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MINERAL COUNTY

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-C-ECR

MINERAL COUNTY'S POINTS  
AND AUTHORITIES IN REPLY  
TO WRID'S RESPONSE AND  
REQUEST FOR HEARING

INTRODUCTION

This reply serves as a reply to the Points and Authorities filed by the Walker River Irrigation District, but makes no response to the letter filed by Stewart Somach, who does not represent any party presently in this case.

I

RETURNING WAIVER OF SERVICE DOES NOT WAIVE RIGHTS  
OF A RECIPIENT TO FILE CHALLENGES TO SUFFICIENCY  
OF PROCESS UNDER FRCP 12(b)(4)

The response of the Walker River Irrigation District

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1 (WRID) fails to state the premise of law that supports its argu-  
2 ment that the recipients of the Waiver of Service, by the act of  
3 executing and returning that waiver have given up rights to chal-  
4 lenge sufficiency of service (Affidavit of DePaoli, P. 4, L. 1,  
5 2). No premise of law supports that statement. On the contrary,  
6 it is quite clear that a challenge to sufficiency of process is  
7 filed as a Motion under FRCP 12(b)(4) prior to filing the Answer  
8 or simultaneous with filing the answer.

9 To clear up any misconception on the part  
10 of plaintiff, it should be made clear that  
11 it was not necessary for defendants to object  
12 to jurisdiction and service of process prior  
13 to their Answer.

14 U.S. v. Marple Community Record, Inc., 335  
15 F.Supp. 95, 100, 101 (E.D.Pa.1971). Also see  
16 O'Brien v. O'Brien, 998 F.2d 1394 (7th Cir.  
17 1992).

18 The very legal analysis upon which the WRID counsel ad-  
19 vised the water rights holders of the Walker River to not return  
20 the Waiver of Service to Mineral County was incorrect and ill-  
21 advised. WRID counsel is a learned and well-experienced counsel  
22 and would not have overlooked the rights of defendants to chal-  
23 lenge sufficiency of process under FRCP 12(b)4. This lends fur-  
24 ther weight to the argument that the interference in service by  
25 WRID was purposely done to delay these proceedings and to cause  
26 Mineral County exorbitant costs, thereby, foreclosing it of a  
27 right to pursue the merits of its claim. Mineral County believes  
28 that this supports its argument that sanctions should be imposed

1 and that WRID et al.<sup>1/</sup> should be made to complete the service  
2 upon the water rights holders in this matter.

3 Mineral County cannot conceive of a scenario where it  
4 can accomplish effective service given the description of it by  
5 WRID et al.: **"Mineral County has begun the attack" and "Today**  
6 **the dreams of our forefathers (and your water rights). . . are**  
7 **being threatened by Mineral County."** (See, Affidavit of Louis  
8 Thompson, Attachment). The water rights holders who received  
9 this sensationalized newsletter sent by WRID et al, will, no  
10 doubt, be reticent to accept service from Mineral County by any  
11 means.

12 The harm was done by WRID. The remedy is for WRID to  
13 be required to accomplish service. The Tribe has yet to begin  
14 its service, perhaps, WRID can now assist them since the news-  
15 letter poisoned the service waters for them as well. WRID,  
16 whether it has shared such with Mineral County or not, no doubt,  
17 has an up-to-date list of water rights holders on the Walker  
18 River for assessment purposes.<sup>2/</sup> Even if WRID counsel is not  
19 authorized to accept service on behalf of the Walker River water  
20 rights holders (Affidavit of Depaoli, pp. 6-7, Lns. 17-21, 1),  
21

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22 <sup>1/</sup> Once again Mineral County states that it does not know  
23 without further discovery and hearing which entity WRID  
24 or the Walker River Users Group acted to frustrate its  
25 attempts to serve the water rights holders on the  
Walker River, but would refer to all those involved as  
WRID et al.

26 <sup>2/</sup> Mineral County believed that if different addresses and  
27 different water rights were attributable to the same  
28 person or entity then each address had to be served,  
and since WRID has alleged duplication of service then  
all of those duplications can be sorted out with the  
special knowledge available to WRID as revealed by WRID  
counsel. (WRID Reply, pages 7-8, Footnote).

1 WRID certainly has access to those persons and entities for  
2 making effective service upon them.

3 II

4 **THE PURPOSE OF SERVICE IS TO PROVIDE THE DEFENDANT**  
5 **WITH REASONABLE NOTICE THAT A LAWSUIT IS PENDING**

6 Likewise, WRID has stated that the service of documents  
7 by Mineral County were not sufficient upon which the recipients  
8 could formulate an answer. WRID maintains that the affidavits  
9 supporting the Preliminary Injunction and the Motion for Inter-  
10 vention were documents critical to understanding the basis of the  
11 claims against the defendants. No law was cited to support this  
12 contention either.

13 Moreover, additional documents filed with the complaint  
14 and summons was challenged recently on grounds of insufficiency  
15 of process. The challenger stated that because of the confusion  
16 that arose with the service of so many documents, the intent of  
17 the Rule to give notice of the claims against the defendant was  
18 compromised. In the particular instance the Court denied the  
19 challenge stating that the documents filed in addition to the  
20 complaint were mere surplusage.

21 . . . the argument that service of process  
22 was ineffective because the defendants were  
23 served with copies of the two pending amended  
24 complaints as well as the original complaint  
25 is without merit. The defendants were in fact  
26 served with the filed complaint which is what  
27 Rule 4 requires. Nothing in Rule 4 mandates  
28 that surplusage material served with the com-  
plaint and summons renders the service of

1 process invalid. (Emphasis Added.)

2 Inter-City Products Corp. v. Willey, 149 F.R.D.

3 563, 569 (M.D.Tenn. 1993).

4 Mineral County had feared that service of so many doc-  
5 uments would confuse the recipients. A considerably relied upon  
6 treatise states that the complaint and summons must advise the  
7 defendant of a statement of the facts, nature or object of action  
8 and amount demanded. "Process," 62B Am Jur 2d 811 (Section 93).  
9 The only case that recently upheld an insufficiency of process  
10 was when a plaintiff served the defendant with a draft of the  
11 filed complaint which lacked seven pages and thus failed to serve  
12 the defendant with the filed complaint. West Coast Theater Corp.  
13 v. City of Portland, 897 F.2d 1519 (9th Cir. 1990). Mineral  
14 County believes contrary to WRID's allegation that all packets  
15 contained the Complaint-in-Intervention, the essential element  
16 required by Rule 4 and the Order of this Court. (See, Affidavit  
17 of Kel Buchanan).<sup>3/</sup>

18 This research done by Mineral County prior to service  
19 did alert Mineral County to the problem of filing too many docu-  
20 ments and causing confusion. It is clear that the complaint must  
21 be the complaint filed in the matter. It is not clear, however,  
22 how many other documents can be filed at the same time before the

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23  
24 <sup>3/</sup> Paragraph 4 of the Court's Order is clear - "If Mineral  
25 County intends to seek a waiver of service of Mineral  
26 County's Intervention documents pursuant to the provi-  
27 sions of Rule 4(d) of the Federal Rules of Civil Pro-  
28 cedure, Mineral County shall include with the mailing  
the attached Notice of Motion to Intervene, Proposed  
Complaint-in-Intervention of Mineral County and Request  
for Waiver of Personal Service of Motions and the at-  
tached Waiver of Personal Service of Order, Motions".  
P. 3 (Emphasis Added).

1 requirements of Rule 4 are clouded. Contrary to the allegations  
 2 of WRID, research indicates that fewer documents filed, as long  
 3 as the essential elements of Rule 4 are met, is preferred by the  
 4 Rule. The purpose of the Rule is to give notice that a lawsuit  
 5 is pending, not to confuse the recipient of service with thous-  
 6 ands of pages of filed court documents. WRID can cite no premise  
 7 of law that these Rule 4 Waiver of Service documents are intended  
 8 to give defendants all information needed to file an Answer.

### 9 III

#### 10 THE COURT CAN DETERMINE THE SERVICE NULL BECAUSE 11 OF THE INTERFERENCE OF WRID ET AL, AND ORDER 12 SERVICE BY OTHER MEANS

12 The Ninth Circuit has indicated that if mail service  
 13 under Rule 4(c)(2)(C)(ii) is "ineffective, then the party making  
 14 service should be free to treat the attempt as null." Electrical  
 15 Specialty v. Road and Ranch Supply, 967 F.2d 309, 313 (9th Cir.  
 16 1992). Under the circumstances the most important issue is how  
 17 to accomplish effective service on the water rights holders of  
 18 the Walker River now that the initial service has been so tainted  
 19 by WRID et al. Since the 9th Circuit has endorsed alternative  
 20 service if the Rule 4(c)(2)(C)(ii) service is ineffective<sup>4/</sup>,  
 21 then the Court should again order service to be made upon the  
 22 water rights holders of the Walker River. Since this double  
 23 attempt at service is required by the interference of WRID et.al.  
 24 for no arguable legal basis, then WRID et al should bear the  
 25 expense of the Court ordered service and should compensate

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27 <sup>4/</sup> The rule as enacted does not foreclose the possibility  
 28 that service could also be secured by other means  
 reasonably intended to assure actual notice.  
Electrical Specialty v. Road and Ranch Supply, supra,  
 p.313, 314.

1 Mineral County for the interference by reimbursing Mineral County  
2 for its first service which it attempted and carried out in good  
3 faith.

4 Moreover, Mineral County should be reimbursed for the  
5 attorneys fees incurred by it to thwart WRID's spurious attempt  
6 to interfere in Mineral County's goal to reach a decision on its  
7 meritorious claim. It is well known to WRID that continual de-  
8 lays and spurious actions such as this will cause Mineral County  
9 to be unable to bear the burden of the costs of pursuing this  
10 matter and, therefore, WRID will prevail by default.

11 FOR THE ABOVE-STATED REASONS and those reasons stated  
12 in Mineral County's earlier response and Motion for Sanctions,  
13 Mineral County respectfully requests that this Court set oral  
14 argument so that a full airing of these matters can be heard or  
15 that the Court direct WRID to accomplish service on the water  
16 rights holders of the Walker River by the means WRID believes to  
17 be most effective within sixty (60) days of the date of the  
18 Court's Order and that Mineral County be reimbursed for its costs  
19 of service and attorney's fees by WRID and its counsel.

20 DATED this 4<sup>th</sup> day of August, 1995.

21  
22 ZEH, POLAHA, SPOO & HEARNE  
23 Attorneys for Plaintiff-Intervenor  
MINERAL COUNTY

24  
25 By  \_\_\_\_\_

JAMES SPOO

26  
27 By  \_\_\_\_\_

TREVA J. HEARNE

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify I am an employee of ZEH, POLAHA, SPOO & HEARNE, and that I deposited for mailing, at Reno, Nevada, a true copy of **\*\* MINERAL COUNTY'S POINTS AND AUTHORITIES IN REPLY TO WRID'S RESPONSE AND REQUEST FOR HEARING \*\*** to:

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10 this 4 day of August, 1995.  
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