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DISTRICT OF NEVADA
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UNITED STATES DISTRICT COURT

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
Subfile No. C-125-B

CASE MANAGEMENT ORDER

UNITED STATES OF AMERICA,
WALKER RIVER PAIUTE TRIBE,

Counterclaimants,

v.

WALKER RIVER IRRIGATION DISTRICT,
et al.,

Counterdefendants.

The enormity and complexity of the issues pending with respect to the First Amended counterclaims filed by the United States and the Walker River Paiute Tribe certainly suggest that

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some sort of bifurcation would be helpful in processing the action. Any such bifurcation may involve some duplication of work in relation to subsequent phases of the case. There does not seem to be any way to entirely avoid duplication, but we should endeavor to do so to the extent that we can. Another major concern is whether persons litigating in later phases of the case may find themselves prejudiced by being bound by decisions and adjudications in earlier phases where they did not participate. This, too, we should endeavor to avoid.

Without bifurcation of some sort, the case may simply be too big and too complex to process on a reasonable basis.

Having determined that some sort of bifurcation is desirable and necessary, we conclude that, in general terms, the proposal of the U.S./Tribe to bifurcate the "Tribal Claims" is as good and logical a basis for dividing the case as has been suggested or can be devised.

While many of the defenses to the claims of the U.S./Tribe claims for the Walker River Paiute Indian Reservation may be the same or similar to the defenses that may be offered with respect to the remaining claims of the U.S. for other Indian reservations and lands and federal enclaves and federal lands, each of the remaining claims appears to require development of a distinctly different factual scenario, as well as specific legal basis. This presents one good reason to bifurcate as suggested by the U.S./Tribe. Exactly how the defenses which overlap the claims for the Walker River Paiute Indian Reservation will play out as to

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each of the other separate claims is uncertain and adds justification for the proposed bifurcation.

In the order that follows, we have expanded the categories of water rights holders to be served with process somewhat beyond the categories suggested by the U.S./Tribe in their proposed case management order, but have not included all such categories as have been suggested by the Walker River Irrigation District and States of Nevada and California.

The categories to be served with process may be subject to adjustment and modification by order of the Magistrate Judge as he may find to be appropriate. However, we note that we have limited domestic users to be served with process to those whom, it appears, might be affected by pumping of underground water on the Walker River Paiute Indian Reservation. If it is shown that other domestic users could be affected by such pumping or that the underground and surface water constitute a single hydrological system where an earlier priority for the tribe for surface or underground waters could affect the rights of other domestic users, the Magistrate Judge should make an order expanding the category of domestic users who are required to be served with process.

We have also expanded the categories of water rights holders who have permits to pump groundwater issued by the State of Nevada and who are required to be served with process to additional Sub Basins in Nevada. This has been done because of the claim that underground and surface waters constitute a single source.

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These additional categories are also subject to modification by the Magistrate Judge on the same basis as noted above.

With the conclusion that the Tribal claims should be bifurcated in mind, we then endeavor to devise a case management order to provide for such bifurcation, taking into account the companion considerations noted above.

IT IS, THEREFORE, HEREBY ORDERED that:

(1) The claims of the Tribe contained in the First Amended Counterclaim of the Tribe and the claims of the U.S. on behalf of the Tribe (First, Second, and Third Claims for Relief) set forth in the First Amended Counterclaim of the U.S. are hereby bifurcated from all other claims raised by the U.S. in its pleading. The bifurcated claims are sometimes referred to herein as the "Tribal Claims." Reference to the U.S./Tribe below refers separately to the United States and its said claims, set forth in its First Amended Counterclaim in behalf of the Tribe and to the Walker River Paiute Tribe and its claims set forth in its First Amended counterclaim.

(2) The Tribal Claims shall proceed as described in this Case Management Order. All discovery and all other proceedings in this action included in or in connection with the said First Amended Counterclaims are stayed, until the further order of the court, and except as provided in this order.

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(3) Prior to the resolution of the Threshold issues identified below, the U.S./Tribe shall effect service of their respective First Amended Counterclaims, notices in lieu of summons, requests for waiver of service, and the within Case Management Order on all of the members of the categories of water rights holders described below. Each of the members of each said category shall be named as a Counterdefendant in this case.

(a) The successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940) ("1936" Decree).

(b) All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basis who are not presently parties to this adjudication.

(c) All holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley), and 110B (Walker Lake Subarea of the Walker Lake Valley).

(d) All holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

(e) All users of groundwater for irrigation in California in the Walker River Basin.

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(f) All holders of "vested rights" to the use of groundwater under the laws of the State of Nevada within the Walker River Basin.

(g) All municipal providers in Nevada within the Walker River Basin who currently use groundwater.

(h) All municipal providers in California within the Walker River Basin who currently use groundwater.

(i) All industrial users in Nevada within the Walker River Basin who currently use groundwater.

(4) Subject to the requirements of this order, within 60 days of entry of this Case Management Order the parties shall file an agreed-upon Notice in Lieu of Summons for the Tribal Claims and agreement upon procedures for recording Lis Pendens to the Magistrate Judge for his consideration and approval. To the extent the parties cannot agree on any of these issues they shall, within said period of time, file their own proposals regarding such issues for consideration and decision by the Magistrate Judge. Procedures for recording of Notices of Lis Pendens will be determined by the Magistrate Judge by order.

(5) To the extent the U.S. and the Tribe cannot effect service or obtain a waiver of service from all the individual members of the categories of water rights holders and users listed above, and all other claimants to surface and groundwater rights not identified or who are unknown, the U.S./Tribe may move for publication of summons consistent with Fed. R. Civ. P. 4 and the laws and rules applicable for Nevada and California respectively to

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the extent they are to be used according to Fed. R. Civ. P. 4. The Magistrate Judge shall consider any such motion and rule on the same so as to grant or deny such motion for publication in whole or in part.

(6) The Magistrate Judge shall establish a schedule for completion of service of process which may be modified by further order from time to time as appropriate.

The Magistrate Judge is authorized to consider and decide all issues which may arise pertaining to service of process.

(7) The Magistrate Judge shall conduct all necessary proceedings and shall decide how the information shall be obtained by the U.S./Tribe to enable them to identify the individuals and entities with claims to surface water and/or groundwater in the Walker River Basin who are the appropriate counterdefendants to the U.S./Tribe said counterclaims. The Magistrate Judge shall determine the responsibilities of the respective parties to provide such information and at whose cost. Such information may be ordered obtained through orders devised by the court or discovery or other processes, so that the litigation may proceed in a reasonable manner.

In this connection, the Magistrate Judge shall also consider and determine how, when, and at whose cost information regarding changes or modification in the individuals or entities with such water rights claims shall be provided as between the parties and the entities which receive information respecting any

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such changes, until service of process is complete on the counterclaims.

(8) The U.S./Tribe may seek costs of service pursuant to the requirement of Fed. R. Civ. P. 4(d) during their service efforts under this Case Management Order.

(9) After the U.S./Tribe have received the information and compiled the list of parties whom they intend to serve, that list and a description of the procedures by which it was compiled shall be filed and provided to the parties who shall have such period of time as the Magistrate Judge shall determine to file objections indicating whether the list is complete and includes all such water rights claimants within the categories described in paragraph (3) above who can reasonably be identified. The Magistrate Judge shall consider and rule on all such objections. Corrections to the list of intended parties may be made during the period of the service of process upon appropriate notice and approval of the Magistrate Judge.

Scheduling, Case Management

(10) Following completion of service of process on the said counterclaims, the Magistrate Judge shall receive recommendations of the parties for procedures for scheduling and for the efficient management of the litigation given the number of parties to the case. Such procedures may include the use of common counsel, special procedures for service of pleadings, or any other mechanisms deemed likely to reduce the burdens on the parties and the court in a case of this magnitude. The Magistrate Judge shall

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consider and make all appropriate rulings with respect to these matters.

Threshold Issues Relative to Tribal Claims

(11) As soon as convenient after the entry of this order, and upon appropriate notice to the parties presently appearing in the case, the Magistrate Judge shall consider and make a preliminary determination of the threshold issues to be addressed at the outset of the litigation on the U.S./Tribe said counterclaims. Scheduling of such consideration shall go forward notwithstanding other proceedings provided for in this order. The list of threshold issues regarding said claims will not be finally resolved and settled by the Magistrate Judge until all appropriate parties are joined. Nevertheless, the parties are directed to identify all potential threshold issues promptly and to submit them to the Magistrate Judge for consideration, as he shall direct, so that action may proceed as promptly as possible upon conclusion of service of process. In general, threshold issues, among others, shall address jurisdiction, claim, preclusion, applicable law, equitable and other defenses which may be raised by any party.

Among others, the Magistrate Judge shall consider inclusion in the list of threshold issues to the resolution of the said Tribal Claims to be addressed at the outset of the litigation:

(a) Whether this court has jurisdiction to adjudicate the said Tribal Claims. If so, to what extent should the court exercise its jurisdiction in these matters. In this connection, what is the scope of this court's subject matter

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jurisdiction to adjudicate the Tribal Claims to groundwater, as well as to additional surface waters?

(b) Does federal law govern the pumping of groundwater on the Walker Lake Paiute Indian Reservation by the Tribe or the U.S. on its behalf?

(c) If the Tribe has the right to pump groundwater under federal law, are such rights, as a matter of federal law, subject to different protections than those provided by State law?

(d) Whether the court has jurisdiction over groundwater used pursuant to State law outside the exterior boundaries of the Walker River Paiute Indian Reservation if such use interferes with the Tribe's rights under federal law to use water from the Walker River system. If so, should the court exercise that jurisdiction?

(e) Whether equitable defenses bar some or all of the said Tribal Claims. Within such time as shall be fixed by the Magistrate Judge the parties now or hereafter appearing in the case shall file for consideration by the Magistrate Judge a statement as to any defenses or issues they intend to assert.

(f) Whether, regardless of the extent of hydrologic connection between surface and groundwater, this court is required to accept the distinction drawn between surface water rights and groundwater rights provided by California and Nevada law.

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(g) Are the holders of surface water rights established under federal law entitled to protection from the use of groundwater beyond the protection provided to holders of surface water rights established under state law.

(h) If the only jurisdiction of this court with respect to groundwater issues is to protect surface water rights established under federal law from interference by junior groundwater users, must the issues of interference be decided as a part of the adjudication of federal surface water claims.

Phasing of Proceedings

(12) Pretrial proceedings in this case with respect to the Tribal Claims shall be conducted in multiple phases as follows:

(a) **Phase I** of the proceedings shall consist of the threshold issues as identified and determined by the Magistrate Judge.

(b) **Phase II** will involve completion and determination on the merits of all matters relating to the said Tribal Claims.

A Scheduling Order shall be entered by the Magistrate Judge, in accordance with this order, and such other appropriate matters as he shall consider necessary to provide for completion of consideration of Phases I, II, and subsequent phases in the case.

(c) Additional phases of the proceedings shall encompass all remaining issues in the case. Such phases shall be

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determined and scheduled by the Magistrate Judge and may, to the extent he determines, overlap Phases I and II as appropriate. We do anticipate, however, that the additional phases will not be scheduled by the Magistrate Judge at least until the threshold issues as set forth above have been decided on the merits. The additional phases shall include, but not be limited to:

(a) All other claims, crossclaims, counterclaims, defenses and issues raised by the pleadings of the parties that are not included in the threshold issues.

(b) All other issues related to the Tribal Claims.

(c) All issues related to the other Federal Claims.

Responses to Process

(13) The notices in lieu of summons shall notify the persons or entities served concerning how and when they must respond. They shall be directed to file and serve upon the U.S., the Tribe, the Walker River Irrigation District, the States of Nevada and California, within 60 days after completion of service of process (or where service is by publication within 60 days after the last day of publication of such service), a notice of appearance and intent to participate. No Answers or other pleading will be required except upon further order of the Magistrate Judge entered thereafter. No default shall be taken for failure to appear.

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(14) Upon completion of Phase I it may be necessary to join additional parties.

Discovery, Motions and Further Proceedings

(15) Once the Magistrate Judge has finally determined the threshold issues, discovery shall be allowed to all parties on the threshold issues. Discovery shall also be permitted during that same time period concerning the basis for the Tribal Claims; such discovery shall be limited to propounding of interrogatories and requests for production of documents relating to the contentions of the U.S./Tribe with respect to the basis for the Tribal Claims.

The discovery provided for in this paragraph (15) shall be conducted for such period and according to such terms, conditions, modifications and extensions to this order as shall be determined to be appropriate by the Magistrate Judge.

As provided above, all other discovery is stayed.

(16) Motions which may be dispositive or partially dispositive of any threshold issue shall be deferred until completion of discovery as permitted by this order and shall be filed thereafter within such time period and schedules for answers and replies as shall be determined by the Magistrate Judge. Such dispositive motions, however, will be decided by the undersigned judge.

(17) To the extent the threshold issues are not resolved by motions, an evidentiary hearing shall be held before the undersigned judge at such time and according to such conditions

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(including, as appropriate, the filing of joint prehearing orders as shall be determined by the Magistrate Judge.

(18) If a party wishes to perpetuate testimony relevant to this matter, that party shall comply with Fed. R. Civ. P. 27 and any applicable Local Rule. The Magistrate Judge will consider and determine all issues pertaining to perpetuation of testimony.

(19) Any party may move for modification of this Case Management Order for good cause shown. The Magistrate Judge shall have authority to change, modify and adjust this order. The Magistrate Judge shall hold regular periodic status conferences at times he shall determine, so that he and the parties may be advised as to the progress of the case and problems encountered, so that appropriate changes, modifications, and adjustments may be made in this order and such problems addressed.

IT IS FURTHER ORDERED that the Joint Motion For Leave to Serve First Amended Counterclaim filed by U.S./Tribe (#62) is **GRANTED** on the basis and to the extent set forth in this order.

The motions (#67), (#90), (#96), and (#98) are all considered ruled upon and decided as provided in the within order.

DATED: April 18, 2000.

Edward C. Reed,
UNITED STATES DISTRICT JUDGE

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