both California and Nevada were worried that the other would start taking more than its fair share of the waters of the three rivers they shared. California politicians wanted assurance that some of the flow of all three rivers would be available to support future state growth. Nevada's leaders were fearful that California would eventually lay claim to the waters that, although originating in California, flowed naturally into Nevada. Both sides came to realize that an interstate water compact was the only way to get a comprehensive water agreement between them (Wilds et al., 1994:180).

Compact commissions were formed by both California and Nevada early in 1955, and when President Eisenhower signed enabling legislation on August 4, 1955, the framework was in place to begin negotiations in earnest. There was much optimism:

*At the first joint meeting of the two state commissions held on January 17, 1956, Shamberger [Nevada State Engineer] sounded an optimistic key-note: "The job that is ahead of us is a large one. We are facing a rather unique situation. I don't know of any similar situation in the country where we are attempting to negotiate a compact on three separate stream systems and one interstate lake.... But I am sure that we have a group here that within a few months, a year or so, will be able to come to agreement" (Jackson and Pisani, 1974:255).*

Yet it took more than 14 years to finally reach an agreement. The California-Nevada Interstate Compact Concerning the Waters of Lake Tahoe, Truckee River, Carson River, and Walker River Basins was finalized on June 25, 1968 and ratified by California in 1970 and Nevada in 1971 (Wilds et al., 1994) (see Appendix A).

Both states lobbied for and expected Congressional approval, yet this was withheld. From 1971 to 1979, Nevada and California congressional delegations proposed six different bills seeking ratification; none even received a hearing. One final major effort was made by Nevada Senator Paul Laxalt in 1985. Although a hearing was held on the bill he introduced, the bill never became law (US Senate, 1990:9). As discussed below, there were just too many issues left unresolved by the compact for it to be ratified.

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<sup>8</sup> These include the Truckee River General Electric Decree (1915), the Truckee River Agreement (1935), the Orr Ditch Decree (1944), the Alpine Decree (1980), and Decree C-125 (1939).

Since that time, in a show of mutual trust and support, both California and Nevada retained the provisions of the compact in their respective laws, and agreed to abide by those terms at the state level, as a “gentlemen’s agreement” (Haller, 1989).

### **Reasons for Failure**

The failure of various parties to obtain ratification of the compact for more than 15 years was largely because the versions of the compact submitted to Congress emphasized the protection of the water rights of those involved in negotiating it, to the exclusion of other interests (Haller, 1989). In particular, Article I (Purposes) states the following:

*Consistent with the provisions of the authorization Acts of the State of California and the State of Nevada and the United States, the major purposes of this compact are to provide for the equitable apportionment of water between the two states; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins (emphasis added) (1968).*

The prior appropriation doctrine has that bias built into it: to maintain the status quo, which translated to continued use of these water supplies to largely to support irrigated agriculture.

Nonetheless, significant efforts have been made to adapt state water law to accommodate changed and changing circumstances. Getches suggests that a virtual “revolution” in western policy has been underway since the 1980s. For example, there is an increased emphasis on conservation and efficiency, water marketing, water leasing, environmental protection, sustainability, and improved water management strategies (1997: 4). These trends have been, in turn, driven by changing western demographics.

The west is the fastest growing<sup>9</sup> region in the United States, as well as home to more than half of the country’s population. It is also increasingly urbanized. As more and more people move into the cities, rural American is “emptied out” (Getches, 1997: 3). Politicians and policy makers have been forced to recognize these changes, and alter public policy to fit changing circumstances.

States are now asking difficult questions about the use of water for irrigated agriculture: Is this use truly beneficial? Are the methods of diversion and distribution really efficient? Is the amount of water diverted for irrigated agriculture reasonable in the current climate? As a consequence, greater value is being placed on the western environment in general and on water-dependent environmental resources in particular. These compete with traditional, consumptive uses of water, especially water used in irrigated agriculture, which had consumed the lion’s share of water in the West for decades. Congressional refusal to ratify the 1968 compact can be seen as tacit recognition of these policy changes.

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<sup>9</sup> Nevada is the fastest growing state in the nation.

Failure to achieve ratification after the 1970s is attributable to other factors as well, such as the nature of interstate compacts. Although the Constitution does require congressional ratification of interstate compacts, Congress routinely ratifies most of these, deferring to agreements that were negotiated primarily by two or more states. The precedent on interstate compacts that involved tribal water rights was to include a statement to the effect that “nothing in this compact would affect the rights of the United States or its Indian wards” (Pelcyger, 1995). The California-Nevada compact included an opposite provision, which stated that the compact would not be effective unless “Congress provides in its consent legislation...that the...provisions of the compact shall be binding on the agencies, wards, and instrumentalities of the United States of America” (Article XXII, Section 3). One of the last things then-Secretary of the Interior (Interior) Stewart Udall did before leaving office was to write a letter to the Office of Management and Budget (OMB) expressing Interior’s opposition to the compact, citing both that unusual provision and the impact it would have on Pyramid Lake if ratified in its present form. Pyramid Lake had by that time been receiving recognition as a national treasure that should be protected. It was also home to two endangered species (the Lahontan cutthroat trout and the cui-ui). The Justice Department was vehemently opposed as well, as it was contrary to the interests of the federal government to bind itself to the terms of a state agreement (Wilds, 2008).

Changes in western water policy<sup>10</sup> are partly attributable to the rise and evolution of the environmental movement as well, which raised public consciousness of the values associated with recreation, fish, and wildlife and enhanced awareness of the impact of water development projects on these values. Wilds, et al., note that in the West this has translated into recognition that irrigated agriculture has been a significant “environmental offender” in its own right. For example, agriculture is a principal source of non-point pollution. The long-term effects of pesticides, fertilizer and trace elements in drainage and return flows were beginning to be recognized. Environmental groups, armed with environmental laws and court precedents, became much more effective at forcing something to be done about those impacts (1994: 177).

Throughout the 1960s and 1970s, Congress passed a host of laws designed to put into place national environmental protections—to clean up the damage that had already been done and to prevent further degradation. All of these laws were passed with little political fanfare.<sup>11</sup> Although the election of Ronald Reagan in 1980 may have signaled the end of the environmentalism of the 1970s, the laws and the bureaucratic machinery to carry them out have for the most part remained. Although many of these acts were

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<sup>10</sup> Since the early 1970s, western states have been making creative adjustments in their water rights systems to accommodate conditions on transfers and exchanges of water rights, permits for a designated period of time, the acquisition and reallocation of existing water rights through purchase. In addition, non-traditional uses of water have become recognized as beneficial in state water laws, including instream flows, water quality, recreation, and aesthetics (Wilds, 2008:11).

<sup>11</sup> For a complete listing of these laws, see Norman J. Vig and Michael E. Kraft (eds.), *Environmental Policy: New Directions for the Twenty-First Century* (Washington, D.C.: CQ Press, 2006).

amended in various ways in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries, environmentalism, both as a movement and a part of American culture, is here to stay.<sup>12</sup>

The environmental impact of irrigated agriculture on two of Nevada's lakes—Pyramid and Walker—has not gone unnoticed. Eighty percent of the surface waters of the Truckee, Carson and Walker rivers have historically been used to support irrigated agriculture.<sup>13</sup> Pyramid and Walker are two of the six larger desert terminal lakes in Western North America. They also are two of the three desert terminal lakes in this area that contain a freshwater fishery.<sup>14</sup>

By 1966, the level of Pyramid Lake had dropped by 80 feet, exposing sandbars at the mouth of the Truckee River; fewer and fewer fish were able to spawn. After passage of the Endangered Species Preservation Act of 1966 (P.L. 89-669), the Lahontan cutthroat trout (*Oncorhynchus clarki heshawi*) and the cui-ui<sup>15</sup> (*Chasmistes cujus*), both found at Pyramid Lake, were listed as threatened and endangered, respectively.<sup>16</sup> This enabled the Pyramid Lake Paiute Tribe to argue strongly for obtaining more water for the lake (Wilds and Acton, 2005).

By 1966, as well, the level of Walker Lake had dropped by 108 feet.<sup>17</sup> This, coupled with greatly increased levels of total dissolved solids (TDS), threatened the lake's viability as a fishery. Moreover, Nevada was experiencing rapid growth, and demands were being made by the local water purveyor, Westpac Utilities (now the Truckee Meadows Water Authority), for increased storage capacity for use in times of drought. Demands were also being made by environmentalists for the preservation, enhancement, and maintenance of the Lahontan Valley Wetlands, which, by 1987, had been reduced by 85% (from 113,000 acres to about 15,000). These wetlands (which include the Stillwater Wildlife Management Area) comprise “the largest primary wetlands within the Lahontan Valley. Over 410,000 ducks, 28,000 geese and 14,000 swans have been observed using the area. . . . Over 4,500 breeding pairs of ducks. . . have been recorded in the area, producing up to 25,000 waterfowl annually” (U.S. Senate, 1990:16). It is home to the largest breeding colony of white-faced ibis in North America. Bald eagles winter there. American white pelicans fly to their nesting colony there to feed (Wilds, et al., 1994:173-199). These wetlands require significantly increased firm supplies of clean water in order to survive.

By the time the compact was submitted to Congress, then, the circumstances surrounding all three river systems had changed dramatically. Realizing this, Congress refused to ratify the compact.

However, beginning in 1986, the newly-elected Nevada senator, Harry Reid, revived the idea of an interstate compact. He brought the parties together to negotiate a

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<sup>12</sup> For a complete history of the origin, evolution, and impact of the environmental movement, see: Riley E. Dunlap and Angela G. Mertig (eds.), *American Environmentalism: The U.S. Environmental Movement: 1970-1990* (Philadelphia, PA: Taylor and Frances, 1992).

<sup>13</sup> In the case of Walker Lake, that figure is 90%.

<sup>14</sup> The other is Summit Lake, also located in Nevada.

<sup>15</sup> The cui-ui are found nowhere else in the world—they exist only in Pyramid Lake.

<sup>16</sup> The Lahontan cutthroat trout were initially classified as endangered but soon reclassified as threatened to allow fishing according to state regulations, since this species occurs in other Nevada locations.

<sup>17</sup> As of 2008, the lake level had dropped 145 feet.

compact that recognized the changed circumstances such that it would pass congressional scrutiny. The stakeholders included the states of California and Nevada, the United States government, the Truckee Meadows Water Authority (formerly Westpac Utilities of Sierra Pacific Power Company), the Newlands Project irrigators,<sup>18</sup> the Pyramid Lake Paiute Tribe, and the Fallon Paiute Shoshone Indian tribes. The end result was passage of an interstate compact, Public Law 101-618, in November 1990 (see Appendix B).

Title I of that act, the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act, dealt with the failure of the federal government to ensure that the tribe's water and other rights were preserved. Title II of the settlement act, the Truckee-Carson-Pyramid Lake Water Rights Settlement, settled water rights allocation issues between California and Nevada, allocating 90% of the Truckee and 80% of the Carson rivers to the state of Nevada, leaving the rest to California to support future growth on its eastern slope. It resolved most of the water allocation and use issues among users within Nevada by developing a new water management regime, the Truckee River Operating Agreement (TROA). This agreement will ultimately maximize water distribution to the major stakeholders, including Pyramid Lake, TMWA, Newlands Project farmers, Churchill county wetlands, and fishing and recreational enthusiasts (Wilds, 2008).<sup>19</sup> It also ended decades of litigation among most of the parties.

At the time of its passage, P. L. 101-618 was hailed as revolutionary. Perhaps, some observers noted at the time, this was the beginning of the end of irrigated agriculture in the West. The law also was touted as a model, both in its process and outcome, which other states might adopt to resolve their own water resource issues (Stalnaker, 1990; Wilds et al., 1994). However, it did not include the Walker River, even though it had been included in the earlier compact. Senator Reid, who ultimately made this decision, did so for several reasons.

He believed that the water allocation and use issues on the Truckee and Carson Rivers were intertwined with each other—but not with the Walker River. The waters of both the Carson and Truckee rivers have historically been used to support irrigated agriculture in the Newlands Project area. Any decision affecting the one would impact the other. The federal government was plaintiff or defendant in much of the litigation that had emerged over the past several decades. The government was also being pressured to address the environmental damage that had been caused by the project. In addition, in 1986, when Senator Reid was gearing up for the negotiations, the various stakeholders on the Carson/Truckee system had decided to engage in such negotiations. Two Indian tribes had been significantly impacted by the Newlands Project. Senator Reid believed that the time was ripe to address those issues (Reid, 2008).<sup>20</sup>

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<sup>18</sup> The Truckee Carson Irrigation District (TCID), which represented the Newlands Project farmers, withdrew from the process in June, 1988. They saw no purpose in negotiating for less water.

<sup>19</sup> Although P.L. 101-618 mandated the negotiation of TROA, it took the parties 17 years to reach an agreement. TROA was finalized and signed by the parties in August 2008.

<sup>20</sup>For a complete history of those negotiations and the outcomes they produced, see Wilds, 2008, *Calming Troubled Waters: The Newlands Project Revisited* (unpublished manuscript submitted to the University of Nevada Press in Summer, 2008).

The water stakeholders in Walker Basin were not as ready to negotiate as were those in the Carson and Truckee River Basins. Additionally, the federal government had not been involved in the development and operation of the irrigation systems in Walker Basin; these were privately owned and operated. Reid believed that the situation in the Walker River Basin was different enough that it should be tackled at another time, using a different process (Reid, 2008).

### **On to the Walker River**

The approach taken in the Walker River Basin is both creative and unique. It is not the result of negotiations. It is not a water-importation project. It is not an inter-basin transfer. It is not directed at changing water use from agriculture to municipal or industrial use. It is not a large-scale public works project aimed at improving storage and conveyance infrastructure. It is a federally-funded, science-driven attempt to purchase enough water from agricultural users in the Walker Basin to preserve Walker Lake, while minimizing or mitigating economic and ecological impacts to the region.<sup>21</sup>

This, then, is the story of that effort—come to be called the Walker Basin Project—as it has evolved.

Chapter Two examines major influences that shaped the creation and development of the state of Nevada. These include mining, which led to the adoption of prior appropriation as the major (and eventually, only) water rights doctrine in the state. Chapter Two also includes an overview of the role the Church of Jesus Christ of the Latter-Day Saints (Mormons) played in shaping Nevada culture and politics. Chapter Three turns attention to two other major influences on Nevada culture and politics: cattle-ranching and agriculture. It includes a discussion of the impact these forces have had on Native Americans in general, and the Northern Paiutes in particular. This chapter ends with a discussion of the contemporary situation, which led to passage of P. L. 109-103.

Chapter Four examines the legislative and political history of P.L. 109-103, as well as the specifics of the Walker Basin Project that emerged from that legislation. It includes a discussion of the process used to attempt to save Walker Lake—and to begin to address water-resource, environmental, and economic problems in the Walker River Basin as a whole. Chapter Five discusses the findings of the research projects, and the ways in which those findings have been used in accomplishing the project's goals. It ends with by offering observations and insights about the progress of that project to date.

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<sup>21</sup> It remains to be seen whether and to what extent that research will result in a “science driven” acquisition program or whether the program be informed by the results of that research over time, as well as shaped by politics and other factors as the program evolves.

## CHAPTER TWO: THE PAST AS PROLOGUE—THE WALKER RIVER BASIN

*Visibly our new home was a desert, walled in by barren, snow-clad mountains. There was not a tree in sight. There was no vegetation but the endless sage-brush and greasewood. All nature was gray with it. We were plowing through great deeps of powdery alkali dust that rose in thick clouds and floated across the plain like smoke from a burning house. . . Long trains of freight-wagons in the distance . . . suggested pictures of prairies on fire. These teams and their masters were the only life we saw. Otherwise we moved in the midst of solitude, silence and desolation (Mark Twain, approaching Carson City, 1871, *Roughing It*).*

### THE PULL OF THE WEST

Prior to the mid-19<sup>th</sup> century, there was minimal settlement of the land west of the 100<sup>th</sup> meridian. The vast territory on the other side of the Mississippi River was regarded as a formidable, inhospitable wasteland, partly due to stories about the explorers, mountain men, and trappers of the early 1800s. It became both the repository of America's best hopes—land, prosperity, liberty, and democracy—and the epitome of its worst fears—tornadoes, wildfires, “savage” Indians, ferocious wild animals, impassable mountains, and endless deserts. All of this reflected, in the American mindset, a natural and cultural lawlessness that generated both awe and terror (Nash, 1982).

Such reluctance to migrate began to diminish in the mid-1840s, however, when the federal government began to actively promote western settlement. One reason was to ease the population pressure on the east coast, which increased with the waves of new immigrants.

Another reason was the “burgeoning pride that characterized American nationalism in the mid-19<sup>th</sup> century” and an “idealistic vision of social perfection. . . [resting] on the idea that America was destined—by God and by history—to expand its boundaries” from one coast to the other (Brinkley, 2000:365). The idea of manifest destiny was loudly proclaimed by national politicians and by the new “penny press” that made newspapers more available and affordable. The mantra of the time, it seems, was “Go West, young man!” Millions of Americans ultimately heeded that call.

A third reason for encouraging settlement of the West was to connect its economy with that of the East. As the settlers pushed the frontier westward, they established communities along the way, creating a demand for eastern goods. Once the West was settled and began to develop on its own, the goods would flow in both directions. Economic connections between East and West were eventually facilitated by the completion of a transnational railroad in 1869. In the mid-to-late 1800s, Western European immigrants began to head westward by the tens of thousands; after the Civil War, they numbered in the millions.

The discovery of gold at Coloma, California<sup>22</sup> that precipitated the Gold Rush of 1848-1850 was also a powerful incentive for moving West. According to Rohrbough:

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<sup>22</sup> This was near present-day Auburn. The actual location was Sutters Mill in Coloma.

The California Gold Rush thrust mining into the center of the expansion of the American nation and began a series of new chapters in the development of the American West. On January 24, 1848, at about ten o'clock in the morning, James W. Marshall, employed by the entrepreneur John Sutter to construct a saw mill on the American River, picked some flakes of mineral out of the tail race. By this act, Marshall set on foot a series of events that would change the history of California, [the history of Nevada], the history of mining, and the lives of hundreds of thousands of 49ers and their families (2004: 114).

Word spread quickly about the find, from newspaper to newspaper and mouth to mouth. Two truths emerged that caused more than 80,000 people to relocate to California in 1849 alone and 300,000 by 1855. First, the gold was abundant. Between 1849 and 1855, more than \$300 million was harvested in gold from California. Second, it was a pretty level playing field. It was a game anyone with a pick, pan, and shovel could play (Rorhrbough, 2004). Families began to migrate on the heels of the 49ers, primarily from the Midwest. Some went not for gold but to escape the crowded eastern seaboard, to seek land of their own, or to find adventure. Very few of these families were wealthy, but many were relatively well off. Those who could not afford to make the trip on their own joined other groups and earned their keep along the way.

Two additional incentives drew settlers in a westward direction: an assurance that “rain would follow the plow” and the Homestead Act of 1862 (U.S. Statutes at Large, Vol. XII, p. 392 ff). The former was the belief that regional precipitation increased as the ground was tilled, labeled by Reisner and Bates as the “meteorological fraud of the century” (1990:12). The Homestead Act, which provided up to 160 acres of land to those who would settle it, was fraudulent in a different sense: 160 acres was insufficient to sustain a farming family in the arid and semi-arid West.<sup>23</sup> Recognizing this deficiency, Congress passed the Desert Land Act of 1877 (U.S. Stat. at Large, XIX 377), which offered potential settlers 640-acre parcels of land, if they agreed to irrigate it. This act not only did not achieve its goal, but resulted in widespread land speculation. Another attempt to encourage western settlement was the Carey Act of 1894 (U.S. Stat. at Large, XXVIII, 422), which authorized the federal government to grant tracts of land to states to sell to settlers for irrigated farming. During the following 16 years, only 288,000 acres were irrigated under the auspices of this act. By 1893, only 400,000 farming families, of more than a million who had made the attempt, remained on their farms (Reisner and Bates, 1990:12).

Of those who stayed, the families that located their farms near surface irrigation sources (streams and rivers) enjoyed greater success than the others. Seeing a potential for profit, numerous private irrigation companies, backed by eastern capital, were created to build irrigation projects to serve farming communities. Landowners also formed cooperatives to build irrigation projects of their own. By the early 1890s, western farmers

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<sup>23</sup> To become eligible for the land, one had to be the head of a family, at least 21 years old, and a citizen of the United States (or expect to become a citizen in the future). If one had taken up arms against the Union during the Civil War, that person was ineligible. To take title to the land, one had to reside on or cultivate the land for five years. To receive patent to the land, a ten-dollar fee had to be paid.

were irrigating nearly 3.5 million acres of land (Reisner and Bates, 1990:13). The Mormons in Utah, Nevada, and Arizona were responsible for at least half of this achievement.<sup>24</sup> The Mormons were among the first western settlers to master the art of irrigated agriculture in an arid environment, as early as 1847 in Utah. Although they did not know much about irrigated agriculture when they headed toward Utah,<sup>25</sup> they were aware that water was scarce and that irrigation would be necessary to grow crops in order for the community to survive. Their earliest efforts were improvised and modest; large-scale projects were not undertaken until the 1870s. Their success can in part be attributed to the Mormon ethic of community action. They developed a “whole set of cooperative management techniques for building and maintaining dams and canal systems, distributing water to individual farmers, and applying it to the fields,” which “evolved into a model for later settlers in the West” (May, 2008:2; Arrington and May, 1975).

In the years that followed, millions of acres were irrigated, not only in Utah but in surrounding states. From the 1860s through the 1880s, hundreds of private companies were created to tackle large-scale irrigation projects; almost none of these early private attempts lasted more than 10 years. Thus, in spite of the money and effort put into individual and corporate irrigation projects, the West remained largely unsuitable for settlement. Farms failed by the thousands, and communities dwindled. By 1898, so many irrigation efforts had failed that the western landscape was likened to a “graveyard.” Senator Francis Newlands declared Nevada, the state that he represented, to be “dying” because of the degree to which agriculture had failed there.<sup>26</sup> The population decline in Nevada at the time (32%)<sup>27</sup> is still regarded as the most severe in American history (Reisner and Bates, 1990:13-14). Large-scale dams and reservoir systems needed to be constructed for the capture, storage, and distribution of water in order to reverse the flow of settlers out of Nevada. The federal government was pressured to undertake this task on behalf of western settlers who without adequate water were unable to provide even a subsistence living for their families. The government eventually passed the Reclamation Act of 1902 (32 Stat. 388, 43 U.S.C. 371). Under this act, the Reclamation Service (later the Bureau of Reclamation) constructed over 1,000 such projects, which are scattered throughout the West.

Not all western settlers welcomed—or, as it turned out—needed the help of the federal government to survive or even prosper. That was the case in the Walker River Basin, where irrigated agriculture struggled to take hold even though a thriving civilization had existed many millennia earlier.

### **Northern Nevada: The Earliest Arrivals**

It is widely accepted that the first immigrants from Asia reached the valleys of the Basin and Range province at least 12,000 years ago. These early arrivals typically lived in caves or under rock shelters; most of what is currently known about them came from

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<sup>24</sup> Much of the rest occurred in southern California along rivers whose waters were easily diverted and stored in natural off-stream basins for use in the summer.

<sup>25</sup> The Mormons had relocated several other times in their early history because non-Mormons were suspicious of and hostile to them. Their leader at this time, Brigham Young, believed that Utah would prove to be a new promised land for them.

<sup>26</sup> There was a sharp decline in mining as well.

<sup>27</sup> Townley (1988) put this figure at 50%.

studies of these sites by archeologists and anthropologists. Human artifacts from these sites were remarkably well preserved. Much of the land was covered with “ancient lakes and expansive and lush grasslands formed during the last ice age” (Horton, 1996b: ii-iii). Lake Lahontan, in northwestern Nevada, and Lake Bonneville, in northwestern Utah and northeastern Nevada, were the largest of these prehistoric lakes. Lake Lahontan was fed by the “flows of the Truckee, Carson, Walker, Humboldt, Susan and Quinn rivers, attained a maximum surface elevation of approximately 4,380 feet above mean sea level (MSL), and reached a maximum depth of at least 886 feet where Pyramid Lake...now remains” (Horton, 1996b: II-1). Pyramid and Walker Lakes are the only remaining evidence of the once-vast Lahontan Lake.

The first emigrants to this area lived near these enormous lakes. As the lakes receded over the millennia, the area became more and more arid, particularly the part that would become Nevada. The hot, dry climate helped preserve remains from this prehistoric people, which have been found in Nevada near Winnemucca Lake, at the Humboldt Sink, at Etna Cave near Caliente, at Lehman Caves in White Pine County, at Jarbidge Cave in Elko County, and at Hidden Cave in Churchill County (Hulse, 2004: 19). Because of this, we know that the people who lived in the Lovelock Cave near Lake Lahontan 3,000 years ago used darts to kill game, were talented basket makers, created nets for catching rabbits, and wove bowls to contain their food. They knew nothing about agriculture and were basically nomadic hunter-gatherers. No one knows whether these original people died out completely or they managed to adapt to become ancestors of the Shoshones and Paiutes (Hulse, 2004).

Whatever the case, Native Americans in Nevada struggled to survive at the beginning of the historic period. They ranged over an area of more than 75,000 square miles in eastern California, western Nevada, southeast Oregon, and southern Idaho, the area presently known as the Great Basin. The Northern Paiutes—or Numa (the People) as they called themselves<sup>28</sup>—roamed the lands in north central Nevada.<sup>29</sup> When the first explorers arrived in the early 1800s, there were at least 20 distinct bands of Northern Paiutes, each consisting of 100-200 people. Each band resided in a specific territory typically located near a lake, wetland, or river system and often took the name of the main local food source. For example, there were the *Koop Ticutta* (Ground Squirrel Eaters) located in present-day Lovelock, the *Kamu Ticutta* (Rabbit Eaters) and the *Tobusi Ticutta* (Bulb Eaters) located in present-day Mason and Smith Valleys, the *Cu Yui Ticutta* (Cu Yui Eaters) located in present-day Pyramid Lake, *Toi Ticutta* (Tule Eaters) and *Koosi Pah Ticutta* (Muddy Water Eaters) located in present-day Stillwater and Fallon, the *Agai Panina Ticutta* (Trout Lake Eaters) and *Moa Ticutta* (Wild Onion Eaters) located in present-day Summit Lake, and the *Agai Ticutta* (Trout Eaters) and *Pugwi Ticutta* (Fish

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<sup>28</sup> The origin of the word Paiute is unclear. Some anthropologists have interpreted it to mean “Water Ute” or “True Ute.” Sarah Winnemucca suggested that the name was associated with their pine-nut diet. It appears that this name was first applied to the Numa about the time that Joseph Walker was exploring Nevada, in 1833. In a report issued in 1976 by the Inter-Tribal Council of Nevada, they still referred to themselves as Numa. When the Walker River Reservation was established in 1859, it was under the name Paiute. The tribe in the Walker River Basin call themselves the Walker River Paiute Tribe.

<sup>29</sup> Other Nevada tribes include the Washo in west central Nevada, the Owens Valley Paiutes, Western Shoshone, and Southern Paiutes (Hulse, 2004:31).

Eaters) located near present-day Walker River [Inter-Tribal Council of Nevada (ITCN), 1976].

The Great Basin is an unforgiving desert environment, but the Native Americans who lived there were well-adapted to the extreme temperatures and harsh living conditions. In the summer, the people either were naked or wore garments they fashioned out of sagebrush fibers; in winter, they made robes of rabbit skins. The Paiutes harvested seeds and nuts and the roots of wild plants. They hunted many types of game, including squirrel, rodents, and rabbits. Their weapons were “obsidian-tipped spears” and the hand-flung darts known as “atlatl” (Laxalt, 1989: 32). Until the bow and arrow was invented, they were unable to bring down large game, such as deer and antelope.

Fish was a major food source as well. Each spring, fish journeyed upstream to spawn; trout virtually flooded the Truckee, Carson, Walker, and Humboldt Rivers, as well as Walker and Pyramid Lakes. Although several methods were used to fish, including nets and spears, the Paiutes fishing on the Walker River built rather sophisticated dams that essentially guaranteed them a bountiful catch. These dams:

...consisted of overlapping three by six feet cottonwood frames within each of which horizontal willow strips were interwoven with vertical cottonwood sticks. These panels were supported by spaced cottonwood posts and stretched across the river at a chosen point. The frames were tied loosely to the supporting posts, although the downstream rush of the water also forced the panels against the face of the supports. The trout were thus prevented from travelling beyond the dam. (Speth, 1969: 229)

The fish were plentiful enough both to feed the people in the spring and to dry and store for winter. While the men harvested the fish, the women gathered cattails, peeling the leaves and collecting the white spears inside; the leaves were used to weave baskets to collect and store food (Wheat, 1967).

The bands had no identifiable tribal organizations, at least until white settlers arrived. The settlers, in their negotiations with these bands, needed to identify tribal “leaders” who could speak with authority on behalf of their groups. Being nomadic, they had no permanent homes during the spring, summer, and fall, fashioning temporary shelters from whatever materials they could find. In the winter, they built “wickiups,”<sup>30</sup> which had a fire pit in the center for warmth and a hole in the top for the smoke to escape. They also were a peaceful people and had no warrior traditions, although when threatened they did band together to fight in self-defense (Hulse, 204: 25-26). The cycle of seasons and life continued for millennia, without any outside influence. Only the weather of the Great Basin affected them—but they had learned to adapt to unpredictable droughts, scorching summer heat, and bitter winter cold.<sup>31</sup> When the first white men came to Nevada, the Paiutes greeted them with curiosity and friendliness.

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<sup>30</sup> A wickiup is a simple type of teepee or wigwam. It is a domed-shaped one-room structure made of reeds (or whatever was available in the area), thatched over with grass or leaves.

<sup>31</sup> Although we do not know how many Native Americans lived in Nevada 200 years ago, before white encroachment, some scientists suggest there were over 40,000. By the early 1870s, the number was 21,500,

## The Arrival of Anglos

Anglo-American settlers did not explore the area that later became the state of Nevada until at least 200 years after they had arrived in North America. The Far West was explored first by Meriwether Lewis and William Clark from 1803 to 1806. Backed by President Thomas Jefferson, they crossed the northern plains and over the Rocky Mountains into the Columbia River Basin. They never made it to Nevada, but sent back reports of “rich lands and large rivers with plenty of fur-bearing animals” (Hulse, 2004:36). In the ensuing years, hundreds of trappers and fur traders followed, as there was a great demand in Europe for fur coats and hats.

Twenty years later, in the fall of 1826, another major expedition was led by 27-year old Jedediah Strong Smith, mountain man, fur trapper, and one of three co-owners of the Rocky Mountain Fur Company. His party entered the eastern and southwestern parts of the Great Basin. Heading southwest from the Great Salt Lake, they entered present-day Nevada on the Virgin River. The group then moved along the edge of the Colorado River toward Needles, California. The Native Americans<sup>32</sup> that they encountered there guided them through the barren, sweltering southern California desert, arriving at the San Gabriel Mission near present-day Los Angeles. Smith had inadvertently reached lands occupied by the Mexicans.<sup>33</sup> Suspecting that Smith and his men were invaders, the Mexican governor, “anxious about new colonial threats so soon after they had gained independence from Spain,” had them arrested (Bowers, 1996: 2). When they were released, Smith and his men were ordered by the governor to backtrack along the route they had used to get there. Instead, Smith headed north and reached in early 1827 what is now the San Joaquin Valley. Not wanting to endanger his men by proceeding into and over the snow-covered Sierra Nevada in the winter, Smith left 13 of them in California. Taking two of his men, he successfully crossed not only the Sierra Nevada but central Nevada as well, eventually reaching the Great Salt Lake. No one knew which route Smith had taken until the 1960s, when a copy of his journal was discovered. It is now certain that he crossed the Sierra Nevada along what is now Highway 89, found the West Walker River, and followed it to Walker Lake. Smith encountered a group of Paiutes there but had little interaction with them. He noted in his journal that when “we found water in some of the rocky hills, we most generally found some Indians who appeared the most miserable of the human race, having nothing to subsist on (nor any clothing) except grass and grasshoppers” (Morgan, 1953: 210). The three men then:

...proceeded eastward across the arid, life-threatening center of the Great Basin. When they could not find game, they killed and ate their mules. In some places they struggled across high mountain passes, in others they

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and by the 1930s, there were only 12,000. Currently, there are approximately 35,000 Native Americans residing in Nevada (U.S. Bureau of the Census).

<sup>32</sup> Different tribes of the Paiute, Shoshone, and Washo lived near the Walker, Carson, and Truckee Rivers. The present-day Walker River Paiute tribe are descendents of the Northern Paiute—or Numa (the People), as they called themselves. Because the early explorers and trappers tended to confuse the Paiute, Shoshone, and Washo tribes, they often used the generic “Indians” to refer to them.

<sup>33</sup> Mexico and Spain signed the Treaty of Córdoba, which granted Mexican independence from Spain, on August 24, 1821.

encountered deep sand. Often they had to ration their water carefully, and once they [even] dug themselves into the ground to get relief from the blistering heat.... Through a combination of bravery and desperation, they finally reached the Great Salt Lake and reestablished contact with his company. They had crossed the Sierra, the middle of Nevada, and half of Utah in six weeks, one of the most remarkable feats in the history of western exploration (Hulse, 2004: 38).

In 1827, Smith returned to California to meet up with the men he had left behind. This time, he avoided the treacherous route he had taken before and went through Oregon. After returning to his base camp in the Great Salt Lake, Smith never returned to Nevada.

A little-known pioneer in exploring Nevada was Peter Skene Ogden, a Canadian and a lead trapper for Hudson's Bay Company. Ogden led six expeditions into Snake River country between 1825 and 1831, venturing into the Walker River Basin on three of them. The company's records indicate that Ogden explored the entire Humboldt River Basin in 1828; trapped beavers in what is present-day Winnemucca,<sup>34</sup> and explored areas around the lower Carson River, Walker Lake, and the Colorado River.<sup>35</sup> Ogden's group had several interactions with the Paiutes in Nevada that could have turned violent. According to a journal entry made while he was camping along an "unknown"<sup>36</sup> river near present-day Lovelock on May 28, 1829,

[Three] of the trappers came in with word of more traps stolen. He pursued the thieves and punished them but could not recover the traps. A man who had gone to explore the lake at this moment dashed in and gave the alarm of the enemy. He had a most narrow escape, only the fleetness of his horse saved his life. When rounding a point within sight of the lake, 20 men on horseback gave the war cry. He fled. An Indian would have overtaken him, but he discharged his gun. He says the hills are covered with Indians. I gave orders to secure the horses, 10 men then started in advance to ascertain what the Indians were doing but not to risk a battle as we were too weak. They reported upwards of 200 Indians marching on our camp. They came on. Having [signaled] a spot for them about 500 yards from our camp, I desired them to be seated. This order was obeyed. From their dress and drums and the fact only one elderly man was with them, I concluded it was a war party. If they had not been discovered, they had intended to attack us, weak as we were in gun—only 12—they would have been successful. It was a narrow escape (Townley, 1983: 24).

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<sup>34</sup> Ogden was under orders from Hudson's Bay Company to deplete the beaver population in an effort to end the competition between the American and British for dominance over the territory (Ogden, 1828; Johnson, 1975).

<sup>35</sup> According to Hulse, Ogden and his men made "a trek that matches the most remarkable exploits of the great British explorers in the depth of Africa and the sands of Arabia" (2004: 39).

<sup>36</sup> The unknown river was later named the Humboldt River by Captain John C. Frémont. This river became the most important "transportation corridor" for early emigrants passing through the Great Basin en route to California through either the Carson or Luther passes in the Carson River Basin or Ebbett's Pass in the Walker River Basin (Horton, 1996b: II-3).

Ogden left the area by June 5, 1829 because no more beaver could be found; Ogden and his men had virtually wiped them out. Ogden also wanted to avoid further contact with the locals.

Four years later, the Northern Paiutes had another major, and this time, disastrous, encounter with whites. A group led by Captain Benjamin Louis Eulale de Bonneville and his chief lieutenant, Joseph Walker, both employed by Hudson's Bay Company, followed the trail detailed in Ogden's journals. Walker was chosen to accompany de Bonneville because he had experience with the Nez Perce and was an excellent trapper. Upon arrival at Ogden's unknown river (the Humboldt), they began setting traps for beaver. As the days passed, Walker and his men noticed not only more Indians but that traps began to disappear. The Paiutes, being non-aggressive and peaceful, bore no ill will towards the trappers. Rather, they did not share the Anglo perception of private property and often took what they wanted, puzzled at the white man's unwillingness to share. The Paiutes extended several invitations to meet with the white men, and Walker accepted. When the meeting took place with a group of 30-40 Paiutes, Walker and his men attacked without provocation or warning, killing 14 Indians and setting the stage for three decades of "intermittent warfare and recrimination" (Laxalt, 1989: 33). Zenas Leonard, a member of Walker's party, later recounted in his journal that this practice was a routine one, designed to "test" the skills Walker's men had at killing Indians. Between 1833 and 1834, they killed over 100 Paiutes (ITCN, 1976).<sup>37</sup>

Besides the trappers, mountain men, and explorers, another intruder on the Paiutes was the tamarisk. It was introduced in the southwest as an ornamental tree in the mid-1830s and became well-established by the time this area began to be settled by whites. Tamarisk flourished along the river banks and streambeds, crowding out the cottonwoods and willows that were necessary to the survival of the natives. Tamarisk has deep roots, consumes much water, and is worthless as wildlife habitat or forage (Kartesz, 1987). It continues to be difficult to eradicate from the Walker River Basin and elsewhere in the Great Basin.

Another major western explorer was Captain John C. Frémont,<sup>38</sup> renowned surveyor and map maker. In 1842, the U.S. Bureau of Topographical Engineers commissioned Frémont to survey the Great Basin. His first visit to this area was in 1842-1843; he headed south from the Columbia River Basin and eventually discovered Pyramid Lake, which he so named because of the pyramid-like rock formation that sits at the eastern end of the lake. He also explored what is now the Truckee River, which supplies fresh water to the lake.<sup>39</sup> After a month of mapping the area, he left the Great Basin to find the "lake in the mountains" that had been described to him by the Paiutes. After reaching present-day Lake Tahoe, he proceeded down the mountain toward the American River.

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<sup>37</sup> The story of these expeditions was published in 1837 as Washington Irving's *Adventures of Captain Bonneville in the Rocky Mountains and Far West*.

<sup>38</sup> He was also renowned for the role that he played in the conquest of the southwest for the United States and for eventually being elected to the U.S. Senate, representing California.

<sup>39</sup> Salmon Trout River, the name given to the Truckee River by Frémont, was not adopted.

The second time he explored Nevada, in 1845, he was accompanied by Joseph Walker, about whom we have already heard, and Kit Carson, whose exploits would become legendary. Their party crossed the Great Basin in two groups, “redefining” the limits of the Humboldt, Carson, Walker, and Truckee River basins. Because Frémont kept a far more thorough record of his explorations than his predecessors, the names that he gave to prominent natural landmarks were officially adopted. In addition to Pyramid Lake, he named the Walker and Carson rivers after his co-explorers; he named Ogden’s “unknown” river after Baron Alexander von Humboldt, a German scientist; and he even gave the Great Basin its name (Hulse, 2004: 42).

Between 1800 and 1840, a steady stream of emigrants headed “westward through the forests, from the Appalachia Mountains to the middle of the continent, and then west of the Mississippi River. For a few years they stopped at that point, like water behind a dam, because the arid prairies and the ‘Indian Barrier’ presented many hazards” (Hulse, 2004:43). By 1840, however, reports of abundant, essentially “free” land began to attract American families east of the Mississippi.<sup>40</sup> Unlike their predecessors, these people were interested in establishing a new life in the Far West.

The first expedition to successfully cross the Great Basin was organized by 29-year-old school teacher John Bidwell, head of the newly-formed Western Emigration Society, and led by him and John Bartelson in 1841. Yet, their ignorance about the western frontier, the land they would cross, and the obstacles they would face did not portend well for the group (Bowers, 1996). The extent of their knowledge was that California lay west. At the beginning of their trip, they were fortunate to meet a group of Jesuits who were headed to Oregon and whose guide, Thomas “Broken Hand” Fitzpatrick, was an experienced fur trapper who knew the land well. The two parties traveled together more than 1,000 miles to the Bear River, near Salt Lake. Fitzpatrick and the missionaries then headed north toward Oregon, accompanied by about half of the original Bidwell-Bartelson party.

The other half, still led by Bidwell and Bartelson, headed independently toward the deserts of the Great Basin,<sup>41</sup> where they experienced wagons getting stuck in the sand and underbrush, the animals becoming exhausted, and food and water becoming scarce. Eventually, the group was forced to abandon much of its belongings in order to lighten the load for the struggling oxen.<sup>42</sup> They crossed the Ruby Mountains and entered the Humboldt River Basin on foot, because there were few horses left to carry them. Impatient at the slow progress, Bartelson and seven other men, all of whom had horses, peeled off from the main group and went ahead. Bidwell was left to lead the rest of the party through Forty Mile Desert into the Carson River Basin, where they headed south toward the Walker River. In the meantime, Bartelson and his men became lost. Disoriented and starving, they were discovered by a band of Paiutes, who gave them fish and pine nuts and guided them out of the desert. The Bidwell and Bartelson parties

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<sup>40</sup> In 1831, Congress passed the Preemption Act, which recognized the right of “squatters” to acquire title to land in the West simply by using it.

<sup>41</sup> Two of these were Nancy Kelsey and her daughter, who became the first white woman and child to cross the Great Basin.

<sup>42</sup> This was to happen repeatedly to emigrants, who often attempted to bring most of their transportable worldly goods.

unexpectedly reunited in the Walker Basin, where they headed across the snowy mountains. Along the way, they ran out of food and were forced to slaughter their oxen and horses. Finally, on October 31, 1841, they arrived at their destination, the San Joaquin Valley. Remarkably, they had completed the trip with neither maps nor guides, though it had taken six months. No one had died or been killed along the way, and their encounters with Indians were few and friendly (Hulse, 2004: 47).

Later that same year, the Rowland-Workman party traveled from Santa Fe to Los Angeles along Jediah Smith's route. They managed to bring a flock of sheep and, upon arrival in the Los Angeles area, obtained land grants from the Mexican government. They settled in the area, becoming prominent ranchers near San Gabriel, California. This time the trip had been completed in two rather than six months (Hulse, 2004: 47). Despite the success of these two groups of settlers, the following decade saw only a steady trickle of western emigration.

Several other parties traversed the Humboldt Trail in the 1840s. The one led by Elisha Stevens, Martin Murphy, and John Townsend in 1844 (Bowers, 1996) opted not to follow the well-established route from the Humboldt Sink south to either the Carson or Walker Rivers. Instead, they took an unknown path across Forty Miles Desert to a river that they called the Truckee. Parts of the Truckee River canyon were so steep and narrow that the travelers had to walk in the river, their feet bleeding from the river rocks. The present-day Donner Pass proved even worse. They had to take their wagons apart and pull them over the steep canyon walls using pulleys. In only two months, they reached the Central Valley of California with no loss of life and most of their belongings intact (Hulse, 2004: 47).

Donner Pass through the Sierra Nevada received its name because of the fate of the Donner Party, which attempted unsuccessfully to cross it.

The original party of 32 organized in Springfield, Illinois under the leadership of George Donner. By the time the party arrived in Independence, Missouri, it had grown to about 100 people, a disproportionate number of whom were elderly, women, and children. They left Independence on May 3, 1846. The first 78 days were uneventful because they traveled a well-known route, which many emigrant groups had successfully traversed (Beck and Haase, 1974). However, on July 20, at Little Sandy, the first critical decision was made. A messenger from Lansford Hastings told them of a cutoff that Hastings had discovered that would shorten the trip by 350-400 miles. Part of the group stayed on the well-marked California Trail, while the other 87 took the shortcut. Before reaching Fort Bridger, they encountered Joseph Walker, who urged them to return and take the marked trail. They rejected his advice, and set off into the trail-less Utah wilderness without a guide. It took them a month to reach the southern part of the Great Salt Lake, beyond which lay the dreaded Forty-Mile Desert.<sup>43</sup> As their oxen died from heat and exhaustion, they abandoned many of their wagons. On September 20, they reached the Humboldt River and returned to the California Trail, reaching it 45 days after the fragment of their original party. The group reached the base of the Sierra on October 30, "its morale shattered by murder, desertion, and death" (Beck and Hasse, 1974: 45). Had they kept going, they may have been able to beat the snow through the pass. Instead,

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<sup>43</sup> It took them 21 days to travel just 36 miles.

they rested five days, and were completely snowed in by November 4. They did little to prepare themselves for surviving the winter. They cut no firewood, constructed no shelters, and slaughtered no livestock for food. The animals just wandered off in the snow and died.<sup>44</sup>

Part of the group camped in cabins on Truckee Lake; the other part camped in tents and huts near Alder Creek. On December 15, a group of 15 attempted to cross the pass, on crudely-constructed snow-shoes, with barely enough rations to last six days. Their journey lasted 32 days, and only seven of the men survived it. As members of the groups died, their flesh was eaten by the others. The group left behind at the camps at the base of the summit also resorted to eating the flesh of those who died. When word reached Fort Sutter, four relief expeditions were sent to rescue what remained of the group. Only 47 survived the ordeal, most of whom were women and children (Beck and Haase, 1974). News of the disaster spread quickly and widely, dampening enthusiasm for making the trek for several years.

### **The Church of Jesus Christ of the Latter-Day Saints**

The history of the Church of Jesus Christ of the Latter-Day Saints is intertwined with that of Nevada. Joseph Smith laid the foundation for Mormonism in New York in the 1820s. The new religious movement elicited controversy from the outset. It was a communal, egalitarian movement that put the good of the whole over that of the individual. Its members were well-organized, which when combined with their strong work ethic and ability to attract converts, made them economically prosperous—and the object of jealousy. Joseph Smith's New York flock numbered only 70, but by 1860, there were more than 65,000 Mormons in Utah alone. They also were aloof from their non-Mormon neighbors, even refusing to do business with them. And they practiced polygamy, which was abhorrent to other religious denominations (Baer, 1988).

In reaction to the escalating conflict between Mormons and non-Mormons, Smith moved his flock first to Ohio and then to Missouri, but still they were met with suspicion, hostility, and violence. They moved again in the winter of 1839, this time to Nauvoo, Illinois, where Smith began to build a religious and political power base. By 1844, Nauvoo had a Mormon population of over 12,000, making it the second largest city in Illinois. The Illinois legislature granted Nauvoo a charter that essentially enabled it to rule itself, as long as the laws it passed did not conflict with state or national laws. It even had its own militia, with Smith as its Lieutenant General. The assassination of Smith on June 27, 1844 at the jailhouse in Carthage, Illinois led his successor, Brigham Young, to move his people again. In 1846-1847, he led 15,000 Mormons to present-day Utah and laid claim to a vast tract of land for his people. In 1849, he proclaimed that region the State of Deseret (Bauer, 1988:9).<sup>45</sup>

Meanwhile, the United States was at war with Mexico for control of California and what is now the southwest. The war ended in 1848 with the Treaty of Guadalupe Hildago, which gave the United States control over California, Utah, Nevada, and

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<sup>44</sup> For a complete history of the Donner Party's experiences, see *The Perilous Journey of the Donner Party* (1999) and *Ordeal by Hunger: The Story of the Donner Party* (1963).

<sup>45</sup> This region included present-day Utah, Nevada, and Southern California and parts of Arizona, New Mexico, Idaho, and Colorado (Bowers, 1996: 5).

portions of Arizona, New Mexico, Wyoming and Colorado. The Great Basin was now “firmly ensconced in the hands of the United States” (Bowers, 1996: 5).

In 1850, Young petitioned Congress to admit the State of Deseret to the union as a state. Rejecting that petition, Congress passed the Compromise of 1850 instead. That act established California as a slave-free state<sup>46</sup> and created the New Mexico and Utah Territories, leaving each to decide whether to permit slavery. The Utah Territory, which included most of what is now Utah, parts of Colorado and Wyoming, and most of present-day Nevada (Bowers, 1996; Horton, 1996b),<sup>47</sup> was only half the size that Young had claimed for the State of Deseret. Brigham Young was appointed governor of the new territory on February 9, 1851.<sup>48</sup>

Not surprisingly, the first people to become established in the western edge of the Utah Territory, in present-day Nevada, were Mormon. Joseph Demont and Hampton S. Beatie established a trading post, Mormon Station, in Carson Valley in 1850. They sold or bartered goods to emigrants passing through. Although they ceased operations when winter arrived, they had demonstrated that trading stations could be profitable. Mormon Station was settled again in the following year, by a party led by John Reese, who came to the area to farm, and became the first permanent settlement in Nevada. Its name was changed to Genoa in 1856. Other pioneering entrepreneurs established stations in Carson, Eagle, and Jack’s valleys as well as in the Truckee Meadows (Bowers, 1996).

The non-Mormon population in Carson Valley surged in 1850 after gold was discovered in Gold Canyon near Virginia City in 1850.<sup>49</sup> Prospectors often spent the warm months mining in the canyon, returning to California in cold weather and taking their usually small bounties. Although they built no permanent structures because they did not intend to stay, they did create a “culture” of sorts, of their own (Hulse, 2004: 66). Other non-Mormons settled there as well. The relationship between Mormons and Gentiles was never comfortable. The Mormons viewed the newcomers as a threat, whereas the latter resented—and resisted—being governed by Mormons in Salt Lake City. The non-Mormon settlers held three meetings in Mormon Station in 1851, where they created a “squatter” government to pass laws and regulations. They also petitioned Congress for a “distinct Territorial Government” for the western part of the Utah Territory (Bowers, 1996: 8). The petition was denied. Then, in 1853, the non-Mormons petitioned California to annex their valley. Young responded by having the Utah legislature create Carson County in 1853, a huge new county that included present-day Carson City, Washoe, Douglas, Storey, Lyon, and Mineral Counties as well as parts of Churchill, Esmeralda, and Humboldt counties. Moreover, Young largely ignored the western part of the territory, leaving it with no local government and no protection from lawless forces. Finally, in January 1855, Young moved to exercise control over the region. The Utah legislature proclaimed Carson County as Utah’s third U.S. judicial

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<sup>46</sup> California had never been a territory.

<sup>47</sup> Establishing the Utah Territory was also a result of the Compromise of 1850, the goal of which was to bring more slave-free territories into the union to balance the power between slave and free states.

<sup>48</sup> He was also appointed ex-officio superintendent of Indian Affairs, a responsibility that he took very seriously (Dale, 1949: 66).

<sup>49</sup> Several people claimed to have been the first to find gold in Gold Canyon. Because of conflicting records, this question may never be resolved.

district, and Young appointed Orson Hyde, a member of the Mormon governing board, as probate and country judge to organize the county. Carson County was also given one vote in the Utah legislature (Bowers, 1996).

Hyde came with 38 other Mormons to Carson valley in June 1855, determined to establish a functioning government there. Hyde called for county elections on September 20, and all but one of the winners in that election were Mormon. The non-Mormons again petitioned to be annexed to California. Young responded by sending 60 more Mormon families to Carson Valley, making them 500 strong. Mormon Station was renamed Genoa and made the county seat. For two years, Hyde and his fellow Mormons tried to build a society in Carson Valley that was based on Mormon principles, despite continuous resistance by the non-Mormon population (Bowers, 1996; Hulse, 2004). Hyde returned to Salt Lake City, although it is uncertain whether this was at Young's request. In any case, the fledgling government Hyde had established began to unravel. Other Mormons decided to return to Salt Lake City as well. Finally, in September 1857, Brigham Young summoned the Mormons in all the outlying settlements to return to Salt Lake City to defend it from a possible attack by the federal government. That battle never occurred, but many Mormons abandoned their farms in Carson Valley, which were quickly taken up by Non-Mormons (Hulse, 2004).

### **Paiute-Anglo Conflicts**

As the number of emigrants increased during the 1850s, violence between the Native Americans and whites escalated. Many settlers were inclined to shoot the Indians they encountered at the "slightest provocation," which the Indians often unwittingly gave them. Not sharing Anglo ideas about private property, they "took" from the settlers things they wanted or needed. As additional settlers crowded the Paiutes out of areas they had freely roamed, they stole out of desperation. Nonetheless, the Native Americans in the Great Basin, as had been the case with Indians all over the United States, were clearly the victims of the "racist attitudes of a conquering nation whose army leaders and emigrants had little regard" for the Indians they encountered (Hulse, 2004: 61), often viewing them as less than human.

The federal government began to establish reservations onto which they eventually moved entire Indian tribes. Much of what we know about the Washo and Paiute tribes that lived in northwestern Nevada at this time came from Frederick Dodge, who was in the area from 1858 to 1860 as an Indian Agent for the Utah Office of Indian Affairs. His instructions were to find suitable lands for the tribes, where they could be relocated and trained to farm and raise livestock. The land that was typically selected for Indian reservations was so arid that farming was impossible. Most people seemed to believe that the Indians "preferred to live in the most unfruitful and desolate" regions of the country even though most Native American tribes circumscribed areas that included streams, rivers, and valleys (Dale, 1949). The real goals appeared to be to prevent Native Americans from impinging on settlers, to reduce the violence between the two cultures, and to indoctrinate Native Americans in the Anglo tradition.

Dodge first selected Truckee Meadows as a suitable reservation site, but by the time he sent his recommendation to Washington in 1859, the Comstock Lode was discovered in and around present-day Virginia City. Settlers began to pour into the

adjacent valleys before the government had withdrawn the land. Dodge then selected land in Truckee and Walker River Basins and recommended that the two lakes the rivers emptied into be part of the two resulting reservations. On November 29, 1859, Walker Lake and 318,809 acres of land around it were withdrawn from the public domain to establish the Walker River Paiute Reservation, but no further action was taken to officially create the reservations (Horton, 1996b: II-8; Hulse, 2004).

The spring of 1860 brought the first major violence to Washoe country, between the frontier mining society and the Northern Paiutes in north central Nevada. James Wilson had established a trading station on the Carson River about 30 miles from Virginia City. In his absence, two of his men kidnapped two young Indian women and took them to the station, provoking an attack in which three white men were killed, likely by the Bannock Indians who were temporarily in the area. When Williams returned to find his friends dead and his station burned to the ground, he concluded that the Paiutes were on the warpath (Hulse, 2004: 69).

News of the killings spread in two directions: to the whites in Carson and Virginia City and to an Indian war council that was being held at Pyramid Lake among the Paiute, Shoshone, and Bannock. The news arrived at the lake just as a young Paiute chief, Numanga, was pleading for peace:

You would make war upon the whites. I ask you to pause and reflect. The white men are like the stars over your head. You have wrongs, great wrongs, that rise up like those mountains before you. But can you, from the mountaintops, reach out and blot out those stars? Your enemies are like the sands in the beds of your own rivers. When taken away they only give place for more to come and settle there. Could you defeat the whites of Nevada, from over the mountains in California would come to help them an army of white men that would cover your country like a blanket.... I love my people; let them live; and when their spirits shall be called to the Great Camp in the southern sky, let their bones rest where their fathers were buried (Laxalt, 1989: 33).

When he heard about the white killings, he realized it was too late. They prepared for the inevitable attack.

When the news reached Carson, no one checked the validity of Williams' claim. His story spread in exaggerated form: hundreds of Paiutes were on the warpath. In response, a volunteer army of 105 men, under the leadership of Major William Ormsby, was assembled. It was a rowdy, undisciplined group unprepared for the kind of warfare they were instigating. On May 12, it proceeded down the lower Truckee Canyon towards Pyramid Lake. When they began to approach the lake, the Paiutes lured them into an ambush and "poured a shower of arrows and bullets into their disorganized ranks" (Laxalt, 1989: 34). The Paiutes killed 76 men, including Ormsby. The rest fled back to Carson to tell of the "horror" that had occurred.

When the news reached California, four companies of the U.S. Cavalry joined forces with 500 volunteers from Carson Valley. They attacked the Paiutes, killing 160 of them in a single battle near Pyramid Lake. Numanga sued for peace. A network of

military posts was established to protect white settlers. Although the whites and Paiutes never made war against each other again, the truce was an uneasy one until around 1878. By then, treaties were signed between the Paiutes and the federal government, formally establishing reservations for them. They were forced to give up their nomadic way of life, to become farmers or menial workers in the white settlements. Some wound up beggars, hanging on the fringes of white settlements.

### **Gold and Silver In Nevada**

The Comstock Lode was the first major silver deposit discovered in the United States, on the eastern slope of Mount Davidson beneath present-day Virginia City. The men who discovered the Comstock Lode, “Old Virginny” Fenimore, Henry P. Comstock, Patrick McLaughlin, and Peter O’Riley, were unaware of its worth. Between the year it was discovered, 1859, and when the mine was exhausted some 20 years later, it generated more than \$300 million in silver and gold (Hulse, 2004:67). From 1865 to 1879, Nevada was regarded as “the most important center for the production of precious metals in America” (Hulse, 2004: 102). In addition to the Comstock Lode, new mining communities sprang up and thrived in the eastern counties, as pockets of gold and silver were discovered and exploited. The biggest boost to Nevada’s mining industry came with the discovery of the “Big Bonanza.”

John Mackay, an Irish immigrant, began his mining career as a hard-rock miner in Gold Hill. He and James Fair, also an Irish immigrant, gradually obtained an interest in Hale and Norcross, a mining enterprise located at the center of the Comstock Lode. They took the profits and acquired control of other mining claims in the Comstock, which became the Consolidated Virginia and California. At the center of the Comstock, 1,300 feet below the surface of Virginia City, their crews discovered the Big Bonanza.<sup>50</sup> It was a block of rich gold and silver ore extending 300 feet, the richest large body of high-grade ore found in America. Over the next nine years, it yielded over \$100 million and paid more than \$74 million to its stockholders.<sup>51</sup> James Mackay became known not only for his role in the Bonanza firm, but for his honesty in business and generosity to fellow miners who were down on their luck (Hulse, 2004: 106). A statue in his honor stands on the campus at the University of Nevada, Reno, and Mackay Stadium and the Mackay School of Mines are named after him.

Mining and everything associated with it influenced the social and political structure of Nevada for the next 100 years. Mining also became part of the Nevada psyche, as did gambling of all sorts. Mining towns experienced cycles of bust and boom, creating social instability. Nevada Senator William Morris Stewart, an ally of the mining interests, was responsible for the country’s first mining law, the National Mining Law of 1868. This gave legal authority to mining regulations that were already in place. It also provided that miners could preempt part of public lands and its waters simply by laying claim to and making use of them (Hulse, 2004: 106), paving the way for western adoption of the appropriation doctrine. The provisions of this law remain in effect.

A new American phenomenon rose up around the major mining enterprises: mining cities. These were aptly portrayed in the popular press as extravagant, wild places

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<sup>50</sup> Bonanza is a Spanish word meaning prosperity or a rich vein of ore.

<sup>51</sup> In that same year, the entire budget of the state was less than \$600,000.

whose fortunes were determined by those of its mining magnates. During its heyday, Virginia City boasted some of the best establishments—mansions, opera houses, cultural centers, churches, and schools—in the West. It also had the most elaborate saloons. The city’s wealthy wives furnished their homes and decorated themselves with the finest luxuries. Hulse captures the spirit of those times:

Its wealthy magnates lived high on the mountainside, near or above C Street, which was the main business thoroughfare. Below, in alphabetical order, were streets where one could find the brothels, the bustling railroad station, the large hoisting works, the Chinese and the Indian communities. Most residents lived close enough together on the rocky slopes to be constantly within earshot of the business bustle on C Street, the riotous life of the saloons, the roar of the mine hoists and stamp mills, and the constant to-and-fro surging of humanity (2004: 107).

Its total population never exceeded about 20,000, yet it attracted celebrities from all over the United States. Scores of writers visited and wrote about its wonders. Mark Twain honed his craft there, first as a journalist and later as a satirist. He became one of the most famous western writers in America. For most of its boom period, Virginia City’s men greatly outnumbered the women, sometimes by 16 to 1. Although a small minority, women provided a much-needed civilizing and stabilizing influence, involving themselves in the establishment of schools, churches, and civic centers. Some who came to the Comstock seeking their fortunes worked in the theaters, dance halls, saloons, or brothels (Hulse, 2004).

On October 25, 1875, a fire broke out in Virginia City, stoked by the winds and fed by the timber of thousands of trees that had been used to build the city. In several hours, it consumed most of the business center and public buildings. Mackay managed to save the mine shaft to the Big Bonanza. Comstock money rebuilt the city to be even more extravagant than before. The main buildings that are famous tourist attractions now were constructed after 1875 (Hulse, 2004: 108). Comstock’s prosperity ended when most of the mines had been exhausted, compounded by the U.S. ceasing to mint silver dollars in 1873 and the increased production of silver in other areas of the state.

## **Nevada Statehood**

The years from 1860 to 1864 were important ones in the creation of what was to become the state of Nevada, both physically and culturally. Even though the slogan “Battle Born” is emblazoned on Nevada’s flag, no Civil War battles were fought there. Nor did Nevada’s substantial silver wealth finance the Civil War, though this was widely believed. However, the Civil War catalyzed Nevada’s transition to statehood. Southern states would have never approved the creation of more slave-free territories, especially those that were sparsely populated. But when the South seceded, there were no southern representatives in Congress to raise such objections. Sensing the inevitability of civil war, President James Buchanan signed legislation granting territorial status to Nevada during his last days as president, on March, 1861.<sup>52</sup> Shortly after Abraham Lincoln was inaugurated three weeks later, he appointed political supporter James W. Nye of New

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<sup>52</sup> The Dakota and Colorado territories were established in 1861 as well.

York to serve as its governor. It took Nye eight months to establish a functioning government there (Hulse, 2004: 80). When the new legislature met for the first time, it designated Carson City as the capitol and provided for the creation of eight county seats and nine counties.<sup>53</sup>

When the territorial government met again, in late 1862, the legislature called a special election for September of the following year, to hold a referendum on becoming a state. The vote was overwhelmingly for statehood (6,600 v. 1,500). Even though Congress had not passed enabling legislation to authorize the territory to hold a constitutional convention, one was held anyway and elected 39 delegates to draft a constitution. The first constitution was rejected by the voters on January 19, 1864, largely because it was considered to be a taxation threat to the mining industry.

A second attempt at the process was spurred by the intervention of Lincoln and the Republican Party, who feared that they would not be able to carry enough states to win the presidency in the 1864 election. In spring of 1864, Lincoln signed legislation authorizing three new territories, Nebraska, Colorado, and Nevada, to convene constitutional conventions and to form state governments. Nevada was the only one to complete this process; the voters approved its constitution in September after the delegates removed the controversial mining clause.<sup>54</sup> President Lincoln proclaimed Nevada the 36<sup>th</sup> state in the union on October 31, 1864, “just in time to participate in the presidential election and to vote for the Thirteenth Amendment, which abolished slavery (Hulse, 2004: 84).

The formation and development of Nevada was greatly influenced not only by mining but cattle ranching and agriculture. The fates of the Walker Lake Paiute Tribe and Walker Lake have been shaped by these forces as well. This is covered in the next chapter.

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<sup>53</sup> These were Esmeralda, Douglas, Ormsby, Washoe, Storey, Churchill, Humboldt, and Lyon. The last county was to have been Lake County. No government was established there, however, and it was eventually annexed to Washoe County.

<sup>54</sup> Instead of taxing mines the same way that other property was taxed, as had been the case in the first constitution, only the proceeds of an active mine would be taxed.

## CHAPTER FOUR: P. L. 109-103 AND THE WALKER BASIN PROJECT

### BACKGROUND

The two forks of the Walker River rise in the high Sierra Nevada, north of Mono Lake in California. Each fork winds its way down the mountain. The West fork crosses the Nevada-California state line in Antelope Valley near Topaz Lake. The East Fork crosses into Nevada near Bridgeport, California, east of the Bridgeport Reservoir, and passes through the Sweetwater Mountains. The two forks merge five miles south of Yerington, becoming the mainstem Walker River. The river flows past ranches and farms around Yerington, through the Mason Valley Wildlife Management Area. It then travels 45 miles across the Walker River Paiute Reservation,<sup>55</sup> terminating in Walker Lake, near Hawthorne<sup>56</sup> (Horton, 1996b; Sharpe et al., 2007). Because most of the surface water of the East and West forks of the Walker River are used to support irrigated agriculture in Smith and Mason Valley, by the time the river reaches the reservation, its flows have been greatly diminished.

Mason and Smith Valleys are part of Lyon County, one of the fastest growing counties in the nation.<sup>57</sup> From 2000 to 2007, the population of Lyon County grew from 34,501 to 49,824 (U.S. Census, 2008). Such growth and development has increased the competition for water resources in the Walker River Basin. Additional pressure comes from the Walker River Paiute Tribe,<sup>58</sup> which is allied with the federal government in litigation to obtain more water rights for the reservation. Environmental, fishing, and recreational interests are interested in the preservation of Walker Lake.

Walker Lake is one of the six largest natural terminus lakes in western North America. It is also one of three desert terminal lakes in this area that support a freshwater fishery.<sup>59</sup> The river and the lake are facing serious issues. The river is over-allocated, meaning that not all the demands on the river can be met, even in “normal” water years. Because irrigated agriculture in Mason and Smith Valleys consumes a significant part of the river upstream from the lake, the lake has been steadily declining. The lake level dropped from an historic (1882) high elevation of 4,083 feet above mean sea level (msl) to 3,934 (msl) (2007), which translates into a 149 foot drop in lake depth, and a decrease in total lake volume from approximately 9.0 to 1.7 million acre-feet. Upstream barriers (including major storage reservoirs diversion dams, lack of passage and screening facilities) have contributed to the demise of the Walker Lake ecosystem and its fishery as well. Consequent changes in water quality have impaired the entire lake ecosystem.

The original genetic strain of Lahontan cutthroat trout (LCT) in the lake is extinct, and the lake has been stocked with a different strain of LCT. The major food source for

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<sup>55</sup> The reservation, established November 29, 1859, is located 42 miles south of Fallon and 23 miles east of Yerington.

<sup>56</sup> Although Walker Lake and the Indian reservation are located in adjacent Mineral County, the center of agricultural production is in Mason and Smith Valleys in Lyon County.

<sup>57</sup> In part, this growth stems from the location of national distribution centers for corporate giants such as Wal-Mart, Amazon, and Sherwin-Williams.

<sup>58</sup> The tribe and the federal government are seeking legal recognition of storage rights in Weber Reservoir on the reservation, as well as water rights for lands that were returned to the reservation in 1936.

<sup>59</sup> The other two are Pyramid Lake and Summit Lake, also located in Nevada.

the existing LCT is the tui chub, which the lake ecosystem is increasingly unable to support. (Sharpe, et al., 2007:2-3).<sup>60</sup> The lake naturally experiences a build-up of total dissolved solids (TDS), particularly salts. TDS concentrations are more than 17,000 milligrams per liter (mg/l), up from 1882 recordings of 2,560 mg/l. Studies show that “concentrations approaching 16,000 mg/l would result in a 100% mortality rate for the lake’s Lahontan cutthroat trout” (Horton, 1996b:I-12).<sup>61</sup> If the salinity issue is not dealt with in the near future, the lake will cease being a sustainable habitat for Lahontan cutthroat trout and migratory waterfowl. In 2004, water quantity and quality issues caused all of the Lahontan cutthroat trout in the lake to die. The Bureau of Reclamation asserts that the lake is currently at risk of “environmental collapse” (U.S. Bureau of Reclamation, 2008).

The federal government’s physical presence in the Walker Basin is threefold. The U.S. Geological Survey (USGS) has several gaging stations by which it measures instream flows in the Walker River. There is an Army Depot in Hawthorne. And the Bureau of Land Management (BLM) owns the land surrounding much of Walker Lake. It has a legal presence as well, because of its trust obligations to the Walker Lake Paiute Tribe, on whose behalf the federal government advocates.

The irrigation system in Walker Basin is privately developed, owned, and operated. Its diversion works and irrigation canal systems were constructed by individual landowners and are managed by several ditch companies and the Walker River Irrigation District (WRID). Currently, there are ~110,850 acres of land in production in the basin (Sharpe, et al., 2007:6).<sup>62</sup> In Smith and Mason Valleys, WRID provides surface and storage water rights for ~80,000 acres of land.

Increased conflict on the Walker River system led to a 2003 Federal District Court-supervised and -sponsored mediation between stakeholders representing the Walker Lake Paiute Tribe; the Walker River Irrigation District; Lyon County, Nevada; Mineral County, Nevada; Mono County, California; the Walker River Working Group; the states of California and Nevada; and the federal government. Recognizing that more than three years of mediation efforts had produced no agreement on any of the basic issues, the Walker River Paiute Tribe withdrew from mediation, followed several months later by Mineral County and the Walker River Working Group (Riley, 2006:4A). The stay that had been placed on lawsuits challenging the provisions of Decree C-125 was lifted by the court, thereby permitting the parties to resume litigation.<sup>63</sup>

As early as 1993, Senator Reid sought help from conservation biologists at the University of Nevada, Reno in establishing baseline conditions for flora, fauna, and water quality of the Walker River Basin, on which federal actions could be taken. That research was completed by summer of 2004 and helped inform future policy developments

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<sup>60</sup> Although the tui chub did spawn in 2005, there were no discernable, viable eggs or larvae (Sharpe, et al., 2007).

<sup>61</sup> The lake contains microenvironments that are spring-fed, which is buying time for both the lake and the fishery it supports.

<sup>62</sup> This figure represents the basin-wide total for lands with surface water rights (decree plus storage), not lands in production.

<sup>63</sup> C-125, issued June 1939, allocated the waters of the Walker River based on priority of uses (Horton, 1996b, p. III-7).

regarding Walker Lake. Eventually, Senator Reid sought—and received—authorization for a federally funded water rights acquisitions program to purchase water from “willing sellers” to deliver to the lake. That authorization came from P. L. 109-103, the Energy and Water Development Appropriations Act, which Congress passed on November 19, 2005.

### **PRECURSORS TO 109-103**

The road to passage of P. L. 109-103 is an interesting one. On May 13, 2002, Congress passed P. L. 107-171, the Farm Security and Rural Investment Act of 2002 (the Farm Bill), a five-year authorization for all of the programs in the Department of Agriculture.<sup>64</sup> Section 2507 the Farm Bill authorized the Secretary of Agriculture to transfer \$200 million to the Bureau of Reclamation Water and Related Resources account, to be used to study and assist at-risk natural desert terminal lakes. It stipulated that the funds “remain available until expended” [Sec. 2507(a) (2)]. To gain consensus on the \$200 million, Section 2507 stipulated that none of these funds could be used to either purchase or lease water rights.

The following year, Congress enacted P. L. 108-7, the Omnibus Appropriations Bill. Section 207 of this bill allocated money that had previously been appropriated from Section 2507 of the 2002 Farm Bill to provide water and assistance to the three desert terminal lakes in northern Nevada, including \$1 million to create a fish hatchery at Walker Lake to benefit the Walker River Paiute Tribe. Additionally, \$2 million was provided in equal shares to the states of Nevada and California, the Truckee Meadows Water Authority, and the Pyramid Lake Paiute Tribe to further implement the provisions of the negotiated settlement (P. L. 101-618) of 1990. Finally, section 207 (b) authorized the Secretary of Interior to provide financial assistance to state and local public agencies, Indian tribes, non-profit organizations, and individuals to carry out the terms of Section 207 of the Omnibus bill and Section 2507 of P. L. 107-171 (the 2002 Farm Bill). Section 207 of the Omnibus bill did not include a prohibition against using these funds to purchase or lease water rights.

Additional money from the 2002 Farm Bill was made available when Congress passed the Energy and Water Development Appropriations Act of 2004 (P. L. 108-137). Section 207 provides \$2.5 million to the state of Nevada to purchase water rights in Lahontan Valley to improve Carson Lake and Pasture, “notwithstanding” the prohibition against same contained in section 2507 of the 2002 Farm Bill. These funds cannot be expended until the state of Nevada receives title to the Carson Lake and Pasture, as required by the negotiated settlement on the Truckee and Carson rivers. Additionally, one million dollars was provided to the University of Nevada, Reno, for an outsourced public education and outreach initiative focused on the Walker River Basin. This initiative led to the first public proposal to acquire water rights from a specific potential willing seller, who eventually became the first person to sign an option and purchase agreement as part of the University’s Walker Basin Project.

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<sup>64</sup> The Farm Bill comes up for reauthorization every five years. Congress then annually appropriates money for agricultural programs as it sees fit during those five years.

## Related Legislation

In November 2005, Congress passed P. L. 109-103 (see Appendix C), the Energy and Water Development Appropriations Act of 2006. Section 208 directs the Secretary of Interior (under the provisions of section 2507 of the Farm Bill of 2002) to provide not more than \$70 million to the University of Nevada, Reno to accomplish the following goals:

(A) to acquire from willing sellers land, water appurtenant to the land, and related interests in the Walker River Basin, Nevada; and (B) to establish and administer an agricultural and natural resources center, the mission of which shall be to undertake research, restoration, and educational activities in the Walker River Basin relating to—(i) innovative agricultural water conservation; (ii) cooperative programs for environmental restoration; (iii) fish and wildlife habitat restoration; and (iv) wild horse and burro research and adoption marketing [sec. 208 (a)].

Section 208 (b) of P. L. 109-103 specified that the Secretary shall provide \$10 million for a water lease and purchase program for the Walker River Tribe, provided that water be acquired only from willing sellers. The program must be designed to maximize water conveyances to Walker Lake and located only within the reservation. Section 208 (c) provides \$10 million for tamarisk eradication, riparian restoration, and channel restoration efforts within the Walker River Basin, “with priority given to activities that are expected to result in the greatest increased water flows to the lake.” It also provides \$5 million to the U.S. Fish and Wildlife Service, the Walker River Paiute Tribe, and the Nevada Division of Wildlife to complete the design and implementation of the Western Inland Trout Initiative and Fishery Improvements in the State of Nevada, with an emphasis on the Walker River Basin.

Anticipating potential bureaucratic inertia and possible public opposition to the project, the act states that “for each day after June 3, 2006, on which the Bureau of Reclamation fails to comply with subsections (a), (b) and (c), the total amount made available for salaries and expenses of the Bureau of Reclamation shall be reduced by \$100,000 per day” [Sec. 208 (d)]. The Bureau accomplished this by initiating a planning process that led to the commitment of the appropriated funds to the University of Nevada before the deadline of June 3. Essentially, Reclamation entered into a master agreement to obligate the entire \$70 million. The \$14 million of those funds that were dedicated to research in the Walker Basin would only be released based on individual task orders (the planning process mentioned above was the first of these). The remaining \$56 million is to be spent on purchase options and purchases of water rights from willing sellers in the basin.

The provisions of P. L. 109-103, section 208 are being implemented through a collaborative effort of the University of Nevada (UNR) and the Desert Research Institute (DRI) under the direction of the Nevada System of Higher Education (NSHE). UNR and DRI provide the scientific expertise for the Walker Basin Project, and the NSHE coordinates the project through the Office of the Chancellor. Broad oversight is provided

by the Walker Basin Working Group.<sup>65</sup> NSHE chose to centrally manage the project through its Academy for the Environment (Academy). The Academy, established in 2004, is an interdisciplinary institution whose mission is to develop, improve, and coordinate environmental teaching, research, and service at UNR. DRI's share of the work was administered through its Center for Watersheds and Environmental Sustainability.

The appropriations legislation seeks to take advantage of the University of Nevada, Reno's natural resource management expertise and that of its affiliated sister institution, the Desert Research Institute. This expertise ranges from hydrology to remote imaging to arid land and soils analysis to alternative crops to water quality to limnology and terminal lake fisheries. Money was appropriated to "undertake research, restoration, and educational activities in the Walker River Basin relating to (i) innovative agricultural water conservation; (ii) cooperative programs for environmental restoration; (iii) fish and wildlife habitat restoration; and (iv) wild horse and burro research and adoption marketing." The last component was included to provide an adoption center within Lyon County at the request of local interests and members of the Nevada Congressional delegation ([www.unr.nevada/walker](http://www.unr.nevada/walker)).

This effort is to be based on rigorous, objective, scientific research conducted by a land grant university with deep, historic ties to Nevada agricultural interests. The policy goal of this appropriation is to deliver water to Walker Lake to address the increase in lake salinity and eventually reverse it to a level that sustains a robust Lahontan cutthroat trout population and migratory waterfowl, while at the same time maintaining—and perhaps even improving—the economy of the Basin.

## **THE WALKER BASIN PROJECT**

Before the research and acquisitions processes could begin, an acquisitions plan and budget were developed to serve as a long-term "road map" for the project. Eighty percent of the funds (\$56 million) were budgeted for the acquisitions program. The other \$14 million was budgeted for all other aspects of the project, including research.

### **Acquisitions**

The plan anticipated that the acquisitions process would occur over three stages: the planning and pre-acquisitions period (January 2007–December 2008), the option and due diligence period (January–December 2009),<sup>66</sup> and the acquisitions and stewardship

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<sup>65</sup> The NSHE Working Group consisted of Mike Collopy, Director, Academy for the Environment and Co-Chair of the Walker Basin Project Study Group; Milt Glick, UNR President; Marc Johnson, UNR Provost; Dan Klaich, NSHE Executive Vice Chancellor and Chair of the Working Group; Chris Maples, DRI Executive Vice President for Research and Chief Science Officer; Jim Thomas, DRI Associate Research Professor, Director of DRI's Center for Watersheds and Environmental Sustainability, and Co-Chair of the Walker Basin Project Study Group; Steve Wells, DRI Vice President for Research; and John V. White, professor of Law at the University of Nevada, Las Vegas' Boyd School of Law. At Senator Reid's request, Mary Conelly, Senator Reid's State Director, and Robert Dickens, UNR Director of Governmental Affairs, were included as ex-officio members. This group was previously called the Executive Steering Committee.

<sup>66</sup> Due diligence refers to optimizing acquisitions by "evaluating the type of water rights purchases, water losses from the river during transport to the lake, interactions between ground and surface water along the Walker River as it flows to Walker Lake, changes to in-stream biological communities, and total dissolved

phrase (beginning 2010) (NSHE Final Report, 2006). Western Development and Storage, a Los Angeles firm experienced in water storage, conservation, transfers, and banking, was selected to coordinate the water rights acquisitions process. As of July 2009, 11 option and purchase agreements were recorded, with a combined negotiated value of \$90 million (subject to appraisal, confirmation of title, and other due diligence issues). Legislation of pending that would substantially restructure and build upon the project's fee acquisition and research efforts to date. It would also end the University of Nevada, Reno's direct involvement with the acquisitions programs and launch a three-year water leasing demonstration program and lead to the University's assignment of its acquisitions-related rights, interests and obligation to the National Fish and Wildlife Federation in early 2010. According to Jim Richardson, a professor at UNR who has been working with the acquisitions team, it is possible that some of the current options may never be exercised, and if they are, it will take four or five years. In the meantime, there is also the possibility that the leasing program will render some of the purchase options moot—and the possibility, as well, that technological advancements may do the same thing. For example, desalination technology is currently under development by Amy Childress and Scott Tyler of the Desert Research Institute (Wolterbeek, 2008).

#### **Walker Basin Project Research (see Appendix D).**

Both campuses issued internal requests for proposals (RFPs), which underwent a two-phase review process. The first phase was an internal peer review, judging proposals against the policy directives found in the legislation and appropriations. The second phase was an external review by the Bureau of Reclamation and Senator Reid's staff. Successful proposals were forged into collaborative research teams, with a principal investigator leading each team.

At the end of that process, 13 projects were selected for funding. Two of these were needed to support the acquisitions process: Development of a Water Rights GIS Database of the Walker River Basin, and Development of a Decision Support Tool in Support of Water Rights Acquisitions. Four dealt with potential consequences to agriculture and ecosystems in the basin: Alternative Agriculture and Vegetation Management; Plant, Soil and Water Interactions; Assessing the Importance of Water Acquisitions to the Health of the Instream Environment, Aquatic Ecology, and Lake Health; and Development of Tools to Quantify Sediment Transport within the Walker River Watershed. Two others were selected for their potential contributions to the agricultural economy of the Walker Basin: Water Conservation Practices for Agricultural Producers; and Formulation and Implementation of Economic Development Strategies to Mitigate Economic and Fiscal Dislocations. Three others related to project coordination, communications, and outreach. At the request of local interests and the Nevada Congressional delegation, a Wild Horse and Burro Marketing Study was included. These 13 tasks are funded with a total budget of \$10,167,000.<sup>67</sup> Collectively, these tasks will help identify “maximum water delivery combinations in land and water purchases to Walker Lake,” as well as the potential consequences of those purchases to the economy

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salt (TDS) changes in the river and lake from increased flows of the Walker River” (NSHE Final Report, 2006, p. 15).

<sup>67</sup> The work statement and budget that defined the specific areas of research were developed by Saxon Sharp and Jim Thomas of DRI and Mike Collopy of UNR.

and ecology of the basin (NSHE Final Report, 2006:3).<sup>68</sup> The project coordinator and the NSHE Working Group oversee the project.

The Walker Basin project also includes a contemporaneous policy analysis and project history component linked to a public communications initiative. The experiences of the negotiated settlement on the Truckee and Carson Rivers and other western water resource conflicts suggested the value of including a communications effort from the start of the project. As part of that effort, a Stakeholders Group was formed in late 2006 to represent major interests in the basin. This group includes two at-large members selected by Senators Harry Reid and John Ensign, as well as representatives of the Nevada Department of Conservation and Natural Resources, the U.S. Fish and Wildlife Service, Lyon County, the Bureau of Land Management, the Nevada Division of State Lands, the Walker River Paiute Tribe, the hunting and fishing community, Mono County, the California Department of Water Resources, the Walker River Irrigation District, the Walker Lake Working Group, and Mineral County ([www.unr.nevada/walker](http://www.unr.nevada/walker)).

Quarterly meetings were scheduled among the Stakeholders Group, the co-chairs of the Walker Basin Study Group, communication teams from UNR and DRI, the project coordinator, and the chair of the Working Group. The meetings were open to the public.

In addition to the Stakeholders' meetings, the communications team created a website that includes a brief history of Walker Lake, including its current status; the legislation that authorized the \$70 million expenditure; project goals; the list of stakeholders, along with contact information; and descriptions of the research projects, including monthly updates. The idea was to create a transparent, ongoing, two-way communication process. Community members were encouraged to attend stakeholders' meetings, where questions were welcome.

Initial opposition to the project in Lyon County was fierce. Public claims were made at these meetings that the stakeholders group did not represent the "real" stakeholders in the valley; that community input was not being taken seriously; and that the research would yield a predetermined set of recommendations. A lawyer representing agricultural and domestic well interests in Mason Valley observed that "the last thing that Nevada needs is to turn the prosperous Mason and Smith Valleys into a mirror image of the now relatively deserted Owens Valley so that they do not disappear the way that Mullholland made the once lush Owens Valley disappear" (Trout, 2007:1).

Many opinion pieces on the project, authored by Jim Sanford, former Mason Valley editor and publisher, appeared in the Mason Valley News. The headlines from these pieces illustrate the sentiment in the basin: "Guest Shot...Any Fight Left in Mason and Smith Valleys?" (July 13, 2007); "A Wake Up Call...If You Don't Think Games are Being Played, You're Naïve" (July 20, 2007); "Saving Walker Lake Really a 'Feel Good' Proposal? Picture Mason Valley without 80% of its Farms (October 5, 2007); "Two Cents Worth: Fair Market Value of Walker River Water is \$2,500 Per Acre Foot? (November 16, 2007); and "Two Cents Worth: Is Harry Reid Contributing to Global Warming?" (December 21, 2007).

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<sup>68</sup> The statement of work and budget were developed by Saxon Sharp and Jim Thomas at DRI and Mike Collopy at UNR.

Such criticism began to wane as research team members began their field work, which resulted in positive interactions between the locals and the researchers. The researchers were encouraged by the project coordinator to interact with locals interested in understanding the research aspects of the project. One local farmer, who had consistently opposed any federal role in local agriculture, eventually leased his property to the project to conduct research on water-conserving crops, a sign that the locals were beginning to trust the researchers. Research designs and preliminary results have been presented at community forums and stakeholder meetings. Questions from the community were sought at stakeholder meetings, through telephone calls, and via email messages. Economic analysis of marketable crops was completed and presented to stakeholders and farmers, some of whom sought new crops and additional markets for their enterprises.

As communication increased, newspaper editorials became more supportive of letting the research teams do the science and see where it leads. Even Jim Sanford began taking a more moderate stance:

Welcome to 2008. Enough sabre rattling. Time to work toward a more palatable solution concerning the Walker River Basin Project.... The basic issue is that there is a lawsuit in the courts seeking changes in the amount of water the downstream tribe receives, plus what can be labeled “an environmental issue” at the end of the system (Walker Lake).... Both these issues have to be addressed because of the lawsuit and proposed federal legislation.... It’s 2008, we have to do something more [than keep calling UNR/DRI names]; time’s a wasting.” (Sanford, 2008, p. 1-2)

Sanford later observed that the community had come to realize that change was coming whether they liked it or not—and it might as well become part of and help shape that change. Sanford also indicated this change of heart was in part the result of the community coming to trust the researchers and the objectivity of their research. This new-found respect and trust is the result of increased interactions between the researchers and the individuals in the community. The community seems more accepting of the idea that the research might show how to sustain agriculture and diversify the economy while delivering water to Walker Lake.<sup>69</sup>

## CONCLUSION

The Walker Basin Project represents a sophisticated attempt to develop and test scientific tools with which to assist achievement of the public policy goals stated in the legislation. Although the legislation authorizes and funds the acquisition of water, that which is acquired must also be *deliverable* to Walker Lake. Data gathered, databases built, decision support tools tested, demonstration of alternative crops, use of natural vegetation to control dust and invasive weeds, economic impact analysis, economic development proposals, and a communicative process with interested local citizens may

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<sup>69</sup> At the public hearings on the Draft EIS conducted by the Bureau Reclamation during the summer of 2009, public comments revealed lingering opposition, however.

yield a set of accommodations that conserve natural resources, local communities, and a rural Nevada lifestyle.

The majority of the original “Farm Bill” appropriation toward the Walker River remains to be committed to the policy goals stated above. There will be water right acquisitions from willing sellers, with purchase and title transfer contingent upon its being shown through the use of the tools developed in this project that water can be delivered to Walker Lake.

In a fundamental sense, this portion of the Walker Basin Project is in “midstream.” Evaluation of the use of scientific tools in achieving stated policy goals will continue at least until the authorization of the current project ends in 2010.

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## **APPENDIX A. CALIFORNIA-NEVADA INTERSTATE COMPACT**

**NRS 538.600 California-Nevada Interstate Compact: Ratification and approval; text.** The Legislature of the State of Nevada hereby ratifies and approves the California-Nevada Interstate Compact as set forth in this section. The provisions of the Compact shall become the law of this state upon the compact becoming operative as provided in Article XXII of the Compact. The provisions of the California-Nevada Interstate Compact are as follows:

### **ARTICLE I. Purposes**

Consistent with the provisions of the authorization Acts of the State of California and the State of Nevada and the United States, the major purposes of this compact are to provide for the equitable apportionment of water between the two states; to promote interstate comity and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins.

### **ARTICLE II. Definitions**

A. The terms “California” and “Nevada” shall mean respectively the State of California and the State of Nevada.

B. The term “commission” shall mean the administrative agency created by Article IV of this compact.

C. The term “Lake Tahoe Basin” shall mean the drainage area naturally tributary to Lake Tahoe including said Lake or to the Truckee River upstream from the Truckee River intersection with the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian.

D. The term “Truckee River Basin” shall mean the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake including such lake, but excluding the Lake Tahoe Basin.

E. The term “Carson River Basin” shall mean the area which naturally drains into the Carson River and its tributaries and to the Carson River Sink, but excluding the Humboldt River drainage area.

F. The term “Walker River Basin” shall mean the area which naturally drains into the Walker River and/or Walker Lake upstream from the intersection of the river and/or lake in Mineral County, Nevada, with the northern township line of Tier 10 North, Mount Diablo Base Line.

G. Except as otherwise expressly provided in this compact the terms “existing,” “present” and “presently” shall mean as of 1964.

H. The term “effective date of the compact” shall be the date on which the legislation provided for in Article XXII (1) and (2) shall become law.

I. “Measured” means the determination of the relevant amount of water in cubic feet per second or gallons per minute or acre-feet by the use of a current meter, rated weir, rated flume, pipeline water meter, computation from contour maps, or any other method which results in a reasonably accurate determination based on sound engineering practices.

### **ARTICLE III. Sovereign Relationship**

A. Each state shall have jurisdiction to determine, pursuant to its own laws, the rights to the use of waters allocated to it herein; provided, however, that the right to use such water shall be limited to such quantities of water as shall reasonably be required for the beneficial use to be served and shall not extend to the waste or unreasonable use of water. Such provision shall not be construed to affect the water rights laws of either state with respect to any waters, other than the waters allocated to the state hereunder. Each state will recognize and accept applications for such permits, licenses or other permissions as are required by the law of the state where the application is filed to enable the other state to utilize water allocated to such other state. This provision shall neither require nor prohibit the United States of America from complying with provisions of state law relating to the appropriation of water allocated to the states by this compact.

B. Each state shall cooperate with the other in securing to each the right to fully utilize the rights and privileges granted and waters allocated to each hereunder.

C. The use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made.

### **ARTICLE IV. The California-Nevada Compact Commission**

#### **A. Creation and Composition**

1. There is hereby created an interstate compact commission to be designated as the California-Nevada Compact Commission herein referred to as the commission.

2. The commission shall consist of five members from each state and one member as representative of the United States chosen by the President of the United States who is hereby requested to appoint such a representative. The United States member shall be ex officio chairman of the commission without vote and shall not be a domiciliary of or reside in either state.

(a) The California members of the commission shall consist of the Director of the Department of Water Resources of the State of California, and four (4) members appointed by the Governor of California, all of whom shall be residents of the State of California. One of the four members so appointed shall be a resident of the Lake Tahoe Basin, one shall be a resident of the Truckee River Basin, one shall be a resident of the Walker River Basin and one shall be a resident of the Carson River Basin.

(b) The Nevada members of the commission shall consist of the State Engineer of the State of Nevada (who additionally shall represent all Nevada areas not otherwise represented as herein provided), and four (4) members appointed by the Governor of Nevada, each of whom shall be a resident of the State of Nevada and represent a specific area therein as below defined, provided that the Governor shall not appoint any person a member of such commission if he determines that such person has a conflicting interest in California. One of the four members so appointed shall be a resident real property owner within and represent the Reno-Sparks metropolitan area (including adjacent agricultural area) and be fully qualified by knowledge and experience in connection with the water requirements and supply for such area; the other three members so appointed shall be representative of the common interest and goals of all water users of the area and each shall have broad practical experience in water management, and one shall be a resident real property owner within and represent the Walker River Basin in Nevada, another shall be a resident real property owner within and represent the Carson River Basin in Nevada upstream

from Lahontan Reservoir, and the third shall be a resident real property owner within and represent the area within the Truckee-Carson Irrigation District in Nevada.

3. The term of office of the four members of the commission appointed by each Governor shall be four (4) years. The Governor of each state, upon appointment of the first members of the commission, shall designate one member of the commission to serve for a period of one year, one member to serve for a period of two years, one member to serve for a period of three years, and one member to serve for a period of four years. Thereafter, members shall be appointed for the regular term of four years as the terms expire.

4. Interim vacancy, for whatever cause, in the office of any member of the commission shall be filled for the unexpired term in the same manner as hereinabove provided for regular appointment.

5. The appointed members of the California-Nevada Compact Commission shall be designated within ninety (90) days after the effective date of the compact. Within thirty (30) days after such members have been appointed and the federal representative designated, the commission shall meet and organize.

#### B. Finances

1. The salaries and the personal expenses of each member of the commission shall be paid by the government he represents. All other expenses which are incurred by the commission incident to the administration of this compact and which are not paid by the United States or by other funds received by the commission shall be borne equally by the two states.

2. The commission shall adopt a budget covering the commission's estimate of its expenses for each of the following two fiscal years; provided, that whenever the legislatures of both states appropriate funds on an annual basis the commission shall submit its budget on such annual basis. The commission shall submit said budget to the Governors of the two states for joint review and approval and to the President of the United States at the earliest date prescribed by the two states for submission of proposed budgets. Each state shall appropriate one-half of the funds necessary to meet said budget requirements, which appropriations shall be made available to the commission as of July 1 of each fiscal year for such fiscal year's operations. All unexpended and unencumbered funds from such appropriations shall be returned by the commission in equal proportions to the states to the credit of the state fund from which said appropriation was made. All receipts and disbursements of funds handled by the commission shall be subject to a joint audit by the states and the report of said audit shall be included, and become a part of the annual report of the commission.

3. The commission shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the Constitution of said government. The commission shall not incur any obligations prior to the availability of funds adequate to meet the same.

4. The commission shall make and transmit to the Legislature and Governor of each state and to the President of the United States an annual report covering the finances and activities of the commission and embodying such plans, recommendations and findings as may have been adopted by the commission.

#### C. Meetings and Voting

1. A quorum for any meeting of the commission shall consist of six members of the commission, provided that at least three members are present from each state.

2. All meetings of the commission for the consideration of and action on any matters coming before the commission, except matters involving the management of internal affairs of the

commission and its staff, or involving litigation in which the commission is a party, shall be open to the public. Matters coming within the exception of this paragraph may be considered and acted upon by the commission in executive session under such rules and regulations as the commission may see fit to establish.

3. Each state shall have but one vote and every decision, authorization, determination, order or other action shall require the concurring votes of both states, provided that no state shall vote on any action without the concurring vote of not less than three members of the commission from such state.

#### D. General Powers

The commission shall have power to:

1. Adopt, amend and revoke bylaws, rules and regulations and prescribe procedures for administration of the provisions of this compact.

2. Establish such offices as it deems necessary, and acquire and hold property either by purchase, lease or otherwise as may be necessary for the performance of its functions under this compact.

3. Employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the commission and shall not be considered to be employees of either state. The commission may establish workmen's compensation benefits directly or by insurance. The commission is authorized to contribute to the cost of health and accident insurance for its employees to the same extent as either state contributes to the cost of such insurance for its employees.

4. Perform all functions required of it by this compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state, federal or local agency or other entity or person.

5. Make such findings as are pertinent to this compact including but not limited to findings as to the quantities of water being used in either state, the amount of water available for use pursuant to the allocations made herein, and each state's share of the waters allocated.

6. Install and maintain measuring devices of a type or types approved by the commission in any stream, lake, reservoir, ditch, pumping station or other diversion works on the Truckee, Carson or Walker Rivers or on Lake Tahoe, or on waters tributary thereto, or to require water users at their expense to install and maintain measuring devices, as the commission may determine necessary or proper to carry out the purposes or provisions of this compact. The execution and enforcement of such requirements concerning such measuring devices as shall be enacted by the commission shall be accomplished by the commission directly, or by such federal, state, local or other official or person as the commission may delegate, or by any other agency responsible to or representing a federal court.

7. Accept gifts of money or real property or anything of value.

8. Appoint a hearing examiner or examiners who may be members of the commission to conduct hearings and to make recommendations to the commission on any matter requiring a hearing and decision by the commission.

9. Obtain a right of access to all properties in the Lake Tahoe, Truckee River, Carson River and Walker River Basins whenever necessary for the purpose of administration of this compact. The commission may obtain a court order to enforce this right of access.

10. Take such action as it deems appropriate for the enforcement of the provisions of this compact.

11. Administer oaths or affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena which may be served anywhere within the territorial limits of the United States; said power to administer oaths and affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena may also be exercised by any hearing examiner appointed as provided in subsection 8 of this Section D.

12. Contract with the appropriate agency of either state, including the retirement system, to provide retirement and other benefits to commission employees.

E. Whenever the public health or welfare is endangered, the commission may declare the existence of an emergency and, in such event, shall designate the location, nature, cause, area, extent and duration thereof. In the event of an emergency so declared, the commission may, with respect to all matters covered by this compact, do all things necessary, proper or convenient independently or in cooperation with any other agency, person, or entity, to initiate, carry on, and complete any and all remedial measures required to meet said emergency including the adoption and enforcement of any regulations and restrictions necessary for such purpose.

#### **ARTICLE V. Lake Tahoe Basin**

A. The right of the United States or its agent to store waters in Lake Tahoe between elevations 6,223.0 and 6,229.1 feet (Lake Tahoe datum) and to release said stored waters for beneficial uses downstream from Lake Tahoe Basin is hereby ratified and confirmed subject to the rights granted in Section D of this article.

B. It is agreed by the states subject to the consent of the head of the federal agency having jurisdiction thereof, that an overflow weir of approximately 140 feet in length with a crest elevation of 6,223.0 feet, Lake Tahoe datum, upstream from the Lake Tahoe outlet gates shall be constructed and installed with necessary channel improvements within four years from the effective date of this compact provided that should the commission decide that it is in the best interests of each of the two states, it may extend such period for such additional period or periods as it may deem reasonable. The cost of this installation shall be borne by the States of California and Nevada in equal amounts. As used herein, Lake Tahoe datum shall be measured with respect to the top surface of the hexagonal brass bolt seven-eighths inch in diameter, projecting one inch from the vertical face of the southerly concrete abutment wall of the present existing Lake Tahoe Dam, at approximately 3.2 feet below the top of the wall and approximately in line with the upstream ends of the cutwaters of the concrete piers between the sluiceways of the dam. This surface of the brass bolt is presumed for the purposes of the compact to have an elevation 6,230.0 feet Lake Tahoe datum, notwithstanding that it was determined by the U.S. Geological Survey on November 15, 1960, to be at an elevation of 6,228.86 feet above sea level datum of 1929.

C. The storage rights in Lake Tahoe shall be operated alone or in conjunction with other reservoirs so as to minimize the period and duration of high and low water elevations in Lake Tahoe, provided that exchanges of water or releases between Lake Tahoe and other reservoirs shall not measurably impair the intended purpose of such reservoirs.

D. Upon construction of the overflow weir provided for in Section B of this article, the total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in said basin shall not exceed 34,000 acre-feet annually, of which 23,000 acre-feet annually is allocated to the State of California for use within said basin, and 11,000 acre-feet annually is allocated to the State of Nevada for use within said basin.

After use of the water allocated herein, neither export of the water from the Lake Tahoe Basin nor the reuse thereof prior to its return to the lake is prohibited. This allocation is conditioned upon the construction of the overflow weir; however, it is recognized that there may well be a period of time between the effective date of the compact and the construction of the overflow weir; during that period of time both states shall be permitted to use waters within the Lake Tahoe Basin subject to the same conditions, both as to place of use and amounts of use, as are provided in this Article V.

E. In addition to the other allocations made by this compact, transbasin diversions from the Lake Tahoe Basin in both states existing as of December 31, 1959, may be continued, to the extent that such diversions are recognized as vested rights under the laws of the state where each such diversion is made.

The diversion of a maximum of 3,000 acre-feet per annum from Marlette Lake for use in Nevada is hereby recognized as an existing transbasin diversion within the meaning of this Section E.

F. Pumping from Lake Tahoe Basin for the benefit of downstream users within the Truckee River Basin shall be permitted only in the event of a drouth emergency as declared by the commission to the extent required for domestic, municipal, and sanitary purposes, and when it is determined by the commission that all other water available for such uses from all sources is being so utilized. In the event of such declaration of emergency, use of this water for such purposes shall have priority over use of water for any other purpose downstream from Lake Tahoe Basin. Pumping shall be done under the control and supervision of the commission and water pumped shall not be charged to the allocation of water to the Lake Tahoe Basin made herein.

## **ARTICLE VI. Truckee River Basin**

The following allocations of water of the Truckee River and its tributaries, including Lake Tahoe releases, are hereby made in the following order of relative priority as between the states:

A. There is allocated to Nevada water for use on the Pyramid Lake Indian Reservation in amounts as provided in the 1944 Truckee River Decree (Final Decree in United States vs. Orr Ditch Company, et al. United States District Court for the District of Nevada, Equity No. A3). By appropriate court order, the United States, for and in behalf of the Pyramid Lake Indians shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so allocated so far as such change may be made without injury to the allocations to either state.

B. There is allocated to California:

1. The right to divert within the Truckee River Basin in California 10,000 acre-feet of water per calendar year which may be stored in reservoirs at times when the flow in the channel of the Truckee River at the United States Geological Survey Gauging Station at or near the California-Nevada state line exceeds 500 cubic feet per second; provided that such diversions shall not in the aggregate exceed 2,500 acre-feet in any calendar month and the amount of such storage in any one reservoir, except Donner Lake, shall not exceed 500 acre-feet of active storage capacity.

2. The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of United States vs. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

3. Six thousand acre-feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet, subject to the execution of a contract or contracts therefor with the United States of America. California may divert all or any portion of said 6,000

acre-feet of conservation yield from Stampede Reservoir directly or by exchanges from any source on the Truckee River or its tributaries or from Lake Tahoe. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

4. If and when the water allocated to California in subparagraphs 1 and 3 of this section and in Article V is being used, or such use appears imminent, the commission shall permit California to develop additional yields of water for use in California, either directly or by exchange subject to the following limitations:

(a) All existing beneficial uses of water for domestic, municipal, industrial, and agricultural purposes in Nevada as determined by Nevada law as of that time together with the yield of Stampede Reservoir in excess of 6,000 acre-feet shall be recognized and not impaired by the development of such additional yield.

(b) Additional yields developed for use in California shall be limited to an amount not to exceed an aggregate of 10,000 acre-feet annually, and such development shall be for domestic, municipal, and industrial uses solely. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

(c) The right of the commission to permit Nevada to share in such additional yield upon participation by Nevada in bearing a proportionate cost of developing such additional yield.

C. The right to store in Prosser Creek Reservoir a maximum of 30,000 acre-feet of water annually with the priority as set forth in California State Water Rights permit 11666 and to release water therefrom as set forth in said permit and any license which may be issued thereunder is hereby recognized and confirmed.

D. There is allocated to Nevada all water in excess of the allocations made in Sections B and C of this article.

## **ARTICLE VII. Carson River Basin**

The following allocations of water of the Carson River and tributaries are hereby made in the following order of priority as between states:

A. There is allocated to the State of California:

1. The right to divert from the natural flow of the West Fork Carson River and its tributaries for existing nonirrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 5,600 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 168 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 185 c.f.s. measured at the points of diversion.

Provided, however, diversions for use downstream from the western boundary of Section 34, Township 11 North, Range 19 East, Mount Diablo Base and Meridian, shall be subject to the following limitations:

(a) Whenever, after the first Monday in May or any day in that week or alternate weeks thereafter of any year the flow of the West Fork of the Carson River at said western boundary shall have fallen below 175 cubic feet per second, then, until October 31 next, water users in California who divert from the West Fork of the Carson River downstream from said western

boundary shall rotate all or any portion of the natural flow of the West Fork of the Carson River necessary to satisfy the demand of Nevada lands with water users in Nevada every other week beginning with the week following that in which water is used in Nevada, and during each rotation period said California users shall be entitled to divert the natural flow of the West Fork of the Carson River during their rotation weeks.

(b) Rotation between water users in California and Nevada on the West Fork of the Carson River may be terminated in whole or in part upon approval of the commission for such termination, upon provision being made so that sufficient water is available by storage or exchange to assure that the water users in Nevada will receive at the same time the flow of water which would have been available to the Nevada water users under rotation.

(c) Stock water, domestic water, and water for fire protection purposes may be diverted downstream from said western boundary from the natural flow of the West Fork of the Carson River at all times by owners of irrigation water rights in California whose lands are contiguous to the West Fork of the Carson River; provided, however, that such diversion shall be limited to the amounts actually required to deliver water for such purposes, and any excess over the amount so diverted shall be returned to the West Fork of the Carson River whenever practicable. Water diverted under this provision shall not be converted to any other use. The commission or its designee shall rule on any challenge relative to the necessity and amount of water required for such purposes.

2. The right to divert from the natural flow of the East Fork Carson River and its tributaries for existing nonirrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 3,820 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 115 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 115 c.f.s. measured at the points of diversion.

3. There is allocated to the State of California the right to store 2,000 acre-feet of water per annum within Alpine County for supplemental use on presently irrigated lands within said county adverse to Lahontan Reservoir but subject to all other existing uses in Nevada. Water stored pursuant to this section remaining at the end of the year shall be deemed to have been stored in the succeeding year.

B. There is allocated to the State of Nevada:

1. The right to divert water from the natural flow of the Carson River and its tributaries during the period commencing March 15 and ending October 31 of each year at the rate of 3 c.f.s. per 100 acres for use on presently irrigated lands in the area above Lahontan Reservoir determined to be approximately 41,320 acres. The rate of 3 c.f.s. per 100 acres is based on a 30-day average for the area as a whole and shall not prevent greater rates of diversion for those areas that have an established greater use; provided that the aggregate diversion measured at the points of diversion shall not exceed 700 c.f.s. on the East Fork of the Carson River, 300 c.f.s. on the West Fork of the Carson River, and 220 c.f.s. on the Main Carson River below the confluence of the East and West Forks.

The combining and exchanging of the use of water between ditches and among users shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economy in the use of the water of the river or other streams, or in order to give to each ditch or user a more advantageous irrigation head.

2. Subject to allocations made in subsection B.1 and Section C of this article, the right to divert water from the Carson River for irrigation use either by direct diversion or by storage in Lahontan Reservoir or other existing reservoirs for use on the Newlands Project.

C. There is allocated to each state the right to store water in existing reservoirs upstream from Lahontan Reservoir to the extent of existing capacity with the appropriate priority with respect to natural flow rights upstream from Lahontan Reservoir under applicable state law, and use such stored waters on the lands in each state to which the storage is appurtenant.

D. Additional yields shall be available for development under the currently authorized Washoe Project from water available in excess of existing beneficial uses recognized by Nevada law, or under other new projects upon a determination by the commission that there is water available on the Carson River and its tributaries in excess of that required to satisfy existing beneficial uses in Nevada as determined by Nevada law as of the time of authorization or construction of such new projects. Such additional yields shall be allocated between the states with equal priority, 20 percent of which shall be allocated to California and 80 percent to Nevada.

Each state shall have the right to participate in any development project by bearing a proportionate cost of such development. In the event that joint developments are found to be not feasible or desirable, each state may develop separately its proportionate share of the remaining water.

E. Except as provided by Article X of this compact, the waters of the Carson River shall not be used in areas outside the Carson River Basin.

## **ARTICLE VIII. Walker River Basin**

### **A. Allocation to Present Rights and Uses**

1. Except as the rights of the Walker River Irrigation District may be limited by subsections 2 and 3 below, the provisions of the decree in the case of *United States v. Walker River Irrigation District, et al.*, United States District Court for the District of Nevada Equity No. C-125, filed April 15, 1936, as amended by the Order of the Honorable A.F. St. Sure, dated April 24, 1940, hereafter called Decree C-125 are hereby recognized and confirmed.

2. The rights of the Walker River Irrigation District to store water of the West Walker River in Topaz Reservoir with a storage capacity of 59,000 acre-feet, under Part VIII of Decree C-125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

(a) The maximum quantity of water which can be diverted annually to storage is 85,000 acre-feet. No more than 85,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district annually. The 85,000 acre-feet amount so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in Decree C-125 acquired by said district prior to 1964. For the purpose of this provision “annually” means the period from November 1 through October 31 of the following year.

(b) The maximum rate of diversion to such reservoir under such rights is 1,000 c.f.s.

(c) For the purpose of determining the availability of water to satisfy rights junior to the Topaz Reservoir storage rights of the Walker River Irrigation District, or for division between the states as unused water, water which has been stored, or is available for storage in and can be physically diverted to such reservoir under such reservoir rights but is released or is allowed to pass through the reservoir and is not rediverted to use in Nevada, shall be deemed to have been held in storage; provided, that until a new major storage project is constructed on the West Walker River, the foregoing shall not apply to the extent that said district with the concurrence of the

watermaster determines, prior to the release or passing through of such water from Topaz Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Topaz Reservoir as a means of protecting lands in Nevada against flood damage later in the year.

3. The rights of the Walker River Irrigation District to store water of the East Walker River in Bridgeport Reservoir with a storage capacity of 42,000 acre-feet, under Part VIII of Decree C-125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

(a) The maximum quantity of water which can be diverted to storage in any year is 57,000 acre-feet. No more than 57,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district in any year. The 57,000 acre-feet amounts so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in said decree acquired by said district prior to 1964 except for water used under such rights prior to 1964 on lands owned by said district in Bridgeport Valley. For the purpose of this provision "year" means the period from November 1 of one calendar year to October 31 of the following calendar year.

(b) Water of the East Walker River and its tributaries may, adversely to the Bridgeport Reservoir storage rights hereinabove recognized and confirmed, be stored upstream from said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights; provided, that when the Walker River system is put on priority under Decree C-125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

4. (a) There is allocated to each state respectively the amount of existing diversions and uses of water of the Walker River Basin diverted upstream from Weber Reservoir and not specifically covered in Decree C-125, provided, that this allocation shall not include water distributed under the historical administration of Decree C-125 in excess of the rights set forth in Decree C-125 to lands having rights thereunder. In making this allocation, it is recognized that the amounts of water allocated and the respective priorities are not presently known with certainty. The commission shall as soon as practicable after its effectuation provide for an investigation, either with its own staff or by other agencies or persons, to ascertain with certainty the amounts of water and priorities of such uses. As between the respective states, the priorities shall be determined as follows: In cases of use not under state-recognized rights, the priorities shall be the date of initiation of use; in cases of use under state-recognized rights, the priorities shall be as provided under the law of the state where the diversion is made. Upon approval by the commission, the results of the investigation shall be binding as to the allocation to each state hereunder.

(b) In addition to rights recognized in subsection A.1 of this article there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet per year for storage in Weber Reservoir and later rediversion to use and in addition 9,450 acre-feet per year to be diverted from natural flow. Both allocations shall have a priority of 1933. The season for diversion of water to storage shall be from November 1 to October 31 of the following year. The season for diversion of water directly for use shall be from March 1 to October 31 and at a maximum rate of 60 cubic feet per second. For the purpose of determining the availability of water to satisfy rights junior to this allocation or for division between the states as unused water,

water which has been stored, or which can be physically stored or diverted to use under this allocation but is released or is allowed to pass through Weber Reservoir and is not rediverted to use on the Walker River Indian Reservation, shall be deemed to have been held in storage or used; provided, that the foregoing shall not apply to the extent that the appropriate representative of said reservation with the concurrence of the watermaster determines prior to the release or passing through of such water from Weber Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Weber Reservoir as a means of protecting lands in Nevada against flood damage later in the year; provided, further, that the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water of suitable quality for irrigation on said reservation as determined by the commission.

Water of the Walker River and its tributaries may, adversely to the Weber Reservoir storage rights hereinabove recognized and confirmed, be stored upstream from said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights; provided, that when the Walker River system is put on priority under Decree C-125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

5. In addition to rights recognized in subsections A.1 and A.4(a) above, there is allocated to California water of the West Walker River as follows:

(a) When all direct diversion rights under Decree C-125 are being satisfied and simultaneously water of the West Walker River is being diverted to storage pursuant to the Topaz Reservoir storage rights recognized and confirmed in subsection 2 of this Section A, but there is not flow in excess of that required to fully satisfy Topaz Reservoir storage rights, diversions in Antelope Valley in excess of the amounts to which Antelope Valley lands are entitled under Decree C-125 shall be permitted by the watermaster for such periods and in such amounts as, in the sound professional judgment of the watermaster, will not cause, on an overall irrigation season basis, any discernible net reduction in the amount of water available to satisfy said Topaz Reservoir storage rights.

(b) Such excess diversions may be used only on Antelope Valley lands entitled to water under Decree C-125 which can be served from the ditch systems existing as of the effective date of this compact.

(c) The allocation in this subsection 5 shall terminate after construction of a new major storage project on the West Walker River upstream from Antelope Valley.

#### B. Allocation of Unused Water

1. The term “unused water” includes all waters of the Walker River and its tributaries in excess of the amounts allocated, or required for satisfaction of rights and uses recognized and confirmed, as provided under Section A of this Article VIII, except that there shall be excluded therefrom natural flow which is not physically available above the head of Mason Valley. There is allocated to the State of California 35 percent of such unused water, and there is allocated to the State of Nevada 65 percent of such unused water. The allocation to each state provided herein in this subsection B.1 shall be equal in priority.

(a) The reregulation by storage of waters allocated for storage shall not be considered as the development of “unused water.”

2. Neither state shall be precluded from constructing works for the control, use and development of the water allocated pursuant to subsection B.1 of this article for optimum use of water.

3. While separate development may be undertaken by either state for surface storage of unused water of the West Walker River so allocated, the State Engineer of the State of Nevada and the Department of Water Resources of the State of California shall cooperate in a joint review of all potential developments of unused water of the West Walker River so allocated in subsection B.1 of this Article VIII and shall prepare and present a report of the benefits to be obtained, and other relevant data from each such development to the commission or if the commission has not yet become operative, to the joint commission which negotiated this compact, at a public hearing or hearings held at times and places within the Walker River Basin set by the commission or said joint commission.

(a) Should a separate surface storage project or projects be constructed in Nevada to develop Nevada's share of the unused water of the West Walker River, California may thereafter store and use said unused water allocated to Nevada adverse to such Nevada storage projects, provided that, without charge to Nevada, California makes available for consumptive use in Nevada, water in the same amounts, at the same times, and in the same places as would have been available for use in Nevada from such Nevada storage projects had California not so stored and used said unused water allocated to Nevada; and provided further that Nevada shall not be deprived of water required for: (1) maintenance of a minimum reservoir level for the preservation of fish life and (2) nonconsumptive uses which are found by the commission to be in the public interest of the Walker River Basin as a whole.

(b) From time to time after construction of each surface storage project upstream from Topaz Reservoir, for development of the unused water allocated herein, the commission shall determine the amounts of water which may be diverted and used in each state pursuant to its allocation as the result of the construction and operation of such project. In making such determination the commission shall compute any increase of yield of previously constructed reservoirs which may result from operation of such project constructed to develop unused water and shall include such increase in the amounts of water which may be diverted and used in each of the two states pursuant to its allocation of unused water.

4. Return flow to the Walker River or its tributaries from any source shall be deemed to be natural flow.

5. Unused water shall be used only:

(a) Within the Walker River Basin;

(b) Within the portion of Artesia Lake Basin south of the northern township line of Tier 12 North and west of a line one mile east of the eastern range line of Range 23 East, Mount Diablo Base Line and Meridian;

(c) Within the portion of Mason Valley and Adrian Valley south of the northern township line of Tier 15 North, Mount Diablo Base Line;

(d) Within the area tributary to Topaz Lake; or

(e) Any combination of the above areas.

C. Watermaster

1. A single watermaster shall have the responsibility and power to administer: (a) all rights and uses of water of the Walker River Basin recognized in Section A of this Article VIII, including rights under Decree C-125, (b) the allocation between the states provided for in this compact of

water of the Walker River Basin in excess of that necessary to satisfy such rights and uses, and (c) all rights acquired to use water so allocated.

2. The watermaster shall be nominated by the commission as soon as practicable after this compact goes into effect, but his appointment shall not become effective until approved and confirmed by the Federal District Court for the District of Nevada, it being the intent of this compact that only a person satisfactory to both the commission and said court be the watermaster under this compact and under Decree C-125. At any time either the commission or said court may terminate the appointment of the person serving as watermaster by adopting an appropriate resolution or order, and notifying the other and the watermaster thereof. When a vacancy occurs by such action or by the death or resignation of the person serving as watermaster, a successor shall be selected by the same procedure as provided for the original appointment.

3. Until appointment of the watermaster becomes effective by approval and confirmation of said court, either as to the original selection of the watermaster or subsequent selections to fill a vacancy, a person designated by the commission shall have interim responsibility and power to administer the allocation between the states referred to in subsection 1(b) above and all rights and uses other than the rights under Decree C-125, and the rights and uses under Decree C-125 shall be administered on an interim basis as may be provided by said court.

4. Actions and decisions of the watermaster as to the administration of the rights under Decree C-125 shall be subject to review and modification by said court. Actions and decisions of the watermaster as to the administration of the allocation between the states referred to in subsection 1(b) above and of all rights and uses other than rights under Decree C-125 shall be subject to review and modification by the commission.

5. Said court is requested to appoint a six-member advisory board composed of one person each representing: (1) the East Walker River Basin in California, (2) the West Walker River Basin in California, (3) the East Walker River Basin in Nevada, (4) the West Walker River Basin in Nevada, (5) the Main Walker River Basin in Nevada, and (6) the Walker River Indian Reservation. The watermaster shall prepare an annual budget of proposed expenditures for personnel, equipment, supplies, and other purposes deemed by him to be necessary to carry out his functions. In the formulation of said budget the watermaster shall consult with said advisory board. In the event that said advisory board is not in agreement with the budget proposed by the watermaster, it shall so advise said court. Said budget shall require approval of both the commission and said court to become effective.

6. The expenditures attributable to administration of the rights under Decree C-125 shall be apportioned and collected in accordance with orders of said court. The expenditures attributable to administration of all other rights and uses of the water of the Walker River Basin under this compact shall be equitably apportioned among, and collected from, the users thereof by the watermaster under rules and regulations of the commission, and the commission shall have the power to enforce collection thereof by any reasonable means, including court action in any state or federal court of appropriate jurisdiction. The expenditures attributable to administering the allocation between the states referred to in subsection 1(b) above shall be borne by the commission as part of the expense under Article IV, subsection B.1 of this compact.

## **ARTICLE IX. Ground Water and Springs**

### **A. Development and Use of Ground Water**

1. Both states shall have the right to develop and use ground water within their respective boundaries; provided that development and use of ground water in one state shall not reduce the amount of water which the other state would have received under the allocation herein if ground water were not developed and used.

2. In the development and use of ground water pursuant to this article, wells or other methods of collecting underground water shall be constructed in a manner which will assure that water will not be drawn directly from allocated surface water. In the absence of proof to the contrary made to the commission, wells drilled within 500 feet from any perennial streams which are not sealed from the surface to a depth of at least 50 feet shall be deemed prima facie to draw directly from allocated surface water.

B. Each state shall have the right to use water from springs; provided that the use of water from springs in one state shall not reduce the amount of water which the other state would have received under the allocations herein if water from springs were not used.

### **C. Effect on Allocations**

1. The commission shall have authority to take such action as it deems appropriate, so that the allocations of water made by this compact to either state shall not be adversely affected by ground water withdrawals or use of water from springs in the other state.

2. If either state claims that the development and use of ground water or water from springs in the other state reduces the amount of water which said state would have received under its allocation if such ground water or water from springs were not developed and used, it may file a protest with the commission in accordance with the rules of the commission. The commission is empowered to receive evidence on any protest and make its ruling thereon.

## **ARTICLE X. Interbasin Transfers of Use**

Either state may use directly, by exchange, or otherwise its allocated waters of the Truckee River in the Lake Tahoe Basin or the Carson River Basin, or its allocated waters of the Carson River in the Lake Tahoe Basin or the Truckee River Basin. The commission shall have authority to take such action as it deems appropriate so that the allocations of water made by this compact to either state shall not be adversely affected by such use in the other state.

Nothing herein shall preclude the use of Lake Tahoe as a physical facility to accomplish the use of Truckee River waters in the Carson River watershed or Carson River waters in the Truckee River watershed, but in no event shall the use of Lake Tahoe as such a physical facility be inconsistent with any provision of Article V of the compact.

## **ARTICLE XI. Suppression of Evaporation**

A. Either state is entitled, but not obligated to participate in any project for the conservation of water through the suppression of evaporation. The yield of any such project shall be allocated to each state by the commission in such proportion as shall be determined by the commission, taking into consideration such factors as the commission deems pertinent. Such allocation of yield to each state shall be in addition to the waters allocated to each state by other provisions of this compact.

B. Subject to the power of the commission to allocate the increased yield resulting from suppression of evaporation as set forth above, no existing property right shall be adversely affected except by agreement with the owner, or as may be otherwise permitted by state law. Nothing herein shall diminish or supersede any law of either state regarding water quality, including but not limited to conditions affecting fish and wildlife.

#### **ARTICLE XII. Coordination of Reservoirs**

A. The commission shall have the authority to prepare plans for the coordination of reservoirs and the method of implementation of any such plans prepared, and to approve the same and to review and revise such approved plans from time to time as the commission may deem appropriate. Prior to the preparation of any such plan and implementation or review or revision thereof, the owners of all reservoirs to be affected thereby shall be given the opportunity of participating in such preparation, review, or revision.

B. Prior to the approval thereof, the commission shall provide for public hearings concerning such a plan, review, or revision upon such notice as the commission deems appropriate.

C. Any owner of a reservoir shall have the right to refuse to participate in any such plan, or method of implementation, or review or revision thereof, and in such event such reservoir shall be excluded therefrom, and any plan or implementation or review or revision concerning other reservoirs as may be approved shall not adversely affect the use of the reservoir or the right to the use of water therefrom, which has been excluded.

D. Owners of reservoirs may develop plans for coordination thereof, but shall give written notice to the commission at least 60 days prior to their implementation.

#### **ARTICLE XIII. Fish, Wildlife, and Recreation**

The use of waters for preservation, protection, and enhancement of fish, wildlife, and recreation is hereby recognized as an inseparable part of the public interest in the use of the waters of Lake Tahoe, Truckee, Carson and Walker River Basins in both states, and is, therefore, beneficial.

#### **ARTICLE XIV. Nonconsumptive Use**

Each state may use water for nonconsumptive purposes, including but not limited to flood control, recreation, fishery and wildlife maintenance and enhancement, and hydroelectric power generation, provided that such uses result in no discernible reduction in the water allocated to the other state.

#### **ARTICLE XV. Diversion and Exchange of Yield From Future Reservoirs**

Upon the construction of a surface storage project or projects to store unused water herein allocated, users who become entitled to the yield therefrom may, at any point where water is physically available, divert water to use subject to approval of the commission and conditioned upon providing water in exchange for such diverted water as directed by the commission, so that other users, including owners of reservoir storage or owners of interest in waters stored, receive their entitlement of water in time, place, and quality the same as if the diversion and exchange had not been made.

## **ARTICLE XVI. Change of Point of Diversion, Manner, Purpose, or Place of Use**

Any change of point of diversion or of manner, purpose or place of use of the waters of the Carson, Truckee or Walker River Basins may be made in either state pursuant to state law or applicable court decree, provided that such change shall not adversely affect the allocation of water to the other state. Either state, if permitted by state law, may permit a change to other use of water formerly consumed by natural subirrigation on meadows. It shall be the duty of each state to initiate proceedings before the commission if it believes that such change in the other state would adversely affect its allocation. In the event of the initiation of such a proceeding a commission hearing shall be held and the person desiring the change shall have the burden of establishing that such change would not adversely affect the allocation to the complaining state. In the event the person desiring the change does not establish that such change would not adversely affect the allocation to the complaining state, the commission shall enter such order as it deems appropriate to assure that the allocation to the complaining state is not adversely affected.

## **ARTICLE XVII. Imported Water**

The provisions of this compact respecting allocation of water are applicable solely to the waters of the Truckee, Carson, and Walker River Basins and the Lake Tahoe Basin. To the extent that either state imports into the Truckee, Carson or Walker River Basins or the Lake Tahoe Basin water from another river or source the state making the importation shall have the exclusive use of such imported water unless by written agreement between the states it is otherwise provided. Nothing herein shall preclude either state from using such imported water as replacement or exchange water to meet such conditions as may be imposed by the commission pursuant to the provisions of this compact.

## **ARTICLE XVIII. Compact Effect**

A. Each state and all persons using, claiming, or in any manner asserting any right to the use of the waters of Lake Tahoe, Truckee River, Carson River, and Walker River Basins, shall be subject to the terms of this compact.

B. The provisions of this compact shall be self-executing and shall by operation of law be conditions of the various state permits, licenses, or other authorizations relating to the waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

C. Nothing in this compact shall abridge, limit or derogate against any claim or right of anyone to the use of water in either state within the allocations to such state that could or may be made or established under state or federal law had this compact not been adopted; provided, that the place of use, under any such right, of water from any of the four basins covered by this compact shall be limited to such basin or such other areas outside such basin as are permissible places of use of water from such basin under this compact.

D. Nothing in this compact shall be construed as granting to any person or entity the right to divert, store, or use water.

## **ARTICLE XIX. Violations**

A. Violations or threatened violations of any of the provisions of this compact which come to the attention of the commission shall be promptly investigated by it. If after such investigation the commission determines further action is necessary it may take such action as it deems advisable including, but not limited to, the commencement of an action injunctive or otherwise in its own name in any court of general jurisdiction of the state where the violation has occurred or is threatened, or the United States District Court for the district where said violation has occurred or is threatened, or if it is determined by the commission appropriate to do so, refer the matter with its recommendations, if any, to an appropriate federal, state, or local official or agency or board for action.

B. In any action concerned with any matter in which the commission has made a decision, the findings of the commission shall constitute prima facie evidence of the facts found.

## **ARTICLE XX. Recourse to Courts**

Nothing in this compact shall be construed to limit or prevent either state or any person or entity from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of its provisions, provided that in all matters in which the commission is given jurisdiction by this compact to make a decision no such court action shall be commenced until the matter has been submitted to the commission for decision and decided by it, unless a decision by the commission has been unreasonably delayed.

## **ARTICLE XXI. Nonimpairment of Rights of United States**

Except as provided in Article XXII nothing in this compact shall be construed as:

A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

B. Affecting any rights or powers of the United States of America, its agencies or instrumentalities in or to the waters of the Truckee, Carson, or Walker River Basins or the Lake Tahoe Basin, or its capacity to acquire rights in and to the use of said waters.

C. Subjecting any property of the United States, its agencies or instrumentalities to taxation by either state or subdivision thereof.

D. Subjecting any property of the United States of America, its agencies or instrumentalities to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

## **ARTICLE XXII. Ratification and Consent**

This compact shall become effective when, but only if:

(1) It shall have been ratified by acts of the Legislature of each of the States of California and Nevada;

(2) It shall have been consented to by act of Congress of the United States; and

(3) Congress provides in its consent legislation or by separate legislation that the following provisions of the compact shall be binding on the agencies, wards, and instrumentalities of the United States of America:

Article V, Section D  
Article V, Section F  
Article VI, Subsection B.1  
Article VI, Subsection B.3  
Article VI, Subsection B.4  
Article VI, Section D  
Article VII, Section A  
Article VII, Section B  
Article VII, Section C  
Article VII, Section D  
Article VII, Section E  
Article VIII, Subsection A.4(b)  
Article VIII, Subsection B.1  
Article VIII, Subsection B.5

#### **ARTICLE XXIII. Termination**

This compact may be terminated any time by legislative consent of both states, but notwithstanding such termination all rights then established hereunder or recognized hereby shall continue to be recognized as valid.

In witness whereof the commissioners have executed six counterparts hereof, each of which shall be and does constitute an original and one shall be deposited with the Administrator of General Services of the United States of America, and two of which shall be forwarded to the Governor of each signatory state, and one of which shall be made a part of the permanent records of the California-Nevada Compact Commission.

(Added to NRS by 1969, 69; A 1969, 1259; 1971, 29)

## **APPENDIX B. PUBLIC LAW 101-618**

An Act to provide for the settlement of water rights claims of the Fallon Paiute Shoshone Indian Tribes and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### **Title I—Fallon Paiute Shoshone Tribal Settlement Act**

#### **SEC. 101. SHORT TITLE.**

This Act may be cited as the “Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990”.

#### **SEC. 102. SETTLEMENT FUND.**

(A) There is hereby established within the Treasury of the United States, the “Fallon Paiute Shoshone Tribal Settlement Fund”, hereinafter referred to in the Act as the “Fund”.

(B) There is authorized to be appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund \$3,000,000 in fiscal year 1992, and \$8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996, and 1997 for a total sum of \$43,000,000.

(C) (1) The income of the Fund may be obligated and expended only for the following purposes:

(a) Tribal economic development, including development of long-term profit-making opportunities for the Fallon Paiute Shoshone Tribes (hereinafter referred to in the Act as “Tribes”) and its tribal members, and the development of employment opportunities for tribal members;

(b) Tribal governmental services and facilities;

(c) Per capita distributions to tribal members;

(d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation (hereinafter referred to in the Act as “Reservation”) not including lands added to the Reservation pursuant to the provisions of Public Law 95-337, 92 Stat. 455;

(e) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers, and improvement of such lands;

(f) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers, including those held in trust by the United States.

(2) Except as provided in subsection (C)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subsections (C)(1)(d), (C)(1)(e) and (C)(1)(f) of this section, the Tribes may obligate and expend no more than 20 percent of the principal of the Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subsection, or from income earned on the remaining principal.

(4) In obligating and expending funds for the purpose set forth in subsection (C)(1)(c), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.

(D) The Tribes shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (F) of this section.

(E) Upon the request of the Tribes, the Secretary shall invest the sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(F) (1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use their best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the Fund to serve any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provisions of section 7 of Public Law 93-134, 87 Stat. 468, as amended by section 4 of Public Law 97-458, 96 Stat. 2513, 25 U.S.C. 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section.

### **SEC. 103. ACQUISITION AND USE OF LANDS AND WATER RIGHTS.**

(A) Title to all lands, water rights and related property interests acquired under section 102(C)(1)(e) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribes as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and no more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

(B) Any lands acquired under section 102(C)(1)(e) or (f) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

(C) (1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(a) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(b) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

(2) The requirements of section 103(C)(1) shall not take effect until the Tribes agree to the limitations on annual use of water rights set forth in subsection (1) of this section.

(D) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Reservation under subsection (A) of this section, and to enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(E) Subject to the limitation on the quantum of use set forth in subsection (C) of this section, and applicable state law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada. Nothing in this subsection is intended to affect the jurisdiction of the Tribes or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(F) (1) The Tribes are authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribes, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

(a) Consolidating Reservation landholdings or water rights, including those held in trust;

(b) Eliminating fractionated heirship interests in Reservation lands or water rights, including those held in trust;

(c) Providing land or water rights for any tribal program;

(d) Improving the economy of the Tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and

(e) General rehabilitation and enhancement of the total resource potential of the Reservation: Provided, That any water rights shall be transferred in compliance with applicable state law.

(2) Title to any lands or water rights, or interests therein, acquired by the Tribes within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribes.

#### **SEC. 104. RELEASE OF CLAIMS.**

(A) (1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met—

(a) the Tribes have released any and all claims they may have against the United States resulting

from any failure of the United States to comply with section 7 of Public Law 95-337, 92 Stat. 457;

(b) the Tribes have dismissed with prejudice their claims in Northern Paiute Nation v. United States, Docket No. 87-A, United States Claims Court;

(c) the Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in section 103(C);

(d) the Tribes have dismissed, without prejudice, their claims in Pyramid Lake Paiute Tribe of Indians v. Lujan, No. R-85-197 (D.Nev.) and their objections to the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988, provided that such dismissal shall not prejudice in any respect the Tribes' right to object in any administrative or judicial proceeding to such Operating Criteria and Procedures, or any revisions thereto, or to assert that any Operating Criteria and Procedures should be changed due to new information, changes in environmental circumstance, changes in project descriptions or other relevant considerations, in accordance with the requirements of all applicable court decrees and applicable statutory requirements;

(e) the Tribes agree to be bound by the plan developed and implemented by the Secretary in accordance with section 106 of this title; and

(f) (1) the Tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this title effect an unlawful taking of their rights: Provided, That—

(i) the United States shall defend and resist any such claims at its own expense;

(ii) the Tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

(iii) the United States shall not compromise or settle any such claims without the consent of the Tribes.

(2) The provisions of this section shall not be construed as:

(i) implying that section 103(C) unlawfully takes any water rights;

(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

(iii) waiving any immunities of the United States or the Tribes; or

(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights.

(2) If the appropriations authorized in section 102(B) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this Act have not been satisfied, and the Tribes may rescind their release of claims under this section and its agreement under subsection (c) of this section.

(3) Upon the appropriation of monies authorized in section 102(B) of this Act, and the allocation of such monies to the Fund, section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed.

## **SEC. 105. LIABILITY OF THE UNITED STATES.**

(A) Except with regard to the responsibilities assumed by the United States under section 102(E), and those set forth in section 1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, U.S.C. 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribes.

(B) Except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1), and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of this Act.

## **SEC. 106. PLAN FOR THE CLOSURE OF TJ DRAIN.**

(A) The Secretary, in consultation with the Tribes and in accordance with applicable law, shall develop and implement a plan for the closure, including if appropriate, modification of components, of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

(B) The plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation season that are served by that system, unless the Tribes and the Secretary agree otherwise.

(C) Implementation of the plan shall not interfere with ongoing agricultural operations.

(D) The United States shall bear all costs for developing and implementing the plan.

(E) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

## **SEC. 107. DEFINITIONS.**

For the purpose of this title, and for no other purposes—

(A) the term “Fallon Paiute Shoshone Tribal Settlement Fund” or “Fund” means the Fund established under section 102A of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this title;

(B) the term “income” means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income;

(C) the term “principal” means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B) of this Act;

(D) the term “Reservation” means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457;

(E) the term “Secretary” means the Secretary of the Department of the Interior;

(F) the term “tribal members” means the enrolled members of the Fallon Paiute Shoshone Tribes; and

(G) the term “Tribe” means the Fallon Paiute–Shoshone Tribe.

## **Title II—Truckee–Carson–Pyramid Lake Water Settlement**

### **SEC. 201. SHORT TITLE.**

This title may be cited as the “Truckee–Carson–Pyramid Lake Water Rights Settlement Act”.

### **SEC. 202. PURPOSES.**

The purposes of this title shall be to—

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation uses, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

### **SEC. 203. DEFINITIONS.**

For the purposes of this title:

(a) the term “Alpine court” means the court having continuing jurisdiction over the Alpine decree;

(b) the term “Alpine decree” means the final decree of the United States District Court for the District of Nevada in *United States of America v. Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

(c) the term “Carson River basin” means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term “Fallon Tribe” means the Fallon Paiute–Shoshone Tribe;

(e) the term “Lahontan Valley wetlands” means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

- (f) the term “Lake Tahoe basin” means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;
- (g) the term “Lower Truckee River” means the Truckee River below Derby Dam;
- (h) the term “Operating Agreement” means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 205 of this title;
- (i) the term “Orr Ditch court” means the court having continuing jurisdiction over the Orr Ditch decree;
- (j) the term “Orr Ditch decree” means the decree of the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al.—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;
- (k) the term “Preliminary Settlement Agreement as Modified by the Ratification Agreement” means the document with the title “Ratification Agreement by the United States of America”, including Exhibit “1” attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report of the Committee on Energy and Natural Resources as Appendix 1 to the Committee’s report accompanying S. 1554;
- (l) the term “Pyramid Lake fishery” means two fish species found in Pyramid Lake, the cuiui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);
- (m) the term “Pyramid Lake Tribe” means the Pyramid Lake Paiute Tribe;
- (n) the term “Secretary” means the Secretary of the Interior;
- (o) the term “Truckee River Agreement” means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee–Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;
- (p) the term “Truckee River basin” means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;
- (q) the term “Truckee River General Electric court” means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;
- (r) the term “Truckee River General Electric decree” means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in United States of America v. Truckee River General Electric Co., No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643;
- (s) the term “Truckee River reservoirs” means the storage provided by the dam at the outlet of

Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term “1948 Tripartite Agreement” means the agreement between the Truckee–Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

## **SEC. 204. INTERSTATE ALLOCATION.**

### **(a) CARSON RIVER.—**

(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per year by depletion for use in the State of California and 2,131 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph: Provided, That the augmentation authority by such paragraph shall be used only on lands having appurtenant Alpine decree rights.

Use of effluent for the irrigation of lands with appurtenant Alpine decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State law.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

**(b) LAKE TAHOE.—**

(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and Public Law 101-608;

(iii) the provisions of paragraph 204(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

- (i) an evaluation of changes in pricing, rate structure, and regulations; and
- (j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term “water distribution system” means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points: Provided, That the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraph (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or has been perfected.

Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

**(c) TRUCKEE RIVER.—**

(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000 acre-feet of water per year from all natural sources, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter “TTSA”) changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California’s Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 204(c)(1)(B) and (D) and shall not

be deemed use of Truckee River basin groundwater within the State of Nevada within the meaning of subparagraph 204(c)(1)(D); and

(b) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1000 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provision of subparagraph 204(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use

of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1).

(J) Unmetered diversion or extraction of water by residences, shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraph 204(c)(1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

**(d) COMPLIANCE.—**

(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. With the third quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

**(e) FORFEITURE OR ABANDONMENT.—**The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

**(f) INTERSTATE TRANSFERS.—**

(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State law applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

(g) **USE OF WATER BY THE UNITED STATES.**—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) **COURT DECREES.**—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) **PLACE OF USE TO DETERMINE ALLOCATION.**—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) **APPLICABILITY OF STATE LAW.**—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

## **SEC. 205. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.**

(a) **OPERATING AGREEMENT.**—

(1) The Secretary shall negotiate an operating agreement (hereafter “Operating Agreement”)

with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

- (1) procedures and criteria for implementing California's allocation of Truckee River water.
- (4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provisions of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.
- (5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 90 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. 706(2)(A)-(D): Provided, That the limits on judicial review in this paragraph shall not apply to any claim based on the provisions of the Endangered Species Act, as amended.
- (6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra Pacific Power Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.
- (7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.
- (8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.
- (9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof.

The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

**(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—**

(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of non-project water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 205(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 206(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an interim agreement with the Sierra Pacific Power Company and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Reservoir, except that the amount of such storage shall not exceed 5,000 acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the Operating Agreement upon the entry into effect of those agreements.

**(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—**The Secretary is released from any obligation to secure payment for the costs of constructing Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

**SEC. 206. WETLANDS PROTECTION.**

**(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—**

(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of

fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 209(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not at all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of the subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 206(c). This study may be conducted in coordination with the studies authorized by paragraph 207(c)(5) and subsection 209(c) of this title, and shall be

reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act.

**(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.—**

(1) Notwithstanding any other provisions of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled “Stillwater National Wildlife Refuge,” dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 206(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within

existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

**(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.—**

(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 206 and 207 of this title: Provided, That,

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary

shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) **STATE COST-SHARING.**—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than \$9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary’s authority under subsection 206(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

(e) **TRANSFER OF CARSON LAKE AND PASTURE.**—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the “Carson Lake and Pasture,” as depicted on the map entitled “Carson Lake Area,” dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(f) **LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.**—

(1) There is hereby established in the Treasury of the United States the “Lahontan Valley and Pyramid Lake Fish and Wildlife Fund” which shall be available for deposit of donations from any source and funds provided under subsections 205(a) and (b), 206(d), and subparagraph 208(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 207(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 208(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) **INDIAN LAKES AREA.**—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled “Indian Lakes Area,” dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

**SEC. 207. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.**

(a) **RECOVERY PLANS.**—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

(b) **TRUCKEE RIVER REHABILITATION.**—

(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta of Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

- (A) restoring riparian habitat and vegetative cover;
- (B) stabilizing the course of the Truckee River to minimize erosion;
- (C) improving spawning and migratory habitats for the cui-ui;
- (D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and
- (E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the on-going reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in that paragraph.

(c) **ACQUISITION OF WATER RIGHTS.**—

(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

- (A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;
  - (B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;
  - (C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;
  - (D) all water rights shall be transferred in accordance with any applicable State law; and
  - (E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.
- (3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.
- (4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.
- (5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 206(a)(4) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

**(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—**

- (1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.
- (2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.
- (3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydro-electric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the

Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) **OFFSETTING FLOWS.**—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 206(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 204 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

## **SEC. 208. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.**

(a) **FUNDS ESTABLISHED.**—

(1) There are hereby established within the Treasury of the United States the “Pyramid Lake Paiute Fisheries Fund” and “Pyramid Lake Paiute Economic Development Fund”.

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund \$25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at \$25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 206(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary’s acts or

omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund \$40,000,000 in five equal annual installments in the 1993, 1994, 1995, 1996, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 207 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Public Law 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 210(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 208(a)(2) is appropriated after fiscal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Paiute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Paiute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 208(a)(2) been appropriated in full for

fiscal year 1992.

(6) If and to the extent that any portion of the sums authorized to be appropriated in paragraph 208(a)(3) are appropriated after fiscal years 1993, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 208(a)(3), there shall be deposited in the Pyramid Lake Paiute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Paiute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 208(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997.

## **SEC. 209. NEWLANDS PROJECT IMPROVEMENT.**

### **(a) EXPLANATION OF AUTHORIZED PURPOSES.—**

(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) **TRUCKEE RIVER DIVERSIONS.**—The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

### **(c) PROJECT EFFICIENCY STUDY.—**

(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) **WATER BANK.**—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) **RECREATION STUDY.**—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) **EFFLUENT REUSE STUDY.**—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

(g) **REPAYMENT CANCELLATION.**—Notwithstanding any other provisions of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 209(h)(2), the term “water conservation measures” shall not include repair, modification, or replacement of Derby Dam.

(h) **SETTLEMENT OF CLAIMS.**—

(1) The provisions of subsections 209(d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 209(g) of this section shall not become effective unless and until the State of Nevada provides not less than \$4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) **FISH AND WILDLIFE.**—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-

regulatory reservoirs for the purpose of fish and wildlife.

**(j) OPERATING CRITERIA AND PROCEDURES.—**

(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F.Supp. 252 (D.D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any order in such a proceeding that will result in the expenditure of any funds out of the United States Treasury.

**SEC. 210. MISCELLANEOUS PROVISIONS.**

**(a) CLAIMS SETTLEMENT.—**

(1) The effectiveness of section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 208(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the Secretary of California, of the following outstanding litigation and proceedings:

(A) Pyramid Lake Paiute Tribe v. California, Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California.

(B) United States v. Truckee-Carson Irrigation District, Civ. No. R-2987-RCB, United States District Court, District of Nevada.

(C) Pyramid Lake Paiute Tribe v. Lujan, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) Pyramid Lake Paiute Tribe v. Department of the Navy, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 204, subsections 206(c), 207(c) and (d), subparagraph 208(a)(3)(D), and paragraph 210(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 205 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 210(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 207(d) shall not take effect until the funds authorized in paragraph 208(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 204 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 204 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 205 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

**(b) GENERAL PROVISIONS.—**

(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administration Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which

agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 of the Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Alpine court to ensure that the owners of vested or perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and preferred right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 204, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935, and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended: Provided, That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works: And provided further, That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 205(a)(6).

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights, or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation.

(c) **APPROPRIATIONS AUTHORIZED.**—There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

**APPENDIX C. PUBLIC LAW 109-103, THE ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2006 ENACTED ON NOVEMBER 19, 2005**

**TITLE II, DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation  
General Provisions, Department of the Interior**

SEC. 208.

(a) (1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107-171), the Secretary [of the Interior] shall provide not more than \$70,000,000 to the University of Nevada—

(A) to acquire from willing sellers land, water appurtenant to the land, and related interests in the Walker River Basin, Nevada; and

(B) to establish and administer an agricultural and natural resources center, the mission of which shall be to undertake research, restoration, and educational activities in the Walker River Basin relating to—

(i) innovative agricultural water conservation;

(ii) cooperative programs for environmental restoration;

(iii) fish and wildlife habitat restoration; and

(iv) wild horse and burro research and adoption marketing.

(2) In acquiring interests under paragraph (1)(A), the University of Nevada shall make acquisitions that the University determines are the most beneficial to—

(A) the establishment and operation of the agricultural and natural resources research center authorized under paragraph (1)(B); and

(B) environmental restoration in the Walker River Basin.

(b) (1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107-171), the Secretary shall provide not more than \$10,000,000 for a water lease and purchase program for the Walker River Paiute Tribe.

(2) Water acquired under paragraph (1) shall be—

(A) acquired only from willing sellers;

(B) designed to maximize water conveyances to Walker Lake; and

(C) located only within the Walker River Paiute Indian Reservation.

(c) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107-171), the Secretary, acting through the Commissioner of Reclamation, shall provide—

(1) \$10,000,000 for tamarisk eradication, riparian area restoration, and channel restoration efforts within the Walker River Basin that are designed to enhance water delivery to Walker Lake, with priority given to activities that are expected to result in the greatest increased water flows to Walker Lake; and

(2) \$5,000,000 to the United States Fish and Wildlife Service, the Walker River Paiute Tribe, and the Nevada Division of Wildlife to undertake activities, to be coordinated by the Director of the United States Fish and Wildlife Service, to complete the design and implementation of the Western Inland Trout Initiative and Fishery Improvements in the State of Nevada with an emphasis on the Walker River Basin.

(d) For each day after June 30, 2006, on which the Bureau of Reclamation fails to comply with subsections (a), (b), and (c), the total amount made available for salaries and expenses of the Bureau of Reclamation shall be reduced by \$100,000 per day.

## **APPENDIX D: WALKER RIVER PROJECT OVERVIEW**

### **A. HEALTH OF WALKER RIVER AND LAKE:**

This project will evaluate and establish a benchmark for the environmental and ecological health of Walker Lake and Walker River. Decision tools will be developed to analyze the efficacy of different water acquisitions for improving future ecological integrity of Walker Lake and Walker River.

### **B. ALTERNATIVE AGRICULTURE AND VEGETATION MANAGEMENT:**

This project will identify the economic potential and cultural practices necessary for low-water-use crops with the aim of minimizing water use, soil erosion and evaporation from soil surfaces. In addition, the research will evaluate methods to re-establish desirable vegetation in areas that may be affected by changing agricultural practices and to anticipate vegetation responses under scenarios identified through modeling efforts.

### **C. PLANT, SOIL AND WATER INTERACTIONS:**

This project will assess likely responses by soils and vegetation to changes in water application and use. Information on the impacts of changes in water table and stream elevation on soil physical and chemical properties, including wind erosion, nutrient cycling and salt accumulation, will aid managers in the preservation of air and water quality adjacent to and within the river and lake itself.

### **D. PROJECT HISTORICAL ACCOUNT:**

This project will provide an overview of the political and historical context in which the acquisition of land and associated water rights for ecosystem restoration in the Walker River system occurs. Key components include arid land agriculture, multi-state involvement and urban/rural interface issues.

### **E. HEALTH OF RIVER CHANNEL AND LAKE WATER WITH INCREASED FLOWS:**

This project will develop a set of recommendations to minimize further sediment and salt loading to Walker Lake and degradation to the lower Walker River under increased water flows. These recommendations will be made available to land and water managers to assess potential impacts resulting from variations in flow, water quality and channel geometry on the transport of sediments and on the flow capacity of the Walker River.

### **F. WATER FLOW MODEL:**

This project will develop a decision-support tool to evaluate the effectiveness of proposed acquisitions of water rights from willing sellers to increase water delivery to Walker Lake. The tool's water flow model will include aspects of climate and evaporation from different water sources.

## **G. WATER CONSERVATION PRACTICES FOR AGRICULTURE PRODUCERS:**

The project will determine the most economically effective use of water on agricultural lands and provide producers with an estimate of the potential amount of water rights they may be able to offer to the market for lease or sale.

## **H. ECONOMIC IMPACT AND STRATEGIES:**

This project will develop estimates of the economic impacts projected to occur from the acquisition of water rights and changes in agricultural production and land use. The project will also formulate economic development actions to mitigate the projected economic and fiscal dislocations. One benefit of this research will be to identify appropriate sustainable economic development actions and related public policy alternatives.

## **I. GIS DATABASE DEVELOPMENT:**

This project will develop a geographic information systems (GIS) framework for linking water rights with water distribution networks and points of diversion for the Walker Basin. The resulting GIS database may be used to assess how water and land acquisitions will affect the entire Walker Basin system. The economic component of this project will develop a GIS database of properties, businesses and local demographics in close proximity to the Walker River and its tributaries.

## **J. WILD HORSE AND BURRO MARKETING:**

The project will determine which characteristics of wild horses and burros increase adoption rates. It will also investigate alternative auction procedures which could increase adoption rates and simultaneously increase revenues to support wild horse and burro programs.