Case No. 72317

In the Supreme Court of Nevada

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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.

SADLER RANCH, LLC'S ANSWER

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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 this 17th day of April, 2017.

TAGGART & TAGGART, LTD.

By: /s/ Paul G. Taggart
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ROUTING STATEMENT

Petitioner Eureka County seeks writ relief from an interlocutory order issued by the Seventh Judicial District Court of the State of Nevada, and the Honorable Gary D. Fairman. Real Party in Interest Sadler Ranch, LLC (hereinafter "Sadler Ranch"), agrees that the Court, and not the Court of Appeals, is the proper court to consider the writ request pursuant to NRAP 17(a)(9) because the underlying case involves water rights.[1] Sadler Ranch disagrees with Petitioners' assertion that NRAP 17(a)(13) applies because this matter does not raise an important question of first impression with respect to either the United States or Nevada Constitutions.

ISSUES PRESENTED

1. Should writ relief be denied because Petitioner has a plain, adequate, and speedy remedy at law?

2. Did the district court properly limit the scope of the show cause hearing that will consider the State Engineer's failure to manage Diamond Valley pumping so that due process rights of junior water users are not violated?

[1] Petitioners' routing statement mistakenly references NRAP 17(a)(8) and 17(a)(10) as authority for this Court's presumptive retention of this matter. Based on the description of Petitioner's claim, Sadler Ranch believes that NRAP 17(a)(9) and 17(a)(13) are the relevant authorities that Petitioners intended to cite.

3. Did the district court properly interpret NRS 534.110(6) and (7) by concluding the legislature did not intend to statutorily protect and sanction ten (10) additional years of over-pumping of groundwater and impairment of senior water rights?

4. Do the Petitioners' unclean hands preclude writ relief?

STATEMENT OF THE CASE

Not only do the Petitioners clearly have an adequate remedy at law, they also misstate what the district court will consider at the scheduled show cause hearing. Sadler Ranch initially requested that curtailment proceed immediately after a show cause hearing. But the district court gave Eureka County what it asked for and limited the relief it would consider at the show cause hearing. The district court ruled that Sadler Ranch presented a prime facie case to conclude curtailment proceedings should *commence*. Then, every statement by the district court indicated the court will consider whether the required proceedings for curtailment should *commence*, and whether the required proceedings should commence before the State Engineer or before the district court. Eureka County is misleading the Court by focusing on what

Sadler Ranch asked for, and not what the district court has clearly stated it will consider at the show cause hearing.

Eureka County's falsely claims that junior pumpers will lose any ability to influence how decisions regarding curtailment will occur. If, after the show cause hearing the district court concludes that required proceedings for curtailment must commence, junior pumpers will receive notice of such proceedings and can elect to participate. The district court can follow or require the same "usual and customary manner" for developing a curtailment order as the State Engineer uses.[2] That manner can include notice and a hearing for those "potentially affected to review the evidence relied upon and provide additional evidence."[3]

The customary method for curtailment can occur before the district court, or the State Engineer, decide that curtailment should occur. The district court does not intend to take action immediately after the show cause hearing that could potentially deprive water rights, or that will involve immediate curtailment. As the district court stated, "the instance show cause hearing, however, does not make the outcome of any

[2] *See* P App at Vol. 1, pp. 130-32.
[3] *Id.*

future proceedings legally inevitable. This hearing will merely determine whether or not this Court will order future proceedings."[4]

Before junior pumpers lose their right to pump, and after notice, they will be able to influence the decision of whether curtailment is needed now, what the perennial yield is of Diamond Valley, whether a scarcity exists in the source of supply, what amount of curtailment is needed and what year should be the cut-off line. The district court was clear that junior pumpers "would not be curtailed at the show cause hearing."[5] At this stage, the only question is whether the required proceedings should *commence*, and that question can be considering without implicating the Petitioners' due process rights.

FACTUAL AND PROCEDURAL BACKGROUND

Diamond Valley is the "poster child for over-appropriation and over-pumping,"[6] and will continue to be until the State Engineer is ordered to do something about it. The State Engineer's Office bears the bulk of the responsibility for the over-pumping and the damage it has caused to holders of senior vested rights. Under the State Engineer's stewardship, Diamond Valley pumping is twice to three

[4] P App at Vol. 2, p. 349.
[5] P-App at Vol.2, pp. 348-50.
[6] Sadler Ranch, LLC's Appendix ("SR APP") 1253.

times the perennial yield, groundwater levels plummeted over one hundred feet, and most springs dried up.

Eureka County defends senior vested rights in other cases before the Court,[7] but now seeks to perpetuate the undisputed destruction of a groundwater aquifer and senior water rights. This request for writ relief represents Eureka County's last ditch effort to stall the inevitable enforcement of Nevada's prior appropriation doctrine in Diamond Valley.

I. FACTUAL BACKGROUND

Sadler Ranch is one of the oldest ranches in central Nevada. The ranch is located in Diamond Valley near the town of Eureka and was established by former Nevada State Governor Reinhold Sadler in the mid-1800s. The ranch encompasses over 3,000 acres of land which includes two major springs – the Big Shipley Spring and the Indian Camp Spring. Historically, these springs provided enough water to support all the operations of the ranch. The United States Geological Survey reported in 1931 that Big Shipley Springs flowed as much as 10,860 acre feet of water on an annual basis.[8] For over 100 years the ranch prospered.

[7] SR APP 480-560; SR APP 825-856.
[8] SR APP 1-4; SR APP 203; SR APP 207; SR APP 561-580.

In the 1960s the State Engineer began issuing groundwater permits in Diamond Valley. The total quantity of water approved under these and later permits vastly exceed the available water in Diamond Valley (the perennial yield of the basin). The perennial yield of Diamond Valley has historically been estimated at between 24,000 and 30,000 acre feet annually.[9] The groundwater permits that were issued by the State Engineer in Diamond Valley exceed 130,000 acre-feet annually.[10] Actual pumping in the valley was estimated in 2014 to exceed 90,000 acre-feet annually.[11]

The State Engineer's office has known about the problem in Diamond Valley for more than forty years. In 1968, the USGS warned the State Engineer that if over-pumping continued "[w]ater levels in the area of concentrated pumping . . . would be drawn down as much as 200 feet below the 1965 levels" and such a drawdown would "decrease the natural discharge from springs in the North Diamond subarea [where Sadler Ranch is located]."[12] In 1975, the State Engineer issued an order that "found

[9] SR APP 10; SR APP 84, SR APP 593.
[10] SR APP 593.
[11] SR APP 593. The State Engineer's office also failed to enforce a 1982 order that required meters to be installed on groundwater wells in Diamond Valley, so pumping quantities can only be estimated. Conveniently, the State Engineer reduced his estimate in 2016, and without any meter readings for pumping, to 70,000 acre feet per year, which is still over twice the perennial yield. P APP 36.
[12] SR APP 163.

that the ground water is being depleted in portions of the basin particularly in the agricultural areas."[13] In 1978, the State Engineer issued another order that "found a continued depletion of the ground water supplies [is occurring] in portions of the basin."[14]

In 1982, during a hearing held in Diamond Valley to consider curtailment, the former State Engineer stated that "I don't think there is any question that the pumpage is having some effect on those springs [Thompson Springs]. We identify this [that pumping is effecting the springs]."[15] The State Engineer also stated, the USGS "identified this in [its] report long before it occurred, [and] predicted it was going to occur."[16]

Yet, despite the overwhelming evidence that pumping by junior priority permits was causing damage to senior priority vested rights, the former State Engineer said he would not order curtailment of the pumping because everyone,

[13] SR APP 191-192.
[14] SR APP 193-194.
[15] SR APP 306: 20-23.
[16] SR APP 306: 23-24.

except the senior right holder whose springs were drying up, "seems to be quite content and happy with the situation in Diamond Valley."[17]

In 1982, the State Engineer's office also issued an order requiring totalizing meters to be installed on all junior wells in Diamond Valley.[18] The State Engineer did not enforce that order, and twenty-seven years later the State Engineer admitted that "there's no meters basically on any of the wells" creating a situation where actual pumping can only be estimated.[19] To this day, the meter order has not been enforced.

The State Engineer also publicly stated in 2009 that his office has been aware of the over-pumping problem since at least the 1960s, "[w]e're in 2009. We've had problems, well, since the 60s. We've been out here in '82, and in '92, the State

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[17] SR APP 337: 3-8. This statement exhibits a troubling and remarkably cavalier attitude on the part of the former State Engineer towards senior water rights. Consider the following hypothetical: John Doe is a homeowner who keeps a large inventory of tools in his garage. Mr. Doe finds out that several of his neighbors have "borrowed" his tools without his permission and refuse to give them back. Mr. Doe calls the police who send an officer to investigate. After a full investigation, the officer informs Mr. Doe that while he knows the neighbors have taken the tools without permission he is not going to take any action because "everyone in the neighborhood except Mr. Doe seems to be quite content and happy with the situation."

[18] SR APP 381-382. The deadline for completion was extended by one year to May 1, 1984, under State Engineer Order 813, SR APP 383.

[19] SR APP 409: 9-10.

Engineer has. We're out here again."[20] He also stated that pinpointing the cause of the declining water levels in Diamond Valley is a "no-brainer," and that "we're pumping more water than the aquifer can sustain on an annual basis."[21] In 2014, the State Engineer made a finding of fact that groundwater levels have fallen over 100 feet.[22]

The over-pumping of the aquifer ruinously effected the springs at Sadler Ranch. Indian Camp spring stopped flowing completely, and Big Shipley Spring flows less than 1,000 acre feet annually.[23] In Ruling 6290, the State Engineer definitively determined that Sadler Ranch has "proven by a preponderance of the evidence that the groundwater pumping in southern Diamond Valley is the main cause of decline in groundwater levels."[24] He also noted that Eureka County, "acknowledges that pumping of groundwater under junior rights has impacted spring flow [at Sadler Ranch] to some extent."[25] Despite these findings, the State Engineer

[20] SR APP 418: 2-5.
[21] SR APP 416: 21-24.
[22] SR APP 605.
[23] SR APP 574; SR APP 576.
[24] SR APP 613.
[25] SR APP 612.

failed to take effective remedial measures to bring the basin back into balance to protect Sadler Ranch's remaining spring flows.

II. PROCEDURAL BACKGROUND

Sadler Ranch filed a petition for curtailment in Diamond Valley because of over-appropriation in the valley, the loss spring flow, and the State Engineer's failure to take action to adequately protect senior water rights. The petition sought the issuance of a writ compelling the State Engineer to "fulfill his affirmative and mandatory obligation to curtail the over-pumping of groundwater in Diamond Valley."[26]

A. Sadler Ranch's failed attempt to gain replacement water.

The curtailment action followed Sadler Ranch's unsuccessful effort to obtain replacement water for its lost spring flows. The State Engineer has failed to complete an adjudication that was initiated in 1982 to quantify Sadler Ranch's water rights. Pending the adjudication, Sadler Ranch asked for roughly 7,500 acre feet in replacement water but was awarded only 975 acre feet by the State Engineer in 2014. The State Engineer's 975 acre foot award was summarily reversed by the district

[26] P APP 44.

court and remanded. The State Engineer recently awarded less than 3,000 acre feet in a decision on remand that is now on appeal before the district court.

Eureka County opposed the replacement water award, arguing in part that the award could not be granted until the adjudication is complete. Eureka County's position was shockingly inconsistent with its position before the Court in Case No. 61324 in which Eureka County itself requested the State Engineer to protect vested water rights that had not yet been adjudicated.[27] In Case No. 61324, Eureka County asserted that pre-statutory vested water rights do not need to be adjudicated in order to be entitled to protection. Eureka County argued that there are "hundreds" of pre-statutory water rights in the area that need to be protected.[28] Eureka County also argued that while "prestatutory vested rights may be subject to state regulation" it is "imperative to Nevada water law that prestatutory vested rights not be impaired by statutory law" under NRS 533.085(1).[29] Eureka County cannot, in good conscience, claim that unadjudicated vested water rights in Kobeh Valley are entitled to protection (Case No. 61324), but claim Sadler Ranch's vested rights are not.

[27] SR APP 480-560.
[28] SR APP 502.
[29] SR APP 519.

B. Designation of Diamond Valley as Critical Management Area.

While Sadler Ranch's curtailment petition was pending, the State Engineer announced he would finally hold a hearing to consider designating Diamond Valley as a Critical Management Area ("CMA").[30] The State Engineer has authority to designate a basin as a CMA if "withdrawals of groundwater consistently exceed the perennial yield of the basin."[31] Sadler Ranch sought, and was granted, a stay of its petition for curtailment because the CMA hearing might result in action to limit pumping in Diamond Valley and would be a more amicable solution.[32]

Sadler Ranch participated in the State Engineer hearing and supported the proposed designation. On August 25, 2015, the State Engineer issued Order 1264, formally designating Diamond Valley as a CMA.[33] Diamond Valley is currently the only basin in Nevada designated as a CMA.

C. Amended Curtailment Petition.

Due to the State Engineer's continued failure to limit pumping in Diamond Valley, Sadler Ranch filed an amended petition with the district court.[34] The

[30] SR APP 659-660.
[31] NRS 533.110(7).
[32] SR APP 659-660.
[33] P APP 33-37.
[34] P APP 44-75.

amended petition requested the district court either: (1) direct the State Engineer to begin curtailment proceedings, or (2) directly issue an order curtailing pumping.[35]

The State Engineer sought dismissal of Sadler Ranch's amended petition.[36] On July 13, 2016, the district court issued an order denying, in part, the State Engineer's motion to dismiss.[37] The order noted that Sadler Ranch's amended petition properly pled a prima facie case that "the State Engineer has manifestly abused his discretion or exercised his discretion arbitrarily or capriciously entitling Sadler Ranch to mandamus relief."[38]

Also on July 13, 2016, the district court issued an Alternative Writ of Mandamus and limited the scope of writ relief from what was originally requested by Sadler Ranch. The district court directed the State Engineer to "begin the required proceedings to order curtailment of pumping in Diamond Valley," but to date, the State Engineer has not. Alternatively, the district court directed the State Engineer to "show cause why you have not done so and why this Court should not order you to begin the required proceedings."[39] The district court scheduled a show cause hearing

[35] P APP 45; P-APP 71.
[36] SR APP 76-85.
[37] P APP 112-122.
[38] P APP 121-122.
[39] P APP 124.

for November 21, 2016.[40] Importantly, in each instruction, the district court directed that the *required proceedings* occur, which the district court later explained will include all necessary due process protections. Neither Eureka County, nor the State Engineer, filed an appeal or sought writ relief from the July 13, 2016, order, nor did they seek to stay the November show cause hearing.

On August 29, 2016, the State Engineer filed a motion to require Sadler Ranch to provide notice to all water users in Diamond Valley of the show cause hearing.[41] Eureka County joined in the motion.[42] Sadler Ranch opposed the motion and argued that notice and an opportunity to be heard will be provided if the *required* proceedings are ordered before the State Engineer, or the district court, and that the proper party to provide notice of such hearings is the State Engineer, not Sadler Ranch.[43]

On October 26, 2016, the district court issued its order denying the State Engineer's motion. The order correctly noted that:

> [E]ven if this Court were to grant Sadler Ranch's request and decide that some curtailment must occur – either

[40] *Id*.
[41] P APP 127-135.
[42] P APP 317-319. Eureka County was granted intervenor status on August 7, 2015. P APP 027-028.
[43] P-APP 320-333.

> through the State Engineer or directly – the "how" and "who" of curtailment could not be decided until a future proceeding. At this future proceeding due process rights would necessarily attach and all possibly affected appropriators would have a constitutional right to receive notice of the action. Possibly affected appropriators could then appear and argue why their specific water rights should not be curtailed. The instant show cause hearing, however, does not make the outcome of any future proceedings legally inevitable. The hearing will merely determine whether or not this Court will order future proceedings.[44]

Eureka County did not file an appeal or seek writ relief from the October 26, 2016 order, nor did it seek to stay the November show cause hearing. Instead, on November 2, 2016, Eureka County filed a motion for reconsideration.[45] Eureka County's primary concern was a statement by the district court indicating that Eureka County and the other intervenors "already represent the diverse interests of water appropriators in Diamond Valley" and that "Eureka County is presumed to represent the interests of all its citizens."[46] Eureka County argued that the county "cannot represent all the diverse interests of those property right holders."[47]

On November 22, 2016, the district court denied Eureka County's motion for reconsideration stating that "Eureka County has misinterpreted the court's order and

[44] P APP 346-350 (internal citations omitted).
[45] P APP 351-366.
[46] P APP 346-350.
[47] P APP 351-366.

has taken language out of context."[48] The district court clarified its earlier order stating that:

> Obviously, Eureka County cannot and is not representing specific interest of each appropriator or other water user as it relates to unadjudicated claims of vested water rights, priority, quantity of water, and related issues. If and when these issues are before the court notice will be provided and each specific and differing interest can be addressed.[49]

For reasons not related to the notice question, the district court continued the November 21, 2016, hearing to May 15-19, 2017. Even though Eureka County was prepared to attend the November 21, 2016, hearing, it took advantage of the continuance by filing the instant writ.

The instant writ petition was filed on February 8, 2017, and challenges determinations that were made by the district court in its July 13, 2016 Alterative Writ, the order denying to State Engineer's motion regarding notice, and the reconsideration motion. The writ was filed nearly almost seven (7) months after the district court denied to motion to dismiss and issued the Alternative Writ, more three (3) months after the order denying the motion regarding notice, and more than two

[48] P APP 389-396.
[49] P-APP 394.

(2) months after Sadler Ranch provided notice of the entry of the district court's order denying reconsideration.[50]

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."[51] "[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."[52] 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.

SUMMARY OF ARGUMENT

Eureka County and the other petitioners have an adequate legal remedy that precludes writ relief at this time. Petitioners will have a full opportunity to appeal an

[50] SR APP 1288-1298.
[51] *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).
[52] *Pan* at 225, 88 P.3d at 841.

adverse decision, or seek a stay of such a decision, after the district court enters an appealable order. In such an appeal, Petitioners will have a full opportunity to raise their due process and statutory interpretation challenges. Accordingly, writ relief is unwarranted.

In addition, the district court properly limited the scope of the show cause hearing so that the due process rights of junior water users are not violated. Eureka County misstates the nature and scope of the show cause hearing. The district court has made clear that no order for immediate curtailment will issue as a result of the show cause hearing. If Sadler Ranch is successful, the only relief that the district court will order is the initiation of further proceedings. Those proceedings, regardless of whether they are conducted by the State Engineer or the district court, will provide the due process protections required by law. Therefore, there is no urgent and strong necessity to grant writ relief at this time.

The district court correctly interpreted NRS 534.110(7)(a). Absent extenuating circumstances, a district court's interpretation of a statute is not subject to interlocutory appeal. The statute at issue applies only to groundwater basins designated as CMAs. Diamond Valley is currently the only basin in Nevada with this designation. Given this, there is no need for the Court to weigh in on the district

court's interpretation of NRS 534.110(7)(a) at this time. Once a final, appealable, determination is made regarding Sadler Ranch's request for curtailment, Eureka County and the other Petitioners will have a full opportunity to ask the Court to review the district court's interpretation of NRS 534.110(7)(a).

Finally, Petitioners approach the Court with unclean hands that precludes writ relief. Eureka County, and the other Petitioners, delayed the filing of the instant petition as a tactic to delay the show cause hearing so that over-pumping in Diamond Valley can continue unabated. Petitioners did not timely file the petition and could have sought a stay of the original November 21, 2016 hearing date but chose not to do so. Instead, they waited several months to file the petition and simultaneously seek a continuance of the rescheduled hearing at the district court on the basis that this Court will not have time to decide the petition before the hearing. In addition, the State Engineer has knowingly and consciously failed to protect holders of senior vested rights in Diamond Valley for more than forty (40) years while, at the same time, assisting Eureka County in its efforts to delay curtailment. Accordingly, the Court should deny the instant writ petition.

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 impact senior water rights in the future without adequate mitigation.[53] Now Eureka County is asking this Court to ignore actual, substantial and continuing harm to senior rights water holders that is caused by decades of over-pumping that the State Engineer authorized. Eureka County's positions are irreconcilable.

Sadler Ranch owns some of the oldest water rights in Diamond Valley. 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.[54] The proceeding below was brought to force the State Engineer to curtail junior pumping to reverse the destruction of the only groundwater aquifer that Sadler Ranch can pump its replacement water from, and the impairment of Sadler Ranch's vested water rights.

Rather than support Sadler Ranch's efforts to protect its vested rights, Eureka County has pursued multiple strategies to block Sadler Ranch from receiving appropriate mitigation or other relief. In a related case, Eureka County has opposed

[53] *Eureka County v. State Engineer*, 131 Nev. Ad. Op. 84 (2015).
[54] NRS 533.085.

Sadler's request for replacement 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 the Court in the *Eureka County* case.

Eureka County stated in its prior brief to this Court that "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."[55] Despite making these statements regarding the fundamental importance of senior vested rights, neither Eureka County nor any junior irrigator in Diamond Valley has made a good-faith attempt to reach agreement with Sadler Ranch regarding mitigation for the loss of water from the springs. Instead they have consistently protested Sadler Ranch's mitigation rights applications and actively litigated to block Sadler Ranch from receiving an effective remedy. This writ petition represents their latest tactical attempt to delay the inevitable.

[55] *See* SR APP 534-535.

I. Writ Relief Should Be Denied Because Petitioners Have A Plain, Adequate, and Speedy Remedy at Law.

The disputed orders were issued by the district court and denied motions filed by the State Engineer, 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.

Eureka County and the other petitioners clearly have an adequate legal remedy that precludes writ relief at this time. When the district court makes a final determination on the curtailment petition that is appealable, Eureka County and the other petitioners can appeal that decision and make all the same arguments that are made here, if that decision is adverse to Eureka County and the other petitioners.

Eureka County is challenging interlocutory orders that are clearly not appealable at this time.[56] The real challenge here is to the district court's partial denial of the motion to dismiss, and the order denying the motion for notice. Neither order is appealable.[57] Also, the motion for reconsideration is obviously not

[56] *Pan* at 225, 88 P.3d. at 841 (2004).
[57] NRAP 3A(b).

appealable. Petitioners' right to appeal is an adequate legal remedy that precludes writ relief, and the fact that an interlocutory order is not immediately appealable is not proper grounds for writ relief.[58]

Importantly, the district court has limited the scope of the show cause hearing to protect the due process rights that Eureka County and the other Petitioners claim is the basis for this writ request. Also, the arguments made in this writ petition can be made to the district court at the show cause hearing to assure those due process concerns are properly considered. If those arguments are not successful, an appeal can be filed from a final order.

The district court has been generous in granting intervention status to a variety of parties that can make these arguments. As the district court stated, 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.[59] As the district court correctly noted:

> 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

[58] *Pan* at 224, 88 P.3d at 841 (2004).
[59] P App No. 394.

> the issues to be heard at the evidentiary hearing will as a practical matter impair or impede their ability to protect their interests.[60]

Hence, in the interest of judicial economy, this Court should not weigh into these proceedings at this time because it may never need to.[61] Instead, 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. Accordingly, this Court lacks a complete factual record with which to make determinations with respect to the allegations raised by Petitioners.

Notification to all holders of water rights in the basin is unnecessary at this time. Even so, nothing in the district court's orders prevented the State Engineer or Eureka County from providing a notice of the show cause hearing to all water users in the basin. The State Engineer maintains water right records in Nevada, and is well-suited to issue any notifications about potential actions that may affect those

[60] P App No. 346-350.
[61] *City of Las Vegas v. Eighth Judicial Dist. Court*, 124 Nev. 540, 544, 188 p.3d 55, 58 (2008).

rights. Eureka County has offered to pay the costs of such a notification. Each of them could have worked together to provide any notice they deem necessary.

Petitioners argue that writ relief should be granted because "Eureka County and DNRPCA will also specifically be harmed by expending considerable resources on a week-long show cause hearing."[62] However, the fact that a petitioner may be required to incur additional expenses in the event that a final judgment is reversed on appeal does not warrant the Court's intervention by way of extraordinary relief.[63]

Finally, Petitioners will have a full opportunity to appeal an adverse decision, or seek a stay of such a decision, at the proper time. In such an appeal, Petitioners will be able to raise their due process and statutory interpretation challenges. Therefore, this writ petition should be denied.

[62] Verified Petition for Writ of Prohibition or in the Alternative, Writ of Cetiorari or Mandamus at 14.

[63] *See e.g. Upper Deck Co. v. Eighth Jud. Dist. Ct.*, 2009 WL 3193620 (unpublished). This case is not cited as precedential authority, but merely as an example of a case where the Court denied writ relief in spite of an argument that the petitioner would incur additional expenses if writ relief was denied.

II. The District Court Properly Limited the Scope Of The Show Cause Hearing So That Due Process Rights of Junior Water Users Are Not Violated.

The only property rights that are being deprived without due process are Sadler Ranch's. The State Engineer allowed, without consent or compensation, junior pumpers to capture Sadler Ranch's vested property rights. No due process was afforded Sadler Ranch, and it has not been made whole. The State Engineer arbitrarily lessened the award of replacement water, and no money has been provided to compensate Sadler Ranch for the loss of its water, or for the infrastructure that is needed to develop replacement water. The show cause hearing should not be delayed because delay will only heighten the deprivation of Sadler Ranch's property rights.

A. Petitioners misstate the nature and scope of the upcoming show cause hearing.

In the alternative writ the district court ordered the State Engineer to either "begin the required proceedings to order curtailment of pumping" or "show cause why you have not done so."[64] If the State Engineer opts for a show cause hearing (which he has done), the district court further instructed him to address two specific issues at the hearing: (1) "why this Court should not order you to begin the required

[64] SR APP 124.

proceedings to order curtailment", and (2) "why this Court should not order curtailment of pumping in Diamond Valley."

The district court ordered the State Engineer to address the second issue because Sadler Ranch's amended curtailment petition alternatively requested that the district court directly order a curtailment of pumping "based on the State Engineer's knowing and intentional refusal to follow Nevada law, and the lack of any indication that he will move forward with curtailment proceedings."

In the State Engineer's motion regarding notice, he argued that the possibility that the district court might directly curtail pumping raised the due process concerns mentioned by Petitioners. The district court acknowledged the validity of the State Engineer's concerns and explained that "even if this Court were to grant Sadler Ranch's request and decide that some curtailment must occur – either through the State Engineer or directly – the "how" and "who" of curtailment could not be decided until a future proceeding."[65] Thus, even if the district court chooses the option of directly ordering a curtailment of pumping, it will do so only after conducting additional proceedings. Just like curtailment proceedings conducted by the State

[65] SR APP 1138.

Engineer, any curtailment proceedings conducted directly by the district court will include notice and an opportunity for affected parties to be heard.

In the order denying Eureka County's request for reconsideration, the district court offered further assurance that if curtailment proceedings are ordered "notice will be provided to all affected appropriators and water users" regardless of whether it is the State Engineer or the district court that conducts the additional proceedings and that "[t]hose who are affected may then appear in this action and protect their individual interest."[66] The district court also reiterated that the scope of the show cause hearing is "limited to the issue of whether the State Engineer's alleged failure to take the discretionary action of initiating curtailment in Diamond Valley is a manifest abuse of discretion or an arbitrary and capricious exercise of discretion."[67]

The district court is clearly aware of the due process concerns raised by Petitioners and has responded to these concerns by limiting the scope and nature of the show cause hearing. The district court's July 16, 2016 Alternate Writ, order denying the State Engineer's motion regarding notice, and order denying Eureka County's request for reconsideration, all indicate that the district court will not be

[66] P APP 392-393.
[67] P APP 392.

ordering any immediate curtailment of pumping as a result of the show cause hearing. Despite this, Petitioners wrongly represent to the Court that at the show cause hearing the district court may "directly order that curtailment commence as a result of the upcoming hearing."[68] Thus, Eureka County's request should be rejected.

B. No strong and urgent necessity exists which warrants writ relief.

Writ relief should only be entertained from interlocutory orders if a strong and urgent necessity exists for this Court to decide an important question of law.[69] That narrow exception does not apply here.

Petitioners cite to *Nevada Yellow Cab*[70] in support of their request for interlocutory relief. The facts in *Nevada Yellow Cab* are readily distinguishable. The legal question raised in *Nevada Yellow Cab* was also raised in a numerous other cases. The Court in *Nevada Yellow Cab* stated "[w]e are aware of at least five other cases that have been filed in Clark County raising the same or similar question."[71]

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[68] Verified Petition for Writ of Prohibition or in the Alternative, Writ of Certiorari or Mandamus at 6.
[69] *Nevada Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 77, 383 P.3d 246 (2016).
[70] *Id.*
[71] *Id.* at 77, 383 P.3d at 248.

Accordingly, "sound judicial economy and administration" weighed in favor of deciding the "important legal issue in need of clarification."[72]

Here, the only statutory issue raised by Petitioners involves the district court's interpretation NRS 534.120(7)(a), a statute that applies only to 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, there is no danger that the issue will be raised in another forum, or that there will be conflicting interpretations by different courts.

Petitioners also cite to *Matter of Two Minor Children*[73] for the proposition that writ relief is "a proper vehicle in which to challenge a district court's violation of due process notice principles.[74] However, in *In Matter of Two Minor Children*, a state agency was seeking writ relief from a contempt proceeding initiated by the district court. Here, the district court has not initiated a contempt proceeding against the

[72] *Id.*
[73] 95 Nev. 225, 592 P.2d 166 (1979).
[74] Verified Petition for Writ of Prohibition or in the Alternative, Writ of Certiorari or Mandamus at 12.

State Engineer and, even if it had, Petitioners have no standing to assert the due process rights of the State Engineer.[75]

Finally, Petitioners cite to *Watson v. Housing Authority of City of N. Las Vegas*[76] to argue that a district court order that violates due process rights of an individual exceeds the jurisdiction of the district court and, therefore, writ relief is appropriate.[77] However, that situation is not present in the instant case. Here, the district court has properly limited the scope of the show cause hearing to specifically address the due process concerns raised by the State Engineer and the Petitioners.

C. No property rights will be impaired if the District Court orders proceedings to implement a priority-based curtailment.

Nevada water law is based on the principle of prior appropriation. This principle is often articulated as "first in time, first in right."[78] The priority date assigned to a right is arguably the most important element of that right because it grants to the holder of the right the power to exclude all holders of junior priority

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[75] *Beazer Homes Holding Corp. v. Dist. Ct.*, 128 Nev.Adv.Op. 66, 291 P.3d 128 (2012) ("a party generally has standing to assert only its own rights and cannot raise claims of a third party.').

[76] 97 Nev. 240, 627 P.2d 405 (1981).

[77] Verified Petition for Writ of Prohibition or in the Alternative, Writ of Certiorari or Mandamus at 12.

[78] *Ormsby County v. Kearney*, 37 Nev. 314, 142 P. 803, 819-20 (1914).

rights from using water when there is not enough water in the source to meet all demands.[79]

Clearly there is not enough water in the Diamond Valley basin to meet the existing demands of all water users. As noted above, pumping in the basin vastly exceeds the established perennial yield. Because of the State Engineer's continued failure to correct this situation, it is Sadler Ranch, not the Petitioners, who is being deprived of a property right without due process. Further delay of the district court's show cause hearing will only exacerbate the harm being done to Sadler Ranch's senior vested rights.

Petitioners argue that if curtailment proceedings are ordered water users will be "deprived of their water rights."[80] This is factually incorrect. The Petitioners do not have a property right that entitles them to over-pump Diamond Valley, capture senior water rights or destroy the only aquifer can provide replacement water to Sadler Ranch. The permits issued in Diamond Valley expressly state that they do not allow water to be taken from the source until all senior rights are satisfied.

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[79] *See Phillips v. Gardner*, 469 P.2d 42, 44 (Or.Ap. 1970)("Priorities are meaningful only in times of shortage"); *See also Whitmore v. Murray City*, 107 Utah 445 (1944)("to deprive a person of his priority is to deprive him of a most valuable property right.")

[80] Petition at 5.

All permits issued by the State Engineer are issued subject to existing senior rights.[81] By the express terms of their permits, junior priority users are only allowed to pump water if any remains in the source after all senior priority rights have been satisfied. A curtailment of pumping by priority, based on the perennial yield of the basin (the water available in the source), does not deprive any person of a property right. They are getting exactly what their permits allow for – the right to pump water if such water remains available in the source after all prior rights have been satisfied. Until Sadler Ranch's vested senior right is fully satisfied or mitigated, Sadler Ranch has the absolute right to prevent holders of junior rights from pumping water from the source. If curtailment proceedings are ordered to commence, no water right permits will be cancelled, forfeited, or otherwise abrogated by a curtailment order. A curtailment order will simply enforce the express terms of the permits.

The relief requested by Sadler Ranch is to have the district court, either on its own or through the State Engineer, begin the proceedings to impose a curtailment of pumping by priority, based on the available water in the source. The granting of such relief will not impair the property rights of any water users within the basin because

[81] *See e.g.* SR APP 195-196 ("This permit is issued subject to existing rights"); *See also* NRS 544.110(5)(the State Engineer may grant later filed permits only "so long as . . . the rights of holders of existing appropriations can be satisfied").

their permits expressly state that they are not allowed to take water from the source until all senior rights are satisfied. What Petitioners are really seeking here is permission to continue to violate the express terms of their permits and engage in groundwater mining.[82] Accordingly, the constitutional due process concerns raised by Petitioners are misplaced and the Petition should be denied.

III. The District Court Properly Interpreted NRS 534.110(7)(a) By Concluding That The Legislature Did Not Intend To Statutorily Protect And Sanction Ten (10) Additional Years Of Over-Pumping Of Groundwater And Impairment of Senior Rights.

Petitioners also raise an issue of statutory interpretation that was decided by the district court when it denied the State Engineer's motion to dismiss. However, absent extenuating circumstances, a district court's interpretation of a statute is not appealable until the district court issues a final determination in the case.[83] Here, there are no such extenuating circumstances.

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[82] SR APP 1280. In testimony before the Nevada Legislature, Eureka County agreed that pumping of water in excess of the perennial yield of the basin constitutes impermissible water mining. Eureka County Testimony on AB 298, April 4, 2017, hearing of the Assembly Natural Resources, Agriculture, and Mining Committee ("perennial yield . . . is limited to the maximum amount of discharge that can be utilized for beneficial use *without causing groundwater mining* or other adverse effect.")(emphasis added).

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

In 2011, the Nevada Legislature amended the curtailment statute (NRS 534.110(6)) to add a provision that allows the State Engineer to designate a basin as a CMA. This provision became NRS 534.110(7)(a). NRS 534.110(6) and (7)(a) read as follows:

> 6. Except as otherwise provided in subsection 7, the State Engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants, and if the findings of the State Engineer so indicate, the State Engineer may order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted to conform to priority rights.
>
> 7. The State Engineer:
>
> (a) May designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin . . . The designation of a basin as a critical management area pursuant to this subsection may be appealed pursuant to NRS 533.450. If a basin has been designated as a critical management area for at least 10 consecutive years, the State Engineer shall order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights, unless a groundwater management plan has been approved for the basin pursuant to NRS 534.037.

Eureka County argues that NRS 534.110(7)(a) is prohibitory in nature and, as such, prevents the State Engineer from ordering a curtailment during the ten year

period immediately following the designation of a basin as a CMA. Both the State Engineer and the district court disagree with Petitioner's interpretation.[84]

To be designated as a CMA basin, the State Engineer must find that withdrawals of groundwater from the basin "consistently exceed the perennial yield of the basin."[85] This means that the basin is in a much worse condition than a basin where "the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants."[86] It is inconceivable that the Legislature intended to provide the State Engineer with fewer tools to manage a CMA basin than it did to manage basins with less of a problem.

Indeed, the plain language of the statute demonstrates the opposite – that the Legislature intended to give the State Engineer *additional* tools to deal with CMA basins, not take away existing ones. When a statute is unambiguous, courts must

[84] The State Engineer filed a joinder to the instant petition in which it "incorporate[d] by reference all the legal arguments therein." However, Petitioners' arguments related to the interpretation of NRS 534.110(7)(a) are in direct opposition to the State Engineer's past interpretation of the statute. The State Engineer has never agreed that NRS 534.110(7)(a) restricts him from ordering a curtailment during the ten year period described in the statute. The State Engineer only joined the instant petition to "support[] the issuance of the requested writ" and to avoid "filing an answer on behalf of Respondent." The joinder does not appear to indicate the State Engineer intended to join Petitioner's argument that NRS 534.110(7)(a) is a prohibition on the State Engineer's discretionary power to order a curtailment under NRS 534.110(6).
[85] NRS 534.110(7)(a).
[86] NRS 534.110(6).

give effect to the plain and ordinary meaning of the language.[87] "The public policy behind the legislation may be discerned from the entire act, and a statute's provisions should be read as a whole, so that no part is rendered inoperative and, when possible, any conflict is harmonized."[88]

In fact, a review of legislative history of NRS 534.110(7) reveals that legislators were concerned with the State Engineer's failure to act in the face of over-pumping problems within over-appropriated basins. In the March 30, 2011 meeting of the Assembly Committee on Government Affairs, Senator Goicoechea, the primary sponsor of the legislation that became NRS 534.110(7), stated that "[t]he problem is where we are today, again the State Engineer, and I am not throwing any rocks at the Division of Water Resources, but the bottom line is we just are not getting it done. We continue to see these groundwater basins decline."[89] The suggestion is absurd that a legislature with the clear intent to prompt action by the

[87] *Cromer v. Wilson*, 126 Nev. 106, 109, 255 P.3d 788, 790 (2010).
[88] *Int'l Game Tech., Inc. v. Dist. Ct.*, 124 Nev. 193, 200-01, 179 P.3d 556, 560 (2008).
[89] March 30, 2011 Minutes of Assembly Committee on Government Affairs at 69.

State Engineer to reverse water level declines in over-allocated basins would impose a ten-year moratorium on the State Engineer's ability to do just that.[90]

Read together NRS 534.110(6) and (7)(a) provide a clear and unambiguous grant of power to the State Engineer. Under NRS 534.110(6) the State Engineer has the *discretionary* power to curtail pumping in a basin. Under NRS 534.110(7) the State Engineer's discretionary power becomes *mandatory* in a basin designated as a CMA if a groundwater management plan is not approved within ten years.

Importantly, the discretionary power granted by NRS 534.110(6) may not be exercised arbitrarily or capriciously. Rather, it must be based on the facts and circumstances of the particular situation. If, as here, the facts and circumstances overwhelmingly demonstrate that curtailment is not just warranted but absolutely necessary to protect senior rights that are being impaired, the State Engineer may not ignore those facts and choose to do nothing merely because he wants to allow the junior priority users time "to create a solution to the overdraft of the basin."[91]

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[90] *J.E. Dunn Northwest, Inc. v. Corus Const. Venture, LLC*, 127 Nev. Ad. Op. 5, 249 P.3d 501, 505 (2011).
[91] SR APP 1065.

Sadler Ranch supported the designation of the basin as a CMA. A groundwater management plan is long overdue and sorely needed in Diamond Valley. However, the development of such a plan should not be an excuse to allow continued over pumping in the basin especially when the evidence so overwhelmingly indicates that the over pumping is directly impairing senior vested water rights.

The district court agreed with this reasoning, holding that. "[t]he CMA designation under NRS 534.110(7)(a) does not preclude the State Engineer from ordering curtailment during the 10 year CMA designation nor does the CMA designation preclude Sadler Ranch from seeking mandamus relief." The district court also agreed that "when read together NRS 534.110(6) and (7) do not require the State Engineer to wait 10 years to curtail pumping in Diamond Valley." The district court did not agree with Eureka County that the Legislature passed the CMA law to "force senior water rights holders to suffer possible irreparable harm over a 10 year period" while "junior appropriators were still pumping to the detriment of senior rights holders." The district court also concluded that even though the State Engineer has an "admitted almost 40 year history of allowing over appropriation in Diamond Valley," he is the trustee of water resources in Nevada and "it is inconceivable he

would tolerate a continuing course of junior over appropriation of water . . . if a management plan is not being timely developed."[92]

The district court properly concluded that acceptance of Petitioners' interpretation of the statute will lead to the "unreasonable or absurd result"[93] that the State Engineer has less discretionary authority to manage a basin designated as a CMA, than he does to manage other basins in the state.[94]

Not only was the district court's interpretation correct, its ruling should not subject to interlocutory appeal. Diamond Valley is the only groundwater basin in Nevada that has been designated a CMA. Given this, there is simply no need at this time for the Court to weigh in on the district court's interpretation of NRS 534.110(7)(a). Once a final, appealable, determination is made regarding Sadler Ranch's request for curtailment, this Court will have a full opportunity on appeal to review the statute and determine the correctness of district court's interpretation. Accordingly, writ relief is improper.

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[92] SR APP 822.
[93] SR APP 823.
[94] "[I]nterpretation should avoid absurd results." *Westpark Owners' Ass'n v. Dist. Ct.*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007).

IV. Petitioners' Unclean Hands Preclude Writ Relief.

A. Eureka County delayed the filing of this writ petition to stall the show cause hearing and allow continued over-pumping in Diamond Valley.

But this writ petition really challenges determinations that were made by the district court in its July 13, 2016 Alterative Writ, the October 26, 2016, order denying to State Engineer's motion regarding notice, and the reconsideration motion. The writ was filed nearly almost seven (7) months after the district court denied to motion to dismiss and issued the Alternative Writ, more three (3) months after the order denying the motion regarding notice, and more than two (2) months after Sadler Ranch provided notice of the entry of the district court's order denying reconsideration.[95] Petitioners did not file their Petition challenging any of these orders until February 8, 2017, more than two months after being served with the notice of entry of order.

NRAP 4(a)(1) provides that an appeal of a determination of a district court must be filed "no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served." The plain language of the Petition reveals that Petitioners are using the writ petition because they failed, or could not,

[95] SR APP 1288-1298.

appeal those orders. A writ petition seeking this Court's review of the orders should be treated no different than an appeal. Equity demands that Petitioners be held to the 30 day requirement of NRAP 4(a)(1) and that the Petition dismissed as untimely.

This is not the first time that Eureka County has attempted to use a writ petition as a tactic to delay legal proceedings. Case No. 71090 currently pending before this Court is a writ petition filed by Eureka County against the State Engineer.[96] In that case, the State Engineer scheduled a pre-hearing conference with regards to water rights applications filed by Kobeh Valley Ranch, LLC ("KVR"). Just two days before the conference was to be held Eureka County filed its petition seeking to halt all consideration of the applications.

Simultaneously, Eureka County also filed a request with the State Engineer to stay the pre-hearing conference until the petition is decided.[97] Without consulting KVR, the State Engineer agreed to Eureka County's request and halted the proceedings.[98] To date, the Petition remains unresolved and the KVR has been delayed in development of its project by more than seven months.

[96] SR APP 825-856.
[97] SR APP 857.
[98] SR APP 858-859.

The instant petition exhibits the same pattern of behavior. Immediately after filing the instant petition, Petitioners filed a motion with the district court asking it to stay the show cause hearing until the petition is decided. This demonstrates that the instant petition is nothing more than a transparent attempt by Petitioners to delay the initiation of curtailment proceedings. Petitioners know that their over pumping of the aquifer is resulting in impermissible groundwater mining and impairing Sadler Ranch's vested water rights. Every day that Petitioners successfully delay this inevitable outcome, is one more day during which they can continue to pump the aquifer dry and violate Sadler Ranch's vested senior rights.

B. The State Engineer has knowingly and consciously failed to protect senior vested rights in Diamond Valley.

The capture of spring flows by junior appropriators in Diamond Valley was not inadvertent or accidental. As early as 1968, the State Engineer was warned that the issuance of permits to irrigators in southern Diamond Valley would have pernicious consequences.[99] The State Engineer failed to heed this warning. In 1982, the State Engineer acknowledged that the warning had been prescient, "[the USGS]

[99] SR APP 163 (warning that if over-pumping continued "[w]ater levels in the area of concentrated pumping . . . would be drawn down as much as 200 feet below the 1965 levels" and that such drawdown would "decrease the natural discharge from springs in the North Diamond subarea.").

identified this [the harm to the springs from over pumping] in [its] report long before it occurred, [and] predicted it was going to occur."[100] Even so, the former State Engineer made a conscious decision at that time to place the interests of the junior priority appropriators who were "quite content and happy with the situation in Diamond Valley" ahead of the interests of a senior priority appropriator whose springs had dried up as a result of the over pumping.[101]

The State Engineer's insistence on placing the needs of junior priority users ahead of holders of senior vested rights continues to this day. The State Engineer recently submitted a bill to the Nevada Legislature with the specific intent of changing the prior appropriations system in Diamond Valley to assist junior pumpers.[102] The State Engineer's introduction of that bill is yet more evidence that he is not acting as a neutral party in the dispute between Sadler Ranch and Petitioners. Instead, he is actively supporting Petitioners' attempts to undermine Sadler Ranch's efforts to vindicate its rights and halt the ongoing harm to the aquifer.

[100] SR APP 306.
[101] SR APP 337.
[102] SR APP 1207-1207.

This conclusion is further reinforced by the actions of the State Engineer with respect to Sadler Ranch's requests for (1) mitigation water rights to compensate for the loss of spring flow, and (2) adjudication of its rights to the springs.

With respect to the former, Sadler Ranch filed an application with the State Engineer seeking the issuance of a groundwater permit to mitigate for the loss of flow to the springs. In spite of clear evidence in the record showing that the pre-1905 flow of the springs was as much as 10,860 acre feet annually, the State Engineer issued Sadler Ranch a mitigation right with a duty of only 975 acre feet annually.[103] Sadler Ranch appealed this determination to the district court.[104]

The district court agreed that the State Engineer acted arbitrarily and capriciously and remanded the case to the State Engineer with specific instructions to calculate the mitigation right based on the actual water placed to beneficial use prior to 1905 (which the court agreed was at least 6,878 acre feet annually).[105] On remand, the State Engineer ignored the district court's findings of fact and conclusions of law and ruled that Sadler Ranch was entitled to a mitigation right of only 2,918.7 acre

[103] SR APP 643.
[104] SR APP 1299-1309; SR APP 1310-1386.
[105] SR 1493-1521.

feet annually.[106] Sadler Ranch has again appealed this determination to the district court.

One reason the State Engineer is reluctant to award Sadler Ranch its full mitigation right is that the more water Sadler Ranch receives, the less water is available to the junior appropriators. However, as directed by the district court, the State Engineer is required to make his determination with respect to the quantity of Sadler Ranch's mitigation right solely based on the evidence of pre-1905 beneficial use.[107] The State Engineer is improperly placing the concerns of junior appropriators ahead of his duty to make sure that Sadler Ranch is fully mitigated for the loss of its water.

Also as part of its efforts to protect its senior rights, on June 11, 2014, Sadler Ranch requested that the State Engineer open an adjudication proceeding to formally determine and adjudicate the rights to the flows of the Big Shipley and Indian Camp Springs.[108] After sitting on a request by Sadler Ranch for more than seven months, the State Engineer denied the request stating only that his office did not have the

[106] SR APP 1165.
[107] SR APP 1493-1521.
[108] Sadler Ranch request for adjudication.

resources to conduct such an adjudication proceeding. Sadler Ranch appealed this determination to the district court.

Just six months later, while Sadler Ranch's appeal was pending, Eureka County requested that the State Engineer conduct an adjudication of the entire Diamond Valley basin. Less than a month after receiving Eureka County's request, the State Engineer issued an order that restarted a long-dormant adjudication of the entire basin.[109] As Sadler Ranch has noted in its appeal to the district court, a basin-wide adjudication will take significantly longer to accomplish than the source-specific adjudication requested by Sadler Ranch.[110] The State Engineer and Eureka County know only too well that delaying the adjudication of Sadler Ranch's vested rights makes Sadler Ranch's efforts to protect those rights more difficult. By agreeing to the basin-wide adjudication, the State Engineer is able to both delay Sadler Ranch's requested relief and simultaneously claim that he is taking action to manage the basin.

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[109] SR APP 581-582.

[110] Sadler Ranch is the only party that has filed a proof of claim to the waters of the Big Shipley and Indian Camp Springs. Since there are no other claimants to these sources of water, the only issue that would have to be decided in a source-specific adjudication is the quantity of water appropriated and the relative priority date. By contrast, a basin wide adjudication will involve a resolution of competing claims to other sources of water in the basin as well as a determination of federal claims to reserved rights.

A similar strategy is at work with respect to the instant petition. Petitioners, in conjunction with the State Engineer who has joined the petition, are using the petition as a tool to delay the upcoming show cause hearing. If they succeed, the junior appropriators will have even more time to continue mining the aquifer and Sadler Ranch will suffer additional impairment of its senior vested rights.

This Court has long recognized that "justice delayed is justice denied."[111] The constant delay in affording Sadler Ranch a remedy serves only the interests of the junior appropriators, who are quite content with the status quo in Diamond Valley. Given the limited scope it is essential that the hearing proceed so curtailment can be order in due course. Otherwise, junior pumpers will pump for another year or two while litigation ensures and continue to destroy the aquifer and senior vested rights. The interests of justice demand that the instant writ be denied.

CONCLUSION

For the reasons stated above, and those included in the answering brief filed by Roger B. and Judith B. Allen on April 6, 2017, Sadler Ranch respectfully requests that the Court deny the instant writ petition in its entirety.

[111] *Dougan v. Gustaveson*, 108 Nev. 517, 523, 835 P.2d 795, 799 (1992) abrogated on other grounds by *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007).

CERTIFICATE OF COMPLIANCE

I, Paul G. Taggart, Esq., declare the following under penalty of perjury:

1. I hereby certify that this Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this Answering Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

2. I further certify this Answering Brief complies with the page-volume limitations of NRAP 32(a)(7) because, excluding the parts exempted by NRAP 32(a)(7)(C), it contains less than 14,000 words and 1,300 lines. Specifically, the word-processing system used to prepare the brief (Microsoft Word) reports that the brief consists of 10,001 words and 914 lines.

3. Finally, I hereby certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Answering Brief complies with all applicable Nevada Rules of Appellate Procedure.

///

I understand that I may be subject to sanctions in the event that the accompanying Answering Brief is not in conformity with the requirements of the Nevada Rules of Appellate procedure.

DATED this 17th day of April, 2017.

By: /s/ Paul G. Taggart

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the foregoing document, as follows:

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