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

Shirley Smith
Assistant 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

FILED
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LANCE S. WILSON
CLERK
DEPUTY

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	IN EQUITY NO. C-125 Sub-file No. C-125-B **STATUS REPORT SUBMITTED BY THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE IN ADVANCE OF THIS COURT'S STATUS CONFERENCE OF APRIL 20, 2001**

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 listed by the Court in its minutes of the status conference of March 20, 2001 for discussion at the status conference of April 20, 2001. *Minutes of Court* (Mar. 20, 2001) (Mag. J. McQuaid). This report has been provided to the Court and designated parties in advance of the status conference.

1. "A modified version of Exhibit 4 concerning an order regarding transfers of water rights:"

The Court has directed the United States to revise its proposed Exhibit 4 to the *Memorandum of the United States of America and the Walker River Paiute Tribe Concerning the Identification of Counter-Defendants by Case Management Order Categories and Use of Notices of Lis Pendens* (Mar. 13, 2001) ("Mar. 13, 2001, Memo."). A revision of this proposed order is attached as Exhibit 1 to this status report and entitled *Proposed Order Regarding Transfers of Water Rights.*

In addition, the United States and the Tribe have attached a revision of a portion of proposed Exhibit 3 to the Mar. 13, 2001, Memo. At the status conference on March 20, 2001, the Court did not approve the proposed order set forth in Exhibit 3 for service in this matter. We have redrafted this Exhibit and submit it here as Exhibit 2 to this Status Report, entitled *Proposed Order – Disclaimer of Claims*, but have limited it to the issue of service on persons or entities no longer in possession of a water right. In the pleadings submitted to the Court prior to the March 20, 2001 status conference, the United States and the Tribe, as well as the Walker River Irrigation District, asserted the need for some sort of disclaimer to address the circumstance of service on persons and entities who no longer have a water right subject to this case. *See Memorandum of Walker River Irrigation District Concerning Procedures for Recording Notices of Lis Pendens and Concerning Identification of Counterdefendants by Case Management Order Categories* at 7 (Feb. 12, 2001); Mar. 13, 2001, Memo. at 12-13. There does not appear to be a disagreement on the need to address this issue.

Consequently, the proposed order set forth in Exhibit 2 attempts to address this situation. We ask that the Court consider it in the upcoming status conference and approve it for service in this matter.

We have circulated both revised exhibits among certain of the parties[1] for comment prior to the April 20 status conference. The Walker River Irrigation District ("District") has drafted its own version of these documents and is submitting them to the Court. We have not yet reviewed the District's drafts and, therefore, cannot comment on them. We are willing to review them and determine if there is common ground between the two sets of exhibits so that the parties might be able to agree on the contents of these proposed orders.

2. "Notice in lieu of summons:"

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. Stipulation* (Aug. 30, 2000). *See also Status Report Submitted By the United States and the Walker River Paiute Tribe in Advance of this Court's Status Conference of October 16, 2000* at 2 (Oct. 13, 2000); *Minutes of Court* at 2 (Oct. 16, 2001) (approving the forms submitted in the Stipulation). As stated in the stipulation to which these documents were attached, the parties reserved

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1/ These are the same parties we have served with these materials by facsimilie transmission.

the right to amend these documents, if necessary, based upon their agreement regarding the notice of pendency of action. *Stipulation* at 2 (Aug. 30, 2000).

The United States and the Tribe have reviewed these four documents to identify where the documents might require amendment, based on the current status of case management. First, the *Notice of Lawsuit and Request for Waiver of Service of Notice in Lieu of Summons* includes a list and brief description of each document included in the service package. Based on the current status of case management, this list should also include a description of the *Proposed Order Regarding Transfers of Water Rights*, Exhibit 1 hereto, once that document is completed and approved by the Court. Second, the notice and waiver document should include a paragraph describing the transfer order and any actions required thereunder, in a similar fashion as the notice and waiver document addresses the other documents in the service package. Third, Paragraph 2 of the *Waiver of Service of Notice in Lieu of Summons* should include a reference to the final version of the *Proposed Order Regarding Transfers of Water Rights*.

Based on our review of the documents included in the *Stipulation* (Aug. 30, 2000), we also believe that additional changes may be required to these documents if other documents are approved for inclusion in the service package, if any group of potential counter-defendants is certified as a class, or if there are any additional amendments to the first amended counterclaims. The United States and the Tribe are in the process of finishing a joint motion seeking certification of one or more defendant

classes in this matter, pursuant to FED. R. CIV. P. 23.[2] That motion is currently under review within the United States Department of the Interior and will likely be filed next week. The United States and the Tribe are also in the process of reviewing their respective first amended counterclaims for possible amendments and anticipate that this process and related reviews within the United States Department of the Interior and United States Department of Justice may be completed by mid-June.

3. "A reasonable time frame from the U.S. and Tribe when they may complete a service list:"

As discussed during the status conference of March 20 and in our Mar. 13, 2001, Memo. at 15, the United States and the Tribe wish to conduct actual service in phases according to CMO category. Our understanding of the Magistrate Judge's comments during the status conference is that the Court has approved this general approach to service.

Our intent, then, would be to identify in the next 60-90 days an initial category of persons and entities for service and to initiate that service within 60-90 days thereafter.[3] Further, we wish to complete service on this initial group, to the extent possible, before moving on to initiate a second phase

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2/

We had raised this issue as a matter of case management regarding the domestic users in Category 3.c. of the *Case Management Order* (Apr. 18, 2000) at the status conference of March 20, 2001, and in our previous Mar. 13, 2001, Memo. at 9, and the Walker River Irrigation District and the Court requested briefing on the issue.

3/

This schedule assumes, among other things, that the Court approves in the near future all materials to be served and addresses any objections thereto from the parties. The United States and the Tribe have not yet received the Court's approval to commence service of their first amended counterclaims.

of service on a different category of defendants. Service in this manner would include, where necessary, formal service in a manner authorized by the Federal Rules of Civil Procedure and requests of the Court for costs of such service. *Case Management Order* ¶8 (Apr. 18, 2000) ("CMO"). To the extent that any group of persons and entities to be served are certified for treatment as a class, pursuant to FED. R. CIV. P. 23, we may wish to propose to the Court an alteration of this initial plan.

One issue that we wish to discuss with the Court and parties is the application of Paragraph 9 of the Case Management Order to the service process. CMO ¶9. Requiring the United States and the Tribe prepare a list of persons we intend to serve and allowing the existing parties time to comment on the list is impractical and goes beyond any requirement of due process governing our efforts to identify and serve persons and entities in this matter. Consequently, we wish to discuss a modification of this provision with the Court pursuant to its authority under Paragraph 19 of the CMO. If necessary, we seek a schedule for briefing this issue.

Dated: 4/19/01

Respectfully submitted,

Shirley Smith, Assistant 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: 4-19-01

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 MAILING

I hereby certify that on this 19th day of April 2001, 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 APRIL 20, 2001,**" by first-class mail, postage prepaid, addressed to the following persons:

Shirley Smith
Assistant U.S. Attorney
100 West Liberty Street, Suite 600
Reno, NV 89509

*George N. Benesch
P.O. Box 3498
Reno, NV 89505-3498

Kenneth Spooner
General Manager
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Garry Stone
United States District Court Water Master
290 South Arlington Avenue, 3rd Floor
Reno, NV 89501

John Kramer
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Hugh Ricci, P.E.
Nevada State Engineer's Office
123 West Nye Lane
Carson City, NV 89710

William Quinn
U.S. Department of the Interior
Office of the Solicitor
401 W. Washington St., SPC 44
Phoenix, AZ 85003

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

R. Michael Turnipseed, P.E.
Dept. of Conservation & Natural Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

*Alice E. Walker
Scott McElroy
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80301

Matthew R. Campbell
David Moser
McCutchen, Doyle, Brown & Enerson
Three Embarcadero Center
San Francisco, CA 94111

Ross E. de Lipkau
Marshall, Hill, Cassas & de Lipkau
P.O. Box 2790
Reno, NV 89505

Mary Hackenbracht
Deputy Attorney General
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

Roger Bezayiff
Chief Dep. Water Commissioner
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

Kelly R. Chase
P.O. Box 2800
Reno, NV 89423

*Michael W. Neville, Depty. Attny. Gen.
California Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-3664

*Marta Adams
Deputy Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

*Treva J. Hearne
Zeh, St. Aubin, Spoo, & Hearne
575 Forest Service, Suite 200
Reno, NV 89509

Hank Meshorer
United States Department of Justice
Natural Resources Division
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044

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

Daniel N. Frink
Water Resources Control Board
State of California
P.O. Box 100
Sacramento, CA 94814

*Gordon H. DePaoli
Dale E. Ferguson
Woodburn and Wedge
6100 Neil Road, Suite 500
P.O. Box 2311
Reno, NV 89511

Craig Alexander
U.S. DOJ, ENRD, Indian Resources Section
P.O. Box 44378
L'Enfant Plaza Station
Washington, D.C. 20026-4378

*Lou Leonard
U.S. Dept. of the Interior, Office of the
Secretary, Division of Indian Affairs
1849 C Street, N.W.,
Mail Stop 6456
Washington, D.C. 20240

Yvonne M. Marsh

Yvonne M. Marsh, Paralegal Specialist

*-service also by facsimilie transmission on April 19, 2001.

DISTRICT OF NEVADA
RECEIVED
APR 20 2001
CLERK, DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125
	)	SUBFILE NO. C-125-B
Plaintiff,	)	
	)	**PROPOSED ORDER**
WALKER RIVER PAIUTE TRIBE,	)	**REGARDING TRANSFERS OF**
	)	**WATER RIGHTS**
Plaintiff-Intervenor,	)	
	)	**Exhibit 1: STATUS REPORT**
vs.	)	**SUBMITTED BY THE UNITED STATES**
	)	**OF AMERICA AND THE WALKER**
WALKER RIVER IRRIGATION DISTRICT,	)	**RIVER PAIUTE TRIBE IN ADVANCE OF**
a corporation, *et al.*,	)	**THIS COURT'S STATUS CONFERENCE**
	)	**OF APRIL 20, 2001**

All parties to this case are hereby ORDERED to notify the Court and the United States, in writing, of the transfer of any water right within any of the nine categories set forth in Paragraph 3 of the *Case Management Order* (Apr. 18, 2000)[1], within sixty days after any such transfer. This notice shall

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[1] You should review the *Case Management Order* and *First Amended Counterclaims* filed by the United States and by the Walker River Paiute Tribe, which are included in the materials served upon you. For convenience, the nine categories of persons and entities that the Court has ordered to be served and named are listed here:

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

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

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

4. Category 3.d.: All holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

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

provide the following information:

1. The full and correct name and post office address of the claimant/counter-defendant/tranferor;

2. The full and correct name and post office address of each person or entity to whom a water right is transferred;

3. An identification of each right or use for which you claim surface or ground water in any of the categories listed in Paragraph 3 of the CMO that has been transferred;

4. The date on which each such transfer occurred; and

5. A copy of the deed(s) or other document(s) evidencing each such transfer.

This information must be provided under oath. Several copies of forms for your use are attached. All such notices shall be sent to the Court and to: Susan L. Schneider, United States Department of Justice, 999 - 18th Street, North Tower, Suite 945, Denver, CO 80220.

IT IS SO ORDERED:

Dated _____, 2001.

_____

The Honorable Robert A. McQuaid, Jr.
United States District Court Magistrate Judge

---

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

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

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

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

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.*,	)))))))))))))	IN EQUITY NO. C-125 SUBFILE NO. C-125-B **NOTIFICATION OF TRANSFER OF WATER RIGHTS**

The undersigned counter-defendant in the above action hereby notifies the Court[2/] of the transfer of one or more water right listed in Paragraph 3 of the Case Management Order in this case and provides the following information:

1. The full and correct name and post office address of the claimant/counter-defendant/tranferor:

2/ All such notices shall be sent to:

1. Linda Lea Sharer, Chief Deputy Clerk
United States District Court for the District of Nevada
400 South Virginia Street, Suite 301
Reno, NV 89501

2. Susan L. Schneider
United States Department of Justice
999 - 18th Street, North Tower
Suite 945
Denver, CO 80220

2. The full and correct name and post office address of each person or entity to whom a water right is transferred:

3. An identification of each right or use for which you claim surface or ground water in any of the categories listed in Paragraph 3 of the CMO that has been transferred:

4. The date on which each such transfer occurred:

5. A copy of the deed(s) or other document(s) evidencing each such transfer:

Pursuant to 28 U.S.C. §1746[3], I declare under penalty of perjury under the laws of the United States of America and the State of Nevada/the State of California that the foregoing is true and correct. Further, affiant sayeth not.

Executed this _____ day of _____, 200_.

_____
[full and correct name of counter-defendant]

_____

_____
[address]

[3]Please note that a declaration under this statutory provision does not require the affiant to appear before a notary or other official.

APR 20 2001
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125
	)	SUBFILE NO. C-125-B
Plaintiff,	)	
	)	**PROPOSED ORDER – DISCLAIMER OF CLAIMS**
WALKER RIVER PAIUTE TRIBE,	)	
	)	
Plaintiff-Intervenor,	)	**Exhibit 2: STATUS REPORT SUBMITTED BY THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE IN ADVANCE OF THIS COURT'S STATUS CONFERENCE OF APRIL 20, 2001**
	)	
vs.	)	
	)	
WALKER RIVER IRRIGATION DISTRICT, a corporation, *et al.*,	)	
	)	
	)	

All parties who have been served or who have waived service in lieu of summons in this matter are hereby ORDERED to notify the Court and the United States, in writing and as set forth in this Order, if they disclaim interest in any water right within any of the nine categories set forth in Paragraph 3 of the *Case Management Order* (Apr. 18, 2000).[1]

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[1] You should review the *Case Management Order* and *First Amended Counterclaims* filed by the United States and by the Walker River Paiute Tribe, which are included in the materials served upon you. For convenience, the nine categories of persons and entities that the Court has ordered to be served and named are listed here:

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

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

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

4. Category 3.d.: All holders of permits or certificates to pump groundwater issued by the State

If you contend that you have been served in error because you do not claim a right to water under any of these categories, you may disclaim any such interest and seek to be removed from this case. If you have transferred any right to water within any of the above nine categories, you must also provide the information specified below to identify all persons and all entities to whom you transferred any such right.

Any disclaimer and additional information must be provided under oath. Several copies of forms for your use are attached. The form also includes a request that you be dismissed from this case.

All such notices shall be sent to the Court and to: Susan L. Schneider, United States Department of Justice, 999 - 18th Street, North Tower, Suite 945, Denver, CO 80220.

IT IS SO ORDERED:

Dated _____, 2001.

_____
The Honorable Robert A. McQuaid, Jr.
United States District Court Magistrate Judge

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of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

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

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

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

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

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

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.*,	)))))))))))))	IN EQUITY NO. C-125 SUBFILE NO. C-125-B **DISCLAIMER OF CLAIMS AND NOTIFICATION OF TRANSFER OF WATER RIGHTS**

The undersigned counter-defendant in the above action hereby notifies the Court[2/] of counter-defendant's intent to disclaim water rights claims and, if applicable, of the transfer of one or more water rights identified in Paragraph 3 of the Case Management Order in this case. By making this filing, the undersigned requests to be dismissed from this case.

I, _____, hereby make the following declaration pursuant to 28 U.S.C. §1746: I have reviewed *the Case Management Order* of the Court, dated April 18, 2000, the *First Amended Counterclaim of the United States of America* (July 31, 1997), and the *First Amended Counterclaim of the Walker River Paiute Tribe* (July 31, 1997), and hereby state that I have no interest in any water rights within any of the nine categories of persons and entities to be served under Paragraph 3 of the Case Management Order and disclaim any interest in this matter.

2/ All such notices shall be sent to:

1. Linda Lea Sharer, Chief Deputy Clerk
United States District Court for the District of Nevada
400 South Virginia Street, Suite 301
Reno, NV 89501

2. Susan L. Schneider
United States Department of Justice
999 - 18th Street, North Tower
Suite 945
Denver, CO 80220

To the extent that I have transferred an interest in any water rights listed in Paragraph 3 of the Case Management Order, I provide the following information:

1. The full and correct name and post office address of each person or entity to whom a water right is transferred:

2. An identification of each water right or use identified in any of the categories listed in Paragraph 3 of the CMO that has been transferred:

3. The date on which each such transfer occurred:

4. A copy of the deed(ss) or other document(s) evidencing each such transfer:

Pursuant to 28 U.S.C. §1746[3], I declare under penalty of perjury under the laws of the United States of America and the State of Nevada/the State of California that the foregoing is true and correct. Further, affiant sayeth not.

Executed this _____ day of _____, 200_.

_____
[full and correct name of counter-defendant]

_____

_____
[address]

[3]Please note that a declaration under this statutory provision does not require the affiant to appear before a notary or other official.