

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 07 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff,

and

TAHOE RENO COMMERCIAL
CENTER, LLC,

Petitioner - Appellant,

v.

ORR WATER DITCH CO.,

Defendant,

and

NEVADA STATE ENGINEER,

Respondent - Appellee.

No. 07-17021

D.C. No. CV-73-00018-LDG

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Argued and Submitted July 15, 2009
San Francisco, California

Before: HALL, W. FLETCHER and PAEZ, Circuit Judges.

Appellant Tahoe Reno Commercial Center, LLC (“TRCC”) appeals the dismissal of its appeal of Nevada State Engineer Ruling 5747 for lack of subject matter jurisdiction. In a separate disposition filed today, we reverse and remand the district court’s decision dismissing, for lack of subject matter jurisdiction, an appeal of the same ruling by the Pyramid Lake Paiute Tribe of Indians. *United States v. Orr Water Ditch Co.*, No. 07-17001.

TRCC complains that the State Engineer’s ruling, *inter alia*, failed to grant TRCC’s applications for water permits to which it was allegedly entitled. TRCC represents that it has separately appealed the State Engineer’s ruling in state court, that it does not seek to have a federal court adjudicate its appeal, and that it filed its appeal in federal court only as a protective measure.

TRCC has not alleged that the grant or denial of water rights to it would have an effect on any party’s rights under the Orr Ditch Decree. Thus, the district court does not have jurisdiction over an appeal of the part of the State Engineer’s ruling adjudicating TRCC’s applications. As we explain in our published opinion, “To the extent that groundwater may be allocated consistent with protection of the

Tribe's decreed rights, the amount of the allocations and distribution among the applicants are of no concern to the district court." *United States v. Orr Water Ditch Co.*, No. 07-17001, ms 17. We therefore affirm the district court's dismissal of TRCC's appeal for lack of subject matter jurisdiction and leave TRCC to pursue its remedies in state court.

AFFIRMED.