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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

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-ECR
SUBFILE NO. C-125-B

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

Attorney General's Office
100 N. Carson Street
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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,

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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.

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By: Marta A. Adams

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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:

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