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## Pyramid Lake Paiute Tribe of Indians v. Nevada, Dept. of Wildlife

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***Pyramid Lake Paiute Tribe of Indians v. Nevada, Dept. of Wildlife*, 724 F.3d 1181  
(9th Cir. 2013).**

**David A. Bell**

**I. ABSTRACT**

In *Pyramid Lake Paiute Tribe of Indians v. Nevada, Dept. of Wildlife*,<sup>1</sup> the Court of Appeals for the Ninth Circuit upheld a Nevada federal district court decision to vacate the Nevada state engineer's approval of the transfer of three water applications.<sup>2</sup> While the appeals court recognized the state's re-watering of wetlands as a "salutary" purpose, it could not allow the engineer's decision to go forward because it did not meet the legal definition of "irrigation."<sup>3</sup> The Court made the decision pursuant to two federal court decrees, which resulted from prior actions by the United States to quiet title to water in the Truckee and Carson Rivers.<sup>4</sup>

**II. INTRODUCTION**

The Paiute Indian Tribe has defended its original water rights in the Pyramid Lake drainage of Nevada for over 100 years. This defensive effort began with water development by the Bureau of Reclamation at the turn of the century, creating a system that has continually pressured the Tribe's rights due to new water needs in the surrounding arid basins. A recent project proposed by the State of Nevada planned to use water from the Truckee and Carson Rivers to improve a wetland to provide habitat for waterfowl and other native species. The Court of Appeals for the Ninth Circuit found that diverting water to the project constituted a change in the manner of use of existing water rights in violation of the governing decree and, because it would have a negative impact on the Tribe's water rights, could not go forward.

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<sup>1</sup> 724 F.3d 1181 (9th Cir. 2013).

<sup>2</sup> *Id.* at 1191.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 1184, 1191.

### III. FACTUAL AND PROCEDURAL BACKGROUND

This action by the Pyramid Lake Paiute Tribe (“Tribe”) and the United States arose from a long history of disputes over water in the Truckee and Carson Rivers and their respective water basins.<sup>5</sup> Water rights have been in tension in these arid basins since they were attached under the establishment of a federal reclamation project known as the “Newlands Project” (“Project”).<sup>6</sup> The Project was a large-scale water project authorized by the Reclamation Act of 1902<sup>7</sup> and was designed to irrigate a substantial portion of western Nevada to turn “wasteland into farmland”.<sup>8</sup>

The Project linked the two parallel river basins together by diverting Truckee River water away from its natural course to Pyramid Lake over to the Carson River drainage.<sup>9</sup> The diversion uses a dam and canal system that carries the Truckee River water to the Lahontan Reservoir in the Carson River basin.<sup>10</sup> The diversion boosts the supply for the Carson irrigators while dewatering Pyramid Lake and reducing the Tribe’s water interests.<sup>11</sup>

The Tribe’s water rights were established in 1924 under the *US v. Winters*<sup>12</sup> doctrine giving the Tribe the most senior water rights on the Truckee water.<sup>13</sup> Because water use in the Carson River basin affects Pyramid Lake and the Tribe’s water rights, the Tribe obtained judicial rulings that Carson River flows should be utilized whenever possible, before Truckee River flows, to supply the Project with its necessary water.<sup>14</sup>

Two federal court decrees govern the water rights in the Project: the *Orr Ditch Decree*,

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<sup>5</sup> *Id.* at 1183.

<sup>6</sup> *Id.* (citing *Nevada v. United States*, 463 U.S. 110, 113 (1983) (summarizing the history of litigation in the Truckee and Carson water basins)).

<sup>7</sup> Reclamation Act of 1902, ch. 1093, 32 Stat. 388, codified at 43 U.S.C. §§ 371-600e. *Pyramid*, 724 F.3d at 1184.

<sup>8</sup> *Pyramid*, 724 F.3d at 1184. (quoting *United States v. Alpine Land & Reservoir Co.*, 878 F.2d 1217, 1219 (9th Cir. 1989) (*Alpine II*)).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (Noting that any increase in demand for water in the Carson River basin has a direct dewatering effect on Pyramid Lake).

<sup>12</sup> *Winters v. United States*, 207 U.S. 564 (1908)(See also *U.S. v. Truckee-Carson*, 649 F.2d at 1291, (The date determined for the Paiute Tribe’s original water right was 1859, the year that the reservation was created for the Tribe)).

<sup>13</sup> *U.S. v. Truckee-Carson Irrigation Dist., State of Nevada*, 649 F.2d 1286, 1290-1291 (9th Cir. 1981).

<sup>14</sup> *Pyramid*, 724 F.3d at 1184.

which allocates rights on the Truckee River, and the *Alpine Decree*, which governs Carson River water rights.<sup>15</sup> The *Alpine Decree* sets landowner water use quantities and rules for transferring water rights to new locations or uses within the Project.<sup>16</sup> Landowner water rights consist of a consumptive and non-consumptive use allocation.<sup>17</sup> The non-consumptive use portion is attached to each right to account for seepage and evaporation in the Project canal system.<sup>18</sup> Under the *Alpine Decree* these non-consumptive use portions cannot be transferred to different uses, as they exist to support return flows throughout the Project.<sup>19</sup>

The Nevada State Engineer adjudicates changes in water use (manner, place of use, place of diversion) but pursuant to the *Alpine Decree*, the U.S. District Court for the District of Nevada retains jurisdiction over the State Engineer's decisions.<sup>20</sup>

This case involved three water applications filed by the Nevada Department of Wildlife and the Nevada Waterfowl Association ("Applicants"), which sought to transfer agricultural water rights in the Project to the Carson Lake and Pasture, a wildlife refuge wetland on the Carson River.<sup>21</sup> The Applicants intended to change the place of use, but not the manner of use, arguing that watering plants in wetlands is "irrigation" similar to the current use of agricultural irrigation.<sup>22</sup>

The Tribe and the United States protested the applications arguing they violate the *Alpine Decree* by transferring the non-consumptive use portion of agricultural irrigation rights to a non-irrigation use, and that water to maintain wetlands is not irrigation.<sup>23</sup> The State Engineer rejected this determining the use was irrigation because it was intended for the "growth of plants."<sup>24</sup> On finding that there was only a change in location and no change in use, the State Engineer approved a

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1185.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Pyramid*, 724 F.3d at 1185 (citing *Alpine Land & Reservoir Co.*, 503 F. Supp. at 893; Nev. Rev. Stat. § 533.450 (1)).

<sup>21</sup> *Id.* at 1186.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

full transfer of water rights at issue.<sup>25</sup>

The Tribe and the United States invoked the U.S. District Court jurisdiction under the *Alpine Decree* and requested review of the decision.<sup>26</sup> The district court reversed the State Engineer holding the proposed use by Applicant's was not "irrigation" under the *Alpine Decree*.<sup>27</sup>

#### IV. ANALYSIS

The Court of Appeals for the Ninth Circuit considered the merits of just one issue: the meaning of "irrigation" under the *Alpine Decree*.<sup>28</sup> On de novo review of the district court's interpretation of "irrigation," the Court of Appeals found that the proposed use of water in the applications was not irrigation under the *Alpine Decree*, the history of the agreements, or Nevada law.<sup>29</sup>

The court first looked to the *Alpine Decree* and its subsequent case law for the definition of "irrigation" in the history of the Project.<sup>30</sup> The court determined that all references to irrigation in the *Alpine Decree* uniformly relate to agricultural uses of water concluding that those references encompass only the application of water to cultivate crops.<sup>31</sup> Thus, the court determined that all interpretations of "irrigation" under the *Alpine Decree* meant irrigation of crops.<sup>32</sup>

Next, the court examined the Applicants' argument that the proposed use of water in the Carson Lake and Pasture was both an "irrigation" and "wildlife" purpose that falls within the definition of agricultural irrigation under the *Alpine Decree*.<sup>33</sup> The court found that the uses are distinct, that both Nevada water law and the *Alpine Decree* have distinguished the two uses, and that neither "embraces the application of water to sustain wildlife habitat in its definition of

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<sup>25</sup> *Id.* at 1187.

<sup>26</sup> *Pyramid*, 724 F.3d at 1187.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1189.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Pyramid*, 724 F.3d at 1189.

<sup>33</sup> *Id.* at 1190.

“irrigation”.”<sup>34</sup>

## V. CONCLUSION

In its conclusion, the court recognized that the Applicants’ project in the Carson River basin would provide a benefit to the wetlands and wildlife.<sup>35</sup> Nonetheless, they affirmed the district court’s decision, concluding that diverting water for improved wetlands in the Carson Lake and Pasture was not permissible under the limitations of transfers of water rights in the *Alpine Decree*.<sup>36</sup>

The decision to block the State Engineer’s ended an environmentally beneficial project. Nonetheless, weighing the Tribe’s interest in the water from the Truckee River and Pyramid Lake against additional new demands for the water, the determination to follow the *Alpine Decree* and its complex history of cases and litigation followed well-established precedent in protecting the Tribe’s water rights.

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<sup>34</sup> *Id.* at 1191.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*