


IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRIS THORSON, P.E., IN HIS
CAPACITY AS STATE ENGINEER;
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES;
ALBEMARLE CORPORATION, A
VIRGINIA CORPORATION; AND
ALBEMARLE U.S., INC., A DELAWARE
CORPORATION,
Appellants,
vs.
ESMERALDA MINERALS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND ITS PARENT
COMPANY PURE ENERGY
MINERALS, LTD.,
Respondents.

No. 88615

FILED
FEB 20 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL¹

This is an appeal from a district court order granting a petition for judicial review of a determination made by the State Engineer. Fifth Judicial District Court, Esmeralda County; Steven R. Kosach, Judge.

Facts

In 2015, appellant Albemarle Corporation (Albemarle), a lithium mining company, acquired the Silver Peak Lithium Operation

¹The Honorable Patricia Lee, Justice, did not participate in the decision in this matter. The Honorable Michael L. Douglas, Senior Justice, was appointed by the court to participate in her place.

(SPLO) in the Clayton Valley hydrographic basin in Esmeralda County. With this acquisition, Albemarle assumed its predecessor's certificated and permitted water rights in the Clayton Valley amounting to 20,000 acre-feet per annum (afa) of groundwater. These rights, including permits 52918 through 52921, had been held by Albemarle's predecessor owners of the SPLO since 1993. At regular intervals from 1995 onward, those prior water rightsholders applied for and received numerous extensions of time (EOTs) to complete their work and put their permitted water to beneficial use.

In 2017, Albemarle submitted the first EOT application in its name as the SPLO's owner, requesting a five-year EOT on permits 52918 through 52921. Along with the standard EOT application, Albemarle submitted an eight-page exhibit detailing the variety of ways in which it was pursuing perfection of the full appropriation contained in the permits. The exhibit explained how Albemarle had prepared an expansion plan to increase the total pumping at the SPLO to 20,000 afa, which would be accomplished through the development and rehabilitation of existing wells and infrastructure, the drilling of new wells, the approval of additional permits, and the completion of an ongoing scientific analysis of the groundwater system.

Respondents Esmeralda Minerals and its parent company, Pure Energy (collectively, Pure Energy), objected to Albemarle's EOT application. Pure Energy, which owns mining claims in the Clayton Valley but has been unable to secure the desired amount of water for its own lithium extraction endeavors, argued that Albemarle's request for an EOT—the 19th for the water rights at issue—should be denied because the SPLO had never been able to use more than 11,000 afa in a year and none

of the progress reports filed by Albemarle showed an ability to exercise the full extent of its rights.

Over these objections, the State Engineer granted Albemarle a limited EOT of one year, rather than the requested five. The next year, in 2018, Albemarle filed another EOT application, which the State Engineer also granted, this time for an extension of three years. Pure Energy sought judicial review of each of those decisions.

On review, the district court initially found that it was unclear whether the State Engineer's decisions to approve the EOT applications were supported by substantial evidence, and it therefore partially granted Pure Energy's petition for judicial review in order to remand to the State Engineer with instructions to hold an evidentiary hearing to determine whether Albemarle had sufficiently demonstrated that an EOT was warranted under NRS 533.380.

Pursuant to the remand order, and in compliance with instructions to only offer evidence of work done before the EOT applications were filed, Albemarle submitted further evidence of its efforts to perfect its water rights. This included 67 exhibits, including affidavits from 5 witnesses, offering evidence of the work Albemarle had done to develop the SPLO prior to filing its 2017 EOT application. Pure Energy provided its own evidence to counter Albemarle's. After a four-day evidentiary hearing, the State Engineer again granted Albemarle's 2017 EOT application, determining that Albemarle had presented sufficient evidence of its progress toward beneficial use of its full appropriation through its work toward regulatory compliance, its efforts to maintain its facilities in operable condition and to increase the number of active wells, its pending

block permit application, and its scientific study of the site to expand water use.

Pure Energy again sought judicial review, arguing that the State Engineer's decision to grant Albemarle's EOT application was still unsupported by evidence, was arbitrary and capricious, and allowed Albemarle to unlawfully speculate on and hoard the water at issue despite a factual impossibility of Albemarle's putting it to beneficial use. The district court granted Pure Energy's petition for judicial review, concluding that Albemarle had failed to provide substantial evidence of its constant and steady efforts to use the full 20,000 afa of water, and ordered the State Engineer to reverse its approval of Albemarle's 2017 EOT application. Both Albemarle and the State Engineer then filed notices of appeal and motions for a stay pending appeal to this court. The motions for a stay pending appeal were subsequently granted.

Discussion

On appeal, Albemarle and the State Engineer argue that the district court applied the wrong legal standard to review Albemarle's EOT application and improperly substituted its judgment for the State Engineer's decision to grant the EOT. Appellants further argue that the district court's remand instructions to the State Engineer exceeded its appellate jurisdiction, and that the district court erroneously considered evidence outside the administrative record. Pure Energy responds, in alignment with the district court, that the State Engineer *did* apply an incorrect legal standard in reviewing Albemarle's EOT application and that, under the correct standard, Albemarle failed to meet its burden to show that its EOT application should be approved.

Because water is “a precious and increasingly scarce resource,” Nevada law upholds a “fundamental requirement . . . that water only be appropriated for beneficial use.” *Bacher v. Off. of State Eng’r of Nev.*, 122 Nev. 1110, 1116, 146 P.3d 793, 797 (2006) (internal quotation marks omitted). Once water is appropriated, the rightsholder must demonstrate within a certain amount of time that it has put the water to beneficial use. NRS 533.380(1). But the State Engineer may, for good cause, grant any number of EOTs for a rightsholder to make this showing, provided that the rightsholder seeking the EOT can demonstrate that it is “proceeding in good faith and with reasonable diligence to perfect” its water rights. NRS 533.380(3). “[T]he measure of reasonable diligence is the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances.” NRS 533.380(6). Our caselaw has clarified that this requires more than “a showing of good faith and due diligence toward *any* amount of permitted water”; rather, an EOT applicant must demonstrate efforts to perfect the entire appropriation. *Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 1057, 944 P.2d 835, 841 (1997). But “[w]hen a project or integrated system is composed of several features, work on one feature . . . may be considered in finding that reasonable diligence has been shown” as to the entire appropriation. NRS 533.380(6).

A decision by the State Engineer, such as the grant of an EOT, may be challenged through a petition for judicial review. NRS 533.450. On review, the State Engineer’s decision is presumed correct, and the burden falls on the petitioner to show otherwise. NRS 533.450(10). On subsequent appeal, we perform the same review as the district court. *King v. St. Clair*, 134 Nev. 137, 139, 414 P.3d 314, 316 (2018). Questions of law, such as

whether the State Engineer applied the correct legal standard, are reviewed de novo. *See Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1148 (2010). Meanwhile, the State Engineer’s factual findings, at issue when evaluating whether a decision was arbitrary or capricious, will not be overturned as long as they are supported by substantial evidence, or “that which a reasonable mind might accept as adequate to support a conclusion.” *See King*, 134 Nev. at 139, 414 P.3d at 316 (quoting *Bacher*, 122 Nev. at 1121, 146 P.3d at 800). “This court, like the district court, may not substitute its judgment for the State Engineer’s judgment,” nor may we examine witness credibility or reweigh the evidence. *Bacher*, 122 Nev. at 1121, 146 P.3d at 800. This judicial restraint respects the specialized expertise that executive agencies often possess, *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. 10, 16, 481 P.3d 853, 858 (2021), as well as the legislature’s delegation, when clearly reflected in statute, of certain fact-based decision-making authority to those agencies, *see, e.g.*, NRS 533.380 (bestowing the State Engineer with broad discretion to ensure that Nevada’s water is being put to beneficial use), both of which are essential to effective governance. Indeed, deference to factual findings is often especially warranted in the water rights context, where the determinations at issue can be “technical and scientifically complex.” *Pahrump Fair Water*, 137 Nev. at 16, 481 P.3d at 858; *see also* NRS 233B.039(1)(i) (exempting the State Engineer from default administrative law requirements imposed by the Nevada Administrative Procedure Act). *The State Engineer applied the correct legal standard to evaluate Albemarle’s EOT application*

The district court concluded that the State Engineer committed legal error by treating Albemarle’s evidence that it was putting “some quantity of water” to beneficial use as sufficient to prove beneficial use.

Albemarle and the State Engineer argue that the district court misconstrued the State Engineer's decision and that the State Engineer did apply the correct standard. Of note, all parties agree that to approve the EOT application, the State Engineer needed to find that Albemarle's evidence showed that it was working diligently toward perfecting the entirety of its water rights, not just "some quantity of water."

Reviewing the State Engineer's decision de novo for legal error, *Pyramid Lake Paiute Tribe*, 126 Nev. at 525, 245 P.3d at 1148, we find none. Instead, when viewed in full, the State Engineer's decision properly measured Albemarle's evidence against its statutory obligation "to put the full 20,000 (afa) to beneficial use." Throughout the decision, including when stating the standard for evaluating the EOT application, the State Engineer characterized Albemarle's burden as needing to demonstrate its progress in good faith and with reasonable diligence toward full perfection of its permits. The district court placed undue weight on a single use of the phrase "some quantity of water," but the complete analysis was not so limited. As such, we conclude that the State Engineer applied the correct legal standard when evaluating Albemarle's EOT application.

The State Engineer's decision to approve Albemarle's EOT application was supported by substantial evidence

The district court overturned the State Engineer's decision to approve Albemarle's EOT application after concluding that the record did not present substantial evidence such that a reasonable person could find that Albemarle acted in good faith and with reasonable diligence to perfect its water rights. Albemarle and the State Engineer argue that the challenged decision *was* supported by substantial evidence and that by reversing, the district court impermissibly substituted its own judgment for the State Engineer's. Pure Energy responds that Albemarle did not

sufficiently demonstrate beneficial use for its full appropriation and in fact *could* not, according to its own expert's testimony suggesting that existing physical limitations at the SPLO make doing so impossible.

The State Engineer's determination was made after a four-day evidentiary hearing. En route to approving Albemarle's EOT application, the State Engineer cited Albemarle's proffered "plan, as described in documents and testimony, [] to put the full 20,000 (afa) to beneficial use . . ."; its efforts to bring its existing infrastructure into regulatory compliance; its efforts to maintain and improve the efficiency of its existing operations; its pursuit of a super permit, pending at the time the application was filed, that would enable it to drill additional wells and expand its brine production; bureaucratic delays impacting Albemarle's efforts to effectuate its goals; its scientific studies aimed at gaining increased understanding of the SPLO; and the overall complexity and environment of the SPLO. Further, the State Engineer noted that the 2017 EOT application was Albemarle's first since acquiring the SPLO and seemingly credited an executive's testimony that Albemarle viewed the above actions as a prerequisite to ultimately increasing groundwater use and perfecting its inherited water rights. In reaching his decision, the State Engineer recognized that Albemarle's predecessors had already received "a generous number of [EOTs]" and declined to credit evidence he felt was immaterial, such as the amount of money Albemarle had spent thus far and certain expert testimony presented by Albemarle that he deemed unreliable. And while Pure Energy's expert submitted that it would be impossible for Albemarle to put its full appropriation to beneficial use, the State Engineer had discretion to discount that opinion based on the record presented of Albermarle's progress and plans. *See, e.g., Pahrump Fair Water*, 137 Nev.

at 16-17, 481 P.3d 858 (recognizing the State Engineer's authority to draw its own inferences from expert evidence based on its technical expertise).

Taking the above into account, the State Engineer concluded that “[i]n light of all of the facts and circumstances” presented in the original application and on remand, Albemarle sufficiently demonstrated that it was proceeding in good faith and with reasonable diligence toward perfection of its water rights. We cannot say, based on the above, that no “reasonable mind” could reach the same conclusion. *Bacher*, 122 Nev. at 1121, 146 P.3d at 800. Further, rather than granting Albemarle the requested five-year EOT, the State Engineer opted to take a more cautious route by extending the permits for just one year. These facts are distinguishable from those in *Desert Irrigation*, where the rightsholder did not pursue perfection of its water rights and then attempted to change the point of diversion and place of use to a separate, non-contiguous development, rather than using it as originally intended. 113 Nev. at 1051-53, 1057-58, 944 P.2d at 837-38, 840-41. Here, a reasonable mind could conclude from the record that Albemarle, as the new owner of the SPLO, was taking care to understand and build the capacity of its existing operation with an eye toward putting its full appropriation to use there.

Recognizing the heightened deference owed to the State Engineer based on its specialized expertise over matters such as the perfection of appropriated water rights, *see Pahrump Fair Water*, 137 Nev. at 16, 481 P.3d at 858, we thus conclude that the State Engineer's decision

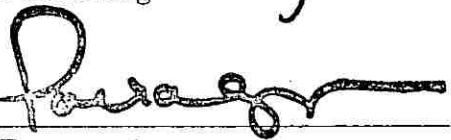
to grant Albemarle an EOT was supported by substantial evidence. It follows that the district court erred by reaching the opposite conclusion.²


Accordingly, we

ORDER the judgment of the district court REVERSED.


_____, C.J.
Herndon


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich


_____, J.
Cadish


_____, Sr. J.
Douglas

²Because we conclude that the State Engineer's decision was supported by substantial evidence and should not have been overturned, we decline to address appellants' additional arguments challenging the evidence the district court relied upon to reach its contrary determination and the instructions it gave the State Engineer in its remand order.

cc: Chief Judge, The Fifth Judicial District Court
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