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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125
	)	Subfile No. C-125 C
Plaintiff,	)	
	)	CALIFORNIA STATE WATER
WALKER RIVER PAIUTE TRIBE,	)	RESOURCES CONTROL BOARD'S
	)	STATEMENT RE: MINERAL
Plaintiff-Intervenor,	)	COUNTY'S MOTION FOR
	)	PUBLICATION (Third
vs.	)	Request)
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
et al.	)	
	)	
Defendants.	)	
	)	
WALKER RIVER PAIUTE TRIBE,	)	
	)	
Counterclaimant,	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Counterclaimant-Intervenor	)	
	)	
v.	)	
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
	)	
Counterdefendant,	)	
	)	
STATE OF NEVADA,	)	
	)	
Counterdefendant-Intervenor.	)	

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

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

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

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