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United States v. State Eng'r, 27 P.3d 51 (Nev. 2001)

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water involve the disposition of property. Moreover, the first court (federal or state), that assumes jurisdiction over real property, will be the one to have continuing and exclusive jurisdiction over that property. Thus, because Nevada law treats water rights as real property, and the federal decree court was the first to adjudicate the subject water rights in 1936, the Nevada Supreme Court held the federal decree court had “exclusive” jurisdiction. The federal decree court also had “continuing” jurisdiction because a lawsuit covering substantially the same issues and parties as the ones in the present case was currently pending before it. Next, although the Nevada Supreme Court recognizes it has original jurisdiction to issue the writ of mandamus, such relief will only be available when the action to be compelled is one that the law already requires. However, if a petitioner shows that writ relief is urgent and necessary, the court may, nevertheless, grant the same. A writ of prohibition is “the counterpart” of the writ of mandate. It does not correct any errors, but its purpose is to prevent courts from over-extending the limits of their judicial power. In short, both writs are a form of extraordinary remedy that will not be issued if petitioner has at his disposal a “plain, speedy, and adequate remedy in the ordinary course of law.” The court is not obligated to issue such writs because they are purely discretionary.

Because Petitioners failed to demonstrate extenuating circumstances existed to warrant the issuance of the writs, and because they had a more appropriate forum in which to seek remedy—the federal decree court—the Nevada Supreme Court denied Mineral County’s request for relief.

Gloria M. Soto

United States v. State Eng’r, 27 P.3d 51 (Nev. 2001) (holding that judicial review was warranted when the State Engineer went beyond the “plain meaning” of a statute when he denied stockwater permits to the United States Department of the Interior, Bureau of Land Management).

The Bureau of Land Management (“BLM”) filed nine stockwater permit applications for public lands in Douglas County, Nevada. The State Engineer for the state of Nevada denied these applications on the grounds that the BLM was not a qualified applicant under the terms of a Nevada statute. Section 533.503 of the Nevada Revised Statutes regulates state water appropriation permits that allow livestock watering on public lands. The BLM petitioned the Ninth Judicial District Court, Douglas County, Nevada, for judicial review of the nine denied permit applications. The court denied judicial review, and the BLM then appealed to the Supreme Court of Nevada.

The supreme court examined the scope and constitutionality of the statute at issue. Section 533.503 of the Nevada Revised Statutes

provides “the state engineer shall not issue a permit to appropriate water for the purpose of watering livestock on public lands unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought.”

Argument centered over the meaning of “legally entitled.” The BLM contended that the plain language of the statute authorizes the State Engineer to issue stockwater permits to the United States as landowner of public lands. The BLM argued the plain meaning of “legally entitled” meant that either the landowner, or a person with the landowner’s permission to use the land, was legally entitled to place livestock on the land.

The State Engineer contended that “legally entitled to place livestock on the land for which the permit is sought” excluded the United States because it does not possess either a grazing permit or lease through the BLM. The State Engineer argued that the United States, as owner of public land, must issue itself a BLM permit to place livestock on its land.

The standard of review applied in cases of statutory construction is *de novo*. Because statute authorized the State Engineer to administer the stockwater permits, the court gave statutory interpretations of that office “great deference.” Though the decision of the State Engineer was not controlling, it was presumed correct and the burden or proving error fell on the challenging party, The BLM.

In evaluating these conflicting interpretations, the Supreme Court of Nevada held that for a statute to be considered ambiguous it must be capable of two or more reasonable but inconsistent interpretations. However, the State Engineer’s interpretation, that the United States, the owner of public land must issue itself a permit or lease to graze livestock upon the land that it owns was an “illogical and unreasonable construction of statutory language.” With this interpretation the State Engineer exceeded his authority by ignoring the plain meaning of the statute. On those grounds, the Nevada Supreme Court reversed the order of the district court and remanded the matter with directions to grant the petition for judicial review.

Erika Delaney-Lew

OHIO

City of Hudson v. County of Summit, 2001 Ohio App. LEXIS 2601 (Ohio Ct. App. June 13, 2001) (holding that a water system does not pass by operation of law at the merger of townships, and a county may only sell a water system to the municipality that the water system services).

Subsequent to the creation of Hudson Township, developers created and conveyed a water system to Summit County (“County”) for