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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RENO, NEVADA

UNITED STATES OF AMERICA Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff, Intervenor v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants. UNITED STATES OF AMERICA WALKER RIVER PAIUTE TRIBE Counterclaimants,	Case No: 03:73:cv-127-ECR-RAM In Equity No. C-125-ECR Subfile No. C-125-B **SUPPLEMENT TO STATUS REPORT OF COMMITTEE**

vs.

WALKER RIVER IRRIGATION DISTRICT, et al.,

Counterdefendants.

This report is submitted as an addition to that filed by United States counsel Susan L. Schneider. It is submitted by four members of the committee formed by the court pursuant to a motion brought by David Haight and Circle Bar N Ranch seeking to accelerate the instant action by beginning activities ordered and contemplated by the Case Management Order.

The primary focus of the motion was to request that the process of (1) identifying the various parties' legal theories; (2) determining threshold issues; (3) determining a method for making discovery requests; (4) establishing a website for discovery documents; (5) dealing with parties without website or computer access, and (6) obtaining a target date for the completion of service of the initial package, be commenced. This motion gave rise to the Court's order that a committee be established to deal with these issues and the Court ordered, in addition, that the committee deal with issues related to (7) the procedure for service of pleadings; (8) the determination of parties and updating the Certificate of Service and (9) the modification of the service package.

The report submitted by Ms. Schneider is incorrect in a number of ways. In indicating its inaccuracy we must start with some background as to how the committee proceeded.

1. **Procedure for service of pleadings**.

As the report indicates, the committee had two meetings in June and one in July. Ms.

Schneider took it upon herself to serve as chair. Most members of the committee participated in the two meetings in June and all in the meeting in July. At the two meetings in June, Ms. Schneider discussed, to the virtual exclusion of all others, issues related to (1) the procedure for service of pleadings and (2) the parties to the litigation and the Certificate of Service. Ms. Schneider made long presentations at the beginning of each of the two June meetings in regard to these two issues and the committee spent most of the rest of the time discussing them in spite of the objection of several committee members that other issues should be, and were not being, discussed. It is, therefore, inaccurate to indicate that Laura Schroeder, John Howard and William Schaeffer "opted out of working on this issue" as Ms. Schneider has indicated in her report to this court. The fact is that they fully participated in exhaustive discussion of those issues during the first two meetings of the committee. Indeed, Ms. Schroeder provided an agenda for the first June meeting and Mr. Howard for the second, both of which Ms. Schneider rejected and refused to follow, and both of which included discussion of those issues. Mr. Howard, Ms. Schroeder and Mr. Schaeffer were, however, frustrated at Ms. Schneider's insistence that nothing be discussed until she had exhausted discussion of service and certificate of service issues.

Why did Ms. Schneider represent to this Court that Mssrs. Schroeder, Howard and Schaeffer "opted out" of working on those issues? The answer is that at the July meeting, Mr. Howard made a motion to create a subcommittee of the committee to deal specifically with those issues and report back to the full committee with recommendations so that the full committee could move on and deal with the other issues this Court assigned. The motion was seconded but Ms. Schneider repeatedly refused to take a vote. When it was clear a majority of the committee supported the motion, she moved on to the other issues which were resolved in a half hour and then indicated that she was going to move back to the issues that had been deferred and those

who did not want to participate any further could sign off. Mr. Schaeffer, Ms. Schroeder, Ms. Steyaert and Mr. Howard left the meeting having already repeatedly expressed their opinion as to how these issues should be dealt with and confident that the rest of the committee could come up with some recommendations as to their resolution. We observe that they have not.

2. **Parties to the litigation**. As in the previous section, Ms. Schneider has represented to this Court that Howard, Schaeffer and Schroeder have opted out of working on this issue. That is incorrect as pointed out hereinabove.

3. **Making discovery requests**. It is not correct, as Ms. Schneider suggests, that the committee has not agreed that standard interrogatories and requests for production should be used. The committee, to a person, agreed that such a procedure, as originally suggested by this Court, would be a good one. The only matter left for agreement is the content of the standard requests.

We believe it would be appropriate for this Court to order that at an appropriate time the parties develop the interrogatories and requests for production for submission to the Court. That appropriate time would be when their legal theories have finally been divulged by the United States and the Tribe. We recommend that as soon as there has been an exchange of legal theories, the parties submit suggested interrogatories and requests for production to the Court so that it can approve those standard discovery requests. We further recommend that the Court set dates by which those suggestions will be submitted and that, once approved, no discovery request can be made unless court approval is first obtained.

4. **Website proposition**. It is true, as Ms. Schneider has suggested, that the committee reached no consensus on what should be on the website. But Ms. Schneider's report did not give this Court sufficient information to know what the sticking point may be. The parties to the

instant report suggest that the website contain the following and only the following: copies of (a) all discovery requests; (b) the written responses to all such discovery requests; (c) copies of all documents produced pursuant to discovery requests; (d) indices of the foregoing.

The items unresolved by the committee are (1) whether or not all court filings should also be on the website; (2) how the website would be administered, and (3) how much it would cost. Item "(1)" is precipitated by questions as to whether or not non-lawyers will be able to access court filings on PACER which some believe is only open to practitioners. If the court will (or can) order that all parties to this litigation can access documents through PACER, the question is moot. As to the other matters, they are administrative and should be easily resolved without prolonged committee discussion.

In all other respects, Ms. Schneider's report is accurate.

These filing parties suggest that the Court make the following orders:

1. That the target date for the completion of service in C-125-B is December 31, 2008.

2. That the Tribe and the United States submit their legal theories to all other parties on or before October 4, 2007 and that the defendants submit their legal theories on or before November 19, 2007.

3. That the parties exchange proposed threshold issues among themselves on or before February 18, 2008 and that the parties confer thereon within thirty (30) days thereafter.

4. That the parties submit their respective suggested lists of threshold issues to the Court by April 18, 2008.

5. That the committee submit a plan for the establishment of a website for the deposit of discovery requests, responses to discovery requests, documents produced pursuant to discovery requests and indices of each by October 5, 2007.

6. That all parties submit suggested standard discovery requests to the Court by June 30, 2008.

Dated: August 16, 2007

John W. Howard
For Committee Members
Laura Schroeder, Esq.,
Lynn Steyaert, Esq.
William Schaeffer, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 2007, I served the foregoing *Supplement to Status Report of Committee* in said action to the following participants by U.S. Mail, postage prepaid, this 16th day of August, 2007:

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