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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF NEVADA

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

3:73-cv-00127-MMD-WGC

**THE SCHROEDER GROUP'S
ANSWER TO AMENDED
COUNTERCLAIM OF THE UNITED
STATES OF AMERICA FOR WATER
RIGHTS ASSERTED ON BEHALF OF
THE WALKER RIVER PAIUTE
INDIAN TRIBE**

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19 Defendants Fenili Family Trust c/o Peter Fenili and Veronica Fenili, Trustees; Six-N
20 Ranch, Inc. c/o Richard & Cynthia Nuti, Michael & Nancy Nuti, Ralph C. & Mary R. Nuti,
21 Ralph E. & Mary E. Nuti, and Lawrence M. & Leslie Nuti; John and Lura Weaver Family Trust
22 c/o Lura Weaver, Trustee; Smith Valley Garage, Inc. c/o Dan Smith and Shawna Smith; and
23 Donald Giorgi hereinafter referred to as the "Schroeder Group," hereby answer the Amended
24 Counterclaim of the United States of America for Water Rights Asserted on Behalf of the
25 Walker River Paiute Indian Tribe filed on May 3, 2019 (the "Second Amended Counterclaim")
26 as follows:



1 **INTRODUCTION**

2 This Answer is made subject to the provisions of the Stipulated Scheduling Order and
3 Discovery Plan filed March 7, 2019 (ECF No. 2437) that provides allowance for answers and
4 affirmative defenses specifically directing that no counterclaims be required or permitted. In
5 addition, no party is to respond to any allegation contained in the United States' First Amended
6 Counterclaim (ECF No. 59) at pages 13 - 31, paragraphs 20 - 73.

7 1. The allegations contained in paragraph 1 of the Second Amended Counterclaim
8 consist of legal conclusions that do not require a response. To the extent a response is required,
9 the Schroeder Group denies them.

10 **JURISDICTION**

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

14 **PARTIES**

15 3. On information and belief, the Schroeder Group admits the allegations contained
16 in paragraph 3.

17 4. The Schroeder Group admits it's members hold decreed and other water rights of
18 use to the water of the Walker River and its tributaries including groundwater. The Schroeder
19 Group is without sufficient information to admit or deny the remaining allegations of paragraph
20 4, and on that basis, denies them.

21 **GENERAL ALLEGATIONS**

22 5. The Schroeder Group admits that the final judgment entered in *United States of*
23 *America v. Walker River Irrigation District, et al.*, In Equity No. C-125 (D. Nev.) on April 14,
24 1936, as amended on April 24, 1940 (the "Decree"), includes water rights of use decreed to the
25 United States of America. The Decree is the best evidence of its provisions, and speaks for
26 itself. The Schroeder Group denies the allegations in paragraph 5 of the Second Amended



1 Counterclaim correctly describe those provisions of the final judgment, and on that basis, denies
2 them.

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

6 7. The Schroeder Group admits that the Decree was amended on April 24, 1940, and
7 affirmatively alleges the Decree as amended is the best evidence of its provisions, and speaks for
8 itself. The Schroeder Group admits that paragraph XIV of the Decree includes provisions
9 pursuant to which the Court retained jurisdiction of the “cause.” The Decree as amended is the
10 best evidence of, and speaks for itself with respect to the content of its paragraph XIV, and
11 denies the allegations of paragraph 7 to the extent it evidences otherwise.

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

17 **FIRST CLAIM FOR RELIEF**

18 **Weber Reservoir**

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

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

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1 18. The allegations in paragraph 18 of the Second Amended Counterclaim consist of
2 legal conclusions that do not require a response. To the extent a response is required, the
3 Schroeder Group denies them.

4 19. The Schroeder Group lacks sufficient information to admit or deny the allegations
5 set forth in paragraph 19 of the Second Amended Counterclaim, and on that basis denies them.

6 20. The allegations contained in paragraph 20 of the Second Amended Counterclaim
7 consist of legal conclusions that do not require a response. To the extent a response is required,
8 the Schroeder Group denies them.

9 **AFFIRMATIVE DEFENSES**

10 **First Affirmative Defense**

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

13 **Second Affirmative Defense**

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

18 **Third Affirmative Defense**

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

23 **Fourth Affirmative Defense**

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

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1 **Fifth Affirmative Defense**

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

4 **Sixth Affirmative Defense**

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

8 **Seventh Affirmative Defense**

9 A federal reserved water right exists only if “necessary” to fulfill the primary purposes –
10 as opposed to the secondary purposes – of the federal reserved lands, *United States v. New*
11 *Mexico*, 438 U.S. 696, 700-702 (1978), and only to the extent necessary to meet the “minimal
12 need” of the federal reservation, “no more.” *Cappaert v. United States*, 426 U.S. 128, 141
13 (1976). The United States has failed to allege or show that the water granted to the United States
14 in the Walker River Decree is insufficient to meet the primary purposes for which the lands were
15 added to the Walker River Indian Reservation, and that the additional water from any source is
16 “necessary” to fulfill the primary purposes of such added lands. Thus, the United States does not
17 have a reserved right to additional water for the lands that have been added to the reservation.

18 **Eighth Affirmative Defense**

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

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1 **Ninth Affirmative Defense**

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

5 **Tenth Affirmative Defense**

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

8 **Eleventh Affirmative Defense**

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

10 **Twelfth Affirmative Defense**

11 If the implied reservation of water rights doctrine applies to groundwater, it does so only
12 in circumstances where it is established that there is insufficient surface water to otherwise
13 satisfy the claimed reserved water right. The water right provided for the Walker River Indian
14 Reservation by the Decree is sufficient to accomplish the purposes for which lands were added to
15 the Reservation.

16 **Thirteenth Affirmative Defense**

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

19 **Fourteenth Affirmative Defense**

20 To the extent that this Court determines that any addition of land to the Walker River
21 Indian Reservation resulted in the reservation of water, the use of that water must be restricted to
22 the use impliedly contemplated at the time the land was added to the Reservation, and any
23 change to that use is subject to the provisions of Paragraph X of the Decree and to the
24 Administrative Rules and Regulations Regarding Change of Point of Diversion, Manner of Use
25 or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance
26



1 With California Fish and Game Code Section 5937 and Other Provisions of California Law as
2 approved by the Court on June 3, 1996.

3 **Fifteenth Affirmative Defense**

4 The Schroeder Group reserves the right to amend this answer as additional affirmative
5 defenses are discovered.

6 WHEREFORE, the Schroeder Group prays for judgment against the United States as
7 follows:

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

11
12 DATED this 1st day of August, 2019.

13 SCHROEDER LAW OFFICES, P.C.

14
15 /s/ Therese A. Ure
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25
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CERTIFICATE OF SERVICE

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2 I hereby certify that on August 1, 2019 I caused a copy of the foregoing ***THE***
3 ***SCHROEDER GROUP'S ANSWER TO AMENDED COUNTERCLAIM OF THE UNITED***
4 ***STATES OF AMERICA FOR WATER RIGHTS ASSERTED ON BEHALF OF THE***
5 ***WALKER RIVER PAIUTE INDIAN TRIBE*** to be served automatically on all Represented
6 Parties through the District Court of Nevada's CM/ECF system and automatically served by the
7 Court on all unrepresented parties who consent to receive service by email
8

9 Dated this 1st day of August, 2019.

10
11 /s/ Therese A. Ure
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