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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.

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

) **WALKER RIVER IRRIGATION
) DISTRICT’S ANSWER TO SECOND
) AMENDED COMPLAINT IN
) INTERVENTION OF MINERAL
) COUNTY, NEVADA**

MINERAL COUNTY,

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT, et
al.,

Defendants.

The Walker River Irrigation District (“District”) hereby answers the Second Amended Complaint in Intervention of Mineral County, filed herein on June 30, 2021 (“the Second Amended Complaint”) as follows:

1 **PREFACE**

2 Mineral County states that the Second Amended Complaint “supplements” its Amended
3 Complaint filed March 10, 1995, and further, that certain affidavits also filed March 10, 1995, are
4 applicable to the Second Amended Complaint. Mineral County’s Second Amended Complaint
5 supersedes its original Complaint and its original Amended Complaint. See *Hal Roach Studios Inc,*
6 *v. Richard Finer and Co.* 896 F. 2nd 1542 (9th Cir. 1990). In addition, the Court has not granted
7 Mineral County permission to file a “Supplemental” pleading pursuant to Fed. R. Civ. P. Rule
8 15(d). Supplemental pleading is allowed solely for purposes of setting out transactions,
9 occurrences, or events that happened after the date of the pleading to be supplemented. To the
10 extent that any response is required to note 1 of the Second Amended Complaint, the District
11 denies the allegations set forth in the March 10, 1995, Motion for Preliminary Injunction and in its
12 supporting affidavits.

13 **I.**

14 **INTRODUCTION**

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

18 **II.**

19 **PARTIES**

20 2. The District admits that Mineral County is a political subdivision of and duly
21 established under the laws of the State of Nevada and that Walker Lake is within Mineral County.
22 The District is without sufficient information to admit or deny the remaining allegations of
23 paragraph 2, and on that basis, denies them.

24 3. The District admits that many of the Defendants are claimants to the waters of the
25 Walker River and its tributaries by appropriation or, in California, also by virtue of riparian land
26 ownership. The District is without sufficient information to admit or deny the remaining
27 allegations of paragraph 3, and on that basis, denies them.

1 **III.**

2 **JURISDICTION**

3 4. The allegations contained in paragraph 4 of the Second Amended Complaint consist
4 of legal conclusions that do not require a response. To the extent that a response is required the
5 District denies them.

6 **IV.**

7 **GENERAL ALLEGATIONS**

8 5. The District admits that Walker Lake is a desert terminus lake located in Mineral
9 County, Nevada. The District denies the remaining allegations of paragraph 5.

10 6. The District admits that the Walker River is an interstate stream. The District is
11 without sufficient information to admit or deny the remaining allegations of paragraph 6, and on
12 that basis, denies them.

13 7. The District admits that the Lahontan cutthroat trout is listed as threatened under the
14 federal Endangered Species Act. The District is without sufficient information to admit or deny the
15 remaining allegations of paragraph 7, and on that basis, denies them.

16 8. The District is without sufficient information to admit or deny the allegations of
17 paragraph 8, and on that basis, denies them.

18 9. The District denies the allegations of paragraph 9.

19 10. The District is without sufficient information to admit or deny the allegations of
20 paragraph 10, and on that basis, denies them.

21 11. The District is without sufficient information to admit or deny the allegations of
22 paragraph 11, and on that basis, denies them.

23 12. The District is without sufficient information to admit or deny the allegations of
24 paragraph 12, and on that basis denies, them.

25 13. In response to paragraph 13, the District admits that as the volume of Walker Lake
26 decreased, its salinity and total dissolved solids increased.

27 14. The District is without sufficient information to admit or deny the allegations of
28 paragraph 14, and on that basis, denies them.

1 **First Affirmative Defense**

2 The Second Amended Complaint fails to state a claim upon which relief may be granted.

3 **Second Affirmative Defense**

4 The Court lacks jurisdiction over the Second Amended Complaint or to grant some of the
5 remedies Mineral County seeks.

6 **Third Affirmative Defense**

7 Mineral County has failed to join necessary and indispensable parties.

8 **Fourth Affirmative Defense**

9 The District alleges that the relief Mineral County seeks in Paragraphs 3, 4, 5 and 10 of its
10 prayer for relief involve a reallocation of water rights adjudicated under the Decree and settled
11 under the doctrine of prior appropriation and are therefore barred.

12 **Fifth Affirmative Defense**

13 The District alleges that the relief Mineral County seeks in Paragraphs 7, 8, 12, 14, 15, 16,
14 17 and 18 of its prayer for relief are beyond the power of the Court to provide and not within its
15 jurisdiction.

16 **Sixth Affirmative Defense**

17 Mineral County's Second Amended Complaint and the relief it seeks are barred by claim
18 preclusion and issue preclusion by reason of the decision of the Nevada Supreme Court in *Mineral*
19 *County v. Lyon County*, 473 P. 3d 418 (Nev. 2020).

20 **Seventh Affirmative Defense**

21 Mineral County's claim that the Decree Court has violated the public trust doctrine is
22 barred by claim and issue preclusion by reason of the decision of the Ninth Circuit in *United States*
23 *v. Walker River Irrigation District*, 986 F.3d 1197 (9th Cir. 2021).

24 **Eighth Affirmative Defense**

25 Mineral County's claim against and the relief is seeks from the State of Nevada is barred
26 by the Eleventh Amendment to the United States Constitution.

27 WHEREFORE, Walker Irrigation District prays for judgment against Mineral County as
28 follows:

1 For dismissal of the Second Amended Complaint in Intervention;
2 For its costs of suit allowed by law; and,
3 For such other and further relief, as the Court deems just and proper.

4 Dated: August 19, 2022

5 WOODBURN AND WEDGE
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7 Reno, Nevada 89511

8 By: /s/ Gordon H. DePaoli
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10 DALE E. FERGUSON, NSB #4986
11 Attorneys for the Walker River Irrigation District
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CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge and that on August 19, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/ s / Candace Kelley
An employee of Woodburn and Wedge

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