UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA, PLAINTIFF, WALKER RIVER PAIUTE TRIBE, PLAINTIFF-INTERVENOR, VS. WALKER RIVER IRRIGATION DISTRICT, *ET AL.*, DEFENDANTS.	IN EQUITY NO. C-125-ECR SUBFILE NO. C-125-B AUGUST 27, 2001 9:30 A.M.
UNITED STATES OF AMERICA, WALKER RIVER PAIUTE TRIBE, COUNTERCLAIMANTS, VS. WALKER RIVER IRRIGATION DISTRICT, *ET AL.*, COUNTERDEFENDANTS.	

TRANSCRIPT OF STATUS CONFERENCE; ARGUMENTS REGARDING THE CLASS CERTIFICATION MOTION; AND ARGUMENTS REGARDING THE IDENTIFICATION METHODS BEFORE THE HONORABLE ROBERT A. MCQUAID, JR. UNITED STATES MAGISTRATE JUDGE

TAPE NOS. 01-099 & 01-100

TRANSCRIPTION: LETTER PERFECT
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING, TRANSCRIPT PRODUCED BY LETTER PERFECT.

ORIGINAL

APPEARANCES:

FOR THE WALKER RIVER IRRIGATION DISTRICT:	GORDON H. DEPAOLI, ESQ. SUELLEN FULSTONE, ESQ. 6100 NEIL ROAD, SUITE 500 RENO, NV 89511
FOR THE U.S. BOARD OF WATER COMMISSIONERS:	LINDA A. BOWMAN, ESQ. 540 HAMMILL LANE RENO, NV 89511
FOR MINERAL COUNTY:	TREVA J. HEARNE, ESQ. 575 FOREST STREET, SUITE 200 RENO, NV 89509
FOR THE U.S. AND THE TRIBE:	SUSAN SCHNEIDER, ESQ. ALICE WALKER, ESQ. SCOTT MCELROY, ESQ. U.S. DEPARTMENT OF JUSTICE/ENRD INDIAN RESERVATION SECTION 999 18TH STREET, SUITE 945 DENVER, CO 80202
FOR THE NEVADA DIVISION OF WILDLIFE:	MARTA ADAMS, ESQ. SENIOR DEPUTY ATTORNEY GENERAL 100 N. CARSON STREET CARSON CITY, NV 89701-4717
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

THE CLERK: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA IS NOW IN SESSION. THE HONORABLE ROBERT A. MCQUAID, JR., PRESIDING.

THE COURT: BE SEATED, PLEASE.

THE CLERK: THIS IS THE DATE AND TIME SET FOR A STATUS CONFERENCE AND ARGUMENTS REGARDING CLASS CERTIFICATION MOTION AND IDENTIFICATION METHODS IN CASE NUMBER C-125-B-ECR (RAM), UNITED STATES OF AMERICA AND OTHERS VERSUS WALKER RIVER IRRIGATION DISTRICT.

PRESENT IN THE COURTROOM ARE ALICE WALKER, SCOTT MCELROY, SUSAN SCHNEIDER, TREVA HEARNE, GORDON DEPAOLI, SUELLEN FULSTONE, MARTA ADAMS, GEORGE BENESCH, LINDA BOWMAN. AND PRESENT BY PHONE IS MICHAEL NEVILLE.

THE COURT: GOOD MORNING. CAN YOU HEAR OKAY, MR. NEVILLE?

MR. NEVILLE: YES, YOUR HONOR.

THE COURT: THE WAVES AREN'T -- THE WAVES AREN'T TOO LOUD THERE?

FIRST LET'S HEAR THE ARGUMENTS ON THE MOTION FOR CLASS CERTIFICATION.

MS. WALKER, YOU GOING TO DO THAT?

MS. WALKER: THANK YOU, YOUR HONOR. IS THAT OKAY FOR THE PHONE, MIKE?

MR. NEVILLE: YES, THANK YOU.

MS. WALKER: GREAT.

YOUR HONOR, UNDER THE CASE MANAGEMENT ORDER, PARAGRAPH 10, WE HAVE BEEN DIRECTED TO CONSIDER TOOLS FOR EFFICIENT CASE MANAGEMENT THAT WILL REDUCE BURDENS ON THE PARTIES AND THE COURT. WE HAVE PROPOSED A CERTIFICATION OF TWO DEFENDANT CLASSES CONSISTENT WITH THE COURT'S DIRECTION UNDER THE CASE MANAGEMENT ORDER. WE SEEK CERTIFICATION OF THE FIRST CLASS, WHICH WOULD CONSIST OF THOSE BELONGING TO CATEGORY THREE A, IDENTIFIED IN THE CASE MANAGEMENT ORDER AS SUCCESSORS IN INTEREST TO THE DECREE. AND WE HAVE SUGGESTED TO DEFINE THAT CLASS AS THOSE SUCCESSORS IN INTEREST, OR THOSE WHO CLAIM A SUCCESSORS IN INTEREST, WHO HAVE NOT -- WHO ARE NOT PARTICIPATING INDIVIDUAL -- INDIVIDUALLY, PARDON ME, IN THESE PROCEEDINGS.

WE ALSO SEEK CERTIFICATION OF A PARTIAL CATEGORY, THREE C DEFENDANT CLASS, AGAIN CONSISTING OF THOSE INDIVIDUALS AND ENTITIES CLAIMING A RIGHT TO USE GROUNDWATER FOR DOMESTIC PURPOSES IN THE SPECIFIED SUB-BASINS, 107, 108, 110-A, AND 110-B, WHO ARE NOT PARTICIPATING INDIVIDUALLY IN THESE PROCEEDINGS.

ONLY THE DISTRICT AND NEVADA HAVE FILED OPPOSITIONS TO OUR MOTION. AND NEVADA PRIMARILY OBJECTS TO ITS DESIGNATION AS CLASS REPRESENTATIVE. NO OTHER PARTY IN THESE PROCEEDINGS HAS OBJECTED TO OUR MOTION.

I'VE ESTABLISHED IN OUR BRIEFS THE TWO CLASSES WHO RECEIVED IDENTIFI (SIC) -- OR, EXCUSE ME, CERTIFICATION,

MR. DEPAOLI?

MR. DEPAOLI: YOUR HONOR, GORDON DEPAOLI, ON BEHALF OF THE WALKER RIVER IRRIGATION DISTRICT.

THE -- THE LANDSCAPE HAS, AT LEAST IN MY INTERPRETATION, HAS SHIFTED SOMEWHAT FROM THE ORIGINAL MOTION TO THE JOINT REPLY. WE ARE NOW PROPOSING TO EXCLUDE FROM THE TWO PROPOSED CLASSES ANYONE WHO IS PARTICIPATING IN THE PROCEEDINGS.

AND, SECONDLY, AT LEAST IN MY MIND, I HAVE SOME QUESTIONS AS TO WHETHER WE HAVE SHIFTED SOME FROM WHAT THE ORIGINAL MOTION INTENDED. THE ORIGINAL MOTION WAS DIRECTED TO CERTIFICATION TO ADDRESS THE THRESHOLD ISSUES RELATIVE TO THE TRIBAL CLAIMS AND FOR PURPOSES OF ADDRESSING THE DECLARATORY RELIEF THAT THE TRIBE AND THE UNITED STATES SEEK IN PHASE TWO OF THE PROCEEDINGS. IN THE ORIGINAL MOTION, THE TRIBE AND THE UNITED STATES ALSO SAID THAT CLASS CERTIFICATION BEYOND PHASES ONE AND TWO MIGHT BE APPROPRIATE.

IT'S IMPORTANT TO UNDERSTAND WHAT JUDGE REED MEANT IN THE CASE MANAGEMENT ORDER WHEN HE DESCRIBED PHASE TWO. HE DESCRIBED PHASE TWO AS, AND I QUOTE, "INVOLVING COMPLETION AND DETERMINATION ON THE MERITS OF ALL MATTERS RELATING TO THE TRIBAL CLAIMS." AND THEN WENT ON TO SAY IT COULD INCLUDE SOME OTHER THINGS.

IT -- IT SEEMS, NOW, THAT WE ARE PROPOSING TO DIVIDE PHASE TWO OF THE LITIGATION INTO PARTS ONE AND TWO. PART ONE

BEING A DECLARATION OF -- ON THE MERITS OF THE TRIBAL CLAIMS. AND PART TWO, THEN, BEING GETTING TO HOW RELIEF WOULD BE HANDLED. AND I THINK IT'S VERY CLEAR THAT IN ORDER TO GRANT EFFECTIVE RELIEF, EVERYONE AGREES THAT THE INDIVIDUAL WATER RIGHTS CLAIMANTS WILL HAVE TO BE NAMED AND JOINED. AND I -- I DO NOT AGREE THAT THEY WILL NOT ALSO HAVE TO BE SERVED UNDER RULE 4.

BUT I THINK WHETHER YOU VIEW THE ISSUES AS -- AS I INTERPRET IT, THE ORIGINAL MOTION, OR AS I INTERPRET THE NARROWING BY THE JOINT REPLY, THE TRIBE AND THE UNITED STATES HAVE NOT MET THEIR BURDEN UNDER RULE 23.

HOWEVER, I THINK IT IS INAPPROPRIATE TO ALTER WHAT JUDGE REED SAID PHASE TWO OF THIS LITIGATION WILL BE. I THINK PHASE TWO, NECESSARILY, HAS TO INCLUDE GRANTING EFFECTIVE RELIEF. AND AS I WILL EXPLAIN LATER, IN MY JUDGMENT THE MERITS OF THE -- THE MERE DECLARATION OF THE MERITS OF THE TRIBAL CLAIMS, NECESSARILY, INVOLVES THEIR AFFECT ON THE OTHER WATER RIGHTS CLAIMANTS. AND THAT THOSE TWO THINGS ARE NOT SEVERABLE, BUT MUST BE CONSIDERED TOGETHER.

THE TRIBE AND THE UNITED STATES HAVE NOT SHOWING (SIC) -- SHOWN THAT JOINDER OF ALL OF THE DEFENDANTS IS NOT PRACTICAL. THE QUESTION OF WHAT CONSTITUTES IMPRACTICABILITY DEPENDS ON THE FACTS OF EACH CASE. THERE'S NO ARBITRARY RULE AS TO NUMBERS. THE BASIC QUESTION IS PRACTICABILITY OF JOINDER. THE JOINDER IS PRACTICABLE WHERE MEMBERS OF THE

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

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

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

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

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

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

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

MR. NEVILLE?

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

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

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

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

Janyce Rossall 10/19/07

Janyce Rossall, Owner Date