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 8 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA
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10	UNITED STATES OF AMERICA,)	
11)	IN EQUITY NO. C-125-MDD
12	Plaintiff,)	Subproceeding: 3:73-CV-00127-MDD-
13	WALKER RIVER PAIUTE TRIBE,)	WGC
14)	
15	Plaintiff-Intervenor,)	
16	vs.)	SECOND AMENDED COUNTERCLAIM
17	WALKER RIVER IRRIGATION)	OF THE WALKER RIVER PAIUTE
18	DISTRICT, a corporation, et al.,)	TRIBE
19)	
20	Defendants.)	
21	_____)	

20 In its order of October 30, 1992 (Doc. 15), the Court found that the
 21 counterclaim filed by the Walker River Paiute Tribe (“Tribe”) (Doc. 1) on March 18,
 22 1992, against the Walker River Irrigation District (“WRID”) should have been filed as
 23 a cross-claim since the Tribe and the WRID were co-plaintiffs with regard to their
 24 assertions against the California State Water Resources Control Board. However, the
 25 Court also determined that the designation given by the Tribe would remain. In light
 26 of the Court’s order, the Tribe files this second amended counterclaim as follows:
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INTRODUCTION

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2 1. This second amended counterclaim is for the recognition of a right to store
3 water in Weber Reservoir for use on the lands of the Walker River Paiute Indian
4 Reservation (“Reservation”), including the lands added and restored to the Reservation
5 in 1928, 1936, and 1972. Such rights are in addition to the surface water rights in the
6 Walker River awarded to the United States for the benefit of the Tribe in *United States*
7 *v. Walker River Irrigation Dist.*, No. C-125 (D. Nev. 1936), *as amended by Order for*
8 *Entry of Amended Final Decree to Conform to Writ of Mandate, etc.*, *United States v.*
9 *Walker River Irrigation Dist.*, No. C-125 (D. Nev. 1940) (“Final Decree”).
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13 2. This second amended counterclaim is also for recognition of a reserved
14 right under federal law to use surface water from the Walker River on the lands
15 added and restored to the Reservation in 1928, 1936 and 1972. Such rights are in
16 addition to the rights to use water from the Walker River awarded to the United
17 States for the benefit of the Tribe in the Final Decree.
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20 3. This second amended counterclaim is also for recognition of a reserved
21 right under federal law to use groundwater underlying and adjacent to the lands of the
22 Reservation, including the lands added and restored to the Reservation in 1918, 1928,
23 1936, and 1972. Such rights are in addition to the rights to use water from the Walker
24 River awarded to the United States for the benefit of the Tribe in the Final Decree.
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1 **JURISDICTION**

2 4. Jurisdiction over this second amended counterclaim is pursuant to: a) the
3 continuing jurisdiction of the Court over the waters of the Walker River and its
4 tributaries in California and Nevada, Final Decree ¶ XIV; b) 28 U.S.C. § 1331, in that
5 this counterclaim arises under the Constitution, laws or treaties of the United States; c)
6 28 U.S.C. § 1362, in that this counterclaim is brought by the Tribe and arises under the
7 Constitution, laws or treaties of the United States; d) 28 U.S.C. § 1367 which vests the
8 Court with supplemental jurisdiction; and e) 28 U.S.C. § 1651 which authorizes the
9 Court to issue all writs necessary or appropriate in aid of its jurisdiction.
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12 **PARTIES**

13 5. The Tribe is a federally-recognized and sovereign Indian Tribe organized
14 under the Indian Reorganization Act, 25 U.S.C. §§ 461-79.
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17 6. Counterdefendants are the Walker River Irrigation District (“WRID”), State
18 of Nevada, and all other claimants to the waters of the Walker River and its tributaries,
19 including groundwater.
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21 **GENERAL ALLEGATIONS**

22 7. The Reservation was established in 1859 with a land base of approximately
23 320,000 acres. In 1902 Congress enacted legislation to allot the lands within the
24 Reservation to Tribal members and open the remaining lands to non-Indian settlement.
25 Act of May 27, 1902, 32 Stat. 245, 260-61. In 1906, the Tribe reached an agreement
26 with the Department of the Interior to allot the Reservation in accordance with the 1902
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28

1 act.

2 8. Following allotment, the United States both restored and added lands to the
3 Reservation for the Tribe's benefit. Exec. Order No. 2820 (Mar. 15, 1918); Exec.
4 Order No. 4041 (June 27, 1924), Exec. Order No. 4177 (Mar. 18, 1925), and Act of
5 Mar. 3, 1928, 45 Stat. 160; Act of June 22, 1936, 49 Stat. 1806, authorizing Secretarial
6 Order, 1 Fed. Reg. 2090-91 (Sept. 25, 1936), and Pub. Land Order 5216, 37 Fed. Reg.
7 12,383 (June 19, 1972).
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10 9. The United States brought suit in July 1924 to quiet title and obtain surface
11 water rights for use on the Reservation as its boundaries existed at the time the suit was
12 commenced.
13

14 10. On April 14, 1936, this Court issued the Final Decree, which as amended in
15 1940 entitles the Tribe to use 26.25 cubic feet per second of surface water from the
16 Walker River and its tributaries, with a priority date of November 29, 1859, to irrigate
17 2,100 acres of land on the Reservation as it existed when the suit was commenced in
18 July 1924. Final Decree ¶ 1. The Final Decree did not adjudicate the groundwater
19 rights of any party.
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22 11. Subsequent to the Final Decree being entered on April 14, 1936, numerous
23 persons and other entities, including the United States, have appropriated additional
24 waters from the Walker River and its tributaries. In many instances, such water uses
25 have not been subject to any adjudicative process.
26

27 12. Weber Reservoir is a federally-constructed reservoir located on the
28

1 Reservation with a storage capacity of approximately 13,000 acre feet. Portions of the
2 reservoir were completed in 1935, and floodgates were added in 1937. The Tribe is
3 entitled to store water from the Walker River in Weber Reservoir for all purposes
4 recognized under federal law, including but not limited to irrigation, stock watering,
5 fish and wildlife, domestic, commercial, and industrial uses.
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7
8 13. By using Weber Reservoir to store water, the Tribe can irrigate more than
9 the 2,100 acres that it is entitled to irrigate under the terms of the Final Decree.

10 14. The Tribe is entitled to use surface water from the Walker River on the
11 lands added and restored to the Reservation in 1928, 1936 and 1972 for all purposes
12 recognized under federal law, including but not limited to irrigation, stock watering,
13 fish and wildlife, recreation, domestic, commercial, and industrial uses.
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15 15. The Tribe is entitled to use groundwater underlying and adjacent to the
16 lands within the Reservation, including groundwater underlying and adjacent to the
17 lands that have never left the Reservation, on the lands added and restored to the
18 Reservation in 1918, 1928 1936, and 1972, for all purposes recognized under federal
19 law, including but not limited to irrigation, stock watering, fish and wildlife, recreation,
20 domestic, commercial, and industrial uses.
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23 16. Paragraph XIV of the Final Decree provides that this Court retains
24 jurisdiction for modification of the Final Decree.
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1 **FIRST CLAIM FOR RELIEF**

2 17. Paragraphs 1-16 are incorporated herein by reference.

3 18. The Tribe is entitled to store water from the Walker River in Weber
4 Reservoir for all purposes recognized under federal law, including but not limited to
5 irrigation, stock watering, fish and wildlife, domestic, commercial, and industrial uses.
6

7 19. The Tribe claims a storage right of approximately 13,000 acre feet, plus
8 evaporation and seepage, with a priority date of June 16, 1933.
9

10 **SECOND CLAIM FOR RELIEF**

11 20. Paragraphs 1-19 are incorporated herein by reference.

12 21. The Tribe is entitled to use surface water from the Walker River on the
13 lands added and restored to the Reservation in 1928, 1936 and 1972 for all purposes
14 recognized under federal law, including but not limited to irrigation, stock watering,
15 fish and wildlife, domestic, commercial, and industrial uses.
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17 22. For surface water rights on lands restored to the Reservation in 1936 and
18 1972, the Tribe claims a priority date of November 29, 1859.
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20 23. For surface water rights on lands added to the Reservation in 1928, 1936,
21 and 1972, the Tribe claims a priority date that coincide with the dates of the addition.
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23 **THIRD CLAIM FOR RELIEF**

24 24. Paragraphs 1-23 are incorporated herein by reference.

25 25. The Tribe is entitled to the groundwater underlying and adjacent to the
26 lands of the Reservation, including the lands that never left the Reservation, which
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1 include any and all relicted lands, and the lands added and restored to the Reservation
2 in 1918, 1928, 1936, and 1972, for all purposes recognized under federal law, including
3 but not limited to irrigation, stock watering, fish and wildlife, domestic, commercial,
4 and industrial uses.
5

6 26. For groundwater rights on lands restored to the Reservation in 1918, 1936,
7 and 1972, the Tribe claims a priority date of November 29, 1859.
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9 27. For groundwater rights on lands added to the Reservation in 1918, 1928,
10 and 1936, the Tribe claims priority dates that coincide with the dates of the addition.
11

12 WHEREFORE, the Tribe prays that the Court:

13 1. Pursuant to the jurisdictional bases set forth in Paragraph 5 hereof, reopen
14 and modify the Final Decree to recognize, and declare, and quiet title to:

15 A. The right of the Tribe to store water in Weber Reservoir for use on
16 the Reservation, for all purposes recognized under federal law, as set forth in the First
17 Claim for Relief;
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19 B. The right of the Tribe to surface water for use on the lands added
20 and restored to the Reservation in 1928, 1936 and 1972, as set forth in the Second
21 Claim for Relief;
22

23 C. The right of the Tribe to the groundwater underlying and adjacent to
24 the Reservation, including the lands that never left the Reservation and the lands added
25 and restored to the Reservation in 1918, 1928, 1936, and 1972, as set forth in the Third
26 Claim for Relief;
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