

MASTERING A CONTINUING OBLIGATION

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Peter A. Fahmy
Policy Analyst
Water Rights Branch
National Park Service
1201 Oak Ridge Drive
Fort Collins, CO 80525
Phone: (970) 225-3555
FAX: (970) 225-9965
peter_a_fahmy@nps.gov

Maintaining State Primacy in the Allocation and Administration of Water Resources

It is well established that states have the primary authority in the allocation and administration of water resources. The prudent exercise of discretion by state water officials in administering federal reserved water rights is essential for that primacy to remain viable in face of new and existing challenges for maintaining adequate water supplies for competing societal demands.

Devils Hole Pupfish



U.S. District Court Order

March 23, 1974 - The Court holds that “[t]he State of Nevada is under a **continuing obligation** to be aware of the requirement for a minimum 2.7’ water level at Devil’s Hole in its consideration of applications for groundwater permits in the Ash Meadows area, for groundwater use that would lower the water level at Devil’s Hole below 2.7’ below the copper washer would be detrimental to the public welfare.”





Order No. 724 Upheld on Appeal

These denials were soon challenged in state court. The reviewing district court upheld the State Engineer's denials, holding that the State Engineer was acting well within his authority when he designated the basin as being in need of administration. The court further noted that "experience has shown that properly designated basins are the most efficient means of protecting, preserving and fairly administering a valuable public resource."

ORDER No. 1197

In 2008, the Nevada State Engineer issued Order No. 1197, which imposed additional restrictions on the appropriation and use of groundwater in the vicinity of Devils Hole. In issuing this Order, the State Engineer exercised his statutory authority to “make such rules, regulations, and orders as are deemed essential for the welfare of the area involved.”



NPS Support for Order No. 1197

Following the filing of an appeal to Order No. 1197, the National Park Service requested that the U.S. Department of Justice join in the appeal to support Order No. 1197. After filing a Notice of Intent to Participate as Real Party in Interest, the Department of Justice filed two briefs urging the district court to sustain the Nevada State Engineer's issuance of Order No. 1197.

Order No. 1197 Affirmed

Upon review, the district court upheld Order No. 1197, specifically finding that the Order was justified because “regulating appropriations and changes of diversion points is really the only viable tool that the Engineer has to maintain the water level.” The court further declared that the State Engineer’s precautionary approach to protecting the water level of Devils Hole was appropriate given that “there is little or no room for error.”

State Engineer's Implementation of Order No. 1197

Since the issuance of Order No. 1197, the State Engineer has assisted prospective applicants in complying with the restrictions of the Order. The State Engineer has also applied Order No. 1197 retroactively by denying applications that proposed to move points of diversion closer to Devils Hole

**Those who ignore history are
doomed to repeat it.**

- George Santayana