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 Subproceeding C-125-C **JOINT BRIEF OF THE WALKER RIVER PAIUTE TRIBE AND THE UNITED STATES OF AMERICA REGARDING SERVICE OF PROCESS BY MINERAL COUNTY**

Scott B. McElroy
Alice E. Walker
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302
303/442-2021

Kelly R. Chase
P.O. Box 2800
Minden, Nevada 89423
702/782-5110

Attorneys for the WALKER RIVER PAIUTE TRIBE

Kathryn E. Landreth
United States Attorney
100 West Liberty St., Suite 600
Reno, Nevada 89509
702/784-5439

John P. Lange
Dept. of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, Colorado 80202
303/312-7312

Attorneys for the UNITED STATES OF AMERICA

1146.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Scott B. McElroy
Alice E. Walker
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302
303/442-2021

Kelly R. Chase
P.O. Box 2800
Minden, Nevada 89423
702/782-5110

Attorneys for the WALKER RIVER PAIUTE TRIBE

Kathryn E. Landreth
United States Attorney
100 West Liberty St., Suite 600
Reno, Nevada 89509
702/784-5439

John P. Lange
Dept. of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, Colorado 80202
303/312-7312

Attorneys for the UNITED STATES OF AMERICA

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 Subproceeding C-125-C **JOINT BRIEF OF THE WALKER RIVER PAIUTE TRIBE AND THE UNITED STATES OF AMERICA REGARDING SERVICE OF PROCESS BY MINERAL COUNTY**

I. INTRODUCTION

Pursuant to the *Minutes of the Court* (Aug. 14, 1997), and the *Minutes of the Court* (Aug. 22, 1997), the Walker River Paiute Tribe ("Tribe") and the United States file this brief addressing the issue of service of process by Mineral County in its attempt to intervene in these proceedings.

The Tribe and the United States do not object to Mineral County's completion of

service by publication. Indeed, the Tribe and the United States do not join the present dispute between Mineral County and the Walker River Irrigation District ("WRID"), revolving around whether Mineral County should be attempting service in Nevada and California at this time. See Part II, infra.

Nevertheless, it does not appear to the Tribe and the United States that the documents in the record demonstrate that Mineral County has complied with the Nevada rule for serving all identified and locatable Walker River water rights holders and claimants. Accordingly, the purpose of the present evidentiary hearing is to allow Mineral County to establish an adequate record under NEV. R. CIV. P. 4(e)(1) that it has satisfied the Due Process requirements for service. A complete record regarding the adequacy of service is required so that the future efforts of the parties and the Court are not undermined by challenges based on deficient service. In sum, the issue before the Magistrate is whether Mineral County has complied with NEV. R. CIV. P. 4(e)(1) for those Walker River water rights holders and claimants who are identified and locatable but Mineral County has not served.

Because of potential challenges to the Court's jurisdiction based upon inadequate service, the Tribe and the United States present the following recommendations for completion of service either prior to or concurrently with service by publication. By taking all reasonable steps to insure that all Walker River water rights holders and claimants receive constitutionally sufficient notice, the parties to these proceedings may move more quickly and efficiently to address the merits of Mineral County's motion to intervene, without addressing tangential service issues.

II. BACKGROUND

Mineral County has sought to intervene in these proceedings since October of 1994.

Mineral County's Proposed Petition to Intervene (Oct. 21, 1994). The Court held that Mineral County could not attempt to intervene in these proceedings without first serving all Walker River water rights holders, including "any subsequent appropriators against whom a claim is to be made by the proposed intervenor and who are named as defendants in the complaint of the proposed intervenor and served with process." *Minutes of the Court* at 2 (Jan. 3, 1995). The Court ordered Mineral County to personally serve on all potential claimants to the waters of Walker River its "Intervention Documents." *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County* at 2 (Feb. 9, 1995).[1]

Mineral County moved for an order allowing it to complete service by publication, which the Court denied. *Minutes of the Court* at 2 (Mar. 22, 1996). Mineral County appealed the Court's denial to the Ninth Circuit, which, while dismissing the appeal, observed in dicta that Mineral County's intervention attempt appeared to be a "particularly attractive candidate for service by publication at the appropriate time." *Memorandum* at 2-3, United States v. Walker River Irr. Dist., No. 96-15885 (9th Cir. Feb. 12, 1997). Subsequently, the Court, noting the Ninth Circuit's dicta, granted a second motion filed by Mineral County to complete service by publication. *Minutes of the Court* at 4 (Apr. 1, 1997).

However, in response to Mineral County's second publication motion, the parties to these proceedings raised various concerns regarding whether Mineral County properly had

---

[1]The Intervention Documents consisted of: "(a) [Mineral County's] revised motion to intervene; (b) its revised points and authorities in support thereof; (c) a revised proposed complaint-in-intervention which clarifies the basis for Mineral County's claims to water from the Walker River for Walker Lake and which identifies the persons or entities against whom such claims are proposed to be asserted; and (d) any motion for preliminary injunction, supporting points and authorities and any other supporting documents which Mineral County may choose to file." *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County* at 2 (Feb. 9, 1995).

served all known and locatable claimants to the waters of the Walker River. See, e.g., *Walker River Irrigation District's Points and Authorities in Support of Motion to Clarify and Amend Order of the Court Dated April 1, 1997, to Amend Order of the Court Dated February 10, 1995, Response to Mineral County's Request for Order Approving Documents for Publication of Service and Request for Scheduling Conference* (May 13, 1997); *Response of the Walker River Paiute Tribe to Mineral County's Request for Order Approving Documents for Publication of Service and Motion to Amend Court's Publication Order* (June 12, 1997); *Notice of Motion and Motion to Dismiss or in Lieu Thereof to Quash Service of Summons* (June 5, 1997). Pursuant to the parties' request for a scheduling conference, *Stipulation for Scheduling Conference* (July 8, 1997), the Court heard argument on service by publication and determined that the issue whether "Mineral County, has in fact made proper service upon all identified holders of Walker River water rights . . . ," is a threshold issue that must be resolved at an evidentiary hearing prior to allowing service by publication and prior to refining the parameters of such service by publication. *Minutes of the Court* at 1-2 (Aug. 14, 1997).

Since the time the Court entered its *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County* (Feb. 9, 1995), which required Mineral County to serve its Intervention Documents, see supra at n.1, the parties have stipulated, and the Court has agreed, that instead of serving the Intervention Documents, Mineral County should serve a Notice in Lieu of Summons, its revised proposed complaint-in-intervention, and its motion for preliminary injunction and supporting memorandum of points and authorities. *Stipulation for Scheduling Conference* ¶ 3(a) at 5 (July 8, 1997); *Minutes of the Court* at 2 (Aug. 14, 1997). The parties also stipulated that no one should file a response to Mineral County's complaint in intervention or its motion for preliminary injunction until the

Court issues a decision on Mineral County's motion to intervene and sets a schedule for submission of responses to Mineral County's complaint in intervention and motion for preliminary injunction. *Stipulation for Scheduling Conference* ¶ 3(b) at 5 (July 8, 1997).

As the Tribe and the United States understand Mineral County's position, on the one hand it admits that there are 351 identified water right holders who have not been served but contends that those water right holders may be served by publication under the Nevada rule. See *Reply to WRID'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* at 5 (Mar. 11, 1996); *Response to Walker River Irrigation District's Motion to Clarify and Amend Order of the Court Dated April 1, 1997 to Amend Order of the Court Dated February 10, 1995; Reply to Walker River Irrigation District's Response to Mineral County's Request for Order Approving Documents for Publication of Service, and Agreement to Request for Scheduling Conference* at 1-2 (May 23, 1997). Yet, on the other hand, Mineral County has recently stated that, "[w]e have finished the service on California appurtenant water rights holders, we finished the service on Nevada water rights holders in February 1996." Letter from Treva J. Hearne to Gordon H. DePaoli at 2 (Sept. 8, 1997) (attached hereto as Attachment 1). Moreover, it appears that Mineral County has attempted to serve Walker River water rights holders and claimants who WRID claims received questionable service. See Letter from Gordon H. DePaoli to Treva J. Hearne and James L. Spoo at 1 (Sept. 2, 1997) ("Mineral County is currently attempting service of certain documents on individuals located in Mason Valley, Nevada.") (attached hereto as Attachment 2); Letter from Treva J. Hearne to Gordon H. DePaoli (Sept. 2, 1997) (there are 20 identified and unserved individuals who

"Mineral County believed that, if personally served, would absolutely resolve all arguments regarding service for California appurtenant water rights holders.") (attached hereto as Attachment 3).

WRID alleges that Mineral County has not served 498 identified individuals. *Reply in Support of Walker River Irrigation District's Motion to Clarify and Amend Order of the Court dated April 1, 1997 and to Amend Order of the Court dated February 10, 1995, Exhibit A, List of Identified and Unserved Walker River Claimants* (June 12, 1997). WRID, the Tribe and the United States are concerned that it is unclear whether returns of service are on file with the Court. See, e.g., Letter from Gordon H. DePaoli to Treva J. Hearne at 2 (Sept. 8, 1997) ("no service form was on file with the Court . . . ." for 498 individuals) (attached hereto as Attachment 4). In other words, despite Mineral County's claim that it has completed service in California and Nevada, it is questionable whether there is evidence in the record demonstrating this.

Because of the seemingly incongruous positions of Mineral County, and because it is unclear whether there is evidence in the record proving that service has in fact occurred, the instant evidentiary proceeding is necessary to determine whether Mineral County has in fact served all identified and locatable Walker River water rights holders and claimants.

III. SERVICE BY PUBLICATION ALONE MAY BE INADEQUATE

As stated above, there is a question whether Mineral County has completed service upon all identified and locatable Walker River water rights holders and claimants since there appears to be a question about whether the returns of service in the record indicate that service is complete, and it does not appear from the record in these proceedings that Mineral County has taken all reasonable steps to comply with NEV. R. CIV. P. 4(e)(1) to serve all Walker

River water rights holders and claimants. Where one form of serving notice proves unsuccessful, Mineral County should employ other reasonable means before resorting to publication alone since the latter may result in multitudinous challenges to the Court's jurisdiction and detract from resolution of the issue whether Mineral County is entitled to intervene in these proceedings.

A. DUE PROCESS, THE FEDERAL RULE AND THE NEVADA RULE REQUIRE ADEQUATE NOTICE TO ALL PARTIES WHOSE PROPERTY INTERESTS MAY BE AT STAKE.

The Due Process Clause of the United States Constitution and Rule 4 of the Federal Rules of Civil Procedure provide that where an individual's property rights may be affected by litigation, service must "notify the defendant that failure to [appear and defend] will result in a judgment by default against the defendant for the relief demanded in the complaint." FED. R. CIV. P. 4(a). "[T]he core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections." Henderson v. United States, 116 S. Ct. 1638, 1648 (1996) (footnote omitted). As the Supreme Court held in Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950),

> [a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.
>
> * * * *
>
> The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.

Id. at 314-315 (citations omitted).

Rule 4 does not require strict adherence to a pat formula in order to provide constitutionally sufficient notice. Rather, "'Rule 4 is a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint.' Nonetheless, without substantial compliance with Rule 4, 'neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction.'" Direct Mail Specialists, Inc. v. Eclat Computerized Tech., Inc., 840 F.2d 685, 688 (9th Cir. 1988) (quoting United Food & Commercial Workers Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984); Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986), amended by, 807 F.2d 1514 (9th Cir.), cert. denied, 484 U.S. 870 (1987)). See also Mullane, 339 U.S. at 315.

Under FED. R. CIV. P. 4(e), any state process for serving potentially affected claimants is "subject only to the constitutional requirement that the means used be reasonably calculated to give defendant notice of the proceedings and an opportunity to be heard." 4A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1115 at 246-247 (1987) (footnote omitted). Accordingly, any notice published pursuant to NEV. R. CIV. P. 4(e)(1)(iii) must inform the defendant that her property rights may be affected by the proceedings, and must provide her reasonable time for making an appearance to defend her rights. Mullane, 339 U.S. at 314. As we show below, the means of service can be "flexible," and may encompass means other than placing process in the individual's hand.

B. PUBLICATION ALONE DOES NOT SATISFY THE NEVADA RULE WHERE THERE ARE IDENTIFIED AND LOCATABLE, BUT UNSERVED, PARTIES WHOSE INTERESTS MAY BE AT STAKE.

Our concern arises from the potential danger that Walker River water rights holders and claimants who did not receive personal service may assert that they did not read the

published notice and claim "a failure to serve process [which] will lead to a dismissal of the action . . . ." 4 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1063 at 226 (1987). See also Wuchter v. Pizzutti, 276 U.S. 13 (1928); Pennoyer v. Neff, 95 U.S. (5 Otto) 714 (1877). Proper service is the act that gives a court jurisdiction over an individual and his property. Omni Capital Int'l v. Rudolf Wolff & Co., Ltd., 484 U.S. 97, 104 (1987) (citing Mississippi Publishing Corp. v. Murphree, 326 U.S. 438, 444-445 (1946)). An individual may challenge the Court's jurisdiction over him either by motion or in his pleading responding to Mineral County's intervention motion. FED. R. CIV. P. 12(b)(2). Thus, in the absence of proper service, jurisdictional challenges may permeate the proceedings to determine whether Mineral County may intervene. A barrage of jurisdictional challenges would only further delay the already drawn out resolution of the parties' water rights.

Mineral County has alleged that it has attempted to personally serve identified Walker River water rights holders but has been unsuccessful. See, e.g., *Affidavit of Kelvin J. Buchanan, Re: Appurtenant Water Rights Holders List Provided Attorney General for State of California* (Aug. 13, 1997); Letter from Treva J. Hearne to Gordon H. DePaoli (Sept. 2, 1997) ("our process server was verbally threatened and physically detained . . . for trying to deliver the papers.") (Attachment 3). In such a situation, the Nevada rule requires that, "[i]n case of publication, where the residence of a nonresident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at his place of residence." NEV. R. CIV. P. 4(e)(1)(iii). Indeed, if personal service is not possible, a constitutionally acceptable method of service is to mail notice where Mineral County knows the individuals' addresses. "Service

through return-receipt postage is 'reasonably calculated ... to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Clint Hurt & Assoc., Inc. v. Silver State Oil & Gas Co., 111 Nev. 1086, 1088, 901 P.2d 703, 705 (1995) (quoting Mullane, 339 U.S. at 314). Accord 4 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1073 at 457-458 (1987) ("Service by registered or certified mail should be regarded as equally efficacious from a constitutional perspective to invoke personal jurisdiction since the return receipt normally guarantees that defendant or someone related or associated with him has received the process.") (citing Hess v. Pawloski, 274 U.S. 352 (1927)) (other citations omitted).

Mineral County has acknowledged that it knows the mailing addresses of various water rights holders. See *Reply to WRID'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* at 5 (Mar. 11, 1996) ("Of the 791 persons listed . . . 169 have post office boxes . . . ."). "Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to a means less likely than the mails to apprise them of its pendency." Mullane, 339 U.S. at 318. There is more than one method of using post office box and street address information to accomplish service: "Where other reasonable methods exist for locating the whereabouts of a defendant, plaintiff should exercise those methods." McNair v. Rivera, 874 P.2d 1240, 1243-1244 (Nev. 1994) (quoting Price v. Dunn, 787 P.2d 785, 787 (Nev. 1990)). Indeed, where the "names and addresses" of the Walker River water rights holders and claimants are "on the books . . . we find no tenable ground for dispensing with a serious effort to inform them personally . . . at least by ordinary mail to the record addresses." Mullane, 339 U.S. at 318 (citing Wutcher, 276 U.S. 13).

Rather than rely upon publication alone to serve 169 water rights holders, a less reliable method of ensuring that all water rights holders will in fact receive notice, to the extent Mineral County knows the mailing addresses of water right holders, Mineral County should, in accordance with NEV. R. CIV. P. 4(e)(1)(iii), serve them by mail to ensure that they receive adequate notice that their water rights may be affected by Mineral County's intervention in these proceedings. The same holds true for the remaining 182 individuals upon whom Mineral County claims to have attempted service, but unsuccessfully. Presumably Mineral County knows the street addresses of these individuals, as it has tried to serve them.

IV. CONCLUSION

If Mineral County has served all identified and locatable Walker River water rights holders and claimants, its burden is to demonstrate to the Court that it has done so. As stated above, it does not appear from the record to the Tribe and the United States that Mineral County in fact has exhausted all reasonable methods of serving those individuals to whom it has been unable to physically hand the intervention papers. To carry its burden, Mineral County should prove to the Court that it has exhausted all reasonable means of serving all Walker River water rights holders and claimants of its intent to attempt intervention in these proceedings.

Dated: Sept. 15, 1997

Respectfully submitted,

Scott B. McElroy
Alice E. Walker
GREENE, MEYER & MCELROY, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
(303) 442-2021

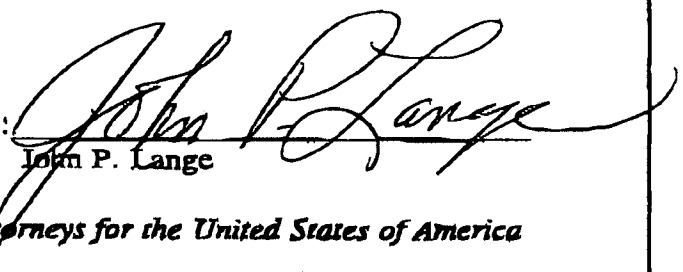
Kelly R. Chase
P.O. Box 2800
Minden, Nevada 89423
702/782-5110

By: Alice E. Walker
Alice E. Walker

Attorneys for the Walker River Paiute Tribe

Kathryn E. Landreth
United States Attorney
100 West Liberty St., Suite 600
Reno, Nevada 89509
702/784-5439

John P. Lange
Dept. of Justice
Environment & Natural Resources Division
999 18th St., Suite 945
Denver, Colorado 80202
303/312-7312

By: 
John P. Lange

Attorneys for the United States of America

Zeh, Polaha, Spoo, Hearne & Picker
Attorneys and Counselors at Law

Charles R. Zeh, Esq.
Jerome M. Polaha, Esq.
James Spoo, Esq.
Treva J. Hearne, Esq.
Marc Picker, Esq.

575 Forest Street
Reno, Nevada 89509
(702) 323-5700
fax (702) 786-8183

September 8, 1997

Gordon DePaoli
Woodburn and Wedge
P.O. Box 2311
Reno, Nevada 89505

re: Mineral County's service in Case No. C-125-C

Dear Mr. Depaoli:

You are correct the twenty persons represent the "questionable" category according to your designation. However, you have failed in your categories to consider the service of one person as both Trustee and as an individual and the service of the husband as service on both the husband and wife. So I have discounted your analysis on many of those and concentrated on those that were considered questionable.

As I stated before the Court directed that publication could not be made on California appurtunant water rights holders by publication. Mineral County ordered an updated list from the State Water Resources Control Board. I was then contacted by the Attorney General of the State of California and given another list. On that list we found persons both deceased and moved with no forwarding address. In our attempt to serve California appurtenant water rights holders, we served persons who then called you. Those persons may not be WRID members, but obviously they are in contact with your office or you would not have been aware of the service. Are you willing to accept service on behalf of all such persons so that further service will not be necessary? If not will they have their counsel please contact us?

Mineral County has constantly and will continue to protest the interference of WRID in the service at a cost to Mineral County of a huge expenditure of its budget for no real reason. I feel it is incumbent to remind the members of WRID that this act has

accomplished nothing but the waste of taxpayer dollars that could have been saved by allowing the waiver process to go forward. Moreover, it seems odd that even though you continually protest that WRID does not encompass the entirety of the Walker River system, which we recognize, that conincidentally, it is members of WRID who also have California appurtenant water rights, who cause the problems and threaten our process server.

We have finished the service on California appurtenant water rights holders, we finished the service on Nevada water rights holders in February 1996. If you still would like to hold a meeting so that the issues on service can be settled, then please feel free to contact Mr. Spoo or myself.

Very truly yours,

Treva J. Hearne

cc: via facsimile and U.S. mail to:
Marta Adams, Dep. Atty. Gen., Nev.Div. of Water Res. -
(702) 687-5798
Linda Bowman, Bowman & Robinson -
(702) 334-1414
✓Scott B. McElroy, Green, Meyer,& McElroy -
(303) 444-3490
Mary E. Hackenbracht, Dep. Atty. Gen., State of California -
(510-286-4020)
David Moser, McCutchen, Doyle, Brown & Enersen -
(415) 393-2286
John P. Lange, U.S. Dept. of Justice, Land & Natural Resources
(303) 312-7331

VIRGIL H. WEDGE
JAMES J. HALLEY
RICHARD O. KWAPIL
CASEY W. VLAUTIN
GORDON H. DEFAOU
SUELLEN FULSTONE
JOHN F. MURTHA
MICHAEL E. KEARNEY
W. CHRIS WICKER
SHAWN B MEADOR
KIRK S. SCHUMACHER
KEITH E. GREGORY
JOHN B. LEACH

WOODBURN AND WEDGE
ATTORNEYS AND COUNSELORS AT LAW
ONE EAST FIRST STREET
SUITE 1600
RENO, NEVADA 89501
P.O. BOX 2311, RENO, NV 89505
(702) 688-3000
FACSIMILE (702) 688-3088

LYNNE K. JONES
RICHARD F. MOLLEY
DAVID C. JOHNSON
GERARD L. OSKAM
R. BLAIN ANDRUS
DON L. ROSS
CRAIG P. BARNARD
MICHAEL L. WOLZ
DALE B. FERGUSON
RANDY A. DRAKE
JAY R. HAMPTON

September 2, 1997

Via Hand Delivery

Treva J. Hearne, Esq.
James L. Spoo, Esq.
Zeh, Polaha, Spoo & Hearne
575 Forest Street
Reno, Nevada 89509

Re: Mineral County's Service Efforts in Case No. C-125-C

Dear Treva and Jim:

On August 27, 1997, I received information that Mineral County is currently attempting service of certain documents on individuals located in Mason Valley, Nevada. Those documents apparently include the following:

1) Summons in a Civil Case, which directs the recipient to serve an answer within 20 days after receipt of the summons;

2) Notice in Lieu of Summons, dated September 6, 1995;

3) Notice of Motion and Motion of Mineral County of Nevada for Intervention, dated October 21, 1994;

4) Amended Memorandum of Points and Authorities in Support of Mineral County's Amended Complaint in Intervention, dated March 10, 1995;

5) Mineral County's Amended Complaint in Intervention, dated March 10, 1995;

6) A document entitled Memorandum of Points and Authorities, dated March 10, 1995;

7) A Notice of Motion to Intervene, Proposed-Complaint-In-Intervention and Motion for Preliminary Injunction of Mineral County and Request for Waiver of Personal Service of Motions, dated April 8, 1996;

8) Duty to Avoid Unnecessary Costs of Service of Summons and Other Documents;

9) Waiver of Personal Service of Motions;

10) Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County, dated February 9, 1995;

11) Several affidavits and attachments thereto originally filed in support of Mineral County's motions to intervene; and

12) September 29, 1995 order amending prior service orders.

These documents were apparently left in the intended recipient's driveway on August 26, 1997.

I cannot understand Mineral County's current attempt at service of these documents in light of recent communications between the parties and the Court. In a stipulation filed in early July of this year, several of the parties to this litigation, including Mineral County, agreed on certain issues involving Mineral County's service of its intervention documents to date.

In the stipulation the parties agreed that they would request a scheduling conference with Judge Reed to address issues related to among other things: 1) the factual dispute as to whether Mineral County has in fact served all identified Walker River Claimants and when that issue should be addressed; and 2) whether the February 9, 1995 order should be amended to coordinate the time for completion of service by Mineral County with a schedule for serving responses to Mineral County's

intervention documents.

In addition, in the Stipulation the parties, including Mineral County, asked the Court to amend its previous orders to provide that: 1) Mineral County would not serve a summons, its Notice of Motion and Motion to Intervene or its Proposed Petition in Intervention; and 2) no answer or other response would be required with respect to the proposed complaint-in-intervention until the Motion to Intervene is decided.

Based on this stipulation, on July 22, 1997, the Court entered an order granting the parties request for a scheduling conference. That order also stated that Mineral County would serve a notice in lieu of summons instead of a summons.

On August 14, 1997, a scheduling conference between Judge Reed and the parties was held by telephone. At the conference, Judge Reed decided to refer the factual dispute to the Magistrate Judge for briefing and a hearing. In addition, the parties discussed and agreed that a summons was inappropriate and that a notice in lieu of summons should be served. They agreed that the notice in lieu of summons should include a date certain for the filing of responses to Mineral County's intervention documents. However, the parties agreed that the date would not be selected until after the factual dispute concerning service is resolved.

Mineral County's recent attempts at service are entirely inconsistent with the stipulation and the recent August 14, 1997 order entered after the scheduling conference. First, the parties have agreed and the Court has ordered that a summons not be served. Second, the parties have agreed that a new notice in lieu of summons would be prepared to include a schedule for responding to Mineral County's intervention documents. The initial draft was to be prepared by Mr. Spoo. The schedule was to be established after the factual dispute concerning service was resolved.

The service which Mineral County has recently undertaken only causes additional confusion and will not be considered effective service. On the one hand it directs an answer within 20 days to a complaint which has not been filed. On the other hand, near the front, it indicates no answer is required but that a response to the motion to intervene is due on July 11, 1995, while at the back it directs a response to the motion to

intervene by April 1, 1996. In fact by order dated March 15, 1996, the entire briefing schedule was suspended.

If there are identified Walker River Claimants who Mineral County has not served, and its recent actions appear to be an admission that there are, you should not attempt to complete that service until the new notice in lieu of summons is approved and until a schedule with respect to your motion to intervene is established. Could you please let me know your position on this matter so that I can decide what if anything to bring to the attention of the Court.

Sincerely Yours,

Gordon H. DePaoli

Gordon H. DePaoli

GHD\def

cc: Via Facsimile and U.S. Mail to:

Marta Adams (702) 687-5798
Linda Bowman (702) 334-1414
Scott B. McElroy (303) 444-3490
Mary E. Hackenbracht (510) 286-4020
David Moser (415) 393-2286
John P. Lange (303) 312-7331

ZEH, POLAHA, SPOO, HEARNE & PICKER
575 FOREST ST., SUITE 200/P.O. BOX 3344
RENO, NV 89504
702/323-5700
FAX: 702/786-6183

September 2, 1997

Mr. Gordon H. DePaoli
Woodburn & Wedge
P.O. Box 2311
Reno, Nevada 89505

RE: Mineral County's Service Efforts.

Dear Mr. DePaoli:

Certain persons have been further identified by your client, W.R.I.D., as holders of water rights in the Walker River that are yet new and different from the list originally delivered and subsequently delivered to Mineral County. In our conversation with Mr. Ferguson he also stated that our service was incomplete on some twenty (20) persons. While we consider most of the arguments regarding "questionable" service incorrect, there were these few listed by the Attorney General of California and W.R.I.D. that Mineral County believed that, if personally served, would absolutely resolve all arguments regarding service for California appurtenant water rights holders.

The Court and the parties have stipulated and agreed to what service will be afforded in publication. No stipulation nor direction of the Court has been afforded Mineral County since 1995-96 on personal service. In an abundance of caution Mineral County included all documents previously ordered by the Court plus a current Summons.

Mineral County has requested a conference to settle some of these issues with W.R.I.D. prior to the filings due September 16 before the Federal Magistrate. Counsel for W.R.I.D. has canceled such a conference and refused to reschedule in order to settle these issues or any others for that matter.

Finally, W.R.I.D., its spokesmen, and the Walker River Users Group, its spokesmen have so inflamed the community that personal service has become hazardous duty. In the instance you referred to, our process server was verbally threatened and physically detained by Mr. Hunnewell for trying to deliver the papers. While Mineral County attempts to complete these final and few personal service matters on holders of appurtenant water rights in California as directed by the Court, it would be most appreciated if W.R.I.D. would urge its members to accept service lawfully presented and reserve its belligerent attitude for an appropriate outlet.

Very truly yours,

TREVA HEARNE

TH/fab

cc: Marta Adams, Dep. Atty. Gen., Nev. Div. of Water Res.
Linda Bowman, Bowman & Robinson
Scott B. McElroy, Green, Meyer & McElroy
Mary E. Hackenbracht, Dep. Atty. Gen., State of California
David Moser, McCutchen, Doyle, Brown & Enersen
John P. Lange, U.S. Dept. of Justice, Land & Natural Resources

ATTACHMENT 3

VIRGIL H. WEDGE
JAMES J. HALLEY
RICHARD O. KWAPIL
CASEY W. VLAUTIN
GORDON H. DePAOLI
SUELLEN FULSTONE
JOHN F. MURTHA
MICHAEL E. KEARNEY
W. CHRIS WICKER
SHAWN B MEADOR
KIRK S. SCHUMACHER
KEITH E. GREGORY
JOHN E. LEACH

WOODBURN AND WEDGE
ATTORNEYS AND COUNSELORS AT LAW
ONE EAST FIRST STREET
SUITE 1600
RENO, NEVADA 89501
P.O. BOX 2311, RENO, NV 89505
(702) 688-3000
FACSIMILE (702) 688-3088

DUANNE K. JONES
RICHARD F. HOLLEY
DAVID G. JOHNSON
GERARD L. OSKAM
R. BLAIN ANDRUS
EDWIN L. ROSS
GREGG P. BARNARD
MICHAEL L. WOLZ
DALE E. FERGUSON
RANDY A. DRAKE
JAY R. HAMPTON

September 8, 1997

VIA U.S. MAIL AND FACSIMILE

Treva J. Hearne, Esq.
Zeh, Polaha, Spoo & Hearne
575 Forest Street
Reno, Nevada 89509

Re: Mineral County's Service Efforts in Case No. C-125-C

Dear Treva:

Thank you for your letter dated September 2, 1997. Your letter suggests that the recent Stipulation (July 9, 1997), Status Conference (August 14, 1997) and Minute Order (August 14, 1997) relate only to service by publication and have nothing to do with "personal service." Assuming arguendo that you are correct in that regard, it is quite clear that the logic and reasons for the Stipulation, Status Conference and Minute Order have similar application to personal service.

Your letter also states that Mineral County has had no direction from the Court concerning personal service since 1995-1996. In part, that is no doubt because since February 1, 1996, Mineral County has represented to the Court in numerous filings that "Mineral County's service of process to water rights holders on the Walker River was completed by February 1, 1996, pursuant to the Court's Order of September, 1995."

However, irrespective of whether Mineral County has had recent direction from the Court, its recent actions are not consistent with the directions originally provided by the Court with respect to personal service. First, the Court's Orders from February 9, 1995 to September 29, 1995, required service of a Notice In Lieu of Summons and not a Summons. All of those Orders provided that "no answer or other response to the proposed complaint in intervention will be required until a decision by the Court on Mineral County's Motion to Intervene and then only upon a schedule to be established by the Court." For obvious reasons, all of those Orders included a schedule for responses to the Motion to Intervene.

Rather than comply with those existing and longstanding directions, Mineral County has chosen to serve a Summons which purports to require a response within twenty days to a complaint which has not been and cannot be filed. It has opted to serve Orders which refer to a schedule which has been suspended since March of 1996.

Mr. Ferguson informs me that he did not state that Mineral County's service of its intervention documents was incomplete with respect to only approximately twenty persons. On June 12, 1997, the District filed a Reply in Support of its Motion to Clarify and Amend (Docket No. 112). Attached to the Reply as Exhibit A were the names of approximately 498 individuals and entities identified by Mineral County as Walker River Claimants for which no service form was on file with the Court. Mr. Ferguson drafted and signed the Reply on behalf of the District. Obviously, it is his position, as well as that of the District, that numerous identified individuals and entities have not been served by Mineral County.

For some reason, it appears that Mineral County is focused on the individuals and entities for whom service was designated as "questionable" in the Table of Service Forms filed by the District on February 27, 1996 (Docket No. 67). Service on these individuals, however, is not the primary concern of the District at this point in time. Instead, it is the numerous individuals and entities (see Docket No. 112) for which no service form is on file with the Court that causes the greatest concern in this matter at the present time. For the reasons stated above, Mineral County should not be attempting to now serve those persons, or any other person for that matter, with the documents as described and discussed in my September 2, 1997 letter to you.

The District has not refused to meet with you in an effort to settle these issues. We will consider such a meeting either before or after the September 16, 1997 filing deadline or before the September 23, 1997 hearing. However, Mineral County's recent actions have created new issues and made old issues more complicated.

I will not dignify your assertions regarding inflaming the community and belligerency with a response. However, your comments about serving holders of appurtenant water rights in California and urging District members to accept service suggest that you are still under the impression that the District boundaries encompass the entire Walker River system. They do not.

Sincerely,

Gordon H. DePaoli

Gordon H. DePaoli

GHD:tlm
cc: **Via Facsimile and U.S. Mail to:**

Marta Adams	- (702) 687-5798
Linda Bowman	- (702) 334-1414
Scott B. McElroy	- (303) 444-3490
Mary E. Hackenbracht	- (510) 286-4020
David Moser	- (415) 393-2286
John P. Lange	- (303) 312-7331

CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of the foregoing Joint Brief of the Walker River Paiute Tribe and the United States of America Regarding Service of Process by Mineral County via U.S. Mail or Overnight Carrier (if so indicated), all charges prepaid thereon, this 15 day of September 1997, addressed to:

Shirley A. Smith
Asst. U.S. Attorney
100 W. Liberty, #600
Reno, NV 89509

George Benesch
210 Marsh Avenue, Suite 105
P.O. Box 3498
Reno, NV 89505

Jim Weishaupt, General Manager
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

James T. Markle
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814

John Kramer
Department of Water Resources
1416 - 9th Street
Sacramento, CA 95814

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

Richard R. Greenfield
Field Solicitor's Office
Department of the Interior
2 North Central Avenue, Suite 500
Phoenix, AZ 85004

Robert L. Hunter, Superintendent
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

Roger Johnson
Water Resources Control Board
State of California
P.O. Box 2000
Sacramento, CA 95810

Garry Stone
290 South Arlington Ave.
Reno, NV 89501

Linda A. Bowman
Bowman & Robinson
499 West Plumb Lane, Ste. 4
Reno, NV 89509

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

Gordon H. DePaoli
Woodburn and Wedge
P.O. Box 2311
Reno, NV 89501
(also via facsimile: 702/688-3088)

Donald B. Gilbert
DeCUIR & SOMACH, P.C.
400 Capitol Mall, Suite 1900
Sacramento, California 95814-4407

Larry Reynolds
Deputy Attorney General
State Engineer's Office
123 W. Nye Lane
Carson City, NV 89710

John Davis
P.O. Box 1646
Tonopah, NV 89049

Robert C. Anderson and Timothy Lukas
Hale, Lane, Peek, Dennison, Howard
Anderson & Pearl
P.O. Box 3237
Reno, NV 89505

Mary Hackenbracht
Deputy Attorney General
State of California
2101 Webster Street
Oakland, CA 94612-3049

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

Treva J. Hearne (also via facsimile: 702/786-8133)
Jim Spoo
Zeh, Polaha, Spoo & Hearne
575 Forest Street
Reno, NV 89509

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

John P. Lange
Environment & Natural Resources Division
999 18th Street, Suite 945
Denver, CO 80202