

1 KIRK C. JOHNSON, ESQ. (NV Bar 4299)  
2 Robertson, Johnson, Miller & Williamson  
3 50 West Liberty Street, Suite 600  
4 Reno, Nevada 89501  
5 Telephone No.: (775) 329-5600  
6 Facsimile No.: (775) 348-8300  
7 [kirk@nvlawyers.com](mailto:kirk@nvlawyers.com)  
8 Attorneys for WESTFORK,  
9 a Nevada corporation

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11 UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF NEVADA

13 UNITED STATES OF AMERICA,  
14 Plaintiff,

15 WALKER RIVER PAIUTE TRIBE,  
16 Plaintiff-Intervenor,

17 v.

18 WALKER RIVER IRRIGATION DISTRICT,  
19 a corporation, et al.,  
20 Defendants.

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

21 MINERAL COUNTY,

22 Plaintiff-Intervenor,

23 v.

24 WALKER RIVER IRRIGATION DISTRICT,  
25 a corporation, et al.,  
26 Defendants.

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

27  
28 Westfork hereby answers the Second Amended Complaint in Intervention of Mineral  
County, filed herein on June 30, 2021 ("the Second Amended Complaint") as follows:

**PREFACE**

Westfork hereby objects to, and denies, Mineral County’s characterization of its Second Amended Complaint as a “supplement” to its Amended Complaint filed March 10, 1995, whatever that means, and to Mineral County’s apparent effort to incorporate by reference certain affidavits filed with a previous pleading. Mineral County’s Second Amended Complaint *supersedes* its prior complaints, and the Court has entered no order authorizing the filing of a “supplemental” pleading. To the extent that any response is required to note 1 of the Second Amended Complaint, Westfork denies the allegations set forth in the March 10, 1995, Motion for Preliminary Injunction and in its supporting affidavits.

**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, Westfork denies them.

**II.**

**PARTIES**

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

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

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**III.**

**JURISDICTION**

4. The 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 Westfork denies them.

**IV.**

**GENERAL ALLEGATIONS**

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

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

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

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

9. Westfork denies the allegations of paragraph 9.

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

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

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

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

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

1 15. Westfork is without sufficient information to admit or deny the allegations of  
2 paragraph 15, and on that basis, denies them.

3 16. Westfork is without sufficient information to admit or deny the allegations of  
4 paragraph 16, and on that basis, denies them; however, Westfork expressly denies the allegations  
5 in the third sentence of paragraph 16.

6 17. Westfork denies the allegations of paragraph 17.

7 18. Westfork admits that the United States Congress has funded a program for  
8 acquisition of water rights for the benefit of Walker Lake. Westfork denies the remaining  
9 allegations of paragraph 18.

10 **V.**

11 **STATEMENT OF CLAIM**

12 19. Westfork realleges and reincorporates herein by reference each and every  
13 response contained in paragraphs 1 through 18 of its Answer to the Second Amended Complaint  
14 as if fully set forth herein.

15 20. The allegations of paragraph 20 of the Second Amended Complaint consist of  
16 legal conclusions that do not require a response. To the extent that a response is required,  
17 Westfork denies them.

18 21. The allegations of paragraph 21 of the Second Amended Complaint consist of  
19 legal conclusions that do not require a response. To the extent that a response is required,  
20 Westfork denies them.

21 22. The allegations of paragraph 22 of the Second Amended Complaint consist of  
22 legal conclusions that do not require a response. To the extent that a response is required,  
23 Westfork denies them.

24 23. The allegations of paragraph 23 of the Second Amended Complaint consist of  
25 legal conclusions that do not require a response. To the extent that a response is required,  
26 Westfork denies them.

**AFFIRMATIVE DEFENSES**

24. As and for affirmative defenses, Westfork asserts the following affirmative defenses subject to the development of evidence through discovery and at trial.

**First Affirmative Defense**

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

**Second Affirmative Defense**

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

**Third Affirmative Defense**

Mineral County has failed to join necessary and indispensable parties.

**Fourth Affirmative Defense**

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

**Fifth Affirmative Defense**

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

**Sixth Affirmative Defense**

The Complaint is barred by the political question doctrine and should thus be dismissed.

**Seventh Affirmative Defense**

Mineral County's claims and relief sought are barred by the doctrines of finality and repose.

**Eighth Affirmative Defense**

Mineral County's claims are barred by the doctrines of estoppel, laches and waiver.

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**Ninth Affirmative Defense**

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

**Tenth Affirmative Defense**

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

**Eleventh Affirmative Defense**

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

WHEREFORE, Westfork prays for judgment against Mineral County as follows:

1. That Mineral County take nothing by virtue of this action and that the Second Amended Complaint in Intervention be dismissed with prejudice;
2. For its costs of suit allowed by law; and,
3. For such other and further relief, as the Court deems just and proper under the circumstances.

DATED this 19<sup>th</sup> day of August, 2022

ROBERTSON, JOHNSON  
MILLER & WILLIAMSON

By:           /s/ Kirk C. Johnson            
Kirk C. Johnson, Esq.  
Attorneys for Westfork, a Nevada corporation

Robertson, Johnson,  
Miller & Williamson  
50 West Liberty Street,  
Suite 600  
Reno, Nevada 89501

**CERTIFICATE OF SERVICE**

I certified that on August 24, 2022, I filed the foregoing with the Clerk of the Court, which will send notification of such filing via the CM/ECF system to the parties of record represented by an attorney and by email to unrepresented parties consenting to electronic service.

/s/ Teresa W. Stovak  
An Employee of Robertson, Johnson,  
Miller & Williamson

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