

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIDLER WATER COMPANY, INC.,  
Appellant,

vs.

OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA; TRACY  
TAYLOR, P.E. STATE ENGINEER;  
MARY E. BACHER; CAROLE L.  
BENNER; ROXANNE R. COLLINS;  
ERNEST M. DUNAJSKI; JOHN H.  
BACHER; MELVIN O. BENNER;  
ELAINE M. CLARK; LARRY V.  
BOWLES; KATHERINE BOWLES; JOY  
HYDE FIORE; GLENDON HARDISON;  
MICHELLE HARDISON; BARBARA L.  
HARMAN; LOREN C. JEGLIN; NANCY  
KNIGHT; WARREN KNIGHT; TOM L.  
KNIGHT; KEITH W. KRAM; GERRY L.  
KRAM; RICHARD KRANZ; WILLIAM  
LOUCKS; STACY LOUCKS; DAVID  
LOWE; BARBARA LOWE; ALBERT G.  
MARQUIS; PAUL H. MUSKAT;  
ROBERT L. NEAD; MARY K. NEAD;  
JOHN E. NOSTRAND; JO E.  
PETERSON; DAVID C. PLYMELL;  
SANDY VALLEY VOLUNTEER FIRE  
DEPARTMENT; JEAN M. QUILLEN;  
KENNETH LEROY SMITH; LAYNE  
ROSEQUIST; LEONARD C. SMITH;  
PATRICIA R. SMITH; ELECTRA KAY  
SMITH; AND LEROY D. WILDER,  
Respondents.

No. 50101

**FILED**

JUL 23 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a petition for judicial review, following this court's reversal of a prior order

denying judicial review. Eighth Judicial District Court, Clark County; David Wall, Judge.<sup>1</sup>

On November 22, 2006, this court issued an opinion reversing the district court's prior order denying a petition for judicial review in a water rights matter, concluding that the State Engineer's decision was not supported by substantial evidence.<sup>2</sup> Specifically, appellant had sought a transfer of 2000 acre-feet annually from the Sandy Valley Basin to the Ivanpah Basin, which includes Primm, Nevada, where appellant planned to develop certain projects. The State Engineer concluded that 415 acre-feet annually were available for transfer and approved appellant's application in that amount. Property owners in Sandy Valley, who had opposed appellant's application, sought judicial review, which the district court denied.

The Sandy Valley property owners then appealed, as did appellant; the appeals were docketed in this court separately. Before briefing commenced, appellant voluntarily dismissed its appeal. Although undisputedly aware of the still-pending appeal by the Sandy Valley property owners, appellant did not seek leave to intervene in their appeal and did not participate in that appeal in any way until after the opinion was issued. At that time, appellant filed a petition for rehearing, asserting that certain evidence that had been before the State Engineer

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

<sup>2</sup>Bacher v. State Engineer, 122 Nev. 1110, 146 P.3d 793 (2006).

had not been included in the appendix filed in the Sandy Valley property owners' appeal to this court. Rehearing was denied.<sup>3</sup>

After the remittitur was issued, the Sandy Valley property owners submitted to the district court a proposed order granting judicial review and vacating the State Engineer's decision. Appellant objected to the order and filed a "Motion for Instructions," arguing that this court's reversal placed the proceedings at the point before the district court's original decision, so the district court could hold additional proceedings before issuing a final judgment. The district court, however, concluded that it was bound by this court's reversal, that the denial of rehearing, which brought to this court's attention two letters that were omitted from the appendix in the appeal, indicated that consideration of the letters had not altered this court's decision to reverse, and that, therefore, it had only one option: to grant the petition for judicial review. The district court entered an order accordingly, and this appeal followed. Sanctions have been requested by both sides to this appeal; appellant contends that the Sandy Valley property owners should be sanctioned for failing to include the full administrative record in its appendix in the first appeal, and the Sandy Valley property owners contend that appellant should be sanctioned for filing a frivolous appeal.

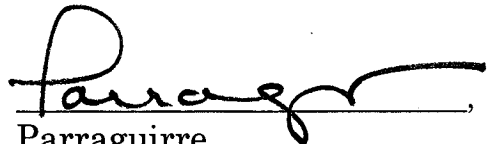
We conclude that the district court acted properly. This court's opinion established the law of the case, and the district court was

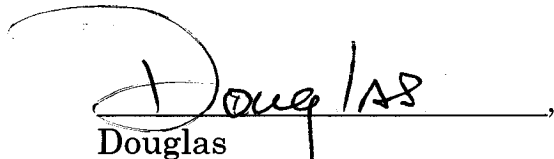
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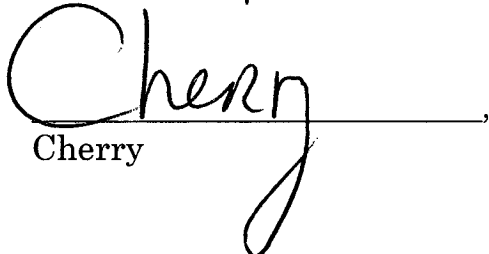
<sup>3</sup>Bacher v. State Engineer, Docket No. 42699 (Order Denying Rehearing, March 30, 2007).

not permitted to reconsider the issues decided in the appeal.<sup>4</sup> We further conclude that sanctions in this appeal are not appropriate based on the Sandy Valley property owners' conduct in the prior appeal, even if sanctions were warranted, and that sanctions under NRAP 38 are not warranted against appellant in this matter. Accordingly, we deny all sanctions requests, and we affirm the district court's order granting the petition for judicial review

It is so ORDERED.

  
Parraguirre, J.

  
Douglas, J.

  
Cherry, J.

cc: Hon. David Wall, District Judge  
Leonard I. Gang, Settlement Judge  
Allison, MacKenzie, Pavlakis, Wright & Fagan, Ltd.  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Reno  
Marquis & Aurbach  
Eighth District Court Clerk

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<sup>4</sup>See Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003).