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Eureka County v. Seventy Jud. Dist. Ct., 134 Nev. Adv. Op. 37 (May 17, 2018)

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PROPERTY LAW: DUE PROCESS OF WATER RIGHTS

Summary

The court held that junior water rights holders are entitled to notice of and an opportunity to participate in the district court's consideration of a curtailment request.

Facts and Procedural History

Sadler Ranch purchased its real property and water rights in Diamond Valley in September 2011. 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 water to offset significant loss from its springs. Dissatisfied with their replacement water award, Sadler Ranch petitioned the district court in April 2015 to order the State Engineer to initiate curtailment proceedings in Diamond Valley. In August 2015, the State Engineer officially designated Diamond Valley as a critical management area. Determining that this designation would not help its water dispute, Sadler Ranch then filed an amended petition for curtailment. The district court entered an order granting in part and denying in part the State Engineer's motion to dismiss, finding that the State Engineer's failure to order curtailment was an abuse of his discretion. The same day, the district court entered an alternative writ of mandamus directing the State Engineer to begin curtailment proceedings or show cause why he had not done so.

In August 2016, the State Engineer filed a motion arguing that Sadler Ranch must provide notice to all Diamond Valley appropriators who may be affected by the district court's decision at an upcoming show cause hearing. In October 2016, the district court denied the State Engineer's motion reasoning that even if it ordered curtailment at the upcoming show cause hearing, specifics of the curtailment could not be decided until a future proceeding and due process was not required until that future proceeding. The district court also reasoned that any potential unnotified parties were already adequately represented by the diverse interests of the dozens of interveners.

Eureka County subsequently filed a motion for reconsideration and was joined by the State Engineer. The district court denied Eureka County's motion to reconsider. In February 2017, Eureka County filed the instant writ petition.

Discussion

The writ petition should be entertained

¹ By Carmen Gilbert

The Court has original jurisdiction to issue writs of mandamus and prohibition² which are available to compel the performance of an act which the law requires as a duty resulting from an office, or to control a manifest abuse or an arbitrary or capricious exercise of discretion.³ Because a writ petition seeks an extraordinary remedy, its consideration is discretionary⁴ and only available where there is no "plain, speedy and adequate remedy in the ordinary course of law."⁵ Although the Court has previously held that appeals generally constitute an adequate and speedy remedy precluding writ relief, they have also exercised their discretion to intervene in cases of urgency or strong necessity, or when an important issue of law needs clarification.⁶ The Court, in this case, chose to entertain the writ petition due to the district court's apparent arbitrary and capricious exercise its discretion in denying the State Engineer's motion.

The parties did not dispute that at some point in the proceedings due process would attach, but instead disputed when due process must be provided. Here, the Court held that judicial economy and the existence of other over appropriated basins in the state favored consideration of the writ in order to answer the due process question now rather than on appeal after future hearings.

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

Constitutional challenges are reviewed de novo, including due process challenges.⁷ The Nevada Constitution protects against the deprivation of property without due process of law,⁸ and procedural due process requires that parties receive notice and an opportunity to be heard.⁹ In Nevada, water rights are regarded and protected as real property.¹⁰

In the lower court proceedings all parties agreed that water rights are property rights protected by due process, but disagreed on when due process rights attach and when notice must be given. The district court characterized the show cause hearing as a step to determine whether future proceedings are required. However, language in the resulting order showed that a possible outcome of the hearing was a judicial determination that may force curtailment. Any junior water rights holders notified after that decision would only be able to argue that the curtailment cutoff date should be below their priority level, and would not be able to argue for alternate solutions.

² Mountain View Hosp., Inc. v. Eighth Judicial Dist. Court, 128 Nev. 180, 184, 273 P.3d 861, 864 (2012); *see* NEV. CONST. art. 6, § 4.

³ Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 39, 175 P.3d 906, 907- 08 (2008).

⁴ Cheung v. Eighth Judicial Dist. Court, 121 Nev. 867, 869, 124 P.3d 550, 552 (2005).

⁵ NEV. REV. STAT. §§ 34.170 (2017); Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

⁶ Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court, 132 Nev., Adv. Op. 77, 383 P.3d 246, 248 (2016) (*quoting* Cote H., 124 Nev. at 39, 175 P.3d at 907-08).

⁷ Callie v. Bowling, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007).

⁸ NEV. CONST. art. 1, § 8(5).

⁹ Callie, 123 Nev. at 183, 160 P.3d at 879.

¹⁰ Application of Filippini, 66 Nev. 17, 21-22, 202 P.2d 535, 537 (1949).

Notice must be given at an appropriate stage in the proceedings to give parties meaningful input in the adjudication of their rights.¹¹ Thus, junior water rights holders must be notified before the curtailment decision is made, even if the specific details are to be decided in a future proceeding. Further, real property rights, including water rights, are unique forms of property and those with an ownership interest cannot be adequately represented by others.¹²

The Court determined that the district court's reliance on *Desert Valley* was misplaced because that case dealt with providing notice of an appeal as required by statute, rather than notice required by due process prior to the deprivation of a property right.¹³ Here, the district court's exercise of its discretion to deny the junior water rights holders their due process rights to notice and the opportunity to be heard at the upcoming show cause hearing was arbitrary and capricious.

Finally, although Sadler Ranch's argues that notice will further delay proceedings, impairing their own water rights without due process, Sadler Ranch acknowledged that at some point the court will require all Diamond Valley water rights holders to be given notice. The Court held that it is not unduly burdensome to give notice now rather than at some future time.

Conclusion

Because a show cause hearing may result in a court order to begin curtailment proceedings, resulting in possible deprivation of property rights, due process requires junior water rights holders in Diamond Valley to be given notice and an opportunity to be heard before the district court conducts the hearing. Accordingly, the court directed the clerk of the court to issue a writ of mandamus vacating the district court's order denying the State Engineer's motion for Sadler Ranch to provide notice to all affected appropriators and directed the district court to enter an order requiring that notice be provided to all junior water rights holders prior to any show cause hearing.

¹¹ Hamdi v. Rumsfeld, 542 U.S. 507, 533 (2004).

¹² See Dixon v. Thatcher, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987).

¹³ Desert Valley Water Co. v. State, 104 Nev. 718, 766 P.2d 886 (1988).