

FILED

MAR 10 1 20 PM '95

CAROL CLIFFORD  
BY JRH  
DEPUTY

1 CHARLES R. ZEH, ESQ.  
2 JAMES SPOO, ESQ.  
3 TREVA J. HEARNE, ATTORNEY AT LAW  
4 ZEH, SPOO & HEARNE  
5 450 Marsh Avenue  
6 Reno, Nevada 89509  
7 702/323-4599

8  
9  
10 Attorneys for Plaintiff-Intervenor  
11 MINERAL COUNTY

12  
13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE DISTRICT OF NEVADA

15 UNITED STATES OF AMERICA, )  
16 )  
17 Plaintiff, )  
18 )  
19 WALKER RIVER PAIUTE )  
20 TRIBE, )  
21 )  
22 Plaintiff-Intervenor, )  
23 )  
24 vs. )  
25 )  
26 WALKER RIVER IRRIGATION )  
27 DISTRICT, a corporation, et al. )  
28 )  
29 Defendants. )

30 IN EQUITY NO. C-125-C-ECR  
31  
32 MINERAL COUNTY'S  
33 AMENDED COMPLAINT IN  
34 INTERVENTION

35  
36 COMES NOW, Plaintiff-Intervenor, MINERAL COUNTY OF NEVADA, by  
37 and through its attorneys of record, on its own behalf and for benefit of the citizens,  
38 residents, and users of Walker Lake, and claims as follows:

39 ///

40 ///

ZEH, SPOO & HEARNE  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

I.

INTRODUCTION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. This claim is made for recognition of a right of minimum level of water for Walker Lake by means of certain right being reserved and allowed to flow down the Walker River both east and west forks, in sufficient quantity to reach, replenish, and maintain Walker Lake. Such minimum levels are requested based upon sufficient water to sustain naturally occurring fish population, including, but not limited to, the Chub, Lahouton Sucker, and Cutthroat Trout.

II.

JURISDICTION

2. Jurisdiction over this claim is pursuant to the continuing jurisdiction of this Court over the waters of the Walker River and its tributaries in California and Nevada; and the matter in controversy arises under the Constitution, laws, or treaties of the United States.

III.

PARTIES

3. Plaintiff-Intervenor, MINERAL COUNTY OF NEVADA, appears in this case on its own behalf and for the benefit of the citizens and residents of Mineral County and on behalf of the public, users of Walker Lake and for recreational, aesthetic preservation of wildlife and for economic purposes. Mineral County is duly

1 established under the laws of the State of Nevada and retains all rights delegated  
2 pursuant to NRS 244.165 with the capacity to sue in its own name.

3 4. Respondents are all water users on the Walker River and its tributaries as  
4 set forth in the Final Decree or have statutory or regulatory authority over the  
5 allocation and protection of waters on the Walker River.  
6

7  
8 IV.

9  
10 GENERAL ALLEGATIONS

11 5. Plaintiff-Intervenor, MINERAL COUNTY OF NEVADA, hereinafter  
12 referred to as, "County," currently benefits from the presence of sufficient levels of  
13 water in Walker Lake. The Nevada Department of Wildlife holds in trust for Mineral  
14 County, the right to 700 cfs. of surplus flows annually, Certificate No. 10860, granted  
15 by the State Engineer of Nevada on December 28, 1983.  
16

17 6. Walker Lake and approximately 16 linear miles of Walker River are  
18 totally contained within the legal boundaries of Mineral County. The elevation of  
19 Walker Lake in 1908 was 4,077 feet. The elevation of Walker Lake in 1993 was  
20 3,950 feet which is equivalent to a loss of one-half of the Lake. The levels required  
21 to maintain Walker Lake as a viable fishery are at an elevation of 3,972 feet. At the  
22 present rate of depletion Walker Lake will be dry by the year 2020.  
23

24 7. Walker Lake supports recreational fishing, boating, and wildlife habitat.  
25 Activities and businesses attributable to the presence and use of Walker Lake  
26 represents approximately 50% of the economy of Mineral County.  
27  
28

ZEH, SPOO & HEARNE  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

ZEH, SPOO & HEARNE  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

1           8.       The current and consistent total loss of flows from Walker River into  
2 Walker Lake has degraded the quality of water in Walker Lake substantially.

3           9.       The public interest and maintenance of the public trust requires that the  
4 flows be allowed to reach Walker Lake that will sustain minimum levels for the  
5 naturally occurring fish population and provide for the preservation of Walker Lake  
6 for the citizens and residents of the County for recreational values, preservation of  
7 wildlife, and maintenance of the economy of Mineral County.

8  
9           10.      Without reallocation of the waters to insure priority minimum flows to  
10 sustain the Lake, Walker Lake, its users and the citizens of Mineral County and the  
11 public will suffer substantial and irreparable damage.

12  
13           11.      Minimum flowage guaranteed to Walker Lake was not dealt with,  
14 resolved, or considered in the original decree (C-125) of 1936. Injury to Walker Lake  
15 and, therefore, to Mineral County has occurred since the Decree was entered.

16  
17           12.      Paragraph XIV of the Final Decree provides that this Court retain  
18 jurisdiction.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V.

FIRST CLAIM FOR RELIEF

13.     An adjudication and reallocation of the waters of Walker River to  
preserve the minimum levels in Walker Lake, as a condition to the water rights  
licenses of all upstream users -- such requirements of minimum levels of Walker Lake  
to be a condition to each license and certificate presently held by upstream license

1 holders in California and Nevada.

2 14. Imposition of responsibilities on the State of California and State of  
3 Nevada to maintain the public trust in Walker Lake by protecting minimum flows for  
4 naturally occurring fish populations.  
5

6 15. The right to, at least, 127,000 acre feet of flows annually reserved from  
7 the Walker River that will reach Walker Lake.  
8

9  
10 WHEREFORE, Plaintiff-Intervenor, prays:

11 1. The Court, pursuant to its continuing jurisdiction under paragraphs XIV  
12 of the Final Decree, reopen and modify the final Decree to recognize the rights of  
13 Mineral County, its citizens and residents and other users of Walker Lake and the  
14 public to have minimum levels to maintain the viability of Walker Lake as a body of  
15 water to sustain its naturally occurring fish population and for recreational benefits,  
16 wildlife preservation, aesthetic and economic beneficial use.  
17

18 2. That the Court order the State of Nevada to grant a certificate to  
19 Mineral County for the benefit of Walker Lake in the amount of 127,000 acre/feet per  
20 year.  
21

22 3. That the Court recognize that a minimum of three feet above sea level in  
23 Walker Lake is necessary to maintain the viability of Walker Lake as a body of water  
24 to sustain its naturally occurring fish population and for recreational benefits, wildlife  
25 preservation, aesthetic and economic benefits and that a minimum of 127,000 acre/feet  
26 per year to Walker Lake is a beneficial use and in the public interest and required  
27  
28

ZEH, SPOO & HEARNE  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

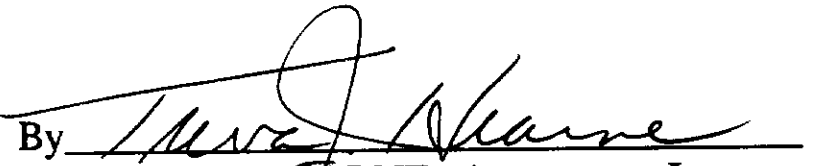
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

under the doctrine of maintenance of the public trust.

4. That the Court grant such other and further relief as it deems just and proper.

DATED this 10th day of March, 1995.

LAW OFFICES OF  
ZEH, SPOO & HEARNE

By 

TREVA J. HEARNE, Attorney at Law  
450 Marsh Avenue  
Reno, Nevada 89509  
702/343-4599

Attorney for Plaintiff  
MINERAL COUNTY

ZEH, SPOO & HEARNE  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

**CERTIFICATE OF MAILING**

Pursuant to FRCP 5(b), I certify that I am an employee of the Law Office of ZEH, SPOO & HEARNE, and that on this date I caused to be mailed a copy of the attached **MINERAL COUNTY'S AMENDED COMPLAINT IN INTERVENTION**, with postage fully prepaid to:

See attached Service List

DATED this 10th day of March, 1995.

  
MARILYN MITCHELL

ZEH, SPOO & HEARNE  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SERVICE LIST**

**ZEH, SPOO & HEARNE**  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

1		
2	Shirley A. Smith	Western Nevada Agency
3	Asst. U.S. Attorney	Bureau of Indian Affairs
4	100 West Liberty, Suite 600	1677 Hot Springs Road
5	Reno, Nevada 89501	Carson City, NV 89706
6	Roger Bezayiff	Scott McElroy
7	Chief Deputy Water Commissioner	Greene, Meyer & McElroy
8	U.S. Board of Water Commissioners	1007 Pearl Street
9	Post Office Box 853	Boulder, CO 80302
10	Yerington, NV 89447	
11	James T. Markle	Matthew R. Campbell, Esq.
12	State Water Resources Control Board	McCutche, Doyle, Brown & Enerson
13	Post Office Box 100	Three Embarcadero Center
14	Sacramento, CA 95814	San Francisco, CA 94111
15	John Kramer	John P. Lange
16	Dept. of Water Resources	Land & Natural Resources
17	1416 Ninth Street	Federal Building, Dr. 3607
18	Sacramento, CA 95814	999 18th Street, Suite 945
19	Evan B. Beavers, Esq.	Denver, CO 80202
20	BEAVERS & YOUNG	Roger Johnson
21	1616 Highway 395	Water Resources Control Board
22	Post Office Box 486	State of California
23	Minden, NV 89423	Post Office Box 2000
24	Ross E. de Lipkau	Sacramento, CA 95810
25	Post Office Box 2790	Linda Bowman
26	Reno, NV 89505	Vargas & Bartlett
27	Garry Stone	Post Office Box 281
28	290 South Arlington	Reno, NV 89504
	Reno, NV 89510	Mary Hackenbracht
	Richard R. Greenfield	Deputy Attorney General
	Dept. of the Interior	State of California
	Two North Central Ave., Suite 500	2101 Webster Street
	Phoenix, AZ 85004	Oakland, CA 94612-3049



**ZEH, SPOO & HEARNE**  
450 Marsh Avenue • Reno, NV 89509  
Phone: (702) 323-4599 • Fax (702) 786-8183

1 Frankie Sue Del Papa  
2 Attorney General, State of Nevada  
3 198 S. Carson Street  
4 Capitol Complex  
5 Carson City, NV 89710

Gordon H. DePaoli  
Woodburn & Wedge  
One E. First Street, Suite 1600  
Post Office Box 2311  
Reno, NV 89505

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28