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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA, *et al.*

Plaintiffs,

vs.

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

WALKER RIVER IRRIGATION
DISTRICT, a Corporation, *et al.*,

Defendants.

MINERAL COUNTY,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION
DISTRICT, a corporation, *et al.*,

Defendants.

IN EQUITY NO. C-125-MMD

Subproceeding: 3:73-CV-00128-MMD-CSD

**NEVADA DEPARTMENT
OF WILDLIFE'S,
ANSWER TO MINERAL COUNTY'S
SECOND AMENDED COMPLAINT IN
INTERVENTION**

The Nevada Department of Wildlife ("NDOW"), by and through counsel, Attorney General for the State of Nevada AARON D. FORD, and Deputy Attorney General, ANTHONY J. WALSH, hereby answers the Second Amended Complaint in Intervention of Mineral County filed herein on June 30, 2021 (the "Second Amended Complaint") as follows:

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I. INTRODUCTION

1. The allegations contained in paragraph 1 of the Second Amended Complaint consist of legal conclusions that do not require a response. To the extent that a response is required, NDOW denies them.

II. PARTIES

2. The allegations contained in paragraph 2 of the Second Amended Complaint consist of legal conclusions that do not require a response. To the extent that a response is required, NDOW is without sufficient information to admit or deny the allegations of paragraph 2, and on that basis, denies them.

3. NDOW admits that it is a claimant to the surface water of the Walker River and its tributaries and also to groundwater for wildlife purposes. NDOW admits that it is the agency of the State of Nevada charged with administering the wildlife laws of the state. See NRS 501.331. However, NDOW denies that it has statutory or regulatory authority over the allocation and protection of the waters of the Walker River and of Walker Lake. NDOW is without sufficient information to admit or deny the remaining allegations of paragraph 3, and on that basis, denies them.

III. JURISDICTION

4. NDOW admits that this Court retains continuing jurisdiction of the Court over the waters of the Walker River and its tributaries in California and Nevada under the Final Decree entered in *United States of America v. Walker River Irrigation District, et al.*, In Equity No. C-125 (D. Nev.) on April 14, 1936, as amended on April 24, 1940 (the “Final Decree”). The provisions of the Final Decree and 28 U.S.C. §§ 1367, 1651, and 1331 are the best evidence of their provisions. The remaining allegations contained in paragraph 4 of the Second Amended Complaint consist of legal conclusions that do not require a response. To the extent that a response is required, NDOW denies them.

IV. GENERAL ALLEGATIONS

5. NDOW is without sufficient information to admit or deny the factual allegations of paragraph 5, and on that basis, denies them.

1 6. Based on information and belief, NDOW admits that Walker Lake is an
2 interstate stream system and that the Lake's primary source of water is inflow from the
3 Walker River.

4 7. Based on information and belief, NDOW admits that Walker Lake supported
5 algae, zooplankton, small crustaceans, insects, and four native fish species: the tui chub,
6 Lahontan cutthroat trout, speckled dace, and the Tahoe sucker. The remaining allegations
7 contained in paragraph 7 of the Second Amended Complaint consist of legal conclusions
8 that do not require a response. To the extent that a response is required, NDOW denies
9 them.

10 8. Based on information and belief, NDOW admits that Walker Lake provides
11 habitat for migratory birds.

12 9. Based on information and belief, NDOW admits the flows into Walker Lake
13 have been inadequate to maintain the water quality necessary to support the fishery.
14 NDOW is without sufficient information to admit or deny the remaining factual allegations
15 of paragraph 9, and on that basis, denies them.

16 10. The United States Geological Survey cited in paragraph 10 contains the best
17 evidence of its provisions. NDOW is without sufficient information to admit or deny the
18 remaining factual allegations of paragraph 10, and on that basis, denies them.

19 11. The United States Geological Survey data cited in paragraph 11 contains the
20 best evidence of its provisions. NDOW is without sufficient information to admit or deny
21 the remaining factual allegations of paragraph 11, and on that basis, denies them.

22 12. The United States Geological Survey Report cited in paragraph 12 contains
23 the best evidence of its provisions. NDOW is without sufficient information to admit or
24 deny the remaining factual allegations of paragraph 12, and on that basis, denies them.

25 13. Based on information and belief, NDOW admits the reduced flows into Walker
26 Lake have reduced the Lake's water quality.

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14. The United States Geological Survey Report cited in paragraph 14 contains the best evidence of its provisions. NDOW is without sufficient information to admit or deny the remaining factual allegations of paragraph 14, and on that basis, denies them.

15. The United States Geological Survey Report cited in paragraph 15 contains the best evidence of its provisions. NDOW is without sufficient information to admit or deny the remaining factual allegations of paragraph 15, and on that basis, denies them.

16. Based on information and belief, NDOW admits the flows into Walker Lake have been inadequate to maintain the water quality necessary to support the fishery. NDOW is without sufficient information to admit or deny the remaining factual allegations of paragraph 16, and on that basis, denies them.

17. NDOW is without sufficient information to admit or deny the factual allegations of paragraph 17, and on that basis, denies them.

18. NDOW lacks sufficient information to admit or deny the factual allegations within the first two sentences of paragraph 18 of the Second Amended Complaint, and on that basis denies them. The remaining allegations within paragraph 18 consist of legal conclusions that do not require a response. To the extent a response is required, NDOW denies them.

V. STATEMENT OF CLAIM

19. Paragraph 19 is an incorporation by reference and requires no response.

20. The allegations within paragraph 20 consist of legal conclusions that do not require a response. To the extent a response is required, NDOW denies them.

21. The allegations within paragraph 21 consist of legal conclusions that do not require a response. To the extent a response is required, NDOW denies them.

22. The allegations within paragraph 22 consist of legal conclusions that do not require a response. To the extent a response is required, NDOW denies them.

23. The allegations within paragraph 23 consist of legal conclusions that do not require a response. To the extent a response is required, NDOW denies them. NDOW

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further denies that Mineral County's legal conclusions support any of the demands set forth following paragraph 23, at actions 1 through 24.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Second Amended Complaint and each and every Claim for Relief stated therein fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The Second Amended Complaint and each and every claim for relief stated therein is, by reason of the Decree, barred by the doctrines of claim preclusion, issue preclusion and/or other principles of finality as set forth in *Nevada v. United States*, 463 U.S. 110 (1983) and in *Arizona v. California*, 460 U.S. 605 (1983). See also *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1052, 194 P.3d 709, 711 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015)

Third Affirmative Defense

Lack of jurisdiction due to "general Principles of finality and repose" that apply to water rights decrees, *Arizona v. California*, 460 U.S. 605, 619 (1983), preclude Paragraph XIV of the Decree from being construed as authorizing the modification of the Decree to recognize additional water rights that were not recognized and established in the Decree.

Fourth Affirmative Defense

The Failure to Join necessary and indispensable parties under F.R.C.P. Rule 19 due to the inability to provide relief against the existing parties and that the missing parties' interests will not be adequately protected or subject to a substantial risk of incurring obligations due to those interests. N 41.031(2) requires that any action against the State of Nevada must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis of the suit.

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Fifth Affirmative Defense

The Second Amended Complaint and each and every claim for relief stated therein is barred on the basis that it is nonjusticiable under the political question doctrine. *N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs*, 129 Nev. 682, 686–88, 310 P.3d 583, 586–87 (2013), citing *United States v. Munoz-Flores*, 495 U.S. 385, 389–90, 110 S.Ct. 1964, 109 L.Ed.2d 384 (1990) (quoting *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)) (The features that characterize a case as being nonjusticiable includes “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.”).

Sixth Affirmative Defense

The Second Amended Complaint and each and every claim for relief stated therein is barred by the Eleventh Amendment, which provides: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI. The Supreme Court has recognized that the significance of the Amendment “lies in its affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III” of the Constitution. . . . the Court long ago held that the Eleventh Amendment bars a citizen from bringing suit against the citizen's own State in federal court.” *Welch v. Texas Dept. of Highways & Pub. Transp.*, 107 S. Ct. 2941, 2945 (1987).

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Seventh Affirmative Defense

The Second Amended Complaint seeks to have the Decree Court sit in judgment of itself. The relief sought by Mineral County would require this Court to rule that the Decree court has also violated the public trust doctrine.

Eighth Affirmative Defense

The Second Amended Complaint and each and every claim for relief stated therein is barred by the doctrine of estoppel.

Ninth Affirmative Defense

NDOW reserves the right to amend this answer as additional affirmative defenses are discovered.

WHEREFORE, the Nevada Department of Wildlife prays for judgment against Mineral County as follows:

1. That the Second Amended Complaint be dismissed;
2. For its costs of suit allowed by law; and
3. For such other and further relief as the Court deems just and proper.

DATED this 18th day of August 2022.

AARON D. FORD
Attorney General

By: /s/ Anthony J. Walsh
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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 18th day of August 2022, I electronically filed the foregoing document, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record

/s/Aaron D. Van Sickle
Employee of the
State of Nevada
Office of the Attorney General