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State Engineer v. Eureka County, 133 Nev. Adv. Op. 71 (Sep. 27, 2017)

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ADMINISTRATIVE LAW: JUDICIAL REVIEW

Summary

In an *en banc* appeal from a district court order, the Court affirmed the district court’s order granting the existing holders of water rights’ petition for judicial review and vacating a limited liability company’s permits to appropriate water as proper and in compliance with the Court’s prior mandate.

Background

In a previous appeal, the Court held that the district court erred in deferring to the State Engineer who failed to rely on substantial evidence that Kobeh Valley Ranch, LLC (KVR) would mitigate its conflicts before approving KVR’s applications to appropriate water. The Court reversed the district court’s denial of judicial review and remanded the case.

On remand, the district court granted Eureka County’s petition for judicial review and vacated KVR’s permits. KVR and the State Engineer appealed contending that the district court violated the Court’s mandate “by not further remanding to the State Engineer for additional fact-finding.”²

Discussion

The Nevada Supreme Court reviewed *de novo* the question of whether the district court had complied with the Court’s mandate on remand.³ Because an appellate court’s decision becomes the law of the case, “[it] must be adhered to throughout [the case’s] subsequent progress both in the lower court and upon subsequent appeal.”⁴ Accordingly, a district court is required to “proceed in accordance with the mandate and the law of the case as established on appeal.”⁵

In *Eureka I*, the Court determined that the State Engineer did not rely on substantial evidence when determining that KVR could mitigate conflicts to preexisting water rights.⁶ However, at no point did the Court direct the district court to remand the case to the State Engineer for additional fact-finding. Here, the Court concluded that, “[b]ecause (1) the State Engineer relied on insufficient facts before granting KVR’s applications, (2) [the Court] gave no order to remand to the State Engineer, and (3) KVR is not entitled to a do-over after failing to provide substantial mitigation evidence,” the district court’s order granting Eureka County’s petition for judicial review and vacating KVR’s permits was consistent with the mandate from *Eureka I*.

¹ By Michelle Harnik

² *State Engineer v. Eureka County*, 133 Nev. Adv. Op. 71 (Sep. 27, 2017).

³ *Id.* at 75.

⁴ *LoBue v. State ex rel. Dep’t of Highways*, 92 Nev. 529, 532, 554, P.2ds 259, 260 (1976).

⁵ *E.E.O.C. v. Kronos Inc.*, 694 F.3d 351, 361 (3d Cir. 2012).

⁶ *Eureka County*, 131 Nev. Adv. Op. 84, 359 P.3d at 1121.

Conclusion

The Court affirmed the district court's order finding that the district court properly granted Respondent's petition for judicial review and vacated Appellant's permits. The district court was not required to remand to the State Engineer for additional fact-finding.

Concurrence

Justice Pickering, writing in concurrence and joined by Justice Hardesty, pointed out that the Court's opinion in *Eureka I* did not rule out the possibility of a mixed result in which some applications and permits could be sustained but not others. Additionally, the Court has previously recognized that the district court has the power "to grant equitable relief when water rights are at issue."⁷ Nonetheless, Petitioners did not establish a basis for reversing the district court's decision to grant the petitions for judicial review.

⁷ Great Basin Water Network v. State Eng'r, 126 Nev. 187, 199, 234 P.3d 912, 919 (2010).