Case 3:73-cv-00127-RCJ-WGC Document 5 Filed 12/19/00 Page 1 of 40

NOV 22 '00 12:24PM WOODBURN & WEDGE P.28/30

PROPERTY DESCRIPTION:

SW¼, Sec. 10;
E½ of E½, Sec. 16;
T. 14 N, R 25 E. (320 Acres)

L. C. DeArmond to A. G. Sturgeon
Book 31, Page 46 - 1941 Roll
Misc R-328 - District Court to M. C. Aikin, Doris Conway Weden, G. C. Indart, E. C. DeArmond - 9/10 Interest and G. J. Brandon, Verna Montrose, Sadie Cain, Elizabeth Evans, James Sturgeon & John Sturgeon 1/10 Interest
36-90 - 11/16/49 - G. J. Brandon, V. Montrose Sadie Cain, E. Evans, J. Sturgeon, John Sturgeon, D. C. Weeden, M. C. Aikin, G. C. Indart & E. C. DeArmond to Alfred H. & Ealain L. Smith - 1950 Roll — 160 A
36-238 - Above grantors to Joseph M. & Flora Farias on 5/24/50 - 1950 Roll. — 160 A.

Tax Roll	Interest on Bonds			Bond Redemption			Current	Operation—Maintenance			Water Distribution		Amount	Amount	
	General	Loc. No. 1	Loc. No. 3	Loc. No. 4	General	Loc. No. 3	Loc. No. 4	Expense	Reservoir	General	Special	General	Special	Assessed	Collected	
1937	111.38				53.46			48.00	17.11			9.60		239.55	239.55	
1938	111.38				53.46			37.76	23.17		2-57.60	15.36	WH-112.00	411.93	353.93	abnd-2-57.60
1939	111.38				53.46			35.84	38.59		2-57.60	25.60	WH-48.00	390.47	312.87	abnd-2-57.60
1940																abnd

Case 3:73-cv-00127-RCJ-WGC Document 5 Filed 12/19/00 Page 2 of 40

P.29/30 NOV 22 '00 12:24PM WOODBURN & WEDGE

NAME Teschlmann, Ernest #1

PRIORITY	C.F.S.	ACRES	DUTY	DAYS STG.	ACRE FEET REQUIRED PER ACRE	ACRE FEET REQUIRED PRIORITY	ACRE FEET REQUIRED TOTAL	ACRE FT. APPORTIONED	TOPAZ RESERVOIR ACRE FEET	TOPAZ RESERVOIR COST	BRIDGEPORT RESERVOIR ACRE FEET	BRIDGEPORT RESERVOIR COST	TOTAL ACRE FEET	TOTAL COST
1911	.172	60.	3.776											
1915	.20	17.		29	.679	11.71								
1925	.17	44.		32	.7603	10.64								
Total		69.		65	.5844	106.56								
		160.				128.91		129.495	87.4175	41.743	6.56	35519	129.495	722.62

Bal Dest - 722.
Gross Acres - 160.
Acre Feet - 129.
Net Acres - 160.

TAX ROLL	INTEREST ON BONDS GENERAL	INTEREST ON BONDS LOC.NO.1	INTEREST ON BONDS LOC.NO.3	INTEREST ON BONDS LOC.NO.4	BOND REDEMPTION GENERAL	BOND REDEMPTION LOC.NO.1	BOND REDEMPTION LOC.NO.3	BOND REDEMPTION LOC.NO.4	CURRENT EXPENSE	Operation-Maintenance Reservoir	Operation-Maintenance General	Operation-Maintenance Special	Water Distribution General	Water Distribution Special	TOTAL ASSESSED	AMOUNT COLLECTED	ACCRUED BACK TAX
1929	48.92		17.12		43.36		45.87		17.80	3.87	4- 4.92		9.60	Sam-14.63	179.24	89.62	
																89.62	
1930	54.92		16.60		43.36		20.37		19.20	6.45	4- 5.84		9.60	Sam-8.54	188.88	94.44	
																94.44	
1931	48.42		17.14				36.30		36.00	9.61			18.40	n.1341	179.02	89.96	
																89.96	
1932	72.26		16.16		~~43.36~~		40.38		28.00	10.45			11.20		178.45	89.23	
																89.22	
1933			16.31						31.60	10.34			6.40		54.65	13.67	
																13.66	
																27.32	
1934			10.13						16.00	3.87	43 14.00		6.40		52.40	52.40	
1935	~~58.30~~		11.41		18.07		57.09		19.60	2.74			6.40		118.29	59.15	
																29.57	
																29.57	
1936	36.13		5.71		17.34		46.80		18.88	7.74	3- 6.40		7.68		113.72	28.18	
	93.96															58.36	
	2.17															28.18	
1937	36.13		5.71		17.34		39.28		24.00	5.55	3- 6.40		4.80		134.17	67.09	
																67.08	
1938	36.13		8.56		17.34		34.24		18.88	7.74	3- 6.40		7.68		136.47	68.24	
																68.23	
1939	36.13		11.41		17.34		34.24		17.92	12.52	3- 6.40		12.80		148.76	74.38	
																74.38	
1940	32.52		11.41		20.96		34.24		15.20	10.58	3- 6.40		9.60		140.91	70.46	

Case 3:73-cv-00127-RCJ-WGC Document 5 Filed 12/19/00 Page 3 of 40

NOV 22 '00 12:25PM WOODBURN & WEDGE P.30/30

PROPERTY DESCRIPTION:

S½ of SE¼ of Sec. 5, &
N½ of NE¼ of Sec. 8,
T. 13 N., R. 26 E. (160 Acres)

Tax Roll	Interest on Bonds				Bond Redemption			Current Expense	Operation—Maintenance			Water Distribution		Amount Assessed	Amount Collected	Accrued Back Tax
	General	Loc.No.1	Loc.No.3	Loc.No.4	General	Loc.No.3	Loc.No.4		Reservoir	General	Special	General	Special			
1919								16.00			2.80			18.80	18.80	
1920	12.53							16.00						28.53	28.53	
1921	21.03							12.80						33.83	33.83	
1922	23.37							12.80		7.28		2.33		45.78	45.78	
1923	26.18 19.31 26.18							12.80	2.61	1.40		7.28		65.58	65.58	
1924	18.64 26.18							12.80	3.87	3.20		5.46	14.68	83.03	83.03	
1925	18.64 17.41							12.80	3.45 1.22	3.20	17.51	5.46		80.86	80.86	
1926	31.89							12.80	3.65 1.22	3.20	29.03	5.46	5.30	101.96		
1927																
1928	30.76				7.66				1.22							

Case 3:73-cv-00127-RCJ-WGC Document 5 Filed 12/19/00 Page 3 of 40

U.S. Department of Justice

Environment and Natural Resources Division

90-6-2-86

Denver Field Office
999 18th Street
Suite 945 North Tower
Denver, CO 80202

Telephone (303) 312-7308
Facsimile (303) 312-7379

By telefacsimilie and regular U.S. mail transmission:

December 1, 2000

Gordon H. DePaoli
Woodburn, Wedge & Jeppson
Post Office Box 2311
Reno, Nevada 89505

Re: United States v. Walker River Irrigation Dist.,
No. C-125-B (D. Nev.).

Dear Mr. DePaoli:

This letter responds to your letter of November 22, 2000. We appreciate the fact that the Walker River Irrigation District ("District") has reconsidered some of the positions it took in your previous letter of November 2, 2000. While presently there appears to be less need to review with the Magistrate the level of production of information in your client's possession identifying individuals and entities within the categories set forth in paragraph 3 of the Court's Case Management Order (Apr. 18, 2000) ("CMO"), we are not prepared to say that such a need will not arise in the future.

Once again, due to a lack of clarity as to what he can review in your client's offices, our contractor has postponed his trip. He is now scheduled, and ticketed, to be in Nevada and California during the week of December 11 and would begin his effort to review documents at the District/U.S. Board of Water Commissioner's offices on December 11. He has ascertained that both the District and U.S. Board of Water Commissioner offices will be open that week. Our contractor plans to use the District's copying machine and is willing to run the machine to expedite matters. We assume that a charge of .25 per copy will cover any District employee costs.

At the upcoming status conference, we would like the District to report to the Court whether there is any other information that the District has in its possession, custody or control that is relevant to the task at hand -- namely information that identifies the individuals and entities within the categories set forth in paragraph 3 of the CMO. With each exchange of correspondence related to the identification and now the production of District information relevant to this task, we learn of other potential sources of information within District control. Several of these potential sources are discussed below. **Is there anything else?**

The District has now offered to make the following documents available for our contractor's review and inspection:

1. Current Index Cards in hard copy;
2. Voter Registration and Oath Cards;

3. Voter Designations from the 1999 Election; and
4. Deeds received from the Lyon County Recorder.

In addition, there are several other documents that we would like to obtain or review and possibly copy at this same time, as well.

First, we would like to obtain copies of the District's "current" index cards as generated by its computer. This may be something that District staff can be able to complete in advance of our contractor's visit. We would also like our contractor to inspect the hard copy of these cards. Based on this inspection and his comparison of these cards with the printed computer card, he may wish to copy some amount of these cards. Our contractor may also wish to inspect and/or copy the District's "inactive" or "cancelled" cards, but it is probably too early to make this decision. We would like your assurance and the District's assurance that all index cards, whether "current," "inactive" or "cancelled," will be maintained in its offices for future reference by any of the parties.

Second, your recent letter references "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 at 2. This appears to indicate that there are some water rights that might be identified from some other, as yet, unidentified documents. Please provide our contractor with all documents that identify such water rights and their owners for our inspection and copying.

Third, in your most recent letter, you reference having other information regarding surface water rights (Holders of Surface Water Rights Under Nevada and California Law Who Are Not Successors), but decline to review or produce this information. You have provided so little information as to what this information is that it is impossible to respond adequately. Perhaps you should provide examples of this information to the Magistrate and be prepared to discuss with him what it is generally and why it is not relevant to the effort at hand.

We also have several questions about some of the election-related documents discussed in your letter of November 22. The examples of oaths you provided us in your most recent letter reference "the face of this card," creating an impression that there may be additional components of this oath. Is this the case? Or is this a more formal reference to the material provided? Are the registrations the same document as the oaths or are there different documents? Your earlier letters indicated that these might be different documents. In addition, you have provided us with poll book copies from the 1999 election for Smith and Mason Valleys. Are these the entire poll book entries for this election? If not, we would like to obtain copies of any other such materials so that we have a complete set of poll book entries for the 1999 election.

Finally, we have some questions based on your current description of the District's assessment roll. Your current description of the District's assessment roll as constituting "from the District's perspective those persons [who] are owners of water rights," DePaoli Letter, Nov. 22 at 2, is, frankly, baffling considering the District's past descriptions of this list of names as "not intended to be used for determining title to a water right," DePaoli Letter, July 6, 1999 (transmitting 1999 assessment roll) at 1, and its recent examples of circumstances when 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. May we now assume from this assertion that if the United States and Tribe serve the persons listed on the District's assessment roll, the District will agree that we have then served the proper persons under Categories 3(a) and 3(b) of the CMO, at least as to those water rights within the District? It will be helpful for us, and we suspect for the Court as well, to clarify what the District means when it references persons under Catgories 3(a) and 3(b) of the CMO. Otherwise, we seem to

be heading to an Alice In Wonderland situation.[1/]

It seems to us that the parties were simply to identify sources of information so that we could examine them. Counsel for the Walker River Paiute Tribe ("Tribe") and I are surprised that the production of this information has become such a challenge. If production of any of the above mentioned or other information is a problem for the District, please explain to us why the Nevada Public Records law, 19 NRS chapter 239, does not apply to our review of District records.

Please contact me with any questions or if you wish to discuss any issue raised in this letter. Please let us know if there are any issues presented by our contractor's work at the time of his inspection so that we may attempt to remedy them promptly. Counsel for the Tribe and I hope that our contractor's work can be accomplished as efficiently and completely as possible during this visit. Obviously, if there are problems, we can discuss them with the Magistrate at the upcoming status conference.

Sincerely,

Susan L. Schneider, Attorney
Indian Resources Section
U.S. Department of Justice
999 18th Street
Suite 945, North Tower
Denver, Colorado 80202
(303) 312-7308

cc: Alice E. Walker (telefacsimilie and U.S. mail transmission)
U.S. mail transmission:
Linda Bowman
Marta Adams
Mary Hackenbracht
Michael Neville
George Benesch

1/ "When I use a word," Humpty Dumpty said ...., "it means just what I choose it to mean -- neither more nor less.

"The question is," said Alice, "whether you can make words mean different things."

"The question is," said Humpty Dumpty, "which is to be master -- that's all."

Carroll, Lewis, *Through the Looking Glass*, chapter 6.

WOODBURN AND WEDGE
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00 DEC 11 AM 11:02

FILED

December 6, 2000

Gordon H. DePaoli
E-MAIL: gdepaoli@woodburnlaw.com
DIRECT DIAL: (775) 688-3010

Via U.S. Mail And Facsimile (303) 312-7379

Susan L. Schneider
United States Department of Justice
Environment & Natural Resources Division
999 18th Street, Suite 945
Denver, CO 80202

Via U.S. Mail And Facsimile (303) 444-3490
Alice Walker
Greene, Meyer & McElroy
1007 Pearl Street, Suite 220
Boulder, Colorado 80302

Re: United States and Walker River Tribe v. Walker River Irrigation District, et al.
Our File No. 1709.0063

Dear Susan and Alice:

This letter responds to your letter of December 1, 2000. In that letter you state that "once again, due to a clarity as to what he can review in your client's office, our contractor has postponed his trip." Schneider Letter, December 1, 2000 at 1. There was nothing unclear about my November 22, 2000 letter. It specifically identified what your contractor could review. Although I have no idea why your contractor postponed his trip, it clearly could not have been as a result of any lack of clarity as to what he could review at the offices of the Walker River Irrigation District.

On December 11, 2000 your contractor will be allowed to review information as set forth on page 4 of my November 22, 2000 letter. The procedure for that review and copying will be as set forth in my November 22, 2000 letter. Your contractor will be expected to identify the documents which he desires to be copied. The District will undertake the process of copying in a manner which is expeditious and insures the integrity of its records. The charges for copying will be as set forth in my November 22, 2000 letter. The issue of a charge for employee time will be determined when we understand the magnitude of what is to be copied and the amount of employee time involved. The charge of .25 cents per copy may not cover District employee costs in all cases.

In your December 1, 2000 letter, you state that "at the upcoming status conference, we would like the District to report to the Court whether there is any other information that the District has in its possession, custody or control, that is relevant to the task at hand – namely information that identifies the individuals and entities within the categories set forth in paragraph 3 of the CMO." Schneider Letter, December 1, 2000 at 1. As set forth in the status report submitted by the District for the October 16, 2000 status conference: "there is no way for the District to 'confirm that no other relevant information is available within [its] office as requested by the Tribe and the United States without reviewing all information in an office which has existed for over 80 years. That is an unreasonable and unnecessary request." District Status Report at pg. 2, lns. 22-25. Between now and the next status conference I do not intend to review all of the records in the District Office.

The District will have a hard copy of its current index cards as generated by its computer for your contractor on December 11, 2000. Your contractor may also inspect the inactive cards and cancelled cards currently in the District's files. Neither I nor the District can provide assurance that it will continue indefinitely to maintain copies of all presently existing current, inactive, or cancelled index cards or of cards which become inactive in the future. At this point the District has no plans to eliminate any of those records.

In your December 1, 2000 letter you reference NRS § 539.513(6). The District list of "reserved water rights" which was included with my November 22, 2000 letter to you 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.

In your December 1, 2000 letter you make reference to information that the District may have relative to persons who have applied for surface water rights to the Nevada State Engineer or to the State of California. Schneider Letter, December 1, 2000 at 2. I have nothing more to say about that information. You know and I know that the two States are the best source of current and complete information with respect to persons and entities who have applied for

surface rights to those agencies. I do not intend to cause my client to incur the unnecessary cost of having me review a file drawer of material for no useful purpose.

As noted in my November 22, 2000 letter to you, your contractor will have the ability to review voter registration and oath cards. My November 22, 2000 letter included a complete copy of the poll books for the two precincts for the April 6, 1999 District Election.

I have no intention of engaging in word games concerning the District's assessment roll. The nature of the District's assessment roll and the purposes for which it is compiled have been explained many times. It is a good beginning point for anyone seriously interested in identifying all owners of surface water rights within Categories 3(a) and 3(b) of the Case Management Order who own land within the District. As we have explained many times and again in my November 22, 2000 letter, the best place to check the accuracy of the District assessment roll on that subject is the Lyon County Recorder's Office. It is not the responsibility of the District to identify the "defendants" for the United States and the Tribe. The failure of the United States and the Tribe to join a necessary party or their joinder of a party who is not necessary is not cured simply because the party in question is or is not on the assessment roll of the District.

Finally, I do not intend to provide a brief concerning the applicability of NRS Chapter 239 to the information within the District's office. If that comes up as an issue before the Court, I will address it then.

Sincerely,

Gordon H. DePaoli

Gordon H. DePaoli

GHD:phc

cc: Marta Adams
Linda Bowman
Mary Hackenbracht
(all via facsimile)

Scott B. McElroy
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303/312-7308

Attorneys for the United States of America

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 **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**

Pursuant to the minutes of the Court dated May 26, 2000, the Walker River Paiute Tribe ("Tribe") and the United States of America ("United States") file the following Motion and Memorandum in Support thereof, requesting an order requiring the identification of all decreed water rights holders and their successors. This motion supplements written comments submitted jointly by the United States and the Tribe to the *Report and Petition for Approval of Budget and Approval of Rate of Assessment for the Year July 1, 2000, through June 30, 2001, and for Approval of the Audit Report for the Year Ended June 30, 1999* (Apr. 3, 2000) and the oral motions and arguments made to the

Court on May 26, 2000. The Tribe and the United States respectfully ask the Court to require all water rights holders under the Decree (Apr. 14, 1936), modified, Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (Apr. 24, 1940) ("Decree"), and their successors in interest to identify themselves to the Court and the United States Board of Water Commissioners ("Commissioners") in a timely manner so that the Court and the Commissioners can identify these persons and entities as a routine matter for administration of the Decree and to ensure that proper notice can be provided to all parties.

The burden and responsibility for this reporting should be on the water rights holders and not on the Court, the Commissioners, any party to the Decree, or any other person. We suggest that each water right holder be required to identify itself to the Commissioners on an annual basis and to correct or change any address and other ownership information. The Commissioners would then annually report these addresses to the Court. This would facilitate the Commissioners' maintenance of their records and an annual confirmation of each water right. We suggest this be done in conjunction with the payment of the annual dues for receipt of the decreed water, which would minimize the need for a separate mailing and thus reduce costs. In addition, whenever a water right is transferred, the Commissioners should be notified of the transfer and the identity of the transferee in a timely manner so that the they may identify at any given time the complete and accurate list of current water rights holders. In this regard, we suggest that the requirements of Nevada law, as set forth in Nev. Rev. Stat. §§ 533.382 (1995) and 533.384 (1995), provide guidance on the relevant requirements. A proposed Order setting

forth our proposals is attached. Other means of accomplishing the same goal – identifying holders of water rights under the Decree – may be available, and, as stated before the Court in its May 26 proceeding, both the United States and the Tribe would be pleased to discuss other such options with the parties.

WHEREFORE, for the reasons set forth in this motion and the accompanying memorandum in support, and for any other reasons appearing to this Court, the United States and the Tribe respectfully request that the Court grant this motion and enter an Order requiring all water rights holders under the Decree and their successors in interest to identify themselves to the Court and the Commissioners in a timely manner. A proposed Order is attached to this motion.

Dated: June 29, 2000

Respectfully submitted,

Scott B. McElroy
Alice E. Walker
GREENE, MEYER & McELROY, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
303/442-2021

Kelly R. Chase
P.O. Box 2800
Minden, Nevada 89423
702/782-3099

By: Alice E. Walker
Alice E. Walker

Attorneys for the Walker River Paiute Tribe

Dated: 6/29/00

Respectfully submitted.

Kathryn Landreth, United States Attorney
Susan L. Schneider
U.S. Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
Denver, Colorado 80202
303/312-7308

By: S. L. Schneider
Susan L. Schneider

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of the foregoing 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, and a Memorandum in Support Thereof, via U.S. Mail, all charges prepaid thereon. this 29 day of June 2000, addressed to:

Walker River Irrigation District
P. O. Box 820
Yerington, NV 89447

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State Water Res. Control Bd.
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Sacramento, CA 94814

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Attorneys for the United States of America

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- **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**

The Walker River Paiute Tribe ("Tribe") and the United States of America ("United States") respectfully ask this Court to require all water rights holders under the Decree (Apr. 14, 1936), modified, Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (Apr. 24, 1940)("Decree"), and their successors in interest to identify themselves to the Court and the United States Board of Water Commissioners ("Commissioners") in a timely manner so that the Court and the Commissioners can identify these persons and entities as a routine matter for administration of the Decree and to ensure that proper notice can be provided to all parties. A notification requirement is

logical and helps address due process concerns that may be raised by decreed rights holders and potential future litigants.

In the past sixty years since the Court issued its Decree, there have been repeated transfers of water rights by sale, inheritance, and otherwise. As originally issued, the Decree includes no requirement that the Court receive notice of such transfers to enable it to have a current list of the parties bound by the Decree. Likewise, the Commissioners, who are appointed pursuant to the Court's authority to administer the Decree, receive no such information. The ability to identify who the water rights holders are is critical to the ability of the Commissioners to "properly administer the Decree and to protect the authority and jurisdiction of [the Commissioners] and this Court to administer the Decree." *Report and Petition for Approval of Budget and Approval of Rate of Assessment for the Year July 1, 2000, through June 30, 2001, and for Approval of the Audit Report for the Year Ended June 30, 1999* at 3 (April 3, 2000).

A. The water rights holders under the Decree should be required to identify themselves and inform the Court and Commissioners of any transfers of ownership of these rights.

It is both logical and sensible to require the water rights holders to identify themselves to the Court and Commissioners and to notify them of any transfers in ownership of these rights. To begin with, all such holders of water rights are already bound by the Decree, which delineates both their water rights and related responsibilities. The Decree, as initially issued by the Court in 1936, bound not just the individuals before the Court, but also bound:

> each of their servants, agents and attorneys and all persons claiming by, through or under them, and their successors and assigns in and to the water rights and lands herein described ....

Decree § XI (emphasis added). Since these persons and entities obtain the benefits of the Decree and are bound by its restrictions, their identities should be known. At present, the Court has no regulatory authority in place to require these persons and entities to identify themselves. Thus, neither the Court nor the Commissioners are in a position where they can identify the current water rights holders under the Decree, even though these persons and entities are bound by the Decree.

Second, the identification of current decreed rights holders is needed for the effective and accountable administration of the Decree. The Decree allows the Court, as part of its continuing jurisdiction, to:

> make such regulations as to notice and form or substance of any applications for change or modification of this decree, or for change or place or manner of use of water as it may deem necessary.

Decree § XIV. The Court's authority includes the ability to appoint a Water Master, "who shall be charged with the duty of apportioning and distributing the waters of the Walker River, its forks and tributaries in the State of Nevada and in the State of California, including waters for storage and stored water, in accordance with the provisions of this decree." Id. § XV. In 1937, the Court appointed the Board of Water Commissioners of the U.S. District Court and charged the Commissioners with this duty. Preface to Rules and Regulations of the U.S. Water Commissioners (Aug. 1953). Since that time, the Water Master, now acting as representative of the United States Board of

Water Commissioners, has undertaken the administration of the Decree under Court supervision. With the approval of the Court, the Commissioners,

> may make such rules as may be necessary and proper for the enforcement of this decree and for the carrying out of its purposes and objects and the proper apportionment and distribution, including rotation of the use of water where necessary, of the waters of said Walker River among and to the persons entitled thereto, including water for storage and stored water.

Decree § XV. Over the years, the Court has approved rules and regulations for the Commissioners' administration of the Decree, including procedures for handling applications for changing the point of diversion, manner of use, or place of use of these waters.

Since there is no list of current water rights holders and no list has ever been maintained or required, the Court and the Commissioners cannot notify all decreed water rights holders of any matter relevant to the administration of the Decree – whether for consideration or approval of rules for its administration, judicial consideration of any dispute under the Decree, or any other matter. Indeed, the Court and Commissioners would be unable to notify water rights holders under the Decree of any emergency matter. As a result, as discussed below, even if the Court wished to seek notice and comment from all decreed water users before issuing the Order requested herein, it could not, in fact, do so, because there is no list of current water rights holders.

The absence of any mechanism to require current water rights holders to identify themselves limits access to the Court for anyone seeking a forum for complaints about the Decree's administration. As the Court is aware, Mineral County has tried to serve the current water rights holders in sub-proceeding C-125-C as part of its effort to intervene in

this matter and assert claims to water on behalf of Walker Lake. After over five years of work and expense, it has not yet completed service, in part because it was left to identify the decreed water rights holders itself before it could serve them. Moreover, Mineral County has spent considerable time and expense defending its determinations of whom to serve from challenges filed by other parties in this matter. As a general matter, parties wishing to assert administrative or other claims regarding the Decree should not be required to spend time and resources defending their efforts to identify decreed right holders. In essence, such an obligation limits, and may effectively bar, access to the Court as a forum for complaints by creating a roadblock of procedure, time and expense. In this regard, the absence of a requirement that decreed water rights holders identify themselves to the Court and Commissioner may work to deny due process to a potential litigant wishing to seek judicial redress. Cf. Bodie v. Connecticut, 401 U.S. 371 (1971)(access to court may implicate due process concerns).

Mineral County is not the only potential litigant adversely affected by the absence of the requirement sought herein. The United States and the Tribe seek this requirement as water rights holders and water users under the Decree, whose rights to water have the potential to be affected and harmed by the water use of other decreed water rights holders. Indeed, the United States and the Tribe are in the process of trying to bring additional claims before this Court. *First Amended Counterclaim of the United States of America* (July 31, 1997); *First Amended Counterclaim of the Walker River Paiute Tribe* (July 31, 1997). Related to this effort, the Court has recently issued a Case Management Order in sub-proceeding C-125-B, which, among other things, requires service upon "[t]he

successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940)('1936 Decree')." *Case Management Order* at 5 (Apr. 18, 2000) (C-125-B). Even though the United States and the Tribe are parties to the original case and are decreed rights holders, it will be hard for us to bring our additional claims before the Court, in part because we too will have to determine who the current rights holders are before we try to serve them.[1]

In the parties' appearance before the Court on May 26, one opposing counsel suggested that the requirement requested by this motion simply seeks to circumvent the Court's Case Management Order. We disagree. The Court's Case Management Order requires the United States and the Tribe to serve their respective counter-claims upon the current water rights holders under the Decree. In this motion, the United States and the Tribe do not contest or seek to circumvent this requirement. We ask that the Court administer the Decree to require identification process as a routine matter. Certainly, this will assist with service efforts, but it will not take the place of service itself.

It is also important to consider the changing context in which the parties to this sixty-year old Decree must rely on its administration. In 1936, about 800 persons lived in

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[1/]We have raised with both the Court and the Magistrate Judge the question of the extent to which we may use Mineral County's prior service to determine the list of decreed rights holders to be served. However, since Mineral County's efforts have stretched out over five years, there will have been many changes in ownership of these rights such that we may have to reinvestigate each such ownership interest.

Yerington, Nevada.[2] There are now about 2,700 persons living in the city limits of Yerington.[3] As area population increases, so have demands on water. And, with increased demands on water, there are increased stresses on the existing water resources and their administration. With such increased pressures on water resources, additional crises and disputes are certainly likely. If the Court waits for a crisis to decide how to notify the decreed water rights holders, it may be too late to address the crisis or do so effectively. Persons wishing to bring complaints to the Court should not have to assume the responsibility and related costs of identifying the decreed water users. This information should be readily available. Likewise, when the Commissioners wish to alter the regulations governing administration of the Decree, they – and the Court – should be able to rely on information provided by the water users to issue notices of proceedings relevant to these rights.

This Decree is now sixty years old and, with each passing year, requires closer attention in its administration, due in substantial part to increases in area population, competing demands for water, and general recognition that the waters of the Walker River are over-appropriated. Requiring the water rights holders under the Decree to identify themselves to the Court and the Commissioners is an essential component for effective and accountable administration of the Decree.

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[2]/United States v. Walker River Irr. Dist., 11 F. Supp. 158, 161 (D. Nev. 1935); 14 F. Supp. 10 (D. Nev. 1936); *rev. on other grounds* 104 F. 2d 334 (9th Cir. 1939).

[3]/Chamber of Commerce, Yerington, Nev., Telephone call, June 28, 2000.

B. A requirement that water rights holders identify themselves will not add undue burden or expense to the administration of the Decree, and may be ordered by the Court without formal amendment of the Decree.

As set forth in the attached proposed Order, the responsibility for providing information regarding the ownership and transfer of decreed water rights should rest with the water rights holders and their successors. We have tried to propose a method for providing such information that should minimize that burden and is largely consistent with State requirements. This request does not require the Commissioners to review property records or conduct any examination akin to a title search to show the transfer of each property from the initial Decree to today. The information provided to the Commissioners by the water users will enable them to update their records and improve the administration of the Decree. Thus, this requirement would be helpful and cost-effective and would further constitutional due process.

This Court can order the requirement proposed by the United States and the Tribe on its own, without formal amendment of the Decree. First, the Court can do so as a function of its continuing jurisdiction over the Decree:

> The Court retains jurisdiction of this cause for the purpose of changing the duty of water or for correcting or modifying this decree; *also for regulatory purposes*, including a change of the place of use of any water user ....

Decree § XIV. Moreover, this Court has authority to act to ensure the accurate and effective administration of its decrees. The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and

principles of law." 28 U.S.C. § 1651(a)(1949). The Supreme Court "has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." United States v. New York Telephone Co., 434 U.S. 159, 172 (1977). Thus, the requirement sought is plainly within the scope of this Court's continuing jurisdiction over the Decree and its broader authority over its decrees, judgments and orders.

There is no need to amend the Decree to facilitate its administration and to require actions that will enable its administration. There is simply no reason for water rights holders to be able to remain anonymous. Moreover, as the parties recognized before the Court at the May 26 hearing, any requirement that notice and an opportunity to be heard be provided to all decreed rights holders on the instant request would be impossible anyway, since their identities are not known.

The Court's long-time role in this matter is analogous to the role served by many state engineers. Thus, it should be of assistance to consider the kinds of notification requirements applicable to transfers of water rights elsewhere under the jurisdiction of a state engineer. Such requirements are of recent enactment, likely due to the growing realization that water rights transfers must be tracked in order to ensure their proper administration. The requirement suggested here (detailed below and in the attached proposed Order), is similar to requirements found elsewhere, including requirements for conveyances of water rights within the State of Nevada.

In 1995, Nevada enacted a series of requirements addressing the transfer of adjudicated or unadjudicated water rights. As a general matter, such transfers must be made by deed, notorized according to State law, and recorded in the office of the county recorder of counties where the water is diverted from its natural source and where it is applied to beneficial use. Nev. Rev. Stat. § 533.382 (1995). Additional requirements are contained in § 533.384, which, among other things, 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). By a separate provision, the State Engineer must confirm that the report filed pursuant to § 533.384 (1)(a) includes all the required information and does not conflict with the chain of title as determined by documents on file with the State Engineer. Nev. Rev. Stat. § 533.386 (1995). The Nevada requirements go beyond what we suggest for this Decree, but make clear that information on water rights transfers benefits their effective and accountable administration.[4]

Accordingly, we suggest the Court order the following:

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[4]Similarly, in the State of Idaho, for certain water rights adjudications, all persons owning or claiming ownership of a right to use water, must notify the State director of the department of water resources of any change in ownership of any part of the water right or any change in the owner's mailing address that occurs after July 1, 1996. All persons owning or claiming ownership of a water right evidenced by records recorded with the department of water resources prior to July 1, 1996, were required to verify ownership and mailing address information by June 30, 1998. Id. St. § 42-248 (1996) (a copy of this statute is attached).

1. On an annual basis, all water rights holder under the Decree shall identify or cause themselves to be identified to the United States Board of Water Commissioners (the "Commissioners"). In its annual assessment to the water users, the Commissioners shall require each person or entity making payment to identify all water rights under the Decree for which payment is made and the current owner(s) of each such right. This identification shall include the name, address and water right -- priority, quantity, and place of use -- of the current water right holder(s). If the assessment is sent out by an entity other than the Commissioners, the Commissioners shall cause this requirement to be complied with by such other entity.

2. Whenever any water right holder under the Decree sells or transfers or otherwise conveys any water right under Decree, the water right holder shall provide the new water right holder(s) with a copy of:

a. the Decree, and

b. this Order.

3. All water rights holders under the Decree shall notify the Commissioners, in writing, of any sale, transfer or conveyance of any decreed water right or a portion of that right. This notice shall be provided within two weeks of any sale or transfer of a water right, and shall include the following:

a. the name, address and water right of the current water right holder(s);

b. an identification of the water right transferred (priority, quantity and place of use), and the date of the transfer;

c. the name, address and water right of the new water right holder(s);

d. a copy of any deed, written agreement or other document pertaining to the conveyance; and

e. A statement that the requirements of paragraph 2 of this Order have been followed.

The water right holder making such a notice shall notarize this information in the manner provided by State law of the residence of the water right holder.

4. All persons to whom is conveyed a right or any portion of a water right under this Decree shall notify the Commissioners, in writing, of their receipt of any decreed water right or a portion of that right. This notice shall be provided within two weeks of their receipt of the water right, and shall include the following:

a. the name, address and water right of the new water right holder(s);

b. an identification of the water right transferred (priority, quantity and place of use), and the date of the transfer;

c. the name, address and water right of the prior water right holder(s); and

d. a copy of any deed, written agreement or other document pertaining to the conveyance.

The water right holder making such a notice shall notarize this information in the manner provided by State law of the residence of the water right holder.

5. The Walker River Irrigation District shall provide to the Commissioners a copy of all information it receives pursuant to Nev. Rev. Stat. § 533.384 (b) (1995) no later than 14 days after its receipt of this information.

6. The requirements of this Order do not address any applications for changing the point of diversion, manner of use, or place of use of these waters, nor do these requirements affect any laws, rules or regulations governing such applications.

7. The Commissioners shall maintain this information in a manner that allows them to identify the current water rights holders and to assist in the Court's administration of the Decree. The Commissioners shall provide a list of the decreed water rights holders on an annual basis, or at such other time as requested by the Court.

CONCLUSION

WHEREFORE, for these and such other grounds as may appear to the Court, the United States and the Tribe respectfully request that the Court grant this motion

Dated: June 29, 2000

Respectfully submitted,

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IDAHO CODE
TITLE 42. IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION
CHAPTER 2. APPROPRIATION OF WATER-- PERMITS, CERTIFICATES, AND LICENSES-- SURVEY

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Current through End of 1999 Reg. Sess.

42-248 Notification of change of ownership of a water right or change of address of a water right holder -- Notice of action affecting a water right.

(1) All persons owning or claiming ownership of a right to use the water of this state, whether the right is represented by decree of the court, by claim to a water right filed with the department of water resources or by permit or license issued by the director of the department of water resources, shall provide notice to the department of water resources of any change in ownership of any part of the water right or of any change in the owner's mailing address, either of which occurs after July 1, 1996. Notice shall be provided within one hundred twenty (120) days of any change using forms acceptable to the director. Any notice received by the department of water resources more than one hundred twenty (120) days after the change in ownership or mailing address has occurred shall be accompanied by a late filing fee. The late filing fee shall be one hundred dollars ($100). The director may waive the late filing fee or a portion thereof for good cause.

(2) All persons owning or claiming ownership of a right to use the water of this state that is evidenced by a water right recorded with the department of water resources prior to July 1, 1996, and for which a claim to water right, with current ownership and mailing address, is not on file with the department of water resources in the Snake River Basin Adjudication, Twin Falls Civil Case No. 39576, shall verify with the department that the ownership and mailing address information in the department's records is correct. Any incorrect ownership or mailing address shall be corrected by the owner or claimant of the water right by June 30, 1998, using forms acceptable to the director. Any mailing address or ownership corrections required by this subsection received by the department of water resources after June 30, 1998, shall be subject to the late filing fee described in subsection (1) of this section.

(3) The director of the department of water resources will be deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice.

(4) Subsections (1) and (2) of this section shall apply only in areas of the state for which a general adjudication pursuant to chapter 14, title 42, Idaho Code, is commenced or completed on or after January 1, 1980. Compliance with section 42-1409(6), Idaho Code, shall be deemed to be compliance with this section.

[I.C., § 42-248, as added by 1996, ch. 149, § 1, p. 487.]

I.C. § 42-248

ID ST § 42-248

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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.	In Equity No. C-125 **WALKER RIVER IRRIGATION DISTRICT'S OPPOSITION 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**

I. INTRODUCTION

On April 3, 2000, the United States Board of Water Commissioners (the "Commissioners") filed their Report and Petition for Approval of Budget and Approval of Rate of Assessment for the Year July 1, 2000 through June 30, 2001, and for Approval of the Audit Report for the Year Ended June 30, 1999 (the "Report and Petition").

At the hearing on the Report and Petition, the Tribe and United States made an oral motion concerning identification of Walker River Decree water rights holders. After

entertaining oral argument, the Court imposed a briefing schedule on the parties concerning this issue. Pursuant to a Stipulation for Modification of Briefing Schedule, the Tribe and United States filed their 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 (the "Joint Motion"). The stipulation further provided that: (1) the Commissioners would file comments concerning the Joint Motion with the Court by October 16, 2000; (2) all parties opposing the Joint Motion would file responses with the Court by November 16, 2000; and (3) the Tribe and United States would file their joint reply by December 8, 2000.

II. THE RELIEF REQUESTED BY THE TRIBE AND UNITED STATES IN THE JOINT MOTION AND THEIR ARGUMENTS IN SUPPORT OF THE REQUESTED RELIEF

The relief requested by the Tribe and United States in the Joint Motion is substantial and would impose significant burdens on water rights holders under the Decree as well as the Commissioners. This relief is set forth in a proposed Order Requiring the Identification of All Decreed Water Rights Holders and Their Successors (the "Proposed Order") filed by the Tribe and United States in connection with the Joint Motion.

Among other things, the Court's entry of the Proposed Order submitted by the Tribe and United States would require the following:

> 1. On an annual basis, all water rights holders under the Decree shall identify or cause themselves to be identified to the United States Board of Water Commissioners (the "Commissioners"). In its annual assessment to the water users, the Commissioners shall require each person or entity making payment to identify all water rights under the Decree for which payment is made and the current owner(s) of each such right. This identification shall include the name, address and water right – priority, quantity, and place of use – of the current water right holder(s). If the assessment is sent out by an entity other than the Commissioners, the Commissioners shall cause this requirement to be complied with by such other entity.
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> * * *
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> 3. All water rights holders under the Decree shall notify the Commissioners, in writing, of any sale, transfer or conveyance of any decreed water right or a portion of that right. This notice shall be provided within two weeks of any sale or transfer of a water right, and shall include the following:

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a. the name, address and water right of the current water right holder(s);
b. an identification of the water right transferred (priority, quantity and place of use), and the date of the transfer;
c. the name, address and water right of the new water right holder(s);
d. a copy of any deed, written agreement or other document pertaining to the conveyance; and
e. a statement that the requirements of paragraph 2 of this Order have been followed

The water right holder making such a notice shall notarize this information in the manner provided by State law of the residence of the water right holder.

* * *

In addition, the Proposed Order seeks to impose the requirements, placed on a transferor of a water right, on all transferees of water rights as well. Even if the identification sought by the Tribe and United States were necessary, which it is not, there appears to be no logical reason for imposing identical requirements on both the transferor and transferee of a water right.

The Tribe and United States argue that the identification of Walker River Decree water rights holders is necessary for the "effective and accountable administration of the Decree". They argue that identification "is critical to the ability of the Commissioners to properly administer the Decree and to protect the authority and jurisdiction of the Commissioners and th[e] Court to administer the Decree". The Tribe and United States, however, conspicuously fail to offer specific reasons as to why identification is necessary for the administration of the Decree or to protect the jurisdiction of the Court.

The Tribe and United States also make arguments concerning notification in their attempt to support identification of water rights holders under the Decree. They argue that identification is necessary so that the Court and Commissioners have the ability to notify water right holders of any matter relevant to the administration of the Decree and of any emergency matter. They argue that the Court currently has no ability to notify water rights holders if a crisis situation arises. The Tribe and United States fail to identify any circumstances, however,

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under which the current ability of the Commissioners to provide notice to water users is insufficient.

Finally, the Tribe and United States argue that the identification procedures they propose would not result in undue burden or expense with respect to the administration of the Decree. They argue that their identification request would not require the Commissioners to review property records or conduct chain of title research. As demonstrated below, however, these statements are simply not true.

III. THE COMMISSIONERS COMMENTS AND RECOMMENDATIONS TO THE COURT

On September 28, 2000, the United States Board of Water Commissioners (the "Commissioners") held a workshop and public hearing in order to receive comments and recommendations concerning the Joint Motion. Subsequent thereto, the Commissioners submitted their comments and recommendations to the Court on or about October 16, 2000. The Commissioners recommended that the Court not grant the relief requested by the Tribe and United States in the Joint Motion. The Walker River Irrigation District (the "District") concurs with the Commissioners' recommendation to the Court and offers the following opposition to the relief requested in the Joint Motion.

IV. THE RELIEF REQUESTED IN THE JOINT MOTION IS NOT NECESSARY TO ADMINISTER THE DECREE AND WOULD RESULT IN THE LOSS OF AN EFFICIENT AND COST EFFECTIVE ASSESSMENT PROCESS FOR LANDS LOCATED WITHIN THE BOUNDARIES OF THE DISTRICT

The efficient administration of the Decree does not require the identification of water rights holders as requested by the Tribe and United States. In fact, as demonstrated below, that identification would unnecessarily complicate the levying and collection of assessments and result in increased costs to water users in their exercise of decreed water rights.

The administration of the Decree for purposes of levying and collecting assessments involves two distinct procedures. The first procedure involves lands with appurtenant water rights located in California. These lands are located outside of the District's boundaries and, therefore, the assessment provisions found in NRS Chapter 539 (the Nevada Irrigation District

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Act) cannot be utilized in any manner by the Commissioners to levy and collect assessments. The second procedure involves lands located within the District's boundaries wherein the assessment provisions found in NRS Chapter 539 do come into play.

A. The Levying and Collection of Assessments by the Commissioners for Lands Located in California

On an annual basis, the Commissioners determine projected annual costs associated with their administration of the Decree. Those costs are then apportioned among the parties to the Decree in accordance with the number of acres of land irrigated by those parties. The number of irrigated acres of land in any particular tract of land, located in California and outside the District's boundaries, is reflected on index cards maintained by the Commissioners. Those index cards contain a description of the irrigated land and a description of the Walker River Decree water right appurtenant to that land. They also contain the name of the individual or entity that the Commissioners send the annual assessment to with respect to the irrigated land. That individual or entity is generally the current or previous owner of the irrigated land with an appurtenant Walker River Decree water right.

The Commissioners mail their apportioned assessment bill for a particular tract of land to the name and address that appears on the index card. The name that appears on a particular index card does not always accurately reflect the identity of the current record title holder of the water right. In many instances, for example, lands have been conveyed from individuals to trusts or business entities that involve the individuals as trustees or principals. In those instances, the trust or business entity, not the individual, is the current record title holder.

The Commissioners, however, do not need to know the identity of the current record title holder of every water right under the Decree to levy and collect their assessments. This is because, in almost all instances, the Commissioners' assessments are timely paid. In fact, the Commissioners experienced only three delinquencies or non-payments in fiscal year 1999-2000. In the rare event of a delinquency, the Chief Deputy's office sends a delinquency letter and may also follow up by telephone. If the reason for the delinquency still cannot be discerned after this follow up, the Commissioners' assistant conducts research at the Mono

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County California Recorder's Office to check for a transfer of ownership. When a transfer of ownership is verified through title research at the Recorder's office, the Commissioners forward the delinquent assessment to the new owner for payment.

The one exception to this procedure involves lands located in California and within the Antelope Valley Mutual Water Company. The Commissioners forward one bill to the Water Company for all irrigated lands located within the boundaries of the Water Company. The Water Company collects the Commissioners' assessment and then forwards the monies collected to the Commissioners.

B. Levying and Collection of Assessments by the Commissioners for Lands Located in Nevada

The Commissioners rely, in part, on provisions found in NRS Chapter 539 for the levying and collection of assessments related to lands located in Nevada and, therefore, within the District's boundaries. After the Commissioners calculate the apportioned assessment for these lands, the assessment is forwarded to the District. The District then includes the Commissioners' assessment with its assessment for purposes of billing and collection.

The District levies and collects its assessments, together with those of the Commissioners, in accordance with NRS 539.667 through 539.705. The District calculates its assessment for any given year in accordance with the provisions found in those sections. The assessment is then allocated to the lands within the District based on the number of acres of irrigated land within any particular tract of land. The number of acres of irrigated land is reflected on index cards maintained by the District. The index cards contain a description of the irrigated land and a description of the water right appurtenant to that land. They also contain the name of the individual or entity that the District assesses with respect to the irrigated land. Importantly, the index cards also list the Lyon County assessors parcel number associated with the parcel of real property which includes irrigated land.

The assessors parcel numbers allow the District to use the Lyon County tax rolls for purposes of collecting its assessments as provided for in Chapter 539. The District forwards

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its assessment, as well as that of the Commissioners if applicable, for each assessor parcel number to the Lyon County Treasurer's Office for collection. The County Treasurer places the District's assessment and the assessment of the Commissioners on the County tax bill before forwarding those bills to the owner of the relevant assessors parcel numbers.

The Lyon County Treasurer also collects its assessments, the District's assessments and the assessments of the Commissioners. The Treasurer then remits the collection related to the District's assessments and Commissioners' assessments to the District. The District, in turn, remits the amount of the assessments related to the Commissioners' assessments to the Commissioners.

The identification request proposed by the Tribe and United States would be included in the Commissioners annual assessment to water right holders under the Decree. When the Commissioner's assessment is sent out by an entity other than the Commissioners (*i.e.* the District), the Commissioners would be obligated to cause these identification requirements to be complied with by the other entity. As demonstrated above, however, this proposal could not be implemented with respect to lands located in Nevada and within the District's boundaries. There is no mechanism by which the Lyon County Treasurer could include the identification request, as set forth in the Proposed Order, in the tax bill forwarded to owners of land with appurtenant water rights under the Decree and located in Nevada. Therefore, the efficient and cost effective assessment process currently employed by the Commissioners for lands located in Nevada would be lost if the Court granted the relief requested by the Tribe and United States in the Joint Motion.

V. ANY MEANINGFUL AND ACCURATE IDENTIFICATION OF ALL CURRENT RECORD TITLE HOLDERS OF WALKER RIVER DECREE WATER RIGHTS WOULD RESULT IN WATER USERS INCURRING SUBSTANTIAL AND ADDITIONAL COSTS TO ACCOMPLISH THIS TASK

The Tribe and the United States request that the Court enter an order requiring all water rights holders under the Decree to identify themselves to the Commissioners. The proposed identification would include the name and address of the current water right holder as well as a description of the water right including claim number under the Decree, priority date, quantity

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and place of use. As set forth in the Proposed Order, the Tribe and United States request that similar requirements be placed on all transfers and conveyances of water rights under the Decree.

The Tribe and United States argue that the imposition of these requirements would "not require the Commissioners to review property records or conduct any examination akin to title search to show the transfer of each property form the initial Decree to today". Apparently, the Tribe and United States are requesting that water users merely "step forward" and identify themselves as water rights holders by providing the information as set forth in the Proposed Order. This "self identification," however, maybe of little or no value. The Commissioners simply cannot rely on unsupported statements as to the current status of the title with respect to any particular water right under the Decree. The accurate identification of current water rights holders under the Decree will necessarily involve chain of title research and the subsequent verification of that research. That research and verification will have to be conducted by qualified individuals with adequate training.

A. The Provisions Found in NRS 533.384 through 533.386 Provide an Example of the Procedures Necessary to Accurately Determine and Verify the Current Record Title Holder of a Water Right

The Provisions found in NRS 533.384 through 533.386 provide an example of the necessity for and resulting mechanics involved in the identification and subsequent verification of current record title holders to water rights. Those sections were enacted by the Nevada Legislature in 1995 to address problems encountered by the Nevada State Engineer in processing applications to appropriate and change water rights in Nevada.

In order to grant a permit or certificate to appropriate water or to process a change application, it is imperative that the State Engineer accurately identify the current record title holder of the underlying water right. In order to foster this identification, the Nevada water law requires the transferee in a water right conveyance to file a Report of Conveyance with the State Engineer. That report must contain an abstract of title to the water right, a copy of any deeds or other documents pertaining to the conveyance and any other information requested by the State Engineer. NRS. 533.384.

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