

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA
STATE ENGINEER, et al.,

Appellants,

vs.

LINCOLN VALLEY WATER
DISTRICT, et al.,

Respondents.

Supreme Court No. 84739

**Consolidated with Nos. 84742,
84741, and 84809** Electronically Filed
Jun 16 2022 05:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT

GENERAL INFORMATION

1. Judicial District: Eighth; Department: 1; County: Clark; Judge: The Honorable Bitia Yeager; District Court Case Number: A-20-816761-C (consolidated).

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4. Nature of disposition below:

- a. Review of Agency Determination.

5. Does this appeal raise issues concerning any of the following?

- a. Child Custody: No
- b. Venue: No
- c. Termination of parental rights: No

6. Pending and prior proceedings in this court:

- a. *Center for Biological Diversity v. Sullivan, P.E., et al.*, Supreme Court No. 84742
- b. *Southern Nevada Water Authority v. Coyote Springs Investment, LLC, et al.*, Supreme Court No. 84741
- c. *Muddy Valley Irrigation Co. v. Sullivan, P.E., et al.*, Supreme Court No. 84809
- d. *Lincoln County Water District v. Wilson*, Supreme Court No. 81792

7. Pending and prior proceedings in other courts:

- a. *Coyote Springs Investment, LLC et al. v. State of Nevada et al.*, District Court for the Eighth Judicial District, No. A-20-820384-B, Pending

- b. *Lincoln County Water District and Vidler Water Company v. State of Nevada et al.*, United States District Court for the District of Nevada, No. 2:20-cv-01891-RFB-EJY, Pending
- c. *Coyote Springs Investment, LLC v. Jason King, Nevada State Engineer et al.*, District Court for the Eighth Judicial District, No. A-18-774817-J, Stipulated Dismissal on September 25, 2018
- d. *Coyote Springs Investment, LLC v. Tim Wilson, Acting Nevada State Engineer et al.*, District Court for the Eighth Judicial District, No. A-19-789203-J, Stipulated Dismissal Sept. 3, 2020

8. Nature of the action:

The Center appeals a District Court decision that vacated the State Engineer's Order 1309 and held that the State Engineer lacks statutory authority to both: (a) jointly manage various hydrographic basins that have been shown to share the same supply of water; and (b) conjunctively manage interconnected ground- and surface water resources. Order 1309 built on decades of investigation, fact-finding, and adjudication by the State Engineer regarding the Lower White River Flow System, an interconnected aquifer system in Southeastern Nevada that shares the same supply of water with the fully decreed Muddy River in Clark County. Order 1309 set forth the State Engineer's factual determinations that: (1) the Lower White River Flow System aquifer underlies six previously defined hydrographic basins and a portion of a seventh—Kane Springs Valley, Coyote Spring Valley, the Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountains Area; and (2) the maximum quantity of groundwater that can be pumped from the Lower White River Flow System aquifer without adversely affected senior Muddy River water rights and the endangered Moapa dace fish is no greater than 8,000 acre-feet annually and may be less. The District Court held that these aspects of Order 1309 exceeded the State Engineer's statutory authority and violated the due process rights of the prevailing petitioners.

9. Issues on appeal:

- a. Did the District Court err as a matter of law in holding that the State Engineer lacks statutory authority to jointly manage previously designated groundwater basins where substantial evidence shows that these basins share a common supply of groundwater?
- b. Did the District Court err as a matter of law in holding that the State Engineer lacks legal authority to conjunctively manage ground- and surface water resources where substantial evidence shows that these resources are connected?
- c. Did the District Court err as a matter of law in holding that the State Engineer's decision to combine groundwater basins for joint administration, where substantial evidence gathered during multiple public workshops and a two-week long administrative hearing showed that the basins share a commons supply of water, violated the due process rights of the prevailing petitioners?
- d. Does substantial evidence support the State Engineer's decision to combine seven basins in the Lower White River Flow System for joint administration and impose a cap on groundwater pumping?

10. Pending proceedings in this court raising the same or similar issues:

- a. *Nevada Gold Mines, LLC v. State, Department of Conservation and Natural Resources*, No. 87464—Extraordinary writ challenging the State Engineer's authority to conjunctively manage interconnected ground- and surface water resources.

11. Constitutional issues:

- a. This appeal does not challenge the constitutionality of a statute; however, the District Court held that the State Engineer's administrative hearing process and decision violated the Constitutional rights of the prevailing petitioners. An agency of the State of Nevada is a party.

12. Other issues:

- a. An issue arising under the United States and/or Nevada Constitutions
- b. A substantial issue of first impression
- c. An issue of public policy
- d. An issue where *en banc* consideration is necessary to maintain uniformity of this court's decisions
- e. Explanation:

The District Court held that the State Engineer violated the constitutional due process rights of the prevailing petitioners; however, the District Court did not declare any statute or regulation to be unconstitutional.

This case presents a substantial issue of first impression because it represents first direct challenge to the State Engineer's statutory authority to delineate and jointly administer an area consisting of multiple previously separate groundwater basins which, through hydrological investigation and scientific advancement, were determined to comprise a single aquifer sharing a single supply of ground- and surface water.

This is also the first direct challenge to the State Engineer's authority to conjunctively manage interconnected ground- and surface water resources.

13. Assignment to the Court of Appeals or retention in the Supreme Court:

- a. This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(8) as an administrative agency case involving a water determination.

14. Trial:

No trial was held; the District Court heard oral arguments over four consecutive days.

15. Judicial Disqualification:

The Center does not intent to file a motion to disqualify.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

April 19, 2022

17. Date written notice of entry of judgment was served:

April, 19, 2022, served electronically.

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRC 50(b), 52(b), or 59):

N/A

19. Date notice of appeal filed:

- a. State Engineer's Notice of Appeal: May 13, 2022
- b. The Center's Notice of Appeal: May 16, 2022
- c. The Southern Nevada Water Authority's Notice of Appeal: May 19, 2022
- d. The State Engineer's Amended Notice of Appeal: May 19, 2022.
- e. Muddy Valley Irrigation Company's Notice of Appeal: May 26, 2022

20. Specify statute or rule governing the time limit for filing the notice of appeal:

- a. NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

NRS 533.450(9)

This is an appeal from a final decision of the Eighth Judicial District Court based on multiple petitions for judicial review commenced in, or that had venue transferred to, the Eighth Judicial District.

This appeal originated from cases brought under NRS 533.450 and therefore appeal may be taken from the judgment of the District Court to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court under Article 6, Section 4 of the Nevada Constitution.

22. List all parties involved in the action or consolidated actions at the district court:

- a. Adam Sullivan, P.E., Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources

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23. Give a brief description of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

- a. Petitioners/Respondent-Intervenors the Center for Biological Diversity, Southern Nevada Water Authority, Las Vegas Valley Water District, and Muddy Valley Irrigation Company each challenged specific factual and legal conclusions included in Order 1309, but otherwise argued that the Order was lawful and based on substantial evidence.
- b. Petitioners Coyote Springs Investment, LLC, Lincoln County Water District, Vidler Water Company, Georgia-Pacific Gypsum LLC, Republic Environmental Technologies, Inc., Nevada Cogeneration Associates Nos. 1 and 2, Apex Holding Company, LLC, and Dry Lake Water, LLC argued that Order 1309 was unlawful on various grounds and not supported by substantial evidence.
- c. Respondent Adam Sullivan, P.E., and Respondent-Intervenors Moapa Valley Water District, Sierra Pacific Power Company d/b/a NV Energy, Nevada Power Company d/b/a NV Energy, and the Church of Jesus Christ of Latter-Day Saints argued that Order 1309 was lawful and based on substantial evidence.

- d. Respondent-Intervenors Western Elite Environmental, Inc., Bedroc Limited, LLC, and the City of North Las Vegas did not submit briefing or participate in oral argument

24. Did the judgment or order appealed from adjudicate all the claims alleged below and the rights and liabilities of all the parties to the action or consolidated actions below?

Yes

25. File-stamped copies of the following documents are attached:

- a. The latest-filed petitions for judicial review from all parties;
- b. The District Court’s Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review;
- c. Addendum and Clarification to the District Court’s Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review;
- d. Notices of Entry.

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement

Center for Biological Diversity
Name of appellant

Scott Lake, NV Bar 15765
Name of counsel of record

June 16, 2022
Date

/s/ Scott Lake
Signature of counsel of record

State of NV, County of Washoe
State and county where signed

CERTIFICATE OF SERVICE

I certify that I am an employee of the Center for Biological Diversity, and that on this 16th day of June, 2022 I served a true and correct copy of the foregoing by electronic service to the participants in this case who are registered with the Nevada Supreme Court's efilings system to this matter.

/s/ Scott Lake
Scott Lake

INDEX OF EXHIBITS

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