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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF PLUMAS

10 IN THE MATTER OF THE
11 DETERMINATION OF THE RIGHTS OF
12 THE VARIOUS CLAIMANTS TO THE
13 WATER OF INDIAN CREEK STREAM
14 SYSTEM IN PLUMAS COUNTY,
15 CALIFORNIA

16) Case No.: 4185
17)
18) **PETITION FOR AMENDMENT OF**
19) **DECREE TO ADD A MOVEABLE POINT**
20) **OF DIVERSION ALONG INDIAN CREEK**
21)
22) Date: April 20, 2026
23) Time: 9:30 a.m.
24) Dept: 2
25)
26)
27)
28)

19 **PETITION**

20 Petitioner Feather River Land Trust, (“FRLT”), successor in interest to a portion of those
21 water rights held by J. LaRue Robinson and Elizabeth Robinson (“Robinson”), hereby petitions
22 this court for amendment of the Decree entered on December 19, 1950, by the Honorable Ben V.
23 Curler (“Decree No. 4185”) and by said petition, request:

- 24
25 1. The addition of a movable point of diversion within Parcel No. 008-160-017 along
26 Indian Creek (the “POD”) in connection with Decreed water rights held by FRLT.

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2 **INTRODUCTION**

3 FRLT acquired a major portion of the Heart K Ranch in December 2006 from The Nature
4 Conservancy. The Heart K Ranch was previously owned by J. Larue Robinson, a party to
5 Decree No. 4185 (**Exhibit 1**, the “Indian Creek Decree”). The Chain of Title for the Heart K
6 Ranch from Robinson to FRLT is provided as **Exhibit 2** attached hereto and included by
7 reference. As successor to Robinson, FRLT is entitled to use a certain portion of the waters of
8 Indian Creek pursuant to the Indian Creek Decree as more fully described below. This property
9 (approximately 290 acres) comprises approximately 80% of the original, contiguous ranch
10 consisting of approximately 362.9 acres. The other 20% of the original ranch was formerly
11 owned by Gonzalo Gonzalez and Emelia Galaviz de Gonzalez, who successful pursued a similar
12 petition to amend the point of diversion of their portion of the water right in 2004. The Gonzalez
13 2004 Petition for Amendment of Decree to Add a Movable Point of Diversion Along Indian
14 Creek and the Order Granting Petition for Amendment of Decree Adding Movable Point of
15 Diversion Along Indian Creek are attached hereto as **Exhibit 3** and included by reference.

16 FRLT acquired the Heart K Ranch with the intent of using it to serve as a demonstration
17 of sustainable grazing and the preservation of conservation values for regional landowners. The
18 current POD as prescribed by the Indian Creek Decree is in a state of disrepair and crosses
19 multiple private parcels, making maintenance impossible. Further, the original diversion
20 facilities made use of 2.5 miles of earthen ditch to transport the water from the point of diversion
21 to the Heart K, resulting in significant transport losses. The diversion facilities are currently
22 incapable of transporting water to the Heart K, and repair would be cost prohibitive.

23 To resolve these problems, FRLT proposes to add an additional POD along a stretch of
24 the Heart K that is directly adjacent to Indian Creek. A water measuring device would be
25 installed at this new point of diversion to ensure compliance with the appropriate water
26 allocations as defined in the Indian Creek Decree. The requested point of diversion would be
27 movable along the course of the streambed but within the Heart K property.

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2 **PROJECT DESCRIPTION**

3 FRLT owns six parcels of property known collectively as the Heart K Ranch, APNs 008-
4 160-021, 008-160-018, 008-160-017, 008-160-020, 008-160-019, 008-160-004, and the
5 accompanying water rights. See **Exhibit 4**, excerpt from Water Resources Map 3 showing
6 property of JL Robinson, attached hereto and included by reference. The parcels comprise
7 approximately 290 acres. This is a portion of the 362.9 acres previously owned by J.L.
8 Robinson. See page 51 of Schedule 1 of the Indian Creek Decree, attached hereto as **Exhibit 5**
9 and included by reference. As owner and successor in interest to the Robinsons, and pursuant to
10 the Indian Creek Decree, FRLT is entitled to a certain amount of the waters of Indian Creek.
11 This amount is stated with specificity in Schedule 6 (attached hereto as **Exhibit 6** and included
12 by reference), the following is a calculation of the volume of FRLT's water rights to Indian
13 Creek:

14 4.22 Cubic Feet per Second of water from Indian Creek

15 [Computation: Page 75 of Decree 4185 allocates to Robinsons 5.28 CFS
16 of water rights to Indian Creek in connection with Robinson's 362.9 acres.
17 FRLT owns approximately 290 acres, or 80.03% of that land.

18 Accordingly, FRLT is entitled to 80.03% of 5.28 CFS, or 4.22 CFS.]

19 Schedule 2 of the Decree, sets forth the location of the point of diversion for
20 FRLT's water right. (Page 58 of the Decree attached hereto as **Exhibit 7** and included by
21 reference.) That point is known as Point of Diversion No. 36. A distance of
22 approximately 2.5 miles separates POD 36 and the Heart K Ranch.

23 With the filing of this Petition, FRLT seeks to add a new POD from Indian Creek.
24 Without the additional point of diversion, FRLT would be required to rehabilitate the
25 historic ditch system, to transport the water approximately 2.5 miles, over property not
26 owned by FRLT. The scope and cost of such a project makes it impracticable.

27 The proposed location of the movable POD shall be located immediately adjacent
28 to or within the boundaries of the FRLT property, on parcel number 008-160-017. (Heart

1 K Ranch Map of Irrigation and APNs is attached hereto as **Exhibit 8** and included by
2 reference.) FRLT will use a portable, trailer-mounted pump and install a piping system
3 to convey the water to high ground along Antelope Lake Road. The water will be
4 conveyed by both the pipeline and existing surface ditches to irrigate pasture on the Heart
5 K. The pump is portable, so it can be removed during winter months when not in use.
6 The use of a portable pump means there is no need to install any physical infrastructure in
7 the creek, reducing impacts to the creek and allowing FRLT to adapt to natural changes
8 to the banks of the creek over time. FRLT will install a water-measuring device at the
9 point of diversion that will instantaneously measure and totalize the amount of water
10 being diverted. This metering device is required by the Watermaster and measures real
11 time flow and totalized use.

12 In preparation for this Petition, FRLT has complied with California Fish and
13 Game Code Section 1602 et seq., the Lake and Streambed Alteration Agreement
14 program. Accordingly, FRLT has notified and consulted with the California Department
15 of Fish and Wildlife concerning the proposed change in POD, and has obtained a Lake
16 and Streambed Alteration Agreement (“LSAA,” Attached hereto as **Exhibit 9** and
17 included by reference.) The LSAA defines the measures that FRLT must comply with to
18 protect fish and wildlife resources.

19 Granting this Petition will allow FRLT to complete its plan to conduct sustainable
20 ranching on its lands. The new POD will allow FRLT to irrigate lands that were
21 historically irrigated by the gravity-fed water system sourced at the historic POD.
22 Irrigation will improve forage production, and the condition of the plant communities in
23 the pastures that receive irrigation. Irrigation of these areas will reduce bare soil, and will
24 help reduce both invasive plants, as well as fire danger during the summer months.

25 FRLT plans to use the additional POD exclusively, but does not wish to abandon
26 the existing point of diversion in the event some future unforeseen circumstance would
27 prohibit it from utilizing the new POD.

28

1 FRLT is not requesting any expansion of the amount of water rights currently
2 allotted to it pursuant to Decree No. 4185. The pump at the proposed additional point of
3 diversion will be fitted with the above-described water measuring device as prescribed
4 and approved by the Watermaster. As it is with all decreed water users, Watermaster will
5 be in close communication with FRLT regarding 1st, 2nd, and 3rd priority water use.
6 Watermaster informs diverters on water availability and regulates diversions based on
7 conditions observed at gauge stations upstream and downstream of the point of diversion.

8 The creation of this additional POD will make for the efficient and beneficial use
9 of the waters of Indian Creek. It would eliminate a wasteful and costly attempt to
10 transport waters to the FRLT property from POD 36 by significantly decreasing the
11 distance the water will travel. Waste will be further decreased by the use of enclosed
12 pipes as opposed to an open ditch. Under no circumstances will FRLT use more than is
13 allotted to it under Decree No. 4185.

14 As owner of the subject lands and accompanying water rights, FRLT respectfully
15 requests an amendment of Decree No. 4185 creating an additional, movable point of
16 diversion. FRLT is not requesting additional amounts of water, nor is it requesting a
17 change of place or use, but simply a change in the point of diversion.

18 LEGAL ANALYSIS

19 In many cases involving appropriative water rights, the user petitions the State Water
20 Resources Control Board (hereinafter "Water Board") to obtain a change in point of diversion, or
21 place or purpose of use. (Water Code§ 1701.)¹ However, the Water Board is not the only
22 adjudicator authorized to review water right matters. "Long-established precedent, however,
23 declares that courts have concurrent jurisdiction in water right controversies." National

24
25 ¹ Before permission to make such a change is granted, the petitioner must establish that the change will not operate
26 to the injury of any legal user of the water involved. (Water Code § 1702.) After filing the petition for permission to
27 make such a change, the petitioner, if required by the Water Board, gives notice of the petition according to the
28 Water Board's determination; in all cases notifying the Department of Fish and Game in writing of the proposed
change. (Water Code§ 1703.) The Water Board may order a hearing regarding the proposed change, whether or not
a protest is filed with the Water Board. (Water Code§ 1704.) After the hearing, the Water Board shall grant or
refuse, as the facts warrant, permission to change the point of diversion, place of use, or purpose of use. (Water
Code§ 1705.)

1 Audubon Society v. Superior Court, (1983) 33 Cal.3d 419, 426. The courts’ jurisdiction is
2 particularly appropriate when, as here with the Indian Creek watershed, the water rights in the
3 watershed have already been defined by the court in a watershed-wide adjudication. Decree No.
4 4185 was such a watershed-wide adjudication. Appropriately, this Court retained “continuing
5 jurisdiction of the parties to this proceeding, and of the subject matter thereof, upon application
6 of any party hereto, or successors in interest, or upon its own motion, to review this decree and
7 change or modify the same as the interest of justice may require.” (See Indian Creek Decree,
8 p.82, paragraph 51.) “The retention of jurisdiction to meet future problems is an appropriate
9 exercise of equitable jurisdiction in litigation over water rights, particularly when the adjustment
10 of substantial public interests is involved.” City of Los Angeles v. City of Glendale, (1943) 23
11 Cal. 2d 68,81. By maintaining jurisdiction, the trial court can determine, on a case-by-case basis,
12 whether new or changed uses are in fact reasonable and beneficial. Tulare Dist. v. Lindsay-
13 Strathmore Dist., (1935) 3 Cal. 2d 489, 525. The petition for addition of a movable point of
14 diversion requires a modification of the decree and so falls directly under this Court’s retention
15 of jurisdiction in this matter.

16 In its exercise of its equitable jurisdiction over the Decree, the Court may choose to refer
17 to Water Code Sections 1700 et seq., which provide the criteria that the Water Board requires of
18 an applicant that seeks to amend its water right. Under the Water Code, the applicant’s proposal
19 must:

- 20 • not enlarge or increase the authorized rate, amount, or season of diversion;
- 21 • not operate to the injury of any legal user of the water involved;
- 22 • comply with any applicable requirements of the Fish and Game Code or the
23 federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.);

23 The proposed change meets all of these criteria.

24 *The proposed change will not increase the authorized rate, amount, or season of diversion*

25 As noted above, FRLT has a decreed right to 4.22 cfs from Indian Creek. 0.62 cfs is first
26 priority right, and 3.6 cfs is second priority. FRLT, like all other parties to the Indian Creek
27 Decree, meets these constraints by following the Indian Creek Decree Field Schedule. A copy of
28 the 2022 Field Schedule is attached as an example (**Exhibit 10**). To meter its usage and ensure it

1 meets the limits of the Field Schedule, FRLT will install a water-measuring device at the point of
2 diversion that will instantaneously measure and totalize the amount of water being diverted. The
3 diversion, as with all diversions subject to the Indian Creek Decree, will be closely monitored by
4 Watermaster, who will then regulate FRLT's diversion based on conditions observed at gauge
5 stations upstream and downstream of the point of diversion. FRLT's use is at all times regulated
6 by Watermaster pursuant to the terms of the Indian Creek Decree.

7
8 *The proposed change will not operate to the injury of any legal user of the water involved*

9
10 Upon obtaining a hearing date for this petition from the Court, FRLT shall serve via
11 certified mail a copy of the petition for the proposed modification on all persons with points of
12 diversion below Petitioner's proposed new point of diversion. FRLT will use the Watermaster
13 mailing list, which has been provided to FRLT pursuant to a non-disclosure agreement, and also
14 publish notice in the local publication, the Plumas Sun, with a link to a webpage that contains the
15 Petition. The webpage is located at [https://www.frlt.org/our-work/conserved-lands-in-the-](https://www.frlt.org/our-work/conserved-lands-in-the-feather-river-watershed/public-notice-heart-k-point-of-diversion/)
16 [feather-river-watershed/public-notice-heart-k-point-of-diversion/](https://www.frlt.org/our-work/conserved-lands-in-the-feather-river-watershed/public-notice-heart-k-point-of-diversion/), and a screenshot of the
17 webpage is included as **Exhibit 11**. The notice states that objections to the petition should be
18 filed with the court and mailed to the Petitioner within 30 days of service of the petition. Notice
19 shall include the hearing date and instructions for the submission of objections by any water
20 rights holders who claim injury.

21 FRLT has conducted preliminary outreach to downstream water rights holders, as well as
22 the Department of Fish and Wildlife ("CDFW") and the Department of Water Resources
23 (Watermaster). See **Exhibit 12**, March 1, 2022 Outreach Letter to Downstream Water Rights
24 Holders). FRLT also directly reached out to the Mill Race Group, the largest downstream water
25 user identified in the Indian Creek Decree. All responses have been favorable, no objections to
26 the proposal have been raised at the time of this Petition.

27 FRLT also applied to CDFW for a Lake and Streambed Alteration Agreement covering
28 the proposed change in the POD pursuant to Fish and Game Code Sections 1602 et seq. The

1 Lake and Streambed Alteration Program evaluates projects within the bed banks and channel of
2 stream that have the potential to adversely impact fish and wildlife resources. Exhibit 9.

3 FRLT also consulted with Watermaster. In fact, FRLT requested that Watermaster
4 participate in the project by acting to assist the Court to evaluate any objections that might be
5 raised by downstream water rights holders. Watermaster had served in this capacity during a
6 previous, related petition to amend Decree No. 4185 brought before this Court by Gonzalo
7 Gonzalez in 2004. Gonzalez had acquired a portion of the Heart K ranch and the Robinson water
8 right. FRLT now owns the remainder of both. Just as with this current petition, Gonzalez
9 petitioned the Court to change his POD from No. 36 (same as FRLT) to a movable POD at his
10 property. The Court approved the petition. (Exhibit 2).

11 While this Petition is almost identical to that of Gonzalez in 2004, Watermaster has
12 declined to participate. In his petition, Gonzalez referenced the amendment procedure outlined
13 in the *San Gregorio Creek Adjudication* (1993) Decree No. 355792 of the San Mateo County
14 Superior Court. The court in that case stated that any proposed modification to its decree include
15 a report by the Watermaster that: (a) summarized objections to the proposal; (b) evaluated which
16 objections were without merit; (c) analyzed whether the objections could be resolved by
17 conditions attached to the proposal, or if not, would injure any legal user of water; and (d)
18 unreasonably affect fish, wildlife, or other instream beneficial uses. In the Gonzalez petition,
19 Watermaster filed a five-page report that identified one objection, which was subsequently
20 withdrawn by the objecting party. (**Exhibit 13**, “2004 Watermaster Report.”)

21 The 2004 Watermaster Report stated that Gonzalez’ proposed change to his POD would
22 not injure any other water rights holders because changing the POD would not alter the
23 adjudicated season, place, or purpose of use, nor would it change the quantity and priorities of
24 Gonzalez decreed rights. (2004 Watermaster Report, p. 2.). The same conclusion applies here,
25 where Petitioner, like Gonzalez, seeks only to change its POD, not to alter the adjudicated
26 season, place or purpose of use, nor the quantity and priorities of its’ decreed rights

27 The 2004 Watermaster Report further acknowledged that a movable point of diversion
28 has precedent, citing to SWRCB License No. 9165, which “establishes boundaries within which

1 a ‘movable point of redirection’ can be used to divert ‘stored’ water conveyed in Indian
2 Creek...”.² (**Exhibit 14**, SWRCB License No. 9165.)

3
4 *The proposed change will comply with any applicable requirements of the Fish and Game Code*
5 *or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.)*

6
7 While the 2004 Watermaster Report also contained a section, the longest and most
8 detailed, evaluating fish and wildlife considerations, this evaluation has already been conducted
9 by CDFW and addressed in the Lake and Streambed Alteration Agreement. Fish and Game
10 Code section 1602 et seq. requires any person, state or local governmental agency, or public
11 utility to notify the California Department of Fish and Wildlife (CDFW) prior to beginning any
12 activity that may do one or more of the following

- 13 • Divert or obstruct the natural flow of any river, stream, or lake;
- 14 • Change the bed, channel, or bank of any river, stream, or lake;
- 15 • Use material from any river, stream, or lake; or
- 16 • Deposit or dispose of material into any river, stream, or lake.

17 Pursuant to Fish and Game Code Section 1603, CDFW must evaluate a proposed project and
18 “determine whether the activity may substantially adversely affect an existing fish and wildlife
19 resource.” If the department determines that the activity may have that effect, the department
20 shall provide a draft agreement that describes the fish and wildlife resources that the department
21 has determined the activity may substantially adversely affect and includes measures to protect
22 those resources. In the Lake and Streambed Alteration Agreement for this proposal, CDFW
23 identified potential risks to fish and wildlife and prescribed measures to protect against those
24 risks. Exhibit 9. Accordingly, the project as described in the LSAA complies with the Fish and
25 Game Code, which includes an evaluation of any potential impacts to endangered species.

26
27 _____
28 ² SWRCB License No. 9165 was formerly owned by FRLT, but recently transferred to the U.S. Forest Service as
part of a separate agreement. It provides precedent not only for a movable point of diversion, but a movable point of
diversion used by Petitioner on Petitioners’ land. The only difference is the source of the water.

1 *This Petition falls squarely within the Court's continuing jurisdiction over the Indian Creek*
2 *Decree.*

3
4 The only substantive task that would fall to the Court due to Watermaster's decision not
5 to produce a report is the evaluation of any objections raised by downstream water rights holders.
6 That is a task this Court is eminently qualified to undertake, though it is FRLT's intention to
7 resolve any objections before they need to be heard by the Court.

8
9 WHEREFORE, for the foregoing reasons, Petitioner and Successor in Interest FRLT
10 respectfully request the court make the following Order:

- 11 1. Contingent upon the expiration of the 30-day objection period, amend the Decree
12 entered on December 19, 1950, by the Honorable Ben V. Curler, to allow for the
13 creation of an additional, movable point of diversion of water from Indian Creek, said
14 movable point of diversion to be located within the boundaries of Parcel No. 008-
15 160-017, along Indian Creek, to be used for the benefit of the owners of Parcels Nos.
16 008-160-021, 008-160-018, 008-160-017, 008-160-020, 008-160-019, 008-160-004,
17 currently the Feather River Land Trust.

18
19 Dated: February 23, 2026

AARON BAKER, ESQ.

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22 _____
Attorney for Feather River Land Trust