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Turnipseed v. Truckee-Carson Irrigation Dist., 13 P.3d 395 (Nev. 2000)

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the overlying landowner has a right to use that groundwater. The court found the Irrigators' allegations of injury from aquifer depletion stated a cause of action. As overlying landowners, the Irrigators' allegations were sufficient to give them some legal or equitable right, title, or interest in the subject of the controversy. In addition, their petition alleged direct injury as a result of the settlement agreement, and not merely a general interest common to all members of the public. Therefore, the court held the Irrigators' had standing to bring their suit and directed the district court to reinstate the petition.

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Turnipseed v. Truckee–Carson Irrigation Dist., 13 P.3d 395 (Nev. 2000) (holding the Third Judicial District Court erred in refusing a preemptive challenge to change both the presiding judge and the venue because it improperly interpreted applicable judicial rules and statutory law).

This case involved numerous applications to appropriate water from the Truckee River in Churchill County, Nevada. Among the applicants were the two parties present in this case, the Truckee–Carson Irrigation District (“District”) and the Pyramid Lake Paiute Tribe of Indians (“Tribe”). The Tribe brought this action, requesting the Nevada Supreme Court to issue a writ of mandamus ordering the Third Judicial District Court to grant a preemptive challenge as authorized under applicable judicial rules. Additionally, the Nevada State Engineer, R. Micheal Turnipseed, (“State Engineer”) petitioned the supreme court to reverse the district court’s denial of his motion to change the venue.

On May 31, 1994, the State Engineer held a hearing to determine whether to grant various water applications to appropriate water from the Truckee River. As part of this hearing, the State Engineer considered a motion from Corkhill Bros., Inc., (“Corkhill”) to intervene in the proceedings as an interested party. The State Engineer denied both the Corkhill’s intervention motion and the District’s applications to appropriate water from the Truckee River. Subsequent to the decision, the District and Corkhill filed separate petitions with the district court, challenging the State Engineer’s decisions and requesting the district court stay the State Engineer’s actions. The district court consolidated the cases (upon motion from the State Engineer) and granted both petitions, remanding the District’s application to the State Engineer for further review.

On November 24, 1998, the State Engineer issued a final order denying all but the Tribe’s applications to appropriate water from the Truckee River. Since the District’s applications were a part of the

denial, the District and Corkhill filed a petition with the district court requesting both a judicial review of the State Engineer's decision and a stay of the State Engineer's Order. This case was assigned to the Honorable Judge Blake. After learning of this judicial assignment, the Tribe filed a preemptory challenge to remove Judge Blake. At the same time, the State Engineer filed a motion with the district court requesting a venue change to Washoe County, because the water rights at issue affected only water in Washoe County, not Churchill County. The district court denied both motions. The Tribe and the State Engineer petitioned the supreme court for review.

The supreme court, after accepting and consolidating both the Tribe's and State Engineer's petitions, reviewed the judicial rules to determine when a party's preemptory challenge was authorized. The judicial rules indicated preemptory challenges were available to a party, if (1) the pending action was not an appeal from a lower court; or (2) the judge had not made a ruling or commenced a hearing in a specific matter.

First, the supreme court determined whether this district court action constituted an appeal from a lower court. The District contended the adjudicatory proceedings with the State Engineer qualified as a lower court. The supreme court disagreed. The court indicated that even though courts give deference to State Engineer decisions, the State Engineer (and other administrative agencies) were not defined under applicable statutes as a lower court. Additionally, the supreme court noted the preemptory challenge supported the determination because, typically, parties want judicial review of agency decisions without bias.

Second, the supreme court considered whether Judge Blake had either already made a ruling or commenced a hearing in this matter, thereby preventing the Tribe from arguing for a preemptory challenge. The District contended that in 1994 and 1995, the Tribe was a party in interest, and Judge Blake ruled on issues concerning this action. The supreme court, again, disagreed. The supreme court determined that under statutory law any person aggrieved by a State Engineer order or decision may have judicial review. The supreme court determined the two actions by the State Engineer in this case were separate. One action was a decision as to whether to include the District in the applicant pool (original denial of the District's application), and the other action was a decision as to who was entitled to the water (the final order issued in 1998).

Since the supreme court determined the preemptory challenge should have been granted, it also vacated the district court's order denying the State Engineer's motion to change venue. The supreme court concluded Judge Blake had lost the power to do anything else in the case, except transfer the proceedings to another judge.

William H. Fronczak