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9	Attorneys for Mineral County	
10	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA	
11	***	•
12	UNITED STATES OF AMERICA,	
13))
14	Plaintiff,)) IN EQUITY NO. C-125-RCJ-WGC
15	WALKER RIVER PAIUTE TRIBE,	Subproceeding: C-125-B
16	Plaintiff-Intervenor,)
17	VS.) 3:73-CV-00127-RCJ-WGC
18	WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.,	MINERAL COUNTY RESPONSE TO COURT'S AUGUST 2, 2012 ORDERS
19		CONCERNING THRESHOLD ISSUES
20	Defendants.	AND TIMING AND NECESSITY OF ANSWERS
21	MINERAL COUNTY,	
22	Proposed Plaintiff-Intervenor))
23	VS.))
	WALKER RIVER IRRIGATION DISTRICT,	
24	a corporation, et al.))
25	Proposed Defendants.	
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Pursuant to the Court's Order during the August 2, 2012, status conference in the above-captioned subproceeding, Mineral County hereby submits the following Response summarizing and referencing Mineral County's positions and previous filings related to threshold issues and the timing and necessity of answers. Mineral County hereby incorporates by reference its 2008 and 2009 filings on threshold issues and answers referenced below.

I. Threshold Issues

The Court's April 18, 2000, Case Management Order ("CMO") in subproceeding C-125-B directs the Magistrate Judge 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, ¶11 (Doc. No. 108).¹ On April 24, 2008, pursuant to Minutes of the Court dated August 20, 2007 (Doc. No. 1221), February 1, 2008 (Doc. No. 1304), and April 15, 2008 (Doc. No. 1322), after an unsuccessful attempt to reach agreement on a list of proposed threshold issues, Mineral County, the United States and Walker River Paiute Tribe, and Defendants Walker River Irrigation District, Nevada Department of Wildlife, Joseph and Beverly Landolt, and Circle Bar N Ranch, submitted separate lists of proposed threshold issues and requested briefing on what constitutes the proper list of threshold issues. Briefing took place in the fall of 2008, but the Court has yet to determine the proper list of threshold issues in this case.

Mineral County's list of threshold issues, submitted to the Court on June 24, 2008 (Doc. No. 1362), is as follows:

¹ Unless otherwise noted, all Doc. Nos. cited in this summary are to the C-125-B subproceeding.

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a. Service

- 1. Should the schedule for completion of service in the C-125-B case be adjusted?
- 2. How will the determination be made whether and when service in the C-125-B case is complete?
- 3. Is publication appropriate for any remaining potential defendants in the C-125-B case?

b. Jurisdiction

- Does the Decree Court have jurisdiction to adjudicate the Tribal Claims to both ground and surface water?
- 2. Does the Decree Court have jurisdiction over groundwater in this case?
- 3. Does the Decree Court have jurisdiction over groundwater used pursuant to state law outside the exterior boundaries of the Walker River Paiute Indian Reservation?

c. Applicable Law

- 1. What law governs the pumping of groundwater on and off the Walker River Paiute Indian Reservation by the Tribe or the United States on its behalf and how should the Court resolve any conflicts in applicable law?
- 2. Is the Decree Court required to accept the distinction drawn between surface water and groundwater rights provided by California and Nevada law?

As explained in greater detail in Mineral County's threshold issues briefing submitted in 2008 (Doc. Nos. 1412, 1441, and 1455), by its nature, a preliminary threshold issue would appear to be one that properly is decided at the outset of litigation in order, like other pretrial

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tools, to "aid the efficient presentation of a case in order to maximize the chances of a fair and just result." Cf. Hon. Milton Pollack, Pretrial Procedures More Effectively Handled, 65 F.R.D. 475, 477 (1975) (discussing generally the proper objectives of pretrial procedures). Mineral County's list of threshold issues include those that properly are addressed at the outset of litigation, i.e., issues of service, jurisdiction, and applicable law. Mineral County's list is consistent with the CMO's evident purpose of designating threshold issues to simplify this complex litigation and organize the case in such a way as to address simpler, more easily decided issues that require minimal resources before deciding issues that require significant expenditure of resources and time.

Conversely, a number of the issues proposed by the Primary Defendants are factually intensive, go to the merits of the Tribal Claims, and do not seem proper for the Court to address at this stage of the case. Designation of threshold issues that require extensive discovery and go to the substantive merits of the Tribal Claims would not serve to streamline litigation, but could well result in unnecessary discovery. Such an approach also would be contrary to the CMO's phased approach. For these reasons, and for those more thoroughly explained in Mineral County's 2008 Threshold Issues briefing, threshold issues should be limited to those of a procedural or choice of law nature that properly are addressed at the outset of litigation and should not include those that go to the merits of the Tribal Claims.

II. Timing and Necessity of Answers

In early 2009, pursuant to the Minutes of the Court dated December 3, 2008 (Doc. No. 1468), the primary parties (Mineral County, the United States, Walker River Paiute Tribe, Walker River Irrigation District, Nevada Department of Wildlife, Joseph and Beverly Landolt, and Circle Bar N Ranch) briefed the issue of timing and necessity of Answers. As noted in its

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1	Response to the United States of America's and Walker River Paiute Tribe's Brief Regarding		
2	When Answers Need to be Filed in This Action (Doc. No. 1497), Mineral County has no		
3	objection to the United States and Walker River Paiute Tribe's treatment of answers in their		
4	January 16, 2009 Brief Regarding When Answers Need to be Filed in This Action (Doc. No.		
5	1487).		
6 7			
8	Respectfully submitted this 20 th day of August, 2012,		
9			
10	/s/ SIMEON M. HERSKOVITS		
11	Simeon M. Herskovits, Nevada Bar No. 11155		
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16	/s/ SEAN A. ROWE		
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1	CERTIFICATE OF SERVICE		
2 3	I hereby certify that on this 20th day of August, 2012, I electronically filed the foregoing MINERAL COUNTY BRIEF ON THRESHOLD ISSUES AND TIMING AND NECESSITY OF ANSWERS with the Clerk of the Court using the CM/ECF system, which		
4	will send notification of such filing to the email addresses that are registered for this case;		
5	and I further certify that on this 20th day of August, 2012, I caused a copy of the forgoing to b served on the following non CM/ECF participants by U.S. Mail, postage prepaid,:		
6	served on the following non CM/ECF partic	ripants by U.S. Mail, postage prepaid,:	
7	Athena Brown, Superintendent	District Attorney for Lyon County	
8	Western Nevada Agency Bureau of Indian Affairs	31 South Main Street Yerington, NV 89447	
9	311 E. Washington Street Carson City, NV 89701-4065	Torington, TCV 05 TT7	
10			
11	Leo Drozdoff Dept. of Conservation & Natural Res.	William J. Shaw Brooke & Shaw, Ltd	
12	State of Nevada 901 S. Stewart St. Suite 1003	P.O. Box 2860 Minden, NV 89423	
13		William, NV 69423	
14	Carson City, NV 89701		
15	Jason King, State Engineer Division of Water Resources	George M. Keele 1692 County Road, Ste. A	
16	State of Nevada	Minden, NV 89423	
17	901 S. Stewart St., Suite 202 Carson City, NV 89701		
18	Arthur B. Walsh		
19	Los Angeles City Attorney's Office PO Box 51-111		
20	111 North Hope Street, Suite 340 Los Angeles, CA 90054		
21			
22			
23		/s/ Simeon Herskovits Simeon Herskovits	
24		Silicon Holskovits	
25			
26			
27			
	II		