

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;

Electronically Filed
Feb 25 2022 11:14 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.

**MOTION TO DETERMINE WHETHER DISTRICT COURT PROPERLY
CERTIFIED CORRECTED ORDER GRANTING SOLARLJOS, LLC’S
MOTION FOR PARTIAL SUMMARY JUDGMENT AS FINAL
PURSUANT TO NRCP 54(b)**

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 to determine the propriety of the district court’s NRCP 54(b) certification of the Corrected Order Granting Solarljios, LLC’s (hereafter “Solarljios”) Motion for Partial Summary Judgment in a statutory water adjudication proceeding. This Motion is based upon the following Points and Authorities and the papers on file herein.

POINTS AND AUTHORITIES

I. INTRODUCTION

Certifying an order as final pursuant to NRCP 54(b) is not an independently appealable order as “no statute or court rule authorizes an appeal.” *Fernandez v.*

Infusaid Corp., 110 Nev. 187, 192, 871, P.2d 292, 295 (1994). “Where an appellant is uncertain as to the propriety of a district court’s certification of finality pursuant to NRCP 54(b), the appellant should first protect the right to appeal by filing a timely notice of the appeal from the order that has been certified as final. Then the appellant should move this court to determine whether the district court properly certified that order as final and whether this court’s appellate jurisdiction has been properly invoked.” *Id.*

The State Engineer appeals the district court’s Corrected Order Granting Solarljós, LLC’s Motion for Partial Summary Judgment (“Order Granting Partial Summary Judgment”), as certified as final by the district court’s Order Granting Solarljós, LLC’s Motion for Certification of Judgment on Solarljós LLC’s Exception in this Adjudication Proceeding (“Order Granting Solarljós NRCP 54(b) Motion”) dated January 21, 2022. *See* Exhibit 1, Notice of Entry of the Order Granting Solarljós, LLC’s NRCP 54(b) Motion. The State Engineer advocated against NRCP 54(b) certification of the Order Granting Partial Summary Judgment due to the unique nature of statutory water adjudications and because the unique circumstances here make the finding that there is no just reason for delay incorrect. Despite these unique circumstances, the district court nonetheless granted Solarljós’ NRCP 54(b) Request. *See* Exhibit 1.

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II. ARGUMENT

A. NRCP 54(b) is Inapplicable to Statutory Water Adjudications as a Final Decree for the System Being Adjudicated is Mandatory Before Such Determinations are Ripe for Appeal

Interlocutory orders entered during statutory water adjudications are inappropriate for NRCP 54(b) certification. In Nevada, “the water law and all proceedings thereunder 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). The State Engineer’s role in statutory adjudication proceedings is also unique and differs from his role in NRS 533.450 appeals. Water users themselves are adverse in adjudication proceedings where the State Engineer is an officer of the court, equivalent to a special master or referee available to assist the district court as needed.¹ *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”); *see also* James H. Davenport, *Nevada Water Law* (2003) at 106–107. The district court’s role is to hold a hearing

¹ The State Engineer oversees the administrative proceedings and submits his Order of Determination to the Court pursuant to NRS 533.165(1). This Court describes the State Engineer’s role in adjudication proceedings as a “co-ordinate agenc[y]” and an “administrative officer.” *Pitt v. Scrugham*, 44 Nev. 418, 195 P. 1101, 1103 (1921). “[T]he ultimate findings of the [S]tate [E]ngineer are entitled to great respect, and in practice are not often disputed[;]” however “they do not take from the court the power to grant relief to a party whose rights the [S]tate [E]ngineer may have infringed.” *Scossa v. Church*, 43 Nev. 407, 187 P. 1004, 1005 (1920).

on exceptions to the Order of Determination and then “enter **a decree** affirming or modifying the order of the State Engineer.” NRS 533.185(1) (emphasis added); *see also* NRS 533.170.

In the Diamond Valley Adjudication, the district court has strayed from the unique and specific statutory procedures found at NRS 533.087 through NRS 533.320. This deviation from statutory process has culminated in both the appealed Order Granting Partial Summary Judgment and the Order Granting Solarljøs’ NRCP 54(b) Motion. These procedural issues are the basis for the State Engineer’s appeal of the Order Granting Partial Summary Judgment, but the irregularities also led to this order being improperly certified as final pursuant to NRCP 54(b).

A plain reading of NRS 533.200 requires a single **decree** for the area designated in the Order of Determination before any appeals are ripe for appellate review. *See also* NRS 534.100(2). No **decree** as to the determination of all the relative rights in and to all waters, both surface and underground, located within the Diamond Valley Hydrographic Basin has issued. The plain language of the law, and specifically the appeals statute in NRS 533.200, requires the court to issue a final decree as to Diamond Valley before appeals may be taken. There is no overarching decree in Diamond Valley, thus certifying this matter as final was improper.

While Solarljøs sought NRCF 54(b) certification to expedite “finality” for their water rights, the law does not permit piecemeal adjudications resulting in separate decrees for each claimant. A single Order of Determination for Diamond Valley was issued and filed. The district court must similarly issue a single decree affirming or modifying the State Engineer’s Order.² The hasty ruling regarding only Solarljøs rights impairs the State Engineer’s ability to discharge his duties under NRS 533.220. Here, there could be separate “decrees” for some while the Order of Determination is still the operative document for others.

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

² Alternatively, the court could refer it back to the State Engineer to take further evidence or for further determination pursuant to NRS 533.180.

This precise situation is again before this Court—part of the judgment in the Diamond Valley Adjudication was certified per NRCP 54(b) and is now final and subject to appeal. Yet, the water law strictly controls this proceeding, and no appeal may lie until the final decree is entered. *See* NRS 533.185(1). NRCP 54(b) certification is inappropriate in statutory water adjudications; accordingly, NRCP 54(b) certification should not have been granted.

B. Even if NRCP 54(b) can be Applied to Adjudications Prior to the Entry of Decree, the Facts of this Case Make NRCP 54(b) Certification Inappropriate

Even if NRCP 54(b) *could* be granted in statutory water adjudications, the facts of this case make it inappropriate. NRCP 54(b) provides that “a judgment or order of the district court which completely removes a party or a claim from a pending action may be certified as final “*only* upon an express determination that there is *no just reason for delay....*” *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986) (emphasis in original).

“If the claims asserted in an action, albeit separate, are so closely related that [the Court] must necessarily decide important issues pending below in order to decide the issues appealed, there can be no finding that there is no just reason for delay, and certification of an order deciding some but not all of those claims as final is an abuse of the district court’s discretion.” *Hallicrafters Co.*, 102 Nev. at 528, 728 P.2d at 442–43 (citing *Mid-Century Ins. Co. v. Cherubini*, 95 Nev. 293,

593, P.2d 1068 (1979); *Las Vegas Hacienda v. G.L.M.M. Corp.*, 93 Nev. 177, 561 P.2d 1334 (1977)). This Court has dismissed appeals stemming from improper NRCP 54(b) certifications where remaining claims are “so closely related that [the Court] would necessarily decide the law of the case on the claims still pending in the district court in the course of deciding the appeal” and where consideration of the appeal “would result in piecemeal litigation and would defeat the purpose of NRCP 54(b).” *Id.*, 102 Nev. at 528–29, 728 P.2d at 443; *see also Wiman v. Refaely*, 489 P.3d 917 (Table), 2021 WL 2787919, Docket No. 82763, filed July 2, 2021 (unpublished disposition).

Solarljós is the first party to have their exceptions decided here. Other parties have had their exceptions heard but not yet decided. The majority of parties remain unheard as of this date. Certifying the Order Granting Partial Summary Judgment pursuant to NRCP 54(b), forces this Court to decide the law of the case for the claims still pending in district court. This is especially true here, where procedural issues are the subject of appeal, and the Court is employing similar procedures for all exceptions in the adjudication.

This approach, separate appeals from each exception, is piecemeal litigation that “defeat[s] the purpose of NRCP 54(b).” *Hallicrafters Co.*, 102 Nev. at 528–29, 728 P.2d at 443; *see also Wiman*, 489 P.3d 917 (Table), 2021 WL 2787919, Docket No. 82763, filed July 2, 2021 (unpublished disposition). The claims

asserted in this adjudication, although separate and distinct claims to water within Diamond Valley, are so closely related that in order to decide the issues appealed this Court will necessarily be deciding important issues still pending at the district court. The district court improperly based its decision to grant NRCP 54(b) certification on the potential prejudice to Solarljós and wrongly equated this basin adjudication as “more akin to consolidated cases retaining their separate identity for purposes of appeal.” *See* Order Granting Solarljós’ NRCP 54(b) Motion, pp. 5–6. Nowhere is this type of prejudice the determining factor in ruling on a NRCP 54(b) Motion, and the underlying proceeding is not a consolidated case in any meaning of that term. This is a single case adjudicating all pre-statutory claims to water rights in Diamond Valley, initiated by the filing of the singular Order of Determination. The district court erred finding no just reason for delay as required for NRCP 54(b) certification.

C. Due to the Procedural Issues at the District Court, this Court’s Intervention May Nonetheless be Warranted

The basis for the State Engineer’s appeal, and this Motion, are the flawed procedures being utilized by the district court in this adjudication. If this appeal moves forward, the State Engineer will argue that the district court has employed a variety of procedures in excess and/or contravention of NRS 533.087 through NRS 533.320, including disregarding the Order of Determination and evidence filed therewith, allowing discovery, and the filing of dispositive motions in

general. This is compounded by the district court's granting partial summary judgment to Solarljøs at least in part because "no oppositions were filed to Solarljøs' Motion for Partial Summary Judgment." This despite the State Engineer's unique, non-adverse position in this type of matter. *See* Order Granting Partial Summary Judgment, p. 1, ll. 15–17. The district court also conflated NRS 533.087 through NRS 533.320 for adjudications with the petition for judicial review process controlled by NRS 533.450. *See id.* at pp. 13–16. In the Order Granting Solarljøs' NRCP 54(b) Motion, the district court further indicated that it "overturned" the Order of Determination because "the State Engineer based his decision on evidence that was never made part of the record." *See* Order Granting Solarljøs' NRCP 54(b) Motion, p. 4, ll. 18–20.

The district court never asked the State Engineer, in his role as a special master, to explain his findings concerning Solarljøs and the State Engineer complied with NRS 533.165(1) making both the Order of Determination, and evidence and testimony taken in support thereof, part of the district court's record for purposes of this proceeding. The State Engineer repeatedly reiterated his role at the district court—that the Order of Determination and evidence filed therewith stand on their own merits and the State Engineer is there to assist the district court as needed. Water law requires a single decree at the conclusion of the adjudication proceedings. NRS 533.185(1). Because of the ongoing adjudication in the district

court, utilizing the same flawed procedures at issue here, intervention from this Court may nonetheless be warranted despite the infirmities with the NRCP 54(b) certification.

III. CONCLUSION

Based on the foregoing, the State Engineer respectfully requests that this Court determine whether the district court properly certified the Order Granting Partial Summary Judgment as final and whether this Court's appellate jurisdiction has been properly invoked pursuant to *Fernandez*.

RESPECTFULLY SUBMITTED this 25th day of February, 2022.

AARON D. FORD
Attorney General

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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 MOTION TO DETERMINE WHETHER DISTRICT COURT PROPERLY CERTIFIED CORRECTED ORDER GRANTING SOLARLJOS, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS FINAL PURSUANT TO NRCP 54(b), by the Nevada Supreme Court's EFlex Electronic Filing System, addressed to:

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INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Notice of Entry of Order Granting Solarljós LLC's Motion for Certification of Judgment on Solarljós LLC's Exception in this Adjudication Proceeding filed January 27, 2022	14

EXHIBIT 1

EXHIBIT 1

Case No.: CV-2002009

Dept. No.: 2

NO. _____ FILED

JAN 27 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

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

TO: ALL PARTIES AND THEIR ATTORNEYS HEREIN:

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

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RECEIVED

JAN 27 2022

Eureka County Clerk

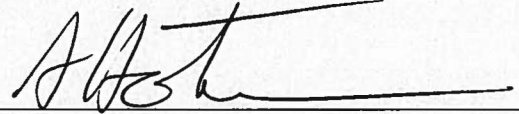
KAEMPFER

CROWELL

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

3 DATED: January 24, 2022.

KAEMPFFER CROWELL

4 

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CERTIFICATE OF SERVICE

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

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2 *Properties; Norman and Kindy Fitzwater*

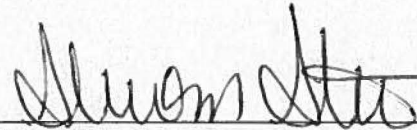
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7 **Courtesy Copy Via U.S.P.S. Mail:**

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

12 DATED January 24, 2022



Sharon Stice
An employee of Kaempfer Crowell

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EXHIBIT INDEX

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EXHIBIT 1

EXHIBIT 1

Case No. CV-2002009

Dept No. 2

NO FILED

JAN 21 2022

Eureka County Clerk
By *B. Mahoney*

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

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

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

BACKGROUND

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

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



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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 Solarijos' 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 Solarijos 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 Solarijos' 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 Solarijos' 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

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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). *SIIS*
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 Solarljós, LLC's request/motion for certification of
4 summary judgment pursuant to NRCP 54(b) and request/motion for certification of
5 judgment on Solarljós 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 Solarljós' LLC's motion for partial summary judgment entered
8 October 27, 2021.

9 DATED this 21st day of January, 2022.

10 
11 DISTRICT JUDGE

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

Case No. CV-2002009

Dept No. 2

NO FILED

JAN 21 2022

Eureka County Clerk
[Signature]

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

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

CERTIFICATE OF SERVICE

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

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

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

David Negri, Esq.
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James N. Bolotin, Esq.
Ian Carr, Esq.
ibolotin@ag.nv.gov
icarr@ag.nv.gov

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



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JAN 21 2022

Eureka County Clerk



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In the following manner:

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

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