A special meeting of the Walker River Irrigation District (WRID) Board of Directors was held on August 30, 2023. The meeting was called to order at 9:00 AM at the District Board Room, 410 N. Main St, Yerington, Nevada by President SNYDER.

Present:

Jim SNYDER Marcus MASINI Richard NUTI David GIORGI Dennis ACCIARI Robert BRYAN Jessica HALTERMAN Gordon DePAOLI Dale FERGUSON President Vice President Treasurer Director Director, via phone General Manager Secretary Legal Counsel Legal Counsel

Public Present:

Peter Stanton, WBC

Public Present via Zoom:

AJ Jensby, NDWR Kat Dow, Dave Hockaday, LCBOCC Carlie He

Kat Dow, WBC Carlie Henneman, WBC

Chad Walling, NDWR Jamie Morin, WBC

1. Public Comment None presented.

2. Roll Call

All 5 board members were in attendance with 4 on site and 1 on the phone.

3. Review and consideration of a District Board Resolution to: (1) approve the Plaintiffs' and Principal Defendants' Proposed Final Conditional Stipulation Resolving The Water Right Claims of the Walker River Paiute Tribe And The United States Of America (the "Stipulation") in the litigation captioned the United States of America and Walker River Paiute Tribe v Walker River Irrigation District, Case No. 3:73-cv-00127-MMD, in the United States District Court for the District of Nevada (the "District Court"); and (2) authorize District Legal Counsel, in consultation with the District Manager, to: (a) enter into and execute a Final Stipulation on behalf of the District Based substantially on the terms of the Proposed Final Conditional Stipulation, a copy of which is to be attached to the Resolution of the District Board; (b) fil the Stipulation in the District Court in Case No: 3:73-cv-00127-MMD; and, (c) take all other reasonable actions as may be necessary to implement the Stipulation resolving the claims of the United States and Walker River Paiute Tribe for the Walker River Indian Reservation as provided by the Stipulation, including any necessary modifications to the Walker River Decree.

A. Public Comment

President SNYDER asked for public comment and none was provided.

B. Board Discussion

Counsel DePAOLI explained the stipulation and proposed resolution of the litigation by summarizing the content of the Memorandum from Legal Counsel provided to the Board on August 28, 2023, a copy of which is attached to these minutes as Exhibit A.

C. Public Comment

President SNYDER asked for public comment and none was presented.

Treasurer NUTI made a motion to approve the Stipulation pursuant to the Resolution of Walker River Irrigation District Board of Directors, a copy of which is attached to these Minutes as Exhibit B; Director GIORGI offered a second. The vote was called for and passed without opposition.

8. Director Comments

Treasurer NUTI thanked legal counsel and all that worked on the case.

9. Public Comment

None presented.

10. Adjournment

Director GIORGI made a motion to adjourn; Vice President MASINI offered a second. The vote was called for and passed. The meeting adjourned at 9:27am.

Jim Snyder, President

Marcus Masini, Vice President

Richard Nuti, Treasurer

Dennis Acciari, Director

David Giorgi, Director



MEMORANDUM

| TO: | WRID Board of Directors and Bert Bryan, District Manager |
|-------|--|
| FROM: | Woodburn and Wedge/Gordon DePaoli/Dale Ferguson |
| DATE: | August 28, 2023 |
| RE: | Proposed Conditional Stipulation Resolving the Water Right Claims of the |
| | Walker River Paiute Tribe and the United States of America. |

I. <u>Background.</u>

In June of 2022 Counsel and the District Manager began settlement negotiations with respect to the claims of the Walker River Paiute Tribe (the "Tribe") and the United States in the Walker River case. Those negotiations involved counsel for the United States, the Tribe and the Nevada Department of Wildlife (NDOW). At times, representatives of the Nevada Division of Water Resources were also involved.

The District's approach to reaching a settlement was to "formalize the status quo." The "status quo" has been that since entry of the Amended Walker River Decree in 1940 (and perhaps before), the United States and Tribe has operated Weber Reservoir as they saw fit, but without the ability to call on water from upstream based upon a water right with an April 15, 1936 priority because no such water right was formally recognized in the Decree. In addition, the Tribe, using both surface water and groundwater, has irrigated more than the 2,100 acres referenced in the Walker River Decree. The Tribe has also made use of wells and springs on Reservation grazing land for stock water. It has also used groundwater for quasi-municipal use. Those uses were also without formal recognition of water rights. In 1970, the Nevada State Engineer issued a permit and water right to NDOW for Walker Lake with a September 17, 1970 priority date. However, the existence of that water right has not limited or restricted how the United States and Tribe have operated Weber Reservoir. From a practical standpoint, the NDOW water right has been treated as subordinate to the operation of Weber Reservoir.

The guiding principle in the negotiations to "formalize the status quo" was that additional water rights recognized for the United States and Tribe could not adversely impact existing upstream surface and groundwater rights.

Pursuant to Agenda Item No. 3 for your August 30, 2023, Special Board meeting, you will be asked to approve and authorize the execution and implementation of the "Plaintiffs' and Principal Defendants' Proposed Final Conditional Stipulation Resolving Water Right Claims of The Walker River Paiute Tribe and The United States of America."



II. Provisions of Proposed Final Stipulation.

The Proposed Final Stipulation has two basic parts to it, the "Recitals" and the "Stipulation." The Recitals provide the factual background against which the Stipulation is made, and the Stipulation covers what the Parties have agreed upon and what the Court will be asked to do.

Recitals

Recitals 1 and 2 describe the background of the original Walker River litigation leading to the Walking River Decree. Recital 3 provides that the Stipulation is not to alter, effect or amend any water right adjudicated by the Walker River Decree.

Recitals 4 and 5 provide a brief history of the litigation to be resolved by the Stipulation. Recitals 6 through 10 describe the water rights the United States and the Tribe are seeking in that litigation, including rights to water livestock for lands added to the Reservation from 1918 through 1972, rights to irrigate lands added in 1936, a conservation storage right for Weber Reservoir, a groundwater right for domestic, commercial, municipal and industrial purposes, and a groundwater right to irrigate additional lands within the Reservation.

Recitals 11 through 15 describe how the United States and Tribe have operated and maintained Weber Reservoir since 1936 and how they have used groundwater underlying the Reservation during that period of time. Recital 16 provides that this historic operation of Weber Reservoir, use of groundwater and use of springs have not interfered with water use outside the boundaries of the Reservation. Recital 17 states that the historic use described in Recitals 11 through 15 constitutes the status quo among the parties and serves as a foundation for resolving these claims. Exhibit A attached to the Stipulation is a map of the lands which are currently included within the Reservation.

Finally, Recital 18 recites that the parties have agreed to resolve the water right claims as set forth in the Stipulation.

Stipulation Recognized Water Rights and Obligations

All of the water rights will be recognized as federal reserved rights, implied and created under federal law. They exist even if they have not been exercised and they are not subject to abandonment or loss by non-use. They are not subject to regulation under state law. They are held by the United States in trust for the Tribe.



1. Weber Reservoir Conservation Storage Water Right.

A federal reserved water right for Weber Reservoir to surface water from the Walker River for storage in Weber to its capacity (13,000 acre feet) will be recognized whenever surface water available at Weber Reservoir exceeds water required to meet the Tribe's senior surface water right, and required to meet any upstream water right that has been changed to provide instream flow to Walker Lake. The stored water may be used for any purpose on the Reservation. The Weber Conservation Storage right will be subject to administration as provided in Paragraph 4.A. of the Stipulation discussed below.

2. Groundwater Rights Underlying the Reservation.

Pursuant to paragraph 2, the Court will determine and recognize a primary groundwater right of up to 641 acre feet annually for domestic, commercial, municipal and industrial purposes and up to 36.3 acre feet annually for watering livestock, with priority dates of November 29, 1859. The Court will also determine and recognize a secondary or supplemental groundwater right of up to 5,649 acre feet to irrigate 939 acres of land shown on Exhibit B to the Stipulation when surface water from Weber Reservoir is not sufficient for that purpose, and a primary groundwater right of up to 1,799 acre feet to irrigate 299 acres of land also shown on Exhibit B to the Stipulation, all with a priority date of 1859. Exhibit B to the Stipulation identifies the areas of supplemental groundwater and primary groundwater. Those rights will all have a priority date of November 29, 1859. Finally, a groundwater right of up to 5,953 acre feet to irrigate 1,500 acres of land added to the Reservation in 1936 with a September 15, 1936 priority date will be recognized. These groundwater rights will all be recognized as federal reserved rights. They will be subject to administration as provided in Paragraphs 4.B. and 6.

3. Water for Livestock Water Rights.

Under this provision, the right to use 13 acre feet of groundwater and /or spring water for watering livestock on the Reservation will be recognized. The priority dates will be based on the date the land on which the water source is located was added to the Reservation which would be 1918, 1928, 1936 or 1972. These rights will be administered as provided in Paragraph 5 under Administration.

Administration

The administration provisions are intended to ensure that the additional water rights recognized for the United States and Tribe do not adversely impact existing upstream surface water and groundwater rights.

4. Limited Priority Administration.



A. Weber Reservoir Conservation Storage Right.

Paragraph 4.A. of the Stipulation describes how the Weber Conservation Storage Right will be administered. Under that provision, it cannot be enforced by priority in any forum against any surface water right with a point of diversion upstream of the Wabuska Gage and which is recognized in the Walker River Decree, or recognized by a permit issued by the Nevada State Engineer or the California State Water Resources Control Board, which have a priority date prior the date of the Stipulation. However, any new water rights granted and with a priority date after the date of the Stipulation will be subject to such regulation. We do not expect there will be any new appropriative surface water rights. Dormant (unexercised) riparian water rights in California, if any, will be subject to such regulation.

In addition, the Weber Reservoir Conservation Storage Right also cannot be enforced by priority administration in any forum against any groundwater right with a point of diversion upstream of the Reservation and which is the subject of a permit issued by the Nevada State Engineer with a priority date prior to the date of the Stipulation or established under California law prior to the date of the Stipulation. However, any groundwater right granted, and with a priority date after the Stipulation, will be subject to regulation. We also do not expect there will be any such new groundwater rights. Dormant (unexercised) groundwater rights in California, if any, will be subject to such regulation.

These enforcement limitations will not prevent the United States and the Tribe to protect the Weber Conservation Storage Right if it is being adversely affected because the holder of either a surface right or a groundwater right is not complying with the other requirements of those rights, including the proper point of diversion, place of use, manner of use, season of use, flow rate and water duty.

B. Groundwater Rights Underlying the Reservation.

Pursuant to Paragraph 4.B., groundwater rights underlying the Reservation may not be enforced by priority administration in any forum against any surface or groundwater right. The limitation of enforcement by priority will not prevent the Tribe and the United States from protecting those groundwater rights from non-compliance with any other parameter of surface and groundwater rights including their point of diversion, place or use, manner of use, season of use, flow rate and water duty.

5. <u>Water for Livestock Rights.</u>

In Paragraph 5, water for livestock rights can be enforced by the Tribe or the United States in an appropriate forum by priority administration against water rights within the hydrologic basin in which the Reservation is located, Nevada Hydrologic Basin 110(a) and 110(b).



6. Administration of Groundwater Rights.

Paragraph 6, concerning administration of groundwater rights, states that there has not been, in this action or anywhere else, a comprehensive adjudication of rights to groundwater in the Walker River Basin. If in the future there is such an adjudication, the rights recognized by the Stipulation will be recognized and established as provided for in the Stipulation. They will be administered by the forum which undertakes the adjudication, subject to the enforcement limitations set forth in Paragraph 4 of the Stipulation and described above. Until there is such a comprehensive adjudication, the administration of these groundwater rights, if any is required, shall be by the Walker River Court directly and not by the Court's Watermaster.

7. <u>Finality.</u>

This paragraph is intended to make the recognition of these water rights final as to the Reservation as it presently exists. However, it allows the United States and the Tribe to seek additional rights to water livestock pursuant to applicable state law or pursuant to federal law for lands which may be added to the Reservation after the date the Stipulation is executed by the parties. As noted above, there is a map which shows the Reservation as it presently exists.

Pending Additions of Lands to the Reservoir

There are pending potential additions of land to the Reservation at the present time under Section 2988 of the National Defense Authorization Act for Fiscal Year 2023, Public Law No. 117-263, 136 Stat. 2395. It provides for the addition of 8,170 acres of Bureau of Land Management and Bureau of Reclamation land located in Churchill and Mineral Counties. Two sections of those lands are located in Churchill County. The remainder of the land is located in Mineral County on the east side of Walker Lake. The lands in Mineral County were part of the Reservation when it was originally established, and before portions of the Reservation were ceded back to the United States.

By way of background, these provisions arose from a dispute the Tribe has had with the Untied States Navy for many years. The Navy has a bombing range, Bravo 19, on the northern edge of the Reservation just east of Highway 95. As early as the 1940's, the Navy has dropped bombs on the adjacent Reservation lands. Over the years, the total lands that have been determined to be contaminated with live and inert ordinance is over 6,000 acres. Much of the bomb remnants have been removed over the years, but the lands may never be completely cleaned up.

The Navy and the Tribe have been trying to resolve these issues for many years beginning in the early 1990's. The discussions made progress over the last four years as the Navy was working to expand its land base. The Tribe asked for compensation and for lands for economic development which were considered disposable by the BLM or the Bureau of Reclamation and near roads, highways and other infrastructure. The provisions in the National



Defense Authorization Act are to finalize the settlement. The settlement also includes provisions for substitute lands if the lands identified for transfer are found to be contaminated. In addition, Section 2988(a) provides for the payment to the Tribe of Twenty Million Dollars (\$20,000,000.00) to resolve the claims of the Tribe for the contamination, impairment and loss of use of 6,000 acres of land within the boundaries of the Reservation.

The United States and Tribe will not be barred from seeking water rights for the lands covered by Section 2988 of the Natural Defense Authorization Act, regardless of whether they are formally added to the Reservation before or after the date the Stipulation is executed by the parties.

8. <u>Cooperation Regarding Water Reserves.</u>

At the request of the Nevada Division of Water Resources, Nevada, the Tribe and the United States will communicate and cooperate in a manner which seeks to maintain the water resources of the Walker River and underground water within their respective jurisdictions.

9. Tribe Reports Concerning Groundwater.

In light of the fact that many of the groundwater rights recognized here are not being exercised and may not be exercised for some time, the Tribe has agreed to provide an annual report to the Court of its groundwater uses during the prior year and a report of its known uses for the upcoming year. This report will be provided at the same time as the Annual Plan of Distribution and Budget are presented to the Court under the Walker River Decree.

10. Water Resources Meetings.

This paragraph allows any one or more of the governmental parties which will include the United States, the Tribe, the Nevada Department of Wildlife and the Walker River Irrigation District, and may or may not include other governmental parties, to request a meeting to consider water resource issues of the Walker River Basin which are related to the Decree. Upon receipt of such a request, the parties will meet and confer within 45 days of the Notice. They will confer in good faith regarding disposition of the request, including but not limited to, seeking funding to fully or partially mitigate any such resource issue. There is no obligation to do more than to meet and confer in good faith.

11-15. Miscellaneous.

Paragraphs 11 - 15 of the Stipulation are boilerplate. The most important one is that if the Stipulation is not approved, no one will be bound by it, and it will not be admissible into evidence in any proceeding. The provisions of this Stipulation are also not a precedent with respect to any issue, principle or interpretation or application of law and regulations for any



purpose, or in connection with any proceeding before any court, or any state or federal government regulatory body.

III Conclusion and Recommendation.

It is our opinion that the Proposed Final Conditional Stipulation achieves the goal of formally recognizing the status quo which has existed since the time of entry of the Walker River Decree, while at the same time protecting existing upstream surface and groundwater rights from adverse impacts. It is our recommendation that the Board authorize legal counsel in consultation with the District Manager to execute and take steps reasonably necessary to obtain Court approval of and implementation of a stipulation which is substantially on the terms of the Proposed Final Stipulation.

RESOLUTION OF WALKER RIVER IRRIGATION DISTRICT BOARD OF DIRECTORS

Approving the Plaintiffs' and Principal Defendants' Conditional Stipulation Resolving The Water Right Claims of the Walker River Paiute Tribe And The United States Of America in the litigation captioned the *United States of America and Walker River Paiute Tribe v Walker River Irrigation District,* Case No. 3:73-cv-00127-MMD, in the United States District Court for the District of Nevada (the "Tribal Water Rights Litigation")

1. This Resolution is based on the following:

A. On April 15, 1936, the United States District Court of Nevada entered its final decree adjudicating the water rights to the surface water flows of the Walker River, including those asserted by the United States for the Tribe's benefit on the Walker River Indian Reservation (the "Reservation"). Following appeal and decision, *United States v. Walker River Irr. Dist.*, 104 F.2d 334 (9th Cir. 1939), the Court's final decree was amended on April 24, 1940 to conform to the mandate of the Ninth Circuit Court of Appeals (the "Walker River Decree").

B. Through the Walker River Decree, the Court decreed to the United States in trust for the Tribe, the right to 26.25 cfs of surface water from the Walker River with a priority date of November 29, 1859 to irrigate 2,100 acres during a 180-day irrigation season on the Reservation.

C. On March 18, 1992, the Tribe asserted rights to the waters of the Walker River in the Tribal Water Rights Litigation, in addition to those recognized in the Walker River Decree, as well as rights to groundwater underlying the Reservation. On December 15, 1992, the United States filed claims in the Tribal Water Rights Litigation asserting water rights similar to those asserted by the Tribe.

D. Since 1992, the Tribe and the United States have amended their water right claims for and on behalf of the Tribe several times.

E. On May 3, 2019, the United States' Detailed Statement of Water Right Claims on Behalf of the Walker River Paiute Tribe was filed in the Tribal Water Rights Litigation and was joined in by the Tribe.

F. Counsel for the District, the Nevada Department of Wildlife, the United States and the Tribe have reached an agreement to resolve and settle the claims of the United States and Tribe being asserted in the Tribal Water Rights Litigation for the benefit of the Tribe and its Reservation through the implementation of a proposed Conditional Stipulation Resolving The Water Right Claims of the Walker River Paiute Tribe And The United States Of America (the "Stipulation).

G. A true and correct copy of the proposed Stipulation is attached to this Resolution as Exhibit A.

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NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY RESOLVED by the Walker River Irrigation District, acting by and through its Board of Directors, that:

A. The proposed Stipulation in the Tribal Water Rights Litigation attached to this Resolution is hereby approved;

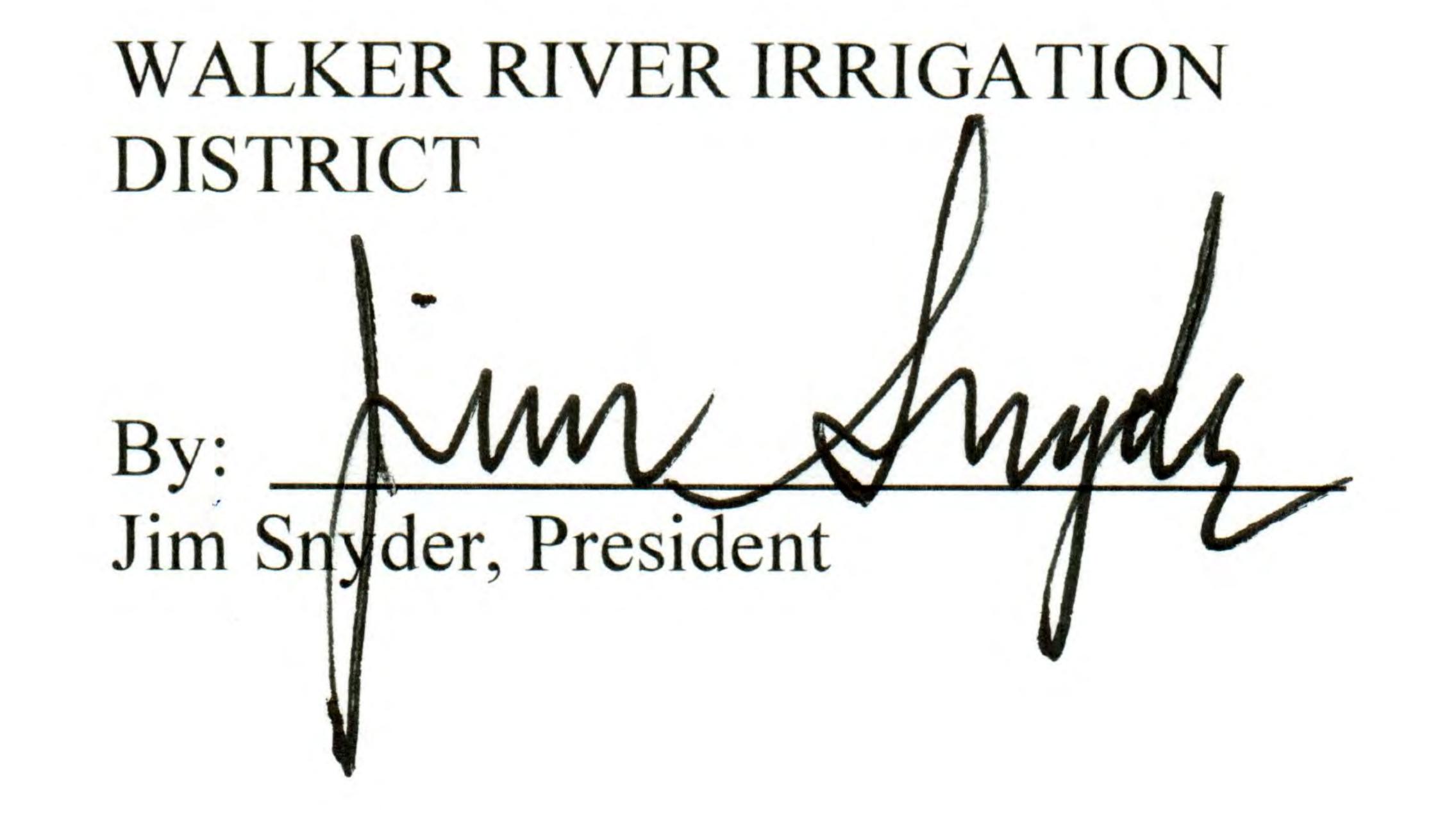
B. The District Legal Counsel, in consultation with the District Manager, is hereby authorized to enter into and execute a final version of the Stipulation on behalf of the District, based substantially on the terms of the proposed Stipulation;

C. The District Legal Counsel is hereby authorized to file a final version of the Stipulation in the Tribal Water Rights Litigation; and

D. The District Legal Counsel, in consultation with the District Manager, is hereby authorized to take all other reasonable actions as may be necessary to implement the Stipulation resolving the claims of the United States and Walker River Paiute Tribe for the Walker River Indian Reservation as provided by the Stipulation, including any necessary modifications to the Walker River Decree.

Upon motion duly made and seconded and approved by ______ in favor, _____ opposed and ______ abstaining, the Board of Directors of the Walker River Irrigation District adopted the foregoing Resolution.

Dated this 30th day of August, 2023



ATTESTED BY:

Hatterman

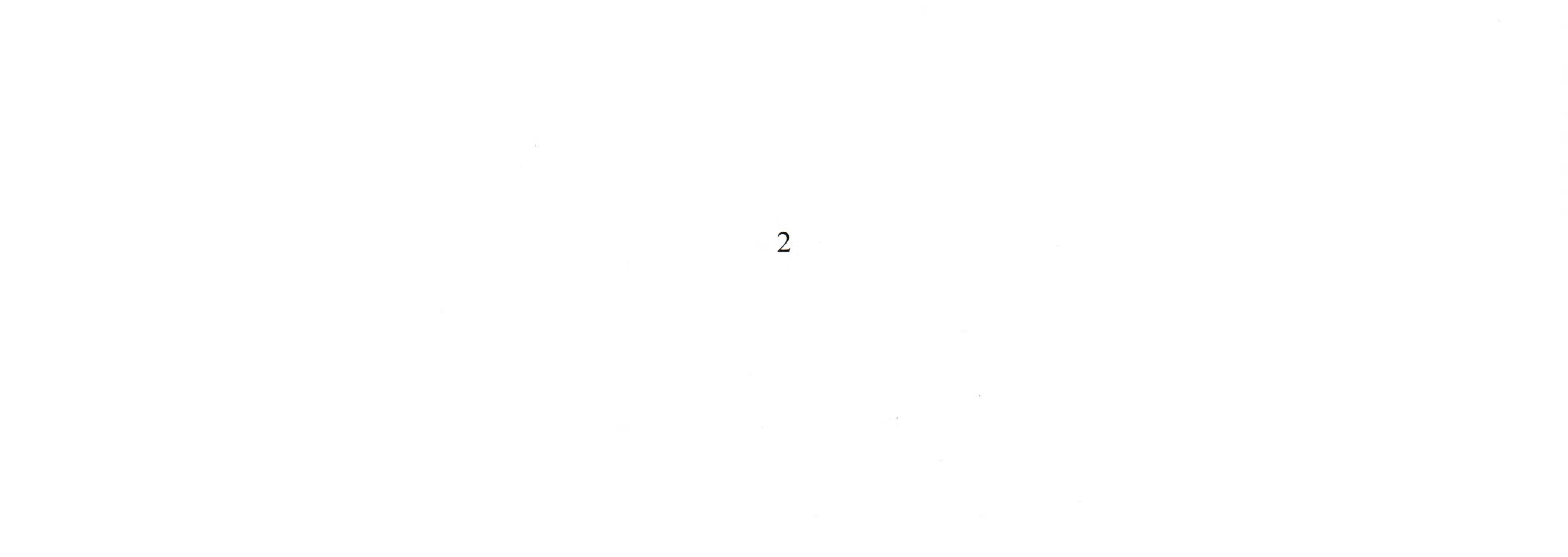


EXHIBIT A

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RESOLUTION OF THE WALKER RIVER IRRIGATION DISTRICT BOARD OF DIRECTIONS

PROPOSED FINAL STIPULATION

PROPOSED FINAL STIPULATION 07/13/23 CONFIDENTIAL SETTLEMENT COMMUNICATION INADMISSABLE IN ANY JUDICIAL OR ADMININSTRATIVE PROCEEDING

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE

Plaintiff-Intervernor,

v.

WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.,

Defendants.

) 3:73-cv-00127-MMD-(xxx)

PLAINTIFFS' AND PRINCIPAL DEFENDANTS' CONDITIONAL STIPULATION RESOLVING THE WATER RIGHT CLAIMS OF THE WALKER RIVER PAIUTE TRIBE AND THE UNITED STATES OF AMERICA

Plaintiffs, the Walker River Paiute Tribe (the "Tribe") and the United States of America acting as Trustee for the Tribe (the "United States"), and Principal Defendants, (LIST - xxx) (collectively, the "Parties") agree to resolve the water right claims made for and on behalf of the Tribe and that were first asserted as counterclaims in 1992 by the Tribe and the United States pursuant to this Conditional Stipulation.

RECITALS

1. On April 15, 1936, the Court entered its final decree adjudicating the water rights to the surface water flows of the Walker River asserted by the United States for the Tribe's benefit and asserted by numerous other parties throughout the Walker River Basin of Nevada and California. Following appeal and decision, *United States v. Walker River Irr. Dist*, 104 F.2d 334 (9th Cir. 1939), the Court's final decree was amended on April 24, 1940 to conform to the mandate of the Ninth Circuit Court of Appeals and to clarify certain other provisions of the

PROPOSED FINAL STIPULATION 07/13/23 CONFIDENTIAL SETTLEMENT COMMUNICATION INADMISSABLE IN ANY JUDICIAL OR ADMININSTRATIVE PROCEEDING

Decree. The Decree, as amended on April 24, 1940, is referred to in this Conditional Stipulation as the "Walker River Decree."

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2. Through the Walker River Decree, the Court decreed to the United States in trust for the Tribe the right to 26.25 cfs of surface water from the Walker River with a priority date of November 29, 1859 to irrigate 2,100 acres on the Walker River Paiute Reservation (Reservation). That right is referred to in this Conditional Stipulation as the "Tribe's senior surface water right."

3. This Conditional Stipulation does not affect, alter, or amend any water right adjudicated in the Walker River Decree, including but not limited to, the Tribe's senior surface water right, or the ability of any water right owner, including but not limited to, the Tribe or the United States, to seek administration of the Walker River Decree to enforce any water right to the surface water of the Walker River, including but not limited to, the Tribe's senior surface water right.

4. On March 18, 1992, the Tribe filed its *Answer to the First Amended Petition, and Counterclaim and Cross-Claim of the Walker River Paiute Tribe* asserting water rights in addition to those recognized in the Walker River Decree. On December 15, 1992, the United States filed its *Counterclaim of the United States of America* asserting water rights similar to those asserted by the Tribe.

5. Since 1992, the Tribe and the United States have amended their water right claims for and on behalf of the Tribe several times. Ultimately, the water rights asserted and pursued for and on behalf of the Tribe were last asserted on May 3, 2019, in *The United States' Detailed Statement of Water Right Claims on Behalf of the Walker River Paiute Indian Tribe* (ECF No. 2476).¹

¹ That same day, the Tribe joined the United States' Detailed Statement. *The Walker River Paiute Tribe's Joinder in the United States' Detailed Statement of Water Right Claims* (ECF No. 2480).

CONFIDENTIAL SETTLEMENT COMMUNICATION INADMISSABLE IN ANY JUDICIAL OR ADMININSTRATIVE PROCEEDING

6. Through their Second Amended Counterclaims, the United States and Tribe are seeking water rights, reserved under federal law, for lands which were added to the Reservation in 1918, 1924/1928, 1936 and 1972. With respect to lands added in 1918, 1924/1928, and 1972 the United States and Tribe seek rights to springs and groundwater to water livestock with priority dates corresponding to the dates the lands were added to the Reservation.

7. The United States' and Tribe's claims to groundwater rights, reserved under federal law, seek a priority date of September 25, 1936, for lands added to the Reservation in 1936, to water livestock and also to irrigate 1,500 acres of those lands.

8. The United States and Tribe also seek a water right, reserved under federal law, to surface water from the Walker River for conservation storage in Weber Reservoir to irrigate 2,100 acres presently recognized by the Tribe's senior surface water right, and to irrigate another 3,856 acres of land within the Reservation. The United States seeks a priority date of April 15, 1936, and the Tribe seeks a priority date of June 16, 1933 for the Weber Reservoir Conservation Storage Right.

9. The United States and Tribe also seek a water right to groundwater, reserved under federal law, for domestic, commercial, municipal and industrial purposes with a priority date of November 29, 1859.

10. The United States and Tribe also seek a water right to groundwater, reserved under federal law, to irrigate another 1,238 acres of land within the Reservation with a priority of November 29, 1859.

11. Since 1936, the United States and the Tribe have operated and maintained Weber Reservoir to store water decreed under the Tribe's senior surface water right, as well as additional surface water from the Walker River whenever that water is available at Weber Reservoir.

12. Water from Weber Reservoir, which includes water regulated by it from the Tribe's senior surface water right and additional available surface water that has been stored in

CONFIDENTIAL SETTLEMENT COMMUNICATION INADMISSABLE IN ANY JUDICIAL OR ADMININSTRATIVE PROCEEDING

Weber Reservoir, has been used to irrigate the 2,100 acres of land recognized in the Walker River Decree; plus 2,800 acres of pasture land with water delivered through the Walker River Indian Irrigation Project facilities and 1,056 acres of pasture land with water delivered through a separate diversion.

13. To the extent technology has made groundwater available, the Tribe and the United States have used groundwater underlying the Reservation as it presently exists² for irrigation, for domestic, commercial, municipal and industrial purposes and to water livestock.

14. The United States and the Tribe have historically used groundwater to irrigate approximately 1,238 acres of land on the Reservation, which land is also a portion of the 2,800 acres of pasture land and the 1,056 acres of pasture land irrigated from Weber Reservoir as referenced in Paragraph 12, above.

15. From the time lands were added to the Reservation beginning in 1918 and perhaps before, the United States and Tribe have used springs on the Reservation to water livestock.

16. The historic operation of Weber Reservoir, use of groundwater underlying the Reservation, and use of water from springs on the Reservation have not interfered with water use outside of the boundaries of the Reservation.

17. The Parties consider this historic use of water on the Reservation described in Recitals 11 through 15 above to be the status quo among them that serves as the foundation on which to resolve the water right claims of the Tribe and the United States asserted in 1992, which are the subject of this proceeding, and are described above.

18. The Parties have engaged in negotiations to resolve the foregoing water right claims and have agreed to resolve them as set forth in this Conditional Stipulation.

² The Reservation as it presently exists is shown on Exhibit A attached hereto and made a part hereof.

PROPOSED FINAL STIPULATION 07/13/23 CONFIDENTIAL SETTLEMENT COMMUNICATION INADMISSABLE IN ANY JUDICIAL OR ADMININSTRATIVE PROCEEDING

STIPULATION

NOW, THEREFORE, the Parties hereto, acting either individually or by and through their respective counsel, stipulate and agree as follows:

RECOGNIZED WATER RIGHTS AND OBLIGATIONS

1. Weber Reservoir Conservation Storage Water Right. The Court may enter an order and judgment amending the Walker River Decree to provide that the United States, as Trustee for the Tribe, is adjudged and decreed to be the owner of the right to surface water from the Walker River for storage in Weber Reservoir to its capacity whenever surface water available at Weber Reservoir exceeds that required to meet the Tribe's senior surface water right and any water right that has been changed to provide instream flow to Walker Lake. The United States and Tribe may operate Weber Reservoir for purposes of regulating the Tribe's senior surface water right and regulating and storing other available surface water as defined herein under this Weber Reservoir Conservation Storage Water Right. The Reservoir's maximum storage capacity is 13,000 acre feet of water. The priority date for this right is April 15, 1936. The water stored in Weber Reservoir may be used for any purpose on the Reservation, including but not limited to domestic, municipal, commercial, industrial, livestock, and irrigation purposes.

The Weber Reservoir Conservation Storage Water Right will be subject to administration as provided in paragraph 4.A below. The Weber Reservoir Conservation Storage Water Right is recognized as a federal reserved right, implied and created under federal law, which is not subject to abandonment or loss, and which is held by the United States in trust for the Tribe.

2. <u>Groundwater Rights Underlying the Reservation</u>. The Court may enter an order and judgment amending the Walker River Decree determining the scope, extent and priority of groundwater rights held by the United States as Trustee for the Tribe as follows: (i) a primary groundwater right of up to 641 acre feet annually for domestic, commercial, municipal and industrial purposes and up to 36.3 acre feet annually for watering livestock, all with a priority

CONFIDENTIAL SETTLEMENT COMMUNICATION INADMISSABLE IN ANY JUDICIAL OR ADMININSTRATIVE PROCEEDING

date of November 29, 1859; (ii) a secondary or supplemental groundwater right of up to 5,649 acre-feet annually to irrigate 939 acres of land shown on Exhibit B to this Stipulation when surface water from the Weber Reservoir Conservation Storage Right is not sufficient for that purpose and a primary groundwater right of up to 1,799 acre feet annually to irrigate 299 acres of land also shown on Exhibit B to this Stipulation, all with a priority date of November 29, 1859; and (iii) a primary groundwater right of up to 5,953 acre feet annually to irrigate 1,500 acres of land added to the Reservation in 1936 with a priority date of September 15, 1936. The Groundwater Rights decreed in this paragraph are recognized as federal reserved rights, implied and created under federal law, which are not subject to abandonment or loss, and which are held by the United States in trust for the Tribe. These groundwater rights will be subject to administration as provided in paragraphs 4.B and 6 below.

3. <u>Water for Livestock Water Rights.</u> The Court may enter an order and judgment amending the Walker River Decree determining the scope, extent and priority of groundwater and spring rights held by the United States, as Trustee for the Tribe, as the right to use annually 13.0 acre feet of groundwater and/or spring water for watering livestock on the Reservation. The priority dates for this right shall be based on the date the land on which the water source is located was added to the Reservation in 1918, 1928, 1936, and 1972. These rights are federal reserved rights, implied and created under federal law, which are not subject to abandonment or loss, and which are held in trust by the United States for the Tribe. These rights will be subject to administration as provided in paragraph 5 below.

ADMINISTRATION

4.

Limited Priority Administration.

A. Weber Reservoir Conservation Storage Right.

The Weber Reservoir Conservation Storage Right may not be enforced by priority in any forum against any surface water right with a point of diversion or point of non-diversion upstream

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of the Wabuska Gage and which is recognized in the Walker River Decree, or is recognized by a permit issued by the Nevada State Engineer, or the California State Water Resources Control Board and with a priority date prior to the date of this Stipulation. The Weber Reservoir Conservation Storage Right may not be enforced by priority administration in any forum against any groundwater right with a point diversion upstream of the Reservation and which is the subject of a permit issued by the Nevada State Engineer and with a priority date prior to the date of this Stipulation, or which was established under California law prior to the date of this Stipulation. Provided, however, that this enforcement limitation by priority with respect to such surface water rights and such groundwater rights shall not limit the ability of the United States and Tribe to protect the Weber Conservation Storage Right from being adversely affected from non-compliance with any other parameter of such surface and groundwater rights, including their point of diversion, place of use, manner of use, season of use, flow rate and water duty.

B. Groundwater Rights Underlying Reservation.

The Groundwater Rights underlying the Reservation which have been determined in paragraph 2 above may not be enforced by priority administration in any forum against any surface or groundwater right. Provided, however, that this enforcement limitation by priority with respect to surface water rights and groundwater rights shall not limit the ability of the United States and Tribe to protect those groundwater rights from being adversely affected from noncompliance with any other parameter of such surface and groundwater rights, including their point of diversion, place of use, manner of use, season of use, flow rate and water duty.

5. <u>Water for Livestock Rights.</u> The water rights for watering livestock which have been determined in paragraph 3 above, may be enforced by the Tribe or the United States in an appropriate forum by priority administration against water rights within the hydrologic basin in which the Reservation is located, Nevada Hydrologic Basin 110 (A) and 110 (B).

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6. <u>Administration of Groundwater Rights.</u> Neither the action resulting in the Walker River Decree, nor this proceeding has involved a comprehensive adjudication of rights to groundwater in the Walker River Basin. If in the future such an adjudication is undertaken in a forum with jurisdiction over the United States and Tribe, the rights to groundwater recognized and determined in paragraphs 2 and 3 of this Stipulation, shall be recognized and established as provided therein for all purposes and may be administered by the forum which undertakes the adjudication, subject to the enforcement limitations set forth in paragraph 4 of this Stipulation. Until such a comprehensive adjudication takes place and is final, the administration of those groundwater rights, if any, shall be by the Walker River Court directly and not by the Court's appointed Watermaster.

7. Finality. The Parties agree that, with the Weber Reservoir Conservation Storage Water Right and the Groundwater Rights underlying the Reservation recognized here, along with the Tribe's senior surface water right, the Tribe holds no additional claims to water for the Reservation as it presently exists that might be asserted under the jurisdiction reserved by the Walker River Decree, and further that the United States and Tribe have had the opportunity to assert and have asserted all claims to water for the Reservation under federal law as the Reservation presently exists. The determination of the Water for Livestock Water Rights shall not prevent the United States and Tribe from seeking additional rights to water livestock pursuant to applicable state law, or pursuant to federal law for lands added to the Reservation after the date this Stipulation is executed by the Parties. For purposes of the Stipulation, the Reservation as it presently exists is shown in Exhibit A attached hereto and made a part of hereof. This Stipulation, including this Paragraph 7, does not affect potential claims to water rights by the United States or Tribe for any land authorized to be added to the Reservation by Section 2988 of the National Defense Authorization Act for Fiscal Year 2023, Pub.L. No. 117-263, 136 Stat. 2395 which land may or may not have been added to the Reservation at the time this Stipulation is executed by the

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Parties. Nothing in this Paragraph 7 shall be construed as an agreement that claims for additional water not barred by it will be or will not be within the reserved jurisdiction of Paragraph XIV of the Walker River Decree.

8. <u>Cooperation Regarding Water Reserves.</u> Subject to the provisions of the Walker River Decree as amended by this Conditional Stipulation, the Parties acknowledge and agree that the State of Nevada, through its Nevada Division of Water Resources (NDWR), the Tribe, and the United States as Trustee, each have an individual and joint responsibility for the management of the water resources that extend through and between their respective sovereign lands so as to not impair the interests of the other. The parties agree that the management and administration of the shared water resources of the Walker River and all underground waters require communication and cooperation, and the exercise of authority to manage the shared water resources in a manner that seeks to maintain the resource, and to initially address any assertion of impairment through consultation.

9. <u>Tribe Reports Concerning Groundwater</u>. The Parties agree that in connection with the Groundwater Rights recognized in paragraph 2 of this Stipulation, the Tribe shall submit to the Court a report on its known uses of its Groundwater Rights from the previous year. The Tribe shall also submit a report of its known uses of its Groundwater Rights for the upcoming calendar year, to the extent the Tribe anticipates such uses will exceed or represent a change in place or manner of use from the prior calendar year. The Tribe's report may include, to the extent known, any anticipated groundwater development amount, consumptive use amount, points of diversion, purposes and places of use of such anticipated groundwater use, and any other information deemed by the Tribe to be significant. The Tribe's report shall be made to the Court prior to the annual hearing held to consider and approve the annual plan of distribution and budget for administering the Walker River Decree.

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10. <u>Water Resource Meetings</u>. At any time, any one or more of the Governmental Parties to this Stipulation, (the United States, Tribe, Nevada Department of Wildlife, Walker River Irrigation District [Mono County, Lyon County and California State Agencies]) may request a meeting to consider water resource issues of the Walker River Basin which are related to the Walker River Decree, as amended by the Court's approval of this Stipulation. Upon receipt of such a request, the Governmental Parties shall meet and confer within _____ days of notice of the request, which notice shall specify the reasons for the request and a time and place for the meeting. At the meeting, the Governmental Parties shall meet and confer in good faith regarding the disposition of the request, including but not limited to seeking funding to wholly or partially mitigate any such resource issue.

11. <u>Severability.</u> The provisions of this Stipulation are not severable, and in the event that this Stipulation is not approved by the Court without changes, it shall be deemed withdrawn without prejudice to any claims or contentions which may have been made or may be made in this proceeding by any Party, and it shall not be admissible as evidence or in any way described or discussed in any proceeding subsequent to any non-approval as described in this paragraph.

<u>Support By All Parties.</u> The Parties to this Stipulation shall support approval of its terms by the Court.

13. <u>Nonbinding If Failure.</u> If the Court does not approve this Stipulation as provided in Paragraph 11 above, no Party to this Stipulation shall be determined to be bound by any provisions or agreements reached and described herein.

14. <u>Construction And Precedent.</u> The Stipulation represents a compromise of the Parties. Except as expressly set for herein, the provisions of this Stipulation shall not be construed as or deemed to be precedent by any Party or the Court with respect to any issue, principle, or interpretation, or application of law and regulations for any purpose, or in connection with any proceeding before a court of law, or any state or federal government regulatory body.

PROPOSED FINAL STIPULATION

07/13/23

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15. <u>Counterpart Execution</u>. This Stipulation may be executed in counterparts or via

facsimile or electronic scanning.

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| Sources: BIA, BLM PLSS CadNSDI, ESRI, USGS Map Projection: UTM NAD 83 Zone 11 Man Commiled hr Burnau of Indian Affaits. Western Region, June 2020 | | Private Inholding, Fee (Non-Trust) | Allotments Purchased 1936-1940 for Weber Dam and Reservoir | Relicted Land BLM Survey, September 12, 1977 | T 2004 Public Land Order 5216, June 19, 1972 | T 2005 Secretarial Order, September 25, 1936, Surface Only public Law 87-223, September 14, 1961, Minerals | T 2000 Public Law 88, March 3, 1928 | T 2003 Executive Order 2820, March 15, 1918 | TR 5 Church Reserve | | TR 3 Agency and School Reserve | TR 2 Timber Reserve | TR 1 Grazing Reserve | Allotment | Stat 3237, September 26, 1906 on October 29, 1940. Secretarial Order August 13, 1906 | 1906 Agreement with the United States. The scriedule of autometica and reserves were approved by Secretarial Order, August 13, 1906. The surplus reservation lands were opened to settlement by Proclamation, 34 | The Allobrents and Tribal Reserves were assigned from reservation lands retained by the Walker River Indian Tribe as described in the July 200 | Allotments and Tribal Reserves (TR) 1-5 | | | | | 05 14N 2 | | 31 | 25 20 11 5 N 27 | N15N 26E 19 20 21 22 |
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EXHIBIT A

EXHIBIT B

