

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

1192

ORDER

WHEREAS, a Civil Decree for the waters of the Quinn River Stream System was adjudged by the Second Judicial District Court (now the Sixth Judicial District Court) of the State of Nevada in and for the County of Humboldt dated April 9, 1919. This Decree adjudicated all the relative rights of all plaintiffs and defendants relative to the use of the waters of the Quinn River and its tributaries.

WHEREAS, the Quinn River Decree and permits on file with the State Engineer have defined the relative date of priority, amount of water expressed in cubic feet per second, the number of acres to be irrigated, place of appropriation and the owner of all the waters of the Quinn River and its tributaries.

WHEREAS, the Quinn River Decree has ordered, adjudged and decreed that users are restrained from damming or otherwise interfering with or retarding the flow of water of said river and tributaries to interfere with prior rights.

WHEREAS, an Order issued on March 10, 1948, Case No. 1596 by the Second Judicial District Court (now the Sixth Judicial District Court) of Nevada in and for the County of Humboldt, directed the State Engineer to distribute the waters of the Quinn River in accordance with the Quinn River Decree.

WHEREAS, a complaint of illegal water use was verbally communicated to Steve Del Soldato, Humboldt River Water Commissioner, by Kimble Wilkenson on May 20, 2008. Mr. Del Soldato conducted a field investigation the following day, May 21, 2008. Mr. Del Soldato contacted Mr. John Albisu and told him that "he did not have a water right out of Ten Mile Slough and he could not divert any water from it."

WHEREAS, a second complaint was lodged by Mr. Wilkenson on May 24, 2008 and was investigated by Mr. Del Soldato the same day. Mr. Del Soldato again told Mr. Albisu "to make sure that there wasn't any water from the slough entering his property". Mr. Albisu said that there wouldn't be any water pumped from the slough onto his ground.

WHEREAS, a field investigation conducted by personnel of the Nevada Division of Water Resources on June 4, 2008, indicated that water can be directed toward the lift pump via a ditch that is incised against the natural slope of the land from Ten Mile Slough into the pump back pond located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ (LOT 4) Section 5, T.47N., R.38E., M.D.B.&M.

WHEREAS, the State Engineer finds that the ditch constructed between the Ten Mile Slough channel and the pump back pond is not necessary for the return of excess irrigation drain and waste water to the natural channel of the Quinn River system.

WHEREAS, a second culvert located upstream of the ditch and pump back pond and within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Lot 5 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) acts as a restriction to the Ten Mile Slough channel, therefore causing the backed-up water to irrigate acreage located within portions of the SW $\frac{1}{4}$ of Lot 5 (NW $\frac{1}{4}$ NW $\frac{1}{4}$).

WHEREAS, research of records of the Division of Water Resources and the Quinn River Decree indicates that no water rights from the Quinn River and tributaries are held by John Albisu (Albisu Ranch) within the confines of Lots 4 and 5 of T.47N., R.38E., M.D.B.&M.

NOW THEREFORE, to insure that the waters of the Quinn River (Ten Mile Slough) and its tributaries are delivered according to the Decree and to insure that all users receive the amount of water to which they are entitled, John Albisu, or successors in interest, is hereby ordered as follows:

1. To fill in the ditch between the lift station on the pump back pond in order to prevent the illegal diversion of water from the Ten Mile Slough channel onto lands irrigated by underground water under Permit 15673, Certificate 4840.
2. To increase the size of the culvert located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Lot 5 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) to a minimum of four (4) feet in diameter or multiple smaller culverts capable of carrying the spring runoff and normal flows of the Quinn River via Ten Mile Slough. The other alternative is the complete removal of the culvert and the restoration of the channel back to its' original configuration.
3. To not artificially block or restrict the flow of the preceding culvert(s) causing the described backwater irrigation affect on land located within portions of the SW $\frac{1}{4}$ of Lot 5 (NW $\frac{1}{4}$ NW $\frac{1}{4}$).
4. The filling of the ditch between Ten Mile Slough and the pump-back pond shall be completed no later than August 1, 2008.
5. The replacement of the culvert at the site located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Lot 5 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) shall be completed prior to the commencement of the 2009 irrigation season or March 1, 2008, whichever is the earlier date.

Failure to comply with this order will result in the filing of a complaint in the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt as set forth under **NRS 533.460, 533.475, 533.480, 536.120 and NRS 533.481**. **The statutes state:**

NRS 533.460 Unauthorized use or willful waste of water; prima facie evidence. The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using or diverting it. [81:140:1913; 1919 RL p. 3247; NCL § 7967]

NRS 533.475 Power of State Engineer and assistants to make arrests. The State Engineer and his assistants shall have power to arrest any person violating any of the provisions of **NRS 533.010 to 533.470**, inclusive, and to turn him over to the sheriff or other competent police officer within the county. Immediately on delivering any such person so arrested into the custody of the sheriff, the State Engineer or his assistant making such arrest shall immediately, in writing, and upon oath, make a complaint before the justice of the peace against the person so arrested. [57:140:1913; 1919 RL p. 3238; NCL § 7942]

NRS 533.480 Penalties. Any person violating any of the provisions of **NRS 533.010 to 533.475**, inclusive, shall be guilty of a misdemeanor. [58:140:1913; 1919 RL p. 3238; NCL § 7943] + [83:140:1913; 1919 RL p. 3247; NCL § 7969]—(NRS A 1967, 609)

NRS 536.120 Penalty. Every person who shall willfully and maliciously remove, damage or destroy a ditch or flume lawfully erected for carrying water or draining land shall be guilty of a misdemeanor. [Part 1911 C&P § 487; RL § 6752; NCL § 10434]

Additional penalties may be assessed under NRS 533.481 beginning July 1, 2008 and levied after July 1, 2009 as follows:

NRS 533.481 Additional penalties.

1. In addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter or any permit, certificate, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120 to:

(a) Pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.

(b) In the case of an unauthorized use or willful waste of water in violation of NRS 533.460 or an unlawful diversion of water in violation of NRS 533.530, or any other violation of this chapter that, as determined by the State Engineer, results in an unlawful use, waste or diversion of water, replace not more than 200 percent of the water used, wasted or diverted.

2. If an administrative fine is imposed against a person pursuant to subsection 1 or the person is ordered to replace any water pursuant to that subsection, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.

3. An order imposing an administrative fine or requiring the replacement of water or the payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to NRS 533.450.

(Added to NRS by 2007, 2014)

Cost of the construction shall be borne by the party that is subject of this order.


TRACY TAYLOR, P.E.
State Engineer

Dated at Carson City, Nevada,
this 26th day of June, 2008