UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervener, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	IN EQUITY NO. C-125-MMD Subproceeding: 3:73-CV-00127-MMD-WGC **[PROPOSED]ORDER REGARDING DISCOVERY AND MOTION SCHEDULE AND PROCEDURE**

FILED ____ RECEIVED
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COUNSEL/PARTIES OF RECORD
MAR 13 2020
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

Pursuant to the *Stipulated Scheduling Order and Discovery Plan* (March 7, 2019) (ECF No. 2437) (Scheduling Order) and the *Stipulation and Order for Extension of Time to Submit Proposal Regarding Discovery Procedure and Agenda for Status Conference, and to Vacate Status Conference of December 18, 2019* (December 12, 2019) (ECF No. 2591) (Extension Order), the United States and Walker River Paiute Tribe ("Tribe"), and the Walker River Irrigation District, the Nevada Department of Wildlife, Lyon County, Centennial Livestock, Desert Pearl Farms, LLC, Peri Family Ranch, LLC, Peri & Peri, LLC and Frade Ranches, Inc., The Schroeder Group, California State Agencies (California State Water Resources Control Board, California Department of Fish and Wildlife and the California Department of Parks and Recreation), and Mono County, California (the "Principal Defendants"), Mineral County, and the Walker Lake Working Group (collectively, the Parties) were to submit a proposal to the Court on or before January 30, 2020 concerning, among other things, coordination of discovery, including sharing

discovery, scheduling discovery, and other matters related to discovery and concerning matters related to dispositive or partially dispositive motions (the "Discovery/Motion Proposal").

Pursuant to the Minute Order of December 17, 2019 (ECF No. 2592), the Court scheduled a Status Conference for February 19, 2020 at 10:00 a.m. to, among other things, issue any orders needed to resolve disputes, if any, concerning the Discovery/Motion Proposal among the parties, and to amend the Scheduling Order accordingly. By Minute Order of December 18, 2019 (ECF No. 2593), the Court further directed the United States to prepare an agenda for that Status Conference to be submitted on or before February 14, 2020.

The Parties have again conferred and resolved the areas of disagreement between them.

Therefore, good cause appearing,

IT IS HEREBY ORDERED:

1. **Parties to This Action.** "Plaintiffs" are the United States of America and the Walker River Paiute Tribe as this action relates to water rights claims asserted on behalf of the Tribe by the U.S. Bureau of Indian Affairs and the Tribe (and as amended May 3, 2019) and collectively referred to herein as "Plaintiffs." For purposes of this Order, "Defendants" are those parties that filed answers to Plaintiffs' Amended Counterclaims on August 1, 2019 who continue to be represented by counsel, and are collectively referred to herein as "Defendants."

2. **Discovery.**

a. **Subjects of Discovery.** Discovery will be on the water rights claims for the Walker River Paiute Tribe asserted by the Plaintiffs and as amended on May 3, 2019. As well, discovery will be on those responses and Affirmative Defenses asserted by Defendants on August 1, 2019.

b. **Period of Discovery.** As described in more detail, herein, discovery may commence on entry of this Order and shall close on January 31, 2022.

3. **Discovery Coordination.** Discovery will be coordinated through coordinating counsel. For Plaintiffs, coordinating counsel will be counsel for the United States, Guss Guarino. For Principal Defendants, coordinating counsel will be counsel for the Walker River Irrigation District, Gordon DePaoli.

4. **Dispositive Motions and Motion Coordination.** Dispositive or partially dispositive motions must be filed no later than 60 days after the close of discovery. For such dispositive motions, responses to dispositive or partially dispositive motions will be due ninety (90) days after service, and replies in support of dispositive or partially dispositive motions will be due forty-five (45) days after service.

The Party groups (i.e. Plaintiffs and Principal Defendants) will coordinate within their respective groups the filing of motions, the grounds for motions, and briefs supporting motions, and will do their best to file joint motions and joint briefs. Plaintiffs and Principal Defendants potentially have common issues to brief. No page limit should be imposed on a brief to the extent that multiple common issues are incorporated into a single brief. To the extent possible, the Party groups (i.e. Plaintiffs and Principal Defendants) shall separately work as a group to file joint motions and joint briefs. When briefs are filed by individual parties rather than as a group, the Local Rules concerning page limitations shall apply.

5. **Limits on Discovery.** Discovery will be conducted in accordance with the Federal Rules of Civil Procedure, applicable local rules of this Court, and this Order.

6. **Written Discovery Requests.** Written discovery may be exchanged between the date of this Order and through the close of discovery, provided it is served so that a response is

due before the close of discovery. Objections to any discovery request will be served with responses to written discovery. Written responses and responsive documents will only be withheld based on a claim of privilege or on a motion to the Court for protective order made after compliance with the provisions of Fed. R. Civ. P. 26(c).

a. **Interrogatories.** Plaintiffs (as a group) and Principal Defendants (as a group) will coordinate interrogatories to avoid repetition and undue burden on a party in responding to interrogatories. Each group is entitled to 25 coordinated Interrogatories. To the extent that individual Defendants have interrogatories unique to their interests that cannot be coordinated with the Defendant group, they are entitled to serve them after service of the initial coordinated interrogatories.

b. **Request for Production of Documents and Things ("RFPs").** Plaintiffs (as a group) and Principal Defendants (as a group) will coordinate RFPs to avoid repetition and undue burden on a party in responding to RFPs. The Parties will prepare and serve RFPs through coordinating counsel and responded to also through coordinating counsel in accordance with Fed. R. Civ. P. 34. The Parties will be responsible for producing documents in their possession, custody, and control. For the United States, it will be responsible for producing documents in custody and control of the Department of the Interior/United States Bureau of Indian Affairs as well as those agencies that have asserted water right claims in the Walker River Basin of Nevada and California. To the extent that individual Defendants have RFPs unique to their interests that cannot be coordinated with the Defendant group, they are entitled to serve them after service of the initial coordinated RFPs.

c. **Request for Admissions ("RFAs").** Plaintiffs (as a group) and Principal Defendants (as a group) will coordinate RFAs to avoid repetition and undue burden on a party in

responding to RFAs. The Parties will prepare and serve RFAs through coordinating counsel and responded to also through coordinating counsel in accordance with Fed. R. Civ. P. 36. Each group is entitled to twenty-five (25) coordinated RFAs. To the extent that individual Defendants have RFAs unique to their interests that cannot be coordinated with the Defendant group, they are entitled to serve them after service of the initial coordinated RFAs.

7. **Responses to Written Discovery Requests.** In response to written discovery, a responding Party may respond to a request for documents by (i) providing a paper copy of the document, (ii) providing a searchable .pdf file through Adobe Acrobat software, or/and (iii) establishing a record repository for inspection and copying. Documents requiring specialized software other than Adobe Acrobat, such as spreadsheet files, may be produced in native format. Although documents might be electronically stored (such as email correspondence, reports, etc.), there is no need to otherwise pursue or produce information referred to as "electronically stored information" that generally refers to backups, duplicates, and underlying signature information (sometimes known as metadata) associated with an electronically stored document. However, a party may request native files for documents that are difficult to understand after they have been produced in the format specified herein or that contain potentially relevant embedded information, and such requests will not be unreasonably denied. Such a request shall be made according to the following protocol:

a. The requesting party shall make any such request as soon as reasonably practical after receiving a document production.

b. The requesting party shall provide a list of bates numbers of the documents that it is requesting to be produced in native file format.

c. Within fourteen (14) days of receiving this request, the producing party will either (a) produce the requested native files to the extent reasonably practicable, or (b) respond in writing, setting forth its position on the production of the requested documents.

d. If the parties are unable to agree as to the production of the requested documents in native format, the parties may submit the matter to the Court.

The Parties do not need to produce copies of documents that were previously produced or copies of documents that are publicly available (such as published materials one might find on the Internet, news publications, a public repository, or a library). If a Party wishes to rely on the public availability of a document, the responding Party will identify the specific location where the document is available to the public (e.g., specific Internet location, specific library, etc.). If a document has been previously produced, the response will identify the document previously produced, and when, and also refer to the location of it by bates number or otherwise.

8. <u>Expert Discovery</u>. Discovery from experts will be in accordance with the Federal Rules of Civil Procedure. Provided, however, that all expert witnesses shall be required to submit a report consistent with the requirements of Rule 26(a)(2)(B), even if the witness would not otherwise be required to provide such a report and would only be subject to the requirements of Rule 26(a)(2)(C). The parties do not need to produce copies of documents that were previously produced or copies of documents that are publicly available (such as published materials one might find on the Internet, news publications, a public repository, a library - so long as the documents are identified and their specific location is provided).

The expert report sequence will be staggered and is summarized in a table below. The Plaintiffs' opening expert reports will be due on August 14, 2020. Defendants' responsive expert

reports to the Plaintiffs' opening expert reports will be due on January 29, 2021. Plaintiffs' rebuttal expert reports to Defendants' responsive expert reports will be due on April 30, 2021.

The Defendants' opening expert reports will be due on January 29, 2021. Plaintiffs' responsive expert reports to Defendants' opening reports will be due on March 26, 2021. Defendants' rebuttal expert reports to Plaintiffs' responsive expert reports will be due on April 30, 2021.

Expert Report Sequence			
Plaintiffs' Opening	August 14, 2020		
Defendants' Response	January 29, 2021	Defendants' Opening	January 29, 2021
		Plaintiffs' Response	March 26, 2021
Plaintiffs' Rebuttal	April 30, 2021	Defendants' Rebuttal	April 30, 2021

Expert depositions will take place between May 24, 2021, and the close of discovery. However, if reasonably necessary for purposes of preparing responsive expert reports, with the consent of relevant parties, deposition of such expert witness may commence immediately after the expert witness's opening expert report has been disclosed. If the relevant parties do not consent, the party seeking to take a deposition prior to responsive or rebuttal expert reports may seek leave of Court to conduct such a deposition.

9. Privileged Materials Located in the Offices of Counsel. If a party is claiming privilege as to a requested document, it should be placed on a privilege log, regardless of where it is located.

10. Privileged Communications (Attorney-Client Communications and Attorney Work Product) and Privilege Log. Unless expressly stated otherwise, no discovery request should be construed to request communications exclusively between a party (including representatives, employees and agents) and its counsel, and work product created by counsel. Unless such communications are expressly requested or otherwise contain discoverable

information (*e.g.*, Fed. R. Civ. P. 26(b)(4)(C)), such materials will not be produced or placed on a privilege log. The parties will follow Fed. R. Civ. P. 26(b)(5)(A), to provide a log of privileged or work product materials subject to any exception which might be applicable.

11. Depositions. Depositions will be taken in accordance with Fed. R. Civ. P. 30 and 31. The parties will have the right to depose any identified expert or lay witness. Expert depositions will be taken in accordance with the schedule set forth in paragraph 8 above.

All lay witnesses, must be identified no later than April 30, 2021. For any lay witnesses on which Plaintiffs will rely, for any lay witnesses (if any) on which Principal Defendants will rely, and for any remaining non-expert persons as contemplated under Fed. R. Civ. P. 30(a), such depositions may be taken before the close of discovery.

Expert depositions will be taken in accordance with the schedule set forth in paragraph 8 above. Subject to specific agreement(s) otherwise, depositions will occur in the Reno/Sparks, Nevada, metropolitan area, be taken in a single day, and last for a maximum of 7 hours of testimony. Notices of deposition and subpoenas duces tecum directed to a deponent may be served on coordinating counsel by email 30 days before a scheduled deposition. Costs of lay/expert witness deponents (which include but are not limited to witness travel, expense, and time spent preparing for and attending the deposition) will be borne by the Party on whose behalf the lay/expert witness will be called. All other costs associated with depositions (such as rented office space, court reporter costs, etc.) shall be borne by the Party taking such deposition. For all oral depositions, the Parties request the right of review pursuant to Fed. R. Civ. P. 30(e).

12. Fed. R. Evid. 502(b). The parties invoke Rule 502(b) of the Federal Rules of Evidence and agree that in the event of an inadvertent disclosure of privileged/protected material, such privilege or protection is not waived or forfeit by inadvertent disclosure. If a party determines

that it has produced a document upon which it wishes to make a claim of privilege, the producing party shall, within 14 days of making such determination, give all counsel of record notice of the claim of privilege. Any party that complies with this paragraph will be deemed to have taken reasonable steps to rectify disclosures of privileged or protected information or materials. If a party identifies a document that appears on its face or in light of facts known to the party to be subject to another party's claim of privilege, the party identifying the potential claim of privilege is under a good-faith obligation to notify the party holding the potential claim of privilege. Recovery, management, and disputed associated with disclosed privileged material will be governed by FRCP 26(b)(5)(B).

13. **Documents Located at American Indian Records Repository.** When the special procedures to access records at the American Indian Records Repository are known, any party may seek an amendment to this Order, if necessary.

14. **Extensions of Modifications of Discovery Plan and Scheduling Order.** LR26-4 governs modifications, extensions of discovery plan and scheduling order. Any stipulation or motion to extend a deadline set forth in this Order must be filed with the Court no later than 3 days prior to the deadline sought to be extended.

15. **Supersedes Scheduling Order.** To the extent there is any conflict between the Scheduling Order (ECF No. 2437) and this Order, the provisions of this Order shall control.

16. **Parties May Seek Relief From Court.** Nothing in this Order shall prevent any party from seeking permission by stipulation and/or order of the Court for relief from any provision of this Order.

17. **Mineral County and Walker Lake Working Group.** Defendants Mineral County and the Walker Lake Working Group do not anticipate actively engaging in the discovery process

described in the paragraphs above, and coordinating counsel for the Principal Defendants does not have to coordinate with them in the discovery process. With respect to motions, including dispositive motions, Defendants Mineral County and Walker Lake Working Group will comply with the schedule detailed above, but they and the Principal Defendants are not required to coordinate with respect to motions. Plaintiffs and Principal Defendants agree that with respect to any written discovery served, Defendants Mineral County and the Walker Lake Working Group are entitled to copies of responses to such discovery, and that they are entitled to participate in any scheduled depositions. To the extent that Defendants Mineral County and the Walker Lake Working Group later determine that they in fact need to more fully participate in the discovery process, upon motion and good cause shown, the Court will consider any such request and grant any appropriate relief.

Dated: _____, 2020

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UNITED STATES MAGISTRATE JUDGE