GORDON H. DePAOLI
DALE E. FERGUSON
WOODBURN and WEDGE
One East First Street
Suite 1600
P.O. Box 2311
Reno, Nevada 89505
Telephone: (702) 688-3000

Attorneys for
WALKER RIVER IRRIGATION DISTRICT

DEC 23 [illegible]
BY JRH

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 SUBFILE NO. C-125-B
WALKER RIVER PAIUTE TRIBE, Counterclaimant, vs. WALKER RIVER IRRIGATION DISTRICT, et al., Counterdefendants.	**REPORT OF THE WALKER RIVER IRRIGATION DISTRICT CONCERNING MINERAL COUNTY'S MOTION TO INTERVENE**

Pursuant to the November 17, 1994, Minute Order of this Court, and the Stipulation and Order Concerning Mineral County's Motion to Intervene and for Pretrial Conference Thereon (the "Stipulation") filed on November 25, 1994, the Walker River

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Irrigation District (the "District") submits its Report Concerning Mineral County's Motion to Intervene.

I. Introduction.

On or about January 3, 1992, the District filed a First Amended Petition for Declaratory and Injunctive Relief and Request for Order to Show Cause; or in the Alternative to Change the Point of Diversion to Storage of Water from California to Nevada (the "Petition"). The Petition challenged the California Water Resources Control Board's (the "Board") authority to issue orders to the District which conflicted with the Walker River Decree. See, Oct. 27, 1992 Order (Doc. No. 15) at 2.

On or about March 17, 1992, the Walker River Paiute Tribe (the "Tribe") served its answer to the Petition. The Tribe's answer included a cross-claim against the Board and a counterclaim against all water users on the Walker River and its tributaries as set forth in the Final Decree (the "Counterclaim"). The Tribe seeks recognition of a right to store water in Weber Reservoir for use on the lands of the Walker River Indian Reservation and for a federal reserved water right to use water on lands added to the Reservation in 1936.

By minute order dated May 18, 1992, the Court ordered that the Tribe's claims would proceed separately from the petition filed by the District. Minutes of Court, May 18, 1992 (Doc. No. 34) at 1. The Court further ordered that in filing documents the parties will designate them as follows:

C-125 is the administration of the Decree;

WOODBURN AND WEDGE
ATTORNEYS
ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000

C-125 A is the [District's] Amended Petition and Cross-Claim; and

C-125 B is the [Tribe's] counterclaim.

Id. at 4. The clerk was ordered to establish a new subfile, to be designated as C-125-B for all proceedings related to the Tribe's counterclaim. Id.

On August 3, 1992, the District filed a series of preliminary threshold motions related to the Tribe's counterclaim, including a motion to require the joinder of all claimants to the waters of Walker River as defendants. October 27, 1992 Order (Doc. No. 15) at 3. The State of Nevada filed similar motions. Id.

On October 27, 1992, the Court granted the District's and Nevada's motions to require joinder of parties. Id. at 7. The effect of that order was to require joinder and/or substitution of all persons or entities claiming a right to use water from the Walker River or its tributaries in Nevada and California, whether such claims were based upon the Walker River Decree or subsequent appropriations. Through a series of stipulations and orders the time for complying with the Court's order has been extended to March 25, 1994. See, November 17, 1994 Stipulation and Order (Doc. No. 36).

On or about October 25, 1994, Mineral County, Nevada filed a Notice of Motion and Motion for Intervention and supporting documents (the "Motion to Intervene") seeking to intervene in C-125-B. Mineral County's proposed petition in intervention seeks a major reallocation of the waters of the Walker River in an effort to preserve a minimum lake level at Walker Lake. The

WOODBURN AND WEDGE
ATTORNEYS
ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000

proposed petition seeks to accomplish this reallocation through modification of the Walker River Decree and issuance of an order requiring Nevada to grant "a certificate to Mineral County for the benefit of Walker Lake in the amount of 103,000 acre/feet per year".

By letter dated November 15, 1994, counsel for Mineral County advised the Clerk of the Court that "the Motion to Intervene and all accompanying papers and documents should be filed in C-125 and should reflect that case number only." The precise meaning of that statement in relation to the filing provisions of the Court's May 18, 1992 Minute Order is not clear.

Pursuant to the November 15 and December 8, 1994, stipulations and orders a status conference was scheduled to address the issue of the persons to be given notice of and an opportunity to respond to the Motion to Intervene and any other matter which will aid in the disposition of the motion to intervene. No response to the motion to intervene is required until further order of the Court.

II. Mineral County Must Give Notice of the Motion to Intervene to All Claimants to Waters of the Walker River and its Tributaries

Mineral County seeks to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure. Under Rule 24, "[a] person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5." Fed. R. Civ. P. 24(c). Therefore, Rule 5 provides the relevant law in identifying the persons Mineral County must serve and thereby notify with regard

WOODBURN AND WEDGE
ATTORNEYS
ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000

to its Motion to Intervene. Similarly, it provides the relevant law as to who should have an opportunity to respond to the Motion.

Under Rule 5, "[e]xcept as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint . . . shall be served upon each of the parties." Fed.R.Civ.P. 5(a) (emphasis added). Therefore, in order to comply with Rule 5 as required by Rule 24, Mineral County must serve all of the parties to this action.

Whether the Motion to Intervene is considered filed in C-125, the administration of the Walker River Decree, or C-125-B, the Tribe's Counterclaim, as a result of this Court's October 27, 1992 Order, the "parties" include successors to the original defendants named in 1924 and 1926 and subsequent appropriators. The Court's October 27, 1992 Order has required that they be joined as parties. Rule 24 requires service of the Motion to Intervene on all of those parties.

Moreover, based upon applicable law and the rationale of the October 27, 1992 Order, if Mineral County is allowed to intervene and assert its claim for reallocation of the waters of the Walker River, it will be required to join those same persons, if they have not already been joined. Mineral County's proposed petition seeks to impact every water user on the Walker River system.

III. FURTHER PROCEEDINGS CONCERNING THE MOTION TO INTERVENE

The United States and the Tribe have until March 25, 1995 within which to complete service of process on the persons ordered joined by this Court's October 27, 1992 Order. Once that service is complete and those persons have appeared, Mineral County should

WOODBURN AND WEDGE
ATTORNEYS
ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000

serve its Motion to Intervene on them. Thereafter, a scheduling conference should be held to coordinate the time for responding to Mineral County's Motion to Intervene. Proceedings on the counterclaim of the Tribe and the United States should be stayed until the Court rules on Mineral County's Motion to Intervene.

DATED this 23rd day of December, 1994.

WOODBURN and WEDGE
One East First Street, Suite 1600
P.O. Box 2311
Reno, Nevada 89505

By Gordon H. DePaoli
GORDON H. DePAOLI
Attorneys for
WALKER RIVER IRRIGATION DISTRICT

WOODBURN AND WEDGE
ATTORNEYS
ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Woodburn and Wedge, and that on this date, pursuant to FRCP 5(b), I deposited in the United States mail at Reno, Nevada, a true copy of the foregoing document, addressed to:

Shirley A. Smith
Asst. U.S. Attorney
100 W. Liberty St., #600
Reno, Nevada 89509

George Benesch
Benesch & Fermoile
P.O. Box 3197
Reno, NV 89505

Jim Weishaupt, General Manager
WRID
P.O. Box 820
Yerington, NV 89447

James T. Markle
State Water Resources
Control Board
P.O. Box 100
Sacramento, CA 95814

John Kramer
Dept. of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Richard E. Olson, Jr.
Claassen and Olson
P.O. Box 2101
Carson City, NV 89702

Ross E. deLipkau
P.O. Box 2790
Reno, Nevada 89505

Garry Stone
290 South Arlington
Reno, NV 89510

Richard R. Greenfield
Dept. of the Interior
Two North Central Ave., #500
Phoenix, AZ 85004

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

R. Michael Turnipseed, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

Scott McElroy
Greene, Meyer & McElroy
1007 Pearl Street
Boulder, CO 80302

David Moser, Esq.
McCutchen, Doyle, Brown &
Enerson
Three Embarcadero Center
San Francisco, CA 94111

John P. Lange
Land and Natural Resources
Federal Bldg., Dr. 3607
999 18th Street, Ste. 945
Denver, CO 80202

Roger Johnson
Water Resources Control Board
State of California
P.O. Box 2000
Sacramento, CA 95810

Linda Bowman
Vargas & Bartlett
P.O. Box 281
Reno, Nevada 89504

Susan Joseph-Taylor
Deputy Attorney General
State of Nevada
123 W. Nye Lane
Carson City, Nevada 89710

Jim Spoo
Zeh, Spoo & Hearne
450 Marsh Avenue
Reno, Nevada 89509

Mary Hackenbracht
Deputy Attorney General
State of California
2101 Webster Street
Oakland, CA 94612-3049

Roger Bezayiff
Water Master
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, Nevada 89447

DATED this 23rd day of December, 1994.

Barry W. Manders

WOODBURN AND WEDGE
ATTORNEYS
ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000