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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF NEVADA**

4 UNITED STATES OF AMERICA,) IN EQUITY NO. C-125-RCJ
5)
6 Plaintiff,) SUBPROCEEDING NO. C-125-B
7) 3:73-CV-00127-RCJ-WGC
8 WALKER RIVER PAIUTE TRIBE,)
9)
10 Plaintiff-Intervenor,)
11)
12 v.) **SUPERSEDING ORDER**
13) **REGARDING SERVICE AND**
14) **FILING IN SUBPROCEEDING**
15 WALKER RIVER IRRIGATION DISTRICT,) **C-125-B ON AND BY**
16 a corporation, et al.,) **UNREPRESENTED PARTIES**
17)
18 Defendants.)
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On June 3, 2013, the Court entered the Order Regarding Service and Filing in Subproceeding C-125-B On and By Unrepresented Parties (the “Unrepresented Party Order”) (Doc. 1874). For the reasons expressed at the Status Conference in this matter on July 25, 2013 and November 4, 2013, the Court has determined that the Unrepresented Party Order should be modified, and in order to have all of the provisions regarding service on Unrepresented Parties in one, rather than two, Orders, the Court is entering this Order to completely supersede the Unrepresented Party Order (hereafter, “Superseding Order”).

ATTENTION – MANDATORY ACTION BY YOU IS REQUIRED

Within thirty (30) days of the date of this Superseding Order, you must take action described on pages XX, paragraph X, below.

INTRODUCTION

The Court is addressing case management issues related to this case - Subproceeding C-125-B. You are receiving this Superseding Order because you are a defendant in Subproceeding C-125-B.

The purpose of this Superseding Order is to identify and implement the alternative methods of service for all parties to receive or to be served papers.

BACKGROUND

Previously, this Court required the United States of America (“United States”) and the Walker River Paiute Tribe (“Tribe”) to serve persons and entities holding certain categories of water rights pursuant to the provisions of Rule 4 of the Federal Rules of Civil Procedure with a Notice in Lieu of Summons that required them to file a Notice of Appearance and Intent to Participate. Thus far, the United States and Walker River Paiute Tribe have served approximately _____ parties. Of those served, approximately _____ have entered their appearance and are represented by an attorney. In addition, almost 1,000 parties have filed a Notice of Appearance and Intent to participate and are not represented by an attorney. Finally, the remaining approximately _____ of those served have not appeared at all. Throughout the remainder of this Superseding Order, a party who has filed a Notice of Appearance and Intent to Participate and who is represented by an attorney will be referred to as “Represented Party.” A party, who has filed a Notice of Appearance and Intent to Participate, but who is not represented by an attorney, will be referred to as “Unrepresented Party.” A party, who has taken no action with regard to this case, making no appearance in this case, will be referred to as “Non-Appearing Party.”

Once service under Rule 4 is complete, the provisions of Rule 5 of the Federal Rules of Civil Procedure control the service of papers filed in this matter. Because of the large number of Non-Appearing Parties, and Unrepresented Parties, the Court is entering this Superseding Attachment A – Notice of Proposed Superseding E-Service Order

1 Order to clarify which papers must be served, on whom they must be served, and how they
2 must be served under Rule 5 as this matter moves forward.

3 Rule 5(a)(2) provides that no service is required on a party who has failed to appear (*i.e.*
4 in this case, a Non-Appearing Party). For purposes of that Rule and as applied to this case,
5 except as provided in page XX, paragraph xx, below, a Non-Appearing Party here who has
6 been properly served and has not filed a Notice of Appearance and Intent to Participate need
7 not be served further unless and until that party does so appear. *See Cutting v. Allentown*, 936
8 F.2d 18, 21, n. 1 (1st Cir. 1991).

10 With respect to parties who have appeared, Rule 5 controls service of papers on them.
11 Under that Rule, most papers filed in this matter are required to be served on every other party.
12 Rule 5 specifies several methods for this service. Two of the most frequently used methods are
13 service by mail and service by electronic means.

15 Under this Court's Local Rules, parties who are represented by attorneys are allowed to
16 serve other parties represented by attorneys using the Court's Case Management/Electronic
17 Case Filing system ("CM/ECF System"). However, use of the CM/ECF System is generally
18 limited to attorneys representing a party, who are required to file and receive all papers using
19 this electronic system. Authorized users do not receive paper copies of filings by mail because
20 the CM/ECF System sends them e-mail notice of all filings with a link to an electronic copy of
21 the document in the CM/ECF System. Use of the CM/ECF System is easy, efficient and
22 economical. This Superseding Order does not change the requirement for attorneys to use the
23 CM/ECF System.

25 Because of the large number of Unrepresented Parties who have appeared, the Court has
26 identified a need for an effective and efficient method for the Court, as well as all parties, to
27 serve papers on Unrepresented Parties, and conversely to allow Unrepresented Parties to serve
28 papers. Unless the CM/ECF System is made available for service on parties without attorneys,

1 service of documents upon Unrepresented Parties must be accomplished by another means.
2 Typically, parties without an attorney are served paper copies of filings by mail and must serve
3 paper copies of their filings by mail on every other party who has appeared. Although the cost
4 of copying and mailing a paper may not be significant when a case includes only a few
5 unrepresented parties, here there are almost 1,000 unrepresented parties and the cost of postage
6 alone for every paper served on by an Unrepresented Party could be, at a minimum,
7 approximately \$460.00.
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9 Although the Court is concerned with, among other things, the cost to the judiciary, of
10 greatest concern to the Court is that the cost of requiring every party to serve every filing by
11 mail on every other party will unfairly impede the participation of all parties to this matter
12 whether represented or unrepresented. The Local Rules for the U.S. District Court for the
13 District of Nevada allow papers to be filed or served by electronic means. Local Rules 5-3 and
14 5-4 allow electronic filing and service pursuant to Special Order No. 109. Further, the Court
15 may amend the electronic filing procedures in Special Order No. 109 “in keeping with the
16 needs of the Court.” Therefore, the Court believes that the unique circumstances of this
17 complex subproceeding, the needs of the Court, and the interests of fairness require this Court
18 to develop alternate service procedures for the remainder of this subproceeding.
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20 **FINDINGS AND CONCLUSIONS**

21 Accordingly, and based upon the foregoing, the Court finds:
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23 **THAT** the alternative methods addressed in this Superseding Order for electronic
24 service on Unrepresented Parties and filing by such parties through the Clerk’s Office are fair,
25 are in keeping with the needs of the Court and all parties, and are consistent with the Federal
26 Rules of Civil Procedure, the Local Rules of this Court, and Special Order No. 109;
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1 **THAT** the procedure set forth herein for Unrepresented Parties to request to be on the
2 Court's "postcard service" list, including the conditions for them to remain on the "postcard
3 service" list, is a reasonable exception to electronic service; and

4 **THAT** the additional, limited use of the CM/ECF System and the establishment and
5 maintenance of the public website described below will not overburden the Court staff.
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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

Parties Who Have Been Served, But Who Have Not Appeared:

1. Because parties who have been properly served under Rule 4 and who have not filed a Notice of Appearance and Intent to Participate are in “default” for purposes of Rule 5(a)(2), no service is required under Rule 5 on those Non-Appearing Parties, unless and until they so appear.
2. Paragraph 1 immediately above is not intended to change and does not change the provisions of the April 18, 2000 Case Management Order (Doc. 108) at page 12, paragraph 13, that no default shall be taken under Rule 55 of the Federal Rules of Civil Procedure, and the Court will take no action to enter a default or a default judgment under that Rule against any Non-Appearing Party.
3. To give Non-Appearing Parties another opportunity to appear, to continue to receive notice as provided in this Superseding Order, and to be heard, the Court orders the following:
 - a. Within thirty (30) days from entry of this Superseding Order, the United States shall serve this Superseding Order by first-class mail on all Non-Appearing Parties. The United States shall serve such persons at their last known address as reflected by records maintained by the United States and/or the Clerk of the Court, and in the case of Non-Appearing Parties who are on the Walker River Irrigation District’s most recent assessment list, at the address shown thereon.
 - b. Such service by the United States shall include the Notice of Appearance and Intent to Participate in form and substance as attached hereto as Exhibit ____.
 - c. Within sixty (60) days from such service by the United States, Non-Appearing Parties may mail the Notice of Appearance and Intent to Participate to the Clerk

of the Court. Further, for any party that appears in this case it is mandatory that such party either consent to receive service by e-mail notification or request to receive service by postcard as outlined in paragraph **X**, below, and as elected through the election on page **X** of the Notice of Appearance and Intent to Participate form. If you have access to a computer and the Internet, the Court strongly encourages you to consent to electronic service in order to reduce the costs associated with service not only for all other parties, but also for yourself because any paper you file in this matter will have to be served by you on other parties as provided in this Order.

- d. After sixty (60) days from entry of this Superseding Order, a Non-Appearing Party may only appear in this case by motion and leave of this Court (**NOTE: Need to discuss conditions which may/may not need be met if water rights user requests to appear after sixty days**)

Establishment of a Public Website:

4. The Clerk of the Court has established and will maintain a website that is separate from the Court's official docket and available to the public, on which the Clerk has and will post Orders and other filings in Subproceeding C-125-B.
5. This separate public website may be accessed directly at: ecf.nv.uscourts.gov/casedisplay or by selecting "Walker River" on the District of Nevada's official website: www.nvd.uscourts.gov.

Service on Unrepresented Parties:

6. **Service of this Order on Unrepresented Parties:** Within thirty (30) days from entry of this Superseding Order, the United States shall serve this Superseding Order by first-class mail on Unrepresented Parties. The United States shall serve such persons at their last known address as reflected by the most recent correspondence with Unrepresented

Parties, or in the case of Unrepresented Parties on the Walker River Irrigation District's most recent assessment list, at the address shown thereon.

7. **Election of Method of Service:** It is mandatory that Unrepresented Parties must either consent to receive service by e-mail notification or request to receive service by postcard. Within sixty (60) days of service of this Superseding Order, every Unrepresented Party must complete and return to the Court the attached notice concerning your election of service. The notice must be mailed to:

U.S. District Court Clerk, Attn. C-125-B Notice Clerk
Bruce R. Thompson Courthouse
400 S. Virginia Street, Rom 301
Reno, Nevada 89501

If an Unrepresented Party previously responded to the Court's June 3, 2013 Unrepresented Party Order, and informed the Court of your election of a method of service (i.e. by e-mail or by mail-only), you need not complete and return the attached Notice - unrepresented Parties who previously elected to be on the "Mail-Only" list under the Unrepresented Party Order shall be mailed post card notice as described in page X, paragraph X, below. **But**, if you have previously entered your appearance but you failed to respond to the June 3, 2013 Order, **you must respond to this Superseding Order**. If you have access to a computer and the Internet, the Court strongly encourages you to consent to electronic service in order to reduce the costs associated with service not only for all other parties, but also for yourself because any paper you file in this matter will have to be served by you on other parties as provided in this Order.

8. **Electronic Service:** If an Unrepresented Party consents to electronic service as hereinafter provided, that party will receive an e-mail from the court's CM/ECF System each time a document is filed in this matter that includes a link to the public website

1 where the party may view, print and/or save the filing at no cost. You may wish to
2 create a new e-mail address to receive notice from the CM/ECF System that is separate
3 from your personal or other e-mail addresses.

4 9. **Service By Postcard:** If an Unrepresented Party designates that he/she wishes to
5 receive postcard notice for substantive documents filed in this matter, that party will be
6 mailed a postcard each time any other party files a paper required to be served by Rule
7 5(a) of the Federal Rules of Civil Procedure and by paragraph X, below, of this
8 Superseding Order. Such notice must contain the following information: language
9 specifically informing the recipient that the recipient is receiving a NOTICE that a
10 document has been filed in this litigation; language informing the recipient that they are
11 receiving the Notice as ordered by the Court; the date the document was filed; the name
12 of the party or parties who filed the document; the Court's docket number for the filed
13 document; the name of the document that was filed; the address of the public website
14 established by the Court where the party may view, print and/or save the filing at no
15 cost; and the locations at which the recipient can access the public website established
16 by the Court and/or obtain a paper copy of the document upon payment of copying
17 costs. A postcard notice may provide notice of the filing of multiple documents, and
18 may provide notice on behalf of more than one party.

19 10. **Service On Unrepresented Party Who Fails To Make A Service Election:** If any
20 **Unrepresented Party fails either to consent to electronic service or service by**
21 **postcard, that Unrepresented Party shall be deemed to have consented and agreed**
22 **to receive service and subsequent notice of all filings in this matter by taking the**
23 **responsibility to check the public website by selecting "Walker River" on the**
24 **Court's website (www.nvd.uscourts.gov) or by accessing the public website directly**
25 **(www.ecf.nv.uscourts.gov/casedisplay).** All such Unrepresented Parties shall be
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1 **deemed to have received notice of all subsequent Orders and other filings in**
 2 **Subproceeding C-125-B.**

3 At any time, such Unrepresented Party who fails to make a service election may elect to
 4 start receiving electronic service or postcard service by filing with the court a request
 5 for such service through the election form attached to this Superseding Order. The
 6 process to file a document with the Court is described in paragraph X, below.

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 8 11. **Filings For Which Postcard Service Not Required:** Consistent with Rule 5(a)(1)(D)
 9 of the Federal Rules of Civil Procedure and Local Rule 7-5 of the U.S. District Court
 10 Rules for the District of Nevada, the postcard notice provided for in paragraph 4, above,
 11 will not be required for a motion that may be heard *ex parte*. As well, the postcard
 12 notice provided for in paragraph X, above, will not be required for any other filing
 13 (notice, pleading, motion, etc.) that does not affect the rights of others and does not
 14 raise a significant issue of law or fact. At the conclusion of every filing, the filing party
 15 shall state whether the materials filed are subject to the postcard notice provided for in
 16 paragraph X, above, and, as a result, whether they have served Unrepresented Parties by
 17 postcard. In the event that the Court, for whatever reason, disagrees with a filing
 18 party's determination that a filing is not subject to postcard service, the Court will
 19 instruct the filing party to serve Unrepresented Parties by postcard.

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 21 12. All papers filed with this Court concerning this case will be available to the public for
 22 free viewing through the website described in paragraph X, above. Free, public access
 23 to the Internet and the Court's website may be made at the following locations in the
 24 Walker River Basin:

- 25 A. (location of local libraries with public Internet Access in Nevada), and
- 26 B. (location of local libraries with public Internet Access in California).
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13. The Court, at a later date, will adopt special procedures regarding the timing of and requirement for responses to motions.

14. In the event circumstances are presented to the Court that require the Court to modify the requirements of this Superseding Order, the Court will provide reasonable notice to such affected parties of the change.

Filings by Unrepresented Parties:

15. Unrepresented Parties may file documents in Subproceeding C-125-B by mail or in person with the Clerk of the Court at:

Clerk of the Court, Bruce R. Thompson Courthouse
400 S. Virginia Street, Room 301
Reno, Nevada 89501

16. In connection with all such filings, Unrepresented Parties must follow the Local Rules for the Federal District Court of Nevada, which are available through the Court's official website (www.nvd.uscourts.gov) and at the Clerk's Office.

Changes of Address and/or E-mail:

17. Whether an Unrepresented Party has elected to receive electronic notice of filings as described herein, elected to receive service by postcard, or made no service election, every Unrepresented Party must notify the Court if their mailing and/or e-mail addresses change. In the event that the Court receives notification from the U.S. Postal Service that the address associated with an Unrepresented Party is no longer valid, the Court shall no longer rely upon that address, and the Court and represented parties shall no longer be required to send any correspondence to the invalid address. Any Unrepresented Party whose address is determined to be invalid may resume receiving correspondence by providing the Court with his/her valid address.

18. Notice of all e-mail and/or mailing address changes must be sent to the Court at:

U.S. District Court Clerk, Attn. C-125-B Notice Clerk

Bruce R. Thompson Courthouse
400 S. Virginia Street, Rom 301
Reno, Nevada 89501

19. Unrepresented Parties who fail to notify the Court of mailing or e-mail address changes and who, as a result of such failure, do not receive notice of a filed document will nevertheless be deemed to have notice of that document and all subsequent orders and other filings in this matter.

20. The Clerk of the Court shall mail a copy of this Superseding Order and the Notice Selecting Method of Service to all Unrepresented Parties identified and served after the date of this Superseding Order on a periodic basis. When the Clerk's Office makes these periodic mailings, it shall insert a due date for Unrepresented Parties to return the **Notice Selecting Method of Service** that is at least thirty days after the mailing date. The United States shall assist the Clerk's Office with compiling the list of persons and entities to subsequently receive a copy of this Superseding Order and the Notice of Selecting Method of Service.

Required Form to Complete and Return to the Court:

21. The **Notice of Selecting Method of Service** ("Notice") shall be completed and shall be returned to:

U.S. District Court Clerk, Attn. C-125-B Notice Clerk
Bruce R. Thompson Courthouse
400 S. Virginia Street, Rom 301
Reno, Nevada 89501

22. Any Unrepresented Party who elects not to register for electronic notice of filings of documents and does not complete Part I of the attached **Notice** must request to be on the Court's "postcard service" list, and complete Part II of the same **Notice**.

23. Unrepresented Parties needing assistance with the electronic notice and/or filing procedures provided for herein are encouraged to contact the Clerk of Court at 775-686-6800, 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

24. Unrepresented Parties are encouraged to keep a copy of this Superseding Order and a copy of their completed **Notice Selecting Method of Service** for future reference.

25. **The cost associated with postcard service is potentially extremely high not only to Represented and Unrepresented Parties but to the Court as well. Therefore, the Court strongly encourages all Unrepresented Parties to consent to electronic service because e-mail notice in conjunction with the use of the Court's website is prompt, helps keep parties apprised of the proceeding's status, and avoids significant mailing expenses. The Court appreciates your careful attention to this Superseding Order.**

26. This Order supersedes in its entirety the Unrepresented Party Order of June 3, 2013 (Doc. 1874).

Dated this ____ day of _____, 2013.

UNITED STATES DISTRICT JUDGE