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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.	3:73-CV-00127-MMD-WGC **RECOMMENDATIONS CONCERNING ECF No. 2408 through 2411**

On December 19, 2018, the Court instructed the United States and the principal parties to review Orders ECF Nos. 2408, 2409, 2410, and 2411, and to make recommendations concerning appropriate changes. *See Minutes of Proceeding* (ECF No. 2424). The United States and the principal parties have had an opportunity to consider these matters and have some recommendations to make. Accordingly, the United States and the principal parties have prepared a proposed order (designated Attachment A) concerning ECF Nos. 2408, 2409, 2410, and 2411. Finally, moving forward, the United States and the principal parties recommend that the Court might respond to any additional request/motion/notice/comment that it receives from any other unrepresented party consistent with the recommendations made here.

The paragraphs below outline our recommendations to the Court and the basis for the attached proposed order.

1. Over the course of many years and as instructed by the Court, the United States served thousands of persons/entities with notice of the water right claims that the United States and the Walker River Paiute Tribe asserted in the early 1990's.
2. Generally speaking, by 2016 the United States completed its service work. The United States secured service on those groups identified by the Court either through personal service, by securing a waiver of service, or through publication.
3. On April 23, 2012, the Court issued its *Order* (ECF No. 1711) on the Magistrate Judge's decisions concerning those individuals who succeed, as property owners, those parties served by the United States (referred to as "successors-in-interest"). In that order, this Court upheld the Magistrate Judge's decision that successors-in-interest would be bound by any judgment in this case whether or not they have been substituted in this case. The

Court also observed that any party may move to substitute a successor-in-interest as a party to this action pursuant to Fed. R. Civ. P. 25. *See also Amended Order Concerning Service Issues Pertaining to Defendants Who have Been Served* (ECF No. 1650) (Amended Order).

4. On October 17, 2014, the Court issued its *Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and by All Parties* (ECF No. 2100). In this Superseding Service Order, this Court ordered that the Court will maintain the list of email addresses for those unrepresented parties who wish to receive notice by email of documents filed in this case. Superseding Service Order at 5-6 ¶ 3. And, the Court ordered that the Court will maintain the list of mailing addresses for those unrepresented parties who wish to receive notice by postcard of substantive documents filed in this case. *Id.* 10 ¶ 19. All other unrepresented parties are required to monitor the Court-maintained website for filings/proceedings in this case. *Id.* at 9 ¶ 15. Finally, the Court ordered that every unrepresented party who elected postcard service or email service must notify the Court if their mailing and/or e-mail address changed. *Id.* at 12 ¶ 25.

5. Today, some unrepresented parties have chosen to stay involved in this case by receiving email and postcard notices. As required by the Superseding Service Order, the Court maintains the unrepresented party mailing/email lists.

6. Examination of the filings identified by the Court reveal the following:

   a. ECF No. 2342 - Cathy White, Trustee – Ms. White is likely associated with the Kirk White Family Trust, the trust elected to receive service by email and, apparently, their

real property in the Walker River Basin has been conveyed; Ms. White also requested that she no longer be sent notices concerning the case;

b. ECF No. 2344 – Jesse Nish – Mr. Nish has not elected to participate in this case or otherwise receive postcard or electronic service, and his real property in the Walker River Basin has apparently been conveyed; Mr. Nish also requested that he no longer be sent notices concerning the case;

c. ECF No. 2376 – Larry and Richelene Simmons – the Simmons have not elected to participate in this case or otherwise receive postcard or electronic service, and their real property in the Walker River Basin has apparently been conveyed; and

d. ECF No. 2381 – Marsha Ann Thieme – the Thiemes elected to receive electronic service and Ms. Thieme requests that her deceased husband (Mr. Thieme) be removed from correspondence. Mrs. Thieme did not identify Mr. Thieme's successor or representative; however, as this Court previously ordered "[i]f a successor-in-interest is already a defendant … as a joint tenant or pursuant to other joint ownership of the right(s) owned by the decedent, no action is required and the subproceeding will continue against the successor-in-interest." Amended Order at 6 ¶ 12.

7. Examination of the orders of November 28, 2018 reveal the following:

a. In the Order concerning Ms. Thieme (ECF No. 2381), the Court ordered that Ms. Thieme's husband (deceased) be removed from the docket (ECF No. 2408);

b. In the Order concerning Mr. Nish (ECF No. 2344), the Court ordered that Mr. Nish be removed from the docket and that Mr. Nish provide the current owner of the subject property (ECF No. 2409);

c. In the Order concerning the Simmons Family 2007 Trust (ECF No. 2376), the Court ordered that the Trust be removed from the docket and that the Trust provide the current owner of the subject property (ECF No. 2410); and

d. In the Order concerning the Cathy White Trust (ECF No. 2342), the Court ordered that the Trust be removed from the docket and that the Trust provide the current owner of the subject property (ECF No. 2411).

8. The previous orders of this Court establish that no party should be substitute of another unless the requirements of Fed. R. Civ. P. 25 have been met. *See Order* (ECF No. 1711) at 12 – 15; *see also* Amended Order. Thus, the United States and the principal parties believe that the Court should amend its orders to reflect that those persons/entities that seek to be removed from this case, should substantially comply with Fed. R. Civ. P. 25(c). To do so, the United States and the principal parties believe that for *inter vivos* tansfers such parties must 1) inform the Court that they no longer own property that is the subject of this action; 2) inform the Court of the name / mailing address of the current property owner; and 3) inform the Court that notice has been properly served on the current property owner, namely at minimum, that such the current property owner has been mailed a copy of the request that they be substituted. *See* Fed. R. Civ. P. 5(b)(2)(C); *see also* Amended Order Attachment A (proposed form motion for *inter vivos* transfer).

9. As such, the United States and the principal parties believe that Court orders ECF Nos. 2409, 2410, and 2411 should be modified to reflect that the existing party to the case (namely, Mr. Nish, the Simmons Family 2007 Trust, and the Cathy White Trust) will be

substituted for the current property owners after establishing that the current property owners have been properly served with the request that they be properly substituted.

10. The United States and the principal parties believe that Court order ECF No. 2408 should be modified to reflect that Mrs. Thieme should inform the Court whether she is the successor to Mr. Thieme. If so, then no further action should be taken. *See* Amended Order at 6 ¶ 12. If not, then Mr. Thieme should be removed from this case only after a motion has been submitted pursuant to Fed. R. Civ. P. 25(a).

11. Also, the United States and principal parties observe that persons not licensed and permitted to appear before this court are not permitted to appear on behalf of another entity or person. 28 U.S.C. § 1654 provides that "parties may plead and conduct their own cases personally or by counsel" but the statute "does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202, 113 S. Ct. 716, 121 L. Ed. 2d 656 (1993). Thus, a non-lawyer should not be permitted to move on behalf of another, including a trust entity, for relief such as substitution of parties.

12. Finally, the United States and the principal parties observe that requests by parties to be removed from the Court's mailing or email list does not equate to a request to be dismissed from this case. Upon any request to be removed from the Court's mailing or email list, the Court can administratively take such action without further docket entry.

13. Consistent with the recommendations made here, the United States and the principal parties have prepared and attached a proposed order that is consistent with this Recommendation (Attachment A).

14. Finally, going forward, to the extent that any party informs the court that it wishes the Court to remove it from the Court-maintained mailing or email list for any reason, the United States and the principal parties believe that the Court can take such administrative steps to update the Court-maintained mailing/email lists without issuing further orders or otherwise triggering a docket entry. *See* Superseding Service Order at 5-6 ¶ 3 and 10 ¶ 19 (the Court shall maintain the email and mailing lists).

Dated: February 27, 2019

Respectfully submitted,

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Tyler J. Eastman, Trial Attorney
David L. Negri, Trial Attorney

By /s/ Andrew "Guss" Guarino
Andrew "Guss" Guarino

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Certificate of Service

It is hereby certified that on February 27, 2019 service of the foregoing was made through the court's electronic filing and notice system (ECF No.) to all of the registered participants.

Further, pursuant to the *Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and by All Parties* (ECF No. 2100) at 10 ¶ 20, the foregoing does not affect the rights of others and does not raise significant issues of law or fact. Therefore, the United States has taken no step to serve notice of this document via the postcard notice procedures described in paragraph 17.c of the Superseding Order.

By /s/ Andrew "Guss" Guarino
Andrew "Guss" Guarino