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Aubrey Markson

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Lawrence v. Clark Cnty., 254 P.3d 606 (Nev. 2011)

NEVADA

Lawrence v. Clark Cnty., 254 P.3d 606 (Nev. 2011) (holding that the public trust doctrine now applies in Nevada to all land under navigable waters at the time of statehood, not lost through reliction).

A recent amendment to the Fort Mohave Valley Development Law (“FMVDL”) required the Colorado River Commission to transfer its Fort Mohave Valley land interest to Clark County (“County”). The State Land Registrar, James R. Lawrence, processed the transfer but refused to transfer approximately 330 acres that lay adjacent to the Colorado River. Lawrence believed that this land was subject to the public trust doctrine, a historical tenet that *obliged* states to hold the land under and around its waterways in trust for the public. This doctrine, Lawrence believed, precluded him from transferring the land to the County. The County filed a complaint with Eighth Judicial District Court in Clark County, Nevada asking for declaratory relief. In response, Lawrence continued to insist that the public trust doctrine applied to the land in question, and therefore, was nontransferable. The district court held in favor of the County, and Lawrence appealed the decision.

While never formally adopted into Nevada state law by the legislature or into state common law by the courts, the Nevada Supreme Court (“Court”) held that the principles of the public trust doctrine were still prevalent and influential throughout state common law. The Court provided three Nevada cases as examples. These cases illustrated that, as a natural right of state sovereignty, the state had a right to own the waterways within its borders and the land beneath that water, provided that those waterways were navigable at the time of the state’s admission to the Union. This land must be held for the public use and ownership and could only be transferred through “express” and “proper” legislative action that ensured that the land would remain in the public interest. The Court also pointed to the Nevada Constitution and Nevada statutes as evidence that the public trust doctrine, while never explicitly adopted into state law, had been upheld and utilized in principle. The Court explained that many of these principles reflect similar principles of the public trust doctrine, such as the role of the state in safeguarding public trust resources and the duty of the state to ensure that these resources are reserved for the public interest. The Court also noted that Nevada subscribed to the belief that states’ power, while sovereign, is limited - an idea clearly implicit within the public trust doctrine. Since the principles of the public trust doctrine were shown to be so pervasive throughout Nevada common law and state law, the court decided to expressly adopt the doctrine.

Once the Court determined that the public trust doctrine was a valid, applicable principle, it turned its attention to the doctrine’s applicability to the land Lawrence refused to transfer. In order to be subject to the doctrine the land must have been submerged beneath navigable waters in 1864, when Nevada became a state of the Union. The land must also

have become dry through avulsion, a natural or artificial rapid rerouting of the stream and exposure of the land underneath, and not through reliction, a gradual exposure of river beds. The Court held that if the land was beneath navigable water and the land became dry through avulsion the doctrine applied to the land in question.

The Court then turned to the issue of whether the land could be transferred under the doctrine as required by the FMVDL. Relying on recent relevant legal developments in Arizona, the Court determined that such a transfer may be permitted if the transfer was made in the public's interest, the state received reasonable compensation for the transfer, and the state induced such a transfer as part of its responsibility to ensure the public's continued beneficial use of the waterway. The Court held that the determination of transferability, along with the application of the public trust doctrine to the land at issue, were questions of fact.

Accordingly, the Court reversed the district court's decision and remanded the case to the district court with the express adoption of the public trust doctrine and these questions of fact.

Aubrey Markson

Pyramid Lake Paiute Tribe of Indians v. State Eng'r, No. 55437, 2011 WL 4390009 (Nev. Sep. 20, 2011) (holding that the Nevada State Legislature's clarification that permitted groundwater rights are not subject to forfeiture for failure to put groundwater to beneficial use within five years has retroactive application).

The Pyramid Lake Paiute Tribe of Indians ("Tribe") petitioned the Second Judicial District Court, Washoe County ("district court") to review the State Engineer's decision to grant Jackrabbit Properties, LLC's ("Jackrabbit") application to amend its groundwater permit on the grounds that Jackrabbit forfeited its groundwater rights when it failed to put the water to beneficial use for five consecutive years. At the time the Tribe brought the challenge, Jackrabbit had a "permitted," but not yet "certificated" right to the water in question. The district court denied the Tribe's petition, and the Supreme Court of Nevada ("Court") affirmed the district court's order.

Historically, Nevada's State Engineer has interpreted NRS 534.090's ("statute") use of the term "permitted right" to mean a "certificated right." If a water right holder has a certificated right, it has five years to put the groundwater to beneficial use before the State Engineer may declare the right forfeited. If forfeited, the water right would revert back to the public and would be available for future appropriation. The State Engineer thus interpreted the statute to mean that a holder of a groundwater permit (but not a certificated right) would, in contrast, not be subject to forfeiture.

In its 2011 session, the Nevada Legislature amended the statute to reflect this long-standing interpretation. Rather than leave the "permitted right" language in the statute, the Legislature amended the language to