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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, vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	IN EQUITY NO. C-125-B-ECR STATE OF NEVADA'S PRELIMINARY THRESHOLD MOTIONS RE DISMISSAL OF COUNTERCLAIMS, ADDITIONAL PARTIES AND SERVICE OF PROCESS
WALKER RIVER IRRIGATION DISTRICT, Petitioner, STATE OF NEVADA, Petitioner -Intervenor vs. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, W. DON MAUGHAN, EDWIN H. FINSTER, ELISEO M. SAMANIEGO, JOHN CAFFREY and DARLENE E. RUIZ, Members of the California State Water Resources Control Board, Respondents, CALIFORNIA TROUT, INC., Respondent-Intervenor.	

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The State of Nevada, by and through the undersigned counsel, moves this Court for an Order dismissing without prejudice the counterclaim of the Walker River Paiute Tribe ("Tribe") filed on March 17, 1992, and any counterclaim filed by the United States of America pursuant to its motion dated July 22, 1992.

Alternatively, the State of Nevada moves this Court for an Order, (1) requiring the joinder of additional parties in order to have before the Court all claimants to the waters of the Walker River or its tributaries and (2) providing for service of process on the joined parties in compliance with the provisions of Rule 4 of the Federal Rules of Civil Procedure.

The motion is made pursuant to Rules 13 and 15 of the Federal Rules of Civil Procedure and is based upon the Walker River Irrigation District's points and authorities supporting its motion to dismiss the counterclaims, adopted and incorporated by reference.

The alternative motion is made pursuant to Rules 19 and 4 of the Federal Rules of Civil Procedure and is based upon all the pleadings and papers previously filed in this matter, including those on file in Equity No. C-125 and subfiles C-125A and C-125B, and the following points and authorities.

POINTS AND AUTHORITIES

I. The Counterclaims Should Be Dismissed Without Prejudice.

On March 17, 1992, the Walker River Paiute Tribe ("Tribe") filed a pleading denoted as a counterclaim. This Court, in orders dated May 18, 1992, and June 17, 1992, gave the United States of America ("United States") until July 24, 1992, in which to file a position statement regarding the Tribe's counterclaim.

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The United States filed a Motion for Leave to File Counterclaim and its proposed Counterclaim on or about July 22, 1992. The proposed counterclaim is substantively the same as the Tribe's counterclaim. Collectively, the Tribe's counterclaim and the proposed counterclaim are referred to as "Counterclaims."

On August 3, 1992, the Walker River Irrigation District ("Irrigation District") filed a motion requesting that this Court dismiss the Counterclaims for two reasons. First, in the context of the Irrigation District's First Amended Petition, the Counterclaims are not against an opposing party. Secondly, the Counterclaims are actually amendments and/or supplements to the original complaint, dated July 3, 1924, which have been filed without court approval under Rule 15 of the Federal Rules of Civil Procedure.

The State of Nevada adopts and incorporates the arguments contained in the Irrigation District's points and authorities supporting its motion to dismiss. The State of Nevada maintains that either reason stated by the Irrigation District provides a basis for dismissing the Counterclaims without prejudice.

II. All Claimants To The Waters Of The Walker River Or Its Tributaries Must Be Joined As Additional Parties.

The Counterclaims seek recognition of two new water rights from the Walker River, one being the right to store water in Weber Reservoir for use on lands of the Walker River Reservation ("Reservation") and the other being a federal reserved water right to use water on lands allegedly restored to the Reservation on September 25, 1936. In the Counterclaims, the Tribe and the United States name as counterdefendants all water users on the

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Walker River and its tributaries as set forth in the Final Decree.

However, due to the time that has passed since the United States began the Walker River adjudication, many if not all of the named defendants in the Final Decree are dead and/or their decreed water rights have been transferred. As an example, the Nevada Department of Wildlife, although not named as a defendant in the Final Decree, holds decreed water rights. Accordingly, the successors in interest to the decreed water rights are not parties before the Court and, as will be discussed, must be joined under Rule 19 of the Federal Rules of Civil Procedure.

In addition, all other claimants to the waters of the Walker River or its tributaries, not included in the Final Decree but authorized by either the California State Water Resources Control Board or the Nevada State Engineer to appropriate such waters, should likewise be joined. One such entity is the Nevada Department of Wildlife which holds permitted water rights to the waters of the Walker River. As discussed below, Rule 19 requires the joinder of all claimants to the waters of the Walker River or its tributaries.

Rule 13(h) authorizes the joinder of parties to a counterclaim in accordance with the provisions of Rules 19. Three separate bases exist, pursuant to Rule 19, requiring that nonparty claimants to the waters of the Walker River be joined as counterdefendants in this case.

Rule 19(a)(1) provides that a person must be joined as a party to an action if "in the person's absence complete relief cannot be accorded among those already parties." Fed. R. Civ. P.

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19(a)(1). The first provision of Rule 19(a) requires that "all persons who have a substantial interest in the litigation must be made parties whenever necessary to assure that the relief which may be awarded will completely and effectively adjudicate the dispute." Trombino v. Transit Casualty Co., 110 F.R.D. 139, 143 (D.R.I. 1986).

In seeking the recognition of additional water rights from the Walker River in the Counterclaims, the Tribe and the United States attempt to amend or modify the Final Decree. Assuming arguendo that they are successful, such an amendment or modification will not completely and effectively adjudicate the dispute if claimants to these same waters are not joined in the action. Therefore, joinder of all claimants to the waters of the Walker River is required under Rule 19(a)(1).

Rule 19(a)(2) provides that a person should be joined as a party in an action if "the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest...." Fed. R. Civ. P. 19(a)(2)(i). Even if a nonparty is not bound by a judgment, the Court must consider the practical effect of the judgment on the absentee's interest. Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 110 (1968). Moreover, the Court need only find possible harm, not certain harm, to the absentee's interest. Aguilar v. Los Angeles County, 751 F.2d 1089, 1094 (9th Cir.) cert. denied, 471 U.S. 1125 (1985).

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In this case, nonparty claimants, as well as the Tribe and the United States, have a claim to the waters of the Walker River or its tributaries, the subject of the Counterclaims. Also, any modification of the Final Decree, reflecting the request for additional water rights in the Counterclaims, may affect the claims of other water users on the Walker River. Consequently, Rule 19(a)(2)(i) requires joinder of the claimants to the waters of the Walker River or its tributaries.

Rule 19(a)(2) provides that a person who claims an interest in the subject of the action should be joined if the person's absence may "leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest." Fed. R. Civ. P. 19(a)(2)(ii). This third provision of Rule 19(a) focusses on the prejudice to those already parties due to the absence of a person.

As previously stated, nonparty claimants to the waters of the Walker River will not be bound by the Court's judgment regarding the new water rights claims of the Tribe and the United States. The absence of the nonparty claimants places the State of Nevada at substantial risk that its decreed water rights and/or permitted water rights will be the subject of future litigation. Thus, Rule 19(a)(2)(ii) requires the joinder of the nonparty claimants.

III. Service Of Process On The Joined Parties Must Comply With The Requirements Of Rule 4.

Rule 4 of the Federal Rules of Civil Procedure provides the process and service requirements for original complaints,

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requiring that a summons and complaint be served upon all defendants in an original action. Rule 19(a) requires that the courts treat counterclaims against additional parties as original actions for the purposes of service. When parties are joined pursuant to Rule 19, the service of process on the joined parties must comply with the requirements of Rule 4. See Lamar v. American Basketball Ass'n, 468 F. Supp. 1198, 1200 (S.D.N.Y. 1979) (order permitting joinder of additional defendant under Rule 20 did not obviate compliance with requirements respecting service of process). Therefore, the Tribe must comply with Rule 4 in serving its counterclaim on the joined parties.

IV. Conclusion

The Counterclaims must be dismissed without prejudice. In the context of the Irrigation District's First Amended Petition, the Counterclaims are not against an opposing party. Also, the Counterclaims are actually amendments and/or supplements to the original complaint, dated July 3, 1924, which have been filed without court approval under Rule 15 of the Federal Rules of Civil Procedure.

Alternatively, all claimants to the waters of the Walker River or its tributaries must be joined as parties pursuant to

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Rule 19. Additionally, the joined parties must be served with process according to the requirements of Rule 4.

DATED this 3rd day of August, 1992.

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CERTIFICATE OF MAILING

Pursuant to FRCP 5(b), I certify that I am an employee of the Office of the State Engineer, Division of Water Resources, and that on this date I deposited for mailing at Carson City, Nevada, a true copy of the foregoing document addressed to:

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DATED this 3rd day of August, 1992.

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