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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** **REPLY TO RESPONSE TO MOTION FOR ORDER OF PUBLICATION (FIFTH REQUEST)**
MINERAL COUNTY, Proposed-Plaintiff-Intervenor, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al. Proposed-Defendants	

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I.

THE HISTORY OF THIS CASE PUTS IN PERSPECTIVE

THE COURT'S EARLIER ORDER

On February 12, 1997, the Ninth Circuit Court of Appeals dismissed Mineral County's request to be relieved from service of process on individuals that held water rights in the Walker River. By that time, Mineral County had served approximately 407 persons with personal service. Mineral County did not believe that the cost and time involved in continuing to serve individuals was reasonable. Both the lower court and the 9th Circuit disagreed, however, the Court offered the opinion that: "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." See, Order of the 9th Circuit Court of Appeals, 2/12/97, Case No. 96-15885, page 2,3.

Circumstances are entirely different than in 1997. Mineral County has made more than 2000 services on individuals and entities. Mineral County has spent nearly five years since that date searching for persons and entities. Mineral County has discovered and could produce evidence that the only way to find persons not found earlier is by detective work in the field, by contact with the Sheriffs of the various counties, by contacting relatives and by information provided by the Walker River Irrigation District. The Court suggested means by which persons could be found but those means simply did not work. Mineral County spent many days at the offices of the County Recorder of both Mono County and Lyon County as indicated by the filings in this matter previously. The information from those

sources assisted Mineral County in finding persons if the deeds had been recorded, but if not, the information was not available. Mineral County found absolutely no information from the Office of the State Engineer in Carson City. The fastest and most efficient means of finding any person or entity was to contact relatives on the telephone if they were found by the sheriff.

Mineral County has spent many hours, many dollars and accomplished nearly all of the service required by the Court. Mineral County can never accomplish every last bit of service of process in this matter. As the Court has experienced, the situation changes too often and the process of serving individuals and entities is too cumbersome and slow to ever result in perfect service.

II.

TIME HAS RESULTED IN A SUBSTANTIAL COMPLETION OF SERVICE AND MINERAL COUNTY SHOULD BE ALLOWED TO ARGUE ITS INTERVENTION ON THE MERITS

Mineral County has substantially completed service. Of the over 1200 serves, the approximately 1000 persons and entities on the caption, only fifty-five service papers are outstanding and Mineral County requests publication on a mere 18 persons. However, as this matter is debated and pleadings are filed, Mineral County is certain that the persons who should be served by publication has changed. That is why the publication should not name individuals but should be to all persons with an interest in water rights in the Walker River including but not limited to certain individuals and unnamed parties.

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Without reference to the fact that Mineral County was able to locate a substantial majority of the persons to be served, the fact that so few cannot be found is support for the due diligence of Mineral County. Mineral County has repeatedly requested that Walker River Irrigation District provide any information it has on the location of these entities. Walker River Irrigation District does not argue that these persons are available for service because no information is available to it either regarding these persons.

The Court in its Order of June 13, 1997, provided that if Mineral County wanted a modification of the terms of the Order allowing publication, then it had to do so by Motion. Mineral County, thus, has requested by its Motion for Publication that the documents to be published be reduced. Mineral County is not at this time pursuing the Motion for Preliminary Injunction. Publishing that would serve no purpose other than to burden the treasury of Mineral County. The matter presently before the Court to be set for hearing is the intervention of Mineral County. The Notice in lieu of summons gives reasonable notice to any party of the proposed intervention of Mineral County in this litigation. See, *Electrical Specialty Company v. Road and Ranch Supply, Inc.*, 967 F.2d 309 (9th Cir. 1992). The Court of appeals interpreted the sufficiency of process flexibly and noted that the most important notice is the claim of the litigant giving the notice and the notice of the commencement of the action.

III.

MINERAL COUNTY HAS EXERCISED DUE DILIGENCE IN ALL STATES

Mineral County has never recited that just because someone left the State of Nevada that the search was complete. Mineral County has searched and found and served persons

in at least 15 different states. If Mineral County had an address, the service was sent to the process server to be found. For WRID to allege that Mineral County was not applying California law to those persons to be served in California is simply incorrect. Mineral County applied the principles of California law to Nevada water rights holders and did not let the simple fact of State lines deter the search if it was possible.

Mineral County has searched all the sources that the Court directed it to use. Mineral County could fill the courthouse with the information now requested by WRID regarding the times, dates, and persons contacted. Although much of this information has been filed in this matter during the course of these proceedings, to file it again would be duplicative and time consuming. The service in this matter has been long and burdensome and must be viewed in light of the task required. The information requested by WRID is superfluous and duplicative of the earlier filings by Mineral County.

The one condition that Mineral County has repeatedly offered cures all of the defects or omissions. As the United States of America completes its service, Mineral County will continue to serve its papers on persons who hold surface water rights in the Walker River and who have not been served by Mineral County to the present. This process would cure any possible omission. Mineral County has the right to be heard on its intervention and the service must be declared as complete.

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WHEREFORE, Mineral County, Nevada, respectfully requests that the Court declare its service complete, that the Court allow it to serve by publication all persons requested in its Motion, and that the request for intervention be set for hearing, and, finally, that the Court order Mineral County to serve any persons holding surface water rights in the Walker River identified by the United States of America not yet served by Mineral County.

DATED this 30th day of July, 2002.

ZEH, SAINT-AUBIN, SPOO & HEARNE

By: _____
TREVA J. HEARNE, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of ZEH, SAINT-AUBIN, SPOO & HEARNE, 575 Forest Street, Suite 200, Reno, Nevada; over the age eighteen years and not a party to the within action; that on this date I caused to be mailed via U.S. Mail, a true and correct copy of the foregoing *Reply to Response to Motion For Order Of Publication,* addressed as follows:

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Dated this 30th of July, 2002.

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