

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
DETERMINATION OF THE
RELATIVE RIGHTS IN AND TO ALL
WATERS, BOTH SURFACE AND
UNDERGROUND, LOCATED
WITHIN THE DIAMOND VALLEY
HYDROGRAPHIC BASIN 10-153,
EUREKA AND ELKO COUNTIES,
NEVADA.

Case No. 84275
District Court Case No. CV-2002009

THE STATE OF NEVADA
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES,
DIVISION OF WATER RESOURCES;
AND ADAM SULLIVAN, P.E.,
STATE ENGINEER,

Appellants,

v.

SOLARLJOS, LLC; DANIEL S.
VENTURACCI; AMANDA L.
VENTURACCI; CHAD D. BLISS;
ROSIE J. BLISS; WILFRED BAILEY
AND CAROLYN BAILEY,
TRUSTEES OF THE WILFRED AND
CAROLYN BAILEY FAMILY TRUST
DATED FEBRUARY 20, 2018;
EUREKA COUNTY; JAMES E.
BAUMANN; VERA L. BAUMANN;
NORMAN C. FITZWATER; KINDY
L. FITZWATER; ARC DOME

PARTNERS, LLC; ROBERT F. BECK
AND KAREN A. BECK, TRUSTEES
OF THE BECK FAMILY TRUST
DATED APRIL 1, 2005; IRA R.
RENNER; MONTIRA RENNER;
SADLER RANCH, LLC; MW
CATTLE, LLC; UNITED STATES
DEPARTMENT OF INTERIOR,
BUREAU OF LAND
MANAGEMENT; PETER
GOICOECHEA; AND GLADY
GOICOECHEA,

Respondents.

**RESPONDENT SOLARLJOS, LLC’S OPPOSITION TO MOTION TO
DETERMINE WHETHER THE DISTRICT COURT PROPERLY
CERTIFIED CORRECTED ORDER GRANTING SOLARLJOS, LLC’S
MOTION FOR PARTIAL SUMMARY JUDGMENT AS FINAL PURSUANT
TO NRCP 54(b)**

Respondent SOLARLJOS, LLC (“Solarljios”) by and through its attorneys of record, Alex J. Flangas and August B. Hotchkin of the law firm Kaempfer Crowell, hereby oppose the Motion to Determine Whether the District Court Properly Certified Corrected Order Granting Solarljios, LLC’s Motion for Partial Summary Judgment as Final Pursuant to NRCP 54(b) (the “Motion”) filed by Appellants, THE STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES; AND ADAM SULLIVAN, P.E., STATE ENGINEER (collectively “Appellants” or the “State Engineer”).

I. INTRODUCTION

The State Engineer has filed an appeal with this Court, largely to challenge the propriety of the procedural mechanisms utilized by the district courts and claimants in the Diamond Valley adjudication proceedings, specifically with respect to the district court granting summary judgment in Solarljós' favor and certifying the same under NRCP 54(b). Regarding the latter, the State Engineer has filed the underlying motion, correctly pointing out that such a motion is procedurally required under *Fernandez v. Infusaid Corp.*, 110 Nev. 187, 871 P.2d 292 (1994) where this Court determined that because no statute or court rule authorizes an appeal from an order certifying an order as final pursuant to NRCP 54(b), there is no right to appeal such an order. However, while the State Engineer's underlying Motion is *procedurally* sound, it is completely devoid of merit and therefore, should be denied by this Court.

As discussed in detail below (as well as Solarljós' opposition to the State Engineer's Emergency Motion for Stay, filed contemporaneously herein)¹, the State Engineer's arguments misconstrues applicable Nevada law and its reliance on the statutes and case law cited in the underlying motion is wholly misplaced.

¹ Solarljós incorporates the arguments set forth in that opposition by reference herein.

II. ARGUMENT

A. The District Court Did Not Abuse Its Discretion Because Nothing in The Applicable Provisions Set Forth In NRS Chapter 533 Precludes The Use of NRCP 54(b) Certification

“[T]he district court is in the best position to consider the [certification] factors[] [and therefore,] a certification of finality pursuant to NRCP 54(b) based on the elimination of a party will be presumed valid and will be upheld by [the appellate court] absent a gross abuse of discretion.” *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 611, 797 P.2d 978, 981-82 (1990) (overruled on other grounds). The State Engineer has failed to show how the district court abused its discretion here.

First, the district court’s order granting certification of Solarljós’ motion for partial summary judgment is not an interlocutory order, it is a final order regarding Solarljós’ exception and claims that the district court correctly found was a consolidated case that still retained its separate identity for the purposes of appeal from the other exceptions and claims by other claimants in the subject adjudication. *See* Ex. “1”, January 21, 2022 Court Order granting Solarljós’ motion for certification, p. 5, lns. 2-10, *citing to In re Estate of Sarge*, 134 Nev. 866, 870-71, 432 P.3d 718, 722 (2018)² (the district court determined that its order granting Solarljós’

² This Court overruled its “decision in *Mallin* to the extent it holds that cases consolidated in the district court become a single case for all appellate purposes. Consolidated cases retain their separate identities so that an order resolving all of the claims in one of the consolidated cases is immediately appealable as a final judgment under NRAP 3A(b)(1).” *Id.*

motion for partial summary judgment resolved all of Solarljós' exceptions issues and that there are no claims with respect to the other claimants and their respective notices of exceptions that are so closely related to Solarljós' claims).³

Second, there is no language in NRS 533.170 or the attendant applicable case law that remotely suggests that NRCP 54(b) is inappropriate in a water-rights adjudication. To the contrary, NRS 533.170 expressly provides that the NRCP is applicable and should be utilized by the district court in such proceedings, which is exactly what occurred here. *See* NRS 533.170(5) (stating in relevant part, "All proceedings . . . , including the taking of testimony, shall be as nearly as may be in accordance with the Nevada Rules of Civil Procedure." NRS 533.170(5) (Emphasis added). The State Engineer's reliance on *In re Water Rights in Sliver Creek and its Tributaries, in Lander Cty.*, 57 Nev. 232, 61 P.2d 987, 989 (1936) for the proposition that because all claimants or water users in adjudication proceedings are inherently adverse, and therefore, too closely related for certification under NRCP 54(b) as to one claimants' claims, is misplaced. In that case, this Court stated that "all claimants or water users in [a water rights] adjudication proceeding under the [water statutes] are adverse." That statement, made by a court in 1936 before the enactment of any Rules of Civil Procedure

³ Indeed, Solarljós is the only claimant in the subject adjudication that asserted vested *groundwater* claims and neither it nor any of the other claimants intervened in their respective exceptions. *See* Ex. "1", p. 4, ln. 20 – p. 5, ln. 2.

including NRCP 54(b), appears directed to those parties who would have been actively involved in a “proceeding” filed under NRS 533.170 and who filed “exceptions” because they were “aggrieved or dissatisfied with the order of determination.” *See* NRS 533.170(1). In 1936, the prior version of NRS 533.170 read as it does today, and limited the court proceeding to a hearing wherein “all parties in interest who have filed notices of exceptions as aforesaid shall appear in person or by counsel” It is no wonder why, then, the *Silver Creek* court would find such parties to be, at least initially, “adverse.”

However, as was explained in *Bentley v. State, Off. of State Eng’r.*, 132 Nev. 946 (2016), parties and issues are not “automatically” presented to the district court in an adjudication; rather, “the [Final] order of determination by the State Engineer and the statements or claims of claimants and exceptions made to the order of determination shall constitute the pleadings, and there shall be no other pleadings in the cause.” *See* NRS 533.170(2). If a party is “aggrieved or dissatisfied with the order of determination,” it would file an exception (NRS 533.170(1)); if a party supported the order of determination and wanted to become involved in the upcoming court proceeding, that party could become an intervenor (as explained in *Bentley*)⁴. But water right holders merely identified in the Final

⁴ As was noted by Justice Pickering in her partial dissent in *Bentley*, NRS 533.170(1) allows exceptions to be filed to the Final Order of Determination by “all parties in interest who are *aggrieved or dissatisfied with*” that Final Order.

Order of Determination would not, necessarily, become adverse “parties” involved in the lawsuit; indeed, if a water right holder filed neither an exception nor a request for intervention, they would not become an active participant in the court action.

Third, Solarljøs is not “adverse” to any other claimants in this case as there are no participants who have preserved a right to take an appeal to the Nevada Supreme Court. The only party that Solarljøs is “adverse” to is the State Engineer, whose Final Order of Determination lacked any substantial evidence to support its findings and decision to reduce the Solarljøs’ water allocation under its vested rights, the basis of Solarljøs’ exceptions in the underlying adjudication. The district court’s order completely resolves Solarljøs’ claim and effectively removes it (and, by extension and effect, removes Solarljøs itself) from the action. This satisfies the requirement outlined in *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986), *citing* NRCP 54(b), that when a judgment or order of the district court “completely removes a party or a claim from a pending

(Emphasis added.) *See* NRS 533.170(1); *see also Bentley*, 132 Nev. 946 at *14. They are not automatically “adverse” until after the pleadings – and intervening party statements and defenses – are set. The language of the 1936 *Silver Creek & Its Tributaries* case (that all parties to an adjudication are adverse), decided before any Nevada Rules of Civil Procedure and intervention rules had been established, should not prohibit the common sense application of modern day civil procedural rules that have since been enacted to eliminate the very prejudice facing Solarljøs and have been in use in Nevada for more than 70 years.

action” and “there is no just reason for delay,” 54(b) certification is appropriate. With no opposition raised to Solarljós’ exception here, and no effect on other vested claimants in this action, there is no reason to delay final entry of judgment.

The State Engineer also contends that NRS 533.185(1) and 533.200 both speak in terms of “the decree,” and thus concludes that these statutes stand for the proposition that they must require but a single “decree” be issued following any proceeding emanating under the water laws governing adjudications. However, the State ignores the other “plain language” that it actually cites from NRS 533.200, which states that “[a]ppeals from such decree may be taken to the appellate court of competent jurisdiction by the State Engineer or any party in interest *in the same manner and with the same effect as in civil cases.*” (Emphasis added.). Civil cases are subject to the NRCP, which also govern this action⁵, and NRCP 54(b) is one of those rules. Pursuant to that rule, the district court has the authority and the discretion to decide whether “just reason for delay” should preclude a finding of finality for Solarljós now. Rule 3 of the NRAP requires that a “judgment” be “final” in order to be appealable, and NRCP 54(b) is what allows a party involved in a multi-claim, multiple-party proceeding who achieves early success on its claims to avoid significant prejudice having to wait until every other

⁵ See Ex. “2”, the district court’s Order issued December 10, 2020, under “Procedure,” wherein the court stated, “The Nevada Rules of Civil Procedure shall apply as appropriate to all proceedings”

party's essentially untethered claims are entirely decided in order for *its own judgment* to be "certified" as final if the trial court concludes "that there is no just reason for delay."

Solarljós' summary judgment fits squarely within the Rule, and nothing in NRS 533.170 nor 533.200 expressly prohibits this court from utilizing NRCP 54(b) should circumstances provide the opportunity; indeed, nothing in that statute says there can be no separate determinations of vested claims in Diamond Valley that, together, comprise the "decree" of the court for the waters of this area. In fact there are several cases where this Court affirmed that utilizing the NRCP is appropriate in water-right adjudication proceedings, contrary to the State Engineer's position here, including the use of dispositive motions. *See e.g., Jackson v. Groenendyke*, 132 Nev. 296, 300-01, 369 P.3d 362, 365 (2016) (where this Court found that the district court is authorized to conduct proceedings consistent with the NRCP that are not prohibited by statute, including water-rights adjudications under NRS Chapter 533). *Bentley v. State, Off. of State Eng'r.*, 132 Nev. 946 (2016) (illustrating the use of NRCP 16 pretrial conference orders under water right adjudications pursuant to NRS 533.170(5)). *See also and cf. In re Determination of Relative Rts. In & to Waters of Franktown Creek, Washoe Cty.*, 77 Nev. 348, 355, 364 P.2d 1069, 1072-73 (1961) (where the Supreme Court of Nevada affirmed the lower court's decision to grant summary judgment in a NRS

533.170 water-rights adjudication). There is no language in the statute or applicable case law whatsoever that remotely suggests that NRS 533 or the exception-adjudication process falls outside the scope and purview of the NRCP with the exception of service of proposed findings of fact and decree and costs related thereto (which is inapplicable here).

The State Engineer also argues that the certification of the district court's order granting summary judgment in favor of Solarljøs amounts to unlawful "piecemeal adjudications". *See* Mot., p. 6. However, as the district court correctly reasoned in its order denying the State Engineer's motion for stay, the State Engineer is incorrect because as the district court correctly found:

No party filed an exception or was otherwise granted intervention in Solarljøs' case,⁶ nor has Solarljøs intervened in any other notices of exceptions . . . [Further, the district court found] there are no claims with respect to the other notices of exceptions with respect to the other notices of exceptions that are so closely related to Solarljøs' issue that the Nevada Supreme Court must necessarily decide issues pending in the other cases in the district court in order to decide the issues appealed, if any, in Solarljøs' case.⁷ In this regard, the [district court found] that no piece meal

⁶ (Footnote No. 14 in district court order) "Eureka County sought intervention in all pending in all pending adjudication cases and was allowed to intervene in some cases not including the Solarljøs case. Eureka County never filed a petition for writ of mandamus challenging this order." (citing to *Aetna Life & Casualty Ins. Co. v. Rowen*, 107 Nev. 362-363, 812 P.3d 350 (1991) and *SIIS v. Dist. Ct.*, 111 Nev. 58, 30, 888 P.2d 911 (1995).

⁷ (Footnote No. 16 in district court order) "Mr. DePaoli, representing the Baileys, orally argued at the hearing that how the State Engineer interpreted and applied the relation back doctrine would be common to all cases. This issue is not present in Solarljøs' notice of exceptions."

litigation would occur if certification were granted to Solarljós.

Ex. “1”, p 4., ln. 18 – p. 5, ln. 10. (Footnotes contained in original). Moreover, as discussed previously, this Court held in the *In re Estate of Sarge* that consolidated cases still retain their separate identities where in a resolution of all the claims in one of the consolidated cases is immediately appeal, and therefore, does not constitute as piecemeal litigation. *See In re Estate of Sarge, supra*.

The State Engineer cites *In re Waters of Humboldt River Stream System*, 54 Nev. 115, 7 P.2d 813 (1932), contending that in that case, this Court “addressed this precise issue” when it determined that the specific parties involved in their portion of the adjudication of the Humboldt River could not separately appeal their “judgment” because no “decree” had yet issued in the proceeding. The State Engineer claims this case is somehow controlling, yet clearly the court there did not examine any aspect of NRCP (or FRCP) 54(b) applicability, and no party applied for such consideration. The reason this did not occur is apparent: in 1932 when *In re Waters of Humboldt River Stream Sys.* was decided, *no rules of civil procedure – including NRCP 54(b) (and even FRCP 54(b)) -- had yet been enacted*.⁸ They were not yet part of the “manner” with which civil cases are made

⁸ The Federal Rules of Civil Procedure were first enacted by order of the U.S. Supreme Court on December 20, 1937, and became effective September 16, 1938. *See* the “Historical Note” to the Federal Rules of Civil Procedure (“FRCP”), immediately preceding the Table of Contents for the FRCP). They have been amended many times since, the first in 1948, but only since 1938 have they

into “final” judgments ripe for appeal. Instead, at that time in 1932, the prevailing procedure in civil actions involving multiple parties or claims was that all claims of all parties were required to be resolved before a matter was subject to appeal – regardless whether the court’s ruling was a “decree” or merely a “judgment.”

B. NRCP 54(b) Certification of the District Court’s Order Granting Summary Judgment in Solarljøs’ Favor Was Appropriate Because The District Court Correctly Found That there Was No Just Reason For Delay

The State Engineer contends that NRCP 54(b) was not appropriate here, arguing that the district court did not find any just reason for delay. However, the State Engineer’s claims are baseless and unsupported by law. The State Engineer provides no analysis to support how the determination of Solarljøs’ exception is, actually, “adverse” (especially given that no one filed an opposition to Solarljøs’ Motion for Partial Summary Judgment), and the State Engineer fails to show how a certification under Rule 54(b) now would have an effect on any other vested claimant in the proceeding going forward.

In contrast, as outlined above, the district court correctly determined that certifying its order for summary judgment in favor of Solarljøs will not result in piecemeal litigation. Solarljøs’ claims and exceptions are completely unrelated to

contained a provision for allowing appeals of entirely resolved claims when the district court determined that “no just reason for delay” existed, giving the district court discretion to make such determinations. The Nevada Rules of Civil Procedure (NRCP), patterned greatly after the FRCP, were enacted in 1951 (*see* the Preface to the NRCP), well after the decision in *In re Waters of Humboldt*.

the other claimants' exceptions in the Diamond Valley adjudication. Only Solarljós has vested *groundwater* rights and neither it nor any of the other claimants intervened or were allowed to intervene in their respective exceptions. Moreover, the State Engineer is not contending that the summary judgment was improperly granted on the *merits*; only that the procedure was somehow improper.⁹ Moreover and critically, the State Engineer failed to lodge a written opposition against Solarljós' motion for summary judgment. This alone is fatal to his appeal and Motion for Emergency Stay. *See e.g., Coleman v. Tomsheck*, 489 P.3d 520 (Nev. App. 2021); *Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014); *King v. Cartlidge*, 121 Nev. 926, 926-27, 124 P.3d 1161, 1162 (2005); and *King v. St. Clair*, 134 Nev. 137, 141-42, 414, P.3d 314, 317-18 (2018).

Notwithstanding the above, the State Engineer continues to posit that because water rights and the adjudication process in Nevada are "special" in character, and that claimants' interests in these matters are inherently adverse, that this automatically means that those claims are so closely related that certification of one claimants' claims under NRCP 54(b) is inappropriate. However, the State

⁹ But even if the State Engineer's argument concerning the procedural issues (which he is not), the result that Solarljós' obtained via its motion for partial summary judgment remains unchanged because the State Engineer would still be unable to show any material facts to dispute that it failed to provide substantial evidence to support its findings and conclusions in his Final Order for Determination with respect to Solarljós' claims.

Engineer fails to provide *any* factual basis how Solarljós's claims are so closely related to the other claimants' exceptions in the Diamond Valley adjudication that its certification would disrupt the proceedings and result in piecemeal litigation, especially when none of the other claimants intervened in Solarljós' case *and* none of them filed an opposition to Solarljós' motion for partial summary judgment. Moreover, as the district court explained in its order denying the State Engineer's motion for stay, the State Engineer's concerns regarding any other claimants' exceptions obtaining separate judgments or decrees is moot and unfounded.¹⁰

Next, the State Engineer's argument that the district court erred in granting certification based on the potential prejudice to Solarljós is fundamentally flawed as it is not supported by the very case law he relies upon in his motion. As Solarljós argued in the lower court, its ability to obtain financing for its mining project and to move forward with the certainty needed to confirm these vested rights as part of the resources available to it a mining operation. Furthermore, no other party will suffer any loss from the district court's certification under NRCP

¹⁰ See Ex. "—" the district court's Order denying the State Engineer's motion for stay, p. 8, ln. 16 – p. 9, ln. 3 (stating that "[f]urther, the State Engineer's concern that multiple decrees will be potentially entered by the court contrary to NRS 533.185(1) which he alleges requires a single decree, although not supported by Nevada Law, is moot, assuming, *arguendo*, this legal argument has merit. Provided the remainder of the evidentiary hearings take place as scheduled in March and April 2022, this Court will be entering a single decree encompassing the Sadler Ranch, LLC, MW Cattle LLC and Venturacci hearings together with the upcoming scheduled hearings.").

54(b) because it will not change the outcome of their exception in any way.

This situation exemplifies – by definition – the *lack* of any “just reason for delay” of the entry of a final judgment that would allow Solarljøs to finally use its vested water rights and move forward with its mining project. In this regard, the language and discussion in *Hallicrafters Co. v. Moore, supra*, actually favors Solarljøs’ position, not the State’s. The State has shown no reason why the court should postpone the finality of this judgment.

Furthermore, the discussion in *Mallin v. Farmers Ins. Exchange*, 106 Nev. 606, 611 797 P.2d 978, 987-972 (1990) (reversed on other grounds) directly refutes the State’s contention that NRCP 54(b) and case law analyzing the same is not directed to a consideration of the prejudicial effect on a party as compared to the prejudice others left in the case will suffer if certification is granted. The court in *Mallin* (which cites to *Hallicrafters* and discusses it as well) makes it clear that “[w]hen a district court is asked to certify a judgment based on the elimination of a party [or claim], it should first consider the prejudice to that party in being forced to wait to bring its appeal.” *Mallin*, 106 Nev. at 611, 797 P.2d at 987-972 (emphasis added). In considering the potential prejudice, “[t]he district court should weigh the prejudice to the various parties and should certify judgment as final in a ‘parties’ case if the prejudice to the eliminated party would be greater than the prejudice to the parties below.” *Id.* (Emphasis added).

C. There Is Not Basis For This Court To “Intervene” Because The State Engineer’s Claims Concerning The Purported Procedural Issues Are Without Merit

The State Engineer’s contention that the procedures utilized by the district court in the Diamond Valley adjudication are flawed (the foundational basis of the State Engineer’s appeal and motions related thereto) is completely contradicted and undermined by the applicable law. As analyzed thoroughly above, in Solarljós’ opposition to the State Engineer’s motion for stay, and the district court’s applicable orders, not only is there absolutely no language in the relevant provisions of NRS Chapter 533 or attendant case law that remotely suggests that the utilization of the NRCP is not appropriate in water-right adjudication proceedings, it expressly provides that the opposite is true.

Also, the State Engineer’s concerns regarding overall procedure impropriety (which are vague at best) do not apply to Solarljós who did not conduct any additional discovery or present any new evidence or facts during the adjudication. Solarljós’ motion for partial summary judgment was entirely based on the State Engineer’s lack of evidence to support his findings and conclusions in his Final Order of Determination.

Moreover, and perhaps most critically, the State Engineer cannot prevail in its appeal because he failed to file an opposition to Solarljós’ motion for partial summary judgment. *See Coleman, supra.; Renown Reg’l Med. Ctr., supra.; King,*

supra., and *King, supra.* While the State Engineer suggests that it was somehow insulated or excused from filing an opposition to Solarljós' motion because of its unique role, he fails to cite to any facts or law that supports such an absurd notion. The district court never imposed any limitations on the State Engineer's role in the subject adjudication proceeding. The State Engineer's decision to limit its involvement and role was his and his alone. The State Engineer, like any other party to a civil action, is not immune or exonerated from consequences of the decision to not participate in litigation.

Further, even if *arguendo* the State Engineer's role was as limited as it suggests (which is not supported), he should have challenged the district court's procedure by a writ of prohibition, which it could have and should have done over a year ago. A writ of prohibition is precisely the vehicle available to litigants to challenge a district court's discovery and motion practice orders on the grounds that such orders are in excess of the district court's statutory authority and jurisdiction. *See Werdleigh v. Dist. Ct.*, 111 Nev. 345, 351, 891(1995). This Court has held that "[a]lthough it rarely entertains writ petitions challenging pretrial discovery, 'there are occasions where, in the absence of writ relief, resulting prejudice would not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions.'" *Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 247, 249, 416 P.3d 228

(2018). The fact that the State Engineer waited over a year to address these purported procedural issues when it now claims are so potentially harmful to him, the other claimants, and the State of Nevada as a whole is both unconscionable and disingenuous on his part.

III. CONCLUSION

The district court's certification of its order granting Solarljøs' motion for partial summary judgment was procedurally and substantively proper, and appropriate in the underlying adjudication. The State Engineer has failed to provide any legal analysis in support of its arguments to contend otherwise and its position is baseless. Therefore, the State Engineer cannot show that the district court abused its discretion here and his underlying motion should be denied in its entirety.

Respectfully submitted this 4th day of March, 2022.

KAEMPFER CROWELL

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2022, service of the foregoing **RESPONDENT SOLARLJOS, LLC'S OPPOSITION TO MOTION TO DETERMINE WHETHER THE DISTRICT COURT PROPERLY CERTIFIED CORRECTED ORDER GRANTING SOLARLJOS, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS FINAL PURSUANT TO NRCP 54(b)** was filed electronically with the Clerk of the Court, and therefore electronic service was made in accordance with the master service list to the following:

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In addition, service was made by depositing the same mailing via first class mail with the United States Postal Service to the following:

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DATED March 4, 2022

/s/ Sharon Stice

An employee of Kaempfer Crowell

EXHIBIT INDEX

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2	December 10, 2020, Order Setting Hearings for Notices of Exceptions Filed on Order of Determination to Determine Relative Water Rights; Order Establishing Case Procedure	6

EXHIBIT 1

EXHIBIT 1

Case No. CV-2002009

Dept No. 2

NO _____ FILED _____

JAN 21 2022

by Eureka County Clerk
B. Mahoney

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA**

IN THE MATTER OF THE
DETERMINATION OF THE RELATIVE
RIGHTS IN AND TO ALL WATERS,
BOTH SURFACE AND UNDERGROUND,
LOCATED WITHIN THE DIAMOND
VALLEY HYDROGRAPHIC BASIN NO.
10-153, EUREKA AND ELKO COUNTIES,
NEVADA

**ORDER GRANTING SOLARLIJOS,
LLC'S MOTION FOR CERTIFICATION
OF JUDGMENT ON SOLARLIJOS
LLC'S EXCEPTION IN THIS
ADJUDICATION PROCEEDING**

BACKGROUND

On October 27, 2021, the court entered a corrected order granting Solarljios, LLC's motion for partial summary judgment. The motion for partial summary judgment was unopposed. No parties intervened or were granted intervention in the Solarljios notice of exceptions. On November 16, 2021, Solarljios, LLC ("Solarljios") filed a notice of hearing on Solarljios, LLC's request/motion for certification of summary judgment pursuant to NRCP 54(b), and request/motion for certification of judgment on Solarljios LLC's exception in this adjudication proceeding ("Solarljios' rule 54(b) motion"). On December 3, 2021, the State Engineer filed State Engineer's response to Solarljios LLC's request/motion for certification of summary judgment pursuant to NRCP 54(b) ("State Engineer's rule 54(b) response"). On December 3, 2021, Ira R. Renner and Montira Renner and Daniel Venturacci and Amanda Venturacci each filed a response to Solarljios' rule 54(b) motion ("Renner/Venturacci's rule 54(b) responses"). Sadler Ranch, LLC and MW Cattle, LLC

SEVENTH JUDICIAL DISTRICT COURT

GARY D. FAIRMAN

DISTRICT JUDGE

DEPARTMENT 2

WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



Eureka County Clerk

RECEIVED

JAN 21 2022



1 filed a joinder to Renner/Venturacci's rule 54(b) responses ("Sadler Ranch/MW Cattle's
2 joinder") on December 3, 2021. On December 7, 2021, Solarljios filed Solarljios, LLC's
3 reply to the State Engineer's rule 54(b) response ("Solarljios' reply"). No other parties
4 filed any written opposition or response to Solarljios' rule 54(b) motion.¹ A virtual hearing
5 was held on the record on December 7, 2021, at which counsel for all of the parties
6 appeared with the exception of Terese A. Ure-Stix, Ross E. deLipkau, and David L.
7 Negri.² The court heard oral argument from all counsel appearing and took the matter
8 under advisement.

9 DISCUSSION

10 The court's procedure for the Diamond Valley vested rights adjudication provided
11 that each party who had filed a notice of exception to the State Engineer's final order of
12 determination ("OD") entered January 31, 2020, would be heard and considered
13 separately. Several of the exceptions have already been heard by the court. Solarljios'
14 notice of exceptions hearing had been scheduled for November 9-11, 2021, but was
15 vacated upon the court's entering partial summary judgment in its favor. Solarljios' notice
16 of exceptions challenged the difference in the amount of water it was allocated by the
17 State Engineer in its preliminary order from that amount it allocated in the OD. Solarljios
18 is not involved as a litigant in any other exceptions. Solarljios is a small family-owned
19 mining operation. Solarljios asserts there is no just reason for the court to delay 54(b)
20 certification since the effect of the court's corrected order granting partial summary
21 judgment removed Solarljios as a party from the pending case adjudication, as well as
22 removed its claim from this pending action. Solarljios further argues that it will suffer

23 ¹ At the oral argument Karen Peterson, representing Eureka County orally opposed Solarljios' rule 54(b)
24 motion.

25 ² The court notes that James E. Baumann and Vora L. Baumann, Arc Dome Partners, LLC, Robert F.
26 Beck and Karen Beck, trustees of the Beck Family Trust dated April 19, 2005, Beck Properties, Norman
and Kandy Fitzwater, and the USA filed no pleadings regarding Solarljios' rule 54(b) motion and their
counsels' appearance was not expected nor required by the court.



1 harm if it is forced to wait until the court enters a singular decree encompassing a decision
2 on all of the filed notices of exceptions because its ability to obtain financing for its mining
3 project would be hampered as well as the importance of having its vested rights claims
4 reach finality as to title and quantity of water thus making the water resource available
5 sooner to its mining operation. Solarljós also states that the court's order granting partial
6 summary judgment in its favor will not adversely affect any other parties' claims to vested
7 rights in the remaining exceptions in this adjudication.

8 In response, the State Engineer first cites that the plain language of Nevada's
9 water statutes and case law "require a single decree on the water system being
10 adjudicated."³ In support, the State Engineer relies on NRS 533.185(1) that states,
11 "After the hearing the court shall enter a decree affirming or modifying the order of the
12 State Engineer." The State Engineer maintains that a singular decree is required
13 encompassing all exceptions to the OD, regardless of whether a hearing is held on an
14 exception because NRS 533.200 provides for appeals to be taken from a decree. The
15 State Engineer concludes that since all exceptions have not been heard by the court and
16 a singular decree has not been entered encompassing all exceptions, the case status is
17 not ripe for appeal.⁴ The State Engineer's analysis is based on the Nevada Supreme
18 Court holding in *In Re Waters of Humboldt River Stream System*⁵ where the Court
19 rejected an appeal from a water rights adjudication case because the decree had not yet
20 been entered.⁶ Second, the State Engineer contends that since the other exceptions in
21 the adjudication are so closely related, if the Nevada Supreme Court must decide issues
22 in the pending cases remaining in the district court in order for the Supreme Court to
23 decide any issues in Solarljós' case, then there can be no finding that there is no just

24 ³ State Engineer's rule 54(b) resp. at 2.

25 ⁴ *Id.* at 4.

26 ⁵ 54 Nev. 115, 7P.2d 813, 814 (1932).

⁶ State Engineer rule 54(b) resp. at 4.



1 reason for delay and a district court certification under those facts would be an abuse of
2 discretion.⁷ Third, the State Engineer asserts that Solarljøs' reliance on *In re Estate of*
3 *Sarge*,⁸ is misplaced as it involved an appeal of consolidated cases which this water
4 system adjudication is not as this is one case with multiple parties and exceptions.⁹

5 Solarljøs responds that in 1932 when *In Re Waters of Humboldt River Stream*
6 *System* was decided no certification procedure was available since neither the Federal
7 Rules of Civil Procedure nor the Nevada Rules of Civil Procedure were in place, the latter
8 being enacted in 1951. Renners' counsel, Tamara Thiel, pointed out at the hearing that
9 the 2019 revisions to rule 54 allow district court certification of a judgment if the judgment
10 not only eliminated one or more parties, but also when one or more but fewer than all
11 claims are resolved.¹⁰ Prior to the 2019 amendment, rule 54(b) only provided for
12 certification of a judgment if it eliminated one or more of the parties, but not claims. The
13 procedure in a water rights case is the same as in other civil cases.¹¹ The State Engineer
14 cites no specific issue in Solarljøs' claims similar to the other notices of exceptions making
15 certification premature if granted by this Court. The court disagrees that the notices of
16 exceptions are so closely related that allowing certification under 54(b) in this case would
17 potentially compel the Nevada Supreme Court to decide the law of the case for the other
18 pending notices of exceptions.¹² In Solarljøs' case, this Court overturned the State
19 Engineer's OD as to an underground source because the State Engineer based his
20 decision on evidence that was never made part of the record.¹³ No party filed an

21
22 ⁷ *Id.* at 5, citing *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 411, 442-43 (internal citations
omitted) (1986).

23 ⁸ 134 Nev. 866, 432 P.3d 718 (2018).

24 ⁹ State Engineer's rule 54(b) response at 6.

25 ¹⁰ NRCP 54(b); See Advisory Committee note -- 2019 Amendment.

26 ¹¹ *Jackson v. Groenendgke*, 132 Nev. 296, 300, 369 P.3d 362, 365 (2016). See NRS 533.020 and NRS
533.170.

¹² State Engr. rule 54 resp. at pg. 7.

¹³ Corrected order granting mot. for sum. judg. at 4-7, 10-16.



1 exception or was otherwise granted intervention in Solarljios' case,¹⁴ nor has Solarljios
2 intervened in any other notices of exceptions. Further, this adjudication is more akin to
3 consolidated cases retaining their separate identity for the purpose of appeal as was held
4 in *In re Estate of Sarge*.¹⁵ The court's corrected order granting partial summary judgment
5 resolved all of Solarljios' exception issues. The court finds there are no claims with respect
6 to the other notices of exceptions that are so closely related to Solarljios' issue that the
7 Nevada Supreme Court must necessarily decide issues pending in the other cases in the
8 district court in order to decide the issues appealed, if any, in Solarljios' case.¹⁶ In this
9 regard, the court finds that no piece meal litigation would occur if certification were granted
10 to Solarljios.¹⁷

11 Solarljios claims the potential prejudice to its ability to get financing and carry on its
12 mining operations by delaying certification substantially outweighs any prejudice to any
13 other party, thus supporting certification.¹⁸ The State Engineer maintains that there is
14 no controlling law that prejudice is the primary consideration for the court.¹⁹ The court
15 agrees with the State Engineer and Solarljios that the court must find that there is "no just
16 reason for delay" to grant a motion for certification.²⁰ Upon consideration of the prejudice
17 to Solarljios and the prejudice to the remaining parties who have filed notices of
18 exceptions, the court finds the prejudice to Solarljios outweighs the prejudices to the

19 ¹⁴ Eureka County sought intervention in all pending adjudication cases and was allowed to intervene in
20 some cases not including the Solarljios case. Order granting Eureka County's motion to intervene
21 entered March 16, 2021, at 1, 11. Eureka County never filed a petition for writ of mandamus challenging
22 this order. See *Aetna Life & Casualty Ins. Co. v. Rowen*, 107 Nev. 362-363, 812 P.2d 350 (1991). *S/IS*
23 *v. District Court*, 111 Nev. 58, 30, 888 P.2d 911 (1995).

24 ¹⁵ *In re Estate of Sarge*, at 870-871.

25 ¹⁶ Mr. DePaoli, representing the Baileys, orally argued at the hearing that how the State Engineer
26 interpreted and applied the relation back doctrine would be common to all cases. This issue is not
present in Solarljios' notice of exceptions.

¹⁷ See *Wiman v. Rafaely*, No. 82763 Supreme Court of Nevada, 489 P.3d 917 (2021) (cited for its
persuasive value).

¹⁸ Solarljios' request/mot. for cert. at pg. 4-6; Solarljios' reply at pg. 9-11.

¹⁹ State Engr's rule 54 resp. at pg. 6.

²⁰ *Id.*, Rule 54(b).



1 remaining parties and that there is no just reason for delaying certification.²¹

2 Good cause appearing,

3 IT IS HEREBY ORDERED that Solarljios, LLC's request/motion for certification of
4 summary judgment pursuant to NRCP 54(b) and request/motion for certification of
5 judgment on Solarljios LLC's exception in this adjudication proceeding is GRANTED.

6 IT IS HEREBY FURTHER ORDERED that the court certifies as a final judgment
7 the corrected order granting Solarljios' LLC's motion for partial summary judgment entered
8 October 27, 2021.

9 DATED this 21st day of January, 2022.

10 
11 DISTRICT JUDGE

22
23
24
25 ²¹ NRCP 54(b); *Mallin v. Farmers Ins. Exchange*, 108 Nev. 606, 611, 797 P.2d 978 (1990) reversed on
26 other grounds, *In re of Estate of Sarge*, at 870.

Case No. CV-2002009

NO FILED

Dept No. 2

JAN 21 2022

Eureka County Clerk
By B. Mahoney

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA

IN THE MATTER OF THE
DETERMINATION OF THE RELATIVE
RIGHTS IN AND TO ALL WATERS,
BOTH SURFACE AND UNDERGROUND,
LOCATED WITHIN THE DIAMOND
VALLEY HYDROGRAPHIC BASIN NO.
10-153, EUREKA AND ELKO COUNTIES,
NEVADA

CERTIFICATE OF SERVICE

The undersigned being an employee of the Eureka County Clerk's Office, hereby
certifies that on the 21st day of January, 2022, I personally delivered a true and
correct copy of the following:

***Order Granting Solarljios, LLC's Motion For Certification Of Judgment On
Solarljios LLC's Exception In This Adjudication Proceeding***
addressed to:

Paul Taggart, Esq.
David H. Rigdon, Esq.
Timothy D. O'Connor, Esq.
Tamara Thiel, Esq.
Paul@legaltnt.com
Tim@legaltnt.com
David@legaltnt.com
Tammy@legaltnt.com

David Negri, Esq.
davidnegri@usdoj.gov

James N. Bolotin, Esq.
Ian Carr, Esq.
jbolotin@ag.nv.gov
icarr@ag.nv.gov

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



RECEIVED

JAN 21 2022

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Steven D. King, Esq.
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In the following manner:

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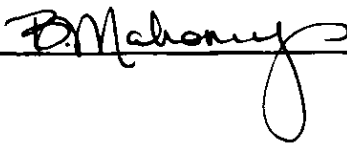


EXHIBIT 2

EXHIBIT 2

DEC 10 2020

By *[Signature]*
Eureka County Clerk

Case No. CV-2002009

Dept No. 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA

IN THE MATTER OF THE
DETERMINATION OF THE RELATIVE
RIGHTS IN AND TO ALL WATERS,
BOTH SURFACE AND UNDERGROUND,
LOCATED WITHIN THE DIAMOND
VALLEY HYDROGRAPHIC BASIN NO.
10-153, EUREKA AND ELKO
COUNTIES, NEVADA

**ORDER SETTING HEARINGS FOR
NOTICES OF EXCEPTIONS FILED ON
ORDER OF DETERMINATION TO
DETERMINE RELATIVE WATER
RIGHTS; ORDER ESTABLISHING
CASE PROCEDURE**

On November 10, 2020, a hearing was held to consider the notices of exceptions filed by parties in interest pursuant to the Court's Order Setting Hearing on Nevada State Engineer's Order of Determination of the Relative Rights in and to All Waters of Diamond Valley Hydrographic Basin No 10-153, Eureka and Elko Counties, Nevada, entered August 27, 2020. Proof of service and publication of the court's order setting hearing on exceptions to the order of determination pursuant to NRS 533.165(6) was filed November 2, 2020. The court finds that notice has been properly given as required by NRS 533.165(c).

The parties identified in this order, with exception of Peter J. Goicoechea and Gladys Goicoechea, filed timely notices of exception. The parties and/or their counsel were allowed by the court to either virtually appear or personally appear in court. The

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA





1 following counsel appeared for the parties: Karen A. Peterson, Eureka County; David H.
2 Rigdon, Sadler Ranch, LLC and MW Cattle, LLC; Tamara C. Thiel, Ira R. and Montira
3 Renner; Timothy O'Connor, Daniel S. Venturacci and Amanda L. Venturacci; Gordon H.
4 Depaoli, Wilfred and Carolyn Bailey, Trustees of the Wilfred and Carolyn Bailey Trust;
5 David L. Negri, U.S. Dept. of Interior, BLM; Terese A. Ure Stix, James E. Bauman and
6 Vera L. Bauman, Arc Dome Partners, LLC, Robert F. Beck and Karen Beck, and Norman
7 and Kindy Fitzwater; Ross E. De Lipkau, Chad D. Bliss and Rosie J. Bliss; Alex J.
8 Flangas, Solarljios, LLC. James E. Bolotin appeared representing Timothy Wilson, State
9 Engineer. Mr. Peter J. Goicoechea appeared as a self-represented litigant.

10
11 PROCEDURE

12 The evidentiary hearings before the court shall be held pursuant to NRS
13 533.170(5). The Nevada Rules of Civil Procedure shall apply as appropriate to all
14 proceedings including the taking of testimony. Discovery and motion practice shall be
15 allowed as appropriate in all proceedings.

16
17 DISCOVERY

- 18 -- Discovery cut off date: May 10, 2021.
- 19 -- All discovery requests and notices shall be served on all parties. Any party
20 not directly litigating with respect to a claimant's filed notice of exception
21 who desires to participate in discovery in the other claimant's cases(s): (1)
22 shall pay for the reasonable costs for telecopies, photocopies, postage or
23 other discovery reproduction and delivery costs; (2) shall proportionately
24 share the fees and costs for any expert's time which may be used to
25 respond to the requested discovery participation (ie. participation in an
26



expert's deposition, including court reporter fees and expenses).

- Lists of lay and expert witnesses shall be disclosed on or before January 11, 2021. The expert's report(s) shall accompany the disclosure of any expert witnesses.

MOTIONS

- Any preliminary motions, including motions to intervene, shall be filed on or before December 18, 2020.¹
- All dispositive motions shall be filed on or before June 1, 2021.

HEARING DATES IN 2021

July 13, 14, 15, 20, 21, 22, 27, 28, Eureka County, notice of exceptions and United States/BLM notice of exceptions

July 29, 30, August 3, 4, 5, Related notice of exceptions to the United States/BLM notice of exceptions and the PWR 107 claims filed by Daniel S. Venturraci and Amanda L. Venturraci, James E. Bauman and Vera Bauman, Chad D. Bliss and Rosie J. Bliss, Arc Dome Partners, LLC and Robert F. Beck and Karen Beck, Norman and Kindy Fitzwater, and Peter J. Goicoechea and Gladys P. Goicoechea. (counsel shall meet and fix the exact day (s) that each party will present their respective evidence.)

August 11, 12, James E. Bauman and Vera L. Bauman and Chad D. Bliss and Rosie Bliss.

¹ Mr. Goicoechea advised the court that his claim involves a BLM public water reserve 107 ("PWR 107") claim. In the event Mr. Goicoechea files a motion to intervene in the notice of exception filed by the United States on November 3, 2020, the court will allow Peter Goicoechea and Gladys Goicoechea to appear and participate in the evidentiary hearing involving the PWR 107 claim.



1 September 27, 28, Wilfred and Carolyn Bailey, Trustees of the Wilfred and
2 Carolyn Bailey Trust.

3 September 29, 30, October 1, Sadler Ranch, LLC and M.W. Cattle, LLC.

4 October 5, 6, 7, Daniel S. Venturacci and Amanda L. Venturacci.

5 November 2, 3, Ira R. and Montira Renner.

6 November 9, 10, 11, Solarljós, LLC.

- 7 -- Subject to court approval, by stipulation, the claimants and the State
8 Engineer may adjust the aforementioned hearing dates.
9
10 - Pre-trial briefs² shall be filed by the parties 10 days prior to first day of the
11 evidentiary hearing.
12
13 - The parties shall provide to the court at its chambers in Ely, Nevada, a
14 courtesy copy of all filed pleadings and exhibits. Exhibits shall be in CD
15 format only.
16
17 - All pleadings and discovery notices shall be served by the parties via email.
18
19 - Counsel and the parties must personally appear at the hearings. Other
20 witnesses, including expert witnesses, may appear virtually. The parties
21 shall follow ADK IX.

22 Good cause appearing,

23 IT IS SO ORDERED.

24 DATED this 9th day of December, 2020.

25 
DISTRICT JUDGE

26 ² The court will enter a separate pre-hearing order regarding briefs, evidence, and other matters related thereto.



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Case No. CV-2002009

Dept No. 2

NO. _____ FILED

DEC 10 2020

By Eureka County Clerk

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF EUREKA

IN THE MATTER OF THE
DETERMINATION OF THE RELATIVE
RIGHTS IN AND TO ALL WATERS,
BOTH SURFACE AND UNDERGROUND,
LOCATED WITHIN THE DIAMOND
VALLEY HYDROGRAPHIC BASIN NO.
10-153, EUREKA AND ELKO
COUNTIES, NEVADA

CERTIFICATE OF SERVICE

The undersigned being an employee of the Eureka County Clerk's Office, hereby
certifies that on the 10th day of December, 2020, I personally delivered a true and
correct copy of the following:

***Order Setting Hearings for Notices of Exceptions Filed on Order of
Determination To Determine relative Water Rights; Order Establishing Case
Procedure***

addressed to:



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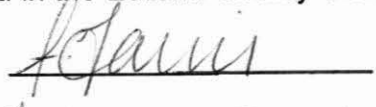
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Ashley Farris
Deputy Clerk Recorder