

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA EX REL. THE
LEGISLATURE OF THE STATE OF
NEVADA; AND KIM R. WALLIN, IN
HER CAPACITY AS THE NEVADA
STATE CONTROLLER,

Appellants,

vs.

BL EXPLORATION, LLC, A NEVADA
CORPORATION; DESERT PACIFIC
EXPLORATION, INC., A NEVADA
CORPORATION; ARTHUR LEGER, A
NEVADA RESIDENT; MGC
RESOURCES, INC., A NEVADA
CORPORATION; REDSTAR GOLD USA,
INC., A NEVADA CORPORATION; AND
WESTERN EXPLORATION, INC., A
NEVADA CORPORATION,

Respondents.

No. 58687

FILED

NOV 15 2011

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting declaratory relief, holding that NRS 517.187, which imposed a “mining claims fee,” was unconstitutional. First Judicial District Court, Carson City; James E. Wilson, Judge.

Respondents have filed a motion to dismiss, arguing that the statute’s repeal, coupled with a refund procedure, renders the appeal moot. Appellants oppose the motion, asserting that the appeal is not moot. Should we conclude that the appeal is moot, appellants nevertheless urge us to apply the public interest exception and consider the appeal. Finally, appellants filed a countermotion asking that, if the appeal is dismissed, we vacate the district court’s order; respondents oppose the motion in light of controlling Nevada authority.


Having reviewed the motions, oppositions, replies, and other documents before this court, we conclude that the appeal is moot. NCAA v. University of Nevada, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) (stating that an appeal is moot when this court is asked to determine an abstract question that is not grounded in existing facts or rights); Boulder Sign Co. v. City of Boulder City, Nevada, 382 F. Supp. 2d 1190, 1196 (D. Nev. 2005) (citations omitted) (recognizing the general rule that repeal of a statute moots any objection to that statute's constitutionality, even if the statute could be reenacted); State ex rel. Evans v. Amusement Ass'n of Wash., Inc., 499 P.2d 906, 907-08 (Wash. Ct. App. 1972) (holding that when the challenged statute had been "superseded by a new and comprehensive plan which will answer the questions raised in this appeal and clearly grant the relief sought," the appeal was moot); see also Westmoreland v. National Transp. Safety Bd., 833 F.2d 1461, 1463 (11th Cir. 1987) (stating that possible collateral effects of an appeal that are speculative are not sufficient to prevent dismissal on mootness grounds); Miller Brands, Inc. v. OLCC, 752 P.2d 320, 322 (Or. Ct. App. 1988) (dismissing appeal as moot when possible collateral effect did not involve the parties before the court).

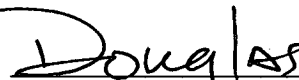
Moreover, we are not persuaded that application of the public interest exception to the mootness doctrine in this instance is appropriate. Notably, the cases relied upon by appellants involved statutes that remained in force, Bd. of Cty. Comm'rs v. White, 102 Nev. 587, 589, 729 P.2d 1347, 1349 (1986); State of Nevada v. Glusman, 98 Nev. 412, 418, 651 P.2d 639, 643 (1982), or a procedural resolution that was effective only during the brief legislative session. Sarkes Tarzian, Inc. v. Legis. State of Nev., 104 Nev. 672, 674, 765 P.2d 1142, 1143 (1988). Here, the statute has been repealed. The possibility that the Legislature might enact a similar


provision in the future is too remote and speculative to warrant invoking the exception in this case.

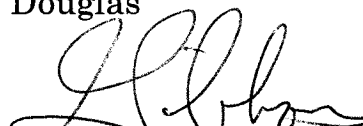
Accordingly, we grant respondents' motion to dismiss and dismiss this appeal. Respondents correctly maintain that the effect of our order today is controlled by Personhood Nevada v. Bristol, 126 Nev. ___, ___, 245 P.3d 572, 576 (2010): The district court's order has neither preclusive nor precedential effect. We therefore deny appellants' counter-motion.


It is so ORDERED.¹


_____, C.J.
Saitta

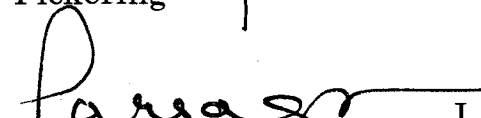

_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. James E. Wilson, District Judge
Attorney General/Carson City
Legislative Counsel Bureau Legal Division
Lionel Sawyer & Collins/Reno
Carson City Clerk

¹The parties' stipulation to stay the briefing schedule in this appeal is disapproved as moot in light of this order.