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.	**Supreme Court No. 84275** District Court Case No. CV-2002009
THE STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES; AND ADAM SULLIVAN, P.E., STATE ENGINEER, Appellants, v. 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.

RESPONDENT SOLARLJOS, LLC'S MOTION TO EXCEED PAGE LIMIT FOR OPPOSITION TO APPELLANT 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)

IMMEDIATE ACTION REQUESTED

Respondent SOLARLJOS, LLC ("Solarljos") by and through its undersigned counsel of record, moves to exceed the 10 page limit on responses to motions imposed by NRAP 27(d)(2). This request applies to Solarljos' Opposition to the 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 NRPC 54(b) (the "Motion to Determine"). This opposition is supported by the following points and authorities. A copy of the Opposition (without exhibits) is attached as **Exhibit 1.**

POINTS AND AUTHORITIES

NRAP 27(d)(2) states "[a] motion …shall not exceed 10 pages, unless the court permits or directs otherwise." While NRAP 32(a)(7)(D) authorizes the filling of a motion to file a brief to that exceeds the applicable page limit "upon a showing of diligence and good cause." Solarljos compiles with the requirements of NRAP 32(a)(7)(D).

The State Engineer filed its Motion to Exceed Page Limit For Emergency Motion to Stay on February 25, 2022, stating that the underlying case involves a matter of statewide public importance (i.e., water-rights adjudication of the Diamond Valley) and that the issues presented in his motion required more pages than the rule allows. Neither Solarljos, nor any other Respondent objected to the State Engineer's motion, and this Court granted the same. While the State Engineer did not file a motion to exceed the page limits of the Motion to Determine, said motion still touches upon the same complex factual and legal issues as its Motion for Stay.

As such, Solarljos respectfully requests leave to exceed the page limit pursuant to NRAP 27(d)(2), as the issues presented in the State Engineer's Emergency Motion for Stay, after diligent work, could not be condensed into 10 pages. The State Engineer's Motion to Determine challenges the appropriateness of the district court's certification of summary judgment in favor of Solarljos under NRCP 54(b). However, in doing so, the State Engineer fails to cite to and provided analysis under

applicable Nevada law which must be addressed in order for this Court to have a comprehensive view of the issues for its determination. As such, the Opposition is 17 pages, not including exhibits, so Solarljos seeks leave to file 7 pages more than allowed under NRAP 27(d)(2). Counsel for Solarljos worked diligently with a conscientious and purposefully effort to present its Opposition in a concise manner, while also referencing the district court's order and other relevant orders or briefs concerning the district court's denial of the State Engineer's similar motion for stay.

Solarlojos respectfully submits it has demonstrated diligence and good cause to exceed the 10-page limit specified in NRAP 27(d)(2) and respectfully requests leave to do so.

Respectfully submitted this 4th day of March, 2022.

KAEMPFER CROWELL

BY: */s/ Alex J. Flangas*

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2022, service of the foregoing **RESPONDENT SOLARLJOS, LLC'S MOTION TO EXCEED PAGE LIMIT FOR OPPOSITION TO APPELLANT STATE ENGINEER'S EMERGENCY 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)** was filed electronically with the Clerk of the Court, and therefore electronic service was made in accordance with the master service list to the following:

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DATED March 4, 2022

/s/ Sharon Stice
An employee of Kaempfer Crowell

EXHIBIT INDEX

EXHIBIT	DESCRIPTION	PAGES
1	Respondent Solarljos, LLC's Opposition to 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) (without exhibits)	21

EXHIBIT 1

EXHIBIT 1

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.	Case No. 84275 District Court Case No. CV-2002009
THE STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES; AND ADAM SULLIVAN, P.E., STATE ENGINEER, Appellants, v. 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	

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Respondents.

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

Respondent SOLARLJOS, LLC ("Solarljos") by and through its attorneys of record, Alex J. Flangas and August B. Hotchkin of the law firm Kaempfer Crowell, hereby oppose the Motion to Determine Whether the District Court Properly Certified Corrected Order Granting Solarljos, LLC's Motion for Partial Summary Judgment as Final Pursuant to NRCP 54(b) (the "Motion") filed by Appellants, THE STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES; AND ADAM SULLIVAN, P.E., STATE ENGINEER (collectively "Appellants" or the "State Engineer").

I. INTRODUCTION

The State Engineer has filed an appeal with this Court, largely to challenge the propriety of the procedural mechanisms utilized by the district courts and claimants in the Diamond Valley adjudication proceedings, specifically with respect to the district court granting summary judgment in Solarljos' favor and certifying the same under NRCP 54(b). Regarding the latter, the State Engineer has filed the underlying motion, correctly pointing out that such a motion is procedurally required under *Fernandez v. Infusaid Corp.*, 110 Nev. 187, 871 P.2d 292 (1994) where this Court determined that because no statute or court rule authorizes an appeal from an order certifying an order as final pursuant to NRCP 54(b), there is no right to appeal such an order. However, while the State Engineer's underlying Motion is *procedurally* sound, it completely devoid of merit and therefore, should be denied by this Court.

As discussed in detail below (as well as Solarljos' opposition to the State Engineer's Emergency Motion for Stay, filed contemporaneously herein)[1], the State Engineer's arguments misconstrues applicable Nevada law and its reliance on the statutes and case law cited in the underlying motion is wholly misplaced.

[1] Solarljos incorporates the arguments set forth in that opposition by reference herein.

II. ARGUMENT

A. The District Court Did Not Abuse Its Discretion Because Nothing in The Applicable Provisions Set Forth In NRS Chapter 533 Precludes The Use of NRCP 54(b) Certification

"[T]he district court is in the best position to consider the [certification] factors[][and therefore,] a certification of finality pursuant to NRCP 54(b) based on the elimination of a party will be presumed valid and will be upheld by [the appellate court] absent a gross abuse of discretion." *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 611, 797 P.2d 978, 981-82 (1990) (overruled on other grounds). The State Engineer has failed to show how the district court abused its discretion here.

First, the district court's order granting certification of Solarljos' motion for partial summary judgment is not an interlocutory order, it is a final order regarding Solarljos' exception and claims that the district court correctly found was a consolidated case that still retained its separate identity for the purposes of appeal from the other exceptions and claims by other claimants in the subject adjudication. *See* Ex. "1", January 21, 2022 Court Order granting Solarljos' motion for certification, p. 5, lns. 2-10, *citing to In re Estate of Sarge*, 134 Nev. 866, 870-71, 432 P.3d 718, 722 (2018)[2] (the district court determined that its order granting Solarljos'

[2] This Court overruled its "decision in *Mallin* to the extent it holds that cases consolidated in the district court become a single case for all appellate purposes. Consolidated cases retain their separate identities sot that an order resolving all of the claims is one of the consolidated cases is immediately appealable as a final judgment under NRAP 3A(b)(1)." *Id.*

motion for partial summary judgment resolved all of Solarljos' exceptions issues and that there are no claims with respect to the other claimants and their respective notices of exceptions that are so closely related to Soarljos' claims).[3]

Second, there is no language in NRS 533.170 or the attendant applicable case law that remotely suggests that NRCP 54(b) is inappropriate in a water-rights adjudication. To the contrary, NRS 533.170 expressly provides that the NRCP is applicable and should be utilized by the district court in such proceedings, which is exactly what occurred here. *See* NRS 533.170(5) (stating in relevant part, "All proceedings . . ., including the taking of testimony, shall be as nearly as may be in accordance with the Nevada Rules of Civil Procedure." NRS 533.170(5) (Emphasis added). The State Engineer's reliance on *In re Water Rights in Sliver Creek and its Tributaries, in Lander Cty.*, 57 Nev. 232, 61 P.2d 987, 989 (1936) for the proposition that because all claimants or water users in adjudication proceedings are inherently adverse, and therefore, too closely related for certification under NRCP 54(b) as to one claimants' claims, is misplaced. In that case, this Court stated that "all claimants or water users in [a water rights] adjudication proceeding under the [water statutes] are adverse." That statement, made by a court in 1936 before the enactment of any Rules of Civil Procedure

[3] Indeed, Solarljos is the only claimant in the subject adjudication that asserted vested *groundwater* claims and neither it nor any of the other claimants intervened in their respective exceptions. *See* Ex. "1", p. 4, ln. 20 – p. 5, ln. 2.

including NRCP 54(b), appears directed to those parties who would have been actively involved in a "proceeding" filed under NRS 533.170 and who filed "exceptions" because they were "aggrieved or dissatisfied with the order of determination." *See* NRS 533.170(1). In 1936, the prior version of NRS 533.170 read as it does today, and limited the court proceeding to a hearing wherein "all parties in interest who have filed notices of exceptions as aforesaid shall appear in person or by counsel …." It is no wonder why, then, the *Silver Creek* court would find such parties to be, at least initially, "adverse."

However, as was explained in *Bentley v. State, Off. of State Eng'r.*, 132 Nev. 946 (2016), parties and issues are not "automatically" presented to the district court in an adjudication; rather, "the [Final] 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." *See* NRS 533.170(2). If a party is "aggrieved or dissatisfied with the order of determination," it would file an exception (NRS 533.170(1)); if a party supported the order of determination and wanted to become involved in the upcoming court proceeding, that party could become an intervenor (as explained in *Bentley)*[4]. But water right holders merely identified in the Final

[4] As was noted by Justice Pickering in her partial dissent in *Bentley*, NRS 533.170(1) allows exceptions to be filed to the Final Order of Determination by "all parties in interest who are *aggrieved or dissatisfied with"* that Final Order.

Order of Determination would not, necessarily, become adverse "parties" involved in the lawsuit; indeed, if a water right holder filed neither an exception nor a request for intervention, they would not become an active participant in the court action.

Third, Solarljos is not "adverse" to any other claimants in this case as there are no participants who have preserved a right to take an appeal to the Nevada Supreme Court. The only party that Solarljos is "adverse" to is the State Engineer, whose Final Order of Determination lacked any substantial evidence to support its findings and decision to reduce the Solarljos' water allocation under its vested rights, the basis of Solarjos' exceptions in the underlying adjudication. The district court's order completely resolves Solarljos' claim and effectively removes it (and, by extension and effect, removes Solarljos itself) from the action. This satisfies the requirement outlined in *Hallicrafters Co. v. Moore,* 102 Nev. 526, 528, 728 P.2d 441, 442 (1986), *citing* NRCP 54(b), that when a judgment or order of the district court "completely removes a party or a claim from a pending

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(Emphasis added.) *See* NRS 533.170(1); *see also Bentley,* 132 Nev. 946 at *14. They are not automatically "adverse" until after the pleadings – and intervening party statements and defenses – are set. The language of the 1936 *Silver Creek & Its Tributaries* case (that all parties to an adjudication are adverse), decided before any Nevada Rules of Civil Procedure and intervention rules had been established, should not prohibit the common sense application of modern day civil procedural rules that have since been enacted to eliminate the very prejudice facing Solarljos and have been in use in Nevada for more than 70 years.

action" and "there is no just reason for delay," 54(b) certification is appropriate. With no opposition raised to Solarljos' exception here, and no effect on other vested claimants in this action, there is no reason to delay final entry of judgment.

The State Engineer also contends that NRS 533.185(1) and 533.200 both speak in terms of "the decree," and thus concludes that these statutes stand for the proposition that they must require but a single "decree" be issued following any proceeding emanating under the water laws governing adjudications. However, the State ignores the other "plain language" that it actually cites from NRS 533.200, which states that "[a]ppeals from such decree may be taken to the appellate court of competent jurisdiction by the State Engineer or any party in interest *in the same manner and with the same effect as in civil cases*." (Emphasis added.). Civil cases are subject to the NRCP, which also govern this action[5], and NRCP 54(b) is one of those rules. Pursuant to that rule, the district court has the authority and the discretion to decide whether "just reason for delay" should preclude a finding of finality for Solarlojs now. Rule 3 of the NRAP requires that a "judgment" be "final" in order to be appealable, and NRCP 54(b) is what allows a party involved in a multi-claim, multiple-party proceeding who achieves early success on its claims to avoid significant prejudice having to wait until every other

[5] *See* Ex. "2", the district court's Order issued December 10, 2020, under "Procedure," wherein the court stated, "The Nevada Rules of Civil Procedure shall apply as appropriate to all proceedings …."

party's essentially untethered claims are entirely decided in order for *its own judgment* to be "certified" as final if the trial court concludes "that there is no just reason for delay."

Solarljos' summary judgment fits squarely within the Rule, and nothing in NRS 533.170 nor 533.200 expressly prohibits this court from utilizing NRCP 54(b) should circumstances provide the opportunity; indeed, nothing in that statute says there can be no separate determinations of vested claims in Diamond Valley that, together, comprise the "decree" of the court for the waters of this area. In fact there are several cases where this Court affirmed that utilizing the NRCP is appropriate in water-right adjudication proceedings, contrary to the State Engineer's position here, including the use of dispositive motions. *See e.g., Jackson v. Groenendyke*, 132 Nev. 296, 300-01, 369 P.3d 362, 365 (2016) (where this Court found that the district court is authorized to conduct proceedings consistent with the NRCP that are not prohibited by statute, including water-rights adjudications under NRS Chapter 533). *Bentley v. State, Off. of State Eng'r.*, 132 Nev. 946 (2016) (illustrating the use of NRCP 16 pretrial conference orders under water right adjudications pursuant to NRS 533.170(5)). *See also and cf. In re Determination of Relative Rts. In & to Waters of Franktown Creek, Washoe Cty.*, 77 Nev. 348, 355, 364 P.2d 1069, 1072-73 (1961) (where the Supreme Court of Nevada affirmed the lower court's decision to grant summary judgment in a NRS

533.170 water-rights adjudication). There is no language in the statute or applicable case law whatsoever that remotely suggests that NRS 533 or the exception-adjudication process falls outside the scope and purview of the NRCP with the exception of service of proposed findings of fact and decree and costs related thereto (which is inapplicable here).

The State Engineer also argues that the certification of the district court's order granting summary judgment in favor of Solarljos amounts to unlawful "piecemeal adjudications". *See* Mot., p. 6. However, as the district court correctly reasoned in its order denying the State Engineer's motion for stay, the State Engineer is incorrect because as the district court correctly found:

> No party filed an exception or was otherwise granted intervention in Solarljos' case,[6] nor has Solarljos intervened in any other notices of exceptions . . .[Further, the district court found] there are no claims with respect to the other notices of exceptions with respect to the other notices of exceptions that are so closely related to Solarljos' issue that the Nevada Supreme Court must necessarily decide issues pending in the other cases in the district court in order to decide the issues appealed, if any, in Solarljos' case.[7] In this regard, the [district court found] that no piece meal

[6] (Footnote No. 14 in district court order) "Eureka County sought intervention in all pending in all pending adjudication cases and was allowed to intervene in some cases not including the Solarljos case. Eureka County never filed a petition for writ of mandamus challenging this order." (citing to *Aetna Life & Casualty Ins. Co. v. Rowen*, 107 Nev. 362-363, 812 P.3d 350 (1991) and *SIIS v. Dist. Ct.*, 111 Nev. 58, 30, 888 P.2d 911 (1995).

[7] (Footnote No. 16 in district court order) "Mr. DePaoli, representing the Baileys, orally argued at the hearing that how the State Engineer interpreted and applied the relation back doctrine would be common to all cases. This issue is not present in Solarljos' notice of exceptions."

litigation would occur if certification were granted to Solarljos.

Ex. "1", p 4., ln. 18 – p. 5, ln. 10. (Footnotes contained in original). Moreover, as discussed previously, this Court held in the *In re Estate of Sarge* that consolidated cases still retain their separate identities where in a resolution of all the claims in one of the consolidated cases is immediately appeal, and therefore, does not constitute as piecemeal litigation. *See In re Estate of Sarge, supra.*

The State Engineer cites *In re Waters of Humboldt River Stream System,* 54 Nev. 115, 7 P.2d 813 (1932), contending that in that case, this Court "addressed this precise issue" when it determined that the specific parties involved in their portion of the adjudication of the Humboldt River could not separately appeal their "judgment" because no "decree" had yet issued in the proceeding. The State Engineer claims this case is somehow controlling, yet clearly the court there did not examine any aspect of NRCP (or FRCP) 54(b) applicability, and no party applied for such consideration. The reason this did not occur is apparent: in 1932 when *In re Waters of Humboldt River Stream Sys.* was decided, *no rules of civil procedure – including NRCP 54(b) (and even FRCP 54(b)) -- had yet been enacted.*[8] They were not yet part of the "manner" with which civil cases are made

[8] The Federal Rules of Civil Procedure were first enacted by order of the U.S. Supreme Court on December 20, 1937, and became effective September 16, 1938. *See* the "Historical Note" to the Federal Rules of Civil Procedure ("FRCP"), immediately preceding the Table of Contents for the FRCP). They have been amended many times since, the first in 1948, but only since 1938 have they

into "final" judgments ripe for appeal. Instead, at that time in 1932, the prevailing procedure in civil actions involving multiple parties or claims was that all claims of all parties were required to be resolved before a matter was subject to appeal – regardless whether the court's ruling was a "decree" or merely a "judgment."

B. NRCP 54(b) Certification of the District Court's Order Granting Summary Judgment in Solarljos' Favor Was Appropriate Because The District Court Correctly Found That there Was No Just Reason For Delay

The State Engineer contends that NRCP 54(b) was not appropriate here, arguing that the district court did not find any just reason for delay. However, the State Engineer's claims are baseless and unsupported by law. The State Engineer provides no analysis to support how the determination of Solarljos' exception is, actually, "adverse" (especially given that no one filed an opposition to Solarljos' Motion for Partial Summary Judgment), and the State Engineer fails to show how a certification under Rule 54(b) now would have an effect on any other vested claimant in the proceeding going forward.

In contrast, as outlined above, the district court correctly determined that certifying its order for summary judgment in favor of Solarljos will not result in piecemeal litigation. Solarljos' claims and exceptions are completely unrelated to

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contained a provision for allowing appeals of entirely resolved claims when the district court determined that "no just reason for delay" existed, giving the district court discretion to make such determinations. The Nevada Rules of Civil Procedure (NRCP), patterned greatly after the FRCP, were enacted in 1951 (*see* the Preface to the NRCP), well after the decision in *In re Waters of Humboldt.*

the other claimants' exceptions in the Diamond Valley adjudication. Only Solarljos has vested *groundwater* rights and neither it nor any of the other claimants intervened or were allowed to intervene in their respective exceptions. Moreover, the State Engineer is not contending that the summary judgment was improperly granted on the *merits*; only that the procedure was somehow improper.[9] Moreover and critically, the State Engineer failed to lodge a written opposition against Solarljos' motion for summary judgment. This alone is fatal to his appeal and Motion for Emergency Stay. *See e.g., Coleman v. Tomsheck*, 489 P.3d 520 (Nev. App. 2021); *Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014); *King v. Cartlidge*, 121 Nev. 926, 926-27, 124 P.3d 1161, 1162 (2005); and *King v. St. Clair*, 134 Nev. 137, 141-42, 414, P.3d 314, 317-18 (2018).

Notwithstanding the above, the State Engineer continues to posit that because water rights and the adjudication process in Nevada are "special" in character, and that claimants' interests in these matters are inherently adverse, that this automatically means that those claims are so closely related that certification of one claimants' claims under NRCP 54(b) is inappropriate. However, the State

[9] But even if the State Engineer's argument concerning the procedural issues (which he is not), the result that Solarljos' obtained via its motion for partial summary judgment remains unchanged because the State Engineer would still be unable to show any material facts to dispute that it failed to provide substantial evidence to support its findings and conclusions in his Final Order for Determination with respect to Solarljos' claims.

Engineer fails to provide *any* factual basis how Solarljos's claims are so closely related to the other claimants' exceptions in the Diamond Valley adjudication that its certification would disrupt the proceedings and result in piecemeal litigation, especially when none of the other claimants intervened in Solarljos' case *and* none of them filed an opposition to Solarljos' motion for partial summary judgment. Moreover, as the district court explained in its order denying the State Engineer's motion for stay, the State Engineer's concerns regarding any other claimants' exceptions obtaining separate judgments or decrees is moot and unfounded.[10]

Next, the State Engineer's argument that the district court erred in granting certification based on the potential prejudice to Solarljos is fundamentally flawed as it is not supported by the very case law he relies upon in his motion. As Solarljos argued in the lower court, its ability to obtain financing for its mining project and to move forward with the certainty needed to confirm these vested rights as part of the resources available to it a mining operation. Furthermore, no other party will suffer any loss from the district court's certification under NRCP

[10] *See* Ex. "_" the district court's Order denying the State Engineer's motion for stay, p. 8, ln. 16 – p. 9, ln. 3 (stating that "[f]urther, the State Engineer's concern that multiple decrees will be potentially entered by the court contrary to NRS 533.185(1) which he alleges requires a single decree, although not supported by Nevada Law, is moot, assuming, arguendo, this legal argument has merit. Provided the remainder of the evidentiary hearings take place as scheduled in March and April 2022, this Court will be entering a single decree encompassing the Sadler Ranch, LLC, MW Cattle LLC and Venturacci hearings together with the upcoming scheduled hearings.").

54(b) because it will not change the outcome of their exception in any way.

This situation exemplifies – by definition – the *lack* of any "just reason for delay" of the entry of a final judgment that would allow Solarljos to finally use its vested water rights and move forward with its mining project. In this regard, the language and discussion in *Hallicrafters Co. v. Moore, supra*, actually favors Solarljos' position, not the State's. The State has shown no reason why the court should postpone the finality of this judgment.

Furthermore, the discussion in *Mallin v. Farmers Ins. Exchange*, 106 Nev. 606, 611 797 P.2d 978, 987-972 (1990) (reversed on other grounds) directly refutes the State's contention that NRCP 54(b) and case law analyzing the same is not directed to a consideration of the prejudicial effect on a party as compared to the prejudice others left in the case will suffer if certification is granted. The court in *Mallin* (which cites to *Hallicrafters* and discusses it as well) makes it clear that "[w]hen a district court is asked to certify a judgment based on the elimination of a party [or claim], it should first consider the prejudice to that party in being forced to wait to bring its appeal." *Mallin,* 106 Nev. at 611, 797 P.2d at 987-972 (emphasis added). In considering the potential prejudice, "[t]he district court should weigh the prejudice to the various parties and should certify judgment as final in a 'parties' case if the prejudice to the eliminated party would be greater than the prejudice to the parties below." *Id.* (Emphasis added).

C. There Is Not Basis For This Court To "Intervene" Because The State Engineer's Claims Concerning The Purported Procedural Issues Are Without Merit

The State Engineer's contention that the procedures utilized by the district court in the Diamond Valley adjudication are flawed (the foundational basis of the State Engineer's appeal and motions related thereto) is completely contradicted and undermined by the applicable law. As analyzed thoroughly above, in Solarljos' opposition to the State Engineer's motion for stay, and the district court's applicable orders, not only is there absolutely no language in the relevant provisions of NRS Chapter 533 or attendant case law that remotely suggests that the utilization of the NRCP is not appropriate in water-right adjudication proceedings, it expressly provides that the opposite is true.

Also, the State Engineer's concerns regarding overall procedure impropriety (which are vague at best) do not apply to Solarljos who did not conduct any additional discovery or present any new evidence or facts during the adjudication. Solarljos' motion for partial summary judgment was entirely based on the State Engineer's lack of evidence to support his findings and conclusions in his Final Order of Determination.

Moreover, and perhaps most critically, the State Engineer cannot prevail in its appeal because he failed to file an opposition to Solarljos' motion for partial summary judgment. *See Coleman, supra.*; *Renown Reg'l Med. Ctr., supra., King,*

supra., and *King, supra*. While the State Engineer suggests that it was somehow insulated or excused from filing an opposition to Solarljos' motion because of its unique role, he fails to cite to any facts or law that supports such an absurd notion. The district court never imposed any limitations on the State Engineer's role in the subject adjudication proceeding. The State Engineer's decision to limit its involvement and role was his and his alone. The State Engineer, like any other party to a civil action, is not immune or exonerated from consequences of the decision to not participate in litigation.

Further, even if arguendo the State Engineer's role was as limited as it suggests (which is not supported), he should have challenged the district court's procedure by a writ of prohibition, which it could have and should have done over a year ago. A writ of prohibition is precisely the vehicle available to litigants to challenge a district court's discovery and motion practice orders on the grounds that such orders are in excess of the district court's statutory authority and jurisdiction. *See Werdleigh v. Dist. Ct.*, 111 Nev. 345, 351, 891(1995). This Court has held that "[a]lthough it 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.'" *Cotter v. Eigth Jud. Dist. Ct.*, 134 Nev. 247, 249, 416 P.3d 228

(2018). The fact that the State Engineer waited over a year to address these purported procedural issues when it now claims are so potentially harmful to him, the other claimants, and the State of Nevada as a whole is both unconscionable and disingenuous on his part.

III. CONCLUSION

The district court's certification of its order granting Solarljos' motion for partial summary judgment was procedurally and substantively proper, and appropriate in the underlying adjudication. The State Engineer has failed to provide any legal analysis in support of its arguments to contend otherwise and its position is baseless. Therefore, the State Engineer cannot show that the district court abused its discretion here and his underlying motion should be denied in its entirety.

Respectfully submitted this 4th day of March, 2022.

KAEMPFER CROWELL

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2022, service of the foregoing **RESPONDENT SOLARLJOS, LLC'S OPPOSITION TO MOTION TO DETERMINE WHETHER THE DISTRICT COURT PROPERLY CERTIFIED CORRECTED ORDER GRANTING SOLARLJOS, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS FINAL PURSUANT TO NRCP 54(b)** was filed electronically with the Clerk of the Court, and therefore electronic service was made in accordance with the master service list to the following:

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DATED March 4, 2022

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