ORIGINAL

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**

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

The Mediating Parties have diligently pursued settlement. They have generally met once per month, and have made substantial progress. As stated in the *Joint Report of the Mediating Parties*

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[1]Consistent with the *Order Governing Mediation Process* ¶ 2(c) (May 27, 2003), the United States and the Tribe have continued service of their first amended counterclaims and associated service documents, and have filed reports with the Court describing the status of their service efforts. *See, e.g., First Report of the United States of America Concerning Status of Service on Certain Persons and Entities*, No. C-125-B (May 27, 2004); *Second Report of the United States of America Concerning Status of Service on Certain Persons and Entities*, No. C-125-B (Nov. 19, 2004); *Third Report of the United States of America Concerning Status of Service on Certain Persons and Entities*, No. C-125-B (Dec. 14, 2004). Mineral County has replaced its previous counsel with attorneys from the Western Environmental Law Center who are currently evaluating the status of service in this matter and intend to file a report on its remaining service efforts as soon as possible.

(Dec. 16, 2004), the Mediating Parties "agree that progress in the mediation is continuing." *Id.* at 1. For this reason,

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

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

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

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

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[2]On November 16, 2004, Joseph and Beverly Landolt filed an *Opposition to Extension of Mediation Process* ("Landolt Opposition"). The Landolts filed that document prior to any filing by the Mediating Parties requesting extension of the stay of litigation. However, at a hearing on December 1, 2004, the Court stated that the Landolt Opposition could stand as the document in response to any stay of litigation request that might be filed. Transcript at ___ (Dec. 1, 2004). The 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.

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

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

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

III. CONCLUSION

For the reasons set forth herein, the Mediating Parties respectfully request that the Court extend the stay of the C-125-B and C-125-C subproceedings until December 31, 2005 to allow the

parties to continue their efforts to reach a negotiated settlement of the outstanding claims for water from the Walker River stream system.

Respectfully submitted,

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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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