

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

IN THE MATTER OF PERMITS 16577 AND)
19188 FILED TO APPROPRIATE THE)
WATERS OF THE COLORADO RIVER WITHIN)
THE BLACK MOUNTAIN AREA)
HYDROGRAPHIC BASIN (215) AND THE)
COLORADO RIVER VALLEY HYDROGRAPHIC)
BASIN (213), RESPECTIVELY, CLARK)
COUNTY, NEVADA.

RULING

4908

GENERAL

I.

Application 16577 was filed on June 27, 1955, by the City of Henderson to appropriate 34.5 cubic feet per second (cfs) of water from the Colorado River. The proposed manner and place of use is for domestic purposes (municipal water supply for Henderson) within Sections 7, 8, 17, 18, 19 and 20, T.22S., R.63E., M.D.B.&M, Sections 1, 12 and 13, T.22S., R.62E., M.D.B.&M, Sections 2, 3, 4 and 24, T.22S., R.62E., M.D.B.&M., Section 33, T.21S., R.63E., M.D.B.&M., and Sections 21, 28, 30, 31 and 32, T.22S., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE1/4 NW1/4 of Section 11, T.22S., R.64E., M.D.B.&M. The State Engineer issued Permit 16577 on January 22, 1958, granting the City of Henderson the right to appropriate 34.5 cfs of water from the Colorado River for the previously stated manner and place of use.¹

II.

Application 19188 was filed on September 9, 1960, by Clyde H. Gilbert and Verona H. Gilbert to appropriate 0.025 cfs, not to exceed 8.0 acre feet per year of water from the Colorado River. The proposed manner of use and place of use is for irrigation and domestic purposes within 2.22 acres of land that are described as being located within a portion of the W1/2 NE1/4 of Lot 1 of the NE1/4 of Section 33, T.32S., R.66E., M.B.D.&M. The proposed point

of diversion is described as being within Lot 1 of the NE1/4 of Section 33, T.32S., R.66E., M.D.B.&M. The State Engineer issued Permit 19188 on August 24, 1961 for 0.025 cfs of water for the previously mentioned manner and place of use.²

FINDINGS OF FACT

I.

On November 24, 1922, the Colorado River Compact was signed which established the allocation of 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.³ 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 power to enter into contracts with users of Colorado River water.⁴ Pursuant to Section 5 of this Act, the Secretary of the U.S. Department of the Interior is to establish contracts with water users for all of the waters of the Colorado River allocated to each state in the lower basin. The State Engineer finds that the United States Supreme Court decision in Arizona v. California⁵ held that Colorado River water cannot be delivered to Nevada users unless contracts with such users are made with the Secretary of the Interior.

Additionally, the State Engineer finds that direct appropriations that occur from Nevada's allotment of Colorado River 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.⁶

² File Number 19188, official records in the office of the State Engineer.

³ 43 U.S.C.S. 6171 (1980).

⁴ 43 U.S.C.S. 617D (1980).

⁵ 373 U.S. 546 (1963).

⁶ See Nevada Attorney General Opinion No. 88-16, dated December 13, 1988.

II.

The State Engineer finds that NRS 538.171 and the federal law provide that applications for the original appropriation of Colorado River water must be made to the Colorado River Commission and the U.S. Secretary of the Interior, not to the 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 Permit 16577 and Permit 19188 must be ruled null and void.

III.

By letter dated, December 14, 1999, the office of the State Engineer requested the Colorado River Commission to provide information relating to the existence or non-existence of valid contracts for the delivery of water from the Colorado River under Permit 16577 and Permit 19188. A timely response was received which indicated that any right to the use of Colorado River water granted under Permit 16577 had either lapsed or been superceded by the City of Henderson's contracts with the Secretary of the Interior, the Colorado River Commission and the Southern Nevada Water Authority. The State Engineer finds that any right to divert Colorado River water, which may have existed under Permit 16577, had been replaced by existing contracts and agreements enacted with the City of Henderson.

V.

In regard to Permit 19188, the Colorado River Commission informed the office of the State Engineer that they had no record of a contract existing between Clyde H. and Verona H. Gilbert and the Secretary of the Interior, to divert water from the Colorado River pursuant to Section 5 of the Boulder Canyon Project Act of 1928. Similarly, no evidence of an agreement between the permittees and the Colorado River Commission was found within

their records. The State Engineer finds that the permittees are not entitled under existing agreements and contracts to appropriate water from the Colorado River.

CONCLUSIONS

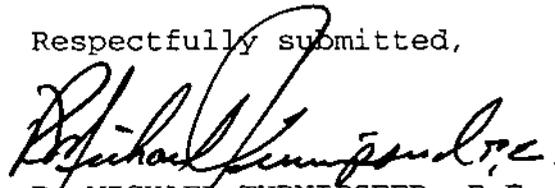
I.

The United States Supreme Court held in 1963 that the State Engineer has no jurisdiction over the original appropriation or use of the waters from the Colorado River. Since these permits were filed to appropriate water from the Colorado River and the Supreme Court has held that the State Engineer has no jurisdiction over said waters, the State Engineer concludes that Permit 16577 and Permit 19188 are not valid.

RULING

Permit 16577 and Permit 19188 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/MDB/cl

Dated this 25th day of
April, 2000.