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FILED

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

10 UNITED STATES OF AMERICA,)	IN EQUITY NO. C-125
)	Subfile No. C-125 C
11 Plaintiff,)	
)	CALIFORNIA STATE WATER
12 WALKER RIVER PAIUTE TRIBE,)	RESOURCES CONTROL BOARD'S
)	STATEMENT RE: MINERAL
13 Plaintiff-Intervenor,)	COUNTY'S MOTION FOR
)	PUBLICATION (Third
14 vs.)	Request)
)	
15 WALKER RIVER IRRIGATION DISTRICT,)	
et al.)	
)	
16 Defendants.)	
)	
17 <hr/>)	
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

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".

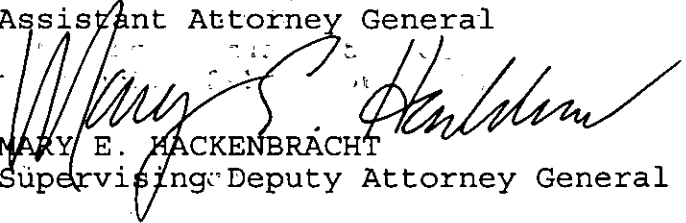
20 Although it may well be that the County can provide an
21 affidavit that meets the requirements of these provisions, it has
22 not yet done so. Nor has it yet moved for an order of
23 publication under California law. This is true for both service
24 upon identified as well as unidentified parties 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

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