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## In re Nevada State Eng'r Ruling No. 5823, 277 P.3d 449 (Nev. 2012)

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Finally, the Court held the Director erred in refusing to address whether NPPD abandoned its water rights. The Court held NEB. REV. STAT. § 46-229 only laid out a procedure the Department must follow when cancelling a water right. The statute did not eliminate common-law methods for challenging an appropriation.

Accordingly, the Court again remanded that case back to the Department with directions to determine whether NPPD's appropriations had been abandoned or forfeited.

*Christopher Butler*

## NEVADA

**In re Nevada State Engr Ruling No. 5823, 277 P.3d 449 (Nev. 2012)** (holding that a court's jurisdiction over an applicant's appeal of a state water engineer's decision is not limited to the county in which the applicant's water rights lie, but rather, a court may hear an appeal in any county in which the decision affects the applicant).

This case concerns the Nevada State Engineer's ("State Engineer") Ruling 5823, which allocated groundwater rights in the Dayton Valley Hydrographic Basin ("Basin"), located in Lyon County, Nevada. Most of the applications the State Engineer considered in Ruling 5823 asked to change the point of diversion, place, and manner of use of existing groundwater appropriations in the Basin. Churchill County, Nevada and the Pyramid Lake Paiute Tribe ("Appellants"), believing the Basin was already over-appropriated, had protested the allocations on the basis that the changes would injure their interests in the Basin. The Basin's groundwater is hydrologically connected to the Carson River, which flows into the Lahontan Reservoir. Appellants argued to the State Engineer that approving the applications in Lyon County would deplete these waters in neighboring Churchill County, in which Appellants have an interest. The State Engineer rejected Appellants' arguments and issued Ruling 5823.

Appellants filed appeals in the Third Judicial District Court in Churchill County ("district court"), invoking NEV. REV. STAT. § 533.450(1) ("Statute"), which enables those negatively affected by a State Engineer's decision to pursue judicial review of that decision. The Statute also provides that an appeal "must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated." Asserting improper venue, the State Engineer requested a venue change from Churchill to Lyon County because Appellants' water rights are or would be located in Lyon County. Appellants argued in return that the Statute allowed for more than one possible venue and that either court was proper.

The Pyramid Lake Paiute Tribe filed a separate appeal in federal district court, arguing the state district court venue was improper because the Tribe's water rights were federally decreed water rights and therefore the decree court, not the state district court, had jurisdiction over the rights. The federal district court ruled that the Statute granted exclusive jurisdiction in the court where the applicant's actual or proposed water rights were located. In the context of Ruling 5823, the federal district ruled jurisdiction was proper in Lyon County.

The federal district court accordingly dismissed the Pyramid Lake Paiute Tribe's federal appeal ("*Alpine* decree").

The district court (in Churchill County) then heard this case and ruled that the location of the applicant's water rights determined which court had jurisdiction to hear an appeal from a State Engineer decision. Therefore, the district court lacked subject matter jurisdiction over Appellants' appeal and could not change the venue.

Appellants eventually appealed the district court's decision to the Supreme Court of Nevada. But in the meantime, the Ninth Circuit Court of Appeals vacated *Alpine*, based on *United States v. Orr Water Ditch Co.*, 600 F.3d 1152 (9th Cir. 2010). In *Orr*, the Ninth Circuit rejected the proposition that the location of an applicant's water rights determines jurisdiction under the Statute. The Supreme Court of Nevada then reviewed Appellants' case *de novo* to determine whether the district court indeed had subject matter jurisdiction over the case in light of the Ninth Circuit's decision to vacate *Alpine*.

The Court began by analyzing the language of the Statute, in particular the phrase "matters affected or a portion thereof." It held the phrase signified multiple potential forums and that if "a portion" of the "matters affected" is located in a certain county, that county was a proper forum for all of the "matters affected." Moreover, the Court noted the district court's decision was at odds with *Orr*, which, while not binding, proved persuasive. The Court ultimately held that subject matter jurisdiction was not limited to the location of an applicant's water rights and the district court erred in dismissing Appellants' appeal for lack of subject matter jurisdiction.

Accordingly, the Court vacated and remanded the case to the district court.

*Leigh Auerbach*

## OREGON

**Brown v. City of Eugene**, 279 P.3d 298 (Or. Ct. App. 2012) (holding that the term "water service" in a city charter granted a city council control over extensions of water service to end users but not over wholesale transfers of water).

In April 2010, the Eugene Water and Electric Board ("EWEB") contracted with the City of Veneta ("Veneta") for Veneta to purchase water from EWEB. The contract specified that EWEB would not provide service directly to customers in Veneta; the sale would be of "surplus water" and characterized as "wholesale." The point of delivery of the approximately 150 million gallons per year under the contract was technically located within Eugene City limits. EWEB and Veneta each agreed to extend their respective water transmission facilities to the point of delivery. In accordance with Oregon law, EWEB petitioned for judicial validation of the contract. Judicial validation of the contract was also a precondition to EWEB performing any of its contractual obligations. The Oregon Circuit Court for Lane County ("trial court") granted motions to intervene by the City of Eugene ("Eugene") and other interested parties (collectively, "Intervenors").