FILED
99 JAN 22 AM 9:42
LANCE S. WILSON
CLERK
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 NO. C-125-ECR SUBFILE C-125-B **UNITED STATES' AND WALKER RIVER PAIUTE TRIBE'S JOINT REPLY REGARDING THEIR 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**

Alice E. Walker
Scott B. McElroy
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302
303/442-2021

Kelly R. Chase
P.O. Box 2800
Minden, NV 89423
702/782-5110

Attorneys for the WALKER RIVER PAIUTE TRIBE

Kathryn E. Landreth, United States Attorney
100 West Liberty St., Suite 600
Reno, NV 89509
702/784-5439

Susan Schneider
United States Department of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, CO 80202
303/312-7308

Hank Meshorer, Special Litigation Counsel
United States Department of Justice
Environment & Natural Resources Division
Ben Franklin Station
P.O. Box 7397
Washington, D.C. 20044-7397
202/616-9643

Attorneys for the UNITED STATES OF AMERICA

72

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. INTRODUCTION 3

II. THE PRESENTLY PENDING REQUESTS TO MODIFY THE 1936 DECREE ARE WITHIN THE COURT'S CONTINUING JURISDICTION 6

A. THE UNITED STATES AND TRIBE HAVE SHOWN A CONFLICT BETWEEN SURFACE WATER AND GROUNDWATER USE 7

B. THE TRIBE'S AND THE UNITED STATES' ADDITIONAL CLAIMS ARE NOT GROUNDS FOR A NEW LAWSUIT 10

C. IT IS INAPPROPRIATE TO CONSIDER THE MERITS OF THE TRIBE'S AND THE UNITED STATES' CLAIMS FOR ADDITIONAL WATER BEFORE COMPLETION OF SERVICE OF THE FIRST AMENDED COUNTERCLAIMS 14

III. SERVING GROUNDWATER USERS IS APPROPRIATE AT THIS TIME 20

A. FEDERAL RULE OF CIVIL PROCEDURE 19 REQUIRES JOINDER OF THE GROUNDWATER CLAIMANTS. 20

1. The Present Parties Cannot Obtain Complete Relief Without Joinder of the Groundwater Claimants 21

2. The Tribe's and United States' Additional Claims to Water Will Affect the Rights of Groundwater Claimants in the Basin 22

B. ESTABLISHMENT OF A PROCESS FOR SERVICE OF PLEADINGS IS APPROPRIATE NOW. 25

C. THE TRIBE AND THE UNITED STATES DO NOT WISH TO RELY UPON MINERAL COUNTY'S SERVICE EFFORTS AT THIS TIME 25

IV. CONCLUSION 26

CERTIFICATE OF SERVICE 29

TABLE OF AUTHORITIES

Page

Cases

Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983) 12-14, 24

Cappaert v. United States, 426 U.S. 128 (1976) 10, 13, 14

Colorado River Water Conservation Dist. v. United States,
424 U.S. 800 (1976) 12, 14, 24

Conley v. Gibson, 355 U.S. 41 (1957) 16

County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985) 20

Hammond v. Clayton, 83 F.3d 191 (7th Cir. 1996) 22

Hurley v. Abbott, 259 F. Supp. 669 (D. Ariz. 1966) 24

Makah Indian Tribe v. Verity, 910 F.2d 555 (9th Cir. 1990) 21, 22, 24

Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S 102 (1968) 16, 20, 22, 24

Rickey Land & Cattle Co. v. Miller & Lux, 218 U.S. 258 (1910) 11

United States v. Ahtanum Irrigation Dist., 236 F.2d 321 (9th Cir. 1956),
cert. denied, 352 U.S. 988 (1957) 20

United States v. Cappaert, 508 F.2d 313 (9th Cir. 1974) aff'd, 426 U.S. 128 (1976) 13, 14

Winters v. United States, 207 U.S. 564 (1908) 13, 14, 20

Statutes and Treaties

IDAHO CODE § 42-1406A 12

Miscellaneous

FED. R. CIV. P. 4 . . . . . 7, 16, 18, 19

FED. R. CIV. P. 7(a) 19

FED. R. CIV. P. 7(b) 19

FED. R. CIV. P. 12(e) 19

FED. R. CIV. P. 19 21

Alice E. Walker
Scott B. McElroy
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302
303/442-2021

Kelly R. Chase
P.O. Box 2800
Minden, NV 89423
702/782-5110

Attorneys for the WALKER RIVER PAIUTE TRIBE

Kathryn E. Landreth
United States Attorney
100 West Liberty St., Ste. 600
Reno, NV 89509
702/784-5439

Susan Schneider
United States Department of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, CO 80202
303/312-7308

Hank Meshorer, Special Litigation Counsel
United States Department of Justice
Environment & Natural Resources Division
Ben Franklin Station
P.O. Box 7397
Washington, D.C. 20044-7397
202/616-9643

Attorneys for the UNITED STATES OF AMERICA

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 REPLY REGARDING THEIR 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 file this joint reply regarding the *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 (Aug. 19, 1998) ("Joint Motion"). Pursuant to the parties' stipulation, the United States and Tribe timely file this reply on January 22, 1999. *Stipulation and Order for Extension of Time for the United States and the Walker River Paiute Tribe to File a Joint Reply to the Responses Regarding the First Amended Counterclaims* at 2 (Dec. 1, 1998).

The following parties have filed the following responses: *Walker River Irrigation District's Points and Authorities in Support of Motion for Scheduling and Planning Conference and in Response to 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 for [sic] Pleadings Once Parties Are Joined* (Nov. 9, 1998) ("District Response"); *Response to the 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 and Motion for Scheduling Planning Conference and Points and Authorities Supporting the Same* (Nov. 9, 1998) ("USBWC Response"); *California State Water Resources Control Board's Response to 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* (Nov. 6, 1998) ("California Response"); and *State of Nevada's Response to United States' and Walker River Paiute Tribe's Joint Motion for Leave to Serve First Amended Counterclaims to Join Ground-water Users, to Approve Forms for Notice and Waiver, and to Approve Procedure for Service of Pleadings Once Parties Are Joined; and, Motion for More Definite Statement* (Nov. 5, 1998) ("Nevada Response"). The United States and the Tribe herein reply to the above responses.

I. INTRODUCTION

This case is about the single body of water that forms the Walker River Basin. In 1936, the Court entered its *Decree* (Apr. 14, 1936), as amended, *Order for Entry of Amended Final Decree to Conform to Writ of Mandate Etc.* (Apr. 24, 1940) ("1936 Decree"), addressing certain rights to the use of waters in the Walker River and its tributaries. At that time, the Court established its continuing jurisdiction over "changing the duty of water or for correcting or modifying this decree; also for regulatory purposes, including a change of the place of use of any water user . . . ." Id. ¶ XIV. Over the years, as scientific and technical knowledge of the Basin has advanced, it has become increasingly clear that the water in the ground and water on the surface in the Basin are hydrologically connected. Thus, it is only logical that claims involving groundwater use in the Basin now come before the Court because groundwater use affects the rights that the 1936 Decree determined, as well as the additional rights that the Tribe and the United States now claim.

Accordingly, on July 31, 1997, the Tribe and the United States filed the *First Amended Counterclaim of the Walker River Paiute Tribe* (July 31, 1997) ("Tribe's 1st Amended Counterclaim"), and the *First Amended Counterclaim of the United States of America* (July 31, 1997) ("U.S. 1st Amended Counterclaim"). The amended counterclaims assert claims to additional water for the benefit of the Tribe for use on the Walker River Indian Reservation ("Reservation"). The United States has asserted additional claims on behalf of the Yerington Paiute Tribe, the Bridgeport Paiute Indian Colony, several allotments, and other federal interests throughout the Walker River Basin. See Joint Motion at 4 (listing additional federal claims). With respect to the Tribe and the Reservation, the Tribe and the United States request additional surface water rights and rights to use groundwater underlying and adjacent to the Reservation.

None of the other parties to these proceedings has filed an answer to either of the amended counterclaims.

On August 19, 1998, the Tribe and the United States filed the Joint Motion in which they request an order from the Court allowing them to serve groundwater claimants, in addition to surface water claimants, with their amended counterclaims. The rationale underlying the request is twofold. First, the Tribe and the United States have asserted the right to extract groundwater underlying and adjacent to the Reservation. Id. at 4-5. Second, the Tribe and the United States assert that groundwater and surface water are hydrologically connected such that joinder of groundwater claimants is necessary "to determine the relative rights of those claimants who are claiming water from the same source . . . ." Id. at 5. The Joint Motion expressly states that, "[e]ven 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." Id. at 6.

The Tribe and the United States attached the *Affidavit of Peter M. Pyle* (Aug. 5, 1998) ("Pyle Affidavit"), to the Joint Motion supporting the claims of hydrologic connectivity. None of the other parties to these proceedings has filed any responsive expert affidavit. Indeed, all that the District, Nevada and California present is legal interpretation of the facts without providing any factual support. As a result, the expert testimony that the Pyle Affidavit presents is uncontested.

The District, Nevada and California all miss the point of the Joint Motion's request to include groundwater claimants in service of process, and instead confuse the Joint Motion's procedural request with actual adjudication of the Tribe's and the United States' additional claims to water in the Walker River Basin. The Joint Motion seeks the Court's permission to serve groundwater users because groundwater pumping in the Walker River Basin depletes the surface

water flow in the Walker River. The depletion of surface flow extends to groundwater as the surface flow is the primary source of groundwater recharge in the Basin, particularly within the Reservation. The District, Nevada and California not only fail to acknowledge the effect of stream depletion due to groundwater pumping, they fail to provide any evidence that contradicts it.

Moreover, the District and Nevada have adopted a stance that is at odds with the position they have pursued aggressively with respect to Mineral County's motion to intervene in these proceedings on behalf of Walker Lake. The District and Nevada have argued repeatedly in the C-125-C subproceedings that they oppose any consideration of the merits of Mineral County's motion to intervene until completion service of its intervention papers on all water rights claimants who Mineral County's water right claim could affect. With respect to the Tribe's and the United States' motion to serve groundwater users along with surface water users in the Basin, however, the District and Nevada have raised questions going to the merits of the claims for additional water even before service has begun. Such inconsistency to suit the moment is merely an effort to delay the eventual consideration of the Tribe's and the United States' claims that may affect current upstream water uses.

The Tribe and the United States have made additional claims to surface water and the groundwater underlying and adjacent to the Reservation, and with respect to the United States, underlying and adjacent to other tribal and federal enclaves in the Walker River Basin. The Tribe's and the United States' claims, and the prima facie demonstration of the hydrologic connection between surface water and groundwater in the Pyle Affidavit, are sufficient to invoke the Court's continuing jurisdiction over the subject matter of these proceedings. For the reasons

set forth herein and in the Joint Motion, the Court should reject the contentions of the District, Nevada and California and grant the Joint Motion.

II. THE PRESENTLY PENDING REQUESTS TO MODIFY THE 1936 DECREE ARE WITHIN THE COURT'S CONTINUING JURISDICTION

As a threshold matter, the Court has continuing jurisdiction over the waters of the Walker River and its tributaries in the Walker River Basin based upon the rights it adjudicated in the 1936 Decree. Over the years, various parties have brought requests to "correct[] or modify[] this decree; also for regulatory purposes, including a change of the place of use of any water user . . . ." 1936 Decree ¶ XIV. As the Court held more recently,

> the East Walker River and West Walker River and Main Walker River are interstate streams that have been previously adjudicated by this Court; [and]
>
> That pursuant to said adjudication, this Court has continuing and exclusive jurisdiction over the waters of the East Walker River, West Walker River and Main Walker River in the State of California and State of Nevada.

Order Regarding Petition for Instructions Regarding Use of Waters of East Walker River to Generate Hydro-Power at 3 (July 1, 1985). None of the parties contests the Court's continuing jurisdiction. See District Response at 5 (describing Court's sole jurisdiction over 1936 Decree).

Instead, the District attempts to characterize the instant proceedings in which various parties have asserted claims to water in addition to the rights the Court adjudicated in the 1936 Decree[1] as separate and distinct from the proceedings that resulted in the 1936 Decree. District

---

[1]Mineral County, Nevada, has also asserted additional claims to water in the Walker River Basin for the benefit of Walker Lake. It is worth noting that the depletion of surface water flow in the Walker River resulting from groundwater pumping upstream reduces the availability of surface water that flows into Walker Lake, just as that same activity reduces the amount of surface water that flows into the Reservation. See Pyle Affidavit at 4 ("Depletion of ground

Response at 18 n.6 (disputing that the instant proceedings are a continuation of those that resulted in the 1936 Decree). In so doing, however, the District ignores the two fundamental issues presented by the Tribe's and the United States' claims for additional water: 1) whether their claims affect the activities of groundwater claimants upstream from the Reservation; and 2) whether the activities of upstream groundwater claimants affect the Tribe's and the United States' claims.

The District's, Nevada's and California's arguments are, then, merely an attempt to avoid that which they cannot dispute -- that this Court has jurisdiction over all claims to water that affect the rights it adjudicated in 1936. They also attempt to reach the merits of the Tribe's and the United States' additional claims to water before the Tribe and the United States have complied with the procedural requirements of the Court's orders and FED. R. CIV. P. 4. The result of such attempts is to further delay the Court's eventual consideration, after procedural compliance with FED. R. CIV. P. 4, of the merits of the Tribe's and the United States' claims, during which delay upstream water users can continue to use surface water and groundwater without challenge.

A. THE UNITED STATES AND TRIBE HAVE SHOWN A CONFLICT BETWEEN SURFACE WATER AND GROUNDWATER USE.

As the District points out, the Court previously has considered whether the Tribe and the United States must serve groundwater claimants as well as surface water claimants with their counterclaims pursuant to FED. R. CIV. P. 4. In its *Order* (July 8, 1994), the Court found that joinder of groundwater claimants was not necessary at that time for two reasons. First, the Court

---

water in storage [in underground aquifers] leads to long-term ground-water level declines which are stabilized by increasing depletion from surface water sources, primarily the Walker River.").

found that "[t]he U.S. never plainly state[d] that it is seeking groundwater rights. . . . A possible future claim by the U.S. and/or the Tribe to groundwater rights is not sufficient to justify current joinder into this litigation of all groundwater claimants in the Walker River basin." Id. at 5-6. However, the Court continued: "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 . . . ." Id. at 6. That time has come, since the Tribe and the United States both include claims to groundwater in their first amended counterclaims. Tribe's 1st Amended Counterclaim ¶¶ 3, 6, 15, 22, Prayer for Relief ¶¶ 1(C), (D); U.S. 1st Amended Counterclaim ¶¶ 4, 15, 17-19, 21, 26, 32, 38, 46, 47, 50, 56, 58, 59, 65, 66, 69, 70. Thus, the United States and the Tribe have satisfied the first criteria the Court identified for including groundwater claimants in service of their first amended counterclaims.

Second, the Court held that service of groundwater claimants was not appropriate because the United States and the Tribe did not "indicate that there is any current conflict between surface and ground water claimants." *Order* at 11 (July 8, 1994). The Court sought more than mere speculation "that groundwater withdrawal on reservation lands will affect other groundwater claimants . . . ." Id. at 6. The Tribe and the United States have heeded the Court's order by submitting the Pyle Affidavit with their Joint Motion.

Mr. Pyle's affidavit makes a prima facie showing that groundwater and surface water are hydrologically connected in the Walker River Basin, and goes on to demonstrate, relying upon various studies by entities such as the Nevada State Engineer, the United States Geological Survey, and independent analysts, that extraction of groundwater conflicts with the availability of surface water in the Walker River and its tributaries. Pyle Affidavit at 3 ("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, wells located closer to the

stream will have a faster and greater impact on streamflow than wells located farther from the stream."); id. ("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."); id. at 4 ("The primary source of [groundwater] recharge [in Smith and Mason Valleys] 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."); id. at 5 ("These depletions [from groundwater pumping in Smith and Mason Valleys] are significant and have a substantial effect on the amount of flow that reaches the Walker River Indian Reservation (Wabuska Gage)."); id. at 6 (noting the Nevada State Engineers' groundwater pumping curtailment orders when groundwater pumping exceeded perennial yield, and its groundwater level monitoring in Smith and Mason Valleys); id. at 7 ("'continued and increased pumping in future years could cause profound changes, especially in the characteristics of surface-water flow.'" (quoting C.J. Huxel and E.E. Harris, U.S.G.S. (1969))). In short, the Pyle Affidavit demonstrates a clear conflict between surface water and groundwater use in the Walker River Basin.

The District's argument, in which California and Nevada join, that the Pyle Affidavit and the Tribe's and the United States' first amended counterclaims fail to "provide information which satisfies the Court's requirement of specific allegations that the claimed right to additional water from the Walker River will result in competition between surface water and groundwater claimants," falls short. District Response at 12. See also Nevada Response at 5-6; California Response at 5. The Pyle Affidavit clearly sets forth the required conflict between surface water and groundwater use, as the following table demonstrates:

	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

Pyle Affidavit at 5. This data plainly shows that the amount of groundwater pumping in the Smith and Mason Valleys is "large relative to the flow of the Walker River at Wabuska . . . ," near the River's entrance to the Reservation. Id. Moreover, the table shows that in both wet years and dry years, the surface outflow reflects stream depletion caused by groundwater pumping. Id.

Thus, the Tribe and the United States have made a sufficient showing -- and have not "merely speculated" -- that surface water and groundwater in the Walker River Basin form a common source of water, and the use of one type of water will affect the availability of the other. Rather, it is the District, Nevada and California that have offered no evidence other than their own speculations. None of the opposing parties has presented evidence to contest the specific allegations of the Pyle Affidavit or the sources upon which it relies. Thus, the Tribe and the United States have made the requisite showing that within the Walker River Basin, "'[g]roundwater and surface water are physically interrelated as integral parts of the hydrologic cycle.'" Cappaert v. United States, 426 U.S. 128, 142 (1976) (quoting C. CORKER, GROUNDWATER LAW, MANAGEMENT AND ADMINISTRATION, NATIONAL WATER COMM'N LEGAL STUDY NO. 6 at xxiv (1971)). The Court should, therefore, grant the Joint Motion.

B. THE TRIBE'S AND THE UNITED STATES' ADDITIONAL CLAIMS ARE NOT GROUNDS FOR A NEW LAWSUIT.

Nowhere in the Court's July 8, 1994 order did it hold that groundwater claims, or claims that groundwater use conflicts with surface water availability, are outside the Court's jurisdiction

or these proceedings. Yet, the District, Nevada and California paint the Court's prior ruling as excluding service of groundwater claimants and requiring any consideration of groundwater claims, or claims of surface-groundwater conflict, in the Walker River Basin be in "new litigation." District Response at 8 (citing *Order* at 10-11 (July 8, 1994)). See also id. at 14 ("the Court's continuing jurisdiction does not apply to groundwater."); California Response at 3 (citing *Order* at 6-8 (July 8, 1994)); Nevada Response at 5 (citing *Order* at 5 (July 8, 1994)). The District also implies that consideration of groundwater claims in the Walker River Basin should be in "new litigation" because the Tribe and the United States have relied upon "jurisdictional bases [that] afford grounds for jurisdiction over new actions." District Response at 11 (citing 28 U.S.C. §§ 1331, 1345, 1362). See also id. at 14 (citing 28 U.S.C. § 1367).

Contrary to these assertions, the Court acknowledged that joinder of groundwater claimants may become necessary in these proceedings. *Order* at 9 (July 8, 1994). Indeed, the Court has long recognized that, "[f]ull justice cannot be done and anomalous results avoided unless all the rights of the parties before the court in virtue of the jurisdiction previously acquired are taken in hand." Rickey Land & Cattle Co. v. Miller & Lux, 218 U.S. 258, 262 (1910) (emphasis added) (affirming this Court's determination that all claims to water from the Walker River should be tried in the Federal District Court for Nevada, Miller & Lux v. Rickey, 146 F. 574, 584 (C.C. Nev. 1906)). Furthermore, the United States Supreme Court has held that as a general rule all rights to water should be adjudicated in the same forum:

> The clear federal policy . . . is the avoidance of piecemeal adjudication of water rights in a river system. This policy is akin to that underlying the rule requiring that jurisdiction be yielded to the court first acquiring control of property, for the concern in such instances is with avoiding the generation of additional litigation through permitting inconsistent dispositions of property. This concern is heightened with respect to water rights, the relationships

> among which are highly interdependent. Indeed, we have recognized that actions seeking the allocation of water essentially involve the disposition of property and are best conducted in unified proceedings.

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 819 (1976) (citing Pacific Live Stock Co. v. Oregon Water Bd., 241 U.S. 440, 449 (1916)). Accord Arizona v. San Carlos Apache Tribe, 463 U.S. 545, 569 (1983) (where the federal court suit "is well enough along" then it alone should proceed to adjudicate all rights to water in a river system in order to avoid "a waste of judicial resources and an invitation to duplicative effort." (citing Colorado River, 424 U.S. at 820; Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 16 (1983)).

The Court acquired jurisdiction over all water within the Walker River Basin on July 3, 1924. 1936 Decree at 4. In light of the Tribe's and United States' claims to groundwater, as well as the showing supported by the Pyle Affidavit that groundwater use conflicts with surface water use, it is fully consistent with the Supreme Court's precedent that the Court grant the Joint Motion. In so doing, it should consider "all the rights of the parties," including rights to use groundwater, so that it may accord them "full justice" and avoid "piecemeal litigation." See *Order* at 8 (May 17, 1988) (noting congressional policy that "water rights should be adjudicated in one forum, and piecemeal litigation should be avoided . . . .") (citations omitted).

The District, Nevada and California argue that under Nevada and California law, state courts treat groundwater and surface water separately,[2] and the decision to treat them separately

---

[2]Other states, such as Idaho, recognize the hydrologic connection between surface and groundwater and adjudicate both in their general stream adjudications. See, e.g., IDAHO CODE § 42-1406A ("Effective management in the public interest of the waters of the Snake River Basin requires that a comprehensive determination of rights of all surface and groundwater from that system be determined.").

is relegated to the state legislatures. District Response at 12; Nevada Response at 3 nn. 1-4; California Response at 2-3 n.1. That Nevada and California laws treat the administration of groundwater and surface water separately does not determine the scope of federal reserved rights to water on behalf of an Indian tribe or other federal interests. The United States Supreme Court has held repeatedly that federal law alone is determinative of federal reserved water rights. See San Carlos Apache Tribe, 463 U.S. at 571 (the court adjudicating Indian water rights has "a solemn obligation to follow federal law."); Cappaert, 426 U.S. at 138 ("the [federal reserved rights] doctrine applies to Indian reservations and other federal enclaves, encompassing water rights in navigable and nonnavigable streams." (citations omitted)).

This Court, too, considered and rejected the effect of state law treatment of groundwater in this matter:

> The requirements and procedures of state law are however, inapplicable in this action. As the Supreme Court reaffirmed in Cappaert v. United States, 426 U.S. 128, 145 (1975), a federal implied-reservation-of-water-rights and federal water rights in general "are not dependent upon state law or state procedures [.]" . . . The Court also held that the doctrine applies to both surface and underground supplies of water. Id. at 142-43.

Order at 8 (July 8, 1994).[3] State law simply has no role in the resolution of the issue whether the Tribe and the United States are entitled to groundwater in addition to surface water in order to satisfy the purposes for which the tribal and other federal enclaves were set aside. See Winters v. United States, 207 U.S. 564, 577 (1908); Cappaert, 426 U.S. at 142-43. As the Ninth Circuit

---

[3]The District and California take issue with the definition of "groundwater claimant," arguing that the Tribe and the United States have not defined the term adequately either with respect to Nevada or California law. District Response at 8; California Response at 2-3 n.1. For purposes of federal law, the term is "synonymous[] with 'underground water.'" United States v. Cappaert, 508 F.2d 313, 315 n.1 (9th Cir. 1974), aff'd, 426 U.S. 128 (1976).

succinctly stated, "state water laws do not apply to 'reservations' -- lands withdrawn from the public domain." United States v. Cappaert, 508 F.2d 313, 320 (9th Cir. 1974) (citation omitted), aff'd, 426 U.S. 128 (1976). With respect to the Tribe, there is only one perennial stream on the Reservation -- the Walker River. The majority of the Reservation lands are "arid and, without irrigation . . . practically valueless . . . ." Winters, 207 U.S. at 576. Surface water, combined with additional groundwater, will enable the Tribe to obtain value from those lands, thereby satisfying the purposes of the Reservation, and federal law alone controls the adjudication of the Tribe's and the United States' rights to surface water and groundwater.[4]

C. IT IS INAPPROPRIATE TO CONSIDER THE MERITS OF THE TRIBE'S AND THE UNITED STATES' CLAIMS FOR ADDITIONAL WATER BEFORE COMPLETION OF SERVICE OF THE FIRST AMENDED COUNTERCLAIMS.

The District attempts to argue the merits of the Tribe's and the United States' prima facie showing that there is a hydrologic connection between groundwater and surface water in the Walker River Basin. The District argues that the Pyle Affidavit does not differentiate among the sources of water for wells, account for plant consumption, or provide information regarding the extent to which groundwater pumping will affect stream flows. District Response at 10. The District asserts that the Pyle Affidavit does not analyze competition among groundwater

---

[4]The District and Nevada argue for consideration of groundwater claims separately from surface water claims, because "the Nevada State Engineer has adequate authority to proceed with one or more groundwater adjudications and, if necessary, to join the Tribe and the United States." District Response at 14 (citing NEV. REV. STAT. §§ 534.100, 533.090-533.320). See also Nevada Response at 3 n.1. This argument begs the question whether the Tribe's and the United States' claims to additional water will have an impact upon groundwater claimants. In any event, the Court acquired jurisdiction over the adjudication of rights to use water in the Walker River Basin in 1924, the Court has been intimately involved in such adjudication since that time, and no state court has ever commenced a parallel adjudication of such rights that could threaten inconsistent dispositions of a single body of water. Colorado River, 424 U.S. at 818-19; San Carlos Apache Tribe, 463 U.S. at 569. There simply is no argument for state jurisdiction over the Tribe's and the United States' claims for additional water.

claimants. Id. at 11. The District concludes that "[w]ithout such specific allegations, the assertion that surface water and groundwater users are or will be in competition for waters comprising a single res is speculative and insufficient to require joinder under Rule 19 of groundwater claimants located in the Walker River Basin." District Response at 12. Nevada posits that the Court must answer myriad questions that go to the merits of the Tribe's and the United States' claims to groundwater before it considers whether the Tribe and the United States should serve groundwater claimants in addition to surface water claimants. Nevada Response at 3. California argues that there is no "nexus" between the Pyle Affidavit and "each of the U.S. and Tribe's claims." California Response at 6.

In the first place, the District, Nevada and California have failed to read the Pyle Affidavit carefully. The Pyle Affidavit identifies the source of water for wells: "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 storage in the aquifer." Id. at 4. The Pyle Affidavit accounts for plant consumption: "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 . . . phreatophytes . . . ." Id. at 1. And the Pyle Affidavit more than adequately analyzes the effect groundwater pumping has upon stream flows:

> [T]he 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.

Id. at 5.

In the second place, the District, Nevada and California have blurred the distinction between notice pleading and discovery. As the Supreme Court has pointed out:

> [T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Conley v. Gibson, 355 U.S. 41, 47 (1957) (quoting FED. R. CIV. P. 8(a)(2)). The purpose of pleading is to provide notice to the defendant. The first amended counterclaims accomplish that purpose. In addition, the Tribe and the United States have made a prima facie showing of fact that there is a hydrologic connection between groundwater and surface water in the Joint Motion. If the District, Nevada, California and groundwater users dispute factual matters, they can do so after the Court deems that service is complete and it becomes time to address the merits of the amended counterclaims. The groundwater claimants, on the other hand, are not yet aware that their interests may be at stake because they are not yet parties to these proceedings. Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S 102, 111 (1968) ("a court . . . should, on its own initiative, take steps to protect the absent party who of course had no opportunity to plead and prove his interest . . . ."). The real risk in this case is that the groundwater claimants will not be made aware of these proceedings, when their interests will be affected by, and may affect, the nature of the rights at issue here.

The Court already has ruled that consideration of the merits of the Tribe's and the United States' additional claims to water is premature unless and until the Tribe and the United States serve, consistent with FED. R. CIV. P. 4, all water claimants who may be affected by the additional claims to water:

> In this case the Tribe and the United States want the Court to recognize additional water rights for the Tribe and integrate these rights into the Decree. Such a recognition might have the effect of reducing the water allocated to other federal rights holders or altering the priority which their allocation is given. Such a recognition may also give the Tribe's newly recognized rights priority over claimants who acquired their rights through a state permit. Thus, the claimants to the water of the Walker River clearly have an interest in the action.
>
> . . . .
>
> In accordance with Rule 19, all claimants to the water of the 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 the Walker River and its tributaries.

Order at 5-6 (Oct. 27, 1992).

The Court has issued similar orders respecting Mineral County's attempt to intervene in these proceedings in order to claim a water right for Walker Lake. *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County* at 2-3 (Feb. 9, 1995) (requiring Mineral County to serve all claimants who could be affected by its claims to water for Walker Lake); *Order* at 3-4 (June 2, 1998) (requiring showing of individualized due diligence in service of process in order to provide claimants affected by Mineral County's water rights claims notice and a chance to object). The District and Nevada have urged the Court to make such rulings:

> The Court cannot grant effective preliminary or permanent relief on the merits only with respect to Walker River Claimants who are properly served. If and when there is a decision on the request for preliminary relief or for permanent relief on the merits, it will be essential for the [C]ourt to have jurisdiction to render a valid order

> or judgment which binds all water right claimants. On a river system, an order or judgment which did anything less would result in chaos.

Response to Motion for Publication and Pre-Hearing Report of the Walker River Irrigation District at 3 (Apr. 28, 1998). Accord *Walker River Irrigation District's Reply to Walker River Paiute Tribe's Response and Mineral County's Opposition to Motion to Vacate Schedule; and Opposition to Mineral County's Countermotion for Sanctions* at 13 (July 25, 1995) ("the District has a vital interest in ensuring that Mineral County effects proper service so that all Walker River Water Claimants are properly joined in this matter and that any final judgment entered by the Court is binding on all affected persons."); Nevada Response at 4 (citing *State of Nevada's Preliminary Threshold Motions re Dismissal of Counterclaims, Additional Parties and Service of Process* at 3-8 (Aug. 3, 1992)); *State of Nevada's Response to Mineral County's Motion for Order of Publication (Second Request)* at 2-3 (Apr. 28, 1998). Yet with respect to the Tribe's and the United States' amended counterclaims, the District and Nevada have argued that the Court should consider issues going to the merits of the Tribe's and the United States' additional claims for water before they have served those water rights claimants whose rights may be affected by the additional claims to water. The Court should not sanction such inconsistent behavior.

The District's, Nevada's and California's claims of inadequacy in the Tribe's and the United States' first amended counterclaims are inapposite. The Court has held and reiterated that it will not consider or allow the parties to brief the merits of claims for additional water that will alter the 1936 Decree until all claimants whose water rights may be affected by such additional claims are parties to these proceedings, that is, served according to FED. R. CIV. P. 4. See, e.g., *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to*

Intervene of Mineral County at 4 (Feb. 9, 1995) (ordering that parties should not respond to Mineral County's intervention documents until the Court so orders upon completion of service). The Court should, therefore, disregard the District's arguments in its Section II(G), on pages 8 to 11 of its Response, and Nevada's arguments in its Section I, page 3, because the issues they raise in those sections are not ripe at this time.[5]

Nevada has included a Motion for More Definite Statement in its responsive brief, arguing that the Tribe and the United States have not done enough "for Nevada as well as other current or potential parties to formulate a proper response." Nevada Response at 2. Nevada, like the District, attempts to go beyond the procedural nature of -- and the discrete issue raised by -- the Joint Motion and argues that the Tribe and the United States must delve into the merits of their claims for additional water. Id. at 3. Not only does Nevada's position contravene the Court's order requiring the Tribe and the United States to complete service of process pursuant to FED. R. CIV. P. 4 before consideration of the merits of their claims may take place, it also disregards the requirements of notice pleading, which the Tribe and the United States have satisfied. The Court should, therefore, deny Nevada's Motion for More Definite Statement. The Joint Motion is sufficiently definite.[6]

---

[5]Appointment of a special master, as the District suggests, District Response at 15, would be particularly untimely as the factual merits of the Tribe's and the United States' claims for additional water cannot be considered before completion of service.

[6]In fact, the availability of a motion for more definite statement under FED. R. CIV. P. 12(e) is very limited. As an initial matter, a Rule 12(e) motion is limited to "a pleading to which a responsive pleading is permitted . . . ." The Federal Rules of Civil Procedure distinguish between a "pleading," FED. R. CIV. P. 7(a), and a "motion," FED. R. CIV. P. 7(b). Thus, Rule 12(e) does not apply to the Joint Motion because it is not a "pleading" within the meaning of the Rules.

The District notes that no one has ever brought an action in this Court "alleging that groundwater pumping was depleting surface water rights recognized by the Decree." District Response at 8 n.1. The District appears to imply that because no one has raised this issue in prior pleadings, the Tribe and the United States somehow are foreclosed from making such claims now. It is well-settled, however, that Indian property rights, including those to water, may not be lost through non-use, adverse possession, statutes of limitation, laches, acquiescence or otherwise. County of Oneida v. Oneida Indian Nation, 470 U.S. 226, 236-48 (1985); Winters, 207 U.S. at 576-77; United States v. Ahtanum Irrigation Dist., 236 F.2d 321, 334 (9th Cir. 1956), cert. denied, 352 U.S. 988 (1957). See *Order* at 6 (June 2, 1998) ("this action . . . is essentially one to quiet title to property."(footnote omitted)); *Minutes of the Court* at 2 (Apr. 1, 1997) (this "is an action the subject of which is real property."). The fact that until now no one has ever alleged a hydrologic connection between surface water and groundwater in this matter, therefore, is irrelevant to the Tribe's and the United States' claims.

III. SERVING GROUNDWATER USERS IS APPROPRIATE AT THIS TIME

A. FEDERAL RULE OF CIVIL PROCEDURE 19 REQUIRES JOINDER OF THE GROUNDWATER CLAIMANTS.

Before the Court is uncontested expert testimony demonstrating a hydrologic connection between surface water and groundwater in the Walker River Basin; those waters form the single water body over which the Court has continuing jurisdiction. Considering the "interest of the courts and the public in complete, consistent, and efficient settlement of controversies," Provident Tradesmens, 390 U.S. at 111, and the interests of the parties who claim water in the Basin in having their claims to water resolved once and for all, the Tribe and the United States have

requested that the Court allow joinder of claimants to groundwater. The Court already has recognized that groundwater claimants may become necessary parties to the instant litigation:

> Joinder of the ground water claimants would be required if: (1) in their absence complete relief could not be accorded among those already parties, or; (2) their claims to groundwater relate to the subject of this action (the U.S. and Tribe's claims to waters from the Walker River) and proceeding without the groundwater claimants might (i) as a practical matter impair or impede their ability to protect their interests or (ii) leave any of the current parties subject to a risk of multiple or inconsistent obligations.

Order at 9-10 (July 8, 1994) (citing FED. R. CIV. P. 19(a)). As paraphrased by the District, "joinder of groundwater claimants is required under Rule 19 . . . [because] groundwater claims and rights . . . affect the water rights of the parties who have or claim rights to the waters of the Walker River or vise versa." District Response at 7. FED. R. CIV. P. 19 requires joinder of groundwater claimants now that the Tribe and the United States have amended their counterclaims to include claims to additional surface water and groundwater in order to satisfy the purpose of setting aside the enumerated tribal lands and other federal enclaves.

1. **The Present Parties Cannot Obtain Complete Relief Without Joinder of the Groundwater Claimants.**

"To determine if the absent party is necessary to the suit, the court must undertake [a] two-part analysis." Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990). First, "the court must decide if complete relief is possible among those already parties to the suit. This analysis is independent of the question whether relief is available to the absent party." Id. (citation omitted). In the absence of the groundwater claimants, complete relief cannot be accorded the present parties to these proceedings because the use of groundwater directly affects the use of surface water. See, e.g., Pyle Affidavit at 4, 8. In fact, present groundwater diversions already affect surface water availability in the Basin. Id. at 5, 9-10.

As a practical matter, then, failure to join the groundwater claimants may result in the inability of surface water claimants to protect their claims because the groundwater users may draw down the water in the Basin too much, thereby reducing the amount of surface water available. Unless the groundwater claimants are joined in this proceeding, the final decree will not be binding on them. See, e.g., Provident Tradesmens, 390 U.S. at 110 ("since the outsider is not before the court, he cannot be bound by the judgment rendered."); *Walker River Irrigation District's Reply to Walker River Paiute Tribe's Response and Mineral County's Opposition to Motion to Vacate Schedule; and Opposition to Mineral County's Countermotion for Sanctions* at 13 (July 25, 1995) (noting necessity of binding all those with an interest in the proceedings). Therefore, the present parties cannot be assured that their rights to water, as the Court will eventually ascertain them, will survive subsequent groundwater claims unless the Court adjudicates groundwater claims at this time. "Rule 19 is designed to protect the interests of absent persons, as well as those already before the court, from duplicative litigation, inconsistent judicial determinations, or other practical impairment of their legal interests." Hammond v. Clayton, 83 F.3d 191, 195 (7th Cir. 1996) (citations omitted). Simply put, without joinder of groundwater claimants in the Walker River Basin, complete relief for the present parties is not possible.

2. The Tribe's and United States' Additional Claims to Water Will Affect the Rights of Groundwater Claimants in the Basin.

The Court should next "determine whether the absent party has a legally protected interest in the suit." Makah, 910 F.2d at 558. If a legally protected interest exists, the Court must further determine whether that interest could be impaired or impeded by the suit. Id. Groundwater claimants' interests in the Walker River Basin directly relate to the subject matter of

As part of this second consideration, the Court should additionally consider whether a risk of inconsistent rulings threatens the present parties. Allocation of rights to a limited resource to which absent parties may be entitled can create such a threat. Makah, 910 F.2d at 558-59. If groundwater claimants are not joined in this action, the present parties are at a very real risk of incurring inconsistent obligations as a result of future adjudication of the groundwater claims, in a different proceeding, and probably in a different forum. Id.; Colorado River, 424 U.S. at 819; San Carlos Apache Tribe, 463 U.S. at 569. "If we fail to properly acquire jurisdiction by service of process, a single party adversely affected by a judgment entered in this case and who was not properly served could conceivably later challenge the validity of that judgment, notwithstanding the extensive work that will no doubt be necessary to adjudicate . . . [additional] claim[s]." *Order* at 5 (June 2, 1998).

Just as "[a]llocation of a limited fund to which absent parties are entitled may create such a risk," Makah, 910 F.2d at 559, allocation of a single, limited body of water to which many entities claim many types of appropriations also creates such a risk. See Provident Tradesmens, 390 U.S. at 108 (assuming that a party was necessary when "there existed . . . at least the possibility that a judgment might impede [his] ability to protect his interest, or lead to later relitigation by him."); Hurley v. Abbott, 259 F. Supp. 669, 670 (D. Ariz. 1966) (holding that "[d]ue to the inter sese nature of appropriative rights the extent of the rights of others must depend on the rights of one user, and vice versa . . . and all must be made a party to the suit." (citations omitted)). Simply put, failure to join groundwater claimants in these proceedings raises the spectre of subjecting the present water rights claims in the Basin to challenge in subsequent proceedings.

B. ESTABLISHMENT OF A PROCESS FOR SERVICE OF PLEADINGS IS APPROPRIATE NOW.

The District, Nevada and California argue that establishment of a process for service of pleadings upon parties to these proceedings is premature. District Response at 17; Nevada Response at 6; California Response at 6. Whether the Court permits the Tribe and the United States to include groundwater claimants in service of their first amended counterclaims, establishment of a process for service of pleadings is appropriate at this time. The number of surface water claimants who may be affected by the Tribe's and the United States' additional claims to water is large, as the captions to the first amended counterclaims show. In fact, the captions list approximately 1,200 surface water claimants before including "all other unknown claimants to groundwater." Tribe's 1st Amended Counterclaim at 12. Accord U.S. 1st Amended Counterclaim at 9-10.

For this reason, the Tribe and the United States submitted a proposed process that could make service of pleadings upon joined parties efficient. Joint Motion at 6-8, Attachments 6, 7. The Tribe and the United States are, of course, willing to consider other approaches. The issue remains, however, that the sheer number of potential parties to these proceedings make establishment of a process for service of pleadings imperative, and it is better done now than after the addition of more than 1,200 parties. The same is true for the Court's approval of the forms of notice and waiver of service that the Tribe and the United States submitted. Id., Attachments 2-5. Resolution of these procedural issues at this time is in no way premature.

C. THE TRIBE AND THE UNITED STATES DO NOT WISH TO RELY UPON MINERAL COUNTY'S SERVICE EFFORTS AT THIS TIME.

The District, the United States Board of Water Commissioners, and Nevada all object to any reliance by the Tribe and the United States upon service that Mineral County has completed

successfully. See District Response at 16; USBWC Response at 2; Nevada Response at 6. The Tribe and the United States did not present any argument on this issue in the Joint Brief, and intended to remove all reference to it therein. Accordingly, the Tribe and the United States hereby withdraw the sentence in the Joint Motion stating, "to eliminate the requirement for personal service upon those surface water claimants Mineral County has served successfully." Joint Motion at 2.

IV. CONCLUSION

As the United States Board of Water Commissioners observes, "the issues addressed in the Joint Motion are sufficiently complex to warrant the Court's consideration of a Scheduling and Planning Conference under Local Rules 16-1 and 16-2." USBWC Response at 1. The Tribe and the United States agree that a scheduling and planning conference is warranted in order to resolve the discrete procedural issue of whether the Tribe and the United States must serve groundwater claimants in the Walker River Basin with their first amended counterclaims.

The Tribe and the United States have made a prima facie showing of the hydrologic connection between groundwater and surface water in the Basin. That connection amply supports the inclusion of groundwater claimants in service of process by the Tribe and the United States for two reasons. First, the Tribe and the United States have made claims to groundwater. Second, the Tribe and the United States have shown in the Pyle Affidavit that groundwater pumping in the Walker River Basin conflicts with surface water use, and appreciably reduces the availability of surface water from the Walker River on, and groundwater underlying, the Walker River Indian Reservation. Rule 19, therefore, requires inclusion of groundwater claimants in the Tribe's and the United States' service efforts. The arguments of the District, Nevada and California do not change this result.

Dated: 1/21/99

Respectfully submitted,

Kathryn E. Landreth
United States Attorney
100 West Liberty St., Ste. 600
Reno, Nevada 89509
702/784-5439

Susan Schneider
United States Department of Justice
Environment & Natural Resources Division
999 18th Street, Suite 945
Denver, Colorado 80202
303/312-7308

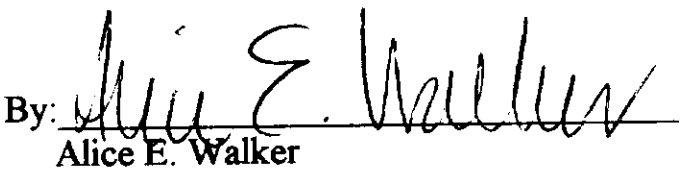
Hank Meshorer, Special Litigation Counsel
United States Department of Justice
Environment & Natural Resources Division
Ben Franklin Station
P.O. Box 7397
Washington, D.C. 20044-7397
202/616-9643

By: Susan L. Schneider
Susan Schneider

Attorneys for the UNITED STATES OF AMERICA

Alice E. Walker
Scott B. McElroy
GREENE, MEYER & MCELROY, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
(303) 442-2021

Kelly R. Chase
P.O. Box 2800
Minden, Nevada 89423
702/782-5110

By: 
Alice E. Walker

Attorneys for the WALKER RIVER PAIUTE TRIBE

CERTIFICATE OF SERVICE

I hereby certify that I have placed a true and correct copy of the foregoing, United States' and Walker River Paiute Tribe's Joint Reply Regarding Their 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 by U.S. Mail, postage prepaid, this 22nd day of January, 1999 to:

Marta Adams, Deputy Attorney General
Capitol Complex
1985 South Carson St.
Carson City, NV 89710

Robert C. Anderson
Timothy Lukas
Hale, Lane, Peek, Dennison, Howard
100 W. Liberty, 10th Floor
P.O. Box 3237
Reno, NV 89505

George Benesch
210 Marsh Avenue, Suite 105
P.O. Box 3498
Reno, NV 89505

Roger Bezayiff
Chief Deputy Water Commissioner
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

Linda A. Bowman
Bowman & Robinson
499 West Plumb Lane, Ste. 4
Reno, NV 89509

David E. Moser
McCutchen, Doyle, Brown & Enerson
Three Embarcadero Center, Suite 1800
San Francisco, CA 94111

Kelly R. Chase
P.O. Box 2800
Minden, NV 89423

James Clear
U.S. Department of Justice
Environment and Natural Resources Division
Indian Resources Section
P.O. Box 44378, L'Enfant Plaza Station
Washington, D.C. 20026-4378

John Davis
P.O. Box 1646
Tonopah, NV 89049

Ross E. deLipkau
Marshall, Hill, Cassas & deLipkau
P.O. Box 2790
Reno, NV 89505

Gordon H. DePaoli
Dale E. Ferguson
Woodburn and Wedge
P.O. Box 2311
Reno, NV 89505-2790

Richard R. Greenfield
Field Solicitor's Office
Department of the Interior
2 North Central Avenue, Suite 500
Phoenix, AZ 85004

Mary Hackenbracht
Deputy Attorney General
State of California
1515 Clay St., 20th Floor
Oakland, CA 94612-1314

Leo Havener
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Treva J. Hearne
James S. Spoo
Zeh, Polaha, Spoo & Hearne
575 Forest Street
Reno, NV 89509

Robert L. Hunter, Superintendent
Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

Roger Johnson
Water Resources Control Board
State of California
P.O. Box 2000
Sacramento, CA 95810

John Kramer
Department of Water Resources
1416 - 9th Street
Sacramento, CA 95814

Kathryn Landreth
Asst. U.S. Attorney
100 W. Liberty, #600
Reno, NV 89509

James T. Markle
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814

Hank Meshorer, Special Litigation Counsel
United States Department of Justice
Environment & Natural Resources Division
Ben Franklin Station
P.O. Box 7397
Washington, D.C. 20044-7397

Michael W. Neville
Deputy Attorney General
California Attorney General's Office
50 Fremont Street, Suite 300
San Francisco, CA 94105-2239

Mary Ann Trask

this action because groundwater is hydrologically connected to surface water in the Basin. See Pyle Affidavit at 4 ("The ground water and surface water in the Walker River watershed are connected and are predominantly derived from the same source. Therefore, increasing diversion and use of one will affect the other."). Because of the relation between groundwater and surface water, final determination of the rights at issue in this case will likely impair the groundwater claimants' ability to protect their interests. Even if the groundwater claimants' interests are left for some future determination, those interests remain significantly related to the interests at stake in these proceedings, specifically the Tribe's and United States' claims for more water.

The relation between the different interests requires that for complete consideration of groundwater claimants' interests, the present parties will have to be joined in any such future determinations, threatening a duplicative and wasteful expenditure of judicial resources. Moreover, joining the present parties in a future case will require significant expenditures by the future parties. The costs may be prohibitive to some of the parties. See, e.g., *Motion for Order of Publication (Third Request)* at 5 (Aug. 4, 1998) ("The cost is no longer a test of Mineral County's resolve to enter this litigation in order to preserve Walker Lake, but has now become so cost prohibitive that Mineral County will be foreclosed from the litigation altogether . . . ."). If the costs of joinder and service of the present parties in a future determination groundwater claimants' interests are prohibitive, the groundwater claimants' ability to protect their interests will be impaired. Clearly, the interests of judicial economy and comprehensive resolution of the questions at issue warrant the inclusion of the groundwater claimants in the present action, where the parties necessary for complete determination of the groundwater claimants' interests already are assembled.