

ENTERED & SERVED

OCT 30 1992

CLERK, U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
BY                      DEPUTY

Oct 27 1 03 PM '92  
CANDICE GREEN  
BY                       
DEPUTY

FILED

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA  
Plaintiff,

IN EQUITY NO. C-125  
SUBFILE NO. C-125-B

WALKER RIVER PAIUTE TRIBE,  
Plaintiff-Intervenor,

v.

ORDER

WALKER RIVER IRRIGATION DISTRICT,  
et al.,  
Defendants.

\_\_\_\_\_ /

WALKER RIVER PAIUTE TRIBE,  
Counterclaimant,

v.

WALKER RIVER IRRIGATION DISTRICT,  
Counterdefendants.

\_\_\_\_\_ /

This Subfile C-125-B is part of larger case concerning rights to the water in the Walker River. This Court entered a Final Decree establishing the rights to the river's water in 1936, and retaining jurisdiction to manage the Decree as necessary.

1           On January 9, 1991 the Walker River Irrigation District ("the  
2 District") filed a complaint against the California Water Control  
3 Board ("the Board") alleging that the Board lacked the authority to  
4 issue orders to the District which are in conflict with the Walker  
5 River Decree. The District filed a first amended complaint, making  
6 the same substantive allegations, on January 3, 1992.

7           In the original action, the United States was a Plaintiff, the  
8 District was a Defendant and on September 30, 1987 the Walker River  
9 Paiute Tribe ("the Tribe") intervened as a Plaintiff. In the  
10 current action, initiated by the District's first amended  
11 complaint, the parties have retained their labels of "plaintiff" or  
12 "defendant" from the original action even though the labels do not  
13 accurately describe their present positions.

14           The Tribe and the United States answered the District's  
15 complaint and filed cross-claims against the Board. The tribe  
16 filed a counterclaims against the District and the United States  
17 filed a motion (document #3) for leave to file a counterclaim which  
18 is substantively similar to the Tribe's counterclaim. One claim  
19 asserted in these cross-claims and counterclaims is that the Tribe  
20 is entitled to additional water rights in the Walker River. If the  
21 Tribe and the United States are successful in asserting their claim  
22 for new water rights for the Tribe, they claim the Walker River  
23 Decree must be amended to reflect these new rights.

24           In their cross-claims against the Board, the Tribe and the  
25 United States allege that the Board lacks the authority to  
26 interfere with the Tribe's water rights either as recognized under

1 the Decree or as asserted in their cross-claim. In their  
2 counterclaim against the District, the Tribe and the United States  
3 allege the District must recognize their new water rights.

4 The District has filed a series of preliminary threshold  
5 motions in this action. The District moves to dismiss the  
6 counterclaims brought against it (document #5). If the motion to  
7 dismiss is denied, the District moves to require the Tribe and the  
8 United States to join all claimants to the water of the Walker  
9 River as defendants in the action and to serve them in accordance  
10 with Fed.R.Civ.P. 4 (document #5). The State of Nevada filed  
11 motions very similar to the District's motions (document #16). The  
12 Tribe and the United States jointly responded (document #11) to  
13 these motions, and the District and the State of Nevada jointly  
14 replied (document #12).

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**MOTION TO DISMISS**

The District alleges that the counterclaims are inappropriate and should be dismissed according to Fed.R.Civ.P. 13 because the District and the Tribe or the United States are not opposing parties. A party may only file a counterclaim when there is a claim pending against them. If there is no claim against them brought by the proposed counterdefendant, then the two parties are not opposing parties and a counterclaim is not permitted. The District points out that it brought suit against the Board and has brought no claim against the Tribe or the United States.

1           The Tribe and United States claim they and the District are  
2 opposing parties in the larger context of the entire suit. They  
3 refer to the original caption in this case to support their  
4 position. They claim the District is relying on a mechanical  
5 interpretation of the rule and ignoring the larger context of the  
6 case which shows the historic conflict between the parties.

7           We believe there needs to be more than historic conflict to  
8 make parties in any one action opposing parties; however, we do not  
9 agree that the claims should be dismissed. The parties use of the  
10 labels used in the original action has caused confusion in the  
11 current action. In the current action, the Tribe and the United  
12 States are actually on the same side as the District. They too  
13 allege that the Board lacks the authority to interfere with the  
14 rights afforded under the Walker River Decree. This alignment of  
15 interests creates a co-plaintiff relationship between the District,  
16 the state of Nevada, the Tribe and the United States, and an  
17 opposing party relationship with the Tribe, the United States and  
18 the District on one side and the Board on the other.

19           In light of these positions the Tribe's and the United States'  
20 cross-claims against the Board should either have been filed as a  
21 complaint or as counterclaims. Their counterclaims against the  
22 District should have been filed as cross-claims.

23           According to Rule 13 of the Federal Rules of Civil Procedure  
24 a cross-claim against a co-party is appropriate whenever the claim  
25 arises out of the same transaction or occurrence relating to any  
26 property that it the subject of the original action. The Tribe's

1 and the United States's claim against the District arises out of  
2 the property rights established, and not established in the Walker  
3 River Decree. The District's claim against the Board also arises  
4 out of the property rights established in the Decree. Since both  
5 claims arise out of the same transaction or occurrence, The Tribe's  
6 and the United States' claim against the District is appropriately  
7 brought here. The Court will treat the claim as if it were brought  
8 as a cross-claim.

9  
10

**Joinder of Parties and Service of Process**

11 The District and the State of Nevada argue that if the Tribe  
12 and the United States are permitted to bring their claims, that  
13 they must join as parties and serve all existing claimants to water  
14 of the Walker River and its tributaries. We agree with this  
15 position.

16 Rule 19 of the Federal Rules of Civil Procedure says a person  
17 shall be joined if feasible if "the person claims an interest  
18 relating to the subject of the action and is so situated that the  
19 disposition of the action in the person's absence may as a  
20 practical matter impair or impede the person's ability to protect  
21 that interest." Fed.R.Civ.P. 19 (a)(2)(i).

22 In this case the Tribe and the United States want the Court to  
23 recognize additional water rights for the Tribe and integrate these  
24 rights into the Decree. Such a recognition might have the effect  
25 of reducing the water allocated to other federal rights holders or  
26 altering the priority which their allocation is given. Such a

1 recognition may also give the Tribe's newly recognized rights  
2 priority over claimants who acquired their rights through a state  
3 permit. Thus, the claimants to the water of the Walker River  
4 clearly have an interest in the action.

5 If these water claimants are not joined in this action, their  
6 ability to protect their interests in their water rights would be  
7 impaired. If they were not a party to the suit and the Tribe's new  
8 water rights were recognized, the claimants may have their water  
9 rights altered or suspended. They may be able to protect their  
10 interests after this suit is concluded through another lawsuit;  
11 however, during the pendency of a later action these claimants may  
12 suffer without their water rights. Thus unless they are parties to  
13 this action, the claimants' practical ability to protect their  
14 interests would be impaired. In accordance with Rule 19, all  
15 claimants to the water of Walker River and its tributaries must be  
16 joined as parties to the claim.

17 In order to be joined as a party, a person must be served in  
18 accordance with Rule 4 of the Federal Rules of Civil Procedure. In  
19 order to sufficiently join all appropriate parties, the Tribe and  
20 the United States must serve with process all claimants to the  
21 water of Walker River and its tributaries.

22 The Tribe and the United States argue that it is unfair to  
23 impose the burden of serving all claimants on them when the  
24 District was allowed to bring its claims without joining or serving  
25 any of these parties. This argument ignores difference in the  
26 nature of the two claims. The District's suit concerns the Board's

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

authority to order the District to act in contradiction to the Decree and perhaps concerns changing the point of diversion. None of these issues affects the appropriation of water by individual right holders, whereas the Tribe and the United States wish to alter the Decree to recognize more water rights for the Tribe. This claim could affect the rights and priority standing of other rights holders, and they must be joined and served in order for the action to proceed fairly.

IT IS, THEREFORE, HEREBY ORDERED that the United States motion (document #3) for leave to file a counterclaim is GRANTED. The signed copy of the counterclaim which was submitted by the United States will be detached by the clerk and filed.

IT IS, FURTHER, HEREBY ORDERED that the District's and the State of Nevada's motions (documents #11, #13 ) to dismiss are DENIED. The Tribe's and the United States' counterclaims will be treated as if they were filed as cross-claims.

IT IS, FURTHER, HEREBY ORDERED that the District's and the State of Nevada's motions (documents #11, #13) to require joinder of parties are GRANTED.

IT IS, FURTHER, HEREBY ORDERED that the District's and the State of Nevada's motions (documents #11, #13) to require service of process in accordance with rule 4 of the Federal Rules of Civil Procedure are GRANTED.

DATED: October 27<sup>th</sup>, 1992.

  
UNITED STATES DISTRICT JUDGE