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## Mineral County v. State, 20 P.3d 800 (Nev. 2001)

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## NEVADA

**Mineral County v. State, 20 P.3d 800 (Nev. 2001)** (denying petitioners' request for the issuance of a writ of mandamus and a writ of prohibition holding that the federal court, not the state supreme court, is the proper forum for the redress petitioners seek).

Petitioners, Mineral County and the Walker Lake Working Group, ("Mineral County"), filed an original proceeding against Respondents, the state of Nevada, the Department of Conservation and Natural Resources, and the State Engineer ("Nevada"). Mineral County claimed Nevada had abrogated their public trust obligations and petitioned the Nevada Supreme Court to issue a writ of mandamus compelling Nevada to protect and maintain state waters for the benefit of the public. Mineral County also asked the court to issue a writ of prohibition preventing Nevada from granting additional water rights, which could possibly decrease the availability of water in the lake. Nevada argued Mineral County should have filed their claim before the federal court because "substantially similar" litigation involving almost the same parties was already pending before that court. Nevada asserted the federal court had exclusive jurisdiction over water disputes concerning the Walker River system, as set forth in the language of the court's 1986 decree, which provided, in part: "This decree shall be deemed to determine all of the rights of the parties to this suit . . . The Court retains jurisdiction of this cause for the purpose of changing the duty of water or for correcting or modifying this decree; also for regulatory purposes." In response, Mineral County asserted even if the federal court had exclusive jurisdiction, it did only over private appropriators, not the state—as in the present case. Mineral County further argued the federal court's decree had not covered the applicability of the public trust doctrine—an issue it was "ill-suited" to address. Mineral County contended, therefore, the Nevada Supreme Court should consider their request for relief and issue the writs.

The issue was whether Petitioners had sought the proper forum wherein relief could be granted. In other words, should the Nevada Supreme Court override the district court's jurisdiction to interpret previously adjudicated water rights involving the Walker River system? After considering the applicable law, the court concluded it would be illogical and counterproductive if it were to override the federal court's exclusive jurisdiction to interpret and apply its own decisions by attempting to construe what the federal court had meant in its judgment in the first place. The court added that because the decree involved the allocation of interstate waters between California and Nevada, the federal court had an interest in retaining exclusive jurisdiction to ensure consistency in the application of its ruling.

The court held as follows. First, actions seeking the allocation of

water involve the disposition of property. Moreover, the first court (federal or state), that assumes jurisdiction over real property, will be the one to have continuing and exclusive jurisdiction over that property. Thus, because Nevada law treats water rights as real property, and the federal decree court was the first to adjudicate the subject water rights in 1936, the Nevada Supreme Court held the federal decree court had “exclusive” jurisdiction. The federal decree court also had “continuing” jurisdiction because a lawsuit covering substantially the same issues and parties as the ones in the present case was currently pending before it. Next, although the Nevada Supreme Court recognizes it has original jurisdiction to issue the writ of mandamus, such relief will only be available when the action to be compelled is one that the law already requires. However, if a petitioner shows that writ relief is urgent and necessary, the court may, nevertheless, grant the same. A writ of prohibition is “the counterpart” of the writ of mandate. It does not correct any errors, but its purpose is to prevent courts from over-extending the limits of their judicial power. In short, both writs are a form of extraordinary remedy that will not be issued if petitioner has at his disposal a “plain, speedy, and adequate remedy in the ordinary course of law.” The court is not obligated to issue such writs because they are purely discretionary.

Because Petitioners failed to demonstrate extenuating circumstances existed to warrant the issuance of the writs, and because they had a more appropriate forum in which to seek remedy—the federal decree court—the Nevada Supreme Court denied Mineral County’s request for relief.

*Gloria M. Soto*

**United States v. State Eng’r, 27 P.3d 51 (Nev. 2001)** (holding that judicial review was warranted when the State Engineer went beyond the “plain meaning” of a statute when he denied stockwater permits to the United States Department of the Interior, Bureau of Land Management).

The Bureau of Land Management (“BLM”) filed nine stockwater permit applications for public lands in Douglas County, Nevada. The State Engineer for the state of Nevada denied these applications on the grounds that the BLM was not a qualified applicant under the terms of a Nevada statute. Section 533.503 of the Nevada Revised Statutes regulates state water appropriation permits that allow livestock watering on public lands. The BLM petitioned the Ninth Judicial District Court, Douglas County, Nevada, for judicial review of the nine denied permit applications. The court denied judicial review, and the BLM then appealed to the Supreme Court of Nevada.

The supreme court examined the scope and constitutionality of the statute at issue. Section 533.503 of the Nevada Revised Statutes