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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 WALKER RIVER PAIUTE TRIBE,
13 Plaintiff-Intervenor,

14 vs.

15 WALKER RIVER IRRIGATION DISTRICT,
A corporation, et al.,
16 Defendants.

17 -----
18 UNITED STATES OF AMERICA, WALKER
RIVER PAIUTE TRIBE,
19 Counterclaimants,

20 vs.

21 WALKER RIVER IRRIGATION DISTRICT,
et al.,
22 Counterdefendants.

CASE NO. 3:73-cv-127-ECR-RAM
IN EQUITY NO. C-125-B-ECR
SUBFILE NO. C-125-B

**NEVADA DEPARTMENT OF WILDLIFE'S
RESPONSE BRIEF ON THRESHOLD
ISSUES**

23 The Nevada Department of Wildlife (NDOW), through its counsel Catherine Cortez
24 Masto, Nevada Attorney General, and Chief Deputy Attorney General, Marta Adams, files this
25 brief in response to opening briefs filed in this case concerning threshold issues which should
26 be considered in this multi-tiered litigation. For purposes of its opening brief, NDOW
27 suggested that appropriate threshold issues (1) logically belong at the initial phase of the

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1 litigation following service; (2) are either purely legal issues or ones which require minimal
2 factual development and (3) will otherwise facilitate this Court's management of the case.

3 In its opening brief, NDOW suggested six threshold issues addressing jurisdiction, the
4 scope of the litigation, and certain equitable defenses consistent with those enumerated in the
5 Case Management Order (CMO). These issues present a means whereby the Court can
6 distill essential elements of the case and significantly reduce the unnecessary expenditure of
7 judicial and party resources needed for ultimate resolution of the litigation.

8 **THE CASE MANAGEMENT ORDER CONTEMPLATES CONSIDERATION OF**
9 **THRESHOLD ISSUES AFTER COMPLETION OF SERVICE.**

10 The CMO carefully lays out categories of water rights' holders and users subject to
11 service. In addition and relevant for purposes of determining appropriate threshold issues, the
12 CMO directs the Magistrate Judge to address threshold issues directed toward resolution of
13 the Tribal claims. In fact, the Tribal claims are to be addressed in Phase 1 following service of
14 process. CMO at 8. Only when service of process has been completed on designated
15 categories of water right holders and water users, the Magistrate Judge is directed to
16 "consider and make a preliminary determination of the threshold issues to be addressed at the
17 outset of the litigation on the U.S./Tribe counterclaims." CMO at 9.

18 The United States, the Walker River Paiute Tribe (Tribe) and Mineral County suggest
19 that among the threshold issues is the issue of completion of service of process. An
20 examination of the CMO shows that the Court actually contemplated completion of service
21 before it addresses threshold issues pertaining to the merits of the Tribal claims. Based on
22 the express direction from the Court, the threshold issues are intended to address the Tribal
23 claims themselves in order to focus the litigation and possibly resolve those issues capable of

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1 resolution. To that end, NDOW respectfully submits that this Court's determination of
2 threshold issues should include those issues which go to the merits of the Tribal claims.

3 DATED this 10th day of October 2008.

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CERTIFICATE OF SERVICE

I declare that I am an employee of the State of Nevada and on this 10th day of October 2008, I served a copy of the foregoing **NEVADA DEPARTMENT OF WILDLIFE'S RESPONSE BRIEF ON THRESHOLD ISSUES**, by U.S. District Court CM/ECF Electronic filing to:

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I further declare that and on this 5th day of September 2008, I served a copy of the foregoing **NEVADA DEPARTMENT OF WILDLIFE’S RESPONSE BRIEF ON THRESHOLD ISSUES**, by mailing a true and correct copy thereof, properly addressed with postage prepaid, to the following:

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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