

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUREKA COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Appellant,
vs.
SADLER RANCH, LLC; AND TIM
WILSON, P.E., NEVADA STATE
ENGINEER, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,
Respondents.

No. 75736

FILED

FEB 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order partially granting a petition for judicial review of the State Engineer's issuance of a permit for mitigation water rights. Seventh Judicial District Court, Eureka County; Gary Fairman, Judge.

Respondent Sadler Ranch, LLC, claims vested pre-statutory surface water rights in Big Shipley Spring (the Spring), which feeds from the Big Shipley Spring Complex (the Complex), part of the over-appropriated Diamond Valley Hydrographic Basin No. 10-153 (the Basin). Flows from the Spring have almost entirely dissipated. Accordingly, as relevant here, Sadler Ranch filed two applications with the respondent State Engineer: one (82268), to change the point of diversion for Sadler Ranch's surface water rights in the Spring; the other (87120), to allow Sadler Ranch to mitigate the loss of surface water available to satisfy those rights with an alternate source in Basin groundwater, as necessary. The State Engineer then issued: Permit 82268, allowing Sadler Ranch to drill a

well to intercept the source water for the Complex; and, Permit 87120 allowing Sadler Ranch “to divert [ground] water whenever Permit 82268 is in priority.”

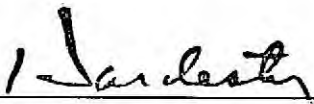
In Ruling 6371,¹ the State Engineer quantified Sadler Ranch’s rights under those permits, and further clarified that the scope of rights available under each permit was coextensive; that is, that Sadler Ranch’s mitigation rights under Permit 87120 could not “exceed the total combined duty of all rights on the source” for Permit 82268. Sadler Ranch sought judicial review of Ruling 6371’s quantification of those combined rights, which quantification the district court, purporting to use its equitable powers, amended. This appeal followed.

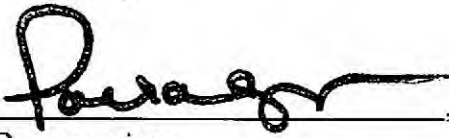
In the interim, on January 31, 2020, the State Engineer issued a final order of determination, which set the scope of Sadler Ranch’s rights to water in the Basin, which order is now pending final adjudication in the district court. See NRS 533.230 (stating that “[f]rom and after the filing of the order of determination, . . . the division of water from the stream involved in such determination shall be made by the State Engineer in accordance with the order of determination”). The somewhat differing, prior calculations by the district court that are the subject of this appeal are thus no longer operative, and the appeal is moot. *Personhood Nev. v. Bristol*, 245 P.3d 572, 574, 126 Nev. 599, 602 (2010) (noting that “[t]his court’s duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment”). Moreover, while appellant Eureka County belatedly argues that the quantification of Sadler Ranch’s


¹This ruling issued following the district court’s reversal and remand of a prior ruling quantifying Sadler Ranch’s rights under the same applications.

rights should be reduced to the extent the reduction in the flow of the Spring is allegedly self-inflicted, this was not properly raised, *Powell v. Liberty Mut. Fire Ins. Co.*, 252 P.3d 668, 672, n.3, 127 Nev. 156, 161, n.3 (2011) (noting that matter not raised in opening brief may be deemed waived); and, in any case, is now a matter for the district court in its review of the controlling quantifications in the State Engineer's January 31, 2020 order of determination. Accordingly, we

ORDER this appeal DISMISSED.

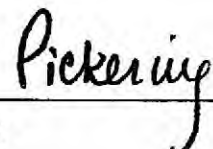

_____, C.J.
Hardesty

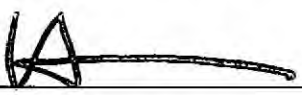

_____, J.
Parraguirre


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Silver


_____, J.
Pickering


_____, J.
Herndon

cc: Hon. Gary Fairman, District Judge
Margaret M. Crowley, Settlement Judge
Allison MacKenzie, Ltd.
Eureka County District Attorney
Taggart & Taggart, Ltd.
Attorney General/Las Vegas
Attorney General/Carson City
Eureka County Clerk