GORDON H. DePAOLI
State Bar No. 000195
DALE E. FERGUSON
State Bar No. 004986
WOODBURN and WEDGE
One East First Street
Suite 1600
P.O. Box 2311
Reno, Nevada 89505
Telephone: (702) 688-3000
Attorneys for
WALKER RIVER IRRIGATION DISTRICT

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 **AFFIDAVIT OF GORDON H. DePAOLI**

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

GORDON H. DePAOLI, being first duly sworn deposes and says:

1. I am a member of the law firm of Woodburn and Wedge.

2. Since the fall of 1987, I have acted as general legal counsel to the Walker River

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Irrigation District (the "District").

3. In that capacity I represent the District in connection with the Mineral County Intervention Documents as defined by paragraph 3 of the February 9, 1995 Order of the Court in this matter entitled "Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County" (the "Service Order").

4. Near the middle of April, 1995, I received a request from the Manager of the District for advice on how the District should respond to numerous inquiries from persons and entities owning real property with appurtenant water rights within the boundaries of the District; the inquiries generally related to what those persons and entities should do with respect to a mailing they had received from attorneys representing Mineral County and in particular with respect to the documents entitled "Waiver of Personal Service of Motions" (the "Waivers of Service").

5. The persons and entities making the inquiries were the electors of the District as defined in Chapter 539 of the Nevada Revised Statutes and in my judgment are the persons to whom the District and its staff are ultimately responsible.

6. In order to provide the advice requested, I asked the District staff to obtain a copy of the actual package of materials which had been received by several persons or entities; the purpose of this request was to make certain that Mineral County had complied with the Service Order.

7. At about the same time, I also began to receive inquiries on the same issue from attorneys who personally represented individuals and entities owning real property with appurtenant water rights within the District; I asked some of them to also provide me with copies of the materials which their clients had received; I also conferred with counsel for the Walker River Water Users Association and requested that they review the issue.

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8. My initial review of several mailings revealed that in one instance the proposed complaint-in-intervention was not included and in every instance exhibits, affidavits and attachments to the affidavits which were relied upon by Mineral County in support of both its Motion to Intervene and Motion for Preliminary Injunction (the "Supporting Documents") were not included at all; with respect to the Supporting Documents Mineral County included a notice stating that the Supporting Documents could be reviewed at any one of four locations.

9. I again reviewed the Service Order and concluded that Mineral County had not complied with it by excluding the Supporting Documents from its mailing.

10. At this time, I was unaware that Mineral County might be still mailing to water right claimants because the Service Order required service to be complete by May 10, 1995; the Service Order provided that if a waiver of service was sought persons were to have 30 days to return the waiver of service; less than 30 days remained until May 10, 1995 and service by waiver could not be complete under Rule 4(d)(4) until the waiver was filed.

11. I therefore advised the District of my preliminary conclusions and I prepared the notice which is attached hereto as Exhibit A for the District to use in responding to inquiries from its electors.

12. Because the information which I provided the District was preliminary, I undertook additional research.

13. As a part of the additional research, I obtained additional copies of Mineral County's mailings; in every case the Supporting Documents were not included; I also noted that Mineral County had duplex copied the documents it had mailed and the last page of the Service Order was out of place and in some cases the first page of the argument in support of the motion to intervene was missing; I also reviewed the Waiver of Service which Mineral County had included with its mailing; in my judgment persons executing that waiver would waive

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"objections based on a defect, if any, in the manner in which these documents have been provided to me" and that such objections would include an objection to providing the Supporting Documents for review at four locations; I conferred again with counsel for the Walker River Water Users Association on this matter.

14. On April 26, 1995, I received the facsimile which is attached hereto as Exhibit B from James Spoo, one of the attorneys for Mineral County.

15. I responded to that facsimile on April 27, 1995, by the facsimile which is attached hereto as Exhibit C.

16. Although Mr. Spoo's affidavit states that the letter he proposed to send was prompted by an "unexplained disruption in return of waivers of service," the only information I had at the time was that the response so far was poor.

17. Although my letter to Mr. Spoo of April 27, 1995 stated that I believed "signing and returning a waiver of personal service may affect legal rights," Mr. Spoo never inquired as to my reasons; instead on April 28, 1995, I received the facsimile from him which is attached hereto as Exhibit D; thereafter I heard nothing further from Mr. Spoo on his proposed "reminder" letter.

18. Thereafter, I worked on a final response to the question which the District had asked; I was especially concerned about this matter because of my experience in representing individual water right holders in connection with abandonment petitions filed in the Alpine and Orr Ditch actions by the Pyramid Lake Paiute Tribe; in those proceedings service was attempted on approximately 1,700 water right holders under the predecessor to Rule 4(d); acknowledgements of service were returned by only 281 water rights holders; persons who had acknowledged service, which included my clients on my advice, were caught in over two years of expensive procedural litigation over whether service was or was not complete and on how

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those matters should proceed.

19. I advised the District of my final conclusions which are embodied in the notice which is attached hereto as Exhibit E; I prepared the notice for the District to use in responding to inquiries from its electors.

20. My advice and the notices which I prepared were not intended for purposes of delay; in my judgment delay was the inevitable result of Mineral County's unilateral decision not to include the Supporting Documents with its mailing; those documents were essential for responding to the Motion to Intervene which was the first matter to be considered by the Court and to the Motion for Preliminary Injunction which likely would have been the second matter to be considered by the Court, if the Motion to Intervene were granted.

21. My advice and the notices which I prepared were not intended to frustrate Mineral County's efforts; in my judgment Mineral County frustrated its own efforts by its unilateral decision to exclude the Supporting Documents from its mailing.

22. My advice and the notices which I prepared were based upon my best judgment at the time, considering the intent of the Service Order, the initial issues to be examined by the Court, and my experiences in the Alpine and Orr Ditch litigation described in paragraph 18 above.

23. The Board of Directors of the District were not involved in the advice given or in the notices which were sent; the Manager of the District properly sought my advice before responding to inquiries and followed it after it was given; no member of my law firm other than myself was involved in the advice or in the preparation of the notices.

24. I recently learned that the Supporting Documents were not received by the Lyon County Library until April 18 or 19, 1995; thus those documents were not on file until a week after Mineral County's initial mailing; I have not actually reviewed the documents at the Lyon

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County Library to make certain that all of the Supporting Documents are in fact included; I have not yet checked the situation at the Mono County Library.

25. It is not clear where at the United States District Court the Supporting Documents may be reviewed; obviously they are attached to pleadings on file in the Clerk's office; however, they are not separately available for review.

26. Among the many unsupported assertions in Mineral County's Points and Authorities in Support of its Motion for Sanctions, there are two which merit a brief factual response in this affidavit; first, the District does not advise the Watermaster on who is entitled to delivery of water; the Watermaster is fully capable of reaching his own conclusions on those issues; moreover, implicit in that assertion is the suggestion that the District would withhold water from persons who returned Waivers of Service; that is nonsense; second, the Walker River Water Users Association is a separate legal entity from the District; the District does not prepare the newsletter of that organization; moreover, I find nothing in the May, 1995 newsletter which is inconsistent with the facts and law applicable here.

27. Finally, irrespective of whether I or Woodburn and Wedge will ultimately represent persons or entities in addition to the District in connection with the Mineral County Intervention Documents, except in the few cases where we may be resident agent for a corporation or other legal entity, we are not authorized to accept service on behalf of Walker

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ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000

River water rights claimants.

DATED: July 25, 1995.

Gordon H. DePaoli

GORDON H. DePAOLI

SUBSCRIBED and SWORN to before me

this 25th day of July, 1995.

Beverly W. Chambers

NOTARY PUBLIC

BEVERLY W. CHAMBERS
Notary Public State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES NOV. 17, 1995

WOODBURN AND WEDGE
ATTORNEYS
ONE EAST FIRST STREET
RENO, NEVADA 89501
(702) 688-3000

WALKER RIVER IRRIGATION DISTRICT

P.O. Box 820
Yerington, NV 89447

(702) 463-3523

April 14, 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

You may have already received or you will shortly receive 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.

You have thirty (30) days from the date the material was mailed to you in which to decide to return the Waiver of Personal Service. You should retain the envelope in which the material came to you because the date of mailing is the date which starts the thirty (30) day period for making a decision concerning the Waiver.

You are not required to return the Waiver of Personal Service. **AT THIS TIME, IT IS REQUESTED THAT YOU NOT RETURN THE WAIVER OF PERSONAL SERVICE.** Counsel for the Walker River Irrigation District and counsel for the Walker River Basin Water Users Association ("Water Users Association") are researching the question of whether you should return the Waiver of Service. It appears that there is a serious defect in Mineral County's mailing. Returning the Waiver might cure that defect and adversely affect your rights. Additional information will be provided to you concerning this matter by May 1, 1995.

You may also want 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.

EXHIBIT A

ZEH, SPOO & ASSOCIATES

450 Marsh Avenue • Reno, Nevada 89509 • (702) 323-4599 • FAX (702) 786-8183

FACSIMILE COVER SHEET

April 26, 1995

TO	:	John Lange	FAX No. 303/294-1931
TO	:	Scott McElroy	FAX No. 303/444-3490
TO	:	David E. Moser	FAX No. 415/393-2286
TO	:	Mary Hackenbracht	FAX No. 510/286-4020
TO	:	Susan J. Taylor	FAX No. 702/687-5798
TO	:	Linda Bowman	FAX No. 702/786-1177
TO	:	Gordon H. DePaoli	FAX No. 702/688-3088
RE	:	Walker River	
FROM:		James Spoo, Esq.	APR 2 6 1995

OF PAGES: 3 (Including this cover sheet)

MESSAGE (If any):

We propose to send attached reminder to all (1,170) to whom we mailed documents. Comments please ASAP. Thanks.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL, OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND/OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENCY RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

EXHIBIT B

Zeh, Spoo, Hearne & Associates

Charles R. [illegible], Esq.*
James Spoo, Esq.**
Treva Hearne, Esq.***

450 Marsh Avenue
Reno, Nevada 89509
(702) 323-4599
Fax: (702) 786-8183

* Also [illegible] Minnesota
** [illegible] Washington, D.C.
*** Also [illegible] California and Missouri

April 26, 1995

To: Walker River Water Rights Holders
Re: Legal Documents from Mineral County

Dear Madam or Sir:

You were recently served with legal documents on behalf of Mineral County Nevada, according to the Order of the U.S. District Court. You or your business or organization are listed as a water rights holder of some nature on the Walker River. These documents consist of Mineral County's efforts to become a legal party to the existing court case concerning the Walker River and to legally obtain water for Walker Lake.

If you object to Mineral County's efforts in this regard, you may formally respond, and seek advice of an attorney in so doing. The Order of the Court, included in the documents you have received, describes when you should respond.

Also included in the documents you have received are two forms called Waiver of Personal Service. At this point, whether you choose later to formally respond or not, Mineral County requests that you sign and return one of the Waiver of Personal Service forms in the return envelope by May 10, as indicated. This indicates only that you acknowledge that you have received the documents, and avoids Mineral County having to serve you with the documents in person and seeking to charge you for the personal service, as the Court rules allow. Signing and returning the Waiver of Personal Service does not otherwise affect your legal rights.

If there has been a change of ownership somehow of your water rights, or you believe you have been mistakenly served with the documents, please, if you choose, go ahead and sign and return the Waiver of Personal Service form, and include a note with any corrections you believe to be necessary.

If you have questions, you may wish to call an attorney. You may call our offices, but we cannot give you legal advice. Our numbers are: Treva Hearne (702) 786-4590 and James Spoo, (702) 323-4599. Thank you.

Sincerely,
ZEH, SPOO, HEARNE AND ASSOCIATES

JAMES SPOO

JS:th

WOODBURN AND WEDGE
ATTORNEYS AND COUNSELORS AT LAW
SIXTEENTH FLOOR
FIRST INTERSTATE BANK BUILDING
ONE EAST FIRST STREET
PO BOX 2311
RENO, NEVADA 89505
(702) 688-3000
FACSIMILE (702) 688-3088

VIRGIL H. WEDGE
AMES J. HALLEY
RICHARD O. KWAPIL
CASEY W. VLAUTIN
GORDON H. DEPAOLI
SUELLEN FULSTONE
JOHN F. MURTHA
JAMES W. ERBECK
MICHAEL E. KEARNEY
W. CHRIS WICKER
CHARLES A. JEANNES
SHAWN B. MEADOR
KIRK S. SCHUMACHER
LYNNE K. JONES
JOHN E. LEACH
HARRY J. SCHLEGELMILCH

DON A. GROSS
ERIC W. ERLIDE
DAVID G. JOHNSON
GREGG P. BARNARD
ANDREW J. DRIGGS
TINA M. CHARTRAW
MICHAEL L. WOLZ
DALE E. FERGUSON
RANDY A. DRAKE
JAY R. HAMPTON
NANCY L. MASTERS

of counsel
EDWARD G. STEVENSON

April 27, 1995

SENT VIA FACSIMILE

James Spoo, Esq.
Zeh, Spoo & Associates
450 Marsh Avenue
Reno, Nevada 89509

Re: Mineral County Motion To Intervene
Our File No. 1709.0083

Dear Jim:

I have reviewed the letter which you faxed to my office yesterday. You propose to send that letter to Water Right Holders on the Walker River system. In my view you should not send the letter. Although you profess to be unable to give legal advice to the persons to whom you are sending the letter, you are, in fact, providing legal advice when you state "signing and returning the waiver of personal service does not otherwise affect your legal rights." In my judgment signing and returning a waiver of personal service may affect legal rights.

In summary, I think it is highly inappropriate for you to communicate with persons who you do not represent, who may be represented by others and against whom you are asserting adverse claims.

Sincerely,

Gordon H. DePaoli

Gordon H. DePaoli

GHD:jgh
cc: John Lange (303)294-1931
Scott McElroy (303)444-3490
David E. Moser (415)393-2286
Mary Hackenbracht (510)286-4020
Susan J. Taylor (702)687-5798
Linda Bowman (702)786-1177

EXHIBIT C

ZEH, SPOO & ASSOCIATES

450 Marsh Avenue • Reno, Nevada 89509 • (702) 323-4599 • FAX (702) 786-6183

FACSIMILE COVER SHEET

April 27, 1995

TO	:	John Lange	FAX No. 303/294-1931
TO	:	Scott McElroy	FAX No. 303/444-3490
TO	:	David E. Moser	FAX No. 415/393-2286
TO	:	Mary Hackenbracht	FAX No. 510/286-4020
TO	:	Susan J. Taylor	FAX No. 702/687-5798
TO	:	Linda Bowman	FAX No. 702/786-1177
TO	:	Gordon H. DePaoli	FAX No. 702/688-3088

RE : Walker River

FROM: James Spoo, Esq.

OF PAGES: 2 (Including this cover sheet)

MESSAGE (If any):

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL, OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND/OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENCY RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

EXHIBIT D

Zeh, Spoo & Associates

Charles R. Zeh, Esq.*
James Spoo, Esq.**

450 Marsh Avenue
Reno, Nevada 89509
(702) 322-4599
Fax: (702) 785-8183

* Also admitted in Minnesota
** Also admitted in Washington, D.C.

April 27, 1995

To: Gordon
Fr: Jim

Re: Suggested Letter.

1. Thanks, we will only do it if it can be done right.

2. I don't think you are suggesting that we would send the letter to persons with known legal counsel, because we would not.

3. We can take out the phrases about not otherwise affecting their legal rights. Even though the statement is true in other than a minimalist sense it is colorably legally inaccurate.

4. The purpose overall is nothing more than a summation of the original mailing, which is designed to encourage response in an unusual situation, for the benefit of all, where response is slow so far.

5. If you have alternative language for any parts or all of the letter, please submit it, and I'm sure it would be acceptable.

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.

EXHIBIT E

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:

Shirley A. Smith
Asst. U.S. Attorney
100 W. Liberty St., #600
Reno, Nevada 89509

Richard R. Greenfield
Dept. of the Interior
Two North Central Ave., #500
Phoenix, AZ 85004

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

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

Jim Weishaupt, General Manager
WRID
P.O. Box 820
Yerington, NV 89447

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

James T. Markle
State Water Resources
Control Board
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Sacramento, CA 95814

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John Kramer
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Enerson
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Linda Bowman
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Susan Joseph-Taylor
Deputy Attorney General
State of Nevada
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Carson City, Nevada 89710

Jim Spoo
Zeh, Polaha, Spoo & Hearne
575 Forest Street
Reno, Nevada 89509

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

Roger Bezayiff
Water Master
U.S. Board of Water
Commissioners
P.O. Box 853
Yerington, Nevada 89447

DATED this 25th day of July, 1995.

WOODBURN AND WEDGE
ATTORNEYS
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(702) 688-3000