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WALKER RIVER IRRIGATION DISTRICT

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEVADA**

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>WALKER RIVER PAIUTE TRIBE,<br><br>Plaintiff-Intervenor,<br><br>vs.<br><br>WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.,<br><br>Defendants. | IN EQUITY NO. C-125-ECR<br>SUBFILE NO. C-125-C<br><br>**WALKER RIVER IRRIGATION DISTRICT'S OPPOSITION TO MINERAL COUNTY'S MOTION FOR ORDER OF PUBLICATION** |

FILED
97 MAR 10 PM 3:30
LARRY R. WILSON
CLERK
BY
DEPUTY

## I. INTRODUCTION

On or about February 20, 1997, Mineral County filed a Motion for Order of Publication (the "Publication Motion") and affidavit in support thereof. In part, the Publication Motion states the grounds for the relief it requests as follows:

> (a) Mineral County's service of process to water rights' holders on the Walker River was completed by February 1, 1996, pursuant to the Court's Order of November, 1995;
>
> (b) Mineral County has, in fact, . . . served substantially all known water rights' holders on the Walker River; and
>
> (c) Mineral County believes unascertained and unascertainable parties exist that may hold entitlement or water rights in the Walker River;

Publication Motion at 1, 2. On several previous occasions, Mineral County has filed papers with this Court offering these same or similar conclusions, in one form or another, as a basis for relief from service of process in this matter. See Docket Nos. 31, 63, 69, 75, 80. As a result, the Walker River Irrigation District (the "District") has offered argument, authorities and evidence to dispute these erroneous conclusions (See Docket Nos. 39, 67, 77) and the Court has rejected them by denying Mineral County's request to be relieved from further service. See Docket Nos. 44, 74, 82.

Although Mineral County has failed to offer any new evidence to support these erroneous conclusions, it now places them before the Court once again as a basis for the Court to enter an order allowing service by publication. Because Mineral County's representations concerning the status of service continue to be erroneous and the requirements for service by publication have not been met, the Court must deny the relief requested in the Publication Motion.

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## II. THE COURT SHOULD DENY MINERAL COUNTY'S REQUEST FOR SERVICE BY PUBLICATION BECAUSE IT HAS NOT COMPLETED OR SUBSTANTIALLY COMPLETED SERVICE ON ALL CLAIMANTS TO THE WATERS OF THE WALKER RIVER AND ITS TRIBUTARIES (THE "WALKER RIVER CLAIMANTS") AS ORDERED BY THE COURT ON FOUR DIFFERENT OCCASIONS

### A. As of February of 1996, a Review of the Waiver of Service and Return of Service Forms filed by Mineral County Clearly Established That It Had Not Completed Service On All or Substantially All Walker River Claimants

To date, the Court has ordered Mineral County to complete service in this matter on all Walker River Claimants pursuant to Rule 4 of the Federal Rules of Civil Procedure on four separate occasions. See Docket Nos. 19, 44, 48, 74. In February of 1996, Mineral County represented to the Court that it had complied with the Court's orders concerning service and that service was complete with respect to "substantially all known water rights holders on the Walker River." See Notice of Motion, Motion for Relief from Service of Process and Request for Hearing (the "Notice of Motion"), Docket No. 63, at 2.

On February 27, 1996, the District filed an opposition to the Notice of Motion (the "District's Opposition") disputing Mineral County's representations that it had complied with the Court's orders and had effected service on substantially all of the Walker River Claimants. See Docket No. 67. Through a review of the Waiver of Service and Return of Service forms (the "Service Forms") filed by Mineral County with the Court, the District attempted to verify the status of Mineral County's service efforts as of the date the Notice of Motion was filed. See District's Opposition at 8 - 10 and Exhibit A attached thereto.

The District reviewed the information contained in the Service Forms, including the names of the individuals and entities allegedly served, and compared that information to the names appearing on the list filed by Mineral County on or about June 2, 1995, with this Court under the cover "Proof of Service by Mailing." Id. Through this review, the District determined that



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of the approximately 1,116 names appearing on the Proof of Service by Mailing List, Mineral County had not served approximately 597 individuals or entities, service may have been accomplished with respect to approximately 398 names and service appeared questionable for approximately 94 other names on the list. Id. at 10.[1]

On or about March 11, 1996, Mineral County filed a reply to the District's Opposition (the "Reply") that disputed to a certain degree some of the District's conclusions concerning the status of Mineral County's service efforts. See Docket No. 69. Despite Mineral County's attack on the District's service analysis[2], the admissions contained in the Reply made it clear that Mineral County had failed to complete service of its Intervention Documents in accordance with Rule 4 of the Federal Rules of Civil Procedure as ordered by the Court. The Reply provided:

> Of the 791 persons listed and are common to both lists, 439 have waived service or have actually been served, 11 are dead, 169 have post office boxes and cannot be found for service, and service has been attempted on another 182 unsuccessfully.

Mineral County's Reply at 5. Assuming arguendo that these numbers were considered correct, Mineral County itself admitted that approximately 351 individuals and entities had not been served. Through an order of the Court dated March 22, 1996 (the "Denial Order"), the Court denied Mineral County's request to be relieved from further service. See Docket No. 74 at 2.

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[1]The District stated the following with respect to its conclusions concerning the status of Mineral County's service efforts:

> In making this determination, the District does not make any representation as to whether service has or has not "actually" been accomplished with respect to any individual or entity on the list. The District simply attempted to compile in a useable way the information filed with the Court in the form of Waiver of Service and Return of Service forms.

District's Opposition at 10.

[2]The District's response to the allegations contained in the affidavit attached to the Reply concerning the District's service analysis is attached hereto as Exhibit A.



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The Denial Order states that it is Mineral County's obligation "to determine who the proper defendants (i.e., competing water rights holders) are in its proposed action" and that Mineral County "must serve all proper defendants with its motion to intervene and proposed complaint-in-intervention, pursuant to Fed. R. Civ. P. 4." Id.

**B. During the Past Year, Mineral County has Prosecuted a Frivolous Appeal Before the Ninth Circuit Court of Appeals But has Failed to do Anything Further to Complete Service of Its Intervention Documents As Ordered by the Court**

Instead of complying with the Court's directive to complete service, Mineral County chose to appeal the Court's ruling contained in the Denial Order to the Ninth Circuit Court of Appeals. On or about April 5, 1996, Mineral County filed a motion asking the Court to certify its ruling made in the Denial Order for immediate appeal under 28 U.S.C. § 1292(b). Pursuant to minutes of the Court dated May 10, 1996, this Court declined to certify its prior ruling under 28 U.S.C. § 1292(b).

Mineral County also appealed from this Court's ruling contained in the Denial Order and filed its opening brief in the Ninth Circuit Court of Appeals on or about June 22, 1996. The District, State of Nevada and the United States Board of Water Commissioners filed Answering Briefs with the Ninth Circuit and oral argument was held on February 10, 1997. In a written decision filed February 12, 1997, the Ninth Circuit dismissed Mineral County's appeal for lack of jurisdiction. See Memorandum of the Ninth Circuit attached hereto as Exhibit B.

During Mineral County's appeal to the Ninth Circuit it did nothing further to complete service as ordered by the Court in the Denial Order. This fact is evidenced by Mineral County's failure to file any additional return of service or waiver of service forms during its appeal. See Copies of Docket Sheets for February 1, 1996, through February 28, 1997, attached hereto as

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Exhibit C. As a result, the status of Mineral County's service of its Intervention Documents remains as it was in March of 1996 when this Court entered the Denial Order. In the Publication Motion, however, Mineral County once again offers the completely unsupported and erroneous statement that it has complied with the Court's orders and served substantially all Walker River Claimants. See Publication Motion at 2. Until Mineral County complies with the Court's orders by personally serving all Walker River Claimants, the Court should deny its request for service by publication.

## III. THE COURT CANNOT ORDER SERVICE BY PUBLICATION BECAUSE MINERAL COUNTY HAS NOT SATISFIED THE REQUIREMENTS FOR SERVICE BY PUBLICATION UNDER NEVADA OR CALIFORNIA LAW

Rule 4 of the Federal Rules of Civil Procedure provides that if a waiver of service has not been obtained and filed, service on individuals, corporations and associations may be effected "pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State." F.R.C.P 4(e)(1) and (h)(1).

In Nevada, a court may order service by publication if the plaintiff establishes the following:

> (i) General. When the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons.
>
> . . .
>
> (ii) Property. In any action which relates to, or the subject of which is, real or personal property in this state in which such person defendant or corporation



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> defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part of excluding such person or corporation from any interest therein, and the said defendant resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or conceals himself to avoid the service of summons, the judge or justice may make an order that the service be made by the publication of summons; said service by publication shall be made in the same manner as now provided in all cases of service by publication.

N.R.C.P. 4(e)(1)(ii) (emphasis added). The relevant section of the California Code addressing service by publication provides:

> (a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that:
>
> (1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action; or
>
> (2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

California Code of Civil Procedure § 415.50 (emphasis added).[3]

To begin with, Mineral County has failed to specifically name the Walker River Claimants it has identified and the status of service with respect to each. In light of this failure, it is impossible for Mineral County to make the required showing, under Nevada or California law, to enable the Court to enter an order permitting service by publication. Mineral County cannot possibly establish that a particular individual resides outside of Nevada, has left Nevada, or

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[3]It is not clear that Mineral County's proposed complaint seeks the type of relief contemplated by the emphasized portion of the Nevada Rule or California Statute. However, the standard of diligence is similar under either the general rule or the emphasized portion.



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cannot through due diligence be located within Nevada unless and until it identifies that individual.[4]

Even if Mineral County's failure to identify unserved Walker River Claimants is overlooked, the Motion for Publication and affidavit attached thereto clearly do not establish that certain Walker River Claimants reside outside of Nevada, have left Nevada, or cannot after the exercise of due diligence be found within Nevada, as required by Nevada law. Likewise, for purposes of the California requirements for service by publication, the Motion for Publication and attached affidavit fail to establish that certain Walker River Claimants: a) cannot with reasonable diligence be served in another manner authorized by California law; b) are necessary parties to Mineral County's proposed action or that a cause of action exists against them; or c) claim an interest in the real property that is subject to this Court's jurisdiction. Under both Nevada and California law there must be a showing of due diligence before service by publication is allowed. Price v. Dunn, 787 P.2d 785, 787-88 (Nev. 1990); Donel, Inc. v. Badalian, 150 Cal.Rptr. 855, 858-59 (Cal.App. 1978). Mineral County has completely failed to make this showing.

### A. Mineral County's Continued Assertion That Numerous Walker River Claimants are Unascertainable is Incorrect and Therefore No Excuse for Its Failure to Specifically Identify the Walker River Claimants

The Walker River Claimants are not unascertainable as Mineral County continues to contend, however, a great deal of time and effort must be expended to identify them. See Docket

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[4]It is the District's position that the Court should require Mineral County to identify the Walker River Claimants and present the Court with evidence concerning the status of service with respect to each individual Walker River Claimant before it can be relieved of service or proceed with service by publication. Therefore, simultaneously with the filing of this Opposition, the District has filed a 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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No. 77. As the proposed plaintiff requesting relief, it is Mineral County that must bear this burden.

In order to identify the Walker River Claimants, information from several different sources is useful. Mineral County has apparently relied on records from several different entities, including the District,[5] as comprising the definitive list of Walker River Claimants. What Mineral County fails to understand, however, is that these records merely contain information specific to the mission of the particular entity maintaining them concerning some of the Walker River Claimants. The records are not, and were never intended to be, a complete and current list of all Walker River Claimants.[6] At most, the records should be considered as a secondary source of information for Mineral County to utilize in initiating the research necessary to identify all Walker River Claimants.

In attempting to identify Walker River Claimants, Mineral County has failed to understand that title to a water right is transferred by deed. Deeds are recorded in the county where the real property to which the water right is appurtenant is located. See Margrave v. Dermody Properties,

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[5]In the past, Mineral County has asserted that the District has given it out of date lists of Walker River claimants in an attempt to frustrate its service of process efforts. This is not true. The District is organized under N.R.S. Chapter 539. Its records of land ownership are used for purposes of assessment under that Chapter. Irrigation district records and lists are not used for and are not intended to be used for determining title to a water right. Title to a water right is transferred by deed. Furthermore, until October 1, 1995, there was no requirement under Nevada law that an irrigation district even be informed of a transfer of title to a water right. That changed under the provisions of N.R.S. § 533.384(1)(b). Nevertheless, in the past the District periodically obtained deeds from the Lyon County, Nevada Recorder for purposes of updating its records for assessment purposes. That is an ongoing process and thus the District's records continually evolve as it receives deeds and is able to incorporate the information in the deeds into its records.

[6]For example, for whatever reason, in attempting to identify the Walker River Claimants, Mineral County proceeded under the belief that the District's boundaries encompass the entire Walker River system and as such the District possesses information on all Walker River Claimants. That is not the case and any information the District has concerning Walker River Claimants does not include the entire river system.



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110 Nev. 824, 828, 878 P.2d 291 (1994); N.R.S. § 533.382; Witherill v. Brehm, 240 P. 529, 532 (Cal. App. 1925). Therefore, it is abundantly clear, under Nevada and California law, that the offices of the county recorder of each county on the Walker River system contain the definitive list of Walker River Claimants. The records of other agencies may be useful in conjunction with or to ferret out the information contained at the relevant county recorder's office necessary to identify all Walker River Claimants. They are not, however, the definitive "list" of all Walker River Claimants.

The Walker River Claimants are not "unascertainable," however, great time and effort must be expended in conducting research and field investigations in the various counties through which the Walker River flows to identify them. Mineral County refuses to acknowledge this fact by claiming that the costs involved in conducting this research, costs it must incur to satisfy the due process rights of persons whose water rights it seeks to affect, would effectively eliminate its opportunity to intervene.

Finally, the Court has impliedly found that the Walker River Claimants are identifiable by ruling that it is Mineral County obligation "to determine who the proper defendants (i.e., competing water rights holders) are in its proposed action." Denial Order at 2.

## IV. THE NOTICE PROVISIONS CONTAINED IN THE NEVADA REVISED STATUTES GOVERNING GENERAL ADJUDICATIONS DO NOT APPLY TO SERVICE OF MINERAL COUNTY'S INTERVENTION DOCUMENTS

Mineral County asserts that N.R.S. §§ 533.090 through 533.320 governing service by publication in general adjudications provide a basis for granting the relief requested in the Publication Motion. Mineral County's attempted intervention in this matter, however, clearly does not involve an initial stream adjudication governed by Nevada water law. The adjudication of the waters of the Walker River ended in April of 1936 with this Court's entry of the Walker River Decree. Therefore, the notice provisions contained in N.R.S. §§ 533.090 through 533.320



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which contemplate several publications and certified mailings throughout the general adjudication process simply do not apply to Mineral County's service of its Intervention Documents.

## V. CONCLUSION

Mineral County has not complied with this Court's orders concerning service of its Intervention Documents or substantially served all Walker River Claimants. In addition, it is impossible for Mineral County to make the required showing under California and Nevada law to allow service by publication until it identifies those Walker River Claimants that have not been served. Mineral County has also failed to offer any evidence, including the exercise of diligence in locating unserved Walker River Claimants, as required by California and Nevada law before service by publication is authorized. Furthermore, the service by publication provisions found in N.R.S. §§ 533.090 through 533.320 do not apply to Mineral County's service of its Intervention Documents. Given these circumstances, the Court must deny the relief requested in the Publication Motion.

DATED this 10th day of March, 1997.

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By Dale E. Ferguson
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# Exhibit A

**WALKER RIVER IRRIGATION DISTRICT'S RESPONSES TO AFFIDAVIT OF KELVIN J. BUCHANAN FILED ON OR ABOUT MARCH 11, 1996**

Copies of returns of service provided to Woodburn and Wedge by The Copy Store and More for Philipp A. Williams, Joni Faith Williams and James Mattice were single pages only and did not include the second pages which indicated the method of service used by Mineral County to effect service on these individuals.

The paralegal who assisted in the preparation of the District's service table inadvertently read the returns of service for Calvin Baker, Carol Harris, Kenneth Orrin, G. L. Osborne and R. E. Osborne as indicating that service on these individuals had been effected by delivery to post office boxes.

Mineral County claims the same error was made in the District's service table with regard to Margaret Tibbals. The District agrees that service was not effected by delivery to a post office box, however, the return of service states that delivery was made to Sherron Cook on behalf of Als Family Trust.

Mineral County claims that James Costa was served. The return of service states that Jim Costa of Annett Ranch was served. The District's service table lists James P. Costa and Annett Ranch. Therefore, the District's table indicates that Jim Costa accepted service on behalf of Annett Ranch, and that no return of service form indicating that James P. Costa was individually served was filed by Mineral County.

Mineral County points out that Greenfield Development was served by personally serving Julie Day. The District initially listed Greenfield Development as not served. A telephone call to the Secretary of State's office revealed that Julie Day is listed as a manager, and the District therefore concedes that a return of service form was filed for Greenfield Development.

Mineral County claims that Snyder Livestock Company Co. was served because Eddie Snyder was personally served. The return of service form indicates that Eddie R. Snyder was served individually by leaving copies with Theresa Snyder. The District 's service table lists this as proper service for Eddie R. Snyder, individually. However, nowhere does Mineral County show that Eddie R. Snyder was served on behalf of Snyder Livestock Company, Inc. A telephone call to the Secretary of State's office revealed that Theresa Snyder is not listed as an officer or agent of that company capable of accepting service on its behalf.

Mineral County claims that Smith Ranch Partnership was served since Glenn H. Smith and Barbara Smith were served. The District's service table indicated that Glenn and Barbara Smith were served individually, therefore, the table should have indicated that service forms had been filed for Smith Ranch Partnership.

Mineral County claims that the Milton Bacon Trust was served. The District listed the Milton Bacon Trust as not served because service was effected by leaving copies with a ranch



EXHIBIT "A"

hand.

Mineral County also disputed the conclusions contained in the service table with respect to service on certain other trusts. Generally, when Mineral County filed a return of service form for a trust, the form indicated that an individual was served on behalf of the trust. Therefore, when a return of service form was filed without any indication that service was being effected on the trust, the District's table indicated that service had not been effected on the trust but instead upon the individual, if applicable.

Service on the following individuals is listed on the District's survey chart as questionable because service was effected by leaving copies with other individuals that may or may not have met the requirements under Rule 4 of the Federal Rules of Civil Procedure: Wilbert Angelo Aiazzi, Batjer Family Trust, Nadine Berrington, Leonard A. Fox Trust, Roger Larson, Eleanor Lommori, Joe Lommori, Gerald Menesini, Rene Menesini and Elvetia Merczak.

Mineral County claims that Alpers Ranch Co., Inc. was served through the owner's son-in-law, Don Jenkins. A telephone call to the Secretary of State's office revealed that Alpers Ranch Co., Inc. is not listed in any way in that office's computer, and the District therefore has no way of knowing if Don Jenkins is authorized to accept service on behalf of Alpers Ranch Co., Inc.

# Exhibit B

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 12 1997

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>WALKER RIVER IRRIGATION DISTRICT, a corporation; STATE OF NEVADA,<br><br>Defendants-Appellees.<br><br>v.<br><br>WALKER RIVER PAIUTE TRIBE,<br><br>Plaintiff-Intervenor-Appellant. | No. 96-15885<br><br>D.C. No. CV-73-00128-ECR<br><br>MEMORANDUM* |

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Jr., District Judge, Presiding

Argued and Submitted
February 10, 1997--San Francisco, California

Before: GOODWIN, LEAVY and THOMAS, Circuit Judges.

Mineral County, Nevada ("Mineral County" or "the County") appeals the district court's interlocutory order refusing to relieve it from its obligation to serve personally all parties whose interests could be affected by the rights its seeks in an intervention in an action dealing with water rights to the Walker River. We dismiss the appeal for lack of jurisdiction.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

EXHIBIT "B"

The Courts of Appeals generally have jurisdiction to review only "final decisions" of the district courts. 28 U.S.C. § 1291. The collateral order doctrine is a "practical construction" of this final decision rule under which certain orders that do not end the litigation on the merits are appealable on an interlocutory basis. See Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, __, 114 S. Ct. 1992, 1995, 128 L. Ed. 2d 842 (1994). The doctrine applies only to district court decisions that (1) are conclusive, (2) resolve important questions completely separate from the merits, and (3) would render such important questions effectively unreviewable on appeal from final judgment in the underlying action. Alaska v. United States, 64 F.3d 1352, 1354 (9th Cir. 1995) (quoting Digital Equip., 511 U.S. at __, 114 S. Ct. at 1995-96).

The district court's order requiring Mineral County to serve personally all the claimants to the Walker River satisfies none of these requirements. It is not conclusive because it is incomplete--it did not address Mineral County's suggestion that it be permitted to publish notice of its proposed intervention in accordance with Nevada law in lieu of further service of process, probably because the County never made a formal motion for such relief. See Cohen v. Beneficial Loan Corp., 337 U.S. 541, 546, 69 S. Ct. 1221, 1225-26, 93 L. Ed. 2d 1528 (1949) ("So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal."). With a properly supported motion for service by publication, the district court very well might grant Mineral County the relief it seeks. Indeed, this case could be a

particularly attractive candidate for service by publication at the appropriate time.

Nor is the order sufficiently important to warrant immediate review--it is not "weightier than the societal interests advanced by the ordinary operation of final judgment principles." Digital Equip. Corp., 511 U.S. at __, 114 S. Ct. at 2002. When service of process is complete and whether a plaintiff should be relieved of further service are questions dependent on the facts in a particular case and subject to the discretion of the district court judge. Under these circumstances, immediate review is inappropriate. See In re Kemble, 776 F.2d 802, 806 (9th Cir. 1985); Sobol v. Heckler Congressional Comm., 709 F.2d 129, 131 (1st Cir. 1983).

Finally, the order is not "effectively unreviewable" absent an immediate appeal. It does not "involve[] an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial." Lauro Lines s.r.l. v. Chasser, 490 U.S. 495, 498-99, 109 S. Ct. 1976, 1978, 104 L. Ed. 2d 548 (1989) (internal quotation marks omitted). See also Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 431, 105 S. Ct. 2757, 2761, 86 L. Ed. 2d 340 (1985) (the court must determine that absent an immediate appeal, the asserted right would be "irretrievably lost"). That an erroneous ruling may result in additional litigation expense "is not sufficient to set aside the finality requirement [of § 1291]." Id. at 499, 109 S. Ct. at 1978 (quoting Richardson-Merrell, 472 U.S. at 436, 105 S. Ct. at 2764). Further, the expense of personal service is hardly "irretrievably

lost" when it can be recovered from any party that refused to waive service without good cause, see Fed. R. Civ. P. 4(d)(2), despite the County's argument that recovering such costs would be "impractical."

Mineral County urges this Court to review the district court's order because compliance with the order is sufficiently burdensome to induce the County to abandon its attempted intervention, spelling the end of this action. This argument is premature, given that the district court has yet to rule on whether to permit publication of notice.

**DISMISSED**

# Exhibit C

| District | Off. | Docket No. Yr. | Number | OR | Filing Date Mo. | Day | Yr. | J | Nature Suit | R 23 | Judge | Mag. | Jury Dem. | ARB | MDL Docket | Docket Yr. | Number |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | | | | | C-125-C-ECR |



CAUSE:

PLAINTIFFS

UNITED STATES OF AMERICA,
PLAINTIFF

WALKER RIVER PAIUTE TRIBE,
INTERVENOR-PLAINTIFF

VS.

DEFENDANTS

WALKER RIVER IRRIGATION DISTRICT, et al.,
DEFENDANTS

RE: MINERAL COUNTY'S MOTION TO INTERVENE

APPEAL FLD 4-24-96 (# )
C/A# 96-15886

ATTORNEYS

SAME AS C-125-ECR

| ☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS | FILING FEES PAID | | | STATISTICAL REPORTS PROCESSED |
|---|---|---|---|---|
| | DATE | RECEIPT NUMBER | C.D. NUMBER | Filing |
| | | | | Termination |
| | | | | Change |

UNITED STATES DISTRICT COURT DOCKET

DC 111S (Rev. 7/85)

EXHIBIT "C"

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF | DEFENDANT | CV-N-73-128-ECR DOCKET NO. ~~C-125-C-ECR~~ |
|---|---|---|
| USA | WALKER RIVER IRRIGATION DISTRICT | PAGE 7 OF ___ PAGES |

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 2/1/96 | 61 | CERTIFICATE OF RETURN OF SERVICE re Mineral County's intervention docs purs to ct order (#48) (AT).csd |
| --- | 62 | MOTION to dispens w/svc of further pldgs obo Plaintiff-Interpleader, Mineral County (m)(AT).csd 66, 67, 74 |
| --- | 63 | NOTICE of motion for relief frm svc of process (#62) REQUEST for hearing obo P-Intervenor, Mineral County (m)(AT).csd 64, 66 74 |
| 2/20/96 | 64 | STIPULATION/ORDER (ECR): ORD WRID's responses to Mineral County's mtn to dispens w/svc of furth pldgs (#62) & notic of mtn/rqst for hrg (#63) due 2/27/96 (cps dist)(AT).csd |
| --- | 65 | AFFIDAVIT OF MAILING re stip/ord (#64) obo WRID (m)(AT).csd |
| --- | 66 | RESPONSE to Mineral County's mtn to dispens w/svc of pldgs & svc of process (#62) obo State of NV (m)(AT).csd |
| 2/27/96 | 67 | OPPOSITION to Mineral County's notic of mtn/mtn for relief frm svc of process & rqst for hrg (#63) & mtn to dispens w/svc of pldgs (#62) obo WRID (m)(AT).csd |
| --- | 68 | AFFIDAVIT OF MAILING re WRID's oppo to mtns (#62 & #63) (#67) obo WRID (AT).csd |
| 3/11/96 | 69 | REPLY in supprt of Mineral County's notic of mtn, mtn for relief rm svc of process & rqst for hrg (#63) & mtn to dispens w/svc of pldgs (#62) obo Mineral County (m)(AT).csd |
| 3/12/96 | -- | SUBD TO ECR: #62,#63,#64,#66,#67,#68,#69. csd |
| 3/15/96 | 70 | APPLICATION (EX-PARTE) to suspend sched concerning Mineral County's mtn to intervene (#2) obo WRID (m)(AT).csd 71, 72, 73 |
| --- | 71 | ORDER (ECR): ORD based on appilcatn (#70), responses to Mineral County's mtn to intervene (#2), responses to Mineral County's notic of mtn/mtn for relief frm svc of process & rqst for hrg (#63) & mtn to dispens w/svc of pldg (#62) shl be srvd either on date establishd in ord denying mtns (#62 & #63) or 30 days after entry of ord grntng mtns (#62 & #63); Reply shl be srvd 60 days aftr date set for svc of responses to Mineral County's mtn to interverne (#2) (cps dist)(AT).csd |
| 3/20/96 | 72 | RESPONSE to ex-parte applicatn (#70) to suspend sched concerning Mineral County's mtn to intervene (#2) obo Walker River Paiute Tribe (m)(AT).csd |
| 3/22/96 | 73 | STATEMENT in response to ex-parte applicatn to suspend sched concerning Mineral County's mtn to intervene (#70) obo USA (m)(AT).csd |

CONT'D TO PG. 8

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF | DEFENDANT | CV-N-73-128-ECR<br>DOCKET NO. ~~C-125-C-ECR~~ |
|---|---|---|
| USA | WALKER RIVER IRRIGATION DISTRICT | PAGE 8 OF ___ PAGES |

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 3/22/96 | 74 | MINUTE ORDER (ECR): ORD Mineral County's mtn to dispens w/svc of furth pldgs (#62) is denied (see ord for specs)(cps dist)(AT).csd (EOD 3/25/96) |
| 4/5/96 | 75 | MOTION to amend interlocutory order (#74) obo Mineral County (m)(AT).csd |
| 4/22/96 | 76 | OPPOSITION to Mineral County's mtn to amend interlocutory ord (#75) obo State of NV (m)(AT).csd |
| 4/23/96 | 77 | OPPOSITION to Mineral County's mtn to amend interlocutory ord (#75) obo WRID (m)(AT).csd |
| 4/24/96 | 78 | NOTICE OF APPEAL frm minute order (#74) obo P-Intervenor, Mineral County (AT).csd |
| 4/29/96 | 79 | TRANSMITTAL of notic of appeal (#78); **DC/CA fees paid**; transmittal of cert of record (cps dist)(AT).csd |
| 5/3/96 | 80 | REPLY in supprt of Mineral County's mtn to amend interlocutory order (#75) obo Mineral County (m)(AT).csd |
| 5/8/96 | -- | SUBD TO ECR: #74,#75,#76,#77,#80. csd |
| 5/10/96 | 81 | STATEMENT of evidenc or proceedings: agreed statmnt as to record on appeal obo Mineral County (m)(AT).csd (cpy to C/A) |
| --- | 82 | MINUTE ORDER (ECR): ORD mtn to amend interlocutory ord (#74) obo Mineral County (#75) is denied (see ord for specs)(cps dist)(AT).csd |
| 5/13/96 | -- | SUBD TO ECR: #22. csd |
| 5/16/96 | 83 | CERTIFICATE OF SERVICE re WRID's reply (#80) in supprt of mtn to amend interloc ord (#75) obo WRID (AT).csd |
| 5/20/96 | 84 | TRANSMITTAL (copy) of notic of appeal (#78) retn'd frm C/A with C/A #**96-15885**. (AT).csd |
| --- | 85 | RESPONSE to Mineral County's statmnt of evidenc or proceedngs (#81) obo WRID (m)(AT).csd |
| 5/29/96 | 86 | SUBSTITUTION OF ATTORNEYS/ORDER (ECR): ORD Bowman & Robinson subd in place/stead of Vargas & Bartlett as atty for U.S. Board of Water Commissioners (cps dist)(AT).csd |
| 8/7/96 | -- | SUBD TO ECR: #22,#48. csd |

**CONT'D TO PG. 9**

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF | DEFENDANT | CV-N-73-128-ECR<br>DOCKET NO. ~~C-125-C-ECR~~ |
|---|---|---|
| USA | WALKER RIVER IRRIGATION DISTRICT | PAGE 9 OF ____ PAGES |

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 1/9/97 | 87 | LETTER to C/A re transmittal of Clk's record in 6 vols on 1/9/97 by W.Julian (AT).csd |

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the law firm of WOODBURN AND WEDGE and that on this 10th day of March, 1997, I deposited for mailing at Reno, Nevada a true and correct copy of the foregoing document, to the following:

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