RECLAMATION
Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

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	R12AS20009
Project Title	Truckee River Operating Agreement (TROA) Desert Terminal Lakes Program – TROA Completion and Implementation
Recipient	City of Fernley
Principle Investigator	Shari Whalen, Civil Engineer
Anticipated Federal Amount	Estimated amount of the Agreement: $1,000,000.00
Cost Share	None
Total Anticipated Award Amount	FY12: $5,000.00
New Award or Continuation?	New Award
Anticipated Period of Performance	Date of execution through December 1, 2016
Award Instrument	Grant
Statutory Authority	Public Law 107-171 (Farm Security and Rural Investment Act of 2002), as amended
CFDA # and Title	15.508 (Providing Water to At-Risk Natural Desert Terminal Lakes
Single Source Justification Criteria Cited	(2) Continuation (4) Unique Qualifications
Reclamation Point of Contact	Judy A. Hudson, jhudson@usbr.gov

OVERVIEW

The proposed project will provide up to $1,000,000 to the City of Fernley 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 110-246, Food, Conservation, and Energy Act of 2008, Section2807, Desert Terminal Lakes, which provided funds to the Bureau of Reclamation to provide water to at-risk natural desert terminal lakes. Also, specific grant authority is given in P.L. 108-7, Section 207(b) allowing this program to provide financial assistance to local public agencies. The City of Fernley needs funds for water resources related legal support in order to continue the work required to implement the Truckee River Operating Agreement (TROA). Reclamation, as well as other federal agencies and Departments, 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 City of Fernley will use the funds to coordinate and continue the necessary litigation that supports TROA implementation. Specifically, the funds will be used for lawsuits involving modification of the Orr Ditch Decree and challenges to TROA under both National Environmental Policy Act (NEPA) and

the Administrative Procedure Act (APA). These cases must be resolved in order for TROA to go into effect in the future. Also, this grant will fund the negotiations with the Pyramid Lake Paiute Tribe regarding multiple water resource issues including the Tribe's appeal of a ruling concerning water forfeiture and abandonment, a long-term water lease with the Tribe and the expansion of water resources. Lastly, TROA implementation will allow the City of Fernley to store water in upstream reservoirs. This grant will also fund activities related to negotiations for upstream storage of surface water supplies as well as developing an aquifer storage and recovery program.

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 will provide technical assistance and implement oversight of federal stewardship responsibilities, when requested, including monitoring of project performance and financial accountability and reporting in accordance with the terms and conditions of the 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). Although the City of Fernley is not a signatory to TROA, it has also been a recipient of previous grants related to TROA implementation. Because they are located adjacent to the Truckee River and own Newlands Project water rights, the city is 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. It also qualifies for a sole-source justification of unique qualifications because the City of Fernley is a stakeholder involved in and significantly impacted by the implementation of TROA due to its location and water rights ownership.

STATUTORY AUTHORITY

Public Law 107-171 (Farm Security and Rural Investment Act of 2002), as amended;

SEC. 2507. DESERT TERMINAL LAKES.

(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

(b) LIMITATION. – The funds described in subsection (a) shall not be used to purchase or lease water rights.