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Eureka County Clerk

1 Case No. CV-2002009

2 Dept. No. 2

NO. _____
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Feb 25 2022 09:15 a.m.
FEB 16 2022 Elizabeth A. Brown
Clerk of Supreme Court

By *Eureka County Clerk*
[Signature]

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

10 IN THE MATTER OF THE
11 DETERMINATION OF THE RELATIVE
12 RIGHTS IN AND TO ALL WATERS,
13 BOTH SURFACE AND UNDERGROUND,
14 LOCATED WITHIN THE DIAMOND
15 VALLEY HYDROGRAPHIC BASIN NO.
16 10-153, EUREKA AND ELKO
17 COUNTIES, NEVADA

16 **EUREKA COUNTY'S NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, that EUREKA COUNTY, a political subdivision of the State
18 of Nevada, by and through its counsel of record, ALLISON MacKENZIE, LTD. and THEODORE
19 BEUTEL, ESQ., the EUREKA COUNTY DISTRICT ATTORNEY, hereby appeals to the Supreme
20 Court of Nevada from the Court's Corrected Order Granting Solarljøs, LLC's Motion for Partial
21 Summary Judgment, filed by this Court on October 27, 2021, as certified as final by this Court's Order
22 Granting Solarljøs, LLC's Motion for Certification of Judgment on Solarljøs LLC's Exception in this
23 Adjudication Proceeding ("Order Granting Solarljøs, LLC's NRCP 54(b) Motion"), filed by this Court
24 on January 21, 2022. Notice of Entry of the Corrected Order Granting Solarljøs, LLC's Motion for
25 Partial Summary Judgment was served on November 5, 2021, a copy of which is attached hereto as
26 **Exhibit "1"**. Notice of Entry of the Order Granting Solarljøs, LLC's NRCP 54(b) Motion was served
27 on January 24, 2022, a copy of which is attached hereto as **Exhibit "2"**.

28 ///

1 EUREKA COUNTY requests its appeal be consolidated with the State Engineer's appeal filed
2 on February 9, 2012.

3 **AFFIRMATION**

4 The undersigned does hereby affirm that the preceding document **DOES NOT** contain the
5 social security number of any person.

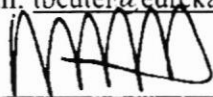
6 DATED this 16th day of February, 2022.

7 KAREN A. PETERSON, ESQ.
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11 ~ and ~

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Telephone: (775) 237-5315
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16 BY:

17 
THEODORE BEUTEL, ESQ.
Nevada State Bar No. 5222

18 Attorneys for EUREKA COUNTY
19
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCF Rule 5, I hereby certify that I am an employee of ALLISON MacKENZIE,
3 LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all
4 parties to this action as follows:

5 **Via Electronic Service:**

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///

1 Hon. Gary D. Fairman
2 c/o Wendy Lopez
3 WLopez@whitepinecountynv.gov

4 **Via First Class Mail:**

5 Hon. Gary D. Fairman
6 Department Two
7 P.O. Box 151629
8 Ely, NV 89315

9 DATED this 16th day of February, 2022.

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11 NANCY FONTENOT
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INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Notice of Entry of Corrected Order Granting Solarlj, LLC's Motion for Partial Summary Judgment, served November 5, 2021	26
"2"	Notice of Entry of Order Granting Solarlj, LLC's NRCP 54(b) Motion, served January 24, 2022	15

4885-1292-9037, v. 1

EXHIBIT “1”

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NOV 05 2021

Eureka County Clerk

1 Case No.: CV-2002009

NO. _____ FILED

2 Dept. No.: 2

NOV 05 2021

3 By Eureka County Clerk
4 [Signature]

5 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF EUREKA

7 IN THE MATTER OF THE
8 DETERMINATION OF THE RELATIVE
9 RIGHTS IN AND TO ALL WATERS,
10 BOTH SURFACE AND UNDERGROUND,
11 LOCATED WITHIN THE DIAMOND
12 VALLEY HYDROGRAPHIC BASIN NO.
13 10-153, EUREKA AND ELKO COUNTIES,
14 NEVADA

NOTICE OF ENTRY OF CORRECTED
ORDER GRANTING SOLARLJOS
LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT
AND
NOTICE VACATING/CONTINUING
STATUS HEARING CURRENTLY SET
FOR NOVEMBER 9, 2021

14 TO: ALL PARTIES AND THEIR ATTORNEYS HEREIN:

15 PLEASE TAKE NOTICE that a Corrected Order Granting Solarljios, LLC's Motion for
16 Partial Summary Judgment was entered in the above-referenced case on the 27th day of October,
17 2021. A true and correct copy of the Order is attached as "Exhibit 1."

18 Vacating/Continuing status hearing currently set for November 9, 2021: Solarljios had
19 previously requested, and the Court granted, a request to vacate the evidentiary hearing following
20 entry of the original summary judgment order. *Nothing has changed in that regard;* following the
21 entry of the Corrected Order, there is still no need for an evidentiary hearing on Solarljios'
22 exception.

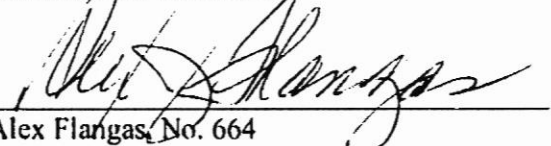
23 However, Solarljios had previously requested the Court allow the parties to conduct a zoom
24 conference on November 9, 2021 instead to address an anticipated request by Solarljios for NRCP

1 54(b) certification, at which time other interested parties would be allowed to participate. **That**
2 **status conference/hearing has now been vacated and will be reset following this Notice of**
3 **Entry of Order.** Solarljios will be filing a request for NRCp 54(b) certification of the *Corrected*
4 Order, and the date for hearing on that request will be set following confirmation of availability of
5 the Court to hear the request.

6 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned hereby affirms that this
7 document does not contain the personal information or social security number of any person.

8 DATED: November 5, 2021.

KAEMPFER CROWELL

9 

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18 Attorneys for Solarljios, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employed by the law firm of Kaempfer Crowell, and that on this 19th day of October, 2021, I served a true and correct copy of the foregoing document **NOTICE OF ENTRY OF CORRECTED ORDER GRANTING SOLARLJOS LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND NOTICE OF VACATING/CONTINUING STATUS HEARING ON NOVEMBER 9, 2021** via email, addressed to the following:

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4 *Properties; Norman and Kindy Fitzwater*

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Attorney for the United States of America

12 **Courtesy Copy Via U.S.P.S. Mail:**

13 Hon. Gary D. Fairman
14 Dept. 2
15 PO Box 151629
16 Ely, NV 89315

17 DATED November 5, 2021



Sharon Stice
An employee of Kaempfer Crowell

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EXHIBIT INDEX

EXHIBIT	DESCRIPTION	PAGES
1	Corrected Order Granting Solarljøs, LLC's Motion for Partial Summary Judgment	19

EXHIBIT 1

EXHIBIT 1

Dept. No.: 2

NO. _____ FILED

By *[Signature]* *Lucas County Clerk*

IN AND FOR THE COUNTY OF EUREKA

**CORRECTED ORDER GRANTING
SOLARLJOS, LLC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

THIS MATTER comes before the Court on a Motion for Partial Summary Judgment filed by Solarljos, LLC (hereinafter "Petitioner" or "Solarljos") on September 3, 2021. Any written opposition was due on or before September 17, 2021. However, no oppositions were filed to Solarljos' Motion for Partial Summary Judgment and Solarljos submitted the Motion for this Court's review and decision. Therefore, there is good cause appearing for this Court to grant Solarljos' Motion for Partial Summary Judgment in its entirety:

I. FINDINGS OF FACT

This Court, having read the moving papers, pleadings, exhibits, and other documentation
HEREBY FINDS THE FOLLOWING:

1. This matter arises as one of the required statutory processes of a "vested rights adjudication" conducted under NRS 533.087 through 533.265.
2. The State Engineer's office began the process of taking "proofs" of vested rights

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OCT 27 2021

Eureka County Clerk

KATHERINE CROWLEY
50 West Liberty Street, Suite 700
Reno, Nevada 89501

1 for the purpose of performing an adjudication of the Diamond Valley Hydrographic Basin, No
2 10-153, nearly 40 years ago, back in 1982 when that office issued Order 800, the *Order*
3 *Initiating Proceedings*, pursuant to NRS 533.090(2) and Order 801, the *Notice of Order and*
4 *Proceedings*, which was published and served on land owners in the basin as required by NRS
5 533.095. Several years of extension later, nothing had occurred to move that process along, and
6 in 2015 the State Engineer issued Order 1263, a *Notice of Order and Proceedings to Determine*
7 *Water Rights, both Surface and Underground*, in the matter of the determination of relative
8 rights in and to all waters in the Diamond Valley Hydrographic Basin (10-153), Elko and
9 Eureka Counties, Nevada. That Order effectively "reinitiated" Order 801 (one of the orders
10 previously issued in 1982), and then on October 16, 2015, the State Engineer issued Order 1266,
11 a *Notice of Order for Taking Proofs to Determine Water Rights*, which directed all interested
12 parties who felt they had a claim to vested water rights in Diamond Valley to file their "Proofs"
13 on or before May 31, 2016.

14 3. Solarjos was one of the parties who filed Proofs of vested water rights with the
15 State Engineer as part of that proceeding in May of 2016, filing Claim Nos. V-10880, V-10881,
16 and V-01882. Those Proofs were based on the use of water for a mining operation associated
17 with the old mining town of Prospect, which had operated near the turn of the century prior to
18 1900. The Proofs included documentation showing the existence of the mining operation,
19 descriptions of the mining operation by the Solicitor General following annual visits to the mine
20 site and the town, ledger entries demonstrating the existence of water pumps as part of the
21 equipment utilized by the mining operation, Eureka County assessment records referencing the
22 water system for the mine and the "Harrub Well" in that valuation, and a few photographs
23 depicting locations of hand-dug wells in that vicinity.
24

1
2 4. When the State Engineer concluded the period for submission of the taking of
3 Proofs, he analyzed those submissions and issued the Preliminary Order on August 30, 2018.
4 The Preliminary Order stated the findings of the State Engineer regarding the submitted Proofs
5 of vested water right claims for all of those persons and companies who had submitted Proofs
6 by the May 31, 2016 deadline. The Preliminary Order stated which of the Proofs would be
7 approved and how much of an allocation of water was proven as having been used (vested), and
8 the State Engineer also indicated whether he found the water right proven up to be a surface
9 right or groundwater right in the case of Solarljøs. The State Engineer also denied some Proofs
10 of claim outright, and those claimants therefore received no vested water.

11 5. In that section of the Preliminary Order addressing the claims made by Solarljøs,
12 the State Engineer approved Proof V-10880 for allocation of .472 cfs (cubic feet per second) of
13 vested water rights to Solarljøs for "mining an milling from January 1 through December 31"
14 from the Einar Spring, which is a surface source. That diversion rate allocation for a mining and
15 milling right is equivalent to an annual total duty of 342.71 acre feet annually ("AFA"). In
16 making that determination, the Preliminary Order at pages 273 and 274 discussed at length the
17 documentary proof supplied by SRK and Solarljøs to support the claim, and spoke supportively
18 of that proof, stating:

19 The waters from Clark Spring were captured and put into a pipeline to the
20 former town of Ruby Hill, according to the maps drawn by Hague, which were
21 surveyed in 1880. ... Several historical sources refer to Prospect being developed
22 about 1885 with a population of about 50 people with a post office being
23 established in 1893, but do not elaborate on much else. The smelter was not
24 constructed until 1908 along with several boarding houses. The water pipeline
from Clark Spring was probably severed in the early 1880's to serve the needs of
the Prospect town site or the water from adjacent springs within the complex were
utilized. This suggests that the needs for water prior to 1880 was minimal.
Support documentation mentioned the water for boilers and mining operations
were supplied with water from springs utilizing a Knowles steam pump and a

1 Cameron steam pump whose operating capacity at normal speeds would be
2 approximately 200 gpm (0.45 cfs) combined. These necessary pieces of
3 machinery probably arrived in the area prior to the town of Prospect being
4 developed. The documentation filed in support of the proof and information
5 gleaned from the public domain would put the date of first beneficial use of the
6 water post-1880, based on the Hague map, and prior to the development of the
7 town of Prospect prior to 1885. Based on the filed support documentation, field
8 investigation by the Office of the State Engineer and information obtained from
9 sources in the public domain, the State Engineer find [sic] a basis the diversion of
10 0.472 cfs of water from Einar Spring source for mining and milling from January
11 1 through December 31 with a priority date of 1880. The State Engineer also finds
12 a basis for the diversion of water for domestic use from January 1 through
13 December 31.

14 6. However, despite granting Solarljøs a .472 cfs vested claim for the Einar Spring,
15 the Preliminary Order then denied Solarljøs' vested claims V-10881 and V-10882, but did so
16 entirely on the basis that those claims were applications for "groundwater." In making those
17 denials, the State Engineer found only that Solarljøs' Proofs failed to demonstrate that
18 groundwater wells rather than springs, were the source of water described and for which
19 Solarljøs provided evidence.

20 7. However, there was no discussion in the Preliminary Order of limiting the
21 amount of water granted to Solarljøs based on the type of mining operation, the size of the
22 pumps, the way in the mining operation was operated (or would have been operated), or the
23 approximate amount of water that such a mining operation and town as Prospect would have
24 used given Solarljøs' Proofs. Instead, the State Engineer denied Proofs V-10881 and V-10882
on the sole basis that the points of diversion for those claims did not bear the necessary
characteristics to be considered historic "wells." Indeed, in denying V-10882 the State Engineer
also made the determination that the point of diversion was the same Einar Spring as was
approved for Claim No. V-10880, and that there was no "well" at any location to support a

1 separate underground source.

2 8. The result of the Preliminary Order, consequently, was that Solarljos was
3 allocated vested rights in the amount of .472 cfs (342.71 AFA), but those vested water rights
4 were limited to a single surface right source rather than also being groundwater rights with wells
5 as their points of diversion. Thus, the State did find that Solarljos had made sufficient proof of
6 the use of that amount of water to justify the award of the vested claim (Solarljos sought
7 approval for .471 cfs).

8 9. The only thing the State disagreed with Solarljos about was the limited source of
9 the water, with the State finding that the source was solely a surface spring and not also the
10 historic, hand-dug groundwater wells identified in V-10881 and V-10882.

11 10. Solarljos properly filed an objection to the Preliminary Order within the time
12 required for filing objections under NRS 533.145 after the Preliminary Order was opened to
13 public inspection as required by that statute.¹ Solarljos' objection to the Preliminary Order was
14 entirely based on the only finding made in the Preliminary Order that was adverse to the
15 position put forth by Solarljos, which was the State Engineer's finding that the sole source of
16 the vested water used was the Einar Spring and that the groundwater well diversion locations
17 identified by Solarljos were not actually hand-dug "wells."

18 11. At the hearing on its objection, Solarljos presented arguments and evidence
19 directed only to that point: evidence and arguments designed to demonstrate that the locations
20 of these other points of diversion of water identified were actually hand-dug wells, that the
21 County's assessment records noted one source as the "Harrub Well," and that a noted
22 archeologist who had worked on the cultural analysis of Solarljos' property in connection with
23

24 ¹ As indicated above, Solarljos had previously filed a Petition for Judicial Review of the Final Order, but upon filing its Objection in this case Solarljos' counsel stipulated to stay that other case, CV2003-010, pending final determination of this matter.

1 the completion of Solarlj's environmental assessment necessary to satisfy BLM permitting
2 requirements had concluded that the points of diversion sites were in fact hand-dug wells that
3 might actually require preservation by Solarlj's as part of the cultural assessment and work on
4 the property. The intent of that proof at the hearing was to establish Solarlj's right to a vested
5 groundwater claim as well as a surface water claim. The amount of the vested claim was not at
6 issue.

7 12. On January 31, 2020, the current State Engineer issued the Final Order after
8 consideration of the various objections that had been filed and presented during the hearings
9 conducted in early 2019. In the Final Order, the State Engineer accepted the additional
10 arguments presented by Solarlj's at the objection hearing when the State concluded that there
11 were grounds to find that vested Proofs V-10881 and V-10882 were, in fact, groundwater
12 sources (hand-dug wells) rather than surface springs.

13 13. However, the State Engineer's impromptu revisit of the analysis regarding the
14 entire vested rights claim/proof filed by Solarlj's and previously accepted as a "basis" for the
15 finding of .472 cfs for mining and milling.

16 14. The Final Order's determination of a new reduction of water was made with no
17 proof of facts or evidence in the record, yet made entirely new findings of fact, without any
18 prior notice, that substantially depleted the prior allocation of water that had been granted to
19 Solarlj's in the Preliminary Order.

20 15. The Final Order suddenly and without notice of any kind to Solarlj's creates an
21 entirely different scenario of "possible" use of water by the prior mining operation and reduced
22 the allocation of vested water from the prior allocation to less than 4% of what was previously
23 approved, giving Solarlj's only 13.2 AFA.

24 16. In making this determination, the State Engineer hypothesized about several

1 scenarios that would have been "more likely" as to the mining operation, and made statements
2 about the amount of water that 100 men living in a bunkhouse and working at the mine would
3 have used.

4 17. However, Solarljos was not given any notice or opportunity to be heard
5 regarding the State Engineer's analysis and conclusion regarding the comingled water amount
6 allocated to Solarljos based on its vested rights claims.

7 18. Further, nearly all of these "findings" were made without citation to any sources
8 whatsoever regarding historical factual proof or even treatises or reference materials discussing
9 mining operations in the area or how they were operated. As such, they were baseless and
10 speculative, and unduly prejudicial to Solarljos.

11 19. Solarljos filed an "exception" to the Final Order of Determination pursuant to
12 NRS 533.170, and this Court is tasked with resolving those exceptions as to all vested claimants
13 who filed exceptions.

14 20. Solarljos' exception is considered in the nature of a petition for judicial review
15 on the *record* created before the State Engineer consisting of (a) the filing of Solarljos' "proofs"
16 of its vested rights claims, as required under NRS 533.087 and 533.125, and (b) the evidence
17 submitted during the hearing on Objections to the Preliminary Order of Determination, as is
18 required by NRS 533.145 and 533.150.²

19 21. The State Engineer failed to provide any evidence to support his decision to

20 ² This Court notes that Solarljos also filed a Petition for Judicial Review pursuant to NRS
21 533.450 in Case No. CV2003-010 within 30 days of the Final Order because Solarljos was
22 "aggrieved" by the Final Order of the State Engineer, and NRS 533.450 states that it applies to
23 "any order or decision of the State Engineer" and does not expressly exclude orders issued under
24 adjudication of vested rights proceedings. However, Solarljos and the State entered into a
stipulation to stay that action pending the outcome of this proceeding and confirming that
Solarljos simply wanted to make sure its rights were preserved to appeal that part of the Final
Order to which Solarljos objected to a district court in *some* proceeding – one time, before a
court. (The Stipulation notes that Solarljos is not attempting to get two bites at the appeal
"apple.")

1 revisit in the Final Order his prior determination regarding the amount of water wo which
2 Solarljøs is entitled under its vested rights claims.

3 22. In his Preliminary Order, the State Engineer determined Solarljøs vested claim to
4 be a mining and milling use from January 1 to December 31 of .472 cfs. Solarljøs raised no
5 objection to the .472 cfs determination.

6 23. Based on the findings and conclusions set forth in the State Engineer's
7 Preliminary Order, Solarljøs' narrow and sole objection was the State Engineer's determination
8 as to the source of that water, The State Engineer decided that Solarljøs had failed to prove that
9 the source was groundwater and that the points of diversion for V-10881 and V-10882 were
10 hand-dug wells. Consequently, all of the evidence presented and discussed at the hearing on that
11 limited objection was directed entirely and completely to Solarljøs' proof that the source of the
12 water was, in fact, groundwater wells.

13 24. Because no objection was raised as to the .472 cfs allocation of water, there was
14 no basis or allowed reason for the State to revise its prior allocation of the amount of water
15 determined to be provided to Solarljøs under its original proof of vested rights claim. 25. The
16 three proofs of claim and other supporting documentation submitted by Solarljøs shows that it
17 made claim to the same water as emanating from a spring and from groundwater, because the
18 source of the water was a site referenced as "Einar Spring" and another as "the Harrub Well."

19 25. Solarljøs was not requesting more water in its Objection to the Preliminary
20 Order, but rather recognition that the source of its water was both a groundwater well and a site
21 that had been identified as a "spring" (surface right).

22 **II. CONCLUSIONS OF LAW**

23 This Court hereby makes the following conclusions of law based on the material
24 undisputed facts outlined above, the evidence submitted, and the record.

1 A. Summary Judgment

2 Rule 56 of the Nevada Rules of Civil Procedure ("NRCP") state that "[t]he court shall
3 grant summary judgment if the movant shows there is no genuine dispute as to any material fact
4 and the movant is entitled to judgment as a matter of law." NRCP 56(c); *Wood v. Safeway, Inc.*,
5 121 Nev. 724, 729 (2005). "A genuine issue of material fact is one where the evidence is such
6 that a reasonable [finder of fact] could return a verdict for the non-moving party." *Lee v. GNLV*,
7 22 P.3d 209, 211-12 (2001) (citations omitted). The party opposing summary judgment may not
8 rely "on gossamer threads of whimsy, speculation and conjecture . . . [and] the non-moving party
9 . . . must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
10 genuine factual issue" to support his or her claim at trial or defeat a motion for summary
11 judgment. *Wood* at 731 (internal quotes and citations omitted); *Thomas v. Bokelman*, 86 Nev. 10,
12 14, 462 P.2d 1020, 1023 (1970) (citations omitted).

13 A burden-shifting scheme is used in determining summary judgment, where "[t]he party
14 moving for summary judgment bears the initial burden of production to show the absence of a
15 genuine issue of material fact." *Cuzze v. Univ. and Comm. College Sys. of Nev.*, 123 Nev. 598,
16 602, 172 P.2d 131, 135 (2007). "The manner in which each party must satisfy its burden of
17 production depends on which party will bear the burden of persuasion on the challenged claim at
18 trial." *Id.*

19 If "the moving party [bears] the burden of persuasion, that party must present evidence
20 that would entitle it to a judgment as a matter of law in the absence of contrary evidence." *Id.* "If
21 such a showing is made, then the party opposing summary judgment assumes a burden of
22 production to show the existence of a genuine issue of material fact." *Id.* "But if the nonmoving
23 party will bear the burden of persuasion at trial, the party moving for summary judgment may
24 satisfy the burden of production by either (1) submitting evidence that negates an essential

1 element of the nonmoving party's claim, or (2) pointing out ... that there is an absence of
2 evidence to support the nonmoving party's case." *Id.* (internal quotations omitted).

3 Further, regarding motions for summary judgment on claims untethered to factual
4 support, the Nevada Supreme Court recently emphasized that:

5 [W]here an action is brought with practically no evidentiary basis to support it,
6 summary judgment can be a valuable tool to discourage protracted and
7 meritless litigation of factually insufficient claims. In dispensing with
8 frivolous actions through summary judgment, courts promote the important
9 policy objectives of sound judicial economy and enhance the judiciary's
10 capacity to effectively and efficiently adjudicate legitimate claims.

11 *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 198, 444 P.3d 436, 441 (2019).

12 **B. Legal Analysis and Conclusions**

13 **1. The State Engineer Violated Solarljos' Right To Due Process.**

14 Based on the material undisputed facts outlined above, this Court finds as a matter of
15 law that The State Engineer did not provide sufficient or adequate notice regarding its allocation
16 of commingled vested water right usage in the Final Order of Determination, thus depriving
17 Solarljos of its right to due process.

18 NRS 533.150(4) states that the evidence taken in a proceeding conducted in accordance
19 with an objection to a Preliminary Order of adjudication of vested rights "must be confined to
20 the subjects enumerated in the objections and the preliminary order of determination." Due
21 process forbids any governmental agency, including the State Engineer, from using evidence in
22 any way that forecloses an opportunity for a vested water right claimant from being heard. *See*
23 *Eureka Cnty. v. State Eng'r*, 131 Nev. 846, 855, 359 P.3d 1114, 1120 (2015) (citing *Bowman*
24 *Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 288, 288 n. 4, 95 S.Ct. 438, 42
L.Ed.2d 447 (1974); *see also Eureka Cnty. v. Seventh Judicial Dist. Court (Sadler Ranch)*, 134
Nev. 275, 279, 417 P.3d 1121, 1124 (2018) ("In Nevada, water rights are regarded and

1 protected as real property.”) (internal quotations and citations omitted).

2 Moreover, it has been held by the Nevada Supreme Court that where the State Engineer
3 issues an order “without providing notice or a hearing—[it is] an omission that, in the context of
4 established water rights, would unquestionably be fatal.” *Wilson v. Pahrump Fair Water, LLC*,
5 137 Nev. Adv. Op. 2, 418 P.3d 853, 858 (2021). This necessarily means that an opportunity to
6 challenge the State Engineer’s determination must be afforded to a claimant such as Solarljøs
7 before it enters its final order – which is precisely what the State Engineer failed to do here.

8 The record shows, and this Court finds, that Solarljøs filed Proofs of vested water rights
9 with the State Engineer as part of the proceeding in May 2016. These claims were filed for
10 vested water rights under Claim Nos. V-10880, V-10881 and V-01882. After analyzing the
11 claims and submissions of evidence and proof, the State Engineer entered its Preliminary Order,
12 where it *approved* Proof V-10880 for allocation of .472 cfs of vested water rights to Solarljøs
13 (which is the equivalent of 341.71 AFA). The evidence presented and attached to these claims
14 presented by Solarljøs was also uncontroverted that claims V-10881 and V-10882 were
15 “comingled” with the source and usage of V-10880. This was not disputed by anyone, including
16 the State Engineer in its Preliminary Order.

17 However, the State Engineer limited the approval to a surface water right from the Einar
18 Spring *rather than* approving that allocation as a groundwater right and the Preliminary Order
19 denied Solarljøs’ vested claims V-10881 and V-10882 on the basis that they were applications
20 for “groundwater.” As such, the State Engineer’s denial in this regard was made solely on the
21 basis that the sources of water identified appeared to be surface sources rather than groundwater
22 wells. As a result, Solarljøs objected to the Preliminary Order solely because it believed that it
23 had already demonstrated that the water was from a groundwater source and that the State
24 should have found the source to be groundwater rather than surface springs. The record shows

1 that further discussion conducted at the hearing on the objection merely emphasized that point,
2 focusing entirely on the source of water – not the mining operation itself or the nature of the use
3 involved, because those factors had apparently been presented to the satisfaction of the State
4 Engineer as demonstrated by the discussion in the Preliminary Order and the finding in favor of
5 Solarljós to award a diversion of .472 cfs (341.71 AFA). No discussion was had at the hearing
6 on the objection of Solarljós – by the State³-- regarding the amount of water used by the old
7 mining operation, because there was nothing in the Preliminary Order suggesting that the State
8 Engineer's office was concerned about the amount of water it had approved under Solarljós'
9 claims for vested water (the .472 cfs/ 341.71 AFA).

10 However, after the March 19, 2019 hearing (which only focused on the singular issue
11 regarding the source of water) the State Engineer entered its Final Order on January 31, 2020,
12 where it reversed its prior decision regarding the source, agreeing with Solarljós that claims V-
13 10881 and V-10882 were ground water sources, and that it was comingled for the total
14 diversion rate of .472 cfs (341.71 AFA) of water. But, the State Engineer also found, for the
15 first time, that Solarljós' allocated usage was "a total combined duty of 13.2 afa from all
16 sources." No party, including Solarljós, was involved in an objection proceeding that would
17 have allowed Solarljós to present evidence that went beyond what was presented in the subjects
18 "enumerated in the objections and preliminary order." Further, there was not a single piece of
19 evidence presented at the hearing on Solarljós' objection that would support the myriad of
20 findings made by the State in the Final Order – suddenly and without notice to Solarljós –
21 regarding an entirely revised review of the Prospect mining operation that the State now
22 "believes" occurred on the site in an entirely different fashion than it previously concluded had
23

24 ³ However, Solarljós' retained hydrologist, Tim Donahoe confirmed that the water usage approved by the state at .472 cfs was equivalent to 212 gallons per minute (i.e., 341.72 AFA) and is not unusual groundwater usage for a mining operation.

1 occurred when it granted Solarljos the allocation of .472 cfs of water use (341.71 AFA) during
2 the initial Proof review. However, no witnesses, expert or percipient, testified at the hearing
3 contrary to what had been presented in the earlier Proof and no documentation was presented
4 showing that Solarljos' Proof of use was being challenged or would be subject to challenge as to
5 the amount of water used.

6 Notwithstanding, the record shows the State Engineer still apparently found a basis for
7 the .472 cfs (341.71 AFA) water usage for all three claims in the Final Order, contradicting its
8 unsupported assumption for a total duty of 13.2 AFA which does not apply to a mining
9 operation. The State Engineer unilaterally included its additional "finding" that not only
10 contradicted itself in both the Preliminary and Final Orders, but also to the principles of
11 calculating water usage with respect to historic mining operations. Therefore, this Court agrees
12 with Solarljos that the State Engineer's finding that the total duty of water usage allocated to
13 Solarljos is 13.2 AFA was arbitrary and unsupported and, based on the foregoing, was also a
14 violation of Solarljos' right to due process.

15 B. The State Engineer's Final Order Regarding The Allocation of 13.2 AFA to
16 Solarljos Was Not Supported By Substantial Evidence And Therefore,
Solarljos Is Entitled To Summary Judgment as a Matter of Law

17 A party aggrieved by an order or decision of the State Engineer is entitled to have the
18 same reviewed in the nature of an appeal. NRS 533.450(1). This proceeding is, essentially, on
19 the record and is in the nature of an appeal and therefore, the State Engineer's Final Order for
20 Determination must include "findings in sufficient detail to permit judicial review" and "must
21 clearly resolve all crucial issues presented." *Revert v. Ray*, 95 Nev. 782, 787, 603 P.2d 262,
22 264-265 (1975).

23 In order to determine that the State Engineer's findings and order are valid, this Court
24 must determine whether substantial evidence exists in the record to support the State Engineer's

1 decision. *Id.*; see also *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991)
2 *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1147-48
3 (2010); and *Eureka Cnty. v. State Eng'r*, 131 Nev. 846, 853, 359 P.3d 1114, 1118-19 (2015);
4 and *Wilson v. Pahrump, LLC*, 137 Nev. Adv. Op. 2, 481 P.3d 853, 858 (2021) (stating that "the
5 State Engineer's decision must be supported by substantial record evidence.") (citing to *King v.*
6 *St. Clair*, 134 Nev. 137, 139, 414 P.3d 314, 316 (2008) (stating that "factual findings of the
7 State Engineer should only be overturned if they are not supported by substantial evidence.")).
8 "Substantial evidence is that which a reasonable mind might accept as adequate to support a
9 conclusion." *Pyramid Lake Paiute Tribe of Indians, supra.* (internal quotations and citations
10 omitted).

11 Moreover, this Court must also determine whether the State Engineer's order (or any
12 part of its decision(s)) was arbitrary, capricious, an abuse of discretion, or whether it was
13 otherwise affected by prejudicial legal error. *Pyramid Lake Paiute Tribe of Indians v. Washoe*
14 *Cnty.*, 112 Nev. 743, 751, 918 P.2d 697, 702 (1996).

15 Finally, in reviewing an administrative decision by the State, this Court is required to
16 "decide pure legal questions without deference to an agency determination" and therefore,
17 applies a *de novo* standard of review to questions of law. See, *Felton v. Douglas Cnty.*, 134 Nev.
18 34, 35, 410 P.3d 991, 993-994 (2018), see also *Pyramid Lake Paiute Tribe of Indians v. Ricci*,
19 126 Nev. at 525, 245 P.3d at 147-48 (stating that "[w]ith respect to questions of law, however,
20 the State Engineer's ruling is persuasive but not controlling . . . [and t]herefore, we review
21 purely legal questions without deference to the State Engineer's ruling.") (internal citations
22 omitted).

23 In its Final Order, the State Engineer agreed with Solarljos and found a basis for the total
24 diversion rate of .472 cfs (341.71 AFA) of water from the underground sourced associated with

1 claims V-10881, V-10882, and the Einar Spring source under claim V-10880 for mining and
2 milling from January 1 through December 31 with a priority date of 1879, as well as for the
3 diversion of water for domestic use from January 1 through December 31. However, the State
4 Engineer inexplicably added the following sentence to the findings for each claim: "This water,
5 being comingled with water from Claims . . . will have a total combined duty of 13.2 afa from
6 all sources." But, the State Engineer failed to provide any evidence, let alone any substantial
7 evidence required to support this finding. Because there is no evidence in the record to support
8 the finding by the State Engineer, this finding was no more than a mere assumption on the State
9 Engineer's part.

10 Moreover and notwithstanding, this Court agrees with Solarljøs that there could never
11 have been a factual basis to make those findings because NRS 533.150(4) would have precluded
12 the introduction of such new evidence entirely outside of the Preliminary Order and outside of
13 the "subjects" of Solarljøs' objection – which had only to do with the source of water and not
14 the amount of the water allocated under the Proofs. This Court agrees that if the State Engineer
15 had alerted the parties to the possibility that the mining operation itself was in question, or that
16 the amount of water being approved was still in question, NRS 533.150(4) would have
17 precluded the introduction of evidence directed to that issue following the issuance of the
18 Preliminary Order. That Preliminary Order, in Nevada's statutory scheme, carries significant
19 precedential weight; unless there is an objection posed, it essentially becomes the final
20 determination of the State Engineer, and that is why there are such stringent statutory limits
21 imposed on those who want to object to the finding made in preliminary orders of adjudication.
22 See NRS 533.145 through 533.160.

23 However, the Final Order suddenly and without notice of any kind to Solarljøs creates
24 an entirely different scenario of "possible" use of water by the prior mining operation, and

1 arbitrarily reduced the allocation of vested water from the prior allocation to less than 4% of
2 what was previously approved, giving Solarljós only 13.2 AFA. In making this determination,
3 the State Engineer hypothesized about several scenarios that would have been "more likely" as
4 to the mining operation, and made statements about the amount of water that 100 men living in
5 a bunkhouse and working at the mine would have used. However, nearly all of these "findings"
6 were made without citation to any sources whatsoever regarding historical factual proof or even
7 treatises or reference materials discussing mining operations in the area or how they were
8 operated. As such, the State Engineer failed to provide any evidence whatsoever, let alone
9 "substantial evidence" required to support its finding that Solarljós' allocation of water usage is
10 only 13.2 AFA, and therefore, its finding must be overturned and Solarljós is entitled to
11 summary judgment as a matter of law.

12 **NOW, THEREFORE, GOOD CAUSE APPEARING,**

13 **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that Solarljós' motion for
14 summary judgment is GRANTED in its entirety and the State Engineer's finding that Solarljós'
15 allocation of commingled water right usage is 13.2 AFA is OVERTURNED.

16 **IT IS HEREBY FURTHER ORDERED ADJUDGED and DECREED** that
17 Solarljós' allocation of commingled water right usage is 472 cfs, or 341.71 AFA as previously
18 found in the State Engineer's Preliminary Order, which previously accepted by Solarljós.

19 DATED: *OCTOBER 27, 2021*

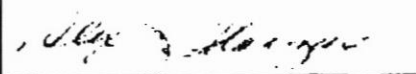
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Respectfully Submitted

DATED: October 25, 2021.

KAEMPFER CROWELL



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



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Case No. CV-2002009

Dept No. 2

NO. _____ FILED

OCT 27 2021

By Eureka County Clerk
[Signature]

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

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

CERTIFICATE OF SERVICE

The undersigned being an employee of the Eureka County Clerk's Office, hereby
certifies that on the 27th day of October, 2021, I personally delivered a true and
correct copy of the following:

**Corrected Order Granting Solarljof, LLC's Motion For Partial Summary
Judgment**
addressed to:

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In the following manner:

- | | | | |
|--------------------------|---|-------------------------------------|---------------------------|
| <input type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
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| <input type="checkbox"/> | hand delivery | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

P. Mahoney

EXHIBIT “2”

Case No.: CV-2002009

Dept. No.: 2

FILED

JAN 27 2022

Eureka County Clerk
P. Mahoney

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

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

**NOTICE OF ENTRY OF ORDER
GRANTING SOLARLJOS LLC'S
MOTION FOR CERTIFICATION OF
JUDGMENT ON SOLARLJOS LLC'S
EXCEPTION IN THIS ADJUDICATION
PROCEEDING**

TO: ALL PARTIES AND THEIR ATTORNEYS HEREIN:

PLEASE TAKE NOTICE that an Order Granting Solarljios LLC's Motion for Certification of Judgment on Solarljios LLC's Exception in this Adjudication Proceeding was entered in the above-referenced case on the 21st day of January, 2022. A true and correct copy of the Order is attached as "Exhibit 1."

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CERTIFICATE OF SERVICE

Pursuant to NRC 5(b), I certify that I am employed by the law firm of Kaempfer
Crowell, and that on this 24th day of January, 2022, I served a true and correct copy of the
foregoing document **ORDER GRANTING SOLARLJOS LLC'S MOTION FOR
CERTIFICATION OF JUDGMENT ON SOLARLJOS LLC'S EXCEPTION IN THIS
ADJUDICATION PROCEEDING** via email, addressed to the following:

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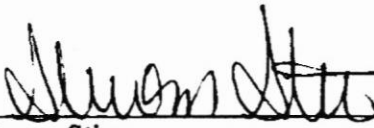
1 *Beck Family Trust dated 4-19-2005 and Beck*
2 *Properties; Norman and Kindy Fitzwater*

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7 **Courtesy Copy Via U.S.P.S. Mail:**
8 Hon. Gary D. Fairman
9 Dept. 2
10 PO Box 151629
11 Ely, NV 89315

11 DATED January 24, 2022


Sharon Stice
An employee of Kaempfer Crowell

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EXHIBIT INDEX

EXHIBIT	DESCRIPTION	PAGES
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EXHIBIT 1

EXHIBIT 1

Case No. CV-2002009

Dept No. 2

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Eureka County Clerk
By *B. Mahoney*

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

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

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

BACKGROUND

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

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



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

9 DISCUSSION

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

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

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



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

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

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

25 ⁴ *Id.* at 4.

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

²⁰ *Id.*, Rule 54(b).



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

2 Good cause appearing,

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

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

9 DATED this 21st day of January, 2022.


DISTRICT JUDGE

21 NRCP 54(b); *Mallin v. Farmers Ins. Exchange*, 106 Nev. 606, 611, 797 P.2d 978 (1990) reversed on
other grounds, *In re of Estate of Sarge*, at 870.

Case No. CV-2002009

NO FILED

Dept No. 2

JAN 21 2022

Eureka County Clerk
By B. Mahoney

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

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

CERTIFICATE OF SERVICE

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

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

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

David Negri, Esq.
davidnegri@usdoj.gov

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

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



RECEIVED
JAN 21 2022

Eureka County Clerk



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Therese Ure Stix, Esq.
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counsel@water-law.com

Alex Flangas, Esq.
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Karen A. Peterson, Esq.
kpeterson@allisonmackenzie.com

Theodore Beutel, Esq.
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Steven D. King, Esq.
Robert A. Dotson, Esq.
Justin C. Vance, Esq.
Kingmont@charter.net
rdotson@dotsonlaw.legal
jvance@dotsonlaw.legal

In the following manner:

- | | | | |
|--------------------------|---|-------------------------------------|---------------------------|
| <input type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input checked="" type="checkbox"/> | via email |
| <input type="checkbox"/> | hand delivery | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

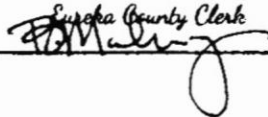
A handwritten signature, likely "D. Mahoney", is written over a horizontal line.

1 Case No. CV-2002009

2 Dept. No. 2

NO. _____ FILED

FEB 16 2022

By *Eureka County Clerk*


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

10 IN THE MATTER OF THE
11 DETERMINATION OF THE RELATIVE
12 RIGHTS IN AND TO ALL WATERS,
13 BOTH SURFACE AND UNDERGROUND,
14 LOCATED WITHIN THE DIAMOND
15 VALLEY HYDROGRAPHIC BASIN NO.
16 10-153, EUREKA AND ELKO
17 COUNTIES, NEVADA

16 **EUREKA COUNTY'S CASE APPEAL STATEMENT**

- 17 1. **Name of appellant filing this case appeal statement:**
18 Eureka County, a political subdivision of the State of Nevada.
- 19 2. **Identify the judge issuing the decision, judgment, or order appealed from:**
20 Honorable Gary D. Fairman, Department Two of the Seventh Judicial District Court
21 of the State of Nevada in and for the County of Eureka.
- 22 3. **Identify each appellant and the name and address of counsel for each appellant:**
 - 23 a. **Appellant:**
24 Eureka County, a political subdivision of the State of Nevada
25 Karen A. Peterson, Esq.
26 Allison MacKenzie, Ltd.
27 402 North Division Street
28 Carson City, NV 89703
~ and ~

///

RECEIVED

FEB 16 2022

Eureka County Clerk

Theodore Beutel, Esq.
Eureka County District Attorney
701 South Main Street
P.O. Box 190
Eureka, NV 89316

b. Other Appellant who has separately appealed:

Adam Sullivan, P.E., Nevada State Engineer
Division of Water Resources, Department of Conservation and Natural Resources

Counsel: James Bolotin, Senior Deputy Attorney General, and Ian E. Carr, Deputy
Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

c. Other Parties below who may or may not appeal or participate in this appeal are:

- (1) Solarljios, LLC ("Solarljios");
- (2) Daniel S. Venturacci and Amanda L. Venturacci ("Venturacci");
- (3) Chad D. Bliss and Rosie J. Bliss ("Bliss");
- (4) Wilfred Bailey and Carolyn Bailey, Trustees of the Wilfred and Carolyn Bailey
Family Trust Dated February 20, 2018 ("Bailey Family Trust");
- (5) Norman C. and Kindy L. Fitzwater ("Fitzwater");
- (6) Arc Dome Partners, LLC, Robert F. Beck and Karen A. Beck, Trustees of the Beck
Family Trust Dated April 1, 2005 ("Beck Entities");
- (7) Ira R. Renner and Montira Renner ("Renner")
- (8) Sadler Ranch, LLC ("Sadler Ranch") and MW Cattle, LLC ("MW Cattle"); and
- (9) The United States of America, on behalf of the United States Department of
Interior, Bureau of Land Management ("the United States of America").

4. **Identify each respondent and the name and address of appellate counsel, if known,
for each respondent (if the name of a respondent's appellate counsel is unknown,
indicate as much and provide the name and address of that respondent's trial
counsel):**

Respondent: Solarljios, LLC

Counsel:
Alex J. Flangas, Esq.
August B. Hotchkin, Esq.
Kaempfer Crowell
50 West Liberty Street, Suite 700
Reno, NV 89501
aflangas@kcnvlaw.com
ahotchkin@kcnvlaw.com

///

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1 Respondents: Daniel S. Venturacci and Amanda L. Venturacci

2 Counsel:

3 Paul G. Taggart, Esq.
4 Timothy D. O'Connor, Esq.
5 Taggart & Taggart, Ltd
6 108 North Minnesota Street
7 Carson City, NV 89703
8 paul@legaltnt.com
9 Tim@legaltnt.com

10 Respondents: Chad D. Bliss and Rosie J. Bliss

11 Counsel:

12 Ross E. de Lipkau, Esq.
13 Robertson, Johnson, Miller & Williamson
14 50 West Liberty Street, Suite 600
15 Reno, NV 89501
16 ross@nvlawyers.com

17 Respondents: Wilfred Bailey and Carolyn Bailey, Trustees of the Wilfred and Carolyn
18 Bailey Family Trust Dated February 20, 2018

19 Counsel:

20 Gordon H. DePaoli, Esq.
21 Woodburn and Wedge
22 6100 Neil Road, Suite 500
23 Reno, NV 89511
24 gdepaoli@woodburnandwedge.com

25 Respondents: Norman C. and Kindy L. Fitzwater

26 Counsel:

27 Therese A. Ure Stix, Esq.
28 Laura A. Schroeder, Esq.
29 Caitlin Skulan, Esq.
30 Schroeder Law Offices, P.C.
31 10615 Double R Blvd., Suite 100
32 Reno, NV 89521
33 counsel@water-law.com
34 therese@water-law.com

35 Respondents: Arc Dome Partners, LLC, Robert F. Beck and Karen A. Beck, Trustees
36 of the Beck Family Trust Dated April 1, 2005

37 Counsel:

38 Therese A. Ure Stix, Esq.
39 Laura A. Schroeder, Esq.
40 Caitlin Skulan, Esq.
41 Schroeder Law Offices, P.C.
42 10615 Double R Blvd., Suite 100
43 Reno, NV 89521
44 counsel@water-law.com
45 therese@water-law.com

Respondent: Ira R. Renner and Montira Renner

Counsel:

Paul G. Taggart, Esq.
Tamara C. Thiel, Esq.
Taggart & Taggart, Ltd
108 North Minnesota Street
Carson City, NV 89703
paul@legaltnt.com
tammy@legaltnt.com

Respondent: Sadler Ranch, LLC and MW Cattle, LLC

Counsel:

Paul G. Taggart, Esq.
David H. Rigdon, Esq.
Taggart & Taggart, Ltd
108 North Minnesota Street
Carson City, NV 89703
paul@legaltnt.com
david@legaltnt.com

Respondent: The United States of America, on behalf of the United States Department of Interior, Bureau of Land Management

Counsel:

David Negri
U.S. Department of Justice – ENRD
c/o U.S. Attorney's Office
1290 West Myrtle Street, Suite 500
Boise, ID 83702
David.negri@usdoj.gov

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission);**

All attorneys are licensed to practice law in the State of Nevada.

6. **Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Appellant was represented by retained counsel in the district court.

7. **Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Appellant is represented by retained counsel on appeal.

8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

Appellant was not granted leave to proceed in forma pauperis.

- 1 9. **Indicate the date the proceedings commenced in the district court (e.g., date**
2 **complaint, indictment, information, or petition was filed):**

3 The proceedings were commenced in the District Court by virtue of the State
4 Engineer's filing of the Order of Determination on February 12, 2020.

- 5 10. **Provide a brief description of the nature of the action and result in the district**
6 **court, including the type of judgment or order being appealed and the relief**
7 **granted by the district court:**

8 Eureka County is appealing the District Court's Corrected Order Granting Solarlj, LLC's Motion for Partial Summary Judgment, certified as final pursuant to NRC 54(b) by the Court's Order Granting Solarlj, LLC's Motion for Certification of Judgment on Solarlj, LLC's Exception in this adjudication proceeding governed by NRS 533.087 *et seq.*

- 9 11. **Indicate whether the case has previously been the subject of an appeal to or**
10 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme**
11 **Court docket number of the prior proceeding:**

12 This case has not been the subject of any prior appeals in the Nevada Supreme Court.

- 13 12. **Indicate whether this appeal involves child custody or visitation:**

14 This appeal does not involve child custody or visitation.

- 15 13. **If this is a civil case, indicate whether this appeal involves the possibility of**
16 **settlement:**

17 Eureka County is always open to settlement discussions.

18 **AFFIRMATION**

19 The undersigned does hereby affirm that the preceding document **DOES NOT** contain the
20 social security number of any person.

21 DATED this 16th day of February, 2022.

22 KAREN A. PETERSON, ESQ.
23 Nevada State Bar No. 366
24 ALLISON MacKENZIE, LTD.
25 402 North Division Street
26 Carson City, Nevada 89703
27 Telephone: (775) 687-0202
28 Email: kpeterson@allisonmackenzie.com

~ and ~


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EUREKA COUNTY DISTRICT ATTORNEY
701 South Main Street
Post Office Box 190
Eureka, Nevada 89316
Telephone: (775) 237-5315
Email: tbeutel@eurekacountynv.gov



BY:

THEODORE BEUTEL, ESQ.
Nevada State Bar No. 5222

Attorneys for EUREKA COUNTY

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP Rule 5, I hereby certify that I am an employee of ALLISON MacKENZIE,
3 LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all
4 parties to this action as follows:

5 **Via Electronic Service:**

6 Paul G. Taggart, Esq.
7 David H. Rigdon, Esq.
8 Timothy D. O'Connor, Esq.
9 Tamara Thiel, Esq.
10 paul@legaltnt.com
11 david@legaltnt.com
12 Tim@legaltnt.com
13 tammy@legaltnt.com

14 *Attorneys for Sadler Ranch, LLC; Daniel S. & Amanda L. Venturacci;*
15 *MW Cattle, LLC; Ira R. & Montira Renner*

16 Therese Ure Stix, Esq.
17 Laura A. Schroeder, Esq.
18 Caitlin R. Skulan, Esq.
19 counsel@water-law.com
20 therese@water-law.com

21 *Attorneys for James E. & Vera L. Baumann; Beck Entities;*
22 *Norman and Kindy Fitzwater*

23 Alex J. Flangas, Esq.
24 August B. Hotchkin, Esq.
25 AFlangas@kcnvlaw.com
26 AHotchkin@kcnvlaw.com
27 *Attorneys for Solarljós, LLC*

28 David L. Negri, Esq.
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Attorney for Nevada State Engineer

Ross E. de Lipkau, Esq.
Ross@nvlawyers.com
Attorneys for Chad D. & Rosie J. Bliss

Gordon H. DePaoli, Esq.
gdepaoli@woodburnwedge.com
Attorneys for the Bailey Family Trust

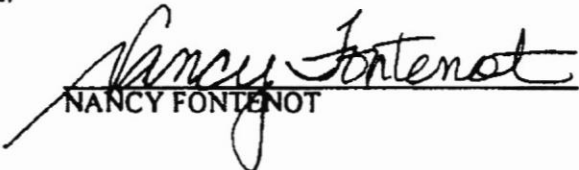
///

1 Hon. Gary D. Fairman
2 c/o Wendy Lopez
3 WLopez@whitepinecountynv.gov

4 Via First Class Mail:

5 Hon. Gary D. Fairman
6 Department Two
7 P.O. Box 151629
8 Ely, NV 89315

9 DATED this 16th day of February, 2022.

10 
11 NANCY FONTENOT

12 4861-1968-5389, v. 1
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Seventh Judicial District Court - Eureka County

Run: 02/19/2022
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Case Summary

Page 1

Case #: CV2002009

Judge: DOBRESCU, STEVEN L

Date Filed: 02/12/2020 Department:

Case Type: OTHER CIVIL FILING

Title/Caption: In the Matter of the Determination of the Relative Rights In and To all
Waters, Both Surface and Underground, Locted Within the Diamond Valley
Hydrographic Basin No. 10-153, Eureka and Elko Counties, Nevada

Attorney(s)

Other

IN THE MATTER OF THE DETERMINATION OF TH No *Attorney 1* Listed

Other

DIAMOND VALLEY HYDROGRAPHIC WATER BASIN No *Attorney 1* Listed

Hearings:

Date	Time	Hearing	Court Result
09/29/2021	9:30AM	SADLER RANCH & M.W. CATTLE	
09/30/2021	9:30AM	SADLER RANCH & M.W. CATTLE	
10/01/2021	9:30AM	SADLER RANCH & M.W. CATTLE	
11/02/2021	9:30AM	VENTURACCI	
11/03/2021	9:30AM	VENTURACCI	
11/04/2021	9:30AM	VENTURACCI	
12/07/2021	1:30PM	SOLARLJOS	
03/03/2022	9:30AM	BAILEY	
03/04/2022	9:30AM	BAILEY	
03/08/2022	9:30AM	RENNER	
03/09/2022	9:30AM	RENNER	
03/10/2022	9:30AM	RENNER	
03/14/2022	9:30AM	EUREKA COUNTY & U.S.	
03/15/2022	9:30AM	EUREKA COUNTY & U.S.	
03/16/2022	9:30AM	EUREKA COUNTY & U.S.	
03/22/2022	9:30AM	EUREKA COUNTY & U.S.	
03/23/2022	9:30AM	EUREKA COUNTY & U.S.	
03/24/2022	9:30AM	EUREKA COUNTY & U.S.	
03/29/2022	9:30AM	EUREKA COUNTY & U.S.	
03/30/2022	9:30AM	EUREKA COUNTY & U.S.	
04/05/2022	9:30AM	VENTURACCI, BAUMAN, BLISS, FITZWATER, GOICOECHEA & U.S.	
04/06/2022	9:30AM	VENTURACCI, BAUMAN, BLISS, FITZWATER, GOICOECHEA & U.S.	
04/07/2022	9:30AM	VENTURACCI, BAUMAN, BLISS, FITZWATER, GOICOECHEA & U.S.	
04/12/2022	9:30AM	VENTURACCI, BAUMAN, BLISS, FITZWATER, GOICOECHEA & U.S.	
04/13/2022	9:30AM	VENTURACCI, BAUMAN, BLISS, FITZWATER, GOICOECHEA & U.S.	
04/19/2022	9:30AM	BAUMAN & BLISS	
04/20/2022	9:30AM	BAUMAN & BLISS	

Filings:

Date	Filing
04/06/2020	ORDER
04/06/2020	CERTIFICATION OF SERVICE
04/21/2020	NOTICE OF INTENT TO FILE OBJECTIONS TO STATE ENGINEER'S ORDER OF DETERMINATION
04/23/2020	NOTICE OF CHANGE OF ADDRESS
04/27/2020	NOTICE TO THE COURT
04/28/2020	EUREKA COUNTY'S NOTICE OF INTENT TO FILE A NOTICE OF EXCEPTION PURSUANT TO NRS 533.170 (1)
04/29/2020	UNITED STATES' NOTICE OF INTENT
04/29/2020	AFFIDAVIT OF DAVID NEGRI
04/29/2020	NOTICE OF INTENT TO FILE NOTICE OF EXCEPTIONS OF BAILEY'S
04/30/2020	NOTICE OF INTENT TO FILE OBJECTIONS TO STATE ENGINEERS ORDER OF DETERMINATION
04/30/2020	NOTICE OF INTENT TO FILE OBJECTIONS TO STATE ENGINEERS ORDER OF DETERMINATION & NOTICE OF CHANGE OF ADDRESS OF COUNSEL FOR SOLARLJOS
04/30/2020	NOTICE OF INTENT TO FILE A NOTICE OF EXCEPTION PURSUANT TO NRS 533.170 FOR SADLER RANCH
04/30/2020	NOTICE OF INTENT TO FILE A NOTICE OF EXCEPTION, VENTURACCI'S
04/30/2020	NOTICE OF INTENT TO FILE A NOTICE OF EXCEPTION, RENNER'S
05/01/2020	NORMAN C. AND KINDY L. FITZWATER NOTICE OF INTENT TO FILE A NOTICE OF EXCEPTION PURSUANT TO NRS 533.170(1)
05/05/2020	NOTICE OF INTENT TO FILE A NOTICE OF EXCEPTION- COLBY
08/27/2020	ORDER SETTING HEARING ON NEVADA STATE ENGINEER'S ORDER OF DETERMINATION OF RELATIVE WATER RIGHTS IN AND TO ALL WATERS OF DIAMOND VALLEY HYDROGRAPHIC BASIN NO. 10-153, EUREKA AND ELKO COUNTIES, NEVADA
08/28/2020	NOTICE OF APPEARANCE, JOHN WEST COLBY II, AND MW CATTLE, LLC.
09/25/2020	NOTICE OF APPEARANCE OF COUNSEL FOR BECK ENTITIES
10/28/2020	NOTICE OF EXCEPTION OF WILFRED AND CAROLYN BAILEY FAMILY TRUST TO THE ORDER OF DETERMINATION FILED HEREIN ON OR ABOUT FEBRUARY 12, 2020
11/02/2020	OBJECTION TO STATE ENGINEER'S ORDER OF DETERMINATION; BLISS
11/02/2020	PROOF OF SERVICE AND PUBLICATION OF THE COURT'S ORDER SETTING HEARING ON EXCEPTIONS TO THE ORDER OF DETERMINATION PURSUANT TO NRS 533.165(6)
11/03/2020	NOTICE OF EXCEPTION TO ORDER OF DETERMINATION; BAUMANN
11/03/2020	DANIEL S. VENTURACCI AND AMANDA L. VENTURACCI'S NOTICE OF EXCEPTIONS & EXCEPTIONS TO THE STATE ENGINEER'S ORDER OF DETERMINATION RE: IRRIGATION CLAIMS V1110, V01111, V01114, V01115, V02845, V02846, V02547, V10368, V10972, V10973 AND STOCK WATER CLAIMS V01319, V01521, V01596, V10974-V11029
11/03/2020	NOTICE OF APPEARANCE OF COUNSEL FOR FITZWATER
11/03/2020	NOTICE OF EXCEPTION TO ORDER OF DETERMINATION; FITZWATER
11/03/2020	NOTICE OF EXCEPTION TO ORDER OF DETERMINATION; ARC DOME, BECK
11/03/2020	UNITED STATES' NOTICE OF EXCEPTIONS
11/03/2020	MW CATTLE, LLC'S NOTICE OF EXCEPTIONS AND EXCEPTIONS TO THE STATE ENGINEER'S ORDER OF DETERMINATION IN RE: PROOFS V-04476, THROUGH V-04480, INCLUSIVE, V-10888, V-10892, AND V-10905 THROUGH V-10917, INCLUSIVE
11/03/2020	SADLER RANCH, LLC'S NOTICE OF EXCEPTIONS AND EXCEPTIONS TO THE STATE ENGINEER'S ORDER OF DETERMINATION IN RE: PROOFS V026578, V03289, V03290, AND V10918
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By Eureka County Clerk
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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

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

**CORRECTED ORDER GRANTING
SOLARLJOS, LLC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

THIS MATTER comes before the Court on a Motion for Partial Summary Judgment filed by Solarljios, LLC (hereinafter "Petitioner" or "Solarljios") on September 3, 2021. Any written opposition was due on or before September 17, 2021. However, no oppositions were filed to Solarljios' Motion for Partial Summary Judgment and Solarljios submitted the Motion for this Court's review and decision. Therefore, there is good cause appearing for this Court to grant Solarljios' Motion for Partial Summary Judgment in its entirety:

I. FINDINGS OF FACT

This Court, having read the moving papers, pleadings, exhibits, and other documentation
HEREBY FINDS THE FOLLOWING:

1. This matter arises as one of the required statutory processes of a "vested rights adjudication" conducted under NRS 533.087 through 533.265.
2. The State Engineer's office began the process of taking "proofs" of vested rights

1 for the purpose of performing an adjudication of the Diamond Valley Hydrographic Basin, No
2 10-153, nearly 40 years ago, back in 1982 when that office issued Order 800, the *Order*
3 *Initiating Proceedings*, pursuant to NRS 533.090(2) and Order 801, the *Notice of Order and*
4 *Proceedings*, which was published and served on land owners in the basin as required by NRS
5 533.095. Several years of extension later, nothing had occurred to move that process along, and
6 in 2015 the State Engineer issued Order 1263, a *Notice of Order and Proceedings to Determine*
7 *Water Rights, both Surface and Underground*, in the matter of the determination of relative
8 rights in and to all waters in the Diamond Valley Hydrographic Basin (10-153), Elko and
9 Eureka Counties, Nevada. That Order effectively "reinitiated" Order 801 (one of the orders
10 previously issued in 1982), and then on October 16, 2015, the State Engineer issued Order 1266,
11 a *Notice of Order for Taking Proofs to Determine Water Rights*, which directed all interested
12 parties who felt they had a claim to vested water rights in Diamond Valley to file their "Proofs"
13 on or before May 31, 2016.

14 3. Solarljøs was one of the parties who filed Proofs of vested water rights with the
15 State Engineer as part of that proceeding in May of 2016, filing Claim Nos. V-10880, V-10881,
16 and V-01882. Those Proofs were based on the use of water for a mining operation associated
17 with the old mining town of Prospect, which had operated near the turn of the century prior to
18 1900. The Proofs included documentation showing the existence of the mining operation,
19 descriptions of the mining operation by the Solicitor General following annual visits to the mine
20 site and the town, ledger entries demonstrating the existence of water pumps as part of the
21 equipment utilized by the mining operation, Eureka County assessment records referencing the
22 water system for the mine and the "Harrub Well" in that valuation, and a few photographs
23 depicting locations of hand-dug wells in that vicinity.
24

1
2 4. When the State Engineer concluded the period for submission of the taking of
3 Proofs, he analyzed those submissions and issued the Preliminary Order on August 30, 2018.
4 The Preliminary Order stated the findings of the State Engineer regarding the submitted Proofs
5 of vested water right claims for all of those persons and companies who had submitted Proofs
6 by the May 31, 2016 deadline. The Preliminary Order stated which of the Proofs would be
7 approved and how much of an allocation of water was proven as having been used (vested), and
8 the State Engineer also indicated whether he found the water right proven up to be a surface
9 right or groundwater right in the case of Solarljós. The State Engineer also denied some Proofs
10 of claim outright, and those claimants therefore received no vested water.

11 5. In that section of the Preliminary Order addressing the claims made by Solarljós,
12 the State Engineer approved Proof V-10880 for allocation of .472 cfs (cubic feet per second) of
13 vested water rights to Solarljós for "mining and milling from January 1 through December 31"
14 from the Einar Spring, which is a surface source. That diversion rate allocation for a mining and
15 milling right is equivalent to an annual total duty of 342.71 acre feet annually ("AFA"). In
16 making that determination, the Preliminary Order at pages 273 and 274 discussed at length the
17 documentary proof supplied by SRK and Solarljós to support the claim, and spoke supportively
18 of that proof, stating:

19 The waters from Clark Spring were captured and put into a pipeline to the
20 former town of Ruby Hill, according to the maps drawn by Hague, which were
21 surveyed in 1880. ... Several historical sources refer to Prospect being developed
22 about 1885 with a population of about 50 people with a post office being
23 established in 1893, but do not elaborate on much else. The smelter was not
24 constructed until 1908 along with several boarding houses. The water pipeline
from Clark Spring was probably severed in the early 1880's to serve the needs of
the Prospect town site or the water from adjacent springs within the complex were
utilized. This suggests that the needs for water prior to 1880 was minimal.
Support documentation mentioned the water for boilers and mining operations
were supplied with water from springs utilizing a Knowles steam pump and a

1 Cameron steam pump whose operating capacity at normal speeds would be
2 approximately 200 gpm (0.45 cfs) combined. These necessary pieces of
3 machinery probably arrived in the area prior to the town of Prospect being
4 developed. The documentation filed in support of the proof and information
5 gleaned from the public domain would put the date of first beneficial use of the
6 water post-1880, based on the Hague map, and prior to the development of the
7 town of Prospect prior to 1885. Based on the filed support documentation, field
8 investigation by the Office of the State Engineer and information obtained from
9 sources in the public domain, the State Engineer find [sic] a basis the diversion of
10 0.472 cfs of water from Einar Spring source for mining and milling from January
11 1 through December 31 with a priority date of 1880. The State Engineer also finds
12 a basis for the diversion of water for domestic use from January 1 through
13 December 31.

14 6. However, despite granting Solarljøs a .472 cfs vested claim for the Einar Spring,
15 the Preliminary Order then denied Solarljøs' vested claims V-10881 and V-10882, but did so
16 entirely on the basis that those claims were applications for "groundwater." In making those
17 denials, the State Engineer found only that Solarljøs' Proofs failed to demonstrate that
18 groundwater wells rather than springs, were the source of water described and for which
19 Solarljøs provided evidence.

20 7. However, there was no discussion in the Preliminary Order of limiting the
21 amount of water granted to Solarljøs based on the type of mining operation, the size of the
22 pumps, the way in the mining operation was operated (or would have been operated), or the
23 approximate amount of water that such a mining operation and town as Prospect would have
24 used given Solarljøs' Proofs. Instead, the State Engineer denied Proofs V-10881 and V-10882
on the sole basis that the points of diversion for those claims did not bear the necessary
characteristics to be considered historic "wells." Indeed, in denying V-10882 the State Engineer
also made the determination that the point of diversion was the same Einar Spring as was
approved for Claim No. V-10880, and that there was no "well" at any location to support a

1 separate underground source.

2 8. The result of the Preliminary Order, consequently, was that Solarljøs was
3 allocated vested rights in the amount of .472 cfs (342.71 AFA), but those vested water rights
4 were limited to a single surface right source rather than also being groundwater rights with wells
5 as their points of diversion. Thus, the State did find that Solarljøs had made sufficient proof of
6 the use of that amount of water to justify the award of the vested claim (Solarljøs sought
7 approval for .471cfs).

8 9. The only thing the State disagreed with Solarljøs about was the limited source of
9 the water, with the State finding that the source was solely a surface spring and not also the
10 historic, hand-dug groundwater wells identified in V-10881 and V-10882.

11 10. Solarljøs properly filed an objection to the Preliminary Order within the time
12 required for filing objections under NRS 533.145 after the Preliminary Order was opened to
13 public inspection as required by that statute.¹ Solarljøs' objection to the Preliminary Order was
14 entirely based on the only finding made in the Preliminary Order that was adverse to the
15 position put forth by Solarljøs, which was the State Engineer's finding that the sole source of
16 the vested water used was the Einar Spring and that the groundwater well diversion locations
17 identified by Solarljøs were not actually hand-dug "wells."

18 11. At the hearing on its objection, Solarljøs presented arguments and evidence
19 directed only to that point: evidence and arguments designed to demonstrate that the locations
20 of these other points of diversion of water identified were actually hand-dug wells, that the
21 County's assessment records noted one source as the "Harrub Well," and that a noted
22 archeologist who had worked on the cultural analysis of Solarljøs' property in connection with

23
24 ¹ As indicated above, Solarljøs had previously filed a Petition for Judicial Review of the Final
Order, but upon filing its Objection in this case Solarljøs' counsel stipulated to stay that other
case, CV2003-010, pending final determination of this matter.

1 the completion of Solarljós' environmental assessment necessary to satisfy BLM permitting
2 requirements had concluded that the points of diversion sites were in fact hand-dug wells that
3 might actually require preservation by Solarljós as part of the cultural assessment and work on
4 the property. The intent of that proof at the hearing was to establish Solarljós right to a vested
5 groundwater claim as well as a surface water claim. The amount of the vested claim was not at
6 issue.

7 12. On January 31, 2020, the current State Engineer issued the Final Order after
8 consideration of the various objections that had been filed and presented during the hearings
9 conducted in early 2019. In the Final Order, the State Engineer accepted the additional
10 arguments presented by Solarljós at the objection hearing when the State concluded that there
11 were grounds to find that vested Proofs V-10881 and V-10882 were, in fact, groundwater
12 sources (hand-dug wells) rather than surface springs.

13 13. However, the State Engineer's impromptu revisit of the analysis regarding the
14 entire vested rights claim/proof filed by Solarljós and previously accepted as a "basis" for the
15 finding of .472 cfs for mining and milling.

16 14. The Final Order's determination of a new reduction of water was made with no
17 proof of facts or evidence in the record, yet made entirely new findings of fact, without any
18 prior notice, that substantially depleted the prior allocation of water that had been granted to
19 Solarljós in the Preliminary Order.

20 15. The Final Order suddenly and without notice of any kind to Solarljós creates an
21 entirely different scenario of "possible" use of water by the prior mining operation and reduced
22 the allocation of vested water from the prior allocation to less than 4% of what was previously
23 approved, giving Solarljós only 13.2 AFA.

24 16. In making this determination, the State Engineer hypothesized about several

1 scenarios that would have been "more likely" as to the mining operation, and made statements
2 about the amount of water that 100 men living in a bunkhouse and working at the mine would
3 have used.

4 17. However, Solarljøs was not given any notice or opportunity to be heard
5 regarding the State Engineer's analysis and conclusion regarding the comingled water amount
6 allocated to Solarljøs based on its vested rights claims.

7 18. Further, nearly all of these "findings" were made without citation to any sources
8 whatsoever regarding historical factual proof or even treatises or reference materials discussing
9 mining operations in the area or how they were operated. As such, they were baseless and
10 speculative, and unduly prejudicial to Solarljøs.

11 19. Solarljøs filed an "exception" to the Final Order of Determination pursuant to
12 NRS 533.170, and this Court is tasked with resolving those exceptions as to all vested claimants
13 who filed exceptions.

14 20. Solarljøs' exception is considered in the nature of a petition for judicial review
15 on the *record* created before the State Engineer consisting of (a) the filing of Solarljøs' "proofs"
16 of its vested rights claims, as required under NRS 533.087 and 533.125, and (b) the evidence
17 submitted during the hearing on Objections to the Preliminary Order of Determination, as is
18 required by NRS 533.145 and 533.150.²

19 21. The State Engineer failed to provide any evidence to support his decision to

20 ² This Court notes that Solarljøs also filed a Petition for Judicial Review pursuant to NRS
21 533.450 in Case No. CV2003-010 within 30 days of the Final Order because Solarljøs was
22 "aggrieved" by the Final Order of the State Engineer, and NRS 533.450 states that it applies to
23 "any order or decision of the State Engineer" and does not expressly exclude orders issued under
24 adjudication of vested rights proceedings. However, Solarljøs and the State entered into a
stipulation to stay that action pending the outcome of this proceeding and confirming that
Solarljøs simply wanted to make sure its rights were preserved to appeal that part of the Final
Order to which Solarljøs objected to a district court in *some* proceeding – one time, before a
court. (The Stipulation notes that Solarljøs is not attempting to get two bites at the appeal
"apple.")

1 revisit in the Final Order his prior determination regarding the amount of water wo which
2 Solarljós is entitled under its vested rights claims.

3 22. In his Preliminary Order, the State Engineer determined Solarljós vested claim to
4 be a mining and milling use from January 1 to December 31 of .472 cfs. Solarljós raised no
5 objection to the .472 cfs determination.

6 23. Based on the findings and conclusions set forth in the State Engineer's
7 Preliminary Order, Solarljós' narrow and sole objection was the State Engineer's determination
8 as to the source of that water, The State Engineer decided that Solarljós had failed to prove that
9 the source was groundwater and that the points of diversion for V-10881 and V-10882 were
10 hand-dug wells. Consequently, all of the evidence presented and discussed at the hearing on that
11 limited objection was directed entirely and completely to Solarljós' proof that the source of the
12 water was, in fact, groundwater wells.

13 24. Because no objection was raised as to the .472 cfs allocation of water, there was
14 no basis or allowed reason for the State to revise its prior allocation of the amount of water
15 determined to be provided to Solarljós under its original proof of vested rights claim. 25. The
16 three proofs of claim and other supporting documentation submitted by Solarljós shows that it
17 made claim to the same water as emanating from a spring and from groundwater, because the
18 source of the water was a site referenced as "Einar Spring" and another as "the Harrub Well."

19 25. Solarljós was not requesting more water in its Objection to the Preliminary
20 Order, but rather recognition that the source of its water was both a groundwater well and a site
21 that had been identified as a "spring" (surface right).

22 **II. CONCLUSIONS OF LAW**

23 This Court hereby makes the following conclusions of law based on the material
24 undisputed facts outlined above, the evidence submitted, and the record.

1 A. Summary Judgment

2 Rule 56 of the Nevada Rules of Civil Procedure ("NRC") state that "[t]he court shall
3 grant summary judgment if the movant shows there is no genuine dispute as to any material fact
4 and the movant is entitled to judgment as a matter of law." NRC 56(c); *Wood v. Safeway, Inc.*,
5 121 Nev. 724, 729 (2005). "A genuine issue of material fact is one where the evidence is such
6 that a reasonable [finder of fact] could return a verdict for the non-moving party." *Lee v. GNLV*,
7 22 P.3d 209, 211-12 (2001) (citations omitted). The party opposing summary judgment may not
8 rely "on gossamer threads of whimsy, speculation and conjecture . . . [and] the non-moving party
9 . . . must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
10 genuine factual issue" to support his or her claim at trial or defeat a motion for summary
11 judgment. *Wood* at 731 (internal quotes and citations omitted); *Thomas v. Bokelman*, 86 Nev. 10,
12 14, 462 P.2d 1020, 1023 (1970) (citations omitted).

13 A burden-shifting scheme is used in determining summary judgment, where "[t]he party
14 moving for summary judgment bears the initial burden of production to show the absence of a
15 genuine issue of material fact." *Cuzze v. Univ. and Comm. College Sys. of Nev.*, 123 Nev. 598,
16 602, 172 P.2d 131, 135 (2007). "The manner in which each party must satisfy its burden of
17 production depends on which party will bear the burden of persuasion on the challenged claim at
18 trial." *Id.*

19 If "the moving party [bears] the burden of persuasion, that party must present evidence
20 that would entitle it to a judgment as a matter of law in the absence of contrary evidence." *Id.* "If
21 such a showing is made, then the party opposing summary judgment assumes a burden of
22 production to show the existence of a genuine issue of material fact." *Id.* "But if the nonmoving
23 party will bear the burden of persuasion at trial, the party moving for summary judgment may
24 satisfy the burden of production by either (1) submitting evidence that negates an essential

1 element of the nonmoving party's claim, or (2) pointing out ... that there is an absence of
2 evidence to support the nonmoving party's case." *Id.* (internal quotations omitted).

3 Further, regarding motions for summary judgment on claims untethered to factual
4 support, the Nevada Supreme Court recently emphasized that:

5 [W]here an action is brought with practically no evidentiary basis to support it,
6 summary judgment can be a valuable tool to discourage protracted and
7 meritless litigation of factually insufficient claims. In dispensing with
8 frivolous actions through summary judgment, courts promote the important
9 policy objectives of sound judicial economy and enhance the judiciary's
10 capacity to effectively and efficiently adjudicate legitimate claims.

11 *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 198, 444 P.3d 436, 441 (2019).

12 **B. Legal Analysis and Conclusions**

13 **1. The State Engineer Violated Solarljos' Right To Due Process.**

14 Based on the material undisputed facts outlined above, this Court finds as a matter of
15 law that The State Engineer did not provide sufficient or adequate notice regarding its allocation
16 of commingled vested water right usage in the Final Order of Determination, thus depriving
17 Solarljos of its right to due process.

18 NRS 533.150(4) states that the evidence taken in a proceeding conducted in accordance
19 with an objection to a Preliminary Order of adjudication of vested rights "must be confined to
20 the subjects enumerated in the objections and the preliminary order of determination." Due
21 process forbids any governmental agency, including the State Engineer, from using evidence in
22 any way that forecloses an opportunity for a vested water right claimant from being heard. *See*
23 *Eureka Cnty. v. State Eng'r*, 131 Nev. 846, 855, 359 P.3d 1114, 1120 (2015) (citing *Bowman*
24 *Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 288, 288 n. 4, 95 S.Ct. 438, 42
L.Ed.2d 447 (1974); *see also Eureka Cnty. v. Seventh Judicial Dist. Court (Sadler Ranch)*, 134
Nev. 275, 279, 417 P.3d 1121, 1124 (2018) ("In Nevada, water rights are regarded and

1 protected as real property.”) (internal quotations and citations omitted).

2 Moreover, it has been held by the Nevada Supreme Court that where the State Engineer
3 issues an order “without providing notice or a hearing—[it is] an omission that, in the context of
4 established water rights, would unquestionably be fatal.” *Wilson v. Pahrump Fair Water, LLC*,
5 137 Nev. Adv. Op. 2, 418 P.3d 853, 858 (2021). This necessarily means that an opportunity to
6 challenge the State Engineer’s determination must be afforded to a claimant such as Solarljøs
7 before it enters its final order – which is precisely what the State Engineer failed to do here.

8 The record shows, and this Court finds, that Solarljøs filed Proofs of vested water rights
9 with the State Engineer as part of the proceeding in May 2016. These claims were filed for
10 vested water rights under Claim Nos. V-10880, V-10881 and V-01882. After analyzing the
11 claims and submissions of evidence and proof, the State Engineer entered its Preliminary Order,
12 where it *approved* Proof V-10880 for allocation of .472 cfs of vested water rights to Solarljøs
13 (which is the equivalent of 341.71 AFA). The evidence presented and attached to these claims
14 presented by Solarljøs was also uncontroverted that claims V-10881 and V-10882 were
15 “comingled” with the source and usage of V-10880. This was not disputed by anyone, including
16 the State Engineer in its Preliminary Order.

17 However, the State Engineer limited the approval to a surface water right from the Einar
18 Spring *rather than* approving that allocation as a groundwater right and the Preliminary Order
19 denied Solarljøs’ vested claims V-10881 and V-10882 on the basis that they were applications
20 for “groundwater.” As such, the State Engineer’s denial in this regard was made solely on the
21 basis that the sources of water identified appeared to be surface sources rather than groundwater
22 wells. As a result, Solarljøs objected to the Preliminary Order solely because it believed that it
23 had already demonstrated that the water was from a groundwater source and that the State
24 should have found the source to be groundwater rather than surface springs. The record shows

1 that further discussion conducted at the hearing on the objection merely emphasized that point,
2 focusing entirely on the source of water – not the mining operation itself or the nature of the use
3 involved, because those factors had apparently been presented to the satisfaction of the State
4 Engineer as demonstrated by the discussion in the Preliminary Order and the finding in favor of
5 Solarljós to award a diversion of .472 cfs (341.71 AFA). No discussion was had at the hearing
6 on the objection of Solarljós – by the State³-- regarding the amount of water used by the old
7 mining operation, because there was nothing in the Preliminary Order suggesting that the State
8 Engineer's office was concerned about the amount of water it had approved under Solarljós'
9 claims for vested water (the .472 cfs/ 341.71 AFA).

10 However, after the March 19, 2019 hearing (which only focused on the singular issue
11 regarding the source of water) the State Engineer entered its Final Order on January 31, 2020,
12 where it reversed its prior decision regarding the source, agreeing with Solarljós that claims V-
13 10881 and V-10882 were ground water sources, and that it was comingled for the total
14 diversion rate of .472 cfs (341.71 AFA) of water. But, the State Engineer also found, for the
15 first time, that Solarljós' allocated usage was "a total combined duty of 13.2 afa from all
16 sources." No party, including Solarljós, was involved in an objection proceeding that would
17 have allowed Solarljós to present evidence that went beyond what was presented in the subjects
18 "enumerated in the objections and preliminary order." Further, there was not a single piece of
19 evidence presented at the hearing on Solarljós' objection that would support the myriad of
20 findings made by the State in the Final Order – suddenly and without notice to Solarljós –
21 regarding an entirely revised review of the Prospect mining operation that the State now
22 "believes" occurred on the site in an entirely different fashion than it previously concluded had

23
24 ³ However, Solarljós' retained hydrologist, Tim Donahoe confirmed that the water usage approved by the state at .472 cfs was equivalent to 212 gallons per minute (i.e., 341.72 AFA) and is not unusual groundwater usage for a mining operation.

1 occurred when it granted Solarljos the allocation of .472 cfs of water use (341.71 AFA) during
2 the initial Proof review. However, no witnesses, expert or percipient, testified at the hearing
3 contrary to what had been presented in the earlier Proof and no documentation was presented
4 showing that Solarljos' Proof of use was being challenged or would be subject to challenge as to
5 the amount of water used.

6 Notwithstanding, the record shows the State Engineer still apparently found a basis for
7 the .472 cfs (341.71 AFA) water usage for all three claims in the Final Order, contradicting its
8 unsupported assumption for a total duty of 13.2 AFA which does not apply to a mining
9 operation. The State Engineer unilaterally included its additional "finding" that not only
10 contradicted itself in both the Preliminary and Final Orders, but also to the principles of
11 calculating water usage with respect to historic mining operations. Therefore, this Court agrees
12 with Solarljos that the State Engineer's finding that the total duty of water usage allocated to
13 Solarljos is 13.2 AFA was arbitrary and unsupported and, based on the foregoing, was also a
14 violation of Solarljos' right to due process.

15 **B. The State Engineer's Final Order Regarding The Allocation of 13.2 AFA to**
16 **Solarljos Was Not Supported By Substantial Evidence And Therefore,**
Solarljos Is Entitled To Summary Judgment as a Matter of Law

17 A party aggrieved by an order or decision of the State Engineer is entitled to have the
18 same reviewed in the nature of an appeal. NRS 533.450(1). This proceeding is, essentially, on
19 the record and is in the nature of an appeal and therefore, the State Engineer's Final Order for
20 Determination must include "findings in sufficient detail to permit judicial review" and "must
21 clearly resolve all crucial issues presented." *Revert v. Ray*, 95 Nev. 782, 787, 603 P.2d 262,
22 264-265 (1975).

23 In order to determine that the State Engineer's findings and order are valid, this Court
24 must determine whether substantial evidence exists in the record to support the State Engineer's

1 decision. *Id.*; see also *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991)
2 *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1147-48
3 (2010); and *Eureka Cnty. v. State Eng'r*, 131 Nev. 846, 853, 359 P.3d 1114, 1118-19 (2015);
4 and *Wilson v. Pahrump, LLC*, 137 Nev. Adv. Op. 2, 481 P.3d 853, 858 (2021) (stating that "the
5 State Engineer's decision must be supported by substantial record evidence.") (citing to *King v.*
6 *St. Clair*, 134 Nev. 137, 139, 414 P.3d 314, 316 (2008) (stating that "factual findings of the
7 State Engineer should only be overturned if they are not supported by substantial evidence.")).
8 "Substantial evidence is that which a reasonable mind might accept as adequate to support a
9 conclusion." *Pyramid Lake Paiute Tribe of Indians, supra.* (internal quotations and citations
10 omitted).

11 Moreover, this Court must also determine whether the State Engineer's order (or any
12 part of its decision(s)) was arbitrary, capricious, an abuse of discretion, or whether it was
13 otherwise affected by prejudicial legal error. *Pyramid Lake Paiute Tribe of Indians v. Washoe*
14 *Cnty.*, 112 Nev. 743, 751, 918 P.2d 697, 702 (1996).

15 Finally, in reviewing an administrative decision by the State, this Court is required to
16 "decide pure legal questions without deference to an agency determination" and therefore,
17 applies a *de novo* standard of review to questions of law. See, *Felton v. Douglas Cnty.*, 134 Nev.
18 34, 35, 410 P.3d 991, 993-994 (2018), see also *Pyramid Lake Paiute Tribe of Indians v. Ricci*,
19 126 Nev. at 525, 245 P.3d at 147-48 (stating that "[w]ith respect to questions of law, however,
20 the State Engineer's ruling is persuasive but not controlling . . . [and t]herefore, we review
21 purely legal questions without deference to the State Engineer's ruling.") (internal citations
22 omitted).

23 In its Final Order, the State Engineer agreed with Solarljos and found a basis for the total
24 diversion rate of .472 cfs (341.71 AFA) of water from the underground sourced associated with

1 claims V-10881, V-10882, and the Einar Spring source under claim V-10880 for mining and
2 milling from January 1 through December 31 with a priority date of 1879, as well as for the
3 diversion of water for domestic use from January 1 through December 31. However, the State
4 Engineer inexplicably added the following sentence to the findings for each claim: "This water,
5 being comingled with water from Claims . . . will have a total combined duty of 13.2 afa from
6 all sources." But, the State Engineer failed to provide any evidence, let alone any substantial
7 evidence required to support this finding. Because there is no evidence in the record to support
8 the finding by the State Engineer, this finding was no more than a mere assumption on the State
9 Engineer's part.

10 Moreover and notwithstanding, this Court agrees with Solarljøs that there could never
11 have been a factual basis to make those findings because NRS 533.150(4) would have precluded
12 the introduction of such new evidence entirely outside of the Preliminary Order and outside of
13 the "subjects" of Solarljøs' objection – which had only to do with the source of water and not
14 the amount of the water allocated under the Proofs. This Court agrees that if the State Engineer
15 had alerted the parties to the possibility that the mining operation itself was in question, or that
16 the amount of water being approved was still in question, NRS 533.150(4) would have
17 precluded the introduction of evidence directed to that issue following the issuance of the
18 Preliminary Order. That Preliminary Order, in Nevada's statutory scheme, carries significant
19 precedential weight; unless there is an objection posed, it essentially becomes the final
20 determination of the State Engineer, and that is why there are such stringent statutory limits
21 imposed on those who want to object to the finding made in preliminary orders of adjudication.
22 See NRS 533.145 through 533.160.

23 However, the Final Order suddenly and without notice of any kind to Solarljøs creates
24 an entirely different scenario of "possible" use of water by the prior mining operation, and

1 arbitrarily reduced the allocation of vested water from the prior allocation to less than 4% of
2 what was previously approved, giving Solarljos only 13.2 AFA. In making this determination,
3 the State Engineer hypothesized about several scenarios that would have been "more likely" as
4 to the mining operation, and made statements about the amount of water that 100 men living in
5 a bunkhouse and working at the mine would have used. However, nearly all of these "findings"
6 were made without citation to any sources whatsoever regarding historical factual proof or even
7 treatises or reference materials discussing mining operations in the area or how they were
8 operated. As such, the State Engineer failed to provide any evidence whatsoever, let alone
9 "substantial evidence" required to support its finding that Solarljos' allocation of water usage is
10 only 13.2 AFA, and therefore, its finding must be overturned and Solarljos is entitled to
11 summary judgment as a matter of law.

12 **NOW, THEREFORE, GOOD CAUSE APPEARING,**

13 **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that Solarljos' motion for
14 summary judgment is GRANTED in its entirety and the State Engineer's finding that Solarljos'
15 allocation of commingled water right usage is 13.2 AFA is OVERTURNED.

16 **IT IS HEREBY FURTHER ORDERED ADJUDGED and DECREED** that
17 Solarljos' allocation of commingled water right usage is 472 cfs, or 341.71 AFA as previously
18 found in the State Engineer's Preliminary Order, which previously accepted by Solarljos.


19 DATED: *OCTOBER 27, 2021*

20
21 
22 _____
23 DISTRICT COURT JUDGE
24

1 Respectfully Submitted

2 DATED: October 25, 2021.

3 KAEMPFER CROWELL
4

5 

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



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OCT 27 2021
Eureka County Clerk

Case No. CV-2002009

Dept No. 2

NO. _____ FILED

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By Eureka County Clerk
[Signature]

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

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

CERTIFICATE OF SERVICE

The undersigned being an employee of the Eureka County Clerk's Office, hereby
certifies that on the 27th day of October, 2021, I personally delivered a true and
correct copy of the following:

**Corrected Order Granting Solarljos, LLC's Motion For Partial Summary
Judgment**
addressed to:

Paul Taggart, Esq.
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Timothy D. O'Connor, Esq.
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In the following manner:

- | | | | |
|--------------------------|---|-------------------------------------|---------------------------|
| <input type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input checked="" type="checkbox"/> | via email |
| <input type="checkbox"/> | hand delivery | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

A handwritten signature in black ink, appearing to read "P. Mahoney", is written over a horizontal line.

1 Case No.: CV-2002009

NO. _____ FILED

2 Dept. No.: 2

NOV 05 2021

3
4 By Eureka County Clerk


5 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF EUREKA

7 IN THE MATTER OF THE
8 DETERMINATION OF THE RELATIVE
9 RIGHTS IN AND TO ALL WATERS,
10 BOTH SURFACE AND UNDERGROUND,
11 LOCATED WITHIN THE DIAMOND
12 VALLEY HYDROGRAPHIC BASIN NO.
13 10-153, EUREKA AND ELKO COUNTIES,
14 NEVADA

**NOTICE OF ENTRY OF CORRECTED
ORDER GRANTING SOLARLJOS
LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT
AND
NOTICE VACATING/CONTINUING
STATUS HEARING CURRENTLY SET
FOR NOVEMBER 9, 2021**

14 TO: ALL PARTIES AND THEIR ATTORNEYS HEREIN:

15 PLEASE TAKE NOTICE that a Corrected Order Granting Solarljios, LLC's Motion for
16 Partial Summary Judgment was entered in the above-referenced case on the 27th day of October,
17 2021. A true and correct copy of the Order is attached as "Exhibit 1."

18 Vacating/Continuing status hearing currently set for November 9, 2021: Solarljios had
19 previously requested, and the Court granted, a request to vacate the evidentiary hearing following
20 entry of the original summary judgment order. *Nothing has changed in that regard*; following the
21 entry of the Corrected Order, there is still no need for an evidentiary hearing on Solarljios'
22 exception.

23 However, Solarljios had previously requested the Court allow the parties to conduct a zoom
24 conference on November 9, 2021 instead to address an anticipated request by Solarljios for NRCP

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1 54(b) certification, at which time other interested parties would be allowed to participate. **That**
2 **status conference/hearing has now been vacated and will be reset following this Notice of**
3 **Entry of Order.** Solarljós will be filing a request for NRC 54(b) certification of the *Corrected*
4 Order, and the date for hearing on that request will be set following confirmation of availability of
5 the Court to hear the request.

6 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned hereby affirms that this
7 document does not contain the personal information or social security number of any person.

8 DATED: November 5, 2021.

KAEMPFFER CROWELL



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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am employed by the law firm of Kaempfer
3 Crowell, and that on this 19th day of October, 2021, I served a true and correct copy of the
4 foregoing document **NOTICE OF ENTRY OF CORRECTED ORDER GRANTING**
5 **SOLARLJOS LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT**
6 **AND NOTICE OF VACATING/CONTINUING STATUS HEARING ON NOVEMBER 9,**
7 **2021** via email, addressed to the following:

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2 *F. Beck and Karen A. Beck, Trustees of the*
3 *Beck Family Trust dated 4-19-2005 and Beck*
4 *Properties; Norman and Kindy Fitzwater*


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Attorney for the United States of America

12 **Courtesy Copy Via U.S.P.S. Mail:**

13 Hon. Gary D. Fairman
14 Dept. 2
15 PO Box 151629
16 Ely, NV 89315

17
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21
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23
24 DATED November 5, 2021


Sharon Stice
An employee of Kaempfer Crowell

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EXHIBIT INDEX

EXHIBIT	DESCRIPTION	PAGES
1	Corrected Order Granting Solarljjos, LLC's Motion for Partial Summary Judgment	19

EXHIBIT 1

EXHIBIT 1

Case No.: CV-2002009

Dept. No.: 2

NO. _____ FILED

OCT 27 2021

By *P. Eureka County Clerk*

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

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

**CORRECTED ORDER GRANTING
SOLARLJOS, LLC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

THIS MATTER comes before the Court on a Motion for Partial Summary Judgment filed by Solarljios, LLC (hereinafter "Petitioner" or "Solarljios") on September 3, 2021. Any written opposition was due on or before September 17, 2021. However, no oppositions were filed to Solarljios' Motion for Partial Summary Judgment and Solarljios submitted the Motion for this Court's review and decision. Therefore, there is good cause appearing for this Court to grant Solarljios' Motion for Partial Summary Judgment in its entirety:

I. FINDINGS OF FACT

This Court, having read the moving papers, pleadings, exhibits, and other documentation
HEREBY FINDS THE FOLLOWING:

1. This matter arises as one of the required statutory processes of a "vested rights adjudication" conducted under NRS 533.087 through 533.265.

2. The State Engineer's office began the process of taking "proofs" of vested rights

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Eureka County Clerk

KIMBERLY CHAMBERLIN
60 West Liberty Street, Suite 708
Reno, Nevada 89501

1 for the purpose of performing an adjudication of the Diamond Valley Hydrographic Basin, No
2 10-153, nearly 40 years ago, back in 1982 when that office issued Order 800, the *Order*
3 *Initiating Proceedings*, pursuant to NRS 533.090(2) and Order 801, the *Notice of Order and*
4 *Proceedings*, which was published and served on land owners in the basin as required by NRS
5 533.095. Several years of extension later, nothing had occurred to move that process along, and
6 in 2015 the State Engineer issued Order 1263, a *Notice of Order and Proceedings to Determine*
7 *Water Rights, both Surface and Underground*, in the matter of the determination of relative
8 rights in and to all waters in the Diamond Valley Hydrographic Basin (10-153), Elko and
9 Eureka Counties, Nevada. That Order effectively "reinitiated" Order 801 (one of the orders
10 previously issued in 1982), and then on October 16, 2015, the State Engineer issued Order 1266,
11 a *Notice of Order for Taking Proofs to Determine Water Rights*, which directed all interested
12 parties who felt they had a claim to vested water rights in Diamond Valley to file their "Proofs"
13 on or before May 31, 2016.

14 3. Solarjos was one of the parties who filed Proofs of vested water rights with the
15 State Engineer as part of that proceeding in May of 2016, filing Claim Nos. V-10880, V-10881,
16 and V-01882. Those Proofs were based on the use of water for a mining operation associated
17 with the old mining town of Prospect, which had operated near the turn of the century prior to
18 1900. The Proofs included documentation showing the existence of the mining operation,
19 descriptions of the mining operation by the Solicitor General following annual visits to the mine
20 site and the town, ledger entries demonstrating the existence of water pumps as part of the
21 equipment utilized by the mining operation, Eureka County assessment records referencing the
22 water system for the mine and the "Harrub Well" in that valuation, and a few photographs
23 depicting locations of hand-dug wells in that vicinity.
24

1
2 4. When the State Engineer concluded the period for submission of the taking of
3 Proofs, he analyzed those submissions and issued the Preliminary Order on August 30, 2018.
4 The Preliminary Order stated the findings of the State Engineer regarding the submitted Proofs
5 of vested water right claims for all of those persons and companies who had submitted Proofs
6 by the May 31, 2016 deadline. The Preliminary Order stated which of the Proofs would be
7 approved and how much of an allocation of water was proven as having been used (vested), and
8 the State Engineer also indicated whether he found the water right proven up to be a surface
9 right or groundwater right in the case of Solarljós. The State Engineer also denied some Proofs
10 of claim outright, and those claimants therefore received no vested water.

11 5. In that section of the Preliminary Order addressing the claims made by Solarljós,
12 the State Engineer approved Proof V-10880 for allocation of .472 cfs (cubic feet per second) of
13 vested water rights to Solarljós for "mining an milling from January 1 through December 31"
14 from the Einar Spring, which is a surface source. That diversion rate allocation for a mining and
15 milling right is equivalent to an annual total duty of 342.71 acre feet annually ("AFA"). In
16 making that determination, the Preliminary Order at pages 273 and 274 discussed at length the
17 documentary proof supplied by SRK and Solarljós to support the claim, and spoke supportively
18 of that proof, stating:

19 The waters from Clark Spring were captured and put into a pipeline to the
20 former town of Ruby Hill, according to the maps drawn by Hague, which were
21 surveyed in 1880. ... Several historical sources refer to Prospect being developed
22 about 1885 with a population of about 50 people with a post office being
23 established in 1893, but do not elaborate on much else. The smelter was not
24 constructed until 1908 along with several boarding houses. The water pipeline
from Clark Spring was probably severed in the early 1880's to serve the needs of
the Prospect town site or the water from adjacent springs within the complex were
utilized. This suggests that the needs for water prior to 1880 was minimal.
Support documentation mentioned the water for boilers and mining operations
were supplied with water from springs utilizing a Knowles steam pump and a

1 Cameron steam pump whose operating capacity at normal speeds would be
2 approximately 200 gpm (0.45 cfs) combined. These necessary pieces of
3 machinery probably arrived in the area prior to the town of Prospect being
4 developed. The documentation filed in support of the proof and information
5 gleaned from the public domain would put the date of first beneficial use of the
6 water post-1880, based on the Hague map, and prior to the development of the
7 town of Prospect prior to 1885. Based on the filed support documentation, field
8 investigation by the Office of the State Engineer and information obtained from
9 sources in the public domain, the State Engineer find [sic] a basis the diversion of
10 0.472 cfs of water from Einar Spring source for mining and milling from January
11 1 through December 31 with a priority date of 1880. The State Engineer also finds
12 a basis for the diversion of water for domestic use from January 1 through
13 December 31.

14 6. However, despite granting Solarljøs a .472 cfs vested claim for the Einar Spring,
15 the Preliminary Order then denied Solarljøs' vested claims V-10881 and V-10882, but did so
16 entirely on the basis that those claims were applications for "groundwater." In making those
17 denials, the State Engineer found only that Solarljøs' Proofs failed to demonstrate that
18 groundwater wells rather than springs, were the source of water described and for which
19 Solarljøs provided evidence.

20 7. However, there was no discussion in the Preliminary Order of limiting the
21 amount of water granted to Solarljøs based on the type of mining operation, the size of the
22 pumps, the way in the mining operation was operated (or would have been operated), or the
23 approximate amount of water that such a mining operation and town as Prospect would have
24 used given Solarljøs' Proofs. Instead, the State Engineer denied Proofs V-10881 and V-10882
on the sole basis that the points of diversion for those claims did not bear the necessary
characteristics to be considered historic "wells." Indeed, in denying V-10882 the State Engineer
also made the determination that the point of diversion was the same Einar Spring as was
approved for Claim No. V-10880, and that there was no "well" at any location to support a

1 separate underground source.

2 8. The result of the Preliminary Order, consequently, was that Solarljøs was
3 allocated vested rights in the amount of .472 cfs (342.71 AFA), but those vested water rights
4 were limited to a single surface right source rather than also being groundwater rights with wells
5 as their points of diversion. Thus, the State did find that Solarljøs had made sufficient proof of
6 the use of that amount of water to justify the award of the vested claim (Solarljøs sought
7 approval for .471 cfs).

8 9. The only thing the State disagreed with Solarljøs about was the limited source of
9 the water, with the State finding that the source was solely a surface spring and not also the
10 historic, hand-dug groundwater wells identified in V-10881 and V-10882.

11 10. Solarljøs properly filed an objection to the Preliminary Order within the time
12 required for filing objections under NRS 533.145 after the Preliminary Order was opened to
13 public inspection as required by that statute.¹ Solarljøs' objection to the Preliminary Order was
14 entirely based on the only finding made in the Preliminary Order that was adverse to the
15 position put forth by Solarljøs, which was the State Engineer's finding that the sole source of
16 the vested water used was the Einar Spring and that the groundwater well diversion locations
17 identified by Solarljøs were not actually hand-dug "wells."

18 11. At the hearing on its objection, Solarljøs presented arguments and evidence
19 directed only to that point: evidence and arguments designed to demonstrate that the locations
20 of these other points of diversion of water identified were actually hand-dug wells, that the
21 County's assessment records noted one source as the "Harrub Well," and that a noted
22 archeologist who had worked on the cultural analysis of Solarljøs' property in connection with

23
24 ¹ As indicated above, Solarljøs had previously filed a Petition for Judicial Review of the Final
Order, but upon filing its Objection in this case Solarljøs' counsel stipulated to stay that other
case, CV2003-010, pending final determination of this matter.

1 the completion of Solarljós' environmental assessment necessary to satisfy BLM permitting
2 requirements had concluded that the points of diversion sites were in fact hand-dug wells that
3 might actually require preservation by Solarljós as part of the cultural assessment and work on
4 the property. The intent of that proof at the hearing was to establish Solarljós right to a vested
5 groundwater claim as well as a surface water claim. The amount of the vested claim was not at
6 issue.

7 12. On January 31, 2020, the current State Engineer issued the Final Order after
8 consideration of the various objections that had been filed and presented during the hearings
9 conducted in early 2019. In the Final Order, the State Engineer accepted the additional
10 arguments presented by Solarljós at the objection hearing when the State concluded that there
11 were grounds to find that vested Proofs V-10881 and V-10882 were, in fact, groundwater
12 sources (hand-dug wells) rather than surface springs.

13 13. However, the State Engineer's impromptu revisit of the analysis regarding the
14 entire vested rights claim/proof filed by Solarljós and previously accepted as a "basis" for the
15 finding of .472 cfs for mining and milling.

16 14. The Final Order's determination of a new reduction of water was made with no
17 proof of facts or evidence in the record, yet made entirely new findings of fact, without any
18 prior notice, that substantially depleted the prior allocation of water that had been granted to
19 Solarljós in the Preliminary Order.

20 15. The Final Order suddenly and without notice of any kind to Solarljós creates an
21 entirely different scenario of "possible" use of water by the prior mining operation and reduced
22 the allocation of vested water from the prior allocation to less than 4% of what was previously
23 approved, giving Solarljós only 13.2 AFA.

24 16. In making this determination, the State Engineer hypothesized about several

1 scenarios that would have been "more likely" as to the mining operation, and made statements
2 about the amount of water that 100 men living in a bunkhouse and working at the mine would
3 have used.

4 17. However, Solarljøs was not given any notice or opportunity to be heard
5 regarding the State Engineer's analysis and conclusion regarding the comingled water amount
6 allocated to Solarljøs based on its vested rights claims.

7 18. Further, nearly all of these "findings" were made without citation to any sources
8 whatsoever regarding historical factual proof or even treatises or reference materials discussing
9 mining operations in the area or how they were operated. As such, they were baseless and
10 speculative, and unduly prejudicial to Solarljøs.

11 19. Solarljøs filed an "exception" to the Final Order of Determination pursuant to
12 NRS 533.170, and this Court is tasked with resolving those exceptions as to all vested claimants
13 who filed exceptions.

14 20. Solarljøs' exception is considered in the nature of a petition for judicial review
15 on the *record* created before the State Engineer consisting of (a) the filing of Solarljøs' "proofs"
16 of its vested rights claims, as required under NRS 533.087 and 533.125, and (b) the evidence
17 submitted during the hearing on Objections to the Preliminary Order of Determination, as is
18 required by NRS 533.145 and 533.150.²

19 21. The State Engineer failed to provide any evidence to support his decision to

20 ² This Court notes that Solarljøs also filed a Petition for Judicial Review pursuant to NRS
21 533.450 in Case No. CV2003-010 within 30 days of the Final Order because Solarljøs was
22 "aggrieved" by the Final Order of the State Engineer, and NRS 533.450 states that it applies to
23 "any order or decision of the State Engineer" and does not expressly exclude orders issued under
24 adjudication of vested rights proceedings. However, Solarljøs and the State entered into a
stipulation to stay that action pending the outcome of this proceeding and confirming that
Solarljøs simply wanted to make sure its rights were preserved to appeal that part of the Final
Order to which Solarljøs objected to a district court in *some* proceeding – one time, before a
court. (The Stipulation notes that Solarljøs is not attempting to get two bites at the appeal
"apple.")

1 revisit in the Final Order his prior determination regarding the amount of water to which
2 Solarljos is entitled under its vested rights claims.

3 22. In his Preliminary Order, the State Engineer determined Solarljos vested claim to
4 be a mining and milling use from January 1 to December 31 of .472 cfs. Solarljos raised no
5 objection to the .472 cfs determination.

6 23. Based on the findings and conclusions set forth in the State Engineer's
7 Preliminary Order, Solarljos' narrow and sole objection was the State Engineer's determination
8 as to the source of that water. The State Engineer decided that Solarljos had failed to prove that
9 the source was groundwater and that the points of diversion for V-10881 and V-10882 were
10 hand-dug wells. Consequently, all of the evidence presented and discussed at the hearing on that
11 limited objection was directed entirely and completely to Solarljos' proof that the source of the
12 water was, in fact, groundwater wells.

13 24. Because no objection was raised as to the .472 cfs allocation of water, there was
14 no basis or allowed reason for the State to revise its prior allocation of the amount of water
15 determined to be provided to Solarljos under its original proof of vested rights claim. 25. The
16 three proofs of claim and other supporting documentation submitted by Solarljos shows that it
17 made claim to the same water as emanating from a spring and from groundwater, because the
18 source of the water was a site referenced as "Einar Spring" and another as "the Harrub Well."

19 25. Solarljos was not requesting more water in its Objection to the Preliminary
20 Order, but rather recognition that the source of its water was both a groundwater well and a site
21 that had been identified as a "spring" (surface right).

22 II. CONCLUSIONS OF LAW

23 This Court hereby makes the following conclusions of law based on the material
24 undisputed facts outlined above, the evidence submitted, and the record.

1 A. Summary Judgment

2 Rule 56 of the Nevada Rules of Civil Procedure ("NRC") state that "[t]he court shall
3 grant summary judgment if the movant shows there is no genuine dispute as to any material fact
4 and the movant is entitled to judgment as a matter of law." NRC 56(c); *Wood v. Safeway, Inc.*,
5 121 Nev. 724, 729 (2005). "A genuine issue of material fact is one where the evidence is such
6 that a reasonable [finder of fact] could return a verdict for the non-moving party." *Lee v. GNLV*,
7 22 P.3d 209, 211-12 (2001) (citations omitted). The party opposing summary judgment may not
8 rely "on gossamer threads of whimsy, speculation and conjecture . . . [and] the non-moving party
9 . . . must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
10 genuine factual issue" to support his or her claim at trial or defeat a motion for summary
11 judgment. *Wood* at 731 (internal quotes and citations omitted); *Thomas v. Bokelman*, 86 Nev. 10,
12 14, 462 P.2d 1020, 1023 (1970) (citations omitted).

13 A burden-shifting scheme is used in determining summary judgment, where "[t]he party
14 moving for summary judgment bears the initial burden of production to show the absence of a
15 genuine issue of material fact." *Cuzze v. Univ. and Comm. College Sys. of Nev.*, 123 Nev. 598,
16 602, 172 P.2d 131, 135 (2007). "The manner in which each party must satisfy its burden of
17 production depends on which party will bear the burden of persuasion on the challenged claim at
18 trial." *Id.*

19 If "the moving party [bears] the burden of persuasion, that party must present evidence
20 that would entitle it to a judgment as a matter of law in the absence of contrary evidence." *Id.* "If
21 such a showing is made, then the party opposing summary judgment assumes a burden of
22 production to show the existence of a genuine issue of material fact." *Id.* "But if the nonmoving
23 party will bear the burden of persuasion at trial, the party moving for summary judgment may
24 satisfy the burden of production by either (1) submitting evidence that negates an essential

1 element of the nonmoving party's claim, or (2) pointing out ... that there is an absence of
2 evidence to support the nonmoving party's case." *Id.* (internal quotations omitted).

3 Further, regarding motions for summary judgment on claims untethered to factual
4 support, the Nevada Supreme Court recently emphasized that:

5 [W]here an action is brought with practically no evidentiary basis to support it,
6 summary judgment can be a valuable tool to discourage protracted and
7 meritless litigation of factually insufficient claims. In dispensing with
8 frivolous actions through summary judgment, courts promote the important
9 policy objectives of sound judicial economy and enhance the judiciary's
10 capacity to effectively and efficiently adjudicate legitimate claims.

11 *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 198, 444 P.3d 436, 441 (2019).

12 **B. Legal Analysis and Conclusions**

13 **1. The State Engineer Violated Solarljos' Right To Due Process.**

14 Based on the material undisputed facts outlined above, this Court finds as a matter of
15 law that The State Engineer did not provide sufficient or adequate notice regarding its allocation
16 of commingled vested water right usage in the Final Order of Determination, thus depriving
17 Solarljos of its right to due process.

18 NRS 533.150(4) states that the evidence taken in a proceeding conducted in accordance
19 with an objection to a Preliminary Order of adjudication of vested rights "must be confined to
20 the subjects enumerated in the objections and the preliminary order of determination." Due
21 process forbids any governmental agency, including the State Engineer, from using evidence in
22 any way that forecloses an opportunity for a vested water right claimant from being heard. *See*
23 *Eureka Cnty. v. State Eng'r*, 131 Nev. 846, 855, 359 P.3d 1114, 1120 (2015) (citing *Bowman*
24 *Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 288, 288 n. 4, 95 S.Ct. 438, 42
L.Ed.2d 447 (1974); *see also Eureka Cnty. v. Seventh Judicial Dist. Court (Sadler Ranch)*, 134
Nev. 275, 279, 417 P.3d 1121, 1124 (2018) ("In Nevada, water rights are regarded and

1 that further discussion conducted at the hearing on the objection merely emphasized that point,
2 focusing entirely on the source of water – not the mining operation itself or the nature of the use
3 involved, because those factors had apparently been presented to the satisfaction of the State
4 Engineer as demonstrated by the discussion in the Preliminary Order and the finding in favor of
5 Solarljós to award a diversion of .472 cfs (341.71 AFA). No discussion was had at the hearing
6 on the objection of Solarljós – by the State³-- regarding the amount of water used by the old
7 mining operation, because there was nothing in the Preliminary Order suggesting that the State
8 Engineer's office was concerned about the amount of water it had approved under Solarljós'
9 claims for vested water (the .472 cfs/ 341.71 AFA).

10 However, after the March 19, 2019 hearing (which only focused on the singular issue
11 regarding the source of water) the State Engineer entered its Final Order on January 31, 2020,
12 where it reversed its prior decision regarding the source, agreeing with Solarljós that claims V-
13 10881 and V-10882 were ground water sources, and that it was comingled for the total
14 diversion rate of .472 cfs (341.71 AFA) of water. But, the State Engineer also found, for the
15 first time, that Solarljós' allocated usage was "a total combined duty of 13.2 afa from all
16 sources." No party, including Solarljós, was involved in an objection proceeding that would
17 have allowed Solarljós to present evidence that went beyond what was presented in the subjects
18 "enumerated in the objections and preliminary order." Further, there was not a single piece of
19 evidence presented at the hearing on Solarljós' objection that would support the myriad of
20 findings made by the State in the Final Order – suddenly and without notice to Solarljós –
21 regarding an entirely revised review of the Prospect mining operation that the State now
22 "believes" occurred on the site in an entirely different fashion than it previously concluded had
23

24 ³ However, Solarljós' retained hydrologist, Tim Donahoe confirmed that the water usage approved by the state at .472 cfs was equivalent to 212 gallons per minute (i.e., 341.72 AFA) and is not unusual groundwater usage for a mining operation.

1 protected as real property.”) (internal quotations and citations omitted).

2 Moreover, it has been held by the Nevada Supreme Court that where the State Engineer
3 issues an order “without providing notice or a hearing—[it is] an omission that, in the context of
4 established water rights, would unquestionably be fatal.” *Wilson v. Pahump Fair Water, LLC*,
5 137 Nev. Adv. Op. 2, 418 P.3d 853, 858 (2021). This necessarily means that an opportunity to
6 challenge the State Engineer’s determination must be afforded to a claimant such as Solarljós
7 before it enters its final order – which is precisely what the State Engineer failed to do here.

8 The record shows, and this Court finds, that Solarljós filed Proofs of vested water rights
9 with the State Engineer as part of the proceeding in May 2016. These claims were filed for
10 vested water rights under Claim Nos. V-10880, V-10881 and V-01882. After analyzing the
11 claims and submissions of evidence and proof, the State Engineer entered its Preliminary Order,
12 where it *approved* Proof V-10880 for allocation of .472 cfs of vested water rights to Solarljós
13 (which is the equivalent of 341.71 AFA). The evidence presented and attached to these claims
14 presented by Solarljós was also uncontroverted that claims V-10881 and V-10882 were
15 “comingled” with the source and usage of V-10880. This was not disputed by anyone, including
16 the State Engineer in its Preliminary Order.

17 However, the State Engineer limited the approval to a surface water right from the Einar
18 Spring *rather than* approving that allocation as a groundwater right and the Preliminary Order
19 denied Solarljós’ vested claims V-10881 and V-10882 on the basis that they were applications
20 for “groundwater.” As such, the State Engineer’s denial in this regard was made solely on the
21 basis that the sources of water identified appeared to be surface sources rather than groundwater
22 wells. As a result, Solarljós objected to the Preliminary Order solely because it believed that it
23 had already demonstrated that the water was from a groundwater source and that the State
24 should have found the source to be groundwater rather than surface springs. The record shows

1 occurred when it granted Solarljos the allocation of .472 cfs of water use (341.71 AFA) during
2 the initial Proof review. However, no witnesses, expert or percipient, testified at the hearing
3 contrary to what had been presented in the earlier Proof and no documentation was presented
4 showing that Solarljos' Proof of use was being challenged or would be subject to challenge as to
5 the amount of water used.

6 Notwithstanding, the record shows the State Engineer still apparently found a basis for
7 the .472 cfs (341.71 AFA) water usage for all three claims in the Final Order, contradicting its
8 unsupported assumption for a total duty of 13.2 AFA which does not apply to a mining
9 operation. The State Engineer unilaterally included its additional "finding" that not only
10 contradicted itself in both the Preliminary and Final Orders, but also to the principles of
11 calculating water usage with respect to historic mining operations. Therefore, this Court agrees
12 with Solarljos that the State Engineer's finding that the total duty of water usage allocated to
13 Solarljos is 13.2 AFA was arbitrary and unsupported and, based on the foregoing, was also a
14 violation of Solarljos' right to due process.

15 B. The State Engineer's Final Order Regarding The Allocation of 13.2 AFA to
16 Solarljos Was Not Supported By Substantial Evidence And Therefore,
Solarljos Is Entitled To Summary Judgment as a Matter of Law

17 A party aggrieved by an order or decision of the State Engineer is entitled to have the
18 same reviewed in the nature of an appeal. NRS 533.450(1). This proceeding is, essentially, on
19 the record and is in the nature of an appeal and therefore, the State Engineer's Final Order for
20 Determination must include "findings in sufficient detail to permit judicial review" and "must
21 clearly resolve all crucial issues presented." *Revert v. Ray*, 95 Nev. 782, 787, 603 P.2d 262,
22 264-265 (1975).

23 In order to determine that the State Engineer's findings and order are valid, this Court
24 must determine whether substantial evidence exists in the record to support the State Engineer's

1 decision. *Id.*; see also *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991)
2 *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1147-48
3 (2010); and *Eureka Cnty. v. State Eng'r*, 131 Nev. 846, 853, 359 P.3d 1114, 1118-19 (2015);
4 and *Wilson v. Pahrump, LLC*, 137 Nev. Adv. Op. 2, 481 P.3d 853, 858 (2021) (stating that "the
5 State Engineer's decision must be supported by substantial record evidence.") (citing to *King v.*
6 *St. Clair*, 134 Nev. 137, 139, 414 P.3d 314, 316 (2008) (stating that "factual findings of the
7 State Engineer should only be overturned if they are not supported by substantial evidence.").
8 "Substantial evidence is that which a reasonable mind might accept as adequate to support a
9 conclusion." *Pyramid Lake Paiute Tribe of Indians, supra.* (internal quotations and citations
10 omitted).

11 Moreover, this Court must also determine whether the State Engineer's order (or any
12 part of its decision(s)) was arbitrary, capricious, an abuse of discretion, or whether it was
13 otherwise affected by prejudicial legal error. *Pyramid Lake Paiute Tribe of Indians v. Washoe*
14 *Cnty.*, 112 Nev. 743, 751, 918 P.2d 697, 702 (1996).

15 Finally, in reviewing an administrative decision by the State, this Court is required to
16 "decide pure legal questions without deference to an agency determination" and therefore,
17 applies a *de novo* standard of review to questions of law. See, *Felton v. Douglas Cnty.*, 134 Nev.
18 34, 35, 410 P.3d 991, 993-994 (2018), see also *Pyramid Lake Paiute Tribe of Indians v. Ricci*,
19 126 Nev. at 525, 245 P.3d at 147-48 (stating that "[w]ith respect to questions of law, however,
20 the State Engineer's ruling is persuasive but not controlling . . . [and t]herefore, we review
21 purely legal questions without deference to the State Engineer's ruling.") (internal citations
22 omitted).

23 In its Final Order, the State Engineer agreed with Solarljós and found a basis for the total
24 diversion rate of .472 cfs (341.71 AFA) of water from the underground sourced associated with

1 claims V-10881, V-10882, and the Einar Spring source under claim V-10880 for mining and
2 milling from January 1 through December 31 with a priority date of 1879, as well as for the
3 diversion of water for domestic use from January 1 through December 31. However, the State
4 Engineer inexplicably added the following sentence to the findings for each claim: "This water,
5 being comingled with water from Claims . . . will have a total combined duty of 13.2 afa from
6 all sources." But, the State Engineer failed to provide any evidence, let alone any substantial
7 evidence required to support this finding. Because there is no evidence in the record to support
8 the finding by the State Engineer, this finding was no more than a mere assumption on the State
9 Engineer's part.

10 Moreover and notwithstanding, this Court agrees with Solarljós that there could never
11 have been a factual basis to make those findings because NRS 533.150(4) would have precluded
12 the introduction of such new evidence entirely outside of the Preliminary Order and outside of
13 the "subjects" of Solarljós' objection – which had only to do with the source of water and not
14 the amount of the water allocated under the Proofs. This Court agrees that if the State Engineer
15 had alerted the parties to the possibility that the mining operation itself was in question, or that
16 the amount of water being approved was still in question, NRS 533.150(4) would have
17 precluded the introduction of evidence directed to that issue following the issuance of the
18 Preliminary Order. That Preliminary Order, in Nevada's statutory scheme, carries significant
19 precedential weight; unless there is an objection posed, it essentially becomes the final
20 determination of the State Engineer, and that is why there are such stringent statutory limits
21 imposed on those who want to object to the finding made in preliminary orders of adjudication.
22 See NRS 533.145 through 533.160.

23 However, the Final Order suddenly and without notice of any kind to Solarljós creates
24 an entirely different scenario of "possible" use of water by the prior mining operation, and

1 arbitrarily reduced the allocation of vested water from the prior allocation to less than 4% of
2 what was previously approved, giving Solarljios only 13.2 AFA. In making this determination,
3 the State Engineer hypothesized about several scenarios that would have been "more likely" as
4 to the mining operation, and made statements about the amount of water that 100 men living in
5 a bunkhouse and working at the mine would have used. However, nearly all of these "findings"
6 were made without citation to any sources whatsoever regarding historical factual proof or even
7 treatises or reference materials discussing mining operations in the area or how they were
8 operated. As such, the State Engineer failed to provide any evidence whatsoever, let alone
9 "substantial evidence" required to support its finding that Solarljios' allocation of water usage is
10 only 13.2 AFA, and therefore, its finding must be overturned and Solarljios is entitled to
11 summary judgment as a matter of law.

12 **NOW, THEREFORE, GOOD CAUSE APPEARING,**

13 **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that Solarljios' motion for
14 summary judgment is GRANTED in its entirety and the State Engineer's finding that Solarljios'
15 allocation of commingled water right usage is 13.2 AFA is OVERTURNED.

16 **IT IS HEREBY FURTHER ORDERED ADJUDGED and DECREED** that
17 Solarljios' allocation of commingled water right usage is 472 cfs, or 341.71 AFA as previously
18 found in the State Engineer's Preliminary Order, which previously accepted by Solarljios.

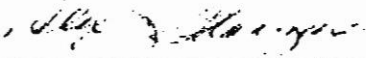
19 DATED: *OCTOBER 27, 2021*

20
21 
22 _____
23 DISTRICT COURT JUDGE
24

1 Respectfully Submitted

2 DATED: October 25, 2021.

3
4 KAEMPFER CROWELL

5 

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



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OCT 27 2021

Eureka County Clerk

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Case No. CV-2002009

Dept No. 2

NO. _____ FILED

OCT 27 2021

By Eureka County Clerk
[Signature]

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

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

CERTIFICATE OF SERVICE

The undersigned being an employee of the Eureka County Clerk's Office, hereby
certifies that on the 27th day of October, 2021, I personally delivered a true and
correct copy of the following:

**Corrected Order Granting Solarljos, LLC's Motion For Partial Summary
Judgment**
addressed to:

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In the following manner:

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| <input type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input checked="" type="checkbox"/> | via email |
| <input type="checkbox"/> | hand delivery | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

A handwritten signature in black ink, appearing to read "B. Mahoney", is written over a horizontal line.

Case No. CV-2002009

Dept No. 2

NO FILED

JAN 21 2022

Eureka County Clerk
By *Billahoney*

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

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

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

BACKGROUND

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

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



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1 filed a joinder to Renner/Venturacci's rule 54(b) responses ("Sadler Ranch/MW Cattle's
2 joinder") on December 3, 2021. On December 7, 2021, Solarljios filed Solarljios, LLC's
3 reply to the State Engineer's rule 54(b) response ("Solarljios' reply"). No other parties
4 filed any written opposition or response to Solarljios' rule 54(b) motion.¹ A virtual hearing
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9 DISCUSSION

10 The court's procedure for the Diamond Valley vested rights adjudication provided
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25 ¹⁶ Mr. DePaoli, representing the Baileys, orally argued at the hearing that how the State Engineer
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present in Solarljios' notice of exceptions.

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

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

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

²⁰ *Id.*, Rule 54(b).



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

2 Good cause appearing,

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

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

9 DATED this 21st day of January, 2022.

10 
11 DISTRICT JUDGE

22
23
24
25 ²¹ NRCP 54(b); *Mallin v. Farmers Ins. Exchange*, 106 Nev. 606, 611, 797 P.2d 978 (1990) reversed on
26 other grounds, *In re of Estate of Sarge*, at 870.

Case No. CV-2002009

Dept No. 2

NO FILED

JAN 21 2022

Eureka County Clerk
B. McHenry

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

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

CERTIFICATE OF SERVICE

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

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

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

David Negri, Esq.
davidnegri@usdoj.gov

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

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



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JAN 21 2022

Eureka County Clerk



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Therese Ure Stix, Esq.
therese@water-law.com
counsel@water-law.com

Alex Flangas, Esq.
aflangas@kcnvlaw.com
August B. Hotchkin, Esq.
ahotchkin@kcnvlaw.com

Karen A. Peterson, Esq.
kpeterson@allisonmackenzie.com

Theodore Beutel, Esq.
tbeutel@eurekacountynv.gov

Ross E. de Lipkau, Esq.
Ross@nvlawyers.com

Gordon H. DePaoli, Esq.
gdepaoli@woodburnwedge.com

Steven D. King, Esq.
Robert A. Dotson, Esq.
Justin C. Vance, Esq.
Kingmont@charter.net
rdotson@dotsonlaw.legal
jvance@dotsonlaw.legal

In the following manner:

- | | | | |
|--------------------------|---|-------------------------------------|---------------------------|
| <input type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input checked="" type="checkbox"/> | via email |
| <input type="checkbox"/> | hand delivery | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

A handwritten signature, likely "D. Mahoney", is written over a horizontal line.

Case No.: CV-2002009

FILED

Dept. No.: 2

JAN 27 2022

Eureka County Clerk
P. Mahoney

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

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

**NOTICE OF ENTRY OF ORDER
GRANTING SOLARLJOS LLC'S
MOTION FOR CERTIFICATION OF
JUDGMENT ON SOLARLJOS LLC'S
EXCEPTION IN THIS ADJUDICATION
PROCEEDING**

TO: ALL PARTIES AND THEIR ATTORNEYS HEREIN:

PLEASE TAKE NOTICE that an Order Granting Solarljios LLC's Motion for Certification of Judgment on Solarljios LLC's Exception in this Adjudication Proceeding was entered in the above-referenced case on the 21st day of January, 2022. A true and correct copy of the Order is attached as "Exhibit 1."

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RECEIVED

JAN 27 2022

Eureka County Clerk

SEMPER

CROWTH


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Page 1 of 5

1 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned hereby affirms that this
2 document does not contain the personal information or social security number of any person.

3 DATED: January 24, 2022.

KAEMPFER CROWELL

4 

5 Alex Flangas, No. 664
6 August B. Hotchkin, No. 12780
7 50 West Liberty Street, Suite 700
8 Reno, Nevada 89501
9 Telephone: (775) 852-3900
10 Fax: (775) 327-2011
11 aflangas@kcnvlaw.com
12 ahotchkin@kcnvlaw.com
13 *Attorneys for Solarljios, LLC*
14
15
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19
20
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24

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employed by the law firm of Kaempfer Crowell, and that on this 24th day of January, 2022, I served a true and correct copy of the foregoing document **ORDER GRANTING SOLARLJOS LLC'S MOTION FOR CERTIFICATION OF JUDGMENT ON SOLARLJOS LLC'S EXCEPTION IN THIS ADJUDICATION PROCEEDING** via email, addressed to the following:

James N. Bolotin
Senior Deputy Attorney General
Ian Carr
Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
jbolotin@ag.nv.gov
icarr@ag.nv.gov
Attorneys for Tim Wilson, P.E., Nevada State Engineer, Dept. of Conservation and Natural Resources, Division of Water Resources

Karen Peterson
ALLISON MACKENZIE, Ltd.
402 N. Division Street
Carson City, NV 89703
kpeterson@allisonmackenzie.com
Attorneys for Eureka County

Therese A. Ure Stix
Laura A. Schroeder
Caitlin R. Skulan
SCHROEDER LAW OFFICES, P.C.
10615 Double R. Blvd., Suite 100
Reno, NV 89521
t.ure@water-law.com
counsel@water-law.com
Attorneys for James E. Baumann and Vera L. Baumann; Arc Dome Partners, LLC, Robert F. Beck and Karen A. Beck, Trustees of the

Paul Taggart
David H. Rigdon
Timothy O'Connor
Tamara C. Thiel
TAGGART & TAGGART, Ltd.
108 Minnesota Street
Carson City, NV 89703
paul@legaltnt.com
david@legaltnt.com
tim@legaltnt.com
tammy@legaltnt.com
Attorneys for Ira R. and Montira Renner; Daniel S. and Amanda L. Venturacci; Sadler Ranch, LLC; and MW Cattle, LLC

Theodore Beutel
EUREKA COUNTY DISTRICT ATTORNEY
701 South Main Street
P.O. Box 190
Eureka, NV 89316
tbeutel@eurekacountynv.gov
Attorneys for Eureka County

Gordon H. DePaoli
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, NV 89511
gdepaoli@woodburnandwedge.com
Attorneys for the Wilfred Bailey and Carolyn Bailey, Trustees of the Wilfred and Carolyn Bailey Family Trust, and Marietta Bailey

1 *Beck Family Trust dated 4-19-2005 and Beck*
2 *Properties; Norman and Kindy Fitzwater*

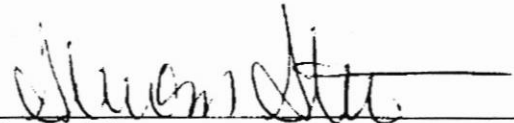
3 Ross E. de Lipkau
4 ROBERTSON, JOHNSON, MILLER &
5 WILLIAMSON
6 50 West Liberty Street, Suite 600
7 Reno, NV 89501
8 ross@nvlawyers.com
9 *Attorneys for Chad D. and Rosie J. Bliss*

David L. Negri, Deputy Attorney General
ENVIRONMENT AND NATURAL
RESOURCES DIVISION
c/o U.S. Attorney's Office
1290 West Myrtle Street, Suite 500
Boise, ID 83702
david.negri@usdaj.gov
Attorney for the United States of America

7 **Courtesy Copy Via U.S.P.S. Mail:**

8 Hon. Gary D. Fairman
9 Dept. 2
10 PO Box 151629
11 Ely, NV 89315

12 DATED January 24, 2022



Sharon Stice
An employee of Kaempfer Crowell

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EXHIBIT INDEX

EXHIBIT	DESCRIPTION	PAGES
1	Order Granting Solarljøs LLC's Motion for Certification of Judgment on Solarljøs LLC's Exception in this Adjudication Proceeding	8

EXHIBIT 1

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Case No. CV-2002009

Dept No. 2

JAN 21 2022

Eureka County Clerk
By *[Signature]*

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

IN THE MATTER OF THE
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10-153, EUREKA AND ELKO COUNTIES,
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**ORDER GRANTING SOLARLIJOS,
LLC'S MOTION FOR CERTIFICATION
OF JUDGMENT ON SOLARLIJOS
LLC'S EXCEPTION IN THIS
ADJUDICATION PROCEEDING**

BACKGROUND

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

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



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Eureka County Clerk



1 filed a joinder to Renner/Venturacci's rule 54(b) responses ("Sadler Ranch/MW Cattle's
2 joinder") on December 3, 2021. On December 7, 2021, Solarljios filed Solarljios, LLC's
3 reply to the State Engineer's rule 54(b) response ("Solarljios' reply"). No other parties
4 filed any written opposition or response to Solarljios' rule 54(b) motion.¹ A virtual hearing
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26 interpreted and applied the relation back doctrine would be common to all cases. This issue is not
present in Solarijos' notice of exceptions.

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

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

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

²⁰ *Id.*, Rule 54(b).



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

2 Good cause appearing,

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

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

9 DATED this 21st day of January, 2022.

10 
11 DISTRICT JUDGE

22
23
24
25 ²¹ NRCP 54(b); *Mallin v. Farmers Ins. Exchange*, 106 Nev. 606, 611, 797 P.2d 978 (1990) reversed on
26 other grounds, *In re of Estate of Sarge*, at 870.

Case No. CV-2002009

Dept No. 2

NO _____ FILED _____

JAN 21 2022

Eureka County Clerk
[Signature]

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

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

CERTIFICATE OF SERVICE

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

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

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

David Negri, Esq.
davidnegri@usdoj.gov
James N. Bolotin, Esq.
Ian Carr, Esq.
jbolotin@ag.nv.gov
icarr@ag.nv.gov

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



RECEIVED

JAN 21 2022

Eureka County Clerk



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In the following manner:

- | | | | |
|--------------------------|---|-------------------------------------|---------------------------|
| <input type="checkbox"/> | regular U.S. mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | priority U.S. mail | <input checked="" type="checkbox"/> | via email |
| <input type="checkbox"/> | hand delivery | | |
| <input type="checkbox"/> | copy placed in agency box located in the Eureka County Clerk's Office | | |

A handwritten signature, likely "D. Mahoney", is written over a horizontal line.



Session Report - Standard

Adjudication

CV2002-009

Date:	Type:	Location:	Department:
9/29/2021		Courtroom 1	
Event Time	Log Event		
9:30:03 AM	Session Started		
9:30:06 AM	Present: Judge Fairman, David Rigdon Esq, Michael D. Buschelman (PLS/WRS), Karen Peterson (Attorney), Jake Tibbitts, James Bolotin (SDAG), Dwight Smith, Levi Shoda, Jeff Frazier.		
9:32:16 AM	James Bolotin addresses the court.		
9:32:33 AM	Court addresses the Motion and Reply.		
	Note: Mahoney, Brandy	Court denies Motion regarding Jake Tibbitts.	
9:33:25 AM	Court is presenting what will be addressed today.		
9:36:03 AM	Mr. Rigdon addresses the Court.		
	Note: Mahoney, Brandy	He explains the purpose boxes of the exhibits. Court requests that the boxes be reduced to a discs for all counsel.	
9:40:03 AM	Ms. Peterson addresses the court regarding the evidence and stipulates the exhibits.		
9:41:07 AM	the evidence will be admitted for evidence by the Court,		
9:41:33 AM	Exhibit #567 to be admitted and accepted by the Court.		
9:42:55 AM	Exhibit #568 will be admitted and accepted by the Court.		
9:43:12 AM	#569 requested to be admitted, accepted by the court.(proof 03289)		
	Note: Mahoney, Brandy	Mr. Bolotin has nothing to add regarding exhibit. Ms. Peterson requests more time to review exhibit #569.	
9:45:49 AM	Court admits exhibit #569		
9:46:13 AM	Mr. Rigdon request for the Court to review exhibit #570 before being admitted.		
	Note: Mahoney, Brandy	Ms. Peterson stipulates evidence and Court admits without objection.	
9:47:47 AM	Mr. Rigdon gives opening statement.		
9:53:09 AM	Ms. Peterson addresses the court and gives opening statement.		
9:55:23 AM	Court asks Mr. Bolotin if he has anything to add. He doesn't.		
9:56:13 AM	Michael D. Buschelman is sworn in as a witness by the Courts.		
	Note: Mahoney, Brandy	Michael begins giving his testimony. He states and spells name for the record, He states his title as a water rights surveyor and lists his education, training and work history.	
10:12:06 AM	Mr. Rigdon asks if Mr. Buschelman if he's ever previously testified in courts of Law before, Mr. Buschelman states he has.		
10:13:22 AM	Mr. Rigdon asks the court to acknowledge Mr. Buschelman as an expert witness in water rights.		
	Note: Mahoney, Brandy	Ms. Peterson doesn't stipulate to this, Mr. Buschelman further elaborates on his area of expertise.	
10:19:40 AM	Mr. Rigdon asks court to recognize Mr. Buschelman as an expert. Ms. Peterson objects to his expertise.		
	Note: Mahoney, Brandy	Court allows Mr. Buschelman to give his testimony based on his areas of expertise, with the exception of oil chemistry and testing.	
10:38:14 AM	Mr. Rigdon asks witness if this adjudication is different from other adjudications, Witness replies "yes".		
	Note: Mahoney, Brandy	Ms. Peterson objects to questioning. Court allows rewording of questioning.	
10:41:18 AM	Ms. Peterson objects to vague questioning. She states that she has no statement of witness' opinion on record.		
	Note: Mahoney, Brandy	Court overrules objection.	
10:45:27 AM	Ms. Peterson objects. She states the line of questioning wasn't admitted into court,		
	Note: Mahoney, Brandy	Judge overrules. Witness continues.	

10:49:05 AM Mr. Peterson objects to further questioning from Mr. Rigdon. States none of Mr. Buschelman's opinions were not prepared and are not on record.
Note: Mahoney, Brandy Mr. Rigdon states that he submitted a Filing regarding Mr. Buschman's expert opinions.

10:52:07 AM Court finds that Mr. Buschman's expert testimony was entered into the court prior to the adjudication and therefore. Mr's Peterson's objection is overruled.
Note: Mahoney, Brandy Witness continues with his testimony.

10:55:04 AM Exhibit #180 is being admitted into Court.
Note: Mahoney, Brandy ORDER OF DETERMINATION

10:57:59 AM Ms. Peterson objects to witness opinion, says Mr. Buschelman's opinion is not entered into the court, Mr. Rigdon withdraws question,

11:00:49 AM Mr. Rigdon continues questioning referring to the Witness Hearing binder.

11:02:28 AM Court's in short recess.

11:02:52 AM Session Paused

11:25:25 AM Session Resumed

11:25:28 AM Mr. Rigman continues with his examination with the witness, Michael Buschelman.

11:26:58 AM Mr. Rigdon moves to admit exhibit #188.
Note: Mahoney, Brandy Ms. Peterson has no objections. She does request all exhibits be admitted beforehand,

11:28:17 AM Mr. Rigdon moves to admit exhibits #188-191. Court allows admitting without objection.

11:32:10 AM Ms. Peterson objects to vague questioning. Judge sustains. Mr. Rigdon re-words questioning.

11:44:36 AM Mr. Rigdon asks witness to explain the method of irrigation ditches to the Court.

11:47:21 AM Ms. Peterson objects to vague questioning. Mr. Rigdon rewords questioning.

11:49:12 AM Ms. Peterson again object. States the questioning is vague pertaining to the history.
Note: Mahoney, Brandy Court overruled.

11:50:04 AM Ms. Peterson objects, States witness isn't an expert and cannot state a valid opinion.

11:53:07 AM Mr. Ridgon asks witness to explain the meaning of the words: hummock, fill & spill.

11:56:08 AM Court asks witness what other ranches he observed with the fill & spill methods.
Note: Mahoney, Brandy Mr Buschman states that a "fill & spill" irrigation method requires significantly more water than other methods.

12:01:43 PM Mr. Rigdon asks for court and witness to refer to exhibit page #110 and asks witness to explain the cultures in the analysis he preformed.

12:16:59 PM Witness explains what "soil salt leaching" is.
Note: Mahoney, Brandy Ms. Peterson objects, She states that he's referring to soil chemistry. Court deems objection sustained.

12:19:07 PM Ms Peterson objects, claims Mr. Rigdon is leading witness. Court sustains objection. Mr Rigdon rephrases questioning.

12:21:05 PM Ms, Peterson objects to Mr. Buschman is referring to Churchill and other counties, not in Diamond Valley.
Note: Mahoney, Brandy Judge overrules. Lets witness continue.

12:23:39 PM Ms. Peterson objects to the entire statement of witness.

12:24:48 PM Court finds witness testimony is relevant. Counsel continues questioning of witness.

12:27:27 PM Ms. Peterson objects, vague questioning. Court sustains objection. Needs more detail.

12:31:38 PM Mr. Rigdon requests noon break.

12:32:01 PM Court is in recess until 1:30.

12:32:22 PM Session Paused

1:33:32 PM Session Resumed

1:33:36 PM Court addresses continuing of court proceedings. Mr. Rigdon resumes questioning of the witness, Michael Buschelman.
Note: Mahoney, Brandy Mr. Buschelman describes the layout of the MW Ranch.

1:38:34 PM Ms. Peterson objects, leading witness. Court sustains.
Note: Mahoney, Brandy Mr. Rigdon continues questioning of witness.

1:42:18 PM Counsel refers to exhibit #190 in the Witness Hearing binder.

1:44:02 PM Counsel refers to exhibit #180 in witness binder: ORDER OF DETERMINATION

1:52:29 PM Counsel request mirroring images from his laptop to main screen.
1:52:40 PM Web Conference Deactivated
1:52:40 PM Left Law PC Activated
1:54:30 PM Mr. Rigdon continues witness examination.
1:55:54 PM Ms. Peterson objects questioning. Claims witness has no foundation to answer. Objection is sustained. Also objects to hearing evidence that wasn't previously presented in front of the engineer's office. Court sustains.
Note: Mahoney, Brandy Witness is allowed to state opinion on land in question,
2:10:21 PM Judge asks witness what year did he find that the water dried up. Witness couldn't come up with a definite year.
2:14:14 PM Counsel goes to exhibit #180 and 181.
2:16:30 PM For the record, Mr. Rigdon says #58 is a one page exhibit entry.
Note: Mahoney, Brandy Also refers to #57 & 58.
2:24:05 PM Web Conference Activated
2:24:05 PM Left Law PC Deactivated
2:24:30 PM Mr. Rigdon presents Mr. Buschelman with documents for further review when questioning
2:27:13 PM Mr. Rigdon refers to exhibit #155 for questioning. Detailed review of Witness Binder and detailed questioning regarding water usage for more than just animals and hay,
Note: Mahoney, Brandy SADLER RANCH: HISTORY OF LAND AND WATER USE.
2:50:43 PM Ms. Peterson objects. Claims no foundation for claim. Mr. Rigdon rewords questioning.
2:53:51 PM Mr. Rigdon refers to exhibits #151 and #7.
2:59:18 PM Mr. Rigdon refers to exhibit #25, 293 and 294 and continues to examine witness.
3:08:35 PM Court is in 10-15 recess.
3:09:02 PM Session Paused
3:28:39 PM Session Resumed
3:28:46 PM Court resumes witness examination by Mr. Rigdon.
3:32:03 PM Counsel refers to exhibit #180 & 156.
Note: Mahoney, Brandy Mr. Bucshelman testifies on Indian Camp Springs.
3:38:53 PM Ms. Peterson objects to questioning, no foundation.
Note: Mahoney, Brandy Mr. Rigdon re-words is questioning
3:40:51 PM Mr. Buschelman is questioned about the Brown Ranch.
3:46:22 PM Ms. Peterson objects. Question not relevant to page 178. Mr. Rigdon changes questioning,
3:49:29 PM Mr. Rigdon asks for time to go through witness binders to see if certain evidence was put in or left out,
Note: Mahoney, Brandy Mr. Rigdon asks to put an arial map on court screen for presentation, Ms. Peterson has no objections. Witness continues to be examined.
3:50:44 PM Web Conference Deactivated
3:50:44 PM Left Law PC Activated
3:53:57 PM Mr. Rigdon refers to exhibit #161.
3:55:17 PM Ms. Peterson object to improper questioning, Court sustains objection.
3:57:36 PM Mr. Rigdon refers to exhibit #178.
4:00:08 PM Web Conference Activated
4:00:08 PM Left Law PC Deactivated
4:03:27 PM Ms. Peterson objects. No foundation for questioning. Court sustains objection.
4:07:05 PM Mr Rigdon rests.
4:07:15 PM Ms. Peterson starts cross-examination.
Note: Mahoney, Brandy Ms. Peterson questions Mr. Buschelman about how much time was spent on the ranches while conducting his investigations.
4:12:59 PM MR. Rigdon objects. Leading the witness. Ms. Peterson requests further information on all claims pre-1905.
Note: Mahoney, Brandy Ms. Peterson clarifies her question and refers to exhibit #190 of the Witness Binder,

4:18:21 PM Counsel asks witness where the data is for the findings of MW Cattle.
Note: Mahoney, Brandy Witness states the information for both Sadler and MW Cattle are taken from the same documentation at the State Engineer's Office.

4:25:15 PM Mr. Rigdon objects questioning of the witness. Mr. Peterson apologizes and proceeds in different line of questioning.

4:26:37 PM Mr. Rigdon object. Witness is not employed with MW Cattle.
Note: Mahoney, Brandy Objection sustained by Judge,

4:29:59 PM Mr. Rigdon objects, States that witness isn't making any testimony on behalf of MW cattle.
Note: Mahoney, Brandy both counsel addresses the court. Court sustains objection. Recommends counsel change the form of questioning.

4:35:34 PM Mr. Rigdon objects, says witness already answered questions being asks. Objection is overruled. Witness is asked to answer question.
Note: Mahoney, Brandy Witness states that the question isn't "yes" or "no" answer, Court understands that the question isn't yes/no.

4:40:49 PM Ms. Peterson refers to exhibit #180 pg 14. ORDER OF DETERMINATION

4:45:45 PM Counsel refers to pg 16 of exhibit #180

4:52:21 PM Mr. Rigdon objects. Vague Questioning. Court asks Ms. Peterson to detail her questioning.

4:57:44 PM Ms. Peterson hands out her exhibit binders to witness and Judge to follow along.
Note: Mahoney, Brandy Counsel refers to exhibit EE.

5:04:46 PM Mr. Rigdon objects, asks for the relevance of Ms. Peterson's line of questioning and where this is going. Court overrules objection, lets Ms. Peterson proceed with questioning.

5:07:14 PM Ms. Peterson questions Mr. Buschelman on Pain's Notes of 1912.

5:15:58 PM Court asks Ms. Peterson if this would be a good time to rest for the night, She agrees.

5:17:02 PM Court rests until tomorrow at 9:00 am.

5:19:37 PM Session Ended



Session Report - Standard

Adjudication

CV2002-009

Date:	Type:	Location:	Department:
9/30/2021		Courtroom 1	
Event Time	Log Event		
9:05:23 AM	Session Started		
9:05:40 AM	Present: Judge Gary D. Fairman, David Rigdon Esq. (Taggard & Taggard, Ltd.), Karen Peterson (Eu Co Attny), Michael D. Buschelman WRS, Jake Tibbitts, James Bolotin SDAG, B.Parker, Ian Carr, Jared McCrum, Adam Sullivan, D. Taylor, Dwight Smith Note: Farris, Ashley Continued present: Dan Nubel SDAC, Micheline Fairbank.		
9:06:56 AM	Ms. Peterson continues cross-examination.		
9:09:05 AM	Ms. Peterson refers to exhibit FF. Note: Mahoney, Brandy Mr. Buschelman is questioned about the maps in exhibit FF.		
9:14:48 AM	Ms. Peterson refers to exhibit GG. Note: Mahoney, Brandy Mr. Buschelman is questioned on Proof - 04476. Romano Springs Tributaries.		
9:18:16 AM	Ms. Peterson is asked to approach the bench to direct Judge Fairman as to where exactly Romano Spring #2 is in the Exhibit Binder. Note: Mahoney, Brandy Cross-examination continues.		
9:28:46 AM	Ms. Peterson refers to the map on page 6.		
9:35:20 AM	Mr. Rigdon objects to context of Ms. Peterson's questioning. Court deems questioning appropriate. Objection overruled.		
9:39:21 AM	Ms. Peterson questions witness on his testimony from yesterday. Note: Mahoney, Brandy Mr. Buschelman is asked to refer back to Mr. Rigdon's Witness Binders to discuss "abandonment."		
9:43:04 AM	Ms. Peterson refers to Exhibit #180, pgs. 128-41.		
9:43:50 AM	Mr. Rigdon objects, vague questioning. Ms. Peterson rewords her questioning.		
9:46:47 AM	Mr. Rigdon objects, calls for illegal questioning, Objection sustained. Note: Mahoney, Brandy Cross-examination continues.		
9:57:24 AM	Ms. Peterson refers to exhibit #110.		
10:05:01 AM	Mr. Ridgon addresses and corrects yesterday's testimony from Mr. Buschelman. Note: Mahoney, Brandy Cross-examination continues.		
10:14:31 AM	Ms. Peterson refers back to her Exhibit Binder, Exhibit AA.		
10:20:03 AM	Mr. Ridgon objects, Calls for illegal conclusion, Objection overruled. Note: Mahoney, Brandy Cross-examination continues.		
10:23:22 AM	Ms. Peterson questions witness regarding his testimony yesterday on "fill & spill" method.		
10:29:01 AM	Ms. Peterson questions witness about yesterday testimony regarding the priority of Romano field		
10:30:12 AM	Objection by Mr, Rigdon, questioning is mischaracterizing. Ms. Peterson agrees to rephrase question.		
10:32:11 AM	Ms. Peterson refers to exhibit #155, pg 10 of Mr. Rigdon Witness Binders. Note: Mahoney, Brandy Also directs to page 16 in exhibit #155.		
10:38:25 AM	Cross-examination continues.		
10:43:13 AM	Session Ended		
Date:	Type:	Location:	Department:
9/30/2021		Courtroom 1	
Event Time	Log Event		
10:47:35 AM	Session Started		
10:47:50 AM	Session Paused		
11:09:25 AM	Session Resumed		
11:09:49 AM	Ms. Peterson continues to refer to exhibit #155.		

11:10:32 AM Mr. Rigdon objects to the form of the question, objection sustained. Ms. Peterson is asked to rephrase question.
Note: Farris, Ashley Cross-examination continues.

11:12:58 AM Ms. Peterson refers to exhibit #25.

11:26:48 AM Ms. Peterson refers to exhibit #180, pg 177.
Note: Farris, Ashley Re: Eva Springs and Mr. Buschelman's testimony from yesterday referring to Eva Springs.

11:29:56 AM Witness' counsel refers to exhibit #24.
Note: Farris, Ashley Regarding the proof of appropriation that was filed by Mr. and Mrs. George and Rita Brown.

11:38:13 AM Ms. Peterson refers back to exhibit EE.

11:52:33 AM Ms. Peterson refers to exhibit #570 of Mr. Rigdon's Witness Binder.

11:58:25 AM Ms. Peterson has nothing further to ask of witness,

11:59:25 AM Mr. Rigdon redirects witness, Mr. Buschelman.
Note: Farris, Ashley Counsel refers witness to Exhibit #171.

12:02:28 PM Ms. Peterson objects. question is misleading and different than what the exhibit shows. Objection is overruled,
Note: Farris, Ashley Redirecting of witness continues.

12:05:02 PM Mr. Rigdon refers back to his Exhibit Binder, exhibit #180 pg. 146-148
Note: Farris, Ashley Regarding Romano Springs Ranch #2.

12:07:08 PM Ms. Peterson objects, points out there is no time frame in the question. Mr. Rigdon clarifies time frame.

12:08:55 PM Mr. Rigdon refers to page 177-178 of exhibit #180

12:13:32 PM Mr. Rigdon rests.

12:13:44 PM Ms. Peterson re-cross examines witness.
Note: Farris, Ashley She refers to exhibit #171 of the Dwight Smith Binders.

12:18:52 PM Parties hace

12:19:50 PM Session Paused

1:33:24 PM Session Resumed

1:33:30 PM Record reflects continuation of hearing and all parties are in attendance.

1:33:40 PM Dwight Smith is sworn in as a witness by the Court and takes the stand.
Note: Farris, Ashley Mr. Smith states and spells his name and states his occupational title as a Hydrogeologist.

1:36:02 PM Mr. Rigdon refers to exhibits #184-186 of his Witness Binder,

1:38:15 PM The Court admits Exhibits #183-186 in as evidence.

1:39:31 PM Mr. Rigdon questions witness regarding his credentials before requesting the Court to recognize him as an expert witness.
Note: Farris, Ashley Ms. Peterson has a few questions regarding his credentials as an expert witness. Witness is recognized by the Court as is allowed to testify his professional opinions as an expert witness in his areas of expertise.

1:43:03 PM Mr. Rigdon refers to exhibit #180, pg 179 in his Witness Binder.
Note: Farris, Ashley Witness is questioned on spring flow.

1:49:13 PM Mr. Rigdon refers to exhibit #50.

1:55:30 PM Mr. Rigdon refers to exhibit #185
Note: Farris, Ashley Witness is questioned about the plots on page 11.

1:56:28 PM Ms. Peterson objects: witness' counsel is referencing to not only measurements, but discharges. Mr. Rigdon re-words his statement.
Note: Farris, Ashley Witness testimony continues,

1:58:03 PM Mr. Rigdon refers to exhibit #449.
Note: Farris, Ashley Counsel states that the exhibit is not in its entirety in the binder, only excerpts that will be relevant to the witness testimony.

2:11:11 PM Mr. Rigdon refers to exhibit #105 in exhibit binder.

2:16:16 PM Ms. Peterson objects: leading the witness. Objection is sustained
Note: Farris, Ashley Witness testimony continues.

2:17:25 PM Ms. Peterson objects: improper questioning. Objection sustained.
Note: Farris, Ashley Witness testimony continues.

2:41:42 PM Mr. Rigdon refers back to exhibit #183 again.
Note: Farris, Ashley Mr. Smith is giving statement regarding spring outlets.

2:46:48 PM Mr. Smith is giving statement regarding spring outlets.
Note: Farris, Ashley Witness testimony continues.

2:49:55 PM Ms. Peterson objects: misrepresenting testimony. Objection sustained.

2:53:57 PM Mr. Rigdon refers to exhibit #449 to discuss values.

3:02:12 PM Mr. Rigdon refers to exhibit #153 in witness binder.

3:07:09 PM Session Paused

3:24:54 PM Session Resumed

3:25:12 PM Mr. Rigdon continues examination of witness.
Note: Farris, Ashley Counsel refers to exhibit #449. Mr. Smith points out there's more than one name for the same spring in question, Eva Spring. Also known as Siri Spring in records.

3:31:42 PM Mr. Rigdon rests.

3:31:51 PM Ms Peterson cross-examines witness Dwight Smith.

3:36:05 PM Mr. Rigdon objects: claims question is outside the scope of direct. Judge Fairman overrules objection.
Note: Farris, Ashley Ms. Peterson continues cross-examination.

3:38:52 PM Ms. Peterson refers to exhibit #184 of witness evidence binder.

3:44:15 PM Ms. Peterson refers to exhibit #105.
Note: Farris, Ashley Ms. Peterson reviews The Knickerson Affidavit with witness.

3:49:28 PM Mr. Smith reads an excerpt from Knickerson Affidavit for the record.

3:52:06 PM Mr. Rigdon objects: claims misreading of a document by Ms. Peterson. Ms. Peterson rephrases statement.

3:54:05 PM Ms. Peterson enters exhibit EEE into the Court as evidence.
Note: Farris, Ashley Ms. Peterson reviews the letter, exhibit EEE, with the witness.

4:03:15 PM Ms. Peterson refers to pg. 180 of exhibit #180 in witness binder.

4:06:09 PM Ms. Peterson refers to exhibit #184.
Note: Farris, Ashley She reviews pages 1-13 with the witness.

4:10:21 PM Ms. Peterson refers witness back to exhibit #449.
Note: Farris, Ashley She has witness read excerpt from exhibit and proceeds to asking follow-up questions regarding previous testimony.

4:13:16 PM M. Rigdon objects: documents speak for themselves. Ms. Peterson refers back to review exhibit #50 with Court.

4:18:33 PM Ms. Peterson refers to exhibit #186 page 3.

4:33:58 PM Mr. Rigdon objects: can't identify document Ms. Peterson is referring to. Mr. Rigdon raises issues with entire model not being entered in as evidence.
Note: Farris, Ashley Ms. Peterson states this is grounds for impeachment of witness, Court allows witness to answer questions.

4:37:24 PM Mr. Ridgon objects: Ms. Peterson is reading off her notes which is putting evidence into the record. Objection is overruled.
Note: Farris, Ashley Ms. Peterson continues cross-examination.

4:39:56 PM Mr. Rigdon asks that Ms. Peterson find exhibit that she's referring to in her cross-examination. Court allows time for her to search for the exhibit.
Note: Farris, Ashley Ms. Peterson believe the exhibits are at the State Engineer's office.

4:45:13 PM Session Paused

4:58:49 PM Session Resumed

4:58:54 PM Court in Continuation

4:59:13 PM Ms. Peterson was not able to find exhibit in question in reference to in the last objection raised by Mr. Rigdon. Ms. Peterson chooses to move on with a different matter.
Note: Farris, Ashley Ms. Peterson asks witness to turn to exhibit #153.

5:06:56 PM	Witness is referring to exhibit #185 for testimony.
5:13:38 PM	Eureka County rests.
5:13:58 PM	Mr. Rigdon redirects witness. Note: Farris, Ashley Counsel reviews exhibits with witness to substantiate his findings to support his reports.
5:17:43 PM	Ms. Peterson objects: improperly characterizes Mr. Bailey. Mr. Rigdon refers to Bailey's ruling in the report. Note: Farris, Ashley Counsel resumes redirection of witness.
5:19:42 PM	Ms. Peterson objects: not the proper characterization of the writtem document, Court sustains objection.
5:20:25 PM	Ms. Peterson objects: not the proper statement of what is characterized in ruling. Judge overrules objection. Allows Mr. Smith to gives his expert scientific opinion on ruling. Note: Farris, Ashley Mr. Rigdon continues redirecting witness.
5:33:47 PM	Mr. Ridgon rests.
5:34:01 PM	Ms. Peterson re-crosses witness, Dwight Smith.
5:40:07 PM	Mr. Peterson rests re-cross.
5:40:31 PM	Court rests until tomorrow.
5:41:42 PM	Session Ended



Session Report - Standard

Adjudication

CV2002-009

Date:	Type:	Location:	Department:
10/1/2021		Courtroom 1	
Event Time	Log Event		
9:02:29 AM	Session Started		
9:02:39 AM	Court is in session		
9:02:44 AM	Continuation of evidentiary hearing for Sadler Ranch and MW Cattle		
9:02:49 AM	MW Cattle and Sadler ranch represented by David Riggdon. Karen Peterson and Jake Tibbits representing Eureka County		
9:02:59 AM	Senior Deputy Attorney General James Bolotin, Chief Deputy Attorney General Ian Carr, Jared McCrum and Beau Parker representing Div. of water and AG's office		
9:03:59 AM	Clerk swears in the witness Doug Frazier		
9:04:39 AM	Mr. Riggdon begins to question the witness		
9:07:01 AM	Mr. Riggdon offers Mr. Frazier as an expert witness		
	Note: Farris, Ashley	Ms. Petersen objects, as to lack of knowledge, and lack of experience.No objections as to Mr. Frazier's report, but they do have an objection to letting him being an expert witness. Mr. Riggdon responds. Ms. Petersen responds. Mr. Riggdon discusses the help the witness can provide to the court. Court rules Mr. Frazier to provide his opionion as an expert witness.	
9:10:48 AM	Mr. Riggdon begins questioning witness as an expert.		
9:17:05 AM	Mr. Riggdon offers exhibit #193. Ms. Peterson has no objection		
	Note: Farris, Ashley	Court enters exhibit #193	
9:17:30 AM	Cross examination begins with Ms. Peterson		
9:22:53 AM	No redirect from Mr. Riggdon		
9:23:10 AM	Mr. Riggdon calls Levi Shoda		
9:23:36 AM	Mr. Shoda takes oath		
9:23:43 AM	Mr. Riggdon begins questioning Mr. Shoda		
9:34:19 AM	Ms. Peterson cross examines witness		
9:37:59 AM	Mr. Riggdon does not re-direct witness		
9:38:20 AM	Evidentiary portion is concluded		
9:38:46 AM	Court requires post trial briefs to be submitted at the same time.		
	Note: Farris, Ashley	Ms. Peterson requests a date of November 12, Mr. Riggdon is in agreeance with 45 days.	
9:40:20 AM	Court would like briefs submitted on November 15		
9:41:20 AM	Ms. Peterson asks about timeline regarding condensed evidence and its final filing date		
	Note: Farris, Ashley	Court responds with November 15	
9:41:44 AM	Mr. Riggdon would like to give a closing argument		
9:42:01 AM	Court is in recess		
9:42:15 AM	Session Paused		
9:57:29 AM	Session Resumed		
9:57:54 AM	Session Paused		
9:58:25 AM	Session Resumed		
9:58:49 AM	Mr. Riggdon begins his closing argument		
10:39:01 AM	Ms. Peterson begins her closing argument		
10:52:37 AM	Ms. Peterson ends her conclusion		
10:52:46 AM	Court addresses parties		
	Note: Farris, Ashley	Court may ask the St. Eng. the meaning of a certain sentence.	
10:56:34 AM	Court is in recess		
10:56:43 AM	Mr. Bolotin addresses the court in regards to the Venturacci hearing		
10:57:40 AM	Court is in recess		

Date:	Type:	Location:	Department:
11/2/2021		Courtroom 1	
Event Time	Log Event		
9:17:28 AM	Session Started		
9:17:29 AM	Honorable Judge Gary Fairman Note: Mahoney, Brandy	Present: Tim O'Connor (T&T), Venturacci, Karen Peterson (Eureka County attorney, Jake Tibbitts (representing Eureka County), Ramona Hage Morrison (T&T witness)).	
9:17:34 AM	Session Paused		
9:33:02 AM	Session Resumed		
9:33:35 AM	Court recognizes case CV2002009 and all parties present. Note: Mahoney, Brandy	Court addresses Dan Nubel is present via zoom. Mr. Nubel states that Jared McCrum and Melissa Flatley are present via zoom representing AG as well.	
9:36:00 AM	Estimated length of counsel to be 2 1/2 days. Both parties agree to length. Note: Mahoney, Brandy	Court lays out guidelines of the hearing.	
9:38:08 AM	Counsel attempts to enter digital copy of evidence into Court. Note: Mahoney, Brandy	Eureka County has not stipulated to the evidence, Court will determined exhibit at a later time.	
9:40:51 AM	Karen Peterson addresses court.		
9:41:18 AM	Court recognizes exhibits entered by stipulation of Eureka County. Note: Mahoney, Brandy	Exhibits 1-295, 298 and A-JJ are entered into court. Eureka County Counsel have objections to areas of experties of the witnesses,	
9:41:29 AM	O'Connor gives opening statement. Note: Mahoney, Brandy	Counsel hands out evidence index binders for the court and opposing counsel to follow along. Counsel lays out how his presentation will go according to evidence and what the expert witnesses will provide in the next few days.	
9:47:52 AM	Mr. O'Connor refers to exhibits 256 and 254 regarding the Thompson Ranch and Taft Springs.		
9:56:06 AM	Counsel directs courts to page 1113 of the index binder for maps.		
9:57:49 AM	Counsel refers to exhibit 254 again to reference the Cox Ranch.		
10:03:16 AM	Counsel refers to exhibit 258 and the willow fields being dried up. Note: Mahoney, Brandy	Counsel also informs Court that we will be hearing oral history stated my the Crowfoot family that was previously entered in as evidence.	
10:11:49 AM	Ms. Peterson addresses the Court. Note: Mahoney, Brandy	Ms. Peterson states the objections she has regarding the evidence to be entered into court by opposing counsel.	
10:17:15 AM	Mrs. Ramona Hage Morrison is sworn in as Mr. O' Conner's first witness. Note: Mahoney, Brandy	Ms. Morrison states her areas of expertise pertaining to the water in reference.	
10:21:34 AM	Mr. O'Connor begins his examination of the witness. Note: Mahoney, Brandy	Mr. O'Connor questions Ms. Morrison on her acheivements and career experience in Historical Western Land Use and Land Law.	
10:29:53 AM	O'Connor requested that Ms. Morrison's experience be recognized by the courts as expertise witness.		
10:31:07 AM	Eureka County has Objections, pending further information on her educational training. Note: Mahoney, Brandy	Ms.Peterson reviews the qualifications of witness between themselves.	

10:37:21 AM	Eureka County Counsel Objects based on lack of education. Note: Mahoney, Brandy	Mr. O'Connor responds to objection with reference to NRS50.275 and what an expert witness is. Both parties give brief statements on objection.
10:42:04 AM	Court will recognize Ms. Morrison as an expert witness according to NRS50.275 and is willing to hear her testimony. Note: Mahoney, Brandy	Court allows Mr. O'Connor to continue witness examination.
10:45:16 AM	Counsel hands out another exhibit binder for Court to follow along.	
10:46:58 AM	O'Connor admits Exhibit 296 (Report of Ms. Morrison) into Court as evidence. Court recognizes Exhibit 296 as evidence. Note: Mahoney, Brandy	Eureka county states that they have no objections following the Court recognizing witness to be expert.
10:56:16 AM	Counsel continues questioning witness regarding the content of her evidential report.	
11:00:49 AM	Counsel directs witness to exhibit 280 regarding her own quote. Note: Mahoney, Brandy	Court states the evidence is in his binder under #3521-3599.
11:03:57 AM	Counsel reference #3502 regarding a quote from Richard Burton. Ms. Morrison preceeds to read Richard Burton's exhibit to Court.	
11:05:34 AM	Session Paused	
11:23:44 AM	Session Resumed	
11:24:10 AM	Court recognizes case CV2002009 and all parties present. Note: Mahoney, Brandy	Counsel continues examination of witness.
11:31:00 AM	Eureka County Counsel Objects to questioning. Note: Mahoney, Brandy	Questioning is outside the scope of expertise of witness.
11:31:18 AM	Court sustains Objection. Asks Counsel to rephrase.	
11:33:17 AM	Counsel directs witness to Exhibit #149 bait stamp #0884 in the binder, reference Tax Assessment Roll.	
11:37:13 AM	Counsel directs witness to Tax Assessment Roll in exhibit #179.	
11:38:41 AM	Court directs witness to Exhibit #171 and #142 Note: Mahoney, Brandy	Counsel asks witness to explain what a Water Appropriation document is.
11:42:46 AM	Ms Peterson objects to opposing counsels questioning Note: Mahoney, Brandy	Claims witness has no personal knowledge of questioning.
11:43:43 AM	Objection is sustained. Examination of witness continues.	
11:44:45 AM	Ms. Peterson object. Note: Mahoney, Brandy	Ms. Peterson asks what this type of questioning has to do with this case. Mr. O'Connor states why.
11:46:36 AM	Court overrules objection. Witness examination continues.	
11:47:55 AM	Eureka Counsel objects, leading witness. Note: Mahoney, Brandy	Objection sustained.
11:49:33 AM	Mr. O'Connor refers to Exhibit #280, bait stamp 3531-3544 for witness to follow along.	
11:52:38 AM	Eureka Counsel Objects. Court gives counsel time to see where questioning it is going. Note: Mahoney, Brandy	Counsel wants to review baitstamp #3529. Counsel asks witness to explain to the Court what the content means.
11:58:24 AM	Counsel refers witness and Court to exhibit #188/Record of Survey plat map.	
12:06:59 PM	Eureka Counsel objects, no foundation to the record in review. Note: Mahoney, Brandy	Court sustains objection. Mr. O'Connor stops questioning about livestock and continues with irrigation questioning again.
12:10:08 PM	Session Paused	
12:10:11 PM	Session Resumed	
12:10:13 PM	Session Paused	
1:24:30 PM	Session Resumed	
1:24:58 PM	Session Paused	
1:25:07 PM	Session Resumed	

1:25:22 PM Court recognizes case CV2002009 and all parties present.
Note: Mahoney, Brandy All parties are present and Mr. O'Connor continues to examine Mrs. Morrison

1:27:43 PM Mr. Connor refers to Exhibit 280 for witness to explain
Note: Mahoney, Brandy Further references document #27

1:34:15 PM Counsel refers to Exhibit #280
Note: Mahoney, Brandy Abstract of Title

1:35:38 PM Counsel has no further questions Venturacci's Counsel rests
Note: Mahoney, Brandy Cross examination begins by Mrs. Peterson

1:40:17 PM Mrs. Peterson Objects - Mrs. Peterson objects to the witness not answering her question
Note: Mahoney, Brandy Sustained. Mr. O'Connor asks that the witness be allowed to answer.

1:48:11 PM Objection by Mr. O'Connor - mischaracterization of testimony
Note: Mahoney, Brandy Counsel (Mrs. Peterson) rephrased question

1:53:16 PM Mrs. Peterson refers to Exhibit binder
Note: Mahoney, Brandy Venturacci 141 "water location" document, as well as exhibit 142

1:57:33 PM Objection - asked and answered
Note: Mahoney, Brandy Sustained. Questioning continues

1:58:53 PM Mrs. Peterson refers to Exhibit 179 for the witness to explain

2:01:40 PM Mrs. Peterson refers to Exhibit 188, GLO Map

2:02:26 PM Objection - calls for speculation
Note: Mahoney, Brandy Sustained

2:03:24 PM Objection - calls for speculation
Note: Mahoney, Brandy Judge requires witness to be asked again

2:04:24 PM Mrs. Peterson refers to B.S. page 3502

2:07:39 PM Mrs. Peterson refers to B.S. 3521

2:08:31 PM Mrs. Peterson refers to B.S. 3529

2:11:07 PM Mrs. Peterson refers to Exhibit 296 page 4

2:12:26 PM Objection - vag as far as net
Note: Mahoney, Brandy Question rephrased

2:14:13 PM Mrs. Peterson refers to Exhibit 167, B.S. 3546

2:18:47 PM Mrs. Peterson refers to Exhibit 167, page 4, B.S. 3547
Note: Mahoney, Brandy Asked witness to site sentence

2:31:11 PM Mrs. Peterson refers to Exhibit 296 pages 7 and 9 - 14
Note: Mahoney, Brandy Mrs. Morrison asked to clarify and review her report

2:46:50 PM Objection - Relevance
Note: Mahoney, Brandy Question allowed, witness answered

2:52:05 PM Session Paused

3:14:21 PM Session Resumed

3:14:25 PM Court recognizes case CV2002009
Note: Mahoney, Brandy All parties are present.

3:14:54 PM Cross examination continues
Note: Mahoney, Brandy Mrs. Peterson continues to examine Mrs. Morrison

3:15:47 PM Objection - calls for legal conclusion
Note: Mahoney, Brandy Over ruled. Questioning continues

3:18:13 PM Objection - asked and answered
Note: Mahoney, Brandy Judge states "I understand where you're going Mrs. Peterson"

3:19:58 PM Objection - speculation as to what the claimant is doing and she is here to testify about her report
Note: Mahoney, Brandy Sustained. Questioning continues

3:21:18 PM Mrs. Peterson provides Judge and witness with binder
Note: Mahoney, Brandy Referencing exhibit "A" page 302

3:25:29 PM Objection - improper hypothetical, goes beyond the scope, and is irrelevant
Note: Mahoney, Brandy Mrs. Peterson offers to rephrase question. Judge allows

3:27:50 PM	Mrs. Peterson Rests. Redirect	
	Note: Mahoney, Brandy	Mr. O'Connor resumes questioning Mrs. Morrison.
3:31:12 PM	Mr. O'Connor provides Court with another binder	
	Note: Mahoney, Brandy	References exhibit 259, B.S. 1900, page 41
3:35:42 PM	Objection - was not the original testimony and leading	
	Note: Mahoney, Brandy	Allowed to go ahead with the question
3:37:18 PM	Mr. O'Connor refers to Venturacci 141 "water location" document	
3:45:50 PM	Objection - outside the scope	
	Note: Mahoney, Brandy	Judge allows
3:49:23 PM	Venturacci counsel rests	
	Note: Mahoney, Brandy	No further questions
3:49:40 PM	Redirected to Mrs. Peterson	
	Note: Mahoney, Brandy	Mrs. Peterson begins questioning and refers to exhibit 259, B.S. 1900
3:54:25 PM	Mrs. Peterson Rests	
3:54:43 PM	Mrs. Morrison steps down	
3:55:37 PM	Mr. O'Connor calls next witness	
3:56:07 PM	Mr. George Thieel is sworn in as Mr. O'Connor's Second witness	
	Note: Mahoney, Brandy	Mr. Thieel states his areas of expertise pertaining to the water resources and explains work related achievements.
3:56:16 PM	Mr. O'Connor asks Mr. Thieel to explain his Professional degrees or education in the area of water rights.	
	Note: Mahoney, Brandy	Explains in extensive detail, his qualifications in water rights and water resources. Additionally, he has knowledge in aerial interpretation.
4:34:15 PM	Mr. O'Connor requests that Mr. Thieel be recognized as an expert witness due to his professional and educational experiences	
	Note: Mahoney, Brandy	The areas that Mr. Thieel's is being requested to be an expert on is 1. water rights 2. water resources 3. aerial photograph interpretation 4. "water shed" hydrology
4:35:24 PM	Mrs. Peterson objects to Mr. Thieel's expertise in "water shed hydrology"	
4:36:33 PM	Mrs. Peterson questions Mr. Thieel on "water shed hydrology"	
4:37:54 PM	Objection - asked and answered	
	Note: Mahoney, Brandy	Over ruled.
4:42:57 PM	Mr. Thieel is deemed an expert in all requested areas	
	Note: Mahoney, Brandy	1. water rights 2. water resources 3. aerial photograph interpretation 4. "water shed" hydrology
4:43:41 PM	Judge requests to resume court at 900am on the following day, November 3 2021	
	Note: Mahoney, Brandy	Both parties agree
4:45:50 PM	Session Paused	
4:45:55 PM	Session Ended	

Date:	Type:	Location:	Department:
11/3/2021		Courtroom 1	
Event Time	Log Event		
8:56:45 AM	Session Started		
8:56:49 AM	Session Paused		
8:57:41 AM	Session Resumed		
8:57:53 AM	Judge enters court room to begin a continuation (day 2) of the Venturacci Case Note: Mahoney, Brandy Mr. O'Connor, Mr. Venturacci, Mr. Tibbitts, Mrs. Petterson and Mr. Thieel are present in the court room. Bryce Vorwaller, Jared McCrum and James Bolotin are present via Zoom.		
8:59:42 AM	Mr. O'Connor delivers digital copies of exhibits in the Judge		
9:01:41 AM	Mr. O'Connor begins to question witness Note: Mahoney, Brandy Counsel refers to exhibits 292 and 297 to be viewed by the court		
9:11:54 AM	Mr. O'Connor asks that exhibit 297 be entered into evidence		
9:12:23 AM	Objection - outside the scope of the proofs being different than originals Note: Mahoney, Brandy Objection sustained. If items are found to be outside the the scope (larger than originally stated) it will be addressed at that point.		
9:17:28 AM	Exhibit 297 is entered into evidence Note: Mahoney, Brandy Exhibit is entered, subject to the objections on the record.		
9:22:29 AM	Mr. O'Connor asks the court to view exhibit 297 Note: Mahoney, Brandy The map on page 16 was asked to be explained by Mr. Thieel. The witness focused on where the fence line would be and that irrigation would be inside and outside said fence.		
9:33:00 AM	Judge asks Mr. Thieel to approach bench for map clarification Note: Mahoney, Brandy Mrs. Peterson asks if she can also approach the bench for the same map clarification.		
9:35:15 AM	Mr. O'Connor resumes questioning		
9:46:37 AM	Questioning still in progress		
9:50:48 AM	O'Connor asks the court to view to exhibit 188		
9:54:36 AM	Mr. O'Connor switches questioning toward "Payne's Notes" in exhibit binder. Note: Mahoney, Brandy H. M. Payne's Notes are notes observed and recorded by Mr. Payne at his time in Eureka.		
9:57:34 AM	Judge asks Counsel to put a year on the Pay notes Note: Mahoney, Brandy 1912		
10:02:07 AM	Judge asks Mr. O'Connor to repeat his previous question		
10:04:57 AM	Objection - no foundation, no determination as documents explain themselves Note: Mahoney, Brandy Over ruled. Testimony allowed.		
10:07:13 AM	Questioning continued		
10:07:35 AM	Objection - Mr. Thieel's opinion is outside the scope as his opinion is not in his notes Note: Mahoney, Brandy Mr. O'Connor refers to pages 61-63 in exhibit 297 to argue the objection. Suggests the objection should be taken up in cross.		
10:10:09 AM	Objection over ruled Note: Mahoney, Brandy Testimony allowed and will be reviewed. Judge states he is aware that not every word of a witness' testimony can be in his notes.		
10:12:53 AM	Objection - asked and answered Note: Mahoney, Brandy Objection is over ruled. Questioning continues.		
10:13:34 AM	Judge has heard testimony on Mr. Payne and that more information is "out there". Note: Mahoney, Brandy Sadler ranch hearing was referenced for giving a base for Mr. Payne and his knowledge		
10:18:26 AM	Mr. O'Connor asks court to view exhibit 249, B.S.1454		

10:21:03 AM	Mr.O'Connor asks court to view exhibit 259, B.S. 1906
10:22:25 AM	Mr.O'Connor asks court to view exhibit 289
10:23:41 AM	Court is in Recess
10:25:53 AM	Session Paused
10:44:15 AM	Session Resumed
10:44:31 AM	All participants are present and court is continuing for Venturacci
10:45:00 AM	Mr.O'Connor asks court to turn to exhibit 266
	Note: Mahoney, Brandy B.S. 2126
10:50:40 AM	Mr.O'Connor switches his line of questioning to the individual Ranches
	Note: Mahoney, Brandy Started with Thomson Ranch
10:53:49 AM	Mr.O'Connor asks court to view exhibit 257, page 4, B.S. 1794
	Note: Mahoney, Brandy Mr.Thieel estimates that there was 1,636 irrigated acres for Thomson Ranch
10:59:31 AM	Mr.O'Connor asks court to view exhibit 188 (GLO Map)
11:02:01 AM	Mr.O'Connor asks court to view exhibit 192
	Note: Mahoney, Brandy B.S. 1011 is read aloud by Mr. Thieel.
11:04:34 AM	Mr.O'Connor asks court to view exhibit 192, page 973
11:05:45 AM	Mr.O'Connor asks court to view exhibit 192, B.S. 986
	Note: Mahoney, Brandy Notes used to create GLO Map.
11:09:53 AM	Mr.O'Connor asks court to view exhibit 187
	Note: Mahoney, Brandy Sections 3,4,9,10 have a common section
11:14:24 AM	Mr.O'Connor asks court to view exhibit 141
	Note: Mahoney, Brandy This exhibit was also discussed with Mrs. Morrison. Both witness' agree springs were dammed up to create a lake
11:20:29 AM	Mr.O'Connor asks court to view exhibit 297, pages 63 - 65, B.S. 0399
11:29:48 AM	Mr.O'Connor switches questioning to acreage
	Note: Mahoney, Brandy Mr.O'Connor asks court to view exhibit Exhibit 86
11:33:17 AM	Objection - leading
	Note: Mahoney, Brandy Sustained
11:33:51 AM	Mr.O'Connor asks court to view exhibits 216 - 219
11:40:10 AM	Mr.O'Connor asks court to view exhibit 254, B.S. 1749
	Note: Mahoney, Brandy Mr. Theeil is asked to describe what is in the photo
11:40:46 AM	Objection - no foundation to time frame of the photo
	Note: Mahoney, Brandy Sustained. Judge allows Mr.Theeil to describe what is in the photo
11:42:35 AM	Mr.O'Connor asks court to view exhibit 1761
	Note: Mahoney, Brandy Mr.Thieel to describe what is in the photo....it is a hay stack
11:43:13 AM	Objection - no foundation to time frame of the photo
	Note: Mahoney, Brandy Judge allows Mr.Theeil to describe what is in the photo
11:45:26 AM	Mr.O'Connor asks court to view exhibit 281
	Note: Mahoney, Brandy Mr.Thieel is asked what the map describes. Map describes the total number of acres listed on the Thompson Ranch inside the fence. B.S. 3587 is also referenced.
11:52:31 AM	Mrs. Peterson seeks for clarification on land acres for Thompson Ranch
	Note: Mahoney, Brandy Thompson Ranch - 1,636 minimum acreage according to Mr. Thieels findings
11:53:41 AM	Court is in Recess
	Note: Mahoney, Brandy To return around 1:15
11:55:38 AM	Session Paused
1:12:55 PM	Session Resumed
1:13:06 PM	Court back in-session; Mr. Thieel is still on the stand; Attendance motified
	Note: Mahoney, Brandy Mr. O'Connor, Mr. Venturacci, Mr. Tibbitts, Mrs.Petterson and Mr. Thieel are present in the court room. D. Taylor, Jared McCrum and James Bolotin are present via Zoom.
1:14:45 PM	Mr.O'Connor is continting to question Mr.Thieel

1:17:03 PM Mr.O'Connor asks court to view exhibit 232

1:20:24 PM Mr.O'Connor asks court to view exhibit 297, page 39

1:24:19 PM Mr.O'Connor asks court to view exhibit 186
Note: Mahoney, Brandy Cox Ranch - 320 acres according to patten maps

1:26:35 PM Mr.O'Connor asks court to view exhibit 194 - 196, B.S. 1076

1:31:11 PM Mr.O'Connor asks court to view exhibit 249, B.S. 1462 & 1463

1:35:42 PM Mr.O'Connor asks court to view exhibit 215

1:37:26 PM Mr.O'Connor asks court to view exhibit 231
Note: Mahoney, Brandy Cox Ranch - 340 acers according to Mr. Thieels findings

1:43:04 PM Mr.O'Connor asks court to view exhibit 8
Note: Mahoney, Brandy Willow Field

1:45:41 PM Mr.O'Connor asks court to view exhibit 199

1:49:43 PM Mr.O'Connor asks court to view exhibit 214

1:51:18 PM Mr.O'Connor asks court to view exhibit 258, B.S. 1889

1:55:56 PM Mr.O'Connor asks court to view exhibit 297, page 45

1:56:48 PM Objection by Mrs.Peterson - leading the witness
Note: Mahoney, Brandy Judge requires the question to be rephrased.

1:57:38 PM Mr.O'Connor asks court to view exhibit 297, page 47 & 48
Note: Mahoney, Brandy Willow Field - 133 acres according to Mr. Thieels findings

2:00:52 PM Mr.O'Connor asks court to view exhibit 184, Sections 9, 10, and 15
Note: Mahoney, Brandy Rock Field Ranch

2:04:03 PM Mr.O'Connor asks court to view exhibit 199

2:05:06 PM Mr.O'Connor asks court to view exhibit 213

2:07:04 PM Mr.O'Connor asks court to view exhibit 297, page 51
Note: Mahoney, Brandy Rock Field Ranch - 166.64 acres according to Mr. Thieels findings

2:08:18 PM Mr.O'Connor asks court to view exhibit 259
Note: Mahoney, Brandy Box Springs Ranch / Mr. Thieel refers to this ranch as MAU Ranch

2:13:18 PM Mr.O'Connor asks court to view exhibit 249, B.S. 1456
Note: Mahoney, Brandy Additionally, B.S.1490 was referenced

2:16:14 PM Mr.O'Connor asks court to view exhibit 212
Note: Mahoney, Brandy Box Springs Ranch - 225.28 acreage according to ACP photo

2:19:31 PM Mr.O'Connor asks court to view exhibit 297, page 55
Note: Mahoney, Brandy Box Springs Ranch - 210 acres according to Mr. Thieels findings

2:21:35 PM Objection - various errors and change to the proofs/ trying to change entered report
Note: Mahoney, Brandy Objection sustained, examination continues.

2:23:27 PM Mr.O'Connor asks court to view page 59 in exhibit 297
Note: Mahoney, Brandy Stock water

2:26:49 PM Objection - inlarging proofs
Note: Mahoney, Brandy Judge Fairman is entertaining the agrument of counsel and her objection

2:27:36 PM Mr.O'Connor objects to Mrs.Peterson's continuous objections
Note: Mahoney, Brandy Judge tells Mr.O'Connor to continue

2:28:19 PM Mr. O'Connor asks Court to view exhibit 297, page 59

2:30:35 PM Mr. O'Connor asks Court to view exhibit 297, page 61

2:39:10 PM Court is in short recess.

2:39:22 PM Session Paused

2:58:24 PM Session Resumed

2:58:59 PM Judge recognizes all parties present and continues hearing.

2:59:20 PM Venturacci counsel rests. Eureka County counsel Mrs. Peterson starts cross examination.

3:00:56 PM Ms. Peterson hands out copies of exhibits to witness, opposing counsel and to Judge Fairman.
Note: Mahoney, Brandy Exhibits are Proof of Appropriation, 2nd amended Proof of Appropriation and 2 Records of Survey. Ms. Peterson reviews exhibits with the expert witness.

3:14:12 PM	Ms. Peterson asks to review Payne's Report in the evidence binder with witness. Note: Mahoney, Brandy	She directs court and witness to Baitstamp #2581
3:29:16 PM	Objection by opposing counsel: calls to speculation as to the reason. Note: Mahoney, Brandy	Objection overruled. Ms. Peterson continues cross-examination.
3:33:27 PM	Ms. Peterson reviews Box Spring Canyon in B. S. #2582 with expert witness.	
3:34:49 PM	Ms. Peterson reviews the Harold report in exhibit BB of the exhibit binder with Mr. Thiel. Note: Mahoney, Brandy	Parties review page 45, 49 and 56.
3:48:45 PM	Objection - relevance Note: Mahoney, Brandy	Judge gives Ms. Peterson a chance to respond. Judge allows Ms. Peterson to proceed.
3:53:40 PM	Ms. Peterson directs Mr. Thiel to his own report. Note: Mahoney, Brandy	References to page 297 in Mr. Thiel to his own report.
4:00:10 PM	Camera Lock Left Law Activated	
4:00:15 PM	Camera Lock Deactivated	
4:00:29 PM	Camera Lock Right Law Activated	
4:00:34 PM	Camera Lock Deactivated	
4:01:23 PM	Ms. Peterson hands out copies of Venturacci exhibit 220, B.S. #1124, 1126 and 1129.	
4:06:08 PM	Objection: relevance again. Note: Mahoney, Brandy	Ms. Peterson argues that Mr. Theil has testified prior. Judge Fairman overrules opposing counsel's objection and allows Ms. Peterson to continue with questioning.
4:10:00 PM	Objection: asked and answered. Note: Mahoney, Brandy	Judge Fairman notes that the document speaks for itself, objection is sustained.
4:15:14 PM	Mr. Thiel states that he usually wears hearing aids but doesn't have them today, and asks Ms. Peterson to speak louder.	
4:21:13 PM	Objection by Mr. O'Connor: miss-states what the document says. Note: Mahoney, Brandy	Objection sustained.
4:25:07 PM	Objection: vague questioning as to anyone else measuring Thompson springs and any time. Note: Mahoney, Brandy	Judge Fairman asks Ms. Peterson to tighten up the question.
4:35:32 PM	Ms. Peterson directs witness to refer to the binder passed out by the Venturacci counsel. Note: Mahoney, Brandy	Parties review exhibit #86 regarding the Dewey Patents.
4:42:09 PM	Objection: vague as to what map. Note: Mahoney, Brandy	Ms. Peterson states what map.
4:44:01 PM	Judge breaks for evening recess.	
4:44:28 PM	Session Paused	
4:47:11 PM	Session Resumed	
4:47:17 PM	Session Ended	

Date:	Type:	Location:	Department:
11/4/2021		Courtroom 1	
Event Time	Log Event		
8:39:07 AM	Session Started		
8:39:10 AM	Session Paused		
8:39:12 AM	Session Resumed		
8:39:13 AM	Preseat: Honorable Judge Fairman presiding.		
	Note: Mahoney, Brandy	In attendance: Tim O'Conner (Venturacci counsel), Daniel Venturacci, Karen Peterson (Eureka County counsel), Jake Tibbitts (Representing Eureka County), James Bolotin (Deputy AG), Micheline Fairbank (AG party), Jared McCrum AG party), Nicholas Tovar (T&T), G. Thiel (expert witness).	
8:39:22 AM	Session Paused		
9:06:31 AM	Session Resumed		
9:07:21 AM	Court recognizes all parties present in the Courtroom and via zoom regaring CV 2002-009.		
	Note: Mahoney, Brandy	Judge Fairman continues hearing.	
9:08:24 AM	Ms. Peterson continues examination of Mr. Thiel.		
	Note: Mahoney, Brandy	Ms. Peterson hands out copies of Venturacci #3 exhibit to all parties and reviews maps filed by Mr. Thiel.	
9:14:42 AM	Objection: Documents speak for themselves.		
	Note: Mahoney, Brandy	Objection sustained. Ms. Peterson continues with questioning.	
9:16:15 AM	Ms. Peterson hands out copies of Venturacci #10, 12, 14, 16 exhibits to all parties.		
	Note: Mahoney, Brandy	Counsel reviews Proofs of Appropriation with Mr. Thiel.	
9:21:00 AM	Objection: Counsel is testifying and not asking questions.		
	Note: Mahoney, Brandy	Objection sustained.	
9:21:44 AM	Mr. O'Connor objects: counsel is reading the document as evidence.		
	Note: Mahoney, Brandy	Judge states he will let that go and Ms. Peterson continues examination.	
9:22:31 AM	Ms. Peterson directs witness to open Eureka County exhibit binder to exhibit W.		
9:32:39 AM	Objection: opposing counsel is reading a document that's already in record instead of asking questions.		
	Note: Mahoney, Brandy	Objection sustained. Examination continues.	
9:35:11 AM	Objection: EC is limited to discussion of map because final order states Eureka County did not believe the map was accurate.		
	Note: Mahoney, Brandy	Ms. Peterson responds. Judge allows examination of the map. Judge Fairman allows Eureka County to proceed.	
9:38:19 AM	Objection: counsel is reading evidence instead of asking questions.		
	Note: Mahoney, Brandy	Overruled, hearing continues.	
9:40:31 AM	Mr. O'Connor objects: irrelavence, opposing counsel is discussing a map that wasn't accepted in the final order.		
	Note: Mahoney, Brandy	Ms. Peterson disagrees with objection, Objection is sustained. Ms. Peterson continues.	
9:47:42 AM	Objection: not found in final order. Counsel is not allowed to go outside the scope of the final order.		
	Note: Mahoney, Brandy	Ms. Peterson responds, Judge Fairman allows Eureka County counsel to continue examination.	
9:52:18 AM	Ms. Peterson directs Mr. Thiel to pages 21-23, 27-30.		
9:56:52 AM	Mr. O'Connor objects: counsel is again reading statements into record instead of questioning.		
	Note: Mahoney, Brandy	Judge agrees. Allows Ms. Peterson to continue with the intention of having follow up questions.	
10:11:29 AM	Counsel directs witness to exhibit photo #14, page 40 and discusses with witness.		

10:14:05 AM	Mr. O'Connor objects: irrelevant. Note: Mahoney, Brandy	Objection overruled.
10:16:09 AM	Counsel directs witness to exhibit CC and has him read to himself.	
10:19:58 AM	Objection to line of questioning. Note: Mahoney, Brandy	Judge states he has an interest regarding what Mr. Thiel's agreements and disagreements.
10:24:04 AM	Objection to questioning. Note: Mahoney, Brandy	Judge asks Ms. Peterson to tighten up the questioning.
10:24:35 AM	Another objection to questioning. Note: Mahoney, Brandy	Ms. Peterson tightens up her questioning. Directs witness to Exhibit FF.
10:28:23 AM	Objection: counsel is testifying. Note: Mahoney, Brandy	Judge Fairman agrees.
10:33:48 AM	Counsel directs Mr. Thiel to page 13 and the last paragraph of said page.	
10:39:47 AM	Objection: asked and answered. Note: Mahoney, Brandy	Objection sustained.
10:41:54 AM	Objection: mischaracterizing the testimony. Note: Mahoney, Brandy	Objection sustained.
10:43:21 AM	Counsel directs Mr. Thiel to page 17 and has him silently read it.	
10:46:15 AM	Counsel directs witness to exhibit binder.	
10:46:44 AM	Session Paused	
11:12:38 AM	Session Resumed	
11:12:49 AM	Judge Fairman states we're back on the record and everyone is in attendance. Hearing continues.	
11:13:16 AM	Ms. Peterson directs the witness to exhibit A of the Eureka County exhibit binder. Note: Mahoney, Brandy	Excerpts of the Order of Determinaton, not entire exhibit,
11:16:35 AM	Objection: opposing counsel is testifying. Note: Mahoney, Brandy	Objection sustained.
11:25:58 AM	Objection: relevance Note: Mahoney, Brandy	Ms. Peterson replies to objection. Mr O'Conner responds. Judge Fairman concludes the objection is sustained.
11:28:33 AM	Ms. Peterson is referencing to Mr, Thiel's testimony from yesterday.	
11:32:43 AM	Objection: compound question Note: Mahoney, Brandy	Objection sustained. Judge asks Ms. Peterson to break up her questioning.
11:38:27 AM	Ms. Peterson has some clarification questions pertaining to Exhibits in the Venturacci binder. Note: Mahoney, Brandy	Counsel starts with exhibit #192, Bait stamp #973 then to Bait stamp #1076.
11:47:11 AM	Ms. Peterson has Mr. Thiel to exhibits #216-219, Bait stamped #1117 and discusses content of the map.	
11:51:58 AM	Ms. Peterson directs witness to exhibit #254, 258.	
11:54:37 AM	Objection: relevance. Note: Mahoney, Brandy	Ms, Peterson responds. Judge states there is some relevance for the questioning.and allows Ms. Peterson continues.
11:59:50 AM	Objection: mischaracterizes the testimony Note: Mahoney, Brandy	Objection sustained,
12:06:28 PM	Eureka County rests.	
12:06:44 PM	Court is in recess for lunch.	
12:07:00 PM	Session Paused	
1:06:53 PM	Session Resumed	
1:07:20 PM	Court recognizes the presence of all parties. Cross examination of Mr. Thiel by Counsel Mr. O'Connor starts.	
1:13:15 PM	Mr. O'Connor directs witness to open the Eureka County exhibit binder to exhibit BB regarding the Harold Report. Note: Mahoney, Brandy	Counsel directs Mr. Thiel to page 56.

1:16:17 PM Objection by Ms, Peterson: vague as to time frame.
Note: Mahoney, Brandy Mr. O'Connor clarifies year.

1:32:04 PM Judge takes a moment to ask the witness on clarification of one of his response.

1:33:24 PM Mr. O'Connor asks witness to take out exhibit #220 that Eureka County handed out earlier.

1:39:14 PM Counsel directs court to exhibit #12.

1:41:34 PM O'Connor directs court exhibit #16

1:43:47 PM Counsel directs court to exhibit C of the Eureka County binder.

1:47:14 PM Objection: no foundation
Note: Mahoney, Brandy Judge gives counsel change to rephrase.

1:49:04 PM Mr. O'Connor directs witness to evidence binder.
Note: Mahoney, Brandy Exhibit W on page 22.

2:06:15 PM Judge Fairman clarifying a few questions.

2:12:51 PM Objection: no foundation laid for questioning,
Note: Mahoney, Brandy Judge gives counsel a chance to rephrase.

2:16:41 PM Mr. O'Connor hands out maps, portion of exhibit, not a complete exhibit.
Note: Mahoney, Brandy Ms. Peterson objects. Outside the scope of her cross-examination.
Judge states to Ms. Peterson that she will have a chance to cross examine.

2:20:40 PM Mr. O'Connor directs witness to pull out exhibit #2 that was providing by the Eureka County

2:26:50 PM Objection: record speaks for itself.
Note: Mahoney, Brandy Judge will wait to hear an answer to the question.

2:27:40 PM Objection: ask and answer.

2:36:12 PM Object: ask and answer.
Note: Mahoney, Brandy Judge overruled. Witness examination continues.

2:39:06 PM Court take a short recess.

2:39:23 PM Session Paused

2:57:03 PM Session Resumed

2:57:37 PM Ms. Peterson start recross-examination.
Note: Mahoney, Brandy Ms. Peterson directs the witness to exhibit V-2 and reviews Taft Springs.

3:07:40 PM Objection: relevance and vague.
Note: Mahoney, Brandy Judge will allow witness to answer.

3:14:04 PM Ms. Peterson has no further questions. The expert witness is excused.

3:14:47 PM There are no further witnesses. Judge Fairman gives both parties 10 minutes to review their closing statements.

3:15:21 PM Session Paused

3:27:12 PM Session Resumed

3:28:08 PM Judge Fairman notes all parties are in attendance.

3:29:32 PM Mr. O'Connor begins his closing arguments on behalf of Venturacci.

3:58:25 PM Brief pause, zoom lost connection.

3:58:51 PM Mr. O'Connor resumes his closing arguments.

5:01:50 PM Mr. O'Conner rests.

5:02:29 PM evidentiary portion and oral arguments rests.

5:06:54 PM Let the record reflect all parties to file their briefs by January 19th, 2022.

5:08:34 PM Court is in recess.

5:10:45 PM Session Paused

5:14:36 PM Session Ended

Date:	Type:	Location:	Department:
12/7/2021		Courtroom 1	
Event Time	Log Event		
1:18:28 PM	Session Started		
1:18:30 PM	Attendance via Zoom		
	Note: Mahoney, Brandy	Judge Fairman; Alex Flangas & August Hotchkin from Kaempfer Crowell; Ian Carr & James Bolotin from the Attorney Generals Office; Karen Peterson & Jake Tibbitts from Eureka County; Tammy Thiel, Tim O'Connor, David Rigdon from Taggart and Taggart; and Gordon DePaoli from Woodburn and Wedge	
1:18:40 PM	Session Paused		
1:27:24 PM	Session Resumed		
1:27:59 PM	Court in Session		
1:28:15 PM	Honorable Judge D. Fairman is present and begins court		
	Note: Mahoney, Brandy	Judge Fairman goes over the most current documents submitted	
1:31:45 PM	Judge Fairman goes over who is present and to which parties they belong		
1:33:16 PM	Judge Fairman asks to have each party to summarize their arguments		
1:33:45 PM	Judge Fairman allows Alex Flangas to state their argument		
	Note: Mahoney, Brandy	Mr. Flangas & Mr. Hotchkin represent Solarljós	
1:51:09 PM	Judge Fairman allows Mr. O'Connor to state their argument		
	Note: Mahoney, Brandy	Mr. O'Connor represents the Venturacci's	
1:54:49 PM	Judge Fairman allows Tammy Thiel to state their argument		
	Note: Mahoney, Brandy	Mrs. Thiel represents the Renner's	
2:00:20 PM	Judge Fairman allows David Rigdon to state their argument		
	Note: Mahoney, Brandy	Mr. Rigdon represents Sadler Ranch	
2:02:15 PM	Judge Fairman allows Gordon DePaoli to state their argument		
	Note: Mahoney, Brandy	Mr. DePaoli represents the Bailey's	
2:04:20 PM	Judge Fairman allows James Bolotin to state their argument		
	Note: Mahoney, Brandy	Mr. Bolotin & Mr. Carr represent Nevada State Engineer's Office	
2:08:46 PM	Judge Fairman allows Karen Peterson to state their argument		
	Note: Mahoney, Brandy	Mrs. Peterson & Mr. Tibbitts represent Eureka County	
2:13:30 PM	Judge Fairman allows Mr. Flangas to reply		
	Note: Mahoney, Brandy	Mr. Flangas addresses Mrs. Peterson	
2:18:56 PM	Mrs. Thiel addresses the Court		
2:19:41 PM	Court is in Recess		
2:20:11 PM	Session Paused		
2:20:29 PM	Session Ended		



Eureka County Clerk Recorder

Lisa Hoehne

February 24, 2022

Elizabeth Brown
Clerk of the Supreme Court
Capitol Complex
201 S. Carson Street
Carson City, NV 89701

RE: CV-2002-009, Dept. 02

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

Dear Clerk of the Supreme Court,

Please see appeal packet that was filed by the Appellant in District Court on Feb 16th, 2022.

Please contact me if you have any questions or concerns. Thank you and have a nice day.

Sincerely,

Brandy Mahoney
Deputy Clerk Recorder
7th Judicial District Court