Scott B. McElroy
Alice E. Walker
GREENE, MEYER & McELROY, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302
303/442-2021

Kelly R. Chase
P.O. Box 2800
Minden, Nevada 89423
702/782-3099

Attorneys for the Walker River Paiute Tribe

Greg Addington, Assistant U.S. Attorney
Susan L. Schneider, Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
Denver, Colorado 80202
303/312-7308

Attorneys for the United States of America

Gordon H. DePaoli
Woodburn & Wedge
6100 Neil Rd., Suite 500
Reno, NV 89511
775/688-3010

Attorney for the Walker River Irrigation District

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al. Defendants.	IN EQUITY NOs. C-125-ECR; C-125-B **PRE-HEARING STATUS REPORT**

The Court has set October 1, 2004, as the date for a status conference before the Magistrate Judge in the C-125-B subproceeding. *Minutes of the Court*, No. C-125-B (July 20, 2004). The United States, the Walker River Paiute Tribe ("Tribe"), and the Walker River Irrigation District ("District") respectfully suggest that the following issues should be discussed at the October 1 hearing.

I. MOTION TO STAY LANDOLT MOTION FOR ORDER TO SHOW CAUSE.

On March 10, 2004, Joseph and Beverly Landolt filed a *Motion for Order to Show Cause re Contempt; Memorandum of Points and Authorities in Support of Motion for Order to Show Cause; Declaration of David Haight* (Mar. 10, 2004) ("Landolt Motion"). In response to the Landolt Motion, the Tribe filed the *Motion to Stay Responses to and Court's Consideration of Motion for Order to Show Cause re Contempt, or, Alternatively, to Dismiss Without Prejudice* (Apr. 19, 2004) ("Tribe's Motion"). Additionally, the District filed the *Walker River Irrigation District's Points and Authorities in Opposition to Motion for Order to Show Cause re Contempt* (Apr. 19, 2004) ("District's Opposition").

By the *Minutes of the Court* (July 14, 2004), the Court referred the Tribe's Motion, "to the Magistrate Judge for consideration and decision." The United States, the Tribe and the District respectfully suggest that the Magistrate Judge hear argument on the Tribe's Motion to stay or, alternatively, dismiss the Landolts' motion for an order to show cause without prejudice during the pendency of the ongoing settlement negotiations. The United States, the Tribe and the District respectfully suggest that the hearing scheduled for October 1, 2004 would be a beneficial time to also consider the Tribe's Motion since all of the parties will be present before the Court and this issue is now fully briefed. The undersigned counsel for the Tribe has communicated with Mr. Howard regarding the inclusion of the Tribe's Motion in the October 1 hearing. Mr. Howard does not object to expanding the scope of the October 1 hearing, to the extent the Court requires argument to resolve the Tribe's Motion. The undersigned counsel for the Tribe has communicated with counsel for the other parties to the C-125 proceeding, and the C-125-B and

C-125-C subproceedings, and they have indicated that they do not object to the consideration of the Tribe's Motion at the October 1, 2004 hearing.

The United States, the Tribe and the District wish to emphasize that their suggestion applies only to the Tribe's Motion, that is, whether the Court should stay, or alternatively, dismiss without prejudice the Landolt Motion. The Court has ruled that "[t]he parties will not be required to respond to the merits of the Landolt motion (#622) until the present motion of the Tribe (#680) is ruled upon by the Court." *Minutes of the Court* (May 13, 2004). Thus, the October 1, 2004 hearing should not be addressed to the merits of the Landolt Motion, but rather, only to whether that motion should be stayed, or alternatively, dismissed without prejudice as a result of the settlement negotiations.

II. CASE MANAGEMENT ORDER AND STATUS OF SERVICE.

Pursuant to the *Order Governing Mediation Process* (May 27, 2003), all matters identified under the *Case Management Order* (Apr. 18, 2000) are stayed pending the ongoing settlement negotiations, except for service upon water rights claimants in the C-125-B and C-125-C subproceedings. *Order Governing Mediation Process* ¶ 2(c). The United States and the Tribe have been working to mail service packets to potential counter-defendants according to the groups of potential counter-defendants identified in Paragraph 3 of the *Case Management Order*. On May 26, 2004, the United States filed the *Report of the United States of America Concerning Status of Service on Certain Persons and Entities* (May 26, 2004), by which the United States provided the Court with a comprehensive update of service efforts and asked the Court to take action with respect to various of the potential counter-defendants.

The United States, the Tribe and the District respectfully suggest that at the October 1, 2004 hearing, the Court consider the *Report of the United States of America Concerning Status of Service on Certain Persons and Entities*, and the requested actions set forth therein.

III. NOTICE AND SERVICE UPON ADDITIONAL SERVED PARTIES, AND MANAGEMENT BY THE CLERK OF THE COURT.

As a result of the ongoing service efforts, parties have entered notices of appearance in the C-125-B subproceeding. Some of those parties are not represented by counsel, and it is likely that as service efforts progress, additional unrepresented parties will join the C-125-B subproceeding. The United States, the Tribe and the District are concerned about the identification of the appropriate procedure by which the parties and the Clerk of the Court may provide notice to those parties. It is particularly important that this issue be discussed so that the Clerk of the Court can effectively manage a significant number of additional parties in the C-125-B subproceeding.

The United States, the Tribe and the District respectfully suggest that the Court consider the question of service and notice to the additional parties who appear in the C-125-B subproceeding, and management of that large number of parties by the Clerk of the Court.

Date: Sept. 23, 2004

Respectfully submitted,

Greg Addington, Assistant U.S. Attorney
Susan L. Schneider, Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
Denver, Colorado 80202
303/312-7308

Attorneys for the United States of America

Gordon H. DePaoli
Woodburn & Wedge
6100 Neil Rd., Suite 500
Reno, NV 89511
775/688-3010

Attorney for the Walker River Irrigation District

Scott B. McElroy, Alice E. Walker
Greene, Meyer & McElroy, P.C.
1007 Pearl St., #220
Boulder, CO 80302
303/442-2021

Kelly R. Chase
P.O. Box 2800
Minden, NV 89423
775/782-3099

By: Alice E. Walker
Alice E. Walker

Attorneys for the Walker River Paiute Tribe

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-Hearing Status Report was sent by U.S. Mail, postage prepaid, this 23rd day of September, 2004, to the following:

Marta Adams
Deputy Nevada Attorney General
100 N. Carson St..
Carson City, NV 89701

Greg Addington
Asst. U.S. Attorney
U.S. Department of Justice
100 W. Liberty, #600
Reno, NV 89501

George Benesch
9432 Double R Blvd., Suite B
Reno, NV 89521-5977

Linda A. Bowman
Law Office of Linda A. Bowman Ltd.
540 Hammill Lane
Reno, NV 89511

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

James Clear
U.S. Dept. of Justice
P.O. Box 7611
Washington, D.C. 20044

Ross E. deLipkau
Marshall, Hill, Cassas & deLipkau
P.O. Box 2790
Reno, NV 89505

Gordon H. DePaoli
Dale E. Ferguson
Woodburn and Wedge
P.O. Box 2311
Reno, NV 89505-2790

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

Cherri Emm-Smith
11165 Silver Lane
Silver Springs, NV 89429

Mary Hackenbracht
Deputy California Attorney General
P.O. Box 944255
Sacramento, CA 94244

Treva J. Hearne
Law Offices of Treva J. Hearne
557 Washington St., Lower Level
Reno, NV 89503

Simeon Herskovits
Western Environmental Law Center
P.O. Box 1507
Taos, NM 87571

John W. Howard
Thomas J. McKinney
JW Howard Attorneys, Ltd.
625 Broadway, Suite 1206
San Diego, CA 92101

Robert L. Hunter, Superintendent
Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

John Kramer
Department of Water Resources
1416 - 9th Street
Sacramento, CA 95814

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

Stephen M. MacFarlane
U.S. Dept. of Justice
501 I Street, Suite 9-700
Sacramento, CA 95814-2322

Erin Mahaney, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

Hank Meshorer, Special Litigation Counsel
U.S .Department of Justice - Tax Div.
Ben Franklin Station
P.O. Box 683
Washington, D.C. 20044-0683

David Moser
McCutchen, Doyle, Brown
3 Embarcadero Cntr., Suite 1800
San Francisco, CA 94111

David L. Negri
U.S. Department of Justice
161 E. Mallard Dr., Suite A
Boise, ID 83706

Michael W. Neville
Deputy California Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-3664

Todd Plimpton
Belanger & Plimpton
1135 Central Ave.
PO Box 59
Lovelock, NV 89419

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

Hugh Ricci, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

Andrew H. Sawyer
P.O. Box 100
Sacramento, CA 95812

William E. Schaeffer
PO Box 936
Battle Mountain, NV 89820

Susan L. Schneider
Attorney for the United States of America
United States Department of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, CO 80202

Laura A. Schroeder
P.O. Box 12527
Portland, OR 97212

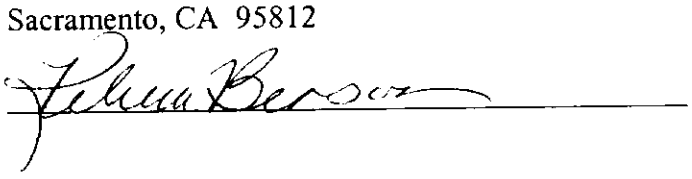
James Shaw
Chief Deputy Water Commissioner
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

Stacey Simon
Deputy County Counsel
Mono County
P.O. Box 2415
Mammoth Lakes, CA 93546

Stuart L. Somach
DeCuir & Somach
813 6th Street, 3rd Floor
Sacramento, CA 95814-2403

Garry Stone
290 South Arlington Ave.
Reno, NV 89501

R. Michael Turnipseed, P.E.
Dept. of Conservation & Natural Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89706

Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Craig M. Wilson
P.O. Box 100
Sacramento, CA 95812