

WRID, Lyon County and Bowman Protestants

EXHIBIT

185

Walker River Irrigation District Response to Joint Comments of the Walker River Paiute Tribe
and the United States of America, filed May 17, 2012 in the Walker River Action

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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE DISTRICT OF NEVADA
 11

12 UNITED STATE OF AMERICA,)	In Equity No. C-125
)	CV-N-73-125-ECR-WGC
13 Plaintiff,)	
)	
14 WALKER RIVER PAIUTE TRIBE,)	
)	RESPONSE OF WALKER RIVER
15 Plaintiff-Intervenor,)	IRRIGATION DISTRICT TO JOINT
)	COMMENTS OF THE WALKER
16 vs.)	RIVER PAIUTE TRIBE AND THE
)	UNITED STATES OF AMERICA
17 WALKER RIVER IRRIGATION DISTRICT,)	
a corporation, et al.)	
)	
18 Defendants.)	
)	

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 21 The Walker River Irrigation District (the "District") submits this Response to certain
 22 of the Joint Comments of the Walker River Paiute Tribe (the "Tribe") and the United States
 23 filed herein on May 16, 2012, Doc. 1087.

24 **The Place of Measurement for the Tribe's Decreed Right.**

25 The Joint Comments refer once again to the provisions of the Plan of Distribution
 26 which state that the Tribe's decreed right will be measured at the Parkers Gage. This and
 27 related comments have been filed since 1993.
 28

1 The Walker River Decree states:

2 I. The plaintiff, United States of America, is hereby adjudged and decreed
3 to be the owner of the right to divert a continuous flow of 26.25 cubic feet per
4 second of the natural flow of the Walker River to be diverted from said stream
5 upon or above the Walker River Indian Reservation during the irrigation
season of 180 days of each year for the irrigation of 2100 acres of land situated
in the Walker River Indian Reservation. . . .

6 The Rules and Regulations for Distribution of Water on the Walker River Stream System
7 approved by order of this Court on September 3, 1953, state that "a gaging station at Parkers
8 at the lower end of Mason Valley will measure water for the Indian Service." Those Rules
9 also provide for a "plan of distribution" for each irrigation season.
10

11 Since about 1988, that annual Plan of Distribution has stated that "a gaging station at
12 Parkers at the lower end of Mason Valley will measure [the 26.25 cfs] for the Indian Service."
13 Beginning in 1993 and each year thereafter, the Tribe and the United States have either filed
14 separate, but identical, or joint comments to the annual Plan of Distribution. Until May of
15 2001, those comments have generally stated:

16 2. As was the case last year and in previous years, the Board's
17 proposed Plan of Distribution requires the measurement of the Tribe's decreed
18 right of 26.25 cfs of natural flow of the Walker River at the Parkers gaging
19 station, which is above the Reservation and a substantial distance from any of
20 the Tribe's irrigation facilities. See Plan of Distribution § VI at 5. Because the
21 Board measures the Tribe's decreed right at Parkers and does not account for
22 conveyance losses, the Tribe does not receive its full 26.25 cfs of water for use
on the Reservation as required by the *Decree* (Apr. 14, 1936), as amended,
Order for Entry of Amended Final Decree to Conform to Writ of Mandate, Etc.
(Apr. 24, 1940) ("Final Decree").

23 * * *

24 4. The Plan of Distribution is based on the rules and regulations
25 that this Court approved in 1953 to aid the Board in carrying out the Court's
26 mandate regarding the decreed rights to the waters of the Walker River. . . .
27 The Tribe and the United States assert that this language is contrary to the
Final Decree, which requires that the Tribe receive 26.25 cfs of natural flow of
28 the Walker River for use upon the lands of the Walker River Indian
Reservation. See Final Decree § I.

1 5. The Tribe and the United States Geologic Service ("U.S.G.S.")
2 have installed a gaging station on the Reservation, known as the Cow Camp
3 Gage. The Tribe and the United States anticipate that the Cow Camp gaging
4 station will provide additional information to assist in determining the losses
5 that occur below the Parkers gage. The Tribe and the United States, however,
6 recognize the concerns that members of the Board and other water users have
7 voiced about the need to corroborate the accuracy of the gaging station. To the
8 extent that the Cow Camp gaging station does not provide complete and
9 accurate information, the United States and the Tribe are in the process of
10 requesting that the U.S.G.S. assist in the determination and installation of an
11 alternate gage that is appropriately sited and provides complete and accurate
12 information. Thus, for this year, the Tribe and the United States do not object
13 to the Board continuing to administer the Walker River Decree and the
14 delivery of water to Division One in the same manner as in the last seven
15 years. This interim period will allow the Tribe and the U.S.G.S. to consider
16 this request. The Tribe's and the United States' recommended approach will
17 also avoid issues regarding Weber Reservoir which will be addressed in sub-
18 proceeding C-125-B.

19 6. Although it is not necessary to resolve the issues surrounding
20 the measurement of the Tribe's decreed water rights at this time, the actions of
21 the Tribe and the United States are not intended to waive any objection that the
22 Tribe and the United States may have to measuring the Tribe's water right at
23 the Parkers gaging station or otherwise prejudice the Tribe's position on this
24 critical matter.

25 *See*, Joint Comments of Walker River Paiute Tribe and the United States, at pgs. 2-5, filed
26 Mar. 12, 2000.

27 Beginning in 2001, the United States and the Tribe added some new language to their
28 otherwise consistent comments on this issue. That new language, which has been repeated
every year since, is to the effect that "in practice, the Decree has been administered in such a
way as to at least partially compensate for the losses between the Parkers Gage and the point
of diversion on the Reservation." In every case, they have stated that they are not waiving
their objections to measurement at the Parkers Gage. The Tribe and the United States takes
the same position this year.

 However, to date, neither the Tribe nor the United States has asked the Court or the
United States Board of Water Commissioners to alter the 1953 Rules concerning the place of

1 measurement, or to include a specific increment of water at the place of measurement to offset
2 alleged conveyance losses. No facts have been submitted to identify alleged conveyance
3 losses.

4 Because the flow at the Parkers Gage is not always subject to control by the Chief
5 Deputy Water Commissioner, or anyone else, one cannot interpret flows in excess of 26.25
6 cfs at the Parkers Gage as a "practice" to administer the Decree "in such a way as to at least
7 partially compensate for losses between the Parkers Gage and the point of diversion or the
8 Reservation" *See* Doc. 1087, p. 3, lns. 11-13. For example, last year on May 20, 2011, the
9 flow at the Parkers Gage was 611 cfs. However, the District recognizes that the United States
10 and Tribe have not waived the rights they may have to seek in the future a different place of
11 measurement and/or to the addition of water to offset conveyance losses, if any.
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13 Dated this 17th day of May, 2012.

WOODBURN AND WEDGE

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16 By: / s / Gordon H. DePaoli

Gordon H. DePaoli

Attorneys for the Walker River Irrigation
District
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Woodburn and Wedge and that on the 17th day of May, 2012, I electronically filed the foregoing *Response of Walker River Irrigation District to Joint Comments of the Walker River Paiute Tribe and the United States of America* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to parties of record via their email addresses.

I further certify that I served a copy of the foregoing to the following non-CM/ECF participants by U.S. Mail, postage prepaid, this 17th day of May, 2012:

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/ s / Holly Dewar

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