

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA
STATE ENGINEER, DIVISION OF
WATER RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES; SOUTHERN NEVADA
WATER AUTHORITY; CENTER FOR
BIOLOGICAL DIVERSITY; and MUDDY
VALLEY IRRIGATION CO.,

Appellants,

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.

Case No.: 84739

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**MUDDY VALLEY IRRIGATION COMPANY'S RESPONSE IN
OPPOSITION TO COYOTE SPRINGS INVESTMENTS, LLC'S MOTION
TO DISMISS THE APPEALS OF SNWA, CBD AND MVIC**

Appellant MUDDY VALLEY IRRIGATION COMPANY (“MVIC”), by and through its counsel, STEVEN D. KING and DOTSON LAW, hereby files this response in opposition to Coyote Springs Investments, LLC’s (“CSI”) Motion to Dismiss the Appeals of SNWA, CBD and MVIC, filed on June 15, 2022 (“Motion to Dismiss”). This response in opposition is made and based upon the pleadings and papers on file herein, and the attached memorandum of Points and Authorities.¹

I. INTRODUCTION/PROCEDURAL BACKGROUND

Most of the material positions set forth in the previously filed Response in Opposition to the Motion to Dismiss the MVIC appealed filed by Lincoln County Water District’s and Vidler Water Company are applicable and determinative of this motion. On that basis the motion should be denied and for that reason those arguments are incorporated herein. However, there are some differences in the motions and through this response MVIC will endeavor to respond to those.

At the outset it is notable that CSI misstates MVIC position and actions below in a number of ways. MVIC did not settle its Petition for Judicial Review (“PJR”) or put the settlement on the record.² Although MCIC did support certain aspects of Order 1309 it did not settle with the Nevada State Engineer (sometimes “NSE” or “State Engineer”) and it was due to the lack of authority and need for involvement of the District Court that it was necessary to proceed with remaining argument. This was fortunate because, although counsel for MVIC believed they had reached what was thought to be an agreement on material terms. They were not able to agree when they attempted to memorialize those terms in a writing. It is also inaccurate to state that MVIC prevailed. MVIC did not prevail in any

¹ MVIC specifically incorporates by this reference the Response to Vidler Motion to Dismiss Appeal filed on June 29, 2022.

² See, Motion at page 2.

aspect or position taken by it. MVIC's PJR was ultimately dismissed by the District Court.

MVIC Position in its PJR was to challenge Order 1309 and sought remand correcting two aspects of Order 1309. MVIC argued that:

- a. The conflicts analysis of Order 1309 was improper; and
- b. Although it was proper to set a maximum sum of groundwater to be pumped from the collective water source, the 8000 figure set by the NSE was arbitrary as it did not meet the logical requirements to return the water source to a level that would return the decreed flows to the Muddy River.

Additionally, MVIC argued that its due process rights were violated in reaching the determination on conflicts as Order 1309 did without a meaningful opportunity to be heard.

MVIC position on appeal, as described in the previously filed response, is that the ruling of the District Court, the appealed from judgment or order, creates standing in MVIC as it is aggrieved by that decision. Contrary to the arguments of CSI, the issue of standing is not based upon a controversy between parties, this was not even an adversarial proceeding, but rather if the decision of the lower court creates an injury to the real and personal property rights of MVIC. As demonstrated by the previously filed papers this appealed from ruling puts MVIC in a worse position than it was, even before Order 1309 issued and certainly a worse position than before the District Court's ruling. Thus, MVIC is aggrieved by that ruling as required by NRAP 3A.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

MVIC Position on Appeal is as an aggrieved party that is challenging the ruling of the District Court. That is the determinative factor, not if there is a dispute with other parties. This has never been a case between CSI and MVIC, or

for that matter any other party. This is a PJR from an order of the NSE. This is and has always been a non-adversarial proceeding wherein parties have challenged the NSE ruling and intervened in each Petition for Judicial Review.³

III. ARGUMENT

A. MVIC has a Property Interest which is impaired by the District Court's Ruling.

The District Court vacated Order 1309, but it did not stop there. In vacating the Order 1309 the District Court made determinations which make it impossible to place MVIC in the same position it was in before Order 1309 was issued. CSI seems to, mistakenly, believe MVIC's appeal is motivated by its, CSI's, arguments. It is not. It is motivated by the error in the District Court's reasoning that the NSE does not have authority for joint and conjunctive management, even when addressing junior water users permitted by the actions of the NSE. That error would exist whether or not CSI existed. The reason MVIC has filed an appeal is in objection to those determinations in the District Court Ruling that undermine MVIC's rights and undermine the Muddy River Decree.

B. The District Court Ruling Restricts the Rights of MVIC by Restricting the Authority of the State Engineer.

It was not Order 1309 that protected MVIC water rights, it was the authority and power of the State Engineer to manage the junior groundwater permits he has issued. That authority was in large part withdrawn by the ruling of the District Court. Consequently, MVIC is an aggrieved party by that ruling and has standing to appeal under NRAP 3A. It is undisputable that a party has the right to appeal when the party is aggrieved by a final, appealable judgment or order. *Valley Bank*

³ Orders of District Court dated September 15, 2020, July 9, 2021 and September 13, 2021 granting intervention in each proceeding.

v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994). Similarly, “[t]o be aggrieved, a party must be adversely and substantially affected by the challenged judgment.” *Webb ex rel. Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009). Based upon these cases is clear therefore that it is the final judgement or order that is determinative of the right of a party to appeal. Here the appealed from decision causes injury to MVIC’s rights and therefore MVIC has standing to appeal.

Contrary to the arguments of CSI, even a party that has its Petition for Judicial Review granted may still have standing to appeal if that final determination fails to grant all of the relief sought. *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 302, 300 P.3d 724, 725 (2013). Here virtually none of the requests sought by MVIC were fulfilled by the ruling of the District Court and instead the decision undermined what had been the protections in place for MVIC before Order 1309 ever was written.⁴ Therefore, the position of MVIC in this appeal is analogous to that of the homeowner in *Jacinto*. Although one might argue that by striking Order 1309 the improper conflict determination is addressed, the denial of the relief sought and indeed even the simple denial of the PJR, like the homeowner, whose loan modification request was denied, results in an adverse and substantial affect upon MVIC’s property rights such that MVIC is aggrieved by the District Court's decision. *See, Jacinto v. PennyMac Corp.*, 129 Nev. 300, 303-04, 300 P.3d 724, 726 (2013).

IV. CONCLUSION

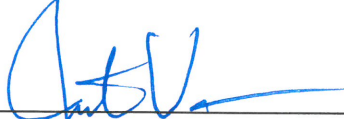
For the reasons stated here, MVIC is an aggrieved party as defined by NRAP 3A(a) and this appeal should not be dismissed.

⁴ No relief was granted to MVIC, but technically by vacating the Order 1309 the conflict determination that was complained of was eliminated.

Affirmation Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 6th day of July, 2022.



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CERTIFICATE OF SERVICE

I certify that on this date, I served a copy of the foregoing document upon all counsel of record by:

- Mail on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Dotson Law, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- By electronic service by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals at the email addresses set for the below.
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Dated this 6th day of July, 2022.



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