

FILED

97 OCT 15 PM 3:41

LANE S. WILSON
CLERK

BY OR
DEPUTY

1 TREVA J. HEARNE, ESQ.
2 Nevada Bar #4450
3 JAMES SPOO, ESQ.
4 Nevada Bar #1018
5 **ZEH, POLAHA, SPOO, HEARNE & PICKER**
6 575 Forest Street, Suite 200
7 Reno, Nevada 89509
8 Telephone: (702) 323-5700
9
10 Attorneys for Intervenor,
11 MINERAL COUNTY NEVADA
12
13

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 * * *

13 UNITED STATES OF AMERICA,)
14)
15 Plaintiff,)
16)
17 WALKER RIVER PAIUTE TRIBE,)
18 Plaintiff-Intervenor,)
19 vs.)
20 WALKER RIVER IRRIGATION DISTRICT,)
21 a corporation;)
22 -----))
23 MINERAL COUNTY NEVADA,)
24 Proposed-Intervenor,)
25 vs.)
26 WALKER RIVER IRRIGATION DISTRICT,)
27 a corporation, et al.)
28

In Equity No. C-125-ECR
Subfile No. C-125-C

PREBRIEF OF SERVICE
ISSUES

Zeh, Polaha, Spoo, Hearne & Picker
575 Forest Street, Suite 200
Reno, Nevada 89509
Tel.: (702) 323-5700 FAX: (702) 786-8183

PREBRIEF OF SERVICE ISSUES

I.

**MINERAL COUNTY HAS SERVED PROPER DOCUMENTS
FOR PURPOSES OF PERSONAL SERVICE**

Mineral County has served substantially the same documents in all attempts at personal service since it began personal service of water rights holders in October 1995. (See Affidavit of Treva J. Hearne). When Mineral County began service of process by personal service, the Court prescribed the documents that were required for the service to be adequate. Those documents have been served in each instance since that date. When Mineral County made a few more attempts and was able to complete personal service on some California water rights holders and close neighbors who were established to be water rights holders in the Walker River, Mineral County served the same documents that had been ordered by the Court for service in previous orders with the addition of a summons based again upon the Court's order.

The Court has always directed the acts in the service of this matter. Mineral County has made every attempt to comply in what has been a very difficult and costly process. Mineral County believes that the nomenclature adopted by the parties in the hearing recently held before this court referring to the documents served by Mineral County as "old documents" was misleading and plainly incorrect. Mineral County has suffered the constant interference in its attempts at service by Walker River Irrigation District ("WRID") and Walker River Users Group ("WRUG"). Mineral County has incurred excessive expenses because of acts of the counsel representing these groups. Mineral County is once again being accused of serving inaccurate documents when the Courts orders are the basis of the documents to be served. There is no confusion because of the dates that cannot be remedied rather easily by a simple mailing to those parties of the agreed upon Notice in Lieu of Summons that will be ordered by this Court on October 22, 1997.

1 The Court in its Order of August 16, 1995, stated that “the Court’s Order not the technical
2 requirements of service of process that apply” to the service of process in this matter. (Order, August
3 16, 1995, p.5) The Court in its order iterated what documents were to be served:

4
5 However, this Court’s order made clear that service of the
6 intervention documents was to be accomplished as though it were
7 service of original process and summons pursuant to Rule 4.

8 (Minutes of the Court, April 1, 1997, p. 4)

9 Those documents included the following:

- 10 1. Summons
- 11 2. Mineral County’s Notice of Motion and Motion to Intervene
- 12 3. Mineral County’s Proposed Petition in Intervention
- 13 4. Mineral County’s Complaint in Intervention
- 14 5. Mineral County’s Amended Memorandum of Points and Authorities in Support of Mineral
15 County’s Amended Complaint
- 16 6. Mineral County’s Motion for Preliminary Injunction.

17
18 Mineral County served these documents on the parties. If the parties had been even remotely
19 interested in intervening in this litigation, the top page of the service documents which was a
20 summons that informed them that they had 20 days within which to respond, would have hastened
21 them to retain counsel to inquire as to the response necessary to intervene or make an appearance in
22 this matter. The only persons to have intervened have done so through counsel for the Walker River
23 Users Group in an attempt to quash service of some mailed documents.

24
25 No other pleadings have been filed in this matter that would be appropriate to serve upon the
26 parties in order to give them notice of the pending action. FRCP, Rule 4 requires that the recipient
27 of notice be fairly apprised of the action. An analogy to what FRCP requires as adequate notice is
28

1 relevant. The Courts have been quite clear about what is sufficient notice. MINERAL COUNTY's
2 service was more than sufficient to give notice of the action.

3 The courts have generally required that the notice serve to advise the defendant of the nature
4 of the case:
5

6 It has long been settled that "statutory provisions shall be liberally
7 construed to promote their object....It is accepted that "mere
8 irregularities in the form of process do not render it void where such
9 defective process " is sufficient to advise the defendant of the nature
of the case, the court in which it is filed, and his interest therein. .
(citations omitted)....

10 Nikwei v. Ross School of Aviation, Inc. 822 F. 2d 939, 944 (10th Cir. 1987)

11 The Ninth Circuit Court of Appeals has had an opportunity to interpret the sufficiency of
12 service when the service was governed by FRCP 4(c)(2)(C)(ii):

13 Our interpretation of Rule 4(c)(2)(C)(ii) fulfills the goals of Rule 4,
14 which was designed to provide maximum freedom and flexibility in the
15 procedures for giving all defendants. . . notice of commencement of
16 the action and to eliminate unnecessary technicality in connection with
17 service of process. 4 C. Wright and A. Miller, Federal Practice and
Procedure, Section 1061, at 216 (2d ed. 1987)(citing cases).

18 Electrical Specialty Company v. Road and Ranch Supply, Inc., 967 F.2d 309. 314 (9th Cir. 1992).

19 Certainly, MINERAL COUNTY succeeded in giving adequate notice when it complied with
20 the Order of the Court and served the Complaint in Intervention and all other pleadings as directed
21 by the Court. These documents apprise the persons who hold water rights in the Walker River of
22 the action contemplated by Mineral County. The only possible confusion is the dates of the Notice
23 in Lieu of Summons issued in 1995 and the Summons issued in 1997. This is simply cured by mailing
24 a copy of the Court-approved Notice in Lieu of Summons to all parties. This has to be done anyway
25 since the times have changed significantly since the first Notice in Lieu of Summons was issued. No
26 person receiving personal service has a correct date for response. This will be cured by the mailing
27
28

1 of a Notice in Lieu of Summons.

2 The Court made a very persuasive statement in stating that this proceeding is different and
3 unusual and the Court's Order overrides the technicalities of Rule 4. That is certainly true. This
4 service has been expensive and difficult. The office of the recorder of deeds in the counties where
5 the Walker River is located did not have complete records. The State Engineer does not have
6 complete records. WRID initially gave Mineral County a list that was prepared in or around 1988
7 and which was found to be considerably out-of-date. The Watermaster's list does not contain the
8 secondary permit holders. We have also now found that the California State Water Resources
9 Control Board list has on it names of deceased persons and persons that cannot be found. We are
10 dealing with multiple parties.
11

12 MINERAL COUNTY deserves an opportunity to intervene in this case and have that Motion
13 heard on its merits. The opposing parties have been extremely successful in delaying this process for
14 over two years. MINERAL COUNTY has exercised due diligence in its attempts to serve the water
15 rights holders of the Walker River.
16

17 WHEREFORE THE ABOVE-STATED REASONS, MINERAL COUNTY respectfully
18 requests that this Court order Mineral County to mail the Notice in Lieu of Summons to all persons
19

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

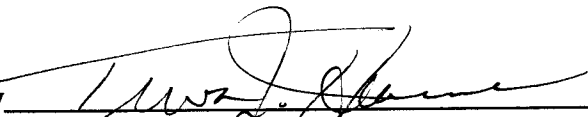
27 ///

28

1 on the final list prepared by the COUNTY and to publish the Notice in Lieu of Summons in the
2 newspapers of general circulation in the area as listed by the Honorable Edward C. Reed.

3 DATED this 15th day of October, 1997.

4 ZEH, POLAHA, SPOO, HEARNE & PICKER

5
6
7 By 

8 TREVA J. HEARNE, ESQ.

9 JAMES SPOO, ESQ.

10 Attorneys for Intervenor,

11 MINERAL COUNTY NEVADA

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

AFFIDAVIT OF TREVA J. HEARNE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

I, Treva J. Hearne, being over the age of twenty-one years do state as follows:

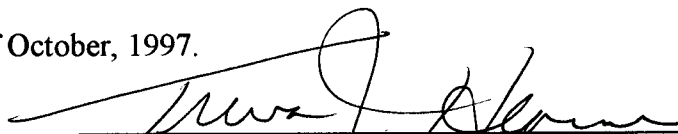
1. I am an attorney admitted to practice in Nevada and California. I am presently a member of the law firm of Zeh, Polaha, Spoo, Hearne & Picker in Reno, Nevada.

2. The firm has represented Mineral County since it made its Motion to Intervene in C-125 in 1994.

3. I have observed and prepared the documents that were collated for service by waiver and by personal service in this matter. In each instance, the intervention documents as defined by the Court in its orders regarding Mineral County service have been included for service. In 1995 personal service included a Notice in Lieu of Summons. In 1997 a Summons was prepared and placed on top of the Notice in Lieu of Summons in each packet of documents for personal service.

Further affiant sayeth naught.

DATED this 15th day of October, 1997.



TREVA J. HEARNE

Zeh, Polaha, Spoo, Hearne & Picker
575 Forest Street, Suite 200
Reno, Nevada 89509
Tel.: (702) 323-5700 FAX: (702) 786-8183

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ZEH, POLAHA, SPOO, HEARNE & PICKER, and that I caused the foregoing ****PREBRIEF OF SERVICE ISSUES**** to be served on all parties to this action by:

- placing an original or true copy thereof in a sealed, postage prepaid envelope in the United States Mail, at Reno, Nevada
- personal delivery
- facsimile (fax)
- Federal express/UPS or other overnight delivery
- Reno/Carson Messenger Service

fully addressed as follows:

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

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

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

Richard R. Greenfield
Department of the Interior
Two North Central Ave. #500
Phoenix, AZ 85004

George Benesch
P.O. Box 3498
Reno, NV 89505

Gary Stone
290 South Arlington Avenue
Reno, NV 89510

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

Roger Johnson
SWRCB
P.O. Box 2000
Sacramento, CA 95814

1 Ross E. deLipkau
2 P.O. Box 2790
3 Reno, NV 89505

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

4 Gordon H. DePaoli
5 Dale E. Ferguson
6 Woodburn & Wedge
7 One East First Street
8 Suite 1600
9 Reno, NV 89505

Kathryn E. Landreth
United States Attorney
100 W. Liberty, Suite 600
Reno, NV 89501

8 Mary Hackenbracht
9 Deputy Attorney General
10 State of California
11 2101 Webster St., 15th Floor
12 Oakland, CA 94612

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

12 John P. Lange
13 U.S. Department of Justice
14 Land & Natural Resources
15 Federal Building DR 3607
16 999 - 18th Street, Suite 945
17 Denver, CO 80202

David Moser
McCutchen, Doyle, Brown &
Enersen
Three Embarcadero Center
San Francisco, CA 94111

16 Scott McElroy
17 Alice Walker
18 Greene, Meyer & McElroy
19 1007 Pearl Street
20 Boulder, CO 80302

Shirley A. Smith
Assistant U.S. Attorney
100 W. Liberty, Suite 600
Reno, NV 89509

20 Richard E. Olson, Jr.
21 Claassen and Olson
22 P.O. Box 2101
23 Carson City, NV 89702

Jim Weishaupt
General Manager
WRID
P.O. Box 820
Yerington, NV 89447

23 ///

24 ///

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Stuart L. Somach
John A. Mendez
Donald B. Gilbert
DeCuir & Somach
400 Capitol Mall, Ste. 1900
Sacramento, CA 95814

Alex J. Flangas
Timothy A. Lukas
Robert C. Anderson
Hale, Lane, Peek, Dennison,
Howard, Anderson & Pearl
P.O. Box 3237
Reno, NV 89509

Dated this 15th day of October, 1997.



Carol Elewski

C:\MyFiles\CLIENTS\Mineral\P-Prebrief.015