

WRID, Lyon County and Bowman Protestants

EXHIBIT

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Joint Comments of the Walker River Paiute Tribe and the United States of America to the Report and Petition for Approval of Budget and Approval of Rate of Assessment for the Year July 1, 2012 Through June 30, 2013, and for Approval of the Audit Report for the Year Ended June 30, 2011, filed May 16, 2012 in the Walker River Action

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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,)
11 Plaintiff,) IN EQUITY NO. C-125-ECR
12)
13 WALKER RIVER PAIUTE TRIBE,) **JOINT COMMENTS OF THE**
14 Plaintiff-Intervenor,) **WALKER RIVER PAIUTE TRIBE**
15 vs.) **AND THE UNITED STATES OF**
16 WALKER RIVER IRRIGATION) **AMERICA TO THE REPORT AND**
17 DISTRICT,) **PETITION FOR APPROVAL OF**
18 a corporation, et al.,) **BUDGET AND APPROVAL OF**
19 Defendants.) **RATE OF ASSESSMENT FOR THE**
) **YEAR JULY 1, 2012 THROUGH**
) **JUNE 30, 2013, AND FOR**
) **APPROVAL OF THE AUDIT**
) **REPORT FOR THE YEAR ENDED**
) **JUNE 30, 2011**

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21 Pursuant to the notice of the Court dated April 20, 2012 (Doc. 1076), the Walker River
22 Paiute Tribe (“Tribe”) and the United States of America (“United States”) file the following joint
23 comments to the Report and Petition for Approval of Budget and Approval of Rate of
24 Assessment for the Year July 1, 2012 through June 30, 2013, and for Approval of the Audit
25 Report for the Year Ended June 30, 2011 (Doc. 1069)(“Report and Petition”).

26 The Tribe’s and United States’ positions stated below are similar to their joint comments
27 filed annually with the court in prior years, and therefore a hearing may not be required. Subject
28 to the following comments, the Tribe and the United States do not object to the Court approving
the Report and Petition (Doc. 1069) submitted by the United States Board of Water

1 Commissioners and Chief Deputy Water Commissioner.

2 1. On April 12, 2012, the United States Board of Water Commissioners (“Board”) filed
3 its Report and Petition asking the Court to approve the budget, the rate of assessment, and last
4 year’s audit for the Board. Exhibit A to the Report and Petition is the final plan of distribution
5 for the 2012 irrigation season. Report and Petition, Exhibit A, *Plan of Distribution, Walker River*
6 *System, 2012 Irrigation Season* (dated March 8, 2012) (“Plan of Distribution”).

7 2. The Plan of Distribution provides: “The irrigation season in Division 1 extends from
8 March 1 until October 31 of each year. April 1 shall be considered as the beginning date for the
9 2012 season because the NRCS Water Supply Outlook Report for the Walker River Basin is
10 below 70%.” Plan of Distribution § VI at 5. The United States and the Tribe agreed with this
11 start date for the Walker River Paiute Indian Reservation (“Reservation”) irrigation season.

12 3. In addition, the Report and Petition at para. 10 references a water leasing
13 demonstration program to be implemented by the Walker River Irrigation District pursuant to the
14 Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law
15 111-85; 123 Stat. 2856). The Report and Petition indicate that the United States Board of Water
16 Commissioners did not yet know the details of this program and that it is “not known if this
17 program will impact the budget of the United States Board of Water Commissioners.” To date,
18 neither the United States nor the Tribe have been provided any details of this program and how it
19 might impact activities on the Reservation and the use of a variety of water rights held or
20 asserted by the United States, including rights it holds or asserts for the benefit of the Tribe.
21 The Tribe and the United States will comment on this program at the appropriate time and in the
22 appropriate forums.

23 4. Weber Dam: All construction activity at Weber Dam, including a fish passage, has
24 been completed.

25 5. The Board’s proposed Plan of Distribution states that the Tribe’s decreed right is 26.25
26 cfs of natural flow of the Walker River and that the delivery of water to the Tribe will be
27 measured at the Parkers gaging station, which is above the Reservation a substantial distance
28 from any of the Tribe’s irrigation facilities. *See* Plan of Distribution § VI at 5. If the Board were
to measure the Tribe’s decreed right at Parkers and fail to account for conveyance losses, the
Tribe would not receive its full 26.25 cfs of water for use on the Reservation, as required by the
Decree (Apr. 14, 1936), *modified, Order for Entry of Amended Final Decree to Conform to Writ*

1 *of Mandate, Etc.* (Apr. 24, 1940) (“Decree”).¹

2 6. The Plan of Distribution for the 2012 irrigation season repeats verbatim the language
3 to which the Tribe and the United States objected in the plans of distribution for 1993 through
4 2011:

5 The right of the United States of America is to a continuous flow of 26.25 cfs of
6 the natural flow of the Walker River during the irrigation season of one hundred
7 eighty (180) days of each year for the irrigation of 2,100 acres of land situated in
8 the Walker River Indian Reservation.

9 Division No. 1 secures full decree rights through the discharge through the
10 Yerington Weir and inflow from the drainage system of the Walker River
11 Irrigation District. A gaging station at Parkers at the lower end of Mason Valley
12 will measure that water for the Indian Service.

13 Plan of Distribution § VI at 5. The meaning of this language is not entirely clear, but it does not
14 say that the amount of water passing the Parkers gage must be capped at 26.25 cfs. In past years,
15 the Decree has been administered in such a way as to at least partially compensate for the losses
16 between the Parkers gage and the point of diversion on the Reservation. *See* United States
17 Geological Survey (“USGS”) 10301500, Walker River Near Wabuska, NV,
18 [http://waterdata.usgs.gov/nv/nwis/dv?cb_00060=on&format=html&begin_date=2011-04-
19 01&end_date=2012-05-15&site_no=10301500&referred_module=sw](http://waterdata.usgs.gov/nv/nwis/dv?cb_00060=on&format=html&begin_date=2011-04-01&end_date=2012-05-15&site_no=10301500&referred_module=sw) (USGS web page showing
20 table of Parkers gage daily measurements from April 1, 2011 to May 15, 2012).

21 7. The Plan of Distribution is based on the rules and regulations that this Court approved
22 in 1953 to aid the Board in carrying out the Court’s mandate regarding the decreed rights to the
23 waters of the Walker River. *Rules and Regulations for the Distribution of Water of the Walker
24 River Stream System Under the Provisions of Section 15 of Decree Case In Equity C-125, in the
25 United States District Court for the District of Nevada* (Aug. 25, 1953). Specifically, the Rules
26 provide that “[a] gaging station at Parkers at the lower end of Mason Valley will measure the
27 water for the Indian Service.” *Id.* at unnumbered p. 5. This language should not be read to
28

24 ¹ As the Court is aware, the Tribe and the United States filed virtually identical objections to the
25 Board’s proposed plans of distribution for the 1993, 1994, and 1995 irrigation seasons and each
26 time raised the issue of conveyance losses. With respect to the 1996 through 2011 plans of
27 distribution, the Tribe and the United States jointly filed objections. *See, e.g., Joint Comments of
28 the Walker River Paiute Tribe and the United States of America to the Report and Petition for
Approval of Budget and Approval of Rate of Assessment for the Year July 1, 2004, through June
30, 2005, and for Approval of the Audit Report for the Year Ended June 30, 2003* (May 17,
2004).

1 require that a maximum of 26.25 cfs of natural flow of the Walker River pass the Parkers gage.
2 Rather, the Decree clearly intends that 26.25 cfs be available for use upon the lands of the
3 Reservation. *See* Decree § I.

4 8. In 1992, the Tribe and the USGS installed a gaging station on the Reservation, known
5 as the Cow Camp gage. Since its installation, the Cow Camp gaging station has provided
6 additional information to assist in determining the carriage losses that occur below the Parkers
7 gage. The Tribe and the United States, however, have recognized the concerns that members of
8 the Board and other water users have voiced about the need to corroborate the accuracy of the
9 Cow Camp gage. As shown in its letter dated April 9, 2001, *see Joint Comments of the Walker*
10 *River Paiute Tribe and the United States of America to the Report and Petition for Approval of*
11 *Budget and Approval of Rate of Assessment for the Year July 1, 2002, through June 30, 2003,*
12 *and for Approval of the Audit Report for the Year Ended June 30, 2001* (May 17, 2002), the
13 USGS has given the Cow Camp gage an accuracy rating on par or better than that of the Parkers
14 gage for the period 1995 to 1999. However, the USGS notes that “downstream beaver activity”
15 may affect the accuracy of the Cow Camp gage. *Id.* Thus, for this year, the Tribe and the United
16 States do not object to the Board continuing to administer the Decree and the delivery of water to
17 Division One in the same manner as in prior similar irrigation seasons. *See* USGS website
18 referred to in section 6 above that shows stream flows passing Parkers gage.

19 9. Although the Tribe and the United States have not objected to the 2012 Plan of
20 Distribution, the actions of the Tribe and the United States are not intended to waive any
21 objection that the Tribe and the United States may have to measuring the Tribe’s water right at
22 the Parkers gaging station, regarding overall Decree administration, or otherwise prejudice the
23 Tribe’s and the United States’ positions on these critical matters.

24 RESPECTFULLY SUBMITTED this 16th day of May 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2012, I electronically filed the foregoing
“JOINT COMMENTS OF THE WALKER RIVER PAIUTE TRIBE AND THE UNITED STATES OF AMERICA TO THE REPORT AND PETITION FOR APPROVAL OF BUDGET AND APPROVAL OF RATE OF ASSESSMENT FOR THE YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, AND FOR APPROVAL OF THE AUDIT REPORT FOR THE YEAR ENDED JUNE 30, 2011” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses that are registered for this case;

and I further certify that I served a copy of the forgoing to the following non CM/ECF participants by U.S. Mail, postage prepaid, this 16th day of May, 2012:

Tracy Taylor
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/s/ Wes Williams Jr.
Wes Williams Jr.