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## Redrock Valley Ranch, L.L.C. v. Washoe Cnty., 254 P.3d 641 (Nev. 2011)

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propriation to offer testimony or evidence on that application, that fact alone does not confer standing on such a party.

FCID argued that it would suffer an imminent injury of lost revenue if overappropriation of the Republican River Basin were to curtail its own allocation. FCID further argued that it did not provide evidence of actual, present injury because it relied on the DNR's stipulation that it was an interested party.

The DNR pointed out that a 2010 Nebraska Supreme Court decision, which occurred after the DNR had stipulated FCID's interest, held that the mere possession of a water right is insufficient to establish standing because standing requires injury-in-fact.

Because FCID failed to allege a specific injury, the Court held that FCID lacked standing to pursue review of the DNR's decision. The Court further held that neither stipulation by a party nor a court's acquiescence could supplant this fundamental jurisdictional principal requiring actual injury. The Court reasoned that FCID's claims of future lost revenue, dependent on the possibility that the basin was overappropriated, were too speculative.

Accordingly, the Court dismissed FCID's appeal.

*Gregory Angstadt*

## NEVADA

**Redrock Valley Ranch, L.L.C. v. Washoe Cnty., 254 P.3d 641 (Nev. 2011)** (holding that (i) the State Engineer's approval of Redrock Valley Ranch's proposed water transfer did not preclude Washoe County from appropriately denying its application for a special use permit; and (ii) public testimony regarding the detrimental effects of the proposed water transfer under a county land use ordinance provided sufficient evidence to support Washoe County's decision to deny the permit).

Redrock Valley Ranch, L.L.C. ("RVR") applied to the State Engineer for a permit to transfer water from one hydrographic basin in Washoe County, Nevada to another for irrigation, domestic, and municipal purposes. After an initial hearing, the State Engineer approved some, but not all, of the water transfer applications upon determining the project would not conflict with existing water rights or protectable interests in domestic wells, and would not be detrimental to the public interest. The State Engineer placed certain conditions on the remainder of RVR's applications.

After facing local resistance, RVR entered into a stipulation with Washoe County, agreeing to limit its water use in exchange for Washoe County's support of the water transfer. RVR concurrently entered into an agreement with Truckee Meadows Water Authority granting it a right of first refusal to purchase RVR's transferable water rights. This agreement required RVR to apply to Washoe County for a special use permit for the water transfer facilities.

RVR first submitted its permit application to the Washoe County Department of Community Development, which recommended approval of the permit application after a limited review of the plan's potential impact on the water facilities. Following a public hearing, the Washoe County Board of Adjustment denied the special use permit on the grounds that it failed to meet all of the requirements of the County's land use code. RVR appealed the Board of Adjustment's decision to the Washoe County Commission, which also denied the permit because the Commission could not ensure that the permit would not be "significantly detrimental to the public health, safety or welfare; injurious to the property or improvements to adjacent properties; or detrimental to the character of the surrounding area," as County land use ordinances required. The Commission cited problems concerning public health, property values, community character, noise, and policy conflicts.

RVR sued Washoe County for judicial review, declaratory relief, and damages. The district court denied relief, concluding that the County did not abuse its discretion and that substantial public testimonial evidence supported its decision.

RVR appealed to the Nevada Supreme Court ("Court"), requesting the case be reviewed *de novo*. RVR laid out several arguments, the first of which was that Washoe County did not have the authority to deny RVR's special use permit application after the State Engineer had recommended its approval. Reviewing *de novo*, the Court held that the State Engineer's ruling neither preempted nor precluded Washoe County from deciding to deny the permit. The Court further held that the State's recently amended Water Management Plan endowed cities and counties with the authority to make final decisions regarding infrastructure improvements, and that Washoe County rightfully based its decisions on public policy concerns. Therefore, the State Engineer's ruling did not, and could not, limit Washoe County's ability to reject the special use permit for the social and economic reasons contained in the code, which were separate and distinct from the issues that the State Engineer addressed.

RVR then argued under issue and claim preclusion that Washoe County could not redetermine any issue or claim that the State Engineer decided or could have decided. The Court held that the public interest considerations of one agency are not necessarily the same public interest considerations of another agency. The State Engineer's primary interests were whether the proposed water transfer applications interfered with existing rights or protectable interests. In contrast, Washoe County's primary interests were, among others, impacts on existing land uses. Accordingly, because Washoe County and the State Engineer play distinct roles in managing water, the Court held that Washoe County did not abuse its discretion in rejecting the State Engineer's ruling.

RVR also asserted that Washoe County violated the stipulation wherein RVR agreed to request less water in exchange for Washoe County to withdraw its protests against RVR's water transfer applications. The Court held, however, that Washoe County did not agree to issue a special

use permit as part of the stipulation. The court also determined that the stipulation only concerned proceedings before the State Engineer, and therefore could not apply to RVR's later application for a special use permit.

Lastly, RVR challenged the sufficiency of the evidence upon which Washoe County relied in denying its special use permit. RVR argued that Washoe County reached beyond the scope of ordinary special use permit review, contending its review should have been limited to whether the proposed land use had potential to adversely affect other land uses, transportation systems, or public facilities in the vicinity. The Court held, however, that a public agency's review is not so limited. Rather, the Court held that a public agency may rely on public testimony in determining whether to issue a special use permit, and that a public hearing can, and in this case did, provide the agency with sufficient evidence.

Accordingly, the Court affirmed the ruling of the district court and upheld Washoe County's denial of RVR's special use permit.

*Tyler Geisert*