U.S. DISTRICT COURT
DISTRICT OF NEVADA
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MAY 11 1999
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

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| UNITED STATES OF AMERICA, Plaintiff, | CV-N-73-127-ECR |
| WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, | IN EQUITY NO. C-125<br>SUBFILE NO. C-125-B |
| VS. | MINUTES OF THE COURT |
| WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants. | DATE: May 11, 1999 |
| WALKER RIVER PAIUTE TRIBE, Counterclaimant, | |
| VS. | |
| WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants. | |
| MINERAL COUNTY, Proposed Plaintiff-Intervenor, | |
| VS. | |
| WALKER RIVER IRRIGATION DISTRICT, et al. Proposed Defendants. | |

FILED
MAY 11 1999

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

Currently before the Court are three motions: "United States' and Walker River Paiute Tribe's Joint Motion for Leave to Serve First Amended Counterclaims, to Join Groundwater Users, to Approve Forms for Notice and Waiver and to Approve Procedure for Service of Pleadings Once Parties Are Joined" (#62) (the "Joint Motion"), filed on August 20, 1998; "State of Nevada's Response to United States' and Walker River Paiute Tribe's Joint Motion for Leave to Serve First Amended Counterclaims, to Join Groundwater Users, to Approve Forms for Notice and Waiver, and to Approve Procedure for

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Service of Pleadings Once Parties Are Joined; and Motion for more Definite Statement" (#64), filed on November 6, 1998; and the Walker River Irrigation District's (WRID's) "Motion for Scheduling and Planning Conference" (#67), filed on November 9, 1998.

**IT IS HEREBY ORDERED** that Nevada's Motion for a More Definite Statement (#64) is **DENIED**. Fed.R.Civ.P. 12(e) provides that such a motion may be made in response to a vague or ambiguous pleading to which a responsive pleading is required. A motion is not a pleading. Nonetheless, the arguments raised in support of Nevada's motion will be considered in connection with the Joint Motion itself.

**IT IS FURTHER ORDERED** that WRID's Motion for a Scheduling and Planning Conference (#67) is **GRANTED** on the following basis. Immediately following the budget hearing previously set for May 24, 1999, at 1:30 p.m., the Court will conduct an additional hearing to entertain argument and proposals as to the matters mentioned below.

The principal question to be addressed at the additional May 24, 1999, hearing is how we should proceed in determining whether all or some of the groundwater users in the Walker River basin should be joined in this case with respect to the counterclaims of the United States and the Tribe. The merits of this question will not be addressed at the hearing. The procedures as to how this issue will be decided will be considered.

The first issue is whether there should be an initial evidentiary hearing and/or argument to determine whether the groundwater in the basin is sufficiently connected or related to the River itself so that claimants to groundwater must be joined in order to provide complete relief to the counterclaimants. While such a hearing might be deemed necessary to determine if the counterclaims should be permitted to be served it seems questionable that the unjoined groundwater users would be bound by the findings the Court might make as a result of such hearings.

Alternatively, should the Court first consider whether the counterclaims with respect to the underground water rights should be permitted to be served based merely on the pleadings, so that if the motion to serve is granted, the groundwater users can be served and participate in the hearing to determine the connection or relation of the groundwater in the basin to surface flows in the River. If it is eventually decided that the groundwater in the basin is not connected or related to the river, the extensive costs of service of process on the groundwater users may be wasted, and the groundwater user may incur large expenses in defending the matter.

Thus, eventually, the Court will have to address the issue of whether joinder of the groundwater users is necessary, appropriate or even permissible at this time in this case, given the procedural posture of the case. The question is when and how that decision should be made.

There appears to be an issue of whether this Court will have jurisdiction over the proposed groundwater defendants in these post judgment proceedings, in that such defendants have never previously been joined in the action. The original decree was adjudicated without reference to groundwater.

It does not appear that the proposed groundwater defendants have been identified. Certain of the groundwater users may have obtained permits from the Nevada State Engineer or the appropriate California authorities, but groundwater users with domestic wells or vested rights wells may not be of record in those offices. Thus, the proposed groundwater defendants appear to be unidentified and possibly unidentifiable at this time.

There are also potential issues of claims relating to groundwater adjacent to the Indian Reservation and federal enclaves for which water rights are sought in the counterclaims, if all of the groundwater in the basin is not found to be connected or directly related to the surface River flows. The jurisdiction of the State Engineer of Nevada to adjudicate the relative rights of groundwater users in Nevada, and the application of the groundwater laws of the States of Nevada and California are considerations which need to be addressed.

Obviously the introduction of the groundwater claims may be necessary to the counterclaims, but such will greatly increase the complexity of the litigation and could possibly make it simply impractical to proceed.

The adequacy of the pleading of the counterclaims to sufficiently allege that the groundwater users should be joined as parties is raised and may be worthy of argument somewhere in the process.

There may be other issues which the parties have raised in their papers which should be considered, as well, at the additional May 24, 1999, hearing, as a part of sorting out how the case ought to proceed.

Our goal here is to place the case on some sort of proper procedural track.

Certainly, all will agree that resolution of these questions will almost certainly have a far reaching impact on this case as a whole, and not just with respect to this subfile.

Finally, at the additional hearing on May 24, 1999, we will also address the question whether, pending the resolution of the matters set forth above, the Court should consider approval of the forms of notice and waiver and the procedure for service of pleadings with respect to the counterclaims.

If further evidentiary or other hearings are required, then a date and time must be set, and guidelines established for how the hearings will be conducted and whether any additional briefing would be appropriate in advance of such hearings.

In sum, we must establish procedures for consideration of these matters in an orderly fashion, so that the matter may proceed in as expeditious a manner as possible.

The Court recommends that, if such can be arranged, the parties meet prior to the hearing to explore the alternatives to resolve these matters and to ascertain if an agreement can be reached as to the proper procedures which ought to be followed.

LANCE S. WILSON, CLERK

By Wayne Tuttle
Deputy Clerk