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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-Intervernor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	3:73-cv-00127-MMD-WGC **UNITED STATES' AND THE WALKER RIVER PAIUTE TRIBE'S RESPONSE IN OPPOSITION TO MOTION FOR RECLASSIFICATION OF PRINCIPAL DEFENDANT SCHROEDER GROUP**

The United States and Walker River Paiute Tribe ("Plaintiffs") respond in opposition to *Schroeder Group's Motion for Reclassification of Principal Defendant Schroeder Group* (ECF No. 2681) ("Motion"). At bottom, the Motion seeks modification of the *Order Regarding Discovery and Motion Schedule and Procedure* (ECF No. 2611) ("Scheduling Order"). Yet, the Motion offers no substantive justification, let alone the required good cause, for making any alteration to the Scheduling Order and Plaintiffs would be unfairly prejudiced were the Motion granted. The Scheduling Order has efficiently guided the thoroughly contested litigation of Plaintiffs' claims, including the Schroeder Group's challenges and affirmative defenses to those claims, for almost two years and no reason exists to relieve the Schroeder Group of the obligations it accepted when it voluntarily became a Principal Defendant. The Court should deny the Motion.

RESPONSE IN OPPOSITION

The Schroeder Group asks that the Scheduling Order be modified so that it is no longer considered a "Principal Defendant" as originally stipulated by all affected parties and as defined in that order.[1] Whether the Scheduling Order can or should be modified is governed by Fed R. Civ. P. 16(b)(4), which succinctly provides: "A schedule may be modified only for good cause and with the judge's consent." The plain language of the rule recognizes that absent good cause, scheduling orders should remain unchanged through the course of litigation so that the Court and the parties can depend on a consistent schedule and structure to accomplish the litigation. The Ninth Circuit Court of Appeals has long recognized that whether a request to modify a

[1] The Schroeder Group is comprised of Fenili Family Trust, Six-N Ranch, Inc., John and Laura Weaver Family Trust, Smith Valley Garage, Inc., and Donald Giorgi. Each member of the Schroeder Group is a Principal Defendant as defined in the Scheduling Order. In this Response, the Schroeder Group will be referred to in the singular though multiple parties are included.

scheduling order is supported by "good cause" under Rule 16(b)(4) turns on the requesting party's diligence in complying with the Order and the reasons presented to justify the modification.[2] If the requesting party's reasoning is sufficient, the court may also consider any prejudice to a party opposing modification of a scheduling order to discern whether an amendment is warranted.[3]

The Schroeder Group fails to meet the basic good-cause standard. The unstated but unmistakable goal of the Motion is that if the Schroeder Group were no longer considered a "Principal Defendant" under the Scheduling Order it would not be subject to ongoing scheduling and discovery obligations. But, the Schroeder Group is an active, vocal participating party that has filed two answers against Plaintiffs' amended claims alleging a host of factual and legal challenges and affirmative defenses for which discovery is necessary.[4] The Schroeder Group offers no good cause for its request which, if granted, would unfairly prejudice Plaintiffs in this litigation by leaving unresolved the answers it filed in this case.

I. Schroeder Group has not shown good cause for modifying the Scheduling Order.

In its Motion, the Schroeder Group makes no mention of and gives no consideration to the governing good-cause standard of Rule 16(b)(4). In fact, the Schroeder Group offers no substantive basis to justify its request. Certainly, no circumstances have changed since the

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[2] *See e.g., Johnson v. Mammoth Recreation, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992); *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013)(citing *Johnson*, 975 F.2d at 609).

[3] *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d at 737.

[4] *See The Schroeder Group's Answer to Amended Counterclaim of the United States of America for Water Rights Asserted on Behalf of the Walker River Paiute Indian Tribe* (ECF No. 2541) and *The Schroeder Group's Answer to Second Amended Counterclaim of the Walker River Paiute Tribe* (ECF No. 2542) ("Answers").

Scheduling Order's issuance to justify the Schroeder Group's request. The water rights claimed by the United States and Tribe have been known throughout the Walker River Basin for many years. By 2019, after decades of effort to serve all potentially affected water rights holders, litigation of Plaintiffs' water right claims began in earnest.[5] In 2020, at the Court's insistence, all active parties including the Schroeder Group drafted, negotiated, and presented to the Court the Scheduling Order in anticipation of the active litigation we now engage. Since the Scheduling Order was issued, the parties have proceeded to litigate as anticipated: Plaintiffs' amended claims have detailed the exact parameters of the water rights they seek; Principal Defendants submitted numerous responses to the amended claims; and the Parties have actively engaged in discovery and motions practice to eliminate the many faulty defenses alleged by the Principal Defendants, including the Schroeder Group. The Schroeder Group itself filed substantial Answers raising a host of legal and factual allegations in opposition to Plaintiffs' claims, including sixteen independent affirmative defenses to which Plaintiffs have had to prepare and against which Plaintiffs have defended and will continue to defend against.[6]

The Schroeder Group provides just two discernable circumstances for requesting modification of the Scheduling Order, namely, it claims that the Schroeder Group's participation is akin to "monitoring" of this litigation[7] and it claims that it is under the burden of the expense

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[5] *See Stipulated Scheduling Order and Discovery Plan* (ECF No. 2437).

[6] Over the last twenty-four months, as legal and factual circumstances solidified, Plaintiffs have diligently worked to narrow the issues and affirmative defenses that remain in controversy between Plaintiffs and Principal Defendants. Based on Plaintiffs' motion for judgment on the pleadings and motion for summary judgement, the Court has dismissed nine affirmative defenses asserted by Principal Defendants including the Schroeder Group. *See Order* (ECF No. 2626);*Order* (ECF No. 2677). Of the sixteen affirmative defenses asserted by the Schroeder Group, nine have been determined to be without legal or factual merit and subject to judgment. Nevertheless, seven affirmative defenses asserted by the Schroeder Group remain active subjects of litigation.

[7] Motion at 3.

of litigation.[8] But, these circumstances fail to recognize the Schroeder Group's major role in developing and extending the litigation at hand. First, the Schroeder Group has hardly been in a "monitoring" position in this litigation; instead, it has been a full, longstanding, active participant. It is for this reason that the Schroeder Group was included in the Scheduling Order as a Principal Defendant in the first place and this circumstance remains unchanged. Participation of the Schroeder Group has been indistinguishable from every other identified Principal Defendant in developing the Principal Defendants' expert reports (ECF No. 2656), preparing discovery requests, responding to Plaintiffs' discovery requests (ECF No. 2641; ECF No. 2672), and responding to Plaintiffs' motions (ECF No. 2619; ECF No. 2649) - all of which have been signed by the Schroeder Group.

Second, the expense in this litigation is neither unexpected nor unwarranted. In fact, the Schroeder Group has itself made a host of complicated factual and legal allegations that would foreseeably and naturally necessitate development through discovery. The expense it is burdened with, although not detailed, is in large part of its own making because it has insisted on actively opposing Plaintiffs' claims. Certainly over two years, the Schroeder Group has failed to act diligently by seeking modification of the Scheduling Order before running up expenses through participation in defense of its affirmative defenses and through foreseeable discovery disputes. Without such diligence, Schroeder Group has wholly failed to show good cause for its request.[9] In any event, the Schroeder Group cannot reasonably expect any relief until its factual and legal allegations as well as its asserted affirmative defenses detailed in its Answers are overcome.

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[8] Motion at 4-5.

[9] *See Johnson*, 975 F.2d at 609 (" Rule 16(b)'s "good cause" standard primarily considers the diligence of the party seeking the amendment.").

II. Plaintiffs will be prejudiced if the Schroeder Group is not classified as a Principal Defendant.

Not only does the Motion fail to establish good cause,[10] but even if good cause could be established by the Schroeder Group, unfair prejudice would result to Plaintiffs from the requested amendment. As mentioned, the unmistakable goal of the Motion is that the Schroder Group would no longer be considered a "Principal Defendant" under the Scheduling Order. It follows that the Schroeder Group would contend that it is no longer subject to the litigation and discovery obligations of the Scheduling Order. But the Schroeder Group's Answers remain substantial obstacles to Plaintiffs' water right claims. Plaintiffs are entitled to disclosures and discovery from all Principal Defendants including the Schroeder Group in order to adequately build their case.

In fact, relevant here but unstated in the Motion, Plaintiffs and the Schroeder Group are currently in the midst of an ongoing and unresolved discovery dispute. Plaintiffs have served discovery requests on all Principal Defendants, but the Schroeder Group has objected and withheld responsive discoverable material. Plaintiffs' counsel and counsel for the Schroeder Group have consulted over the matter, but the dispute remains unresolved. As a named Principal Defendant and having contested Plaintiffs' claims with allegations and affirmative defenses, the Schroeder Group remains bound by the obligations of the Scheduling Order as originally contemplated.

Although the Schroeder Group did not consult with Plaintiffs before filing its motion, Plaintiffs recognize from its Motion that the Schroeder Group no longer wishes to participate in

[10] If good cause is not established, that is the end of the matter. *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d at 737.

this proceeding.[11] The Schroeder Group cannot simply cease to be a Principal Defendant. Plaintiffs believe that the only way for the Schroeder Group to be relieved of the obligations of a Principal Defendant and the Scheduling Order is for either its Answers be withdrawn or its Answers be declared entirely co-extensive with the answers of other Principal Defendants.[12] Were the Answers withdrawn or declared co-extensive, Plaintiffs would have no objection to the Schroeder Group being removed from the Scheduling Order's list of Principal Defendants and, thereafter, being considered a party who may file an answer and participate in these proceedings only if first given leave by the Court as contemplated by the earlier scheduling order of March 7, 2019.[13]

CONCLUSION

For the reasons provided in the paragraphs above, the Motion should be denied.

Dated: December 7, 2021

Respectfully submitted,
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Andrew "Guss" Guarino, Trial Attorney
Marisa J. Hazell, Trial Attorney

By *<u>/s/ Andrew "Guss" Guarino</u>*
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[11] Motion at 5.

[12] ECF Nos. 2541 and 2542.

[13] *See Stipulated Scheduling Order and Discovery Plan* at 3 (ECF No. 2437) (this scheduling order instructed that those who did not file an answer at the designated time could only do so after the deadline if given leave of court).

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Certificate of Service

It is hereby certified that on December 7, 2021, service of the foregoing was made through the court's electronic filing and notice system (CM/ECF) to all of the registered participants.

Further, pursuant to the Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and by All Parties (ECF 2100) at 10 ¶ 20, the foregoing does not affect the rights of others and does not raise significant issues of law or fact. Therefore, the United States has taken no step to serve notice of this document via the postcard notice procedures described in paragraph 17.c of the Superseding Order."

By /s/ Andrew "Guss" Guarino
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