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

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For the reasons set forth below and in the Points and Authorities in Support of the Motion Concerning Case Management submitted by the Walker River Irrigation District ("WRID") and the State of Nevada ("Nevada"), Nevada submits this response to the case management order submitted by the United States of America ("United States") and the Walker River Paiute Tribe ("Tribe").

I. Introduction.

By order dated May 21, 1999, this Court directed the parties to try to reach a stipulation concerning management of this case. After diligently pursuing a case management stipulation, the parties were unable to reach an agreement concerning case management. The WRID and Nevada submitted a proposed case management order joined in by the State of California ("California"). Similarly, the United States and the Tribe have requested that this Court adopt their proposed case management order.

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The principle areas of disagreement concern the extent of service required in this matter and bifurcation to allow consideration of the Tribe's claims before the other federal claims. Nevada submits the following in response to the United States' and the Tribe's proposed case management order.

II. Comprehensive joinder of surface and groundwater users is a matter of basic fairness and serves the interest of judicial economy.

Earlier in this litigation, Nevada argued that the United States and the Tribe should be ordered to provide more specificity with respect to their broad claims to groundwater so that potential parties, upon service, would have meaningful notice of the pendency of claims which could impact their interests in water in the Walker River Basin.[1] Such potential parties would then be in a position to make an informed decision whether to actively participate in the litigation or not. The basis for Nevada's argument at that time was that potential parties could not know from the United States' and the Tribe's broad claims in their amended counterclaims whether they should participate in the litigation to protect their interests.

Since that time, the United States and the Tribe have not chosen to refine their claims to groundwater but have instead shifted to the position that bifurcation of the Tribe's claims from the other federal claims would initially relieve the United States and the Tribe of service requirements on parties outside the geographic area of the Tribe's claims. As argued below, it has become apparent that to the extent the Tribe's and the United States' claims can affect the groundwater users in both California and Nevada, those users should be joined from the outset to have the opportunity to participate in decisions relative to the litigation and to have access to appellate forums should certain decisions be appealed before final disposition of the entire case. Moreover, it is crucial that all affected parties be joined to enable the Court to effectuate any ultimate decisions relative to the parties' water rights.

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[1] 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 (November 6, 1998).

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III. A decision to bifurcate this proceeding is premature and should not be made until all the parties are served and have an opportunity to participate in the litigation.

The United States and the Tribe urge the Court to bifurcate the Tribe's claims from the other federal claims so that the Tribe's claims to additional Walker River water can be resolved first. The reasons advanced for bifurcation are that the Tribe's claims are at the heart of the litigation and service could be limited, at least initially, to fewer parties whose use of water is geographically in closer proximity to the Tribe's claims. A close analysis of this approach reveals its fundamental failings.

First, bifurcation of this proceeding at this early stage in the litigation, coupled with service of process only upon water users located close to the Tribe's claims, deprives other potential parties of notice and an opportunity to meaningfully participate in development of the case from the outset. The Tribe and the United States argue that addressing the Tribe's claims first will limit an expenditure of time and expense for those whose use of water may be unrelated to the Tribe's claims. In addition, the Tribe and the United States contend that bifurcation serves the interest of judicial economy. In spite of these arguments, however, there is clearly no guarantee for those unserved water users that they will not be unfairly prejudiced because they could not participate at the outset of the litigation, particularly as early decisions could affect both the procedural and substantive posture of the litigation.

Second, this Court has emphasized both in this sub-part and in the Mineral County proceeding (C-125-C) that the requirements of Federal Rule of Civil Procedure 4 are fundamental prerequisites to the Court's consideration of new claims in this post-judgment proceeding. This adherence to Rule 4 places the onus on the Tribe and the federal government to properly serve all those potential parties who may have property interests potentially affected by this litigation. The Tribe and the United States have presented this Court with an expert's affidavit which alleges, among other things, that groundwater pumping in the Walker River Basin impacts decreed rights to surface water.[2] Thus, given the expansive nature of the United States' and Tribe's claims to groundwater, basic fairness requires that groundwater users are entitled to service of process and an opportunity to protect their interests. Until all potential parties are served, no decision should be made concerning bifurcation.

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[2] In August, 1998, the United States and the Tribe filed a Motion for Leave to Serve First Amended Counterclaims to Join Groundwater Users. Attached to their Motion is the affidavit of Peter M. Pyle which broadly asserts his beliefs concerning the hydrologic connection between groundwater and surface water in the Walker River Basin.

IV. The United States and the Tribe are proposing an unrealistic schedule for supplementation of service information.

The United States and the Tribe propose that the parties identify and provide to the Tribe and the United States any information they possess relative to surface and/or groundwater claims in the Walker River Basin.[3] *See,* United States' and Tribe's [proposed] Case Management Order, p. 5. In addition, the Tribe and the United States propose that as information changes, each party shall provide the supplemental information within two weeks of its receipt during the service period.

Nevada submits that this two week reporting requirement is unrealistic and that a more appropriate time frame be substituted. Rule 26(e)(1) of the Federal Rules of Civil Procedure provides that supplemental information should be provided at "appropriate intervals." Nevada believes that a more appropriate interval for supplementing information should be sixty to ninety days.

Dated this 18th day of February, 2000.

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[3]As explained in the Points and Authorities In Support of Motion Concerning Case Management, none of the defendant parties has a comprehensive list of all groundwater users in the Walker River Basin. For example, the Nevada State Engineer does not have a list of vested groundwater users whose use of groundwater pre-dates the 1939 enactment of Nevada's groundwater code (NRS Chapter 534) nor does the State Engineer have a list of domestic well owners in the Basin.

CERTIFICATE OF MAILING

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 16th day of February, 2000, I deposited for mailing, postage prepaid, true and correct copies of the foregoing document addressed as follows:

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