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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA Plaintiff, THE WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. THE WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	IN EQUITY NO. C-125-RCJ SUBFILE No. C-125-B 3:73-cv-00127-RCJ-WGC **JOINDER BY CIRCLE BAR N RANCH, LLC, ET AL. TO WALKER RIVER IRRIGATION DISTRICT'S REPLY AND SUPPLEMENTARY ARGUMENT REPLY**
UNITED STATES OF AMERICA, WALKER RIVER PAIUTE TRIBE, Counterclaimants vs. WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants.	

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Circle Bar N Ranch, LLC, et al.[1] ("Circle Bar N Ranch"), by and through their counsel, Laura A. Schroeder, Therese A. Ure, Matthew J. Curti, and Schroeder Law Offices, P.C., hereby join the Reply of Walker River Irrigation District ("WRID") and hereby supplement such Reply with additional argument. Circle Bar N Ranch, in its joinder, hereby adopts all argument made by WRID in its Reply and supplements as appropriate, which supplement should not be construed as an opposition to WRID.

For the reasons presented in WRID's and Circle Bar N Ranch's Motions to Dismiss, the pleadings and papers on file, including the Points and Authorities and these Replies, Circle Bar N Ranch asks the Court to: (1) dismiss the Walker River Paiute Tribe's ("Tribe") and United States' Amended Counterclaims and require these issues to be brought in a new action; (2) dismiss all claims not based on federal law; and (3) dismiss those claims related to ground water outside the boundary of the reservation.

This Court retained jurisdiction under the 1940 Final Decree for specific defined purposes, not for the reopening of the adjudication to decide new claims.

The United States and Tribe insist the Court retained jurisdiction under the "1936" Decree to adjudicate additional water right claims. Specifically, the 1940 Final Decree provided for retained jurisdiction as follows, "for the purpose of changing the duty of water or for correcting or modifying this decree; also for regulatory purposes, including a change of the place of use of any water user…"[2] The United States and Tribe contend the phrase "modifying this decree" provides this Court with the ability to adjudicate additional water right claims, which contention is inconsistent with the provisions of the Decree as a whole and inconsistent with the preclusive effect of final judgments.[3]

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[1] Notice of Appearance filed at Document 2155 (Circle Bar N Ranch, LLC; Fenili Family Trust; Six-N Ranch, Inc.; Mica Farms, LLC; John and Lura Weaver Family Trust; Smith Valley Garage, Inc.; Donald Giorgi; and Lorie and Merle McMahon).

[2] 1940 Final Decree at 72:29 – 73:25.

[3] It is recognized that this Court precluded a discussion of issues that include, but are not limited to, res judicata (or claim preclusion) and collateral estoppel (or issue preclusion) at this stage of the proceedings, reserving them for a

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At the risk of sounding pedantic, there is a distinction between modifying and supplementing. One means to change what exists; the other to add to what exists.[4] The United States and Tribe fail to appreciate this distinction.

The four corners of the 1940 Final Decree includes the following language that ***does not*** support the United States' and Tribe's contention that use of the term "modifying the Decree" provides this Court with the continuing jurisdiction to allow parties to the Decree to claim additional water rights.

> XI . Each and every party to this suit and their and each of their servants, agents and attorneys and all persons claiming by, through or under them, and their successors and assigns in and to the water rights and lands herein described, be and each of them hereby *is forever enjoined and restrained from claiming any rights in or to the waters of Walker River and/or its branches and/or its tributaries, except the rights set up and specified in this decree* and each of the said parties is hereby enjoined and restrained from taking, diverting or interfering in any way with the waters of the said Walker River or its branches or tributaries so as to in any way or manner interfere with the diversion, enjoyment and use of the waters of any of the other parties to this suit as set forth in this decree, having due regard to the relative rights and priorities herein set forth . . . .
>
> XII. This decree shall be deemed to determine all of the rights of the parties to this suit and their successors in interest in and to the waters of Walker River and its tributaries, except the undetermined rights of Walker River Irrigation District under its applications to the State Water Commission of the State of California and the undetermined rights of the applicants for permits from the State Engineer of the State of Nevada hereinabove specified, and it is hereby ordered, adjudged and decreed that *none of the parties to this suit has any right, title, interest or estate in or to the waters of said Walker River, its branches or its tributaries other than as above set forth, excepting*

(Cont.)

future time. However, the United States' and Tribe's proposed interpretation of the language of the 1940 Final Decree may not be viewed in a legal vacuum, but in the context of the preclusive effects of final judgments.

[4] Modify means to change some parts of (something) while not changing other parts ; supplement means something that is added to something else in order to make it complete. *See* http://www.merriam-webster.com/dictionary/modify and http://www.merriam-webster.com/dictionary/supplement.

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> *the undetermined rights of Walker River Irrigation District and the several applicants for permits from the State Engineer of the State of Nevada.*

1940 Final Decree, 71:10-23 through 72:1-14 (emphasis added).

The Walker River is fully appropriated. The Court in 1935, stated:

> The evidence shows that within a few years after the creation of the reservation, the lands along Walker river were taken up by white settlers under the homestead [164] and pre-emption laws and the Desert Land Act (43 USCA § 321 et seq.), and the water of the river was gradually applied by them to a beneficial use until all of the water of the river had been ***fully appropriated***;...

United States v. Walker River Irr. Dist., 11 F. Supp. 158, 163 (D. Nev. 1935) (emphasis added).

The United States incorrectly suggests that at the time the original decree was issued, the Walker River and its tributaries were not fully appropriated and use of the term "modification" was consistent with recognition that at some future point the United States and Tribe would be applying for additional water rights. U.S. Response at 11-13.

As a final comment, Circle Bar N Ranch did not mischaracterize, as alleged by the United States and the Tribe, the holding in *Arizona v. California*, 460 U.S.605, 607 (1983). U.S. Response at 16; Tribe Response at 14-15. The case was cited as an example of the language one would expect to find in a decree wherein the decree court retained continuing jurisdiction to address additional claims. That decree contained the following language: "The Court retains jurisdiction of this suit for the purpose of any order, direction or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter..." *Id.* at 618. If one were to follow the line of reasoning proposed by United States and Tribe that "modification" means supplementation, the Court used superfluous language when retaining jurisdiction for both modification and supplementation of that decree. Unlike the Court in *Arizona*, this Court did not retain jurisdiction under the provisions of the 1940 Final Decree for the issuance of supplementary decrees.

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Additionally, Circle Bar N Ranch did not mischaracterize, as alleged by both the United States and Tribe, the extent of the implied reserved federal water rights doctrine. Rather, the United States misrepresented the holding in *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983). The distinction between primary and secondary purposes of reservations, regardless of whether the reservation is Indian or non-Indian, was acknowledged by the Ninth Circuit Court of Appeals in *Adair,* a case that addressed reserved rights claimed by the Klamath Tribe. The court discussed the holdings in *United States v. New Mexico*, 438 U.S. 696 (1978) and *Cappaert v. United States,* 426 U.S. 128 (1976), as establishing useful guidelines for dealing with reserved rights for Indian reservations. That court stated,

> First, water rights may be implied only 'where water is necessary to fulfill the very purposes for which a federal reservation was created,' and not where it is merely 'valuable for a secondary use of the reservation.' Second, the scope of the implied right is circumscribed by the necessity that calls for its creation. The doctrine 'reserves only that amount of water necessary to fulfill the purpose of the reservation, no more.'

(Internal citations omitted). *Adair*, 723 F.2d at 1408-09. See also, *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 47 (9th Cir. Wash. 1981) (The Ninth Circuit applied the *New Mexico* test when determining the extent of the implied reservation of water for the Colville Reservation).

Without continuing jurisdiction to address additional claims, the United States' and Tribe's claims for additional claims should be dismissed.

Without continuing jurisdiction of the Court, the United States and Tribe would of necessity be required to file a new action, not one within Case No. C-125. The United States improperly suggests that even if the Court were to determine that the state law claims were not within the continuing jurisdiction of the Court under the Decree, the Court would have independent jurisdiction to hear the United States' claims for state-law-based water rights.[5] U.S. Response at 22-23.

[5] The defendants have been precluded by this Court from addressing issues of claim and issues of preclusion at this stage of the proceedings, so Circle Bar N Ranch will defer argument relating to these matters to the future.

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Conclusion

Accordingly, because this Court: (1) did not retain jurisdiction to adjudicate new claims, (2) has no jurisdiction over claims based on state law, and/or (3) has no jurisdiction for claims to ground water located outside the reservation boundary; this Court should dismiss the Walker River Paiute Tribe's and United States' Amended Counterclaims, and require them to be brought in a new action, dismiss all claims not based on federal law, and/or dismiss those related to ground water outside the boundary of the reservation.

DATED this 20th day of April, 2015.

SCHROEDER LAW OFFICES, P.C.

/s/ Laura A. Schroeder

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Therese A. Ure, NSB# 10255
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(Cont.)

However, the United States' comments in Footnote 17 (U.S. Response at 21) regarding the scope of the 1940 Final Decree not including ground water seems disingenuous given its argument that this Court has continuing jurisdiction to hear state ground water claims as federal law recognizes no distinction between surface and ground water.

Further, with regard to the United States' comment relating to the 1936 Act, one need only look at the legislative history behind the addition to the Reservation to recognize the purpose for which the lands were reserved. The Senate Report relating to the 1936 enactment is attached hereto as Exhibit A.

EXHIBIT A

EXHIBIT A

Calendar No. 1829

74TH CONGRESS, 2d Session } SENATE { REPORT No. 1750

WALKER RIVER INDIAN RESERVATION, NEV., ADDITION OF CERTAIN PUBLIC DOMAIN

FEBRUARY 24 (calendar day, APR. 7), 1936.—Ordered to be printed

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 3805]

The Committee on Indian Affairs, to whom was referred the bill (S. 3805) to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation, in the State of Nevada, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

On page 1, line 7, just after the word "township" insert "11".

On page 2, line 1, after the word "hereof" change the period to a colon and insert the following:

Provided further, That the Secretary of the Interior shall arrange, either by the maintenance of existing stock driveways or otherwise, to permit stock owned by others than Indians to cross the reservation at designated points.

On page 2, after line 7 insert a new section as follows:

SEC. 2. Title to all minerals in said lands is hereby reserved to the United States and shall be subject to all forms of mineral entry or claim under the public land mining laws: *Provided*, That the Paiute Indians of the Walker River Reservation shall be paid by mineral claimants for the loss of any improvements on any lands located or withdrawn for mining purposes under rules and regulations to be prescribed by the Secretary of the Interior; *And provided further*, That an annual rental of not less than five cents per acre shall be paid to the superintendent of the reservation to be deposited to the credit of the tribe as compensation for loss of use or occupancy of any lands withdrawn for mining purposes or mineral entry. No mineral patent shall be granted to any applicant who is delinquent in the payment of rental or in the payment of any damages due the tribe under the provisions of this Act.

The proposed amendments to this bill were suggested by Senator McCarran, author of the bill, and the Commissioner of Indian Affairs joins in recommending the said amendments for approval.

The Secretary of the Interior in his report on this bill, under date of March 26, 1936, recommends favorable consideration, and states that the Acting Director of the Bureau of the Budget advises that there is no objection to the presentation of the said report to this committee.

The Secretary of the Interior's report on the bill is as follows:

THE SECRETARY OF THE INTERIOR,
Washington, March 26, 1936.

HON. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your request of February 26 for report on S. 3805, a bill to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation.

The bill authorizes the Secretary of the Interior to set aside not to exceed 171,200 acres of public-domain land in Townships 12, 13, 14, and 15 North, Ranges 27, 28, 29, 30, and 31 East, Mount Diablo meridian, Nev., as an addition to the Walker River Indian Reservation. The proposed addition embraces vacant public-domain lands adjacent to the present Walker River Reservation. A considerable portion of these lands were formerly Indian owned, but were included in an area relinquished by them under the act of May 27, 1902 (32 Stat. 260). The lands involved are located and described approximately as follows:

On the west side of the reservation—

All of secs. 3, 4, 5, 9, 10, 11, 14, 15, 23, 26, and W½ W½ sec. 24, W½ W½ sec. 25, T. 12 N., R. 28 E.

N½ and SE¼ sec. 1, E½ sec. 24, sec. 25, and the unsurveyed lands which will become SE¼ sec. 23, SW¼ sec. 24, NE¼ sec. 26, and the E½ sec. 36, T. 13 N., R. 27 E. All of secs. 6, 17, 19, 20, 28, 29, 30, 32, 33, and E½ sec. 7, W½ sec. 8, E½, E½, SW¼, and lots 3 and 4, sec. 18, W½ sec. 21, sec. 31, T. 13 N., R. 28 E.

The unallotted portions of lots 1, 2, 3, 4, and S½ N½ sec. 5, T. 14 N., R. 27 E.

All of secs. 30 and 31, T. 14 N., R. 28 E.

On the east side of the reservation—

Beginning at the W¼ corner of sec. 24, T. 15 N., R. 27 E.; thence north ½ mile, thence east 1 mile; thence north 1 mile; thence east 6 miles; thence south 2 miles; thence east 12 miles; thence south 1 mile; thence east 2 miles; thence south 1 mile more or less to the present boundary of the reservation as surveyed and marked by Emergency Conservation Work Engineer, M. A. Hall; thence east to a point 2 miles east of the northeast corner of the reservation; thence south to where this line intersects with the projection of the south line of township 13 N., R. 29 and 30 E.; thence east along this projected line to the range line on the west side of R. 32 E., as now outlined; thence south to a point formed by the intersection of this range line and the projection of the south boundary of the present reservation as surveyed and marked by M. A. Hall; thence west along this projection, the south line of the reservation, and a western projection of this line to a point ½ mile east of the northeast corner of sec. 1, T. 11 N., R. 29 E.; thence southerly along this line to a point ½ mile east of the southeast corner of sec. 25, T. 11 N., R. 29 E.; thence westward to the southeast corner of said section; thence westward along the south boundary of secs. 25 and 26, T. 11 N., R. 29 E., to the shore line of Walker Lake; thence north to the intersection of the Lake Shore and the present reservation line; thence northward and westward along the reservation line to the place of beginning; excluding those lands already included in the reservation.

Part of the land, as above described, is located in township 11 north, range 29 east, which township has been omitted from the bill. It is recommended that the bill be amended by inserting "11," just after the word "townships" in line 7, page 1.

Under the act of June 21, 1906 (34 Stat. 358), certain tracts of timber land on the reservation were withheld from disposition to meet the reasonable requirements of the Indians for fuel and improvements, before opening their surplus lands to public entry as authorized by the act of May 27, 1902, supra. Additional lands have been found necessary to meet the present requirements of the Indians for a wood supply. This accounts for a small tract of 1,440 acres of woodland, formerly Indian owned, being included in the present proposed withdrawal.

The remainder of the lands, approximately 169,700 acres, most of which are on the east side of the present reservation and surround their grazing reserve, is desirable as an addition for grazing purposes. The lands are being utilized almost exclusively by Indians. Their character and location makes them almost valueless to any other group. The range value of the land is so low that it takes from 150 to 200 acres per head per year. Due to the increased interest of the Walker River Indians in the cattle industry, it is found that, if the industry is to be developed and expanded further, additional permanent grazing lands will be needed. These lands are now being used by the Indians. At the present time the Indians have only approximately 1,400 head of cattle. If they are to maintain their present herds upon a substantial basis and expand and develop their industry to any appreciable degree for their own support, the public domain lands which they have been using for years for grazing purposes should be reserved for their use and benefit.

Although the lands in question have been and are being used by the Indians practically to the exclusion of all others, part of this area has been utilized to a limited extent by non-Indians for stock-driveway purposes. When making a definite selection of lands to comprise the reserve, this fact will be given appropriate attention and such stock driveways maintained as may be found necessary, or other arrangements made to permit non-Indian stock to cross the land at points to be agreed upon. As all of the public-domain lands in question were temporarily withdrawn from disposition by Executive order of November 26, 1934, for classification, etc., under the Taylor Grazing Act of June 28, 1934 (ch. 865, 48 Stat. 1269), it is necessary that this withdrawal order be revoked insofar as it applies to such of these lands as may ultimately be selected for addition to the Indian reservation. Valid existing rights are not to be affected, and the proposed withdrawal will not interfere with the administration of grazing on adjacent public-domain lands under the Taylor Grazing Act, as the users of existing driveways adjacent to the reserve are to be granted permission to cross the lands, as mentioned above.

In view of the foregoing, I recommend that S. 3805, with the amendment suggested, receive favorable consideration.

Under date of March 20, the Acting Director of the Bureau of the Budget advised that "there would be no objection by this office to the presentation of this report to the committee."

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

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74TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 2614

WALKER RIVER INDIAN RESERVATION, NEV., ADDITION OF CERTAIN PUBLIC DOMAIN

MAY 12, 1936.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. GREEVER, from the Committee on the Public Lands, submitted the following

REPORT

[To accompany S. 3805]

The Committee on the Public Lands, to whom was referred the bill (S. 3805) to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation, in the State of Nevada, having considered the same, report thereon with a recommendation that it do pass

Facts concerning this legislation are set forth in Senate Report No. 1750 of this Congress, which is self-explanatory and is hereinbelow set out in full and made a part of this report as follows:

[S. Rept. No. 1750, 74th Cong., 2d sess.]

The Committee on Indian Affairs, to whom was referred the bill (S. 3805) to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation, in the State of Nevada, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

On page 1, line 7, just after the word "township" insert "11".

On page 2, line 1, after the word "hereof" change the period to a colon and insert the following:

"*Provided further*, That the Secretary of the Interior shall arrange, either by the maintenance of existing stock driveways or otherwise, to permit stock owned by others than Indians to cross the reservation at designated points."

On page 2, after line 7, insert a new section as follows:

"SEC. 2. Title to all minerals in said lands is hereby reserved to the United States and shall be subject to all forms of mineral entry or claim under the public land mining laws: *Provided*, That the Paiute Indians of the Walker River Reservation shall be paid by mineral claimants for the loss of any improvements on any lands located or withdrawn for mining purposes under rules and regulations to be prescribed by the Secretary of the Interior: *And provided further*, That an annual rental of not less than 5 cents per acre shall be paid to the superintendent of the reservation to be deposited to the credit of the tribe as compensation for loss of use or occupancy of any lands withdrawn for mining purposes or mineral entry. No mineral patent shall be granted to any applicant who is

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Exhibit A
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delinquent in the payment of rental or in the payment of any damages due the tribe under the provisions of this Act."

The proposed amendments to this bill were suggested by Senator McCarran, author of the bill, and the commissioner of Indian Affairs joins in recommending the said amendments for approval.

The Secretary of the Interior in his report on this bill, under date of March 26, 1936, recommends favorable consideration, and states that the Acting Director of the Bureau of the Budget advises that there is no objection to the presentation of the said report to this committee.

The Secretary of the Interior's report on the bill is as follows:

THE SECRETARY OF THE INTERIOR,
Washington, March 26, 1936.

Hon. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your request of February 26 for report on S. 3805, a bill to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation.

The bill authorizes the Secretary of the Interior to set aside not to exceed 171,200 acres of public-domain land in Townships 12, 13, 14, and 15 North, Ranges 27, 28, 29, 30, and 31 East, Mount Diablo meridian, Nev., as an addition to the Walker River Indian Reservation. The proposed addition embraces vacant public-domain lands adjacent to the present Walker River Reservation. A considerable portion of these lands were formerly Indian owned, but were included in an area relinquished by them under the act of May 27, 1902 (32 Stat. 260). The lands involved are located and described approximately as follows:

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N½ and SE¼ sec. 1, E½ sec. 24, sec. 25, and the unsurveyed lands which will become SE¼ sec. 23, SW¼ sec. 24, NE¼ sec. 26, and the E½ sec. 36, T. 13 N., R. 27 E. All of secs. 6, 17, 19, 20, 28, 29, 30, 32, 33, and E½ sec. 7, W½ sec. 8, E½, E½, SW¼, and lots 3 and 4, sec. 18, W½ sec. 21, sec. 31, T. 13 N., R. 28 E.

The unallotted portions of lots 1, 2, 3, 4, and S½ N½ sec. 5, T. 14 N., R. 27 E.

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Part of the land, as above described, is located in township 11 north, range 29 east, which township has been omitted from the bill. It is recommended that the bill be amended by inserting "11," just after the word "townships" in line 7, page 1.

Under the act of June 21, 1906 (34 Stat. 358), certain tracts of timberland on the reservation were withheld from disposition to meet the reasonable requirements of the Indians for fuel and improvements before opening their surplus lands to public entry as authorized by the act of May 27, 1902, supra. Additional lands have been found necessary to meet the present requirements of the Indians for a wood supply. This accounts for a small tract of 1,440 acres of woodland, formerly Indian owned, being included in the present proposed withdrawal.

Exhibit A
Page 5 of 6

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Although the lands in question have been and are being used by the Indians practically to the exclusion of all others, part of this area has been utilized to a limited extent by non-Indians for stock-driveway purposes. When making a definite selection of lands to comprise the reserve, this fact will be given appropriate attention and such stock driveways maintained as may be found necessary, or other arrangements made to permit non-Indian stock to cross the land at points to be agreed upon. As all of the public-domain lands in question were temporarily withdrawn from disposition by Executive order of November 26, 1934, for classification, etc., under the Taylor Grazing Act of June 28, 1934 (ch. 865, 48 Stat. 1269), it is necessary that this withdrawal order be revoked insofar as it applies to such of these lands as may ultimately be selected for addition to the Indian reservation. Valid existing rights are not to be affected, and the proposed withdrawal will not interfere with the administration of grazing on adjacent public-domain lands under the Taylor Grazing Act, as the users of existing driveways adjacent to the reserve are to be granted permission to cross the lands, as mentioned above.

In view of the foregoing, I recommend that S. 3805, with the amendment suggested, receive favorable consideration.

Under date of March 20, the Acting Director of the Bureau of the Budget advised that "there would be no objection by this office to the presentation of this report to the committee."

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

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Exhibit A
Page 6 of 6

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Schroeder Law Offices, P.C., over the age of eighteen and not a party to the within action, and that on this date I caused the foregoing document titled: ***JOINDER BY CIRCLE BAR N RANCH, LLC, ET AL. TO WALKER RIVER IRRIGATION DISTRICT'S REPLY AND SUPPLEMENTARY ARGUMENT REPLY*** to be electronically filed with the Clerk of the Court using the CM/ECF system, and I caused it to be served by electronic mail through CM/ECF addressed to all of the registered participants

Dated this 20th day of April, 2015.

/s/ Laura A. Schroeder

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Therese A. Ure, NSB #10255
Matthew J. Curt, NSB #12572
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