DISTRI
ENTERED & SERVED
JUL 29 2002
LERK, U.S. DISTRICT COURT
BY DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

FILED
02 JUL 26 PM 4:04
LANCE S. WILSON
CLERK
BY ECR
DEPUTY

UNITED STATES OF AMERICA et al.

vs.

WALKER RIVER IRRIGATION DISTRICT, et al.

In Equity No. C-125-ECR
Subproceeding C-125-B

MINUTES OF THE COURT

DATE: July 26, 2002

PRESENT: EDWARD C. REED, JR. U.S. DISTRICT JUDGE
DEPUTY CLERK: WAYNE JULIAN REPORTER: NONE APPEARING
COUNSEL FOR PLAINTIFF (S): NONE APPEARING
COUNSEL FOR DEFENDANT (S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

On May 9, 2002, the United States of America (hereinafter "the United States") and the Walker River Paiute Tribe (hereinafter "the Tribe") filed a joint motion (#180) for amendment of our order denying the motion for certification of defendant classes or, in the alternative, relief from our order. The United States and the Tribe filed a separate memorandum in support of their joint motion (#181). The legal basis for the joint motion is Fed. R. Civ. P. 59(e) and Fed. R. Civ. P. 60 (b). The United States and the tribe object to our determination that the State of Nevada is not a proper class representative for the domestic well users and object to our final determination that none of the sections of Fed. R. Civ. P. 23(b) apply to the proposed class representatives.

Under Fed. R. Civ. P. 59(e) "[r]econsideration is

192

appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." School District No. 1J Multnomah County, 5 F.3d 1255, 1263 (9th Cir. 1993).

Under Fed. R. Civ. P. 60(b) relief may be granted from an order for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that could not have been discovered by due diligence in time to move for a new trial; (3) fraud, misrepresentation, or misconduct of the other party; (4) the judgment is void; (5) the judgment is satisfied; or (6) any other reason justifying relief.

Neither Fed. R. Civ. P. 59 (e) nor 60(b) are applicable here.

The United States and the Tribe argue that our decision that the State of Nevada is not a proper class representative was based upon errors of fact in that we disregarded the facts that the State of Nevada owns multiple groundwater wells in the Walker River basin. To the contrary, we explicitly considered this fact when we reached our decision. The United States and the Tribe previously argued to the court that Nevada's ownership of a well made it an acceptable class representative. However, we found that Nevada's claims and defenses would not be typical of the other holders of domestic wells. Nothing in the joint motion

(#180/181) changes that analysis. Although Nevada owns multiple wells, the state is not a "domestic well" owner and its participation in this litigation focuses on its decreed rights in the Walker River and in Walker Lake. Relief is not available under Fed. R. Civ. P. 59(e) or 60(b) as to this part of our decision.

The United States and the Tribe argue that our decision that the proposed classes cannot meet the requirements of Fed. R. Civ. P. 23(b) is also based on errors of law and fact. Specifically, the United States and the tribe argue that our decision: (1) is contrary to United States v. Truckee-Carson Irrigation District, 71 F.R.D. 10 (D. Nev. 1975), (2) failed to take into account the fact that other cases involving the Walker River have been filed in various other courts, and (3) ignored the evidence that "more than amply demonstrated the applicability" of Fed. R. Civ. P. 23(b)(3) to this case.

The United States and the Tribe previously cited United States v. Truckee Carson Irrigation District, 71 F.R.D. 10 (D. Nev. 1975) to the Court. The Court considered the possible application of that case. That case does not provide a reason to set aside or otherwise amend the Court's order. The United States and the Tribe present for the first time the argument that other cases concerning the Walker River have been brought in other courts. This does not change our holding that Fed. R. Civ.

P. 23 (b)(1) does not apply.

With respect to our decision on the applicability of Fed. R. Civ. P. 23 (b)(3) the United States and the Tribe have not presented any new evidence or arguments as to why our properly exercised discretion should be altered. We conducted a rigorous analysis and considered all of the arguments by both sides in reaching our decision. Simply because the United States and the Tribe choose to disagree with our decision is not a basis for relief under Fed. R. Civ. P. 59 (e) or Fed. R. Civ. P. 60(b).

IT IS THEREFORE HEREBY ORDERED THAT, the motion (#180) for amendment of the Court's order denying motion for certification of defendant classes or for relief from the same order is **DENIED**.

LANCE S. WILSON, CLERK

By: _____
Deputy Clerk