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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,

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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:

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