CATHERINE CORTEZ MASTO
Attorney General
MARTA A. ADAMS
Chief Deputy Attorney General
Nevada Bar No. 1564
Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701-4717
Telephone: 775-684-1237
Facsimile: 775-684-1108
Attorneys for State of Nevada
Department of Wildlife

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, A corporation, et al., Defendants. ---------- UNITED STATES OF AMERICA, WALKER RIVER PAIUTE TRIBE, Counterclaimants, vs. WALKER RIVER IRRIGATION DISTRICT, et al., 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**

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

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100 N. Carson St.
Carson City, NV
89701-4717

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

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

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

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

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

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

DATED this 10th day of October 2008.

CATHERINE CORTEZ MASTO
Attorney General

By: Marta A Adams

MARTA A. ADAMS
Nevada State Bar No. 1564
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1237
Attorneys for State of Nevada
Department of Wildlife

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:

- **Linda Ackley**
  lackley@water.ca.gov
- **Marta A. Adams**
  MAdams@ag.nv.gov,cbrackley@ag.nv.gov
- **Gregory W. Addington**
  greg.addington@usdoj.gov,judy.farmer@usdoj.gov,joanie.silvershield@usdoj.gov
- **George N. Benesch**
  gbenesch@sbcglobal.net
- **Linda A. Bowman**
  office@bowman.reno.nv.us,office@webmail.hotspotbroadband.com
- **T. Scott Brooke**
  brooke@brooke-shaw.com,marianne@brooke-shaw.com
- **Brian Chally**
  brian.chally@lvvwd.com
- **Gordon H. De Paoli**
  gdepaoli@woodburnandwedge.com
- **William J Duffy**
  william.duffy@dgslaw.com
- **Cheri K Emm-Smith**
  districtattorney@mineralcountynv.org
- **Dale E Ferguson**
  dferguson@woodburnandwedge.com,cmayhew@woodburnandwedge.com
- **Andrew D. Galvin**
  drew.galvin@americantower.com
- **Noelle R Gentilli**
  ngentill@water.ca.gov,esoderlu@water.ca.gov
- **Sylvia L. Harrison**
  sharrison@mcdonaldcarano.com
- **Simeon M Herskovits**
  simeon@communityandenvironment.net
- **John W Howard**
  johnh@jwhowardattorneys.com,elisam@jwhowardattorneys.com

Office of the Attorney General
100 N. Carson St.
Carson City, NV
89701-4717

- **Michael D Hoy**
  mhoy@nevadalaw.com,cstewart@nevadalaw.com,tchrissinger@nevadalaw.com,service@nevadalaw.com
- **Kirk C. Johnson**
  kirk@nvlawyers.com,chris@nvlawyers.com
- **Debbie Leonard**
  dshosteck@mcdonaldcarano.com,smelendez@mcdonaldcarano.com,pmiller@mcdonaldcarano.com
- **Michael F. Mackedon**
  falonlaw@phonewave.net
- **Erin K.L. Mahaney**
  emahaney@waterboards.ca.gov
- **Malissa Hathaway McKeith**
  mckeith@lbbslaw.com
- **Michael R. Montero**
  mrm@eloreno.com,lwatson@eloreno.com
- **Marvin W. Murphy**
  marvinmurphy@sbcglobal.net
- **David L. Negri**
  david.negri@usdoj.gov
- **Michael Neville**
  michael.neville@doj.ca.gov.cory.marcelino@doj.ca.gov
- **Michael A. Pagni**
  mpagni@mcdonaldcarano.com,dshosteck@mcdonaldcarano.com,spierallini@mcdonaldcarano.com
- **Karen A Peterson**
  kpeterson@allisonmackenzie.com,nlillywhite@allisonmackenzie.com,voneill@allisonmackenzie.com
- **G. David Robertson**
  gdavid@nvlawyers.com,kirk@nvlawyers.com,chris@nvlawyers.com
- **William E Schaeffer**
  lander_lawyer@yahoo.com
- **John P Schlegelmilch**
  jpslaw@netscape.com
- **Susan L. Schneider**
  susan.schneider@usdoj.gov,christopher.watson@sol.doi.gov,yvonne.marsh@usdoj.gov,eileen.rutherford@usdoj.gov,catherine.wilson@sol.doi.gov
- **Laura A Schroeder**
  counsel@water-law.com,Katherine@water-law.com,tau@water-law.com,c.moore@water-law.com
- **Stacey Simon**
  ssimon@mono.ca.gov

Office of the Attorney General
100 N. Carson St.
Carson City, NV
89701-4717

- **Julian C Smith , Jr**
  joylyn@smithandharmer.com
- **James Spoo**
  spootoo@aol.com,jjrbau@hotmail.com
- **Lynn L Steyaert**
  lls@water-law.com,tau@water-law.com,counsel@water-law.com
- **Bryan L Stockton**
  bstockton@ag.nv.gov,sgeyer@ag.nv.gov
- **J. D. Sullivan**
  jd@mindenlaw.com,joesullivan@mindenlaw.com,gkaufmann@mindenlaw.com,clint@mindenlaw.com,attyjoesullivan@hotmail.com,gene_kaufmann@hotmail.com
- **Harry W Swainston**
  hwswainston@earthlink.net
- **Louis S Test**
  twallace@htag.reno.nv.us
- **Westfork**
  kirk@nvlawyers.com
- **Wes Williams**
  wwilliams@stanfordalumni.org
- **Charles S Zumpft**
  zumpft@brooke-shaw.com
- **Ross E. de Lipkau**
  RdeLipkau@parsonsbehle.com,LBagnall@parsonsbehle.com

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.

Linda Ackley
Department of Water Resources
1416 Ninth Street, Room 1104
Sacramento, CA 94236-0001

Office of the Attorney General
100 N. Carson St.
Carson City, NV
89701-4717

Kelly R. Chase
P.O. Box 2800
Minden, NV 89423-

James T. Fousekis
2848 Garber Street
Berkeley, CA 94705

Susan Fousekis
2848 Garber Street
Berkeley, CA 94705

Daniel N. Frink
California Water Resources Control Board
P.O. Box 100
Sacramento, CA 94814-

Nathan Goedde
California Department of Fish and Game
1416 9th Street Ste 1335
Sacramento, CA 95814

Mary Hackenbracht
California Attorney General's Office
1300 I Street, Suite 1101
PO Box 944255
Sacramento, CA 94244-2550

Robert L. Hunter
Western Nevada Agency
311 East Washington Street
Carson City, NV 78701-4065

George M. Keele
George M. Keele, APC
1692 Country Road
Suite A
Minden, NV 89423

John Kramer
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Donald B. Mooney
Law Offices of Donald B. Mooney
129 C Street
Suite 2
Davis, CA 95616

David Moser
McCutchen, Doyle, Brown, Et Al.
Three Embarcadero Center,
Suite 1800
San Francisco, CA 94111

///

Ragan, Leslie and Steven

Mary Rosaschi
P.O. Box 22
Wellington, NV 89444

Stephen B Rye
Lyon Count District Attorney
31 South Main Street
Yerington, NV 89447

William J Shaw
Brooke & Shaw, Ltd.
1590 Fourth Street
P.O. Box 2860
Minden, NV 89423-

Gary A Sheerin
Gary A. Sheerin, Law Office of
177 W Proctor Street
Suite B
Carson City, NV 89703

Garry Stone
Water Master
290 South Arlington Ave
Reno, NV 89501

Walker Lake Water Dist. G.I.D.
175 Wassuk Way
Walker Lake, NV 89415

Carole Brackett
Employee of the State of Nevada
Office of the Attorney General

Office of the
Attorney General
100 N. Carson St.
Carson City, NV
89701-4717