

FILED
02 FEB -8 AM 10:44
LANCE S. WILSON
DEPUTY

1 LAURA A. SCHROEDER, ESQ
2 Schroeder Law Offices, P.C.
3 1915 N.E. 39th Avenue, P. O. Box 12527
4 Portland, Oregon 97212-0527
5 PHONE – (503) 281-4100 FAX – (503) 281-4600
6 counsel@water-law.com
7 Nevada State Bar # 3595
8 Attorney for the Respondents

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
IN THE UNITED STATES DISTRICT COURT OF NEVADA

10 UNITED STATES OF AMERICA AND
11 THE WALKER RIVER PAIUTE TRIBE,

12 Plaintiff(s),

13 v.

14 THE WALKER RIVER IRRIGATION
15 DISTRICT, et al,

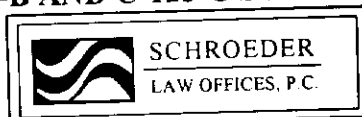
16 Defendant(s).

IN EQUITY NO. C-125
SUBFILES C-125-B, C-125-C

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

18 CIRCLE BAR N RANCH (TOM REVIGLIO, TONY REVILGIO); BORSINI RANCH,
19 INC (DALE BORSINI); PEAVINE LEASING, LLC (MIKE FARETTO); PERI BROTHERS &
20 SONS (DAVE PERI, BUTCH PERI); L & M FAMILY LIMITED PARTNERSHIP (BRIAN
21 MASINI); and THOMAS BOBRICK TRUST (TOM BOBRICK) (“Respondents”), file this
22 response to the United States of America, State of California, State of Nevada, Walker River
23 Paiute Tribe, Mono County, California, Lyon and Mineral County, Nevada, Walker River
24 Irrigation District (“WRID”) Walker River Working Group (“Mediating Group”), requesting that
25 this Court order the Mediating Group to incorporate the additional parties who have been served
26

{P0019657; 0800.00 LLS}



1915 NE 39th Ave.
P.O. Box 12527
Portland, Oregon 97212-0527
PHONE (503) 281-4100 FAX (503) 281-4600

508

1 in the subproceedings of Case No. C-125 in the mediation proceedings, or to terminate the court
2 sanctioned mediation process.

3 I. BACKGROUND

4 In May 2003, this Court entered an order sanctioning the mediation process requested by
5 parties and proposed intervenors in Case No. C-125 and its subfile proceedings, and setting out
6 procedures for the mediation. *See Order Governing Mediation Process.* While the parties in the
7 Mediating Group may have been inclusive of those actively involved in the subfile litigation at
8 the time the order was issued, the situation has changed. At this point, additional parties have
9 been served with the counterclaims of the United States and the Tribes, pursuant to this Court's
10 case management orders.

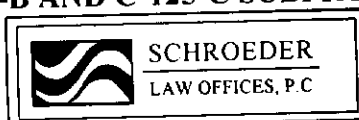
11 Despite their status as necessary parties to the litigation, these parties are refused a place
12 in the mediation process. Accordingly, these parties are deprived of proper notice and an
13 opportunity to meaningfully participate in proceeding.

14 While the Mediating Group has couched its motion as a motion to continue the stay of the
15 litigation in subproceedings C-125-B and C-125-C, in reality this Court during its status
16 conference of December 1, 2004, instructed parties to address both the merits of extending the
17 mediation process and the matter of staying these subproceedings. While the Mediating Group
18 did not address the merits of the mediation process, implicit in their argument was an assumption
19 that the mediation should be continued. Respondents would disagree with this premise, if this
20 Court allows the Mediating Group to continue to exclude parties to the litigation.

21 II. THE MEDIATION PROCESS MUST BE OPEN TO ALL PARTIES TO THESE 22 SUBPROCEEDINGS OR SHOULD BE DISCONTINUED

23 The mediation proceedings are limited a select group of participants, yet they are
24 intended to resolve the issues raised in subproceedings C-125-B and C-125-C. The Mediating
25 Group is seeking to create "an efficient and mutually beneficial resolution of the Walker River
26 Issues, including certain unresolved portions of the C-125 case and subproceedings C-125-B and

{P0019657, 0800 00 LLS }

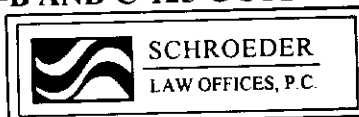


1 C-125-C, through mediation....” *Joint Motion for Entry of Order Governing Mediation Process*,
2 *Attachment 2* at 2. The parties to the Mediation Process Agreement agreed that with the
3 assistance of a mediator they would identify the issues, develop potential alternatives and
4 approaches to resolve those issues, resolve the issues, and achieve an appropriate resolution of
5 the Walker River Issues. *Id.*, *Attachment 2* at 8. As expressed in the joint motion for entry of
6 order governing mediation process, it is the Mediating Group’s intent to create “a written
7 settlement agreement to be used to develop appropriate papers seeking to conclude the relevant
8 portions of the C-125 case and its subproceedings, obtain necessary congressional legislation and
9 other appropriate papers and/or other actions to implement the agreement possibly including one
10 or more separate agreements when signed by appropriate authorities, and achieve all other
11 implementation requirements.” *Joint Motion for Entry of Order Governing Mediation Process* at
12 3. Included in these issues are the active claims of the United States, the Tribe and Mineral
13 County for water rights not recognized under the Decree.

14 Respondents are individual water rights holders whose rights are recognized under the
15 Decree. Additionally, they hold groundwater rights. There is no indication that the means by
16 which the parties to the Mediation Process Agreement plan to attain their goals are consistent
17 with the rights and interests of these individual water rights holders. The proceedings are
18 confidential, pursuant to this Court’s order, as well as pursuant to the Mediation Process
19 Agreement. *See Order Governing Mediation Process; Joint Motion for Entry of Order*
20 *Governing Mediation, Attachment 2*. The confidentiality requirements of this Court’s order
21 exacerbate the excluded parties’ concerns. As is clear from the Mediating Group’s statements in
22 their motion and their agreement, it is their intent to limit and resolve issues before this Court
23 without any input from other necessary parties. As parties to the case, Respondents should not
24 be excluded from court sanctioned proceedings that impact their rights.

25 This Court has recognized the merits of the argument made previously by members of the
26 Mediating Group that in order to satisfy concepts of due process and fundamental fairness and to

(P0019657, 0800 (X) LLS)



1 ensure that the Court's decisions bind all affected parties and their successors in the future, that
2 necessary parties must be joined before decisions concerning identification of threshold issues
3 are resolved. See *Walker River Irrigation District's Reply Points and Authorities in Support of*
4 *Joint Motion Concerning Case Management* at 4. Yet the Mediating Group not only intends to
5 identify the issues in isolation, thereby arbitrarily limiting those issues, but they intend resolve
6 those issues without input from other parties to the litigation. The Mediating Group lacks legal
7 authority to act for these necessary parties in this way. Alternatively, if the Mediating Group is
8 suggesting that the excluded parties are not necessary to the proceeding, the Mediating Group
9 should move to dismiss those parties from the litigation and take no further action to affect their
10 private property interests. The Mediating Group should not be allowed to continue operating in
11 this inconsistent manner, precluding necessary parties from participating in the settlement
12 negotiations.

13 The unreasonableness of the Mediating Group's exclusionary position may be further
14 called into question by its willingness to give Mineral County a seat at the mediation table.
15 Mineral County has not been granted party status nor does it hold rights under the Decree, yet it
16 has been allowed to participate in the mediation process. Given the aspirations of the Mediating
17 Group regarding limiting and resolving the issues before this Court, it is illogical to allow an
18 entity who has not yet secured intervenor status to participate in these settlement activities while
19 excluding necessary parties to the litigation from the settlement proceedings.

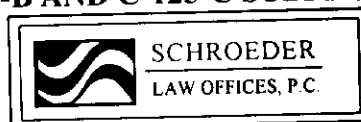
20 Respondents do recognize that if certain parties want to mediate in private there is
21 nothing to preclude them from doing so. However, they should not be allowed to continue to do
22 so as a court sanctioned activity, nor should this activity prevent the parties from moving forward
23 with the litigation once service of all parties is achieved.

24 ///

25 ///

26 ///

(P0019657 0800 00 LLS)



1 **III. THE COURT SHOULD CONTINUE THE STAY OF LITIGATION BECAUSE**
2 **SERVICE HAS NOT BEEN EFFECTED ON ALL PARTIES**

3 While the Respondents recognize that the stay must remain in place, they disagree with
4 the rationale put forward by the Mediating Group for the basis of the stay. Until all parties are
5 properly served, this Court has determined that a stay is appropriate.

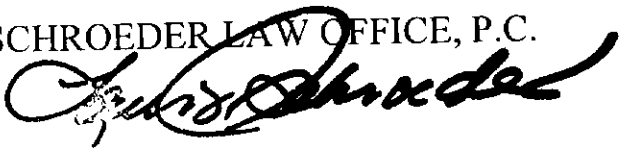
6 This does not mean, however, that the Mediating Group's activities must necessarily
7 continue. As the Mediating Group asserts, the possibility of inconsistent outcomes between
8 litigation and mediation would represent a waste of the Mediating Group's resources. *Brief in*
9 *Support of Joint Motion of Mediation Parties to Continue Stay of Litigation in C-125-B and C-*
10 *125-C Subproceedings* at 4. To preclude the participation of necessary parties to the
11 subproceedings in the mediation process would similarly lead to a waste of the Mediating
12 Group's resources as subsequent litigation is inherently likely to occur.

13 **CONCLUSION**

14 Respondents respectfully request this Court to stay litigation until service of all necessary
15 parties has been completed in subproceedings C-125-B and C-125-C. Service is necessary to
16 insure that satisfaction of due process and fundamental fairness requirements are met, and to
17 ensure that the Court's decisions bind all affected parties and their successors in the future.
18 Additionally, Respondents request that this Court condition its order for continuation of court
19 sanctioned mediation upon the requirement that Mediating Group include all parties who have
20 been served in these subproceedings.

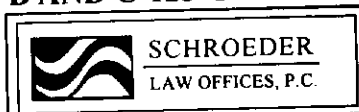
21 DATED this 7th day of February, 2005.

22 SCHROEDER LAW OFFICE, P.C.

23 

24 Laura A. Schroeder, NSB 3595
25 Of Attorneys for Respondents
26

{P0019657; 0800; 00 LLS }



CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that I am an employee of Schroeder Law Offices, P.C., and that I mailed a true and correct copy of the foregoing **RESPONSE TO JOINT MOTION OF MEDIATION PARTIES TO CONTINUE STAY OF LITIGATION IN C-125-B AND C-125-C SUBPROCEEDINGS**, by U.S. Mail postage prepaid and addressed to:

Greg Addington
Assistant U.S. Attorney
100 W. Liberty St., #600
Reno, NV 89509

William W. Quinn
Office of the Field Solicitor
Department of the Interior
401 W. Washington St./, SPC 44
Phoenix, AZ 85003

George Benesch
190 W. Huffaker
Reno, NV 89511

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

Kenneth Spooner
General Manager
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Hugh Ricci, P. E.
Division of Water Resources
State of Nevada
123 W. Nye Ln.
Carson City, NV 89706

Garry Stone
United States District Court Water Master
290 S. Arlington Ave., 3rd Floor
Reno, NV 89501

Alice E. Walker / Scott McElroy
Greene, Meyer & McElroy
1007 Pearl St., Suite 220
Boulder, CO 80302

John Kramer
Department of Water Resources
1416 Ninth St.
Sacramento, CA 95814

Alan Biaggi
Dir. of Conservation & Natural Resources
State of Nevada
123 W. Nye Ln.
Carson City, NV 89706

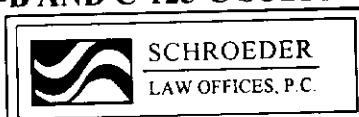
Bill Lockyer / Michael W. Neville
California Attorney General's Office
455 Golden Gate Ave., #11000
San Francisco, CA 94102-3664

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

Susan Schneider
Indian Resources Section
U.S. Department of Justice
999 18th Street, #945 North Tower
Denver, CO 80202

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

(P0019657, 0800 00 LLS)



1 Mary Hackenbracht
Deputy Attorney General
2 State of California
1515 Clay St., 20th Floor
3 Oakland, CA 94612-1413

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

4 James Shaw
Water Master
5 U.S. Board of Water Commissioners
P.O. Box 853
6 Yerington, NV 89447

David L. Negri
United States Department of Justice e
Environment and Natural Resources Div.
161 E. Mallard Dr., Suite A
Boise, ID 83706

7 Linda Bowman
540 Hammill Ln.
8 Reno, NV 89511

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

9 Tim Glidden
10 U. S. Dept. of the Interior, Office of the
Secretary, Div. Of Indian Affairs
1849 C St. N.W.
11 Mail Stop 6456
12 Washington, D.C. 20240

Scott H. Schackelton
Silverado, Inc.
4160 Long Knife Rd.
Reno, NV 89509

13 Marshall S. Rudolph, Mono County Counsel
14 Stacy Simon, Deputy County Counsel
Mono County
15 P. O. Box 2415
Mammoth Lakes, CA 93546-2415

Erin K .L. Mahaney
Office of Chief Counsel
State Water Resources Control Board
10011 St., 22nd Floor
Sacramento, CA 95814

16
17 Steve Rye
Chief Deputy District Attorney
18 Lyon County
31 S. Main St.
19 Yerington, NV 89447

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

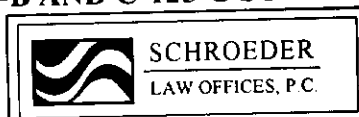
20 Cheri Emm-Smith
Mineral County District Attorney
21 P. O. Box 1210
Hawthorne, NV 89415

William E. Schaeffer
P. O. Box 93 6
Battle Mountain, NV 89820

22
23 John W. Howard
JW Howard/Attorneys
625 Broadway, Suite 1206
24 San Diego, CA 92101

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

25
26
{PXX19657; 0800.00 LLS }



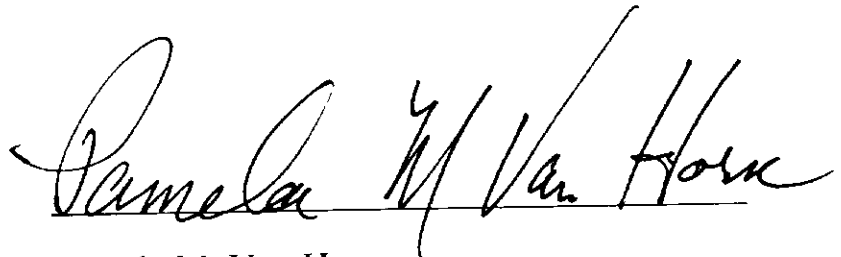
1 Wesley G. Beverlin
2 Malissa Hathaway McKeith
3 Lewis, Brisbois, Bisgaard & Smith LCP
221 N. Figueroa St., Suite 1200
Los Angeles, CA 90012

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

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

Stephen M. MacFarlane
U.S. Dept. of Justice
5011 Street, Suite 9-700
Sacramento, CA 95814-2322

7
8 Dated this 7th day of February, 2005
9

10
11 
12

13 Pamela M. Van Horn
14
15
16
17
18
19
20
21
22
23
24
25
26

{P0019657, 0800 00 LLS }

