

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 ND ELKO COUNTIES,
NEVADA.

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Elizabeth A. Brown
Clerk of Supreme Court
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; AND EUREKA COUNTY,

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; 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 GLADYS
GOICOECHEA,

Respondents.

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**EUREKA COUNTY’S JOINDER TO STATE ENGINEER’S REPLIES IN
SUPPORT OF 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) AND EMERGENCY MOTION UNDER NRAP 27(e)
FOR STAY OF DISTRICT COURT’S CORRECTED ORDER GRANTING
SOLARLJOS, LLC’S MOTION FOR PARTIAL SUMMARY JUDGMENT AND
STAY OF ADJUDICATION PROCEEDINGS PENDING APPEAL AND
REQUEST FOR TEMPORARY STAY PENDING DECISION ON UNDERLYING
MOTION FOR STAY**

EUREKA COUNTY, by and through its undersigned counsel, hereby joins in
the STATE ENGINEER’S REPLY IN SUPPORT OF 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) AND STATE
ENGINEER’S REPLY IN SUPPORT OF EMERGENCY MOTION UNDER
NRAP 27(e) FOR STAY OF DISTRICT COURT’S CORRECTED ORDER
GRANTING SOLARLJOS, LLC’S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND STAY OF ADJUDICATION PROCEEDINGS PENDING

APPEAL AND REQUEST FOR TEMPORARY STAY PENDING DECISION ON UNDERLYING MOTION FOR STAY filed with this Court by Appellants, THE STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES; and ADAM SULLIVAN, P.E., STATE ENGINEER on March 9, 2022.

EUREKA COUNTY joins in the STATE ENGINEER's arguments in his Replies and submits the following additional information and argument for the Court's consideration.

The district court's procedure adopted in the adjudication proceeding has been unorthodox. For example, the district court indicated every claimant would be required to file a motion to intervene pursuant to the Nevada Rules of Civil Procedure to participate in any other claimant's exception proceeding. *See Solarljøs Opposition to Motion to Determine Whether the District Court Properly Certified Corrected Order, Exhibit 2, Order Setting Hearings on Notices of Exceptions Filed on Order of Determination to Determine Relative Water Rights; Order Establishing Case Procedure* at 3. EUREKA COUNTY did so and moved to intervene to ensure it could participate fully in the evidentiary hearings to be held in the adjudication on all the exceptions that had been filed in the adjudication proceedings and to support the Order of Determination entered by the State Engineer as may be necessary to protect EUREKA COUNTY's interests. *See Sadler Ranch, LLC's Response to State*

Engineer's Emergency Motion for Stay, Exhibit 3, *Eureka County's Motion to Intervene* at 2. Solarljós did not oppose EUREKA COUNTY's motion to intervene, but the district court only granted EUREKA COUNTY's intervention in the exception proceedings involving claimants that opposed EUREKA COUNTY's intervention. *See* State Engineer's Motion for Emergency Stay, Exhibit 5, *Order Granting Solarljós, LLC's Motion for Certification of Judgment on Solarljós' Exception in this Adjudication Proceeding* at 5, n. 14. Because EUREKA COUNTY had not been granted intervention in the Solarljós proceeding, EUREKA COUNTY could not file an opposition to Solarljós' motion for partial summary judgment. This is particularly troubling when the district court appears to have granted Solarljós' motion for partial summary judgment because no other claimant intervened in its exception proceeding and no one opposed Solarljós' motion. *Id.* at 5. The district court made a similar statement that no one participated in the Solarljós case because its case was unrelated to the other claimants or interested parties, and if anyone was interested, they could have utilized the intervention procedure. *See* State Engineer's Motion for Emergency Stay, Exhibit 7, *Order Denying State Engineer's Motion for Stay of Corrected Order Granting Solarljós, LLC's Motion for Partial Summary Judgment Pending Appeal; Order Denying Motion for Stay of the Entirety of These Adjudication Proceedings Pending Appeal* at 11.

The district court views the adjudication proceeding as more akin to consolidated cases retaining their separate identities for purposes of appeal. *See* State Engineer’s Motion for Emergency Stay, Exhibit 5, *Order Granting Solarljøs, LLC’s Motion for Certification of Judgment on Solarljøs’ Exception in this Adjudication Proceeding* at 5. 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. *In re Water Rights in Silver Creek*, 57 Nev. 232, 61 P.2d 987 (1936), cited with approval in *Bentley v. State, Office of State Eng’r*, 132 Nev. 946, 2016 WL 3856572 (Table), Docket Nos. 64773, 66303, 66932, (July 14, 2016) (unpublished disposition cited as persuasive authority). The purpose of a statutory adjudication is to have water rights “adjudicated in such a proceeding as to terminate for all time litigation between all such water users.” *Ruddell v. Sixth Judicial Dist. Court*, 54 Nev. 363, 367, 17 P.2d 693, 695 (1933). Claimants in an adjudication who are satisfied with the State Engineer’s Order of Determination would not file exceptions to the Order of Determination because only persons aggrieved or dissatisfied with the Order of Determination are required to file exceptions pursuant to NRS 533.170(1). However, such claimants are still parties to the adjudication because they have an interest in ensuring the State Engineer’s Order of Determination is upheld with regard to their water rights, and other water users or adverse claims in the

adjudication. Claimants in an adjudication should not have to intervene to protect their interests in a proceeding in which they are already a party.

The district court erred in its procedure granting summary judgment in this proceeding even if no one opposed the motion. Summary judgment is only appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions and affidavits, if any, that are properly before the court demonstrate no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). Some have argued the State Engineer's Order of Determination is a pleading as provided in NRS 533.170(2). Even if no claimant opposed a motion for summary judgment, NRCP 56 specifically provides that summary judgment is only appropriate when the *pleadings* before the court demonstrate no genuine issue of material fact exists. The State Engineer's Order of Determination is replete with facts related to Solarljós' claims and noted the amount of water put to beneficial use was not clearly defined in the claims filed by Solarljós nor in the supporting documentation. The district court used a NRS 533.540 standard of review finding there was no evidence of record supporting the Order of Determination and granted summary judgment because no one opposed Solarljós' motion for partial summary judgment. The district court is required to determine if there was pre-1905 beneficial use of water in its review of the Order of Determination, not grant a claimant vested

water rights because no one opposed a motion for summary judgment. If the district court had questions about the evidence relied upon to support the Order of Determination, the district court should have referred the matter back to the State Engineer under NRS 533.180 to take further evidence as the Legislature provided if evidence or findings were missing.

Finally, the district court's rationale for determining that the object of the State Engineer's appeal in this case would not be defeated based upon the quantity of water it awarded to Solarljøs is very troubling to EUREKA COUNTY. The district court stated awarding 341.71 acre feet of vested groundwater water rights to Solarljøs instead of the 13.2 acre feet granted by the State Engineer is "insignificant" based upon over pumping the State Engineer has allowed to occur in Diamond Valley over the last 40 years of over 30,000 acre feet per year. *See State Engineer's Motion for Emergency Stay, Exhibit 7, Order Denying State Engineer's Motion for Stay of Corrected Order Granting Solarljøs, LLC's Motion for Partial Summary Judgment Pending Appeal; Order Denying Motion for Stay of the Entirety of These Adjudication Proceedings Pending Appeal* at 10. As EUREKA COUNTY stated in its Motion to Intervene, every drop of water in Diamond Valley is precious. The Diamond Valley adjudication involves the adjudication of and will have implications on all waters, both surface and underground, located in the Diamond Valley basin. *See Sadler Ranch, LLC's Response to State Engineer's Emergency Motion for Stay,*

Exhibit 3, *Eureka County's Motion to Intervene* at 2. Because the surface and groundwater systems in Diamond Valley are hydrologically connected, the adjudication and quantification of the senior pre-statutory surface water rights necessarily affects junior water right holders in the basin such as EUREKA COUNTY. *Id.* Further, the judicial decree entered by the district court will subsequently affect all water right holders, both senior and junior, in other matters in the Diamond Valley basin, related to corresponding granting of mitigation rights, groundwater management plans and curtailment. *Id.* EUREKA COUNTY's municipal rights in Diamond Valley are used to provide municipal service to its citizens. Every superior priority right claimed above EUREKA COUNTY's must be quantified carefully and correctly in order to honor the importance and rights of the other users of water in the basin. The 329 acre feet of additional vested groundwater water rights awarded to Solarljøs by the district court undoubtedly push other groundwater rights in Diamond Valley below the cut line if curtailment by priority were to occur. The cut line for groundwater if curtailment by priority were to occur for junior rights such as those held by EUREKA COUNTY versus senior rights in Diamond Valley is impacted by every acre foot of water awarded, including the additional approximately 329 acre feet of vested groundwater water rights awarded to Solarljøs, considered "insignificant" by the district court and "so infinitesimal" by Solarljøs.

DATED this 9th day of March, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

✓ Court's electronic notification system

as follows:

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DATED this 9th day of March, 2022.

/s/ Nancy Fontenot
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