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12
13 STATE WATER RESOURCES CONTROL BOARD

14 DIVISION OF WATER RIGHTS

15
16 In the Matter of:) Hearing Officers: Charles Hoppin
17) and Tam Doduc
18 Water Right Applications 31487 and 31488)
19 filed by the United States Bureau of) **MOTION TO EXCLUDE**
20 Reclamation, and Petitions to Change License) **TESTIMONY, EXPERT**
21 3723 (Application 5169) of Washoe County) **REPORTS AND EXHIBITS**
22 Water Conservation District, License 4196) **RELATED TO ISSUES NOT**
23 (Application 9247) of Truckee Meadows Water) **BEFORE THE CALIFORNIA**
24 Authority, Permit 11605 (Application 15673)) **STATE WATER RESOURCES**
25 and License 10180 (Application 18006) of the) **CONTROL BOARD**
26 United States Bureau of Reclamation)
27) Date: July 21-23; 28-29, 2010
28) Time: 9:00 a.m.
29) Dept: 1001 I Street, Second Floor
30) Coastal Hearing Room
31) Sacramento, California
32)

33
34 The Truckee Meadows Water Authority ("TMWA") moves the Board for an Order
35 excluding Truckee-Carson Irrigation District's expert reports and exhibits related to: (1) the

1 consumptive use portion of water rights adjudicated for irrigation by the Orr Ditch Decree; and,
2 (2) whether the California State Water Resources Control Board (the "State Board") should stay
3 its action on these Applications and Change Petitions until after the court in *United States of*
4 *America v. Orr Water Ditch Company, et al.*, in the United States District Court for the District
5 of Nevada, in Equity No. A-3 (the "Orr Ditch Court") determines whether the Orr Ditch Decree
6 may be modified or amended as necessary to allow the Truckee River Operating Agreement to
7 supersede the Truckee River Agreement.

8 This Motion is made and based upon the following grounds:

9 (1) The State Board has no jurisdiction under federal or California law over changes
10 to Orr Ditch Decree irrigation water rights, and TMWA has made no filing concerning such
11 changes with the State Board; and

12 (2) The issue of the appropriate consumptive use portion of water rights adjudicated
13 for irrigation by the Orr Ditch Decree has been heard and decided by the Nevada State Engineer
14 in Ruling 6035 (TMWA Ex. 1-5), and judicial review of that Ruling is now pending before the
15 Orr Ditch Court; and

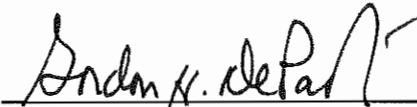
16 (3) The notice for the Applications and Change Petitions which are the subject of this
17 proceeding do not involve any issue concerning changes to Orr Ditch Decree irrigation rights,
18 including, without limitation, the consumptive use portion of such water rights; and

19 (4) The State Board can and should decide the issues of whether the Change Petitions
20 injure any legal user of water, initiate a new water right, or result in significant adverse impacts
21 to water quality, the environment or public trust resources without any need to know whether the
22 Orr Ditch Court will allow the Orr Ditch Decree to be modified or amended to accommodate the
23 Truckee River Operating Agreement, and, in any event, the State Board's approval of Change
24 Petitions will not be effective until all of the conditions for the Truckee River Operating
25 Agreement to enter into effect, including any necessary amendment to the Orr Ditch Decree,
26 have been satisfied. The same is true with respect to the Applications.

1 This Motion is supported by the Points and Authorities which follow immediately.

2 Dated: July 15, 2010

WOODBURN AND WEDGE

3
4 By: 
5 Gordon H. DePaoli

6 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXCLUDE**

7 **I. INTRODUCTION**

8 The Truckee-Carson Irrigation District ("TCID") improperly seeks to expand the scope
9 of this proceeding by submitting testimony and exhibits concerning issues outside the
10 jurisdiction of the State Board, not properly noticed, irrelevant, and which are pending before
11 and will be decided by the Orr Ditch Court. Allowing testimony and exhibits that are irrelevant
12 and not properly noticed will not only violate the statutory notice requirements but the due
13 process provisions of the United States and California Constitutions. Furthermore, it is a waste
14 of the State Board's resources, and invites the State Board to make findings inconsistent with
15 those made by the Nevada State Engineer and under review by the Orr Ditch Decree Court. It is
16 also a waste of the resources of the State Board and of the parties to this proceeding for the State
17 Board to hold this hearing and then defer action until after the Orr Ditch Court acts to modify or
18 amend the Orr Ditch Decree.

19 TMWA respectfully requests the State Board exclude the following testimony and
20 exhibits submitted by TCID: exhibits (including reports and testimony) that relate to the matter
21 of consumptive use: TCID-244B through TCID-257; TCID-280 and all attachments thereto
22 (including TCID-144); and, exhibits and testimony that relate to the request that the State Board
23 defer action here until the Orr Ditch Court acts: TCID-282, pg. 7, ln. 4 to ln. 17; pg. 8, ln. 14 to
24 pg. 10, ln. 26.

25 **II. ARGUMENT**

26 **A. The State Board Has No Jurisdiction Over Changes to Nevada Irrigation**
27 **Water Rights Adjudicated By the Orr Ditch Decree, and No Change Petition**
28 **Regarding Those Water Rights Is Pending Before the State Board.**

1. **The Nevada Change Applications.**

1 In 2006, TMWA filed 59 Change Applications with the Nevada State Engineer (the
2 "Change Applications") to change the point of diversion, place and manner of use of various Orr
3 Ditch Decree water rights. The Change Applications sought to obtain approval from the Nevada
4 State Engineer to store the consumptive use portion of those water rights when they are not
5 needed to meet the demands of TMWA's customers. TCID, the City of Fallon and Churchill
6 County, ("Protestants")¹, protested those Change Applications on numerous grounds. An
7 important issue with respect to those Change Applications was a consumptive use determination
8 for those water rights and whether it should be based upon the water rights' original irrigation use
9 or based upon municipal use.

10 The Protestants presented the testimony, reports and exhibits of Chris Mahannah on the
11 consumptive use issue in a State Engineer hearing which was held from December 14 through
12 December 17, 2009. On March 19, 2010, the Nevada State Engineer issued Ruling 6035. In that
13 Ruling, the Nevada State Engineer made a determination as to the consumptive use portion of the
14 Orr Ditch Decree water rights which would be allowed to be changed for storage. TCID, the
15 City of Fallon, and Churchill County have sought judicial review of the State Engineer's decision
16 in the Orr Ditch Court, and that matter is pending before that Court.

17 TCID filed testimony and exhibits in this matter on June 29, 2010, which included TCID-
18 244B, the Expert Report of Chris Mahannah - M&I Consumptive Use Analysis and related
19 exhibits. In its first line, TCID-244B states "this report and associated expert witness testimony
20 was presented at a hearing before the Nevada State Engineer" TCID has also included
21 TCID-280, the Expert Report of Chris Mahannah - Agricultural Consumptive Use. TCID-280
22 was also presented to the Nevada State Engineer in that same hearing, and is written to rebut the
23 testimony and report of TMWA's expert in that Nevada hearing. That expert is not testifying in
24 connection with the matters before this Board because they do not involve issues related to the
25 consumptive use of Orr Ditch Decree water rights. The direct, cross and State Engineer
26
27

28 ¹ TCID, the City of Fallon and Churchill County are also the protestants in this hearing.

1 examination of Mr. Mahannah in the Nevada proceeding encompassed about 1 1/2 days of the
2 four day proceeding.

3 TCID, and the other Protestants here, had a full and fair opportunity to present evidence
4 on consumptive use to the Nevada State Engineer. The Nevada State Engineer has made a
5 decision. The Protestants will have a full and fair opportunity to present to the Orr Ditch Court
6 their position as to why the State Engineer's decision is incorrect.

7
8 **2. Unless and Until the Orr Ditch Court Appoints the State Board As a**
9 **Special Master to Hear Changes to Orr Ditch Decree Irrigation Water**
10 **Rights, the State Board Has No Such Jurisdiction.**

11 Three principal rivers flow out of California and into and through West Central Nevada,
12 the Truckee, Carson and Walker Rivers. All three river systems are administered pursuant to
13 judgments or "decrees" issued by the United States District Court for the District of Nevada
14 resulting from actions brought by the United States.

15 Each of those decrees includes provisions concerning changes to water rights. *See*, Orr
16 Ditch Decree at 88 (App./Pet. Joint-7); Alpine Decree at 161-162 (TCID-134); Walker River
17 Decree at 71 (Excerpt attached as Exhibit A). The provisions of the Orr Ditch and Walker River
18 Decrees are nearly identical. The Orr Ditch Decree provides:

19 Persons whose rights are adjudicated hereby, their successors or assigns, shall be
20 entitled to change, in the manner provided by law, the point of diversion and the
21 place, means, manner or purpose of use of the waters to which they are so entitled
22 or of any part thereof, so far as they may do so without injury to the rights of
23 other persons whose rights are fixed by this decree.

24 Orr Ditch Decree at 88. With respect to the Carson River, the counterpart provision of the
25 Alpine Decree states:

26 Applications for changes in the place of diversion, place of use or manner of use
27 as to Nevada shall be directed to the State Engineer. Any person feeling himself
28 aggrieved by any order or decision of the State Engineer on these matters may
appeal that decision or order to this Court. Proceedings for review of a decision
or order by the State Engineer must be commenced within 30 days of the
rendition of the order or decision.

* * *

1 Applications for changes in the place of diversion, place of use or manner of use
2 as to California or as to both California and Nevada shall be made directly to this
3 Court in accordance with the regular rules of procedure and notice must be served
4 on all affected interests.

5 Alpine Decree at 161-162.

6 The decrees on the Carson and Walker Rivers adjudicated numerous pre-1914 irrigation
7 water rights in California. The Orr Ditch Decree adjudicated a limited number of pre-1914 water
8 rights in California. The three courts have each addressed the issue of changes to water rights,
9 particularly those in California, in somewhat different ways.

10 The Orr Ditch Court simply provided that changes be made "in the manner provided by
11 law." That provision has been interpreted to require that applications for changes to Nevada
12 water rights be filed first with the Nevada State Engineer, and that the State Engineer's decision
13 is subject to review by the Orr Ditch Court. *United States v. Orr Water Ditch Company*, 914
14 F.2d 1302, 1309-1311 (9th Cir. 1990). Changes to California water rights adjudicated by the Orr
15 Ditch Decree² are allowed to take place "in the manner provided by law," which, in the case of
16 pre-1914 water rights, would not involve the State Board, but would involve the Orr Ditch Court
17 if a water right holder alleged injury from the change.
18

19 The Alpine Decree is explicit in how changes to water rights adjudicated by it are to be
20 processed, both as to Nevada water rights, California water rights, and changes involving both
21 states. The Alpine Court required that changes to California water rights be presented to it
22 before the change is made because it recognized that the State Board had no jurisdiction over
23 changes to the pre-1914 California water rights adjudicated by the Alpine Decree. *United States*
24 *v. Alpine Land and Reservoir Co.*, 503 F.Supp. 877, 893 (D.Nev. 1980).
25
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27

28 ² The water rights which are the subject of the Change Petitions here were not adjudicated by the
Orr Ditch Decree.

1 The Walker River Court, through its Administrative Rules and Regulations Regarding
2 Change of Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and
3 Its Tributaries, determined that changes to Nevada water rights would be filed first with the
4 Nevada State Engineer, and the Engineer's decision would be subject to approval by the Walker
5 River Court. As to changes to pre-1914 California water rights adjudicated by the Walker River
6 Decree, the Court appointed the State Board special master to initially hear such changes, subject
7 to approval by the Walker River Court. *See*, Exhibit B attached hereto.
8

9 Finally, and most importantly here, relevant case law provides that the decree courts, here
10 the Orr Ditch Court, have exclusive jurisdiction over all matters arising under the decrees. *See*,
11 *United States v. Alpine Land & Reservoir Company*, 174 F.3d 1007, 1012-1014 (9th Cir. 1999).
12 The State Board has no jurisdiction to become involved in changes to Nevada irrigation water
13 rights adjudicated by the Orr Ditch Decree for three reasons. First, they are Nevada water rights,
14 and the Orr Ditch Court and relevant case law require such changes to be filed with the Nevada
15 State Engineer. Second, the rights involved are all pre-1914 water rights, and the State Board
16 would have no jurisdiction, even if the water rights were California water rights. *See*, Cal. Water
17 Code, § 1706; *People v. Murrison*, 101 Cal.App. 4th 349, 359, n. 6 (2002); *Nicoll v. Rudnick*,
18 160 Cal.App. 4th 550, 557 (2008). Third, the Orr Ditch Court has not appointed the State Board
19 to act on changes to Orr Ditch Decree water rights, and unless and until it does, the State Board
20 has no jurisdiction.
21

22
23 **B. TCID Seeks to Revisit Issues Already Decided By the Nevada State Engineer
24 and Now Before the Orr Ditch Court.**

25 TCID is asking the State Board for a second bite of the apple. TCID and the other
26 protestants have already submitted the consumptive use issue to the Nevada State Engineer, and
27 have appealed the Engineer's decision to the Orr Ditch Court. TCID has had an opportunity to
28 fully argue and present its testimony regarding consumptive use to the Nevada State Engineer.
The State Engineer's decision on that and other issues is pending review before the Orr Ditch

1 Court. By submitting the same testimony and exhibits to the State Board, TCID is inviting the
2 State Board to make an inconsistent finding on an issue beyond the State Board's jurisdiction.
3 Allowing TCID to re-argue the issues related to consumptive use is a waste of State Board
4 resources and should not be allowed. The State Board need not, and indeed, should not, become
5 involved in the consumptive use issue. It is not an issue raised by the Change Petitions or the
6 Applications here. It should be excluded from this hearing and all testimony, exhibits and
7 documents related to it should be excluded from evidence in this proceeding.

8 **C. The Testimony and Evidence Submitted by TCID is beyond the Scope of the**
9 **Issues Contained in the Notice.**

10 The State Board is required to give notice of proposed changes in water rights. See Cal.
11 Water Code § 1703. The notice requirement ensures the parties and potential protestant's due
12 process rights by setting forth the issues to be heard and decided by the State Board. Because
13 TMWA has not filed any petition to change Nevada Orr Ditch Decree irrigation water rights with
14 the State Board, the notice for this matter does not state that the proper consumptive use portion
15 of TMWA's Orr Ditch Decree water rights will be determined. Similarly, the notice for this
16 matter does not state that the State Board will consider deferring action here pending action by
17 the Orr Ditch Court on the Motion to Modify or Amend the Orr Ditch Decree as necessary to
18 allow the Truckee River Operating Agreement to supersede the Truckee River Agreement. In
19 fact, the notice does not even mention these issues and specifically focuses on whether the
20 changes will injure any legal user of water, initiate a new water right, cause significant adverse
21 impacts to water quality, the environment or public trust resources. Nothing in the notices
22 suggest an evaluation of the consumptive use of water rights or of whether the State Board
23 should defer action here pending action by the Orr Ditch Court.

24 The evidence submitted by TCID is legally improper because it goes to issues not raised
25 pursuant to the applicable statutory procedures, and the parties to the proceeding did not have
26 proper notice. Based on the notice provided, TMWA has not submitted testimony on the issue of
27 consumptive use of Orr Ditch water rights. However, TCID has submitted the expert and expert
28 reports it used to rebut the testimony and report of TMWA's expert in that Nevada hearing, who
is not testifying in connection with the matters before this Board because they do not involve

1 issues related to the consumptive use of Orr Ditch Decree water rights. If the State Board allows
2 the inclusion of this testimony and related exhibits, it will violate notice provision set forth in
3 Water Code section 1703 and the due process provisions of the United States and California
4 Constitutions. Additionally, allowing TCID to submit evidence related to whether the Orr Ditch
5 Court will allow for the changes necessary to implement TROA is not a properly noticed issue.
6 Furthermore, as discussed below this issue is pending before the Orr Ditch Court.

7 **D. Issues Related to Necessary Amendments to the Orr Ditch Decree.**

8 Protestants have a number of theories and reasons why the Orr Ditch Decree cannot be
9 amended to allow the Truckee River Operating Agreement to supersede the Truckee River
10 Agreement.³ Perhaps, the one used most often is that the Truckee River Agreement cannot be
11 changed without the consent of every person or entity who was a party to it.

12 A Motion to Modify or Amend the Orr Ditch Decree has been filed with the Orr Ditch
13 Court. Protestants here have opposed that Motion. Initially, the Orr Ditch Court is dealing with
14 a myriad of procedural issues. *See* Exhibit C attached hereto. However, eventually, the
15 Protestants will have an opportunity to present their reasons why the Orr Ditch Decree cannot
16 and/or should not be modified or amended, and if the Orr Ditch Court agrees with them, and that
17 ruling is upheld on appeal, any approvals by this Board of the Applications or the Change
18 Petitions will not enter into effect.

19 This Board need not and should not defer its action until the Orr Ditch Court acts.
20 Moreover, it should not use limited hearing time to receive exhibits and testimony on that issue.
21 Much of the testimony of Lyman McConnell (TCID-282) is directed to why the Orr Ditch
22 Decree cannot be amended to accommodate the Truckee River Operating Agreement, and why
23 this Board should not act until after the Orr Ditch Court acts.

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27 ³ Contrary to the assertions of Protestants, the Truckee River Operating Agreement does not
28 change many of provisions of the Truckee River Agreement. It only authorizes adjustments to
the Floriston Rate Flows, if and to the extent that the Nevada State Engineer approves changes to
water rights in accordance with Nevada law.

1 Protestants made the same argument to the Nevada State Engineer. The Nevada State
2 Engineer addressed that issue in Interim Order No. 1. *See*, TCID-259. The Nevada State
3 Engineer framed the issue as follows:

4 Prior to the status conference, Protestant TCID filed a Status Conference
5 Report. The TCID's Status Conference Report focuses on the argument that the
6 TROA is not a foregone conclusion and a number of actions remain to be taken
7 before the TROA is adopted, promulgated and can go into effect. Thus, it argues
8 it is premature for the State Engineer to take any steps toward an administrative
9 hearing on the above-referenced applications. The TCID asserts that until the
10 TROA is implemented, there is no way the water can be used as proposed in the
11 applications or a determination can be made related to impacts to existing rights
12 or whether use of the water as proposed would threaten to prove detrimental to the
13 public interest. Therefore, the TCID asserts there is no benefit to reviewing the
14 applications until the TROA is finalized. Additionally, it asserts since there are
15 also a number of other administrative and judicial proceedings required before the
16 implementation of the TROA, those actions need to be taken in order to have a
17 full understanding of how use of water under the applications will operate and
18 whether the use will impact existing rights. The TCID argues that judicial
19 economy dictates that the Orr Ditch Decree be modified before any action by the
20 State Engineer related to the TROA, particularly since any appeal of the State
21 Engineer's determination would be heard by the Orr Ditch Decree Court.

22 TCID-259, Interim Order No. 1 at 5-6.

23 Rejecting TCID's argument, the State Engineer said:

24 The State Engineer agrees that it is appropriate for him to initially make a
25 determination on whether the proposed changes, which will be implemented by a
26 modification in the Floriston Rates, will conflict with existing rights or threaten to
27 prove detrimental to the public interest; however, this does not require him to
28 analyze, accept or decide whether the TROA violates the Orr Ditch Decree or
whether TROA itself impairs anyone's rights under the Orr Ditch Decree.

The State Engineer finds he agrees with TMWA that many of these issues
presented by these protests are not for the State Engineer and he will not permit
those issues to be brought into the consideration of these applications. The State
Engineer finds that issues as to the TROA, whether the TROA can legally modify
the Orr Ditch Decree or issues as to the petitions filed in California does not affect
the analysis of whether storing the consumptive use portion of these water rights
will conflict with existing rights or threaten to prove detrimental to the public
interest. The State Engineer agrees with the Applicant and finds he is not the
proper authority to "approve" the TROA in general or in the abstract; approval is
for the Orr Ditch Decree Court.

TCID-259, Interim Order No. 1 at 8.

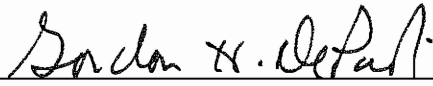
1 The same is true here. This Board can make the determinations it must make without
2 knowing whether or not the Orr Ditch Decree will be modified or amended. In addition, the
3 State Board is not the proper authority to make the determination of whether the Orr Ditch
4 Decree will or will not be modified or amended. Like the Nevada State Engineer, the State
5 Board should proceed to make its determination, the effectiveness of which will be conditioned
6 on implementation of the Truckee River Operating Agreement, which cannot happen unless the
7 Orr Ditch Decree is amended. The State Board should not use limited hearing time to receive
8 exhibits and testimony on why Protestants contend the Orr Ditch Decree cannot be amended.

9 **III. CONCLUSION**

10 Based on the arguments presented above, TMWA respectfully requests that the following
11 testimony, exhibits and reports be excluded: TCID-244B through TCID-257; TCID-280 and all
12 attachments thereto (including TCID-144), TCID-282, pg. 7, ln. 4 to ln. 17; pg. 8, ln. 14 to pg.
13 10, ln. 26.

14 Dated: July 15, 2010.

WOODBURN AND WEDGE

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16
17 By: 
18 Gordon H. DePaoli
19 Attorneys for Truckee Meadows Water Authority
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1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that on July 15, 2010, I served a copy of the attached *Motion to Exclude*
3 *Testimony, Expert Reports and Exhibits Related to Issues Not Before the California State Water*
4 *Resources Control Board* via electronic mail to the parties listed below:

5 Division of Water Rights
6 State Water Resources Control Board
7 Attn: Paul Murphey
8 P.O. Box 2000
9 Sacramento, California 95812
10 wrhearing@waterboards.ca.gov

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25 CONSERVATION DISTRICT
26 Michael A.T. Pagni
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Holly Dewar

EXHIBIT A

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IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.
IN AND FOR THE DISTRICT OF NEVADA

- - - - - Filed April 15th, 1936.
O. E. Benham, Clerk.

UNITED STATES OF AMERICA
Plaintiff,
-vs-
WALKER RIVER IRRIGATION DISTRICT, a corporation, JOHN A BEEMER, ANTELOPE VALLEY LAND & CATTLE COMPANY, a corporation, ARTHUR PITTS, WILLIE PITTS, H. F. POWELL, MRS. ELIZABETH CHICHESTER, B. H. CHICHESTER, JAMES POWELL, MRS. ELIZA MCKAY, MRS. SARAH CARNEY, VIGIL CONNELL, RUNNEWILL LAND & LIVESTOCK COMPANY, a corporation, JAMES MCKAY, FRANK SIMPSON, TRUCKEE RIVER GENERAL ELECTRIC COMPANY, a corporation, H. W. SETTLEMAYER, A. SETTLEMAYER, F. SCHACHT, THOMAS BERRY, JOE ALLARD, SAM FALES, HENRY RUBE, EDDIE RUBE, JOE CORERINE, A. DELLAMONICA, MODESTO DELLAMONICA, FRANK YPARRAGUINE, MRS. MINNIE PIMENTAL, MONO LAND & LIVESTOCK COMPANY, a corporation, C. C. LOOSE, MRS. ANNIE B. PHILATRO, FRED FREDERICKS, G. B. DAY, MRS. H. P. DAY ESTATE, PLYMOUTH LAND & LIVESTOCK COMPANY, a corporation, LELAND DAY, C. M. KIRKWOOD, A. S. BRYANT, LORENE WEDEPERTZ, A. W. BRANSON, MRS. M. V. CINNAMON, C. E. DAY, FRANK W. CHICHESTER, DAVID MCKAY, MRS. BERTRAND

1 PERRY, M. F. BERTRAND, MRS. A. F. McLEOD, C. A.)
2 McLEOD, J. B. GALLAGHER, MRS. G. W. WEBSTER,)
3 S. McCROSKEY, LETTIE SHELTON, F. S. COX. C. F.)
4 WILLIS, G. L. NICHOLAS, JOHN LAMFERSWEILER, M.)
5 DELLAMONICA, GEORGE WELSH, L. SIMMONS, W. F.)
6 CAMBRELL, FRANK BOWARD, JOHN SNYDER, C. E.)
7 KINGSLEY, H. M. HANSON, J. H. WELSH, J. G.)
8 McGOWAN, ISAAC A. STROSNIDER, F. O. STICKNEY,)
9 ALICE L. MARTIN, ANTOINE GAMAGNI, THE PLYMOUTH)
10 COMPANY, a corporation, NELLIE J. WHITEACRE,)
11 BERTHA ANN JOHNSON, G. W. WILSON, J. Q. WILSON,)
12 W. R. McGOWAN, J. W. WILSON, J. G. McGOWAN,)
13 MRS. LOUISE McGOWAN, EMILIO AIAZZI, HESTER)
14 WEST, SOPHIA E. LYNCH, JOHN McVICAR, F. B.)
15 MANN, MARGARET SCHOOLEY, JAMES T. McKAY, JOHN)
16 F. YPARRAGUIRRE, FRANK YPARRAGUIRRE, JOSEPH)
17 YPARRAGUIRRE, GEORGE PARKER AND JOHN DOE,)
18 RICHARD DOE, SIMEON POE, JANE DOE, AND SARAH)
19 ROE, whose true names are to the plaintiff)
20 unknown.)

21 Defendants.)

22 -----
23
24 DECREE

25 This suite was commenced on July 3, 1924. The plain-
26 tiff thereafter filed an amended complaint to which amended
27 complaint the several defendants filed their answers and cross
28 complaints.

29 The parties to said suit were represented by attor-
30 neys as follows:

31 The United States of America was represented originally
32

1 Court in San Francisco, California, and finally submitted
2 on January 10, 1936. The Court, having considered the argu-
3 ments of counsel and the evidence and having made its find-
4 ings of fact and conclusions of law, orders, adjudges and de-
5 crees as follows:

6
7 RIGHTS OF THE UNITED STATES OF AMERICA

8 I. The plaintiff, United States of America, is hereby
9 adjudged to be the owner of the several rights acquired by ap-
10 propriation in and to the waters of Walker River for use upon
11 Walker River Indian Reservation in the State of Nevada as set
12 forth in the following tabulation, which shows in columns read-
13 ing from left to right the years in which the several rights
14 of appropriation accrued, the amounts of water expressed in
15 cubic feet per second at the point of diversion acquired in
16 such years respectively, and the number of acres irrigated
17 under such appropriations.

18 <u>Priority</u>	<u>Cu. Ft. per Sec.</u>	<u>Acres irrigated</u>
19 1868	4.70	385.95
20 1872	3.55	295.80
21 1875	6.15	512.80
22 1883	7.50	625.20
23 1886	1.03	85.80

24 RIGHTS OF DEFENDANTS RECOGNIZED IN DECREE NO. 731.

25 II. The parties defendant to this suit, or their sue-
26 cessors in interest, hereinafter in this paragraph II. mentioned
27 whose rights were adjudicated for them, or their predecessors
28 in interest, in the decree of this Court in the suit entitled,
29 "Pacific Livestock Company, a corporation, Plaintiff, vs. T. K. Rick-
30 ey, et al, Defendants" in Equity No. 731, are hereby severally
31
32

1 the same stream, such priorities shall be deemed to be identical
2 in point of time and equal in point of right with due regard to
3 the amount hereby allowed to each. Any of the said parties shall
4 be entitled to change the manner, means, place or purpose of use
5 or the point of diversion of the said waters or any thereof in
6 the manner provided by law, so far as they may do so without
7 injury to the rights of other parties hereto, as the same are
8 fixed hereby.

9
10 XI. Each and every party to this suit and their and
11 each of their servants, agents and attorneys and all persons
12 claiming by, through or under them, and their successors and
13 assigns in and to the water rights and lands herein described,
14 be and each of them hereby is forever enjoined and restrained from
15 claiming any rights in or to the waters of Walker River and/or
16 its branches and/or its tributaries, except the rights set up and
17 specified in this decree and each of the said parties is hereby
18 enjoined and restrained from taking, diverting or interfering in
19 any way with the waters of the said Walker River or its branches
20 or tributaries so as to in any way or manner interfere with the
21 diversion, enjoyment and use of the waters of any of the other
22 parties to this suit as set forth in this decree, having due re-
23 gard to the relative rights and priorities herein set forth; and
24 each of the said parties is hereby enjoined and restrained from
25 ever taking, diverting, carrying away, or otherwise using or claim-
26 ing any of the water so allotted to them in any manner or at any
27 time so as to in any way interfere with the prior rights of other
28 parties to this suit as the same are herein set forth, xxxxxxxx
29 xxx. or until
30 such parties having prior rights as herein specified have received
31 upon their several lands the waters so adjudicated to them.
32

1 of said Walker River among and to the persons entitled thereto,
2 including water for storage and stored water.
3

4 XVI. The irrigation season along the Walker River,
5 its branches and its tributaries, extends from the first day of
6 March to the thirtieth day of September of each year, except that
7 in Bridgeport Valley on the East Walker River and at all points
8 above Coleville Gauging Station on the West Walker River the
9 irrigating seasons covers the period from March first to September
10 fifteenth of each year.
11

12 XVII. Each of the parties to this suit shall severally
13 pay their costs therein expended.
14

15 XVIII. The Special Master, B. F. Curler and Robert M.
16 Price, heretofore appointed by the Court "to take the evidence
17 and testimony herein, and to report the same to the Court with
18 his recommendations for the advice of the Court as to conclusions
19 of fact and of law, and as to the form and substance of the de-
20 cree to be entered" shall be paid for their several services by
21 the United States of America, such sums respectively as the Court
22 shall hereafter order.
23

24 DONE IN OPEN COURT this 14th day of April, 1936.
25

26 A. F. ST. SURE
27 United States District Judge.
28

29 ENDORSED: DECREE. UNITED STATES OF AMERICA - vs - WALKER RIVER
30 IRRIGATION DISTRICT, et al.
31

EXHIBIT B

165

CAROL C. FITZGERALD
By Roberts

UNITED STATES DISTRICT COURT APR 9 12 10 PM '90
DISTRICT OF NEVADA
RENO, NEVADA

RECEIVED
APR 11 1990

UNITED STATES OF AMERICA, et al.,)
VS.)
WALKER RIVER IRRIGATION DISTRICT,)
et al.)

IN EQUITY NO. C-125
MINUTES OF THE COURT
DATE: April 9, 1990

PRESENT: EDWARD C. REED, JR. U.S. District Judge
Deputy Clerk: DEBBIE ROBERTS Reporter: NONE APPEARING
Counsel for Plaintiff(s) NONE APPEARING
Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

On April 9, 1990, this Court adopted the Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use or Place of Use of Waters of the Walker River and Its Tributaries (document #161 Exhibit A), and entered its Order of Appointment of the California State Water Resources Control Board as Special Master (document #161 Exhibit B). The Administrative Rules and Regulations were adopted with one modification made by the Court on page 13 of Exhibit A.

IT IS, THEREFORE, HEREBY ORDERED that the Clerk shall provide copies of Exhibits A and B to document #161 to the parties to this action.

CAROL C. FITZGERALD, CLERK
By Debbie Roberts
Deputy Clerk

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EXHIBIT B

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	IN EQUITY NO. C-125
)	
Plaintiff,)	
)	
WALKER RIVER PAIUTE TRIBE,)	
)	
Intervenor-Plaintiff,)	
)	
vs.)	ORDER OF APPOINTMENT
)	OF CALIFORNIA STATE
WALKER RIVER IRRIGATION DISTRICT,)	WATER RESOURCES BOARD
a corporation, et. al.,)	AS SPECIAL MASTER
)	
Defendants.)	

1. On July 15, 1987, the United States Board of Water Commissioners and the Chief Deputy Water Commissioner filed a petition herein for an order establishing the procedure, rules and regulations to be followed with respect to changing the point of diversion, manner of use or place of use of the waters of the Walker River and for the appointment of the California State Water Resources Board as special master with respect to changes involving water rights in California.

2. The United States and the Walker River Paiute Tribe filed objections to the proposed rules and regulations and to the appointment of the California State Water Resources Control Board as special master.

1 3. The Court having heard the arguments of counsel and
2 having rendered its decisions on May 17, 1988, July 7, 1989 and
3 September 11, 1989, hereby makes the following order:

4 PREFACE

5 Neither this Order nor the Administrative Rules and
6 Regulations affect the authority or duties of the United States
7 Board of Water Commissioners to the extent that it may be deemed
8 to be a special master under the Walker River Decree. To the
9 extent that the duties assigned hereunder to the California State
10 Water Resources Control Board may constitute duties formerly
11 assigned to the United States Board of Water Commissioners, the
12 United States Board of Water Commissioners shall no longer have
13 such duties assigned to it.

14 I. APPOINTMENT

15 1. Pursuant to:

16 (a) the Administrative Rules and Regulations Regarding
17 Change of Point of Diversion, Manner of Use or Place of Use of
18 Waters of the Walker River and Its Tributaries, approved by the
19 court on April 9, 1990;

20 (b) the Final Decree in the Walker River Action entered
21 on April 15, 1936, as amended on April 20, 1940, and in particular
22 paragraphs X, XIV, and XV thereof;

23 (c) Rule 53 of the Federal Rules of Civil Procedure;
24 and

25 (d) Sections 2075 and 2076 of the Water Code of the
26 State of California;

27
28

1 the California State Water Resources Control Board is hereby
2 appointed as Special Master in this action.

3 II. GENERAL DUTY AND LIMITATION

4 2. The Special Master shall submit a report to this court
5 for each change application, in the form and manner and pursuant
6 to the procedure hereinafter provided, on any and all changes
7 proposed in point of diversion, manner of use, or place of use,
8 in exercise of those rights to the use of waters of the Walker
9 River and its tributaries within the State of California
10 established by the final decree in this action and any decree
11 supplementary thereto.

12 III. UNAPPROPRIATED WATERS

13 3. This Order shall not govern applications to appropriate
14 unappropriated waters of the Walker River or its tributaries in
15 the State of California, except as provided in this paragraph.
16 With respect to any such applications, it is the intent of this
17 Court that such applications be processed in accordance with the
18 laws of the State of California relating to the appropriation of
19 unappropriated water; provided, first, that in the event any such
20 application is approved, and following final judgment of the
21 courts of the State of California should judicial review of such
22 approval be sought therein, the Special Master shall timely move
23 this Court for entry of a supplemental decree in this case
24 recognizing any rights granted as the result of approval of such
25 application; and, provided, second, that this Order shall govern
26 changes proposed in point of diversion, manner of use, or place
27
28

1 of use, in exercise of any such rights recognized in a
2 supplemental decree.

3 IV. PROCEDURE TO BE FOLLOWED

4 4. In processing all applications to change the point of
5 diversion, manner of use or place of use ("change application"),
6 the Special Master shall follow and require applicants to follow
7 the Administrative Rules and Regulations Regarding Change of Point
8 of Diversion, Manner of Use or Place of Use of Water of the Walker
9 River and Its Tributaries (the "Administrative Rules and
10 Regulations").

11 V. ADDITIONAL POWERS OF SPECIAL MASTER

12 5. The Special Master may hold any hearings and conduct any
13 investigations in any part of the State of California or the State
14 of Nevada necessary to carry out its duties pursuant to this
15 Order. For such purposes the Special Master shall have (i) the
16 powers conferred on Masters by the Federal Rules of Civil
17 Procedure, and (ii) the power conferred on it, as California State
18 Water Resources Control Board, by the laws of the State of
19 California and by rules and regulations heretofore or hereafter
20 adopted by it as California State Water Resources Control Board
21 pursuant to such laws, so long as such proceeding affords all
22 parties due process of law, and except as expressly otherwise
23 provided in this Order. It is the duty of the Special Master to
24 proceed with all reasonable diligence.

25 VI. REPORT

26 6. Form of Report. The report of the Special Master may
27 be in narrative form, or in the form of findings of fact and
28

1 conclusions of law, or in some combination thereof, as deemed
2 appropriate by the Special Master in view of the complexity of the
3 factual and legal issues presented by the Application to Change.
4 The report may contain such opinion upon the law and the facts as
5 the Special Master deems appropriate in view of the issues
6 presented.

7 7. Draft Report. Before filing its report as hereinafter
8 provided, the Special Master shall announce it in the form of a
9 draft.

10 a. The draft report shall include copies of the
11 following:

12 (1) The Application to Change;

13 (2) The Notice of Application to Change, together
14 with proof of publication thereof and a list of all persons to
15 whom a copy of the Notice was mailed;

16 (3) Any protest(s) to the Application;

17 (4) Any notice(s) of hearing.

18 b. The Special Master shall mail notice of the draft
19 report, together with a copy of the draft report, to the parties
20 to the change proceedings or their attorneys.

21 c. Within 30 days after the date of the mailing of the
22 draft, or within such further time as the Special Master may for
23 good cause allow, any such party may file objections to it with
24 the Special Master.

25 d. The Special Master shall consider any objections
26 and may hold an adjudicatory hearing thereon if deemed advisable
27 by it.

28

1 As used in this section the word "party" shall mean and refer
2 to any person who appears or is allowed to appear in any
3 proceeding before the Special Master.

4 8. Adopting, Filing and Serving Report. Following
5 consideration of any objections to the draft report, the Special
6 Master shall take the following actions:

7 a. The Special Master shall adopt the Report of
8 Special Master pursuant to the laws of the State of California
9 governing the taking of action by the Special Master as California
10 State Water Resources Control Board.

11 b. The Report of Special Master shall consist of the
12 draft report showing any changes made therein as the result of
13 consideration of objections, and copies of any objections to the
14 draft report.

15 c. The Report of Special Master shall be served and
16 filed in accordance with Section 6.3 of the Administrative Rules
17 and Regulations.

18 9. Effect of Report. The report of the Special Master
19 shall not be final and its findings shall not be given presumptive
20 effect. In review of any report and recommendation as to a change
21 application rendered by the Special Master, the court shall not
22 be limited by the "clearly erroneous" standard prescribed by
23 Fed.R.Civ.P. 53(e)(2) and all matters referred to the Special
24 Master shall be open for determinations by the court as if no
25 findings had been made.

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VII. COMPENSATION OF SPECIAL MASTER

10. Pursuant to Rule 53 of the Federal Rules of Civil Procedure, this Court fixes the compensation to be allowed to the Special Master for discharge of its duties pursuant to this Order as follows: The Special Master shall not be entitled to any fee for its services but shall be paid or reimbursed the total expenses incurred by it which are properly chargeable to the reference. The Special Master's Report shall include a statement of the total expense and shall equitably apportion the total expense among the parties to the agency proceeding.

DATED this 9th day of April, 1990.

Edward C. Reed.
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Woodburn, Wedge and Jeppson, and that on the 9th day of February, 1990, I served a true and correct copy of the foregoing document, by placing the same in the United States mail at Reno, Nevada, in a sealed envelopoe, postage prepaid, addressed to the following:

Shirley A. Smith
Asst. U.S. Attorney
300 Booth Street, Room 2031
Reno, Nevada 89509

Richard R. Greenfield
Dept. of the Interior
505 N. 2nd Street, Ste. 150
Phoenix, Arizona 85004

George Benesch
Larry C. Reynolds
Deputy Attorney General
201 S. Fall Street
Carson City, Nevada 89701

Western Nevada Agency
Bureau of Indian Affairs
1300 Curry Street
Carson City, Nevada 89701

Jim Weishaupt
Cheif Deputy Water Commissioner
P.O. Box 820
Yerington, Nevada 89447

Peter G. Morros, Engineer
State of Nevada, Division
of Water Resources
201 S. Fall Street
Carson City, Nevada 89710

James T. Markle
State Water Resources Control Bd.
P.O. Box 100
Sacramento, CA 95814

Scott McElroy
Greene, Meyer & McElroy
1007 Pearl Street, Ste. 240
Boulder, Colorado 80302

John Kramer
Dept. of Water Resources
1416 Ninth Street
Sacramento, California 95814

John Davis
Attorney at Law
P.O. Box 1646
Tonopah, Nevada 89049

Richard E. Olson, Jr.
Classen and Olson
P.O. Box 1311
Bishop, California 93514

John P. Lange
Land and Natural Resources
Federal Bldg., Dr. 3607
1961 Stout Street
Denver, Colorado 80294

Ross E. de Lipkau
P.O. Box 2790
Reno, Nevada 89505

Catherine Chandler
Water Resources Board
State of California
P.O. Box 2000
Sacramento, CA 95810

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Garry Stone
290 S. Arlington Avenue
Reno, Nevada 89501

James W. Johnson, Jr.
210 S. Sierra, Ste. 200
Reno, Nevada 89501

Mary Ann Muirhead
Office of Regional Counsel-EPA
Region IX-215 Fremont St.
San Francisco, CA 94105



EXHIBIT C

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE ORR WATER DITCH CO., *et al.*,

Defendants.

Case No. 3:73-cv-00003-LDG

ORDER

Previously, this court required the Moving Parties¹ to serve all potential owners of Orr Ditch decreed water rights with a notice of their Motion to Amend the Orr Ditch Final Decree. In conjunction with that notice, the court provided water right owners with an opportunity to appear and participate in this matter. The response of water right owners has been significant. At present, more than 900 parties have returned Notices of Appearance.

¹ The Moving Parties now include the United States, the State of California acting by and through the California Department of Water Resources and the California State Water Resources Control Board, the State of Nevada, the Truckee Meadows Water Authority, the Washoe County Water Conservation District, the Pyramid Lake Paiute Tribe, and the City of Fernley, Nevada.

1 While some of these water right owners are represented by counsel, more than 800
2 are not. As a result, in considering the management of this matter, the Court has identified
3 a need for an effective and efficient method for the Court, as well as the parties, to serve
4 documents on those water right owners who are not represented by counsel.

5 At present, a cost-effective system is already in place for the Court to serve
6 documents on those water right owners who are represented by counsel. This existing
7 procedure is the Court's CM/ECF (Case Management/Electronic Case Filing) system,
8 which counsel in the District of Nevada are required to use. When the Court enters an
9 Order, or when a party files a document, the CM/ECF system automatically creates an
10 electronic notice of the filing and then sends that notice, by e-mail, to the parties who
11 participate in the CM/ECF system. The notice created by the CM/ECF system includes a
12 link to an electronic copy of the filed document. This allows those persons who receive the
13 notice to easily and quickly retrieve an electronic copy of the filed document. The Federal
14 Rules recognize this electronic transmission of the notice, including the link allowing
15 retrieval of the electronic copy of the document, as an appropriate method of service. See,
16 Federal Rules of Civil Procedure 5(b)(2)(E) and 5(b)(3). Since the CM/ECF system delivers
17 documents electronically, no costs are incurred in copying or mailing documents to those
18 persons registered to use the CM/ECF system.

19 At present, however, the use of the CM/ECF system is limited to lawyers
20 representing a party. As such, service of a document upon someone who is not
21 represented by a lawyer must be accomplished by some other appropriate means. Of
22 those remaining means, service by mail is among the most cost-effective and is the method
23 typically used by the Court to serve parties who are representing themselves. While the
24 cost of copying and mailing a document is not significant when only a few parties must be
25 served, the cumulative cost can become quite significant when numerous persons must be
26 served. As noted previously, more than 800 water right owners have filed Notices of

1 Appearance but are not represented by counsel. As a result, the postage costs to serve a
2 document could exceed \$350 any time the Court, or any party, is required to serve a
3 person by first class mail.

4 While the Court is concerned with the costs to the judiciary, of greater concern is that
5 the cost of serving documents by mail might impede the participation of all parties to this
6 matter, particularly those water right owners who are not represented by counsel. With this
7 in mind, the Court has considered procedures by which water right owners may file a
8 document in this matter without also incurring the cost of mailing a copy of that document to
9 every other water right owner. The Court has determined that this can be appropriately
10 accomplished by allowing all water right owners to participate as receiving users in the
11 CM/ECF system for purposes of the Motion to Amend the Decree. This will allow the
12 electronic delivery, to all water right owners, of all documents filed in this matter.

13 Accordingly, the Court invites all water right owners who are not represented by
14 counsel to register for the electronic delivery of documents from the Court's CM/ECF
15 system for the Orr Water Ditch Litigation.

16
17 **For those persons electing to receive electronic delivery of documents:**

18 Please complete and return, not later than Friday, July 23, 2010, the attached
19 **Notice Regarding Means for Service**, being sure to also complete the **Registration for**
20 **Electronic Delivery of Documents – Orr Water Ditch Litigation**. Mail the Notice to the
21 following address:

22 U.S. District Court Clerk
23 Attn: A-3 Notice Clerk
24 Bruce R. Thompson U.S. Courthouse
400 S. Virginia St. #301
Reno, NV 89501

25 After you register to receive electronic delivery of documents, the Court's CM/ECF
26 system will send you a notice, by e-mail, each time a document is filed in this matter. This

1 e-mail will be sent to you within moments after the document is filed. Further, the e-mail
2 will include a link to an electronic copy of the filed document, allowing you to retrieve a copy
3 of the filed document.

4 Your participation in the CM/ECF system will be limited to the pending Motion to
5 Amend the Orr Ditch Final Decree. That is, you will only receive delivery of electronic
6 notices and documents that are relevant to the pending Motion to Amend. When the
7 Motion to Amend the Orr Ditch Final Decree is finally decided, you will no longer receive
8 notices from the CM/ECF system.

9 The court would note that registration to participate in the CM/ECF system requires
10 that you provide the Clerk of the Court with both a valid e-mail address and a telephone
11 number. The e-mail address you provide will be the address to which the CM/ECF system
12 will send electronic notices. The telephone number will be used exclusively for the purpose
13 of allowing court employees to contact you during business hours to resolve any issues that
14 might arise regarding the delivery of an e-mail. You may wish to create and use an e-mail
15 address solely to receive documents from the court's CM/ECF system.

16
17 **For those persons who elect to NOT receive electronic delivery of documents:**

18 To assist the Court in ensuring that all water right owners continue to receive
19 notices, the Court would ask that you complete and return the **Notice Regarding Means**
20 **for Service** not later than Friday, July 23, 2010. You do not need to complete the
21 Registration for Electronic Delivery portion of the form. Please mail the **Notice** to:

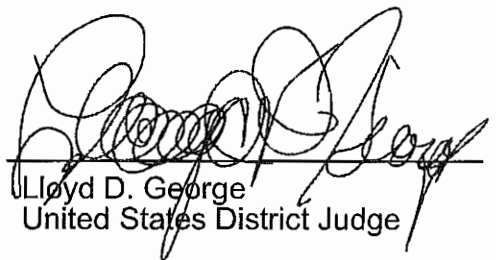
22 U.S. District Court Clerk
23 Attn: A-3 Notice Clerk
24 Bruce R. Thompson U.S. Courthouse
400 S. Virginia St. #301
Reno, NV 89501

25 You will continue to receive notices by mail. However, in order to limit the costs of
26 service and to promote the participation of all parties, the court will be establishing a

1 procedure to limit the number of notices and documents that will be mailed to you. Under
2 this procedure, you will not receive a separate notice each time a document is filed.
3 Rather, on a periodic basis, you will receive a notice identifying all recently filed documents.
4 Of necessity, the mailed notice cannot include copies of the documents that have been
5 filed, but will instead indicate the location where you can review copies of the filed
6 documents.

7
8 IT IS SO ORDERED.

9
10 DATED this 1st day of July, 2010.

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13 Lloyd D. George
14 United States District Judge
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1 In Equity A-3: USA v. Orr Water Ditch Company

2 **Notice Regarding Means for Service**

3 Please indicate how you will receive service in this matter. You may select only one
4 method.

- 5 I will register for electronic delivery of documents.
6 I will continue to receive service by mail.

7 Name: _____

8 Signature: _____ Date: _____

9 Complete the following ONLY IF you are registering for electronic delivery of documents.

10 **Registration for Electronic Delivery of Documents - Orr Ditch Litigation**

11 By completing the following registration form, you are consenting to receiving the electronic
12 delivery of documents pursuant to the Federal Rules of Civil Procedure via the Court's
13 electronic filing system. This consent is limited to documents filed relevant to the Motion to
14 Amend or Modify the Orr Ditch Final Decree, and does NOT extend to service of a
15 complaint and summons. This consent *does* include electronic notice of any order or
16 judgment. You are also agreeing to abide by the requirements stated herein.

17 Name: _____

18 Phone number: _____

19 E-mail Address: _____

20 Confirm E-mail Address: _____

21 The CM/ECF system follows and must be used in conjunction with the Federal Rules of
22 Civil and Criminal Procedure, the Local Rules, and any administrative orders and policies of
23 the United States District Court for the District of Nevada.

- 24 **I accept the above rules and guidelines. (If you do not check this box, you will
25 not be registered to receive electronic delivery of documents.)**
26