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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-MDD-WGC **RECOMMENDATIONS AND PROPOSED ORDER RE: SUBSTITUTION OF PARTIES AND ATTORNEY WITHDRAWAL FOR ENTITIES**

On June 3, 2019, the Court instructed the United States and the principal parties (collectively "Principal Parties") to review the process for substituting parties following property transfers or death. Additionally, the Court instructed the Principal Parties to consider and address permitting organizations or entities who have appeared as a "Represented Party," to continue as an "Unrepresented Party" upon the withdrawal of an attorney. The Principal Parties make the following recommendations and have prepared a proposed order and form as described below.

I. Recommendation concerning substitution of parties–property transfer and death.

The paragraphs below outline our recommendations to the Court and the basis for the attached proposed order (Exhibit 1) regarding the substitution process following property transfer or death.

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. To facilitate the service process, those parties being served were required to provide the Court and the United States with Notice of Change of Ownership of Water Right, ECF No. 207, upon conveyance of any portion of any water rights brought into this action.
3. 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.
4. 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). The Amended Order included *Revised Proposed Form of Joint Motion for Substitution of Parties Following Transfer of Interest and Request for Hearing*. *See Id.*, Attachment A.

5. On March 4, 2019, the Court amended multiple orders concerning the substitution of parties, ECF No. 2432.

   a. Generally speaking, Fed. R. Civ. P. 25(c) governs the substitution of parties upon the transfer of interest. Consistent with this rule, the Court recently outlined the substitution process upon the transfer of interest:

      > Each party 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, by namely at minimum, that such the current property owner has been mailed a copy of the request that they be substituted.

      ECF No. 2432. The Court also instructed parties that they may utilize Attachment A to the Amended Order to accomplish the substitution process outlined. Upon reflection, the Court and the Principal Parties agree that Attachment A to the Amended Order should be updated. Also, parties continue to use the form from ECF No. 207 (Notice of Change of Ownership of a Water Right); this form is outdated and inadequate to effectuate the substitution of parties.

b. The Principal Parties have prepared an updated form for unrepresented parties to utilize to request that the Court substitute one party for another. This form has been attached the proposed order accompanying these recommendations and has been identified as Form A.

c. Fed. R. Civ. P. 25(a) generally governs the substitution of parties upon the death of a party. This Court previously outlined the treatment of successors-in-interest as a result of the death, Amended Order, and stated that "service of a statement noting the death" of a party "means the filing on the record in the applicable subproceeding(s) and service of a statement that identifies the successor(s) to the estate who may be substituted for the decedent." Amended Order; *see also* ECF Nos. 2266, 2282, 2283, 2284, and 2285 (examples of such substitution).

d. As this Court has previously stated, "[a]bsent service of a statement noting the death in a subproceeding, the case may proceed against the original named parties in that proceeding and will bind any and all successors-in-interest." Amended Order. And, no action is required and the subproceeding will continue against the successor-in-interest when said successor-in-interest is already a defendant (joint tenant or other joint ownership of the right(s) owned by the decedent). *Id.*

e. Further, this Court has also noted 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). This prohibition against non-lawyers appearing on behalf of artificial entities applies to the estates of deceased persons. *See C.E. Pope Equity Tr. v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) ("Although a non-attorney may appear *in propria persona* in his own behalf, that privilege is personal to him. He has no authority to appear as an attorney for others than himself." (citations omitted)); *Guest v. Hansen*, 603 F.3d 15, 20 (2d Cir. 2010) ("[A]n administr[ator] or execut[or] of an estate may not proceed *pro se* when the estate has beneficiaries or creditors other than the litigant.").

f. It appears to the Principal Parties that once a party dies and can no longer act for her/himself, that person and her/his interests in this action can only be represented by an attorney. Thus, the United States and the Principal Parties recommend that upon death, if the estate or the party's heirs wish to have the deceased removed as a party, the estate or the heirs should employ the services of an attorney to move that the deceased party be substituted for the heirs who hold the water right relevant to this case.

g. The Principal Parties also observe that the Court has previously stated that "[u]pon any request to be removed from the Court's mailing or email list, the Court will take such action without further docket entry." ECF No. 2432. So far the Court has received such requests that also allude to the transfer of interest. The Principal Parties wish to confer with the Court on August 7, 2019 about such requests and whether the Court should take additional action when the requests allude to the transfer of interest.

6. Based on the foregoing, to govern the substitution process moving forward the Principal Parties recommend that the Court adopt and that parties – specifically pro se individuals – utilize Form A attached to the proposed order titled *Request For Party Substitution – Property Transfer*. The parties also recommend that this Court should inform the parties through the proposed order that upon death, if the estate or the party's heirs wish to have the deceased removed as a party, the estate or the heirs should employ the services of an attorney to move that the deceased party be substituted for the heirs who hold the water right relevant to this case.

II. Concerning ECF Nos. 2485, 2486, 2487, 2452, and 2460

7. The Court asked the Principal Parties to examine ECF Nos. 2485, 2486, 2487, 2452, and 2460 and make any suggestion that might be relevant to the filings. Examination of the filings identified by the Court reveal the following:

   a. ECF No. 2452 the Court received a Consent for Electronic Service of Electronic Documents form that simply states that Reiko and Patricia Hervin are deceased.

   b. ECF No. 2460 Marcia Anderson requested to be removed from the email list. She further explained that the provided email address was used when she was Trustee for the Sabatino Trust; the Sabatino Trust was terminated in 2017 upon the conveyance of property to Rebecca and Jay Aliff.

   c. ECF No. 2485 Christine Lynn VanSyoc, Executor to the Estate of Dennis Howard VanSyoc, filed a Notice of Change of Ownership of Water Right (ECF No. 2434) which stated that Dennis VanSyoc passed away on January 6, 2018. Ms. VanSyoc represented that Mr. VanSyoc was the owner of one share of stock in the Antelope Valley Mutual Water Company (AVWMC) and also purported

that upon his death the ownership of said stock conveyed to several others. The Court previously requested that Ms. VanSyoc provide the current mailing address and email address for each successor identified before the Court orders the substitution of the parties.

d. ECF No. 2486 Phillip and Dona Tucker, requested to be removed from the Court's email service. They also represented that they sold their property but did not identify to whom the property was sold. The Tuckers asked that they be "deleted from the interested parties." (ECF No. 2458). The Tuckers' letterhead identifies them both as Trustees to AAPSM Trust. The Court informed them that the Trust would be removed from the Court's email service once it receives the email address to be deleted. Further, the Court noted that until the Trustees complete the substitution process identified in ECF No. 2432, the Trust would remain a party to this litigation. The Court requested that if the Trust pursues the necessary steps for substitution that it provide a mailing address and email address for the successor-in-interest.

e. ECF No. 2487 John H. Felber, Trustee of the John H. Felber Trust, filed a Notice of Change of Ownership of Water Right (ECF No. 2475) which stated that the John H. Felber Trust conveyed ownership of its water rights to another trust (*i.e.*, the Elizabeth Hayden Separate Property Trust). The Court requested that the John H. Felber Trust provide the current mailing address and email address for the successor.

8. Consistent with the comments and observations made in paragraphs 1 – 6, above, the Principal Parties have the following comments/recommendations for the filings identified by the Court:

   a. ECF No. 2452 The Principal Parties do not recommend any further action by the Court regarding this filing. To the extent that the Hervins or their estate wish to take action in this case, they should operate with the assistance of counsel.

   b. ECF No. 2460 The Principal Parties wish to confer with the Court about this filing before recommending any further action. The request to be removed from the Court's email list appears to arise in the context of a transfer of interest. Ultimately, the Court should administratively remove the email address from the Court's maintained list but conferral with the Court is necessary to determine whether any additional action should be taken by the Court. To the extent the Sabatino Trust wishes to take action in this case, it must act through counsel. Otherwise, the Sabatino Trust should remain undisturbed as a party to this case.

   c. ECF No. 2485 The Principal Parties do not recommend any further action by the Court regarding this filing. However, the Court should not substitute Ms. VanSyoc or the other heirs for Mr. VanSyoc. The AVMWC previously filed its Notice of Intent to Appear and there is no language in ECF No. 2434 filed by Ms. VanSyoc indicating that the AVMWC no longer wishes to participate in this proceeding. Rather, Ms. VanSyoc simply informed the Court that one share of stock of AVMWC was owned by Mr. VanSyoc and that the share has been conveyed to the heirs of Mr. VanSyoc. The Court should not substitute Mr. VanSyoc out of this proceeding because the only property interest transfer

identified in ECF No. 2434 was the share of stock of AVMWC. Further, if the AVMWC wishes to take action in this case, it must act through counsel. Otherwise, the AVMWC should remain undisturbed as a named interested party to this case.

d. ECF No. 2486 The Principal Parties wish to confer with the Court about this filing before recommending any further action. The request to be removed from the Court's email list appears to arise in the context of a transfer of interest. Ultimately, the Court should administratively remove the email address from the Court's maintained list but conferral with the Court is necessary to determine whether any additional action should be taken by the Court. However, it is worth noting that Phillip and Donna Tucker are currently parties to this proceeding and the AAPSM Trust is not–the letterhead used by the Tuckers appears to have caused confusion. The Court should not substitute the AAPSM Trust out of this proceeding because it was never a party. If Mr. and Mrs. Tucker (not the Trust) wish to be substituted from this case, they should follow the substitution process previously outlined by the Court and utilize the attached Form A. Otherwise, Mr. and Mrs. Tucker should remain undisturbed as named interested parties to this case.

e. ECF No. 2487 The Principal Parties do not recommend any further action by the Court regarding this filing. To the extent the John H. Felber Trust wishes to take action in this case, it must act through counsel. Otherwise, John H. Felber Trust should remain undisturbed as a party to this case.

III. Recommendation concerning entities who wish to proceed as "Unrepresented Parties."

The paragraphs below outline the Principal Parties' comments/recommendations to the Court regarding service of entities (such as trusts and corporations) who have appeared as a "Represented Party" who wish to continue as an "Unrepresented Party."

9. The Court recently entered its *Order Discontinuing Service by Postcard Notice*. ECF No. 2439. Therein, the Court determined that service by postcard should be discontinued, except as authorized on a limited case by case basis.
10. A "Represented Party" is one who has been served, filed a Notice of Appearance and Intent to Participate, and who is represented by an attorney. Represented Parties have and continue to receive service through the CM/ECF system. ECF No. 2439.
11. An "Unpresented Party" is one who has been served, filed a Notice of Appearance and Intent to Participate, and who is not represented by an attorney. With the few exceptions authorized on a limited case by case basis, Unrepresented Parties have either consented to electronic service by email or they have consented to receive service by the public website established and maintained by the Court. ECF No. 2439.
12. The Court recently "inform[ed] all unrepresented parties that persons not licensed/permitted to appear before this court as lawyers are not permitted to appear on behalf of artificial entities such as trusts, corporations, partnerships, or associations." ECF No. 2432 (citing *Rowland*, 506 U.S. at 202).
13. During the June 3, 2019 Status Conference, the Court considered permitting an entity or organization to withdraw its counsel, thereby shifting its status for service purposes from a Represented Party to an Unrepresented Party. The Court agreed to permit such a shift

and granted the *Motion for Withdrawal of Counsel of Mica Farms, LLC* (ECF No. 2489). ECF No. 2494. Mica Farms, LLC is now an Unrepresented Party and will receive service by way of its provided email address.

14. The Court requested that the Principal Parties confer to consider the interrelationship between the shifting of status for service purposes described above and the substitution of parties wherein the successor-in-interest is an entity, such as a trust. The Principal Parties believe that because an entity must participate through a licensed attorney, the entity's attorney should be capable of filing a motion for substitution without using the attached *Request for Party Substitution-Property Transfer* form – which is designed for pro se individuals. It is difficult to anticipate the form or substance of such motions but if the entity wishes to proceed as an "Unrepresented Party," it should be informed that it will receive service electronically by way of a provided email address or the Court's website. Ideally, the entity's attorney would utilize the attached *Request for Party Substitution-Property Transfer* form – which requires the mailing address and email address of the successor-in-interest and the successor-in-interest's consent to receive all future service by way of electronic service – as a template for any motion for substitution.

15. Similarly, the Principal Parties recommend that upon any motion for withdrawal of attorney that would result in a party, whether it be an individual, entity, or organization, being an Unrepresented Party, the Court requires the movant to provide the mailing address and email address for the party to receive electronic service. As this information can be provided by any counsel withdrawing from representation, no form need be prepared by the Court or utilized by the parties.

Respectfully submitted this 30th day of July, 2019.

/s/ Tyler J. Eastman
TYLER J. EASTMAN
ANDREW "GUSS" GUARINO
U.S. Department of Justice
Indian Resources Section
Environment & Natural Resources Div.

ATTORNEYS FOR THE UNITED STATES

Certificate of Service

It is hereby certified that on July 30, 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/ Tyler J. Eastman
Tyler J. Eastman