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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

**NOTICE of Case Management
Conference**

ORDER

Re: Motion to Amend Orr Ditch Decree

This Notice and Order concerns only the pending Motion to Amend the Orr Ditch Decree.

Case Management Conference

You are **NOTIFIED** that the Court has scheduled a Case Management Conference for Monday, October 4, 2010, at 10:00 a.m., in a courtroom in the Bruce R. Thompson U.S. Courthouse, 400 S. Virginia St., Reno, NV 89501. (The courtroom will be determined at a later time, and will be posted in the Courthouse on the date of the Conference.)

1 A purpose of the Case Management Conference will be to establish a schedule and
2 any other appropriate procedures necessary for the resolution of Motion to Amend the Orr
3 Ditch Decree on its merits.

4 An additional purpose of the Case Management Conference will be to discuss the
5 procedures that the Court has previously adopted and is adopting by this Order intended to
6 ensure that all parties, including all water right owners who have filed Notices of
7 Appearance, will receive proper notice and service of documents. This discussion will also
8 address the procedures adopted by the Court intended to ensure meaningful participation
9 of all participants in these proceedings.

10 The Case Management Conference will not address the merits of the Motion to
11 Amend the Orr Ditch Decree.

12
13 **Filing of a Written Statement in Preparation for Case Management Conference**

14 In preparation for the Case Management Conference, the Court invites the filing of
15 written statements regarding a party's position or proposal on issues of notice, service,
16 meaningful participation, scheduling, and other appropriate procedures necessary for the
17 resolution of the Motion to Amend the Orr Ditch Decree. Represented parties must file
18 such written statements, if any, not later than Friday, September 3, 2010. Represented
19 parties may file a response, if any, not later than Friday, September 10, 2010.
20 Unrepresented water right owners may file a written statement or a response, if any, not
21 later than Friday, September 24, 2010.

22 The Court invites parties to address the issue of ensuring adequate access to copies
23 of documents filed with the Court, and in particular the maintenance of copies of
24 documents at locations other than the Court.

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Number of Persons Who Will Be Attending

To permit the Clerk of the Court to ensure adequate facilities for the Case Management Conference, all persons planning on attending the Conference must so inform the Court not later than Friday, September 10, 2010.

If you received this Notice and Order by e-mail, please respond by e-mail addressed to: Reno_Intake@nvd.uscourts.gov

If you received this Notice and Order by regular mail, please respond by regular mail addressed to:

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

The correspondence must identify the number of persons who will be attending.

Additional Procedures Adopted by the Court

The following sets forth (a) procedures that the Court is adopting or modifying, and (b) existing procedures and rules that the Court will enforce, to ensure that all parties (including all water right owners who have filed Notices of Appearance) will receive appropriate notice and service and will have a meaningful opportunity to participate in proceedings related to the Motion to Amend the Orr Ditch Decree.

Written Motions Must be Served on All Parties

Pursuant to Rule 5(a)(1)(D) of the Federal Rules of Civil Procedure, a written motion (except one that may be heard *ex parte*) must be served on every party.

1 Rule 5(c) does not excuse the service of written motions on water right owners.
2 First, Rule 5(c) only excuses service in actions involving an unusually large number of
3 defendants. At present, while all water right owners have been permitted to appear and
4 participate in the Motion to Amend, those who filed appearances have not necessarily
5 appeared in opposition to the Motion. Given the unique nature and posture of the Motion
6 to Amend the Orr Ditch Decree, water right owners may elect to participate in support of or
7 in opposition to the Motion. Second, Rule 5(c) excuses the service of “pleadings and
8 replies to them.” Pleadings, which are defined in Rule 7, do not include written motions.
9 Accordingly, any party filing a written motion (other than one which may be heard *ex parte*)
10 must serve (and certify the serving of) the written motion on each party and each water
11 right owner, including those who are not represented by counsel.

12 The court would note that, to facilitate the service of papers, the Court has permitted
13 unrepresented water right owners to become receiving users of the Court’s CM/ECF
14 system solely to receive documents that are filed relevant to the Motion to Amend Decree.
15 The service of written motions to water right owners participating as receiving users of the
16 CM/ECF system comports with Rule 5(b)(2)(E), as each consented in writing to the delivery
17 of documents by electronic means.

18 Service of a written motion upon unrepresented water right owners who have not
19 consented to electronic delivery remains subject to Rule 5(b)(2).
20

21 **The Filing of Points and Authorities in Support of a Written Motion**

22 A party that files a written motion must file points and authorities in support of the
23 motion. The Court will consider the failure of a party to file points and authorities in support
24 of its written motion to be a consent to the denial of the motion. See Local Rule 7-2(d). To
25 ensure that other parties are not required to needlessly expend resources to oppose an
26

1 unsupported motion, the Court will not require briefing on any such motion, but will deny
2 and strike the motion.

3
4 **The Filing of Points and Authorities in Response to a Written Motion**

5 Generally, a party's failure to file points and authorities opposing a motion
6 constitutes that party's consent to the granting of the motion. See Local Rule 7-2(d). The
7 court will modify the application of this Local Rule as follows:

8 The Court will consider the failure to file points and authorities in opposition to a
9 motion to be a consent to the granting of the motion only if no party files points and
10 authorities in opposition. Otherwise, if an opposition is filed by one party, the court will
11 neither presume consent nor opposition by another party's decision to not file points and
12 authorities in response to a motion.

13
14 **Modification of Briefing Schedule for Written Motions**

15 To ensure that all water right owners have an opportunity to meaningfully participate,
16 the Court will modify the briefing schedule for each written motion. Pursuant to this
17 modification, unrepresented water right owners will have an opportunity to file a written
18 response after points and authorities are filed by represented parties. This will permit
19 unrepresented water right owners an opportunity to first review the arguments presented by
20 counsel both in support of and in opposition to any written motion. By providing this
21 opportunity to file a written response, the Court is not obligating unrepresented water right
22 owners to file a response. Rather, the Court is only providing an opportunity to do so.

23 Accordingly, the Court will modify the briefing schedule for written motions as
24 follows: Immediately upon the filing of a written motion, the Court will enter an order
25 establishing a briefing schedule that establishes date certain deadlines. For parties who
26 are represented by counsel, the deadline to file an opposition will be approximately three

1 weeks after the motion is filed. The Court would request that counsel engage in efforts to
2 jointly file points and authorities. For water right owners who are not represented by
3 counsel, the deadline to file a response to a motion, whether in support of or in opposition
4 to the motion, will be approximately four weeks after the motion is filed.¹ Finally, the
5 deadline for the moving party to file points and authorities in reply will be approximately five
6 weeks after the motion is filed.

7 8 **The Service of Points and Authorities on CM/ECF Users**

9 Federal Rule of Civil Procedure Rule 5(a)(1) does not require that points and
10 authorities be served on every party. Nevertheless, unless ordered otherwise, service of
11 points and authorities is required by Local Rule 7-2(a-c). The Court will continue to require
12 that points and authorities be served on all parties and water right owners represented by
13 counsel. In addition, the Court will continue to require points and authorities be served on
14 all unrepresented water right owners who have elected to participate as a receiving user of
15 the CM/ECF system.

16 The court would note that, to facilitate the service of papers, the Court has permitted
17 unrepresented water right owners to become receiving users of the Court's CM/ECF
18 system solely to receive documents that are filed relevant to the Motion to Amend Decree.
19 The service of documents to water right owners participating as a receiving user of the
20 CM/ECF system comports with Rule 5(b)(2)(E), as each consented in writing to the delivery
21 of documents by electronic means.

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25 ¹ The Court notes that water right owners who are not represented by counsel
26 are not under any obligation to file points and authorities. Rather, the court is merely
ensuring that every water right owner who wishes to file points and authorities will have an
opportunity to do so.

1 **Notice of Points and Authorities to Parties Not Receiving Service by CM/ECF**

2 The Court will relieve parties and water right owners of the requirement that they
3 serve points and authorities on those water right owners who have not consented to the
4 electronic delivery of documents. The Court will, however, require that such water right
5 owners who are not served with the points and authorities must nevertheless be served
6 with a written notice regarding the points and authorities.

7 For parties who are represented by counsel, if you file points and authorities, then
8 counsel must either serve the points and authorities or serve a written notice regarding the
9 points and authorities on every water right owner who is not receiving service through
10 CM/ECF. Those parties who elect to serve a written notice must serve the written notice
11 on every party and water right owner. See Fed. R. Civ. P. 5(a)(1)(E). The written notice
12 must briefly summarize the points and authorities and must instruct the recipient as to all
13 locations where a copy of the points and authorities may be reviewed and copied. Service
14 of the written notice upon unrepresented water right owners who have not consented to
15 electronic delivery remains subject to Rule 5(b)(2).

16 For parties who are not represented by counsel, if you file a response to a written
17 motion, you need only file the response with the Court. The Court will prepare and serve a
18 written notice on all parties identifying all responses that were timely filed by unrepresented
19 water right owners.

20

21 **IT IS SO ORDERED.**

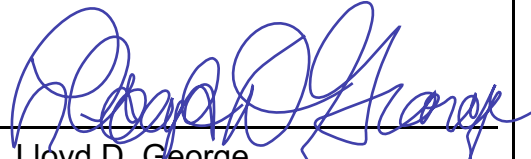
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23 DATED this 13 day of August, 2010.

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Lloyd D. George
United States District Judge