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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA, ) In Equity Case No. C-125  
10 Petitioner, )  
11 vs. ) MOTION TO ALLOW TARDY FILING OF  
12 WALKER RIVER IRRIGATION ) OPPOSITION TO PETITION  
DISTRICT, a corporation, et., al., ) OF THE WALKER RIVER PAIUTE TRIBE FOR  
13 ) APPROVAL OF STATE ENGINEER'S  
Defendants. ) RULING NO. 5746  
14 )

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

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

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

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

17  
18 DATED this 25<sup>th</sup> day of July, 2007

19 WILLIAM E. SCHAEFFER  
Attorney for Joseph and Beverly Landolt