

BUREAU OF INDIAN AFFAIRS
Western Regional Office

- AGENCY: Bureau of Indian Affairs, Western Regional Office
- ACTION: Record of Decision for the Truckee River Water Quality Settlement Agreement – Federal Water Rights Acquisition Program in Washoe, Storey, Lyon, and Churchill Counties, Nevada.
- SUMMARY: The Truckee River Water Quality Settlement Agreement – Federal Water Rights Acquisition Program was originally proposed by the Bureau of Indian Affairs (BIA) in a Draft Environmental Impact Statement (EIS) issued for public review on October 5, 2001. The Final EIS, issued October 11, 2002, analyzed the potential effects of implementing various strategies for acquiring \$12 million worth of Truckee River water rights. With the issuance of this Record of Decision (ROD), BIA announces that Alternative 2, an option allowing acquisition of water rights from willing sellers in the Truckee Meadows, Truckee River corridor, and the Truckee Division of the Newlands Project, is the action to be implemented. The BIA decision is based on its review of the Draft EIS, the Final EIS, and comments received from the public, federal agencies, state agencies, local governmental entities, and potentially affected Tribes.

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Introduction

On October 10, 1996, the U.S. Department of Justice, Environmental Protection Agency (EPA), and Department of the Interior (DOI) joined Nevada Division of Environmental Protection (NDEP), Washoe County, City of Reno, City of Sparks, and the Pyramid Lake Paiute Tribe (Tribe) in signing the Truckee River Water Quality Settlement Agreement (WQSA). This agreement resulted in dismissal of litigation brought by the Tribe against Reno, Sparks, the State of Nevada, and the United States over approval and operation of the Reno-Sparks wastewater treatment facility, now called Truckee Meadows Wastewater Reclamation Facility. WQSA does not establish water quality goals or identify water quality standards to be met; rather, it establishes a joint program to improve water quality by increasing flows in the Truckee River through the purchase and dedication of Truckee River water rights for instream flow. According to terms of the agreement, the United States is obligated to acquire \$12 million worth of Truckee River water rights and negotiate storage agreements for WQSA water in federally owned and operated reservoirs in the Truckee River Basin. The agreement also provides for the use of treatment plant effluent in place of river water for certain purposes. This ROD documents the decision and rationale for selecting an acquisition strategy to comply with the terms of WQSA.

Bureau of Indian Affairs (BIA), Bureau of Reclamation (BOR), and Fish and Wildlife Service (FWS), all bureaus within DOI, will be responsible for implementing the federal commitments identified in WQSA. BIA has received appropriated funds for the federal acquisition program, and, accordingly, was the lead agency in preparing the EIS.

Public scoping meetings to gather information to be used to prepare the EIS were held in September, 1995 and March 1997. A Notice of Intent to prepare an EIS was published in the Federal Register (Volume 62, Number 50, pages 12245-12246) on March 14, 1997. A Draft EIS was issued for public review on October 5, 2001. In addition to comments received at public hearings, written comments on the Draft EIS were received from 18 parties; responses to those comments were included in a chapter of the Final EIS and relevant information in the Draft EIS was revised as appropriate to address those comments. The Final EIS was issued on October 11, 2002. Comments on the Final EIS were received timely from the United States Environmental Protection Agency and Nevada State Clearinghouse (representing Nevada Office of Historic Preservation and Division of Water Resources). Copies of those comments are included in an appendix to this document and responses to those comments are included herein; no text in the Final EIS has been revised in response to those comments.

Description of Alternatives

Alternative 1 – No Action Alternative

The No Action Alternative analyzed in the EIS represents a continuation of existing water management operation for the Truckee River and water use trends for the next 10 years. It differs from the action alternatives by assuming no new efforts would be initiated to increase Truckee River flow during months that are characterized by low flow (primarily June through September). The No Action Alternative represents annual water management in the Truckee River basin expected to occur if WQSA were not implemented. No Action assumes urbanization would continue with a corresponding increase in demand for M&I water in the study area.

Alternative 2 – Acquire Truckee River Water Rights (Proposed Action and Preferred Alternative)

Alternative 2, the Proposed Action and Preferred Alternative, evaluated an acquisition strategy that would enable the acquisition of water rights from willing sellers with properties located in the Reno-Sparks

metropolitan area (known locally as Truckee Meadows), Truckee River corridor from Vista to Wadsworth, and the Truckee Division of the Newlands Project. Alternative 2 assumed that a majority of the federally acquired water rights would come from the Truckee Division due to the substantially lower cost per acre-foot in the Division compared to other locations in the study area. Some water rights, however, are expected to be acquired from both the Truckee Meadows and Truckee River corridor. Although the actual location of acquisitions would most likely be guided by cost and opportunity, Alternative 2 estimated approximately 8,500 acre-feet of water rights would be acquired with federal funds and analyzed the following acquisition distribution: 6,300 acre-feet from the Truckee Division; approximately 750 acre-feet from the Vista to Wadsworth segment of the Truckee River corridor; and approximately 1,450 acre-feet from the Truckee Meadows. While this acquisition distribution is realistic and appropriate for the analysis, it is one of many variations that could occur, and was not intended to predict or direct the number of water rights that would be acquired from each geographic section of the study area.

Water rights acquired pursuant to WQSA would be transferred in accordance with applicable State law and procedures from the then-current purpose (most likely irrigated agriculture) and place of use to that of water quality and instream flow for use in the lower Truckee River and Pyramid Lake. Because there is very little surface water return flow to the Truckee River from water diverted to serve Truckee Division water rights (i.e., all water is considered to be consumed), water rights acquired from the Truckee Division would be transferred to storage or to the lower Truckee River and Pyramid Lake at the full duty of 4.5 acre-feet/acre/year. Water rights acquired from properties along the Truckee River corridor and in Truckee Meadows are not completely consumed and thus would be transferred at the consumptive use rate. As noted by the Nevada Division of Water Resources in comments on the FEIS, the amount allowed to be transferred and the consumptive use factor are decisions for the Nevada State Engineer.

Water associated with the exercise of water rights acquired by DOI pursuant to WQSA would be stored, when possible, in Truckee River reservoirs owned and managed by BOR, primarily Stampede and Prosser Creek Reservoirs. DOI has agreed that WQSA water associated with the exercise of water rights acquired jointly by Reno, Sparks, and Washoe County would also be stored in these federal reservoirs. Storage of water was included as a component of Alternative 2.

The decision to divert WQSA water to storage in the federal reservoirs would depend in large part on hydrologic conditions. Diversion to storage would be accomplished in two ways:

1. Exchanging a quantity of Stampede or Prosser Creek Reservoir project water which would be scheduled for release for the benefit of Pyramid Lake fishes for an equal quantity of water in the lower river associated with the exercise of WQSA water rights – the project water in storage is reclassified as Water Quality Credit Water and WQSA water in the river then becomes project water and flows to Pyramid Lake.
2. Storing (as Water Quality Credit Water) a portion of the water in excess of Floriston rates and not needed to serve other Orr Ditch Decree water rights which would otherwise pass through either of the federal reservoirs and flow to Pyramid Lake.

When WQSA water could not be diverted to storage as Water Quality Credit Water, it would remain in the river and flow undiverted to Pyramid Lake.

Water associated with water rights acquired through the WQSA program would be managed by the Joint Program Parties, defined as the parties acquiring water rights under WQSA and the Pyramid Lake Paiute Tribe. DOI, the Tribe, and the Truckee Meadows communities would provide a release schedule, in

accordance with the cooperative management measures, to the Federal Water Master (or the Truckee River Administrator if TROA is implemented) according to the following priority order, to:

1. Meet water quality standards in the river from Vista to Pyramid Lake;
2. Improve water quality in the river from Vista to Pyramid Lake when sufficient water is not available to meet water quality standards;
3. Maintain aquatic and riparian habitat in the river downstream from Derby Dam; and,
4. Promote aesthetic and recreational purposes through the Reno/Sparks area, continuing to Pyramid Lake.

Because the possible real-time permutations for water management are virtually limitless (depending on a number of hydrologic, meteorologic, and socioeconomic variables) and to provide objective criteria for comparison among alternatives, the EIS analysis assumed that water would be released during June through September to supplement existing flow to achieve, in every year possible, a flow of 275 cfs at the Sparks gage and 135 cfs at the Nixon gage during those months. These flow targets are designed to address WQSA flow enhancement goals, and assist in achieving water quality standards for the Truckee River in Nevada.

Alternative 3 – Acquire Truckee Division Water Rights

Alternative 3 proposes an acquisition strategy different from Alternative 2 and focuses on acquiring all active and transferable Truckee River water rights in the Truckee Division of the Newlands Project. Due to the lower estimated cost of Truckee Division water rights, \$12 million would not be fully expended currently if acquisitions were limited exclusively to the Truckee Division. Thus, Alternative 3 also includes acquisition of some rights from properties located in the Truckee River corridor, but no Truckee Meadows water rights would be acquired.

Alternative 3 differs from Alternatives 2 and 4 only in the location of water rights acquisitions and the volume of water rights anticipated to be acquired. Alternative 3 represents the strategy that would acquire the largest quantity of water rights with the available \$12 million, and could result in the acquisition of approximately 13,350 acre-feet. Water that accrues from implementation of Alternative 3 would be managed in the same manner as described for Alternative 2. It would be stored in federal reservoirs according to applicable storage agreements and procedures, and released to augment flows in June through September using the release schedule developed cooperatively by the Joint Program Parties. As discussed for Alternative 2, the schedule would be provided to the Federal Water Master for implementation, and the priorities for release would be identical to those described for Alternative 2. Also, as was the case for Alternative 2, DOI would negotiate reasonable terms and conditions with Reno, Sparks, and Washoe County to allow for storage of water which accrues from the water rights acquired by the local governments to satisfy their WQSA obligations.

Alternative 4 – Acquire Truckee Meadows Water Rights

Under Alternative 4, Truckee River water rights would only be acquired from the Truckee Meadows, an area in the basin from the California-Nevada state line downstream to Vista. No water rights would be acquired from the Truckee Division of the Newlands Project or the Truckee River corridor if this alternative were implemented. Approximately 3,600 acre-feet of water rights would be acquired with implementation of this alternative.

Alternative 4 differs from Alternatives 2 and 3 only in terms of the location of water rights acquisitions and the volume of water rights anticipated to be acquired. Water that accrues from implementation of Alternative 4 would be managed in the same manner as water in Alternative 2. It would be stored in federal reservoirs according to relevant storage agreements and procedures, and released to augment flows from June through

September. The release schedule would be developed cooperatively by the Joint Program Parties and provided to the Federal Water Master for implementation. The priorities for release would be identical to those described for Alternative 2. As was the case for Alternatives 2 and 3, DOI would negotiate reasonable terms and conditions with Reno, Sparks, and Washoe County to allow for storage of water which accrues from the water rights acquired by the local governments to satisfy their WQSA obligations.

Issues Evaluated

A number of issues were raised during the scoping process and public review of the draft EIS. Each of the alternatives considered in the FEIS was evaluated relative to these and other issues. The most substantive issues were:

- Water resources, including ground water quality and quantity, groundwater recharge, and surface water quality and quantity;
- Air quality, specifically the potential for an increase in the level of inhalable particulates (PM₁₀);
- Wetlands, particularly those wetlands dependent on seepage or irrigation drainage in the Truckee Division of the Newlands Project;
- Endangered and threatened fish species of Pyramid Lake;
- Agricultural activities in the Truckee Division of the Newlands Project and the impacts of reduced agricultural activity;
- Water rights and the value of water rights transactions in the community and possible changes to the local tax base;
- Population growth in the area, along with subdivision of agricultural lands to residential lots; and,
- Potential cumulative effects of a variety of known proposals, including rehabilitation of the lower Truckee River, implementation of the Truckee River Operating Agreement (TROA), and acquisition of water rights by Fernley, Reno, Sparks, and Washoe County.

Comments on the Final EIS addressed planned urban growth, land use, protection of historic properties, local water supplies, and administrative procedures for transfer of water rights.

When compared to No Action, unavoidable adverse impacts attributed to implementing WQSA are expected to be minor and localized, and potentially negligible, or be mitigated through specific agreement as identified in the "Implementation" section below.

Air Quality -- Implementation of the proposed action is likely to result in some short-term additional sources of fugitive dust depending on changes in the amount of actively irrigated land, primarily in the Truckee Division of the Newlands Project, amount of vegetative cover, and rate of transition from irrigated to native desert vegetation, but would not result in violations of existing air quality standards (PM₁₀) or affect attainment status of the region. Appropriate measures to minimize the generation of blowing dust would depend on the size and location of the affected parcels; review of the Naval Air Station Fallon (NASF) dust and debris control program could assist in identifying effective dust control measures.

Water Supply -- Reservoir storage and releases are not anticipated to be adversely affected; changes would be within the range of historic volumes. (As noted in a Nevada Division of Water Resources comment on the Final EIS, the Nevada Lake Tahoe basin water demand is satisfied primarily by pumping of surface water, not groundwater as stated in the EIS.) The acquisition and transfer of water rights from parcels in the Truckee Division is likely to result in a decrease in groundwater recharge of the local, shallow aquifer. No mitigating measures are identified to address this issue because there are no attendant water rights for Truckee Canal

seepage water. Property owners located near the Truckee Canal are not likely to be affected to the same degree as those with wells located more distant as the canal would continue to seep as long as water is diverted to Lahontan Reservoir; those more distant from the canal may be required to deepen their wells if recharge diminishes and the distance to groundwater increases.

Water Quality -- Truckee River flows are anticipated to be enhanced during the summer months when flows have historically been lowest. Additional flow in the river would allow greater dilution of pollutants and moderate summer water temperatures, improving water quality, particularly downstream from Vista.

Vegetation -- As irrigated acres are acquired and water rights transferred, the volume of water moving through the irrigation conveyance system and applied to agricultural fields would be reduced, leaving less water available to these wetlands from canal seepage and drain water. The intermittent wetlands are not expected to disappear as long as the Truckee Canal remains in use and effluent from the local wastewater treatment facility continues to be discharged to secondary wetlands. FWS and other agencies are implementing a water rights acquisition program to benefit Lahontan Valley wetlands.

Cultural Resources -- Cultural resources in the reservoirs likely have already been damaged by historic operations and drought and flood, and so any WQSA impacts to these resources are anticipated to be minor and localized. BIA has engaged in consultation with the Nevada State Historic Preservation Office, as well as Bureau of Reclamation, Advisory Council on Historic Preservation, and Pyramid Lake Paiute Tribe, regarding the federal water rights acquisition program pursuant to WQSA. Consultation has focused on the possible change in the historic landscape of the farming communities that may occur as a result of purchase of water rights and subsequent conversion of farmland to other uses. Because WQSA precludes the federal government from retaining land acquired through the water rights acquisition program, the consultation is considering the effect of transferring historic properties out of federal ownership and control. The consulting parties are developing a programmatic agreement that will address identification and evaluation of historic properties and procedures to avoid or reduce any adverse effects to satisfy Section 106 consultation requirements.

Socio-economics -- Acquisition of water rights for WQSA would result in the conversion of farmland to other uses, including developed parcels and desert habitat. Overall, socio-economic impacts anticipated under any of the action alternatives would likely be overshadowed by impacts attributed to extant and projected growth and urbanization in the study area. Acquisition and transfer of water rights for water quality purposes would not promote population growth and the dispersed locations of any lands likely to be acquired would not promote urbanization. As noted above, the purpose of WQSA is to acquire water rights in order to improve water quality; land acquisition would occur only to the extent necessary to facilitate acquisition of water rights and is not the focus of the proposed action. The involvement of local governments in the planning and implementation phases of the water rights acquisition program as well as in the role of Joint Program Parties for the adaptive management of water associated with the water rights would ensure that maximum benefits to lower Truckee River water quality would accrue from WQSA.

Cumulative – Analysis of cumulative projects identified the following potential effects:

- Air Quality -- The additional dust that could result from the WQSA program along with that from other cumulative projects is not expected to result in violations of the PM₁₀ air quality standard. Measures to minimize generation of fugitive dust from affected parcels would not eliminate blowing dust in the region.
- Water Resources -- WQSA would enhance surface water supply for the Truckee River and Pyramid Lake slightly by increasing the volume of water stored in Truckee River reservoirs.

Once released, this stored water would supplement Truckee River flows and increase inflow to Pyramid Lake. Reductions in Newlands Project demand could increase lower Truckee River flow, depending on hydrologic conditions in the Truckee and Carson River basins. Overall, groundwater levels would likely decline throughout the Truckee Division in the Cumulative Case, and domestic wells would need to be deepened in order to continue to serve as a water source for affected residences. Alternatively, groundwater wells could be abandoned if a municipal water supply system were available to residents of the Truckee Division. Combining the potential effects of WQSA with those of other reasonably foreseeable projects would result in improved water quality in the Truckee River, either directly (i.e. increased flow) or indirectly (elimination of septic tank contamination of ground water). Urban growth would likely require additional wastewater treatment facilities and increase point source discharges, potentially increasing the quantity of nutrients in the Truckee River. Increased growth could also cause increased water quality impacts through erosion and runoff attributed to new developments.

- **Vegetation** -- A number of reasonably foreseeable projects are expected to have positive effects on vegetation within the Truckee River floodplain by enhancing seasonal flow or reducing flow variability. Enhanced or stabilized river flows would benefit riparian vegetation and encourage expansion of the riparian plant community. Wetlands located within the floodplain would also benefit from enhanced or stabilized river flows; secondary wetlands in the Truckee Division could be diminished in area and quality to the extent that drain water or subsurface flows are diminished by reduction of application of irrigation water. Several projects will result in the replacement of agricultural crops throughout Truckee Meadows and the Truckee Division by drought-tolerant species, possibly noxious weed species that are able to colonize disturbed soils more quickly than native desert species, or by ornamental vegetation commonly found in an urban setting.
- **Fish and Wildlife** -- A number of projects could provide additional benefits to reservoir and stream fish populations, particularly in the upper Truckee River basin, by allowing additional WQSA and other categories of credit water to be stored in Truckee River reservoirs, providing opportunities for credit water to be exchanged among reservoirs, and identifying minimum release and storage targets for fish and wildlife resources. Recovery of cui-ui and LCT and enhancement of local fish populations would be facilitated variously by habitat improvement and fish passage programs. Projects related to demographic change (i.e., urban growth) are likely to create conditions in the basin that are inimical to fish, such as deterioration of water quality from point and nonpoint sources, increase in storm runoff, and expanded utilization for recreation. The potential cumulative impacts to wildlife are very similar to those anticipated for vegetation because wildlife diversity and abundance are dependent on availability of suitable habitat. There appears to be a number of opportunities to enhance wildlife habitat through expansion of wetland and riparian communities in the Truckee River floodplain.
- **Endangered, Threatened, and Sensitive Species** -- Recovery efforts for cui-ui and LCT would benefit from habitat improvement and fish passage programs. In particular, implementation of flow regimes to promote the lower river cottonwood forest would improve habitat for associated wildlife species. Projects related to demographic change (urban growth) are likely to increase the threats to endangered, threatened and special status species associated with aquatic and riparian habitats.
- **Socioeconomic Resources** -- It is unlikely that any identified cumulative action would

individually or collectively contribute directly to population increases or demographic shifts in the study area beyond that already anticipated. Projected land use patterns will continue to change as the population in the study area shifts from a rural landscape to a more urban pattern with residential developments, parks and open space, and commercial and industrial complexes. As agricultural properties are sold and acquired by the various entities, such lands may be kept as open space, or converted to residential, commercial, or industrial properties, conditional on each community's or individual county's master plan dictates. As agricultural lands are displaced, there would be a societal shift from an agrarian community, and open space and farmland preservation values would be affected.

- Cultural Resources -- Cultural resources in the reservoirs likely have already been damaged by historic operations and drought and flood. With WQSA impacts to these resources anticipated to be minor and localized, adding the impacts of other cumulative projects would not increase the severity of impacts.
- Indian Trust Assets -- Trust assets associated with the Pyramid Lake Indian Reservation -- generally water supply, water quality, fish, and endangered, threatened, and sensitive species -- would be affected in a manner similar to that described above for those resources. Trust assets of the Reno-Sparks Indian Colony or Fallon Paiute Shoshone Indian Reservation would not be materially affected by cumulative projects.

Environmentally Preferred Alternative

A comparison of alternatives indicated that Alternative 3 – Acquisition of Truckee Division Water Rights would best enhance and protect the natural environment and natural resources. If implemented, the acquisition strategy considered by Alternative 3 would accumulate more water rights than any other alternative, provide more water to enhance Truckee River flows and thus, provide the greatest benefit to the lower Truckee River environment. Over the long run, Alternative 3 would do more to enhance the ecological health and integrity of the lower Truckee River by assisting in the stabilization of river flows, particularly during the period June through September. Consequently, Alternative 3 has been identified as the environmentally preferred alternative.

Decision

Based on a thorough review of the alternatives, their potential environmental impacts, and comments received from the public, the Pyramid Lake Tribe, interest groups, and federal, state, local agencies, it is my intention to adopt and implement the acquisition strategy proposed in Alternative 2 – Acquisition of Truckee River Water Rights to fulfill the federal obligations identified in WQSA. Water rights will only be acquired from willing sellers; adopting Alternative 2 allows the federal acquisition process the flexibility to secure water rights throughout the study area. Also, Alternative 2 is anticipated to acquire a sufficient volume of water rights to enhance Truckee River flow and achieve the primary goal of WQSA.

Alternative 2 is preferable to the No Action Alternative because No Action would acquire no water rights and do nothing to enhance flow in the Truckee River during low flow months. The federal obligations identified in WQSA would not be met, thereby nullifying the agreement. Such inaction would lead to a renewal of litigation and a significant level of distrust directed at the federal government by the Pyramid Lake Paiute Tribe, the State of Nevada, and the local governments. Further, without the enhanced flow anticipated by WQSA, water quality of the Truckee River would be diminished in the summer months as there would be little flow available to dilute effluent from TMWRF or various non-point pollution sources, such as agricultural runoff.

Although Alternative 2 would acquire fewer water rights than Alternative 3, it is preferable to Alternative 3 because it allows the necessary flexibility to acquire available water rights anywhere in the study area. In comparison, the acquisition strategy proposed by Alternative 3 narrowly focuses on acquiring water rights from the Truckee Division. By focusing primarily on the Truckee Division, Alternative 3 is at risk for not achieving WQSA goals due to the character of the water rights market in the Division. Compared to Truckee Meadows and the Truckee River corridor, the majority of water-righted properties in the Truckee Division are smaller than 10 acres. As was noted in the EIS, Alternative 3 is anticipated to acquire approximately 2,800 acres. Given the small average size of individual parcels, the acquisition program would require a large number of transactions and it is possible a large percentage of water right owners would elect not to sell. The strategy proposed by Alternative 3 offers no option for seeking water rights at locations outside of Truckee Division.

The strategy proposed by Alternative 4 is similar to Alternative 3 insofar that location for acquiring water rights is restricted – in this case to water rights in Truckee Meadows. A noteworthy difference is that even though Alternative 4 focuses on acquisition of Truckee Meadows water rights, it is more likely to expend \$12 million than is Alternative 3. This is not due to a greater availability of water rights in the Truckee Meadows but to the substantially higher cost of water rights in Truckee Meadows. Truckee Meadows water rights are generally senior to those of the Truckee Division and thus considered more valuable. Truckee Meadows water rights are estimated to be approximately three times the cost of Truckee Division water rights. The acquisition strategy proposed by Alternative 4 would acquire the fewest water rights of any of the action alternatives and would result in the smallest change to Truckee River flow.

While a number of local issues were described in public comments, no significant impacts requiring mitigation were identified in the Final EIS or the endangered species consultation process.

[Section on Mitigation Measures may be inserted here if applicable.]

Implementation

BIA administers the funds appropriated by Congress to support federal acquisition of Truckee River water rights through a contract with the Pyramid Lake Paiute Tribe. The Tribe has entered into an agreement with Great Basin Land and Water (a land and water rights contractor) to acquire water rights. Ultimate responsibility for implementing the federal obligations of WQSA rests with BIA. This responsibility will require BIA to work closely with the Pyramid Lake Paiute Tribe and its contractor until the federal acquisition funds are fully expended.

BIA will participate as part of the DOI team with the other Joint Program Parties in monitoring water quality in the lower Truckee River and developing cooperative adaptive management measures to accomplish the purpose of WQSA. DOI, the Tribe, and the Truckee Meadows communities will identify a flow management strategy including a release schedule for dedicated stored WQSA water to meet water quality standards, improve Truckee River water quality, benefit resident fish populations, enhance riverine habitat, and promote aesthetic and recreational purposes in priority order, depending on water availability.

Based on the provisions of section 7 of the Endangered Species Act, potential effects to listed species would be re-evaluated if:

- The proposed action is changed such that it could affect listed species in a manner or to an extent not considered in the EIS;
- New biological information becomes available concerning listed species and is potentially affected by the proposed action; or,

- A new species is listed or critical habitat is designated that could be affected by the proposed action.

Lands acquired in the Truckee River corridor through the federal WQSA program and identified to be resold will first be offered for sale to local governments and certain non-government organizations to incorporate into ongoing efforts to restore and enhance flood control features and riparian habitat of the corridor, consistent with Smart Growth planning principles for the middle and lower river area as recommended by EPA. Any lands not so utilized and lands in the Truckee Division will be offered for sale to private or commercial interests. Because no water rights would be associated with such lands, potential urban development would require acquisition and transfer of additional water rights, and local governments would address planning and zoning for those areas. To prevent potential revenue loss to the Irrigation District, DOI will continue to pay O&M fees on acquired Truckee Division water rights until a lump sum payment or other mutually acceptable arrangement is negotiated to terminate future O&M assessments.

The Farmland Policy Protection Act (FPPA) directs federal agencies to consider project alternatives or mitigation to minimize such conversion. While the EIS determined that there is no alternative to minimize the conversion of farmland that would occur with WQSA because most, if not all, water rights available to WQSA are coincident with agricultural lands, BIA will comply with applicable requirements of FPPA as the WQSA water rights acquisition program proceeds. In those instances where acquired properties are re-sold to private interests, local ordinances could require control of blowing sand and dust. BIA will comply with applicable local dust and sand control ordinances during implementation of the WQSA program, as well as with applicable local ordinances pertaining to control of noxious weeds as long as acquired properties are retained by the program. The process to control noxious weeds would depend on the area involved, condition of local vegetation, and effectiveness of measures available.

BIA will comply with applicable federal, tribal, state, and local regulations, including the National Historic Preservation Act, to ensure that cultural resources are conserved and potential adverse impacts are minimized. In response to comments on the Final EIS by and BIA discussions with the Nevada State Historic Preservation Officer, the actions that may be necessary to protect these sites will be determined based upon conditions identified in a programmatic agreement among BIA, Bureau of Reclamation, Pyramid Lake Paiute Tribe, Advisory Council on Historic Preservation, and the Nevada State Historic Preservation Officer.

This decision may be appealed to the Interior Board of Indian Appeals (IBIA) at 801 N. Quincy Street, #300, Arlington, Virginia, 22203, in accordance with the regulations set forth at 43 CFR Parts 4.310-4.340. The notice of appeal to IBIA must be signed and mailed within thirty days of the date of this decision is received. The notice of appeal should clearly identify the decision being appealed and a copy of the decision should be attached to the notice of appeal. Copies of the notice of appeal must be sent to the Assistant Secretary for Indian Affairs, MS 4140-MIB, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C., 20240, as well as to my office and all other interested parties known to the person appealing the decision. The notice of appeal to the IBIA must also certify that the appealing party sent copies to each of these parties. The IBIA will notify an appealing party of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior.

By my signature, I indicate my decision to implement Alternative 2 – Acquisition of Truckee River Water Rights, the Preferred Alternative and Proposed Action identified in the Truckee River Water Quality Settlement Agreement – Federal Water Rights Acquisition Program Final EIS.

(Name), Regional Director
Western Regional Office
Bureau of Indian Affairs