

IN THE SUPREME COURT OF THE STATE OF NEVADA

MORRIS DELEE, MORRIS DELEE  
REVOCABLE TRUST,

Appellants,

vs.

R. MICHAEL TURNIPSEED, STATE  
ENGINEER, INDUSTRIAL MINERAL  
VENTURES,

Respondents.

No. 34788

**FILED**

**MAY 21 2001**

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

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. Furthermore, neither 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.<sup>1</sup> A fundamental precept of constitutional law is that due process considerations are not implicated in the absence of a constitutionally protected right.<sup>2</sup> 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.<sup>3</sup> We conclude therefore that additional hearings were not required.

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

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<sup>1</sup>See 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).

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


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


<sup>4</sup>See NRS 533.450.

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

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

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Rose

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