ORIGINAL

GORDON H. DEPAOLI
Nevada State Bar 00195
SUELLEN FULSTONE
Nevada State Bar 1615
DALE E. FERGUSON
Nevada State Bar 04986
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Post Office Box 2311
Reno, Nevada 89511
Telephone: (775) 688-3000

Attorneys for Defendant/Counterdefendant,
WALKER RIVER IRRIGATION DISTRICT

FILED
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LARCH S. WILSON
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	In Equity No. C-125-ECR Subfile No. C-125-B **STATEMENT OF THE WALKER RIVER IRRIGATION DISTRICT REGARDING METHODS USED BY THE UNITED STATES OF AMERICA AND WALKER RIVER PAIUTE TRIBE TO IDENTIFY PERSONS AND ENTITIES TO BE SERVED PURSUANT TO PARAGRAPH 3 OF THE CASE MANAGEMENT ORDER**
UNITED STATES OF AMERICA, WALKER RIVER PAIUTE TRIBE, Counterclaimants, v. WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants.	

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I. INTRODUCTION.

At the status conference of May 30, 2001 the Court ordered the United States and the Walker River Paiute Tribe (the "Tribe") to describe the methods they have used to identify persons required to be joined and served under the Case Management Order. The other parties were given an opportunity to object or suggest additional methods. *May 30, 2001 Minute Order, (Doc. No. 521).*

Before providing the suggestions of the Walker River Irrigation District (the "District") it is useful to review the reasons why the Court and the parties should be concerned with the methods the United States and the Tribe have used in identifying the persons to be joined and served as defendants in this action. The reasons were expressed by the Court in the Mineral County subproceeding as follows:

> This case is essentially an action *in rem* to quiet title to property – that property being the water (or rather, right to take the water) of the Walker River and its tributaries . . . . Without all the owners of the property properly joined in the case as defendants, any reallocation of water rights that might result from the case could be subject to future attack. *See March 2, 1999 Order at 4, Subfile C-125-C (Doc. No. 257).*

In short, any judgment entered in this matter must be binding on all affected water right holders.

In an action like this one, a plaintiff may acquire personal jurisdiction over unknown parties by service of a summons by publication. In that situation it must be established that the identity of such persons and their whereabouts could not be discovered after a diligent search. *See April 1, 1997 Minute Order at page 3, Subfile C-125-C (Doc. No. 99),* and cases cited therein. However, as the Supreme Court of the United States stated in *Walker v. Hutchinson*, 352 U.S. 112, 115 (1956) "it is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property." For that reason a judgment will not bind a person served by publication if that person's identity is a matter of public record and can be ascertained through reasonable diligence. A judgment so obtained is subject to collateral attack. *See, Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950); *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983); *Walker v. Hutchinson* 352 U.S. 112 (1956); *Benoit v. Panthaky* 780 F.2d 336 (3rd Cir. 1985).

Therefore, in assessing the methods used by the Tribe and the United States to identify the persons and entities described in the Case Management Order, the Court must consider whether they have failed to use a method of identification through which the identity of such a person or entity could have been ascertained with reasonable diligence. If they have so failed, persons or entities not joined will not be bound by any judgment the Court eventually enters.

II. THE FAILURE OF THE UNITED STATES AND THE TRIBE TO CONDUCT ANY RESEARCH WITHIN THE OFFICES OF THE COUNTY RECORDERS WITHIN THE WALKER RIVER BASIN PRESENTS THE VERY REAL POSSIBILITY THAT THEY WILL FAIL TO IDENTIFY A PERSON WHOSE RIGHTS ARE AFFECTED AND WHOSE IDENTITY AND WHEREABOUTS COULD HAVE BEEN DISCOVERED WITH REASONABLE DILIGENCE.

It is apparent that the United States and Tribe have employed methods of identification directed at obtaining already existing lists or identifications of persons required to be joined. This has been particularly the case with respect to persons who are successors to parties to the Walker River Decree. They have studiously avoided bringing the tabulation of water rights and water rights holders in the Decree current through review of deeds in the offices of County Recorders. *See e.g., Status Report of United States and Tribe at 26, December 21, 2000; Affidavit of Elizabeth Rimer paras. 8-9, Exh. 2 to Memorandum of United States and Tribe, March 13, 2001.* Except for reviewing deeds obtained from the U.S. Board of Water Commissioners and the District with respect to the successors-in-interest category, the June 12, 2001 Becker Affidavit makes no reference to having conducted any research within offices of County Recorders.

Paragraph 3 of the Case Management Order requires joinder and service on persons or entities who hold certain categories of water rights. Under Nevada and California law water rights in most of those categories will be appurtenant to the land on which they are used. Therefore, under Nevada and California law, absent something in a deed to the contrary, ownership of those water rights will pass with ownership of the land on which the water is used. *See Margrave v. Dermody Properties*, 110 Nev. 824, 828, 878 P.2d 291 (1994); N.R.S. § 533.382; *Wetherill v. Brehm*, 240 P. 529, 532 (Cal. App. 1925).

Categories which include water rights likely to be appurtenant to real property are categories 3(a) (the successors-in-interest category), category 3(b) (holders of surface water rights under Nevada and California law not included in the Walker River Decree), category 3(c) (holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater in certain subbasins in Nevada), category 3(d) (holders of permits or certificates to pump groundwater issued by the State of Nevada within certain subbasins), category 3(e) (users of groundwater for irrigation in California), category 3(f) (all holders of vested rights to the use of groundwater under the laws of the State of Nevada), and category 3(i) (industrial users in Nevada).

From the material provided by the United States and the Tribe, it is clear that they have made no attempt to examine information available in Recorder's offices concerning ownership of water rights within the categories listed in the Case Management Order. This failure is mitigated somewhat with respect to category 3(a) by work which the United States Board of Water Commissioners and the District undertake in reviewing deeds provided to those entities by Lyon County. There is, however, no similar direct or indirect link between the information which the United States and Tribe have reviewed concerning other categories in the Case Management Order and County Recorders offices. There is no assurance, for example, that State Engineer well log information on a domestic wells represents the current owner of the land to which that domestic well is appurtenant or that State Engineer assignment information concerning an irrigation or industrial well represents the current owner of the land to which water rights from such wells are appurtenant. That failure is also mitigated somewhat by the fact that many of the persons with water rights in category 3(a) will also be persons with water rights in categories 3(b), 3(c), 3(d), 3(e), and 3(f). However, as the Becker Affidavit reflects, not all of the persons or entities have multiple water rights and claims to rights to water in more than one of the Case Management Order categories. *See June 12, 2001 Becker Affidavit at paragraphs 8, 17b, 18c, 20d and 24a.*

III. EFFORTS TO IDENTIFY USERS OF GROUNDWATER FOR IRRIGATION IN CALIFORNIA IN THE WALKER RIVER BASIN ARE INADEQUATE.

As the Becker Affidavit recognizes, the California State Water Resources Control Board does not maintain information on or regulate the use of groundwater for irrigation. Yet, the only information which Mr. Becker has examined with respect to this category appears to be information from the California State Water Resources Control Board. *See, Becker Affidavit at para. 19.* As noted in the Becker Affidavit, that information has not yielded any persons and entities in this category. Information provided by an entity which maintains no information on a category is not adequate.

IV. THE UNITED STATES AND THE TRIBE SHOULD NOT RELY ON INFORMATION OR MATERIAL FILED BY MINERAL COUNTY.

In a number of places, the Becker Affidavit references material obtained from Mineral County in the subfile C-125-C proceeding. In many instances the Becker Affidavit notes problems with these materials. *See, e.g., Becker Affidavit at paras. 15i, 15j, and 15k.* The Court is very familiar with Mineral County's approach to service and identification. Moreover, over six years have elapsed since Mineral County began to identify and serve water right holders. The United States and Tribe should not rely on work done by Mineral County as a method for identifying persons to be joined and served here.

V. CONCLUSION.

The efforts made by the United States and the Tribe to identify persons and entities to be served pursuant to Paragraph 3 of the Case Management Order have been substantial. However, without some work in the offices of County Recorders, it is possible, if not likely, that they will fail to join and serve persons whose rights will be affected, whose names are a

matter of public record and who therefore could have been ascertained with reasonable diligence.

Dated this 3rd day of August, 2001.

WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Post Office Box 2311
Reno, Nevada 89511

By: Gordon H. DePaoli

GORDON H. DEPAOLI
Nevada State Bar 00195
SUELLEN FULSTONE
Nevada State Bar 1615
DALE E. FERGUSON
Nevada State Bar 04986
Attorneys for Defendant/Counterdefendant
WALKER RIVER IRRIGATION DISTRICT

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CERTIFICATE OF MAILING

I certify that I am an employee of Woodburn and Wedge and that on this date, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing ***STATEMENT OF THE WALKER RIVER IRRIGATION DISTRICT REGARDING METHODS USED BY THE UNITED STATES OF AMERICA AND WALKER RIVER PAIUTE TRIBE TO IDENTIFY PERSONS AND ENTITIES TO BE SERVED PURSUANT TO PARAGRAPH 3 OF THE CASE MANAGEMENT ORDER*** in an envelope addressed to and where indicated by an asterisk by Federal Express also:

Shirley A. Smith
Assistant U.S. Attorney
100 West Liberty Street, #600
Reno, NV 89509

William Quinn
Department of the Interior
Two North Central Avenue, #500
Phoenix, AZ 85004

George Benesch
P.O. Box 3498
Reno, NV 89505

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

Kenneth Spooner
General Manager
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Hugh Ricci, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

Garry Stone
United States District Court Water Master
290 South Arlington Avenue
Third Floor
Reno, NV 89501

Alice E. Walker
Greene, Meyer & McElroy
1007 Pearl Street, Suite 220
Boulder, CO 80302

John Kramer
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Matthew R. Campbell, Esq.
David Moser, Esq.
McCutchen, Doyle, Brown & Enerson
Three Embarcadero Center
San Francisco, CA 94111

Michael W. Neville
California Attorney General's Office
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102-3664

Ross E. de Lipkau
Marshall, Hill, Cassas & de Lipkau
P.O. Box 2790
Reno, NV 89505

Susan Schneider
Indian Resources Section
U.S. Department of Justice
999 18th Street
Suite 945, North Tower
Denver, CO 80202

Marta Adams
Deputy Attorney General
State of Nevada
100 North Carson street
Carson City, NV 89701

Mary Hackenbracht
Deputy Attorney General
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

Treva J. Hearne
Zeh, Spoo, & Hearne
575 Forest Service
Reno, NV 89509

Roger Bezayiff
Water Master
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

Hank Meshorer
United States Department of Justice
Natural Resources Division
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044

Kathryn E. Landreth
United States Attorney
100 West Liberty Street
Suite 600
Reno, NV 89501

Linda Bowman
540 Hammill Lane
Reno, NV 89511

Kelly R. Chase
P.O. Box 2800
Reno, NV 89423

Dated this 3rd day of August, 2001.

Penelope H. Colter

Penelope H. Colter

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