

Gordon H. DePaoli  
Nevada State Bar No. 195  
Dale E. Ferguson  
Nevada State Bar No. 4986  
Domenico R. DePaoli  
Nevada State Bar No. 11553  
WOODBURN AND WEDGE  
6100 Neil Road, Suite 500  
Reno, Nevada 89511  
Telephone: 775 / 688-3000  
Attorneys for Walker River Irrigation District

*(List of attorneys continued on page 2)*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

|                                   |   |                                |
|-----------------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA,         | ) | IN EQUITY NO. C-125-ECR        |
|                                   | ) | Subproceeding: C-125-C         |
| Plaintiff,                        | ) |                                |
|                                   | ) | 3:73-CV-00128-ECR-WGC          |
| WALKER RIVER PAIUTE TRIBE,        | ) |                                |
|                                   | ) |                                |
| Plaintiff-Intervenor,             | ) |                                |
|                                   | ) |                                |
| v.                                | ) | <b>JOINT REPORT OF CERTAIN</b> |
|                                   | ) | <b>DEFENDANT PARTIES</b>       |
| WALKER RIVER IRRIGATION DISTRICT, | ) |                                |
| a corporation, et al.,            | ) |                                |
|                                   | ) |                                |
| Defendants.                       | ) |                                |
| _____                             | ) |                                |
| MINERAL COUNTY,                   | ) |                                |
|                                   | ) |                                |
| Proposed-Plaintiff-Intervenor,    | ) |                                |
|                                   | ) |                                |
| v.                                | ) |                                |
|                                   | ) |                                |
| WALKER RIVER IRRIGATION DISTRICT, | ) |                                |
| et al.,                           | ) |                                |
|                                   | ) |                                |
| Proposed Defendants.              | ) |                                |
| _____                             | ) |                                |

1 Marta Adams  
2 Chief Deputy Attorney General  
3 Division of Government and Natural Resources  
4 Nevada Attorney General's Office  
5 100 N. Carson Street  
6 Carson City, Nevada 89701  
7 Attorneys for Nevada Department of Wildlife

8 John W. Howard  
9 1508 W. Lewis Street  
10 San Diego, California 92103  
11 Attorneys for Joseph and Beverly Landolt

12 Laura Schroeder, Therese Ure  
13 440 Marsh Avenue  
14 Reno, Nevada 89509  
15 Attorneys for Circle Bar N Ranch, LLC and Mica Farms, LLC

16 Stacey Simon  
17 Assistant County Counsel, Mono County  
18 P.O. Box 2415  
19 Mammoth Lakes, California 93546-2415  
20 Attorneys for Mono County, California

21 George Benesch  
22 190 W. Huffaker Lane, # 408  
23 Reno, Nevada 89511  
24 Attorney for Lyon County, Nevada  
25  
26  
27  
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**I. INTRODUCTION.**

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

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

**A. Overview.**

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

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

<sup>2</sup> These Defendant Parties have elected to file separate Joint Reports in each of the proceedings for two primary reasons. First, the subjects to be covered by the reports involve different matters in each, although there are some similar issues in the two subproceedings. Second, one 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.

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

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

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

17 Doc. #19 at 4-5.

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

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27  
28 <sup>5</sup> 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 11 Documents in 1995.**

12 In approximately April and May of 1995, Mineral County attempted service under the  
13 waiver provisions of then Fed. R. Civ. P., Rule 4(d). In seeking waivers of service, Mineral  
14 County mailed some, but not all, of the documents required to be served to persons it had  
15 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 Records’ 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.

21  
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 On August 14, 1997, the Court assigned this matter to the Magistrate Judge for purposes  
6 of determining if Mineral County had made proper service upon all identified holders of  
7 Walker River water rights. Doc. #140. During the Fall of 1997, the Magistrate Judge held  
8 hearings and ordered Mineral County to prepare a caption that contained the names of the  
9 proposed defendants. By order dated December 4, 1997, the Magistrate Judge acknowledged  
10 that "Mineral County has submitted the defendant's list which has been put into a caption."  
11 Doc. #162. The Court also directed Mineral County to complete service in accordance with the  
12 provisions of the Service Order, and a subsequent order (Doc. #48), by March 30, 1998. *Id.* at  
13 2. Finally, the Magistrate Judge directed that the documents served by Mineral County from  
14 that date forward would state that responses to the Motion to Intervene would be due June 15,  
15 1998. *Id.*

16  
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.

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.

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 16 and 2001.**

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

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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.

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.

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



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

**B. Notice to Unrepresented Parties.**

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

| Docket No.<br>of Order | Date<br>of Order | Date to Complete<br>Service         | Date to Respond to<br>Motion to Intervene |
|------------------------|------------------|-------------------------------------|---|
| 19                     | 02/09/95         | 05/10/95                            | 07/11/95                                  |
| 33                     | 07/07/95         | Expired                             | Vacated                                   |
| 44                     | 08/16/95         | 09/29/95                            | 10/27/95                                  |
| 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 |   |
| 162                    | 12/04/97         | 03/30/98                            | 06/15/98                                  |
| 210                    | 06/04/98         | 06/01/98                            | No change                                 |
| 221                    | 06/11/98         | No change                           | 11/24/98                                  |
| 240                    | 11/06/98         | No change                           | 02/01/99                                  |
| 247                    | 01/08/99         | Vacated                             | Vacated                                   |

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

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

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

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

Dated: January 23, 2012

WOODBURN AND WEDGE

By: / s / Gordon H. DePaoli  
Gordon H. DePaoli,  
Dale E. Ferguson, Domenico R. DePaoli  
6100 Neil Road, Suite 500  
Reno, Nevada 89511  
Attorneys for Walker River Irrigation District

NEVADA ATTORNEY GENERAL'S OFFICE

By: / s / Marta Adams  
Marta Adams  
Chief Deputy Attorney General  
Division of Government and Natural Resources  
Nevada Attorney General's Office  
100 N. Carson Street  
Carson City, Nevada 89701  
Attorneys for Nevada Department of Wildlife

JW HOWARD/ATTORNEYS LTD.

By: / s / John W. Howard  
John W. Howard  
1508 W. Lewis Street  
San Diego, California 92103  
Attorneys for Joseph and Beverly Landolt

SCHROEDER LAW OFFICES, P.C.

By: / s / Laura Schroeder

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
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23  
24  
25  
26  
27  
28

Laura Schroeder, Therese Ure  
440 Marsh Avenue  
Reno, Nevada 89509  
Attorneys for Circle Bar N Ranch, LLC and  
Mica Farms, LLC

MONO COUNTY, CALIFORNIA

By: / s / Stacey Simon  
Stacey Simon  
Assistant County Counsel, Mono County  
P.O. Box 2415  
Mammoth Lakes, California 93546-2415

LAW OFFICES OF GEORGE BENESCH

By: / s / George Benesch  
George Benesch  
190 W. Huffaker Lane, # 408  
Reno, Nevada 89511  
Attorney for Lyon County, Nevada

**CERTIFICATE OF SERVICE**

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

|                         |                                |
|-------------------------|--------------------------------|
| Brian Chally            | brian.chally@lvvwd.com         |
| Bryan L. Stockton       | bstockton@ag.nv.gov            |
| Charles S. Zumpft       | zumpft@brooke-shaw.com         |
| Cherie K. Emm-Smith     | emmsmithlaw@cccomm.net         |
| Don Springmeyer         | dspringmeyer@wrslawyers.com    |
| Christopher Mixson      | cmixson@wrslawyers.com         |
| G. David Robertson      | gdavid@nvlawyers.com           |
| George Benesch          | gbenesch@sbcglobal.net         |
| Greg Addington          | greg.addington@usdoj.gov       |
| Harry W. Swainston      | hwsainston@earthlink.net       |
| J.D. Sullivan           | jd@mindenlaw.com               |
| James Spoo              | spootoo@aol.com                |
| John Paul Schlegelmilch | jpslaw@netscape.com            |
| Julian C. Smith, Jr.    | joylyn@smithandharmer.com      |
| Karen Peterson          | kpeterson@allisonmackenzie.com |
| Kirk C. Johnson         | kirk@nvlawyers.com             |
| Laura Schroeder         | counsel@water-law.com          |
| Louis S. Test           | twallace@htag.reno.nv.us       |
| Marta Adams             | madams@ag.nv.gov               |
| Marvin W. Murphy        | marvinmurphy@sbcglobal.net     |
| Michael D. Hoy          | mhoy@nevadalaw.com             |
| Michael F. Mackedon     | faonlaw@phonewave.net          |
| Michael R. Montero      | mrm@eloreno.com                |
| Michael A. Pagni        | mpagni@mcdonaldcarano.com      |
| Richard W. Harris       | rharris@gbis.com               |
| Ross E. de Lipkau       | ecf@parsonsbehle.com           |
| Sylvia Harrison         | sharrison@mcdonaldcarano.com   |
| T. Scott Brooke         | brooke@brooke-shaw.com         |
| Michael W. Neville      | michael.neville@doj.ca.gov     |
| Stacey Simon            | ssimon@mono.ca.gov             |
| William E. Schaeffer    | lander_lawyer@yahoo.com        |
| Susan Schneider         | susan.schneider@usdoj.gov      |
| Paul J. Anderson        | panderson@mclrenolaw.com       |
| Debbie Leonard          | dleonard@mcdonaldcarano.com    |
| Wes Williams            | wwilliams@standfordaluni.org   |
| William J. Duffy        | william.duffy@dgsllaw.com      |
| Gene M. Kaufmann        | GKaufmann@mindenlaw.com        |
| Erin K.L. Mahaney       | emahaney@waterboards.ca.gov    |
| David L. Negri          | david.negri@usdoj.gov          |

|   |                          |                                    |
|---|--------------------------|------------------------------------|
| 1 | Simeon Herskovits        | simeon@communityandenvironment.net |
| 2 | John W. Howard           | johnh@jwhowardattorneys.com        |
| 3 | Malissa Hathaway McKeith | mckeith@lbbslaw.com                |
| 4 | Andrew D. Galvin         | drew.galvin@americantower.com      |
| 5 | Lynn L. Steyaert         | lls@water-law.com                  |
| 6 | Noelle R. Gentilli       | ngentill@water.ca.gov              |
| 7 | Donald B. Mooney         | dbmooney@dcn.org                   |
| 8 | Erick Soderlund          | esoderlu@water.ca.gov              |
| 9 | Stuart David Hotchkiss   | david.hotchkiss@ladwp.com          |

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

Robert L. Auer  
Lyon County District Attorney  
31 S. Main St.  
Yerington, NV 89447

William W. Quinn  
Office of the Field Solicitor  
Department of the Interior  
401 W. Washington St., SPC 44  
Phoenix, AZ 85003

Wesley G. Beverlin  
Malissa Hathaway McKeith  
Lewis, Brisbois, Bisgaard & Smith LCP  
221 N. Figueroa St., Suite 1200  
Los Angeles, CA 90012

Mary Rosaschi  
P.O. Box 22  
Wellington, NV 89444

Leo Drozdoff  
Dir. of Conservation & Natural Resources  
State of Nevada  
901 S. Stewart St., #1003  
Carson City, NV 89701

Marshall S. Rudolph, Mono County Counsel  
Stacy Simon, Deputy County Counsel  
Mono County  
P. O. Box 2415  
Mammoth Lakes, CA 93546-2415

Kelly R. Chase  
P.O. Box 2800  
Minden, NV 89423

William E. Schaeffer  
P. O. Box 936  
Battle Mountain, NV 89820

Arden O. Gerbig  
106629 U.S. Highway 395  
Coleville, CA 96407-9538

James Shaw  
Water Master  
U.S. Board of Water Commissioners  
410 N. Main Street  
Yerington, NV 89447

George M. Keele, APC  
1692 County Rd., Suite A  
Minden, NV 89423

Kenneth Spooner  
General Manager  
Walker River Irrigation District  
P.O. Box 820  
Yerington, NV 89447

Jason King

Garry Stone

Division of Water Resources  
State of Nevada  
901 S. Stewart St.  
Carson City, NV 89701

U.S. District Court Water Master  
290 S. Arlington Ave., 3rd Floor  
Reno, NV 89501

Timothy A. Lukas  
P.O. Box 3237  
Reno, NV 89505

Walker Lake Water Dist, G.I.D.  
Walker Lake GID  
175 Wassuk Way  
Walker Lake, NV 89415

Todd Plimpton  
Belanger & Plimpton  
1135 Central Ave.  
P.O. Box 59  
Lovelock, NV 89419

Kenneth Mayer, Director  
Elmer Bull, Habitat Director Chief  
Nevada Dept. of Wildlife  
1100 Valley Rd.  
Reno, NV 89512

I certify that I am an employee of Woodburn and Wedge and that on the 23<sup>rd</sup> day of January, 2012, I electronically served the foregoing in Case No. 3:73-cv-0128-ECR-WGC with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

|                       |                                    |
|-----------------------|------------------------------------|
| David L. Negri        | david.negri@usdoj.gov              |
| Don Springmeyer       | dspringmeyer@wrslawyers.com        |
| Chris Mixson          | cmixson@wrslawyers.com             |
| Garry Stone           | jaliep@aol.com, jtboyer@troa.net   |
| George N. Benesch     | gbenesch@sbcglobal.net             |
| Gregory W. Addington  | greg.addington@usdoj.gov           |
| James Spoo            | spootoo@aol.com                    |
| Thomas J. Hall        | tjhlaw@eschelon.com                |
| Karen A. Peterson     | kpeterson@allisonmackenzie.com     |
| Marta A. Adams        | madams@ag.nv.gov                   |
| Michael Neville       | michael.neville@doj.ca.gov         |
| Ross E. de Lipkau     | ecf@parsonsbehle.com               |
| Simeon M. Herskovits  | simeon@communityandenvironment.net |
| Stacey Simon          | ssimon@mono.ca.gov                 |
| Stephen M. Macfarlane | Stephen.Macfarlane@usdoj.gov       |
| Susan L. Schneider    | susan.schneider@usdoj.gov          |
| Wes Williams          | wwilliams@stanfordalumni.org       |

and I further certify that I served a copy of the foregoing in Case No. 3:73-cv-0128-ECR-WGC to the following by U.S. Mail, postage prepaid, this \_\_\_\_ day of January, 2012:

U.S. Bureau of Indian Affairs  
Regional Director, Western Region  
2600 N. Central Ave., 4<sup>th</sup> Floor

Timothy A. Lukas  
P.O. Box 3237  
Reno, NV 89505

|    |  |                                  |
|----|--|----------------------------------|
| 1  | Phoenix, AZ 85004                          |                                  |
| 2  | Robert Auer                                | Michael F. Mackedon              |
| 3  | District Attorney for Lyon County          | P.O. Box 1203                    |
| 4  | 31 South Main St.                          | 179 South LaVerne St.            |
| 5  | Yerington, NV 89447                        | Fallon, NV 89407                 |
| 6  | Michael Axline                             | Cynthia Menesini                 |
| 7  | Western Environmental Law Center           | 111 N. Hwy. 95A                  |
| 8  | 1216 Lincoln St.                           | Yerington, NV 89447              |
| 9  | Eugene, OR 97405                           |                                  |
| 10 | Wesley G. Beverlin                         | Cynthia Nuti                     |
| 11 | Malissa Hathaway McKeith                   | P.O. Box 49                      |
| 12 | Lewis, Brisbois, Bisgaard & Smith LCP      | Smith, NV 89430                  |
| 13 | 221 N. Figueroa St., Ste. 1200             |                                  |
| 14 | Los Angeles, CA 90012                      |                                  |
| 15 | Adah Blinn and John Hargus Trust,          | Nancy J. Nuti                    |
| 16 | Robert Lewis Cooper, Trustee               | P.O. Box 49                      |
| 17 | 984 Hwy. 208                               | Smith, NV 89430                  |
| 18 | Yerington, NV 89447                        |                                  |
| 19 | George N. Bloise                           | Richard B. Nuti                  |
| 20 | 34 Artist View Ln.                         | P.O. Box 49                      |
| 21 | Smith, NV 89450-9715                       | Smith, NV 89430                  |
| 22 | Kelly R. Chase                             | Charles Price                    |
| 23 | 1700 County Road, Ste. A                   | 24 Panavista Cir.                |
| 24 | P.O. Box 2800                              | Yerington, NV 89447              |
| 25 | Minden, NV 89423                           |                                  |
| 26 | Christy De Long & Kirk Andrew Stanton      | John Gustave Ritter III          |
| 27 | 27 Borsini Ln.                             | 34 Aiazzi Ln.                    |
| 28 | Yerington, NV 89447                        | Yerington, NV 89447              |
| 29 | Domenici 1991 Family Trust                 | Sean A. Rowe                     |
| 30 | Lona Marie Domenici-Reese                  | Mineral County District Attorney |
| 31 | P.O. Box 333                               | P.O. Box 1210                    |
| 32 | Yerington, NV 89447                        | Hawthorne, NV 89415              |
| 33 | Leo Drozdoff                               | Sceirine Fredericks Ranch        |
| 34 | Dir. of Conservation and Natural Resources | c/o Todd Sceirine                |
| 35 | 901 S. Stewart St., # 1003                 | 3100 Hwy. 338                    |
| 36 | Carson City, NV 89701                      | Wellington, NV 89444             |
| 37 | Michael D. Hoy                             | Scott H. Shackelton              |
| 38 | Hoy & Hoy                                  | Law Offices of Scott Shackelton  |

1 4741 Caughlin Pkwy, Ste. 4  
2 Reno, NV 89519

4160 Long Knife Rd.  
Reno, NV 89509

3 Jason King  
4 Division of Water Resources  
5 State of Nevada  
6 901 S. Stewart St.  
7 Carson City, NV 89701

James Shaw  
Water Master  
U.S. Board of Water Commissioners  
410 N. Main Street  
Yerington, NV 89447

6 Wallace J. & Linda P. Lee  
7 904 W. Goldfield Ave.  
8 Yerington, NV 89447

Silverado, Inc.  
Gordon R. Muir, RA  
One E. Liberty St., Suite 416  
Reno, NV 89501

9 L & M Family Limited Partnership  
10 Rife Sciarani & Co, RA  
11 22 Hwy. 208  
Yerington, NV 89447

Daniel G. & Shawna S. Smith  
P.O. Box 119  
Wellington, NV 89444

12 Joseph J. Bessie J. Lommori Trust  
13 Joseph & Bessie J. Lommori, Trustees  
14 710 Pearl St.  
Yerington, NV 89447

Kenneth Spooner  
General Manager  
Walker River Irrigation District  
P.O. Box 820  
Yerington, NV 89447

15 Los Angeles City Attorney's Office  
16 P.O. Box 51-111  
17 111 North Hope St., Ste. 340  
Los Angeles, CA 90051

Susan Steneri  
7710 Pickering Cir., Reno  
Reno, NV 89511

18 Kenneth Mayer, Director  
19 Elmer Bull, Habitat Director Chief  
20 Nevada Dept. of Wildlife  
21 1100 Valley Rd.  
Reno, NV 89512

Arthur B. Walsh  
Los Angeles City Attorney's Office  
P.O. Box 51-111  
111 N. Hope St., Suite 340  
Los Angeles, CA 90051-0100

22 I further certify that I served a copy of the foregoing in Case No. 3:73-cv-125-ECR-  
23 WGC to the following non-CM/ECF participants by U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of  
24 January, 2012:

25 Robert Auer  
26 District Attorney for Lyon County  
27 31 S. Main St.  
Yerington, NV 89447

Jason King  
State Engineer, Div. of Water Resources  
State of Nevada  
901 S. Stewart St.  
Carson City, NV 89701



Athena Brown, Superintendent  
Western Nevada Agency  
Bureau of Indian Affairs  
311 E. Washington St.  
Carson City, NV 89701-4065

**Jim Shaw**  
**Chief Dep. Water Commissioner**  
**U.S. Board of Water Commissioners**  
**410 N. Main Street**  
**Yerington, NV 89447**

Leo Drozdoff  
Dept. of Conservation & Natural Resources  
State of Nevada  
901 S. Stewart St., #1003  
Carson City, NV 89701

Ken Spooner  
General Manager  
Walker River Irrigation District  
P.O. Box 820  
Yerington, NV 89447

---

/ s / Holly Dewar  
Holly Dewar