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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,

v.

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

Defendants.

MINERAL COUNTY,

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT, et al.,

Defendants.

IN EQUITY NO. C-125-MMD
Subproceeding: 3:73-cv-00128-MMD-WGC

**ANSWER OF DEFENDANTS LYON
COUNTY, NEVADA; MONO COUNTY,
CALIFORNIA; AND CENTENNIAL
LIVESTOCK TO MINERAL COUNTY'S
SECOND AMENDED COMPLAINT IN
INTERVENTION**

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This is the Answer of Defendants Lyon County, Nevada; Mono County, California; and Centennial Livestock, a California entity (collectively “Defendants”) to the Second Amended Complaint in Intervention (“Complaint”) of Plaintiff Mineral County. This Answer responds to each allegation in the Complaint according to its heading and paragraph number, as follows:

I. INTRODUCTION

1. Paragraph 1 sets forth the Plaintiff’s legal interpretation of the public trust doctrine as applied to the Walker River system, and an answer is not required. To the extent that an answer is required, Defendants deny said allegations.

II. PARTIES

2. Defendants admit the allegations in the first sentence in Paragraph 2. Defendants have no information or belief concerning the remaining allegations of Paragraph 2, and on that basis deny said allegations.

3. Defendants have no information or belief concerning the allegations of Paragraph 3, and on that basis deny said allegations.

III. JURISDICTION

4. Defendants deny the allegations in Paragraph 4.

IV. GENERAL ALLEGATIONS

5. Defendants admit the allegation in Paragraph 5 that Walker Lake is a desert terminus lake located in Mineral County. Defendants have no information or belief concerning the remaining allegations of Paragraph 5, and on that basis deny said allegations.

6. Defendants admit the allegations in Paragraph 6 that the Walker River is the primary source of water for Walker Lake, and that the Walker River is an interstate stream system. Defendants have no information or belief concerning the remaining allegations in Paragraph 6, and on that basis deny said allegations.

7. Defendants have no information or belief concerning the allegations in Paragraph 7, and on that basis deny said allegations.

8. Defendants have no information or belief concerning the allegations in Paragraph 8, and on that basis deny said allegations.

9. Defendants have no information or belief concerning the allegations in Paragraph 9, and on that basis deny said allegations.

10. Defendants have no information or belief concerning the allegations in Paragraph 10, and on that basis deny said allegations.

11. Defendants have no information or belief concerning the allegations in Paragraph 11, and on that basis deny said allegations.

12. Defendants have no information or belief concerning the allegations in Paragraph 12, and on that basis deny said allegations.

13. Defendants have no information or belief concerning the allegations in Paragraph 13, and on that basis deny said allegations.

14. Defendants have no information or belief concerning the allegations in Paragraph 14, and on that basis deny said allegations.

15. Defendants have no information or belief concerning the allegations in Paragraph 15, and on that basis deny said allegations.

16. Defendants have no information or belief concerning the allegations in Paragraph 16, and on that basis deny said allegations.

17. Defendants have no information or belief concerning the allegations in Paragraph 17, and on that basis deny said allegations.

18. Defendants admit that the United States Congress has funded a program for acquisition of water rights for the benefit of Walker Lake. Defendants have no information or belief concerning the remaining allegations in Paragraph 18, and on that basis deny said allegations.

V. STATEMENT OF CLAIM

19. Paragraph 19 incorporates the Plaintiff's allegations in Paragraphs 1-18 of the Complaint, and the Defendants hereby incorporate their responses to the allegations in Paragraphs 1-18.

20. Defendants deny the allegations in Paragraph 20.

21. Defendants deny the allegations in Paragraph 21.

22. Defendants deny the allegations in Paragraph 22.

23. Defendants deny the allegations in Paragraph 23.

PRAYER FOR RELIEF

24. Paragraphs 1-24 of the Prayer for Relief describe the relief that the Plaintiff seeks, and do not require an answer. To the extent an answer is required, Defendants deny that the Plaintiff is entitled to the relief it seeks in Paragraphs 1-24 of the Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim Upon Which Relief Can Be Granted)

The Plaintiff's Complaint alleges that the State of Nevada and the Decree Court are required under Nevada's public trust doctrine to provide inflows into Walker Lake to maintain minimum lake levels, and that they have violated their public trust duties by failing to provide the inflows. ECL 936 at 7 (Statement of Claim ¶¶ 20-23). The Prayer for Relief describes several actions that the State of Nevada and the Decree Court are allegedly required to take to fulfill their public trust duty to provide the inflows, *id.* at 8-9 (Prayer for Relief ¶¶ 1, 2, 4, 7), and describes other actions involving the Walker River that are also allegedly required under the public trust doctrine, *id.* at 8-11 (¶¶ 3, 5, 6, 8-23).

In *Mineral County v. Lyon County, et al.*, 473 P.3d 418 (Nev. 2020) ("*Mineral County*"), the Nevada Supreme Court held that Nevada's comprehensive statutory water rights laws "codif[y]," "incorporate[]" and are "consistent with" Nevada's public trust doctrine. 473 P.3d at 424 ("codified"), 431 ("incorporates"), 421, 426, 429 ("consistent with"), which was the basis for the Court's ruling that the public trust doctrine does not authorize reallocation of adjudicated water rights. Under *Mineral County*, Nevada's public trust doctrine does not establish separate duties from the statutory duties; instead, the statutes establish the public trust duties. Neither the State of Nevada nor the Decree Court has a *statutory duty* under the water rights laws to provide additional inflows into Walker Lake or to take other actions alleged in the Complaint, and therefore neither has a *public trust duty* to provide the inflows or take other such actions. Similarly, the statutory water rights laws do not mandate the other actions that the Complaint alleges must be taken under the public trust doctrine, and therefore, under

1 *Mineral County*, Nevada’s public trust doctrine does not mandate other such actions.

2 Accordingly, the Plaintiff’s Complaint is inconsistent with Nevada’s public trust doctrine as
3 interpreted by the Nevada Supreme Court in *Mineral County*, and should be dismissed for failure to state
4 a claim upon which relief can be granted under Rules 12(b)(6) and 12(c) of the Federal Rules of Civil
5 Procedure (FRCP).

6 **SECOND AFFIRMATIVE DEFENSE**

7 (Complaint Seeks Reallocation of Adjudicated Water Rights)

8 The Complaint’s Prayer for Relief seeks certain relief that would involve, either directly or
9 indirectly, reallocation of water rights adjudicated in the Walker River Decree. ECL 936 at 8-10 (Prayer
10 for Relief ¶¶ 1, 3-10, 19). In *Mineral County*, the Nevada Supreme Court held that Nevada’s public
11 trust doctrine does not authorize reallocation of water rights adjudicated in the Walker River Decree.
12 *Mineral County*, 473 P.3d at 429-430. The Ninth Circuit in its remand order held that the Plaintiff is not
13 entitled to relief that would involve reallocation of water rights adjudicated in the Walker River Decree.
14 *United States v. Walker River Irrig. Dist., et al.*, 986 F.3d 1197, 1206 (9th Cir. 2021). Therefore, the
15 Complaint seeks relief that is not permitted under the Nevada Supreme Court’s decision in *Mineral*
16 *County* and the Ninth Circuit’s remand order, and to that extent should be dismissed.

17 **THIRD AFFIRMATIVE DEFENSE**

18 (Political Question Doctrine)

19 The political question doctrine provides that certain matters are within the exclusive powers of
20 the legislative or executive branches and are non-justiciable and foreclosed from review by the judicial
21 branch. *Baker v. Carr*, 369 U.S. 186, 217 (1962); *I.N.S. v. Chadha*, 452 U.S. 919, 940-944 (1983);
22 *Japan Whaling Ass’n v. American Cetacean Soc’y*, 478 U.S. 221, 230 (1986); *United States v. Munoz-*
23 *Flores*, 495 U.S. 385, 389-390 (1990); *N. Lake Tahoe Fire v. Washoe Cnty. Comm’rs*, 129 Nev. 682,
24 686-688, 310 P.3d 583, 586-587 (Nev. 2013). Specifically, the doctrine precludes judicial review of
25 “policy choices and value determinations” that are constitutionally committed to the legislative or
26 executive branches. *Japan Whaling*, 478 U.S. at 230.

27 Under the political question doctrine, the Nevada Legislature is responsible for making policy
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choices and value determinations concerning the allocation and use of Walker River water, and for determining whether to provide additional flows of Walker River water into Walker Lake, and the judicial branch is precluded from making these policy choices and value determinations. Therefore, the political question doctrine bars the claims in the Plaintiff's Complaint, because the claims would require the State of Nevada and the Decree Court to take actions, such as by adopting principles, regulations, mandates or other requirements, to provide additional flows of Walker River water into Walker Lake, rather than allocating Walker River water for other purposes. Under the political question doctrine, the responsibility for making these policy choices and value determinations belongs to the legislative and executive branches and not the judicial branch.

Therefore, the Complaint is barred by the political question doctrine and should be dismissed under Rules 12(b)(1), 12(b)(6) and 12(c) of the FRCP.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Join State of Nevada as Necessary and Indispensable Party)

Under Rule 12(7) of the FRCP, a complaint must be dismissed if it fails to join a party under Rule 19. Under Rule 19, a necessary and indispensable party must be joined if feasible, and, if it is not feasible to join the party, the court must determine in "equity and good conscience" whether the complaint should be dismissed. *E.E.O.C. v. Peabody Western Coal Co.*, 400 F.3d 774, 778-780 (9th Cir. 2005). A necessary and indispensable party is one who "not only [has] an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." *Id.* at 780.

The State of Nevada is a necessary and indispensable party under Rule 19 regarding the claims and proposed remedies in the Complaint that would define the State of Nevada's alleged public trust duty, and would require the State of Nevada to take certain actions to fulfill its public trust duty, such as by providing inflows into Walker Lake. These claims and proposed remedies are set forth in the Complaint at ECL 936 at 7 (Statement of Claim ¶¶ 20-23) and 8-10 (Prayer for Relief ¶¶ 1, 2, 4, 12, 15, 18). The State of Nevada is, however, not a party in this action. Therefore, such claims and proposed

remedies should be dismissed under Rules 12(7) and 19 for failure to join the State of Nevada as a necessary and indispensable party.

FIFTH AFFIRMATIVE DEFENSE

(General Principles of Finality and Repose Applicable to Water Rights Decrees)

In *Arizona v. California*, 460 U.S. 605, 619 (1983), the U.S. Supreme Court held that “general principles of finality and repose” of water rights decrees preclude a reserved jurisdiction clause of a water rights decree from being construed as authorizing modification or restriction of water rights adjudicated in the decree, even though such modification or restriction is not barred by the doctrines of res judicata or collateral estoppel. Under the “general principles of finality and repose” described in *Arizona v. California*, Paragraph XIV of the Walker River Decree, which reserves jurisdiction for the Court to correct and modify the Decree, does not authorize the Court to modify or restrict the water rights adjudicated in the Walker River Decree, such as by recognizing rights under Nevada’s public trust doctrine that may have the effect of modifying or restricting the adjudicated rights.

WHEREFORE, Defendants Lyon County, Mono County and Centennial Livestock pray for judgment as follows:

- (1) For dismissal of the Second Amended Complaint in Intervention;
- (2) For Defendants’ costs of suit allowed by law; and
- (3) For such other and further relief as may be just and proper.

Dated: August 19, 2022

Respectfully submitted,

/s/ Roderick E. Walston
Roderick E. Walston
Miles B. H. Krieger
Jerry M. Snyder
Attorneys for Defendant Lyon County

Dated: August 19, 2022

/s/ Stacey Simon
Stacey Simon
Attorney for Defendant Mono County

Dated: August 19, 2022

/s/ Roderick E. Walston
Roderick E. Walston
Miles B. H. Krieger
Attorneys for Defendant Centennial Livestock

CERTIFICATE OF SERVICE

I, Irene Islas, declare:

I am a citizen of the United States and employed in Contra Costa County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2001 N. Main Street, Suite 390, Walnut Creek, California 94596.

On August 18, 2022, I electronically filed the attached document:

ANSWER OF DEFENDANTS LYON COUNTY, NEVADA;
MONO COUNTY, CALIFORNIA; AND CENTENNIAL
LIVESTOCK TO MINERAL COUNTY'S SECOND AMENDED
COMPLAINT IN INTERVENTION

with the Clerk of the court using the CM/ECF system which will then send a notification to all parties in this case.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 18, 2022, at Walnut Creek, California.

/s/ Irene Islas