

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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**APPELLANT SOUTHERN NEVADA WATER AUTHORITY'S RESPONSE
TO COYOTE SPRINGS INVESTMENTS, LLC'S MOTION TO DISMISS**

Appellant, SOUTHERN NEVADA WATER AUTHORITY (“SNWA”) by and through its counsel of record, hereby files this Response to Coyote Springs Investments, LLC’s (“CSI”) Motion to Dismiss SNWA’s appeal of the Eighth Judicial District’s Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review (“District Court Order”) based on the following memorandum of points and authorities, and all papers and pleadings on file in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND

The Lower White River Flow System (“LWRFS”) is a groundwater aquifer in southern Nevada that is hydrologically connected to the Muddy River.¹ SNWA owns and controls approximately 20,000 acre-feet annually (“afa”) of vested Muddy River water rights.² The Muddy River water is a vital resource to southern Nevada as the water flows into Lake Mead and is used to meet municipal demands. The main purpose of State Engineer Order 1309, was to limit the amount of groundwater pumping to protect vested water rights in the LWRFS.³

After an evidentiary hearing, the State Engineer ruled that no more than 8,000 afa can be pumped from the LWRFS without impairing vested water rights.⁴ The district court vacated Order 1309, and rejected the State Engineer’s authority to regulate groundwater rights to protect vested surface water rights.⁵ SNWA appealed to uphold the law against impairment of vested water rights and to ensure its vested

¹ App. for Appellant SNWA’s Emergency Mot. for Stay (“Mot. Stay App”) Vol. 1 at 1-6, 42, Doc. No. 22-17446.

² Mot. Stay App. Vol. 4 at 369, Doc. No. 22-18809; *see also*, Mot. Stay App. Vol. 3 at 204, Doc. No. 22-17447. SNWA also owns 11,200 afa of groundwater rights in the LWRFS. *Id.*

³ Mot. Stay App. Vol. 1 at 42-43, Doc. No. 22-17446. The non-impairment doctrine is one of the primary principles of Nevada water law, and even a groundwater management plan that this Court determined could abrogate prior appropriation cannot impair vested water rights. *Diamond Natural Resources Protection & Conservation Association v. Diamond Valley Ranch, LLC*, 2022 WL 2182502, 138 Nev. Ad. Op. 43, at *4 (2022).

⁴ Mot. Stay App. Vol. 1 at 42-43, 63, 65, Doc. No. 22-17446.

⁵ Mot. Stay App. Vol. 2 at 215:20-216:13, 223:12-28, Doc. No. 22-17447.

rights and the endangered Moapa dace are protected.⁶ CSI and other respondents oppose SNWA so they can increase pumping beyond the available supply.⁷

SNWA was a party in the administrative hearings that led to Order 1309.⁸ SNWA appeared both as a Petitioner and Respondent-Intervenor before the district court in the appeals of Order 1309 to protect its senior vested water rights.⁹ While SNWA made best efforts to settle its petition, SNWA *did not* reach a settlement with the State Engineer, or any other party. The district court granted the petitions for judicial review in which SNWA was a Respondent-Intervenor. The district court's vacation of Order 1309 was directly adverse to SNWA's position in those petitions.¹⁰ In its role as a Petitioner, the district court granted a portion of SNWA's Petition for Judicial Review, and rejected the remainder.¹¹

STANDARD OF REVIEW

CSI filed its Motion to Dismiss challenging SNWA's standing to appeal the District Court Order. Motions to dismiss are subject to a rigorous standard of review, and the factual allegations of the appellant are to be recognized as true with all inferences to be drawn in its favor.¹² "A party has the right to appeal when the party

⁶ Appellant SNWA's Docketing Statement at 5-7, Doc. No. 22-19344; SNWA's Emergency Mot. for Stay at 2-4, Doc. No. 22-17445.

⁷ Mot. Stay App. Vol. 2 at 96:22-97:1, 146:4, 179:18-24, Doc. No. 22-17447.

⁸ Mot. Stay App. Vol. 1 at 33-35, Doc. No. 22-17446.

⁹ Mot. Stay App. Vol. 4 at 384-401, Doc. No. 22-18809.

¹⁰ Mot. Stay App. Vol. 2 at 223:26-28, Doc. No. 22-17447.

¹¹ Mot. Stay App. Vol. 2 at 229-234, Doc. No. 22-17447.

¹² *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

is aggrieved by a final, appealable judgment or order.”¹³ “A party is ‘aggrieved’ within the meaning of NRAP 3A(a) ‘when either a personal right or right of property is adversely and substantially affected’ by a district court’s ruling.”¹⁴ This right to appeal applies even if a party prevails in part in a petition for judicial review.¹⁵ “Generally, 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.”¹⁶

ARGUMENT¹⁷

I. CSI Is Precluded From Arguing Against SNWA’s Interest And Standing

CSI argues that SNWA has no standing to appeal the District Court Order claiming SNWA has no protectable interest and is not an adverse party to CSI.¹⁸ CSI previously conceded by stipulation that SNWA has both a property interest and is an adverse party standing in this matter.¹⁹ “[V]alid stipulations are controlling and conclusive and both trial and appellate courts are bound to enforce them.”²⁰ CSI

¹³ NRAP 3A(a); *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 303, 300 P.3d 724, 726 (2013).

¹⁴ *Las Vegas Police Protective Ass'n Metro, Inc. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 122 Nev. 230, 239–40, 130 P.3d 182, 189 (2006) citing *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

¹⁵ *Jacinto*, 129 Nev. at 303, 300 P.3d at 726.

¹⁶ *Las Vegas Police Protective Ass'n Metro*, 122 Nev. at 239, 130 P.3d at 189.

¹⁷ SNWA hereby incorporates its arguments from its Response to Lincoln County Water District and Vidler Water Company’s Motion to Dismiss.

¹⁸ CSI’s Mot. to Dismiss at 5, 8, Doc. No. 22-19044.

¹⁹ Mot. Stay App. Vol. 4 at 384-401, Doc. No. 22-18809. Note, CSI also received a benefit by also receiving intervenor status in SNWA’s petition for judicial review.

²⁰ *Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008) (internal quotation omitted); *See also Second Baptist Church of Reno v. Mount Zion Baptist Church*, 86 Nev 164, 172. 466 P.2d 212, 217 (1970).

stipulated that SNWA’s intervention in CSI’s petition for judicial review “is appropriate and warranted under both NRCP 24(a) and NRCP 24(b), thereby giving standing to each party to be an actual party in each of the other matters filed by the parties.”²¹ NRAP 24(a) provides that the intervening party has an “interest relating to the property or transaction that is the subject of the action.” Thus, CSI has stipulated to the two key issues in its the Motion to Dismiss.

II. SNWA Is An Aggrieved Party.

“A party is ‘aggrieved’ within the meaning of NRAP 3A(a) ‘when either a personal right or right of property is adversely and substantially affected’ by a district court’s ruling.”²² CSI argues that under the holding of *Las Vegas Police Protective Ass’n Metro*, SNWA has no protectable interest or legal right affected by the District Court Order.²³ In *Las Vegas Police Protective Ass’n Metro*, a police union was found to be an aggrieved party with standing although it was not immediately or directly affected by the holding because the outcome of the case could impact future proceedings of its members. Here, the property rights and protectable interest of SNWA are directly and adversely impacted by the District Court Order. SNWA owns and controls over 20,000 afa of surface water rights in the Muddy River, holding a significant portion of the decreed rights on the Muddy River.²⁴ This water flows into Lake Mead, and is a part of southern Nevada’s municipal water supply.

²¹ Mot. Stay App. Vol. 4 at 386-387, Doc. No. 22-18809.

²² *Las Vegas Police Protective Ass’n Metro*, 122 Nev. at 239–40, 130 P.3d at 189.

²³ CSI’s Mot. to Dismiss at 5, Doc. No. 22-19044.

²⁴ Mot. Stay App. Vol. 2 at 16:12-16, Doc. No. 22-17447; Mot. Stay App. Vol. 4 at 369:17-19, Doc. No. 22-18809.

Without Order 1309 in place the State Engineer will be unable to use the 8,000 afa pumping cap to protect SNWA’s senior water rights. Furthermore, contrary to CSI’s claims, the State Engineer will be unable to use existing tools, other than Order 1309, to protect SNWA’s senior water rights.²⁵ The district court held that the State Engineer does not have the authority to conjunctively manage groundwater and surface water, therefore it is unclear how he can use existing statutory tools to protect SNWA’s senior water rights from the impacts of increased groundwater pumping.²⁶

SNWA was granted intervenor status in CSI’s petition for judicial review because the outcome of that case directly impacts SNWA’s ability to protect its vested water rights.²⁷ The District Court Order severely limits the State Engineer’s authority to protect vested rights, stating that while logically the State Engineer should protect vested surface water rights from statutory groundwater pumping, he lacks the authority to do so.²⁸ Despite the district court’s confusion, SNWA’s vested rights *may not* be impaired by statutory water rights.²⁹ The District Court Order denies SNWA of “some equitable or legal right” to protect its vested rights from impairment by the pumping of statutory groundwater rights.³⁰ Thus, SNWA has a legal interest to protect its vested water rights in this matter.

²⁵ CSI’s Mot. to Dismiss at 6, Doc. No. 22-19044.

²⁶ Mot. Stay App. Vol. 2 at 215:20-216:13, Doc. No. 22-17447.

²⁷ Mot. Stay App. Vol. 4 at 367-401, Doc. No. 22-18809.

²⁸ Mot. Stay App. Vol. 2 at 215:20-216:13, Doc. No. 22-17447.

²⁹ NRS 533.085(1); *Andersen Family Associates v. Hugh Ricci, P.E.*, 124 Nev. 182, 190, 179 P.3d 1201, 1206 (2008).

³⁰ *Las Vegas Police Protective Ass'n Metro*, 122 Nev. at 239–40, 130 P.3d at 189.

CSI also argues, without any citation, that as an intervenor, SNWA has no standing to appeal.³¹ This Court has previously found 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.”³² Even if SNWA was not an intervenor in CSI’s petition, SNWA also has appellate standing under its own petition.³³ Despite the claims of CSI, SNWA did not fully prevail in its Petition for Judicial Review and instead prevailed on a very narrow due process issue and the district court dismissed the remainder of its petition.³⁴ SNWA is not appealing the district court’s decision to partially grant SNWA’s petition, but rather the district court’s dismissal of the remainder of its petition. SNWA has standing to appeal the district court’s dismissal where SNWA’s request for relief was denied.³⁵

III. SNWA Has A Justiciable Controversy.

CSI cites *Doe v. Bryan* to claim that SNWA has no justiciable controversy.³⁶ SNWA is not in the same position as the plaintiffs in *Bryan*, who were contesting a statute under which they had not been prosecuted. Instead, SNWA’s rights are directly impacted by the District Court Order. SNWA meets all the requirements

³¹ CSI’s Mot. to Dismiss at 5, Doc. No. 22-19044. *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330, n. 38, 130 P.3d 1280, 1288, n. 38 (2006) (noting that an argument may be deemed waived where not supported by relevant legal authority).

³² *Las Vegas Police Protective Ass’n Metro*, 122 Nev. at 239, 130 P.3d at 189.

³³ Mot. Stay App. Vol. 2 at 230, Doc. No. 22-17447; *Jacinto*, 129 Nev. at 303, 300 P.3d at 726.

³⁴ Mot. Stay App. Vol. 2 at 230, Doc. No. 22-17447; CSI’s Mot. to Dismiss at 5, Doc. No. 22-19044.

³⁵ *Jacinto*, 129 Nev. at 303, 300 P.3d at 726.

³⁶ CSI’s Mot. to Dismiss at 8, Doc. No. 22-19044; *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986).

under the *Bryan* test: (1) SNWA has a claim of right that it is asserting against CSI who has an interest in contesting it; (2) CSI and SNWA are adverse parties; (3) SNWA has a legally protected interest impacted by the District Court Order; and (4) the controversy is ripe for judicial determination, which is undisputed.³⁷

A. SNWA has a claim of right that it is asserting against CSI.

SNWA's interest is to uphold the pumping limit in Order 1309 to prevent new groundwater development to protect its vested rights.³⁸ CSI's interest is to overturn Order 1309 so it can pump more water to support its residential development.³⁹ SNWA owns "a significant portion of the Muddy River decreed rights," and the river is fully appropriated.⁴⁰ CSI owns junior groundwater rights in Coyote Springs Valley.⁴¹ CSI's development of its permitted, but currently unused, water rights in Coyote Springs Valley will conflict with SNWA's vested water rights.⁴² CSI affirmatively stated it intends to pump 536 afa more water because Order 1309 was vacated.⁴³ Thus, SNWA and CSI have opposing claims of right.

B. SNWA and CSI are adverse parties.

SNWA and CSI are adverse parties, contrary to CSI's claims.⁴⁴ At all times at the district court, CSI and SNWA were adverse parties. SNWA intervened in

³⁷ *Bryan*, 102 Nev. at 525, 728 P.2d at 444.

³⁸ SNWA's Mot. for Stay, Doc. No. 22-17445.

³⁹ Mot. Stay App. Vol. 2 at 96:22-97:1, Doc. No. 22-17447; *see also* CSI's Opp. to Mot. for Stay, Doc. No. 22-17883.

⁴⁰ Mot. Stay App. Vol. 2 at 196:1-15, 204:12-15, Doc. No. 22-17447.

⁴¹ Mot. Stay App. Vol. 2 at 204, Doc. No. 22-17447.

⁴² Mot. Stay App. Vol. 2 at 199:7-11, Doc. No. 22-17447.

⁴³ Mot. Stay App. Vol. 2 at MFS 96:22-97:1, 144:4-10, 146:4, Doc. No. 22-17447.

⁴⁴ CSI's Mot. to Dismiss at 8, Doc. No. 22-19044.

CSI's petition as an adverse party to CSI to defend the State Engineer's order against the claims in CSI's petition.⁴⁵ CSI filed an opening brief and SNWA filed an answering brief as Respondent-Intervenor in opposition to CSI's petition for judicial review.⁴⁶ The district court sided with CSI, and approved its petition over SNWA's objections.⁴⁷ SNWA appealed this decision. SNWA intends to continue to "vigorously and effectively present [its] case against an adverse party."⁴⁸

CSI seeks to confuse the issue by claiming, incorrectly, that to have standing SNWA must be adverse to the State Engineer.⁴⁹ The district court ruled in favor of CSI, and other petitioners, not the State Engineer.⁵⁰ The district court's decision to grant CSI's petition, as well as the petitions of other parties that are also adverse to SNWA's interest, is the relevant matter on appeal.

C. SNWA has a legally protectable interest.

SNWA's interest in this case gives them standing to appeal that would not apply to "any random member of the public."⁵¹ CSI incorrectly cites to *Schwartz v. Lopez* to support its argument that SNWA does not have a legally protectable interest.⁵² The *Schwartz* case dealt with a unique situation where the plaintiff could

⁴⁵ Mot. Stay App. Vol. 4 at 367-401, Doc. No. 22-18809.

⁴⁶ Mot. Stay App. Vol. 2 at 191:22-24, Doc. No. 22-17447. Note, CSI was also an adverse party to SNWA in SNWA's Petition for Judicial Review, and filed an answering brief in opposition to SNWA's petition. *Id.*

⁴⁷ Mot. Stay App. Vol. 2 at 223:26-28, Doc. No. 22-17447.

⁴⁸ *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

⁴⁹ CSI's Mot. to Dismiss at 7-8, Doc. No. 22-19044.

⁵⁰ Mot. Stay App. Vol. 2 at 223-224, Doc. No. 22-17447

⁵¹ CSI's Mot. to Dismiss at 5-6, Doc. No. 22-19044.

⁵² CSI's Mot. to Dismiss at 5, Doc. No. 22-19044.

not show a personal injury but was still granted standing under the public-importance exception.⁵³ That Court’s holding is irrelevant to this case where SNWA has a legally protectable interest.

SNWA owns or controls a significant portion of vested Muddy River water rights.⁵⁴ These water rights are treated as real property, and are highly protected under the law.⁵⁵ Order 1309 was issued to fulfil the State Engineer’s mandate to protect vested water rights.⁵⁶ The district court overturned Order 1309 stating the State Engineer has no authority to regulate groundwater to protect surface water.⁵⁷ This decision directly impacts SNWA’s interest in enforcing the rule of non-impairment to protect its vested water rights.

D. The State Engineer does not represent SNWA’s interests.

CSI also argues that SNWA does not have standing because their brief will be similar to that of the State Engineer.⁵⁸ CSI conceded that the State Engineer does not “adequately represent”⁵⁹ SNWA’s interests when it stipulated to SNWA’s intervention in CSI’s Petition for Judicial Review.⁶⁰ Additionally, as this Court has

⁵³ *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016).

⁵⁴ Mot. Stay App. Vol. 2 at 196:1-15, 204:12-15, Doc. No. 22-17447.

⁵⁵ NRS 533.085(1); *Andersen Family Associate*, 124 Nev. at 190, 179 P.3d at 1206; *Application of Filippini*, 66 Nev. at 21–22, 202 P.2d at 537 (water rights are “regarded and protected as real property.”); *see also Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 473 P.3d 418 (2020) (decreed rights are final and cannot be impaired).

⁵⁶ Mot. Stay App. Vol. 1 at 42-43, 63, 65, Doc. No. 22-17446; Mot. Stay App. Vol. 3 at 522 page 12:11-12, Doc. No. 22-17448.

⁵⁷ Mot. Stay App. Vol. 2 at 215:20-216:13, Doc. No. 22-17747.

⁵⁸ CSI’s Mot. to Dismiss at 7, Doc. No. 22-19044.

⁵⁹ NRCPC 24(a)(2).

⁶⁰ Mot. Stay App. Vol. 4 at 386, Doc. No. 22-18809.

consistently held, water rights are unique forms of property and those with an ownership interest cannot be adequately represented by others.⁶¹ Therefore, SNWA will not be participating as co-counsel or an amicus curiae to the State Engineer, but rather protecting its interests that cannot be adequately protected by the State Engineer or any other party.

E. SNWA did not enter a settlement agreement.

CSI also falsely argues that SNWA has no justiciable controversy because SNWA settled its petition with the State Engineer. While SNWA entered into a preliminary settlement agreement with the State Engineer which it disclosed to the court,⁶² the settlement agreement was never finalized or submitted for approval. This lack of settlement is evident in the record: if SNWA had settled its petition with the State Engineer then the district court would not have ruled on its petition.⁶³ While irrelevant to the question of standing, no settlement agreement was executed as CSI seeks to confuse this Court.

CONCLUSION

SNWA respectfully request this Court deny CSI's Motion to Dismiss SNWA's appeal of the District Court Order.

⁶¹ *Eureka County v. Seventh Jud. Dist. Ct.*, 134 Nev., Adv. Op. 37, 417 P.3d 1121, 1125-26 (2018).

⁶² Contrary to CSI's claim, SNWA's disclosure of an attempted settlement was not disingenuous. SNWA's counsel properly believed his duty of candor to the Court required the disclosure of the ongoing preliminary settlement agreement.

⁶³ Mot. Stay App. Vol. 2 at 229-234, Doc. No. 2022-17447.

AFFIRMATION

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

Respectfully submitted this 6th day of July 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
Paul@legaltnt.com; Tom@legaltnt.com

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 document by electronic service to:

OFFICE OF THE ATTORNEY GENERAL
JAMES N. BOLOTIN #13829, Email: jbolotin@ag.nv.gov
LAENA ST-JULES #15156C, Email: lstjules@ag.nv.gov
Attorneys for Nevada State Engineer

ROBISON, SHARP, SULLIVAN & BRUST
KENT R. ROBISON #1167, Email: krobison@rssblaw.com;
tshanks@rssblaw.com

IN ASSOCIATION WITH:
BROWNSTEIN HYATT FARBER SCHRECK, LLP
BRADLEY J. HERREMA #10368, Email: bherrema@bhfs.com

COULTHARD LAW
WILLIAM L. COULTHARD #3927, Email: wlc@coulthardlaw.com

EMILIA K. CARGILL #6493, Email: emilia.cargill@coyotesprings.com
Attorneys for Coyote Springs Investment, LLC

MARQUIS AURBACH COFFING
CHRISTIAN T. BALDUCCI #12688, Email: cbalducci@maclaw.com,
kwilde@maclaw.com
Attorneys for Apex Holding Company, LLC and Dry Lake Water, LLC

Center for Biological Diversity
SCOTT LAKE, Email: slake@biologicaldiversity.org
LISA T. BELENKY, Email: lbelenky@biologicaldiversity.org
Attorneys for Center for Biological Diversity

DYER LAWRENCE, LLP
FRANCIS C. FLAHERTY, Email: fflaherty@dyerlawrence.com
Attorneys for Nevada Cogeneration Associates Nos. 1 and 2

KAEMPFER CROWELL

SEVERIN A. CARLSON #9373, Email: scarlson@kcnvlaw.com

SIHOMARA L. GRAVES #13239, Email: sgraves@kcnvlaw.com

Attorneys for The Church of Jesus Christ of Latter-day Saints

DOTSON LAW

ROBERT A. DOTSON #5285, Email: rdotson@dotsonlaw.legal

JUSTIN C. VANCE #11306, Email: jvance@dotsonlaw.legal

IN ASSOCIATION WITH:

STEVEN D. KING #4304, Email: kingmont@charter.net

Attorneys for Muddy Valley Irrigation Company

McDONALD CARANO LLP

SYLVIA HARRISON #4106, Email: sharrison@mcdonaldcarano.com

LUCAS FOLETTA #12154, Email: lfoletta@mcdonaldcarano.com

SARAH FERGUSON #14515, Email: sferguson@mcdonaldcarano.com

Attorneys for Georgia-Pacific Gypsum LLC and Republic Environmental Technologies, Inc.

PARSONS BEHLE & LATIMER

GREGORY H. MORRISON #12454; Email: gmorrison@parsonsbehle.com

Attorneys for Moapa Valley Water District

NEVADA ENERGY

JUSTINA A. CAVIGLIA #9999, Email: justina.caviglia@nvenergy.com

MICHAEL D. KNOX #8143, Email: mknnox@nvenergy.com

Attorneys for Nevada Power Company dba NV Energy

SCHROEDER LAW OFFICES, P.C.

THERESE A. URE STIX #10255, Email: t.ure@water-law.com

LAURA A. SCHROEDER #3595, Email: schroeder@water-law.com

Attorneys for City of North Las Vegas, Western Elite Environmental, Inc. and Bedroc Limited, LLC

ALLISON MacKENZIE, LTD.

KAREN A. PETERSON #366, Email: kpeterson@allisonmackenzie.com

Attorneys for Vidler Water Company, Inc.

LINCOLN COUNTY DISTRICT ATTORNEY
DYLAN V. FREHNER #9020, Email: dfrehner@lincolncountynv.gov

IN ASSOCIATION WITH:

SNELL & WILMER L.L.P.

WAYNE O. KLOMP #10109, Email: wklomp@swlaw.com

Attorneys for Lincoln County Water District

DATED this 6th day of July 2022.

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