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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 **WALKER RIVER IRRIGATION DISTRICT'S REPLY IN SUPPORT OF MOTION TO REQUIRE MINERAL COUNTY TO IDENTIFY AND FILE A REPORT CONCERNING THE STATUS OF SERVICE ON EACH INDIVIDUAL WALKER RIVER CLAIMANT**

I. INTRODUCTION

In October of 1994, Mineral County filed documents with this Court in an attempt to intervene in the above-captioned lawsuit. Mineral County began service efforts with respect

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to those documents in Spring of 1995. Since that time, Mineral County has repeatedly asked the Court to relieve it of any further service obligations in this matter. Recently, Mineral County filed a Motion for Order of Publication asking the Court to enter an order allowing it to complete service through publication. Mineral County has completely failed, however, to make the necessary showing to this Court to support a grant of the relief it continues to request.

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: 1) identify the Claimants to the Waters of the Walker River and its tributaries (the "Walker River Claimants") that it proposes to assert claims against; and 2) 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.

Realizing that Mineral County must accomplish these tasks before its proposed intervention may possibly move forward, on March 10, 1997, the Walker River Irrigation District (the "District") filed a Motion to Require Mineral County to Identify and File a Report Concerning the Status of Service on Each Individual Walker River Claimant (the "Report Motion"). The Report Motion requests that the Court enter an order: 1) requiring Mineral County by a date certain to identify, by name, all Walker River Claimants against whom it seeks permission to assert the claims set forth in its proposed Amended Complaint in Intervention; 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 or entity it identifies as a 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.

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On or about March 19, 1997, Mineral County filed a Reply to Opposition to Motion and Opposition to Motion of WRID to Require Mineral County to Identify and File a Report Concerning the Status of Service on Each Individual Walker River Claimant (the "Report Opposition"). The content of the Report Opposition further illustrates and establishes the need for this Court to enter an order granting the relief requested by the District in the Report Motion.

II. THE COURT SHOULD REQUIRE MINERAL COUNTY TO FILE A REPORT CONCERNING THE STATUS OF SERVICE WITH RESPECT TO EACH INDIVIDUAL AND ENTITY LISTED IN ATTACHMENT NUMBER ONE TO THE REPORT OPPOSITION

Mineral County has attached an extensive list of names to the Report Opposition as Attachment 1 ("Attachment 1"). Mineral County identifies these names as the "list from the County Recorders of Deeds."[1] Report Opposition at 4. This list apparently names all Walker River Claimants against whom Mineral County seeks to assert the claims contained in its Amended Complaint in Intervention. At the present time, the District will assume that Attachment 1 comprises the list of individuals and entities that Mineral County seeks to assert claims against and must therefore serve with its Intervention Documents.[2]

Assuming arguendo that Attachment 1 contains the names of the individuals and entities that Mineral County alleges comprises all Walker River Claimants, the Court should

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[1]The District's review of the names contained in Attachment 1 revealed that several ditch companies within the District's boundaries which may hold title to water rights were not listed by Mineral County. The District notes that pursuant to N.R.S. § 533.387 transfers of water rights by these ditch companies may not appear in the records maintained at the county recorders' offices.

[2]The District does not concede that the list of names contained in Attachment 1 comprehensively identifies all Walker River Claimants. Furthermore, the District specifically reserves the right to file a motion in the future addressing any failure by Mineral County to join indispensable or necessary parties to this action.

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require Mineral County to file a report concerning the status of service of its Intervention Documents with respect to each.[3] The report should state whether service is complete or incomplete for each name listed in Attachment 1 and in the event service is incomplete, state the reason as to why service has not been effected. Until Mineral County submits this information, this Court cannot possibly enter an order relieving Mineral County of further service obligations or order the completion of service through publication.

III. MINERAL COUNTY HAS FAILED TO OFFER ANY AUTHORITY SUPPORTING ITS REQUEST FOR SERVICE BY PUBLICATION AND IN THE REPORT OPPOSITION ADMITS THAT IT HAS NOT SATISFIED THE REQUIREMENTS OF SERVICE BY PUBLICATION

The requirements under Nevada and California law that must be satisfied before a plaintiff may complete service through publication are set forth in detail at pages 6 - 7 of the Publication Opposition. In Nevada, a plaintiff must establish that 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." N.R.C.P. 4(e)(1)(i).

In the Report Opposition, Mineral County states the following:

> It is true that Mineral County has not alleged that the defendants live out of Nevada or have departed from Nevada. Mineral County cannot swear or affirm to facts of which it has no knowledge. Mineral County has not alleged that the defendants are concealing themselves in order to avoid service.

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[3]Relying in part on an affidavit filed in February of 1996, in the Report Opposition Mineral County states that it "has served the persons on the" list contained in Attachment 1. Report Opposition at 4. Numerous persons and entities listed in Attachment 1, however, were designated by the District as not having been served as a result of its service analysis conducted in February of 1996. See Attachment One to the Walker River Irrigation District's Opposition to Mineral County's Notice of Motion, Motion for Relief from Service of Process and Request for Hearing, and Motion to Dispense with Service of Pleadings (Docket No. 67). Furthermore, as explained at pages 5 and 6 of the Walker River Irrigation District's Opposition to Mineral County's Motion for Order of Publication (the "Publication Opposition"), Mineral County has done nothing further to complete service since February of 1996.

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> Mineral County does not have direct knowledge that potential defendants are concealing themselves in order to avoid service of process.

Report Opposition at 2. By these statements, Mineral County admits that is has not satisfied the requirements for service by publication or conducted the research necessary to make representations to the court that might enable it to enter an order authorizing the completion of service through publication.[4]

In the Report Opposition, Mineral County cites two cases in support of its request to complete service through publication. Neither case, however, even remotely addresses the issues before the Court concerning service by publication.

Desert Valley Water Co. v. State, 104 Nev. 718 (1988), involved the Nevada Supreme Court's interpretation of N.R.S. § 533.450(3). That section requires any person appealing from a decision of the Nevada State Engineer to serve their notice of appeal on "persons who may have been affected by such order or decision." The Nevada Supreme Court rejected an interpretation of this language that would have required an appellant to serve the notice of appeal on any party even "potentially" affected by the decision or order of the State Engineer appealed from. Id. at 720. The Desert Valley decision did not even remotely involve or address service of process by publication or otherwise.

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[4]In the Report Opposition, Mineral County once again makes completely unsupported and erroneous allegations concerning notices the District provided to its members and blames those notices for the failure of individuals and entities to return Waiver of Service forms. Report Opposition at 2. Issues involving the notices, and any alleged interference with Mineral County's service efforts resulting from the notices, were fully briefed by Mineral County in a motion requesting sanctions (Docket No. 31), and by the District in an opposition to Mineral County's motion for sanctions and an affidavit in support thereof (Docket Nos. 39, 40). This Court denied Mineral County's request for sanctions in an order filed on or about August 16, 1995 (Docket No. 44).

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United States v. Oregon Water Resources Dep't, 44 F.3d 758 (9th Cir. 1994) addressed several issues involving the mass adjudication of water rights in the Klamath River Basin in Oregon. For the most part, Oregon Water involved the issue of whether the State of Oregon, pursuant to the provisions of the McCarren Amendment (43 U.S.C. § 666), could compel the United States, Klamath Indian Tribe and certain other individuals to participate in the adjudication proceedings conducted pursuant to Oregon's statutory water law. Oregon Water did not involve service of process issues and is therefore irrelevant with respect to Mineral County's service of its Intervention Documents.

Finally, Mineral County asserts that this Court's order permitting notice through publication of the filing of the stipulation resolving the issues in the C-125-A litigation somehow supports its request for by publication. Report Opposition at 7. Mineral County alleges that the issues involved in the C-125-A litigation were "no different in kind or effect" than the issues raised by its proposed intervention. Id. This is simply not true.

The C-125-A proceedings involved questions concerning whether orders of the California State Water Resources Control Board were inconsistent with and interfered with the administration of the Walker River Decree. The only water rights affected by the stipulation terminating the C-125-A litigation were the District's storage rights in Bridgeport and Topaz Reservoirs. Nevertheless, because the stipulation amended the rules and regulations governing the administration of the Walker River Decree, the Court entered an order providing that notice of filing of the stipulation be accomplished through publication.

In contrast, through its proposed intervention Mineral County seeks to establish a water right senior to and in derogation of all water rights held by the Walker River Claimants. If Mineral County is successful in establishing this water right, the real property interests of all Walker River Claimants will be substantially impacted. Therefore, Mineral

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County cannot legitimately argue that issues surrounding its proposed intervention are "no different in kind or effect" than issues present in the C-125-A litigation. The issues are substantially different and this Court's order concerning publication of the C-125-A stipulation does not provide a basis for the Court to grant Mineral County's request to complete service through publication in this matter.

In summary, by its own admission Mineral County has failed to satisfy the requirements necessary for the Court to enter an order allowing it to complete service by publication. Mineral County has also failed to offer any authority supporting its request for an order allowing it to complete service by publication. Given these circumstances, the Court must deny the relief requested by Mineral County in the Publication Motion.

IV. CONCLUSION

Based on the foregoing, the District respectfully requests that the Court grant the relief requested in its Report Motion. The Court should require Mineral County by a date certain to identify, by name, each individual and entity it believes comprises the Walker River Claimants. If Mineral County believes the list of names in Attachment 1 to the Report Opposition correctly identifies the Walker River Claimants, the Court should require Mineral County to affirmatively state this position. In addition, the Court should require Mineral County by a date certain to file a report concerning the status of service of its Intervention Documents with respect to each individual or entity it identifies as a Walker River Claimant. In the event service is incomplete for a particular Walker River Claimant, Mineral County's

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report should state the reason as to why service has not been effected on that particular individual or entity.

DATED this 2nd day of April, 1997.

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law firm of WOODBURN AND WEDGE and that on this 2nd day of April, 1997, I deposited for mailing at Reno, Nevada a true and correct copy of the foregoing document, to the following:

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