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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, v. WALKER RIVER IRRIGATION DISTRICT, et al., Defendants.	In Equity No. C-125-ECR Subfile No. C-125-C **WALKER RIVER IRRIGATION DISTRICT'S RESPONSE TO REQUEST TO LATE FILE AND REQUEST FOR MODIFIED SERVICE ORDER**
MINERAL COUNTY, Proposed Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, et al., Proposed Defendants.	

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I. INTRODUCTION

By Order dated May 3, 2002, the Court directed Mineral County to file a motion to effect service through publication by June 16, 2002. (See Docket #413). That order also required the parties to file responses to Mineral's County's motion for publication within thirty (30) days after the filing of that motion.

Mineral County served its *Motion for Order of Publication (Fifth Request)* on June 19, 2002. Therefore, the Walker River Irrigation District (the "District") will file its response to the *Motion for Order of Publication (Fifth Request)* on or before July 19, 2002.

Also on June 19, 2002, Mineral County filed a pleading styled *Request to Late File and Request for Modified Service Order* (the "Request"). The Request moves the Court to grant Mineral County three items of relief.

First, the Request moves the Court to accept Mineral County's filing of the *Motion for Order of Publication (Fifth Request)* two days later than required by the Court's order of May 3, 2002 (Docket No. 413). The District has no objection to this request.

Second, the Request moves the Court to make a determination that Mineral County's service of its Intervention Documents is complete. The District objects to this request as set forth below.

Third, the Request apparently moves the Court to allow Mineral County to serve its intervention documents on new parties identified as holding water rights without first obtaining leave of Court to add or substitute these new parties into the action. The District responds to this request as set forth below.

II. MINERAL COUNTY HAS NOT YET COMPLETED SERVICE OF ITS INTERVENTION DOCUMENTS ON NUMEROUS IDENTIFIED PARTIES.

In the Request, Mineral County requests that "the Court determine that Mineral County's service is complete." Request at 3, lns. 17-19. Mineral County, however, has not completed service of its intervention documents on numerous identified parties in this matter.

On June 18, 2002, the Court entered an order in this matter as Docket No. 414. That order stated that Mineral County has either failed to properly serve its Intervention

Documents or the information contained in the record in this matter does not establish proper service with respect to approximately 84 parties. See Docket No. 414 at 5, 6. Mineral County has filed nothing since the Court's entry of the June 18, 2002, order to indicate that the status of service has changed with respect to these approximately 84 parties. Clearly, under these circumstances, Mineral County's service cannot be considered complete. The Court should deny Mineral County's request that service of its Intervention Documents be deemed complete.

III. THE COURT SHOULD DENY MINERAL COUNTY'S REQUEST TO SERVE PARTIES WITHOUT THEIR FIRST HAVING BEEN ADDED OR SUBSTITUTED INTO THIS ACTION OR, ALTERNATIELY, IF IT GRANTS THE REQUESTED RELIEF IT SHOULD REQUIRE MINERAL COUNTY TO FORMALLY ADD OR SUBSTITUTE THESE PARTIES AS SOON AS POSSIBLE AFTER SERVICE.

In the Request, Mineral County also asks the Court to allow it to serve parties, recently and in the future identified as holding water rights, without first obtaining leave of Court to add or substitute these parties into the action. To avoid confusion caused by service on defendants not identified in the caption, Mineral County also requests that the list of proposed defendants in the caption be abbreviated to "et al." *See* Request at 4, lns. 3 – 7.

Mineral County's proposal to serve parties prior to their having been added or substituted into the action violates both Rules 4 and 10 of the Rules of Federal Procedure. Rule 4(a) requires a summons, in this case the Notice In Lieu of Summons, to identify the parties. Rule 10(a) requires that "[i]n the complaint the title of the action shall include the names of all the parties." These requirements ensure that the defendant has sufficient notice that the plaintiff's claims are against him and that he must respond to those claims to avoid the entry of judgment by default. Therefore, the Court should not allow Mineral County to serve parties without first obtaining leave of court to substitute or add them, and it should not allow Mineral County to abbreviate the caption to read "et al." *See Feliciano v. Dubois*, 846 F.Supp. 1033 at 1048 (D.Mass. 1994) (plaintiffs may not use the term "et al." but must instead specifically identify in the caption of the complaint each defendant against whom relief is sought).

Finally, in the event that the Court does allow Mineral County to serve parties without first substituting or adding them, it should require that Mineral County obtain an order of the Court that adds or substitutes these parties as soon as possible after service occurs. If the Court does not require Mineral County to obtain an order of this nature, parties will be substituted or added into this action by Mineral County without the Court, District or any other party having knowledge of the substitution or addition.[1]

Dated this 8th day of July, 2002.

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[1] Similarly, at the May 3, 2002 Status Conference, the Court ruled that Mineral County may not unilaterally add parties to the Caption without leave of Court because it would result in total chaos.

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 RESPONSE TO REQUEST TO LATE FILE AND REQUEST FOR MODIFIED SERVICE ORDER** in an envelope addressed to:

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Dated this 8th day of July, 2002.

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