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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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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** **RESPONSE TO REQUEST FOR STATUS CONFERENCE** #387
MINERAL COUNTY, Proposed-Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al. Proposed Defendants.	

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COMES NOW, Mineral County, Nevada, responds to the Walker River Irrigation District's Request for Status Conference. Mineral County, Nevada, has no objection to a status conference regarding its service of process on parties in this proceeding, but Mineral County states arguments regarding the incongruity of the basis for WRID's request for status conference as follows:

RESPONSE

Mineral County, Nevada, has indeed been in the active process of service of its papers in this matter since 1995. The Court has directed Mineral County to shoulder an incredibly burdensome and costly task in order for it to make its case to this Court of equity regarding the impending death of the natural wonder that is Walker Lake.

Mineral County, Nevada, whose annual expenditures for the year ending June 30, 2000 were $4,755, 727.00 has spent more than $100,000.00 in making this service of process. Over one hundred volunteers have donated their time in addition to the sums expended to employ process servers, marshals, and sheriffs over the entire United States of America, in order to make service on holders of water rights in the Walker River. Nearly 2000 persons have been personally served. The Court has held numerous hearings, one that lasted an entire day. This type of personal service for a water adjudication is both unheard of and considerable in its breadth. In the State of New Mexico, for example, the federal district court determined that the water rights holders could be added as their identity became known until the New Mexico Court had approved a plan to survey the water course. See, *U.S. v. Bluewater-Toltec Irrigation District,* 580 F.Supp. 1434, 1438 (D.New Mexico 1984). order to determine if a water right is being challenged. See, The holders of water rights

in the Walker River have been given notice far and above any other State's requirement and far and above the requirement of this State if the challenge were being handled by the State Engineer. See, NRS, 533.095.

The hostility to the service of process grew by degree as Walker River Irrigation District continued to complain about aspects of the service and Mineral County was required to serve persons multiple times. Guard dogs were let lose on the process servers, one process server was intentionally trapped in a driveway and had to call for police assistance and, in Los Angeles, a process server had to run several blocks in order to make personal service on a party by chase. Mineral County has serious concerns over continued service of process in this hostile environment precipitated by the newsletters of Walker River Irrigation District and Walker River Users Group in 1995 which made allegations of water theft by Mineral County. (See, Brief of Mineral County, Affidavit of Louis Thompson, August 1995)

Now, those same persons will again be served by the United States of America since it is now, after over seven years, only making preparation to begin its service of process on those same people. Certainly, Mineral County can make its service papers available to the United States and the Tribe and any person not served with the pleadings of Mineral County could also be served with Mineral County pleadings simultaneously to avoid any further harassment of the Walker River water rights holders. This was the original plan for Mineral County until the United States took so very long to begin its service of process.

As Mineral County has briefed on numerous occasions, the pleadings are adequate to give notice to the parties of the action contemplated no matter the complaints of WRID regarding paper. As Mineral County has briefed previously, even if the documents are

slightly defective, if adequate notice is given that an action has been filed, then service is complete. Mineral County had to rely upon marshals, process servers and sheriffs and documents were forwarded but not always served. As Mineral County has briefed on this issue before, the courts have generally held that the pleadings served must give sufficient notice.

> It has long been settled that statutory provisions shall be liberally construed to promote their objective. . . .It is accepted that mere irregularities in the form of process do not render it void where such defective process is sufficient to advise the defendant of the nature of the case, the court in which it is filed, and his interest therein.. . .

Nikwei v. Ross School of Aviation, Inc., 822 F.2d 939, 944 (10th Cir. 1987) and the same issue was decided by the 9th Circuit and remains good law since the brief was filed in 1996.

> Our interpretation of Rule 4(c)(2)(C)(ii) fulfills the goals of Rule 4, which was designed to provide maximum freedom and flexibility in the procedures for giving all defendants. . . notice of commencement of the action and to eliminate unnecessary technicality in connection with service of process. 4 C. Wright and A. Miller, Federal Practice and Procedure, Section 1061, at 216 (2d ed. 1987).

Electrical Specialty Company v. Road and Ranch Supply, Inc., 967 F.2d 309, 314 (9th Cir. 1992).

Mineral County has always believed that when a briefing schedule is determined, that the parties ought to be informed by means of letter, publication or both. Moreover, there is no reason for Mineral County's intervention to wait for the final service of process on the final party to this action. If the Court desires Mineral County to continue to serve those persons who acquire water rights, Mineral County agrees to do that. There may be still

approximately 20 persons that need service.(See, Motion to Join and Dismiss Certain Parties of Mineral County and Responses of Walker River Irrigation District and Watermaster.) Over 1500 have been served and will adequately represent the issues in this case. The merits of Mineral County's intervention should be set for hearing on the merits and the parties will continue to be served until the waters are surveyed just as approved in the New Mexico case cited herein above.

As stated by the Court itself, Mineral County has made a heroic effort in completing service and complying with the Court's directives. Mineral County's request for intervention should be set for briefing and hearing immediately. Mineral County has served well over 2000 parties and will agree to continue to serve parties as they are identified by the Court through the process with the United States of America.

WHEREFORE, Mineral County, Nevada, respectfully agrees to a status conference 1) for the purpose of ascertaining how service will continue, if necessary and 2) for the purpose of setting the briefing schedule and hearing on the merits of the Motion to Intervene by Mineral County and its preliminary injunction.

Dated this 5th day of October, 2001.

ZEH, SAINT-AUBIN, SPOO & HEARNE

By: _____
TREVA J. HEARNE, ESQ.

PROOF OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of ZEH, SAINT-AUBIN, SPOO & HEARNE, 575 Forest Street, Suite 200, Reno, Nevada; over the age of eighteen years and not a party to the within action; that on this date, I deposited for mailing in the United States Mail, at Reno, Nevada, postage thereon fully prepaid, a true and correct copy of the *Response to Request for Status Conference*, addressed as follows:

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Dated this 5th of October, 2001.

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