

In the Supreme Court of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

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 PETITION FOR REHEARING

Real Party in Interest Sadler Ranch, LLC ("Sadler Ranch"), by and through its attorneys of record, PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of TAGGART & TAGGART, LTD., respectfully petitions for rehearing pursuant to Nevada Rules of Appellate Procedure ("NRAP") 40 of the Court's Opinion issued December 28, 2017 ("Opinion").

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APPLICABLE LAW

A petition for rehearing “shall state briefly and with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present.”¹

ARGUMENT

This Court’s Opinion determined that notice must be provided to junior water rights holders now, prior to the commencement of the show cause hearing, as factual questions will be considered at the show cause hearing.² In its July 15, 2016, Alternate Writ of Mandamus; Order Setting Briefing Schedule and Show Cause Hearing (“Alternate Writ”), the district court ordered the State Engineer to immediately upon receipt of this writ, [] begin the required proceedings to order curtailment of pumping in Diamond Valley on the basis of priority of right, or, that [he] show cause why [he has] not done so and why this Court should not order [him] to begin the required proceedings to order curtailment and why this Court should not order curtailment of pumping in Diamond Valley.³

The district court’s Alternate Writ appeared to indicate that one potential outcome of the show cause hearing was that the district court would, sua sponte, order a

¹ NRAP 40(a)(1).

² *Eureka Cnty. v. Dist. Ct.*, 133 Nev. Adv. Op. 111 at 9.

³ P-APP124 at 2:3-8.

curtailment of pumping in Diamond Valley. This potential outcome was relied upon by this Court in its Opinion.⁴

However, in its Order Denying Eureka County's Motion for Reconsideration and Notice of Motion ("Order Denying Motion for Reconsideration"), the district court clarified the scope of the show cause hearing, directing that it would be:

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 supporting this Court's alternate writ of mandamus directing the State Engineer to immediately begin the required proceedings to order curtailment on the basis of priority and for the State Engineer to show cause why he has not done so, and why this Court should not order him to begin curtailment proceedings.⁵

In its Opinion, the Court cited only to the Show Cause Order,⁶ indicating that it did not consider the Order Denying Motion for Reconsideration when drafting the Opinion. Given that the only issue that will be heard at the show cause hearing is whether or not the State Engineer's inaction in Diamond Valley was a "manifest abuse of discretion or arbitrary and capricious exercise of discretion,"⁷ notice to all junior water rights holders is not required at this time. Sadler Ranch raised this point

⁴ *Eureka Cnty. v. Dist. Ct.*, 133 Nev. Adv. Op. 111 at 9.

⁵ P-APP392 at 4:2-9.

⁶ *Eureka Cnty. v. Dist. Ct.*, 133 Nev. Adv. Op. 111 at 9.

⁷ P-APP392 at 4:5-6.

in its Answer to the Writ.⁸ As Sadler Ranch stated in its Answer, “the district court will not [] order[] immediate curtailment of pumping as a result of the show cause hearing.”⁹ Curtailment will be neither considered nor ordered at the show cause hearing; therefore, notice to junior water rights holder is not required at this stage in the proceedings.

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⁸ Sadler Ranch, LLC’s Answer at 28.

⁹ Sadler Ranch, LLC’s Answer at 28-29.

CONCLUSION

Sadler Ranch respectfully requests that the Court rehear this matter to include consideration of the clarification provided by the district court in its Order Denying Motion for Reconsideration. This Court mistakenly overlooked the district court's narrowing of the scope of the show cause hearing in the Order Denying Motion for Reconsideration, a material fact that changes the analysis of whether due process requires notice at this stage of the proceedings.¹⁰

DATED this 16th day of January, 2018.

TAGGART & TAGGART, LTD.

By: /s/ David H. Rigdon
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
*Attorneys for Real Party in Interest
Sadler Ranch, LLC*

¹⁰ As noted by this Court, the central question in this case is “when due process must be provided for junior water rights holders.” *Eureka Cnty. v. Dist. Ct.*, 133 Nev. Adv. Op. 111 at 7.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition for Rehearing 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 Petition for Rehearing has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40(b)(3) because it does not exceed ten pages and contains no more than 4,667 words. Specifically, the word-processing program used to prepare the Petition for Rehearing (Microsoft Word) reports that the Petition for Rehearing consists of 731 words and 84 lines.

3. Finally, I hereby certify that I have read this Petition for Rehearing, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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DATED this 16th day of January, 2018.

TAGGART & TAGGART, LTD.

By: /s/ David H. Rigdon
PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
Attorneys for Sadler Ranch, LLC

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:

Karen A. Peterson, Esq.
Willis M. Wagner, Esq.
Allison Mackenzie, Ltd.
P.O. Box 646
Carson City, NV 89703
kpeterson@allisonmackenzie.com
wwagner@allisonmackenzie.com

Justina A. Caviglia, Esq.
Nevada Attorney General's Office
100 N. Carson St.
Carson City, NV 89701
jcaviglia@ag.nv.gov

Alex J. Flangas, Esq.
Holland & Hart, LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
aflangas@hollandhart.com

Theodore Beutel, Esq.
Eureka County District Attorney
P.O. Box 190
Eureka, NV 89316
tbeutel@eurekacountynv.gov

Debbie A. Leonard, Esq.
McDonald Carano Wilson LLP
100 W. Liberty St., 10th Floor
Reno, NV 89501
dleonard@mcdonaldcarano.com

Robert W. Marshall, Esq.
Gregory H. Morrison, Esq.
Parsons Behle & Latimer
50 West Liberty St., Suite 750
Reno, NV 89501
rmarshall@parsonsbehle.com
gmorrison@parsonsbehle.com

The Honorable Gary D. Fairman
Seventh Judicial District Court,
Department 2
P.O. Box 151629
Ely, NV 89315
wlopez@whitepinecountynv.gov

DATED this 16th day of January, 2018.

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