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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,
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26 Proposed Plaintiff-
Intervenor,
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INTRODUCTION

On October 25, 1994 - over three years ago - Mineral County filed a motion to intervene in this case. Mineral County has been attempting to complete service of process since that time. The question before the Court today is whether Mineral County should be allowed to complete service of process by publication, given the efforts it has made to accomplish service. As the Court is aware, there have been a number of status conferences held on this matter over the last several months. The most recent status conference was held on April 14, 1998.

THE COURT SHOULD PERMIT MINERAL COUNTY TO COMPLETE SERVICE OF
PROCESS BY PUBLICATION

On April 21, 1998, in accordance with the Court's Order of April 14, 1998, Mineral County filed a motion for an Order of Publication pursuant to Rule 4(e) of the Federal Rules of Civil Procedure. By its motion Mineral County seeks to complete its service of process by publication of a Notice in Lieu of Summons "for all unidentified parties who may be holders of water rights in the Walker River...." Mineral County contends that the Court should permit publication but appears also to argue that publication may not be necessary if the Court finds that the due diligence of Mineral County to complete personal service to date has been sufficiently carried out so as not to require any more effort to complete service, whether by publication or otherwise. *SEE, MINERAL COUNTY'S MOTION FOR ORDER OF PUBLICATION, AT 2 (APRIL 21, 1998).*

The United States and the Walker River Paiute Tribe, for the reasons set forth below, have no objection to the Court permitting completion of service by publication. We do not believe, however, that the Court should conclude that no further service of any kind is in order. Service by publication will ensure that any water users who may have a claim to the waters of the Walker River, but have not for some reason been served, will be placed on notice of Mineral

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

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

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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

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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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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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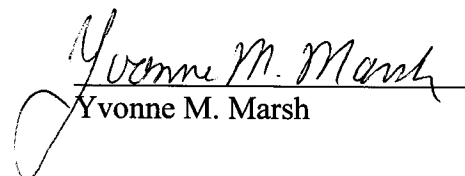
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