

In the Supreme Court of Nevada

EUREKA COUNTY AND DIAMOND NATURAL
RESOURCES PROTECTION & CONSERVATION
ASSOCIATION,

PETITIONERS,

VS.

THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF
EUREKA AND THE HONORABLE GARY D. FAIRMAN,
DISTRICT COURT JUDGE,

RESPONDENTS,

AND

SADLER RANCH, LLC; ET AL.,

REAL PARTIES IN INTEREST.

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Clerk of Supreme Court

**REAL PARTY IN INTEREST SADLER RANCH, LLC'S
MOTION TO DISMISS WRIT PETITION**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed.

None – Sadler Ranch, LLC has no parent corporations and is not a publicly held company.

The undersigned counsel of record further certifies that no law firm other than Taggart & Taggart, Ltd. has appeared or is expected to appear on behalf of Sadler Ranch, LLC in this matter. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

DATED: March 15, 2017

TAGGART & TAGGART, LTD.

By: /s/ Paul G. Taggart
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Real Party in Interest, Sadler Ranch, LLC (hereinafter “Sadler Ranch”), by and through its counsel of record, Paul G. Taggart, Esq. and David H. Rigdon, Esq., of the law firm of Taggart & Taggart, Ltd., respectfully requests this Court to enter an order dismissing petitioner’s writ petition.

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioners, Eureka County and Diamond Natural Resources Protection & Conservation Association (hereinafter “DNRPCA”) seek writ relief from interlocutory orders issued by the district court. Writ relief should be denied because Eureka County and DNRPCA have a plain, speedy and adequate remedy at law. The district court’s orders can be reviewed by this Court after a final, appealable, judgment is issued by the district court.¹

FACTUAL AND PROCEDURAL BACKGROUND

Sadler Ranch owns the oldest ranch in Diamond Valley. The ranch was established in the mid-1800s and used water that naturally flowed from the Big Shipley and Indian Camp Springs which are located on the ranch. The ranch used the entire flow of the springs and established pre-statutory vested rights to that

¹ NRS 34.340 (Writ relief may only be granted where the petitioner has no “plain, speedy and adequate remedy in the ordinary course of law”).

water. Junior groundwater pumping that was authorized by the State Engineer in southern Diamond Valley has caused spring flows on Sadler Ranch to disappear.

Between 1950 and 1970, the State Engineer issued hundreds of permits for groundwater in southern Diamond Valley. Even though the annual supply of groundwater was estimated to be 30,000 acre feet per year, the State Engineer issued 130,000 acre feet in permits. Over-appropriation and over-pumping lowered the groundwater levels by more than 100 feet, and captured historic spring flows on Sadler Ranch, and throughout Diamond Valley.

The State Engineer has not fulfilled his duty to curtail pumping in Diamond Valley. Nevada's prior appropriation doctrine, and Nevada's statutory law, precludes the State Engineer from impairing Sadler Ranch's spring rights.² Each of the water right permits issued by the State Engineer is junior in priority to Sadler Ranch's spring rights. Each of the State Engineer's permits expressly state they were issued subject to all existing rights. Yet, for more than forty years, the State Engineer has taken no action to limit over-pumping, even though his office has evidence that over-pumping of junior rights is impairing senior rights.

² NRS 533.085.

In the proceeding below, Sadler Ranch sought writ relief to require the State Engineer to curtail junior groundwater rights in Diamond Valley. On July 15, 2016, the district court issued both an order addressing motions to dismiss, and an alternative writ of mandamus. Neither Eureka County nor DNRPCA appealed or sought a writ from either order.

In the order regarding motions to dismiss, the district court found that the allegations made by Sadler Ranch, if true, support a “claim that the State Engineer has manifestly abused his discretion arbitrarily or capriciously entitling Sadler Ranch to mandamus relief.”³ The alternative writ commanded the State Engineer to either: (1) “begin the required proceedings to order curtailment of pumping in Diamond Valley on the basis of priority of right”, or (2) “show cause why you have not done so and why this Court should not order curtailment of pumping in Diamond Valley.”⁴

The State Engineer did not begin the required proceedings and the district court scheduled a show cause hearing for November, 2016. That hearing has been rescheduled for May, 2017. The purpose of the hearing is for the State Engineer to

³ *Id.* at Vol. 1, 112-122.

⁴ *Id.* at Vol. 1, 123-124.

present evidence explaining why he has failed, for over forty years, to take effective action to limit groundwater pumping in Diamond Valley. Then the district court can either: (1) grant Sadler its requested relief and order the State Engineer to begin curtailment proceedings, (2) grant Sadler its alternative relief and establish a schedule and process for holding evidentiary hearings to establish the amount of pumping to be curtailed or (3) deny the requested relief.⁵

The district court denied a motion and a motion for reconsideration that alleged Sadler Ranch should provide notice to all junior pumpers in Diamond Valley of the show cause hearing. The district court noted, “the next stage of this case [after the hearing] will be to adjudicate all claims of vested water rights, determine priority, quality, and when curtailment would occur together with related issues.”⁶ If this happens “*notice will be provided to all affected appropriators and other water users.*”⁷ The district court stated that it “clearly understands the posture of this case and the next steps for the court or the State

⁵ *Id.* at Vol. 2, 392.

⁶ *Id.* at Vol.2, 392.

⁷ *Id.* at Vol. 2, 392-93 (emphasis added).

Engineer to implement if the court orders that the alternate writ of mandamus remain as issued.”⁸

STANDARD OF REVIEW

NRS 34.020, 34.170, and 34.340 authorize writ relief only when a plain, speedy, and adequate remedy at law is not available. This Court has consistently held that “the right to appeal is generally an adequate legal remedy that precludes writ relief.”⁹ “[E]ven if an appeal is not immediately available because the challenged order is interlocutory in nature, the fact that the order may ultimately be challenged on appeal from the final judgment generally precludes writ relief.”¹⁰ The policy underlying the restriction on the use of writ petitions is one of judicial economy. If a petitioner has the right to appeal a determination made in an interlocutory order after the issuance of a final, appealable, determination, writ relief is not warranted.

ARGUMENT

In *Eureka County v. State Engineer*, this Court agreed with Eureka County and held that the State Engineer cannot authorize junior groundwater pumping that could

⁸ *Id.* at Vol. 2, 393.

⁹ *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

¹⁰ *Id.*, 120 Nev at 225, 88 P.3d at 841.

impact senior water rights in the future without adequate mitigation.¹¹ Now Eureka County is asking this Court to ignore actual and substantial harm to senior water holders that was caused by decades of over-pumping that the State Engineer authorized. Eureka County cannot have it both ways.

Sadler Ranch owns the oldest water rights in Diamond Valley, Nevada. Sadler Ranch's water rights are vested, pre-statutory, water rights that cannot be impaired by the State Engineer or any act of the Legislature.¹² The United States Geological Survey reported that spring flow on Sadler Ranch was once 15 cubic feet per second. Today those springs barely produce one cubic foot per second of flow. In the 1960s, the State Engineer over-appropriated the groundwater in Diamond Valley, and the unregulated pumping of those rights for decades captured Sadler Ranch's spring flow. The proceeding below was brought to force the State Engineer to curtail junior pumping to reverse the impairment of Sadler Ranch's vested water rights.

Rather than support Sadler's efforts to protect its vested rights, Eureka County has actively litigated to block Sadler Ranch from receiving appropriate mitigation or other relief. Eureka County has opposed Sadler's request for replacement

¹¹ *Eureka County v. State Engineer*, 131 Nev. Ad. Op. 84 (2015).

¹² NRS 533.085.

groundwater rights to mitigate for the loss of the spring water. In the instant case, Eureka County intervened to block Sadler's efforts to have pumping in the basin reduced in accordance with long-standing principles of prior appropriation. In so doing, Eureka County is taking a position that is diametrically opposed to the arguments it successfully made to this Court in the *Eureka County* case.¹³

I. PETITIONERS HAVE AN ADEQUATE REMEDY AT LAW.

The disputed orders were issued by the district court and denied motions filed by the State Engineer, and Eureka County and DNRPCA that sought to require Sadler to provide notice of the upcoming hearing to all junior appropriators in Diamond Valley. Now a show cause hearing is scheduled to allow the State Engineer the opportunity to present evidence to explain why, for more than forty years, his office failed to take action to prevent over-pumping in Diamond Valley.

The district court has been generous in granting intervention status to a variety of parties,¹⁴ and the district court correctly noted:

¹³ See Eureka County Opening Brief at 45-46, *Eureka County v. State Engineer*, 131 Nev. Adv. Op. 84 (2015) (Case No. 61324) ("Vested surface water rights cannot be impaired or affected nor can the customary manner of use of vested rights be impaired or affected pursuant to NRS 533.085.").

¹⁴ As the district court noted, DNRPCA represents literally dozens of irrigators in the basin. When combined with intervenors Ruby Hill Mining Company, Eureka County, the Allen's, and the State Engineer, every type of water use and priority of water right will be represented at the hearing. Petitioners' Appendix, Vol. 2,394.

At this juncture the appropriators and other water users either opposing or supporting curtailment as sought by Sadler Ranch are not so situated that the disposition of the issues to be heard at the evidentiary hearing will as a practical matter impair or impede their ability to protect their interests.¹⁵

The district court orders are interlocutory and can be appealed after the district court enters its final and appealable judgment. Eureka County's and DNRPCA's right to appeal is an adequate legal remedy that precludes writ relief.¹⁶

In the interest of judicial economy, the Court should not weigh into these proceedings at this time because it may never need to.¹⁷ The Court should allow the scheduled hearing to take place so that a proper record can be developed. No party has had the opportunity to examine witnesses or challenge evidence submitted by the other parties, nor have final rulings been made after the consideration of such evidence regarding Sadler Ranch's claims. Accordingly, this Court lacks a complete factual record with which to make determinations with respect to the allegations raised by Eureka County and DNRPCA.

Notification to all holders of water rights in the basin is unnecessary at this time. Even so, the State Engineer or Eureka County could provide that notice.

¹⁵ Petitioners' Appendix, Vol. 2, 392.

¹⁶ *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

¹⁷ *City of Las Vegas v. Eighth Judicial Dist. Court*, 124 Nev. 540, 544, 188 p.3d 55, 58 (2008).

The State Engineer maintains water right records in Nevada, and is well-suited to issue any notifications about potential actions that may affect those rights. Eureka County has offered to pay the costs of such a notification. Therefore, this writ petition should be denied.

II. EUREKA COUNTY AND DNCPCA CANNOT JUSTIFY INTERLOCUTORY REVIEW BY THIS COURT.

Writ relief can only be entertained from interlocutory orders if a strong and urgent necessity exists for the Court to decide an important question of law.¹⁸ Eureka County and DNRPCA cannot identify a vitally important question of law that necessitates writ relief at this time.

Eureka County and DNRPCA claim that property rights have already been impacted by the district court's orders. Yet, Eureka County and DNRPCA will have the opportunity to appeal an adverse decision, or seek a stay of such a decision, to this Court at the proper time. Eureka County and DNRPCA will have a full opportunity to raise such challenges, including due process and procedural challenges, at that time.

¹⁸ *Nevada Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 132 Nev.Adv.Op. 77, 383 P.3d 246 (2016).

Eureka County and DNRPCA cite to *Nevada Yellow Cab*¹⁹ in support of their request for interlocutory relief. The facts in *Nevada Yellow Cab* are readily distinguishable. The legal question raised in the *Nevada Yellow Cab* was also raised in numerous other cases. The Court stated “[w]e are aware of at least five other cases that have been filed in Clark County raising the same or similar question.”²⁰ Accordingly, “sound judicial economy and administration” weighed in favor of deciding the “important legal issue in need of clarification.”²¹ Here, the statutory issue that is raised involves the district court’s interpretation of the statutes (NRS 534.120(6)-(7)) that involve Critical Management Areas (“CMA”). CMAs are groundwater basins where groundwater pumping consistently exceeds the perennial yield in that basin. Diamond Valley is the only basin in Nevada that has been designated as a CMA. Accordingly, this interlocutory appeal should be denied.

CONCLUSION

For the reasons stated above, Sadler respectfully requests this Court enter an order dismissing Petitioner’s Verified Petition for Writ of Prohibition or in the Alternative, Writ of Certiorari or Mandamus.

¹⁹ *Id.*

²⁰ *Id.* at 383 P.3d 248.

²¹ *Id.*

CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that this Motion complies with the formatting requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This Motion has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman, 14 point font.

The undersigned does further certify that this Motion complies with the page limitations of NRAP 27(d)(2) because, excluding the parts exempted by NRAP 27(d)(1)(D), it does not exceed 10 pages.

In addition, the undersigned has read this Motion, and to the best of his knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. This Motion complies with all applicable Nevada Rules of Appellate Procedure.

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The undersigned understands that he may be subject to sanction in the event that the accompanying Motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: March 15, 2017.

TAGGART & TAGGART, LTD.

By: /s/ Paul G. Taggart
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I hereby certify that I am an employee of TAGGART & TAGGART, LTD, and that on this date, I caused the foregoing document to be served on all parties to this action by electronic filing to:

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DATED this 15th day of March, 2017.

/s/ Sarah Hope
Employee of TAGGART & TAGGART, LTD.