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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-ECR Subproceeding: C-125-B REPORT OF THE COMMITTEE OF CERTAIN PARTIES REGARDING CASE MANAGEMENT ISSUES ASSIGNED BY THE COURT

During the May 29, 2007, status conference in this action, the Court ordered that counsel for certain parties form a committee to discuss eight designated case management issues and to file a summary of accomplishments prior to the status conference set for August 20, 2007. *Minutes of Court* (May 29, 2007). The following summarizes the accomplishments of this group and the status of their discussions and continuing efforts to address some of these issues.

The attorneys who participated in some or all of this effort are: Susan Schneider, United

Statesof America ("United States"); Wes Williams, Jr., Walker River Paiute Tribe ("Tribe"); Simeon Herskovits, Mineral County/Walker Lake Working Group ("MC/WLWG"); John Howard and William Schaeffer, D.Haight/the Landolts; Laura R. Schroeder, Reviglio; Karen Peterson, U.S. Board of Water Commissioners ("U.S. Board"); Marta Adams, Nevada Dept. of Wildlife ("Nevada"); Dale Ferguson, Walker River Irrigation District ("WRID"). As stated below, some of the attorneys have opted out of working on certain issues.

The group met by telephone on four occasions: June 14, 27; July 24; and August 9, 2007. In addition, various participants conferred on other occasions. The following summarizes efforts and accomplishments according to each of the eight tasks assigned.

This report has been authorized by the members of the committee or their delegates to be filed on behalf of the committee. On August 9, 2007, Attorney Howard stated that he expects to file his own report and agrees in part and disagrees in part with the committee report, but declined to identify his specific concerns. Attorney Schroeder may join in this separate report.

1. **Procedure for service of pleadings**

a. Participants:

Attorneys Howard/Schaeffer and Schroeder have opted out of working on this issue.

b. Status of the parties' efforts:

This issue requires consideration of a number of applicable requirements, including: *In re Authorization for Conversion to Case Management/Electronic Case Filing (CM/ECF),* Special Order 109Y (Sept. 29, 2005) ("Special Order 109Y"); U.S. Dist Ct., D. Nev., Electronic Filing Procedures (rev. Aug. 24, 2006); and Fed. R. Civ. P. 5. An approach to this issue also requires consultation with the Court Clerk's Office, which effort has begun, and requires

consideration of the use and application of PACER.

The parties have begun to discuss these requirements and various approaches to this issue and will be prepared to discuss these issues in further detail and identify some approaches under consideration with the Court during the upcoming status conference.

2. **Parties to the litigation:**

a. Participants:

Attorneys Howard/Schaeffer and Schroeder have opted out of working on this issue. Attorneys Schneider, Peterson and Adams have taken the lead on this issue with review and additional work to be provided by Attorneys Ferguson and Herskowits.

b. Scope of this Issue:

The parties believe this issue focuses on the need to correct, update and coordinate with the Court Clerk's office regarding the Certificate of Service ("COS") in this case. The parties wish to confirm their understanding of the scope of this issue with the Court on August 20, 2007. Furthermore, the attorneys working on this issue believe that the COS in each of the three cases require corrections and updating and have focused their efforts accordingly. As a basic matter, the Court and the parties will conserve resources if each COS is updated and all attorneys are required to comply with the Court's requirement that they register for e-file.

c. Coordination with Clerk's Office:

Attorneys Schneider and Peterson have each discussed this issue briefly with the Clerk's Office, and Attorney Peterson has arranged a meeting with Lia Griffin of the Clerk's Office for the morning of August 20, 2007.

d. C-125:

On July 9, 2007, Attorneys Adams, Peterson and Schneider reviewed the Court's COS and their own COS's, identified names to be dropped, and divided inquiries to be made among themselves. We will be able to provide a preliminary list of proposed corrections and changes to the Court on August 20, 2007, but are uncertain how the Court and/or Clerk's Office wants this information transmitted and if it requires additional filings (e.g., whether each attorney we propose to delete from the COS must ask to be deleted). We anticipate being able to provide additional information after we meet with the Clerk's Office on the morning of the scheduled status conference.

e. C-125-B:

This review has not yet begun. This review can be divided into a review of the "core group of attorneys," additional attorneys, and pro se parties who have filed notices of appearance. Parties who have been dismissed should be removed from the COS, if that has not already occurred. We anticipate discussing a process for this review with the Clerk's Office.

f. C-125-C:

This review has not yet begun. Attorney Herskovits will take the lead on this effort. The State and WRID have indicated they have concerns and will be speaking further with Attorney Herskowits.

3. **Making discovery requests**:

a. The Court's directions:

The Court directed the committee to consider if there is a way to use a standard set of discovery to be served by the defendants on the plaintiffs and the plaintiffs on the defendants that

would encompass most of the issues identified. The parties were to discuss procedures for such discovery. The Court recognized that implementation of discovery was "down the road." Tr. at 13-15, 35.

b. Status of the parties' efforts:

The parties agree that use of a standard set of interrogatories and document production requests may be useful, but there is not yet universal agreement as to how it may be helpful in this case. The parties agree that the substantive content of any standard discovery cannot be prepared until the identity of legal theories and threshold issues has occurred, if not later. Consequently, assuming such an approach is appropriate for this case, they have agreed to hold off preparing the substantive content of any such discovery. In the meantime, the parties agree that additional investigatory work can be done now to identify instances where such discovery has been used and consider the procedural requirements for such an approach to discovery. The parties agreed to consult other attorneys about such an approach and to collect and share information on specific approaches used in other cases Their initial date to begin to share such information is August 10, 2007.

4. **Website proposition:**

a. The Court's directions:

The Court directed the parties to consider the idea of a website and use of the Internet, and noted that the parties would need to consider such issues as the purposes to be served, who would implement and maintain a website, and who would be responsible for the costs of such an effort. Tr. at 13.

b. Status of the parties' efforts:

The parties view the general concept of using a website favorably, but there is currently no agreement on the use of a website and the purposes to be served by a website (e.g., pleadings compilation, document repository, discovery production) and how that might relate to the other case management issues under discussion. Based on the review and scrutiny of preliminary investigations into one possible service provider, the parties agree that they do not have sufficient information on available technology and related costs for the various purposes for which a website might be used. Consequently, as an initial matter, the parties agree that these issues require further investigation, which is ongoing.

5. **Method for dealing with persons without access to website:**

The parties have discussed this issue and determined that it should be deferred pending further discussion and possible resolution of related case management issues (e.g., procedure for service of pleadings; website proposal). The resolution of some of these issues may address this issue. We also note Chief Judge Pro's determination in Special Order 109Y that "the CM/ECF System provides adequate procedures for the filing, review and retrieval of documents by parties who are not able to access the Electronic Filing System from a remote location."

6. **Target date for completion of service:**

a. C-125-B:

The United States and Tribe have identified a "target date" for the completion of service of the end of calendar year 2008. On May 29, 2007, the United States noted before the Court that this date is not "carved in stone" and does not include publication, challenges, etc. to the completion of service. Tr. at 9-11.

b. C-125-C:

MC/WLWG has identified a "target date" for the completion of service of the end of calendar year 2008. MC/WLWG also asserts that this date does not include publication, challenges, etc., to the completion of service.

7. **Set forth a schedule to identify legal issues and preliminary determination of legal issues**

a. The Court's directions:

The Court directed the committee "to discuss and perhaps set forth a schedule, if you can agree on it, for the identity of legal issues and preliminary determination of threshold issues. . . . It makes some sense to me that the plaintiffs disclose their legal issues first and then the defendants sometime after that." Tr. at 35.

b. Identification of Legal Issues:

i. Scope of this Issue:

The parties agree that this issue concerns just C-125-B and does not address C-125-C, and is limited to Phase One of the C-125-B litigation, which addresses the claims of/on behalf of the Walker River Paiute Tribe. Further, the parties agree that the form of this identification may be brief (e.g. John Howard: Just a "one-pager").

ii. Schedule for identification of legal theories:

Note - all deadlines are subject to adjustment.

(1)	U.S. and tribe:	45 days	Oct. 4, 2007
(2)	defendants:	45 days thereafter	Nov. 19, 2007

c. Schedule to discuss and identify threshold issues:

i. Parties to exchange proposed threshold issues among themselves:

[90 days after defendants provide their legal theories] Feb. 18, 2008

ii. Parties to confer within 30 days after proposed threshold issues are exchanged. March 19, 2008

iii. Parties to report to Court on status of this work at the following status conference or at another date set by the Court.

8. **Modification of service package of domestic users:**

The parties have deferred to Attorneys Schneider and Ferguson to address this issue. They will present suggested changes to the service package regarding domestic users and may also suggest further changes to the package that may assist with other case management issues.

9. **Next Steps:**

The parties' efforts are continuing and they will provide the Court with an additional report before the next status conference or as directed by the Court.

Respectfully submitted,

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By:/s/ Susan L. Schneider
Susan L. Schneider

Date: August 10, 2007

Attorney for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2007, I served or caused to have served a true and correct copy of the foregoing REPORT OF THE COMMITTEE OF CERTAIN PARTIES REGARDING CASE MANAGEMENT ISSUES ASSIGNED BY THE COURT by electronic mail or first-class mail, postage prepaid, addressed to the following persons:

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