

*AM*

ORIGINAL

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 CHARLES W. GETZ, IV  
Assistant Attorney General  
3 MARY E. HACKENBRACHT  
Deputy Attorney General  
4 2101 Webster Street, 12th Floor  
Oakland, California 94612-3049  
5 Telephone: (510) 286-1356

6 Attorneys for Respondents  
California State Water Resources Control Board, et al

BY  
DEPUTY  
LANCES WILSON  
CLERK

98 SEP -2 AM 10:29

FILED

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF NEVADA

10	UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125
11	Plaintiff,	)	Subfile No. C-125 C
12	WALKER RIVER PAIUTE TRIBE,	)	CALIFORNIA STATE WATER
13	Plaintiff-Intervenor,	)	RESOURCES CONTROL BOARD'S
14	vs.	)	STATEMENT RE: MINERAL
15	WALKER RIVER IRRIGATION DISTRICT,	)	COUNTY'S MOTION FOR
16	et al.	)	PUBLICATION (Third
17	Defendants.	)	Request)
18	WALKER RIVER PAIUTE TRIBE,	)	
19	Counterclaimant,	)	
20	UNITED STATES OF AMERICA,	)	
21	Counterclaimant-Intervenor	)	
22	v.	)	
23	WALKER RIVER IRRIGATION DISTRICT,	)	
24	Counterdefendant,	)	
25	STATE OF NEVADA,	)	
26	Counterdefendant-Intervenor.	)	

27 The California State Water Resources Control Board  
28 ("Water Board"), files this Statement in response to Mineral

278

1 County's Motion for Publication (Third Request). The Water Board  
2 understands that, among other things, the goals of the service by  
3 publication request are to ensure that all persons/entities  
4 receive due process and to avoid the risk that an unserved party  
5 later challenges the validity of the Court's ruling,  
6 notwithstanding the adjudication of the County's claim. The  
7 Water Board is concerned that possibly one category of potential  
8 water rights holders has not been addressed by a motion for  
9 service by publication. More specifically, the County's motion  
10 does not address service upon the group of unidentified parties  
11 holding water rights appurtenant to lands in California.

12 The potential defendants seem to fall within four  
13 categories: identified parties holding water rights appurtenant  
14 to lands in California; unidentified parties holding water rights  
15 appurtenant to lands in California; identified parties holding  
16 water rights appurtenant to lands in Nevada; and unidentified  
17 parties holding water rights appurtenant to lands in Nevada. The  
18 present motion is about serving identified water rights holders  
19 whose rights are appurtenant to land in Nevada or California who  
20 have not yet been served. (#210, page 2.) In its April 1, 1997  
21 ruling (#99), the Court granted the County's motion to serve by  
22 publication the unidentified parties holding land in Nevada.  
23 However, in that ruling, the Court noted that "To the extent  
24 Mineral County seeks leave to serve by publication holders of  
25 water rights appurtenant to California real property, its request  
26 must therefore be denied." The reason for the denial was that  
27 the County relied upon Nev. R. Civ. P. 4(e)(1)(ii) for service by  
28 publication.

1           In order to serve by publication, the County would have to  
2 demonstrate compliance with California's law of service by  
3 publication. Federal R.Civ. P. 4 requires personal service in  
4 accordance with Rule 4(e)(2) or service "pursuant to the law of  
5 the state in which the district court is located, or in which  
6 service is effected." Fed.R.Civ.P. 4(e)(1). California Code of  
7 Civil Procedure section 763.010 applies to service on  
8 unidentified parties in quiet title actions. Under this section,  
9 the plaintiff must provide an affidavit demonstrating to the  
10 satisfaction of the court "that the plaintiff has used reasonable  
11 diligence to ascertain the identity and residence of and to serve  
12 summons on the persons named as unknown defendants and persons  
13 joined as testate or intestate successors of a person known or  
14 believed to be dead." California Code of Civil Procedure section  
15 415.50(a) generally provides for service by publication. Under  
16 this provision, the plaintiff must provide an affidavit  
17 demonstrating to the satisfaction of the court "that the party to  
18 be served cannot with reasonable diligence be served in another  
19 manner specified in this article".

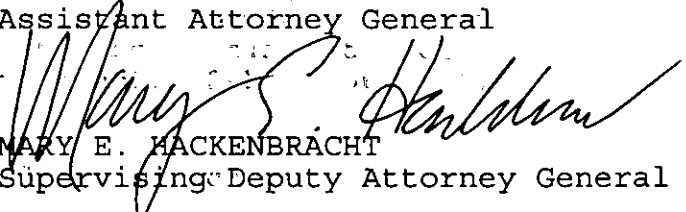
20           Although it may well be that the County can provide an  
21 affidavit that meets the requirements of these provisions, it has  
22 not yet done so. Nor has it yet moved for an order of  
23 publication under California law. This is true for both service  
24 upon identified as well as unidentified parties holding water  
25 rights appurtenant to land in California that have not yet been  
26 served. Despite the County's significant efforts, until the  
27 necessary evidence is submitted in an affidavit(s), the Court  
28 lacks the proper foundation for issuing an order for publication

1 of service on unidentified and identified parties holding water  
2 rights appurtenant to lands in California.

3 DATED: September 1, 1998

4 DANIEL E. LUNGREN, Attorney General  
of the State of California

5 CHARLES W. GETZ, IV  
6 Assistant Attorney General

7   
8 MARY E. HACKENBRACHT  
9 Supervising Deputy Attorney General

10 Attorneys for Respondents  
11 California State Water Resources  
12 Control Board, et al.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Service List

United States of America v. Walker River Paiute Tribe  
v. Walker River Irrigation District  
In Equity No. C-125

GORDON H. DePAOLI  
Woodburn, Wedge and Jeppson  
One East First St., Suite 1600  
P. O. Box 2311  
Reno, NV 89505

SHIRLEY A. SMITH  
Assistant U.S. Attorney  
100 West Liberty, Suite 600  
Reno, NV 89501

JIM WEISHAAPT  
General Manager  
Walker River Irrigation Dist.  
P. O. Box 820  
Yerington, NV 89447

DAN FRINK  
Water Resources Control Board  
P. O. Box 100  
Sacramento, CA 95814

JOHN KRAMER  
Department of Water Resources  
1416 Ninth Street  
Sacramento, CA 95814

EVAN BEAVERS  
Beavers & Young  
1616 Hwy. 395  
P. O. Box 486  
Minden, NV 89423

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

GARRY STONE  
290 South Arlington  
Reno, NV 89510

RICHARD R. GREENFIELD  
Office of the Field Solicitor  
U.S. Dept. of the Interior  
Two North Central Avenue  
Suite 1130  
Phoenix, AZ 85004-2383

ROBERT L. HUNTER  
Superintendent  
Western Nevada Agency  
Bureau of Indian Affairs  
1677 Hot Springs Road  
Carson City, CA 89706

R. MICHAEL TURNIPSEED, P.E.  
Division of Water Resources  
State of Nevada  
123 West Nye Lane  
Carson City, NV 89710

SCOTT McELROY  
Greene, Meyer & McElroy  
1007 Pearl Street, #220  
Boulder, CO 80302

DAVID E. MOSER  
McCutchen, Doyle, Brown  
& Enerson  
Three Embarcadero Center  
San Francisco, CA 94111

KATHRYN E. LANDRETH  
United States Attorney  
JOHN P. LANGE  
U.S. Department of Justice  
Environment and Natural  
Resources Division  
999 - 18th Street, Suite 945  
Denver, CO 80202

ROGER BEZAYIFF, Chief Deputy  
Water Commissioner  
U.S. Bd of Water Commissioners  
P. O. Box 853  
Yerington, NV 89447

LINDA A. BOWMAN  
Bowman & Robinson  
499 West Plumb Lane  
Suite 4  
Reno, NV 89509

MARTA ADAMS  
Deputy Attorney General  
Office of the Attorney General  
100 N. Carson Street  
Carson City, NV 89701-4717

ROBERT C. ANDERSON  
TIMOTHY A. LUKAS  
Hale, Lane, Peek, Dennison,  
Howard, Anderson & Pearl  
100 W. Liberty St., 10th Fl.  
P. O. Box 3237  
Reno, NV 89505

GEORGE N. BENESCH  
210 Marsh Ave., Suite 105  
P.O. Box 3498  
Reno, NV 89505

JAMES S. SPOO  
TREVA J. HEARNE  
Zeh, Polaha, Spoo & Hearne  
450 Marsh Ave.  
Reno, NV 89509