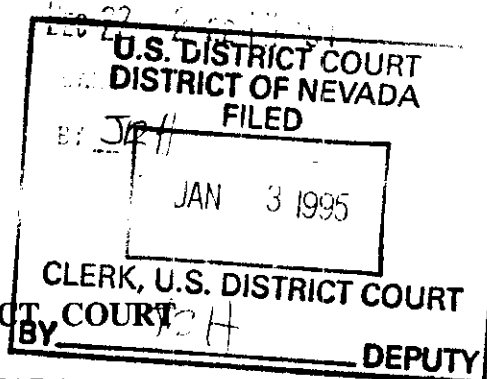


Frankie Sue Del Papa, ATTORNEY GENERAL
Susan Joseph-Taylor, Deputy Attorney General
198 South Carson
Carson City, Nevada 89710
Tel. (702) 687-7319
Fax. (702) 687-5798
Attorneys for Plaintiff, the STATE
OF NEVADA, its Officers and Agencies



UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

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

Defendants.

WALKER RIVER PAIUTE TRIBE,

Counterclaimant,

v.

WALKER RIVER IRRIGATION DISTRICT,
et al.,

Counterdefendants.

IN EQUITY NO. C-125

SUBFILE NO. C-125-B-

C-125-C

**STATE OF NEVADA'S REPORT
RE MINERAL COUNTY'S
MOTION TO INTERVENE**

The State of Nevada, by and through the undersigned counsel, files this Report pursuant to the Court's Minute Order approving the Stipulation and Order Concerning Mineral County's

1 Motion to Intervene and for Pretrial Conference Thereon, dated November 17, 1994.

2 **BACKGROUND**

3 On January 3, 1992, the Walker River Irrigation District ("WRID") filed a First Amended
4 Petition for Declaratory and Injunctive Relief and Request for Order to Show Cause, or in the
5 Alternative to Change Point of Diversion to Storage of Water from California to Nevada ("First
6 Amended Petition").

7 On March 17, 1992, the Walker River Paiute Tribe ("Tribe") served its Answer to the
8 First Amended Petition, and its Counterclaim and Cross-claim. In filing its Counterclaim, the
9 Tribe greatly expanded the factual and legal issues raised in the First Amended Petition. On May
10 21, 1992, the Court ordered that the Tribe's Counterclaim be set aside as a subaction identified
11 as C-125-B.

12 In C-125-B, the Tribe alleged a claim against all the water users as counterdefendants for
13 a right to store water in Weber Reservoir and for a water right in lands restored to the Walker
14 River Paiute Reservation. The State of Nevada argued that all claimants to the waters of the
15 Walker River or its tributaries had to be joined and served with process in compliance with the
16 provisions of Rule 4 of the Federal Rules of Civil Procedure. All water users on the Walker
17 River and its tributaries, as counterdefendants, were indispensable parties. Nevada argued that
18 due to the time that had passed since the United States began the Walker River adjudication,
19 many if not all of the named defendants in the Final Decree were dead and/or their decreed water
20 rights had been transferred. Accordingly, the successors in interest to the decreed water rights
21 who had not been parties before the decree Court, must be joined under Rule 19 of the Federal
22 Rules of Civil Procedure.

23 Nevada also took the position that all other claimants to the waters of the Walker River
24 and its tributaries, not included in the Final Decree, but authorized by either the California State
25 Water Resources Control Board or the Nevada State Engineer to appropriate such waters, should
26 likewise be joined. On October 27, 1992, the Court ruled that the Tribe and the United States
27 were required to join as parties, and serve pursuant to Rule 4 of the Federal Rules of Civil
28

1 Procedure, all existing claimants to waters of the Walker River and its tributaries.

2 On or about November 7, 1994, Mineral County moved to intervene in C-125-B pursuant
3 to Rule 24 of the Federal Rules of Civil Procedure. Mineral County claims it has an interest
4 relating to the subject matter of the action and is so situated that disposition of the action may
5 as a practical matter impair or impede its ability to protect that interest, which may not be
6 adequately represented by the existing parties; or that, Mineral County's defense and the main
7 action have a question of law or fact in common.

8 Nevada takes the same position in reference to Mineral County's Motion to Intervene that
9 it took with regard to the joinder and service required by the Tribe in relation to the Tribe's
10 Counterclaim asserting a right to additional waters from the Walker River. Every water right
11 user on the Walker River must be notified of Mineral County's Motion to Intervene.

12 In seeking the recognition of the public trust doctrine as a limitation on the water rights
13 granted pursuant to the Final Decree and state water law systems of appropriation, Mineral
14 County seeks to amend or modify the Final Decree and impose a restriction on water rights not
15 previously recognized under Nevada law. Application of the public trust doctrine could affect
16 all water users on the Walker River and its tributaries, and could result in the water rights of
17 various water users being significantly diminished in quantity. The holders of those water rights
18 are entitled to adequate notice and a full opportunity to be heard and participate in any proceeding
19 before the Court makes a determination whether to grant or deny Mineral County's Motion to
20 Intervene.

21 The Court recognized in its October 27, 1992, Order that if the Court were to recognize
22 additional water rights for the Tribe and integrate those rights into the Final Decree, such
23 recognition might have the effect of reducing water allocation to other water right holders or
24 altering the priority of the allocations. Thus, the claimants to the waters of the Walker River
25 clearly had an interest in the action. Pursuant to the Court's Order of October 27, 1992, the
26 Tribe and the United States were required to join as parties, and serve pursuant to Rule 4 of the
27 Federal Rules of Civil Procedure, all existing claimants to waters of the Walker River and its
28

1 tributaries.

2 Mineral County's Motion to Intervene and present the public trust doctrine in the context
3 of C-125-B has the same potential to effectively reduce water allocated to water right holders.
4 The claimants to the waters of the Walker River clearly have a substantial interest in Mineral
5 County's motion and allegations. Thus, service of Mineral County's Motion to Intervene is
6 required on all claimants to the waters of the Walker River. If these water claimants are not
7 served, their ability to protect their interests and oppose Mineral County's Motion to Intervene
8 is impaired. Furthermore, Rule 24 of the Federal Rules of Civil Procedure provides that a
9 "person desiring to intervene shall serve a motion to intervene upon the parties as provided in
10 Rule 5." Fed.R.Civ.P.24(c).

11 **PROPOSED PROCEDURES**

12 The Tribe and the United States are in the process of serving all claimants to the waters
13 of the Walker River and its tributaries with process. Pursuant to a Stipulation and Order dated
14 November 17, 1994, the Tribe and the United States were given until March 24, 1995, within
15 which to complete joinder of additional parties and service of process on claimants to the water
16 of the Walker River and its tributaries.

17 The State of Nevada suggests that once service has been completed by the Tribe and the
18 United States, further action on the Tribe's claims should be stayed pending Mineral County's
19 service of its Motion to Intervene on all the claimants to the waters of the Walker River and its
20 tributaries. The stay should continue through the Court's ruling on Mineral County's motion.

21 Dated this 20th day of December, 1994.

22 FRANKIE SUE DEL PAPA
23 Attorney General

24 By:

25 
26 SUSAN JOSEPH-TAYLOR
27 Deputy Attorney General
28

CERTIFICATE OF MAILING

I certify that I am an employee of the office of the Attorney General, State of Nevada, and that on this day, at Carson City, Nevada, I deposited for mailing, postage prepaid, a true and correct copy of the foregoing document addressed as follows:

Gordon H. DePaoli, Esq.
P.O. Box 2311
Reno, NV 89505

David E. Moser, Esq.
Three Embarcadero Center
San Francisco, CA 94111

Mary E. Hackenbracht
Deputy Attorney General
2101 Webster St., 12th Floor
Oakland, CA 94612-3049

Linda Bowman, Esq.
P.O. Box 281
Reno, NV 89504

Scott McElroy, Esq.
1007 Pearl St., #220
Boulder, CO 80302

James Spoo, Esq.
450 Marsh Ave.
Reno, NV 89509

Kathryn Landreth
John P. Lange
U.S. Department of Justice
999 18th St., #945
Denver, CO 80202

Dated: 12-22-94

Sue Clugage
Sue Clugage