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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 WALKER RIVER PAIUTE TRIBE,

14 Plaintiff-Intervenor,

15 v.

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

18 Defendants.

19 MINERAL COUNTY,

20 Plaintiff-Intervenor,

21 v.

22 WALKER RIVER IRRIGATION DISTRICT, et
23 al.,

24 Defendants.
25
26

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

**SCHROEDER GROUP'S ANSWER TO
MINERAL COUNTY'S SECOND
AMENDED COMPLAINT IN
INTERVENTION**



1 COMES NOW, the **Fenili Family Trust** c/o Peter Fenili and Veronica Fenili, Trustees;
2 **Six-N Ranch, Inc.** c/o Richard & Cynthia Nuti, Michael & Nancy Nuti, Ralph E. & Mary E.
3 Nuti, Ralph C. and Mary R. Nuti, and Larry and Leslie Nuti; **John and Lura Weaver Family**
4 **Trust** c/o Lura Weaver, Trustee; **Smith Valley Garage, Inc.** c/o Dan Smith and Shawna Smith;
5 and **Donald Giorgi** (collectively referred to in this litigation as “the Schroeder Group”), by and
6 through counsel, Schroeder Law Offices, P.C. and its attorneys Laura A. Schroeder, Therese A.
7 Stix, and Caitlin R. Skulan and hereby answers Mineral County, Nevada’s Second Amended
8 Complaint in Intervention, filed June 30, 2021 (“Second Amended Complaint”) as follows:

9 **i.**

10 Mineral County’s introduction language identifies the Second Amended Complaint as a
11 supplement to Mineral County’s *Amended Complaint in Intervention*, filed March 10, 1995
12 (Doc. No. 20). *See* Second Amended Complaint, Doc. No. 936. Under federal law, Mineral
13 County’s Second Amended Complaint supersedes its original Complaint and its Amended
14 Complaint as the operative pleading in this proceeding and content raised in prior pleadings is
15 irrelevant. *See Hal Roach Studios Inc, v. Richard Finer and Co.*, 896 F. 2d 1542, 1546 (9th Cir.
16 1990) (Finding an amended pleading supersedes the original.); *see also Cort v. Ash*, 422 U.S. 66,
17 72, fn. 6 (1975) (Finding the party foreclosed himself from consideration of content not raised in
18 his operative pleading, an amended complaint.). Additionally, the Court has not granted Mineral
19 County leave to file a supplemental pleading per Federal Rule of Civil Procedure (“FRCP”)
20 15(d). As such, to the extent a response is required to Mineral County’s first unnumbered
21 paragraph and to footnote 1, the Schroeder Group denies all allegations set forth therein.

22 **I.**

23 **INTRODUCTION**

24 1. The allegations contained in paragraph one consists of legal conclusions, to which no
25 response is required. To the extent a response is required, the Schroeder Group denies any and
26 all allegations contained in paragraph 1.



1 **II.**

2 **PARTIES**

3 2. The Schroeder Group admits that Mineral County appears on its own behalf and is a
4 political subdivision of the State of Nevada. The Schroeder Group admits that Walker Lake is
5 within Mineral County. The Schroeder Groups lacks sufficient knowledge to admit or deny the
6 remaining allegations contained in paragraph 2 and therefore denies them.

7 3. The Schroeder Group admits that they are surface water uses on the Walker River and
8 its tributaries who appropriate water per the Walker River Decree. Upon information and belief,
9 the Schroeder Group admits that other respondents in this proceeding are surface water users on
10 the Walker River and its tributaries per the Walker River Decree or owners of riparian water
11 rights in the Walker River Basin pursuant to California law as a result of riparian land
12 ownership. The Schroeder Group lacks sufficient knowledge to admit or deny the remaining
13 allegations contained in paragraph 3 and therefore denies them.

14 **III.**

15 **JURISDICTION**

16 4. The allegations contained in paragraph 4 of the Second Amended Complaint consist
17 of legal conclusions for which no response is required. To the extent a response is required, the
18 Schroeder Group denies any and all allegations contained in paragraph 4.

19 **IV.**

20 **GENERAL ALLEGATIONS**

21 5. The Schroeder group admits that Walker Lake is a terminus lake located in Mineral
22 County, Nevada. The Schroeder Group denies all remaining allegations contained in paragraph
23 5.

24 6. With regard to paragraph 6, the Schroeder Group admits.

25 7. With regard to paragraph 7, the Schroeder Group admits the Lahontan cutthroat trout is
26 listed as threatened under the federal Endangered Species Act. The Schroeder Group lacks



1 sufficient knowledge to admit or deny the remaining allegations in paragraph 7 and therefore
2 denies.

3 8. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
4 contained in paragraph 8 and therefore denies any and all allegations contained therein.

5 9. With regard to paragraph 9, the Schroeder Group denies any and all allegations
6 contained therein.

7 10. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
8 contained in paragraph 10 and therefore denies any and all allegations contained therein.

9 11. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
10 contained in paragraph 11 and therefore denies any and all allegations contained therein.

11 12. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
12 contained in paragraph 12 and therefore denies any and all allegations contained therein.

13 13. In regards to paragraph 13, the Schroeder Group admits that as volume of water in
14 Walker Lake decreases, salinity and total dissolved solids in the lake increase.

15 14. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
16 contained in paragraph 14 and therefore denies any and all allegations contained therein.

17 15. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
18 contained in paragraph 15 and therefore denies any and all allegations contained therein.

19 16. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
20 contained in paragraph 16 and therefore denies any and all allegations contained therein.

21 17. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
22 contained in paragraph 17 and therefore denies any and all allegations contained therein.

23 18. The Schroeder Group lacks sufficient knowledge to admit or deny the allegations
24 contained in paragraph 18 and therefore denies any and all allegations contained therein.

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V.

STATEMENT OF CLAIM

19. Paragraph 19 is an incorporation by reference of Mineral County’s proceeding allegations. Thus, the Schroeder Group incorporates by reference each proceeding answer as it pertains to the relevant allegation incorporated by Mineral County as though fully set forth herein.

20. The allegations contained in paragraph 20 consist of legal conclusions to which no response is required. To the extent a response is required, the Schroeder Group denies any and all allegations contained in paragraph 20.

21. The allegations contained in paragraph 21 consist of legal conclusions to which no response is required. To the extent a response is required, the Schroeder Group denies any and all allegations contained in paragraph 21.

22. The allegations contained in paragraph 22 consist of legal conclusions to which no response is required. To the extent a response is required, the Schroeder Group denies any and all allegations contained in paragraph 22.

23. The allegations contained in paragraph 23 consist of legal conclusions to which no response is required. To the extent a response is required, the Schroeder Group denies any and all allegations contained in paragraph 23.

24. The remainder of Mineral County’s Second Amended Complaint consist of “Prayer” for relief to which no answer is required. To the extent an answer is required, the Schroeder Group denies Mineral County is entitled to any and all relief sought therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Claim and Issue Preclusion)

Mineral County’s claims and sought relief are barred by claim and issue preclusion and other principles of finality per the Nevada Supreme Court’s Decision in *Mineral County v. Lion*



1 County, 473 p.3d 418 (Nev. 2020). See also *Nevada v. United States*, 463 U.S. 110 (1983); see
2 also *Arizona v. California*, 460 U.S. 605 (1983).

3 **SECOND AFFIRMATIVE DEFENSE**

4 **(Failure to State a Claim)**

5 Mineral County's Second Amended Complaint fails to state a claim up which relief can
6 be granted and seeks reallocation of water rights adjudicated under the Decree and settled under
7 the prior appropriation doctrine and the law of the case.

8 **THIRD AFFIRMATIVE DEFENSE**

9 **(Reallocation of Water Rights)**

10 Mineral County's Second Amended Complaint seeks relief beyond the power and
11 jurisdiction of the Court. The Court is barred from reallocation of water rights under the Decree
12 and Paragraph XIV. Further *Arizona v. California* precludes the Court from construing the
13 Decree as authorizing modification of the Decree to recognize additional water rights not
14 established under the Degree. 460 U.S. 605, 619-20 (1983)(finding that even upon request for
15 modification, a fundamental concept of common-law adjudication is that an issue once
16 determined by a competent court is conclusive; further finding that certainly of rights is
17 particularly important with respect to water rights in the Western United States).

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Failure to Join an Indispensable Party)**

20 Mineral County's Second Amended Complaint fails to join an indispensable party.
21 Mineral County is required to join the State of Nevada under FRCP 19, otherwise there is no
22 ability in the existing parties to provide relief and the State's interest will not be adequately
23 protected or subject to a substantial risk of incurring obligations due to those interests.

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FIFTH AFFIRMATIVE DEFENSE

(Political Question)

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3 Mineral County's claims are barred by the political question doctrine. The doctrine
4 establishes exclusive powers of the legislative and executive branches and designates certain
5 matters non-justiciable. *Baker v. Carr*, 369 U.S. 186, 217 (1962). Among those certain matters
6 are controversies that arise from policy choices and value determinations committed to resolution
7 by another branch of government. *Japan Whaling Ass'n v. American Cetacean Soc'y*, 478 U.S.
8 221, 230 (1986). The relief requested by Mineral County is dependent on the policy choices and
9 values of the State of Nevada and are not determinations justiciable by this Court.

10
11 WHEREFORE, based upon the foregoing, Defendants respectfully pray and request for
12 relief as follows:

- 13 1. Dismissal of Mineral County's Second Amended Complaint in Intervention;
14 2. Costs of suit allowed by law; and
15 3. For any such other relief the Court deems just and proper.

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17 DATED this 19th day of August, 2022.

18 SCHROEDER LAW OFFICES, P.C.

19
20 /s/ Laura A. Schroeder
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CERTIFICATE OF SERVICE

I certify that on August 19, 2022 I caused a copy of the foregoing **SCHROEDER GROUP'S ANSWER TO MINERAL COUNTY'S SECOND AMENDED COMPLAINT IN INTERVENTION** to be served automatically on all Represented Parties through the District Court of Nevada's CM/ECF system and automatically served by the Court on all unrepresented parties who consent to receive service by email.

Dated this 19th day of August, 2022.

/s/ Laura A. Schroeder

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