Case No. 72317

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.

REAL PARTY IN INTEREST SADLER RANCH, LLC'S REPLY TO THE STATE ENGINEER'S OPPOSITION TO SADLER RANCH LLC'S REQUEST FOR JUDICIAL NOTICE

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., hereby replies to the State Engineer's Opposition to Sadler Ranch's Request for Judicial Notice (hereinafter "Request").

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MEMORANDUM OF POINTS AND AUTHORITIES

The State Engineer seeks to block the Court from taking judicial notice of inconsistent positions that the State Engineer has taken in other cases before Nevada courts with respect to the law governing curtailment of groundwater pumping. In doing so, the State Engineer does not argue that the materials Sadler Ranch requests the Court take notice of are either (1) not generally known within the jurisdiction of the Court, or (2) incapable of accurate and ready determination using sources whose accuracy cannot be reasonably questioned.[1] Nor does the State Engineer dispute that NRS 47.150(2) requires a court to take judicial notice of such material if requested by a party and supplied with the necessary information.[2] Instead, the State Engineer attempts to distinguish the facts of the cases in which he made the inconsistent arguments and then claim that, because of those factual differences, his previous arguments have no relation to the case at hand.

The materials Sadler Ranch is requesting the Court take judicial notice of are pleadings filed by the State Engineer in other Nevada courts and an order issued by

[1] *See* NRS 47.130(2) ("A judicially noticed fact must be (a) Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.").

[2] NRS 47.150(2) ("A judge or court *shall* take judicial notice if requested by a party and supplied with the necessary information.") (emphasis added).

one of those courts. These are public documents whose authenticity and veracity is beyond question. There is no legitimate reason why the Court should not recognize such materials. The Court, and not the State Engineer, is the party best suited to interpret the documents and determine what weight they should be given.

With respect to the reply brief filed by the State Engineer in *Farmers Against Curtailment Order, LLC v. State Engineer*[3] (hereinafter the "FACO" case), the State Engineer falsely states that "no party in this matter, or at the district court, has requested or even briefed the potential of designating a preferred use under NRS 534.120(2) as part of the requested curtailment of Diamond Valley."

The truth is that Sadler Ranch specifically asserted in its pleadings in the underlying case that if the district court orders the State Engineer to begin curtailment proceedings, he could, during those proceedings, designate preferred uses under NRS 534.120(2) and thereby exempt those uses from curtailment.[4] As Sadler Ranch noted:

> The State Engineer has authority to designate municipal and domestic water use as preferred uses under NRS 534.120(2), and thus exempt them from a curtailment

[3] *Farmers Against Curtailment Order, LLC v. State Engineer,* Third Judicial District Court of Nevada in and for Lyon County Consolidated Case Nos. 15-CV-01395, 15-CV-01396, 15-CV-01397.

[4] See Sadler Ranch Appendix (hereinafter "SR APP") Vol. 5 at 1125.

> action. The State Engineer is well aware of this authority, as it was recently confirmed by the Third Judicial District Court. In that case, the State Engineer advocated that his office could prefer uses in curtailment. The Court agreed, stating:
>
> > The State Engineer may designate and regulate preferred uses under NRS 534.120 (2). The statutory language when read in its whole context indicates that the Legislature gave the State Engineer the authority to designate preferred uses when the groundwater in a basin is being depleted.[5]

Contrary to the State Engineer's contention that "NRS 534.110(6) has been and is the relevant statute in this case, not NRS 534.120(2)"[6] Sadler Ranch has cited to both statutes in its briefs in the underlying case.

Accordingly, the conflict between the State Engineer's prior argument to the district court in the FACO case (arguing that NRS 534.120(2) authorizes him to prefer uses in a curtailment action) and his contrary argument to the Court in the present case (that in a curtailment proceeding he has no statutory authority to deviate from the priority system) is highly relevant and further confirms Sadler Ranch's contention that the State Engineer is acting arbitrarily and capriciously in his management of the Diamond Valley basin.

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[5] *Id*. (Internal citations and quotations omitted).

[6] Opposition to Real Party in Interest Sadler Ranch, LLC's Request for Judicial Notice at 9.

The State Engineer's Opposition also improperly attempts to correct and modify the argument he made in his Reply. In his Reply, the State Engineer represented to the Court that if the district court orders him to begin curtailment proceedings, he will have absolutely no choice but to curtail all water uses including municipal and domestic uses.[7] Now, in his Opposition, the State Engineer readily acknowledges that "preferred uses and curtailment may be utilized together as was done in FACO."[8]

In addition, the instant writ petition is predicated on Eureka County and the State Engineer's dubious contention that the mere holding of a hearing to determine whether curtailment proceedings should be initiated (proceedings that will include additional noticed hearings before any curtailment order is issued) will immediately deprive water right holders of their property rights. Accordingly, the State Engineer's counter-argument in *Happy Creek, Inc. v. State Engineer*[9] (hereinafter the "Happy Creek" case"), that the actual issuance of an order curtailing pumping by priority does not deprive any junior priority water right holder of a property right, is

[7] Nevada State Engineer's Reply at 5-6 (emphasis added).
[8] Opposition to Real Party in Interest Sadler Ranch, LLC's Request for Judicial Notice at 8.
[9] *Happy Creek, Inc. v. State Engineer*, Sixth Judicial District Court of Nevada in and for Humboldt County, Case No. CV 20,869.

highly relevant. This is especially true since the argument raised by the State Engineer in the Happy Creek case directly mirrors an argument advanced by Sadler Ranch (and disputed by Eureka County and the State Engineer) in the present case.[10]

Based on the arguments contained herein, and those included in the Request for Judicial Notice, Sadler respectfully requests this Court take judicial notice of the requested materials.

[10] Sadler Ranch, LLC's Answer at 31-34.

CERTIFICATE OF COMPLIANCE

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

This Reply 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 Reply 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 5 pages.

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

DATED: June 20, 2017.

TAGGART & TAGGART, LTD.

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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 20 day of June, 2017.

/s/ Paul Taggart
Employee of TAGGART & TAGGART, LTD.