

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,

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,

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

No. 84739

FILED

AUG 29 2022

ELIZABETH A. PROVIN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 84741

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 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

No. 84742

No. 84809

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.

*ORDER DENYING MOTIONS TO DISMISS,
GRANTING TEMPORARY STAY AND DIRECTING SUPPLEMENT,
AND SCHEDULING APPEAL CONFERENCE*

These are four consolidated appeals challenging April 19 and May 13, 2022, district court orders resolving petitions for judicial review of State Engineer Order 1309, which designated the Lower White River Flow System (LWRFS) and determined the amount of water that could be sustainably withdrawn therefrom. Currently before this court are two motions to dismiss and two motions for stay of the district court's order vacating Order 1309.

Motions to dismiss

Respondents Lincoln County Water District and Vidler Water Company, Inc. (collectively, Lincoln) have filed a motion to dismiss the appeals filed by appellants Southern Nevada Water Authority (SNWA) (Docket No. 84741), the Center for Biological Diversity (CBD) (Docket No. 84742), and Muddy Valley Irrigation Company (MVIC) (Docket No. 84809).¹ Respondent Coyote Springs Investments, LLC (CSI) also has filed a motion to dismiss those appeals, for substantially the same reasons. The moving respondents assert that SNWA, CBD, and MVIC lack standing to appeal because (1) they have no protectible interest in obtaining reinstatement of Order 1309 or that is otherwise affected by the district court's order and (2) they were granted the relief sought below, even if for reasons different from their arguments, and thus are not aggrieved by the district court's orders. They further assert that appellants cannot base any grievance on the Moapa dace because any interest in the fish is merely a general interest held in common with the public. Additionally, CSI asserts that no justiciable controversy exists between SNWA, CBD, and MVIC and any of the respondents or the State Engineer.

SNWA, CBD, and MVIC oppose the motions to dismiss, pointing out that the outcome of this matter affects their personal interests in senior decreed water rights or their (or their members') interests in protecting the endangered Moapa dace. They argue that they participated in the administrative proceedings preceding the State Engineer's order, as well as the district court proceedings, in which they were not granted the

¹Respondents Georgia-Pacific Gypsum, LLC, and Republic Environmental Technologies, Inc., filed a joinder to Lincoln's motion to dismiss on June 17, 2022.

relief they sought—the striking of certain findings and/or a lower cap on the amount of water that can be sustainably withdrawn from the LWRFS.

A party seeking to appeal from a district court order must be aggrieved by the order under NRAP 3A(a). “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.” *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (internal quotation marks omitted). “[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.’” *Las Vegas Police Protective Ass’n Metro, Inc. v. Eighth Judicial Dist. Court*, 122 Nev. 230, 240, 130 P.3d 182, 189 (2006) (quoting *State v. State Bank & Tr. Co.*, 36 Nev. 526, 535, 137 P. 400, 402 (1913)).

We conclude that SNWA, CBD, and MVIC have adequate standing to appeal. Order 1309 relates to the administration of these appellants’ determined rights (or their interests in the Moapa dace), and under NRS 534.030(3), that order is subject to judicial review as provided in NRS 533.450. In relevant part, NRS 533.450(1) allows “any person feeling aggrieved by any order or decision of the State Engineer, . . . affecting the person’s interests, when the order or decision relates to the administration of determined rights” to petition for judicial review. This court has stated that the clause “any person” in NRS 533.450(1) “signifies inclusiveness, not limitation.” *In re Nevada State Eng’r Ruling No. 5823*, 128 Nev. 232, 239, 277 P.3d 449, 453-54 (2012); see also *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 807 F.3d 1031, 1044 (9th Cir. 2015) (recognizing CBD’s interest in preserving the Moapa dace and in asserting a procedural injury). Although appellants

petitioned the district court for judicial review to address the portions of Order 1309 that they felt aggrieved by, the district court did not grant them the relief they requested but vacated the order altogether, which decision they feel impacts their ability to protect their interests. Nor is it clear that this court cannot reach those issues in this appeal. *See Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1148 (2010) (“In reviewing an order of the State Engineer, we are bound by the same standard of review as the lower court. Under this standard, we are to determine whether the evidence upon which the engineer based his decision supports the order.”). Thus, we conclude that these appellants are aggrieved by the district court’s order and having standing to challenge it, and we deny the motions to dismiss their appeals.

Motions for stay

In their stay motions, SNWA and CBD argue that, if the State Engineer is not able to enforce Order 1309 pending appeal, senior decreed rights and the Moapa dace’s survival will be at risk.² They note that an additional 22,000 afa groundwater could be pumped under existing permits, even though the State Engineer determined that no more than 8,000 afa could be pumped without impacting senior rights and fish habitat. They further assert that there is no other way to protect these interests because the district court, in determining that the State Engineer cannot jointly administer basins or conjunctively manage underground and surface waters, created uncertainty in how the State Engineer should use his statutory authority to effectively manage the subject basins. The State

²SNWA’s opposed motion for leave to file a stay motion with 14 pages in excess of the NRAP 27(d)(2) 10-page limit is granted; the motion was filed in Docket No. 84741 on June 1, 2022.

Engineer has joined in both stay motions, asserting that “in light of the findings in the Order Vacating Order 1309, the State Engineer is without means to address the next management and administrative steps to balance the interests of the water right holders within the LWRFS while being protective of the water resource.”

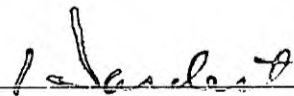
After reviewing the motions, the joinders, and the several oppositions and replies, we conclude that a temporary stay is warranted pending a response by the State Engineer further explaining his joinder. Therefore, within 10 days from the date of this order, we direct the State Engineer to file and serve a supplement to his joinder explaining, with specificity, his argument that the district court’s order limits his ability to proceed with balancing the various interests in the subject water resource. The supplement may be no longer than 10 pages. Respondents shall have 10 days from the date when the State Engineer’s supplement is served to file and serve a single, combined response to the supplement, no longer than 10 pages. No time- or page-limit extensions are permitted. The district court’s order vacating Order 1309 is hereby stayed pending our receipt and consideration of the State Engineer’s supplement and any response thereto and further order of this court.

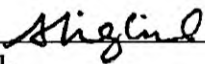
NRAP 33 conference

Finally, based upon our review of the documents before us, and in light of the multiple parties involved in the four consolidated appeals and the overlapping arguments that appear to exist, we direct the attorneys for the parties to appear before the Southern Panel at 2:30 p.m. on Wednesday, September 14, 2022, at the Supreme Court building in Las Vegas for an appeal conference to address the issues raised in these proceedings and any other matters that may aid in the disposition of the pending appeals. NRAP

33. Attorneys may appear in person or by video conference. In addition to any other matters the attorneys wish to raise, the attorneys should be prepared to (1) specify the issues for resolution in these appeals; and (2) discuss briefing and appendices for all four cases, such that the same arguments/briefs and supporting documentation are not duplicated in these matters.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Stiglich


_____, J.
Herndon

cc: Hon. Bitá Yeager, District Judge
Attorney General/Carson City
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Wingfield Nevada Group
Dotson Law
Robison, Sharp, Sullivan & Brust
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Marquis Aurbach Coffing
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McDonald Carano LLP/Reno
Justina Alyce Caviglia
Allison MacKenzie, Ltd.
Michael D. Knox
Kaempfer Crowell/Reno
Great Basin Law
Eighth District Court Clerk