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BY JRH

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, vs. STATE OF NEVADA, Petitioner-Intervenor, vs. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, et al. Respondent-Intervenor.	**STATE OF NEVADA'S RESPONSE TO MOTION FOR INSTRUCTIONS AND ORDER**
WALKER RIVER PAIUTE TRIBE AND UNITED STATES OF AMERICA, Cross-Claimants, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al. Cross-Defendants.	

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The State of Nevada, by and through the undersigned counsel, responds to the United States' Motion for Instructions and Order as follows:

In the memorandum of points and authorities supporting its motion, the United States briefly describes the litigation which resulted in the Walker River Decree. The United States notes that "[i]t 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 State of Nevada agrees that the Walker River Decree only involves the users of surface waters.

The subsequent proceedings in this case also involve only the users of the surface waters of the Walker River and its tributaries. This Court has found no basis for taking jurisdiction over the groundwater users in the Walker River Basin. More importantly, in the motion before the Court, the United States provides no sound basis for expanding the present action to include these groundwater users.

Nevada water law has long included the regulation of the groundwaters of this State. In 1939, the Nevada Legislature enacted a statutory appropriation system for groundwater comparable to the system for surface waters. Act of March 25, 1939, ch. 178, 1939 Nev. Stat. 274. The State Engineer has the responsibility for administering both the groundwater provisions and the surface water provisions. NRS 532.120; NRS 534.020. In administering Nevada water law, the State Engineer manages the surface water sources under chapter 533 of the Nevada Revised Statutes separately from the groundwater sources under chapter 534. Even in situations in which groundwater rights provide a supplemental source to surface water rights, the State Engineer administers the groundwater source independently of the surface water source. Likewise, this Court should continue to administer the rights of the surface water users on the Walker River system and leave the responsibility of administering the groundwater rights with the State Engineer.

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For the above-stated reasons, the State of Nevada respectfully requests that the Court instruct the United States to join only surface water claimants as parties and serve them with process.

Dated this 24th day of May, 1994.

FRANKIE SUE DEL PAPA
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 24th day of May, 1994, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of State of Nevada's Response to Motion for Instructions and Order addressed to the following:

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