



N E V A D A

AGENDA
Special Meeting
City Council

Thursday, September 19, 2024 • 3:00 PM

Mayor

Neal E. McIntyre

City Council

Ward 1 - Ryan Hanan

Ward 2 - Felicity Zoberski

Ward 3 - Stan Lau

Ward 4 - Albert Torres

Ward 5 - Fran McKay

City Manager

Benjamin Marchant

Fernley City Council Chambers, 595 Silver Lace Boulevard, Fernley, NV 89408

Zoom information:

Please click the following link to join the webinar: <https://us02web.zoom.us/j/82966343247>, or one tap_mobile: 12532158782, Dial: 669 900 9128, Webinar ID: 829 6634 3247

Public Notice: This agenda has been physically posted in compliance with 241.020 at Fernley City Hall, 595 Silver Lace Blvd. In addition, this agenda has been electronically posted in compliance with NRS 241.020(3) at www.cityoffernley.org and NRS 232.2175 at <https://notice.nv.gov/>. To obtain further documentation regarding posting, please contact the City Clerk's Office at (775) 784-9830 or cityclerk@cityoffernley.org

Public Comment: Those wishing to address the City Council may submit public comment through the [online public comment form](#), or by sending an email to cityclerk@cityoffernley.org. Comments received prior to 4:00 pm the day of the meeting will be provided to City Council and added to the record but will not be read during the live meeting. Public comments received after 4 pm the day of the meeting will be included in the record but may not reach council members before action is taken. Public comment, whether on action items or public comment, is limited to three (3) minutes per person. Unused time may not be reserved by the speaker, nor allocated to another speaker. The public may comment on any matter that is not specifically included on an agenda as an action item or comment on a specific agenda item. Items not included on the agenda cannot be acted upon other than to place them on a future agenda. Additionally, if you wish you can comment in person at the meeting or use the Raise your Hand feature in Zoom (*9 if you are participating via phone).

Accommodations: City Council and staff will make reasonable efforts to assist and accommodate individuals with disabilities desiring to attend the meeting. Please contact the City Clerk's Office at (775) 784-9830 in advance so that arrangements can be made.

Supporting Material: Staff reports and supporting material for the meeting are available at the City Clerk's Office, and on the City's website at www.cityoffernley.org. Pursuant to NRS 241.020(6), supporting material is made available to the general public at the same time it is provided to the City Council.

Order of Business: The presiding officer shall determine the order of the agenda. The Fernley City Council may combine two or more agenda items for consideration; remove an item from the agenda; or delay discussion relating to an item on the agenda at any time. All items are action items unless otherwise noted. Items scheduled to be heard at a specific time will be heard no earlier than the stated time but may be heard later.

1. INTRODUCTORY ITEMS

1.1. Pledge of Allegiance

1.2. Roll Call

1.3. Public Forum

1.4. (For Possible Action) Approval of Agenda

2. CONSENT AGENDA

(PLEASE NOTE: ALL MATTERS LISTED UNDER THE CONSENT AGENDA ARE CONSIDERED ROUTINE, AND MAY BE ACTED UPON BY THE COUNCIL MEMBERS IN ONE MOTION, AND WITHOUT AN EXTENSIVE HEARING. ANY MEMBER OF THE COUNCIL MAY REQUEST THAT AN ITEM BE TAKEN FROM THE CONSENT AGENDA, DISCUSSED, AND ACTED UPON SEPARATELY DURING THIS MEETING.)

2.1. Possible Action to approve a settlement agreement with the Truckee-Carson Irrigation District resolving the litigation between the parties in Tenth Judicial District Court Case Nos. 22-10DC-0868 and 23-10DC-0332

3. PUBLIC FORUM

4. ADJOURNMENT

Next Meeting: October 2nd at 5pm



CITY OF FERNLEY

City Council AGENDA REPORT

Meeting Date: September 19, 2024

REPORT TO: Mayor and City Council

REPORT FROM:

FINANCIAL IMPACT:

Yes: No:

CURRENTLY BUDGETED:

Yes: No:

FUND/ACCOUNT:

ACTION REQUESTED:

AGENDA ITEM:

Possible Action to approve a settlement agreement with the Truckee-Carson Irrigation District resolving the litigation between the parties in Tenth Judicial District Court Case Nos. 22-10DC-0868 and 23-10DC-0332

AGENDA ITEM BRIEF:

RECOMMENDED MOTION:

BUSINESS IMPACT (per NRS Chapter 237):

See attached report for background, analysis, alternatives.

ALTERNATIVES:

BACKGROUND:

RELEVANT LAWS, STATUTES, AND REGULATIONS:

FINANCIAL IMPLICATIONS:

ATTACHMENTS:

1. Settlement Agreement (final)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is by and between the CITY OF FERNLEY, a political subdivision of the State of Nevada (“City” or “Fernley”), and the TRUCKEE-CARSON IRRIGATION DISTRICT, a Nevada irrigation district formed pursuant to NRS 539 (“District” or “TCID”) (collectively known as the “Parties”).

RECITALS

WHEREAS, the Parties have been engaged in litigation; and

WHEREAS, in an attempt to resolve the litigation, the Parties participated in a mediated settlement conference presided over by the Honorable James Hardesty, Senior Judge, held on August 29, 2024; and

WHEREAS, the parties were able to reach a tentative negotiated settlement of the litigation subject to final approval by their respective governing bodies; and

WHEREAS, the terms and conditions contained herein are substantially the same as the provisions of the Tentative Settlement Agreement executed by the Parties’ representatives on August 29, 2024,

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties stipulate and agree as follows:

1. Effective Date: This Agreement shall become effective upon the date it has received final approval by each party’s respective governing body. The governing body for Fernley is the Fernley City Council. The governing body for TCID is the TCID Board of Directors.

2. Dismissal of Case No. 23-10DC-0332: Within ten (10) days of the effective date of this Agreement, Fernley shall file with the district court a stipulated request for dismissal of the case filed in the Tenth Judicial District Court of Nevada captioned City of Fernley v. Truckee-Carson Irrigation District and identified as Case No. 23-10DC-0332. The Parties shall jointly take all actions necessary to vacate any trial currently scheduled in this matter.

3. No Appeal of Case No. 22-10DC-0868: Fernley agrees not to pursue an appeal of the ruling of the district court entered in the case filed in the Tenth Judicial District Court of Nevada captioned In the Matter of the Submission of a Contract for Judicial Determination of Validity and Authority of the Board of Directors of the Truckee-Carson Irrigation District to Enter into Such Contract as Provided for by NRS 539.305 and identified as Case No. 22-10DC-0868. If, to preserve its rights in the event that the TCID governing body fails to approve this Agreement, Fernley has filed a timely notice of appeal, Fernley shall, within ten (10) days of the effective date of this Agreement, file the necessary documents to have said appeal dismissed.

4. Credit of Operation & Maintenance Fees: TCID shall provide Fernley a credit of One Dollar and Fifty Cents (\$1.50) per equivalent irrigated acre owned by Fernley, as reflected in the water righted acreage records of TCID, to be deducted from the Operations and Maintenance

Fees assessed by TCID on irrigated lands within the District for a period of Fifty (50) years from the effective date of this Agreement, or until such time that the repayment obligations are satisfied under TCID's repayment contract for the Truckee Canal Extraordinary Maintenance Project, whichever occurs sooner.

5. Maximum Operation \$ Maintenance Fee Attributable To Repayment Contract: TCID agrees that the maximum Operation and Maintenance Fess TCID may assess to Fernley to meet TCID's repayment obligations under TCID's agreement with the United States Bureau of Reclamation ("Reclamation"), which requires repayment of the costs of construction of Phase 1 of the Truckee Canal Extraordinary Maintenance Project, shall be Seven Dollars (\$7.00) per equivalent irrigated acre, as reflected in the water righted acreage records of TCID, less the One Dollar and Fifty Cents (\$1.50) credit identified in Section 4 herein, until such time that the repayment obligations are satisfied under TCID's repayment contract for the Truckee Canal Extraordinary Maintenance Project.

6. No Separate Assessment For The Fernley Check Structure. TCID agrees that when establishing assessments to meet TCID's repayment obligations related to Phase 1 of the Truckee Canal Extraordinary Maintenance Project, TCID shall not establish a separate special assessment for any costs associated with the reconstruction of the Fernley Check Structure, apart from any overall special imposed on all water right owners in the Newlands Project.

7. Changes to Nevada's Irrigation District Act (NRS Chapter 539). The Parties agree to work cooperatively to schedule meetings with their legislative representative to discuss potential amendments to Nevada's Irrigation District Act (NRS Chapter 539) to resolve issues related to Fernley's inability to vote in district elections or lack of representation on the District Board of Trustees. Topics for discussion shall include, without limitation, providing Fernley a seat on the Board of Trustees, allowing Fernley to vote in District elections based on its total number of equivalent irrigated acres, and extending representation and/or voting right to non-water-righted property owners who pay assessments to an irrigation district pursuant to NRS 539.480(3). Nothing contained herein shall be interpreted to require a Party to support any particular amendment, in whole or in part, to NRS Chapter 539.

8. Entire Agreement. This Agreement and all referenced documents herein constitute the entire understanding and agreement between the Parties with respect to the subject matter hereof and shall not be amended, supplemented or changed, nor shall any provision hereof be waived or terminated except by written instrument signed by the Party against whom enforcement of any such amendment, supplement, modification, waiver or termination is sought. The Parties hereto acknowledge and agree that they have not relied upon any representations or warranties other than those expressly contained in this Agreement.

9. No Admission of Liability. It is agreed and understood that this is a compromise of disputed claims and that this Agreement shall never be construed as an admission of liability of the part of any of the Parties, by whom liability is expressly denied.

10. Warranties of Authority. The Parties to this Agreement, and each of them, expressly warrant and represent to all other Parties that each has the full right, title and authority to enter into this Agreement as provided herein.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. Any action to enforce any term of this Agreement shall be brought and maintained in the Tenth Judicial District Court in and for Churchill County, Nevada.

12. Litigation Fees and Expenses. Each Party hereto agrees to bear its own attorney fees and costs arising out of or related to the litigation described herein, including without limitation, the negotiation and documentation of this Agreement. In the event any party brings any action to enforce the provisions of this Agreement, each party shall pay its own costs and attorney's fees.

13. Counterparts and Copies. This Agreement may be executed in counterparts and shall be deemed executed when counterparts of this Agreement have been executed by all the parties. Such counterparts taken together shall be deemed to be the Agreement. All fully executed copies of this Agreement are duplicate originals, equally admissible in evidence.

14. Headings for Convenience Only. The Parties acknowledge that the paragraph headings contained herein are only for the convenience of the Parties. The substance and provisions hereof control without regard to the headings.

15. Preparation of Agreement. The Parties acknowledge that they have each been represented by competent counsel and that this Agreement has been negotiated and prepared in an arms-length transaction and that all Parties are deemed to have drafted this Agreement and this Agreement shall not be interpreted against any Party as the draftsman.

13. No Waiver. The failure of a Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such Party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

14. Severability. In the event that any one or more of the provisions of this Agreement shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

15. Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

[Signature Page follows]

IN WITNESS WHEREOF, the Parties hereby execute the forgoing Settlement Agreement and represent that said Agreement was approved by their respective governing bodies on the dates provided.

CITY OF FERNLEY

This Settlement Agreement was adopted on this ____ day of _____, 2024 by vote of the Fernley City Council.

The Honorable Neal McIntyre, Mayor

David H. Rigdon, Esq
Attorney for City of Fernley

TRUCKEE-CARSON IRRIGATION DISTRICT

This Settlement Agreement was adopted on this ____ day of _____, 2024 by vote of the Truckee-Carson Irrigation District Board of Directors.

The Honorable Eric Olsen, President

Michael J. Van Zandt, Esq
Attorney for Truckee-Carson Irrigation
District