

1 Linda A. Bowman, Esq.
2 State Bar No. 0743
3 Law Office of Linda A. Bowman, Ltd.
4 540 Hammill Lane
5 Reno, NV 89511
6 (775) 335-1700

FILED
JUN 17 PM 4:00
BY: [Signature]
Clerk of Court

Attorney for UNITED STATES BOARD OF WATER COMMISSIONERS

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 UNITED STATES OF AMERICA,
10 Plaintiff,

IN EQUITY NO. C-125 -ECR
Subfile No. C-125-B

11 WALKER RIVER PAIUTE TRIBE,
12 Intervenor-Plaintiff,

**RESPONSE OF UNITED STATES BOARD
OF WATER COMMISSIONERS TO
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, AND MEMORANDUM IN
SUPPORT THEREOF**

13 vs.

14 WALKER RIVER IRRIGATION DISTRICT,
15 a corporation, et al.,
16 Defendants.

17 The UNITED STATES BOARD OF WATER COMMISSIONERS ("USBWC") by and through
18 its undersigned counsel hereby submits its Response to the Joint Motion of the United States of America
19 and the Walker River Paiute Tribe for Amendment of the Court's Order Denying Motion for
20 Certification of Defendant Classes or For Relief From This Same Order and Memorandum in Support
21 Thereof.

22 The USBWC objects to the requested relief which is set forth at Page 13 of the Memorandum
23 in Support of the Joint Motion of the United States of America and the Walker River Paiute Tribe for
24 Amendment of the Court's Order Denying Motion for Certification of Defendant Classes or for Relief
25 From This Same Order. The United States and the Tribe propose as follows:

26 It seems to us that the Court should not refuse to allow us to pursue either option — that
27 is, use of the WRID and United States Board of Water Commissioner assessment lists
28 and publication or certification of these water users as a class. By this motion we ask the
Court to reconsider these two approaches to service on this group of water users.

1 The USBWC objects to these proposals because they are not likely to insure that the successors
2 in interest to the original decree water right holders receive actual notice of the pending action. The
3 assessment list maintained by the USBWC is a detailed list of names and addresses for those who are
4 identified with water rights included within the Decree. This information has been updated over the
5 years by the USBWC as information is provided and many transfers or changes in ownership have not
6 been provided to the USBWC -- nonetheless the person assessed has seen that the assessments are paid
7 each year. The USBWC collects assessments based upon this information for all of the original acreage
8 covered by the Decree. The assessment list contains names and addresses of the owners of the water
9 rights **or their designated agent for payment of the assessments**. These agents for payment of
10 assessments may or may not be the same people who would be authorized to accept service under FRCP
11 4. Each name on the assessment list can be linked to a water right described in the Decree. The Tribe
12 and the United States have been provided with current assessment lists and water rights cards which
13 reflect the acreage covered by each claim contained in the Decree. To allow service upon just those
14 listed on the assessment lists will not insure that the successors of the original decree water right holders
15 are served. The next step to determine actual ownership would be a review of the real property records
16 to ascertain that the person being assessed is the current owner of the water-righted lands covered by the
17 Decree. Because the Decree covers lands in both Nevada and California, the real property records of
18 Lyon County, Nevada and Mono County, California would need to be reviewed. To allow for service
19 upon those listed on the assessment lists, along with publication, without insuring that the real property
20 records are reviewed will not provide due process to those against whom these claims are made.

21 It is only because the Tribe and the United States seek new and additional claims to water from
22 the Walker River that they have been required to undertake the service ordered by the Court. Surely
23 those who will be adversely impacted by these new claims should be provided adequate notice and the
24 opportunity to be heard by this Court. The Court has determined that personal service pursuant to FRCP
25 4 is how this notice will be provided and the currently pending Motion provides nothing which would
26 justify anything less. There simply has been no showing as to why personal service upon the successors
27 in interest to the original decree holders is not possible. The assessment lists of the USBWC and the
28 Walker River Irrigation District are a starting point. However, without title work to insure that each

1 person being assessed is the current holder of the water rights, the finality of any judgment rendered by
2 this Court will be in jeopardy.

3 Dated this 17th day of June, 2002.

4 LAW OFFICE OF LINDA A. BOWMAN, LTD.

5
6 By: *Linda A. Bowman*
7 Linda A. Bowman, Esq.
8 540 Hammill Lane
9 Reno, NV 89511
10 (775) 335-1700
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to FRCP 5(b), I hereby certify that on this date, I mailed a true and correct copy of the Response to the 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 and Memorandum in Support Thereof, postage prepaid, addressed to:

Greg Addington, Esq.
Assistant U.S. Attorney
100 West Liberty, Suite 600
Reno, NV 89501

Scott McElroy, Esq.
Alice Walker, Esq.
Greene, Meyer & McElroy
1007 Pearl Street, Suite 220
Boulder, CO 80302

Marta Adams, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Hank Meshorer, Special Litigation Counsel
United States Department of Justice
Environment & Natural Resources Division
Ben Franklin Station
P.O. Box 7397
Washington, D.C. 20044-7397

Walker River Irrigation District
Post Office Box 820
Yerington, NV 89447

Kelly R. Chase, Esq.
P.O. Box 2800
Minden, NV 89423

David Moser, Esq.
McCutchen, Doyle, Brown, et al.
Three Embarcadero Center, Suite 1800
San Francisco, CA 94111

John Kramer
Dept. of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Susan L. Schneider, Esq.
U.S. Department of Justice
Environment & Natural Resources Division
999 - 18th Street, Suite 945
Denver, CO 80202

William W. Quinn
Field Solicitor's Office
Department of Interior
401 West Washington St. SPC 44
Phoenix, AZ 85003

Gordon H. DePaoli, Esq.
Dale Ferguson, Esq.
Woodburn and Wedge
Post Office Box 2311
Reno, NV 89505-2790

Robert L. Hunter
Superintendent
Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

Garry Stone
290 South Arlington
Reno, NV 89501

Hugh Ricci, P.E.
State Engineer
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89706

James S. Spoo, Esq.
Treva J. Hearne, Esq.
Zeh St. Aubin, Spoo, & Hearne
575 Forest Street
Reno, NV 89509

1 Mary Hackenbtach
2 Deputy Attorney General
3 State of California
4 1515 Clay Street, 20th Floor
5 Oakland, CA 94612

Mike Turnipseed
Director of Conservation & Natural Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89706

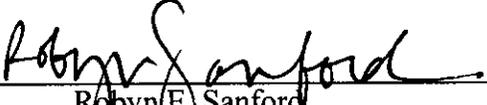
6 Jim Shaw
7 Chief Deputy Water Commissioner
8 U.S. Bd. of Water Commissioners
9 Post Office Box 853
10 Yerington, NV 89447

11 Michael Neville, Esq.
12 Deputy Attorney General
13 State of California
14 455 Golden Gate Ave., Ste. 11000
15 San Francisco, CA 94102-3664

16 Ross E. deLipkau, Esq.
17 Marshall, Hill, Cassas &
18 deLipkau
19 P. O. Box 2790
20 Reno, NV 89505-2790

21 George Benesch, Esq.
22 P.O. Box 3498
23 Reno, NV 89505

24 DATED this 17 day of June, 2002.

25
26
27
28

Robyn E. Sanford