

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

vs.

LINCOLN VALLEY WATER  
DISTRICT et al.,

Respondents.

**Supreme Court No. 84739**

**Consolidated with Nos. 84742,  
84741, and 84809**

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**THE CENTER FOR BIOLOGICAL DIVERSITY’S RESPONSE IN  
OPPOSITION TO COYOTE SPRINGS INVESTMENT, LLC’S MOTION  
TO DISMISS**

Appellant, the Center for Biological Diversity (the “Center”), by and through counsel, hereby opposes Respondent Coyote Springs Investment, LLC’s (“Coyote Springs”) Motion to Dismiss.

**INTRODUCTION**

Following decades of scientific research and administrative proceedings concerning groundwater availability in Southeastern Nevada, Appellant, the Nevada State Engineer (“State Engineer”) entered Order 1309. *See* Center’s Motion for Emergency Stay and Joinder, Exh. 2. Order 1309 recognized, based on the best available scientific evidence, that several “hydrologic basins” in Southeastern Nevada are not separate sources of water groundwater, as previously believed, but rather part of an interconnected groundwater aquifer called the Lower White River Flow System (“LWRFS”), which shares the same supply of water with the fully-decreed Muddy River. *Id.* Order 1309 further recognized that over-pumping from

this interconnected groundwater aquifer would harm senior decreed water rights by depleting the Muddy River’s groundwater-fed headwater springs that also provide habitat for the endangered Moapa dace. *Id.*

In order to protect senior decreed rights and the Moapa dace—as the State Engineer is required to do under Nevada’s water statutes and the public trust doctrine, NRS § 533.0245; *Mineral Cty v. Lyon Cty.*, 136 Nev. Adv. Rep. 58, 473 P.3d 418 (Nev. 2020)—Order 1309 delineated the boundaries of the LWRFS and instituted an area-wide pumping cap of 8,000 acre-feet annually. Center’s Motion for Emergency Stay and Joinder, Exh. 2. The State Engineer determined that higher rates of groundwater pumping would impair senior decreed rights and reduce the springflows on which the Moapa dace depend. *Id.* Since Order 1309 was issued in June 2020 groundwater pumping from the LWRFS has remained at or near 8,000 acre-feet annually, and while springflows have not increased during that period, they have not significantly declined, either.

Several parties filed petitions for judicial review of Order 1309, alleging various grounds for error. Some petitioners, such as the Center, the Southern Nevada Water Authority (“SNWA”), and the Muddy Valley Irrigation District (“MVIC”) (together, “Appellants”), challenged specific aspects of Order 1309, but otherwise agreed that the Order was a lawful and necessary exercise of the State Engineer’s authority under the Nevada water statutes. *See, e.g.*, State Engineer & Center’s Joint Motion to Consolidate, Exh. 7 (Center’s Petition for Judicial Review). These parties did not seek wholesale vacatur of Order 1309, and for good reason—SNWA and MVIC hold senior water rights on the Muddy River, and the Center’s members have

strong personal interests in the conservation and recovery of the Moapa dace. All three parties recognized that despite its flaws, Order 1309 was necessary to protect their interests from the real and impending threat of increased groundwater pumping.

Other petitioners, including Coyote Springs, sought to overturn Order 1309 in its entirety. *See, e.g.*, State Engineer & Center’s Joint Motion to Consolidate, Exhs. 4, 6 (Lincoln/Vidler and Coyote Springs’ Petitions). These petitioners, who wish to increase groundwater pumping in basins throughout the LWRFS, argued that the State Engineer lacks statutory authority to jointly administer different “hydrographic basins,” and also alleged due process violations. The District Court ultimately agreed with these petitioners and vacated Order 1309. Center’s Emergency Motion for Stay and Joinder, Exh. 1. As a result of the District Court’s decision, junior groundwater users in basins throughout the LWRFS could dramatically increase pumping based on existing (but previously unused) permitted water rights which total approximately 30,000 acre-feet per year.

The District Court’s decision therefore placed Appellants’ interests at significant risk, because there are far more water rights in the LWRFS than can be developed without harming senior decreed water rights and the Moapa dace. Center’s Emergency Motion for Stay and Joinder, Exhs. 2, 3, and 5. A 2010 aquifer test showed that pumping even a small fraction of the existing but unused rights caused rapid, severe, and virtually permanent declines in the springflows that sustain the Moapa dace and supply a large portion of the Muddy River’s flow. Center’s Emergency Motion for Stay and Joinder, Exhs. 2, 5. The threat of increased pumping

is now imminent, as Coyote Springs and other parties have stated that they intend to increase pumping beyond *status-quo* levels.

Coyote Springs, however, disingenuously argues here that Appellants lack standing to bring these appeals. Coyote Springs is incorrect. Because the District Court's Order allows an immediate increase in groundwater pumping, and because increased groundwater pumping injures Appellants' interests, Appellants are "aggrieved parties" within the meaning of Nevada Rule of Appellate Procedure ("NRAP") 3A(a), and have standing to appeal. This Court should therefore deny Coyote Springs' Motion to Dismiss

### **LEGAL STANDARDS**

Under NRAP 3A(a), only "aggrieved parties" have standing to appeal. A party is "aggrieved" if "either a personal right or right of property is adversely and substantially affected by a district court's ruling." *Las Vegas Police Prot. Ass'n v. Dist. Ct.*, 122 Nev. 230, 239-40, 130 P. 3d 182, 189 (2006) (citations omitted). The term "aggrieved" also means a "substantial grievance," which includes "[t]he imposition of some injustice, or illegal obligation or burden, by a court, upon a party, or the denial to him of some equitable or legal right." *Esmeralda County v. Wildes*, 36 Nev. 526, 535, 137 P. 400, 402 (1913).

"The question of standing concerns whether the party seeking relief has a sufficient interest in the litigation." *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). "Generally, a party must show a personal injury and not merely a general interest that is common to all members of the public." *Id.*; *see also Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P. 644, 648 (1929) (requiring appellant to

show that he would suffer a special or peculiar injury different from that sustained by the general public in order to maintain action for injunctive relief).

### **ARGUMENT**

Coyote Springs claims that the Center “prevailed” before the District Court and therefore lacks standing to appeal. Coyote Springs’ Mot. to Dismiss at 2. This argument ignores that the District Court failed to grant the Center relief, vacated Order 1309 in its entirety, and dismissed the Center’s Petition for Judicial Review without reaching the Center’s substantive challenges to Order 1309.

The Center’s Petition challenged one particular aspect of Order 1309—namely the State Engineer’s factual finding that the LWRFS aquifer was at or approaching a “steady state” at then-current rates of groundwater pumping and therefore that the 8,000 acre-foot annual pumping cap would prevent harm to the Moapa dace. *See* State Engineer & Center’s Joint Motion to Consolidate, Exh. 7 (Center’s Petition for Judicial Review). The purpose of Center’s Petition was to secure additional protection for the Moapa dace and senior decreed water rights. *See id.*

Other parties, such as Coyote Springs, filed Petitions for Judicial Review challenging Order 1309 in its entirety. *See, e.g.,* State Engineer & Center’s Joint Motion to Consolidate, Exhs. 4, 6 (Lincoln/Vidler and Coyote Springs’ Petitions). Those parties wish to increase groundwater pumping in basins within the LWRFS by developing junior water rights that are not currently in use, and to facilitate that end they sought to vacate Order 1309. Thus, even though the Center and Coyote

Springs both filed Petitions for Judicial Review, their actual interests in this litigation are directly adverse.

The Center also participated in the District Court proceedings as Respondent-Intervenor, pursuant to a stipulation and Court Order allowing each Petitioner to intervene in the others' cases. *See* State Engineer & Center's Joint Motion to Consolidate, Exh. 12 (Order Approving Joint Stipulation for Joint Intervention). As Respondent-Intervenor, the Center presented arguments defending Order 1309 against allegations that the Order was issued without statutory authority and violated the due process rights of Coyote Springs and others. *See Las Vegas Police Protective Ass'n*, 122 Nev. at 239, 130 P.3d at 189 (explaining that “[g]enerally, an intervenor is afforded all the rights of a party to the action, including a right to appeal independent from that of the original parties.”) (internal quotations omitted).

The District Court ruled in favor of Coyote Springs and the other Respondents who challenged the Order in its entirety, and vacated Order 1309. Center's Motion for Emergency Stay and Joinder, Exh 1. The District Court later issued an Addendum and Clarification dismissing the Center's petition. State Engineer & Center's Joint Motion to Consolidate, Exh. 19.

Consequently, the Center is an “aggrieved” party under NRAP 3A(a), because the District Court did not grant the Center any relief whatsoever. In fact, with Order 1309 vacated, the Center's interests are at greater risk than they were when the Center filed its Petition for Judicial Review in July of 2020. *See Vill. League to Save Incline Assets, Inc. v. State*, 133 Nev. 1, 7, 388 P.3d 218, 223 (2017) (where a district court's order of dismissal did not reach merits of an appellant's claims, but adversely

affected the appellant's interests, that appellant was an aggrieved party); *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 303-04, 300 P.3d 724, 726 (2013) (although an appellant's Petition for Judicial Review was granted, the appellant was aggrieved because the district court's decision adversely affected the appellant's interests).

As noted, without Order 1309's 8,000 acre-foot pumping cap, an additional 30,000 acre-feet of groundwater rights may now be pumped, threatening the very existence of the Moapa dace. Because the District Court's decision adversely affects the Center's interests, the Center is an "aggrieved" party with standing to appeal. *See, e.g., Kondas v. Washoe Cty. Bank*, 50 Nev. 181, 187, 254 P. 1080, 1081 (1927) (holding that "to the extent" the trial court's decision was adverse to an appellant, the appellant "was aggrieved and had a right to appeal").

Coyote Springs also alleges that the Center settled its claims with the State Engineer. Coyote Springs' Mot. to Dismiss at 2. This is false. On February 17, 2022—the last day of oral arguments before the District Court—the Center entered into settlement negotiations with the State Engineer. However, no agreement was ever reached. Before the Center and the State Engineer could agree on settlement terms or finalize an agreement, the District Court issued its Order vacating Order 1309. The District Court's Order effectively mooted the settlement discussions.

Coyote Springs next contends that "even if [the Center] did not settle with the State Engineer, they have been and remain aligned with the State Engineer." *Id.* at 7. However, the Center's position with respect to the State Engineer is irrelevant to the question at hand—whether the Center is an "aggrieved party" under NRAP 3A(a). While the Center agrees with the State Engineer that the District Court's

ruling was incorrect, and supports the State Engineer’s authority to jointly and conjunctively manage interconnected ground- and surface water resources, the Center has its own distinct interests in this litigation that are threatened by the District Court’s vacatur of Order 1309. Nothing in NRAP 3A states, or even implies, that there can be only one “aggrieved party” in litigation involving a state agency, and Coyote Springs provides no other authority to support its position. *See Las Vegas Police Protective Ass’n*, 122 Nev. at 239, 130 P.3d at 189 (discussing an intervenor’s right to appeal “independent from that of the original parties”).

Finally, Coyote Springs argues that no justiciable controversy exists between the Center and the State Engineer, or between the Center and Respondents. However, the Center previously explained the basis for its standing to appeal in its Opposition to Vidler’s Motion to Dismiss, and the supporting declaration of the Center’s Great Basin Director, Patrick Donnelly. Specifically, the Center explained that its members have “special” and “peculiar” interests in the Moapa dace that give the Center a substantial interest in this controversy distinct and apart from that of the general public. *Blanding*, 52 Nev. at 69, 280 P. at 648; *Schwartz*, 132 Nev. at 743, 382 P.2d at 894. The Center incorporates its Opposition to Vidler’s Motion to Dismiss and Mr. Donnelly’s declaration by reference as if fully set forth herein.

Mr. Donnelly’s aesthetic, recreational, scientific and spiritual interests in the Moapa dace establish a justiciable controversy between the Center and Respondents, and are sufficient to satisfy the analogous “injury in fact” requirement under Article III of the U.S. Constitution. *See Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, 807 F.3d 1031, 1043 (9th Cir. 2015); *see also Reno v. Goldwater*,



92 Nev. 698, 700, 558 P.2d 532, 533 (1976) (recognizing that “residents of the City of Reno who live in close proximity” to a public park and “enjoy its beauty” have standing to challenge the City’s conveyance of park property). Although Coyote Springs filed its Motion to Dismiss after the Center filed its Opposition to Vidler’s motion, Coyote Springs entirely fails to address the Center’s specific descriptions of particularized injury, or Mr. Donnelly’s detailed supporting declaration.

Coyote Springs also suggests that the Center lacks standing because there is no imminent risk to its interests from Coyote Springs or the other Respondents. Coyote Springs Mot. to Dismiss at 3, 5. Again, the District Court record shows that Coyote Springs’ position is unfounded. Coyote Springs and the other Respondents are junior water rights holders in basins within the LWRFS, who through these proceedings seek to acquire and/or protect rights to increase groundwater pumping. Any additional groundwater pumping in basins within the LWRFS beyond current levels will harm the Moapa dace. Without Order 1309’s area-wide pumping cap, Coyote Springs or other junior water rights holders in basins within the LWRFS may immediately increase pumping and harm the Moapa dace. Center’s Emergency Motion for Stay and Joinder, Exh. 2. Put simply, Order 1309 protected the Moapa dace from the threat of increased groundwater pumping and without Order 1309, the Center and other affected parties are at much higher risk from over-pumping.

Coyote Springs refers to “several [other] tools and statutes available to the State Engineer to manage ground and surface water.” Coyote Springs’ Mot. to Dismiss at 6. But as the Center explained in its Reply in Support of its Emergency Motion for Stay and Joinder, these alleged other tools and statutes may not

affirmatively prevent harm to the dace and the Center's interests therein. For instance, a 2006 Memorandum of Agreement between Coyote Springs, SNWA, and others permits flows to decrease significantly before halting pumping, and does not consider the fact—established through a 2010 pumping test of the LWRFS aquifer—that any pumping-induced reduction in springflows in the Muddy River headwaters springs is likely to be permanent, or at least of exceedingly long duration. *See* Center's Emergency Motion for Stay and Joinder at 10-11. Moreover, the District Court's ruled that the State Engineer lacks statutory authority to jointly and conjunctively manage groundwater and surface-water resources, meaning the State Engineer lacks authority to address impacts to the dace or its habitat that originate in adjacent "hydrologic basins," including impacts from Coyote Springs' pumping in the Coyote Springs Valley basin. *See id.* at 9-10. Coyote Springs therefore cannot claim here that its groundwater pumping will not threaten the Center's interests, or that unspecified other tools and statutes are certain to protect those interests.

### **CONCLUSION**

Because District Court's order substantially and adversely affects the Center's particularized interests in the protection of the Moapa dace and its habitat in the upper Muddy River headwaters springs, the Center is an aggrieved party under NRAP 3A(a) and has standing to appeal. Coyote Springs' Motion to Dismiss should be denied.

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

Dated this 6th day of July, 2022.

/s/ Scott Lake  
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## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the Center for Biological Diversity, and that on this 6th day of July, 2022 I served a true and correct copy of the foregoing by electronic service to the participants in this case who are registered with the Nevada Supreme Court's efilng system to this matter.

/s/ Scott Lake  
Scott Lake