

IN THE SUPREME COURT OF THE STATE OF NEVADA

GOLD RIDGE PARTNERS, A
CALIFORNIA GENERAL
PARTNERSHIP, AS TO AN
UNDIVIDED 1/4 INTEREST; SKY
VIEW PARTNERS, A CALIFORNIA
GENERAL PARTNERSHIP, AS TO AN
UNDIVIDED 1/4 INTEREST; GRAND
VIEW PARTNERS, A CALIFORNIA
GENERAL PARTNERSHIP, AS TO AN
UNDIVIDED 1/4 INTEREST; ROLLING
HILLS PARTNERS, A CALIFORNIA
GENERAL PARTNERSHIP, AS TO AN
UNDIVIDED 1/4 INTEREST; AND
FIRST FINANCIAL PLANNING
CORPORATION, A NEVADA
CORPORATION,

Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
STOREY, AND THE HONORABLE
JAMES TODD RUSSELL, DISTRICT
JUDGE,

Respondents,

and

SIERRA PACIFIC POWER COMPANY,
A NEVADA CORPORATION,
Real Party in Interest.

No. 51749

FILED

AUG 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF
MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition, challenging a district court order granting occupancy in a condemnation action.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or

station,¹ or to control a manifest abuse of discretion.² We may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.³ Both mandamus and prohibition are extraordinary remedies, and it is within our discretion to determine if a petition will be considered.⁴ A petitioner seeking extraordinary relief has the burden of demonstrating that our intervention is warranted.⁵

In this case, real party in interest Sierra Pacific Power Company ("SPPC") is seeking to condemn 480 acres of petitioners' 620 acres of undeveloped land to build a new electric substation and transmission towers, known as the Blackhawk substation project.⁶ SPPC contends that preconstruction studies, planning, and design of the substation and power liens must begin immediately and construction must commence by September 2008, as the new plant and lines must be operating by summer of 2009, when the company anticipates that the

¹See NRS 34.160.

²See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

³See NRS 34.320.

⁴See, e.g., Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

⁵Pan v. Dist. Ct., 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004).

⁶The four petitioners, each owning one-quarter of the property, are Gold Ridge Partners, Sky View Partners, Grand View Partners, and Rolling Hills Partners. The fifth petitioner, First Financial Planning Corporation, holds the deed of trust on the property and is also the general partner for each of the other four petitioners. Most of petitioners' property is located in Storey County, with a small portion located in Lyon County.

maximum limit of the Carson area's existing electric system will be exceeded.⁷ Although SPPC sent a January 2008 letter agreement to petitioners to obtain their consent to enter the property to conduct a land survey and noninvasive studies, petitioners did not execute and return the agreement until after SPPC filed a condemnation complaint in the district court and also moved for a right of entry under NRS 37.050 and for occupation under NRS 37.100.

After a hearing, the district court entered a May 16, 2008, order allowing SPPC to occupy 480 acres pursuant to NRS 37.100 and to commence the substation's construction after depositing \$1,920,000 with the court. Petitioners have filed an original petition for a writ of mandamus or prohibition, seeking to vacate the May 16 order or to compel the district court to order specific performance of the letter agreement.

Petitioners do not challenge the public use of the Blackhawk project,⁸ but they contend that SPPC did not demonstrate the public "necessity," as required by NRS 37.040(2), for the amount of land to be

⁷The "Carson area" refers to SPPC's customers in Virginia City, Mark Twain, Dayton, Carson City, Minden, Gardnerville, South Tahoe, and Incline.

⁸See NRS 37.040 (requiring the court to find, before a condemnation judgment is entered, that the property will be applied to a public use and is necessary to such use); NRS 37.010(h) (identifying electric light and power lines and electric plant sites as public uses and authorizing public utilities to exercise the right of eminent domain for such uses); Urban Renewal Agcy. v. Iacometti, 79 Nev. 113, 120-21, 379 P.2d 466, 469-70 (1963) (recognizing the court's "extremely narrow role" in determining the issues of public use and necessity in condemnation cases, and stating that although "the legislative declaration of public use may not be final, a court must pay it proper deference and, if a doubt exists, the legislative declaration shall prevail").

condemned. Moreover, petitioners appear to allege bad faith by SPPC, claiming that the company is engaging in a “land grab,” as it had increased the amount of land to be condemned from 300 acres to 480 acres only after receiving a low appraisal based upon a depressed real estate market. Petitioners also claim that the motion for occupancy was prematurely granted, since the project cannot proceed without the requisite federal, state, and county permits. Finally, petitioners claim that the letter agreement superceded SPPC’s statutory condemnation rights.

As our prior cases make clear, SPPC has broad discretion to determine the amount and location of the land it needs to construct the substation and transmission lines.⁹ Moreover, petitioners have not supported their apparent claim of bad faith with any evidence.¹⁰ The district court concluded that SPPC had demonstrated a reasonable necessity to condemn petitioners’ 480 acres in order to construct the Blackhawk project so as to prevent a Carson area electric system overload

⁹Aeroville v. Lincoln Power, 71 Nev. 320, 324, 290 P.2d 970, 972 (1955). See State v. Pinson, 66 Nev. 227, 230-31, 207 P.2d 1105, 1109 (1949) (affirming the condemnation of land for a public road, despite evidence of an alternative, but less safe, road and stating that necessity need only be reasonable under the circumstance, not absolute and unconditional).

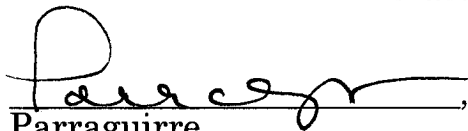
¹⁰See Las Vegas Downtown Redev. Agency v. Pappas, 119 Nev. 429, 449, 76 P.3d 1, 15 (2003) (stating that “[c]ourts may not question the wisdom of how to accomplish the public purpose absent a showing of fraud or bad faith”); Douglass v. Byrnes, 59 Fed. 29-32 (D. Nev. 1893) (stating that it is not within the court’s power to absolutely control the exercise of the condemnor’s discretion in selecting the land to be condemned, unless the condemnor has exceeded its statutory authority and acted in bad faith).

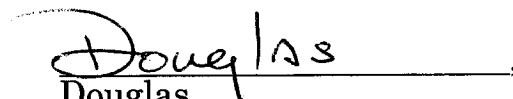
next summer. The district court rejected petitioners' arguments that permits were required before occupancy¹¹ and that the letter agreement governed.¹² We are not persuaded that the district court manifestly abused its discretion in reaching its decision.

Petitioners have not demonstrated that the district court, in deferring to SPPC's broad discretion to determine the amount and location of the land needed for public use, manifestly abused its discretion in concluding that the conditions precedent of public use and necessity under NRS 37.040 had been met and in granting SPPC's motion for immediate occupancy. Accordingly, this court's intervention by way of extraordinary relief is not warranted and we

ORDER the petition DENIED.¹³


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

¹¹See County Comm'rs v. Schrodel, 577 A.2d 39, 47 (Md. Ct. App. 1990) (reviewing eight out-of-state cases and concluding that "not one of these cases stands for the proposition that a court can postpone a condemnation action until the condemning authority obtains all necessary permits").

¹²See Dixon v. City of Phoenix, 845 P.2d 1107 (Ariz. Ct. App. 1992) (recognizing that a city could not contract away its eminent domain power, so that a right of entry agreement did not bar the city from taking the easement) (citing Tucson Elec. Power Co. v. Adams, 656 P.2d 1257 (Ariz. Ct. App. 1982) (holding that an electric company's eminent domain power could not be contracted away)).

¹³See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

cc: Hon. James Todd Russell, District Judge
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Law Offices of Michael G. Chapman
Storey County Clerk