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 8 and Clarence J. Moreda Family Trust

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

11
 12 UNITED STATES OF AMERICA,) 3:73-cv-00127-MMD-WGC
)
 13 Plaintiff,)
)
 14 WALKER RIVER PAIUTE TRIBE,) **MOREDA DAIRY AND**
) **CLARENCE J. MOREDA FAMILY**
 15 Plaintiff-Intervenor,) **TRUST’S ANSWER TO AMENDED**
) **COUNTERCLAIM OF THE**
 16) **UNITED STATES OF AMERICA**
 v.) **FOR WATER RIGHTS ASSERTED**
 17) **ON BEHALF OF THE WALKER**
 WALKER RIVER IRRIGATION DISTRICT,) **RIVER PAIUTE INDIAN TRIBE**
 18 a corporation, et al.,)
)
 19 Defendants.)
 20)

21 Counterdefendants, Moreda Dairy and Clarence J. Moreda Family Trust (“Moreda”),
 22 hereby answers the Amended Counterclaim of the United States of America for Water Rights
 23 Asserted on Behalf of the Walker River Paiute Indian Tribe filed herein on May 3, 2019 (the
 24 “Second Amended Counterclaim”) as follows:

25 **INTRODUCTION**

26
 27 1. This Answer is made subject to the provisions of the Stipulated Scheduling
 28 Order and Discovery Plan dated March 7, 2019 (ECF No. 2437) which provides that only

1 answers and affirmative defenses are allowed, and which also provides that no counterclaims
2 are required or permitted. In addition, no party is to respond to any allegation contained in the
3 United States' First Amended Counterclaim (ECF No. 59) at pages 13 – 31, paragraphs 20 - 73.
4 The allegations contained in paragraph 1 of the Second Amended Counterclaim consist of legal
5 conclusions that do not require a response. To the extent that a response is required, Moreda
6 denies them.
7

8 **JURISDICTION**

9 2. The allegations contained in paragraph 2 of the Second Amended Counterclaim
10 consist of legal conclusions that do not require a response. To the extent that a response is
11 required, Moreda denies them.
12

13 **PARTIES**

14 3. On information and belief, Moreda admits the allegations contained in
15 paragraph 3.
16

17 4. Moreda admits that it is a claimant to the water of the Walker River and its
18 tributaries and also to groundwater. Moreda is without sufficient information to admit or deny
19 the remaining allegations of paragraph 4, and on that basis, denies them.
20

21 **GENERAL ALLEGATIONS**

22 5. Moreda admits that the final judgment entered in *United States of America v.*
23 *Walker River Irrigation District, et al.*, In Equity No. C-125 (D. Nev.) on April 14, 1936, as
24 amended on April 24, 1940 (the "Decree"), includes a right for the United States of America.
25 The Decree is the best evidence of its provisions, and speaks for itself. Moreda denies that the
26 allegations in paragraph 5 of the Second Amended Counterclaim correctly describe those
27 provisions, and on that basis, denies them.
28

1 6. The allegations contained in paragraph 6 of the Second Amended Counterclaim
2 consist of legal conclusions that do not require a response. To the extent a response is required,
3 Moreda denies them.

4 7. Moreda admits that the Decree was amended on April 24, 1940, and
5 affirmatively alleges the Decree as amended is the best evidence of its provisions, and speaks
6 for itself. Moreda admits that paragraph XIV of the Decree includes provisions pursuant to
7 which the Court retained jurisdiction of the “cause.” The Decree as amended is the best
8 evidence of, and speaks for itself with respect to the content of its paragraph XIV.

9 8. Moreda admits that since April 14, 1936, persons and entities have appropriated
10 water from sources within the Walker River Basin pursuant to and consistent with the laws of
11 the State of Nevada and the State of California. The remaining allegations of paragraph 8
12 consist of legal conclusions, and do not require a response. To the extent a response is
13 required, Moreda denies them.
14
15

16 **FIRST CLAIM FOR RELIEF**

17 **Weber Reservoir**

18 9. Moreda realleges and reincorporates herein by reference each and every
19 response contained in paragraphs 1 through 8 of its Answer to the Second Amended
20 Counterclaim as if fully set forth herein.

21 10. Moreda lacks sufficient information to admit or deny the first three sentences of
22 paragraph 10 of the Second Amended Complaint, and on that basis denies them. The
23 remaining allegations of paragraph 10 consist of legal conclusions that do not require a
24 response. To the extent a response is required, Moreda denies them.

25 11. Moreda lacks sufficient information to admit or deny the factual allegations
26 contained in paragraph 11 of the Second Amended Counterclaim, and on that basis, denies
27 them.
28

1 19. Moreda lacks sufficient information to admit or deny the allegations set forth in
2 paragraph 19 of the Second Amended Counterclaim, and on that basis denies them.

3 20. The allegations contained in paragraph 20 of the Second Amended Counterclaim
4 consist of legal conclusions that do not require a response. To the extent a response is required,
5 Moreda denies them.

6
7 **AFFIRMATIVE DEFENSES**

8 **First Affirmative Defense**

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

11 **Second Affirmative Defense**

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

16 **Third Affirmative Defense**

17
18 “General Principles of finality and repose” that apply to water rights decrees, *Arizona*
19 *v. California*, 460 U.S. 605, 619 (1983), preclude Paragraph XIV of the Decree from being
20 construed as authorizing the modification of the Decree to recognize additional reserved water
21 rights for the Tribe that were not recognized and established in the Decree.

22 **Fourth Affirmative Defense**

23
24 The Second Amended Counterclaim and each and every claim for relief stated therein is
25 barred by the doctrine of laches.

26 **Fifth Affirmative Defense**

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

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Sixth Affirmative Defense

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

Seventh Affirmative Defense

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 United States has failed to allege or show that the water granted to the United States in the Walker River Decree is insufficient to meet the primary purposes for which the lands were added to the Walker River Indian Reservation, and that the additional water from any source is “necessary” to fulfill the primary purposes of such added lands. Thus, the United States does not have a reserved right to additional water for the lands that have been added to the reservation.

Eighth Affirmative Defense

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

Ninth Affirmative Defense

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

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Tenth Affirmative Defense

The implied reservation of water rights doctrine does not apply to conservation storage of water, including, but not limited to, storage for any purpose, including carryover and conservation.

Eleventh Affirmative Defense

The implied reservation of water rights doctrine does not apply to groundwater.

Twelfth Affirmative Defense

If the implied reservation of water rights doctrine applies to groundwater, it does so 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 Reservation by the Decree is sufficient to accomplish the purposes for which lands were added to the Reservation.

Thirteenth Affirmative Defense

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

Fourteenth Affirmative Defense

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

Fifteenth Affirmative Defense

To the extent that this Court determines that any addition of land to the Walker River Indian Reservation resulted in the reservation of water, the use of that water must be restricted to the use impliedly contemplated at the time the land was added to the Reservation, and any change to that use is subject to the provisions of Paragraph X of the Decree and to the

1 Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use
2 or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance
3 With California Fish and Game Code Section 5937 and Other Provisions of California Law as
4 approved by the Court on June 3, 1996.

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6 **Sixteenth Affirmative Defense**

7 Moreda reserves the right to amend this answer as additional affirmative defenses are
8 discovered.

9 WHEREFORE, Moreda prays for judgment against the United States as follows:

- 10 1. For the dismissal of the Second Amended Counterclaim;
11 2. For its costs of suit allowed by law; and
12 3. For such other and further relief as the Court deems just and proper.

13 Dated: August 1, 2019

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