Frankie Sue Del Papa, ATTORNEY GENERAL
Susan Joseph-Taylor, Deputy Attorney General
198 South Carson
Carson City, Nevada 89710
Tel. (702) 687-7319
Fax. (702) 687-5798
Attorneys for Plaintiff, the STATE
OF NEVADA, its Officers and Agencies

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.,

Defendants.

_____/

WALKER RIVER PAIUTE TRIBE,

Counterclaimant,

v.

WALKER RIVER IRRIGATION DISTRICT, et al.,

Counterdefendants.

_____/

IN EQUITY NO. C-125
SUBFILE NO. C-125-B

STATE OF NEVADA'S REPORT RE MINERAL COUNTY'S MOTION TO INTERVENE

The State of Nevada, by and through the undersigned counsel, files this Report pursuant to the Court's Minute Order approving the Stipulation and Order Concerning Mineral County's

38

Motion to Intervene and for Pretrial Conference Thereon, dated November 17, 1994.

BACKGROUND

On January 3, 1992, the Walker River Irrigation District ("WRID") filed a First Amended Petition for Declaratory and Injunctive Relief and Request for Order to Show Cause, or in the Alternative to Change Point of Diversion to Storage of Water from California to Nevada ("First Amended Petition").

On March 17, 1992, the Walker River Paiute Tribe ("Tribe") served its Answer to the First Amended Petition, and its Counterclaim and Cross-claim. In filing its Counterclaim, the Tribe greatly expanded the factual and legal issues raised in the First Amended Petition. On May 21, 1992, the Court ordered that the Tribe's Counterclaim be set aside as a subaction identified as C-125-B.

In C-125-B, the Tribe alleged a claim against all the water users as counterdefendants for a right to store water in Weber Reservoir and for a water right in lands restored to the Walker River Paiute Reservation. The State of Nevada argued that all claimants to the waters of the Walker River or its tributaries had to be joined and served with process in compliance with the provisions of Rule 4 of the Federal Rules of Civil Procedure. All water users on the Walker River and its tributaries, as counterdefendants, were indispensable parties. Nevada argued that due to the time that had passed since the United States began the Walker River adjudication, many if not all of the named defendants in the Final Decree were dead and/or their decreed water rights had been transferred. Accordingly, the successors in interest to the decreed water rights who had not been parties before the decree Court, must be joined under Rule 19 of the Federal Rules of Civil Procedure.

Nevada also took the position that all other claimants to the waters of the Walker River and its tributaries, not included in the Final Decree, but authorized by either the California State Water Resources Control Board or the Nevada State Engineer to appropriate such waters, should likewise be joined. On October 27, 1992, the Court ruled that the Tribe and the United States were required to join as parties, and serve pursuant to Rule 4 of the Federal Rules of Civil

(O)-4299A

Procedure, all existing claimants to waters of the Walker River and its tributaries.

On or about November 7, 1994, Mineral County moved to intervene in C-125-B pursuant to Rule 24 of the Federal Rules of Civil Procedure. Mineral County claims it has an interest relating to the subject matter of the action and is so situated that disposition of the action may as a practical matter impair or impede its ability to protect that interest, which may not be adequately represented by the existing parties; or that, Mineral County's defense and the main action have a question of law or fact in common.

Nevada takes the same position in reference to Mineral County's Motion to Intervene that it took with regard to the joinder and service required by the Tribe in relation to the Tribe's Counterclaim asserting a right to additional waters from the Walker River. Every water right user on the Walker River must be notified of Mineral County's Motion to Intervene.

In seeking the recognition of the public trust doctrine as a limitation on the water rights granted pursuant to the Final Decree and state water law systems of appropriation, Mineral County seeks to amend or modify the Final Decree and impose a restriction on water rights not previously recognized under Nevada law. Application of the public trust doctrine could affect all water users on the Walker River and its tributaries, and could result in the water rights of various water users being significantly diminished in quantity. The holders of those water rights are entitled to adequate notice and a full opportunity to be heard and participate in any proceeding before the Court makes a determination whether to grant or deny Mineral County's Motion to Intervene.

The Court recognized in its October 27, 1992, Order that if the Court were to recognize additional water rights for the Tribe and integrate those rights into the Final Decree, such recognition might have the effect of reducing water allocation to other water right holders or altering the priority of the allocations. Thus, the claimants to the waters of the Walker River clearly had an interest in the action. Pursuant to the Court's Order of October 27, 1992, the Tribe and the United States were required to join as parties, and serve pursuant to Rule 4 of the Federal Rules of Civil Procedure, all existing claimants to waters of the Walker River and its

(O)-4299A

tributaries.

Mineral County's Motion to Intervene and present the public trust doctrine in the context of C-125-B has the same potential to effectively reduce water allocated to water right holders. The claimants to the waters of the Walker River clearly have a substantial interest in Mineral County's motion and allegations. Thus, service of Mineral County's Motion to Intervene is required on all claimants to the waters of the Walker River. If these water claimants are not served, their ability to protect their interests and oppose Mineral County's Motion to Intervene is impaired. Futhermore, Rule 24 of the Federal Rules of Civil Procedure provides that a "person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5." Fed.R.Civ.P.24(c).

PROPOSED PROCEDURES

The Tribe and the United States are in the process of serving all claimants to the waters of the Walker River and its tributaries with process. Pursuant to a Stipulation and Order dated November 17, 1994, the Tribe and the United States were given until March 24, 1995, within which to complete joinder of additional parties and service of process on claimants to the water of the Walker River and its tributaries.

The State of Nevada suggests that once service has been completed by the Tribe and the United States, further action on the Tribe's claims should be stayed pending Mineral County's service of its Motion to Intervene on all the claimants to the waters of the Walker River and its tributaries. The stay should continue through the Court's ruling on Mineral County's motion.

Dated this 22nd day of December, 1994.

FRANKIE SUE DEL PAPA
Attorney General

By: S. Joseph-Taylor
SUSAN JOSEPH-TAYLOR
Deputy Attorney General

(O)-4259A

CERTIFICATE OF MAILING

I certify that I am an employee of the office of the Attorney General, State of Nevada, and that on this day, at Carson City, Nevada, I deposited for mailing, postage prepaid, a true and correct copy of the foregoing document addressed as follows:

Gordon H. DePaoli, Esq.
P.O. Box 2311
Reno, NV 89505

Mary E. Hackenbracht
Deputy Attorney General
2101 Webster St., 12th Floor
Oakland, CA 94612-3049

Scott McElroy, Esq.
1007 Pearl St., #220
Boulder, CO 80302

Kathryn Landreth
John P. Lange
U.S. Department of Justice
999 18th St., #945
Denver, CO 80202

David E. Moser, Esq.
Three Embarcadero Center
San Francisco, CA 94111

Linda Bowman, Esq.
P.O. Box 281
Reno, NV 89504

James Spoo, Esq.
450 Marsh Ave.
Reno, NV 89509

Dated: 12-22-94

Sue Clugage

Sue Clugage

(O)-4299A