

IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION )  
50670 FILED BY THE UNIVERSITY )  
OF NEVADA-RENO, AND APPLICATION)  
50696 FILED BY THE CITY OF RENO)

**ORDER RE:**  
PETITION FOR DECLARATORY  
ORDER FILED BY CITY OF  
RENO; AND APPLICATION FOR  
CEASE AND DESIST ORDER  
FILED BY PYRAMID LAKE  
PAIUTE TRIBE OF INDIANS

INTRODUCTION

On March 6, 1987, the University of Nevada-Reno (hereinafter "UNR") filed Application 50670, pursuant to the provisions of NRS 533.325, seeking permission to change the point of diversion of a portion of the waters of the Truckee River heretofore appropriated under Claim #603, #605 and #606, as set forth in the Final Decree of the District Court of the United States for the District of Nevada in that certain proceeding entitled United States of America vs. Orr Ditch Company et al. in Equity A-3 (1944), (hereinafter "Decree"), from the Pioneer Ditch to Steamboat Creek.

On March 18, 1987, the City of Reno (hereinafter "City") filed Application 50696 pursuant to the provisions of NRS 533.325 seeking permission to change the point of diversion of a portion of the waters of the Truckee River heretofore appropriated under Claim #605 of the Decree from the Pioneer Ditch to Steamboat Creek.

Both applications were timely protested pursuant to NRS 533.365 by the Pyramid Lake Paiute Tribe Of Indians (hereinafter "Tribe") and the Truckee Carson Irrigation District (hereinafter "T.C.I.D.").

On December 8, 1987, the instant matter was set for administrative hearing on January 27, 1988, by the State Engineer, pursuant to NRS 533.365(3) and NRS 533.375. On December 28, 1987, by written notice to all parties, the January 27, 1988 hearing date was vacated and the matter reset for March 2, 1988. On February 26, 1988, the State Engineer noticed all parties that the March 2, 1988 hearing date was vacated at the request of City and that a prehearing conference was scheduled for April 26, 1988.

On March 16, 1988 the Tribe filed its "APPLICATION FOR CEASE AND DESIST ORDER" (hereinafter "Application").

On April 6, 1988, City filed its "PETITION FOR DECLARATORY ORDER", (hereinafter "Petition"), and "ANSWER TO APPLICATION FOR CEASE AND DESIST ORDER".

The prehearing conference was held, as previously scheduled, on April 26, 1988 with all parties in attendance and represented by counsel.

DISCUSSION

At the prehearing conference, matters of procedure were discussed and the State Engineer agreed to issue his written decision with regard to the Tribe's Application and City's Petition. It is the decision on these two matters which this Order concerns itself.

1. The Application

At the prehearing conference City's representative indicated that they were ready to start the land application of the waters which are the subject matter of both Application No. 50670 and Application No. 50696; however, after some discussion City's counsel represented that no such use of the waters would begin until after receipt and evaluation of the decision set forth herein. Thus, there is no present use being made of the waters. Until the State Engineer is presented with evidence of actual use and all the facts and circumstances surrounding such use, a cease and desist order would be anticipatory and premature in nature and cannot be properly issued.

2. The Petition

First impression on reading the City's petition is that it is a statement of the City's position on the subject matter. The issues on which City would have the State Engineer rule in the Petition (which is based on City's Answer to Application For Cease and Desist Order filed together with the Petition) are issues of extremely significant importance. It is within the State Engineer's authority to decide such matters only after due consideration from a complete record which includes the presentation of all the facts, evidence and testimony pertaining thereto from all involved parties. It is the opinion of the State Engineer that the forum leading to the full understanding of the instant matter is most properly accomplished at administrative hearings with all parties given ample opportunity to present their respective positions, evidence and testimony.

NRS 533.365(3) states:

3. The state engineer shall duly consider the protest, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved;...

And NRS 533.375 provides in pertinent part:

Before either approving or rejecting the application, the state engineer may require such additional information as will enable him to guard the public interest properly,...

The matters contained in City's Petition are included among the matters which the State Engineer requires further explanation, information and evidence, and which cannot be properly determined on the state of the record now before him. The proper forum to gather such additional information is the public administrative hearing.

To rule on the merits of the Petition without the benefit of all facts, evidence and argument would be premature, at the very least.

ORDER

From the foregoing discussion it necessarily follows that:

1. The Application for Cease and Desist Order be and the same hereby is denied at this time; and
2. The Petition for Declaratory Order be and the same hereby is denied.

Respectfully submitted,

  
Peter G. Morros  
State Engineer

Dated at Carson City, Nevada,  
this 5th day of MAY, 1988.