IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 75917

MINERAL COUNTY, et al.
Appellants,

v.

LYON COUNTY, et al.
Respondents.

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case No. 15-16342

AMICUS BRIEF OF THE WALKER RIVER PAIUTE TRIBE

[not in support of any party]

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NRAP 26.1 DISCLOSURE

Pursuant to Rule 26.1(a) of the Nevada Rules of Appellate Procedure, the undersigned counsel of record certifies that the amicus curiae Walker River Paiute Tribe is a federally-recognized Indian tribe and thus has no parent corporation and no publicly held corporation owns 10% or more of its stock. This representation is made in order that the judges of this Court may evaluate possible disqualification or recusal.

Respectfully submitted this 25th day of January, 2019.

By: /s/ Wes Williams, Jr.

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STATEMENT OF INTEREST

The Walker River Paiute Tribe ("Tribe") is a federally-recognized Indian tribe desiring to appear in this matter as amicus curiae because it is the holder of the most senior water rights on the Walker River system. *Decree* art. I, *United States v. Walker River Irrigation Dist.*, No. C-125 (D. Nev. Apr. 14, 1936), *amended by Order for Entry of Amended Final Decree to Conform to Writ of Mandate Etc.* art. I (D. Nev. Apr. 24, 1940) ("Decree"). The Tribe's members have resided near Walker Lake (sometimes "Lake") since time immemorial and historically depended on its fishery for sustenance,[1] so the Tribe continues to be interested in the Lake's environmental health. The Tribe also has a legitimate claim to Walker Lake and the historically submerged lands under it which, if confirmed, precludes application of Nevada's public trust doctrine to those resources.

While the certified questions are limited on their face to the application of Nevada's public trust doctrine to appropriative water rights generally, not to the Tribe's federal reserved water rights or Walker Lake, the Appellants framed the issues in a manner that directly implicates the Tribe's interests and exceeds the scope of the questions before this Court. Specifically, the Appellants assert that

[1] The Tribe's name for itself is Agai Dicutta, which means "Trout Eater," and its name for Walker Lake is Agai Pah, meaning "Trout Lake."

title to Walker Lake and the lakebed passed to Nevada upon statehood in 1864, *Appellants' Opening Brief* at 18 (Nov. 27, 2018) (Doc. 18-905914) ("Opening Brief"), and they "urge the Court" to simply assume this is true and "recognize that the [public trust] doctrine applies to Walker Lake and its tributary waters." *Id.* at 20. The law professors appearing as amici curiae similarly ask the Court to hold that the public trust doctrine applies to Walker Lake and the water rights set forth in the Decree. *Brief Amicus Curiae of Law Professors in Support of Appellants* at 2-4 (Dec. 27, 2018) (Doc. 18-910584) ("Amicus Law Professor Brief"). If the Court reaches the question of whether the public trust doctrine applies to Walker Lake, which was not certified, and accepts the Appellants' argument that the public trust doctrine acts "as a constraint on the *entire* Walker River system," Opening Brief at 43 (emphasis added), the Tribe's senior water rights and claims to Walker Lake and the lakebed may be adversely affected.

Moreover, the limited factual record in this case prevents the Court from adequately assessing whether the public trust doctrine applies to Walker Lake. Such a determination depends in part on whether the federal government previously reserved Walker Lake and the lakebed for the Tribe's benefit when it created the Walker River Indian Reservation ("Reservation") in November 1859, and whether the Lake was navigable when Nevada obtained statehood in October 1864. Answering these questions will require extensive fact-finding involving,

inter alia, the cultural importance of Walker Lake to the Tribe, the circumstances surrounding the Reservation's creation and subsequent allotment, the Reservation's purposes, other congressional actions concerning the Reservation, historical surveys, and contemporaneous news clippings. Because the current record lacks sufficient evidence, the Tribe seeks to ensure that this Court's decision is limited to the narrow questions certified by the Ninth Circuit and does not speculate on important issues in the absence of key facts.

I. ARGUMENT

Whether the public trust doctrine applies to Walker Lake exceeds the scope of the questions certified by the Ninth Circuit, requires impermissible fact-finding, and is impossible to answer with the limited factual record currently before the Court. In addition, the public trust doctrine is a matter of state law and cannot be applied to the detriment of the Tribe's reserved water rights, which derive from federal law and vested prior to Nevada statehood.

A. THE PUBLIC TRUST DOCTRINE'S APPLICABILITY TO WALKER LAKE IS BEYOND THE SCOPE OF THE CERTIFIED QUESTIONS AND REQUIRES IMPERMISSIBLE FACT-FINDING.

The Court must not address whether Nevada's public trust doctrine applies to Walker Lake because this issue exceeds the scope of the questions certified by the Ninth Circuit and will require extensive fact-finding. This Court's "role 'is limited to answering the questions of law posed to [it, and] the certifying court

retains the duty to determine the facts and to apply the law provided by the answering court to those facts.'" *Progressive Gulf Ins. Co. v. Faehnrich*, 327 P.3d 1061, 1063 (Nev. 2014) (quoting *In re Fontainebleau Las Vegas Holdings, L.L.C.*, 267 P.3d 786, 794-95 (Nev. 2011)); *accord In re Fontainebleau*, 267 P.3d at 795 (the Nevada Supreme Court may not "make findings of fact in responding to a certified question").

Here, the certified questions are: (1) "Does the public trust doctrine apply to rights already adjudicated and settled under the doctrine of prior appropriation and, if so, to what extent?"; and (2) "If the public trust doctrine applies and allows for reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such adjudicated or vested rights constitute a 'taking' under the Nevada Constitution requiring payment of just compensation?" *Mineral Cty. v. Walker River Irrigation Dist.*, 900 F.3d 1027, 1034 (9th Cir. 2018); *Order Accepting Second Certified Question and Modifying Briefing Schedule* (Sept. 7, 2018) (Doc. 18-35022). Both questions plainly ask about the public trust doctrine's applicability to appropriative water rights generally, without respect to a particular water basin or the Decree. Also, determining whether the public trust doctrine applies to Walker Lake will necessitate fact-finding, *see infra* Section II(B), a task this Court must leave for the federal court having continuing jurisdiction in this matter. *Faehnrich*, 327 P.3d at 1063. Since the Ninth Circuit

did not inquire about the doctrine's application to the Walker River system, and nothing about its questions requires an analysis of this issue, the Court must refrain from addressing it here.

B. THE CURRENT RECORD DOES NOT CONTAIN SUFFICIENT EVIDENCE TO DETERMINE WHETHER THE PUBLIC TRUST DOCTRINE APPLIES TO WALKER LAKE.

Nevada's public trust doctrine does not attach to Walker Lake if it does not own the Lake and lakebed, but the present record lacks sufficient information to determine, without additional fact-finding, whether the State or Tribe holds such title. If, for example, the federal government withdrew Walker Lake and its bed from the public domain and conveyed title to the Tribe in 1859, prior to Nevada statehood in 1864, or if Walker Lake was historically not navigable, then Nevada did not acquire ownership of the Lake or lakebed at the time it joined the Union.[2] Before its public trust doctrine may attach, Nevada must show how and when it acquired title to Walker Lake. These are complicated, fact-dependent, and unsettled issues.

[2] Despite the Appellants' assumption that Walker Lake was navigable at the time Nevada obtained statehood, *see* Opening Brief at 19, no court has finally resolved this issue. *See infra* Section II(B)(2). At this time the Tribe takes no position regarding this federal question. *See State v. Bunkowski*, 503 P.2d 1231, 1234 (Nev. 1972) ("Navigability, when asserted as the basis of a right arising under the Constitution of the United States, is necessarily a question of federal law." (citing *Brewer-Elliott Oil & Gas v. United States*, 260 U.S. 77, 87 (1922))).

1. The Record Lacks Information Regarding the History of the Reservation and the Intentional Inclusion of Walker Lake Within its Exterior Boundaries.

To determine whether the public trust doctrine applies to Walker Lake, a court must first determine whether the federal government reserved Walker Lake and the lakebed and conveyed title to the Tribe prior to Nevada statehood. *See Bunkowski*, 503 P.2d at 1234 (title to navigable waterways and beds passed to Nevada upon statehood only "if the bed had not already been disposed of by the United States"). In other instances where the federal government included a navigable river or lake within the exterior boundaries of an Indian reservation prior to statehood, federal courts undertook extensive fact-finding to determine whether the tribe owned the riverbed or lakebed. Both the United States Supreme Court and Ninth Circuit have held that the tribe received such title if, among other things, the tribe traditionally depended on the fishery for sustenance.

In *Alaska Pacific Fisheries v. United States*, the Supreme Court considered whether an 1891 reservation of a group of islands for local Indians in present-day Alaska included the adjacent navigable waters and submerged lands. 248 U.S. 78, 87 (1918). In finding that the reservation included ownership of the waters and submerged lands, the Court looked to (1) the creation of the reservation; (2) the government's power over the premises; (3) the location and character of the reserved lands; (4) the tribe's needs; and (5) the reservation's purpose. *Id.* Since

the Indians traditionally fished and viewed the surrounding waters as part of the islands, the Court held that the reservation included those waters and the submerged lands. *Id.* at 88-89. The Court found support for its conclusion in the canon of construction that doubtful expressions of federal law intended to benefit Indian tribes must be interpreted in their favor. *Id.* at 89.

More recently, in *Idaho v. United States*, the Supreme Court affirmed the decisions of the Ninth Circuit and a federal district court quieting title in favor of the Coeur d'Alene Tribe to the bed and banks of Lake Coeur d'Alene, a navigable waterbody within its reservation. 533 U.S. 262, 272 (2001). The tribe historically depended on Lake Coeur d'Alene "for food, fiber, transportation, recreation, and cultural activities," *id.* at 265, so in 1873 President Grant issued an Executive Order establishing a reservation that included most, but not all, of the lake. *Id.* at 266. The Court said its analysis of whether title to the lakebed passed to the State "is refined somewhat" here, where "submerged lands are located within a tract that the National Government has dealt with in some special way before statehood, as by reserving lands for a particular national purpose such as . . . an Indian reservation." *Id.* at 273. In finding that the tribe held title to the lakebed, the Court considered whether: (1) the executive branch reserved the submerged lands and Congress subsequently recognized the reservation in a way that shows intent to defeat state title; (2) Congress was aware that the reservation included submerged

lands; and (3) the reservation's purpose would have been frustrated without title to the lakebed. *Id.* at 273-74 (citing *United States v. Alaska*, 521 U.S. 1, 39-61 (1997)).

Similarly, in *Puyallup Indian Tribe v. Port of Tacoma*, the Ninth Circuit affirmed the district court's decision that the Puyallup Tribe received title to the bed of a navigable river when in 1857, prior to Washington statehood, its reservation was expanded by Executive Order to encompass a section of the river and its fishery. 717 F.2d 1251, 1253-54 (9th Cir. 1983). Following an extensive analysis of the relevant precedent, including *Alaska Pacific Fisheries*, the court concluded

> that where a grant of real property to an Indian tribe includes within its boundaries a navigable water and the grant is made to a tribe dependent on the fishery resource in that water for survival, the grant must be construed to include the submerged lands if the Government was plainly aware of the vital importance of the submerged lands and the water resource to the tribe at the time of the grant. In such a situation, the Government's awareness of the importance of the water resource to the Tribe taken together with the principle of construction resolving ambiguities in transactions in favor of the Indians warrants the conclusion that the intention to convey title to the waters and lands under them to the Tribe is "otherwise made very plain" . . . .

Id. at 1258 (footnote and citations omitted); *accord Muckleshoot Indian Tribe v. Trans-Canada Enters.*, 713 F.2d 455, 457 (9th Cir. 1983) (per curiam) (reciting same analytic framework in case decided on same day as *Puyallup Indian Tribe*). Puyallup Indians historically depended on fish for sustenance and their "spiritual,

religious and social life centered around the river," which the government knew when it expanded the tribe's reservation. *Puyallup Indian Tribe*, 717 F.2d at 1259-60 (citing *Puyallup Indian Tribe v. Port of Tacoma*, 525 F. Supp. 65, 71 (W.D. Wash. 1981)). The government also enlarged the reservation in response to a public exigency, i.e., avoiding hostility with non-Indian settlers, so the court held that the tribe received and continued to hold riverbed title.[3] *Id.* at 1260-61; *see Muckleshoot Indian Tribe*, 713 F.2d at 457-58 (title to navigable riverbed passed to tribe who depended on fishery for sustenance at the time the government enlarged its reservation in response to a public exigency); *see also Montana v. United States*, 450 U.S. 544, 556 (1981) (declining to interpret the Crow Treaty as including a riverbed in the tribe's reservation because "fishing was not important to [tribe's] diet or way of life").

Here, the federal government established the Tribe's Reservation largely to protect Walker Lake and its fishery for the Tribe's benefit. In November 1859, the

[3] Significantly, even though most of the Puyallup Tribe's lands along the river were eventually allotted and passed into individual Indian and non-Indian ownership, *Puyallup Indian Tribe*, 717 F.2d at 1254, such allotments did not include title to the riverbed under the general rule that "grants of property bounded by a navigable river are deemed to be bounded by the ordinary high water mark of that river." *Id.* at 1261. Thus, the tribe continued to hold title to the riverbed even after allotment, including a section of the bed exposed many years later by an avulsive change. *Id.* at 1262-63. Clearly, the effect of allotting the Walker River Reservation pursuant to the Act of May 27, 1902, ch. 888, 32 Stat. 245, 260, on the Tribe's interest in Walker Lake is relevant and requires analysis by the federal district court in the first instance.

local Indian agent suggested to the Commissioner of Indian Affairs that "the northeast part of the valley of Walker's River, including the lake of the same name, be reserved for the Indians of his agency." *United States v. Walker River Irrigation Dist.*, 104 F.2d 334, 338 (9th Cir. 1939). The Commissioner agreed and thereupon wrote the Secretary of the Interior to recommend that the area surrounding Walker Lake "'be set apart and reserved from sale or settlement, for Indian use.'" *Id.* (quoting Commissioner's letter). The Commissioner noted that the Reservation lacked many agricultural lands, but believed it would still provide the Tribe with sufficient sustenance "'in connection with the fish which they may obtain from . . . Walker Lake[], and with a view to secure suitable homes for these Indians where they can be protected from the encroachment of the whites.'" *Id.* (quoting Commissioner's letter). On November 29, 1859, the Commissioner wrote the General Land Office to request that the public surveys respect the lands surrounding the Lake as belonging to the Tribe. *Id.* This last executive act formally established the Reservation, which included all of Walker Lake within its exterior boundaries. *Id.* (1874 Executive Order issued by President Grant formally sanctioned "an accomplished fact"); *see id.* at 340 (November 29, 1859 priority date applies to Tribe's federal reserved water rights). The Tribe thus has a strong case that at the time of statehood it owned Walker Lake and the lakebed.

As shown, however, whether title to Walker Lake and the lakebed passed to

the Tribe prior to Nevada statehood is a factually complex issue. Since the record in this case completely lacks the relevant information this Court should not attempt to address that issue here.

2. The Record Lacks Information Regarding Walker Lake's Navigability at the Time of Nevada Statehood.

Even if the federal government did not convey Walker Lake and the lakebed to the Tribe prior to statehood, the applicability of Nevada's public trust doctrine still depends on whether the Lake was navigable on October 31, 1864, the date Nevada joined the Union.[4] *See Lawrence v. Clark County*, 254 P.3d 606, 614 (Nev. 2011) ("Determining whether land is held in trust for the public by the state begins by reference to whether the land was submerged beneath navigable water when Nevada joined the United States on October 31, 1864, as Nevada joined the United States on equal footing with other states in every respect.").

The determination of historic navigability is highly fact-intensive, however. *See id.* ("determining the navigability of a segment of a body or channel of water . . . may be accomplished through 'expert testimony, historical surveys, and news clippings from the relevant time.'" (quoting *Ariz. Ctr. for Law v. Hassell*, 837 P.2d 158, 164-65 (Ariz. Ct. App. 1991))); *Bunkowski*, 503 P.2d at 1233-36 (reciting federal test for navigability and applying test to Carson River). Since the current

[4] The Ninth Circuit previously found that "Walker River is an unnavigable stream." *Walker River Irrigation Dist.*, 104 F.2d at 335.

record lacks any evidence regarding Walker Lake's navigability in 1864, the Court must refrain from speculating on this unresolved issue. *See Lawrence*, 254 P.3d at 617 (issue of navigability remanded to district court for further fact-finding); Letter from E.J. Thomas, Acting Dir., Bureau of Land Mgmt., to Alan Bible, U.S. Senator, at 2 (Sept. 9, 1957) (Attachment 1) ("While we believe that Walker Lake is navigable, we cannot act until this question is settled judicially or legislatively.").

C. NEVADA'S PUBLIC TRUST DOCTRINE MAY NOT INFRINGE UPON THE TRIBE'S FEDERAL RESERVED WATER RIGHTS.

The Court's decision in this matter must be clear that Nevada's public trust doctrine does not apply to the Tribe's federal reserved water rights, which vested prior to Nevada statehood. It is well-settled that the public trust doctrine is solely "a matter of state law," *PPL Mont., LLC v. Montana*, 565 U.S. 576, 603 (2012), "the contours of which are determined by the states, not by the United States Constitution." *United States v. 32.42 Acres of Land*, 683 F.3d 1030, 1038 (9th Cir. 2012); *accord Lawrence*, 254 P.3d at 615 ("state courts considering the public trust doctrine have developed their own frameworks for examining the administration of lands held in public trust"); *see* Amicus Law Professor Brief at 6-7. Indeed, this Court found in *Lawrence* that the public trust doctrine "is implicit in Nevada law," 254 P.3d at 607, including in the Nevada Constitution and state statutes. *Id.* at 612-13; *see Mineral Cty.*, 900 F.3d at 1031 (Nevada Supreme Court "recognized

the public trust doctrine under Nevada law"). So rather than answer unresolved questions regarding Nevada's public trust doctrine, the Ninth Circuit certified those questions to this Court. *Mineral County*, 900 F.3d at 1034.

As a creature of state law, the public trust doctrine cannot destroy or infringe upon federal reserved water rights.[5] *See Cappaert v. United States*, 426 U.S. 128, 145 (1976) (federal reserved "water rights are not dependent upon state law"); *Sierra Club v. Yeutter*, 911 F.2d 1405, 1419 (10th Cir. 1990) ("federal reserved water rights, as creatures of federal law, are protected from extinguishment under state law by the Supremacy Clause"); *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 52-53 (9th Cir. 1981) (federal government preempted state control of waters reserved for Indian reservation); *Walker River Irrigation Dist.*, 104 F.2d at 337 ("a state cannot destroy" federal reserved water rights); *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 989 P.2d 739, 747 (Ariz. 1999) (reserved water rights are "an exception to Congress's deference to state water law"). Thus, "any state court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought for review before [the Supreme] Court, a particularized and exacting scrutiny commensurate

[5] To the contrary, the federal government may use its powers to extinguish a state's public trust doctrine. *32.42 Acres of Land*, 683 F.3d at 1038 (federal government extinguished California's public trust on lands it condemned); *United States v. 11.037 Acres of Land*, 685 F. Supp. 214, 216-17 (N.D. Cal. 1988) (same).

with the powerful federal interest in safeguarding those rights from state encroachment." *Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 571 (1983).

Further, the Tribe's water rights predate Nevada statehood and its public trust doctrine. The federal government withdrew certain lands from the public domain in November 1859 to establish the Reservation, and implicit in the withdrawal was a reservation of waters to provide the Tribe with a permanent homeland. *Walker River Irrigation Dist.*, 104 F.2d at 338-40; *see Winters v. United States*, 207 U.S. 564, 577 (1908). The Tribe's water rights thus vested on and carry a priority date of November 29, 1859, five years before Nevada joined the Union in 1864. *Walker River Irrigation Dist.*, 104 F.2d at 340; *see Cappaert*, 426 U.S. at 138 (federal reserved water right "vests on the date of the reservation and is superior to the rights of future appropriators"). Even if the public trust doctrine could apply to federal reserved rights, since Nevada's public trust doctrine did not exist until statehood, *see* Opening Brief at 22 ("the doctrine has inhered in Nevada law since the State's inception"), state water right holders cannot rely on the doctrine to deprive the Tribe of its previously vested federal water rights.

II. CONCLUSION

For all the foregoing reasons, the Tribe respectfully requests the Court to limit its decision to the questions certified by the Ninth Circuit and refrain from

addressing matters that implicate the Tribe's interests in the absence of all the key facts.

RESPECTFULLY SUBMITTED this 25th day of January, 2019.

By: /s/ Wes Williams, Jr.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,738 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 25th day of January, 2019.

By: /s/ Wes Williams, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that the AMICUS BRIEF OF THE WALKER RIVER PAIUTE TRIBE was filed electronically with the Nevada Supreme Court on the 25th day of January, 2019. Electronic Service of the Brief shall be made in accordance with the Master Service List, as follows:

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I further certify that on the 25th day of January, 2019, I served, via USPS first class mail, complete copies of the Brief on the following attorneys of record who are not registered for electronic service:

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ATTACHMENT 1

SEP 9 1957

Hon. Alan Bible
United States Senate
Washington 25, D. C.

Dear Senator Bible:

This responds to your letter of July 30, with which you included maps and copies of letters furnished by the Nevada Fish and Game Commission, relating to the problem of the lands bordering the north end of Walker Lake, Nevada.

This lake is a remnant of prehistoric Lake Lahontan which at one time covered a large part of western Nevada and extended into Oregon. In 1882 the level of Walker Lake was reported rising and a map of that date shows it to be approximately the same size and shape as it was when the northern shore was meandered in 1904. Its mean depth in 1882 was 118 feet, with a relatively large bottom depth of 224 feet. This lake is definitely not a playa type lake and was deep enough for any conceivable water transport that could be placed on it. There appears to be no physical reason why this lake would not have been navigable when Nevada entered the Union in 1864. In 1908 the lake level was at 4078 feet which had gradually lowered to 3993 feet in 1955. Its present maximum depth is over 100 feet.

No judicial finding of navigability of Walker Lake has been found. There have been judicial determinations of the navigability of other bodies of water. Also, the Colorado River has been legislatively declared navigable (Sec. 1425, Compiled Laws 1929). In the case of the Colorado River, the State asserts ownership of the bed to high water-mark. We believe Walker Lake would be considered navigable if ruled upon judicially. However, we are without authority to make this determination (Okla. v. Texas, 258 U.S. 574, 585).

If Walker Lake were declared navigable by a competent court, the United States might have a claim to that part of the dry bed of the lake fronting on public land. However, the question of riparian rights of the owners of the uplands to reliction on navigable waters does not seem to have been passed on in Nevada. Two adjoining States, with similar and common legal roots, have ruled that they own the beds of navigable waters; Idaho, 148 Pac. 732, and Utah, 217 Pac. 577.

If Walker Lake is found nonnavigable, it is likely that the United States, as a riparian proprietor, would have riparian rights. Even in this case we question the advisability of executing an official survey of our portion of the relicted area at this time. Walker Lake is still a living lake. While it has receded for nearly 50 years, it could begin to rise. Great Salt Lake, which had receded for many years, began to rise in 1940 for no apparent reason; rose nearly 5 feet by 1950, and since has remained relatively stable. On the other hand, Walker Lake could recede still further. If it is determined that the United States has rights in the dry bed of the Lake, the Bureau of Land Management can still administer its portion for any purpose short of disposal without an official survey.

While we believe that Walker Lake is navigable, we cannot act until this question is settled judicially or legislatively. We would also be restrained by the lack of precedent as to the extent of riparian rights, particularly rights to reliction attaching to meandered shores of navigable waters in Nevada. This is especially significant in view of the holdings in the two adjoining States of Idaho and Utah in similar cases that no rights attach to the shores of navigable waters.

One way to obtain a ruling on these two questions would be to challenge judicially the alleged claims or rights of the Indians who are occupying and claiming a part of the relicted bed of Walker Lake.

A large portion of the lands bordering on the north side of the lake as originally meandered were set aside by the withdrawal of August 13, 1906, for a grazing reservation for the Walker River Indian Reservation. In addition, other lands surrounding the north end of the lake have been set aside for the Indian reservation under the terms of the act of June 22, 1936 (49 Stat. 1806), which provides for the setting aside of not to exceed 171,200 acres, or so much thereof as the Secretary of the Interior may deem advisable. The Bureau of Indian Affairs has informally advised me that there is approximately 6,000 acres out of this total not yet selected or set aside. The 1936 addition to the reservation was made by departmental order of September 25, 1936.

There are some lands in the vicinity of the northern portion of the lake which are shown on our records to be vacant public lands. These lands may be subject to disposal to the State of Nevada under the provisions of the act of June 14, 1926 (44 Stat. 741; 43 U.S.C. 869), as amended by the act of June 4, 1954 (68 Stat. 173). The three applications filed by the Nevada Fish and Game Commission are under the terms of this act.

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I am asking the State Supervisor of this Bureau at Reno, Nevada, for a current report on the action taken in connection with Walker Lake lands. Upon receipt thereof, I will give you such further data as may then be available, including the action taken in connection with the Commission's three applications.

The material you submitted is enclosed.

Sincerely yours,

/s/ E. J. Thomas

Acting Director

Enclosures 5

9/4/57 LSHillman:H

Copy to: BLM Reading File
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SO, Reno, Nevada