

“The Truckee River flows out of Lake Tahoe.”

TRUCKEE RIVER OPERATING AGREEMENT:

Photo by Scott G. Wasserman, Esq.

After more than 27 years of negotiation, environmental studies and litigation, on December 1, 2015, the Federal Water Master began implementing the Truckee River Operating Agreement (TROA), a comprehensive river and reservoir management regime that has already proven to be a game-changer for water supply in the Truckee Meadows. In simple terms, TROA provides for flexible and coordinated river and reservoir operations, allowing water rights owners to use water when it's needed and store water when it's not. As simple as that sounds, achieving this milestone was anything but.

A GAME CHANGER FOR WATER SUPPLY IN THE TRUCKEE MEADOWS

BY MICHAEL PAGNI, ESQ.

Overview of the Truckee River System

The Truckee River flows out of Lake Tahoe on California's north shore. The top 6.1 feet of the lake act as a reservoir, enabling that water to be stored and released into the Truckee River. As the Truckee River flows northeast, it is joined by other streams, originating from five regulated storage reservoirs in California: Donner Lake, Prosser Creek Reservoir, Independence Lake, Stampede Reservoir and Boca

Reservoir. Most of the water stored in the reservoirs is used in Nevada.

As the river descends the mountains, it powers several run-of-the-river hydroelectric power plants operated by the Truckee Meadows Water Authority (TMWA), the municipal water purveyor in the Reno-Sparks area, and continues east into Reno-Sparks, where Truckee River water rights comprise 80 to 90 percent of the area's municipal water supply.¹ About 18 miles downstream, Derby Dam diverts Truckee River water into the Truckee Canal, which provides supplemental water for the federal Newlands Reclamation Project, an approximately 60,000-acre agricultural project. Below Derby Dam, the Truckee River enters the Pyramid Lake Indian Reservation, terminating in Pyramid Lake.

Floriston Rates and Orr Ditch Decree

Two court decrees entered in the early 20th century are critical to understanding both the origins and benefits of TROA.

In 1909, the U.S. filed an action to secure control of the Lake Tahoe Dam for the Newlands Project. The resulting court decree required the maintenance of specified flows in the river at certain times of year, referred to as "Floriston Rates."² Maintenance of these Floriston Rates remains a fundamental element of Truckee River operations to this day.

In 1913, the U.S. filed an action to quiet title to all water rights claimed on the Truckee River.³ The resulting Orr Ditch Decree confirmed the relative rights to the use of Truckee River water in Nevada and continued the rigid Floriston Rate regime, with some modifications. As a result, if natural flows in the river are not high enough to meet Floriston Rates at any time during the year, water must be released from upstream reservoirs to supplement natural flows in the river. The rigidity of Floriston Rates would become problematic by the 1980s, as increases in municipal water demand changed the timing of when water was needed.

Changing Demands on Truckee River Water

After 1944, increased urbanization and adoption of environmental laws and other regulations significantly altered and expanded the demands and opportunities for the use of Truckee River water. Competing and often-conflicting interests between municipal, irrigation, hydroelectric, recreation, in-stream and environmental uses, as well as interstate disputes over the allocation of waters between California and Nevada, led to constant litigation. Increases

in municipal use triggered new demands for fluctuating year-round diversions, rather than constant hydropower or seasonal irrigation diversions. Because these new uses were not well served by the rigid Floriston Rate regime, water rights owners were increasingly forced to watch their water flow downriver when they didn't need it, spurring demand for alternative approaches.

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Settlement Act and TROA

Senator Harry Reid spearheaded efforts to resolve these disputes and improve the operation of upstream reservoirs, which eventually resulted in the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Pub. L. No. 101-618 (Nov. 16, 1990), Title II, 104 Stat. 3289). The settlement

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act resolved long-standing disputes over the rights and uses of water in the Truckee and Carson River basins, and directed the Secretary of the Interior to negotiate a new operating agreement for the Truckee River reservoirs. After 17 years of negotiations, the secretary and the two states—in conjunction with the Pyramid Lake Paiute Tribe and TMWA—finalized that operating agreement, now known as TROA.⁴

TROA is the linchpin by which many of the settlement act’s purposes are achieved. Among other benefits, the act, through TROA, provides for the equitable apportionment of the waters of the Truckee and Carson Rivers and Lake Tahoe between California and Nevada; modifies the purposes and operation of federal reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial and irrigation users of water; provides for the settlement of litigation and claims; fulfills federal trust obligations to Indian tribes; and fulfills the goals of the Endangered Species Act, (16 U.S.C. §§ 1531, et seq.), through the enhancement and recovery of the Pyramid Lake fishery.

Benefits and Effects of TROA on Municipal Supplies

The fundamental benefit of TROA is that it allows water rights owners to use their water rights when they need them, by changing the timing and manner in which water can be stored in, exchanged between and released from upstream reservoirs. For TMWA, TROA makes additional locations and waters available for storage. TMWA can now store water in Boca, Stampede and Prosser reservoirs through credit exchanges—reservoirs in which it previously had no direct storage rights—and TMWA can now store certain waters that previously had to be left in the river in order to satisfy Floriston Rates. Because TROA must be implemented in a manner that fully protects first-in-time, first-in-right priorities established in the Orr Ditch Decree, it simply makes what is already in place operate more efficiently. Floriston Rates are retained as the baseline for reservoir operations; however, TROA allows portions of Floriston Rate water to be stored for later use, rather than forcing its release. TROA’s major innovation is the establishment and priorities of credit water and carryover of stored water for future years. Under this concept, a portion of a water right,

stored by its owner for one purpose (e.g., drought protection), can be converted to another purpose (e.g., water for fish). As long as space in the reservoirs is available, credit water may be accumulated in all reservoirs using portions of water rights that otherwise would be used to satisfy Floriston Rates under modified reservoir licenses that essentially allow them to operate as one large reservoir, rather than six independent reservoirs.

TROA is projected to provide extensive benefits compared to the existing reservoir management regime. It will triple the amount of water storage available for TMWA municipal supplies, allowing TMWA to store an additional 11,600 acre-

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foot per year and carry that storage over year to year if it is not used. Hydrologic models confirm that, under TROA, TMWA’s storage will actually increase from year to year during a drought. For example, if

hydrologic conditions from the single worst drought year on record were repeated, back to back, for 20 consecutive years, TMWA’s drought supplies would increase year to year to more than 40,000 acre-feet. One of the primary reasons for this is that TMWA holds some of the most senior water rights (in priority) on the river; so, even in a severe drought, when there is not enough to satisfy all water rights owners on the river, there is still enough in low-demand winter periods for TMWA to store portions of its rights. In the past, TMWA was forced to watch those rights flow downstream in winter months (when it didn’t need them), in order to satisfy Floriston Rates.

The benefits of TROA are not just hypothetical. In December 2015 and January 2016, Floriston Rate targets were 300 cfs, but natural flows in the river were insufficient to meet those minimum flows. Rather than release water from storage to make up the difference, TROA allowed TMWA to leave some of that water in storage. As a result, in just the first two months of TROA’s implementation, TMWA was able to credit store over 5,000 acre-feet of additional water for drought supplies. That’s enough water to serve 12,500 homes for a year.

TROA redefines what constitutes a drought in the Truckee Meadows, evaluating drought in terms of Lake Tahoe elevation and available reservoir water supplies, rather than climatologic conditions.⁵ As a result, the Truckee Meadows is now an oasis in the desert, as TROA enables the reliable availability of full

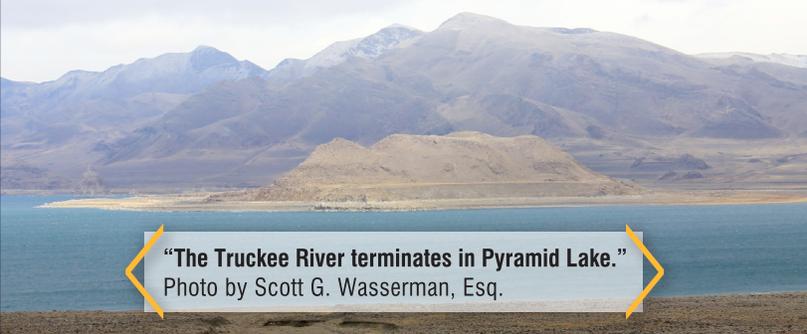
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Boca Reservoir
Photo by Scott G. Wasserman, Esq.

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water supplies in even the most extreme climatologic drought conditions.

By replacing an outdated and inflexible river-management system, TROA provides more efficient use of existing, available reservoir storage and releases to meet modern-day demands, including the municipal needs of Reno and Sparks, as well as recreation, instream and wildlife needs for the entire river ecosystem. The product of decades of negotiations and forward-thinking deliberations, TROA builds reliability and flexibility into the Truckee River management system and provides essential tools with which the region can cope with droughts and changing weather patterns in the future. **NL**



“The Truckee River terminates in Pyramid Lake.”
Photo by Scott G. Wasserman, Esq.

1. See TMWA Water Resource Plan, 2016-2035, p. 57, available at http://www.tmwa.com/docs/your_water/2035WRP/DRAFT-WRP-2016-2035.pdf.
2. *United States v. Truckee River General Electric Co.*, Case No. 2:68-cv-643 (E.D. Cal. 1913).
3. *United States v. Orr Water Ditch Co.*, In Equity, Docket No. A3 (D. Nev. Sept. 4, 1944).
4. TROA was published by the Bureau of Reclamation as a federal rule in 2008. See 43 C.F.R. Part 419. A copy of TROA is available at <http://www.usbr.gov/mp/troa/>.
5. See Truckee River Operating Agreement, Article 1, Secs. 20 and 26.



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