ORIGINAL FILED

Greg Addington, Assistant U.S. Attorney
Susan L. Schneider, Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
Denver, Colorado 80202
303/312-7308

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	IN EQUITY NO. C-125-B
Plaintiff,	)	**APPLICATION OF THE UNITED STATES OF AMERICA FOR SPECIAL APPOINTMENT OF A PROCESS SERVER UNDER F.R.C.P. 4(c)(2), AND POINTS AND AUTHORITIES IN SUPPORT THEREOF**
WALKER RIVER PAIUTE TRIBE,	)	
Plaintiff-Intervenor,	)	
vs.	)	**EX PARTE FILING**
WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.,	)	
Defendants.	)	

I. LR 7-5 Statement:

The United States of America ("United States") has submitted this application to the Court without providing notice to all parties. The United States has notified counsel for the Walker River Irrigation District ("District"), counsel for the United States Board of Water Commissioners ("U.S. Board"), and counsel for the Walker River Paiute Tribe ("Tribe") of this application and the reasons therefor. Counsel for the District and counsel for the U.S. Board have been asked to meet with counsel for the United States and the Magistrate Judge to discuss this application.

It is undersigned counsel's opinion that notice to all parties and a discussion in open court

662

of the factual bases for this application, as set forth in the attached Declaration of Craig Wesley Rimer, may only serve to encourage others to resist service and assault the process server, or encourage worse conduct. Although the United States has not provided notice to all parties in this action of this application, it has notified counsel for the District and counsel for the U.S. Board; the individuals whose conduct has prompted this application hold Decreed water rights under the indirect supervision of the U.S. Board and are District members. The United States asserts that these circumstances present good cause for presenting this Application to the Court in this manner. Undersigned counsel represents to the Court that counsel for the Tribe agree with this opinion.

The United States requests the Court to sign the attached proposed Order and issue it as a public order of the Court. The United States requests that this Application and the Declaration of Craig Wesley Rimer remain an *ex parte* filing and that the Court place them under seal.

II. Application for Special Appointment of a Process Server Under F.R.C.P. 4(c)(2):

The United States requests the Court to appoint Craig Wesley Rimer to effect service in the above-captioned matter under F.R.C.P. 4(c)(2), which provides, in part:

> Service may be effected by any person who is not a party and who is at least 18 years of age. *At the request of the plaintiff, however, the court may direct that service be effected by* a United States marshal, deputy United States marshal, *or other person or officer specially appointed by the Court for that purpose. . . .*

F.R.C.P. 4(c)(2) (emphasis added).

During the status hearing conducted before this Court on December 1, 2004, the United States raised the issue of requesting an order from the Court regarding its process servers conducting personal service, and the United States and the Court agreed that the United States

would "request an order from the court regarding personal service only if it becomes an issue." *Minutes of the Court,* Case No. C-1250-B (Dec. 1, 2004). As set forth in the attached *Declaration of Craig Wesley Rimer,* attached as Exhibit 1, there have now been two instances during which Mr. Rimer attempted to effect person service on an individual and was obstructed and/or assaulted in the performance of his duties.

The United States believes that an order from this Court appointing Mr. Rimer as a process server for this action may assist him in identifying himself to persons or entities that elect to challenge his efforts to effect service. If any further incidents occur, despite issuance of an order of this Court, the United States will report such incidents to the Court and it may be necessary to request further relief of the Court. A proposed Order is attached.

Dated: 5/24/05

Respectfully submitted,

Greg Addington, Assistant United States Attorney
Susan L. Schneider, Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
Denver, Colorado 80202
303/312-7308

By: Susan L. Schneider
Susan L. Schneider
Attorneys for the United States of America

The United States requests that this Application and the attached *Declaration of Craig Wesley Rimer* remain an *ex parte* filing and that the Court place them under seal.

IT IS SO ORDERED this ___day of _____, 2005.

_____

United States Magistrate Judge

Greg Addington, Assistant U.S. Attorney
Susan L. Schneider, Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Div.
999 - 18th Street, Suite 945
Denver, Colorado 80202
303/312-7308

Attorneys for the United States of America

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-B **DECLARATION OF CRAIG WESLEY RIMER** **IN SUPPORT OF APPLICATION OF THE UNITED STATES OF AMERICA FOR SPECIAL APPOINTMENT OF A PROCESS SERVER UNDER F.R.C.P. 4(c)(2)** **EX PARTE FILING**

I, Craig Wesley Rimer, hereby make the following declaration pursuant to 28 U.S.C. § 1746:

1. This declaration provides information about two incidents that occurred in connection with efforts by the undersigned to serve process in the above action.

2. The first incident concerns my efforts on May 14, 2004, to serve Robert A. Garrett and Diana Davis at 40 MacKenzie Road, Yerington, Nevada. Mr Garrett and Ms. Davis are each owners of a 50% undivided interest as Tenants in Common of surface water rights

EXHIBIT 1

under the 1936 Walker River Decree (Case No. C-125) and are members of the Walker River Irrigation District. As such, they are subject to service in Case No. C-125-B under Paragraph 3.a. of the Case Management Order. *See* WRID card No. 19605, attached hereto.

3. The second incident concerns my efforts on May 19, 2005, to serve Norman D. Brown, Inc.'s agent, Michael Compston, at 1000 Plymouth Ranch Road, Smith, NV. Norman D. Brown Inc. owns water rights under the 1936 Walker River Decree (Case No. C-125) and is a member of the Walker River Irrigation District. As such, it is subject to service in Case No. C-125-B under Paragraph 3.a. of the Case Management Order. *See* WRID card No. 5714, attached hereto.

4. I am currently the President of Cardinal Pointe, Inc., which is a litigation support company doing business at 600 17th Street, Suite 2800 South, Denver, CO 80202. Cardinal Pointe, Inc. provides certain legal services pursuant to a written contract with the United States Department of Justice. These services include making personal service of the package of Court-approved service documents in the instant action on persons and entities that have not waived service in response to receiving a similar Court-approved package of service materials sent by mail. The specific documents in the service package are the Notice in Lieu of Summons; Notice of Appearance and Intent to Participate; First Amended Counterclaim of the United States of America; First Amended Counterclaim of the Walker River Paiute Tribe; Case Management Order; Order – Disclaimer of Interest; and Order Regarding Changes in Ownership of Water Rights.

5. On or about April 26, 2005, I began to make personal service of process upon persons and entities who had not responded to the United States' mailed request that they waive service. To date, I have served approximately 165 persons and entities. Most of the persons or entities I have served were located in the Mason Valley and Smith Valley areas of Lyon County, Nevada.

6. I have been involved in a variety of aspects of this action as a contractor for the United States for approximately 5 ½ years. This work has included supervision of the initial research into the ownership of relevant water rights. Because of my background and experience, I am now the primary researcher for the United States in terms of research done directly at the various county and state offices in Nevada and California.

7. My educational background includes: a paralegal certification (1979-1980, Morrison College (formerly Reno Business College, Reno); an undergraduate college degree (1996, Sacramento City College); and a law degree (2004, Lincoln School of Law & BAU).

8. I have worked as a trial preparation specialist for almost thirty years. This work has included a variety of work including effecting personal service and conducting various forms of investigation. I have investigated both civil and criminal cases. I have extensive experience in reviewing title records. I have effected personal service of process on roughly several thousand occasions.

9. Prior to the changes in 1983 to F.R.C.P. 4(c), I was appointed on numerous occasions to effect service in cases pending before the federal court in Sacramento, California. Within the last few years, I also effected service on well over 500 persons in a water rights case

pending in Arizona.

10. My professional credentials include the following:

a. 2004 - Present, Member, National Council of Investigation & Security Services.

b. 2002 - Present, District of Columbia Investigator's License.

c. 2000 - Present, PPIAC (Colorado Investigator's Association - Senior Member).

d. 2000 - Present, Certified Financial Investigator (CFI), National Association of Certified Investigators.

e. 1998 - Present, Colorado Notary Public.

f. 1996 - 1998, Investigator Credential, Brotherhood of Maintenance of Way Employees, AFL-CIO.

g. 1995 - 1998, Member, Oregon Association of Legal Investigators.

h. 1985 - Present, Certified Legal Investigator, National Association of Legal Investigators.

i. 1981 - Present, Licensed California Investigator, License No. 13166 (previously 8177).

11. I do not carry weapons such as firearms, knives or chemical mace. In circumstances where it appears that I need to act in self-defense, I prefer, if possible, to disengage and retreat, which I believe generally works to defuse, rather than exacerbate, a potentially threatening situation.

Incident No. 1:

12. On May 14, 2004, at approximately 5:00 P.M., I attempted to serve Robert A. Garrett and Diana Davis at 40 MacKenzie Road, Yerington, Nevada. This is a rural property located southeast of Yerington. The residence is located at least 1/4 mile off the main road. The

driveway is a dirt road that ends in a heavily graveled area. I parked my Jeep Cherokee in a wide open area near Mr. Garrett's residence and got out of the car. A man, who appeared to be approximately fifty years old, approached me. I inquired politely if he was Robert A. Garrett, and he responded that he was. I informed him that I was delivering legal documents to him that concerned his water rights and handed him two sets of the service documents – one for Mr. Garrett and the other for his spouse or companion, Diana Davis. At this point, Mr. Garrett became visibly upset.

13. I retreated to my car, entered the driver's side, started the car and turned it to leave. The driver's side window was completely open. Mr. Garrett waved for me to stop and approached the driver's side of my car. As he neared, I could see that he had a very angry look on his face and his complexion had become very red. Mr. Garrett stated that he wanted to "throw me off the ranch." I replied that I would leave on my own accord. Mr. Garrett raised his voice and demanded that I not leave until he "had time to check this out." I sensed that Mr. Garrett was about to initiate a physical altercation. Mr. Garrett became even angrier and demanded my name and address. I informed him in a calm voice that under the circumstances, I did not feel compelled to disclose that information to him and he could seek my identity from the proof of service in the Court file.

14. At this point, I started to leave. Mr. Garrett began to scream at me and charged the open driver's window of my car. He screamed, "this is what you can do with your fucking papers," and attempted to slam them into my face. I promptly accelerated the car to get away from Mr. Garrett. The papers that Mr. Garrett tried to shove in my face struck the

side of the Jeep at the rear of the driver's side window. My effort to accelerate my car to disengage and retreat from this encounter caused my tires to spin in the soft gravel of the driveway.

15. I traveled down the dirt access road away from the Garrett property at approximately forty (40) miles per hour. As I approached MacKenzie Road, which is paved, I realized that a white Chevrolet or GMC truck was coming up behind me and then drove very close to my rear bumper. I thought the truck was going to rear-end my car, due to its rapid approach, and braced myself accordingly. In my rear and side view mirrors, I could see that Robert A. Garrett was driving the truck. He was close enough for me to see that he had the same look of rage on his face. I turned right out of the drive and traveled northbound on MacKenzie Road at approximately fifty-five (55) miles per hour. Mr. Garrett followed close behind me. He also drove his truck along the driver's side of my car several times and swerved to the right several times in an attempt to force me off of the road.

16. As I approached Purcel Road, I noticed two bicyclists ahead on my side of the road and slowed to approximately thirty (30) miles per hour to pass them safely. By this point I had moved my car toward to the center of the road to try to keep Mr. Garrett from driving along the driver's side of my car and attempting to force my car off the side of the road. This also helped me avoid hitting the bicyclists. If Mr. Garrett had been able to force my car off the side of the road, I might have hit the bicyclists. Mr. Garrett was still driving behind me at what appeared to be approximately one foot from my rear bumper.

17. Before passing the bicyclists, I telephoned "911" from my cellphone and the Lyon County Sheriff's Department answered. I told them that I had served someone in the Walker River water litigation, and that the person had become upset and was following me and trying to hit my car. The dispatcher told me to drive directly to the Sheriff's Department offices and that they were dispatching a deputy to respond to my call. Mr. Garrett continued to "ride" the rear bumper of my car. The truck was so close to my car that I again braced for a collision. I turned left on Purcel Road, traveled out to State Route 208, and turned north towards the City of Yerington. Mr. Garrett continued to follow me, but turned abruptly eastbound at Bridge Street when a Sheriff's vehicle with lights flashing approached southbound. The Sheriff's vehicle pursued Mr. Garrett. I was told later by Sheriff's Department personnel that they pursued and stopped Mr. Garrett. I drove directly to the Lyon County Sheriff's Department, as instructed by the "911" dispatcher.

18. At the Lyon County Sheriff's Department, I was met by two deputies, physically searched for weapons, and escorted into the Lyon County Sheriff's Department, where I was asked to provide a written statement. I wrote a two page statement and gave it to the deputies. Approximately one hour later, another deputy joined us and I learned that he was the officer who apprehended Mr. Garrett. I was informed that what Mr. Garrett had done constituted "road rage" and reckless driving. The deputy told me that I too could be cited for reckless driving because I spun my tires in the loose gravel on the Garrett property. I told the deputy that such a charge was ludicrous as I was being assaulted and was acting in self defense. We agreed to disagree. I was informed that Mr. Garrett was now calm

and would be of no danger to me. I was also told that I should inform the Lyon County Sheriff's Dispatcher when I am serving documents in the area, which I have now done, to date. One of the deputies also informed me that I should be very careful at night and cautious while in the area he called "Hillbilly Haven." As there is enough tension over the water issues in Lyon County, we came to the conclusion that it was best if we let the matter rest and not proceed with prosecutions. I left the Sheriff's Department on that note.

Incident No. 2:

19. The second incident occurred on May 19, 2005, at approximately 6:00 PM, when I served Norman D. Brown, Inc.'s agent, Michael Compston, at 1000 Plymouth Ranch Road, Smith, NV. I had driven down a driveway and came to a gate that was closed. Three people were there talking. I parked my car, walked over to them, and inquired if any of them was Michael Compston. The man who identified himself as Michael Compston, in response to my inquiry, was on the other side of the gate. He refused at first to take the documents and became agitated. He asked me if he had to take them and I said that since he had identified himself to me and I could see and hear him, there was no choice. He still stated that he would not take them. I left the service package in the gate he was standing behind and walked back to my car.

20. Mr. Compston climbed over the fence and walked after me. He demanded to know who I was, and I told him my full name. I got to the car and he was still walking after me. He told me that he was not going to let me leave and wanted to see my driver's license. I

refused and got into my car and tried to turn around. Compston stood in the middle of the dirt road and would not let me pass. He then sat down on my front bumper to prevent me from leaving. This lasted a few minutes. Finally, I got out, walked up to him and showed him my driver's license. He immediately grabbed the card and tried to take it from me. We struggled over it for a few seconds and he did not get it. I told him that it was my personal property and that he could not have it. He told me that I was on his property. I told him that I was simply trying to leave his property. He finally moved and let me leave, but as he was standing next to my open driver's side window, he called me a "cocksucker." I was always polite during this whole incident and drove away at a normal rate of speed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the foregoing is true and correct. Further, affiant sayeth not.

Executed this 24 day of May, 2005.

Craig Wesley Rimer

Division #: 2

WALKER RIVER IRRIGATION DISTRICT
YERINGTON, NEVADA

Card #: 19605
Name: Robert A. Garrett
Diana Davis
Address: P. O. Box 407
Pine Grove, CA 95665

O. & M. Local No. 3

Index No. 97-B
Lyon County No. 12-301-10
Claim No.
User # 816
Ditch High

Court Decree:

PRIORITY	C.F.S.	ACRES	DUTY	DAYS STORAGE	ACRE FEET REQUIRED PER ACRE	ACRE FEET REQUIRED TOTAL	ACRE FEET APPORTIONED	TOPAZ RES. ACRE FEET	BRIDGEPORT RES. ACRE FEET	CLAIM #
EXCL		45.000	4.2768			.000				
NEWL		5.000	4.2768	66	2.0592	10.296				
TOTAL		50.000				10.296	10.30	.00	10.30	

TOTAL ACRES	50.000
Water Rt. Acres	5.000
Non Wtr Rt. Acres	45.000
Acre Feet Storage	10.300

LEGAL DESCRIPTION:

NE 1/4 of SE 1/4, Fr. S 1/2 of SE 1/4 of NE 1/4, Sec. 12;
T. 12 N., R. 26 E.

COMMENTS:

4/29/91 - Transferred from card #4911 - Bradleyville
96/12/3 - Transferred from card #4912 - Bradleyville

DOCUMENT HISTORY:

DOCUMENT #	DATE	DESCRIPTION
#44-543	03/01/62	Don R. & Bobbie R. Womack to Curtis R. & Molly C. Clayton.
#49-518	11/21/66	Molly C. Clayton to Curtis R. Clayton.
#50-32	12/30/66	Curtis R. Clayton to Molly C. Clayton.
#50-478	09/01/67	Nevada Title & Garuntee Co. Trustee under deed of Trust to J. Frank Silva.
#51-249	03/01/68	J. Frank Silva to Edward J. & Lola Giacometto.
#43-233	09/09/69	Lola M. Giacometto to Edward Giacometto.
#127888	09/26/89	Edward Giacometto to Bradleyville.
#194893	07/01/96	A Map O Division into Large Parcels for Bradleyville.
#200419	12/03/96	Order of the Board & Certificate of Transfer of Storage Water Rights.
#259042	03/28/01	Record of Survey and Boundary Line Adjustment for Donald U. & Lynda Hunewill Giorgi and Bradleyville, a General Partnership
#259044	03/28/01	Bradleyville, a general partnership to Bradleyville, a general partnership
#298207	06/10/03	Bradleyville, a general partnership to Robert A. Garrett, an unmarried man as to an und. 50% int. and Diana Davis, an unmarried woman as to an und. 50% int. as Tenants in Common

Division #: 4

WALKER RIVER IRRIGATION DISTRICT
YERINGTON, NEVADA

Card #: 5714
Name: Norman D. Brown, Inc.

Address: P. O. Box 108
Wellington, NV 89444

Court Decree: "PROVISIONAL" C-125, P. 38; Plymouth L & L

Index No. 275-A
Lyon County No. 10-441-29
Claim No. Pt. of 123
Ditch Plymouth

PRIORITY		C.F.S.	ACRES	DUTY	DAYS STORAGE	ACRE FEET REQUIRED PER ACRE	ACRE FEET REQUIRED TOTAL	ACRE FEET APPORTIONED	TOPAZ RES. ACRE FEET	BRIDGEPORT RES. ACRE FEET	CLAIM #
1862		.002	.167	3.2076			.000				123
1863		.194	16.205	3.2076			.000				123
1864		.138	11.523	3.2076			.000				123
1868		.026	2.168	3.2076			.000				123
1878		.166	13.838	3.2076	17	.4039	5.589				123
1878		.007	.573	3.2076	17	.4039	.231				123
1885		.039	3.242	3.2076	29	.689	2.234				123
1892		.025	2.061	3.2076	31	.7366	1.518				123
1897		.156	13.033	3.2076	32	.7603	9.909				123
1862	*	.001	.089	3.2076			.000				123
1863	*	.103	8.609	3.2076			.000				123
1864	*	.073	6.122	3.2076			.000				123
1868	*	.014	1.152	3.2076			.000				123
1878	*	.088	7.352	3.2076	17		.000				123
1878	*	.004	.305	3.2076	17		.000				123
1885	*	.021	1.722	3.2076	29		.000				123
1892	*	.013	1.095	3.2076	31		.000				123
1897	*	.083	6.924	3.2076	32		.000				123
TOTAL		1.154	96.180				19.481	19.48	19.48	.00	

TOTAL ACRES	62.810
Water Rt. Acres	96.180
Non Wtr Rt. Acres	.000
Acre Feet Storage	19.4

LEGAL DESCRIPTION:

Fr. S 1/2 of NE 1/4, Fr. SE 1/4, Fr. of NE 1/2 of SW 1/4, Sec. 17;
T. 11 N., R. 24 E.

COMMENTS:

* Water Rights in EXCESS of Available Appurtenant Land
Transferred from card #5711 - N.D. Brown, Inc.

DOCUMENT HISTORY:

DOCUMENT #	DATE	DESCRIPTION
#200449	12/04/96	Boundary Line Adjustment for N.D. Brown, Inc.
#200451	12/04/96	Norman D. Brown, Inc. a Nevada Corporation to Norman D. Brown, Inc., a Nevada Corporation.
#219101	05/21/98	Boundary Line Adjustment for Norman D. Brown, Inc.
#222009	08/04/98	Norman D. Brown, Inc. to Alton & Susan Anker, husband and wife as community property (APN 10-441-24, 25, & 38)