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SEP 16 PM 5:24
CLERK, U.S. DISTRICT COURT
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U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED
SEP 16 1997
CLERK, U.S. DISTRICT COURT
BY *DR* DEPUTY

4 Attorneys for UNITED STATES BOARD OF WATER COMMISSIONERS
5 and CHIEF DEPUTY WATER COMMISSIONER, ROGER BEZAYEFF

6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF NEVADA
9

10 UNITED STATES OF AMERICA,
11 Plaintiff,

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

12 WALKER RIVER PAIUTE TRIBE,
13 Plaintiff-Intervenor,
14 vs.

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

15 WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,
16 Defendant.

17
18 MINERAL COUNTY,
19 Proposed Plaintiff-Intervenor,
20 vs.

21 WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,
22 Proposed Defendants.
23

24 INTRODUCTION

25 The United States Board of Water Commissioners (hereinafter "Board of Water
26 Commissioners") was created in 1936 by judicial order. The Board of Water Commissioners is
27 obligated by its order of appointment to oversee the distribution of the waters of the Walker River
28 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.

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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 16th day of September, 1997.

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By 

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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:

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21 DATED this 16th day of September, 1997.

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