

**DECLARATION OF**  
**KERI SPAULDING**  
**PART ONE**

BILL LOCKYER  
Attorney General of the State of California  
DANIEL L. SIEGEL  
Supervising Deputy Attorney General  
MICHAEL CROW, State Bar No. 70498  
Deputy Attorney General  
VIRGINIA CAHILL, State Bar No. 99167  
Deputy Attorney General  
1300 I Street  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 322-5647  
Fax: (916) 327-2319  
Attorneys for State of California, Santa Monica  
Mountains Conservancy, and State of California 50<sup>th</sup>  
District and Agricultural Association

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding  
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER  
CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co.  
Superior Court of California County of Los Angeles,  
Case No. BC 325 201

Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co.  
Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California, County of Riverside,  
consolidated Actions, Case Nos. RIC 353 840, RIC 344  
436, RIC 344 668

AND RELATED ACTIONS.

Judicial Council Coordination  
Proceeding No. 4408

Assigned to The Honorable  
Jack Komar

**DECLARATION OF KERI  
SPAULDING IN SUPPORT OF  
STATE OF CALIFORNIA'S  
OBJECTION TO REQUEST  
FOR JUDICIAL NOTICE  
AND STATE'S REQUEST  
FOR JUDICIAL NOTICE.**

I, KERI SPAULDING, declare as follows:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify

1 competently thereto in a court of law.

2 2. I am a Senior Legal Analyst for the Department of Justice in the Public Rights Division,  
3 Land Law Section, at 1300 I Street, Sacramento, California, 95814. I have been employed with the  
4 State of California since 1995.

5 3. I am the staff person in the Office of the Attorney General who was assigned the task of  
6 accessing and locating the official court records in the *United States of America v. Walker River*  
7 *Irrigation District*, United District Court for the District of Nevada, Case No. C-125-ECR and Sub-  
8 File No. C-125-B.

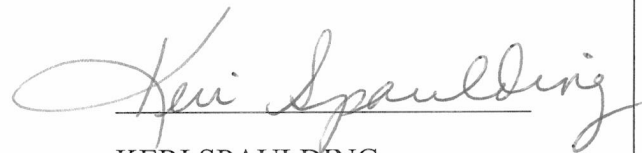
9 3. I accessed these official court records through the federal court program, Public Access  
10 to Court Electronic Records (PACER), and downloaded the attached documents.

11 4. Attached as Exhibit "A" is a true and correct copy of the minute order dated March  
12 29, 2002, which I downloaded from the Court's files in *United States of America v. Walker River*  
13 *Irrigation District*.

14 5. Attached as Exhibit "B" is a true and correct copy of the Court's order dated April  
15 29, 2002, which I downloaded from the Court's files in *United States of America v. Walker River*  
16 *Irrigation District*.

17 6. I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct, and that this declaration was executed in Sacramento County,  
19 California.

20 DATED: 3/22/07



KERI SPAULDING

Senior Legal Analyst

# **EXHIBIT A**

FILED

02 MAR 29 AM 11:19

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

LANCE S. WILSON  
CLERK  
BY \_\_\_\_\_ DEPUTY

UNITED STATES OF AMERICA,  
Plaintiff,  
WALKER RIVER PAIUTE TRIBE,  
Plaintiff-Intervenor,  
vs.

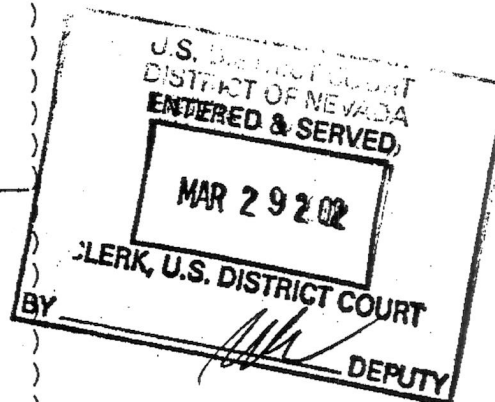
WALKER RIVER IRRIGATION DISTRICT,  
a Corporation, et al.,  
Defendants.

UNITED STATES OF AMERICA,  
WALKER RIVER PAIUTE TRIBE,  
Counterclaimants,

vs.

WALKER RIVER IRRIGATION DISTRICT,  
et al.,  
Counterdefendants.

IN EQUITY NO. C-125-ECR (RAM)  
and  
Sub-File No. C-125-B  
MINUTES OF THE COURT  
DATE: MARCH 29, 2002



PRESENT: \_\_\_\_\_ EDWARD C. REED, JR. \_\_\_\_\_ U. S. DISTRICT JUDGE

Deputy Clerk: \_\_\_\_\_ WAYNE JULIAN \_\_\_\_\_ Reporter: \_\_\_\_\_ NONE APPEARING

Counsel for Plaintiff(s) \_\_\_\_\_ NONE APPEARING

Counsel for Defendant(s) \_\_\_\_\_ NONE APPEARING

MINUTE ORDER IN CHAMBERS

The Magistrate Judge filed a report and recommendation (#164), on September 13, 2001. Objections were filed by the United States and the Walker River Paiute Tribe (#167), on October 26, 2001.

172

The Court adopts the recommendation, but not all parts of the report. The Court will file a further written order explaining the reasons for its decisions in the near future.

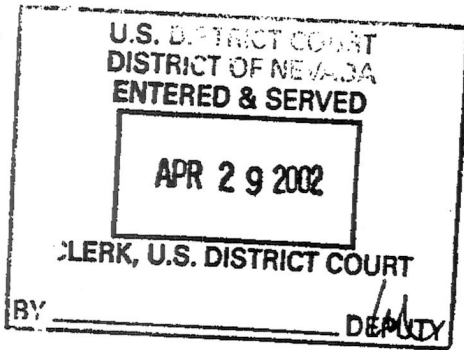
NOW, THEREFORE, IT IS HEREBY ORDERED that the joint motion (#142), filed on May 4, 2001, for certification of defendant classes is DENIED.

LANCE S. WILSON, CLERK

By

Wayne J. Ilin  
Deputy Clerk

# **EXHIBIT B**



FILED

02 APR 26 PM 4:42

LANCE S. WILSON  
CLERK  
DEPUTY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 WALKER RIVER PAIUTE TRIBE

15 Plaintiff-Intervenor

16 vs.

In Equity No. C-125-B

ORDER

17 WALKER RIVER IRRIGATION DISTRICT,  
18 a corporation, et. al.,

19 Defendants.

20 \_\_\_\_\_/

21 I. PROCEDURAL HISTORY

22 The United States of America (hereinafter "United States")  
23 and the Walker River Paiute Tribe (hereinafter "the Tribe") filed  
24 a motion for class certification on May 4, 2001 (#142). The State  
25 of Nevada opposed (#150) on June 14, 2001, as did the Walker River  
26



1 Irrigation District (#151) on June 18, 2001. The United States  
2 and the Tribe replied (#158) on August 3, 2001.

3 The magistrate judge issued his report and recommendation  
4 (#164) on September 13, 2001. The magistrate judge recommended  
5 that the motion for certification be denied.

6 The United States and the Tribe filed objections (#167) on  
7 October 26, 2001, and the Walker River Irrigation District filed  
8 points and authorities in reply (#169) on November 30, 2001. We  
9 issued our order (#172) denying the motion. This memorandum sets  
10 forth our explanation of our decision in that order.

## 11 II. BACKGROUND

12  
13 In this order we consider the motion on behalf of the United  
14 States and the Tribe to certify two defendant classes. The  
15 classes come from categories we established in our case management  
16 order (#108). The first proposed class consists of members of  
17 category 3(a): successors in interest to all water rights holders  
18 under the decree of 1936. The second proposed class consists of  
19 members of category 3(c) who hold permits or certificates to pump  
20 groundwater in sub-basins 107, 108, 110A and 110B in the Walker  
21 River basin.

22 In our case management order we also established various  
23 phases for the case. We required that at the outset of the  
24 litigation concerning the United State and the Tribe's  
25

1 counterclaims, the magistrate judge would determine a list of  
2 threshold issues. These issues would include, among others,  
3 jurisdiction, claim preclusion, applicable law, and any defenses  
4 which may apply. We designated these threshold issues as "Phase  
5 I." The remainder of the case would involve the determination of  
6 the merits of all matters relating to the claims of the United  
7 States and the Tribe. These we refer to as the "Phase II" issues.  
8 Part of the Phase II issues involve declaratory and injunctive  
9 relief; the United States and the Tribe seek a declaration of  
10 their rights to water in the Walker River and an injunction  
11 preventing the other water right holders from claiming and using  
12 the water.  
13

14 The United States and the Tribe seek to certify classes  
15 consisting of category 3(a) and the specified members of category  
16 3(c) for the purposes of determining the Phase I threshold issues  
17 and the Phase II injunctive and declaratory issues.

18 **A. Review of Report and Recommendation**

19 Certification of a class action falls within the category of  
20 cases that a magistrate judge does not have the authority to  
21 determine. 28 U.S.C. § 636 (b) (1) (A); Langley v. Coughlin, 715 F.  
22 Supp 522, 529 (S.D.N.Y. 1989). In these cases, the magistrate  
23 judge may issue proposed findings of fact and recommendations for  
24 disposition. 28 U.S.C. § 636 (b) (1) (B); Fed. R. Civ. P. 72(a);  
25

1 Langley, 715 F. Supp. at 529. When objections are filed " [A]  
2 judge of the court shall make a de novo determination of those  
3 portions of the report or specified proposed findings or  
4 recommendations as to which objection is made." 28 U.S.C. §  
5 636(b) (1) .

6 In our case, the United States and the Tribe made three  
7 objections to the report and recommendation: (1) the determination  
8 that the United States and the Tribe had not met the numerosity  
9 requirement of Fed. R. Civ. P. 23(a); (2) the determination that  
10 the United States and the Tribe could not satisfy any of the  
11 subsections of Fed. R. Civ. P. 23(b); and (3) the final  
12 recommendation of the magistrate judge denying class  
13 certification. We review de novo the determination of numerosity,  
14 the determination under Fed. R. Civ. P. 23(b), and the final  
15 conclusion of the magistrate judge. Although we do not have to  
16 review the remainder of the report and recommendation, Thomas v.  
17 Arn, 474 U.S. 140, 149-152 (1985), we do so because the rights at  
18 stake in this case are extremely important.  
19

### 20 III. ANALYSIS

21 Class certification under Fed. R. Civ. P. 23 requires the  
22 United States and the Tribe to demonstrate that their proposed  
23 classes meet the four requirements of Fed. R. Civ. P. 23(a) and  
24 then satisfy the requirements of one of the three parts of 23(b).  
25

1 Mantolete v. Bloger, 767 F.2d 1416, 1424 (9th Cir. 1985). The  
2 district court has the discretion to grant or deny class  
3 certification. Local Joint Exec. Board of Culinary/Bartender  
4 Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152, 1161 (9th Cir.  
5 2001); SP/4 A.R. Montgomery, IV v. Rumsfeld, 572 F.2d 250, 255  
6 (9th Cir. 1978) (stating that grant or denial of class  
7 certification is a "matter within the discretion of the trial  
8 court"); cf. Califano v. Yamasaki, 442 U.S. 682, 701 (1978)  
9 (holding that if the district court had jurisdiction to hear a  
10 case under section 205(g) of the Social Security Act, it also had  
11 the discretion to certify a class). The determination of class  
12 certification "does not permit or require a preliminary inquiry  
13 into the merits." Hernandez v. Alexander, 152 F.R.D. 192, 194 (D.  
14 Nev. 1993). However, it is our job to conduct a "rigorous  
15 analysis" to determine whether the requirements of Fed. R. Civ. P.  
16 23 have been met. General Telephone Co. of Southwest v. Falcon,  
17 457 U.S. 147, 161 (1982).

18  
19 A. Fed. R. Civ. P. 23(a)

20 There are four requirements of Fed. R. Civ. P. 23(a): (1) the  
21 class is so numerous that joinder of all members is impracticable;  
22 (2) there are questions of law or fact common to the class; (3)  
23 the claims or defenses of the representative parties are typical  
24 of the class; and (4) the representative parties will fairly and  
25

1 adequately protect the interest of the class. We address each in  
2 turn.

3 **1. Numerosity**

4 A class may be certified only if it is "so numerous that  
5 joinder of all members is impracticable." Impracticable does not  
6 mean impossible. Hum v. Dericks, 162 F.R.D. 628, 633-34 (D. Haw.  
7 1995); In re Activision Sec. Litg., 621 F.Supp 415, 433 (N.D. Cal.  
8 1985). The standard is satisfied if there is great difficulty and  
9 inconvenience in joining all of the members of the proposed class.  
10 Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913-14  
11 (9th Cir. 1964). Determination of numerosity is fact specific and  
12 there are no absolute limitations. General Telephone Co. of the  
13 Northwest v. EEOC, 446 U.S. 318, 330 (1980). The court may  
14 consider a number of factors in its numerosity analysis, such as  
15 "class size, ease of identification of members of the proposed  
16 class, geographic distribution of the class members, and the  
17 ability of the class members to pursue individual actions." Olden  
18 v. LaFarge Corp., 203 F.R.D. 254, 268 (E.D. Mich. 2001) (quoting  
19 Kruger v. Gast, 197 F.R.D. 310, 314 (W.D. Mich. 2000)). Further  
20 factors for consideration include "the nature of the relief  
21 sought, the ability of the individuals to pursue their own claims,  
22 the practicality of forcing relitigation of a common core of  
23 issues, and administrative difficulties involved in interpretation  
24  
25  
26

1 and joinder." Rosario v. Cook County, 101 F.R.D. 659, 661 (N.D.  
2 Ill. 1983).

3 The United States and the Tribe present four main arguments  
4 as to why joinder is impracticable: (1) there are a large number  
5 of parties in class 3(a) and the class 3(c) sub-basins; (2) the  
6 parties are geographically dispersed; (3) the parties are actively  
7 resisting service of process; and (4) the United States and the  
8 Tribe are having difficulty identifying the water rights holders.

9 In addition to the factors presented by the United States and  
10 the Tribe we also consider the administrative difficulties in  
11 joinder. Our decision on the factors to consider is guided by an  
12 analysis of the factors that are most applicable to defendant  
13 class actions, as opposed to those that appear to be applicable to  
14 plaintiff class actions.  
15

16 The United States and the Tribe have identified over 1,000  
17 people who would fit into the 3(a) category, and over 1,000 people  
18 who would fit into category 3(c). Based upon numbers alone this  
19 case fits the numerosity requirement. However, numbers alone are  
20 not dispositive of the numerosity factor. Hum, 162 F.R.D. at 634.

21 The United States and the Tribe have noted that although the  
22 water rights exist only in a few valleys, the water rights  
23 holders, those who must be served, are geographically dispersed.  
24 It is not exactly clear what percentage of the water rights  
25  
26

1 holders reside outside of the valleys, but it is clear that the  
2 water rights holders are geographically dispersed. This factor  
3 makes it more "impracticable" to join all of the parties.

4 The court does not find persuasive the arguments that service  
5 will be difficult, because certain water rights holders are  
6 actively resisting service of process. Defendants never want to  
7 be served, especially in a case like this where the outcome of the  
8 litigation may very well be a reduction or elimination of their  
9 water rights. We recognized this difficulty when we noted in the  
10 case management order that after the United States and the Tribe  
11 attempted service of process they could apply for service by  
12 publication pursuant to Fed. R. Civ. P. 4. This would take care  
13 of the problems with those defendants who actively resist service.  
14

15 We have recognized that there are difficulties with the  
16 identification of water rights holders on the Walker River. In  
17 our order denying the motion to require a list of current water  
18 rights holders in C-125 we stated our understanding of the  
19 frustrations of identifying all of the parties and accomplishing  
20 service, instead of focusing on the merits. However, we believe  
21 that the United States and the Tribe would have a less difficult  
22 time with identification, joinder, and service than has faced  
23 Mineral County.

24 As demonstrated by all of the motions, the United States and  
25