

**PROCEDURAL RULES FOR DISPUTES ARISING UNDER THE
TRUCKEE RIVER OPERATING AGREEMENT**

TRUCKEE RIVER SPECIAL HEARING OFFICER

2019

**PROCEDURAL RULES FOR DISPUTES ARISING UNDER THE TRUCKEE RIVER
OPERATING AGREEMENT**

I. LEGAL AUTHORITY AND DEFINITIONS

Rule 1 Legal Authority.

- a. These Procedural Rules (“Rules”) are adopted pursuant to the Truckee River Operating Agreement (“TROA”), Section 2.B.2(b) and effective as of the date of filing with the Orr Ditch Court.
- b. To the extent a provision of these Rules contradicts or is inconsistent with the provisions of the TROA, the TROA controls.
- c. These Rules shall control procedures regarding Contested Cases initiated under the TROA before the Truckee River Special Hearing Officer (“TRSHO”).
- d. These Rules are subject to periodic review and revision at the request of the United States, the State of Nevada, the State of California, or the Pyramid Lake Paiute Tribe, or on the TRSHO’s own initiative, but not less frequently than once every five years, with the first such five-year deadline to be calculated from the date these Rules are promulgated.

Rule 2 Limited Authority of Truckee River Special Hearing Officer (“TRSHO”) to Resolve Contested Cases.

- a. The TRSHO shall hear all Contested Cases arising from disputes under the TROA pursuant to TROA Section 2.B.
- b. The TRSHO may hold Hearings or otherwise resolve Contested Cases in which Scheduling Parties, Signatory Parties, and all other persons having standing to assert disputes under the TROA may appear under the requirements of these Rules.
- c. Remedies available to the TRSHO are limited to declaratory and injunctive relief to carry out and enforce provisions of the TROA. The TRSHO has no power to grant monetary relief.
- d. To the extent a Contested Case properly involves issues of state water law, the TRSHO may request the Nevada State Engineer or California State Water Resources Control Board to accept a reference as may be authorized by state law, including but not limited to the authority established under California Water Code sections 2075 and 2076.

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- e. The TRSHO has authority as necessary to resolve Contested Cases properly brought under these Rules, and to order non-monetary sanctions for good cause, consistent with Federal Rule of Civil Procedure (FRCP) 37.

Rule 3 Definitions. In general, unless otherwise defined below, terms defined in the TROA are to be given the same meaning in these Rules. Any inconsistencies or conflicts between the TROA definitions and the definitions stated in these Rules are to be resolved by reference to the TROA definition.

- a. **Administrator** means the individual appointed in accordance with Sections 2.A.2 through 2.A.3. (*see* TROA page D-1).
- b. **Amicus or Amici** means the limited status that may be accorded an entity or entities that seeks to participate in a Contested Case in the manner provided for in Rule 11(c).
- c. **Answer** means the Pleading filed in response to a Petition. *See* Rule 10.
- d. **Contested case** means a proceeding in which a dispute involving the legal rights, duties or privileges of a Party arising under the TROA is determined by the TRSHO pursuant to Section 2.B of TROA.
- e. **Filing(s)** means a document, including a Petition, Answer or Pleading, filed with the TRSHO.
- f. **Hearing** means an opportunity to be heard regarding matters in dispute in a Contested Case filed under these Rules.
- g. **Intervenor** means any entity not a Petitioner or Respondent that demonstrates standing to participate in a Contested Case initiated under these Rules. *See* Rule 11.
- h. **Notice of Intent to Participate** means the Pleading filed by any TROA Signatory, Scheduling Party, or Administrator who seeks to participate in a Contested Case, and who is not already a Party to the Contested Case. *See* Rule 11.
- i. **Order** means a TRSHO determination resolving in whole or in part a matter or matters in dispute, or establishing deadlines or other procedural framework for resolution of matters in a Contested Case.
- j. **Orr Ditch Court** means the court having continuing jurisdiction over the Orr Ditch Decree: the United States District Court for the District of Nevada.
- k. **Party or Parties** means Petitioner(s), Respondent(s) and/or Intervenor(s) to any Contested Case initiated under these Rules (including a TROA Signatory Party, Scheduling Party or TROA Administrator who files a Notice of Intent to

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Participate). Party does not include any entity granted Amicus status under these Rules.

- l. **Pleading(s)** means a formal document in which a Party to a Contested Case sets forth or responds to allegations, claims, denials, or defenses; this includes documents filed by Amicus as authorized by the TRSHO Order defining scope of Amicus participation.
- m. **Petition** means an initial Pleading filed by a Petitioner with the TRSHO to initiate a Contested Case. *See* Rule 6.
- n. **Petitioner** means a Party who presents a Petition to the TRSHO. Petitioner may also include an Intervenor who intervenes in support of a Petition.
- o. **Representative** means one who stands for or acts on behalf of another.
- p. **Respondent** means any Party against whom a Petition is filed. Respondent may also include an Intervenor who intervenes in opposition to a Petition.
- q. **Scheduling Parties** refers to the entities identified in Section 11.E. of the TROA which are authorized to schedule one or more water management operations as described in Article Eleven of TROA (*see* TROA page D-9).
- r. **Signatory Parties or Signatories** refers to the Mandatory Signatory Parties defined in the TROA, page D-6, including any entity that is or becomes a successor to a Mandatory Signatory Party.
- s. **TROA** means the Truckee River Operating Agreement executed on September 6, 2008 and officially implemented on December 1, 2015.
- t. **Truckee River Special Hearing Officer, Truckee River Hearing Officer, or TRSHO** are all appellations referring to the individual charged with proceeding to hear Contested Cases pursuant to these Rules.
- u. **TRSHO Electronic Filing System** means the electronic platform created and maintained for purposes of receiving documents, Pleadings, and related filings in Contested Cases.

II. SCOPE AND PURPOSE OF RULES

Rule 4 Purpose of the Rules.

- a. The purpose of these Rules is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and legal relations under the TROA, as well as to facilitate fair and expedient resolution of disputes arising under the TROA. To the extent the relief sought is declaratory in nature, the scope of relief available

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shall be interpreted to be consistent with case law interpreting the Federal Declaratory Relief Act, 28 U.S.C. 2201.

- b. All Rules adopted for TROA Hearings are public records.
- c. All filings made pursuant to these Rules are public records, however, for good cause shown and consistent with FRCP 26(c), a document or filing may be protected from public disclosure pursuant to a protective Order.
- d. All Hearings involving TROA disputes brought pursuant to these Rules are public and on the record.

Rule 5 Scope of the Rules.

- a. These Rules apply only to disputes arising under the TROA, and specifically, to Contested Cases for declaratory and prospective injunctive relief, including disputes regarding the implementation, interpretation and enforcement of TROA provisions. These Rules do not apply to the adjudication of water rights on the Truckee River, including disputes arising under the interstate apportionment of the Truckee River as provided in Pub. L. 101-618. *Title II, Pub. L. No. 101-618, § 204(d). TROA § 2.B.2(b)(6)*. These Rules also do not apply to disputes involving the administration of water rights pursuant to Nevada or California state law.
- b. No Party may commence a judicial action involving a dispute arising under the TROA without first having exhausted procedures for resolution of disputes as set forth in the TROA.

III. INITIATING A CONTESTED CASE

Rule 6 Commencing a Contested Case.

- a. A Contested Case is commenced by filing a Petition with the TRSHO. The Petition shall name the Parties in dispute.
 - i. The entity or person bringing the Petition shall be designated the “Petitioner” and the entities or person(s) named as Parties to the dispute will be “Respondent(s).”
 - ii. If the dispute stems from a decision made by the Administrator, the Administrator shall be named as a Respondent, and the Party bringing the Contested Case regarding the Administrator’s decision shall be the Petitioner.

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- b. Any Petition filed pursuant to these Rules will:
 - i. Identify the Petitioner. Provide the name, address, phone number and email address of the Petitioner's attorney, if the Petitioner is represented by an attorney.
 - ii. Provide a clear statement of the relief sought by the Petition and sufficiently describe the factual and legal grounds therefor. The Pleading standards found in FRCP (8)(a) and case law interpreting FRCP (8) are incorporated herein by reference.
 - iii. Be served in the manner described in Rule 7 on the Administrator (whether or not the Administrator is a Respondent) and all Respondents and Signatories.

Rule 7 Filing and Service.

- a. Filing under these Rules defined. The filing of a Petition, Answer or other Pleading in a Contested Case, or an Order of the TRSHO, shall be made using the Electronic Filing System established by the Administrator's office.
 - i. However, to the extent a Petition is served on a Respondent who is not a TROA Signatory Party, that Petition shall be filed using certified or registered mail. The non-Signatory Respondent will be added to the Sharefile efilng system once it responds to the Petition.
- b. Who Must Be Served.
 - i. Service of the Petition and Answer shall be made on every Petitioner, Respondent, and Intervenor-movants, the Administrator, whether or not a Party to the Contested Case, and all TROA Signatories and Scheduling Parties.
 - ii. TROA Signatories who are not Petitioners or named Respondents in a Contested Case may opt-out of receiving Pleadings from a particular Contested Case through the opt-out procedures of the TRSHO Electronic Filing System.
- c. A Pleading or other document (with the exception noted in 7.a.i. above) is served under this Rule by uploading the Pleading to the TRSHO Electronic Filing System. To the extent a Pleading, attachment, or exhibit (or any filed document) is too large to be served on the TRSHO Electronic Filing System, the document may be served via overnight delivery of any electronic file storage device. Electronic files must be provided in a format that does not require any specialized computer hardware or software for viewing, with the exception of computer models used by the Parties for the administration of the TROA.

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- d. Proof of service will be in the form of the message received from the filing entity from the Electronic Filing System, or the receipt for overnight delivery.
- e. After a Contested Case is initiated and all necessary Parties have been served, the participating Parties may mutually consent and stipulate to service via electronic mail.

Rule 8 Computing Time.

- a. The following rules apply in computing any time period specified in these Rules:
 - i. Exclude the day of the event, act or default that triggers the period.
 - ii. Thereafter, every day shall be counted including legal holidays, Saturdays and Sundays.
 - iii. The last day of the period shall be included unless the last day is a Saturday, Sunday or legal holiday, in which case the period shall run until the next day that is not a Saturday, Sunday or legal holiday.
 - iv. The “next day” is measured by continuing to count forward when the time period is measured after an event and backwards when the time is measured before an event.
 - v. As used in these rules, “legal holiday” includes: first day of January, observed as New Year’s Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; March 31, observed as Cesar Chavez Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the last Friday in October, observed as Nevada Day; the 11th day of November, observed as Veteran’s Day; the fourth Thursday in November, observed as Thanksgiving Day; and the twenty-fifth day of December, observed as Christmas Day.
 - vi. Enlargement. When by these Rules or by a notice given thereunder or by Order of the TRSHO an act is required or allowed to be done at or within a specified time, the TRSHO for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request, including by stipulation of all Parties, therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

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Rule 9 Form of Pleadings and Caption. All Pleadings filed or submitted by a Party and intended to be part of the Hearing Officer’s record shall:

- a. Be formatted as an 8½” by 11” document in 12 point font;
- b. State the caption and case number or, if a new Petition, leave the case number blank space blank, and the title of the document;
- c. Include in the upper left corner of the first page the name(s), mailing address(es) and telephone number(s) and email address(es) of the person(s) or entity filing the document or the person(s) to whom questions about the document can be directed; and
- d. Have at least one-inch margins unless the document is a map or other technical document.
- e. Documents complying with this Rule will have the following caption form:

Name of Party and Representative
 Affiliation, if any
 Mailing Address of Representative
 Street Address of Representative
 Telephone
 Email
 Attorney/Representative for (Name of Party)

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| | | |
|-------------------------------------|---|---|
| In the Matter of (Petition Caption) |) | |
| |) | DOCKET NO.[year][nature of proceeding] ¹ # |
| |) | |
| |) | TITLE OF DOCUMENT |
| |) | |

Rule 10 Answers or Motions to Dismiss in Response to Petition.

- a. Within 45 days of service of a Petition, Respondents shall file an Answer or a motion to dismiss.

¹ For example, the first Petition for declaratory judgment would be: Docket No. 2019-DJ-1 etc.

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- i. Notwithstanding the foregoing, if the Petition involves matters or disputes requiring expeditious resolution, the Petitioner may file a Motion to Shorten Time, requesting an Order to file Answers in time shorter than 45 days.
 - ii. If such a Motion to Shorten Time is filed, the TRSHO may either grant the Motion without responsive briefing or order briefing on a schedule commensurate with the relief sought in the Motion to Shorten Time.
- b. Answers filed pursuant to these Rules shall:
- i. State the name and address of the Respondent's attorney, if the Respondent is represented by an attorney; or state the name and address of the Respondent if appearing *pro se*.
 - ii. Provide a clear statement of the Respondents' position on the relief sought in the Petition and the legal and factual grounds therefor, and the alternate form of relief, if any, that Respondents seek.
 - iii. Identify any affirmative defenses and the factual legal grounds therefor.
 - iv. Be served in the manner described in Rule 7 on the Administrator (whether or not he is a Respondent), all Petitioners, and all TROA Signatories.
- c. Motions to dismiss must allege a lack of subject matter jurisdiction or failure to state a claim. The merits of any motions to dismiss will be evaluated by reference to standards found in FRCP 12 and related case law.

Rule 11 Motions to Intervene.

- a. On a timely motion, TROA Signatories, Scheduling Parties or the Administrator not named in the Petition as Respondents shall have the unconditional right to intervene through the filing of a Notice of Intent to Participate.
 - i. Timeliness. A Notice of Intent to Participate must be filed no later than 45 days before any scheduled Hearing;
 - ii. Contents. Consistent with standards imposed under FRCP 24(a) the Notice of Intent to Participate shall identify the entity and the interest it seeks to protect in the Contested Case.
 - iii. Limitations. Consistent with standards imposed under FRCP 24(a), a Notice of Intent to Participate shall not prejudice existing Parties or expand issues in dispute. Similarly, the filing of Notice of Intent to Participate after any established case management deadlines but no later than 45 days before any scheduled Hearing, does not, in and of itself,

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establish a basis to seek modification of any existing case management deadlines.

- b. On a timely motion, the TRSHO may permit other entities or persons to intervene for good cause and upon demonstrating an interest in the Contested Case, consistent with the standards identified in FRCP 24(b) and associated case law interpreting FRCP 24. In exercising its discretion, the TRSHO must consider whether the intervention will unduly delay or prejudice the adjudication of the original Parties' rights.
- c. Entities or persons who cannot demonstrate an interest in the Contested Case consistent with the standards set forth in FRCP 24(b) and related case law have not met the legal standards to appear and may not participate as Parties in a Contested Case under these Rules. Notwithstanding the foregoing, TROA Signatories, Scheduling Parties, the Administrator or any other person may move for Amicus status to participate in briefing on legal issues in a Contested Case.

Rule 12 Modification of Deadlines.

- a. Expediting deadlines. To ensure timely resolution of the dispute, the deadlines associated with Answers, motions practice, and other standardized deadlines under these Rules can be accelerated by stipulation of all Parties, Order of the TRSHO upon request by a Party and for good cause shown, or in the discretion of the TRSHO.
- b. Lengthening deadlines. Deadlines associated with Pleadings including motions practice and discovery, may be lengthened by stipulation of the Parties to a Contested Case or, upon good cause shown, by order of the TRSHO.

IV. FORMS OF CONTESTED CASES

Rule 13 Limitation on Forms of Contested Cases. The TROA limits the remedies available pursuant to these Rules to Contested Cases for declaratory and prospective injunctive relief to interpret, implement or enforce provisions of the TROA. TROA § 2.B.2(b)(6). Therefore, forms of Contested Case are limited to:

- a. Declaratory relief.
 - i. Such declaratory relief includes, but is not limited to, requesting interpretation of TROA provisions individually or collectively where there is a dispute arising under the TROA.
- b. Injunction seeking prospective relief.
- c. Such other Contested Cases that may be styled to seek the limited relief provided for in TROA Section 2.B.2(b)(6).

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Rule 14 Signing Pleadings, Motions and Other Papers; Representations to the TRSHO.

- a. All Pleadings filed with the TRSHO shall be signed by the attorney of record or the Party personally if the Party is unrepresented.
- b. An affidavit is not required with any Pleading. By signing a Pleading, counsel and/or the Party personally are representing that the contents of the Pleading:
 - i. Are warranted by the plain language of the TROA or by a non-frivolous argument for a different interpretation of the plain language, as well as for extending, modifying or reversing existing law interpreting the TROA or establishing new law interpreting the TROA;
 - ii. Involve factual allegations that have evidentiary support or, if specifically identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - iii. Involve denials of factual contentions that are warranted on the evidence or are reasonably based on a belief or a lack of information.

Rule 15 Request for Declaratory Relief.

- a. Pursuant to TROA Section 2.B.2(b)(6), the TRSHO is authorized to entertain declaratory judgment requests with the purpose of declaring rights, status, and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.
- b. Any Party may ask the TRSHO to determine any question, construction or validity regarding the implementation, interpretation and enforcement of TROA provisions to obtain a declaration of rights, status, or other legal relations.
- c. TROA provisions may be construed prospectively provided the Petitioner makes a showing that a case or controversy exists.
- d. The TRSHO may refuse to enter a declaratory judgment where such judgment if rendered would not terminate the uncertainty or controversy giving rise to the proceeding.
- e. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. Any adverse Party whose rights or interests were adjudicated by the declaratory judgment may be required to show cause why further relief should not be granted forthwith.

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- f. When a declaratory judgment involves issues of fact, such issues may be tried and determined in the same manner as issues of fact are tried and determined in other TRSHO proceedings, subject to these Rules.

Rule 16 Injunctions and Restraining Orders.

- a. Any Party may ask the TRSHO to issue an injunction or restraining order arising from a dispute regarding the implementation, interpretation and enforcement of TROA provisions.
- b. Preliminary injunctions may only be issued after notice to the adverse Party or Parties and an opportunity to respond, and shall not include a bond or other security.
- c. A Hearing on the preliminary injunction may be consolidated with a Hearing on the merits and, in any event, evidence admitted at the preliminary injunction Hearing may be admitted at a merits Hearing without further presentation.
- d. Temporary restraining order (“TRO”) issued without notice.
 - i. The TRSHO may issue a TRO without written or oral notice to the adverse Party or its attorney only:
 - (1) If specific facts alleged in an affidavit or verified Petition clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse Party can be heard in opposition; and
 - (2) If the movants’ attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.
 - (3) TROs issued without notice must state the date and hour of issuance, describe the injury and state why it is irreparable, state why the TRO was issued without notice, and be promptly entered into the TRSHO’s record. The TRO expires at the time after entry—not to exceed 14 days—that the TRSHO sets, unless before that time the TRSHO, for good cause, extends it for a like period or the adverse Party consents to a longer extension.
 - (4) If the TRO is issued without notice and opportunity to respond, the motion for preliminary injunction must be set for Hearing at the earliest possible time. At the preliminary injunction Hearing the Party who obtained the TRO must proceed with the motion for a preliminary injunction; if the Party does not, the TRSHO must dissolve the TRO and deny the motion for preliminary injunction.

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- (5) On two (2) days' notice to the Party who obtained the TRO without notice—or on shorter notice set by the TRSHO—the adverse Party may appear and move to dissolve or modify the TRO. The TRSHO must then hear and decide the motion for preliminary injunction as promptly as justice requires.
- ii. Contents and scope of every injunction and TRO.
 - (1) Every Order granting an injunction and every TRO must:
 - (a) State the reasons why it is issued;
 - (b) State its terms specifically; and
 - (c) Describe in reasonable detail—and not by general reference to the complaint or other document—the act or acts restrained and required.
 - (2) Who is bound. The injunction and/or TRO binds only the following who receive actual notice of it by personal service:
 - (a) The Parties to the Contested Case;
 - (b) The Parties' officers, agents, servants, employees and attorneys; other persons who are in active concert or participation with anyone described in Rule 16.c.ii.2(a) or 16.c.ii.2(b); and
 - (c) The Administrator and/or Federal Water Master, including its or their employees, agents, and attorneys, and/or other persons who have operational control over diversion works, water deliveries or other operations subject to and affected by the TRO.

V. SCHEDULING AND STATUS CONFERENCES

Rule 17 Initial Scheduling and Status Conference.

- a. Unless a date is specifically requested by the Parties to a Contested Case, the TRSHO shall set a scheduling and status conference within 15 days of the filing of any Answers to a Petition.
- b. Generally, the purpose of the scheduling and status conference is to discuss factual and legal issues in dispute, set deadlines, order discovery if appropriate, and generally frame the scope of the dispute.
- c. Deadlines shall be set for:

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- i. Pre-trial motions or briefing;
 - ii. Timing and extent of discovery (if appropriate);
 - iii. Exchange of witness lists and expert reports (if necessary) ;
 - iv. Exchange of exhibits; and
 - v. Hearing (if required).
- d. The above list of deadlines may be expanded to include additional deadlines and hearing efficiencies as required by the nature and complexity of the dispute. The list of deadlines may also be limited, depending upon the scope of the issues in dispute.
- e. While formality, adherence to due process, and creation of a robust administrative record are in the best interest of all Parties to a Contested Case, the TRSHO shall strive to craft the scope and process associated with each Contested Case to ensure effective and expedient resolution of disputes.

Rule 18 Additional Conferences. Parties may request of the TRSHO or the TRSHO may order of his or her own accord additional conferences as needed based on the status and progress of any Contested Case initiated under these Rules.

VI. DISCOVERY

Rule 19 Discovery. To facilitate expedient resolution of Contested Cases initiated under these Rules, discovery is limited in the manner described in this section.

- a. Except to the extent provided otherwise in these Rules or in the TRSHO's Order authorizing discovery in a particular Contested Case, the limitations of the Federal Rules of Civil Procedure 26 through 36 apply.
- b. Notwithstanding the foregoing, discovery associated with any Contested Case initiated pursuant to these Rules shall not include:
 - i. Mandatory disclosures (*see*, FRCP 26(a))
 - ii. Mandatory conference (*see*, FRCP 26(f))
 - iii. Physical or mental examination of a Party (*see*, FRCP 35).

Rule 20 Discovery Order. In Contested Cases initiated under these Rules, Parties may request the Discovery Order include one or more of the following forms of discovery:

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- a. Depositions;
- b. Production requests, interrogatories, requests for admission;
- c. Physical inspection and examination of real property, structures, or other physical items that might be germane to resolution of a dispute.

Rule 21 Commencement of Discovery. Discovery in Contested Cases initiated under these Rules may only commence upon entry of a Discovery Order by the TRSHO, either in response to the motion of a Party or *sua sponte*.

- a. The Discovery Order shall identify numerical limits on authorized forms of discovery, including but not limited to limits on written discovery and depositions (both number and duration).
- b. The Discovery Order shall set forth appropriate deadlines; however, in the absence of specific deadlines, discovery deadlines default to those set out in the Federal Rules of Civil Procedure, as applicable.
- c. In the absence of an established deadline, discovery shall conclude within 45 days before any Hearing.

Rule 22 Motions to Compel-Sanctions. After documenting an attempt or attempts to resolve any discovery dispute without intervention of the TRSHO, any Party, upon reasonable notice, may apply for an Order compelling discovery in a manner consistent with the provisions of FRCP 37(a).

VII. HEARINGS AND ORDERS

Rule 23 Notice of Hearing/Notice of Trial.

- a. The TRSHO shall issue a Notice of Hearing no later than 14 days before the calendared date of any Hearing.
- b. To the extent possible, Hearings will be held at the federal district courthouse, 400 S. Virginia, Reno, Nevada, 89501 or the Administrator's Office, 9760 S McCarran Blvd, Reno, NV 89523.
- c. The notice shall list:
 - i. The Parties;
 - ii. Case number;
 - iii. Contact information regarding scheduling;
 - iv. Scheduled length of the Hearing; and

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- v. Address and room number of the Hearing location;
- vi. If no prior Order has established the legal authority for holding a Hearing, the Notice of Hearing must include this as well.

Rule 24 Hearings. Hearings under these Rules are open to the public. Hearings shall be audio recorded unless the Parties desire to pay for a court reporter.

Rule 25 Reasonable Accommodations. Reasonable accommodations for facilities (compliance with the Americans with Disabilities Act (“ADA”)). To the extent the location of the Hearing is not already ADA compliant, reasonable accommodations will be made to ensure facilities are available to accommodate all individuals participating in any proceedings under these Rules.

Rule 26 Evidence. Evidence should be taken by the TRSHO to assist with the Parties’ development of a record, not excluded to frustrate that development. The TRSHO will look to the Federal Rules of Evidence as a guide, but is not bound by the Federal Rules of Evidence. Towards that end:

- a. The TRSHO, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by federal statute.
- b. Notwithstanding the foregoing, if opinion testimony is offered:
 - i. By lay witnesses. The TRSHO will limit lay witness opinion testimony consistent with Federal Rule of Evidence 701;
 - ii. By expert witnesses. Opinion testimony offered by expert witnesses shall be limited to the areas in which an expert can be qualified under Federal Rules 702 through 705 and related standards established by case law. Expert testimony that is allowed shall be evaluated for admissibility and reliability purposes consistent with Federal Rules of Evidence 702 through 705, and standards established by case law.

Rule 27 Orders.

- a. Orders may be interlocutory or final.
 - i. Final Orders resolve all claims in a Contested Case.
 - ii. Interlocutory Orders resolve some but not all issues in a Contested Case.
- b. The TRSHO may request that the Parties to a Contested Case submit proposed orders.

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- c. The TRSHO shall establish a deadline of not more than 180 days for issuing Final Orders based on the substance and urgency of the matter in dispute.
- d. Service of Orders shall be made through the procedures described in Rule 7.

Rule 28 Reconsideration.

- a. Parties may move for reconsideration of an Interlocutory Order, Orders on motions for summary judgment that do not dispose of all issues in a Contested Case, or Orders denying preliminary injunctions, within 28 days of service of such Order.
- b. Parties to a Contested Case may move for reconsideration of a Final Order within 28 days of service of the Order. Motions to reconsider must identify specific portions of the Order to be reconsidered, and set forth the basis in fact and law for the reconsideration.
- c. No motion to reconsider shall exceed 10 pages.

Rule 29 Record of Decision.

- a. The TRSHO shall maintain an official record for each Contested Case. The record shall be maintained on a TRSHO website.
- b. Decisions shall be based on the official record.
- c. Contents of the record shall include:
 - i. All notices of proceedings;
 - ii. All Petitions, responsive Pleadings, motions, responsive briefing, or other documents filed in the Contested Case;
 - iii. All intermediate or interlocutory decisions of the TRSHO;
 - iv. All evidence received or considered (including audio recordings, transcripts of recordings of any Hearings or oral arguments, all exhibits offered or identified at Hearing);
 - v. All offers of proof, however made;
 - vi. All briefs, memoranda, proposed orders, statements of positions, or exceptions filed by Parties;
 - vii. All evidentiary rulings on testimony, exhibits or offers of proof;

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- viii. Any technical memoranda offered or requested for purposes of resolving disputed issues; and
- ix. All recommended orders, Preliminary Orders, Final Orders, and Orders on Reconsideration.

VIII. INFORMAL PROCEDURES

Rule 30 Purpose of Informal Procedures. Informal procedures are intended to promote cooperation between disputing Parties by encouraging dialogue, and reducing costs, complexity and procedural requirements that would otherwise apply to resolve a Contested Case initiated under these Rules.

Rule 31 Limitation on Application of Informal Procedures. Upon unanimous agreement of Parties to a Contested Case to invoke the informal procedures, Parties waive the ability to operate under the formal procedures provided for in Parts III through VII *supra* for at least 90 days. The TRSHO, in consultation with the Parties to a Contested Case, shall establish by Order the time frame for application of informal procedures, and the specific nature of the informal procedures to be applied (*see* below).

Rule 32 Invoking Informal Procedures. All Contested Cases initiated under these Rules shall be resolved under the procedures described in Parts III through VII *supra*, unless:

- a. A Party to a Contested Case requests application of informal procedures as described within this section and all other Parties to a Contested Case agree; and
- b. Such an agreement is reduced to writing; and
- c. The agreement to proceed under the informal rules indicates whether the Parties desire to proceed under the informal procedures with or without the assistance of the TRSHO.

Rule 33 Resolving Disputes Using Informal Procedures With TRSHO Oversight.

- a. In general, under this Rule the Parties would privately convene to negotiate and exchange information in any manner they believe to be expedient to resolve disputed issues, subject to the protections of Federal Rule of Evidence 408. The Parties might request TRSHO oversight designed to facilitate moving any Party-led informal efforts along, and could take the form, *inter alia*, of scheduled status conferences or deadlines for Party-filed status reports.
- b. A dispute is successfully resolved under informal procedures without substantive assistance of the TRSHO if the Parties enter into a settlement agreement, consent decree, stipulation, or other signed instrument that clearly identifies all material terms and conditions agreed upon by the Parties, and submission of the same to the TRSHO for approval.

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- c. Upon approval of the document setting forth the terms of the resolution, the dispute is finally resolved. Final resolution of a dispute in this manner is not subject to Petitions for Review as provided for in part IX below.
- d. Parties to a Contested Case are encouraged to actively attempt to resolve their dispute, whether in the context of Rule 34 or under the formal procedures provided elsewhere in these Rules.

IX. PETITIONS FOR REVIEW OF FINAL ORDERS

Rule 34 Petition for Review of Final Orders.

- a. Final Orders entered by the TRSHO are reviewable by the Orr Ditch Court upon timely filing of a Petition for Review as provided in this section IX of these Rules. TROA § 2.B.2(b)(5).
- b. An Interlocutory Order is not subject to review by the Orr Ditch Court under these Rules unless the TRSHO issues an Order finding that the Interlocutory Order should be considered final as to the issues it resolves and pursuant to the principles reflected in FRCP 54(b) and related case law.

Rule 35 Who May File Petitions for Review. Final Orders entered by the TRSHO are reviewable by the Orr Ditch Court upon Petition for Review by any aggrieved Party who participated in the Hearing before the TRSHO. TROA § 2.B.2(b)(5).

Rule 36 Appeals: Timing of Appeal. An appeal from a Final Order entered by the TRSHO may be taken only by filing a Notice of Petition for Review with the Orr Ditch Court within 30 days of service of the Final Order being appealed. TROA § 2.B.2(b)(5).

In the event of the filing of a motion to reconsider, the 30-day period will be tolled until service of an Order on Reconsideration. Any Order on Reconsideration will be the Final Order for purposes of Petitions for Review.

Rule 37 Petitions for Review: Effective. A Party may Petition for Review of a TRSHO decision only if the Notice of Petition for Review is filed within 30 days of the Final Order as provided in TROA 2.B.2(b)(5). Such Petition for Review shall be filed in the manner in which documents are served in the Orr Ditch case on all other Parties, with a copy provided at the same time to the TRSHO. The Petition for Review shall include a statement of the substance of the decision being appealed and the manner in which the decision adversely affects or aggrieves the Petitioner's interests. TROA § 2.B.2(b)(5).

Rule 38 Petitions for Review: Substance. Decisions of the TRSHO are prima facie correct. TROA § 2.B.2(b)(5). Petitions for judicial review by the Orr Ditch Court shall include a statement of the substance of decision being appealed, the manner in which the decision adversely affects or aggrieves the Petitioner's interests, and the basis for asserting the decision complained of is arbitrary and capricious, unsupported by substantial evidence

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on the record, or otherwise not in accordance with the provisions of the TROA or other law. *Id.*

Rule 39 Petitions for Review: Preparation of the Record. Upon the lodging of a Petition for Review with the Orr Ditch Court, the TRSHO shall within 35 days compile the record and provide it to the Parties for review. The Parties then have 21 days to object to the contents of the record and to propose the addition or removal of documents. The TRSHO shall resolve disputes regarding the contents of the record within 21 days.

Rule 40 Petitions for Review: Transmission of the Record to the Orr Ditch Court. The TRSHO shall transmit the record to the Orr Ditch Court within 21 days of resolution of disputes regarding the contents of the record.