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No. 59 Original

In the Supreme Court of the
United States

OCTOBER TERM, 1972

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATES OF NEVADA AND CALIFORNIA, *Defendants*

BRIEF OF TRUCKEE-CARSON IRRIGATION
DISTRICT, AMICUS CURIAE, IN OPPOSI-
TION TO MOTION FOR LEAVE TO
FILE COMPLAINT

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BRIEF OF TRUCKEE-CARSON IRRIGATION DISTRICT, AMICUS CURIAE, IN OPPOSI- TION TO MOTION FOR LEAVE TO FILE COMPLAINT

This brief is filed by the Truckee-Carson Irrigation District, Amicus Curiae, with the consent of the parties, in opposition to the motion of the United States for leave to file its Complaint. The Amicus Curiae (hereinafter - District) concurs in, and adopts Nevada's argument but presents some additional facts which are pertinent to the issues, and additional reasons for denying the plaintiff's motion.

INTEREST OF THIS AMICUS CURIAE

The Truckee-Carson Irrigation District is a public corporation organized under Nevada law to operate and control irrigation facilities serving Indian and Non-Indian lands within its boundaries. Such lands are within the Newlands Reclamation Project, which was approved for construction by the Secretary of the Interior in 1903 under the Reclamation Act of June 17, 1902, 32 Stat. 388. The United States and the District entered into a contract dated December 18, 1926 by the terms of which the District took over the care, operation and maintenance of the government owned dams, reservoir, canal system and other project works and assumed the obligations of the landowners to repay to the United States the construction costs of the project.

The 1926 contract provides that the lands within the District boundaries shall have a prior right to sufficient water from the Truckee and Carson Rivers to properly irrigate 87,500 acres of land, and that until such priority is satisfied none of the waters of such streams shall be diverted or impounded by the United States for use on other lands. The priority of such water right is 1902.

The United States is seeking by its complaint in this case to establish a water right to 375,000-400,000 acre feet of water annually from the Truckee River for the benefit of the Pyramid Lake Paiute Tribe with a priority of 1859. See paragraphs IV to VII both inclusive, of the complaint. If the claim to water had been in effect for the 53 years of record from 1918 to 1970, both inclusive, for 25 of those years there would

have been no water for the District lands. The result would have been disastrous not only to the farmers in the District, (many of whom are Indians of the Piute-Shoshoni Tribal Council), but to all of Churchill County, Nevada, with some 13,000 inhabitants. This result would have followed because under the Nevada law of appropriation a prior water right must be fully satisfied before any water is available for a subsequent right.

STATEMENT OF FACTS

When the Newlands Reclamation Project was approved for construction the project area, then comprising in excess of 230,000 acres, included both public and privately owned land. Water rights acquired and vested under state law were appurtenant to some of the land within the project boundaries and other project land was raw desert land with no appurtenant water rights. The practice was for the owners of the privately owned lands and the settlers on public land to make applications for the purchase of permanent water rights from the United States, and upon approval of the application by the government, the title to the water rights passed to the applicants and the United States retained a lien upon each water right and the land to which it was appurtenant to secure the payment of the purchase price. Copies of several forms of water right applications are attached to the affidavit of James D. Wood, the original of which has been lodged with the Clerk of the Court.

The water right applications provide that the quantity of water to be furnished shall be that quantity

which may be applied beneficially in accordance with good usage in the irrigation of the land described therein.

The contract dated December 18, 1926, mentioned above, between the United States and the District provides that the District shall be entitled to divert an equitable proportion of the water to be decreed to the United States in the suit pending in the Nevada Federal District Court, entitled, United States v. Orr Water Ditch Company et al., (and in the Alpine Land and Reservoir suit on the Carson River) “. . . but the lands of said Truckee and Carson Divisions shall have a prior right to the economical and beneficial use of all such waters in sufficient quantity to properly irrigate 87,500 acres of land and until such priority has been satisfied none of the waters of the aforesaid streams shall be diverted or impounded by the United States for use upon other lands . . . ” (Article 35). A copy of the 1926 contract is attached to the affidavit of James D. Wood and lodged with the clerk. Article 35 is Appendix A. p. 16.

In 1935, the United States entered into an agreement known as the “Truckee River Agreement” with the principal water users on the Truckee River for the purposes of (1) defining water rights in Lake Tahoe, and the Truckee River, (2) conserving water, (3) preventing floods, (4) providing for the administration of the waters of such sources, and (5) stipulating for the entry of the final decree in the Orr Water Ditch Company case. The United States agreed:

ARTICLE XI

“Provisions shall be made in the Truckee River final decree, for the rights of the United States to the use of water from the Truckee River for the irrigation of Indian lands within the Pyramid Lake Indian Reservation by inserting in the decree the following language:

(there follows the identical language which appears in the Orr Water Ditch Decree on page 10 under the heading “Government Rights, Indian Ditch Claim No. 1, and Claim No. 2”.)

A certified copy of the Truckee River Agreement is lodged with the Clerk of the Court. For the full text of Article XI, see Appendix B, p. 18.

In Article XVI of the Truckee River Agreement, it is stated that none of the provisions of the 1926 agreement between the United States and the District . . . shall be deemed to have been in anywise altered, changed, modified or abrogated by the execution of this agreement . . . ” See Article XVI Appendix C, p. 21.

On page 86, Orr Water Ditch Decree appears the following:

“IT IS FURTHER ORDERED AND DECREED, that that certain agreement known as the Truckee River Agreement, dated July 1, 1935, entered into by the United States of America, party of the first part, Truckee-Carson Irrigation District, party of the second part, Washoe County Water Conservation District, party of the third part, Sierra Pacific Power Company, party of the fourth part, and such other users of the waters of the Truckee River as may have or shall become parties to said agree-

ment by signing their names thereto, parties of the fifth part, which agreement provides (among other things) for the upstream storage of the waters of the Truckee River) and its tributaries, be and the same is hereby approved, adopted by the Court and made a part of the decree and shall be binding as between the signatory parties to said agreement."

A certified copy of the decree has been lodged with the Clerk. Nevada Brief, footnote p. 5.

The Orr Water Ditch decree further provides specifically that all parties are restrained and enjoined from asserting or claiming water rights, other than those set out therein. A copy of the language, page 87 of the printed decree, is Appendix D, p. 22.

The affidavit of James D. Wood states that there are now approximately 131,000 acres of land within the District, of which 73,002 acres have appurtenant water rights initiated by the water right applications mentioned above or under state law and that there are some 2400 water right contracts in separate ownership. There are 350 miles of canals and laterals to serve the 73,002 acres of land. Indians of the Paiute-Shoshoni Tribal Council who number 324, own 4877.3 acres of Newlands Project land in the District which are covered by water right applications. There are a total of 590 Indians on the roll of the Tribal Council and there are pending applications for membership which, if granted, will increase the roll to approximately 1200 members. (See the affidavit of Del Steve, Chairman of the Paiute-Shoshoni Tribal Council, lodged with the Clerk

ARGUMENT

I

THE CLAIMS OF THE UNITED STATES ARE BARRED BY THE DOCTRINES OF ESTOPPEL AND RES JUDICATA.

The District joins in Nevada's argument that the claim of the United States that it has water rights other than those set out in the Orr Water Ditch Company decree, is barred by the doctrine of res judicata and collateral estoppel. In addition, the District contends that the United States is estopped by contract to deny the binding effect of the individual water right contracts, the Truckee River Agreement and the 1926 contract and from asserting claims inconsistent with such contracts, to all of which contracts the United States is a party.

The individual water right contracts which resulted from the approval of applications by the United States created independent water rights owned, not by the United States, but by the individual landowners in the project. The question of ownership of similar water rights was considered in the case of *Ickes v. Fox*, 300 U.S. 82 (1937) and *Nebraska v. Wyoming*, 325 U.S. 589 (1945). The *Ickes* case involved the Yakima Reclamation Project, which was constructed about the same time as the Newlands Project and the forms of water right contracts used on both projects were essentially the same. The question was raised as to whether the United States or the landowners were the owners of the water rights sold under the water right applications. This court said:

“Although the government diverted, stored and distributed the water, the contention of petitioner that thereby ownership of the water or water rights became vested in the United States is not well founded. Appropriation was made not for the government, but, under the Reclamation Act, for the use of the landowners; and by the terms of the law and of the contract already referred to, the water rights became the property of the landowners wholly distinct from the property rights of the government in the irrigation works.”

“The government was and remained simply a carrier and distributor of the water, with the right to receive the sums stipulated in the contract as reimbursement for the cost of construction and annual charges for operation and maintenance of the works. As security therefor, it was provided that the government should have a lien upon the lands *and the water rights* appurtenant thereto—a provision which in itself imports that the water rights belong to another than the lienor, that is to say, the landowner.”

As indicated above, in the Truckee River Agreement (Article XI), Appendix B, p. 18, the United States agreed that provision would be made in the Truckee River final decree (in the Orr Water Ditch Company case) for the rights of the United States to use Truckee River water on Indian lands by inserting in the final decree the identical language which now appears on page 10 of the decree. In Article XVI, the United States and the District consented to all changes in the method of regulation and the manner of use of the waters of the Truckee River and the District agreed to waive all claims against the United States on account thereof.

The decree in the Orr Water Ditch suit by its terms restrains all parties from “. . . asserting or claiming any rights in or to the waters of the Truckee River or its tributaries—except the rights specified, determined or allowed by this decree . . . ” The rights of the United States were established by contract. (See Appendix D, p ??).

By attempting now to establish additional water rights for a large quantity of water with a priority of 1859, the United States is seeking to avoid its contractual obligations under the individual water contracts, the 1926 contract and the Truckee River Agreement.

The effect of such avoidance upon the water rights established by the contracts mentioned above is clear when consideration is given to the annual yield of the Truckee River.

The Pyramid Lake Task Force Report (1971), a copy of which has been lodged with the Clerk, contains a tabulation showing the historic flows on the Lower Truckee River, page A-4, as follows:

HISTORIC FLOWS ON LOWER TRUCKEE RIVER

Unit = 1,000 acre-feet

Water year 1	Truckee R. at Derby Dam	Water year 1	Truckee R. at Derby Dam
1915-16		1945-46	459.9
-17		-47	294.8
-18	452.8	-48	317.8
-19	514.0	-49	291.2
-20	330.1	-50	444.1
1920-21	433.3	1950-51	810.7
-22	625.0	-52	1,307.5
-23	557.1	-53	658.2
-24	215.9	-54	374.1
-25	341.5	-55	302.2
1925-26	248.0	1955-56	828.9
-27	616.2	-57	474.5
-28	496.3	-58	796.9
-29	209.7	-59	305.0
-30	293.9	-60	312.8
1930-31	103.2	1960-61	211.4
-32	340.8	-62	293.4
-33	151.2	-63	591.6
-34	136.7	-64	299.8
-35	320.3	-65	684.3
1935-36	416.2	1965-66	398.0
-37	353.7	-67	937.8
-38	865.5	-68	432.5
-39	300.8	-69	1,197.0
-40	549.3	-70	714.4
1940-41	435.5		
-42	725.2		
-43	895.9		
-44	338.4		
-45	417.7		

1 A water year is the 12-month period from October 1 of each calendar year through September 30 of the following calendar year.

Under the doctrine of prior appropriation, which has been the law of Nevada since 1885, a prior right must be completely satisfied before any water is available for a subsequent right. *Jones v. Adams*, 19 Nev. 78, 6 Pac. 442 (1885); *In Re Humboldt River*, 49 Nev. 357, 246 P. 692 (1926); *Union Mill & Mining Co. v. Dangberg*, 81 F. 73, (C.C.D. Nev. 1897). Thus, if the United States should establish for the Indians an annual right to 375,000 to 400,000 acre feet of water, as claimed in the complaint, with a priority of 1859 that right would have to be filled before any water would be available for the water right for the Newlands Projects, which has a priority of 1902. It is apparent from an examination of the above flow records that during the period 1918-1970 inclusive, *there would have been 25 years out of the 53 years shown on the table when no water would have been available from the Truckee River for the Newlands Project* if the claim for 375,000 to 400,000 acre feet asserted by the United States with an 1859 priority should prevail. In one period of seven consecutive years (1929-1935 inclusive) there would have been no water for the project.

The rule is that if in making a contract the parties agree on, or assume, the existence of a particular fact as the basis of their negotiations they are estopped to deny the fact as long as the contract stands, in the absence of fraud, accident or mistake.

Parish v. United States, 8 Wall. 489 (1869); *Nashville Ry. Co. v. United States*, 113 U.S. 261 (1885); *Harding v. Harding*, 198 U.S. 317 (1905); *Stevens v. United States*, C.C.A. Minn., 29 F.2d 904 (1928); *Big-*

elow on Estoppel (6th Ed.) 496. 31 C.J.S. Sec. 55, pp. 360-362.

We agree with and adopt the argument set out in Nevada's brief to the effect that the United States is subject to the rules of *res judicata* and estoppel and it will not be repeated here. Our contribution to the argument is that the United States entered into (1) some 2400 contracts for the sale of water rights.

(2) the 1926 contract and (3) the Truckee River Agreement setting out the Indian right as it appears in the decree limited to water for 5875 acres and is now clearly estopped from claiming that each contract is subject to a prior right to 375,000 to 400,000 acre feet of water, which historically would have taken from the project landowners all Truckee River water in 25 out of 53 years.

II.

ASSUMING, ARGUENDO, THAT THE UNITED STATES HAS THE RIGHT TO LITIGATE THE INDIAN WATER CLAIMS, THE PROPER FORUM IS A NEVADA COURT, EITHER STATE OR FEDERAL.

The Nevada Federal District Court has jurisdiction of the subject matter in the Orr Water Ditch case, to wit, the Truckee River, and has jurisdiction of the parties. It made and entered a temporary restraining order on February 13, 1926, after a full hearing in which the claims to water rights were submitted, contested and determined. As shown in Nevada's brief, pp. 30, 31, the precise issue as to the water right for

the Indians under the Winters doctrine was pleaded and litigated before the entry of such temporary order. After the entry of such order, the principal water users including the United States and the District agreed in writing to stipulate the entry of a final decree. See Article XI, Truckee River Agreement, Appendix B, p. 18. The decree was entered pursuant to the stipulation. No appeal was taken and it is now final.

The well settled rule is that the power to open, modify, or vacate a judgment is not only possessed by, but is restricted to, the court in which the judgment was rendered.

In re *Rochester Sanitarium & Bath Co.*, 222 F. 22 (C.C.A. 2d, 1915); *Marquez v. Perez*, 14 Ariz. App. 451, 484 P.2d 220 (1971); 21 C.J.S. Sec. 501, p. 765; *State ex rel Bradshaw v. Probate Court*, 225 Ind. 268, 73 N.E.2d 769 (1947); *Perdrix Machinery Sales, Inc. v. Papp*, 116 Ohio App. 291 188 N.E.2d 80 (1963).

The only court which has the power to open the Orr Water Ditch Decree for further litigation of the issue of Indian water rights under the Winters doctrine is, thus, the Federal District Court of Nevada.

As we have seen the parties to the Truckee River Agreement and to the Orr Water Ditch case settled their water rights as against the United States on the basis of the awards for the Pyramid Lake Indian Reservation and the Newlands Project set out specifically in the agreement and the decree. All parties named in the agreement and decree have property rights protected by the due process clauses of the Constitution of the United States. In any litigation attacking these

rights the individual water right owners are necessary parties. Indeed, it is settled law that all water right claimants are necessary parties in a suit for the adjudication of water rights. *People of the State of California v. United States*, 235 F.2d 647 (C.A. 9th Cir. 1956.) 2 Wiel, Water Rights, 3rd Ed. pp., 1125, 1126; *Campbell v. Wyoming Development Co.*, 55 Wyo. 347, 100 P.2d 124 (1940); *Allen v. California Water Co.*, 31 Cal. 2d 104, 187 P.2d 393 (1947). The issues in a suit for the general adjudication of water rights, such as *United States v. Orr Water Ditch*, are the rights of the water claimants against each other. *Brooks v. United States*, 119 F.2d 636 (C.A. 9th Cir. 1941).

The only courts which have jurisdiction of the subject matter and can obtain jurisdiction of the many hundreds of litigants who are necessary parties are the Nevada Federal District Court and a Nevada State District Court.

This court does not have original jurisdiction of this kind of a suit and has declined to permit a complaint to be filed in cases where, although the complaint names states as the litigants, the questions in issue are actually between or among individuals. In the recent case of *State of Illinois v. State of Michigan*, No. 57, Original, 41 U.S. L. Week 3225, 34 L.Ed. 2d 42, (Sup. Ct. October 24, 1972) in a Per Curiam opinion this Court said:

“While the complaint on its face is within our original, as well as our exclusive jurisdiction, it seems apparent from the moving papers and the response, that Illinois, though nominally a party, is here in the vindication of grievances

of particular individuals. Louisiana v. Texas, 176 U. S. 1, 16, 44 L.Ed. 347, 20 S.Ct. 251." The motion to file the complaint was denied.

The issues in the present case are not between the United States and the two states named as defendants, nor are they between the states of California and Nevada. They are principally between the United States as representative of the Pyramid Lake Paiute Tribe and the many hundreds of individual users of water from Truckee River, including landowners in the District who are not and cannot be parties to this suit.

CONCLUSION

It appearing that this is an attempt by the United States to litigate issues which have already been agreed to and decided, and that it is actually a suit to vindicate the grievances of the Pyramid Lake Paiute Tribe and not a suit between the United States and Nevada and California, it is respectfully submitted that the motion of the United States for a leave to file a complaint should be denied.

Respectfully submitted,

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APPENDIX A

Article from Contract dated December 18, 1926, between the United States and the Truckee-Carson Irrigation District.

QUANTITY OF WATER TO BE DELIVERED
TO DISTRICT

35. The quantity of water decreed to the United States by the District Court of the United States in and for the District of Nevada in the suit entitled "The United States of America, Plaintiff, vs. Orr Water Ditch Company, a corporation, et al., Defendants," and designated therein In Equity, Docket No. A-3, which may be diverted by the District shall be an equitable proportion, as nearly as practical operations will permit, of the water actually available at that time for all the irrigable area of the Carson and Truckee Divisions of the Newlands project. The provisions of this article shall also apply to any water decreed to the United States by the District Court of the United States in and for the District of Nevada in the suit entitled "The United States of America, plaintiff, vs. Alpine Land and Reservoir Company, a corporation, et al., Defendants," and designated therein in Equity, D-183, and/or any other suit or proceeding that may be hereafter instituted concerning the waters of the Truckee River and/or the Carson River, and/or the tributaries of such streams or either of them; provided however, that the provisions of this article shall not be construed or held as entitling, nor shall it entitle, the lands of the Truckee and Carson Divisions of the Newlands project to any of the waters of the aforesaid stream which may be impounded and stored for use upon lands of the Spanish Springs Division of said project and/or any other divisions thereof where the cost of facili-

ties for impounding and storing such waters is assessed to and repaid by such lands, but the lands of such Truckee and Carson Divisions shall have a prior right to the economical and beneficial use of all such waters in sufficient quantity to properly irrigate 87,500 acres of land, and until such priority has been satisfied none of the waters of the aforesaid streams shall be diverted or impounded by the United States for use upon other lands. In no event, however, shall any liability accrue against the United States, its officers, agents, or employees, or any of them for damage direct or indirect arising from floods, drought, hostile diversion, interruption of service made necessary by repairs, unavoidable accidents, shortage of water supply or other cause.

APPENDIX B
TRUCKEE RIVER AGREEMENT

ARTICLE XI

RIGHTS OF THE UNITED STATES TO USE
OF WATER OF TRUCKEE RIVER UPON
PYRAMID LAKE INDIAN RESERVATION
LANDS.

“Provisions shall be made in the Truckee River Final decree, for the rights of the United States to the use of water from the Truckee River for the irrigation of Indian lands within the Pyramid Lake Indian Reservation by inserting in the final decree the following language: Claim No. 1. By order of the Commissioner of the General Land Office made on December 8, 1859, the lands comprising the Pyramid Lake Indian Reservation were withdrawn from the public domain for use and benefit of the Indians and this withdrawal was confirmed by order of the President on March 23, 1874. Thereby and by implication and by relation as of the date of December 8, 1859, a reasonable amount of the water of the Truckee River, which belonged to the United States under the cession of territory by Mexico in 1848 and which was the only water available for the irrigation of these lands, became reserved for the needs of the Indians on the reservation.

For the irrigation of 3130 acres of Pyramid Lake Indian Reservation bottom lands, plaintiff, the United States of America, is entitled and allowed to divert from the Truckee River through the Indian Ditch, the intake of which is on the left bank of the river in Section 18, Township 22 North, Range 24 East, Mount Diablo Base and Meridian, not exceeding 58.7 cubic feet of water per second to an amount not exceeding 14,742 acre feet of water in any cal-

endar year with a priority of December 8, 1859; provided the amount of water as to be diverted shall not exceed a flow of one miner's inch or one-fortieth of one cubic foot per second per acre for the aggregate number of acres of this land being irrigated during any calendar year and the amount of water applied to the land after an estimated transportation loss of 15 per cent, shall not exceed 85-100 of one-fortieth of one cubic foot per second for the total number of acres irrigated, and provided that the amount of water so diverted during any such year shall not exceed 4.71 acre feet per acre for the aggregate number of acres of this land being irrigated during that year, and further provided that the amount of water applied to the land shall not exceed four acre feet per acre for the aggregate number of acres of this land being irrigated during any calendar year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

Claim No. 2. In addition to water for the above mentioned 3130 acres of Pyramid Lake Indian Reservation bottom lands, the Government is hereby and will be allowed to divert water from the Truckee River, with a priority of December 8, 1859, to the amount of one-fortieth of one cubic foot per second per acre for the irrigation of 2745 acres of Pyramid Lake Indian Reservation bench lands. The water so allowed for bench lands may be diverted from the Truckee River through the Truckee Canal or any other ditch now or hereafter constructed as

the plaintiff may desire or authorize; provided that the amount of water for bench lands shall not exceed during any calendar year 5.59 acre feet per acre diverted from the river, nor exceed during any calendar year 4.1 acre feet per acre applied to the lands, for the aggregate number of acres of this land being irrigated during any year. This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

APPENDIX C
TRUCKEE RIVER AGREEMENT

ARTICLE XVI

AGREEMENT BETWEEN UNITED STATES
AND IRRIGATION DISTRICT DATED DE-
CEMBER 18, 1926, TO REMAIN IN EFFECT

“As between the United States and the Irrigation District none of the provisions of the contract entered into between the United States and the Irrigation District dated December 18, 1926, shall be deemed to have been in any wise altered, changed, modified or abrogated by the execution of this agreement; provided, however, that the United States and the Irrigation District hereby consent to all changes (if any there be) in the method of regulation and the manner of use of the waters of the Truckee River and its tributaries (including Lake Tahoe) and also to the construction and operation of certain reservoirs, made or provided for in this agreement; and the Irrigation District hereby waives all claims upon the United States on account thereof.”

APPENDIX D

LANGUAGE OF ORR WATER DITCH
DECREE, p. 87.

“The parties, persons, corporations, intervenors, grantees, successors in interest and substituted parties hereinbefore named, and their and each of their servants, agent, attorneys, assigns and all persons claiming by, through or under them and their successors, in or to the water rights or lands herein mentioned or described, are and each of them is hereby forever enjoined and restrained from asserting or claiming any rights in or to the waters of the Truckee River or its tributaries, or the waters of any of the creeks or streams or other waters hereinbefore mentioned except the rights, specified, determined and allowed by this decree, and each and all of said parties, persons, corporations, intervenors, agents, attorneys, servants, assigns and successors in interest; and all persons claiming by, through or under them, are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Truckee River or its tributaries or with waters of any of the creeks or streams, or with any of the other waters hereinbefore mentioned, so as to in any manner prevent or interfere with the diversion, use and enjoyment of the waters of any of the other persons or parties as allowed or adjudicated by this decree, having due regard to the relative priorities herein set forth; and each of the said parties and persons and each of their agents, servants, attorneys and employees is hereby enjoined and restrained from ever taking, diverting, using or claiming any of the water so decreed, in any manner or at any time so as to in any way interfere with the prior rights of any other persons or parties having prior rights under this decree, as herein set forth, until such persons or parties having prior rights have received for their several uses the waters hereby allowed and adjudged to them.”

PROOF OF SERVICE

I, E. J. SKEEN, one of the attorneys of record for Defendants, herein, depose and say that on the 16th day of January, 1973, I served a copy of the foregoing

**BRIEF OF TRUCKEE-CARSON IRRIGATION
DISTRICT
AMICUS CURIAE,
IN OPPOSITION TO MOTIONFOR LEAVE
TO FILE COMPLAINT**

by placing a copy of said document in an envelope, individually addressed as follows:

Solicitor General
Department of Justice
Washington, D.C. 20530

The envelope was then sealed and deposited in the United States Mail at Salt Lake City, Utah, air mail postage thereon fully prepaid.

All parties required to be served have been served.

E. J. SKEEN

SUBSCRIBED AND SWORN to before me at Salt Lake City, Utah, this 16th day of January, 1973.

