



**Washoe County
Department of
Water Resources**

4930 Energy Way
Reno, NV 89502-4106
Tel: (775) 954-4600
Fax: (775) 954-4610

June 10, 2009

Truckee Meadows Water Authority
Mark Foree, General Manager
P.O. Box 30013
Reno, NV 89520-3013

Dear Mark:

Enclosed please find a fully executed original Amended and Restated Washoe County Nevada District No. 24 Groundwater Remediation Agreement for Ownership, Operation and Maintenance of Certain Remediation Facilities and for Reimbursement of Certain Expenses approved by the Washoe County Commission on June 9, 2009. A fully executed original is on file with the Washoe County Clerk.

Should you have questions or concerns, please do not hesitate to contact me at (775) 954-4661.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura Rose".

Laura Rose
Administrative Secretary

Enc.

/lr

cc: Chris Benedict, Program Manager

Department of



Water Resources



WASHOE COUNTY

"Dedicated To Excellence in Public Service"

www.co.washoe.nv.us

CM/ACM _____

Finance _____

DA _____

Risk Mgt. _____

HR _____

Other _____

STAFF REPORT

BOARD MEETING DATE: **June 9, 2009**

DATE: May 14, 2009

TO: Board of County Commissioners

FROM: Chris Benedict, Remediation District Program Manager
954-4642, cbenedict@washoecounty.us

THROUGH: Rosemary Menard, Director, Department of Water Resources

SUBJECT: **Authorize the Chairman to execute an amended and restated agreement with the Truckee Meadows Water Authority for ownership, operation and maintenance of certain remediation facilities and for reimbursement of certain expenses, Washoe County, Nevada, District 24 (Groundwater Remediation). (All Commission Districts)**

SUMMARY

The Central Truckee Meadows Remediation District (CTMRD) program was created by State legislation and County ordinance in response to, and to address, tetrachloroethene (PCE) contaminated groundwater in the central Truckee Meadows that poses a potential threat to local residents and water users. This program is administered on behalf of the Washoe County Board of Commissioners (Board) by the Department of Water Resources (DWR).

In January 2000, a formal request for reimbursement of costs associated with identifying, studying, and remediating the PCE contamination in these five wells was submitted by SPPCo (now TMWA) to the County in accordance with NRS540A.270. Satisfying that request also resulted in an associated agreement (the "2000 Pumping Plan Agreement") that defined the schedule for Pumping Plan implementation along with the terms and conditions for ownership, operation and maintenance, and for reimbursement of certain expenses incurred while operating the PCE treatment equipment for attaining remedial benefit was prepared and approved by the Board on June 27, 2000.

Since that time an improved understanding of PCE distribution in the central Truckee Meadows along with changes in groundwater operating conditions require that the pumping schedule, upon which the 2000 Pumping Plan Agreement is based, be amended in order to attain (in this case to actually increase) remedial benefit and redefine the terms and conditions upon which the reimbursement from the CTMRD program to TMWA for costs associated with attaining remedial benefit is made. The proposed Amended Pumping Plan Agreement reflects a cooperative and collaborative approach between the County and TMWA that results in a higher remedial benefit per dollar of CTMRD funds.

AGENDA ITEM # _____

County Priorities/Goals supported by this item: Preserve and Enhance Our Quality of Life - Effectively plan and manage use of our natural assets including water, air and open space; Improve Regional Collaboration - Continue to improve communication and cooperation among regional partners; and, manage and protect regional water resources in a sustainable, cost-effective manner.

PREVIOUS ACTION

The original agreement for ownership, operation and maintenance of certain remediation facilities and for reimbursement of certain expenses, Washoe County, Nevada, District 24 (Groundwater Remediation) was approved by the Board on June 27, 2000.

BACKGROUND

Several municipal water supply wells in the central Truckee Meadows have been impacted by PCE contamination. Between 1992 and 1995 the PCE concentrations in five of these wells (owned at the time by Sierra Pacific Power Company or SPPCo [now the Truckee Meadows Water Authority or TMWA]) were identified to be above the maximum contaminant level (MCL) requiring these wells to be taken off-line and fitted with PCE treatment equipment to maintain their viability. In January 2000, a formal request for reimbursement for costs associated with identifying, studying, and remediating the PCE contamination in these five wells was submitted by SPPCo to the County in accordance with NRS540A.270 (a portion of the state legislation enabling the CTMRD program). At the time of the reimbursement request, the County identified three major issues that would need to be resolved before any such request would be considered. These issues included:

1. Developing a satisfactory Remedial Pumping Plan (the “Pumping Plan”);
2. Conducting an independent audit of the expense package comprising the reimbursement request; and,
3. Completing an operation/ownership agreement for the PCE treatment facilities.

The Pumping Plan would define the operating conditions for the impacted wells fitted with PCE treatment equipment (the “treated wells”) under which the remedial benefit required by NRS 540A.270 would be derived. Remedial benefit in this context is considered to be the effective capture and/or hydraulic containment of PCE contaminated groundwater derived by pumping the treated wells, thereby protecting other municipal water supply wells that aren’t fitted with PCE treatment equipment located down gradient from the treated wells. A Pumping Plan was developed by SPPCo, the Nevada Division of Environmental Protection (NDEP), and DWR that required year-round pumping of the five treated wells and established annual pumping targets for each of the wells (with a total extraction of 4000 acre-feet per year for the five wells combined) that resulted in the required remedial benefit. An associated agreement (the “2000 Pumping Plan Agreement”) defining the schedule for Pumping Plan implementation along with the terms and conditions for ownership, operation and maintenance, and for reimbursement of certain expenses incurred while operating the PCE treatment equipment for attaining remedial benefit was prepared and approved by the Board on June 27, 2000. Under the 2000 Pumping Plan Agreement the treated wells would be pumped year-round to a combined total annual extraction of 4000 acre-feet. Under the 2000 Pumping Plan Agreement, remedial benefit would be derived by operating the treated wells between October 1 and May 31 where operating costs associated with attaining remedial benefit during that time period would be borne by CTMRD program funds and

SPPCo would be reimbursed on an annual basis for those costs. Under the 2000 Pumping Plan Agreement, any costs generated for operating the treated wells between May 31 and October 1 each year would be borne solely by SPPCo.

DWR, in collaboration with NDEP and TMWA, conducted an assessment during 2005 of the remedial benefit provided while operating the treated wells in accordance with the Pumping Plan. This 2005 assessment also evaluated the remedial benefit of several potential alternative pumping schedules. The objectives of this assessment included verifying the remedial benefit of the Pumping Plan based on the understanding of PCE distribution in the central Truckee Meadows that had been gained since the systematic CTMRD groundwater monitoring plan (GMP) had been implemented in December 2003. Another objective was to identify possible alternative pumping schedules for the treated wells that would result in comparable or increased remedial benefit while requiring less than year-round pumping. With the advent of a new drinking water standard for arsenic beginning on January 1, 2006, year-round operation of existing wells (including the treated wells) in the central Truckee Meadows could only be conducted at the risk of being in non-compliance with the new, lower drinking water standard for arsenic. The results of this assessment (Intera, 2006¹) include a prescribed pumping schedule for the treated wells that:

1. Results in an improved estimated remedial benefit (90% capture/containment as compared to 77% capture/containment resulting from the 2000 Pumping Plan);
2. Requires a greater combined annual extraction from the treated wells (4750 acre-feet as compared to the previous 4000 acre-feet); and,
3. Does not require year-round pumping (i.e. remedial benefit for PCE can be accomplished by pumping between May and October each year without creating a potential compliance issue with the 2006 arsenic standard).

This new pumping schedule (the “Interim Pumping Plan”) was identified as the most practical alternative that met the objectives. This alternative specifies operation of the treated wells between May and October each year, requires an increased level of pumping, and results in the treated wells remaining idle between October and May (unless needed in order to meet water supply demands).

This Interim Pumping Plan has been followed by DWR and TMWA since 2006. Given that the terms and conditions specified in the 2000 Pumping Plan Agreement (wherein DWR would reimburse SPPCo [now TMWA] for the cost of operation of the treated wells resulting in remedial benefit between October and May) do not apply to the pumping schedule defined in the Interim Pumping Plan (wherein TMWA operates the treated wells in a prescribed manner between May and October, resulting in remedial benefit), it was recognized that a new basis for reimbursing TMWA for the costs of attaining remedial benefit would need to be defined.

The basis for reimbursement under the 2000 Pumping Plan Agreement is the timing of operation of the treated wells during any given year. In accordance with the 2000 Pumping

¹ INTERA (2006) 2005 PUMPING PLAN ANALYSES. PREPARED IN COOPERATION WITH WCDWR BY INTERA, INC. JANUARY, 2006.

Plan Agreement, the treated wells have been used to meet peak water demands during the summer months and any pumping during the off-season (between October and May) was strictly for remedial benefit and would be eligible for reimbursement. Under the Interim Pumping Plan, remedial benefit is obtained by pumping the treated wells in a prescribed manner (higher pumping rates over a shorter period of time) during the peak demand season (between May and October). Accordingly, remedial benefit is being attained at the same time that municipal water demands were being met. TMWA has various water resources at its disposal to use at any given time to meet water demand. It is in the best interest of TMWA's water rate to use the most readily available and lowest cost resource options that meet water quality standards. Surface water (when available) is typically the most inexpensive resource option, groundwater from wells that have not been impacted by PCE is the next most inexpensive resource option, and groundwater from wells that have been impacted by PCE is typically the most expensive (because of the treatment costs) resource option. The prescriptive pumping schedule in the Interim Pumping Plan assumes that TMWA will incorporate the amount of pumping from the treated wells that is required to attain remedial benefit as part of their baseline resource allocation that is utilized to meet base demand even if less costly resource alternatives are available. The basis for reimbursement under the Interim Pumping Plan becomes the unit cost differential between groundwater produced from the treated wells and the average cost for water produced from all the other TMWA resource options during a given calendar year. In this way the remedial benefit is attained during the same time that peak water demand is being met, and TMWA is reimbursed for any additional costs associated with prescriptive use of what has to date been a more costly water source (groundwater from the treated wells) above and beyond what it would have cost to meet water demand using less costly water sources.

The Interim Pumping Plan has been followed by DWR and TMWA since 2006. Table 1 (below) shows the pumping schedules for the treated wells under the 2000 Pumping Plan and the Interim Pumping Plan. As shown, the prescribed pumping rates in the Interim Pumping Plan that are subject to reimbursement (in accordance with the terms and conditions of the amended Pumping Plan Agreement, Attachment 1) have increased in comparison to the pumping rates specified under the 2000 Pumping Plan.

TABLE 1. ANNUAL PUMPING FROM TREATED WELLS FOR REMEDIAL BENEFIT		
WELL	ANNUAL PUMPING (ACRE-FEET)	
	2000 PUMPING PLAN	INTERIM PUMPING PLAN
CORBETT	500	460
MILL	500	780
HIGH	1000	1150
KIETZKE	1000	1460
MORRILL	1000	900
TOTAL	4000	4750

As described previously, the increased pumping over a shorter period of time prescribed by the Interim Pumping Plan produces an increased estimated remedial benefit (90%

capture/containment under the Interim Pumping Plan as compared to 77% capture/containment under the 2000 Pumping Plan) over a shorter period of time.

A consequence of the Interim Pumping Plan (and the terms and conditions for reimbursement proposed in the amended Pumping Plan Agreement) is that the remedial benefit is obtained each year in a more cost effective manner. As shown in Table 2 (below), the annual costs for attaining remedial benefit exhibited significant increases between 2001 and 2004 (note that the relatively lower costs for remedial benefit for 2000 and 2005 result from decreased “off-season” pumping by SPPCo/TMWA that would have been eligible for reimbursement). Given that the costs of attaining remedial benefit result predominantly from the electrical costs to operate the PCE treatment equipment, these increases are largely the result of increased electricity costs during this time period. The reduction in costs beginning in 2006 reflects the implementation of the Interim Pumping Plan. This reduction results from the change in determining the basis for reimbursing remedial benefit to TMWA on making up the unit cost differential for incorporating the prescribed amount of production from the treated wells (to attain remedial benefit) into the annual resource allocation also utilized to meet peak seasonal water demands.

YEAR	TREATED WELL PRODUCTION SUBJECT TO REIMBURSEMENT (ACRE-FEET)	REIMBURSEMENT
2000	2090	\$115,705
2001	3871	\$136,489
2002	4164	\$397,225
2003	5609	\$491,727
2004	5448	\$452,701
2005	2209	\$232,242
2006	4889	\$129,155
2007	4565	\$200,924
2008	4379	TBD
TOTALS	37,224	\$2,156,168

This cooperative and collaborative approach with TMWA results in a higher remedial benefit per dollar of CTMRD funds and has allowed the CTMRD program to increase activity levels in other program areas (such as the expanded monitoring well network and potential PCE source area investigations that have been underway during 2008-2009) without having to increase annual CTMRD program fee rates. The Interim Pumping Plan is recognized (see Attachment 2) by NDEP (who also endorsed the 2000 Pumping Plan) as resulting in remedial benefit and contributing to meeting the goals of the CTMRD program.

While the Interim Pumping Plan (and associated terms and conditions for reimbursement) has been followed cooperatively by DWR and TMWA since 2006, it is requested that the Board consider the approval and execution of the amended Pumping Plan Agreement to formalize these terms and conditions.

FISCAL IMPACT

There is no direct cost or fiscal impact associated with the execution of the amended Pumping Plan Agreement. Adequate funding for the annual reimbursement to TMWA for costs associated with attaining remedial benefit is included in the FY2009-2010 budget in Fund Center 206000 and Account 710200.

RECOMMENDATION

It is recommended that the Board of County Commissioners move to authorize the Chairman to execute an amended and restated agreement with the Truckee Meadows Water Authority for ownership, operation and maintenance of certain remediation facilities and for reimbursement of certain expenses, Washoe County, Nevada, District 24 (Groundwater Remediation).

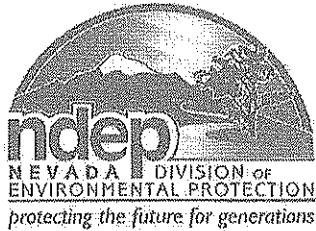
POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to authorize the Chairman to execute an amended and restated agreement with the Truckee Meadows Water Authority for ownership, operation and maintenance of certain remediation facilities and for reimbursement of certain expenses, Washoe County, Nevada, District 24 (Groundwater Remediation)."

RM:cb

Attachments: [Attachment 1 Agreement](#)
[Attachment 2 NDEP letter](#)

c: Trish Gonzales, Comptroller
Risk Management
Anna Heenan, Sr. Fiscal Analyst
Ben Hutchins, Finance and Customer Services Manager
Ted Rolfs, Fiscal Compliance Officer
Betsy Mellinger, Public Information Officer



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF CORRECTIVE ACTIONS

P: 775.687.9368 F: 775.687.8335

Jim Gibbons, Governor

Allen Biaggi, Director

Leo M. Drozdoff, P.E., Administrator

April 11, 2008

Mr. Chris Benedict
Washoe County Department of Water Resources
4930 Energy Way
Reno, NV 89502-4106

Dear Mr. Benedict:

As you requested, the Nevada Division of Environmental Protection (NDEP) has reviewed the Washoe County Department of Water Resources – Remediation District revised Pumping Plan (Plan) as presented in Appendix E of the draft *2004 Annual Report for Groundwater Monitoring* dated April, 2006 and the *2005 Pumping Plan Analyses* dated January 2006. The Plan describes the proposed operation of the Mill, Kietzke, Corbett, High and Morrill groundwater production wells to mitigate the movement of PCE groundwater contamination within the Central Truckee Meadows Remediation District (District).

The NDEP acknowledges that operating the subject wells as described in the revised Plan will contribute to the containment and remediation of PCE groundwater contamination within the District. As described in the current Remediation Management Plan and governing statutes at NRS 540A.250 et. seq., costs for operating these production wells to accomplish remedial goals are eligible for reimbursement by the Remediation District.

Please contact the undersigned at 775-687-9373 or glovato@ndep.nv.gov if you have any questions regarding this letter.

Sincerely,

Greg Lovato, P.E.
Supervisor, Remediation and Certification Branch
Bureau of Corrective Actions

cc: Paul Miller, TMWA, P.O. Box 30013, Reno, NV 89520-3013
Bill Hauck, TMWA, P.O. Box 30013, Reno, NV 89520-3013
Jim Najima, NDEP

PABCA\CTMRD\080411 CTMRD Pumping Plan.doc



AMENDED AND RESTATED WASHOE COUNTY, NEVADA
DISTRICT NUMBER 24 (GROUNDWATER REMEDIATION)
AGREEMENT FOR OWNERSHIP, OPERATION AND MAINTENANCE
OF CERTAIN REMEDIATION FACILITIES AND FOR
REIMBURSEMENT OF CERTAIN EXPENSES

1. PARTIES

This Agreement is entered into between Washoe County, a political subdivision of the State of Nevada, ("County") and Truckee Meadows Water Authority, a joint powers entity created by cooperative agreement among the County and the cities of Reno and Sparks, Nevada ("TMWA"), or collectively referred to herein as the "Parties".

2. RECITALS

2.1 Pursuant to an Asset Purchase Agreement effective June 11, 2001, TMWA acquired the water operations of Sierra Pacific Power Company ("Sierra") and assumed certain contracts of Sierra, including that certain "District Number 24 (Groundwater Remediation) Agreement for Ownership, Operation and Maintenance of Certain Remediation Facilities and for Reimbursement of Certain Expenses" (hereinafter the "Sierra Reimbursement Agreement"). County and TMWA desire to amend and restate the Sierra Reimbursement Agreement and Exhibits to clarify their ongoing rights and obligations. This Amended and Restated Agreement and Exhibits (the "Agreement") are intended to supersede the Sierra Reimbursement Agreement and Exhibits in their entirety.

2.2 TMWA owns and operates, as part of its drinking water distribution system, five groundwater wells, more commonly known as the Corbett, Kietzke, Mill, Morrill and High wells (the "Wells"), to which PCE treatment facilities and equipment have been installed.

2.3 Pursuant to Washoe County Ordinance 1000 (November, 1997) and enabling state legislation -- Chapter 540A, Nevada Revised Statutes, the County has established a PCE (perchloroethylene) Remediation District (District No. 24) necessary to remedy PCE contamination as set forth in the Remediation Management Plan ("Remediation Plan") and established a PCE remediation fund to reimburse certain expenses for remediation of such contamination.

2.4 County and TMWA have determined that TMWA shall remove PCE contamination using the Wells in a mutually agreeable and prescribed manner pursuant to a State-approved pumping plan, and that such PCE removal substantially contributes to remedying the condition of PCE contamination. Accordingly, County is authorized, pursuant to the provisions of NRS 540A.270 and Washoe County Ordinance 1000, to reimburse TMWA for certain of its expenses as provided in this Agreement.

3. OPERATION AND MAINTENANCE

3.1 TMWA will inspect, operate, repair and maintain the Wells, and all PCE remediation equipment and facilities, including without limitation, piping, pumps, blowers, air-stripping towers, conduits, fixtures, and any other facilities,

appurtenances or improvements necessary for PCE remediation ("PCE Treatment Facilities") related to the Wells. Attached hereto and incorporated herein by reference is Exhibit "A" which contains a list of all PCE Treatment Facilities. _

3.2 TMWA will be solely responsible for finished water quality entering its water distribution system from the Wells, and will hold County harmless from any violations of water quality agreements or regulations applicable to water extracted from the Wells.

3.3 To assure PCE remediation facility effectiveness, TMWA will analyze both the pre-treatment and post-treatment water for volatile organic compounds. Such analysis will be performed on a quarterly basis, and TMWA will provide to the County Remediation District Manager on or before March 1st an annual report of the water quality analysis results from the Wells and PCE Treatment Facilities.

3.4 Upon reasonable, advance notice to TMWA, County, at its discretion, is authorized to access, inspect and test the Wells and related PCE Treatment Facilities.

3.5 TMWA will be responsible for all inspection, testing, repair, operation, and maintenance costs associated with the normal operation of the Wells, excluding certain approved costs solely associated with remediation, as determined pursuant to Section 3.6 below.

3.6 County will reimburse TMWA for certain approved operation and maintenance costs associated solely with remediation, determined as follows:

3.6(1) Commencing with the 2006 calendar year, remedial benefit will be attained by TMWA's operation of each of the Wells in accordance with the Pumping Plan Schedule, as amended from time to time. The Pumping Plan Schedule is attached hereto and incorporated herein by reference as Exhibit "B". The Pumping Plan Schedule may be amended from time to time by mutual agreement of the Parties and incorporated by reference herein without the necessity of formal amendment of this Agreement. County acknowledges that TMWA may operate its Wells by producing more or less water from the Wells than the amounts set forth in the Pumping Plan Schedule. Pursuant to Section 3.6(2), the County shall reimburse TMWA for actual and necessary costs to achieve remedial benefit up to the pumping volumes set forth in the Pumping Plan Schedule, but any costs attributed to pumping volumes that exceed the per-well pumping amounts identified or that exceed the cumulative total amount identified for the Wells shall be borne by TMWA at its sole cost and expense.

3.6(2) The County's reimbursement obligation shall be determined according to the following procedure: Commencing with the 2006 calendar year and each calendar year thereafter, TMWA shall determine its annual production costs

in dollars per million gallons for: 1) water produced from its Chalk Bluff and Glendale Treatment Plants and all wells other than the Wells (the "Blended Non-PCE Unit Production Cost"); and 2) water produced from the Wells (the "PCE Unit Production Cost"). The PCE Unit Production Cost shall include, without limitation, all actual and necessary costs of chemicals, contract or professional services, electricity and other services and miscellaneous supplies deemed necessary to perform such PCE remediation. County's reimbursement obligation shall be determined by multiplying the difference between the PCE Unit Production cost and the Blended Non-PCE Unit Production Cost times the actual annual amount of water produced from the PCE Wells, not to exceed the individual per-well or total volumes specified in the Pumping Plan Schedule required to attain remedial benefit.

3.6(3) TMWA shall submit its demand for reimbursement to County no later than March 1 following the calendar year for which reimbursement is sought, together with a full accounting of any necessary costs for PCE remediation, and all supporting documentation and production data to substantiate its reimbursement demand. County shall review such accounting, supporting documentation and production data, and reserves the right to audit the same at its own expense. If County approves the accounting, it will budget the same and submit for approval and payment by October 1 of the calendar year received. If County does not approve the

accounting, both Parties agree to negotiate in good faith to determine a mutually acceptable amount due.

4. ADDITIONAL, REPLACEMENT EQUIPMENT AND COMPLIANCE WITH THE REMEDIATION PLAN

4.1 The Parties hereto agree that one of the goals of this Agreement is to further accomplish the Remediation Plan, as established by and defined in Washoe County Ordinance 1000, adopted November 14, 1997, as amended from time to time with respect to the Wells. The Parties recognize that the Remediation Plan may be revised from time to time as is necessary. The Parties further recognize that if PCE remediation continues, it will be necessary from time to time to replace certain of the PCE Treatment Facilities listed on Exhibit "A" and possibly to install additional or different PCE Treatment Facilities. As the Remediation Plan is revised, amendments to this Agreement and the Exhibits may be necessary to authorize payment for the cost of additional, different or replacement PCE Treatment Facilities. The Parties agree to negotiate in good faith to make such amendments or modifications to this Agreement and Exhibits, as are necessary to accomplish the goals of the Remediation Plan and, at such time as PCE remediation is no longer necessary, to terminate this Agreement.

4.2 Additional, different or replacement PCE Treatment Facilities costing less than \$5,000 (including installation costs) shall be treated as incidental operating and maintenance expenses as described in Section 3.6.

4.3 Additional, different or replacement PCE Treatment Facilities costing more than \$5,000, but less than \$25,000 (including installation costs) shall require the prior written approval of County's Remediation District Manager, who shall have authority to approve and budget payment for the following year.

4.4 Additional, different or replacement PCE Treatment Facilities costing \$25,000 or more (including installation costs) shall require an amendment to the Exhibits hereto and payment of the cost thereof shall be subject to negotiation. Nothing in this Section 4.4 obligates County to pay the cost of such additional, different or replacement PCE Treatment Facilities.

4.5 The Parties recognize that at some point the PCE remediation contemplated by this Agreement may no longer be necessary, either upon effective written notification of such a finding from the Administrator of the Nevada Department of Environmental Protection, the Washoe County District Health Officer or from another regulatory body with jurisdiction over the matter. In such event, TMWA may purchase, at its option, the PCE Treatment Facilities owned by the County at the Wells, at a price equal to its fair market value. TMWA will provide written notice to County of its intent to exercise its option to purchase within thirty (30) days after the date of determination, by the Nevada Division of Environmental Protection or other regulatory body with jurisdiction over the matter, that PCE remediation is no longer required at the Wells.

4.5(1) The Parties agree to negotiate in good faith to determine a mutually acceptable price.

4.5(2) If TMWA does not exercise its option to purchase, County will, at its own expense, remove the remediation facilities, within 1 year after the date of determination defined in Section 4.5 above.

5. MISCELLANEOUS PROVISIONS

5.1 The Parties will execute all further documents required to accomplish the terms and conditions of this Agreement.

5.2 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

5.3 This Agreement is made in, and shall be governed, enforced and construed under the laws of the State of Nevada.

5.4 This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.

5.5 This Agreement may not be modified, terminated, or amended in any respect, except pursuant to an instrument in writing duly executed by the Parties.

5.6 If, after good faith negotiations to resolve any dispute arising out of or relating to this Agreement, the Parties are unable to agree upon a mutually acceptable resolution, the complaining party must first demand in writing that the dispute

be submitted to mediation. The Parties shall meet in mediation within thirty (30) days of a selection of a mediator. The mediator shall be agreed to by the mediating parties within 10 days of the delivery of the demand. In the absence of an agreement, the parties shall each select a representative that is a practicing attorney, licensed in the State of Nevada for a minimum of fifteen (15) years. Those two individuals will then select a practicing attorney, licensed in the State of Nevada for a minimum of fifteen (15) years to serve as the mediator.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a demand for arbitration under section 5.7 without first meeting in mediation and making good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but no more than ten (10) days, unless the maximum time is extended by the parties.

5.7 Arbitration. After mediation any remaining unresolved dispute or claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the NRS Chapter 38 Nevada Arbitration Rules. Either party may demand arbitration in writing. The parties shall set a date for arbitration within ten (10) days of selection of an arbitrator. The parties shall agree to the arbitrator within ten (10) days of the delivery of the demand. In the absence of an agreement, the

parties shall each select a representative that is a practicing attorney, licensed in the State of Nevada for a minimum of fifteen (15) years. Those two individuals will then select a practicing attorney, licensed in the State of Nevada for a minimum of fifteen (15) years to serve as the arbitrator. Each party shall bear its own costs of arbitration and neither party shall be deemed the prevailing party.

5.8 Except as set forth in Sections 5.6 and 5.7, in the event either party shall bring 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 prevailing party in such action or proceeding shall be entitled to recover costs and reasonable attorneys' fees. The Parties hereby consent to the jurisdiction of, and agree to exclusive venue in, the Second Judicial District Court of the State of Nevada in Washoe County in the event any such legal action or proceeding is commenced.

5.9 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 hereof

to be performed by any other party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreement, restrictions or conditions hereof.

5.10 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 of 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:

County: Washoe County Manager
P. O. Box 11130
Reno, NV 89520

and

Remediation District Program Manager
Washoe County Department of Water Resources
4930 Energy Way
Reno, NV 89502-4106

TMWA:

Truckee Meadows Water Authority
General Manager
P.O. Box 30013
Reno, NV 89520-3013

Any party may change its address for notice by written notice given in accordance with the foregoing provisions.

5.11 This Agreement may be executed in one or more counterpart copies, and each of which so executed, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

6.0 APPROPRIATION REQUIREMENTS

Pursuant to the provisions of NRS 354.626, County's obligations to make payments under this Agreement except by bonding, are subject to the Board of County Commissioners lawfully making an appropriation to pay the amounts required and are binding upon County only to the extent such an appropriation is made.

7.0 EFFECTIVE DATE AND TERM

This Agreement shall be effective upon the date the last signing party signs this Agreement ("Effective Date") and shall continue in effect for a period of twenty (20) years thereafter unless earlier terminated by mutual written consent of the Parties.

8.0 TERMINATION.

The County or TMWA may terminate this Agreement without cause upon 120 days prior written notice.

WASHOE COUNTY

By *Paul Foster* 6/9/09
Chairman
Board of Commissioners

ATTEST:

Amy Harvey
Amy Harvey
County Clerk

TRUCKEE MEADOWS WATER AUTHORITY

By *Mark Foree*
Mark Foree, Interim General Manager