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U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED
JAN 3 1995
CLERK U.S. DISTRICT COURT
BY JR DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.

Defendants.

WALKER RIVER IRRIGATION DISTRICT,

Petitioner,

STATE OF NEVADA,

Petitioner-Intervenor,

vs.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, W. DON MAUGHAN, EDWIN H. FINSTER, ELISEO M. SAMANIEGO, JOHN CAFFREY and DARLENE E. RUIZ, Members of the California State Water Resources Control Board,

Respondents,

CALIFORNIA TROUT, INC.,

Respondent-Intervenor.

IN EQUITY NO. ~~C-129~~
SUBFILE ~~C-125-B-ECR~~
C-125-C

THE WALKER RIVER PAIUTE TRIBE'S REPORT CONCERNING MINERAL COUNTY'S MOTION TO INTERVENE

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Pursuant to the November 15, 1994, Stipulation and Order Concerning Mineral County's Motion to Intervene and for Pretrial Conference Thereon, the Walker River Paiute Tribe ("the Tribe") files this report. While this Court may be the appropriate forum for the resolution of claims such as those advocated by the County, the Tribe disagrees with many of the assertions in the County's motion to intervene and supporting documentation and will respond to the motion at the appropriate time. The Tribe notes, however, that the precise nature of the County's claimed rights is unclear and that it will be difficult to respond to the County's claim in its present form. The Tribe also is concerned that the County's attempt to intervene does not delay the resolution of the Tribe's pending claims to additional water from the Walker River.

A. THE PERSONS WHO SHOULD BE GIVEN NOTICE OF AN OPPORTUNITY TO RESPOND TO THE MOTION TO INTERVENE.

In addressing the question of who should be given the opportunity to respond to the County's motion to intervene, it is important to distinguish between the issues surrounding intervention and the issues surrounding the claim which the County seeks to assert if intervention is permitted. The Tribe submits that only the present parties to this litigation need to receive notice of the motion to intervene. If intervention is permitted, the County then should be required to provide notice to all claimants on the Walker River consistent with this Court's earlier order requiring the United States and Tribe to serve all surface water claimants in the Walker River Basin. See Order at

6 (Oct. 27, 1992) ("claimants to the water of the Walker River clearly have an interest in the action.").

This Court retains jurisdiction over the East and West Walker Rivers, pursuant to the complaint filed by the United States in 1924 and the Final Decree entered in 1936 and amended in 1940. See United States v. Walker River Irrigation Dist., In Equity C-125, *Final Decree* (D. Nev. April, 14, 1936), as amended by, *Stipulation and Agreement for Entry of Amended Final Decree Pursuant to Writ of Mandate of the Circuit Court of Appeals - Ninth Circuit - and also Amended Decree entered herein on April 15, 1936 to Clarify Certain Provisions Thereof* ("Amended Decree") and *Order for Entry of Amended Final Decree to Conform to Writ of Mandate, etc. dated April 24, 1940*. In its October 27, 1992 Order, the Court required the United States and Tribes to serve all claimants to the waters of the Walker River with notice of the federal and tribal claims to additional water. Order at 5-6. The Court reasoned that in order to protect the interests of claimants of state water rights who had not sought recognition of their rights in this case, such cliamants should be joined in the adjudication. The Court rejected the notion that a later adjudication would safeguard the interests of such claimants: "[t]hey may be able to protect their interests after this suit is concluded through another lawsuit; however, during the pendency of a later action these claimants may suffer without their water rights." Id. at 6.

Mineral County argues that recognition of its claimed rights will protect the fishery, recreational benefits, wildlife preservation, aesthetic, and economic benefits of Walker Lake.

See *Mineral County's Proposed Petition to Intervene* at 6 (Oct. 25, 1994). Mineral County thus claims a right to 103,000 acre/feet per year of water for Walker Lake. Id. at 5-6. The County further asks the Court to reallocate the existing water uses on the Walker River. Id. Mineral County's claims potentially affect the rights of all other water right holders on the Walker River. Accordingly, the County should be ordered to serve all claimants to the waters of the Walker River and its tributaries if it is permitted to intervene.

B. OTHER MATTERS THAT WILL AID IN THE DISPOSITION OF THE MOTION TO INTERVENE.

1. The Nature of the County's Claims.

Based on the pleadings to date, it is difficult to understand the precise nature of the County's claim. While it is apparent that the County wishes to protect the water supply for Walker Lake -- a goal with which the Tribe sympathizes -- the extent and scope of the water right claim is amorphous. Does the County claim merely to be the beneficiary of an existing state right or does it seek additional rights in its own name? Does the County seek "reallocation" of decreed rights or all rights on the Walker River? Does the County claim that only the holders of decreed rights must further monitor their water uses or should all water right holders do so? If it is permitted to intervene, the County should clarify its claim prior to providing notice to all claimants.

2. **<u>The County's Proposed Intervention should not delay resolution of the Tribe's claims</u>.**

The resolution of the issues surrounding the County's claim should not delay addressing the issues involved in the Tribe's pending claims for additional water. To be sure, the County's claims may affect the tribal claims and may need to be addressed concurrently with the tribal claims. We also recognize that the next step in bringing the tribal claims before the Court is to accomplish service of process on the water right claimants who are not parties to the case. The Tribe, however, is anxious to proceed with its claims and is concerned that the determination of those claims not be unduly delayed as a result of the County's motion to intervene.

Dated: Dec. 22, 1994

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of the foregoing Walker River Paiute Tribe's Report Concerning Mineral County's Motion to Intervene, via overnight carrier, all charges prepaid thereon, this 30th day of December 1994, addressed to:

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