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CV-N-73-127-ECR

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Mary Hackenbracht, Esq.
Attorney General's Office
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

#79

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA, Plaintiff,	CV-N-73-127-ECR
WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor,	IN EQUITY NO. C-125-ECR SUBFILE NO. C-125-B
VS.	MINUTES OF THE COURT
WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	DATE: March 1, 1999
WALKER RIVER PAIUTE TRIBE, Counterclaimant,	
v.	
WALKER RIVER IRRIGATION DISTRICT, et al. Counterdefendants.	
MINERAL COUNTY, Proposed Plaintiff-Intervenor,	
VS.	
WALKER RIVER IRRIGATION DISTRICT, et al. Proposed Defendants.	

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

Motion filed on February 4, 1999, (#74) by the State of California for relief from the requirements of local rule IA 10-2(C) is **GRANTED**. No opposition was filed to the motion. It appears appropriate in the case of the State of California that it should be relieved from the requirements of the rule.

LANCE S. WILSON, CLERK

By Wayne Julian
Deputy Clerk

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA, Plaintiff,	CV-N-73-128-ECR
WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor,	IN EQUITY NO. C-125-ECR SUBFILE NO. C-125-C
VS.	MINUTES OF THE COURT
WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	DATE: March 1, 1999
WALKER RIVER PAIUTE TRIBE, Counterclaimant,	
v.	
WALKER RIVER IRRIGATION DISTRICT, et al. Counterdefendants.	
MINERAL COUNTY, Proposed Plaintiff-Intervenor,	
VS.	
WALKER RIVER IRRIGATION DISTRICT, et al. Proposed Defendants.	

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

Motion filed on February 4, 1999, (#249) by the State of California for relief from the requirements of local rule IA 10-2(C) is **GRANTED**. No opposition was filed to the motion. It appears appropriate in the case of the State of California that it should be relieved from the requirements of the rule.

LANCE S. WILSON, CLERK

By _____
Deputy Clerk

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA, Plaintiff,	CV-N-73-126-ECR
WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor,	IN EQUITY NO. C-125-ECR SUBFILE NO. C-125-A
VS.	MINUTES OF THE COURT
WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	DATE: March 1, 1999
WALKER RIVER PAIUTE TRIBE, Counterclaimant,	
v.	
WALKER RIVER IRRIGATION DISTRICT, et al. Counterdefendants.	
MINERAL COUNTY, Proposed Plaintiff-Intervenor,	
VS.	
WALKER RIVER IRRIGATION DISTRICT, et al. Proposed Defendants.	

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

Motion filed on February 4, 1999, (#116) by the State of California for relief from the requirements of local rule IA 10-2(C) is **GRANTED**. No opposition was filed to the motion. It appears appropriate in the case of the State of California that it should be relieved from the requirements of the rule.

LANCE S. WILSON, CLERK

By _____
Deputy Clerk

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA, Plaintiff,	CV-N-73-125-ECR
WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor,	IN EQUITY NO. C-125-ECR
VS.	MINUTES OF THE COURT
WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	DATE: March 1, 1999
WALKER RIVER PAIUTE TRIBE, Counterclaimant,	
v.	
WALKER RIVER IRRIGATION DISTRICT, et al. Counterdefendants.	
MINERAL COUNTY, Proposed Plaintiff-Intervenor,	
VS.	
WALKER RIVER IRRIGATION DISTRICT, et al. Proposed Defendants.	

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

Motion filed on February 4, 1999, (#447) by the State of California for relief from the requirements of local rule IA 10-2(C) is **GRANTED**. No opposition was filed to the motion. It appears appropriate in the case of the State of California that it should be relieved from the requirements of the rule.

LANCE S. WILSON, CLERK

By Wayne Julian
Deputy Clerk

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U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED
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CLERK, U.S. DISTRICT COURT
BY DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

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

Defendants.

CV-N-73-128-ECR

IN EQUITY NO. C-125;
SUBFILE NO. C-125-C

O R D E R

On June 29, 1998, Proposed Intervenor Mineral County filed its Amended Motion to Dismiss Certain Parties (#222) (the "Motion"). The Walker River Irrigation District ("WRID") filed its Response (#225) to the Motion on July 17, 1998. Although Mineral County did not file a reply in support of its Motion, it did file two other documents that are relevant to the Motion: "Supplemental Affidavits in Support of Motion to Publish" (#230), filed September 21, 1998; and the Affidavit of Lisa M. Cannizzaro (the "Cannizzaro Affidavit"), attached to the "Affidavit of Treva J. Hearne" (#233),

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filed October 21, 1998. The first of these documents (#230) includes two separate affidavits of Kelvin Buchanan, a volunteer who has been leading Mineral County's efforts to effect service of process. We shall refer to these two Buchanan affidavits as "Affidavit A" and "Affidavit B," with Affidavit A being the first of the two documents in the order in which they are attached to document #230 in the Court file, and consisting of 5 pages, and Affidavit B being the second of the two, and consisting of 16 pages.

Also, the Motion--or rather, the list of defendants sought to be dismissed by the Motion--was amended three times subsequent to the filing of the Motion. The most recent amendment was filed on November 16, 1998, as an attachment to Mineral County's "Response to Ex Parte Application to Vacate Schedule for Filing Responses to Mineral County's Motion to Intervene" (#239). With each list, defendants appear and disappear seemingly at random. Nonetheless, we will assume that Mineral County had good reason to amend its list, and we will therefore consider the most recent list to be the complete list of persons as to whom Mineral County seeks dismissal. Accordingly, we will examine whether dismissal is warranted for the following defendants (spellings are per the 11/16/98 list):

1. Aiazzi, Anastasia
2. Aiazzi, James
3. Aiazzi, James K.
4. Aiazzi, Reno
5. Baker, Cherie
6. Baker, Steven
7. Baker, Virginia
8. Beagle, Billy Roy

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9. Beagle, Thelma G.
10. Bitler, Peggy, as individual
11. Bliss Trust, U D T
12. Bryan, Maggie, as individual
13. Bryan, Vernon, as individual
14. Chounet, Jill
15. Chounet, William
16. Costa, Norma, as individual
17. Dye Family Trust
18. Georgi, Baldo, Trustee
19. Hanifan, Janet
20. Hayes, Deborah A.
21. Hayes, Jonathan C.
22. Hunniwell, Harvey E.
23. Lyon Ranch Operation, Inc.
24. Mackenzie, Andrew
25. Marriott, Carlis N.
26. McColloch, Pamela
27. McColloch, Robert L.
28. Menisini, Grace
29. Mortimore, Craig A.
30. Pellegrini, Violet
31. Smith, Cary
32. Smith, Mary
33. Snook, Jean
34. Stevens, Lynn
35. Stevens, Ronald
36. Tholke, Rachel
37. Traitel, David S.
38. Webb, Linda K.
39. Webb, Robert K.
40. Wright, Glenora F.

We have also considered documents filed in connection with the original "Motion to Dismiss Certain Parties and Amended Notice in Lieu" (#198), filed by Mineral County on May 18, 1998. WRID filed its Response (#211) to the first motion to dismiss on June 4, 1998, and the State of Nevada filed its Response (#212) on June 8, 1998. Instead of filing a reply in support of its first motion, Mineral County filed its amended motion (#222), under consideration herein, which superseded the first motion. In addition, we have considered several other documents as well: Mineral County's "Report of Service," attached to the Motion for

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Order of Publication (Third Request) (#226), filed on August 4, 1998 (the "Service Report"); Exhibit B to WRID's Response to Motion for Publication and Pre-Hearing Report of the Walker River Irrigation District (#189), filed April 28, 1998 ("Exhibit B"); and the Notice in Lieu of Summons issued January 12, 1998 (no #) (the "Notice in Lieu").

Before moving on to discuss the merits of dismissal as to each individual defendant, it is important to note that none of the documents submitted by any of the parties in connection with either the first motion or the amended motion contain much legal analysis. Normally, it is true that a plaintiff exercises a fair degree of control over what entities or individuals are named as defendants in a case. In many respects, Mineral County is in the position of a plaintiff--it has been required to serve all defendants with notice of its claims. However, we cannot allow Mineral County complete freedom here to determine who the proper defendants are or should be. This case is essentially an action in rem to quiet title to property--that property being the water (or rather, the right to take the water) of the Walker River and its tributaries. Minute Order of April 1, 1997 (#99). Without all the owners of the property properly joined in the case as defendants, any reallocation of water rights that might result from the case could be subject to future attack. Order of June 4, 1998 (#210). Thus we have not dismissed any defendant from the case solely on Mineral County's representations that that defendant has no water rights. As to certain defendants, dismissal is appropriate; as to others,

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it is not. We have set forth our findings as to each defendant below.

Individual Defendants

The **Aiazzi** family - In its Motion, Mineral County seeks to dismiss "James K. Aiazzi," "Reno Aiazzi," and "James and Anastasia Aiazzi." The Notice in Lieu lists several Aiazzis, including individuals not at issue here. The relevant defendants listed in the Notice in Lieu are: "Aiazzi Ranches"; "James K. Aiazzi Trust"; "Reno George Aiazzi Trust"; "Reno Aiazzi"; and "James & Anastasia Aiazzi." The Motion states that neither "James K. Aiazzi," "Reno Aiazzi," nor "James and Anastasia Aiazzi" own water rights as individuals, but that "Aiazzi Ranches" does. The Service Report indicates that there is only one trust, not two. Affidavit A states: "James K. Aiazzi has been served as Aiazzi Ranches. Reno George Aiazzi has been served as Trustee of the Reno George and James K. Aiazzi Trust. WRID does not show him as an individual holder of water rights. Mr. Aiazzi claims his water right as Aiazzi Ranches. Mr. Aiazzi has been personally served. Per a telephone conversation with Mr. James K. Aiazzi, on September 16, 1998, at approximately 3:30 p.m., Mr. Aiazzi confirmed that the water rights are held as Aiazzi Ranches or as James K. and Reno George Aiazzi Trust, not in the individual names of James K., Reno George, or Anastasia." As set forth in Exhibit A to WRID's Response (#225) to the Motion, filed July 17, 1998 ("Exhibit A"), WRID's records apparently show that the James K. Aiazzi Trust and the Reno George Aiazzi Trust own water rights. Also, WRID's

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records show that "Reno Aiazzi" and "James Aiazzi" both "hold[] water rights in connection with Aiazzi Ranches." Exhibit B indicates that the James K. Aiazzi Trust and the Reno George Aiazzi Trust are cotenants. Thus it appears that both Aiazzi Ranches and the Trust (or Trusts) are proper defendants, but that the individuals are not. Whether there is one trust or two is irrelevant at this point; we have not been asked to rule on the issue, although it may become important in determining whether the Trust or Trusts have been properly served. The only issue that is before us at the moment is whether the individual defendants should be dismissed from the case, and it appears that they should. It appears that neither "James K. Aiazzi," "Reno Aiazzi," nor "James & Anastasia Aiazzi" own water rights as individuals. However, it appears that both James Aiazzi and Reno George Aiazzi are trustees, either each of his own eponymous trust or both of the one, joint trust. See Service Report. Thus while it is appropriate to dismiss these defendants as individuals, they should, as trustees, be named as defendants. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANTS JAMES K. AIAZZI, RENO AIAZZI, AND JAMES & ANASTASIA AIAZZI, IN THEIR INDIVIDUAL CAPACITY; HOWEVER, JAMES AIAZZI, TRUSTEE, AND RENO GEORGE AIAZZI, TRUSTEE, SHOULD BE SUBSTITUTED AS DEFENDANTS IN THEIR PLACE.

Baker, Cherie, Steven, and Virginia - The Service Report states that the Bakers no longer have a water right, and indicates that the right was sold to "Bothelo [sic]." Affidavit A states: "Virginia, Steven and Cherie Baker sold their water rights to

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Bothello [sic] on May 29, 1997, according to WRID records." Exhibit A indicates that WRID's records do not show any of the Bakers as an "owner of land with appurtenant water rights." Further, the Service Report indicates that William D. and Jacqulyn J. Botelho purchased their water right from the Bakers on May 29, 1997. Since everyone seems to agree that the Bakers no longer own a water right, and since the successors to the right the Bakers once owned are already named as defendants, then the Bakers should be dismissed from the case. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANTS CHERIE, STEVEN, AND VIRGINIA BAKER.

Beagle, Billy Roy and Thelma G. - Affidavit A states: "Billy Roy and Thelma G. Beagle have no water rights. WRID listed them for information only. The conveyance from Massini's to the Beagles reserved water rights. Lawrence Massini has been personally served." Exhibit A indicates that WRID's records do not show either of the Beagles as an "owner of land with appurtenant water rights." The Cannizzaro Affidavit, however, which is the most recent of all these documents, states: "On this day I spoke with Billy Roy Beagle of Yerington, Nevada, and verified that he holds water rights in Walker River. I verified his physical address as 140 Highway 208." Thus while Mineral County and WRID appear to agree that the Beagles have no water rights, the Beagles themselves seem to have other ideas. One would tend to think that Billy Roy Beagle would be the most accurate source of information regarding whether Billy Roy Beagle owns water rights. Absent some really persuasive evidence to the contrary, we cannot disregard his

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recent confirmation that he does own water rights. As for Thelma, although it is possible that she alone sold her rights while Billy Roy kept his, the more likely scenario is that if one Beagle still owns water rights, then both Beagles still own water rights. If contrary information exists, then Mineral County should feel free to submit it in support of a renewed motion to dismiss. Without such evidence, however, the better course of action is to assume that the Beagles do own water rights, and do belong in the case. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANTS BILLY ROY AND THELMA G. BEAGLE.

Bitler, Peggy - The Notice in Lieu lists the following Bitler defendants: "Bitler, Kenneth P."; "Kenneth Bitler & Peggy L. Bitler, Trustees"; "Bitler Family Trust"; and "Bitler, Peggy." The Motion seeks to dismiss Peggy Bitler as an individual defendant. The Service Report states: "Listed only as a co-trustee on Bitler Trust, not as an individual. Incorrect listing by WRID and Mineral Co." Affidavit A states: "Peggy Bitler holds no individual water right. A telephone conversation with Kenneth Bitler, her husband[,] on September 18, 1998 at 4:15 p.m. confirmed that all water rights held by the Bitlers are held in the Bitler Family Trust." Exhibit A, however, shows that "WRID's records indicate Peggy Bitler holds water rights as co-tenant with Wilbert Aiazzi, Laurie Coutts & Troy Coutts." Given that the parties are not in agreement on this point, we cannot grant the motion to dismiss at this time. Most likely, it is the Trust that is a cotenant with Wilbert Aiazzi, Laurie Coutts, and Troy Coutts, and

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not Peggy Bitler herself (assuming this information is correct), but we need more information to so hold. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT PEGGY BITLER.

Bliss Trust, U D T - The Notice in Lieu does not list a Bliss Trust in any form. Nor does any other document that we have seen. The Notice in Lieu does list "Maurice & Agnes C. Bliss" as defendants, along with the "John Hargus & Adah Blinn Trust," but no Bliss Trust. Thus it does not appear that there is, or ever has been, a defendant with this name. Since the Bliss Trust is not a defendant, there is no need to dismiss it from the case. THEREFORE, THE MOTION TO DISMISS IS DENIED.

Bryan, Vernon and Maggie - The Notice in Lieu lists as defendants "Vernon F. Bryan, Inc." and "Brown, Vernon & Maggie Bryan." The Service Report indicates that there is no "Vernon & Maggie Brown," but rather a "Vernon & Maggie Bryan," and that all water rights are held by Vernon F. Bryan, Inc., rather than Vernon or Maggie Bryan individually. Exhibit A shows that "WRID's records indicate water right holder is Vernon F. Bryan, Inc." It thus appears that everyone's records agree that the proper defendant is Vernon F. Bryan, Inc., and not the individual defendants. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO THE DEFENDANTS LISTED IN THE NOTICE IN LIEU AS "BROWN, VERNON & MAGGIE BRYAN."

Chounet, William and Jill - The Service Report states simply: "No water right. On dismissal list." Affidavit A states: "William and Jill Chounnet [sic] have no water rights. This was confirmed and reconfirmed by records of WRID." Exhibit A indicates

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that WRID's records do not show either of the Chounets as an "owner of land with appurtenant water rights." Since everyone's records appear to agree, there seems little reason to keep these defendants in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss these defendants with the understanding that, should any party to this case discover at any point new information suggesting that the Chounets do own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANTS WILLIAM AND JILL CHOUNET.

Costa, Norma - We have found no indication of why Mineral County seeks to dismiss this defendant. From Exhibit B, it appears that she has already been served. It also appears that she has some connection with defendant Annett Ranch. It is possible that Mineral County has determined that all water rights are held by Annett Ranch, and not by Norma Costa, but that is pure speculation at this point and certainly not a basis for dismissal. Since we have been presented with no reason for holding that this defendant does not have water rights, it makes no sense to dismiss her--especially since it appears that she has already been served. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT NORMA COSTA.

Dye Family Trust - The Service Report states simply: "To be dismissed. No water right." Affidavit A states: "Dye Family Trust sold its water rights to Desert Pearl Farms. WRID records

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confirm this statement and this is reconfirmed by Fred Rodriguez who owns Desert Pearl Farms with whom I personally spoke when I served him for Desert Pearl Farms." Exhibit A indicates that WRID's records do not show this defendant as an "owner of land with appurtenant water rights." Since everyone's records appear to agree, there seems little reason to keep this defendant in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this case discover at any point new information suggesting that the Dye Family Trust does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT DYE FAMILY TRUST.

Georgi, Baldo, Trustee - The Notice in Lieu lists the "Baldo Giorgi Trust" as a defendant, but does not list Baldo Giorgi as a trustee. In fact, it is not clear from the Notice in Lieu whether any trustee is listed for this trust. Of the "Giorgi, Baldo Trust," the Service Report states: "On dismissal list. No water right." Thus it is unclear whether Mineral County wants to dismiss the Trust, or its Trustee. Affidavit A states: "Giorgi Baldo Trust no longer appears as a water rights holder. This is confirmed and reconfirmed by records of WRID." Exhibit A indicates that WRID's records do not show the Giorgi, Baldo Trust as an "owner of land with appurtenant water rights." Since everyone's records appear to agree that the Baldo Giorgi Trust does not own

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water rights, there seems little reason to keep this defendant in the case. And if the Trust is dismissed, there is no need for any trustees of the trust to be named as defendants. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this case discover at any point new information suggesting that the Giorgi Baldo Trust does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS, TO THE EXTENT IT SEEKS TO DISMISS DEFENDANT BALDO GIORGI TRUST, IS GRANTED.

Hanifan, Janet - The Service Report states simply: "On dismissal list. No water right." Affidavit A states: "Janet Hanifan no longer appears as a water rights holder. This is confirmed and reconfirmed by records of WRID." Exhibit A shows that "WRID's records indicate water rights held by Philip Hanifan only." Since everyone's records appear to agree that Janet Hanifan does not own water rights, there seems little reason to keep this defendant in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this case discover at any point new information suggesting that Janet Hanifan does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT JANET HANIFAN.

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Hayes, Jonathan C. and Deborah A. - Affidavit A states: "Jonathan C. and Deborah A. Hayes purchased property from the Jacobsens. The Jacobsens reserved the water rights for themselves. The Jacobsens have all been served." The Cannizzaro Affidavit, however, which is the most recent of all the relevant documents, states: "On this day I spoke with Deborah Hayes of Wellington, Nevada, and verified that she and her husband Jonathan C. Hayes of Wellington, Nevada hold water rights in Walker River. I verified that they purchased the Jacobsen water rights. I verified their physical address as 254 Lower Colony Rd." Exhibit A shows that "WRID's records indicate Jonathan & Debra [sic] Hayes acquired water rights on 02/11/98." Thus it appears that both WRID's records and the defendants themselves disagree with Mineral County's contention that they have no water rights. Mineral County could conceivably be correct, but under the circumstances we cannot dismiss these defendants based solely on Mineral County's representations. THEREFORE, THE MOTION TO DISMISS IS DENIED AS TO DEFENDANTS JONATHAN C. AND DEBORAH A. HAYES, WITHOUT PREJUDICE.

Hunniwell, Harvey E. - First, we note that this defendant's name should be spelled "Hunewill," not "Hunniwell." Of Harvey E. Hunewill, the Service Report states: "On dismissal list for decease." Exhibit A simply states "Deceased." We also note that this defendant was included in the motion for publication which we recently addressed. In our order (#252), filed on February 25, 1998, we explained that the heirs of a deceased defendant should be substituted in place of the deceased, Fed. R.

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Civ. P. 25(a), and that Mineral County was required to show that it had exercised due diligence to determine who those heirs were. N.R.S. § 14.040(1). When the heirs are known, they can be substituted in, and the deceased defendant can be dismissed from the case. When the heirs are unascertainable even after due diligence, the deceased defendant should remain in the case, and the unknown heirs should be served by publication. However, as we explained in our recent order, Mineral County has not yet shown that it either knows who this defendant's heirs are, or has, after the exercise of due diligence, been unable to ascertain who those heirs are. Until one of those results has been demonstrated, we cannot dismiss this defendant from the case or order service by publication on his unknown heirs. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT HARVEY E. HUNEWILL.

Lyon Ranch Operation, Inc. - Affidavit A states: "Lyon Ranch Operation is not a corporation listed in Nevada. It is not listed in the telephone book in Lyon County. It is not listed as a water rights holder in the Walker River. This is confirmed and reconfirmed by WRID's records." Exhibit A indicates that WRID's records do not show Lyon Ranch Operations [sic], Inc. as an "owner of land with appurtenant water rights." Since everyone's records appear to agree, there seems little reason to keep this defendant in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this case discover at any

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point new information suggesting that Lyon Ranch Operation, Inc., does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT LYON RANCH OPERATION.

Mackenzie, Andrew - Affidavit A states: "Andrew MacKenzie is not listed as a water rights holder. This was confirmed and reconfirmed by WRID's records." Exhibit A indicates that WRID's records do not show Andrew Mackenzie as an "owner of land with appurtenant water rights." Since everyone's records appear to agree that Andrew Mackenzie does not own water rights, there seems little reason to keep this defendant in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this case discover at any point new information suggesting that Andrew Mackenzie does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT ANDREW MACKENZIE.

Marriott, Carlis N. - The Service Report states simply: "On dismissal list. No water right." Affidavit A states: "Carlis N. Marriott is not listed as a water rights holder. This was confirmed and reconfirmed by WRID's records." Exhibit A indicates that WRID's records do not show Carlis N. Marriott as an "owner of land with appurtenant water rights." Since everyone's records appear to agree that Carlis Marriott does not own water rights, there seems little reason to keep this defendant in the case. As

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noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this case discover at any point new information suggesting that Carlis Marriott does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT CARLIS MARRIOTT.

McColloch, Robert L. and Pamela - The Service Report states simply: "On dismissal list. No water right." Affidavit A states: "Robert C. and Pamela McColloch conveyed their water rights in the Walker River to Lee A. and Cheryl McCoy. WRID's records confirm and reconfirm this information." Exhibit A indicates that WRID's records do not show either of the McCollochs as an "owner of land with appurtenant water rights." Since everyone's records appear to agree, there seems little reason to keep these defendants in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss these defendants with the understanding that, should any party to this case discover at any point new information suggesting that the McCollochs do own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANTS ROBERT L. AND PAMELA MCCOLLOCH.

Menisini, Grace - First, we note that this defendant's name should be spelled "Menesini," not "Menisini." Second, we have found no indication of why Mineral County seeks to dismiss this

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defendant. On the list attached to the Motion itself, Grace Menesini is not included--but Lucinda Menesini is, and is reportedly deceased. It is possible that Mineral County inadvertently replaced Lucinda's name with Grace's in amending the list, but we cannot make that assumption. In Exhibit B, Grace Menesini is listed by WRID, and there is no indication that she does not belong on that list, although throughout Exhibit B WRID has stated "Not on WRID's list" for defendants that are not included on WRID's list of water rights holders. Since it appears that Grace may have been placed on the dismissal list in error, we will not dismiss her from the case at this point. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT GRACE MENESINI.

Mortimore, Craig A. - The Service Report states: "No individual listed as having a water right. Mineral County error. On dismissal list." Affidavit A states: "Craig A. Mortimore is not listed as an individual water rights holder. Craig Mortimore works for the Nevada Division of Wildlife. WRID's records confirm and reconfirm this information." Exhibit A indicates that WRID's records do not show Craig A. Mortimore as an "owner of land with appurtenant water rights." Since everyone's records appear to agree that Craig Mortimore does not own water rights, there seems little reason to keep this defendant in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this

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case discover at any point new information suggesting that Craig Mortimore does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT CRAIG A. MORTIMORE.

Pellegrini, Violet - The Service Report states simply: "On dismissal list. Deceased." Exhibit A simply states: "Deceased." We note, however, that this defendant was also listed on the motion for publication which we recently addressed. In our order (#252), filed on February 25, 1998, we explained that the heirs of a deceased defendant should be substituted in place of the deceased, Fed. R. Civ. P. 25(a), and that Mineral County was required to show that it had exercised due diligence to determine who those heirs were. N.R.S. § 14.040(1). When the heirs are known, they can be substituted in, and the deceased defendant can be dismissed from the case. When the heirs are unascertainable even after due diligence, the deceased defendant should remain in the case, and the unknown heirs should be served by publication. However, as we explained in our recent order, Mineral County has not yet shown that it either knows who this defendant's heirs are, or has, after the exercise of due diligence, been unable to ascertain who those heirs are. Until one of those results has been demonstrated, we cannot dismiss this defendant from the case or order service by publication on her unknown heirs. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT VIOLET PELLEGRINI.

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Smith, Cary - The Service Report states simply: "On dismissal list. No water right." Affidavit A states: "Cary Smith is not listed as a water rights holder. This was confirmed and reconfirmed by WRID's records." Exhibit A indicates that WRID's records do not show Cary Smith as an "owner of land with appurtenant water rights." Since everyone's records appear to agree that Cary Smith does not own water rights, there seems little reason to keep this defendant in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss this defendant with the understanding that, should any party to this case discover at any point new information suggesting that Cary Smith does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT CARY SMITH.

Smith, Mary - First, we note that there are actually two Mary Smiths listed on the Notice in Lieu. The Notice in Lieu lists "Smith, Keith A., Kathy & Mary" and "Smith, Ermon W. & Mary Lee." It would appear that Mineral County wishes to dismiss "Mary Smith" rather than "Mary Lee Smith," but that is not clear. The Service Report states simply: "On dismissal list. No water right." Affidavit A states: "Mary Smith is not listed as a water rights holder. This was confirmed and reconfirmed by WRID's records." Although it is not clear whether this is relevant, the Cannizzaro Affidavit states: "On this day I attempted to call Mary Lee Smith of Yerington, Nevada, but was unsuccessful." Exhibit A indicates

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that WRID's records do not show Mary Smith as an "owner of land with appurtenant water rights." Although it thus appears that A Mary Smith should be dismissed, we cannot assume which Mary Smith it should be. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO THIS DEFENDANT.

Snook, Jean - The Service Report states: "On dismissal list. No water right." Affidavit A states: "There is no record of an individual by the name of Jean Snook as a water rights holder. WRID's records confirm and reconfirm this." Exhibit A shows that "WRID's records indicate she does not hold water rights individually but she is a co-[t]rustee of the C.W. & V.B. Twombly Trust and the trust holds water rights." Thus it appears that Jean Snook should be dismissed as an individual defendant, but that Jean Snook, Trustee of the C.W. & V.B. Twombly Trust, should remain in the case. We note that, with the Twombly Trust, the Twombly Trustees are listed as defendants, including one Jean T. Snock [sic]. As WRID notes in Exhibit B, this is clearly a misprint, and should read "Snook." THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT JEAN SNOOK, AS AN INDIVIDUAL.

Stevens, Ronald and Lynn - Exhibit A indicates that WRID's records do not show either of the Stevens as an "owner of land with appurtenant water rights." Mineral County, however, provides us with no information regarding why it seeks to dismiss this couple. Since Mineral County has asked us to dismiss these defendants, though, and since WRID's information indicates that they do not own water rights, there seems little reason to keep

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these defendants in the case. As noted above, however, it would be quite unfortunate for this case to go forward without all necessary parties joined. Thus we will dismiss these defendants with the understanding that, should any party to this case discover at any point new information suggesting that either of the Stevens does own water rights after all, that fact will be brought to our attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANTS RONALD AND LYNN STEVENS.

Tholke, Rachel - The Service Report states: "Was listed as an individual in error. Should only be listed as a trust. On dismissal list." Affidavit A states: "There are no water rights held in the name of Rachel Tholke. The water right is held in the name of Rachel Tholke Trust. WRID's records confirm and reconfirm this." Exhibit A shows that the "U.S. Board's records indicate that the Rachel Tholke Trust holds water rights." Thus it appears that the proper defendant is the Rachel Tholke Trust, not Rachel Tholke the individual. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT RACHEL THOLKE, AS AN INDIVIDUAL. The Rachel Tholke Trust, and its Trustee, Don Cook, shall remain in the case as defendants.

Traitel, David S. - The Service Report states: "Had no individual water right. Was listed as President of Pinenut Ranch. Now not listed. Should not be on list. Error. Dismissal list." Affidavit A states: "There are no water rights held in the name of David Traitel. The water right is held in the name of Pinenut Ranch. David S. Traitel was Ranch Manager or President and listed

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on Pinenut Ranch. According to the Secretary of the State of Nevada, the President is now Ugo Giorgi and the Registered Agent is Corporate Trust Company." Exhibit A shows that "WRID's records indicate he is affiliated with Pinenut Ranch Corporation and the corporation holds water rights." Since everyone's records appear to agree that Pinenut Ranch owns water rights, but that David Traitel, as an individual, does not, there seems little reason to keep this defendant in the case, regardless of whether Mr. Traitel is still Ranch manager or President of defendant Pinenut Ranch. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT DAVID S. TRAITEL.

Webb, Linda K. and Robert K. - First, we note that Robert's middle initial is "D." and not "K." The Service Report states simply: "On dismissal list. No water rights." Affidavit A states: "Robert D. and Linda K. Webb purchased the Beagle property but the water rights were still reserved. This is confirmed and reconfirmed by WRID's records." Exhibit A indicates that WRID's records do not show either of the Webbs as an "owner of land with appurtenant water rights." Everyone's records appear to agree that these defendants do not own water rights. However, the Webbs purchased the Beagle property, and the status of the Beagles' rights is unclear--thus the status of the Webbs' rights must be unclear as well. Without more information, then, we cannot hold that the Webbs own no water rights. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANTS LINDA K. AND ROBERT D. WEBB.

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Wright, Glenora F. - The Service Report states: "Only listed as trustee under Vivian Fulstone Trust. Should not be listed as individual water rights holder. Served under trust." Exhibit A shows that "WRID's records indicate she holds water rights as a co-tenant with the Vivian F. Fulstone Trust and James H. Fulstone." Although it seems somewhat more likely, given the information we have, that Glenora Wright would be a trustee than a cotenant, we cannot so hold based solely on Mineral County's representation to that effect. The parties are not in agreement on this point, so we need additional evidence--either proof that Ms. Wright is a trustee, or the circumstances by which Mineral County came to believe that she is a trustee, and not a cotenant. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT GLENORA F. WRIGHT.

IT IS, THEREFORE, HEREBY ORDERED that Mineral County's amended motion to dismiss certain defendants (#222) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

The motion is **DENIED, WITHOUT PREJUDICE**, as to defendants Billy Roy and Thelma G. Beagle, Peggy Bitler, the Bliss Trust, Norma Costa, Jonathan C. and Deborah A. Hayes, Harvey E. Hunewill, Grace Menesini, Violet Pellegrini, Mary Smith, Linda K. and Robert D. Webb, and Glenora F. Wright;

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The motion is **GRANTED** as to all other defendants discussed in this order, as set forth above, who shall be dismissed from the case.

DATED: March 2, 1999.

Edward C. Reed.
UNITED STATES DISTRICT JUDGE

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