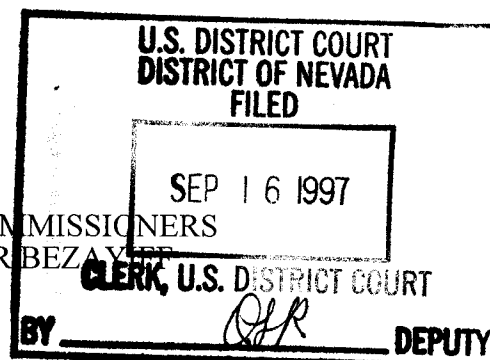


RECEIVED  
IN DROP BOX  
SEP 16 PM 5:24  
U.S. DISTRICT COURT  
DISTRICT OF NEVADA

Linda A. Bowman, Esq.  
Debra B. Robinson, Esq.  
BOWMAN & ROBINSON  
499 West Plumb Lane, Suite 4  
Reno, NV 89509  
(702) 334-1400



Attorneys for UNITED STATES BOARD OF WATER COMMISSIONERS  
and CHIEF DEPUTY WATER COMMISSIONER, ROGER BEZAYE

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.,

Defendant.

IN EQUITY NO. C-125  
SUBFILE NO. C-125-C-ECR(RAM)

UNITED STATES BOARD OF  
WATER COMMISSIONERS'  
BRIEF OF ISSUES TO BE SETTLED  
AT HEARING

MINERAL COUNTY,

Proposed Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, et al.,

Proposed Defendants.

INTRODUCTION

The United States Board of Water Commissioners (hereinafter "Board of Water Commissioners") was created in 1936 by judicial order. The Board of Water Commissioners is obligated by its order of appointment to oversee the distribution of the waters of the Walker River to all who hold water rights thereon. The Board of Water Commissioners acts as a special master.

1 In the instant law suit, Mineral County attempts to intervene for the purpose of securing for  
2 Mineral County substantial water rights and corresponding priority sufficient to create a minimum  
3 pool of water in the Walker Lake, which is located in Mineral County. The Walker River terminates  
4 in Walker Lake. Despite the fact that adjudication concerning the waters of the Walker River was  
5 initiated in 1926, this is the first time in seventy years that Mineral County has attempted to  
6 intervene and obtain water rights.

7 In order to intervene, Mineral County necessarily must provide notice and due process to the  
8 existing water right holders. Because the waters of the Walker River are fully allocated, any rights  
9 ultimately obtained by Mineral County through this lawsuit necessarily would alter the quantity of  
10 the rights available to the present water rights holders. The issue now before this Court concerns  
11 whether the actions that have been taken by Mineral County as to their intervention are sufficient  
12 to comply with the requirements of due process which must be accorded to the potential defendants,  
13 the present water right holders.

14 A hearing has been set for September 23, 1997 at which time the Court will consider whether  
15 Mineral County, the proposed intervenor, has in fact made proper service upon all identified holders  
16 of Walker River water rights. The Court has ordered the parties to file briefs regarding the issues  
17 to be settled concerning the sufficiency of the actions thus far undertaken by Mineral County, and  
18 regarding potential completion of service by publication.

#### 19 STATEMENT OF FACTS

20 Rather than restate the facts and procedural posture of this case, the Board of Water  
21 Commissioners incorporates herein the statement of Background set forth in pages 1 through 3 of  
22 the State of Nevada's Memorandum of Points and Authorities Concerning Whether Mineral County  
23 has Properly Served All Identified Walker River Claimants.

#### 24 POSITION OF THE BOARD OF WATER COMMISSIONERS

25 The Board of Water Commissioners does not have any property right at stake. Rather, the  
26 Board's interest in these proceedings is to see that due process is observed so that any potential  
27 reallocation of water rights which may result from this lawsuit properly will be enforceable by the  
28 Board of Water Commissioners. It is the Board's understanding that the Walker River Irrigation

1 District ("WRID"), which is more intimately involved with the property rights aspect of this case,  
2 will be submitting to the Court a detailed report on the status of service on each of the identified  
3 water rights users. The Board of Water Commissioners will not attempt to address herein the status  
4 of service on particular individuals, but rather, will set forth herein the general issues of concern to  
5 the Board as to why the requirements of due process have not been satisfied by Mineral County.

6 I. IDENTIFIED WATER RIGHTS HOLDERS MUST  
7 BE PERSONALLY SERVED IN SATISFACTION  
8 OF THE REQUIREMENTS OF NRCP 4(d).

9 NRCP 4(d) governs personal service. Rule 4(d)(6) governs service upon most individuals  
10 living within Nevada, and presumably is applicable to the majority of the Walker River water rights  
11 holders who reside in Nevada. Pursuant to that rule, personal service is complete when the  
12 appropriate papers have been given to the defendant personally, left at the dwelling place with a  
13 person of suitable age and discretion who resides at the dwelling place; or by delivering the papers  
14 to an agent authorized to receive service on behalf of the intended defendant. NRCP 4(g) governs  
15 the return of service which is filed with the Court for the purpose of proving that service was  
16 completed. Where an individual completes the service, which seems to be the manner in which  
17 Mineral County has attempted to make service, NRCP 4(g)(2) requires that proof of service be made  
18 promptly to the court in the form of an affidavit by the person making the service, stating the date,  
19 place and manner in which the service was completed.

20 In the case at bar, Mineral County has not complied with the requirements of Rule 4(g).  
21 Thus, absent polling each of the potential defendants, it is impossible to ascertain whether service  
22 was properly accomplished on many of the identified potential defendants. As is detailed in the  
23 Brief submitted by WRID, it would appear that service was not performed in a manner which  
24 satisfies the requirements of Rule 4(d) with regard to numerous of the identified potential defendants.

25 Areas of concern include whether the appropriate papers were included within the document  
26 "served; where substituted service was attempted, whether delivery was accomplished to a person  
27 suitable to accept service; and whether adequate service was made in situations where more than one  
28 water right holder resides in the same residence.

II. SERVICE BY PUBLICATION IS APPROPRIATE  
ONLY WHEN THE PROPOSED DEFENDANT  
RESIDES OUT OF STATE OR CANNOT, AFTER  
DUE DILIGENCE, BE LOCATED IN THE STATE.

Service by publication is governed by NRCp 4(e). It is an appropriate mode of service upon potential defendants who reside outside the state, or cannot, after due diligence, be found within the state. Thus, it would appear that service by publication is not an appropriate form of service for "identified" defendants, if they reside in the state and can be located here.

There appears to be confusion among the parties as to which potential defendants must be served by personal service, and which can be served by publication. The Board of Water Commissioners respectfully submits that this is an issue which needs to be resolved between the parties and the Court so that effort and funds are not wasted on forms of service which might be inappropriate for the particular potential defendant.

Respectfully submitted this 16<sup>th</sup> day of September, 1997.

BOWMAN & ROBINSON

By



Linda A. Bowman, Esq.  
Debra B. Robinson, Esq.  
499 West Plumb Lane, Suite 4  
Reno, NV 89509  
(702) 334-1400

Attorneys for UNITED STATES BOARD OF  
WATER COMMISSIONERS and CHIEF DEPUTY  
WATER COMMISSIONER, ROGER BEZAYIFF

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I hereby certify that I am an employee of Bowman & Robinson and that on September 16, 1997, I mailed a true and correct copy of the UNITED STATES BOARD OF WATER COMMISSIONERS' BRIEF OF ISSUES TO BE SETTLED AT HEARING, postage prepaid, addressed to:

Shirley A. Smith, Esq.  
Assistant U.S. Attorney  
100 West Liberty, Suite 600  
Reno, NV 89501

R. Michael Turnipseed, P.E.  
Division of Water Resources  
State of Nevada  
123 West Nye Lane  
Carson City, NV 89710

Marta Adams, Esq.  
Deputy Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

Scott McElroy, Esq.  
Greene, Meyer & McElroy  
1007 Pearl Street, Suite 220  
Boulder, CO 80302

Jim Weishaupt  
WRID  
Post Office Box 820  
Yerington, NV 89447

Mathew R. Campbell, Esq.  
McCutchen, Doyle, Brown, et al.  
Three Embarcadero Center, Suite 1800  
San Francisco, CA 94111

James T. Markle, Esq.  
State Water Resources  
Control Board  
Post Office Box 100  
Sacramento, CA 95814

John P. Lange, Esq.  
U.S. Department of Justice  
Environment & Natural Resources  
Division  
999 - 18th Street, Suite 945  
Denver, CO 80202

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

Ross E. deLipkau, Esq.  
Marshall, Hill, Cassas &  
deLipkau  
Post Office Box 2790  
Reno, NV 89505-2790

Kelly R. Chase, Esq.  
P.O. Box 2800  
Minden, NV 89423  
Richard R. Greenfield, Esq.  
Field Solicitor's Office  
Department of Interior  
Two North Central Avenue, Suite 500  
Phoenix, AZ 85004

Gordon H. DePaoli, Esq.  
Woodburn and Wedge  
Post Office Box 2311  
Reno, NV 89505-2790

Robert L. Hunter  
Superintendent  
Western Nevada Agency  
Bureau of Indian Affairs  
1677 Hot Springs Road  
Carson City, NV 89706

Garry Stone  
290 South Arlington  
Reno, NV 89501

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

1 Roger Johnson  
2 Water Resources Control Board  
3 State of California  
4 Post Office Box 2000  
5 Sacramento, CA 95810

6 Mary Hackenbracht, Esq.  
7 Deputy Attorney General  
8 State of California  
9 2101 Webster Street, 12th Floor  
10 Oakland, CA 94612-3049

11 Roger E. Bezayiff  
12 Chief Deputy Water Commissioner  
13 U.S. Bd. of Water Commissioners  
14 Post Office Box 853  
15 Yerington, NV 89447

16 Michael Neville  
17 Deputy Attorney General  
18 State of California  
19 50 Freemont Street, #300  
20 San Francisco, CA 94105

21 Stuart L. Somcah, Esq.  
22 Donald B. Gilbert  
23 DeCuir & Somach  
24 400 Capitol Mall, Suite 1900  
25 Sacramento, CA 95814

26 Timothy A. Lukas, Esq.  
27 Hale, Lane, Peek, Dennison, Howard,  
28 Anderson and Pearl  
100 West Liberty Street, Tenth Floor  
Post Office Box 3237  
Reno, NV 89505

DATED this 16<sup>th</sup> day of September, 1997.

  
DARCI BERTRAM