

City and Storey County, is sent downstream to Franktown Creek decreed users in Washoe Valley. If TMWA is permitted to use the "surplus water" in years of normal or better than normal precipitation where surplus MLWS resources are available, there would be a third customer paying into the system, which conceptually should lower the price of the MLWS's wholesale water, currently solely paid for by Carson City's and Storey County's rate payers.

An important aspect of this MOU is acknowledging the importance of Marlette Lake for summer demand storage and supply for Carson City and Storey County. Carson City and Storey County have relied and will continue to rely on this important storage reservoir in order to meet peak summer demands. Future operating agreements and procedures in future agreements will also aim to protect this key resource for both Carson City and Storey County.

Applicable Statute, Code, Policy, Rule or Regulation

Public Law 101-618; NRS Chapter 533

Financial Information

Is there a fiscal impact? No

If yes, account name/number: N/A

Is it currently budgeted? No

Explanation of Fiscal Impact: N/A

Alternatives

Do not enter into the MOU and provide alternative direction to staff.

Attachments:

[MOU Round 2 Draft_Clean Copy.docx](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

MEMORANDUM OF UNDERSTANDING
MARLETTE LAKE WATER SYSTEM

This Memorandum of Understanding (“MOU”) is entered into by and between the Truckee Meadows Water Authority (“TMWA”), Storey County (“Storey”) and Carson City (“Carson”). TMWA, Storey, and Carson are individually referred to as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, Carson, Storey and TMWA are each responsible for providing municipal water service to customers within their respective jurisdictions.

WHEREAS, the State of Nevada (“State”) owns and may sell water from the Marlette Lake Water System (MLWS) for beneficial use in Carson City, Storey County, and Washoe County. MLWS includes water rights totaling approximately 11,476 acre-feet; however, the State is not maximizing the beneficial use of MLWS water resources and only a portion are currently used by Carson and Storey. Additionally, State operations of MLWS are challenged by funding constraints, aging infrastructure and the need for additional data to inventory and quantify system flows and capacities.

WHEREAS, the Parties desire to enter this MOU as a preliminary expression of general intentions and to provide the basis for negotiations of a definitive agreement with the State with respect to deliveries of MLWS water. The Parties anticipate that the terms of a definitive agreement can be reached within two years from the date of execution of this MOU.

WHEREAS, if properly planned and managed, the MLWS will remain an important water source for and meet the needs of Storey and Carson while also delivering surplus water to TMWA, and by working together the Parties can facilitate more efficient and economic alternatives to address the State’s funding constraints in operating and maintaining the MLWS.

WHEREAS, the MLWS is the sole source of municipal supply to Storey. The Parties recognize Storey’s reliance on and historic priority to MLWS water usage and desire to protect and facilitate MLWS deliveries to Storey for its existing and future demands.

WHEREAS, Carson relies on the MLWS to meet a portion of its existing municipal supply. Based on past master planning and current forecasted conditions subject to change, Carson estimates it will require approximately 3,000 acre feet per year of MLWS water to meet existing demands and future build out demands for 80,000 residents.

WHEREAS, TMWA is the regional water manager for the Truckee Meadows. Through the Truckee River Operating Agreement, TMWA can utilize surplus MLWS resources, water beyond the needs of Carson and Storey, to enhance the resiliency and operational efficiency of TMWA’s water resource supplies, especially in years of normal or better than normal precipitation where surplus MLWS resources are available.

WHEREAS, the Parties desire to work cooperatively to identify surplus water resources in the MLWS that can be made available and delivered to TMWA in a manner that does not adversely impact or diminish MLWS deliveries to Storey and Carson. The Parties recognize Storey’s and

Carson's reliance on and historic priority to MLWS water usage and desire to protect and facilitate MLWS deliveries for existing and future demands as described herein.

WHEREAS, TMWA, Storey and Carson are political subdivisions of the State of Nevada and are public agencies as defined by NRS 277.100, and under NRS 277.180 are authorized to contract regarding any activity, service or undertaking which they are authorized by law to perform.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

A. PURPOSE AND OBJECTIVE

The purpose of this MOU is to set forth common objectives of the Parties in working with the State. TMWA, Storey and Carson desire to assist the State in maximizing the beneficial uses of MLWS water resources, and work with the State to explore mutually beneficial opportunities to enhance revenues for funding operations and maintenance of MLWS, improve operating procedures, allocate water resources to Carson and Storey for municipal demands including critical water storage supplies in Marlette Lake, and identify surplus resources for delivery to TMWA. TMWA, Storey and Carson desire to offer their collective utility operational expertise to assist the State to further such objectives and improve water management and operational aspects of MLWS.

B. GOALS

The common objectives include the following terms and/or elements:

1. Maximize Use of MLWS Resources. The Parties desire to assist the State in maximizing the beneficial use of the State's available water resources from the MLWS by TMWA, Carson and Storey, while preserving the historic priorities for MLWS water usage described in the recitals above.

2. Identification of Existing and Future Municipal Demands. Carson and Storey will provide to all parties their existing and potential future municipal water demands from MLWS, including existing Marlette Lake storage requirements ("Carson and Storey Existing Demands"). The Parties recognize Carson's desire, based on current forecasted conditions subject to change, for 3,000 acre feet per year of MLWS supplies for its existing and future build out demands, and will work cooperatively to identify Storey's and Carson's future build out demands for municipal water from the MLWS ("Carson and Storey Future Demands"). Storey's Future Demands include those for Virginia City, Gold Hill, Silver City (Silver City is located in Lyon County but is served by the Virginia City Water System), American Flat and their immediate surrounding areas of the Comstock, and also include the Virginia City Highlands, Highland Ranches, and Mark Twain Estates. The Parties will take into account existing infrastructure, paid for by Carson and Storey, that serves existing demands of Carson and Storey, which shall not be restricted by surplus water beneficially used by TMWA, and improvements to the East Slope collection system and increase in capacity of infrastructure necessary to transport water in connection with the Carson and Storey Future Demands.

3 Identification of Surplus MLWS Water. The Parties will work cooperatively to identify surplus water resources owned by the State that can be made available for delivery to

TMWA (“Surplus MLWS Water”) and to develop information necessary to assist the State with developing the master plan and operating agreement described in Section 4. It is the Parties’ intention that deliveries to TMWA will not adversely impact or diminish Carson and Storey Existing Demands or Carson and Storey Future Demands.

4. Assistance with State Master Plan. The Parties will work cooperatively with the State on the following:

i) Identifying and defining the amount, timing and source of water resources available to TMWA, Carson and Storey, allocations, priority and availability of water supplies, including in times of drought or varying hydrologic conditions;

ii) Establishing a long-term operating agreement that:

a) maximizes the beneficial use of the State’s available water resources;

b) preserves the priority of Carson and Storey Existing Demands;

c) protects and facilitates MLWS deliveries for Carson and Storey Future Demands;

d) addresses an agreed upon delivery schedule;

e) addresses special conditions of service; and

f) addresses pre-determined adjustments to the quantity of water available for sale under variable hydrologic conditions which may occur in any given year;

iii) Identifying necessary long-term infrastructure replacements, improvements, costs and potential funding mechanisms;

iv) Installing and/or improving monitoring and gauging devices in the Marlette Lake Water System to accurately account for the available water resources;

v) Cost of service study and methodology for rate setting procedures which establish an equitable allocation of capital and operating costs between the Parties;

vi) Memorializing with the Nevada Department of Wildlife (“NDOW”) the specific operating restrictions, if any, on discharges of water impounded in Marlette Lake in connection with fisheries operations on Marlette Lake; and

vi) Establishing operating guidelines for storage in Marlette Lake for the Parties.

5. Permitting and Regulatory Approvals. Storey and Carson shall cooperate with TMWA and the State regarding any necessary permitting, authorizations, or approvals required by the State Engineer, Federal Water Master, Bureau of Reclamation, or any other agency or entity to use the surplus MLWS for TMWA’s intended purposes consistent with this MOU.

C. TERM

This MOU may be extended or terminated by mutual consent of the parties or unilaterally by any party without cause upon thirty (30) days written notice.

D. GENERAL PROVISIONS.

1. Notice. All notices or other communications required or permitted to be given under this Agreement must be in writing and will be deemed given if delivered: personally by hand; by facsimile with simultaneous regular mail; or mailed certified mail, return receipt requested, and addressed to another Party at the following address:

TMWA

Director, Natural Resources
Truckee Meadows Water Authority
1355 Capital Blvd.
Reno, NV 89502
Tel: (775) 834-8250

Carson

Public Works Director
Carson City Public Works
3505 Butti Way
Carson City, NV 89701
Tel: (775) 887-2355
Fax: (775) 887-2112

Storey

County Manager
P.O. Box 176
Virginia City, NV 89440

Any Party may, by notice in writing sent to the Parties as described above, designate a different mailing address to which or a different person to whose attention all such notices or demands must thereafter be addressed.

2. Required Approval. This Agreement shall not become effective until and unless approved by appropriate authorized representative of or official action of the governing body of each Party.

3. Limited Liability. The Parties do not waive and intend to assert available liability limitations, including NRS Chapter 41, in all cases. Contract liability of the Parties shall not be subject to punitive or liquidated damages.

4. Independent Public Agencies. The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each Party is a public agency separate and distinct from any other Party. Nothing contained in this Agreement may be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, to convey ownership of any asset, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of another Party. This Agreement does not contemplate any transfer of property or ownership interest between the Parties and each Party will each maintain ownership of their own facilities.

5. Severability. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement will be construed as if such provision did not exist and the non-enforceability of the provision will not render any other provision or provisions of this Agreement unenforceable.

6. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

7. Governing Law; Jurisdiction. This Agreement and the rights and obligations of the Parties shall be governed by and construed according to the laws of the State of Nevada. The Parties consent to the jurisdiction of, and agree that disputes will be resolved by, the courts of the First Judicial District Court of the State of Nevada.

8. Entire Agreement and Modification. This Agreement constitutes the full and final agreement between the Parties. This Agreement may not be amended or assigned except by an agreement in writing signed by all Parties and it will be binding upon and inure to the benefit of the Parties' respective successors and assigns.

9. Force Majeure. No Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the last date written below.

<p><u>TMWA:</u></p> <p>TRUCKEE MEADOWS WATER AUTHORITY, a joint powers authority and political subdivision of the State of Nevada</p> <p>By: _____ MARK FOREE, General Manager</p> <p>Dated: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ MICHAEL PAGNI TMWA Legal Counsel</p>	<p><u>CARSON:</u></p> <p>CARSON CITY, a political subdivision of the State of Nevada</p> <p>By: _____</p> <p>Dated: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Deputy District Attorney</p> <p><u>STOREY:</u></p> <p>STOREY COUNTY, a political subdivision of the State of Nevada</p> <p>By: _____</p> <p>Dated: _____</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Deputy District Attorney</p>
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