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12

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF NEVADA**

15 UNITED STATES OF AMERICA,
16 Plaintiff,

17 WALKER RIVER PAIUTE TRIBE,
18 Plaintiff-Intervenor,

19 v.

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

23 MINERAL COUNTY,
24 Plaintiff-Intervenor,

25 v.

26 WALKER RIVER IRRIGATION DISTRICT, et al.,
27 Defendants.
28

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

5 **I. INTRODUCTION**

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

9 **II. PARTIES**

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

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

15 **III. JURISDICTION**

16 4. Defendants deny the allegations in Paragraph 4.

17 **IV. GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **V. STATEMENT OF CLAIM**

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

25 20. Defendants deny the allegations in Paragraph 20.

26 21. Defendants deny the allegations in Paragraph 21.

1 22. Defendants deny the allegations in Paragraph 22.

2 23. Defendants deny the allegations in Paragraph 23.

3 **PRAYER FOR RELIEF**

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

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

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

10 The Plaintiff's Complaint alleges that the State of Nevada and the Decree Court are required
11 under Nevada's public trust doctrine to provide inflows into Walker Lake to maintain minimum lake
12 levels, and that they have violated their public trust duties by failing to provide the inflows. ECL 936 at
13 7 (Statement of Claim ¶¶ 20-23). The Prayer for Relief describes several actions that the State of
14 Nevada and the Decree Court are allegedly required to take to fulfill their public trust duty to provide the
15 inflows, *id.* at 8-9 (Prayer for Relief ¶¶ 1, 2, 4, 7), and describes other actions involving the Walker
16 River that are also allegedly required under the public trust doctrine, *id.* at 8-11 (¶¶ 3, 5, 6, 8-23).

17 In *Mineral County v. Lyon County, et al.*, 473 P.3d 418 (Nev. 2020) ("*Mineral County*"), the
18 Nevada Supreme Court held that Nevada's comprehensive statutory water rights laws "codif[y],"
19 "incorporate[]" and are "consistent with" Nevada's public trust doctrine. 473 P.3d at 424 ("codified"),
20 431 ("incorporates"), 421, 426, 429 ("consistent with"), which was the basis for the Court's ruling that
21 the public trust doctrine does not authorize reallocation of adjudicated water rights. Under *Mineral*
22 *County*, Nevada's public trust doctrine does not establish separate duties from the statutory duties;
23 instead, the statutes establish the public trust duties. Neither the State of Nevada nor the Decree Court
24 has a *statutory duty* under the water rights laws to provide additional inflows into Walker Lake or to take
25 other actions alleged in the Complaint, and therefore neither has a *public trust duty* to provide the
26 inflows or take other such actions. Similarly, the statutory water rights laws do not mandate the other
27 actions that the Complaint alleges must be taken under the public trust doctrine, and therefore, under
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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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1 choices and value determinations concerning the allocation and use of Walker River water, and for
2 determining whether to provide additional flows of Walker River water into Walker Lake, and the
3 judicial branch is precluded from making these policy choices and value determinations. Therefore, the
4 political question doctrine bars the claims in the Plaintiff's Complaint, because the claims would require
5 the State of Nevada and the Decree Court to take actions, such as by adopting principles, regulations,
6 mandates or other requirements, to provide additional flows of Walker River water into Walker Lake,
7 rather than allocating Walker River water for other purposes. Under the political question doctrine, the
8 responsibility for making these policy choices and value determinations belongs to the legislative and
9 executive branches and not the judicial branch.

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

12 **FOURTH AFFIRMATIVE DEFENSE**

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

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

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

3 **FIFTH AFFIRMATIVE DEFENSE**

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

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

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

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

19 Dated: August 19, 2022

Respectfully submitted,

20 /s/ Roderick E. Walston
21 Roderick E. Walston
22 Miles B. H. Krieger
23 Jerry M. Snyder
24 Attorneys for Defendant Lyon County

23 Dated: August 19, 2022

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

25 Dated: August 19, 2022

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

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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

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