John W. Howard, CA Bar No. 80900
JW Howard Attorneys, Ltd.
625 Broadway, Ste. 1206
San Diego, CA 92101
619-234-2842

William E. Schaeffer, NV Bar No. 2789
PO Box 936
Battle Mountain, NV 89820
775-635-3227

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Petitioner, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et., al., Defendants.	) In Equity Case No. C-125))) MOTION TO ALLOW TARDY FILING OF) OPPOSITION TO PETITION) OF THE WALKER RIVER PAIUTE TRIBE FOR) APPROVAL OF STATE ENGI9NEER'S) RULING NO. 5746)))

COME NOW, Defendants' Joseph and Beverly Landolt, by and through their local attorney, William E. Schaeffer, Esq. and respectfully request that this Honorable Court allow the tardy filing of the previously filed Opposition to stand for the reason that said local counsel did not receive the Tribe's Petition nor the Court's Order granting the abbreviated briefing schedule until Monday, July 16, 2007 which was the same day that said Opposition was due according to said Order. Further, despite the short notice, said Defense Counsel prepared and faxed a copy of said Opposition to the Tribe's Attorney, Wes Williams, before 5:00pm on July 17th. Said Defense Counsel also attempted to file the Opposition electronically on that date but could not figure out how to do it. There ensued several days of e-mail exchanges with this Court's personnel first in Las Vegas and then in Reno before, with the kind help of a clerk named Amber Freeman, the undersigned Defense Counsel was able to figure out how to electronically file documents with this Honorable Court.

The Landolts also ask this Court to ignore and/or strike any objections to the tardy filing raised by anyone other than the parties of record before the State Engineer in regards to Ruling

No. 5746. Despite the fact that we are in Federal Court and despite the fact that we got here by way of a petition by the Tribe, this is in fact and intention an appeal of the State Engineer's decision. Such appeals are governed by NRS 233B.130 et seq. NRS 233B.130 limits participation in such an appeal to the responding agency (here, the State Engineer) and "all parties of record to the administrative proceeding." Since the Landolts' protest was separate from the other protests involved (except insofar as it or they referenced each other) that would limit participation to just those involved in the Landolt protest which - to this writer's knowledge and understanding - would include only the Tribe and arguably the Circle Bar N Ranch. Subsection 5 specifically provides that the "court shall ... dismiss from the proceeding any agency or person who ... was not a party to the administrative proceeding" below. Accordingly, no one should be heard to object to the lack of timeliness or other deficiency of the Landolts' Opposition to the Tribe's Petition except the Tribe. However, the Tribe was not damaged by said untimeliness since its Counsel was faxed a copy in a timely manner.

WHEREFORE, Defendants Joseph and Beverly Landolt, respectfully request this Honorable Court to allow the tardy filing of the Landolts' Opposition to the Petition of the Walker river Paiute Tribe for Approval of the State Engineer's Ruling No. 5746.

DATED this 25th day of July, 2007

_____
WILLIAM E. SCHAEFFER
Attorney for Joseph and Beverly Landolt