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9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA, ) IN EQUITY NO. C-125-ECR  
13 ) Subproceeding: C-125-C  
14 Plaintiff, )

15 WALKER RIVER PAIUTE TRIBE, )  
16 )  
17 Plaintiff-Intervenor, )

18 v. ) **JOINT REPORT OF CERTAIN**  
19 ) **DEFENDANT PARTIES**

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

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

29 v. )  
30 )

31 WALKER RIVER IRRIGATION DISTRICT, )  
32 et al., )  
33 )  
34 Proposed Defendants. )

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**TABLE OF CONTENTS**

	<u>Page</u>
I. Introduction .....	4
II. Overview and History of This Proceeding .....	4
A. Overview .....	4
B. History of This Subproceeding .....	5
1. The Original Motion to Intervene .....	5
2. Mineral County’s Initial Attempts at Service of Its Intervention Documents in 1995 .....	8
3. Mineral County’s Service Efforts and Court Proceedings From January of 1998 Through January of 1999 .....	10
4. Mineral County’s Service Efforts and Proceedings During 1999 .....	11
5. Mineral County’s Service Efforts and Proceedings in the Years 2000 and 2001 .....	12
6. Mineral County’s Service Efforts and Court Proceedings From January of 2002 to May of 2003 .....	13
7. The Mediation Order .....	15
8. The 2008 Service Report .....	15
III. Primary Issues Presented By and Remaining In This Case .....	16
A. Introduction .....	16
B. Notice to Unrepresented Parties .....	17
IV. Matters of Legal or Factual Importance Within the Magistrate’s Jurisdiction .....	18

1 **I. INTRODUCTION.**

2 This Joint Report is submitted pursuant to and for the purposes set forth in the Order of  
3 the Magistrate Judge of December 23, 2011 (Doc. #567), the subsequent Stipulation and Order  
4 of January 10, 2012 (Doc. #571), and the Order of January 10, 2012 (Doc. #572).<sup>1</sup> This Joint  
5 Report is submitted on behalf of the Walker River Irrigation District (the “District”), the  
6 Nevada Department of Wildlife, Lyon county, Nevada, Mono County, California, Circle Bar N  
7 Ranch, LLC, Mica Farms, LLC, and Joseph and Beverly Landolt.<sup>2</sup>

9 **II. OVERVIEW AND HISTORY OF THIS PROCEEDING.**

10 **A. Overview.**

11 This matter involves Mineral County’s 1994 motion to intervene and assert a public  
12 trust claim for the benefit of Walker Lake in connection with the water rights adjudicated by  
13 the Walker River Decree entered April 14, 1936, and amended on April 24, 1940, pursuant to  
14 the mandate in *United States v. Walker River Irrigation District*, 104 F.2d 334 (9th Cir. 1939)  
15 (the “Walker River Action”). If allowed to intervene, Mineral County would seek “an  
16 adjudication and reallocation of the waters of Walker River to preserve minimum levels in  
17 Walker Lake.” Doc. #20. To achieve that goal, Mineral County seeks “the right to, at least,  
18 127,000 acre feet of flows annually reserved from the Walker River” for the benefit of Walker  
19 Lake.<sup>3</sup> In addition, if allowed to intervene, Mineral County would seek preliminary injunctive  
20 relief during the pendency of the litigation so that that 240,000 acre feet of water reaches  
21 Walker Lake annually.

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23 <sup>1</sup> Identical Minute Orders, and Stipulations and Orders were entered in C-125 (Doc. #s 1047;  
24 1049; 1051) and in subproceeding C-125-B (Doc. #s 1675; 1680;1681).

25 <sup>2</sup> These Defendant Parties have elected to file separate Joint Reports in each of the proceedings  
26 for two primary reasons. First, the subjects to be covered by the reports involve different  
27 matters in each, although there are some similar issues in the two subproceedings. Second, one  
28 of the purposes for establishing separate files was to avoid burdening this file with material  
related to the other matters.

<sup>3</sup> The Nevada Department of Wildlife holds Nevada Certificate of Appropriation No. 10860 for  
the benefit of Walker Lake with a priority of September 17, 1970.

1           The early stages of this litigation involved Mineral County's efforts to comply with  
2 orders of the Court related to service initially without undertaking adequate efforts to identify  
3 and name the persons to be served.<sup>4</sup> They also involved Mineral County's failure to comply  
4 with the Court's orders concerning service, numerous motions for service by publication, and  
5 motions for a determination that service was complete. In addition, nearly one year was taken  
6 up with an appeal from a service order to the Ninth Circuit Court of Appeals. That appeal that  
7 was ultimately dismissed for lack of jurisdiction.

8           Since dismissal of the appeal, this litigation has continued to involve Mineral County's  
9 efforts to identify and serve the persons and entities required to be served by the Court. That  
10 identification and service has taken place mostly between 1997 and early 2002. In addition,  
11 for a period from mid-2003 through late 2006, some of the parties, including Mineral County,  
12 participated in a facilitated mediation process in an effort to resolve the claim being made in  
13 this matter, and little or no service took place during that time period or thereafter.

14           **B. History of This Subproceeding.**

15           **1. The Original Motion to Intervene.**

16           As noted, this matter involves Mineral County's attempt to intervene and assert a public  
17 trust claim for the benefit of Walker Lake in connection with the water rights adjudicated by  
18 the Walker River Decree entered April 14, 1936, and amended on April 24, 1940, pursuant to  
19 the mandate in *United States v. Walker River Irrigation District*, 104 F.2d 334 (9th Cir. 1939)  
20 (the "Walker River Action"). In October, 1994, Mineral County filed the following pleadings  
21 in the Walker River Action (No. C-125): (1) Notice of Motion and Motion of Mineral County  
22 of Nevada for Intervention; (2) Mineral County's Proposed Petition to Intervene and an  
23 attached Proposed Order granting intervention; (3) Memorandum of Points and Authorities in  
24 Support of Mineral County's Proposed petition to Intervene; and (4) two exhibits and four  
25 affidavits (including several attachments thereto) as factual support for the memorandum (the  
26 "Original Intervention Documents"). Doc. #s 2-4.  
27

28           <sup>4</sup> Mineral County's present counsel did not appear in this subproceeding on behalf of Mineral  
County until August of 2004 (Doc. #s 440; 442) and was not involved in those efforts.

1 A status conference was held on January 3, 1995. On February 9, 1995, as a result of  
2 that status conference, the Court entered an Order Requiring Service of and Establishing  
3 Briefing Schedule Regarding the Motion to Intervene of Mineral County (the "Service Order").  
4 Doc. #19. The Service Order addressed numerous issues concerning how Mineral County's  
5 proposed intervention was to proceed. The Court directed Mineral County to file a revised  
6 motion to intervene and points and authorities in support thereof (the "Motion to Intervene"), a  
7 revised proposed complaint-in-intervention, "which identifies the persons or entities against  
8 whom" its claims would be asserted, and any motion for preliminary injunction with supporting  
9 points and authorities and other supporting documents (collectively, the "Intervention  
10 Documents"). Doc. #19 at 2.

11 The Court directed Mineral County to serve the Intervention Documents and the Service  
12 Order itself on all claimants to the waters of the Walker River and its tributaries (the "Walker  
13 River Claimants") pursuant to Rule 4 of the Federal Rules of Civil Procedure. The Court  
14 defined the Walker River Claimants to include all parties holding water rights under the Walker  
15 River Decree and all parties who had acquired rights to use the waters of the Walker River by  
16 subsequent appropriation. Doc. #19 at 2-3.

17 The Service Order anticipated that Mineral County might utilize what then were the  
18 waiver provisions of FRCP 4(d) in order to comply with the Service Order. With respect to  
19 those provisions, the Court directed Mineral County to serve a copy of a document entitled  
20 Notice of Motion to Intervene, Proposed Complaint-in-Intervention of Mineral County (the  
21 "Notice of Motion") and of a document entitled Request for Waiver of Personal Service of  
22 Motions (the "Request for Waiver). The Notice of Motion and Request for Waiver forms were  
23 attached to the Service Order. Therefore, the Court directed Mineral County to serve the  
24 Intervention Documents, a Notice of Motion, a Request for Waiver and a copy of the Service  
25 Order on all parties served pursuant to the waiver provisions of FRCP 4(d). Doc. #19 at 3; 5.  
26  
27

28 The Service Order also provided for personal service on parties who did not waive  
service. It directed Mineral County to serve a copy of a document entitled Notice in Lieu of

1 Summons. The Notice in Lieu of Summons form was also attached to the Service Order.  
2 Therefore, to effectuate personal service, Mineral County was required to serve the Intervention  
3 Documents, Notice in Lieu of Summons and a copy of the Service Order on all parties that it  
4 made personal service upon.

5  
6 The Court ordered Mineral County to complete service of the Intervention Documents  
7 pursuant to the Service Order by May 10, 1995. *Id.* at 2. It also adopted a schedule requiring  
8 responses to the Motion to Intervene to be served not later than July 11, 1995. *Id.* at 3, 4. No  
9 answers to the proposed complaint-in-intervention or responses to the motion for preliminary  
10 injunction were required until after the Court decided the Motion to Intervene. *Id.* at 4.  
11 However, the Service Order provides:

12  
13 Persons, corporations, institutions, associations or other entities  
14 properly served with Mineral County's Intervention Documents who do not  
15 appear and respond to Mineral County's Motion to Intervene shall nevertheless  
16 be deemed to have notice of subsequent orders of the Court with respect to  
17 answers or other responses to the proposed complaint-in-intervention or  
18 responses to any motion for preliminary injunctive relief filed and served by  
19 Mineral County.

20 Doc. #19 at 4-5.

21 In response to the Service Order, on approximately March 10, 1995, Mineral County  
22 filed: (1) Mineral County's Amended Complaint in Intervention;<sup>5</sup> (2) Amended Memorandum  
23 of Points and Authorities in Support of Mineral County's Amended Complaint in Intervention;  
24 (3) Motion for Preliminary Injunction; Memorandum of Points and Authorities; together with  
25 supporting affidavits that included several attachments (the "Revised Intervention  
26 Documents"). Doc. #s 20-22. The Revised Intervention Documents referred to and relied upon  
27 all of the exhibits and attachments included with the Original Intervention Documents. The

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5 Apparently through some clerical error, Mineral County's proposed Amended Complaint was  
"filed" by the Clerk on March 10, 1995, even though the Court has never heard or granted  
Mineral County's Motion to Intervene as required by Fed. R. Civ. P. 24. *See* Doc. #20.

1 proposed amended Complaint-in-Intervention did not specifically name the persons or entities  
2 against whom Mineral County proposed to assert its claims.

3 The Revised Intervention Documents seek “an adjudication and reallocation of the  
4 waters of Walker River to preserve minimum levels in Walker Lake.” Doc. #20. To achieve  
5 that goal, Mineral County seeks “the right to, at least, 127,000 acre feet of flows annually  
6 reserved from the Walker River.” In its Motion for Preliminary Injunction, Mineral County  
7 seeks to require water rights holders on the Walker River system to allow 260,000 acre feet of  
8 water to reach Walker Lake in 1995. It asks that thereafter water rights holders be enjoined so  
9 that 240,000 acre feet of water reaches Walker Lake annually until this litigation is concluded.

10 **2. Mineral County’s Initial Attempts at Service of Its Intervention  
Documents in 1995.**

11 In approximately April and May of 1995, Mineral County attempted service under the  
12 waiver provisions of then Fed. R. Civ. P., Rule 4(d). In seeking waivers of service, Mineral  
13 County mailed some, but not all, of the documents required to be served to persons it had  
14 apparently identified as Walker River Claimants.<sup>6</sup> Doc. #40 at 1-3.

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21  
22 <sup>6</sup> As stated above, the Service Order expressly required Mineral County to file “a revised  
23 proposed Complaint-In-Intervention . . . which identifies the persons or entities against whom  
24 such claims are proposed to be asserted....” Service Order at 2. [Emphasis added]. Mineral  
25 County failed to comply with that requirement. As a result, it became increasingly difficult to  
26 determine if Mineral County had correctly indentified the Walker River Claimants before it  
27 initiated any service efforts and to determine the status of those efforts. In early 1996, the  
28 Court clarified “that it is up to the County to determine who the proper defendants (i.e.  
competing water right holders) are in its proposed action.” Doc. #74 at 2. Later, it would  
become apparent that Mineral County had attempted to identify the Walker River Claimants by  
merely acquiring lists of names from various entities instead of conducting the work necessary  
to ascertain those parties at the relevant County Recorders’ Offices. *See e.g.* Attachment 1 to  
Doc. #97; Doc. #77 at 7, 8; Doc. #94 at 8, 9; Doc. #259 at 3.



1 Mineral County's solicitation of waivers of service was not successful.<sup>7</sup> Subsequent to  
2 its attempted service under the waiver provisions of Rule 4(d), Mineral County asked the Court  
3 to relieve it of any further responsibility with regard to service of the Intervention Documents.  
4 Doc. #31 at 1. Because it was obvious as a matter of fact that service had not been  
5 accomplished, the Court denied that request by order dated August 16, 1995. Doc. #44 at 13.  
6 That Order reaffirms the service provisions contained in the Service Order, noting that it had  
7 not been vacated, modified or appealed. *Id.* at 2. Therefore, the Court again directed Mineral  
8 County to serve the Intervention Documents as directed in the Service Order on all Walker  
9 River Claimants. *Id.*

10 In the months following August 16, 1995, Mineral County filed several pleadings with  
11 the Court representing that service was complete and requesting that the Court relieve it from  
12 any further obligation to complete service of the Intervention Documents. The Court denied  
13 these requests for relief because service had not been completed. *See e.g.* Doc. #s 48 and 74.  
14 The Court also entered orders that suspended or vacated the briefing schedule set forth in the  
15 Service Order with respect to the Motion to Intervene. *See e.g.* Doc. #s 33, 44, 71.

16 Instead of complying with the Court's directive to complete service, in April of 1996  
17 Mineral County appealed the Court's decision that service was not complete to the Ninth  
18 Circuit Court of Appeals. Doc. #78. This further delayed Mineral County's service efforts and  
19 in a written decision filed February 12, 1997, the Ninth Circuit dismissed Mineral County's  
20 appeal for lack of jurisdiction. Doc. #98.

22 On or about February 20, 1997, Mineral County filed a motion for leave to serve by  
23  
24

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25 <sup>7</sup> Mineral County complained that the District had interfered with and frustrated its attempts to  
26 obtain waivers of service. Doc. #31 at 5. It sought substantial sanctions from the District. *Id.*  
27 at 2. The Court denied Mineral County's request for sanctions. Doc. #44 at 10-13. Although  
28 what the District did and why are not relevant here, they are explained in detail at Doc. #40,  
and are supported by the Court's order denying Mineral County relief. Suffice it to say that the  
District responded in good faith to inquiries and its response was based upon Mineral County's  
unilateral decision to not mail documents which the Service Order clearly required be served.

1 publication unidentified holders of water rights appurtenant to lands located within the Walker  
2 River system. Doc. #88. The Court granted that motion (Doc. #99) and subsequently made it  
3 absolutely clear, however, that its order did not apply to identified holders of water rights. Doc.  
4 #114.

5  
6 On August 14, 1997, the Court assigned this matter to the Magistrate Judge for purposes  
7 of determining if Mineral County had made proper service upon all identified holders of  
8 Walker River water rights. Doc. #140. During the Fall of 1997, the Magistrate Judge held  
9 hearings and ordered Mineral County to prepare a caption that contained the names of the  
10 proposed defendants. By order dated December 4, 1997, the Magistrate Judge acknowledged  
11 that “Mineral County has submitted the defendant’s list which has been put into a caption.”  
12 Doc. #162. The Court also directed Mineral County to complete service in accordance with the  
13 provisions of the Service Order, and a subsequent order (Doc. #48), by March 30, 1998. *Id.* at  
14 2. Finally, the Magistrate Judge directed that the documents served by Mineral County from  
15 that date forward would state that responses to the Motion to Intervene would be due June 15,  
16 1998. *Id.*

### 17 18 **3. Mineral County’s Service Efforts and Court Proceedings From** 19 **January of 1998 Through January of 1999.**

20 In early 1998, Mineral County served and attempted service on numerous parties and  
21 filed several “certificates of return of service” with the Court. *See e.g.*, Doc. #s 165 through  
22 180. At a status conference held in April of 1998, the Court ordered Mineral County to file a  
23 motion to effect service by publication which Mineral County filed that motion on April 21,  
24 1998. Doc. #s 181 and 183. That motion was opposed on the basis that service was  
25 substantially incomplete and that Mineral County had failed to make the showings necessary to  
26 support service by publication. Doc. #189.  
27  
28

1 On April 30, 1998, the Magistrate Judge entered an order stating that all service issues  
2 had not been settled and scheduled a hearing. Doc. #193. After that hearing, the Magistrate  
3 Judge issued an order listing the service issues that had been resolved and those which  
4 remained unresolved and providing the parties an opportunity to respond to this list. Doc.  
5 #196. By order dated June 11, 1998, the Court once again amended the briefing schedule by  
6 requiring responses to Mineral County's Motion to Intervene to be filed by November 24,  
7 1998. Doc. #221. Mineral County filed yet another motion for publication on August 4, 1998.  
8 Doc. #226.

9  
10 By order dated November 6, 1998, the Court again amended the briefing schedule by  
11 requiring responses to Mineral County's motion to intervene to be filed by February 1, 1999.  
12 Doc. #240. Finally, by order dated January 8, 1999, the Court vacated the briefing schedule on  
13 the Motion to Intervene and postponed setting any further briefing schedule until the Court  
14 ruled on all outstanding issues concerning the completion of personal service, service through  
15 publication and the dismissal of parties. Doc. #247.

#### 17 **4. Mineral County's Service Efforts and Proceedings During 1999.**

18 On February 25, 1999, the Court entered an order addressing pleadings Mineral County  
19 had filed up to that date concerning service by publication. The order denied service through  
20 publication in large part, granted service through publication on four parties, dismissed two  
21 parties, gave Mineral County 120 days to file another motion for service by publication,  
22 directed the District to file any objections it had to service on individual parties within 60 days  
23 and directed Mineral County to file any response to those objections within 30 days thereafter.  
24 Doc. #252 at 83.

25  
26 On March 2, 1999, the Court entered an order addressing pleadings Mineral County had  
27 filed up to that date requesting the dismissal of certain parties. That order dismissed certain  
28 parties and denied Mineral County's request to dismiss other parties. Doc. #257. The District

1 filed its objections to service on April 26, 1999 (Doc. #259) as directed by the Court in Doc.  
2 #252. That document set forth in detail the District's general objections with respect to service  
3 and objections related to specific parties.

4 On July 23, 1999, Mineral County filed another motion requesting permission from the  
5 Court to serve all unidentified parties by publication. Doc. #288. By order dated August 27,  
6 1999, the Court referred the District's objections to service (Doc. #259) and Mineral County  
7 motion for publication (Doc. #288) to the Magistrate Judge for decision. Doc. #298. That  
8 order stated: "Thus, after the Magistrate Judge rules on these matters, we should have a list of  
9 which defendants have been properly served, which defendants Mineral County has shown  
10 should be served by publication, and which defendants have not yet been correctly served but  
11 as to whom Mineral County has not yet demonstrated that service by publication is warranted."  
12

13 *Id.* at 2.<sup>8</sup>

14  
15 **5. Mineral County's Service Efforts and Proceedings in the Years 2000  
and 2001.**

16 As a result of a status conference held on January 6, 2000, the Magistrate Judge directed  
17 submission of lists reflecting: (i) parties properly served; (ii) parties for whom the District  
18 objected to service; (iii) parties Mineral County claimed should be served by publication; and  
19 (iv) parties, based on information in Mineral County's possession, that no longer owned water  
20 rights together with the identity of their successors-in-interest. Doc. #316 at 2. The District  
21 filed its pleading containing these lists and addressing other matters on February 7, 2000 (Doc.  
22 #319) and Mineral County filed a report concerning service on March 10, 2000. Doc. #s 322  
23 and 323.  
24  
25

26  
27 <sup>8</sup> It is worth noting that Mineral County continued to serve documents on an on-going basis as  
28 demonstrated by the numerous "Certificate of Return of Service" forms and "Waiver of  
Service" forms filed with the Court as evidenced by the docket sheets. It is not possible to  
know with certainty, however, what documents Mineral County was serving or the dates stated  
in those documents to respond to the Motion to Intervene at any particular time.

1           After a hearing to address the service issues, the Magistrate Judge entered an *Order*  
2 *Concerning Status of Service on Defendants*. Doc. #327 (the “Status of Service Order”).  
3 Among many other things, the Status of Service Order listed the parties for whom the District  
4 did not object to service, parties deemed to have been properly served, parties deemed to have  
5 not been served and parties for whom Mineral County intended to file motions to dismiss. It  
6 also stated that responses to the Motion to Intervene would be served pursuant to a schedule to  
7 be established by further order of the Court and that any party served from that point forward  
8 would be required to file and serve a Notice of Appearance which includes the name of the  
9 party and the mailing address of that party or of its counsel. *Id.* at 7. Finally, the Status of  
10 Service Order stated that any “party who is properly served but does not file and serve a Notice  
11 of Appearance shall be deemed to have notice of subsequent orders of the Court and  
12 subsequent pleadings filed and served in this matter.” *Id.* at 8.  
13

14  
15           On August 8, 2000, Mineral County filed another motion to dismiss and substitute  
16 certain parties. Doc. #351. Over the next year, Mineral County filed additional documents  
17 concerning this motion to dismiss and other parties filed their respective responses. *See, e.g.*,  
18 Doc. #s 354; 358; 361; 374; 382; 386.

19           After a December 19, 2001 hearing, the Court entered an order denying in part and  
20 granting in part Mineral County’s requests to dismiss certain parties. Doc. #397. That order  
21 also substituted many parties into the caption of the case. On January 15, 2002, the District  
22 filed responses concerning the content of the December 19, 2001 order. Doc. #400. After  
23 another hearing, the Court adopted all of those responses by order dated February 25, 2002.  
24 Doc. #403.  
25

26           **6. Mineral County's Service Efforts and Court Proceedings From**  
27 **January of 2002 to May of 2003.**  
28

1           The April 3, 2000 Status of Service Order listed 170 parties who Mineral County had  
2 not served. Doc. #327 at 4, 5. On January 31, 2002, the District filed a list containing the  
3 names of 66 parties from that 170 which the District believed Mineral County had still failed to  
4 effect service upon. Doc. #401 at 2, 3. It also listed the names of an additional 45 parties  
5 added to the caption by the Court's December 19, 2001 order (Doc. #397) who had not been  
6 served. Doc. #401 at 3, 4.

7  
8           At a hearing held on and by order dated February 25, 2002, the Court directed Mineral  
9 County to circulate an amended caption to the parties. Doc. #403. Mineral County circulated  
10 the revised caption on March 4, 2002, for the parties to review. By letter dated March 18,  
11 2002, the District set forth numerous discrepancies between the revised caption and the caption  
12 filed with the Court on January 12, 1998. Doc. #408. The letter also set forth the names of 11  
13 parties who Mineral County had not moved to dismiss as it had previously represented. *Id.* at  
14 3. Finally it offered a proposed order to memorialize the content of the Court's order of  
15 February 25, 2002 (Doc. #403) which adopted the District's responses contained in its January  
16 15, 2002 pleading (Doc. #400). After the filing of additional reports on service issues (Doc. #s  
17 411; 412), the Court held a hearing on May 3, 2002, and made rulings concerning the status of  
18 service on certain parties and the content of the proposed order. Doc. #413. It also set a  
19 schedule for briefing another motion for publication and ordered Mineral County to prepare  
20 another revised or amended caption to reflect the rulings made at the hearing. *Id.* An order  
21 adopting rulings from the February 25, 2002 and May 3, 2002 hearings was entered thereafter.  
22 Doc. #414.

23  
24  
25           On June 19, 2002, Mineral County filed another motion for service by publication.  
26 Doc. #415. On June 20, 2002, Mineral County also moved the Court to deem service complete  
27 and to allow service on new parties without first obtaining leave of court to add or substitute  
28 them into the caption. Doc. #416. The District objected to these two requests by pleading

1 dated July 8, 2002. Doc. #417. In addition, the District filed its response to Mineral County's  
2 motion for publication on July 19, 2002. Doc. #420. By Order dated June 17, 2003 (Doc.  
3 #434) the Court denied in substantial part Mineral County's fifth motion for publication filed as  
4 Doc. #415.

#### 5 **7. The Mediation Order.**

6  
7 In the spring of 2003, a number of the principal parties involved in this subproceeding  
8 and in subproceeding C-125-B agreed to participate in a mediation process to attempt to settle  
9 certain issues in the litigation. As a result, the Court entered an Order Governing Mediation  
10 Process on May 28, 2003 (the "Mediation Order"). Doc. #430. The Mediation Order provided  
11 that service of process should continue and be completed as soon as possible during the  
12 Mediation. However, all other proceedings were held in abeyance during the Mediation. Doc.  
13 #430 at 2-3. On September 15, 2006, Mineral County withdrew from the Mediation Process,  
14 which ultimately ended on December 8, 2006. Doc. #466. Little or no service was made  
15 during the mediation. *See* Doc. #s 431-465.

#### 16 **8. The 2008 Service Report.**

17  
18 On August 29, 2008, Mineral County filed a Report Concerning Status of Service on  
19 Proposed Defendants (Doc. #479) (the "Service Report") together with a Proposed Order  
20 Concerning the Service Report and Status of Service on Proposed Defendants (Doc. #480).  
21 The Service Report set forth Mineral County's position with respect to the status of service in  
22 this matter and its position on certain issues involving service as previously ordered by the  
23 Court. The Service Report was based upon counsel's review of service which had taken place  
24 with respect to service by early 2002. Doc. #479. Little or no service has taken place since the  
25 Service Report. *See* Doc. #s 415-548.

26 The District responded on November 21, 2008. Doc. #488. Mineral County filed its  
27 Reply on January 23, 2009. Doc. #496. The matter was to be considered at a status conference  
28 on March 30, 2009, which was later continued to May 4, 2009. Doc. #s 497; 498. However,  
on March 12, 2009, Magistrate Judge McQuaid recused himself from this matter. Doc. #499.

1 The previously scheduled status conference was vacated (Doc. #501), and the matter was  
2 assigned to Magistrate Judge Leavitt. Doc. #500.

3 By order dated September 20, 2010, the Magistrate Judge set a telephonic status  
4 conference in this matter for October 19, 2010. Doc. #512. As a result of that status  
5 conference and subsequent stipulations and orders, a schedule was established for submission  
6 of and briefing with respect to an order related to the status and obligations of existing  
7 defendants that transfer water rights subsequent to appearing or being served, and procedures to  
8 address issues related to their successors and their substitution and/or Joinder (a “Successor-In-  
9 Interest Order”). Doc. #s 515; 517; 518.

10 The proposed Successor-In-Interest Order was lodged with the Court. Doc. #516.  
11 Objections were filed and briefed. Doc. #s 523; 535. Thereafter, on August 24, 2011, the  
12 Magistrate Judge entered the Successor-In-Interest Order. Doc. #540. On September 6, 2011,  
13 the Magistrate Judge entered an Amended Order. Doc. #542. On September 27, 2011, the  
14 Magistrate Judge entered an Order based upon the 2008 Service Report and filings. Doc. #547  
15 (the “Order Concerning Service Issues”). The District has objected to the Rulings of the  
16 Magistrate Judge. Doc. #s 552; 553; 554. Those objections have been opposed (Doc. #s 563;  
17 564). A hearing on those objections is scheduled for February 21, 2012. Doc. # 573.

### 18 **III. PRIMARY ISSUES PRESENTED BY AND REMAINING IN THIS CASE.**

#### 19 **A. Introduction.**

20 In this portion of the Joint Report, we attempt to identify primary issues so that they can  
21 be appropriately scheduled for briefing, argument and/or decision. We recognize that the  
22 purpose of this report and the status conference of February 6, 2012 is not to make decisions on  
23 issues, but rather to identify issues so that an appropriate schedule for and decisions on them  
24 can be established.

25 At this point, the primary issues presented by and remaining with respect to Mineral  
26 County’s Motion to Intervene relate to the status of service. Important issues on that subject  
27 are now before the District Judge based upon the objections to the Successor-In-Interest Order  
28 and the September 27, 2011 Order Concerning Service Issues. Once those objections are  
decided, there will be direction on what remains to be done with respect to service, briefing and



1 argument on the Motion to Intervene and Notice thereof. Depending on the outcome of the  
2 Motion to Intervene, this matter may be over, or just beginning.

3 **B. Notice to Unrepresented Parties.**

4 There are several hundred persons who have been served in this matter, but who were  
5 not required to do anything at all except respond to the Motion to Intervene by a date which has  
6 been changed, and since January 8, 1999, has been vacated. The following table summarizes  
7 how and when that date has changed:

8 <b>Docket No. of Order</b>	<b>Date of Order</b>	<b>Date to Complete Service</b>	<b>Date to Respond to Motion to Intervene</b>
9 19	02/09/95	05/10/95	07/11/95
10 33	07/07/95	Expired	Vacated
11 44	08/16/95	09/29/95	10/27/95
12 48	09/29/95	02/01/96	04/01/96
71	03/15/96	Suspended	Suspended
78	04/24/96	Appeal to 9th Circuit - No schedule	
13 162	12/04/97	03/30/98	06/15/98
14 210	06/04/98	06/01/98	No change
221	06/11/98	No change	11/24/98
15 240	11/06/98	No change	02/01/99
16 247	01/08/99	Vacated	Vacated

17 There are also many persons who have filed Notices of Appearances, but who are not  
18 represented by counsel.

19 In order to move forward with briefing and a hearing on the Motion to Intervene when  
20 service is complete, it will be necessary to have in place an effective and efficient method for  
21 the Court, as well as the parties, to serve notices, orders, motions, points and authorities, and  
22 other materials on parties who are not represented by counsel. The same is true with respect to  
23 service of the Amended Successor-In-Interest Order once a decision is made on the objections  
24 to it. It is also true with respect to notice of all future proceedings in this matter. The  
25 Magistrate Judge should establish a schedule for recommendations from the parties for  
26 procedures for providing notice to those unrepresented parties, and service of pleadings on  
27 those parties in a manner which is consistent with the Federal Rules of Civil Procedure, and  
28 due process.

1 **IV. MATTERS OF LEGAL OR FACTUAL IMPORTANCE WITHIN THE**  
2 **MAGISTRATE'S JURISDICTION.**

3 Until the service issues are resolved, and there is a decision on the Motion to Intervene,  
4 it is not possible to identify matters of factual or legal importance which may come within the  
5 jurisdiction of a Magistrate Judge. At the present time, these Defendant Parties are not aware  
6 of any other matter not set forth above, of legal or factual importance, related to this matter  
7 within the jurisdiction of a United States Magistrate Judge under 28 U.S.C. § 636(b)(1) which  
8 is pending at the present time.

9 Dated: January 23, 2012

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Woodburn and Wedge and that on the 23<sup>rd</sup> day of  
 3 January, 2012, I electronically served the foregoing *Joint Report of Certain Defendant Parties*  
 4 in Case No. 3:73-cv-0127-ECR-WGC with the Clerk of the Court using the CM/ECF system,  
 5 which will send notification of such filing to the following via their email addresses:  
 6

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10 and I further certify that I served a copy of the foregoing in Case No. 3:73-cv-0127-ECR-WGC  
11 to the following by U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of January, 2012:

12 Robert L. Auer  
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10 I certify that I am an employee of Woodburn and Wedge and that on the 23<sup>rd</sup> day of  
11 January, 2012, I electronically served the foregoing in Case No. 3:73-cv-0128-ECR-WGC with  
12 the Clerk of the Court using the CM/ECF system, which will send notification of such filing to  
13 the following via their email addresses:  
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25 and I further certify that I served a copy of the foregoing in Case No. 3:73-cv-0128-ECR-WGC  
26 to the following by U.S. Mail, postage prepaid, this \_\_\_\_ day of January, 2012:

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15	George N. Bloise	Richard B. Nuti
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21 I further certify that I served a copy of the foregoing in Case No. 3:73-cv-125-ECR-  
22 WGC to the following non-CM/ECF participants by U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of  
23 January, 2012:  
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 10   / s / Holly Dewar  
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