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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 **WALKER RIVER IRRIGATION DISTRICT'S RESPONSE TO MINERAL COUNTY'S MOTION TO AMEND JUDGMENT**

I. INTRODUCTION

On June 22, 1995, the Walker River Irrigation District (the "District") served its 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 "Motion to Vacate Schedule").

In response to the Motion to Vacate Schedule, Mineral County filed Points and Authorities in Opposition to WRID's Motion to Vacate Schedule and in Support of Counter Motion for Sanctions ("Mineral County's Opposition and Counter Motion").

After considering the Motion to Vacate Schedule and Mineral County's Opposition and Counter Motion, and all related responses and replies, the Court entered an order in this matter on August 16, 1995 (the "Order"). The Order granted the Motion to Vacate Schedule and denied Mineral County's Opposition and Counter Motion. See Order at 13. In addition, the Order decided several issues related to Mineral County's service of process in this matter and required Mineral County to "serve its Intervention Documents on all claimants to the waters of the Walker River and its tributaries" on or before September 29, 1995. Id. at 9.

On August 21, 1995, Mineral County served a Motion to Amend Judgement (the "Motion to Amend") asking the Court to amend the Order by extending the time for completion of personal service to December 14, 1995. In addition, the Motion to Amend asks the Court to clarify the content of paragraph 4 of its February 9, 1995, order in this matter (the "Service Order"). The District offers the following response to the Motion to Amend.

II. CLARIFICATION OF PARAGRAPH 4 OF THE SERVICE ORDER

To begin with, it is difficult to understand the need for clarification of paragraph 4 of the Service Order. Paragraph 4 specifically addressed any attempt by Mineral County to obtain waivers of service in this matter. Mineral County did attempt to obtain waivers of service and several individuals and entities refused to return waiver of service forms. With respect to these individuals and entities, "[p]ersonal service of the moving documents (Doc. #s 20, 21 & 22), the supporting documents and the Notice in Lieu of Summons properly issued by the Clerk of the Court is required" of Mineral County to comply with the Service Order.

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Order at 9. Therefore, at this juncture clarification of paragraph 4 of the Service Order is unnecessary as Mineral County cannot again attempt to obtain waivers of service through a subsequent mailing.

The Motion to Amend suggests that Federal Rule of Civil Procedure 5(c) is somehow applicable to Mineral County's efforts to effect service of process. Motion to Amend at 2. However, both the Order and the Service Order make it clear that service is "to be made pursuant to the requirements for service of process under Federal Rule of Civil Procedure 4." Order at 2; Service Order at 2. Therefore, any reference by Mineral County to Rule 5 as the applicable law with regard to service of process in this matter should be disregarded by the Court.

The Motion to Amend states:

> Mineral County seeks a determination of paragraph 4 of the Court's February 9, 1995, Order, in that said paragraph referred to what Mineral County should mail to persons if it sought a waiver of service of the intervention documents, then Mineral County was to serve the Notice of Motion to Intervene, Proposed Complaint in Intervention of Mineral County and Request for Waiver of Personal Service of Motions and the attached Waiver of Personal Service of Motions, <u>and that no other documents were required with the Waiver Request.</u>

Motion to Amend at 2 (emphasis added). From the statement "and that no other documents were required with the Waiver Request", it appears that Mineral County interprets the language "Notice of Motion to Intervene, Proposed Complaint in Intervention of Mineral County and Request for Waiver of Personal Service of Motions and the attached Waiver of Personal Service of Motions," contained in paragraph 4 of the Service Order, to refer to service of four separate and distinct documents. However, this interpretation of paragraph 4 is clearly erroneous when paragraph 4 is read in context with the other sections of the Service Order and attachments thereto.

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At paragraphs 2 and 3 of the Service Order, the Court ordered Mineral County to serve the following documents on all claimants to the waters of the Walker River and its tributaries:

> (a) its revised motion to intervene; (b) its revised points and authorities in support thereof; (c) a revised proposed complaint-in-intervention which clarifies the basis for Mineral County's claims to water from the Walker River for Walker Lake and which identifies the persons or entities against whom such claims are proposed to be asserted; and (d) any motion for preliminary injunction, supporting points and authorities and any other supporting documents which Mineral County may choose to file. The documents filed pursuant to this paragraph 2 are hereinafter sometimes collectively referred to as "Mineral County's Intervention Documents."

See Order at 3. Paragraph 4 of the Service Order then went on to address the possibility that Mineral County might seek a waiver in connection with its service of process. In this regard, paragraph 4 stated in pertinent part:

> 4. If Mineral County intends to seek a waiver of service of Mineral County's Intervention Documents pursuant to the provisions of Rule 4(d) of the Federal Rules of Civil Procedure, 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 attached Waiver of Personal Service of Motions.

Service Order at para. 4 (emphasis added). Obviously, the Court intended the language "the mailing" to refer to those documents listed in paragraph 2 which the Court required Mineral County to serve on all claimants to the waters of the Walker River and its tributaries in paragraph 3 of the Service Order.

In addition to the documents listed in Paragraph 2, if Mineral County sought a waiver, paragraph 4 of the Service Order required Mineral County to include two additional documents in its mailing: 1) a Notice of Motion to Intervene, Proposed Complaint-in-

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Intervention of Mineral County and Request for Waiver of Personal Service of Motions[1] (the "Notice"); and 2) a Waiver of Personal Service of Motions (the "Waiver"). The Court "attached" copies of the Notice and the Waiver to the Service Order to foster Mineral County's compliance with Rule 4(d).

In attempting to gain a waiver of service of summons, the plaintiff must provide the defendant with adequate notice of the commencement of the action. Fed.R.Civ.P. 4(d). The contents of this required notice are stated in Rule 4(d)(2) and the Federal Rules of Civil Procedure also provide a sample of the notice as Form 1A.

The Notice contains some information unique to Mineral County's attempted intervention in this matter, otherwise, the contents of the Notice virtually parallel those of Form 1A. The Court intended that the Notice, described in paragraph 4 of the Service Order, would be the equivalent of Form 1A in the event that Mineral County sought waivers of service. The language describing the Notice in paragraph 4 does not refer to the service of separate and distinct documents as Mineral County apparently believes.[2]

The Waiver referred to in paragraph 4 was also "attached" to the Service Order. The Federal Rules provide a sample of the waiver required by Rule 4(d) as Form 1B. The content of the Waiver virtually parallels the content of Form 1B with the exception that the Waiver contains information unique to Mineral County's attempted intervention. The Court obviously

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1 This document, attached to the Order, was actually styled Notice of Motion to Intervene, Proposed Complaint-In-Intervention and Motion for Preliminary Injunction of Mineral County and Request for Waiver of Personal Service.

2 This conclusion is further established by the language contained in the Notice. The first paragraph of the Notice states that "[a] motion to intervene, proposed complaint-in-intervention, and motion for preliminary injunction by Mineral County . . . have been filed in the United States District Court for the District of Nevada, Reno, Nevada. Copies of these documents . . . are enclosed."

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intended that the Waiver described in paragraph 4 of the Service Order would be the equivalent of Form 1B in the event that Mineral County sought waivers of service.

In summary, clarification of Paragraph 4 of the Service Order is unnecessary as Mineral County has already attempted to obtain waivers of service. Mineral County must now proceed by personally serving those individuals and entities that failed to return Waivers. Nevertheless, it is clear from reading the entire Service Order and the attachments thereto that the language contained in Paragraph 4 referred to and described only two documents: 1) the Waiver: and 2) the Notice. The Waiver and Notice were patterned after Forms 1A and 1B of the Federal Rules of Civil Procedure and attached to the Service Order by the Court in an effort to foster Mineral County's compliance with the requirements of Rule 4(d).

II. MINERAL COUNTY'S REQUEST FOR AN EXTENSION OF TIME TO EFFECT PERSONAL SERVICE IN THIS MATTER

The District does not specifically object to Mineral County's request for an extension of time to effect personal service in this matter. However, Mineral County's Opposition and Counter Motion alleged that the District has actively sought to cause delay in this matter. Mineral County's Opposition and Counter Motion at 20. Therefore, in refuting Mineral County's allegation of delay, the District informs the Court that it stands ready to proceed

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under the briefing schedule set forth in the Order should the Court decide to deny the Motion to Amend.

DATED this 8th day of September, 1995.

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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:

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DATED this 8th day of September, 1995.

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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 **NOTICE IN LIEU OF SUMMONS**

TO: _____: (As _____ of_____)

To the above named Defendant:

You are notified that 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 would affect the water rights in the Walker River which you (or the entity on whose behalf you are addressed) possess, have been filed in the United States District Court for the District of Nevada, Reno, Nevada. You are required to respond within the times and as provided in the attached Order Requiring Service of and Establishing Briefing Schedules Regarding the Motion to Intervene of Mineral County. If you fail to do so and if the proposed complaint-in-

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intervention is allowed to be filed and to the extent provided by further orders of the Court, a judgment by default may be taken against you for the relief demanded in the proposed complaint in intervention.

DATED this _____ day of SEP 6 1995, 1995.

LANCE S. WILSON, CLERK

(Seal)

Clerk of the Court

By WAYNE JULIAN
Deputy Clerk