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LANCE S. WILSON
CLERK
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Assistant United States Attorney
Susan L. Schneider
Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
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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 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 MAY 30, 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 April 20, 2001, for discussion at the status conference of May 30, 2001. *Minutes of Court* (Apr. 20, 2001). This report has been provided to the Court and designated parties in advance of the status conference.

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1. Modifications to the documents regarding notices in lieu of summons.

The Court has directed the United States to modify certain service-related documents to reflect the addition of two other orders and related forms, as discussed at the last status conference. The parties have stipulated previously to four service-related documents, and the Court has approved these documents and the parties' stipulation. *Stipulation* (Aug. 30, 2000); *Amended Minutes of Court* (Oct. 16, 2000). These documents are: 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. The additional documents for incorporation into these documents are: 1. Order - Disclaimer of Interest, and the attached form; and 2. Order Regarding Changes in Ownership of Water Rights, and the attached form. During the status hearing of April 20, 2001, the Magistrate Judge recognized that additional changes to these documents may be warranted at a later time, but wished to have the documents updated.

On Wednesday, May 16, 2001, counsel for the United States, on behalf of itself and the Tribe, sent opposing counsel,[1] by facsimile transmission, a draft of proposed revisions to these documents, and requested comments from counsel on these proposals by the close of business on May 18, 2001. To date, only two counsel have responded. On Tuesday, May 22, 2001, Dale Ferguson (co-counsel

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[1]/Gordon DePaoli, counsel for the Walker River Irrigation District ("District"); Treva Hearne, counsel for Mineral County; Linda Bowman, counsel for the United States Board of Water Commissioners; Marta Adams, counsel for the State of Nevada; Mary Hackenbracht, counsel for the State of California; Michael Neville, counsel for the State of California; and George Benesch, counsel for Lyon County and other parties.

with Mr. DePaoli) and Marta Adams contacted counsel for the United States, and among other things, indicated that they had no problems with the proposed changes to the service-related documents.[2]

Two of the previously-approved service documents do not appear to require any changes at this point. These documents are: 1. Notice in Lieu of Summons; and 2. Notice of Appearance and Intent to Participate. Two of the documents appear to require modification by way of inserts. We propose two changes to the Notice of Lawsuit and Request for Waiver of Service of Notice in Lieu of Summons. We also propose one change to the Waiver of Service of Notice in Lieu of Summons. The proposed changes are indicated on Attachment 1 to this status report, which is a copy of the facsimile transmission sent to opposing counsel. The two amended documents with these changes incorporated therein, are also included as Attachment 2 to this status report. The Court required that a new stipulation be submitted with these documents. (*Minutes of Court* (Apr. 20, 2001). Since we have been unable to obtain approval of all parties, we do not have a completed stipulation to submit.

2. **Modifications to Paragraph 9 of the Case Management Order.**

In our prior status report and the April 20, 2001 status conference, the United States and the Tribe raised the issue of the application of Paragraph 9 of the *Case Management Order* ("CMO") (Apr. 18, 2000) to the service process. CMO ¶ 9. As we stated, requiring the United States and the Tribe to 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

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[2]Counsel for the United States spoke with Mr. Ferguson on May 24, 2001, who indicated that he had no problems with the proposed changes "at the moment," but could not provide his agreement to those changes.

identify and serve persons and entities, as required by the Court. Consequently, we asked to the Court to modify Paragraph 9, pursuant to its authority under Paragraph 19 of the CMO. We also raised again the issue of conducting actual service in phases according to CMO category. As discussed during the status conferences of March 20 and April 20, 2001, and in our *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* at 15 (Mar. 13, 2001) ("Mar. 13, 2001, Memo"), and *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* at 5-6 (Apr. 20, 2001), the United States and the Tribe wish to conduct service in phases according to the categories listed in the CMO. Our understanding of the Magistrate Judge's comments during the March 20, 2001 status conference is that the Court has approved this general approach to service.

As a result of the April 20, 2001 status conference, the Court proposed that "the United States and the Tribe discuss with opposing counsel how the Tribe intends to go about service and what time frames are involved. Counsel shall also discuss whether the identification method is adequate." *Minutes of Court* (Apr. 20, 2001). On April 26, with the assistance of Mr. DePaoli, the United States and the Tribe arranged a conference call for the discussion of these issues. This conference call was attended by counsel for the United States and the Tribe, as well as counsel for the Walker River

Irrigation District, counsel for the State of Nevada, and counsel for Lyon County and other parties.[3] During the call, the United States presented its concerns and issues and answered any questions from the other participants. At the close of the call, counsel for the District asked counsel for the United States to come up with a proposal to stipulate to a change to Paragraph 9 of the CMO. The United States did so and included the proposed draft revisions to Paragraph 9 in its facsimile transmission of May 16, 2001 to opposing counsel.

The United States' and Tribe's proposed revision to Paragraph 9 of the CMO, which we sent by facsimile to opposing counsel, is:

> Prior 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 in Paragraph 3 of this Case Management Order and determine if they are reasonable and satisfy due process. Following the Court's determination that such documents and methods of identification are reasonable and satisfy due process, the U.S./Tribe may commence service. Upon notice to the Court, the U.S./Tribe may conduct service in phases (e.g., by Case Management Order category) in a manner to be determined by the U.S./Tribe. Following their completion of any phase of service, the U.S./Tribe shall provide a list of persons and entities for which they have attempted or have made service to the Court. Any objections or corrections to the list shall be made by any other party within 30 days thereafter. The Magistrate Judge shall consider and rule on all such objections.

We have heard nothing regarding this proposal from counsel for the State of California, counsel for the U.S. Board of Water Commissioners, counsel for Mineral County, or counsel for Lyon County.

The only comments on this proposal have come from counsel for the District and counsel for the State of Nevada. They now ask to postpone any consideration of changes to Paragraph 9 of the

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[3/]It is our understanding the Ms. Bowman, counsel for the U.S. Board of Water Commissioners intended to participate but was prevented from doing so at the last minute.

CMO until the Court has acted on the *Joint Motion of the United States and the Walker River Paiute Tribe for Certification of Defendant Classes* (May 4, 2001). The United States and the Tribe proposed class certification of one defendant class in their Mar. 13, 2001, Memo at 9, and the issue was discussed at the status conference of March 20, 2001. Through our discussions of modification of Paragraph 9, the parties have known that we would be moving to certify certain CMO categories for treatment as a class. Assuming that our motion is granted, other categories of persons and entities remain for personal service. In any event, our changes to Paragraph 9 go to issues that are not related to the question of certification of defendant classes. We see no reason to postpone consideration of this modification.

Counsel for the District and the State of Nevada also appear to disagree with the standard proposed in the redraft of Paragraph 9 -- that the Court determine if the methods by which the United States and Tribe have identified the persons and entities described in Paragraph 3 of the CMO satisfy due process. This standard, as discussed in detail in the United States' and Tribe's Mar. 13, 2001, Memo, is consistent with the standard applied four years ago by the Court to Mineral County's identification efforts. Mar. 13, 2001, Memo at 1-17; *Minutes of the Court* at 3, No. C-125-C (Apr. 1, 1997). The District and the State of Nevada seem to want a standard that allows a later review of service on a case-by-case basis. We think this issue needs to be addressed by the Court so that the United States and the Tribe know at the outset how their service efforts will be measured for purposes of due process.

Dated: 5/24/01

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: 5-24-01

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 24th day of May 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 May 30, 2001,**" by first-class mail, postage prepaid, addressed to the following persons:

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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

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

John Kramer
Department of Water Resources
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Sacramento, CA 94814

Hugh Ricci, P.E.
Nevada State Engineer's Office
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William Quinn
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Office of the Solicitor
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Phoenix, AZ 85003

Robert L. Hunter
Western Nevada Agency
Bureau of Indian Affairs
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Dept. of Conservation & Natural Resources
State of Nevada
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Carson City, NV 89710

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Roger Bezayiff
Chief Dep. Water Commissioner
U.S. Board of Water Commissioners
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Kelly R. Chase
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Minden, NV 89423

*Michael W. Neville, Depty. Attny. Gen.
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Deputy Attorney General
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*Treva J. Hearne
Zeh, St. Aubin, Spoo, & Hearne
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Reno, NV 89509

Hank Meshorer
United States Department of Justice
Natural Resources Division
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Debra B. Robinson
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Dale E. Ferguson
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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 facsimile transmission on April 19, 2001.

****
*** MULTI TX/RX REPORT ***
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COPY FOR YOUR INFORMATION

TX/RX NO	4330	
INCOMPLETE TX/RX		
TRANSACTION OK	(1)	87756883088
	(2)	87757868183
	(3)	93034443490
	(4)	87753351717
	(5)	87756841108
	(6)	85106222270
	(7)	84157035480
	(8)	87758273020
ERROR		

MAY 25 2001

COURT

DEPUTY

FAX TRANSMITTAL COVER SHEET

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
INDIAN RESOURCES SECTION
999 18TH STREET, SUITE 945 - NORTH
DENVER, COLORADO 80202

PHONE: 303-312-7308 / FAX: 303-312-7379

DATE: May 16, 2001 NO. OF PAGES 11 + COVER SHEET

ADDRESSEE:	FAX NUMBER:
Gordon DePaoli	775/688-3088
Treva Hearne	775/786-8183
Alice Walker/Scott McElroy	303/444-3490
Linda Bowman	775/335-1717
Marta Adams	775/684-1108
Mary Hackenbracht	510/622-2270
Michael Neville	415/703-5480
George Benesch	775/827-3020

FROM: Susan Schneider, Indian Resources Section, Denver

RE: Walker River

Special Instructions: Please see following draft revisions to 1. The previously-approved service documents; and, 2. paragraph 9 of the Case Management Order. Please provide any comments on these to me by the close this week. Thank you.

ATTACHMENT 1

FAX TRANSMITTAL COVER SHEET

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
INDIAN RESOURCES SECTION
999 18TH STREET, SUITE 945 - NORTH
DENVER, COLORADO 80202

PHONE: 303-312-7308 / FAX: 303-312-7379

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George Benesch	775/827-3020

FROM: Susan Schneider, Indian Resources Section, Denver

RE: Walker River

Special Instructions: Please see following draft revisions to 1. The previously-approved service documents; and, 2. paragraph 9 of the Case Management Order. Please provide any comments on these to me by the close this week. Thank you.
Susan Schneider (303) 312-7308

A. Notice in Lieu of Summons: No changes so far.

B. Notice of Lawsuit and Request for Waiver of Service of Notice in Lieu of Summons:

1. Insert A on Notice of Lawsuit:

7. *Order - Disclaimer of Interest: This Order requires you to notify the Court and the United States if you contend that you have been included in this litigation in error because you have no interest in any water right within any of the nine categories set forth in Paragraph 3 of the Case Management Order (Apr. 18, 2000).*

8. *Order Regarding Changes in Ownership of Water Rights: This Order requires you to notify the Court and the United States whenever during the course of this litigation you convey ownership of all or a portion of any water right within any of the nine categories set forth in Paragraph 3 of the Case Management Order (Apr. 18, 2000). You should retain this document and the attached form for use whenever appropriate during the course of this litigation. In the event that you may convey ownership of applicable water rights on more than one occasion during the course of this litigation, you may wish to make additional copies of the form attached to the Order.*

2. Insert B on Notice of Lawsuit:

There are also two Orders included herein that require you to provide certain information to the Court and the United States in two different circumstances. First, the Court anticipates use of the form attached to the ORDER - DISCLAIMER OF INTEREST only in connection with the initial service upon you of the documents in this package if you have no interest in any water right within any of the nine categories of PARAGRAPH 3 OF THE CASE MANAGEMENT ORDER (APR. 18, 2000). Second, the Court intends use of the form attached to the ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS in connection with each and every conveyance of the ownership of all or a portion of any water right within any of the nine categories set forth in PARAGRAPH 3 OF THE CASE MANAGEMENT ORDER (APR. 18, 2000). You should review each of these Orders carefully and retain copies of each of them for your use.

C. Waiver of Service of Notice in Lieu of Summons:

1. Insert C on Waiver of Service of Notice in Lieu of Summons:

"a copy of the ORDER - DISCLAIMER OF INTEREST and a copy of the ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS"

D. Notice of Appearance and Intent to Participate: no changes so far.

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

NOTICE IN LIEU OF SUMMONS

TO: (A) _____
as (B) _____ of (C) _____

You are hereby summoned and required to file with the United States District Court for the District of Nevada, a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE within 60 days after the service of the FIRST AMENDED COUNTERCLAIM of the United States of America and the FIRST AMENDED COUNTERCLAIM of the Walker River Paiute Tribe, which are herewith served upon you.

Copies of your NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE shall also be mailed to:

Susan L. Schneider
Attorney for the United States of America
United States Department of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, CO 80202

Scott B. McElroy
Attorney for the Walker River Paiute Tribe
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302

Marta Adams
Attorney for the State of Nevada
100 N. Carson St..
Carson City, NV 89701

Mary Hackenbracht
Attorney for the California State Water
Resources Control Board
1515 Clay St., 20th Floor
Oakland, CA 94612-1314

Gordon DePaoli
Attorney for the Walker River Irrigation
District
Woodburn and Wedge
P.O. Box 2311
Reno, NV 89505-2790

Under the CASE MANAGEMENT ORDER (Apr. 18, 2000) governing this phase of the case, you are not obligated to answer either the FIRST AMENDED COUNTERCLAIM filed by the United States of America or the FIRST AMENDED COUNTERCLAIM filed by the Walker River Paiute Tribe except upon further order of the Court.

Dated:_____

_____
Clerk of the Court

[Seal of District Court]

This Notice is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure, the Case Management Order, and the Case Management Order No. 2 in this case.

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS

TO: (A) _____
as (B) _____ of (C) _____

Enclosed are the following [6] documents:

1. ***Notice of Lawsuit and Request for Waiver of Service of Notice in Lieu of Summons:*** ***That is the title of this document (see the title at the top of this page). Please begin your review with this 2-page document.***

2. ***Waiver of Service in Lieu of Summons:*** ***Two copies of this document are enclosed, one for your records and one that may be sent by you in the enclosed envelope to SUSAN L. SCHNEIDER, of the United States Department of Justice, if after reading this document, you choose to execute the document.***

3. ***Notice of Appearance and Intent to Participate:*** ***If you choose to sign the document, you must file the original with the District Court and you must send a copy of the document to the attorney for the United States, who will send copies to the attorneys for the Walker River Paiute Tribe, the Walker River Irrigation District, the California State Water Resources Control Board, and the State of Nevada. Please keep a copy of the document for your records. You may send the copy of the notice of appearance and intent to participate to the attorney for the United States in the same envelope provided for return of the waiver of service in lieu of summons.***

4. ***First Amended Counterclaim of the United States of America*** ***(July 31, 1997).***

5. ***First Amended Counterclaim of the Walker River Paiute Tribe*** ***(July 31, 1997).***

6. ***Case Management Order*** ***(Apr. 18, 2000).***

Insert (A) →

The plaintiff, the United States of America, has filed a FIRST AMENDED COUNTERCLAIM in the United States District Court for the District of Nevada, in an action entitled *United States v. Walker River Irrigation District*. The plaintiff-intervenor, Walker River Paiute Tribe, has also filed a FIRST AMENDED COUNTERCLAIM in that case. A copy of the FIRST AMENDED COUNTERCLAIMS filed by the United States and the Tribe are attached to this notice. The documents have been filed in the District Court and have been assigned docket

A - Name of individual defendant (or name of officer or agent of corporate defendant).
B - Title, or other relationship of individual to corporate defendant.
C - Name of corporate defendant, if any.

number In Equity C-125, Subfile C-125-B. Also attached is the CASE MANAGEMENT ORDER (Apr. 18, 2000) governing this portion of the case. Pursuant to the CASE MANAGEMENT ORDER, the United States and the Tribe are required to serve you with a Notice in Lieu of Summons, or to obtain a waiver of service of Notice in Lieu of Summons from you.

This is not a formal notification from the Court, but rather the plaintiffs' request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial Notice in Lieu of Summons and additional copies of the FIRST AMENDED COUNTERCLAIMS. If you do not send a signed copy of the waiver to the plaintiff within 30 days after the date designated below as the date on which this Notice and Request is sent, you may be liable for the cost of serving you. The plaintiff has enclosed a stamped and addressed [color] envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the Court and no Notice in Lieu of Summons will be served on you. The action will then proceed as if you have been served on the date the waiver is filed.

If you return the signed waiver, you are not obligated to answer either of the FIRST AMENDED COUNTERCLAIMS, except upon further order of the Court. However, you are required, within 60 days of your execution of this waiver, to file a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE with the Court and mail a copy of the notice to the attorney for the United States, who will mail copies to the attorneys for the Walker River Paiute Tribe, the Walker River Irrigation District, the California State Water Resources Control Board, and the State of Nevada. A copy of a NOTICE OF APPEARANCE AND AN INTENT TO PARTICIPATE that you may choose to use is attached. You may return both the waiver of service and notice of appearance to the attorney for the United States in the self-addressed, stamped envelope provided. For your information, attached to this document is a list of the names and addresses of the attorneys for the Walker River Paiute Tribe, the Walker River Irrigation District, the California State Water Resources Control Board, and the State of Nevada.

If you do not return the signed waiver within the time indicated, the plaintiff will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the Court to require you (or the entity on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the Notice in Lieu of Summons, which is set forth at the foot of the waiver form.

Insert B

I affirm that this request is being sent on behalf of the plaintiff, the United States of America and the plaintiff-intervenor, Walker River Paiute Tribe, this ___day of _____, 2000.

_____
Signature of Plaintiff's Attorney

WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS

TO: Susan L. Schneider, attorney for the United States of America

1. I acknowledge receipt of your request that I waive service of a Notice in Lieu of Summons in the action of *United States v. Walker River Irrigation District*, which is docket number In Equity, C125, Subfile C-125-B, in the United States District Court for the District of Nevada.

insert (C)

2. I have also received a copy of the FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA, the FIRST AMENDED COUNTERCLAIM OF WALKER RIVER PAIUTE TRIBE, the CASE MANAGEMENT ORDER (Apr. 18, 2000), two copies of a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE, two copies of this document, and a means by which I can return the signed waiver to you without cost to me.

3. I agree to save the cost to me of service of a Notice in Lieu of Summons and an additional copy of the FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA and the FIRST AMENDED COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure.

4. I understand that if I waive service of a Notice in Lieu of Summons, I must file a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE with the Court and mail a copy of the same to the attorney for the United States. I understand that I may return the notice in the same envelope provided for return of the waiver of service.

5. I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections based on a defect in the Notice in Lieu of Summons or in the service of the Notice in Lieu of Summons.

Date:_____

_____
Signature

_____
Printed/Typed Name

As _____ of
(Title)

_____
Corporate Defendant

Duty to Avoid Unnecessary Costs of Service of Notice in Lieu of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the Notice in Lieu of Summons and the First Amended Counterclaims. An entity (such as yourself) located in the United States who, after being notified of an action and asked by a plaintiff (here the United States and Tribe) located in the United States to waive service of a Notice in Lieu of Summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the claims of the opposing parties are unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the Notice in Lieu of Summons retains all defenses and objections (except any relating to the Notice in Lieu of Summons or to the service of the Notice in Lieu of Summons), and may later object to the jurisdiction of the Court or to the place where the action has been brought.

An entity in this case who waives service must, within 60 days, as specified on the waiver form, provide the Court with a notice of appearance and intent to participate.

LIST OF ATTORNEY NAMES & ADDRESSES

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Environment & Natural Resources Division
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Marta Adams
Attorney for the State of Nevada
100 N. Carson St..
Carson City, NV 89701

Mary Hackenbracht
Attorney for the California State Water Resources Control Board
1515 Clay St., 20th Floor
Oakland, CA 94612-1314

Gordon DePaoli
Attorney for the Walker River Irrigation District
Woodburn and Wedge
P.O. Box 2311
Reno, NV 89505-2790

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
WALKER RIVER PAIUTE TRIBE,	)	
	)	
Plaintiff-Intervenor,	)	
	)	IN EQUITY NO. C-125
vs.	)	SUBFILE NO. C-125-B
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.,	)	

NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE

1. I hereby enter my appearance in this sub-proceeding in this case.

2. I am filing this document with the District Court at the following address:

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

3. In the envelope provided for return of my waiver of service of notice in lieu of summons, I am mailing a copy of this document to:

Susan L. Schneider
Attorney for the United States of America
United States Department of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, CO 80202

4. I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the Notice in Lieu of Summons or in the service of the Notice in Lieu of Summons.

5. If I (or the entity on whose behalf I am acting) retain an attorney to represent me in these proceedings, I identify that attorney below, along with his or her mailing address, telephone number, and facsimile number:

Attorney:

Address:

Phone Number:
Fax Number:

_____
(Name)

_____
(entity, if any, on whose behalf you are appearing)

_____
(Address)

_____
(phone number)

U.S. v. WRID
proposed revision to CMO Para. 9
For discussion purposes
May 16, 2001

Draft-redraft of Para. 9:

Prior 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 in Paragraph 3 of this Case Management Order and determine if they are reasonable and satisfy due process. Following the Court's determination that such documents and methods of identification are reasonable and satisfy due process, the U.S./Tribe may commence service. Upon notice to the Court, the U.S./Tribe may conduct service in phases (e.g., by Case Management Order category) in a manner to be determined by the U.S./Tribe. Following their completion of any phase of service, the U.S./Tribe shall provide a list of persons and entities for which they have attempted or have made service to the Court. Any objections or corrections to the list shall be made by any other party within 30 days thereafter. The Magistrate Judge shall consider and rule on all such objections.

MAY 25 2001
COURT
DEPUTY

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS

TO: (A) _____
as (B) _____ of (C) _____

Enclosed are the following [6] documents:

1. ***Notice of Lawsuit and Request for Waiver of Service of Notice in Lieu of Summons:*** ***That is the title of this document (see the title at the top of this page). Please begin your review with this 2-page document.***

2. ***Waiver of Service in Lieu of Summons:*** ***Two copies of this document are enclosed, one for your records and one that may be sent by you in the enclosed envelope to SUSAN L. SCHNEIDER, of the United States Department of Justice, if after reading this document, you choose to execute the document.***

3. ***Notice of Appearance and Intent to Participate:*** ***If you choose to sign the document, you must file the original with the District Court and you must send a copy of the document to the attorney for the United States, who will send copies to the attorneys for the Walker River Paiute Tribe, the Walker River Irrigation District, the California State Water Resources Control Board, and the State of Nevada. Please keep a copy of the document for your records. You may send the copy of the notice of appearance and intent to participate to the attorney for the United States in the same envelope provided for return of the waiver of service in lieu of summons.***

4. ***First Amended Counterclaim of the United States of America*** ***(July 31, 1997).***

5. ***First Amended Counterclaim of the Walker River Paiute Tribe*** ***(July 31, 1997).***

6. ***Case Management Order*** ***(Apr. 18, 2000).***

7. ***Order - Disclaimer of Interest:*** ***This Order requires you to notify the Court and the United States if you contend that you have been included in this litigation in error because you have no interest in any water right within any of the nine categories set forth in Paragraph 3 of the Case Management Order (Apr. 18, 2000).***

A - Name of individual defendant (or name of officer or agent of corporate defendant).
B - Title, or other relationship of individual to corporate defendant.
C - Name of corporate defendant, if any.

8. ***Order Regarding Changes in Ownership of Water Rights*: This Order requires you to notify the Court and the United States whenever during the course of this litigation you convey ownership of all or a portion of any water right within any of the nine categories set forth in Paragraph 3 of the *Case Management Order* (Apr. 18, 2000). You should retain this document and the attached form for use whenever appropriate during the course of this litigation. In the event that you may convey ownership of applicable water rights on more than one occasion during the course of this litigation, you may wish to make additional copies of the form attached to the Order.**

The plaintiff, the United States of America, has filed a FIRST AMENDED COUNTERCLAIM in the United States District Court for the District of Nevada, in an action entitled *United States v. Walker River Irrigation District*. The plaintiff-intervenor, Walker River Paiute Tribe, has also filed a FIRST AMENDED COUNTERCLAIM in that case. A copy of the FIRST AMENDED COUNTERCLAIMS filed by the United States and the Tribe are attached to this notice. The documents have been filed in the District Court and have been assigned docket number In Equity C-125, Subfile C-125-B. Also attached is the CASE MANAGEMENT ORDER (Apr. 18, 2000) governing this portion of the case. Pursuant to the CASE MANAGEMENT ORDER, the United States and the Tribe are required to serve you with a Notice in Lieu of Summons, or to obtain a waiver of service of Notice in Lieu of Summons from you.

This is not a formal notification from the Court, but rather the plaintiffs' request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial Notice in Lieu of Summons and additional copies of the FIRST AMENDED COUNTERCLAIMS. If you do not send a signed copy of the waiver to the plaintiff within 30 days after the date designated below as the date on which this Notice and Request is sent, you may be liable for the cost of serving you. The plaintiff has enclosed a stamped and addressed [color] envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the Court and no Notice in Lieu of Summons will be served on you. The action will then proceed as if you have been served on the date the waiver is filed.

If you return the signed waiver, you are not obligated to answer either of the FIRST AMENDED COUNTERCLAIMS, except upon further order of the Court. However, you are required, within 60 days of your execution of this waiver, to file a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE with the Court and mail a copy of the notice to the attorney for the United States, who will mail copies to the attorneys for the Walker River Paiute Tribe, the Walker River Irrigation District, the California State Water Resources Control Board, and the State of Nevada. A copy of a NOTICE OF APPEARANCE AND AN INTENT TO PARTICIPATE that you may choose to use is attached. You may return both the waiver of service and notice of appearance to the attorney for the United States in the self-addressed, stamped envelope provided. For your information,

A - Name of individual defendant (or name of officer or agent of corporate defendant).
B - Title, or other relationship of individual to corporate defendant.
C - Name of corporate defendant, if any.

attached to this document is a list of the names and addresses of the attorneys for the Walker River Paiute Tribe, the Walker River Irrigation District, the California State Water Resources Control Board, and the State of Nevada.

If you do not return the signed waiver within the time indicated, the plaintiff will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the Court to require you (or the entity on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the Notice in Lieu of Summons, which is set forth at the foot of the waiver form.

There are also two Orders included herein that require you to provide certain information to the Court and the United States in two different circumstances. First, the Court anticipates use of the form attached to the ORDER - DISCLAIMER OF INTEREST only in connection with the initial service upon you of the documents in this package <u>if</u> you have no interest in any water right within any of the nine categories of PARAGRAPH 3 OF THE <u>CASE MANAGEMENT ORDER</u> (APR. 18, 2000). Second, the Court intends use of the form attached to the ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS in connection with <u>each and every</u> conveyance of the ownership of all or a portion of any water right within any of the nine categories set forth in PARAGRAPH 3 OF THE CASE MANAGEMENT ORDER (APR. 18, 2000). You should review each of these Orders carefully and retain copies of each of them for your use.

I affirm that this request is being sent on behalf of the plaintiff, the United States of America and the plaintiff-intervenor, Walker River Paiute Tribe, this ___day of _____, 2000.

_____

Signature of Plaintiff's Attorney

WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS

TO: Susan L. Schneider, attorney for the United States of America

1. I acknowledge receipt of your request that I waive service of a Notice in Lieu of Summons in the action of *United States v. Walker River Irrigation District*, which is docket number In Equity, C125, Subfile C-125-B, in the United States District Court for the District of Nevada.

2. I have also received a copy of the FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA, the FIRST AMENDED COUNTERCLAIM OF WALKER RIVER PAIUTE TRIBE, the CASE MANAGEMENT ORDER (Apr. 18, 2000), two copies of a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE, a copy of the ORDER - DISCLAIMER OF INTEREST, a copy of the ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS, two copies of this document, and a means by which I can return the signed waiver to you without cost to me.

3. I agree to save the cost to me of service of a Notice in Lieu of Summons and an additional copy of the FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA and the FIRST AMENDED COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure.

4. I understand that if I waive service of a Notice in Lieu of Summons, I must file a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE with the Court and mail a copy of the same to the attorney for the United States. I understand that I may return the notice in the same envelope provided for return of the waiver of service.

5. I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections based on a defect in the Notice in Lieu of Summons or in the service of the Notice in Lieu of Summons.

Date:_____

_____
Signature

_____
Printed/Typed Name

As _____ of
(Title)

_____
Corporate Defendant

Duty to Avoid Unnecessary Costs of Service of Notice in Lieu of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the Notice in Lieu of Summons and the First Amended Counterclaims. An entity (such as yourself) located in the United States who, after being notified of an action and asked by a plaintiff (here the United States and Tribe) located in the United States to waive service of a Notice in Lieu of Summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the claims of the opposing parties are unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the Notice

in Lieu of Summons retains all defenses and objections (except any relating to the Notice in Lieu of Summons or to the service of the Notice in Lieu of Summons), and may later object to the jurisdiction of the Court or to the place where the action has been brought.

An entity in this case who waives service must, within 60 days, as specified on the waiver form, provide the Court with a notice of appearance and intent to participate.