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BY
DEPUTY

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 Publication requested by Mineral County based upon what appears to be the following reasons: (1) Mineral County has failed to demonstrate that it has exercised due diligence in serving the unascertainable 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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the Walker River and failing on those two issues, publication cannot give the Court jurisdiction over the potential defendants.

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

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

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

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

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

How did Mineral County arrive at the conclusion that there are other water rights holders who are not identified is one of the questions posed by the State of Nevada (Opposition of March 10, 1997, page 4). Mineral County has repeatedly stated that in concert with the United States of America, they made a list of the deed holders (see attachment 1), then the list of the Watermaster was checked (see June 2, 1995 filing), then the records of the State Engineer were checked which netted nothing, and finally, Mineral County obtained two separate assessment 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 piece-meal 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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record. No objection was made by the parties that this list was incorrect or incomplete. This is the list used by Mineral County for service. Mineral County cannot attest to this list as complete because the State Engineer has no definitive list of the water rights holders in the Walker River and the best source available was the Offices of the Recorders of Deeds in the counties where the Walker River is located. Mineral County cannot explain why the discrepancies exist in the list of water users and the names found in the Offices of Recorders of Deeds; therefore, Mineral County cannot certify any list with complete confidence.

III.

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

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

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

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more explanation forthcoming from WRID as to why such discrepancies should exist between the lists of WRID and the Watermaster and those found in the Office of the Recorders of Deeds. Any further discussion wastes the time of this Court as well as the time of our clients.

WRID, the State of Nevada and the Watermaster have simply run out of reasons why Mineral County should not be allowed to deem this service complete and finally reach the merits of its case. Mineral County has expended more effort and expenditure to reach the holders of water rights in the Walker River than any other party seeking entrance into this matter. Certainly, when the State of California was challenged and made a finding that minimum levels should be kept in Bridgeport, an order that had not heretofore been a part of the 1936 adjudication, the Court allowed the settlement of that matter, which affected the rights of all downstream users, both by those minimum reservations as well as the priority assigned to the Walker River Paiute Tribe's Weber Reservoir, which also had not been a part of the 1936 adjudication, to be published. Mineral County's claim is no different in kind or effect and, therefore, should be allowed the same manner of informing any downstream users affected by its claim to be served notice by publication.

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

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

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

DATED this 18th day of March, 1997.

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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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