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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, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	3:73-CV-0128-ECR-RAM IN EQUITY NO. C-125 SUBFILE NO. C-125-C **WALKER RIVER IRRIGATION DISTRICT'S RESPONSE TO JOINT MOTION OF MINERAL COUNTY, WALKER RIVER PAIUTE TRIBE, AND UNITED STATES OF AMERICA TO SET STATUS CONFERENCE ON PENDING ISSUES**
UNITED STATES OF AMERICA, WALKER RIVER PAIUTE TRIBE, Counterclaimants, v. WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants.	

I. Introduction.

By Joint Motion, the United States, Walker River Paiute Tribe (the "Tribe") and Mineral County have requested the Court to schedule a status conference in Subfiles C-125-B

and C-125-C "to consider a number of issues that have been pending before the Court for some time" (the "Request for Status Conference"). Doc. 508. The Request for Status Conference is captioned as though these separate Subfiles have been consolidated. Moreover, the Request for Status Conference describes the Subfiles as "related C-125 proceedings." Doc. 508 at 2-3. There has been no such consolidation, and except to the extent that counsel and some of the parties are common to both proceedings, Subfiles C-125-B and C-125-C are not related. Moreover, the current status of Subfile C-125-B is vastly different than that of C-125-C. A very brief history of each follows.

II. The Claims of the United States and Walker River Tribe - Subfile C-125-B.

Subfile C-125-B involves the claim of the United States and the Tribe for additional water rights for the Walker River Indian Reservation (the "Reservation"). Among other things in C-125-B, the United States and Tribe seek recognition of a right to store water in Weber Reservoir, and a federal reserved water right for up to 167,460 acres of land added to the Walker River Indian Reservation in the 1930s.

In addition to seeking a right to store water in Weber Reservoir and a water right for lands added to the Reservation in the 1930s, the Tribe seeks recognition of a federal reserved water right to use groundwater on Reservation lands including those lands added to the Reservation in the 1930s. The United States, in addition to seeking a right to store water in Weber Reservoir and a water right for lands added to the Reservation in the 1930s, seeks a groundwater right for use on the Reservation, and for federal reserved and other water rights for the benefit of the Yerington Paiute Tribe, Bridgeport Paiute Indian Colony, Garrison and Cluette allotments, certain other individual allotments, the Hawthorne Army Ammunition Plant, the United States Department of Agriculture (Toiyabe National Forest), the United States Marine Corps and the Bureau of Land Management.

After extensive briefing, on April 19, 2000, the Court entered the Case Management Order ("CMO"). *See*, Subfile C-125-B, Doc. 108. In the CMO, the Court recognized that the case as a whole is simply too big and too complex to process on a reasonable basis without bifurcation and other management. It, therefore, entered an order to manage the case.

The CMO bifurcates the claims of the Tribe and United States for the Walker River Indian Reservation (the "Tribal Claims") from all of the other claims raised by the United States (the "Federal Claims"). Except as expressly provided in the CMO, all discovery and other proceedings in the action are stayed. CMO, p. 4, lns. 20-24; Doc. 108. The CMO requires the Tribe and United States to serve their amended pleadings and related service documents on and thereby join numerous individuals and entities who hold surface and underground water rights within the Walker River Basin. It groups these individuals and entities into nine different categories. CMO, pp. 5-6; Doc. 108.

The CMO expressly provides that no answers or other pleading will be required except upon further order of the Magistrate Judge. It also provides that no default shall be taken for failure to appear. CMO, p. 12, lns. 22-25; Doc. 108.

The CMO divides the proceedings concerning the Tribal Claims into two phases. Phase I will consist of "threshold issues as identified and determined by the Magistrate Judge." Phase II will "involve completion and determination on the merits of all matters relating to [the] Tribal Claims." CMO, pg. 11, lns. 11-18; Doc. 108. Additional phases of the proceedings will "encompass all remaining issues in the case." *Id.*, p. 11, lns. 25-26.

The identification of threshold issues is left to the Magistrate Judge, and those issues shall "not be finally resolved and settled by the Magistrate Judge until all appropriate parties are joined." CMO, p. 9; Doc. 108. Included among the possible threshold issues to be considered for inclusion by the Magistrate Judge are issues related to the Court's jurisdiction and equitable defenses to the Tribal Claims. *See*, CMO, pgs. 9-11; Doc. 108.

The CMO also directs the procedures to be followed in connection with the disposition of the threshold issues. First, it allows for discovery on those issues. Second, it allows for written discovery concerning the bases for the Tribal Claims. It stays all other discovery. *CMO*, p. 13, lns. 4-15; Doc. 108. It provides for disposition of the threshold issues by motion, evidentiary hearing, or both. *Id.*, p. 13, ln. 16 - p. 14, ln. 2.

Prior to March of 2009, the Magistrate Judge had begun the process to identify the threshold issues in connection with Subfile C-125-B.

III. The Mineral County Motion to Intervene - Subfile C-125-C.

Subfile C-125-C involves an October 25, 1994 motion of Mineral County to intervene in the proceeding which adjudicated and now administers water rights on the Walker River system. *See, United States v. Walker River Irrigation District*, 11 F.Supp. 158 (D.Nev. 1935), *rev'd* 104 F.2d 334 (9th Cir. 1939). Mineral County seeks permission to file an "Amended Complaint in Intervention" and a Motion for Preliminary Injunction. Mineral County's proposed "Amended Complaint in Intervention" seeks "an adjudication and reallocation of the waters of Walker River to preserve minimum levels in Walker Lake" under the public trust doctrine. To achieve that goal, Mineral County seeks "the right to, at least, 127,000 acre feet of flows annually reserved from the Walker River." The Motion for Preliminary Injunction asks the Court to require water right holders on the Walker River system to allow 260,000 acre feet of water to reach Walker Lake in 1995. It asks that thereafter water right holders be enjoined so that 240,000 acre feet of water reaches Walker Lake annually until this litigation is concluded.

On February 9, 1995, the Court entered an Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County (the "Service Order"). The Service Order required Mineral County to serve all claimants to the waters of Walker River with its filing by May 10, 1995. Because Mineral County has sought and received

numerous extensions of time to complete service as originally ordered by the Court, the original schedule established by the Court with respect to the Motion to Intervene is no longer meaningful.

The Court has not entered a case management order in this Subfile.

IV. Separate Status Conferences in Subfiles C-125-B and C-125-C.

The Walker River Irrigation District (the "District") is not opposed to the Court setting a status conference in Subfile C-125-B. Similarly, the District is not opposed to the Court setting a status conference in Subfile C-125-C. For the convenience of the Court, the parties and their counsel, both status conferences could be set for the same day. Indeed, the Court has done this in the past. However, unless and until a motion for consolidation has been filed and briefed, and the Court has entered an order consolidating these two proceedings, the status conferences must and properly should remain separate and distinct.

Finally, in the event that the Court decides to schedule a separate status conference in each of Subfile C-125-B and Subfile C-125-C, the District respectfully requests that the Court also establish a schedule for the parties to file Status Reports in connection with each Subfile several days prior to the date set for each status conference. Such an exchange of Status Reports prior to each status conference will be beneficial to the Court and to the participating parties.

DATED this 9th day of August, 2010.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge and that on the 9th day of August, 2010, I electronically served the foregoing *Walker River Irrigation District's Response To Joint Motion of Mineral County, Walker River Paiute Tribe, and United States of America To Set Status Conference On Pending Issues* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record via their email addresses.

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 9th day of August, 2010:

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