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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	3:73-cv-00127-MMD-WGC **ANSWER TO SECOND AMENDED COUNTERCLAIM OF WALKER RIVER PAIUTE TRIBE**

Pursuant to the *Stipulated Scheduling Order and Discovery Plan* dated March 7, 2019 [Doc. No. 2437], Defendants Desert Pearl Farms, LLC, Peri Family Ranch, LLC, Peri & Peri, LLC, and Frade Ranches, Inc. (collectively, "Peri") hereby answer Plaintiff-Intervenor Walker River Paiute Tribe's ("Plaintiff") *Second Amended Counterclaim of Walker River Paiute Tribe* (the "Counterclaim") [Doc. No. 2479] as follows:

INTRODUCTION

1. In response to paragraph 1 of the Counterclaim, Peri states that the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

2. In response to paragraph 2 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

3. In response to paragraph 3 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

JURISDICTION

4. In response to paragraph 4 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

PARTIES

5. In response to paragraph 5 of the Counterclaim, Peri admits the allegations therein.

6. In response to paragraph 6 of the Counterclaim, Peri admits that they are claimants to waters of the Walker River and its tributaries and also to groundwater in the Walker River Basin. Peri lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 6 and on that basis denies them.

GENERAL ALLEGATIONS

7. In response to paragraph 7 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

8. In response to paragraph 8 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

9. In response to paragraph 9 of the Counterclaim, Peri admits that in 1924 the United States commenced an action in this Court for purposes of determining and quantifying water rights for the Walker River Indian Reservation. The remaining allegations in paragraph 9 of the Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

10. In response to paragraph 10 of the Counterclaim, Peri admits that the final judgment was entered in *United States of America v. Walker River Irrigation District, et al.*, In Equity No. C-125 (D. Nev.) on April 14, 1936, and amended on April 24, 1940 (the "Decree") and refers to the Decree for its terms. Peri denies the remaining allegations in paragraph 10 of the Counterclaim.

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

12. In response to paragraph 12 of the Counterclaim, Peri lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in the first two sentences and on that basis denies them. The remaining allegations in paragraph 12 of the Counterclaim consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

13. In response to paragraph 13 of the Counterclaim, Peri lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations therein and on that basis denies them.

14. In response to paragraph 14 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

15. In response to paragraph 15 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

16. In response to paragraph 16 of the Counterclaim, Peri refers to the Decree for its terms.

FIRST CLAIM FOR RELIEF

17. In response to paragraph 17 of the Counterclaim, Peri repeats and realleges the responses to paragraphs 1 through 16 as though they are fully set forth herein.

18. In response to paragraph 18 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

19. In response to paragraph 19 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

SECOND CLAIM FOR RELIEF

20. In response to paragraph 20 of the Counterclaim, Peri repeats and realleges the responses to paragraphs 1 through 19 as though they are fully set forth herein.

21. In response to paragraph 21 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

22. In response to paragraph 22 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

23. In response to paragraph 23 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

THIRD CLAIM FOR RELIEF

24. In response to paragraph 24 of the Counterclaim, Peri repeats and realleges the responses to paragraphs 1 through 23 as though they are fully set forth herein.

25. In response to paragraph 25 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

26. In response to paragraph 26 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

27. In response to paragraph 27 of the Counterclaim, Peri states the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Counterclaim fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The Counterclaim is barred by the doctrines of claim preclusion, issue preclusion and/or other principles of finality and repose.

Third Affirmative Defense

The general principles of finality and repose that apply to decreed water rights preclude Paragraph XIV of the Decree from being construed as authorizing the modification of the Decree to recognize additional reserved water rights for the Tribe that were not recognized and established in the Decree.

Fourth Affirmative Defense

The Counterclaim is barred by the doctrine of laches.

Fifth Affirmative Defense

The Counterclaim is barred by the doctrine of estoppel.

Sixth Affirmative Defense

Through commencement and resolution of claims against the United States by the Walker River Paiute Tribe, the Counterclaim is barred by the doctrine of waiver.

Seventh Affirmative Defense

A federal reserved water right exists only if "necessary" to fulfill the *primary* purposes – as opposed to the *secondary* purposes – of federal reserved lands and then only to the extent necessary to meet the "minimal need" of the federal reservation. The Counterclaim fails to allege that the water granted to the Tribe 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, there is no 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

Counterclaim 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.

Tenth Affirmative Defense

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

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 such withdrawal should not affect existing legal rights, or valid rights, including, but not limited to, the right of the State of Nevada to control and regulate the use of waters within the State.

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.

Sixteenth Affirmative Defense

Peri reserves the right to amend this answer as additional affirmative defenses are discovered.

WHEREFORE, the Peri prays for judgment against the United States of America as follows:

1. For the dismissal of the Counterclaim with prejudice with the Walker River Paiute Tribe taking nothing thereby;

2. For their costs of suit allowed by law; and

3. For such other and further relief as the Court deems just and proper.

Dated this 1st day of August, 2019.

SIMONS HALL JOHNSTON PC

By: /s/ Brad M. Johnston

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CERTIFICATE OF SERVICE

I hereby certify 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/ Brad M. Johnston
Brad M. Johnston