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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE DISTRICT OF NEVADA

13 UNITED STATES OF AMERICA
 Plaintiff,

Case No. 3:08-CV-00386-JCM-VPC

14 v.

STIPULATION OF SETTLEMENT

16 753.95 ACRES OF LAND, MORE OR
 LESS, IN WASHOE COUNTY, NEVADA
 17 and INCLINE LAKE CORPORATION, et al.
 Defendants.

19
 20 Plaintiff United States of America and all defendants to this action, each by and through
 21 its/his/her counsel of record, except for James McBride, pro se, who also joins herein,
 22 respectfully submit this Stipulation reflecting a settlement agreement as to the just compensation
 23 to be paid for the subject property. This Stipulation fully resolves the above-titled action. The
 24 parties request an order of final judgment in accord with the following stipulations:
 25

- 26 1. This stipulation concerns approximately 754 acres of real property located in
 27 Washoe County, Nevada, as more particularly described in the Declaration of Taking filed herein
 28

1 (the “Property”). The leased fee of the Property was formerly owned by Incline Lake
2 Corporation (“ILC”).

3 2. ILC acquired the Property in 1939. While ILC owned the Property, ILC issued a
4 series of 99-year restricted leases in portions of the Property to various ILC shareholders. The
5 former owners of 32 of these leasehold interests (the “Leasehold Interests”) are individual
6 defendants in this action and will be collectively referred to herein as the “Former Leaseholders”.

7 3. Beginning in 2005, ILC entered into discussions with the United States about the
8 possibility of selling the Property to the United States Forest Service.
9

10 4. According to the defendants, in July and August of 2008, all Former Leaseholders
11 except the MacLean Trust and Hawley MacLean negotiated with ILC for the value of their
12 Leasehold Interests and as a result of such negotiations entered into a Deposit Distribution and
13 Leasehold Assignment Agreement (“Deposit Distribution Agreement”) with ILC. Pursuant to
14 these agreements, the Former Leaseholders assigned their Leasehold Interest(s) to ILC and
15 negotiated a value and compensation that each would receive for their Leasehold Interests upon
16 payment from the United States Forest Service for the Property.
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18 5. According to the defendants, in addition to the Deposit Distribution Agreements,
19 on August 3, 2007, ILC entered into a Settlement, Release and Purchase Agreement with the
20 MacLean Trust. (“MacLean Settlement Agreement”). According to the defendants, on August
21 14, 2009, Hawley MacLean entered into a Consent to Distribution (“Consent to Distribution”)
22 with ILC.
23

24 6. According to the defendants, pursuant to the Deposit Distribution Agreements, the
25 MacLean Settlement Agreement, and the Consent to Distribution, ILC and the Former
26 Leaseholders negotiated and agreed that in the event the Property was sold, each Leasehold
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1 Interest would be valued the same as all other Leasehold Interests, and that each Former
2 Leaseholder would be entitled to an initial payment of \$1 million per Leasehold Interest from the
3 Deposit (hereinafter defined), with each Former Leaseholder to share equally in any additional
4 payments made by the United States for the full value of the Property.
5

6 7. ILC was unable to agree with the United States on a purchase price for the
7 Property. Accordingly, ILC and the United States agreed that the United States would acquire
8 the Property, pursuant to the Southern Nevada Public Land Management Act of 1998 (112 Stat.
9 2343 et seq.), 7 U.S.C. § 428a (the “Act”) and 40 U.S.C. §§ 3113-3114.
10

11 8. The United States agreed to purchase, and defendant ILC agreed to sell, and to
12 bind all the other defendants hereto to sell, the Property pursuant to the terms and conditions of
13 that certain Land Acquisition Agreement, dated May 16, 2008 (the “Agreement”).

14 9. The United States is authorized to acquire the subject property, with the consent
15 of the owner, pursuant to the Southern Nevada Public Land Management Act of 1998 (112 Stat.
16 2343 et seq.), 7 U.S.C. § 428a (the “Act”) and 40 U.S.C. §§ 3113-3114. As provided by the
17 Agreement, and in accordance with § 5(c) of the Act, ILC and the United States agreed to the
18 commencement of the instant action as the means to transfer the Property and to determine its
19 fair market value. Agreement at ¶ III A-C.
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21 10. On July 14, 2008, the United States initiated the instant condemnation action in
22 the United States District Court for the District of Nevada, captioned as United States of America
23 v. 735.95 Acres of Land, et al., Case No. 3:08-vc-00386-JCM-VPC (the “Condemnation
24 Action”).
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26 11. When the United States initiated the Condemnation Action, it filed a Declaration
27 of Taking and subsequently on July 29, 2008, deposited \$46 million into the Registry of the
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1 Court, as provided in the Agreement (“the Deposit”). Upon the making of the Deposit into the
2 Registry of the Court, title to the Property, as set forth in the Declaration of Taking, vested in the
3 United States.

4
5 12. On August 11, 2008, ILC filed in the Condemnation Action a Motion for
6 Forthwith Disbursement of Deposit (“Motion to Disburse” – Doc. No. 42). As represented in its
7 Motion to Disburse, ILC sought disbursement of the Deposit to it so that ILC could make further
8 disbursements to the other defendants in the amount of \$1,000,000 for each of their former
9 leasehold interests in the Property. According to ILC, this disbursement was in accord with
10 agreements by and among ILC and other defendants to this action. The Motion to Disburse also
11 provided that ILC would set aside \$1,000,000 in escrow to pay for performance of certain of
12 ILC’s obligations under the Agreement. The United States filed a Response In Support of
13 Defendant Incline Lake’s Motion For Disbursement of Deposit (Doc. No. 67). Said Response
14 was filed in accordance with the Agreement, which provides that the United States will not
15 contest or oppose any distribution or disbursement of the Deposit. Doc. No. 67 at ¶ 9. On
16 September 9, 2008, the court in this action granted the Motion to Disburse (the “Disbursement
17 Order” – Doc. No. 75). In the Disbursement Order, the Court ordered disbursement of the entire
18 deposit to ILC, subject to the obligations to make the additional disbursements of the Deposit to
19 other defendants as spelled out in the Motion to Disburse. According to the defendants, the
20 Deposit was initially disbursed to ILC subject to ILC’s contractual obligations to further disburse
21 to the Former Leaseholders \$32 million of the Deposit for the Leasehold Interests. According to
22 the defendants, ILC has disbursed to the Former Leaseholders \$32 million of the Deposit.

23
24 13. ILC and the Former Leaseholders contend that the fair market value of the
25 Property on July 29, 2008 was more than the amount of the Deposit, and therefore they are
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1 entitled to additional just compensation for their property interests that were acquired by the
2 United States. The United States contends that the fair market value of the Property on July 29,
3 2008 was less than the amount of the Deposit, and therefore it is entitled to return of any
4 overpayment. It is the intention of all parties to fully resolve the dispute regarding just
5 compensation by this Stipulation.
6

7 14. In order to settle the Condemnation Action, the parties agree that \$43,500,000,
8 inclusive of interest, represents the full just compensation payable by the United States for its
9 acquisition of the Property pursuant to the Agreement.
10

11 15. Defendants have negotiated among themselves the appropriate distribution of
12 \$43,500,000 as payment for their various former interests in the Property as follows: (a)
13 \$1,000,000 to each Former Leaseholder for each former leasehold interest in the Property
14 formerly owned by such defendant; and (b) the remainder to ILC.
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16 16. The \$46,000,000 deposit represents an overpayment of \$2,500,000 for the
17 Property. Within five days after the entry of judgment in this case, \$2,500,000 shall be returned
18 by ILC to the Registry of the Court in restitution to the United States of the overpayment. The
19 parties hereto agree to entry of final judgment disbursing said sum immediately to the United
20 States.
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22 17. The parties shall be responsible for their own legal fees, costs and expenses
23 (including attorneys' fees, consultants' fees, appraisers' fees, and any other expenses).
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25 18. The parties consent to the entry of all orders and judgments necessary to
26 effectuate this Stipulation of Settlement and to bear their own costs and attorneys' fees.
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28 19. Defendants warrant to their knowledge that they were the sole owners of the
Property at the date of the acquisition, and that they have the exclusive right to just compensation

1 herein, and that no other party is entitled to the compensation or any part thereof by reason of
2 any recorded or unrecorded agreement executed by the defendants.

3 20. The U.S. Forest Service will cause a trail on the subject property to be named in
4 memory of Norman H. Biltz.

5 21. The U.S. Forest Service will engage in a public process in accordance with the
6 National Environmental Policy Act of 1969 (42 U.S.C. § 4321(note)), and its implementing
7 regulations at 40 CFR § 1500, regarding the disposition of the existing dam and former reservoir
8 on the Property.

9 22. Upon restitution to the United States of the \$2,500,000 overpayment, the United
10 States releases the defendants and the defendants release the United States from any and all
11 claims relating to the payment of just compensation to the defendants for the United States’
12 acquisition of the Property. The Joint Stipulation Concerning Remediation of Hazardous
13 Materials and Completion of Post DT Work filed herein (Doc. No. 294) remains in full force and
14 effect.

15 23. The parties hereto will take no appeal from any ruling or judgments made by the
16 Court in this action.

17 24. Undersigned counsel for the United States of America files this Stipulation on
18 behalf of all parties with consent of defendants and their counsel. All parties agree that this
19 Stipulation may be executed in counterparts.

20 WHEREFORE, the parties request that the Court enter the attached proposed Final
21 Judgment Approving Stipulation of Settlement.
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Respectfully submitted,

DANIEL G. BOGDEN
United States Attorney

GREG ADDINGTON
Assistant United States Attorney
Bar No. 6875

Date: December 14, 2011

/s/Michael J. Krainak
MICHAEL J. KRAINAK
MICHAEL K. BAKER
United States Department of Justice
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P.O. Box 561, Ben Franklin Station
Washington, DC 20044

Date: December 14, 2011

/s/ Todd Miller
J. STEPHEN PEEK
TODD MILLER
Holland and Hart, LLP
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

Attorneys for Incline Lake Corporation

Date: December 14, 2011

/s/ James McBride (By Michael Krainak)
JAMES MCBRIDE
PO Box 190
Glen Ellen, CA 95442

Pro Se Defendant

Date: December 14, 2011

/s/ Mark H. Gunderson
MARK H. GUNDERSON
CATHERINE REICHENBERG
Gunderson Law Firm
3895 Warren Way
Reno, NV 89509

Attorneys for all other defendants

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that the foregoing document is being served in accordance with
3 Fed. R. Civ. P. 71.1 on all counsel of record or pro se parties identified below by United States
4 Mail unless otherwise specified on December 15, 2011.

5 /s/ Michael J. Krainak

6 Incline Lake Corporation
7 c/o J. Stephen Peek
8 Holland and Hart, LLP
9 5441 Kietzke Lane, 2nd Floor
10 Reno, NV 89511
11 Automatically served via cmecf

12 James McBride
13 PO Box 190
14 Glen Ellen, CA 95442

15 MacLean Marital Trust u/t/d
16 October 5, 1981
17 and all other defendants not listed above
18 c/o Mark H. Gunderson
19 Gunderson Law Firm
20 3895 Warren Way
21 Reno, Nevada 89509
22 Automatically served via cmecf
23
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25
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27
28

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF NEVADA**

3 UNITED STATES OF AMERICA
4 Plaintiff,

Case No. 3:08-CV-00386-JCM-VPC

5 v.

**FINAL JUDGMENT APPROVING
STIPULATION OF SETTLEMENT**

6
7 753.95 ACRES OF LAND, MORE OR
8 LESS, IN WASHOE COUNTY, NEVADA
and INCLINE LAKE CORPORATION, et al.
9 Defendants.

10 Upon consideration of the Stipulation of Settlement executed by the United States of
11 America and all defendants herein, it is hereby ORDERED, ADJUDGED AND DECREED that:

12
13 1. The United States is authorized to acquire the subject property, with the consent of the
14 owner, pursuant to the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343
15 et seq.), 7 U.S.C. § 428a (the “SNPLMA”) and 40 U.S.C. §§ 3113-3114.

16
17 2. The United States agreed to purchase, and defendant Incline Lake Corporation
18 (“ILC”) agreed to sell, and to bind all other defendants to this action to sell, the subject property
19 pursuant to the terms and conditions of that certain Land Acquisition Agreement, dated May 16,
20 2008 (the “Agreement”).

21
22 3. As provided by the Agreement, and in accordance with § 5(c) of SNPLMA, the parties
23 agreed to the commencement of the instant action as the means to transfer the subject property
24 and to determine its value. Agreement at ¶ III A-C.

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26 4. Following commencement of this action, on July 29, 2008, the United States deposited
27 the amount of \$46,000,000 into the Registry of this Court, as provided by the Agreement.
28 Agreement at ¶ IV C. At that time, title to the subject property, to the extent set forth in the
Declaration of Taking filed in this case, vested in the United States.

1 5. On September 9, 2008, the Court ordered disbursement of the entire deposit to ILC,
2 subject to the obligations to make the additional disbursements from the Deposit to other
3 Defendants as spelled out in the Motion for Forthwith Disbursement of Deposit filed by ILC
4 (Doc. No. 42).

6 6. The parties have agreed that \$43,500,000, inclusive of interest, represents the full just
7 compensation payable by the United States for its acquisition of the subject property pursuant to
8 the Agreement.

10 7. The said sum of \$43,500,000 is the final and just compensation for the subject
11 property and in full satisfaction of any and all claims of whatsoever nature against the United
12 States by reason of the Agreement and the institution and prosecution of this action.

13 8. Defendants have negotiated among themselves the appropriate distribution of
14 \$43,500,000 as payment for their various former interests in the subject property as follows: (a)
15 \$1,000,000 to each defendant for each former leasehold interest in the Property owned by such
16 defendant; and (b) the remainder to ILC.

18 9. The \$46,000,000 deposit represents an overpayment of \$2,500,000 for the subject
19 property. Within five days of the entry of this judgment, ILC shall return \$2,500,000 to the
20 Registry of the Court in restitution to the United States of the overpayment. Once deposited, said
21 sum shall be immediately disbursed by check made payable to the United States Forest Service,
22 as a refunded appropriation to be returned to the SNPLMA special account. Said check shall be
23 made available by the Clerk to be picked-up in person by Asst. U. S. Attorney Greg Addington at
24 the Clerk's Office in the Federal Courthouse in Reno, Nevada.

26 10. The parties shall be responsible for their own legal fees, costs and expenses
27 (including attorneys' fees, consultants' fees, appraisers' fees, and any other expenses).
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