ORIGINAL

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U.S. Department of Justice
Environmental and Natural Resources Div.
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303/312-7308

Attorneys for the United States of America

FILED
02 MAY 30 AM 10: 11
LANCE S. WILSON
CLERK
BY DEPUTY CLERK

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 Sub-proceeding C-125-B **JOINT MOTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE FOR APPROVAL OF SERVICE DOCUMENTS AND LEAVE TO COMMENCE SERVICE**

The United States of America ("United States") and the Walker River Paiute Tribe ("Tribe") jointly move this Court for approval of the attached service documents and for leave to commence service in this matter. The reasons supporting this motion are set forth in the accompanying Memorandum in Support of the Joint Motion of the United States of America and the Walker River Paiute Tribe for Approval of Service Documents and leave to Commence Service.

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The United States and the Tribe suggest that the Court set a status conference to consider and address this motion and that the Court require all parties with any questions or comments on the proposed "Service Package" to contact the United States and the Tribe with any specific questions, objections or suggestions no later that one week prior to the Court's status conference.

WHEREFORE, for the reasons set forth in this Motion and the accompanying Memorandum in Support, and for any other reasons that may appear to this Court, the United States and the Tribe respectfully request that their motion be granted.

Dated: May 29, 2002

Respectfully submitted,

Scott B. McElroy
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By: Alice E Walker
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Dated: May 29, 2002

Respectfully submitted,

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By: S. L. Schneider
Susan L. Schneider

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that I have placed a true and correct copy of the foregoing **JOINT MOTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE FOR APPROVAL OF SERVICE DOCUMENTS AND LEAVE TO COMMENCE SERVICE** and **MEMORANDUM IN SUPPORT OF THE JOINT MOTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE FOR APPROVAL OF SERVICE DOCUMENTS AND LEAVE TO COMMENCE SERVICE** in the U.S. Mail, first-class postage prepaid thereon, unless otherwise specified, this 29th day of May, 2002, addressed to the following:

Marta Adams
Deputy Nevada Attorney General
100 N. Carson St..
Carson City, NV 89701

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Reno, NV 89505

James Shaw
Chief Deputy Water Commissioner
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

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Yvonne Marsh
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U.S. DISTRICT OF NEV
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MAY 30
CLERK, U.S. DISTRICT COURT

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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-ECR Sub-proceeding C-125-B **MEMORANDUM IN SUPPORT OF THE JOINT MOTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE FOR APPROVAL OF SERVICE DOCUMENTS AND LEAVE TO COMMENCE SERVICE**

The United States of America ("United States") and the Walker River Paiute Tribe ("Tribe") have moved this Court for approval of the attached service documents and for leave to commence service of their counterclaims in this matter.

The Court and parties have reviewed and considered a variety of service-related documents in this matter, including proposed orders and forms for use when persons or entities in this matter disclaim any water rights that may be at issue in this case or sell or otherwise convey any water right subject to this case. Previously, the parties have stipulated to several service-related documents and the Court has directed the preparation of other such documents. These documents include: 1. *Notice of Lawsuit and Request for Waiver of Service of Notice in Lieu of Summons*; 2. *Waiver of Service of Notice in Lieu of Summons*; 3. *Notice of Appearance and Intent to Participate*; 4. *Order -- Disclaimer of Interest*, and the attached form; and 5. *Order Regarding Changes in Ownership of Water Rights,* and the attached form.[1] These documents constitute the package of documents to be served initially on each person or entity identified in Paragraph 3 of the Court's *Case Management Order* (Apr. 18, 2000) ("CMO"), plus a copy of the respective First Amended Counterclaims of the United States and the Tribe and a copy of the CMO. By this motion, the United States and the Tribe seek approval of these documents as the "Service Package" in this case.

The United States and the Tribe have attached a copy of each of the documents that we propose to constitute the "Service Package" for review by the Court and the parties. We have reviewed each of these documents as separate documents and as part of the larger "Service Package," and made a number of changes to them in an effort to make the documents clearer and consistent with one another. We believe it is important that the documents provide sufficient information to people

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[1]In addition, the parties have previously stipulated to the Notice in Lieu of Summons for use in circumstances when persons or entities subject to service do not agree to sign the *Waiver of Service of Notice in Lieu of Summons*.

receiving them so they can determine, based on their individual circumstances, how they wish to respond. For example, we do not believe that the earlier versions of these documents were clear as how persons who wished to disclaim interests in any water rights in this case should respond to the request that they waive service of notice. Many of these persons may assume, incorrectly, that if they disclaim any interest in any water right in this case, they are not parties to the matter and have no reason to return the *Waiver of Service of Notice in Lieu of Summons.* Thus, we have not referred to these persons or entities as "parties" in the attached order and form regarding disclaimers (*Order -- Disclaimer of Interest; Disclaimer of Interest in Water Rights and Notice of Related Information and Documentation Supporting Disclaimer).* Further, it is our position that these persons and entities must still return the *Waiver of Service of Notice in Lieu of Summons,* along with their disclaimer and underlying documents, before we can determine whether to omit them from the case. We have also added an express statement that these persons and entities are still subject to the duty to avoid unnecessary costs of serving the *Notice in Lieu of Summons*, even if they ultimately disclaim any ownership interest in any applicable water rights. Consequently, we have added to the proposed order that if a person or entity does not return a *Waiver of Service of Notice in Lieu of Summons* and we must personally serve them, even if that person subsequently files a disclaimer of interest form, he or she may be subject to paying the costs related to conducting formal personal service.

Consequently, based on our review of these documents as a package, the attached proposed service documents are different than those previously discussed with the Court. We have already provided a copy of these documents to counsel for the Walker River Irrigation District ("WRID") and

obtained his comments. We have attempted to incorporate WRID's comments and suggestions into the documents attached to this motion. For example, counsel for WRID suggested that the order and form regarding disclaimer of water rights (*Order -- Disclaimer of Interest; Disclaimer of Interest in Water Rights and Notice of Related Information and Documentation Supporting Disclaimer)* should include an acknowledgment that persons who initially disclaim water rights, but subsequently claim that they, in fact, had retained water rights subject to this case, are nevertheless bound by the results of this litigation. We have attempted to edit the documents to address this comment and have also attempted to insert a similar concept in the order and form regarding sales or other conveyances of water rights (*Order Regarding Changes in Ownership of Water Rights; Notice of Change of Ownership of Water Right*).

Second, we have provided the proposed "Service Package" to each party in the general form in which it would be served, with the exception of certain limited information, as noted (e.g., the United States' Post Office box number is not yet identified). Further, we have provided these documents to the parties for their current review and approval in the format in which we propose to serve them. Specifically, some documents are provided as double-sided copies, while other are single-sided copies. Since the Court Clerk's office has indicated that it prefers to receive single-sided filings, we would serve copies of those documents that might be filed with the Court as single-sided copies, while those documents to be served for informational purposes would be served as double-sided copies. The Court's copies of the materials attached to this filing, however, are solely in a single-sided format, since they will be filed with the Court Clerk in their entirety. The proposed *Notice of Lawsuit and Request*

for Waiver of Service of Notice in Lieu of Summons identifies which documents would be served as single-sided documents and which documents would be served as double-sided documents. We have used double-sided copying, where indicated, to conserve paper and limit the bulk and cost of mailing.

The United States and the Tribe seek the Court's approval of these service documents and seek leave to commence service in this matter.[2] We suggest that the Court set a status conference to consider and address this motion and that the Court require all parties with any questions or comments on the proposed "Service Package" to contact the United States and the Tribe with any specific questions, objections or suggestions no later that one week prior to the Court's status conference.

WHEREFORE, for the reasons set forth in this Memorandum and the Joint Motion of the United States of America and the Walker River Paiute Tribe for Approval of Service Documents and Leave to Commence Service, and for any other reasons that may appear to this Court, the United States and the Tribe respectfully request that this motion be granted.

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[2]We have previously sought certification of certain limited defendant classes for service in this matter. *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"). The Court has denied this request, *Order* (March 29, 2000), *Order* (April 29, 2002), and we have filed a motion for reconsideration under FED. R. CIV. P. 59 and 60. *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* (Apr. 9, 2002). The instant motion does not change our position on the merits of class certification in this matter.

Dated: May 28, 2002

Respectfully submitted,

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303/442-2021

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Minden, Nevada 89423
702/782-3099

By: Alice E. Walker
Alice E. Walker

Attorneys for the Walker River Paiute Tribe

Dated: May 29, 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

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

TO:

You have been named as a Defendant in a civil action filed in the United States District Court in Reno, Nevada, entitled *United States v. Walker River Irrigation District* and assigned the court docket number In Equity C-125, Subfile C-125-B. You have been named as a Defendant because you are among a large number of persons and entities identified as having an ownership interest in certain water rights that the Court has directed to be included in this case.

Rule 4 of the Federal Rules of Civil Procedure provides that you can avoid being assessed the cost of being personally served by signing a waiver and accepting service by mail. The materials that have been sent you in this package include a waiver form, instructions, and a self-addressed, stamped envelope for returning the waiver form. There are also other documents enclosed that address the sale or other conveyance of your water rights or if you believe that you should not be a party to this lawsuit. **Please read these materials carefully, as they are important to your legal rights.** Please note that some of these papers are single-sided and others are double-sided.

Enclosed are the following [8] 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 6-page document. (This document is double-sided.)***

2. ***Waiver of Service of Notice in Lieu of Summons:*** ***Two copies of this document are enclosed, one for your records and one that you may send in the enclosed envelope to SUSAN L. SCHNEIDER of the United States Department of Justice, if you choose to execute the document. (This document is single-sided.)***

3. ***Notice of Appearance and Intent to Participate:*** ***(This document is single-sided.) If you choose to sign this document, you must file the original with the District Court and you must send a copy of the document to MS. SCHNEIDER of the United States Department of Justice, who will send copies to the attorneys for the Walker River Paiute Tribe, the Walker River Irrigation District, the State of California, and the State of Nevada. Please keep a copy of the document for your records. You may send the Notice of Appearance and Intent to Participate to MS. SCHNEIDER in the same envelope provided for return of the Waiver of Service of Notice in Lieu of Summons.***

4. ***First Amended Counterclaim of the United States of America*** ***(July 31, 1997). (This document is double-sided.)***

5. ***First Amended Counterclaim of the Walker River Paiute Tribe*** ***(July 31, 1997). (This document is double-sided.)***

6. ***Case Management Order*** ***(Apr. 18, 2000). (This document is double-sided.)***

7. ***Order and Form -- 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). If you contend that you have been included in this litigation in error, the Order -- Disclaimer of Interest also requires you to provide certain information and documents related to the transfer of water rights that would be part of this litigation. If you disclaim any water right in this litigation, you must comply with the Order -- Disclaimer of Interest, and you may use the form entitled Disclaimer of Interest in Water Rights and Notice of Related Information and Documentation Supporting Disclaimer, which is attached to the Order -- Disclaimer of Interest, to provide this information. (The Order -- Disclaimer of Interest is double-sided. The form Disclaimer of Interest in Water Rights and Notice of Related Information and Documentation Supporting Disclaimer is single-sided.)***

8. ***Order and Form 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 sell or otherwise 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). If you sell or otherwise convey any water right in this litigation, you must comply with the Order Regarding Changes in Ownership of Water Rights, and may use the form entitled Notice of Change of Ownership of Water Right, which is attached to the Order Regarding Changes in Ownership of Water Rights, to provide this information. You should retain this Order and the attached form for use whenever appropriate during the course of this litigation. You may also wish to make additional copies of the form attached to the Order for use if you sell or otherwise convey ownership of applicable water rights on more than one occasion during the course of this litigation. You should note that this Order also requires you to provide certain information and documents related to the transfer of water rights. (The Order Regarding Changes in Ownership of Water Rights is double-sided. The form Notice of Change of Ownership of Water Right is single-sided.)***

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 the same case. A copy of each FIRST AMENDED

COUNTERCLAIM is 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 phase 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 OF NOTICE IN LIEU OF SUMMONS 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. <u>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.</u> The plaintiff has enclosed a stamped and addressed envelope for your use. An extra copy of the WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS 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 upon you personally. The action will then proceed as if you had been served on the date the waiver is filed.

If you return the signed WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS, 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 the WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS, to file and serve a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE with the Court and mail a copy of the notice to SUSAN L. SCHNEIDER, 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 State of California, and the State of Nevada. A copy of a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE that you may choose to use is attached. You may return both the WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS and NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE to SUSAN L. SCHNEIDER, 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 United States, Walker River Paiute Tribe, the Walker River Irrigation District, the State of California, and the State of Nevada.

If you do not return the signed WAIVER OF SERVICE OF NOTICE IN LIEU OF

SUMMONS 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 this regard, 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 OF SERVICE OF NOTICE IN LIEU OF SUMMONS 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 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). If you contend that you have been included in this litigation in error because you have no such interest, you should follow the directions in the ORDER – DISCLAIMER OF INTEREST and provide the information and documents requested. You are still being asked to return the WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS and you remain subject to the duty to avoid unnecessary costs of serving the NOTICE IN LIEU OF SUMMONS, even if you disclaim any ownership interest in any of the water rights described by PARAGRAPH 3 of the CASE MANAGEMENT ORDER (Apr. 18, 2000). Following receipt of any DISCLAIMERS OF INTEREST IN WATER RIGHTS AND NOTICE OF RELATED INFORMATION AND DOCUMENTATION SUPPORTING DISCLAIMER and the accompanying information and documents, plaintiffs will review the materials received and, if appropriate, seek the Court's concurrence in omitting you from this case.

Second, the Court intends use of the form attached to the ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS for each and every sale or other 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). This Order requires you to notify the Court if you transfer any portion of your water right to another person or entity. That notice must include identification of the water right subject to the transfer, the nature of the transfer, and the name and address of the recipient of the water right. You should review this Order carefully and retain copies of it and the attached form entitled NOTICE OF CHANGE OF OWNERSHIP OF WATER RIGHT 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 _____, 2002.

_____

Susan L. Schneider
Attorney for Plaintiff, the United States of America

ATTORNEY NAMES AND ADDRESSES:

Attorney for the United States:

Susan L. Schneider, Attorney
U.S. Department of Justice
P.O. Box ***
Denver, Colorado 802**

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Attorney for the State of Nevada:

Marta Adams
Senior Deputy Attorney General
Conservation Section
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Carson City, Nevada 89701

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 C-125, 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 and related form, a copy of the ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS and related form, two copies of this instrument (WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS), 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 mail a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE to Susan L. Schneider, attorney for the United States, and I may use 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

If you are acting on behalf of any entity, identify that you are acting as: _____ of
(Title)

_____
(Corporate, Trust, Partnership or other entity)

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 and DOJ attorney S. Schneider with a notice of appearance and intent to participate.

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 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:

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
P.O. Box [*to be inserted]
Denver, CO 802**

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) have retained 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:

_____

(Signature)

_____

(Printed or typed Name)

_____

(Entity, if any, on whose behalf you are appearing)

_____

_____

(Address)

_____

(Telephone number)

FILED

97 JUL 31 P.M. 2:07

LANCE S. WILSON
CLERK
BY _____
DEPUTY

LOIS J. SCHIFFER
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

KATHRYN E. LANDRETH
United States Attorney
100 West Liberty Street, Suite 600
Reno, Nevada 89501
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John P. Lange
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Hank Meshorer
Special Litigation Counsel
United States Department of Justice
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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 C-125-ECR Subfile C-125-B
WALKER RIVER PAIUTE TRIBE, Counterclaimant, UNITED STATES OF AMERICA, Counterclaimant,	

vs.

WALKER RIVER IRRIGATION DISTRICT,

Counterdefendant,

STATE OF NEVADA,

Intervenor-Counterdefendant,

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FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA

COMES NOW, the United States of America, at the request of the Secretary of Defense, the Secretary of Agriculture, and the Secretary of the Interior, by and through its undersigned attorneys, on its own behalf and for the benefit of the Walker River Paiute Tribe, the Yerington Paiute Tribe, the Bridgeport Paiute Indian Colony, and several individual Indians who are owners of allotments, either held in trust by the United States or held in restricted status by the United States, and herewith asserts the following claims:

INTRODUCTION

1. This first amended counterclaim is made for the confirmation and declaration of certain rights in the United States to the use and storage of water ~~in,~~ on, under and otherwise appurtenant to certain lands in the Walker River basin owned by the United States that are under the jurisdiction of the Department of Defense, the Department of Agriculture and the Department of the Interior; or, held in trust or restricted status by the United States for the benefit of individual Indians, and certain Indian Tribes. The rights set forth in this first amended counterclaim are in addition to the right to divert the natural flow of the Walker River and its tributaries, awarded to the United States in the Decree entered in this action on April 15, 1936, as amended on April 24, 1940 in United States v. Walker River Irrigation Dist., In Equity No. C-125, hereinafter, the "Decree."

JURISDICTION

2. Jurisdiction over this first amended counterclaim is pursuant to (i) the continuing jurisdiction of this Court, by virtue of the Decree entered herein, over the waters of the Walker River and its tributaries in California and Nevada; (ii) 28 U.S.C. §1345 in that the proceedings are brought by the United States; (iii) 28 U.S.C. §1367 which vests the court with supplemental jurisdiction; (iv)

28 U.S.C. §1651 which authorizes the court to issue all writs necessary or appropriate in aid of its jurisdiction; (v) 28 U.S.C. §1331, in that this first amended counterclaim is brought by the United States of America, on its own behalf and for the benefit of individual Indians, and Indian Tribes, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

PARTIES

3. Counterclaimant, the United States of America, appears in this case on its own behalf and for the benefit of specified individual Indians, and certain Indian Tribes.

4. Counterdefendants are all claimants to water of the Walker River and its tributaries, including groundwater.

GENERAL ALLEGATIONS

5. The United States of America, under the Decree, currently has the right to use the natural flow of the waters of the Walker River and its tributaries in the amount of 26.25 cubic feet per second with a priority date of November 29, 1859, to irrigate 2,100 acres of land on the Walker River Reservation.

6. The suit commenced by the United States in 1924, under Docket Number C-125, was brought to quiet title and only concerned the water rights for use on the Walker River Indian Reservation as those boundaries existed at the time the suit was commenced. The suit did not adjudicate the groundwater rights of any of the parties in the litigation.

7. Paragraph XII of the 1936 Decree, entered on April 15, 1936, was amended on April 24, 1940, to reflect that the Decree determined water rights "as of the 14th day of April, 1936." Paragraph XIV of the Decree provides that this Court retains jurisdiction for a number of purposes, including modification of the Decree.

8. Subsequent to April 14, 1936, numerous persons and other entities, including the United States, have appropriated additional waters from the Walker River Basin and its tributaries. In many instances such claims to the use of water have not been subject to any adjudicative process.

9. In addition to the Walker River Indian Reservation, there are other lands within the Walker

River Basin owned by the United States that are under the jurisdiction of the Department of Defense, the Department of Agriculture and the Department of the Interior. There are also lands in the Walker River Basin, in addition to the Walker River Indian Reservation, owned by the United States and held in trust or restricted status for the benefit of specified individual Indians, the Bridgeport Paiute Indian Colony and the Yerington Pauite Tribe.

These lands and their appurtenant water rights and claims for water are more particularly described below.

FIRST CLAIM FOR RELIEF

WEBER RESERVOIR

10. Weber Reservoir is a federally-constructed reservoir located on the Walker River Indian Reservation with a storage capacity of approximately 13,000 acre feet. The reservoir was practically completed in 1935, although floodgates were added in 1937. The United States, for the benefit of the Walker River Paiute Tribe, is entitled to store water from the Walker River and its tributaries in Weber Reservoir for all purposes recognized under federal law including but not limited to irrigation, stock watering, fish and wildlife, and domestic uses.

11. By the use of Weber Reservoir to store water, the Walker River Paiute Tribe can irrigate more than the 2,100 acres which it presently is entitled to irrigate under the terms of the Decree.

12. The right to store water in Weber Reservoir has a priority date of April 15, 1936. The amount claimed is 13,000 acre-feet plus evaporation and seepage.

SECOND CLAIM FOR RELIEF

LANDS RESTORED TO WALKER RIVER RESERVATION

13. Paragraphs 1-12 are incorporated herein as if fully set forth in this paragraph 13.

14. The Walker River Indian Reservation was established in 1859 with a land base of approximately 320,000 acres. Under the Act of May 27, 1902, 32 Stat. 260-261, the Reservation land base substantially reduced. A substantial part of these original Reservation lands, however, were restored to the Reservation on September 25, 1936, pursuant to the Act of June 22, 1936. The Act of June 22, 1936, 49 Stat. 1806-07, authorized the Secretary of the Interior to set aside certain lands as

an addition to the Walker River Indian Reservation. In accordance with the legislation, by Order dated September 25, 1936, the Secretary restored to the Walker River Indian Reservation approximately 167,460 acres.

15. The United States, for the benefit of the Walker River Paiute Tribe, is entitled to use water from the Walker River, its tributaries, and all other water located in, on, under, adjacent or otherwise appurtenant to the restored lands of the Reservation for all purposes recognized under federal law. The restored lands of the Reservation are entitled to a federal reserved water right as of the date of restoration.

16. The United States, for the benefit of the Walker River Paiute Tribe, is entitled to water rights for the restored lands in addition to the rights now recognized for use on the lands of the Reservation under the Decree.

THIRD CLAIM FOR RELIEF

GROUNDWATER FOR ALL LANDS WITHIN WALKER RIVER RESERVATION

17. The United States, for the benefit of the Walker River Paiute Tribe, is entitled to use the groundwater of the Walker River basin located in, under, adjacent or otherwise appurtenant to all lands of the Walker River Indian Reservation not otherwise claimed in this First Amended Counterclaim.

18. The amount claimed is the amount necessary to fulfill the purposes of the Reservation.

19. The priority date claimed is November 29, 1859, or, in the alternative, April 15, 1936.

FOURTH CLAIM FOR RELIEF

YERINGTON PAIUTE TRIBE

20. Paragraphs 1-19 are incorporated herein as if fully set forth again in this paragraph 20.

21. The United States, at the request of the Secretary of the Interior, and for the benefit of the Yerington Paiute Tribe, makes the following claim for water from the Walker River, its tributaries, and all other water located in, on, under, adjacent or otherwise appurtenant to the lands hereinafter described.

22. The Yerington Reservation is located in Lyon County, Nevada, approximately eighty (80)

miles southeast of Reno, Nevada. The Reservation contains 1,636.24 acres, of which approximately 22.9 acres are located within the City of Yerington, Nevada. The majority of these lands were acquired pursuant to the Indian Reorganization Act, §§ 5, 7, 48 Stat. 984, 25 U.S.C. §§ 465, 467.

23. The United States claims federal reserved water rights for these lands with the following priority dates:

A. Parcel 1:

Parcel 1 is 9.456 acres located in Section 22, T. 13 N., R. 25 E., MDM. The priority date claimed is May 25, 1917, which is based on the Act of May 18, 1916, 39 Stat. 143. In the alternative, the priority date claimed is April 15, 1936.

B. Parcel 2:

Parcel 2, which is sometimes referred to as Campbell Ranch, is 1,036.24 acres located in portions of Sections 7,17,18, and 20. MDM. The priority date claimed is December 10, 1936, the date of purchase, which purchase as made pursuant to the Indian Reorganization Act of 1934, §§ 5,7, 48 Stat. 984, and the Act of May 9, 1935, 49 Stat. 176.

C. Parcel 3:

Parcel 3 is 120 acres located on the N1/2 of the NE1/4 OF Section 18, and the NE1/4 of the NW1/4 of Section 20, T. 14 N., R. 25 E., MDM. The priority date claimed is June 18, 1940, which is based on the Act of June 18, 1940, 54 Stat. 414-415. In the alternative, the priority date claimed is November 15, 1941.

D. Parcel 4:

Parcel 4 is 12.91 acres in or near the Town of Yerington located within the NW1/4 of Section 22, T. 14 N., R. 25 E., MDM. The priority date claimed is the date of purchase, January 20, 1978.

E. Parcel 5:

Parcel 5, which is sometimes referred to as Arrowhead Ranch, is approximately 480 acres located in the W1/2 and the W1/2 of the E1/2 of Section 16, T. 14 N., R. 25 E., MDM. The priority date claimed is April 9, 1979.

24. The federal reserved water claimed for the benefit of the Yerington Paiute Tribe is claimed in order to fulfill the purposes of the Reservation. In addition to the claims set forth

above for federal reserved rights, the United States also seeks a declaration and confirmation of the water rights held under state law which have been acquired in connection with the above described parcels.

FIFTH CLAIM FOR RELIEF

BRIDGEPORT PAIUTE INDIAN COLONY

25. Paragraphs 1-24 are incorporated herein as if fully set forth again in this paragraph 25.

26. The United States, at the request of the Secretary of the Interior, and for the benefit of the Bridgeport Paiute Indian Colony makes the following claim for water from the Walker River, its tributaries, and all other water located in, on, under, adjacent or otherwise appurtenant to the lands hereinafter described.

27. The Bridgeport Paiute Indian Colony consists of 40 acres and is located in the SE1/4NE1/4, Section 28, T. 5 N., R. 25 E., MDB&M.

28. The United States claims federal reserved water rights for the Bridgeport Paiute Indian Colony, made pursuant to an Act of Congress, 88 Stat. 1368, with a priority date of no later than October 18, 1974, the date of creation of the Colony.

29. In addition, for the Bridgeport Paiute Indian Colony, the United States also claims water rights based on California law, including but not limited to riparian, overlying and prescriptive rights, if any.

30. The water claimed for the benefit of Bridgeport Paiute Indian Colony is claimed in order to fulfill the purposes of the Colony.

SIXTH CLAIM FOR RELIEF

GARRISON AND CLUETTE ALLOTMENTS

31. Paragraphs 1-30 are incorporated herein as if fully set forth again in this paragraph 31.

32. The United States, at the request of the Secretary of the Interior, and for the benefit of the Garrison and Cluette allottees makes the following claim for water from the Walker River, its tributaries, and all other water located in, on, under, adjacent or otherwise appurtenant to the lands

hereinafter described.

33. The Garrison and Cluette Allotments are both located in S. 17, T. 8 N., R. 23 E., MDB&M. The Garrison Allotment consists of 30.18 acres; the Cluette Allotment consists of 20.02 acres.

34. The United States claims federal reserved water rights for the Garrison and Cluette allotments, made pursuant to the Act of June 30, 1932, 47 Stat. 474, with the following priority dates:

A. Garrison Allotment:

The priority date claimed is no later than November 10, 1933. In the alternative, the priority date claimed is April 15, 1936.

B. Cluette Allotment:

The priority date claimed is no later than May 8, 1933. In the alternative, the priority date claimed is April 15, 1936.

35. In addition, for both allotments, the United States also claims water rights based on California law, including but not limited to riparian, overlying and prescriptive rights.

36. The water claimed for the benefit of the Garrison and Cluette Allottees is claimed in order to fulfill the purposes of the allotments, above and beyond any water rights already acquired under State law for these allotments.

SEVENTH CLAIM FOR RELIEF

INDIVIDUAL ALLOTMENTS

37. Paragraphs 1-36 are incorporated herein as if fully set forth in this paragraph 37.

38. The United States, at the request of the Secretary of the Interior, and for the benefit of the individual Indians, makes the following claim for water from the Walker River, its tributaries, and all other water located in, on, under, adjacent or otherwise appurtenant to the lands hereinafter described:

	Allotment #	Township	Range	Section	Portion	Area (acres)	Walker R. Basin
1	402	10N	21E	1	NW1/4	119.43	Yes
2	212	10N	21E	1	SW1/4	160	Yes

3	403	10N	21E	2	NE1/4	159.50	Yes
4	404	10N	21E	2	NW1/4	159.05	1% outside
5	405	10N	21E	2	SW1/4	160	Partial
6	719	10N	21E	2	SE1/4	160	Yes
7	406	10N	21E	11	NW1/4	160	Partial
8	723	10N	21E	14	NE1/4	160	Partial
9	721	10N	21E	12	NW1/4	160	Yes
10	735	10N	21E	14	SE1/4	160	1% outside
11	699	10N	21E	12	SW1/4	160	Yes
12	698	10N	21E	12	SE1/4	160	Yes
13	725	10N	21E	13	NE1/4	160	Yes
14	726	10N	21E	13	NW1/4	160	Yes
15	727	10N	21E	13	SW1/4	160	Yes
16	718	10N	21E	13	SE1/4	160	Yes
17	715	10N	21E	24	NE1/4	160	Yes
18	716	10N	21E	24	NW1/4	160	Partial
19	717	10N	21E	24	SE1/4	160	Yes
20	682	10N	22E	1	S1/2NE1/4	80	Yes
		10N	22E	1	SE1/4NW1/4	40	Yes
		10N	22E	1	NE1/4NE1/4	32.69	Yes
21	304	10N	22E	3	S1/2NW1/4	80.01	Yes
		10N	22E	3	NW1/4NW1/4	38.88	Yes
		10N	22E	3	NE1/4NW1/4	38.71	Yes
22	303	10N	22E	4	S1/2NE1/4	80	Yes
		10N	22E	4	NE1/4NE1/4	39.01	Yes
		10N	22E	4	NW1/4NE1/4	39.12	Yes
23	289	10N	22E	4	NW1/4	158.59	Yes
24	288	10N	22E	4	SW1/4	160	Yes
25	290	10N	22E	4	SE1/4	160	Yes
26	236	10N	22E	6	NE1/4	160	Yes
27	235	10N	22E	6	NW1/4	160	Yes
28	237	10N	22E	6	SE1/4	160	Yes

29	238	10N	22E	7	NE1/4	160	Yes
30	276	10N	22E	7	E1/2SE1/4	80	Yes
		10N	22E	8	S1/2SW1/4	80	Yes
31	277	10N	22E	8	S1/2SE1/4	80	Yes
		10N	22E	17	N1/2NE1/4	80	Yes
32	260	11N	21E	36	NE1/4	160	Yes
33	259	11N	21E	36	NW1/4	160	Yes
34	399	11N	21E	36	N1/2SE1/4	80	Yes
		11N	21E	36	SE1/4SE1/4	40	Yes
35	257	11N	21E	25	SW1/4	160	Partial
36	258	11N	21E	25	W1/2SE1/4	80	Yes
		11N	21E	25	SE1/4SE1/4	40	Yes
37	215	11N	21E	25	NE1/4NE1/4	39.95	No
		11N	22E	30	NW1/4NW1/4	39.48	Partial
		11N	22E	30	SW1/4NW1/4	39.48	Yes
38	216	11N	22E	30	W1/2NE1/4	80	Partial
		11N	22E	30	E1/2NW1/4	80	Partial
39	217	11N	22E	30	E1/2NE1/4	80	Partial
		11N	22E	29	W1/2NW1/4	80	Partial
40	218	11N	22E	29	W1/2NE1/4	80	Partial
		11N.	22E	29	E1/2NW1/4	80	Partial
41	285	11N	22E	30	E1/2SW1/4	80	Yes
		11N	22E	30	NW1/4SW1/4	39.54	Yes
		11N	22E	30	SW1/4SW1/4	39.59	Yes
42	286	11N	22E	30	SE1/4	160	Yes
43	287	11N	22E	29	SW1/4	160	Yes
44	344	11N	22E	29	SE1/4	160	Yes
45	305	11N	22E	31	E1/2NW1/4	78.02	Yes
		11N	22E	31	NW1/4NW1/4	39.67	Yes
		11N	22E	31	SW1/4NW1/4	39.76	Yes
46	306	11N	22E	31	NE1/4	160	Yes
47	400	11N	22E	31	SW1/4	159.81	Yes

48	401	11N	22E	31	SE1/4	160	Yes
49	702	12N	22E	24	NE1/4	160	Yes
50	700	12N	22E	24	NW1/4	160	Yes
51	701	12N	22E	24	SW1/4	160	Yes
52	705	12N	22E	24	SE1/4	160	Yes
53	703	12N	22E	25	NW1/4	160	Yes
54	704	12N	22E	25	SW1/4	160	Yes
55	706	12N	22E	25	SE1/4	160	Yes

39. The United States claims federal reserved water rights for 55 allotments, made pursuant to the General Allotment Act of 1887, with the following priority dates:

A. Trust Allotments 1 through 5, 7 and 21 through 48:

The priority date claimed is no later than December 31, 1895. In the alternative, the priority date claimed is April 15, 1936.

B. Trust Allotments 6 and 8 through 20:

The priority date claimed is no later than May 26, 1908. In the alternative, the priority date claimed is April 15, 1936.

C. Trust Allotments 49 through 55:

The priority date claimed is no later than December 9, 1907. In the alternative, the priority date claimed is April 15, 1936.

40. The water claimed for the benefit of individual Indian allottees is claimed in order to fulfill the purposes of the allotments.

EIGHTH CLAIM FOR RELIEF

HAWTHORNE ARMY AMMUNITION PLANT

41. Paragraphs 1-40 are incorporated herein as if fully set forth in this paragraph 41.

42. The Hawthorne Army Ammunition Plant (hereinafter "Hawthorne Reservation") was originally withdrawn and reserved from the public domain by Executive Order 4531 on October 27,

1926. Additional contiguous lands were withdrawn and reserved from the public domain to become a part of the Hawthorne Reservation pursuant to Executive Order 5664 on July 2, 1931, Executive Order 5828 on March 30, 1932 and Executive Order 6958 on February 4, 1935.

43. Said lands were reserved for the Hawthorne Ammunition Plant for the exclusive use and benefit of the United States Navy for the development and use as an ammunition depot. In 1979, the management of the Reservation was transferred to the Department of the Army.

44. Pursuant to 10 U.S.C. § 3062, Hawthorne's mission includes:

(1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

45. The Hawthorne Reservation is located in Mineral County, Nevada adjacent to the town of Hawthorne on the eastern slope of the Wassuk mountain range and the south shore of Walker Lake, and contains approximately 147,000 acres of land dedicated to the above-stated mission.

46. The United States is entitled to the use of all of the waters located in, on, under, or otherwise appurtenant to the lands of the Hawthorne Reservation necessary to fulfill all of the purposes for which the reservation was created as recognized under federal or state law. Such lands are entitled to a federal water right with a date of priority date as of the date of the withdrawal and reservation from the public domain.

47. The United States of America has and is also entitled to state-based appropriative rights as well as federally reserved water rights in both surface and underground waters, including, but not limited to, aquifers, springs, seeps, rivers, streams and lakes wholly or partly on or otherwise appurtenant to the Hawthorne Reservation including Walker Lake in quantities of water necessary for present and future use and development of the Hawthorne Reservation and in the accomplishment of its mission. This includes, but is not limited to: providing water in amounts necessary for

commercial, municipal and industrial operations (eg. storage, maintenance, inspection, modification, testing and demilitarization of munitions); fire-fighting; administration and operation; training; domestic; recreation; wildlife and livestock management; irrigation; mobilization; deployment; and tactical applications. Additionally, the United States is entitled to reserved water rights for any and all other purposes for which the Hawthorne Reservation was withdrawn and reserved.

48. The priority date of the reserved water rights for the Hawthorne Reservation, for present and future use and development and the accomplishment of its mission, is October 27, 1926, the date Hawthorne was originally withdrawn and reserved from the public domain.

49. The reserved and state water rights for the Hawthorne, Reservation for present and future use and development and the accomplishment of its mission, for the purposes described in paragraphs 44 and 47, supra, include, but are not necessarily limited, to the following water sources, diversions, storage reservoirs, and amounts:

(a) Cottonwood Creek/Black Beauty Reservoir: Water is diverted from the following four diversion points in Cottonwood Canyon, west and south of the Town of Walker Lake and stored in Black Beauty Reservoir.

Weir #1 - up to 220 GPM

Weir #2 - up to 200 GPM

Weir #3 - up to 400 GPM

Little Catch - up to 50 GPM

(b) Squaw Creek/Black Beauty Reservoir: Water is diverted from Squaw Creek up to 75 GPM and is stored in Black Beauty Reservoir.

(c) Rose Creek/Rose Reservoir: Water is diverted from Rose Creek up to 200 GPM and stored in Rose Reservoir. Rose Reservoir has a storage capacity of 39,000,000 gallons (120 acre feet (af)). Water is drawn from Rose Reservoir via a pipe line to Black Beauty Reservoir.

(d) Middle Rose Creek/Rose Reservoir: Water is diverted from Middle Rose Creek up to 75 GPM and is stored in Black Beauty Reservoir.

(e) House Creek/Black Beauty Reservoir: Water is diverted from House Creek up to 25 GPM and is stored in Black Beauty Reservoir.

(f) Cat Creek Dam and Reservoir: Water from Cat Creek is stored behind Cat Creek Dam up to 50,000,000 gallons (153 af). Water from Cat Creek is also stored in Black Beauty Reservoir.

(g) Dutch Creek: Water may be diverted from Dutch Creek in amounts necessary for the future use and development of the Hawthorne Reservation and in the accomplishment of its mission.

(h) Black Beauty Reservoir: A 48,000,000 gallon (147 af) storage reservoir which receives, or may in the future receive, its water from the sources listed in (a) through (g) above.

(i) Walker Lake: Sufficient water for the purposes described in paragraphs 44 and 47, supra.

50. The reserved water rights for the Hawthorne Reservation, for present and future use and development and the accomplishment of its mission, for the purposes described in paragraphs 44 and 47, supra, include, but is not limited to, the following groundwater sources and amounts:

(a) Well #1 - 950 gpm: Located north of the Industrial Area and south of HWY 95 and used to supply water to the Industrial Area. This water is pumped into a storage tank to be used on demand.

(b) Well #2 - 250 gpm: Located east of the town of Hawthorne and just south of HWY 95 at the entrance to the South Magazine Area.

(c) Well #3 - 250 gpm: Located east of the town of Hawthorne and south of HWY 95 and in the Southern Magazine Area.

(d) Well #4 - 250 gpm: Located in the southern storage area of the installation and used to supply water to the South Magazine area via a pipeline to 3 above-ground tanks.

(e) Well #5 - 800 gpm: Located west of Schwear Housing Area and sometimes stored in Black Beauty Reservoir.

(f) Well #6 - 640 gpm: Supplies Babbitt and the North and Central Magazine areas. The water is pumped into a 1,000,000 gallon (3 af) storage tank for use on demand.

(g) Well #7 - 250 gpm: Located between tank 5 and building 108-20.

(h) Well #8 - (total available capacity): Located on the west side of tank 6.

(i) Well #9 - (total available capacity): Located on the southwest side of Babbitt Housing Area.

51. In addition to the above-listed federal reserved water rights for the Hawthorne

Reservation, the United States has numerous appropriative water rights some of which were acquired when land was purchased by the United States of America and which subsequently became a part of the Hawthorne Reservation.

52. In the event of a mobilization the increase in Hawthorne activities will rise to an as yet unknown amount, but at a minimum of approximately 80% (European crisis) to 150% (Pacific crisis) of current usage along with an attendant need for water.

NINTH CLAIM FOR RELIEF

UNITED STATES DEPARTMENT OF AGRICULTURE

TOIYABE NATIONAL FOREST

53. Paragraphs 1-52 are incorporated herein as if fully set forth in this paragraph 53.

54. The Toiyabe National Forest extends from the crest of the Sierra Nevada range in California east to the Cambridge Hills in western Nevada. The Forest was created from several forest reserves which were withdrawn from the public domain beginning in 1907.

55. The Toiyabe National Forest is managed under several acts of Congress (hereinafter "Acts") beginning with the Organic Administration Act of 1897, ch. 2, 30 Stat. 34, 16 U.S.C. § 475 (1988) which provides that the purposes of the national forests are, inter alia, to "improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States. . . ." The national forests are also managed under the principles of the Multiple-Use Sustained-Yield Act of 1960, Pub. L. No. 86-517, §§ 1 - 4, 74 Stat. 215, 16 U.S.C. §§ 528-531 (1988) (hereinafter "MUSYA"), which provides that the national forests shall be administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes. Portions of the Toiyabe National Forest are administered pursuant to the Wilderness Act (September 3, 1964) Pub. L. No. 88-577, 78 Stat. 890, as amended, 16 U.S.C. §§ 1131-1136 (1988). Additionally, the National Forests and Public Lands of Nevada Enhancement Act of 1988, Pub. L. No. 100-550, § 5, 102 Stat. 2749, 16 U.S.C. § 460ccc-3 (1988) which transferred lands between the Forest Service and the Bureau of Land Management, "expressly reserves the minimum quantity of water necessary to achieve the primary

purposes for which the lands transferred . . . are withdrawn."

56. The United States is entitled to use the waters from the Walker River, its tributaries, and all other waters located in, on, under, or otherwise appurtenant to the lands comprising the Toiyabe National Forest in the amounts of water necessary to fulfill all purposes for which the reservation was created as recognized under federal or state law. Such lands are entitled to a federally reserved water right with a date of priority as of the date said lands were withdrawn and reserved from the public domain.

57. In connection with paragraph 56, supra, the United States is entitled to an instream flow reserved water rights in the amounts necessary to fulfill the purposes for which the Toiyabe National Forest was established under the Organic Administration Act of 1897. This includes, but is not necessarily limited to, reserved water rights in amounts necessary for the maintenance of the entire reach of each stream channel and all its named and unnamed tributaries lying within the Toiyabe National Forest.

58. The United States also has and is also entitled to both reserved water rights pursuant to the Organic Administration Act and the above noted subsequent Acts as well as water rights under state law, both surface and underground water, both consumptive and non-consumptive, which include but are not necessarily limited to, all aquifers, springs, seeps, rivers, streams, lakes and waters otherwise appurtenant to the Toiyabe National Forest in the amounts necessary to fulfill all present and future administrative purposes on the Toiyabe National Forest as stated in the Acts. The use of these waters include or will include, but is not necessarily limited to: fire management activities, erosion control, revegetation, irrigation, domestic, stockwatering and timber production, which includes but is not limited to, reforestation, road construction and maintenance and silvicultural treatments.

59. The United States also has and is also entitled to reserved water rights pursuant to the Organic Administration Act and its successor Acts in both surface and groundwater which includes, but is not necessarily limited to, all aquifers, springs, seeps, rivers, streams, lakes and waters otherwise appurtenant to Toiyabe National Forest in the amounts necessary for fighting fires in said National Forest.

60. The United States also has and is also entitled to instream flow water rights in the Toiyabe National Forest within the boundaries of the State of Nevada in the amounts of water necessary to fulfill the purpose of providing habitat for fish and wildlife and for recreational opportunities for the public. To the extent these instream flow claims are not available under state law, the United States has federal reserved water rights for the purposes set forth in the MUSYA, supra. In such instance, the priority date is the date of the enactment of the MUSYA, June 12, 1960.

61. The United States also has and is also entitled to riparian rights in the Toiyabe National Forest within the boundaries of the State of California for riparian Forest Service land in the amounts of water necessary to fulfill the purpose of providing watershed management, habitat for fish and wildlife and for recreational opportunities for the public. The priority date for these riparian water rights is the date the United States took title from Mexico under the Treaty of Guadalupe Hidalgo; February 2, 1848. To the extent the above instream flow claims are not available under state law, the United States has federal reserved water rights for the purposes set forth in the MUSYA,supra, with a priority date of June 12, 1960.

62. The United States also has and is also entitled to certain appropriative water rights, including rights that either have been permitted and certificated pursuant to Nevada or California state law, or have applications pending for appropriation before the Nevada State Engineer and before the California Water Resources Control Board. In addition, the United States of America has riparian rights pursuant to California state law.

TENTH CLAIM FOR RELIEF

UNITED STATES MARINE CORPS

MOUNTAIN WARFARE TRAINING CENTER

63. Paragraphs 1-62 are incorporated herein as if fully set forth in this paragraph 63.

64. The United States Marine Corps, Department of the Navy (Marine Corps) operates a training base known as the Mountain Warfare Training Center (hereinafter "MWTC") within the Toiyabe National Forest. The Marine Corps presence in this National Forest dates back to 1951. Pursuant to an agreement with the Forest Service, the Marine Corps uses approximately 45,635 acres of the National Forest for cold weather and mountaineering training and evaluation of prototype

equipment. This training area is the only site available to the Marine Corps for these activities. To support these training operations, the Marine Corps uses a 405-acre tract for a Base Camp, located at the confluence of Silver Creek and the West Walker River. Additionally, the Navy owns a family housing area 25 miles from the Base Camp.

65. The United States is entitled to use waters from the Walker River, its tributaries, and all other waters located in, on, under, or otherwise appurtenant to the lands of the MWTC in the amounts necessary to fulfill all purposes recognized under the federal and state law. Such lands are entitled to a priority date as of the date of the reservation.

66. The Marine Corps is diverting and is also entitled to certain waters pursuant to federal reserved, riparian, overlying, and appropriative water rights, including surface and groundwater sources, which are identified below:

a. Silver Creek:

Water needs of the Base Camp are supplied by surface diversions from Silver Creek and two groundwater wells, **noted** below. The Marine Corps uses water from Silver Creek based upon a pre-existing Forest Service claim and statement of diversion (USFS No. 9839), which is based on a riparian right, and has a priority date of 1951. Silver Creek surface water, up to 150 gpm, is diverted via a spillway located upstream of the Base Camp.

Silver Creek surface water is used for purposes that include, but are not limited to, training, domestic, industrial, fire protection, irrigation, construction, base hygiene, dust control, equipment and road washing, and future regulatory requirements for fire sprinkler system cross-connection control.

b. Base Camp Wells:

The Marine Corps' Base Camp domestic water demand is served by two groundwater wells, which are located in the Lower Base Camp up-gradient from all the buildings. Water is diverted from these wells up to the following amount:

Well No. 1 - 125 GPM.

Well No. 2 - 127 GPM.

An application for a Base Camp permit for both wells was submitted on May 26, 1993 to the

State of California, Department of Health Services.

c. Family Housing, Coleville, CA:

The Marine Corps also operates a family housing area on a tract approximately 40 acres in size and about 25 miles from the Base Camp. The facility, owned in fee by the U.S. Navy, is located within the West Walker River watershed on the eastern slope of the Sierra Nevada Mountains between the towns of Topaz, Nevada and Coleville, California. More specifically, the housing facility is located on the west side of highway 395, approximately 1.5 miles north of Coleville and about a quarter mile from the river. The housing area's domestic water demand, including domestic irrigation (lawn-watering of family gardens), is served by five wells. Water is diverted from these wells up to the following amount:

Well No. 1 - 21 GPM

Well No. 2 - 27 GPM

Well No. 3 - 14 GPM

Well No. 4 - 21 GPM

Well No. 5 - 200 GPM

The State of California, Department of Health Services, granted a permit for Well Nos. 1 - 4 on December 15, 1986, as water permit # 86-048, and amended that permit on February 11, 1994, to add Well No. 5 to the system.

ELEVENTH CLAIM FOR RELIEF

BUREAU OF LAND MANAGEMENT

67. Paragraphs 1-66 are incorporated herein as if fully set forth in this paragraph 67.

68. Certain lands were reserved from the public domain to establish Public Water Reserves No. 29, No. 70, and No. 107 (hereinafter "PWR"). These reservations were made pursuant to Executive Orders dated June 1, 1915, March 8, 1920 and April 17, 1926, respectively, and are administered by the Department of the Interior through the Bureau of Land Management ("BLM"), except as noted below.

69. The United States is entitled to the use of all of the waters located in, on, under, or

otherwise appurtenant to the lands of the PWRs necessary to fulfill all of the purposes recognized under federal or state law. Such lands, except as noted below, are entitled to a federal reserved water right with a date of priority as of the date of each individual PWR.

70. The United States has and is also entitled to reserved water rights for public springs and water holes in amounts necessary to fulfill the purposes of the PWRs described in paragraph 78. above. The priority dates are the dates the lands were withdrawn from the public domain. These reserved rights include, but are not limited to, the following:

Executive Order 6/1/15 - PWR #29	Reserved Acres	Flow
T. 9 N., R. 28 E., Sec. 17, SW1/4NW1/4, NW1/4SW1/4	80 ac.	1 GPM
T. 11 N., R. 28 E., Sec. 7, (unsurveyed)	125.60 ac.	1 GPM

Executive Order 3/8/20 - PWR #70	Reserved Acres	Flow
T. 5 N., R. 28 E., Sec. 11, SW1/4NE1/4, SE1/4NW1/4	40 ac.	All
T. 5 N., R. 28 E., Sec. 30, N1/2 of lot 5	approx. 25 ac.	All

The above two PWRs are now located on land administered by the U.S. Forest Service pursuant to the National Forests and Public Lands of Nevada Enhancement Act of 1988, Pub. L. No. 100-550, § 5, 102Stat. 2749, 16 U.S.C. § 460ccc-3 (1988).

Executive Order 4/17/26 - PWR #107	Reserved Acres	Flow
T. 7 N., R. 28 E., Sec. 10, E1/2SE1/4	80 ac.	5 GPM
T. 7 N., R. 28 E., Sec. 11, NW1/4SW1/4	40 ac.	5 GPM
T. 7 N., R. 28 E., Sec. 15, N1/2NE1/4, SW1/4NE1/4, SE1/4NW1/4, NE1/4SW1/4, S1/2SW1/4	280 ac.	3 GPM
T. 7 N., R.28 E., Sec. 21, NE1/4	160 ac.	2 GPM
T. 7 N., R. 28E., Sec. 22, NW1/4NW1/4	40 ac.	2 GPM
T. 9 N., R. 28 E., Sec. 20, N1/2NE1/4	80 ac.	1 GPM

71. The United States has acquired and is therefore entitled to certain water rights which were previously adjudicated and decreed in the C-125 Walker River Decree. These lands were acquired by the United States and are identified as follows:

Legal Description	Water Right Acres
SW1/4SE1/4, Sec. 14; NW1/4 NE1/4, SW1/4 NE1/4, NW1/4 SE1/4, Sec. 23, T 3 N, R 25 E (C-125 Assessment, Roll # 63, Card # 105750)	160.00
Part of Claim #210 SE1/4NE1/4, E1/2SE1/4, NE1/4 SW1/4, S1/2 SW1/4, Section 23; NE1/4NE1/4, NW1/4NW1/4, Sec. 26; SW1/4SW1/4, Section 20; NW1/4 NW1/4, Section 29, T 3 N, R 25 E. (C-125 Assessment, Roll # 64, Card # 105751)	400.00

72. The United States also has and is also entitled to riparian water rights under California state law for riparian lands managed by the BLM. The priority date for lands which the United States has held continuously since taking title from Mexico under the Treaty of Guadalupe Hidalgo is February 2, 1848. In the case of acquired land, the priority date is the date the land was patented out of the public domain. The water is used for the purpose of sustaining the existing riparian vegetation and providing habitat for fish and wildlife. The above rights are appurtenant to the following stream reaches:

Virginia Creek and tributaries

Public Land
T 3 N., R 25 E.: Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15

T 4 N, R 25 E: Sections 35, 34, 27, 26, 25

Acquired land: T 3 N, R 25 E: Sections 21, 22, 23, 24, 25, 26, 27, 34, 35

Clear Water Creek and tributaries

Acquired Land
T 3 N, R 25 E: Section 12; T 4 N, R 26 E: Section 33

T 3 N, R 26 E: Sections 5, 6, 7, 18

Public Land
T 3 N, R 25 E: Section 1, 12

T 4 N, R 25 E: Section 24

T 4 N, R 26 E: Sections 31, 32, 34, 35, 30, 28, 27, 10, 14, 16, 19, 21, 22, 23

Aurora Canyon and tributaries - Rock Creek and other unnamed creeks

Public Land
T 4 N, R 25 E: Sections 1, 12, 10, 11

T 4 N, R 26 E: Sections 4, 3

T 5 N, R 25 E: Sections 35, 27, 26, 25, 24, 23, 14, 15, 12, 11, 10, 2

T 5 N, R 26 E: Sections 31, 32, 33, 29, 22, 21, 20, 19, 18, 17, 7, 8

Rough Creek and tributaries

Public Land
T 4 N, R 26 E: Sections 1, 2, 3

T 4 N, R 27 E: Section 6

T 5 N, R 26 E: Sections 35, 34, 26, 25, 24, 23, 22, 12, 13, 14

T 5 N, R 26 E: Sections 12, 11, 10, 9, 1, 2, 3, 4

T 5 N, R 27 E: Sections 31, 32, 33, 30, 29, 28, 19, 20, 18, 17, 7, 8, 9, 6

T 6 N, R 26 E: Sections 32, 33, 34, 35, 36

Including Portions of Bodie, Matastra and Rough Creeks that originate in California and flow into Nevada.

Bodie Creek tributaries
T 4 N, R 26 E: Section 12
T 4 N, R 27 E: Sections 1, 2, 3, 4, 7, 8, 9, 10, 11,12, 15, 16 and 17
T 5 N, R 27 E: Sections 25, 26 and 35.

Green Creek

T 4 N, R 25 E: Section 33

Topaz Lake Area

Slinkard Creek and tributaries

T 9 N, R 22 E: Sections 4, 5, 6, 7, 8, 9, 10, 11, 14, 18, 19, 22, 23, 26 and 30

Mail Creek and tributaries

T 8 N, R 23 E: Sections 29, 31 and 32
T 8 N, R 22 E: Sections 1, 12, 14, 23 and 26.

73. The United States is also entitled to certain appropriative water rights, including rights

that either have been permitted and certificated pursuant to Nevada or California state law, or have applications pending for appropriation before the Nevada State Engineer and before the California Water Resources Control Board. In addition, the United States has riparian rights pursuant to California state law.

WHEREFORE, the United States of America, in its first amended counterclaim on its own behalf and for the use and benefit of the Walker River Paiute Tribe, the Yerington Paiute Tribe, the Bridgeport Paiute Indian Colony and individual Indians owning allotments in the Walker River Basin prays that this court enter judgment and decree as follows:

(1) Quieting the title of the United States to the use in proper priority of the above-claimed waters rights on its own behalf and for the use and benefit of the Walker River Paiute Tribe, the Yerington Paiute Tribe, the Bridgeport Paiute Indian Colony and individual Indians owning allotments in the Walker River Basin.

(2) Declaring that the United States, on its own behalf and for the use and benefit of the Walker River Paiute Tribe, the Yerington Paiute Tribe, the Bridgeport Paiute Indian Colony and individual Indians owning allotments in the Walker River Basin, are entitled to the exclusive use, occupancy and right to the quiet enjoyment of such water rights in their proper priority.

(3) Declaring that the defendants and counterdefendants have no right, title or other interest in or to the use of such water rights.

(4) Preliminarily and permanently enjoining the defendants and counterdefendants from asserting any adverse rights, title or other interest in or to such water rights.

(5) Grant such other and further relief as the Court deems proper.

DONE this day of 30th day of July, 1997.

Respectfully submitted,

LOIS SCHIFFER

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United States Department of Justice
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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, Complete Caption to be Served at a Later Date.	IN EQUITY NO. C-125-ECR Subproceeding C-125-B **FIRST AMENDED COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE**

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WALKER RIVER PAIUTE TRIBE,

Counterclaimant,

UNITED STATES OF AMERICA,

Counterclaimant,

vs.

WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.

Counterdefendants,

STATE OF NEVADA,

Counterdefendant-Intervenor.

FIRST AMENDED COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE

In its order of October 30, 1992, (document #15) the Court found that the counterclaim filed by the Walker River Paiute Tribe ("Tribe") (document #1) on March 18, 1992, against the Walker River Irrigation District ("WRID") should have been filed as a cross-claim since the Tribe and the WRID were co-plaintiffs with regard to their assertions against the California State Water Resources Control Board. However, the Court also determined that the designation given by the Tribe would remain. In light of the Court's order, the Tribe files this first amended counterclaim as follows:

INTRODUCTION

1. This first amended counterclaim is for the recognition of a right to store water in Weber Reservoir for use on the lands of the Walker River Indian Reservation ("Reservation"), including the lands restored to the Reservation in 1936. Such rights are in addition to the rights to use water from the Walker River awarded to the United States for the benefit of the Tribe in United States v. Walker River Irrigation Dist., In Equity No. C-125 (D. Nev. 1936), as amended by, *Stipulation and Agreement for Entry of Amended Final Decree Pursuant to Writ of Mandate of the Circuit Court of Appeals - Ninth Circuit - and also Amended Decree entered herein on April 15, 1936 to Clarify Certain Provisions Thereof*, approved by, *Order for Entry of Amended Final Decree to Conform to Writ of Mandate, etc.*, United States v. Walker River Irrigation Dist., In Equity No. C-125 (D. Nev. 1940) ("Final Decree").

2. This first amended counterclaim is also for recognition of a right reserved under federal law to use surface water from the Walker River on the lands restored to the

Reservation in 1936. Such rights are in addition to the rights to use water from the Walker River awarded to the United States for the benefit of the Tribe in the Final Decree.

3. This first amended counterclaim is also for recognition of a right reserved under federal law to use groundwater underlying and adjacent to the lands of the Reservation, including groundwater underlying and adjacent to the lands restored to the Reservation in 1936, on the lands of the Reservation, including the lands restored to the Reservation in 1936. Such rights are in addition to the rights to use water from the Walker River awarded to the United States for the benefit of the Tribe in the Final Decree.

JURISDICTION

4. Jurisdiction over this first amended counterclaim is pursuant to: a) the continuing jurisdiction of the Court over the waters of Walker River and its tributaries in California and Nevada, Final Decree ¶ XIV; b) 28 U.S.C. § 1331, in that this counterclaim arises under the Constitution, laws or treaties of the United States; c) 28 U.S.C. § 1362, in that this counterclaim is brought by the Tribe and arises under the Constitution, laws or treaties of the United States; d) 28 U.S.C. § 1367 which vests the Court with supplemental jurisdiction; and e) 28 U.S.C. § 1651 which authorizes the Court to issue all writs necessary or appropriate in aid of its jurisdiction.

PARTIES

5. The Tribe is a federally-recognized Indian Tribe organized under the Indian Reorganization Act, 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471, 472, 473, 474, 475, 476-478, 479. The Reservation was established in 1859 with a land base of approximately 320,000 acres. Certain lands which were originally a part of the Reservation

were restored to the Reservation on September 25, 1936, pursuant to the Act of June 22, 1936, 49 Stat. 1806-07.

6. Counterdefendants are the WRID, the State of Nevada, and all claimants to the waters of the Walker River and its tributaries, including groundwater.

GENERAL ALLEGATIONS

7. The Tribe currently is entitled to use 26.25 cubic feet per second from the Walker River and its tributaries, with a priority date of November 29, 1859, to irrigate 2,100 acres of land on the Reservation as it existed before September 25, 1936. Final Decree ¶ 1.

8. Subsequent to April 14, 1936, numerous persons and other entities, including the United States, have appropriated additional waters from the Walker River Basin and its tributaries. In many instances, such claims to the use of water have not been subject to any adjudicative process.

9. Weber Reservoir is a federally-constructed reservoir located on the Reservation with a storage capacity of approximately 13,000 acre feet. Portions of the reservoir were completed in 1935, and floodgates were added in 1937. The Tribe is entitled to store water from the Walker River in Weber Reservoir for all purposes recognized under federal law including but not limited to irrigation, stock watering, fish and wildlife, and domestic uses.

10. By the use of Weber Reservoir to store water, the Tribe can irrigate more than the 2,100 acres which it is entitled to irrigate under the terms of the Final Decree.

11. The Tribe's priority date for storage in Weber Reservoir is April 15, 1936. The Tribe claims 13,000 acre feet plus evaporation and seepage.

12. The Act of June 22, 1936, 49 Stat. 1806-07, authorized the Secretary of the Interior to set aside certain lands as an addition to the Reservation for the benefit of the Tribe.

In accordance with that legislation, by Order dated September 25, 1936, the Secretary restored to the Reservation approximately 167,460 acres.

13. The Tribe is entitled to use water from the Walker River on the lands restored to the Reservation in 1936 for all purposes recognized under federal law including but not limited to irrigation, stock watering, fish and wildlife, recreation and domestic uses.

14. The instant suit, commenced by the United States in 1924, was brought to quiet title and only concerned the water rights for use on the Reservation as the boundaries existed at the time the suit was commenced. The suit did not adjudicate the groundwater rights of any of the parties in the litigation.

15. The Tribe is entitled to use groundwater underlying and adjacent to the lands within the Reservation, including groundwater underlying and adjacent to the lands restored to the Reservation in 1936, for all purposes recognized under federal law including but not limited to irrigation, stock watering, fish and wildlife, recreation and domestic uses.

16. Paragraph XIV of the Final Decree provides that this Court retains jurisdiction for modification of this decree.

FIRST CLAIM FOR RELIEF

17. Paragraphs 1-16 are incorporated herein by reference.

18. The Tribe is entitled to store water from the Walker River in Weber Reservoir for all purposes recognized under federal law. The Tribe's right to store water in Weber Reservoir has a priority date of April 15, 1936.

SECOND CLAIM FOR RELIEF

19. Paragraphs 1-16 are incorporated herein by reference.

20. The Tribe is entitled to use water from the Walker River on the lands restored to the Reservation in 1936 for all purposes recognized under federal law.

THIRD CLAIM FOR RELIEF

21. Paragraphs 1-16 are incorporated herein by reference.

22. The Tribe is entitled to use groundwater underlying and adjacent to the lands of the Reservation, including groundwater underlying and adjacent to the lands restored to the Reservation in 1936, for all purposes recognized under federal law with a priority date of November 29, 1859, on the lands of the Reservation including the lands restored to the Reservation in 1936.

WHEREFORE, the Tribe prays that the Court:

1. Pursuant to the jurisdictional bases set forth in Paragraph 4 hereof, reopen and modify the Final Decree to recognize, and declare and quiet title to:

A. The right of the Tribe to store water in Weber Reservoir for use on the Reservation including the lands restored to the Reservation in 1936;

B. The right of the Tribe to use water on the lands restored to the Reservation in 1936;

C. The right of the Tribe to use groundwater underlying and adjacent to the Reservation on the lands of the Reservation including the lands restored to the Reservation in 1936;

D. The right of the Tribe to use groundwater underlying and adjacent to the lands restored to the Reservation in 1936 on the lands of the Reservation including the lands restored to the Reservation in 1936.

2. Declare that the defendants and counterdefendants have no right, title or other interest in or to the use of such water rights.

3. Preliminarily and permanently enjoin the defendants and counterdefendants from asserting any adverse rights, title or other interest in or to such water rights.

4. Grant such other and further relief as it deems proper.

Dated: 30 July 1997

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of the foregoing **First Amended Counterclaim of the Walker River Paiute Tribe**, via U.S. Mail or Overnight Carrier (if so indicated), all charges prepaid thereon, this 30th day of July 1997, addressed to:

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CLERK
BY _____ DEPUTY

UNITED STATES DISTRICT COURT

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

CASE MANAGEMENT ORDER

UNITED STATES OF AMERICA,
WALKER RIVER PAIUTE TRIBE,

Counterclaimants,

v.

WALKER RIVER IRRIGATION DISTRICT,
et al.,

Counterdefendants.

The enormity and complexity of the issues pending with respect to the First Amended counterclaims filed by the United States and the Walker River Paiute Tribe certainly suggest that

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some sort of bifurcation would be helpful in processing the action. Any such bifurcation may involve some duplication of work in relation to subsequent phases of the case. There does not seem to be any way to entirely avoid duplication, but we should endeavor to do so to the extent that we can. Another major concern is whether persons litigating in later phases of the case may find themselves prejudiced by being bound by decisions and adjudications in earlier phases where they did not participate. This, too, we should endeavor to avoid.

Without bifurcation of some sort, the case may simply be too big and too complex to process on a reasonable basis.

Having determined that some sort of bifurcation is desirable and necessary, we conclude that, in general terms, the proposal of the U.S./Tribe to bifurcate the "Tribal Claims" is as good and logical a basis for dividing the case as has been suggested or can be devised.

While many of the defenses to the claims of the U.S./Tribe claims for the Walker River Paiute Indian Reservation may be the same or similar to the defenses that may be offered with respect to the remaining claims of the U.S. for other Indian reservations and lands and federal enclaves and federal lands, each of the remaining claims appears to require development of a distinctly different factual scenario, as well as specific legal basis. This presents one good reason to bifurcate as suggested by the U.S./Tribe. Exactly how the defenses which overlap the claims for the Walker River Paiute Indian Reservation will play out as to

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each of the other separate claims is uncertain and adds justification for the proposed bifurcation.

In the order that follows, we have expanded the categories of water rights holders to be served with process somewhat beyond the categories suggested by the U.S./Tribe in their proposed case management order, but have not included all such categories as have been suggested by the Walker River Irrigation District and States of Nevada and California.

The categories to be served with process may be subject to adjustment and modification by order of the Magistrate Judge as he may find to be appropriate. However, we note that we have limited domestic users to be served with process to those whom, it appears, might be affected by pumping of underground water on the Walker River Paiute Indian Reservation. If it is shown that other domestic users could be affected by such pumping or that the underground and surface water constitute a single hydrological system where an earlier priority for the tribe for surface or underground waters could affect the rights of other domestic users, the Magistrate Judge should make an order expanding the category of domestic users who are required to be served with process.

We have also expanded the categories of water rights holders who have permits to pump groundwater issued by the State of Nevada and who are required to be served with process to additional Sub Basins in Nevada. This has been done because of the claim that underground and surface waters constitute a single source.

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These additional categories are also subject to modification by the Magistrate Judge on the same basis as noted above.

With the conclusion that the Tribal claims should be bifurcated in mind, we then endeavor to devise a case management order to provide for such bifurcation, taking into account the companion considerations noted above.

IT IS, THEREFORE, HEREBY ORDERED that:

(1) 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 Relief) set forth in the First Amended Counterclaim of the U.S. are hereby bifurcated from all other claims raised by the U.S. in its pleading. The bifurcated claims are sometimes referred to herein as the "Tribal Claims." Reference to the U.S./Tribe below refers separately to the United States and its said claims, set forth in its First Amended Counterclaim in behalf of the Tribe and to the Walker River Paiute Tribe and its claims set forth in its First Amended counterclaim.

(2) The Tribal Claims shall proceed as described in this Case Management Order. All discovery and all other proceedings in this action included in or in connection with the said First Amended Counterclaims are stayed, until the further order of the court, and except as provided in this order.

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(3) Prior to the resolution of the Threshold issues identified below, the U.S./Tribe shall effect service of their respective First Amended Counterclaims, notices in lieu of summons, requests for waiver of service, and the within Case Management Order on all of the members of the categories of water rights holders described below. Each of the members of each said category shall be named as a Counterdefendant in this case.

(a) The successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940) ("1936" Decree).

(b) All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basis who are not presently parties to this adjudication.

(c) All holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley), and 110B (Walker Lake Subarea of the Walker Lake Valley).

(d) All holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

(e) All users of groundwater for irrigation in California in the Walker River Basin.

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(f) All holders of "vested rights" to the use of groundwater under the laws of the State of Nevada within the Walker River Basin.

(g) All municipal providers in Nevada within the Walker River Basin who currently use groundwater.

(h) All municipal providers in California within the Walker River Basin who currently use groundwater.

(i) All industrial users in Nevada within the Walker River Basin who currently use groundwater.

(4) Subject to the requirements of this order, within 60 days of entry of this Case Management Order the parties shall file an agreed-upon Notice in Lieu of Summons for the Tribal Claims and agreement upon procedures for recording Lis Pendens to the Magistrate Judge for his consideration and approval. To the extent the parties cannot agree on any of these issues they shall, within said period of time, file their own proposals regarding such issues for consideration and decision by the Magistrate Judge. Procedures for recording of Notices of Lis Pendens will be determined by the Magistrate Judge by order.

(5) To the extent the U.S. and the Tribe cannot effect service or obtain a waiver of service from all the individual members of the categories of water rights holders and users listed above, and all other claimants to surface and groundwater rights not identified or who are unknown, the U.S./Tribe may move for publication of summons consistent with Fed. R. Civ. P. 4 and the laws and rules applicable for Nevada and California respectively to

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the extent they are to be used according to Fed. R. Civ. P. 4. The Magistrate Judge shall consider any such motion and rule on the same so as to grant or deny such motion for publication in whole or in part.

(6) The Magistrate Judge shall establish a schedule for completion of service of process which may be modified by further order from time to time as appropriate.

The Magistrate Judge is authorized to consider and decide all issues which may arise pertaining to service of process.

(7) The Magistrate Judge shall conduct all necessary proceedings and shall decide how the information shall be obtained by the U.S./Tribe to enable them to identify the individuals and entities with claims to surface water and/or groundwater in the Walker River Basin who are the appropriate counterdefendants to the U.S./Tribe said counterclaims. The Magistrate Judge shall determine the responsibilities of the respective parties to provide such information and at whose cost. Such information may be ordered obtained through orders devised by the court or discovery or other processes, so that the litigation may proceed in a reasonable manner.

In this connection, the Magistrate Judge shall also consider and determine how, when, and at whose cost information regarding changes or modification in the individuals or entities with such water rights claims shall be provided as between the parties and the entities which receive information respecting any

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such changes, until service of process is complete on the counterclaims.

(8) The U.S./Tribe may seek costs of service pursuant to the requirement of Fed. R. Civ. P. 4(d) during their service efforts under this Case Management Order.

(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.

Scheduling, Case Management

(10) Following completion of service of process on the said counterclaims, the Magistrate Judge shall receive recommendations of the parties for procedures for scheduling and for the efficient management of the litigation given the number of parties to the case. Such procedures may include the use of common counsel, special procedures for service of pleadings, or any other mechanisms deemed likely to reduce the burdens on the parties and the court in a case of this magnitude. The Magistrate Judge shall

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consider and make all appropriate rulings with respect to these matters.

Threshold Issues Relative to Tribal Claims

(11) As soon as convenient after the entry of this order, and upon appropriate notice to the parties presently appearing in the case, the Magistrate Judge shall consider and make a preliminary determination of the threshold issues to be addressed at the outset of the litigation on the U.S./Tribe said counterclaims. Scheduling of such consideration shall go forward notwithstanding other proceedings provided for in this order. The list of threshold issues regarding said claims will not be finally resolved and settled by the Magistrate Judge until all appropriate parties are joined. Nevertheless, the parties are directed to identify all potential threshold issues promptly and to submit them to the Magistrate Judge for consideration, as he shall direct, so that action may proceed as promptly as possible upon conclusion of service of process. In general, threshold issues, among others, shall address jurisdiction, claim, preclusion, applicable law, equitable and other defenses which may be raised by any party.

Among others, the Magistrate Judge shall consider inclusion in the list of threshold issues to the resolution of the said Tribal Claims to be addressed at the outset of the litigation:

(a) Whether this court has jurisdiction to adjudicate the said Tribal Claims. If so, to what extent should the court exercise its jurisdiction in these matters. In this connection, what is the scope of this court's subject matter

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jurisdiction to adjudicate the Tribal Claims to groundwater, as well as to additional surface waters?

(b) Does federal law govern the pumping of groundwater on the Walker Lake Paiute Indian Reservation by the Tribe or the U.S. on its behalf?

(c) If the Tribe has the right to pump groundwater under federal law, are such rights, as a matter of federal law, subject to different protections than those provided by State law?

(d) Whether the court has jurisdiction over groundwater used pursuant to State law outside the exterior boundaries of the Walker River Paiute Indian Reservation if such use interferes with the Tribe's rights under federal law to use water from the Walker River system. If so, should the court exercise that jurisdiction?

(e) Whether equitable defenses bar some or all of the said Tribal Claims. Within such time as shall be fixed by the Magistrate Judge the parties now or hereafter appearing in the case shall file for consideration by the Magistrate Judge a statement as to any defenses or issues they intend to assert.

(f) Whether, regardless of the extent of hydrologic connection between surface and groundwater, this court is required to accept the distinction drawn between surface water rights and groundwater rights provided by California and Nevada law.

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(g) Are the holders of surface water rights established under federal law entitled to protection from the use of groundwater beyond the protection provided to holders of surface water rights established under state law.

(h) If the only jurisdiction of this court with respect to groundwater issues is to protect surface water rights established under federal law from interference by junior groundwater users, must the issues of interference be decided as a part of the adjudication of federal surface water claims.

Phasing of Proceedings

(12) Pretrial proceedings in this case with respect to the Tribal Claims shall be conducted in multiple phases as follows:

(a) **Phase I** of the proceedings shall consist of the threshold issues as identified and determined by the Magistrate Judge.

(b) **Phase II** will involve completion and determination on the merits of all matters relating to the said Tribal Claims.

A Scheduling Order shall be entered by the Magistrate Judge, in accordance with this order, and such other appropriate matters as he shall consider necessary to provide for completion of consideration of Phases I, II, and subsequent phases in the case.

(c) Additional phases of the proceedings shall encompass all remaining issues in the case. Such phases shall be

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determined and scheduled by the Magistrate Judge and may, to the extent he determines, overlap Phases I and II as appropriate. We do anticipate, however, that the additional phases will not be scheduled by the Magistrate Judge at least until the threshold issues as set forth above have been decided on the merits. The additional phases shall include, but not be limited to:

(a) All other claims, crossclaims, counterclaims, defenses and issues raised by the pleadings of the parties that are not included in the threshold issues.

(b) All other issues related to the Tribal Claims.

(c) All issues related to the other Federal Claims.

Responses to Process

(13) The notices in lieu of summons shall notify the persons or entities served concerning how and when they must respond. They shall be directed to file and serve upon the U.S., the Tribe, the Walker River Irrigation District, the States of Nevada and California, within 60 days after completion of service of process (or where service is by publication within 60 days after the last day of publication of such service), a notice of appearance and intent to participate. No Answers or other pleading will be required except upon further order of the Magistrate Judge entered thereafter. No default shall be taken for failure to appear.

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(14) Upon completion of Phase I it may be necessary to join additional parties.

Discovery, Motions and Further Proceedings

(15) Once the Magistrate Judge has finally determined the threshold issues, discovery shall be allowed to all parties on the threshold issues. Discovery shall also be permitted during that same time period concerning the basis for the Tribal Claims; such discovery shall be limited to propounding of interrogatories and requests for production of documents relating to the contentions of the U.S./Tribe with respect to the basis for the Tribal Claims.

The discovery provided for in this paragraph (15) shall be conducted for such period and according to such terms, conditions, modifications and extensions to this order as shall be determined to be appropriate by the Magistrate Judge.

As provided above, all other discovery is stayed.

(16) Motions which may be dispositive or partially dispositive of any threshold issue shall be deferred until completion of discovery as permitted by this order and shall be filed thereafter within such time period and schedules for answers and replies as shall be determined by the Magistrate Judge. Such dispositive motions, however, will be decided by the undersigned judge.

(17) To the extent the threshold issues are not resolved by motions, an evidentiary hearing shall be held before the undersigned judge at such time and according to such conditions

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(including, as appropriate, the filing of joint prehearing orders as shall be determined by the Magistrate Judge.

(18) If a party wishes to perpetuate testimony relevant to this matter, that party shall comply with Fed. R. Civ. P. 27 and any applicable Local Rule. The Magistrate Judge will consider and determine all issues pertaining to perpetuation of testimony.

(19) Any party may move for modification of this Case Management Order for good cause shown. The Magistrate Judge shall have authority to change, modify and adjust this order. The Magistrate Judge shall hold regular periodic status conferences at times he shall determine, so that he and the parties may be advised as to the progress of the case and problems encountered, so that appropriate changes, modifications, and adjustments may be made in this order and such problems addressed.

IT IS FURTHER ORDERED that the Joint Motion For Leave to Serve First Amended Counterclaim filed by U.S./Tribe (#62) is **GRANTED** on the basis and to the extent set forth in this order.

The motions (#67), (#90), (#96), and (#98) are all considered ruled upon and decided as provided in the within order.

DATED: April 18, 2000.

Edward C. Reed

UNITED STATES DISTRICT JUDGE

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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 **ORDER – DISCLAIMER OF INTEREST**

The following background information is provided to aid in understanding the reasons for and what is required by this Order:

1. The Court has ordered that certain categories of persons and entities be included as parties in this action because they own water rights within one or more of the nine categories set forth in Paragraph 3 of the Court's April 18, 2000 Case Management Order.

2. It is possible that some of the specific persons or entities who are served with a Waiver of Service of Notice in Lieu of Summons, Notice of Lawsuit, or a Notice in Lieu of Summons do not belong in this action, because, for example, they may have sold or otherwise conveyed the ownership of all water rights subject to this action prior to being served.

3. A change in ownership of a water right can occur in a number of ways and for a variety of reasons. Often a change in ownership of a water right occurs when ownership of the land on which the water is used changes. A change in ownership may involve a sale, a gift, a death or even a divorce. It may also involve estate or business planning decisions, such as conveyance to an intervivos trust or a limited liability company. Frequently, changes in ownership are accomplished by a deed. However, in an estate or divorce proceeding, they may be accomplished by an order of a court. These examples are not an exclusive list of all of the ways

in which a change in ownership may occur.

4. It is important that the Court and the Plaintiffs be notified if a person or entity who receives service by mail or personal service does not, in fact, have any ownership interest in a water right in any of the nine categories set forth in Paragraph 3 of the Court's April 18, 2000 Case Management Order. In addition, that person or entity need not be burdened with this litigation and, if there was a change in ownership, a new party may need to be added to the action. Before any such person may be omitted from this action, certain information and documents will have to be provided to the Plaintiffs and the Court.

Based upon the foregoing, it is hereby ORDERED as follows:

1. If any person or entity receiving service by mail or personal service has 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)[1/], that person or entity shall notify the Court and the United

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[1/] You should review the *Case Management Order* and *First Amended Counterclaims* filed by the United States and by the Walker River Paiute Tribe, which are included in the materials served upon you. For convenience, the nine categories of persons and entities that the Court has ordered to be served and named are listed here:

1. Category 3.a.: The successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order of Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940) ("Decree").

2. Category 3.b.: All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basin who are not presently parties to this adjudication.

3. Category 3.c.: All holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley), and 110B (Walker Lake Subarea of the Walker Lake Valley).

4. Category 3.d.: All holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

5. Category 3.e.: All users of groundwater for irrigation in California in the Walker River Basin.

States in writing of that fact.

2. If such person or entity sold or otherwise conveyed ownership of all of the water rights that the person or entity once owned before they were served or otherwise brought into this action, in addition to disclaiming any interest in this action, they shall include a notice providing the following information:

A. The name and address of the person or entity who sold or otherwise conveyed ownership;

B. The name and address of each person or entity who acquired ownership; and

C. A copy of the deed, court order or other document by which the change in ownership was accomplished.

3. The disclaimer and notice shall be sent to the Court and counsel for the United States, addressed as follows:

Linda Lea Sharer, Chief Deputy Clerk
United States District Court for the District of Nevada
400 South Virginia Street, Suite 301
Reno, NV 895501

Susan L. Schneider
United States Department of Justice
P.O. Box [*to be inserted]
Denver, CO 802**

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6. Category 3.f.: All holders of "vested rights" to the use of groundwater under the laws of the State of Nevada within the Walker River Basin.

7. Category 3.g.: All municipal providers in Nevada within the Walker River Basin who currently use groundwater.

8. Category 3.h.: All municipal providers in California within the Walker River Basin who currently use groundwater.

9. Category 3.i.: All industrial users in Nevada within the Walker River Basin who currently use groundwater.

4. The form and substance of the disclaimer and notice shall substantially conform to the form attached to this Order as Exhibit A.

5. Following their receipt from any person or entity disclaiming any interest in any of the water rights at issue in this case of a Waiver of Service of Notice in Lieu of Summons and any Disclaimers of Interest and accompanying information and documents sought by this Order, Plaintiffs will review the materials received and, if appropriate, seek the Court's concurrence in omitting that person or entity filing such materials from this case.

6. If Plaintiffs do not receive a Waiver of Service of Notice in Lieu of Summons and must personally serve a person or entity that subsequently files a Disclaimer of Interest pursuant to this Order, Plaintiffs will also review the materials received and, if appropriate, seek the Court's concurrence in omitting the person or entity from this case, but that person or entity may be subject to paying the costs related to formal personal service on them.

7. Despite the above provisions, any person or entity who files a Disclaimer of Interest in this matter is ultimately responsible for the accuracy of this filing. Consequently, any person or entity who files a Disclaimer of Interest, but, in fact, has water rights subject to this litigation, shall nevertheless be bound by the results of this litigation.

8. Any person or entity subject to service under the Federal Rules of Civil Procedure who receives notice of this action in the manner provided by Federal Rule of Civil Procedure 4(d) remains subject to the duty to avoid unnecessary costs of serving the summons, even if that person or entity ultimately disclaims any ownership interest in any of the water rights described by Paragraph 3 of the Court's April 18, 2000 Case Management Order.

IT IS SO ORDERED:

Dated: _____, 2002.

_____
The Honorable Robert A. McQuaid, Jr.
United States District Court Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	In Equity No. C-125-ECR Subfile No. C-125-B **DISCLAIMER OF INTEREST IN WATER RIGHTS AND NOTICE OF RELATED INFORMATION AND DOCUMENTATION SUPPORTING DISCLAIMER**

The undersigned counter-defendant in the above action hereby notifies the Court and the United States that the undersigned (or the entity on whose behalf the undersigned is acting) has no interest in any water right within the categories set forth in Paragraph 3 of the *Case Management Order* (Apr. 18, 2000) and, therefore, **disclaims all interest in this action.**

This disclaimer and notice shall be sent to the following two persons:

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

<u>And</u>

Susan L. Schneider
United States Department of Justice
P.O. Box [*to be inserted]
Denver, CO 802**

In addition, because the undersigned sold or otherwise conveyed ownership of all of the

water rights that the undersigned (or the entity on whose behalf the undersigned is acting) once owned before the undersigned was served with a Waiver of Service of Notice in Lieu of Summons or by a Notice in Lieu of Summons, the undersigned provides the following additional information:

1. The name and address of the party or parties who sold or otherwise conveyed ownership:

Name(s):

Street or P.O. Box:

Town or City:

State:

Zip Code:

2. The name and address of each person or entity who acquired ownership

Name(s):

Street or P.O. Box:

Town or City:

State:

Zip Code:

3. Attached to or included with this notice is a copy of the (check appropriate box(es)):

- ☐ Deed
- ☐ Court Order
- ☐ Other Document.

by which the change in ownership was accomplished.

4. The undersigned acknowledges that any person or entity who files a Disclaimer of Interest in this matter is ultimately responsible for the accuracy of this filing. Consequently, the undersigned acknowledges that any person or entity who files a Disclaimer of Interest, but, in fact, has water rights subject to this litigation, shall nevertheless be bound by the results of this litigation.

Executed this _____ day of _____ 200__.

[signature of counter-defendant]

[name of counter-defendant]

[name, if applicable, of person acting on behalf of counter-defendant]

[signature, if applicable, of person acting on behalf of Counter-Defendant]

[address]

[telephone number]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	IN EQUITY NO. CV-125-ECR SUBFILE NO. C-125-B **ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS**

The following background information is provided to aid in understanding the reasons for and what is required by this Order:

1. The Court has ordered that certain categories of persons and entities be included as parties to this action because they own water rights within one or more of the nine categories set forth in Paragraph 3 of the Court's *Case Management Order* (Apr.18, 2000).

2. During the course of this action, it is possible that a party will sell or otherwise convey ownership of all or a portion of the water rights which that party owned when brought into this action by a Waiver of Service of Notice in Lieu of Summons or by service of a Notice in Lieu of Summons.

3. A change in ownership of a water right or a portion of a water right can occur in a number of ways and for a variety of reasons. Often a change in ownership of a water right occurs when ownership of some or all of the land on which the water is used changes. A change in ownership may involve a sale, a gift, a death or even a divorce. It may also involve estate or business planning decisions such as conveyance to an intervivos trust or a limited liability company. Frequently changes in ownership are accomplished by a deed. However, in an estate or divorce proceeding they may be accomplished by an order of a court. These examples are

not a exclusive list of all of the ways in which a change in ownership may occur.

4. It is important that the Court and the Plaintiffs be notified of changes in the ownership of water rights while this action is pending because among other things, a change in ownership may require that a new party be included in the action, or that a present party be dismissed or both.

Based upon the foregoing it is hereby ORDERED as follows:

1. If a party to this action sells or otherwise conveys 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)[1/], that party shall, within sixty days after any such change in

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1/ You should review the *Case Management Order* and *First Amended Counterclaims* filed by the United States and by the Walker River Paiute Tribe, which are included in the materials served upon you. For convenience, the nine categories of persons and entities that the Court has ordered to be served and named are listed here:

1. Category 3.a.: The successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order of Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940) ("Decree").
2. Category 3.b.: All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basin who are not presently parties to this adjudication.
3. Category 3.c.: All holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley_, 110A (Schurz Subarea of the Walker Lake Valley, and 110B (Walker Lake Subarea of the Walker Lake Valley).
4. Category 3.d.: All holders of permits of certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), and 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin.
5. Category 3.e.: All users of groundwater for irrigation in California in the Walker River Basin.
6. Category 3.f.: All holders of "vested rights" to the use of groundwater under the laws of the State of Nevada within the Walker River Basin.
7. Category 3.g.: All municipal providers in Nevada within the Walker River Basin who currently use groundwater.
8. Category 3.h.: All municipal providers in California within the Walker River Basin who currently use groundwater.
9. Category 3.i.: All industrial users in Nevada within the Walker River Basin who currently use groundwater.

ownership, notify the Court and the United States of the change in ownership.

2. The notice required by this Order shall provide the following information:

A. The name and address of the party who sold or otherwise conveyed ownership;

B. The name and address of each person or entity who acquired ownership; and

C. A copy of the deed, court order or other document by which the change in ownership was accomplished.

3. The notice shall be sent to the Court and counsel for the United States addressed as follows:

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

Susan L. Schneider
Unites States Department of Justice
P.O. Box [*to be inserted]
Denver, CO 802**

4. The form and substance of the notice shall substantially conform to the form of notice attached to this order as Exhibit A.

5. Any person or entity who files a Notice of Change of Ownership of Water Right using the attached form or provides information for this purpose by other means is ultimately responsible for the accuracy of this filing. Consequently, any person or entity who files such a notice regarding water rights subject to this litigation, but retains such water rights, shall nevertheless be bound by the results of this litigation.

IT IS SO ORDERED:

Dated: _____, 2002

_____
The Honorable Robert A. McQuaid, Jr.
United States District Court Magistrate Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	)	In Equity No. C-125-ECR Subfile No. C-125-B **NOTICE OF CHANGE OF OWNERSHIP OF WATER RIGHT**

The undersigned counter-defendant in the above action hereby notifies the Court and the United States that the undersigned (or the entity on whose behalf the undersigned is acting) has sold or otherwise conveyed ownership of all or a portion of a water right within one or more of the categorie set forth in Paragraph 3 of the Case Management Order and provides the following information:

1. The name and address of the party or parties who sold or otherwise conveyed ownership:

Name(s)

Street or P.O. Box

Town or City State ZipCode

2. The name and address of each person or entity who acquired ownership

Name(s)

Street or P.O. Box

Town or City State ZipCode

3. Attached to or included with this notice is a copy of the (check appropriate box(es)):

☐ Deed

☐ Court Order

☐ Other Document.

by which the change in ownership was accomplished.

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* This notice shall be sent to the following two persons:

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

<u>And</u>

Susan L. Schneider
United States Department of Justice
P.O. Box [*to be inserted]
Denver, CO 802**

4. The undersigned acknowledges that any person or entity who files a Notice of Change of Ownership of Water Right using this form is ultimately responsible for the accuracy of this filing. Consequently, the undersigned acknowledges that any person or entity who files such a notice, but retains such water rights, shall nevertheless, be bound by the results of this litigation.

Executed this _____ day of _____ 200__.

[signature of counter-defendant]

[name of counter-defendant]

[signature, if applicable, of person acting on behalf of counter-defendant]

[name, if applicable, of person acting on behalf of counter-defendant]

[address]

[telephone number]