Upon his receipt of a report of conveyance, the State Engineer is obligated to proceed as follows:

> 1. The state engineer shall confirm that the report of conveyance required by paragraph (a) of subsection 1 of NRS 533.384 includes all material required by that subsection and that:
>
> (a) The report is accompanied by the prescribed fee;
> (b) No conflict exists in the chain of title that can be determined by the state engineer from the conveyance documents or from other information on file in the office of the state engineer; and
> (c) The state engineer is able to determine the rate of diversion and the amount of water conveyed in acre-feet or million gallons from the conveyance documents or form other information on file in the office of the state engineer.
>
> 2. If the state engineer determines that the report of conveyance is deficient, he shall reject the report of conveyance and return it to the person who submitted it with:
>
> (a) An explanation of the deficiency; and
> (b) A notice stating that the state engineer will not confirm a report of conveyance that has been rejected unless the report is resubmitted with the material required to cure the deficiency.
>
> * * *

NRS 533.386

The report of conveyance form used by the State Engineer is attached hereto as Exhibit A. The first page of that form details the information that must be provided by the transferee of the water right. Among other things, that information includes the identification of the water right by application, permit, proof or claim number. It also includes an identification of the current water right holder on file with the State Engineer and of the new holder or transferee. The report requires the transferee to provide all title documents and an abstract of title listing those documents. Finally, the report requires the transferee to identify any supplemental rights related to the underlying water right, the legal description of the point of diversion and the water duty related to the right.

Obviously, the Report of Conveyance requires the transferee to provide extensive information concerning the transferred water right and the legal title to that right.

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This explains why, in many instances, the transferee retains an engineer, attorney or other qualified agent to prepare and submit the report to the State Engineer.

The second page of the Report of Conveyance is for the State Engineer's use in verifying the information provided by the transferee. Among many other things, this second page demonstrates that the State Engineer's review involves an in-depth review of all title documents provided to verify the chain of title for the particular water right at issue. If this review reveals any discrepancies in the chain of title that cannot be resolved based on the information provided the report is returned to the transferee for correction.

The resources expended by the State Engineer to verify title to water rights through the Report of Conveyance procedure are substantial. In fact, approximately twenty percent (20%) of the State Engineer's staff is devoted to the review of Reports of Conveyance and related matters. These approximately ten full-time employees must have a minimum of three years of technical experience in fields involving, among other things, water rights mapping, reading and interpreting legal descriptions and matters involving real estate conveyancing. Salaries and related expenses associated with the employment these individuals amount to approximately $471,717.00 annually. This amount comprises approximately fifteen percent (15%) of the State Engineer's annual budget.

In summary, the actual and meaningful identification of water rights holders, necessarily involves chain of title research and the subsequent verification of that research. That research and verification process involves a substantial expenditure of resources. This fact is evidenced by the State Engineer's implementation of the requirements of NRS 533.384 and 533.386 through the Report of Conveyance procedure.

Undoubtedly, Walker River Decree water rights holders would incur substantial expenditures to provide an accurate and meaningful identification of their water rights to the Commissioners. That identification and resulting costs, however, is not necessary to administer the Decree. As demonstrated above, the Commissioners are currently capable of administering the Decree for purposes of water distribution, providing notice and levying and collecting

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assessments without requiring Walker River Decree water rights holders to provide the information sought by the Tribe and United States.

## VI. THE COMMISSIONERS CURRENTLY HAVE ADEQUATE RESOURCES AVAILABLE TO THEM IN ORDER TO IDENTIFY WALKER RIVER DECREE WATER RIGHTS HOLDERS AS NECESSARY

The Joint Motion argues that the Commissioners currently have no ability to identify water right holders and, therefore, cannot provide notice to those holders for purposes of administering the Decree or as otherwise necessary. The Commissioners, however, do have the ability to determine, when necessary, the identity of individual Walker River Decree water rights holders.

First, as explained above, the Commissioners maintain index cards for lands located in California. In many instances, those index cards either identify the current record title holder of the water right or contain information that proves helpful in making that identification. With respect to lands located within the Antelope Valley Mutual Water Company, the Commissioners can easily contact the Company to inquire concerning the identity of a particular water right holder.

With respect to lands located in Nevada, the Commissioners may contact the District to inquire concerning the identity of a particular water right holder. The District is able to provide the Commissioners with information from its assessment records that either identifies the water right holder or is valuable in conducting the research necessary to identify the holder.

When necessary, the Commissioners can conduct their own research at the County Recorders Offices located in Lyon County, Nevada and Mono County, California to identify water rights holders. The Commissioners may also rely on the records of the County Assessors in those two counties for identification purposes.

Finally, the composition of the Board of Commissioners is designed to provide representation from the various geographical divisions of the Walker River system. Each individual board member, therefore, has personal knowledge of the lands located within his particular geographical section of the River. In many instances, this personal knowledge includes knowledge concerning the ownership of lands within the geographical section at issue.

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In summary, the Commissioners currently do have resources at their disposal to identify, when necessary, current record title holders of lands with appurtenant Walker River Decree water rights. The Commissioners ability to identify water rights holders using these resources is adequate for purposes of administering the Decree. It is also adequate for purposes of providing notice to water rights holders as necessary to administer the Decree.

## VII. CONCLUSION

It is not necessary to identify all current Walker River Decree water rights holders in order for the Commissioners to efficiently administer the Decree. In fact, the identification process proposed by the Tribe and United States would eliminate the efficient and cost effective assessment process currently employed by the Commissioners with respect to lands located in Nevada. Furthermore, any meaningful and accurate identification of all current record title holders of Walker River Decree water rights would result in water users incurring substantial costs unnecessarily. Finally, the Commissioners currently have resources available to identify current record title holders as necessary to administer the Decree and for purposes of providing notice.

Under these circumstances, the District respectfully requests that the Court deny the relief requested by the Tribe and United States in their Joint Motion because it is not necessary to administer the Decree and, if ordered by the Court, would result in water users incurring substantial additional costs in connection with the administration of the Decree.

Dated this 16th day of November, 2000.

WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Post Office Box 2311
Reno, Nevada 89511

By: Dale E. Ferguson
GORDON H. DEPAOLI
Nevada State Bar 00195
DALE E. FERGUSON
Nevada State Bar 04986
Attorneys for WALKER RIVER IRRIGATION DISTRICT

State of Nevada

# REPORT OF CONVEYANCE

to

Department of Conservation and Natural Resources, Division of Water Resources, Office of the State Engineer

ITEM

1 APPL., PERMIT, PROOF, or CLAIM No: _____ STATUS: _____ USE: _____

2 CURRENT HOLDER(S) SHOWN BY THE STATE ENGINEER: _____

If any item requires additional space, please use Item 13 Remarks, or attach 8 1/2" X 11" sheets referencing appropriate item number

3 NEW HOLDER(S): _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____ PHONE: _____

4 INVENTORY DOCUMENTS BY CATEGORY AND NUMBER OF EACH IN CHAIN OF TITLE. See Guidelines Page 2

| | | | | | |
|---|---|---|---|---|---|
| DEED(S) | | CORRECTION DEED(S) | | OTHER: | |
| DEED(S) OF TRUST | | RECONVEYANCE...at no charge | | TOTAL NUMBER OF $$ DOCUMENTS = > | |
| NOTICE(S) OF PLEDGE | | MAP(S) at no charge | | TOTAL # X $10 each = | $ .00 |
| DEATH CERTIFICATES | | AFF OF ID at no charge | | Report filing fee = $25.00 | $ .00 |
| DECREE(S) OF DISTR. | | OTHER: | | FEES SUBMITTED | $ .00 |

5 A ONE-TIME $25 FILING FEE MUST ACCOMPANY THIS REPORT + $10 PER CONVEYANCE DOCUMENT LISTED ABOVE.

6 This REPORT requires an ABSTRACT OF TITLE listing the above documents in chronological order, from the current holder(s) of record (ITEM 2) with the Division of Water Resources, Office of the State Engineer, to the proposed, new holder(s) of record (ITEM 3). Document(s) must be recorded in the Office(s) of the respective County Recorder(s).

If the legal description on any deed(s) refer(s) to a subdivision lot or parcel or assessor's parcel number, or lists any deviation(s) different than the place of use in a Quarter/Quarter/Section/Township/Range format, a copy of the map referred to in said deed(s) *is required.* Copies of maps should be 8 1/2" x 11" or 11" x 17". Please refer to instruction sheet for details.

7 LIST SUPPLEMENTAL RIGHTS _____

8 COUNTY: POINT OF DIVERSION _____ COUNTY: PLACE(S) OF USE _____

9 PLACE(S) OF USE: QTR ____ QTR ____ SEC ____ TWN ____ RNG ____ APN _____

10 AMOUNT (DUTIES) TO BE ASSIGNED: _____ CFS _____ Acre Feet or MG _____ Acres or Units

11 DOES THE CURRENT HOLDER INTEND TO RETAIN ANY PORTION OF THE WATER RIGHT? YES _____ NO _____

12 List any other water rights relating to this Report of Conveyance that has been filed using this same abstract and chain of title.

13 Additional Space/Remarks:

14 *"I swear, under penalty of perjury, that this represents a complete and thorough search of the records of the county recorder of each county in which the water is placed to beneficial use or diverted from its natural source and the records on file in the office of the state engineer."*

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF

Mo. _____ Yr _____

(SS) _____
Notary Signature

NOTARY PUBLIC IN AND FOR THE COUNTY OF _____

STATE OF _____

MY COMMISSION EXPIRES _____

SIGNATURE: _____

PRINT NAME: _____

MAILING ADDRESS: _____

FIRM NAME: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____

OWNER?: ____

AGENT?: ____

EXHIBIT A

NOTARY STAMP

THIS DOUBLE SIDED FORM CAN BE COPIED ONTO GREEN PAPER ONLY.

FOR OFFICE USE ONLY

| ITEM | | REVIEW BY / DATE |
|---|---|---|
| 1 | Previous reports/submittals pending | - |
| 2 | Current holder(s) verified | - |
| 3 | New holder(s) information complete | - |
| 4 | Inventory verified. Fees correct. | - |
| 5 | Technical review | - |
| 6 | Abstract / Chain of Title | - |
| 7 | Supplemental rights recognized | - |
| 8 | Counties compared POD/POU | - |
| 9 | Place of Use determinable | - |
| 10 | Duties determined. | - |
| 11 | Appurtenancy / portions / percentages | - |
| 12 | Related rights by deeds and abstract | - |
| 13 | Remarks reviewed | - |
| 14 | Notary/SS legible and logical | - |

FEE RECORDS

Receipt No.(s) _____

Date of Receipt _____

Receipt No.(s) _____

Date of Receipt _____

SS This R.O.C. _____

Original Receipt(s) Located In File No _____

Deeds/Docs Filed in File No. _____

ITEM

* * * DEFICIENCIES REQUIRING RETURN * * *

RETURNED for CORRECTION to: _____ DATE: BY:

Remarks:

DUE DATE:

CORRECTION RECEIVED: DATE: BY:

CONFIRMED REPORT: DATE: BY:

Remarks:

( Received Stamp Date )

# ABSTRACT OF TITLE

This column for office use only

Permit/Proof No. _____

Page ____ of ____ pages

| DEED NO. | GRANTOR | GRANTEE | CFS | AFA/AFS MGA/MGS (circle one) | ACRES or Units (circle one) | FILED UNDER / DATE | DOC # / DATE | DOCUMENT DESCRIPTION/ REMARKS |
|---|---|---|---|---|---|---|---|---|
| 1 | | | | | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
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| 6 | | | | | | | | |
| 7 | | | | | | | | |
| 8 | | | | | | | | |

Type or print in black ink

**CERTIFICATE OF MAILING**

I certify that I am an employee of Woodburn and Wedge and that on this date, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing ***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*** in an envelope addressed to:

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Dated this 16th day of November, 2000.

Penelope H. Colter

Penelope H. Colter

C:\WP\WRID\0127\WRID's Opposition to Identification.1.doc

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Attorney for UNITED STATES BOARD OF WATER COMMISSIONERS

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>WALKER RIVER PAIUTE TRIBE,<br>Intervenor-Plaintiff,<br>vs.<br>WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.,<br>Defendant. | IN EQUITY NO. C-125<br>**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** |

The UNITED STATES BOARD OF WATER COMMISSIONERS ("USBWC") by and through its undersigned counsel hereby submit its Comments and Recommendations to this Court on 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 "Joint Motion".

In response to the Court's Order dated May 26, 2000, the United States Board of Water Commissioners held a Workshop and Public Hearing on the Joint Motion. The members of the United States Board of Water Commissioners present for the Workshop and Public Hearing were: Chairman, Richard Fulstone and members, John Pursel, Joseph Sceirine, Irwin Miller, and Stanley Hunewill. Comments upon the Joint Motion were made by the following: Alice Walker, Esq. counsel for the Walker River Paiute Tribe; Marta Adams, Esq. counsel for the Nevada Department of Wildlife; George Benesch, counsel for various water rights holders, and Dale Ferguson, counsel for the Walker River

Irrigation District.

The comments presented to the United States Board of Water Commissioners and the recommendation of the USBWC are set forth below:

1. Several comments addressed the issue of how water rights holders would comply with the proposed Order. The proposed Order would require each water right holder to submit, each year, a document which would identify all water rights under the Decree for which payment is made and the current owner(s) of each such right. This document would include the name, address and water right (priority, quantity, and place of use). Further, the proposed Order would require the USBWC to cause this requirement to be complied with by any other entity which mails out assessments. The USBWC believes that many water rights holders would be unable to comply in submitting the requested information without the assistance of an attorney, water rights surveyor or engineering firm. This requirement would be costly for water rights holders and would not provide any benefit to the USBWC. The USBWC does not currently have a staff to evaluate the information which would be submitted every year. The USBWC believes that this information will not assist it in the administration of the Decree inasmuch as the USBWC already maintains a list of those who are assessed for water delivered to lands described in the Walker River Decree. The USBWC also includes on each assessment notice a request that the recipient of the assessment contact the USBWC if he or she no longer owns the water rights covered by the assessment. If the USBWC learns of any change in ownership it requests copies of the conveyancing documents so that the assessment records can be updated, if appropriate. When it is provided with updated title information showing that the water rights have been transferred the USBWC updates its assessment records accordingly. The USBWC staff advised the USBWC that there does not appear to be a problem with the assessment records as its assessments are paid on a timely basis. The USBWC does not believe requiring each water right holder to prepare and submit this "identification" annually would assist it or the Court in the administration of the Decree.

2. With regard to the provision of the proposed Order that would require all water rights holders notify the USBWC of any sale, transfer or conveyance of any decreed water right or a portion of that right within two weeks thereof, the USBWC cannot recommend the implementation of this requirement. The USBWC is not currently staffed or funded such that all transfers could be handled in a timely

Respectfully submitted this 16th day of October, 2000.

LAW OFFICE OF LINDA A. BOWMAN, LTD.

By: Linda A. Bowman

Linda A. Bowman, Esq.
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Reno, NV 89511
(775) 335-1700

## CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on this date, I mailed a true and correct copy of the **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**, postage prepaid, addressed to:

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DATED this 16th day of October, 2000.

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEVADA**

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>WALKER RIVER PAIUTE TRIBE,<br><br>Plaintiff-Intervenor,<br><br>vs.<br><br>WALKER RIVER IRRIGATION DISTRICT,<br>a corporation, et al.,<br><br>Defendants. | IN EQUITY NO. C-125<br><br>**REPLY 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** |

## I. INTRODUCTION.

The Walker River Paiute Tribe ("Tribe") and the United States of America ("United States") file this reply memorandum in support of their request that the Court require the identification of the parties entitled to use water 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"). *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*

*Right Holders and their Successors* (June 29, 2000) ("Joint Memorandum"). Identification of the parties who hold rights to use water under the Decree is an essential component of the Court's continuing jurisdiction over this case and is necessary to provide access to the Court for those seeking to modify the administration of the Decree.

At the outset, it is worth noting that there were no objections to three critical points raised in the Joint Memorandum. First, no one questioned that this Court has ample authority under its retained jurisdiction to require the identification of decreed water rights holders and their successors. Plainly, the Court has authority to act under Section XIV of the Decree, as well as under the All Writs Act, 28 U.S.C. § 1651(a) (1949), to ascertain the parties that are subject to the terms of its Decree. Joint Memorandum at 8-9. Second, as discussed in more detail below, no one has responded to the concern that the failure to identify decreed water rights holders and their successors prevents potential litigants from obtaining access to the courts. Joint Memorandum at 4-5. Third, no one questioned the fact that requirements such as those proposed by the United States and the Tribe find support in Nevada law. Joint Memorandum at 9-10. Finally, neither the State of Nevada nor the State of California have filed a response in opposition to our Joint Motion.

The arguments of the two entities opposed to identifying the parties who hold water rights under the Decree -- the United States Board of Water Commissioners ("Commissioners") and the Walker River Irrigation District ("District") -- are essentially complaints that the identification of the owners of the water rights subject to this Court's jurisdiction will be too difficult to accomplish, may cost too much and is not necessary for the collection of assessments or the daily distribution of water. *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* (Nov. 16, 2000) ("WRID Opp."); *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* (Oct. 16, 2000) ("Commissioners' Comments"). Neither the District nor the Commissioners offer any suggestions as to how to mitigate the problems that they postulate. In any event, the Tribe and the United States are not wedded to any particular method for identifying those who hold water rights under the Decree; rather we simply assert that those parties must be identified through a method directed by the Court.

## II. IDENTIFICATION OF THE PARTIES TO THE CASE IS NECESSARY TO PROVIDE ACCESS TO THIS COURT WHICH RETAINS JURISDICTION OVER THE WATERS OF THE WALKER RIVER.

The fundamental problem with the failure to identify the water rights holders under the Decree is the imposing barrier that it erects to those who seek to challenge the current operation of the Decree. "[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). Although the Court has retained jurisdiction over the rights governed by the Decree and undertaken to administer its terms, neither the Court nor its Commissioners can identify the holders of the rights protected under the Decree.[1] As the Court is aware, three

[1] While the Commissioners do not address this issue, the District offers that this concern is met because "[e]ach individual board member [of the Commissioners], therefore, has personal knowledge of the lands located within his particular geographical section of the River. In many instances, this personal knowledge includes knowledge concerning the ownership of lands . . . ." (continued...)

additional subparts to this case have been initiated, C-125-A, C-125-B, and C-125-C. In C-125-B and C-125-C, the moving parties, the Tribe, the United States, and Mineral County, seek to establish the relationship of their claimed rights to the rights administered by the Court under the terms of the Decree. In C-125-C, Mineral County has required over five years to identify and serve the persons and entities it has identified as the current decreed water rights holders. It is still not clear whether the County's claims will be heard, since many of the rights addressed by the County in its early service efforts have now been transferred to other potentially unidentified persons and entities. The goal of identifying the decreed rights holders has become an end in itself for Mineral County, when its real objective is to have its case heard by the Court.

In short, the inability to identify the parties who hold rights under the Decree is a massive stumbling block to proceeding with those cases and may ultimately preclude the adjudication of the federal, tribal and county claims. The Commissioners' and District's blithe response to the suggestion that anyone wanting to know who holds the rights subject to the Decree may conduct a full title search ignores the reality of the situation in which even such an expensive and time-consuming effort may not produce an acceptable result. *Compare* Commissioners' Comments at 3 *and* WRID Opp. at 8, *with* MINUTES OF THE NEVADA SENATE COMMITTEE ON NATURAL RESOURCES, 68th Sess. (Feb. 20, 1995) ("in a lot of cases, particularly on the Truckee, Carson and Walker Rivers, those rights are recognized in federal court decrees and may or may not be the subject of any kind of filing, generally with the state engineer.") (Statement of Gordon DePaoli, outside counsel, Sierra Pacific Power Co., Walker River

---

[1](...continued)
WRID Opp. at 11. The oral history of water rights ownership by the individual Commissioners, suggested by the District, is not an adequate substitute for the identification sought by the United States and the Tribe.

Irrigation Dist. re S.B. 93). *See generally infra* Part III (B)(2).

To be sure, the inability to identify the water rights holders under the Decree has not always precluded litigation over the rights to use water under the Decree. In a variety of matters, service on the current water right holders has not been required. In C-125-A, the District brought suit to determine whether certain actions by California state agencies interfered with the District's rights under the Decree. *First Amended Petition for Declaratory and Injunctive Relief and Request for Order to Show Cause; or in the Alternative to Change the Point of Diversion to Storage of Water from California to Nevada* (Jan. 3, 1992) ("Petition"). Among other things, the Petition asserted that by the filing of the United States' complaint in this case, "this Court acquired jurisdiction over the waters of the Walker River and its tributaries in California and Nevada." Petition at 2. The District did not serve all of the holders of water rights under the Decree but instead posted and published notice of its Petition. *See Minutes of Court* (Jan. 3, 1992). Likewise, when the Court adopted the *Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and its Tributaries and Regarding Compliance with California Fish and Game Code Section 5937 and other Provisions of California Law* (as amended through June 3, 1996) ("Administrative Rules"), notice was provided by posting and publication. Nor do the Administrative Rules require service on all parties to the Decree or their successors in order to proceed in accordance with their requirements. *See, e.g., id.* § 7.2. And, of course, the Commissioners post and publish notice of their budget and the annual assessments prior to adoption by the Court.

At the end of the day, however, the Commissioners' failure to maintain a current list of those who are entitled to use water under the Decree effectively isolates those parties from judicial scrutiny. Although this Court expressly retained jurisdiction "for correcting or

modifying this decree; also for regulatory purposes," Decree § XIV, the parties to the Decree, such as the Tribe and the United States, as well as those claiming to be adversely affected by the assertion of rights under the Decree, such as Mineral County, cannot invoke the Court's jurisdiction to perform the very tasks for which the Court retained jurisdiction because no one knows who the parties to the case are. If the Court's retained jurisdiction is to serve its purpose, a method must be devised for the prompt and efficient identification of those who use water under the protection of the Decree and this Court's authority. In other words, the retention of jurisdiction under the Decree was meant to ensure that those who reaped its benefits would remain subject to judicial review. The Commissioners' adamant refusal to maintain a list of those who operate under the Decree's umbrella frustrates that goal and cannot be reconciled with the language and intent of the Decree.

## III. ADMINISTRATION OF THE DECREE REQUIRES THE IDENTITY OF DECREED RIGHT HOLDERS.

### A. THE REQUIREMENTS OF THE DECREE.

The Commissioners and the District contend that identification of the water rights holders under the Decree would not assist the Court's administration of the Decree. Commissioners' Comments at 2 ("The USBWC does not believe requiring each water right holder to prepare and submit this 'identification' annually would assist it or the Court in the administration of the Decree."); WRID Opp. at 4 ("The efficient administration of the Decree does not require the identification of water rights holders . . . ."). In their view, collection of assessments is the only purpose for which identification of the decreed right holders is required, and so long as the Commissioners collect the assessments, there is no problem warranting a remedy. WRID Opp. at 4-7.

The Commissioners' role in assisting the Court is not limited to collection of assessments but requires the comprehensive supervision of the use of water under the Decree. Under the Decree, the Court acting through a water master may allow for rotation of the use of the water subject to the Decree, change the water duty, modify the Decree, and make changes in the use of water prescribed under the Decree. The Court and its officers are expressly 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 water for storage and stored water, in accordance with the provisions of this decree." Decree § XV. The water master "with the approval of the Court" is authorized to enact "such rules as may be necessary and proper for the enforcement of this decree and for the carrying out of its purposes and objects . . . ." *Id.* To summarize, the Court's administration of the Decree involves much more than the mere collection of assessments or the routine distribution of water on a daily basis. Rather, it involves the active oversight and management of the use of water in the Walker River Basin. It defies comprehension that such an all-encompassing task can be accomplished without a clear identification of the parties who are using water under the terms of the Decree and who are subject to the Court's continuing jurisdiction.

**B. ADMINISTRATION OF THE DECREE REQUIRES IDENTIFICATION OF THOSE SUBJECT TO ITS TERMS.**

**1. <u>This Court Has Previously Acknowledged the Guidance Provided by Nevada Law on the Proper Administration of Water Rights</u>.**

To carry out the broad administrative requirements of the Court's retained jurisdiction, the Court previously adopted the Administrative Rules. Those rules reflect considerable deference to the provisions of Nevada and California law related to the administration of water rights. For example, the Administrative Rules, among other things,

provide that applications for changes in point of diversion, and manner or place of use for water rights on the Walker River system shall be made before the Nevada State Engineer, "on such forms and in such manner as required by that office," Administrative Rules § 3.1, or before the California State Water Resources Control Board, "on such forms and in such manner as required by that office." *Id.* § 3.2. Thus, state law applies to the procedure for filing such applications, including the filing of protests. *Id.* § 5.1 (citing NEV. REV. STAT. § 533.365; CAL. WATER CODE § 1704). Nevada state law provides useful guidance on the need to identify the parties who own water rights as part of the proper administration of such rights.

2. **<u>The Proper Administration of Water Rights under State Law Requires the Identification of Water Rights Holders</u>.**

As discussed in the Joint Memorandum, Nevada law requires recording in the public records of "every conveyance of an application or permit to appropriate any of the public waters, a certificate of appropriation, an adjudicated or unadjudicated water right or an application or permit to change the place of diversion, manner of use or place of use of water . . . ." NEV. REV. STAT. § 533.382. *See also* NEV. REV. STAT. § 533.384 (requiring transferee to record transfer with State Engineer, and with the irrigation district if the place of use of the water is entirely or partially within the district). The onus is, therefore, on the owner of the water right to record in the public record the information describing the identity of said owner. *See, e.g.*, MINUTES OF THE NEVADA SENATE COMMITTEE ON NATURAL RESOURCES, 68th Sess. (Feb. 20, 1995) ("the person who gets the water conveyed to them should have the responsibility of filing." (Senator James providing comment on S.B. 93 (codified as NEV. REV. STAT. §§ 533.382-533.387))). The state law provisions requiring the proper identification of the owners of state law water rights indicate the importance of identifying the owners of water rights to the proper administration of

water rights under state law. Those unequivocal provisions counsel strongly in favor of this Court, with its extensive administrative responsibilities, similarly directing the identification of those who hold rights to use water under its Decree.

The legislative history of the Nevada recording statutes illustrates that requiring decreed right holders to identify themselves is a significant requirement of the applicable state law. The Nevada legislature's purpose in enacting NEV. REV. STAT. §§ 533.382- 533.387 was to enable State Engineer to identify all water rights holders. The District supported this effort:

> the substantial majority of surface water rights in Nevada are not actually the subject of any application to the state engineer or the subject of any permit issued by the state engineer. They are water rights that were acquired prior to 1905 and are vested rights. And so, Mr. DePaoli continued, in a lot of cases, particularly on the Truckee, Carson and Walker Rivers, those rights are recognized in federal court decrees and may or may not be the subject of any kind of filing, generally with the state engineer. On the other hand, changes in those water rights require change applications to the state engineer and as a result of that process, sometimes some of those rights do become the subject of an application and/or permit and even a certificate. He stressed that situation has created part of the conflict that legislation is trying to correct in a prospective way.

MINUTES OF THE NEVADA SENATE COMMITTEE ON NATURAL RESOURCES, 68th Sess. (Feb. 20, 1995) (Gordon DePaoli testifying). The Nevada State Engineer agreed with the Nevada legislature's intent to "change the way water right titles are changed, so the division [of water resources] wanted to include all possible water rights existing in the state." MINUTES OF THE NEVADA SENATE COMMITTEE ON NATURAL RESOURCES, 68th Sess. (Apr. 12, 1995) (R. Michael Turnipseed testifying). As a means of verifying the State Engineer's records of water rights conveyances and changes in place and manner of use, the District suggested -- and the legislature codified -- a requirement that records of all such conveyances and changes be filed

with the irrigation districts as well when the conveyance or transfer occurred entirely within the district. *Compare* MINUTES OF THE NEVADA SENATE COMMITTEE ON NATURAL RESOURCES, 68th Sess. (Feb. 20, 1995) (suggestion by Gordon DePaoli to require filing "with the irrigation district . . . ."), *with* NEV. REV. STAT. § 533.384(1)(b) (abstract of title and deed, agreement or conveyance document must be filed with irrigation district when the place of use is entirely or partially within the district).

There is, then, nothing onerous or unique about requiring holders of water rights under the Decree to identify themselves to the Commissioners and the Court.[2] Indeed, it is the Nevada legislature's determination that the public interest is best served by requiring that water rights holders record in the public record (either with the county recorder or the State Engineer) all changes in place of use, manner of use, and conveyances of water rights, and identify the transferor and the transferee, as well as the deed which presumably would identify the quantity, priority and place of use of the water right. Thus, the State of Nevada recognized the importance of identifying such holders to the proper administration of water rights. In arguing the lack of necessity to know the holders of rights under the Decree, the Commissioners and the District ignore the lessons available from state law about the need to identify the owners of water rights for the proper administration of such rights. *See* Commissioners' Comments at 2; WRID Opp. at

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[2]The Commissioners and District complain that identification of decreed right holders and the nature of their rights will be too costly. Commissioners' Comments at 3; WRID Opp. at 7-11. Yet requiring the identification of this information to the Court is no different than what is required to be eligible to vote in an irrigation district. Electors must be bona fide holders of title to real property within a district, and "[a] surface water right must be appurtenant to the acreage." NEV. REV. STAT. 539.123(1). All district members who are eligible to vote in the district, then, have already amassed the information we seek and would incur no additional cost in reporting it to the Court.

7-11.

The legislative history of the Nevada recording statues also undercuts the argument oft-repeated by the defendants and the Commissioners in this case that the Tribe and the United States must engage in title searches to identify all those who hold water rights in the Walker River. Commissioners' Comments at 3; WRID Opp. at 8. "Senator James commented there have been transfers of land which did not mention water rights, where water rights were pertinent to the land being transferred. Then title to the water rights also changed hands and was not recorded in the state engineer's office, obviously because the parties were not even thinking about it." MINUTES OF THE NEVADA SENATE COMMITTEE ON NATURAL RESOURCES, 68th Sess. (Feb. 20, 1995) (comments of Senator James). The Nevada recording statutes only address changes in or conveyances of water rights from 1995 forward, and, therefore, did not redress the problems associated with failure to record such transfers. *See id.* ("S.B. 93 is intended to be neutral on any disputes that have arisen prior to its effective date concerning, where or when a conveyance of water should or should not have been filed or recorded." (testimony of Gordon DePaoli)). As the Nevada legislature has acknowledged, title searches of real property will not necessarily reveal the holders of all water rights in the Walker River Basin. The Commissioners' and District's assertion is a red herring.

## IV. CONCLUSION

The United States and the Tribe ask the Court to require the identification of those holding water rights under the Decree as a central feature of the Court's continuing jurisdiction to administer the Decree. We have proposed a means by which such identification can be accomplished: that the water rights holders identify themselves and the nature of their water rights to the Commissioners and the Court. We do not, however, argue that this is the only

means to accomplish identification, and we remain open to any suggestions that would better enable the Court to achieve this goal. For example, the need for verification of the owner of a water right, at least in Nevada, could be accomplished by the Commissioners developing a current list of those entitled to use water under the Decree and then taking action to ensure that provisions of Nevada law, NEV. REV. STAT. § 533.386, are followed in the future. But no matter how accomplished, those who are governed by the Decree must be identified if the Court's retention of jurisdiction is to fulfill its purpose.

Dated: Dec 7, 2000

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CERTIFICATE OF MAILING

I hereby certify that I have placed a true and correct copy of the foregoing *Reply 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* in the U.S. Mail, first-class postage prepaid thereon, on this 7th day of December, 2000, addressed to the following:

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