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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al. Defendants.	IN EQUITY NO. C-125-ECR SUBFILE NO. C-125-B **STATE OF CALIFORNIA'S RESPONSE TO MOTION OF THE UNITED STATES AND WALKER RIVER PAIUTE TRIBE TO ADOPT CASE MANAGEMENT ORDER**
WALKER RIVER PAIUTE TRIBE, Counterclaimant, v. WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants.	

On January 24, 2000, the State of California Department of Fish and Game and State Water Resources Control Board ("State of California" or "California") concurred in the

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Joint Motion Concerning Case Management filed by the State of Nevada and the Walker River Irrigation District, and urged this court to adopt and sign the Order Concerning Case Management proposed by those parties. In this Response, the State of California will briefly respond to several points raised in the Motion of the United States and Walker River Paiute Tribe to Adopt Case Management Order and the proposed Case Management Order ("CMO") filed on or about January 20, 2000.

First, in the proposed CMO at page 5, paragraph 4, line 17, the words "MAMMOTH TIMES" should be substituted for the words "REVIEW-HERALD." Counsel for the State of California is informed that the REVIEW-HERALD recently ceased publication, and that the MAMMOTH TIMES in Mammoth Lakes, California, is the appropriate newspaper for publication of service on California residents, assuming such publication of service becomes appropriate in the future.

Second, the proposed CMO at paragraph 5, page 5, imposes upon, *inter alia*, the State of California, the duty to identify and provide (in electronic format to the extent available) the United States and the Tribe "all information in their possession, custody or control identifying all individuals and entities with any claims to surface water and/or ground water in the Walker River Basin" and a duty to supplement such information *within two weeks* of *any* modification or change. The State of California, will, of course, respond cooperatively to appropriate discovery requests from the United States and Tribe to appropriate California state agencies, pursuant to the provisions of the Federal Rules of Civil Procedure. However, California objects to the two-week supplemental informational requirement as impracticable and inconsistent with Federal Rule of Civil Procedure 26(e)(1), which imposes a duty to supplement or correct past disclosures of information *at appropriate intervals* if the disclosing party learns that in some *material* respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process and in writing. The United States and the Tribe have not shown the necessity to impose a disclosure requirement which is inconsistent with Rule 26(e).

Notably, the State of California does *not* possess information which would identify *all* individuals and entities with any claims to surface water and/or ground water in the Walker River Basin. The State Water Resources Control Board ("SWRCB") maintains records of some, but not all, persons who claim a right to divert and use water in the Walker River Basin.

The SWRCB has records of all parties who hold a permit or license to appropriate surface water in the Walker River watershed for appropriations initiated after December 19, 1914. However, persons who hold a riparian right or an appropriative right initiated prior to December 19, 1914 (a pre-1914 appropriative right), are not required to obtain a permit or license from the State. Some riparians and pre-1914 appropriators have filed Statements of Water Diversion and Use with the SWRCB pursuant to Water Code section 5100. But the failure to file a Statement of Water Diversion and Use does not deprive riparians or pre-1914 appropriators of any water rights that they may hold. Therefore, the SWRCB's records of those who have filed Statements of Water Diversion and Use do not include all parties who may hold a riparian or pre-1914 appropriative water right to the diversion and use of surface water.

Moreover, parties who pump ground water in California may or may not have to obtain a permit from the SWRCB. Only ground water that is determined to be part of a subterranean stream is subject to the same application, permit, and license procedure which applies to diversion and use of surface water. (California Water Code section 1200 *et seq.*) Other ground water is considered to be "percolating ground water" and is not subject to the rules that apply to appropriation of surface water. (*City of Los Angeles v. Pomeroy* (1899) 124 Cal. 597, 632, 57 P. 585.) Thus, the SWRCB does not maintain records of all parties who may claim a right to the use of percolating ground water.

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The State of California urges the adoption of the Case Management Order proposed by the State of Nevada and the Walker River Irrigation District. Should the court instead be inclined to adopt the Case Management Order proposed by the United States and Tribe, the State of California suggests that it be modified as outlined above.

DATED: February 18, 2000

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

Re: *United States v. Walker River Irrigation District, et al.*
U.S.D.C. Nev. Dist., Case No. **C-125-ECR** (Subfile No. C-125-B)

I, **Helen Jellen,** declare that I am over 18 years of age, and not a party to the within cause; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102-7004. I served a true copy of the attached

STATE OF CALIFORNIA'S NOTICE REGARDING SERVICE UPON STATE OF CALIFORNIA

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

SEE ATTACHED SERVICE LIST

Each said envelope was then, on February 18, 2000, sealed and deposited in the mail in San Francisco, California, the county in which I am employed, with the fees thereon fully prepaid. Executed on February 18, 2000, at San Francisco, California.

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

Helen Jellen

HELEN JELLEN

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United States v. Walker River Irrigation Dist., et al.
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