

NEVADA DIVISION OF  
**WATER RESOURCE**



Nevada Department of  
**CONSERVATION &  
NATURAL RESOURCES**

# NV Supreme Court Decision: State Engineer Authorities for Conjunctive Management

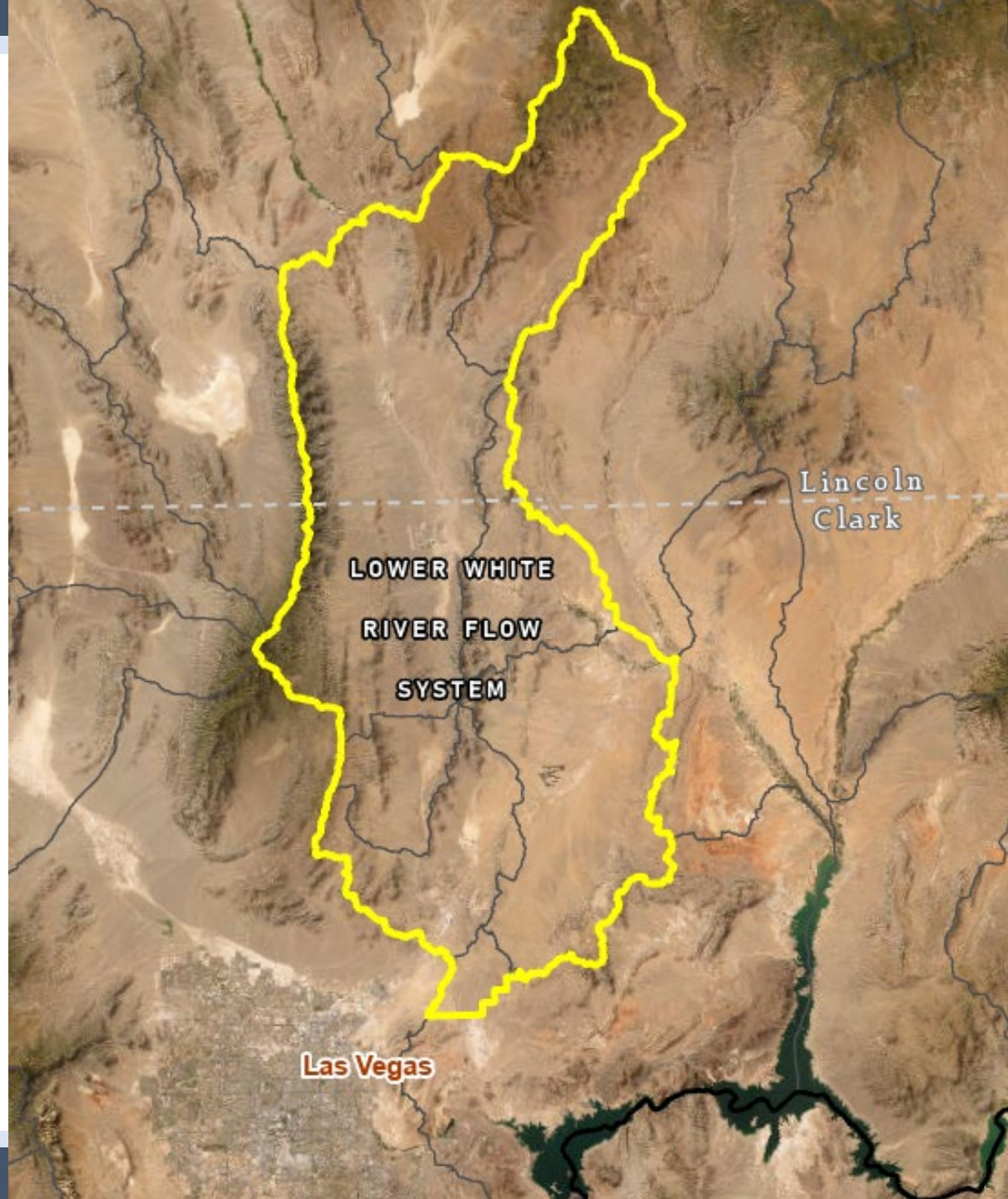
Joint Interim Committee on Natural  
Resources

February 29, 2024

## **Presented by:**

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Law Judge*

**LOWER WHITE  
RIVER FLOW  
SYSTEM (LWRFS)  
ADMINISTRATIVE  
BOUNDARY**



# STATE ENGINEER'S EXPRESS AUTHORITY TO ESTABLISH LWRFS

“NRS 533.085 prohibits the impairment of vested water rights, regardless of the source of water.” (page 15)

“All statutorily granted water rights in Nevada are given subject to existing rights.” (NRS 533.030, page 15)

“Because vested water rights by definition exist prior to the grant of statutorily granted water rights, all statutory rights are granted subject to vested rights, and no statutorily granted water right may impair vested water rights.” (page 15)

\*All quotes from *Sullivan v. Lincoln Co. Water Dist., et al.*, 140 Nev. \_\_ (Adv. Op. 4, Jan. 25, 2024)

# STATE ENGINEER'S IMPLIED AUTHORITY TO DETERMINE AVAILABLE WATER

“In order to protect prestatutory vested rights from impairment, the State Engineer must be able to determine the extent of the groundwater resources that feed the [surface water source]...” (page 15)

“... in determining the amount of unappropriated water in the LWRFS and in accounting for the impact on the source of water, the State Engineer has the *implied authority* to conjunctively manage surface and groundwater and to jointly administer across multiple basins based on the interconnected source of water that flows to vested rights holders.” (emphasis added, page 16)

## LEGISLATIVE DECLARATION

“If the best available science indicates that groundwater and surface water in the LWRFS are interrelated and that appropriations from one reduces the flow of the other, then the State Engineer should manage these rights together based on a shared source of supply.” (page 17)

**STATE ENGINEER'S AUTHORITY FOR  
ISSUING ORDER 1309  
UNDER VARIOUS STATUTORY PROVISIONS**



# APPROPRIATION OF GROUNDWATER IS SUBJECT TO EXISTING RIGHTS

## NRS 534.080(1)

“The right to appropriate groundwater can be obtained only by complying with the provisions of NRS Chapter 533... several provisions implicitly require conjunctive management and joint administration.” (page 18)

## PRIOR DECISION ON CONJUNCTIVE MANAGEMENT

“NRS 533.370(2) requires the State Engineer to reject applications for permitted water rights ‘where there is no unappropriated water in the proposed source of supply... or *where its proposed use or change conflicts with existing rights.*’ ... [the Supreme Court] previously held [in *Eureka County v. State Engineer*, 131 Nev. 846, 359 P.3d 1114 (2015)] that the State Engineer must consider the effect that groundwater appropriations have on spring discharge... Although we did not use the term ‘conjunctive management,’ it is clear the concept was recognized in that caselaw.” (page 18-19)



# BASIN DESIGNATION AND INVESTIGATION

“We hold that NRS 534.110(6) gives the State Engineer the implied authority to make a factual finding as to the boundaries of the LWRFS and determine the maximum amount that can be pumped from the LWRFS without reducing the supply of groundwater. He may then delineate the boundary of the basin for administration under NRS 534.030. All of this requires conjunctive management and joint administration.” (page 22)

# AUTHORITY TO MAKE RULES IN DESIGNATED BASINS

## NRS 534.120

“...the clause enabling the State Engineer to ‘make such rules, regulations and orders as are deemed essential for the welfare of the area involved’ is a broad delegation of authority, one that encompasses the creation of the LWRFS out of multiple sub-basins for future management and determining the maximum amount of water that can be pumped.” (page 24)

## WILDLIFE AND THE PUBLIC INTEREST

“NRS 533.367 impliedly requires the State Engineer to determine the amount of water in the source of supply to springs or seeps, in order to determine how much water can be drawn [without impeding access by wildlife].” (page 25)

“Both [NRS 533.370(2) and 533.367] require the State Engineer to determine the amount of water ‘in the proposed source of supply’ in order to determine if an application would be a threat to the public interest. The preservation of wildlife is part of the public interest.” (page 25-26)

## DUE PROCESS

“All of the respondents received constitutionally adequate notice... and an opportunity to be heard on the factual issues.” (page 27)

“The Due Process Clause does not require the State Engineer to explain how he will analyze and weigh evidence prior to the evidence being submitted at a hearing.” (page 29)

## STILL TO COME...

- Remand to district court for review of substantial evidence
- Administrative process regarding the management and policy decisions that are necessary in light of the amount of water available without a conflict

# TAKEAWAYS

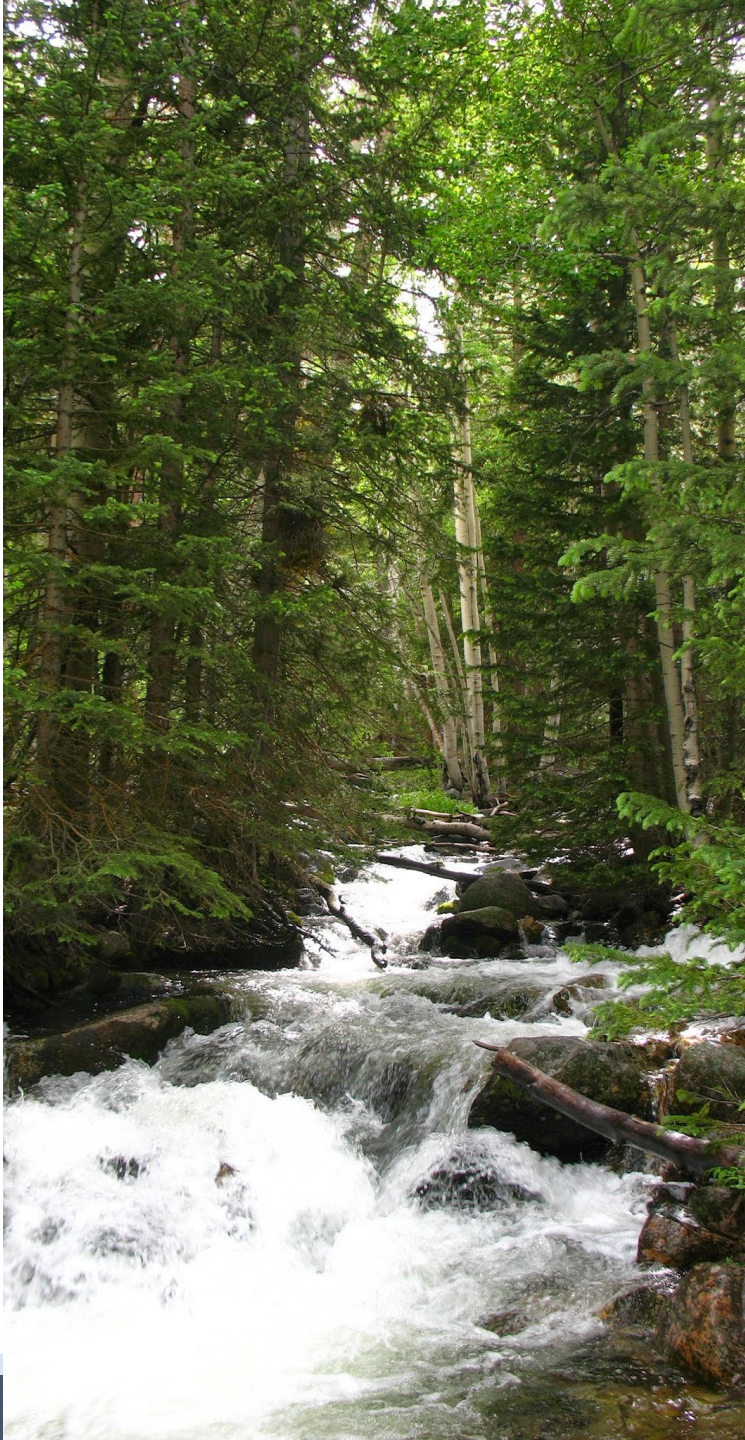
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The Supreme Court opinion:

- ✓ Affirms State Engineer authority to make decisions ***supported by science*** to protect water rights and the public interest
- ✓ Supports long-term water security for Nevada
- ✓ Resolves issues contemplated in AB 387 (2023)

***Hydrogeologic setting*** is highly variable around the state, and essential to understand for accurate and effective conjunctive management

Questions?



# Contact

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