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**FILED**

MAY 18 1961

JAMES P. WELSH, Clerk

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 18<sup>th</sup> day of  
May, 1961, J. Harold Weise, Esquire,

Sutcliffe, and W. H. Orrick, Esquire,  
appearing for plaintiff, and Messrs. Orrick, Dalquist, Herrington and /  
appearing for defendant; and

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

14                 It further appearing that after the entry of the Judgment  
15          and Decree herein, by Agreement between plaintiff and TRUCKEE-  
16          CARSON IRRIGATION DISTRICT (an irrigation district organized and  
17          existing under the laws of the State of Nevada), dated December 18,  
18          1926, plaintiff transferred to said TRUCKEE-CARSON IRRIGATION  
19          DISTRICT the care, operation and maintenance of (but not the title  
20          to) said dam and controlling works, and that said TRUCKEE-CARSON  
21          IRRIGATION DISTRICT thereupon assumed the care, operation and  
22          maintenance thereof and agreed to care for, operate and maintain  
23          the same and deliver water therefrom in full compliance with the  
24          National Reclamation Laws, as said laws then existed or as they  
25          might thereafter be amended or supplemented, Court orders and  
26          decrees, contracts theretofore entered into between the United  
27          States and various persons for the delivery of water, the terms  
28          and conditions of said Agreement, the rules and regulations of  
29          the Secretary of the Interior then in force or thereafter promulgated;  
30          and in accordance with said provision of said Agreement said TRUCKEE-  
31          CARSON IRRIGATION DISTRICT is now in possession of and operating said  
32          outlet works, and

1 It further appearing that thereafter plaintiff herein, as  
2 party of the first part, TRUCKEE-CARSON IRRIGATION DISTRICT, as  
3 party of the second part, WASHOE COUNTY WATER CONSERVATION DISTRICT  
4 (an irrigation district organized and existing under the laws of  
5 the State of Nevada) as party of the third part, the defendant  
6 herein, as party of the fourth part, and certain other users of  
7 the waters of the Truckee River and its tributaries within said  
8 Washoe County Water Conservation District, as parties of the fifth  
9 part, entered into an Agreement relating to the use of the waters  
10 of said Lake and River, dated July 1, 1935 (herein referred to as  
11 the "Truckee River Agreement"), fixing and determining the rights  
12 of said parties, as between themselves, to the use of said waters,  
13 providing that releases of the water from said Lake into said River  
14 shall be made by said TRUCKEE-CARSON IRRIGATION DISTRICT, as agent  
15 of plaintiff, in accordance with the provisions of said Agreement,  
16 and limiting the use of said waters in accordance with the  
17 provisions thereof; and in said Agreement and as part thereof,  
18 said parties stipulated for the entry, in accordance with its  
19 provisions, of a Final Decree in the cause brought by the United  
20 States for the purpose of adjudicating the rights of water users  
21 on said Truckee River and then pending in the United States District  
22 Court for the District of Nevada, entitled "The United States of  
23 America, plaintiff, vs. Orr Water Ditch Company, et al, defendants,  
24 Equity Docket No. A-3." That the parties to said last mentioned  
25 cause included the United States, Truckee-Carson Irrigation District,  
26 Washoe County Water Conservation District, the defendant herein, and  
27 many other water users on said River; and that, pursuant to said  
28 provision of said Agreement for the entry of a Final Decree in said  
29 cause, a Final Decree dated September 8, 1944, adjudicating the  
30 rights of all of said parties and determining that the rights of  
31 the United States, as of the date of said Decree, were as therein  
32 set forth, save only as the same were affected by said Truckee River

1 Agreement, was thereafter duly entered therein. That a copy of said  
2 except as to signatures thereon  
3 Truckee River Agreement/is annexed hereto, made a part hereof, and  
4 marked "Exhibit A"; and

5 It further appearing that in furtherance of said Washoe  
6 Reclamation Project plaintiff proposes to construct certain works  
7 at various sites on or near the Truckee and Carson Rivers, including  
8 a reservoir (herein referred to as "Prosser Creek Reservoir") in or  
9 near Prosser Creek, a tributary of the Truckee River, together with  
10 the necessary works for impounding water therein and releasing the  
11 same into the Truckee River for irrigation and the generation and  
12 transmission of hydroelectric power and for drainage of lands and  
13 other beneficial purposes; and that to that end the parties hereto  
14 and said TRUCKEE-CARSON IRRIGATION DISTRICT and WASHOE COUNTY WATER  
15 CONSERVATION DISTRICT have entered into an Agreement dated June 15,  
16 1959, providing for the construction and operation of said Dam and  
17 Reservoir and (with a particular view to protecting and developing  
18 fish and wildlife resources in said River), for the making of  
19 additional releases of water from said Lake into said River during  
20 periods of limited flow therein, as hereinbelow in Paragraph  
21 SECOND of this Order and Decree specified and provided, subject to  
22 the conditions therein provided; that Paragraph 8 of said last  
23 mentioned Agreement provides, as follows:

24 "No exchange of water shall be made here-  
25 under unless and until the United States District  
26 Court for the Northern District of California  
27 shall enter an Order and Decree in said cause  
28 entitled 'United States of America vs. The Truckee  
29 River General Electric Company,' Docket No. 14,861,  
30 modifying said 1915 Decree as provided for in  
31 Paragraph 4 hereof, but upon entry of such Order  
32 and Decree of modification this agreement shall be  
effective and binding upon all of the parties hereto."

1 and

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

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

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

15 NOW, THEREFORE:

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

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

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

26 (aa) From and after the time when, pursuant to  
27 the Statute of the Congress of the United States enacted  
28 August 1, 1956 (70 Stat. 775), as amended, Prosser Creek  
29 Reservoir is completed and in operation, whenever the  
30 flow of the Truckee River at the outlet of Lake Tahoe is  
31 less than 50 cubic-feet per second during the period from  
32 October 1 of any year through the next following March 31,

1 and less than 70 cubic-feet per second during the period  
2 from April 1 of any year through September 30 of that  
3 year, the United States may release or cause to be released,  
4 but not to exceed, sufficient water from Lake Tahoe to  
5 maintain minimum flows at said Lake outlet of 50 cubic-  
6 feet per second during the period from October 1 of any  
7 year through the next following March 31, and of 70 cubic-  
8 feet per second during the period from April 1 of any  
9 year through September 30 of that year, provided, however,  
10 that the United States may release or cause to be released  
11 water from Lake Tahoe for the maintenance of said minimum  
12 flows to the following extent and in the following amounts  
13 only:

14 (i) When Lake Tahoe water can be released  
15 by gravity flow through the outlet works of Lake  
16 Tahoe; and (ii) when an amount of water equal to  
17 that so released from Lake Tahoe pursuant to the  
18 foregoing provisions of this Subarticle (aa) is  
19 available for later release from Prosser Creek  
20 Reservoir for replacement of said water so released  
21 from Lake Tahoe consisting of either (A) concurrent  
22 flow of Prosser Creek being then stored in Prosser  
23 Creek Reservoir, or (B) water in said Prosser Creek  
24 Reservoir previously stored therein pursuant to  
25 Permit No. 11666 of the California State Water  
26 Rights Board and not previously credited to and  
27 classified as 'Tahoe Exchange Water' as defined  
28 in Subarticle (bb) hereof, or (C) a combination  
29 of the waters defined in (A) and (B) hereof.  
30

31 (bb) When water is released from Lake Tahoe  
32 pursuant to Subarticle (aa) hereof for the purpose

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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 (whichever 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).

1 (cc) Water stored in Prosser Creek Reser-  
2 voir as 'Tahoe Exchange Water' shall not be dimin-  
3 ished by Prosser Creek Reservoir losses; and the  
4 United States shall replace such Reservoir losses  
5 from water stored by it in said Reservoir. When  
6 no water in said Reservoir is available to make  
7 up for Reservoir losses, then, no further exchange  
8 of Lake Tahoe water shall be made until such water  
9 is again available for such purpose.

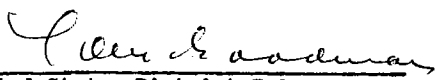
10 The officers and agents of the United States  
11 in charge of said outlet works, shall, in the opera-  
12 tion thereof under said Judgment and Decree, observe  
13 the directions contained in the foregoing subparagraph  
14 (g) and the provisions of said Truckee River Agreement."

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

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

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

DONE IN OPEN COURT this 10<sup>th</sup> day of May, 1961.

  
United States District Judge