

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 15 2022 01:57 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 MOTION TO DISMISS THE
APPEALS OF SNWA, CBD, AND MVIC**

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Respondent Coyote Springs Investment, LLC (“CSI”) is a Nevada limited liability company. Wingfield Nevada Group Holding Company, LLC is a parent company of CSI, and no publicly traded company owns 10% or more of its stock.

CSI is presently represented by Kent Robison and Hannah Winston of Robison, Sharp, Sullivan & Brust, Bradley Herrema of Brownstein Hyatt Farber Schreck, LLP, William Coulthard of Coulthard Law, and Emilia Cargill.

In the course of the proceedings leading up to this appeal, CSI was also represented by Therese Shanks.

DATED this 15th day of June, 2022.

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

Respondent Coyote Springs Investments, LLC (“CSI”) moves 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). This Motion is based on the following Memorandum of Points and Authorities and the papers and pleadings on file with this Court.

Given the clear lack of standing requiring dismissal, CSI respectfully requests that this Court decide the Motions to dismiss prior to the Motions requesting stay.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

SNWA and MVIC are in a paradoxical dilemma. Both argued in the District Court that the State Engineer violated their due process rights. They won. No appeal is available for that victory. CBD is in a similar position. CBD argued that the 8,000 afa cap on pumping should be far lower and was therefore, arbitrary and capricious.

However, SNWA and MVIC also supported certain aspects of the State Engineer’s Order 1309. SNWA, MVIC, and the State Engineer joined forces and

aligned themselves in support of 1309. Thus, no dispute exists between SNWA, MVIC, and the State Engineer. SNWA, CBD, and MVIC are appealing what they won and appealing an issue that does not adversely affect any actual interest or property right.

Through this procedural gamesmanship, SNWA, CBD, and MVIC have outsmarted themselves. None have an appeal. On one hand, they have nothing to appeal because they prevailed, and on the other hand, their support of the State Engineer eliminates any judiciable controversy between and among these parties.

SNWA, CBD, and MVIC filed petitions for judicial review of Order 1309. SNWA, CBD, and MVIC settled their issues with the State Engineer. Thereafter, the District Court declared Order 1309 void.

SNWA, CBD, and MVIC's notices of appeal have several fundamental defects. Most obvious is that SNWA, CBD, and MVIC *challenged* Order 1309 and thereby, got what they wanted when the District Court declared Order 1309 void because it no longer has effect. Moreover, SNWA, CBD, and MVIC are not aggrieved parties with legally protectable property rights to confer standing upon them to participate as parties in this appeal. Further, neither SNWA, CBD, nor MVIC can establish an actual justiciable controversy with the State Engineer because they are aligned with the State Engineer. Finally, these parties have no actual justiciable controversy with CSI or the other respondents other than holding

a differing opinion on the interpretation and application of Nevada water law statutes.

SNWA, CBD, and MVIC want to participate in this appeal to act as amicus curiae parties to bolster and support the State Engineer's arguments in defense of Order 1309. As this Court is well aware, that is not a basis to file a notice of appeal, nor does it render these parties aggrieved. Because SNWA, CBD, and MVIC are aligned with the State Engineer and want to support Order 1309, there is no case or controversy between these parties and the State Engineer. The only controversy that exists between SNWA, CBD, MVIC and the other respondents like CSI, is a disagreement about the scope of the State Engineer's statutory authority and whether the State Engineer violated due process.

There is no case or controversy between SNWA, CBD, MVIC and the other respondents. Moreover, SNWA, CBD, and MVIC are not aggrieved parties because neither Order 1309 nor the District Court's Order created or stripped SNWA, CBD, or MVIC of legally protectable property interests. The State Engineer is capable of handling this appeal and arguing that Order 1309 is a lawful order. This Court does not need SNWA, CBD, and MVIC to file lengthy briefs simply in support of the State Engineer. These appeals must be dismissed.

II. FACTUAL BACKGROUND

CSI adopts and incorporates by reference the factual background set forth in

Lincoln County Water District's and Vidler Water Company, Inc's Motion to Dismiss the Appeals of SNWA, CBD, and MVIC (the "Vidler Motion to Dismiss")

III. LEGAL ARGUMENT

"This Court has consistently taken a restrictive view of those persons or entities that have standing to appeal as parties." *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994). Therefore, under NRAP 3A(a), "only 'aggrieved parties' may appeal." *Las Vegas Police Protective Ass'n Metro, Inc. v. Eighth Jud. Dist. Ct.*, 122 Nev. 230, 239, 130 P.3d 182, 189 (2006) (footnote omitted).

This Court has further explained that "[a] party is 'aggrieved' within the meaning of NRAP 3A(a) 'when either a personal right or right of property is adversely and substantially affected' by a district court's ruling." *Id.* at 239-40, 130 P.3d at 189 (quoting *Valley Bank*, 110 Nev. at 446, 874 P.2d at 734). Moreover, this Court noted that "[a]s we recognized in the 1913 case of *Esmeralda County v. Wildes*, a substantial grievance also includes '[t]he imposition of some injustice, or illegal obligation or burden, by a court, upon a party, or the denial to him of some equitable or legal right.'" *Id.* (quoting *Esmeralda County v. Wildes*, 36 Nev. 526, 535, 137 P. 400, 402 (1913)).

CSI adopts and incorporates by reference the standard of review and argument contained in Vidler's Motion to Dismiss. SNWA, CBD, and MVIC lack standing

because they have no legally protectable property interests that were created or harmed by the District Court's Order or by Order 1309. Moreover, SNWA, CBD, and MVIC prevailed in the District Court because they, like CSI, challenged Order 1309 and were successful.

SNWA, CBD, and MVIC, as intervening parties, defended the State Engineer and Order 1309 to the District Court. However, that does not mean that they are aggrieved parties under NRAP 3(A)(a) because their defense of Order 1309 does not implicate any equitable or legal right. Rather, SNWA, CBD, and MVIC simply attempted to support and supplement the State Engineer's Answering Brief. The desire to be the State Engineer's co-counsel does not mean that Order 1309 being declared void actually impacts or affects SNWA's, CBD's, or MVIC's *legal or equitable interests*.

This Court has explained that “[t]he primary purpose of this standing inquiry is to ensure the litigant will vigorously and effectively present his or her case against an adverse party.” *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). But CSI is not an “adverse party” to SNWA, CBD, or MVIC. While CSI certainly disagrees with SNWA's, CBD's, and MVIC's, legal analysis and interpretation of Order 1309, that does not make them adverse to each other because CSI cannot impact SNWA's, CBD's, or MVIC's legal interests or property rights in this litigation. SNWA, CBD, and MVIC no more have standing than any random

member of the public that disagrees with CSI's legal analysis and interpretation of Order 1309. This general interest is not sufficient to confer standing upon these parties as they have not suffered any "special", "peculiar", or "personal" injury. *See id.* (explaining that "a party must show a personal injury and not merely a general interest that is common to all members of the public").

Moreover, SNWA's attempt to establish standing to appeal by claiming that Order 1309 protects senior water rights holders is disingenuous and legally incorrect. Primarily, SNWA has not identified any actual interest or property right that is actually harmed or at risk of injury by Order 1309 being declared void. Order 1309 being declared void does not harm senior water rights holders but rather forces the State Engineer to find a legal way to effectively manage ground water in the effected basins. There are several tools and statutes available to the State Engineer to manage ground and surface water. Declaring Order 1309 void simply means the State Engineer has to use the available tools within the bounds of his statutory authority.

Furthermore, SNWA, CBD, and MVIC cannot establish standing because there is no justiciable controversy between them and the State Engineer. First, MVIC told the District Court that it and SNWA have settled their disputes with the State Engineer. They asked and were given permission to put their settlements "on the record". They did so.¹ However, SNWA and MVIC also asked to argue their

¹ The settlement was the product of some seriously disingenuous strategies. After

position in favor of Order 1309 after putting their settlement on the record.

The settlement “in principle” was described as resolving MVIC’s and SNWA’s petitions against the State Engineer. SNWA expressly stated that it had reached an agreement with the State Engineer. CBD also represented to the district court that it had reached an agreement (“in concept”) with the State Engineer.

Now, SNWA has backed off of the purported settlement. But even if these parties did not settle with the State Engineer, they have been and remain aligned with the State Engineer. SNWA’s and CBD’s Motions seeking stay make that abundantly clear as they defend and advocate for Order 1309. If this Court does not dismiss SNWA, CBD, and MVIC, this Court will receive nearly identical briefs from them and the State Engineer, all advocating for the State Engineer’s authority to enter Order 1309. There is no justiciable controversy between these parties and the State Engineer. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (“Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief.”) (internal quotation marks omitted).

Similarly, while CSI and these parties disagree about the interpretation and legal analysis of the issues involved, that does not mean that there is an actual

filing a multitude of briefs in the District Court, the parties appeared for closing argument before the District Court the week of February 14, 2022. On the last day of argument (February 17, 2022), SNWA, CBD, and MVIC made a bold, albeit contradictory announcement.

justiciable controversy between CSI, SNWA, CBD, and MVIC. The definition of a justiciable controversy is:

(1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (citation omitted).

Here, the appealing parties do not have a claim of right against CSI or the other respondents. SNWA, MVIC, and CBD may have had a claim against the State Engineer, which they either prevailed upon or settled with the State Engineer. However, SNWA, MVIC, and CBD do not have a claim of right against CSI. While CSI and these parties may ultimately have adverse interests, it is the State Engineer that ultimately impacts the parties' rights and interests—not each other. SNWA's, CBD's, and MVIC's differing legal opinion on the interpretation and application of Nevada water law does not make the parties adverse to create a justiciable controversy. Finally, and as noted above, SNWA, CBD, and MVIC do not have a legally protectable interest involved that would create a justiciable controversy.

SNWA, CBD, and MVIC's goal is clearly to advocate for and support the State Engineer's exercise of authority in issuing Order 1309. This goal does not make them aggrieved parties any more than any citizen. Accordingly, the appeals

should be dismissed.

IV. CONCLUSION

CSI respectfully requests that this Court dismiss the appeals filed by SNWA, CBD, and MVIC as they are not aggrieved parties and should not be permitted to participate in this appeal solely to advocate on behalf of the State Engineer.

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 15th day of June, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 27(d), I hereby certify that this Motion to Dismiss (“Motion”) 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 Opposition has been prepared in a proportionally spaced typeface using 14-point font, Times New Roman style. I further certify that this Opposition 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 Motion, 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 Motion complies with all applicable Nevada Rules of Appellate Procedure.

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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 15th day of June, 2022.

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CERIFICATE OF SERVICE

I certify that on the 15th day of June 2022, I served a copy of **COYOTE SPRINGS INVESTMENTS, LLC’S 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 ELECTRONIC SERVICE: by electronically filing and serving the foregoing document with the Nevada Supreme Court's electronic filing system:

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DATED: This 15th day of June, 2022.

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