

TRIBAL LAND: WALKER RIVER TRIBAL LANDS
AND ALLOTTED LANDS
FILE NUMBER: _____
CASE NUMBER: _____

GRANT OF EASEMENT FOR OPERATION
AND MAINTENANCE OF A RAILROAD LINE

KNOWN ALL MEN BY THESE PRESENTS:

That the United States of America, acting by and through Robert L. Hunter, Superintendent, Western Nevada Agency, Bureau of Indian Affairs, Department of the Interior, Carson City, Nevada, hereinafter referred to as "Grantor", under authority contained in 10 BIAM 3 (34 F.R. 637), and Phoenix Area Office Redlegation Order No. 3 (34 F.R. 11108), and pursuant to the provisions of the Act of February 5, 1948, (62 Stat. 17, 25 U.S.C. 323-328), and Part 169 Title 25, Code of Federal Regulations, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is acknowledged, does hereby grant to Department of the Army, Hawthorne Army Ammunition Plant, Nevada, its successors and assigns, hereinafter referred to as "Grantee", an easement for a right-of-way for the following purposes, namely: the right to place, inspect, maintain, and replace thereon, ties, rails, ballast, culverts, trestles, bridges, signals, and other appurtenances, all hereinafter referred to as facilities, and to keep the same free of foliage with the right to trim and remove limbs, brush, and timber which may interfere with the operation of said line; upon, over, and across the following described lands and premises, situate in the Counties of Lyon and Mineral, State of Nevada;

The said Railroad Easement is shown on the map of definite location attached hereto and made a part hereof, is limited to and more particularly described in the following fourteen (14) parcels:

PARCEL 1

A parcel of land on the Walker River Indian Reservation in Sections 22, 23, and 26 Township 12 North Range 29 E MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the Southwest corner of Section 26 Township 12 North Range 29 E MDM; thence $N0^{\circ}07'E$ 1517.70 feet to the point of beginning; at centerline station 3910+91.2 thence on a spiral curve to the left from a tangent bearing of $N44-38-04$ the following courses:

Central Angle $3^{\circ}-10'-04''$ R = 2644.36'
Central Angle $2^{\circ}-56''-00''$ R = 5728.80'
Central Angle $12^{\circ}-00'-00''$ R = 2864.73'
Central Angle $9^{\circ}-10'-35''$ R = 15626.16
Central Angle $7^{\circ}-20'-00''$ R = 7813.08

Thence North $10^{\circ}02'E$ 707.50 feet; thence on a spiral curve to the left with the following courses:

$\Delta = 19^{\circ}-10'-00''$ R = 10,728.17'
 $\Delta = 1^{\circ}-59'-35''$ R = 12,275.27'

To the North line of Section 23 Township 12 North, Range 29 East, MDM at centerline station 3818+28.4 feet and the termination of this parcel.

PARCEL 2

A parcel of land on the Walker River Indian Reservation in Section 9 Township 12 North, Range 29 East, MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the Southeast corner of Section 9, Township 12 North, Range 29 E, MDM; thence $N 0^{\circ} 05.1' W$ 464.81 feet to the true point of beginning; thence $N55^{\circ}33.2'W$ 5301.24 feet to a point 393.86 feet South $0^{\circ}12'30''$ West from the South east corner of the West 1/2 of the NW¼ of the NW¼ of Section 9 Township 12 North, Range 29 E MDM and the terminus of this parcel.

PARCEL 3

A parcel of land on the Walker River Indian Reservation in Sections 5, 6, 8, and 9, Township 12 North, Range 29 East MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the Southeast corner of the West 1/2 of the NW¼ of the NW¼ of Section 9, Township 12 North, Range 28 East, MDM, thence $S89^{\circ}56'12''W$ 434.87' feet to the true point of beginning, thence on a curve to the left with a central angle at $2^{\circ}01'06''$ and a radius of 5668.34 feet; thence $N59^{\circ}21'18''W$ 4641.25 to the point of beginning of a curve to the right with a central angle of $4^{\circ}-43'-54''$ and a radius of 5730.25 feet; thence on and along the curve for a distance of 473.22 feet; thence $N54^{\circ}37'48''W$ 6644.14 feet to a point $S89^{\circ}44'48''E$ 624.89 from the Northwest corner of Section 6, Township 12 North, Range 29 East MDM the terminus of this parcel.

PARCEL 4

A parcel of land on the Walker River Indian Reservation in Section 31, Township 13 North, Range 29 East MDM and in Section 36, Township 13 North, Range 28 East, MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the Southwest corner of Section 31, Township 13 North, Range 29 East, MDM; thence S89°44'-48"E 624.89 feet to the True Point of Beginning; thence N54°38'12"W 4566.94 feet to a point N01°01'24"E 168.27 from the Southeast corner of the West 1/2 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 13 North, Range 28 East MDM and the point of terminus of this parcel.

PARCEL 5

A parcel of land on the Walker River Indian Reservation in Section 36, Township 13 North, Range 38 E, MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the Southwest corner of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 13 North, Range 28 East, MDM; thence North 0°02'-30" West 635.12 feet to the True Point of Beginning; thence North 54°37'54" West 1605.19 feet to a point South 0°26'36"E 1070.42 feet from the Northwest corner of Section 36 T13N R28E, MDM, the terminus of this parcel.

PARCEL 6

A parcel of land on the Walker River Indian Reservation in Sections 35 and 26, Township 13 North, Range 28 E, MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at a point North 89°-23'-36" West 556.58 feet from the Southeast corner of the North 1/2 of the Northeast 1/4 of the North East 1/4 of Section 35, Township 13 North, Range 28 East, MDM; thence North 54°38'-42"W 4947.14 to a point South 89°48'-18" East 126.75 feet from the West 1/4 corner of Section 26, Township 13 North, Range 28 East, MDM, the terminus of this parcel.

PARCEL 7

A parcel of land on the Walker River Indian Reservation in Sections 27, 22, and 21, Township 13 North, Range 28 East, MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the East 1/4 corner of Section 27, Township 13 North, Range 28 East, MDM; thence N 0°00'54"W 56.96 feet to the True Point of Beginning, thence N54°40'54"W 5805.35 feet to the Point of Beginning of a curve to the left with a central angle of 16°51'12" a radius of 2866.84 feet; thence on and along the centerline of the curve a distance of 843.28 feet to the end of the curve; thence North 71°-31'48" West 1240.14 feet to the beginning of a curve to the right with a central angle of 37°54'-36" a radius of 955.48; thence along the centerline 632.21 feet to the end of the curve; thence North 33°37'12" West 193.31 feet to the beginning of a curve to the left with a central angle of 15°-52'-48" and a radius of 1434.25 feet; thence along the centerline of the curve 397.52 feet to the end of the curve; thence N49°30'00"W 232.32 feet to a point North 0°09'18" West 235.39' from the center 1/4 corner of Section 21, Township 13 North, Range 28 East, the terminus of this parcel.

PARCEL 8

A parcel of land on the Walker River Indian Reservation in Section 16, Township 13 North, Range 28 East, MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the South 1/4 corner of Section 16, Township 13 N, Range 28 East, MDM; thence N89°43'06" West 798.34 feet to the True Point of Beginning; thence N7°19'36" West 4203.54 to the Point of Beginning of a spiral curve to the left with the following central angles and radius:

Central angle = 11°06' Radius = 818.66 feet
 Central angle = 25°-30' Radius = 955.15 feet
 Central angle = 3°01' Radius = 2858.46 feet
 Central angle = 34°-30' Radius = 954.76 feet

Thence N81°-26'-36"W 462.40 to the beginning of a curve to the right with a central angle of 33°58'-18" and a radius of 427.00 thence on and along the curve a distance of 283.08 to a point that is North 0°30'06"E 555.82 feet from the West 1/4 corner of Section 16, Township 13 North, Range 28 East, MDM, the terminus of this parcel.

PARCEL 9

A parcel of land on the Walker River Indian Reservation in Section 8, Township 13 North, Range 28 E, MDM, 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the Southeast corner of Section 8, Township 13 North, Range 28 East, thence North 89°57'-30" West 957.66 feet to the True Point of Beginning; thence North 26°40'06" West 399.70 feet to the beginning of a curve to the left with a central angle of 6°00'00" and a radius of 2864.80 feet thence on and along the centerline of the curve a distance of 300.01 feet; thence North 32°-40'-06" west 796.85 feet to the beginning of a curve to the left with a central angle of 17°44'-00" and a radius of 1432.26 feet; thence on and along the centerline of the curve a distance of 443.29 feet; thence North 50°-24'-06" west 184.10 feet to the beginning of a curve to the right with a central angle of 18°-13' and a radius of 1432.40 feet; thence on and along the centerline of the curve a distance of 455.41 to a point that is S0°02'-12"W 350.36 feet from the center 1/4 corner of Section 8, Township 13 N, Range 28 E, MDM; the terminus of this parcel.

PARCEL 10

A parcel of land on the Walker River Indian Reservation in Section 5, Township 13 North, Range 28 East, MDM; 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the west 1/4 corner of Section 5, Township 13 North, Range 28 E, MDM; thence North 89°58'00"E 880.64 feet to the True Point of Beginning; thence North 30°43'-92" West 409.01 feet to the beginning of a curve to the right with a central angle of 4°08'00" and a radius of 5729.13 feet thence on and along the centerline of the curve a distance of 413.30 feet; thence N26°-35'-42" West 839.44 feet to a point South 0°16'-54" East 973.96 feet from the Northwest corner of Section 5, Township 13 North, Range 28 East, MDM; the terminus of this parcel.

PARCEL 11

A parcel of land on the Walker River Indian Reservation in Sections 24 and 25, Township 14 North, Range 27 East, MDM; 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the Northeast corner of Section 25, Township 14 North, Range 27 East, MDM; thence South $0^{\circ}01'36''$ East 822.81 to the True Point of Beginning; thence North $39^{\circ}06'48''$ West 2447.0 feet to the beginning of a curve to the left with a central angle of $3^{\circ}45'42''$ and a radius of 5788.33 feet; thence on and along the curve a distance of 380.02 feet; thence North $42^{\circ}52'30''$ West 2542.80 feet to the beginning of a curve to the left with a central angle of $10^{\circ}24'30''$ and a radius of 2899.25 feet; thence on and along the curve a distance of 526.68 feet; thence North $53^{\circ}17'00''$ West 1533.16 feet to a point South $0^{\circ}02'30''$ West 308.95 feet from the Northwest corner of Section 24, Township 14 North, Range 27 East, MDM; the terminus of this parcel.

PARCEL 12

A parcel of land on the Walker River Indian Reservation in Section 14, Township 14 North, Range 27 East, MDM; 60 feet in width 30 feet on either side of the following described centerline:

Commencing at the Southeast corner of Section 14, Township 14 North, Range 27 East, MDM; thence South $89^{\circ}41'18''$ West 411.51 feet to the True Point of Beginning; thence North $53^{\circ}17'00''$ West 6059.20 feet to a point South $0^{\circ}05'42''$ West 1665.31 feet from the Northwest corner of Section 14, Township 14 North, Range 27 East, the terminus of this parcel.

PARCEL 13

A parcel of land on the Walker River Indian Reservation in Sections 4, 5, 9, and 10, Township 14 North, Range 27 East, MDM; 60 feet in width, 30 feet on either side of the following described centerline:

Commencing at the South 1/4 corner of Section 10, Township 14 North, Range 27 East, MDM; thence North $89^{\circ}55'18''$ East 422.14 feet to the True Point of Beginning; thence North $53^{\circ}17'12''$ West 13,242.24 feet to a point South $89^{\circ}49'24''$ East 338.91 feet from the center 1/4 corner of Section 5, Township 14 North, Range 27 East, MDM; the terminus of this parcel.

PARCEL 14

A parcel of land on the Walker River Indian Reservation in Section 31, Township 15 North, Range 27 East, MDM; 60 feet in width, 30 feet either side of the following described centerline:

Commencing at the Southeast corner of Section 31, Township 15 North, Range 27 East, MDM; thence South $89^{\circ}59'06''$ West 510.54 feet to the True Point of Beginning; thence North $53^{\circ}20'00''$ West 5505.98 to a curve to the left with a central angle of $4^{\circ}29'15''$ and a radius of 1909.84 thence on and along the centerline curve a distance of 149.58 feet to a point North $0^{\circ}06'36''$ East 700.92 feet from the West 1/4 corner of Section 31, Township 15 North, Range 27 East, MDM, the terminus of this parcel.

The described Railroad Easement is 37.3 miles in length more or less and contains 141.0 acres more or less.

TO HAVE AND TO HOLD the said Easement and right-of-way unto the Grantee, its successors and assigns, and with the further right in the United States, its successors and assigns to transfer said right-of-way by assignment, grant, or otherwise.

This Easement is subject to any prior valid existing right or adverse claim and is to terminate on December 31, 2039, and all conditions of the Agreement Settling the Case of United States and the Walker River Paiute Tribe, et al. v. Southern Pacific Transportation Company, Civ. Nos. R2702-HBM and R2708-HBM, entered into between the Department of the Army, the United States of America, the Heirs of Allottees, and the Walker River Paiute Tribe are incorporated herein and made a part of this Document by Reference. PROVIDED, that the right-of-way shall be terminated in whole or in part by the Grantor for any of the following causes upon 30 days written notice and failure of the Grantee within said notice period to correct the basis for termination (25 CFR 169.20).

A. Failure to comply with any term or condition of the Grant or the applicable regulations.

B. A nonuse of the right-of-way for a consecutive two year period for the purpose for which it was granted.

C. An abandonment of the right-of-way.

D. Failure of the Grantee, upon the completion of constructing, to file with the Grantor an affidavit of completion pursuant to 25 CFR 169.16.

The conditions of this Easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the Grantee.

This Easement is expressly subject to the stipulations by 25 CFR 161.5.

The United States, Department of the Army, agrees to pay any taxes or make any payment in lieu of taxes authorized or required by Federal Law.

IN WITNESS WHEREOF, Grantor has executed this Grant of Easement this 1st day of MAY, 1991.

UNITED STATES OF AMERICA

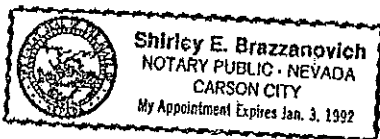
By: Robert J. Hinkle
Superintendent
U.S. Department of the Interior
Bureau of Indian Affairs
Western Nevada Agency
Carson City, NV 89706

*Henry
Radlozman*

A C K N O W L E D G M E N T

STATE OF Nevada)
COUNTY OF Carson City)

BEFORE ME, a Notary Public, in and for said County and State, on this 1st day of May, 1991, personally appeared Robert L. Hunter whose name is subscribed to the foregoing Grant of Easement for Right-of-Way as Superintendent Bureau of Indian Affairs, and he personally acknowledged to me that he executed the said Grant of Easement for Right-of-Way as his free and voluntary act and deed for the uses and purposes set forth therein.



Shirley E. Brazzanovich
Notary Public

My Appointment Expires: Jan. 3, 1992

RIGHT-OF-WAY AGREEMENT
BETWEEN INDIAN PLAINTIFFS
AND ARMY

For the purpose of securing continued rail service to the Hawthorne Army Ammunition Plant (hereinafter HWAAP), and as a part of the settlement of the consolidated cases styled United States v. Southern Pacific Transportation Co., and the Walker River Paiute Tribe et al. v. Southern Pacific Transportation Co., Civ. Nos. R2707-BRT and R2708-BRT (hereinafter "U.S. v. S.P."), now pending in the federal district court for the district of Nevada, the Department of the Army (hereinafter "Army") and the Indian plaintiffs (hereinafter referred to collectively as "the Indians") in U.S. v. S.P., including the Walker River Paiute Tribe (hereinafter "the Tribe") and the members of the allottee class, enter into this Agreement by which the Indians consent to the issuance of a right-of-way grant over the Indians' lands described herein to the Army upon the following terms and conditions.

1. Definitions.

"Track Structure" shall mean rails, ties, fastenings, ballast, bridges and culverts, crossing signals, grade crossings and necessary track support structures.

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"Mina Branch" shall mean Southern Pacific Railroad's rail line extending from its mainline at Hazen to milepost 418.00 near Mina, Nevada.

"Hawthorne Line" shall mean that portion of SP's Mina Branch extending from milepost 331.12 near Wabuska to milepost 385.00 near Thorne.

"Contingency" shall mean a future event, short of declared war, that may occur but that is not likely or intended, which will require immediate action. It shall include, but is not limited to, any form of conflict short of a declared war.

"Allottee class" or "allottees" shall mean all those individual Indians who are owners of lands crossed by Southern Pacific's railroad within the exterior boundaries of the Walker River Indian Reservation."

2. Scope.

a. The right-of-way over the Indians' lands shall be used for the sole purpose of operating a railroad. However, the right-of-way grant shall specifically exclude the right to transport or to permit the transportation of radioactive nuclear wastes over the right-of-way. Army shall include in any and all leases, contracts, or other agreements relating to the transportation of materials over the subject right-of-way a clause that prohibits the transportation of radioactive nuclear wastes over the subject right-of-way, and a clause that requires

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the other party to include a similar clause in any subsidiary lease, contract, or other agreement relating to the transportation of materials over the subject right-of-way.

b. The right-of-way shall not exceed thirty (30) feet in width on each side of the center line of the road, that is, it shall not exceed a total of sixty (60) feet in width.

c. The location of the right-of-way shall be the existing route now used by the railroad as tentatively shown by the map of definite location which was submitted by SP to the U.S. Bureau of Indian Affairs in 1976 as part of a right-of-way application, provided that the definite location of the existing route is subject to the approval of the U.S. Bureau of Indian Affairs in conjunction with Army's application for a right-of-way pursuant to 25 C.F.R. Part 169.

3. Duration.

The right-of-way grant shall take effect on the date the Secretary of the Interior issues a grant to Army incorporating the terms and conditions of this Agreement and the grant shall be limited to a term not longer than the period ending December 31, 2039.

4. Monetary Compensation.

a. Monetary compensation for the right-of-way grant shall be \$312,000.00. This amount shall be deposited with the

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Secretary of the Interior in trust for the Indians on the date Army files its application for a right-of-way with the Secretary in accordance with 25 C.F.R. § 169.14.

b. The Indians agree to a release to Southern Pacific of all claims that they may have in and to the railroad trackage and equipment utilized by Southern Pacific on the Mina Branch. The United States shall jointly execute such a release.

c. If this Agreement terminates due to the failure of the parties in U.S. v. S.P. to reach a settlement agreement, or due to the Court's refusal to dismiss that case in accordance with a settlement agreement, any money deposited with the Secretary of Interior as compensation for a right-of-way grant over the Indians' lands shall be distributed to Army along with any accrued interest.

5. Safety.

To ensure that the risk of harm to the Tribe from the transportation of hazardous materials over the right-of-way is minimized, Army agrees to the following:

a. Rehabilitation and Maintenance.

(1) Within six (6) months after funds appropriated by Congress become available for such purpose, Army shall proceed to rehabilitate the track structure on the Indians' lands to not less than FRA Class I standards. Such rehabilitation shall be performed as soon as physically possible and with the

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utmost speed, and shall include, but not be limited to, grade crossings, and road markings.

(a) Rehabilitation of grade crossings shall be accomplished as follows.

(i) Army agrees to upgrade all railroad crossings discussed in Railroad Safety Diagnostic Review conducted on May 3, 1989, by a review team composed of officials from the Nevada Department of Transportation, the Federal Highway Administration, and the U.S. Bureau of Indian Affairs, with the exception of the crossings at U.S. 95 and Canal Road. The upgrade work shall be performed in accordance with the recommendations of the review team set forth in its Railroad Diagnostic Safety Report (incorporated herein by reference) which was transmitted to Army by letter dated May 11, 1989, from Robert E. Hilderbrand, Chief Safety Engineer, Nevada Department of Transportation. Only those recommendations of improvement that fall within the right-of-way granted pursuant to this agreement will be the responsibility of the Army. Any recommendation for improvements or changes to the highway or road outside this right-of-way are not the responsibility of the Army. It is further understood that to the extent any such recommendation is based, not upon safety considerations, but solely upon considerations of long-term fiscal economy, implementation thereof shall be within Army's discretion.

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(ii) Recommendations for upgrade of reservation railroad crossings may be made from time to time by agencies having authority over safety considerations at these railroad crossings. These agencies include the Nevada Department of Transportation, the Federal Highway Administration, the United States Bureau of Indian Affairs, and any successors to, or delegates of, these agencies that assume the responsibilities of one of the agencies for reservation railroad crossings. The Army agrees to implement these recommendations if the Army is able to secure funds for such purpose, and if the Army agrees that such recommendations are necessary. If the Army disagrees with the necessity of any such recommendations, Army shall advise the Tribe in writing as to the reasons for not making the improvements. In seeking review of the safety of reservation railroad crossings, the Tribe agrees to first attempt to obtain the review from the Nevada Department of Transportation, the Federal Highway Administration, and the United States Bureau of Indian Affairs, or the successor to, or delegatee of, the responsibility for reservation railroad crossings of any of these agencies. If, however, any one or more of these agencies or their successors are not able or willing to conduct such a review without charge to the Tribe or Army, a study by one or more of the other agencies will be acceptable by all parties to this agreement.

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(b) In any rehabilitation program affecting the Hawthorne Line, priority shall be given first to the Line through Schurz from milepost 351 to 357.5, and then to the Line through the remainder of the Walker River Indian Reservation. Upon completion of such rehabilitation, Army shall provide a track inspection report to the Tribe confirming the FRA Class I status of the Line through the Reservation.

(2) Unless Army discontinues operation of the Hawthorne Line, Army shall thereafter maintain the track structure through the Walker River Indian Reservation at not less than FRA Class I standards. In any maintenance program affecting the Hawthorne Line, the Line through Schurz shall be given first priority, and the Line through the remainder of the Walker River Indian Reservation shall be given next priority.

(3) In the event that Army determines to improve the Hawthorne Line to FRA Class II status, priority shall be given first to the Line through Schurz, and then to the Line through the remainder of the Walker River Reservation.

(4) To the extent Army operates and maintains a railroad over the Indians' lands, it shall do so in strict accordance with the FRA safety maintenance standards applicable to the class of tracks in operation over the Indian lands.

(5) Army shall maintain in good repair all railroad bridges on Indian land, including keeping the waterways

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under the bridges free from an excessive amount of debris so as not to impede normal drainage.

(6) Army shall provide to the Tribe on an annual basis information relating to the rehabilitation and maintenance of the line south of Wabuska. This information shall include at a minimum the following: (a) copies of track inspection reports whether by the state or the federal government or by Southern Pacific as these become available; (b) copies of reports of action taken to correct any reported deficiencies and to bring the track into compliance with FRA Class I standards; and (c) copies of all accident reports filed by Southern Pacific or other service provider with a government agency on the Hawthorne Line.

(7) It is expressly understood that the level of operation of the Hawthorne Line will be in the sole discretion of the Army, including operation only in the event of contingency or war, if deemed necessary.

b. Operational Restrictions.

Army agrees that the following restrictions shall be applicable to the operation of trains over the right-of-way:

(1) The speed limit for trains passing through Schurz, between mileposts 351 and 357.5, shall not exceed 10 MPH regardless of what FRA class the tracks fall within, unless the Tribe consents to a greater speed.

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(2) Side tracks will not be located or utilized within Schurz, between mileposts 351 and 357.5, nor will trains normally be allowed to stop or stand within Schurz, provided that, Army may utilize the existing siding for the purpose of operating a "helper" or "pusher" locomotive to assist in moving large trains. It is understood that such locomotive will not contain hazardous material nor be allowed to stop or stand at a crossing.

(3) The operation of trains through Schurz, between mileposts 351 and 357.5, will normally be restricted to daylight hours.

(4) None of these operational restrictions will inhibit the ability of the Commander, HWAAP, to operate as he deems necessary in the event of a contingency or war. However, in such event, the Commander, HWAAP, will provide procedures for addressing safety concerns.

c. HWAAP Memorandum of Understanding.

Army agrees that HWAAP will enter into a memorandum of understanding with the Tribe for the purpose of specifying how HWAAP will, at no cost to the Tribe, assist the Tribe in addressing safety concerns arising from the transportation of munitions over the Hawthorne Line. It is the intent and understanding of the parties hereto that this subparagraph c of paragraph 5 shall take immediate effect and shall remain in effect so long as HWAAP ships hazardous materials

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over the Hawthorne Line and notwithstanding that the right-of-way over the Indians' lands may ultimately be granted to Southern Pacific pursuant to the terms of the settlement agreement in U.S. v. S.P.. The memorandum will at a minimum provide for the following:

(1) Training to be made available by HWAAP personnel to tribal emergency response personnel, including tribal police and emergency medical personnel, in appropriate techniques for emergency response to potential hazards and endangerment to the tribal community associated with the transportation of hazardous materials to and from the HWAAP.

(2) To the extent reasonably practical, reasonable advance notice to the Tribe of train movement and of any unusual hazards associated with any particular shipments along with recommended necessary or appropriate safety measures that should be taken to minimize the endangerment to the tribal community from such shipments.

6. Economic Development.

a. Army shall permit the Tribe to connect facilities, such as a spur track with or without a loading dock, to the Hawthorne Line to enable the Tribe to transport commodities to or from the reservation by rail; but Army shall not be obligated to pay any expenses associated with such facilities. Use of such facilities must not interfere with Army

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use of the Line or interfere with operations of HWAAP, and Army will have priority of service.

b. Army will obligate any service provider to offer the Tribe, upon the Tribe's request, a shipping/service contract containing rates and terms at least as favorable as the most favorable rates and terms then in effect on the Mina Branch for the commodities to be transported.

7. Applicable Law.

a. The right-of-way grant shall be made pursuant to the Act of February 5, 1948, 25 U.S.C. §§323-328 and the implementing regulations, 25 C.F.R. Part 169, the provisions of which are incorporated herein, except that it is expressly understood that, subject to the determination of the Secretary of the Interior, 25 C.F.R. §169.23(f) and 169.20(b) shall not be applicable to this right-of-way, and, accordingly, Army will not operate the Hawthorne Line as a common carrier. And it is further understood that the terms and conditions of this Agreement shall be incorporated as terms and conditions of the right-of-way grant issued pursuant hereto by the Secretary of the Interior.

b. The parties agree that the Interstate Commerce Commission will have jurisdiction over railroad operations over the Hawthorne Line to the extent such jurisdiction is consistent with rights of the Indians under federal law.

8. Indian Consent to Right-of-Way Grant.

a. Based upon the terms and conditions of this Right-of-Way Agreement, the Tribe agrees to consent to a right-of-way grant to Army over the subject tribal lands. The Tribe shall adopt a tribal resolution authorizing and approving this Right-of-Way Agreement which resolution shall be attached hereto as Exhibit B.

b. Based upon the terms and conditions of this Right-of-Way Agreement, the Secretary of the Interior shall solicit the consent of the members of the allottee class in U.S.v.S.P. to this Agreement and to a right-of-way grant to Army.

9. Application By Army For Right-Of-Way Grant Over Tribal And Allotted Lands.

a. Promptly upon the availability of the requisite funds to pay the Indians the monetary compensation specified in paragraph 4 above, Army shall submit to the Secretary of the Interior an application for a right-of-way grant over tribal and allotted lands pursuant to the Act of February 5, 1948, 25 U.S.C. §§ 323-328, and the applicable regulations, 25 C.F.R Part 169, which application shall have attached thereto and incorporated therein the terms and conditions of this Agreement.

b. The parties hereto shall take whatever other steps are reasonably necessary to obtain prompt approval by the Secretary of Army's application.

10. Terms and Conditions Run with the Land.

The Indians and Army agree that all terms and conditions herein setting forth continuing obligations to the Indians shall run with the land and shall be binding upon any and all parties which by agreement with Army, obtain an interest in or a right to use the subject right-of-way over the Indians' lands, whether or not such obligations are expressly included in any such agreements. However, Army agrees to include in any and all such agreements a provision expressly making them subject to the continuing obligations assumed by Army in this Agreement.

11. Conditions Precedent.

a. Except as stated in ¶12 below, this Agreement shall not take effect unless and until all of the following conditions precedent are fulfilled:

(1) The parties to U.S.v.S.P. reach agreement as to the settlement and dismissal of that action;

(2) The federal district court dismisses U.S.v.S.P. in accordance with a settlement agreement reached therein;

(3) Army and Southern Pacific Railroad reach agreements for the purchase, operation, and maintenance of the Hawthorne Line;

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(4) Federal funds are authorized, appropriated, and available for the payment of the monetary compensation for the right-of-way and for the rehabilitation of the Hawthorne Line as provided in this Agreement; and,

(5) Army obtains the issuance of a right-of-way grant from the Secretary of the Interior;

b. If all of the conditions specified in subparagraph a. above, are not fulfilled by December 31, 1991, this Agreement shall expire automatically, and shall be null and void, unless extended by mutual written agreement of the parties hereto.

c. If, at any time, any one of the conditions specified in subparagraph a. above becomes incapable of fulfillment, any party may terminate this Agreement by providing written notice to all parties in accordance with paragraph 13 below, provided that any party shall have the right to contest the notice by filing, within 15 days after service of such notice, a written objection in a forum of competent jurisdiction, with notice to all parties hereto in accordance with paragraph 13 below.

12. Extent of Immediate Effectiveness of Agreement.

a. This Agreement shall take immediate effect upon execution by the parties to the extent it contemplates, whether by express provision or by implication, good faith efforts by the

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parties to fulfill the conditions precedent set forth in ¶11 above.

b. The notice provisions set forth in ¶13 below shall also take immediate effect upon execution of this Agreement by the parties.

c. Subparagraph c. of paragraph 5. of this Agreement providing for a memorandum of understanding between the Tribe and HWAAP shall also take immediate effect upon execution of this Agreement by the parties, and shall remain in effect so long as HWAAP ships hazardous materials over the Hawthorne Line, notwithstanding that the right to use the Indians' lands for such railroad operation may ultimately be granted to Southern Pacific pursuant to the terms of the settlement agreement in U.S. v. S.P.

13. Notices.

a. In addition to other notices required to be given by the terms of this Agreement, Army shall give written notice to the Tribe upon the occurrence of the following events:

(1) The filing of Army's right-of-way application with the Secretary of the Interior pursuant to paragraph 9 above; notice shall be given by sending a copy of such application to the Tribe.

(2) The fulfillment of the condition precedent set forth in paragraph 11.a.(3).

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(3) The fulfillment of the condition precedent set forth in paragraph 11.a.(4).

(4) The fulfillment of the condition precedent set forth in paragraph 11.a.(5).

b. Whenever under this Agreement a notice or information is required to be provided to a party, such notice or information shall be provided as follows:

(1) Tribe: Send to Chairman, Walker River Paiute Tribe, P.O. Box 220, Schurz, NV. 89427.

(2) United States and the members of the allottee class: Send to Superintendent, Western Nevada Agency, Bureau of Indian Affairs, 1300 Curry St., Carson City, NV 89703.

(3) Army: Send to Litigation Division, General Litigation Branch, Office of the Judge Advocate General, Department of the Army, Washington, D.C. 20310-2200.

(4) During the pendency of U.S. v. S.P., including any period of continuing jurisdiction to enforce settlement and right-of-way agreements, any notice or information sent to parties at the above addresses shall also be served on all counsel of record in that case.

14. Amendment.

This Agreement may be amended by mutual written consent of the parties.

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Dated this 12th day of July, 1989.

WALKER RIVER PAIUTE TRIBE OF NEVADA

By Anita Collins
Anita Collins, Chairperson
Walker River Paiute Tribal Council

Approved:

Yvonne T. Knight

Yvonne T. Knight, Esq.
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
(303) 447-8760

Attorney of Record for the Plaintiffs, Walker River
Paiute Tribe of Nevada and Allottee Class

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Dated this 19th day of JULY, 1989.

UNITED STATES DEPARTMENT OF THE ARMY

BY 

Gordon M. Hobbs
Assistant for Real Property
OASA(L&L)

(Position/Title)