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6
7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 UNITED STATES OF AMERICA
11 Plaintiff,
12 THE WALKER RIVER PAIUTE TRIBE,
13 Plaintiff-Intervenor,
14 v.
15 THE WALKER RIVER IRRIGATION
16 DISTRICT, a corporation, et al.,
17 Defendants.

IN EQUITY NO. C-125-RCJ
Subproceedings: C-125-B
3:73-cv-00127-RCJ-WGC

**JOINDER BY CIRCLE BAR N RANCH,
LLC, ET AL. TO WALKER RIVER
IRRIGATION DISTRICT'S MOTION TO
DISMISS CLAIMS OF UNITED STATES
BASED UPON STATE LAW PURSUANT
TO FED. R. CIV. P. 12(b)(1), AND
SUPPLEMENTAL ARGUMENT**

18 UNITED STATES OF AMERICA,
WALKER RIVER PAIUTE TRIBE,
19 Counterclaimants
20 v.
21 WALKER RIVER IRRIGATION DISTRICT,
22 et al.,
23 Counterdefendants.

24 **JOINDER AND MOTION**

25 Defendants Circle Bar N Ranch, LLC, et al., by and through their counsel, Laura A.
26 Schroeder, Therese A. Ure, Matthew J. Curti and Schroeder Law Offices, P.C., hereby join in



1 the Walker River Irrigation District's Motion Pursuant to Fed. R. Civ. P. 12(b)(1), and hereby
2 supplement such Motion with additional argument.

3 Pursuant to Fed. R. Civ. P. 12(b)(1), Circle Bar N Ranch, LLC, et al., moves for an order
4 of this Court to 1) dismiss the Walker River Paiute Tribe's First Amended Counterclaim, 2)
5 dismiss the United States' First Amended Counterclaim, 3) dismiss the claims, as made by both
6 the Walker River Paiute Tribe and the United States, based upon state law, and 4) dismiss all
7 claims made by both the Walker River Paiute Tribe and the United States regarding ground
8 water.

9 Circle Bar N Ranch, LLC, et al., in its joinder, hereby adopts all arguments made by the
10 Walker River Irrigation District in its Motion, and any argument made herein is meant to
11 supplement that made by the Walker River Irrigation District, and should not be construed as an
12 opposition to such.

13 This motion is made and based upon all of the pleadings and papers on file herein and the
14 Points and Authorities which are filed herewith under separate cover.

15 DATED this 9th day of February, 2015.

16 SCHROEDER LAW OFFICES, P.C.

17
18 /s/ Laura A. Schroeder

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20 Laura A. Schroeder, NSB# 3595
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Schroeder Law Offices, P.C., over the age of eighteen and not a party to the within action, and that on this date I caused the foregoing document titled: ***JOINDER BY CIRCLE BAR N RANCH, LLC, ET AL. TO WALKER RIVER IRRIGATION DISTRICT'S MOTION TO DISMISS CLAIMS OF UNITED STATES BASED UPON STATE LAW PURSUANT TO FED. R. CIV. P. 12(b)(1), AND SUPPLEMENTAL ARGUMENT*** to be electronically filed with the Clerk of the Court using the CM/ECF system, and I caused it to be served by electronic mail through CM/ECF addressed to the following persons:

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9 Dated this 9th day of February, 2015.

10 /s/ Laura A. Schroeder

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10 UNITED STATES OF AMERICA
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21 v.
22 WALKER RIVER IRRIGATION DISTRICT,
et al.,
23 Counterdefendants.

IN EQUITY NO. C-125-RCJ
Subproceedings: C-125-B

3:73-cv-00127-RCJ-WGC

**POINTS AND AUTHORITIES OF
CIRCLE BAR N RANCH, LLC, ET AL.
IN SUPPORT OF ITS JOINDER TO
WALKER RIVER IRRIGATION
DISTRICT'S MOTION PURSUANT TO
FED. R. CIV. P. 12(b)(1), AND
SUPPLEMENTAL ARGUMENT**

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1 **1. Introduction**

2 Following a public lands survey, the Walker River Reservation (“Reservation”) was set
3 apart for the Tribe by Executive Order dated March 19, 1874. The Ninth Circuit Court of
4 Appeals concluded the establishment of the Reservation was effective the date the lands were
5 withdrawn by the Commissioner of Indian Affairs, November 29, 1859, rather than the date of
6 the Executive Order. *United States v. Walker River Irr. Dist.*, 104 F.2d 334, 340 (CA 9 1939).
7 Only waters unappropriated at the time of the establishment of the Reservation were subject to
8 appropriation. In 1924, the United States brought a suit in equity on behalf of the Paiute Tribe
9 against the appropriators and users of the waters of Walker River and its tributaries claiming an
10 interest in 150 cubic feet per second (“cfs”) of the river and its tributaries.

11 The 1925 suit resulted in a Decree issued by this Court in 1936 adjudicating the relative
12 rights of the parties and holding that the government had failed to reserve water for use on the
13 reservation. *United States v. Walker River Irr. Dist.*, No. C-125-ECR (D.Nev. April 14, 1936).
14 The United States appealed the holding to the Ninth Circuit Court of Appeals, which reversed the
15 District Court’s denial. *United States v. Walker River Irrigation District*, 104 F.2d 334 (9th Cir.
16 1939). The Decree was amended in 1940 to conform to the Court of Appeals mandate. *Order for*
17 *Entry of Amended Final Decree to Conform to Writ of Mandate* (D. Nev. Apr. 24, 1940):

18 The plaintiff, United States of America, is hereby adjudged and
19 decreed to be the owner of the right to divert a continuous flow of
20 26.25 cubic feet per second of the natural flow of the Walker River
21 to be diverted from said stream upon or above the Walker River
22 Reservation during the irrigation season of 180 days of each year
23 for the irrigation of 2100 acres of land situate in the Walker River
24 Indian Reservation, in addition to whatever flow of said stream is
25 reasonably necessary for domestic and stock watering purposes
26 and power purposes, to the extent now used by plaintiff during the
non-irrigation season, all with a priority of November 29, 1859, the
date of the establishment of said Indian Reservation.

24 *Id.*

25 Following issuance of the 1936 Decree, and before the Ninth Circuit Court of Appeals
26 addressed the appeal, Congress legislated approximately 171,200 additional acres of ceded lands



1 to the Walker River Reservation for timber and grazing purposes. This Congressional legislation
2 provided that the minerals were reserved for the United States and the lands were “subject to
3 mineral entry or claim under the public land mining laws.” It further provided that “said
4 withdrawal shall not affect any valid rights initiated prior to the approval hereof.”

5 In 1991, the Walker River Irrigation District (“WRID”) filed a complaint against the
6 California Water Control Board, alleging the Board lacked authority to issue orders in conflict
7 with the Decree. *See* Order filed October 27, 1992.(Docket # 15). In 1992, the Walker River
8 Paiute Tribe (“Tribe” or “WRPT”) filed an answer and counterclaim, requesting a right to store
9 water in Weber Reservoir for use on the Reservation and for a federal reserved water right for
10 lands added to the Reservation in 1936. The 1992 counterclaims also requested additional water
11 uses over and above the reserved rights awarded to the United States for the benefit of the
12 Walker River Indian Reservation in the Decree. The United States filed a counterclaim the same
13 year asserting identical claims for water use to benefit the Walker River Indian Reservation.
14 While the Tribes’ and United States’ pleadings were procedurally, improperly denominated
15 counterclaims, this Court, by Order dated October 27, 1992, determined that the counterclaims
16 would be treated as if filed as cross-claims.

17 In 1997, the Tribe filed a “First Amended Counter Claim,” adding claims for ground
18 water use for the Reservation. The United States similarly filed a First Amended Claim, which
19 advanced claims for surface and ground water for use at the Walker River Reservation, the
20 Yerington Reservation, the Bridgeport Paiute Indian Colony, several individual allotments, as
21 well as surface water and groundwater claims for other federal enclaves within the Walker River
22 Basin.

23 2. Procedural Posture

24 Service of process proceeded and on November 4, 2013, a status hearing was held before
25 the District Court to establish a briefing schedule regarding certain threshold jurisdictional
26 issues. By order, the Court instituted a briefing schedule requiring Motions to Dismiss to be



1 filed by the Respondents regarding limited, specific issues on questions relating to Jurisdiction.
2 These motions to raise threshold jurisdictional challenges were contemplated under the Case
3 Management Order (C-125-B Document #108). The Court ordered that the jurisdictional
4 challenges focus on the Tribes' and the United States' Amended Counterclaims (C-125-B
5 Document #58 and #59), as well as Mineral County's Amended Complaint in Intervention (C-
6 125-C Document #20).

7 The Court narrowed the scope of the topics it preferred to be covered in the first Motions
8 to be filed by Respondents. This Memorandum is in response to the Court's order following the
9 July 25, 2013, status hearing.

10 Subsequently, the parties followed the Court's briefing schedule and proceeded to file
11 certain motions to dismiss in accordance with the Court's direction. Such motions were then
12 opposed, with replies filed in return. On October 17, 2014, the Court issued an order addressing
13 the several motions filed in both this sub-proceeding as well as the C-125-C sub-proceeding. As
14 to the present matter, the Court denied the parties motions to dismiss, without prejudice, subject
15 to re-filing upon issuance and service of the Superseding Order Regarding Service. (C-125-B
16 Document #2099).

17 On December 30, 2014, the Court entered an Order setting forth a Stipulated Schedule for
18 Motions to Dismiss to be re-filed. (C-125-B Document #2150). The present motion is being filed
19 in compliance with such Order, and in anticipation of oral argument set to be heard before the
20 Court on May 4, 2015.

21 Circle Bar N Ranch, LLC, et al. hereby joins and adopts all argument made by the
22 Walker River Irrigation District in its Motion, and any argument made herein is meant to
23 supplement that made by the Walker River Irrigation District, and should not be construed as an
24 opposition to such.

25 ///

26 ///



1 **3. Decree Court Lacks Jurisdiction to Adjudicate New Claims for Additional**
2 **Water Rights Under C-125**

3 This Court lacks jurisdiction to adjudicate new claims for additional surface and/or
4 underground water rights, because final judgment was entered. A new and separate action must
5 form the basis for the claims made by the Tribe, United States and Mineral County.

6 The United States and Tribe improperly filed their claims in Case No. C-125. No
7 authority exists for reopening the Decree in order to enlarge the United States' decreed rights or
8 to provide additional rights to the Tribe (or any other party) because a final judgment was
9 entered. In addition, a prohibition specifically precluding enlargement of a party's rights is
10 found in the provisions of the Decree itself, as explained below.

11 Case C-125 adjudicated the implied federally reserved rights for the Walker
12 River Paiute Tribe as of June 14, 1936. *Decree, United States of America v.*
13 *Walker River Irrigation District, et al., as Amended Order for Entry of Amended Final Decree to*
14 *Conform to Wirt of Mandate* (D Nev. Apr. 24, 1940). The Decree provides for the Court's
15 continuing jurisdiction as it relates to regulation of the water uses adjudicated. The Decree's
16 jurisdictional statement provides:

17 The court retains jurisdiction of this cause for the purpose of
18 changing the duty of water or for correcting or modifying this
19 decree; also for regulatory purposes, including a change of the
20 place of use of any water user...

20 Walker River Decree at Paragraph XIV.

21 While it is possible for this Court to modify or change the duty of existing adjudicated
22 water uses established under the Decree, no authority exists for reopening the Decree to
23 adjudicate new water use claims to the United States, Tribe, or any other party, as the Court
24 entered a final order which did not retain jurisdiction allowing for any further claims'
25 adjudication.



1 In order to fully understand the limited nature of the retained, regulatory jurisdiction, we
2 must look to decree language in other cases. In *Arizona v. California*, 460 U.S. 605, 607 (1983),
3 the Court reviewed a decree which was issued in 1964, in which the United States acquired water
4 rights for multiple Indian reservations. The United States petitioned the Court to increase the
5 tribes' water rights under the 1964 decree. The Court first looked at its jurisdiction to grant such
6 additional rights, and in doing so looked to the language of the decree, which provided:

7 Any of the parties may apply at the foot of this decree for its
8 amendment or for further relief. The Court retains jurisdiction of
9 this suit for the purpose of any order, direction, or modification of
the decree, or any supplementary decree, that may at any time be
deemed proper in relation to the subject matter in controversy.

10 *Id.* at 617-618 (emphasis added). Under the “supplementary” language, the Court found
11 jurisdiction to allow the additional, or “supplemental”, rights to be granted.

12 In the present case, no such “supplemental” jurisdiction was retained by the Court within
13 the final order of the Decree. If the Court had intended to retain the right to supplement the
14 Decree by allowing additional claims to surface and/or ground water rights to be added, it would
15 have expressly provided for this jurisdiction. Instead, this Decree provides only for regulatory,
16 continuing jurisdiction in its final order.

17 **4. Decree Court and United States District Court Jurisdiction is Limited to**
18 **Claims Based on Federal Law**

19 The United States District Court for the District of Nevada holds jurisdiction over
20 adjudicated claims brought by the United States and Tribe for water rights of use which are
21 based on federal law. This jurisdiction is based on the United States' ability to reserve water for
22 federally reserved lands.

23 The power of the United States Government to reserve waters for federally reserved lands
24 and exempt them from subsequent appropriation is “beyond debate.” *United States v. Walker*
25 *River Irrigation District*, 104 F.2d 334, 336 (9th Cir. 1939). The scope and extent to which
26



1 reserved rights may be claimed is derived and delimited by *Winters v. United States*, 207 U.S.
2 564 (1908), and its progeny.

3 The United States Supreme Court's holding in *Winters* established the federal
4 government's right to impliedly reserve water rights for federal reservations, even when the
5 treaty, executive order, or legislation that created the reservation was silent as to the reservation
6 of those rights. Since its inception in 1908, the *Winters* doctrine has expanded to apply to other
7 types of federal reservations. For example in 1976, the Court in *Cappaert v. United States*, 436
8 U.S. 128 (1976), succinctly explained the Supreme Court's position on implied reserved water
9 rights:

10 This Court has long held that when the Federal Government
11 withdraws its land from the public domain and reserves it for a
12 federal purpose, the Government, by implication, reserves
13 appurtenant water then unappropriated to the extent needed to
14 accomplish the purpose of the reservation. In so doing the United
15 States acquires a reserved right in unappropriated water which
16 vests on the date of the reservation and is superior to the rights of
future appropriators. Reservation of water rights is empowered by
the Commerce Clause, Art. I, § 8, which permits federal regulation
of navigable streams, and the Property Clause, Art. IV, §3, which
permits federal regulation of federal lands. The doctrine applies to
Indian reservations and other federal enclaves, encompassing water
rights in navigable and nonnavigable streams.

17 *Id.* at 137 (citations omitted).

18 When determining the extent of these unique court-created federal reserved water rights
19 of use, the Court must examine the purpose for which the reservation was created:

20 In determining whether there is a federally reserved water right
21 implicit in a federal reservation of public land, the issue is whether
22 the Government intended to reserve unappropriated and thus
23 available water. Intent is inferred if the previously unappropriated
waters are necessary to accomplish the purposes for which the
reservation was created.

24 *Id.* at 140 (citations omitted).

25 A determination of the purpose of the reservation is critical as "water may be reserved
26 under the *Winters* Doctrine only for the primary purposes of the federal reservation." *United*



1 *States v. Adair*, 723 F.2d 1394, 1408 (9th Cir. 1984), *cert. denied*, 967 U.S. 1252 (1984). Water
2 rights are not implied where they are merely “valuable for a secondary use of the reservation.”
3 *Id.* at 1409 (quoting *United States v. New Mexico*, 438 U.S. 696, 702 (1978)). Where water on a
4 federal reservation is not explicitly reserved, but is required for a secondary use, the Supreme
5 Court has inferred that “Congress intended . . . that the United States would acquire water in the
6 same manner as any other public or private appropriator” under state law. *New Mexico*, 438 U.S.
7 at 701.

8 Further, the primary purpose of the reservation also is used to adjudicate and define the
9 extent of the reserved rights, as the “implied-reservation-of water-rights doctrine . . . reserves
10 only that amount of water necessary to fulfill the purpose of the reservation, no more.” *Cappaert*,
11 426 U.S. at 141:

12 While many of the contours of what has come to be called the
13 “implied-reservation-of-water doctrine” remain unspecified, the
14 Court has repeatedly emphasized that Congress reserved “only that
15 amount of water necessary to fulfill the purpose of the reservation,
16 no more.” Each time this Court has applied the “implied
17 reservation-of-water doctrine,” it has carefully examined both the
18 asserted water right and the specific purposes for which the land
19 was reserved, and concluded that without the water the purposes of
20 the reservation would be entirely defeated . . . This careful
21 examination is required both because the reservation is implied,
22 rather than expressed, and because of the history of congressional
23 intent in the field of federal-state jurisdiction with respect to
24 allocation of water.

25 *New Mexico*, 438 U.S. at 700 (citations omitted).

26 The need to tailor the award of implied right to the “minimum need” of the reservation
also arises from the recognition that in the case of fully appropriated rivers, federally reserved
rights will frequently require a “gallon-for-gallon” reduction in the amount of water available for
state and private appropriators. *Id.* at 705. It is not uncommon for private appropriators to have
relied on these waters for their livelihood and expended considerable sums of money for the



1 construction of dams, ditches, and reservoirs long before the existence or extent of the federal
2 claims are recognized through an adjudication process. See *Winters*, 207 U.S. at 569-70.

3 The purpose and extent of the entire water right for the Walker River Paiute Reservation
4 as it existed in 1935 was previously determined by final order and decreed. *United States v.*
5 *Walker River Irr. District*, 104 F.2d 334 (1939). With regard to the 1936 Congressional
6 legislative addition of lands to the Reservation, the stated purpose for the withdrawal of those
7 lands was to provide the Tribe with additional lands for dry land stock grazing. S. R. 1750, 74th
8 Cong., 2d Sess. 6-39 (1936). If this Court elects to proceed in this case, despite lacking subject
9 matter jurisdiction, the extent of any claims to water rights of use associated with 1936 lands
10 must be limited to those necessary “for dry land stock grazing.”

11 **5. Decree Court and United States District Court Lack Jurisdiction Over**
12 **Ground Water Located Outside Reservation Boundaries**

13 The Amended Counterclaim of the United States and that of the Tribe ask this Court to
14 recognize additional rights to groundwater not only underlying the reserved land, but to adjacent
15 lands as well. First of all, under the reserved rights doctrine, there is no basis upon which the
16 claims for water rights of use outside the exterior boundaries of the Walker River Paiute
17 Reservation may be made. The federal court, particularly the Decree court, holds no subject
18 matter jurisdiction over ground water claims or uses outside the Reservation.

19 Even if the United States and Tribes were only seeking to invoke the continuing,
20 regulatory jurisdiction under the Decree to claim interference with adjudicated, surface water
21 uses, there could be no jurisdiction in this Court without a specific allegation as to present
22 interference with a federal surface or ground water right as a result of pumping of state ground
23 water rights of use outside the boundaries of the federal reservation. Even with a specific
24 allegation, the State of Nevada, which holds the power to regulate the groundwater uses, would
25 be in a better position to enjoin an interfering ground water use, than the federal decree court that
26 only holds the power, under its continuing regulatory jurisdiction, to assert its authority over the



1 adjudicated surface water uses. If the ultimate remedy the United States and the Tribe seeks is to
2 shut off ground water uses, it is not this decree Court whose jurisdiction the United States and
3 Tribe should seek to invoke. This Court's continuing regulatory jurisdiction does not spread so
4 far.

5 When the federal government withdraws lands from the public domain for a federal
6 purpose, water rights are impliedly reserved to support the purpose of the withdrawal. The
7 Property Clause, Art. IV, § 3 of the United States Constitution, provides the federal government
8 with the authority for the regulation of federal lands and non-navigable waters within the federal
9 reservation. See, *Cappaert*, 436 U. S. at 138. Conversely, on lands outside the reservation, state
10 law governs:

11 [P]roperty ownership is not governed by a general federal law, but
12 rather by the laws of the several States. 'The great body of law in
13 this country which controls acquisition, transmission, and transfer
14 of property, and defines the rights of its owners in relation to the
15 state or to private parties, is found in the statutes and decisions of
16 the state.'

17 *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378 (U.S. 1977),
18 quoting *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 155 (1944).

19 Further, the Desert Land Act of 1877, which specifically addressed water rights on public
20 lands, provided that such water rights were to be acquired in the manner provided by the law of
21 the State of location. *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S.
22 142 (1935). In interpreting the Desert Land Act, the Supreme Court stressed that the waters of
23 lakes, rivers and other sources of water supply upon the public lands that were not navigable
24 were severed and "reserved for the use of the public under the laws of the states and territories."
25 *Id.*, at 162.

26 To obtain water rights of use on non-federally reserved lands, the United States and the
Tribe are required to obtain water rights through the application and permitting in compliance
with the State of Nevada water code or claim pre-code vested rights for groundwater use



1 consistent with state law. The federal court cannot grant such groundwater rights of use, and its
2 ability to exercise jurisdiction over such rights is extremely limited.

3 A federal court's jurisdictional authority to issue determinations with regard to non-
4 federally reserved groundwater rights is limited to cases involving: (1) federal rights in basin
5 adjudications of water systems in which hydrological connections between groundwater and
6 surface water are recognized (see e.g., *In re General Adjudication of All Rights to Use Water &*
7 *Water Rights*, 531 F. Supp. 449 (D.S.D. 1982)); (2) cases in which the federal water rights have
8 been impacted adversely by state agency determinations; and (3) appeal is made to the federal
9 decree court or injunctive relief is sought with regard to an undefined federal reserved right. See,
10 e.g., *United States v. Orr Water Ditch Co.*, 391 F.3d 1077 (2004), *Cappaert*, 426 U.S. at 135.
11 Jurisdiction in these cases arises under 28 U.S.C. § 1331, §1362, 1367, and §1345.

12 In this case, we have no new action for an adjudication. Neither the United States nor the
13 Tribe has claimed the necessity for a comprehensive adjudication of all rights to groundwater in
14 the Water River Basin. Nor have either alleged in a new action that the existing reserved rights
15 or claimed implied reserved rights have been or will be injured as a result of groundwater use
16 outside the original federal reservation. Without these allegations, brought in a new action, this
17 Court lacks jurisdiction to address nonfederal ground water claims.

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1 **6. Conclusion**

2 For the above reasons, the Court should dismiss the Walker River Paiute Tribe and
3 United States' Amended Counterclaims, and require them to be brought in a new action; dismiss
4 all claims not based on federal law; and dismiss those related to ground water outside the
5 boundary of the reservation.

6 DATED this 9th day of February, 2015.

7 SCHROEDER LAW OFFICES, P.C.

8
9 /s/ Laura A. Schroeder

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Schroeder Law Offices, P.C., over the age of eighteen and not a party to the within action, and that on this date I caused the foregoing document titled: ***POINTS AND AUTHORITIES OF CIRCLE BAR N RANCH, LLC, ET AL. IN SUPPORT OF ITS JOINDER TO WALKER RIVER IRRIGATION DISTRICT'S MOTION TO DISMISS CLAIMS OF UNITED STATES BASED UPON STATE LAW PURSUANT TO FED. R. CIV. P. 12(b)(1), AND SUPPLEMENTAL ARGUMENT*** to be electronically filed with the Clerk of the Court using the CM/ECF system, and I caused it to be served by electronic mail through CM/ECF addressed to the following persons:

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