

ENTERED & SERVED

OCT 30 1992

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

Oct 27 1 03 PM '92
CANON CLERK
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.

O R D E R

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 **MOTION TO DISMISS**

17 The District alleges that the counterclaims are inappropriate
18 and should be dismissed according to Fed.R.Civ.P. 13 because the
19 District and the Tribe or the United States are not opposing
20 parties. A party may only file a counterclaim when there is a
21 claim pending against them. If there is no claim against them
22 brought by the proposed counterdefendant, then the two parties are
23 not opposing parties and a counterclaim is not permitted. The
24 District points out that it brought suit against the Board and has
25 brought no claim against the Tribe or the United States.
26

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

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

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

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

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

24 DATED: October 27th, 1992.

25 
26 UNITED STATES DISTRICT JUDGE