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Meridian Gold Co. v. State ex rel Dep't of Tax.,
81 P.3d 516 (Nev. 2003).¹

ADMINISTRATIVE LAW

Summary

Appeal from judgment of the Second Judicial District Court, Washoe County, affirming a Nevada Department of Taxation tax deficiency determination.

Disposition/Outcome

Affirmed. Heap leaching is a mining operation under Nevada Administrative Code (NAC) 326.100 to 362.160. The Nevada Tax Commission did not abuse its discretion by revoking the Petitioner's accelerated depreciation when the Petitioner violated NAC 362.160.

Factual and Procedural History

Petitioner Meridian Gold Co. (Meridian) operated the Paradise Peak Mine in Northern Nevada. On March 7, 1991, Meridian applied for accelerated depreciation of its assets under NAC 362.100² to 362.160,³ which allow mining operators to accelerate their assets' depreciation if mining operations cease. Meridian represented to the Nevada Tax Commission (Commission) on several occasions that it would close the mine in mid-1993. Accordingly, the Commission granted Meridian accelerated depreciation of all its leasehold improvements and fixed equipment from 1990 to 1993.

In 1993, Meridian laid off most of its mine employees and closed its mill. However, from mid-1993 to 1995, Meridian produced at least 45,000 ounces of gold through heap leach pads at the Paradise Peak Mine. The Commission discovered that production never ceased, and it imposed additional taxes, penalties and interest on Meridian in the amount of \$1,257,993.75.

¹ By Beth Rosenblum.

² NEV. ADMIN. CODE CH. 362, § 100 (1991) provides, in pertinent part:

A mining operator may petition the Nevada tax commission for permission to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140 if the mining operator has:

- (a) Complied with all applicable provisions of chapter 519A of NRS and the regulations adopted pursuant thereto;
- (b) Agreed in writing to extend the time allowed for the department to file a certificate of delinquency pursuant to NRS 360.420 to the date on which the department completes a final audit; and
- (c) Given public notice that the mining operation will close within 36 months after the date on which the petition is filed with the commission.

³ NEV. ADMIN. CODE CH. 362, § 160 (1991) provides, in pertinent part:

If a mining operator who has been allowed to depreciate assets using the accelerated method fails to cease operations on the date of the closure specified in the notice required by NAC 362.100 or at any time reopens the mining operation, he shall . . . [p]ay to the department within 30 days after demand the difference between the net proceeds taxes using the straight-line method of depreciation over a 20-year period and the amount paid using the accelerated method for any year in which the accelerated method was used.

Meridian appealed the Commission's decision through the tax agency. The hearing officer upheld the tax imposition and the Commission eventually waived the interest and penalties, leaving Meridian still owing \$860,628.57 in taxes. Meridian unsuccessfully appealed the hearing officer's decision and filed a petition for judicial review.

The district court remanded the case to the Commission to determine the definition of "mine closure" under NAC 362.160. The Commission responded:

Mine closure for purposes of the accelerated depreciation contemplated in NAC 362.160 is the cessation of operations of the mine. Cessation of operations contemplates no further production of minerals through operation, reduction, beneficiation or any other treatment used by the mine operator The production and reporting of any amount of gold (minerals) after the stated date of mine closure is inconsistent with the cessation of operation of a mine.

District Court Judge Connie J. Steinheimer adopted the Commission's definition and upheld the deficiency tax. Meridian appealed.

The Nevada Supreme Court, Justice Gibbons, Agosti, Rose, Becker and Blake, held that the plain meaning of the phrase "mining operations" in NAC 362.160 includes extracting precious metals from earth. Thus, cyanide heap leaching is a mining operation, and the district court did not err in affirming the deficiency tax. Justice Shearing, in a concurring opinion, disagreed that the phrase "mining operation" includes cyanide heap leaching but deferred to the Commission's interpretation of NAC 362.100 to 362.160. Additionally, Justice Maupin concurred in the judgment that Meridian had not ceased mining operations pursuant to the administrative code.

Discussion

The Nevada Supreme Court reviews administrative decisions according to "the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and thus an abuse of the agency's discretion."⁴ An abuse of discretion occurs when a decision is not supported by substantial evidence that a reasonable mind would accept as adequate to support the conclusion.⁵

Definition of Mining Operations

NAC 362.100 to 362.160 does not contain a specific definition of "mining operations" or "mining closure." The Nevada Supreme Court reviews issues of statutory construction *de novo*.⁶ The court gives words in a statute their plain meaning unless the reading violates the spirit of the act, or if the statute is clear on its face, the court will not go beyond the language to determine the legislative intent.⁷

⁴ Sec'y of State v. Tretiak, 22 P.3d 1134, 1137-38 (Nev. 2001) (quoting Clements v. Airport Auth., 896 P.2d 458, 460 (Nev. 1995)).

⁵ Tighe v. Las Vegas Metro. Police Dep't, 877 P.2d 1032, 1034 (Nev. 1994).

⁶ California Commercial v. Amedeo Vegas I, 67 P.3d 328, 330 (Nev. 2003).

⁷ Pellegrini v. State, 34 P.3d 519, 528 (Nev. 2001).

Mining is “the process or business of extracting from the earth the precious or valuable metals, either in their native state or in their ores.”⁸ Under this definition, extracting gold from earth is mining.

Meridian used the process of cyanide heap leaching to extract between 45,000 and 47,000 ounces of gold from 1993 to 1995. Cyanide heap leaching is a method of extracting precious metals from previously extracted ore. The process involves moving large quantities of ore onto a huge pad where cyanide placed over ore removes the precious metals over time. It differs from tradition mining, which includes digging into the ground and either stripping the ground of metals or tunneling deep in the earth. Traditional mining also requires drilling machines and explosives, whereas heap leaching uses chemicals to remove precious metals from the ore.

Nevertheless, heap leaching is a mining operation contemplated under NAC 362.160 because it is a basic mining technology and involves extracting precious metals from earth. The district court did not err in affirming the Commission’s deficiency tax.

Arbitrary and Capricious

The Nevada Supreme Court generally defers to administrative determinations but “will not hesitate to declare a regulation invalid when the regulation violates the constitution, conflicts with existing statutory provision or exceeds the statutory authority of the agency or is otherwise arbitrary and capricious.”⁹ NAC 362.160(2) provides that a mine operator who fails to cease operations on the date of closure will pay “the difference between the net proceeds taxes using the straight-line method of depreciation over a 20-year period and the amount paid using the accelerated method for any year in which the accelerated method was used.”¹⁰ As a standard, the regulations impose a 20-year depreciation schedule on the entire industry, but the Commission can change the schedule when a mining operator fails to cease operations. Accelerated depreciation is available only when operators comply with NAC 362.100 to 362.160.

Meridian applied for accelerated depreciation but failed to comply with the regulations by ceasing mining operations on the specified date of closure. The Commission, following its regular practice, properly imposed the standard 20-year depreciation schedule on Meridian. The Commission’s action was not “arbitrary and capricious.”

Administrative Rule-Making

Nevada Revised Statute (NRS) 362.120(3)(g) requires the Commission to consider the probable life of a mine’s equipment when calculating depreciation.¹¹ The statute also authorizes the Commission to prescribe the manner of depreciation by regulation.¹² The Commission promulgated the 20-year depreciation schedule currently in use, and the provisions for

⁸ BLACK’S LAW DICTIONARY 898 (5th ed. 1979).

⁹ State, Div. of Insurance v. State Farm, 995 P.2ds 482, 485 (Nev. 2000).

¹⁰ NEV. ADMIN. CODE CH. 362, § 160(2) (1991).

¹¹ NEV. REV. STAT. 362.120(3)(g) provides:

The net proceeds are ascertained and determined by subtracting from the gross yield . . . [d]epreciation of the original capitalized cost of the machinery, equipment, apparatus, works, plants and facilities mentioned in paragraph (e). The annual depreciation charge consists of amortization of the original cost in a manner prescribed by regulation of the Nevada tax commission. The probable life of the property represented by the original cost must be considered in computing the depreciation charge.

¹² *Id.*

accelerated depreciation. The Nevada Supreme Court defers to the administrative body's interpretation when it is within the statutory language.¹³ Moreover, the Legislature's "acquiescence in an agency's reasonable interpretation indicates that the interpretation is consistent with legislative intent."¹⁴

The Commission's depreciation regulations are consistent with the statute's requirement that the Commission consider the property's probable life when calculating depreciation. First, the Commission assigns different depreciation periods to different types of properties and equipment.¹⁵ Second, the regulations provide that the Commission may adjust the allowable depreciation period if the mining company petitions the Commission and shows that the property's expected life is other than that provided in the regulation.¹⁶

Furthermore, the Legislature has acquiesced to the Commission's interpretation because the statute remains unaltered. NAC 362.100 and NAC 362.160 have been in effect since 1990. The regulation imposing the 20-year depreciation schedule has been in effect since 1980.

Concurrence

SHEARING, J.:

Justice Shearing agreed that Meridian owed additional taxes based on straight-line depreciation rather than accelerated depreciation. However, Justice Shearing disagreed that the phrase "mining operations" clearly includes cyanide heap leaching. Cyanide heap leaching does not involve digging into the ground to extract precious metals. The material treated is already above the earth. However, considering that the material being leached was originally extracted from a mine and an integral part of the process of gaining precious metals, the Nevada Department of Taxation reasonably interpreted the heap leaching process to be "mining operations." Because the court gives deference to administrative interpretations, the judgment of the district court should be affirmed.¹⁷

MAUPIN, J.:

Meridian continued gold production from previously extracted ore through cyanide heap leaching, a process that constituted "mining operations" after the closure date indicated by Meridian. Accordingly, Meridian was not entitled to accelerated depreciation, and the Commission properly assessed an additional tax based upon straight-line depreciation.¹⁸

Conclusion

When reviewing administrative decisions, the Nevada Supreme Court's role is identical to that of the district court because both courts review the evidence presented to determine if a decision is "arbitrary or capricious."¹⁹ Administrative decisions are given deference by the

¹³ State *ex rel.* Tax Comm'n v. Saveway, 668 P.2d 291, 294 (Nev. 1983).

¹⁴ *Id.*

¹⁵ NEV. ADMIN. CODE CH. 362, § 040(1)-(5) (1980).

¹⁶ NEV. ADMIN. CODE CH. 362, § 040(8) (1980).

¹⁷ *Saveway*, 668 P.2d at 294.

¹⁸ See NEV. ADMIN. CODE CH. 362 § 160 (1991).

¹⁹ Sec'y of State v. Tretiak, 22 P.3d 1134, 1137-38 (Nev. 2001).

courts and will only be set aside if they are clearly erroneous in view of substantial evidence on the record.²⁰ In this case, the evidence demonstrated that Meridian continued its mining operations beyond 1993, violating NAC 362.160(2). As a result, Meridian was properly assessed a deficiency tax.

²⁰ *Id.* at 1138.