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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

| | | | |
|----|------------------------------|---|----------------------------|
| 10 | BILL ADAMSON et al., |) | |
| | |) | |
| 11 | Plaintiffs, |) | 3:08-cv-621-LDG-RAM |
| | |) | |
| 12 | v. |) | UNITED STATES' MOTION TO |
| | |) | DISMISS CLAIMS OF LORILLEE |
| 13 | UNITED STATES OF AMERICA, |) | BABCOCK |
| | |) | |
| 14 | Defendant. |) | |
| | |) | |
| 15 | _____ | | |
| 16 | JUDY KROSHUS, et al., |) | 3:09-cv-713-LDG-RAM |
| | |) | |
| 17 | Plaintiffs, |) | FEDERAL DEFENDANTS' MOTION |
| | |) | TO DISMISS CLAIMS OF |
| 18 | v. |) | LORILLEE BABCOCK |
| | |) | |
| 19 | UNITED STATES OF AMERICA, et |) | |
| | al., |) | |
| | |) | |
| 20 | Defendants. |) | |
| | |) | |
| 21 | _____ | | |
| 22 | BILL ADAMSON et al., |) | |
| | |) | |
| 23 | Plaintiffs, |) | 3:09-cv-715-LDG-RAM |
| | |) | |
| 24 | v. |) | UNITED STATES' MOTION TO |
| | |) | DISMISS CLAIMS OF LORILLEE |
| 25 | UNITED STATES OF AMERICA, |) | BABCOCK |
| | |) | |
| 26 | Defendant. |) | |
| | |) | |
| | _____ | | |

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1 The federal defendants in these related actions, through
2 their undersigned counsel, move this Court for dismissal of the
3 claims brought by plaintiff LORILLEE BABCOCK pursuant to Rules
4 7(b) and 25(a), Fed.R.Civ.P.

5 The grounds for this motion are that plaintiff Lorillee
6 Babcock died in November 2009, a suggestion of death was filed on
7 March 19, 2010, no substitution of a personal representative or
8 other successor has been made, and this action must be dismissed
9 in accordance with Rule 25(a)(1).
10

11 This motion is based on the papers and pleadings filed in
12 this action and the accompanying memorandum of law.

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14 Respectfully submitted,

15 DANIEL G. BOGDEN
16 United States Attorney

17 /s/ Greg Addington
18 GREG ADDINGTON
19 Assistant United States Attorney
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1 MEMORANDUM OF LAW IN SUPPORT OF
2 MOTION TO DISMISS CLAIMS OF LORILLEE BABCOCK

3 A. INTRODUCTION

4 Lorillee Babcock is a plaintiff in each of these three
5 related actions arising from the January 2008 Truckee Canal
6 embankment failure in Fernley, Nevada. In "Adamson I" (3:08-cv-
7 621) and "Adamson II" (3:09-cv-715), plaintiff Babcock is one of
8 many plaintiffs seeking recovery of tort damages against the
9 United States. In "Kroshus II" (3:09-cv-713), plaintiff Babcock
10 is one of many plaintiffs seeking judicial review of the decision
11 by the Bureau of Reclamation to permit limited resumption of
12 water flows in the canal following the repair of the breach
13 site.¹

14
15 In November 2009, plaintiff Babcock died. On March 19,
16 2010, the federal defendants filed a Suggestion of Death on the
17 Record (#81 - Adamson I; #37 - Adamson II; #77 - Kroshus II) in
18 accordance with Rule 25(a)(1), Fed.R.Civ.P.

19 The 90-day deadline imposed by Rule 25(a)(1) has expired and
20 no substitution of a personal representative or other successor
21 has been made. Accordingly, this action must be dismissed by the
22 plain terms of Rule 25(a)(1).
23

24
25 ¹ Plaintiff Babcock is not a plaintiff in "Kroshus I" (3:08-cv-246), an action which seeks
26 the same relief as that sought in "Kroshus II." The federal defendants have filed their motion for
27 summary judgment in "Kroshus I" and "Kroshus II," which motions are pending. Multiple
28 motions are pending in "Adamson II." The current motion does not affect the viability of any
other pending motions.

1 B. ARGUMENT

2 Rule 25(a)(1), Fed.R.Civ.P., provides a mechanism for
3 substitution of a successor when a party dies during the course
4 of litigation and the litigation is not automatically
5 extinguished by the death. If the claim is not automatically
6 extinguished, a motion for substitution must be filed "within 90
7 days after service of a statement noting the death..." If such a
8 motion for substitution is not filed within the 90-day time
9 period, "the action by or against the decedent must be
10 dismissed." See Rule 25(a)(1).

12 On March 19, 2010, the federal defendants filed a Suggestion
13 of Death on the Record in each of the three cases in which
14 decedent Lorillee Babcock is a plaintiff. The 90-day deadline has
15 expired for the filing of a motion for substitution of a
16 successor to Babcock and no such motion has been filed.
17 Accordingly, this action "by or against the decedent [Babcock]
18 must be dismissed" by the plain terms of the operative Rule
19 25(a)(1). See Hofheimer v. McIntee, 179 F.2d 789 (7th Cir.
20 1950); see also Patrick v. Sharon Steel Corp., 549 F.Supp. 1259
21 (W.Va. 1982).

1 C. CONCLUSION

2 Based on the foregoing, the claims of plaintiff Lorilee
3 Babcock must be dismissed in accordance with Rule 25(a),
4 Fed.R.Civ.P.
5

6 Respectfully submitted,
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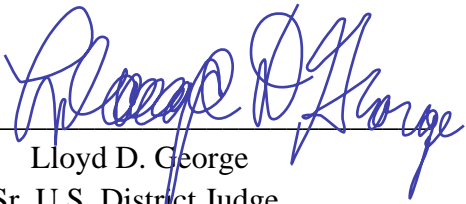
8 DANIEL G. BOGDEN
9 United States Attorney

10 /s/ Greg Addington
11 GREG ADDINGTON
12 Assistant United States Attorney
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14 ORDER

15 IT IS SO ORDERED.

16 DATED this 9 day of July, 2010.
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19 _____
20 Lloyd D. George
21 Sr. U.S. District Judge
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