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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	IN EQUITY NO. C-125-MMD
	)	Subproceeding: 3:73-CV-00128-MMD-WGC
WALKER RIVER PAIUTE TRIBE,	)	
	)	
Plaintiff-Intervenor,	)	
vs.	)	<b>SECOND AMENDED</b>
	)	<b>COMPLAINT IN INTERVENTION</b>
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.,	)	
	)	
Defendants.	)	
<hr/>		
MINERAL COUNTY,	)	
	)	
Plaintiff-Intervenor,	)	
vs.	)	
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.,	)	
	)	
Defendants.	)	
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COMES NOW, Plaintiff-Intervenor, MINERAL COUNTY, NEVADA, by and through its attorneys of record, Simeon Herskovits and Iris Thornton of Advocates for Community and Environment, and Sean Rowe, Mineral County District Attorney, on its own behalf and for the benefit of the citizens, residents, and users of Walker Lake (“the Lake”), and pursuant to the Court’s direction (Doc. No. 926) files this *Second Amended Complaint in Intervention*, which supplements Mineral County’s *Amended Complaint in Intervention* filed March 10, 1995.<sup>1</sup> See Doc. No. 20.

I.

INTRODUCTION

1. Mineral County’s *Second Amended Complaint in Intervention* seeks to enforce the State of Nevada’s and the Decree Court’s continuing public trust duty to maintain minimum average annual inflows from the Walker River system into Walker Lake, in sufficient quantity to replenish and maintain the Lake over the long term to sustain the Lake’s environmental, wildlife, recreational, aesthetic, and economic values for current and future generations of Nevadans and the general public. This public trust obligation encompasses the restoration and maintenance of the Walker Lake ecosystem to a condition which will sustain a healthy put-grow-and-take Lahontan cutthroat trout fishery in a manner which properly balances and protects agricultural, economic, environmental, recreational, aesthetic, and wildlife habitat values in the Walker River Basin, including Walker Lake.

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<sup>1</sup> On March 10, 1995, Mineral County also filed a *Motion for Preliminary Injunction* and supporting affidavits, which affidavits are equally applicable to this *Second Amended Complaint in Intervention*. See Doc. No. 22.

II.

PARTIES

2. Plaintiff-Intervenor, MINERAL COUNTY, NEVADA, appears in this case on its own behalf, for the benefit of the citizens and residents of Mineral County, and on behalf of the public. Mineral County is the political subdivision that completely contains Walker Lake, and the health of Walker Lake directly and dramatically affects the quality of life, general welfare, and the economic, aesthetic, and recreational wellbeing of the County itself and of its residents. Mineral County is duly established under the laws of the State of Nevada and retains all rights delegated pursuant to NRS 244.165 with the capacity to sue in its own name.

3. Respondents are all surface water users on the Walker River and its tributaries as set forth in the Final Walker River Decree, all surface water users on the Walker River and its tributaries who appropriated water subsequent to the entry of the Walker River Decree, owners of riparian water rights by virtue of riparian land ownership in the California portion of the Walker River Basin, and entities with statutory or regulatory authority over the allocation and protection of the waters of the Walker River and of Walker Lake. *See Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County* (Feb. 9, 1995) (Doc. No. 19); *Mineral County's Amended Complaint in Intervention* (Mar. 10, 1995) (Doc. No. 20); *Summary for the Status Conference Held November 4, 2013* (Nov. 20, 2013) (Doc. No. 733).

III.

JURISDICTION

4. This Court has jurisdiction over this *Second Amended Complaint in Intervention*, because: (i) as the Decree Court, the Court has continuing jurisdiction, by virtue of the Decree

entered herein, over the waters of the Walker River and its tributaries in California and Nevada to change the duty of water and for correcting or modifying the Decree, and also for regulatory purposes, including changing the place of use of any water user; (ii) 28 U.S.C. § 1367 vests the Court with supplemental jurisdiction; (iii) 28 U.S.C. § 1651 authorizes the Court to issue all writs necessary or appropriate in aid of its jurisdiction; and (iv) 28 U.S.C. § 1331 grants the Court jurisdiction by virtue of the fact that the matter in controversy arises under the Constitution, laws, or treaties of the United States.

#### IV.

##### GENERAL ALLEGATIONS

5. Walker Lake is a rare desert terminus lake located in Mineral County, Nevada, that is one of Nevada's most precious natural water resources.

6. Walker Lake's primary source of water is inflow from the Walker River, which is an interstate stream system. Dr. Saxon E. Sharpe, Dr. Mary E. Cablk, & Dr. James M. Thomas, Desert Research Institute, *The Walker Basin, Nevada and California: Physical Environment, Hydrology, and Biology*, Publication No. 41231, at 13-14 (May 2008), available at [http://water.nv.gov/hearings/past/National%20Fish%20and%20Wildlife%20Foundation/Exhibits/NFWF/NFWF\\_Exh%20089%20-%20080501%20DRI%20Walker%20Basin%20Pub%20No%2041231.pdf](http://water.nv.gov/hearings/past/National%20Fish%20and%20Wildlife%20Foundation/Exhibits/NFWF/NFWF_Exh%20089%20-%20080501%20DRI%20Walker%20Basin%20Pub%20No%2041231.pdf).

7. Historically, the Lake supported a balance of algae, zooplankton, small crustaceans, insects, and four native fish species: the tui chub, Lahontan cutthroat trout, speckled dace, and Tahoe sucker. Sharpe, et al., *supra*, at 36. The Lahontan cutthroat trout is listed as threatened under the federal Endangered Species Act. 40 Fed. Reg. 29,864 (1975). The tui chub is identified as a "subspecies of concern" by the American Fisheries Society.

8. Walker Lake also has provided important, scarce habitat for a variety of migratory birds, including American white pelicans, common loons, snowy plovers, longbilled curlews, double crested cormorants, gulls, herons, terns, grebes, avocets, and many others. *See* Sharpe, et al., *supra*, at 27, 32, & 39.

9. As upstream appropriations and consumptive uses of water from the Walker River and its tributaries increased over the 20th Century, the natural flow of water into Walker Lake was almost entirely cut off.

10. In 1882, the level of Walker Lake was 4,082 feet above sea level. *See* U.S. Geological Survey, Scientific Investigations Report No. 2007-5012 (“USGS SIR 2007-5012”) at 1, available at <https://pubs.usgs.gov/sir/2007/5012/pdf/sir20075012.pdf>.

11. As of June 29, 2021, the Lake’s elevation had receded to approximately 3,914.25 feet above sea level, a decline of 167.75 feet above mean sea level from levels observed prior to the initiation of upstream agricultural diversions.<sup>2</sup>

12. This drop in elevation resulted in a decrease in Lake volume from approximately 9.0 million acre feet in 1882 to 1.135 million acre feet in June of 2021.<sup>3</sup>

13. As water volume decreased, salinity and total dissolved solids in the Lake increased.

14. In 1882, the salinity of Walker Lake as measured by total dissolved solids (“TDS”) was 2,500 milligrams per liter (“mg/l”). USGS Scientific Investigations Report 2007-5012 at 1.

15. As of November 2020, the salinity had increased to roughly 22,000 mg/l TDS.<sup>4</sup>

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<sup>2</sup> Data available at USGS Station 10288500, Walker Lake near Hawthorne, NV, [http://waterdata.usgs.gov/nv/nwis/uv/?site\\_no=10288500&agency\\_cd=USGS&](http://waterdata.usgs.gov/nv/nwis/uv/?site_no=10288500&agency_cd=USGS&).

<sup>3</sup> *See id.*; *see also* USGS SIR 2007-5012, App. A.

<sup>4</sup> Data available at [https://nwis.waterdata.usgs.gov/usa/nwis/qwdata/?site\\_no=384200118431901](https://nwis.waterdata.usgs.gov/usa/nwis/qwdata/?site_no=384200118431901).

16. This impact to water quality has severely degraded the entire ecosystem of Walker Lake, resulting in a devastating loss of biodiversity. What had been a healthy Lahontan cutthroat trout fishery, that was maintained by stocking after dams on the Walker River prevented natural spawning, has been eliminated for the time being by the diminished inflows to Walker Lake and resulting degraded water quality in the Lake. The severity and continued worsening of the damage to Walker Lake due to the inadequacy of inflows from the Walker River system has caused the near total loss of the Lake's environmental, economic, recreational, and aesthetic values to the public at large, Nevadans in particular, and Mineral County and its residents most egregiously.

17. For generations, Walker Lake supported the economy of Mineral County as a fishery and recreation area. Restoration and maintenance of a healthy fishery and recreation area at Walker Lake is critical to Mineral County's tax base and economy.

18. Pursuant to funding and direction provided by the United States Congress, the Walker Basin Conservancy was established to oversee a program of water rights acquisitions and other measures to restore Walker Lake and address other issues in the Walker River Basin. That program, however, only has enough funding to provide for a partial restoration of the increased inflows needed from the Walker River system to restore Walker Lake's public trust values. There remains a need for other measures to provide additional flows of water from the Walker River system into Walker Lake to restore the Lake's fishery and its other public trust values.

V.

STATEMENT OF CLAIM

19. Paragraphs 1 through 18 are incorporated herein as if fully set forth in this paragraph 19.

20. The statutory and common law of Nevada, including the public trust doctrine, imposes an affirmative duty on both the State of Nevada and the Decree Court to exercise continuing regulatory and administrative power over the waters and water rights of the Walker River system to ensure that sufficient average annual inflows reach Walker Lake to restore and maintain Lake elevation and salinity levels sufficient to support the Lake's Lahontan cutthroat trout fishery, which also will restore the Lake's other public trust values, including environmental, wildlife, recreational, and aesthetic values, for current and future generations of Nevadans and the public.

21. By permitting excessive and unreasonable upstream consumptive uses to reduce average annual inflows to Walker Lake to the detriment of the Lake's public trust values, the Decree Court and State of Nevada have violated this continuing duty under the public trust doctrine to maintain Walker Lake in a reasonable state of environmental health.

22. This public trust obligation requires the restoration and maintenance of the Walker Lake ecosystem to a condition which will sustain a healthy put-grow-and-take Lahontan cutthroat trout fishery in a manner which will properly balance and protect the agricultural, economic, environmental, recreational, aesthetic, and wildlife habitat values of Walker Lake and the Walker River Basin.

23. Specifically, to support a reasonably healthy Lahontan cutthroat trout fishery, the public trust doctrine imposes a continuing duty on the part of both the State of Nevada and the Decree Court to manage or administer the waters and water rights of the Walker River system in a manner that ensures that Walker Lake is maintained at a minimum water level of approximately 3,965 feet above mean sea level, or a Lake salinity level of 10,000 mg/l TDS.

WHEREFORE, Plaintiff-Intervenor Mineral County, Nevada, prays that this Court exercise its continuing regulatory and administrative authority under the Walker River Decree

and Nevada water law, including the public trust doctrine, to enter judgment and decree, taking as many of the following actions as necessary to restore and maintain Walker Lake's public trust values:

1. Declaring that the State of Nevada and the Decree Court have a continuing affirmative duty, pursuant to the public trust doctrine, to manage the Walker River system so as to ensure that flows from the system into Walker Lake are increased so as to restore and maintain the Lake at a minimum water level of 3,965 feet above mean sea level, and to ensure that a total dissolved solids level of 10,000 mg/l is achieved and maintained at Walker Lake to support a healthy put-grow-and-take Lahontan cutthroat trout fishery;
2. Declaring that the State of Nevada and the Decree Court historically have failed to fulfill their continuing affirmative duty, pursuant to the public trust doctrine, to manage the Walker River system so as to ensure that the public trust values of Walker Lake are maintained;
3. Amending the 1953 Rules and Regulations for the Distribution of Water of the Walker River Stream System Under the Provisions of Paragraph 15 of Decree in Equity No. C-125 ("1953 Rules and Regulations"), to modify the formula used to establish the quantity of water available for diversion on an annual basis so as to provide for increased average annual inflows to Walker Lake to assist in achieving and maintaining the minimum Lake level and maximum total dissolved solids level referenced herein;
4. Regulating the use of water from the Walker River system consistent with the State of Nevada's and the Court's public trust duty with regard to Walker Lake, and mandating temporary restrictions in years of shortage;
5. Amending the 1953 Rules and Regulations to require that water in excess of that needed to satisfy all Decreed rights be delivered to the Lake in wet years instead of being delivered to Decreed rights holders on a pro-rata basis;



6. Amending the 1996 Administrative Rules and Regulations Regarding Changes in Point of Diversion, Manner of Use or Place of Use of Water of the Walker River and Its Tributaries and Regarding Compliance with California Fish and Game Code Section 5937 and Other Provisions of California Law (“1996 Rules and Regulations”) to require denial of change applications which would have a negative impact on flows to Walker Lake;
7. Declaring the Walker River system overappropriated, cancelling all unperfected permits for which the works necessary to place water to beneficial use have not yet been constructed and for which the deadline for filing proof of beneficial use has passed, and requiring denial of all pending applications for additional new appropriations or impoundments which could reduce average annual inflows to Walker Lake;
8. Cancelling water rights or portions of water rights for which the necessity of use does not exist or for which no beneficial use can be demonstrated and requiring that such water be permitted to flow to Walker Lake and considered unavailable for future appropriation;
9. Finding that Decreed water rights have been abandoned where water has not been put to beneficial use as required by Nevada law and requiring that such water be permitted to flow to Walker Lake and considered unavailable for future appropriation;
10. Modifying delivery schedules from and management of Topaz and Bridgeport Reservoirs to maximize water delivery to Walker Lake;
11. Amending Section 2.4 of the 1996 Rules and Regulations to require change applications within the boundaries of the Walker River Irrigation District to be subject to the same procedures required of all other change applications in the Walker River Basin;
12. Mandating efficiency improvements to on and off-farm irrigation water delivery systems and to the Walker River channel and tributaries, and mandating that the State of Nevada provide funding

to pay for such efficiency improvements and to purchase water saved thereby to change to instream use for the benefit of Walker Lake;

13. Directing the United States Board of Water Commissioners and the Water Master to monitor and prevent unreasonable use or waste of water in the Walker River Basin and imposing penalties for such use or waste;

14. Adopting rules for the enforcement of penalties for unauthorized diversions and water uses;

15. Mandating that the State of Nevada develop a plan for fulfilling its public trust duty to Walker Lake and provide the funding necessary to implement that plan;

16. Mandating that the surplus flows covered by the water right held by the Nevada Department of Wildlife (“NDOW”) under Certificate No. 10860 be automatically delivered to Walker Lake when conditions permit without NDOW having to call for such delivery;

17. Mandating that NDOW change the purpose and place of use of its water rights, or a portion thereof, presently used for the artificially created Mason Valley Wildlife Management Area to instream use for the benefit of Walker Lake in order to fulfill the State’s continuing public trust duty to maintain Walker Lake’s public trust values for future generations;

18. Mandating that the State of Nevada fund programs for temporary and permanent water delivery measures, including water leasing and purchase programs, to deliver additional water to Walker Lake sufficient to achieve and maintain the Lake and TDS levels referenced herein as necessary to support a healthy put-grow-and-take Lahontan cutthroat trout fishery;

19. Ordering that the Water Master facilitate delivery to Walker Lake of all water under water rights changed permanently or temporarily to instream use to benefit Walker Lake without any added delay or expense;

20. Amending the 1953 Rules and Regulations to add a seventh Division to the Walker River Basin management regime consisting of Walker Lake;

21. Modifying the 1953 Rules and Regulations to change the makeup of the Board of Water Commissioners so as to ensure that Mineral County, Walker Lake, and the public's interest in Walker Lake are adequately represented;
22. Mandating that management of the Walker River system under the Walker River Decree be conducted in a transparent fashion, including creation of a publicly accessible website where real-time water delivery and stream flow data will be posted;
23. Ordering that real-time gauging stations be installed at all significant points of diversion in the Walker River system, including ordering that a gauge station be installed at the mouth of Walker Lake, which will enable the Court, the State of Nevada, and all parties to accurately monitor diversions and inflows to the Lake; and
24. Granting such other and further relief as it deems just and proper.

Respectfully submitted this 30th day of June, 2021,

/s/ Simeon M. Herskovits

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of June, 2021, I electronically filed the foregoing **SECOND AMENDED COMPLAINT IN INTERVENTION** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to parties of record via their E-Mail addresses. I further certify that on this 30th day of June, 2021, I caused a copy of the forgoing to be served on the following non CM/ECF participants by U.S. Mail, postage prepaid:

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Rachel Tholke Trust  
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Twelves Family Trust  
c/o Roy Snyder, Trustee  
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Stanley and Janet Hunewill  
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/s/ Simeon Herskovits  
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