

1 GORDON H. DePAOLI
Nevada State Bar No. 195
2 DALE E. FERGUSON
Nevada State Bar No.4986
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
Reno, Nevada 89511
5 Telephone: 775 / 688-3000

6 Attorneys for WALKER RIVER IRRIGATION
7 DISTRICT

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

10	UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125
		)	SUBFILE NO. C-125-B
11	Plaintiff,)	
)	
12	WALKER RIVER PAIUTE TRIBE,)	
)	
13	Plaintiff-Intervenor,)	
		)	WALKER RIVER IRRIGATION
14	v.	)	DISTRICT'S RESPONSE TO JOINT
		)	MOTION OF MINERAL COUNTY,
15	WALKER RIVER IRRIGATION DISTRICT,	)	WALKER RIVER PAIUTE TRIBE,
16	a corporation, et al.,	)	AND UNITED STATES OF
		)	AMERICA TO SET STATUS
17	Defendants.	)	CONFERENCE ON PENDING
		)	ISSUES
18	_____)	
)	
19	UNITED STATES OF AMERICA,)	
	WALKER RIVER PAIUTE TRIBE,)	
20)	
	Counterclaimants,)	
21)	
	v.)	
22)	
	WALKER RIVER IRRIGATION DISTRICT,)	
23	et al.,)	
)	
24	Counterdefendants.)	
25	_____)	

26 **I. Introduction.**

27 By Joint Motion, the United States, Walker River Paiute Tribe (the "Tribe") and
28 Mineral County have requested the Court to schedule a status conference in Subfiles C-125-B

1 and C-125-C “to consider a number of issues that have been pending before the Court for some
2 time” (the “Request for Status Conference”). Doc. 1591. The Request for Status Conference is
3 captioned as though these separate Subfiles have been consolidated. Moreover, the Request for
4 Status Conference describes the Subfiles as “related C-125 proceedings.” Doc. 1591 at 2-3.
5 There has been no such consolidation, and except to the extent that counsel and some of the
6 parties are common to both proceedings, Subfiles C-125-B and C-125-C are not related.
7 Moreover, the current status of Subfile C-125-B is vastly different than that of C-125-C. A
8 very brief history of each follows.
9

10 **II. The Claims of the United States and Walker River Tribe - Subfile C-125-B.**

11 Subfile C-125-B involves the claim of the United States and the Tribe for additional
12 water rights for the Walker River Indian Reservation (the "Reservation"). Among other things
13 in C-125-B, the United States and Tribe seek recognition of a right to store water in Weber
14 Reservoir, and a federal reserved water right for up to 167,460 acres of land added to the
15 Walker River Indian Reservation in the 1930s.
16

17 In addition to seeking a right to store water in Weber Reservoir and a water right for
18 lands added to the Reservation in the 1930s, the Tribe seeks recognition of a federal reserved
19 water right to use groundwater on Reservation lands including those lands added to the
20 Reservation in the 1930s. The United States, in addition to seeking a right to store water in
21 Weber Reservoir and a water right for lands added to the Reservation in the 1930s, seeks a
22 groundwater right for use on the Reservation, and for federal reserved and other water rights for
23 the benefit of the Yerington Paiute Tribe, Bridgeport Paiute Indian Colony, Garrison and
24 Cluette allotments, certain other individual allotments, the Hawthorne Army Ammunition
25 Plant, the United States Department of Agriculture (Toiyabe National Forest), the United States
26 Marine Corps and the Bureau of Land Management.
27
28

1 After extensive briefing, on April 19, 2000, the Court entered the Case Management
2 Order ("CMO"). *See*, Subfile C-125-B, Doc. 108. In the CMO, the Court recognized that the
3 case as a whole is simply too big and too complex to process on a reasonable basis without
4 bifurcation and other management. It, therefore, entered an order to manage the case.

5
6 The CMO bifurcates the claims of the Tribe and United States for the Walker River
7 Indian Reservation (the "Tribal Claims") from all of the other claims raised by the United
8 States (the "Federal Claims"). Except as expressly provided in the CMO, all discovery and
9 other proceedings in the action are stayed. CMO, p. 4, Ins. 20-24; Doc. 108. The CMO
10 requires the Tribe and United States to serve their amended pleadings and related service
11 documents on and thereby join numerous individuals and entities who hold surface and
12 underground water rights within the Walker River Basin. It groups these individuals and
13 entities into nine different categories. CMO, pp. 5-6; Doc. 108.

14
15 The CMO expressly provides that no answers or other pleading will be required except
16 upon further order of the Magistrate Judge. It also provides that no default shall be taken for
17 failure to appear. CMO, p. 12, Ins. 22-25; Doc. 108.

18 The CMO divides the proceedings concerning the Tribal Claims into two phases. Phase
19 I will consist of "threshold issues as identified and determined by the Magistrate Judge." Phase
20 II will "involve completion and determination on the merits of all matters relating to [the]
21 Tribal Claims." CMO, pg. 11, Ins. 11-18; Doc. 108. Additional phases of the proceedings will
22 "encompass all remaining issues in the case." *Id.*, p. 11, Ins. 25-26.

23
24 The identification of threshold issues is left to the Magistrate Judge, and those issues
25 shall "not be finally resolved and settled by the Magistrate Judge until all appropriate parties
26 are joined." CMO, p. 9; Doc. 108. Included among the possible threshold issues to be
27 considered for inclusion by the Magistrate Judge are issues related to the Court's jurisdiction
28 and equitable defenses to the Tribal Claims. *See*, CMO, pgs. 9-11; Doc. 108.

1 The CMO also directs the procedures to be followed in connection with the disposition
2 of the threshold issues. First, it allows for discovery on those issues. Second, it allows for
3 written discovery concerning the bases for the Tribal Claims. It stays all other discovery.
4 *CMO*, p. 13, lns. 4-15; Doc. 108. It provides for disposition of the threshold issues by motion,
5 evidentiary hearing, or both. *Id.*, p. 13, ln. 16 - p. 14, ln. 2.

6
7 Prior to March of 2009, the Magistrate Judge had begun the process to identify the
8 threshold issues in connection with Subfile C-125-B.

9 **III. The Mineral County Motion to Intervene - Subfile C-125-C.**

10 Subfile C-125-C involves an October 25, 1994 motion of Mineral County to intervene
11 in the proceeding which adjudicated and now administers water rights on the Walker River
12 system. *See, United States v. Walker River Irrigation District*, 11 F.Supp. 158 (D.Nev. 1935),
13 *rev'd* 104 F.2d 334 (9th Cir. 1939). Mineral County seeks permission to file an "Amended
14 Complaint in Intervention" and a Motion for Preliminary Injunction. Mineral County's
15 proposed "Amended Complaint in Intervention" seeks "an adjudication and reallocation of the
16 waters of Walker River to preserve minimum levels in Walker Lake" under the public trust
17 doctrine. To achieve that goal, Mineral County seeks "the right to, at least, 127,000 acre feet of
18 flows annually reserved from the Walker River." The Motion for Preliminary Injunction asks
19 the Court to require water right holders on the Walker River system to allow 260,000 acre feet
20 of water to reach Walker Lake in 1995. It asks that thereafter water right holders be enjoined
21 so that 240,000 acre feet of water reaches Walker Lake annually until this litigation is
22 concluded.
23

24
25 On February 9, 1995, the Court entered an Order Requiring Service of and Establishing
26 Briefing Schedule Regarding the Motion to Intervene of Mineral County (the "Service Order").
27 The Service Order required Mineral County to serve all claimants to the waters of Walker
28 River with its filing by May 10, 1995. Because Mineral County has sought and received

1 numerous extensions of time to complete service as originally ordered by the Court, the
2 original schedule established by the Court with respect to the Motion to Intervene is no longer
3 meaningful.

4 The Court has not entered a case management order in this Subfile.

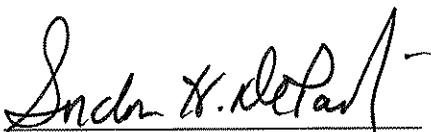
5 **IV. Separate Status Conferences in Subfiles C-125-B and C-125-C.**

6 The Walker River Irrigation District (the "District") is not opposed to the Court setting
7 a status conference in Subfile C-125-B. Similarly, the District is not opposed to the Court
8 setting a status conference in Subfile C-125-C. For the convenience of the Court, the parties
9 and their counsel, both status conferences could be set for the same day. Indeed, the Court has
10 done this in the past. However, unless and until a motion for consolidation has been filed and
11 briefed, and the Court has entered an order consolidating these two proceedings, the status
12 conferences must and properly should remain separate and distinct.

13 Finally, in the event that the Court decides to schedule a separate status conference in
14 each of Subfile C-125-B and Subfile C-125-C, the District respectfully requests that the Court
15 also establish a schedule for the parties to file Status Reports in connection with each Subfile
16 several days prior to the date set for each status conference. Such an exchange of Status
17 Reports prior to each status conference will be beneficial to the Court and to the participating
18 parties.

19 DATED this 9th day of August, 2010.

20
21
22
23 WOODBURN AND WEDGE

24 By: 

25 Gordon H. DePaoli
26 Dale E. Ferguson
27 6100 Neil Road, Suite 500
28 Reno, Nevada 89511
Attorneys for WALKER RIVER
IRRIGATION DISTRICT

CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge and that on the 9th day of August, 2010, I electronically served the foregoing *Walker River Irrigation District's Response To Joint Motion of Mineral County, Walker River Paiute Tribe, and United States of America To Set Status Conference On Pending Issues* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record via their email addresses.

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 9th day of August, 2010:

- | | |
|--|---|
| Robert L. Auer
Lyon County District Attorney
31 S. Main St.
Yerington, NV 89447 | Jeff Parker
Deputy Atty. General
Office of the Attorney General
100 N. Carson St.
Carson City, NV 89701-4717 |
| Wesley G. Beverlin
Malissa Hathaway McKeith
Lewis, Brisbois, Bisgaard & Smith LCP
221 N. Figueroa St., Suite 1200
Los Angeles, CA 90012 | Todd Plimpton
Belanger & Plimpton
1135 Central Ave.
P.O. Box 59
Lovelock, NV 89419 |
| Leo Drozdoff
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 |
| 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 | Marshall S. Rudolph, Mono County Counsel
Stacy Simon, Deputy County Counsel
Mono County
P. O. Box 2415
Mammoth Lakes, CA 93546-2415 |
| Nathan Goedde, Staff Counsel
California Dept. of Fish and Game
1416 Ninth St., #1335
Sacramento, CA 95814 | William E. Schaeffer
P. O. Box 936
Battle Mountain, NV 89820 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Robert L. Hunter, Superintendent
Western Nevada Agency
Bureau of Indian Affairs
311 E. Washington St.
Carson City, NV 89701-4065

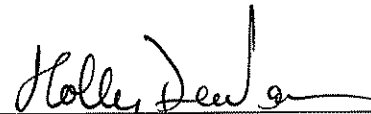
Jason King
Division of Water Resources
State of Nevada
901 S. Stewart St.
Carson City, NV 89701

Timothy A. Lukas
P.O. Box 3237
Reno, NV 89505

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
U.S. District Court Water Master
290 S. Arlington Ave., 3rd Floor
Reno, NV 89501



Holly Dewar