

JOINT STATEMENT OF:

**ELWOOD LOWERY
CHAIRMAN
PYRAMID LAKE PAIUTE TRIBE**

**STEPHEN HARTMAN
VICE PRESIDENT AND GENERAL COUNSEL
FISH SPRINGS RANCH LLC**

BEFORE THE:

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

**LEGISLATIVE HEARING
S. 1818**

**PYRAMID LAKE PAIUTE TRIBE – FISH SPRINGS RANCH SETTLEMENT ACT
MAY 7, 2014**

I am Elwood Lowery, Chairman of the Pyramid Lake Paiute Tribe, and am here today representing the Tribe and also at the request of Vidler Water Company regarding S. 1818, the Pyramid Lake Paiute Tribe – Fish Springs Ranch Settlement Act. Vidler Water Company is the managing partner for Fish Springs Ranch, LLC. We greatly appreciate the fact that the Senate Indian Affairs Committee has scheduled this hearing and we urge you to expeditiously report out S. 1818 to the full Senate for consideration and approval.

At the outset, I would like to say that we have worked hard to make this settlement and the requisite legislation easy for Congress to approve. It ratifies an agreement between two independent parties – the Tribe and Fish Springs Ranch – at no cost to the United States Government, asks for and requires no action by the Department of the Interior and likely reduces its workload, terminates a lawsuit against the Department of the Interior, and assures that the Government will bear no liability from the settlement. It also protects a private water project that is already constructed and reasonably compensates the Pyramid Lake Paiute Tribe from private funds for any actual or potential resource loss. Because it involves a trust resource, however, it requires Federal authorization to take effect. That is why we are here.

The proposed legislation (S. 1818) authorizes, ratifies and confirms a settlement between the Pyramid Lake Paiute Tribe (Tribe) and Fish Springs Ranch, LLC (Fish Springs). The proposed legislation is necessary to complete the settlement which resolves the parties' dispute over water rights and alleged injuries to tribal water rights in connection with the pumping and transport by Fish Springs of groundwater from the Honey Lake Valley Basin to the suburban Stead/Lemmon Valley area north of Reno, Nevada. The transport of the groundwater to the Reno suburbs is across public lands, which required a Bureau of Land Management (BLM) right-of-way permit. The groundwater pumping takes place west of the Pyramid Lake Paiute Reservation. The Tribe's concern with the project was that Fish Springs' pumping could reduce the flow of groundwater to the Pyramid Lake Valley and Smoke Creek Desert portions of the Tribe's Reservation, reducing the Tribe's precious groundwater resource and potentially adversely

affecting Pyramid Lake, which is a desert terminus lake located entirely within the boundaries of the Pyramid Lake Paiute Reservation and home to the threatened Lahontan cutthroat trout and the endangered cui-ui. The fish of Pyramid Lake were the primary food resource of the Tribe for millennia and the Tribe has close cultural ties to them. The Native name for the Pyramid Lake Paiute, *Cui Ui Ticutta*, means cui-ui eaters.

Fish Springs Ranch and the Tribe have resolved their dispute through settlement, which needs federal approval. The terms of the settlement are reflected in an agreement entered into by the parties on May 30, 2007 (Original Agreement), and a supplement to that agreement entered into by the parties on November 20, 2013 (Supplemental Agreement), discussed below. The settlement involved two parts, the first of which has been completed and required no federal legislation. The second part involves the Tribe's waiver of full legal protection of its potentially affected water rights in the project area in favor of Fish Springs Ranch's pumping for its water export project and requires federal authorization for the Tribe to grant such waivers. Without this legislation, the Tribe will lose its ability to receive the benefits of the second part of the settlement, including the right to \$3.6 million and accumulated interest.

BACKGROUND:

In 2005 and 2006, the Bureau of Land Management issued a Final Environmental Impact Statement on rights-of-way across public lands for groundwater projects in the Honey Lake Valley of Nevada north of Reno, a Record of Decision for the Fish Springs groundwater project, and a water pipeline right-of-way across public lands for transport of groundwater from Honey Lake Valley to suburbs north of Reno. One of the project proposals considered in the EIS was Fish Springs' water pumping and export project. The total amount of groundwater rights covered by the Fish Springs project is 14,108 acre feet per year (afy), of which 13,000 afy is authorized to be pumped by Nevada State Engineer rulings. Of the 13,000 afy, 8,000 afy was covered in the EIS and another 5,000 afy could be pumped and sold in the future. A visual portrayal of the geography of the project area in relation to the Pyramid Lake Paiute Reservation and Reno, Nevada, is attached to the end of this statement.

The Tribe's concern with the groundwater pumping was the potential effects of pumping groundwater in Honey Lake Valley on the Tribe's Reservation and water resources. The U.S. Geological Survey groundwater model used in BLM's EIS predicted the maximum groundwater outflow from Honey Lake Valley to Pyramid Lake Valley, which is the location of much of the Pyramid Lake Paiute Reservation, via Astor Pass could be reduced by about 140 afy after 100 years, and eventually 150 afy at steady-state, or 10 percent of baseline conditions. The maximum groundwater outflow to Smoke Creek Desert, much of which is also part of the Tribe's Reservation, via Sand Pass could be reduced by about 450 afy after 100 years, and eventually 570 afy at steady-state, or 11 percent of baseline conditions. A substantial quantity of Smoke Creek Desert groundwater flows toward Pyramid Lake Valley and the model projected a potential reduction in flow of this groundwater that could eventually reduce groundwater outflow to Pyramid Lake Valley by about 500 afy, for a total effect on Pyramid Lake Valley of about 650 afy. These reductions were predicted for the entire hydrologic basins rather than groundwater specifically underlying the portions of the Pyramid Lake Paiute Reservation within those basins, but the Pyramid Lake Paiute Reservation occupies a major part of both areas.

The Tribe objected to the EIS, the Record of Decision, and the project, and asserted that the project would harm the resources of the Pyramid Lake Paiute Reservation, cause injuries to tribal water rights, and impair the Tribe's existing and claimed tribal water rights. The Tribe filed suit in Federal District Court for the District of Nevada on grounds of a violation of the National Environmental Policy Act (NEPA) and breach of trust, securing a preliminary ruling that the EIS most likely violated NEPA and an injunction. Appeals were filed with the Ninth Circuit Court of Appeals and an appeal was also filed before the Interior Board of Land Appeals.

The parties intended to settle these issues through the Original Agreement entered into on May 30, 2007.

THE ORIGINAL AGREEMENT HAD TWO PARTS:

Part 1: The first part permitted Fish Springs project construction to proceed and the project to operate in return for \$3,600,000, the transfer of over 6,200 acres of land to the Tribe, and certain other consideration including the right to payments to the Tribe for future transfers of water in excess of 8,000 afy already authorized up to an additional 5,000 afy. It was intended to settle all administrative appeals and end all litigation involving the Tribe's objections to the project and Fish Springs water rights, the EIS, and BLM's Record of Decision and impacts to the Tribe and its resources.

Part 2: The second part, in return for a second payment of \$3,600,000 plus accumulated interest to the Tribe, intended to completely and fully settle all claims of the Tribe and, if any, of the United States on behalf of the Tribe for impacts or injuries to existing and claimed tribal water rights, injuries to tribal water rights in four hydrographic basins, and potential injuries resulting from the project to the Pyramid Lake Paiute Reservation. Part 2 of the Original Agreement was contingent on legislation to authorize the completion of its terms.

THE SETTLEMENT TODAY:

Part 1: Part 1 of the Original Agreement was not contingent on legislation and the parties have performed and are continuing to perform their obligations, including but not limited to the following:

1. Fish Springs paid the Tribe \$3,600,000;
2. Fish Springs transferred and conveyed approximately 6,214.32 acres of land to the Tribe;
3. Fish Springs has implemented the water resources, monitoring, and management plan as approved by the Nevada State Engineer;
4. Fish Springs has delivered and continues to deliver certain resource reports to the Tribe and the United States showing the total amount of water pumped and transferred from Fish Springs Ranch to the North Valleys Planning Area through the project;
5. To the extent opportunities have arisen to date, the Tribe has cooperated in the future permitting for the project;

6. The Tribe has participated in dissolving a preliminary injunction in the Federal District Court Action, dismissing the IBLA Appeal, and dismissing the Ninth Circuit Appeals, which paved the way for Fish Springs' pipeline to be constructed; and
7. Fish Springs has been able to exercise its right under the Original Agreement to pump and transfer water through the project to end users.

Part 2: Completing Part 2 of the Original Agreement languished as the legislation required by the settlement and proposed toward the end of the session in 2008 was not enacted. The Tribe and Fish Springs still desired to complete the terms of Part 2 of the Original Agreement, however, and entered into the Supplemental Agreement this past November to accomplish this objective. The Supplemental Agreement simplifies the remaining actions required to accomplish Part 2 of the Original Agreement while remaining true to its original intent. Under Part 2 of the settlement, the Pyramid Lake Paiute Tribe agrees to not challenge Fish Springs existing state permitted water rights, to waive claims for damages or taking of Tribal water rights from use of Fish Springs' state-permitted water rights, and to not impair, prevent, or interfere with implementation of the Fish Springs' project. In return, Fish Springs agrees to compensate the Tribe for allowing the project to proceed through a monetary settlement. The Tribe considers the value of the settlement to be fair and the Pyramid Lake Paiute Tribal Council has approved the settlement after examining it closely.

The Supplemental Agreement modifies the manner in which the settlement is approved by the United States. The Original Agreement was negotiated by the Tribe and Fish Springs, but assumed that the United States, through the Executive Branch, as the Tribe's trustee, would sign waivers of potential claims against Fish Springs along with the Tribe even though Departments of Justice and Interior representatives were not involved in the negotiations. This approach has been modified to have the same effect, but for Congress to 1) extinguish claims the United States could bring on behalf of the Tribe against Fish Springs to the extent that claims are waived by the Tribe, 2) eliminate the responsibility of the United States to assert such claims on behalf of the Tribe, and 3) terminate any potential liability of the United States resulting from the settlement terms. In these ways, the settlement is simpler and the proposed legislation does not require participation in the settlement by the Executive Branch.

The Supplemental Agreement also modifies the approach in the Tribe's waivers to that generally recommended by the Department of the Interior, which is patterned on recent Indian water rights settlements such as those for Aamodt, White Mountain Apache, and the Crow Tribe. In doing so, it adds specific waivers of claims against the United States by the Tribe, which complement the waivers of claims against Fish Springs, and assures the United States that it will incur no liabilities as a result of the settlement.

The Supplemental Agreement also provides that if Legislation is not enacted by December 31, 2015, Part 2 of the Settlement will be terminated. In this case, the Tribe would no longer be entitled to payment from Fish Springs for Part 2 of the settlement.

THE PROPOSED LEGISLATION, S. 1818:

The proposed legislation authorizes and ratifies the Supplemental Agreement and thereby

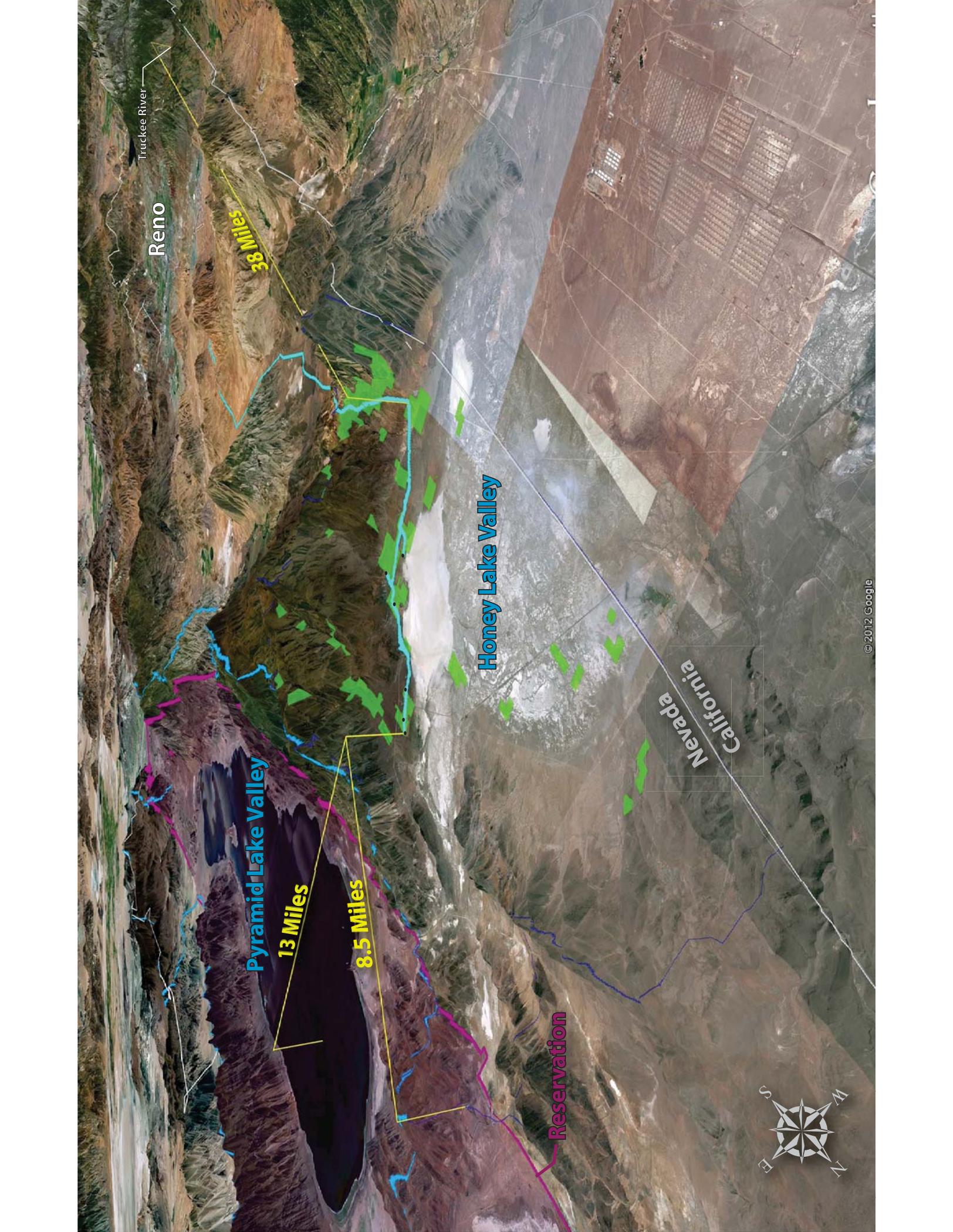
permits the settlement between the Tribe and Fish Springs to be completed. Through the proposed legislation, the United States would extinguish any claims on behalf of the Tribe that are waived by the Tribe against Fish Springs and the United States would have no right or obligation on behalf of the Tribe to assert claims waived by the Tribe. The Tribe would also waive any claims it might have against the United States under the agreement and act including waiving any United States liability to the Tribe for the claims waived, subject to certain reservations. The proposed legislation would authorize the Tribe to grant the waivers against both Fish Springs and the United States, which it cannot do without authorization from Congress. These provisions would take effect after the Tribe signed its waivers and Fish Springs paid the Tribe \$3,600,000 plus interest from January 8, 2009, until the date the payment is made. The Tribe will also dismiss pending litigation against the Bureau of Land Management for violations of NEPA and United States trust responsibilities related to the Fish Springs project and Fish Springs' use of its groundwater rights.

BENEFITS OF THE SETTLEMENT TO THE UNITED STATES:

The settlement resolves a lawsuit against the Bureau of Land Management, eliminates the potential need for the Bureau of Land Management to prepare a new or supplemental EIS, fulfills a trust responsibility of the United States to the Tribe, eliminates a potential liability of the United States for breach of trust against the Tribe, resolves water rights between the Tribe and Fish Springs Ranch, and, potentially, between the United States, acting on behalf of the Tribe, and Fish Springs Ranch, at no cost to the United States.

No federal appropriation of funds is sought or needed under the settlement or the proposed legislation.

Both Fish Springs Ranch and the Tribe urge that Congress enact S. 1818 at its earliest opportunity this year so that we can complete the settlement and not be pushed up against the termination deadline next year. We thank you for this hearing and for your consideration of this settlement legislation.



Truckee River

Reno

38 Miles

Pyramid Lake Valley

13 Miles

8.5 Miles

Reservation

Honey Lake Valley

Nevada
California



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