

The Burger Court Opinion Writing Database

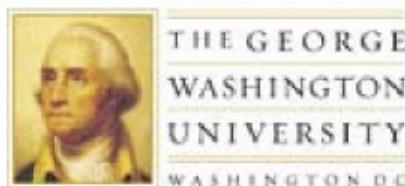
United States v. Nevada

412 U.S. 534 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20542

file
CHAMBERS OF
THE CHIEF JUSTICE

June 1, 1973

Re: 59 Orig. - U. S. v. Nevada and California

Dear Byron:

Please join me in your per curiam.

Regards,

WEB

Mr. Justice White

Copies to the Conference

(6)

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Douglas

No. 59, Orig.

Circulated: 6-5-73

United States of America,

Plaintiff,

v.

States of Nevada and
California.

Recirculated:

On Motion for Leave to File
Bill of Complaint.

[June —, 1973]

Memorandum from MR. JUSTICE DOUGLAS.

I feel that it would be more appropriate to grant leave to file under the head of the Court's original jurisdiction. The Truckee River is a navigable interstate stream. While there is at present no controversy between California and Nevada over the waters of the Truckee, the demands of the United States, if honored, may well restrict California on behalf of interests in Nevada.

The United States in the litigation represents conflicting interests. It speaks for at least two Reclamation projects and the beneficiaries of these projects—the Washoe Reclamation Project, 70 Stat. 775, and the Newlands Reclamation Project, 32 Stat. 338. It speaks for the Indians when it claims more water for Pyramid Lake. It speaks for the Forest Service when it asks for waters in national forests in the Truckee River watershed. It speaks for a wildlife refuge lying below the Newlands Project and wanting more runoff waters.

These interests are conflicting because in this arid, semi-deserted portion of the Nation there's hardly enough water to go around. The Reclamation Service, the Indian Service, the Fish and Wildlife Service all wear the hat of the Department of the Interior. But the history

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 30, 1973

RE: No. 59 Orig. United States v. Nevada
and California

Dear Byron:

I agree with your proposed per curiam
opinion.

Sincerely,



Mr. Justice White

cc: The Conference

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1973

No. 59 Orig., U. S. v. Nevada and California

Dear Byron,

I am glad to join the Per Curiam you have circulated in this case. I have read with interest your memorandum.

Sincerely yours,

P.S.
I

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1973

MEMORANDUM FOR THE CONFERENCE

Re: No. 59, Orig. - United States v. Nevada
and California

Attached is a suggested per curiam in
this case. I also append a longer memorandum,
which with footnotes, might prove of some
interest to you.

385

B.R.W.

BB
PL 28/11

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
 Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

Circulated: 5-30-73

Recirculated: _____

No. 59, Orig.

United States of America,

Plaintiff,

v.

States of Nevada and
California.

On Motion for Leave to File
Bill of Complaint,

[June —, 1973]

PER CURIAM.

The United States asks leave to file a complaint pursuant to this Court's original jurisdiction against the States of California and Nevada seeking a declaration of the respective rights of the States and of the United States in the Truckee River, a navigable interstate stream. The Truckee rises in the High Sierras, flows into Lake Tahoe, through which the California-Nevada boundary runs, exits on the California side of the Lake, and flows 20 miles before crossing into Nevada. It then continues another 65 miles, through Reno and beyond, to its termination in Pyramid Lake, a desert lake 20 miles long and five miles wide, with no outlet and a water level determined by the balance or imbalance between inflow and evaporation.

The complaint sought to be filed states that in 1859 the United States created a reservation for the Paiute Indian Tribe that included Pyramid Lake and an extensive area surrounding it. Allegedly, the United States intended at the time to reserve sufficient water from the Truckee River to maintain Pyramid Lake and the lower reaches of the river as a viable fishery on which the Indians could depend for their subsistence and livelihood.

No. 59, Orig. - United States v. Nevada
and California

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

Circulated: 5-30-73

Recirculated: _____

MEMORANDUM OF MR. JUSTICE WHITE:

This case arises on the motion of the United States for leave to file a complaint against the States of Nevada and California, invoking the original jurisdiction of this Court under Art. III, § 2, of the Constitution and 28 U.S.C. § 1251(b)(2). The complaint seeks a declaration of the respective rights of the United States and of the two States in the waters of the Truckee River. The Truckee originates in California; flows into Lake Tahoe (through which runs the boundary between California and Nevada), exits on the California side and flows ^{1/} for 20 miles before entering Nevada and then continuing in that State for another 65 miles before running into Pyramid Lake.

The United States asserts several claims to water from the Truckee River. In 1859, Pyramid Lake and the area around it were administratively declared a reservation for the Pyramid Lake Piaute Indian Tribe. In creating the reservation, confirmed by Executive Order in 1874, the complaint alleges that the United States intended not only to preserve the tribe's aboriginal home but to reserve sufficient water from the Truckee River to maintain the lake and the lower reaches of the river itself at a sufficient level to assure the continuance of the large fishery in the lake that is said to provide the principal source of

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 2, 3

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 59, Orig.

Recirculated: _____

Recirculated: 6-4-73

United States of America,

Plaintiff,

vs.
States of Nevada and
California.

On Motion for Leave to File
Bill of Complaint.

[June —, 1973]

PER CURIAM.

The United States asks leave to file a complaint pursuant to this Court's original jurisdiction against the States of California and Nevada seeking a declaration of the respective rights of the States and of the United States in the Truckee River, a navigable interstate stream. The Truckee rises in the High Sierras, flows into Lake Tahoe, through which the California-Nevada boundary runs, exits on the California side of the Lake, and flows 20 miles before crossing into Nevada. It then continues another 65 miles, through Reno and beyond, to its termination in Pyramid Lake, a desert lake 20 miles long and five miles wide, with no outlet and a water level determined by the balance or imbalance between inflow and evaporation.

The complaint sought to be filed states that in 1859 the United States created a reservation for the Paiute Indian Tribe that included Pyramid Lake and an extensive area surrounding it. Allegedly, the United States intended at the time to reserve sufficient water from the Truckee River to maintain Pyramid Lake and the lower reaches of the river as a viable fishery on which the Indians could depend for their subsistence and livelihood,

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5

JW
3rd DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

No. 59, Orig.

Circulated: _____

Recirculated: 6-8-73

United States of America.

Plaintiff,

et al.
States of Nevada and
California.

On Motion for Leave to File
Bill of Complaint.

[June 1, 1973]

PER CURIAM.

The United States asks leave to file a complaint pursuant to this Court's original jurisdiction against the States of California and Nevada seeking a declaration of the respective rights of the States and of the United States in the Truckee River, a navigable interstate stream. The Truckee rises in the High Sierras, flows into Lake Tahoe, through which the California-Nevada boundary runs, exits on the California side of the Lake, and flows 20 miles before crossing into Nevada. It then continues another 65 miles, through Reno and beyond, to its termination in Pyramid Lake, a desert lake 20 miles long and five miles wide, with no outlet and a water level determined by the balance or imbalance between inflow and evaporation.

The complaint sought to be filed states that in 1859 the United States created a reservation for the Paiute Indian Tribe that included Pyramid Lake and an extensive area surrounding it. Allegedly, the United States intended at the time to reserve sufficient water from the Truckee River to maintain Pyramid Lake and the lower reaches of the river as a viable fishery on which the Indians could depend for their subsistence and livelihood.

11511

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 31, 1973

Re: No. 59, Orig. - U. S. v. Nevada and Calif.

Dear Byron:

Please join me.

Sincerely,



T. M.

Mr. Justice White

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1973

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Re: No. 59 Original - United States v. Nevada and
California

Dear Byron:

Please join me in your proposed per curiam.

Sincerely,

Harry

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1973

No. 59 Orig. U. S. v. Nevada and California

Dear Byron:

Please join me in your Per Curiam.

Sincerely,

Lewis

Mr. Justice White

cc: The Conference

lfp/ss

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1973

Re: No. 59, Orig. - U. S. v. Nevada and California

Dear Byron:

Please join me in your per curiam.

Sincerely,

W

Mr. Justice White

Copies to the Conference