

1 GORDON H. DePAOLI
Nevada State Bar No. 00195
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**
FOR THE DISTRICT OF NEVADA

9	UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125
10		)	SUBFILE NO. C-125-B
11	Plaintiff,)	
12	WALKER RIVER PAIUTE TRIBE,)	
13	Plaintiff-Intervenor,	)	PROPOSED THRESHOLD ISSUES
14	v.	)	SUBMITTED BY NEVADA
15	WALKER RIVER IRRIGATION DISTRICT,	)	DEPARTMENT OF WILDLIFE,
16	a corporation, et al.,	)	JOSEPH AND BEVERLY
17	Defendants.	)	LANDOLT, CIRCLE BAR N
18		)	RANCH, LLC, ET AL., AND
19	UNITED STATES OF AMERICA,	)	WALKER RIVER IRRIGATION
20	WALKER RIVER PAIUTE TRIBE,	)	DISTRICT
21	Counterclaimants,)	
22	v.)	
23	WALKER RIVER IRRIGATION DISTRICT,)	
24	et al.,)	
25	Counterdefendants.)	

26 Pursuant to the Court's relevant Orders, counsel for the United States, the Walker River
27 Paiute Tribe, Mineral County, the Walker Lake Working Group, Nevada, California, Landolts,
28 Circle Bar N Ranch, LLC, et al., and Walker River Irrigation District have met in an effort to

1 agree upon the threshold issues to be considered in accordance with the Case Management
2 Order. They have been unsuccessful in reaching such an agreement.

3 Set forth below are issues which the Nevada Department of Wildlife, Joseph and
4 Beverly Landolt, Circle Barn N Ranch, LLC, et al., and the Walker River Irrigation District
5 contend are appropriate for consideration as threshold issues. In submitting this list, we do not
6 contend that all of these issues should be addressed simultaneously. We request that the Court
7 establish a schedule pursuant to which the parties would provide argument as to why a
8 particular issue is a threshold issue, and as to how and when the issue ought to be addressed.
9 We suggest an initial filing of simultaneous briefs on those questions, with a period of time
10 allowed for a simultaneous response to the initial filings, and finally with a time allowed for a
11 simultaneous reply to the responses. Thereafter, the Court might schedule a hearing to
12 determine the threshold issues.
13
14

15 **PROPOSED THRESHOLD ISSUES**

16 1. Whether this Court has jurisdiction to adjudicate new claims for additional surface
17 and/or underground water in Case C-125, a case in which a final judgment has been entered, or
18 must a new and separate action form the basis for these claims; and if so, to what extent should
19 the Court exercise its jurisdiction in these matters?

20 2. Whether a claim to a right for conservation storage of water in Weber Reservoir may be
21 made under the implied reservation of water rights doctrine, which was established in *Winters*
22 *v. United States*, 207 U.S. 564 (1908), or under any other theory of federal common law?
23

24 3. Whether a claim to a right for underground water may be made under the implied
25 reservation of water rights doctrine, which was established in *Winters v. United States*, 207
26 U.S. 564 (1908), or under any other theory of federal common law?

27 4. Whether the express provisions of the Walker River Decree prevent the Tribe and the
28 United States from asserting any claim in and to the waters of the Walker River and its

1 tributaries that could have been asserted as of April 14, 1936, including a claim to a right for
2 conservation storage?

3 5. Whether any water, surface or underground, was impliedly reserved when lands were
4 added to the Reservation in 1936 in light of the following: (1) the language and history of the
5 Act of Congress that authorized the addition of those lands; (2) the fact that prior to their
6 addition to the Reservation, those lands were designated as public domain and opened to entry
7 under the Desert Lands Act; and (3) the fact that the lands were added for grazing purposes.

9 6. Whether the United States may reserve water, under the federally implied reservation of
10 water doctrine, from a water source that is not within the lands being reserved?

11 7. Whether the doctrine of claim (res judicata) and/or issue preclusion (collateral estoppel)
12 bar any claim for:

13 a. federally reserved surface water rights for the lands added to the Reservation as
14 a result of the 1936 legislation ("1936 Lands");

16 b. additional water from an underground source for lands that were within the
17 Reservation at the time the Walker River Decree was entered;

18 c. additional water from an underground source for the 1936 Lands;

19 d. storage rights, other than those for regulatory purposes, for those lands that were
20 within the Reservation at the time the Walker River Decree was entered; and

21 e. storage rights, other than those for regulatory purposes, for the 1936 Lands.

22 8. Whether the doctrine of laches may be asserted against the counterclaims filed by the
23 United States and Tribe?

24 a. Whether the doctrine of laches bars the conservation storage claims of the
25 United States and the Tribe for the lands within the Reservation as it existed at the time of entry
26 of the Walker River Decree?
27
28

1 b. Whether the doctrine of laches bars the United States' and the Tribe's claims for
2 a water right from underground sources for the Reservation as it existed at the time of the entry
3 of the Walker River Decree?

4 c. Whether the doctrine of laches bars the United States' and Tribe's claims for
5 federally reserved water rights including surface water, underground water, and/or conservation
6 storage claims for the 1936 Lands?

7
8 9. Whether other equitable defenses bar some or all of the said Tribal Claims?

9 a. Whether the doctrine of estoppel bars:

10 (1) any claim for a water right from underground sources within the
11 Reservation as it existed at the time of entry of the Walker River Decree;

12 (2) any claim for a water right from underground sources within the 1936
13 Lands;

14 (3) any claim for conservation storage water rights for use on lands within
15 the Reservation as it existed at the time of entry of the Walker River Decree; and

16 (4) any claim for conservation storage water rights for use on the 1936
17 Lands.

18
19 b. Whether the Defendants may assert detrimental reliance as a defense to the
20 counterclaims of the United States and the Tribe?

21 c. Whether past actions by the Tribe and/or the United States, with regard to the
22 use of water and the allowance of waste, are sufficient to bar equitable relief?

23
24 10. Whether through its commencement and resolution of claims against the United States,
25 the Tribe's claims (a) for water from underground sources, (b) for a conservation storage water
26 right for Weber Reservoir, and/or (c) for a implied reserved water right for the 1936 Lands
27 have been waived and are therefore extinguished?

28

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

11. If the Tribe has no claim to underground water on the Reservation based upon the implied reservation of water doctrine, or based upon any other theory of federal common law, does the State of Nevada have jurisdiction to regulate the use of underground water on the Reservation? Should the court decide this question?

12. Whether, regardless of the extent of hydrologic connection between surface and underground water, this court is required to accept the distinction drawn between surface water rights and groundwater rights provided by California and Nevada law?

13. Are the holders of surface water rights established under federal law entitled to protection from the use of underground water beyond the protection provided to holders of surface water rights established under state law?

DATED this 24th day of June, 2008.

By: Marta Adams
Marta Adams
Sr. Deputy Attorney General
Conservation, Natural Resources
100 North Carson Street
Carson City, Nevada 89701
Attorneys for NEVADA DEPARTMENT OF WILDLIFE

By: _____
Laura Schroeder
Schroeder Law Offices
1915 N.E. 39th Avenue
P.O. Box 12527
Portland, Oregon 97212-0527
Attorneys for CIRCLE BAR N RANCH, LLC, et al.

By: _____
John W. Howard
1508 West Lewis Street
San Diego, California 92103
Attorneys for JOSEPH AND BEVERLY LANDOLT

By: _____
Gordon H. DePaoli
Dale E. Ferguson
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511
Attorneys for WALKER RIVER IRRIGATION DISTRICT

1 11. If the Tribe has no claim to underground water on the Reservation based upon the
2 implied reservation of water doctrine, or based upon any other theory of federal common law,
3 does the State of Nevada have jurisdiction to regulate the use of underground water on the
4 Reservation? Should the court decide this question?

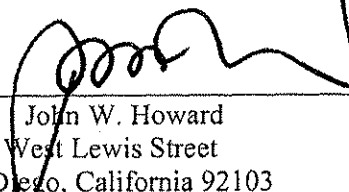
5 12. Whether, regardless of the extent of hydrologic connection between surface and
6 underground water, this court is required to accept the distinction drawn between surface water
7 rights and groundwater rights provided by California and Nevada law?
8

9 13. Are the holders of surface water rights established under federal law entitled to
10 protection from the use of underground water beyond the protection provided to holders of
11 surface water rights established under state law?

12 DATED this 24th day of June, 2008.

13
14
15 By: _____
16 Marta Adama
17 Sr. Deputy Attorney General
18 Conservation, Natural Resources
19 100 North Carson Street
20 Carson City, Nevada 89701
21 Attorneys for NEVADA DEPARTMENT OF
22 WILDLIFE

By: _____
Laura Schroeder
Schroeder Law Offices
1915 N.E. 39th Avenue
P.O. Box 12527
Portland, Oregon 97212-0527
Attorneys for CIRCLE BAR N RANCH,
LLC, et al.

23 By:  _____
24 John W. Howard
25 1508 West Lewis Street
26 San Diego, California 92103
27 Attorneys for JOSEPH AND BEVERLY
28 LANDOLT

By: _____
Gordon H. DePaoli
Dale E. Ferguson
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511
Attorneys for WALKER RIVER
IRRIGATION DISTRICT


1 11. If the Tribe has no claim to underground water on the Reservation based upon the
2 implied reservation of water doctrine, or based upon any other theory of federal common law,
3 does the State of Nevada have jurisdiction to regulate the use of underground water on the
4 Reservation? Should the court decide this question?

5 12. Whether, regardless of the extent of hydrologic connection between surface and
6 underground water, this court is required to accept the distinction drawn between surface water
7 rights and groundwater rights provided by California and Nevada law?
8

9 13. Are the holders of surface water rights established under federal law entitled to
10 protection from the use of underground water beyond the protection provided to holders of
11 surface water rights established under state law?

12 DATED this 24th day of June, 2008.

13
14
15 By: _____
16 Marta Adama
17 Sr. Deputy Attorney General
18 Conservation, Natural Resources
19 100 North Carson Street
20 Carson City, Nevada 89701
21 Attorneys for NEVADA DEPARTMENT OF
22 WILDLIFE

By:  _____
Laura Schroeder
Schroeder Law Offices
1915 N.E. 39th Avenue
P.O. Box 12527
Portland, Oregon 97212-0527
Attorneys for CIRCLE BAR N RANCH,
LLC, et al.

23 By: _____
24 John W. Howard
25 1508 West Lewis Street
26 San Diego, California 92103
27 Attorneys for JOSEPH AND BEVERLY
28 LANDOLT

By: _____
Gordon H. DePaoli
Dale E. Ferguson
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511
Attorneys for WALKER RIVER
IRRIGATION DISTRICT

1 11. If the Tribe has no claim to underground water on the Reservation based upon the
2 implied reservation of water doctrine, or based upon any other theory of federal common law,
3 does the State of Nevada have jurisdiction to regulate the use of underground water on the
4 Reservation? Should the court decide this question?

5 12. Whether, regardless of the extent of hydrologic connection between surface and
6 underground water, this court is required to accept the distinction drawn between surface water
7 rights and groundwater rights provided by California and Nevada law?
8

9 13. Are the holders of surface water rights established under federal law entitled to
10 protection from the use of underground water beyond the protection provided to holders of
11 surface water rights established under state law?

12 DATED this 24th day of June, 2008.

13
14
15 By: _____
16 Marta Adamo
17 Sr. Deputy Attorney General
18 Conservation, Natural Resources
19 100 North Carson Street
20 Carson City, Nevada 89701
21 Attorneys for NEVADA DEPARTMENT OF
22 WILDLIFE

By: _____
Laura Schroeder
Schroeder Law Offices
1915 N.E. 39th Avenue
P.O. Box 12527
Portland, Oregon 97212-0527
Attorneys for CIRCLE BAR N RANCH,
LLC, et al.

23 By: _____
24 John W. Howard
25 1508 West Lewis Street
26 San Diego, California 92103
27 Attorneys for JOSEPH AND BEVERLY
28 LANDOLT

By: Gordon H. DePaoli
Gordon H. DePaoli
Dale E. Ferguson
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511
Attorneys for WALKER RIVER
IRRIGATION DISTRICT

CERTIFICATE OF SERVICE

1
2 I certify that I am an employee of Woodburn and Wedge and that on the 24th day of
3 June, 2008, I electronically served the foregoing *Proposed Threshold Issues Submitted by*
4 *Nevada Department of Wildlife, Joseph and Beverly Landolt, Circle Bar N Ranch. LLC, et al.,*
5 *and Walker River Irrigation District* on the following via their email addresses:
6

7 Linda Ackley
lackley@water.ca.gov

8 Marta Adams
9 maadams@ag.state.nv.us, payoung@ag.state.nv.us

10 Greg Addington
11 greg.addington@usdoj.gov, judy.farmer@usdoj.gov, joanie.silvershield@usdoj.gov

12 George Benesch
gbenesch@sbcglobal.net

13 Karen Peterson
14 kpeterson@allisonmackenzie.com, jjonas@allisonmackenzie.com

15 Simeon Herskovits
16 herskovitx@westernlaw.org

17 John W. Howard
18 johnh@jwhowardattorneys.com, elisam@jwhowardattorneys.com

19 Michael D. Hoy
Michael D Hoy mhoy@nevadalaw.com

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

22 David L. Negri
23 david.negri@usdoj.gov

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

25 Susan Schneider
26 susan.schneider@usdoj.gov

27 Laura Schroeder
28 counsel@water-law.com

1 Stacey Simon
2 ssimon@mono.ca.gov

3 Wes Williams
4 wwilliams@standfordaluni.org

5 and I further certify that I served a copy of the foregoing to the following by U.S. Mail, postage
6 prepaid, this 24th day of June, 2008:

7 Kenneth Spooner
8 General Manager
9 Walker River Irrigation District
10 P.O. Box 820
11 Yerington, NV 89447

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

12 Mary Hackenbracht
13 Deputy Attorney General
14 State of California
15 1515 Clay St., 20th Floor
16 Oakland, CA 94612-1413

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

17 Garry Stone
18 United States District Court Water Master
19 290 S. Arlington Ave., 3rd Floor
20 Reno, NV 89501

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

21 John Kramer
22 Dept. of Water Resources
23 1416 Ninth St.
24 Sacramento, CA 95814

Wesley G. Beverlin
Malissa Hathaway McKeith
Lewis, Brisbois, Bisgaard & Smith LCP
221 N. Figueroa St., Suite 1200
Los Angeles, CA 90012

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

Robert L. Auer
Lyon County District Attorney
31 S. Main St.
Yerington, NV 89447

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

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

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

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

6 Todd Plimpton
7 Belanger & Plimpton
8 1135 Central Ave.
9 P.O. Box 59
10 Lovelock, NV 89419

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

11 Jeff Parker
12 Deputy Atty. General
13 Office of the Attorney General
14 100 N. Carson St.
15 Carson City, NV 89701-4717

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

16
17
18
19
20
21
22
23
24
25
26
27
28

