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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
WALKER RIVER PAIUTE TRIBE,	)	
	)	IN EQUITY NO. C-125-ECR
Plaintiff-Intervenor,	)	SUBFILE NO. C-125-B
	)	3:73-CV-00127-RCJ-WGC
vs.	)	
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	JOINT MOTION TO ALLOW SERVICE
a corporation, et al.,	)	BY PUBLICATION
	)	
Defendants.	)	
_____	)	

The United States of America ("United States") and the Walker River Tribe ("Tribe")  
(collectively "Plaintiffs") jointly move the Court to enter an Order that allows service by

publication for this sub-proceeding. The paragraphs below are provided in support of this motion.

## **I. Introduction**

Since 2000, Plaintiffs have followed the Court's instruction and taken those steps necessary to notify water rights holders throughout the Walker River Basin of the *First Amended Counterclaim of the United States of America* (July 31, 1997; Doc. B-59) ("U.S. Counterclaim") and the *First Amended Counterclaim of the Walker River Paiute Tribe* (Doc. B-58) ("Tribal Counterclaim"). During that time, the United States has mailed over 4,000 service packages, personally served over 1,500 persons and entities, and obtained review and approval of its efforts by the Court and Defendants in nineteen Service Reports and seven proofs of service by process servers.<sup>1</sup> As a result of these efforts, over 3,100 defendants have been joined to this subproceeding C-125-B.

The United States has completed its effort to personally serve those groups of Walker River Basin water rights holders that this Court previously identified.<sup>2</sup> Plaintiffs now seek to

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<sup>1</sup> Over the years, the United States has provided the Court numerous reports on the progress of the United State's service efforts. *See* Doc. 481; 497; 513; 649; 740; 802; 838; 1035; 1126; 1178; 1269; 1316; 1479; 1578; 1609; 1717, 1953, and 2057. These reports were approved by the Court. *See* Doc. 488, 522, 520; 521; 665; 708; 800; 854; 897; 1047; 1158; 1266; 1301; 1382; 1572; 1610; 1701; 1728, 2074, and 2114. Further, the United States has periodically filed proofs of service with the Court. *See* Doc. 717; 1319; 1375; 1586; 1670, and 2059. To the extent necessary, these proofs of service were addressed, if at all, at subsequent status hearings. *See e.g.*, Doc. 734 (minutes of the Court September 28, 2005).

<sup>2</sup> In its *Case Management Order* (April 18, 2000, Doc. B-108) ("CMO"), the Court directed the United States to notify the following nine categories of water rights holders of the pendency of the U.S. and Tribal Counterclaims:

- a. Successors in interest to all water rights holders under the Decree (April 14,

complete and conclude service in this sub-proceeding by publishing notice of this sub-proceeding pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure (and by incorporation, pursuant to Rule 4(e)(1) of the Nevada Rules of Civil Procedure and California Code of Civil Procedure 415.50). As discussed with the Court at previous status conferences, publication will serve two purposes. First, publication will constitute service on unknown defendants who remain unknown. Second, publication will provide a general notice to the public of this sub-proceeding and identify where filings and other relevant case documents can be reviewed without charge.

See CMO at 6-7 ¶ 5.

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- 1936), modified, Order of Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940);
- b. All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basin;
  - 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 of certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), and 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;
  - 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 in the Walker River Basin who currently use groundwater;
  - h. All municipal providers in California in the Walker River Basin who currently use groundwater; and
  - i. All industrial users in Nevada in the Walker River Basin who currently use groundwater.

CMO at 4 – 6 at ¶ 3(a) – (i).

**II. Argument**

**A. The Court should order service by publication to complete and conclude service associated with this sub-proceeding.**

As described above, the United States has now served each identifiable person or entity associated with the specific category of water rights holders previously identified by the Court. Such service was perfected either by personal service or by securing a written waiver of the party and eliminating the need for personal service. Although each relevant water rights holder has been identified and served pursuant to Fed. R. Civ. P. 4, the Court and the Primary Parties have long-contemplated that Plaintiffs would issue a published notice at the conclusion of service efforts. *See* CMO at CMO at 6-7 ¶ 5. Although this subproceeding arises in an effort to modify a decree issued long ago, such publication should be issued otherwise in conformity with the publication requirements of the Federal Rule of Civil Procedure.

Fed. R. Civ. P. 4(e)(1) provides that individuals may be served by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Service by publication in the State of Nevada is governed by Rule 4(e)(1) of the Nevada Rules of Civil Procedure. The requirements for publication under Nevada law are captured in Rule 4(e)(1)(iii) of the Nevada Rules of Civil Procedure. “The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during said time.” Nev. R. Civ. P. 4(e)(1)(iii).

Service by publication in the State of California is governed by Section 415.50 of the California Code of Civil Procedure. The requirements for publication under California law are

captured in section 6064 of the California Government Code. “Publication of notice pursuant to this section shall be once a week for four successive weeks. Four publications in a newspaper regularly published once a week or oftener, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences with the first day of publication and terminates at the end of the twenty-eighth day, including therein the first day.” *See also* Cal. Civ. Proc. Code § 415.50(b) (publication shall occur in a paper “most likely to give actual notice to the party being served.”).

**1. Service efforts by the United States are now otherwise complete.**

As the Court predicted earlier, implementing service as required by the CMO has been neither economical nor easy.<sup>3</sup> The United States spent significant time and resources (over \$1.5 million in contract services and hundreds of personnel hours throughout the federal government) to notify by mail, and, when necessary, personally serve the persons and entities that the Court directed it to identify, locate, and serve. Without exception, the United States has completed this task.

**2. Service by publication will provide notice to potential unknown defendants.**

Over fifteen years ago, this Court permitted service by publication on unidentified holders of Walker River water rights in the companion sub-proceeding C-125-C. Minute Order (April 1, 1997; C-125-C) (Doc. C-99) at 4; *see also* Minutes of the Court (June 13, 1997; C-125-C) (Doc.

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<sup>3</sup> When it required Rule 4 service, the Court stated: “We are sympathetic to the struggles of the United States and the Tribe to serve parties for C-125-B. . . . Altering water rights on a river system divided more than sixty years ago is no easy task. There will be considerable time and expense in pursuing an action.” *Order* at 6, 8 n.2 (June 11, 2001, Doc. B-522).

C-114 at 1) (confirming that the April 1997 Order is “only with respect to unidentified and unserved potential defendants.”). Service by publication is now appropriate in sub-proceeding C-125-B to serve potential defendants who fall into one of the categories identified by the Court but who remain unknown. *See id.*; *see also* CMO at 6 ¶ 5 (service by publication appropriate for “all other claimants to surface and groundwater rights not identified or who are unknown”).

**3. Service by publication will provide notice to interested members of the public.**

Finally, throughout these proceedings, the Court has recognized that members of the public might have an interest in this case and expressed a continuing interest to keep the public aware of the activities associated with this case to the extent that such interests exist. In fact, the Court established its public website for this sub-proceeding in part to inform the public about pleadings and other matters addressed in this sub-proceeding. Publication will further inform the public about the Court’s website and this sub-proceeding.

**B. Content of the Proposed Notice**

Fed. R. Civ. P. 4 requires that service must provide notice of the pendency of a legal action. “[T]he core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections.” *Henderson v. United States*, 517 U.S. 654, 672 (1996) (footnote omitted). Adequate notice is a constitutional requirement that flows “‘from the Due Process Clause . . . .’” *Omni Capital Int’l v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987), quoting *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

The United States has prepared the content of the *Notice by Publication in Lieu of Summons* that it proposes be published. *See* Attachment A. The proposed Notice provides a clear and succinct statement concerning this sub-proceeding and satisfies both Rule 4 and due process requirements. Importantly, the proposed Notice informs the public of the Internet address of the Court’s website, through which copies of all pleading may be examined.

**C. Proposed Order Approving Publication**

A proposed Order approving the proposed Notice and instructing the United States to publish such notice is attached as Attachment B. Though the Nevada and California rules of civil procedure state that only “a newspaper” should be used for publication, the United States proposes that notice should be published in the three newspapers in which the U.S. Board of Water Commissioners has been required to publish its annual budget notices: the *Mason Valley News* (Yerington, Nevada), the *Mammoth Times*, (Mammoth Lakes, California), and the *Record Courier* (Gardnerville, Nevada). Further, to ensure broad distribution of the notice, the United States will also publish the notice in the *Mineral County Independent* (Hawthorne, Nevada). As described above, both Nevada and California procedural rules require that publication be made in a newspaper once a week for 4 weeks. *See* fn. 2 and 3, *supra*.

**III. Conclusion**

To complete service in this sub-proceeding, this Court should approve the *Notice by Publication in Lieu of Summons* (Attachment A) and enter the attached order allowing service of process by publication for the party defendant identified and for all unknown defendants (Attachment B).

Dated: February 9, 2015

Respectfully submitted,

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By /s/ Andrew "Guss" Guarino  
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## CERTIFICATE OF SERVICE

It is hereby certified that on February 9, 2015, service of the forgoing JOINT MOTION TO ALLOW SERVICE BY PUBLICATION was made through the court's electronic filing and notice system (CM/ECF) to all registered participants.

It is further certified that notice of the filing of the forgoing document was mailed through the United States Postal Service, postage prepaid to Unrepresented Parties who have elected to receive notice via postcard and who are listed in Docket No. 2156, dated January 14, 2015. This postcard notice complies with ¶18 of the Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and by all Parties (Doc 2100).



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