GORDON H. DePAOLI
Nevada State Bar No. 00195
DALE E. FERGUSON
Nevada State Bar No.4986
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
Telephone: 775 / 688-3000

Attorneys for WALKER RIVER IRRIGATION DISTRICT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	)	3:73-cv-00127-MMD-WGC **STIPULATED SCHEDULING ORDER AND DISCOVERY PLAN** **SPECIAL SCHEDULING REVIEW REQUESTED**

1. Pursuant to Minute Order of October 17, 2018 (ECF 2389), the Court instructed the principal parties to consult regarding the development of a proposed Scheduling Order and Discovery Plan.

2. The Principal Parties have consulted, and at the Status Conference held in this matter on March 4, 2019, they acknowledged their agreement to this Scheduling Order and Discovery Plan.

NOW, THEREFORE, the Principal Parties consisting of the United States, the Walker River Paiute Indian Tribe, the Walker River Irrigation District, Nevada Department of Wildlife, Lyon County, Centennial Livestock, Peri & Sons, the Schroeder Group, the California State

Agencies, Mono County, Mineral County and the Walker Lake Working Group, pursuant to Local Rule 26(1)(b) submit the following Scheduling Order and Discovery Plan:

SPECIAL SCHEDULING REVIEW REQUESTED

This Scheduling Order and Discovery Plan concerns the water right claims asserted by the Walker River Paiute Indian Tribe (Tribe) and the water right claims asserted by the United States on behalf of the Tribe and comports with Fed. R. Civ. P. Rule 26(f) and LR 26-1. To the extent that time periods or deadlines do not comply with standard practices or time frames, that is due to the unique circumstances of this case, the complexity of issues, and the number of parties involved in this case. Special scheduling review by the Court will be required.

1. **The United States' and Tribe's More Detailed Statement of Claims.** To give greater detail and specificity to the water right claims last asserted in 1997 and based on the anticipated completion of expert analysis, the United States and the Tribe will jointly file a more detailed statement of claims on or before May 3, 2019, and any associated amendment to the first amended counterclaims last filed in 1997. The United States will only issue amended claims, if at all, as they relate to the water rights claims asserted on behalf of the Tribe.

2. **Responses to the Amended Counterclaims.** Any party may answer the First, Second and Third Claims for Relief asserted by the United States in its First Amended Counterclaim (ECF No. 59) and the First Amended Counterclaim of the Walker River Paiute Tribe (ECF No. 58) on or before August 1, 2019. In the event that on or before May 3, 2019, the United States and Tribe file second amended counterclaims concerning water right claims for the Tribe, parties will answer those second amended counterclaims only. Only answers and affirmative defenses will be allowed. There will be no counterclaims required or permitted. Establishment of this date for the filing of answers does not change the provisions of the April 18, 2000 Case Management Order (ECF No. 108) at page 12, paragraph 13, that no default shall be taken under Fed. R. Civ. P. 55, and the Court will take no action to enter a default or a

default judgment under that Rule against any party not filing an answer. No party shall respond to any allegation contained in the United States' First Amended Counterclaim (ECF No. 59) at pages 13 through 31, paragraphs 20 through 73. After August 1, 2019, any party who has not answered as provided herein may only do so upon leave of Court.

3. **Initial Disclosures.** The initial disclosures required by Fed. R. Civ. P. Rule 26(a) will be made by the United States, the Tribe, and parties filing answers on or before October 1, 2019.

4. **Defendants' Coordination of Discovery and Dispositive or Partially Dispositive Motions.** Between May 3, 2019 and November 22, 2019, counsel for the Walker River Irrigation District, the Nevada Department of Wildlife, Lyon County, Centennial Livestock, Peri & Sons, 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, will confer to coordinate their discovery, including sharing discovery, scheduling discovery, and other matters related to discovery so as to facilitate the orderly and cost effective acquisition of relevant information and materials. In addition, to the extent feasible during that period of time, they will confer on matters related to dispositive or partially dispositive motions, including coordination of filing, grounds and other matters to avoid duplication. Those Defendant Parties will submit the results of their discussions to the United States and Walker River Paiute Tribe on or before November 22, 2019. Thereafter, the United States, Walker River Tribe, those Defendant Parties and any other party who has answered shall meet and confer to propose necessary amendments to this Scheduling Order, if any. The parties shall submit their proposal to the Court on or before December 16, 2019, and the Court shall issue any orders needed to resolve disputes between the parties, if any, and to amend this Scheduling Order accordingly.

5. **Discovery.** In addition to the initial disclosures referenced in paragraph 4 above and the expert disclosures referenced in paragraph 6 below, the following discovery plan is proposed:

a. **Subjects of Discovery.** Discovery will be related to the legal and factual bases for the water right claims asserted for the Tribe in the First Amended Counterclaims and related to the Answers, including affirmative defenses asserted in response thereto;

b. **Commencement.** Unless the Court orders otherwise, discovery governed by Fed. R. Civ. P. Rules 28 through 37 shall commence on December 16, 2019;

c. **Privileged Material.** Pursuant to Fed. R. Evid. 502(d), production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding;

d. **Discovery Cut-Off Date.** Unless the Court orders otherwise, the last day for discovery shall be June 1, 2021. Discovery requests must be made far enough in advance of this deadline to allow completion of the discovery by the deadline date; and

e. **Amending the Pleadings and Adding Parties.** Amendment of pleadings and adding parties will be governed by Fed. R. Civ. P. Rule 15 and 19, respectively, as well as L.R. 26-1(b)(2).

f. Pursuant to Fed. R. Civ. P. 16(B)(3)(b)(v), the court directs that before filing a motion relating to discovery the movant must request a conference with the court to discuss the discovery issue with the court and involved counsel.

6. **Expert Disclosure and Reports.** Disclosure of experts shall proceed according to Fed. R. Civ. P. 26(a)(2), except that:

b. The disclosure of responsive experts and responsive expert reports by the United States and the Tribe and by any party filing an answer to the Amended Counterclaims shall be on or before 6 months after the disclosure deadline for expert and initial expert reports.

c. The disclosure of rebuttal experts and rebuttal expert reports by the United States and the Tribe and by any party filing an answer to the Amended Counterclaims shall be 90 days after the deadline for responsive expert disclosures and responsive expert reports; and

d. Generally, depositions shall commence only after responsive or rebuttal reports have been submitted. 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.

7. **Dispositive Motions.** A schedule for dispositive motions will be developed based on the consultation between the parties and the Court described in paragraph 4 above. Generally, responses to dispositive or partially dispositive motions shall be submitted no later than 60 days after a motion is filed and replies to dispositive or partially dispositive motion responses shall be submitted no later than 30 days after responses to a motion are filed.

8. **Pretrial Order.** A joint pretrial order will be submitted as further ordered by the Court concerning any remaining disputed issues of fact to be resolved through trial.

9. **Fed. R. Civ. P. Rule 26(a)(3) Disclosures.** The disclosures required by Fed. R. Civ. P. 26(a)(3) will be submitted as further ordered by the Court.

10. **Alternative Dispute Resolution.** The parties have conferred about the possibility of using alternative dispute resolution processes. The parties are not opposed to

settlement conference or other alternative methods of dispute resolution as contemplated by LR 16-5 at an appropriate time.

11. **Alternative Forms of Case Disposition.** The parties have considered consent to trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short Trial Program (General Order 2013-01). The parties do not consent to the use of a magistrate judge to address the claims asserted by or on behalf of the Tribe.

12. **Electronic Discovery.** The parties agree that production of disclosures pursuant to Fed. R. Civ. P. 34 may (but is not limited to) occur in paper or a convenient electronic format, but that all information will be preserved in its native electronic format, and will be produced in such format only upon request. Such request may occur either initially or after review of previous production. A party shall have 30 days to respond to a request for production in native format, if the subject of the request has previously been produced otherwise. Unless unduly burdensome or costly, the parties agree that PDF files that are produced will be electronically searchable, and hard copies that are produced will be of sufficient quality to scan into electronically searchable files.

Dated: March 6, 2019.

WOODBURN AND WEDGE

By: / s / Gordon H. DePaoli
Gordon H. DePaoli
Nevada Bar No. 195
6100 Neil Road, Suite 500
Reno, Nevada 89511
Attorneys for Walker River Irrigation District

IT IS SO ORDERED.

DATED: March 7, 2019.

William G. Cobb

UNITED STATES MAGISTRATE JUDGE