

IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF PERMIT 3736, CERTIFICATE 325; )  
PERMIT 3924, CERTIFICATE 1029; PERMIT 7645, )  
CERTIFICATE 1498; PERMIT 7677, CERTIFICATE 2261; )  
PERMIT 10430, CERTIFICATE 2551; PERMIT 10445, )  
CERTIFICATE 2759; PERMIT 10568, CERTIFICATE 2835; )  
PERMIT 14771, CERTIFICATE 4269; PERMIT 15024, )  
CERTIFICATE 4344; AND PERMIT 17437, CERTIFICATE )  
5166 FILED TO DIVERT THE SURFACE WATERS OF THE )  
COLORADO VALLEY HYDROGRAPHIC BASIN (213), CLARK )  
COUNTY, NEVADA, AND PERMIT 10779, CERTIFICATE 3118; )  
PERMIT 10799, CERTIFICATE 3119; PERMIT 10861, )  
CERTIFICATE 4101; AND PERMIT 13424, CERTIFICATE )  
5984 FILED TO DIVERT THE SURFACE WATERS OF THE )  
BLACK MOUNTAINS AREA HYDROGRAPHIC BASIN (215), )  
CLARK COUNTY, NEVADA. )

RULING

# 4718

GENERAL

I.

Application 3736 was filed on December 16, 1915, by The Colorado-Nevada Mining and Milling Company to appropriate 0.0333 cubic feet per second (c.f.s.) of water from Eldorado Canyon at a point locally known as "The Falls" for mining, milling, and domestic purposes within portions of Section 11, T.26S., R.64E., M.D.B.&M. The point of diversion is described as being located within the SW¼ SW¼ of Section 2, T.26S., R.64E., M.D.B.&M. Permit 3736 was approved on August 21, 1916, for mining, milling and domestic purposes. Certificate 325 under Permit 3736 was issued on April 28, 1917, for 0.0333 c.f.s. of water for mining, milling, and domestic purposes within the NW¼ NE¼ of Section 11, T.26S., R.64E., M.D.B.&M.<sup>1</sup>

<sup>1</sup> File No. 3736, official records in the office of the State Engineer.

II.

Application 3924 was filed on April 24, 1916, by Albert Fredrick Wuertz to appropriate 1.65 c.f.s. of water from the Colorado River for irrigation and domestic purposes within portions of Section 7, T.29S., R.66E., M.D.B.&M. The point of diversion is described as being located within Lot 4 in Section 6, T.29S., R.66E., M.D.B.&M. Permit 3924 was approved on October 7, 1916, for irrigation and domestic purposes. Ownership was transferred to Roy B. Crofts and Certificate 1029 under Permit 3924 was issued on May 6, 1924, for 0.2715 c.f.s. of water, not to exceed 81.45 acre feet per season, for the irrigation of 27.15 acres located within the S $\frac{1}{2}$  NW $\frac{1}{4}$  and the N $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 7, T.29S., R.66E., M.D.B.&M.<sup>2</sup>

III.

Application 7645 was filed on February 20, 1926, by Roy B. Crofts to appropriate 6.0 c.f.s. of water from the Colorado River for irrigation and domestic purposes within portions of Sections 6, 7, and 18, T.29S., R.66E., M.D.B.&M. The point of diversion is described as being located within Lot 4 of Section 6, T.29S., R.66E., M.D.B.&M. Permit 7645 was approved on March 8, 1927, for irrigation and domestic purposes. Certificate 1498 under Permit 7645 was issued on February 19, 1929, for 0.755 c.f.s. of water, not to exceed 408.2 acres feet per season, for the irrigation of 75.516 acres located within Lot 7 of Section 7, T.29S., R.66E., and Lots 1 and 2 of Section 18, T.29S., R.66E., M.D.B.&M.<sup>3</sup>

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<sup>2</sup> File No. 3924, official records in the office of the State Engineer.

<sup>3</sup> File No. 7645, official records in the office of the State Engineer.

IV.

Application 7677 was filed on March 29, 1926, by Rimmer J. Oppedyk to appropriate 1.25 c.f.s. of water from the Colorado River for irrigation and domestic purposes within Lots 1, 2, and 3 of Section 6, T.29S., R.66E., M.D.B.&M. The point of diversion is described as being located within Lot 1 of Section 6, T.29S., R.66E., M.D.B.&M. Permit 7677 was approved on March 22, 1927, for irrigation and domestic purposes. Certificate 2261 under Permit 7677 was issued on August 5, 1936, for 0.381 c.f.s. of water, not to exceed 275 acre-feet annually (afa), for the irrigation of 38.10 acres located within Lots 1, 2, and 3 of Section 6, T.29S., R.66E., M.D.B.&M.<sup>4</sup>

V.

Application 10430 was filed on October 13, 1939, by W. W. Hartman to appropriate 0.10 c.f.s. of water from an unnamed wash for mining and domestic purposes within portions of Section 4, T.26S., R.64E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 8, T.26S., R.64E., M.D.B.&M. Permit 10430 was approved on February 8, 1940, for mining and domestic purposes. Certificate 2551 under Permit 10430 was issued on December 10, 1940, for 0.10 c.f.s. of water for mining and domestic purposes within the W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 4, T.26S., R.64E., M.D.B.&M.<sup>5</sup>

VI.

Application 10445 was filed on November 22, 1939, by El Dorado Rover Mining Company to appropriate 0.25 c.f.s. of water

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<sup>4</sup> File No. 7677, official records in the office of the State Engineer.

<sup>5</sup> File No. 10430, official records in the office of the State Engineer.

from an unnamed wash for milling and domestic purposes within the NW¼ NE¼ of Section 11, T.26S., R.64E., M.D.B.&M. The point of diversion is described as being located within the SW¼ SW¼ of Section 2; T.26S., R.64E., M.D.B.&M. Permit 10445 was approved on March 20, 1940, for milling and domestic purposes. Certificate 2759 under Permit 10445 was issued on December 20, 1943, for 0.10 c.f.s. of water for milling and domestic purposes within the NW¼ NE¼ of Section 11, T.26S., R.64E., M.D.B.&M.<sup>6</sup>

VII.

Application 10568 was filed on October 21, 1940, by Leon V. and Manley T. Garland to appropriate 0.15 c.f.s. of water from an unnamed wash for mining, milling and domestic purposes within portions of Section 9, T.26S., R.64E., M.D.B.&M. The point of diversion is described as being located within the NW¼ NW¼ of Section 9, T.26S., R.64E., M.D.B.&M. Permit 10568 was approved on March 26, 1941, for mining, milling and domestic purposes. Certificate 2835 under Permit 10568 was issued on January 5, 1945, for 0.1025 c.f.s. of water for mining, milling and domestic purposes within the N¼ NW¼ and the SW¼ NW¼ of Section 9, T.26S., R.64E., M.D.B.&M.<sup>7</sup>

VIII.

Application 10779 was filed on January 28, 1942, by Defense Plant Corporation to appropriate 45.0 c.f.s. of water from the Colorado River for milling and metallurgical purposes within portions of Sections 11, 12, 13, and 14, T.22S., R.62E., and portions of Sections 7 and 18, T.22S., R.63E., M.D.B.&M. The

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<sup>6</sup> File No. 10445, official records in the office of the State Engineer.

<sup>7</sup> File No. 10568, official records in the office of the State Engineer.

point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 11, T.22S., R.64E., M.D.B.&M. Permit 10779 was approved on February 3, 1943, for milling and metallurgical purposes. Certificate 3118 under Permit 10779 was issued on June 21, 1948, for 45.0 c.f.s. of water for milling and metallurgical purposes within portions of Sections 11, 12, 13, and 14, T.22S., R.62E., and portions of Sections 7 and 18, T.22S., R.63E., M.D.B.&M.<sup>8</sup>

IX.

Application 10799 was filed on March 28, 1942, by Defense Plant Corporation to appropriate 12.0 c.f.s. of water from the Colorado River for municipal purposes within portions of Section 31, T.21S., R.63E., M.D.B.&M.; Section 36, T.21S., R.62E., M.D.B.&M.; Sections 5, 6, 7, 8, 17, 18, 19, 20, 21, 27, 28 and 29, T.22S., R.63E., M.D.B.&M.; Sections 2, 3, 4, 9, 10, 11, 12, 13, 14, 15 and 16, T.22S., R.62E., M.D.B.&M.; and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, T.22S., R.62E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 11, T.22S., R.64E., M.D.B.&M. Permit 10799 was approved on February 3, 1943, for municipal purposes. Certificate 3119 under Permit 10799 was issued on June 21, 1948, for 12.0 c.f.s. of water for municipal purposes within portions of Section 31, T.21S., R.63E., M.D.B.&M.; Section 36, T.21S., R.62E., M.D.B.&M. ; Sections 5, 6, 7, 8, 17, 18, 19, 20, 21, 27, 28 and 29, T.22S., R.63E., M.D.B.&M.; Sections 2, 3, 4, 9, 10, 11, 12, 13, 14, 15 and 16,

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<sup>8</sup> File No. 10779, official records in the office of the State Engineer.

T.22S., R.62E., M.D.B.&M.; and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, T.22S., R.62E., M.D.B.&M.<sup>9</sup>

X.

Application 10861 was filed on September 5, 1942, by Manganese Ore Company to appropriate 5.0 c.f.s. of water from the Colorado River for mining, milling, and domestic purposes within portions of Sections 26, 27, 34, and 35, T.21S., R.63E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 11, T.22S., R.64E., M.D.B.&M. Permit 10861 was approved on April 10, 1943, for mining, milling and domestic purposes. Certificate 4101 under Permit 10861 was issued on July 1, 1954, for 5.0 c.f.s. of water for mining, milling and domestic purposes within portions of Sections 26, 27, 34 and 35, T.21S., R.63E., M.D.B.&M.<sup>10</sup>

XI.

Application 13424 was filed on June 19, 1950, by the Las Vegas Valley Water District to appropriate 59.0 c.f.s. of water from Lake Mead and the Colorado River for municipal purposes within the Las Vegas Valley. The point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 11, T.22S., R.64E., M.D.B.&M. Permit 13424 was approved on January 31, 1951, for municipal purposes. Certificate 5984 under Permit 13424 was issued on February 24, 1966, for 24.0 c.f.s. of water, not to exceed 8,756.93 acre-feet per season, for municipal purposes within T.19S., R.60E.; T.20S., R.61E.; T.21S., R.61E.; S $\frac{1}{2}$  T.19S., R.61E.; E $\frac{1}{2}$  T.21S., R.60E.; Sections 19 through 23 and 26 through

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<sup>9</sup> File No. 10799, official records in the office of the State Engineer.

<sup>10</sup> File No. 10861, official records in the office of the State Engineer.

35, inclusive, T.19S., R.62E.; N½ T.20S., R.60E.; and Sections 22, 23, 24, 25, 26, 27, 34, 35, 36, T.20S., R.60E.; Sections 2 through 11, Sections 14 through 23, Sections 26 through 35, T.20S., R.62E.; Sections 2 through 11, Sections 14 through 23, Sections 26 through 36, T.21S., R.62E.; Sections 28, 29, 30, 31, 32, 33, T.21S., R.63E.; Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, T.22S., R.60E.; N½ T.22S., R.61E.; N½ T.22S., R.62E.; Sections 5, 6, 7, 8, 17, 18, 19, 20, T.22S., R.63E., M.D.B.&M.<sup>11</sup>

XII.

Application 14771 was filed on January 13, 1953, by Ebbie H. Davis to appropriate 0.10 c.f.s. of water from the Colorado River (Lake Mohave) for stockwatering purposes within portions of Section 13, T.29S., R.65E., M.D.B.&M. The point of diversion is described as being located within the SE¼ SE¼ of Section 13, T.29S., R.65E., M.D.B.&M. Permit 14771 was approved on July 21, 1953, for stockwatering purposes. Certificate 4269 under Permit 14771 was issued on January 25, 1956, for 0.0015 c.f.s. of water for stockwatering purposes within the SE¼ SE¼ of Section 13, T.29S., R.65E., M.D.B.&M.<sup>12</sup>

XIII.

Application 15024 was filed on May 7, 1953, by Ebbie H. Davis to appropriate 0.01 c.f.s. of water from the Colorado River (Lake Mohave) for stockwatering purposes within portions of Section 36, T.26S., R.65E., M.D.B.&M. The point of diversion is described as being located within the SW¼ NW¼ of Section 36, T.26S., R.65E., M.D.B.&M. Permit 15024 was approved on August

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<sup>11</sup> File No. 13424, official records in the office of the State Engineer.

<sup>12</sup> File No. 14771, official records in the office of the State Engineer.

28, 1953, for stockwatering purposes. Certificate 4344 under Permit 15024 was issued on February 24, 1956, for 0.0023 c.f.s. of water for stockwatering purposes within the SW¼ NW¼ of Section 36, T.26S., R.65E., M.D.B.&M.<sup>13</sup>

**XIV.**

Application 17437 was filed on November 22, 1957, by Warren Portenier to appropriate 0.0784 c.f.s. of water from the Colorado River for irrigation and domestic purposes within portions of Section 33, T.32S., R.66E., M.D.B.&M. The point of diversion is described as being located within the NE¼ NE¼ of Section 33, T.32S., R.66E., M.D.B.&M. Permit 17437 was approved on April 17, 1958, for irrigation and domestic purposes. Certificate 5166 under Permit 17437 was issued on August 4, 1961, for 0.0784 c.f.s. of water, not to exceed 42.0 afa for irrigation and domestic purposes for the irrigation of 7.0 acres located within the NE¼ of Section 33, T.32S., R.66E., M.D.B.&M.<sup>14</sup>

**FINDINGS OF FACT**

**I.**

On November 24, 1922, the Colorado River Compact was signed and allocated the waters of the Colorado River between the upper basin states of Wyoming, Colorado, Utah and New Mexico, and the lower basin states of Nevada, Arizona and California.<sup>15</sup> The Boulder Canyon Project Act, effective June 25, 1929, apportioned the waters of the lower basin states, and gave to the Secretary of the United States Department of the Interior the right to

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<sup>13</sup> File No. 15024, official records in the office of the State Engineer.

<sup>14</sup> File No. 17437, official records in the office of the State Engineer.

<sup>15</sup> 43 U.S.C.S. § 6171 (1980).

contract with users of Colorado River water.<sup>16</sup> Pursuant to Section 5 of the Act, the Secretary of the U.S. Department of the Interior is to contract with water users for all water allocated to each state in the lower basin. The State Engineer finds that the United States Supreme Court decision in Arizona v. California<sup>17</sup> held that Colorado River water cannot be delivered to Nevada users unless contracts with such users are made with the Secretary of the Interior. The State Engineer finds that direct appropriations of Colorado River water from Nevada's allotment of said water are not made pursuant to Nevada's statutory process for appropriating water found in NRS Chapter 533, but rather are made pursuant to contracts with the Secretary of the Interior.<sup>18</sup>

## II.

The State Engineer finds that NRS § 538.171 and federal law provide that applications for the original appropriation of Colorado River waters must be made to the Colorado River Commission and the U.S. Secretary of the Interior not to the Nevada State Engineer. The State Engineer further finds that NRS § 538.171 clarifies that the State Engineer has no authority as it pertains to the original appropriation and use of the waters of the Colorado River, and the issuance of the permits and certificates subject of this ruling is null and void.

## III.

The State Engineer finds that on May 22, 1997, a letter was sent by the Division of Water Resources to the Colorado River

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<sup>16</sup> 43 U.S.C.S. § 617d (1980).

<sup>17</sup> 373 U.S. 546 (1963).

<sup>18</sup> See Nevada Attorney General Opinion No. 88-16, dated December 13, 1988.

Commission requesting information regarding to the existence or non-existence of valid contracts for the delivery of water from the Colorado River. Said information was requested for Permit 3736, Certificate 325; Permit 3924, Certificate 1029; Permit 7645, Certificate 1498; Permit 7677, Certificate 2261; Permit 10430, Certificate 2551; Permit 10445, Certificate 2759; Permit 10568, Certificate 2835; Permit 10779, Certificate 3118; Permit 10799, Certificate 3119; Permit 10861, Certificate 4101; Permit 13424, Certificate 5984; Permit 14771, Certificate 4269; Permit 15024, Certificate 4344; and Permit 17437, Certificate 5166.<sup>1-17</sup>

IV.

On June 25, 1997, the Division of Water Resources received a response from the Colorado River Commission. This response stated that the Bureau of Reclamation had been consulted, the files of the Colorado River Commission checked, that valid delivery contracts exist for Permit 10779, Certificate 3118, and Permit 10799, Certificate 3119 in the name of Basic Management Inc., and Permit 13424, Certificate 5984 in the name of the Las Vegas Valley Water District.<sup>1-15</sup>

CONCLUSIONS OF LAW

I.

The United States Supreme Court in 1963 held that the State Engineer has no jurisdiction over the original appropriation or use of the waters from the Colorado River. Since these certificates are for the use of waters from the Colorado River, and the Supreme Court has held that the State Engineer has no jurisdiction over said waters, the State Engineer concludes the permits and certificates are not valid.

II.

Basic Management Inc., the holder of Permit 10779, Certificate 3118, and Permit 10799, Certificate 3119, and the Las Vegas Valley Water District, holder of Permit 13424, Certificate 5984, both have valid contracts with the U.S. Secretary of the Interior through the Colorado River Commission for use of the waters of the Colorado River. The State Engineer concludes their use of Colorado River water is pursuant to those contracts and not pursuant to the permits and certificates issued by the State Engineer.

RULING

Permit 3736, Certificate 325; Permit 3924, Certificate 1029; Permit 7645, Certificate 1498; Permit 7677, Certificate 2261; Permit 10430, Certificate 2551; Permit 10445, Certificate 2759; Permit 10568, Certificate 2835; Permit 10779, Certificate 3118; Permit 10799, Certificate 3119; Permit 10861, Certificate 4101; Permit 13424, Certificate 5984; Permit 14771, Certificate 4269; Permit 15024, Certificate 4344; and Permit 17437, Certificate 5166; are hereby declared null and void on the grounds that an appropriation of water from the Colorado River requires a contract with the U.S. Secretary of the Interior and the U.S. Supreme Court has held that the State Engineer has no jurisdiction over the waters of the Colorado River.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JG/cl

Dated this 31st day of

March, 1999.