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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 Subproceedings: C-125-B and C-125-C 73-128 **ORDER GOVERNING MEDIATION PROCESS** ~~(Proposed)~~

Certain of the parties and potential intervenors in this litigation (referred to collectively as the "Parties") have agreed to participate in a mediation process to attempt to settle certain issues that have arisen in this litigation.

1. Parties. The United States; the State of Nevada; the State of California; the Walker River Paiute Tribe; the Walker River Irrigation District; Mono County, California; Lyon County, Nevada; Mineral County, Nevada; and the Walker Lake Working Group have approved and signed a Mediation Process Agreement. Each of these Parties represents that it is a party to, successor to a party to, or a proposed intervenor in the C-125 case and/or one of its subproceedings. Each Party represents that it has previously appeared in the C-125 and/or one of its subproceedings or that it has now filed an appearance in conjunction with the filing of this

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ATTACHMENT 1

Proposed Order. In addition, each Party represents that it is subject to service in the C-125-B subproceeding as a person or entity within one or more of the service categories set forth in Paragraph 3 of the *Case Management Order* (April 18, 2000) and consents to service therein.

2. Procedures.

a. Every six months, beginning on Nov. 21, 2003, the Parties shall file a joint report with the Court that: (1) describes whether progress is continuing in the mediation process; (2) advises whether the Parties wish to have the mediation process continue; (3) states whether activity in C-125-B and C-125-C should continue to be held in abeyance as described in paragraph 2.c; (4) addresses whether or not the Parties making payments towards the Mediator's fees and expenses have agreed or are able to make such payments over the following 6-month period and if any other Parties will be contributing to the costs of mediation; and (5) states whether any of the Parties believe there is a need for a hearing before the Court.

b. Magistrate Judge McQuaid shall be available to assist the Parties in the mediation process, as appropriate.

c. The ongoing efforts to complete service in C-125-B and C-125-C should be completed as soon as possible. The Parties to the mediation process agree that it is important that the Court work closely with the Parties in both C-125-B and C-125-C to resolve all service issues and complete service. Although the Parties agree that the remainder of the proceedings in these two matters should be stayed during the mediation process, they look to the Court to play an active role in the resolution of service issues.

Within 30 days after the date of this Order, or as soon thereafter as is convenient for the Court and the Parties, the Magistrate Judge shall conduct a status conference to review the status

of service efforts in both cases and continue the process of resolving service issues. In Case No. C-125-B, a motion for the approval of service documents is pending before the Court. *Joint Motion of the United States of America and the Walker River Paiute Tribe for Approval of Service Documents and Leave to Commence Service.* In Case No. C-125-C, a motion for publication is pending before the Court. *Motion for Order of Publication (Fifth Request).* The Magistrate Judge shall address these motions and any other service-related matters during its status conference to review service efforts in both cases, and, where appropriate, shall set schedules for the briefing and resolution of service-related matters. In the C-125-C case, this effort shall also include consideration by the Court of the schedule by which it will consider and resolve the pending motion to intervene. Any Party that wishes to comment or object to the proposed Service Package in C-125-B shall do so by providing any specific questions, objections or suggestions regarding the proposed Service Package to the United States and the Tribe at least one week in advance of this hearing.

All other proceedings in these two matters shall be held in abeyance until December 2004 or until ruled otherwise by the Court.

3. Confidentiality. The Mediation Process is a confidential process. That process shall be treated as compromise negotiations under Rule 408 of the Federal Rules of Evidence and shall not be discoverable in this or any other case. This Paragraph shall apply notwithstanding any request under Nevada or federal freedom of information statutes, *see, e.g.*, 5 U.S.C. 552. This Mediation Process is a "mediation" within the meaning of California Evidence Code § 1115(a). The Parties to the Mediation Process are bound by and shall comply with the confidentiality provisions set forth in Paragraphs 8 and 9.3 of the Mediation Process Agreement. Except as

provided in Paragraph 8.3.1 of the Mediation Process Agreement, all Parties to the Mediation Process shall be protected from being required to disclose any information regarding the substance of the Mediation Process to any party to the C-125 case, whether or not such party is also a Party to the Mediation Process. Except as provided in Paragraph 8.3.1 of the Mediation Process Agreement, all information that is confidential within the Mediation Process and under the Mediation Process Agreement shall not be admissible for any purpose in the C-125 case or in any judicial or administrative proceeding for any purpose, including but not limited to impeachment.

4. Other Requirements: The provisions of the Mediation Process Agreement and the requirements of this Order shall apply to and be binding upon each Party to the Mediation Process, its officers, agents, employees, successors and assigns, contractors and consultants, and any person acting on its behalf, and upon the United States on behalf of the Department of the Interior, the U.S. Department of Agriculture; Forest Service, and the U.S. Department of Defense; U.S. Army and U.S. Marine Corps. The provisions of this Mediation Process Agreement and the requirements of this Order shall also apply to and be binding upon those tribes that have concurred in the Mediation Process Agreement, their officers, agents, employees, successors and assigns, contractors and consultants, and any person acting on their behalf. The provisions of this Order shall remain in full force and effect without regard to whether any legal actions or issues arising out of Case C-125 or any of its subproceedings or the Walker River Issues (as that term is defined in the Mediation Agreement) are settled or concluded by final judgment or otherwise, and shall survive termination of this case.

IT IS SO ORDERED this 27th day of May, 2003.

United States ~~District~~ Magistrate Judge