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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FILED
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LANCE S. WILSON
CLERK
BY DEPUTY

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	IN EQUITY NO. C-125 and Sub-file No. C-125-B **NOTICE OF FILING OF SUPPLEMENTAL AFFIDAVIT REGARDING THE OBJECTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE TO THE REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE REGARDING CERTIFICATION OF DEFENDANT CLASSES**

The United States of America and the Walker River Paiute Tribe ("Tribe") have filed their objections to the *Report and Recommendation of U.S. Magistrate Judge* (Sept. 13, 2001) ("Report and Recommendation"), recommending denial of the *Joint Motion of the United States and the Walker River Paiute Tribe for Certification of Defendant Classes* (May 4, 2001) ("Joint Motion"). *Objection of the United States of America and the Walker River Paiute Tribe to the Report and*

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Recommendation of U.S. Magistrate Judge Regarding Certification of Defendant Classes (Oct. 26, 2001) ("Objection"). Attached is a Supplemental Affidavit of paralegal Dennis Becker ("Jan. 8, 2002 Aff."), who has been working on the identification of the persons and entities to be served under paragraph 3 of the *Case Management Order* (Apr. 18, 2000) ("CMO").

The purpose of this supplemental affidavit is to provide the Court with additional information regarding the potential numbers of persons and entities within the Nevada sub-basin domestic groundwater user group identified in CMO category 3(c). The supplemental affidavit demonstrates that the number of persons and entities who would be potential defendants in this case based in whole or in part on their status as domestic users of groundwater is higher than prior numbers and estimates reported to the Court. As stated previously, we anticipated that the numbers of potential defendants would increase because the work on identifying potential defendants was ongoing and several sources of information had been located but not reviewed in depth. *E.g.*, Objection at 7. The attached supplemental affidavit confirms these prior statements. Further, as set forth in the attached affidavit, this work remains ongoing and even the current numbers will increase. Thus, the numerosity factor of the determination whether to certify defendant classes is even higher.

First, as of January 7, 2002, Mr. Becker has identified 1514 domestic well owners. Jan. 8, 2002 Aff. ¶ 4. For 1137 well owners of this total, he has, thus far, discovered no other water rights claims. *Id.* This total also includes 598 domestic well owners identified from his ongoing review of the February 2001 Lyon County Assessors Office list of property owners in Lyon County. *Id.*

Second, Mr. Becker is in the process of reviewing the February 2001 Lyon County Assessors Office list of property owners in Lyon County. *Id.* ¶¶ 5-7. This list identifies 6,120 parcels and

identifies parcels with domestic wells. *Id.* ¶ 5. Thus, far, Mr. Becker has reviewed approximately 37% of the Lyon County list, and identified 598 persons and entities whose status as domestic users of groundwater was not previously known to him. *Id.* ¶ 6. Of this number, he had already identified 187 persons and entities because he had already identified them as holders of water rights claims under other categories in the CMO. *Id.* However, 411 of these persons and entities were not previously known to him. *Id.*

Thus, Mr. Becker has currently identified 1514 persons and persons and entities who would be included in this case as defendants under category 3(c) of the CMO as domestic users of groundwater. *Id.* ¶ ¶ 4, 8. Moreover, Mr. Becker estimates that at this rate, his review of the Lyon County list could add approximately an additional 1,100 additional domestic users of groundwater to the numbers of potential defendants within that portion of category 3(c) of the CMO for which we seek class certification. *Id.* ¶ 7. Therefore, he estimates that there could be at least 2,600 persons and entities who are domestic users of groundwater and would be among the defendants to be served in this action. *Id.* ¶ 8.

Dated this 9th day of January, 2002

Respectfully submitted,

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Dated: 1-09-02

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that on this 9th day of January, 2002, I served a true and correct copy of the foregoing NOTICE OF FILING OF SUPPLEMENTAL AFFIDAVIT REGARDING THE OBJECTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE TO THE REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE REGARDING CERTIFICATION OF DEFENDANT CLASSES by first-class mail, postage prepaid, addressed to the following persons:

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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, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	))))))))))))))	IN EQUITY NO. C-125 and Sub-file No. C-125-B **SUPPLEMENTAL AFFIDAVIT REGARDING THE OBJECTION OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE TO THE REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE REGARDING CERTIFICATION OF DEFENDANT CLASSES** Exhibit 1: Affidavit of Dennis Becker

I, Dennis Becker, hereby make the following declaration pursuant to 28 U.S.C. § 1746. The following statements incorporate and supplement statements made in my previous and supplemental affidavits of March 9, 2001, March 19, 2001, June 12, 2001, and October 24, 2001.

1. My primary assignment in this matter has been to work on the identification of the persons and entities described in the categories in paragraph 3 of the *Case Management Order* (Apr. 18, 2000) ("CMO") for purposes of conducting court-ordered service on them as counter-defendants.

2. My affidavit of October 24, 2001 ("Oct. Aff.") was filed as Exhibit 1 to the *Objection of the United States of America and the Walker River Paiute Tribe to the Report and Recommendation of U.S. Magistrate Regarding Certification of Defendant Classes* (Oct. 26, 2001). In that affidavit, and based on the status of my work at that point, I provided information on the number of persons and entities with claims to water in the Walker River Basin who are within CMO categories 3(a) and/or 3(c), which constitute the basis for two class certification proposals by the United States and the Walker River Paiute Tribe. I also provided information on the whereabouts of these persons and entities; a significant number of these persons and entities identified thus far are not located throughout the Walker River Basin. Oct. Aff. ¶ 4.

3. The purpose of the instant affidavit is to supplement my prior affidavits to provide the Court with additional information regarding the potential numbers of persons and entities within the Nevada sub-basin domestic user group identified in CMO category 3(c). This is the only category in the CMO that includes domestic users. This information is based on my continuing work. As I have stated in my prior affidavits, there were a variety of information sources that I had identified but not yet reviewed

and I anticipated that the total numbers of persons and entities in this and other CMO categories would increase based on a review of these other information sources. Based on my ongoing work, it appears that the potential numbers of domestic users to be served is much larger than prior estimates.

4. As of January 7, 2002, I have identified 1514 domestic well owners. Of these, 1137 have no other water rights. This number includes the 598 domestic well owners information from the Lyon County Assessors Office list of property owners discussed below.

5. In connection with this assignment and beginning on December 11, 2001, I have been reviewing the February 2001, Lyon County Assessors Office list of property owners in Lyon County. Lyon County listed 6,120 parcels at the time the list was compiled. This list indicates parcels with domestic wells located on them.

6. As of January 7, 2002, I have reviewed 2,300 of the 6,120 parcels on the Lyon County list -- or roughly 37% of this list. Many of the parcels are jointly owned by husband and wife or a trust having co-trustees. During my review, I discovered 598 domestic well owners not previously known to me as owners of domestic wells on approximately 26% of the 2,300 parcels reviewed. Of these 598 domestic well owners, 187 (on approximately 8% of the parcels reviewed) are persons and entities already known to me because I have already found that they have water rights claims under other categories in the CMO. However, the remaining 411 (on approximately

18% of the parcels reviewed) persons and entities were not previously known to me as water rights claimants and are additional and newly-identified potential counter-defendants.

7. I have not finished my review of the Lyon County list. If the remainder of the list provides a similar percentage of newly identified well owners identified as holding other water rights and potential counter-defendants not previously identified, I estimate that this list of parcels may yield a total of almost 1700 potential counter-defendants, including the 490 previously identified potential counter defendants holding other water rights and 1,100 new potential counter-defendants not previously identified as water rights holders.

8. Based on the information described above, the number of individuals and entities within the domestic portion of Category 3(c) is clearly higher than prior estimates, and will only increase further. Based on the numbers of well owners identified thus far (1514) and the number of well owners I have estimated are in the Lyon County portion of the list I have not yet reviewed (1,100), I estimate that there are at least 2600 persons and entities who are domestic users of groundwater and would be among the defendants to be served in this action.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the foregoing is true and correct. Further, affiant sayeth not.

Executed this 8th day of January 2002.

Dennis Becker