

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 04 2022 03:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

Respondents.

**IRA R. RENNER AND MONTIRA RENNER'S OPPOSITION TO STATE
ENGINEER'S 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)**

Respondents IRA R. RENNER and MONTIRA RENNER (hereinafter “the Renners”), by and through their counsel of record, PAUL G. TAGGART, ESQ. and TAMARA C. THIEL, ESQ., of the law firm of TAGGART & TAGGART, LTD., hereby file this Opposition to the State Engineer’s motion challenging NRCP 54(b) certification.¹ The Renners only provide this Opposition as it relates to procedure, and do not make any argument as to the merits of the NRCP 54(b) certification in the SOLARLJOS LLC (“Solarljós”) matter as that matter is unrelated to the issues on their separate and unique water source and their separate and unique issues before the District Court.

MEMORANDUM OF POINTS AND AUTHORITIES

NRCP 54(b) allows for the certification of a judgment as final prior to the resolution of all claims.² This Court has affirmed that the procedures in water right adjudications are the same as other civil cases.³ Thus, NRCP 54(b) applies to this case the same as it applies to any other civil case.

ARGUMENT

The State Engineer incorrectly argues that because NRS 533.185(1) uses the words “a decree,” a court may only enter a singular decree.⁴ However, NRS 0.030

¹ Titled “Motion To Determine Whether District Court Properly Certified Corrected Order Granting Solarljós, LLC’s Motion For Partial Summary Judgment As Final Pursuant To NRCP 54(B)” (herein referenced as the “State Engineer’s Jurisdictional Motion”).

² As defined in NRCP 54(a) a judgment “includes a decree and any order from which an appeal lies.”

³ *Jackson v. Groenendyke*, 132 Nev. 296, 300, 369 P.3d 362, 365 (2016); NRS 533.200.

⁴ State Engineer’s Jurisdictional Mot. at 5.

expressly directs that, when interpreting individual statutes, singulars are to be deemed to include the plural and plurals are to be deemed to include the singular.⁵ Thus NRS 533.185(1) must be read as follows: “after the hearing the court shall enter a decree [or decrees] affirming or modifying the order of the State Engineer.”

Also, NRS 533.170 and 533.200 specifically provide that the rules of civil procedure apply to water rights adjudications, the same as any other civil case. The statutes do not prohibit certification of matters as final judgments in subparts, nor does *In re Waters of Humboldt River Stream Sys.*, 54 Nev. 115, 7 P.2d 813, 814 (1932). Instead, these authorities only hold that a decision entered by the district court in a water rights adjudication is appealable per the rules of civil procedure. As in any civil case with multiple claims and parties, an appeal lies upon either entry of a final judgment, or certification of a partial judgment as final under NRCP 54(b).

Notably, the cases the State Engineer case cites predate significant changes to water law and NRCP. In 1951, the legislature authorized the Nevada Supreme Court to prescribe rules regulating civil practice and procedure.⁶ Those rules were adopted in 1952. Prior to the 1952 adoption of the NRCP, the statutes provided that district court adjudication proceedings shall be held “in accordance with the rules governing

⁵ NRS 0.030 comports with long-standing and well-established principles of statutory interpretation. *See* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 129-131 (2012); *See also* 1 U.S.C. §1 (“In determining the meaning of any Act of Congress . . . words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular.”).

⁶ *See* NRCP preface.

civil actions . . .”⁷ After the adoption of the NRCP, to clear up any confusion as to what “the rules governing civil actions” meant, NRS 533.170(5) was amended to specifically direct courts to use the NRCP.

The civil procedure rules are amended from time to time, which impacts the relevance of certain caselaw regarding procedural rules. Most recently, NRCP 54(b) was amended in 2019. Prior to 2019, NRCP 54(b) certification was only authorized if the judgment eliminated one or more parties, not one or more claims. This Court has reviewed certification of orders in other water rights adjudications, and only found them to be improper because they followed the Federal rule, but at the time the Nevada rule was different.⁸ In 2019, NRCP 54(b) was amended to allow certification of individual judgments in conformity with the similar Federal rule.⁹ Now the two rules agree.¹⁰ When reviewing caselaw on the point, the Court should be aware of the change in NRCP over time. Importantly, though, all the caselaw is

⁷ Sec. 1, 1927 STATUTES OF NEVADA 334.

⁸ See generally, *In re Waters of Mott Creek*, 129 Nev. 1098, 2013 WL 621977 (Table) (2013) (unpublished opinion, not cited as authority and being provided as example only). Order to Show Cause, Document No. 12-36281, (November 15, 2012), *In re Waters of Mott Creek*, 129 Nev. 1098, 2013 WL 621977 (Table) (2013), available from <http://caseinfo.nvsupremecourt.us/public/caseView.do;jsessionid=85FBF169D11D3F806135A0777D973785?csIID=29057> (last visited 12/3/2021)(unpublished opinion, not cited as authority, but used as an example only).

⁹ See e.g., https://nvcourts.gov/AOC/Committees_and_Commissions/NRCP/Final_Documents/ADKT_522_Redline_NRCP/

¹⁰ This distinction is important in reviewing caselaw, but is moot in this matter. The Solarljós order removed a party as well as a claim. Solarljós is the only vested groundwater right claimant. Solarljós is not a party in the matters under any of the other Exceptions filed in this matter

in agreement on one key point – rules of civil procedure apply to vested rights adjudications. This key fact has not changed since the 1915 water law statutes were initiated.

The State Engineer is also incorrect when he states that the subparts of this proceeding are so closely related that application of NRCP 54(b) to one sub-matter would decide the law of the case in other still-pending sub-matters.¹¹ The State Engineer has not provided any rationale or examples to support his claim. In fact, all sub-matters are for different water sources with different legal issues and factual bases. Unless a party makes a showing that an order from another sub-matter will prejudice their sub-matter, no just reason for delay of certification exists.

Lastly, the State Engineer's claim of harm through piecemeal litigation is also incorrect.¹² The number of appeals in a case is not dependent on the timing of the finality of a judgment. For example, in 2008, the State Engineer issued a single order of determination on multiple creeks and springs in Carson Valley.¹³ There, like here, the district court heard the matter in subparts. The district court then issued a unified decree that consisted of the various orders and sub-issues in the case.¹⁴

¹¹ State Engineer's Jurisdictional Mot. at 8-9.

¹² State Engineer's Jurisdictional Mot. at 8-9.

¹³ *In The Matter of The Determination of The Relative Rights In and To The Waters of Mott Creek, Taylor Creek, Cary Creek (A/K/A Carey Creek), Monument Creek, and Bulls Canyon, Stutler Creek (A/K/A Stattler Creek), Sheridan Creek, Gansberg Spring, Sharpe Spring, Wheeler Creek No. 1, Wheeler Creek No. 2, Miller Creek, Beers Spring, Luther Creek And Various Unnamed Sources In Carson Valley, Douglas County, Nevada.*

¹⁴ Available at <http://images.water.nv.gov/images/Decrees/M/Mott-Final.pdf> (last visited 12/1/2021).

Various parties filed separate appeals on two sub-matters in the decree.¹⁵ This Court heard those appeals separately and issued two independent decisions. The same number of appeals would have occurred if the court had certified the orders in those subparts per NRCP 54(b), except this Court would have heard the appeals years earlier. Likewise, here, there is no reason that this Court should delay hearing the appeal issues related to Solarljøs sub-matter, or any other sub-matter that may eventually obtain NRCP 54(b) certification, until all other issues are resolved. All claims in this proceeding are for different water sources and are completely unrelated to each other as to fact or legal issues.

Notably, the Diamond Valley vested rights adjudication is different than historic adjudications. Here, the adjudication is for many unrelated water sources over a large geographic area. Historically, adjudications occurred per separate water source.¹⁶ The Renners agree that certification of judgments for claimants on the same water source might not be proper, as the dispute is between how separate parties are to distribute the waters of the same source. But that is not the issue before this Court. Here, there is no other claimant for the same water sources as the Renners springs, or other groundwater claimants for the same source as Solarljøs. Just because the

¹⁵ See, *Jackson v. Groenendyke*, 132 Nev. 296, 369 P.3d 362 (2016) (appeal involving Subpart E); and *Bentley v. State, Office of State Eng'r*, 132 Nev. 946, 2016 WL 3856572 (Table) (July 14, 2016) (appeal relating to Subpart D) (unpublished opinion included for reference only and not as authority).

¹⁶ A list of all adjudications by water source is available here: <http://www.water.nv.gov/AdjudicationStatus.aspx> (last visited March 4, 2022).

State Engineer decided to combine separate water sources into one administrative hearing is no reason to force all those separate parties to be part of the same appeal.¹⁷

CONCLUSION

Accordingly, the Renners respectfully request the Court confirm that NRC 54(b) certification procedure is allowed under current law.

Respectfully submitted this 4th day of March 2022.

TAGGART & TAGGART, LTD.

By: /s/ Tamara C. Thiel

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¹⁷ The Renners object to being listed as a respondent in this case as their water source is nowhere near the Solarljos points of diversion and are from surface water sources (springs) and are not groundwater rights.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of the foregoing document using the Nevada Supreme Court's E-Flex electronic filing system to the following parties:

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DATED this 4th day of March 2022.

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