IN THE SUPREME COURT OF THE STATE OF NEVADA

MORRIS DELEE, MORRIS DELEE REVOCABLE TRUST, Appellants, vs. R. MICHAEL TURNIPSEED, STATE ENGINEER, INDUSTRIAL MINERAL



Respondents.

VENTURES,

ORDER OF AFFIRMANCE

This is an appeal from a district court's order affirming the State Engineer's decision to deny sixteen applications to appropriate groundwater. Delee contends that the State Engineer was required to hold additional hearings before determining whether to grant or deny the applications. We disagree. Additionally, we conclude that the State Engineer's decision to deny the applications was based on substantial evidence. Therefore, we affirm the district court's order affirming the State Engineer's decision to deny the applications.

First, Delee argues that the language of the district court's order of remand mandated additional hearings before the State Engineer decided to deny or grant the applications. The district court remanded this matter to the State Engineer for "further study and analysis." In its subsequent ruling, the State Engineer, in over eight pages of detailed analysis, expressly considered the district court's concerns regarding these applications. The district court expressly found that the State Engineer's ruling followed the order of remand and adequately addressed the court's concerns. Further the State Engineer, nor any other

administrative body, is required to hold additional hearings upon remand. Accordingly, we reject Delee's contention that the district court's order of remand required additional hearings.

Next, Delee contends that due process required the State Engineer to hold additional hearings. While an applicant, such as Delee, has the right to have his applications considered and acted upon, unless and until the applications are granted, no property right exists.¹ A fundamental precept of constitutional law is that due process considerations are not implicated in the absence of a constitutionally protected right.² Delee's contention that he was not afforded due process of law therefore fails. We note that, even if due process were required in this instance, Delee was afforded a full and fair opportunity to be heard.³ We conclude therefore that additional hearings were not required.

We perceive no error in the State Engineer's decision to deny the applications.⁴ After reviewing the record, we conclude that the State Engineer's decision was based on substantial evidence.⁵ We therefore affirm the order

¹See Boulder City v. Cinnamon Hills Assocs., 110 Nev. 238, 246-48, 871 P.2d 320, 325 (1994); see also 1 W. Hutchins, Water Rights Laws in the Nineteen Western States 303 (1971).

²See Board of Regents v. Roth, 408 U.S. 564, 569-70 (1972).

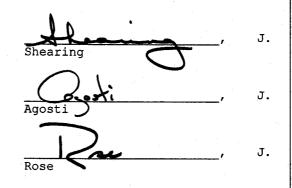
³See Revert v. Ray, 95 Nev. 782, 787, 603 P.2d 262, 264-65 (1979).

⁴<u>See</u> NRS 533.450.

⁵See <u>Revert</u>, 95 Nev. at 786, 603 P.2d at 264; <u>see also</u> State Engineer v. Morris, 107 Nev. 699, 701, 819 P.2d 497, 498 (1991).

2

of the district court affirming the decision of the State Engineer to deny the applications to appropriate groundwater.



cc: Hon. John P. Davis, District Judge Attorney General, Carson City Allison MacKenzie Hartman Soumbeniotis & Russell Marshall Hill Cassa & deLipkau Nye County Clerk

3