

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

1		
2		
3	UNITED STATES OF AMERICA,)
4)
5	Plaintiff,)
6)
7	WALKER RIVER PAIUTE TRIBE,)
8)
9	Plaintiff-Intervenor,)
10	vs.)
11)
12	WALKER RIVER IRRIGATION DISTRICT,)
13	a corporation, et al.,)
14)
15	Defendants.)
16)
17	_____)
18	MINERAL COUNTY,)
19)
20	Plaintiff-Intervenor,)
21	vs.)
22)
23	WALKER RIVER IRRIGATION DISTRICT,)
24	a corporation, et al.,)
25)
26	Defendants.)
27	_____)
28)

IN EQUITY NO. C-125
CASE NO. 3:73-CV-00128-MMD-
CSD

DISCOVERY PLAN
AND SCHEDULING ORDER

1. Pursuant to the Order of October 3, 2022, (ECF 1079), the Court granted Mineral County and Walker Lake Working Group (collectively “Plaintiffs”) and the Principal Defendants (collectively “the Parties”) until Tuesday, November 22, 2022, to agree upon and file a stipulated Scheduling Order and Discovery Plan, or to file separate proposals, under Fed. R. Civ. P. 26(f). After conferring a number of times and exchanging proposals, the Parties were unable to reach agreement prior to the November 22, 2022, deadline for submission of a stipulated Scheduling Order and Discovery Plan, and instead submitted separate proposals to the Court. (ECF 1081; 1082).

2. On December 7, 2022, the Court held a status conference to resolve the outstanding points of disagreement between the Parties.

1 3. In accordance with the Court’s Minute Order of December 7, 2022, (ECF 1084),
2 and consistent with rulings made during the status conference as reflected in the Court’s Minute
3 Order, the Parties have prepared the following Scheduling Order and Discovery Plan.

4 Therefore, good cause appearing, **IT IS HEREBY ORDERED:**

5 **1. Parties to This Action.** For purposes of this Order, “Plaintiffs” are Mineral
6 County and the Walker Lake Working Group, collectively referred to herein as “Plaintiffs.”
7 “Principal Defendants” are the Walker River Irrigation District (the “District”), the Nevada
8 Department of Wildlife (“NDOW”), Lyon County and Centennial Livestock, Mono County,
9 Desert Pearl Farms, Peri Family Ranch LLC, Peri & Peri, LLC and Frade Ranches, the
10 Schroeder Group and California State Water Resources Control Board, California Department
11 of Fish and Wildlife and California Department of Parks and Recreation (the “California State
12 Agencies”)(collectively, the “Principal Defendants”). Plaintiffs and Principal Defendants have
13 also included in their discussions the United States, the Walker River Paiute Tribe, Annett
14 Family Trust, and Westfork, who filed answers to Plaintiffs’ Second Amended Complaint.

15 **2. Initial Disclosures.** The initial disclosures required by Fed. R. Civ. P. 26(a) will
16 be made by the Plaintiffs and Principal Defendants on or before April 7, 2023.

17 **3. Discovery.**

18 **a. Subjects of Discovery.** Discovery will be on Plaintiffs’ claim based upon
19 the Public Trust as set forth in their Second Amended Complaint in Intervention (ECF 936),
20 including, but not limited to: (1) whether the Public Trust Doctrine has been violated; (2) if the
21 Public Trust Doctrine has been violated, by whom; (3) whether any violation must be remedied,
22 and if so to what extent; (4) whether the relief Plaintiffs seek is viable or available; (5) whether
23 and to what extent the relief Plaintiffs seek will be effective in redressing Mineral County’s
24 alleged injuries and curing any claimed violation of the Public Trust Doctrine with respect to
25 Walker Lake; (6) answers to the Second Amended Complaint; and (7) affirmative defenses
26 asserted in answers to the Second Amended Complaint.
27
28

1 **b. Period of Discovery.** As described in more detail herein, discovery may
2 commence on April 7, 2023, and shall close on April 4, 2025.

3 **4. Discovery Coordination.** Discovery will be coordinated through coordinating
4 counsel. For Plaintiffs, coordinating counsel will be counsel for Mineral County and Walker
5 Lake Working Group, Simeon Herskovits. For Principal Defendants, coordinating counsel will
6 be counsel for the Walker River Irrigation District, Gordon DePaoli.

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

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

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

21 **7. Written Discovery Requests.** Written discovery may be exchanged between
22 April 7, 2023, and through the close of discovery, provided it is served so that a response is due
23 before the close of discovery. Objections to any discovery request will be served with responses
24 to written discovery. Written responses and responsive documents will only be withheld based
25 on a claim of privilege or on a motion to the Court for a protective order made after compliance
26 with the provisions of Fed. R. Civ. P. 26(c).
27
28

1 **a. Interrogatories.** Plaintiffs (as a group) and Principal Defendants (as a
2 group) will coordinate interrogatories to avoid repetition and undue burden on a party in
3 responding to interrogatories. Each group is entitled to 75 coordinated interrogatories. To the
4 extent that individual Defendants have interrogatories unique to their interests that cannot be
5 coordinated with the group, they are entitled to serve them after service of the initial
6 coordinated interrogatories.

7 **b. Requests for Production of Documents and Things (“RFPs”).**
8 Plaintiffs (as a group) and Principal Defendants (as a group) will coordinate RFPs to avoid
9 repetition and undue burden on a party in responding to RFPs. The Parties will prepare and
10 serve RFPs through coordinating counsel and will respond to them also through coordinating
11 counsel in accordance with Fed. R. Civ. P. 34. The Parties will be responsible for producing
12 documents in their possession, custody, and control. To the extent that individual Defendants
13 have RFPs unique to their interests that cannot be coordinated with the group, they are entitled
14 to serve them after service of the initial coordinated RFPs.

15 **c. Requests for Admissions (“RFAs”).** Plaintiffs (as a group) and Principal
16 Defendants (as a group) will coordinate RFAs to avoid repetition and undue burden on a party
17 in responding to RFAs. The Parties will prepare and serve RFAs through coordinating counsel
18 and will respond to them also through coordinating counsel in accordance with Fed. R. Civ. P.
19 36. Each group is entitled to seventy-five (75) coordinated RFAs. To the extent that individual
20 Defendants have RFAs unique to their interests that cannot be coordinated with the group, they
21 are entitled to serve them after service of the initial coordinated RFAs.

22 **8. Responses to Written Discovery Requests.** In response to written discovery, a
23 responding Party may respond to a request for documents by (i) providing a paper copy of the
24 document, (ii) providing a searchable .pdf file through Adobe Acrobat software, or/and (iii)
25 establishing a record repository for inspection and copying. Documents requiring specialized
26 software other than Adobe Acrobat, such as spreadsheet files, may be produced in native
27 format. Although documents might be electronically stored (such as email correspondence,
28

1 reports, etc.), there is no need to otherwise pursue or produce information referred to as
2 “electronically stored information” that generally refers to backups, duplicates, and underlying
3 signature information (sometimes known as metadata) associated with an electronically stored
4 document. However, a party may request native files for documents that are difficult to
5 understand after they have been produced in the format specified herein or that contain
6 potentially relevant embedded information, and such requests will not be unreasonably denied.

7 Such a request shall be made according to the following protocol:

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

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

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

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

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

25 **9. Expert Discovery.** Discovery from experts will be in accordance with the
26 Federal Rules of Civil Procedure. Provided, however, that all expert witnesses shall be required
27 to submit a report consistent with the requirements of Fed. R. Civ. P. 26(a)(2)(B), even if the
28

1 witness would not otherwise be required to provide such a report and would only be subject to
 2 the requirements of Fed. R. Civ. P. 26(a)(2)(C). The Parties do not need to produce copies of
 3 documents that were previously produced or copies of documents that are publicly available
 4 (such as published materials one might find on the Internet, news publications, a public
 5 repository, a library - so long as the documents are identified and their specific location is
 6 provided).

7 The expert report sequence will be staggered and is summarized in a table below. The
 8 Plaintiffs’ opening expert reports will be due on October 6, 2023. Defendants’ responsive expert
 9 reports to the Plaintiffs’ opening expert reports will be due on March 8, 2024. Plaintiffs’
 10 rebuttal expert reports to Defendants’ responsive expert reports will be due on June 7, 2024.

11 The Defendants’ opening expert reports will be due on March 8, 2024. Plaintiffs’
 12 responsive expert reports to Defendants’ opening reports will be due on May 10, 2024.
 13 Defendants’ rebuttal expert reports to Plaintiffs’ responsive expert reports will be due on June 7,
 14 2024.

Expert Report Sequence			
Plaintiffs’ Opening	October 6, 2023		
Defendants’ Response	March 8, 2024	Defendants’ Opening	March 8, 2024
		Plaintiffs’ Response	May 10, 2024
Plaintiffs’ Rebuttal	June 7, 2024	Defendants’ Rebuttal	June 7, 2024

15
 16
 17
 18
 19
 20 Expert depositions will take place between July 8, 2024, and the close of discovery.
 21 However, if reasonably necessary for purposes of preparing responsive expert reports, with the
 22 consent of relevant parties, deposition of such expert witness may commence immediately after
 23 the expert witness’s opening expert report has been disclosed. If the relevant parties do not
 24 consent, the party seeking to take a deposition prior to responsive or rebuttal expert reports may
 25 seek leave of Court to conduct such a deposition.
 26
 27
 28

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

4 **11. Privileged Communications (Attorney-Client Communications and**
5 **Attorney Work Product) and Privilege Log.** Unless expressly stated otherwise, no discovery
6 request should be construed to request communications exclusively between a party (including
7 representatives, employees and agents) and its counsel, and work product created by counsel.
8 Unless such communications are expressly requested or otherwise contain discoverable
9 information (*e.g.*, Fed. R. Civ. P. 26(b)(4)(C)), such materials will not be produced or placed on
10 a privilege log. The Parties will follow Fed. R. Civ. P. 26(b)(5)(A); to provide a log of
11 privileged or work product materials subject to any exception which might be applicable.

12 **12. Depositions.** Depositions will be taken in accordance with Fed. R. Civ. P. 30 and
13 31. The Parties will have the right to depose any identified expert or lay witness. Expert
14 depositions will be taken in accordance with the schedule set forth in paragraph 9 above.
15 All lay witnesses must be identified no later than June 7, 2024. For any lay witnesses on which
16 Plaintiffs will rely, for any lay witnesses on which Principal Defendants will rely, and for any
17 remaining non-expert persons as contemplated under Fed. R. Civ. P. 30(a), such depositions
18 may be taken before the close of discovery.

19 Subject to specific agreement(s) otherwise, depositions will occur in the Reno/Sparks,
20 Nevada, metropolitan area, be taken in a single day, and last for a maximum of 7 hours of
21 testimony. Notices of deposition and subpoenas duces tecum directed to a deponent may be
22 served on coordinating counsel by email 30 days before a scheduled deposition. The Parties
23 shall endeavor to coordinate the scheduling of depositions on dates that maximize efficiency
24 and minimize the need for repetitive travel to the extent practicable. Costs of lay/expert witness
25 deponents (which include but are not limited to witness travel, expense, and time spent
26 preparing for and attending the deposition) will be borne by the Party on whose behalf the
27 lay/expert witness will be called. All other costs associated with depositions (such as rented
28

1 office space, court reporter costs, etc.) shall be borne by the Party taking such deposition. For all
2 oral depositions, the Parties request the right of review pursuant to Fed. R. Civ. P. 30(e).

3 **13. Fed. R. Evid. 502(b).** The Parties invoke Rule 502(b) of the Federal Rules of
4 Evidence and agree that in the event of an inadvertent disclosure of privileged/protected
5 material, such privilege or protection is not waived or forfeited by inadvertent disclosure. If a
6 party determines that it has produced a document upon which it wishes to make a claim of
7 privilege, the producing party shall, within 14 days of making such determination, give all
8 counsel of record notice of the claim of privilege. Any party that complies with this paragraph
9 will be deemed to have taken reasonable steps to rectify disclosures of privileged or protected
10 information or materials. If a party identifies a document that appears on its face or in light of
11 facts known to the party to be subject to another party's claim of privilege, the party identifying
12 the potential claim of privilege is under a good-faith obligation to notify the party holding the
13 potential claim of privilege. Recovery, management, and disputes associated with disclosed
14 privileged material will be governed by Fed. R. Civ. P. 26(b)(5)(B).

15 **14. Extensions or Modifications of Discovery Plan and Scheduling Order.** LR
16 26-3 governs modifications or extensions of this discovery plan and scheduling order. Any
17 stipulation or motion to extend a deadline set forth in this Order must be filed with the Court no
18 later than 3 days prior to the deadline sought to be extended.

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

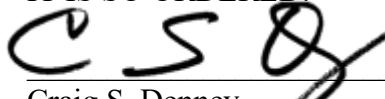
22 **16. Answering Defendants Not Actively Participating.** The United States, Walker
23 River Paiute Tribe, Annett Family Trust, and Westfork do not anticipate actively engaging in
24 the discovery process described in the paragraphs above, and coordinating counsel for the
25 Principal Defendants does not have to coordinate with them in the discovery process. With
26 respect to motions, including dispositive motions, those Defendants will comply with the
27 schedule detailed above, but they and the Principal Defendants are not required to coordinate
28

1 with respect to motions. Plaintiffs and Principal Defendants agree that with respect to any
2 written discovery served, those Defendants are entitled to copies of responses to such discovery,
3 and that they are entitled to participate in any scheduled depositions. To the extent that those
4 Defendants later determine that they in fact need to more fully participate in the discovery
5 process, upon motion and good cause shown, the Court will consider any such request and grant
6 any appropriate relief.

7
8 **ORDER**

9 Dated: December 20, 2022.

IT IS SO ORDERED.

10 

11

Craig S. Denney
United States Magistrate Judge