GORDON H. DePAOLI
State Bar No. 000195
DALE E. FERGUSON
State Bar No. 004986
WOODBURN and WEDGE
One East First Street
Suite 1600
P.O. Box 2311
Reno, Nevada 89505
Telephone: (702) 688-3000
Attorneys for the
WALKER RIVER IRRIGATION DISTRICT

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 SUBFILE NO. C-125-C **MOTION TO REQUIRE MINERAL COUNTY TO IDENTIFY AND FILE A REPORT CONCERNING THE STATUS OF SERVICE ON EACH INDIVIDUAL WALKER RIVER CLAIMANT**

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DEPUTY

The Walker River Irrigation District (the "District") hereby moves this Court for an order requiring Mineral County by a date certain to identify, on an individual basis, all claimants to the waters of the Walker River and its tributaries (the "Walker River Claimants") against whom it seeks permission to assert the claims set forth in its proposed First Amended Complaint. In addition, the District moves the Court for an order requiring Mineral County

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by a date certain to file a report concerning the status of service of its Intervention Documents with respect to each individual it identifies as a Walker River Claimant.

This Motion is based on the following memorandum of points and authorities and all of the pleadings and papers on file herein.

DATED this 10th day of March, 1997.

WOODBURN AND WEDGE
P.O. Box 2311
Reno, Nevada 89505

By Dale E. Ferguson
GORDON H. DePAOLI
DALE E. FERGUSON
Attorneys for the Walker River Irrigation District

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In October of 1994, Mineral County filed documents with this Court in an attempt to intervene in the above-captioned lawsuit. As a result, in February of 1995 this Court entered an order requiring Mineral County to serve its Intervention Documents on all claimants to the waters of the Walker River and its tributaries (the "Walker River Claimants") pursuant to Rule 4 of the Federal Rules of Civil Procedure (the "Service Order"). See Docket No. 19.

Since the entry of the Service Order, Mineral County has attempted to serve its Intervention Documents on numerous individuals and entities. In conducting these service efforts, however, Mineral County has failed and refused to take into consideration a paramount factor that must be established in every lawsuit. Mineral County has not identified

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

the parties against whom it proposes to assert its claims. In other words, Mineral County has failed and refused to identify each and every individual and entity that it claims is a Walker River Claimant and is therefore a necessary and proper party to this action. Absent this identification, Mineral County's proposed intervention cannot possibly proceed.

II. THE COURT SHOULD REQUIRE MINERAL COUNTY TO IDENTIFY (BY NAME) ALL PERSONS AND ENTITIES IT CLAIMS ARE WALKER RIVER CLAIMANTS AND TO FILE A REPORT WITH THE COURT CONCERNING THE STATUS OF ITS SERVICE WITH RESPECT TO EACH

In order to comply with the Court's orders addressing service of its Intervention Documents (See Docket Nos. 19, 44, 48, 74), Mineral County must identify each individual and entity it proposes to assert claims against and offer the Court evidence concerning completed or attempted service on those individuals and entities. Until Mineral County submits this information to the Court, it is impossible for Mineral County to be relieved of service or ordered to complete service through publication.

On or about June 2, 1995, Mineral County filed a list with this Court under the cover "Proof of Service by Mailing." Mineral County has not, however, indicated whether all or merely some of the names contained in the Proof of Service by Mailing list comprise the list of Walker River Claimants against whom Mineral County proposes to assert its claims. Therefore, at the present time, neither the Court nor any other party knows the specific identity of the individuals and entities that Mineral County will assert claims against if allowed to intervene in this matter.

In February of 1996, Mineral County claimed that it had complied with the Court's orders concerning service and had served substantially all Walker River Claimants. To rebut this claim, it was necessary for the District to attempt to determine the status of Mineral County's service by reviewing the information contained in the Return of Service and Waiver

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

of Service forms (the "Service Forms") filed by Mineral County. By comparing the information contained in the Service forms to the names appearing on the "Proof of Service by Mailing" list, the District determined that Mineral had not complied with the Court's service orders or served substantially all Walker River Claimants.

At this point in Mineral County's attempted intervention, however, the initial burden of determining the status of service should be on Mineral County and not the District or any other party. As a proposed plaintiff, Mineral County should have the initial burden to establish that it has effected service on all necessary and proper parties, as defined by the Court, and that its proposed intervention is therefore ready to move forward. To make this initial showing, Mineral County must first name each individual Walker River Claimant that may someday be impacted by its claims and then, with respect to each, make a representation as to whether or not service has been accomplished. If service has not been accomplished on a specific individual or entity, Mineral County should state the reason for failing to effect service.

III. CONCLUSION

In order for this Court to relieve Mineral County of further service obligations or to order the completion of service through publication, Mineral County must first identify the Walker River Claimants that it proposes to assert claims against. In addition, to comply with the Court's service orders, Mineral County must establish completed service or offer reasons as to why service is not complete with respect to each individual and entity that it identifies as a Walker River Claimant. Initially, the burden of making this showing should fall on Mineral County as the proposed plaintiff.

Given these circumstances, the District respectfully requests that the Court enter an order: 1) requiring Mineral County by a date certain to identify, by name, each individual and

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

entity it believes comprises the Walker River Claimants; and 2) requiring Mineral County by a date certain to file a report concerning the status of service of its Intervention Documents with respect to each individual Walker River Claimant which, in the event service is incomplete for a particular Walker River Claimant, states the reason as to why service has not been effected.

DATED this 10th day of March, 1997.

WOODBURN AND WEDGE
P.O. Box 2311
Reno, Nevada 89505

By Dale E. Ferguson
GORDON H. DePAOLI
DALE E. FERGUSON
Attorneys for the Walker River Irrigation District

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law firm of WOODBURN AND WEDGE and that on this ~~16th~~ 10th day of ~~July~~ MARCH, 199~~6~~7, I deposited for mailing at Reno, Nevada a true and correct copy of the foregoing document, to the following:

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

George Benesch
P.O. Box 3498
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

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

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

Garry Stone
290 South Arlington
Reno, NV 89510

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

Marta Adams
Deputy Attorney General
State of Nevada
198 So. Carson Street
Carson City, Nevada 89710

Jim Spoo
Treva J. Hearne
Zeh, Polaha, Spoo & Hearne
575 Forest Street
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

Janna G. Hoyt

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