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7 MINERAL COUNTY

9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA, )

12 )  
13 Plaintiff, )

14 )  
15 WALKER RIVER PAIUTE )  
16 TRIBE, )

17 )  
18 Plaintiff-Intervenor, )

19 vs. )

20 )  
21 WALKER RIVER IRRIGATION )  
22 DISTRICT, a corporation, et al. )

23 )  
24 Defendants. )

25 )  
26 )  
27 )  
28 )

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IN EQUITY NO. C-125-C-ECR

AMENDED MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MINERAL  
COUNTY'S AMENDED  
COMPLAINT IN  
INTERVENTION

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I.

INTRODUCTION

1 Since the dawn of the ice age, Walker Lake, an arm of the Pleistocene Lake  
2  
3  
4 Lahontan, has graced the desert landscape of Mineral County. Throughout pre-  
5  
6 recorded human history and into the twentieth century, Walker Lake continued to  
7  
8 support the naturally occurring Cutthroat Trout, Lahontan suckers, and tui chub,  
9  
10 enough so that the Indian tribes living on the banks of this lake were actually named  
11  
12 for their consumption of the bounty of the Lake. Walker Lake is a terminal lake fed  
13  
14 by the waters of the Walker River. This river represents 84% of the lake's source of  
15  
16 recharge with the balance made up from rainwater and groundwater. (See,  
17  
18 Declaration of Kelvin J. Buchanan already filed 10/25/94, hereinafter referred to as,  
19  
20 "Buchanan Declaration".)

21 In 1989, there were a series of events beginning with the release of sediment-  
22  
23 laden irrigation water from Bridgeport Reservoir. This dewatering of the Reservoir  
24  
25 resulted in litigation by upstream interests, initiated by the State Water Resources  
26  
27 Control Board of California (SWRCB), which initiated the total loss of the fishery at  
28  
29 Walker Lake, quickly and certainly, without further consideration. By the actions  
30  
31 taken to retain minimum levels at Bridgeport Reservoir, a man-made trout fishery, the  
32  
33 SWRCB essentially decreed a death sentence to Walker Lake, a naturally created trout  
34  
35 fishery.

36 Simultaneously, in conjunction with this action by the SWRCB, the Walker  
37  
38 River Irrigation District (WRID), manager of storage and irrigation allocations along

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1 the River, has failed in its stewardship. WRID has failed to mitigate waste of water  
2 resources along the River, failed to monitor and require returns of irrigation water to  
3 the river channel, and failed to require that the diversions be technically efficient,  
4 thereby, preserving the river to the extent possible with twentieth century technology.  
5 This failure has reduced the available waters to flow through the Walker River to  
6 Walker Lake. (See, Buchanan Declaration.) WRID has also allocated more water for  
7 irrigation then contemplated at the time the decree in C-125 was adopted. (Headley,  
8 Economic Study of Walker River Irrigation District.)  
9

11 The State of Nevada has failed to enforce the water pollution laws and issued  
12 certificates for diversions that allowed allocations to greatly exceed the waters of the  
13 River actually available which deprives any natural or excess flows from reaching  
14 Walker Lake. WRID, the State of Nevada, and the Walker River Paiute Tribe (the  
15 "Tribe") have not contracted with the United States to install and maintain accurate  
16 measuring devices along the Walker River so that lawful and proper allocations of  
17 water will be made (see, Declaration of Buchanan). As a result, Walker Lake has  
18 been denied flows that might have survived the treacherous path along the River to its  
19 inlet.  
20  
21

23 Without sufficient flows through the Walker River arriving at Walker Lake, the  
24 Lake has dropped so precipitously that, some scientists predict, within two years the  
25 Lake will not be able to support its naturally occurring fish population (see,  
26 Declaration of Buchanan). Mineral County depends on this resource for recreation,  
27 wildlife habitat, and other economic and aesthetic reasons for both the citizens of  
28



1 Mineral County and the users of the Lake.

2 Mineral County requests intervention into this case in order to represent  
3 interests for the preservation of this irreplaceable natural resource, Walker Lake,  
4 which is nearly totally dependent on adequate flows from the Walker River.  
5

6  
7 II.

8 ARGUMENT

9  
10 A. MINERAL COUNTY MEETS THE REQUIREMENTS  
11 FOR INTERVENTION AS OF RIGHT UNDER RULE  
12 24(a)(2), F.R.C.P.

13 1. Mineral County Has Not Delayed in Moving  
14 to Intervene in the Pertinent Federal Case  
15 Affecting the Adjudication of the Waters of  
16 the Walker River, Case C-125.

17 Intervention as of right under Rule 24(a)(2) Federal Rules of Civil  
18 Procedure<sup>1</sup> requires that the applicant claim an interest, the protection of which may as  
19 a practical matter be impaired or impeded if the lawsuit proceeds without him. The  
20 Ninth Circuit has enunciated the test to be administered for applying these elements of  
21 Rule 24, F.R.C.P.:

22 We (the 9th Circuit Court of Appeals) apply a four-part test  
23 under this rule: (1) the motion must be timely; (2) the  
24 applicant must claim a "significant protectable" interest

25 <sup>1</sup>Rule 24 Federal Rules of Civil Procedure: (a) Intervention of Right. Upon timely  
26 application anyone shall be permitted to intervene in an action: (2) when the applicant  
27 claims an interest relating to the property or transaction which is the subject of the  
28 action and the applicant is so situated that the disposition of the action may as a  
practical matter impair or impede the applicant's ability to protect that interest, unless  
the applicant's interest is adequately represented by existing parties.

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relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action. Sierra Club v. U.S. E.P.A., 995 F.2d 1478 (9th Cir. 1993) at page 1481.

Moreover, Rule 24, F.R.C.P., is to be liberally applied:

The rule is construed "broadly in favor of the applicants for intervention." Sierra Club v. U.S. E.P.A., supra at page 1481.

Taking the elements of the Ninth Circuit's test, *seriatim*, and then tempering that by the liberal construction to be given Rule 24, F.R.C.P., it is evident that Mineral County satisfied the requirements of Rule 24, F.R.C.P., and should be allowed to intervene as of right in this case as developed, below.

A decision on the appropriation of the waters of the Walker River materially affects the preservation of Walker Lake. Mineral County cannot protect the interests of the Lake unless it can represent those interests in the present litigation.

The Court must, in its discretion, based upon the circumstances, determine if the motion to intervene is timely:

Timeliness of intervention is a matter for the sound discretion of the trial court, NAACP v. New York, 413 U.S. 345, 365-66, 93 S.Ct. 2591, 2602-03, 37 L.Ed.2d 648(1973), but a court should be more reluctant to refuse when intervention is sought of right, as here. United Sates v. American Telephone and Telegraph Co., 642 F.2d 1285, 1295 (D.C. Cir.1980). Williams and Humbert Limited v.

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W.&H. Trade Marks (Jersey) Ltd., 840 F.2d 72 (D.C. Cir. 1988) at pp. 74-75.

The Ninth Circuit has also set forth the standard for assessing the timeliness of a motion to intervene:

In determining whether a motion to intervene is timely, we evaluate three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay. County of Orange v. Air California, 799 F2d 535 (9th Cir. 1986), cert. denied, 480 U.S. 946, 107 S.Ct. 1605, 94 L.Ed2d 791 (1987) (citing United States v. Oregon, 745 F.2d 550 (9th Cir.1984).

Sierra Club v. U.S. E.P.A., *supra* at p. 1481.

Without a doubt, Mineral County's motion under Rule 24, F.R.C.P. is timely, first and foremost, because Mineral County began the process for intervention as soon as the Commissioners learned of the litigation. Mineral County had no knowledge of the litigation until September 1, 1994, and has never had written notice by any of the other parties of this litigation (see, Declaration of Herman F. Staat already filed 10/24/94). The County has clearly acted immediately upon the information, once supplied them. The County's immediate actions could not be construed as dilatory or less than vigilant in protecting their rights. Rule 24, F.R.C.P., demands no more of a potential intervenor in the timely pursuit of a claim.

Furthermore, Mineral County seeks to intervene in these proceedings at a time that notice is being given to other parties that may wish to intervene. By November 25, 1994, the Tribe, Plaintiff-Intervenor, will give notice to all surface water diversion license holders of the Walker River, pursuant to order of

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1 the Court (see, May 23, 1994, Stipulation and Order for Enlargement of Time). After  
2 this Notice any certified holder may wish to intervene to protect his interest or water  
3 diversion. Mineral County's intervention at this time will not be any different than  
4 the other potential interventions that may join after this Court ordered notice.  
5

6           Moreover, these proceedings have not progressed to an agreement  
7 on the merits or substance of the case. Neither actual diversions, the request by the  
8 Tribe for additional quantities, the unlawful conditions imposed upon the Walker  
9 River Irrigation District ("WRID") by the SWRCB, nor the change of diversion  
10 requested by WRID has been heard, nor has discovery been commenced by any of the  
11 parties. The preliminary stage in the proceedings also argues in favor of intervention.  
12 See, Mille Lacs Band of Indians v. State of Minn., 989 F.2d 994 (8th Cir. 1993).  
14

15           No prejudice to other parties could possibly arise because of the  
16 intervention of Mineral County. Its presence will not cause to unravel a complex  
17 settlement since none has been completed and entered into by the parties. The parties  
18 will remain essentially in the same position as if Mineral County had intervened  
19 earlier. See, U.S. ex rel. McGough v. Covington Technologies, 967 F.2d 1391 (9th  
20 Cir. 1992).  
21

22           Each element of the three-pronged timeliness test set forth in the  
23 Sierra Club case is manifestly satisfied, here. There is no plausible basis for denying  
24 the motion of Mineral County to intervene because it is delinquent. Having engaged  
25 counsel, approved its intervention and voted to go forward to protect the interests of  
26 Walker Lake within less than 60 days from the date Mineral County learned of this  
27  
28

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1 litigation, Mineral County has been diligent. For these reasons, the intervention of  
2 Mineral County is timely and should be allowed by this Court.  
3

4  
5 B. MINERAL COUNTY HAS A SIGNIFICANT  
6 PROTECTABLE INTEREST IN THE PRESERVATION  
7 OF WALKER LAKE

- 8 1. Mineral County Has Water Rights in the  
9 Surplus Flows of the Walker River That  
10 Directly Feed the Waters of Walker Lake and,  
11 Moreover, Mineral County Asserts the Right  
12 to Minimum Sustainable Levels in Walker  
13 Lake on Behalf of the Public.

14 Mineral County is the only party representing the preservation of  
15 Walker Lake. Nevada State Law recognizes that recreational purpose is a beneficial  
16 use, NRS 533.030(c). This recreational, beneficial use can be a right to flows in situ  
17 without the requirement of diversion from the source. A similar fact situation arose in  
18 Humbolt County, Nevada:

19 The Blue Lake application is for a water grant to waters of  
20 Blue Lake in situ, in place as a natural body of water. The  
21 BLM manages the land surrounding the lake and desires this  
22 water right to assure maintenance of Blue Lake for public  
23 recreation and fishery purposes.

24 State v. Morros, 766 P.2d 263, 265 (Nev. 1988).

25 The State of Nevada recognizes the recreational purpose and the  
26 in situ appropriation. Pursuant to this recognition, the State of Nevada issued a  
27 certificate for 795.2 Cfs to the Nevada Department of Fish and Game (now the  
28 Department of Wildlife) on December 28, 1983, for Walker Lake. The Department

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1 of Wildlife holds the certificate in trust for the benefit of Mineral County. (See,  
2 Exhibit "A" to Memorandum of Points and Authorities filed 10/24/94.) This trust  
3 relationship where a state agency holds rights for the benefit of the public has been  
4 recognized by other states. Permit No. 36-7200 In the Name of the Idaho Department  
5 of Parks & Recreation, 828 P.2d 848 (Id. 1992).

6  
7 The Court has precedent to determine such matters of a "water  
8 duty for public recreation."  
9

10 The court need not allow the issue to lie unresolved; if the  
11 United States (in the instant case, the State of Nevada) is  
12 unwilling to represent the public, anyone with standing who  
13 can adequately represent the public's interest may be  
14 allowed to do so. [Parenthetical added.] United States v.  
15 Alpine Land & Reservoir Co., 697 F.2d 851, 860 (9th Cir.  
16 1983).

17  
18  
19  
20 The State of Nevada has failed to come forward to enforce its  
21 public trust responsibilities to preserve minimum flows to the lake and failed to protect  
22 the water quality of Walker Lake. Mineral County will allege that it is the only party  
23 representing such responsibilities.  
24

25 Mineral County will also allege that the Court should review the  
26 allocation in the C-125 decree of 1936 to determine if the waters of the Walker River  
27 are being put to beneficial use.  
28

1                   The Court must determine beneficial use from the circumstances  
2 before it. United States v. Alpine Land and Reservoir Co., supra. Beneficial use is a  
3 dynamic concept and should not allow waste. Circumstances in 1994 are different  
4 than in 1936 when the Walker River Decree was last considered; different, in that  
5 society has determined that preservation of our natural waterways are critical to  
6 environmental balance and ecological survival. A summary of the conflict between in-  
7 stream flow preservation and appropriative rights is found in Johnson, "Reallocation"  
8 Volume 2, Chapter 16, Water and Water Rights.  
9

10                   A reallocation of the waters of Walker River is required to  
11 preserve the public's right to the natural body of water existing in Mineral County  
12 known as Walker Lake. The State holds land in its sovereign capacity in trust for the  
13 public purposes of navigation and fisheries. Any conveyance of trust property to a  
14 private individual, as in the case of a certificate of appropriation for waters, is subject  
15 to the public trust and the State remains trustee with the duty to supervise the trust.  
16  
17 See, National Audubon Society v. Superior Court, 33 Cal.3d 419, 189 Cal.Rptr. 346,  
18 658 P.2d 709 (Cal. 1983). Mineral County requests intervention to insure that the  
19 State of Nevada performs its duties and obligations as trustee of the waters of Walker  
20 Lake for the benefit of the public.  
21  
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2. Mineral County Has a Great Financial Stake in the Property Values of Mineral County's Taxable Private Property, Which Are Inexorably Attached to the Presence of Walker Lake and Would, Likewise, Be Devalued by Loss of the Lake.

Mineral County has the right to tax the property of the private owners situated in and around Walker Lake since it is totally located within the political and legal boundaries of the County. N.R.S., Section 244.150. Any devaluation of the property values in Mineral County because of loss of Walker Lake will substantially reduce the budget of Mineral County which is dependent upon property tax revenues (see, Declaration of Marlene Bunch, hereinafter referred to as "Declaration of Bunch," already filed 10/25/94). "These taxing and regulatory interests are inherently ripe for protection by intervention as a practical means for a political subdivision to protect its financial and administrative affairs. Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. U.S., 921 F.2d 924, 928 (9th Cir.1990). Mineral County will allege the substantial loss of value of property within its borders if Walker Lake ceases to be a viable fishery.

3. Mineral County Has a Significant Protectable Interest in the Recreation, Wildlife Habitat, Aesthetic and Other Economic Concerns That Support Mineral County Because of the Presence of Walker Lake.

Mineral County has participated in many federal and state actions to preserve and enhance the Lake. (See, Exhibit "B" to Memorandum of Points and



1 Authorities filed 10/25/94.) Mineral County has always been very interested and  
2 active in Lake matters (see, Declaration of Buchanan). Likewise, the federal courts  
3 have recognized these are significant protectable interests justifying the right to  
4 intervene by other public agencies that have actively participated in the issue that will  
5 be affected by the litigation. See, Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525  
6 (9th Cir. 1983).  
7

8  
9 Mineral County has a more critical concern than a public  
10 advocacy group as was the intervenor in Sagebrush Rebellion in protecting the  
11 interests of its citizens and the users of Walker Lake. A substantial percentage of  
12 Mineral County's businesses is related to Walker Lake and its available recreation  
13 (see, Declaration of Louis Thompson (hereinafter referred to as "Declaration of  
14 Thompson") already filed 10/25/94). Significant decreases in the revenues to these  
15 businesses have been realized already because of the damage to the Lake by the loss  
16 of flows into the Lake from the Walker River. (See, Declarations of Bunch and  
17 Thompson.)  
18

19  
20 The loss of flows of the Walker River into Walker Lake has so  
21 degraded the quality of the water of the Lake that fish no longer flourish and other  
22 wildlife have disdained to make Walker Lake their home or transient stop in migratory  
23 journeys. Besides the inability for the businesses to survive because of the loss of  
24 fishing in the Lake, other tourists are lost because the pathetic condition of reduced  
25 Lake levels does not entice those who came before to witness the pristine beauty of  
26 the Lake and the abundance of waterfowl and other wildlife present. Tourists do not  
27  
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1 come to witness the death of a Lake.

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Only Mineral County is so affected by the loss of tourism and the presence of a naturally occurring desert lake with the exceptional beauty of the water itself and the incumbent wildlife populations. The loss of the familiar view of the Lake to a community that has little else in its vista cannot be measured in property terms alone, but must also be measured in aesthetic, environmental, and historical terms. Flows from Walker River are the only means by which Walker Lake can be rejuvenated and maintained. (See, Declaration of Buchanan.)

"[T]he determination of whether an interest is sufficient for Rule 24(a)(2) purposes is colored to some extent by the third factor-whether disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest." Conservation Law Foundation v. Mosbacher, 966 F.2d 39 (1st Cir. 1992).

The U.S. Supreme Court allowed the intervention (certain Indian tribes who had claims in the Corado R. adjudication) on similar grounds as Mineral County alleges herein. "Accordingly, the Indians' participation in litigation critical to their welfare should not be discouraged." Arizona v. California, 460 U.S. 605, 615, 103 S.Ct. 1382, 1389 (1983). Mineral County is not a party to the original decree nor had it suffered any injury at that point in history regarding degradation of the Lake. Mineral County will contend the original decree omitted reference to Walker Lake. Mineral County will ask this Court to interpret and modify the Decree, if necessary, in light of Mineral County's substantial injury. Mineral County does not

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1 believe that the original decree gave the upstream users the right to de-water Walker  
2 Lake. (See, Nebraska v. Wyoming, 113 S.Ct. 1689 (1993).  
3

4 One of the allegations of the Mineral County position is that the  
5 waters of Walker River are allocated beyond the capacity of the River, leaving no  
6 natural flows left to enter the Lake. The instant litigation is where the issues of  
7 allocation will be adjudicated. Mineral County must be allowed to intervene in order  
8 to preserve and protect Walker Lake in the forum where reallocations can and will be  
9 determined, the instant case.  
10

11  
12 C. MINERAL COUNTY IS NOT ADEQUATELY  
13 REPRESENTED BY ANY OF THE PRESENT PARTIES  
14 TO THE LITIGATION

15 Mineral County may very well have interests coincident with some of the  
16 parties to the present litigation to contest the right of the SWRCB to entrap flows to  
17 protect the man-made fishery of Bridgeport Reservoir at the cost of the natural fishery  
18 in Walker Lake. But no other party to this litigation has expressed even a casual  
19 reference to the protection of the levels of Walker Lake.  
20

21 Whether a party may intervene turns, in part, upon a  
22 comparison of the adequacy of representation primarily by  
23 comparing the interests of the proposed intervenor with the  
24 current parties to the action. Sierra Club v. Robertson, 960  
25 F.2d 83, 86 (8th Cir. 1992). To satisfy the adequacy of  
26 representation may be inadequate, not that it is inadequate.  
27 Conservation Law Foundation v. Mosbacher, 966 F.2d 39  
28 (1st Cir. 1992). (Emphasis added.)

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The State of Nevada is required by its very position to protect all of its citizens. The interests of its citizens are not necessarily identical and may become competing. Some residents may not favor the preservation of Walker Lake, if other, more immediate, pronounced, or self-serving interests are at stake. The burden of showing inadequate representation by a political sub-entity of a State when that State is a party also, may be more than minimal; however, Mineral County can more than show why its interests differ from all of the interests that the State of Nevada must represent upstream. See, Environmental Defense Fund v. Higginson, 631 F.2d 738 (D.C. Cir. 1979). The State must protect its own decisions regarding the appropriation of the waters of the Walker River which may in large part have deprived Walker Lake of its critical recharge. Further the State of Nevada only listed its concern for protection of the Mason Valley Wildlife Preserve as any specific reason for its intervention. (See, State of Nevada Motion for Intervention, Page 3, Lines 12-15.) Walker Lake, indeed, has no protector but Mineral County.

D. MINERAL COUNTY HAS NO OTHER MEANS TO PROTECT ITS INTEREST IN WALKER LAKE THAN TO ENTER THIS PROCEEDING AND PRAY THAT THIS COURT REALLOCATE THE WATERS OF THE WALKER RIVER

The Walker River is a stream the headwaters of which rise on the eastern slopes of the Sierra Nevada mountains in California. United States v. Walker River Irr. Dist., 104 F.2d 334 (9th Cir. 1939). The River flows through lands that are arid, mostly rough or mountainous into the Walker River Paiute Reservation for a distance

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1 of approximately thirty miles where the stream empties into Walker Lake. See,  
2 United States v. Walker River Irr. Dist., supra at p. 335. The River has been the  
3 subject of litigation culminating in the Decree of C-125 entered on April 14, 1936,  
4 which is the basis for the continuing jurisdiction of this Court and the instant  
5 litigation. In order for Mineral County to claim minimum flows and in situ rights for  
6 the Lake, Mineral County must be a party to this action. An adjudication is a quiet  
7 title action in equity for the purpose of settling all claims to the waters of the  
8 watercourse that is the subject of the adjudication. (United States v. Truckee-Carson  
9 Irrigation District, 649 F.2d 1286, 1308 (9th Cir. 1981), United States v. Alpine Land  
10 and Reservoirs Co., supra. When the matters brought before this Court are  
11 determined and the waters of the Walker River reallocated accordingly, the fate of  
12 Walker Lake will be in the balance.  
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18 E. IN THE EVENT THAT THIS COURT DOES NOT  
19 ALLOW MINERAL COUNTY INTERVENTION AS OF  
20 RIGHT, IN THE ALTERNATIVE MINERAL COUNTY  
21 ASKS FOR PERMISSIVE INTERVENTION PURSUANT  
22 TO F.R.C.P. 24(b)(2)

- 23 1. Mineral County Meets Each and Every  
24 Element of Permissive Intervention Pursuant  
25 to F.R.C.P. 24(b)(2).<sup>2</sup>

26 Permissive intervention is allowed a party that has a claim that  
27 involves a question of law or fact that is common to the main action. In both the

28 <sup>2</sup>Rule 24. Intervention (b) Permissive Intervention. Upon timely application anyone  
may be permitted to intervene in an action: . . .(2) when an applicant's claim or  
defense and the main action have a question of law or fact in common. )

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1 claims presently filed, Mineral County's request for flows to Walker Lake will impact  
2 the outcome and the considerations. Because Walker Lake is located in Mineral  
3 County and comprises such an integral part of the economy and well-being of  
4 Mineral County, the County Commission considered it part of their public duty to  
5 protect and preserve the Lake as a healthy, viable recreational asset and fishery.  
6

7 It is a living tenet of our society and not mere rhetoric that  
8 a public office is a public trust. While a public official may  
9 not intrude in a purely private controversy, permissive  
10 intervention is available when sought because an aspect of  
11 the public interest with which he is officially concerned is  
12 involved in the litigation. Nuesse v. Camp, 385 F.2d 694,  
13 702 (D.C. Dist. 1967).

14 2. The Intervention of Mineral County at this  
15 Stage of These Proceedings Will Not Unduly  
16 Delay the Litigation And, Moreover, Will  
17 Significantly Contribute to the Underlying  
18 Factual and Legal Issues.

19 No party to this litigation presently can offer the intimate  
20 knowledge of the Lake that Mineral County can. Mineral County has accumulated as  
21 much information as it can find regarding the scientific studies involving the biology,  
22 geology, hydrology and history of Walker Lake. Starting when the Bureau of Land  
23 Management indicated an interest in funding the recreational aspects of the Lake, and  
24 particularly through the last years when the loss of the Lake has been imminent,  
25 Mineral County has requested assistance in analysis from United States Senator Harry  
26 Reid, the Office of Technology Assistance, the University of Nevada at Reno, the  
27 State of Nevada Division of Wildlife, the Bureau of Land Management, the United  
28

1 States Geologic Survey and other engineers and other governmental and non-profit  
2 agencies. See, Natural Resources Defense Council v. Tennessee Valley Authority,  
3 340 F.Supp. 400 (S.D.N.Y.1971); and Levin v. Ruby Trading Corporation, 333 F.2d  
4 592 (2d Cir. 1964). In those cases the Court gave weight to the knowledge and  
5 expertise of those seeking intervention in its granting of their motion to intervene.  
6

7 Other factors to be considered in connection with permissive  
8 intervention are: the nature and extent of the intervenor's  
9 interest, whether the intervention will unduly delay or  
10 prejudice the adjudication of the rights of the original  
11 parties, whether the applicant will benefit by the  
12 intervention, whether the intervenor's interests are  
13 adequately represented by the other parties, and whether the  
14 intervenors will significantly contribute to the full  
15 development of the underlying factual issues in the suit and  
16 to the just and equitable adjudication of the legal questions  
17 presented. State of Utah v. Kennecott Corp., 801 F.Supp.  
18 553, 572 (D.Utah 1992).

19 As discussed heretofore, granting intervention to Mineral County  
20 will in no way delay these proceedings. Granting intervention to Mineral County will  
21 add an aspect to the adjudication of the waters of Walker River that has been  
22 neglected to this point in history and is a very necessary consideration to save Walker  
23 Lake.

24 III.

25 CONCLUSION

26 As stated hereinabove, Mineral County seeks intervention as of right or, in the  
27 alternative, as permissive intervention pursuant to Rule 24, F.R.C.P. For the  
28

1 foregoing reasons, Mineral County respectfully requests that the Court grant its  
2 motion for intervention.  
3  
4

5 DATED this 10th day of March, 1995.

6 LAW OFFICES OF  
7 ZEH, SPOO & HEARNE

8  
9 By 

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14 Attorney for Plaintiff  
15 MINERAL COUNTY  
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**CERTIFICATE OF MAILING**

Pursuant to FRCP 5(b), I certify that I am an employee of the Law Office of ZEH, SPOO & HEARNE, and that on this date I caused to be mailed a copy of the attached **AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MINERAL COUNTY'S AMENDED COMPLAINT IN INTERVENTION**, with postage fully prepaid to:

See attached Service List

DATED this 10th day of March, 1995.

  
MARILYN MITCHELL

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| 7  | Chief Deputy Water Commissioner     | Greene, Meyer & McElroy          |
| 8  | U.S. Board of Water Commissioners   | 1007 Pearl Street                |
| 9  | Post Office Box 853                 | Boulder, CO 80302                |
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| 11 | James T. Markle                     | Matthew R. Campbell, Esq.        |
| 12 | State Water Resources Control Board | McCutche, Doyle, Brown & Enerson |
| 13 | Post Office Box 100                 | Three Embarcadero Center         |
| 14 | Sacramento, CA 95814                | San Francisco, CA 94111          |
| 15 | John Kramer                         | John P. Lange                    |
| 16 | Dept. of Water Resources            | Land & Natural Resources         |
| 17 | 1416 Ninth Street                   | Federal Building, Dr. 3607       |
| 18 | Sacramento, CA 95814                | 999 18th Street, Suite 945       |
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