

FILED

APR 12 PM 12:37

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

LANCE S. WILSON
CLERK

1 UNITED STATES OF AMERICA,

2 Plaintiff,

3 WALKER RIVER PAIUTE TRIBE,

4 Plaintiff-Intervenor,

5 vs.

6 WALKER RIVER IRRIGATION DISTRICT,
7 a corporation, et al.,

8 BY _____
9 DEPUTY

10 IN EQUITY NO. C-125

11 SUBFILE NO. C-125-B

12 NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE

- 13 1. I hereby enter my appearance in this sub-proceeding in this case.
- 14 2. I am filing this document with the District Court at the following address:

15 Chief Deputy Clerk
 16 United States District Court for the
 17 District of Nevada
 18 400 South Virginia Street, Suite 301
 19 Reno, Nevada 89501

- 20 3. In the envelope provided for return of my Waiver of Service of Notice in Lieu of
 21 Summons. I am mailing a copy of this document to:

22 Susan L. Schneider
 23 Attorney for the United States of America
 24 United States Department of Justice
 25 Environment & Natural Resources Division
 26 P.O. Box 756
 27 Littleton, Colorado 80160

- 28 4. I (or the entity on whose behalf I am acting) will retain all defenses or objections
 to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect
 in the Notice in Lieu of Summons or in the service of the Notice in Lieu of Summons.

- 5. If I (or the entity on whose behalf I am acting) have retained an attorney to represent
 me in these proceedings. I identify that attorney below, along with his or her mailing address,
 telephone number, and facsimile number:

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Attorney: Mineral County District Attorney
Cheri Emm-Smith

Address: P.O. Box 1210
Hawthorne NU 89415

Phone Number: 775-945-3636

Fax Number: 775-945-0740

Cheri Smith

(Signature)

Cheri Emm-Smith

(Printed or typed Name)

Hawthorne Utilities

(Entity, if any, on whose
behalf you are appearing)

P.O. Box 1448

Hawthorne NU 89415

(Address)

775-945-2486

(Telephone number)

WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS

TO: Susan L. Schneider, attorney for the United States of America

1. I acknowledge receipt of your request that I waive service of a Notice in Lieu of Summons in the action of *United States v. Walker River Irrigation District*, which is docket number In Equity C-125, Subfile C-125-B, in the United States District Court for the District of Nevada.

2. I have also received a copy of the FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA, the FIRST AMENDED COUNTERCLAIM OF WALKER RIVER PAIUTE TRIBE, the CASE MANAGEMENT ORDER (Apr. 18, 2000), two copies of a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE, a copy of the ORDER – DISCLAIMER OF INTEREST and related form, a copy of the ORDER REGARDING CHANGES IN OWNERSHIP OF WATER RIGHTS and related form, two copies of this instrument (WAIVER OF SERVICE OF NOTICE IN LIEU OF SUMMONS), and a means by which I can return the signed waiver to you without cost to me.

3. I agree to save the cost to me of service of a Notice in Lieu of Summons and an additional copy of the FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA and the FIRST AMENDED COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure.

4. I understand that if I waive service of a Notice in Lieu of Summons, I must mail a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE to Susan L. Schneider, attorney for the United States, and I may use the same envelope provided for return of the waiver of service.

5. I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections based on a defect in the Notice in Lieu of Summons or in the service of the Notice in Lieu of Summons.

Date: 3-25-04

Cheri Emm-Smith
Signature

Cheri Emm-Smith
Printed/Typed Name

If you are acting on behalf of any entity, identify that you are acting as: Hawthorne Utilities Attorney of (Title)

Hawthorne Utilities
(Corporate, Trust, Partnership or other entity)

Duty to Avoid Unnecessary Costs of Service of Notice in Lieu of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the Notice in Lieu of Summons and the First Amended Counterclaims. An entity (such as yourself) located in the United States who, after being notified of an action and asked by a plaintiff (here the United States and Tribe) located in the United States to waive service of a Notice in Lieu of Summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the claims of the opposing parties are unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the Notice in Lieu of Summons retains all defenses and objections (except any relating to the Notice in Lieu of Summons or to the service of the Notice in Lieu of Summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

An entity in this case who waives service must, within 60 days, as specified on the waiver form, provide the court and DOJ attorney S. Schneider with a notice of appearance and intent to participate.