ORIGINAL

GORDON H. DEPAOLI
Nevada State Bar 00195
DALE E. FERGUSON
Nevada State Bar 04986
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Post Office Box 2311
Reno, Nevada 89511
Telephone: (775) 688-3000

Attorneys for Defendant,
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, v. WALKER RIVER IRRIGATION DISTRICT, et al., Defendants.	In Equity No. C-125-ECR Subfile No. C-125-C **WALKER RIVER IRRIGATION DISTRICT'S OPPOSITION TO MINERAL COUNTY'S MOTION TO DISMISS AND ADD CERTAIN PARTIES STATUS REPORT**
MINERAL COUNTY, Proposed Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, et al., Proposed Defendants.	

374

I. Introduction.

On or about January 9, 2001, Mineral County filed a Motion to Dismiss and Add Certain Parties Status Report (the "Motion to Dismiss and Add"). The Motion to Dismiss and Add alleges that 101 persons must be dismissed, 73 persons added and 8 persons served through publication in this matter. It also alleges that "[d]ue diligence has been completed on those need [sic] to be served by publication." Motion to Dismiss and Add at 2.

II. The Court Must Deny Any Relief Requested By The Motion To Dismiss And Add Because It Does Not Identify The Defendants Mineral County Seeks To Dismiss Or Add Or Serve By Publication.

The Motion to Dismiss and Add completely fails to identify the proposed defendants that Mineral County now seeks to dismiss or add or serve through publication. It also fails to offer any documentation or other evidence in support of the relief requested. Under these circumstances, it is impossible for the Walker River Irrigation District (the "District") or any other party to respond to the Motion to Dismiss and Add. The Court, therefore, must deny any relief requested by the Motion to Dismiss and Add until, at a minimum, Mineral County identifies the defendants it seeks to dismiss or add and those it seeks to serve through publication and also provides the Court with supporting documentation. In addition, all parties including the District must be given an adequate opportunity to respond after Mineral County provides this identification and documentation with respect to its Motion to Dismiss and Add.

III. Status Report.

The Motion to Dismiss and Add also purports to be a "status report". Apparently, this is because the Motion to Dismiss and Add alleges that 954 persons have been served and service is out with respect to another 28 persons. Once again, the District is unable to address these allegations based on the information contained in the Motion to Dismiss and Add. The District, however, believes that it is important to inform the Court concerning the District's position as to the current status of this matter.

On April 3, 2000, the Court entered an Order Concerning Status of Service on Defendants. Docket No. 326. Among other things, that order listed the proposed defendants that Mineral County had properly served with respect to its Intervention Documents. It also

WOODBURN AND WEDGE
6100 Neil Road
Reno, Nevada 89511
Tel: (775) 688-3000

listed the proposed defendants that Mineral County had failed to serve, the proposed defendants that Mineral County intended to dismiss from the action and those whom it intended to serve through publication.

The Court also entered a scheduling order on April 3, 2000 (Docket No. 327), setting forth filing deadlines with respect to Mineral County's anticipated motions. That order stated the following:

> Mineral County shall file and serve all motions to dismiss and substitute proposed defendants on or before August 7, 2000; responses shall be filed and served on or before September 8, 2000; replies shall be filed and served on or before September 29, 2000.
>
> Information to supplement the record shall be filed and served on or before July 7, 2000; objections thereto shall be filed and served on or before August 7, 2000; responses thereto shall be filed and served on or before September 8, 2000; replies in support thereof shall be filed and served on or before September 29, 2000.
>
> Mineral County shall file and serve motions for permission to serve by publication any proposed defendants on or before October 31, 2000; responses thereto shall be filed and served on or before November 30, 2000; replies in support thereof shall be filed and served on or before December 22, 2000.

A. Status Concerning Dismissal and Substitution.

On or about August 8, 2000, Mineral County filed a *Motion to Dismiss and Substitute Proper Parties*. Docket No. 354. That motion requested that the court dismiss and substitute several parties and stated that "more substitutions may be required" in the future.

On September 8, 2000, the District filed *the Walker River Irrigation District's Response to Mineral County's Motion to Dismiss and Substitute Proper Parties*. Docket No. 358. The District's response individually addressed the defendants Mineral County seeks to dismiss and substitute as set forth in its *Motion to Dismiss and Substitute Proper Parties*. The District's response also pointed out that Mineral County's August 8, 2000 motion failed to address 13 proposed defendants that were listed in the April 3, 2000 order as defendants for which Mineral County intended to file a motion to dismiss or substitute.

On or about September 28, 2000, Mineral County filed its *Reply to Response Motion to Dismiss and Substitute Proper Parties*. Docket No. 361. Mineral County's reply responded to

WOODBURN AND WEDGE
6100 Neil Road
Reno, Nevada 89511
Tel: (775) 688-3000

the District's comments as set forth in its September 8, 2000 response. Mineral County's *Motion to Dismiss and Substitute Proper Parties* (Docket No. 354) now appears to be fully briefed by the parties and ready for decision by the Court.

B. Status Concerning Supplementation of the Record by Mineral County.

The April 3, 2000 order required Mineral County to file and serve all information to supplement the record with respect to its service efforts on or before July 7, 2000. Mineral County filed nothing in this regard on or before July 7, 2000, however, it has filed additional Return of Service forms and other documentation as follows:

1. Several Return of Service forms and other documents attached to a *Request for an Extension of Time in which to Complete Service* (the "Request") filed by Mineral County on or about October 20, 2000 (Docket No. 363)
2. *Certificates of Returns of Service, Waivers of Service, and Attempts to Locate*, filed by Mineral County on or about November 15, 2000 (Docket No. 370);

By order dated October 27, 2000 (Docket No. 364), the Court granted Mineral County until December 26, 2000, in order "to complete the service and file its motions with the Court." In addition, the District filed the *Walker River Irrigation District's Response to Mineral County's Request for an Extension of Time in which to Complete Service* on November 7, 2000. Docket No. 368. The District's response to the Request informed the Court that the District will respond to the information attached to the Request after December 26, 2000 (the new deadline set by the Court in its October 27, 2000 order) or at another appropriate time in the future.

WOODBURN AND WEDGE
6100 Neil Road
Reno, Nevada 89511
Tel: (775) 688-3000

C. Status Concerning Service by Publication.

Mineral County has filed no motions for permission to serve by publication as set forth in the April 3, 2000 order as may have been amended by the Court's October 27, 2000 order.

Dated this 26th day of January, 2001.

WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Post Office Box 2311
Reno, Nevada 89511

By: Dale E. Ferguson
GORDON H. DEPAOLI
Nevada State Bar 00195
DALE E. FERGUSON
Nevada State Bar 04986

Attorneys for WALKER RIVER IRRIGATION DISTRICT

C:\WP\WRID\0083\Opposition to MC's Motion to Dismiss.doc

CERTIFICATE OF MAILING

I certify that I am an employee of Woodburn and Wedge and that on this date, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing ***WALKER RIVER IRRIGATION DISTRICT'S OPPOSITION TO MINERAL COUNTY'S MOTION TO DISMISS AND ADD CERTAIN PARTIES STATUS REPORT*** in an envelope addressed to:

Shirley A. Smith
Assistant U.S. Attorney
100 West Liberty Street, #600
Reno, NV 89509

George Benesch
P.O. Box 3498
Reno, NV 89505

Ken Spooner
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

Garry Stone
United States District Court Water Master
290 South Arlington Avenue
Third Floor
Reno, NV 89501

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

Sharon E. Claassen
P.O. Box 209
Carson City, CA 89702

Richard R. Greenfield
Department of the Interior
Two North Central Avenue, #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

Alice E. Walker
Greene, Meyer & McElroy
1007 Pearl Street, Suite 220
Boulder, CO 80302

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

Ross E. de Lipkau
Marshall, Hill, Cassas & de Lipkau
P.O. Box 2790
Reno, NV 89505

WOODBURN AND WEDGE
6100 Neil Road
Reno, Nevada 89511
Tel: (775) 688-3000

Susan L. Schneider
Indian Resources Section
U.S. Department of Justice
999 18th Street
Suite 945, North Tower
Denver, CO 80202

Marta Adams
Deputy Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

Mary Hackenbracht
Deputy Attorney general
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

James Spoo
Treva J. Hearne
Zeh, Spoo & Hearne
575 Forest Service
Reno, NV 89509

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

James Clear
United States Department of Justice
Natural Resources Division
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044

William Hvidsten
Decuir & Somach
400 Capitol Mall, Suite 1900
Sacramento, CA 95814

Linda Bowman
540 Hammill Lane
Reno, NV 89511

Michael W. Neville
California Attorney General's Office
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102-3664

Dated this 26th day of January, 2001.

Holly C. Deuker

C:\WP\WRID\0083\Opposition to MC's Motion to Dismiss.doc

WOODBURN AND WEDGE
6100 Neil Road
Reno, Nevada 89511
Tel: (775) 688-3000