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STUART L. SOMACH
ADMITTED IN CALIFORNIA AND IN THE DISTRICT OF COLUMBIA

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EDWARD C. REED, JR.
SENIOR JUDGE

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BY CSD

July 25, 1995

FEDERAL EXPRESS

The Honorable Edward C. Reed, Jr.
Senior United States District Court Judge
U.S. District Court
300 Booth Street, Room 1109
Reno, NV 89509-1385

Re: *United States of America, et al. v. Walker River Irrigation District, et al.*
U.S. District Court, District of Nevada, No. C-125-ECR, Subfile No. C-125-C

Dear Judge Reed:

I am not certain of the appropriate way to respond to certain allegations made in papers filed in the above referenced case. *See* Mineral County's Points and Authorities in Opposition to Walker River Irrigation District's Motion to Vacate Schedule and in Support of Counter Motion for Sanctions (hereinafter "Points and Authorities"). Indeed, in light of the fact that I do not currently represent any party in that case and have not been served with any of the papers filed in the case, I am not even certain that I need to respond. Nonetheless, it may be that in the future my clients will themselves seek to intervene in this action, in which case I believe it appropriate that we not avoid addressing this issue. Moreover, and in any event, I believe that in light of the allegations made, I owe the Court the courtesy of a response. Accordingly, I have chosen to respond through this letter, with service to all parties served in the Mineral County filing and, in the event of a hearing on this matter, intend to specially appear at that time to respond to any questions that the Court may have.

As noted above, Mineral County did not provide me with copies of its Points and Authorities. I obtained copies of these documents from the Walker River Irrigation District. From reading these documents it is difficult to determine what allegations are being made with respect to my purported actions and what allegations are being made with respect to that of the Walker River Irrigation District and its attorneys. To the extent that the allegations against me are interrelated with the allegations against the Walker River Irrigation District and its attorneys, I have read the papers in response and the opposition filed by the Walker River Irrigation District as well as the Affidavit of Gordon H. DePaoli.[1] In response to the allegations made by Mineral County, I believe that the Walker River Irrigation District response recites the applicable law as well as the most material factual matters. Accordingly, with the addition of

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1 During the time in question, I or Donald Gilbert, an associate with this firm, had discussions with Mr. DePaoli and Mr. Ferguson about how best to proceed and have concurred with the approach taken by the Walker River Irrigation District.

the additional information provided below, I incorporate by reference the arguments made in papers filed by the Walker River Irrigation District.

I represent, as General Counsel, the Walker River Basin Water Users Association ("WUA"). In January of this year, Donald Mooney, an associate with this firm, specially appeared in the instant case and indicated that a group of water users in both California and Nevada with rights on the Walker River were interested in the then pending motions by Mineral County and the Walker River Paiute Tribe. He indicated that the water users group was attempting to look for solutions to various tribal and environmental issues that had arisen and that, in light of the papers we understood had been filed, it appeared that the group might need to intervene in the litigation in order to protect its interests. At that time the form of the water users group was an "association" working under a Memorandum of Understanding. As a direct outgrowth of the hearing and other related matters, the "association" reformed as a corporation under Nevada law. We did this for various reasons, including a belief that the collective needs of the members of the corporation could best be protected with this kind of formal organization.

The WUA currently consists of various individuals and entities in California and Nevada who possess water rights on the Walker River, including the Walker River Irrigation District. The intent of the WUA is not to duplicate representation, but rather to provide representation of the "whole." The WUA seeks, among other things, to (1) protect the existing water rights of its membership so that farmers can continue to pursue their livelihood and their way of life; (2) protect local communities; (3) provide for the biological and environmental needs of Walker Lake; and (4) provide for the legitimate claims of the Tribe.

The core idea which caused the formation of the WUA is that certain problems that cannot be solved with one or two or more water right holders might be better addressed by all the water rights collectively. Market-based water pooling solutions are the best example of this type of collective solution.

At the time the WUA was forming, Mineral County started its service. As attorneys for the WUA, we were asked on countless occasions by various members of the WUA and by those considering joining the WUA how to proceed. In all candor, we were not certain what to advise. First, we were ourselves never provided with a copy of all of the pleadings that were filed by Mineral County. Indeed, I am not positive that I even now have all of the papers filed by Mineral County. The Walker River Irrigation District has over time supplied me with some pleadings, which I believe to be a substantially complete set of documents, but no member of the WUA or potential member of the WUA that contacted me about what it should do had a complete copy of Mineral County's filing.

Second, matters at issue are complex. They are factually intense and because of the way the matter has thus far been pled, a full understanding of what is presented requires one to review, in addition to the motion and points and authorities, extensive affidavits and other exhibits which are part of the actual filing made by Mineral County. One cannot advise anyone on the appropriate answer or response to the papers at issue without receiving and reviewing with them all of the information and matters dealt with in those papers.

In my view, when Mineral County did not provide full service of the documents in question, they placed upon those it served (or the WUA or me) the burden of duplicating all of the documents that, under the Court's order, should have been served by Mineral County, thus shifting the costs to those served (or to the WUA or to me). When I reviewed the Court's

order, it appeared that it dealt with this issue and provided that service would logically include material exhibits, affidavits and attachments on which Mineral County relied in its filing. As a consequence, I indicated that unless properly served there was no obligation to return service and that to do so would result in our duplication of volumes of information (Mineral County's full filing for each of the WUA members) or proceed without all concerned having complete information. I still believe that this is an accurate assessment of the situation.

I have enclosed, for the Court's information, the actual Notice that was prepared to respond to the inquiries we received. The Notice is similar to the one prepared by the Walker River Irrigation District. (As noted above, we attempted to coordinate with attorneys for the Walker River Irrigation District in order to avoid providing inconsistent advice and thereby potentially further complicating the matter.)

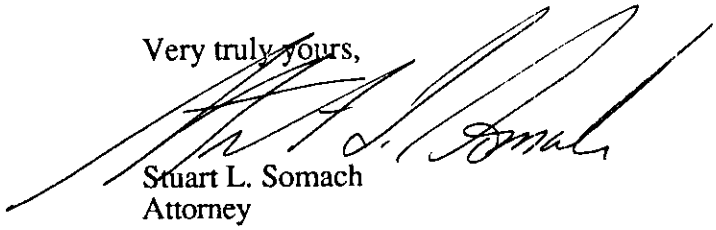
In reviewing the actual Notice we provided, it is clear that we recited much of what was on the return of service itself, including obligations to return service. The "recommendation" not to return service was qualified by the reference to a May 1, 1995 date upon which additional information might be forthcoming. Finally, the Notice provided that anyone reading it might "want to consult with your personal attorney on this matter." In this regard, we have, in fact, been contacted by several parties' personal attorneys who, to my knowledge, have all concurred with our advice.

In reviewing the papers filed by other parties, I note that the United States has not objected to the Walker River Irrigation District's motions and that the Walker River Paiute Tribe has, in fact, concurred with our view that "[b]y 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." Walker River Paiute Tribe's Response at p. 3; lines 14-17.

Neither the WUA nor its members seek to delay, in any way, the proceedings in this matter. The WUA and its members do, however, want to make certain that their interests are fully protected. In this regard, the WUA will, of course, follow carefully the proceedings in this matter and, if appropriate, seek to apprise the Court of its views through intervention or in another appropriate manner.

I am hopeful that the foregoing provides the Court with an explanation of relevant actions I have taken on behalf of the WUA. I would be happy to provide the Court with further information if requested.

Very truly yours,



Stuart L. Somach
Attorney

SLS:sb

Encl.

cc: See Attached Certificate of Service
WUA Board of Directors

CERTIFICATE OF SERVICE
(Federal)

I am employed in the County of Sacramento; my business address is 400 Capitol Mall, Suite 1900, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On July 25, 1995, I served the within:

Letter dated July 25, 1995 to The Honorable Edward C. Reed, Jr., from Stuart L. Sornach

_X_ on all parties in said action by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States post office mailbox at Sacramento, California, addressed as set forth below:

___ (by personal delivery) by personally delivering a true copy thereof to the person and at the address set forth below:

___ (by overnight delivery service) via Federal Express to the person at the address set forth below:

___ (by facsimile transmission) to the person at the address and phone number set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 25, 1995, at Sacramento, California.

Susan Bentley

SERVICE LIST

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Water Master
U.S. Board of Water Commissioners
P.O. Box 853
Yerington, NV 89447

WALKER RIVER BASIN WATER USERS ASSOCIATION
P.O. Box 478
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 Basin Water Users Association ("Water Users Association") and counsel for the Walker River Irrigation District 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.

You are not required to file a legal brief responding to Mineral County's motion until July 11, 1995. We will provide you with additional information concerning this matter, including the exact steps you need to take, by May 1, 1995.

Meanwhile, the best step you can take is to become a member of the Water Users Association, which will continue to keep you informed about the legal process. Membership in the Water Users Association will assist you in responding to Mineral County's motion and similar motions which Mineral County and others may file in the future. In fact, the Water Users Association may be able to respond on your behalf. While you may already be a member of the Water Users Association, to assure yourself of membership please complete the attached membership form and mail it to the Water Users Association at the address above.

You may also want to consult with your personal attorney on this matter. If you do, please ask that attorney to contact the Water Users Association's or Irrigation District's attorneys concerning this matter. The Water Users Association's attorneys are Stuart L. Somach and Donald B. Gilbert and their phone number is (916) 446-7979. The Irrigation District's attorneys are Gordon H. DePaoli and Dale Ferguson and their phone number is (702) 688-3000.