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PERMITTING PROCESS: State high court deals setback to pipeline proposal for Southern Nevada

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A state Supreme Court ruling issued Thursday could seriously delay or halt a multibillion-dollar plan to supply Las Vegas with groundwater from across eastern Nevada.

In a stunning reversal of a District Court decision, the Supreme Court ruled that the groundwater applications underpinning the pipeline project might not be valid, raising the possibility that the Southern Nevada Water Authority will have to start the state permitting process all over again.

Within hours of the decision, Utah officials announced they were backing away from a water-sharing agreement with Nevada, and the authority filed a flurry of new water applications.

One longtime critic of the pipeline project, White Pine County Commissioner Gary Perea, called on the authority to "go back to the beginning and do this right" or "simply abandon the scheme and work to make Las Vegas sustainable."

At issue are the dozens of applications filed by the Las Vegas Valley Water District with the state engineer in 1989 for unappropriated groundwater in rural areas as much as 300 miles away. The water was originally sought to supply growth in Southern Nevada, but it is now seen as a safety net for a community that gets 90 percent of its water from the drought-stricken Colorado River.

At the time of the massive filing, Nevada law required the state's chief water regulator to act on applications within one year, but the district's water requests would not be heard for almost two decades.

In 2003, with the district's applications still pending, the Legislature passed a law that addressed that discrepancy by waiving the one-year rule for water sought for municipal use. In its unanimous opinion Thursday, however, the Supreme Court said the district's filings were already far too old in 2003 to be covered by such an exemption.

But the justices stopped short of nullifying the applications altogether. Instead, they sent the matter back to the rural District Court, where a judge will decide whether the Southern Nevada Water Authority, which is now responsible for the water district's filings, should be required to submit new applications for the groundwater it wants in rural Clark, Lincoln and White Pine counties.

The lower court also could decide to let the older applications stand but require the state engineer to hear new protests on those filings.

State law limits the protest period to 30 days after an application is filed, which means only those who lodged protests within that window 21 years ago were allowed to participate directly in hearings on the groundwater withdrawals.

Authority officials have 18 days to file a motion for reconsideration with the high court.

There is no telling how long it could take for the water authority to repeat the entire state permitting process and no guarantee that the state engineer will decide to grant the agency any water the second time around.

John Entsminger, deputy counsel for the water authority, said having to restart the process would mean "additional time and additional hearings, but I can't quantify that at this point."

Authority spokesman J.C. Davis said there is a real chance the project won't be delayed because the authority board hasn't voted to build it yet.

All that is going on right now is a federal environmental review and the state permitting process, work that water authority Deputy General Manager Kay Brothers vowed to continue.

"We're committed to getting the (environmental impact statement) done on time," she said.

The authority already has spent tens of millions of dollars on studies, preliminary designs and legal work for the project, which is expected to supply Las Vegas with enough water for more than 250,000 homes.

The network of pipes, pumps and reservoirs would cost between $2 billion and $3.5 billion to build, according to authority estimates now several years old.

Davis acknowledged that having to start the permitting process all over again involves uncertainty and could take some time, but he said in the end it probably won't to change anything.

"You go through the process. You get more protests, but the science is the same," he said. "You're not going to get any fresh arguments."

The Supreme Court action is the proposed pipeline's second major setback. In October, a District Court struck down a state engineer's ruling granting the authority water rights in three Lincoln County watersheds. That case is now on appeal before the state Supreme Court.

Thursday's ruling came in response to a separate case from 2006 involving a group of White Pine County residents and conservationists who sued for the right to participate in the state hearings on the authority's applications.

The lawsuit filed in Ely included 54 plaintiffs, most of them residents or property owners in White Pine County and Utah. They were joined in the lawsuit by the national environmental group Defenders of Wildlife and the Great Basin Water Network, an advocacy group formed to fight the pipeline project.

In a statement, the network's coordinator, Rose Strickland, called the ruling a "home run for the public."

"The Supreme Court followed Nevada water law. If we follow the law and the science, there will be no misguided pipeline threatening the environment and economies of rural Nevada and Utah," Strickland said.

Officials from the Nevada Department of Conservation and Natural Resources were "still digesting the ruling" on Thursday and declined to comment, said Bob Conrad, spokesman for the department, which includes the state engineer's office.

Though the ruling specifically concerns the authority's groundwater applications in Spring Valley, it could have implications well outside that White Pine County watershed and not merely for the authority.

Entsminger said the decision could jeopardize more than 1,800 water applications that have been pending with the state for more than a year.

It also calls into question permits issued on applications that took more than a year to be reviewed and are being used to supply water to communities, farms, mines and power plants across Nevada, he said.

Because of a backlog of water applications and their complexity, the one-year rule is rarely met, he said.

Entsminger predicted the Supreme Court's decision could trigger a "race to the state engineer's office" by those who fear their applications could be in jeopardy.

Within hours of the ruling, the water authority refiled 40 of its applications for groundwater in Lincoln and White Pine counties, just in case. Because state law requires water applications to be considered in the order they are filed, the authority wanted to make certain it would be first in line should the courts throw out its earlier filings, explained Brothers, the authority's deputy general manager.

By Thursday afternoon, the ruling prompted Utah Gov. Gary Herbert to stop work on a contentious water sharing agreement between Nevada and Utah.

Officials from the two states were said to be close to signing a deal to divide groundwater and protect the environment in Snake Valley, a massive watershed that straddles the border and lies at the northern end of the authority's proposed pipeline.

Now that agreement -- like the pipeline project itself -- has been turned upside down.

"This ruling significantly changes the landscape upon which our ongoing discussions have been based," Herbert said in a statement. "It allows us to revisit the proposed agreement with the state of Nevada and ensure that our continued desire to protect Utah's water interests and the environment is met."

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