

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. HOWELL AND CHERI A.
HOWELL,
Appellants,

vs.

HUGH RICCI, P.E., STATE ENGINEER,
DIVISION OF WATER RESOURCES,
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES; AND
PACIFIC RECLAMATION WATER
COMPANY, A NEVADA
CORPORATION,
Respondents.

No. 39788

FILED

APR 01 2004

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

ORDER OF AFFIRMANCE

Michael and Cheri Howell appeal the district court's denial of their petition for judicial review of a State Engineer decision refusing their report of conveyance of rural water rights.¹

The Howells contend on appeal that the district court misapplied governing statutory requirements in affirming the decision of the State Engineer and, thus, erroneously: applied a substantial evidence standard in its evaluation of the petition for judicial review; concluded that substantial evidence supported the State Engineer's determination; found that the petition was procedurally barred; and failed to grant equitable relief. Additionally, the Howells argue that the State Engineer arbitrarily approved another transfer of water rights under the same claim number, and that the State Engineer violated their procedural due process rights. We affirm.

¹See NRS 533.450(8).

FACTUAL AND PROCEDURAL BACKGROUND

This is a dispute over 116.43 acres of water rights that were adjudicated as a part of proof 608 of the Humboldt Decree.² Metropolis Land Company originally held the subject rights through permits 1000 and 1807. Pacific Reclamation Water Company ultimately acquired these water rights through later transfers.

On June 14, 1944, Pacific Reclamation filed applications 11125 and 11127 with the State Engineer to change the point of diversion, manner and place of use of the 116.43 acres (again, a portion of the public water rights appropriated under proof 608). The applications sought to move the existing point of diversion away from the Howells' land,³ then owned by one of their predecessors in interests, Alonzo Knudsen, to land owned by Pacific Reclamation. The State Engineer published Pacific Reclamation's applications in the Wells, Nevada, newspaper for five weeks, from July 7, 1944 until August 4, 1944.

On September 12, 1944, the State Engineer granted Pacific Reclamation's applications. This had the effect of divesting the Knudsen/Howell property of its appurtenant riparian rights. Pacific Reclamation did not record a deed or instrument of conveyance regarding the appropriation with the State Engineer or the county recorder. However, Pacific Reclamation's applications and permits remained on file

²"In 1930 and 1935, [a district court] entered two decrees that adjudicated rights to the waters in the Humboldt River and its tributaries These decrees are collectively referred to as the 'Humboldt Decree.'" State Engineer v. Sustacha, 108 Nev. 223, 224, 826 P.2d 959, 959 (1992).

³The land was specifically described in the applications as NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 1, Township 38N, Range 61E (application 11125), and SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 2, Township 38N, Range 61E (application 11127) M.D.B.&M.

with the State Engineer, and Mr. Knudsen never challenged their issuance. Despite these permits, the headgates to the property remained open for many years until after the Howells' acquisition of the parcel.

On June 18, 1962, Mr. Knudsen sent a letter to the State Engineer regarding one of Pacific Reclamation's permits. In its reply, the State Engineer confirmed their validity. In 1986, the State Engineer also sent letters to Royce Wood, another predecessor of the Howells, reaffirming the validity of Pacific Reclamation's permits and stated, "a water right no longer exists in [your property]."⁴ This notwithstanding, the State Engineer did not terminate the distribution of water to the property in question.

On August 19, 1997, Mr. and Mrs. William Robert Hawks, the immediate predecessors to the Howells, submitted a report of conveyance to the State Engineer in their favor. In this, the Hawks presented their chain of title to the property and requested the State Engineer assign the 116.43-acre portion of proof 608 to show them as the current owners of record. The Howells acquired this property from the Hawks on August 20, 1997.

On February 11, 1999, the State Engineer replied that Pacific Reclamation's 1944 permits were valid and had effectively transferred the water rights appurtenant to the Hawks' land to a new place of use.

The Hawks challenged the State Engineer's determination via a separate letter dated May 25, 1999, asserting that, because Pacific Reclamation did not appear in their chain of title, the 1944 transfer of

⁴The subject property, from which the rights had been diverted, was again specifically described in the letter as "Section 1 and 2, T.38N, R.61E, M.D.B.&M."

water rights to Pacific Reclamation evidenced by the permits was incorrect. On June 15, 1999, the State Engineer stated that its records demonstrated the Hawks as owners of the subject portion of proof 608. This determination was expressly "subject to amendment upon receipt of additional documentation."

By letter of July 19, 1999, the State Engineer rescinded the June 15, 1999 notice, stating that no appurtenant water rights existed under proof 608 in connection with the subject property.⁵

On August 18, 1999, the Howells filed a petition for judicial review challenging the implied ruling set forth in the State Engineer's July 19, 1999 letter to the Hawks. The district court sustained the State Engineer's decision to reject the Hawks'/Howells' report of conveyance and dismissed the Howells' petition for judicial review with prejudice. The district court concluded that the petition essentially sought review of the State Engineer's 1944 decision and, thus, was procedurally barred under NRS 533.405(1) and (3). The district court also affirmed the State Engineer's finding of a binding and legitimate conflict in the Howells' chain of title stemming from the preexisting Pacific Reclamation permits, which, by statute, prohibited the State Engineer from granting or accepting the report of conveyance. The Howells filed their timely appeal.

DISCUSSION

NRS 533.382

The Howells argue that the State Engineer's 1944 appropriation to Pacific Reclamation is not binding against them as a matter of law because Pacific Reclamation did not comply with NRS

⁵The State Engineer ordered the headgates to the subject property closed on April 28, 2000.

533.382, which requires that an application or permit to change the place of diversion, manner of use or place of use must be made by deed and recorded with the county recorder.⁶ Failures to comply with NRS 533.382 render such conveyances void as against subsequent purchasers.⁷

Nevada Compiled Laws were the applicable statutory laws in 1944. Under NCL 7951, a permit to appropriate water was binding if filed in the office of the State Engineer.⁸ The statutory construct in effect at that time did not require a party to file a deed with the county recorder or with the State Engineer.⁹ Thus, the Pacific Reclamation permits on file with the State Engineer satisfied all public notice and filing requirements extant at the time of their approval. Therefore, we conclude that Pacific Reclamation's permits were valid at the time of their issuance. Additionally, the NRS 533.382 requirements concerning water rights do not apply to Pacific Reclamation's permits. First, the legislature did not enact that provision until 1995; second, the statute must be prospectively applied.¹⁰

⁶NRS 533.382(1) and (3). Based upon this argument, the Howells contend that the district court erred in applying a substantial evidence standard of review to a question of law, which should have received a de novo review.

⁷NRS 533.383.

⁸Nev. Compiled Law § 7951 (1929).

⁹Id.

¹⁰The legislative history specifically states, "[t]he bill's provisions do not apply to transactions conducted prior to October 1, 1995." Nevada Legislative Counsel Bureau, Research Div., 68th Leg., Summary of Legislation 1 (Nev. 1995).

Substantial evidence

Having determined that the title was not defective under the 1995 statutory construct, our review is limited to whether substantial evidence supports the decision and, thus, we will not reweigh the evidence.¹¹ Substantial evidence is that which a reasonable person would accept in support of a conclusion.¹²

Under 533.386(1)(b), when confirming a record of conveyance, the State Engineer must determine that no conflict exists in the chain of title based on the submitted documents and any information on file with the State Engineer. "If the state engineer determines that the report of conveyance is deficient, he shall reject the report . . . and return it to the person who submitted it" ¹³

Upon receiving the Hawks' request for a report of conveyance, the State Engineer consulted the submitted chain of title documents and his own files regarding the subject land. The files contained the permits issued to Pacific Reclamation, which appropriated the water rights of the Hawks' property. Because the files clearly showed a conflict in the chain of title, we conclude that the State Engineer's decision is supported by substantial evidence.

Procedural bar

The Howells contend that they filed a timely appeal of the State Engineer's July 19, 1999 letter as required under NRS 533.450, and

¹¹State Engineer v. Morris, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991).

¹²McClanahan v. Raley's, Inc., 117 Nev. 921, 924, 34 P.3d 573, 576 (2001).

¹³NRS 533.386(2).

the district court erred in determining they were, of necessity, seeking judicial review of the State Engineer's 1944 permits to Pacific Reclamation.

NRS 533.450 establishes the procedure by which a person aggrieved by a decision or order of the State Engineer granting or denying a record of conveyance may obtain judicial review. A party must commence proceedings to review the decision or order within thirty days following its rendition.¹⁴ "This court strictly construes statutes dealing with mandatory filing dates in water rights actions"¹⁵

The implied ruling contained within the State Engineer's July 19, 1999 letter did not constitute a final determination as to the ownership of the subject water rights that would be subject to review under the Nevada Administrative Procedures Act. Rather, the State Engineer finally determined the subject rights in 1944 in accordance with then applicable notice and filing requirements. The failure of the Howells' predecessors to appeal the 1944 decision procedurally bars the Howells from contesting it.

Equitable relief

The Howells request equitable relief from the State Engineer's decision.

"[I]t is . . . settled in this state that the water law and all proceedings thereunder are special in character, and the provisions of such law not only lay down the method of procedure but strictly limit[] [the

¹⁴NRS 533.450(1).

¹⁵Preferred Equities v. State Engineer, 119 Nev. ___, ___, 75 P.3d 380, 383 (2003).

method] to that provided.”¹⁶ We have, however, under rare circumstances, indicated that decisions of the State Engineer may be an appropriate subject of equitable relief.

The present case is dissimilar from prior cases where we have affirmed or ordered equitable relief to property owners regarding the termination of water rights. In Engelmann v. Westergard,¹⁷ Bailey v. State of Nevada¹⁸ and State Engineer v. American National Insurance Company,¹⁹ the State Engineer cancelled water rights’ permits because the permittees failed to timely file proofs of beneficial use.²⁰ We held that a determination of the State Engineer to correctly cancel “a permit, pursuant to his statutory mandate, did not affect the power of the district court to grant equitable relief to the permittee when warranted.”²¹ Because there had been actual use or development in compliance with the Nevada water statutes, and because the failures to file the proofs were corrected within a reasonable time, we either affirmed awards of equitable relief or remanded with instructions to award the same.

¹⁶Preferred Equities Corp. v. State Engineer, 119 Nev. ___, ___, 75 P.3d 380, 383 (2003) (quoting Application of Filippini, 66 Nev. 17, 27, 202 P.2d 535, 540 (1949)).

¹⁷98 Nev. 348, 351, 647 P.2d 385, 387 (1982).

¹⁸95 Nev. 378, 383, 594 P.2d 734, 738 (1979).

¹⁹88 Nev. 424, 425, 498 P.2d 1329, 1330 (1972).

²⁰See NRS 533.410 (cancellation of water rights for failure to file beneficial use statements).

²¹Engelmann, 98 Nev. at 351, 647 P.2d at 387; see also Bailey, 95 Nev. at 381, 594 P.2d at 736; American Nat’l Ins. Co., 88 Nev. at 426, 498 P.2d at 1330.

We see no abuse of discretion in the district court's refusal to grant similar relief in the instant matter.²² In this case, the Howells did not detrimentally rely on the appurtenant water rights, knowing that the Hawks' record of conveyance was pending with the State Engineer prior to their purchase of the property. Additionally, Pacific Reclamation's permits had been on file with the State Engineer since approval in 1944, thus leaving the land the Howells purchased with no ownership in the water rights at issue. We therefore conclude that equitable relief under these facts is not warranted.

Dalton Livestock

The Howells contend that the State Engineer arbitrarily approved a record of conveyance for Dalton Livestock on a portion of proof 608, but refused to approve the Howells' record. However, the Dalton Livestock water rights on proof 608 do not include the 116.43 acres of appurtenant water rights owned by Pacific Reclamation, which the Howells contest. Additionally, the Howells fail to cite to any authority to support this contention. Therefore, we conclude that this argument lacks merit.²³

²²See Williams v. Rhodes, 393 U.S. 23, 65 (1968) (the traditional standard of review for the denial of equitable relief is whether the district court abused its discretion in denying equitable relief).


²³Plankinton v. Nye County, 95 Nev. 12, 12, 588 P.2d 1025, 1025 (1979) (error alleged as to dismissal of complaint would not be sustained on appeal absent citation of relevant authority).

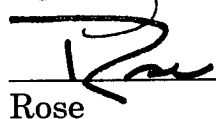
CONCLUSION


We affirm the district court judgment dismissing the Howells' petition for judicial review and affirming the State Engineer's decision to deny the report of conveyance. We conclude that: substantial evidence supported the State Engineer's decision; the district court correctly concluded that the Howells' petition was procedurally barred; and equitable relief is not warranted in this case. Accordingly, we

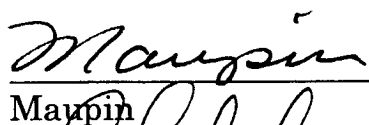
ORDER the judgment of the district court AFFIRMED.^{24 25}

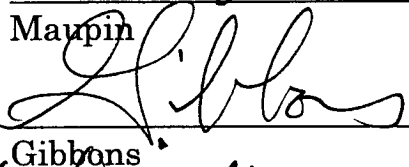
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Shearing

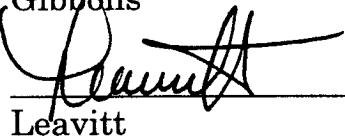
 _____, J.
Agosti

 _____, J.
Rose

 _____, J.
Becker

 _____, J.
Maupin

 _____, J.
Gibbons

 _____, D.J.
Leavitt

²⁴In light of our disposition of the other issues litigated in this appeal, we reject the Howells' claim that the original 1944 permits are void for lack of procedural due process.

²⁵The Honorable Michelle Leavitt, Judge of the Eighth Judicial District Court, was designated by the Governor to sit in place of the Honorable Myron Leavitt, Justice. Nev. Const. art. 6, § 4.

cc: Hon. Richard Wagner, District Judge
Marshall Hill Cassas & de Lipkau
Wilson & Barrows
Attorney General Brian Sandoval/Carson City
Goicoechea, DiGrazia, Coyle & Stanton, Ltd.
Humboldt County Clerk