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Summary of In re Nevada State Engineer Ruling No. 5823, 129 Nev. Adv. Op. No 22

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CIVIL PROCEDURE - WATER LAW AND SUBJECT MATTER JURISDICTION

Summary

Appeal from a district court decision dismissing a petition for judicial review of the State Engineer's ruling in a water rights action for lack of subject matter jurisdiction.

Disposition / Outcome

The Court concluded that the NRS 533.450(1) does not vest exclusive jurisdiction in the court of the county in which the *applicant's* water rights are located. Rather, the statute contemplates multiple potential forums, the selection of which turns on the "location, nature, and origin of the interests allegedly affected." Moreover, according to the Court, the general forum clause in NRS 553.450(1) does not address subject matter jurisdiction, but rather, venue. The Court vacated the jurisdictional dismissal and remanded the case to the district court for determination of the motion to change venue.

Factual and Procedural History

The present case arises from State Engineer Ruling 5823, which allocated groundwater rights in the Dayton Valley Hydrographic Basin ("the Basin"). The Basin is located wholly within Lyon County.

Before the State Engineer, Appellants Churchill County and the Pyramid Lake Paiute Tribe ("the Tribe") protested applications for groundwater appropriations, arguing that the Basin was "severely over-appropriated." Specifically, the Appellants argued that due to the hydrological connection between the Basin's groundwater and the surface waters of the Carson River, approval of the applications in Lyon County would deplete waters in which the Appellants have an interest in neighboring Churchill County. Rejecting Appellants' protests, the State Engineer granted all pending applications in Ruling 5823.

Churchill County and the Tribe appealed the State Engineer's decision, invoking NRS 533.450(1), which provides in pertinent part:

Any person feeling aggrieved by any order or decision of the State Engineer... affecting the person's interests... may have the same reviewed by a proceeding for that purpose, insofar as may be in the nature of an appeal, which must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated, but on stream systems where a decree of court has been entered, the action must be initiated in the court that entered the decree.²

Reasoning that the "matters affected or a portion thereof" were located in Churchill County, Appellants filed their appeals in the Third Judicial District Court in Churchill County. In

¹ By Alan R. Smith

² NEV. REV. STAT. § 533.450(1) (2007).

addition, based on the clause of exception in NRS 533.450(1), the Tribe filed an appeal in the federal court that issued the decree governing use of Carson River water (“the *Alpine* decree”).³

In response to the Third Judicial District Court appeals, the State Engineer filed a motion to change venue.⁴ Additionally, Respondents Aspen Creek, LLC and Dayton Valley Investors, LLC (collectively, “Aspen Creek”) filed a motion to dismiss, to which several other Respondents joined, based on lack of subject matter jurisdiction.

Citing NRS 533.450(1), both motions asserted that the Third Judicial District Court in Lyon County represented “the proper court of the county in which the matters affected or a portion thereof are situated,” as the applicant’s water rights are or would be located in Lyon County. Appellants Churchill County and the Tribe disagreed, arguing that the district court in either Churchill or Lyon County could hear the appeal because NRS 533.450(1) contemplates more than one possible forum. Moreover, according to appellants, the phrase “matters affected,” does not merely refer to an applicant’s interests, but rather, to the interests of a protestor as well.

Respondents asserted similar arguments before the *Alpine* decree court, seeking to dismiss the Tribe’s parallel federal appeal. Ruling before the Third Judicial District Court, the *Alpine* decree court rejected the Tribe’s argument that the court had jurisdiction to entertain the appeal under the clause of exception in NRS 533.450(1).⁵ According to the *Alpine* decree court, merely alleging that the State Engineer’s ruling affects federally decreed water rights is not sufficient to establish the decree court’s jurisdiction. Instead, the court determined that NRS 533.450(1) confers exclusive jurisdiction on the court where the applicant’s water rights are located. Thus, the *Alpine* decree court dismissed the Tribe’s appeal, finding that the district court in Lyon County had jurisdiction because the Basin is located in Lyon County.

Taking judicial notice of the *Alpine* 2008 order, the Third Judicial District Court in Churchill County agreed with the *Alpine* decree court, holding that the location of the applicant’s water rights determines which court has jurisdiction to hear an appeal from a State Engineer’s decision. As State Engineer Ruling 5823 granted or altered water rights of the applicants that are located in Lyon County, the court held that it lacked subject matter jurisdiction, and dismissed both appeals. Both Churchill County and the Tribe appealed.

In the interim, the Ninth Circuit Court of Appeals vacated the *Alpine* 2008 order, basing its decision on *United States v. Orr Water Ditch Co.*⁶ The 2010 *Orr Ditch* decision held that where a protestor’s allegedly affected rights are federally decreed, the location of the applicant’s water rights is not determinative of jurisdiction. Instead, the court concluded that the clause of exception in NRS 533.450(1), providing for appellate review in the court that entered a decree, is implicated where the State Engineer allocates groundwater rights in a manner that allegedly diminishes the Tribe’s decreed water rights.

Discussion

³ *United States v. Alpine Land & Reservoir Co.*, 503 F. Supp. 877 879-81 (D. Nev. 1980), *aff’d as modified* 697 F.2d 851 (9th Cir. 1983).

⁴ At the time the Third Judicial District included both Churchill and Lyon Counties. Thus, the State Engineer’s motion represented an intradistrict change of venue. However, effective January 1, the legislature removed Churchill county from the Third Judicial District, creating the Tenth Judicial District. 2012, 2011 Nev. Stat. ch. 316, § 1, at 1772-73.

⁵ *United States v. Alpine Land & Reservoir Co.*, Case No. 3:73-cv-00183-LDG, Subfile No. 3:73-cv-00203-LDG (D. Nev. July 3, 2008) (hereinafter *Alpine* 2008 order).

⁶ 600 F.3d 1152 (9th Cir. 2010).

On Appeal, the sole issue before the court was whether NRS 533.450(1) granted the Third Judicial District Court of Churchill County subject matter jurisdiction to entertain the appeals of Churchill County and the Tribe.

Statutory Analysis

First, the court considered the plain meaning of NRS 533.450(1). The statute begins with an introductory grant clause, which provides a right to judicial review to “any person feeling aggrieved by any order or decision of the State Engineer” where the order or decision “affect[s] the person’s interests.”⁷ The court determined the phrase “any person” to denote inclusiveness,⁸ thereby conferring a right of judicial review to both applicants and protestors.⁹

Following the introductory grant of a right to judicial review, NRS 533.450(1) proceeds with a general forum clause – a judicial review proceeding “must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated.”¹⁰ According to the Court, while the word “must” is mandatory, indicating that a judicial review proceeding must be initiated in the proper forum, it does not follow that the clause signifies (1) that a given proceeding must occur in a single court in a single county or (2) that the phrase “matters affected” only contemplates the interests of an applicant. Rather, the phrase “or a portion thereof” suggests multiple potential forums. Moreover, accepting the proposition that multiple iterations of the same word in the same statute have the same meaning,¹¹ the Court determined that use of the word “affect” in both the introductory grant clause and the forum clause indicates that the phrase “matters affected” refers to the interests of applicants and protestors alike.

Finally, NRS 533.450(1) includes a clause of exception – “but on stream systems where a decree of court has been entered, the action must be initiated in the court that entered the decree.”¹² The Court concluded that the clause of exception reinforces the proposition that NRS 533.450(1) contemplates multiple potential forums – here, the decree court and the non-decree court.

As such, the Court held that NRS 533.450(1) does not vest exclusive jurisdiction in the court of the county in which the applicant’s water rights are located, but rather, contemplates multiple potential forums the selection of which turns on the “location, nature, and origin of the interests allegedly affected.”¹³

The Third Judicial District Court Decision and Ninth Circuit Precedent

Basing its decision on the later-vacated order of the *Alpine* decree court, the Third Judicial District Court in Churchill County determined that the language of NRS 533.450(1) was ambiguous, and that a literal reading of the statute produced an unreasonable result. The district court reasoned that the legislature intended NRS 533.450(1), through the clause of exception, to confer exclusive jurisdiction to a decree court where a State Engineer’s decision affects water rights on decreed stream systems. According to the district court, absent this reading, a single

⁷ § 533.450(1).

⁸ See *Western Surety Co. v. ADCO Credit*, 127 Nev. ___, ___, 251 P.3d 714, 716-17 (2011).

⁹ See *Howell v. State Engineer*, 124 Nev. 1222, 1228, 197 P.3d 1044, 1048 (2008).

¹⁰ § 533.450(1).

¹¹ See *Savage v. Pierson*, 123 Nev. 86, 94, 157 P.3d 697, 702 (2007).

¹² § 533.450(1).

¹³ *In Re Nevada State Engineer Ruling No. 5823*, 128 Nev. Adv. Op. 22 (May 31, 2012).

decision could implicate interests relating to two different stream systems for which two different courts have entered decrees. Based on the above consideration, the district court concluded that accomplishing exclusive jurisdiction, requires courts to limit the phrase “matters affected” to encompass the water rights of the applicant.

Here, the Court concluded that limiting jurisdiction to the court of the county in which the applicant’s water rights are located would also create problems associated with multiple potential forums. Moreover, such a limitation on jurisdiction would create a conflict between the ongoing jurisdiction of a decree court and a second court’s assumed jurisdiction. According to the Court, this is precisely the type of conflict that the legislature designed the clause of exception in NRS 533.450(1) to mitigate.

To illustrate the problem, the Court turned to the *Orr Ditch* decision, which held that a decree court has jurisdiction over an appeal where a State Engineer’s order or decision affects a protestor’s senior, federally decreed rights.¹⁴ However, the decree court’s jurisdiction is limited to an assessment of the affect of the State Engineer’s decision on the senior, federally decreed rights, and if necessary, an order directing the State Engineer to correct any adverse affect. Where an appeal implicates state decreed rights, according to the *Orr Ditch* court, the general forum clause of NRS 533.450(1) governs jurisdiction.

While *Orr Ditch* primarily considered the jurisdiction of a federal decree court, the Court determined that the district court’s decision that jurisdiction turns on the location of an applicant’s water rights was inconsistent with *Orr Ditch*. Moreover, the Ninth Circuit affirmed *Orr Ditch* in *Alpine Land and Reservoir Co.*, vacating the parallel decision of the Alpine Decree court.¹⁵ Concluding that the Ninth Circuit’s precedent represented persuasive authority, the Court rejected the district court’s interpretation of NRS 533.450(1) both due to the conflict it created with *Orr Ditch* and within the statute itself.

Prior Nevada Supreme Court Precedent

Having determined that the location of an applicant’s water rights is not determinative of subject matter jurisdiction under NRS 533.450(1), the Court considered whether its holding is consistent with *Jahn v. District Court*.¹⁶ In *Jahn*, The Court held that the remedy provided by section 75 (now NRS 533.450(1)) was exclusive, and that HLILP could not rely on section 36½ (now NRS 533.330(1)) or the inherent powers of the decree court to compel the State Engineer to act as demanded. Thereafter, the Court recited the forum clause of section 75 (NRS 533.450(1)), and indicated that as the “matters affected” were located in Pershing County, the district court in Humboldt County lacked jurisdiction. In the present case, the Court concluded that the statement regarding jurisdiction was dictum. Moreover, the statement could not assist Respondents, as all relevant water rights in *Jahn* were located solely in Pershing County.

Venue

Finally, the Court acknowledged both the general principle that jurisdiction over a single interrelated system of water rights should be vested in a single court, and the practical difficulties

¹⁴ *Orr Ditch*, 600 F.3d at 1160 (9th Cir. 2010).

¹⁵ *United States v. Alpine Land & Reservoir Co.*, 385 F. App’x 770, 771,72 (9th Cir. 2010).

¹⁶ 58 Nev. 204, 73 P.2d 499 (1937).

associated with multiple courts exercising jurisdiction over such a system.¹⁷ However, the Court concluded that the general principle does not represent an inviolable rule.¹⁸ Moreover, the Court reasoned that the practical difficulties that arise where multiple courts exercise jurisdiction over an interrelated system of water rights are diminished if one recognizes the general forum clause in NRS 533.450(1) as addressing venue rather than subject matter jurisdiction. The Court then compared procedures specified in various statutes to the general forum clause to demonstrate that NRS 533.450(1) addresses venue. Additionally, the Court acknowledged that reading the general forum clause in NRS 533.450(1) as establishing venue is consistent with the position of the State Engineer,¹⁹ which in the context of a water law statute, represents persuasive authority. However, the Court remanded to the district court for determination of venue, due to an incomplete record and lack of a district court decision addressing venue.

Conclusion

The Court concluded that NRS 533.450(1) does not limit jurisdiction according to the location of an applicant's water rights. Rather, the phrase "matters affected" in the general forum clause of NRS 533.450(1) refers to the interests of applicants and protestors alike. Moreover, according to the Court, the general forum clause of NRS 533.450(1) does not address subject matter jurisdiction, but rather, venue. Accordingly, the Court vacated the district court's jurisdictional dismissal, and remanded the case for determination of the State Engineer's motion for a change of venue.

¹⁷ *Orr Ditch*, 600 F.3d at 1160.

¹⁸ *Id.*

¹⁹ *State v. State Engineer*, 104 Nev. at 713, 766 P.2d at 266.