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BY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Intervenor-Plaintiff, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	IN EQUITY NO. C-125 -ECR Subfile No. C-125-B **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**

The UNITED STATES BOARD OF WATER COMMISSIONERS ("USBWC") by and through its undersigned counsel hereby submits its 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.

The USBWC objects to the requested relief which is set forth at Page 13 of the Memorandum in Support of 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. The United States and the Tribe propose as follows:

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

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

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

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

Dated this 17th day of June, 2002.

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CERTIFICATE OF SERVICE

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:

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DATED this 17 day of June, 2002.

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