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775/358-8973

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 RENO, NEVADA
4
5 UNITED STATES OF AMERICA, IN EQUITY NO. C-125-ECR
6 PLAINTIFF, SUBFILE NO. C-125-B
7 WALKER RIVER PAIUTE TRIBE, AUGUST 27, 2001
8 PLAINTIFF-INTERVENOR, 9:30 A.M.
9 VS.
10 WALKER RIVER IRRIGATION
11 DISTRICT, ET AL.,
12 DEFENDANTS.
13 UNITED STATES OF AMERICA,
14 WALKER RIVER PAIUTE TRIBE,
15 COMERCIALMANTS,
16 VS.
17 WALKER RIVER IRRIGATION
18 DISTRICT, ET AL.,
19 COUNTERDEFENDANTS.
20
21 TRANSCRIPT OF STATUS CONFERENCE, ARGUMENTS
22 REGARDING THE CLASS CERTIFICATION MOTION, AND
23 ARGUMENTS REGARDING THE IDENTIFICATION METHODS
24 BEFORE THE HONORABLE ROBERT A. MCGUARD, JR.,
25 UNITED STATES MAGISTRATE JUDGE

TAPE NOS. 01-099 & 01-100

TRANSCRIPTION: LETTER PERFECT
P.O. BOX 70626
RENO, NV 89570
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING, TRANSCRIPT
PRODUCED BY LETTER PERFECT.

ORIGINAL

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1
2 APPEARANCES:
3 FOR THE WALKER RIVER
4 IRRIGATION DISTRICT:
5 FOR THE U.S. BOARD OF
6 WATER COMMISSIONERS:
7 FOR MINERAL COUNTY:
8 FOR THE U.S. AND THE
9 TRIBE:
10 SUSAN SCHNEIDER, ESQ.
11 ALICE WALKER, ESQ.
12 SCOTT MCELROY, ESQ., JUSTICE/ENRD
13 U.S. DEPARTMENT OF JUSTICE
14 INDIAN RESERVATION SECTION
15 999 18TH STREET, SUITE 945
16 DENVER, CO 80202
17
18 FOR THE NEVADA DIVISION
19 OF WILDLIFE:
20 MARTA ADAMS, ESQ.
21 SENIOR DEPUTY ATTORNEY GENERAL
22 100 N. CARSON STREET
23 CARSON CITY, NV 89701-4717
24
25 FOR THE STATE OF
CALIFORNIA:
MICHAEL NEVILLE, ESQ.,
ATTORNEY GENERAL'S OFFICE
(TELEPHONICALLY)
ALSO APPEARING:
GEORGE N. BENESCH, ESQ.,
1025 RIDGEVIEW DRIVE, SUITE 400
RENO, NV 89509

EXHIBIT A

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1 THE CLERK: THE UNITED STATES DISTRICT COURT FOR THE
2 DISTRICT OF NEVADA IS NOW IN SESSION. THE HONORABLE ROBERT A.
3 MCGUINID, JR., PRESIDING.
4 THE COURT: BE SEATED, PLEASE.
5 THE CLERK: THIS IS THE DATE AND TIME SET FOR A
6 STATUS CONFERENCE AND ARGUMENTS REGARDING CLASS CERTIFICATION
7 MOTION AND IDENTIFICATION METHODS IN CASE NUMBER C-125-B-ECR
8 (RAM), UNITED STATES OF AMERICA AND OTHERS VERSUS WALKER RIVER
9 IRRIGATION DISTRICT.
10 PRESENT IN THE COURTROOM ARE ALICE WALKER, SCOTT
11 MCELROY, SUSAN SCHNEIDER, TREVIA HEARNE, GORDON DEPOLLI,
12 SUELEEN FULSTONE, MARTA ADAMS, GEORGE BENESECH, LINDA BOWMAN,
13 AND PRESENT BY PHONE IS MICHAEL NEVILLE.
14 THE COURT: GOOD MORNING. CAN YOU HEAR OKAY, MR.
15 NEVILLE?
16 MR. NEVILLE: YES, YOUR HONOR.
17 THE COURT: THE WAVES AREN'T -- THE WAVES AREN'T TOO
18 LOUD THERE?
19 FIRST LET'S HEAR THE ARGUMENTS ON THE MOTION FOR
20 CLASS CERTIFICATION.
21 MS. WALKER, YOU GOING TO DO THAT?
22 MS. WALKER: THANK YOU, YOUR HONOR. IS THAT OKAY FOR
23 THE PHONE, MIKE?
24 MR. NEVILLE: YES, THANK YOU.
25 MS. WALKER: GREAT.

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1 YOUR HONOR, UNDER THE CASE MANAGEMENT ORDER,
2 PARAGRAPH 10, WE HAVE BEEN DIRECTED TO CONSIDER TOOLS FOR
3 EFFICIENT CASE MANAGEMENT THAT WILL REDUCE BURDENS ON THE
4 PARTIES AND THE COURT. WE HAVE PROPOSED A CERTIFICATION OF
5 TWO DEFENDANT CLASSES CONSISTENT WITH THE COURT'S DIRECTION
6 UNDER THE CASE MANAGEMENT ORDER. WE SEEK CERTIFICATION OF THE
7 FIRST CLASS, WHICH WOULD CONSIST OF THOSE BELONGING TO
8 CATEGORY THREE A, IDENTIFIED IN THE CASE MANAGEMENT ORDER AS
9 SUCCESSORS IN INTEREST TO THE DECREE. AND WE HAVE SUGGESTED
10 TO DEFINE THAT CLASS AS THOSE SUCCESSORS IN INTEREST, OR THOSE
11 WHO CLAIM A SUCCESSORS IN INTEREST, WHO HAVE NOT -- WHO ARE
12 NOT PARTICIPATING INDIVIDUAL -- INDIVIDUALLY, PARDON ME, IN
13 THESE PROCEEDINGS.
14 WE ALSO SEEK CERTIFICATION OF A PARTIAL CATEGORY,
15 THREE C DEFENDANT CLASS, AGAIN CONSISTING OF THOSE INDIVIDUALS
16 AND ENTITIES CLAIMING A RIGHT TO USE GROUNDWATER FOR DOMESTIC
17 PURPOSES IN THE SPECIFIED SUB-BASINS, 107, 108, 110-A, AND
18 110-B, WHO ARE NOT PARTICIPATING INDIVIDUALLY IN THESE
19 PROCEEDINGS.
20 ONLY THE DISTRICT AND NEVADA HAVE FILED OPPOSITIONS
21 TO OUR MOTION. AND NEVADA PRIMARILY OBJECTS TO ITS
22 DESIGNATION AS CLASS REPRESENTATIVE. NO OTHER PARTY IN THESE
23 PROCEEDINGS HAS OBJECTED TO OUR MOTION.
24 I'VE ESTABLISHED IN OUR BRIEFS THE TWO CLASSES WHO
25 RECEIVED IDENTIFI (SIC) -- OR, EXCUSE ME, CERTIFICATION,

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20

1 MR. DEPAOLI?
 2 MR. DEPAOLI: YOUR HONOR, GORDON DEPAOLI, ON BEHALF
 3 OF THE WALKER RIVER IRRIGATION DISTRICT.
 4 THE -- THE LANDSCAPE HAS, AT LEAST IN MY
 5 INTERPRETATION, HAS SHIFTED SOMEWHAT FROM THE ORIGINAL MOTION
 6 TO THE JOINT REPLY. WE ARE NOW PROPOSING TO EXCLUDE FROM THE
 7 TWO PROPOSED CLASSES ANYONE WHO IS PARTICIPATING IN THE
 8 PROCEEDINGS.
 9 AND, SECONDLY, AT LEAST IN MY MIND, I HAVE SOME
 10 QUESTIONS AS TO WHETHER WE HAVE SHIFTED SOME FROM WHAT THE
 11 ORIGINAL MOTION INTENDED. THE ORIGINAL MOTION WAS DIRECTED TO
 12 CERTIFICATION TO ADDRESS THE THRESHOLD ISSUES RELATIVE TO THE
 13 TRIBAL CLAIMS AND FOR PURPOSES OF ADDRESSING THE DECLARATORY
 14 RELIEF THAT THE TRIBE AND THE UNITED STATES SEEK IN PHASE TWO
 15 OF THE PROCEEDINGS. IN THE ORIGINAL MOTION, THE TRIBE AND THE
 16 UNITED STATES ALSO SAID THAT CLASS CERTIFICATION BEYOND PHASES
 17 ONE AND TWO MIGHT BE APPROPRIATE.
 18 IT'S IMPORTANT TO UNDERSTAND WHAT JUDGE REED MEANT IN
 19 THE CASE MANAGEMENT ORDER WHEN HE DESCRIBED PHASE TWO. HE
 20 DESCRIBED PHASE TWO AS, AND I QUOTE, "INVOLVING COMPLETION AND
 21 DETERMINATION ON THE MERITS OF ALL MATTERS RELATING TO THE
 22 TRIBAL CLAIMS." AND THEN WENT ON TO SAY IT COULD INCLUDE SOME
 23 OTHER THINGS.
 24 IT -- IT SEEMS, NOW, THAT WE ARE PROPOSING TO DIVIDE
 25 PHASE TWO OF THE LITIGATION INTO PARTS ONE AND TWO. PART ONE

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1 BEING A DECLARATION OF -- ON THE MERITS OF THE TRIBAL CLAIMS.
 2 AND PART TWO, THEN, BEING GETTING TO HOW RELIEF WOULD BE
 3 HANDLED. AND I THINK IT'S VERY CLEAR THAT IN ORDER TO GRANT
 4 EFFECTIVE RELIEF, EVERYONE AGREES THAT THE INDIVIDUAL WATER
 5 RIGHTS CLAIMANTS WILL HAVE TO BE NAMED AND JOINED. AND I -- I
 6 DO NOT AGREE THAT THEY WILL NOT ALSO HAVE TO BE SERVED UNDER
 7 RULE 4.
 8 BUT I THINK WHETHER YOU VIEW THE ISSUES AS -- AS I
 9 INTERPRET IT, THE ORIGINAL MOTION, OR AS I INTERPRET THE
 10 NARROWING BY THE JOINT REPLY, THE TRIBE AND THE UNITED STATES
 11 HAVE NOT MET THEIR BURDEN UNDER RULE 23.
 12 HOWEVER, I THINK IT IS INAPPROPRIATE TO ALTER WHAT
 13 JUDGE REED SAID PHASE TWO OF THIS LITIGATION WILL BE. I THINK
 14 PHASE TWO, NECESSARILY, HAS TO INCLUDE GRANTING EFFECTIVE
 15 RELIEF. AND AS I WILL EXPLAIN LATER, IN MY JUDGMENT THE
 16 MERITS OF THE -- THE MERE DECLARATION OF THE MERITS OF THE
 17 TRIBAL CLAIMS, NECESSARILY, INVOLVES THEIR AFFECT ON THE OTHER
 18 WATER RIGHTS CLAIMANTS. AND THAT THOSE TWO THINGS ARE NOT
 19 SEVERABLE, BUT MUST BE CONSIDERED TOGETHER.
 20 THE TRIBE AND THE UNITED STATES HAVE NOT SHOWING
 21 (SIC) -- SHOWN THAT JOINDER OF ALL OF THE DEFENDANTS IS NOT
 22 PRACTICAL. THE QUESTION OF WHAT CONSTITUTES IMPRACTICABILITY
 23 DEPENDS ON THE FACTS OF EACH CASE. THERE'S NO ARBITRARY RULE
 24 AS TO NUMBERS. THE BASIC QUESTION IS PRACTICABILITY OF
 25 JOINDER. THE JOINDER IS PRACTICABLE WHERE MEMBERS OF THE

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1 CLASS CAN BE IDENTIFIED AND ARE FROM THE SAME GEOGRAPHIC AREA.
 2 IN REPLY, THE UNITED STATES AND THE TRIBE DO NOT
 3 DIRECTLY ADDRESS THIS REQUIREMENT AT ALL. THEY REFER TO
 4 ALLEGED DIFFICULTY IN IDENTIFYING DEFENDANTS, AND THE TIME
 5 WHICH HAS ELAPSED FROM THE FILING OF THE CLAIMS. IN -- IN
 6 FACT, THERE HAS NOT BEEN A SERIOUS EFFORT TO IDENTIFY
 7 DEFENDANTS BEFORE THE CORE (SIC) -- BEFORE THE CASE MANAGEMENT
 8 ORDER WAS -- WAS ENTERED.
 9 AND IT SEEMS TO ME THE UNITED STATES AND THE TRIBE
 10 CAN'T, ON THE ONE HAND, CLAIM THAT JOINDER IS IMPRACTICABLE
 11 BECAUSE IT'S DIFFICULT TO IDENTIFY AND SERVE THE DEFENDANTS,
 12 AND AT THE SAME TIME PROPOSE THAT THERE BE NOTICE TO ALL CLASS
 13 MEMBERS SENT BY MAIL.
 14 IN ADDITION, IT SEEMS TO ME THAT THEY CAN'T CLAIM
 15 THAT JOINDER IS IMPRACTICABLE AND AT THE SAME TIME ARGUE THAT
 16 DEFENDANTS CAN OPT OUT OF THE CLASS AND PARTICIPATE
 17 INDIVIDUALLY IN LITIGATION ON THEIR OWN.
 18 IN BOTH OF THOSE CASES, THE TRIBE AND THE UNITED
 19 STATES WILL HAVE TO IDENTIFY THE DEFENDANTS AND AT LEAST MAIL
 20 A NOTICE TO THEM. A PROCESS NOT UNLIKE WHAT IS GOING TO OCCUR
 21 WITH JOINDER AND MAILING OF REQUESTS FOR WAIVER OF SERVICE OF
 22 SUMMONS.
 23 AND, AS I WILL EXPLAIN IN A LITTLE DETAIL LATER, IF
 24 SOMEONE CHOOSES TO BE EXCLUDED FROM THE CLASS AND -- AND THE
 25 CLASS IS CERTIFIED UNDER RULE 23(B) (3), THOSE PEOPLE UNDER

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1 JUDGE REED'S ORDER AND THE WAY THIS CASE IS INTENDED TO
 2 PROCEED WILL HAVE TO BE SERVED WITH PROCESS AND JOINED BECAUSE
 3 WE CAN'T HAVE A BUNCH OF PEOPLE BEING EXCLUDED -- OR DECIDING
 4 TO BE EXCLUDED AND THEN NOT BOUND BY ANY JUDGMENT THAT IS
 5 FINALLY ENTERED.
 6 AS -- IN FACT, THE UNITED STATES AND THE TRIBE HAVE
 7 ACCESS TO THE REQUIRED INFORMATION TO IDENTIFY THE PARTIES.
 8 THE PARTIES ARE NOT GEOGRAPHICALLY DISPERSED.
 9 AND IN -- IN THE REPLY, THE -- THE CHANGE IN
 10 OWNERSHIP QUESTION IS REFERENCED AS A REASON FOR JOINDER BEING
 11 IMPRACTICAL AND ALSO AS A REASON FOR THE CLASS ACTION BEING
 12 SUPERIOR HERE. AND THE -- THE REPLY SUGGESTS THAT WHAT HAS
 13 BEEN DONE ON DEALING WITH CHANGES IN OWNERSHIPS IS -- IS SOME
 14 VOLUNTARY TRACKING OF CHANGES IN OWNERSHIPS BY THE UNITED
 15 STATES. AND IT'S -- CERTAINLY, THAT'S NOT HOW I INTERPRET
 16 WHAT THE COURT HAS DONE HERE. IT SEEMS TO ME THAT THE COURT
 17 HAS ADOPTED AN ORDER THAT WILL GO OUT TO ALL OF THE DEFENDANTS
 18 REQUIRING THEM TO GIVE NOTICE OF CHANGES IN OWNERSHIP, TO BOTH
 19 THE COURT AND THE UNITED STATES. AND THE PURPOSE OF THAT IS
 20 NOT MERELY FOR VOLUNTARILY TRACK -- VOLUNTARY TRACKING, BUT IS
 21 TO, AT APPROPRIATE POINTS IN TIME, BRING IN, IF THAT'S
 22 NECESSARY, IF THEY'RE NOT ALREADY PARTICIPATING, THE PEOPLE
 23 WHO HAVE COME INTO OWNERSHIP OF -- OF THESE WATER RIGHTS.
 24 AS A PRACTICAL MATTER, IF -- IF THE UNITED STATES AND
 25 THE TRIBE ARE EVENTUALLY SUCCESSFUL, THE PEOPLE ARE GOING TO

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1 HAVE TO BE JOINED. AND, IN FACT, BECAUSE OF THE OVERLAP IN
 2 THE CATEGORIES, A LOT OF THEM ARE GOING TO BE JOINED IN ANY
 3 EVENT. ON --
 4 THE COURT: IF YOU EXCLUDE THE -- IF YOU EXCLUDE THE
 5 DECLARATORY RELIEF, ISN'T THIS -- ISN'T THIS CLASS
 6 CERTIFICATION A MORE EFFICIENT WAY TO DISPOSE OF THE THRESHOLD
 7 ISSUES?
 8 MR. DEPAOLI: WELL, IT -- IT MAY BE MORE EFFICIENT,
 9 BUT IT -- IN -- IN MY JUDGMENT, IT PRESENTS SOME OF THE SAME
 10 PROBO (SIC) -- PROB (SIC) -- PROBLEMS WITH RESPECT TO
 11 TYPICALITY AND ADEQUACY OF REPRESENTATION AS WILL THE -- AS
 12 WILL THE DECLARATORY ISSUES.
 13 AND -- AND THAT'S WHERE I WAS -- WHERE I WAS HEADED
 14 NEXT ON THIS TYPICALITY AND ADEQUACY OF REPRESENTATION ISSUE.
 15 THE UNITED STATES AND THE TRIBE DO NOT REALLY DISPUTE THE FACT
 16 THAT A PARTY'S POSITION ON THE ISSUES IN THIS CASE IS GOING TO
 17 BE SHAPED BY THEIR WATER RIGHTS, BY THE WATER RIGHTS PACKAGE
 18 THAT THEY HELD -- HOLD AND NOT SOLELY ON WHETHER THEY HAVE A
 19 DECREE RIGHT OR A DOMESTIC WELL.
 20 THEY, INSTEAD, BASICALLY, SAY THAT -- THAT THAT WON'T
 21 MATTER UNTIL WE GET TO PART TWO OF -- OF PHASE TWO OF THE
 22 TRIBE'S CLAIMS. BUT I THINK IT -- THE -- THE WATER RIGHTS
 23 PACKAGE THAT INDIVIDUALS HAVE DOES -- DOES MATTER ON THE
 24 THRESHOLD ISSUES. AND, CERTAINLY, ANY DEFENSE THAT IS A
 25 COMPLETE BAR TO THE TRIBAL CLAIMS IS PROBABLY GOING TO BE

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1 LOOKED AT IDENTICALLY BY PRETTY MUCH EVERYBODY IN THE CLASS.
 2 BUT I THINK THAT'S WHERE THINGS MAY START -- HAVE THE
 3 POTENTIAL TO CHANGE.
 4 IF YOU LOOK AT THE OTHER PROPOSED THRESHOLD ISSUES
 5 AND THAT'S -- AND NOW WE'RE PROPOSING TO DELETE A THRESHOLD
 6 ISSUE, AND, OF COURSE, THE THRESHOLD ISSUES ARE NOT SET IN
 7 CONCRETE, THE CASE MANAGEMENT ORDER MAKES THAT CLEAR. BUT
 8 MOST OF THOSE RELATE TO THIS SOLE SOURCE THEORY AND RELATE TO
 9 HOW AND IF AND UNDER WHAT CIRCUMSTANCES THE COURT IS GONNA GET
 10 INVOLVED IN REGULATING THE USE OF GROUNDWATER WITHIN THE
 11 WATERSHED.
 12 AND I THINK THAT THE POSITION OF PEOPLE IN THESE
 13 CLASSES ON THOSE KINDS OF ISSUES IS GONNA DEPEND ON WHAT THEIR
 14 WATER RIGHT ASSORTMENT IS. AND IT'S GONNA DEPEND ON WHETHER
 15 THEY HAVE GROUNDWATER TO SUPPLEMENT THEIR IRRIGATION SUPPLIES
 16 OR NOT. IT'S GONNA DEPEND ON THEIR PRIORITY DATE OF THEIR
 17 SURFACE SUPPLIES. IT'S GONNA DEPEND ON WHETHER THEIR (SIC)
 18 HAVE ONLY NEW LAND WATER RIGHTS FROM THE DISTRICT OR -- OR
 19 SOME SUPPLEMENTAL DECREE -- OR SOME DECREE WATER RIGHTS.
 20 AND -- AND IN -- IN MY JUDGMENT, THERE IS POTENTIAL
 21 FOR CONFLICT AND -- AND ON -- AND THE -- HOW PEOPLE APPROACH
 22 THOSE ISSUES MAY NOT NECESSARILY BE TYPICAL. AND THE DISTRICT
 23 AND NEVADA CANNOT ADEQUATELY REPRESENT THE MEMBERS ON THOSE
 24 PROPOSED ISSUES.
 25 THE COURT: WELL, I GUESS I'M -- IN LOOKING AT THE

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1 STAGE YET. I THINK WHAT YOU HAVE DONE IS -- THUS FAR AND THE
2 EFFORTS YOU HAVE MADE ARE REASONABLE.

3 AND IT MAY VERY WELL BE THAT WHEN YOU PUT A LIST
4 TOGETHER, THAT WILL BE THE LIST. THERE MIGHT NOT BE ANY MORE
5 WORK NEED TO BE DONE. BUT I DON'T WANT TO FORECLOSE THAT BY
6 SAYING WHAT I'M SAYING HERE TODAY.

7 IS THERE ANYTHING ELSE THAT WE NEED TO DEAL WITH
8 TODAY IN THIS MATTER?

9 MR. NEVILLE?

10 MR. NEVILLE: NO, YOUR HONOR, I DON'T HAVE ANYTHING.

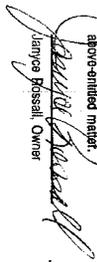
11 THANK YOU.

12 THE COURT: OKAY. THANK YOU VERY MUCH, THEN. WE'RE

13 ADJOURNED.

14 (PROCEEDINGS CONCLUDED AT 10:55 A.M.)

15
16 I certify that the foregoing is a correct transcript
17 from the electronic sound recording of the proceedings in the
18 above-entitled matter.

19 
20 Steven Russell, Owner
21
22
23
24
25


Date