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Attorney General's Office

FRANKIE SUE DEL PAPA

Attorney General MARTA ADAMS

Nevada Bar No. 1564

Senior Deputy Attorney General 100 North Carson Street

Carson City, Nevada 89701

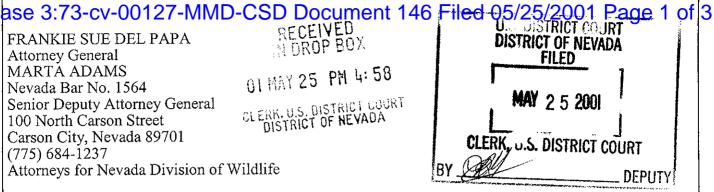
(775) 684-1237

Attorneys for Nevada Division of Wildlife

NOROP BOX

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

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

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

UNITED STATES OF AMERICA

Plaintiff,

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

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

VS.

WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.

Defendants.

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

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

# Attorney General's Office 100 N. Carson Street Carson City, Nevada 89701-4717 9 5 7 8

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

The original Paragraph 9 provides that:

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

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

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

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

Respectfully submitted this 25th day of May, 2001.

FRANKIE SUE DEL PAPA Attorney General

Bv:

MARTÁ A. ÁDAMS

Senior Deputy Attorney General

Nevada Bar No. 1564

Office of the Attorney General

100 N. Carson Street

Carson City, Nevada 89701-4717

(775) 684-1237

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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 25th day of May, 2001, I deposited for mailing, postage prepaid, true and correct copies of the foregoing document addressed as follows:

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

George Benesch	Scott B. McElroy
P.O. Box 3498	Alice E. Walker
Reno, NV 89505	Greene, Meyer & McElroy
	1007 Pearl Street, Suite 220
	Boulder, CO 80302
Matthew R. Campbell, Esq.	Treva J. Hearne
David Moser, Esq.	James Spoo
M. C. t. L. D. D. D. Duary & Engage	7 oh Doloho Snoo Hearne & Dicker

McCutchen, Doyle, Brown & Enerson Zeh, Polaha, Spoo, Hearne & Picker Three Embarcadero Center 575 Forest Service Reno, NV 89509 San Francisco, CA 94111

Susan Schneider	Linda Bowman
Indian Resources Section	Bowman & Robinson
U.S. Department of Justice	540 Hammill Lane
999 18th Street	Reno, NV 89511
Suite 945, North Tower	

Kelly R. Chase	Hank Meshorer
P.O. Box 2800	United States Department of Justice
Reno, NV 89423	Natural Resources Division
·	Ben Franklin Station
	P.O. Box 7611

Washington, D.C. 20044

Michael W. Neville
California Attorney General's Office
455 Golden Gate Ave. Suite 11000
San Francisco, CA 94102-3664

Denver, CO 80202

Attorney General's Office