

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
Mar 09 2022 11:48 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.

**REPLY IN SUPPORT OF 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)**

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 Reply in support of the State Engineer’s jurisdictional Motion to determine the propriety of the district court’s NRCP 54(b) certification of the Corrected Order Granting Solarljjos, LLC’s (hereafter “Solarljjos”) Motion for Partial Summary Judgment. This Reply is timely¹

///

¹ In the Court’s Order Granting Temporary Stay, the Court indicated that responses to the State Engineer’s Jurisdictional Motion and Emergency Motion for Stay were due by 4 p.m. on Friday, March 4, 2022, and that “[n]o extensions of time will be granted absent extraordinary and compelling circumstances demonstrated by written motion”. *Id.*, p. 3. Solarljjos filed both its Opposition to the State Engineer’s Jurisdictional Motion and its Opposition to the State Engineer’s Emergency Stay Motion after 4 p.m. on March 4, 2022, and did not seek an extension by written motion indicating extraordinary and compelling circumstances before doing so.

filed pursuant to the Court's Order Granting Temporary Stay and is based upon the following Points and Authorities and the papers on file herein.

POINTS AND AUTHORITIES

I. NRCP 54(b) CANNOT BE USED TO CERTIFY INDIVIDUAL CLAIMS IN A STATUTORY WATER ADJUDICATION

Despite Solarljós's arguments otherwise, the State Engineer argued in his motion (and does so again here) that it was improper for the district court to treat Solarljós's exception and claims as a consolidated case retaining its separate identity for purposes of appeal. The Diamond Valley Adjudication is a single case, stemming from a single administrative process and the single Order of Determination. A single decree should be the result of this case. *See* NRS 533.185.

In fact, case law relating to water adjudications in Nevada make this clear: "the 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, in Lander Cty.*, 57 Nev. 232, 61 P.2d 987, 989 (1936); *see also* James H. Davenport, *Nevada Water Law* (2003) at 110 ("An adjudication is not a separable controversy between a few claimants. All claimants or water users in a water rights adjudication proceeding under the water [statutes] are essentially adverse."). The fact that the *Silver Creek* case predates the adoption of the Nevada Rules of Civil Procedure ("NRCP") is irrelevant. "The purpose of the Water Law is perfectly obvious. It seeks not only to have the water rights adjudicated but to have them adjudicated in

such a proceeding as to terminate for all time litigation between all such water users.” *Ruddell v. Sixth Jud. Dist. Ct. in & for Humboldt Cty.*, 54 Nev. 363, 17 P.2d 693, 695 (1933). It is for this reason that standing to appeal is not as narrow in the context of water adjudications as Solarljøs argues.

In fact, despite Solarljøs’s arguments that the Court should essentially ignore the *Silver Creek* case because the decision predates the NRCP, *Silver Creek* addressed (and discarded) almost all the arguments that Solarljøs makes in its Opposition. NRS 533.200 requires that notices of appeal from a decree must be served on the Attorney General as process agent for “all claimants or water users who **have not** filed exceptions or objections to the final order of determination.” (emphasis added). In *Silver Creek*, this Court determined that provision in NRS 533.200, previously found at section 35 of the Water Code, was “mandatory in form and jurisdictional in effect”, finding that a claimant or water user who did not file an exception at the district court would nonetheless have standing to appeal the decree because “[a]lthough satisfied with the final order of determination of the state engineer, they are vitally concerned in every other appropriation, because a modification of the order might affect them.” *In re Water Rights in Silver Creek & Its Tributaries, in Lander Cty.*, 57 Nev. at 232, 61 P.2d at 989–990; see also James H. Davenport, *Nevada Water Law* (2003) at 110 (“Because of the objective of quieting and resolving all claims in the river system, the notion of standing to

appeal a final determination is broad. Even parties who fail to take exceptions to an adjudication when reviewed on appeal are entitled to participation in consideration of the adjudication.”). The right of appeal in a statutory adjudication proceeding exists solely by virtue of NRS 533.200, and therefore “[a]n appeal in a water adjudication proceeding other than from an order denying a motion for a new trial must be taken from **the decree** as entered.” *In re Water Rights in Silver Creek & Its Tributaries, in Lander Cty.*, 57 Nev. at 232, 61 P.2d at 990 (emphasis added).

While Solarljøs alleges that the only party to which it is adverse is the State Engineer, that is the main subject of the State Engineer’s underlying appeal: the State Engineer sits in the role of a special master in these proceedings and is not “adverse” to any of the claimants. Rather, as an officer of the Court, the State Engineer’s primary goal is to ensure that the proper procedure and proper standard of review are used such that prestatutory water rights are determined correctly. Solarljøs similarly argues that *In re Waters of Humboldt River Stream Sys.*, 54 Nev. 115, 7 P.2d 813 (1932), is essentially irrelevant because it too predates the NRCP. This is incorrect—NRS 533.200, just like section 36 of the Water Law in 1932, states that appeals may be taken from such **decree** “by the State Engineer or any party in interest in the same manner and with the same effect as in civil cases.” *See In re Waters of Humboldt River Stream Sys.*, 54 Nev. at 115, 7 P.2d at 814. This is because adjudications are a special statutory proceeding, and the right to appeal is expressly

conferred by statute: that statute, now found at NRS 533.200, expressly requires a decree to be the final product of an adjudication at the district court and that such a decree is required for appeals to be ripe. The Renners' Opposition likewise concedes that in the Carson Valley adjudication, the district court issued a unified decree before such appeals were ripely taken. Renners' Opposition, P. 4. The *Humboldt River* case remains good law and remains directly on point. The district court's NRCP 54(b) certification of the resolution of Solarljós's claims in the adjudication was inappropriate.

II. ASSUMING ARGUENDO NRCP 54(b) CERTIFICATIONS ARE PERMITTED IN WATER ADJUDICATIONS, NRCP 54(b) CERTIFICATION WAS NONETHELESS INAPPROPRIATE HERE

Lastly, while Solarljós argues that it was the only one claiming vested groundwater rights in the adjudication, and the Renners argue its water sources are likewise unrelated to claims from others, they are far from the only ones interested in the water of Diamond Valley. *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. This takes on added significance in a place like Diamond Valley where the interaction between groundwater pumping and surface water springs has been the focus of prior litigation as well. *See Eureka Cty. v. Sadler Ranch, LLC*, Nevada Supreme Court Case No. 75736. This underscores the importance that the proper procedures and standards of review be utilized by the district court in this

adjudication—the ultimate line between senior water rights holders and junior water rights holders will be determined based on the volume of vested rights determined in the Diamond Valley adjudication.

Solarljøs parrots the district court on two points: (1) Solarljøs faults the State Engineer because, after the State Engineer made his concerns about the process and understanding of his role known to the district court and all the parties early on the proceedings, he waited for an independently appealable decision rather than seeking extraordinary writ relief; and (2) the State Engineer did not file a response to Solarljøs’s motion for partial summary judgment because in his role as a special master he should not be adverse to the water claimants, and the State Engineer assumed that an exception to the Order of Determination was in and of itself a fact question that should preclude summary judgment.

The State Engineer’s appeal is based on his position that the district court has utilized incorrect procedures throughout the Diamond Valley adjudication—whether it be the standard of review and the weight given to the Order of Determination (which unquestionably affects all proceedings in the adjudication) or the district court’s decision to allow Solarljøs to file a dispositive motion against the Order of Determination, and then granting it as unopposed, despite seeming to confirm the State Engineer’s role as a special master in these proceedings. *See* State Engineer’s Emergency Motion for Stay, p. 4. The State Engineer also takes issue with the

discovery procedures at the district court, as more fully explained in his Reply in support of Emergency Motion for Stay. Notwithstanding the State Engineer's argument that NRCP 54(b) certifications are inappropriate in statutory water adjudications in general, this is clearly a case where remaining claims in the adjudication 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)." *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528–29, 728 P.2d 441, 443 (1986); *see also Wiman v. Refaely*, 489 P.3d 917 (Table), 2021 WL 2787919, Docket No. 82763, filed July 2, 2021 (unpublished disposition).

III. CONCLUSION

The district court abused its discretion in granting Solarljós's NRCP 54(b) request, as doing so was inappropriate in this statutory water adjudication and inappropriate under NRCP 54(b) generally. Therefore, the State Engineer once again respectfully requests that this Court determine whether the district court properly certified the Order Granting Partial Summary Judgment as final—and that it answer that question in the negative and find that NRCP 54(b) certification was improper. Lastly, the State Engineer reiterates his concern that, despite this jurisdictional defect, intervention from this Court may nonetheless be warranted

because of the procedural issues in the ongoing adjudication proceedings in the district court. However, the State Engineer is prepared to address those in an appeal of the ultimate decree should the Court find that it lacks jurisdiction to hear this appeal by finding that the NRCP 54(b) certification was an abuse of discretion.

RESPECTFULLY SUBMITTED this 9th day of March, 2022.

AARON D. FORD
Attorney General

By: /s/ James N. Bolotin
JAMES N. BOLOTIN (No. 13829)
Senior Deputy Attorney General
IAN CARR (No. 13840)
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
T: (775) 684-1231
E: jbolotin@ag.nv.gov
E: icarr@ag.nv.gov
*Attorney for Appellant,
State Engineer*

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of March, 2022, I served a copy of the foregoing REPLY IN SUPPORT OF 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), by the Nevada Supreme Court's EFlex Electronic Filing System, addressed to:

Paul G. Taggart, Esq.
David H. Rigdon, Esq.
Timothy O'Connor, Esq.
Tamara C. Thiel, Esq.
TAGGART & TAGGART, LTD.
E: paul@legaltnt.com; david@legaltnt.com; tim@legaltnt.com;
tammy@legaltnt.com
Attorneys for Sadler Ranch, MW Cattle, Venturacci & Renners

Therese A. Ure Stix, Esq.
Laura A. Schroeder, Esq.
Caitlin Skulan, Esq.
SCHROEDER LAW OFFICES, P.C.
E: counsel@water-law.com
Attorneys for Baumanns, Beck Entities & Fitzwaters

Karen A. Peterson, Esq.
ALLISON MACKENZIE, LTD.
E: kpeterson@allisonmackenzie.com
Attorney for Eureka County

///

///

Theodore Beutel
EUREKA COUNTY DISTRICT ATTORNEY
E: tbeutel@eurekacountynv.gov
Attorney for Eureka County

Robert A. Dotson, Esq.
Justin C. Vance, Esq.
DOTSON LAW
E: rdotson@dotsonlaw.legal; jvance@dotsonlaw.legal
Attorneys for Goicoechea

Alex J. Flangas, Esq.
August B. Hotchkin, Esq.
KAEMPFER CROWELL
E: aflangas@kcnvlaw.com; ahotchkin@kcnvlaw.com
Attorneys for Solarljós

Ross E. de Lipkau, Esq.
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
E: ross@nvlawyers.com
Attorney for Bliss

Gordon H. DePaoli, Esq.
WOODBURN AND WEDGE
E: gdepaoli@woodburnandwedge.com
Attorney for Bailey Family Trust

And by electronic mail, addressed to:

Steven D. King, Esq.
LAW OFFICES OF STEVEN D. KING
E: kingmont@charter.net
Attorney for Goicoechea

David Negri
U.S. DEPT. OF JUSTICE – ENRD
E: david.negri@usdoj.gov
Attorney for the United States of America

/s/ Dorene A. Wright