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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

**JOINT RESPONSE OF THE UNITED
STATES OF AMERICA AND THE
WALKER RIVER PAIUTE TRIBE
TO LANDOLTS’ MOTION TO
CLARIFY CASE MANAGEMENT
ORDER**

The United States of America and the Walker River Paiute Tribe (“Tribe”) file this joint response to the *Notice of Motion and Motion to Clarify Judge Reid’s Case Management Order Dated April 18, 2000* (Dec. 6, 2005) (“*Motion to Clarify*”). By order of the Court, the United States and the Tribe timely file this response by January 30, 2006. *Stipulation and Order for Extension of Time Concerning Briefing Schedule on Motion to Disqualify Counsel, Gordon*

DePaoli, and Motion to Clarify Case Management Order Dated April 18, 2000 at 2 (Jan. 19, 2006). For the reasons set forth herein, the Court should deny the *Motion to Clarify*.

I. BACKGROUND

Joseph and Beverly Landolt continue to pursue their challenge to the use of the waters of the Walker River by the Tribe on the Walker River Indian Reservation (“Reservation”). They initially sought to challenge the Tribe’s water use in March 2004 by filing a motion for an order to show cause why the Tribe should not be held in contempt of court for taking more water from the Walker River than its adjudicated right. *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) (“*Contempt Motion*”). The Tribe filed a motion to stay consideration of the *Contempt Motion* or, alternatively, to dismiss it without prejudice. *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). The Tribe argued that the *Order Governing Mediation Process* (May 27, 2003) has stayed all proceedings in the C-125-B matter pending settlement discussions. Additionally, at oral argument, the Tribe argued that to address the merits of the *Contempt Motion* -- that is whether the Tribe is using water in violation of the decree -- would require the litigation of the first amended counterclaims filed by the Tribe and the United States, contrary to the provisions of the *Case Management Order* (Apr. 18, 2000). *Transcript of Status Conference* at 8 (Oct. 1, 2004) (“Oct. 1 Tr.”). The Walker River Irrigation District filed a response in opposition to the *Contempt Motion* seeking denial of the motion without prejudice. *Walker River Irrigation District’s Points and Authorities in Opposition to Motion for Order to Show Cause re Contempt* (Apr. 19, 2004).

The Magistrate Judge agreed with the Tribe, and stayed consideration of the *Contempt Motion*: “[T]he order is it will be stayed until the order staying this proceeding for mediation, at least until the order staying this matter until the mediation process is over, is lifted.” Oct. 1 Tr. at 20.¹ The Magistrate Judge also held that reaching the merits of the *Contempt Motion* would require the adjudication of the merits of the first amended counterclaims filed by the Tribe and the United States, contrary to the *Case Management Order*, which requires the completion of service and resolution of a series of threshold legal issues prior to consideration of the merits of the claims:

[T]o decide the Landolts’ motion would be to litigate this case on the merits. It would involve just about that. I think that there would have to be a large amount of discovery done. I think there would have to be numerous hearings, perhaps even some evidentiary hearings, and I think that is contrary to both the Case Management Order and the Stay Order that’s been entered.

....

The Case Management Order provides that the merits of this action are not going to be litigated until the last step. And that step is a long ways away. It provides service first, decision on threshold issues next, and then the merits.

Oct. 1 Tr. at 14, 18.

The Landolts now claim that the Magistrate Judge “erroneously interpreted [the *Case Management Order*] to mean that defendants could not enforce their water rights under the existing Decree.” *Motion to Clarify* at 2.² For the reasons set forth below, the Magistrate Judge

¹The Court gave the Landolts’ attorney the choice whether he would prefer that the *Contempt Motion* be stayed or dismissed without prejudice. The Landolts’ attorney said “I’d prefer it be stayed.” Oct. 1 Tr. at 20.

²The Landolts also repeat their mischaracterization of the ongoing settlement negotiations. *Motion to Clarify* at 3. The *Joint Response to Motion to Disqualify Counsel*,

correctly interpreted the *Case Management Order* as well as the *Order Governing Mediation Process*, and as a result, there is nothing to clarify. In any event, the Magistrate Judge's ruling should not be read to prohibit the enforcement of the decree to ensure that the Landolts receive the amounts of water to which they may be entitled. To be sure, that issue was not before him.

II. ARGUMENT

A. **THERE IS NOTHING TO CLARIFY.**

The Landolts want to proceed down a slippery slope, by opening up all water uses under the decree to attack by any decreed right holder at any time without requiring the moving party to demonstrate any injury as a result of the actions of other water rights holders under the decree. The Court has repeatedly refused to go down that slope, and the Magistrate Judge acted consistently with the Court's conduct of this case: he stayed the Landolts' *Contempt Motion* first on the ground that the *Order Governing Mediation Process* has stayed everything but service in the C-125-B matter, and second on the ground that even without the *Order Governing Mediation Process*, the *Case Management Order* requires completion of service and resolution of threshold legal issues before the parties and the Court can reach the merits of the Tribe's and United States' claims for additional water. Thus, there is nothing to clarify.³

Gordon DePaoli (Jan. 26, 2006) responds to these mischaracterizations.

³The *Motion to Clarify* should be one for reconsideration of the Magistrate Judge's ruling. The Landolts request a ruling from the Court that they may seek to "enforce existing rights" under the decree. *Motion to Clarify* at 4. The Landolts are particularly interested in challenging the Tribe's use of water downstream from their lands, claiming that they "and others similarly situated, have been and continue to be aggrieved as a result of the Walker River Paiute Tribe's violation of the 1936 Decree." *Id.* at 5; *see also id.* at 4. The Landolts' *Contempt Motion* sought the same thing. *Contempt Motion* at 3. The Court should not allow the Landolts to couch a motion for reconsideration in the guise of a motion for clarification, seemingly unconnected to the earlier *Contempt Motion*. In any event, the Landolts have not satisfied the requirements for reconsideration. *See Transcript of Proceedings* at 3-4, No. C-125 (Apr. 9,

Significantly, the Landolts cannot seek to “enforce” the decree in a vacuum, specifically, without demonstrating tangible injury as a result of the Tribe’s activities. *See Reply of the Walker River Paiute Tribe to Landolt Opposition to Motion to Stay or Dismiss* at 7 (July 12, 2004). In their *Motion for Clarify*, the Landolts make the bare allegation that they “have been and continue to be aggrieved as a result of the Walker River Paiute Tribe’s violation of the 1936 Decree.” *Motion for Clarify* at 5. But the Magistrate Judge ruled that in order to challenge the Tribe’s downstream water use, the Landolts must make some showing of injury:

It seems to me that the Landolts, number one, have shown no evidence or any claim of any injury. They are upstream from the Tribe, and they haven’t shown even a modicum of injury, let alone of any immediate or irreparable injury that might occur. And I think that some showing in that regard needs to be made to attempt to get the relief that they are seeking.

Oct. 1 Tr. at 18. To make a credible claim of injury, the Landolts would have to demonstrate that the Chief Deputy Water Commissioner did not deliver the water adjudicated for the benefit of their lands in order to serve the Tribe. In fact, the Landolts have never argued that they are not getting their water rights or that the Chief Deputy Water Commissioner is doing anything other than providing the decreed amounts to the Tribe. Merely paying lip service to the Magistrate Judge’s ruling that the Landolts must show that they are injured by alleged activity downstream is insufficient to demonstrate standing that the Tribe’s activities are harmful to them.⁴

2004) (setting forth requirements for reconsideration of a previous ruling).

⁴The Landolts wish to pursue their claim against the Tribe on behalf of themselves “and others similarly situated.” *Motion to Clarify* at 5. Notably, the Court has refused to certify a defendant class in this matter. *See Order* at 23 (Apr. 26, 2002) (affirming and adopting ruling of Magistrate Judge which denied motion of the Tribe and United States for certification of two defendant classes pursuant to FED. R. CIV. P. 23); *Minutes of the Court* at 4 (July 26, 2002)

The Court has steadfastly adhered to the requirement that all parties who could be affected by claims arising under the decree be joined in any proceeding to entertain such claims. The Tribe and the United States must serve all water rights claimants -- including groundwater users -- who could be affected by their first amended counterclaims, and Mineral County must serve all water rights holders who could be affected by its claim for water for the benefit of Walker Lake. The Landolts are no different from the Tribe, the United States, or Mineral County; they must conduct appropriate service as well.

Thus, the Landolts cannot disregard the *Case Management Order*'s procedures and schedule for consideration of the claims asserted by the United States and the Tribe. Even when properly read, which the Landolts fail to do, *see infra* Part B, nothing in the *Case Management Order* or the *Order Governing Mediation Process* countenances the approach the Landolts wish to seek. The Magistrate Judge found "no instances of any kind of the anarchy that the Landolts claim," Oct. 1 Tr. at 19, because the *Case Management Order* sets out an orderly procedure to address and resolve the tribal and federal claims. In the absence of any allegation of material injury to a water right protected under the decree, there is no reason to proceed in a fashion different than that set forth in the *Case Management Order*. In any event, the Landolts have offered no such reason.

(denying motion of the Tribe and United States for amendment of, or relief from, prior order denying motion to certify defendant classes).

B. THE LANDOLTS HAVE CONFUSED THE *CASE MANAGEMENT ORDER* AND THE *ORDER GOVERNING MEDIATION PROCESS*.

The Landolts misread the *Case Management Order* and omit any mention of the *Order Governing Mediation Process*. The Landolts' mistakenly characterize the *Case Management Order* as follows:

[The] parties requested an order from this Court which, among other things, stayed all litigation in this case until the mediation was either completed or abandoned. (See Case Management Order dated April 18, 2000).

. . . The request [for an order to show cause against the Tribe] was denied on the basis that the April 18, 2000 Case Management Order stayed litigation pending mediation.

Motion for Clarify at 3, 4.

But nothing in the *Case Management Order* has anything remotely to do with the settlement negotiations. The *Case Management Order* sets forth an orderly procedure for consideration of the claims in the C-125-B subproceeding, and stays any consideration of the merits of the United States' and Tribe's claims until: 1) completion of service; and 2) resolution of all of the threshold issues which may or may not be exhaustively listed in the *Case Management Order*. In adopting the *Case Management Order*, the Court emphasized the need for an orderly process to address the outstanding claims asserted by the Tribe and the United States:

The enormity and complexity of the issues pending with respect to the First Amended counterclaims filed by the United States and the Walker River Paiute Tribe certainly suggest that some sort of bifurcation would be helpful in processing the action. Any such bifurcation may involve some duplication of work in relation to subsequent phases of the case. There does not seem to be any way to entirely avoid duplication, but we should endeavor to do so to the extent that we can. Another major concern is whether persons litigating in later phases of the case may find

themselves prejudiced by being bound by decisions and adjudications in earlier phases where they did not participate. This, too, we should endeavor to avoid.

Case Management Order at 1-2. As summarized by the Magistrate Judge, “[t]he *Case Management Order* provides that the merits of this action are not going to be litigated until the last step. And that step is a long ways away. It provides service first, decision on threshold issues next, and then the merits.” Oct. 1 Tr. at 18.

In short, regardless of what happens with the settlement negotiations, the *Case Management Order* establishes an orderly process by which the Court and the parties will address the claims of the Tribe and the United States. Significantly, even if the settlement negotiations were to end, the *Case Management Order* would nevertheless stay consideration of the Tribe’s and United States’ claims pending completion of service and consideration of the threshold issues. *See Case Management Order* at 4 (“All discovery and all other proceedings in this action included in or in connection with the said First Amended Counterclaims are stayed, until the further order of the court, and except as provided in this order.”); *see also Motion for Clarify* at 4 (citing same).

The *Order Governing Mediation Process* stays the proceedings pending settlement talks. “The order governing mediation stays everything except service. And the very precise reason for that order, and the reasoning behind that order was to preclude the ongoing litigation in this action during the mediation process.” Oct. 1 Tr. at 18-19. The Landolts appear to have misread the Magistrate Judge’s ruling of October 1, 2004 which stayed the Court’s consideration of their *Contempt Motion* “at least until the order staying this matter until the mediation process is over, is lifted.” Oct. 1 Tr. at 20. The Landolts’ contrary view of the October 1, 2004 status conference is that the Magistrate Judge denied their request for a contempt order against the Tribe because

the “Case Management Order stayed litigation pending mediation.” *Motion for Clarify* at 4.
Clearly, this view of the Magistrate Judge’s ruling is incorrect.

III. CONCLUSION

As with their *Contempt Motion*, the Landolts have failed to offer any reason why they are entitled to attack water uses under the decree in the absence of a showing that they are somehow injured by such water uses. They have shown no injury. Nor is there anything to clarify in the Magistrate Judge’s interpretation of the *Case Management Order*. Accordingly, the Court should deny the *Motion to Clarify*.

Dated: January 30, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2006, I electronically filed the foregoing *Joint Response of the United States of America and the Walker River Paiute Tribe to Landolts' Motion to Clarify Case Management Order* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their e-mail addresses:

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and I further certify that I served a copy of the foregoing to the following non CM/ECF participants by U.S. Mail, postage prepaid, this 30th day of January, 2006:

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