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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE
TRIBE,

Plaintiff-Intervenor,

vs.

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

Defendants.

IN EQUITY NO. C-125-ECR

REPLY TO OPPOSITION TO
MOTION AND OPPOSITION
TO MOTION OF WRID TO
REQUIRE MINERAL COUNTY
TO IDENTIFY AND FILE A
REPORT CONCERNING THE
STATUS OF SERVICE ON
EACH INDIVIDUAL WALKER
RIVER CLAIMANT

I.

REPLY TO COMMENTS OF STATE OF NEVADA

The State of Nevada objects to the Motion for Publica-
tion requested by Mineral County based upon what appears to be
the following reasons: (1) Mineral County has failed to demon-
strate that it has exercised due diligence in serving the un-
ascertainable parties or identifying the unascertainable parties
for purposes of service and (2) Mineral County has failed to
submit a list of those parties that are water rights holders in

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FILED
MAR 19 1997
U.S. DISTRICT COURT
DISTRICT OF NEVADA
RENO

1 the Walker River and failing on those two issues, publication
2 cannot give the Court jurisdiction over the potential defendants.

3 It is true that Mineral County has not alleged that the
4 defendants live out of Nevada or have departed from Nevada.
5 Mineral County cannot swear or affirm to facts of which it has no
6 knowledge. Mineral County has not alleged that the defendants
7 are concealing themselves in order to avoid service. Although
8 Mineral County is highly suspicious, that after the inflammatory
9 newsletter sent to the water rights holders in the Walker River
10 by WRID (see Affidavit of Lou Thompson, June 19, 1995), alleging
11 that Mineral County intended to steal water rights from present
12 holders of water rights, water rights holders would avoid service
13 if possible. After all, accepting service from Mineral County,
14 according to the allegations of WRID in its newsletter, would be
15 tantamount to asking these water rights holders to declare them-
16 selves as cousins to Benedict Arnold or Judas Iscariot. However,
17 notwithstanding such tactics of WRID, Mineral County does not
18 have direct knowledge that potential defendants are concealing
19 themselves in order to avoid service of process.

20 The State of Nevada Attorney General has repeatedly
21 applied case law to this situation from cases where one to ten
22 defendants were the maximum determined. See Gassett v. Snappy
23 Car Rental, 111 Nev. 1416, 906 P.2d 258 (1995) and Price v. Dunn,
24 106 Nev. 100, 787 P.2d 258 (1990). This case involves a
25 potential for 800 defendants. The standard for due diligence
26 must certainly be different when the proposed intervenor is
27 searching for 800 potential defendants rather than one or two.

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1 Moreover, why does the State Engineer argue that publication
2 gives the Court no jurisdiction when it is the very method that
3 the State Engineer has implemented for notice of his adjudica-
4 tions and decisions on water rights for the last several decades.

5 The Supreme Court of the State of Nevada adopted a
6 reasonable interpretation of the notice requirements for water
7 rights decisions.

8 In the broadest sense, a decision concerning
9 the allocation of water affects every citizen
10 of Nevada. In a populous area, such as Clark
11 County, many thousands of citizens are poten-
12 tially affected by the grant or denial of an
13 application for water. Requiring notice to
14 all such persons would impose a burden on the
15 appellant which might be impossible to overcome.
16 Desert Valley Water Co. v. State, 766 P.2d 886,
17 887, 104 Nev. 718 (Nev. 1988).

18 How did Mineral County arrive at the conclusion that
19 there are other water rights holders who are not identified is
20 one of the questions posed by the State of Nevada (Opposition of
21 March 10, 1997, page 4). Mineral County has repeatedly stated
22 that in concert with the United States of America, they made a
23 list of the deed holders (see attachment 1), then the list of
24 the Watermaster was checked (see June 2, 1995 filing), then the
25 records of the State Engineer were checked which netted nothing,
26 and finally, Mineral County obtained two separate assessment
27 lists from WRID (see June 2, 1995, filing).

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In the State of Oregon, wherein publication of notice for service of process was allowed by a federal court, the piecemeal adjudications were settled years before, but were reopened for settlement of new issues analogous to the case before the Court in this Walker River reconsideration. U.S. v. State of Oregon, 44 F.3d 758 (9th Cir. 1994). The State of Nevada wants this Court to determine, in its discretion, that Mineral County, using the deeds in the Offices of the County Recorders, using a list from the Watermaster and using a list from WRID and mailing waivers which were frustrated by bad faith efforts by WRID to interfere in service of process, then personal service on persons whose addresses were found, is not due diligence. Whatever "pound of flesh" standard the State of Nevada is advocating is repeated by WRID and the Watermaster and presented to the Court without indicating what would happen if this magic list were turned over to the Court, as the list has been repeatedly submitted heretofore. Mineral County has repeatedly stated the number of persons that are dead, the number of persons with post office box numbers that cannot be found and the discrepancy in the lists compiled. However, Mineral County will accept that the list from the County Recorders of Deeds is the only list applicable and that list is the only one that Mineral County should be required to serve. Mineral County has served the persons on that list (see Affidavits filed September 29, 1995 and February 1, 1996).

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II.

REPLY TO COMMENTS OF WRID AND WATERMASTER

IN OPPOSITION TO MOTION

Rule 4(d) states that the law of the State where the Court is situate is the State whose local laws can be used to substitute for federal requirements for service of process. WRID consistently argues that the list from the County Recorder of Deeds is the operative list. Mineral County agrees. If the Court would agree that the only list that requires service is the list of record title holders listed in the County Recorder of Deeds, much of the inconsistency is corrected. Mineral County accepts WRID's argument that the only persons that should merit service are those that have properly recorded deeds to secure their water rights. Mineral County asks that the Court find Mineral County's list, taken from the county Recorder of Deeds, be the operative list and the one accepted by this Court and that Mineral County's service be declared complete based upon its service on those persons who are title record holders and based upon WRID's assertion that such a list is determinative of the water rights holders in the Walker River. Whatever inconsistencies exist because of the list given to Mineral County by WRID can now be ignored and treated as though nonexistent. If WRID is not concerned that the persons potentially holding some interest in water rights on its list are not served, then certainly, Mineral County will make no further issue of same.

On June 2, 1995, Zeh, Polaha, Spoo & Hearne filed the combined list of water users and served it on the parties of

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1 record. No objection was made by the parties that this list was
 2 incorrect or incomplete. This is the list used by Mineral County
 3 for service. Mineral County cannot attest to this list as com-
 4 plete because the State Engineer has no definitive list of the
 5 water rights holders in the Walker River and the best source
 6 available was the Offices of the Recorders of Deeds in the
 7 counties where the Walker River is located. Mineral County can-
 8 not explain why the discrepancies exist in the list of water
 9 users and the names found in the Offices of Recorders of Deeds;
 10 therefore, Mineral County cannot certify any list with complete
 11 confidence.

12 III.

13 MINERAL COUNTY HAS FILED A LIST WITH THE 14 PARTIES ON JUNE 2, 1995, AND THEREAFTER FILED 15 WAIVERS RECEIVED AND PROOF OF SERVICE

16 WRID has made a motion to add even more paper to this
 17 cause and require needless effort for work that has already been
 18 accomplished. WRID itself, in its filing of February 27, 1996,
 19 filed a status report that was as meaningless as any other. WRID
 20 alleged to have new and different names without stating the
 21 source of the names and upon what basis WRID believed that these
 22 persons were water rights holders in the Walker River.

23 WRID incorrectly analyzed the service by Mineral County
 24 as stated in the affidavit filed by Mineral County on March 11,
 25 1996. All of the affidavits that have been filed in this matter
 26 are referenced for the Motion and in this Reply in order to sup-
 27 port the due diligence efforts of Mineral County. There is no

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1 more explanation forthcoming from WRID as to why such discrep-
2 ancies should exist between the lists of WRID and the Watermaster
3 and those found in the Office of the Recorders of Deeds. Any
4 further discussion wastes the time of this Court as well as the
5 time of our clients.

6 WRID, the State of Nevada and the Watermaster have
7 simply run out of reasons why Mineral County should not be al-
8 lowed to deem this service complete and finally reach the merits
9 of its case. Mineral County has expended more effort and expen-
10 diture to reach the holders of water rights in the Walker River
11 than any other party seeking entrance into this matter. Certain-
12 ly, when the State of California was challenged and made a find-
13 ing that minimum levels should be kept in Bridgeport, an order
14 that had not heretofore been a part of the 1936 adjudication, the
15 Court allowed the settlement of that matter, which affected the
16 rights of all downstream users, both by those minimum reserva-
17 tions as well as the priority assigned to the Walker River Paiute
18 Tribe's Weber Reservoir, which also had not been a part of the
19 1936 adjudication, to be published. Mineral County's claim is no
20 different in kind or effect and, therefore, should be allowed the
21 same manner of informing any downstream users affected by its
22 claim to be served notice by publication.

23 The State Engineer has simply failed to keep records of
24 the water rights holders on the Walker River. In order to miti-
25 gate his lack of fulfilling his responsibility pursuant to NRS
26 535, et seq., he claims that this responsibility has become the
27 responsibility of Mineral County.

28 / / /

1 Mineral County respectfully requests that this Court
2 allow notice by publication to insure that all potential water
3 rights holders in the Walker River received adequate notice.

4 WHEREFORE the above-stated reasons, Mineral County
5 respectfully requests that the court enter an Order of Publi-
6 cation of Notice of Mineral County's Request For Intervention.

7 DATED this 18th day of March, 1997.

8
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ZEH, POLAHA, SPOO & HEARNE, and that on March 19th, 1997, I deposited for mailing, at Reno, Nevada, a true copy of **** REPLY TO OPPOSITION TO MOTION AND OPPOSITION TO MOTION OF WRID TO REQUIRE MINERAL COUNTY TO IDENTIFY AND FILE A REPORT CONCERNING THE STATUS OF SERVICE ON EACH INDIVIDUAL WALKER RIVER CLAIMANT **** to:

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