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

11 UNITED STATES OF AMERICA, ) 3:73-cv-00127-MMD-WGC  
12 )  
Plaintiff, )  
13 ) **DAVID A. SCEIRINE’S ANSWER**  
WALKER RIVER PAIUTE TRIBE, ) **TO SECOND AMENDED**  
14 ) **COUNTERCLAIM OF THE**  
Plaintiff-Intervenor, ) **WALKER RIVER PAIUTE TRIBE**  
15 )  
16 v. )  
17 WALKER RIVER IRRIGATION DISTRICT, )  
a corporation, et al., )  
18 )  
19 Defendants. )

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21 Counterdefendant, David A. Sceirine (“Sceirine”), hereby answers the Second  
22 Amended Counterclaim of the Walker River Paiute Tribe filed herein on May 3, 2019 (the  
23 “Second Amended Counterclaim”) as follows:

24 **INTRODUCTION**

25 1. This Answer is made subject to the provisions of the Stipulated Scheduling  
26 Order and Discovery Plan dated March 7, 2019 (ECF No. 2437) which provides that only  
27 answers and affirmative defenses are allowed, and which provides that no counterclaims are  
28 required or permitted. The allegations contained in paragraph 1 of the Second Amended

1 Counterclaim consist of legal conclusions that do not require a response. To the extent that a  
2 response is required, Sceirine denies them.

3 2. The allegations contained in paragraph 2 of the Second Amended Counterclaim  
4 consist of legal conclusions that do not require a response. To the extent that a response is  
5 required, Sceirine denies them.

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7 3. The allegations contained in paragraph 3 of the Second Amended Counterclaim  
8 consist of legal conclusions that do not require a response. To the extent that a response is  
9 required, Sceirine denies them.

10 **JURISDICTION**

11 4. The allegations contained in paragraph 4 of the Second Amended Counterclaim  
12 consist of legal conclusions that do not require a response. To the extent that a response is  
13 required, Sceirine denies them.

14 **PARTIES**

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16 5. On information and belief, Sceirine admits the allegations contained in  
17 paragraph 5.

18 6. Sceirine admits that it is a claimant to the waters of the Walker River and its  
19 tributaries and also to groundwater. Sceirine is without sufficient information to admit or deny  
20 the remaining allegations of paragraph 6, and on that basis, denies them.

21 **GENERAL ALLEGATIONS**

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23 7. The allegations in paragraph 7 of the Second Amended Counterclaim consist of  
24 legal conclusions that do not require a response. To the extent that a response is required,  
25 Sceirine denies them.

26 8. The allegations in paragraph 8 of the Second Amended Counterclaim consist of  
27 legal conclusions that do not require a response. To the extent that a response is required,  
28 Sceirine denies them.

1           9.       Sceirine admits that in 1924, the United States commenced an action in this  
2 Court for purposes of determining and quantifying a water right for the Walker River Indian  
3 Reservation. The remaining allegations of paragraph 9 of the Second Amended Counterclaim  
4 consist of legal conclusions that do not require a response. To the extent that a response is  
5 required, Sceirine denies them.

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7           10.       Sceirine admits that the final judgment entered in *United States of America v.*  
8 *Walker River Irrigation District, et al.*, In Equity No. C-125 (D. Nev.) on April 14, 1936, as  
9 amended on April 24, 1940 (the “Decree”), includes a right of the United States of America for  
10 the Walker River Indian Reservation. The Decree is the best evidence of its provisions, and  
11 speaks for itself. Sceirine denies that the remaining allegations in paragraph 10 of the Second  
12 Amended Counterclaim correctly describe those provisions, and on that basis, denies them.

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14           11.       Sceirine admits that since April 14, 1936, persons and entities have appropriated  
15 water from sources within the Walker River Basin pursuant to and consistent with the laws of  
16 the State of Nevada and the State of California. The remaining allegations of paragraph 11  
17 consist of legal conclusions that do not require a response. To the extent that a response is  
18 required, Sceirine denies them.

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20           12.       Sceirine lacks sufficient information to admit or deny the first two sentences of  
21 paragraph 12, and on that basis, denies them. The remaining allegations in paragraph 12 of the  
22 Second Amended Counterclaim consist of legal conclusions that do not require a response. To  
23 the extent that a response is required, Sceirine denies them.

24           13.       Sceirine lacks sufficient information to admit or deny the allegations contained  
25 in paragraph 13 of the Second Amended Counterclaim, and on that basis, denies them.

26           14.       The allegations in paragraph 14 of the Second Amended Counterclaim consist of  
27 legal conclusions that do not require a response. To the extent that a response is required,  
28 Sceirine denies them.

1 15. The allegations in paragraph 15 of the Second Amended Counterclaim consist of  
2 legal conclusions that do not require a response. To the extent that a response is required,  
3 Sceirine denies them.

4 16. Sceirine admits that Paragraph XIV of the Decree includes provisions pursuant  
5 to which the Court retained jurisdiction of the “cause.” The Decree as amended is the best  
6 evidence of, and speaks for itself, with respect to the content of its Paragraph XIV.

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8 **FIRST CLAIM FOR RELIEF**

9 17. Sceirine realleges and reincorporates herein by reference each and every  
10 response contained in paragraphs 1 through 16 of its Answer to the Second Amended  
11 Counterclaim as if fully set forth herein.

12 18. The allegations in paragraph 18 of the Second Amended Counterclaim consist of  
13 legal conclusions that do not require a response. To the extent a response is required, Sceirine  
14 denies them.

15 19. The allegations in paragraph 19 of the Second Amended Counterclaim consist of  
16 legal conclusions that do not require a response. To the extent a response is required, Sceirine  
17 denies them.

18  
19 **SECOND CLAIM FOR RELIEF**

20 20. Sceirine realleges and reincorporates herein by reference each and every  
21 response contained in paragraphs 1 through 19 of its Answer to the Second Amended  
22 Counterclaim as if fully set forth herein.

23 21. The allegations in paragraph 21 of the Second Amended Counterclaim consist of  
24 legal conclusions that do not require a response. To the extent a response is required, Sceirine  
25 denies them.  
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1            22. The allegations in paragraph 22 of the Second Amended Counterclaim consist of  
2 legal conclusions that do not require a response. To the extent a response is required, Sceirine  
3 denies them.

4            23. The allegations in paragraph 23 of the Second Amended Counterclaim consist of  
5 legal conclusions that do not require a response. To the extent a response is required, Sceirine  
6 denies them.

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8                                 **THIRD CLAIM FOR RELIEF**

9            24. Sceirine realleges and reincorporates herein by reference each and every  
10 response contained in paragraphs 1 through 23 of its Answer to the Second Amended  
11 Counterclaim as if fully set forth herein.

12            25. The allegations in paragraph 25 of the Second Amended Counterclaim consist of  
13 legal conclusions that do not require a response. To the extent a response is required, Sceirine  
14 denies them.

15            26. The allegations contained in paragraph 26 of the Second Amended Counterclaim  
16 consist of legal conclusions that do not require a response. To the extent a response is required,  
17 Sceirine denies them.

18            27. The allegations contained in paragraph 27 of the Second Amended Counterclaim  
19 consist of legal conclusions that do not require a response. To the extent a response is required,  
20 Sceirine denies them.  
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23                                 **AFFIRMATIVE DEFENSES**

24                                   **First Affirmative Defense**

25            The Second Amended Counterclaim and each and every Claim for Relief stated therein  
26 fails to state a claim upon which relief may be granted.

27                                   **Second Affirmative Defense**  
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1           The Second Amended Counterclaim and each and every claim for relief stated therein  
2 is, by reason of the Decree, barred by the doctrines of claim preclusion, issue preclusion and/or  
3 other principles of finality as set forth in *Nevada v. United States*, 463 U.S. 110 (1983) and in  
4 *Arizona v. California*, 460 U.S. 605 (1983).

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6                           **Third Affirmative Defense**

7           “General Principles of finality and repose” that apply to water rights decrees, *Arizona v.*  
8 *California*, 460 U.S. 605, 619 (1983), preclude Paragraph XIV of the Decree from being  
9 construed as authorizing the modification of the Decree to recognize additional reserved water  
10 rights for the Tribe that were not recognized and established in the Decree.

11                           **Fourth Affirmative Defense**

12           The Second Amended Counterclaim and each and every claim for relief stated therein  
13 is barred by the doctrine of laches.

14                           **Fifth Affirmative Defense**

15           The Second Amended Counterclaim and each and every claim for relief stated therein is  
16 barred by the doctrine of estoppel.

17                           **Sixth Affirmative Defense**

18           Through commencement and resolution of claims against the United States by the  
19 Walker River Paiute Tribe, the Second Amended Counterclaim and each and every claim for  
20 relief stated therein have been waived, and are therefore extinguished.

21                           **Seventh Affirmative Defense**

22           A federal reserved water right exists only if “necessary” to fulfill the *primary* purposes  
23 – as opposed to the *secondary* purposes – of the federal reserved lands, *United States v. New*  
24 *Mexico*, 438 U.S. 696, 700-702 (1978), and only to the extent necessary to meet the “minimal  
25 need” of the federal reservation, “no more.” *Cappaert v. United States*, 426 U.S. 200, 141  
26 (1976). The Tribe has failed to allege or show that the water granted to the Tribe in the Walker  
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1 River Decree is insufficient to meet the primary purposes for which the lands were added to the  
2 Walker River Indian Reservation, and that the additional water from any source is “necessary”  
3 to fulfill the primary purposes of such added lands. Thus, the Tribe does not have a reserved  
4 right to additional water for the lands that have been added to the reservation.  
5

6 **Eighth Affirmative Defense**

7 Under the implied reservation of water doctrine, the United States may not reserve  
8 water from a water source that is not within the lands which are being reserved. To the extent  
9 that the Second Amended Counterclaim and any claim for relief therein seeks water from a  
10 source for lands which did not include that water source at the time of reservation, no such  
11 claim can be made.  
12

13 **Ninth Affirmative Defense**

14 The primary purpose of adding lands to the Walker River Indian Reservation from 1918  
15 to 1972 was for purposes of dry land grazing, which requires no water for irrigation and only  
16 sufficient water to water livestock which can be reasonably grazed on such lands.  
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18 **Tenth Affirmative Defense**

19 The implied reservation of water rights doctrine does not apply to the conservation  
20 storage of water, including, but not limited to, storage for any purpose, including carryover and  
21 conservation.  
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23 **Eleventh Affirmative Defense**

24 The implied reservation of water rights doctrine does not apply to groundwater.  
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26 **Twelfth Affirmative Defense**

27 If the implied reservation of water rights doctrine applies to groundwater, it does so  
28 only in circumstances where it is established that there is insufficient surface water to otherwise  
satisfy the claimed reserved water right. The water right provided for the Walker River Indian

1 Reservation by the Decree is sufficient to accomplish the purposes for which lands were added  
2 to the Reservation.

3 **Thirteenth Affirmative Defense**

4 The United States had no power, after Nevada became a State on October 31, 1864, to  
5 reserve water for the benefit and use of federal land.

6 **Fourteenth Affirmative Defense**

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8 In withdrawing from the public domain some or all of the lands added to the Walker  
9 River Indian Reservation, Congress provided that the withdrawal should not affect existing  
10 legal rights, or valid rights, which includes, but is not limited to, the right of the State of  
11 Nevada to control and regulate the use of its waters.

12 **Fifteenth Affirmative Defense**

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14 To the extent that this Court determines that any addition of land to the Walker River  
15 Indian Reservation resulted in the reservation of water, the use of that water must be restricted  
16 to the use impliedly contemplated at the time the land was added to the Reservation, and any  
17 change to that use is subject to the provisions of Paragraph X of the Decree and to the  
18 Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use  
19 or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance  
20 With California Fish and Game Code Section 5937 and Other Provisions of California Law as  
21 approved by the Court on June 3, 1996.

22 **Sixteenth Affirmative Defense**

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24 Sceirine reserves the right to amend this answer as additional affirmative defenses are  
25 discovered.

26 WHEREFORE, Sceirine prays for judgment against the Walker River Paiute Tribe as  
27 follows:

- 28 1. For the dismissal of the Second Amended Counterclaim;



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- 2. For its costs of suit allowed by law; and
- 3. For such other and further relief as the Court deems just and proper.

Dated: August 1, 2019

By:  / s / Gordon H. DePaoli  
Gordon H. DePaoli, NSB 195  
Dale Ferguson, NSB 4986  
Domenico R. DePaoli, NSB 11553

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge and that on the 1st day of August, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Holly Dewar

Holly Dewar

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