

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.

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Elizabeth A. Brown
Clerk of Supreme Court

**VOLUME FOUR OF APPENDIX FOR EMERGENCY MOTION FOR
STAY UNDER NRAP 27(e) OF DISTRICT COURT’S ORDER GRANTING
PETITION FOR JUDICIAL REVIEW PENDING APPEAL**

COMES NOW, Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) by and through its counsel, PAUL G. TAGGART, ESQ. and THOMAS P. DUENSING, ESQ., of the law firm of TAGGART & TAGGART, LTD., and STEVEN C. ANDERSON ESQ., of SNWA, submit Volume Four of this appendix in support of SNWA’s Emergency Motion for Stay under NRAP 27(e) of District Court’s Order Granting Petition for Judicial Review Pending Appeal pursuant to NRAP 8(a)(2).

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.

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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:

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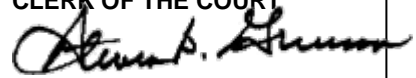
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APPENDIX INDEX

<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 th , 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 th , 2019	APP MFS 315-332
11.	Prehearing Conference on August 8 th , 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



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DISTRICT COURT
CLARK COUNTY, NEVADA

21 COYOTE SPRINGS INVESTMENT, LLC,

Case No. A-20-817765-P

Petitioner,

Dept. No. I

vs.

MOTION TO INTERVENE

22 TIM WILSON, State Engineer, State of Nevada,
23 Department of Conservation and Natural
24 Resources, Division of Water Resources,

(Hearing Requested)

25 Respondent.

26 LAS VEGAS VALLEY WATER DISTRICT (“LVVWD”) and SOUTHERN NEVADA
27 WATER AUTHORITY (“SNWA”), by and through their counsel, PAUL G. TAGGART, ESQ. and
28 TIMOTHY D. O’CONNOR, ESQ., of the law firm of TAGGART & TAGGART, LTD., and STEVEN
C. ANDERSON, ESQ., of the SOUTHERN NEVADA WATER AUTHORITY, file this Motion to
Intervene in COYOTE SPRINGS INVESTMENT, LLC’s (“CSI”) Petition for Judicial Review of the
Nevada State Engineer’s Interim Order 1309 (“2020 PJR”). This motion is supported by the attached
memorandum of points and authorities.

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1 SNWA and LVVWD filed a Petition for Judicial Review from the same State Engineer decision
2 – Order 1309 – on June 17, 2020. SNWA and LVVWD’s appeal was the first-filed appeal from Order
3 1309. Nonetheless, CSI has filed a motion to consolidate appeals from Order 1309 in this case.
4 Accordingly, SNWA and LVVWD ask the Court to schedule a hearing on this motion to intervene at
5 the same time as, or before, the hearing set for CSI’s motion to consolidate.

6 DATED this 23rd day of July, 2020.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This matter is a Petition for Judicial Review of State Engineer Order 1309. The issue the State
4 Engineer grappled with before issuing that order is whether CSI should be granted subdivision maps for
5 thousands of new homes that will rely on a groundwater supply that is not sustainable. On June 15,
6 2020, the State Engineer issued Order 1309, and determined CSI does not have a sustainable water
7 supply for its project because its pumping will impact senior surface water rights in the Muddy River,
8 and the habitat of the Moapa Dace—an endangered fish.

9 LVVWD is a non-profit water utility and municipal purveyor that provides water service to over
10 1.5 million people in Southern Nevada from Colorado, Virgin and Muddy River waters, and from
11 groundwater within the Las Vegas Valley. LVVWD also operates rural groundwater systems in Jean,
12 Searchlight, Blue Diamond, and Kyle Canyon, as well as in Coyote Spring Valley. SNWA is a regional
13 water utility responsible for treating and delivering Colorado River water to its member agencies, of
14 which LVVWD is the largest. SNWA is also responsible for regional water supply planning and
15 development of new water resources for its members, who serve approximately 74 percent of Nevada’s
16 population.

17 SNWA’s water resource portfolio includes approximately 20,000 acre-feet annually (“afa”) of
18 senior Muddy River decreed water rights, and 11,200 afa of groundwater in the area surrounding CSI’s
19 project. LVVWD and SNWA were parties to the State Engineer’s administrative hearing process, and
20 sought to protect these water rights by providing evidence during the hearing process that led to Order
21 1309. Order 1309 addresses the protection of those water rights, and any appeal of Order 1309 could
22 affect LVVWD and SNWA’s ability to protect those rights. Therefore, LVVWD and SNWA should be
23 granted intervention, and the status of a party, in this case.

24 **BACKGROUND**

25 Order 1309 was issued as part of the water administration process in the Lower White River
26 Flow System (“LWRFS”). The LWRFS is comprised of a series of groundwater basins and the Muddy
27 River. CSI’s proposed project lies in the center of the LWRFS. CSI is seeking to develop thousands of
28 homes in Coyote Spring Valley, which is over fifty miles from Las Vegas. CSI currently operates a golf

1 course in the area and pumps groundwater for that course. The groundwater management challenge in
2 the LWRFS centers on the groundwater pumping in Coyote Spring Valley, and the groundwater basins
3 that surround it. Coyote Spring Valley groundwater rights have been the subject of administrative
4 proceedings and litigation for decades, and SNWA and LVVWD have been a party to those proceedings.
5 At hearings in 2001, the State Engineer considered CSI's groundwater applications for its proposed
6 project. The result was State Engineer Order 1169. Order 1169 required a pumping test of existing
7 water permits in the LWRFS before the State Engineer would consider awarding additional permits.
8 SNWA conducted the Order 1169 pumping test.

9 **I. Protection of Moapa Dace**

10 Another key consideration for managing groundwater development in the LWRFS is the
11 presence of the Moapa Dace, which is listed on the federal list of threatened and endangered species.
12 The Moapa Dace exists in springs and spring-fed habitats in Moapa, Nevada. Groundwater pumping in
13 the LWRFS impacts the spring flow at the springs where Moapa Dace are found. To authorize the Order
14 1169 pumping test, SNWA negotiated, and was a primary participant, in a Memorandum of Agreement
15 ("MOA") concerning the Moapa Dace. That agreement was based on a Biological Opinion from the
16 U.S. Fish and Wildlife Service that concluded a specific rate of flow is required at Warm Springs West
17 to protect the Dace, and required the curtailment of LWRFS pumping if that rate was not sustained.

18 More specifically, the MOA was signed in 2006 by the SNWA, CSI, the United States Fish and
19 Wildlife Service ("USFWS"), the Moapa Valley Water District ("MVWD"), and the Moapa Valley
20 Band of Paiute Indians ("MBOP"). The MOA was created to ensure water usage in the LWRFS did not
21 interfere with measurable progress toward protection and recovery of the endangered Moapa Dace and
22 its habitat. The MOA contained triggers and actions for the various parties to take if flow levels in the
23 Muddy River declined. Through the MOA, all parties recognized that pumping in Coyote Springs
24 Valley could have a detrimental impact on existing water rights and the environment.

25 **II. Order 1169 Pumping Test and Rulings 6254-58**

26 The primary wells that were used in the Order 1169 pumping test are located near CSI's golf
27 course and proposed subdivision. After Order 1169, the State Engineer concluded that pumping from
28 those wells impacts the springs where Moapa Dace are located, and denied all pending water rights

1 applications—including CSI’s. Specifically, the State Engineer concluded that the pumping had a direct
2 connection to the fully appropriated Muddy River, which is part of the source of water for the
3 endangered Moapa Dace, and the decreed senior rights of the Muddy River. The State Engineer issued
4 Rulings 6254-6258 on January 29, 2014, in which he denied all pending water right applications in the
5 LWRFS basins. The State Engineer ruled in Rulings 6254-6258 that pumping of existing rights in the
6 1169 pump tests measurably reduced flows in headwater springs of the Muddy River. The State
7 Engineer denied the pending applications and found that the amount and location of water that could be
8 pumped from existing rights remained unclear.¹

9 **III. CSI Litigation Against State Engineer, LVVWD and SNWA**

10 This is the third action CSI has filed in the Eighth Judicial District Court that involves the State
11 Engineer, and is related to the its ability to pump groundwater for a subdivision in Coyote Spring Valley.
12 SNWA and LVVWD were granted intervention as parties in the two prior cases.²

13 **A. CSI’s First Lawsuit Against State Engineer.**

14 CSI sued the State Engineer because the State Engineer sent a letter to CSI that indicated the
15 State Engineer would not sign a subdivision map based on CSI current water rights. In that case, the
16 Court ordered that SNWA and LVVWD be granted the status of a party. SNWA and LVVWD supported
17 the position of the State Engineer that inefficient groundwater exists to be a sustainable water supply for
18 the CSI project. The parties in that case stipulated to dismiss the action based on the State Engineer’s
19 commitment to conduct an evidentiary hearing related to the LWRFS. Then the State Engineer issued
20 Interim Order 1303 to develop a schedule, and scope, for an administrative hearing regarding the
21 LWRFS.

22 Starting in 2018, the State Engineer held several public workshops to review the status of
23 groundwater use and recovery following the conclusion of the State Engineer Order 1169 pumping tests.
24 The purpose of the workshops was to update the public on development in the LWRFS, address concerns
25 relating to the effect of groundwater pumping, and to provide an opportunity to comment on how to
26

27 ¹ Exhibit 1, State Engineer Ruling 6254 at 24.

28 ² Exhibit 2, *Coyote Springs Investment, LLC v. Jason King*, Case No. A-18-775817-J, (8th Dist.Ct. Nev. 2018) and *Coyote Springs Investment, LLC v. Tim Wilson*, Case No. A-19-789203-J (8th Dist. Ct. Nev. 2019). The Court has granted SNWA and LVVWD intervenor status on two prior CSI appeals.

1 proceed in developing the water resources in the LWRFS.³ In the 2018 Notice of Public Workshop, the
2 State Engineer noted that pumping only 10,200 afa of the over 50,000 afa of permitted rights during the
3 Order 1169 pumping test “yielded an unacceptable loss in spring flow and aquifer storage within the
4 LWRFS.”⁴ The State Engineer found that “only a small portion of the permitted water rights in the
5 LWRFS may be fully developed without negatively affecting the endangered Moapa Dace and its habitat
6 or the senior decreed rights on the Muddy River.”⁵

7 As a result of the workshops, on August 30, 2018, the State Engineer drafted a proposed order.
8 On December 14, 2018, the State Engineer held a hearing and received comments on the proposed order.
9 CSI was present at the hearing and made comments. On January 11, 2019, the State Engineer issued
10 Interim Order 1303 as a result of the workshop and proposed order process. The State Engineer
11 continued to hold several more workshops and meetings relating to the potential development of a
12 conjunctive management plan on the LWRFS.⁶

13 **B. CSI’s Second Lawsuit Against the State Engineer – Order 1303**

14 The second action CSI filed against the State Engineer came after the issuance of Order 1303.
15 Interim Order 1303 was issued to obtain stakeholder input on four discrete factual matters: 1) the
16 geographic boundary of the LWRFS; 2) aquifer recovery since the 1169 pump test; 3) long-term annual
17 quantity that may be pumped from the LWRFS; and 4) effects of moving water rights between the
18 carbonate and alluvial system to senior water rights on the Muddy River.⁷ After factual findings were
19 made on those questions, the State Engineer was to evaluate groundwater management options for the
20 LWRFS.⁸

21 In Order 1303, the State Engineer made sound factual findings based on the Order 1169 pumping
22 test. He found that groundwater rights within the LWRFS should be jointly managed because of a
23

24 ³ Exhibit 3, Interim Order 1303 at 13.

25 ⁴ Exhibit 4, Notice of Public Workshop at 2.

26 ⁵ Exhibit 3 at 11.

27 ⁶ *Id.*

28 ⁷ *Id.* at 3.

⁸ *Id.* at 3-12 (“The State Engineer directed the participants to limit the offer of evidence and testimony to the salient conclusions, including directing the State Engineer and his staff to the relevant data, evidence and other information supporting those conclusions. The State Engineer further noted that the hearing on the Order 1303 reports was the first step in determining to what extent, if any, and in what manner the State Engineer would address future management decisions, including policy decisions relating to the [LWRFS] basins.”)

1 “unique hydraulic connection” among basins that encompass over 1,100 square miles.⁹ He also
2 determined water was not available for additional applications and denied all the pending applications
3 in the LWRFS through Rulings 6254-6260. The State Engineer also found that:

- 4 1. pumping has a direct interrelationship with the flow of the decreed and
5 fully appropriated Muddy River, which are the most senior rights;
- 6 2. the Muddy River had a pre-development flow of approximately 34,000
7 acre-feet annually;
- 8 3. pumping from the test caused “sharp declines in groundwater levels
9 and flows in the Pederson and Pederson East springs,” and throughout
10 the LWRFS; and
- 11 4. pumping in the LWRFS must be less than occurred during the test,
12 otherwise pumping will conflict with senior Muddy River rights or
13 adversely impact the Moapa dace.¹⁰

14 Order 1303 was issued to solicit input from experts on discrete issues to build on these foundational
15 findings from Rulings 6254-6260—not to “start over.”

16 After CSI appealed Interim Order 1303, SNWA and LVVWD were granted party status in that
17 case, and took the same position they did in CSI’s first appeal.¹¹ CSI’s second action led to litigation
18 over non-substantive matters, and ultimately the parties agreed to stay the proceedings in that case until
19 the State Engineer completed his LWRFS hearing and issued an order based on that hearing.

20 On July 25, 2019, the State Engineer issued a Notice of Pre-Hearing Conference. On August 23,
21 2019, the State Engineer held a prehearing conference. At the prehearing conference, Hearing Officer
22 Fairbank unequivocally stated that the purpose of the hearing is not to resolve or address allegations of
23 conflict between groundwater pumping within the LWRFS and Muddy River decreed rights. On August
24 23, 2019, the State Engineer issued a Notice of Hearing, and again clarified the limited scope of the
25 hearing. Between September 23, 2019, and October 4, 2019, the State Engineer held a hearing on the
26 reports submitted under Order 1303.

27 **C. Order 1309 and CSI’s Third Lawsuit Against the State Engineer**

28 On June 15, 2020, the State Engineer issued Order 1309. In Order 1309, the State Engineer
focused on four primary issues: (1) the geographic boundary of the LWRFS; (2) impacts of pumping to
the Muddy River and Moapa Dace; (3) the long-term annual quantity of water that can be pumped in a

⁹ Exhibit 3 at 6.

¹⁰ *Id.* at 7-11.

¹¹ Exhibit 2 at 2-4.

1 sustainable manner; and (4) the effects of movement of water rights between alluvial wells and carbonate
2 wells on senior decreed rights.¹² The State Engineer issued Order 1309 to protect senior water rights in
3 the Muddy River (including those owned by SNWA), and the Moapa Dace. He determined that a total
4 of 8,000 acre-feet of groundwater can be pumped sustainably in the LWRFS. He expanded the
5 geographic area to include the Kane Springs basin and slightly more of the Black Mountain basin. He
6 concluded that pumping of groundwater in the LWRFS impacts flows in the Muddy River, and for the
7 Moapa Dace, that those flows need to be protected. He also indicated that any movement of water in
8 the LWRFS must satisfy the criteria of NRS 533.370.

9 In response to Order 1309, SNWA filed the first Petition for Judicial Review (“SNWA PJR”) in
10 the Eight Judicial District Court on June 17, 2020, asserting that the State Engineer incorrectly went
11 beyond the scope of the hearing to determine that “capture or potential capture of flows of the waters of
12 a decreed system does not constitute a conflict.”¹³

13 On July 9, 2020, CSI became the second party to file an appeal of Order 1309. Five other
14 petitions followed in Clark County, and one in Lincoln County.¹⁴ Pursuant to Nevada Rules of Civil
15 Procedure (“NRCP”) 24, SNWA and LVVWD hereby file this motion to intervene in CSI’s PJR.

16 ARGUMENT

17 NRCP 24 provides for both intervention as a matter of right and permissive intervention.¹⁵ The
18 Nevada Supreme Court has held that when the subject matter of a lawsuit could potentially affect an
19 entity’s property rights, that entity has a right to intervene into the matter to protect its property.¹⁶

20 **I. LVVWD and SNWA Have a Right to Intervene**

21 Intervention is allowed by right pursuant to NRCP 24(a) when the movant “claims an interest
22 relating to the property or transaction that is the subject of the action, and is so situated that disposing
23 of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless
24

25 ¹² Exhibit 5, Order 1309 at 67-68.

26 ¹³ Exhibit 5 at 62.

27 ¹⁴ The six other cases are as follows: Apex Holding Company, LLC and Dry Lake Water, LLC, Case No. A-20-817840-P;
Center for Biological Diversity, Case No. A-20-817876-P; Muddy Valley Irrigation Company, Case No. A-20-817977-P;
Nevada Cogeneration Associates Nos. 1 and 2, Case No. A-20-818015-P; Georgia Pacific Gypsum, LLC and Republic
28 Environmental Technologies, LLC, Case No. A-20-818069-P; and Lincoln County Water District, Case No. CV 0702520
(Lincoln County).

¹⁵ NRCP 24.

¹⁶ See *Painter v. Anderson*, 96 Nev. 941, 943, 620 P.2d 1254, 1256 (1980).

1 existing parties adequately represent that interest.”¹⁷ A real party that holds legal title to water rights,
2 which is the subject of litigation, is a real party in interest.¹⁸ If the real party in interest is not adequately
3 represented by an existing party, that real party in interest has a right to intervene to protect its interest.¹⁹
4 The motion to intervene must be made timely, and the Court has discretion to determine whether the
5 motion is timely.²⁰

6 **A. Senior water right holders, including SNWA, have a right to intervene.**

7 Any water right holder whose water rights are senior to those owned by CSI, including all entities
8 utilizing the senior surface water rights on the Muddy River, have an interest “relating to the property
9 or transaction which is the subject of” CSI’s appeal of Order 1309.²¹ SNWA is a senior water right
10 holder with Muddy River water rights. As such, SNWA is a real party to this case, with a vested interest
11 relating the property at the heart of this action. On this basis alone, SNWA was granted party status in
12 CSI’s two prior appeals.

13 In addition, as the State Engineer’s orders and findings have held for over a decade, and as CSI’s
14 Permit 46777’s terms indicate, pumping CSI groundwater will likely reduce Muddy River flows. A
15 reduction in Muddy River flows necessarily creates a conflict with senior water rights holders because
16 the Muddy River is fully appropriated.²² In CSI’s second appeal, CSI was ultimately requesting that it
17 be permitted to pump groundwater and continue developing the CSI Project in perpetuity, placing all
18 senior right holders on the Muddy River at risk of impairment. CSI is looking to side-step the State
19 Engineer’s public administrative hearing process and jump directly into development, despite clear
20 evidence of immediate conflicts with LWRFS water supplies.

21 Recently, the Nevada Supreme Court issued a decision in *Eureka County v. Seventh Judicial*
22 *Dist. Court.*²³ In *Eureka County*, the district court reviewed a writ petition requesting that the State
23 Engineer be required to initiate curtailment proceedings against junior groundwater appropriators in
24 Diamond Valley. The Nevada Supreme Court found that before court proceedings may continue, other

25 _____
26 ¹⁷ NRCPC 24(a).

¹⁸ *See Painter*, 96 Nev. at 943, 620 P.2d at 1256.

¹⁹ *Hairr v. First Judicial Dist. Court*, 132 Nev. Adv. Op. 16, 368 P.3d 1198, 1201 (2016).

²⁰ *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668 (1978).

²¹ NRCPC 24(a)(2).

²² Exhibit 5 at 8.

²³ 134 Nev. Adv. Op. 37, 417 P.3d 1121 (2018).

1 water right holders that could potentially be affected by the district court’s decision must be permitted
2 to participate in the proceedings.²⁴ Importantly, the Nevada Supreme Court rejected the notion that the
3 hearing would “merely be the initiation of a more detailed proceeding.”²⁵

4 Here, other water users that are affected by Order 1309 must be allowed to participate in this
5 proceeding under the rules established in *Eureka County* because there has already been a finding that
6 the Muddy River water rights may be impacted by the pumping that CSI seeks to have approved.
7 Because water right holders will be affected, they must be permitted to participate to protect their
8 interest, and to be heard before any order is issued with the potential to bind the State Engineer to a
9 certain action that may affect them. As such, senior water right holders in the LWRFS have a right to
10 intervene and protect their interests in the Muddy River and related headwaters.

11 **B. The parties to the MOA entered into by CSI have a right to intervene.**

12 In the MOA, all five parties, including CSI, agreed that a paramount goal of the agreement was
13 to protect the endangered species and help aid the recovery of the habitat.²⁶ In order to facilitate this
14 goal, the parties dedicated certain water rights and funds to help maintain in-stream flows in the Muddy
15 River and recover the habitat for the endangered species. Additionally, the parties all agreed on specific
16 Muddy River in-stream flow rates and trigger ranges. If the triggers are activated, the terms of the MOA
17 will result in cutoffs of pumping and additional mitigation measures.²⁷ These cutoff provisions
18 specifically require CSI to cease pumping the water development sources it has and wants to use for a
19 land development project.

20 In its appeal from Order 1303, CSI was attempting to push its development forward. This
21 development could cause tremendous damage, as the CSI Project would be building homes absent a
22 reliable long-term supply of water. Building the CSI Project would necessarily include the pumping of
23 CSI’s water rights that the State Engineer has concluded are in direct connection with the Muddy River
24 and other springs that were assigned triggers through the MOA due to their importance and connection
25 to the Muddy River. Any party to the MOA, and specifically SNWA, must be given an opportunity to
26

27 ²⁴ *Id.*

²⁵ *Id.* at 1126.

28 ²⁶ Exhibit 5 at 6.

²⁷ *Id.*

1 be a party in this case because appeal relates to the MOA triggers. As such, the parties to the MOA are
2 necessary to this matter because CSI is seeking to develop and put to use water that will affect the other
3 parties in the MOA, who are otherwise abiding by Order 1309 and freezing further development of water
4 resources. CSI should not be permitted to unilaterally bypass the MOA while the other parties to the
5 MOA are participating in the State Engineer’s administrative hearing process.

6 **C. Prior Stipulations, and LVVWD’s Role as General Manager of the CSWRGID,**
7 **Indicate LVVWD is Entitled to Intervene.**

8 During CSI’s first appeal, in which it similarly challenged a State Engineer decision to delay
9 processing subdivision maps, CSI and the State Engineer both agreed that LVVWD was an
10 indispensable party to the action because LVVWD is the General Manager of the Coyote Springs Water
11 Resources General Improvement District (“CSWRGID”). LVVWD’s role as the General Manager of
12 the CSWRGID involves the review and execution of tentative and final subdivision and parcel maps on
13 behalf of CSWRGID. This responsibility includes determining whether the maps meet the requirements
14 of Clark County and Nevada law regarding sustainable water resources. The issues in CSI’s first appeal
15 and this appeal are substantially similar. Both matters relate to the State Engineer’s decision to not
16 process subdivision maps based on junior groundwater rights held by CSI or CSWRGID in the LWRFS.
17 In the State Engineer’s 2018 letter that prompted the first CSI appeal, he warned that he may not approve
18 new subdivision maps based on junior groundwater rights owned by CSI or the CSWRGID. In Interim
19 Order 1303, the State Engineer formalized the temporary moratorium on consideration of all subdivision
20 maps based on junior groundwater rights in the LWRFS.

21 In short, the issues being addressed in both matters dealt with whether the State Engineer’s
22 decisions related to CSI subdivision review were arbitrary and capricious given the evidence he relied
23 upon. The similarity between CSI’s three appeals, and CSI’s agreement to stipulate that LVVWD was
24 an indispensable party in CSI’s first appeal, further demonstrates that LVVWD has a right to intervene
25 in the current litigation.

26 Without a chance to intervene, SNWA and LVVWD will be shut out of proceedings that may
27 lead to the impairment of SNWA’s senior rights through approval of CSI’s subdivision maps and
28 increased groundwater pumping in the LWRFS. Increased groundwater pumping will reduce

1 groundwater levels and surface water flows in the LWRFS.²⁸ LVVWD would also be unable to protect
2 its interests absent intervention. As General Manager of the CSWRGID, LVVWD is responsible for the
3 development, implementation, and administration of a water plan for CSI's Project. This water plan
4 will be based on the subdivision maps and the water use permitted for the CSI Project. In other words,
5 homes will be built and sold despite the real possibility that no water exists to serve them. Without
6 intervention, the Court could inadvertently uphold or reverse Order 1309 without involving the party,
7 LVVWD, that will be asked to develop and administer the water services that will be defined or
8 prevented by the State Engineer's order.

9 While CSI stipulated to LVVWD's intervention in a previous case, to date, CSI refused to
10 stipulate to LVVWD and SNWA's intervention in the current case.

11 **D. Neither existing party adequately represents the interests of LVVWD and SNWA.**

12 No party to the action adequately represents SNWA or LVVWD's interests. In *Hairr v. First*
13 *Judicial Dist. Court*,²⁹ the Nevada Supreme Court stated that the existing parties' representation is not
14 adequate if the existing party has a different objective adverse to the intervenor's interest.³⁰ Here, the
15 State Engineer's interests in defending Order 1309 are not completely aligned with LVVWD's and
16 SNWA's interests in the litigation. Moreover, SNWA's interests will not be adequately represented by
17 CSI.

18 The State Engineer does not have a property interest similar to SNWA in this litigation. The
19 State Engineer's concern is with the administration of water resources in the LWRFS as a whole, not
20 with the water rights owned by particular parties. SNWA's interests in the protection of its own water
21 rights may be adverse to the State Engineer's interest in the welfare of the entire LWRFS. In fact,
22 SNWA's Muddy River surface water rights are threatened by the State Engineer's conclusions. The
23 findings in Order 1309 may harmed SNWA's ability to deliver water to its customers based on
24 Intentionally Created Surplus.

25 Similarly, LVVWD's interest will not be adequately represented by either current party. As
26 manager of the CSWRGID, LVVWD's interests are very different from CSI's interests. CSI's interest

27 _____
28 ²⁸ Exhibit 5 at 65.

²⁹ 132 Nev. Adv. Op. 16, 368 P.3d 1198 (Nev. 2016).

³⁰ *Id.* at 1201.

1 lies in developing the proposed subdivisions for the CSI Project, and acquiring sufficient water rights
2 for the approval of those subdivisions. As the General Manager of the CSWRGID, LVVWD's interest
3 lies in the CSWRGID's responsible and sustainable management when providing water services.
4 LVVWD has a much more long-term view of and responsibility over the issues than CSI because it is
5 contractually obligated to manage the CSWRGID until 2056. As a developer, CSI is focusing on its
6 investment in the Coyote Springs Development project and, when the Project is complete, CSI may
7 move on, while the residents of the Coyote Springs Development may face protracted and expensive
8 battles to secure sufficient long-term water. LVVWD's interests would also not be adequately
9 represented by the State Engineer. While LVVWD's concerns focus on its role as General Manager of
10 the CSWRGID and administering a water plan for the Coyote Springs Development, the State
11 Engineer's concerns focus more on water issues relevant to the LWRFS as a whole as evidenced in his
12 declaration of the LWRFS as a joint administrative unit.

13 **E. Under NRS 533.450, persons affected by an appeal should be parties.**

14 Pursuant to NRS 533.450(3), CSI was required to serve notice of this action on persons who may
15 be affected by Order 1309.³¹ The purpose of the notice language contained in NRS 533.450(3) is to
16 ensure that all parties who are affected by a State Engineer decision are also included in the petition for
17 judicial review process, which may change the outcome of the decision. This is analogous to ensuring
18 all necessary parties are included in typical civil litigation prior to litigation proceeding.³² CSI provided
19 that service. Therefore, LVVWD and SNWA, along with other water users that are affected by Order
20 1309, should be allowed to participate in this proceeding under the rules established in *Eureka County*
21 because there has already been a finding that current pumping is capturing Muddy River flows.³³
22 Because water right holders will be affected, they must be permitted to participate to protect their
23

24 ³¹ Under NRS 533.450(3) (emphasis added):

25 No [PJR] proceedings may be entertained unless notice thereof . . . has been served upon
26 the State Engineer, personally or by registered or certified mail, at the Office of the State
27 Engineer at the State Capital within 30 days following the rendition of the order or
decision in question. *A similar notice must also be served personally or by registered or
certified mail upon the person who may have been affected by the order or decision.*

28 ³² See NRCP 24.

³³ Exhibit 5 at 64.

1 interest, and to be heard before any order is issued with the potential to bind the State Engineer to a
2 certain action that may affect them.

3 **F. SNWA’s submitted a timely motion to intervene.**

4 Finally, SNWA’s motion is timely. The Nevada Supreme Court precedent indicates that
5 generally “intervention is timely if the procedural posture of the action allows the intervenor to protect
6 its interests.”³⁴ Here, CSI submitted its Petition for Judicial Review two weeks ago. No additional
7 findings have been made by the State Engineer or any other party outside of CSI. No court decisions
8 have been issued in this matter that would need to be undone to accommodate LVVWD or SNWA.
9 Thus, LVVWD and SNWA’s request for intervention is timely.

10 **II. Permissive Intervention**

11 As stated in NRCP 24(b), a court may permissively allow a party to intervene when it “has a
12 claim or defense that shares with the main action a common question of law or fact.”³⁵ The Court must,
13 in exercising its discretion, “consider whether the intervention will unduly delay or prejudice the
14 adjudication of the original parties’ rights.”³⁶ Here, SNWA’s water rights in the LWRFS share a
15 common question of fact and law with the State Engineer’s reasoning in issuing Order 1309. All senior
16 water right holders on the Muddy River are inextricably intertwined in this litigation because CSI is
17 requesting that the Court let CSI jump to development. However, as explained in Order 1309,
18 sustainable water rights do not exist for CSI’s project.

19 Also, LVVWD’s role as General Manager of the CSWRGID supports intervention. Lastly, as
20 explained above, LVVWD and SNWA’s intervention will not unduly delay or prejudice the adjudication
21 of the rights of the original parties. There have been no significant developments in this litigation that
22 would prohibit the necessary parties from being included into the case. There will be no undue prejudice
23 to the parties if LVVWD and SNWA are permitted to intervene pursuant to NRCP 24(b).

24 //

25 //

26 //

27 ³⁴ *Estate of Lomastro ex rel. Lomastro v. American Family Ins. Group*, 124 Nev. 1060, n.29, 195 P.3d 339 n.29 (2008).

28 ³⁵ See also, NRS 12.130 (intervention allowed when applicant has an interest in the matter in litigation and may unite with the defendant in resisting claims of the plaintiff).

³⁶ NRCP 24(b).

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CONCLUSION

For the foregoing reasons, SNWA and LVVWD respectfully request that the Court grant their Motion to Intervene on CSI’s Petition for Judicial Review.

DATED this 23rd day of July, 2020.

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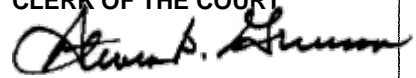
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EXHIBIT INDEX

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<u>Exhibit Number</u>	<u>Description</u>	<u>Page Count</u>
1.	State Engineer Ruling 6254, January 29, 2014.	30
2.	Orders approving motions to intervene in related cases <i>Coyote Springs Investment, LLC v. Jason King</i> , Case No. A-18-775817-J, (8th Dist.Ct. Nev. 2018) and <i>Coyote Springs Investment, LLC v. Tim Wilson</i> , Case No. A-19-789203-J (8th Dist. Ct. Nev. 2019).	7
3.	State Engineer Interim Order 1303, January 11, 2019.	18
4.	Notice of Public Workshop Regarding Existing Water Right Use and Groundwater Pumping in the Lower White River Flow System, Department of Conservation and Natural Resources, Division of Water Resources, June 14, 2018.	5
5.	State Engineer Order 1309, June 15, 2020	69



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18 **DISTRICT COURT**
19
20 **CLARK COUNTY, NEVADA**

21 LAS VEGAS VALLEY WATER DISTRICT,
22 and SOUTHERN NEVADA WATER
23 AUTHORITY

24 Petitioners,

25 v.

26 TIM WILSON, P.E., Nevada State Engineer,
27 DIVISION OF WATER RESOURCES,
28 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES

Respondent.

Case No.: A-20-816761-C

Dept. No.: 19

JOINT STIPULATION FOR ORDER
ALLOWING EACH PETITIONER TO
INTERVENE IN THE OTHER
PETITIONERS' ACTIONS

1 **JOINT STIPULATION FOR ORDER ALLOWING EACH PETITIONER TO INTERVENE**
2 **IN THE OTHER PETITIONERS' ACTIONS**

3 There are presently seven different lawsuits filed and pending in the Clark County
4 District Court. The actions are all initiated by Petitions for Judicial Review, each of which
5 challenges, in whole or in part, the State Engineer's Order 1309 ("Order 1309"). Each petition
6 filed in Clark County District Court was filed pursuant to NRS 533.450. This stipulation is
7 entered into pursuant to NRCP 24.

8 The seven actions presently pending are:

9 1. Clark County District Court Case No. A-20-816761-C (this matter) in which Petitioner
10 Las Vegas Valley Water District and the Southern Nevada Water Authority challenge a portion
11 of Order 1309;

12 2. Clark County District Court Case No. A-20-811765-P, filed in Department 1, in which
13 Coyote Springs Investment, LLC ("CSI") challenges Order 1309.

14 3. Clark County District Court Case No. A-20-818015-P, filed in Department 8, in which
15 Nevada Cogeneration Associates Nos 1 and 2 challenge Order 1309;

16 4. Clark County District Court Case No. A-20-817977-P, filed in Department 2, in which
17 Muddy Valley Irrigation Company challenges a portion of Order 1309;

18 5. Clark County District Court Case No. A-20-818069-P, filed in Department 18, in
19 which Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc. challenge
20 Order 1309;

21 6. Clark County District Court Case No. A-20-817840-P, filed in Department 28, in
22 which Apex Holding Company, LLC and Dry Lake Water LLC challenge Order 1309; and

23 7. Clark County District Court Case No. A-20-817876-P, filed in Department 24, in
24 which the Center for Biological Diversity challenges portions of Order 1309.

25 All the parties named in the seven pending actions have stipulated that all seven
26 actions be consolidated into and with this action for the purpose of facilitating efficiency and
27 judicial economy, with each action retaining its separate and distinct factual and legal
28 characteristics. See attached **Exhibit 1**.

1 The parties to each of the seven pending actions also stipulate and agree that each
2 party should be allowed to intervene in each of the other pending actions challenging Order
3 1309, as authorized and permitted by NRCP 24 (a) and NRCP 24 (b). It is stipulated and
4 agreed that each party satisfies the requirements for intervention set forth in Rule 24 (a) and
5 (b) in that each party claims an interest relating to the property or transaction subject to and of
6 the Petitions for Judicial Review filed by the parties. The parties further stipulate and agree
7 that by entering into this stipulation no party waives any claims, defenses, or other rights they
8 may otherwise have if this stipulation did not exist.

9 This stipulation is entered into to provide a just, efficient and economic administration of
10 these seven actions in which each of the parties agree that their interests and claims share
11 common facts and law with each of the other petitions filed in Clark County in which Order
12 1309 is challenged in whole or in part. This stipulation is also entered into with the
13 understanding and agreement that intervention is appropriate and warranted under both
14 NRCP 24 (a) and NRCP 24 (b), thereby giving standing to each party to be an actual party in
15 each of the other matters filed by the parties.

16 **AFFIRMATION:** The undersigned do hereby affirm that the preceding document
17 and/or attachments do not contain the social security number of any person.

18 IT IS SO STIPULATED:

19 Dated this 14th day of August, 2020.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that I served, or caused to be served, a true and correct copy of the foregoing **JOINT STIPULATION FOR ORDER ALLOWING EACH PETITIONER TO INTERVENE IN THE OTHER PETITIONERS' ACTIONS** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada, addressed to:

 x emailing an attached Adobe Acrobat PDF version of the document to the email addresses below/facsimile (fax) and/or E-Filing pursuant to Section IV of the District of Nevada Electronic Filing Procedures:

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DATED: This 14th day of August, 2020.

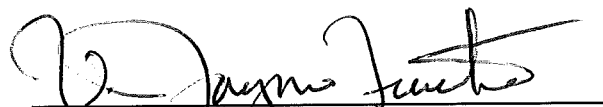

V. JAYNE FERRETTO
An Employee of Robison, Sharp, Sullivan & Brust

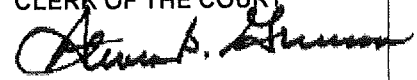
EXHIBIT LIST

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<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Stipulation for Consolidation	8

EXHIBIT 1

EXHIBIT 1



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Attorneys for Coyote Springs Investment, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS VALLEY WATER DISTRICT,
and SOUTHERN NEVADA WATER
AUTHORITY

Petitioners,

v.

TIM WILSON, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES

Respondent.

Case No.: A-20-816761-C

Dept. No.: 19

STIPULATION FOR CONSOLIDATION

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On June 15, 2020, Tim Wilson, P.E., Nevada State Engineer, on behalf of the Division of Water Resources, Department of Conservation and Natural Resources, issued Order 1309. Pursuant to NRS 533.450, Order 1309 has been challenged by various interested parties by and through seven different Petitions for Judicial Review filed with the District Court of Clark County, Nevada. The seven pending Petitions for Judicial Review are:

1. This action, Case No. A-20-816761-C;
2. A Petition filed by Coyote Springs Investment, LLC in Case No. A-20-817765-P, in Department 1;
3. A Petition filed by Nevada Cogeneration Associates Nos. 1 and 2 in Case No. A-20-818015-P, in Department 8;
4. A Petition filed by Muddy Valley Irrigation Company in Case No. A-20-817977-P, in Department 2;
5. A Petition filed by Georgia-Pacific Gypsum LLC, and Republic Environmental Technologies, Inc. in Case No. A-20-818069-P, in Department 18;
6. A Petition filed by Apex Holding Company, LLC and Dry Lake Water, LLC in Case No. A-20-817840-P, in Department 28; and
7. A Petition filed by Center for Biological Diversity in Case No. A-20-817876-P, in Department 24.


By and through their counsel, these Petitioners and Tim Wilson, P.E., the Nevada State Engineer, do hereby stipulate and agree that the above-identified actions should be consolidated with this proceeding pursuant to NRCP 42 to provide for judicial economy and efficiency for the Court and parties. The parties stipulate and agree that once consolidated, each Petition will retain its individual and distinct factual and legal issues.

AFFIRMATION: The undersigned does hereby affirm that the preceding document and/or attachments do not contain the social security number of any person.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that I served, or caused to be served, a true and correct copy of the foregoing **STIPULATION FOR CONSOLIDATION** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada, addressed to:

X_____ emailing an attached Adobe Acrobat PDF version of the document to the email addresses below/facsimile (fax) and/or E-Filing pursuant to Section IV of the District of Nevada Electronic Filing Procedures:

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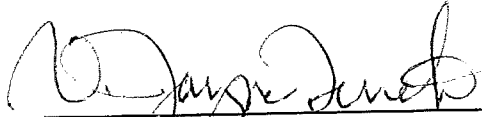
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