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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA Plaintiff, WALKER RIVER IRRIGATION, et al. Defendants. _____/	IN EQUITY NO. C-125-ECR Subproceeding: C-125-C 3:73-CV-0128-ECR-RAM **WALKER RIVER IRRIGATION DISTRICT'S RESPONSE TO MINERAL COUNTY'S SERVICE REPORT**

I. INTRODUCTION

This matter involves Mineral County's attempt to intervene and assert a new and senior water right in the water right adjudication which was concluded by the entry of a final judgment and decree on April 14, 1936, and amended on April 24, 1940, pursuant to the mandate in *United States v. Walker River Irrigation District*, 104 F.2d 334 (9th Cir. 1939) (the "Walker River Decree"). Pursuant to its proposed complaint, Mineral County seeks a reallocation of the waters of the Walker River under the public trust doctrine in order to preserve minimum levels in

Walker Lake. If granted, this relief would impact the interests of all parties who hold a right to use the water of the Walker River and its tributaries.

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

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intervention, whether updated intervention documents should be served on parties who have already been served with outdated documents and whether the successors-in-interest to parties already served should be served under Rule 4 of the Federal Rules of Civil Procedure.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

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

II. BACKGROUND

A. The Service Order

As a result of a status conference held in early 1995, the Court entered an *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of*

Mineral County (the "Service Order"). Doc. No. 19. The Service Order addressed numerous issues concerning how Mineral County's proposed intervention was to proceed before the Court. With respect to documents, the Court directed Mineral County to file a revised motion to intervene and points and authorities in support thereof (the "Motion to Intervene"), a revised proposed complaint-in-intervention, "which identifies the persons or entities against whom" its claims would be asserted, and any motion for preliminary injunction with supporting points and authorities and other supporting documents (collectively the "Intervention Documents"). Doc. No. 19 at 2.

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

The Service Order anticipated that Mineral County might utilize what then were the waiver provisions of FRCP 4(d) in order to comply with the Service Order. In this instance, the Court directed Mineral County to serve a copy of a document entitled *Notice of Motion to Intervene, Proposed Complaint-in-Intervention of Mineral County* (the "Notice of Motion") and of a document entitled *Request for Waiver of Personal Service of Motions* (the "Request for Waiver). The Notice of Motion and Request for Waiver forms were attached to the Service Order. Therefore, the Court directed Mineral County to serve the Intervention Documents, a

[1] Most, if not all, of the original parties to the Walker River Decree are no longer the owners of 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.

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

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

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

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

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

In approximately April and May of 1995, Mineral County attempted service under the waiver provisions of then Fed. R. Civ. P., Rule 4(d). In seeking waivers of service, Mineral

County mailed some, but not all, of the documents required to be served to persons it had apparently identified as Walker River Claimants.[2] Doc. No. 40 at 1-3.

Mineral County's solicitation of waivers of service was not successful.[3] Subsequent to its attempted service under the waiver provisions of Rule 4(d), Mineral County asked the Court to relieve it of any further responsibility with regard to service of the Intervention Documents. Doc. No. 31 at 1. Because it was obvious as a matter of fact that service had not been accomplished, the Court denied that request by order dated August 16, 1995 (the "Second Order"). Doc. No. 44 at 13. The Second Order reaffirms the service provisions contained in the Service Order, noting that it had not been vacated, modified or appealed. Id. at 2. Therefore, the Court again directed Mineral County to serve the Intervention Documents as directed in the Service Order on all Walker River Claimants.

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[2] As stated above, the Service Order expressly required Mineral County to file "a revised proposed Complaint-In-Intervention . . . which identifies the persons or entities against whom such claims are proposed to be asserted...." Service Order at 2. [Emphasis added]. Mineral County failed to comply with that requirement. As a result, it became increasingly difficult to determine if Mineral County had correctly indentified the Walker River Claimants before it initiated any service efforts and to determine the status of those efforts. In early 1996, the Court clarified "that it is up to the County to determine who the proper defendants (i.e. competing water right holders) are in its proposed action." Doc. No. 74 at 2. Later, it would become apparent that Mineral County had attempted to identify the Walker River Claimants by merely acquiring lists of names from various entities instead of conducting the work necessary to ascertain those parties at the relevant County Recorders' Offices. *See e.g.* Attachment 1 to Doc. No. 97; Doc. No 77 at 7, 8; Doc. No. 94 at 8, 9; Doc. No. 259 at 3.

[3] Mineral County complained that the District had interfered with and frustrated its attempts to obtain waivers of service. Doc. 31 at 5. It sought substantial sanctions from the District. *Id.* at 2. The Court denied Mineral County's request for sanctions. Doc. 44 at 10-13. Although what the District did and why are not relevant here, they are explained in detail at Doc. No. 40, and are 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.

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

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

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

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

On August 14, 1997, the Court assigned the C-125-C matter to the Magistrate Judge for purposes of determining if Mineral County had made proper service upon all identified holders of Walker River water rights. Doc. No. 140. The Magistrate Judge set a hearing on this question for September 23, 2007 and ordered the parties to file briefs addressing the issue prior to that date. Doc. No. 143. On September 16, 1997, the Walker River Irrigation District (the "District")

filed a comprehensive brief that detailed the status of service with respect to Mineral County's proposed intervention as of that date. Doc. No. 151. Among many other things, the District's brief specifically requested that the Court "require Mineral County to name the proposed defendants in its proposed Complaint-In-Intervention" as directed by the Service Order in 1995. *Id* at 10.

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

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

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

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

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

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

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

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

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

On February 25, 1999, the Court entered an order addressing pleadings Mineral County had filed up to that date concerning service by publication. The order denied service through publication in large part, granted service through publication on four parties, dismissed two parties, gave Mineral County 120 days to file another motion for service by publication, directed the District to file any objections it had to service on individual parties within 60 days and

directed Mineral County to file any response to those objections within 30 days thereafter. Doc. No. 252 at 83.

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

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

On July 23, 1999, Mineral County filed another motion requesting permission from the Court to serve all unidentified parties by publication. Doc. 288. By order dated August 27, 1999, the Court referred the District's objections to service (Doc. No. 259) and Mineral County motion for publication (Doc. No. 288) to the Magistrate Judge for decision. Doc. No. 298. That order stated: "Thus, after the Magistrate Judge rules on these matters, we should have a list of which defendants have been properly served, which defendants Mineral County has shown should be served by publication, and which defendants have not yet been correctly served but as to whom Mineral County has not yet demonstrated that service by publication is warranted." *Id.* at 2.[4]

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

As a result of a status conference held on January 6, 2000, the Court directed submission of lists reflecting: (i) parties properly served; (ii) parties for whom the District objected to service; (iii) parties Mineral County claimed should be served by publication; and (iv) parties,

[4] It is worth noting that Mineral County continued to serve documents on an on-going basis as demonstrated by the numerous "Certificate of Return of Service" forms and "Waiver of Service" 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.

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

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

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

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

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

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

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

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

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

At a hearing held on and by order dated February 25, 2002, the Court directed Mineral County to circulate an amended caption to the parties. Doc. No. 403. Mineral County circulated the revised caption on March 4, 2004, for the parties to review. By letter dated March 18, 2002, the District set forth numerous discrepancies between the revised caption and the caption filed with the Court on January 12, 1998. Doc. No. 408. The letter also set forth the names of 11

parties who Mineral County had not moved to dismiss as previously represented in Doc. No. 396. *Id.* at 3. Finally it offered a proposed order to memorialize the content of the Court's order of February 25, 2002 (Doc. No. 403) which adopted the District's responses contained in its January 15, 2002 pleading (Doc. No. 400).

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

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

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

On June 19, 2002, Mineral County filed another motion for service by publication. Doc. No. 415. On June 20, 2002, Mineral County also moved the Court to deem service complete and to allow service on new parties without first obtaining leave of court to add or substitute them into the caption. Doc. No. 416. The District objected to these two requests by pleading dated

July 8, 2002. Doc. No. 417. In addition, the District filed its response to Mineral County's motion for publication on July 19, 2002. Doc. No. 420.[5]

H. The Mediation Order

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

> The ongoing efforts to complete service in C-125-B and C-125-C should be completed as soon as possible. The Parties to the mediation process agree that it is important that the Court work closely with the Parties in both C-125-B and C-125-C to resolve all service issues and complete service. Although the Parties agree that the remainder of the proceedings in these two matters should be stayed pending the mediation process, they look to the Court to play an active role in the resolution of service issues.
>
> Within 30 days after the date of this Order, or as soon thereafter as is convenient for the Court and the Parties, the Magistrate Judge shall conduct a status conference to review the status of service efforts in both cases and continue the process of resolving service issues . . . In Case No. C-125-C, a motion for publication is pending before the Court. *Motion for Order of Publication (Fifth Request).* The Magistrate Judge shall address [this] motion and any other service related matters during its status conference to review service efforts in both cases, and, where appropriate, shall set schedules for the briefing and resolution of service-related matters. In the C-125-C case, this effort shall also include consideration by the Court of the schedule by which it will consider and resolve the pending motion to intervene . . .
>
> 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.

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[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.

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

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

This Court has previously held as follows:

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

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

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

As a result, the parties who have already been served do not possess accurate information 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

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

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

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

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

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

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[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.

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

Furthermore, to satisfy due process concerns it will be necessary for Mineral County to serve these successors-in-interest in order to provide them adequate notice of the proposed intervention and the information they need to respond. There has been no lis pendens or other procedure implemented in this case to give successors-in-interest any notice concerning Mineral County's proposed intervention.[7] As a result, it is likely that many of these parties currently have no notice of Mineral County's proposed intervention much less any idea of how to participate. Mineral County, therefore, must identify and serve the successors-in-interest to parties previously served with the Intervention Documents. [8]

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[7] The Status of Service Order (Doc. No. 227) requires served parties to file and serve a Notice of Appearance form. It also provided that they would be deemed to have notice of subsequent orders of the Court and subsequent pleadings if they failed to file the Notice of Appearance form. 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.

[8] The Court has previously held that: "The requirement of serving individual defendants is not some arcane, administrative hoop that we are arbitrarily making Mineral County jump through. The requirement that every defendant be informed of actions that may deprive him or her of 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

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

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

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

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

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

E-10 - John R. Hargus and Adah M. Blinn Trust, Robert Lewis Cooper, Trustee – The documentation provided at E-10 demonstrates that the Trust no longer owns water rights, however, Mineral County proposes that the Trust should remain in the caption based upon information contained in the Nevada Division of Water Resources database. That information,

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

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

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

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

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

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

E-112 - Gerald Lee Wymore - Mineral County requests that Gerald Lee Wymore be dismissed and Terry Gene &Margaret Hawkins be added. It appears that the Caption, however, already includes Terry Hawkins and Margaret Hawkins.

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

Dale E. Ferguson

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Nevada State Bar 00195
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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 Hervin
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

Service Report Exhibit No.	Name of Party
8	Jack Allen Cooper
9	Sandra J. Robison
10	Paul P. Sans
11	Susan L. Brown
12	Vernon F. Bryan
13	Ewert Family 1995 Trust dated May 9, 1995, Lewis A. and Beverly J. Ewert, Trustees
14	Jim Snyder
15	Lucy Rechel
16	Daniel E. & Cherryl A. Del Porto Family Trust, Daniel E. & Cherryl A. Del Porto, Trustees
17	Lona Marie Domenici-Reese
18	Brett A. Emery 1999 Revocable Trust UDT Dated December 27, 1999, Brett A. Emery, Trustee
19	Sovereign Enterprises, LLC
20	Lauren Ward
21	Mary Margaret Ward
22	Casey M. Jones
23	Mary C. Jones
24	Blanton Family Trust dated March 24, 1997, Christopher and Madelyn Blanton, Trustees
25	Angela B. Gerbig
26	Richard W. Chesnutt
27	Loretta L. Chesnutt
28	Joseph M. Bozsik
29	Sandra K. Day
30	Stephen R. Day
31	Mario J. Durazzo
32	Jack E. Bush
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

Service Report Exhibit No.	Name of Party
43	Pauline Bradshaw
44	Leslie Bradshaw
45	James E. Purrell and Karen M. Purrell Family Trust, James E. and Karen M. Purrell, Trustees
46	Lucille Ritter
47	Trust for Public Land
48	Sierra Land & Sheep, LLC
49	The State of California
50	The Susana Cox Fousekis Intervivos Trust, James T. Fousekis, Trustee
51	James T. Fousekis Intervivos Trust, James T. Fousekis, Trustee
52	Nevada Bighorns Unlimited
53	Presto Family Trust Agreement dated August 16, 1990, Beatrice Presto, et al. Trustees
54	Rene Presto
55	Carmen Ferch
56	Richard C. Huntsberger
57	Michael Duane Sceirine
58	John E. Mattice
59	Dena L. Mattice
60	Marlene S. Greggersen
61	Paula A. Greggersen
62	Stephen B. Rye
63	Cherie C. Rye
64	Michael E. Lamb
65	Esther I. Lamb
66	Mica Farms LLC
67	The Grant B. Smith and Gaila M. Smith 1996 Revocable Trust dated November 22, 1996, Grant B. and Gaila M. Smith, Trustees
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

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

CERTIFICATE OF SERVICE

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

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