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

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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, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al. Defendants.	IN EQUITY NO. C-125-ECR; Subproceeding: C-125-B **REPLY OF UNITED STATES OF AMERICA AND WALKER RIVER PAIUTE TRIBE TO RESPONSE OF CIRCLE BAR N RANCH, ET AL., TO PROPOSED AGENDA ITEMS FOR DECEMBER 1, 2004 STATUS CONFERENCE**

The United States of America and the Walker River Paiute Tribe ("Tribe"), herein reply to the *Response to United States of America and Walker River Paiute Tribe's List of Proposed Agenda Items for December 1, 2004 Status Conference* (Nov. 23, 2004) ("Circle Bar N Ranch Response"). As a preliminary matter, nothing in *The United States of America's and the Walker River Paiute Tribe's List of Proposed Agenda Items for December 1, 2004, Status Conference* (Nov. 16, 2004) ("Proposed Agenda") contained any substantive argument. Rather, the sole

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purpose of the Proposed Agenda was to identify issues for discussion on December 1, 2004. The United States and the Tribe filed the Proposed Agenda in accordance with the *Minutes of Court* (Oct. 1, 2004), directing that "[a] status report shall be submitted to the Court two weeks in advance of the status conference to identify the issues that need to be discussed." *Id.* at 2.

Circle Bar N Ranch, however, believes that the Court established "a motion schedule for the parties regarding continuing the stay to allow mediation which expires on December 31, 2004. That motion schedule provided that the mediation parties had until November 1, 2004 to file a motion to continue mediation . . . ." Circle Bar N Ranch Response at 1-2. The undersigned counsel for the United States and the Tribe have extensively reviewed the *Transcript of Status Conference before the Honorable Robert A. McQuaid, Jr., United States Magistrate Judge* (Oct. 1, 2004) ("Transcript"), and the *Minutes of Court* (Oct. 1, 2004), and no such "motion schedule" is contained in either document. Rather, at the status conference held on October 1, 2004, the Court stated that the topic of whether the parties wish to continue the mediation process and the stay of the C-125-B and C-125-C subproceedings should be listed among the things that the parties will discuss with the Court at the December 1, 2004 status conference. *See* Transcript at 34. Accordingly, the United States and the Tribe included that issue in the proposed list of topics for discussion on December 1, 2004. Proposed Agenda at 2 (item 4).

The Court also ordered that "[a] status report shall be submitted to the Court two weeks in advance of the status conference to identify the issues that need to be discussed." *Minutes of Court* at 2 (Oct. 1, 2004). In addition to the Proposed Agenda, the parties also filed the *Joint Report of Mediating Parties* (Nov. 17, 2004), by which they informed the Court that they "have agreed to file a report with the Court no later than December 17, 2004 stating their respective

positions as to whether the Court should extend the stay and if so for how long." *Id.* at 2. The United States and the Tribe do not dispute the need for the Court's review of the question whether to extend the mediation process, and continue the stay of the C-125-B and C-125-C subproceedings. *See* Circle Bar N Ranch Response at 2 (requesting "sufficient time" for the non-mediating parties to respond to any request to extend the mediation process). However, any consideration by the Court of the question of continuation of the mediation process may only occur after the parties to the mediation process have informed the Court whether they wish to continue those settlement efforts.

Since the parties to the mediation process have not yet requested that the Court extend the mediation process and the stay of the C-125-B and C-125-C subproceedings, Circle Bar N Ranch's request for time to response to any such request is premature. Similarly, the *Opposition to Extension of Mediation Process* (Nov. 16, 2004), filed by Joseph and Beverly Landolt, is not yet ripe since no one has requested the extension of the mediation process. The Court should stay all briefing regarding continuation of the mediation process until someone has actually requested the extension of the mediation process.[1]

The United States and the Tribe take exception to the claim that they were required to file a brief by November 1, 2004, since the Court issued no such order. Briefing on the question of continuation of the mediation process and associated stay of the C-125-B and C-125-C subproceedings should only occur if and when the parties to the mediation process request such a

[1]Assuming that the Landolt opposition is a pleading within the meaning of LR 7-2, the date for responses to the Landolt opposition presently is December 6, 2004. The United States and the Tribe respectfully submit that the response date should be modified in accordance with a comprehensive briefing schedule to address all filings addressing the continuation of the mediation process and the stay of the C-125-B and C-125-C subproceedings.

continuation. The Court will receive such request on or before December 17, 2004. The United States and the Tribe respectfully submit that after that date, establishment of a briefing schedule to address the propriety of extending the settlement efforts would be appropriate.

Date: 11-29-04

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

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 I have placed a true and correct copy of the foregoing *Reply of United States of America and Walker River Paiute Tribe to Response of Circle Bar N Ranch, et al., to Proposed Agenda Items for December 1, 2004 Status Conference* in the U.S. Mail, first-class postage paid , on this 30th day of November, 2004, addressed to:

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

Craig Alexander
U.S. Dept. of Justice
P.O. Box 7611
Washington, D.C. 20044

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

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

Simeon Herskovits/Courtney Brown
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

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.
P.O. Box 59
Lovelock, NV 89419

Hugh Ricci, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane, Suite 246
Carson City, NV 89710

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

William E. Schaeffer
P.O. 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

Garry Stone
290 South Arlington Ave.
Reno, NV 89501

Allen Biaggi
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

Helen Benson