

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

1165

ORDER

Pacific Reclamation Water Company
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WHEREAS, pursuant to state law, the Sixth Judicial District Court of the State of Nevada entered the Bartlett Decree in 1931 and the Edwards Decree in 1935, which adjudicated the Humboldt River Stream System and its tributaries, and

WHEREAS, pursuant to NRS §533.220, the State Engineer of Nevada and the Water Commissioners of the Sixth Judicial District Court are officers of the Sixth Judicial District Court and are authorized and duty-bound to administer the Humboldt River Stream System and tributaries according to the Bartlett and Edwards Decrees, and

WHEREAS, the Bartlett and Edwards Decrees adjudicated all the waters of the Humboldt River and tributaries, including the waters of Bishop Creek, Trout Creek, and Burnt Creek, and

WHEREAS, on Bishop Creek, decreed water rights identified in Claims 00521 and 00609 exist that are senior in priority to most of the water rights on Bishop Creek that were decreed to the Pacific Reclamation Company's predecessors in interest, and

WHEREAS, on June 15, 1915, the Sixth Judicial District Court entered a Final Decree in the case captioned Union Canal Company, et al., v. Pacific Reclamation Company, et al., (Case No. 1899 Final Decree), and

WHEREAS, the Final Decree in Case No. 1899 adjudged and decreed that:

1. the Union Canal Ditch Company, et al., was entitled to use all the water flowing in Bishop, Burnt, and Trout Creeks, and the Pacific Reclamation Company's claim to such waters was invalid as against the Union Canal Ditch Company, et al ,
2. Pacific Reclamation Company's storage or impoundment of water from Bishop Creek between February 1st through September 1st results in invasion, infringement, and violation of the water rights of the Union Canal Ditch Company, et al ,
3. Pacific Reclamation Company is entitled to divert and store all of the waters of Bishop Creek above the Bishop Creek Reservoir in a manner that does not interfere with the water rights of the Union Canal Ditch Company, et al., and
4. Pacific Reclamation Company is enjoined from storing, impounding, or diverting any of the waters of Burnt and Trout Creeks, except as in the manner it or its predecessors in interest used such water prior to the construction of the reservoir and project works, and from preventing or obstructing the flow of Burnt or Trout Creeks below the point where they join with any flow in the same channel as Bishop Creek, and

WHEREAS, it does not appear the owners of decreed water rights on Bishop Creek that are downstream from Pacific Reclamation Company, particularly owners of Claims 00521 and 00609, nor their predecessors in interest, were parties to the Final Decree in Case No. 1899, and

WHEREAS, the Bartlett Decree made reference to the Final Decree in Case No. 1899, apparently incorporating that decree by reference at page 219 of the Bartlett Decree, and

WHEREAS, the Edwards Decree did not make mention of the Final Decree in Case No 1899, but the Nevada Supreme Court denied a motion for rehearing in Carpenter v. District Court, 84 P.2d 289 (1938), which sought to have a notation regarding the Final Decree in Case No 1899 added to the Edwards Decree, and

WHEREAS, in 1945, Certificates of Appropriation Nos. 2846 and 2846 were issued under Permits 11125 and 11127, respectively, to Pacific Reclamation Company authorizing the changes in the place of use and point of diversion of many water rights decreed in the Bartlett and Edwards Decrees to places of use and points of diversion within the Pacific Reclamation Project, and

WHEREAS, in 1945, Certificate of Appropriation 2850 was issued under Permits 1000 and 1807 to the Pacific Reclamation Company stating the amount of the appropriation was the entire flow of Bishop Creek and its tributaries from August 15th through April 15th of the following year, and that the period of use for the appropriation was April 15th through August 15th, and

WHEREAS, Certificate of Appropriation 2850 was issued subject to existing water rights that were recognized in the Final Decree in Case No. 1899, and the Bartlett and Edwards Decrees. Also, NRS § 533.430 provides that any certificate of appropriation granted on the Humboldt River is granted subject to the existing rights recognized in the Bartlett and Edwards Decrees. Accordingly, any storage of Bishop Creek water by the Pacific Reclamation Company cannot interfere with senior water rights that were recognized in the Final Decree in Case No. 1899 or the Bartlett and Edwards Decrees, and

WHEREAS, on July 3, 1984, the State Engineer issued Order No. 844 which declared Bishop Creek Dam unsafe and ordered the Pacific Reclamation Company to empty Bishop Creek Reservoir. Since that time, no repairs have been made to the dam and the reservoir has remained empty, and

WHEREAS, neither Certificate 2850, nor the Final Decree in Case No. 1899 provide the Pacific Reclamation Company with the right to divert the full water flow of Bishop Creek during the irrigation season, and

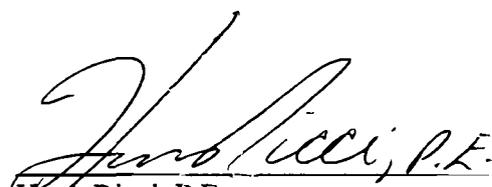
WHEREAS, during the irrigation season, Pacific Reclamation Company's right to use Bishop Creek water is based on the rights that were decreed in the Bartlett and Edwards Decrees to their predecessors in interest, and particularly, according to the priorities contained therein, and

WHEREAS, downstream senior decreed water rights on Bishop Creek, particularly those included in Claims 00521 and 00609, must be served before any junior decreed water rights from Bishop Creek that are owned by Pacific Reclamation Company, and

WHEREAS, it would be inappropriate for a Water Commissioner to prohibit upstream, junior Bishop Creek decreed water rights from being served if the Bishop Creek channel cannot substantially deliver Bishop Creek water to downstream, senior Bishop Creek decreed water rights, as such a regulation would result in a waste of water or the irrigation on lands without a water right

ACCORDINGLY, if the Water Commissioner determines the Bishop Creek channel can substantially deliver water to downstream decreed water rights, particularly Claims 00521 and 00609, without waste, the Water Commissioner shall regulate Bishop Creek in such a manner as to

allow downstream decreed water rights, particularly Claims 00521 and 00609, to be served before any junior upstream water rights owned by Pacific Reclamation Company.


Hugh Ricci, P.E.
State Engineer

Dated at Carson City, Nevada

this 25th Day of April, 2001.

cc. Honorable Richard A. Wagner
Kirk Owsley
Paul Taggart, Esq., Deputy Attorney General
David Stanton, Esq