

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERSHING COUNTY WATER
CONSERVATION DISTRICT,
Appellant,
vs.
JOE CACIOPPO, P.E., STATE
ENGINEER OF THE STATE OF
NEVADA, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES AND NEVADA
DEPARTMENT OF WILDLIFE,
INTERVENOR,
Respondents.

No. 90247

FILED

APR 30 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review as moot. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In 2023, respondent Nevada Department of Wildlife (NDOW) applied for a temporary water permit, seeking to divert its water rights from the Humboldt Sink to the South Fork Reservoir. In response to NDOW's application, the Nevada Department of Water Resources prepared a memorandum suggesting that NDOW's proposed permit might conflict with appellant Pershing County Water Conservation District's (PCWCD) senior water rights. Respondent State Engineer then held NDOW's application in abeyance for nine months.

The following year, while NDOW's application was still in abeyance, the Department of Water Resources prepared a second memorandum suggesting that, because 2024 was a wetter year than 2023, there would not be any conflict between NDOW's permit and PCWCD's

water rights. Without noticing PCWCD, the State Engineer approved NDOW's permit for a four-month period. PCWCD promptly petitioned for judicial review. In particular, PCWCD took umbrage with the State Engineer's failure to re-notice PCWCD after the abeyance and again argued that the permit conflicted with its water rights. Before the State Engineer filed the administrative record with the district court, however, the temporary permit expired, and the district court consequently dismissed the case as moot. PCWCD timely appealed, arguing that the district court nevertheless should have reviewed the petition under the "capable of repetition, yet evading review" exception to the mootness doctrine.

We review a district court's mootness determination de novo. *Martinez-Hernandez v. State*, 132 Nev. 623, 625, 380 P.3d 861, 863 (2016). See also *Muney v. Arnould*, Nos. 81354, 81355, 81356, 2021 WL 4238755 (Nev. Sep. 16, 2021) (Order Dismissing Appeals) (citing *Martinez-Hernandez's* mootness de novo standard of review in a civil context). Nevada courts will adjudicate moot cases that are "capable of repetition, yet evading review" if "(1) the duration of the challenged action is relatively short; (2) there is a likelihood that a similar issue will arise in the future; and (3) the matter is important." *Bisch v. L.V. Metro. Police Dept.*, 129 Nev. 328, 334-35, 302 P.3d 1108, 1113 (2013). The proponent of the mootness exception has the burden of proving each of those points. *Id.* at 334-35, 302 P.3d at 1113.

"[T]he second factor of the mootness exception requires that the question presented is likely to arise in the future with respect to the complaining party or individuals who are similarly situated to the complainant." *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 160, 460 P.3d 976, 983 (2020). Parties seeking to invoke this exception generally

need to provide more than mere assurance or speculation that the issue will repeat. *Washoe Cnty. Hum. Servs. Agency v. Second Jud. Dist. Ct.*, 138 Nev. 874, 878, 521 P.3d 1199, 1204 (2022); *Degraw v. Eighth Jud. Dist. Ct.*, 134 Nev. 330, 333, 419 P.3d 136, 139 (2018).

Here, the district court found that, given the uniqueness of the abeyance, PCWCD's claims were unlikely to reoccur. The district court did not address whether any of PCWCD's other claims were likely to reoccur. PCWCD argues that even if the abeyance was an anomaly, its claims involving the alleged misappropriation of its water rights are likely to arise in the future as they involve violations of Nevada law.

Even if we were to agree that the district court should have analyzed the likelihood of PCWCD's non-abeyance-related claims recurring, PCWCD fails to show that disputes over temporary water permits are commonplace. Consistent with our previous decisions, we decline to credit PCWCD's mere assertion that these issues will repeat, absent more information. *Cf. Washoe Cnty. Hum. Servs. Agency*, 138 Nev. at 878, 521 P.3d at 1204. Similarly, the fact that PCWCD alleges violations of Nevada law is insufficient to show that its claims will likely recur. Most, if not all, actions before this court allege a violation of Nevada law. If the threshold for the second element were this low, then virtually every claim would meet it. We decline to render this element a functional nullity and thus conclude that PCWCD has not met its burden in showing that the issues present in its petition for judicial review are likely to reoccur.¹ We accordingly

¹Given our conclusion that the district court did not err on the second factor of the capable-of-repetition-yet-evading-review test, we decline to address the first and third inquiries.

conclude that the district court did not err in dismissing PCWCD's petition
and

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Bryce Shields, District Judge
Lansford W. Levitt, Settlement Judge
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Clerk of the Court/Court Administrator