

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

1 UNITED STATES OF AMERICA, *et al.*,

) Case No. 3:73-cv-00003-LDG

2)
3 Plaintiff,

) [PROPOSED]

4 v.

) ORDER

5 THE ORR WATER DITCH CO., *et al.*,

) MODIFYING THE FINAL

) DECREE ENTERED IN

) THIS CASE IN 1944

6 Defendants.
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The Court has considered the Motion of the United States, State of Nevada, Pyramid Lake Paiute Tribe, Truckee Meadows Water Authority, and the Washoe County Water Conservation District to Modify or Amend the Final Decree Entered in this Case in 1944, all joinders in the Motion, oppositions thereto, and the record. Good cause having been shown, the Motion is GRANTED, and it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Notwithstanding anything to the contrary in the sixth paragraph or the last paragraph of the General Provisions of the Final Decree entered September 8, 1944, including any amendments thereto made prior to the entering of this Order ("Final Decree") or in the Truckee River Agreement dated July 1, 1935 ("Truckee River Agreement"), and subject to the provisions of paragraphs 4 through 7 of this Order, Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Stampede Reservoir, Donner Lake and Independence Lake shall be operated in accordance with the terms and conditions of the Truckee River Operating Agreement signed September 6, 2008 ("Truckee River Operating Agreement").

2. In order to implement, but not limit, paragraph 1 of this Order:

(a) Articles II(D)(3), III, IV(A), IV(B), IV(C)(1) and (3), VI, XVII, XVIII(A) and XXV(G)(3) of the Truckee River Agreement which was previously incorporated into and made a part of the Final Decree are superseded by the Truckee River Operating Agreement and the Final Decree be and the same hereby is amended accordingly.

(b) Articles IX and XXIII of the Truckee River Agreement which was previously

1 incorporated into and made a part of the Final Decree are superseded by the Truckee River
2 Operating Agreement with respect to Privately Owned Stored Water owned by Signatory Parties to
3 the Truckee River Operating Agreement and the Final Decree be and the same hereby is amended
4 accordingly.

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6 (c) Article II(C)(1) of the Truckee River Agreement which was previously
7 incorporated into and made a part of the Final Decree is superseded by the Truckee River Operating
8 Agreement except with respect to the allocation of the existing operating expenses of Boca
9 Reservoir, and the Final Decree be and the same hereby is amended accordingly.

10 (d) Articles I, XIV, XVIII(B), XIX, XXI, XXII, XXIV, XXV(A), XXV(D),
11 XXV(E), XXV(F) and XXVIII of the Truckee River Agreement which was previously incorporated
12 into and made a part of the Final Decree are superseded by the Truckee River Operating Agreement
13 with respect to their application to the portions of the Truckee River Agreement which are identified
14 in this Order as being superseded by the Truckee River Operating Agreement and the Final Decree
15 be and the same hereby is amended accordingly.

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17 (e) Articles II(A), II(B), II(D)(1), X, XI, XII and XXVII of the Truckee River
18 Agreement which was previously incorporated into and made a part of the Final Decree were
19 required to have been performed before or simultaneous with the entry of said Final Decree and as
20 a result of the entry of said Final Decree on September 8, 1944 it was determined that such Articles
21 were fully executed and performed or that such performance was not required.

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23 (f) With respect to the allocation of existing operating expenses of Boca
24 Reservoir, Article II(C)(1) and with respect to ownership of Pondage, Article II(C)(2) of the Truckee
25 River Agreement which was previously incorporated into and made a part of the Final Decree never
26 became operative as a result of an agreement dated January 15, 1937, among the United States of
27 America, the Washoe County Water Conservation District and Sierra Pacific Power Company.
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1 (g) Because Lake Tahoe will be operated in accordance with the terms and
2 conditions of the Truckee River Operating Agreement, the second and third sentences of Article XV
3 of the Truckee River Agreement which were previously incorporated into and made a part of the
4 Final Decree are superseded with respect to such operations.
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6 (h) Subject to the provisions of paragraphs 4 through 7 of this Order, the Truckee
7 River Operating Agreement is hereby approved, adopted by the Court and made a part of the Decree
8 and shall be binding as between the Signatory Parties to the Truckee River Operating Agreement.
9 The Federal Water Master for the Truckee River is hereby appointed as the Administrator of the
10 Truckee River Operating Agreement, and is ordered to implement the Truckee River Operating
11 Agreement as the operating agreement for this Decree.
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13 3. Except as provided in Sections 5.A.7 and 5.A.8 of the Truckee River Operating
14 Agreement, Articles V and VII of the Truckee River Agreement shall remain in effect.

15 4. This Court retains and reserves jurisdiction to enforce and carry out the provisions
16 of Section 1.C.1 of the Truckee River Operating Agreement.

17 5. In addition to any remedy which may be available pursuant to the retention and
18 reservation of continuing jurisdiction under paragraph 4 above, the Administrator charged with
19 implementing the Truckee River Operating Agreement shall implement and carry out the provisions
20 of Section 1.C.2 of the Truckee River Operating Agreement.
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22 6. When water is not available to satisfy water rights under the Final Decree, because
23 of implementation of Section 204(b) and Section 204(c) of the Truckee-Carson-Pyramid Lake Water
24 Rights Settlement Act of 1990, Pub. L. 101-618, 104 Stat. 3294 (“Settlement Act”) or as a result of
25 the voluntary relinquishment of water rights, the provisions of paragraphs 4 and 5 above do not
26 apply.
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1 7. The General Provisions of the Final Decree entered September 8, 1944 are hereby
2 amended to add the following:

3 (a) By virtue of the United States' commencement of this action and by virtue
4 of the Pyramid Lake Paiute Tribe's intervention as plaintiff in this action for all purposes, and both
5 sovereigns being bound by the Final Decree of this Court and the amendments to the Decree
6 approved herein, said sovereigns have each acknowledged, and the Court hereby finds and declares,
7 that said sovereigns are not immune from and are subject to the jurisdiction of this Court over
8 petitions filed against them concerning disputes arising under this Decree, including petitions filed
9 against said sovereigns for declaratory and prospective injunctive relief for disputes arising under
10 the Truckee River Operating Agreement. Such jurisdiction does not extend to any claim for money
11 damages.
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14 (b) Although the State of Nevada was not a party to this action on the date of the
15 entry of the Final Decree, its water rights were set forth therein and by virtue of the State of
16 Nevada's intervention in this action for all purposes, and being bound by the Final Decree of this
17 Court and the amendments to the Decree approved herein, the State of Nevada has acknowledged,
18 and the Court hereby finds and declares, that said sovereign is not immune from and is subject to
19 the jurisdiction of this Court over petitions filed against it concerning disputes arising under this
20 Decree, including petitions filed against said sovereign for declaratory and prospective injunctive
21 relief for (I) disputes arising under the Truckee River Operating Agreement, and (ii) claims by any
22 aggrieved party where such claims allege failure to comply with the allocations or any other
23 provisions of Section 204(b) and Section 204(c) of the Settlement Act. Such jurisdiction does not
24 extend to any claim for money damages.
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1 (c) By virtue of the State of California's intervention in this action for the limited
2 purposes of providing this Court with jurisdiction to hear and decide (I) petitions seeking judicial
3 review of decisions by the Truckee River Special Hearing Officer that resolve disputes arising under
4 the Truckee River Operating Agreement, and (ii) claims that allege failure to comply with the
5 allocations or any other provisions of Section 204(b) and Section 204(c) of the Settlement Act, and
6 being bound by the amendments to the Decree approved herein for those limited purposes, the State
7 of California has acknowledged, and this Court hereby finds and declares, that said sovereign is not
8 immune from and is subject to the jurisdiction of this Court over petitions filed against it for
9 declaratory and prospective injunctive relief for those two limited purposes. Such jurisdiction does
10 not extend to any claim for money damages.
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12 (d) The Eleventh Amendment waivers by the States of Nevada and California do
13 not extend to any claim for money damages, nor to any claim of violation of state law or procedures.
14 Nor shall the waivers be construed to (I) alter the applicability of state law or procedures to the water
15 allocated to the States by the Settlement Act; (ii) alter the applicability of federal or state law or
16 procedures to the supervision of safety of dams or to flood control; (iii) alter the applicability of any
17 federal or state law or procedures in the Settlement Act; or (iv) abrogate the jurisdiction of, or any
18 required approvals by, the Nevada State Engineer, the California State Water Resources Control
19 Board, or the federal or state agencies authorized or directed to implement or carry out such laws
20 and procedures. The Eleventh Amendment waivers by the States of Nevada and California shall not
21 take effect until the Truckee River Operating Agreement has entered into effect and become
22 operative.
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3 8. This Order shall become effective when the Truckee River Operating Agreement
4 enters into effect as provided in Section 12.A.4 thereof.

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IT IS SO ORDERED.

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DATED: _____

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LLOYD D. GEORGE
SENIOR UNITED STATES DISTRICT JUDGE

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