



# Walker River Litigation Update

# Why an update?

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- After rulings from the 9<sup>th</sup> Circuit and Nevada Supreme Court, Mineral County filed an amended complaint on June 30, 2021.
- Mineral County is working to serve all remaining Californian riparian property owners in the Walker River Basin by December 31, 2021.

# Background & History



- The Walker River is an interstate system originating in California and terminating in Nevada
- Headwaters in Sierra Nevada west of Bridgeport and Antelope Valley
- Two reservoirs on the Walker River in Mono County: Topaz Lake and Bridgeport Reservoir (both controlled by Walker River Irrigation District)
- Terminates at Walker Lake in Hawthorne, Nevada

# Legal History

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- Walker River Decree in 1936
- 1990s: Litigation initiated and split into two cases:
  - Sub-File B: *USA & Walker River Paiute Tribe v. Walker River Irrigation District, et al.*
    - Claims brought by the United States on behalf of the Walker River Paiute Tribe for water for use on their reservation in Nevada
  - Sub-File C: *Mineral County and Walker Lake Working Group v. Walker River Irrigation District, et al.*
    - Claims brought by Mineral County and the Walker Lake Working Group for additional water for Walker Lake
- Mono County is a defendant



# Sub-File C

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- Mineral County and the Walker Lake Working Group asserted that Nevada’s Public Trust Doctrine required modification of the 1936 Decree and reallocation of water rights to allow more inflows to the lake
- Appealed to the Ninth Circuit, which certified two questions of state law to the Nevada Supreme Court:
  - (1) “Does the [Nevada Public Trust Doctrine] apply to rights already adjudicated and settled under the doctrine of prior appropriation and, if so, to what extent?”
  - (2) “If the [Nevada Public Trust Doctrine] applies and allows for reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such adjudicated or vested rights constitute a ‘taking’ under the Nevada Constitution requiring payment of just compensation?”
- Nevada Supreme Court held that that Nevada’s “public trust doctrine applies to rights already adjudicated and settled under the doctrine of prior appropriation,” but that “the public trust doctrine does not permit reallocating water rights already adjudicated and settled under the doctrine of prior adjudication.” *Mineral County v. Lyon County*, 473 P.3d 418, 425, 430 (Nev. 2020).

# Sub-File C cont.

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- Original district court then dismissed Mineral County's and the Walker Lake Working Group's claims that sought reallocation of water rights under the Walker River Decree.
  - The Ninth Circuit affirmed and remanded the case to the district court "to consider the County's public trust doctrine claim to the extent it [seeks] remedies that would *not* involve a reallocation of adjudicated water rights.
- Now, back in the District Court, Mineral County filed a Second Amended Complaint with a public trust claim seeking remedies that they claim do not require reallocation of rights

# Second Amended Complaint: Remedies

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Seeking 24 remedies in all, most of which pertain exclusively to Nevada. The key remedies that potentially affect Mono County water rights holders include:

- Amend the 1953 Rules and Regulations for the distribution of water under the 1936 Decree to modify the formula used to establish the quantity of water available for diversion on an annual basis
- Mandate for temporary restrictions in years of shortage
- Amend the 1953 Rules and Regulations for the distribution of water under the 1936 Decree to require that water in excess of that needed to satisfy all Decree rights be delivered to the Lake in wet years instead of be delivered to rights holders
- Amend the 1996 Administrative Rules and Regulations to require denial of change applications which would have a negative impact on flows into Walker Lake
- Declare that the Walker River System over-appropriated, which would cancel all unperfected permits for which no structures have been constructed and require denial of all pending applications for new appropriations or impoundments

# Remedies, cont.

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- Cancel water rights or portions of water rights for which there is no necessity or no demonstrated beneficial use and require that those flows be re-directed to Walker Lake
- Modify delivery schedules from and management of Topaz and Bridgeport Reservoirs to maximize water delivery to Walker Lake.
- Amend the 1996 Rules and Regulations to subject change applications within the Walker River Irrigation District to be subject to the same procedures as the Walker River Basin
- Mandate efficiency improvements to on and off-farm irrigation water delivery systems to the Walker River channel and tributaries
- Adopt of rules for enforcement of penalties for unauthorized diversions and uses
- Order that real-time gauging stations be installed at all significant points of diversion in the Walker River system and the mouth of Walker Lake



# Next Steps: Service & Response

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- After the Second Amended Complaint was filed, the Court ordered Mineral County to complete service on all California riparian property owners in the Walker River Basin by **December 31, 2021**.
  - The list of 320 remaining rights holders is attachment A to the Order Regarding Service in the agenda packet.
- Each owner listed will receive a packet with a:
  - Notice
  - A copy of the Order on Service
  - The Second Amended Complaint
  - Forms for a Notice of Appearance and Intent to Participate
  - Form for Disclaimer of Interest in Water Rights

# Next Steps, cont.

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- There are three ways a riparian owner can respond:
  - To participate in the lawsuit with an attorney representing them
  - To participate in the lawsuit without an attorney
  - To file a notice disclaiming any ownership in a water right
- Once served, a riparian owner has **30 days** to file the forms to indicate that they will participate or that they disclaim any water right.

# Next Steps, cont.

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- After service, defendants may respond to the complaint with an Answer or a Motion to Dismiss.
- There is **no default** for defendants who do not respond.
  - For defendants who were already served or who returned Waivers of Personal Service forms **before July 19, 2021**, responses are due no later than **September 28, 2021**.
  - For defendants served **after July 19, 2021**, responses to the complaint will be due **90 days** from the date on which Defendant is served or signs a Waiver of Personal Service.