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8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

10 PINE VIEW ESTATES HOMEOWNERS	) Case No. 3:16-CV-00402-MMD-WGC
11 ASSOCIATION,	
12       Petitioner,	
13       v.	
14 UNITED STATES ENVIRONMENTAL	
15 PROTECTION AGENCY,	) <b>STIPULATION TO STAY MATTER</b> ) <b>UNTIL NOVEMBER 12, 2018</b> ) <b>(SIXTH REQUEST)</b>
16       Respondents.	

17 TO THE UNITED STATES DISTRICT COURT:

18 Petitioner, Pine View Estates Home Owners Association ("PVHOA"), and Respondent, United  
 19 States Environmental Protection Agency ("EPA"), have agreed and hereby stipulate pursuant to  
 20 Local Rules IA 6-1 and 6-2 as follows:

21       A.     This matter involves PVHOA's appeal of a June 2, 2016 compliance order issued by  
 22 EPA ("Compliance Order"). The stay is necessary because the appeal is approaching a resolution.

23       B.     On May 14, 2018, because the appeal was approaching a resolution, the Parties  
 24 requested a fifth, 90-day stay of this matter until August 14, 2018, and the Court ordered that stay  
 25 on May 14, 2018 (ECF Nos. 21, 22). There has been substantial progress towards this resolution, but  
 26 as discussed below, the final resolution of this matter cannot be accomplished until the final  
 27 resolution of separate litigation involving the PVHOA, but not the EPA.

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1 C. As alluded to immediately above, the resolution of this petition is based on the  
2 settlement of a related matter. On September 12, 2017, PVHOA and Mark Kizer, another party  
3 subject to the Compliance Order, entered into a settlement agreement ("Settlement Agreement") in  
4 Kizer v. PTP, Inc. *et al*, Case No. 3:15-CV-00120-RCJ-WGC (D. Nev.) (ECF No. 338). There are  
5 over 200 defendants in the *Kizer* case, including all of the individual homeowners in Pine View  
6 Estates, PVHOA and the Bureau of Indian Affairs ("BIA"). The Settlement Agreement was  
7 contingent on the BIA's approval of the transfer of land comprising the HOA common areas to the  
8 HOA in fee simple, a trust-to-fee transfer.<sup>1</sup> The fee lands will serve as collateral for a loan to fund  
9 the remediation obligations detailed in the Compliance Order. The BIA approved said trust-to-fee  
10 transfer on October 18, 2017 and that transfer was contemplated to occur by the end of November,  
11 2017.

12 D. Once the land is actually transferred from trust to fee, as described in Para. C, the  
13 Parties in this case anticipate lodging a consent decree relating to and addressing the Compliance  
14 Order. The consent decree will need to be negotiated and once finalized and approved by officials  
15 at EPA and the United States Department of Justice, will be lodged with the Court. The Parties will  
16 then request that the Court approve and enter the consent decree.

17 E. On November 8, 2017, the Hon. Robert C. Jones confirmed and approved  
18 the Settlement Agreement described in Para. C. *See Kizer v. PTP, Inc.*, Case No.  
19 3:15-CV-00120-RCJ-WGC (D. Nev.) (ECF No. 452).

20 F. However, subsequent to Judge Jones' approval of the Settlement Agreement in the  
21 *Kizer* case, a dispute arose between Kizer and some of the defendants in the implementation of the  
22 Settlement Agreement; specifically, attorneys representing the title insurers who are funding the  
23 Settlement Agreement, as well as attorneys representing individual homeowners, asserted that the  
24 BIA had not fully complied with the terms of the Settlement Agreement, and by extension, the  
25 requirements of the National Historic Preservation Act ("NHPA") in effecting the transfer of land  
26 described in Para. C. Subsequently, there were extensive discussions among attorneys representing

27 \_\_\_\_\_  
28 <sup>1</sup> The BIA holds title to the land comprising Pine View Estates in trust on behalf of Kizer.

1 Kizer, the title insurance companies and individual homeowners to resolve the issue of whether or  
2 not there has been compliance with NHPA or the terms of the Settlement Agreement in the *Kizer*  
3 case.

4 G. On April 18, 2018 counsel for Kizer sent a letter to counsel for the title insurance  
5 companies and counsel for defendants in the *Kizer* case documenting the points of dispute regarding  
6 implementation of the settlement agreement, setting forth Kizer's position on those points and  
7 proposing final steps to resolve all points of dispute, including actions to be undertaken by BIA at  
8 Kizer's request to comply with NHPA. In closing his letter, counsel for Kizer asked title insurance  
9 company counsel and all defense counsel to notify him immediately of any other points of dispute  
10 or any objection to the proposed course of action set forth in his letter. As of the submission of this  
11 stipulation, counsel for PVHOA is not aware of any other dispute points or objection to Kizer's  
12 proposed course of action as set forth in the April 18<sup>th</sup> letter being raised by counsel for the title  
13 insurance companies or any defense counsel and anticipates full implementation of the settlement  
14 agreement approved by Judge Jones once the BIA completes all necessary steps to effectuate the  
15 trust-to-fee transfer detailed in Para. C *supra*.

16 H. On July 24, 2018 the BIA sent a letter to Nevada's State Historic Preservation Office  
17 ("SHPO") regarding BIA compliance with NHPA. SHPO may take up to thirty days to respond to  
18 BIA. Assuming SHPO raises no NHPA concerns within that thirty-day period, BIA will notify the  
19 Washoe Tribe that it has approved the trust-to-fee transfer. Thereafter, the Washoe Tribe has thirty  
20 days to lodge an objection to the transfer. Assuming no objection from the Washoe Tribe, which did  
21 not object following the BIA's October 18, 2017 approval (Para. C *supra*), BIA will thereafter  
22 transfer fee title for the common areas to the HOA in October or November of this year. This  
23 transfer will trigger the consent decree process described in Para. D. *supra*.

24 I. The approval and entry of the anticipated consent decree described in Para. D would  
25 fully resolve PVHOA's appeal of the Compliance Order in this case.

26 J. To promote and facilitate these efforts, allow the parties to fully focus thereon, and  
27 avoid unnecessary litigation and discovery activity and expense during the necessary settlement and

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1 consent decree negotiations, the parties jointly request that this Court issue an Order staying these  
2 proceedings until November 12, 2018.

3 Accordingly, IT IS HEREBY STIPULATED by and between the parties hereto, with the  
4 approval of the Court, as follows: All proceedings in this lawsuit are hereby stayed until November  
5 12, 2018.

6  
7 Dated: August 13, 2018.

JEFFREY H. WOOD  
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8  
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Attorney for Respondent

16 Dated: August 13, 2018.

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Attorney for Petitioner.

24 IT IS SO ORDERED:



UNITED STATES DISTRICT JUDGE

25 DATED: August 13, , 2018