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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
Subfile No. C-125-B and C-125-C

**BRIEF IN SUPPORT OF JOINT
MOTION OF MEDIATING PARTIES
TO CONTINUE STAY OF
LITIGATION IN C-125-B AND C-
125-C SUBPROCEEDINGS**

FILED
JAN 18 PM 1:53
LANCE S. WILSON
CLERK
DEPUTY

Pursuant to the *Minutes of the Court* (Dec. 1, 2004), the United States, State of Nevada, State of California, Walker River Paiute Tribe ("Tribe"), Walker River Irrigation District, Mono County, California, Lyon County, Nevada, Mineral County, Nevada, and the Walker Lake Working Group (the "Mediating Parties") submit this brief in support of their joint motion to continue the stay of the litigation in the C-125-B and C-125-C subproceedings. For the reasons set forth herein, the Mediating Parties respectfully request that the Court continue the stay of the C-125-B and C-125-C subproceedings until December 31, 2005 to enable the parties to continue their efforts to settle the outstanding claims at issue in those subproceedings.

I. BACKGROUND

On January 14, 2003, the Mediating Parties entered into an agreement by which they determined to pursue settlement of matters at issue in litigation before this Court. *Mediation Process Agreement* (Jan. 14, 2003). The Mediating Parties requested that the Court enter an order staying the

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1 ongoing litigation so that the parties could pursue settlement. *Joint Motion for Entry of Order*
2 *Governing Mediation* at 4 (Apr. 30, 2003). On May 27, 2003, the Court entered an order staying all
3 matters in the C-125-B and C-125-C subproceedings -- other than service of process¹ -- in order to
4 allow the parties to explore the possibilities for settlement of the outstanding claims in those two
5 subproceedings. *Order Governing Mediation Process* ¶¶ 2(a), (c) (May 27, 2003). The C-125-B
6 subproceeding involves the claims of the Tribe and the United States on behalf of the Tribe and other
7 federal claimants for water from the Walker River stream system. The C-125-C subproceeding
8 involves the claims of Mineral County, Nevada under the Public Trust Doctrine, for additional water
9 to benefit Walker Lake.

10 The Mediating Parties have diligently pursued settlement. They have generally met once per
11 month, and have made substantial progress. As stated in the *Joint Report of the Mediating Parties*
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16 ¹Consistent with the *Order Governing Mediation Process* ¶ 2(c) (May 27, 2003), the United
17 States and the Tribe have continued service of their first amended counterclaims and associated
18 service documents, and have filed reports with the Court describing the status of their service efforts.
19 *See, e.g., First Report of the United States of America Concerning Status of Service on Certain*
20 *Persons and Entities*, No. C-125-B (May 27, 2004); *Second Report of the United States of America*
21 *Concerning Status of Service on Certain Persons and Entities*, No. C-125-B (Nov. 19, 2004); *Third*
22 *Report of the United States of America Concerning Status of Service on Certain Persons and*
23 *Entities*, No. C-125-B (Dec. 14, 2004). Mineral County has replaced its previous counsel with
24 attorneys from the Western Environmental Law Center who are currently evaluating the status of
25 service in this matter and intend to file a report on its remaining service efforts as soon as possible.
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2 (Dec. 16, 2004), the Mediating Parties “agree that progress in the mediation is continuing.” *Id.* at 1.

3 For this reason,

4 [t]he Parties agree that the mediation process should continue through
5 December 31, 2005 pursuant to the provisions of the Mediation
6 Process Agreement previously entered by the Parties and pursuant to
7 the Order Governing Mediation Process. In this regard, the parties,
8 either individually or jointly, will file and serve a motion on or before
9 January 18, 2005 consistent with this Joint Report.

10 *Id.* at 2. The Mediating Parties file this joint motion and brief in support of continuation of the stay
11 of the C-125-B and C-125-C subproceedings so that they may continue their settlement efforts
12 through the end of calendar year 2005.

13 **II. THE COURT SHOULD CONTINUE THE STAY**
14 **OF LITIGATION SO THAT THE MEDIATING PARTIES**
15 **CAN CONTINUE TO PURSUE SETTLEMENT**

16 The Mediating Parties iterate the following reasons in support of their request that the Court
17 should continue the stay of the litigation while they attempt to negotiate a settlement of the issues
18 that are outstanding in the C-125-B and C-125-C subproceedings.² First, the Mediating Parties are
19 hopeful that they will reach an agreement consistent with the provisions of Paragraph 6 of the
20 *Mediation Process Agreement* that will ultimately lead to a settlement of the matters at issue in the
21 litigation. Settlement of those matters could well differ from their litigated resolution. The
22 possibility of inconsistent outcomes would, therefore, represent a waste of the Mediating Parties’

23 ²On November 16, 2004, Joseph and Beverly Landolt filed an *Opposition to Extension of*
24 *Mediation Process* (“Landolt Opposition”). The Landolts filed that document prior to any filing by
25 the Mediating Parties requesting extension of the stay of litigation. However, at a hearing on
26 December 1, 2004, the Court stated that the Landolt Opposition could stand as the document in
27 response to any stay of litigation request that might be filed. Transcript at ___ (Dec. 1, 2004). The
28 Mediating Parties will address the Landolts’ response, or any other document they may substitute for
a response to the instant motion, in their reply which will be due on or before February 22, 2005.

1 resources simultaneously to attempt to settle and litigate the C-125-B and C-125-C subproceedings.
2
3 Second, the Mediating Parties have limited resources that they can devote either to settlement or
4 litigation, but not both at the same time. Since the Mediating Parties have resolved to pursue
5 settlement, they must devote their limited resources to that effort. Simultaneous settlement and
6 litigation would be impossible for most of the Mediating Parties.

7
8 Third, the *Mediation Process Agreement* provides that the mediation process shall remain
9 confidential, while also providing a method for informing decision-makers, governing bodies and
10 boards, and, where appropriate, constituents, elected officials and the public regarding the mediation
11 process. It further provides the mediation process shall be treated as compromise negotiations
12 pursuant to Rule 408 of the Federal Rules of Evidence. This allows the Mediating Parties an
13 opportunity to engage in full and frank discussions that might otherwise not be possible if
14 simultaneous litigation were ongoing in the C-125-B and C-125-C subproceedings.

15
16 Finally, the *Case Management Order* (Apr. 18, 2000) requires the completion of service prior
17 to the litigation of the claims at issue in the C-125-B subproceeding, and as stated above, that effort
18 is proceeding. See *Order Governing Mediation Process* ¶ 2(c) (May 27, 2003). Continuation of the
19 stay of all other matters in the C-125-B and C-125-C subproceedings until December 31, 2005 will
20 not impair the resumption of litigation after that time since service must be completed in any event
21 before moving on to the identification and resolution of threshold issues. See *Case Management*
22 *Order* at 5 (Apr. 18, 2000).

23 24 **III. CONCLUSION**

25 For the reasons set forth herein, the Mediating Parties respectfully request that the Court
26 extend the stay of the C-125-B and C-125-C subproceedings until December 31, 2005 to allow the
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parties to continue their efforts to reach a negotiated settlement of the outstanding claims for water from the Walker River stream system.

Date: 1-14-05

Respectfully submitted,

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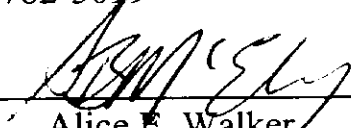
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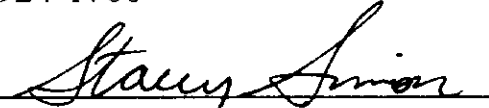
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CERTIFICATE OF MAILING

I certify that I am an employee of Woodburn and Wedge and that on this date, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing ***Brief in Support of Joint Motion of Mediating Parties to Continue Stay of Litigation in C-125-B and C-125-C Subproceedings*** in an envelope addressed to:

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