

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 27 2022 03:33 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

ADAM SULLIVAN, P.E., NEVADA STATE
ENGINEER, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Appellant,

vs.

LINCOLN COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
COYOTE SPRINGS INVESTMENT, LLC;
NEVADA COGENERATION ASSOCIATES
NOS. 1 AND 2; APEX HOLDING
COMPANY, LLC; DRY LAKE WATER,
LLC; GEORGIA-PACIFIC GYPSUM, LLC;
REPUBLIC ENVIRONMENTAL
TECHNOLOGIES INC.; SIERRA PACIFIC
POWER COMPANY d/b/a NV ENERGY;
NEVADA POWER COMPANY d/b/a NV
ENERGY; THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS;
MOAPA VALLEY WATER DISTRICT;
WESTERN ELITE ENVIRONMENTAL,
INC.; BEDROC LIMITED, LLC; CITY OF
NORTH LAS VEGAS; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents. _____/

SOUTHERN NEVADA WATER
AUTHORITY,

Appellant,

SUPREME COURT NO. 84739
District Court Case No. A816761
(Consolidated with Supreme
Court Cases 84741, 84742 and
84809)

SUPREME COURT NO. 84741
(Consolidated with Supreme
Court Cases 84739, 84742 and
84809)

vs.

LINCOLN COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
COYOTE SPRINGS INVESTMENT, LLC;
NEVADA COGENERATION ASSOCIATES
NOS. 1 AND 2; APEX HOLDING
COMPANY, LLC; DRY LAKE WATER,
LLC; GEORGIA-PACIFIC GYPSUM, LLC;
REPUBLIC ENVIRONMENTAL
TECHNOLOGIES INC.; SIERRA PACIFIC
POWER COMPANY d/b/a NV ENERGY;
NEVADA POWER COMPANY d/b/a NV
ENERGY; THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS;
MOAPA VALLEY WATER DISTRICT;
WESTERN ELITE ENVIRONMENTAL,
INC.; BEDROC LIMITED, LLC; CITY OF
NORTH LAS VEGAS; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents. /

CENTER FOR BIOLOGICAL DIVERSITY,

Appellant,

vs.

LINCOLN COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
COYOTE SPRINGS INVESTMENT, LLC;
NEVADA COGENERATION ASSOCIATES
NOS. 1 AND 2; APEX HOLDING
COMPANY, LLC; DRY LAKE WATER,
LLC; GEORGIA-PACIFIC GYPSUM, LLC;
REPUBLIC ENVIRONMENTAL
TECHNOLOGIES INC.; SIERRA PACIFIC
POWER COMPANY d/b/a NV ENERGY;
NEVADA POWER COMPANY d/b/a NV

SUPREME COURT NO. 84742
(Consolidated with Supreme
Court Cases 84739, 84741 and
84809)

ENERGY; THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS;
MOAPA VALLEY WATER DISTRICT;
WESTERN ELITE ENVIRONMENTAL,
INC.; BEDROC LIMITED, LLC; CITY OF
NORTH LAS VEGAS; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents. /

MUDDY VALLEY IRRIGATION
COMPANY,

Appellant,

vs.

LINCOLN COUNTY WATER DISTRICT;
VIDLER WATER COMPANY, INC.;
COYOTE SPRINGS INVESTMENT, LLC;
NEVADA COGENERATION ASSOCIATES
NOS. 1 AND 2; APEX HOLDING
COMPANY, LLC; DRY LAKE WATER,
LLC; GEORGIA-PACIFIC GYPSUM, LLC;
REPUBLIC ENVIRONMENTAL
TECHNOLOGIES INC.; SIERRA PACIFIC
POWER COMPANY d/b/a NV ENERGY;
NEVADA POWER COMPANY d/b/a NV
ENERGY; THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS;
MOAPA VALLEY WATER DISTRICT;
WESTERN ELITE ENVIRONMENTAL,
INC.; BEDROC LIMITED, LLC; CITY OF
NORTH LAS VEGAS; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents. /

SUPREME COURT NO. 84809
(Consolidated with Supreme
Court Cases 84739, 84741 and
84742)

**COYOTE SPRINGS INVESTMENTS, LLC’S REPLY IN SUPPORT OF
MOTION TO DISMISS THE APPEALS OF SNWA, CBD, AND MVIC**

Respondent Coyote Springs Investments, LLC (“CSI”) replies in support of its motion to dismiss the appeals of Southern Nevada Water Authority (“SNWA”) (designated as Case No. 84741), Center for Biological Diversity (“CBD”) (designated as Case No. 84742), and Muddy Valley Irrigation Company (“MVIC”) (designated as Case No. 84809) as follows.¹

I. INTRODUCTION

MVIC, SNWA, and CBD challenged Order 1309 in the District Court. All three prevailed. MVIC, SNWA, and CBD appeal in order to have an opportunity to influence this Court’s interpretation of the State Engineer’s statutory authority. However, MVIC, SNWA, and CBD fail to identify any property interests impacted by the District Court’s Order. These parties cannot identify any grievance because they did not gain or lose any property interests when the District Court vacated Order 1309. MVIC, SNWA, and CBD are not aggrieved parties with standing to appeal. Accordingly, these appeals must be dismissed.

///

¹ CSI additionally incorporates by reference the arguments and legal authorities set forth in the Reply of Lincoln County Water District and Vidler Water Company, Inc. in Support of Motion to Dismiss the Appeal of SNWA; the Reply of Lincoln County Water District and Vidler Water Company, Inc. in Support of Motion to Dismiss the Appeal of CBD; and Reply of Lincoln County Water District and Vidler Water Company, Inc. in Support of Motion to Dismiss the Appeal of MVIC as though fully set forth herein.

II. MVIC’S GENERAL INTEREST IN THE SCOPE OF THE STATE ENGINEER’S AUTHORITY DOES NOT RENDER MVIC AN AGGRIEVED PARTY FOR PURPOSES OF THIS APPEAL

MVIC’s Response makes clear that MVIC lacks standing to participate as an appellant in this appeal. First, MVIC argues that this is a “non-adversarial proceeding” and “[t]his has never been a case between CSI and MVIC”. MVIC misses the point. For MVIC to have standing as an *appellant*, it must have a case or controversy with the *respondent*. The respondent here is CSI (and the other successful petitioners), with whom MVIC has now conceded it has no issue.

Second, MVIC argues that it has a property interest impacted by the District Court’s Order. However, MVIC identifies no property interest. Rather, MVIC contends that its appeal is “motivated by the error in the District Court’s reasoning that the NSE does not have authority for joint and conjunctive management”. Response, 4. But the general scope of the State Engineer’s statutory authority does not implicate any property interest of MVIC.

Finally, MVIC argues that it has standing because the District Court’s ruling restricted the authority of the State Engineer and therefore, restricted the “rights of MVIC”. Response, 4. This is the exact type of generalized interest that this Court has rejected in the past. *See Ford v. Showboat Operating Co.*, 110 Nev. 752, 756, 877 P.2d 546, 549 (1994) (“A party who prevails in the district court and who does not wish to alter any rights of the parties arising from the judgment is not

aggrieved *by the judgment.*”). While MVIC tries to gloss over the fact that it challenged Order 1309 and therefore, prevailed because the District Court declared Order 1309 void, MVIC unequivocally is a prevailing party.

MVIC relies on *Jacinto v. Penny Mac Corp.* to assert that because MVIC was not granted all of the relief it sought, it is an aggrieved party. MVIC’s reliance on *Jacinto* is misplaced. In *Jacinto*, the Court reiterated that “a party is aggrieved when a judgment causes a ‘substantial grievance,’ such as the denial of some personal or property right.” 129 Nev. 300, 303, 300 P.3d 724, 726 (2013). In *Jacinto*, the appellant was sanctioned \$3,500. *Id.* Thus, this Court concluded that *Jacinto* had standing to appeal because “the denial of his loan modification request adversely and substantially affected his property rights such that he was aggrieved by the district court’s decision regarding the imposition of sanctions.” *Id.* at 303-04, 300 P.3d at 726.

Here, unlike in *Jacinto*, and as conceded by MVIC, the question on appeal is only a question of statutory interpretation to determine the scope of the State Engineer’s authority. The District Court’s Order did not cause a “substantial grievance” to MVIC because MVIC challenged Order 1309 and thus, prevailed in the District Court. MVIC’s appeal must therefore be denied.

III. THE DISTRICT COURT’S ORDER DOES NOT IMPACT A PERSONAL OR PROPERTY RIGHT OF SNWA

SNWA argues that the District Court’s Order vacating Order 1309 impacts its

senior water rights in the Muddy River because CSI wants to use CSI's water rights in the Coyote Springs Basin *in the future*. But CSI cannot use those water rights without the State Engineer's approval (and only currently pumps approximately 1,200 afa of its water rights). SNWA's *prediction* that the State Engineer will allow CSI to use its water rights in the future *and* in a manner that will negatively impact SNWA's decreed rights is not sufficient to render SNWA an aggrieved party. *See Federated Ins. Co. v. Oakland Cnty. Rd. Comm'n*, 475 Mich. 286, 291, 715 N.W.2d 846, 850 (2006) ("To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency."). SNWA's allegations concerning its property rights are entirely speculative, unsupported, and would require several unpredictable contingencies to first occur. *In re Petition for Incorporation of the Vill. of Holiday City*, 1994-Ohio-405, 70 Ohio St. 3d 365, 371, 639 N.E.2d 42, 47 (explaining that a party's interest to have standing to appeal "must affect a substantial right and it must be immediate and pecuniary, and not a remote consequence of the judgment; a future, contingent or speculative interest is not sufficient.") (internal quotation marks omitted). SNWA's hyperbolic contention that the State Engineer cannot restrict CSI's water use in any manner other than by way of Order 1309 is overstated. The State Engineer must simply follow the law.

SNWA further contends that CSI cannot challenge SNWA's standing to

appeal because CSI stipulated that SNWA could intervene in the District Court. SNWA misunderstands the standing inquiry, which presents a jurisdictional question. Parties cannot stipulate to this Court having jurisdiction where it does not exist by rule or statute. *See Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994) (“This is a court of limited appellate jurisdiction. Specifically, this court has jurisdiction to entertain an appeal only where an appeal is authorized by statute or court rule.”). Moreover, a party’s status as an intervenor does not automatically grant the intervenor a right to appeal unless the intervenor is actually aggrieved by the final order. *See Las Vegas Police Protective Ass’n Metro, Inc. v. Eighth Jud. Dist. Ct.*, 122 Nev. 230, 239, 130 P.3d 182, 189 (2006) (explaining that while intervenors are generally afforded the same rights of a party to the action, only aggrieved parties can appeal). Therefore, CSI is not precluded from challenging SNWA’s standing to appeal.

Additionally, SNWA argues that CSI opposes “SNWA so they can increase pumping beyond the available supply”. That argument is ridiculous. SNWA phrases the issue in this manner to make it appear as though SNWA and CSI are adversaries such that SNWA has standing to appeal. SNWA Response, 2. CBD makes the same argument. CBD Response, 6. But CSI’s issue is not with SNWA or any other water rights holder in the basins within the Lower White River Flow System. Of course, CSI and SNWA disagree about the scope of the State Engineer’s authority and each

desire to use water in the relevant basins. However, neither CSI nor SNWA can restrict each other's pumping or allocation of water. That is the role of the State Engineer. SNWA would have this Court believe that the District Court's Order negatively impacts SNWA. This is false. The status quo was not changed. The District Court did not rule or order that CSI could pump water to SNWA's detriment. Without Order 1309 in place, CSI and the State Engineer must still go through the procedures set forth in Nevada's water law statutory scheme. Without Order 1309, the parties remain in the exact place they were prior to its issuance. Thus, SNWA does not have a case or controversy with either CSI or the State Engineer.

SNWA's desire to participate in this appeal is to have the opportunity to support the State Engineer and argue that the State Engineer has broader authority than the District Court held. But the scope of the State Engineer's authority affects SNWA no more than any other individual in the State of Nevada. SNWA prevailed in its challenge to Order 1309. SNWA is not an aggrieved party. *See In re Chester Cnty. Outdoor, LLC*, 64 A.3d 1148, 1151 (Pa. Commw. Ct. 2013) ("A prevailing party that disagrees with the legal reasoning of an order or a court or agency or may have had a particular issue decided against it lacks standing to appeal because it is not adversely affected by the order.") (internal quotation marks omitted); *Tuscola Area Airport Zoning Bd. of Appeals v. Michigan Aeronautics Comm'n*, No. 357209, 2022 WL 572561, at *2 (Mich. Ct. App. Feb. 24,

2022) (“An aggrieved party is not one who is merely disappointed over a certain result. Rather, to have standing on appeal, a litigant must have suffered a concrete and particularized injury, as would a party plaintiff initially invoking the court’s power.”) (quoting *Federated Ins. Co. v. Oakland Co. Rd. Comm.*, 475 Mich. 286, 291-292, 715 N.W.2d 846 (2006)); *Castaldi v. 39 Winfield Assocs., LLC*, 22 A.D.3d 780, 781, 803 N.Y.S.2d 716, 716 (2005) (“Merely because the order appealed from contains language or reasoning that a party deems adverse to its interests does not furnish a basis for standing to take an appeal”) (internal quotation marks omitted). SNWA’s appeal must be dismissed.

IV. LIKE SNWA, CBD’S RESPONSE IS BASED ON THE FALSE PREMISE THAT THE DISTRICT COURT’S ORDER PERMITS CSI TO PUMP ADDITIONAL WATER

CBD prevailed in the District Court. Notwithstanding, CBD (like SNWA and MVIC) wants to weigh in on the scope of the State Engineer’s authority. CBD’s generalized interest in Nevada law does not render CBD an aggrieved party. Perhaps recognizing its lack of standing, CBD falsely argues that “without Order 1309’s 8,000 acre-foot pumping cap, an additional 30,000 acre-feet of groundwater rights may now be pumped, threatening the very existence of the Moapa dace”. CBD Response, 7. Primarily, CBD challenged the 8,000 acre-foot pumping cap as arbitrary and capricious in its petition for judicial review. CBD cannot change positions now. But worse, CBD’s hypothetical that 30,000 acre-feet of water will

suddenly be pumped is completely unsupported. No water rights holder can imminently pump additional water without following the proper procedure to do so. Like SNWA, CBD's concerns are false, speculative, and not sufficient to confer standing upon CBD to participate in this appeal.

CBD's claims of harm to the Moapa dace are also purely hypothetical and based on future contingencies. The District Court's Order does not grant or permit pumping. The District Court's Order interprets the scope of the State Engineer's authority. The State Engineer now must find a lawful way to regulate the water at issue and can consider any impact to the Moapa dace if necessary.

CBD is not an aggrieved party. CBD is a prevailing party interested in the interpretation of Nevada water law. But that interest alone is insufficient to render CBD an aggrieved party. *See Kenney v. Hickey*, 60 Nev. 187, 105 P.2d 192, 193 (1940). Therefore, CBD's appeal must be dismissed.

///

///

///

///

///

///

///

V. CONCLUSION

CSI respectfully requests that this Court dismiss the appeals filed by SNWA, CBD, and MVIC as they are not aggrieved parties with standing to appeal.

DATED this 27th day of July, 2022.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

/s/ Hannah E. Winston

KENT R. ROBISON #1167

HANNAH E. WINSTON #14520

IN ASSOCIATION WITH:

BRADLEY J. HERREMA #10368
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106

WILLIAM L. COULTHARD #3927
COULTHARD LAW
840 South Ranch Drive, #4-627
Las Vegas, Nevada 89106

EMILIA K. CARGILL #6493
3100 State Route 168
P.O. Box 37010
Coyote Springs, Nevada 89037
Attorneys for Respondent
Coyote Springs Investment, LLC

CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 27(d), I hereby certify that this Reply in Support of Motion to Dismiss (“Reply”) complies with the formatting requirements of NRAP 27(d)(1), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because this Reply has been prepared in a proportionally spaced typeface using 14-point font, Times New Roman style. I further certify that this Reply complies with the page limits of NRAP 27(d)(2) as it does not exceed 10 pages, calculated in accordance with the exclusions of NRAP 32(a)(7)(C).

Pursuant to NRAP 28.2, I hereby certify that I have read this Reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Reply complies with all applicable Nevada Rules of Appellate Procedure.

I understand that I may be subject to sanctions in the event that this Motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 27th day of July, 2022.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

/s/ Hannah E. Winston
KENT R. ROBISON #1167
HANNAH E. WINSTON #14520

IN ASSOCIATION WITH:

BRADLEY J. HERREMA #10368
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106

WILLIAM L. COULTHARD #3927
COULTHARD LAW
840 South Ranch Drive, #4-627
Las Vegas, Nevada 89106

EMILIA K. CARGILL #6493
3100 State Route 168
P.O. Box 37010
Coyote Springs, Nevada 89037
Attorneys for Respondent
Coyote Springs Investment, LLC

CERTIFICATE OF SERVICE

I certify that on the 27th day of July 2022, I served a copy of **COYOTE SPRINGS INVESTMENTS, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS THE APPEALS OF SNWA, CBD, AND MVIC** upon all counsel of record:

 BY MAIL: I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

 BY FACSIMILE: I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:

 X BY EMAIL: By emailing a copy of the foregoing document on this date to the parties at the email addresses as follows:

PAUL G. TAGGART, ESQ.
TIMOTHY D. O'CONNOR, ESQ.
Taggart & Taggart, Ltd.
Email: paul@legaltnt.com; tim@legaltnt.com
Attorneys for LVVWD and SNWA

STEVEN C. ANDERSON, ESQ.
Las Vegas Valley Water District
Email: Sc.anderson@lvvwd.com
Attorneys for LVVWD and SNWA

SYLVIA HARRISON, ESQ.
McDonald Carano
Email: sharrison@mcdonaldcarano.com
Attorneys for Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.

SCOTT LAKE, ESQ.
Center for Biological Diversity
Email: slake@biologicaldiversity.org
Attorney for Center for Biological Diversity

///

JULIE CAVANAUGH-BILL, ESQ.
Cavanaugh-Bill Law Offices, LLC
Email: julie@cblawoffices.org
Attorneys for Center for Biological Diversity

ROBERT A. DOTSON, ESQ.
JUSTIN C. VANCE, ESQ.
Email: rdotson@dotsonlaw.legal / jvance@dotsonlaw.legal
Attorneys for Muddy Valley Irrigation Company

STEVEN D. KING, ESQ.
Email: kingmont@charter.net
Attorneys for Muddy Valley Irrigation Company

JORDAN W. MONTET
Marquis Aurbach Coffing
Email: jmontet@maclaw.com
Attorneys for Apex Holding Company, LLC and Dry Lake Water, LLC

 X BY ELECTRONIC SERVICE: by electronically filing and serving the
foregoing document with the Nevada Supreme Court's electronic filing
system:

JAMES N. BOLOTIN, ESQ.
AARON D. FORD, ESQ.
STEVEN G. SHERORSKI, ESQ.
LAENA ST-JULES, ESQ.
KIEL B. IRELAND, ESQ.
OFFICE OF THE ATTORNEY GENERAL
Attorneys for Respondent State Engineer

BRADLEY J. HERREMA, ESQ.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
Attorneys for Coyote Springs Investment, LLC

WILLIAM L. COULTHARD, ESQ.
COULTHARD LAW
Attorneys for Coyote Springs Investment, LLC

EMILIA K. CARGILL, ESQ.
Attorneys for Coyote Springs Investment, LLC

GREGORY H. MORRISON, ESQ.
PARSON BEHLE & LATIMER
Attorneys for Moapa Valley Water District

CHRISTIAN T. BALDUCCI, ESQ.
MARQUIS AURBACH COFFING
Attorneys for Apex Holding Company, LLC and Dry Lake Water, LLC

LUCAS FOLETTA, ESQ.
SARAH FERGUSON, ESQ.
JANE E. SUSSKIND, ESQ.
*Attorneys for Georgia-Pacific Gypsum LLC
and Republic Environmental Technologies, Inc.*

FRANCIS C. FLAHERTY, ESQ.
SUE MATUSKA, ESQ.
Attorneys for Nevada Cogeneration Association Nos. 1 and 2

SEVERIN A. CARLSON, ESQ.
SIHOMARA L. GRAVES, ESQ.
Attorneys for The Church of Jesus Christ of Latter-Day Saints

JUSTINA A. CAVIGLIA, ESQ.
MICHAEL D. KNOX, ESQ.
NEVADA ENERGY
*Attorneys for Sierra Pacific Power Company, dba NV Energy
Nevada Power Company, dba NV Energy*

THERESE A. URE-STIX, ESQ.
LAURA A. SCHROEDER, ESQ.
CAITLIN R. SKULAN, ESQ.
Attorneys for Bedroc and City of North Las Vegas

KAREN A. PETERSON, ESQ.
ALLISON MacKENZIE
*Attorneys for Lincoln County Water District and Vidler Water
Company, Inc.*

DYLAN V. FREHNER, ESQ.
LINCOLN COUNTY DISTRICT ATTORNEY
*Attorneys for Lincoln County Water District and Vidler Water
Company, Inc.*

WAYNE O. KLOMP, ESQ.
GREAT BASIN LAW
*Attorneys for Lincoln County Water District and Vidler Water
Company, Inc.*

DATED: This 27th day of July, 2022.

/s/ Christine O'Brien
An Employee of Robison, Sharp, Sullivan & Brust