

# EXHIBIT 1

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## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release (“Agreement”) is hereby entered into and effective upon the date of the full execution of this Agreement (“Effective Date”), by and between Pershing County Water Conservation District (“PCWCD”), and Tim Wilson, P.E., as State Engineer, Department of Conservation and Natural Resources, State of Nevada (“State Engineer”).

### RECITALS

A. On August 12, 2015, PCWCD filed its original Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition in the Eleventh Judicial District Court of the State of Nevada in and for the County of Pershing (“the Court”) in Case No. CV15-12019 (“the Dispute”).

B. On January 2, 2018, after being granted leave to do so by the Court, PCWCD filed its First Amended Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (“Amended Writ Petition”).

C. On June 14, 2018, the Court held an evidentiary hearing on PCWCD’s Amended Writ Petition, wherein the Court provided PCWCD with an opportunity to provide evidence to prove up the basis for its Amended Writ Petition.

D. On October 23, 2018, the Court issued its Order to Answer Writ of Mandamus, finding that PCWCD presented sufficient evidence to meet its initial burden that its Amended Writ Petition was proper and should go forward, and therefore requiring the State Engineer to Answer PCWCD’s Amended Writ Petition to show why a writ should not issue, with an evidentiary hearing to follow.

E. On February 4, 2019, the State Engineer filed his Answer to PCWCD’s Amended Writ Petition.

F. During a hearing before the Court on July 28, 2020, the Court ordered PCWCD to provide notice of the Dispute to holders of water rights in the Humboldt River Basin by mail as well as publish notice in newspapers of general circulation in the Humboldt River Basin by October 14, 2020. The Court also set an evidentiary hearing for March 22 through March 26, 2021, for the State Engineer to present evidence in opposition to PCWCD’s Amended Writ Petition, as well as providing an opportunity for intervening parties to present supplemental evidence in opposition to PCWCD’s Amended Writ Petition.

G. On October 12, 2020, pursuant to a stipulation submitted by the State Engineer and PCWCD, the Court entered its Order Staying Judicial Proceedings and All Currently Pending Matters, staying all proceedings in the Dispute for a period of 90 days so that the State Engineer and PCWCD could engage in settlement discussions.

H. While the Dispute has been proceeding in the Court, the State Engineer has undertaken the following endeavors in an effort to proactively manage the Humboldt River Region in an effort to balance the interests of the senior decreed rights of the Humboldt River with those groundwater uses in the region. These efforts include, but are not limited to:

- a. In 2016, in an effort to utilize the best available science to inform decisions relating to the appropriate management of the Humboldt River Basin, the State Engineer initiated work with the United States Geological Survey ("USGS") and the Desert Research Institute ("DRI") on a groundwater capture model ("the Model") for the Humboldt River Region to more accurately understand the relationships between groundwater and surface water, and to determine the effects of groundwater pumping on Humboldt River flows. The State Engineer retained USGS and DRI to develop a scientifically-sound calibrated numerical model and to develop improved groundwater budgets at the basin scale using modern methods to update estimates from early USGS Reconnaissance Series Reports and Water Resource Bulletins. The Model will be a science-based tool to determine to what extent groundwater withdrawals within the Humboldt River Region capture river flow, and to assist in determining effective measures to avoid conflict with deliveries of Humboldt River water.
- b. Recognition of the hydrologic connections between the Humboldt River and the tributary groundwater basins, in accordance with the Nevada Legislature's adoption of NRS 533.024(1)(e) declaring it the policy of the state to "manage conjunctively the appropriation, use and administration of all waters of [Nevada], regardless of the source of the water."
- c. Establishment of a policy relating to evaporative losses from pit lakes, including requirements that evaporative losses be accounted for through permanent relinquishment of groundwater rights and included within the basin groundwater budget.
- d. Continued communication and stakeholder outreach relating to the State Engineer's efforts within the Humboldt River Region to work toward data sharing and uniform management within the Humboldt River Region.
- e. Issuance of an order requiring the installation of totalizing meters and required reporting of water use, subsequent field verification of meter installation and data accuracy, and development of a database to manage and report groundwater pumping data.

I. Through negotiations, the State Engineer and PCWCD (together as "Parties" or separately as a "Party") have reached a compromise that will settle and resolve the Dispute.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties hereby agree to the following terms, conditions, and covenants:

#### **TERMS OF SETTLEMENT**

1. Recitals. The Recitals stated above are true and incorporated herein as though set forth in full.

2. Forthcoming Administrative Order. The State Engineer is in the process of developing an administrative draft order ("Order") that is intended to provide clear procedures and standards for review of groundwater applications within the Humboldt River Region as informed by the Model. These procedures will provide the following:

- a. New Groundwater Appropriations. The Order will set out specific thresholds for capture for new groundwater appropriations, including requirements to provide replacement water in a manner sufficient to avoid conflict resulting from the application. The mitigation requirements will be specific as to quantity, priority, and other considerations of the State Engineer to assure that the replacement water is sufficient to avoid conflict with existing rights.
- b. Groundwater Change Applications. The Order will set out specific thresholds for capture for applications to change existing groundwater appropriations that consider the changes in capture, and resulting potential for conflict, caused by a change in the point of diversion. Where such a change results in an increase in capture the Order will set out specific requirements to offset any increase in capture with surface water replacement or relinquishment of groundwater rights. Such requirements are intended to be specific and intended to assure any change is sufficiently mitigated so as to not increase any resulting capture and potential conflict.
- c. Addressing Future Conflicts. The Order will set out a mechanism to address future conflicts between valid existing groundwater uses and decreed Humboldt River rights within the Humboldt River Region. This will include articulating a basis upon which to make determination, based upon the best available science, as to issuing future orders that would restrict withdrawals to conform to priority of rights, and the establishment of specific considerations that would be reviewed by the State Engineer in determining whether to invoke a curtailment order.
- d. Notice. The Order will seek to notify all applicants of new rights, as well as those applying for changes to existing rights, that approval of the application does not constitute an exception to any long-term conjunctive management plan determined to be necessary by the State Engineer to prevent or avoid conflict so as to meet the needs of the water users.

The Order will first be issued as a Draft Order and will be subject to a public administrative process that will include taking comments from interested parties and the general public on the Draft Order as well as a public administrative hearing. A Final Order will be issued following the public administrative hearing.

3. Issuance of the Administrative Order. The State Engineer hereby agrees to issue the aforementioned Draft Order within ninety (90) days of the Effective Date of this Agreement.

4. Dismissal of PCWCD's Amended Writ Petition. In exchange for the State Engineer's agreement to issue the aforementioned Draft Order within the aforementioned time period, PCWCD agrees to dismiss its Amended Writ Petition with prejudice.

5. Full and Final Release. The Parties agree that this Agreement is intended to be a full and final compromise, release and settlement of all claims, demands, lawsuits, expenses, injuries, attorney fees, actions, suits, causes of action, known or unknown, suspected or unsuspected, against the other relating in any manner to the Dispute. Nothing herein shall be construed as a release of or otherwise affect the right of any party to enforce any right under this Agreement.

6. Dismissal of the Dispute. The Parties, through counsel, agree to fully execute the Stipulation and Order for Dismissal with Prejudice shown in Exhibit 1 hereto simultaneous with the execution of this Agreement.

7. Complete Agreement. The Parties understand and agree that this Agreement sets forth the full and complete agreement of the Parties, and that no statement or representation, other than those contained herein, have been made or relied upon by the Parties as an inducement for executing this Agreement. No part of this Agreement may be changed except in a writing executed by a duly authorized representative of each Party.

8. Representation by Counsel. All Parties to this agreement hereby represent and acknowledge that they have been represented by counsel regarding the terms of this Agreement and that their counsel have fully advised them with respect to the consequences associated with agreeing to its terms.

9. Litigation Attorneys' Fees. The Parties hereby acknowledge and agree to bear their own attorneys' fees and costs in connection with the Litigation and the preparation of this Agreement.

10. Miscellaneous:

a) Execution of Additional Documents: Each of the Parties hereto agrees to perform any and all acts and to execute and deliver any and all documents reasonably necessary to carry out the intent and the provisions of this Agreement.

b) Governing Law and Choice of Venue: This Agreement is executed and intended to be performed in the State of Nevada, and the laws of Nevada shall govern its interpretation and effect, and any dispute arising from this agreement shall be commenced before the First Judicial District Court, in and for Carson City, Nevada.

c) Severance: Should any term, part, portion or provision of this Agreement be decided or declared by the Courts to be, or otherwise found to be, illegal or in conflict with any law of the State of Nevada or the United States, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions and provisions shall be deemed severable and shall not be affected thereby, providing such remaining parts, terms, portions or

provisions can be construed in substance to constitute the agreement that the parties intended to enter into in the first instance.

d) Successors and Assigns: This Agreement shall be binding and inure to the benefit of the Parties hereto, their predecessors, parents, subsidiary and affiliated business entities, all officers, directors, shareholders, members, agents, employees, attorneys, assigns, successors, heirs, executors, administrators and legal representatives of whatsoever kind or character in privity therewith.

e) Third-Party Beneficiary: This Agreement is for the benefit of the Parties, their successors and assigns only. No other third-party beneficiary rights are intended by this Agreement.

f) No Precedential Effect: Each of the parties hereto acknowledges and agrees that certain negotiated provisions of this Agreement were agreed as an accommodation to the Parties and may be unique to the facts and circumstances surrounding this particular relationship. By entering into this Agreement, it is not the intention of the State Engineer to establish any policy, procedure, course of dealing or plan of general application irrespective of any similarity in facts or circumstances involving such other person or party. This Agreement shall not be binding or controlling in any proceeding before the State Engineer or any court reviewing the State Engineer's decisions, other than to enforce the terms of this Agreement.

g) No Liability: This Agreement is a compromise and is not to be construed as an admission of liability on the part of any Party. Nothing in this agreement shall be construed as an admission against the interest of any Party.

h) Counterparts: This Agreement may be executed in counterparts, one or more of which may be facsimiles or color scanned copies but all of which shall constitute one and the same Agreement. Facsimile or scanned signatures of this Agreement shall be accepted by the Parties to this Agreement as valid and binding in lieu of original signatures.

IN WITNESS WHEREOF, this Agreement is executed as of:

**SIGNATORIES**

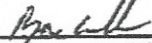
**On Behalf of Nevada Division of Water Resources:**

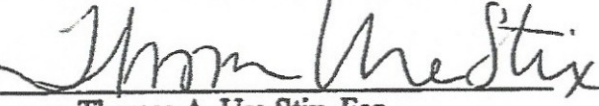
By: Tim Wilson, P.E. Date: 10/19, 2020  
Tim Wilson, P.E.  
State Engineer

By: James Bolotin Date: 10/19, 2020  
James Bolotin, Esq.  
Senior Deputy Attorney General

**On Behalf of Pershing County Water Conservation District:**

By:  Date: 10/15, 2020  
Ronnie Burrows  
PCWCD President

By:  Date: 10-15 -, 2020  
Ryan Collins  
PCWCD Secretary/Manager

By:  Date: 10/15, 2020  
Therese A. Ure Stix, Esq  
Attorney for PCWCD