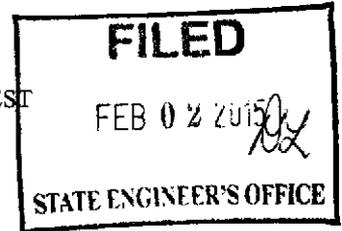


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 84515
FILED BY The City of Fernley
ON November 5, 2014



PROTEST



Comes now U.S. Bureau of Reclamation

Printed or typed name of protestant

whose post office address is 705 N. Plaza St. Room 320, Carson City, NV 89701

Street No. or PO Box, City, State and ZIP Code

whose occupation is owner of Newlands Project Facilities

and protests the granting

of Application Number 84515

, filed on November 5

, 2014

by City of Fernley

for the

waters of Truckee River

situated in Lyon

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See attached protest grounds

THEREFORE the Protestant requests that the application be limited to the Newlands Project irrigation season and direct use

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Agent or protestant

Terri Edwards, Area Manager, LBAO

Printed or typed name, if agent

Address 705 N. Plaza St. Room 320

Street No. or PO Box

Carson City, NV 89701

City, State and ZIP Code

State of Nevada

County of Carson City

Subscribed and sworn to before me on 02-02-15

(775)884-8353

Phone Number

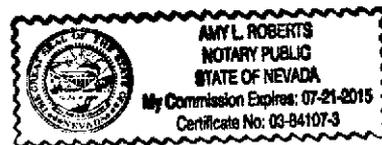
by Terri Edwards

tedwards@usbr.gov

E-mail

RECEIVED 2015 FEB -2 AM 10:35 STATE ENGINEERS OFFICE

Signature of Notary Public Required



Notary Stamp or Seal Required

+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

City of Fernley Application No. 84515
 U.S. Bureau of Reclamation Protest Grounds

The Bureau of Reclamation has reviewed the City of Fernley's (Fernley) Application No. 84515 for Permission to Change Point of Diversion, Manner of Use and Place of Use of Newlands Project water rights, derived from Orr Ditch Decree Claim 3 water rights. The current authorized use under the Newlands Project rights and contracts are for irrigation in the Truckee Division of the Newlands Project. The application requests a change in manner of use from agriculture to municipal, and a change in place of use from the Newlands Project lands in the Truckee Division to within the city limits of Fernley, of approximately 23.125 acre feet of water annually. Of primary concern to Reclamation is the application's proposal to change the period of use from the Newlands Project irrigation diversion season to year-round diversions.

Reclamation has previously protested similar applications filed by Fernley. The previous protests have resulted in a settlement agreement (Exhibit B) between Reclamation and Fernley, effective November 12, 2009. The settlement agreement is intended to provide a pathway for Reclamation to consider whether, and under what conditions, to allow the Truckee Canal to be used as a conveyance facility for municipal use, and whether, and under what conditions, municipal use can occur in a manner consistent with the Newlands Operating Criteria and Procedures (OCAP), *Tribe v. Morton*, and P.L. 101-618, until such time as the OCAP may be amended to accommodate municipal use.

Under the agreement, Fernley has agreed to a number of terms regarding its use of project water rights for municipal use, including requirements for beneficial use and conservation plans, application of federal environmental, and other, laws, shortage sharing, project efficiency impact studies, and the below provision specifically relevant to Application No. 84515:

2(D) Fernley shall divert water under its acquired Newlands Project water rights at Derby Dam on an irrigation season specified by the operator of the Newlands Project, subject to the Newlands Project OCAP.

Fernley's application is in contravention to the terms of its settlement agreement with Reclamation by requesting a year-round period of use rather than the Newlands Project irrigation season.

In addition, year-round direct diversions of Truckee River water to support municipal demand is unprecedented, and unaccounted for under the OCAP, and therefore conflicts with existing rights, as prohibited by N.R.S. 533.370(2). Under OCAP and historic Derby Dam direct diversions for Truckee Division irrigation demands, diversions generally begin in March and continue only so long as irrigators have demand, and Truckee River water remains available for diversion under Claim 3 of the Orr Ditch Decree. Should Fernley be allowed to suddenly change the demand season, or schedule, for Truckee Division direct diversions, from the irrigation season to year-round municipal use, the new diversion schedule could negatively impact project efficiencies and other users by increasing Truckee Canal diversions and losses during the winter and fall months.

RECEIVED
 2010-2 AM 10:35
 ENGINEERS OFFICE

Reclamation is further concerned about Fernley's intention to use the water for its proposed Aquifer Storage and Recovery (ASR) project, which has not yet been approved. Reclamation detailed several concerns with Fernley's proposed ASR program in its June 5, 2014 letter to the State Engineer.

Reclamation accordingly requests that if the State Engineer approves Fernley's Change Application No. 84515 from irrigation to municipal use, it should condition such approval upon use limited to the OCAP irrigation season, and for direct use only until such time that Fernley may have an approved ASR.

RECEIVED
FEB -2 AM 10:35
STATE ENGINEERS OFFICE

**AGREEMENT BETWEEN THE CITY OF FERNLEY
AND THE UNITED STATES
REGARDING SETTLEMENT OF CLAIMS AND PROTESTS OVER
USE OF FEDERAL RECLAMATION FACILITIES**

I. EXPLANATORY RECITALS

WHEREAS the City of Fernley, Nevada ("Fernley") seeks to expand its existing municipal water supply and treatment system to serve customers within its service area;

WHEREAS Fernley has acquired surface water rights within the Truckee Division of the Newlands Reclamation Project ("Newlands Project"), and has submitted applications to the Nevada State Engineer to transfer the purpose and place of use of said water rights from irrigation to municipal and industrial use within Fernley's service area;

WHEREAS the Bureau of Reclamation ("Reclamation") and the Pyramid Lake Paiute Tribe ("Tribe") have filed protests of those transfer applications, and Reclamation has asserted as protest grounds that, among other things, its approval was required before Fernley could use Federal reclamation facilities, including but not limited to the Truckee Canal, to convey water under any transferred water rights for municipal and industrial purposes;

WHEREAS the Nevada State Engineer on May 31, 2007 issued Ruling #5744, and on June 12, 2007 issued Ruling #5744A, in which he approved the transfer of certain water rights requested by Fernley over protests by Reclamation and the Tribe;

WHEREAS the United States, on behalf of Reclamation, timely appealed Ruling #5744/5744A to the United States District Court for the District of Nevada. *United States v. Orr Water Ditch Co./Re: Nevada State Eng'r Ruling #5744/5744A*, Case No. 3:73-cv-19-LDG (D. Nev.);

WHEREAS Reclamation has protested Fernley water right transfer applications nos. 74911, 74943, 74944, 74980, 75503, 75504, 75581, 75582, 75583, 75862, 75863, 75864, 75865, 76061, 76209, 76292, 76837, 76976, 76977, 77006, 77050, 77276, 77923, 77924, and 78626 which are currently pending before the Nevada State Engineer;

WHEREAS Fernley now seeks federal approval for the use of Federal reclamation facilities in the Newlands Project to assist in the delivery of water for municipal, industrial, and domestic purposes within Fernley's service area;

WHEREAS Reclamation now seeks to develop, in a collaborative process with Fernley, a procedure by which Fernley may request, and Reclamation will consider, after consultation with the Tribe, Federal approval of Fernley's use of Federal reclamation facilities in connection with Fernley's municipal water supply and treatment system;

RECEIVED
2015 FEB -2 AM 10:35
STATE ENGINEERS OFFICE

WHEREAS the United States and Fernley seek to settle claims by the United States in *United States v. Orr Water Ditch Co./Re: Nevada State Eng'r Ruling #5744/5744A*, Case No. 3:73-cv-19-LDG (D. Nev.) ;

WHEREAS Reclamation and Fernley seek to settle protests by Reclamation of Fernley transfer application nos. 74911, 74943, 74944, 74980, 75503, 75504, 75581, 75582, 75583, 75862, 75863, 75864, 75865, 76061, 76209, 76292, 76837, 76976, 76977, 77006, 77050, 77276, 77923, 77924, and 78626;

NOW, THEREFORE, Fernley and the United States ("the Parties") mutually stipulate and agree as follows:

II. AGREEMENT

1. GENERAL PROVISIONS

- A. This Agreement is executed solely for the purpose of compromising and settling litigation and nothing herein shall be construed as a precedent in any other context. This Agreement is not, and shall not be construed as, an admission against interest or of wrongdoing or liability by any party hereto with respect to any fact or issue involved in any pending or future litigation.
- B. Nothing in this Agreement shall be construed to deprive any federal official of authority to revise, amend, or promulgate regulations. Nothing in this Agreement shall be deemed to limit the authority of the executive branch to make recommendations to Congress on any particular piece of legislation.
- C. No Member of, or Delegate to, Congress, Resident Commissioner or official or employee of Fernley shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- D. Nothing in this Agreement shall be construed to commit a federal official to expend funds not appropriated by Congress.
- E. The Parties do not intend by this Agreement to confer any rights or interests on any third-parties or non-parties to the Agreement.
- F. The Parties reserve the right to amend this Agreement upon mutually agreeable terms to comply with any subsequent court order issued by a court of competent jurisdiction concerning the operation of the Newlands Project or the administration of the Orr Ditch Decree.

////

RECEIVED
2015 FEB -2 AM 10:35
STATE ENGINEERS OFFICE

- G. The terms set forth in this Agreement are intended by the Parties as a final expression of agreement with respect to such terms, and may not be contradicted by evidence of any prior agreement or any contemporaneous oral statement. This Agreement is a complete and exclusive statement of the Parties' agreement which may not be explained or supplemented by evidence of additional terms. This Agreement may not be altered or modified except by written instrument signed by each of the Parties or as otherwise provided by order of a court of competent jurisdiction.
- H. This Agreement shall be governed by, and construed and enforced in accordance with, and pursuant to, the laws of the United States of America, including federal reclamation law and federal law applicable to contracts made or performed by the United States or to which it is a party. In the event that Fernley is granted approval by Reclamation, pursuant to this Agreement, to access the Truckee Canal and use Project Water for M&I purposes, Fernley acknowledges that the delivery of Project Water and the use of Federal facilities will be subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law, as well as Reclamation determinations necessary to administer the operation and maintenance contract between the United States and the Truckee-Carson Irrigation District ("TCID") (Contract No. 7-07-20-X0348), or any subsequent operation and maintenance contract entered into by the United States regarding Newlands Project facilities.
- I. The underlined paragraph headings in this Agreement are for the convenience of the Parties and are not intended to be given any substantive effect in interpreting the Agreement.
- J. Nothing in this Agreement shall be construed to constitute a waiver of the sovereign immunity of the United States.
- K. The Parties acknowledge that each party and/or its counsel have reviewed and revised this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement or any document executed and delivered by the Parties in connection with this Agreement.

2. FERNLEY'S EXERCISE OF TRANSFERRED NEWLANDS PROJECT WATER RIGHTS

- A. All water rights acquired by Fernley for municipal and industrial purposes within its service area shall be transferred in accordance with Nevada law and the Orr Ditch Decree. For the purposes of this Agreement, "acquired water rights" refers

RECEIVED
 2015 FEB - 2 AM 10:35
 CIVIL ENGINEERS OFFICE

to Newlands Project Water Rights that have been acquired by the City of Fernley, and does not include groundwater rights or surface water rights that are not delivered via the Newlands Project.

- B. Fernley's exercise of its acquired water rights shall be subject to all applicable federal and state laws, decrees, and regulations, including the Orr Ditch Decree, the Newlands Project Operating Criteria and Procedures ("OCAP"), and water quality laws; all orders or settlements pursuant thereto; and determinations made by Reclamation pursuant to the operations and maintenance contract between Reclamation and the operator of the Newlands Project. Any use of Federal reclamation facilities in the Newlands Project for the conveyance of non-Project water shall be subject to federal reclamation law as amended and supplemented.
- C. Fernley's exercise of its acquired water rights shall be subject to beneficial use not to exceed water duties under the Orr Ditch Decree, including uses of Fernley Municipal Credit Water as provided in the Truckee River Operating Agreement executed September 6, 2008 ("TROA"). In cooperation with Reclamation, Fernley shall prepare a water conservation and efficiency plan that Fernley shall implement within its service area as provided in Paragraph 6 below.
- D. Fernley shall divert water under its acquired Newlands Project water rights at Derby Dam on an irrigation season specified by the operator of the Newlands Project, subject to the Newlands Project OCAP.
- E. Fernley shall share proportionately in any Newlands Project water shortages, subject to the exercise of Fernley's rights under TROA. On account of drought, as determined by the operator of the Newlands Project, inaccuracy in distribution, or other cause, there may occur at times a shortage in the water supply, and in no event shall any liability accrue to the United States, its officers, agents, or employees, for any damage direct or indirect arising therefrom. "Other causes" may include, but are not limited to, court orders or Acts of Congress that are applicable to the Newlands Project, including Fernley's acquired water rights. "Other causes," however, do not include criminal acts, intentional torts or negligence of the United States, its officers, agents or employees.
- F. Fernley shall indemnify and hold harmless the United States with regard to any damage claim, Fifth Amendment takings claim, or request for injunctive relief pertaining to the control, distribution, disposal or delivery of water beyond the Truckee Canal. Fernley agrees that the United States does not warrant the quality of any water transported or conveyed through Federal reclamation facilities, including but not limited to the Truckee Canal.
- G. Fernley shall pay its proportionate share of Newlands Project Operations and Maintenance charges and any applicable Newlands Project assessments.

RECEIVED
FEBRUARY - 2 AM 10:35
STATE ENGINEERS OFFICE

H. Fernley shall pay the costs of any environmental documentation prepared by Reclamation or by a consultant approved by Reclamation in connection with a request made pursuant to the provisions of Section 3 of this Agreement. If environmental documentation is prepared by Reclamation, Fernley shall be provided notice and the opportunity to comment on an estimate of the costs of the preparation of environmental documentation prior to Reclamation's expenditure of funds on such work.

3. PROCEDURE FOR REQUESTING AUTHORIZATION TO USE FEDERAL RECLAMATION FACILITIES

- A. Fernley shall submit to Reclamation a request in writing for authorization to use Federal reclamation facilities in the Newlands Project, including the Truckee Canal, for the delivery of water under Fernley's acquired water rights from the diversion point at Derby Dam to its municipal water supply system and treatment plant ("Authorization Request").
- B. Such Authorization Request shall be in a form deemed satisfactory by the United States, shall be consistent with the terms of this Agreement and shall incorporate the terms in Section 2 of this Agreement including all subparts. For purposes of this Agreement, Reclamation has determined that a formal letter with attached reports and data will be acceptable.
- C. Such Authorization Request shall include or be accompanied by the following:
- (1) An efficiency study in form and content as provided in Section 4 of this Agreement.
 - (2) Accounting rules for the accounting of Fernley's exercise of its acquired water rights for municipal and industrial purposes within its service area as provided in Section 5 of this Agreement, including but not limited to any groundwater recharge and recovery, or storage not covered under the TROA.
 - (3) A draft water conservation and efficiency plan as provided in Section 6 of this Agreement.
 - (4) A construction plan as provided in Section 7 of this Agreement.
- D. Upon receipt of Fernley's Authorization Request, Reclamation shall review the Authorization Request for completeness as provided in this Agreement. If the Authorization Request is incomplete, Reclamation will promptly return the Authorization Request to Fernley with a written explanation of deficiencies. If

RECEIVED
2015 FEB - 2 AM 10:35
STATE ENGINEERS OFFICE

the Authorization Request is determined by Reclamation to be complete, Reclamation will review the Authorization Request as provided in subpart E of this Section 3.

- E. Reclamation shall determine whether to grant authorization for Fernley's use of Federal reclamation facilities based upon Fernley's Authorization Request, subject to compliance with the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* ("NEPA"), the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, federal reclamation law as amended and supplemented, all other applicable law, and after consultation with the Tribe. Fernley and the United States understand and agree that Reclamation's consideration of Fernley's Authorization Request will include a NEPA process, and that no final determination whether to approve Fernley's Authorization Request will occur until such NEPA process is completed.
- F. In reviewing the Authorization Request as provided in Section 3.E, Reclamation reserves the right to request additional information from Fernley, and Fernley shall promptly provide information in response to such a request.

4. EFFICIENCY STUDY

- A. As provided in Section II.3(C)(1) of this Agreement, Fernley will prepare a study, in cooperation with Reclamation, on the impact of Fernley's diversions on Newlands Project efficiency as determined under OCAP. Such efficiency study shall be completed prior to the submission of any Authorization Request and shall be attached to such Request.
- B. The efficiency study shall further be based on the assumptions, which may be amended by mutual agreement at a later date, set forth in a technical memorandum attached hereto as Appendix A.
- C. In the event the efficiency study prepared pursuant to this subsection discloses potentially significant adverse impacts on Newlands Project efficiency from Fernley's diversions, Reclamation and Fernley will develop mutually acceptable measures to mitigate such adverse impacts. Any such mitigation measures shall also be submitted to the Nevada State Engineer with the request that they be incorporated into and made a part of any permits issued by the Nevada State Engineer approving applications to transfer Fernley's acquired water rights.

5. ACCOUNTING

- A. As provided in Section II.3(C)(2) of this Agreement, Fernley's Authorization Request will include and be consistent with the following rules for accounting of Fernley's diversions of water from the Truckee Canal and the treatment and

RECEIVED
2015 FEB -2 AM 10:33
STATE ENGINEERS OFFICE

distribution of such diverted water to Fernley's customers.

- B. Fernley shall meter and report to Reclamation all water that it receives delivery of through Federal reclamation facilities, including but not limited to the Truckee Canal, for any purpose. The following accounting practices and rules will apply to all water diverted by Fernley through Federal reclamation facilities.
1. Fernley shall install, at its expense, a meter or meters, at each Truckee Canal intake approved by Reclamation for Fernley's use.
 2. Fernley shall meter the quantity of water diverted at the proposed Fernley municipal Truckee Canal intake, and shall report monthly that quantity to Reclamation. Fernley shall also report diversion quantities to the operator of the Newlands Project in accordance with the operator's reporting requirements.
 3. Fernley shall meter and report monthly to Reclamation the quantity of water delivered at the point of delivery to Fernley, and at any other locations where Fernley receives water from the Truckee Canal for any purpose. Such locations may include, but are not limited to, the Fernley Golf Course, Out of Town Park, and other locations as may be added from time to time.
 4. Fernley shall meter and report monthly to Reclamation the quantity of all water diverted by Fernley from Federal reclamation facilities, including but not limited to the Truckee Canal, that Fernley places into any surface or subsurface storage. Fernley shall meter and report to Reclamation all quantities of such water withdrawn from storage. Although underground storage of Newlands Project water rights under Claim 3 of the Orr Ditch Decree is not proposed at this time, Fernley shall negotiate accounting rules to account for any underground storage, if underground storage is proposed. These accounting rules will be based on applicable federal law and the Nevada Division of Water Resources recharge and recovery permit terms and reporting requirements as identified in Nevada Revised Statutes 535.250 through 535.340.
 5. Fernley shall report monthly to Reclamation data on water deliveries to Fernley's customers. The City of Fernley Rate Table Summary for water usage, in substantial form as provided in Appendix B hereto, may be used for this reporting requirement.
 6. Meters used by Fernley in the measurement of water shall be of a type and design mutually agreeable to Fernley, Reclamation, and the operator of the Newlands Project. The type and design of such meters are required to be

RECEIVED
2015 FEB -2 AM 10:35
BACE ENGINEERS OFFICE

submitted as part of the Authorization Request. Any future modifications to existing meters, or new metering devices, shall be mutually agreeable to Fernley, Reclamation, and the operator of the Newlands Project. Fernley shall maintain all meters installed pursuant to the Authorization Request.

6. WATER CONSERVATION AND EFFICIENCY PLAN

- A. Fernley shall submit with its Authorization Request a draft Water Conservation Plan ("Plan"). A Plan meeting Reclamation's standards must be finalized by Fernley and approved by Reclamation before Fernley may divert water through, or otherwise use, Federal reclamation facilities within the Newlands Project for municipal and industrial use within Fernley's service area.
- B. Continued diversion of Project Water pursuant to Fernley's Authorization Request, if approved, shall be contingent upon Fernley's continued implementation of the Plan and this Agreement. In the event that Fernley's Plan or any revised water conservation plan completed pursuant to this Agreement are determined to not meet Reclamation's standards due to circumstances which Reclamation determines are beyond the control of Fernley, Project Water diversion shall be made pursuant to any approved Authorization Request so long as Fernley diligently works with Reclamation to create a Plan acceptable to Reclamation.
- C. If Fernley is engaged in direct groundwater recharge, such activity shall be described in Fernley's Plan or any revision to that Plan.
- D. Fernley shall submit annually to Reclamation a report on the status of the implementation of the Plan. This report shall be due on October 1 of each year.
- E. Fernley shall revise its Plan at five-year intervals to remain acceptable to Reclamation, and shall submit the revised Plan to Reclamation for review and evaluation. Reclamation will then determine if the revised Plan meets Reclamation's then current criteria. The revised Plan will be due at five year intervals on October 1st, beginning with the fifth October following Reclamation's approval of the initial Plan.

7. CONSTRUCTION PLAN

- A. Fernley shall submit, as part of its Authorization Request, an *Application for Transportation and Utility Systems and Facilities of Federal Lands "SF-299"* (the SF-299 Application). The SF-299 Application shall include the following:
 - 1. A design of the canal takeout structure that will be used to divert water from the Truckee Canal to the pipeline that extends to Fernley's municipal

RECEIVED
2015 FEB -2 AM 10:35
FERT ENGINEERS OFFICE

water treatment plant. The design shall be at an approximate 75% level of the full completed design, including all major structural elements and approximate dimensions, locations, and specifications for construction.

2. A plan and profile design of the pipeline that will be used to divert water from the takeout on the Truckee Canal to Fernley's municipal water treatment plant. The plan and profile design shall be at conceptual level, including general structural elements, approximate dimensions, and estimated locations.
3. A full topographic survey of the location of the proposed takeout on the Truckee Canal, as well as a full geotechnical site evaluation. These field activities must be acceptable in scope to Reclamation, and the information gained from these activities shall be used in the design of the takeout structure.
4. A construction plan. The construction plan shall include all typical elements of a plan for the construction of a water management feature on a Reclamation easement, including but not limited to descriptions of the construction execution; emergency action procedures; and required permissions from the operator of the Newlands Project, the underlying landowner, and any other required permits or permissions.

B. The engineering design and construction plan referred to in this section shall conform to all requirements specified by Reclamation's *Engineering and O&M Guidelines for Crossings* (Current Draft, "6C"), as well as the requirements, standards, and guidelines set forth in Reclamation's *Design of Small Canal Structures (1978)*, and Reclamation's *Design Standards #3; Canals and Related Structures (1967)*.

8. DISMISSAL OF CLAIMS AND PROTESTS

Upon execution of this Agreement, the United States shall dismiss all of its claims on appeal of Ruling 5744/5744A of the Nevada State Engineer, in *United States v. Orr Water Ditch Co.*, Case No. 3:73-cv-19-LDG. Upon execution of this Agreement, Reclamation shall dismiss all of Reclamation's protests of Fernley transfer application nos. 74911, 74943, 74944, 74980, 75503, 75504, 75581, 75582, 75583, 75862, 75863, 75864, 75865, 76061, 76209, 76292, 76837, 76976, 76977, 77006, 77050, 77276, 77923, 77924, and 78626 pending before the Nevada State Engineer.

9. OTHER PROVISIONS

A. Any federal authorization of Fernley's use of Federal reclamation facilities in the Newlands Project pursuant to an Authorization Request as provided in this Agreement shall be in addition to any agreement required for the exercise of

RECEIVED
2015 FEB -2 AM 10:33
STATE ENGINEERS OFFICE

Fernley's rights under TROA.

- B. Nothing in this Agreement shall waive, or be construed to waive, any claim of the Parties regarding rights to the use of canal seepage within Fernley's service area. The United States, Reclamation and Fernley expressly reserve all rights not explicitly modified by this Agreement.
- C. Continued diversion of Fernley's acquired water pursuant to an Authorization Request, if approved, shall be contingent upon Fernley's continued adherence to the provisions, procedures, and rules established by this Agreement.

////

////

////

////

////

////

////

////

////

////

////

////

////

////

RECEIVED
2015 FEB -2 AM 10:33
STATE ENGINEERS OFFICE

10. SIGNATURES

The undersigned certify that they are fully authorized by the Party whom they represent to enter into the terms and conditions of this Agreement and legally to bind such Party thereto.

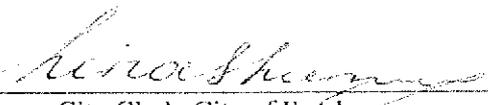
IN WITNESS WHEREOF, the Parties agree to the provisions set forth herein as evidenced by the signatures of their authorized representatives below:

FOR THE CITY OF FERNLEY:



LEROY GOODMAN, Mayor, City of Fernley

Dated: 11/13/09

Attest: 

Lena Shumway, City Clerk, City of Fernley

Dated: 11/13/09

FOR THE UNITED STATES:



STEPHEN M. MACFARLANE, Trial Attorney
United States Department of Justice

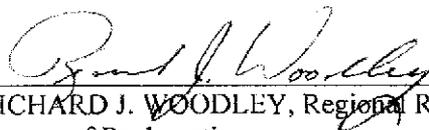
Dated: 11/13/09

FOR THE BUREAU OF RECLAMATION:



KENNETH L. PARR, Area Manager
Bureau of Reclamation

Dated: 11/12/09



RICHARD J. WOODLEY, Regional Resources Manager
Bureau of Reclamation

Dated: 11/6/2009

RECEIVED
2015 FEB -2 AM 10:35
STATE ENGINEERS OFFICE

Appendix A Technical Memorandum for Efficiency Study

This technical memorandum sets forth the assumptions upon which the efficiency study ("study") prepared by Fernley pursuant to Sections II.3.C.3 and II.4 of the "*Agreement Between the City of Fernley and the United States Regarding Settlement of Claims and Protests Over Use of Federal reclamation facilities*" shall be based, and procedures that will be followed in preparing this study.

A. Efficiency Study Assumptions:

1. The study shall use existing OCAP and Reclamation available information as source data for the study. This information includes but is not limited to the Newlands Project Efficiency Study Report, and historic OCAP efficiency evaluations.
2. The study shall assume that Fernley will be diverting water from the Truckee Canal through a pipeline connected directly to the Municipal Water Treatment system and efficiency for those deliveries will be 100%.
3. The study shall use, as its "baseline," the average of the two most recent Reclamation OCAP efficiency calculations in full (100%) normal water supply years.
4. The study shall include efficiency analyses under scenarios consisting of Fernley utilizing 50%, 75%, and 100% of its permitted Newlands Project water rights for municipal and industrial purposes.
5. The study shall assume that Fernley will divert water during irrigation season.
6. The study shall present the efficiency of No-Action, current condition, and Action (diversion of Fernley municipal water rights from Truckee Canal) alternatives.
7. The study shall assume all reductions in future irrigation and flow through laterals will be converted to Fernley municipal use.
8. The study will be restricted to Fernley area TC-1 through TC-13 and direct takeouts.
9. The study will present, in graphical and tabular form, the combined efficiencies of TC-1 through TC-13 (and direct takeouts) for the no-action and action alternatives.

B. Procedures:

RECEIVED
2015 FEB -2 AM 10:33
CITY ENGINEERS OFFICE

1. Reclamation will make available any applicable studies or reports relating to this study.
2. Fernley shall submit the study to Reclamation in support of Fernley's Authorization Request as provided in Section II.3.C.1 of the Agreement.
3. The study shall be re-evaluated and may be amended in the future if Fernley proposes additional diversion locations and the manner of diversion differs from the assumption stated above.

RECEIVED

2016 FEB -2 AM 10:35

STATE ENGINEERS OFFICE

Appendix B

Sample Water Delivery Reporting Form (Paragraph 5.B (5))

The City of Fernley Rate Table Summary

RECEIVED

2015 FEB -2 AM 10:30

STATE ENGINEERS OFFICE

Rate Table	Title	Service	Number of Customers	Number of Units	Base / Minimum	Excess/Amount	Adjustments	Total/Amount	Usage
A	101	WATER - RESIDENTIAL - 3/4"	6,829	6,896,000	85,174.67	151,477.34	25,330.91	209,321.10	79,179,000
	102	WATER - RESIDENTIAL - 1"	40	40,000	800.52	1,243.94	-	2,044.46	617,000
	103	WATER - RESIDENTIAL - 1 1/2"	2	2,000	74.70	229.14	-	303.84	98,000
	104	WATER - RESIDENTIAL - 2"	1	1,000	55.46	190.84	-	246.30	76,000
B	111	WATER - COMMERCIAL - 3/4"	114	114,000	1,583.59	2,256.03	-	3,839.62	1,165,000
	112	WATER - COMMERCIAL - 1"	40	45,000	1,035.05	1,804.20	-	2,839.25	935,000
	113	WATER - COMMERCIAL - 1 1/2"	38	38,000	1,786.73	2,851.80	-	4,638.53	1,470,000
	114	WATER - COMMERCIAL - 2"	103	103,000	7,308.96	25,951.64	-	34,320.60	13,692,600
	115	WATER - COMMERCIAL - 4"	14	14,000	3,017.00	21,010.20	-	24,027.20	10,830,000
	116	WATER - COMMERCIAL - 6"	2	2,000	839.64	3,041.92	-	3,881.56	1,568,000
	117	WATER - COMMERCIAL - 8"	1	1,000	-	-	-	-	-
	118	WATER - COMMERCIAL - 3"	1	1,000	133.68	638.26	-	771.92	329,000
C	119	WATER - WELL 8 HOUR DIAL	25	25,000	376.77	-	-	376.77	5,700
D	121	Master Metered 3/4"	10	44,000	108.40	284.16	-	392.56	148,000
	122	Master Metered 1"	44	186,000	989.24	2,561.28	-	3,549.52	1,334,000
	123	Master Metered 1-1/2"	9	47,000	334.35	723.94	-	1,058.19	377,000
	124	Master Metered 2"	27	291,000	1,488.51	3,557.75	-	5,046.27	1,853,000
	125	Master Metered 4"	2	126,000	319.58	2,131.20	-	2,450.78	1,110,000
E	127	Master Metered 3"	2	42,000	200.48	320.64	-	521.12	167,000
	199	WATER - NON BILL	9	9,000	-	-	-	-	3,380,600
F	301	SEWER - RESIDENTIAL - 3/4"	6,024	6,092,000	119,914.61	-	18.89	119,933.49	370,003
	302	SEWER - RESIDENTIAL - 1"	1	4,000	81.36	-	-	81.36	-
	311	SEWER - COMMERCIAL 3/4"	97	97,000	1,615.70	413.40	-	2,029.10	555,510
	312	SEWER - COMMERCIAL 1"	29	29,000	587.00	227.76	-	814.76	339,000
	313	SEWER - COMMERCIAL 1 1/2"	29	29,000	976.43	323.44	-	1,299.87	401,000
	314	SEWER - COMMERCIAL 2"	66	66,000	4,144.80	5,919.68	-	10,064.48	6,036,100
	315	SEWER - COMMERCIAL 4"	8	8,000	1,298.40	5,212.37	-	6,510.77	5,061,900
	316	SEWER - COMMERCIAL 8"	2	2,000	523.62	-	-	523.62	700
G	321	Master Metered Per Unit	85	708,000	14,400.72	-	-	14,400.72	-
	501	HYDRANT METER CHARGE	23	23,000	1,010.71	4,790.56	2,640.26	3,151.99	1,381,100
H	701	FIRE	19	19,000	750.00	163.00	-	923.00	-
	901	SERVICE CHARGE	98	98,000	-	1,900.00	21.33	1,878.67	1
	1101	WATER SERVICE CALL	1	1,000	-	60.00	-	60.00	-
	1501	RECONNECT FEE	101	101,000	-	9,100.00	249.22	8,850.78	2
	1701	Ret Check FEE	11	11,000	-	330.00	-	330.00	-
	1801	MATERIAL/LABOR - WATER	1	1,000	-	140.00	-	140.00	-
	2501	CANAL PUMP METER CHARGE	4	4,000	-	-	-	-	-
J	3901	Late Fees	1,095	1,095,000	10,840.00	-	164.56	10,675.44	-
Grand Totals:			15,007	16,418,000	262,839.66	249,854.40	31,396.42	481,297.64	132,890,216

A	RESIDENTIAL USERS
B	COMMERCIAL USERS
C	NON-POTABLE WELL #8 - CONSTRUCTION WATER
D	MULTI-FAMILY USERS (APARTMENTS/CONDO/ETC.)
E	EXEMPT RESIDENTS - COLLECTED MONTHLY
F	SEWER - NOT APPLICABLE
G	HYDRANT USERS - CONSTRUCTION WATER
H	COSTS - NOT APPLICABLE
I	CANAL PUMP PERMITS
J	COSTS - NOT APPLICABLE

PEOPLE VIEW
 2015 FEB - 2 AM 10:30
 WATER ENGINEERS OFFICE