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

Kelly R. Chase
P.O. Box 2800
Minden, Nevada 89423
775/782-3099

Attorneys for the Walker River Paiute Tribe

OCT 13 2000

DEPUTY

Kathryn Landreth
United States Attorney
Susan L. Schneider
Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
Denver, Colorado 80202
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 Subfile No. C-125-B **STATUS REPORT SUBMITTED BY THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE IN ADVANCE OF THIS COURT'S STATUS CONFERENCE OF OCTOBER 16, 2000**

The following constitutes a status report to the Court from the United States of America ("United States") and the Walker River Paiute Tribe ("Tribe") regarding issues to be discussed with the Court during its October 16, 2000, status conference with the parties. This report has been provided in advance to the other parties for their review, comment, and approval.

In the last few months, the parties have been attempting to address three basic issues: 1. agreement on the language of specific documents regarding the notice of this lawsuit and requests for waiver of service; 2. sharing information concerning the identification of individuals and entities within

125

the categories set forth in the *Case Management Order* (Apr. 18, 2000), regarding what information may be provided by the parties to the United States and the Tribe; and 3. agreement on a procedure for lis pendens or another form of constructive notice of the lawsuit. We address each issue in turn, below.

I. Agreement on the language of specific documents regarding the notice of this lawsuit and requests for waiver of service.

On August 30, 2000, the parties submitted to the Court, for its approval, four documents that the parties stipulated were appropriate for use in effecting service of the United States' and Tribe's first amended counterclaims. These documents are the following: 1. Notice in Lieu of Summons; 2. Notice of Lawsuit and Request for Waiver of Service of Notice in Lieu of Summons; 3. Waiver of Service of Notice in Lieu of Summons; and 4. Notice of Appearance and Intent to Participate. As stated in their stipulation to which these documents were attached, the parties reserved the right to amend these documents, if necessary, based upon their agreement regarding the notice of pendency of action. See *Stipulation* (Aug. 30, 2000).

II. Sharing information concerning the identification of individuals and entities within the categories set forth in the Case Management Order.

In their discussions regarding information sources and the provision of such information, the United States and the Tribe have asked each party to: identify relevant information and its sources within its offices; ascertain if there are other sources of information within its offices; identify the nature of each information source, where it is located, what format it is in, whether it is available in computer format, and how it can be copied and/or reviewed; and confirm that no other relevant information is available within their offices. We have also asked to arrange with each party a means by which it will

notify the United States and the Tribe of any changes in this information that occur after the respective dates of information provided.

The parties have identified the following information as responsive to this issue. The United States and the Tribe have summarized and/or quoted the parties' various responses to this issue. Each party has reviewed this Status Report before its submission to the Court. By presenting this information to the Court, the United States and the Tribe intend to inform the Court of the information given to them, but express no position as to the accuracy or completeness of the responses given. As noted below, some of this information is being provided to the United States and the Tribe by computer disk and/or hard copy, and some of it will be made available for inspection and copying. Each party's agreement to update this information, to the extent stated, is also specified below. It is premature to come up with a plan as to what other information is necessary in advance of a review of the information sources provided or identified, although work on this issue can begin shortly.

A. **U.S. Board of Water Commissioners**

The U.S. Board of Water Commissioners ("U.S. Board") has two general kinds of documents, both of which it is providing to the United States and the Tribe. These documents relate to Category 3.a. in the Case Management Order.

First, the U.S. Board will provide the United States and the Tribe, by computer disk and hard copy, with its most recent assessment list, by which it bills those to whom it delivers water. The U.S. Board has provided the United States and the Tribe with earlier versions of this list.

Second, the U.S. Board has water cards in its office that contain information for each water right and may include such information as water right acres, township and range numbers, Decree claim

number, and an identification of any transfers of title. The U.S. Board will allow the United States and Tribe to examine and copy these cards.

In addition, to the extent that the U.S. Board has additional materials related to the identification of categories of persons and entities listed in the Case Management Order (e.g., deeds, documents of transfer, etc.), it will make them available for review and copying.

B. **State of California**

1. Category 3.a.

The California State Water Resources Control Board ("California Board") has compiled a list of surface water rights claimants in California on tributaries to the West Walker River, rights on the West Walker River itself, rights on tributaries to the East Walker River, and rights on the East Walker River itself. The California Board is providing this list by hard copy. This list comprises water rights claimants who have filed either applications to appropriate water or statements of use. Statements of use are filed by individuals or entities who claim riparian water rights or appropriative water rights that precede the California legislature's adoption of the statutory water appropriative system (so-called "pre-1914 water rights"). Holders of riparian water rights or pre-1914 water rights are not required to file statements of use with the California Board to establish the validity of their rights. Thus, there may be some holders of riparian water rights or pre-1914 water rights that do not appear on the California Board's list.

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

The California Board does not keep track of successors in interest to water rights holders under the Decree, although the list described above may include successors in interest.

2. Category 3.b.

The list described above comprises the information held by the California Board about current holders of surface water rights.

3. Category 3.e.

As a preliminary matter, the United States, the Tribe, and the State of California discussed limiting this category to the Walker River Basin and agreed that such limitation is appropriate.

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

4. Category 3.h.

The California Board does not maintain information on these water users. The Department of Health Services apparently does maintain some of this information and the State's attorney is working with the Department to obtain further information in this category.

5. The California Board reports that it has no information as to Categories 3.c., 3.d., 3.f., and 3.g. of the Case Management Order.

C. **State of Nevada**

1. Category 3.a.

The State of Nevada does not have this information, with the exception of information regarding some individuals who have filed change applications within the scope of the 1936 Decree. The State is providing, by computer disk and hard copy, information regarding change applications under the 1936 Decree. This information will include information on permits issued by the State Engineer for waters of the Walker River and its tributaries, some of which are permits recognized in the Decree; this information is not included in the computer disk, but is indicated by hand on the hard copy.

2. Category 3.b.

The Nevada Division of Water Resources has a list of the holders of surface water rights issued under the laws of Nevada only. This information is being provided in hard copy and by computer disk.

3. Category 3.c.

The State Engineer does not regulate domestic wells. Certain uncategorized information is contained in well drillers' logs on file in the State Division of Water Resources. This information is being provided in hard copy and by computer disk.

A list of all holders of permits or certificates to pump groundwater issued by the State of Nevada is being provided in hard copy and by computer disk.

4. Category 3.d. See the response to Category 3.c.

5. Category 3.f.

The State has no list for this category, but some applications on file with the State Engineer include claims for such rights. This information is being provided in hard copy and by computer disk.

6. Category 3.g.

See the response to Category 3.c. The State also reports that there is no statutory definition of "municipal" relevant to this category, but that it categorizes municipal providers in general in terms of their size and that this process may include some larger water providers that are not necessarily municipalities. In addition, its lists include providers considered to be "quasi-municipal."

7. Category 3.i.

See the response to Category 3.c.

8. The State has no information on Categories 3.e. and 3.h.

The State of Nevada has agreed to provide updated information related to change applications and transfers of ownership at quarterly intervals. In addition to the above information, the State Engineer maintains water permit files, which are available for review and copying.

D. **Walker River Irrigation District**

1. Category 3.a.

The Walker River Irrigation District ("District") has information that pertains to lands within the District's boundaries within the State of Nevada and does not maintain information concerning lands located in California with appurtenant Walker River Decree water rights.

The District will provide the United States and the Tribe with a copy of its current assessment roll, by hard copy and computer disk.

The District maintains index cards in both computer and hard copy format. These contain a description of a particular water right and the land to which it is appurtenant and may contain a document history that identifies some or all of the deeds or other documents in the chain of title of or

related to the particular real property at issue. These cards list the Lyon County assessors' parcel number(s) associated with the particular parcel of real property and the name of the individual or entity the District assesses with respect to that real property. The District will review the index cards and let the United States and the Tribe know if they are available for copying. The District will provide the United States and the Tribe with samples of what is contained on the computer format of these cards and, if requested by the United States and the Tribe, will ascertain the costs associated with the production of some amount of information from this computer directory. Thereafter, some production of this computer information may be arranged between the District and the United States and the Tribe.

The District receives and retains copies of deeds from Lyon County that may address the conveyance of a water right within the District. These materials are available to the United States and the Tribe for review and copying.

The District has begun to maintain, in hard copy, a list of persons and entities who appear to own a water right, but not the land to which the water right is appurtenant. This list is available to the United States and the Tribe for review and copying.

The District maintains a variety of election-related information: 1. eligible voter registrations; 2. voter oaths of continued eligibility to vote; 3. consents and designations by which eligible voters consent to or designate a person to vote for them; 4. a computer-generated "Registrar List Worksheet," indicating, among other things, where an elector is eligible to vote, and the voter's associated water right acres and number of votes (this list is also available by hard copy); 5. a computer-generated Registrar List, alphabetically by elector (this list is also available by hard copy); and 6. a poll book including precinct, voter name, number of votes to be cast, and signatures of

persons voting. The District has not yet determined the extent to which documents related to its election are confidential. Without having examined these documents, the United States and the Tribe believe that some, if not all of them, may be of assistance in identifying individuals and entities within the categories set forth in the Case Management Order. Once the District clarifies whether any of these documents are confidential, it and the United States and the Tribe will further consider whether and how they may be reviewed and copied.

2. Category 3.b.

The District holds water rights under the Decree for storage of water in Topaz and Bridgeport Reservoirs. The benefits of these storage rights have been apportioned to certain lands within the District. Any information that the District maintains concerning the identity of the record title holders of lands with appurtenant storage rights will be contained within the assessment roll and index cards noted above in Category 3.a. The election-related materials identified above are also relevant for this category. The District will provide the United States and the Tribe with a copy of its current assessment roll, by hard copy and computer disk. The production of the index cards and election-related materials is discussed above.

3. Category 3.c.

The District holds a permit and certificate to appropriate underground water issued by the Nevada State Engineer, but does not maintain information on permits or certificates to appropriate underground water issued by the Nevada State Engineer to individuals or entities owning property within the District's boundaries. The District will produce a copy of the permit and certificate regarding its underground water appropriation.

4. Category 3.d.

See the response to Category 3.c.

5. The District has no information on Categories 3.e., 3.f., 3.g., 3.h., and 3.i.

III. Agreement on a procedure for lis pendens or another form of constructive notice of the lawsuit.

The parties have discussed this issue at length on several occasions and shared preliminary drafts on approaches to this issue. The United States and Tribe have noted that lis pendens appears not to be utilized in state water adjudications. Neither the United States nor the Tribe can commit to any specific procedure until they ascertain the number of parties potentially involved and the potential costs associated with various approaches to this issue, and then consider this information along with applicable laws. The parties have now agreed that this issue should be postponed for a period to allow the United States and the Tribe to review the information identified above and consider this issue further.

Dated: 10/12/00

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

Dated: 10-12-00

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

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2000, I served a true and correct copy of the foregoing "**STATUS REPORT SUBMITTED BY THE UNITED STATES AND THE WALKER RIVER PAIUTE TRIBE IN ADVANCE OF THIS COURT'S STATUS CONFERENCE OF OCTOBER 16, 2000,**" by first-class mail, postage prepaid, to the persons on the attached mailing list.

Yvonne M. Marsh

Kathryn Landreth, Esq.
Asst. U. S. Attorney
100 W. Liberty St., Suite 600
Reno, NV 89509

Daniel N. Frink
State Water Res. Control Bd.
P. O. Box 100
Sacramento, CA 94814

Ross E. deLipkau
Marshall, Hill, Casses & deLipkau
P. O. Box 2790
Reno, NV 89505

Richard R. Greenfield, Esq.
Field Solicitor's Office
Department of the Interior
Two N. Central Ave., Suite 500
Phoenix, AZ 85004

Scott McElroy
Alice Walker
Greene, Meyer & McElroy
1007 Pearl Street, No. 220
Boulder, CO 80302

Linda A. Bowman, Esq.
Debra B. Robinson, Esq.
Bowman & Robinson
540 Hammill Lane
Reno, NV 89511

George N. Benesch, Esq.
1025 Ridgeview Drive, Suite 400
Post Office Box 3498
Reno, Nevada 89505-3498

James Spoo, Esq.
Treva J. Hearne, Esq.
Zeh, Polah, Spoo & Hearne
575 Forest, Suite 200
Reno, Nevada 89509

James J. Clear
U.S. DOJ/ENRD, Indian Res. Sec.
P.O. Box 44378
L'Enfant Plaza Station
Washington, D.C. 20026-4378

Mary V. Reynolds, Esq.
Deputy Attorney General
State Engineer's Office
123 West Nye Lane
Carson City, NV 89710

John Kramer
Department of Water Resources
1416 Ninth Street
Sacramento, CA 94814

Gary Stone
U.S. Dist. Water Court Master
290 South Arlington Ave., 3rd Floor
Reno, NV 89501

Robert L. Hunter, Superintendent
Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, CA 89706

John Davis, Esq.
Post Office Box 1646
Tonopah, NV 89049

Mary Hackenbracht, Esq.
Department of Justice
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

David E. Moser, Esq.
McCutchen, Doyle, Brown & Enerson
3 Embarcadero Center
San Francisco, CA 94111

Robert Anderson & Timothy Lukas
Hale, Lane, Peek, Dennison, Howard
Anderson & Pearl
Post Office Box 3237
Reno, NV 89505

Bill Lockyer, Attorney General
Michael Neville, Depty. Attny. General
DOJ, Off. of the Attorney General
455 Golden Gate Avenue, Suite 1100
San Francisco, CA 94102-3664

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

Kelly R. Chase
Post Office Box 2800
Minden, NV 89423

Gordon H. DePaoli, Esq.
Dale E. Ferguson, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511

R. Michael Turnipseed, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

Roger Bezayiff
Chief Dep. Water Commissioner
U. S. Bd. Water Commissioners
Post Office Box 853
Yerington, NV 89447

Marta Adams, Esq.
Deputy Attorney General
State of Nevada
100 N. Carson Street
Carson City, NV 89701-4717

William Hvidsten
Stuart Somach
DeCuir & Somach, P.C.
400 Capitol Mall, Suite 1900
Sacramento, California 95814-4407

Hank Meshorer, Special Lit. Counsel
US DOJ/ENRD, Special Lit. Unit
P.O. Box 7397
Ben Franklin Station
Washington, D.C. 20044-7397