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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 Sub-file No. C-125-B **STATUS REPORT SUBMITTED BY THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE IN ADVANCE OF THIS COURT'S STATUS CONFERENCE OF DECEMBER 21, 2000**

The following constitutes a status report to the Court from the United States of America ("United States") and the Walker River Paiute Tribe ("Tribe") regarding activities we have undertaken following the Court's last status conference with the parties on October 16, 2000, and issues to be discussed with the Court during the December 21, 2000 status conference. This report has been provided to the Court and parties in advance of the status conference. *Amended Minutes of Court* (Oct. 16, 2000).

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On October 16, 2000, during the Court's last status conference, the United States and the Tribe reported on, among other things, the parties' status in "sharing information concerning the identification of individuals and entities within the categories set forth in the *Case Management Order* (Apr. 18, 2000), regarding what information may be provided by the parties to the United States and the Tribe." *Status Report Submitted By the United States and the Walker River Paiute Tribe in Advance of this Court's Status Conference of October 16, 2000* at 1-2 (Oct. 13, 2000). During its last status conference, the Court directed the United States and the Tribe to review the information identified by the various parties that names individuals and entities within the categories set forth in paragraph 3 of the Case Management Order ("CMO"), "so that a determination may be made as to what categories of people[] are missing who need to be identified and served." *Amended Minutes of Court* (Oct. 16, 2000).

This status report reviews each of the categories set forth in paragraph 3 of the CMO. For each category, we review the information sources identified by the parties and the status of our review of these and other sources of potentially relevant information. We also provide our current assessment as to whether the information reviewed identifies the categories of persons and entities to be served, based on our work so far. In addition, our work has raised a number of issues and questions that we believe warrant further discussion with the Court. While we identify and discuss a few of these issues herein, we suggest that the parties have an additional status conference with the Court in January 2001 where these and any other issues related to the identification of persons and entities set forth in paragraph 3 of the CMO may be discussed in further detail.

The bulk of the work reviewing information identified by the parties has been done by the United States, in consultation and coordination with the Tribe, through the work of litigation support personnel. These efforts have included a review of materials identified to the Court that parties have provided to the United States and the Tribe in hard copy, electronic form, or both. In addition, a senior paralegal employed by the United States, Dennis Becker, traveled to Nevada during the week of December 10 to review and obtain documents in the offices of the United States Board of Water Commissioners ("Commissioners"), the Walker River Irrigation District ("District"), and the State of Nevada. Mr. Becker traveled to Yerington, Nevada on Sunday, December 10, and spent Monday and half of Tuesday in the Commissioners' and Districts' shared offices. On Tuesday afternoon, he began his review of files in the office of the Nevada State Engineer in Carson City, and continued his work there through Friday. We had also planned to have Mr. Becker travel to Sacramento, California, to review documents in state offices there. Due to the great number of documents in the Nevada State Engineer's Office, we opted to postpone Mr. Becker's examination of California's files and have him remain in Carson City to continue his review of documents there.

As of the end of Friday, December 15, Mr. Becker reported that he had reviewed over 950 files in the Nevada State Engineer's Office, but still had about 125 files to review, in addition to certain materials not available in the file area of the State Engineer's Office during his visit. In addition, Mr. Becker has requested that a large number of documents he reviewed in the State Engineer's office be copied; those copies are still being made by the State Engineer's staff.

Thus, while we have now obtained and reviewed a substantial number of the documents identified to us, we have not been able to complete this effort. Furthermore, there may be other documents and information not yet provided to us that we would seek to review.

I. CATEGORIES IN PARAGRAPH 3 OF THE CASE MANAGEMENT ORDER

A. Category 3.a.: The successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order of Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940) ("Decree")

As a result of our investigation so far, we have determined that the two best places to begin identification of the parties within this category are the Commissioners' and District's files. The files of the States of Nevada and California contain additional information sources. Furthermore, some additional information can be found in Mineral County's filings in C-125-C related to its efforts to serve decreed rights holders with its motion to intervene. We have obtained or reviewed a significant portion of this information.

As a basic matter, we object to the requirement that we identify these persons and entities. In a separate but related motion, we have asked the Court to require the parties entitled to use the water under the Decree to identify themselves and their water rights as an essential component of the Court's continuing jurisdiction over this case and as a necessary means to provide access to the Court for those seeking to modify the administration of the Decree. *Joint Motion and Memorandum in Support of the Joint Motion of the Walker River Paiute Tribe and the United States of America for an Order Requiring the Identification of All Decreed Water Rights Holders and Their Successors* (June 29, 2000). We incorporate those arguments herein. For the Court's information and convenience, we

have attached to this status report copies of our pleadings on this motion and the responses District and the Commissioners.[1] **(Exhibit J.)**

Nevertheless, it should be clear from this report that we have been working very hard to try to identify the decreed rights holders on our own. As is clear from our motion, we seek the institution of an ongoing requirement and procedure by which the Court and its Commissioners will be able to identify the water rights holders under the Decree. In fact, our request is similar to the requirements of Nevada law. See NEV. REV. STAT. §§ 533.382-533.387. At this point, there is no such procedure, and the Commissioners cannot identify the current water rights holders under the Decree. Thus, we are unable to identify the decreed right holders, as required by the Court, and serve them with our counter-claims in order to reach the merits.

Our overall assessment is that, as a general matter, we should be able to identify and locate a large number of the water rights holders within Category 3.a. based on a review of the information noted below. Of course, this is a time-consuming process and, just as experienced by Mineral County, water rights will change before service is complete.[2]

1. **Information from the U.S. Board of Water Commissioners**

The Commissioners have identified three categories of information and made each of them available to us.

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[1] We are not serving these materials on the other parties.

[2] Indeed, one issue we would like to raise with the Court is to determine the appropriate role of the Mineral County service list, as approved by the Court, in our service effort. We propose to address this issue at the next status conference.

a. U. S. Board of Water Commissioners Assessment Rolls.

In September 2000, the Commissioners provided the United States and the Tribe with a computer disk and hard copy of the current version of their assessment roll, dated July 1, 2000. The Commissioners have also provided us with earlier versions of this annual list, generally by computer disk and hard copy as well. A copy of the current list is attached as **Exhibit A**.

The current assessment roll identifies individuals and entities billed for water rights assessments as of July 1, 2000 for the fiscal year 2000. The assessment roll is an alphabetical list of 87 names and addresses,[3] some of which are listed more than once without explanation. The assessment roll is simply a mailing list identifying those individuals and entities billed by the Commissioners for water rights assessments. There is no indication of what, if any, decreed water rights these individuals and entities hold. It may be logical to assume that most of these persons and entities are water rights holders, but the Commissioners acknowledge that the names on the list often are not the actual water rights holders. *Comments & Recommendations of United States Board of Water Commissioners to Joint Motion of the Walker River Paiute Tribe and the United States of America for an Order Requiring the Identification of All Decreed Water Rights Holders and their Successors* at 2(Oct. 16, 2000)(Civil No. C-125).

We think that this list provides minimal assistance in identifying the decreed rights holders and is most helpful for confirming addresses.

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[3]This number is low when compared to the number of decreed water rights. The large number of water rights administered by the District substantially reduces the Commissioners' assessment roll, sin the Commissioners only assess the District.

b. U.S. Board of Water Commissioners Water Index Cards.

The Commissioners also maintain an index card system for each water right under their administration. While the Commissioners create and maintain these cards separately in hard copy and by computer, the staff make changes and updates to each set of cards. On December 11, 2000, the Commissioners provided the United States and the Tribe with a copy of one set of its hard copy index cards, consisting of 87 cards. A sample index card is attached as **Exhibit B**.

The information on these cards appears very helpful for the task of identifying the persons and entities addressed in Category 3.a. of the CMO. Among other things, the cards provide information on the parameters of the specific water rights and the land to which the water rights are appurtenant, including water right acres, township and range numbers, county assessors parcel numbers, and Decree claim number. The cards appear to identify the water rights holders, some or all of the history of the ownership of each water right, and transfers of title.

c. Assorted deeds and other water right transfer documents.

The Commissioners also have a collection of deeds and other documents, which they obtain from time to time, that indicate the transfer of the water rights under their administration. Staff use this information to update the water index cards described above. The Commissioners made these documents available for review and copying on December 11, 2000. We estimate that these materials fill about one-quarter of a file cabinet drawer. Mr. Becker reviewed materials from this drawer, but did not copy any of them, although we may wish to do so in the future.

2. **Information from the Walker River Irrigation District**

The identification and production of information from the District regarding this CMO category has been problematic. There was uncertainty over which documents the District would allow to be examined. Although we have now obtained a significant amount of information, we cannot say at this point that we are comfortable that the District has provided us with all information that it has within its custody or control that would assist in identifying the current decreed rights holders.[4]

a. District Assessment Roll.

On November 3, 2000, the District provided the United States and the Tribe with a computer disk and hard copy of the current version of its assessment roll, dated September 30, 2000. The District has also provided us with earlier versions of this annual list, generally by computer disk and hard copy as well. A sample page of the current list are attached as **Exhibit C**.

We have received contradictory information from the District as to the purpose of its assessment roll. For the most part, the District has maintained that its assessment roll is "not intended to be used for determining title to a water right," DePaoli Letter, July 6, 1999 at 1 (transmitting 1999 assessment roll) (**Exhibit F**) and that the "name present on the assessment roll may not accurately identify the current record title holder of a particular ... water right." DePaoli Letter, Oct. 5, 2000 at 2 (**Exhibit G**). Nevertheless, even more recently the District asserted that the names on its assessment roll constituted "from the District's perspective those persons [who] are owners of water rights,"

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[4] We have attached the correspondence relating to this effort as **Exhibit I** for the Court's information.

DePaoli Letter, Nov. 22, 2000 at 2 (**Exhibit I**). As a result of its shift in description, we asked the District if we could assume that if the United States and Tribe serve the persons listed on the District's assessment roll, the District will agree that we have served the proper persons under Categories 3.a. and 3.b. of the CMO as to water rights within the District. The District has not agreed to this suggestion. DePaoli Letter, Dec. 6, 2000 at 3 (**Exhibit I**). Nevertheless, it would be helpful for us, and we suspect for the Court as well, for the District to clarify what it means when it references persons under its assessment roll.

When compared with the Commissioners' list, it is apparent that the District administers a substantially larger number of individual water rights than do the Commissioners. Like the Commissioners' list, the District's assessment roll appears to be just an alphabetical list of names and addresses that the District uses as a mailing list for collection of assessments. See DePaoli Letter, Oct. 5, 2000 at 2 (**Exhibit G**). There are also significant changes between these lists from year to year. When we compared the June 1999 and June 2000 assessment rolls, we saw that over 60 listings out of 536 listings on the 1999 list do not appear on the 2000 list. There are over 140 new listings out of 565 listings on the 2000 roll; although some of these appear to be address changes, over 100 appear to be changes in ownership. The assessment rolls do not explain the reasons for these changes.[5] While it may be logical to assume that most of these names represent owners of water rights and that most of them hold some water rights under the Decree as original owners or successors in interest, nothing in

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[5]We have not yet examined the District's index cards, see below, to see if they, in fact, provide information regarding these changes, but expect that these cards should assist here. We have also asked the District if there are other documents in their offices, other than those produced thus far, that explain these changes. Schneider Letter, Nov. 15, 2000 at 3 (**Exhibit I.**).

this list indicates what water right is connected to each name, whether the person or entity is the owner or successor in interest of a water right under the Decree, or whether the named person or entity is, in fact, an owner of any water right.

Our assessment so far is that the District's assessment roll provides minimal assistance in identifying the decreed rights holders and is most helpful for confirming addresses. Nevertheless, following our last status conference with the Court, the District took the position that, "the . . . assessment roll in hard copy and computer format is the best information the District has concerning the identity of individuals and entities with claims to surface water in categories 3(a) and 3(b) of the Case Management Order." DePaoli letter, Nov. 2, 2000 at 2 (**Exhibit I**). In connection with this assertion, the District initially refused to produce a variety of other documents, such as its index cards and certain voter information, discussed below, DePaoli Letter, Nov. 2, 2000 at 2-3 (**Exhibit I**), but has since modified its position.

b. <u>District Water Index Cards.</u>

The District also maintains an index card system for each water right under its administration essentially in the same manner as the Commissioners. Indeed, the Commissioners' index cards and those of the District are virtually indistinguishable, and the District provides blank index cards to the Commissioners at no charge. In a similar fashion to the Commissioners, the District creates, maintains and updates two separate index systems: one in hard copy; the other in the computer system shared with or identical to that of the Commissioners.

Although the District initially refused to make these cards available for our review, it ultimately produced them. DePaoli Letter, Nov. 22, 2000 at 2-3 (**Exhibit I**). On December 11, 2000, the

District provided us with computer printouts of its index cards. The District also allowed access to its hand-written index cards. The United States' paralegal, Mr. Becker, reviewed a portion of these cards on December 11, comparing them with the computer version. The District has about 800 cards; two sample computer-generated index cards are attached as **Exhibit D.**

We believe the information on these cards is very helpful to the task of identifying the persons and entities addressed in Category 3.a. of the CMO. In its letter of November 2, the District asserted that its index cards "provide no information on identification of such persons and entities which is not already provided by the assessment roll." DePaoli Letter, Nov. 2, 2000 at 2 (**Exhibit I**). A review of the information on the face of the District's index cards, contradicts this assertion, as do previous statements of the District. See DePaoli Letter, Oct. 5, 2000 at 2-3 (**Exhibit G**). The District's index cards appear to include identifications of water rights in the Decree, and may identify other water rights held by District members, the parameters of the specific water rights, the water right holders, and some or all of the history of the water rights. Accordingly, we disagree that the index cards provide no useful information and believe instead that they will assist our effort greatly.

c. Assorted deeds and other water right transfer documents.

The District also has a collection of deeds and other documents, which it has obtained from time to time, that track the transfer of water rights under its administration. Staff use this information to make changes on the water index cards described above. The District made these documents available for review and copying on December 11, 2000. We estimate that these materials fill about three-quarters of a file cabinet drawer. Mr. Becker spot-checked a portion of the deeds and confirmed the

transfer of deed information to the District's cards. Mr. Becker did not copy any of these documents, although we may wish to do so in the future.

In addition, the District has provided us with a list of water rights that are not connected to the ownership of the land to which they are appurtenant. This is a list that the District has only recently begun to compile. *Status Report Submitted By the United States and the Walker River Paiute Tribe* at 8 (Oct. 13, 2000). The District also allowed inspection of old index cards. Although at first review, these old cards do not appear relevant for the task at hand, we have asked the District for its assurance that all index cards, whether "current," "inactive", or "canceled," will be maintained in its offices for future reference by any of the parties. Schneider Letter, Dec, 1, 2000 at 2 (**Exhibit I**). The District has also given us copies of three Nevada State water certificates and one Nevada State permit issued to the District.

All of this information, with the likely exception of the old index cards, will assist in identifying the persons and entities to be served under Category 3.a.

d. District Voter and Election Information.

We have also obtained or reviewed a variety of District voter and election information, much of which the District also declined to produce initially. See DePaoli Letter, Nov. 2, 2000 at 2 (**Exhibit I**). As set forth in our previous status report:

> The District maintains a variety of election-related information: 1. eligible voter registrations; 2. voter oaths of continued eligibility to vote; 3. consents and designations by which eligible voters consent to or designate a person to vote for them; 4. a computer-generated "Registrar List Worksheet," indicating, among other things, where an elector is eligible to vote, and the voter's associated water right acres and number of votes (this list is also available by hard copy); 5. a computer-generated Registrar List, alphabetically by elector (this list is also available by hard

copy); and 6. a poll book including precinct, voter name, number of votes to be cast, and signatures of persons voting.

Status Report Submitted By the United States and the Walker River Paiute Tribe at 8 (Oct. 13, 2000). Much of this information is potentially helpful for this task, for example:

> Nevada Revised Statutes § 531.127 requires electors to be registered in order to vote . . . . [V]oters are required to take and subscribe the registration oath before a Board election on a form provided by the District as evidence of continued eligibility . . . . Nevada Revised Statutes § 539.123 allows certain persons and entities to consent to a particular person voting for them or to designate a person to vote for them . . . . The District is able to generate from its computer a "Registrar List Worksheet." The Registrar List Worksheet lists electors in alphabetical order, indicates . . . the water rights acres of the elector and the number of votes the elector is eligible to vote. It includes blanks for noting whether the elector is registered and whether the elector voted in the last election.

DePaoli Letter, Oct. 10, 2000 at 2-3 (**Exhibit H**). Thus, it appears that this information should identify persons entitled to vote regarding each water right, who should be the owners of the water right, and the water right acres. Moreover, since the last District election was in April 1999, this information should be current at least as of that date. DePaoli Letter, Oct. 10, 2000 at 2 (**Exhibit H**).

The District has now provided us with copies of the following:

1. Registrar List Worksheet, 3/15/99
2. Smith Valley Precinct Poll Book, April 6, 1999
3. Mason Valley Precinct Poll Book, April 6, 1999.

These documents are included in the District's letter of November 22, 2000, which is included in **Exhibit I**. Mr. Becker also reviewed, on December 11 through12, each District voter registration oath card produced to us. Sample voter cards are included in the District's letter of November 22, 2000 (**Exhibit I.**). Comparing voter registration and oath cards with the election work sheets, most voters

were found in both sets of documents. There were an estimated 150-200 voter registration and oath cards for the 1999 election.

We believe that of this information will be of assistance in identifying the persons and entities to be served under Category 3.a. of the CMO.

3. **Information from the State of Nevada.**

The State of Nevada has produced or made available for review a variety of documents that assist in identifying the water rights holders under the Decree. Nevada has produced or made available for review, the following information sources:

1. Nevada Division of Water Resources, Surface and Ground Water Rights holders list, dated May 2000.

2. Nevada Division of Water Resources, Surface and Ground Water Rights holders list, dated April 1999.

3. Nevada Division of Water Resources, State Engineer, Water permit files, Carson City.

We have reviewed the first two information sources, which the State produced in hard copy and electronic format. Mr. Becker, the United States' paralegal spent three and one-half days reviewing the State Engineers' water permit files during the week of December 10. As noted above, he did not complete his review during that time.

This information is of assistance in identifying the persons and entities under Category 3.a. of the CMO. The computer-generated materials provide information on change applications under the Decree. They state the type of interest – ground or surface water, certificate or permit --, sub-basin and use. Annotations provided by the State on the hard copy of this information identify permits issued by the State Engineer for waters of the Walker River and its tributaries, some of which may reflect

rights recognized under the Decree. All of these files include file summary pages, which provide some identifying and ownership information. Some water permit files have "Summary of Ownership" and/or "Abstract of Title" pages, which also provide additional identifying and ownership information. Samples of each of these three pages are included in **Exhibit E** . These sources include information on decreed rights and, thus, assist in identifying persons and entities to be served under Category 3.a. of the CMO.

4. **Information from the State of California.**

The State of California has produced or made available for review a variety of documents that assist in identifying the persons and entities in Category 3.a. of the CMO.

1. California State Water Resources Control Board, List of Walker River Diversions in California.

2. The information on the preceding list and a map that identifies current water rights claimants known to the California Board is also available on the California Board's website at www.waterrights.ca.gov.

3. California State Water Resources Control Board files, Sacramento, California.

We have already reviewed in a cursory fashion the first information source. This is a hard copy list of approximately 150 surface water rights claimants in California on tributaries to the West Walker River and the West Walker River itself, and rights on tributaries to the East Walker River and the East Walker River itself. According to the State of California, this list comprises water rights claimants who have filed either applications to appropriate water or statements of use. Statements of use are filed by individuals or entities who claim riparian water rights or appropriative water rights that precede the California legislature's adoption of the statutory water appropriative system (so-called "pre-1914 water

rights"). Holders of riparian water rights or pre-1914 water rights are not required to file statements of use with the California State Water Resources Control Board to establish the validity of their rights. Thus, according to the State, there may be some holders of riparian water rights or pre-1914 water rights that do not appear on the California Board's list. The California Board does not keep track of successors in interest to water rights holders under the Decree, although the list described above may include successors in interest.

We also believe the California Board's website will be a helpful source of information. As stated above, we have postponed our review of the State's files in Sacramento, but will attend to that shortly. These sources include information on decreed rights and, thus, we believe they will assist in identifying persons and entities to be served under Category 3.a. of the CMO.

5. **Information from Mineral County's Effort in C-125-C.**

We have obtained a variety of materials related to the on-going efforst of Mineral County in C-125-C to serve the decreed rights holders. This effort has been ongoing since 1995 and may include information that is not current. Materials that we have obtained include some, but not all, Waiver of Service and Return of Service forms from the Mineral County effort. Until very recently, Mineral County did not include copies of these forms with any of its service filings served on us. See, e.g., *Certificate of Return of Service,* C-125-C (July 8, 1999) (noting the filing of fourteen Returns of Service without providing any copies); *Certificate of Returns of Service, Waivers of Service, And Attempts to Locate* (Nov. 9, 2000) (copies of returns included). We have obtained most of these forms instead, from the Court files in this case. A number of these forms are missing from the copies we obtained from the Court and we still need to locate and copy the missing forms. We also have

obtained and begun to review the various pleadings Mineral County and other parties filed addressing the sufficiency of Mineral County's service efforts and related opinions of the Court. It is not clear to us if the Mineral County list includes non-decreed water rights holders as well as decreed rights holders.

Thus far, we worked substantially from what Mineral County has referred to as its "Good Serve" list, which we understand is a list of persons and entities it has served to the satisfaction of the parties and the Court. Currently, we have reviewed over 700 names from the Waiver of Service and Return of Service documents that are also considered "good serves" and confirmed or located new addresses for them. We are, however, missing Waiver of Service or Return of Service documentation for a number of individuals and entities on the "Good Serve" list and have Waiver of Service or Return of Service documentation for a number of individuals and entities not on the list. Mineral County has promised us a copy of its service list, but has not yet provided it to us.

The Mineral County materials that we have obtained so far do not identify the water rights claimed by the persons and entities it has served, even though Mineral County has collected and provided the Court with some information on water rights transfers. This means that Mineral County's "Good Serves" list has the potential to be hard to use and update since it is incomplete. Certainly, its materials are helpful in some instances and should, at a minimum, be sources of addresses, but in our view the identification of water rights claimed by each potential party is essential to be able to track changes in parties over time.

B. **Category 3.b.:** **All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basin who are not presently parties to this adjudication.**

Much of the information discussed above in Section I.A. includes information relevant to the identification of persons and entities in this category.

1. **Information from the Walker River Irrigation District**

It appears to us that the District's water users may have rights in addition to those set forth in the Decree. It is not clear to us, however, exactly which additional rights may be included within the District and who the holders of such rights are. This is one area where we request assistance from the Court in obtaining additional information and clarification. See Sections I.A.2.b. and II.D.5.

2. **Information from the State of Nevada.**

The following sources of information from Nevada State files are relevant to the identity of persons and entities to be served under this category:

1. Nevada Division of Water Resources, Surface and Ground Water Rights holders list, dated May 2000.
2. Nevada Division of Water Resources, Surface and Ground Water Rights holders list, dated April 1999.
3. Nevada Division of Water Resources, State Engineer, Water permit files, Carson City.

We have reviewed the first two information sources, which the State produced in hard copy and electronic format. Mr. Becker, the United States' paralegal, spent three and one-half days reviewing the State Engineer Water permit files during the week of December 10. As noted above, he did not complete this review during that time.

This information is of assistance in identifying the persons and entities under Category 3.b. of the CMO. The computer-generated materials provide information on change applications under the Decree. They include type of interest – ground or surface water, certificate or permit-- , sub-basin and use. All water permit files include file summary pages, which provide some identifying and ownership information. Some of these files have "Summary of Ownership" and/or "Abstract of Title" pages, which also provide additional identifying and ownership information. Samples of each of these three pages are included in **Exhibit E**. These sources include information that assists in identifying persons and entities to be served under Category 3.b. of the CMO.

3. **Information from the State of California.**

The following are sources of information from California State files relevant to the identity of persons and entities to be served under this category:

1. California State Water Resources Control Board, List of Walker River Diversions in California.

2. The information on the preceding list and a map that identifies current water rights claimants known to the California Board is also available on the California Board's website at www.waterrights.ca.gov

3. State Water Resources Control Board files, Sacramento, California.

As stated above, we have reviewed in a cursory fashion the first information source. This is a hard copy list of approximately 150 surface water rights claimants in California on tributaries to the West Walker River and the West Walker River itself, and rights on tributaries to the East Walker River and the East Walker River itself. This list includes both decreed and other surface water rights claimants. According to the State of California, this list comprises water rights claimants who have filed

either applications to appropriate water or statements of use. Statements of use are filed by individuals or entities who claim riparian water rights or appropriative water rights that precede the California legislature's adoption of the statutory water appropriative system (so-called "pre-1914 water rights"). Holders of riparian water rights or pre-1914 water rights are not required to file statements of use with the California State Water Resources Control Board to establish the validity of their rights. Thus, according to the State, there may be some holders of riparian water rights or pre-1914 water rights that do not appear on the California Board's list.

We also believe the California Board's website will be a helpful source of information. As stated above, we have postponed our review of the State's files in Sacramento, but will attend to that shortly. These sources include information on both decreed and other surface water right claimants, and, thus, we believe they will assist in identifying persons and entities to be served under Category 3.b. of the CMO.

4. **Information from Mineral County's Effort in C-125-C.**

Mineral County's effort appears to include, to some extent, identification and service on water rights holders other than just the decreed rights holders. Although it appears to us that Mineral County is attempting to identify and serve the current Decreed rights holders, its work may be of some limited use addressing Category 3.b., as well, primarily for claimant addresses. See the additional discussion in Section I.A.5., above.

C. Category 3.c.: **All holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley), and 110B (Walker Lake Subarea of the Walker Lake Valley).**

The information relevant to most of this category comes from the files of the State of Nevada. Our review of materials identified to us by the State has just begun, but we believe that but for the domestic users, discussed below, these sources are sufficient to address this category.

1. **Information from the State of Nevada.**

a. Nevada Division of Water Resources, Well Log Database.

The State has provided us with a disk and hard copy of its well log database dated October 2000. The log lists approximately 690 wells, including domestic wells. The log includes basin number, well log number, owner's name and partial or complete address.

b. Nevada Division of Water Resources, List of Holders of permits or certificates to pump groundwater issued by the State of Nevada.

The State has provided us with a disk and hard copy dated October 2000. This identifies holders of groundwater rights in sub-basins 107, 108, 110a, 110b, 106, 109 and 110c.

c. Nevada Division of Water Resources, Surface and Ground Water Rights holders list.

The State has provided us with a disk and hard copy dated April 1999. This list is discussed in Section I.A.3.

d. Nevada Division of Water Resources, Surface and Ground Water Rights holders list.

The State has provided us with a disk and hard copy dated May 2000. This list is discussed in Section I.A.3.

e. Nevada Division of Water Resources, State Engineer, Water permit files, Carson City.

The State has made these files available for review and copying. These are the materials that Mr. Becker is in the process of reviewing.

f. Nevada Division of Water Resources, Well Log data base, monthly updates of all rights, located at http://ndwr.state.nv.us/IS/IS.htm

This database lists wells by basin, location, owner, purpose, and other technical data related to the well. This list includes domestic, municipal, and industrial users, and thus, is useful for providing information for several CMO categories including category 3.c.

2. **Domestic users.**

The sources identified above include information on domestic users, but probably will not yield a sufficiently complete list of domestic users. The State informs us that the State Engineer does not regulate domestic wells. Our review of the above sources confirms that certain uncategorized information identifying domestic users is scattered throughout these materials. Additional work will almost certainly be needed to address the issue of service on domestic users. We are in the process of trying to consider alternate means of approaching this issue and would be prepared to submit a proposal to the Court and other parties in advance of the next suggested status conference.

D. **Category 3.d.:** **All holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and 110C**

(Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

The information relevant to this category comes from the files of the State of Nevada and consists of the materials identified in Section I.C. above, except that the issues raised in Category 3.c. regarding domestic users are not relevant here.

E. **Category 3.e.:** **All users of groundwater for irrigation in California in the Walker River Basin.**

The information identified to us thus far that is relevant to this category follows:

1. The California Board's website at www.waterrights.ca.gov .

2. California State Water Resources Control Board files, Sacramento, California.

The California Board reports that it does not maintain information in this category, other than appropriators named on the list identified above who are diverting water from subterranean streams. Not all persons who pump groundwater in California are required to obtain a permit from the California Board. Under California law, only groundwater that is determined to be part of a subterranean stream is subject to the same application, permit, and license procedure that applies to surface water users. Other groundwater is considered to be "percolating ground water" and is not subject to the rules that apply to appropriation of surface water.

This is also a category where we think additional investigation may also be needed. Our intention is to review the above sources of information and then address how we might obtain additional information relevant to this category.

F. **Category 3.f.: All holders of "vested rights" to the use of groundwater under the laws of the State of Nevada within the Walker River Basin.**

The State of Nevada reports that it has no information for this category, but that some applications on file with the State Engineer include claims for such rights. Our review of information provided by and available in the offices of the State confirms that information identifying a number of "vested rights" holders is scattered throughout these materials. A list of these materials can be found in Section I.A.3.

G. **Category 3.g.: All municipal providers in Nevada within the Walker River Basin who currently use groundwater.**

Information relevant to this category can be found in the Nevada State sources identified in Section I.A.3., above. In addition, we have obtained information from the Nevada Department of Human Resources, Health Division, which has provided a list of 130 water systems in the Churchill, Douglas, Lyon and Mineral counties. This list includes municipal, industrial and service businesses, not all of which are in the Walker River Basin.

The State also reports that there is no statutory definition of "municipal" relevant to this category, but that it categorizes municipal providers in general in terms of their size and that this process may include some larger water providers that are not necessarily municipalities. In addition, its lists include providers considered to be "quasi-municipal."

We think this information is adequate to identify the entities to be served under this category. We note that the lack of a definition of "municipal" under State law may raise some questions as to

what is a municipal provider. Since we are serving a wide range of water users under other Categories of paragraph 3 of the CMO, however, a specific definition here may not be necessary.

H. **Category 3.h.:** **All municipal providers in California within the Walker River Basin who currently use groundwater.**

Information relevant to this category may be found in the above identified sources of information from the State of California. In addition, the State is in the process of locating information relevant to this issue from its Department of Health Services and any similar State agencies.

I. **Category 3.i.:** **All industrial users in Nevada within the Walker River Basin who currently use groundwater.**

We incorporate our response to Category 3.g. (See also Section I.A.3.) herein.

II. ISSUES RAISED BY OUR INVESTIGATION OF THE CMO CATEGORIES.

There are a variety of issues raised by our work so far that we wish to raise with the Court for further discussion at a subsequent status conference. There may be additional issues that the other parties identify as well. As stated at the outset of this status report, we suggest that the Court hold the next status conference in this matter in January 2001.

A. Identification of the water right(s) of each individual and entity to be served.

The process of attempting to identify the many categories of persons and entities the Court has directed us to serve will be extraordinarily time-consuming. At present, we estimate roughly that we may have to serve upwards of 3,000 persons and entities, or more, and water rights are continually being sold and otherwise transferred. Thus, we believe it will be necessary to determine a way to track the sales and transfers of water rights to ensure that persons who are no longer water rights holders are

deleted as parties to this case and that the successor water rights holders are included in the case. We are still considering this issue and how to approach it as we continue our review of the documents collected last week and provided by the parties. We would like to discuss this issue with the Court and parties in our next status conference.

B. **Use of Mineral County Records.**

As noted above, we wish to explore with the Court what role the Mineral County service list, when complete, would have in our service efforts.

C. **Role of county records.**

Several of the primary parties in this matter – the District, the Commissioners and the State of Nevada – have repeatedly asserted in pleadings, correspondence, and otherwise, that the only way to obtain an accurate identification of water rights holders for purposes of conducting service in this matter is to conduct a title search of each water right in the appropriate county recorders offices. We are not convinced that this is appropriate or feasible. This is another issue that we wish to discuss with the Court and the parties in our next status conference.

D. **Other District documents.**

There are several categories of documents about which we have asked the District but without receiving answers. We are prepared to address this issue with the Court at this or the next status conference.

1 Materials provided to the District, pursuant to Nevada law, identifying the transfer of a water right.

Nevada law requires persons to whom an adjudicated or unadjudicated right is conveyed to file a report of conveyance with the State Engineer that includes an abstract of title and "a copy of any deed, written agreement or other document pertaining to the conveyance." NEV. REV. STAT. § 533.384 (1)(a) (1995). For places of use of such water that are wholly or in part within the boundaries of an irrigation district, this same information is to be filed with the irrigation district. NEV. REV. STAT. §533.384 (1)(b) (1995). Thus, District should have additional documents in its offices that set forth the identity of water rights holders. We have asked the District to provide these documents to us. Schneider Letter, Nov. 15, 2000 at 3 (**Exhibit I**). We wish to obtain an identification of any such past filings with the District and receive copies or notice of future filings so that we may track the transfer of water rights administered by the District.

2. District water rights addressed under NRS § 539.513(6).

In one of its recent letters, the District referenced "situations where there is an agreement under NRS §539.513(6)" as somehow being handled differently from listings on the District's assessment roll. DePaoli Letter, Nov. 22, 2000 at 2 (**Exhibit I**). This appears to indicate that there are some water rights that might be identified from some documents other than the assessment roll. We asked the District to provide Mr. Becker with all documents that identify such water rights and their owners for our inspection and copying. Schneider Letter, Dec. 1, 2000 at 2 (**Exhibit I**). The District responded that,

> The District list of "reserved water rights" which was included with my November 22, 2000 letter . . . constitutes a list of persons or entities with whom the District has or is seeking an agreement pursuant to the provisions of NRS § 539.513(6). We do not intend to provide your contractor with any additional information on this subject.

DePaoli Letter, Dec. 6, 2000 at 2 (**Exhibit I**). The District's list of "reserved water rights," appended to its November 22 letter, was represented to us then as simply being a list of "water rights owned by persons or entities who are different than the owner of the land to which the water right is appurtenant." DePaoli Letter, Nov. 22, 2000 at 3 (**Exhibit I**). By contrast, NEV. REV. STAT. § 539.513(6) states that the assessments, tolls and charges fixed by the District are a lien on the land even if the ownership of the land is separate from the ownership of the water right unless, among other options, the owner of the right to use the water enters into a written agreement with the District for the payment of these charges. We would like to review these agreements as a means of identifying and tracking the ownership of water rights not connected with the land.

3. Other information in District files identifying certain holders of surface water rights under Nevada and California Law.

In its letter of November 22, the District referenced having other information regarding surface water rights, Holders of Surface Water Rights Under Nevada and California Law Who Are Not Successors, but declined to review or produce this information. DePaoli Letter, Nov. 22, 2000 at 3-4 (**Exhibit I**). We have asserted that the District has provided us with so little information describing the nature of this information that it is impossible for us to respond adequately, and suggested that the District could provide examples of this information to the Court and be prepared to discuss with the Court what it is generally and why it is not relevant to the effort at hand. Schneider Letter, Dec. 1, 2000 at 2 (**Exhibit I**). The District has refused to address this issue at all. DePaoli Letter, Dec. 6, 2000 at 2-3 (**Exhibit I**). We ask that the Court require the District to provide additional information as to this category of information.

4. Clarification of the content of the District's Assessment roll.

As set forth above,Section I.A.2.a., several questions related to the District's assessment roll remain: What exactly is the District's assessment roll? To what extent is it, or is it not, a list of water rights owners?

5. Clarification of the content of the District's Index Cards and the Water Rights under District administration.

The District index cards have raised several questions for us as to the breadth of the water rights administered by the District. The cards include a line for "Court Decree." Some cards identify "C-125" and include a reference to the Decree on that line. Other cards are blank in this area. These differences can be seen by reviewing the two sample computer-generated index cards attached as **Exhibit D**. We have no explanation for these differences. Do these cards represent both decreed and non-decreed rights? If so, is there a way to distinguish between a decreed (Category 3.a.) and non-decreed (Category 3.b.) right from the cards?

6. Request to ensure that all documents have been identified.

In contrast to the basic cooperation of the Commissioners and the State of Nevada in identifying and producing documents for our inspection and their willingness to answer questions for us, obtaining information from the District has been exceedingly difficult. As we stated above, we cannot say at this point that we are comfortable that the District has provided us with all information that it has within its custody or control that would assist in identifying the current decreed rights holders. We have inquired of the District to explain to us why the Nevada Public Records law, 19 NEV. REV. STAT. chapter 239, does not apply to our review of its records, but the District has declined to respond.

DePaoli Letter, Dec. 6, 2000 (**Exhibit I**). We would appreciate hearing the District's position on this issue, which we think would be instructive for us in this current effort and any future effort to examine portions of its files. We suggest that we discuss this issue at the next status conference.

As a general matter, we request that the Court inquire of the parties if there are any additional documents other than the documents already identified and produced to us within their custody or control, or other documents of which they have knowledge that are relevant to the identification of the categories in paragraph 3 of the CMO.

To summarize, we believe that we have made a very good effort to gather information identifying those who must be served under paragraph 3 of the CMO. Clearly, our effort is not yet complete and the parties must address with the Court a variety of questions. We propose to do so at the next status conference.

Dated: 12-15-00

Respectfully submitted,

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By: _____
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Dated: 12-15-00

Respectfully submitted,

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Attorneys for the Walker River Paiute Tribe

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of December, 2000, I served a true and correct copy of the foregoing "**STATUS REPORT SUBMITTED BY THE UNITED STATES AND THE WALKER RIVER PAIUTE TRIBE IN ADVANCE OF THIS COURT'S STATUS CONFERENCE OF DECEMBER 21, 2000,**" by first-class mail, postage prepaid, addressed to the following persons:

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Yerington, NV

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Name:
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Reno, NV 89509

Page 60, Decree C-125 (McKay, J.T.)
West Walker River

Index No.
Lyon County No.

W CL 225

PRIORITY	C.F.S.	ACRES	DUTY	DAYS STORAGE	ACRE FEET REQUIRED PER ACRE	ACRE FEET REQUIRED TOTAL	ACRE FEET APPORTIONED	TOPAZ RES. ACRE FEET	BRIDGEPORT RES. ACRE FEET	
1878	.64	40.00								
TOTAL										

TOTAL ACRES: 40.00

Water Rt. Acres 40.00

Non Wtr. Rt. Acres

Acre Feet Storage

SE¼ of NE¼, S½ of SE¼,
NE¼ of SE¼, Sec. 9;
T 6 N - R 23 E

99-76 - 12/31/68 Fairfield Estate to Robert T. & Vivian Adams - 1969 Roll

Case 3:73-cv-00127-MMD-WGC Document 1 Filed 12/19/00 Page 39 of 40

WALKER RIVER IRRIGATION DISTRICT
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September 30, 2000

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