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IN THE DISTRICT COURT OF THE UNITED STATES IN AND
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SECOND DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

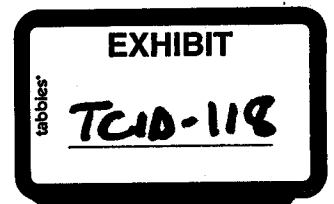
vs.

THE TRUCKEE RIVER GENERAL ELECTRIC
COMPANY, a corporation,
Defendant.

No. 14,861

ORDER AND DECREE AMENDING INJUNCTIVE
AND OTHER PROVISIONS OF JUDGMENT AND
DECREE

The petition of the UNITED STATES OF AMERICA, the
plaintiff herein, and SIERRA PACIFIC POWER COMPANY (formerly



The Truckee River General Electric Company), the defendant herein, for modification of the injunctive and other provisions of the Judgment and Decree herein coming on regularly to be heard in open Court this 18th day of May, 1961,

appearing for plaintiff, and
appearing for defendant; and

It appearing that under authority of an Act of the Congress of the United States entitled "An Act to Authorize the Secretary of the Interior to Construct, Operate and Maintain the Washoe Reclamation Project, Nevada and California," approved August 1, 1956, the Secretary of Interior was authorized, for the purpose of furnishing water for the irrigation of lands in the Carson and Truckee River Basins, Nevada and California, providing drainage service to lands therein, firming the existing water supplies of lands under the Truckee River Storage Project and the Newlands Project, controlling floods and providing hydro-electric power, the development of fish and wild life resources, and for other beneficial purposes, to construct, operate and maintain the Washoe Reclamation Project hereinafter mentioned; and

It further appearing that after the entry of the Judgment and Decree herein, by Agreement between plaintiff and TRUCKEE-CARSON IRRIGATION DISTRICT (an irrigation district organized and existing under the laws of the State of Nevada), dated December 18, 1926, plaintiff transferred to said TRUCKEE-CARSON IRRIGATION DISTRICT the care, operation and maintenance

of (but not the title to) said dam and controlling works, and that said TRUCKEE-CARSON IRRIGATION DISTRICT thereupon assumed the care, operation and maintenance thereof and agreed to care for, operate and maintain the same and deliver water therefrom in full compliance with the National Reclamation Laws, as said laws then existed or as they might thereafter be amended or supplemented, Court orders and decrees, contracts theretofore entered into between the United States and various persons for the delivery of water, the terms and conditions of said Agreement, the rules and regulations of the Secretary of the Interior then in force or thereafter promulgated; and in accordance with said provision of said Agreement said TRUCKEE-CARSON IRRIGATION DISTRICT is now in possession of and operating said outlet works, and

It further appearing that thereafter plaintiff herein, as party of the first part, TRUCKEE-CARSON IRRIGATION DISTRICT, as party of the second part, WASHOE COUNTY WATER CONSERVATION DISTRICT (an irrigation district organized and existing under the laws of the State of Nevada) as party of the third part, the defendant herein, as party of the fourth part, and certain other users of the waters of the Truckee River and its tributaries within said Washoe County Water Conservation District, as parties of the fifth part, entered into an Agreement relating to the use of the waters of said Lake and River, dated July 1, 1935 (herein referred to as the "Truckee River Agreement"), fixing and determining the rights of said parties, as between themselves, to the use of said waters, providing that releases

of the water from said Lake into said River shall be made by said TRUCKEE-CARSON IRRIGATION DISTRICT, as agent of plaintiff, in accordance with the provisions of said Agreement, and limiting the use of said waters in accordance with the provisions thereof; and in said Agreement and as part thereof, said parties stipulated for the entry, in accordance with its provisions, of a Final Decree in the cause brought by the United States for the purpose of adjudicating the rights of water users on said Truckee River and then pending in the United States District Court for the District of Nevada, entitled "The United States of America, plaintiff, vs. Orr Water Ditch Company, et al, defendants, Equity Docket No. A-3." That the parties to said last mentioned cause included the United States, Truckee-Carson Irrigation District, Washoe County Water Conservation District, the defendant herein, and many other water users on said River; and that, pursuant to said provision of said Agreement for the entry of a Final Decree in said cause, a Final Decree dated September 8, 1944, adjudicating the rights of all of said parties and determining that the rights of the United States, as of the date of said Decree, were as therein set forth, save only as the same were affected by said Truckee River Agreement, was thereafter duly entered therein. That a copy of said Truckee River Agreement is annexed hereto, made a part hereof, and marked "Exhibit A"; and

It further appearing that in furtherance of said Washoe Reclamation Project plaintiff proposes to construct

certain works at various sites on or near the Truckee and Carson Rivers, including a reservoir (herein referred to as "Prosser Creek Reservoir") in or near Prosser Creek, a tributary of the Truckee River, together with the necessary works for impounding water therein and releasing the same into the Truckee River for irrigation and the generation and transmission of hydroelectric power and for drainage of lands and other beneficial purposes; and that to that end the parties hereto and said TRUCKEE-CARSON IRRIGATION DISTRICT and WASHOE COUNTY WATER CONSERVATION DISTRICT have entered into an Agreement dated June 15, 1959, providing for the construction and operation of said Dam and Reservoir and (with a particular view to protecting and developing fish and wildlife resources in said River), for the making of additional releases of water from said Lake into said River during periods of limited flow therein, as hereinbelow in Paragraph SECOND of this Order and Decree specified and provided, subject to the conditions therein provided; that Paragraph 8 of said last mentioned Agreement provides, as follows:

"No exchange of water shall be made hereunder unless and until the United States District Court for the Northern District of California shall enter an Order and Decree in said cause entitled 'United States of America vs. The Truckee River General Electric Company,' Docket No. 14,861, modifying said 1915 Decree as provided for in

Paragraph 4 hereof, but upon entry of such Order and Decree of modification this agreement shall be effective and binding upon all of the parties hereto."

and

It further appearing that in order to carry out said plans for said Washoe Project and said Agreement of the parties hereto it is necessary that the injunctive and other provisions of said Judgment and Decree hereinafter mentioned shall be modified as herein provided; and

It further appearing that the modifications of said Judgment and Decree provided for in Paragraph 4 of said Prosser Creek Reservoir Agreement are effected by this Order and Decree of Modification, and that upon the entry hereof all provisions of said Agreement will be effective and binding upon the parties thereto; and

It further appearing that the parties hereto in open Court have consented to the entry of this Decree modifying said Judgment and Decree as herein provided, and good cause appearing;

NOW, THEREFORE:

FIRST: IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED that all and singular the matters hereinabove stated or recited are true.

SECOND: IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that said Judgment and Decree be and is hereby modified by the addition of a paragraph to be inserted at the end of, and immediately following, Article FIFTH of said Judgment and Decree to be designated "(g)" and to read as follows:

"(g) Notwithstanding anything to the contrary contained herein:

(aa) From and after the time when, pursuant to the Statute of the Congress of the United States enacted August 1, 1956 (70 Stat. 775), as amended, Prosser Creek Reservoir is completed and in operation, whenever the flow of the Truckee River at the outlet of Lake Tahoe is less than 50 cubic-feet per second during the period from October 1 of any year through the next following March 31, and less than 70 cubic-feet per second during the period from April 1 of any year through September 30 of that year, the United States may release or cause to be released, but not to exceed, sufficient water from Lake Tahoe to maintain minimum flows at said Lake outlet of 50 cubic-feet per second during the period October 1 of any year through the next following March 31, and of 70 cubic-feet per second during the period from April 1 of any year through September 30 of that year, provided, however, that the United States may release or cause to be released water from Lake Tahoe for the maintenance of said minimum flows to the following extent and in the following amounts only:

(i) When Lake Tahoe water can be released by gravity flow through the outlet works of Lake Tahoe; and (ii) when an amount of water equal to that so released from Lake Tahoe pursuant to the foregoing

provisions of this Subarticle (aa) is available for later release from Prosser Creek Reservoir for replacement of said water so released from Lake Tahoe consisting of either (A) concurrent flow of Prosser Creek being then stored in Prosser Creek Reservoir, or (B) water in said Prosser Creek Reservoir previously stored therein pursuant to Permit No. 11666 of the California State Water Rights Board and not previously credited to and classified as 'Tahoe Exchange Water' as defined in Subarticle (bb) hereof, or (C) a combination of the waters defined in (A) and (B) hereof.

(bb) When water is released from Lake Tahoe pursuant to Subarticle (aa) hereof for the purpose of maintaining minimum flows, an equal amount of water stored by the United States in Prosser Creek Reservoir for the purposes of this Agreement shall be credited to and classified as Lake Tahoe Storage and shall be known as 'Tahoe Exchange Water.' The United States shall release said 'Tahoe Exchange Water' stored in Prosser Creek Reservoir, when, and in amounts, necessary to maintain Floriston Rates or Reduced Floriston Rates, as defined herein (which-ever are in force) and to make available in the Reservoir by the first day of November of each year 20,000 acre-feet of flood storage space or such other

amount as the U. S. Army Corps of Engineers may designate from time to time. Any water discharged in excess of Floriston Rates or Reduced Floriston Rates to provide said required flood storage space shall first be charged to uncommitted water impounded in Prosser Creek Reservoir under Permit No. 11666. Storage of 'Tahoe Exchange Water' in Prosser Creek Reservoir at any one time shall be limited to the amount that may be stored and evacuated to maintain Floriston Rates or Reduced Floriston Rates (whichever is in force), in accordance with the provisions of this Subarticle (bb). The term 'uncommitted water' as used herein means all water stored in Prosser Creek Reservoir under Permit No. 11666 which will not be required as 'Tahoe Exchange Water' for delivery, as provided herein, including the amount of water necessary to replace all Reservoir losses in accordance with the provisions of Subarticle (cc).

(cc) Water stored in Prosser Creek Reservoir as 'Tahoe Exchange Water' shall not be diminished by Prosser Creek Reservoir losses; and the United States shall replace such Reservoir losses from water stored by it in said Reservoir. When no water in said Reservoir is available to make up for Reservoir losses, then, no further exchange of Lake Tahoe water

shall be made until such water is again available for such purpose.

The officers and agents of the United States in charge of said outlet works, shall, in the operation thereof under said Judgment and Decree, observe the directions contained in the foregoing subparagraph (g) and the provisions of said Truckee River Agreement."

THIRD: IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that said Judgment and Decree be and is hereby further modified by amending Article SEVENTH of said Judgment and Decree to read as follows:

"SEVENTH: That all officers and agents of the United States, and its successors and assigns, and all persons acting in aid or in conjunction with them, or any of them, be and are hereby forever restrained and enjoined from drawing any water from said lake, through or by means of the said dam and controlling works, or by means of any substituted method of control, except in accordance with this decree as amended hereby."

FOURTH: AND IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that upon the entry of this Order and Decree all of the provisions of said Prosser Creek Reservoir Agreement will be, and are hereby determined and declared to be, effective and binding upon the parties hereto.

DONE IN OPEN COURT this 18th day of May, 1961.

s/ Louis E. Goodman
United States District Judge