

1 NICHOLAS A. TRUTANICH
 United States Attorney
 2 District of Nevada
 3
 4 TROY K. FLAKE
 Deputy Civil Chief
 5 501 Las Vegas Boulevard South, Suite 1100
 Las Vegas, Nevada 89101
 6 Telephone: 702-388-6336
 Facsimile: 702-388-6787
 7 Email: troy.flake@usdoj.gov

8 EUGENE N. HANSEN
 9 JOHANNA M. FRANZEN
 ANTHONY C. GENTNER
 10 MARK C. ELMER
 Trial Attorneys, U.S. Department of Justice
 11 Environment & Natural Resources Division
 12 P.O. Box 7611, Ben Franklin Station
 Washington, DC 20044-7611
 13 Telephone: 202-305-0301
 Facsimile: 202-514-8865
 14 Email: eugene.hansen@usdoj.gov
 15 johanna.franzen@usdoj.gov
 16 anthony.gentner@usdoj.gov
 mark.elmer@usdoj.gov

17 *Attorneys for the United States*

18 **UNITED STATES DISTRICT COURT**
 19 **DISTRICT OF NEVADA**

20 UNITED STATES OF AMERICA,
 21
 22 Plaintiff,
 v.
 23 400 ACRES OF LAND, more or less,
 24 situate in Lincoln County, State of Nevada;
 25 and JESSIE J. COX, et al.,
 26 Defendants.

Case No. 2:15-cv-01743-MMD-NJK
**STIPULATION REGARDING IN
 LIMINE ISSUES**

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1 The Parties respectfully submit the following Stipulation Regarding *In Limine* Issues:

2 **RECITALS**

3 WHEREAS, the Court’s Scheduling Order requires that the Parties file any motions *in*
4 *limine* in this case no later than November 1, 2019 (ECF 506);

5 WHEREAS, on October 22, 24, and 31, 2019, the Parties met and conferred in an effort
6 to resolve all proposed motions *in limine* without Court involvement;

7 WHEREAS, the Parties reached agreement on several issues pertaining to the proposed
8 motions *in limine*;

9 WHEREAS, the Parties have recorded their agreement in this Stipulation; and

10 WHEREAS, the Parties respectfully request that the Court so order these stipulations.

11 **STIPULATIONS FOR TRIAL**

12 NOW THEREFORE, the Parties stipulate as follows with respect to the trial scheduled in
13 this case:

14 1.) The Parties, their witnesses, and counsel shall not put forward any evidence,
15 question, argument, testimony, or reference concerning the tax-assessed value of the land taken
16 in this eminent domain proceeding (hereafter “Subject Property”).

17 2.) The Parties, their witnesses, and counsel shall not put forward any evidence,
18 question, argument, testimony, or reference concerning the quantum of any intra-family transfer
19 of the Subject Property.¹

20 3.) The Parties, their witnesses, and counsel shall not put forward any evidence,
21 question, argument, testimony, or reference that taxpayers are responsible for paying any award
22 of just compensation.

23 4.) Landowners’ expert witness Tio DiFederico shall not sponsor his \$56,870,000
24 sales-comparison valuation and \$57 million final value conclusion (hereafter, individually and
25 collectively, the “\$57 million valuation”). Mr. DiFederico instead may sponsor his \$49,870,000
26 million sales-comparison valuation and \$50 million final value conclusion (hereafter,

27 _____
28 ¹ The United States makes this stipulation in light of the Court’s prior ruling excluding
Landowners’ opinions of value.

1 individually and collectively, the “\$50 million valuation”) as quantified in his Supplemental
2 Analysis dated July 26, 2018 and referencing his Appraisal of Real Property Groom Mine dated
3 October, 13, 2016. The Parties, their witnesses, and counsel accordingly shall not put forward
4 any evidence, question, argument, testimony, or reference to Mr. DiFederico’s \$57 million value.
5 The United States further stipulates and agrees that it will not contend or elicit any testimony
6 suggesting that the \$50 million valuation fails to appraise the entire condemned estate.

7 5.) Unless otherwise ordered by the Court or Commission (as authorized by the
8 Court), the Parties, their witnesses, and counsel shall not put forward any evidence, question,
9 argument, testimony, or reference concerning the capitalization rate and/or discount rate that
10 could be used to value the Subject Property under the income capitalization approach as the
11 Court excluded the income capitalization approach.² This stipulation is without prejudice to any
12 appellate right to challenge the exclusion of the income capitalization approach as a method to
13 value the Subject Property.

14 6.) Unless otherwise ordered by the Court or Commission (as authorized by the
15 Court), the Parties stipulate and agree that the Court’s reasoning in excluding the Qualtrics
16 surveys from trial (see ECF 497 at 51-53) applies to exclude the surveys which were
17 administered at the Alien Research Center for this case (the “ARC Surveys”). The Parties, their
18 witnesses, and counsel accordingly shall not put forward any evidence, question, argument, or
19 testimony, regarding the ARC Surveys.³ This stipulation is without prejudice to any appellate
20 right to challenge the exclusion of the Qualtrics and ARC Surveys.

21 7.) The Parties, their witnesses, and counsel shall not put forward any evidence,
22 question, argument, testimony, or reference concerning (a) allegations that the United States Air
23 Force and/or other governmental officials have held people at gunpoint or otherwise detained
24

25
26 ² The Landowners make this stipulation in light of the Court’s prior ruling excluding the
27 use of the income capitalization approach.

28 ³ Should the Commission inquire whether any surveys were conducted in this matter, the
parties shall be able to reference that the Qualtrics and ARC surveys were conducted and the
reason for the Court’s exclusion.

1 people on or near the Subject Property; (b) illness and deaths due to radiation from atomic
2 testing, including impacts to animals; and (c) bullets strafing the property. Notwithstanding the
3 foregoing, Landowners may put forward evidence of bullets allegedly strafing the Subject
4 Property in the late 1940s-early 1950s but only in the event that the United States, its counsel, or
5 its witnesses contend or suggest that mining production on the Subject Property declined in the
6 late 1940s-early 1950s because of diminishing ore quality and/or amounts.

7 8.) The Parties, their witnesses, and counsel shall not put forward any evidence,
8 question, argument, testimony, or reference concerning the United States' deposit of \$1.2 million
9 as the estimated just compensation or the Landowners' withdrawal of any portion thereof.

10 9.) The Parties, their witnesses, and counsel shall not put forward any evidence,
11 question, argument, testimony, or reference concerning (a) amounts offered to settle or avoid the
12 2015 condemnation of the Subject Property or any conduct or statement made during
13 negotiations regarding the 2015 Condemnation of the Subject Property (including offers made by
14 the Parties in 2014 and 2015) and (b) the settlement of Landowners' claim for relocation
15 expenses. The Parties recognize, however, that certain historical documents reflecting prior
16 negotiations and offers (*i.e.*, documents created prior to 2014) otherwise may be relevant and
17 admissible.


18 10.) The Parties, their witnesses, and counsel shall not put forward any evidence,
19 question, argument, testimony, or reference concerning the character and motivations of
20 opposing counsel, specifically any allegations that counsel has attempted to delay this
21 proceeding and/or has engaged in discovery violations. This stipulation in and of itself shall not
22 prevent Landowners' expert witnesses from testifying concerning (or Landowners otherwise
23 seeking to admit) the document entitled "Work Plan, Groom Mine Preliminary Assessment/Site
24 Inspection" (Bates stamped US0012619 -662) ("PA/SI") or raising the timing of the disclosure
25 of the PA/SI, although the United States reserves its right to object to such testimony, argument,
26 and/or the introduction of the PA/SI into evidence on other grounds besides this stipulation.

27 11.) Unless otherwise ordered by the Court or Commission (as authorized by the
28 Court), the Parties, their witnesses, and counsel shall not put forward any evidence, question,

1 argument, testimony, or reference concerning Landowners' request to have core drilling and
2 testing performed on the Subject Property after the filing of this case beyond an instruction to the
3 Commission. The substance of this Commission instruction will be drafted later by the Parties
4 and proposed to the Court, but, generally, the Parties agree that the Commission should be
5 instructed at the commencement of trial that Landowners requested core drilling and testing be
6 performed, that the United States opposed this request because, among other things, it would not
7 lead to information relevant to the property's value as of the date of value and because of the
8 burdens imposed by the request, including the burden of having civilian access on the property
9 for one day or longer, and that the Court denied Landowners' motion to compel entry to the
10 Subject Property to perform core drilling and testing.

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12 WHEREFORE, the Parties respectfully request that the Court so order the above
13 stipulations.

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16 **SO ORDERED:**

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18 

19 THE HON. MIRANDA M. DU
20 UNITED STATES DISTRICT JUDGE

21 Dated: November 5, 2019.

22
23 FOR THE PARTIES:

24
25 Dated November 1, 2019

26 ON BEHALF OF PLAINTIFF:

27 NICHOLAS A. TRUTANICH
28 United States Attorney
District of Nevada

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TROY K. FLAKE
Deputy Civil Chief
District of Nevada

/s/ Eugene N. Hansen
/s/ Johanna M. Franzen
EUGENE N. HANSEN
JOHANNA M. FRANZEN
ANTHONY C. GENTNER
MARK C. ELMER
Trial Attorneys
U.S. Department of Justice

ON BEHALF OF DEFENDANT SHEAHAN
LANDOWNERS:

LAW OFFICES OF KERMIT L. WATERS

/s/ James J. Leavitt
KERMIT L. WATERS, ESQ.
Nevada Bar No. 2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8889
AUTUMN L. WATERS, ESQ.
Nevada Bar No. 8917
Attorneys for Defendant Sheahan
LANDOWNERS

ON BEHALF OF DEFENDANT TANIS
LANDOWNERS:

GUNDERSON LAW FIRM

/s/ John R. Funk
MARK H. GUNDERSON, Bar No. 2134
JOHN R. FUNK, Bar No. 12372
Attorneys for Defendant Tanis Landowners

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 1, 2019, I caused the foregoing Stipulation Regarding
3 In Limine Issues to be served on all parties who have appeared in this action using the Court's
4 case management/electronic case filing system. I further certify that on November 1, 2019, the
United States sent a copy of the foregoing via U.S. mail to the following interested parties:

5 Sandra Sears-Lavallee
6 1172 Skyline Road
7 Henderson, NV 89002

Debbie DeVito
c/o Stanley Pedder
3445 Golden Gate Way
Lafayette, CA 94549

8 John B. Sheahan
9 address unknown

Melanie Goodpasture
P.O. Box 7044
Cotati, CA 94931

10 Deborah Lynn Sheahan
11 4662 Gabriel Drive
12 Las Vegas, NV 89121

House Rabbit Society
c/o Anne Martin (Registered Agent)
148 Broadway
Richmond, CA 94804

13 Diane Sibley-Origlia
14 1615 Via Romero
15 Alamo, CA 94507

Animal Place
c/o Kim Sturla (Registered Agent)
17314 McCourtney Road
Grass Valley, CA 95949

16 Katherine Kell
17 c/o Stanley Pedder
18 3445 Golden Gate Way
19 Lafayette, CA 94549

Hui Chu Poole
165 Lakewood Road
Walnut Creek, CA 94598

20 Amy E. Sears
21 P.O. Box 71
22 Pioche, NV 89043

23 /s/ Johanna M. Franzen
24 Johanna M. Franzen
25
26
27
28