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DEC 15 2 33 PM '92
CAROL C. FITZGERALD
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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 C-125 Subfile C-125-B
WALKER RIVER IRRIGATION DISTRICT, Petitioner, STATE OF NEVADA, Petitioner-Intervenor, vs. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, W. DON MAUGHAN, ELISEO M. SAMANIEGO, JOHN CAFFREY, MARC DEL PIERO AND JAMES M. STUBCHAER, Members of the California State Water Resources Control Board, Respondents, CALIFORNIA TROUT, INC., Respondent-Intervenor.	COUNTERCLAIM OF THE UNITED STATES OF AMERICA

COUNTERCLAIM

COMES NOW the United States of America, by and through its undersigned attorneys, on its own behalf and for the benefit of the Walker River Paiute Tribe, (hereinafter "the Tribe"), and claims as follows:

INTRODUCTION

1. This counterclaim is made for the recognition of a right to store water in Weber Reservoir for use on the lands of the Walker River Indian Reservation, and for a federal reserved water right to use water on lands restored to the Reservation in 1936. Such rights are in addition to the right to divert the natural flow of the Walker River and its tributaries, awarded to the United States in United States v. Walker River Irrigation Dist., In Equity No. C-125.

JURISDICTION

2. Jurisdiction over this counterclaim is pursuant to the continuing jurisdiction of this Court over the waters of the Walker River and its tributaries in California and Nevada; and, 28 U.S.C. §§1345 and 1331, in that this action is brought by the United States of America, on its own behalf and for the benefit of the Tribe, and the matter in controversy arises under the Constitution, laws or treaties of the United States.

PARTIES

3. Plaintiff, the United States of America, appears in this case on its own behalf and for the benefit of the Tribe. The Walker River Indian Reservation was established in 1859 with

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a land base of approximately 320,000 acres. Lands originally a part of the Reservation were restored to the Reservation on September 25, 1936, pursuant to the Act of June 22, 1936, 49 Stat. 1806-07.

4. Counter defendants are all water users on the Walker River and its tributaries as set forth in the Final Decree.

GENERAL ALLEGATIONS

5. Counterclaimant, United States of America, hereinafter referred to as the United States, currently has the right to use the direct flow of the waters of the Walker River and its tributaries in the amount of 26.25 cubic feet per second with a priority date of November 29, 1859, to irrigate 2,100 acres of land on the Walker River Reservation. See Decree entered in 1936 in United States v. Walker River Irrigation Dist., C-125, as amended, pursuant to the writ of mandate of the Circuit Court of Appeals, Ninth Circuit, in 1940.

6. Weber Reservoir is a federally-constructed reservoir located on the Reservation with a storage capacity of approximately 13,000 acre feet. The reservoir was practically completed in 1935, although floodgates were added in 1937. The United States, for the benefit of the Tribe, is entitled to store water from the Walker River in Weber Reservoir for all purposes recognized under federal law including but not limited to irrigation, stock watering, fish and wildlife, and domestic uses.

7. By the use of Weber Reservoir to store water, the Tribe

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can irrigate more than the 2,100 acres which it is entitled to irrigate under the terms of the Final Decree.

8. The Act of June 22, 1936, 49 Stat. 1806-07, authorized the Secretary of the Interior to set aside certain lands as an addition to the Reservation. In accordance with the legislation, by Order dated September 25, 1936, the Secretary restored to the Walker River Indian Reservation approximately 167,460 acres.

9. The United States, for the benefit of the Tribe, is entitled to use water from the Walker River on the restored lands of the Reservation for all purposes recognized under federal law including but not limited to irrigation, stock watering, fish and wildlife, recreation and domestic uses.

10. Paragraph XIV of the Final Decree provides that this Court retain jurisdiction for modification of this decree.

FIRST CLAIM FOR RELIEF

11. Paragraphs 1-10 are incorporated herein as if fully set forth again in this paragraph 11.

12. The United States, for the benefit of the Tribe, is entitled to store water from the Walker River in Weber Reservoir for all purposes recognized under federal law. The right to store water in Weber Reservoir has a priority date of April 15, 1936.

SECOND CLAIM FOR RELIEF

13. Paragraphs 1-12 are incorporated herein as if fully set forth again in this paragraph 13.

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14. The United States, for the benefit of the Tribe, is entitled to use water from the Walker River on the restored lands of the Reservation for all purposes recognized under federal law. The restored lands of the Reservation are entitled to a federal reserved water right as of the date of restoration.

15. The United States, for the benefit of the Tribe, is entitled to water rights for the restored lands in addition to the rights now recognized for use on the lands of the Reservation under the Final Decree.

WHEREFORE, counterclaimant, on its own behalf and for the benefit of the Walker River Paiute Tribe, prays:

1. The Court, pursuant to its continuing jurisdiction under paragraph XIV of the Final Decree, reopen and modify the Final Decree to recognize the right of the United States, for the benefit of the Tribe, to store water in Weber Reservoir for use on the Reservation.

2. The Court, pursuant to its continuing jurisdiction under paragraph XIV of the Final Decree, reopen and modify the Final Decree to recognize the federal reserved right of the United States, for the benefit of the Tribe, to use water on the lands restored to the Reservation in 1936.

3. The Court grant such other and further relief as it

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deems proper.

DATED: July 22, 1992.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of July, 1992, served a true copy of the UNITED STATES OF AMERICA'S MOTION FOR LEAVE TO FILE COUNTERCLAIM and COUNTERCLAIM OF THE UNITED STATES OF AMERICA by placing same in the U. S. mails, postage prepaid, addressed as follows:

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