ENTERED & SERVED

OCT 30 1992

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

FILED
OCT 27 1 03 PM '92
CLERK
BY _____ DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA
Plaintiff,

WALKER RIVER PAIUTE TRIBE,
Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,
et al.,
Defendants.

WALKER RIVER PAIUTE TRIBE,
Counterclaimant,

v.

WALKER RIVER IRRIGATION DISTRICT,
Counterdefendants.

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

ORDER

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.

AO 72
(Rev 8/82)

15

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

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

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

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

AO 72
(Rev 8/82)

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

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

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.

AO 72
(Rev 8/82)

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

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

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

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

AO 72
(Rev 8/82)

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

Joinder of Parties and Service of Process

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

Rule 19 of the Federal Rules of Civil Procedure says a person shall be joined if feasible 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 as a practical matter impair or impede the person's ability to protect that interest." Fed.R.Civ.P. 19 (a)(2)(i).

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

AO 72
(Rev 8/82)

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

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

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

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

AO 72
(Rev 8/82)

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 27th, 1992.

Edward C. Reed.
UNITED STATES DISTRICT JUDGE

AO 72
(Rev 8/82)