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U.S. DISTRICT COURT
RENO, NEVADA
C.S.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

* * *

11 UNITED STATES OF AMERICA,)
12)
13 Plaintiff,)
14 WALKER RIVER PAIUTE)
15 TRIBE,)
16 Plaintiff-Intervenor,)
17 vs.)
18 WALKER RIVER IRRIGATION)
19 DISTRICT, a corporation, et al.)
20 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 Author-
ities filed by the Walker River Irrigation District, but makes no
response to the letter filed by Stewart Somach, who does not rep-
resent 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

42

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.^{1/} 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.^{2/} 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

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

26 ^{2/} 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).^{3/}

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
23

24 ^{3/} 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**

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

27 ^{4/} 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.

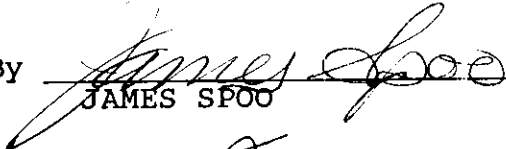
1 Mineral County for the interference by reimbursing Mineral County
2 for its first service which it attempted and carried out in good
3 faith.

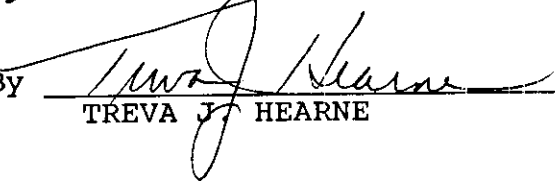
4 Moreover, Mineral County should be reimbursed for the
5 attorneys fees incurred by it to thwart WRID's spurious attempt
6 to interfere in Mineral County's goal to reach a decision on its
7 meritorious claim. It is well known to WRID that continual de-
8 lays and spurious actions such as this will cause 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 4th day of August, 1995.

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

24 By 
25 JAMES SPOO

26
27 By 
28 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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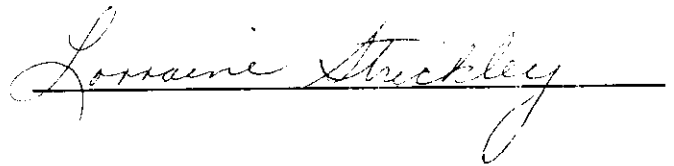
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this 7 day of August, 1995.



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