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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.,

Defendants.

_____/

MINERAL COUNTY,

Proposed Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT,

a corporation, et al.,

Proposed Defendants.

_____/

In Equity No: C-125-ECR

Subfile No.: C-125-C

RESPONSE OF UNITED STATES BOARD OF WATER COMMISSIONERS TO MINERAL COUNTY'S MOTION FOR ORDER OF PUBLICATION - SECOND REQUEST

FILED
98 APR 28 PM 3:44
LANCE S. WILSON
CLERK
BY _____ DEPUTY

The UNITED STATES BOARD OF WATER COMMISSIONERS ("USBWC") , by and

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through its counsel, Linda A. Bowman of the firm of Bowman & Robinson, presents to this Court its Response to MINERAL COUNTY'S MOTION FOR ORDER OF PUBLICATION - SECOND REQUEST which was filed with the Court on April 21, 1998 and only a portion of which was served upon the parties on April 22, 1998.[1]

Instead of filing an Affidavit in response to the Court's request, it appears that Mineral County has, once again, sought by this motion to amend Judge Reed's Minute Order entered on June 13, 1997[2]. Mineral County appears to seek a rehearing on several issues contained in that order, namely, what needs to be published and the parties for whom publication would substitute for personal service. Mineral County's Motion seeks an "Order of Publication of the Notice in Lieu of Summons for all **unidentified parties** who may be holders of water rights in the Walker River, if the Court deems such publication necessary after the due diligence of Mineral County to complete personal service." (Emphasis added). Instead of identifying the known and identifiable parties for whom personal service was attempted and detailing the efforts made to effect personal service, Mineral County seeks to modify the earlier Order of the Court which clearly states at page 2 thereof, "the prior Order of the court (Doc. #99) granting Proposed Intervenor Mineral County's motion for leave to make service by publication **shall apply only to those potential defendants or claimants which the County has been unable to identify**." (Emphasis added)

What was supposed to have been provided was an affidavit which clearly set forth the names of the proposed defendants in intervention for whom personal service was attempted and now for which service by publication would be requested by Mineral County. The efforts made to serve these proposed Defendants in intervention were to have been detailed. It is fundamental that where an affected party's identity is known or reasonably ascertainable, the Due Process Clause of the Fourteenth Amendment

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[1]The Affidavit of Treva J. Hearne dated April 21, 1998 indicates that there was an Attachment 1 thereto. This Attachment was not served upon this party until April 24, 1998.

[2]The Points & Authorities filed by Mineral County indicate that the Court's previous Order concerning publication is dated January 13, 1997, however, it was entered on June 13, 1997 and is identified as document #181 in the Court's file.

of the United States Constitution requires that notice be given by mail or such other means as is certain to ensure actual notice. Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 478 (1988). The USBWC is concerned that any shortcomings in notice of this action could leave the USBWC with an impossible task of attempting to deliver water under a decree which might not include all of the water right holders originally bound thereby.

Mineral County's Motion and accompanying papers do not address the names of those persons upon whom this form of substituted service is requested, the efforts made to personally serve those persons, nor do they suggest where service by publication should take place. The USBWC does not believe that we are any closer to a resolution of this matter than we were at the Status Conference on April 14, 1998 because of the change of direction taken by Mineral County.

Dated this 28th day of April, 1998.

Bowman & Robinson

Linda A. Bowman

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CERTIFICATE OF SERVICE and FACSIMILE TRANSMITTAL

Pursuant to FRCP 5(b), I hereby certify that I am an employee of Bowman & Robinson and that on April 28, 1998, I mailed a copy of the attached RESPONSE OF UNITED STATES BOARD OF WATER COMMISSIONERS TO MINERAL COUNTY'S MOTION FOR ORDER OF PUBLICATION - SECOND REQUEST postage prepaid, addressed to:

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DATED this 28th day of April, 1998.

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