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

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

IN EQUITY NO. C-125-ECR  
SUBFILE NO. C-125-B

9 UNITED STATES OF AMERICA

STATE OF NEVADA'S POSITION PAPER IN  
RESPONSE TO MINUTES OF THE COURT  
(APRIL 20, 2001)

10 Plaintiff,

11 WALKER RIVER PAIUTE TRIBE,

12 Plaintiff-Intervenor,

13 vs.

14 WALKER RIVER IRRIGATION  
DISTRICT, a corporation, et al.

15 Defendants.  
16

17 Pursuant to Order of the Court, the United States of America ("United States") and the Walker  
18 River Paiute Tribe ("Tribe") have proposed to modify Paragraph 9 of the Case Management Order  
19 ("CME") entered in this case. The State of Nevada ("Nevada") disagrees with the draft-redraft of  
20 Paragraph 9 for two reasons. The United States and the Tribe currently have pending before the Court a  
21 Joint Motion for Certification of Defendant Classes ("Joint Motion"). Until the Joint Motion is  
22 considered and ruled upon, a decision on Paragraph 9 is premature. At this juncture before the Court has  
23 determined the merits of the Joint Motion concerning the creation of defendant classes, it is impossible  
24 for the United States and the Tribe to compile a list of parties for purposes of this action or to  
25 meaningfully address the due process aspects contained in Paragraph 9.

26 In addition, as explained below, the redrafted version submitted by the United States and the Tribe  
27 does not comport with the Court's apparent intention that the water rights claimants who can reasonably  
28 be identified be contained in a list to be reviewed by the present parties. Although not expressly stated,

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1 the review by the other parties serves the Court's interests in the creation of a service list, which is as  
2 complete as possible and optimally able to guide the service process.

3 The original Paragraph 9 provides that:

4 (9) After the U.S./Tribe have received the information and compiled the list  
5 of parties whom they intend to serve, that list and a description of the  
6 procedures by which it was compiled shall be filed and provided to the  
7 parties who shall have such period of time as the Magistrate Judge shall  
8 determine to file objections indicating whether the list is complete and  
9 includes all such water rights claimants within the categories described in  
10 paragraph (3) above who can reasonably be identified. The Magistrate Judge  
11 shall consider and rule on all such objections. Corrections to the list of  
12 intended parties may be made during the period of the service of process  
13 upon appropriate notice and approval of the Magistrate Judge.

14 Clearly, the Court's focus in Paragraph 9 is on the completeness of the service list so as to provide  
15 legally sufficient notice of the pending claims to those water rights claimants who can reasonably be  
16 identified. The requirement that the parties review the list serves the Court's interest in the creation of as  
17 complete a service list as possible.

18 The proposed redraft of Paragraph 9 submitted by the United States and the Tribe states that  
19 "[p]rior to the initiation of service of process, the Magistrate Judge shall review the documents proposed  
20 to be served and the methods by which the U.S./Tribe have identified the persons and entities described . .  
21 . and determine if they are reasonable and satisfy due process." Any objections raised by the parties,  
22 according to the redrafted paragraph, shall be made after the particular phase of service is completed.  
23 This after-the-fact review and objection process is not consistent with the Court's original Paragraph 9.

24 For these reasons, Nevada respectfully disagrees with the redraft of Paragraph 9.

25 Respectfully submitted this 25<sup>th</sup> day of May, 2001.

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**CERTIFICATE OF MAILING**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 25<sup>th</sup> day of May, 2001, I deposited for mailing, postage prepaid, true and correct copies of the foregoing document addressed as follows:

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