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8 DISTRICT

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF NEVADA**

11	UNITED STATES OF AMERICA,	)	3:73-cv-00127-MMD-WGC
12		)	
	Plaintiff,	)	
13		)	<b>STIPULATION AND [PROPOSED]</b>
14	WALKER RIVER PAIUTE TRIBE,	)	<b>ORDER AMENDING ORDER</b>
		)	<b>REGARDING DISCOVERY AND</b>
15	Plaintiff-Intervenor,	)	<b>MOTION SCHEDULE AS</b>
		)	<b>PREVIOUSLY AMENDED</b>
16	v.	)	
		)	
17	WALKER RIVER IRRIGATION DISTRICT,	)	
18	a corporation, et al.,	)	
		)	
19	Defendants.	)	

20 1. On March 16, 2020, the Court entered the Order Regarding Discovery and  
21 Motion Schedule and Procedure (the “Order”). ECF 2611.

22 2. On December 28, 2020, a Stipulation and Order Amending Order Regarding  
23 Discovery and Motion Schedule was entered (the “Amendment to the Order”). ECF 2648

24 3. The Amendment to the Order was concerned with and addressed the fact that the  
25 historical expert engaged by the Principal Defendants to provide a response to the Historical  
26 Reports of the United States and Tribe and perhaps also to provide an opening expert report on  
27 historical matters which may not be directly addressed in the Historical Reports of the United  
28 States and Tribe, was not able to undertake her research plan because the several repositories

1 holding manuscript collections critical to her research and assignments in this matter were and  
2 for some time prior had been and then remained closed due to the Covid-19 Pandemic, making  
3 archival research progress (outside of digitally available records) impossible.

4 4. At that time, the Principal Defendants' historical expert had been waiting for the  
5 following archive/records offices to reopen: the National Archives - Riverside; National  
6 Archives – San Bruno; National Archives – DC/College Park; California State Archives;  
7 Nevada State Archives; and the Water Resource Center Archives at the University of California  
8 (the "Archive / Records Offices"). The National Archives –Seattle has been added to and  
9 should now be included in the Archive / Records Offices.

10 5. Pursuant to the Amendment to the Order, since February 1, 2021, and  
11 continuing to September 1, 2021, the Principal Defendants have reported to the Plaintiffs'  
12 Counsel and to the Court concerning the status of access to each of the Archive/Records  
13 Offices.

14 6. The most recent Report advised:

15 As noted in the August 2, 2021 report, on July 16, 2021 the National  
16 Archives Records Administration (NARA) issued a press release stating that it  
17 was starting to resume research operations, and that starting Monday, August 2,  
18 2021, most National Archives research rooms would reopen for research on a  
19 limited basis. However, on or about August 16, 2021, National Archives in  
20 Washington, D.C. announced it was again closed with no information on when it  
21 might reopen. The National Archives, College Park, Md, the National Archives,  
22 San Bruno, the National Archives, Riverside and the National Archives, Seattle  
are all closed, also with no information on when they might reopen. All of these  
facilities offer the following information on their websites: "once public health  
conditions improve, and we are able to reopen our research room, we will  
update our website with additional information." As of this date none have  
reopened.

23 As of September 1, 2021, the Nevada State Archives continues to be open with  
24 limited hours from 10:00 AM to 2:00 PM on business days. As of September 1,  
25 2021, the other Archive/Records Offices as defined in said Order and not  
mentioned above remain closed.

26 See ECF 2674 at 1

27 7. The Amendment to the Order suspended the January 29, 2021 due date for the  
28 Principal Defendants' Responsive Historical Report and Opening Historical Report.

1           8.       The Amendment to the Order also provided that the date of Plaintiffs' Response  
2 to the Principal Defendants' Opening Historical Report, if any, is also suspended to a date  
3 which is 60 days after the Principal Defendants Opening Historical Report is served, the date  
4 for Plaintiffs' Rebuttal to the Principal Defendants' Responsive Historical Report is also  
5 suspended to a date which is 60 days after the Principal Defendants' Responsive Historical  
6 Report is served and that the date for Principal Defendants' Rebuttal to Plaintiffs' response to  
7 Principal Defendants' Opening Historical Report is also suspended to a date which is 60 days  
8 after Plaintiffs' Responsive Report is served.

9           9.       The Amendment to the Order further provided that the depositions of experts  
10 whose opening, responsive and/or rebuttal reports are delayed by this Stipulation shall be  
11 delayed until the last of such reports have been served. In the event insufficient time exists to  
12 complete such depositions within the discovery period, Plaintiffs and Principal Defendants will  
13 seek appropriate relief from the Court.

14           10.      The Amendment to the Order further provided that the schedule for and expert  
15 report sequence for all other opening, responsive and rebuttal expert reports are not modified  
16 by this Stipulation and Order, and shall remain as provided therein and in the following table:

<b><u>Non-Historical Expert Sequence</u></b>			
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

21           11.      The requirements of that schedule have been met.

22           12.      The Amendment to the Order also provided that if the author of one or more of  
23 the non-historical expert reports which will be provided on the current schedule later becomes  
24 aware of information obtained from archival research which is the result of the facilities  
25 reopening and which, in their judgment, is relevant to their opinions, they may supplement their  
26 reports and opinions within 30 days.

1           13. In addition to meeting the schedule set forth in the table above for non-  
2 Historical Expert Reports, Plaintiffs and the Principal Defendants have engaged in significant  
3 written discovery.

4           14. As noted above, with the exception of the Nevada State Archives which is open  
5 with limited hours, all of the other archive repositories remain closed with considerable  
6 uncertainty as to when they might reopen.

7           15. The Plaintiffs and Principal Defendants have conferred and agree that the Order  
8 and the Amendment to the Order should be modified in light of the foregoing circumstances.

9           NOW, THEREFORE, pursuant to Paragraphs 14 and 16 of the Order, the parties hereby  
10 stipulate and agree as follows:

11           1. Because the expert engaged to prepare the Principal Defendants' Responsive  
12 Historical Report and the Principal Defendants' Opening Historical Report needs access to the  
13 Archive/Records Offices, the due date for those reports remains suspended.

14           2. The suspension provided for in Paragraph 1 of this Stipulation will continue  
15 until an appropriate date determined by the Court. This date shall be a date after the reopening  
16 date of the Archive/Records Offices to which the Principal Defendants' historical expert is  
17 awaiting access. In establishing this date, consideration will be given to the date of such  
18 reopenings, when the expert has been allowed access, obtained and reviewed materials, and the  
19 time needed to complete a report based upon the expert's then schedule. In light of the  
20 unexpected delay occasioned by the Covid-19 Pandemic circumstances, the Principal  
21 Defendants' historical expert shall take all reasonable steps, consistent with her then  
22 availability, to work expeditiously to access the Archive/Records Offices, and to complete the  
23 Principal Defendants' Responsive Historical Report and the Principal Defendants' Opening  
24 Historical Report.

25           3. On the first judicial day of each month thereafter, the Principal Defendants will  
26 continue to report to the Plaintiffs' Counsel and to the Court concerning the status of access to  
27 each of the Archive/Records Offices.

28           4. The Plaintiffs will share with the Principal Defendants any information which

1 they may have concerning access to the Archive/Records Offices on the same schedule.

2 5. The date for Plaintiffs' Response to the Principal Defendants' Opening  
3 Historical Report, if any, continues to be suspended to a date which is 60 days after the  
4 Principal Defendants' Opening Historical Report is served.

5 6. The date for Plaintiffs' Rebuttal to the Principal Defendants' Responsive  
6 Historical Report continues to be suspended to a date which is 60 days after the Principal  
7 Defendants' Responsive Historical Report is served.

8 7. The date for Principal Defendants' Rebuttal to Plaintiffs' response to Principal  
9 Defendants' Opening Historical Report is also suspended to a date which is 60 days after  
10 Plaintiffs' Responsive Report is served.

11 8. The date for close of all forms of discovery allowed by the Federal Rules of  
12 Civil Procedure, including all depositions, whether of historical experts or not, as provided in  
13 paragraph 2.b of the Order is extended from January 31, 2022 to July 31, 2022.

14 9. Depositions of experts whose opening, responsive and/or rebuttal reports are  
15 delayed by this Stipulation shall be delayed until the last of such reports have been served. In  
16 the event insufficient time exists to complete such depositions within the discovery period as  
17 extended, Plaintiffs and Principal Defendants will seek appropriate relief from the Court.

18 10. If the author of one or more of the non-historical expert reports which were  
19 previously provided later becomes aware of information obtained from archival research which  
20 is the result of the facilities reopening and which, in their judgement, is relevant to their  
21 opinions, they may supplement their reports and opinions within 30 days.

22 Dated: September 14, 2021.

23 WOODBURN AND WEDGE

U.S. DEPARTMENT OF JUSTICE

24 By: /s/ Gordon H. DePaoli

By: /s/ Guss Guarino

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**ORDER**

Dated: \_\_\_\_\_, 2021. IT IS SO ORDERED.

\_\_\_\_\_  
William G. Cobb  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge and that on the 14<sup>th</sup> day of September, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/ s / Candace Kelley

Candace Kelley

Further, pursuant to the *Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and by All Parties* (ECF 2100) at 10 ¶ 20, the foregoing does not affect the rights of others and does not raise significant issues of law or fact. Therefore, the Walker River Irrigation District has taken no step to serve notice of this document via the postcard notice procedures described in paragraph 17.c of the *Superseding Order*.

/ s / Gordon H. DePaoli

Gordon H. DePaoli