

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.

1915 Decree

JUDGMENT AND DECREE

The above entitled action came on regularly for trial before the court sitting without a jury (a trial by jury and findings having been expressly waived by all of the parties) on the 4th day of June, 1915, upon the second amended and supplemental complaint of plaintiff and the answer of defendant The Truckee River General Electric Company thereto, John W. Preston, Esq., United States Attorney, and John F. Truesdell, Esq., Special Assistant to the Attorney General of the United States; appearing for plaintiff, and Messrs. Goodfellow, Eels, Moore & Orrick appearing for defendant; and it appearing to the court that said action is brought by the United States under the authority of th Act of Congress entitled, "An Act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," adopted June 17, 1902.

and acts amendatory thereof and supplemental thereto, for the purpose of obtaining a judgment of condemnation of an easement in the lands, dam and controlling works in said second amended complaint described, and of storage and other rights in aid thereof, and that since the time of the service of process herein upon Floriston Pulp and Paper Company and Truckee River General Electric Company, respectively, each of them has ceased to exist and that defendant, The Truckee River General Electric Company has succeeded to all of the rights of said Truckee River General Electric Company in and to said property, and the said The Truckee River General Electric Company having, by order of the court been made a party defendant herein, and having appeared and answered, submitting itself to the judgment of the court, and the defendants Reno Power Light and Water Company, California-Nevada Electric Power Company and Washoe Power and Development Company having disclaimed any interest in the land, dam and controlling works sought to be condemned, and the said action having been dismissed as to the defendants W. P. Hammon, F. G. Baum, Truckee River General Electric Company, Reno Power Light and Water Company, California-Nevada Electric Power Company, Washoe Power and Development Company, Floriston Pulp and Paper Company and Floriston Land and Power Company; and it further appearing to the court that under the proceedings herein the plaintiff is entitled to acquire the easement and rights hereinafter described, upon the payment of compensation therefor as herein provided, and upon and subject to all the terms, provisions and conditions in this decree set forth; and both parties consenting in open court to the entry of this decree, now on

motion of counsel for the plaintiff, the United States,

IT IS HERBY ORDERED, ADJUDGED AND DECREED:

FIRST: That defendant The Truckee River General Electric Company, its successors and assigns, is entitled to have stored in Lake Tahoe by means of said dam, or otherwise, and to have released from said lake, so that it may be carried down said Truckee River for the uses hereinafter in this paragraph specified, sufficient water to maintain the flow of said river at the head of the diversion penstock of the Crown Willamette Paper Company situate in said river in or near Floriston, California, during that part of each year from the first day of March to the 30th day of September, inclusive, at not less than five hundred (500) cubic feet of water per second, and during that part of each year from the 1st day of October to the last day of February, inclusive, at not less than four hundred (400) cubic feet of water per second, and to use the same in operating its power plants on said river, and in meeting its contractual obligations to the Crown Willamette Paper Company under the contract dated the 2nd day of November, 1908, between said Truckee River General Electric Company, Floriston Land and Power Company, and Floriston Pulp and Paper Company, recorded in Liber 108 of Deeds, at page 630, in the County Recorder's office of Nevada County, California, and is also entitled to use said water in the manner and to the extent that it was before the entry of this judgment entitled to make use thereof for other beneficial purposes, including those of its allied corporations, to-wit, the said Reno Power Light and Water Company, California- Nevada Electric Power Company and Washoe Power and Development Company.

SECOND: That defendant The Truckee River General Electric Company is the owner in fee simple of all of the lands described in said second amended complaint, and upon which are situate said dam across the Truckee River, and the controlling works used in connection therewith by means of which the level of Lake Tahoe is controlled.

THIRD: That plaintiff is entitled to condemn and acquire in this proceeding, and by virtue of this decree, upon making the payment therefor herein specified, an easement and right of exclusive possession and enjoyment, in, over and upon said lands hereinafter described, to hold, maintain, use and operate said lands, dam and controlling works, and any other improvements and structures which now are or may be hereafter placed upon said lands, for the purpose of controlling the level of Lake Tahoe and the storage of water therein, and all rights now held by defendant The Truckee River General Electric Company to use said lands, dam and controlling works, for said purposes; and that plaintiff's said easement and right of possession, use and enjoyment shall be exclusive and perpetual, subject only to termination in the event of abandonment and disuse thereof by plaintiff as hereinafter provided.

FOURTH: That plaintiff, the United States, upon paying to the clerk of this court for the use of defendant The Truckee River General Electric Company, the sum of one hundred and thirty-nine thousand five hundred (139,500) dollars, in lawful money of the United States, within thirty (30) days from the date of this decree, shall be forthwith thereby vested with said easement and right of possession and enjoyment in, over and upon the lands and property described in said second amended complaint, to-wit: All that certain tract or parcel of land situate at or near the outlet of Lake Tahoe, in the County of Placer, State of California, and bounded and particularly described as follows, to-wit:

BEGINNING at a point on the meander line of Lake Tahoe, as the same was established by the United States Land Office, November 9th, 1866, situate south twenty-one (21) degrees west three hundred ten and $\frac{2}{10}$ (310.2) feet from a point in said meander line at its intersection with the north line of section seven (7), township fifteen (15) North, Range seventeen (17) East, Mount Diablo Base and Meridian, said point of intersection being three thousand one hundred and thirty-five (3,135) feet, more or less, easterly from the northwest corner of said section seven (7); thence along said meander line south twenty-two (22)degrees fifteen (15) minutes west four hundred and twenty-two and $\frac{4}{10}$ (422.4) feet; thence along said meander line south thirty-four (34) degrees east three hundred and sixty three (363) feet; thence west six hundred and sixteen (616) feet, more or less, to a point in the north and south center line of said section seven (7); thence south fifty-eight (58) feet, more or less, to a point in the north and south center line of said section seven (7), and due east from a point fixed by an iron post set in the ground which bears north forty-seven (47) degrees twenty-five (25) minutes west four hundred and thirteen and $\frac{8}{10}$ (413.8) feet from the southeast corner of the northeast quarter of the northwest quarter of said section seven (7); thence west three hundred and eight (308) feet, more or less, to the said iron post; thence south fifty-two (52) degrees west four hundred and sixty-three (463) feet to an iron post near the left bank of the Truckee River and in the south line of the said northeast quarter of the northwest quarter of section seven (7); thence west across the Truckee River and along the said south line of the northeast quarter of the northwest quarter of section seven (7) two hundred and

fifty five and 5/10 (255.5) feet to an iron post; thence north fifty-five (55) feet more or less, to a point of intersection with a line bearing north fifty-two (52) degrees east and situate two hundred (200) feet distant from the previously described line of parallel bearing marked by iron posts on the opposite side of the Truckee river; thence north fifty-two (52) degrees east eleven hundred and eighty-two (1182) feet, more or less, to a point in the north and south center line of said section seven (7) thence north along said center line two hundred and fifty (250) feet, more or less, to a point due west from the point of beginning, thence east five hundred and seventy-seven (577) feet more or less, to the point of beginning; the boundaries as described containing in all an area of fourteen (14) acres more or less.

TOGETHER with the dam, controlling works, and all other structures and improvements now placed on said lands, or which may hereafter be placed thereon.

For the purpose of holding, maintaining, using and operating said lands, dam and controlling works, improvements and structures to control the level of Lake Tahoe and for the storage of water therein, and discharge of water therefrom, under the provisions of this decree:

And by said payment of money the plaintiff in aid of its said easement, use and enjoyment shall be forthwith vested with all rights and powers now held by said defendant The Truckee River General Electric Company to control the level of said lake, to receive water therein and to discharge the same, to flood the uncover lands adjacent to said lake, and with all other rights of said defendant appurtenant to or connected with the use and operation of said land, dam and controlling works, and shall be entitled to store the waters of said lake and to conduct them through the Truckee River for use upon and in connection

with the Truckee-Carson Reclamation Project, subject only to the rights of The Truckee River General Electric Company and the obligations of the United States, as the same are respectively defined herein.

Plaintiff's said easement and right of possession, use and enjoyment shall be exclusive and perpetual; Provided only, that in the event that plaintiff, its successors or assigns, shall at any time discontinue the said use and operation of said dam and controlling works, or of any other dam or controlling works which may be substituted therefor, for a period of thirty (30) days after written notice of such discontinuance given to the Secretary of the Interior by defendant The Truckee River General Electric Company, its successors or assigns, at any time when the flow of water from said lake down the Truckee river can be controlled by such dam or controlling works, if properly maintained, then such discontinuance of use shall constitute a complete abandonment of plaintiff's said easement, and of its said right of possession, use and enjoyment, and of all rights taken or acquired by it by virtue of this decree; and the defendant The Truckee River General Electric Company shall, by reason of said abandonment, be revested in full ownership with all rights taken from it by this decree, and shall be entitled to resume immediate possession of all said property and rights taken from it by virtue of this decree, as of its present estate and ownership therein.

FIFTH: That said easement shall be taken and held by the United States, its successors and assigns, subject to the obligations of storing in said lake, by means of the present dam, or otherwise, the waters that flow into said lake, and releasing them, or part of them, into the Truckee river, as herein provided for the satisfaction of the water rights of defendant The Truckee River General Electric Company as herein defined, and to the end

that said water rights may be fully satisfied and protected, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the officers and agents of the United States, and its successors in interest who at any time may be in charge of the operation of such dam or controlling works, or the regulation of the level of said lake, shall, without expense to said defendant, regulate the discharge of water from Lake Tahoe, in the manner following, and not otherwise, to-wit:

(a) The officers and agents of the United States in regulating the water level of said lake by means of the present dam and controlling works, or any dam or controlling works that shall hereafter be substituted therefor, shall release from said lake into the Truckee river sufficient water to maintain the "Floriston rates", as hereinafter defined, under the conditions as to diversions from said river above Floriston which now exist; and whenever during the months of December, January and February there shall be need of an additional flow of water to enable the said defendant The Truckee River General Electric Company to remove ice interfering with the operation of its power plants, or any of them, the officers and agents of the United States shall, when requested so to do by the last named defendant, release from said lake such additional amount of water as shall be requested for that purpose; provided, however, that they shall not, in any event be required to release more water than enough to maintain the flow of said river at said penstock at five hundred (500) cubic feet per second; and whenever defendant The Truckee River General Electric Company does not require the full "Floriston rates" and shall so notify in writing the officers or agents of the United States the smaller flow at said penstock which the said defendant then actually requires and specifies in such notice may be temporarily maintained, instead of the said full "Floriston rates" until such notice shall be withdrawn. In such

Cases of reduction of flow to less than the full "Floriston rates" the amounts by which the actual flow is less than the full "Floriston rates" shall be considered as belonging to the United States, and may be drawn by it from said lake subject to the provisions of paragraph (a) of this section; such waters are hereinafter referred to by the term "saved waters."

(b) Whenever because of the lake's falling below the low water level, as hereinafter defined, it shall not be possible to draw enough water from said lake to fully maintain said "Floriston rates," the largest draught that can be made from said lake by means of such dam and controlling works shall be made by the officers and agents of the United States for that purpose, unless a smaller draught shall be requested in writing by defendant The Truckee River General Electric Company, in which case such smaller draught shall be made, and any saving of water thereby occasioned shall not be "saved waters" belonging to the United States.

(c) All water which shall be contained in said lake above a level four feet higher than the low water level as hereinafter defined shall be considered as belonging to the United States and the United States shall have the right at any time, for its own purposes, to draw said lake down to said four foot level; and whenever the lake shall be below the said four foot level the United States shall have the right to draw therefrom for its own purposes an amount of water equivalent to that which the lake shall have contained above said four foot level at any prior time (after the entry of this decree, however,) that the United States may select, together with all "saved waters" retained in the lake since such selected time, less the amount of water that the United States shall have drawn from said lake for its own purposes since such selected time. The waters

that the United States shall have the right to draw from said lake for its own purposes, as above provided, are hereinafter referred to as the "reserved waters" of the United States. In computing the quantity of water contained in Lake Tahoe at any and all levels thereof, for the purposes of this decree, the area of said lake shall be deemed to be one hundred and twenty thousand (120,000) acres.

(d) No water shall be drawn from said lake by the United States in excess of the quantity of water required to maintain the "Floriston rates," except from its "reserved waters" as above defined, and except that the United States shall have the right to draw for its own purposes thirty-six thousand (36,000) acre feet of water per annum under either of the following special conditions, to-wit:

(1) After the expiration of any calendar year during which the lake level shall have been at any time lower than five-tenths (0.5) of a foot above the low water level as herein defined, and until the lake level shall reach an elevation of four and three-tenths (4.3) feet above said low water level, the United States shall have the right to draw from said lake, in the latter half of each calendar year, thirty-six thousand (36,000) acre feet of water;

(2) After the expiration of any period of forty-two (42) consecutive months, during which the lake level shall not have been at any time as high as four and three-tenths (4.3) feet above said low water level nor lower than five-tenths (0.5) of a foot above said low water level, and until the lake level shall reach an elevation of four and three tenths (4.3) feet above said lowwater level, the United States shall have the right to draw from said lake, in the latter half of each calendar year, thirty-six thousand (36,000)acre feet of water

Provided, however, if the United States, under either of said special conditions, shall draw any part of said thirty-six thousand

(36,000) acre feet of water, the quantity of water drawn by the United States during any such year, including that drawn during said year from its unused "reserved waters" shall not exceed the maximum quantity that shall have existed in said lake at any time during said year above a level two and two tenths (2.2) feet higher than said low water level.

(e) The officers and agents of the United States in charge of such dam and controlling works shall each day measure the high water level reached by said lake, the flow of water in the Truckee River at Iceland, and all water that shall be released from said lake through or over such dam or other controlling works, and they shall also each day make all other measurements necessary to be made in order to determine the quantity of flow of said river at the head of said diversion penstock. They shall, also, keep and furnish weekly to the defendant The Truckee River General Electric Company a record of all such measurements, and such record and measurements shall at all times be open to the inspection of said defendant. All flow of water in said river at said diversion penstock at Floriston in excess of the "Floriston rates" or in excess of said rates with the additional flow requested by defendant The Truckee River General Electric Company, its successors and assigns, to facilitate the removal of ice at its plants as hereinabove provided, and not exceeding the amount thereof discharged from the lake, shall be considered as drawn from said lake by the United States for its own purpose.

(f) The words "low water level," when herein used, shall be taken to mean that level of said lake (not lower than five (5) feet below that

62 x 5.00

contain bench mark hereinafter described) at which the discharge of water through said dam as at present or hereafter constructed with all of the gates of said dam wide open, will be just three hundred and fifty (350) cubic feet per second. The bench mark referred to being the top surface of a hexagonal brass bolt seven-eighths ($7/8$) of an inch in diameter projecting one (1) inch from the vertical face of the left hand or southerly concrete abutment wall of the said existing dam at approximately three and two-tenths (3.2) feet below the top thereof and approximately in line, both horizontally and vertically, with the upstream ends or "cutwaters" of the concrete piers between the sluiceways of said dam. The elevation of said bench mark being six thousand two hundred and thirty (6,230) feet above the sea level datum plane to which all records of Lake Tahoe levels have in the past been referred. However, if at any time it shall become physically possible and the United States shall have the legal right to discharge through said dam, with all of the gates thereof wide open, three hundred and fifty (350) cubic feet of water per second at a point below the low water level herein fixed, then upon establishment of such right this decree may be altered so as to fix the low water level at such new point. The word "Iceland," when herein used, shall be taken to mean that certain point in the Truckee River in or near Iceland, California, where is situate the station for gaging the Truckee River now and heretofore maintained by the defendant The Truckee River General Electric Company. The words "Floriston rates," when herein used, shall be taken to mean a flow of water in the Truckee River at the head of said diversion penstock at Floriston of five hundred (500) cubic feet of water per second during that part of the year from the first day of March to the 30th day of September inclusive, and of four hundred (400) cubic feet of water per second during that part of the

year between the first day of October and the last day of February inclusive.

Sixth: The provisions of this decree shall bind and innur to the benefit of the successors and assigns of the parties hereto.

SEVENTH: That all officers and agents of the United States, and its successors and assigns, and all persons acting in aid of or in conjunction with them, or any of them, be and are hereby forever restrained and enjoined from drawing any water from said lake, through or by means of said dam and controlling works, or by means of any substituted method of control, except in accordance with this decree.

EIGHTH: Jurisdiction of this cause is retained after the entry of this decree for the purpose of enabling the court to enforce and exact strict compliance with, and obedience to, all of the terms and provisions of this decree on application of either party, its successors or assigns, and also for the purpose of altering the low water level of said lake as herein fixed if and when there shall be occasion to do so as herein above provided.

NINTH: That no costs shall be allowed to any party.

Done in open court this fourth day of June 1915.

Wm. C. Van Fleet, Judge.

We consent to the entry of the foregoing decree.

Franklin K. Lane,
Secretary of the Interior.

T. W. Gregory
Attorney General.

John W. Preston
U. S. Attorney

John W. Truesdell
Special Assistant to the Attorney General.
Attorneys for Plaintiff.

UNITED STATES OF AMERICA)
Northern District of California,)
City and County of San Francisco.)

SS

No. 14861
United States of America

VS.

The Truckee River General
Electric Co. a corp.

I, WALTER B. MALING, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the original Judgment and Decree filed and entered June 4, 1915, in the above entitled cause, as the same remains of record and on file in the office of the Clerk of the said Court.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of said District Court this 19th day of May, A. D.
1919.

WALTER B. MALING

Clerk of the United States District
court, Northern District of California

BY J. A. SCHAERTZER

Deputy Clerk