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U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED
DEC - 6 2005
CLERK, U.S. DISTRICT COURT
BY _____ DEPUTY

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, vs. WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants.	In Equity No. C-125-ECR Subfile No. C-125-B **NOTICE OF MOTION AND MOTION TO CLARIFY JUDGE REID'S CASE MANAGEMENT ORDER DATED APRIL 18, 2000**

PLEASE TAKE NOTICE that Defendants Joseph and Beverly Landolt bring the instant Motion to Modify Judge Reid's Case Management Order dated April 18, 2000. Defendants request that this Motion be heard by Judge Reid, as he is the one who issued the order.

The Landolts seek an order clarifying the April 18, 2000 Case Management Order so that it clearly states that the litigation stay contained therein applies to issues that bear on the determination of the stakeholders' rights going forward but not to litigation over the rights and responsibilities existing under the operative Decree of 1936.

This motion is made on the grounds that good cause exists to either clarify or modify Judge Reid's Order. It is an inherent power of the court to clarify or modify any order issued by it. The existing order needs to be clarified because Judge McQuaid erroneously interpreted it to mean that defendants could not enforce their water rights under the existing Decree. Given this interpretation, defendants could not enforce their rights even though they have evidence that Walker River Paiute Tribe is appropriating significantly more water than was authorized under the 1936 Decree currently in effect. In order to protect their water rights, the existing order must be clarified as to enable the defendants to enforce the existing Decree of 1936.

This motion is based upon these points and authorities, any pleadings on file with the court and any oral or documentary evidence presented at the hearing.

Date: December 1, 2005

John W. Howard

BACKGROUND

This case dates back to the beginning of the last century. It was resolved by a decree issued by this court in 1936 which determined the rights of the competing parties in certain water resources. The water resources were managed in accordance with the decree without apparent complaint until July 31, 1997. In that year, this case became active again because some of the parties wanted to change the decree to reflect what they claim is a change in circumstances between 1936 and the present day. The purpose of this action is to determine the rights of the parties going forward. That will, of course, require litigation. The parties who revived the case decided to conduct a mediation as among themselves, and only among themselves, to attempt to narrow the issues this Court must decide.

In furtherance of that effort, those parties requested an order from this Court which, among other things, stayed all litigation in this case until the mediation was either completed or abandoned. (See Case Management Order dated April 18, 2000.) The order reads in pertinent part: "All discovery and all other proceedings in this action included in or in connection with the said First Amended Counterclaims are stayed, until further order of the court, and except as provided in this order." (See Case Management Order dated April 18, 2000, page 4, lines 21-24.)

Since that time, those parties have, for several years, fruitlessly mediated. In addition, the number of parties to the action has expanded geometrically. The new parties have repeatedly requested a seat at the mediation table, which requests have been vigorously opposed by the mediating parties. The result is, of course, that the issues will not be narrowed; the disputes will not be resolved and the case will not settle. Therefore, after some delay, the case will be tried.

During the litigation, it became clear to some of the parties that the Walker River Paiute Tribe was appropriating significantly more water than was authorized under the decree and they requested an order to show cause why the Tribe should not be found in contempt for violating the Decree. The request was denied on the basis that the April 18, 2000 Case Management Order stayed litigation pending mediation.

Since the litigation is intended to modify the decree and determine the rights of the various stakeholders *going forward*, it is clear that the stay order was intended to apply to litigation geared toward resolving those issues. Equally clear is that it was not intended to prevent interested parties from enforcing their existing rights under the decree or to prevent others from acting in violation of it. Indeed the very wording of the stay that "All discovery and all other proceedings in this action included in or *in connection with the said First Amended Counterclaims* are stayed, ..." clearly indicates that the Court intended that only litigation undertaken in connection with the First Amended Counterclaims are stayed and not those connected to other things, such as enforcement of the existing decree. The words cited above are clearly words of limitation unintended as limiting the ability of any party to enforce existing rights. And the First Amended Counterclaims only speak in terms of modifying the decree going forward, not of adjudicating rights that currently exist.

Therefore, the Landolts seek an order clarifying the April 18, 2000 Case Management Order to indicate that the litigation stay contained therein applies to issues that bear on the determination to be made herein of the stakeholders' rights going forward but not to litigation over the rights and responsibilities existing under the operative Decree of 1936.

GOOD CAUSE EXISTS TO MODIFY THE APRIL 18, 2000 ORDER

Under the circumstances, good cause exists to clarify Judge Reid's Case Management Order so that the Landolts can enforce the 1936 Decree as it stands today. Defendants Joseph & Beverly Landolt, and others similarly situated, have been and continue to be aggrieved as a result of the Walker River Paiute Tribe's violation of the 1936 Decree. Defendants know that the Paiute Tribe is appropriating significantly more water than was authorized under the decree. Yet, this Court will not permit the Landolts from enforcing the 1936 Decree on the grounds that Judge Reid's April 18, 2000 stayed all proceedings related to this case.

In order to enable the Landolts to enforce their water rights and prevent other's abuse of certain water rights under the Decree, the existing April 18, 2000 order must be rewritten to make clear that the only proceedings that are stayed are as to the future water rights of the parties.

CONCLUSION

Defendants respectfully request that the Court clarify Judge Reid's April 18, 2000 order so as to allow the defendants to enforce their rights under the 1936 Decree that is currently controlling.

Date December 1, 2005

John W. Howard

PROOF OF SERVICE

STATE OF CALIFORNIA	)		*USA v. Walker River Paiute Tribe*
	)	ss.	In Equity No. C-125-ECR
COUNTY OF SAN DIEGO	)		Subfile No. C-125-B

I am over the age of 18 years, employed in the county of San Diego; my business address is 625 Broadway, Suite 1206, San Diego, CA 92101.

On December 2, 2005, I served the following documents:

NOTICE OF MOTION AND MOTION TO CLARIFY JUDGE REID'S CASE MANAGEMENT ORDER DATED April 18, 2000

in said action by placing a true copy thereof closed in a sealed envelope, addressed as follows and placing same in the U.S. mail, postage prepaid, to:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of December 2005 at San Diego, California.

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