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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALICIA UHOUSE, et al. Case No. 3:08-cv-0285-LDG-RAM
 Plaintiffs,
 vs.
 UNITED STATES DEPARTMENT OF THE
 INTERIOR, BUREAU OF RECLAMATION;
 et al.

Defendants.

JUDY KROSHUS, et al. Case No. 3:08-cv-0246-LDG-RAM
 Plaintiffs, **ORDER GRANTING CLASS
CERTIFICATION AND
APPOINTING CLASS COUNSEL**
 vs.

UNITED STATES OF AMERICA; et al.
 Defendants.

The plaintiffs in *Kroshus, et al. v. United States, et al.*, 3:08-cv-0246-LDG-RAM (#132) and *Uhouse, et al. v. Bureau of Reclamation, et al.*, 3:08-cv-0285-LDG-RAM (#50) have asked this court to certify the actions as class actions and to appoint their attorneys as class counsel pursuant to FRCP 23. The *Kroshus* plaintiffs allege violations of the Administrative Procedure Act (hereinafter the "APA") against the United States of America, Department of the Interior through its Bureau of Reclamation, Mid-pacific Region, Carson City Office, Dirk Kempthorne, Secretary of the Interior, and Elizabeth Rieke, Director of the Carson City Office of the Bureau of Reclamation (hereinafter "*Kroshus* Federal Defendants") and assert injunctive and declaratory relief against the *Kroshus* Federal Defendants, declaratory relief and negligence claims against Truckee-Carson Irrigation District, David P. Overvold, Gary Stone, Truckee River Federal Water

Uhouse et al vs Bureau of Reclamation, et al
Doc 258

1 Master (hereinafter “*Kroshus* Irrigation District-related defendants”), violation of constitutional
2 rights and negligence claims against City of Fernley and Lyon County, and negligence and failure
3 to disclose claims against developers and realtors, based upon the January 5, 2008 Truckee Canal
4 embankment failure in Fernley, Nevada. The *Uhouse* Plaintiffs allege violations of the APA
5 against the United States Department of the Interior, Bureau of Reclamation and Dirk
6 Kempthorne, in his official capacity as Secretary of the Interior (hereinafter “*Uhouse* Federal
7 Defendants”) and assert injunctive and declaratory relief against the *Uhouse* Federal Defendants
8 and declaratory relief and negligence claims against the Board of Directors of Truckee-Carson
9 Irrigation District, Truckee-Carson Irrigation District, and David P. Overvold, in his official
10 capacity as Project Manager of the Truckee-Carson Irrigation District (hereinafter “*Uhouse*
11 Irrigation District-related defendants”), on behalf of persons who suffered damages and injuries
12 as a result of a flood in Fernley, Nevada, on January 5, 2008, caused by the overflowing and
13 breach of the Truckee Canal.

14 In the *Kroshus* action, Defendants Re/Max Realty, Judy Ashton, C.A.L. Investment
15 Properties, Cal Eilrich, Dinah Eilrich, LL Realty, the *Kroshus* Federal Defendants, the *Kroshus*
16 Irrigation District-related defendants, Lyon County, City of Fernley, Keystone Realty, and King
17 Construction, Inc. opposed class certification.

18 In the *Uhouse* action, the *Uhouse* Federal Defendants and *Uhouse* Irrigation District-
19 related defendants opposed class certification.

20 This court having reviewed the pleadings and exhibits thereto, considered the arguments
21 of the parties made at the hearing on September 16, 2009 and, having taken the matter under
22 advisement, makes the following findings of fact and conclusions of law.

23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24 This action arises out of the January 5, 2008, Truckee Canal Embankment failure and the
25 resulting flood that occurred in Fernley, Nevada.

26 The *Uhouse* and *Kroshus* plaintiffs seek an order certifying a class.

27 Fed. R. Civ. Pro. 23(c)(1)(A) provides that “the court must determine by order whether to
28 certify the action as a class action” “[a]t an early practicable time after a person sues or is sued as

1 a class representative.” The court must determine only whether the *Uhouse* and *Kroshus*
2 plaintiffs’ allegations and proffered evidence satisfy each prerequisite of Fed. R. Civ. Pro. 23.

3 The specific requirements of a class action as set forth in Fed. R. Civ. Pro., Rule 23(a)
4 are:

- 5 (a) Prerequisites. One or more members of a class may sue or be sued as
6 representative parties on behalf of all members only if:
7 (1) the class is so numerous that joinder of all members is impracticable;
8 (2) there are questions of law or fact common to the class;
9 (3) the claims or defenses of the representative parties are typical of the
10 claims or defenses of the class; and
11 (4) the representative parties will fairly and adequately protect the interests of
12 the class.

13 The requirement of Fed. R. Civ. Pro., Rule 23(b) for which plaintiffs argue this action
14 qualifies is:

- 15 (b) Types of Class Actions. A class action may be maintained if Rule 23(a) is
16 satisfied and if:
17 . . .
18 (3) the court finds that the questions of law or fact common to class members
19 predominate over any questions affecting only individual members, and that a
20 class action is superior to other available methods for fairly and efficiently
21 adjudicating the controversy. . . .

22 As indicated, all of the prerequisites in Fed. R. Civ. Pro. 23(a) must be found and only
23 one of prerequisites in Fed. R. Civ. Pro., Rule 23(b) must be found. The plaintiffs argue that this
24 case meets all the prerequisites of Fed. R. Civ. Pro., Rule 23(a) and the prerequisite of Fed. R.
25 Civ. Pro., Rule 23(b)(3). The defendants disagree.

26 Before addressing the prerequisites of class certification, the court will address the
27 *Uhouse* Plaintiffs allegations of violations of the APA, injunctive relief and declaratory relief
28 against the *Uhouse* Federal Defendants and the *Kroshus* plaintiffs allegations of violations of the
APA against the *Kroshus* Federal Defendants. At the September 16, 2009 hearing, the *Kroshus*
and *Uhouse* Plaintiffs addressed the necessity of a class action to assert their respective claims
against the Federal Defendants. At the hearing *Kroshus* Plaintiffs conceded a class could not be
certified against the Federal Defendants. (Transcript of September 16, 2009, Hearing, *Kroshus*
DOC 405, *Uhouse* DOC 178 at 88:4-88:13). Similarly, *Uhouse* Plaintiffs stated that the named
plaintiffs were sufficient to assert the APA claims against the Federal Defendants. (*Id.* at 96:14-

1 96:19). Accordingly, the court denies Plaintiffs' motion for class certification against the Federal
2 Defendants.

3 The court now turns its attention to whether Plaintiffs have met their "burden of
4 demonstrating that the requirements of Rules 23(a) and (b) are met" as to the remaining
5 Defendants. *United Steel v. ConocoPhillips Company*, supra at *4 citing *Zinser v. Accufix*
6 *Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

7 **Fed. R. Civ. Pro., Rule 23(a)(1) — Numerosity**

8 In order to meet the first element of Fed. R. Civ. Pro. 23(a), the purported class must be
9 so numerous that joinder is impractical. "[I]mpracticability does not mean impossibility, but
10 only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs*
11 *Alpine Est., Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964), citing *Advert. Specialty Nat. Assn. v.*
12 *FTC*, 238 F.2d 108, 119 (1st Cir. 1956); see also *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir.
13 1993).

14 In moving papers and at the September 16, 2009, hearing, Defendants Re/Max Realty,
15 Judy Ashton, C.A.L. Investment Properties, Cal Eilrich, Dinah Eilrich, LL Realty, Keystone
16 Realty, and King Construction, Inc. asserted the numerosity prong could not be met against them.
17 For instance, LL Realty stated that it was involved in the sale of six to eight houses. (Transcript
18 of September 16, 2009, Hearing, *Kroshus* DOC 405, *Uhouse* DOC 178 at 78:8-78:10).
19 Similarly, Re/Max Realty and Judy Ashton stated they were only involved in one transaction.
20 (*Id.* at 80:14-80-18). In response, the *Kroshus* Plaintiffs responded that they would stipulate that,
21 because the numerosity prong might not be met, a class action against Defendants Re/Max
22 Realty, Judy Ashton, C.A.L. Investment Properties, Cal Eilrich, Dinah Eilrich, LL Realty,
23 Keystone Realty, and King Construction, Inc. could not be certified. (*Id.* at 93:22-94:3).
24 Accordingly, the court denies the *Kroshus* Plaintiffs' motion for class certification against
25 Defendants Re/Max Realty, Judy Ashton, C.A.L. Investment Properties, Cal Eilrich, Dinah
26 Eilrich, LL Realty, Keystone Realty, and King Construction, Inc.

27 The court's analysis then turns to whether class certification for Plaintiff claims against
28 the Irrigation District-related defendants, Lyon County, and the City of Fernley is appropriate.

1 Generally, courts will find the numerosity prong has been met when there are at least 40
2 class members. *Monaco v. Stone*, 87 F.R.D. 50 (E.D.N.Y. 1999). Classes with fewer known
3 class members as exist here have been certified. See *Horn v. Associated Wholesale Grocers, Inc.*,
4 555 F.2d 270, 275 (10th Cir. 1977) (41-46 class members); *Cross v. National Trust Life Ins. Co.*,
5 553 F.2d 1026 (6th Cir. 1977) (7 class members); *Afro American Patrolmen's League v. Duck*,
6 503 F.2d 294, 298 (6th Cir. 1974) (35 class members); *Jack v. American Linen Supply Co.*, 498
7 F.2d 122, 124 (5th Cir. 1974) 51 class members); *Arkansas Education Ass'n v. Board of*
8 *Education*, 446 F.2d 763, 765 (8th Cir. 1971) (20 class members); and *Cypress v. Newport News*
9 *Hospital Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) (18 class members). Generally, numbers in
10 excess of 100, sustain the numerosity requirement under FRCP 23(a)(1). Newberg, Class
11 Actions § 3.05 at 3-25; see also 3B Moore's Federal Practice P 23.05[1] at 23-143-45 (2d ed.
12 1995).

13 The City of Fernley, in what it named "Map of Estimated Effected [SIC] Area Updated:
14 1-11-2008," found over five hundred homes were affected by the January 5, 2008, flood. (Map
15 of Estimated Effected Area Updated: 1-11-2008, attached hereto as Exhibit "1."). The court
16 finds it is not practicable to have over 500 separate cases or even joinder of that many in one
17 case. It is doubtful that all, or even a significant number of, the proposed class members in these
18 neighborhoods, would have the financial resources to institute suits and hire the engineers and
19 other scientific experts who would be needed to prove liability. And of course the court could be
20 inundated if a large number of the proposed class members were to sue individually. The class
21 action would further judicial economy since a multiplicity of actions would be avoided.

22 Joinder of all members in one suit or filing of individual suits is impracticable in this
23 case. Accordingly, Plaintiffs have demonstrated the numerosity prerequisite against the
24 Irrigation District-related defendants, Lyon County, and City of Fernley is met.

25 **Fed. R. Civ. Pro., Rule 23(a)(2) — Commonality**

26 Fed. R. Civ. Pro. 23(a)(2) requires "questions of law or fact common to the class."

27 All questions of law and fact need not be common. *Hanlon v. Chrysler Corp.*, 150 F.3d
28 1011, 1019 (9th Cir. 1998). Rather, "[t]he existence of shared legal issues with divergent factual

1 predicates is sufficient, as is a common core of salient facts coupled with disparate legal
2 remedies within the class.” *Id.*; see also *Parra v. Bashas’, Inc.*, 536 F.3d 975 (9th Cir. 2008);
3 *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003); and, *Bafus v. Aspen Realty, Inc.*,
4 236 F.R.D. 652, 656 (D. Idaho 2006).

5 The Ninth Circuit construes the commonality prerequisite permissibly. *Hanlon, supra.*,
6 150 F.3d at 1019. In *Staton, supra.* 329 F.3d at 953, the court said:

7 All questions of fact and law need not be common to satisfy the rule. The
8 existence of shared legal issues with divergent factual predicates is sufficient, as
9 is a common core of salient facts coupled with disparate legal remedies within the
10 class.

11 In this case, the determination of whether the actions or inactions of the Irrigation
12 District-related defendants were contrary to law and caused and/or exacerbated Plaintiffs’
13 injuries is the key issue of liability and that satisfies the issues of commonality. Similarly, the
14 determination of whether the actions or inactions of Lyon County and the City of Fernley were
15 contrary to law and caused and/or exacerbated Plaintiffs’ injuries is the key issue of liability and
16 that satisfies the issues of commonality. The action against the Irrigation District-related
17 defendants, the action against Lyon County, and the action against the City of Fernley all arise
18 out of the January 5, 2008, Truckee Canal Embankment failure and the resulting flood that
19 occurred in Fernley, Nevada. Accordingly, Plaintiffs have demonstrated the commonality
20 prerequisite against the Irrigation District-related defendants, Lyon County, and City of Fernley is
21 met.

22 **Fed. R. Civ. Pro., Rule 23(a)(3) — Typicality**

23 Fed. R. Civ. Pro., Rule 23(a)(3) requires that the claims of the representative plaintiffs be
24 typical of those of the class. The claims or defenses must be typical of the claims or defenses of
25 the class. The foremost consideration is that there is an absence of an adverse interest between
26 the representative parties and other members of the class. *Tidwell v. Schweiker*, 677 F.2d 560,
27 566 (7th Cir. 1982), *cert. denied*, 461 U.S. 905 (1983); *Blake v. Arnett*, 663 F.2d 906, 913 (9th
28 Cir. 1981). The issue of liability is the focus of the litigation here and is the same for all
members. Each class member’s claim arises from the same course of conduct by the Irrigation

1 District-related defendants and each class member has the same legal arguments to prove the
2 Irrigation District-related defendants' responsibility for the harmed caused. Similarly, each class
3 member's claim arises from the same course of conduct by Lyon County and the City of Fernley
4 and each class member has the same legal arguments to prove Lyon County and City of Fernley
5 is/are responsible for the harmed caused. The legal arguments against the Irrigation District-
6 related defendants, the legal arguments against Lyon County, and the legal arguments against the
7 City of Fernley all arise out of the January 5, 2008, Truckee Canal Embankment failure and the
8 resulting flood that occurred in Fernley, Nevada.

9 "Although some inquiry into the substance of a case may be necessary to ascertain
10 satisfaction of the commonality and typicality requirements of Rule 23(a), it is improper to
11 advance a decision on the merits to the class certification stage." *Staton v. Boeing Co.*, 327 F.3d
12 938, 954 (9th Cir. 2003), quoting *Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475, 480 (9th Cir.
13 1983).

14 "Typicality 'does not mean that the claims of the class representative[s] must be identical
15 or substantially identical to those of the absent class members.'" *Staton*, supra., 327 F.3d at 957
16 (citations omitted); see also *Parra*, supra. 536 F.3d at 979 (finding that if the cause of the
17 damage is the same than that is enough for class certification.) The court finds the typicality
18 requirement is met in this case as to the Irrigation District-related defendants, Lyon County, and
19 City of Fernley.

20 **Fed. R. Civ. Pro., Rule 23(a)(4) — Adequacy**

21 The representative plaintiffs must be able to fairly and adequately protect the interests of
22 all class members. To determine whether the representation meets this standard, we ask two
23 questions: (1) Do the representative plaintiffs and their counsel have any conflicts of interest with
24 other class members, and (2) will the representative plaintiffs and their counsel prosecute this
25 action vigorously on behalf of the class? *Staton v. Boeing Co.* at 957. There has been no
26 evidence of conflicts of interest by either proposed class representatives or counsel. There has
27 been no evidence the representative plaintiffs and their counsel will not prosecute this action
28 vigorously on behalf of the class. To the contrary, the court finds the representative plaintiffs and

1 their counsel have undertaken to adequately represent all putative class members who were
2 affected by the flood, regardless of the individual types of damages.

3 In *Staton v. Boeing* at 957, the objectors complained that every job category did not have
4 its own representative. Although the challenge was made on the basis of typicality, the court's
5 response is instructive. It said, "In *Hanlon*, we stated that "[u]nder the rule's permissive
6 standards, representative claims are 'typical' if they are reasonably coextensive with those of
7 absent class members; they need not be substantially identical." (citations omitted). The claims of
8 the families and children who experienced the flood are reasonably coextensive with the class
9 representatives who also experienced the flood.

10 This court finds, based on their experience and credentials, that the counsel of the
11 proposed class representatives have the character, ability and resources to adequately represent
12 the putative class. The court also finds the adequacy requirement is met in this case against the
13 Irrigation District-related defendants, Lyon County, and City of Fernley.

14 **Fed. R. Civ. Pro., Rule 23(b)(3) – Predominance and Superiority**

15 Plaintiffs are petitioning for class certification under Fed. R. Civ. Pro., Rule 23(b)(3) in
16 which the court must find that the questions of law and fact common to the members of the class
17 predominate over any questions only affecting individual members and that a class action is
18 superior to other methods of adjudication. The Rule states that the matters pertinent to these
19 findings include:

- 20 (A) the class members' interests in individually controlling the prosecution or
21 defense of separate actions;
22 (B) the extent and nature of any litigation concerning the controversy already
23 begun by or against class members;
24 (C) the desirability or undesirability of concentrating the litigation of the claims
25 in the particular forum; and
26 (D) the likely difficulties in managing a class action.

27 The consideration cited under (A) is whether members of the class are interested in
28 controlling the litigation individually. In this case, there is no evidence that any class members
desire to have exclusive control of their case. In any case, individual control by each of the large
number of prospective plaintiffs would not be practicable or manageable.

Under (B) the court is to consider the nature and extent of other litigation commenced by

1 class members. There has been other litigation in both state and federal court. The *Uhouse*
2 plaintiffs' attorneys have filed four (4) other actions in state court: (1) a case against Truckee
3 Carson Irrigation District (hereinafter TCID) that has already been certified as a class action, (2)
4 a putative class action against the City of Fernley and Lyon County, (3) a putative class action
5 against persons and companies involved in the construction and development of the Rolling
6 Meadows subdivision in Fernley that was affected by the flood, and (4) a putative class action
7 against persons and companies involved in the construction and development of the Wrangler
8 Road "knuckle." The *Uhouse* Plaintiffs' attorneys have also filed two actions in United States
9 District Court against the United States Bureau of Reclamation under the Federal Tort Claims
10 Act - *Moore, et al. v. United States of America*, 3:09-cv-00167-LDG-RAM and *Adgett, et al. v.*
11 *United States of America*, 3:09-cv-00649-LDG-RAM. The case of *Moore, et al. v. United States*
12 *of America*, 3:09-cv-00167-LDG-RAM is filed as prospective class action. This order does not
13 address class certification against the federal defendants for claims made under the Federal Tort
14 Claims Act. The issue of class certification in *Moore*, if raised, will be addressed in a separate
15 order at the appropriate time. Similarly, the *Kroshus* plaintiffs' attorneys have filed three (3)
16 other actions in the United States District Court: (1) *Kroshus, et al. v. United States, et al.*, 3:09-
17 cv-00713-LDG-RAM; (2) *Adamson, et al. v. United States*, 3:08-cv-00621-LDG-RAM and (3)
18 *Adamson, et al. v. United States*, 3:09-cv-00715-LDG-RAM.

19 Related to the consideration of other actions is the desirability of concentrating this
20 litigation in this forum. Fed. R. Civ. Pro., Rule 23(b)(3)(C). The Irrigation District-related
21 defendants, Lyon County, and City of Fernley should not be subject to multiple actions on the
22 same issue. At this point there is no reason why the issue of Irrigation District-related
23 defendants', Lyon County's, and City of Fernley's liability should not be determined in this
24 forum. Since this case involves a discrete event and readily identifiable class members,
25 management of this class action is not a significant problem. Most of the proposed class is still
26 located in the county and the identification of those who are not should not be insurmountable so
27 that virtually all the class members will receive notice. The discovery can, for the most part, be
28 conducted locally where all counsel are readily available.

1 Under (D) the court must consider the likely difficulties in managing a class action. This
2 court must consider whether a class action is superior to other available methods for a fair and
3 efficient adjudication of this controversy. As briefly discussed above there are currently seven
4 (7) cases filed in the United States District Court District of Nevada concerning the January 5,
5 2008, flood: (1) *Kroshus, et al., v. United States, et al.*, 3:08-cv-0246; (2) *Kroshus, et al. vs.*
6 *United States*, 3:09-cv-00713; (3) *Uhouse, et al., v. Bureau of Reclamation*, 3:08-cv-0285; (4)
7 *Moore, et al. vs. United States*, 3:09-cv-00167; (5) *Adgett, et al. vs. United States*, 3:09-cv-
8 00649; (6) *Adamson, et al. vs. United States*, 3:08-cv-00621; and (7) *Adamson, et al. vs. United*
9 *States*, 3:09-cv-00715. Certifying a class action would limit the procedural issues confronting
10 the court. No matter what other method of adjudication is considered, whether it be multiple
11 court actions, joinder in one court action or arbitration or mediation, we are still faced with the
12 large number of potential litigants. Especially considering the alleged financial devastation that
13 some of the putative class members experienced by the flood, a class action is superior to other
14 methods for the fair and efficient adjudication of this case.

15 If the common questions “present a significant aspect of the case and they can be resolved
16 for all members of the class in a single adjudication, there is clear justification for handling the
17 dispute on a representative rather than on an individual basis.” *Hanlon, supra*, 150 F.3d at 1022
18 (internal quotation omitted). Implicit in the satisfaction of the predominance test is the notion
19 that the adjudication of common issues will help achieve judicial economy. *Valentino v. Carter-*
20 *Wallace, Inc.*, *supra*, 97 F.3d at 1234, citing 1 Herbert B. Newberg & Alba Conte, *Newberg on*
21 *Class Actions*, §§ 4.25 at 4-86 (3d ed. 1992).

22 In *Parra v. Bashas', Inc.*, 536 F.3d 975, 979, (2008), the Ninth Circuit Court stated:

23 Bashas', Inc. argued that the difficulty in redressing the harm and calculating the
24 various pay disparities for the different employment positions precludes class
25 certification. We disagree. We have previously held that classes with far more
26 complex remedies can seek redress in the form of a class action. See e.g. *Staton*,
327 F.3d at 953-57. The claimed difficulties in the calculation of damages, as they
affected the various class members, do not preclude class certification.

27 The overriding and predominant issue in this case is the issue of liability. Considering
28 the purposes of class action certification, it is even more important that class action be allowed in

1 this case. In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997), the United States
2 Supreme Court stated:

3 While the text of Rule 23(b)(3) does not exclude from certification cases in which
4 individual damages run high, the Advisory Committee had dominantly in mind
5 vindication of “the rights of groups of people who individually would be without
6 effective strength to bring their opponents into court at all.” As concisely recalled
7 in a recent Seventh Circuit opinion:

8 “The policy at the core of the class action mechanism is to overcome the problem
9 that small recoveries do not provide the incentive for any individual to bring a
10 solo action prosecuting his or her rights. A class action solves this problem by
11 aggregating the relatively paltry potential recoveries into something worth
12 someone’s (usually an attorney’s) labor.” (citations omitted)

13 A class action in this case is superior to other methods of adjudication. The comment to
14 the Fed. R. Civ. Pro., Rule 23 states:

15 [A] (b)(3) action encompasses those cases in which a class action would achieve
16 economies of time, effort, and expense, and promote uniformity of decisions as
17 to persons similarly situated, without sacrificing procedural fairness or bringing
18 about undesirable results.

19 The court finds a class action in this case would accomplish those results, as well as
20 obtaining relief for those class members who might individually be unable or unwilling to litigate
21 an action for financial or other reasons. As explained by the court in *Northwestern Fruit Co. v.*
22 *A. Levy & J. Zentner Co.*, 116 F.R.D. 330, 389 (E.D. Cal. 1986), “[m]ultiple lawsuits ... would be
23 costly and inefficient, and the exclusion of every class member that cannot afford separate
24 representation would be neither ‘fair’ nor an ‘adjudication’ of their claims.”

25 Accordingly, the court orders a class be certified against the Irrigation District-related
26 defendants, Lyon County, and the City of Fernley.

27 **Fed. R. Civ. Pro., Rule 23(c)(1)(B) – Class Definition**

28 As stated previously the City of Fernley produced a map entitled “Map of Estimated
Effected [SIC] Area Updated: 1-11-2008.” Said map identified over five hundred homes
affected by the January 5, 2008, flood. The class is geographically defined by the City of Fernley
map. (Exhibit 1). Accordingly, the class shall be:

Owners and renters, including their families, of residential real property within
the area identified by the City of Fernley on January 11, 2008, as being affected
by the collapse of a segment of the Truckee Canal Embankment in the early
morning of January 5, 2008.

1 A subclass, pursuant to Fed. R. Civ. Pro., Rule 23(c)(5), shall be:

2 Renters, including their families, of residential real property within the area
3 identified by the City of Fernley on January 11, 2008, as being affected by the
4 collapse of a segment of the Truckee Canal Embankment in the early morning
of January 5, 2008.

5 **Fed. R. Civ. Pro., Rule 23(c)(1)(C) – Class Claims and Issues**

6 The above-defined class action is on the issue of the liability of the Irrigation District-
7 related defendants, Lyon County, and City of Fernley. The class claims against the Irrigation
8 District-related defendants are: (1) Negligence and Gross Negligence - Failure to Maintain or
9 Monitor; (2) Negligence and Gross Negligence - Failure to Remedy or Prevent Harm; (3)
10 Nuisance; and, (4) Trespass; (5) Injunction and Mandate; (6) Violation of Due Process; and, (7)
11 Negligence. The class claims against the City of Fernley are: (1) Injunction and Mandate; (2)
12 Violation of Due Process; and, (3) Negligence. The class claims against the County of Lyon are:
13 (1) Injunction and Mandate; (2) Violation of Due Process; and, (3) Negligence.

14 **Fed. R. Civ. Pro., Rule 23(g) – Appointment of Class Counsel**

15 Pursuant to Fed. R. Civ. Pro., Rule 23(g), when a court certifies a class the court must
16 appoint class counsel. Fed. R. Civ. Pro., Rule 23(g)(1)(A) provides in appointing class counsel
17 the court must consider:

- 18 (i) the work counsel has done in identifying or investigating potential claims in the
19 action;
20 (ii) counsel's experience in handling class actions, other complex litigation, and
the types of claims asserted in the action;
21 (iii) counsel's knowledge of the applicable law; and
(iv) the resources that counsel will commit to representing the class;

22 All of the above considerations establish that class counsel proposed by the parties are
23 appropriate class counsel. The court hereby appoints Robert C. Maddox, Esq. and Nancy H.
24 Jасulca, Esq. of the law firm Robert C. Maddox & Associates; Vernon E. Leverty, Esq., Patrick
25 R. Leverty, Esq. and William R. Ginn, Esq. of the law firm Leverty & Associates Law, Chtd.,
26 Calvin R.X. Dunlap, Esq. and Monique Laxalt, Esq. of the law firm Dunlap & Laxalt, Robert R.
27 Hager, Esq. and Treva Hearne, Esq. of the law firm Hager & Hearne and Lee Hotchkin, Esq. of
28 the Law Offices of Lee T. Hotchkin class counsel. The appointed class counsel will fairly and

1 adequately represent the interest of the class.

2 CONCLUSION

3 It is hereby ORDERED:

4 1. This action is certified as a class action the Irrigation District-related defendants,
5 Lyon County, and the City of Fernley.

6 2. The class shall be:

7 Owners and renters, including their families, of residential real property within the
8 area identified by the City of Fernley on January 11, 2008, as being affected by the
9 collapse of a segment of the Truckee Canal Embankment in the early morning of
10 January 5, 2008.

11 3. A subclass, pursuant to Fed. R. Civ. Pro., Rule 23(c)(5), shall be:

12 Renters, including their families, of residential real property within the area
13 identified by the City of Fernley on January 11, 2008, as being affected by the
14 collapse of a segment of the Truckee Canal Embankment in the early morning of
15 January 5, 2008.

16 4. Counsel for the class shall be:

17 Robert C. Maddox, Esq.
18 Nancy H. Jasculca, Esq.
19 ROBERT C. MADDOX & ASSOCIATES

20 Calvin R. X. Dunlap, Esq.
21 Monique Laxalt, Esq.
22 DUNLAP & LAXALT

23 Vernon E. Leverty, Esq.
24 Patrick R. Leverty, Esq.
25 William R. Ginn, Esq.
26 LEVERTY & ASSOCIATES LAW, CHTD.

27 Robert R. Hager, Esq
28 Treva Hearne, Esq.
HAGER & HEARNE

29 Lee Hotchkin, Esq.
30 THE LAW OFFICES OF LEE T. HOTCHKIN

31 5. The Plaintiffs in shall provide notice of the class action to putative class members
32 pursuant to the approved notice attached hereto as Exhibit "2."

33 6. Service of said notice to each member of the class shall be sent via first class mail
34 to the current mailing address of the class member, to the extent possible, and addressed to the
35 class member and class member's family. Class counsel shall show proof of mailing to each
36 address by purchasing a certificate of mailing for each mailed notice. Class counsel shall account
37 for the certificates of mailing in a mailing book to be kept by class counsel for the duration of
38 this action. The cost of providing the notice shall be borne by class counsel. Service of said
notice shall be completed, to the extent possible, on or before November 1, 2010.

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7. Requests to opt-out must be mailed to Robert C. Maddox, Esq., Robert C. Maddox and Associates, 10587 Double R Blvd Suite 100, Reno, Nevada 89521 and postmarked no later than December 3, 2010.

Dated this 22 day of Oct., 2010.

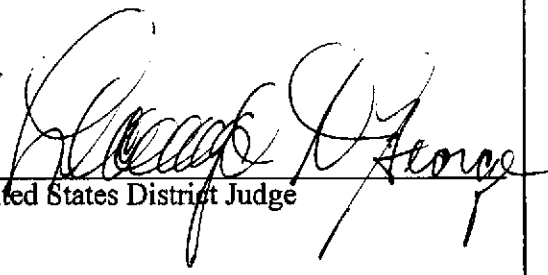
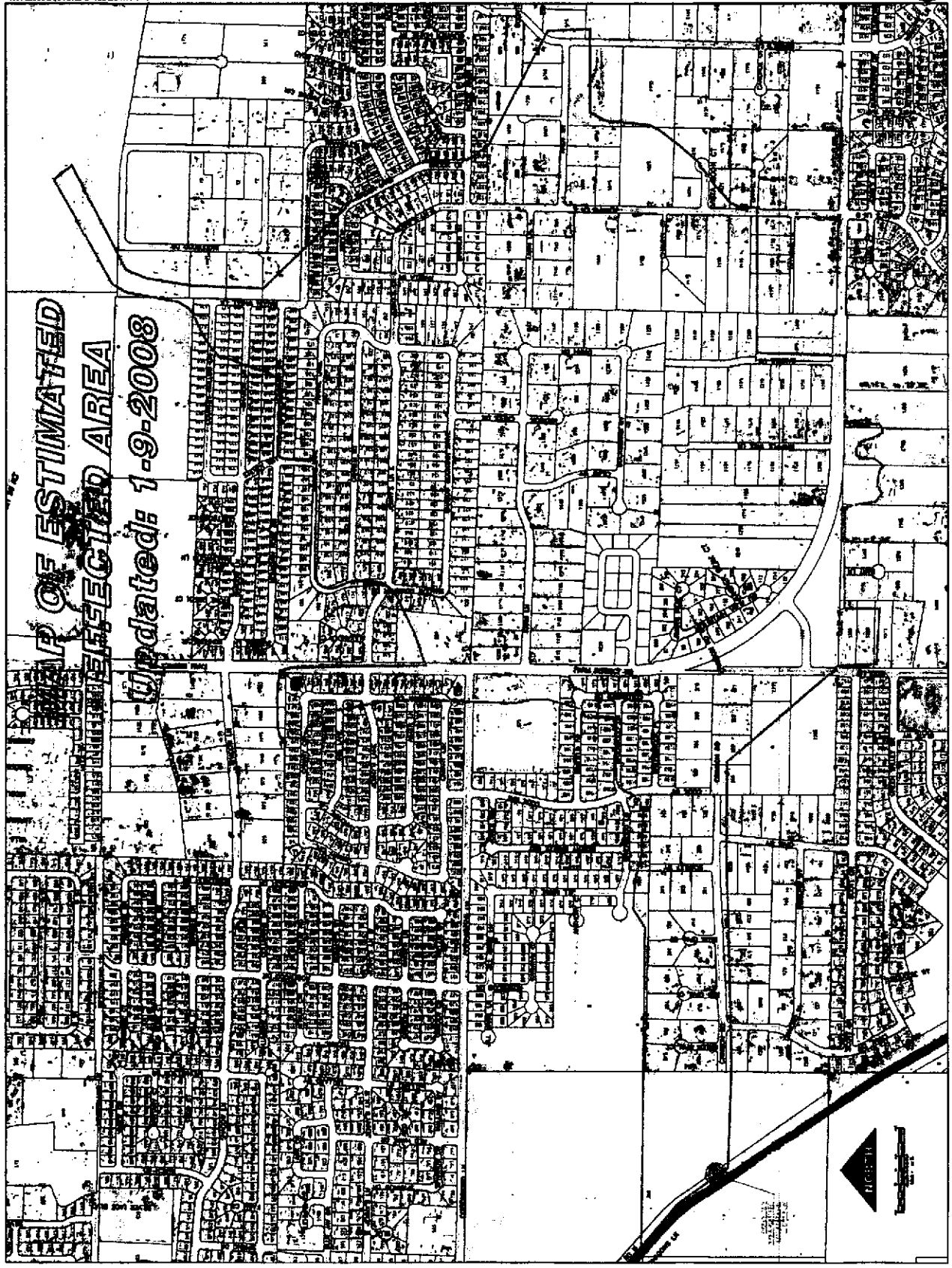

United States District Judge

Exhibit 1

Exhibit 1



**Map of Estimated
Impacted Area**
Updated: 1-9-2008



Exhibit 2

Exhibit 2

U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILE ~~IN~~ AFTER HOURS
OCT 22 2010
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY _____ DEPUTY

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALICIA UHOUSE, et al.,
Plaintiffs,

Case No. 3:08-cv-0285-LDG-RAM

vs.

UNITED STATES DEPARTMENT OF THE
INTERIOR, BUREAU OF RECLAMATION,
et al.,
Defendants.

JUDY KROSHUS, et al.
Plaintiffs,

Case No. 3:08-cv-0246-LDG-RAM

vs.

UNITED STATES OF AMERICA, et al.
Defendants.

NOTICE OF PENDENCY OF CLASS
ACTION

Notice: A federal court has entered an order granting class certification in a lawsuit known as *Uhouse, et al. v. Bureau of Reclamation, et al.*, 3:08-cv-0285-LDG-RAM, and *Kroshus, et al. v. United States, et al.*, 3:08-cv-0246-LDG-RAM. You may have already received notices from the Nevada state court that lawsuits filed in the Third Judicial District Court against Truckee-Carson Irrigation District and its Board of Directors ("TCID"), *Reynolds, et al., v. TCID, et al.*, Case Number CI 18948, and the City of Fernley and Lyon County, *Reynolds, et al., v. City of Fernley, et al.*, Case Number CI 19002, have been certified as class actions. This Notice explains the nature of the litigation pending in the federal court.

To: Owners and renters, including their families, of residential real property within the area identified by the City of Fernley on January 11, 2008, as being affected by the collapse of a segment of the Truckee Canal Embankment in the early morning of January 5, 2008, a class action lawsuit may affect your rights:

1 (If you were an owner of residential real property affected by the collapse of the
2 Truckee Canal embankment on January 5, 2008 and rented your property to a renter
3 in January 2008, please provide a copy of this Notice to your renter at the time.)

4 ***THIS NOTICE HAS BEEN APPROVED BY THE UNITED STATES DISTRICT COURT.
5 THIS IS NOT A SOLICITATION FROM AN ATTORNEY.***

- 6 • Owners and renters of residential real property situated in the City of Fernley, County of
7 Lyon in January 2008 have sued Truckee-Carson Irrigation District, Board of Directors of
8 Truckee-Carson Irrigation District, David P. Overvold, City of Fernley, and Lyon County
9 (hereinafter "Defendants") for damages they sustained as a result of the failure of the
10 Truckee Canal embankment on January 5, 2008.
- 11 • The Court has allowed the lawsuit to be a class action on behalf of all owners and renters
12 of residential real property, including their family members, in the City of Fernley,
13 County of Lyon, Nevada on January 5, 2008, who were affected by the collapse of the
14 Truckee Canal embankment in the early morning of January 5, 2008.
- 15 • The Court has not decided whether Defendants have done anything wrong. There is no
16 money available now, and no guarantee there will be. However, your legal rights are
17 affected, and you have a choice to make now:

<u>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</u>	
DO NOTHING	Stay in this lawsuit. Await the outcome. Give up certain rights. By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement. But, you give up any rights to sue Defendants separately about the same legal claims in this lawsuit.
ASK TO BE EXCLUDED	Get out of this lawsuit. Get no benefits from it. Keep rights. If you ask to be excluded and money or benefits are later awarded, you will not share in those. But, you keep any rights to sue Defendants separately about the same legal claims in this lawsuit.

- 18 • Your options are explained in this notice. To be excluded, you must act before
19 **December 3, 2010.**
- 20 • Attorneys must prove the claims against Defendants at a trial not yet scheduled. If money
21 or benefits are obtained from Defendants, you will be notified about how to ask for a
22 share.
- 23 • **Any questions? Read on.**

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WHAT THIS NOTICE CONTAINS

A. BASIC INFORMATION

- 1. Why did I get this notice? 4
- 2. What is this lawsuit about? 4
- 3. What is a class action and who is involved? 4
- 4. Why is this lawsuit a class action? 4

B. THE CLAIMS IN THE LAWSUIT

- 5. What does the lawsuit complain about? 5
- 6. How did Defendants answer? 5
- 7. Has the Court decided who is right? 5
- 8. What are the Plaintiffs asking for? 5
- 9. Is there any money available now? 5

C. WHO IS IN THE CLASS

- 10. Am I part of this Class? 5
- 11. I am still not sure if I am included. 5

D. YOUR RIGHTS AND OPTIONS

- 12. What happens if I do nothing at all? 6
- 13. Why would I ask to be excluded? 6
- 14. How do I ask the Court to exclude me from the Class? 6

E. THE ATTORNEYS REPRESENTING YOU

- 15. Do I have an attorney in this case? 6
- 16. Should I get my own attorney? 7
- 17. How will the attorneys be paid? 7

F. THE TRIAL

- 18. How and when will the Court decide who is right? 7

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- 19. Are more details available? 7

1 More information about why the Court is allowing this lawsuit to be a class action is in the Order
2 Re: Class Certification and Appointment of Class Counsel, which is available at
3 www.femleyflood.org.

4 B. THE CLAIMS IN THE LAWSUIT

5 **5. What does the lawsuit complain about?**

6 In the lawsuit, the Plaintiffs say that Defendants' actions or inactions resulted in harm to owners
7 and renters, including their families, of residential real property within the area identified by the
8 City of Fernley on January 11, 2008, who were affected by the collapse of a segment of the
9 Truckee Canal Embankment in the early morning of January 5, 2008.

8 **6. How did Defendants answer?**

9 Defendants deny that they did anything wrong.

10 **7. Has the Court decided who is right?**

11 The Court has not decided whether the Plaintiffs or Defendants are correct. By establishing the
12 Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this
13 case. The Plaintiffs must prove their claims at a trial which will be scheduled in the future. (See
14 "The Trial" below on page 7.)

13 **8. What are the Plaintiffs asking for?**

14 The Plaintiffs are asking to be compensated for the losses they and other members of the Class
15 sustained as a result of the failure of the Truckee Canal on January 5, 2008.

16 **9. Is there any money available now?**

17 No money or benefits are available now because the Court has not yet decided whether
18 Defendants have done anything wrong, and the two sides have not settled the case. There is no
19 guarantee that money or benefits will ever be obtained. If they are, you will be notified about
20 how to ask for a share. It is possible that you may need to provide some proof of losses in order
21 to recover money. The total sum you might recover in this case and in other cases arising out of
22 the January 5, 2008 flood cannot exceed the total damages you suffered as a result of the flood.

20 C. WHO IS IN THE CLASS

21 You need to decide whether you are affected by this lawsuit.

22 **10. Am I part of this Class?**

23 The Court decided that all owners and renters of residential real property, including family
24 members of owners or renters, situated in the City of Fernley, County of Lyon, Nevada as of
25 January 5, 2008, and who were affected by the collapse of the Truckee Canal embankment in the
26 early morning of January 5, 2008 are part of the class.

26 **11. I am still not sure I am included.**

27 If you are still not sure whether you are included, you can call or write to the lawyers in this case,
28 listed in question 19.

1 **D. YOUR RIGHTS AND OPTIONS**

2 You have to decide whether to stay in the Class or ask to be excluded before trial, and you have
3 to decide this now.

4 **12. What happens if I do nothing at all?**

5 You do not have to do anything now if you want to keep the possibility of getting money or
6 benefits from this lawsuit. By doing nothing, you are staying in the Class. If you stay in and the
7 Plaintiffs obtain money or benefits, either as a result of the trial or a settlement, you will be
8 notified about how to apply for a share (or how to ask to be excluded from any settlement).
9 **Please keep in mind that if you do nothing now, regardless of whether the Plaintiffs win or
lose the trial, you will not be able to sue, or continue to sue, Defendants, as part of any
other lawsuit, about the same legal claims that are the subject of this lawsuit.** This means
that if you do nothing, you will be legally bound by all of the Orders the Court issues and
judgments the Court makes in this class action.

10 **13. Why would I ask to be excluded?**

11 If you already have your own lawsuit against Defendants and want to continue with it, you may
12 wish to be excluded from the Class. **If you exclude yourself from the Class, which also means
to remove yourself from the Class, and is sometimes called "opting-out" of the Class, you
will not get any money or benefits from this lawsuit even if the Plaintiffs obtain them as a
result of the trial or from any settlement (that may or may not be reached) between
Defendants and the Plaintiffs.** However, you may then be able to sue or continue to sue
14 Defendants. If you exclude yourself, you will not be legally bound by the Court's judgments in
15 this class action.

16 If you start your own lawsuit against Defendants after you exclude yourself, you will have to hire
17 and pay your own lawyer for that lawsuit, and you will have to prove your claims. If you do
exclude yourself so you can start or continue your own lawsuit against Defendants, you should
talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

18 **14. How do I ask the Court to exclude me from the Class?**

19 To ask to be excluded, you must fill out, sign, and return the enclosed postcard, stating that you
20 want to be excluded from *Uhouse, et al. v. Bureau of Reclamation, et al.*, 3:08-cv-0285-LDG-
RAM, and *Kroshus, et al. v. United States, et al.*, 3:08-cv-0246-LDG-RAM, United States
21 District Court for the District of Nevada, to Class Counsel Robert C. Maddox, Esq., Robert C.
Maddox & Associates, 10587 Double R Blvd., Suite 100, Reno, Nevada 89521 (775-322-3666).
22 You must mail your Exclusion Request postmarked by **December 3, 2010.**

23 **E. THE ATTORNEYS REPRESENTING YOU**

24 **15. Do I have an attorney in this case?**

25 The Court decided that the law firms of Robert C. Maddox & Associates, Dunlap & Laxalt,
26 Leverty & Associates Law, Chtd., Hager & Hearne, and the Law Office of Lee T. Hotchkin of
Reno, Nevada are qualified to represent you and all Class Members. Together the law firms are
27 called "Class Counsel." They are experienced in handling class action lawsuits. More
information about these law firms, their practices, and their attorneys' experience is available at
28 www.fernleyflood.org.

1 **16. Should I get my own attorney?**

2 You do not need to hire your own attorney because Class Counsel is working on your behalf.
3 But, if you want your own attorney, you will have to pay that attorney. For example, you can ask
4 him or her to appear in Court for you if you want someone other than Class Counsel to speak for
5 you.

6 **17. How will the attorneys be paid?**

7 If Class Counsel get money or benefits on behalf of the Class, they may ask the Court to be
8 awarded fees and expenses. If the Court grants Class Counsels' request, the fees and expenses
9 may be deducted from any money obtained for the Class or paid separately by Defendants.

10 **F. THE TRIAL**

11 The Court will schedule a trial to decide who is right in this case.

12 **18. How and when will the Court decide who is right?**

13 As long as the case is not resolved by a settlement or otherwise, Class Counsel will have to prove
14 the Plaintiffs' claims at a trial. The trial has not yet been scheduled but once it is scheduled, it
15 will take place at the Bruce R. Thompson United States Courthouse, 400 S. Virginia St., Reno,
16 Nevada. During the trial, a Jury will hear all of the evidence to help them reach a decision about
17 whether the Plaintiffs or Defendant are right about the claims in the lawsuit. There is no
18 guarantee that the Plaintiffs will win, or that they will get any money for the Class.

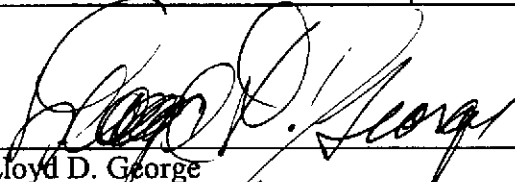
19 **G. GETTING MORE INFORMATION**

20 **19. Are more details available?**

21 You may speak to one of the attorneys by calling or writing to them:

22 Robert C. Maddox, Esq. Nancy H. Jasculca, Esq. ROBERT C. MADDOX & ASSOCIATES (775) 322-3666	23 Calvin R. X. Dunlap, Esq. Monique Laxalt, Esq. DUNLAP & LAXALT (775) 323-7790	24 Vernon E. Leverty, Esq. Patrick R. Leverty, Esq. William R. Ginn, Esq. LEVERTY & ASSOCIATES LAW, CHTD. (775) 322-6636	25 Robert R. Hager, Esq. Treva Hearne, Esq. HAGER & HEARNE (775) 329-5800	26 Lee Hotchkin, Esq. THE LAW OFFICES OF LEE T. HOTCHKIN (775) 786-5791
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27 **DATED** this 22 day of October, 2010.

28 
Lloyd D. George
United States District Judge

29 Enclosure:
30 Exclusion Request