

IN THE SUPREME COURT OF THE STATE OF NEVADA

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 10-153,
EUREKA AND ELKO COUNTIES,
NEVADA.

THE STATE OF NEVADA
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES,
DIVISION OF WATER RESOURCES;
and ADAM SULLIVAN, P.E., STATE
ENGINEER,

Appellants,

vs.

SOLARLJOS, LLC; DANIEL S.
VENTURACCI; AMANDA L.
VENTURACCI; CHAD D. BLISS;
ROSIE J. BLISS; WILFRED BAILEY
AND CAROLYN BAILEY, TRUSTEES
OF THE WILFRED AND CAROLYN
BAILEY FAMILY TRUST DATED
FEBRUARY 20, 2018; EUREKA
COUNTY; JAMES E. BAUMANN;
VERA L. BAUMANN; NORMAN C.
FITZWATER; KINDY L. FITZWATER;
ARC DOME PARTNERS, LLC;
ROBERT F. BECK AND KAREN A.
BECK, TRUSTEES OF THE BECK
FAMILY TRUST DATED APRIL 1,
2005; IRA R. RENNER; MONTIRA
RENNER; SADLER RANCH, LLC;

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Feb 25 2022 11:09 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 84275

District Court Case No. CV-2002009

MW CATTLE, LLC; UNITED STATES
DEPARTMENT OF INTERIOR,
BUREAU OF LAND MANAGEMENT;
PETER GOICOECHEA; and GLADY
GOICOECHEA,

Respondents.

**EMERGENCY MOTION UNDER NRAP 27(e)
FOR STAY OF DISTRICT COURT’S CORRECTED ORDER GRANTING
SOLARLJOS, LLC’S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND STAY OF ADJUDICATION PROCEEDINGS PENDING APPEAL
AND REQUEST FOR TEMPORARY STAY PENDING DECISION ON
UNDERLYING MOTION FOR STAY**

IMMEDIATE ACTION REQUESTED

Appellant, the State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, and Adam Sullivan, P.E., in his capacity as the Nevada State Engineer (hereafter “State Engineer”), by and through counsel, Nevada Attorney General Aaron D. Ford, Senior Deputy Attorney General James N. Bolotin, and Deputy Attorney General Ian Carr hereby files this Motion requesting a stay of the district court’s corrected order granting Solarljios, LLC’s motion for partial summary judgment (“Order Granting Partial Summary Judgment”) and requesting a stay of the adjudication proceedings as a whole pending this appeal on an emergency basis. This Motion is based upon the following points and authorities, and all pleadings and papers on file in this case.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND FOR STAY REQUEST

The underlying appeal in this case stems from an interlocutory order 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 (hereafter the “Diamond Valley Adjudication”). In Nevada, water law proceedings, particularly those related to adjudications, are “special in character, and the provisions of such law not only lay down the method of procedure but strictly limits it to that provided.” *Application of Filippini*, 66 Nev. 17, 27, 202 P.2d 535, 540 (1949). In adjudication proceedings, all parties filing claims and exceptions during the adjudication process are considered adverse. *In re Water Rights in Silver Creek and its Tributaries, in Lander Cty.*, 57 Nev. 232, 61 P.2d 987, 989 (1936) (“all claimants or water users in an adjudication proceeding under the act are adverse”). However, the State Engineer’s role is more akin to a special master or referee, who compiles and files the Order of Determination, rather than a party who is adverse to the interests of the claimants/water users. *See Pitt v. Scrugham*, 44 Nev. 418, 195 P. 1101, 1104 (1921) (“the state engineer and district courts are to act as co—ordinate agencies to effect, with the least possible expense, a speedy determination, for administrative purposes, of the relative rights of various claimants to the waters of

a stream or stream system, in order to make water do its full duty; that it may not be wasted, and that it shall be employed to the fullest extent. Since the state engineer in the instant case, as an administrative officer, was only proceeding to do what the court might require him to do in the Anker Case, the averments of the complaint relative to its pendency furnish no ground for injunctive relief”) (emphasis added); *see also* James H. Davenport, *Nevada Water Law* (2003) at 106–107.

The State Engineer on numerous occasions reiterated what he believes to be his proper role in the adjudication process, including as early as April 27, 2020, in his Notice to the Court (*see* Exhibit 1) and during a status conference held on the record on August 25, 2020.¹ This position was reiterated over the course of the adjudication, and seemingly confirmed by the district court. *See, e.g.*, State Engineer’s Limited Non-Opposition to Eureka County’s Motion Regarding Scope of Hearing, p. 2, attached hereto as Exhibit 2; State Engineer’s Pre-Trial Brief for the Hearing on Exceptions filed by Sadler Ranch and MW Cattle, attached hereto as Exhibit 3; and Order Granting Eureka County’s Motion to Intervene, p. 10, attached hereto as Exhibit 4.

Despite these facts and controlling law, the district court rejected the State Engineer’s arguments against Solarljós, LLC’s NRCP 54(b) motion seeking to

¹ The State Engineer is in the process of obtaining a transcript from the August 25, 2020, hearing.

certify as final the Order Granting Partial Summary Judgment. *See* Order Granting Solarljios, LLC's Motion for Certification of Judgment on Solarljios, LLC's Exception in this Adjudication Proceeding, attached hereto as Exhibit 5; *see also* State Engineer's Response to Solarljios LLC's Request/Motion for Certification of Summary Judgment Pursuant to NRCP 54(b), attached hereto as Exhibit 6. Furthermore, despite the State Engineer's unique role and the special character of the procedure in adjudication proceedings under NRS Chapter 533, the district court permitted discovery and dispositive motion practice in these proceedings despite the absence of any applicable procedure prescribed by NRS Chapter 533. NRS 533.170(2) states that no other pleadings should be filed in the cause besides the Order of Determination and exceptions thereto. NRS 533.170(3) requires that a hearing be held even if no exceptions are filed, and NRS 533.170(4) requires that parties who filed exceptions shall have those heard at the time set for hearing "until such exceptions are disposed of." The only provision regarding depositions in the adjudication statutes is NRS 533.150, and that is related to State Engineer's evidence gathering process in hearing objections to the preliminary order of determination.

While NRS 533.170(5) states that the hearing on exceptions to the order of determination, and testimony taken thereunder, "shall be as nearly as may be in accordance with the Nevada Rules of Civil Procedure," this does not mean that the

entire adjudication must adhere to all aspects of standard civil practice, as that would render much of NRS 533.087 through NRS 533.320, as well as the previously cited portions of *Application of Filippini*, meaningless.² In fact, in response to Solarljós, LLC’s NRCP 54(b) motion, the State Engineer argued that NRCP 54(b) should not be applied to adjudications at all. *See* Exhibit 6.

Thus, the State Engineer believes that the district court has erred through its imposed procedure throughout this adjudication, as illustrated in the now appealable Order Granting Partial Summary Judgment for Solarljós, LLC. Further, the State Engineer simultaneously files a Motion with this Court to determine whether NRCP 54(b) certification was appropriately granted by the district court pursuant to *Fernandez v. Infusaid Corp.*, 110 Nev. 187, 871 P.2d 292 (1994).

The State Engineer is especially troubled that the district court granted Solarljós’s partial motion for summary judgment, at least in part, on the basis that “no oppositions were filed to Solarljós’ Motion for Partial Summary Judgment” despite the State Engineer’s unique role in these proceedings and repeated position on the record and in filings that the Order of Determination and evidence filed therewith stand on their own merits and that the State Engineer is here to assist the district court. *See* Order Granting Partial Summary Judgment, p. 1, ll. 15–17;

² Nevada courts endeavor to interpret statutes as a whole, so as not to render any provisions superfluous or nugatory. *See Rural Tel. Co. v. PUCN*, 133 Nev. 387, 389, 398 P.3d 909, 911 (2017) (internal citation omitted).

see also Exhibit 2, p. 2; Exhibit 3. The district court also subsequently indicated that it “overturned” the State Engineer’s Order of Determination because “the State Engineer based his decision on evidence that was never made part of the record.” *See* Exhibit 5, p. 4, ll. 18–20. This is despite the State Engineer’s clear compliance with NRS 533.165(1) thus making the Order of Determination, “together with the copies of the original evidence and transcript of testimony filed with, or taken before, the State Engineer, duly certified by the State Engineer” part of the court’s record for purposes of this proceeding. This presented a clear fact issue.

Lastly, the State Engineer remains concerned that, in his reading, the law requires, after the hearing on exceptions, a single decree affirming or modifying the State Engineer’s Order of Determination. NRS 533.185(1). The State Engineer maintains that all claims asserted in an adjudication are so closely related that the Nevada Supreme Court is now tasked with deciding important issues still pending in the district court, and there are also significant logistical challenges associated with the district court issuing essentially separate “miniature” decrees given the State Engineer’s role as an officer of the district court in distributing the water of Diamond Valley “pursuant to the order of determination or under and pursuant to the decree of the court.” NRS 533.220(1).

For these reasons, the State Engineer respectfully requests a stay of the Order Granting Partial Summary Judgment as well as a stay of the entirety of the

district court adjudication proceedings to get clarification on these issues from this Court.³ This stay will prevent the district court and all parties from expending additional time and resources on the adjudication proceedings that are potentially subject to reversal.

The State Engineer requests immediate action on this Emergency Motion because Solarljós, LLC, based on the Order Granting Partial Summary Judgment, could start immediately making use of water that exceeds that granted in the Order of Determination, which was awarded through the procedures the State Engineer

³ The State Engineer sought this relief first in the district court, and such relief was denied in an order entered February 24, 2022. *See* District Court’s Order Denying State Engineer’s Motion for Stay of Corrected Order Granting Solarljós, LLC’s Motion for Partial Summary Judgment Pending Appeal; Order Denying Motion for Stay of Entirety of These Adjudication Proceedings Pending Appeal (“Order Denying Motion for Stay”), attached hereto as Exhibit 7. The district court now states it is going to issue a single decree moving forward, as opposed to separate decrees as it did for Solarljós, LLC. Exhibit 7, pp. 8–9. However, the district court again states that “if no discovery were allowed, the evidentiary hearing under NRS 533.170 would be relegated to trial by ambush.” *Id.*, p. 6. This conflicts with the plain language of NRS 533.170 that requires exceptions to the Order of Determination to be filed a mere 5 days before the hearing on exceptions, and is indicative of the State Engineer’s concerns with the procedures used at the district court. Further, the State Engineer did not waive his procedural arguments as he made them known to the district court and all parties at a hearing held on August 25, 2020, prior to the issuance of the district court’s December 10, 2020, order regarding case procedures. Lastly, while the State Engineer does not waive his argument that dispositive motions are inappropriate in statutory adjudication proceedings, the motion for summary judgment at issue in *In re Determination of Relative Rights in and to Waters of Franktown Creek, Washoe Cty.*, was filed by Marlette Lake Company and opposed and appealed by Franktown Creek Irrigation Company, Inc., 77 Nev. 348, 350, 364 P.2d 1069, 1071 (1961). That was a dispositive motion between adverse water users, not a unilateral dispositive motion against the State Engineer’s Order of Determination. *Id.*

challenges in his appeal. Further, there are upcoming hearings on other exceptions scheduled for March 3–4, 2022, March 8–10, 2022, and continuing for 2 to 3 days each week through the second to last week of April 2022. These upcoming hearings threaten to compound the procedural concerns that the State Engineer raises in this appeal. Further, the district court’s order denying the State Engineer’s Motion for Stay brings into direct question what the State Engineer’s role should be in these upcoming hearings. *See* Exhibit 7.

II. ARGUMENT

A. This Court Should Stay the Operation of the Order Granting Partial Summary Judgment to Solarljøs, LLC and Should Stay the Diamond Valley Adjudication Pending Appeal

The State Engineer seeks to preserve the status quo as set out in his Order of Determination during the pendency of this appeal, while also seeking to reserve the resources of the parties and the district court while he seeks clarification from the Supreme Court on the procedures utilized in this adjudication for all claimants that resulted in the appealed order specifically related to Solarljøs, LLC, pursuant to NRAP 8.

In this case, the first factor regarding the potential defeat of the object of the State Engineer’s appeal should hold substantial weight. NRAP 8(c)(1). “Water in Nevada belongs to the public and is a precious and increasingly scarce resource.” *Bacher v. State Eng’r*, 122 Nev. 1110, 1116, 146 P.3d 793, 797 (2006). The State

Engineer and his office put decades of effort into this adjudication, culminating in his Order of Determination quantifying the prestatutory vested water claims in Diamond Valley and their associated dates of priority. As is apparent from prior litigation in this area, Diamond Valley is one of the most overappropriated and overpumped groundwater basins in the State. *See, e.g., Diamond Nat. Res. Prot. & Conservation Ass'n, et al. v. Diamond Valley Ranch, LLC, et al.*, Nevada Supreme Court Case No. 81224. In addition to the district court's Order Granting Partial Summary Judgment thereby approving Solarljøs, LLC's exceptions to the Order of Determination, there are other hearings on exceptions that have been completed, and others that are scheduled to occur imminently.

This appeal seeks to maintain the status quo (*i.e.*, distribution of water pursuant to the Order of Determination) while this Court reviews the district court's Order Granting Partial Summary Judgment and the procedures used to reach that point. If this stay is denied, the object of the State Engineer's appeal will be defeated as the State's scarce water resources will be distributed to Solarljøs, LLC in contravention of the State Engineer's Order of Determination and despite the State Engineer's concerns that the district court used improper procedures to grant their exception. Further, the other proceedings in this adjudication have utilized an identical procedure, and therefore to the extent the State Engineer's appeal is successful, these errors could be compounded should

this adjudication continue to move forward at the district court while this appeal is pending. While the district court ultimately disagreed with the State Engineer's Order of Determination and granted Solarljós, LLC's exception, the State Engineer respectfully requests that this Court stay that order as well as the entirety of these adjudication proceedings so that water can continue to be divided pursuant to the Order of Determination while this appeal is pending; otherwise, the object of the appeal will be defeated.

Furthermore, the State Engineer and the State of Nevada as a whole will suffer serious, potentially irreparable, harm should this stay not issue. First, without a stay, should the Supreme Court ultimately reverse the district court's order and direct the district court to alter its procedure moving forward with the adjudication, Solarljós, LLC could make use of the scarce water of Diamond Valley in excess of their right to do so. Second, this potentially irreparable harm to the State of Nevada could be compounded should the district court continue to rule on now-submitted exceptions or yet-to-be-heard exceptions, all of which have followed the same procedures that the State Engineer now challenges on appeal. The water of all sources of supply within the boundaries of the State of Nevada belongs to the public, and the citizens of this State risk being irreparably harmed if these waters are distributed incorrectly.

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Conversely, Solarljós, LLC and the other claimants in this adjudication will not suffer serious or irreparable harm if this stay is granted. There is no irreparable harm caused by waiting a short time longer to receive clarification from the Nevada Supreme Court, especially considering that these adjudication proceedings have been going, off and on, since 1982, and no parties to this adjudication requested that the operation of the Order of Determination be stayed pursuant to NRS 533.235. *See* Order of Determination, p. 4. The Nevada Supreme Court has held that delays or increased costs do not constitute irreparable harm. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004). Should the State Engineer not succeed on appeal, then Solarljós, LLC can use the water to which it would then be entitled, and in the meantime can use its water pursuant to the Order of Determination. Thus, entering this stay would not result in serious or irreparable harm to any non-moving parties.

Lastly, regarding the likelihood of success on the merits, the Supreme Court has held that where the object of an appeal will be defeated if the stay is denied, a stay is generally warranted; however, “the party opposing the stay motion can defeat the motion by making a strong showing that appellate relief is unattainable” particularly where “the appeal appears frivolous or if the appellant apparently filed the stay motion purely for dilatory purposes.” *Id.*, 120 Nev. at 253, 89 P.3d at 40. Here, the water law is unique, such that it provides the State Engineer with a right

of appeal in water adjudications. NRS 533.200 (“Appeals from such decree may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution by the State Engineer...”). Further, the State Engineer is appealing the district court’s order, and seeking this stay, in good faith, seeking to ensure that the State’s water resources are used only to the extent that they were put to beneficial use prior to the adoption of Nevada’s water statutes.

In adjudications, “[t]he ultimate findings of the [S]tate [E]ngineer are entitled to great respect” and the State Engineer’s appeal will focus on his position that the district court has not treated his findings accordingly. *See Scossa v. Church*, 43 Nev. 407, 187 P. 1004, 1005 (1920). Additionally, the procedures laid down by the water law are “special in character, and the provisions of such law not only lay down the method of procedure but strictly limits it to that provided.” *See Application of Filippini*, 66 Nev. at 27, 202 P.2d at 540. The State Engineer’s appeal intends to argue that this adjudication has strayed from these mandatory provisions. Based on this, the State Engineer believes he has a high likelihood of success on the merits. In any event, this factor should not be given as much weight at this stage of the case as the others that clearly weigh in favor of this requested stay.

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III. CONCLUSION

Here, the State Engineer is appealing the district court's Order Granting Partial Summary Judgment, as certified final per the order granting Solarljós, LLC's NRCP 54(b) motion. However, the purpose of this appeal will be defeated if the operation of the Order of Determination is not enforced during the pendency of the appeal. It is also likely that the State Engineer, and the State of Nevada as a whole, will suffer serious, irreparable injury due to potential use of Nevada's water resources in excess of the parties' entitlements to do so, and that this error will likely be compounded as the additional determinations are made with respect to other claimant's vested claims. Therefore, and based on the foregoing, the State Engineer respectfully requests that this Court grant this Motion and stay both the order granting partial summary judgment and the entirety of the adjudication proceedings in Diamond Valley pending the State Engineer's appeal.

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Lastly, given the emergency nature of this Motion and aforementioned concerns regarding upcoming hearings and potential water use, the State Engineer respectfully requests a temporary administrative stay pending the briefing and decision on this Motion for Stay.

RESPECTFULLY SUBMITTED this 25th day of February, 2022.

AARON D. FORD
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NRAP 27(e) CERTIFICATE

I, James N. Bolotin, declare as follows:

1. I am currently employed by the Nevada Office of the Attorney General as a Senior Deputy Attorney General. I am counsel for Appellant named herein.

2. I verify that I have read the foregoing Emergency Motion Under NRAP 27(e) for Stay of District Court's Corrected Order Granting Solarljós, LLC's Motion for Partial Summary Judgment and Stay of Adjudication Proceedings Pending Appeal and Request for Temporary Stay Pending Decision on Underlying Motion for Stay ("Motion for Stay"), and that the same is true of my own knowledge, except for matters stated on information and belief, and as to those matters, I believe them to be true.

3. The facts showing the existence and nature of the emergency are set forth in the Motion for Stay. As described above, relief is needed as soon as possible to avoid defeating the purpose of the State Engineer's appeal and to avoid potentially irreparable harm to the State Engineer and the State of Nevada as a whole. There are additional hearings related to other portions of the adjudication scheduled starting next week on March 3, 2022, and therefore immediate action is requested.

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4. The relief sought in this Motion was presented to the district court in a motion filed with the district court February 9, 2022. The district court denied this relief, filing its order on February 24, 2022. The State Engineer is filing this Motion for Stay at the earliest possible time in light of these events.

5. I have made every practicable effort to notify the Supreme Court and other counsel in this case of the filing of this Motion. The State Engineer alerted other counsel to the filing of this Motion shortly before it was submitted for efilng. I also called the Clerk of Court's Office for the Nevada Supreme Court before filing. A courtesy copy was emailed to all parties.

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Executed this 25th day of February, 2022, in Carson City, Nevada.

/s/ James N. Bolotin
JAMES N. BOLOTIN (No. 13829)
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 25th day of February, 2022, I served a copy of the foregoing EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY OF DISTRICT COURT'S CORRECTED ORDER GRANTING SOLARLJOS, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND STAY OF ADJUDICATION PROCEEDINGS PENDING APPEAL AND REQUEST FOR TEMPORARY STAY PENDING DECISION ON UNDERLYING MOTION FOR STAY, by the Nevada Supreme Court's EFlex Electronic Filing System, addressed to:

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EXHIBIT 1

EXHIBIT 1

COPY

No. FILED

Case No. CV-2002009

APR 27 2020

Dept. No. 2

By: 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

NOTICE TO THE COURT

Tim Wilson, P.E., in his capacity as the Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Aaron D. Ford and Senior Deputy Attorney General James N. Bolotin, hereby submits this Notice to the Court. This Notice is based upon the attached Points and Authorities and the pleadings and papers on file herein.

POINTS AND AUTHORITIES

As noted by the Court in its Order¹ dated April 6, 2020, on February 12, 2020, the State Engineer filed his Order of Determination in the matter of determination of the relative rights in and to all water, both surface and underground, located within Diamond Valley, Hydrographic Basin No. 10-153, Eureka and Elko Counties, State of Nevada ("Order of Determination"). See Court's April 6, 2020, Order ("Court's Order"). When the State Engineer implements an order of determination, he and his assistants are acting as officers of the Court. *Bentley v. State, Office of State Eng'r*, 132 Nev. 946, 2016 WL 3856572,

¹ The State Engineer notes that he was not served with a copy of the Court's Order dated April 6, 2020, and respectfully requests that he be added to the service list for future orders and filings in this matter.

1 Docket Nos. 64773, 66303, 66932, filed July 14, 2016 (unpublished disposition) (citing
2 NRS 533.220). It is in this role as an officer of the Court that the State Engineer files the
3 instant Notice.

4 The Court's Order requires "all parties in interest who are aggrieved or dissatisfied
5 with the order of determination of the State Engineer" to "file with the clerk of the court a
6 notice of intent to file a notice of exception pursuant to NRS 533.170(1)" on or before May 1,
7 2020. Court's Order, p. 2. The Court issued this Order in an effort "to efficiently schedule
8 the necessary time for a hearing for each exception filed." *Id.* Once these exceptions are
9 filed, there are to be no other pleadings filed in the case. *See* NRS 533.170(2); *see also*
10 *Ruddell v. Sixth Jud. Dist. Ct.*, 54 Nev. 363, 17 P.2d 693, 695 (1933) ("The purpose of the
11 Water Law is perfectly obvious. It seeks not only to have the water rights adjudicated but
12 to have them adjudicated in such a proceeding as to terminate for all time litigation
13 between all such water users. If the petition of Taylor and others can be permitted, then
14 what is to prevent the filing at some future date further petitions by water users upon the
15 stream system? We can see no escape from the language of the law providing that 'there
16 shall be no other pleadings in the cause' than those therein provided for.").

17 In an effort to assist the Court in scheduling the hearing on exceptions, per
18 NRS 533.170(4), the State Engineer brings the following issues to the Court's attention.

19 First, in scheduling the hearing on exceptions, the State Engineer again emphasizes
20 his role as an officer of the Court. Additionally, the Court may "refer the case or any part
21 thereof for such further evidence to be taken by the State Engineer as it may direct, and
22 may require a further determination by the State Engineer, subject to the court's
23 instructions." NRS 533.180. As officers of the Court, the State Engineer and his assistants
24 hereby notify the Court of their availability to participate and/or assist as needed by the
25 Court in the upcoming hearing on exceptions. In maintaining its goal "to efficiently
26 schedule the necessary time for a hearing," the Court may wish to factor in additional time
27 for the hearing to the extent the State Engineer plays a role in that process.

28 ///

1 Second, the State Engineer hereby notifies the Court that, once the hearing on
2 exceptions is set, the State Engineer is required to mail a copy of the certified order of the
3 Court setting the hearing on exceptions by registered or certified mail to each party in
4 interest at the party's last known place of residence. NRS 533.165(6). Further, the State
5 Engineer is also required to cause the order of the Court setting the hearing "to be
6 published at least once a week for 4 consecutive weeks in some newspaper of general
7 circulation that is available in general circulation in each county in which such stream
8 system or any part thereof is located." *Id.* The State Engineer is required to file proof of
9 such service and publication with the clerk of the Court. *Id.*

10 The State Engineer fully intends to comply with the service and publication
11 requirements found in NRS 533.165(6). Therefore, the State Engineer hereby notifies the
12 Court that there is a possibility that there may be "parties in interest" who did not receive
13 the Court's Order but rather, for the first time, receive notice of the upcoming hearing on
14 exceptions through the service and publication actions taken by the State Engineer. These
15 potential "parties in interest" may also wish to file exceptions to the State Engineer's Order
16 of Determination. Therefore, the State Engineer hereby notifies the Court that it may also
17 be prudent to factor in extra time when scheduling the hearing on exceptions for purposes
18 of hearing any exceptions filed by parties in interest who receive notice of the upcoming
19 hearing through the service and publication actions taken by the State Engineer rather
20 than through receipt of the Court's Order.

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DATED this 23RD day of April, 2020.

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Attorney for Nevada State Engineer

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General,
and that on this 23rd day of April, 2020, I served a true and correct copy of the foregoing
NOTICE TO THE COURT, by placing said document in the U.S. Mail, postage prepaid,
addressed to:

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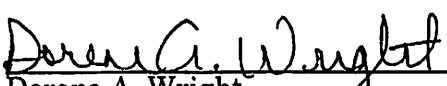

Dorene A. Wright

EXHIBIT 2

EXHIBIT 2

JUN 15 2021

By *Eureka County Clerk*

Case No. CV-2002009

Dept. No. 2

**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.

**STATE ENGINEER'S
LIMITED NON-OPPOSITION TO
EUREKA COUNTY'S MOTION
REGARDING SCOPE OF HEARING**

Adam Sullivan, P.E., in his capacity as the Acting Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Aaron D. Ford, Senior Deputy Attorney General James N. Bolotin, and Deputy Attorney General Ian E. Carr hereby files this Limited Non-Opposition to Eureka County's Motion Regarding Scope of Hearing. This Limited Non-Opposition is based upon the attached Points and Authorities and the pleadings and papers on file herein.

POINTS AND AUTHORITIES

On June 2, 2021, Eureka County, through its counsel, filed its Motion Regarding Scope of Hearing (hereafter "Motion"). Therein, Eureka County makes two requests of the Court. First, Eureka County requests clarification as to the scope of the hearing regarding the State Engineer's role in these proceedings, and specifically requests an order from this Court "having the State Engineer available for the hearings related to the exceptions filed by Sadler Ranch, LLC, Daniel S. Venturacci and Amanda L. Venturacci, Ira. R. Renner and Montira Renner, MW Cattle, LLC, Wilfred and Carolyn Bailey Family Trust and the United States and the pertinent portions of the Order of Determination related to those

1 claimants.” See Motion, p. 2. Second, Eureka County requests an order from this Court
2 that will permit Eureka County to “go outside the State Engineer’s record or
3 determinations in this proceeding so that the Court may ascertain additional information
4 with regard to self-inflicted harm and mitigation water rights,” pointing to a recent
5 unpublished decision from the Nevada Supreme Court. See Motion, pp. 2–5 (citing
6 *Eureka County v. Sadler Ranch, LLC, et al.*, 2021 WL 673468, Docket No. 75736, filed
7 February 19, 2021 (unpublished disposition)). The State Engineer takes no position on
8 either of these requests.

9 Specifically as to the first request regarding the scope of the hearings on exceptions
10 to the Order of Determination and the State Engineer’s availability at the hearings, this
11 Court previously opined on this issue in its Order Granting Eureka County’s Motions to
12 Intervene RE: Sadler Ranch, LLC, MW Cattle, LLC, Daniel S. Venturacci and Amanda L.
13 Venturacci, Ira R. Renner and Montira Renner, Wilfred and Carolyn Bailey Family Trust,
14 and United States’ Notices of Exceptions (hereafter, “Order Granting Eureka County’s
15 Motions to Intervene”) filed on March 16, 2021. In that Order, the Court noted that the
16 State Engineer had “affirmed his role as that of ‘an officer of the court’” who is “availab[le]
17 to participate and/or assist as needed by the court in the upcoming hearing on exceptions.”
18 See Order Granting Eureka County’s Motions to Intervene, p. 10. The Court went on to
19 state: “Thus the state engineer will only participate if requested by the court. No such
20 request has been made by the court. The state engineer will not be representing the
21 interests of Eureka County in this water rights determination case.” *Id.*

22 As a preliminary matter, it is the intent of the State Engineer to have one or both of
23 his undersigned counsel attending all hearings in this matter virtually, via Zoom, in the
24 event the Court requests the State Engineer’s participation in any portion of these
25 proceedings. The State Engineer does not oppose Eureka County’s request so long as the
26 State Engineer remains in his role of officer of the court and is not being asked to present
27 an affirmative case or be subject to discovery or cross-examination. The State Engineer
28 reiterates his role as an officer of the court in this proceeding and defers to the honorable

1 Court's discretion should it request the State Engineer's participation, in the role of a
2 special master, in the hearings identified by Eureka County.

3 Further, the State Engineer notes that while he is obviously intimately familiar with
4 the Order of Determination at the center of this proceeding, the Order of Determination
5 was issued by the prior State Engineer and was the culmination of work from a number of
6 staff members¹ at the Nevada Division of Water Resources. Therefore, to the extent the
7 Court does request the State Engineer's participation, it may not be the State Engineer
8 himself who is best suited to assist the Court, but rather one or more of his staff members,
9 contingent upon which aspect of the Order of Determination is in controversy and initiates
10 the Court's request for the State Engineer's participation. Advanced notice of the Court's
11 request, if made, is necessary to ensure that the appropriate personnel are available to
12 assist the Court if requested.

13 As to Eureka County's second request (that the Court issue an order permitting the
14 scope of the hearings related to the exceptions filed by Sadler Ranch, LLC, Daniel S.
15 Venturacci and Amanda L. Venturacci, Ira R. Renner and Montira Renner, MW Cattle,
16 LLC, Wilfred and Carolyn Bailey Family Trust and the United States to be expanded to
17 include consideration of "self-inflicted harm and mitigation water rights"), the State
18 Engineer takes no position on this request. See Motion, p. 5.

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27 ¹ The State Engineer also notes that the Order of Determination is the product of work occurring over
28 the course of many years. Accordingly, some, if not many, of the staff members who worked on this
adjudication up to and including the issuance of the Order of Determination are no longer employed by the
Division of Water Resources.

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DATED this 15th day of June, 2021.

By:

By: 
JAMES N. BOLOTIN (Bar No. 13840)
Senior Deputy Attorney General
IAN E. CARR (Bar No. 13840)

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 15th day of June, 2021, I served a true and correct copy of the foregoing STATE ENGINEER'S LIMITED NON-OPPOSITION TO EUREKA COUNTY'S MOTION REGARDING SCOPE OF HEARING, via Email, to:

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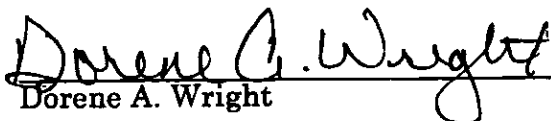

Dorene A. Wright

EXHIBIT 3

EXHIBIT 3



COPY

Case No. CV-2002009

NO. _____ FILED

Dept. No. 2

SEP 22 2021

By Eureka County Clerk
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.

**STATE ENGINEER'S
PRE-TRIAL BRIEF FOR THE
HEARING ON EXCEPTIONS FILED BY
SADLER RANCH AND MW CATTLE**

The State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, and Adam Sullivan, P.E., in his capacity as the Nevada State Engineer (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Aaron D. Ford, Senior Deputy Attorney General James N. Bolotin, and Deputy Attorney General Ian Carr, hereby files his Pre-Trial Brief ahead of the upcoming hearing on the Exceptions to the Order of Determination filed by Sadler Ranch, LLC ("Sadler") and MW Cattle, LLC ("MW Cattle"). This Pre-Trial Brief is filed in compliance with the Court's Pre-Trial Order dated August 18, 2021, and is based upon the attached Points and Authorities and the pleadings and papers on file herein.

POINTS AND AUTHORITIES

A. STATEMENT OF THE CASE

On February 12, 2020, pursuant to NRS 533.165(1), the State Engineer filed with this Court "a certified copy of the order of determination" for Diamond Valley "together with copies of the original evidence¹ and transcript of testimony filed with, or taken before,

¹ The State Engineer subsequently supplemented this original evidence with his Notice of Filing of Supplemental Evidence Pursuant to NRS 533.165 and Second Notice of Filing of Supplemental Evidence Pursuant to NRS 533.165.

RECEIVED

SEP 23 2021

Eureka County Clerk

1 the State Engineer.” Simultaneously therewith, the State Engineer also filed certain other
2 initiating documents including a Notice of Transmittal and a Request for Review,
3 requesting that the Court start the process of setting the hearing on exceptions so the
4 State Engineer could comply with his publication obligations pursuant to NRS 533.165(6)
5 and the deadline for exceptions could be established pursuant to NRS 533.170(1).

6 On August 27, 2020, the Court issued its Order setting the hearing on exceptions for
7 November 10, 2020, at 9:30 am, and the State Engineer subsequently filed his Proof of
8 Service and Publication of the Court’s Order Setting Hearing on Exceptions to the Order of
9 Determination Pursuant to NRS 533.165(6). Various parties, including Sadler Ranch and
10 MW Cattle, timely filed Notices of Exceptions and Exceptions to the State Engineer’s Order
11 of Determination pursuant to NRS 533.170(1) as parties in interest who claimed to be
12 “aggrieved or dissatisfied” with the Order of Determination. The hearing scheduled for
13 September 29, 2021, through October 1, 2021, will be to hear those exceptions timely filed
14 by Sadler Ranch and MW Cattle pursuant to NRS 533.170(4) and (5) before the Court
15 enters a decree affirming or modifying the State Engineer’s Order of Determination
16 pursuant to NRS 533.185.

17 As the State Engineer has stated multiple times during the preliminary proceedings
18 in this matter, and as affirmed by this Court, the State Engineer’s role in this proceeding
19 is one of an officer of the court, akin to a referee or special master, who is “availab[le] to
20 participate and/or assist the court in the upcoming hearing on exceptions.” See State
21 Engineer’s Limited Non-Opposition to Eureka County’s Motion Regarding Scope of Hearing
22 (“State Engineer’s Limited Non-Opposition”), p. 2; see also Order Granting Eureka County’s
23 Motion to Intervene, p. 10. The State Engineer “will only participate as requested by the
24 court. No such request has been made by the court” as of this date. *Id.*

25 The State Engineer will have one or both of the undersigned counsel attending all
26 hearings in this matter virtually via Zoom should the Court request the State Engineer’s
27 participation in any portion of these proceedings, including the upcoming hearing on the
28 Exceptions filed by Sadler Ranch and MW Cattle. The State Engineer reiterates his role

1 as an officer of the court in this proceeding and defers to the Court's discretion should it
2 request the State Engineer's participation in the context of his role as an officer of the court
3 or special master regarding the Order of Determination. See State Engineer's Limited
4 Non-Opposition, pp. 2-3. The State Engineer also reiterates that to the extent the Court
5 requests the State Engineer's participation, it may not be the State Engineer himself who
6 is best suited to assist the Court, but rather one or more of his staff members, contingent
7 upon which aspect of the Order of Determination is in controversy and leads to the Court's
8 request for the State Engineer's participation. *Id.*, p. 3. Accordingly, advanced notice of
9 the Court's request would be necessary to ensure the appropriate personnel are available
10 to assist the Court if requested.

11 Therefore, as previously stated and affirmed by this Court, "while [the State
12 Engineer] is available to assist the court, neither he nor his staff intend to present an
13 affirmative case or subject themselves to discovery or cross-examination." Order Denying
14 Eureka County's Motion Regarding Scope of Hearing, p. 3. The Court has indicated that
15 "while it appreciates the State Engineer's offer of assistance, such assistance has not been
16 requested by the Court." *Id.* If the Court determines such assistance is of benefit, the
17 Court "will make such a request." *Id.*

18 The State Engineer maintains that his Order of Determination filed with this Court
19 stands on its own, "together with copies of the original evidence and transcript of testimony
20 filed with, or taken before, the State Engineer" filed with the Court and including the
21 supplements thereto. NRS 533.165(1). Apart from this, the State Engineer's role is that
22 of an officer of the court here to assist as needed, as restated above and previously in this
23 matter.

24 **B. CLAIMED AND UNDISPUTED FACTS**

25 The State Engineer again reiterates that he will not be making any claims or
26 defenses in this proceeding, but rather that his Order of Determination, and the facts
27 therein, stands on its own as based upon the evidence and transcripts taken before the

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1 State Engineer and filed with the Court. The State Engineer will stipulate to any facts
2 contained in his Order of Determination.

3 **C. CERTIFICATION OF DISCUSSION WITH COUNSEL**

4 Undersigned counsel hereby certifies that he complied with the Court's Pre-Trial
5 Order by having discussions with other counsel regarding undisputed issues, facts, and
6 exhibits.

7 **D. ABANDONED ISSUES**

8 The State Engineer does not identify any abandoned issues, but again reiterates that
9 his Order of Determination, and the issues therein, stands on its own based upon the
10 evidence and transcripts taken before the State Engineer and filed with the Court.

11 **E. EXHIBITS AND DEPOSITIONS**

12 The State Engineer reiterates that his Order of Determination stands on its own
13 based upon the evidence and transcripts taken before the State Engineer and filed with the
14 Court. Therefore, the State Engineer will not be offering any exhibits at the evidentiary
15 hearing, nor will he be offering any depositions.

16 **F. OBJECTIONS TO EXHIBITS**

17 Based upon the discussions with counsel for other parties, the State Engineer will
18 stipulate to the admission of any exhibits contained within the evidence he filed with the
19 Court, including any supplements thereto, that constitutes "the original evidence and
20 transcript of testimony filed with, or taken before, the State Engineer" pursuant to
21 NRS 533.165(1). The State Engineer takes no position on other exhibits from outside the
22 State Engineer's previously filed evidence that the other parties may plan to introduce.

23 **G. WITNESSES**

24 The State Engineer reiterates that his Order of Determination stands on its own
25 based upon the evidence and transcripts taken before the State Engineer and filed with the
26 Court. Therefore, the State Engineer does not intend to call any witnesses and
27 consequently does not provide a summary of the substance of any witness testimony.

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1 H. CONTESTED ISSUES OF LAW

2 The State Engineer again reiterates that he will not be making any legal arguments
3 in this proceeding, but rather that his Order of Determination, and the legal conclusions
4 therein, stands on its own as based upon the evidence and transcripts taken before the
5 State Engineer and filed with the Court. The State Engineer will stipulate to any legal
6 conclusions contained in his Order of Determination.

7 I. ADDITIONAL INFORMATION

8 The State Engineer only requests that the Court provide his counsel with the
9 appropriate Zoom links or other log-in information so that they may attend the upcoming
10 hearing virtually. The State Engineer and his counsel are grateful for the Court providing
11 this arrangement.

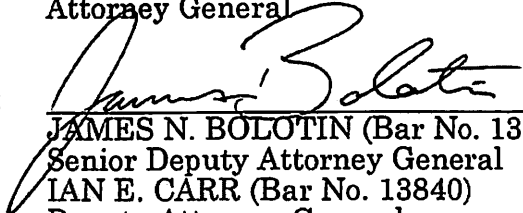
12 AFFIRMATION

13 The undersigned does hereby affirm that the preceding State Engineer's Pre-Trial
14 Brief for the Hearing on Exceptions filed by Sadler Ranch and MW Cattle does not contain
15 the social security number of any person.

16 DATED this 20th day of September, 2021.

17 AARON D. FORD
18 Attorney General

19 By:


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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 20th day of September, 2021, I served a true and correct copy of the foregoing STATE ENGINEER'S PRE-TRIAL BRIEF FOR THE HEARING ON EXCEPTIONS FILED BY SADLER RANCH AND MW CATTLE, via Email, to:

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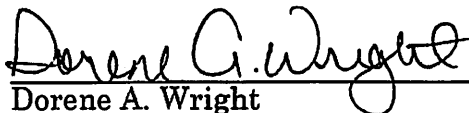

Dorene A. Wright

EXHIBIT 4

EXHIBIT 4



NO. _____

FILED

MAR 16 2021

By _____

Case No. CV-2002009

Dept No. 2

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 EUREKA
COUNTY'S MOTIONS TO INTERVENE
RE: SADLER RANCH, LLC, MW
CATTLE, LLC, DANIEL S.
VENTURACCI AND AMANDA L.
VENTURACCI, IRA R. RENNER AND
MONTIRA RENNER, WILFRED AND
CAROLYN BAILEY FAMILY TRUST,
AND UNITED STATES' NOTICES OF
EXCEPTIONS¹**

RELEVANT PROCEDURAL HISTORY

NOTICE OF EXCEPTIONS

On November 3, 2020, the following notice of exceptions were filed:

1. Sadler Ranch, LLC's ("Sadler Ranch") notice of exceptions and exceptions to the state engineer's and to the state engineer's order of determination in re: proofs V-026578, V-03289, V-03290, and V-109186 ("Sadler Ranch's notice of exceptions").
2. 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 ("MW Cattle's notice of exceptions").

¹For the purpose of this order, the parties, with the exception of Eureka County and the United States, are collectively referred to as "claimants".



1 3. Ira R. Renner and Montira Renner's ("Renner") notice of exceptions and
2 exceptions to the state engineer's order of determination in re: proofs V-02432, V-10845
3 to V-10852, V-10855, and V-10882 to V-10886.

4 4. Daniel S. Venturacci and Amanda L. Venturacci's notice of exceptions to the
5 state engineer's order of determination re: irrigation claims V-01110, V-01111, V-01114,
6 V-01115, V-02845, V-02846, V-02547, V-10368, V-10972, V-10973, and stock water
7 claims V-01319, V-01521, V-01596, V-10974-V-11029.

8 5. Notice of exceptions of Wildfred and Carolyn Bailey Family Trust to the order of
9 determination.

10 6. On November 4, 2020, Eureka County filed Eureka County's notice of exceptions
11 ("Eureka's notice of exceptions"). Eureka's notice of exceptions states:

12 **"D. OTHER RELATED MATTERS**

13 EUREKA COUNTY intends to appear before the court and present
14 testimony, evidence and oral argument to oppose any alteration or
15 modification to the STATE ENGINEER's order of determination as proposed
16 by those filing exceptions that could impact EUREKA COUNTY's other
17 ongoing water litigation in Diamond Valley."

18 7. On December 17, 2020, the United States filed United States' motion to
19 intervene.

20 8. On December 18, 2020, Eureka County's motion to intervene and notice of
21 motion ("Eureka motion to intervene") was filed.

22 9. On January 4, 2021, the State Engineer's non-opposition to motions to intervene
23 was filed.

24 10. On January 4, 2021, Daniel S. Venturacci's and Amanda L. Venturacci's
25 opposition to Eureka County's motion to intervene relating to exceptions to the state
26 engineer's order of determination in re: proofs V-02432, V-10845 to V-10852, V-10855,
and V-10882 to V-10886 was filed.



1 11. On January 4, 2021, Ira R. Renner's and Montira Renner's opposition to Eureka
2 County's motion to intervene was filed.

3 12. On January 12, 2021, Eureka County's reply to Daniel S. Venturacci and
4 Amanda L. Venturacci's and Ira Renner and Montira Renner's oppositions to Eureka
5 County's motion to intervene was filed.

6 13. On January 19, 2021, Sadler Ranch LLC's and MW Cattle LLC's opposition to
7 Eureka County's motion to intervene ("Sadler Ranch's and MW Cattle's opposition to
8 motion to intervene") was filed.

9 14. On January 27, 2021, Eureka County's reply to Wilfred and Carolyn Bailey
10 Family Trust's opposition to Eureka County's motion to intervene and reply to Sadler
11 Ranch, LLC's and MW Cattle, LLC's opposition to Eureka County's motion to intervene
12 ("Eureka County's reply") were filed together with a request for review.

13 The court has reviewed the case file and the pleadings and finds that no oral
14 argument or further briefing is required.²

15 DISCUSSION

16 As it relates to the claimants addressed in this order, Eureka County's motion to
17 intervene was filed to "protect Eureka County's interests and to support the order of
18 determination entered by the State Engineer as may be necessary to protect Eureka
19 County's interests."³ Eureka County does not claim that it has ever directly beneficially
20 used the waters to which the claimants assert their claims of vested rights nor does
21 Eureka County own any land in or around the ranches owned by claimants. Eureka
22 County never participated in the administrative hearings before the state engineer involving
23 claimants' claims of vested rights where the state engineer subsequently entered an order

24 ²7JDCR7(11).

25 ³Eureka County's mot. to intervene at 2; Eureka County also opposes the order of
26 determination as it relates to the United States BLM public water reserves ("PWRs").



1 of determination which is the complaint in this case. Eureka County's claims of water rights
2 and certificates are to other sources of water at other locations in Diamond Valley. Eureka
3 County does not claim to have any permit or certificated rights to any of the water rights
4 in the spring sources claimed by the claimants. However, in all of Diamond Valley water
5 litigation in this department since 2015, including the ground water management plan,⁴ the
6 claimants, the state engineer, and Eureka County have acknowledged that over pumping
7 of the Diamond Valley aquifer by junior irrigators has been in large part responsible for
8 claimants' surface water to dry up or has otherwise diminished the spring flow to the water
9 sources historically used by the claimants. Sadler Ranch's request to adjudicate Shipley
10 Hot Springs and its other water sources, and its objections to the state engineer's order of
11 determination, incorporated by reference into its notice of exceptions, clearly raises the
12 issue of over pumping by junior rights holders and their impact on Sadler Ranch's vested
13 rights and mitigation cases as well as water regulation in Diamond Valley.

14 Eureka County's notice of exceptions, although vague as to the specific facts
15 relating to the claims of each claimant, did give notice of its intention, "to present testimony,
16 evidence, and oral argument to oppose any alteration or modification to the State
17 Engineer's order of determination to the municipal use and vested claims of Eureka County
18 determined to be valid by the State Engineer in his order of determination."⁵ Eureka
19 County's position is simple in that it claims all Diamond Valley water, both surface and
20 underground, with the exception possibly of intermittent creeks fed only by snow melt,
21 comes from one common source being the Diamond Valley aquifer. Eureka County
22 argues that any deviation from the state engineer's order of determination increasing the
23 quantity of the vested rights to the claimants may adversely affect Eureka County by

24 _____
25 ⁴Case CV-1902-348 consolidated with case nos. CV-1902-349 and CV-1902.350.

26 ⁵Eureka County's notice of exceptions at 13.



1 diminishing the available water to Eureka County as a junior rights holder now and in the
2 future.

3 APPLICABLE LAW

4 To prevail on a claim for intervention of right under NRCP 24(a)(2) the applicant
5 must show, "(1) that it has a sufficient interest in the litigation subject matter, (2) that it
6 could suffer an impairment of its ability to protect that interest if it does not intervene, (3)
7 that its interest is not adequately represented by existing parties, and (4) that its application
8 is timely."⁶ There is "no 'bright line' test to determine an alleged interest's sufficiency
9 exists."⁷ "A general, indirect, contingent, or insubstantial interest is insufficient⁸ and an
10 applicant must show a 'significantly protectable interest.'"⁹ The Ninth Circuit has described
11 a "significantly protectable interest" as "one that is protected under the law and bears a
12 relationship to the plaintiff's claims."¹⁰ The court has discretion whether to grant or deny
13 intervention.¹¹

14 Claimants argue that Eureka County cannot intervene and has no standing to object
15 as a party in interest in this adjudication because Eureka County does not claim an interest
16 in their stream systems by reason of a vested right or under a permit issued from the state
17 engineer.¹²

18
19 ⁶*Am. Home Assur. Co. v. Dist. Ct.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006).

20 ⁷*Id.* at 1239, citing *Southern California Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir.
21 2002).

22 ⁸ *Am. Home Assur.* at 1238-1239, internal citations omitted.

23 ⁹*Id.*, internal citations omitted.

24 ¹⁰*Id.*

25 ¹¹*Id.* at 1234.

26 ¹²Renner oppn. at 2-4, Sadler Ranch/MW Cattle oppn. at 3-5. NRS 533.145(1).



1 Although Eureka County has never directly beneficially used any of claimants'
2 springs, creeks flowing therefrom, seeps or other surface water that each is claiming
3 vested rights, the undisputed modern hydrology of the Diamond Valley aquifer has shown
4 that most of the sources of water claimed by the claimants, whether their surface waters
5 have diminished or not, derive from a common source being the Diamond Valley aquifer.
6 Eureka County contends that any upward deviation in the quantity of water established by
7 judicial decree from that fixed in the state engineer's order of determination will adversely
8 affect Eureka County, because such an increase in any vested rights quantity could result
9 in less remaining water in the aquifer to be allocated to Eureka County as a junior rights
10 holder.¹³

11 Several claimants¹⁴ rely on the Franktown Creek¹⁵ and Alpine Land and Reservoir¹⁶
12 cases for the premise that Eureka County only has a general interest in the water system
13 that does not give it a right to intervene in the adjudication of the senior rights holders'
14 claims of vested rights.¹⁷ Their reliance on these cases is misplaced. In the Franktown
15 Creek case, the waters of Hobart Creek, a tributary to Franktown Creek, had been under
16 the control of the Marlette Lake Company ("Marlette") and its predecessor. Marlette
17 diverted the Hobart creek waters into flumes at a point known as the Red House diversion.
18 The diverted water supplied domestic, industrial, commercial and municipal purposes in
19 Virginia City, Gold Hill, Silver City, and Carson City.¹⁸ All water not diverted at Red House

20 ¹³Reply to Sadler Ranch/MM Cattle's oppn. at 2-3.

21 ¹⁴Sadler Ranch/MW Cattle oppn. at 4-6, Venturacci oppn. at 5, 8, Renner oppn. at 4-5.

22 ¹⁵In re determination of relative rights in and to waters of Franktown Creek, 77 Nev.
23 348, 355, 364 P.2d 1069 (1981).

24 ¹⁶U.S. v. Alpine Land and Reservoir Co., 431 F.2d 763, 765 (1970).

25 ¹⁷Sadler Ranch/MW Cattle oppn. at 4-6.

26 ¹⁸Franktown Creek at 349-352.



1 was allowed to spill into the Franktown Creek channel where it was used by the
2 shareholders of Franktown Creek Irrigation Company ("FCIC").¹⁹ Marlette at all times
3 controlled the means which permitted water above the Red House diversion to flow down
4 Franktown Creek to the lower users.²⁰ FCIC's use of any of Marlette's water that was
5 allowed to flow below the diversion was permissive. FCIC claimed that it had a prescriptive
6 right to use the water claimed by Marlette's predecessor and that Marlette or its
7 predecessors abandoned its right to use the waters of Franktown Creek and its tributaries,
8 including Hobart Creek, that flowed at and above the Red House diversion.²¹ The Nevada
9 Supreme Court rejected FCIC's argument, holding that under NRS 533.145 a party is
10 entitled to object to a state engineer's order of determination if the objecting party claims
11 "an interest in the stream system by reason of a claimed vested right or under permit from
12 the state engineer."²² FCIC never sought to appropriate the waters of Hobart Creek above
13 the Red House diversion by making application to the state engineer, thus it never acquired
14 a right to use the waters of Franktown Creek above the Red House diversion, including the
15 Hobart Creek tributary, in which Marlette had a vested right to use all of the waters. FCIC's
16 use of the water of Franktown Creek and Hobart Creek was never adverse to Marlette.
17 Further, without ever claiming an interest in the stream system above the Red House
18 diversion, Franktown could not assert its claim of abandonment by Marlette and thus was
19 not a party in interest.²³

20
21
22 ¹⁹*Id.* at 351.

23 ²⁰*Id.* at 352.

24 ²¹*Id.* at 353-355.

25 ²²*Id.* at 355.

26 ²³*Id.*



1 The Alpine Reservoir case also differs from the Diamond Valley adjudication. Alpine
2 Reservoir concerned an adjudication of the water rights in the Carson River and its
3 tributaries. The Pyramid Lake Paiute Tribe ("Tribe") had no interest in the Carson River
4 waters, but sought intervention based on its water rights to the Truckee River which was
5 sometimes diverted to Lake Lahonton on the Carson River. The Tribe's requested
6 intervention was denied because it had no interest in the Carson River adjudication and
7 its claimed water rights in the Truckee River would not be affected by the Carson River
8 adjudication.²⁴

9 Renner, Venturacci and Bailey contend that Eureka County "has no definable
10 protected interest in the subject matter of their vested claims or exceptions."²⁵ Venturacci
11 and Renner also claim that whatever quantity of water is decreed by this Court to them will
12 not affect Eureka's certificated or vested rights.²⁶ This may not be the case in the future.
13 Should any claimant be decreed an increase in the quantity of water whose source is the
14 Diamond Valley aquifer, those claimant(s) will have a priority to use the allocated water
15 which will potentially diminish the available quantity of water for junior rights holders such
16 as Eureka County in a future curtailment action or ground water management plan,
17 regardless of the quantity of water designated in Eureka County's junior certificate or
18 vested rights.²⁷ While the curtailment issue is not involved in this determination case,

19 ²⁴Alpine Reservoir at 768-769.

20 ²⁵Renner oppn. at 4, Venturacci oppn. at 3, 7-10, Bailey oppn. at 4-5

21 ²⁶Renner oppn. at 5-6, Venturacci oppn. at 8-9.

22 ²⁷NRS 533.085. See Findings of fact, conclusions of law, order granting petition for
23 judicial review, case no. CV-1902-348 consolidated with case nos. CV-1902-349 and
24 CV-1902-350. Although the Diamond Valley groundwater management plan that was
25 overturned by this Court excluded Eureka County, if this Court's order is affirmed by the
26 Nevada Supreme Court, another groundwater management plan may include Eureka
County's water rights. Eureka County may also be subject to a curtailment by priority
under NRS 534.110(6)(7) in which case the amount of water decreed in this
adjudication case could affect Eureka County's water rights.



1 curtailment could be involved in a future groundwater management plan if this Court's
2 order on appeal to the Nevada Supreme Court is affirmed. Eureka County could thus be
3 affected by the judicial decree entered in the matters before this Court.

4 Although Eureka County is satisfied with the state engineer's order of determination
5 for Diamond Valley, its interest in intervention is sufficient in that a decree increasing the
6 quantity of vested rights above the state engineer's order may affect Eureka County's
7 junior rights to water in the Diamond Valley aquifer in current and/or future water litigation
8 regarding the quantity of water available for Eureka County.²⁸ The court views the
9 hydrologic evidence presented to the court in other cases as establishing that all users of
10 water, either underground or surface, including Eureka County, have as their water source
11 the Diamond Valley underground aquifer, and are actually using water from one source,
12 and not from separate, confined, streams and stream systems. Eureka County has a
13 junior water rights interest in the Diamond Valley aquifer which supplies the water to
14 virtually all irrigators or surface rights users, including the claimants. Since almost all of the
15 underground and surface water comes from one source, the Diamond Valley aquifer,²⁹
16 the fact that Eureka County has junior certificates or claims of junior vested water rights to
17 the same source of water being used by the claimants establishes a sufficient interest in
18 claimants' stream systems.

19 The court finds that Eureka County has a sufficient interest in the same source of
20 water that supplies water to claimants stream systems sufficient to permit its intervention
21 pursuant to NRS 533.145(1) and NRCP 24(a)(2). Eureka County's stated interest in
22 objecting to an upward deviation in water allocated by the state engineer's order of
23

24 ²⁸See *In re Water Rights in Silver Creek and its Tributaries*, in *Lander Cty.*, 57 Nev. 232,
237-238, 61 P.2d 987, 989 (1936).

25 ²⁹See order of determination at 7 where State Engineer noted many sources of water
26 are intermittent and confined.



1 determination bears a relationship to the claimants' notice of exceptions. The court finds
2 that Eureka County has a sufficient interest in the subject matter of the claimants' notice
3 of exceptions to intervene as to Eureka County's junior certificated or vested rights claims
4 only. Eureka County does not have the right to intervene or argue as the *parens patriae*
5 for any other holder of water rights in Diamond Valley.

6 EXISTING PARTIES DO NOT ADEQUATELY REPRESENT EUREKA COUNTY'S
7 INTEREST

8 The claimants maintain the Nevada attorney general's office represents the state
9 engineer whose order of determination is supported by Eureka County.³⁰ The state
10 engineer has filed a non-opposition to intervention.³¹ At the hearing to consider notices
11 of exception held on November 10, 2020, James Bolotin, deputy attorney general,
12 represented to the court that the state engineer did not intend to present evidence or
13 otherwise defend its order of determination.³² Further the state engineer's notice to the
14 court filed April 27, 2020, affirmed his role as that of "an officer of the court."³³ The state
15 engineer notified the court of his "availability to participate and/or assist as needed by the
16 court in the upcoming hearing on exceptions."³⁴ Thus the state engineer will only
17 participate if requested by the court. No such request has been made by the court. The
18 state engineer will not be representing the interests of Eureka County in this water rights
19 determination case. The court finds that Eureka County is not adequately represented by
20

21 ³⁰Sadler Ranch/MW Cattle oppn. at 8-10, Renner oppn. at 6, Venturacci oppn. at 11-14,
22 Bailey oppn. at 6-7.

23 ³¹Non-opposition to motion to intervene filed January 4, 2021, at 1-2.

24 ³²November 10, 2020, hearing on notice of exceptions JAVS recording at 11:43-44 a.m.

25 ³³Notice to court at 2.

26 ³⁴*Id.*

1 existing parties.³⁵

2 EUREKA COUNTY'S APPLICATION IS TIMELY

3 At the November 10, 2020, hearing on exceptions and in its December 10, 2020,
4 order, the court ordered that any motions to intervene must be filed on or before December
5 18, 2020, the date which Eureka County filed its motion to intervene. Eureka County's
6 motion to intervene is timely filed.³⁶


7 The court finds that Eureka County has met the four requirements for intervention
8 of right.³⁷ Eureka County must be allowed to intervene in the Sadler Ranch/MW Cattle,
9 Renner, Venturacci, and Bailey hearings to determine the relative rights of those parties
10 to the waters of the Diamond Valley hydrographic basin.

11 Eureka County has stated that its intervention will not delay this case and that its
12 participation will not extend the hearings.³⁸ Based on this representation the court will not
13 schedule additional hearing time to accommodate Eureka County's participation.

14 Good cause appearing,

15 IT IS HEREBY ORDERED that Eureka County's motion to intervene is GRANTED.

16 DATED this 24th day of February, 2021.

17 
18 DISTRICT JUDGE

19
20
21
22
23 ³⁵NRCP 24(a)(2); *Am. Home Assur. Co.*, at 1238.

24 ³⁶*Am. Home Assur. Co.*, at 1238.

25 ³⁷*Id.*

26 ³⁸Mot. to intervene at 7, Reply at 9.





Case No. CV-2002009

Dept No. 2

NB.O. FILED
MAR 16 2021
By *[Signature]*
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

CERTIFICATE OF SERVICE

The undersigned being an employee of the Eureka County Clerk's Office, hereby
certifies that on the 15th day of March, 2021, I personally delivered a true and
correct copy of the following:

***Order Granting Eureka County's Motions to Intervene Re: Sadler Ranch,
LLC, MW Cattle, LLC, Daniel S. Venturacci and Amanda L. Venturacci, Ira R. Renner
and Montira Renner, Wilfred and Carolyn Bailey Family Trust, and United States'
Notices of Exceptions***

Order Granting Baumann Motion to Intervene

Order Granting United States' Motion to Intervene

Order Granting Beck Entities Motion to Intervene

Order Granting Goicoechea Motion to Intervene to Limited Proceedings



addressed to:

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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 | | |

EXHIBIT 5

EXHIBIT 5

Case No. CV-2002009

Dept No. 2

NO _____ FILED _____

JAN 21 2022

by Eureka County Clerk
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 SOLARLJOS,
LLC'S MOTION FOR CERTIFICATION
OF JUDGMENT ON SOLARLJOS
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



Eureka County Clerk

RECEIVED

JAN 21 2022



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. Solarljós 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 Solarljós' 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 Solarljøs' 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 Solarljøs 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 Solarljøs' 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 Solarljøs' 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 *Hallicrafters 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).

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

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

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

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

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/IS*
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 *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

NO _____ FILED

Dept No. 2

JAN 21 2022

By Eureka County Clerk
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 Solarljof, LLC's Motion For Certification Of Judgment On
Solarljof 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
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David Negri, Esq.
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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 "B. Mahoney", is written over a horizontal line.

EXHIBIT 6

EXHIBIT 6

Case No. CV-2002009

NO. _____
FILED

Dept. No. 2

NOV 30 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.

**STATE ENGINEER'S
RESPONSE TO SOLARLJOS LLC'S
REQUEST/MOTION FOR
CERTIFICATION OF SUMMARY
JUDGMENT PURSUANT
TO NRCP 54(b)**

The State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, and Adam Sullivan, P.E., in his capacity as the Nevada State Engineer (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Aaron D. Ford, Senior Deputy Attorney General James N. Bolotin, and Deputy Attorney General Ian Carr, hereby files this response to Solarljios LLC's 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 (hereafter "Solarljios's NRCP 54(b) Request"). This response is based upon the attached Points and Authorities and the pleadings and papers on file herein.

POINTS AND AUTHORITIES

I. INTRODUCTION

It has been well established that the State Engineer's role in this proceeding is unique. The State Engineer oversaw the administrative proceedings resulting in his Order of Determination and his role here is that of an officer of the Court equivalent to a referee

1 or special master available to assist the Court as needed. *See* State Engineer's Pre-Trial
2 Brief for the Hearing on Exceptions filed by Daniel S. Venturacci and Amanda L.
3 Venturacci, p. 2 (citing State Engineer's Limited Non-Opposition to Eureka County's
4 Motion Regarding Scope of Hearing, p. 2, and Order Granting Eureka County's Motion to
5 Intervene, p. 10); *see also* Eureka County's Reply to Sadler Ranch, LLC's and MW Cattle,
6 LLC's Opposition to Eureka County's Motion to Intervene, pp. 6–8 (citing State Engineer's
7 Notice to the Court dated on or about April 23, 2020, pp. 1–2, and James H. Davenport,
8 *Nevada Water Law* 106 (Colo. River Comm'n of Nev. 2003)). Furthermore, Nevada
9 Supreme Court precedent has described the State Engineer's role in adjudication
10 proceedings as a "co-ordinate agenc[y]" and "administrative officer" under the water law.
11 *Pitt v. Scrugham*, 44 Nev. 418, 195 P. 1101, 1103 (1921).

12 In this role, the State Engineer's duty is to notify the Court that Solarljøs's
13 NRCP 54(b) Request invites potential reversible error. Simply put, Solarljøs's NRCP 54(b)
14 Request conflicts with the plain language of the water statutes and case law addressing
15 the same—both of which require a single decree on the water system being adjudicated,
16 affirming or modifying the State Engineer's Order of Determination, before it is appealable.
17 Furthermore, even if the Court determines that Solarljøs's NRCP 54(b) Request is not
18 inherently inappropriate in water adjudication proceedings, the specifics of this
19 adjudication proceeding makes it incompatible with NRCP 54(b) and case law interpreting
20 the rule. Accordingly, Solarljøs's NRCP 54(b) Request is inconsistent with the legal
21 requirement that a singular decree, affirming or modifying the State Engineer's Order of
22 Determination as to all waters located in Diamond Valley, is necessary before any appeal
23 may be taken.

24 ///

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27 ///

28 ///

1 **II. ARGUMENT**

2 **A. A Final Decree on the Source(s) of Water Subject to the Adjudication**
3 **is Required Before Such Determination is Ripe for Appeal, making**
4 **NRCP 54(b) Inapplicable to This Proceeding**

5 In Nevada, “the water law and all proceedings thereunder are special in character,
6 and the provisions of such law not only lay down the method of procedure but strictly limits
7 it to that provided.” *Application of Filippini*, 66 Nev. 17, 27, 202 P.2d 535, 540 (1949). In
8 adjudication proceedings, such as this, the State Engineer enters an order of determination,
9 “defining the several rights to the waters of the stream or stream system.” NRS 533.160(1).
10 The same procedure applies to underground water. NRS 534.100(2). After the court holds
11 a hearing under NRS 533.170(3) and (4), whether or not exceptions are filed, “the court
12 shall enter a decree affirming or modifying the order of the State Engineer.”
13 NRS 533.185(1) (emphasis added). “Appeals from such decree may be taken to the
14 appellate court of competent jurisdiction,” which is the Nevada Supreme Court per
15 NRAP 17(a)(8), “by the State Engineer or any party in interest in the same manner and
16 with the same effect as in civil cases” with the exception of certain special requirements for
17 service of the notice of appeal. NRS 533.200 (emphasis added).

18 The plain language of NRS 533.200 requires a single decree for the area designated
19 in the State Engineer’s Order of Determination before any appeals are ripe for appellate
20 review. *See also* NRS 534.100(2). Solarljøs seeks NRCP 54(b) certification of an order
21 granting partial summary judgment as to their exceptions, likely in order to start the clock
22 on the deadline to appeal so that they can have finality as to their water rights. *See*
23 Solarljøs’s NRCP 54(b) Request, p. 6. However, there is not yet a decree as to the
24 determination of all the relative rights in and to all waters, both surface and underground,
25 located within the Diamond Valley Hydrographic Basin No. 10-153, Eureka and Elko
26 Counties, Nevada. The plain language of the water law, and specifically the appeals statute
27 in NRS 533.200, requires the Court to issue a final decree as to Diamond Valley, affirming
28 or modifying the State Engineer’s Order of Determination, and such final decree is

1 necessary before appeals may be taken. Accordingly, as there is not yet an overarching
2 decree in this adjudication, this matter is not ripe for appeal. Solarljøs's NRCP 54(b)
3 Request cannot change that calculus—it is therefore clearly contrary to existing law.

4 Furthermore, the Nevada Supreme Court has addressed this precise issue during
5 the Humboldt River Adjudication, rendering an appeal not effective that was taken before
6 the decree was entered. *In re Waters of Humboldt River Stream Sys.*, 54 Nev. 115, 7 P.2d
7 813, 814 (1932). Specifically, during that adjudication, a party attempted to appeal from
8 “a part of the judgment rendered in the main Humboldt river adjudication suit.” *Id.* The
9 Supreme Court noted that “the right to appeal in a proceeding of this kind is expressly
10 conferred by the provisions of the water law” citing the analogous provisions now found in
11 NRS 533.185(1) and NRS 533.200. *Id.* Accordingly, the Nevada Supreme Court granted
12 the motion to dismiss the appeal, finding that “it appears quite clearly that an appeal will
13 not lie in a proceeding for the determination of the relative rights to use of the waters of a
14 stream or stream system until the decree is entered.” *Id.*

15 This is the precise situation now presented to the Court—Solarljøs seeks NRCP 54(b)
16 certification of part of the judgment rendered in the Diamond Valley adjudication, such
17 that it be made final and subject to appeal. However, the water law strictly controls this
18 proceeding, and no appeal may lie until the final Diamond Valley decree is entered
19 (as required by NRS 533.185(1)). Accordingly, any grant of NRCP 54(b) certification on a
20 part of the judgment rendered in this adjudication, or appeal taken therefrom, would be
21 ineffective.

22 **B. If NRCP 54(b) can be Applied to a Water Adjudication Where No**
23 **Decree Has Yet Been Entered, the Court's Order Granting Solarljøs's**
24 **Motion for Partial Summary Judgment Fails to Meet the**
25 **Requirements for NRCP 54(b) Certification**

26 Should the Court disagree that there must be a final decree as to the entire
27 adjudication prior to appellate review, despite the clear the statutory language and the
28 Nevada Supreme Court's controlling decision in *Humboldt*, the State Engineer nonetheless

1 recommends that the Court deny Solarljos's NRCP 54(b) Request as granting it would
2 defeat the purpose of NRCP 54(b).

3 NRCP 54(b) provides:

4 When an action presents more than one claim for relief—
5 whether as a claim, counterclaim, crossclaim, or third-party
6 claim—or when multiple parties are involved, the court may
7 direct entry of a final judgment as to one or more, but fewer than
8 all, claims or parties only if the court expressly determines
9 that there is no just reason for delay. Otherwise, any order
10 or other decision, however designated, that adjudicates fewer
than all the claims or the rights and liabilities of fewer than all
the parties does not end the action as to any of the claims or
parties and may be revised at any time before the entry of a
judgment adjudicating all the claims and all the parties' rights
and liabilities.

11 (emphasis added). Thus, NRCP 54(b) provides that “a judgment or order of the district
12 court which completely removes a party or a claim from a pending action may be certified
13 as final “only upon an express determination that there is *no just reason for delay*...”
14 *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986) (emphasis in
15 original).

16 “If the claims asserted in an action, albeit separate, are so closely related that [the
17 Nevada Supreme Court] must necessarily decide important issues pending below in order
18 to decide the issues appealed, there can be no finding that there is no just reason for delay,
19 and certification of an order deciding some but not all of those claims as final is an abuse
20 of the district court's discretion.” *Hallicrafters Co.*, 102 Nev. at 528, 728 P.2d at 442–43
21 (citing *Mid-Century Ins. Co. v. Cherubini*, 95 Nev. 293, 593, P.2d 1068 (1979); *Las Vegas*
22 *Hacienda v. G.L.M.M. Corp.*, 93 Nev. 177, 561 P.2d 1334 (1977)). The Supreme Court has
23 dismissed appeals stemming from improper NRCP 54(b) certifications where the claims
24 still pending at the district court are “so closely related that [the Nevada Supreme Court]
25 would necessarily decide the law of the case on the claims still pending in the district court
26 in the course of deciding the appeal” and where consideration of the appeal “would
27 result in piecemeal litigation and would defeat the purpose of NRCP 54(b).” *Id.*, 102 Nev.

28 ///

1 at 528–29, 728 P.2d at 443; *see also Wiman v. Refaely*, 489 P.3d 917 (Table), 2021
2 WL 2787919, Docket No. 82763, filed July 2, 2021 (unpublished disposition).

3 Solarljøs properly titled its Motion as one for partial summary judgment, as there
4 are many claims and parties remaining at the district court. Yet, Solarljøs focuses on the
5 fact that the Court’s Order granting its Motion for Partial Summary Judgment resolved
6 “all of the exception claims of Solarljøs in this matter.” Solarljøs’s NRCP 54(b) Request,
7 p. 4. Solarljøs attempts to argue that this case could be construed as consolidated cases,
8 citing *Matter of Estate of Sarge*, 134 Nev. Ad. Op. 105, 432 P.3d 718 (2018), a case that
9 deals exclusively with the appealability of consolidated matters. Solarljøs’s NRCP 54(b)
10 Request, pp. 4–5. However, this is not a consolidated case in any meaning of that term.
11 Rather, this is one case, with multiple parties and multiple exceptions (or claims), the
12 purpose of which is to adjudicate all pre-statutory water rights in Diamond Valley, initiated
13 by the filing of the State Engineer’s singular Order of Determination. Solarljøs cannot
14 avoid this fact.

15 Solarljøs focuses on prejudice to itself (should it be required to wait for the final
16 decree) and alleged lack of prejudice to others because “nothing about this Corrected
17 Judgment will have an effect¹ on those other claimants.” Solarljøs’s NRCP 54(b) Request,
18 p. 6. While the State Engineer can sympathize with the desire for Solarljøs to have a final
19 ruling on their exceptions, the State Engineer is unaware of controlling law deeming
20 prejudice the key consideration for purposes of NRCP 54(b). Rather, the language of
21 NRCP 54(b) itself, and case law analyzing the same, hold that the primary determination
22 for this Court to make is to expressly find whether or not there is “no just reason for delay.”
23

24 ¹ Further, the State Engineer disagrees that the Court’s ruling on one claimant’s exceptions has no
25 effect on other claimants, even if none of the other claimants responded to Solarljøs’s Motion for Partial
26 Summary Judgment. A statutory basin-wide adjudication, like this, “is not a separable controversy between
27 a few claimants.” *See Bentley v. State, Office of State Eng’r*, 132 Nev. 946 at *6, 2016 WL 3856572 (Table),
28 Docket Nos. 64773, 66303, 66932, filed July 14, 2016 (unpublished disposition) (citing *Davenport, supra*,
at 110). “[A]ll claimants or water users in [a water rights] adjudication proceeding under the [water statutes]
are adverse.” *Id.* (citing *In re Water Rights in Silver Creek & Its Tributaries*, 57 Nev. 232, 238, 61 P.2d 987,
989 (1936)). “[T]he character of an adjudication, under the Water Code, forbids the idea of separate
controversies being involved.” *In re Water Rights in Silver Creek & Its Tributaries*, 57 Nev. 232, 61 P.2d
at 989.

1 This case presents identical rationale to *Hallicrafters Co.* and, like in that case, NRCP 54(b)
2 certification is likewise improper here. This rationale was recently affirmed by the Nevada
3 Supreme Court in the unpublished *Wiman* decision.

4 While a couple of exceptions have been heard by the Court in this matter, only
5 Solarljøs's exceptions have been decided and the majority of exceptions remain unheard as
6 of this date. Thus, should Solarljøs's NRCP 54(b) Request be granted by the Court, any
7 appeal would force the Nevada Supreme Court to decide the law of the case for the claims
8 and parties still pending in the district court in the course of deciding the appeal. This is
9 especially true where any procedural issues are the subject of appeal as the Court has
10 employed a similar procedure for all exceptions in this adjudication.

11 Furthermore, granting Solarljøs's NRCP 54(b) Request would signal to *other* parties
12 in this adjudication that partial orders in this case may receive NRCP 54(b) certification
13 and be the subject of interlocutory appeals. This could lead to piecemeal litigation in the
14 form of separate appeals from each exception. The Nevada Supreme Court has already
15 determined such piecemeal litigation "defeat[s] the purpose of NRCP 54(b)." *Hallicrafters*
16 *Co.*, 102 Nev. at 528–29, 728 P.2d at 443; *see also Wiman*, 489 P.3d 917 (Table), 2021
17 WL 2787919, Docket No. 82763, filed July 2, 2021 (unpublished disposition). Furthermore,
18 to the extent prejudice is a consideration of the Court, it is worth mentioning that other
19 parties (like the State Engineer and possibly Eureka County and others) would likely be
20 involved in each and every piecemeal appeal born from this adjudication and would
21 therefore be extremely prejudiced by a decision to certify, pursuant to NRCP 54(b),
22 individual rulings on the various exceptions.

23 The claims asserted in this adjudication, although separate and often dealing with
24 different sources of water, are so closely related that the Nevada Supreme Court would
25 necessarily be deciding important issues still pending in this Court in order to decide the
26 issues appealed. Therefore, there can be no finding that there is no just reason for delay
27 as required to NRCP 54(b) certification. Accordingly, the State Engineer recommends that
28 the Court deny Solarljøs's NRCP 54(b) Request.

1 **III. CONCLUSION**

2 Due to the unique nature of statutory water adjudications, NRCP 54(b) certifications
3 are inappropriate in this type of proceeding. Notwithstanding, even if NRCP 54(b)
4 certification *could* be applied to a water adjudication, the facts of this case make it so there
5 can be no finding that there is no just reason for delay, thus defeating an NRCP 54(b)
6 request. Accordingly, the State Engineer therefore respectfully recommends that the Court
7 deny Solarljós's NRCP 54(b) Request.

8 **AFFIRMATION**

9 The undersigned does hereby affirm that the preceding State Engineer's Response
10 to Solarljós LLC's Request/Motion for Certification of Summary Judgment Pursuant to
11 NRCP 54(b) does not contain the social security number of any person.

12 DATED this 30th day of November, 2021.

13 AARON D. FORD
14 Attorney General

15 By: 

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18 IAN E. CARR (Bar No. 13840)
19 Deputy Attorney General
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24 E: jbolotin@ag.nv.gov
25 E: icarr@ag.nv.gov
26 Attorneys for Defendant,
27 State Engineer
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 30th day of November, 2021, I served a true and correct copy of the foregoing STATE ENGINEER'S RESPONSE TO SOLARLJOS LLC'S REQUEST/MOTION FOR CERTIFICATION OF SUMMARY JUDGMENT PURSUANT TO NRCP 54(b), via Email, to:

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Dorene A. Wright

EXHIBIT 7

EXHIBIT 7

Case No. CV-2002009

Dept No. 2

NO _____ FILED _____

FEB 24 2022

By Eureka County Clerk
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 DENYING STATE
ENGINEER'S MOTION FOR STAY OF
CORRECTED ORDER GRANTING
SOLARLIJOS, LLC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
PENDING APPEAL; ORDER DENYING
MOTION FOR STAY OF THE
ENTIRETY OF THESE ADJUDICATION
PROCEEDINGS PENDING APPEAL**

On February 9, 2022, the State of Nevada, Department of Conservation and Natural Resources, Division of Water resources, and Adam Sullivan, P.E., in his capacity as the Nevada state Engineer (hereafter "State Engineer") filed a motion for stay of corrected order granting Solarljios, LLC's motion for partial summary judgment and for stay of the entirety of these adjudication proceedings pending appeal. On February 10, 2022, the court entered an order setting hearing for oral arguments and an order shortening time to 5:00 p.m. on February 17, 2022 to file responses to the motion for stay. On February 17, 2022, the following responses were timely filed: (1) Venturacci's opposition to State Engineer's motion for stay of corrected order granting Solarljios, LLC's motion for partial summary judgment and for stay of the entirety of these adjudication proceedings pending appeal; (2) Baumann, Beck Entities, and Fizwater's opposition to

SEVENTH JUDICIAL DISTRICT COURT

GARY D. FAIRMAN

DISTRICT JUDGE

DEPARTMENT 2

WHITE PINE, LINCOLN AND EUREKA COUNTIES

STATE OF NEVADA



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FEB 24 2022

Eureka County Clerk



1 motion for stay of corrected order and stay of the entirety of adjudication proceedings
2 pending appeal; (3) United States' response to Nevada State Engineer's motion in
3 support of a stay; (4) Eureka County's joinder to motion for stay of corrected order
4 granting Solarljios, LLC's motion for partial summary judgment and for stay of the entirety
5 of these adjudication proceedings pending appeal; (5) Solarljios, LLC's opposition to the
6 State Engineer's motion for stay of corrected order granting Solarljios, LLC's motion for
7 partial summary judgment and for stay of the entirety of these adjudication proceedings
8 pending appeal; (6) opposition of Wildred and Carolyn Bailey Family Trust to motion for
9 stay of corrected order granting Solarljios, LLC's motion for partial summary judgment and
10 for stay of the entirety of these adjudication proceedings pending appeal; (7) Sadler
11 Ranch, LLC's and MW Cattle, LLC's joinder to opposition of Wilfred and Carolyn Bailey
12 Family Trust to motion for stay of corrected order granting Solarljios, LLC's motion for
13 partial summary judgment and for stay of the entirety of these adjudication proceedings
14 pending appeal; (8) Ira R. Renner and Montira Renner's opposition to State Engineer's
15 motion for stay of corrected order granting Solarljios, LLC's motion for partial summary
16 judgment and for stay of the entirety of these adjudication proceedings pending appeal;
17 (9) United States' response to Nevada State Engineer's motion in support of a stay. On
18 February 18, 2022, after reviewing all timely filed responses, the court entered an order
19 vacating the oral arguments hearing.

RELEVANT PROCEDURAL BACKGROUND

20 On November 10, 2020, a hearing was held to consider the notices of exceptions
21 filed by the parties in interest. The parties and/or their counsel appeared and provided
22 input to the court regarding case procedure, including discovery and motion practice.¹
23 On December 10, 2020, the court entered an order setting hearings for notices of
24

25 ¹ JAVS recorded hearing held via Zoom on November 10, 2020.



1 exceptions filed on order of determination to determine relative water rights; order
2 establishing case procedure ("order establishing case procedure"). No motion for
3 reconsideration of the court's order establishing case procedure was filed by any claimant
4 nor the State Engineer. Throughout the entirety of almost all, if not all, of the individual
5 claimants' cases discovery has occurred and a variety of motion practice has been
6 engaged by various claimants, including the proceedings involving Sadler Ranch, LLC,
7 MW Cattle, LLC, and Daniel S. Venturacci and Amanda L. Venturacci, all of which had
8 their evidentiary hearings in 2021.² The USA and the Venturaccis currently have
9 pending before the court motions for summary judgment.³

10 The State Engineer's motion for stay: (1) generally objects to the court allowing
11 discovery and dispositive motions in this adjudication; (2) objects to the fact that the effect
12 of this Court's corrected order granting Solarljós, LLC's motion for partial summary
13 judgment violated NRS 533.170(3) and (4) which he argues required that a hearing be
14 held even if no exceptions are filed⁴; and (3) challenges whether the court's NRCP 54(b)
15 certification of the corrected order granting Solarljós, LLC's motion for partial summary
16 judgment was proper.

17 ...

18 ...

19 ...

22 ² Motion practice concerning various requests to the court has also been engaged in the cases involving
23 the USA, Eureka County, Arc Dome Partners, LLC, Robert F. Beck and Karen A. Beck, Trustees of the
24 Beck Family Trust dated 4-9-2005 and Beck Properties.

24 ³ Eureka County has filed an opposition to the USA's motion for partial summary judgment. Its opposition
25 does not object that the procedure of engaging in summary judgment practice is prohibited under NRS
26 533.170. The USA has opposed Venturacci's motion for summary judgment and likewise does not
object to the use of summary judgment as a procedure in these proceedings.

⁴ Motion for stay at pg. 3; case appeal statement filed February 9, 2022, at pg. 5.



DISCUSSION

WHETHER ENTIRETY OF THE PROCEEDING SHOULD BE STAYED

NRS 533.170(2) reads as follows:

The order of determination by the State Engineer and the statements or claims of claimants and exceptions made to the order of determination shall constitute the pleadings, and there shall be no other pleadings in the cause.

NRCP 7(a) sets forth pleadings allowed in civil actions consisting of a complaint, answer, answer to a counterclaim, answer to a cross-claim, third-party complaint, answer to a third-party complaint and if ordered by the court, a reply to an answer. NRS 533.170(2) describes the only pleadings allowed in an adjudication as the (1) order of determination; and (2) the statements or claims of claimants and exceptions made to the order of determination. The court agrees with the State Engineer that the pleadings in water rights adjudication proceedings are defined by NRS 533.170. But, the State Engineer then argues that it was error for the court to permit discovery and dispositive motions premising his rationale on NRS 533.170(2) which he reads as prohibiting any further documents to be filed in the case beyond the order of determination and the claimants' statements or claims and exceptions to the order of determination. The State Engineer's argument is without merit. The State Engineer confuses pleadings with motion practice. NRS 533.170(5) reads in relevant part, "All proceedings thereunder, including the taking of testimony, shall be as nearly as may be in accordance with the Nevada Rules of Civil Procedure . . .". Pursuant to NRCP 7(b), a request for a court order must be made by a motion. Nothing in NRS 533.170 prohibits parties from requesting the court for an order by motion practice.



1 This adjudication has been replete with requests for orders seeking various relief,
2 which if the State Engineer's interpretation was sound would have been prohibited.
3 Case management chaos would occur if the State Engineer's skewed analysis was
4 followed by the court. Using the State Engineer's rationale, if a filed notice of exception
5 was facially defective, no other interested party, including the State Engineer, could
6 challenge the defect by way of a case dispositive motion to dismiss, but the interested
7 parties would instead be compelled to prepare for an adjudication hearing consuming
8 enormous time, expense, and judicial resources. Certainly this cannot be the demise of
9 an adjudication case. If the effect of granting a dispositive motion renders a hearing on
10 an exception unnecessary such a result is proper. Motions for summary judgment and
11 discovery have been allowed in Nevada's adjudication cases.⁵ In Solarljøs's motion for
12 partial summary judgment the court reviewed the record before the State Engineer in
13 order to determine the merits of Solarljøs's notice of exceptions and motion. No other
14 interested parties were involved in Solarljøs's case. The State Engineer unilaterally
15 decided early on in this adjudication that it would not participate to defend his order of
16 determination.⁶ A hearing under NRS 533.170 was not necessary or required.

17
18
19 Regarding discovery, if the court in an adjudication case were limited solely to the
20 record before the State Engineer, there would be no need for the presentation of any
21 evidence to the district court in an adjudication case. The court has found no such
22

23
24 ⁵ *In Re Determination of Relative Rights In and To Waters of Frankton Creek, Washoe Cty.*, 77 Nev. 348,
355, 364 P.2d 1069, 1072-73 (1961). The Nevada Supreme Court affirmed a District Court order
granting summary judgment.

25 ⁶ This was an important fact this Court considered in granting Eureka County's motion to intervene on
26 March 16, 2021.



1 limitation under Nevada law. In fact, NRS 533.170(3) and (5) allow, but do not compel,
2 the court to take testimony. Admissible testimony is evidence. Nowhere under NRS
3 533.170 is the court's review limited to that of administrative determination record below
4 and only to evidence offered before the State Engineer or his hearing officer.⁷ Simply
5 put, if no discovery were allowed, the evidentiary hearing under NRS 533.170 would be
6 relegated to trial by ambush. The court rejects the State Engineer's position, it being
7 frivolous.

8
9 The State Engineer's failure to challenge the court's order setting hearings for notices of
10 exceptions filed on order of determination to determine relative water rights; order
11 establishing case procedure constitutes a waiver

12 On December 10, 2020, the court entered its order establishing case procedure
13 providing for discovery and dispositive motions. The State Engineer failed to challenge
14 this order until February 8, 2022, when it filed a notice of appeal and his motion for stay.
15 For over a year discovery as ensured by most, if not all, claimants and numerous motions
16 have been filed and ruled upon by this Court. During this time the State Engineer has
17 sat on his hands to the clear detriment of all parties. Needless to say, during this year
18 the parties have incurred enormous time and expense as earlier noted. But, the State
19 Engineer had a remedy if he believed that this Court was acting in excess of its statutory
20 authority under NRS 533.170, that being to challenge the court's order establishing case
21 procedure by a writ of prohibition. A writ of prohibition is the remedy to prevent the
22 discovery and motion practice ordered as being in excess of the court's statutory
23

24
25 ⁷ See NRS 48.025(1)(c).
26



jurisdiction.⁸ The Nevada Supreme court has considered a writ of prohibition in cases where the district court exceeded its jurisdiction in ordering the production and disclosure of privileged information. The Nevada Supreme Court has stated, "Although this court rarely entertains writ petitions challenging pretrial discovery, 'there are occasions where, in the absence of writ relief, resulting prejudice would not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions.'"⁹ The argument the State Engineer makes is that this Court has exceeded its statutory jurisdiction under NRS 533.170 by allowing discovery, and motion practice, including dispositive motions in the adjudication proceedings. For the State Engineer to wait over a year and allow discovery, motion practice and two lengthy adjudication hearings to take place without a challenge in any way to this Court's December 10, 2020, order establishing case procedure is unconscionable. The court finds that the State Engineer has waived any objection that he may have to the discovery and motion practice used in this adjudication.

A single decree involving all other claimants' cases either affirming or modifying the State Engineer's order of determination was not required in Solarljos LLC's notice of exceptions

No parties in interest, other than Solarljos, participated in its adjudication. Solarljos's argument is that the record before the State Engineer, made part of the record in the district court and reviewed by this Court, was void of any evidence to support the State Engineer's factual finding, conclusions and order of determination. The court agreed with Solarljos and entered partial summary judgment in its favor. The State

⁸ See *Wardleigh v. District Court*, 111 Nev. 345, 351, 891 P.2d 1180 (1995).

⁹ *Cotter v. Eighth Judicial Dist. Court of Nev.* 134 Nev. 247, 249, 416 P.3d 228 (2018).



1 Engineer and Eureka County disagreed and have appealed. The issues in Solarljios's
2 case are unlike the other claimants' issues who have filed notices of exceptions, where
3 there have been either competing notices of exceptions filed or there have been
4 intervening parties who challenge the notices of exceptions. Several of the cases
5 involving Sadler Ranch LLC, MW Cattle, LLC and Daniel S. Venturacci and Amanda L.
6 Venturacci have already proceeded through evidentiary hearings and post-trial briefing.
7 All of the remaining cases are set for adjudication hearings in March and April, 2022.
8 Other than the Solarljios case involving a decreed amount of water in Diamond Valley,
9 there is nothing else factually similar in the Solarljios case and the cases previously heard
10 by the court or in those that will be heard in March and April.¹⁰ With Solarljios LLC's
11 motion for partial summary judgment being unopposed, an order granting its motion and
12 certification was appropriate under NRCP 54(b).
13

14 The court finds a stay of any of the remaining proceedings scheduled to be heard
15 March and April, 2022, is not supported by the State Engineer's motion for stay and issues
16 noted in his case appeal statement. Further, the State Engineer's concern that multiple
17 decrees will be potentially entered by the court contrary to NRS 533.185(1) which he
18 alleges requires a single decree, although not supported by Nevada Law, is moot,
19 assuming, arguendo, this legal argument has merit. Provided the remainder of the
20 evidentiary hearings take place as scheduled in March and April, 2022, this Court will be
21 entering a single decree encompassing the Sadler Ranch, LLC, MW Cattle LLC and
22
23
24

25 ¹⁰ See this Court's order granting Solarljios LLC's motion for certification of judgment on Solarljios LLC's
26 exceptions in this adjudication proceeding entered January 21, 2022 at pg. 4-5.



Venturacci hearings together with the upcoming scheduled hearings. This Court's future case docket will not allow this Court time to enter individual decrees and the court's judicial time will best be used to address all cases in one decree.

Whether a stay should be granted pending the appeal by the State Engineer and Eureka County of the certification of the corrected order granting Solarijos LLC's motion for partial summary judgment

In deciding whether to grant a motion to stay pending appeal the Nevada Supreme Court considers four factors which this Court must also consider, they being: (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether appellants will suffer irreparable or serious injury if the stay is denied; (3) whether respondents will suffer irreparable harm or serious injury if the stay is granted; and (4) whether appellants are likely to prevail on the merits in the appeal.¹¹ A movant does not always have to show a probability of success on the merits, but the movant must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.¹²

The Object Of The Appeal

The object of the appeal will not be defeated if the stay is denied. The State Engineer argues that his interest in preserving the status quo is to not have any decree entered by the district court providing for the vested rights of Solarijos until the issues raised in the State Engineer's appeal have been decided.¹³ The State Engineer relies

¹¹ *Fritz Hansen A/S V. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982 (2000).

¹² *Id.*, at 659, citing *Ruiz v. Estelle*, 850 F.2d 535, 565 (5th Cir, 1981).

¹³ Eureka County joined the State Engineer's position on this issue as well as all issues raised in the State Engineer's motion for stay. On September 23, 2021, Eureka County filed an opposition to the USA's motion for summary judgment filed September 3, 2021. Eureka's opposition does not raise the issue that



1 on his position that this Court impermissibly allowed discovery and motion practice,
2 including motions for summary judgment, as part of the case procedure.¹⁴ As stated
3 earlier, this argument is clearly misplaced. Further, given that the State Engineer for in
4 excess of 40 years has allowed egregious over pumping in Diamond Valley by junior
5 pumpers, whereby the Diamond Valley aquifer is being over pumped by in excess of
6 30,000 afa, the difference in the amount of water allocated to Solarljios from the State
7 Engineer's preliminary order to his final order of determination of approximately 329 afa
8 is insignificant. None of the other vested rights claimants, except Eureka County, have
9 appealed the court's corrected order granting Solarljios LLC's motion for partial summary
10 judgment or otherwise challenged Solarljios's notice of exceptions.

12 Consistent with the State Engineer's decision not to participate in any of the notices
13 of exceptions he did not file an opposition to Solarljios's motion for partial summary
14 judgment. The State Engineer's failure to oppose a dispositive motion precludes the
15 State Engineer from challenging the court's order granting relief to Solarljios.¹⁵ This
16 Court cannot compel any individual or entity, including the State Engineer, to be a litigant
17 party to an adjudication proceeding. It is the parties' "right to enforce the claim and who
18 has a significant interest in the litigation."¹⁶ It would have been inappropriate for the
19 court to compel the State Engineer to defend his order of determination. That choice
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21
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23 this Court exceeded its jurisdiction by allowing motion practice in an adjudication proceeding under NRS
24 533.170.

24 ¹⁴ Mot. for stay at 8

25 ¹⁵ See *Renown Reg'l Med. Ctr. v. Second Judicial District Court*, 130 Nev. 834, 828, 335 P.3d 199, 202
(2014); 7JDCR7(7).

26 ¹⁶ *Pointer v. Anderson*, 96 Nev. 941, 943, 620 P.2d 1254, 1255 (1980); NRCP 17.



1 was his, and his election not to defend his order of determination was his alone.
2 Additionally, the State Engineer's case appeal statement cites that he will pursue on
3 appeal the issue of propriety of discovery and use of dispositive motions in adjudication
4 proceedings under NRS 533.170 and whether NRCP 54(b) certification was appropriate.
5 No apparent challenge is being made by the State Engineer regarding the substantive
6 merits of Solarljós LLC's motion for partial summary judgment or the court's order granting
7 the same.¹⁷

8
9 Finally, none of the other vested rights claimants, nor any other interested party
10 participated in Solarljós's case for the reason that the claims and substantive issues in
11 Solarljós case were unrelated to those of the other vested rights claimants or to anyone
12 else. Had there been any interested party, they had the intervention procedure
13 available, as others in this adjudication pursued.

14 No Irreparable Harm or Injury Will Occur to the State Engineer or to the People of
15 Nevada

16 No irreparable injury will occur to the Diamond Valley water users, the State
17 Engineer or to Nevada if the stay is denied. Should the Nevada Supreme Court reverse
18 this Court's corrected order granting partial summary judgment and it be determined that
19 pending the Supreme Court's decision, Solarljós used water in excess of its right, the
20 excess use can be repaired by reducing future allocation of the amount of water that
21 Solarljós is ultimately found to be entitled until the excess amount used was replaced.¹⁸

22
23
24 ¹⁷ See case appeal statement, paragraph I, pg. 4-5.

25 ¹⁸ See *United States v. Truckee-Carson Irrigation District* 882 F.2d 364, 368 (9th Cir. 1989) ("stay of
26 order releasing water to Newlands Project denied because if Pyramid Tribe prevailed in overturning the
order, an amount of water equal to the amount released could be accumulated . . . out of future



1 The State Engineer's position is exaggerated and premised on speculation. The State
2 Engineer couches his position that the State of Nevada "potentially" will suffer irreparable
3 injury because water "might" be distributed incorrectly.¹⁹ Speculation does not equate
4 to irreparable harm. Irreparable harm or injury to Solarljos or other claimants will occur
5 if these proceedings are stayed in their entirety. Staying the entirety of the proceedings
6 while the appeal is pending, will result in a substantial delay in a decision on the water to
7 which the claimants are entitled and if they are found to be entitled to more water than is
8 allowed by the order of determination, the delay will result in the permanent loss of an
9 additional water to which they may be found entitled. That loss cannot be made up by
10 providing them additional water to make up for the delay because they can only irrigate
11 the land which they own or regularly farm.
12

13 Should the court grant a stay Solarljos will not be able to pursue the development
14 of its mining operations as previously found by this Court. Such a delay will obviously
15 impact its business operations. This Court has previously held that the prejudice to
16 Solarljos outweighs the prejudice to the remaining parties to this adjudication.²⁰ This
17 adjudication case involves more than litigation costs and delay of litigation as the sole
18 harm. Any delay to Solarljos or to any of the other claimants should a stay be entered
19 as to the entirety of this proceeding would cause the claimants to have even more years
20 of unsurety as to the vested rights they claim and an interference with their business
21 operations. The balance of the equities lies against granting a stay, not only to Solarljos,
22
23

24 allotments to the District and allowed to flow to Pyramid Lake . . .").

25 ¹⁹ Mot. for stay at 8-9.

26 ²⁰ Corrected order granting Solarljos LLC's partial motion for summary judgment at 6-6.



1 but as well to the remaining claimants whose cases have been heard or will be heard in
2 March and April, 2022.

3 Likelihood of Success on the Merits

4 Other than challenging the court's use discovery and motion practice, the State
5 Engineer's case appeal statement fails to cite any other substantive issue(s) he seeks to
6 challenge on appeal. As previously discussed by this Court, the State Engineer has not
7 shown that he will prevail on appeal that this Court improperly allowed discovery or the
8 use of motion practice, including summary judgment. The State Engineer failed to
9 oppose Solarlj's motion for partial summary judgment. No court order or other
10 impediment existed precluding the State Engineer from opposing Solarlj's motion.

11 Good cause appearing

12 IT IS HEREBY ORDERED that the State Engineer's motion for stay of corrected
13 order granting Solarlj's, LLC's motion for partial summary judgment pending appeal is
14 DENIED.
15

16 IT IS HEREBY FURTHER ORDERED that the State Engineer's motion for stay of
17 the entirety of these adjudication proceedings pending appeal is DENIED.
18

19 DATED this 24th day of February, 2022.

20
21 
22 DISTRICT JUDGE
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25
26



Case No. CV-2002009

Dept No. 2

FEB 24 2022

For 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 24th day of February, 2022, I personally delivered a true and
correct copy of the following:

***Order Denying State Engineer's Motion For Stay of Corrected Order Granting
Solarljios, LLC's Motion For Partial Summary Judgment Pending Appeal; Order
Denying Motion For Stay of The Entirety of These Adjudication Proceedings Pending
Appeal***
addressed to:

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B. Mahoney