

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREAT BASIN MINE WATCH,
Appellant/Cross-Respondent,
vs.
THE STATE OF NEVADA
ENVIRONMENTAL COMMISSION;
STATE OF NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION,
BUREAU OF MINING REGULATION
AND RECLAMATION; AND
NEWMONT MINING CORPORATION,
Respondents/Cross-Appellants.

No. 43943

FILED

DEC 04 2006

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

ORDER GRANTING REHEARING, VACATING PRIOR ORDER, AND
AFFIRMING IN PART AND REVERSING IN PART

This is a petition for rehearing of this court's order in an appeal and cross-appeal from a district court order denying in part and granting in part a petition for judicial review of an administrative agency decision involving a water discharge permit's 2002 renewal. First Judicial District Court, Carson City; William A. Maddox, Judge.

On April 19, 2006, we issued an order affirming the district court's order granting in part and denying in part appellant Great Basin Mine Watch's (GBMW) petition for judicial review. The district court determined that respondent Newmont Mining Corporation substantially complied with the 1994 permit but that 2002 permit's less-stringent total dissolved solids (TDS) limitations and temperature controls violated federal antibacksliding and state antidegradation provisions. In our April 19, 2006, order, we concluded that respondent the State Environmental Commission (SEC) did not abuse its discretion by finding that Newmont substantially complied with the 1994 permit. We also concluded that the

*12/5/06 Page 4 corrected by deletion of words "do not violate" and
insertion of word "violated." - JTB, Clerk*

district court correctly determined that the TDS limitations and temperature controls violated federal antibacksliding and state antidegradation provisions, and the SEC therefore abused its discretion by renewing the 1994 permit with less-stringent permit controls. Thus, we affirmed the district court's order granting in part and denying in part GBMW's petition for judicial review.

Respondents have filed a petition for rehearing, arguing that we overlooked or misapprehended evidence in the record supporting their contentions that the 1994 permit's TDS limitations and temperature controls were erroneous and that the 2002 permit's less-stringent permit controls were designed to correct these mistaken limitations. Therefore, respondents argue that we incorrectly affirmed the portion of the district court's order regarding federal antibacksliding and state antidegradation. GMBW answered and opposed respondents' rehearing petition. We agree with respondents, and we grant rehearing. We therefore vacate our April 19, 2006 order, and we issue this order in its place. We now affirm that portion of the district court's order denying GMBW's petition for judicial review regarding substantial compliance, and we reverse that portion of the district court's order granting GBMW's petition for judicial review pertaining to federal antibacksliding and state antidegradation.

We review an agency's decision for an abuse of discretion.¹ In reviewing the agency's decision, we give deference to the agency's conclusions of law, which are closely related to the agency's factual findings, and we will not disturb the agency's decision if it is supported by

¹Secretary of State v. Tretiak, 117 Nev. 299, 305, 22 P.3d 1134, 1138 (2001).

substantial evidence.² “Substantial evidence is that ‘which a reasonable person might accept as adequate to support a conclusion.’”³

Substantial compliance

GBMW argues that because of Newmont’s undisputed noncompliance with the TDS limitations for many months at a time, Newmont did not substantially comply with the 1994 permit. Respondents argue that the permit must be examined as a whole. We agree with respondents.

NDEP “may issue a new permit upon expiration of an existing permit if . . . [t]he holder of the permit is in full or substantial compliance with all the requirements and schedules of compliance of the expired permit.”⁴ “Substantial” compliance is not defined, but the plain meaning is “considerable in quantity” or “being largely but not wholly that which is specified.”⁵ NDEP has broad discretion to determine whether a facility is substantially complying with its permit. In exercising its discretion, NDEP considers both EPA guidance documents and the facility’s data. Looking at facility data as a whole, Newmont was in nearly perfect compliance with the requirements for other constituents. It was well within NDEP’s discretion to afford great weight to the facility data and,

²Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

³Id. at 235, 71 P.3d at 491-92 (quoting SIIS v. Montoya, 109 Nev. 1029, 1032, 862 P.2d 1197, 1199 (1993)).

⁴NRS 445A.495(1).

⁵Webster’s Collegiate Dictionary 1174 (10th ed. 1993).

therefore, the SEC's finding that Newmont substantially complied with the 1994 permit was not an abuse of discretion.

Antibacksliding and antidegradation

Respondents have directed us to evidence in the record demonstrating that the SEC's determinations—that the 1994 permit's TDS limitations and temperature controls were erroneous and that the 2002 permit's less-stringent standards were adopted to correct those errors—were supported by substantial evidence. Therefore, the district court incorrectly concluded that the 2002 permit's less-stringent TDS limitations and temperature controls ^{violated} ~~do not violate~~ federal antibacksliding provisions.

Further, we conclude that the 2002 permit does not violate Nevada's antidegradation policy as set forth in NRS 445A.565(1). This policy is administered through the establishment of a requirement to maintain higher quality (RMHQ), and when an RMHQ has not been established, NDEP establishes permit discharge limits in accordance with the SEC's general water quality and beneficial use standards. An RMHQ has not yet been established for Maggie Creek, and accordingly, Maggie Creek's TDS limitations are to be established under the SEC's applicable water quality and beneficial use standards. The 2002 permit's TDS limitations were established in accordance with NAC 445A.126(3), which provides the SEC's applicable water quality and beneficial use standards for Maggie Creek's TDS limitations. Accordingly, we conclude that the

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district court erroneously determined that the 2002 permit violated Nevada's antibacksliding provisions.⁶

Therefore, we affirm in part and reverse in part the district court's judgment.

It is so ORDERED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. William A. Maddox, District Judge
Robert Eisenberg, Settlement Judge
Nicole U. Rinke
Attorney General George Chanos/Carson City
Attorney General George Chanos/Las Vegas
Beckley Singleton, Chtd./Las Vegas
Jones Vargas/Las Vegas
Temkin Wielga & Hardt, LLP
Lawrence S. Bazel
Brian V. Chally
Carson City Clerk

⁶With regard to respondents' argument that the district court's determination that NDEP had established a TDS discharge limitation exceeding the standard for the Humboldt River, we conclude that the district court's determination was unsupported and, giving deference to NDEP's and the SEC's authority to establish permit limitations, its determination was therefore incorrect. We have carefully considered the parties' other arguments and conclude they are without merit.