Scott B. McElroy
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, Suite 220
Boulder, CO 80302
303/442-2021

Evan Beavers
Beavers & Young
1616 Highway 395
P.O. Box 486
Minden, Nevada 89423
702/782-5110

Attorneys for the WALKER RIVER PAIUTE TRIBE

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.	IN EQUITY NO. C-125-ECR SUBFILE NO. C-125-C **RESPONSE OF THE WALKER RIVER PAIUTE TRIBE TO THE MOTION TO VACATE SCHEDULE FOR SERVING RESPONSES TO MINERAL COUNTY MOTION TO INTERVENE; TO ESTABLISH DATE FOR COMPLETION OF SERVICE; TO ESTABLISH SCHEDULE FOR RESPONSES TO MINERAL COUNTY MOTION TO INTERVENE AFTER COMPLETION OF SERVICE**

The Walker River Paiute Tribe ("Tribe") offers the following comments in response to the Walker River Irrigation District's *Motion to Vacate Schedule for Serving Responses to Mineral County Motion to Intervene; to Establish Date for Completion of Service; to Establish Schedule for Responses to Mineral County Motion To Intervene After Completion of Service* (June 22, 1995).

1. In its Points and Authorities, the Walker River Irrigation District ("District") recites its understanding of the procedures followed by Mineral County in attempting to comply

27

with the Court's *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County* (Feb. 9, 1995) ("Service Order"). Although the District has attached a document entitled *Proof of Service of Mailing* as Exhibit A to its motion, its allegations are generally unsubstantiated. Nevertheless, counsel for the District professes considerable familiarity with the process that has been followed by the County.

2. The issues raised by the District are substantial. As the District correctly points out, the Service Order directed the County to serve its "Intervention Documents on all claimants to the waters of the Walker River and its tributaries . . . ." Service Order ¶ 3. As set forth by the District, the County has not complied with the Court's earlier directive. Rather than serve the claimants with the pleadings it has filed in the case, the County merely gave notice of those pleadings and stated where the pleadings could be reviewed. In these circumstances, the existing parties, such as the Tribe, should not be required to respond to Mineral County's intervention papers on the presently scheduled date since service on the non-party claimants is not complete.

3. On the other hand, the District is disingenuous in arguing that "not one waiver of service had been filed." Points and Authorities at 8. Attached is a copy of a document with the heading Walker River Irrigation District requesting that water right holders not return the waiver of service (attached hereto as Attachment 1). The document states that "it is the judgment of counsel for the Irrigation District that it is not in [the

water right holder's] best interest to return the waiver of personal service." Also attached is a document entitled the Walker River Advocate, dated May 1995 and denominated as the "Official Walker River Water Users Association Publication" (attached hereto as Attachment 2), which quotes an attorney for the Walker River Basin Water Users Association to the effect that water users should not return the service of process. Id. at 3. The attorney for the Association is further quoted as recognizing that return of the service might cure any defects in the County's service. Id. These documents suggest that counsel for the District and the Water Users Association have actively sought to frustrate the efforts of the County to complete service.

4. The Tribe is concerned over the delay engendered by the actions of both sides of this controversy. By attempting to fashion some sort of abbreviated service, Mineral County has not complied with the Court's prior order and therefore delayed completion of service. By advising their constituents not to return the waiver of service, the District and the Water Users Association have eliminated any possibility that the County's abbreviated process might result in the saving of time and money.

5. The actions of the District and the Water Users Association also raise substantial questions about the extent to which the District and the other existing parties to the litigation are able to represent the interests of the non-Indian water users on the River and thus whether individual service must be accomplished on every water right holder on the stream before the important and far reaching issues raised by the County may be

presented to the Court. To be sure, it is important that those affected by the claims of the County have notice of those claims. But the need to involve all affected parties should not be an excuse to delay unnecessarily the consideration of the issues raised by the County.

6. In these circumstances, there probably is no alternative to delaying the time for responses to the motion to intervene filed by the County. However, given the widespread knowledge about the County's claims and the ongoing efforts to organize in opposition to those claims, there is no need for an extended briefing schedule such as is suggested by the District. Instead, the parties should be required to respond to the County's intervention and preliminary injunction motions 21 days after completion of service.

Dated: June 29, 1995

Respectfully submitted,

Scott B. McElroy
GREENE, MEYER & MCELROY, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
(303) 442-2021

Evan Beavers
Beavers & Young
1616 Highway 395
P.O. Box 486
Minden, Nevada 89423
702/782-5110

By: _____
Scott B. McElroy

Attorneys for the Walker River Paiute Tribe

CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of the foregoing Response of the Walker River Paiute Tribe to the Motion to Vacate Schedule for Serving Responses to Mineral County Motion to Intervene; to Establish Date for Completion of Service; to Establish Schedule for Responses to Mineral County Motion To Intervene After Completion of Service, via U.S. Mail or Overnight Carrier (if so indicated), all charges prepaid thereon, this 29th day of June 1995, addressed to:

Shirley A. Smith
Asst. U.S. Attorney
100 W. Liberty, #600
Reno, NV 89501

George Benesch
Benesch & Fermoile
P.O. Box 3197
Reno, NV 89505

Jim Weishaupt, General Manager
Walker River Irrigation District
P.O. Box 820
Yerington, NV 89447

James T. Markle
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814

John Kramer
Department of Water Resources
1416 - 9th Street
Sacramento, CA 95814

Ross E. deLipkau
Marshall, Hill, Cassas & deLipkau
P.O. Box 2790
Reno, NV 89505

Richard R. Greenfield
Field Solicitor's Office
Department of the Interior
2 North Central Avenue, Suite 500
Phoenix, AZ 85004

Robert L. Hunter, Superintendent
Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

R. Michael Turnipseed, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

David E. Moser
McCutchen, Doyle, Brown & Enerson
Three Embarcadero Center
San Francisco, CA 94111

John P. Lange
Environment & Natural Resources Division
999 18th Street, Suite 945
Denver, CO 80202

Roger Johnson
Water Resources Control Board
State of California
P.O. Box 2000
Sacramento, CA 95810

Garry Stone
290 South Arlington Ave.
Reno, NV 89501

Linda A. Bowman
201 W. Liberty St., 3rd Floor
P. O. Box 281
Reno, NV 89504

Susan Joseph-Taylor
Deputy Attorney General
Division of Water Resources
198 Carson Street
Carson City, NV 89710

Gordon H. DePaoli -- Overnight
Woodburn and Wedge
P.O. Box 2311
Reno, NV 89501

Mary Hackenbracht
Deputy Attorney General
State of California
2101 Webster Street
Oakland, CA 94612-3049

Roger Bezayiff
Chief Deputy Water Commissioner
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

Jim Spoo -- Overnight
Zeh, Spoo & Hearne
450 Marsh Avenue
Reno, NV 89509

Case 3:73-cv-00128-MMD-CSD Document 27 Filed 06/30/95 Page 7 of 12

WALKER RIVER
ADVOCATE

Volume II Official Walker River Water Users Association Publication May 1995

MORE GOVERNMENT INTERVENTION

Decades ago, hard working pioneers with a vision for the future put their earnings and elbow grease together to build a dream. It began with the construction of several dams: Topaz, Bridgeport, Twin Lakes, Green Lakes, Virginia Lakes, Poore Lake and other smaller opportune natural places to store the irratic and unpredictable runoff. The idea was to provide generations to come with water for agriculture and recreation, at the sole expense of those who would use the resources.

Today the dreams of our forefathers (and your water rights) as well as potential damage to the upper and middle sections of the

Continued on Page 2...

The Walker River provides for many.

Inside...

Meet the attorneys who represent the users.....Page 4

The board members who work hard for the users.....Page 2

A statement of purpose.....Page 4

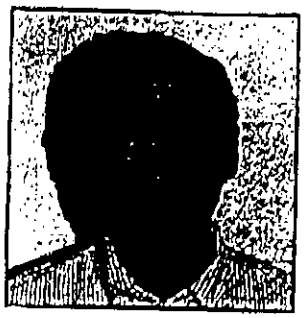
Meet the Walker River Basin Water Users Association Board Members

The Walker River Basin Water Users Association was established to protect and/or defend the water rights of water users along the Walker Rivers system. The board members were appointed by the Walker River Irrigation District and the Bridgeport Valley Land Owners Association. They volunteer their time for the cause, spending approximately six to ten hours a month in bi-monthly meetings.

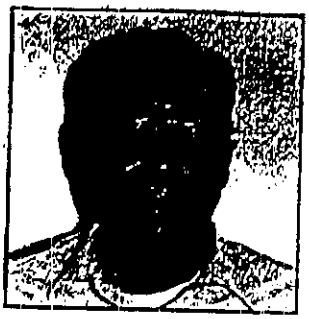
Continued on Page 2...

Continued from page one...

Jeff Hunewill is a cattle rancher and farmer in Smith Valley and Bridgeport Valley, and a Guest Ranch owner /operator in Bridgeport Valley. He represents Bridgeport Valley Land Owners Association and has been appointed Director of the East Walker River Division in Bridgeport Valley.



Pete Fenili is a cattle rancher and farmer in Smith Valley and Feed Lot owner/operator. He is a Walker River Irrigation District Board of Directors Respresentative for the West Walker River Division in Smith Valley.



Ed Snyder is a farmer in Mason Valley and Feed Lot owner/operator. He is an appointed member of the Walker River Irrigation District respresenting the East Walker River in Mason Valley.

Tom Connoly is a cattle rancher and farmer in Mason Valley. He is an appointed member of the Walker River Irrigation Districet representing the Main Walker River in Mason Valley.

Richard Fulstone is a cattle rancher and farmer in Smith Valley, Mason Valley and Bridgport Valley, and Feed Lot owner/operator. He represents the Bridgeport Valley Land Owners Association and has been appointed Director of the East Walker River Division in Bridgport Valley.

Don't Forget!

The Annual Walker River Water Users Association Meeting

May 11, 1995 at 6:30 PM

Seating of Directors and Election of Officers

Continued from page one...

Walker River ecosystems are being threatened by Mineral Coutny and the Walker River Paiute Tribe.

The agreement that governs your water rights is Federal Decree C-125. It was issued in 1936 by the Federal District Court for the District of Nevada, and it determines the water rights of most water right holders on the Walker River system.

Mineral County has already begun the attack, even though they are not even a party to the Decree. They have started by filing a motion to intervene and will follow that by a motion for preliminary injunction. This means they will ask the Court to allow them to gain party status without the consent of the original parties (the upstream water users) based primarily on allegations that Walker Lake is entirely within Mineral County, that Walker Lake and its fisheries are mortally threatened by upstream diversions, and that Mineral County is the only entity that will protect Walker Lake. From there they will ask the court to order Walker River water users to reduce their diversions and to allow more

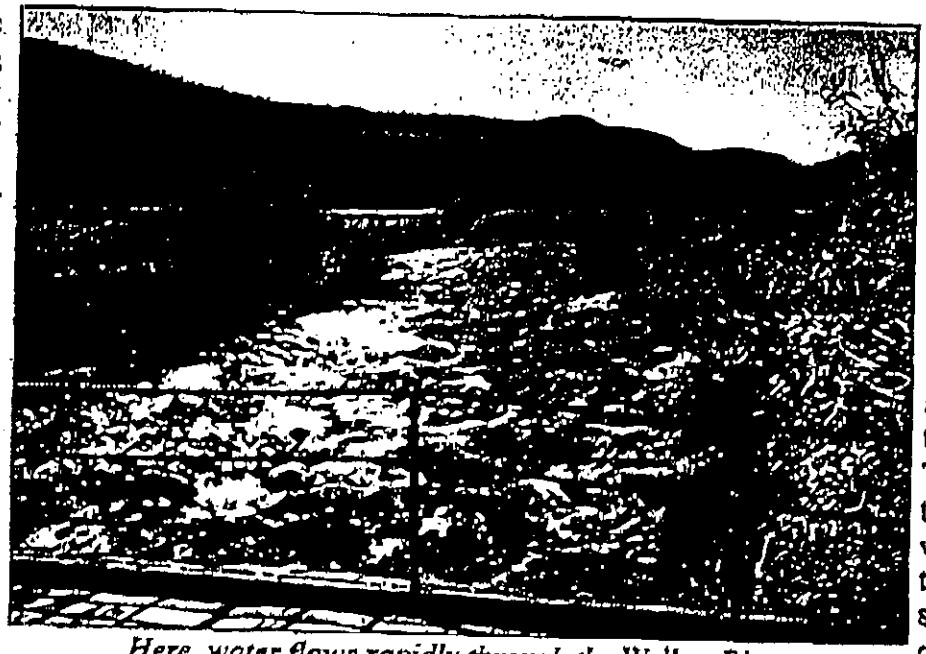
Continued on page three...

Continued from page two...

water to flow to Walker Lake. They want the Court to impose a permanent solution to Walker Lake's problems; a solution that will require a dramatic increase in the flow of water from Walker River to Walker Lake.

Recently, you were served by mail with a Motion to Intervene along with supporting documents, a Motion for Preliminary Injunction with supporting documents, a Proposed Complaint-in-Intervention, and a Waiver of Personal Service for the documents that were served. You have thirty (30) days from the date the documents were mailed to you to return the Waiver of Personal Service. ***DO NOT RETURN THE WAIVER OF PERSONAL SERVICE UNTIL YOU HEAR FROM THE WALKER RIVER WATER USERS ASSOCIATION!***

Don Gilbert of De Cuir & Somach in Sacramento, California, attorneys for the Walker River Basin Water Users Association explains. "It appears that there is a serious defect in Mineral County's mailing," claims Gilbert. "Returning the Waiver of Personal Service may cure the defect and adversely affect your rights. Therefore, do not return the Waiver of Personal Service until we provide you with more information concerning this matter." If the Water Users Association has not already contacted you with specific suggestions regarding the handling of this matter, you can expect to hear from them soon.



Here, water flows rapidly through the Walker River.

The Court has already ordered the Water Users to serve an opposition brief to Mineral County's Motion to Intervene (and it's supporting documents) by July 11, 1995. Mineral County must file and serve a reply brief to that opposition by September 11, 1995. Then, at a future date, the Court will decide if and when we must file legal documents responding to Mineral County's Proposed Complaint-in-Intervention and Motion for Preliminary Injunction. All of these legal maneuvers are being closely observed by the attorneys at De Cuir & Somach, as each one is a step closer to the loss of your valuable water entitlements. The attorneys will inform you if and when such documents must be filed.

If Mineral County wins it's first battle and is permitted by the Court to become a party to the Decree, their second campaign will begin, and the Court will entertain their Motion for Preliminary Injunction. According to Don Gilbert, that motion seeks "emergency" flows from Walker River to Walker Lake in the following quantities: 260,000 af in 1995, 240,000 in 1996, and 127,000 af each year thereafter until a permanent solution is imposed. This motion is supported by declarations of experts who assert that the fishery is dying. In addition, Mineral County will argue that such environmental injury is irreparable and therefore warrants an emergency supply of water from Walker River.

As if this weren't enough to drive a farmer or rancher stark raving mad, we must keep in mind the needs of the other users, including the Walker River Paiute Tribe. While all this has been going on, the Court has granted the Tribe's request to push back the deadline for filing and serving its legal documents from March 25, 1995 to September 22, 1995. So prepare yourself and watch your mail to be served by the Tribe on or around that date. Again, when the time comes, the Walker River Basin Water Users Association will provide suggestions for handling the Tribe's motion.

Decades ago the water rights were established and today the Water Users have felt the crunch of less water. From 1990 to 1992, farm income was down 17 percent due to the drought. If the onslaught of pilfering water from the Walker River to new interests is successful, it could mean the demise of rural life as we know it. The Walker River Basin Water Users Association needs the strength of all upstream water users, from Smith Valley and Mason Valley, to Bridgeport Valley and Antelope Valley. **Please call the Association at (702) 463-3523 to join. If you wish to become involved on an individual basis contact Don Gilbert, the attorney working on the rights of the users.**

Our Counsel's Backgrounds

DONALD B. GILBERT:

Mr. Gilbert joined De Cuir & Somach as an associate attorney in August, 1992. A graduate of Hastings College of the Law, Mr. Gilbert was admitted to the State Bar of California in 1990 and formerly practiced at Bronson, Bronson & McKinnon, San Francisco, in the areas of commercial litigation and real estate litigation.

Since joining De Cuir & Somach, Mr. Gilbert's practice areas include water law, public law, the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), hazardous waste law, and general counsel work.

STUART L. SOMACH:

Mr. Somach is an Attorney-Shareholder with the Sacramento law firm of De Cuir & Somach. He is a former attorney with the United States Department of the Interior. He also served as an Assistant United States Attorney and Senior Trial Attorney, United States Department of Justice. Mr. Somach entered private practice in 1984, and now specializes in water rights and water quality law, natural resource and environmental law, as well as litigation in federal and state court. He has taught water rights courses and is an Adjunct Professor of Law at the University of the Pacific McGeorge School of Law.

Mr. Somach has authored numerous law review articles in the area of water rights, and is the former Chairman of the American Bar Association's Committee on Water Resources Law.

United We Stand!

Strength comes in numbers. We've all heard the expression. The Walker River Basin Water Users Association is no exception. The Association is working to protect the water rights of its members who are water users on the Walker River System. We intend to defend, to a solution, the legal right of our members to exercise their respective water rights in full. This includes pursuing legal defenses against Mineral County's and the Walker River Paiute Tribe's motions.

Moreover, the Water Users Association is working on a comprehensive plan to resolve the issues concerning Walker River and Walker Lake. These issues include (1) the protection of existing water rights, (2) the recreational needs of Walker Lake, (3) the Tribe's claims to additional water, and (4) the allocation of water between Nevada and California. The Water Users Association believes that the final resolution to the issues is a plan that will protect the rights of the individual, allow them to make voluntary decision on those rights, and to provide an intergrated water management mechanism whereby the water right holderand other stakeholders along the Walker River System can continue to provide the necessary food and fiber as well as satisfy the other interest as our nation continues to grow.

By taking a unified position we, the water users, will maximize our influence on the legal process and minimize any negative impact on our individual water rights. If you are not yet a member of the Walker River Basin Water Users Association, please join us by contacting the Association at (702) 463-3523, or the attorney, Don Gilbert of De Cuir & Somach can be reached at (916) 446-7979.

Walker River Water Users Association
P.O. Box 478
Yerington, NV 89447

FIRST CLASS
U.S. POSTAGE PAID
RENO, NV
PERMIT #867

WALKER RIVER BASIN WATER USERS ASSOCIATION
ANNUAL MEMBERSHIP MEETING

WRID Board Room
410 N. Main Street
Yerington, Nevada 89406

MAY 11, 1995
6:30 PM

Notice: Time of meeting has been set to begin at 6:30 PM and to adjourn no later than 8:30 PM.

1. Roll Call and Determination of Quorum
2. Water User Forum
   Any member of the water user group may address and ask questions of the Board relating to any matter within the Board's jurisdiction. Member comment need not be related to any item on the agenda. Action will not be taken on any matter raised by a member until the matter is specifically included on an agenda as an item upon which action will be taken.
3. Welcome and presentation on the Water Users Association by Chairman.
4. Approval of Minutes of last General Meeting and Financial Report
5. Legal Report - Introduction of Legal Counsel and Discussion of issues on the Walker River System
6. Old Business
7. New Business
8. Seating of Directors and Election of Officers
9. Adjourn

WALKER RIVER IRRIGATION DISTRICT
P.O. Box 820
Yerington, NV 89447

(702) 463-3523

May 2, 1995

NOTICE TO ALL WATER RIGHT HOLDERS CONCERNING MOTION TO INTERVENE OF MINERAL COUNTY IN UNITED STATES OF AMERICA, PLAINTIFF, WALKER RIVER PAIUTE TRIBE, PLAINTIFF-INTERVENOR, VS. WALKER RIVER IRRIGATION DISTRICT, ET AL., DEFENDANTS, IN EQUITY NO. C-125-ECR, SUBFILE C-125-C

This Notice Regarding Waiver of Personal Service follows the previous Notice of April 14, 1995.

You have received a mailing from attorneys for Mineral County concerning a Motion to Intervene, Proposed Complaint-in-Intervention and Motion for Preliminary Injunction by Mineral County, Nevada, claiming a right to a minimum level of water for Walker Lake which may affect water rights in the Walker River which you own. The materials include a request that you sign and return a Waiver of Personal Service of the documents involving the Motion to Intervene.

IT IS REQUESTED THAT YOU NOT RETURN THE WAIVER OF PERSONAL SERVICE. Counsel for the Walker River Irrigation District believes that there is a serious defect in Mineral County's mailing. Returning the Waiver is likely to cure that defect and adversely affect your rights.

At this time, it is the judgment of counsel for the Irrigation District that it is not in your best interest to return the waiver of personal service. However, if the judgment of the Irrigation District's counsel is later found to be incorrect by the Court, you might be required to bear the cost which Mineral County incurs in personally delivering documents to you. Therefore you may wish to consult with your personal attorney on this matter. If you do, please ask that attorney to contact the Irrigation District's or Water Users Association's attorneys concerning this matter. The Irrigation District's attorneys are Gordon H. DePaoli and Dale Ferguson and their phone number is (702) 688-3000. The Water Users Association's attorneys are Stuart Somach and Don Gilbert and their phone number is (916) 446-7979.

Until you are personally delivered all documents which the Court's February 9, 1995 order requires you receive or until you return a waiver of personal service, you are not required to respond to any of the documents mailed to you by Mineral County's Attorneys. There is a July 11, 1995 deadline for persons who have returned a waiver of personal service to respond to Mineral County's Motion to Intervene. However, in light of the defects in Mineral County's mailing, the Irrigation District may seek to have that date changed until such time as service is completed as required by the Court's order of February 9, 1995. The District and/or the Water Users Association will continue to keep you informed about the status of this matter.