

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 07 2010

UNITED STATES OF AMERICA,

Plaintiff,

and

PYRAMID LAKE PAIUTE TRIBE OF
INDIANS,

Petitioner - Appellant,

v.

ALPINE LAND & RESERVOIR CO.,

Defendant,

NEVADA STATE ENGINEER,

Respondent - Appellee,

and

ASPEN CREEK, LLC; DAYTON
VALLEY INVESTORS, LLC; STANTON
PARK DEVELOPMENT, INC.,

Real-parties-in-interest -
Appellees.

No. 08-16767

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

D.C. No. 3:73-cv-00203-LDG

MEMORANDUM*

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

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

Argued and Submitted July 15, 2009
San Francisco, California

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

The legal issues in this appeal are essentially identical to those we decided in *United States v. Orr Water Ditch Co.*, No. 07-17001. We have filed a published opinion in that case today.

This appeal arises from Ruling 5823 of the Nevada State Engineer, allocating groundwater rights in the Dayton Valley Hydrographic Basin (“the Basin”). The Pyramid Lake Paiute Tribe of Indians (“the Tribe”) opposed many of the applications. The Tribe contended that the groundwater in the Basin was over-appropriated and that granting the applications would impair their federally decreed water rights under the Alpine Decree. The State Engineer ruled against the Tribe. *Inter alia*, the Engineer ruled that the Tribe’s decreed water rights were not protected against diminution as a result of allocations of groundwater. The Tribe appealed the Engineer’s ruling to the federal district court.

The district court held that it did not have subject matter jurisdiction over the Tribe’s appeal, holding that the appeal should be brought in the Nevada state court

in Lyon County. The district court so held even though the Tribe contended in its appeal that the Engineer's ruling adversely affected its water rights under the Alpine Decree.

The district court's holding is inconsistent with our decision today in *United States v. Orr Water Ditch Co.* We vacate and remand to the district court for further proceedings consistent with that decision.

VACATED and REMANDED.