

## **Appendix B-5: Comment Sheet**

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# Appendix C

## List of Commenters



# 1 **Appendix C. List of Commenters**

2 The formal public comment period, as required by NEPA, began on October 19, 2015,  
3 with the publication of the NOI in the *Federal Register*, and ended on November 30,  
4 2015. **Table C-1**, Commenters, lists the names, affiliations, and locations of those who  
5 submitted written comments to Reclamation for the Truckee Canal XM EIS as part of the  
6 public scoping process. All comments received on or before January 14, 2016, are  
7 included in this scoping summary report.

Table C-1. Commenters

	Commenter Name		Affiliation	City	State	Date Received (MM/DD/YYYY)
	First	Last				
<b>Federal Government</b>						
1.	Carter	Jessop	US Environmental Protection Agency	San Francisco	CA	11/30/2015
2.	Edward	Koch	US Fish and Wildlife Service	Reno	NV	11/27/2015
<b>Tribal Government</b>						
3.	Albert	John	Pyramid Lake Fisheries	Reno	NV	11/19/2015
4.	Vinton	Hawley	Pyramid Lake Paiute Tribe	Nixon	NV	11/30/2015
<b>State Government</b>						
5.	Julie	Ernststein	Nevada State Historic Preservation Office	Carson City	NV	11/30/2015
6.	Rusty	Jardine	Truckee-Carson Irrigation District	Fallon	NV	11/30/2015
<b>Local Government</b>						
7.	Roy	Edgington	City of Fernley (Mayor)	Fernley	NV	10/29/2015
8.	Peter	Olsen	Churchill County Commissioners	Fallon	NV	11/23/2015
9.	Daphne	Hooper	City of Fernley	Fernley	NV	01/14/2016
<b>Organization</b>						
10.	Dennis	Ghiglieri	Sierra Club-Toiyabe Chapter	Reno	NV	11/24/2015
11.	Rose	Strickland	Truckee River Yacht Club	Reno	NV	12/07/2015
<b>Individual</b>						
12.	Shaunee	Sander		Wadsworth	NV	10/27/2015
13.	Terri	Pereira		Fallon	NV	10/28/2015
14.	Florindor	Bender		Fernley	NV	10/29/2015
15.	Davy	Stix		Fernley	NV	10/29/2015
16.	Shari	Whalen		Fernley	NV	10/29/2015
17.	Ray	Lowrey		Fernley	NV	11/23/2015
18.	Tasha	Lowrey		Fernley	NV	11/23/2015



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# Appendix D

Summary of Scoping Comments by  
Resource Category



# Appendix D. Summary of Scoping Comments by Resource Issue Category

Reclamation received a total of 145 discrete comments during the Truckee Canal XM EIS scoping period. These comments were classified by resource issues, other issues that will be addressed in the EIS, and issues that will not be addressed in the EIS. Comments for each category and subcategory are included in this appendix. Comments are included verbatim from the comment submissions; however, information in letters that was not considered a substantive comment is not included. Comment letters can be viewed in their entirety in **Appendix E**.

Comments are included for the following groups:

## ***Comments by Resource Issue***

**Table D-1**, Comments Related to Climate Change

**Table D-2**, Comments Related to Cultural Resources

**Table D-3**, Comments Related to Fish and Wildlife

**Table D-4**, Comments Related to Geology and Soils

**Table D-5**, Comments Related to Lands, Realty, and Agriculture

**Table D-6**, Comments Related to Public Health and Safety

**Table D-7**, Comments Related to Recreation

**Table D-8**, Comments Related to Socioeconomic Values

**Table D-9**, Comments Related to Threatened and Endangered Species

**Table D-10**, Comments Related to Tribal Interests

**Table D-11**, Comments Related to Wetlands and Riparian Areas

**Table D-12**, Comments Related to Water Resources

*Surface Water*

*Groundwater*

*Water Rights*

*Water Supply*

**Table D-13**, Comments Concerning Other Issues to be Addressed in the EIS

*General Comments Related to the Project*

*Comments Related to Alternatives*

*Comments Related to Public and Agency Collaboration*

*Comments Related to NEPA Analysis*

**Table D-14**, Comments Concerning Issues that will not be Addressed in the EIS

**Table D-1. Comments Related to Climate Change**

Comment No.	Comment
1.	<p>Include in the Affected Environment section of the DEIS a summary discussion of climate change and ongoing and reasonably foreseeable climate change impacts relevant to the project, based on U.S. Global Change Research Program' assessments, to assist with identification of potential project impacts that may be exacerbated by climate change and to inform consideration of measures to adapt to climate change impacts. Among other things, this will assist in identifying resilience-related changes to the proposal that should be considered.</p>
2.	<p>How have temperatures over the past 15 and 30 years increased or decreased in the project areas compared to the long-term record of temperatures in the project areas?</p> <p>How have temperature increases affected the effectiveness of the water delivery strategies of the BOR?</p> <p>How is the evaporation of water from Lahontan Reservoir and each of the regulating reservoirs in Lahontan Valley affected by increases or decreases in temperatures?</p>
3.	<p>All of Reclamation's evaluations of lower Truckee River flows and inflows to Pyramid Lake must include evaluation of direct, indirect and cumulative effects for not just "average" water years, but must also specifically evaluate impacts during drought conditions.</p>
4.	<p>The DEIS alternatives analysis should, as appropriate, consider practicable changes to the proposal to make it more resilient to anticipated climate change.</p> <p>Estimate the GHG emissions associated with the proposal and its alternatives. Example tools for estimating and quantifying GHG emissions can be found on CEQ's NEPA.gov website. For actions which are likely to have less than 25,000 metric tons of CO<sub>2</sub>-e emissions/year, provide a qualitative estimate unless quantification is easily accomplished.</p> <p>The estimated GHG emissions can serve as a reasonable proxy for climate change impacts when comparing the proposal and alternatives. In disclosing the potential impacts of the proposal and reasonable alternatives, consideration should be given to whether and to what extent the impacts may be exacerbated by expected climate change in the action area, as discussed in the affected environment section.</p> <p>Describe measures to reduce GHG emissions associated with the project, including reasonable alternatives or other practicable mitigation opportunities and disclose the estimated GHG reductions associated with such measures.</p>
5.	<p>We believe the Council on Environmental Quality's December 2014 revised draft guidance for Federal agencies' consideration of GHG emissions and climate change impacts in NEPA outlines a reasonable approach, and we recommend that the Corps use that draft guidance to help outline the framework for its analysis of these issues. Accordingly, we recommend the DEIS include an estimate of the GHG emissions associated with the project, analyze reasonable alternatives and/or practicable mitigation measures to reduce project-related GHG emissions, and qualitatively describe relevant climate change impacts. More specifics on those elements are provided below. In addition, we recommend that the NEPA analysis address the appropriateness of considering changes to the design of the proposal to incorporate resilience to foreseeable climate change and GHG reduction measures. The draft and final EIS should make clear whether commitments have been made to ensure implementation of design or other measures to reduce GHG emissions or to adapt to climate change impacts.</p>

**Table D-2. Comments Related to Cultural Resources**

Comment No.	Comment
1.	Thank you for distributing the Bureau of Reclamation's "Notice of Intend to Prepare an Extraordinary Operation and Maintenance Environmental Impact Statement for the Truckee Canal, Lahontan Basin Area Office, Nevada," published in the <i>Federal Register</i> Vol. 80/No. 201 on October 19, 2015 through the Nevada State Clearinghouse. The XM EIS to be prepared to reduce the risk of public safety resulting from a potential Canal breach in addition to assessing the effects of structural improvements to the Canal facilities is of particular interest to the State Historic Preservation Office (SHPO). As noted in these documents and elsewhere, the Truckee Canal is part of the National-Register-listed Newlands Project, for which portions of the Project were listed as part of a Thematic nomination in 1981. The Canal and associated structures have likewise been determined eligible as contributing resources.
2.	Thus, the SHPO is keen to review the XM EIS to be developed for the proposed undertaking and respectfully reminds our federal partners and the Canal operator (i.e., the Truckee-Carson Irrigation District) of the existence of the Programmatic Agreement among the Bureau of Reclamation, the Advisory Council on Historic Preservation, and the Nevada State Historic Preservation Office Regarding Management of Canals, Laterals, and Drains within the Newlands Project, Churchill, Lyon, and Storey Counties, Nevada (executed 2002). That document contains information that will likely be relevant to the XM EIS and potential effects it evaluates--as is the fact that the Truckee-Carson Irrigation District (TCID) is a Concurring Party to that PA.

1

**Table D-3. Comments Related to Fish and Wildlife**

Comment No.	Comment
1.	Reclamation must review fish passage opportunities, or the harm to fish passage opportunities, resulting from the project.
2.	<p>Pyramid Lake and the lower Truckee River are important habitat for wintering, migrating, and breeding waterfowl. Anaho Island provides nesting habitat for many bird species, not least pelicans.</p> <p>Lower elevations at Pyramid Lake from upstream diversions may hydrologically contribute to predator access onto Anaho Island. Any water diversion contributing to lower lake level would be a significant impact. Anaho Island could be accessed by predators if the elevation were to drop below 3795 feet. While Pyramid Lake never is below the land bridge threshold elevation of 3795 feet, increase upstream diversions could contribute to a future threshold elevation.</p>
3.	Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID result in stranding fish downstream in the lower Truckee River?
4.	Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID affect either upstream or downstream fish movement at Derby Dam?
5.	Impacts to fish and wildlife of lower water levels in Lahontan Reservoir with reduced diversions at Derby Dam.
6.	Reclamation must identify all fish and wildlife species and their habitats located in the study area, including the lower Truckee River and Pyramid Lake, that could be affected by the project. This must include federally listed threatened and endangered species, migratory birds, etc. Reclamation must determine the potential direct and indirect impacts on these resources and the measures that could be implemented to avoid and minimize impacts. Also, Reclamation must identify means of compensation for unavoidable impacts and must include fish and wildlife enhancement measures as project features.

2

**Table D-4. Comments Related to Geology and Soils**

Comment No.	Comment
1.	Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to the formation of a delta at the mouth of the Truckee River leading into Pyramid Lake?

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**Table D-5. Comments Related to Lands, Realty, and Agriculture**

Comment No.	Comment
1.	<p>Of the total claimed irrigated acreage of the Newlands Project, how much of that acreage is engaged in production agriculture as its primary economic activity?</p> <p>Of the total claimed irrigated acreage of the Newlands Project, how much of that acreage is not in agriculture?</p>
2.	City of Fernley development code needs to be examined concerning requirements of developers with respect to drainage, disruptions in drainage by existing developments, and subsequent changes in drainage if subdivisions are constructed etc., along with requirements to notify prospective landowners of the existence and potential hazards of the canal.
3.	<p>The Tribe is aware that Reclamation has already undertaken various studies regarding the Truckee Canal, including the “Newlands Project Planning Study” and the so-called “Value Planning Study” that was used to determine the range of alternatives to be studied in the DEIS.</p> <p>Such studies were not undertaken in the context of NEPA, and therefore should not be used in support of any NEPA analysis, particularly analysis of environmental impacts. In the past, Reclamation has analyzed the Truckee Canal necessity based upon its flawed analysis that more than 63,000 acres of “potentially active” water righted lands need to be served. That figure is hugely inflated. There are less than 57,000 acres of land under irrigation in the Newlands Project. The difference of 6,000 acres is because Reclamation includes inactive lands that still have water rights, which methodology is in complete violation of applicable Operating Criteria and Procedures for the Newlands Project, which require annual determinations of actual irrigated acreage, which is always less than the theoretical maximum irrigated acreage based on an analysis of paper water rights. Reclamation, in order to comply with NEPA, must begin with a blank slate and not rely on its own past studies which contain many flaws, and which flaws were excused based on the representation at the time that such studies were “not decision documents”.</p>

2

**Table D-6. Comments Related to Public Health and Safety**

Comment No.	Comment
1.	Public health and safety with regard to Truckee Canal.
2.	In his memorandum to the Commissioner, my Director expressed full support for proposals to repair the Truckee Canal so that it can more efficiently deliver water to water rights holders, including the Service, while conserving much-needed, additional water for Pyramid Lake and its fishery. Therefore, as Reclamation embarks upon this planning effort, I again encourage you to consider opportunities for increasing the efficiency of water deliveries alongside of addressing safety related concerns prompted by the 2008 canal breach.

**Table D-6. Comments Related to Public Health and Safety**

Comment No.	Comment
3.	<p>The thrust of the XM EIS is, and should be, Canal safety. Looking back to the circumstances attending the failure of the embankment at Fernley in 2008, valuable lessons have been learned. The urbanization near the Truckee Canal could not have been reasonably foreseen by early Project developers and water users. As lands have been taken out of production over time, important protections relating to land use planning and approval processes have failed. Drains that had once served to remove tail water from irrigated lands were either removed or the carrying capacity of the drains was reduced. As flood waters moved away from the Canal in the morning hours of January 5, 2008, the same became trapped in down-slope places such as the “knuckle”. But for the elimination of drains below the Canal, we think that the damage to homes could have been greatly reduced. If Fernley is to be protected from the possibility of an embankment failure in the future, care must be taken to ensure that future planning and approval processes will include protection of the Canal against Imprudent down-stream land use decision making. Appropriate storm and flood water planning must be undertaken; and, both the District and Reclamation should be involved with planning authorities in all such processes.</p>
4.	<p>As this XM EIS unfurls, we think there must be a marriage or union between Canal safety and efficiency. Most persons would agree that a safe canal is going to be an efficient canal too. We must provide a design that bares both characteristics. We recognize just how important all of this is to those persons that rely upon the waters of the Truckee Canal for recharge to municipal or private wells. Accordingly, a huge challenge exists within the Fernley Reach of the Canal. How do we design a safe canal, one which will also efficiently transport water for purposes in both the Truckee and Carson divisions of the Project, without adverse economic, legal, or social impacts? This challenge must be surmounted. The District, Reclamation, and the City of Fernley must work together in providing a meaningful response to this question.</p>
5.	<p>The Risk Analysis acknowledges efforts by the District to reduce risks along the Truckee Canal, (See Risk Analysis, p. ES-S). Of particular mention was modification to winter-time operations. Id. We have exercised extreme caution when operating the canal under conditions of icing. On multiple occasions we have stopped winter-time flow in the canal out of concern for the inability to operate the Derby Reach waste-ways to account for ice jams downstream. Safe operation of the canal is the overarching principle. When are Canal failures likely to occur? Most recently failure struck during the winter of 2008.</p>
6.	<p>This “use it or lose it” places tension on operational decisions that have no place upon the Truckee Canal. The District must never have to choose between safe operation and injury to property rights. The most basic safety related measure that should attend any alternative is to restrict flow in the Canal under: actual or potentially dangerous conditions. However, the decision to restrict flow must never work an injustice upon decreed water right holders. The District does not own the water rights; nor does the United States. The people do! Their rights are appurtenant to the land irrigated. Long ago, and in no subtle manner, the United States Supreme Court helped us remember that concept. (See Nevada v. United States, 463 U.S. 110 (1983)).</p>
7.	<p>The effect of the proposed alternatives on the safety and security of Fernley residents and property.</p> <p>As always, the safety and security of the residents of Fernley is a top priority of the City. The January 2008 canal breach had a severe impact on our community. Each of the proposed alternatives needs to be analyzed to ensure that it offers full and complete protection against such events in the future.</p> <p>Again, we appreciate the opportunity to provide input regarding the scope of the EIS and look forward to working with yourself, the Bureau, and all other interested parties as the EIS is developed.</p>

**Table D-7. Comments Related to Recreation**

Comment No.	Comment
1.	Effect on recreational use of Lahontan Reservoir with less water.

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**Table D-8. Comments Related to Socioeconomic Values**

Comment No.	Comment
1.	Impacts to the Truckee Carson Irrigation District's income from hydroelectric plants by reduced water in Lahontan due to reduced inflow from canal.
2.	From the irrigation period 2014 through the end of the 2015, project water deliveries terminated early in the irrigation season. What percentage of a normal year's water was delivered to project users during the drought period? How much was production reduced due to the reduced delivery of irrigation water in both dollars as well as a percentage over production average over the previous 23 years?
3.	Reclamation must analyze whether the funds spent on Truckee Canal repair could be used for other purposes, such as a Newlands Project water acquisition program, that could obviate any alleged need to increase the capacity of the Truckee Canal and which would have significantly more benefits for the environment and wildlife, including threatened and endangered species. Such analysis must consider the actual amount of land under irrigation in the Newlands Project, and not an inflated demand based upon inactive lands or paper water rights.
4.	As mayor my hope is that the process will work and all parties will be heard. We at the city of Fernley look forward to working with all the different parties that have an interest in fixing the problems with the Truckee Canal. My take on long term solutions will require more than one fix. The cost is another concern, TCID has budget problems and funding I believe will be the hardest problem to resolve. The city of Fernley is only as large as it is because of the 100 year plus history with this canal. Not only does this canal provide drinking water but it provides green in trees, grass, and farming for our community. I want to see the flow up to 650 CFS.
5.	Economic impact to Churchill County and Fernley of reduced water levels in the canal compared to the historic water levels, including the impact already experienced and during this long EIS process.
6.	How does the existing canal affect the Pyramid Lake Paiute Reservation economy and survival of its communities and members? How will they be affected by the BOR expanding diversions?
7.	Economic impacts (land values) of lower water level in Truckee Canal = less diversions
8.	I would also like to ask that funding of any repair be considered, because it is my understanding that TCID will be paying for the repair. TCID will likely pass that cost on to the water users. We are concerned that the cost would be prohibitive for the consumers.
9.	How much money was paid out for property damage, homes/valuables lost, any loss of livestock? Was it individual insurance or paid by BOR/GOV/TCID?
10.	The Newlands Project Is a museum. The whole of its structures and facilities exceed 100 years in age. But, unlike the artifacts placed for observation in museums elsewhere, we use our pieces every day. Our Project infrastructure is aged. Yet we have no basis to look to Congress for any assistance in ameliorating the financial impact to water users across a very small economic base. We have been told repeatedly not to count on any appropriation.



**Table D-8. Comments Related to Socioeconomic Values**

Comment No.	Comment
	<p>In typical fashion monies for District improvements are raised by bonding. The debt incurred is retired through assessments imposed upon water users. An XM project carries with it the prospect of extraordinary debt. While the District, as a function of Nevada law, enjoys the power to generate revenues by bonding, and further enjoys the full faith and credit of the State of Nevada in the financing process, financial institutions assess the ability for repayment upon the same principles to be applied to private individuals or businesses. What is the existing debt burden of the entity? What is the ratio of debt to revenues? What judgments exist?</p> <p>What is the likely outcome of the litigation related to the breach of the Canal in 2008? When these factors are considered the ability of the District to finance extraordinary improvements is very limited. Federal assistance is needed even as Congress pushes back.</p>
11.	<p>Since the courts have determined that TCID was responsible for the breach and the damages to properties in Fernley and the BOR's contractual agreement with the TCID specifies that TCID will complete its duties without cost to the Federal government or American taxpayers by charging an operation and maintenance fee to all water users who benefit from the Newlands Project, why is BOR proposing to fund additional canal repairs or reconstruction on behalf of TCID? What is the source of funds for any proposed BOR repairs or reconstruction of the Truckee Canal? Can O&amp;M fees cover the project costs, considering that the court-ordered damage liability of TCID for the breach is substantial and has not yet been paid?</p>
12.	<p>The socioeconomic impacts of the proposed alternatives on the continued existence and future growth and development of Fernley.</p> <p>For more than 100 years the community of Fernley has grown and developed alongside the Truckee Canal. The relationship between the two has been symbiotic, the canal provided the water the community needed to grow and develop while the community's growth and development provided the justification for the construction and ongoing operation of the canal.</p> <p>Any significant changes to the canal, therefore, have the potential to disrupt this symbiotic relationship and negatively impact the socioeconomic environment of the community. Each of the proposed alternatives studied in the EIS must be analyzed in the context of the effect it will have not only on Fernley's continued growth and development but on its continued existence and the overall socioeconomic environment of the Fernley community.</p>

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**Table D-9. Comments Related to Threatened and Endangered Species**

Comment No.	Comment
1.	<p>Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, title II of Public Law 101-618, November 16, 1990 (Settlement Act), directs the Secretary of the Department of the Interior to among other objectives:</p> <p>Provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery (endangered cui-ui and threatened Lahontan cutthroat trout [LCT]) in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended (ESA).</p> <p>The completion of Stampede Dam and Reservoir on the Little Truckee River contributed to reestablishing Truckee River flows suitable for cui-ui and LCT. In 1982, the U.S. District Court affirmed that the waters stored in Stampede Reservoir were to be used for the</p>

**Table D-9. Comments Related to Threatened and Endangered Species**

Comment No.	Comment
	benefit of the Pyramid Lake fishery until such time as the cui-ui and LCT are no longer federally listed as endangered or threatened, or until sufficient water becomes available from other sources, such as water rights acquisition, to conserve the cui-ui and LCT. The Settlement Act gave these species their only “assured” water supply.
2.	Beginning in 2002, FWS, in cooperation with the Pyramid Tribe, began a set of flow regimes using water stored in Stampede Reservoir to more closely mimic a natural river system while protecting habitat for both cui-ui and LCT. Water from Stampede Reservoir is managed to adjust volume and timing of flows to enhance spawning runs and to maintain water temperatures suitable for egg incubation. These flow regimes have also resulted in substantial improvements in the riparian corridors which provides shade along the river needed to maintain suitable temperatures for spawning. In 2002, Reclamation completed construction of the Derby Dam Fish Passage Project to provide passage to cui-ui and LCT past the Dam as part of ESA recovery efforts for these species.
3.	<p>Cui-ui were abundant in Pyramid Lake at the beginning of the 20th century. As water diversions for the Newlands Project proceeded, Truckee River inflow to Pyramid Lake diminished substantially and the elevation of the Lake dropped rapidly. A large delta formed at the mouth of the River. Winnemucca Lake dried up at this time as well.</p> <p>In most years after the 1930s, neither cui-ui or LCT were able to gain access to the river for spawning. By 1967, Pyramid Lake was nearly 80 feet lower than in 1900. Cui-ui were listed as endangered and a Recovery Plan was approved in 1978 with the most recent revision completed in 1992.</p> <p>Lahontan cutthroat trout was listed by FWS as endangered and later reclassified as threatened in 1975. A Recovery Plan was approved in 1995. The plan identified several factors contributing to the decline and affecting the potential for recovery of LCT in the Truckee River basin including diversions leading to reduction and alteration of streamflow.</p> <p>Both cui-ui and LCT spawn between spring and early summer depending on flow, elevation, and water temperatures. In the lower Truckee River, spawning and fry rearing habitat has been degraded through centuries of upstream man-induced river manipulations, and many of the complex pool habitats critical to juvenile survival have been lost. Available habitat for spawning, incubation, and rearing of cui-ui and LCT is especially restricted during low river flows.</p> <p>In an effort to facilitate restoring LCT to the Truckee River, the Pyramid Lake Fishery, FWS and NDOW are actively engaged in LCT stocking efforts in the River. Historically, cui-ui may have spawned in the lower 43 miles of the Truckee River. Most now spawn downstream from Numana Dam within the Reservation. Cui-ui spend up to 16 days in the river. Once adults complete spawning, they move back to the Lake.</p> <p>Effects on the river from diversion modifications, especially during spawning periods, may affect future fish populations in the lower river and Lake. Cui-ui and LCT spawning, incubation, and rearing stages are sensitive to relatively minor changes in Truckee River flow.</p>
4.	New flow recommendations developed by FWS were implemented in 2003 (TRIT, 2003). The purpose of these new flow recommendations, known as the six-flow regime, is to guide the management of Fish Water and, under TROA, Fish Credit Water releases in order to meet ecosystem requirements along the Truckee River. The six-flow regime emphasizes maintaining essential flows while attempting to mimic the river's natural hydrologic variability.

**Table D-9. Comments Related to Threatened and Endangered Species**

Comment No.	Comment
	The flow regime considers the biological requirements of cui-ui and LCT and also incorporates ecosystem considerations such as flows that enhance the establishment and maintenance of willow and cottonwoods.
5.	<p>The FWS Recovery Criteria for both cui-ui and LCT identify water right purchases to protect a secure and stable Pyramid Lake ecosystem and meet life history and habitat requirements for these species.</p> <p>PL 10 1-618 authorizes the Secretary of the Interior to acquire water rights to improve the habitat for cui-ui and LCT by purchase, bequest, donation, or other contractual agreement. This mechanism would fulfill the goals of the ESA by promoting the enhancement and recovery of the Pyramid Lake fishery. The Title to all water rights and related property interests acquired could be held in trust by the United States for the Pyramid Lake Paiute Tribe as part of the Reservation.</p>
6.	Reclamation must initiate and complete consultation with the U.S. Fish & Wildlife Service under Section 7 of the Endangered Species Act in conjunction with the DEIS and prior to taking any steps resulting in increasing the present 350 cfs capacity or related stage level of the Truckee Canal.
7.	Upstream diversions directly and indirectly affect cui-ui and LCT along with other biological resources associated with the amount of water in the lower Truckee River that arrives at Pyramid Lake. Flow is the most important aspect of a river system because it influences both the physical structure of the substrate (the base on which an aquatic organism live) and water quality. These two factors help determine the types of plant and invertebrate life present in addition to other river characteristics all of which interact, and species respond differently to any given set of environmental conditions at different stages of their life cycles.
8.	<p>Increasing the TCID Canal diversion from 300 to 600 cfs could affect the quality, quantity, timing, and duration of flow in the lower River and Pyramid Lake. Such changes could potentially affect the habitat and life cycles of federally endangered cui-ui and threatened LCT along with associated aquatic life and wetland habitats.</p> <p>Different flows are necessary for different seasons because each fish life stage has different requirements. High flows generally result in colder, well-oxygenated water that is vital to cui-ui and LCT spawning. Low flows result in reduced habitat, increase in water temperature, and decrease in DO concentrations.</p>
9.	The EIS Truckee Canal analysis must focus on how a doubling of cfs diversion in the Canal may affect the habitat and management efforts for cui-ui and LCT in the lower Truckee River and Pyramid Lake. The federally approved recovery criteria for both species stipulate that Truckee River water is managed to support cui-ui and LCT migration, life history, and habitat requirements. Under TROA, average annual inflow to Pyramid Lake is greater than current conditions and would benefit cui-ui and LCT by maintaining Pyramid Lake at a higher elevation, which would enhance connectivity between the lower river and lake.
10.	The proposed increase Truckee Canal diversion from 300 to 600 cfs could result in lower inflow to the lower river and Lake during critical spawning times which would adversely affect both cui-ui and LCT. Riparian vegetation along the lower Truckee River which benefits fish from cooler water temperatures as a result of shading could also be impacted.
11.	Changes in flow within the lower Truckee River brought about by increase diversion affect the amount of habitat available for spawning, incubation, and rearing of cui-ui and LCT. The magnitude of this potential impact on the overall fish population over the long-term from increased TCID diversions is uncertain and exacerbated if temperatures unsuitable to the fish occur. Any increase in habitat degradation from increased cfs canal diversion would be considered an adverse effect to cui-ui and LCT.

**Table D-9. Comments Related to Threatened and Endangered Species**

Comment No.	Comment
12.	Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID directly or indirectly impact cui-ui and/or LCT spawning, incubation, and rearing?
13.	Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to less shallow water foraging habitat for cui-ui and LCT and if so what would the differences be?
14.	Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID increase pumping velocity resulting in entrainment and impingement of cui-ui or LCT?
15.	Reclamation must also consider the effects on the threatened and endangered species that call the lower Truckee River and Pyramid Lake home, including the Lahontan cutthroat trout, Cui-ui and American white pelican. Reclamation's study of these impacts must look into the future in perpetuity.
16.	How are endangered Cui ui fish at Pyramid Lake affected by the diversions from the Truckee River? How are they affected by Derby Dam? How will they be affected by the BOR expanding diversions?
17.	How are the threatened Lahontan Cutthroat Trout at Pyramid Lake affected by the diversions from the Truckee River? How are they affected by Derby Dam? How are they affected by the Truckee Canal? How will they be affected by the BOR expanding diversions through increasing the capacity of the Truckee Canal?
18.	How does temperature and water quality affect endangered and threatened species in Pyramid Lake and the Truckee River on the Pyramid Lake Paiute Reservation? How will they be affected by the BOR expanding diversions?
19.	Specifically, my Regional Director encouraged your office to rigorously evaluate potential effects upon Lahontan Valley wetlands (including Newlands Project water rights acquired and managed by the Service), inflows to the Truckee River, and elevations within Pyramid Lake. The latter two criteria will inform Reclamation's evaluation of the potential effects of its actions regarding the continued operation of the Truckee Canal upon Cui-ui ( <i>Chasmistes cujus</i> ) and Lahontan cutthroat trout ( <i>Oncorhynchus clarkii henshawi</i> ), species listed as endangered and threatened, respectively, pursuant to the provisions of the Endangered Species Act of 1973, as amended.

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**Table D-10. Comments Related to Tribal Interests**

Comment No.	Comment
1.	<p>The Truckee Carson Irrigation District (“TCID”), a political subdivision of the state of Nevada, manages an irrigation canal as part of “the Reclamation Act of 1902” and built by the Bureau of Reclamation. The canal both prevents diversion of water from the Truckee River to Pyramid Lake and traverses tribal land of the Pyramid Lake Indian Tribe.</p> <p>Commercialleasing<sup>1</sup> of Indian lands is strictly prohibited except to the extent expressly permitted by Congress. 25 U.S.C. § 177, which was effective on June 30, 1834, provides that:</p> <p>No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.</p> <p>Most non-agricultural surface leasing has been conducted pursuant to the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415,<sup>2</sup> which generally allows a 25-year lease</p>

**Table D-10. Comments Related to Tribal Interests**

Comment No.	Comment
	with an option to renew for 25 years. When Indian property is leased, such leases must receive the written approval of the Bureau of Indian Affairs. 25 C.F.R. Part 162. The Indian Reorganization Act clearly grants tribal governing bodies the right to prevent the lease of tribal lands without the consent of the tribe. 25 U.S.C. §,476.
2.	This letter is in response to the October 9, 2015, <i>Federal Register</i> Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS) for so-called “Extraordinary Maintenance and Operations” of the Truckee Canal. The Bureau of Reclamation (Reclamation) has requested written comments to be delivered on or before November 30,2015, regarding the appropriate scope of issues that should be addressed in the DEIS. I The Pyramid Lake Paiute Tribe (Tribe) offers the following comments and recommendations for your consideration. As you know, Pyramid Lake is wholly encompassed within the boundaries of the Pyramid Lake Paiute Reservation and the principal source of water for Pyramid Lake is the Truckee River. As stated by the United States Court of Appeals for the Ninth Circuit, Pyramid Lake “is a unique natural resource of almost incomparable beauty.” <i>Tribe v. Morton</i> , 354 F. Supp. 252 (9th Cir. 1972). The Tribe has depended upon the surface water flow of the Truckee River to sustain its people and culture from time immemorial. The surface water flow of the Truckee River is directly and significantly affected by any and all diversions of water into the Truckee Canal. Such diversions have been and will continue to be harmful to the water quality and wildlife habitat of the Truckee River and Pyramid Lake, and therefore have significant impacts on the members of the Tribe who depend on the Truckee River for their culture and subsistence, and on the members of the Tribe and the general public who enjoy recreation on the Truckee River and Pyramid Lake. These impacts are all reasonably foreseeable results of any increased diversions of Truckee River water into the Truckee Canal.
3.	The United States has a trust responsibility to all federally-recognized Indian Tribes, such as the Pyramid Lake Paiute Tribe. This trust responsibility is the cornerstone of administrative agency government-to-government dealings with Indian Tribes. “The United States, acting through the Secretary of Interior, has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.” <i>Tribe v. Morton</i> , 354 F.Supp. 274 (quoting <i>Seminole Nation v. United States</i> , 316 U.S. 286 (1942)). Specifically, Reclamation is bound by this trust responsibility to soundly exercise its discretion when considering the competing demands on the Truckee River of the Newlands Project and its trust responsibilities to the Tribe. See e.g. <i>Tribe v. Morton</i> , 374 F. Supp. 252. The burden is therefore on Reclamation “to justify any diversion of water from the Tribe with precision.” <i>Id.</i> (emphasis added). Reclamation is “obliged to formulate a closely developed regulation that would preserve water for the Tribe” and must “assert [its] statutory and contractual authority to the fullest extent possible to accomplish this result.” <i>Id.</i> Therefore, when Reclamation's actions fail to “demonstrate an adequate recognition of [its] fiduciary duty to the Tribe,” its actions are deemed “defective and irrational.”
4.	The above comments are not intended to represent an exclusive list of the Tribe's comments and concerns at this early stage of the Truckee Canal XM EIS, and the Tribe reserves the right to supplement its comments in the future as more information becomes available. The Tribe appreciates the opportunity to provide comments and is looking forward to working with Reclamation to ensure that potential project impacts to Indian Trust resources, including fish and wildlife resources, are adequately addressed in the Truckee Canal XM EIS.
5.	Reclamation must enter into serious consultation with the Tribe pursuant to its trust responsibilities, particularly regarding any and all Trust Resources, in relation to the reconstruction of the Truckee Canal and increasing its present capacity.

**Table D-10. Comments Related to Tribal Interests**

Comment No.	Comment
6.	Reclamation must fully consider all potential impacts of any diversions of water from the Truckee River that could result in the stage or flow of the Truckee Canal above the long-standing 350 cubic feet per second limitation. Such consideration of impacts must include impacts to the flow of the Truckee River below Derby Dam and the surface elevation of Pyramid Lake, and the effects on the Tribe's culture that could result from such diversions.

1

**Table D-11. Comments Related to Wetlands and Riparian Areas**

Comment No.	Comment
1.	Reclamation must assess the presence and distribution of Truckee River and Pyramid Lake wetlands and riparian areas in the detailed study area. Reclamation must determine the potential direct and indirect impacts of project implementation on these areas.
2.	Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to a decline in lower river and/or lake habitat availability? Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to modifications in lower river and lake characteristics resulting in increased riparian and/or littoral habitat degradation?
3.	EPA supports considerations for creating or enhancing wetland habitat. Based upon the information provided, it is unclear the extent to which the proposed project could be designed so as to enhance or create aquatic or wetland habitat. We encourage Reclamation to consider, to the extent practicable, project alternatives and design features that would mimic natural floodplain characteristics. For example, consider whether detention/retention or overflow/waste way structures could be designed so as to allow periodic flooding of adjacent lands that have been engineered for this purpose. Design features of this nature could serve to create wetland/wildlife habitat while also meeting the primary project purpose of improving public safety.
4.	At the public scoping meeting held October 29, 2015, in Fernley, Nevada, Reclamation also requested preliminary scoping comments by November 30, 2015. I would therefore like to take this opportunity to reiterate the Service's interests in the Project, as outlined in my Regional Director's memorandum to your office, dated November 26, 2013, and my Director's subsequent memorandum to Reclamation's Commissioner, dated August 11, 2014. Specifically, my Regional Director encouraged your office to rigorously evaluate potential effects upon Lahontan Valley wetlands (including Newlands Project water rights acquired and managed by the Service), inflows to the Truckee River, and elevations within Pyramid Lake.

2

**Table D-12. Comments Related to Water Resources**

Comment No.	Comment
	<b>Surface Water</b>
1.	Long term impacts to Lahontan Reservoir (water levels, vegetation, wildlife, fish, recreation) of reduced water levels in the canal.
2.	How do river diversions currently affect the temperature and water quality of the Truckee River? How will these be affected by BOR's proposal to expand diversions?
3.	How much water is diverted at Derby Dam on average over the last 15 and 30 years from the Truckee River and in total over the last 15 and 30 years. What percentage of the flow

**Table D-12. Comments Related to Water Resources**

Comment No.	Comment
	<p>of the Truckee River does this represent?</p> <p>What is the flow of the Truckee River at Derby Dam on average over the last 15 years? 30 years?</p> <p>How much have the annual Truckee River flows decreased during these time frames?</p> <p>What percentage of the Truckee River water has been diverted at Derby Dam for each year in the past 30 years?</p> <p>How much water over the last 15 and 30 years on average flows into Lahontan Reservoir from the Carson River and in total over the last 15 and 30 years.</p> <p>How much water is actually delivered (based on water allocations and O &amp; M charges) to water users at their head gates over the last 15 and 30 years?</p> <p>How much water is lost in transmission in the Truckee Canal in the same time frames? In the Fernley distribution reach? At each of the various delivery ditches in Lahontan Valley?</p>
4.	<p>How have the flows of the Carson River into Lahontan Reservoir changed in the last 15 and 30 years compared to the entire period of record for the Carson River?</p> <p>What percentage of water to fill Lahontan Reservoir comes from the Truckee River for each year since the beginning of the OCAP? From the Carson River?</p>
5.	<p>Has the BOR analyzed the flows of the Carson River to determine if flows of the Carson River are meeting its historic average flows at the Ft Churchill gauge?</p>
6.	<p>What are the evaporation losses from Lahontan Reservoir and the various reservoirs in Lahontan Valley?</p>
7.	<p>The impacts on the lower Truckee River and Pyramid Lake are without doubt foreseeable. As Reclamation is fully aware, historic diversions from the Truckee River into the Truckee Canal were the primary driver of the drying up of Lake Winnemucca and the drastic lowering of the water surface elevation of Pyramid Lake, and the resulting cultural and environmental catastrophes.</p>
8.	<p>Reclamation is using the Desert Terminus Lakes funding for the DEIS, which would be used as a basis to increase Truckee River diversions into the Truckee Canal, which would result in less flows to Pyramid Lake. This is contrary to the intent and purposes of the Desert Terminus Lakes program, which is meant to increase, not decrease, the flow of water to Nevada's desert terminus lakes. The DEIS should be funded through a reimbursable contract between Reclamation and TCID. Similarly, all funding for any Truckee Canal repairs or construction should be paid directly by TCID or through reimbursable contracts between TCID and Reclamation.</p>
9.	<p>Analyze City of Fernley policies regarding development along the canal and drainage.</p>
10.	<p>Any short-term canal improvements for safety must be limited to the long-standing 350 cubic feet per second capacity. In other words, Reclamation must not increase the canal capacity above 350 cubic feet per second in reliance on any short-term safety fixes. Reclamation and/or the Truckee-Carson Irrigation District can put in place maintenance programs or strengthening of any canal embankment, if needed, as part of the maintenance for additional safety, but in no event should there be any increase in the canal capacity above 350 cubic feet per second until a full EIS is completed.</p>
11.	<p>My wish is that the canal stops at the last farm in Fernley. Fallon can get their water from the Carson River.</p>
12.	<p>The PLF request the Truckee Canal EIS determine how a doubling in cfs diversion might impact Pyramid Lake water inflows, surface elevation, and the potential for delta formation.</p> <p>The effect on Truckee River delta formation would be considered a significant impact if the elevation of the Lake was even slightly lowered resulting from the increased TCID cfs diversion. A lower elevation could adversely affect the connectivity between the Truckee</p>

**Table D-12. Comments Related to Water Resources**

Comment No.	Comment
	<p>River and Pyramid Lake. The lower river and Lake could be adversely affected if water levels were to fall below the thresholds recommended to maintain water quality and aquatic productivity. An effect on fish populations at Pyramid Lake would be significant if a change in shallow water habitat were to occur during the juvenile rearing period.</p>
13.	<p>Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID affect ecosystem flows established by the Truckee River Interdisciplinary Team (TRIT)?</p>
14.	<p>If the Newlands Project diversions from the Truckee River were entirely stopped, what benefits to the Truckee River system would have occurred during the past 15-year drought? What would the level of Pyramid Lake be without diversions over the last 15 years? Over the last 30 years? Over the last 110 years?</p>
15.	<p>Reclamation must include all proposed federal action regarding Truckee Canal operations within the DEIS, including plans that are already underway to allow increased diversions into the Truckee Canal above the long-standing 350 cubic feet per second limitation. Allowing any increase in diversions to the Truckee Canal that would result in canal flow above the longstanding 350 cubic feet per second limitation would be a violation of NEPA's injunction against approval of piecemeal actions that may affect the requisite "hard look" required by NEPA. Allowing any increase in the stage or flow of the Truckee Canal without considering it in the Truckee Canal XM DEIS would constitute an irreversible or irretrievable commitment of resources before the requisite environmental review has been completed. The PowerPoint slides utilized by Reclamation's NEP A contractor clearly stated that the purpose of the Truckee Canal XM EIS is directly related to the long-standing 350 cubic feet per second limitation, and any analysis by Reclamation that does not consider 350 cubic feet per second, or some lower figure that more accurately represents actual canal flow based upon gage data from the time of initiation of the limitation, as the baseline for analysis of environmental effects will be fundamentally flawed. Reclamation must complete the full Environmental Impact Statement, including the Record of Decision, before any improvements are undertaken to increase the Truckee Canal capacity above the present limit of 350 cubic feet per second, or associated stage level.</p>
	<p><b>Groundwater</b></p>
1.	<p>How has pumping and upstream diversion in the upper basins of the Carson River affected river flows of the Carson River at the Ft Churchill gauge?</p>
2.	<p>Impact to City of Fernley aquifer water levels and existing domestic/municipal well water levels if historic levels are not restored.</p>
3.	<p>Changes in aquifer levels and domestic wells in Churchill County due to less water in Lahontan from reduced inflow from canal.</p>
4.	<p>Prior analysis by Reclamation has considered impacts to local groundwater aquifers, including in and around the town of Fernley, NV, because of reduced Truckee Canal flow to be a disadvantage of lining the Truckee Canal. As Reclamation is aware, the long-standing position of the U.S. Department of the Interior and the U.S. Department of Justice is that Fernley has no legal right to water which may seep from the Truckee Canal into the local aquifer. It is not a disadvantage to make the Truckee Canal more efficient by conserving water that would otherwise seep into the groundwater aquifer, particularly when such conservation would and should be used to reduce diversions from the Truckee River. Minimizing changes to wasteful seepage of water from the Truckee Canal to the groundwater aquifer must not be considered an objective or advantage of the project.</p>



**Table D-12. Comments Related to Water Resources**

<b>Comment No.</b>	<b>Comment</b>
5.	Please consider that any lining will hurt the groundwater recharge for all residents, municipal and commercial water supplies along the Truckee canal reach. Sheet piling looks to be the answer.
6.	Impact to aquifer recharge in Fernley from Truckee Canal low water level
7.	Impacts to aquifer recharge in Churchill County if lower levels in Lahontan Reservoir due to lower diversions
8.	I would like to make sure that the impact to domestic well owners is considered with the options.
9.	The effects of proposed alternatives on groundwater recharge. Currently, the City of Fernley is utterly reliant on groundwater within the Fernley Basin aquifer to serve its municipal needs. In addition, there are numerous residents of Fernley who rely on domestic wells as their sole source of groundwater. There is documented evidence that seepage from the canal is a significant source of recharge for the groundwater aquifer. The EIS needs to fully analyze and consider the effects of each of the proposed alternatives on the Fernley groundwater basin.
10.	The potential for delay in implementing the preferred alternative as a result of litigation. The City of Fernley has relayed its position to the Bureau that seepage from the Truckee Canal is a vital source of recharge to the groundwater aquifer that cannot be discontinued without negatively affecting the City's groundwater rights. In analyzing the various proposed alternatives, the EIS should evaluate the potential of litigation expense and delay should that alternative be chosen as the preferred course of action. While it is never the intention of the City to engage in such litigation, the City has an affirmative obligation to its citizens to protect the groundwater resources of the City. If a preferred alternative will negatively impact those resources without providing appropriate mitigation of the impact, the City will be required to take all necessary action to protect its interests.
	<b><i>Water Rights</i></b>
1.	How is the City of Fernley permitted water from the Truckee Canal? Is leakage from the canal and canal water lost through irrigation and delivery of project water a defined benefit of the Newlands Project?
2.	Will the BOR look at purchasing water rights on the Carson River to increase water for the project rather than taking more water from the Truckee River?
3.	The Truckee River Operating Agreement (TROA) provides the framework, rules, and procedures to modify operations of five Federal and two non-Federal reservoirs to implement the Congressional allocation of Lake Tahoe, Truckee River, and Carson River waters between the States of California and Nevada. TROA has been negotiated pursuant to section 205(a) of Public Law 101-618.
4.	The obvious issue of how many acres can be irrigated in Truckee and Carson Divisions with different water flow scenarios - the amount of water delivered cannot be less than the amount the water right owners are legally entitled to.
5.	Changes in water supply to Churchill County water right holders for irrigation.
	<b><i>Water Supply</i></b>
1.	How many project water users receive water in the entire Newland's Project excluding the Stillwater National Wildlife Refuge and the Carson Lake and Pasture and the Fallon Paiute Tribe? In the Fernley Division? In the Lahontan Division? What is the average irrigated acreage for project water users? What is the highest acreage amount of any project water user? What is the lowest acreage amount of any project water user?

**Table D-12. Comments Related to Water Resources**

Comment No.	Comment
	<p>What is the criterion for a user to receive project water?                      What is the average annual production from project users?                      What are the crop percentages (how much alfalfa, grass and pasture, corn, wheat, etc.)?                      What are the crop percentages for high value crops (cantaloupe, onions, etc.)                      How much land receives project water excluding the Carson Lake and Pasture and the Stillwater National Wildlife Refuge? Please provide maps of irrigated lands in the Fernley and Lahontan Divisions.</p>
2.	<p>Has the BOR determined that there is sufficient water flows in the Carson River to support the Newlands Project while at the same time to support increasing upriver water demands?</p>
3.	<p>Reclamation's DEIS should evaluate whether monetary and other resources would be better spent on increased project-wide delivery efficiency to the head gate under current Truckee Canal flow limitations versus extraordinary Truckee Canal maintenance that would result in increased diversions of water from the Truckee River. See OCAP, 43 CFR 418.12(c)                      (“Assuming the head gate deliveries are valid and enforceable, conveyance efficiency is the only remaining variable in determining the quantity of water needed to be supplied to the District. “) (emphasis added); see also 43 CFR 427. 1 (a) (“The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-federal recipients of irrigation and municipal and industrial water from Federal Reclamation projects.”).</p>
4.	<p>Reclamation must take a hard look at alternatives that would reduce demand for diversions of the Truckee River into the Truckee Canal, including reduced demand in the Carson Division of the Newlands Project, increased efficiency in the Carson Division, and increased supply from the Carson River. Reclamation must also take a hard look at the alternative of decommissioning the Truckee Canal in the future.</p>
5.	<p>Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID affect water quality in the lower river in light of loading concentrations from upstream point and non-point sources?</p>
6.	<p>While the City of Fernley fully supports the efforts of the Bureau to improve the safety and efficiency of the Truckee Canal, we are concerned with the effects that certain proposals may have in the City's water resources.</p>

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**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
	<p><b><i>General Comments Related to the Project</i></b></p>
1.	<p>The Churchill County Board of Commissioners is deeply concerned about the proposed length of time to undertake the preparation of an Environmental Impact Statement (EIS) for the Truckee Canal Extraordinary Operation and Maintenance Project (XM). The breach occurred in January 2008; nearly nine years have passed with restricted flows in the Truckee Canal and the continued sustainability of many of our farming operations under these conditions is at risk.                      During the past eight years, innumerable engineering studies and risk assessments have been undertaken addressing many of the public safety issues this EIS will address. We request that this data and information be reviewed immediately to minimize duplication of efforts, resulting in a significantly shorter period of time to complete the EIS.</p>
2.	<p>I've lived in Fernley 26 years. We need this canal to keep the water in this basin. I've bought property here and invested a lot of time and money. If water does not continue to flow, it will bankrupt a lot of good hard working Americans who moved here for a better</p>

**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
	way of life. It makes no sense to me that we allow viable water to go past us here and run into a lake of salt water, we can grow much more with fresh water on our land than you can by allowing it to turn into a salt lake.
3.	The TCID canal is the source for the most valuable asset, water! For central Nevada. Do not close this otherwise more jobs and homes will be lost adding to an escalating Nation problem.
4.	<p>The Bureau of Reclamation (Reclamation), Lahontan Basin Area Office, the lead Federal agency, intends to prepare an Extraordinary Operation and Maintenance (XM) Environmental Impact Statement (EIS) for the Truckee Canal (Canal). Reclamation will evaluate alternatives that will enable the Canal operator, the Truckee Carson Irrigation District (TCID), to increase flow in the canal from to 300 to 600 cfs and deliver water to the Newlands Project in compliance with Operating Criteria and Procedures (OCAP). OCAP is a Federal regulation that governs diversions to the Newlands Project from the Truckee River. The purpose of OCAP is to maximize use of the Carson River and minimize use of the Truckee River for Newlands Project irrigation. On average, the Truckee River provides approximately 20 percent of the TCID water supply.</p> <p>Reclamation has a contract with TCID to operate and maintain the Canal at Derby Dam. The Dam is a component of the Newlands Project and diverts Truckee River water into the Canal Since the rupture of the Canal in January 2008 the flow has been limited to 300 cfs. The proposed repairs to the Canal would allow TCID to increase diversion rates to 600 cfs.</p> <p>Reclamation held three open house/public scoping meetings for the Truckee Canal EIS in Wadsworth, Fallon, and Fernley, between October 27-29,2015. The purpose of the meetings was to solicit early input from the public regarding the development of the proposed project and the potential environmental impacts.</p> <p>The specific written comments provided in Section 6 below are being submitted as part of the Pyramid Lake Fishery (PLF) comments to the Truckee Canal EIS as it relates to endangered and threatened fish and aquatic resources of the lower Truckee River and Pyramid Lake. The following sections provide a setting leading to the formulation of the PLF comments to the proposed increase diversion rate.</p>
5.	<p>The U.S. Environmental Protection Agency has reviewed the <i>Federal Register</i> Notice published October 19, 2015 requesting comments on the Bureau of Reclamation's decision to prepare an Extraordinary Operations and Maintenance Environmental Impact Statement for the Truckee Canal. Our comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.</p> <p>According to Reclamation's notice, the purpose of this project is to improve public safety by reducing the risk of a breach of the Truckee Canal. Reclamation and Truckee Carson Irrigation District are proposing to complete structural improvements to Canal facilities and/or implement a long-term tolerable stage level restriction in order to enable the Canal operator, TCID, to safely operate the Canal and deliver Project water in compliance with operating criteria and procedures for the Newlands Project.</p> <p>EPA acknowledges the stated purposed of the project to improve public safety and enable Newlands Project water deliveries. We also see potential for this project to serve to restore ecosystem functions and we encourage Reclamation to evaluate project alternatives and design components that might serve this purpose.</p>
6.	<p>Is the Extraordinary Operations and Maintenance (XM) a canal repair? A simple maintenance project? An operational change? A wholesale reconstruction of the canal to increase its capacity to divert water from the Truckee River?</p> <p>Will this be the only environmental document prepared by your office regarding future operation and construction proposals on the Truckee Canal?</p>

**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
	Or is the BOR planning to do separate Environmental Assessments (EAs) on additional projects for the Truckee Canal that precede or are in parallel with the preparation of this referenced EIS?
7.	What other environmental or research documents or reports have been prepared by the BOR regarding the breach of the Canal operated by the Truckee-Carson Irrigation District (TCID)?
8.	Does the BOR intend to take over the operation and maintenance of the Canal from the TCID? If not, then why is the BOR engaging in operation and maintenance that is the responsibility of the TCID? We would appreciate definitive answers to these questions as soon as possible from your office as it would be helpful to understand why the BOR is making these proposals.
9.	We are extremely concerned with the process the BOR has started. The information available for scoping for the XM EIS is essentially non-existent. The BOR appears to be assuming the role of operator and maintainer of the project when this is exclusively the responsibility of the TCID. The potential adverse impacts to the Truckee River and Pyramid Lake from increasing the capacity of the Truckee Canal are very high. Any supposed benefits to the Newlands Project water users who are actually engaged in agriculture is unlikely to outweigh the environmental and financial costs to the public.
10.	All planning processes associated with the Truckee Canal, and all ensuing improvements to be made thereto, will require time -much time! Therefore, the XM EIS must acknowledge and instruct a process intended to both identify and implement all short-term improvements with realistic time tables. Moreover, the study must take into account all prior efforts taken by the District to either maintain existing flow levels or to increase the same. All effort of the District and Reclamation must include protection of the lives and personal “stakes” that depend upon the Truckee Canal in some fashion. We strongly disagree with consideration of any default flow level such as 150 cubic feet per second - even in the event that any short-term improvement efforts may have failed. A flow regime of 150 cubic feet per second is tantamount to shutting the Canal down.
11.	Long ago our entire region was vitalized by a spirit that accompanied the Act of 1902. Settlers came here based upon promises made to them. Water became appurtenant to lands for all beneficial uses. Something that has not changed through the intervening years is the reliance upon federal facilities with which to supply Project water. While the District once had responsibility for the operation and maintenance of Tahoe Dam, such is no longer the case. In former times up-stream federally created reservoirs were operated largely for the benefit of the Project but no longer is that the case. The promise to all water users under the Act of 1902 must be honored. Its application is no less important than the competing claims made by water users elsewhere in the Truckee River watershed. The purposes of the 1902 Act are no less important than those borne by the Endangered Species Act of 1978 -as one example. The XM EIS must not give way to competing claims in the balance of legal and political interests. Project interests demand that upstream storage be made a part of all planning.
12.	What is the proposed BOR project? Is it a “repair?” Is it a canal reconstruction? What does “extraordinary operation and maintenance” mean? Since a major breach has already occurred on January 5, 2008 and repairs, which were approved by the BOR, have already been made by TCID to the canal through construction of a zone earthfill embankment, why are additional repairs required?
13.	Why isn't BOR proposing methods to increase flows to the Newlands Project from the Carson River? Wouldn't increase Carson River flows limit the amount of Truckee River water diversions?
14.	Who is responsible for maintenance and operations of the Truckee Canal under the contract the TCID has with the BOR?

**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
<b><i>Comments Related to Alternatives</i></b>	
1.	We recommend the DEIS provide a thorough evaluation of direct, indirect, and cumulative effects of all project alternatives. The DEIS should discuss the ways in which the proposed canal improvements will affect long term water deliveries relative to an appropriate baseline. Furthermore, in so far as water management influences land use patterns, which may, in turn, have environmental effects, we recommend the DEIS address potential changes in land use patterns that may result from the proposed project and future resultant changes in water deliveries.
2.	Each of the Action Alternatives should include a robust discussion of impacts to water quality. The evaluation of project alternatives should address how both short term construction-related impacts and the long term operations-related impacts to water quality. The EIS should discuss the project’s potential to affect downstream impaired waters, all reasonable mitigation measures for offsetting such impacts, and the likelihood such mitigation would be implemented.
3.	All reasonable alternatives that fulfill the project’s purpose and need should be evaluated in detail, including alternatives that may be outside Reclamation’s legal jurisdiction (40 CFR Section 1502.14(c)). The DEIS should provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail. A robust range of alternatives will include options for avoiding significant environmental impacts. The DEIS should clearly describe the rationale used to determine whether impacts of an alternative are significant or not. Thresholds of significance should be determined by considering the context and intensity of an action and its effects (40 CFR 1508.27). The environmental impacts beneficial and adverse of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g. acres of wetlands impacted; change in water quality). The No Action Alternative should clearly describe the current quality and quantity of habitat in the watershed, including habitat connectivity and water quality metrics.
4.	As water flowed from the breach site that early January morning, an essential construction fact was made manifest. The Canal has little vertical fall. From Derby Dam to Lahontan Dam and Reservoir the difference in elevation is approximately thirty (30) feet. After Derby Spill was operated and waters into the Canal had been diverted away, water remaining in the Canal flowed through the breach site from both upstream and downstream sources. If an additional spill structure had existed, one in closer proximity to Fernley, as an example, one nearer to the first takeout on the canal (TC-1), more water could have been evacuated from the Canal -water that remained in the channel only to find its way to the breach site. Planning must include consideration of an additional waste-way structure near to Fernley, the purpose of which is to take even more pressure off the entire Canal system in the event of failure.
5.	In 2013 the Newlands Project Planning Study Special Report was issued. Federal authorization for that study was provided in the Omnibus Appropriations Act of 2009 (Public Law 11-8, 123 Statute 609). The purpose of the study was to “determine the actions necessary to rehabilitate the Truckee Canal so restrictions on its operation can be removed.” (See Study, at P, E-2). We questioned in that study, which we were informed would not become a “decisional document”, a scope of study that would allow the examination of alternatives including a zero flow alternative in the Truckee Canal. (See Letter, dated October 10, 2012, borne by Appendix H (c) of the Study). This “zero flow” alternative has ostensibly and Improperly taken flight. We presume the alternative will be revisited in the EIS. As we said regarding the Canal Study of 2013, the scope of this XM EIS should not include an alternative that provides for a zero flow. The creation of the Newlands Federal Reclamation Project was provided for as a result of the Reclamation

**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
	Act of June 17, 1902 (32 stat. 388). The very quintessence of the Newlands Project is the Truckee Canal. No federal authorization exists in this study, or any other study for that matter, that authorizes consideration of a no flow alternative in the Project. If Congress is to act in modification to the Act, it should so speak. Any record of decision predicated upon such a consideration is, and shall be, fallacious and untrue to the purposes long ago established by and for the Act of 1902.
6.	The XM EIS will evaluate alternatives associated with permanent repairs to be made to the Truckee Canal to improve its safety. Operational decisions, however, must be the first consideration in protecting the public from any Canal related failure. Certain realities attend this Project that do not exist elsewhere. Icing in Arizona? Overtopping from ice-jams in California? The safest operation of the Canal in winter conditions must consist of credit storing water upstream for use - allowing passage of flows only after dangerous winter conditions no longer prevail. In current operation, in order to attain storage targets, waters are transported via the Truckee Canal to Lahontan. If flows into the Truckee Canal are stopped, due to icing as an example, waters capable of diversion at Derby Dam will pass on to Pyramid Lake. The water that could have been diverted is converted to the use of downstream users with no consideration for credit given to water users within the Project. The "use it or lose it" principle runs counter to safe Canal operation. The water users, not the District, are injured. Any alternative that may be considered by the XM EIS must never foster explicitly or implicitly a disincentive to safe operation.
7.	Alternatives to be considered by the XM EIS will involve various flow regimes. Incorporating the substance of Comment 4, herein-above, care must always be exercised in not limiting the rights of Project water users by reference to some operational constraint. A 350, 400, or 600 cubic foot per second Canal flow restriction, whether vegetated or not, does not modify the Orr Ditch Decree. The ability of the Canal to transport water at a certain rate of flow does not redefine the valuable property rights of Project water users. When operational constraints are imposed upon the Canal, when waters are controlled "as so many bushels of wheat", Canal capacity cannot reshape Constitutional protections. Any effort undertaken by the District to improve canal safety and efficiency is not, and must never be construed as, a waiver of the full exercise of personally held and Constitutional protected property interests had by Project water users. The District nor the United States controls or exercises water rights within the Project. We merely deliver water as decreed in accordance with the spirit of the Reclamation Act of 1902, the individual contracts had with entrymen into the Project, the Alpine and Orr Ditch Decrees respectively, and Contract No. 7-07-20-X0348. Accordingly, when consideration is given to up-stream storage as an essential component of safe Canal operation, credit must be given to water users not for what could safely pass through the Canal but for the water necessary to irrigate lands as decreed. If otherwise, the right to the use of the waters as decreed will have been taken in an amount corresponding to the difference between the administratively imposed restraint and that amount of water necessary to irrigate lands.
8.	Why didn't BOR provide to the public, as part of the EIS scoping process, the results of its study to evaluate multiple alternatives for water delivery in the Newlands Project that integrate the design data collected on the canal and the risk assessment to determine effective alternatives for safely delivering water to meet Newlands Project water rights, also completed in 2011?
9.	Why isn't BOR considering alternatives to increase flows to the Newlands Project by decreasing evaporation losses from Lahontan Reservoir by redesigning a smaller reservoir?
10.	The need for mitigation of any negative effects of proposed alternatives and the costs of, and potential sources of funding to finance, such mitigation measures. As noted above, various proposed alternatives could have significant negative impacts on

**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
	the City of Fernley and individual residents. Accordingly, the EIS should properly identify and analyze methods for mitigating such impacts, including funding sources that could be utilized to pay for any needed mitigation.
<b><i>Comments Related to Public and Agency Collaboration</i></b>	
1.	Churchill County is pleased to be a Cooperating Agency during this process. We request that, where possible, during the EIS process the residents and community members most impacted by restricted flows in the Truckee canal be kept informed of progress. The Board of County Commissioners meets on the 1st Thursday and 3rd Wednesday of each month and we invite you to provide updates to the Commission as often as possible.
2.	This memorandum responds to your September 23, 2015 memorandum inviting the U.S. Fish and Wildlife Service (Service) to participate as a Cooperating Agency in the Bureau of Reclamation's (Reclamation) Environmental Impact Statement (EIS) for the Truckee Canal Extraordinary Maintenance Project (Project). We accept Reclamation's invitation, and look forward to establishing a Memorandum of Understanding (MOU) describing our agency's interests and commitments related to the Project and particularly our Cooperating Agency role. As you are aware, the Service manages trust resources in the Truckee and Carson basins; oversight for these resources is distributed among our agency's Ecological Services, Fisheries, National Wildlife Refuge, and Realty programs. Dr. Carolyn Swed, Deputy Field Supervisor for my office, will be Reclamation's primary point of contact related to the Project. However, I request that you also continue to copy Ms. Lisa Heki, Manager for the Lahontan National Fish Hatchery Complex; Ms. Nancy Hoffman, Manager for the Stillwater National Wildlife Refuge Complex; and Mr. Richard Grimes, Supervisory Realty Specialist for the Nevada Realty Field Office on all correspondence related to the Project.
3.	Service personnel from each of our agency's affected programs are ready to assist in the identification and evaluation of alternatives addressing these objectives.
4.	At the onset, we extend our appreciation to you and other staff members for all efforts undertaken with regard to the Truckee Canal Extraordinary Maintenance (XM) Environmental Impact Study (EIS). We acknowledge the considerable effort expended in achieving compliance with the National Environmental Policy Act of 1970, with all its supplemental legislation, related executive orders, and administrative rules. The creation of an administrative record, a record free from legal defect, is a daunting challenge. As a District we were present and participated in three (3) "scoping meetings" relating to the Truckee Canal XM EIS. These scoping meetings were conducted at Wadsworth, at a facility of the Pyramid Lake Paiute Tribe, at the Fernley City Hall, and at the Churchill County Commission Chambers in Fallon. We also participated with you in Site visits made to locations on the Canal. At each location we expressed our interests and concerns. By this letter we will attempt to provide a summary of the comments we have previously given. We will also provide other comments as needed.
5.	At the scoping meeting, a meeting of "stakeholders" attended in Wadsworth, we saw signs that said: "Shut down the Truckee Canal" At the meeting we were told that a no flow alternative would be considered. In all the discussion had regarding this XM EIS great care has been exercised to afford input by all stakeholders. Time was that the term "stakeholder" meant something special. A stakeholder was a third party chosen by two or more other parties to keep on deposit property or money the right of possession of which is contested between them and to be delivered to one who shall establish a right to it' Black's Law Dictionary 6th Edition (West: 1990), p. 1404. Now a stakeholder is merely a member of a set of persons, collectively "opponents" and "proponents", having interest in a particular matter -the lowest and ugliest common denominator of which is politics I Once a stakeholder meant someone exercising a sacred trust for the benefit of others; now, it means opposing what is sacred to someone else! Perhaps the time has come to

**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
	<p>jettison the term “stakeholder”, We are all truly and simply “opponents” and “proponents” of a measure. The value of doing something to help others long ago fled. “Stakeholder” sounds of political correctness, without evidence of a breath of humanity, in a process that is most assuredly meant to include consideration of the impact to be had upon human beings! Our expectation in this XM EIS is that those parties truly having a “stake” will be listened to the most! We do not mind others expressing opposition founded in reality. Such is the process. However, let these “opponents” bring to the discussion a checkbook. We will then listen intently!</p>
6.	<p>Moreover, circumstances attend our Project unique only to us. The largest single holder of water rights in the Project is the United states through the United States Fish and Wildlife Service (USFWS). Private lands have been purchased and taken out production with the use of tax dollars. The USFWS is not the only government holder of water rights; nor is It the only governmental entity providing payment to the District for operation and maintenance assessments. Will the USFWS share in the cost of an XM like other water users? Will the Tribes that also hold water rights pay additional assessments? We are informed and believe that these federal entities are unwilling to pay additional monies. What then are we to do?</p> <p>If improvements are not made to the Canal the result will be permanent restrictions in flow imposed upon Canal operations. The “leverage” upon the District, the real parties in interest being the water users of course, is to fund improvement or suffer the consequence of reduced flows. This sounds a whole lot like having a gun placed to the head' Do the impossible if necessary! The payment for improvement must be borne across the entire base of water users. And no alternative should be imposed that injures personally held property rights. If federal water users are not inclined to pay more, as do other water users, federal assistance must be granted. Otherwise, must we acquiesce to a permanent restriction? Is that the goal? Is the desired outcome a planned for inability to make improvements? We seek to push back such conspiracy thinking. Yet the seeds of such thinking are real.</p>
7.	<p>On behalf of the Truckee River Yacht Club (TRYC), I am submitting scoping comments on the Truckee Canal Extraordinary Operation and Maintenance Environmental Impact Statement (EIS), proposed by the Bureau of Reclamation (BOR). The TRYC has many concerns about this BOR project proposal on which there is little to no publicly accessible information as well as its potential impacts on the Truckee River. The TRYC is a non-profit, tax-exempt, volunteer community-based advocacy group working and playing for a thriving, dynamic Truckee River system. Our mission, objectives, and blogs can be found on our website at: <a href="http://truckeeriver.org/about/">http://truckeeriver.org/about/</a>. The BOR did not schedule an open house in the Reno area. Nor is there much information on the BOR website about this project, other than a press release which simply refers the viewer back to the webpage: <a href="http://www.usbr.gov/mp/lbao/programs/truckee-canal-eis/index.html">http://www.usbr.gov/mp/lbao/programs/truckee-canal-eis/index.html</a>. The intent of the EIS, according to the webpage, is to “ ... evaluate opportunities to reduce the risk to public safety from a Canal breach. Reclamation proposes to take action to evaluate alternatives that will enable the Canal operator - the Truckee Carson Irrigation District (TCID) - to safely operate the Canal and deliver Project water in compliance with operating criteria and procedures (OCAP). Additional restrictions on Canal operations may be necessary without taking actions or initiating risk-reducing repairs.” This is the only publicly accessible information on this proposal we could find which makes it difficult to submit EIS scoping comments.</p>
8.	<p>In conclusion, we strongly urge the BOR to use a more transparent process in its communications to the public about agency proposals. Providing access to the two existing reports on canal repairs would have been most useful in developing scoping comments on the proposed EIS. BOR may actually receive very valuable ideas and comments from the public if it improves its communication to the public.</p>



**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
9.	Why didn't BOR provide to the public, as part of the EIS scoping process, the results of the \$2.5 million project to do an exploration/risk analysis of the Truckee Canal to determine the full extent of rehabilitation needed for the canal to resume flows above 350 cfs which was completed in June 2011?
<b><i>Comments Related to NEPA Analysis</i></b>	
1.	<p>The National Environmental Policy Act (NEPA) requires Reclamation to prepare a detailed study on the impacts of any proposed federal action that may “significantly affect the quality of the human environment.” NEPA, 42 U.S.C. § 4332(C). The NEPA process requires Reclamation to assess the potential impacts-direct, indirect and cumulative-of the proposed action on the environment.</p> <p>Direct impacts “are caused by the action and occur at the same time and place.” Indirect impacts “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Cumulative impacts “result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such actions.” Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. See Council for Environmental Quality, NEPA Implementing Regulations, 40 C.F.R. § 1508.8.</p>
2.	As a general matter, the NOI failed to provide sufficient details regarding the proposed project, its purpose and need, and potential alternatives for the Tribe to fully comment, and the Tribe's comments at this time are therefore to be understood in that context. The Tribe reserves the right to provide additional comments as more information becomes available.
3.	<p>The DEIS for the proposed project should clearly identify the underlying purpose and need that is the basis for proposing the range of alternatives (40 CFR 1502.13). The purpose of the proposed action is typically the specific objectives of the activity, while the need for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity.</p> <p>The purpose and need should be a clear, objective statement of the rationale for the proposed project, as it provides the framework for identifying project alternatives. The DEIS should concisely identify why the project is being proposed, why it is being proposed now, and should focus on the specific desired outcomes of the project (e.g. improve public safety) rather than prescribing a predetermined resolution.</p>
4.	Please note that, as of October 1, 2012, EPA Headquarters no longer accepts paper copies or CDs of EISs for official filing purposes. Submissions must be made through EPA’s electronic EIS submittal tool: e-NEPA. To begin using e-NEPA, you must first register with EPA’s electronic reporting site - <a href="https://cdx.epa.gov/epahome.asp">https://cdx.epa.gov/epahome.asp</a> . Electronic filing with EPA Headquarters does not change the requirement to submit a hard copy to the EPA Region 9 Office for review.
5.	We appreciate the opportunity to provide comments on the preparation of the DEIS. Please send one hard copy and one CD of the DETS to this office at the same time it is officially filed with our Washington D.C. Office. If you have any questions, please contact me at (415) 972-3815 or <a href="mailto:jessop.carterepa.gov">jessop.carterepa.gov</a> .
6.	I am making these comments on behalf of the members of the Toiyabe Chapter of the Sierra Club many of whom live in the Carson City and Reno-Sparks and Lake Tahoe regions. We have reviewed the single page project description entitled Truckee Canal XM EIS Fact Sheet. I have also spoken to you briefly about the lack of information on the Bureau of Reclamation, Lahontan Basin Area Office (BOR) website about the Environmental Impact Statement (EIS) and got a little more information about the project.

**Table D-13. Comments Concerning Other Issues to be Addressed in the EIS**

Comment No.	Comment
	<p>In addition, I've spoken to others who've attended the BOR scoping meetings. Nevertheless, I find that the need and purpose of this proposal is not clearly defined and that the BOR is not being forthcoming about precisely what it plans to do or why.</p> <p>Below we are offering our scoping comments for the proposed EIS. However, we also are very concerned with the process that the BOR is currently engaged in and remind the Bureau that NEPA prohibits a federal agency from engaging in a piecemeal process which would result in increased diversions by not only repairing but also enlarging the capacity of the canal to take more water from the Truckee River.</p>
7.	<p>This XM EIS follows years of analysis and study relating to the Truckee Canal. In view of an administrative record that has grown to be voluminous in its scope, including the recent addition of Technical Memorandum No. QY-2015-8311-9, Truckee Canal Updated Risk Analysis, the process of environmental review is clearly susceptible to a significant shortening of time - a shortening made possible by the existence of so much information heretofore developed. We trust the full use of this information in the NEPA process.</p>

1

**Table D-14. Comments Concerning Issues that will not be Addressed in the EIS**

Comment No.	Comment
1.	<p>What were the court assessed damages to the canal breach?                      Who was held responsible for the canal breach by the court?                      Who held the operating permit at the time of the canal breach?                      What was the BOR position on the canal breach responsibility at the time of the breach?                      How many property owners were damaged by the canal breach?                      Was the canal properly maintained by the TCID according to the BOR at the time of the canal breach?                      What penalties from the BOR did TCID face from the canal breach?</p>
2.	<p>TCID collects operations and maintenance (O&amp;M) money from each of its water users; how much money has TCID collected during the past 25 years? How much of that money has been used to maintain and repair the Truckee Canal? How much of that money has been used to maintain and repair the Derby Diversion Structure? What portion of TCID O&amp;M fund comes from the USFWS for water rights acquired for the Stillwater National Wildlife Refuge? From NDOW acquired for Carson Lake wetlands?                      How much money has the BOR spent repairing or upgrading the Derby Dam during the past 25 years?                      How much money has the BOR spent repairing or upgrading the Lahontan Dam during the past 25 years?                      Has the TCID contributed to the cost of repairs or upgrades of Derby Dam or Lahontan Dam? If so, how much money has TCID expended. If not, who has paid for these repairs and upgrades?                      What repayment plans are currently outstanding for the TCID to the BOR? What is the outstanding amount owed? What is time frame for completing payments? Has the TCID ever failed to repay any debt to the Federal Government?                      Has the TCID used any of its O&amp;M funds to sue one or more Federal agencies? Please provide a list, if so.                      Is TCID paying for this proposed EIS and subsequent projects? If not, who is?</p>

2

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# Appendix E

## Comment Letters and Forms



## - Public Scoping Comment Card -

Please submit your comment by mail, fax, or email to:

**Roberta Tassey**  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701  
**Fax:** (775) 884-8376  
**E-mail:** TruckeeEIS@empci.com

### PLEASE PRINT

Date: 10-20-15  
Name: Florinda Bender  
Organization (if applicable):  
City of Fernley  
Email Address (optional):  
fbender@cityoffernley.org

Street Address (optional): \_\_\_\_\_

City/State/Zip (optional): \_\_\_\_\_

Comments (use back if needed):

My wish is that the canal stop at the last farm in Fernley -  
Fallon can get their water from the Carson River



U.S. Department of the Interior  
Bureau of Reclamation

## - Public Scoping Comment Card -

Please submit your comment by mail, fax, or email to:

**Roberta Tassey**  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701  
**Fax:** (775) 884-8376  
**E-mail:** TruckeeEIS@empsi.com

### PLEASE PRINT

Date: 29 Oct 2015  
Name: Rog Edgington  
Organization (if applicable):  
city of Fernley  
Email Address (optional):  
feruley2@yahoo.com

Street Address (optional): 516 Pioneer Ct P.O. Box 210

City/State/Zip (optional): Fernley NV 89408

Comments (use back if needed):

As mayor my hope is that the process  
will work and all parties will be heard.  
We at the city of Fernley look forward to  
working with all the different parties  
that have an interest in fixing the  
problems with the Truckee Canal.

My take on long term solutions will  
require more than one fix.

The cost is a another concern

TCID has budget problems and funding  
I believe will be the hard problem  
to resolve.

The city of Fernley is only as large  
as it is because of the 100 year plus  
history with this canal.



U.S. Department of the Interior  
Bureau of Reclamation

Not only does this canal provide  
drinking water but it provide  
Green in trees, grass, farming for  
our community. I want to see the  
flow up to GSC CFS

A handwritten signature in black ink, appearing to be 'B. S. G. H.', written in a cursive style.

## Skip Canfield

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**From:** Julie Ernstein  
**Sent:** Monday, November 30, 2015 2:14 PM  
**To:** Skip Canfield  
**Subject:** RE: Nevada State Clearinghouse Notice E2016-045 (Scoping - EIS - Truckee Canal - Public Safety)

Dear Skip,

Thank you for distributing the Bureau of Reclamation's "Notice of Intend to Prepare an Extraordinary Operation and Maintenance Environmental Impact Statement for the Truckee Canal, Lahontan Basin Area Office, Nevada," published in the *Federal Register* Vol. 80/No. 201 on October 19, 2015 through the Nevada State Clearinghouse. The XM EIS to be prepared to reduce the risk of public safety resulting from a potential Canal breach in addition to assessing the effects of structural improvements to the Canal facilities is of particular interest to the State Historic Preservation Office (SHPO). As noted in these documents and elsewhere, the Truckee Canal is part of the National-Register-listed Newlands Project, for which portions of the Project were listed as part of a Thematic nomination in 1981. The Canal and associated structures have likewise been determined eligible as contributing resources.

Thus, the SHPO is keen to review the EM EIS to be developed for the proposed undertaking and respectfully reminds our federal partners and the Canal operator (i.e., the Truckee-Carson Irrigation District) of the existence of the *Programmatic Agreement among the Bureau of Reclamation, the Advisory Council on Historic Preservation, and the Nevada State Historic Preservation Office Regarding Management of Canals, Laterals, and Drains within the Newlands Project, Churchill, Lyon, and Storey Counties, Nevada* (executed 2002). That document contains information that will likely be relevant to the XM EIS and potential effects it evaluates--as is the fact that the Truckee-Carson Irrigation District (TCID) is a Concurring Party to that PA.

As always, thank you for the opportunity to comment on this important document and its implications for a nationally-significant constellation of resources. Should you have any questions regarding these comments, please do not hesitate to contact me directly.

Best,

Julie

Julie H. Ernstein, Ph.D., RPA  
Deputy SHPO  
State Historic Preservation Office  
901 S. Stewart St., Suite 5004  
Carson City, NV 89701  
jernstein@shpo.nv.gov  
tel: 775.684.3437  
fax: 775.684.3442

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**From:** scanfield@lands.nv.gov [mailto:scanfield@lands.nv.gov]  
**Sent:** Tuesday, October 20, 2015 2:21 PM  
**To:** Alan Jenne; clytle@lincoln.nv.com; Brad Hardenbrook; James Morefield; cohn1@nv.doe.gov; Mark Freese; Sandy Quilici; Tod.oppennborn@nellis.af.mil; zip.upham@navy.mil; Dave Marlow; Shimi.Mathew@nellis.af.mil; craig.mortimore@wildnevada.org; njboland.nev@gmail.com; Jennifer Crandell; 99abw.ccy@nellis.af.mil; whenderson@nvleague.org; dstapleton@nvnaco.org; ddavis@unr.edu; munteanj@unr.edu; jprice@unr.edu; Rebecca Palmer; Mark Harris; ed.rybold@navy.mil; dmouat@dri.edu; Alisanne Maffei; Richard Ewell; Bette



Hartnett; mison@dot.state.nv.us; Warren Turkett; Michael Visher; Jim R. Balderson; Lindsey Lesmeister; Steve Foree; Mark Enders; John C. Tull; John Christopherson; Richard M. Perry; Kevin J. Hill; endacottsteve@charter.net; jered.mcdonald@lcb.state.nv.us; Moira Kolada; rwarnold@hotmail.com; lkryder@co.nye.nv.us; Julie Erstein; Claudia Vecchio; bob@intermountainrange.com; CAnderson@washoecounty.us; JEnglish@washoecounty.us; tmuellet@dot.state.nv.us; Valerie King; Adele M. Basham; Skip Canfield; jolson@landercountynv.org; Tina Mudd; Kacey KC; janehfreeman@fs.fed.us; JSouba@ci.fallon.nv.us; robert.turner.3@us.af.mil; Robert.rule@navy.mil; Alysa.Keller@lcb.state.nv.us; Cayenne Engel; larry.m.cruz.civ@mail.mil; Elizabeth A. Kingsland; charles.r.king104.civ@mail.mil; Matt Maples; Richard Martin; Elyse Randles; Tracy Kipke; Jennifer Newmark; Edmund Quaglieri; Kristin Szabo; douglas.m.mcelandowney.mil@mail.mil; Paul.Ryan@nv.usda.gov; Shirley DeCrona; Tim Rubald; Lori Story; Anna Higgins; Gary Reese; Ian Kono; Karen Beckley; Sherry Rupert; djohnston@dps.state.nv.us; bthompson@dot.state.nv.us; Cynthia Turiczek; mstewart@lcb.state.nv.us; sscholley@lcb.state.nv.us; brenda@cwsd.org

**Subject:** Nevada State Clearinghouse Notice E2016-045 (Scoping - EIS - Truckee Canal - Public Safety)



## NEVADA STATE CLEARINGHOUSE

Department of Conservation and Natural Resources, Division of State Lands  
901 S. Stewart St., Ste. 5003, Carson City, Nevada 89701-5246  
(775) 684-2723 Fax (775) 684-2721

TRANSMISSION DATE: 10/20/2015

U.S. Bureau of Reclamation

### Nevada State Clearinghouse Notice E2016-045

#### **Project: Scoping - EIS - Truckee Canal - Public Safety**

Follow the link below to find information concerning the above-mentioned project for your review and comment.

[E2016-045 - http://clearinghouse.nv.gov/public/Notice/2016/E2016-045.pdf](http://clearinghouse.nv.gov/public/Notice/2016/E2016-045.pdf)

- **Please evaluate this project's effects on your agency's plans and programs and any other issues that you are aware of that might be pertinent to applicable laws and regulations.**
- **Please reply directly from this e-mail and attach your comments.**
- **Please submit your comments no later than Monday November 30th, 2015.**

The Bureau of Reclamation, Lahontan Basin Area Office, the lead Federal agency, intends to prepare an Extraordinary Operation and Maintenance (XM) Environmental Impact Statement (EIS) for the Truckee Canal (Canal). The XM EIS will evaluate opportunities to reduce the risk to public safety from a Canal breach. Multiple federal, state, and local government agencies, tribal entities, and quasi- or non-governmental entities will be invited to participate as cooperating agencies for the XM EIS.

[Clearinghouse project archive](#)

Questions? Skip Canfield, Program Manager, (775) 684-2723 or  
[nevadaclearinghouse@lands.nv.gov](mailto:nevadaclearinghouse@lands.nv.gov)

\_\_\_\_ No comment on this project \_\_\_\_ Proposal supported as written

AGENCY COMMENTS:

Signature:

Date:

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Requested By:

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Distribution:

- 99ABW Nellis
- Division of Emergency Management
- Intermountain Range
- Adele M. Basham - NDEP
- Alan Jenne - Department of Wildlife, Elko
- Alisanne Maffei - Department of Administration
- Alysa Keller - Legislative Counsel Bureau
- Anna Higgins - Nevada Division of Forestry
- Bette Hartnett - State Energy Office
- Bill Thompson - Department of Transportation, Aviation
- Bob Roper - Nevada Division of Forestry
- Bob Turner - Nellis AFB
- Brenda Hunt - CWSD
- Cayenne Engel - Nevada Division of Forestry
- Chris Anderson - Washoe County Health Department
- Chuck King - Hawthorne Army Depot
- Claudia Vecchio - Nevada Commission on Tourism
- Cory Lytle - Lincoln County
- Craig Mortimore - Wild Nevada
- Cynthia Turiczek - Public Utilities Commission
- D. Bradford Hardenbrook - Department of Wildlife, Las Vegas
- Dagny Stapleton - NACO
- Dave Marlow -
- David David - UNR Bureau of Mines

David Mouat - Desert Research Institute  
Denesa Johnston - Fire Marshal  
Ed Ryan - Smith and Mason Valleys Conservation District  
Ed Rybold - NAS Fallon  
Eddy Quaglieri - Division of Water Resources  
Elizabeth A. Harrison - Tahoe Resource Team - Division of State Lands  
Elyse Randles - State Land Office  
Gary Reese - Nevada Division of Forestry  
Ian Kono - Nevada Division of Water Resources  
J Crandell - Colorado River Commission of Nevada  
James D. Morefield - Natural Heritage Program  
Jane Freeman - US Forest Service  
Jennifer Newmark - NDOW - Wildlife Diversity  
Jered McDonald - Legislative Counsel Bureau  
Jim Balderson - NDEP  
Jim English - Washoe County  
Jim Olson - Lander County  
Jim Souba - City of Fallon Public Works  
John Christopherson - Nevada Division of Forestry  
John Muntean - UNR Bureau of Mines  
John Tull - NDOW  
Jon Price - UNR Bureau of Mines  
Julie Ernstein - State Historic Preservation Office  
Kacey KC - Sagebrush Ecosystem Technical Team  
Karen Beckley - State Health Division  
Kevin Hill - Nevada State Energy Office  
Kristin Szabo - Nevada Natural Heritage Program  
Larry Cruz - Hawthorne Army Depot  
Levi Kryder - Nye County  
Linda Cohn - National Nuclear Security Administration  
Lindsey Lesmeister - NDOW  
Lori M. Story - Attorney General  
Major Doug McEldowney - Nevada National Guard  
Mark Enders - NDOW  
Mark Freese - Department of Wildlife  
Mark Harris, PE - Public Utilities Commission  
Matt Maples - NDOW  
Michael J. Stewart - Legislative Counsel Bureau  
Michael Visher - Division of Minerals  
Mitch Ison - NDOT  
Moir Kolada - NDOW  
Nancy Boland - Esmeralda County  
Rebecca Palmer - State Historic Preservation Office  
Rich Perry - Nevada Division of Minerals  
Richard Arnold - Nevada Indian Commission  
Rick Martin - Division of Emergency Management  
Robert Rule - NAS Fallon  
Sandy Quilici - Department of Conservation & Natural Resources  
Sherry Rupert - Indian Commission  
Shimi Mathew - Nellis AFB  
Shirley DeCrona - Nevada Division of State Parks  
Skip Canfield - State Land Use Planning Agency  
Stephen Foree - NDOW  
Steve Endacott - City of Fallon  
Susan Scholley - Legislative Counsel Bureau  
Terry Rubald - Nevada Department of Taxation, Local Government, Centrally Assessed Property  
Tim Rubald - Conservation Districts  
Timothy Mueller - Department of Transportation

Tina Mudd - Dept of Agriculture  
Tod Oppenborn - Nellis Air Force Base  
Tracy Kipke - NDOW  
Valerie King - NDEP  
Warren Turkett - Colorado River Commission of Nevada  
Wes Henderson - Nevada League of Cities  
Zip Upham - NAS Fallon



**Toiyabe Chapter**  
PO Box 8096  
Reno, NV 89507

## SIERRA CLUB

November 24, 2015

Bureau of Reclamation  
Lahontan Basin Area Office  
Attn: Roberta Tassej  
705 N. Plaza Street, Room 320  
Carson City, NV 89701

RE: Truckee Canal XM EIS

Dear Ms. Tassej:

I am making these comments on behalf of the members of the Toiyabe Chapter of the Sierra Club many of whom live in the Carson City and Reno-Sparks and Lake Tahoe regions. We have reviewed the single page project description entitled "Truckee Canal XM EIS Fact Sheet". I have also spoken to you briefly about the lack of information on the Bureau of Reclamation, Lahontan Basin Area Office (BOR) website about the Environmental Impact Statement (EIS) and got a little more information about the project. In addition, I've spoken to others who've attended the BOR scoping meetings. Nevertheless, I find that the need and purpose of this proposal is not clearly defined and that the BOR is not being forthcoming about precisely what it plans to do or why.

Below we are offering our scoping comments for the proposed EIS. However, we also are very concerned with the process that the BOR is currently engaged in and remind the Bureau that NEPA prohibits a federal agency from engaging in a piecemeal process which would result in increased diversions by not only repairing but also enlarging the capacity of the canal to take more water from the Truckee River.

1. Is the "Extraordinary Operations and Maintenance" (XM) a canal repair? A simple maintenance project? An operational change? A wholesale reconstruction of the canal to increase its capacity to divert water from the Truckee River?
2. Will this be the only environmental document prepared by your office regarding future operation and construction proposals on the Truckee Canal?
3. Or is the BOR planning to do separate Environmental Assessments (EAs) on additional projects for the Truckee Canal that precede or are in parallel with the preparation of this referenced EIS?
4. What other environmental or research documents or reports have been prepared by the BOR regarding the breach of the Canal operated by the Truckee-Carson Irrigation District (TCID)?
5. Does the BOR intend to take over the operation and maintenance of the Canal from the TCID? If not, then why is the BOR engaging in operation and maintenance that is the responsibility of the TCID?

*We would appreciate definitive answers to these questions as soon as possible from your office as it would be helpful to understand why the BOR is making these proposals.*

Additional scoping questions and issues and alternatives:

#### Damage from the Truckee Canal breach

- What were the court assessed damages to the canal breach?
- Who was held responsible for the canal breach by the court?
- Who held the operating permit at the time of the canal breach?
- What was the BOR position on the canal breach responsibility at the time of the breach?
- How many property owners were damaged by the canal breach?
- Was the canal properly maintained by the TCID according to the BOR at the time of the canal breach?
- What penalties from the BOR did TCID face from the canal breach?
- Who is responsible for maintenance and operations of the Truckee Canal under the contract the TCID has with the BOR?

#### Budget and operator scoping issues:

- TCID collects operations and maintenance (O&M) money from each of its water users; how much money has TCID collected during the past 25 years? How much of that money has been used to maintain and repair the Truckee Canal? How much of that money has been used to maintain and repair the Derby Diversion Structure? What portion of TCID O&M fund comes from the USFWS for water rights acquired for the Stillwater National Wildlife Refuge? From NDOW acquired for Carson Lake wetlands?
- How much money has the BOR spent repairing or upgrading the Derby Dam during the past 25 years?
- How much money has the BOR spent repairing or upgrading the Lahontan Dam during the past 25 years?
- Has the TCID contributed to the cost of repairs or upgrades of Derby Dam or Lahontan Dam? If so, how much money has TCID expended. If not, who has paid for these repairs and upgrades?
- What repayment plans are currently outstanding for the TCID to the BOR? What is the outstanding amount owed? What is time frame for completing payments? Has the TCID ever failed to repay any debt to the Federal Government?
- Has the TCID used any of its O&M funds to sue one or more Federal agencies? Please provide a list, if so.
- Is TCID paying for this proposed EIS and subsequent projects? If not, who is?

#### Newlands Project users scoping issues:

- How many project water users receive water in the entire Newland's Project excluding the Stillwater National Wildlife Refuge and the Carson Lake and Pasture and the Fallon Paiute Tribe? In the Fernley Division? In the Lahontan Division?
- What is the average irrigated acreage for project water users?
- What is the highest acreage amount of any project water user?
- What is the lowest acreage amount of any project water user?
- What is the criterion for a user to receive project water?
- What is the average annual production from project users?
- What are the crop percentages (how much alfalfa, grass and pasture, corn, wheat, etc)? What are the crop percentages for high value crops (cantaloupe, onions, etc.)
- How much land receives project water excluding the Carson Lake and Pasture and the Stillwater National Wildlife Refuge? Please provide maps of irrigated lands in the Fernley and Lahontan Divisions.
- How is the City of Fernley permitted water from the Truckee Canal? Is leakage from the canal and canal water lost through irrigation and delivery of project water a defined benefit of the Newlands Project?
- Of the total claimed irrigated acreage of the Newlands Project, how much of that acreage is

- engaged in production agriculture as its primary economic activity?
- Of the total claimed irrigated acreage of the Newlands Project, how much of that acreage is not in agriculture?

Newlands Project water diversion scoping issues:

- How much water is diverted at Derby Dam on average over the last 15 and 30 years from the Truckee River and in total over the last 15 and 30 years. What percentage of the flow of the Truckee River does this represent?
- What is the flow of the Truckee River at Derby Dam on average over the last 15 years? 30 years? How much have the annual Truckee River flows decreased during these time frames?
- What percentage of the Truckee River water has been diverted at Derby Dam for each year in the past 30 years?
- How much water over the last 15 and 30 years on average flows into Lahontan Reservoir from the Carson River and in total over the last 15 and 30 years.
- How much water is actually delivered (based on water allocations and O & M charges) to water users at their head gates over the last 15 and 30 years?
- How much water is lost in transmission in the Truckee Canal in the same time frames? In the Fernley distribution reach? At each of the various delivery ditches in Lahontan Valley?

Drought scoping issues:

From the irrigation period 2014 through the end of the 2015, project water deliveries terminated early in the irrigation season.

- What percentage of a normal year's water was delivered to project users during the drought period?
- How much was production reduced due to the reduced delivery of irrigation water in both dollars as well as a percentage over production average over the previous 23 years?

Carson River issues:

- How have the flows of the Carson River into Lahontan Reservoir changed in the last 15 and 30 years compared to the entire period of record for the Carson River?
- What percentage of water to fill Lahontan Reservoir comes from the Truckee River for each year since the beginning of the OCAP? From the Carson River?
- How has pumping and upstream diversion in the upper basins of the Carson River affected river flows of the Carson River at the Ft Churchill gauge?
- Has the BOR analyzed the flows of the Carson River to determine if flows of the Carson River are meeting its historic average flows at the Ft Churchill gauge?
- Will the BOR look at purchasing water rights on the Carson River to increase water for the project rather than taking more water from the Truckee River?
- Has the BOR determined that there is sufficient water flows in the Carson River to support the Newlands Project while at the same time to support increasing upriver water demands?
- What are the evaporation losses from Lahontan Reservoir and the various reservoirs in Lahontan Valley?

Climate Change scoping issues:

- How have temperatures over the past 15 and 30 years increased or decreased in the project areas compared to the long-term record of temperatures in the project areas?
- How have temperature increases affected the effectiveness of the water delivery strategies of the BOR?
- How is the evaporation of water from Lahontan Reservoir and each of the regulating reservoirs in Lahontan Valley affected by increases or decreases in temperatures?

Pyramid Lake issues:

- How are endangered Cui ui fish at Pyramid Lake affected by the diversions from the Truckee River? How are they affected by Derby Dam? How will they be affected by the BOR expanding diversions?
- How are the threatened Lahontan Cutthroat Trout at Pyramid Lake affected by the diversions from the Truckee River? How are they affected by Derby Dam? How are they affected by the Truckee Canal? How will they be affected by the BOR expanding diversions through increasing the capacity of the Truckee Canal?
- How do river diversions currently affect the temperature and water quality of the Truckee River? How will these be affected by BOR's proposal to expand diversions?
- How does temperature and water quality affect endangered and threatened species in Pyramid Lake and the Truckee River on the Pyramid Lake Paiute Reservation? How will they be affected by the BOR expanding diversions?
- How does the existing canal affect the Pyramid Lake Paiute Reservation economy and survival of its communities and members? How will they be affected by the BOR expanding diversions?
- If the Newlands Project diversions from the Truckee River were entirely stopped, what benefits to the Truckee River system would have occurred during the past 15 year drought? What would the level of Pyramid Lake be without diversions over the last 15 years? Over the last 30 years? Over the last 110 years?

We are extremely concerned with the process the BOR has started. The information available for scoping for the "XM" EIS is essentially non-existent. The BOR appears to be assuming the role of operator and maintainer of the project when this is exclusively the responsibility of the TCID. The potential adverse impacts to the Truckee River and Pyramid Lake from increasing the capacity of the Truckee Canal are very high. Any supposed benefits to the Newlands Project water users who are actually engaged in agriculture is unlikely to outweigh the environmental and financial costs to the public.

Thank you for this opportunity to comment.

Sincerely,

Dennis Ghiglieri  
Conservation Chair

cc: U.S. Senator Harry Reid



# *Pyramid Lake Paiute Tribe*

*Post Office Box 256*

*Nixon, Nevada 89424*

*Telephone: (775) 574-1000 | 574-1001 | 574-1002*

*FAX (775) 574-1008*

November 30, 2015

Ms. Roberta Tassej  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza St., Rm 320  
Carson City, NV 89701  
Fx: 775-884-8376  
Email: TruckeeEIS@empci.com

Dear Ms. Tassej,

This letter is in response to the October 9, 2015, *Federal Register* Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS) for so-called “Extraordinary Maintenance and Operations” of the Truckee Canal. The Bureau of Reclamation (Reclamation) has requested written comments to be delivered on or before November 30, 2015, regarding the appropriate scope of issues that should be addressed in the DEIS.<sup>1</sup> The Pyramid Lake Paiute Tribe (Tribe) offers the following comments and recommendations for your consideration.

As you know, Pyramid Lake is wholly encompassed within the boundaries of the Pyramid Lake Paiute Reservation and the principal source of water for Pyramid Lake is the Truckee River. As stated by the United States Court of Appeals for the Ninth Circuit, Pyramid Lake “is a unique natural resource of almost incomparable beauty.” *Tribe v. Morton*, 354 F. Supp. 252 (9th Cir. 1972). The Tribe has depended upon the surface water flow of the Truckee River to sustain its people and culture from time immemorial. The surface water flow of the Truckee River is directly and significantly affected by any and all diversions of water into the Truckee Canal. Such diversions have been and will continue to be harmful to the water quality and wildlife habitat of the Truckee River and Pyramid Lake, and therefore have significant impacts on the members of the Tribe who depend on the Truckee River for their culture and subsistence, and on the members of the Tribe and the general public who enjoy recreation on the Truckee River and Pyramid Lake. These impacts are all reasonably foreseeable results of any increased diversions of Truckee River water into the Truckee Canal.

## **General Comments**

The National Environmental Policy Act (NEPA) requires Reclamation to prepare a detailed study on the impacts of any proposed federal action that may “significantly affect the quality of the human environment.” NEPA, 42 U.S.C. § 4332(C). The NEPA process requires

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<sup>1</sup> Hopefully as this project progresses Reclamation will refrain from setting deadlines on business days immediately following national holidays.

Reclamation to assess the potential impacts—direct, indirect and cumulative—of the proposed action on the environment.

Direct impacts “are caused by the action and occur at the same time and place.” Indirect impacts “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Cumulative impacts “result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such actions.” Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. *See* Council for Environmental Quality, NEPA Implementing Regulations, 40 C.F.R. § 1508.8.

The United States has a trust responsibility to all federally-recognized Indian Tribes, such as the Pyramid Lake Paiute Tribe. This trust responsibility is the cornerstone of administrative agency government-to-government dealings with Indian Tribes. “The United States, acting through the Secretary of Interior, has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.” *Tribe v. Morton*, 354 F.Supp. 274 (quoting *Seminole Nation v. United States*, 316 U.S. 286 (1942)). Specifically, Reclamation is bound by this trust responsibility to soundly exercise its discretion when considering the competing demands on the Truckee River of the Newlands Project and its trust responsibilities to the Tribe. *See e.g. Tribe v. Morton*, 374 F. Supp. 252. The burden is therefore on Reclamation “to justify any diversion of water from the Tribe *with precision*.” *Id.* (emphasis added). Reclamation is “obliged to formulate a closely developed regulation that would preserve water for the Tribe” and must “assert [its] statutory and contractual authority to the fullest extent possible to accomplish this result.” *Id.* Therefore, when Reclamation’s actions fail to “demonstrate an adequate recognition of [its] fiduciary duty to the Tribe,” its actions are deemed “defective and irrational.” *Id.*

Reclamation must fully consider all potential impacts of any diversions of water from the Truckee River that could result in the stage or flow of the Truckee Canal above the long-standing 350 cubic feet per second limitation. Such consideration of impacts must include impacts to the flow of the Truckee River below Derby Dam and the surface elevation of Pyramid Lake, and the effects on the Tribe’s culture that could result from such diversions. Reclamation must also consider the effects on the threatened and endangered species that call the lower Truckee River and Pyramid Lake home, including the Lahontan cutthroat trout, Cui-ui and American white pelican. Reclamation’s study of these impacts must look into the future in perpetuity.

The impacts on the lower Truckee River and Pyramid Lake are without doubt foreseeable. As Reclamation is fully aware, historic diversions from the Truckee River into the Truckee Canal were the primary driver of the drying up of Lake Winnemucca and the drastic lowering of the water surface elevation of Pyramid Lake, and the resulting cultural and environmental catastrophes.

### **Specific Comments**

1. As a general matter, the NOI failed to provide sufficient details regarding the proposed project, its purpose and need, and potential alternatives for the Tribe to fully comment, and the Tribe's comments at this time are therefore to be understood in that context. The Tribe reserves the right to provide additional comments as more information becomes available.
2. Reclamation's DEIS should evaluate whether monetary and other resources would be better spent on increased project-wide delivery efficiency to the headgate under current Truckee Canal flow limitations versus extraordinary Truckee Canal maintenance that would result in increased diversions of water from the Truckee River. *See* OCAP, 43 CFR 418.12(c) ("Assuming the headgate deliveries are valid and enforceable, *conveyance efficiency is the only remaining variable in determining the quantity of water needed to be supplied to the District.*") (emphasis added); *see also* 43 CFR 427.1(a) ("The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-federal recipients of irrigation and municipal and industrial water from Federal Reclamation projects.").
3. Reclamation must include all proposed federal action regarding Truckee Canal operations within the DEIS, including plans that are already underway to allow increased diversions into the Truckee Canal above the long-standing 350 cubic feet per second limitation. Allowing any increase in diversions to the Truckee Canal that would result in canal flow above the long-standing 350 cubic feet per second limitation would be a violation of NEPA's injunction against approval of piecemeal actions that may affect the requisite "hard look" required by NEPA. Allowing any increase in the stage or flow of the Truckee Canal without considering it in the Truckee Canal XM DEIS would constitute an irreversible or irretrievable commitment of resources before the requisite environmental review has been completed. The powerpoint slides utilized by Reclamation's NEPA contractor clearly stated that the purpose of the Truckee Canal XM EIS is directly related to the long-standing 350 cubic feet per second limitation<sup>2</sup>, and any analysis by Reclamation that does not consider 350 cubic feet per second, or some lower figure that more accurately represents actual canal flow based upon gage data from the time of initiation of the limitation, as the baseline for analysis of environmental effects will be fundamentally flawed. Reclamation must complete the full Environmental Impact Statement, including the Record of Decision, before any improvements are undertaken to increase the Truckee Canal capacity above the present limit of 350 cubic feet per second, or associated stage level.
4. Any short-term canal improvements for safety must be limited to the long-standing 350 cubic feet per second capacity. In other words, Reclamation must not increase the canal capacity above 350 cubic feet per second in reliance on any short-term safety fixes. Reclamation and/or the Truckee-Carson Irrigation District can put in place maintenance programs or strengthening of any canal embankment, if needed, as part of the maintenance for additional safety, but in no

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<sup>2</sup> At the October 27, 2015 Public Scoping meeting in Wadsworth, NV, Reclamation's contractor stated that his powerpoint slides would be made available on Reclamation's dedicated Truckee Canal XM EIS webpage. As of November 23, 2015, those slides were not available at <<http://www.usbr.gov/mp/lbao/programs/truckee-canal-eis/>>.



event should there be any increase in the canal capacity above 350 cubic feet per second until a full EIS is completed.

5. The Tribe is aware that Reclamation has already undertaken various studies regarding the Truckee Canal, including the “Newlands Project Planning Study” and the so-called “Value Planning Study” that was used to determine the range of alternatives to be studied in the DEIS. Such studies were not undertaken in the context of NEPA, and therefore should not be used in support of any NEPA analysis, particularly analysis of environmental impacts. In the past, Reclamation has analyzed the Truckee Canal necessity based upon its flawed analysis that more than 63,000 acres of “potentially active” water righted lands need to be served. That figure is hugely inflated. There are less than 57,000 acres of land under irrigation in the Newlands Project. The difference of 6,000 acres is because Reclamation includes inactive lands that still have water rights, which methodology is in complete violation of applicable Operating Criteria and Procedures for the Newlands Project, which require annual determinations of *actual irrigated acreage*, which is always less than the theoretical maximum irrigated acreage based on an analysis of paper water rights. Reclamation, in order to comply with NEPA, must begin with a blank slate and not rely on its own past studies which contain many flaws, and which flaws were excused based on the representation at the time that such studies were “not decision documents.”

6. Prior analysis by Reclamation has considered impacts to local groundwater aquifers, including in and around the town of Fernley, NV, because of reduced Truckee Canal flow to be a disadvantage of lining the Truckee Canal. As Reclamation is aware, the long-standing position of the U.S. Department of the Interior and the U.S. Department of Justice is that Fernley has no legal right to water which may seep from the Truckee Canal into the local aquifer. It is not a disadvantage to make the Truckee Canal more efficient by conserving water that would otherwise seep into the groundwater aquifer, particularly when such conservation would and should be used to reduce diversions from the Truckee River. Minimizing changes to wasteful seepage of water from the Truckee Canal to the groundwater aquifer must not be considered an objective or advantage of the project.

7. Reclamation is using the Desert Terminus Lakes funding for the DEIS, which would be used as a basis to increase Truckee River diversions into the Truckee Canal, which would result in less flows to Pyramid Lake. This is contrary to the intent and purposes of the Desert Terminus Lakes program, which is meant to increase, not decrease, the flow of water to Nevada’s desert terminus lakes. The DEIS should be funded through a reimbursable contract between Reclamation and TCID. Similarly, all funding for any Truckee Canal repairs or construction should be paid directly by TCID or through reimbursable contracts between TCID and Reclamation.

8. Reclamation must analyze whether the funds spent on Truckee Canal repair could be used for other purposes, such as a Newlands Project water acquisition program, that could obviate any alleged need to increase the capacity of the Truckee Canal and which would have significantly more benefits for the environment and wildlife, including threatened and endangered species. Such analysis must consider the actual amount of land under irrigation in

the Newlands Project, and not an inflated demand based upon inactive lands or paper water rights.

9. Reclamation must identify all fish and wildlife species and their habitats located in the study area, including the lower Truckee River and Pyramid Lake, that could be affected by the project. This must include federally listed threatened and endangered species, migratory birds, etc. Reclamation must determine the potential direct and indirect impacts on these resources and the measures that could be implemented to avoid and minimize impacts. Also, Reclamation must identify means of compensation for unavoidable impacts and must include fish and wildlife enhancement measures as project features.

10. Reclamation must initiate and complete consultation with the U.S. Fish & Wildlife Service under Section 7 of the Endangered Species Act in conjunction with the DEIS and prior to taking any steps resulting in increasing the present 350 cfs capacity or related stage level of the Truckee Canal.

11. Reclamation must enter into serious consultation with the Tribe pursuant to its trust responsibilities, particularly regarding any and all Trust Resources, in relation to the reconstruction of the Truckee Canal and increasing its present capacity.

12. Reclamation must assess the presence and distribution of Truckee River and Pyramid Lake wetlands and riparian areas in the detailed study area. Reclamation must determine the potential direct and indirect impacts of project implementation on these areas.

13. Reclamation must review fish passage opportunities, or the harm to fish passage opportunities, resulting from the project.


14. Reclamation must take a hard look at alternatives that would reduce demand for diversions of the Truckee River into the Truckee Canal, including reduced demand in the Carson Division of the Newlands Project, increased efficiency in the Carson Division, and increased supply from the Carson River. Reclamation must also take a hard look at the alternative of decommissioning the Truckee Canal in the future.

15. All of Reclamation's evaluations of lower Truckee River flows and inflows to Pyramid Lake must include evaluation of direct, indirect and cumulative effects for not just "average" water years, but must also specifically evaluate impacts during drought conditions.

The above comments are not intended to represent an exclusive list of the Tribe's comments and concerns at this early stage of the Truckee Canal XM EIS, and the Tribe reserves the right to supplement its comments in the future as more information becomes available.

The Tribe appreciates the opportunity to provide comments and is looking forward to working with Reclamation to ensure that potential project impacts to Indian Trust resources, including fish and wildlife resources, are adequately addressed in the Truckee Canal XM EIS.

Sincerely,

  
Vinton Hawley, Chairman  
Pyramid Lake Paiute Tribe

cc: Terri Edwards  
Rod Smith  
Amy Aufdemberge  
Cathy Wilson  
Ted Koch  
Carolyn Swed  
Albert John  
Donna Noel  
Don Springmeyer  
Christopher W. Mixson  
Ali Shahroody





**CITY OF FERNLEY**  
**City Manager's**  
**Office**

Administration  
Human Resources  
Budgeting  
Risk Management  
& Contract

January 14, 2015

Roberta Tasse  
Project manager Natural Resources Specialist  
Lahontan Basin Area Office  
United State Bureau of Reclamation  
705 N. Plaza St., Suite 320  
Carson City, NV 89701

**Re: Truckee Canal EIS Scoping Issues**

Dear Roberta:

Thank you for the opportunity to comment on the scoping process for the Truckee Canal EIS. While the City of Fernley fully supports the efforts of the Bureau to improve the safety and efficiency of the Truckee Canal, we are concerned with the effects that certain proposals may have in the City's water resources. Accordingly, we believe that the EIS needs to analyze the following:

**1. The effects of proposed alternatives on groundwater recharge**

Currently, the City of Fernley is utterly reliant on groundwater within the Fernley Basin aquifer to serve its municipal needs. In addition, there are numerous residents of Fernley who rely on domestic wells as their sole source of groundwater. There is documented evidence that seepage from the canal is a significant source of recharge for the groundwater aquifer. The EIS needs to fully analyze and consider the effects of each of the proposed alternatives on the Fernley groundwater basin.

**2. The socioeconomic impacts of the proposed alternatives on the continued existence and future growth and development of Fernley.**

For more than 100 years the community of Fernley has grown and developed alongside the Truckee Canal. The relationship between the two has been symbiotic, the canal provided the water the community needed to grow and develop while the community's growth and development provided the justification for the construction and ongoing operation of the canal. Any significant changes to the canal, therefore, have the potential to disrupt this symbiotic relationship and negatively impact the socioeconomic environment of the community. Each of the proposed alternatives studied in the EIS must be analyzed in the context of the effect it will



have not only on Fernley's continued growth and development but on its continued existence and the overall socioeconomic environment of the Fernley community.

**3. The need for mitigation of any negative effects of proposed alternatives and the costs of, and potential sources of funding to finance, such mitigation measures.**

As noted above, various proposed alternatives could have significant negative impacts on the City of Fernley and individual residents. Accordingly, the EIS should properly identify and analyze methods for mitigating such impacts, including funding sources that could be utilized to pay for any needed mitigation.

**4. The potential for delay in implementing the preferred alternative as a result of litigation.**

The City of Fernley has relayed its position to the Bureau that seepage from the Truckee Canal is a vital source of recharge to the groundwater aquifer that cannot be discontinued without negatively affecting the City's groundwater rights. In analyzing the various proposed alternatives, the EIS should evaluate the potential of litigation expense and delay should that alternative be chosen as the preferred course of action. While it is never the intention of the City to engage in such litigation, the City has an affirmative obligation to its citizens to protect the groundwater resources of the City. If a preferred alternative will negatively impact those resources without providing appropriate mitigation of the impact, the City will be required to take all necessary action to protect its interests.

**5. The effect of the proposed alternatives on the safety and security of Fernley residents and property.**

As always, the safety and security of the residents of Fernley is a top priority of the City. The January 2008 canal breach had a severe impact on our community. Each of the proposed alternatives needs to be analyzed to ensure that it offers full and complete protection against such events in the future.

Again, we appreciate the opportunity to provide input regarding the scope of the EIS and look forward to working with yourself, the Bureau, and all other interested parties as the EIS is developed.

Sincerely,



Daphne Hooper  
City Manager

Cc: Fernley City Council



# Truckee-Carson Irrigation District

Phone: (775) 423-2141

Newlands Project

Fax: (775)423-5354

## RECEIVED

NOV 30 2015

BUREAU OF RECLAMATION  
LAHONTAN BASIN AREA OFFICE

# FAX

**BOARD OF DIRECTORS**  
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 Joe Gomez, Director  
 Wade Workman, Director

Rusty D. Jardine, Esq., District Manager & General Counsel

Date: November 30, 2015	
Number of pages including cover sheet:	7
Sent To: Roberta Tassey, Bureau of Reclamation	Fax phone: 775-884-8376
From: Rusty D. Jardine, Esq., District Manager	775-423-2141

**REMARKS:**

Roberta:

Attached are the District comments with regard to the Truckee Canal XM EIS.

Hard copy to follow via certified mail.

Thank you in advance.

CODE	PERSON RESP	INITIAL & DATE
100		
101		
110	DP	11/30/15
400		
600	*	11/30/15
800		
900		
670	*	11/30/15
130	*	"

REMARKS:     Urgent     For your review     Reply ASAP     Please comment  
 Original to follow

FILE CODE: ENV-6.00  
 PROJECT: \_\_\_\_\_  
 CONTROL NO.: \_\_\_\_\_  
 FOLDER ID: \_\_\_\_\_

FILE CODE: LAD-6.00  
 PROJECT: \_\_\_\_\_  
 CONTROL NO.: \_\_\_\_\_  
 FOLDER ID: \_\_\_\_\_



# Truckee-Carson Irrigation District

## *Newlands Project*

November 30, 2015

SENT VIA FACIMILIE AND  
CERTIFIED MAIL RECEIPT NO.: 7006 0100 0006 1006 1622

Roberta Tassej  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, Nevada 89701

**BOARD OF DIRECTORS**  
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Wade Workman, Director

Rusty D. Jardine, Esq., District Manager &  
General Counsel

Re: **Truckee Canal XM EIS**

Dear Roberta:

At the onset, we extend our appreciation to you and other staff members for all efforts undertaken with regard to the Truckee Canal Extraordinary Maintenance (XM) Environmental Impact Study (EIS). We acknowledge the considerable effort expended in achieving compliance with the National Environmental Policy Act of 1970, with all its supplemental legislation, related executive orders, and administrative rules. The creation of an administrative record, a record free from legal defect, is a daunting challenge.

As a District we were present and participated in three (3) "scoping meetings" relating to the Truckee Canal XM EIS. These scoping meetings were conducted at Wadsworth, at a facility of the Pyramid Lake Paiute Tribe, at the Fernley City Hall, and at the Churchill County Commission Chambers in Fallon. We also participated with you in site visits made to locations on the Canal. At each location we expressed our interests and concerns. By this letter we will attempt to provide a summary of the comments we have previously given. We will also provide other comments as needed.

### **Comment 1.**

The thrust of the XM EIS is, and should be, Canal safety. Looking back to the circumstances attending the failure of the embankment at Fernley in 2008, valuable lessons have been learned. The urbanization near the Truckee Canal could not have been reasonably foreseen by early Project developers and water users. As lands have been taken out of production over time, important protections relating to land use planning and approval processes have failed. Drains that had once served to remove tail water from irrigated lands were either removed or the carrying capacity of the drains was reduced.

Truckee Canal XM EIS  
November 30, 2015

As flood waters moved away from the Canal in the morning hours of January 5, 2008, the same became trapped in down-slope places such as the "knuckle". But for the elimination of drains below the Canal, we think that the damage to homes could have been greatly reduced. If Fernley is to be protected from the possibility of an embankment failure in the future, care must be taken to ensure that future planning and approval processes will include protection of the Canal against imprudent down-stream land use decision making. Appropriate storm and flood water planning must be undertaken; and, both the District and Reclamation should be involved with planning authorities in all such processes.

#### **Comment 2.**

As water flowed from the breach site that early January morning, an essential construction fact was made manifest. The Canal has little vertical fall. From Derby Dam to Lahontan Dam and Reservoir the difference in elevation is approximately thirty (30) feet. After Derby Spill was operated and waters into the Canal had been diverted away, water remaining in the Canal flowed through the breach site from both upstream and downstream sources. If an additional spill structure had existed, one in closer proximity to Fernley, as an example, one nearer to the first takeout on the Canal (TC-1), more water could have been evacuated from the Canal –water that remained in the channel only to find its way to the breach site. Planning must include consideration of an additional waste-way structure near to Fernley, the purpose of which is to take even more pressure off the entire Canal system in the event of failure.

#### **Comment 3.**

As this XM EIS unfurls, we think there must be a marriage or union between Canal safety and efficiency. Most persons would agree that a safe canal is going to be an efficient canal too. We must provide a design that bares both characteristics. We recognize just how important all of this is to those persons that rely upon the waters of the Truckee Canal for recharge to municipal or private wells. Accordingly, a huge challenge exists within the Fernley Reach of the Canal. How do we design a safe canal, one which will also efficiently transport water for purposes in both the Truckee and Carson divisions of the Project, without adverse economic, legal, or social impacts? This challenge must be surmounted. The District, Reclamation, and the City of Fernley must work together in providing a meaningful response to this question.

#### **Comment 4.**

All planning processes associated with the Truckee Canal, and all ensuing improvements to be made thereto, will require time –much time! Therefore, the XM EIS must acknowledge and instruct a process intended to both identify and implement all short- term improvements with realistic time tables. Moreover, the study must take into account all prior efforts taken by the District to either maintain existing flow levels or to increase the same. All effort of the District and Reclamation must include protection of the lives and personal "stakes" that depend upon the Truckee Canal in some fashion. We strongly disagree with consideration of any default flow level such as 150 cubic feet per second –even in the event that any short-term improvement efforts may have failed. A flow regime of 150 cubic feet per second is tantamount to shutting the Canal down.

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### **Comment 5.**

Long ago our entire region was vitalized by a spirit that accompanied the Act of 1902. Settlers came here based upon promises made to them. Water became appurtenant to lands for all beneficial uses. Something that has not changed through the intervening years is the reliance upon federal facilities with which to supply Project water. While the District once had responsibility for the operation and maintenance of Tahoe Dam, such is no longer the case. In former times up-stream federally created reservoirs were operated largely for the benefit of the Project but no longer is that the case. The promise to all water users under the Act of 1902 must be honored. Its application is no less important than the competing claims made by water users elsewhere in the Truckee River watershed. The purposes of the 1902 Act are no less important than those borne by the Endangered Species Act of 1978 -as one example. The XM EIS must not give way to competing claims in the balance of legal and political interests. Project interests demand that upstream storage be made a part of all planning.

### **Comment 6.**

This XM EIS follows years of analysis and study relating to the Truckee Canal. In view of an administrative record that has grown to be voluminous in its scope, including the recent addition of Technical Memorandum No. QY-2015-8311-9, *Truckee Canal Updated Risk Analysis*, the process of environmental review is clearly susceptible to a significant shortening of time – a shortening made possible by the existence of so much information heretofore developed. We trust the full use of this information in the NEPA process.

### **Comment 7.**

In 2013 the *Newlands Project Planning Study Special Report* was issued. Federal authorization for that study was provided in the *Omnibus Appropriations Act of 2009* (Public Law 11-8, 123 Statute 609). The purpose of the study was to “determine the actions necessary to rehabilitate the Truckee Canal so restrictions on its operation can be removed.” (*See Study*, at p. E-2). We questioned in that Study, which we were informed would not become a “decisional document”, a scope of study that would allow the examination of alternatives including a zero flow alternative in the Truckee Canal. (*See Letter*, dated October 10, 2012, borne by Appendix H (c) of the Study). This “zero flow” alternative has ostensibly and improperly taken flight. We presume the alternative will be revisited in the EIS. As we said regarding the Canal Study of 2013, the scope of this XM EIS should not include an alternative that provides for a zero flow. The creation of the Newlands Federal Reclamation Project was provided for as a result of the Reclamation Act of June 17, 1902 (32 Stat. 388). The very quintessence of the Newlands Project is the Truckee Canal. No federal authorization exists in this study, or any other study for that matter, that authorizes consideration of a no flow alternative in the Project. If Congress is to act in modification to the Act, it should so speak. Any record of decision predicated upon such a consideration is, and shall be, fallacious and untrue to the purposes long ago established by and for the Act of 1902.

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### **Comment 8.**

At the scoping meeting, a meeting of "stakeholders" attended in Wadsworth, we saw signs that said: "Shut down the Truckee Canal!" At the meeting we were told that a no flow alternative would be considered. In all the discussion had regarding this XM EIS great care has been exercised to afford input by all stakeholders. Time was that the term "stakeholder" meant something special. A stakeholder was a third party chosen by two or more other parties to keep on deposit property or money the right of possession of which is contested between them and to be delivered to one who shall establish a right to it! *Black's Law Dictionary 6<sup>th</sup> Edition* (West: 1990), p. 1404. Now a stakeholder is merely a member of a set of persons, collectively "opponents" and "proponents", having interest in a particular matter -the lowest and ugliest common denominator of which is politics! Once a stakeholder meant someone exercising a sacred trust for the benefit of others; now, it means opposing what is sacred to someone else! Perhaps the time has come to jettison the term "stakeholder". We are all truly and simply "opponents" and "proponents" of a measure. The value of doing something to help others long ago fled. "Stakeholder" sounds of political correctness, without evidence of a breath of humanity, in a process that is most assuredly meant to include consideration of the impact to be had upon human beings!

Our expectation in this XM EIS is that those parties truly having a "stake" will be listened to the most! We do not mind others expressing opposition founded in reality. Such is the process. However, let these "opponents" bring to the discussion a checkbook. We will then listen intently!

### **Comment 9.**

The Risk Analysis acknowledges efforts by the District to reduce risks along the Truckee Canal. (*See* Risk Analysis, p. ES-5). Of particular mention was modification to winter-time operations. *Id.* We have exercised extreme caution when operating the Canal under conditions of icing. On multiple occasions we have stopped winter-time flow in the Canal out of concern for the inability to operate the Derby Reach waste-ways to account for ice jams downstream. Safe operation of the Canal is the overarching principle. When are Canal failures likely to occur? Most recently failure struck during the winter of 2008.

The XM EIS will evaluate alternatives associated with permanent repairs to be made to the Truckee Canal to improve its safety. Operational decisions, however, must be the first consideration in protecting the public from any Canal related failure. Certain realities attend this Project that do not exist elsewhere. Icing in Arizona? Overtopping from ice-jams in California? The safest operation of the Canal in winter conditions must consist of credit storing water upstream for use – allowing passage of flows only after dangerous winter conditions no longer prevail. In current operation, in order to attain storage targets, waters are transported via the Truckee Canal to Lahontan. If flows into the Truckee Canal are stopped, due to icing as an example, waters capable of diversion at Derby Dam will pass on to Pyramid Lake. The water that could have been diverted is converted to the use of downstream users with no consideration for credit given to water users within the Project.

The "use it or lose it" principle runs counter to safe Canal operation. The water users, not the District, are injured. Any alternative that may be considered by the XM EIS must never foster explicitly or implicitly a disincentive to safe operation.



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This "use it or lose it" places tension on operational decisions that have no place upon the Truckee Canal. The District must never have to choose between safe operation and injury to property rights. The most basic safety related measure that should attend any alternative is to restrict flow in the Canal under actual or potentially dangerous conditions. However, the decision to restrict flow must never work an injustice upon decreed water right holders. The District does not own the water rights; nor does the United States. The people do! Their rights are appurtenant to the land irrigated. Long ago, and in no subtle manner, the United States Supreme Court helped us remember that concept. (*See Nevada v. United States*, 463 U.S. 110 (1983)).

#### **Comment 10.**

Alternatives to be considered by the XM EIS will involve various flow regimes. Incorporating the substance of Comment 4, herein-above, care must always be exercised in not limiting the rights of Project waters users by reference to some operational constraint. A 350, 400, or 600 cubic foot per second Canal flow restriction, whether vegetated or not, does not modify the Orr Ditch Decree. The ability of the Canal to transport water at a certain rate of flow does not redefine the valuable property rights of Project water users. When operational constraints are imposed upon the Canal, when waters are controlled "as so many bushels of wheat", Canal capacity cannot reshape Constitutional protections. Any effort undertaken by the District to improve Canal safety and efficiency is not, and must never be construed as, a waiver of the full exercise of personally held and Constitutional protected property interests had by Project water users.

The District nor the United States controls or exercises water rights within the Project. We merely deliver water as decreed in accordance with the spirit of the Reclamation Act of 1902, the individual contracts had with entrymen into the Project, the Alpine and Orr Ditch Decrees respectively, and Contract No. 7-07-20-X0348. Accordingly, when consideration is given to up-stream storage as an essential component of safe Canal operation, credit must be given to water users not for what could safely pass through the Canal but for the water necessary to irrigate lands as decreed. If otherwise, the right to the use of the waters as decreed will have been *taken* in an amount corresponding to the difference between the administratively imposed restraint and that amount of water necessary to irrigate lands.

#### **Comment 11.**

The Newlands Project is a museum. The whole of its structures and facilities exceed 100 years in age. But, unlike the artifacts placed for observation in museums elsewhere, we use our pieces every day. Our Project infrastructure is aged. Yet we have no basis to look to Congress for any assistance in ameliorating the financial impact to water users across a very small economic base. We have been told repeatedly not to count on any appropriation.

In typical fashion monies for District improvements are raised by bonding. The debt incurred is retired through assessments imposed upon water users. An XM project carries with it the prospect of extraordinary debt. While the District, as a function of Nevada law, enjoys the power to generate revenues by bonding, and further enjoys the full faith and credit of the State of Nevada in the financing process, financial institutions assess the ability for repayment upon the same principles to be applied to private individuals or businesses. What is the existing debt burden of the entity? What is the ratio of debt to revenues? What judgments exist?

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What is the likely outcome of the litigation related to the breach of the Canal in 2008? When these factors are considered the ability of the District to finance extraordinary improvements is very limited. Federal assistance is needed even as Congress pushes back.

Moreover, circumstances attend our Project unique only to us. The largest single holder of water rights in the Project is the United States through the United States Fish and Wildlife Service (USFWS). Private lands have been purchased and taken out production with the use of tax dollars. The USFWS is not the only government holder of water rights; nor is it the only governmental entity providing payment to the District for operation and maintenance assessments. Will the USFWS share in the cost of an XM like other water users? Will the Tribes that also hold water rights pay additional assessments? We are informed and believe that these federal entities are unwilling to pay additional monies. What then are we to do?

If improvements are not made to the Canal the result will be permanent restrictions in flow imposed upon Canal operations. The "leverage" upon the District, the real parties in interest being the water users of course, is to fund improvement or suffer the consequence of reduced flows. This sounds a whole lot like having a gun placed to the head! Do the impossible if necessary! The payment for improvement must be borne across the entire base of water users. And no alternative should be imposed that injures personally held property rights. If federal water users are not inclined to pay more, as do other water users, federal assistance must be granted. Otherwise, must we acquiesce to a permanent restriction? Is that the goal? Is the desired outcome a planned for inability to make improvements? We seek to push back such conspiracy thinking. Yet the seeds of such thinking are real.

### **Conclusion**

In conclusion, thank you for consideration of the foregoing comments. We look forward to the culmination of a review process that will fully comport with the spirit of the Reclamation Act of 1902 and to the support of all interests that exist as a result of the birth of the Newlands Federal Reclamation Project.

Sincerely,

TRUCKEE-CARSON IRRIGATION DISTRICT

By: 

Rusty D. Jardine, Esq.  
District Manager

RDJ:pkbu

cc: Board of Directors



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

NOV 30 2015

Ms. Roberta Tasse  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, Nevada 89701

Subject: Notice of Intent to Prepare an Extraordinary Operations and Maintenance Environmental Impact Statement for the Truckee Canal, Lyon County, Nevada

Dear Ms. Tasse:

The U.S. Environmental Protection Agency has reviewed the Federal Register Notice published October 19, 2015 requesting comments on the Bureau of Reclamation's decision to prepare an Extraordinary Operations and Maintenance Environmental Impact Statement for the Truckee Canal. Our comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

According to Reclamation's notice, the purpose of this project is to improve public safety by reducing the risk of a breach of the Truckee Canal. Reclamation and Truckee Carson Irrigation District are proposing to complete structural improvements to Canal facilities and/or implement a long-term tolerable stage level restriction in order to enable the Canal operator, TCID, to safely operate the Canal and deliver Project water in compliance with operating criteria and procedures for the Newlands Project.

EPA acknowledges the stated purpose of the project to improve public safety and enable Newlands Project water deliveries. We also see potential for this project to serve to restore ecosystem functions and we encourage Reclamation to evaluate project alternatives and design components that might serve this purpose.

In addition, we offer the following more detailed recommendations for your consideration:

**Purpose and Need**

The DEIS for the proposed project should clearly identify the underlying purpose and need that is the basis for proposing the range of alternatives (40 CFR 1502.13). The *purpose* of the proposed action is typically the specific objectives of the activity, while the *need* for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity.

The purpose and need should be a clear, objective statement of the rationale for the proposed project, as it provides the framework for identifying project alternatives. The DEIS should concisely identify why the project is being proposed, why it is being proposed now, and should focus on the specific desired outcomes of the project (e.g. improve public safety) rather than prescribing a predetermined resolution.



### **Range of Alternatives**

All reasonable alternatives that fulfill the project's purpose and need should be evaluated in detail, including alternatives that may be outside Reclamation's legal jurisdiction (40 CFR Section 1502.14(c)). The DEIS should provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail.

A robust range of alternatives will include options for avoiding significant environmental impacts. The DEIS should clearly describe the rationale used to determine whether impacts of an alternative are significant or not. Thresholds of significance should be determined by considering the context and intensity of an action and its effects (40 CFR 1508.27).

The environmental impacts – beneficial and adverse – of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g. acres of wetlands impacted; change in water quality).

The No Action Alternative should clearly describe the current quality and quantity of habitat in the watershed, including habitat connectivity and water quality metrics.

EPA supports considerations for creating or enhancing wetland habitat. Based upon the information provided, it is unclear the extent to which the proposed project could be designed so as to enhance or create aquatic or wetland habitat. We encourage Reclamation to consider, to the extent practicable, project alternatives and design features that would mimic natural floodplain characteristics. For example, consider whether detention/retention or overflow/wasteway structures could be designed so as to allow periodic flooding of adjacent lands that have been engineered for this purpose. Design features of this nature could serve to create wetland/wildlife habitat while also meeting the primary project purpose of improving public safety.

### **Environmental Effects Analysis**

We recommend the DEIS provide a thorough evaluation of direct, indirect, and cumulative effects of all project alternatives. The DEIS should discuss the ways in which the proposed canal improvements will affect long term water deliveries relative to an appropriate baseline. Furthermore, in so far as water management influences land use patterns, which may, in turn, have environmental effects, we recommend the DEIS address potential changes in land use patterns that may result from the proposed project and future resultant changes in water deliveries.

Each of the Action Alternatives should include a robust discussion of impacts to water quality. The evaluation of project alternatives should address how both short term construction-related impacts and the long term operations-related impacts to water quality. The EIS should discuss the project's potential to affect downstream impaired waters, all reasonable mitigation measures for offsetting such impacts, and the likelihood such mitigation would be implemented.

### **Climate Change**

We believe the Council on Environmental Quality's December 2014 revised draft guidance for Federal agencies' consideration of GHG emissions and climate change impacts in NEPA outlines a reasonable approach, and we recommend that the Corps use that draft guidance to help outline the framework for its analysis of these issues. Accordingly, we recommend the DEIS include an estimate of the GHG emissions associated with the project, analyze reasonable alternatives and/or practicable mitigation

measures to reduce project-related GHG emissions, and qualitatively describe relevant climate change impacts. More specifics on those elements are provided below. In addition, we recommend that the NEPA analysis address the appropriateness of considering changes to the design of the proposal to incorporate resilience to foreseeable climate change and GHG reduction measures. The draft and final EIS should make clear whether commitments have been made to ensure implementation of design or other measures to reduce GHG emissions or to adapt to climate change impacts.

More specifically, we suggest the following approach:

#### “Affected Environment” Section

Include in the “Affected Environment” section of the DEIS a summary discussion of climate change and ongoing and reasonably foreseeable climate change impacts relevant to the project, based on U.S. Global Change Research Program<sup>1</sup> assessments, to assist with identification of potential project impacts that may be exacerbated by climate change and to inform consideration of measures to adapt to climate change impacts. Among other things, this will assist in identifying resilience-related changes to the proposal that should be considered.

#### “Environmental Consequences” Section

- The DEIS alternatives analysis should, as appropriate, consider practicable changes to the proposal to make it more resilient to anticipated climate change.
- Estimate the GHG emissions associated with the proposal and its alternatives. Example tools for estimating and quantifying GHG emissions can be found on CEQ’s NEPA.gov website<sup>2</sup>. For actions which are likely to have less than 25,000 metric tons of CO<sub>2</sub>-e emissions/year, provide a qualitative estimate unless quantification is easily accomplished.
- The estimated GHG emissions can serve as a reasonable proxy for climate change impacts when comparing the proposal and alternatives. In disclosing the potential impacts of the proposal and reasonable alternatives, consideration should be given to whether and to what extent the impacts may be exacerbated by expected climate change in the action area, as discussed in the “affected environment” section.
- Describe measures to reduce GHG emissions associated with the project, including reasonable alternatives or other practicable mitigation opportunities and disclose the estimated GHG reductions associated with such measures.

Please note that, as of October 1, 2012, EPA Headquarters no longer accepts paper copies or CDs of EISs for official filing purposes. Submissions must be made through EPA’s electronic EIS submittal tool: *e-NEPA*. To begin using *e-NEPA*, you must first register with EPA’s electronic reporting site - [https://cdx.epa.gov/epa\\_home.asp](https://cdx.epa.gov/epa_home.asp). Electronic filing with EPA Headquarters does not change the requirement to submit a hard copy to the EPA Region 9 Office for review.

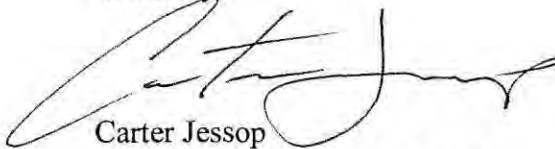
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<sup>1</sup> <http://www.globalchange.gov/>

<sup>2</sup> [https://ceq.doe.gov/current\\_developments/GHG\\_accounting\\_methods\\_7Jan2015.html](https://ceq.doe.gov/current_developments/GHG_accounting_methods_7Jan2015.html)

We appreciate the opportunity to provide comments on the preparation of the DEIS. Please send one hard copy and one CD of the DEIS to this office at the same time it is officially filed with our Washington D.C. Office. If you have any questions, please contact me at (415) 972-3815 or [jessop.carter@epa.gov](mailto:jessop.carter@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Carter Jessop". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Carter Jessop  
Environmental Review Section  
Enforcement Division



November 12, 2015

# PYRAMID LAKE FISHERIES

603 SUTCLIFFE DR - Reno, NV 89510  
(775) 476-0500 FAX (775) 476-0558

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**RECEIVED**

NOV 19 2015

BUREAU OF RECLAMATION  
LAHONTAN BASIN AREA OFFICE

Roberta Tasse, Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Suite 320  
Carson City, Nevada 89701

Roberta: Here are comments on the Truckee Canal Extraordinary Operation and Maintenance (XM) Environmental Impact Statement (EIS) for the Truckee Canal in Nevada.

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## 1.0 INTRODUCTION

The Bureau of Reclamation (Reclamation), Lahontan Basin Area Office, the lead Federal agency, intends to prepare an Extraordinary Operation and Maintenance (XM) Environmental Impact Statement (EIS) for the Truckee Canal (Canal).

Reclamation will evaluate alternatives that will enable the Canal operator, the Truckee Carson Irrigation District (TCID), to increase flow in the canal from 300 to 600 cfs and deliver water to the Newlands Project in compliance with Operating Criteria and Procedures (OCAP).

OCAP is a Federal regulation that governs diversions to the Newlands Project from the Truckee River. The purpose of OCAP is to maximize use of the Carson River and minimize use of the Truckee River for Newlands Project irrigation. On average, the Truckee River provides approximately 20 percent of the TCID water supply.

Reclamation has a contract with TCID to operate and maintain the Canal at Derby Dam. The Dam is a component of the Newlands Project and diverts Truckee River water into the Canal. Since the rupture of the Canal in January 2008 the flow has been limited to 300 cfs. The proposed repairs to the Canal would allow TCID to increase diversion rates to 600 cfs.

Reclamation held three open house/public scoping meetings for the Truckee Canal EIS in Wadsworth, Fallon, and Fernley, between October 27-29, 2015. The purpose of the meetings was to solicit early input from the public regarding the development of the proposed project and the potential environmental impacts.

The specific written comments provided in Section 6 below are being submitted as part of the Pyramid Lake Fishery (PLF) comments to the Truckee Canal EIS as it relates to endangered and threatened fish and aquatic resources of the lower Truckee River and Pyramid Lake. The following sections provide a setting leading to the formulation of the PLF comments to the proposed increase diversion rate.

## 2.0 BACKGROUND

Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, title II of Public Law 101-618, November 16, 1990 (Settlement Act), directs the Secretary of the Department of the Interior to among other objectives:

- *Provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery (endangered cui-ui and threatened Lahontan cutthroat trout [LCT]) in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended (ESA).*

The completion of Stampede Dam and Reservoir on the Little Truckee River contributed to reestablishing Truckee River flows suitable for cui-ui and LCT. In 1982, the U.S. District Court affirmed that the waters stored in Stampede Reservoir were to be used for the benefit of the Pyramid Lake fishery until such time as the cui-ui and LCT are no longer federally listed as



endangered or threatened, or until sufficient water becomes available from other sources, such as water rights acquisition, to conserve the cui-ui and LCT. The Settlement Act gave these species their only “assured” water supply.

The Truckee River Operating Agreement (TROA) provides the framework, rules, and procedures to modify operations of five Federal and two non-Federal reservoirs to implement the Congressional allocation of Lake Tahoe, Truckee River, and Carson River waters between the States of California and Nevada. TROA has been negotiated pursuant to section 205(a) of Public Law 101-618.

Beginning in 2002, FWS, in cooperation with the Pyramid Tribe, began a set of flow regimes using water stored in Stampede Reservoir to more closely mimic a natural river system while protecting habitat for both cui-ui and LCT. Water from Stampede Reservoir is managed to adjust volume and timing of flows to enhance spawning runs and to maintain water temperatures suitable for egg incubation. These flow regimes have also resulted in substantial improvements in the riparian corridors which provides shade along the river needed to maintain suitable temperatures for spawning. In 2002, Reclamation completed construction of the Derby Dam Fish Passage Project to provide passage to cui-ui and LCT past the Dam as part of ESA recovery efforts for these species.

### **3.0 BRIEF UNDERSTANDING OF CUI-UI and LCT**

Cui-ui were abundant in Pyramid Lake at the beginning of the 20th century. As water diversions for the Newlands Project proceeded, Truckee River inflow to Pyramid Lake diminished substantially and the elevation of the Lake dropped rapidly. A large delta formed at the mouth of the River. Winnemucca Lake dried up at this time as well.

In most years after the 1930s, neither cui-ui or LCT were able to gain access to the river for spawning. By 1967, Pyramid Lake was nearly 80 feet lower than in 1900. Cui-ui were listed as endangered and a Recovery Plan was approved in 1978 with the most recent revision completed in 1992.

Lahontan cutthroat trout was listed by FWS as endangered and later reclassified as threatened in 1975. A Recovery Plan was approved in 1995. The plan identified several factors contributing to the decline and affecting the potential for recovery of LCT in the Truckee River basin including diversions leading to reduction and alteration of streamflow.

Both cui-ui and LCT spawn between spring and early summer depending on flow, elevation, and water temperatures. In the lower Truckee River, spawning and fry rearing habitat has been degraded through centuries of upstream man-induced river manipulations, and many of the complex pool habitats critical to juvenile survival have been lost. Available habitat for spawning, incubation, and rearing of cui-ui and LCT is especially restricted during low river flows.

In an effort to facilitate restoring LCT to the Truckee River, the Pyramid Lake Fishery, FWS and NDOW are actively engaged in LCT stocking efforts in the River. Historically, cui-ui may have

spawned in the lower 43 miles of the Truckee River. Most now spawn downstream from Numana Dam within the Reservation. Cui-ui spend up to 16 days in the river. Once adults complete spawning, they move back to the Lake.

Effects on the river from diversion modifications, especially during spawning periods, may affect future fish populations in the lower river and Lake. Cui-ui and LCT spawning, incubation, and rearing stages are sensitive to relatively minor changes in Truckee River flow.

#### **4.0 LOWER TRUCKEE RIVER AND PYRAMID LAKE FLOWS**

Upstream diversions directly and indirectly affect cui-ui and LCT along with other biological resources associated with the amount of water in the lower Truckee River that arrives at Pyramid Lake. Flow is the most important aspect of a river system because it influences both the physical structure of the substrate (the base on which an aquatic organism live) and water quality. These two factors help determine the types of plant and invertebrate life present in addition to other river characteristics all of which interact, and species respond differently to any given set of environmental conditions at different stages of their life cycles.

Increasing the TCID Canal diversion from 300 to 600 cfs could affect the quality, quantity, timing, and duration of flow in the lower River and Pyramid Lake. Such changes could potentially affect the habitat and life cycles of federally endangered cui-ui and threatened LCT along with associated aquatic life and wetland habitats.

Different flows are necessary for different seasons because each fish life stage has different requirements. High flows generally result in colder, well-oxygenated water that is vital to cui-ui and LCT spawning. Low flows result in reduced habitat, increase in water temperature, and decrease in DO concentrations.

The EIS Truckee Canal analysis must focus on how a doubling of cfs diversion in the Canal may affect the habitat and management efforts for cui-ui and LCT in the lower Truckee River and Pyramid Lake. The federally approved recovery criteria for both species stipulate that Truckee River water is managed to support cui-ui and LCT migration, life history, and habitat requirements. Under TROA, average annual inflow to Pyramid Lake is greater than current conditions and would benefit cui-ui and LCT by maintaining Pyramid Lake at a higher elevation, which would enhance connectivity between the lower river and lake.

The proposed increase Truckee Canal diversion from 300 to 600 cfs could result in lower inflow to the lower river and Lake during critical spawning times which would adversely affect both cui-ui and LCT. Riparian vegetation along the lower Truckee River which benefits fish from cooler water temperatures as a result of shading could also be impacted.

New flow recommendations developed by FWS were implemented in 2003 (TRIT, 2003). The purpose of these new flow recommendations, known as the six-flow regime, is to guide the management of Fish Water and, under TROA, Fish Credit Water releases in order to meet

ecosystem requirements along the Truckee River. The six-flow regime emphasizes maintaining essential flows while attempting to mimic the river's natural hydrologic variability.

The flow regime considers the biological requirements of cui-ui and LCT and also incorporates ecosystem considerations such as flows that enhance the establishment and maintenance of willow and cottonwoods.

Changes in flow within the lower Truckee River brought about by increase diversion affect the amount of habitat available for spawning, incubation, and rearing of cui-ui and LCT. The magnitude of this potential impact on the overall fish population over the long-term from increased TCID diversions is uncertain and exacerbated if temperatures unsuitable to the fish occur. Any increase in habitat degradation from increased cfs canal diversion would be considered an adverse effect to cui-ui and LCT.

- **Truckee River Delta Formation at Pyramid Lake**

The PLF request the Truckee Canal EIS determine how a doubling in cfs diversion might impact Pyramid Lake water inflows, surface elevation, and the potential for delta formation.

The effect on Truckee River delta formation would be considered a significant impact if the elevation of the Lake was even slightly lowered resulting from the increased TCID cfs diversion. A lower elevation could adversely affect the connectivity between the Truckee River and Pyramid Lake. The lower river and Lake could be adversely affected if water levels were to fall below the thresholds recommended to maintain water quality and aquatic productivity. An effect on fish populations at Pyramid Lake would be significant if a change in shallow water habitat were to occur during the juvenile rearing period.

- **Anaho Island**

Pyramid Lake and the lower Truckee River are important habitat for wintering, migrating, and breeding waterfowl. Anaho Island provides nesting habitat for many bird species, not least pelicans.

Lower elevations at Pyramid Lake from upstream diversions may hydrologically contribute to predator access onto Anaho Island. Any water diversion contributing to lower lake level would be a significant impact. Anaho Island could be accessed by predators if the elevation were to drop below 3795 feet. While Pyramid Lake never is below the landbridge threshold elevation of 3795 feet, increase upstream diversions could contribute to a future threshold elevation.

## **5.0 ACQUISITION OF WATER RIGHTS FOR CUI-UI and LCT**

The FWS Recovery Criteria for both cui-ui and LCT identify water right purchases to protect a secure and stable Pyramid Lake ecosystem and meet life history and habitat requirements for these species.



PL 101-618 authorizes the Secretary of the Interior to acquire water rights to improve the habitat for cui-ui and LCT by purchase, bequest, donation, or other contractual agreement. This mechanism would fulfill the goals of the ESA by promoting the enhancement and recovery of the Pyramid Lake fishery. The Title to all water rights and related property interests acquired could be held in trust by the United States for the PLPT as part of the Reservation.

## **6.0 LIST OF SPECIFIC TRUCKEE CANAL EIS COMMENTS**

### **Lower Truckee River and Pyramid Lake**

- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID affect ecosystem flows established by the Truckee River Interdisciplinary Team (TRIT)?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID directly or indirectly impact cui-ui and/or LCT spawning, incubation, and rearing?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to a decline in lower river and/or lake habitat availability?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to modifications in lower river and lake characteristics resulting in increase riparian and/or littoral habitat degradation?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to the formation of a delta at the mouth of the Truckee River leading into Pyramid Lake?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID contribute to less shallow water foraging habitat for cui-ui and LCT and if so what would the differences be?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID result in stranding fish downstream in the lower Truckee River?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID affect water quality in the lower river in light of loading concentrations from upstream point and non-point sources?

### **Derby Diversion Dam**

- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID increase pumping velocity resulting in entrainment and impingement of cui-ui or LCT?
- Would an increase in diversion flows from 300 to 600 cfs in the Truckee Canal by TCID affect either upstream or downstream fish movement at Derby Dam?

## I. INTRODUCTION.

The Truckee Carson Irrigation District ("TCID"), a political subdivision of the state of Nevada, manages an irrigation canal as part of "the Reclamation Act of 1902" and built by the Bureau of Reclamation. The canal both prevents diversion of water from the Truckee River to Pyramid Lake and traverses tribal land of the Pyramid Lake Indian Tribe.

Commercial leasing<sup>1</sup> of Indian lands is strictly prohibited except to the extent expressly permitted by Congress. 25 U.S.C. § 177, which was effective on June 30, 1834, provides that:

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

Most non-agricultural surface leasing has been conducted pursuant to the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415,<sup>2</sup> which generally allows a 25-year lease with an option to renew for 25 years. When Indian property is leased, such leases must receive the written approval of the Bureau of Indian Affairs. 25 C.F.R. Part 162. The Indian Reorganization Act clearly grants tribal governing bodies the right to prevent the lease of tribal lands without the consent of the tribe. 25 U.S.C. § 476.

*Albert Jhu*  
*Executive Director*  
*Pyramid Lake Fishery*

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# United States Department of the Interior

## Pacific Southwest Region FISH AND WILDLIFE SERVICE

Reno Fish and Wildlife Office  
1340 Financial Blvd., Suite 234

Reno, Nevada 89502

Ph: (775) 861-6300 ~ Fax: (775) 861-6301



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NOV 27 2015

BUREAU OF RECLAMATION  
LAHONTAN BASIN AREA OFFICE

November 23, 2015  
File No. 2016-TA-0085

### Memorandum

To: Area Manager, Lahontan Basin Area Office, Bureau of Reclamation,  
Carson City, Nevada

From: Field Supervisor, Reno Fish and Wildlife Office, Reno, Nevada

Subject: Invitation to Participate as a Cooperating Agency and Preliminary Scoping  
Comments for the Truckee Canal Extraordinary Operation and Maintenance  
Project

This memorandum responds to your September 23, 2015 memorandum inviting the U.S. Fish and Wildlife Service (Service) to participate as a Cooperating Agency in the Bureau of Reclamation's (Reclamation) Environmental Impact Statement (EIS) for the Truckee Canal Extraordinary Maintenance Project (Project). We accept Reclamation's invitation, and look forward to establishing a Memorandum of Understanding (MOU) describing our agency's interests and commitments related to the Project and particularly our Cooperating Agency role. As you are aware, the Service manages trust resources in the Truckee and Carson basins; oversight for these resources is distributed among our agency's Ecological Services, Fisheries, National Wildlife Refuge, and Realty programs. Dr. Carolyn Swed, Deputy Field Supervisor for my office, will be Reclamation's primary point of contact related to the Project. However, I request that you also continue to copy Ms. Lisa Heki, Manager for the Lahontan National Fish Hatchery Complex; Ms. Nancy Hoffman, Manager for the Stillwater National Wildlife Refuge Complex; and Mr. Richard Grimes, Supervisory Realty Specialist for the Nevada Realty Field Office on all correspondence related to the Project.

At the public scoping meeting held October 29, 2015, in Fernley, Nevada, Reclamation also requested preliminary scoping comments by November 30, 2015. I would therefore like to take this opportunity to reiterate the Service's interests in the Project, as outlined in my Regional Director's memorandum to your office, dated November 26, 2013, and my Director's subsequent memorandum to Reclamation's Commissioner, dated August 11, 2014. Specifically, my Regional Director encouraged your office to rigorously evaluate potential effects upon Lahontan Valley wetlands (including Newlands Project water rights acquired and managed by the Service),



inflows to the Truckee River, and elevations within Pyramid Lake. The latter two criteria will inform Reclamation's evaluation of the potential effects of its actions regarding the continued operation of the Truckee Canal upon Cui-ui (*Chasmistes cujus*) and Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*), species listed as endangered and threatened, respectively, pursuant to the provisions of the Endangered Species Act of 1973, as amended. In his memorandum to the Commissioner, my Director expressed full support for proposals to repair the Truckee Canal so that it can more efficiently deliver water to water rights holders, including the Service, while conserving much-needed, additional water for Pyramid Lake and its fishery.

Therefore, as Reclamation embarks upon this planning effort, I again encourage you to consider opportunities for increasing the efficiency of water deliveries alongside of addressing safety-related concerns prompted by the 2008 canal breach. Service personnel from each of our agency's affected programs are ready to assist in the identification and evaluation of alternatives addressing these objectives. Should you have any questions, please contact me directly, or Dr. Carolyn Swed of my staff, at (775) 861-6300.

Edward D. Koch

Cc:

- Polly Wheeler, Assistant Regional Director for Refuges, Region 8, Sacramento, California
- Lisa Heki, Complex Manager, Lahontan National Fish Hatchery Complex, Gardnerville, Nevada
- Nancy Hoffman, Wildlife Refuge Manager, Stillwater National Wildlife Refuge, Fallon, Nevada
- Richard Grimes, Supervisor Realty Specialist, Stillwater National Wildlife Refuge, Fallon, Nevada

CODE	PERSON RESP	INITIAL & DATE
100 *		11/30/15
101		
110	DP	11/30/15
400		
600 *		11/30/15
800		
900		
670 *		11/30/15
130 *		"

## - Public Scoping Comment Card -

Please submit your comment by  
mail, fax, or email to:

**Roberta Tassey**  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701  
Fax: (775) 884-8376  
E-mail: TruckeeEIS@empci.com

PLEASE PRINT

Date: 11-19-15Name: Ray LowreyOrganization (if applicable):  
Property owner

Email Address (optional):

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NOV 23 2015

Street Address (optional): \_\_\_\_\_

City/State/Zip (optional): \_\_\_\_\_

BUREAU OF RECLAMATION  
LAHONTAN BASIN AREA OFFICE

Comments (use back if needed):

I've lived in Fernley 26 years,  
we need this canal, too keep the water  
in this basin. I've bought property  
here and invested a lot of time  
and money. If water does not  
continue to flow it will bankrupt  
a lot of good hard working AMERICANS  
who moved here for a better way  
of life. it makes know sense to me  
that we allow viable water to go  
past us here, and run into a lake  
of salt water, we can grow much more  
with fresh water on our land. than  
you can by allowing it too turn into a  
salt lake.





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**Roberta Tassey**  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701  
Fax: (775) 884-8376  
E-mail: TruckeeEIS@empci.com

**PLEASE PRINT**

Date: 11/19/15

Name: Tasha Lowrey

Organization (if applicable):  
\_\_\_\_\_

Email Address (optional):  
r-t-lowrey@stglobal.net

Street Address (optional): 925 Margaret Way

City/State/Zip (optional): Fernley, NV 89408

Comments (use back if needed):

The TCID canal is the source for the most valuable asset, water for Central Nevada.

Do not close this otherwise more jobs & homes will be lost adding to an escalating Nation problem.

*Tasha Lowrey*

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**NOV 23 2015**

BUREAU OF RECLAMATION  
LAHONTAN BASIN AREA OFFICE



U.S. Department of the Interior  
Bureau of Reclamation



Office of the

**CHURCHILL COUNTY COMMISSIONERS**

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*Carl Erquiaga  
Pete Olsen  
Bus Scharmann*

**NOV 23 2015**

November 18, 2015

BUREAU OF RECLAMATION  
LAHONTAN BASIN AREA OFFICE

Roberta Tasse  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701

**RE: Truckee Canal XM EIS**

Ms. Tasse:

The Churchill County Board of Commissioners is deeply concerned about the proposed length of time to undertake the preparation of an Environmental Impact Statement (EIS) for the Truckee Canal Extraordinary Operation and Maintenance Project (XM). The breach occurred in January 2008; nearly nine years have passed with restricted flows in the Truckee Canal and the continued sustainability of many of our farming operations under these conditions is at risk. During the past eight years, innumerable engineering studies and risk assessments have been undertaken addressing many of the public safety issues this EIS will address. We request that this data and information be reviewed immediately to minimize duplication of efforts, resulting in a significantly shorter period of time to complete the EIS.

In addition, the following comments are submitted for consideration in the Environmental Impact Statement:

- Economic impact to Churchill County and Fernley of reduced water levels in the canal compared to the historic water levels, including the impact already experienced and during this long EIS process.
- Impact to City of Fernley aquifer water levels and existing domestic/municipal well water levels if historic levels are not restored.
- City of Fernley development code needs to be examined concerning requirements of developers with respect to drainage, disruptions in drainage by existing developments, and subsequent changes in drainage if subdivisions are constructed etc., along with requirements to notify prospective landowners of the existence and potential hazards of the canal.
- Long term impacts to Lahontan Reservoir (water levels, vegetation, wildlife, fish, recreation) of reduced water levels in the canal.
- Changes in aquifer levels and domestic wells in Churchill County due to less water in Lahontan from reduced inflow from canal.
- Impacts to the Truckee Carson Irrigation District's income from hydroelectric plants by reduced water in Lahontan due to reduced inflow from canal.

- The obvious issue of how many acres can be irrigated in Truckee and Carson Divisions with different water flow scenarios - the amount of water delivered cannot be less than the amount the water right owners are legally entitled to.

Churchill County is pleased to be a Cooperating Agency during this process. We request that, where possible, during the EIS process the residents and community members most impacted by restricted flows in the Truckee canal be kept informed of progress. The Board of County Commissioners meets on the 1<sup>st</sup> Thursday and 3<sup>rd</sup> Wednesday of each month and we invite you to provide updates to the Commission as often as possible.

Sincerely,



H. Peter Olsen, Jr., Chairman  
Board of County Commissioners



## - Public Scoping Comment Card -

Please submit your comment by mail, fax, or email to:

**Roberta Tassey**  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701  
**Fax:** (775) 884-8376  
**E-mail:** TruckeeEIS@emp.si.com

### PLEASE PRINT

Date: 10-28-15

Name: Terri Pereira

Organization (if applicable):  
Churchill County

Email Address (optional):  
planning-tp@churchillcounty.org

Street Address (optional): \_\_\_\_\_

City/State/Zip (optional): \_\_\_\_\_

Comments (use back if needed):

- Issues to be analyzed in the EIS:
- changes in water supply to Churchill County water right holders for irrigation
  - impact to aquifer recharge in Fernley from Truckee Canal low water level
  - economic impacts (land values) of lower water level in Truckee Canal = <sup>less</sup> diversions
  - impacts to fish + wildlife of lower water levels in Lahontan Reservoir with reduced diversions at Derby Dam
  - impacts to aquifer recharge in Churchill County if lower levels in Lahontan Reservoir due to lower diversions
  - public health + ~~safety~~ safety with regard to Truckee Canal
  - effect on recreational use of Lahontan Reservoir with less water
  - analyze City of Fernley policies regarding development along the canal + drainage



U.S. Department of the Interior  
Bureau of Reclamation

# RECLAMATION

Managing Water in the West

U.S. Department of the Interior  
Bureau of Reclamation  
Albuquerque Area Office

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Please submit your comment by mail, fax, or email to:

**Roberta Tassey**

Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701

Fax: (775) 884-8376

E-mail: TruckeeEIS@empci.com

### PLEASE PRINT

Date: 10-26-15

Name: Shavnee Sander

Organization (if applicable):  
Tribal member

Email Address (optional):  
northernpaivtenation@gmail

Street Address (optional): Wadsworth

City/State/Zip (optional): \_\_\_\_\_

Comments (use back if needed):

How much money was paid out  
for property damage, homes/vehicles  
land  
Any loss of livestock?  
was it individual insurance  
or paid by BOR / Gov. / TCID



U.S. Department of the Interior  
Bureau of Reclamation

## - Public Scoping Comment Card -

Please submit your comment by mail, fax, or email to:

**Roberta Tassey**  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701  
**Fax:** (775) 884-8376  
**E-mail:** TruckeeEIS@emp.si.com

**PLEASE PRINT**

Date: 10-29-2015

Name: DAVY STIX

Organization (if applicable): \_\_\_\_\_

Email Address (optional): DKStix3r@att.net

Street Address (optional): \_\_\_\_\_

City/State/Zip (optional): \_\_\_\_\_

Comments (use back if needed):

*please consider that any lining will hurt the ground water recharge for all residents, municipal and commercial water supplies along the truckee canal reach. sheet filing looks to be the answer.*



U.S. Department of the Interior  
Bureau of Reclamation



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DEC 07 2015

BUREAU OF RECLAMATION  
LAHONTAN BASIN AREA OFFICE



**Truckee River Yacht Club**  
**PO Box 8409**  
**Reno, NV 89507**

CODE	PERSON RESP	INITIAL & DATE
100	X	12/7/15
101		
110	DP	12/7/15
400		
600	X	"
800		
900		
670	X	"

November 30, 2015

BOR/Lahontan Basin Area Office  
ATTN: Roberta Tasse, Project Manager  
705 N. Plaza St. #320  
Carson City, NV 89701

FILE CODE: ENV-6.00  
PROJECT: 29  
CONTROL NO.: 15229271  
FOLDER ID: 1339212

Re: Truckee Canal XC EIS

Dear Project Manager Tasse,

On behalf of the Truckee River Yacht Club (TRYC), I am submitting scoping comments on the Truckee Canal Extraordinary Operation and Maintenance Environmental Impact Statement (EIS), proposed by the Bureau of Reclamation (BOR). The TRYC has many concerns about this BOR project proposal on which there is little to no publicly accessible information as well as its potential impacts on the Truckee River.

The TRYC is a non-profit, tax-exempt, volunteer community-based advocacy group working and playing for a thriving, dynamic Truckee River system. Our mission, objectives, and blogs can be found on our website at: <http://truckeeriver.org/about/>.

The BOR did not schedule an open house in the Reno area. Nor is there much information on the BOR website about this project, other than a press release which simply refers the viewer back to the webpage: <http://www.usbr.gov/mp/lbao/programs/truckee-canal-eis/index.html>. The intent of the EIS, according to the webpage, is to "...evaluate opportunities to reduce the risk to public safety from a Canal breach. Reclamation proposes to take action to evaluate alternatives that will enable the Canal operator - the Truckee Carson Irrigation District (TCID) - to safely operate the Canal and deliver Project water in compliance with operating criteria and procedures (OCAP). Additional restrictions on Canal operations may be necessary without taking actions or initiating risk-reducing repairs." This is the only publicly accessible information on this proposal we could find which makes it difficult to submit EIS scoping comments.

1. What is the proposed BOR project? Is it a "repair?" Is it a canal reconstruction? What does "extraordinary operation and maintenance" mean?
2. Since a major breach has already occurred on January 5, 2008 and repairs, which were approved by the BOR, have already been made by TCID to the canal through construction of a zone earthfill embankment, why are additional repairs required?
3. Since the courts have determined that TCID was responsible for the breach and the damages to



properties in Fernley and the BOR's contractual agreement with the TCID specifies that TCID will complete its duties without cost to the Federal government or American taxpayers by charging an operation and maintenance fee to all water users who benefit from the Newlands Project, why is BOR proposing to fund additional canal repairs or reconstruction on behalf of TCID?

4. What is the source of funds for any proposed BOR repairs or reconstruction of the Truckee Canal? Can O&M fees cover the project costs, considering that the court-ordered damage liability of TCID for the breach is substantial and has not yet been paid?
5. Why didn't BOR provide to the public, as part of the EIS scoping process, the results of the \$2.5 million project to do an exploration/risk analysis of the Truckee Canal to determine the full extent of rehabilitation needed for the canal to resume flows above 350 cfs which was completed in June 2011?
6. Why didn't BOR provide to the public, as part of the EIS scoping process, the results of its study to evaluate multiple alternatives for water delivery in the Newlands Project that integrate the design data collected on the canal and the risk assessment to determine effective alternatives for safely delivering water to meet Newlands Project water rights, also completed in 2011?
7. Why isn't BOR proposing methods to increase flows to the Newlands Project from the Carson River? Wouldn't increased Carson River flows limit the amount of Truckee River water diversions?
8. Why isn't BOR considering alternatives to increase flows to the Newlands Project by decreasing evaporation losses from Lahontan Reservoir by redesigning a smaller reservoir?
9. The extended drought and continuing changes in climate to hotter temperatures and decreasing river flows bring into question whether OCAP requirements can ever be met in the future, without condemning the endangered Cui-ui and threatened Lahontan Cutthroat Trout, which are dependent on adequate Truckee River flows to Pyramid Lake, to extinction. How would the proposed repairs/reconstruction of the Truckee Canal avoid this impact to the Truckee River and to Pyramid Lake?

In conclusion, we strongly urge the BOR to use a more transparent process in its communications to the public about agency proposals. Providing access to the two existing reports on canal repairs would have been most useful in developing scoping comments on the proposed EIS. BOR may actually receive very valuable ideas and comments from the public if it improves its communication to the public.

Sincerely,



Rose Strickland  
TRYC

## - Public Scoping Comment Card -

Please submit your comment by mail, fax, or email to:

**Roberta Tassey**  
Bureau of Reclamation  
Lahontan Basin Area Office  
705 N. Plaza Street, Room 320  
Carson City, NV 89701  
**Fax:** (775) 884-8376  
**E-mail:** TruckeeEIS@empsi.com

### PLEASE PRINT

Date: 10.29.15

Name: Shari Whalen

Organization (if applicable):  
\_\_\_\_\_

Email Address (optional):  
\_\_\_\_\_

Street Address (optional): 1350 Truckee Lane

City/State/Zip (optional): Fernley NV 89408

Comments (use back if needed):

I would like to make sure that the impact to domestic well owners is considered with the options.

I would also like to ask that funding of any repair be considered, because it is my understanding that TCID will be paying for the repair. TCID will likely pass that cost on to the water users. We are concerned that the cost would be prohibitive for the consumers.



U.S. Department of the Interior  
Bureau of Reclamation