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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA,)
10)
Plaintiff,)

11 WALKER RIVER PAIUTE TRIBE,)
12)
13 Plaintiff-Intervenor,)

14 vs.)

15 WALKER RIVER IRRIGATION)
DISTRICT, a corporation, et al.,)
16 Defendants.)

17 MINERAL COUNTY,)
18)
19 Plaintiff-Intervenor,)

20 vs.)

21 WALKER RIVER IRRIGATION)
DISTRICT, a corporation, et al.,)
22 Defendants.)

IN EQUITY NO. C-125-RCJ
Subproceeding: C-125-C

3:73-CV-00128-RCJ-WGC

**MINERAL COUNTY'S POINTS
AND AUTHORITIES IN
RESPONSE TO WALKER RIVER
IRRIGATION DISTRICT'S
MOTION TO DISMISS OR IN THE
ALTERNATIVE TO STAY**

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1 **I. INTRODUCTION**

2 Pursuant to the Court’s Order of November 4, 2013, (Doc.736), Mineral County
3 respectfully submits the following memorandum of points and authorities in response to the
4 *Walker River Irrigation District’s (“WRID’s”) Motion to Dismiss Pursuant to Fed. R. Civ. P.*
5 *12(b)(1), or in the Alternative to Stay Proceedings with Respect to Mineral County’s Amended*
6 *Complaint in Intervention and WRID’s Points and Authorities in Support of Motion to Dismiss*
7 *(Docs. 751 and 751-1).* For the reasons set forth below, WRID’s Motion is without merit and
8 should be denied.
9

10 To encapsulate the matter before the Court, in this case Mineral County asserts a claim
11 that the public trust doctrine requires that the Walker River system be managed and regulated
12 under the Walker River Decree in such a way as to ensure that adequate inflows are provided
13 from the Walker River system to Walker Lake so as to restore and sustain the public trust values
14 and uses of Walker Lake. In its motion WRID asserts that this Court did not retain broad enough
15 jurisdiction in the Walker River Decree to entertain Mineral County’s public trust claim, if that
16 claim is interpreted as claiming a new water right within the priority system.
17

18 In the alternative, WRID argues that if this Court’s broad retained jurisdiction does
19 extend to Mineral County’s public trust claim, then the Court should stay the exercise of its
20 jurisdiction until the Nevada state courts rule on what WRID characterizes as three “novel”
21 questions, namely: (1) whether the public trust applies to water in Nevada and how it relates to
22 Nevada water rights; (2) whether Mineral County has standing to assert its public trust claim;
23 and (3) whether Mineral needs to exhaust Nevada state administrative remedies before it can
24 pursue its claim in court.
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1 As explained in greater detail below, while Mineral County’s public trust claim does not
2 seek a priority water right, under the plain language of the Walker River Decree this Court
3 plainly retained broad enough continuing jurisdiction to address Mineral County’s regardless of
4 how that claim is characterized. WRID’s request that this Court stay the exercise of that
5 jurisdiction is ill taken, considering that WRID forcefully argued directly to the contrary when
6 Mineral County attempted to raise these issues before the Nevada Supreme Court nearly a
7 decade and a half ago. In addition, WRID’s arguments for abstention and a stay with regard to
8 the three issues it raises are mistaken because the issues are not “novel” but rather are issues that
9 have been addressed and settled by Nevada state courts, providing ample guidance to this Court
10 in resolving Mineral County’s public trust claim under the exclusive jurisdiction the Court has
11 exercised over the Walker River system for the better part of a century.
12

13 **II. PROCEDURAL HISTORY**

14 Subproceeding C-125-C is part of the litigation over the waters and water rights of the
15 Walker River system that commenced in 1924, when certain upstream users prevented water
16 from reaching the Walker River Paiute Reservation. This conduct prompted the United States to
17 sue to determine a water right for the Reservation and the relative rights to water of particular
18 parties in Nevada and California. On April 14, 1936, the United States District Court for the
19 District of Nevada issued Decree C-125 (the “Walker River Decree” or “Decree”). *See United*
20 *States v. Walker River Irrigation Dist.*, 11 F. Supp. 158 (D. Nev. 1935); *United States v. Walker*
21 *River Irrigation Dist.*, 14 F. Supp. 10 (D. Nev. 1936). The Decree was amended on April 24,
22 1940, to conform with the Court of Appeal’s decision in *United States v. Walker River Irrigation*
23 *Dist.*, 104 F.2d 334 (9th Cir. 1939).
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1 Within the Walker River Decree this Court (the “Decree Court”) retained jurisdiction “for
2 the purpose of changing the duty of water or for correcting or modifying this decree; also for
3 regulatory purposes. . . .” Walker River Decree ¶ XIV, at 72-73. Pursuant to the Decree, the
4 United States District Court has appointed a federal water master to oversee the distribution of
5 waters in the Walker River and its tributaries in accordance with the Decree. Over the years, the
6 Court has exercised ongoing authority over and supervision of these proceedings, including
7 approving rules to implement the Decree, addressing requests to amend the Decree, and
8 appointing Water Masters and the U.S. Board of Water Commissioners. In addition, it has
9 designated three subproceedings, including C-125-C.
10

11 On October 25, 1994, Mineral County filed a *Notice of Motion and Motion for*
12 *Intervention* and a *Petition to Intervene* in the C-125-B subproceeding of the C-125 litigation.
13 (C-125-B Doc. Nos. 31, 32). On January 3, 1995, the Court created subfile C-125-C, or 3:73-
14 CV-128. *Minutes of the Court*, at 1 (C-125-C Doc. No. 1). On February 9, 1995, the Court
15 ordered Mineral County to file revised Intervention Documents and to serve these Intervention
16 Documents on all claimants to the waters of the Walker River and its tributaries pursuant to
17 Federal Rule of Civil Procedure 4. *Order Requiring Service of and Establishing Briefing*
18 *Schedule Regarding the Motion to Intervene of Mineral County*, ¶¶ 2, 3 (Doc. No. 19). Mineral
19 County filed its *Amended Complaint in Intervention*, (Doc. No. 20), *Amended Memorandum of*
20 *Points and Authorities in Support of Mineral County’s Amended Complaint in Intervention*,
21 (Doc. No. 21), and *Motion for Preliminary Injunction; Memorandum of Points and Authorities;*
22 *Affidavit of Kelvin J. Buchanan; and Affidavit of Gary L. Vinyard, Ph.D.* (Doc. No. 22), on
23 March 10, 1995.
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1 At the September 23, 2013, hearing the Court granted Mineral County’s Motion to
2 Intervene. *Minutes of Proceedings*, Doc. No. 726 (Sept. 23, 2013). Thereafter, at the November
3 4, 2013, status conference the Court set a briefing schedule for jurisdictional motions to dismiss
4 in both subproceedings C-125-B and C-125-C. *Minutes of Proceedings*, Doc. No. 736 (Nov. 4,
5 2013). Pursuant to the Court’s direction, on March 31, 2014, the Walker River Irrigation District
6 (“WRID”) filed its *Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), or in the Alternative*
7 *to Stay Proceedings with Respect to Mineral County’s Amended Complaint in Intervention* and
8 its supporting Points and Authorities. Doc. Nos. 751 and 751-1. Mono County, Circle Bar N
9 Ranch, LLC, and Lyon County joined in WRID’s Motion. Doc. Nos. 752, 753, and 754.
10

11 WRID also filed a *Motion to Dismiss Claims of United States Based Upon State Law*
12 *Pursuant to Fed. R. Civ. P. 12(b)(1)* and supporting points and authorities in subproceeding C-
13 125-B. C-125-B Doc. Nos. 1981, 1981-1, and 1981-2. Mono County, Circle Bar N. Ranch, and
14 Lyon County joined in WRID’s Motion. C-125-B Doc. Nos. 1982, 1983, and 1985. The State
15 of Nevada also filed a *Motion to Dismiss Concerning Threshold Jurisdictional Issues* in
16 subproceeding C-125-B. C-125-B Doc. No. 1980.

17 **III. BACKGROUND FACTS CONCERNING WALKER LAKE AND THE SEVERE**
18 **AND WORSENING IMPAIRMENT THE LAKE’S PUBLIC TRUST VALUES**
19 **AND USES**

20 Walker Lake is a rare desert terminus lake located in Mineral County, Nevada, that is one
21 of Nevada’s and the western United States’ rare, precious natural public water resources. By far
22 its primary source of water is inflow from the Walker River. Dr. Saxon E. Sharpe, Dr. Mary E.
23 Cablk, & Dr. James M. Thomas, Desert Research Institute, *The Walker Basin, Nevada and*
24 *California: Physical Environment, Hydrology, and Biology, Publication No. 41231*, at 13-14
25 (May 2008); *see also* Memorandum of Points and Authorities in Support of Mineral County’s
26 Proposed Petition to Intervene, Affidavit of Kelvin J. Buchanan (Oct. 25, 1994) (Doc. No. 3).
27

1 The only additional inflow into Walker Lake consists of relatively minor amounts of local
2 groundwater, local surface water runoff, and precipitation on the Lake surface.

3 Historically, Walker Lake has supported a balance of algae, zooplankton, small
4 crustaceans, insects, and four native fish species: the tui chub, Lahontan cutthroat trout, speckled
5 dace, and Tahoe sucker. Sharpe, et al., at 36. The Lahontan cutthroat trout is listed as threatened
6 under the federal Endangered Species Act. 40 Fed. Reg. 29,864 (1975). The tui chub is
7 identified as a “subspecies of concern” by the American Fisheries Society. Walker Lake also has
8 provided important, scarce habitat for a variety of migratory birds, including American white
9 pelicans, common loons, snowy plovers, long-billed curlews, double crested cormorants, gulls,
10 herons, terns, grebes, avocets, and many others. *See* Sharpe, et al., at 27, 32, & 39.

12 As upstream appropriations of water from the Walker River and its tributaries increased
13 over the 20th Century, the natural flow of water into Walker Lake was effectively cut off. As a
14 result, the Lake’s level dropped from an elevation of 4,083 feet above mean sea level (msl) in
15 1882 to a level of approximately 3,917 feet above msl as of May 30, 2014. USGS Station
16 10288500, Walker Lake near Hawthorne, NV,
17 [http://waterdata.usgs.gov/nv/nwis/uv/?site_no=10288500&agency_cd=USGS&";](http://waterdata.usgs.gov/nv/nwis/uv/?site_no=10288500&agency_cd=USGS&). This drop
18 in elevation resulted in a decrease in lake volume from approximately 9.0 million acre feet to
19 1.25 million acre feet. *Id.* As water volume decreased, salinity and total dissolved solids in the
20 Lake increased. This impact to water quality has severely degraded the entire ecosystem of
21 Walker Lake, resulting in a devastating loss of biodiversity. What had been a healthy Lahontan
22 cutthroat trout fishery, that was maintained by stocking after dams on the River prevented natural
23 spawning, has been eliminated for the time being by the diminished inflows to Walker Lake and
24 resulting degraded water quality in the Lake. Even the Lake’s tui chub fishery now is threatened
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1 with extinction because salinity in the Lake has risen to a level that precludes successful
2 reproduction. Sharp, et al., at 1. Thus, the tragic effect of upstream overappropriation has been
3 to strangle the Lake, devastate its once-thriving fisheries, eliminate the once-spectacular flocks
4 of migratory birds that depended on the Lake, and, perhaps most importantly, drive away the
5 many Nevadans and other Americans who used Walker Lake for recreational enjoyment and
6 economically productive activities.¹
7

8 The inadequacy of inflows from the Walker River to Walker Lake has caused the
9 dramatic lowering of the water level and degradation of water quality in Walker Lake,
10 devastating Walker Lake's fisheries and ecosystem and the Lake's ability to serve as a vital stop
11 for migratory birds on the Pacific Flyway, as it has since before human memory. The severity
12 and continued worsening of the damage to Walker Lake due the inadequacy of inflows from the
13 Walker River has caused the near total loss of the Lake's environmental, economic, recreational,
14 and aesthetic values to the public at large, Nevadans in particular, and Mineral County residents
15 most egregiously.
16

17 Because neither the parties nor the Court considered the public trust values and uses of
18 Walker Lake, or the long-term implications of private appropriations of water from the Walker
19 River system, at the time the Walker River Decree was developed, the Decree fails to make any
20 provision for inflows to Walker Lake. The result of this omission has been the reduction of
21 average annual inflows from the Walker River system to Walker Lake to an amount that is
22 inadequate to sustain the Lake's continued ecological health and or its important environmental,
23 economic, recreational, and aesthetic values and uses. Sharpe, et al., at 13-14.
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26 ¹ Indeed, the Walker River Paiute Tribe, whose people once depended on the Lake for their subsistence and way of
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1 **IV. ARGUMENT**

2 A. Introduction: The Public Trust Doctrine

3 The public trust doctrine is a fundamental principle of law that originated in ancient
4 Roman and English common law, and has underpinned the water law of Nevada and all of its
5 sister states since their inception. *Lawrence v. Clark County*, 254 P.3d 606, 617 (Nev. 2011); *In*
6 *re Water Use Permit Applications*, 9 P.3d 409, 443-45 (Haw. 2000); *Kootenai Env'tl. Alliance v*
7 *Panhandle Yacht Club*, 671 P.2d 1085, 1095 (Idaho 1983); *National Audubon Soc'y v. Superior*
8 *Court of Alpine County*, 658 P.2d 709, 718-24 (Cal. 1983). The public trust doctrine holds that
9 water resources such as Walker Lake, Walker River, and their tributary water sources are
10 inherently the property of the public at large, including future generations. Because of the
11 inherent public ownership of such waters, the public trust doctrine imposes a permanent
12 affirmative duty on the state to hold those water resources in trust for the public and act as trustee
13 to protect the public's long-term interests in those waters.

14 As the United States Supreme Court explained over a century ago, the public's interest in
15 these waters is perpetual in nature and therefore the state, as the trustee of the public's rights in
16 these waters, can never abdicate or lose ultimate control over them, and only could relinquish its
17 control over them in a public manner and in strict, clearly expressed, furtherance of the long-
18 term public interests protected by the public trust. *Illinois Central R.R. v. Illinois*, 146 U.S. 387,
19 453-54 (1892). By the same token, neither a governor, a state engineer, nor even a state
20 legislature can abdicate or sign away the state's fiduciary responsibilities to protect the public's
21 long-term interests in these water resources. *Id.* Even, perhaps especially, when water resources
22 have been mismanaged in such a way as to create a conflict between the narrow interests of
23 select private water rights holders and the broader public interests protected by the public trust
24 doctrine, the State is obligated to give precedence to the public interests safeguarded under the

25
26 life, can no longer rely on the Lake as the Tribe's principal subsistence resource.

1 doctrine. While these public trust obligations are paramount in the government's management of
2 the public's waters, the doctrine is not inconsistent with private property rights in water, but
3 rather such private property rights always are bounded by the requirements of the public trust
4 doctrine. See *Nat'l Audubon Soc'y v. Superior Court of Alpine County*, 658 P.2d 709, 712 (Cal.
5 1983).

6 After implicitly acknowledging the public trust doctrine for many years, e.g., *State*
7 *Engineer v. Cowles Bros., Inc.*, 478 P.2d 159 (Nev. 1970), *State v. Bunkowski*, 503 P.2d 1231
8 (Nev. 1972), *Desert Irr. Ltd. v. Nevada*, 944 P.2d 835 (Nev. 1997), the Nevada Supreme Court
9 expressly addressed the scope and role of the public trust doctrine in Nevada law in *Lawrence v.*
10 *Clark County*, 254 P.3d 606 (Nev. 2011). In doing so, the Nevada Supreme Court described the
11 history of the doctrine and its characteristics in detail.
12

13 The public trust doctrine is an ancient principle thought to be
14 traceable to Roman law and the works of Emperor Justinian. Justinian derived the doctrine from the principle that the public
15 possesses inviolable rights to certain natural resources, noting that “[b]y the law of nature these things are common to mankind—the
16 air, running water, the sea, and consequently the shores of the sea.” He also stated that “rivers and ports are public; hence the right of
17 fishing in a port, or in rivers, is common to all men.”

18 *Lawrence*, 254 P.3d at 608 (citations omitted).

19 ...in what has become the seminal public trust doctrine case, the
20 Supreme Court decided *Illinois Central Railroad v. Illinois*, 146
21 U.S. 387 (1892). In *Illinois Central* the Court noted that because
22 the State of Illinois was admitted to the United States on “equal
23 footing” with the original 13 colonies, it, like the colonies, was
24 granted title to the navigable waters and the lands underneath
25 them. *Id.* at 434 ... More specifically, it possessed only “title held
26 in trust for the people of the State that they may enjoy the
27 navigation of the waters, carry on commerce over them, and have
28 liberty of fishing therein freed from the obstruction or interference
of private parties.” *Id.* . . . While the Court noted that such lands
need not, under all circumstances, be perpetually held in trust, it
recognized that in effecting transfers, the public interest is always
paramount, providing that “[t]he control of the State for the
purposes of the trust can never be lost, except as to such parcels as

1 are used in promoting the interests of the public therein, or can be
2 disposed of without any substantial impairment of the public
interest in the lands and waters remaining.” *Id.*

3 *Lawrence*, 254 P.3d at 609.

4 In confirming the existence of the public trust doctrine in Nevada, the Court in *Lawrence*
5 *v. Clark County* relied heavily on Justice Rose’s concurrence in *Mineral County v. Nevada*, 20
6 P.3d 800 (Nev. 2001). As Justice Rose noted, the Nevada Court and sister courts had recognized
7 that:

8
9 public ownership of water is the “most fundamental tenet of
10 Nevada water law.” Additionally, we have noted that those
11 holding vested water rights do not own or acquire title to water, but
12 merely enjoy a right to the beneficial use of the water. This right,
13 however, is forever subject to the public trust, which at all times
14 “forms the outer boundaries of permissible government action with
respect to public trust resources.” In this manner, then, the public
trust doctrine operates simultaneously with the system of prior
appropriation.

15 *Mineral County*, 20 P.3d at 808 (Rose, J., concurring) (citations omitted). Justice Rose
16 continued, explaining that “the public trust is more than an affirmation of state power to use
17 public property for public purposes. It is an affirmation of the duty of the state to protect the
18 people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of
19 protection only in rare cases when the abandonment of that right is consistent with the purposes
20 of the trust.’ Our dwindling natural resources deserve no less.” *Id.* at 809.

21 In *Lawrence v. Clark County* the Nevada Supreme Court found that the public trust
22 doctrine in Nevada has a basis, in part, in the Nevada Constitution’s gift clause, which limits the
23 legislature’s ability to dispose of public resources by placing the state in a fiduciary relationship
24 with the public. See *Lawrence*, 254 P.3d at 612. The Court in *Lawrence* also held that NRS
25 321.005 and NRS 533.025 statutorily affirm the public trust doctrine in Nevada. NRS 321.005
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1 provides that “state lands must be used in the best interest of the residents of this State, and to
2 that end the lands may be used for recreational activities, the production of revenue and other
3 public purposes.” *Lawrence*, 254 P.3d at 612 (citing NRS 321.005). Similarly, “NRS 533.025
4 provides that ‘[t]he water of all sources of water supply within the boundaries of the State
5 whether above or beneath the surface of the ground, belongs to the public.’ Notably, NRS
6 533.025 does not provide that Nevada's water belongs to the state; rather, it belongs to the
7 public.” *Lawrence*, 254 P.3d at 612-13. The Court in *Lawrence* also held that the public trust
8 doctrine in Nevada is also based on the inherent limitations on the state’s sovereign power, as
9 recognized in *Illinois Central Railroad*. *Id.* at 613.

11 In a case bearing considerable similarity to this case, the California Supreme Court held
12 that the public trust doctrine required the State of California to ensure adequate inflows to Mono
13 Lake. Like Walker Lake, Mono Lake is a terminal lake, which suffered from excessive upstream
14 diversions. In that case, the National Audubon Society filed a lawsuit alleging that the State had
15 violated its public trust duties to ensure adequate inflows to Mono Lake. The court engaged in a
16 discussion of the relationship between the public trust doctrine and California’s system of
17 appropriative water rights.

19 In our opinion, the core of the public trust doctrine is the state’s
20 authority as sovereign to exercise a continuous supervision and
21 control over the navigable waters of the state and the lands
22 underlying those waters. This authority applies to the waters
23 tributary to Mono Lake and bars DWP or any other party from
claiming a vested right to divert waters once it becomes clear that
such diversions harm the interests protected by the public trust.

24 *Nat’l Audubon Soc’y*, 658 P.2d at 712. The court was careful to note, however, that the public
25 trust is not only an affirmation of state power, “[i]t is an affirmation of the duty of the state to
26 protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering
27

1 that right of protection only in rare cases when the abandonment of that right is consistent with
2 the purposes of the trust.” *Id.* at 724; *see also id.* at 727. “The state has an affirmative duty to
3 take the public trust into account in the planning and allocation of water resources, and to protect
4 public trust uses whenever feasible.” *Id.* at 728.

5
6 The court also noted that the granting of water rights may be reconsidered when it is
7 apparent that the public trust was not considered when the rights were granted.

8 The water rights enjoyed by DWP were granted, the diversion was
9 commenced, and has continued to present without any
10 consideration of the impact upon the public trust. An objective
11 study and reconsideration of the water rights in the Mono Basin is
12 long overdue. The water law of California – which we conceive to
be an integration including both the public trust doctrine and the
board-administered appropriative rights system – permits such a
reconsideration; the values underlying that integration require it.

13 *Id.* at 712. Because of the inherent public ownership of such waters, the court recognized
14 a permanent, or continuing, affirmative duty on the state as the administrator of to hold those
15 water resources in trust for the public and act as trustee to protect the public’s long-term interests
16 in those waters. *Id.* at 723, 727-28. In exercising its sovereign power and obligation to allocate
17 water resources in the public interest, the state is not confined by past allocation decisions which
18 may be incorrect in light of current knowledge or inconsistent with current needs. *Id.* at 728.
19 The State has an affirmative obligation to reconsider past allocation decisions whether or not
20 those decisions were made after due consideration of their effect on the public trust. *Id.* This
21 duty is even more compelling where, as here, the past allocation decisions were made without
22 consideration of the public trust values and uses at stake. *See id.* at 712-13. This right to revoke
23 previously granted water rights stems partially from the fact that water rights are usufructuary
24 rights. The owner of a water right owns the right to use water, but does not own the water itself.
25 As such, these rights are always subject to the public trust, which underpins the granting of all
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1 water rights. *See id.* at 721-723, 727, 728; *see also Kootenai*, 671 P.2d 1085 (Idaho 1983); *In re*
2 *Water Use Permit Applications*, 9 P.3d 409 (2000) (*Wai' Hole Ditch* case).

3 As noted above, the failure to consider and provide for adequate inflows from the Walker
4 River system to sustain Walker Lake's environmental, recreational, economic, and aesthetic
5 values and uses over the long term has resulted in the gradual strangulation of Walker Lake and
6 the near total elimination of those important public trust values and uses. Allowing so precious a
7 public water resource – one of only two sizeable natural lakes contained in the State of Nevada –
8 to be destroyed through excessive upstream appropriation violates the government's public trust
9 obligation to maintain the health of Walker Lake for the benefit of the public. Under any reading
10 of the public trust doctrine a vital, navigable body of water like Walker Lake that has supported
11 and naturally would continue to support thriving fisheries and wildlife and a local economy must
12 be safeguarded for the benefit of the public at large and future generations.
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15 The public trust doctrine underpins and ultimately controls the application of Nevada and
16 California water law, as well as federal common law, and the governmental management of
17 water resources such as the Walker River and Walker Lake. Had the doctrine properly been
18 considered and applied in the historic allocation and management of the waters of the Walker
19 River and its tributaries, it would have led to a balanced approach that protected the health and
20 viability of Walker Lake as the priceless recreational, economic, scenic, and environmental
21 resource it rightfully is, while allowing reasonable amounts of water to be appropriated upstream
22 for productive agricultural uses. Unfortunately, past government officials and the Decree Court
23 itself failed to consider the need to maintain the health of the entire Walker River system or to
24 appreciate the devastating effects that permitting excessive water appropriations from the Walker
25 River and its tributaries would have on Walker Lake. These circumstances forced Mineral
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1 County to file its Motion for Intervention in order to represent the public's interests in Walker
2 Lake and ensure that sufficient inflow from the River reaches the Lake to restore and maintain
3 the Lake's public trust values and uses, including fisheries, recreation, and wildlife.

4 Thus, the public trust doctrine holds that water resources such as Walker Lake, Walker
5 River, and their tributary water sources are inherently the property of the public at large,
6 including future generations. And the doctrine requires the State of Nevada and this Court to
7 affirmatively manage and regulate Walker Lake, and the lands underneath, for the protection of
8 public uses, including navigation, commerce, fisheries, recreation, and wildlife. *See Lawrence*,
9 254 P.3d 606; *Mineral County*, 20 P.3d at 807-08 (Rose, J., concurring); *Bunkowski*, 503 P.2d
10 1231; *Illinois Central R.R.*, 146 U.S. 387; *Nat'l Audubon Soc'y*, 658 P.2d 709.

11
12 With this understanding of the doctrine, it is clear that Mineral County's public trust
13 doctrine claim does not seek a water right for Walker Lake, but rather a recognition and
14 enforcement of the public trust duty to protect and maintain Walker Lake as the trustee of the
15 public's rights in the waters of the Lake. The public trust duty acts as a constraint on the entire
16 Walker River system and underpins the water rights granted under the Decree and otherwise on
17 the system.

18
19 B. WRID's Motion to Dismiss²

20 WRID's only argument for dismissing Mineral County's public trust claim is based on a
21 mischaracterization of Mineral County's claim as one for a water right for Walker Lake, Doc.
22 751-1 at 3-5, despite the fact that Mineral County has made it clear that its public trust claim is
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25 ² Circle Bar N Ranch joined WRID's motion to dismiss and also filed a motion to dismiss in subproceeding C-125-
26 B. C-125-B. Doc. Nos. 1983; 1983-1. To the extent that Circle Bar N Ranch's arguments in C-125-B affect
27 subproceeding C-125-C, Mineral County addresses them below.

1 not tantamount to a request for a new priority water right on the Walker River system, but rather
2 a request for the enforcement of the public trust duty, as recognized by Nevada law, which
3 requires adequate inflows to Walker Lake be maintained. As explained above, all of the relevant
4 case law concerning the public trust doctrine explains its operation in this way, and not as
5 creating a water right. Accordingly, WRID's argument in support of dismissal plainly is
6 misplaced, and Mineral County's public trust claim cannot properly be dismissed on this ground.
7 Indeed, by framing its argument for dismissal within the speculative qualifying language, "[i]f
8 Mineral County seeks recognition of a first priority water right to be held by it," WRID all but
9 concedes this point.
10

11 Even if the Court were to characterize Mineral County's claim as a claim for a new water
12 right for Walker Lake, under the terms of the Walker River Decree itself it is clear that this Court
13 has subject matter jurisdiction to hear such a claim. This Court retained jurisdiction "for the
14 purpose of *changing the duty of water* or for *correcting or modifying* the decree; also for
15 *regulatory purposes*, including a change of point of diversion or of the place of use of any water
16 user." 1936 Decree ¶ XIV (emphasis added). Contrary to WRID's suggestion that the Court's
17 jurisdiction is limited to changes to existing water rights and the regulation of existing water
18 rights, Doc. No. 751-1 at 4, the Court's continuing jurisdiction is composed of four separate
19 elements: changing the duty of water, correcting the Decree, modifying the Decree, and
20 "regulatory purposes" stated in general terms without restriction.
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23 In construing the terms of decrees, courts apply rules of construction that are essentially
24 the same as the rules of construction applied to contracts. See *United States v. ITT Baking Co.*,
25 420 U.S. 223, 233-37 (1975). Pursuant to these rules "interpretation begins with the language of
26 the [decree]." *Coast Fed. Bank, FSB v. United States*, 323 F.3d 1035, 1038 (Fed. Cir. 2003).
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1 Terms and provisions that are “clear and unambiguous . . . must be given their plain and
2 ordinary meaning.” *McAbee Constr., Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996).
3 Further, the court construing a decree is required to presume that all of the words used in the
4 Decree were used “carefully and thoughtfully” to express the court’s “deliberate intention.” *See*
5 *St. Louis, Kansas City, and Colorado R.R. Co. v. Wabash R.R. Co.*, 152 F. 849, 851 (8th Cir.
6 1907), *modified on other grounds and aff’d* 217 U.S. 247 (1910).

8 Here the words used in paragraph XIV of the Decree are straightforward and
9 unambiguously broad in their meaning. The verb “correct” means “[t]o make or set right; to
10 remove the faults or errors of.” *See Webster’s New International Dictionary of the English*
11 *Language, Second Ed. Unabridged* at 597 (1956). The verb “modify” means “[t]o change
12 somewhat the form or qualities of; to alter somewhat; as, to modify the terms of a contract.” *Id.*
13 at 1577. “Regulatory” is an adjective meaning “[o]f or pertaining to regulation; making
14 regulations.” *Id.* at 2099. “Regulation” as a verb means “[t]o prescribe or control by
15 regulations,” and as a noun means “[a]ct of regulating or state of being regulated.” *Id.* The verb
16 “regulate” means “to govern or direct according to rule.” *Id.* The conjunction “or” is “[a]
17 coordinating particle that marks an alternative.” *Id.* at 1712. Thus, under the clear, plain,
18 meaning of these terms, paragraph XIV of the Walker River Decree unmistakably designates
19 three quite different and distinct types of claim or legal action that this Court has retained
20 jurisdiction to entertain, separate from the narrow, technical “purpose of changing the duty of
21 water” which the Court also retained the jurisdiction to do. Because paragraph XIV of the
22 Decree uses the disjunctive conjunction “or,” the plain meaning of this paragraph is that the
23 Court retained jurisdiction to consider requests or claims for any and all of these types of
24 potential action by the Court.
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1 Given the plain meaning of the terms used by the Decree Court in paragraph XIV of the
2 Walker River Decree, there is no sound basis for WRID's claim that the scope of the jurisdiction
3 retained by the Court does not extend to Mineral County's public trust claim. This is so
4 regardless of whether that claim is viewed as seeking a water right, or as a claim that the Court
5 should modify the Decree for the regulatory purpose of recognizing and providing for the
6 enforcement of the public trust duty to ensure adequate inflows from the Walker River system to
7 Walker Lake in order to restore and sustain the public trust values and uses of Walker Lake for
8 present and future generations of the public.

9
10 This interpretation of Paragraph XIV is consistent with other provisions of the Decree.
11 For example, from Paragraph XI, which enjoins any interference with the rights established in
12 the Walker River Decree, it logically follows that the Court must have retained jurisdiction to
13 consider other claims to the waters of the Walker River system to ensure that those rights do not
14 conflict with the rights recognized in the Decree.

15
16 Given the applicable rules of construction, the plain meaning of the terms in Paragraph
17 XIV of the Decree, and the internal logic of the Decree, the straightjacketed, self-defeating,
18 reading of paragraph advanced by WRID, *see* Doc. No. 751-1 at 3-5, clearly is incorrect and
19 inappropriate. Accordingly, the Court should deny WRID's Motion to Dismiss on this ground,
20 as well, regardless of whether Mineral County's public trust claim is viewed as seeking a new
21 water right or not.

22
23 C. There Is No Need for this Court to Stay the Exercise of Its Exclusive Jurisdiction
24 over the Subject Matter of this Litigation or Certify Legal Questions to the
25 Nevada Supreme Court Because the Law Pertaining to those Questions Is Clear
26 and Settled

27 Perhaps recognizing that its argument for dismissal of Mineral County's public trust
28 claim lacked merit, WRID argues in the alternative that this claim presents three legal questions

1 that are so new, and on which the law is so unsettled, that this Court should stay the exercise of
2 its exclusive jurisdiction over the Walker River system until “Mineral County obtains a final
3 decision ultimately from the Nevada Supreme Court” on those legal issues. The three issues
4 WRID claims require a stay are: (1) whether Mineral County has standing; (2) whether Mineral
5 County must exhaust state administrative remedies before it may bring a public trust claim; and
6 (3) the relationship between the public trust doctrine and the Nevada water rights system. *See*
7 Doc. No. 751-1- at 1.
8

9 As explained below, WRID’s arguments concerning these issues and the need for staying
10 the Court’s exercise of jurisdiction are without merit because they are not, in fact novel or
11 unsettled areas of law, and there is ample legal precedent to guide the Court in its resolution of
12 those issues. In reality, WRID’s attempt to entice this Court into staying the exercise of its
13 exclusive jurisdiction over the Walker River system until the Nevada Supreme Court has ruled
14 on these issues in nothing more than another in the series of cynical stratagems employed by
15 WRID for nearly 20 years to delay and obstruct resolution of the merits of Mineral County’s
16 public trust claim. In addition to obstructing Mineral County’s initial service efforts and raising
17 a number of pretextual procedural issues to repeatedly delay and obstruct the Court from
18 reaching the merits of this subproceeding, more than ten years ago WRID vigorously asserted
19 diametrically opposed arguments before the Nevada Supreme Court, insisting that that court
20 could not consider or rule on Mineral County’s public trust claim because this Court had
21 exclusive jurisdiction over issues concerning the Walker River system, including Mineral
22 County’s claim, and because this Court was the most competent court to rule on these issues and
23 the proper forum to afford a legal remedy in response to Mineral County’s claim. In light of this
24 history of delay and opposition to the Nevada Supreme Court considering Mineral County’s
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1 public trust claim, the Court should not humor WRID's present about-face effort to further delay
2 the case by returning it to the very court WRID previously objected to.³

3 WRID's request for a stay flies in the face of the fact that in 2001, at the urging of
4 WRID, the Nevada Supreme Court held that this Decree Court has exercised continuing
5 exclusive jurisdiction over the Walker River system for more than 80 years and has the greatest
6 understanding of the competing claims and interests in the waters of the system. The Nevada
7 Supreme Court held that it could not exercise jurisdiction to consider Mineral County's public
8 trust claim on the ground that it could not properly address issues related to this C-125-C
9 subproceeding, because "to construe these Decrees so that the district court does not retain
10 exclusive jurisdiction would render the retention of jurisdiction a nullity." *Mineral County*, 20
11 P.3d at 806 (quoting *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007, 1013 (9th
12 Cir.1999)). Thus, as the Nevada Supreme Court already has indicated, abstention in this case
13 would be unnecessary and inappropriate.
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16 In support of its argument for a stay, WRID relies primarily on *Louisiana Power & Light*
17 *Company v. City of Thibodaux*, 360 U.S. 25 (1959), and to a lesser degree on *Kaiser Steel Corp.*
18 *v. W.S. Ranch Co.*, 391 U.S. 593 (1968) and *Kern-Tunale Water Dist. v. City of Bakersfield*, 828
19 F.2d 514 (9th Cir. 1987), for the proposition that a stay would be appropriate in a case which
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22 ³ Because WRID's request for a stay is without merit and there is no sound basis for the Court to stay the execution
23 of its exclusive jurisdiction in this case, the procedure for obtaining state court rulings should not matter. However,
24 WRID's failure to acknowledge or inform the Court of the most efficient way of obtaining rulings on these issues
25 from the Nevada Supreme Court illustrates the actual purpose of WRID's request for a stay, which is simply to
26 further delay and obstruct the Court's consideration of the merits of Mineral County's public trust claim. Although,
27 as explained below, a stay would be inappropriate in this case, were the Court to seek rulings from the Nevada
28 Supreme Court on any issues, the most efficient procedure for doing so would be to certify any such question to that
court pursuant to Nevada Rule of Appellate Procedure 5(a). Rather than acknowledge this established procedure,
WRID suggests that Mineral County be required to institute a second state court action to obtain the state court

1 presents an unsettled important question of state law which is truly novel. *See* WRID Motion to
2 Dismiss at 7. However, WRID fails to note that “[a]bstention is an extraordinary and narrow
3 exception which is appropriate only where the consequences of exercising federal jurisdiction
4 outweigh [the] obligation to adjudicate suits over which [a federal court has] jurisdiction
5 The federal courts are obliged to exercise their jurisdiction in all but the most exceptional cases.”
6 *Kern-Tunale Water Dist. v. City of Bakersfield*, 828 F.2d 514, 518 (9th Cir. 1987) (citing *Turf*
7 *Paradise v. Arizona Downs*, 670 F.2d 813, 819 (9th Cir. 1982)). Moreover, a “mere difficulty of
8 state law does not justify a federal court’s relinquishment of jurisdiction in favor of state court
9 action.” *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 27 (1959) (citing
10 *Meredith v. City of Winter Haven*, 320 U.S. 228 (1943).

11
12 *Thibodaux* is readily distinguished from this case. To begin with, *Thibodaux* was filed as
13 a state court case and subsequently removed to federal court. 360 U.S. at 25. In *Thibodaux*, the
14 Supreme Court upheld the exercise of the district court’s discretion to stay the federal court
15 proceedings in the context of a truly extraordinary “quandary” created by a conflict between a
16 state attorney general opinion that conflicted with the apparent meaning of a state statute in
17 question, which had never been interpreted by any state court, and which therefore raised a
18 completely novel question of state law that already was the subject of a plainly unsettled conflict
19 within the state’s legal system. 360 U.S. at 30. Similarly, in *Kaiser Steel*, the Court held that a
20 stay of federal jurisdiction was required because the case involved a “truly novel” question of
21 state law which no court had ever considered at all. 391 U.S. 593, 594.
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26 rulings in a transparent effort to impose the maximum burden on Mineral County and cause the maximum delay in
27 the Court’s resolution of the merits of Mineral County’s claim.
28

1 At the present stage of this case, unlike *Thibodaux* and *Kaiser Steel*, because the Nevada
2 Supreme Court already has considered and ruled on the public trust doctrine, its contours, and
3 relationship with the rest of Nevada water law, there no longer is any novel question of state law
4 that must be decided by the Nevada Supreme Court before this Court may properly resolve
5 Mineral County's claim. Unlike *Kaiser* and *Thibideaux*, where unclear state statutory language
6 had never been construed, here the public trust doctrine has been clearly adopted and applied by
7 the Nevada Supreme Court, and there are no novel questions of state law at play.
8

9 Nearly a decade and a half ago, when Mineral County attempted to raise its public trust
10 claim before the Nevada Supreme Court, the question of how the public trust doctrine should be
11 interpreted and applied under Nevada law was a novel question that had not been expressly
12 addressed by any Nevada court. But, as discussed in detail above, in the wake of Justice Rose's
13 concurrence in *Mineral County v. Nevada*, and the Nevada Supreme Court's ruling in *Lawrence*
14 *v. Clark County*, this question has been addressed and settled by the state's highest court.
15 Ironically, when the question of how the public trust doctrine should be understood and applied
16 under Nevada law was truly novel WRID took a position diametrically opposed to the one it now
17 advances in its Motion, insisting that this Court, the Decree Court, was the only proper forum in
18 which to litigate this case. See *Mineral County v. Nevada*, 20 P.3d 800; Answer of Walker River
19 Irrigation District et al. at 2-4, *Mineral County v. Nevada*, 20 P.3d 800 (Nev. Nov. 1, 2000)
20 (Case No. 3652); Memorandum of Points and Authorities in Opposition to Petition for Writ of
21 Mandamus and Writ of Prohibition of Walker River Irrigation District, et al. at 18, *Mineral*
22 *County v. Nevada*, 20 P.3d 800 (Nev. Nov. 1, 2000) (Case No. 3652). Even at that time, when
23 the questions involved in Mineral County's claim could be considered genuinely novel, the
24 Nevada Supreme Court itself determined that the Decree Court is the best forum in which to
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1 litigate this case. *Mineral County*, 20 P.3d at 801, 806. In light of this history, and the Nevada
2 Supreme Court’s previous rulings, WRID’s effort to persuade the Court to stay the exercise of its
3 jurisdiction should be recognized for what it is – nothing more than a delay tactic – and rejected
4 as such.

5
6 i. The Public Trust Doctrine and Its Relationship to the Rest of Nevada
7 Water Law Is Not a Novel Question, But Rather an Issue that Has Been
8 Ruled on by the State Supreme Court and Is Clear and Settled, and that
9 this Court Is Best Suited To Apply To the Walker River System

10 WRID’s suggestion that a ruling on various contours of the public trust doctrine in
11 Nevada involves important and novel questions of state law that must be certified to the Nevada
12 Supreme Court for decision is entirely without merit and is belied by Nevada case law cited by
13 WRID itself in its motion to dismiss which clearly outlines the contours of the public trust
14 doctrine in Nevada as it relates to water bodies such as Walker Lake. WRID bases the bulk of its
15 argument on the fact that the public trust issues in this case are ones of great importance to the
16 State of Nevada. Mineral County agrees that the issues in this case are important.⁴ However,
17 while the public trust doctrine is an important part of Nevada law, it is far from novel and has
18 been the subject of substantial guidance from the Nevada Supreme Court. Thus, the public trust
19 doctrine and its relationship with the rest of Nevada law is not an appropriate issue for
20 certification to the Nevada Supreme Court.

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23 ⁴ WRID’s reference to the Southern Nevada Water Authority’s groundwater rights applications in eastern Nevada,
24 which are the subject of an appeal before the Nevada Supreme Court is a misleading attempt to create an air of
25 controversy around the public trust doctrine in Nevada. That case deals exclusively with groundwater, did not
26 involve any meaningful consideration of the public trust doctrine at the state district court level, and does not
27 involve the public trust doctrine at all on appeal. *See King, et al. v. Millard County, et al.*, Nevada Supreme Court
28 Case No. 64815. Accordingly, that case has no implications for the public trust claim in this case or for the public
trust doctrine in Nevada at all.

1 WRID attempts to mislead the Court into mistakenly thinking that the public trust
2 doctrine's place in Nevada water law is novel by mischaracterizing the Nevada Supreme Court's
3 ruling in *Lawrence v. Clark County*, as one narrowly relating only to the alienation of public
4 land. In fact, a careful reading of *Lawrence* reveals that the Court in that case comprehensively
5 outlined the contours of the public trust doctrine in Nevada as it relates to water bodies of the
6 state. "Thus, in this opinion, we clarify Nevada's public trust doctrine jurisprudence by
7 expressly adopting the doctrine and determining its application in Nevada, given the public's
8 interest in Nevada's waters and the law's acknowledgement of that interest." *Lawrence*, 254
9 P.3d at 607. "When a state holds a resource which is available for the free use of the general
10 public, a court will look with considerable skepticism upon *any* governmental conduct which is
11 calculated *either* to reallocate that resource to more restricted uses *or* to subject public uses to the
12 self-interest of private parties.'" *Lawrence*, 254 P.3d at 617, n. 5 (quoting Joseph L. Sax, *The*
13 *Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L.
14 Rev. 471, 490 (1970)).

17 Indeed, the court in *Lawrence* noted that the first case in which the Nevada Supreme
18 Court recognized concepts foundational to the public trust doctrine actually involved the State
19 Engineer of Nevada and an application to drill a well on a dry lake bed. The Nevada Supreme
20 Court in that case noted that "the state owns the waters and the beds beneath them, based on their
21 navigable status at the time of statehood." *Lawrence*, 254 P.3d at 610 (discussing *State Engineer*
22 *v. Cowles Bros., Inc.*, 478 P.2d 159 (Nev. 1970)). Contrary to WRID's suggestion, the adoption
23 and explanation of the public trust doctrine in *Lawrence* is not limited to alienation of public
24 land. Rather, the doctrine applies to any public trust resource, including water and the allocation
25 of that water by the Nevada State Engineer. Thus, the Nevada Supreme Court's decision in
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1 *Lawrence v. Clark County* makes it clear that the public trust doctrine in Nevada imposes a duty
2 to protect water bodies such as Walker Lake from overappropriation upstream.⁵ As the Court
3 noted in *Lawrence v. Clark County*,

4 [t]his court has itself recognized that this public ownership of
5 water is the “most fundamental tenet of Nevada water law.”
6 Additionally, we have noted that those holding vested water rights
7 do not own or acquire title to water, but merely enjoy a right to the
8 beneficial use of the water. This right, however, is forever subject
9 to the public trust, which at all times “forms the outer boundaries
of permissible government action with respect to public trust
resources.” In this manner, then, the public trust doctrine operates
simultaneously with the system of prior appropriation.

10 *Lawrence v. Clark County*, 254 P.3d at 611; *see also supra*, discussion contained
11 in Section IV(A).

12 Not only has the Nevada Supreme Court clearly affirmed application of the public trust
13 doctrine and discussed its contours in Nevada, the broader body of law governing the public trust
14 doctrine is well developed and dates back to Roman law and English Common Law, and the
15 doctrine is a fundamental principle of federal common law. *See, supra*, discussion contained in
16 Section IV(A). Additionally, state courts throughout the 9th Circuit have confirmed the public
17 trust doctrine’s status as a fundamental legal principle and explored the various implications of
18 its application to water rights controversies and historic overappropriation of water resources.

19 *See, e.g., Lawrence*, 54 P.3d 606 (Nev. 2011); *Nat’l Audubon Soc’y*, 658 P.2d 709 (Cal. 1983)

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23 ⁵ While Mineral County took the position in the 2000 Writ of Mandamus and Prohibition proceedings before the
24 Nevada Supreme Court that at that time it planned to seek to have the Nevada Supreme Court “decide the scope of
25 the public trust doctrine pursuant to the federal abstention doctrine,” *Mineral County*, 20 P.3d at 807 n.35, this was
26 because at that time, the Nevada state courts had not formally adopted or analyzed the public trust doctrine. As
27 noted above, since that time the Supreme Court has issued two separate opinions addressing the scope of the public
28 trust doctrine in Nevada, the latter of which formally adopted the doctrine. *See Mineral County*, 20 P.3d 800;
Lawrence, 254 P.3d 606. So, the situation has changed over the past 14 plus years, and the issue no longer truly is
novel or unsettled in Nevada.

1 (Mono Lake case); *Kootenai*, 671 P.2d 1085 (Idaho 1983); *In re Water Use Permit Applications*,
2 9 P.3d 409 (2000) (*Wai' Hole Ditch* case). Thus, the law in this area is essentially settled, and
3 the courts of Nevada and its sister states have provided ample guidance concerning the
4 application of the public trust doctrine in the context of the rest of Nevada's (and California's)
5 water law. And under any reasonable construction of the public trust doctrine, it clearly imposes
6 a duty to ensure the restored health of Walker Lake. Accordingly, it is not necessary and would
7 not be appropriate for this Court to stay the exercise of its jurisdiction and certify to the Nevada
8 Supreme Court.
9

10 ii. Mineral County Clearly Has Standing to Bring its Public Trust Claim

11 WRID next makes the unsupported assertion that the question of whether Mineral County
12 has standing to bring a public trust claim is a novel question of state law that must be certified to
13 the Nevada Supreme Court for decision. Tellingly, when intervention was briefed, and the
14 opportunity arose in the context of intervention's legally protected interest test, WRID did not seriously
15 dispute that Mineral County has a legally protectable interest in public trust protections for Walker Lake.
16 As explained below, standing to bring a claim to assert or protect the public trust has uniformly
17 been held to be broadly available to essentially any individual or entity. Given WRID's failure
18 to point to any substantive doubt about Mineral County's standing or protected legal interest in
19 asserting the public trust doctrine duty to provide adequate inflows to Walker Lake, WRID's
20 unsupported argument concerning standing, like its argument about the public trust doctrine's
21 applicability to water in Nevada, is nothing more than another pretext designed to obstruct and
22 delay actual consideration of the merits of Mineral County's public trust claim.
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25 It is a well established principle of the public trust doctrine that any member of the public
26 may bring a public trust claim. *See Nat'l Audubon Soc'y*, 658 P.2d at 716, n. 11 (any member of
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1 public, and in this case plaintiffs alleging harm to recreational and aesthetic interests, has
2 standing to sue to protect the public trust); *Wisconsin v. Deetz*, 224 N.W.2d 407, 413 (Wisc.
3 1974) (“The public trust doctrine merely establishes standing for the state, or any person suing in
4 the name of the state for the purpose of vindicating the public trust”); *see also* Joseph L. Sax, *The*
5 *Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L.
6 Rev. 471 (1970). This only makes sense, since there would be no other way for public trust
7 obligations to be enforced where, as here, the state or other pertinent sovereign governmental
8 entity has failed to recognize, enforce, or comply with its obligations under the public trust
9 doctrine.
10

11 As discussed above, Mineral County brought this public trust claim on behalf of the
12 public at large, citizens of Nevada more particularly, and most pointedly on behalf of Mineral
13 County residents, all of whom are within the class of people for whose benefit the public trust
14 exists. The County has established that its and the public’s recreational, aesthetic, and economic
15 interests have been harmed by the substantial impairment of Walker Lake resulting from the
16 failure to recognize and fulfill the public trust obligation to ensure adequate inflows to Walker
17 Lake from the Walker River system. *See* Affidavits of Kelvin J. Buchanan and Gary L. Vinyard,
18 Doc. No. 22. Thus, Mineral County is a proper party to assert a claim seeking to enforce the
19 public trust doctrine and ensure that the Decree Court enforces the public trust obligation to
20 provide for adequate inflows from the Walker River System into Walker Lake in order to sustain
21 the values, and uses of Walker Lake that the public trust doctrine protects.
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24 The fact that neither NDOW nor the State of Nevada has never sought to assert or enforce
25 the public trust in order to protect Walker Lake in this way, and the fact that that the State of
26 Nevada affirmatively opposed the recognition or application of the public trust doctrine in any
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1 meaningful sense before the Nevada Supreme Court,⁶ only underscores the appropriateness and
2 need for Mineral County to prosecute its public trust claim. Accordingly, Mineral County's
3 standing to bring its public trust claim should not be considered open to serious debate, and it
4 certainly is not the sort of issue or question that requires or is appropriate for certification to the
5 Nevada Supreme Court.

6
7 iii. The Law Is Clear that Mineral County Need Not Exhaust Administrative
Remedies Prior to Bringing Its Public Trust Claim in this Court

8 WRID also suggests, in passing, and without any supportive argument whatsoever, that
9 exhaustion of administrative remedies may be a novel question of state law that must be certified
10 to the Nevada Supreme Court for decision. *See* WRID Motion to Dismiss, at 9. To begin with,
11 the Court should regard this argument from WRID with a jaundiced eye, since WRID
12 aggressively asserted before the Nevada Supreme Court that no such administrative remedy was
13 available or could be provided in response to Mineral County's public trust claim. *See* Answer
14 of Walker River Irrigation District et al. at 3-4, *Mineral County v. Nevada*, 20 P.3d 800 (Case
15 No. 3652); Memorandum of Points and Authorities of Walker River Irrigation District et al. at
16 18, 28, *Mineral County v. Nevada*, 20 P.3d 800 (Case No. 3652). No Nevada court has required
17 exhaustion of administrative remedies before bringing a public trust claim, and Nevada law does
18 not provide any administrative procedure or remedy for such a claim. In general, public trust
19 claimants or petitioners are not required to challenge specific appropriations or otherwise exhaust
20 administrative remedies in an action based solely on the state's violation of the public trust
21 doctrine. *See Nat'l Audubon Soc'y*, 658 P.2d at 730 (plaintiffs bringing action based solely on
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26 ⁶ *See* State of Nevada Answer at 19 – 31, *Mineral County*, 20 P.3d 800 (asserting various grounds why the public
trust doctrine could not be asserted with regard to Walker Lake or did not require any action beyond the continued
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1 public trust not required to exhaust administrative remedies contained in state's water rights
2 system); *Kootenai*, 671 P.2d at 1094; *In re Water Use Permit Applications*, 9 P.3d at 445, 453,
3 455. Consistent with this general approach, the Nevada Supreme Court has held that the state's
4 right in public waters cannot be prescribed against nor impaired by "an estoppel growing out of a
5 mere failure to object to encroachment." *State v. Bunkowski*, 503 P.2d at 1238. Further, because
6 the public trust doctrine imposes a continuing duty on the state, a public trust claim may be
7 raised at any time, *see id.* at 1238, and requiring exhaustion of administrative remedies in the
8 context of such a claim would not be practical for that reason as well. Accordingly, apart from
9 the fact that Nevada law appears not to provide any administrative remedy for a public trust
10 claim such as Mineral County's, it is clear that there is no legal requirement under Nevada law
11 for Mineral County to exhaust any administrative remedies prior to pursuing its public trust
12 claim in this Court.
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15 The suggestion that some unidentified administrative remedy must be exhausted before
16 the Court can exercise jurisdiction over Mineral County's public trust claim is especially dubious
17 in the context of the Walker River litigation, in which the Decree Court, and not the Nevada
18 State Engineer, makes the ultimate determinations about the allocation of and relative rights to
19 water in the Walker River system. The diminished authority of the State in these proceedings is,
20 perhaps, illustrated by the fact that in the nearly 20 years since this case was instituted, the State
21 of Nevada has not taken effective action to meet the public trust obligation to provide for
22 adequate inflows from the Walker River system to Walker Lake in order to restore and sustain
23 the Lake's public trust values and uses. The State's inability, or disinclination, to ensure that the
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26 operation of the Walker River Decree and Nevada water law without change).

1 requirements of the public trust doctrine are fulfilled with regard to Walker Lake only further
2 demonstrates the futility and illusory nature of WRID's vaguely suggested exhaustion of
3 administrative remedies requirement.

4 For the foregoing reasons, none of the issues raised by WRID are novel or unsettled
5 questions of law, and therefore a stay is not appropriate in this case. If, however, the Court is
6 inclined to stay the exercise of its jurisdiction with regard to nay issue, the proper procedure for
7 the Court to follow would be to certify the legal question or questions to the Nevada Supreme
8 Court for decision pursuant to Nev. R. App. P. 5(a).

10 **V. CONCLUSION**

11 For the reasons stated above, Mineral County respectfully urges the Court to deny
12 WRID's *Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)*, or in the *Alternative to Stay*
13 *Proceedings with Respect to Mineral County's Amended Complaint in Intervention* in its
14 entirety.

15 Respectfully submitted this 30th day of May, 2014,

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2014, I electronically filed the foregoing **MINERAL COUNTY'S POINTS AND AUTHORITIES IN RESPONSE TO WALKER RIVER IRRIGATION DISTRICT'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO STAY** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses that are registered for the C-125-B and C-125-C subproceedings; I further certify that on this 30th day of May, 2014, postcards containing notice of this filing were mailed to all pro se parties in the C-125-B subproceeding; and I further certify that on this 30th day of May, 2014, I caused a copy of the forgoing to be served on the following C-125-C non CM/ECF participants by U.S. Mail, postage prepaid:

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