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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 NO. C-125-ECR SUBFILE NO. C-125-B **UNITED STATES' AND WALKER RIVER PAIUTE TRIBE'S JOINT MOTION FOR LEAVE TO SERVE FIRST AMENDED COUNTERCLAIMS, TO JOIN GROUNDWATER USERS, TO APPROVE FORMS FOR NOTICE AND WAIVER, AND TO APPROVE PROCEDURE FOR SERVICE OF PLEADINGS ONCE PARTIES ARE JOINED**

The United States of America and the Walker River Paiute Tribe ("Tribe") respectfully move the Court for an Order: 1) granting leave to serve the *First Amended Counterclaim of the United States of America* (July 30, 1997) ("United States' First Amended Counterclaim"), and the *First Amended Counterclaim of the Walker River Paiute Tribe* ("Tribe's First Amended

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Counterclaim") (July 30, 1997) upon surface water and groundwater claimants in the Walker River basin; 2) to eliminate the requirement for personal service upon those surface water claimants Mineral County has served successfully; 3) to establish a procedure for service of pleadings upon joined parties; and 4) to approve forms for purposes of notice and waiver.

I. BACKGROUND

The Tribe filed its original counterclaim on March 18, 1992 asserting claims to surface water in addition to those adjudicated in the *Decree* (Apr. 14, 1936), as amended, *Order for Entry of Amended Final Decree to Conform to Writ of Mandate Etc.* (Apr. 24, 1940). See *Notice of Filing Answer to First Amended Petition, and Counterclaim and Cross-Claim of the Walker River Paiute Tribe* (Mar. 18, 1992). On July 22, 1992, the United States moved for leave to file its original counterclaim, also asserting additional surface water claims. *United States of America's Motion for Leave to File Cross-Claim* (July 22, 1992). The State of Nevada and the Walker River Irrigation District moved to dismiss the counterclaims. *State of Nevada's Preliminary Threshold Motions re Dismissal of Counterclaims, Additional Parties and Service of Process* (Aug. 3, 1992); *Walker River Irrigation District's Points and Authorities in Support of Motions to Dismiss Counterclaims; to Require Joinder of Parties; and to Require Service of Process in Accordance with Rule 4 of the Federal Rules of Civil Procedure* (Aug. 3, 1992). The District and the State argued that if the Court permitted the Tribe and the United States to bring their claims, then they must join as parties and serve all existing claimants to waters of the Walker River and its tributaries. *State of Nevada's Preliminary Threshold Motions re Dismissal of Counterclaims, Additional Parties and Service of Process* at 3-8 (Aug. 3, 1992); *Walker River Irrigation District's Motions to Dismiss Counterclaims; to Require Joinder of Parties; and to Require Service of Process in Accordance with Rule 4 of the Federal Rules of Civil Procedure* at

2 (Aug. 3, 1992).

The Court denied the motions to dismiss and ordered the United States and the Tribe to join as parties all the claimants to waters of the Walker River. *Order* at 3-7 (Oct. 20, 1992). The Court further required that the United States and Tribe complete service of process of the original counterclaims under Rule 4 of the Federal Rules of Civil Procedure. Id. at 6-7. Since the entry of the Court's order, the parties have stipulated to several extensions of time for completion of service. By order of United States Magistrate Judge McQuaid, dated March 19, 1998, the current time to complete service is September 21, 1998. *Stipulation and Order for Extension of Time Within Which to Join Additional Parties and Complete Service of Process (Twelfth Extension)* (Mar. 20, 1998).

On April 7, 1994 the United States filed its *Motion for Instructions and Order* (Apr. 8, 1994), asking the Court to clarify whether it intended that groundwater users be included in the United States' and Tribe's service of all claimants to the waters of the Walker River and its tributaries. The Court answered the question in the negative:

> At such time as the U.S. and/or the Tribe do assert claims to groundwater rights, it may be necessary to join other parties, but at this time the mere possibility is insufficient to require joinder under Rule 19.
>
> Without deciding this issue at this time, the Court notes that even if a claim to groundwater rights was currently asserted, the U.S. has alleged no reason why joinder of all groundwater claimants in the Walker River basin is required. While there has been some indication in supporting documents (see exhibits attached to Doc. #29) that groundwater sources are hydrologically connected to each other and to the Walker River, there is nothing to indicate the extent of this connection is such that withdrawal of groundwater on the restored reservation lands will have any effect on surrounding groundwater claimants.

Order at 6 (July 8, 1994).

The United States and the Tribe now have asserted claims to groundwater. The Tribe amended its water right claims to include groundwater claims, not only for the lands that were restored to the Walker River Indian Reservation pursuant to the Act of June 22, 1936, 49 Stat. 1806-1807, and the Secretarial Order of September 25, 1936, but also for groundwater underlying and adjacent to the Reservation. The United States added several specific claims to surface water and groundwater in its first amended counterclaim, including surface and groundwater claims for other federal enclaves in the Walker River basin: the Hawthorne Army Ammunition Plant, the Toiyabe National Forest, the Mountain Warfare Training Center of the United States Marine Corps, and the Bureau of Land Management. The United States also claimed surface and groundwater for the Walker River Indian Reservation, the Yerington Reservation, the Bridgeport Paiute Indian Colony, and several allotments. Therefore, the United States' and Tribe's assertion of groundwater claims is no longer a "mere possibility," but has now become reality.

II. SERVICE OF PROCESS AND JOINDER OF PARTIES

Given the present status of the case, the United States' and the Tribe's first amended counterclaims have raised the question whether the United States and the Tribe must serve groundwater claimants in the Walker River basin in addition to the claimants of surface waters. Because the United States and the Tribe filed specific claims to groundwater in our first amended counterclaims, both on the Walker River Indian Reservation and throughout the Walker River basin, it is necessary to serve all surface and groundwater claimants. The United States and the Tribe are concerned that if all water claimants in this proceeding are not served at the present time, we may be faced with arguments in any future effort to adjudicate these rights that we should have brought the claims in the present proceeding, and that our failure to do so would

preclude assertion of the rights as described in the first amended counterclaims.

The cost of service in a case of this nature can be extremely expensive, and service can be quite difficult to complete. In the related subproceeding, C-125-C, where Mineral County of Nevada is attempting to intervene in order to assert a surface water claim on behalf of Walker Lake, Mineral County has represented to the Court that already it has "expended over $110,000.00" and has not completed service. *Motion for Order of Publication, Second Request*, Affidavit of Treva J. Hearne ¶ 12 (Apr. 21, 1998). Recently, Mineral County alleged that it has expended more than "$25,000.00 additional funds to accomplish the remainder of the personal service." *Motion for Order of Publication, Third Request* at 6 (Aug. 4, 1998). The costs Mineral County has expended only represent its efforts to serve surface water claimants in the Walker River basin. To include groundwater claimants will necessarily increase service costs substantially. Resolution of the question of who should be served, and which claims shall be included, before proceeding further in this matter will promote judicial economy and avoid unnecessary expenses in this case.

Groundwater in the Walker River basin is hydrologically connected to surface water. Affidavit of Peter M. Pyle at 2-4 (Aug. 5, 1998) ("Pyle Affidavit") (Attachment 1 hereto). As a practical matter such connection means that the source of water for users along the Walker River, whether as a direct diversion of surface water from the stream, or as a diversion by pumping the connected groundwater, is actually the same source of water. See Cappaert v. United States, 426 U.S. 128 (1976) (groundwater pumping caused water level in Devil's Hole to drop where groundwater and surface water were physically interrelated as integral parts of the hydrologic system). Thus, as the purpose of these proceedings is to determine the relative rights of those claimants who are claiming water from the same source, it is necessary to join both the surface

and groundwater claimants. Even if the Tribe and the United States were only making surface water claims in this proceeding, because of the hydrologic connectivity of ground and surface water in the basin, the surface water claims of the Tribe and the United States will effect groundwater users. Pyle Affidavit at 4 ("The primary source of that recharge [to the aquifer] is the Walker River which becomes depleted as recharge is induced from the flow of the River to the ground-water system."). In any event, the United States and the Tribe have now included groundwater claims in their respective amended counterclaims, and therefore groundwater claimants must be served.

III. NOTICE AND WAIVER

We have attached to this motion four draft documents. The first and second are the United States' and the Tribe's Notices of Lawsuit and Request for Waiver of Service of Summons ("Notices") (Attachments 2 and 3 hereto). The third and fourth are the United States' and the Tribe's Waivers of Service of Summons ("Waivers") (Attachments 4 and 5 hereto). The draft documents follow Forms 1A (Notice) and 1B (Waiver) suggested by FED. R. CIV. P. 84, and are intended to obtain service pursuant to FED. R. CIV. P. 4(d). The Notices inform the parties of the claims the United States and the Tribe make in the first amended counterclaims. Because of the magnitude of this case, the expense to be incurred in obtaining service, and the need to determine whether the case will proceed with the inclusion of the claims set forth in the first amended counterclaims, the United States and the Tribe respectfully move that the Court approve the attached Notices and Waivers.

IV. PROCEDURE FOR SERVICE OF PLEADINGS ONCE PARTIES ARE JOINED

As a final matter, the United States and the Tribe seek the Court's guidance regarding service of pleadings upon parties to the C-125 proceedings once they are successfully joined in the

proceedings. The list of claimants that the United States and Tribe have compiled to date exceeds 1,000 names, and we anticipate that not all of those claimants will be represented by counsel. Service of pleadings upon all of such claimants once joined would be cumbersome, costly, and would likely impede judicial efficiency. Accordingly, the United States and the Tribe propose that the Court adopt the following procedure for service of pleadings upon parties to the C-125 proceedings, based upon the procedure adopted by the United States District Court for the District of New Mexico in a case with a similarly large number of water rights claimants.

In State of New Mexico v. Aamodt, No. 6639 Civil M (D.N.M.), the court requires service of pleadings upon the major parties to the case, requires the State of New Mexico to mail a copy of the court's docket sheet to all parties, and allows those parties who did not participate in the proceedings leading to a particular court order a period of time to request vacation or modification of that order. Thus, in addition to filing all original pleadings with the clerk of the court, the parties must serve pleadings upon the following individuals: the Special Master; counsel for the state; counsel for the United States; counsel for several, consistently participating defendants' groups; and counsel for participating Indian tribes. *Order Adopting Procedures for Filing and Serving Pleadings and Providing Notices of Hearings* at 3-4, State of New Mexico v. Aamodt, No. 6639 Civil M (D.N.M. Mar. 20, 1990) (Attachment 6 hereto). The State of New Mexico must send monthly docket sheets to those not included in the identified groups, id. at 3, and those individuals may request the court to amend orders it entered in that month. *Order Adopting Procedures for Correcting and Amending Subfile Orders*, State of New Mexico v. Aamodt, No. 6639 Civil M (D.N.M. Feb. 11, 1993) (Attachment 7 hereto).

Here, the United States and the Tribe propose that, in addition to service of original pleadings with the Clerk of the Court, the Court require service of all pleadings upon all parties

currently listed on the Court-approved service list in the C-125 proceedings. The United States would be responsible for sending monthly docket sheets to all other parties joined in the proceedings but not on the Court-approved mailing list, and the Court could permit those parties 30 days to move to amend orders entered during the previous month. In light of the very large magnitude of parties, this procedure would permit orderly service, and would also provide all parties with due process. The United States and the Tribe, therefore, respectfully request that the Court adopt the procedure described herein, and which the Aamodt court successfully employs, for service of pleadings in the C-125 proceedings.

Dated: Aug. 19th 1998

Respectfully submitted,

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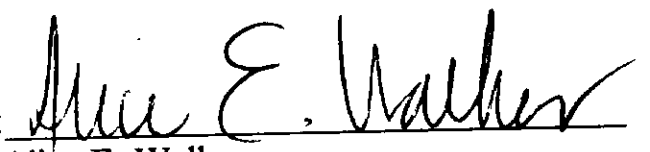
By: 
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CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of the foregoing **UNITED STATES' AND WALKER RIVER PAIUTE TRIBE'S JOINT MOTION FOR LEAVE TO SERVE FIRST AMENDED COUNTERCLAIMS, TO JOIN GROUNDWATER USERS, TO APPROVE FORMS FOR NOTICE AND WAIVER, AND TO APPROVE PROCEDURE FOR SERVICE OF PLEADINGS ONCE PARTIES ARE JOINED**, via U.S. Mail, postage prepaid, this 19 day of August, 1998, addressed to:

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ATTACHMENT - NO. 1

STATE OF CALIFORNIA

COUNTY OF MARIN

Affidavit of Peter M. Pyle

Qualifications

I am a Senior Hydrogeologist with Stetson Engineers. I have more than 16 years' experience in the related fields of geology and hydrology and am a Registered Geologist in the State of California (#6807). For the last seven years I have been involved with regional ground-water studies that include ground and surface water interaction. Specifically, I have been involved with the historical and potential future effects of ground-water development on surface streams and vice-versa. Some of these projects have involved a large number of basins in Nevada, as well as numerous individual basins in California, Arizona, Utah, Idaho and Montana. Stetson Engineers has had experience in similar projects for many years prior to my joining the company.

Experience in the Walker River Watershed

I have been working for the Department of Justice studying the Walker River Basin since 1994. During that time I have visited the Walker River Indian Reservation and performed field testing, sampling of wells and observations of Walker River flows during various years and seasons. I have also observed hydrologic conditions and irrigation practices over much of the Walker River watershed, including Antelope, Smith and Mason Valleys and the portion referred to as the East Walker Area. In addition, I have reviewed and analyzed numerous published and unpublished reports and data related to ground water and surface water in the Walker River watershed, including geology, well log data, streamflows, water levels, water quality, phreatophytes, recharge estimates and pumping estimates.

My independent studies of the Walker River Basin have included analyses of the effects of well pumping above Wabuska Gage on streamflow on the Walker River Indian Reservation. I have also evaluated ground-water quality in relation to the proximity of wells to the Walker River on the Reservation. My studies relative to Antelope, Smith and Mason Valleys have included analysis of ground-water recharge, review of the State of Nevada's well inventory for the region, collection and analysis of over 300 irrigation and domestic well logs obtained from the Nevada Department of Water Resources, development of geologic cross-sections and evaluation of ground-water levels in Smith and Mason Valleys, evaluation of aquifer properties based on drillers' well logs and pump tests, and analytical analysis of stream depletion based on geologic studies and estimates of aquifer properties derived from drillers' pump test data. My analyses in the Walker River Basin are not yet complete and I expect to continue more detailed evaluation and simulation of the effects of well pumping on streamflow in Smith, Mason and Antelope Valleys.

The Hydrologic Connection between Ground Water and Surface Water in the Walker River Basin

I have analyzed geologic maps of the region and well logs in Smith and Mason Valleys. The valley fill sediments consist of discontinuous layers of sands, gravels and clays that allow flow to occur between ground-water and surface water sources. The sands and gravels are relatively thick and highly permeable, allowing high well yields suitable for irrigation. With the possible exception of the Artesia Lake area of Smith Valley, there are no clay barriers that prevent a connection between ground-water and surface water through coarse stream bed material.

Drillers' logs from Smith and Mason Valleys indicate high well yields which average roughly 1000 to 4000 gallons per minute, and my analysis of drillers' pump tests indicates high aquifer permeabilities averaging 15 to 40 ft/day. These data indicate that well pumping will draw water from a wide area surrounding the well and will deplete streams when a well's radius of influence extends to the stream. In other words, the wells located closer to the stream will have a faster and greater impact on streamflow than wells located farther from the stream. Wells pumping greater volumes will have a more significant effect than wells pumping smaller volumes.

Evaluation of Ground-Water Levels

My analysis of ground-water levels in Smith and Mason Valleys indicates significant declines in recent years, especially during dry periods, followed by recovery during wet periods. Increasing ground-water pumping and lowering of water levels near the Walker River undoubtedly cause stream depletion. Lowering of water levels away from the stream will eventually cause stream depletion over time as water level gradients steepen toward surface water sources. Water levels recover during wet years when there is more flow available to replace depleted ground-water aquifers. Many basins in the western U.S. are operated in this manner intentionally (conjunctive use) so that surface water can be captured and stored for later use. Pumping of ground water creates storage space in the aquifer which induces stream depletion, thereby maximizing the long-term water supply in the basin through the use of aquifer storage. This simple physical relationship has been anticipated and recognized in the Walker River basin for many years, as evidenced by USGS and State of Nevada published reports. These reports often refer to a "system yield" which assumes a future (these reports date from the late 1960's and early 1970's) amount of depletion of the Walker River due to ground-water pumping. The problem in the

Walker River watershed is that an overall management plan, which takes into account all water uses and their effects on downstream users, is not in effect.

Published reports for this area and my analyses indicate that the predominant source of water in the Walker River watershed is surface water in the Walker River. The ground water and surface water in the Walker River watershed are connected and predominantly derived from the same source. Therefore, increasing diversion and use of one will affect the other.

Significant Depletion of River Flows Due to Ground-Water Pumping

My review of the geologic maps and my field surveys in Smith and Mason Valleys indicate that they are bounded by bedrock that is relatively impermeable, which distorts a well's radius of influence, focusing it on areas of recharge. The primary source of that recharge is the Walker River which becomes depleted as recharge is induced from the flow of the River to the ground-water system. Stream depletion is presently occurring in Smith and Mason Valleys due to ground-water pumping. Return flows from irrigation using surface and ground water also contribute to recharge, but these waters were originally derived from the River. Pumping from wells also limits surface and ground-water return flows that would otherwise reach the River.

In general, wells located closer to the river will derive most of their water from the River, whereas others farther away may be more dependent on natural recharge, irrigation return flows to ground water, and ground water in storage in the aquifer. Depletion of ground water in storage leads to long-term ground-water level declines which are stabilized by increasing depletion from surface water sources, primarily the Walker River.

A preliminary analysis of Walker River depletion by well pumping based on well test data derived from over 100 drillers logs indicates that, with the presence of bedrock boundaries, wells in Smith and Mason Valleys derive most of their flow from the River if they are located within two miles of it. Wells located at distances from three to six miles from the River derive up to thirty percent of their water from the River. These depletions are significant and have a substantial effect on the amount of flow that reaches the Walker River Indian Reservation (Wabuska Gage).

Recent data collected by the State of Nevada indicate that the amount of ground-water pumping in Smith and Mason Valleys is large relative to the flow of the Walker River at Wabuska, as shown in the following table.

	1994	1995
Surface Inflow	130,200 afy	565,500 afy
Surface Water Diversion	91,400	265,300
Ground-water Pumping	153,500	49,200
Surface Outflow (Wabuska)	20,600	284,000

This table shows that ground-water pumping has affected surface flows of the Walker River in that the difference between surface inflow and outflow cannot be accounted for by surface diversions alone, particularly during a relatively dry year such as 1994. Wet years, such as 1995, cause ground-water levels to increase, indicating the Walker River and some amount of the water diverted for irrigation, recharges the ground-water aquifers that were depleted by pumping from wells during the preceding dry period. Therefore, even during wet years the surface outflow reflects stream depletion caused by ground-water pumping. This effect of delayed stream

depletion after pumping is reduced, or halted altogether, is common to basins with interconnected ground water and surface water.

The State Engineer's Orders

The Nevada State Engineer issued Order #1125 in 1997 restricting ground-water pumping in Mason Valley because ground-water pumping of 149,000 afy exceeded the perennial yield of the valley (25,000 afy) by nearly six times. Because of the hydrologic connection between ground water and surface water, an unavoidable consequence of overdraft pumping in this basin is depletion of surface water. Presently, the source of water being pumped by wells is now primarily surface flows of the Walker River and some portion of surface and ground-water irrigation return flows that no longer reaches the River.

The State Engineer also issued a curtailment order (#1126) in 1997 for pumping of ground water in Smith Valley because pumping was estimated at more than three times the perennial yield of the valley (17,000 afy). Although not specifically stated in these Orders, they appear to address concerns regarding surface and ground-water supplies and over-appropriation of all waters since they comprise a single interdependent source of supply.

The State Engineer has also ordered the monitoring of water levels in selected areas of Smith and Mason Valleys and has published estimates of pumping from the valley aquifers within the Walker River Basin. Selected basins in Nevada were chosen for monitoring in order to identify water level declines for correlation with climatic, streamflow, basin lithology and pumpage data, according to a 1992 Nevada Division of Water Planning report.

Reporting by Others Regarding the Interconnection of Ground Water and Surface Water and Stream Depletion Caused by Pumping

There is considerable discussion regarding the relationship between ground water and surface water and depletion of the Walker River due to ground-water pumping in the Walker River Basin, particularly Smith and Mason Valleys, in the published technical reports by the State of Nevada, the USGS and others. These studies, in large part, support my findings regarding the interconnection between ground water and surface water, and the effects of well pumping on streamflow in the Walker River Basin. A few excerpts from some of these reports are reproduced below.

A report by the USGS on Mason Valley (C.J. Huxel and E.E. Harris, 1969) discusses ground water and surface water interactions. The field work for this report was conducted in the mid-1960's, which is before extensive pumping of ground water for irrigation began in Mason Valley. However, the authors recognized the early effects of ground-water pumping on Walker River flows and outlined a plan for increased pumping in order to induce additional recharge from the River to ground water to increase the "system yield" of Mason Valley. System yield is defined in the report as "the maximum amount of surface and ground water of usable chemical quality that can be obtained economically each year from sources within the system for an indefinite period of time." The report also states:

> Since the introduction of supplemental pumping from the ground-water reservoir in 1959, the hydrologic system in Mason Valley has undergone another change in equilibrium. Although the period of pumping was too short to have caused large effects, continued and increased pumping in future years could cause profound changes, especially in the characteristics of surface-water flow.

In the Summary and Conclusions section of the report the authors state:

> The effects of large scale short-term pumping on river flow could be minimized by placing wells as far from the river as possible. On the other hand, this concept of conjunctive use of surface and ground water also provides for the replenishment of ground water by seepage loss from the river and irrigated fields during wet periods.

Another report prepared for the USGS by P.A. Glancy in 1971 provides insight into ground and surface water interactions in the Antelope Valley and East Walker Area:

> The East and West Walker Rivers receive flow from direct runoff within the report area and also from local ground-water discharge. As river flow passes through the report area, it loses water by natural evapotranspiration, irrigation use, and by local recharge to ground-water reservoirs.

This report also predicts the effects of future increases in ground water pumping on streamflow:

> Ground water is presently a relatively untapped resource of the area, except for a small amount of irrigation along the West Walker River and limited domestic and livestock use in both areas. Therefore, water-resource development in the near future might be expected to consider ground water as a principal source. However, the major ground-water reservoirs have the two rivers flowing across them, and therefore it is doubtful where large-scale ground water development could occur without affecting the presently appropriated flow of these streams.

In the summary section of the report the author states:

> Many areas that show good promise for ground-water development are near the perennial stream channels. There the interrelationships of ground- and surface-water systems might preclude extensive ground-water exploitation because of interference with existing surface-water rights.

A report by the USGS with a focus on Walker Lake (J.M. Thomas, 1995), also discusses the interrelationship between ground-water and surface water in the Walker River Basin:

> The lake is the terminus for all surface-water and ground-water flow in the Walker River Basin....
>
> ***
>
> Streamflow is measured approximately where the principal streams enter and exit each valley. Little ground water flows between valleys, so the difference between streamflow entering and exiting a valley can be used to estimate the consumption of surface water in the valley. Streamflow is consumed by evaporation and transpiration from irrigated crops and pasture land, natural vegetation and water surfaces. River water also recharges ground-water aquifers.

The USGS evaluated the water supply on the Walker River Indian Reservation (Schaefer, 1980). In that study the author states:

> The most important source of ground-water recharge to the Walker River Indian Reservation ground-water system is percolation from the channel of the Walker River. The River is hydraulically connected with the ground-water system, and exchanges of water occur between the two systems. The rate of exchange depends upon the ground-water level adjacent to the river, the permeability of the channel bed, and the stage and width of flow in the channel.

The report also states:

> The situation along the river is such that the more ground water is pumped, the more water enters the system from the river.

In addition to the USGS reports, I reviewed a report prepared by consulting hydrologist T. Meyers (1994) that provided a detailed analysis of the interaction of streamflow and pumping in valleys along the Walker River. The report assesses the effects on surface flows of the Walker River due to changes in agriculture with the advent of large scale ground-water pumping in Mason and Smith Valleys since the decade of the 1950's. The author states:

> The decrease in ground-water elevation between 1986 and 1993 is quite large.... During this period, pumping also removed from the river 101,000 and 60,000 acre-feet from Smith and Mason Valleys, respectively, in addition to surface diversions. The drawdown will be replenished by further reducing river flows in the basin.

In conclusion, my analyses and those of others indicate ground water and surface water are interconnected in the Walker River basin and that ground-water pumping is significantly depleting the flow of the River.

I declare upon penalty of perjury that the foregoing is true and correct.

EXECUTED this 5th day of August, 1998, at San Rafael, California

Peter M. Pyle

SUBSCRIBED and SWORN to before

me this 5 day of August, 1998.

Notary ~~in and for~~ said
County and State Marin, CA

ALI NABIPOUR
Comm. #1158770
NOTARY PUBLIC - CALIFORNIA
MARIN COUNTY
Comm. Exp. Nov. 11, 2001

My commission expires: Nov 11, 2001

ATTACHMENT - NO. 2

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

DRAFT

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit concerning the water rights of the Walker River and its tributaries has been ongoing for many years. As part of that lawsuit, the United States of America, recently filed a FIRST AMENDED COUNTERCLAIM. A copy of the FIRST AMENDED COUNTERCLAIM is attached to this notice. It has been filed in the United States District Court for the District of Nevada and has been assigned docket number: In Equity C-125, Subfile C-125-B. If you (or the entity on whose behalf you are addressed) own or claim a water right to the waters of the Walker River or its tributaries, or to groundwater within the Walker River basin, it is necessary for the United States to serve you with a summons or obtain a waiver of service of summons from you.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the FIRST AMENDED COUNTERCLAIM. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you have been served on the date the waiver is filed, except that you will not be obligated to answer the FIRST AMENDED COUNTERCLAIM before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the United States of America, this ___ day of _____, 1998.

A - Name of individual defendant (or name of officer or agent of corporate defendant)
B - Title, or other relationship of individual to corporate defendant
C - Name of corporate defendant, if any.

DRAFT

Signature of Attorney for the
United States of America

A - Name of individual defendant (or name of officer or agent of corporate defendant)
B - Title, or other relationship of individual to corporate defendant
C - Name of corporate defendant, if any.

ATTACHMENT - NO. 3

DRAFT

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SUMMONS

TO: (A) _____
as (B) _____ of (C) _____

A lawsuit concerning the water rights appurtenant to the Walker River and its tributaries has been ongoing for many years. As part of that lawsuit, the plaintiff-intervenor, Walker River Paiute Tribe, filed a FIRST AMENDED COUNTERCLAIM. A copy of the FIRST AMENDED COUNTERCLAIM is attached to this notice. It has been filed in the United States District Court for the District of Nevada and has been assigned docket number: In Equity C-125, Subfile C-125-B. If you (or the entity on whose behalf you are addressed) own or claim a water right to the waters of the Walker River or its tributaries, or to groundwater in the Walker River Basin, it is necessary for plaintiff-intervenor to serve you with a summons or obtain a waiver of service of summons from you.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the FIRST AMENDED COUNTERCLAIM. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you have been served on the date the waiver is filed, except that you will not be obligated to answer the FIRST AMENDED COUNTERCLAIM before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address in not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the entity on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent on behalf of the plaintiff-intervenor, Walker River Paiute Tribe, this ___day of _____, 1998.

_____
Signature of Plaintiff-Intervenor's Attorney

A - Name of individual defendant (or name of officer or agent of corporate defendant).
B - Title, or other relationship of individual to corporate defendant.
C - Name of corporate defendant, if any.

ATTACHMENT - NO. 4

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I acknowledge receipt of your request that I waive service of a summons in the action of *United States et al. V. Walker River Irrigation District et al.*, which is case number In Equity, C-125, Subproceeding C-125-B in the United States District Court for the District of Nevada. I have also received a copy of the FIRST AMENDED COUNTERCLAIM of the United States of America in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the FIRST AMENDED COUNTERCLAIM of the United States in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served

DRAFT

upon you within 60 days after _____, or within 90 days after
(DATE REQUEST WAS SENT)

that date if the request was sent outside the United States.

_____ _____
DATE SIGNATURE

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

DRAFT

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

ATTACHMENT - NO. 5

DRAFT

WAIVER OF SERVICE OF SUMMONS

TO:_____

I acknowledge receipt of your request that I waive service of a summons in the action of *United States et al. v. Walker River Irrigation District et al.*, which is case number In Equity, C-125, Subproceeding C-125-B in the United States District Court for the District of Nevada. I have also received a copy of the FIRST AMENDED COUNTERCLAIM of Walker River Paiute Tribe in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the FIRST AMENDED COUNTERCLAIM of the Walker River Paiute Tribe in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you with 60 days after _____, or within 90 days after that date if the request was sent outside the United States.

Date:_____

_____
Signature

_____
Printed/Typed Name

As _____ of
(Title)

_____
Corporate Defendant

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on the waiver form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons actually had been served when the request for waiver of service was received.

ATTACHMENT - NO. 6

COPY FOR YOUR INFORMATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE
MAR 20 1990
ROBERT M. MARCH
CLERK

STATE OF NEW MEXICO ex rel.
S. E. REYNOLDS, State Engineer,

Plaintiff,

v.

R. LEE AAMODT, et al.,

Defendants.

No. CIV 6639-M

ORDER ADOPTING PROCEDURES FOR FILING AND SERVING PLEADINGS AND PROVIDING NOTICES OF HEARINGS

The plaintiff State of New Mexico ex rel. S. E. Reynolds by Motion filed February 22, 1990, requested the court to enter an order adopting a procedure for filing and service of pleadings and other legal papers and for providing notice of hearings in this case. Based on the agreement of counsel at the February 23, 1990, status conference with the Special Master and the recommended findings of fact and conclusions of law in the Report of the Special Master, which are hereby adopted by the court,

IT IS HEREBY ORDERED THAT:

The procedures in this Order are adopted in connection with these adjudication proceedings and shall apply to the filing and service of all pleadings and other legal papers and notices of hearings regarding all matters occurring on or after April 1, 1990.

PROCEDURES FOR FILING AND SERVICE OF PLEADINGS AND NOTICE OF HEARINGS

1. Content of Papers Filed with the Court

A. In addition to the requirements for pleadings contained in the Federal Rules of Civil Procedure, all pleadings and other papers shall contain a descriptive summary. The descriptive summary will be placed after the caption and title and before the text of the pleading or other paper.

B. "Descriptive summary" means a short statement in a pleading or other paper filed in this action that states:

i. the nature of the document;

ii. its relationship to any other document; and

iii. the action or relief requested.

C. "Other papers" means any document, other than a pleading, that is filed with the court during the course of this adjudication, including any documents filed with or related to motions.

2. Docket Sheet

A. The attorney for the state shall prepare a docket sheet at the beginning of each month containing the following information:

i. A list of all orders, pleadings and other papers filed during the preceding month listed in chronological order. Each entry on the docket shall contain the complete title of the document, the name of the party or attorney filing the document and a descriptive summary of the document.

ii. A list of hearings and status conferences scheduled for the next three months listed in the order of hearing and including the subject of each hearing and the names of the parties known to be participating in each

hearing, and the agenda, if any, for the status conferences.

B. Any person wishing to receive the monthly docket sheet must request it in writing from the state. The state is directed to maintain a docket sheet mailing list. The state and the United States shall each pay one-half of the cost of copying and mailing the docket sheet.

C. Within five working days after the first of the month the attorney for the state shall file a copy of the docket sheet with the Clerk of the District Court and serve copies on all persons on the docket sheet mailing list.

3. Service of Pleadings and Other Papers

A. A party shall file the original of any pleading or other paper with the Clerk of the District Court.

B. Parties shall serve copies of pleadings and other papers on the following parties or attorneys:

i. Copies to the Special Master, Harl D. Byrd, and his law clerk, Darcy Bushnell.

ii. One copy to Peter Thomas White, counsel of record for the State of New Mexico, at the State Engineer Office, Bataan Memorial Building, Room 101, Santa Fe, New Mexico 87503.

iii. One copy to Herbert A. Becker, counsel of record for the United States of America, at Post Office Box 607, Albuquerque, New Mexico 87103.

iv. One copy each for the following active counsel for the non-Indian defendants: Mark F. Sheridan, P.O. Box 2208, Santa Fe, NM 87504-2208; Peter B. Shoenfeld, P.O. Box 2421, Santa Fe, NM 87504-2421; Neil C. Stillinger, P.O. Box 8378, Santa Fe, NM 87504-8378; and Larry C. White, P.O. Box 787, Santa Fe, NM 87504-0787; and active counsel of record for the Indian Pueblos: Scott E. Borg, P.O. Box 25245, Albuquerque, NM 87125; Peter C.

Chestnut, 405 Grand Avenue, NE, Suite 203, Albuquerque, NM 87102; Donald M. Salazar, P.O. Box 2187, Santa Fe, NM 87504-2187; and William C. Schaab, P.O. Box 1888, Albuquerque, NM 87103.

v. Additionally, one copy shall be served on those parties identified in the pleading from whom relief is sought; however, if relief is sought against a class or group of parties, then service as provided by subsections i through iv of this section is sufficient.

C. Other parties may obtain copies of any pleading or other paper from the state by paying the cost of providing the copies.

4. Motion Practice

A. Hearing date for motions

Unless otherwise ordered by the court or the Special Master, upon the filing of a request for hearing in connection with motions, they will be heard on the last Tuesday of the month of the initial appearance on the docket sheet of the response or reply thereto or the expiration of the time therefore. Any request for a hearing will be given the same procedural treatment as a motion. Any motion physically filed with the court before the expiration of the last working day of a month and received by the state before the expiration of the first working day of the following month will be placed on the docket sheet for the month.

B. Notice of hearings

i. A party requesting a hearing on any matter shall serve a notice of hearing pursuant to section 3.B.

ii. The docket sheet shall constitute notice to all other parties to this proceeding. Any party may receive a copy of the docket sheet by complying with section 2.B.

E.L. MECHEM
Senior District Judge

ATTACHMENT - NO. 7

FILED
AT ALBUQUERQUE
FEB 1 1 1993
ROBERT M. MARCH
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel.
State Engineer,

Plaintiff,

v.

R. LEE AAMODT, et al.,
Defendants,

and

UNITED STATES OF AMERICA,
PUEBLO DE NAMBE,
PUEBLO DE POJOAQUE,
PUEBLO DE SAN ILDEFONSO,
and PUEBLO DE TESUQUE,

Plaintiffs-in-Intervention.

No. 6639 M Civil

ORDER ADOPTING PROCEDURES FOR CORRECTING AND AMENDING SUBFILE ORDERS

The Court adopts the following procedures for amending or correcting subfile orders for clerical or substantive mistakes or omissions.

A. CLERICAL MISTAKES OR OMISSIONS AND PROCEDURES FOR CORRECTION

1. Corrections in Subfile Orders

Corrections in subfile orders include additions or changes in the elements used to describe a water right that do not affect the nature or extent of the water right. [Cf. Fed.R.Civ.P. 60(a).] Corrections in connection with clerical mistakes or omissions in subfile orders can be made for the following reasons, but are not limited to the reasons listed below:

1112

a. Errors in the description of the purpose of use.

b. Errors in the survey description of the point of diversion or the place of use of the water right.

c. Errors in the spelling of a defendant's, current property owner's or water right claimant's name.

d. Incomplete description of the place of use of an irrigation water right because:

i. The section-subdivision description does not include or includes an incomplete quarter-quarter-quarter section description;
ii. Overlapping section-subdivision descriptions were omitted; or,
iii. The land grant name or private claim and parcel numbers were omitted.

e. Incomplete description of the point of diversion of a water right because:

i. The section-subdivision description does not include the quarter-quarter-quarter section description; or,
ii. The X and Y coordinates were omitted.

f. Errors in the ditch name.

g. Errors in the State Engineer Office file number.

The legal descriptions of state law water rights shall include those items identified under paragraphs 1.d and 1.e, **supra**, if appropriate.

2. **Procedures for Correcting Subfile Orders**

The State may file motions that request corrections in two or more subfile orders. The motion and proposed order need not be served on the defendant, current property owner, current water right claimant or successors-in-interest [hereinafter collectively referred to as "claimant(s)"] whose rights are being corrected,

except for motions to correct errors or omissions in subfile orders identified under paragraphs 1.b, 1.d.i, and 1.d.ii, supra. Service of motions, orders and notices required under this paragraph shall be carried out as provided in paragraph B.2 of this order. The Special Master is authorized to sign and enter corrective orders. Notice of corrected water right descriptions will be given to the claimant(s) prior to the entry of the state law partial final decree.

B. SUBSTANTIVE MISTAKES OR OMISSIONS AND PROCEDURES FOR CORRECTION

1. Amendments in Subfile Orders

Amendments in subfile orders may include changes in the elements used to describe a water right that affect the nature or extent of the water right. [Cf. Fed.R.Civ.P. 60(b).] Good cause must be established for such amendments in subfile orders and may be based upon:

a. The incorrect description of a purpose of use.

b. The wrong point of diversion or incorrect priority date of a water right.

c. Errors in the amount of irrigated acreage resulting from:

   i. Inconsistencies between the State Engineer Hydrographic Survey map sheet acreage and the subfile order acreage;
   ii. Omissions of historically irrigated tracts from the hydrographic survey; or,
   iii. An incorrect point of diversion having been adjudicated for irrigated acreage that should have been adjudicated under a different subfile.

2. **Procedures for Amending Subfile Orders**

The State or claimant(s) must file separate motions for each subfile order for which an amendment is required. The motion and proposed order shall be served by mail to the last known address of the claimant(s) and their counsel of record, if any.

The State will base the current ownership of a water right upon its existing mailing lists as supplemented by lists provided by counsel representing Non-Pueblo Defendants and claimant(s), information gathered during field checks, and other information available to the State. The State will coordinate this information with the Court's data manager who will create an ownership database and inform the State of errors and omissions therein, when appropriate.

The State, if a motion is filed by claimant(s), or claimant(s), if a motion is filed by the State, shall have thirty [30] days after a motion is served within which to file an objection(s) to the form or content of the proposed amendment to the subfile order. Other parties reserve the right and may object to the form or content of an amended subfile order(s) at the inter se phase of these proceedings.

The Special Master may enter an order granting motions filed, as aforesaid, if no objections opposing the motion are filed. If objections are filed, as aforesaid, the Special Master may hear evidence or legal argument on the motion and report recommendations to the Court.

C. CORRECTIONS OF ERRORS IN THE HYDROGRAPHIC SURVEY MAPS

Any errors in the hydrographic survey maps that do not require an amendment or correction in a subfile order may be corrected by the State provided that the State files and serves advance notice of corrections on persons claiming water rights under the subfile order or their counsel, if any, allowing time for the claimant(s) to file appropriate objections.

IT IS SO ORDERED.

SENIOR UNITED STATES DISTRICT JUDGE

RECOMMENDED FOR ENTRY:

Harl D. Byrd, Special Master