



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: September 27, 2016

DATE: August 22, 2016
TO: Board of County Commissioners
FROM: Vahid Behmaram, Water Management Planner Coordinator
Community Services Dept., 954-4647, vbehmaram@washoecounty.us
THROUGH: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-3600, dsolaro@washoecounty.us
SUBJECT: Approve the Termination of Agreement on Management of Water Rights Appurtenant to Street Rights-of-Way between Reno, Sparks and Washoe County. (All Commission Districts.)

SUMMARY

The Agreement on Management of Water Rights Appurtenant to Street Rights-of-Way between Reno, Sparks and Washoe County was created to meet obligations set forth in section 1.E.4 of the Truckee River Operating Agreement (TROA) to provide 6700 acre feet of water rights to be managed to augment the flow of the Truckee River for water quality purposes.

The agreement, approved by the Board of County Commissioners (Board) in February 2007, is no longer necessary and has become moot since the entities met the obligation to provide 6700 acre feet of water rights in August of 2015. The 2007 agreement provides for its termination by a written instrument duly executed by the Parties.

Strategic Objective supported by this item: Stewardship of our community.

PREVIOUS ACTION

August 25, 2015 – The Board approved the Agreement Regarding Satisfaction of the Obligation of the City of Reno, City of Sparks and Washoe County pursuant to Section 1.E.4 of the TROA to provide 6,700 acre-feet of water rights.

February 20, 2007 – The Board approved the Agreement on Management of Water Rights Appurtenant to Street Rights-of-Way between the City of Reno, City of Sparks and Washoe County, which committed the Entities respective street water rights towards the TROA obligation and set forth a process of funding and acquisition of any shortfalls in meeting the obligation.

September 9, 2008 – The Board ratified a Resolution authorizing the Chair to execute the TROA as one of the non-mandatory signatories to TROA.

AGENDA ITEM # 6.A.

BACKGROUND

The Truckee River Operating Agreement is an agreement among five mandatory signatory parties: California, Nevada, the Pyramid Lake Paiute Tribe, the United States, and the Truckee Meadows Water Authority (TMWA) and was signed pursuant to Public Law 101-618. When implemented, TROA will allow for a congressionally authorized interstate allocation of water between Nevada and California and change the operations of the Truckee River system to accommodate multiple beneficial uses for drought supply, improve spawning flows for endangered and threatened fish species, and improve water quality, use and storage. In addition, operations will enhance riparian habitat, re-establish river canopy, enhance reservoir releases, improve recreational pools in the reservoirs, and improve emergency draw-down procedures for Lake Tahoe.

Prior to 2007, the City of Reno, City of Sparks and Washoe County were negotiating with the Pyramid Lake Paiute Tribe the details to satisfy the obligation pursuant to Section 1.E.4 of TROA to provide 6700 acre feet of water rights. In 2007, the Entities agreed to designate their respective water rights associated with street rights-of-way toward the satisfaction of the 6700 acre feet obligation. The Entities entered into a management agreement for the purpose of acquiring additional water rights to meet any shortfalls, a funding source for the acquisition of the water rights, and a reimbursement mechanism to the entities for the purchase of additional water rights. Due to grant funding provided to the Pyramid Lake Paiute Tribe, the assistance of TMWA and the verified inventory of Entities street water rights, the Entities met their obligation without using the funding mechanism set forth in the February 2007 Agreement subject to termination today. The 2007 agreement provides for its termination by a written instrument executed by the Parties.

FISCAL IMPACT

There is no fiscal impact due to this termination.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the Termination of Agreement on Management of Water Rights Appurtenant to Street Rights-of-Way between Reno, Sparks and Washoe County.

POSSIBLE MOTION

Should the Board wish to implement the staff recommendation, a possible motion would be "Move to approve the Termination of Agreement on Management of Water Rights Appurtenant to Street Rights-of-Way between Reno, Sparks and Washoe County."

**Termination of Agreement on Management of Water Rights Appurtenant to
Street Rights- of-Way between Reno, Sparks and Washoe County**

This Termination entered into this ____ day of _____, 2016, by and between Washoe County, a political subdivision of the State of Nevada (“Washoe”), the City of Reno, a municipal corporation (“Reno”), and the City of Sparks, a municipal corporation (“Sparks”), collectively referred to herein as the “Parties.”

WHEREAS, on February 20th, 2007, the Parties entered into an Agreement on Management of Water Rights Appurtenant to Street Rights-of-Way (“the Agreement”); and

WHEREAS, the Agreement provides termination is to occur by a written instrument duly executed by the Parties; and

WHEREAS, in August of 2015, the Parties satisfied the obligation to provide 6700 acre feet of water rights pursuant to Section 1.E.4 of the Truckee River Operating Agreement; and

WHEREAS, the satisfaction of the obligation renders the Agreement moot.

NOW, THEREFORE, the Parties agree as follows:

1. The Agreement is hereby terminated.
2. The termination is binding upon and inures to the benefit of the Parties and their respective heirs, estates, personal representatives, successors and assigns.

COUNTY OF WASHOE

ATTEST:

Kitty K. Jung
Chair, Board of County Commissioners

Nancy Parent, County Clerk

Approved as to Form:

By: _____
District Attorney

**Termination of Agreement on Management of Water Rights Appurtenant to
Street Rights- of-Way between Reno, Sparks and Washoe County
(Counterpart Signature Page)**

CITY OF RENO

ATTEST:

Hillary L. Schieve, Mayor

Ashley Turney, Reno City Clerk

Approved as to Form:

Susan Ball Rothe, Deputy City Attorney

CITY OF SPARKS

ATTEST:

Geno Martini, Mayor
Approved as to Form:

Teresa Gardner, Sparks City Clerk

Chet Adams, Sparks City Attorney

**Agreement on Management of Water Rights Appurtenant to Street Rights-of-Way
between Reno, Sparks and Washoe County**

This Agreement is entered into this 20 day of February, 2007, by and between Washoe County, a political subdivision of the State of Nevada ("Washoe"), the City of Reno, a municipal corporation ("Reno"), and the City of Sparks, a municipal corporation ("Sparks"), collectively referred to herein as the "Parties."

WHEREAS, the Parties are public agencies as defined in NRS 277.100(1)(a); and

WHEREAS, NRS 277.180 provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any public agency entering into the contract is authorized to perform; and

WHEREAS, the Parties entered into an Agreement regarding Section 1.E. of the Draft Truckee River Operating Agreement (the "1.E.4 Agreement") wherein it was requested of the mandatory signatory Parties to the Truckee River Operating Agreement ("TROA") that certain portions of Section 1.E.4 (provision of 6700 acre feet of water rights) be removed from TROA so Reno, Sparks and Washoe could resolve outside of TROA the requirement to provide 6700 acre feet of water rights (the "6700 AF"); and

WHEREAS, TROA has been amended to generally conform to the amendments requested by way of the 1.E.4 Agreement; and

WHEREAS, Reno, Sparks and Washoe have provided certain assurances to the Pyramid Lake Paiute Tribe regarding the 6700 AF; and

WHEREAS, Reno, Sparks and Washoe desire to confirm the allocation, disposition and management of the 6700 AF; and

WHEREAS, a rational nexus exists for one-half the value of the 6700 AF to be contributed as an asset of the Parties with the remaining one half to be funded by future fees on new development; and

WHEREAS, a rational nexus exists for the recovery of one-half the value of 6700 AF through hookup fees charged to customers of the Municipal and Industrial water systems using Orr Ditch Decree Water Rights.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

WATER RIGHTS DESIGNATION

- 1) The Parties hereby agree to designate and provide all water rights that are appurtenant to their respective street rights-of-way (the "Appurtenant Water Rights") on the date of this Agreement, per Section 1.E.4 of TROA, in accordance with the terms set forth in the Agreement Designating Water Rights to satisfy or partially satisfy the 6700 AF.
- 2) The Appurtenant Water Rights shall be pooled together by the Parties for the purposes of partially satisfying the 6700 AF.
- 3) Title to the Appurtenant Water Rights shall remain vested in the Party that designated and provided each respective water right.

MANAGEMENT OF WATER

- 4) An Interlocal Agreement Regarding the Purchase of Water Rights Pursuant to the Truckee River Water Quality Settlement Agreement was entered into on October 10, 1996, which created the Local Government Oversight Committee ("LGOC") to perform certain duties for the purpose of carrying out the obligations of Reno, Sparks and Washoe under the Truckee River Water Quality Settlement Agreement.
- 5) Designees from Reno, Sparks and Washoe form the membership of the LGOC.
- 6) The Parties agree to enter into an interlocal agreement wherein the LGOC, the Truckee Meadows Water Authority, or other entity mutually agreed upon by the Parties will manage and administer the 6700 AF, including exchanges, for purposes of making additional water available for Municipal and Industrial needs in the Truckee Meadows area. Said interlocal agreement will also address the financial administration of the funds collected and dispersed pursuant to the terms of this agreement.
- 7) The 6700 AF will be used as water quality water for the purposes per Section 1.E.4 of TROA.

FUNDING

- 8) The Parties agree to negotiate an interlocal agreement with the Truckee Meadows Water Authority ("TMWA") and Washoe, as municipal and industrial water purveyors, for the purpose of TMWA and Washoe charging and collecting a fee of \$4,355 per acre foot of new demand relying upon Orr Ditch Decree water rights to establish a reimbursement

fund (the "Fund") for one half the value of the 6700 AF. The basis of the fee is to recover one half the value of the 6,700 AF of water rights when applied to 20,000 AF of new demand relying upon the benefits from the Truckee River Operating Agreement. The fee calculation utilizes the current valuation \$26,000 per acre foot.

- 9) If the Parties, for any reason, are unable to enter into the Interlocal Agreement referred to in Section 8 above, the Parties agree to provide alternative funding for the same purpose. Such alternative funding shall not be charged to or assessed against any party's general fund.
- 10) The fees to be charged and collected by TMWA and Washoe, as water purveyors, will be based on each acre-foot of demand to be served by the Orr Ditch Decree Water Rights dedicated to the water purveyors for future municipal and industrial use.
- 11) The Parties agree to annually review the revenue sufficiency for both Costs and reimbursement funding under Sections 14 through 18. If the funding provided by the above water hookup fees is insufficient to pay the Costs identified in Section 12 of this agreement, the Parties agree to have the fees adjusted or extended to provide the necessary funding. The Parties may modify and amend this Agreement in accordance with Section 22 herein if necessary to adjust revenues. Such alternative funding shall not be charged to or assessed against any party's general fund.

USE OF FUNDS

- 12) The Fund will be used to pay program costs, professional services, legal fees incurred in researching and securing the title to the Appurtenant Water Rights, water right transfers, Section 6 costs and the cost to purchase any additional water rights that may be necessary or required to satisfy the 6700 AF, including payment of professional services, financing costs, and title costs associated with such purchases (collectively referred to as the "Costs"). To the extent that any funds are available after paying the above Costs, the Parties will receive reimbursement in accordance with Sections 14 through 18 of this agreement.
- 13) Title to purchased water rights will be held by Reno, Sparks and Washoe as tenants-in-common, each as to a 1/3 undivided interest.

REIMBURSEMENT

- 14) Reimbursement, if any, shall be paid to the Parties based upon the quantity of water rights, with documented title (which means reports of conveyance or other mutually acceptable evidence of title), each Party contributes from their respective street rights-of-ways (“Contributed Water Rights”). There shall be two components of reimbursement and will be paid in the following order:
- a. Reimbursement for the portion of the Contributed Water Rights in excess of the respective targets of the Parties shall be paid pursuant to Sections 15 through 17 of this agreement.
 - b. Reimbursement for the portions of the Contributed Water Rights at or below the respective targets (as identified in Sections 15 and 16) of the Parties shall be paid as provided in Section 18 of this agreement.
- 15) The Parties agree the following Targets, reflecting the ratios (expressed in percent) of the target water rights contributions for each party to the total of the actual Contributed Water Rights of the three Parties, shall be used in implementing Sections 14 through 18 of this agreement:
- a. Reno 60 percent.
 - b. Sparks 20 percent.
 - c. Washoe 20 percent.
- 16) Target Contributions for each party are to be calculated by multiplying the total of the actual Contributed Water Rights of all Parties by each party’s respective Target identified in Section 15 of this agreement. Each party whose quantity of Contributed Water Rights exceeds their respective Target Contributions shall be entitled to a reimbursement for that difference (“Excess Contribution”) under Section 17 of this agreement.
- 17) Reimbursements shall be paid to the Parties that have made Excess Contributions at the rate of \$26,000 per acre-foot of such Excess Contributions.
- 18) The money remaining in the Fund after paying the reimbursements under Section 17 shall be reimbursed to the Parties in proportion to their respective contributions at or below the target contributions. For the purpose of making this proportionate determination, the water rights contributions of the Parties receiving reimbursements under Section 17 shall

be considered to be equal to the respective Target Contributions. See Exhibit A for four examples of implementation of Sections 14 through 18.

MISCELLANEOUS PROVISIONS

- 19) This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, estates, personal representatives, successors and assigns.
- 20) This Agreement is made in, and shall be governed, enforced and construed under the laws of the State of Nevada.
- 21) This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.
- 22) This Agreement may not be modified, terminated, or amended in any respect, except pursuant to an instrument in writing duly executed by the Parties.
- 23) In the event either party brings any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, the losing party or Parties in such action or proceeding shall reimburse the prevailing party or Parties therein for all reasonable costs of litigation, including reasonable attorneys' fees.
- 24) No delay or omission by either party in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Agreement specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the person granting such waiver. A waiver of any person of any of the covenants, conditions, or agreements hercof to be performed by any party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreement, restrictions or conditions hercof.

25) All notices, demands or other communications required or permitted to be given in connection with this Agreement, shall be in writing, and shall be deemed delivered when personally delivered to a party (by personal delivery to an officer or authorized representative or a corporate party) or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid, certified or registered mail, addressed to the Parties as follows:

To Washoe: Director
Department of Water Resources
4930 Energy Way
Reno, Nevada 89502

To Reno: Greg Dennis, P.E., Deputy Director of Public Works
City of Reno
1 East First Street, 8th Floor
Reno, Nevada 89501

To Sparks: Wayne Seidel, P.E., Public Works Director
City of Sparks
910 Roberta Lane
Sparks, Nevada 89431

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date and year first above written.

COUNTY OF WASHOE

By: Robert M. Larkin

Its: Chairman

Attest: Amy Harvey
Washoe County Clerk

Approved as to Form:

By: Melanie Foster
District Attorney

CITY OF RENO

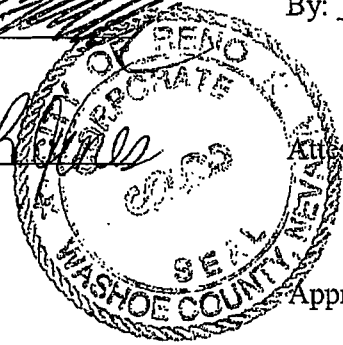
CITY OF SPARKS

By: [Signature]
Mayor of Reno

By: [Signature]
Mayor of Sparks

Attest: [Signature]
Reno City Clerk

Attest: [Signature]
Sparks City Clerk



Approved as to Form:

Approved as to Form:

By: [Signature]
Reno City Attorney

By: [Signature]
Sparks City Attorney

Example 1			
Fund balance (FB) available for reimbursements after buying water rights and paying costs (assumed for example calculation)	\$	75,000,000	
Section 14			
Contributed Water Rights with Documented Title (CWR)			
Reno	3000	assumed water rights	
Sparks	2100	contributions for this example	
Washoe	1500		
Total of Contributed Water Rights (TCW)	6600		
Section 15			
Target % per Section 15			
Reno	60%		
Sparks	20%		
Washoe	20%		
Section 16			
Target Contributions = Target % X TCW			
Reno	3960		
Sparks	1320		
Washoe	1320		
Total Target	6600		
Excess Contributions (EC) in acre-feet			
Reno	0		
Sparks	780		
Washoe	180		
TOTAL Excess Contribution (TEC)	960		
Section 17			
Reimbursement for Excess Contributions at \$ 26,000 per acre foot			
Reno	\$	-	
Sparks	\$	20,280,000	
Washoe	\$	4,880,000	
total under section 17 (TECR)	\$	24,980,000	
Remaining Fund Balance (RFB)	\$	50,040,000	
RFB = FB - TECR			
Section 18			
Reimbursements for Contributions At or Below Targets			
Contributions	Acre feet	percent (PC)	Reimbursement (RFB X PC)
Reno	3000	53.19%	\$ 26,817,021
Sparks	1320	23.40%	\$ 11,711,489
Washoe	1320	23.40%	\$ 11,711,489
Total at or Below Targets (TBT)	5640		\$ 50,040,000
note TBT + TEC = TCW			
Summary of Reimbursements			
Total Reimbursements to Parties	Above targets	At or Below Targets	Total
Reno	\$ -	\$ 26,817,021	\$ 26,817,021
Sparks	\$ 20,280,000	\$ 11,711,489	\$ 31,991,489
Washoe	\$ 4,680,000	\$ 11,711,489	\$ 16,391,489
Totals	\$ 24,960,000	\$ 50,040,000	\$ 75,000,000

Example 2			
Fund balance (FB) available for reimbursements after buying water rights and paying costs (assumed for example calculation)	\$	45,000,000	
Section 14			
Contributed Water Rights with Documented Title (CWR)			
Reno	2500	assumed water rights	
Sparks	950	contributions for this example	
Washoe	750		
Total of Contributed Water Rights (TCW)	4200		
Section 15			
Target % per Section 15			
Reno	60%		
Sparks	20%		
Washoe	20%		
Section 16			
Target Contributions = Target % X TCW			
Reno	2520		
Sparks	840		
Washoe	840		
Total Target	4200		
Excess Contributions (EC) in acre-feet			
Reno	0		
Sparks	110		
Washoe	0		
TOTAL Excess Contribution (TEC)	110		
Section 17			
Reimbursement for Excess Contributions at \$ 26,000 per acre foot			
Reno	\$	-	
Sparks	\$	2,860,000	
Washoe	\$	-	
total under section 17 (TECR)	\$	2,860,000	
Remaining Fund Balance (RFB)	\$	42,140,000	
RFB = FB - TECR			
Section 18			
Reimbursements for Contributions At or Below Targets			
Contributions	Acre feet	percent (PC)	Reimbursement (RFB X PC)
Reno	2500	61.12%	\$ 25,757,946
Sparks	840	20.54%	\$ 8,654,670
Washoe	750	18.34%	\$ 7,727,384
Total at or Below Targets (TBT)	4090		\$ 42,140,000
note TBT + TEC = TCW			
Summary of Reimbursements			
Total Reimbursements to Parties	Above targets	At or Below Targets	Total
Reno	\$ -	\$ 25,757,946	\$ 25,757,946
Sparks	\$ 2,860,000	\$ 8,654,670	\$ 11,514,670
Washoe	\$ -	\$ 7,727,384	\$ 7,727,384
Totals	\$ 2,860,000	\$ 42,140,000	\$ 45,000,000

Example 3			
Fund balance (FB) available for reimbursements after buying water rights and paying costs (assumed for example calculation)	\$	30,000,000	
Section 14			
Contributed Water Rights with Documented Title (CWR)			
Reno		2500	assumed water rights
Sparks		800	contributions for this example
Washoe		700	
Total of Contributed Water Rights (TCW)		4000	
Section 15			
Target % per Section 15			
Reno		60%	
Sparks		20%	
Washoe		20%	
Section 16			
Target Contributions = Target % X TCW			
Reno		2400	
Sparks		800	
Washoe		800	
Total Target		4000	
Excess Contributions (EC) in acre-feet			
Reno		100	
Sparks		0	
Washoe		0	
TOTAL Excess Contribution (TEC)		100	
Section 17			
Reimbursement for Excess Contributions at \$ 26,000 per acre foot			
Reno	\$	2,600,000	
Sparks	\$	-	
Washoe	\$	-	
total under section 17 (TECR)	\$	2,600,000	
Remaining Fund Balance (RFB)	\$	27,400,000	
RFB = FB - TECR			
Section 18			
Reimbursements for Contributions At or Below Targets			
Contributions	Acre feet	percent (PC)	Reimbursement (RFB X PC)
Reno	2400	61.54%	\$ 18,861,538
Sparks	800	20.51%	\$ 5,620,513
Washoe	700	17.95%	\$ 4,917,949
Total at or Below Targets (TBT)	3900		\$ 27,400,000
note TBT + TEC = TCW			
Summary of Reimbursements			
Total Reimbursements to Parties	Above targets	At or Below Targets	Total
Reno	\$ 2,000,000	\$ 18,861,538	\$ 19,461,538
Sparks	\$ -	\$ 5,620,513	\$ 5,620,513
Washoe	\$ -	\$ 4,917,949	\$ 4,917,949
Totals	\$ 2,600,000	\$ 27,400,000	\$ 30,000,000

Example 4			
Fund balance (FB) available for reimbursements after buying water rights and paying costs (assumed for example calculation)	\$	20,000,000	
Section 14			
Contributed Water Rights with Documented Title (CWR)			
Reno		1500	assumed water rights
Sparks		300	contributions for this example
Washoe		200	
Total of Contributed Water Rights (TCW)		2000	
Section 15			
Target % per Section 15			
Reno		60%	
Sparks		20%	
Washoe		20%	
Section 16			
Target Contributions = Target % X TCW			
Reno		1200	
Sparks		400	
Washoe		400	
Total Target		2000	
Excess Contributions (EC) in acre-feet			
Reno		300	
Sparks		0	
Washoe		0	
TOTAL Excess Contribution (TEC)		300	
Section 17			
Reimbursement for Excess Contributions at \$ 26,000 per acre foot			
Reno	\$	7,800,000	
Sparks	\$	-	
Washoe	\$	-	
total under section 17 (TECR)	\$	7,800,000	
Remaining Fund Balance (RFB)	\$	12,200,000	
RFB = FB - TECR			
Section 18			
Reimbursements for Contributions At or Below Targets			
Contributions	Acre feet	percent (PC)	Reimbursement (RFB X PC)
Reno	1200	70.58%	\$ 8,611,765
Sparks	300	17.65%	\$ 2,152,941
Washoe	200	11.76%	\$ 1,435,294
Total at or Below Targets (TBT)	1700		\$ 12,200,000
note TBT + TEC = TCW			
Summary of Reimbursements			
Total Reimbursements to Parties	Above targets	At or Below Targets	Total
Reno	\$ 7,800,000	\$ 8,611,765	\$ 18,411,765
Sparks	\$ -	\$ 2,152,941	\$ 2,152,941
Washoe	\$ -	\$ 1,435,294	\$ 1,435,294
Totals	\$ 7,800,000	\$ 12,200,000	\$ 20,000,000