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 WATER DISTRICT,

Respondents.

Case No. 84739
Case No. 84741
Case No. 84742
Case No. 84809

District Court
Case No.
A816761

REPLY OF LINCOLN COUNTY WATER DISTRICT AND VIDLER WATER COMPANY, INC. IN SUPPORT OF MOTION TO DISMISS THE APPEAL OF CBD

Respondents, LINCOLN COUNTY WATER DISTRICT ("Lincoln") and VIDLER WATER COMPANY, INC. ("Vidler" or collectively "Respondents"), respectfully submit their reply in support of their motion to dismiss the appeal filed by the Center for Biological Diversity ("CBD") designated Case No. 84742.

MEMORANDUM OF POINTS AND AUTHORITIES

CBD's appeal should be dismissed because the only interest CBD has shown is that it desires to uphold illegal Order 1309 and it desires to appeal the district court's Order Vacating Order 1309. This Court should continue to reject such an interest as sufficient to file an appeal as an aggrieved party and invoke the Court's jurisdiction.

A. CBD prevailed below on its petition for judicial review and is not aggrieved by the district court's Order Vacating Order 1309.

In its Petition for Judicial Review, CBD requested the district court order the State Engineer to remove or strike findings made in Order 1309 regarding the amount of water that can be sustainably pumped in the Lower White River Flow System ("LWRFS"), i.e., the 8,000 acre-feet annually ('afa') cap, and that pumping will not conflict with Muddy River decreed rights. *See* State Engineer's and Center for Biological Diversity's Joint Motion to Consolidate Appeals and Modify Caption Exhibit 7 (CBD Petition for Judicial Review) at 18. The district court vacated Order 1309. SNWA APP MFS Vol. 2 at 224. Since Order 1309 had been vacated, the district court dismissed CBD's Petition in its May 13, 2022 Addendum and Clarification Order because CBD's requested relief was moot.

In other words, CBD received the relief it requested in its Petition by the district court's Order Vacating Order 1309 - the 8,000 afa pumping cap was stricken and findings that pumping does not conflict with Muddy River Decree rights were vacated. CBD cannot appeal from the district court's Order Vacating Order 1309 because the relief it requested was granted and it prevailed. *See Cottonwood Cove Corp. v. Bates*, 86 Nev. 751, 753, 476 P.2d 171, 172 (1970) (a party is not aggrieved by a district court ruling in that party's favor); *Bates v. Nevada Sav. & Loan Ass'n*, 85 Nev. 441, 444, 456 P.2d 450, 452 (1969) (Appellant was not a party aggrieved because of the limitation placed on the appellee's action by the trial court).

B. CBD is dissatisfied but has not shown it is an aggrieved party.

In *Kenney v. Hickey*, 60 Nev. 187, 105 P.2d 192, 193 (1940), the Court determined "the mere fact that a party could properly arouse the jurisdiction of the court below does not establish his right to appeal from an adverse decision." *Id*. at 192. In *Kenney*, the complainant sought to remove a Washoe County General Hospital trustee pursuant to statute; his action was dismissed, and he appealed. The Court determined the complainant was not an aggrieved party and refused to allow a party whose "status is nothing more than a dissatisfied party" to file an appeal. The Court determined "[t]he most that appears in this proceeding is that complainant desires to appeal. It is not enough." *Id*. at 193. The Court stated: "Appeals are not allowed for the purpose of settling abstract questions, however interesting or

important to the public generally, but only to correct errors injuriously affecting the appellant. *** Persons aggrieved, in this sense, are not those who may happen to entertain desires on the subject." (Cite omitted). *Id*., *see also State v. State Bank & Tr. Co.,* 36 Nev. 526, 137 P. 400, 402–03 (1913) (Receiver not aggrieved by general orders of court segregating creditors into classes or orders as to priority or preference of claims).

Further, the federal courts do not allow an appeal to be filed by an intervenor such as CBD where it has not shown how the district court's order affects it in a "personal and individual way" or it possesses a "direct stake in the outcome" of the case. *Hollingsworth v. Perry*, 570 U.S. 693, 705–07, 133 S. Ct. 2652, 2661–63, 186 L. Ed. 2d 768 (2013) citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, n.1, 112 S. Ct. 2130. In *Hollingsworth*, petitioners were intervenors who appealed a district court order that had not ordered them to do or refrain from doing anything. The district court enjoined the state officials named as defendants from enforcing an unconstitutional Proposition. The Supreme Court noted the petitioners had no direct stake in the outcome of their appeal as their only interest in having the district court order reversed was to vindicate the constitutional validity of a generally applicable California law. *Id*. at 705–06, 133 S. Ct. at 2662. In dismissing the appeal, the Supreme Court stated:

> We have repeatedly held that such a "generalized grievance," no matter how sincere, is insufficient to confer standing. A litigant "raising only

> a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy."

Id. at 706, 133 S. Ct. at 2662. The Supreme Court explained the personal, particularized injury requirement serves vital interests as to the role of the judiciary by ensuring that courts exercise power that is judicial in nature, not legislative. *Id*. at 715, 133 S. Ct. at 2667. CBD has not shown how it has any kind of particularized interest in the district court's Order Vacating Order 1309 which does not order CBD to do or not do anything. Nor has CBD shown any kind of particularized interest in illegal Order 1309 other than to vindicate the validity of State Engineer's Order 1309 combining seven hydrographic basins into one joint administrative unit and establishing a pumping cap. Even if the district court's order is reversed on legal grounds by this Court, this Court cannot reinstate Order 1309 because the district court did not rule the factual determinations made by the State Engineer were supported by substantial evidence. There is no redress the Court can award CBD in its appeal. CBD appears to support, in part, the State Engineer's position in his appeal. This is akin to an amicus, not an aggrieved party.

C. CBD's authority cited in its Opposition is inapposite.

The Courts in *Lujan v. Defs. Of Wildlife*, 504 U.S. 55, 112 S. Ct. 2130 (1992), *Wash. Cty. Water Conservation Dist. v. Morgan*, 82 P.3d 1125 (Utah 2003) and *Haik*

v. Jones, 427 P. 3d 1155 (Utah 2018) cited by CBD in its Opposition denied standing to the appellants in those cases. The Court determined the appellants were not aggrieved parties because there was no imminent injury or particularized injury shown by the appellants. These cases support Lincoln and Vidler's position CBD's appeal should be dismissed.

Ctr. For Biological Diversity v. United States Fish & Wildlife Serv., 807 F.3d 1031 (9th Cir. 2015) also does not support that CBD is an aggrieved party by the District Court's Order Vacating Order. That Court determined CBD had standing to challenge a Biological Opinion issued by the United States Fish and Wildlife Service under the Endangered Species Act ("ESA") for the Order 1169 pump test conducted in 2010-2012. CBD's appeal in this case has nothing to do with the ESA or challenging a Biological Opinion.

The district court's order does not adversely or substantially affect a personal or property right of CBD nor is there the imposition of some injustice, illegal obligation or burden, or the denial to CBD of some equitable or legal right by the district court's order. Any potential future harm to the Moapa dace or Muddy River decreed water right holders CBD relies upon to show it is an aggrieved party is speculative and indefinite.

Lincoln and Vidler ask this Court to dismiss CBD's appeal.

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Respectfully submitted this 20th day of June, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

✓ Court's electronic notification system

~ and ~

✓ Via E-Mail as follows:

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DATED this 20th day of June, 2022.

/s/ Nancy Fontenot
NANCY FONTENOT

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