

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA WELL OWNERS  
ASSOCIATION, A NEVADA NON-  
PROFIT ASSOCIATION,  
Appellant,  
vs.  
SOUTHERN NEVADA WATER  
AUTHORITY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,  
Respondent.

No. 37360

FILED

JUN 05 2002

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment denying the petition of appellant Nevada Well Owners Association (“NWOA”) for writ of mandamus to compel respondent Southern Nevada Water Authority (“SNWA”) to disclose a list of the names and addresses of groundwater well owners in the Las Vegas area. The NWOA argues on appeal that the list of groundwater well owners is a public document subject to disclosure under NRS 239.010, the Nevada Public Records Act. We agree.

A writ of mandamus “is the appropriate procedural remedy to compel production of . . . public records.”<sup>1</sup> It follows that a district court’s decision to deny a petition for a writ of mandamus is reviewed for an abuse of discretion.<sup>2</sup>

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<sup>1</sup>DR Partners v. Bd. of County Comm’rs, 116 Nev. 616, 620, 6 P.3d 465, 468 (2000).

<sup>2</sup>Id. at 621, 6 P.3d at 468.

The Nevada Public Records Act, NRS 239.010(1), provides that “[a]ll public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person . . . .” “The purpose of the Act is to ensure the accountability of the government to the public by facilitating public access to vital information about governmental activities.”<sup>3</sup> We employ a balancing test, which we first adopted in Donrey of Nevada v. Bradshaw,<sup>4</sup> to interpret the Act’s application, weighing “the interests of non-disclosure against the general policy in favor of open government,”<sup>5</sup> where

“the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference . . . [and] the burden is cast upon the agency to explain why the records should not be furnished.”<sup>6</sup>

Here, the district court did not explain its reasoning or indicate that it conducted a balancing of interests before denying the NWOA’s petition, other than generally citing privacy concerns on behalf of the well owners.

Applying the Bradshaw balancing test, on one hand, the SNWA notes that 2,398 of 10,300 well owners wish for the list to remain undisclosed. The SNWA also notes that disclosure of the list may be an

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<sup>3</sup>Id.

<sup>4</sup>106 Nev. 630, 634, 798 P.2d 144, 147 (1990).

<sup>5</sup>DR Partners, 116 Nev. at 621, 6 P.3d at 468.

<sup>6</sup>Id. (quoting MacEwan v. Holm, 359 P.2d 413, 421-22 (Or. 1961)).

issue of community safety. However, we stated in DR Partners v. Bd. of County Comm'rs<sup>7</sup> that non-particularized hypothetical concerns of harm are insufficient to justify the refusal by a public entity to disclose public information. Beyond citing to the desire for confidentiality by these 2,398 well owners, the SNWA has failed to show how disclosing the names and addresses of the well owners would result in any real harm or undue invasion of privacy. We conclude that the SNWA's justifications for withholding the list are unpersuasive.

On the other hand, both Bradshaw and DR Partners reflect our adherence to upholding policies favoring an open government consistent with the spirit of NRS 239.010. The SNWA compiled the list of well owners pursuant to a groundwater management program enacted by the legislature.<sup>8</sup> The SNWA has indicated that approximately eighty-five percent of the addresses of the well owners on the list were already contained in public records. Meaning, the information was already in the public domain in one form or another—it had just not been compiled. There is no privacy expectation in this already public information.<sup>9</sup>

Additionally, we recognize that water issues throughout Nevada are becoming increasingly important to our state's future. Groundwater well owners have unique access to this natural resource.

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<sup>7</sup>116 Nev. 616, 628, 6 P.3d 465, 472-73 (2000).

<sup>8</sup>1997 Nev. Stat., ch. 572 § 6, at 147-48.

<sup>9</sup>DR Partners, 116 Nev. at 627, 6 P.3d at 472.

The list of well owners sheds light on the SNWA's performance of its statutory duties in managing these water resources.<sup>10</sup>

Given the above balancing of interests, we conclude that the district court abused its discretion by denying the NWOA's petition.<sup>11</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Maupin, C. J.  
Maupin

Agosti, J.  
Agosti

Leavitt, J.  
Leavitt

cc: Hon. Stephen L. Huffaker, District Judge  
Graham, Wilde, Lish, Harker & Boggess  
John J. Entsminger  
Clark County Clerk

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<sup>10</sup>See Bibles v. Oregon Natural Desert Ass'n., 519 U.S. 355, 355-56 (1997).

<sup>11</sup>We note that other jurisdictions have reached mixed conclusions regarding the disclosure of citizen's names and addresses by a government entity. However, these jurisdictions were interpreting both law and facts distinguishable from the case at hand.