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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	)	IN EQUITY NO. C-125-ECR Subproceeding: C-125-B REQUEST FOR APPROVAL OF FIFTEENTH REPORT OF THE UNITED STATES OF AMERICA CONCERNING STATUS OF SERVICE ON CERTAIN PERSONS AND ENTITIES

The United States of America ("United States"), through undersigned counsel, requests this Court to approve and enter the attached Proposed *Order Concerning Fifteenth Report of the United States of America Concerning Status of Service on Certain Persons and Entities.*

The United States filed the *Fifteenth Report of the United States of America Concerning Status of Service on Certain Persons and Entities* (Docket # 1578) ("Fifteenth Service Report") on March 5, 2010. The Fifteenth Service Report was served by e-filing on all parties to the case and all persons and entities addressed in the Fifteenth Service Report whose counsel are CM/ECF participants, and was also mailed to all persons and entities addressed in the Fifteenth Service Report who are not CM/ECF participants.

The Fifteenth Service Report reports the status of the United States' continuing efforts to effect service on persons and entities subject to service under the *Case Management Order* (Apr. 18, 2000) ("CMO"). As set forth in this and the other fourteen similar pleadings, the United States asks the Court to approve certain service efforts, to amend the caption related to this phase of service, to make corrections and additions, and, in some instances, to take no action at this point.

Pursuant to the *Order Regarding Comment on Fifteenth Service Report* (Mar. 8, 2010) (Docket # 1580), the United States received six comments or questions. Based on some of the comments, we are withdrawing a number of requests to dismiss certain persons and entities that have already been served in this case and are not asking the Court at this time to take any action. As a result, persons and entities that have already been served in these instances remain as defendants in this case.

1. **Persons and Entities to be Deemed Served:**

No comments were received regarding the persons and entities listed in Part One of the Fifteenth Service Report for which we request that service be deemed complete. The persons and entities proposed to be deemed served are identified in Part B of the attached proposed Order. In addition, this list includes other persons and entities that we ask the Court to deem served, as noted in the Fifteenth Service Report and this Request.

2. Successors in Interest:

a. Comments from the Walker River Irrigation District:

The Walker River Irrigation District ("WRID"), filed comments (Docket # 1583 and included as Attachment 2) questioning the substitution of new parties to the action based on a transfer of ownership of the water right at issue in the absence of service on the nonparties to the litigation pursuant to Rule 4 of the Federal Rules of Civil Procedure.

The United States agrees with WRID and withdraws the majority of its requests in Part Two of the Fifteenth Service Report. Specifically, it withdraws its requests regarding entries 43, 46 through 65, and 67 through 93 in the Fifteenth Service Report. We note that in each of these instances, service has been deemed complete on the predecessor owner, which remains a party to this action. Pursuant to Rule 25(c), "[if] an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party." Fed. R. Civ. P. 25(c).

This raises an issue that the primary parties discussed with the Court at the initiation of service, but should be revisited in conjunction with a number of issues related to completing service. Based on the United States' withdrawal of the above requests, the Court does not need to address this issue in conjunction with the Fifteenth Service Report.

Although the United States withdraws the above requests for substitution, these filings notify the subsequent owners that rights they received from the predecessor owners (who are current parties to this case) are involved in this case. If the prior and current owners of any such rights wish to substitute the current owner into this case in place of the prior owner who is currently a named party, they should contact undersigned counsel.

The United States does not withdraw the following entries in Part Two of the Fifteenth Service Report:

1. Entry 44: The Norman W. and Kelli J. Annett Family Trust: The current owner, The Norman W. and Kelli J. Annett Family Trust, filed a Notice of Appearance in conjunction with a Notice of Change of Ownership of Water Right that was filed by the previous owner, Norman W. Annett. The previous and current owners are represented by the same attorney.

2. Entry 45: Antler Peak Gold, Inc: The current owner, Antler Peak Gold, Inc., filed a Notice of Appearance in conjunction with a Notice of Change of Ownership of Water Right that was filed by the previous owner, Metallic Ventures (U.S.) Inc. The previous and current owners are represented by the same attorney.

3. Entry 66: Lubbe Family Trust dtd 4/10/08: The Fifteenth Service Report states that the Trust was personally served.

b. Additional Comments Received:

1. Entry 48: J.R. Benton LLC: We received an inquiry from this company's comptroller. *See* Attachment 3. We have withdrawn our request to substitute J.R. Benton LLC at this time. Service is complete on its predecessor.

2. Entry 84: Malcolm S. and Evelyn M. Rountree Trust: Both Mr. and Mrs. Rountree are deceased and we were contacted by telephone by the bank that is handling their estate. Although we have provided most of the documents in the service package to the trust administrator, we will contact her to ascertain how she would like to proceed. *See* Attachment 3.

3. Entries 85/86: Shorr, Anna and Robert: The Shorrs sent an e-mail inquiry about the requested action and the status of Candace Wipfli. *See* Attachment 3. We have withdrawn our request to substitute the Shorr's into this case at this time. Service is complete on their predecessors.

3. Persons And Entities to be Dismissed:

a. Comments from Attorney Karen Peterson:

Attorney Karen Peterson, who represents the U.S. Board of Water Commissioners, which administers the underlying Decree in Case No. C-125, but is not a party to Case No. C-125-B, submitted questions regarding a number of the persons and entities identified for possible dismissal in Part Three of the Fifteenth Service Report. Ms. Peterson's questions and our response are in Attachment 4.

Ms. Peterson raises one issue that was not addressed by the Court-approved service documents that should be raised with the Court in conjunction with issues related to completing service: whether persons or entities previously deemed served to which other water rights are subsequently transferred need to be served again. We do not think such persons or entities should be served a second time because they are already parties to the case, although some additional notice would be appropriate in a form approved by the Court. Pending a discussion of this issue with the primary parties in the case and with the Court, we have withdrawn our requests for dismissal for a limited number of persons and entities that may present this circumstance. As explained in our letter to Ms. Peterson, the remaining dismissals that she questioned involve circumstances where the transferees of such rights were served after they acquired the rights. Based on the United States' withdrawal of these requests, which involve three properties and six owners, the Court does not need to address this issue in conjunction with the Fifteenth Service Report.

1. Based on Ms. Peterson's comments, we have determined to withdraw the following requests for dismissal:

a. Entries 134/178: Grant, Kathy; No Worries, LLC
b. Entries 160/161: Lemos, Carroll J. and Milton
c. Entries 204/205: Weller, William and Bessie

2. Entry 131: Estate of Susana Fousekis:

When we followed up on Ms. Peterson's question regarding the Estate of Susana Fousekis, we learned that her rights and those of her husband, James Fousekis, had been transferred to two separate trusts, for which Mr. Fousekis is the trustee. Both Mr. and Mrs. Fousekis had been deemed served in the Third Service Order. We obtained deeds that document the establishment of each trust, and Mr. Fousekis sent us Notices of Appearance for each trust. *See* Attachment 5.

Based on Mr. Fousekis' updated Notices of Appearance, we ask the Court to: 1. Substitute the Susana Cox Fousekis Intervivos Trust dated June 6, 2007, for Susana C. Fousekis; 2. Substitute the James T. Fousekis Intervivos Trust dated June 6, 2007, for James T. Fousekis; 3. Deem the

Susana Cox Fousekis Intervivos Trust dated June 6, 2007, and the James T. Fousekis Intervivos Trust dated June 6, 2007, served; and 4. Dismiss Susana C. Fousekis and James T. Fousekis.

3. As set forth in the attached letter to Ms. Peterson, we do not believe additional changes are warranted in response to her other questions.

b. Comments from WRID:

Based on WRID's comments, discussed above, because we have withdrawn our motions for substitutions, we are withdrawing the corresponding dismissals.

c. Inquiry From Michael Robertson:

Mr. Robertson (entries 186, 187) telephoned on March 22, 2010, to inquire generally about the case and his interests in an undeveloped property with a domestic well. He spoke with a paralegal, who referred him to his County Attorney's Office and the Office of the Nevada State Attorney General. The United States has asked to dismiss Mr. and Mrs. Robertson because their property does not meet the requirements of the Case Management Order.

WHEREFORE, for these and such additional reasons that may appear to the Court, the United States asks the Court to approve this Request and sign and enter the Proposed *Order Concerning Fifteenth Report of the United States of America Concerning Status of Service on Certain Persons and Entities*, which is included in Attachment 1.

Dated: April 29, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2010, I electronically filed the foregoing REQUEST FOR APPROVAL OF FIFTEENTH REPORT OF THE UNITED STATES OF AMERICA CONCERNING STATUS OF SERVICE ON CERTAIN PERSONS AND ENTITIES and Proposed ORDER CONCERNING FIFTEENTH REPORT OF THE UNITED STATES OF AMERICA CONCERNING STATUS OF SERVICE ON CERTAIN PERSONS AND ENTITIES with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following via their email address:

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I further certify that on this 29th day of April 2010 I sent a copy of REQUEST FOR APPROVAL OF FIFTEENTH REPORT OF THE UNITED STATES OF AMERICA CONCERNING STATUS OF SERVICE ON CERTAIN PERSONS AND ENTITIES and Proposed ORDER CONCERNING FIFTEENTH REPORT OF THE UNITED STATES OF AMERICA CONCERNING STATUS OF SERVICE ON CERTAIN PERSONS AND ENTITIES to the following non CM/EMF participants by U.S. Mail, postage prepaid:

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