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### Eureka County v. Seventh Judicial Dist. Ct., 133 Nev. Adv. Op. 111 (Dec. 28, 2017)

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## CONSTITUTIONAL LAW: DUE PROCESS

### **Summary**

The Court determined that due process requires junior water rights holders be given notice and an opportunity to be heard in the district court's consideration of a senior water rights holder's request to curtail the junior's water rights.

### **Background**

Real party in interest Sadler Ranch claims to be a pre-statutory, vested, senior water rights holder in Diamond Valley. In 2014, Sadler Ranch petitioned the State Engineer for replacement of water to offset losses from its two major springs. The State Engineer awarded only a fraction of the volume of water Sadler Ranch requested, and in April 2015, Sadler Ranch petitioned the district court to order the State Engineer to initiate curtailment proceedings for junior water rights in Diamond Valley and to reimburse Sadler Ranch for damage to its senior water rights. The district court allowed dozens of parties, including petitioners Eureka County, to intervene in the litigation.<sup>2</sup>

The State Engineer then proposed to designate Diamond Valley as a critical management area (CMA) in which withdrawals of ground water consistently exceed the perennial yield of the basin.<sup>3</sup> Under NRS 534.110(7), a basin must be designated a CMA for at least 10 consecutive years before the State Engineer is required to curtail withdrawals in that basin.<sup>4</sup> Subsequently, Sadler Ranch moved to stay the proceedings pending the outcome of the State Engineer's action.<sup>5</sup>

In August 2015, the State Engineer designated Diamond Valley as a CMA. Sadler Ranch then filed an amended petition for curtailment, requesting that the district court either (1) direct the State Engineer to curtail proceedings, or (2) issue an order curtailing pumping "based on the State Engineer's knowing and intentional refusal to follow Nevada law."<sup>6</sup> The State Engineer moved to dismiss and the district court granted in part and denied in part after finding that Sadler Ranch pleaded sufficient facts to conclude the State Engineer's failure to order curtailment was an abuse of his discretion.<sup>7</sup> The district court then entered an alternative writ of mandamus directing the State Engineer to either begin curtailment proceedings or show cause why it has not done so.<sup>8</sup>

In August 2016, the State Engineer filed a motion, which Eureka County joined, arguing that Sadler Ranch must provide notice to "all Diamond Valley appropriators who may be affected by the district court's decision at the upcoming show cause hearing," to which Sadler Ranch

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<sup>1</sup> By Michelle Harnik

<sup>2</sup> *Eureka County v. Seventh Jud. Dist. Ct.*, 133 Nev. Adv. Op. 111 (Dec. 28, 2017).

<sup>3</sup> NEV. REV. STAT. § 534.110(7)(a).

<sup>4</sup> *Eureka County*, 133 Nev. Adv. Op. at 114, note 1.

<sup>5</sup> *Id.* at 114.

<sup>6</sup> *Id.* at 115.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

opposed.<sup>9</sup> Two months later, the district court denied the State Engineer’s motion, reasoning that even if it ordered curtailment at the upcoming show cause hearing, a future proceeding would be required to determine who the curtailment would apply to, and at that proceeding due process would be required.<sup>10</sup>

Eureka County, joined by the State Engineer, then filed a motion for reconsideration, which the district court denied, again determining due process would not be required until a future proceeding and that any potential un-notified parties were already adequately represented by the diverse interests of the dozens of interveners and thus unable to join. In February 2017, Eureka County filed the instant writ petition.<sup>11</sup>

## **Discussion**

### *The writ petition should be entertained*

The Nevada Supreme Court entertained the instant writ petition as one for mandamus because it found that the district court appeared to have arbitrarily and capriciously exercised its discretion by denying the State Engineer’s motion for reconsideration, and because “[j]udicial economy favors answering the due process question now rather than on appeal after the hearings are held.”<sup>12</sup>

### *Due process requires notice be given to all junior water rights holders*

The Court reviewed de novo the question of whether the district court violated Petitioners’ due process rights.<sup>13</sup> The Nevada Constitution affords due process protection to water rights as real property.<sup>14</sup> Procedural due process requires that parties receive “notice and an opportunity to be heard.”<sup>15</sup> Before proceedings to initiate curtailment, water rights holders must be given notice at an appropriate stage in the proceedings, to give parties meaningful input in the adjudication of their rights.<sup>16</sup>

In lower court proceedings, the dispute centered around “*when* due process rights attach and at what stage in the proceedings notice must be given.”<sup>17</sup> The district court characterized the show cause hearing as merely determining whether future proceedings were to be required. However, based on the language of the district court’s order directing the State Engineer to begin the required proceedings to order curtailment or show cause why he has not done so, the Nevada Supreme Court found that “one possible outcome of the show cause hearing is a judicial determination forcing curtailment to begin,” and that any junior water rights holders notified after

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 116.

<sup>12</sup> *Eureka County*, 133 Nev. Adv. Op. at 117.

<sup>13</sup> *Id.*

<sup>14</sup> NEV. CONST. art. 1, §8(5); *See Application of Filippini*, 66 Nev. 17, 21–22, 202 P.2d 535, 537 (1949).

<sup>15</sup> *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007).

<sup>16</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).

<sup>17</sup> *Eureka County*, 131 Nev. Adv. Op. at 118.

that decision would only be able to dispute the curtailment cutoff date, rather than argue for a solution other than curtailment.<sup>18</sup>

Here, the Court held that “in order to comply with constitutional due process, notice to junior water rights holders is required before the upcoming show cause hearing that may impact their rights.”<sup>19</sup> Further, the Court concluded that “real property rights, including water rights, are unique forms of property and those with an ownership interest cannot be adequately represented by others,”<sup>20</sup> and “all Diamond Valley water rights holders should be given notice of the upcoming show cause hearing regardless of whether the district court is deciding only a ‘pure question of law.’”<sup>21</sup>

### **Conclusion**

The Court granted the petition and issued a writ of mandamus vacating the district court’s order that denied the State Engineer’s motion for Sadler Ranch to provide notice to all affected appropriators in Diamond Valley. Additionally, the Court directed the district court to enter an order requiring that notice be provided to all junior water rights holders in Diamond Valley prior to any show cause hearing being conducted in the district court.

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<sup>18</sup> *Id.* at 119.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 120.

<sup>21</sup> *Id.* at 121.