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12
13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 UNITED STATES OF AMERICA,
16 Plaintiff,

17 WALKER RIVER PAIUTE TRIBE,
18 Plaintiff-Intervenor,

19 v.

20 WALKER RIVER IRRIGATION DISTRICT,
21 a corporation, et al.,
22 Defendants.

Case No. 3:73-cv-00127-MMD-WGC

**ANSWER OF DEFENDANTS LYON
COUNTY, MONO COUNTY AND
CENTENNIAL LIVESTOCK TO
SECOND AMENDED
COUNTERCLAIM OF WALKER
RIVER PAIUTE TRIBE**

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1 This is the Answer of counter-defendants Lyon County, Nevada; Mono County,
2 California; and Centennial Livestock (collectively “Defendants”) to the Second Amended
3 Counterclaim of the Walker River Paiute Tribe (“Tribe”). This Answer is made pursuant to the
4 Stipulated Scheduling Order and Discovery Plan dated March 7, 2019 (ECF No. 2437), which
5 only permits answers and affirmative defenses, and prohibits counterclaims.

6 The Defendants answer the Tribe’s Second Amended Counterclaim as follows:

7 **INTRODUCTION**

8 1. Paragraph 1 consists of legal theories and conclusions that do not require a
9 response. To the extent a response is required, the Defendants deny the allegations.

10 2. The allegations in Paragraph 2 consist of legal theories and conclusions that do not
11 require a response. To the extent a response is required, the Defendants deny the allegations in
12 the Paragraph.

13 3. The allegations in Paragraph 3 consist of legal theories and conclusions that do not
14 require a response. To the extent that a response is required, the Defendants deny the allegations
15 in the Paragraph.

16 **JURISDICTION**

17 4. The allegations contained in Paragraph 4 of consist of legal theories and
18 conclusions that do not require a response. To the extent that a response is required, the
19 Defendants deny the allegations in the Paragraph.

20 **PARTIES**

21 5. Based on information and belief, the Defendants admit the allegations in
22 Paragraph 5.

23 6. The Defendants admit that they are claimants to the waters of the Walker River
24 and its tributaries, including groundwater. The Defendants are without sufficient information to
25 admit or deny the remaining allegations of Paragraph 6, and on that basis deny the remaining
26 allegations in the Paragraph.

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GENERAL ALLEGATIONS

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2 7. The allegations in Paragraph 7 consist of legal theories and conclusions that do not
3 require a response. To the extent a response is required, the Defendants are without sufficient
4 information to admit or deny the allegations, and on that basis deny the allegations in the
5 Paragraph.

6 8. The allegations in Paragraph 8 consist of legal theories and conclusions that do not
7 require a response. To the extent a response is required, the Defendants are without sufficient
8 information to admit or deny the allegations, and on that basis deny the allegations in the
9 Paragraph.

10 9. The Defendants admit that the United States in 1924 commenced an action in this
11 Court for purposes of determining and quantifying a water right for the Walker River Indian
12 Reservation. The remaining allegations of Paragraph 9 consist of legal theories and conclusions
13 that do not require a response. To the extent a response is required, the Defendants deny the
14 remaining allegations in the Paragraph.

15 10. The Defendants admit that the final judgment entered in *United States of America*
16 *v. Walker River Irrigation District, et al.*, Equity No. C-125 (D. Nev.) on April 14, 1936, as
17 amended on April 24, 1940 (“Decree”), includes a right of the United States of America for the
18 Walker River Indian Reservation. The Decree speaks for itself, and no further response is
19 required. Additionally, the remaining allegations in Paragraph 10 consist of legal theories and
20 conclusions to which no response is required. The Defendants deny that the remaining
21 allegations in Paragraph 10 correctly describe those provisions, and on that basis deny the
22 remaining allegations in the Paragraph.

23 11. The allegations of Paragraph 11 consist of legal theories and conclusions that do
24 not require a response. To the extent that a response is required, the Defendants are without
25 sufficient information to admit or deny the allegations, and on that basis deny the allegations in
26 the Paragraph.

27 12. The Defendants lack sufficient information to admit or deny the first two sentences
28 of Paragraph 12, and on that basis deny them. The remaining allegations in Paragraph 12 consist

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1 of legal theories and conclusions that do not require a response. To the extent that a response is
2 required, the Defendants deny the remaining allegations in the Paragraph.

3 13. The Defendants lack sufficient information to admit or deny the allegations in
4 Paragraph 13, and on that basis denies the allegations in the Paragraph.

5 14. The allegations in Paragraph 14 consist of legal theories and conclusions that do
6 not require a response. To the extent that a response is required, the Defendants deny the
7 allegations in the Paragraph.

8 15. The allegations in Paragraph 15 consist of legal theories and conclusions that do
9 not require a response. To the extent that a response is required, the Defendants deny the
10 allegations in the Paragraph.

11 16. With respect to the allegations in Paragraph 16, the Decree, as amended, speaks
12 for itself, and no further response is required. Additionally, the allegations in Paragraph 16
13 consist of legal theories and conclusions that do not require a response. To the extent that a
14 response is required, the Defendants deny the allegations in the Paragraph.

15 **FIRST CLAIM FOR RELIEF**

16 17. The Defendants re-allege and incorporate herein by reference the responses in
17 Paragraphs 1 through 16 of their Answer to the Second Amended Counterclaim as if fully set
18 forth herein.

19 18. The allegations in Paragraph 18 consist of legal theories and conclusions that do
20 not require a response. To the extent a response is required, the Defendants deny the allegations
21 in the Paragraph.

22 19. The allegations in Paragraph 19 consist of legal theories and conclusions that do
23 not require a response. To the extent a response is required, the Defendants deny the allegations
24 in the Paragraph.

25 **SECOND CLAIM FOR RELIEF**

26 20. The Defendants re-allege and incorporate herein by reference the responses in
27 Paragraphs 1 through 19 of their Answer to the Second Amended Counterclaim as if fully set
28 forth herein.

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1 21. The allegations in Paragraph 21 consist of legal theories and conclusions that do
2 not require a response. To the extent a response is required, the Defendants deny the allegations
3 in the Paragraph.

4 22. Assuming *arguendo* that the Tribe has reserved rights on lands restored to the
5 Walker River Indian Reservation, the Defendants deny that any such reserved rights have a
6 priority date of November 29, 1859. Otherwise, the allegations in Paragraph 22 consist of legal
7 theories and conclusions that do not require a response. To the extent a response is required, the
8 Defendants deny the allegations in the Paragraph.

9 23. The allegations in Paragraph 23 consist of legal theories and conclusions that do
10 not require a response. To the extent a response is required, the Defendants deny the allegations
11 in the Paragraph.

12 **THIRD CLAIM FOR RELIEF**

13 24. The Defendants re-allege and incorporate herein by reference the responses in
14 Paragraphs 1 through 23 of their Answer to the Second Amended Counterclaim as if fully set
15 forth herein.

16 25. The allegations in Paragraph 25 consist of legal theories and conclusions that do
17 not require a response. To the extent a response is required, the Defendants deny the allegations
18 in the Paragraph.

19 26. The allegations in Paragraph 26 consist of legal theories and conclusions that do
20 not require a response. To the extent a response is required, the Defendants deny the allegations
21 in the Paragraph.

22 27. The allegations in Paragraph 27 consist of legal theories and conclusions that do
23 not require a response. To the extent a response is required, the Defendants deny each and every
24 allegation in the Paragraph.

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AFFIRMATIVE DEFENSES

GENERAL

First Affirmative Defense

(Failure to State a Claim)

The Second Amended Counterclaim, and each claim therein, fails to state a claim upon which relief may be granted.

Second Affirmative Defense

(Standing)

Under Article III of the United States Constitution, a party does not have standing to maintain its action unless it demonstrates that it has suffered an “injury in fact”—that is, a “concrete and particularized” injury that is “actual or imminent”—that is fairly traceable to the defendant and will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The Tribe has failed to allege or show that it will suffer an injury in fact if its reserved right claim for lands added or restored to the Walker River Indian Reservation is not adjudicated, and thus does not have standing to assert its reserved right claim.

Third Affirmative Defense

(Failure to Mitigate)

Assuming *arguendo* that the Tribe has suffered an injury in fact and has standing, any such injury could have been mitigated through reasonable or proper steps that the Tribe declined to take or failed to sufficiently perform.

Fourth Affirmative Defense

(Laches)

The Second Amended Counterclaim, and each and every claim therein, is barred by the doctrine of laches.

Fifth Affirmative Defense

(Estoppel)

The Second Amended Counterclaim, and each and every claim therein, is barred by the doctrine of estoppel.

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Sixth Affirmative Defense

(Waiver)

Through the Tribe’s commencement of action and resolution of claims against the United States, the Tribe’s Second Amended Counterclaim, and each and every claim therein, have been waived and are therefore extinguished.

NATURE, EXISTENCE AND LIMITATIONS OF RESERVED WATER RIGHTS

Seventh Affirmative Defense

(Failure to Demonstrate Necessity)

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

Eighth Affirmative Defense

(No Reserved Right for Water Sources Outside Reservation Lands)

A federal reserved right applies only to water “appurtenant” to the reserved lands. *Cappaert v. United States*, 426 U.S. 200, 138 (1976). Therefore, assuming *arguendo* that the Tribe has a reserved water right in lands added or restored to the Walker River Indian Reservation, the Tribe’s reserved right applies only to waters of the Walker River that are appurtenant to such added or restored lands, and not to waters that are not appurtenant to the lands.

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Ninth Affirmative Defense

(Reserved Right Only for Uses Contemplated When Lands Added or Restored)

Assuming *arguendo* that the Tribe has a reserved water right in lands added or restored to the Walker River Indian Reservation, the use of the reserved water is limited to the use that was impliedly contemplated at the time the lands were added or restored to the Reservation.

Tenth Affirmative Defense

(Reserved Right, if Any, Only for Dry Land Grazing)

The primary purpose of adding lands to the Walker River Indian Reservation from 1918 to 1972 was for purposes of dry land grazing. Dry land grazing requires no water for irrigation, and only requires sufficient water to water livestock that can be reasonably grazed on such lands. Therefore, the Tribe does not have a reserved water right for purposes unassociated with dry land grazing, such as irrigation.

FINALITY OF WATER RIGHTS DECREES

Eleventh Affirmative Defense

(Res Judicata)

The doctrine of res judicata bars the Tribe from asserting claims for reserved water rights on lands that were added or restored to the Walker River Indian Reservation prior to issuance of the Walker River Decree, because such additional reserved rights could have been adjudicated as part of the Decree. *Nevada v. United States*, 463 U.S. 110, 129-139 (1983).

Twelfth Affirmative Defense

(Principles of Finality and Repose)

The Tribe’s claim for additional reserved water rights on lands added or restored to the Walker River Indian Reservation are barred under “general principles of finality and repose” that apply to water rights decrees, including the Walker River Decree, that provide a comprehensive adjudication of water rights in a river system. *Arizona v. California*, 460 U.S. 605, 619-620 (1983); *see Nevada v. United States*, 463 U.S. 110, 129 n. 10 (1983).

Thirteenth Affirmative Defense

(Decree May Not Be Modified to Recognize Additional Reserved Rights)

Although Paragraph XIV of the Walker River Decree provides that this Court has continuing jurisdiction for the purpose of “correcting or modifying” the Decree, the “general principles of finality and repose” that apply to water rights decrees, *Arizona v. California*, 460 U.S. 605, 619 (1983), preclude Paragraph XIV from being construed as authorizing the Court to modify the Decree by recognizing additional reserved water rights for the Tribe that were not recognized and established in the Decree.

GROUNDWATER

Fourteenth Affirmative Defense

(Reserved Rights Doctrine Not Applicable to Groundwater Underlying Reservation)

The reserved rights doctrine does not apply to groundwater underlying the Walker River Indian Reservation.

Fifteenth Affirmative Defense

(The Tribe Cannot Assert Reserved Right to Groundwater)

The Walker River Decree adjudicated, and was intended to adjudicate, all reserved water rights of the Tribe in the Walker River and its tributaries, including groundwater. Therefore, the Tribe does not have a reserved right in groundwater. *Cf. Pyramid Lake Paiute Tribe v. Ricci*, 126 Nev. 521, 524, 245 P.3d 1145 (Nev. 2011).

Sixteenth Affirmative Defense

(Res Judicata Bars The Tribe’s Claim to Groundwater)

The Tribe’s claimed reserved right in groundwater could have been, but was not, adjudicated in the Walker River Decree. Therefore, the doctrine of res judicata bars the Tribe from asserting additional reserved rights in groundwater. *Nevada v. United States*, 463 U.S. 110, 129-130 (1983).

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Seventeenth Affirmative Defense

(Principles of Finality and Repose Bar Modifying Decree to Include Groundwater)

Under the “general principles of finality and repose” that apply to water rights decrees, *Arizona v. California*, 460 U.S. 605, 619-620 (1983), the Tribe is required—in a general adjudication of water rights in a river system, such as the Walker River adjudication—to adjudicate all of its reserved rights claims in the river system, including its claims for both surface water and groundwater, and is not permitted to seek piecemeal adjudication by asserting claims for surface water in the general adjudication and claims for groundwater in a separate, subsequent proceeding. Therefore, the general principles of finality and repose bar the Tribe from asserting a reserved right claim in groundwater.

Eighteenth Affirmative Defense

(Surface Water Not Inadequate to Satisfy Primary Reservation Purpose)

Assuming *arguendo* that the Tribe has a reserved right in groundwater for the Walker River Indian Reservation, the reserved right exists only to the extent that the surface waters of the Walker River are inadequate to accomplish the purpose of the Walker River Indian Reservation. *In re General Adjudication of All Rights to Use Water In Gila River System and Source*, 195 Ariz. 411, 989 P.2d 739, 748 (Ariz. 1999). The surface waters of the Walker River are adequate to accomplish the purpose of the Walker River Indian Reservation, and thus the Tribe does not have a reserved right in groundwater.

PRIORITY OF RIGHTS

Nineteenth Affirmative Defense

(Subsequent Federally Reserved Rights Junior to Original Reservation Rights or Decreed Rights)

Assuming *arguendo* that the Tribe has reserved water rights on lands added or restored to the Walker River Indian Reservation subsequent to the reservation’s creation on November 29, 1859, or subsequent to the Walker River Decree, any such reserved rights are junior in priority to water rights of non-federal water users that were recognized under state law prior to the Tribe’s acquisition of such reserved rights. *Cappaert v. United States*, 426 U.S. 128, 138 (1976).

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Twentieth Affirmative Defense

(Additional Defenses)

The Defendants reserve the right to further amend this Answer as additional affirmative defenses are discovered.

PRAYER FOR RELIEF

WHEREFORE, Defendants Lyon County, Mono County and Centennial Livestock pray for judgment against the Walker River Paiute Tribe as follows:

1. That the Tribe take nothing by reason of the Second Amended Counterclaim, and that judgment be rendered in favor of Defendants Lyon County, Mono County and Centennial Livestock;
2. That Defendants Lyon County, Mono County and Centennial Livestock be awarded their costs of suit allowed by law; and
3. For such other and further relief as the Court deems just and proper.

Dated: Thursday, August 01, 2019

By: /s/ Roderick E. Walston
RODERICK E. WALSTON
MILES B. H. KRIEGER
JERRY M. SNYDER

Attorneys for Defendants LYON COUNTY
and CENTENNIAL LIVESTOCK

By: /s/ Stacey Simon
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CERTIFICATE OF INTERESTED PARTIES

Pursuant to LR 7.1-1, I hereby certify that there are no known interested parties other than those participating in the case.

Dated: August 1, 2019

BEST BEST & KRIEGER LLP

By: /s/ Miles B. H. Krieger
MILES B. H. KRIEGER

Attorney for Defendants LYON COUNTY and
CENTENNIAL LIVESTOCK

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2019, I electronically filed the foregoing with the U.S. District Court for the District of Nevada via the CM/ECF system, which will send notifications of such filing via email to the parties of record. This filing raises significant issues of law or fact, and therefore is subject to postcard notice as provided for in Paragraph 17.c of the Court’s Order continuing service by postcard notice (ECF No. 2495). Accordingly, Unrepresented Parties who have opted for postcard notice (ECF No. 2483) have been served via U.S. Mail with written notice containing the requisite information set forth in Paragraph 18 of the Court’s Order continuing service by postcard notice.

Dated: August 1, 2019

BEST BEST & KRIEGER LLP

By: /s/ Miles B. H. Krieger
MILES B. H. KRIEGER

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