

IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

1193

ORDER

**REGARDING TRIBUTARY CONSERVATION INTENTIONALLY CREATED
SURPLUS FOR THE VIRGIN RIVER**

WHEREAS, the Nevada State Engineer is designated by the Nevada Legislature to perform duties related to the management and appropriation of the water resources belonging to the people of the State of Nevada;¹

WHEREAS, pursuant to Nevada Revised Statute (NRS) chapter 533, the Nevada State Engineer acts as an officer of the court for administration and distribution of water from a stream system that has been adjudicated by a district court decree;

WHEREAS, the Virgin River Decree was entered on May 14, 1927, by the Tenth (now Eighth) Judicial District Court, Clark County, Nevada;

WHEREAS, under the Virgin River Decree, the Bunkerville Irrigation Company (BIC) and Mesquite Irrigation Company (MIC) own water rights on the Virgin River and said water is distributed by BIC and MIC to the individual shareholders of said irrigation companies;

WHEREAS, in addition to the Virgin River Decree, other water rights for the diversion of the waters of the Virgin River have been granted through the permitting and certification process administered by the Nevada State Engineer;

WHEREAS, pursuant to NRS 533.060 rights to the use of surface water cannot be lost through forfeiture;

WHEREAS, pursuant to NRS 533.060 a surface water right that is appurtenant to land formerly used primarily for agricultural purposes is not subject to abandonment if the land has been converted to urban use or the water right has been acquired by a water purveyor for municipal use;

¹ See Nevada Revised Statutes chapters 532, 533, 534, 535, and 536.

WHEREAS, pursuant to NRS 538.171 any appropriation or use of the waters of the Colorado River by the Colorado River Commission of Nevada or an entity with whom the Colorado River Commission of Nevada has contracted is not subject to regulation by the State Engineer;

WHEREAS, the Attorney General of the State of Nevada determined in Attorney General Opinion Number 88-16 that a permit from the State Engineer is not required for appropriation and use of Colorado River water for entities that have water delivery contracts with the Secretary of the Interior (Secretary), nor is a permit from the State Engineer necessary for use of such water merely to provide the State Engineer with information regarding such use if information is timely supplied upon request;

WHEREAS, pursuant to Section 2 of Chapter 393 of the Statutes of Nevada 1995, the powers, duties, rights and obligations of the State of Nevada and the Colorado River Commission of Nevada relating to contracts for delivery of Colorado River water were assumed by the Southern Nevada Water Authority;

WHEREAS, the Boulder Canyon Project Act (BCPA), 43 U.S.C. § 617, became effective on June 25, 1929;

WHEREAS, the Secretary of the Interior (Secretary) has a broad and unique legal role in managing the lower Colorado River system in accordance with federal law, including the Boulder Canyon Project Act of 1928, the 1963 decision of the U.S. Supreme court in *Arizona v. California*, the 2006 Consolidated Decree of the U.S. Supreme Court in *Arizona v. California*, the Colorado River Basin Project Act of 1968, and other applicable provisions of federal law. Within this legal framework, the Secretary makes annual determinations regarding the availability of water to be delivered to Colorado River contract holders from Lake Mead;

WHEREAS, on December 13, 2007, the Secretary adopted the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (Guidelines). The Guidelines provide for the creation and delivery of Tributary Conservation Intentionally Created Surplus and Developed Shortage Supply (for convenience, both referred to hereinafter as ICS) to entities with a contract or entitlement to Colorado River water with the Bureau of Reclamation provided said entities have also entered into a delivery agreement with the Bureau of Reclamation for delivery of ICS (ICS Delivery Contract);

WHEREAS, pursuant to Sections 3 and 4 of the Guidelines, the holder of a valid ICS Delivery Contract who purchases documented water rights on a tributary of the Colorado River, perfected prior to June 25, 1929, (the effective date of the BCPA) may convey said water to the Colorado River mainstream so that said water may be diverted from the Colorado River mainstream by the ICS Delivery Contract holder as Tributary Conservation ICS;

WHEREAS, the Guidelines and the consolidated decree in *Arizona v. California*, 547 U.S. 150 (2006), define the Colorado River mainstream to include the reservoirs located on the Colorado River downstream from Lee Ferry within the United States; and

WHEREAS, Lake Mead is located on the Colorado River mainstream downstream from Lee Ferry and full pool elevation of Lake Mead is 1,220 feet above mean sea level.

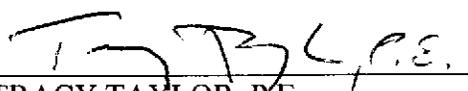
NOW THEREFORE, the State Engineer finds that:

1. The Judgment and Decree in the Matter of the Determination of the Relative Rights in and to the Waters of the Virgin River (Virgin River Decree) was entered on May 14, 1927 by the Tenth (now Eighth) Judicial District Court, Clark County, Nevada.
2. All water rights adjudicated in the Virgin River Decree were acquired by valid appropriation prior to March 1, 1905, and were determined to be in good standing and in use prior to March 1, 1905 as affirmed by the Virgin River Decree.
3. That Permit No. 3085 (Certificate No. 1153) is for the diversion of the waters of the Virgin River with a priority date of August 17, 1914 and was acquired by valid appropriation prior to June 25, 1929.
4. Permit No. 6061 (Certificate No. 1408) is for the diversion of the waters of the Virgin River with a priority date of April 21, 1920 and was acquired by valid appropriation prior to June 25, 1929.
5. Permit No. 7624 (Certificate No. 4509) is for the diversion of the waters of the Virgin River with a priority date of January 21, 1926 and was acquired by valid appropriation prior to June 25, 1929.
6. The Virgin River Decree and issuance of subsequent permits and certificates by the State Engineer have appropriated the entire flow of the Virgin River, and that there is insufficient flow in the Virgin River to grant any new appropriations.
7. As of the date of this Order there has been no declaration or finding of forfeiture or abandonment regarding any water rights adjudicated under the Virgin River Decree or certificated by the State Engineer for the diversion of the waters of the Virgin River.

8. As of the date of this Order, no proceedings for forfeiture or abandonment have been initiated regarding any water rights adjudicated under the Virgin River Decree or certificated by the State Engineer for the diversion of the waters of the Virgin River.
9. In accordance with NRS 538.171 and Attorney General Opinion 88-16 a permit is not required for the creation or use of Tributary Conservation ICS when an ICS Delivery Contract exists with the Secretary.
10. The creation of ICS as defined in the current Guidelines promulgated by the Secretary and as those Guidelines may hereinafter be amended, is beneficial to the state of Nevada.

NOW THEREFORE, the State Engineer orders:

1. The Virgin River is closed to new appropriations.
2. An entity with an ICS Delivery Contract, which uses water rights adjudicated under the Virgin River Decree or water rights on the Virgin River issued by the State Engineer with a priority date prior to June 25, 1929 for the creation of ICS, shall file an annual report with the State Engineer's Office. The annual report shall give a full accounting of water rights on the Virgin River owned or controlled by the entity with an ICS Delivery Contract, which have been conveyed through the Virgin River system to the Colorado River mainstream for the creation of ICS. After review of the annual report, the State Engineer shall issue a letter verifying the quantity of water conveyed through the Virgin River system to the Colorado River mainstream for the purpose of creating ICS.



TRACY TAYLOR, P.E.
State Engineer

Dated at Carson City, Nevada

this 15 day of July, 2008.