

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORR WATER DITCH CO., *et al.*,

Defendants.

Case No. 3:73-cv-00003-LDG
(In Equity No. A-3-LDG)
Case Sub-File 3:73-cv-00024-LDG

ORDER

In Re: Protested Application Nos.
73783, 73791 through 73800, 73849
through 73855, 73863 through 73872,
73908 through 73917, 73986, 73987,
74076 through 74085, 74193 through
74202.

Churchill County has petitioned for judicial review (#2) of the Nevada State Engineer’s Interim Order No. 1, entered in the protested applications identified in the above caption.¹ The respondent, real party-in-interest Truckee Meadows Water Authority, moves to dismiss the petition (#18). The Water Authority has been joined in its motion by the

¹ The City of Fallon also filed a petition for judicial review (#1), but has withdrawn that petition (#45). The Truckee-Carson Irrigation District moved for a writ of mandamus (#4), but has withdrawn that motion (#43).

1 Nevada State Engineer (#22), the United States (#23), and the Pyramid Lake Paiute Tribe
2 of Indians (#24). Churchill County opposes the motion (#28).

3 Motion to Dismiss

4 The defendant's motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(1),
5 challenges whether Churchill County's petition seeking judicial review of an interim order of
6 the State Engineer is ripe. The threshold issue raised by the motion to dismiss is
7 straightforward: Pursuant to the language of Nevada Revised Statute §533.450(1), can
8 Churchill County appeal an interim or interlocutory order of the State Engineer?

9 Section 533.450(1) states in relevant part:

10 Any person feeling himself aggrieved by any order or decision of the State
11 Engineer . . . affecting his interests, when such order or decision relates to
12 the administration of determined rights or is made pursuant to NRS 533.270
to 533.445, inclusive, may have the same reviewed by a proceeding for that
purpose, insofar as may be in the nature of an appeal

13 Churchill County's argument is equally straightforward: Since the statute permits a review
14 of "any order," an interim order may be appealed. The respondents counter that the statute
15 must be read as a whole, and when read as such leads to the conclusion that a judicial
16 review becomes ripe only after the State Engineer has entered a final order. The
17 respondents further note the general judicial abhorrence of permitting appeals of
18 interlocutory orders, and the judicial preference that the decisions of a decision-maker
19 become ripe for review only after the final decision in the matter is issued.

20 Recently, in *Howell v. State Engineer*, 124 Nev. Adv. Op. No. 99 (2008), the Nevada
21 Supreme Court stated:

22 Because NRS 533.450(1) provides review for "any order or decision" of
23 the State Engineer that affects a person's interests "when the order or
24 decision relates to the administration of determined rights," we conclude that
so long as the decision affects a person's interests concerning the rights, and
is a final written decision of the issue, it is reviewable.

25 In several places in its decision, the Nevada Supreme Court reiterates that the decision of
26 the State Engineer must be final to be reviewable under NRS 533.450(1). The State

1 Engineer clearly identified the order from which Churchill County seeks review as an
2 interim order. As such, the State Engineer indicated his intent to retain jurisdiction over the
3 issues addressed in Interim Order #1, including an inherent procedural power to
4 reconsider, rescind, or modify the resolution of issues addressed in Interim Order #1 prior
5 to entering his final decision on the underlying change applications. Indeed, shortly after
6 entering Interim Order #1, the State Engineer modified the resolution of several issues and
7 subsequently entered Interim Order #2.

8 The court would note that, by this decision, Churchill County is not deprived of an
9 opportunity to seek review of the State Engineer's decisions set forth in Interim Order #1.
10 Rather, the court has determined only that those decisions are not yet ripe for review.

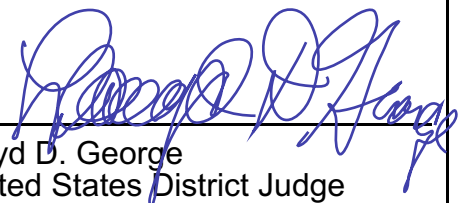
11 Accordingly, for good cause shown,

12 THE COURT **ORDERS** that Churchill County's Motion for Leave to File Response
13 (#40) to Truckee Meadows Water Authority's Notice of Additional Authority is GRANTED;

14 THE COURT FURTHER **ORDERS** that Truckee Meadows Water Authority's Motion
15 to Dismiss for Lack of Jurisdiction (#18) is GRANTED.

16 THE COURT FURTHER **ORDERS** that the outstanding Motion to Stay (#3) filed by
17 Churchill County is DENIED as moot.

18
19 DATED this 27 day of April, 2009.

20
21 
22 Lloyd D. George
23 United States District Judge
24
25
26