

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILL CARD,
Appellant,
vs.
NEVADA BOARD OF WILDLIFE
COMMISSIONERS,
Respondent.

No. 42975

FILED

JUL 11 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying a petition for judicial review in a proceeding concerning an application for a commercial fishing license. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

This court's role in reviewing actions of an administrative board "is identical to that of the district court."¹ That review is limited to the record below, and to whether the board's decision is supported by substantial evidence.² "A decision that lacks support in the form of substantial evidence is arbitrary or capricious, and thus an abuse of discretion that warrants reversal."³ "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'"⁴

¹Tighe v. Las Vegas Metro. Police Dep't, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994).

²Id. (citing State Indus. Ins. System v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1978)).

³Id. (citing NRS 233B.135(3); Titanium Metals Corp. v. Clark County, 99 Nev. 397, 399, 663 P.2d 355, 357 (1983)).

⁴Id. (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

Neither this court “nor the district court may substitute [its] judgment for that of the agency as to the weight of the evidence on a question of fact.”⁵

Appellant Bill Card asserts in his appeal that the facts relied upon by the respondent Board of Wildlife Commissioners were “peripheral and immaterial to the decision of whether to issue a second permit.” We disagree.

There is substantial evidence in the record to support the Board’s findings. Admittedly, the data are limited and come primarily from the holder of the current permit, but Card made no showing that the data were wrong or unreliable. There was testimony from fishery biologists as to the low water levels in the reservoir; the low recent blackfish catch, indicating low population, and the current satisfactory state of the reservoir. Further, there was testimony that allowing another permit could upset the balance in the reservoir.

Card is correct that opinions of agency board members are not valid evidence absent supporting proof,⁶ and that a district court reviewing agency action cannot imply findings of fact.⁷ However, there were facts to support two important opinions of Board members here.

First, Board members mentioned “harm to the fishery” as an important factor. There was adequate testimony to support the inference that allowing another permittee could harm the fishery through over-harvesting. There was also adequate testimony to support the inference

⁵Id. (citing NRS 233B.135(3)).

⁶State ex rel. Johns v. Gragson, 89 Nev. 478, 482, 515 P.2d 65, 67 (1973).


⁷SIIS v. Christensen, 106 Nev. 85, 88, 787 P.2d 408, 409-10 (1990).

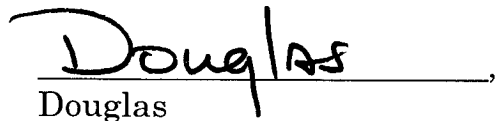
that two competing permittees could cause a division of harvest such that neither permittee would be able to keep an operation profitable. Should the permittees decide to abandon the harvest as not profitable, the Department of Wildlife (DOW) would be left without a "tool in the toolbox" to help with maintaining the balance in the reservoir.

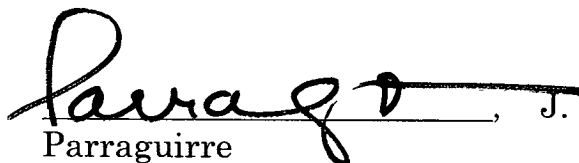
Second, Commissioner Quilici verbalized the central theme of the hearing when he opined that unless it was "broken," there was no need to "fix" the current situation. There was adequate testimony to support the inference that the fishery was not currently under-harvested, or "broken."

We conclude that the Board had substantial evidence to support the finding of fact central to this dispute, that of the current balance in the fishery. Although that fact was based on limited data, DOW used all the information available to come to a reasonable conclusion about the fishery. We further conclude that there was substantial evidence presented to support the findings of the Board; enough for a reasonable mind to accept as adequate support for the conclusion reached. Therefore, we find that the district court did not err in denying the petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Kenneth J. McKenna
Attorney General Brian Sandoval/Las Vegas
Washoe District Court Clerk