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 10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA

IN EQUITY NO. C-125-ECR
 Subproceeding: C-125-C
 3:73-CV-0128-ECR-RAM

13
 14 Plaintiff,

15 WALKER RIVER IRRIGATION, et al.

**WALKER RIVER IRRIGATION
 DISTRICT'S RESPONSE TO
 MINERAL COUNTY'S
 SERVICE REPORT**

16
 17 Defendants.
 18 _____/

19 **I. INTRODUCTION**

20 This matter involves Mineral County's attempt to intervene and assert a new and senior
 21 water right in the water right adjudication which was concluded by the entry of a final judgment
 22 and decree on April 14, 1936, and amended on April 24, 1940, pursuant to the mandate in *United*
 23 *States v. Walker River Irrigation District*, 104 F.2d 334 (9th Cir. 1939) (the "Walker River
 24 Decree"). Pursuant to its proposed complaint, Mineral County seeks a reallocation of the waters
 25 of the Walker River under the public trust doctrine in order to preserve minimum levels in
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1 Walker Lake. If granted, this relief would impact the interests of all parties who hold a right to
2 use the water of the Walker River and its tributaries.

3 Mineral County initiated its attempt to intervene into this action by filing several
4 documents with the Court in late 1994 and early 1995. Over the past approximately 13 years,
5 Mineral County has attempted but failed to complete service on all claimants to the waters of the
6 Walker River and its tributaries as ordered by the Court in early 1995.

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8 The current status of service here raises several issues concerning whether persons who
9 have been served have received and whether those who will be served will receive, the quality of
10 notice required by due process. Those issues require the Court to consider, among other things,
11 the content of the documents which have been and will be served, whether those documents
12 should be updated to reflect current information on the status of the proposed intervention,
13 whether updated intervention documents should be served on parties who have already been
14 served with outdated documents and whether the successors-in-interest to parties already served
15 should be served under Rule 4 of the Federal Rules of Civil Procedure. The Court must also
16 consider the status of service concerning certain parties.

17
18 In order to address these issues and others raised by the *Mineral County Report*
19 *Concerning Status of Service on Proposed Defendants* (Doc. No. 479) (the "Service Report")
20 and because over 13 years have elapsed since this proceeding was commenced, it is necessary to
21 review some of the background information present in the C-125-C sub-file concerning Mineral
22 County's attempted intervention.

23
24 **II. BACKGROUND**

25 **A. The Service Order**

26 As a result of a status conference held in early 1995, the Court entered an *Order*
27 *Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of*
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1 *Mineral County* (the "Service Order"). Doc. No. 19. The Service Order addressed numerous
2 issues concerning how Mineral County's proposed intervention was to proceed before the Court.
3 With respect to documents, the Court directed Mineral County to file a revised motion to
4 intervene and points and authorities in support thereof (the "Motion to Intervene"), a revised
5 proposed complaint-in-intervention, "which identifies the persons or entities against whom" its
6 claims would be asserted, and any motion for preliminary injunction with supporting points and
7 authorities and other supporting documents (collectively the "Intervention Documents"). Doc.
8 No. 19 at 2.
9

10 With respect to service, the Court directed Mineral County to serve the Intervention
11 Documents on all claimants to the waters of the Walker River and its tributaries (the "Walker
12 River Claimants") pursuant to Rule 4 of the Federal Rules of Civil Procedure. The Court defined
13 the Walker River Claimants to include all parties holding water rights under the Walker River
14 Decree and all parties who had acquired rights to use the waters of the Walker River by
15 subsequent appropriation.¹ *Id.* at 2, 3.
16

17 The Service Order anticipated that Mineral County might utilize what then were the
18 waiver provisions of FRCP 4(d) in order to comply with the Service Order. In this instance, the
19 Court directed Mineral County to serve a copy of a document entitled *Notice of Motion to*
20 *Intervene, Proposed Complaint-in-Intervention of Mineral County* (the "Notice of Motion") and
21 of a document entitled *Request for Waiver of Personal Service of Motions* (the "Request for
22 Waiver). The Notice of Motion and Request for Waiver forms were attached to the Service
23 Order. Therefore, the Court directed Mineral County to serve the Intervention Documents, a
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27 ¹ Most, if not all, of the original parties to the Walker River Decree are no longer the owners of
28 the water rights it adjudicated because several decades have passed since the entry of the Decree.
It is the successors in interest to those parties that currently hold the water rights under the
Walker River Decree.

1 Notice of Motion, a Request for Waiver and a copy of the Service Order on all parties served
2 pursuant to the waiver provisions of FRCP 4(d). *Id.* at 3, 5.

3 The Service Order also anticipated that it would be necessary for Mineral County to
4 effect personal service on certain parties. In this instance, the Court directed Mineral County to
5 serve a copy of a document entitled *Notice in Lieu of Summons* instead of a summons. The
6 Notice in Lieu of Summons form was also attached to the Service Order. Therefore, the Court
7 directed Mineral County to serve the Intervention Documents, Notice in Lieu of Summons and a
8 copy of the Service Order on all parties that it made personal service upon.
9

10 The Court ordered Mineral County to complete service of the Intervention Documents
11 pursuant to the Service Order by May 10, 1995. *Id.* at 2. It also adopted a schedule requiring
12 responses to the Motion to Intervene to be served not later than July 11, 1995. *Id.* at 3, 4. No
13 answers to the proposed complaint-in-intervention or responses to the motion for preliminary
14 injunction were required until after the Court decided the Motion to Intervene. *Id.* at 4.
15 Finally, the Court directed that any party properly served by Mineral County that did not appear
16 and respond to the Motion to Intervene would be deemed to have notice of subsequent orders of
17 the Court. *Id.*
18

19 The Service Order anticipated and addressed many issues related to Mineral County's
20 proposed intervention in 1995. The Service Order could not have anticipated and therefore did
21 not address, however, issues that would arise as a result of Mineral County failing to complete
22 service for more than 13 years.
23

24 **B. Mineral County's Initial Attempts at Service of Its Intervention Documents**
25 **in 1995**

26 In approximately April and May of 1995, Mineral County attempted service under the
27 waiver provisions of then Fed. R. Civ. P., Rule 4(d). In seeking waivers of service, Mineral
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1 County mailed some, but not all, of the documents required to be served to persons it had
2 apparently identified as Walker River Claimants.² Doc. No. 40 at 1-3.

3 Mineral County's solicitation of waivers of service was not successful.³ Subsequent to its
4 attempted service under the waiver provisions of Rule 4(d), Mineral County asked the Court to
5 relieve it of any further responsibility with regard to service of the Intervention Documents.
6 Doc. No. 31 at 1. Because it was obvious as a matter of fact that service had not been
7 accomplished, the Court denied that request by order dated August 16, 1995 (the "Second
8 Order"). Doc. No. 44 at 13. The Second Order reaffirms the service provisions contained in the
9 Service Order, noting that it had not been vacated, modified or appealed. *Id.* at 2. Therefore, the
10 Court again directed Mineral County to serve the Intervention Documents as directed in the
11 Service Order on all Walker River Claimants.
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16 ² As stated above, the Service Order expressly required Mineral County to file "a revised
17 proposed Complaint-In-Intervention . . . which identifies the persons or entities against whom
18 such claims are proposed to be asserted...." Service Order at 2. [Emphasis added]. Mineral
19 County failed to comply with that requirement. As a result, it became increasingly difficult to
20 determine if Mineral County had correctly indentified the Walker River Claimants before it
21 initiated any service efforts and to determine the status of those efforts. In early 1996, the Court
22 clarified "that it is up to the County to determine who the proper defendants (i.e. competing
23 water right holders) are in its proposed action." Doc. No. 74 at 2. Later, it would become
24 apparent that Mineral County had attempted to identify the Walker River Claimants by merely
25 acquiring lists of names from various entities instead of conducting the work necessary to
26 ascertain those parties at the relevant County Recorders' Offices. *See e.g.* Attachment 1 to Doc.
27 No. 97; Doc. No 77 at 7, 8; Doc. No. 94 at 8, 9; Doc. No. 259 at 3.

24 ³Mineral County complained that the District had interfered with and frustrated its attempts to
25 obtain waivers of service. Doc. 31 at 5. It sought substantial sanctions from the District. *Id.* at
26 2. The Court denied Mineral County's request for sanctions. Doc. 44 at 10-13. Although what
27 the District did and why are not relevant here, they are explained in detail at Doc. No. 40, and are
28 supported by the Court's order denying Mineral County relief. Suffice it to say that the District
responded in good faith to inquiries and its response was based upon Mineral County's unilateral
decision to not mail documents which the Service Order clearly required be served.

1 C. **Mineral County's Subsequent Attempts at Service of Its Intervention**
2 **Documents and Related Court Proceedings From August of 1995 through**
3 **December of 1997**

4 In the months following the entry of the Second Order in 1995, Mineral County filed
5 several pleadings with the Court representing that service was complete and requesting that the
6 Court relieve it from any further obligation to complete service of the Intervention Documents.
7 The Court denied these requests for relief because it was absolutely clear that service had not
8 been completed pursuant to the terms of the Service Order. *See e.g.* Doc. Nos. 48 and 74 . The
9 Court also entered orders that suspended or vacated the briefing schedule set forth in the Service
10 Order with respect to the Motion to Intervene. *See e.g.* Doc. Nos. 33, 44, 71.

11 Instead of complying with the Court's directive to complete service, in April of 1996
12 Mineral County appealed the Court's ruling in Doc. No. 74 to the Ninth Circuit Court of Appeals.
13 Doc. No. 78. This further delayed Mineral County's service efforts and in a written decision
14 filed February 12, 1997, the Ninth Circuit dismissed Mineral County's appeal for lack of
15 jurisdiction. Doc. No. 98.

16 On or about February 20, 1997, Mineral County filed a motion for leave to serve by
17 publication unidentified holders of water rights appurtenant to lands located within the Walker
18 River system. Doc. No. 88. The Court granted that motion (Doc. No. 99) and subsequently
19 made it absolutely clear, however, that its order did not apply to identified holders of water
20 rights. Doc. No. 114.

21 On August 14, 1997, the Court assigned the C-125-C matter to the Magistrate Judge for
22 purposes of determining if Mineral County had made proper service upon all identified holders
23 of Walker River water rights. Doc. No. 140. The Magistrate Judge set a hearing on this question
24 for September 23, 2007 and ordered the parties to file briefs addressing the issue prior to that
25 date. Doc. No. 143. On September 16, 1997, the Walker River Irrigation District (the "District")
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1 filed a comprehensive brief that detailed the status of service with respect to Mineral County's
2 proposed intervention as of that date. Doc. No. 151. Among many other things, the District's
3 brief specifically requested that the Court "require Mineral County to name the proposed
4 defendants in its proposed Complaint-In-Intervention" as directed by the Service Order in 1995.
5 *Id* at 10.

6
7 During the Fall of 1997, the Court held additional hearings and ordered Mineral County
8 to prepare a caption that contained the names of the proposed defendants. By order dated
9 December 4, 1997, the Court acknowledged that "Mineral County has submitted the defendant's
10 list which has been put into a caption." Doc. No. 162. The Court also directed Mineral County
11 to complete service in accordance with the provisions of the Service Order, and a subsequent
12 order (Doc. No. 48), by March 30, 1998. *Id.* at 2. Finally, the Court directed that the documents
13 served by Mineral County from that date forward would state that responses to the Motion to
14 Intervene would be due June 15, 1998. *Id.*

15
16 **D. Mineral County's Service Efforts and Court Proceedings from January of**
17 **1998 Through January of 1999**

18 In early 1998, Mineral County served and attempted service on numerous parties and
19 filed several "certificates of return of service" with the Court. *See e.g. Doc. Nos.* 165 through
20 180. In a pre-conference report, the District noted that approximately 350 additional service
21 attempts were made by Mineral County during early 1998. Doc. 177 at 3. Those parties were
22 apparently served with a Notice In Lieu of Summons stating that responses to Mineral County's
23 Motion to Intervene were due on June 15, 1998 as set forth in the Court's December 4, 1997
24 order (Doc. No. 162).

25
26 At a status conference held in April of 1998, the Court ordered Mineral County to file a
27 motion to effect service by publication and Mineral County filed that motion on April 21, 1998.
28 Doc. Nos. 181 and 183. The District opposed Mineral County's motion for service by

1 publication concluding that service was substantially incomplete and that Mineral County had
2 failed to make the showings necessary to support service by publication. Doc. No. 189.

3 On April 30, 1998, the Magistrate Judge entered an order stating that all service issues
4 had not been settled and scheduled a hearing before the Court. Doc. No. 193. As a result, the
5 Court issued an order listing the service issues that had been resolved and those which remained
6 unresolved and providing the parties an opportunity to respond to this list. Doc. No. 196.
7 Mineral County then moved to dismiss a number of parties by motion dated May 18, 1998. Doc.
8 No. 198.

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10 By order dated June 11, 1998, the Court once again amended the briefing schedule by
11 requiring responses to Mineral County's Motion to Intervene to be filed by November 24, 1998.
12 Doc. No. 221. On June 29, 1998, Mineral County filed an amended motion to dismiss certain
13 parties (Doc. No. 222.) and another motion for publication on August 4, 1998. Doc. No. 226.

14
15 By order dated November 6, 1998, the Court again amended the briefing schedule by
16 requiring responses to Mineral County's motion to intervene to be filed by February 1, 1999.
17 Doc. No. 240. Finally, by order dated January 8, 1999, the Court vacated the briefing schedule
18 on the Motion to Intervene and postponed setting any further briefing schedule until the Court
19 ruled on all outstanding issues concerning the completion of personal service, service through
20 publication and the dismissal of parties. Doc. No. 247.

21
22 **E. Mineral County's Service Efforts and Court Proceedings During 1999**

23 On February 25, 1999, the Court entered an order addressing pleadings Mineral County
24 had filed up to that date concerning service by publication. The order denied service through
25 publication in large part, granted service through publication on four parties, dismissed two
26 parties, gave Mineral County 120 days to file another motion for service by publication, directed
27 the District to file any objections it had to service on individual parties within 60 days and
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1 directed Mineral County to file any response to those objections within 30 days thereafter. Doc.
2 No. 252 at 83.

3 On March 2, 1999, the Court entered an order addressing pleadings Mineral County had
4 filed up to that date requesting the dismissal of certain parties. That order dismissed certain
5 parties and denied Mineral County's request to dismiss other parties. Doc. No. 257.

6 The District filed its objections to service on April 26, 1999 (Doc. No. 259) as directed
7 by the Court in Doc. No. 252. That document set forth in detail the District's general objections
8 with respect to service and objections related to specific parties.

9 On July 23, 1999, Mineral County filed another motion requesting permission from the
10 Court to serve all unidentified parties by publication. Doc. 288. By order dated August 27,
11 1999, the Court referred the District's objections to service (Doc. No. 259) and Mineral County
12 motion for publication (Doc. No. 288) to the Magistrate Judge for decision. Doc. No. 298. That
13 order stated: "Thus, after the Magistrate Judge rules on these matters, we should have a list of
14 which defendants have been properly served, which defendants Mineral County has shown
15 should be served by publication, and which defendants have not yet been correctly served but as
16 to whom Mineral County has not yet demonstrated that service by publication is warranted." *Id.*
17 at 2.⁴

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21 **F. Mineral County's Service Efforts and Court Proceedings in the Years 2000
and 2001.**

22 As a result of a status conference held on January 6, 2000, the Court directed submission
23 of lists reflecting: (i) parties properly served; (ii) parties for whom the District objected to
24 service; (iii) parties Mineral County claimed should be served by publication; and (iv) parties,
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26 ⁴ It is worth noting that Mineral County continued to serve documents on an on-going basis as
27 demonstrated by the numerous "Certificate of Return of Service" forms and "Waiver of Service"
28 forms filed with the Court as evidenced by the docket sheets. It is not possible to know with
certainty, however, what documents Mineral County was serving or the dates stated in those
documents to respond to the Motion to Intervene at any particular time.

1 based on information in Mineral County's possession, that no longer owned water rights together
2 with the identity of their successors-in-interest. Doc. No. 316 at 2.

3 The District filed its pleading containing these lists and addressing other matters on
4 February 7, 2000 (Doc. No. 319) and Mineral County filed a report concerning service on March
5 10, 2000. Doc. Nos. 322 and 323. The Court then held a hearing to address the service issues on
6 March 14, 2000.

7
8 On April 3, 2000, the court entered an *Order Concerning Status of Service on*
9 *Defendants*. Doc. No. 327 (the "Status of Service Order"). Among many other things, the
10 Status of Service Order listed the parties for whom the District did not object to service, parties
11 deemed to have been properly served, parties deemed to have not been served and parties for
12 whom Mineral County intended to file motions to dismiss. It also stated that responses to the
13 Motion to Intervene would be served pursuant to a schedule to be established by further order of
14 the Court and that any party served from that point forward would be required to file and serve a
15 Notice of Appearance which includes the name of the party and the mailing address of that party
16 or of its counsel. *Id.* at 7. Finally, the Status of Service Order stated that any "party who is
17 properly served but does not file and serve a Notice of Appearance shall be deemed to have
18 notice of subsequent orders of the Court and subsequent pleadings filed and served in this
19 matter." *Id.* at 8.

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21
22 On August 8, 2000, Mineral County filed another motion to dismiss and substitute certain
23 parties. Doc. No. 351. Over the next year, Mineral County filed additional documents
24 concerning this motion to dismiss and other parties filed their respective responses.

25 The District filed a request for status conference on September 7, 2001. Doc. No. 387.
26 That request raised several important issues with respect to Mineral County's service efforts.
27 First, it informed the Court that Mineral County was serving parties for which it had requested,
28

1 but not yet received, permission from the Court to substitute into the caption. Second, it
2 informed the Court that Mineral County was not serving the Notice of Appearance form as
3 directed by the Status of Service Order. *Id.* at 3. Third, the request pointed out that it was
4 necessary to inform parties who were previously served with outdated information concerning
5 when they needed to respond to the motion to intervene. *Id.* at 4. Finally, it raised the issue
6 concerning the need for service upon the successors-in-interest to those parties who had already
7 been served. *Id.* at 5.

9 After hearing, the Court entered an order denying in part and granting in part Mineral
10 County's requests to dismiss certain parties on December 19, 2001. Doc. No. 397. That order
11 also substituted many parties into the caption of the case. On January 15, 2002, the District filed
12 responses concerning the content of the December 19, 2001 order. Doc. No. 400. After a
13 hearing, the Court adopted all of those responses by order dated February 25, 2002. Doc. No.
14 403.

16 **G. Mineral County's Service Efforts and Court Proceedings From January of**
17 **2002 to May of 2003**

18 The Status of Service Order listed 170 parties who Mineral County had not served. Doc.
19 327 at 4, 5. On January 31, 2002, the District filed a list containing the names of 66 parties from
20 that 170 which the District believed Mineral County had still failed to effect service upon. Doc.
21 No. 401 at 2, 3. It also listed the names of an additional 45 parties added to the caption by the
22 Court's December 19, 2001 order (Doc. No. 397) who had not been served. Doc. No. 401 at 3, 4.

23 At a hearing held on and by order dated February 25, 2002, the Court directed Mineral
24 County to circulate an amended caption to the parties. Doc. No. 403. Mineral County circulated
25 the revised caption on March 4, 2004, for the parties to review. By letter dated March 18, 2002,
26 the District set forth numerous discrepancies between the revised caption and the caption filed
27 with the Court on January 12, 1998. Doc. No. 408. The letter also set forth the names of 11
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1 parties who Mineral County had not moved to dismiss as previously represented in Doc. No.
2 396. *Id.* at 3. Finally it offered a proposed order to memorialize the content of the Court's order
3 of February 25, 2002 (Doc. No. 403) which adopted the District's responses contained in its
4 January 15, 2002 pleading (Doc. No. 400).

5 On April 26, 2002, the District and the U.S. Board of Water Commissioners filed a joint
6 status report with the Court. Doc. No. 411. That report describes in detail the discrepancies
7 concerning the revised caption and the parties' resolution concerning those discrepancies as well
8 as the content of a proposed order attached to the District's letter dated March 18, 2002. On
9 April 30, 2002, the District filed another report setting forth in detail its position with respect to
10 the content of the proposed order. Doc. No. 412.

11 On May 3, 2002, the Court held a hearing and made rulings concerning the status of
12 service on certain parties and the content of the proposed order. Doc. No. 413. It also set a
13 schedule for briefing another motion for publication and ordered Mineral County to prepare
14 another revised or amended caption to reflect the rulings made at the hearing. *Id.*

15 On June 18, 2002, the Court entered an order adopting its rulings from the February 25,
16 2002 and May 3, 2002 hearings. The order amended the caption in certain respects, substituted
17 or added certain parties, dismissed certain parties, deemed service complete on certain parties
18 and ruled that certain other parties had not yet been served. Doc. No. 414

19 On June 19, 2002, Mineral County filed another motion for service by publication. Doc.
20 No. 415. On June 20, 2002, Mineral County also moved the Court to deem service complete and
21 to allow service on new parties without first obtaining leave of court to add or substitute them
22 into the caption. Doc. No. 416. The District objected to these two requests by pleading dated
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1 July 8, 2002. Doc. No. 417. In addition, the District filed its response to Mineral County's
2 motion for publication on July 19, 2002. Doc. No. 420.⁵

3 **H. The Mediation Order**

4 In the Spring of 2003, the District, Mineral County and several other parties involved in
5 the C-125-B and C-125-C actions agreed to participate in a mediation process to attempt to
6 settle certain issues in the litigation. As a result, the Court entered an Order Governing
7 Mediation Process on May 27, 2003 (the "Mediation Order"). Doc. No. 430. The Mediation
8 Order stated the following:
9

10 The ongoing efforts to complete service in C-125-B and C-125-C should
11 be completed as soon as possible. The Parties to the mediation process agree that
12 it is important that the Court work closely with the Parties in both C-125-B and C-
13 125-C to resolve all service issues and complete service. Although the Parties
14 agree that the remainder of the proceedings in these two matters should be stayed
15 pending the mediation process, they look to the Court to play an active role in the
16 resolution of service issues.

17 Within 30 days after the date of this Order, or as soon thereafter as is
18 convenient for the Court and the Parties, the Magistrate Judge shall conduct a
19 status conference to review the status of service efforts in both cases and continue
20 the process of resolving service issues . . . In Case No. C-125-C, a motion for
21 publication is pending before the Court. *Motion for Order of Publication (Fifth
22 Request)*. The Magistrate Judge shall address [this] motion and any other service
23 related matters during its status conference to review service efforts in both cases,
24 and, where appropriate, shall set schedules for the briefing and resolution of
25 service-related matters. In the C-125-C case, this effort shall also include
26 consideration by the Court of the schedule by which it will consider and resolve
27 the pending motion to intervene . . .

28 All other proceedings in these two matters shall be held in abeyance until
December 4 or until ruled otherwise by the Court.

Id. at 2, 3.

⁵ By Order dated June 17, 2003 (Doc. No. 434) the Court denied in substantial part Mineral County's fifth motion for publication filed as Doc. No. 415.

1 The Mediation Order contemplated that Mineral County would complete service as soon
2 as possible. Mineral County, however, did nothing to complete service and has now filed the
3 Service Report over five years after the Mediation Order was entered.

4 **III. THE COURT SHOULD REQUIRE MINERAL COUNTY TO NOTIFY PARTIES**
5 **WHO HAVE BEEN SERVED WITH OUTDATED INFORMATION**
6 **CONCERNING WHEN THEY ARE REQUIRED TO RESPOND TO THE**
7 **MOTION TO INTERVENE**

8 This Court has previously held as follows:

9 The Due Process Clause of the Fifth Amendment to the Constitution of the
10 United States constrains the exercise of judicial jurisdiction. A decree purporting
11 directly and adversely to affect a person's legally protected interests – such as the
12 right to take or use water – is void as in violation of the Due Process clause unless
13 the party plaintiff employs a method of notifying such person of the pendency of
14 the suit which is reasonably calculated to give them knowledge of the action at a
15 meaningful time and in a meaningful manner. . . citing *Mullane v. Central*
16 *Hanover Trust Co.*, 339 U.S. 306, 314 (1950). Doc. No. 99 at 3.

17 The parties who have already been served by Mineral County over the past 13 years currently do
18 not possess adequate information to allow them a meaningful opportunity to respond to the
19 Motion to Intervene.

20 Mineral County began its service efforts in this matter in early 1995. Parties served
21 during early 1995 were instructed that responses to Mineral County's Motion to Intervene were
22 to be served by no later than July 11, 1995. During 1995 and on several occasions thereafter,
23 however, the Court postponed the briefing schedule on the Motion to Intervene and imposed new
24 briefing schedules. *See* Docket Nos. 33, 44, 71, 162, 216, 221 and 240. Finally, in early 1999
25 the Court vacated the briefing schedule and there is no briefing schedule currently in place. *See*
26 Docket No. 247.

27 As a result, the parties who have already been served do not possess accurate information
28 concerning when they must respond to the Motion to Intervene. Under these circumstances,
when the Court does impose a new briefing schedule in this matter, Mineral County must give

1 notice of that new briefing schedule to parties who were previously served with a schedule which
2 is out of date.

3 In addition, these parties should be provided with any additional updated information that
4 they may need to actively participate in this matter. For example, if Mineral County modifies the
5 Intervention Documents that were based upon facts and information that existed in late 1994 and
6 early 1995, those modified documents must be provided.
7

8 **IV. THE SUCCESSORS- IN-INTEREST TO PARTIES THAT HAVE ALREADY**
9 **BEEN SERVED MUST BE SERVED BY MINERAL COUNTY PURSUANT TO**
10 **RULE 4 OF THE FEDERAL RULES OF CIVIL PROCEDURE**

11 Mineral County began its service efforts in this matter in early 1995. Since that time,
12 Mineral County has served the Intervention Documents on numerous parties that held title to
13 Walker River Decree water rights when they were served by the County. It is likely that some of
14 those parties are now deceased. It is also likely that many of those parties may have conveyed
15 their interest in Walker River Decree water rights subsequent to Mineral County having effected
16 service upon them. In those instances, the successors-in-interest to the parties served by
17 Mineral County currently hold title to the real property rights at issue in this litigation and,
18 therefore, must be served by Mineral County.⁶

19 Rules 17 and 25 of the Federal Rules of Civil Procedure are relevant to this issue. If,
20 because Mineral County has not yet been allowed to file its amended complaint, its action is not
21 yet commenced, Rule 17 requires it to name and serve subsequent owners. If, on the other hand,
22 Mineral County's action is already commenced, under Rule 25, the successors-in-interest if they
23 are to be named defendants must be served in accordance with Rule 4. *See*, Fed.R.Civ.P., Rules
24 17, 25(a) and 25(c); 7C, C. Wright and A. Miller, Fed. Prac. and Proc. §§ 1951, 1956 and 1958
25 (2007).
26

27
28 ⁶ Over the years, the District has raised the issue of service on successors-in-interest on several occasions. *See* Doc. Nos. 189 at 11; 211 at 4; 259 at 5; 387.

1 The Court cannot obtain personal jurisdiction over these successors-in-interest unless
2 Mineral County substitutes them into the action pursuant to Rule 25 and then serves them with
3 the Intervention Documents, as set forth in the Service Order and Status of Service Order,
4 pursuant to Rule 4. Any judgment entered by the Court without the proper substitution and
5 service will not bind the successors-in-interest to parties that Mineral County previously served
6 with the Intervention Documents. *See Ransom v. Brennan*, 437 F.2d 513, 518 (5th Cir. 1971)
7 (successor-in-interest “must be served in accordance with Rule 4 in order that the court obtain
8 personal jurisdiction over the new party”).
9

10 Furthermore, to satisfy due process concerns it will be necessary for Mineral County to
11 serve these successors-in-interest in order to provide them adequate notice of the proposed
12 intervention and the information they need to respond. There has been no *lis pendens* or other
13 procedure implemented in this case to give successors-in-interest any notice concerning Mineral
14 County’s proposed intervention.⁷ As a result, it is likely that many of these parties currently
15 have no notice of Mineral County’s proposed intervention much less any idea of how to
16 participate. Mineral County, therefore, must identify and serve the successors-in-interest to
17 parties previously served with the Intervention Documents.⁸
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21 ⁷ The Status of Service Order (Doc. No. 227) requires served parties to file and serve a Notice of
22 Appearance form. It also provided that they would be deemed to have notice of subsequent
23 orders of the Court and subsequent pleadings if they failed to file the Notice of Appearance form.
24 As demonstrated by the District in September of 2001, however, it appears that at least in some
instances Mineral County failed to provide served parties with a Notice of Appearance form as
ordered by the Court. Doc. No. 387.

25 ⁸ The Court has previously held that: “The requirement of serving individual defendants is not
26 some arcane, administrative hoop that we are arbitrarily making Mineral County jump through.
27 The requirement that every defendant be informed of actions that may deprive him or her of
28 property is a fundamental right of due process, and our procedural rules have developed as the
best way to protect that right. We will not disregard the rules because Mineral County is
understaffed or short on funds.” Doc. No. 252 at 10

1 Finally, the Court should adopt a procedure going forward to address future changes in
2 ownership of water rights. The issues in this regard may be similar to those addressed by the
3 parties in the C-125-B sub-proceeding with respect to providing notice to successors-in-interest.
4 Some of the procedures adopted in the C-125-B sub-proceeding may be appropriate for
5 incorporation into this sub-proceeding going forward.
6

7 **V. MINERAL COUNTY MUST SERVE THE INTERVENTION DOCUMENTS ON**
8 **PARTIES THAT HAVE NOT BEEN SERVED**

9 Mineral County must serve the Intervention Documents and any modifications thereto as
10 directed by the Service Order and Status of Service Order on parties that have not yet been
11 served. Exhibit E to the Service Report identifies and discusses issues related to many of these
12 parties. The District believes, however, that it would be helpful to have a separate and
13 comprehensive list of all parties that have not yet been served. The District believes that list
14 would be comprised of the parties listed as "Additions" on Attachment B to the proposed order
15 (Doc. No. 480) (parties from pages 5 and 6 of the Service Report) as well as certain other parties
16 addressed in Exhibit E to the Service Report. The District has prepared a proposed list and
17 attached it hereto as Exhibit 1. The District requests that the list be included as Attachment D to
18 the proposed order submitted by Mineral County.
19

20 **VI. SPECIFIC COMMENTS WITH RESPECT TO MINERAL COUNTY'S SERVICE**
21 **REPORT**

22 Exhibit E to the Service Report discusses parties that Mineral County has not yet served
23 with the Intervention Documents. The District's comments to Exhibit E are set forth below in
24 the same numerical order as discussed in Exhibit E.

25 **E-10 - John R. Hargus and Adah M. Blinn Trust, Robert Lewis Cooper, Trustee -**

26 The documentation provided at E-10 demonstrates that the Trust no longer owns water rights,
27 however, Mineral County proposes that the Trust should remain in the caption based upon
28 information contained in the Nevada Division of Water Resources database. That information,

1 however, states that the Trust may hold an interest in an underground (UG) water right. The
2 District is uncertain why Mineral County would want to include holders of underground water
3 rights in the caption. In addition, it appears that Richard Leroy Cooper no longer holds any
4 interest in the water rights based upon the documents provided in E-10.

5 **E-32, 33 and 34 – Arden, Evilo J. and Josephine A. Gerbig** – Mineral County requests
6 that the Court add and require service upon Angela B. Gerbig. The documentation provided,
7 however, does not mention the name “Angela B.” Gerbig.

8 **E-64 - Marvin & Lynn Peterson Trust, Marvin F. & Lynn M. Peterson, Co-Trustees**
9
10 – The District notes that it appears from the deeds included in E-64 that the Marvin & Lynn
11 Peterson Trust and William Merriwether and Sherri Merriwether no longer own any interest in
12 the property conveyed by those deeds. That interest appears to be owned by the Louis Flasko
13 and Erma Flasko Family Trust based upon a review of the deeds in E-64.

14 **E-74 - Sario Livestock Company** – It appears that no service document has been
15 included in E-74 to establish service on Mrs. Presto on behalf of Sario Livestock Company.

16 **E-83 - Paul S. Silva** - Mineral County requests that Paul S. Silva be dismissed because
17 his interest has been transferred. The deeds provided also indicate that Dorthella A. Silva has
18 conveyed her interest in the property. The District questions whether Mineral County also
19 intended to seek the dismissal of Dorthella A. Silva.

20 **E-104 - Mildred A. Watkins** - Mineral County requests that the court dismiss Mildred
21 A. Watkins, however, the documents included in E-104 do not mention Mildred A. Watkins,
22 instead, they show that Louis H. Watkins conveyed property to Coale Robert Johnson.

23 **E-112 - Gerald Lee Wymore** - Mineral County requests that Gerald Lee Wymore be
24 dismissed and Terry Gene & Margaret Hawkins be added. It appears that the Caption, however,
25 already includes Terry Hawkins and Margaret Hawkins.
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Except as discussed above with respect to Sario Livestock Company (E-74), the District has no objections to Mineral County's request that the Court find service complete for those parties listed in Attachment C to the proposed order (parties listed on page 7 of the Service Report).

Dated this 21st day of November, 2008.

WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511



GORDON H. DEPAOLI
Nevada State Bar 00195
DALE E. FERGUSON
Nevada State Bar 04986

Attorneys for WALKER RIVER
IRRIGATION DISTRICT

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Exhibit 1

List of Parties that
have not yet been served

Service Report Exhibit No.	Name of Party
E-1	Richard Taylor Adams
E-1	Gregory Burton Adams
E-13	Vernon F. Bryan, Inc.
E-14	Michael A. Casey
E-15	Claudia C. Casey
E-28	Frank Floyd
E-29	Betty Floyd
E-31	Don Ray Gable
E-32	Arden Gerbig
E-33	Evilo J. Gerbig
E-36	Karen Lund Hardy
E-37	Patricia Herwin
E-38	Marjorie Ann Jones
E-48	William David Manha
E-53	Moreda Dairy
E-54	James R. Morgan (on behalf of Morgan Family Trust)
E-56	Nesmith Family Trust Agreement, Teresa M. Nesmith Trustee
E-69?	William S. Rauber and Charlotte F. Rauber Declaration of Trust
E-70	Ritter Family Trust
E-72	Romero Family Trust, Benito Antonio & Linda Irene Romero, Co Trustees
E-73	Weaver Properties, LLC
E-75	Keith Savage
E-76	Virginia Savage
E-85	Patricia Simmons
E-91	Soilfume, Inc.
E-98	Sweetwater Land & Cattle Company
E-105	Weaver Properties, LLC
E-113	Darlene S. Zippwald

All parties listed in "Additions" section of Attachment B to the proposed order (parties listed on pages 5 and 6 of the Service Report) as set forth below.

1	Kathy S. Blackford
2	Norman Annett
3	Juan and Carmel Arrache Family Trust, Ronald B. Arrache, Trustee
4	Arrache 1990 Living Trust, Ronald B. Arrache, Trustee
5	Robert Lewis Cooper
6	Richard Leroy Cooper
7	Heather Cooper

1	Service Report	
2	Exhibit No.	Name of Party
3	8	Jack Allen Cooper
4	9	Sandra J. Robison
5	10	Paul P. Sans
6	11	Susan L. Brown
7	12	Vernon F. Bryan
8	13	Ewert Family 1995 Trust dated May 9, 1995, Lewis A. and Beverly J. Ewert, Trustees
9	14	Jim Snyder
10	15	Lucy Rechel
11	16	Daniel E. & Cherryl A. Del Porto Family Trust, Daniel E. & Cherryl A. Del Porto, Trustees
12	17	Lona Marie Domenici-Reese
13	18	Brett A. Emery 1999 Revocable Trust UDT Dated December 27, 1999, Brett A. Emery, Trustee
14	19	Sovereign Enterprises, LLC
15	20	Lauren Ward
16	21	Mary Margaret Ward
17	22	Casey M. Jones
18	23	Mary C. Jones
19	24	Blanton Family Trust dated March 24, 1997, Christopher and Madelyn Blanton, Trustees
20	25	Angela B. Gerbig
21	26	Richard W. Chesnutt
22	27	Loretta L. Chesnutt
23	28	Joseph M. Bozsik
24	29	Sandra K. Day
25	30	Stephen R. Day
26	31	Mario J. Durazzo
27	32	Jack E. Bush
28	33	The Gordon Revocable Trust dated June 24, 2002, Guy Gordon and Gaye Ekholm Gordon, Trustees
	34	Clearview Ranch, LLC
	35	Desert Hills Dairy, LLC
	36	Walter D. Shipley
	37	Sandra J. Shipley
	38	Eunice Sjolin
	39	Delores N. Munson
	40	Mary E. Jurica
	41	Sandoval Family Trust U/D/T March 12, 2001, Albert Raymond and Cecilia Lillian Sandoval, Trustees
	42	Peri & Peri, LLC

1	Service Report	
2	Exhibit No.	Name of Party
3	43	Pauline Bradshaw
4	44	Leslie Bradshaw
5	45	James E. Purrell and Karen M. Purrell Family Trust, James E. and Karen M. Purrell, Trustees
6	46	Lucille Ritter
7	47	Trust for Public Land
8	48	Sierra Land & Sheep, LLC
9	49	The State of California
10	50	The Susana Cox Fousekis Intervivos Trust, James T. Fousekis, Trustee
11	51	James T. Fousekis Intervivos Trust, James T. Fousekis, Trustee
12	52	Nevada Bighorns Unlimited
13	53	Presto Family Trust Agreement dated August 16, 1990, Beatrice Presto, et al. Trustees
14	54	Rene Presto
15	55	Carmen Ferch
16	56	Richard C. Huntsberger
17	57	Michael Duane Sceirine
18	58	John E. Mattice
19	59	Dena L. Mattice
20	60	Marlene S. Greggersen
21	61	Paula A. Greggersen
22	62	Stephen B. Rye
23	63	Cherie C. Rye
24	64	Michael E. Lamb
25	65	Esther I. Lamb
26	66	Mica Farms LLC
27	67	The Grant B. Smith and Gaila M. Smith 1996 Revocable Trust dated November 22, 1996, Grant B. and Gaila M. Smith, Trustees
28	68	Robert L. McMinn
	69	Joann A. McMinn
	70	Jon W. Hopkins
	71	Lisa M. Hopkins
	72	The Cecelia Perumean Trust, Peter Perumean Jr., Trustee
	73	Travis S. Smith
	74	Centennial Livestock, A California General Partnership
	75	Terschluse Family Trust, Robert William and Marie Louisa Terschluse, trustees
	76	Coale Robert Johnson
	77	Dixon Family 1994 Trust, Robert E. and Judith E. Dixon, Co-Trustees
	78	Weiser Living Trust dated February 28, 2002, Robert G. and Betty J. Weiser, Trustees

1	Service Report Exhibit No.	Name of Party
2	79	The Robert S. Dunn and Tammy M. Dunn Revocable Family Trust dated January 29, 1997, Robert S. and Tammy M. Dunn, Trustees
3	80	Terry Gene Hawkins
4	81	Margaret Hawkins

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CERTIFICATE OF SERVICE

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I certify that I am an employee of Woodburn and Wedge and that on the 21st day of November, 2008, I electronically served the foregoing *Walker River Irrigation District's Response to Mineral County's Service Report* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

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21 and I further certify that I served a copy of the foregoing to the following by U.S. Mail, postage
22 prepaid, this 21st day of November, 2008:

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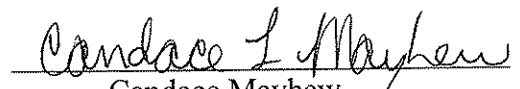
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