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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 ORR WATER DITCH CO., et al.,

16 Defendants.

Case No. 3:73-CV-00035-LDG
(In Equity A-3-LDG)

**STIPULATION AND ORDER
REMANDING NEVADA STATE
ENGINEER RULING NO. 6327**

17 Re Nevada State Engineer Ruling No. 6327.

18 Petitioner, Pyramid Lake Paiute Tribe (“Tribe”); Respondent, Jason King, P.E., State
19 Engineer, Division of Water Resources, Department of Conservation and Natural Resources of the
20 State of Nevada (“State Engineer”); and the City of Fernley, a political subdivision of the State of
21 Nevada (“Fernley”) (collectively the “Parties”), hereby file this Stipulation and [Proposed] Order
22 Remanding Nevada State Engineer Ruling No. 6327, as set forth more fully below.

23 **I. Background**

24 On December 19, 2011, Fernley filed groundwater change application numbers 81398,
25 81399, 81400, and 81401 (“Fernley’s Applications”) with the State Engineer seeking to change
26 the points of diversion and place of use of existing groundwater rights identified as Permit Nos.
27 35976, 40004, 70288, and 70289 (the “Base Water Rights”). The Tribe timely filed protests of
28 Fernley’s applications with the State Engineer, requesting that Fernley’s Applications be denied

1 on various grounds and for various reasons. On December 2, 2015, the State Engineer issued
2 Ruling No. 6327 wherein he overruled the Tribe's protests and granted Fernley's Applications.
3 On December 31, 2015, the Tribe timely appealed State Engineer Ruling No. 6327 to this Court.
4 The Tribe alleges in its Petition for Review and Notice of Appeal (ECF No. 1597) that the State
5 Engineer's determinations in Ruling 6327 are unsupported by the evidence, are clearly erroneous,
6 and are based on the misapplication of governing law, and therefore that Ruling 6327 enables
7 Fernley to receive water to which it is not legally entitled.

8 In the interest of judicial economy, and to attempt to resolve issues raised in the Tribe's
9 Petition for Review and Notice of Appeal, the Parties stipulate as follows. The Parties' stipulation
10 is contingent upon the issuance of this order from this Court remanding Ruling 6327 to the State
11 Engineer for further proceedings as more fully set forth below. The Parties' stipulation is also
12 conditioned upon the stipulated scope of the remand proceedings as set forth below.

13 **II. Terms of Stipulation for Remand of Ruling 6327**

14 The Parties stipulate and the Court orders as follows:

15 A. Within fifteen (15) days of the entry of this stipulation as an Order of the Court, the
16 State Engineer shall, in a written notice or order, schedule remand proceedings regarding Ruling
17 No. 6327, to commence within ninety (90) days of the date of the State Engineer's notice or order;

18 B. The remand proceedings shall consist of a technical session to be held by the State
19 Engineer with representatives from the Tribe and from Fernley, at their sole discretion and
20 choosing ("Technical Session"), at which the State Engineer will provide the Parties with the data,
21 analysis, methodology and all other related documents and details upon which the State Engineer
22 relied for the findings and conclusions set forth in Ruling 6327;

23 C. Within thirty (30) days of the Technical Session, the Tribe and Fernley may
24 provide to the State Engineer any additional analysis, evidence, responses or materials they deem
25 necessary in response to the Technical Session, Ruling 6327, Fernley's Applications, or the
26 Tribe's protests of the same;

27 D. After completing a review of the information provided by the Tribe and Fernley
28 pursuant to Part II.C above, the State Engineer shall issue a ruling on remand with respect to

1 Fernley’s Applications (the “Ruling on Remand”);

2 E. The Tribe and Fernley do not waive any rights and expressly reserve any and all
3 rights to judicial review of the Ruling on Remand, except as provided for in Part II.F below;

4 F. The Parties hereby stipulate that the scope of the proceedings on remand will be
5 limited to the Tribe’s claims that the proposed changes of the points of diversion of the Base
6 Rights as requested in Fernley’s Applications will harm, injure or otherwise conflict with the
7 rights and interests of the Tribe and the public in violation of relevant law; and therefore, all
8 Parties expressly retain, and do not waive or relinquish their rights to challenge or defend any
9 potential impact or alleged conflict that may result between Fernley’s Applications and the Tribe’s
10 water rights or other interests. The Tribe expressly reserves the right to make any claim,
11 challenge, assertion and/or allegation against Fernley’s Base Rights, including that they have been
12 forfeited, abandoned, canceled and/or are otherwise invalid, in any future proceeding or action or
13 otherwise.

14 G. The State Engineer enters into this Stipulation because of the unique factual
15 circumstances surrounding Fernley’s Applications, the Tribe’s Protests and the issuance of Ruling
16 6327, and therefore:

17 1. This Stipulation does not represent a change of policy by the State
18 Engineer, and is not binding on the State Engineer—and may not be relied upon—regarding any
19 future actions, rulings, decisions, orders, or any other application of the State Engineer’s
20 administrative duties in conjunction with any other application or permit. This Agreement shall
21 not be binding or controlling in any proceeding before the State Engineer, or any court proceeding
22 reviewing his decisions, other than those proceedings described herein;

23 2. Except as provided for above in Part II.G.1, this Agreement has no
24 precedential effect in any proceeding involving these Parties or any other parties and may not be
25 relied upon as evidence of the policy or practices of the State Engineer. This Agreement does not
26 limit the State Engineer’s statutory authority or discretion as it relates to consideration of any
27 application to appropriate or change the manner of use, place of use, point of diversion, or means
28 of diversion of any water right, by whoever filed or any proof of beneficial use, application for

1 extension of time, or other proceeding before the State Engineer.

2 H. Each Party to bear its own attorney fees and costs arising out of or related to the
3 Applications, Protests, and Petition for Judicial Review described herein, including without
4 limitation, the negotiation and documentation of this Stipulation.

5 DATED this ____ day of July, 2017.

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ORDER

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IT IS SO ORDERED.

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26 Dated: _____, 2016

By: _____
UNITED STATES DISTRICT COURT JUDGE

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