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Dec 23 2 03 PM '95

U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED
JAN 3 1995
CLERK, U.S. DISTRICT COURT
BY [Signature] DEPUTY

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.)

WALKER RIVER PAIUTE TRIBE,)
)
Counterclaimant,)

vs.)

WALKER RIVER IRRIGATION DISTRICT,)
et al.,)
)
Counterdefendants.)

IN EQUITY NO. C-125
SUBFILE NO. C-125-B
3-125-C

REPORT OF THE WALKER
RIVER IRRIGATION DISTRICT
CONCERNING MINERAL
COUNTY'S MOTION TO
INTERVENE

Pursuant to the November 17, 1994, Minute Order of this Court, and the Stipulation and Order Concerning Mineral County's Motion to Intervene and for Pretrial Conference Thereon (the "Stipulation") filed on November 25, 1994, the Walker River

9 [Signature]

1 Irrigation District (the "District") submits its Report Concerning
2 Mineral County's Motion to Intervene.

3 **I. Introduction.**

4 On or about January 3, 1992, the District filed a First
5 Amended Petition for Declaratory and Injunctive Relief and Request
6 for Order to Show Cause; or in the Alternative to Change the Point
7 of Diversion to Storage of Water from California to Nevada (the
8 "Petition"). The Petition challenged the California Water
9 Resources Control Board's (the "Board") authority to issue orders
10 to the District which conflicted with the Walker River Decree.
11 See, Oct. 27, 1992 Order (Doc. No. 15) at 2.

12 On or about March 17, 1992, the Walker River Paiute Tribe
13 (the "Tribe") served its answer to the Petition. The Tribe's
14 answer included a cross-claim against the Board and a counterclaim
15 against all water users on the Walker River and its tributaries as
16 set forth in the Final Decree (the "Counterclaim"). The Tribe
17 seeks recognition of a right to store water in Weber Reservoir for
18 use on the lands of the Walker River Indian Reservation and for a
19 federal reserved water right to use water on lands added to the
20 Reservation in 1936.

21 By minute order dated May 18, 1992, the Court ordered that
22 the Tribe's claims would proceed separately from the petition
23 filed by the District. Minutes of Court, May 18, 1992 (Doc. No.
24 34) at 1. The Court further ordered that in filing documents the
25 parties will designate them as follows:

26 C-125 is the administration of the Decree;

27
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1 C-125 A is the [District's] Amended Petition and Cross-
2 Claim; and

3 C-125 B is the [Tribe's] counterclaim.

4 Id. at 4. The clerk was ordered to establish a new subfile, to be
5 designated as C-125-B for all proceedings related to the Tribe's
6 counterclaim. Id.

7 On August 3, 1992, the District filed a series of preliminary
8 threshold motions related to the Tribe's counterclaim, including
9 a motion to require the joinder of all claimants to the waters of
10 Walker River as defendants. October 27, 1992 Order (Doc. No. 15)
11 at 3. The State of Nevada filed similar motions. Id.

12 On October 27, 1992, the Court granted the District's and
13 Nevada's motions to require joinder of parties. Id. at 7. The
14 effect of that order was to require joinder and/or substitution of
15 all persons or entities claiming a right to use water from the
16 Walker River or its tributaries in Nevada and California, whether
17 such claims were based upon the Walker River Decree or subsequent
18 appropriations. Through a series of stipulations and orders the
19 time for complying with the Court's order has been extended to
20 March 25, 1994. See, November 17, 1994 Stipulation and Order
21 (Doc. No. 36).

22 On or about October 25, 1994, Mineral County, Nevada filed a
23 Notice of Motion and Motion for Intervention and supporting
24 documents (the "Motion to Intervene") seeking to intervene in C-
25 125-B. Mineral County's proposed petition in intervention seeks
26 a major reallocation of the waters of the Walker River in an
27 effort to preserve a minimum lake level at Walker Lake. The

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1 proposed petition seeks to accomplish this reallocation through
2 modification of the Walker River Decree and issuance of an order
3 requiring Nevada to grant "a certificate to Mineral County for the
4 benefit of Walker Lake in the amount of 103,000 acre/feet per
5 year".

6 By letter dated November 15, 1994, counsel for Mineral County
7 advised the Clerk of the Court that "the Motion to Intervene and
8 all accompanying papers and documents should be filed in C-125 and
9 should reflect that case number only." The precise meaning of
10 that statement in relation to the filing provisions of the Court's
11 May 18, 1992 Minute Order is not clear.

12 Pursuant to the November 15 and December 8, 1994,
13 stipulations and orders a status conference was scheduled to
14 address the issue of the persons to be given notice of and an
15 opportunity to respond to the Motion to Intervene and any other
16 matter which will aid in the disposition of the motion to
17 intervene. No response to the motion to intervene is required
18 until further order of the Court.

19 **II. Mineral County Must Give Notice of the Motion to Intervene**
20 **to All Claimants to Waters of the Walker River and its**
21 **Tributaries**

22 Mineral County seeks to intervene pursuant to Rule 24 of the
23 Federal Rules of Civil Procedure. Under Rule 24, "[a] person
24 desiring to intervene shall serve a motion to intervene upon the
25 parties as provided in Rule 5." Fed. R. Civ. P. 24(c).
26 Therefore, Rule 5 provides the relevant law in identifying the
27 persons Mineral County must serve and thereby notify with regard

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1 to its Motion to Intervene. Similarly, it provides the relevant
2 law as to who should have an opportunity to respond to the Motion.

3 Under Rule 5, "[e]xcept as otherwise provided in these rules,
4 every order required by its terms to be served, every pleading
5 subsequent to the original complaint . . . shall be served upon
6 each of the parties." Fed.R.Civ.P. 5(a) (emphasis added).
7 Therefore, in order to comply with Rule 5 as required by Rule 24,
8 Mineral County must serve all of the parties to this action.

9 Whether the Motion to Intervene is considered filed in C-125,
10 the administration of the Walker River Decree, or C-125-B, the
11 Tribe's Counterclaim, as a result of this Court's October 27, 1992
12 Order, the "parties" include successors to the original defendants
13 named in 1924 and 1926 and subsequent appropriators. The Court's
14 October 27, 1992 Order has required that they be joined as
15 parties. Rule 24 requires service of the Motion to Intervene on
16 all of those parties.

17 Moreover, based upon applicable law and the rationale of the
18 October 27, 1992 Order, if Mineral County is allowed to intervene
19 and assert its claim for reallocation of the waters of the Walker
20 River, it will be required to join those same persons, if they
21 have not already been joined. Mineral County's proposed petition
22 seeks to impact every water user on the Walker River system.

23 **III. FURTHER PROCEEDINGS CONCERNING THE MOTION TO INTERVENE**

24 The United States and the Tribe have until March 25, 1995
25 within which to complete service of process on the persons ordered
26 joined by this Court's October 27, 1992 Order. Once that service
27 is complete and those persons have appeared, Mineral County should

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1 serve its Motion to Intervene on them. Thereafter, a scheduling
2 conference should be held to coordinate the time for responding to
3 Mineral County's Motion to Intervene. Proceedings on the
4 counterclaim of the Tribe and the United States should be stayed
5 until the Court rules on Mineral County's Motion to Intervene.

6 DATED this 23rd day of December, 1994.

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11 By Gordon H. DePaoli
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CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Woodburn and Wedge, and that on this date, pursuant to FRCP 5(b), I deposited in the United States mail at Reno, Nevada, a true copy of the foregoing document, addressed to:

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DATED this 23rd day of December, 1994.

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