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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF NEVADA  
13

14 UNITED STATES OF AMERICA,  
15  
16 Plaintiff,

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

17 WALKER RIVER PAIUTE TRIBE,  
18 Plaintiff-Intervenor,

) **JOINT RESPONSE AND POINTS OF**  
) **AUTHORITIES OF THE UNITED STATES OF**  
) **AMERICA AND THE WALKER RIVER**  
) **PAIUTE TRIBE TO MINERAL COUNTY'S**  
) **MOTION FOR ORDER OF PUBLICATION**  
) **AND AFFIDAVIT OF SERVICE**

19 vs.

20 WALKER RIVER IRRIGATION  
21 DISTRICT, et al.,  
22 Defendants.

23 vs.

24 MINERAL COUNTY,  
25  
26 Proposed Plaintiff-  
Intervenor,  
27



1 County's intentions to intervene in this suit.

2 We now turn to the rules relevant to service of process in this case. Rule 4(e), Fed. R.

3 Civ. P., in pertinent part, provides that service on individuals may be effected:

4 pursuant to the law of the state in which the district court is  
5 located, or in which service is effected, for the service of a  
6 summons upon the defendant in an action brought in the courts of  
7 general jurisdiction of the State ...."

8 In this regard, Rule 4(e)(1) of the Nevada Rules of Civil Procedure allows for service by  
9 publication under circumstances where a defendant, "resides out of the state or has departed from  
10 the state, or cannot after due diligence be found within the state, or conceals himself to avoid the  
11 service of summons..."

12 Thus, the question presented is whether Mineral County has exercised due diligence in its  
13 efforts to complete service and whether the Court should permit the service to be completed by  
14 publication.  
15

16 In the Affidavit of Treva J. Hearne, attached to Mineral County's motion, the affiant  
17 states that Mineral County "sent request for waivers of service to 1107 persons" and that 122  
18 were "returned signed." *AFFIDAVIT, PARAGRAPHS 3,4 AT 3*. The affiant further states that Mineral  
19 County has "expended over \$110,000.00" and expended far in excess of 1000 hours of time,  
20 including volunteer time, and "served or attempted service on over 1100 persons and entities."  
21 *AFFIDAVIT, PARAGRAPH 12, AT 6*. The affiant goes on throughout the affidavit to describe in  
22 considerable detail the leviathan efforts Mineral County has expended to complete service.  
23

24 We have no reason to dispute the veracity of the efforts Mineral County describes here in  
25 attempting to complete its service of process. It would appear that Mineral County has exercised  
26 due diligence and that the Court should permit Mineral County to complete the service by  
27

28

1 publication. We note that Mineral County has been attempting to complete service in this case  
2 for more that three years. As part of that effort, Mineral County, in the past, requested the Court  
3 to allow it to complete service by publication. The Court initially denied that request by Minute  
4 Order, dated March 22, 1996. Mineral County appealed the denial to the Ninth Circuit.  
5 Although the appeal was dismissed for lack of jurisdiction, the Ninth Circuit went out of its way  
6 to note that Mineral County's intervention attempt appeared to be a "particularly attractive  
7 candidate for service by publication at the appropriate time." United States v. Walker River Irr.  
8 Dist., No. 96-15885(9th Cir. Feb.12, 1997).  
9

10  
11 CONCLUSION

12 As set forth in the Affidavit of Treva J. Hearne, Mineral County has expended a great  
13 deal of money, time , and effort to complete the service since the Ninth Circuit made its  
14 observation. We believe it is now time to allow Mineral County to complete service by  
15 publication.  
16

17 DATED the 27th day of April, 1998.

18 Respectfully submitted,

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By:

  
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CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of April 1997, served a true copy of the foregoing **JOINT RESPONSE AND POINTS OF AUTHORITIES OF THE UNITED STATES OF AMERICA AND THE WALKER RIVER PAIUTE TRIBE TO MINERAL COUNTY'S MOTION FOR ORDER OF PUBLICATION AND AFFIDAVIT OF SERVICE** by placing same in the U. S. mails, postage prepaid, addressed as follows:

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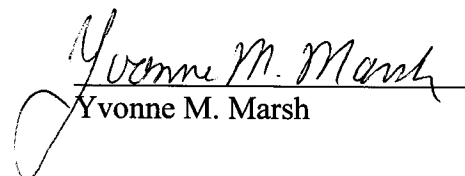
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