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

Greg Addington
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

FILED
2002 MAY -9 AM 10: 26
LANCE S. WILSON
CLERK
BY DEPUTY

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 and Sub-file No. C-125-B **MEMORANDUM IN SUPPORT OF JOINT MOTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE FOR AMENDMENT OF THE COURT'S ORDER DENYING MOTION FOR CERTIFICATION OF DEFENDANT CLASSES OR FOR RELIEF FROM THIS SAME ORDER**

The United States of America ("United States") and the Walker River Paiute Tribe ("Tribe") have moved this Court, pursuant to FED. R. CIV. P. 59(e), to alter, amend or vacate its Order of April 29, 2002, denying the *Joint Motion of the United States and the Walker River Paiute Tribe for Certification of Defendant Classes* (May 4, 2001) ("Joint Motion for Class Certification"). *Order*

181

(April 29, 2002). In the alternative, the United States and the Tribe move this Court for relief from this same order pursuant to FED. R. CIV. P. 60(b).

A. Background:

The *Case Management Order* (Apr. 18, 2000) ("CMO") directs the United States and the Tribe to join water users in nine categories of water right holders on the Walker River, estimated in June 2001 to number over 3,000, before the Court addresses the outstanding threshold issues relative to the Tribal Claims. *Id.* ¶ 3; *Identification of Methods Used by the United States of America and the Walker River Paiute Tribe to Identify Persons and Entities to be Served Pursuant to Paragraph 3 of the Case Management Order, Exhibit 1: Affidavit of Dennis Becker* ¶ 25.d (June 12, 2001) ("Becker June 2001 Aff.").[1] As discussed below, the figure of 3,000 is low. Indeed, the Court has recognized that "[f]or some time now, various parties have had considerable difficulty in determining the current water right holders on the Walker River for purposes of service of process." *Order* at 4, No. C-125 (June 8, 2001) ("June 8 Order").

In seeking to comply with the Court's mandate to join water users who may be affected by the Tribal Claims,[2] the United States and the Tribe requested certification of a defendant class for two of

---

[1]The Becker June 2001 Affidavit was filed subsequent to the Joint Motion for Class Certification, but was before the Court prior to argument of that motion. The Joint Motion for Class Certification referenced an earlier affidavit by Mr. Becker dated March 9, 2001. *E.g.*, Joint Motion for Class Certification at 5. As a general matter, Mr. Becker's affidavits demonstrated his ongoing work related to the identification of persons and entities to be served and demonstrate that the total number of potential defendants identified continues to increase.

[2]The CMO bifurcated the "claims of the Tribe contained in the First Amended Counterclaim of the Tribe and the claims of the U.S. on behalf of the Tribe (First, Second, and Third Claims for

the CMO's categories: 1) successors in interest to those individuals and entities whose rights are recognized in the *Decree* (Apr. 14, 1936), *modified, Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc.* (Apr. 24, 1940) ("Decree"), and designated in Category 3(a) of the CMO; and 2) domestic well users in the sub-basins where the Court has deemed joinder of such users to be necessary, as designated in a portion of Category 3(c) of the CMO. Joint Motion for Class Certification, Mem. at 1. Under this proposal, certification of these two classes would be limited to the determination of a series of threshold questions under the CMO and for the declaration of the Tribe's rights. *Joint Reply of the United States of America and the Walker River Paiute Tribe to the Walker River Irrigation District and the State of Nevada Regarding the Certification of Defendant Classes* at 2 (Aug. 2, 2001) ("Joint Reply"). *See generally Report and Recommendation of U.S. Magistrate Judge* at 3-4 (Sept. 13, 2001) ("Report and Recommendation"). If the United States and the Tribe prevail on the threshold questions and additional tribal rights are recognized, decertification of the class and joinder of the individual class members would be necessary before the Court can address the issues associated with the administration of the tribal rights relative to other rights in the basin and questions concerning the validity and the extent of the individual water rights of the class members. Under the CMO, however, these issues would be addressed in subsequent phases of this litigation.

The United States and the Tribe filed their Joint Motion for Class Certification on May 4, 2001. This motion was initially heard by the Magistrate Judge, who recommended in September 2001 that the

---

relief) set forth in the First Amended Counterclaim of the U.S." and defined these as the "Tribal Claims." CMO at p. 4.

motion be denied. Report and Recommendation. Thereafter, in October 2001, the United States and the Tribe filed their objections to the Magistrate Judge's Report and Recommendation. *Objection of the United States of America and the Walker River Paiute Tribe to the Report and Recommendation of U.S. Magistrate Judge Regarding Certification of Defendant Classes* (Oct. 26, 2001) ("Objection"). In addition, in January 2002, the United States and the Tribe provided a supplemental filing to their Objection to clarify that their continuing work shows that the number of potential defendants involved in the two proposed classes for certification is much higher than originally estimated. *Notice of Filing of Supplemental Affidavit Regarding the Objection of the United States of America and the Walker River Paiute Tribe to the Report and Recommendation of U.S. Magistrate Judge Regarding Certification of Defendant Classes* (Jan. 10, 2002) ("Supplemental Filing to Objection"). The Court issued its present Order on April 29, 2002.

B. <u>This Court should alter, amend or vacate its Order.</u>

The United States and the Tribe reiterate their arguments in all of their pleadings related to the Joint Motion for Certification, asserting that the Court's decision is based upon manifest errors of law or fact. The United States and Tribe respectfully move that the Court amend or vacate its decision to prevent manifest injustice.

FED. R. CIV. P. 59(e) authorizes this Court to alter or amend a judgment after its entry. The rule has also been interpreted to allow a motion to vacate a judgment rather than merely to amend it. *E.g., Foman v. Davis,* 371 U.S. 178 (1962). *See also* WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, CIV. 2D, § 2810.1. Two of the four basic grounds on which a Rule 59(e) motion may be granted are applicable to the circumstances of this case: a Rule 59(e) motion may be granted to correct

manifest errors of law or fact upon which the judgment is based, as well as to prevent manifest injustice. *See id. and n. 17.*

FED. R. CIV. P. 60(b) provides an alternate remedy to address situations where an order or judgment should be changed or vacated to prevent manifest injustice. Pursuant to FED. R. CIV. P. 60(b), "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for . . . (6) any other reason justifying relief from the operation of the judgment."

1. This Court should allow for the appointment of a class representative under FED. R. CIV. P. 23(a) for those persons and entities in Category 3(c) of the CMO who are domestic well users.

The Court agrees that the United States and the Tribe have met all prerequisites of FED. R. CIV. P. 23(a), with one limited but important exception. Order at 13. In the Court's view, the State of Nevada does not have claims and defenses typical of the proposed class of domestic groundwater claimants in Category 3(c) of the CMO, such that it "is not an appropriate class representative" under FED. R. CIV. P. 23(a)(3) on behalf of these domestic well users. Order at 11-13.

First, we disagree that the State of Nevada cannot function as a representative party of these persons and entities. The Court simply asserts that the "state's focus will be on its decreed rights on the Walker River and its permit to flood waters in Walker Lake," which it contends "differ significantly from the claims and defenses of domestic well owners who rely on groundwater." Order at 11. Our information shows that the State of Nevada has groundwater interests relevant to CMO Category 3(c) on behalf of at least the Nevada Fish and Game Commission, the Nevada Division of Wildlife, and the Nevada Department of Transportation. *See, e.g.,* the documents in Attachment A to this Motion.

(This information is from a print-out dated August 9, 2001, which we were not able to update for purposes of this filing.) Consequently, it appears that the State's interests should also include claims and defenses that would be typical of other groundwater users in Category 3(c), such that it would, indeed, be an appropriate class representative.

Second, for the reasons set forth in our previous pleadings on this issue and as discussed below, we believe that the superior method of addressing this very large group of water users is in a class. Even if the Court were to continue to believe that the State of Nevada was unable to serve as a class representative for this group of its citizens, we wish to explore with the Court, and would be willing to agree to, the appointment of an alternate representative for this group who meets all the class representative criteria of FED. R. CIV. P. 23. Since this proposed class may include in excess of 2,600 persons and entities, *see* Supplemental Filing to Objection and affidavit of paralegal Dennis Becker, there are unquestionably other parties capable of serving this function.

2. This Court should alter, amend or vacate its determination that the United States and Tribe failed to demonstrate that their proposed classes meet the requirements of at least one of the three subsections of FED. R. CIV. P. 23(b).

The United States and the Tribe contend that the Court erred when it determined that the United States and the Tribe failed to meet the requirements of any of the three subsections of FED. R. CIV. P. 23(b). To the contrary, there is ample basis to support class certification under each of these factors.

a. FED. R. CIV. P. 23(b)(1):

FED. R. CIV. P. 23(b)(1) addresses two separate circumstances. FED. R. CIV. P. 23(b)(1) (A) allows a class action when separate actions may result in adjudications that would result in

"incompatible standards of conduct for the party opposing the class." FED. R. CIV. P. 23(b)(1)(B) allows a class action when separate actions could prevent non-party class members from adequately protecting their interests. The Court and the U.S. Magistrate simply concluded that subpart (b)(1) does not apply at all here because "there can be no other adjudications: all parties and claims to the Walker River that could be impacted by the claims of the United States and the Tribe must be joined in this action." Order at 14.

The Court does not explain this conclusion, which appears contradicted by *United States v. Truckee-Carson Irrigation Dist.*, 71 F.R.D. 10, 17 (D. Nev. 1975), in which the court held that the risk of varying and incompatible standards could occur even where a single court retains exclusive jurisdiction. In addition, the nature of the threshold questions, which address jurisdiction and other broader issues, makes clear that the Court wishes to address the extent of its authority over certain of the issues raised in this matter. Thus, there is no reason to believe that one or more parties may not attempt to obtain redress of some of these issues in other forums. For example, Mineral County has brought one action in the Nevada Supreme Court to determine the applicability of the public trust doctrine in the Walker River Basin, *Mineral County, et al. v. State of Nevada* (Case No. 36352, Nev. Sup. Ct.) (June 26, 2000), and has brought another action in federal district court in San Francisco regarding water quality standards and endangered species issues regarding Walker Lake. *Mineral County and Walker Lake Working Group v. EPA*, Case No. C-01-03894-MHP (N.D. Cal.).

b. FED. R. CIV. P. 23(b)(2):

FED. R. CIV. P. 23(b)(2) applies where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." The Court simply dismissed the threshold questions in the CMO as "questions of applicable law, jurisdiction and defenses to the claims of the United States and the Tribe, [and] not issues of injunctive and declaratory relief. The United States and the Tribe are not asking for primarily injunctive or declaratory relief, even though that is part of their claims in Phase II." Order at 15-16.

At best, this determination splits hairs that are not capable of being split. The entire nature of this case is one that seeks injunctive or declaratory relief. The United States and the Tribe seek to obtain a declaration of the rights of the Tribe and other federal parties to water from the Walker River Basin and seek another order enjoining others from diverting or using water inconsistent with the Court's determination. It is simply not accurate to analogize this case to one "where the primary claim is for damages." Order at 16. Moreover, this determination ignores the practical reality of this case -- that any conclusions of law made in Phase I will bind all parties in subsequent phases and will profoundly impact the nature of any later declaratory and injunctive relief. In essence, the outlines of any subsequent declaratory or injunctive relief will be determined in Phase I and will carry over to the rest of the litigation. *See Southern Ute Indian Tribe v. Amoco Prod. Co.*, 874 F. Supp. 1142 (D. Colo. 1995), *rev'd on other grounds*, 119 F.3d 816 (10th Cir. 1997), *aff'd in part on reh'g en banc,* 151 F.3d 1251 (10th Cir. 1998), *rev'd on other grounds*, 526 U.S. 865 (1999).

c. FED. R. CIV. P. 23(b)(3):

Under FED. R. CIV. P. 23(b)(3), a class may be certified if (1) common questions of law or fact predominate and (2) the class action is the superior method of adjudicating the case. It is this portion of the Court's ruling that is possibly the most troubling to the United States and the Tribe, because it appears to us that we have more than amply demonstrated the applicability of this factor to justify the certifications requested.

1. Predominance:

The predominance test focuses on the relationship between the common and individual issues in order to determine if the common issues represent a significant aspect of the case and can be resolved in a single adjudication. *See Local Joint Executive Board of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001); *Hanlon v. Chrysler Corporation,* 150 F.3d 1011, 1022 (9th Cir. 1998); *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Moreover, the Ninth Circuit has also expressly recognized that common issues may be separated out in appropriate cases for treatment on a class basis:

> Even if the common questions do not predominate over the individual questions so that class certification of the entire action is warranted, Rule 23 authorizes the district court in appropriate cases to isolate the common issues under Rule 23(c)(4)(A) and proceed with class treatment of these particular issues.

Valentino v. Carter-Wallace, Inc., 97 F.3d at 1234. The very purpose of the Phase I threshold issues is to identify and determine common legal issues and defenses prior to any individual determinations as to water rights, including determinations of the Tribal Claims. *See* CMO at 9-12. As a result, no answers or other pleadings are required by any defendant until further order of the Court. CMO at 12,

¶13. There is absolutely nothing about the Phase I threshold issues that would demonstrate other than that this phase is intended to address common legal issues.

While members of a class may vary as to how they view the potential impact to themselves of common issues, this does not change the common nature of such issues. Questions of jurisdiction in general, jurisdiction over groundwater, whether federal law or what other law governs groundwater pumping on the Tribe's reservation, whether the Court has jurisdiction over groundwater, and what relationship the Court should recognize, if any, between surface water and groundwater, for example, are simply basic questions as to the Court's jurisdiction and what law it will apply.

It is unlikely, for example, that there would be any difference in the positions of holders of decreed surface water rights as to the jurisdiction of the Court to adjudicate the claims of the United States and the Tribe to additional surface water. The same conclusion applies to the position of groundwater users as to the Court's authority to adjudicate groundwater rights. In addition, members of both of the proposed classes are likely to have common positions on whether the claims of the United States and the Tribe are valid on their merits and whether these claims are precluded by equitable defenses such as claim preclusion or issue preclusion. And the position of groundwater users on the questions of whether federal or state law applies to groundwater use by the Tribe, and the content and reach of the applicable law, are unlikely to be affected by the relative rights of groundwater users among themselves. In sum, either these issues challenge the right of the United States and the Tribe to bring their claims for reasons independent of any defendant's individual situation, or the questions raise such abstract issues, such as the rules of decision, that again depend in no way on

evaluation of individual circumstances. Consequently, certification of the defendant classes under FED. R. CIV. P. 23(b)(3) is appropriate to address those common issues.

The Court reasons, without explanation, that there are three possible groups of defendants in the possible classes – those who possess both groundwater and surface water rights, those who possess only groundwater rights, and those who possess only surface water rights – and that each group will have different issues and may take different positions based on their individual water rights and not the categories of service under the CMO. Order at 17. This is a distinction without a difference. First, while various individuals may have differing opinions on these issues, this does not change the essential nature of such questions as common issues. Clearly, there are significant common issues where the type of water right is unlikely to determine anyone's position. Second, with this analysis, the Court disregards the proposal to create two subclasses that divide the two types of interests. Moreover, there is ample authority under Fed. R. Civ. P. 23 to make further divisions into sub-classes if appropriate, and persons who wish to opt out of class treatment altogether may do so. FED. R. CIV. P. 23(c)(2). Third, in those possible cases where individuals take both surface and groundwater, the court does not explain why this circumstance means that individual issues are likely to predominate over common questions at the threshold stage. Once again, the separate classes allow common positions of each class to be asserted. Their various rights will be subject independently at a later phase to a review of these respective rights.

2. <u>Superior Method:</u>

The United States and the Tribe assert that their request for certification of classes is by far the superior method of handling this case. The determination of superiority focuses on whether class

proceedings offer advantages of efficiency and economy over other methods. *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1190, *op. amended and superceded*, 273 F.3d 1266 (9th Cir. 2001). FED. R. CIV. P. 23(b)(3) provides a non-exhaustive list of potential pertinent factors and we agree that it is appropriate to consider the unique nature of this case as well.

First, the Court's Order overlooks the reality that the threshold issues (including any related appeals) will take considerable time to resolve and that the United States and the Tribe wish to have their claims heard before the passage of many more years. Certainly, as the Court noted, the threshold issues might go against the Tribe and the United States such that their prompt resolution before commencement of years of individual service efforts will save considerable amounts of money. *See In re Agency Orange Product Liability Litigation,* 818 F.2d 145, 166-167 (2d Cir. 1987), *cert. den.*, 484 U.S. 1004 (1988). But just as likely is the case that the United States and Tribe could prevail on the threshold issues and the other parties might then approach settlement with enhanced seriousness.

Second, as we have pointed out previously,[3] it is not fair for those persons and entities who are water rights holders under the Court's Decree to get all of the benefits of the Decree without any responsibilities. As a result of the Court's recent order and its earlier order denying the United States and Tribe's request that the Decreed rights holders be required to identify themselves, *see* n.3 and June

---

[3] *See Joint Motion of the Walker River Paiute Tribe and the United States of America for an Order Requiring the Identification of All Decreed Water Rights Holders and Their Successors,* No. C-125 (June 29, 2000); *Reply Memorandum in Support of the Walker River Paiute Tribe and the United States of America for an Order Requiring the Identification of All Decreed Water Rights Holders and Their Successors*, No. C-125 (Dec. 7, 2000); *Objection of the United States of America and the Walker River Paiute Tribe to the Report and Recommendation of the U.S. Magistrate Judge*, No. C-125 (Apr. 6, 2001).

8 Order, the Court has allowed these persons to reap all of the benefits of the Decree and, in essence, maintain a judicially-sanctioned anonymity. Instead, the United States Board of Water Commissioners, a local entity appointed under the authority of the Decree, and the Walker River Irrigation District ("WRID"), the two primary groups involved in implementation of the Decree on a daily basis, claim that while their assessment lists are adequate for purposes of distributing and regulating water use under the Decree and sending out bills for payment, these lists somehow are not competent for purposes of identifying those persons and entities that have succeeded to the water rights listed in the Decree. The United States and the Tribe have already asked this Court to require these water rights holder to identify themselves and have been unsuccessful. The Court has also not sanctioned the use of the WRID and United States Board of Water Commissioner assessment lists, combined with publication, as sufficient for service purposes. It seems to us that handling this group of water users as a class is a reasonable alternative under the circumstances. It also seems to us that the Court should not refuse to allow us to pursue either option – that is, use of the WRID and United States Board of Water Commissioner assessment lists and publication or certification of these water users as a class. By this motion, we ask the Court to reconsider these two approaches to service on this group of water users.

Third, the reasonableness of the class certification option is all the more apparent in light of the Court's recognition that certain water right holders are actively resisting service of process. Order at 8. We do not believe that the Court should indirectly sanction or directly permit any person or entity to evade service. While we do not believe that the Court would sanction such behavior, its rulings invite resistance to service. We believe strongly that the Court must take charge of this litigation and enable it

to proceed to be considered on its merits and not allow the delaying tactics of opponents, including persons who seek to evade service, to delay this case.

Fourth, the Court's response to our concerns about efforts to evade service is that it believes the United States and Tribe will have a less difficult time with identification, joinder, and service than has been the case for Mineral County. Order at 8. To the contrary, we have no assurance or indication that our efforts at service will be any more successful than those of Mineral County. Moreover, since the County only has to serve the equivalent of Category 3(a) on the CMO and the United States and the Tribe have to serve persons and entities in nine different categories, it is plain that we will have to serve considerably higher number of persons and entities. In addition, we have seen no indication in the Mineral County effort that it will be permitted to do publication on any aspect of its service effort in the reasonably foreseeable future. Rather, we only see a never-ending series of status conferences where the opposing parties pick at the quality of Mineral County's service in an apparent effort to force an unattainable level of perfection on service before publication may be attempted. We have no reason to doubt that these and other attacks await our efforts to do service.[4] The Court also cites the work of the

---

[4]/With respect to the status of service on persons and entities in the other CMO categories, we are in the process of finalizing a package of service documents, which would incorporate significant work done on this issue with the United States Magistrate. We have already provided an advance copy of these materials to counsel for WRID and requested their comments prior to preparing a submission to the Court. We intend to conduct service on these other categories, to the extent possible, in phases, in part to conduct service in manageable numbers and in part to review any problems associated with service with the Court promptly. We have also informed the United States Magistrate that if service on other of the CMO categories proves unreasonably problematic, we may seek certification of additional defendants classes. Once this service package is approved, we can commence service on some or all of the other CMO categories of persons and entities to be served.

United States' paralegal – Dennis Becker and the "resources of the United States government to aid in the actual service of process." Order at 9. Mr. Becker is but one person, albeit a dedicated and capable person.[5] If we are forced to conduct personal service on persons who have elected to evade process, the United States will have to hire special process servers and private investigators at considerable cost to track down missing people and people who are evading service.[6] The resources of the United States are not unlimited, especially in these post-September 11 days. Moreover, we see no rational reason to spend significant resources conducting personal service on persons who wish to evade service when class certification is an available option at this point and will satisfy notice and due process concerns.

Fifth, the large numbers and relatively smaller interests of the domestic groundwater users in Category 3(c) make class certification the most efficient and desirable method of addressing these claims. As noted in the Supplemental Filing to Objection and affidavit of paralegal Dennis Becker, the sheer numbers of these interests – likely to be in excess of 2,600 – underscores the logic of class certification. Moreover, these interests are relatively small when compared with some of the water rights of the large irrigators; indeed, many of these persons and entities may be forced to be included in this action simply because they have a domestic well. And while we are by no means minimizing the importance of a drinking water well, as we have explained previously, these wells are handled outside

---

[5]He has also retired and we have hired a new paralegal.

[6]The United States Marshals Service is not a realistic option for use here and has not been available for such massive amounts of civil process work for many years, if ever, because of the Service's own resource constraints and primary focus on criminal matters.

of the Nevada state water rights priority system. Furthermore, it appears to us to be overly-burdensome to force small water users to be defendants here when they might be treated as a class.[7] Finally, we think that the amount of time that might be necessary to conduct personal service on each of these persons and entities is unduly large.

Sixth, the Court does not address the problem of the constant shifts in memberships of the various proposed classes. Indeed, every day of each year, there will likely be different members of each class, especially the domestic class. It is unreasonable to expect tracking of each residential transaction within the areas included in Category 3(c) of the CMO. The class certification approach for these classes would assist with this problem.

Finally, the Court's Order appears to mandate that the burden for bringing this case must rest solely on the United States and the Tribe and that there is no means short of complete personal service on every person and entity potentially affected by this case before any of the merits of this case can be heard. We contend that this works to deny the Tribe its constitutional right of access to the courts, as we are now approaching several years of pretrial procedures without having our claims heard. *See Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering,* 476 U.S. 877, 888 (1986); *Boddie v. Connecticut,* 401 U.S. 371, 377 (1971). We contend that this places an undue

---

[7]Addressing these water rights users in the manner proposed could be analogized to the manner in which Congress directed the United States to address small contributors of hazardous wastes under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9622(g). In addition, while the Court asserts that if "defendant members thought their interests would be best protected by a class, they would have moved to certify a class action," Order at 21, there is no evidence that potential class members have ever rejected, let alone considered, this manner of participating in this case.

burden on the United States and the Tribe. Certainly, in any balance between the right of the Tribe to have its issues heard by a Court and the right of a person or entity potentially affected by these issues, there should be some means by which sufficient notice may be given without causing undue delays in having the claims heard. Here, for the two specific classes proposed, we believe that balance can be struck at this stage in the litigation by certifying these two proposed classes.

CONCLUSION

WHEREFORE, for the above reasons and such other reasons that may appear to the Court, the United States and Tribe respectfully request that this motion be granted and that the Court permit certification of the two proposed classes. As to the persons and entities within Category 3(a) of the CMO, in the alternative, the United States and the Tribe request a ruling that service based on the current assessment list of WRID and the United States Board of Water Commissioners, plus publication, is sufficient for purposes of meeting all due process and other requirements of service in this matter.

Date: May 8, 2002

Respectfully submitted,

Greg Addington, Assistant United States Attorney
Susan L. Schneider, Trial Attorney
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

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: _____
Scott B. McElroy

Attorneys for the Walker River Paiute Tribe

Nevada Division of Water Resources

Well Log Database

Query Results

Basin	County	Qtr-Qtr	Section	Twp	Rng	Owner	Date Complete	Well Log #	Driller Lic#	Total Depth	Static Water Level	Casing Diameter	APN	Work Type	Propos Use
108	32019	NE SW	18	14N	26E	STATE OF NEVADA	8/16/1988	30624	675	415	20.5	26		N	Q
108	32019	NE SW	18	14N	26E	NV DEPT OF WILDLIFE	8/11/1986	27730	1454	540	6	4		N	N
108	32019	SE NW	18	14N	26E	STATE OF NEVADA	5/24/1988	30269	1548	375	13	26		N	Q
108	32019	SE NW	18	14N	26E	DEPARTMENT OF WILDLIFE		34361	1448	535		6		P	U
108	32019	SE NW	18	14N	26E	NV DEPT OF WILDLIFE	8/18/1986	27729	1454	380	6	6		T	X
108	32019	NW SW	19	14N	26E	STEWART, MIKE	5/11/1985	26695	870	99	5	8.62		N	H
108	32019	NE NW	22	14N	26E	O-N RANCH	2/15/1991	35815	634	258	16	6.62	14-321-06	N	H
108	32019	NE SE	22	14N	26E	ROWLEY, CLYDE	8/7/1991	37350	634	143	20	6.62	14-341-06	N	H
108	32019	SE NW	22	14N	26E	REVIGLIO, TOM	11/11/1999	78222	1713	160	10			P	I
108	32019	SE NW	22	14N	26E	REVIGLIO, TOM	2/22/1999	74843	1572	480	12.1	17.4		N	I
108	32019	NW SW	23	14N	26E	DAVIDSON, LEE	6/10/1994	46657	634	142	25	5	14-332-10	D	H
108	32019	SW NW	23	14N	26E	OGDEN, RUTH	9/13/1994	47546	634	279	25	6.62	14-331-03	N	H
108	32019	SW SW	23	14N	26E	THOMAS, HAROLD	3/8/1984	25231	870	119	10	6.62		N	H
108	32019	NE	25	14N	26E	BUTTERLY, JAMES OR ELLEN	1/20/1996	52000	1876	200	111	6.62	14-372-110	N	H
108	32019	NW NW	26	14N	26E	SUN MESA MINING	9/2/1996	54954	1876	120	26	6.62	14-351-20	N	H
108	32019	NW NW	26	14N	26E	SUN MESA MINING CO	9/5/1996	56974	1877	160	40	6.62	14-351-25	N	H
108	32019	NW NW	26	14N	26E	SUN MESA MINING CO	9/4/1996	56978	1877	160	40	6.62	14-351-18	N	H
108	32019	NW NW	26	14N	26E	SUN MESA MINING CO	9/3/1996	56976	1877	160	40	6.62	14-351-21	N	H
108	32019	SW NE	26	14N	26E	GLEN, NETTIE	5/19/1986	26696	870	148	69	6.62		N	H
108	32019	SW NW	26	14N	26E	ROSSMAN, DOUG & BEATRICE	10/4/1994	55091	634			6	14-351-06	P	H
108	32019	SW NW	26	14N	26E	ROSSMAN, DOUG & BEATRICE	9/2/1994	55090	634	179	56	6.62	14-351-06	S	H
108	32019	SW SE	31	14N	26E	RITTER, JOHN	2/16/2001	82570	1713	241	8	16		P	I
108	32019	SE NE	32	14N	26E	LANDOLT, JOE	2/20/2001	82569	1713	308	8	14		P	I
						LANDOLT									

ATTACHMENT A

Nevada Division of Water Resources

Well Log Database

Query Results

Basin	County	Qtr-Qtr	Section	Twp	Rng	Owner	Date Complete	Well Log #	Driller Lic#	Total Depth	Static Water Level	Casing Diameter	APN	Work Type	Prop Use
108	32019	SW SE	29	14N	25E	ROBERSON, A L	1/30/1986	26692	870	120	33	6.62		N	H
108	32019	SW SE	29	14N	25E	RODERICK, JOE & EMOGEAN	6/20/1994	46654	634	159	47	6.62	04-083-03	N	H
108	32019	SW SE	29	14N	25E	GILES, WILLIAM C	8/1/1996	58915	1905	150	35	6.62	14-271-63	N	H
108	32019	SW SE	29	14N	25E	GILES, WILLIAM	3/25/1998	71631	718	155	50	6	14-271-61	N	H
108	32019	SW SE	29	14N	25E	GILES, WILLIAM	4/8/1998	71630	718	140	40	6	14-271-60	N	H
108	32019	SW SE	29	14N	25E	GILES, WILLIAM	3/10/1998	71629	718	150	30	6	14-271-62	N	H
108	32019	SW SE	29	14N	25E	KENNEDY, KEITH	6/20/1996	67351	634	139	30	6.62	04-083-01	N	H
108	32019	SE NE	30	14N	25E	ARIMETCO INTERNATIONAL	12/8/1992	40322	641	500	240	4		N	G
108	32019	NE NE	31	14N	25E	KASSEBAUM, DARRELL	5/25/2000	81115	1876	260	78	6.62	14-281-05	N	H
108	32510	SE	31	14N	25E	U S BUREAU OF LAND MANAGEMENT	7/7/1961	6025	93	110	90	6		N	S
108	32019	NE	32	14N	25E	JOCHEM, JOHN	5/8/1996	58927	1876	109	67	6.62	14-271-24	N	H
108	32019	NW NE	32	14N	25E	BARCELLOUS, WADE	10/14/1985	26693	870	139	30	6.62	2	N	H
108	32019	SE NE	32	14N	25E	ANDERSON, PAUL	11/12/1992	39956	1740	113	33	6.62	04-092-03	N	H
108	32019	SW SE	32	14N	25E	ANACONDA MINERALS	10/25/1983	25331	1366	155	3	10		N	G
108	32019	NE NW	33	14N	25E	FOUR G CORP	6/2/1993	49093	671	200	20	8.62		N	S
108	32019	SE SW	33	14N	25E	PERI & SONS	2/15/2001	82983	1572	523	14	30		N	I
108	32019	SE SW	33	14N	25E	HUNEWILL, HARVEY	4/7/1986	26694	675	500	12	16		N	I
108	32019	NW SW	34	14N	25E	PERI, BUTCH & DAVID	10/30/1992	40004	1713	430	50	16		N	I
108	32019	SW SW	34	14N	25E	NEILSON, NORMAN	1/18/1988	29482	530	123	7	6.62		N	H
108	32019	SW NW	09	14N	26E	WALLACK, RICHARD	10/13/1995	77109	634	249	99	6.62	14-371-24	N	H
108	32019	SW NW	14	14N	26E	GENE BINGEMAN FMLY TRUST	7/26/1991	37383	1533	200	30			P	I
108	32019	SW NW	14	14N	26E	GENE BINGEMAN FMLY TRUST	7/3/1991	37384	1533	400	35	16		N	I
108	32019	NE NW	18	14N	26E	STATE OF NEVADA	6/28/1988	30272	1548	410	13.6	26		N	Q
108	32019	NE NW	18	14N	26E	STATE OF NEVADA	6/7/1988	30271	1567	400	12.4	26		N	Q
108	32019	NE SW	18	14N	26E	STATE OF NEVADA	7/15/1988	30270	1548	415	14.2	26		N	Q

Nevada Division of Water Resources

Well Log Database

Query Results

Basin	County	Qtr-Qtr	Section	Twp	Rng	Owner	Date Complete	Well Log #	Driller Lic#	Total Depth	Static Water Level	Casing Diameter	APN	Work Type	Propo Use
108	32019	NW SW	14	13N	25E	YERINGTON ELEMENTARY SCHOOL	10/27/1996	64429	1028	25	10	4		N	G
108	32019	NW SW	14	13N	25E	LYON CO SCHOOL DIST	6/12/1992	39763	1023	30	19	2		N	G
108	32019	NW SW	14	13N	25E	YERINGTON ELEMENTARY SCHOOL	10/27/1996	64428	1028	25	10	4		N	G
108	32019	NW SW	14	13N	25E	YERINGTON ELEMENTARY SCHOOL	10/26/1996	64427	1028	20	10	4		N	G
108	32019	NW SW	14	13N	25E	YERINGTON ELEMENTARY SCHOOL	2/6/1997	68586	1028	25	10	2	01-162-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRANSP	11/19/1998	73526	1028	19	12.4	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRANSP	11/19/1998	73506	1028	23	10	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRAMSP	11/19/1998	73524	1028	20	9.26	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRANSP	11/19/1998	73505	1028	23	9.5	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRANSP	11/19/1998	73523	1028	23	10	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRANSP	11/19/1998	73525	1028	18	12.7	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRANSP	11/19/1998	73507	1028	23	10	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	STATE OF NEVADA DEPT OF TRANSP	11/19/1998	73527	1028	18	12.8	2	001-059-01	P	G
108	32019	SW NW	14	13N	25E	LYON MARKET	2/7/1997	68587	1028	20	6.5	4	01-114-14	P	G
108	32019	SW NW	14	13N	25E	LYON COUNTY SCHOOL DISTRICT	4/26/1996	59250	1028	25	12	2		N	G

108	32019	SW NW	14	13N	25E	LYON COUNTY SCHOOL DISTRICT	4/26/1996	59251	1028	25	12	2		N	G
108	32019	SW NW	14	13N	25E	LYON COUNTY SCHOOLS	10/25/1996	64423	1028	30	5	4		P	G
108	32019	SW NW	14	13N	25E	LYON COUNTY SCHOOLS	10/25/1996	64424	1028	30	5	4		P	G
108	32019	SW NW	14	13N	25E	LYON COUNTY SCHOOLS	10/25/1996	64425	1028	30	5	4		P	G
108	32019	SW NW	14	13N	25E	LYON MARKET	4/18/1997	68615	1028	25	8	4	01-114-14	P	G
108	32019	SW NW	14	13N	25E	LYON MARKET	4/18/1997	68614	1028	25	8	4	01-114-14	P	G
108	32019	SW NW	14	13N	25E	LYON MARKET	4/18/1997	68616	1028	25	8	4	01-114-14	P	G
108	32019	SW NW	14	13N	25E	LYON MARKET	4/18/1997	68613	1028	25	8	4	01-114-14	P	G
108	32019	SW SW	14	13N	25E	REDVINE, MAL	4/13/1990	33228	1674	218	175	6.62		N	H
108	32019	NE SE	15	13N	25E	COX, WALTER J	3/6/1997	67436	634	52	3	6.62		P	H

|< < > >| [11/25]

Code Definitions

Enter Well Log # to view detailed information:

Submit Reset

NDWR Home Page | Site Index
Strategic Plan | Statutes & Regulations | Phone & Email

NDWR Sections
Water Rights | Engineering
Hearings | Information Services
Mapping | Adjudications | Deeds Section
Las Vegas Office | Elko Office

Last Updated 07/11/01

Nevada Division of Water Resources

Well Log Database

Query Results

Basin	County	Qtr-Qtr	Section	Twp	Rng	Owner	Date Complete	Well Log #	Driller Lic#	Total Depth	Static Water Level	Casing Diameter	APN	Work Type	Pr Us
107	32019	NW NE	10	10N	23E	MCKAY, GARY	9/18/1995	50444	718	120	20		10-691-06	N	H
107	32019	SE SW	10	10N	23E	MILLER, ROBERT & ANNE	7/8/1988	30103	1511	358		6.62	10-691-07	N	X
107	32019	SE SW	10	10N	23E	MILLER, DR ROBERT	3/8/1989	31196	718	120	32	8		N	H
107	32005		11	10N	23E	WRIGHT, BARBARA	6/3/1985	26647	1425	245	170	8	37-170-34	N	H
107	32019	NE NE	11	10N	23E	CARBAL, JOE	12/14/1993	46662	634	197	92	6.62	10-661-09	D	H
107	32019	NE NE	11	10N	23E	QXSEN, PETE	10/4/1996	65214	1949	140	64	8.62	10631-10	N	H
107	32019	NE NE	11	10N	23E	STATE OF NEVADA DEPARTMENT OF TRANSPORTATION	7/19/1999	78112	1028	35	25	2	10-661-05	N	G
107	32005	SE SE	11	10N	23E	CHAPMAN, ROBERT/LILIAN	2/11/1989	33066	718	255	175			N	H
107	32019	NE NW	12	10N	23E	DEFOREST, KENT	5/26/1996	51868	590	130	102	6.62	10-711-10	N	H
107	32019	NE NW	12	10N	23E	BAMMER, DAVE & CINDY	11/21/1997	71609	1905	220	65	6.62	10-711-22	N	H
107	32019	NE NW	12	10N	23E	ROSASCHI, ANGELO	4/9/1988	29692	1533	93	38	8		N	H
107	32019	NE NW	12	10N	23E	LOMPA, SAM	11/23/1992	39995	718	125	35	8	10-671-07	N	H
107	32019	NW SW SE	12	10N	23E	VANNORMAN, CHARLES	1/23/1994	44044	719	180	100	6.62	10-712-11	N	H
107	32019	NW SW SE	12	10N	23E	CARASSCO, RAY	6/7/2000	81030	1876	180	27	8.62	10-711-23	N	H
107	32019	NW SW SE	12	10N	23E	FLAHRTY, RON	12/12/1993	43256	718	200	130	6	10-712-06	N	H
107	32019	NW SW SE	12	10N	23E	RAUBER, SPENCER	6/20/1994	44543	1226	180	130	8.62	10-712-09	N	H
107	32019	NW SW SE	12	10N	23E	SKAGGS, MR	7/30/1993	42567	1535	280	120	6	10-711-07	N	H
107	32019	NW SW SE	12	10N	23E	TRAN, T	2/13/1998	70680	1476	160	70	6.62	10-711-08	N	H
107	32019	SW NW	12	10N	23E	RAUBER, JIM	1/27/1996	51418	1949	140	47	6	10-711-18	N	H
107	32005	NE NW	17	10N	23E	NAGY, KEN	11/6/1997	69645	718	280		6.62	37-540-89	N	H
107	32019	NE SE	26	10N	23E	ABROTT, ART	8/23/1988	30282	1533	212	30	8		N	H
107	32019	SW	27	10N	23E	FLECK, DEWEY	7/23/1999	76888	718	210	145	6.62	10-341-05	N	H
107	32019	NW NW	03	10N	24E	SALMONSON, MICHAEL	10/16/1990	34858	718	400	100	8		N	I
107	32019	NW NW	03	10N	24E	CEFALU, JOHN	6/25/1996	58932	1949	240	140	6.62	10-601-15	S	H
107	32019	SE NE	05	10N	24E	LOMORI, JULIO	7/25/1994	46369	718	250	110	6.62	10-731-02	N	H

|< < > >| [2/18]

Nevada Division of Water Resources

Well Log Database

Query Results

Basin	County	Qtr-Qtr	Section	Twp	Rng	Owner	Date Complete	Well Log #	Driller Lic#	Total Depth	Static Water Level	Casing Diameter	APN	Work Type	Pro Use
107	32019	SE	34	11N	23E	GRIFFIN, FLOYD	6/27/1994	44549	718	200	100	6.62	10-361-16	N	H
107	32019	SE	34	11N	23E	GLOCK, LARRY	6/18/1987	28559	0	200	100	8		N	H
107	32019	SE	34	11N	23E	HUTZLER, JIM	9/10/1994	45751	1949	260	120	8.62	10-361-26	N	H
107	32019	SE NE	34	11N	23E	LUKUNBERRY, ROBERT & SUSAN	3/15/1993	40808	1674	155	80	6.62	10-351-16	N	H
107	32019	SE NW	34	11N	23E	SLATER, DENNIS	12/22/1993	43509	718	280	120	6	10-351-06	N	H
107	32019	SE NW	34	11N	23E	MONTENARO, MARY	11/12/1993	43257	718	200	140	6	10-351-06	N	H
107	32019	SW NE	34	11N	23E	ARCULARIES, LORNA	10/27/2000	82100	1876	180	77	6.62	10-351-24	N	H
107	32019	SW SE	34	11N	23E	WILLS, DENNIS	12/2/1997	71612	718	180	85	6.62	10-361-27	N	H
107	32019	SW NE	35	11N	23E	CAIRNS, KEN & CHRIS	7/17/2000	83138	1876	140		6.62	10-141-11	P	H
107	32019	SW NE	35	11N	23E	CAIRNS, KEN & CHRIS	7/17/2000	83137	1816	140		6.62	10-141-11	S	H
107	32019	NE NE	36	11N	23E	SHEHADY, DON	4/9/1987	28344	0	80	32	8		N	H
107	32019	SW NW	36	11N	23E	RUBERTY, CARL	11/20/1991	37792	1544	360	58	6.62	10-371-03	N	H
107	32019	SW SW	02	11N	24E	SIMMONS, STAN	7/15/1990	34117	718	148	28	8		N	H
107	32019	SE SE	03	11N	24E	FULSTONE, RICHARD	8/5/1997	68579	1949	360	100	6.62	10-402-06	N	H
107	32019	SE	04	11N	24E	ROSACHI, MIKE	10/28/1986	28021	0	200	53	8		N	H
107	32019	SW SW	05	11N	24E	STATE OF NEVADA ENVIRONMENTAL PROTECTION	1/18/2000	79923	2019	65	56	4	10-401-06	N	G
107	32019	SW SW	05	11N	24E	STATE OF NEVADA ENVIRONMENTAL PROTECTION	1/19/2000	79926	2079	63	50	4	10-401-06	N	G
107	32019	SW SW	05	11N	24E	STATE OF NEVADA ENVIRONMENTAL PROTECTION	1/19/2000	79924	2019	83	63	4	10-401-06	N	G
107	32019	SW SW	05	11N	24E	STATE OF NEVADA ENVIRONMENTAL PROTECTION	4/4/2000	79928	2079	60	54	4	10-401-06	N	G
107	32019	SW SW	05	11N	24E	STATE OF NEVADA ENVIRONMENTAL PROTECTION	1/20/2000	79927	2079	63	53	4	10-401-06	N	G
107	32019	SW SW	05	11N	24E	STATE OF NEVADA ENVIRONMENTAL PROTECTION	1/18/2000	79929	2079	70	53	4	10-401-06	N	G
107	32019	NW SW	07	11N	24E	VONSEEBURG, JOHN	11/17/1992	39997	718	260	120	8	9-081-01	N	H