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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 SUBFILE NO. C-125-B **PROPOSED THRESHOLD ISSUES SUBMITTED BY NEVADA DEPARTMENT OF WILDLIFE, JOSEPH AND BEVERLY LANDOLT, CIRCLE BAR N RANCH, LLC, ET AL., AND WALKER RIVER IRRIGATION DISTRICT**
UNITED STATES OF AMERICA, WALKER RIVER PAIUTE TRIBE, Counterclaimants, v. WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants.	

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

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

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

PROPOSED THRESHOLD ISSUES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Whether the doctrine of estoppel bars:

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

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

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

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

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

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

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

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.

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CERTIFICATE OF SERVICE

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

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

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