

NOTICE OF INTENT TO AWARD

This Funding Announcement is not a request for applications. This announcement is to provide public notice of Reclamation's intention to fund the following project activities without full and open competition.

ABSTRACT	
Funding Announcement	R12AS20017
Project Title	Truckee River Operating Agreement (TROA) Desert Terminal Lakes Program – TROA Completion and Implementation
Recipient	Pyramid Lake Paiute Tribe
Principal Investigator/ Program Manager	John Jackson, Director Water Resources
Anticipated Federal Amount	\$2,986,211.19
Cost Share	None
Total Anticipated Award Amount	Fiscal Year 2012: \$5,000.00
New Award or Continuation?	Continuation
Anticipated Period of Performance	Date of execution through October 1, 2014
Award Instrument	Grant Agreement
Statutory Authority	Public Law 107-171 , Farm Security and Rural Investment Act of 2002, Section 2507, Public Law 101-618 , Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990, Section 205 Truckee River Water Supply Management, Public Law 108-7 , Consolidated Appropriations Resolution, Section 207
CFDA # and Title	15.508 - Providing Water to At-Risk Natural Desert Terminal Lakes
Single Source Justification Criteria Cited	Justification Criterion: (2) Continuation and (4) Unique Qualifications of the Department of Interior Single Source Policy Requirements
Reclamation Point of Contact	Vivian Davis, vdavis@usbr.gov

OVERVIEW

The proposed project will provide up to \$2,986,211.19 to the Pyramid Lake Paiute Tribe under the authority provided by Public Law 107-171, the Farm Security and Rural Investment Act of 2002, Section 2507, as amended, and Public Law 101-618, Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990, Section 205 Truckee River Water Supply Management. The Desert Terminal Lakes legislation provided funds to the Bureau of Reclamation to provide water to at-risk natural desert terminal lakes. The Pyramid Lake Paiute Tribe needs funds for continuation of the work on their grant agreement related tribal involvement, engineering and legal support in order to continue the work required to implement the Truckee River Operating Agreement (TROA). The Tribe has a need to complete and implement TROA, which will allow improved management of water resources in the Truckee River basin, provide environmental and drought protection benefits to the general public in the basin, and increase inflows to Pyramid Lake. The increased flows to Pyramid Lake meet the requirement of the authorizing legislation to provide water to at-risk natural desert terminal lakes, of which Pyramid Lake is one.

RECIPIENT INVOLVEMENT

The activities to be funded through this action are a continuation of the activities on the current grant agreement and include funding for tribal staff and their consultant attorney and water engineer for the following:

Truckee River Operating Agreement (TROA) Related Litigation This grant will be utilized to support the Tribe's efforts to develop legal briefs and supporting documentation as requested by the Court and in the timeframe outlined by the federal judge.

Unappropriated water permits and challenges: The Tribe through our consultants and staff will work to secure the permits granting the unappropriated waters of the Truckee River Watershed.

Recoupment: The Ninth Circuit Court of Appeals issued a remand order in 2010 to US District Court supporting the Tribe on recoupment. The Tribe under this grant will provide the court as requested all supporting documents and briefs.

Non-litigation Negotiations:

- A. 6700 Acre Foot ground water component-
- B. TROA-MOA- TROA-MOA is an agreement between the Department of Interior and the Pyramid Lake Paiute Tribe to manage the waters dedicated to the Lower Truckee River and Pyramid Lake.
- C. WRAP Program- The Water Rights Acquisition Program (WRAP) is based upon the Water Quality Settlement Agreement (WQSA) entered into with the Department of the Interior to resolve water quality issues in the Lower Truckee River.
- D. City of Fernley Negotiations- Fernley and the Tribe have many common water issues that need coordination and planning together.

RECLAMATION INVOLVEMENT

No substantial involvement on the part of Reclamation is anticipated for the successful completion of the objectives to be funded by this award. Reclamation's involvement will consist of standard federal stewardship responsibilities including monitoring project performance, technical assistance at the request of the recipient, etc. Reclamation's involvement on the grant will be to provide technical assistance when requested and implement oversight of federal stewardship responsibilities, including monitoring of project performance and financial accountability and reporting in accordance with the terms of the grant agreement.

SINGLE-SOURCE JUSTIFICATION

DEPARTMENT OF THE INTERIOR SINGLE SOURCE POLICY REQUIREMENTS
Department of the Interior Policy (505 DM 2) requires a written justification which explains why competition is not practicable for each single-source award. The justification must address one or more of the following criteria as well as discussion of the program legislative history, unique capabilities of the proposed recipient, and cost-sharing contribution offered by the proposed recipient, as applicable.
In order for an assistance award to be made without competition, the award must satisfy one or more of the following criteria:

- (1) Unsolicited Proposal – The proposed award is the result of an unsolicited assistance application which represents a unique or innovative idea, method, or approach which is not the subject of a current or planned contract or assistance award, but which is deemed advantageous to the program objectives;
- (2) **Continuation** – The activity to be funded is necessary to the satisfactory completion of, or is a continuation of an activity presently being funded, and for which competition would have a significant adverse effect on the continuity or completion of the activity;
- (3) Legislative intent – The language in the applicable authorizing legislation or legislative history clearly indicates Congress' intent to restrict the award to a particular recipient of purpose;
- (4) **Unique Qualifications** – The applicant is uniquely qualified to perform the activity based upon a variety of demonstrable factors such as location, property ownership, voluntary support capacity, cost-sharing ability if applicable, technical expertise, or other such unique qualifications;
- (5) Emergencies – Program/award where there is insufficient time available (due to a compelling and unusual urgency, or substantial danger to health or safety) for adequate competitive procedures to be followed.

Reclamation did not solicit full and open competition for this award based on the following criteria:

- (2) Continuation
And
(4) Unique Qualifications

Single Source Justification Description:

On November 16, 1990, Public Law 101-618 was enacted. Section 205(a), Truckee River Water Supply Management, Operating Agreement, directed the Secretary of the Interior to negotiate an operating agreement for operation of Truckee River Reservoirs with the states of California and Nevada, after consulting with other parties designated by the Secretary. Water supply and water right issues involving the Truckee River and its tributaries have been contested, challenged and litigated for decades. Implementation of the Truckee River Settlement Act will provide stability and finality for operating and managing water supplies under established water rights. Great strides have been made towards finalizing the Truckee River Settlement Act. The TROA document was signed on September 6, 2008. Many issues, both legal and administrative, remain to be resolved and it could take many more years for full and uncontested implementation to occur. The federal government has invested millions of dollars in facilitating the implementation of TROA in the form of grants to the five signatories (State of Nevada, State of California, the Truckee Meadows Water Authority, the Pyramid Lake Paiute Tribe, and the Federal Watermaster of the Truckee River). The Pyramid Lake Paiute Tribe have been a recipient of grant funding related to TROA implementation and are a very important stakeholder whose participation is essential to TROA implementation. The circumstances involving considerable investment on the part of federal government to help implement TROA establishes a justification of continuation because the litigation to be funded is necessary to the satisfactory implementation of the TROA and is a continuation of funding for these purposes.

The Pyramid Lake Paiute Tribe qualifies for a sole-source justification of unique qualifications because the Tribe is a mandatory signatory to TROA and is involved in and significantly impacted by the implementation of TROA.

STATUTORY AUTHORITY

Public Law 107-171 (Farm Security and Rural Investment Act of 2002; May 13, 2002; 116 STAT. 134) SEC. 2507. DESERT TERMINAL LAKES as ammended.

- (a) IN GENERAL. Subject to subsection (b), as soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall transfer \$200,000,000 of the funds of the Commodity Credit Corporation to the Bureau of Reclamation Water and Related Resources Account, which funds shall —
- (1) be used by the Secretary of the Interior, acting through the Commissioner of Reclamation, to provide water to at-risk natural desert terminal lakes; and
- (2) remain available until expended.

Public Law 101-618 (Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990)

TITLE II--TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT

SEC. 202. PURPOSES.

The purposes of this title shall be to--

- (a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;
- (b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;
- (c) authorize acquisition of water rights for fish and wildlife;
- (d) encourage settlement of litigation and claims;
- (e) fulfill Federal trust obligations toward Indian tribes;
- (f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and
- (g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 205. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

(a) Operating Agreement-

- (1) The Secretary shall negotiate an operating agreement (hereafter 'Operating Agreement') with the State of Nevada and the State of California, after

consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

- (A) satisfy all applicable dam safety and flood control requirements;
- (B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;
- (C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;
- (D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and
- (E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

Grant authority under the Desert Terminal Lakes Program:

**Public Law 108-7, Omnibus Appropriations Bill
enacted 2/20/03
Bureau of Reclamation**

SEC. 207. RESTORATION OF FISH, WILDLIFE, AND ASSOCIATED HABITATS IN WATERSHEDS OF CERTAIN LAKES.

(b) ADMINISTRATION.--The Secretary of the Interior, acting through the Commissioner of Reclamation, may provide financial assistance to State and local public agencies, Indian tribes, nonprofit organizations, and individuals to carry out this section and section 2507 of Public Law 107-171.