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FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY ..... DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants	In Equity C-125 Subfile C-125-B
WALKER RIVER IRRIGATION DISTRICT, Petitioner, STATE OF NEVADA, Petitioner-Intervenor, vs. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, et al. Respondents.	**MOTION FOR INSTRUCTIONS AND ORDER**
WALKER RIVER PAIUTE TRIBE AND UNITED STATES OF AMERICA, Cross-Claimants, vs. WALKER RIVER IRRIGATION DISTRICT, et al. Cross-Defendants.	

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The United States, through its undersigned attorneys, seeks an instruction and Order from the Court on whether claimants to the use of groundwater within the Walker River Basin are required to be served with process under Rule 4, F.R.Civ.P., in connection with the Court's Order entered on October 30, 1992, (Subfile No. C-125-B, Document No. 15).

The referenced Order provides, in pertinent part:

> In accordance with Rule 19, all claimants to the water of Walker River and its tributaries must be joined as parties to the claim.
>
> In order to be joined as a party, a person must be served in accordance with Rule 4 of the Federal Rules of Civil Procedure. In order to sufficiently join all appropriate parties, the Tribe and the United States must serve with process all claimants to the water of Walker River and its tributaries.

The United States is unsure whether, under the Order referenced above, groundwater claimants are to be included as parties and therefore served with process.

The grounds for this motion are set forth in our Memorandum of Points and Authorites in support of this motion.

DATED this 6th day of April, 1994.

Respectfully submitted,

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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 Subfile C-125-B
WALKER RIVER IRRIGATION DISTRICT, Petitioner, STATE OF NEVADA, Petitioner-Intervenor, vs. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, et al. Respondents.	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR INSTRUCTIONS AND ORDER**
WALKER RIVER PAIUTE TRIBE AND UNITED STATES OF AMERICA, Cross-Claimants, vs. WALKER RIVER IRRIGATION DISTRICT, et al. Cross-Defendants.	

INTRODUCTION

In reference to the Counterclaims filed by the Walker River Paiute Tribe and the United States, the court entered an Order on October 30, 1992, (Subfile C-125-B, Document No. 15), regarding service of process which sets forth the following pertinent language:

> In accordance with Rule 19, all claimants to the water of Walker River and its tributaries must be joined as parties to the claim.
>
> In order to be joined as a party, a person must be served in accordance with Rule 4 of the Federal Rules of Civil Procedure. In order to sufficiently join all appropriate parties, the Tribe and the United States must serve with process all claimants to the water of Walker River and its tributaries.

We are seeking an instruction from the court because we are unsure whether the language quoted above requires us to serve process on the groundwater users within the Walker River Basin.

BACKGROUND

The United States commenced this suit on July 3, 1924, to quiet title to water rights for the Walker River Reservation, and to enjoin certain other water users from interfering with those rights. The claim for water was made out of the natural flow of the Walker River and its tributaries. United States v. Walker River Irr. Dist., 11 F.Supp. 158 (1935). The Decree entered in 1936, as amended in 1940, provides for "the right to divert a continuous flow of 26.25 cfs of the natural flow of the Walker River to be diverted from streams upon or above the Walker River Indian Reservation . . . ." See also, United States v. Walker River Irr. Dist., 104 F.2d 334 (1939). The Decree also sets

forth water rights from the Walker River and its tributaries in connection with those parties who were named as defendants in the suit. It does not appear from either the pleadings or the Decree that groundwater users were included, or intended to be included, in the original proceedings.

THE NEED FOR INSTRUCTION BY THE COURT

The use of groundwater today in the Walker River Basin appears to be extensive. In order to determine "all claimants to the water of the Walker River and its tributaries" (Order of Court entered October 30, 1992, Subfile No. C-125-B, Document No. 15), we have investigated water uses in both California and Nevada and have discovered that there are several hundred groundwater users within the Walker River Basin. Based on the hydrogeology of the Walker River Basin, it further appears that the groundwater, at least to a large extent, is hydrologically connected to the surface water of the Walker River and its tributaries. We believe that the use of groundwater can impact hydrologically connected surface water uses.

In view of these circumstances, the question arises whether groundwater users in the Walker River Basin need to be included in the service of process under Rule 4, F.R.Civ.P., which was ordered by the Court (C-125-B, Document No. 15), to comply with the Order.

If groundwater users are not included, then those claimants would not have notice that there were additional claims for the benefit of the Walker River Paiute Tribe and they would not have the opportunity to protest those claims.

If groundwater users are to be included, then the Tribe and the United States need to assess and determine their own groundwater uses in the Walker River Basin and include any such uses in these proceedings.

The phrase used in the October 30, 1992, Order arguably could be interpreted to either include ground water claimants, or not include them. Thus, we seek an instruction and Order from the court before proceeding further with our efforts to complete service of process.

DATED this 6th day of April, 1994.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of April, 1994, served a true copy of the foregoing **MOTION FOR INSTRUCTIONS AND ORDER** and **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR INSTRUCTIONS AND ORDER** by placing same in the U. S. mails, postage prepaid, addressed as follows:

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