

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA  
STATE ENGINEER, et al.

Appellants,

vs.

LINCOLN COUNTY WATER  
DISTRICT; et al.

Respondents.

Electronically Filed  
Jun 13 2022 06:58 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**SOUTHERN NEVADA WATER AUTHORITY’S REPLY TO COYOTE  
SPRINGS INVESTMENTS, INC.’S RESPONSE TO MOTION FOR STAY**

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) hereby files this Reply to Coyote Springs Investments, LLC’s (“CSI”) Response to its Emergency Motion for Stay Under NRAP 27(e) of the district court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review (“Order” or “Order Vacating Order 1309”) based on the following memorandum of points and authorities, and all papers on file in case.

//

//

//

//

## **MEMORANDUM OF POINTS AND AUTHORITIES**

A stay of the district court’s Order Vacating Order 1309 is necessary to protect SNWA’s senior water rights in the Muddy River during this appeal. SNWA’s Muddy River water rights are critical to protect Las Vegas against drought. The threat to those water rights is not speculative. Overwhelming scientific evidence proves that the Order 1309 pumping cap of 8,000 acre-foot annum (“afa”) is needed to protect senior Muddy River water rights and an endangered fish (the Moapa dace). Without a stay, CSI and others will increase groundwater pumping above the 8,000 afa pumping cap. Therefore, the Order 1309 pumping cap must remain in place while the Court considers whether the district court erred when it found the State Engineer cannot jointly manage groundwater basins or protect surface water from groundwater pumping.

### **I. SNWA Has Standing To Appeal.**

In its Response, CSI claims that SNWA had settled its petition with the State Engineer and therefore has no standing to appeal.<sup>1</sup> This claim is patently false for two obvious reasons. First, as CSI knows full well, SNWA was both a petitioner *and* an intervening respondent below. SNWA filed a petition to challenge a discrete finding in Order 1309 – that current groundwater pumping does not *conflict* with

---

<sup>1</sup> On June 8, 2022, Vidler Water Company and Lincoln County filed a motion to dismiss SNWA’s appeal on similar baseless grounds. SNWA will fully respond to that motion in due course.

Muddy River water rights. SNWA also intervened as a respondent to defend the remainder of Order 1309 against petitions that were filed by five other parties (including CSI). Those parties stipulated to SNWA’s intervention in those cases.<sup>2</sup> SNWA, as a respondent, sought to have Order 1309 upheld, except the conflicts determination. Hence, SNWA has standing to appeal, as CSI stipulated, because groundwater pumping in the Lower White River Flow System (“LWRFS”) impacts SNWA’s Muddy River rights, new development based on unsustainable water supplies will cause a public health crisis, and SNWA’s long-standing interest in protecting the Moapa dace.<sup>3</sup> Second, CSI also knows that SNWA did not settle its petition for judicial review with the State Engineer. If it had, the district court would not have entered the addendum on May 13, 2022, that partially granted SNWA’s petition.<sup>4</sup>

**II. The object of the appeal will be defeated without a stay.**

CSI claims SNWA’s concern about additional groundwater pumping is speculative and hyperbolic.<sup>5</sup> Yet, CSI itself requested approval of a subdivision map from the State Engineer’s office within days after the district court issued its Order

---

<sup>2</sup> APP MFS at 367-383 (CSI Stipulation to SNWA’s Intervention).

<sup>3</sup> APP MFS at 384-401 (SNWA’s Motion to Intervene).

<sup>4</sup> APP MFS at 229-234 (Addendum and Clarification to the Court’s April 19, 2022, Order). While SNWA reached a tentative agreement to settle its petition with the State Engineer, that agreement was never finalized.

<sup>5</sup> CSI’s Response to SNWA’s Motion for Stay at 8.

Vacating Order 1309, and told the district court it plans to pump an additional 536 afa of water right away.<sup>6</sup> CSI's own statements make clear that SNWA's concern about the 8,000 afa threshold is neither speculative nor hyperbolic.

**III. SNWA will suffer irreparable harm if its Motion for Stay is denied.**

CSI argues SNWA will not suffer irreparable harm because the Memorandum of Agreement ("MOA") will provide protection for senior water rights. This is false. The MOA is a conservation tool for the Moapa dace.<sup>7</sup> The MOA does not protect senior water rights on the Muddy River. Next, CSI argues SNWA is disingenuous when it seeks a stay because SNWA argued in its Opening Brief at the district court that the State Engineer was allowing junior groundwater pumpers to capture senior Muddy River water rights. CSI mischaracterizes those arguments. In its Opening Brief, SNWA's arguments related to the State Engineer's conflicts determination, not the 8,000 afa pumping cap. Finally, CSI makes the meritless claim that a stay is not needed because the State Engineer has other tools to protect senior water rights. Since the district court found that those authorities wanting a stay must maintain the pumping cap until the validity of those authorities is fully adjudicated in this appeal.

---

<sup>6</sup> APP MFS at 146 (Transcript of Hearing regarding LVVWD & SNWA's Motion for Stay Pending Appeal at 43).

<sup>7</sup> APP MFS at 4 (Order 1309 at 4).

**IV. CSI will not suffer irreparable harm from a stay.**

CSI argues that it will suffer irreparable harm if the State Engineer prevents it from using its water rights. This is false. Neither CSI, nor any other water user, has a legal right to use additional groundwater that harms senior water rights.<sup>8</sup>

**V. SNWA is likely to succeed on the merits of its appeal.**

The district court erred by narrowly interpreting the authority of the State Engineer to exclude joint administration of groundwater basins and conjunctive management of ground and surface water. In *Pahrump Fair Water*, the Court held the State Engineer's broad authority to regulate groundwater wells was so vast that it negates the express language under NRS 534.030(4) which specifically excludes domestic wells from the State Engineer's regulatory authority.<sup>9</sup> Similarly, here the State Engineer's authority to jointly manage connected groundwater basins and to conjunctively manage ground and surface water is consistent with the broad grant in NRS 533.085 of authority to protect senior water rights. Under NRS 533.085(1), vested water rights cannot be impaired or affected by groundwater uses, but the district court's reasoning improperly precludes that protection.<sup>10</sup> Also, in *Mineral*

---

<sup>8</sup> NRS 533.430(1).

<sup>9</sup> *Wilson, v. Pahrump Fair Water*, 137 Nev. 10, 15, 481 P.3d. 853, 858 (2021).

<sup>10</sup> APP MFS at 209-11 (Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review). Furthermore, the district court's primary basis for vacating Order 1309 was the lack of express statutory language authorizing the State Engineer to revise hydrographic basin boundaries, even if it is abundantly clear that revisions are necessary. But the district court never accounted for how the generally

*County v. Lyon County* this Court held that the State Engineer has an affirmative duty to “maintain public trust resources.”<sup>11</sup> In Order 1309, the State Engineer fulfilled that duty. Restricting pumping to the available water supply is required to protect the public trust and public health and safety.

**VI. The State Engineer properly designated the LWRFS Hydrographic Basin under NRS 532.120 and NRS 534.030.**

In Order 1309, the State Engineer properly used his powers under NRS 532.120 and NRS 534.030 to designate the LWRFS Hydrographic Basin. After an extensive administrative process which included the required public hearings, the State Engineer properly designated the LWRFS in need of additional administration. His powers are not limited if a designation is supported by the best available science.

Regardless of CSI’s claim that the State Engineer did not explicitly explain the sources of his powers, the State Engineer clearly referenced NRS 532.120 and NRS 534.030 in Order 1309.<sup>12</sup>

**CONCLUSION**

For the aforementioned reasons, the Court should grant SNWA’s Motion for Stay of the district court’s Order Vacating Order 1309.

---

accepted hydrographic basin map came into existence. If the State Engineer can create hydrographic basins, it can surely revise those boundaries when compelling evidence demonstrates such a need.

<sup>11</sup> *Mineral County v. Lyon County*, 136 Nev. 503, 513-14, 473 P.3d 418, 426-27 (2020).

<sup>12</sup> APP MFS at 43 (Order 1309 at Fn. 245).

**AFFIRMATION**

The undersigned hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 13th day of June 2022.

TAGGART & TAGGART, LTD.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 – Telephone  
(775) 883-9900 – Facsimile

By: /s/ Paul Taggart  
PAUL G. TAGGART, ESQ.  
Nevada State Bar No. 6136  
THOMAS P. DUENSING, ESQ.  
Nevada State Bar No. 15213

STEVEN C. ANDERSON  
Nevada State Bar No. 11901  
SOUTHERN NEVADA WATER  
AUTHORITY  
1001 S. Valley View Blvd.  
Las Vegas, NV 89153  
Sc.anderson@lvvwd.com

*Attorneys for SNWA*

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of this Motion by electronic service to:

OFFICE OF THE ATTORNEY GENERAL  
JAMES N. BOLOTIN #13829  
LAENA ST-JULES #15156C  
100 North Carson Street  
Carson City, Nevada 89701-4717  
Email: [jbolotin@ag.nv.gov](mailto:jbolotin@ag.nv.gov)  
Email: [lstjules@ag.nv.gov](mailto:lstjules@ag.nv.gov)  
*Attorneys for Nevada State Engineer*

ROBISON, SHARP, SULLIVAN & BRUST  
KENT R. ROBISON #1167  
71 Washington Street  
Reno, Nevada 89593  
Email: [krobison@rssblaw.com](mailto:krobison@rssblaw.com)  
Email: [tshanks@rssblaw.com](mailto:tshanks@rssblaw.com)

**IN ASSOCIATION WITH:**  
BRADLEY J. HERREMA #10368  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106  
Email: [bherrema@bhfs.com](mailto:bherrema@bhfs.com)

WILLIAM L. COULTHARD #3927  
COULTHARD LAW  
840 South Ranch Drive, #4-627  
Las Vegas, Nevada 89106  
Email: [wlc@coulthardlaw.com](mailto:wlc@coulthardlaw.com)



EMILIA K. CARGILL #6493  
3100 State Route 168  
P.O. Box 37010  
Coyote Springs, Nevada 89037  
Email: [emilia.cargill@coyotesprings.com](mailto:emilia.cargill@coyotesprings.com)  
*Attorneys for Coyote Springs Investment, LLC*

MARQUIS AURBACH COFFING  
CHRISTIAN T. BALDUCCI #12688  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Email: [cbalducci@maclaw.com](mailto:cbalducci@maclaw.com)  
Email: [kwilde@maclaw.com](mailto:kwilde@maclaw.com)  
*Attorneys for Apex Holding Company, LLC and Dry Lake Water, LLC*

SCOTT LAKE  
Center for Biological Diversity  
P.O. Box 6205  
Reno, Nevada 89513  
(802) 299-7495  
Email: [slake@biologicaldiversity.org](mailto:slake@biologicaldiversity.org)

**IN ASSOCIATION WITH:**

LISA T. BELENKY (Pro Hac Vice to be submitted)  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, California 94612  
Email: [lbelenky@biologicaldiversity.org](mailto:lbelenky@biologicaldiversity.org)  
*Attorneys for Center for Biological Diversity*

DYER LAWRENCE, LLP  
FRANCIS C. FLAHERTY  
2805 Mountain Street  
Carson City, Nevada 89703  
(775) 885-1896  
Email: [fflaherty@dyerlawrence.com](mailto:fflaherty@dyerlawrence.com)  
*Attorneys for Nevada Cogeneration Associates Nos. 1 and 2*

KAEMPFER CROWELL  
SEVERIN A. CARLSON #9373  
SIHOMARA L. GRAVES #13239  
50 West Liberty Street, Suite 700  
Reno, Nevada 89501  
Email: [scarlson@kcnvlaw.com](mailto:scarlson@kcnvlaw.com)  
Email: [sgraves@kcnvlaw.com](mailto:sgraves@kcnvlaw.com)  
*Attorneys for The Church of Jesus Christ of Latter-day Saints*

DOTSON LAW  
ROBERT A. DOTSON #5285  
JUSTIN C. VANCE #11306  
5355 Reno Corporate Drive, Suite 100  
Reno, Nevada 89511  
Email: [rdotson@dotsonlaw.legal](mailto:rdotson@dotsonlaw.legal)  
Email: [jvance@dotsonlaw.legal](mailto:jvance@dotsonlaw.legal)

**IN ASSOCIATION WITH:**  
STEVEN D. KING #4304  
227 River Road  
Dayton, Nevada 89403  
Email: [kingmont@charter.net](mailto:kingmont@charter.net)  
*Attorneys for Muddy Valley Irrigation Company*

McDONALD CARANO LLP  
SYLVIA HARRISON #4106  
LUCAS FOLETTA #12154  
SARAH FERGUSON #14515  
100 W. Liberty Street, Suite 1000  
Reno, Nevada 89501  
Email: [sharrison@mcdonaldcarano.com](mailto:sharrison@mcdonaldcarano.com)  
Email: [lfoletta@mcdonaldcarano.com](mailto:lfoletta@mcdonaldcarano.com)  
Email: [sferguson@mcdonaldcarano.com](mailto:sferguson@mcdonaldcarano.com)  
*Attorneys for Georgia-Pacific Gypsum, LLC and Republic Environmental Technologies, Inc.*

PARSONS BEHLE & LATIMER  
GREGORY H. MORRISON #12454  
50 West Liberty Street, Suite 750  
Reno, Nevada 89501  
Email: [gmorrison@parsonsbehle.com](mailto:gmorrison@parsonsbehle.com)  
*Attorneys for Moapa Valley Water District*

NEVADA ENERGY  
JUSTINA A. CAVIGLIA #9999  
MICHAEL D. KNOX #8143  
6100 Neil Road  
Reno, Nevada 89511  
Email: [justina.caviglia@nvenergy.com](mailto:justina.caviglia@nvenergy.com)  
Email: [mknox@nvenergy.com](mailto:mknox@nvenergy.com)  
*Attorneys for Nevada Power Company dba NV Energy*

SCHROEDER LAW OFFICES, P.C.  
THERESE A. URE STIX #10255  
LAURA A. SCHROEDER #3595  
10615 Double R Blvd., Suite 100  
Reno, Nevada 89521  
Email: [t.ure@water-law.com](mailto:t.ure@water-law.com)  
Email: [schroeder@water-law.com](mailto:schroeder@water-law.com)  
*Attorneys for City of North Las Vegas, Western Elite Environmental, Inc. and Bedroc Limited, LLC*

LINCOLN COUNTY DISTRICT ATTORNEY  
DYLAN V. FREHNER #9020  
181 North Main Street, Suite 205  
P.O. Box 60  
Pioche, Nevada 89043  
Email: [dfrehner@lincolncountynv.gov](mailto:dfrehner@lincolncountynv.gov)

**IN ASSOCIATION WITH:**  
WAYNE O. KLOMP #10109  
SNELL & WILMER L.L.P.  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501  
Email: [wklomp@swlaw.com](mailto:wklomp@swlaw.com)  
*Attorneys for Lincoln County Water District*

ALLISON MacKENZIE, LTD.  
KAREN A. PETERSON #366  
402 North Division Street  
Carson City, Nevada 89703  
Email: [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
*Attorneys for Vidler Water Company, Inc.*

DATED this 13th day of June, 2022.

*/s/ Thomas P. Duensing*  
Employee of TAGGART & TAGGART, LTD.

**APPENDIX INDEX**

<u>Exhibit</u>	<u>Description</u>	<u>Bate Stamp</u>
1.	Order 1309	APP MFS 1-68
2.	Interim Order 1303	APP MFS 69-87
3.	CSI's Opposition to LVVWD & SNWA's Motion for Stay Pending Appeal	APP MFS 68-103
4.	Transcript of Hearing regarding LVVWD & SNWA's Motion for Stay Pending Appeal	APP MFS 104-188
5.	Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review	APP MFS 189-228
6.	Addendum and Clarification to Court's Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review	APP MFS 229-234
7.	Court Minutes from May 16 <sup>th</sup> , 2022	APP MFS 235-236
8.	SNWA & LVVWD Assessment of the Moapa Dace and other Groundwater-Dependent Special Status Species in the Lower White River Flow System	APP MFS 237-239
9.	APP MFS 240-314 Intentionally Omitted	APP MFS 240-314
10.	Amended Notice of Hearing August 26 <sup>th</sup> , 2019	APP MFS 315-332
11.	Prehearing Conference on August 8 <sup>th</sup> , 2019	APP MFS 333-366
12.	CSI's Stipulation to SNWA's Intervention	APP MFS 367-383
13.	SNWA's Motion to Intervene	APP MFS 384-401