GORDON H. DePAOLI
Nevada State Bar No. 0195
DALE E. FERGUSON
Nevada State Bar No. 4986
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Post Office Box 2311
Reno, Nevada 89511
Telephone: (775) 688-3000

Attorneys for Defendant,
WALKER RIVER IRRIGATION DISTRICT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	In Equity No. C-125-ECR Subfile No. C-125-B **WALKER RIVER IRRIGATION DISTRICT'S RESPONSE TO MOTION TO MODIFY CASE MANAGEMENT ORDER IN THE C-125-B CASE**

I. INTRODUCTION

Cross-Defendants David Haight and Tom Reviglio have filed a Motion to Modify Case Management Order (the "Motion"). The Motion includes several requests. One is to require parties to make initial disclosures of the legal bases for their claims and defenses within sixty (60) days of modification of the Case Management Order. Another is to allow document discovery immediately. Another is to allow dispositive motions by any party, apparently, at

any time, based on the initial disclosures and documents produced. The Motion suggests a mechanism and procedure for making document requests, responses, documents produced and other pleadings available to parties joined after the fact. Finally, the Motion includes a vague discussion concerning preservation of the status quo while litigation is pending.

The Walker River Irrigation District (the "District") was a participant in the process which resulted in the entry of the Case Management Order on April 18, 2000. That Order was entered after the filing of simultaneous motions, responses to motions, and replies from the District and Nevada, California, the United States, and the Walker River Tribe. Although the Order recognizes that the Magistrate Judge may change, modify and adjust it from time to time, such changes, modifications and adjustments should not alter the fundamental decisions made by the Court for the management of this matter without good and sufficient reason. That said, the District agrees that it is now time to undertake such procedures as may be necessary "so that the action may proceed as promptly as possible upon conclusion of service of process" as directed in the Case Management Order. *See*, Case Management Order, para. (11), pg. 9, lns. 15-17.

In the judgment of the District, the Case Management Order, as presently written, and without need for modification, provides ample authority and discretion for the Magistrate Judge to take such actions as may be necessary to meet the above objective and to allow Phase I of these proceedings to commence promptly on completion of service. In order to begin that process, the District suggests that the Magistrate Judge consider the actions described below.

II. PURSUANT TO PARAGRAPH (6) OF THE CASE MANAGEMENT ORDER, THE MAGISTRATE JUDGE SHOULD NOW ESTABLISH A SCHEDULE FOR COMPLETION OF SERVICE OF PROCESS.

Paragraph (6) of the Case Management Order allows the Magistrate Judge to "establish a schedule for completion of service of process which may be modified by further order from time to time as appropriate." Case Management Order, para. (6), pg. 7, lns. 5-7. The District

recognizes that in April of 2000 it was impossible to establish a realistic schedule for completion of service of process. However, several years have passed since the Court first authorized the United States and the Tribe to begin service of process, and significant progress has been made by them in that service. Establishment of a target date now for completion of service would be helpful for the Court and the parties to begin to do those things necessary to allow this action to proceed as promptly as possible on completion of service of process under the procedures established in the Case Management Order.

III. PURSUANT TO PARAGRAPH (10) OF THE CASE MANAGEMENT ORDER, THE COURT SHOULD DIRECT THE PARTIES BY A DATE CERTAIN TO JOINTLY OR SEPARATELY RECOMMEND PROCEDURES TO THE COURT FOR SERVICE OF PLEADINGS ON PARTIES TO THE LITIGATION, AND FOR MAKING DISCOVERY REQUESTS, DISCOVERY RESPONSES, AND DOCUMENTS PRODUCED AVAILABLE TO THE PARTIES TO THIS LITIGATION.

Paragraph (10) of the Case Management Order provides as follows:

> Following completion of service of process on the said counterclaims, the Magistrate Judge shall receive recommendations of the parties for procedures for scheduling and for the efficient management of the litigation given the number of parties to the case. Such procedures may include the use of common counsel, special procedures for service of pleadings, or any other mechanisms deemed likely to reduce the burdens on the parties and the court in a case of this magnitude.

Case Management Order, para. (10), pg. 8, lns. 19-26.

Although paragraph (10) of the Case Management Order contemplates that these recommendations be made following completion of service, it seems prudent that the Court begin to receive those recommendations at this time. Indeed, previously, the parties had commenced to consider such procedures.

Much of what the pending Motion requests depends upon having in place special procedures for making pleadings, discovery requests, discovery responses, and documents produced available to the hundreds of parties in this case, many of whom are not represented by counsel. The Motion includes a proposal to establish a website for purposes of posting requests

for production of documents, responses to requests for production of documents, and copies of documents produced, as well as making such information available at various public places within the area affected by this litigation. That proposal needs further analysis and evaluation with respect to its cost and how those costs might be funded. In addition, the efficacy of the proposal needs additional evaluation. Therefore, the Court should establish a schedule by which the parties would jointly or separately recommend procedures that encompass the need to have mechanisms for service of pleadings on, and making discovery available to, all parties to this action, particularly those who have filed a Notice of Appearance and Intent to Participate, but who have not engaged counsel.

IV. PURSUANT TO PARAGRAPH (11) OF THE CASE MANAGEMENT ORDER, THE COURT SHOULD ESTABLISH A SCHEDULE FOR SUBMISSION OF A LIST OF THRESHOLD ISSUES BY THE PARTIES, AND FOR MAKING A PRELIMNARY DETERMINATION OF THE THRESHOLD ISSUES TO BE ADDRESSED AT THE OUTSET OF THE LITIGATION.

Paragraph (11) of the Case Management Order provides:

> As soon as convenient after the entry of this order, and upon appropriate notice to the parties presently appearing in the case, the Magistrate Judge shall consider and make a preliminary determination of the threshold issues to be addressed at the outset of the litigation on the U.S./Tribe said counterclaims. Scheduling of such consideration shall go forward notwithstanding other proceedings provided for in this order. The list of threshold issues regarding said claims will not be finally resolved and settled by the Magistrate Judge until all appropriate parties are joined. Nevertheless, the parties are directed to identify all potential threshold issues promptly and to submit them to the Magistrate Judge for consideration, as he shall direct, so that action may proceed as promptly as possible upon conclusion of service of process.

Case Management Order at para. (11), pg. 9, lns. 4 -17.

Initially, the Court should direct the United States and the Tribe to disclose the bases for the Tribal Claims. The pending Motion would have all parties make an initial disclosure of the legal bases for their claims and defenses simultaneously within sixty (60) days of modification of the Case Management Order. In order to identify threshold issues not included in the Case Management Order, it is appropriate, and probably necessary, for the Tribe and the United

States to first disclose the legal bases for their claims. With that information, the parties will be in a better position to suggest, and the Magistrate Judge will be in a better position to consider and make a preliminary determination of, threshold issues to be addressed at the outset of the litigation.

V. ADJUSTMENTS, IF ANY, TO THE PROVISIONS IN THE CASE MANAGEMENT ORDER WITH RESPECT TO DISCOVERY, FINAL IDENTIFICATION OF THRESHOLD ISSUES, AND FILING OF DISPOSITIVE MOTIONS, SHOULD NOT BE CONSIDERED UNLESS AND UNTIL THE COURT HAS MADE A DETERMINATION OF THE PROCEDURES TO BE FOLLOWED WITH RESPECT TO SERVICE OF PLEADINGS AND OTHER SPECIAL PROCEDURES FOR THE EFFICIENT MANAGEMENT OF THE LITIGATION.

In 2000, the District took the position that the Case Management Order should allow "any party, at any time, to propound interrogatories and requests for production of documents to the United States and the Tribe concerning their contentions with respect to the claims alleged in their amended counterclaims." *See*, Joint Motion Concerning Case Management of Walker River Irrigation District, and State of Nevada and Proposed Order Concerning Case Management attached thereto as Exhibit A at paragraph 16 filed January 21, 2000. However, in response to that position, the Court in paragraph (15) of the Case Management Order determined as follows:

> Once the Magistrate Judge has finally determined the threshold issues, discovery shall be allowed to all parties on the threshold issues. Discovery shall also be permitted during that same time period concerning the basis for the Tribal Claims; such discovery shall be limited to propounding of interrogatories and requests for production of documents relating to the contentions of the U.S./Tribe with respect to the basis for the tribal Claims.

The District continues to believe that discovery should be permitted with respect to the bases for the Tribal Claims. It recognizes, however, the need for effective procedures for making service of that discovery on all parties, as well as making the responses to such discovery available to all parties. The District also recognizes that the United States and the Tribe should not be required to respond multiple times to identical discovery requests. The

Motion also recognizes that the procedures for service on all parties must be determined and in place in order to facilitate such discovery. Therefore, those procedures must be determined before discovery proceeds.

VI. THE COURT SHOULD NOT OTHERWISE MODIFY THE CASE MANAGEMENT ORDER.

Although it is not entirely clear, it seems that the Motion contemplates a change to the Case Management Order that would allow parties to bring dispositive motions on any legal basis, at any time, regardless of whether the dispositive motion is related to a threshold issue. The framework of the Case Management Order related to initial disposition of threshold issues should be maintained going forward. Some threshold issues may, in fact, involve matters which are dispositive of all or some portion of the Tribal Claims. However, dispositive motions unrelated to threshold issues would be an extreme departure from the Case Management Order, and is not justified at this time.

The Motion also includes a vague statement concerning maintenance of the status quo while the litigation is pending. There is insufficient information in that portion of the Motion for the District to understand what is contemplated by it. Moreover, the Proposed Order Amending Case Management Order includes no reference to maintenance of the status quo. If, at some point in time, a party believes that some sort of injunctive relief is required to preserve the status quo, the party or parties may file an appropriate motion with the Court which identifies the acts which the Court is being requested to enjoin, and sets forth the facts on which

///

///

///

///

///

the request is based. In that fashion, the requirements of Rule 65 of the Federal Rules of Civil Procedure and related case law will be satisfied.

Date: May 14, 2007

WOODBURN AND WEDGE

By: _____

Gordon DePaoli
Dale Ferguson
Woodburn and Wedge
6100 Neil Rd., #500
Reno, NV 89511-1149
775/688-3000
Attorneys for Walker River Irrigation District

CERTIFICATE OF MAILING

I certify that I am an employee of Woodburn and Wedge and that on the 14th day of May, 2007, I electronically filed the foregoing *Walker River Irrigation District's Response to Motion to Modify Case Management Order in the C-125-B Case* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

Marta Adams
maadams@ag.state.nv.us

Greg Addington
greg.addington@usdoj.gov

George Benesch
gbenesch@sbcglobal.net

Brian Chally
brian.chally@lvvwd.com

Ross E. de Lipkau
RdeLipkau@parsonsbehle.com

William J. Duffy
william.duffy@dgslaw.com

Andrew Galvin
drew.galvin@americantower.com

Sylvia Harrison
sharrison@mcdonaldcarano.com

Simeon Herskovits
herskovitx@westernlaw.org

John W. Howard
johnh@jwhowardattorneys.com

Michael D. Hoy
mhoy@nevadalaw.com

Kirk C. Johnson
kirk@nvlawyers.com, chris@nvlawyers.com

Debbie Leonard
dshosteck@mcdonaldcarano.com

Michael F. Mackedon
falonlaw@phonewave.net

Erin K.L. Mahaney
emahaney@waterboards.ca.gov

Malissa Hathaway McKeith
mckeith@lbbslaw.com

Michael R. Montero
mrm@eloreno.com

Marvin W. Murphy
marvinmurphy@sbcglobal.net

David L. Negri
david.negri@usdoj.gov

Michael W. Neville
michael.neville@doj.ca.gov, wallace.greene@doj.ca.gov

Michael A. Pagni
mpagni@mcdonaldcarano.com

Karen A. Peterson
kpeterson@allisonmackenzie.com, egarrison@allisonmackenzie.com

G. David Robertson
gdavid@nvlawyers.com

James Spoo
spootoo@aol.com

John P. Schlegelmilch
jpslaw@netscape.com

Susan Schneider
susan.schneider@usdoj.gov

Laura Schroeder
counsel@water-law.com

Sheri M. Schwartz
ajarvis@lbbslaw.com

Stacey Simon
ssimon@mono.ca.gov

Julian C. Smith, Jr.
joylyn@smithandharmer.com
Bryan L. Stockton
blstockt@ag.state.nv.us

J.D. Sullivan
jd@mindenlaw.com

Harry W. Swainston
hwswainston@earthlink.net

Wes Williams
wwilliams@stanfordalumni.org

Charles S. Zumpft
zumpft@brooke-shaw.com

and I further certify that I served a copy of the foregoing to the following non-CM/ECF participants by U.S. Mail, postage prepaid, this 14th day of May, 2007:

Allen Biaggi
Dir. of Conservation & Natural Resources
State of Nevada
901 S. Stewart St.
Carson City, NV 89701

William W. Quinn
Office of the Field Solicitor
Department of the Interior
401 W. Washington St., SPC 44
Phoenix, AZ 85003

Wesley G. Beverlin
Malissa Hathaway McKeith
Lewis, Brisbois, Bisgaard & Smith LCP

Hugh Ricci, P.E.
Division of Water Resources
State of Nevada

221 N. Figueroa St., Suite 1200
Los Angeles, CA 90012

Cheri Emm-Smith
Mineral County District Attorney
P. O. Box 1210
Hawthorne, NV 89415

Tim Glidden
U. S. Dept. of the Interior, Office of the Secretary, Div. Of Indian Affairs
1849 C St. N.W.
Mail Stop 6456
Washington, D.C. 20240

Nathan Goedde, Staff Counsel
California Dept. of Fish and Game
1416 Ninth St., #1335
Sacramento, CA 95814

Mary Hackenbracht
Deputy Attorney General
State of California
1515 Clay St., 20th Floor
Oakland, CA 94612-1413

John Kramer
Dept. of Water Resources
1416 Ninth St.
Sacramento, CA 95814

Todd Plimpton
Belanger & Plimpton
1135 Central Ave.
P.O. Box 59
Lovelock, NV 89419

901 S. Stewart St.
Carson City, NV 89701

Marshall S. Rudolph, Mono County Counsel
Stacy Simon, Deputy County Counsel
Mono County
P. O. Box 2415
Mammoth Lakes, CA 93546-2415

Steve Rye
Chief Deputy District Attorney
Lyon County
31 S. Main St.
Yerington, NV 89447

William E. Schaeffer
P. O. Box 936
Battle Mountain, NV 89820

James Shaw
Water Master
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

Kenneth Spooner
General Manager
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Garry Stone
United States District Court Water Master
290 S. Arlington Ave., 3rd Floor
Reno, NV 89501

Holly Dewar

Holly Dewar