

**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.

Electronically Filed  
Jun 08 2022 04:20 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 84741  
Case No. 84742  
Case No. 84809

District Court  
Case No.  
A816761

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**LINCOLN COUNTY WATER DISTRICT'S AND VIDLER WATER  
COMPANY, INC.'S MOTION TO DISMISS THE APPEALS OF SNWA,  
CBD AND MVIC**

## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certify 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 Court may evaluate possible disqualification or recusal.

1. Respondent, LINCOLN COUNTY WATER DISTRICT, is a political subdivision of the State of Nevada, created for the purpose of providing adequate and efficient water service within Lincoln County, Nevada.

2. Respondent, VIDLER WATER COMPANY, INC., is a Nevada corporation authorized to conduct business in the state of Nevada.

3. All parent corporations and publicly held companies owning 10 percent or more of any of Respondent, Vidler Water Company, Inc.'s stock:

Vidler Water Company, Inc.'s parent company is D.R. Horton, Inc., a Delaware corporation and a publicly held company that owns 10% or more of Vidler Water Company, Inc.'s stock.

4. Names of all law firms whose attorneys have appeared for Respondents in this case:

Lincoln County District Attorney, Snell & Wilmer, L.L.P., Great Basin Law and Allison MacKenzie, Ltd. Snell & Wilmer, L.L.P. has been substituted out of this case and no longer represents any of the Respondents.

5. If any litigant is using a pseudonym, the litigant's true name:

Not applicable.

DATED this 8<sup>th</sup> day of June, 2022.

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**LINCOLN COUNTY WATER DISTRICT’S AND VIDLER WATER  
COMPANY, INC.’S MOTION TO DISMISS THE APPEALS OF SNWA,  
CBD AND MVIC**

Respondents, LINCOLN COUNTY WATER DISTRICT (hereinafter “Lincoln”) and VIDLER WATER COMPANY, INC. (hereinafter “Vidler”) by and through their undersigned counsel of record, respectfully request this Court enter an order dismissing the appeal filed by Southern Nevada Water Authority (hereinafter “SNWA”) designated Case No. 84741; the appeal filed by the Center for Biological Diversity (hereinafter the “CBD”) designated Case No. 84742; and the appeal filed by Muddy Valley Irrigation Company (hereinafter “MVIC”) designated Case No. 84809. This motion is based on the papers and pleadings currently on file in these consolidated cases and the following memorandum of points and authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

The Court should dismiss the appeals of SNWA, CBD and MVIC because Order 1309 did not create any legally-protectable property interests for those Appellants, and therefore the vacating of Order 1309 cannot have aggrieved Appellants.

**I. FACTUAL BACKGROUND**

On June 15, 2020, the Nevada State Engineer (hereinafter the “State Engineer”) issued Order 1309. Numerous parties filed petitions for judicial review

of the State Engineer's Order 1309. SNWA, MVIC, and CBD (hereinafter collectively referred to as the "Appellants") each filed a petition for judicial review of the State Engineer's Order 1309.

SNWA and MVIC alleged in their respective Petitions for Judicial Review the State Engineer violated their due process rights by certain findings made in Order 1309 regarding conflicts when the State Engineer had indicated the scope of the hearing would not include that issue and evidence on that point would not be accepted. *See* State Engineer's and Center for Biological Diversity's Joint Motion to Consolidate Appeals and Modify Caption Exhibit 3 (LVVWD and SNWA's Petition for Judicial Review of Order 1309) at 7 and Exhibit 5 (MVIC's Petition for Judicial Review of Nevada State Engineer Order 1309) at 4. Both parties requested the district court order the State Engineer to amend Order 1309 to remove or strike findings made in Order 1309 regarding conflicts with senior water rights. SNWA Petition for Judicial Review at 8; MVIC Petition for Judicial Review at 5. Neither sought relief from any other portion of Order 1309. *Id.*

CBD alleged in its Petition for Judicial Review the State Engineer's determinations were based on arbitrary and capricious findings. *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 15. CBD's Petition also alleged the State Engineer failed to consider many important

environmental factors. *Id.* at 15-16. 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”) and the findings that pumping will not conflict with Muddy River decreed rights. *Id.* at 18. Additionally, CBD requested an order directing the State Engineer to consider the environmental consequences and to prohibit all carbonate groundwater pumping within the LWRFS, including Kane Springs, until a new sustainable limit was determined by the State Engineer. *Id.*

The district court vacated Order 1309 determining Order 1309 violated due process rights by failing to provide adequate notice and a meaningful opportunity to be heard. SNWA APP MSF Vol. 2 at 223. The district court concluded Order 1309 was “arbitrary, capricious, and therefore void.” *Id.*

In its May 13, 2022 Addendum and Clarification to Court’s Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review filed on April 19, 2022 (“Addendum and Clarification Order”), the district court specifically granted SNWA’s Petition for Judicial Review to the extent it sought relief for violating SNWA’s due process rights. SNWA APP MFS Vol. 2 at 230.

While MVIC’s and CBD’s Petitions for Judicial Review were dismissed in the Addendum and Clarification, the district court concluded Order 1309 was “arbitrary, capricious, and therefore void” and granted the relief requested by MVIC

and CBD in their Petitions. In other words, the district court struck and vacated the portions of Order 1309 complained of by MVIC (which were identical to the portions of Order 1309 complained of by SNWA in its Petition for Judicial Review which was granted by the district court) and complained of by CBD. SNWA APP MFS Vol. 2 at 224 (“IT IS FURTHER ORDERED that the State Engineer’s Order 1309 is VACATED in its entirety.”).

Appellants’ purported interests in their appeals of Order Vacating Order 1309 are to uphold the State Engineer’s determination to manage seven basins as one administrative unit and to uphold the 8,000 acre-feet annually (“afa”) pumping cap imposed by the State Engineer in vacated Order 1309. SNWA Emergency Motion for Stay at 12; CBD Emergency Motion for Stay at 5-6; State Engineer and CBD Joint Motion for Consolidation and Modify Caption at 8-9. Order 1309 was the result of discretionary action taken by the State Engineer purportedly under his general authority to administer “*all* the water within the State of Nevada.” See SNWA Emergency Motion for Stay at 14 (emphasis in original). The State Engineer issued Order 1309 to delineate the LWRFS consisting of the seven groundwater basins as one joint administrative unit with a pumping cap determined by the State Engineer for the jointly administered LWRFS unit. SNWA APP MFS Vol. 1 at 65. The effect of the district court’s Order Vacating Order 1309 is that SNWA, CBD and MVIC are left in the same position as they were before Order 1309 was issued.

Their respective personal rights and property rights are just as they were before Order 1309 was issued. The district court's Order Vacating Order 1309 does not affect any personal rights or property rights of SNWA, CBD or MVIC. SNWA, CBD and MVIC do not have any personal or property right to have the LWRFS managed as one administrative unit with a pumping cap nor did the district court's Order Vacating Order 1309 deny some personal or property right of Appellants. The district court's Order Vacating Order 1309 does not impose any injustice, or illegal obligation or burden, on the Appellants nor deny them some equitable or legal right. The Appellants are not aggrieved by the district court's Order Vacating Order 1309 or the district court's Addendum and Clarification Order and thus, the Court has no jurisdiction over their appeals.

## **II. STANDARD OF REVIEW**

NRS 533.450(9) provides for appeals from a district court order on a petition for judicial review filed under NRS 533.450. NRS 533.450(9) states: "Appeals may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the judgment of the district court in the same manner as in other civil cases." An order granting or denying a petition for judicial review is an appealable final judgment if it fully and finally resolves the matters as between all parties. *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 303, 300 P.3d 724, 726 (2013).



Under NRAP 3A(a), a party only has standing to appeal if they are “aggrieved by an appealable judgment or order.” A party is aggrieved by the district court’s judgment or order “when either a personal right or right of property is adversely and substantially affected.” *Webb, ex rel. Webb v. Clark County School Dist.*, 125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009); *see also Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (quoting *Estate of Hughes v. First Nat’l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)). “A substantial grievance also includes ‘[t]he imposition of some justice, 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 ex rel. County of Clark*, 122 Nev 230, 240, 130 P.3d 182, 189 (2006) (quoting *State v. State Bank & Tr. Co.*, 36 Nev. 526, 137 P. 400, 402 (1913)). Since the right that is substantially affected must be personal, a party cannot appeal on behalf of another party. *In re Ray’s Estate*, 68 Nev. 355 (1951) (dismissing an executor’s appeal on behalf of the beneficiaries of the estate). Furthermore, a party cannot appeal on behalf of the public interest or a community in general. *Blanding v. City of Las Vegas*, 52 Nev. 52, 74, 280 P. 644, 650 (1929) (holding that a taxpayer cannot maintain an action unless the taxpayer can show an injury “differing in kind and not merely in degree from that suffered by the public generally.”).

This Court has repeatedly stated “this court has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved party.” *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994). SNWA, CBD and MVIC have the burden to show this Court has jurisdiction over their respective appeals. *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) (providing that “the burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction”).

### **III. ARGUMENT**

Appellants are not aggrieved parties and therefore have no standing to appeal. The district court’s Order Vacating Order 1309 does not affect any personal or property right of the Appellants. *Matter of Estate of Moon*, 501 P.3d 470 (The personal or property rights of appellants were not affected by the district court’s order and the Court had no jurisdiction over the appeal). Nor does it impose any illegal obligation or burden or deny Appellants any equitable or legal right.

Appellants have no personal or property right impacted by the district court’s Order Vacating Order 1309. Order 1309 delineated seven former separate hydrographic basins as one jointly administered unit and restricted the amount of water that could be pumped from the jointly administered unit. SNWA APP MFS Vol. 1 at 65. The determinations of Order 1309 that Appellants contend were in

error and in which they purportedly have an interest vacated by the district court are not the denial of some personal or property right. Indeed, by vacating Order 1309, SNWA, MVIC, and CBD obtained the relief sought in their respective Petitions – those portions of Order 1309 to which each objected have been vacated. They had no legally protected right or interest that Order 1309 otherwise be maintained.

Accordingly, the Order Vacating Order 1309 does not impose an injustice, illegal obligation or burden on Appellants, nor does Order Vacating Order 1309 deny Appellants an equitable or legal right. There is no injury peculiar to Appellants resulting from the district court's Order Vacating Order 1309. There is no loss of right or any harm to Appellants by the district court's Order Vacating Order 1309.

Further Appellants' potential injury is merely speculative. In SNWA's Emergency Motion for Stay, it argues that vacating Order 1309 creates uncertainty regarding the ability of the State Engineer to protect senior water rights. SNWA Emergency Motion for Stay at 11-12. The wording of its own Motion shows that any interest it has is merely speculative. The district court's Order Vacating Order 1309 merely means that the State Engineer must manage ground and surface waters through other means within his statutory authority. It does not prevent the State Engineer from doing his job. Since the State Engineer can still manage

surface and ground water, any injury from vacating Order 1309 is purely speculative.

Appellants further allege the Moapa dace will be irreparably harmed without Order 1309. SNWA Emergency Motion for Stay at 3-4; CBD's Emergency Motion for Stay at 5-6. This is a general complaint that does not affect any personal or property rights of Appellants. A party is not an aggrieved party if it appeals on behalf of others. Appellants have the same interest in protecting the Moapa dace as the general community.

Additionally, a party that prevails below is not an aggrieved party. Appellants all filed petitions for judicial review requesting that the district court amend and strike certain parts of Order 1309. Appellants prevailed when the district court issued the Order Vacating Order 1309. It does not matter the district court reached the decision to vacate Order 1309 on grounds different than that urged by Appellants, only that the appealing party prevailed. *Ford v. Showboat Operating Co.*, 110 Nev. 752, 756, 877 P.2d 546, 549 (1995) (holding that a prevailing party did not have standing to appeal a conclusion of law made in the district court's judgment). Furthermore, since Appellants do not have any personal or property interest in vacated Order 1309, their appeals will not alter any of their rights arising from the judgment. *Id.* at P.2d at 549 ("A party who prevails in the

district court and who does not wish to alter any rights of the party arising from the judgment is not aggrieved *by the judgment.*”).

Since Appellants are not aggrieved parties, they cannot appeal the district court’s Order Vacating Order 1309. Appellants have no real personal or property interest in Order 1309. Their interests of future injury are merely speculative, and their interests in defending vacated Order 1309 are general in nature. Since Appellants cannot show they are aggrieved by the district court’s Order Vacating Order 1309, the Court does not have jurisdiction over their appeals.

#### **IV. CONCLUSION**

For the reasons stated above, Lincoln and Vidler respectfully ask this Court to dismiss the appeals filed by SNWA, CBD and MVIC.

Respectfully submitted this 8<sup>th</sup> 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 as follows:

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Steven C. Anderson  
Kent R. Robison  
Hannah E. Winston  
Bradley J. Herrema  
William L. Coulthard  
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DATED this 8<sup>th</sup> day of June, 2022.

*/s/Casey Popovich*  
CASEY POPOVICH