

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN NEVADA WATER
AUTHORITY,

Appellant,

vs.

COYOTE SPRINGS INVESTMENT,
LLC; et al.

Respondents.

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Elizabeth A. Brown
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**VOLUME ONE OF APPENDIX FOR EMERGENCY MOTION FOR STAY
UNDER NRAP 27(E) OF DISTRICT COURT'S ORDER GRANTING
PETITIONS 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 One 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 1st 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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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

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

#1309

ORDER

**DELINEATING THE LOWER WHITE RIVER FLOW SYSTEM HYDROGRAPHIC
BASIN WITH THE KANE SPRINGS VALLEY BASIN (206), COYOTE SPRING
VALLEY BASIN (210), A PORTION OF BLACK MOUNTAINS AREA BASIN (215),
GARNET VALLEY BASIN (216), HIDDEN VALLEY BASIN (217), CALIFORNIA
WASH BASIN (218), AND MUDDY RIVER SPRINGS AREA (AKA UPPER MOAPA
VALLEY) BASIN (219) ESTABLISHED AS SUB-BASINS, ESTABLISHING A
MAXIMUM ALLOWABLE PUMPING IN THE LOWER WHITE RIVER FLOW
SYSTEM WITHIN CLARK AND LINCOLN COUNTIES, NEVADA,
AND RESCINDING INTERIM ORDER 1303**

Table of Contents

I.	Background of the Administration of the Lower White River Flow System Basins	1
II.	Interim Order 1303	10
III.	Public Comment	41
IV.	Authority and Necessity	42
V.	Endangered Species Act	43
VI.	Geographic Boundary of the LWRFS	46
VII.	Aquifer Recovery Since Completion of the Order 1169 Aquifer Test	55
VIII.	Long-term Annual Quantity of Water That Can Be Pumped	57
IX.	Movement of Water Rights	63
X.	Order	65

**I. BACKGROUND OF THE ADMINISTRATION OF THE LOWER WHITE
RIVER FLOW SYSTEM BASINS**

WHEREAS, the State Engineer has actively managed and regulated the Coyote Spring Valley Hydrographic Basin (Coyote Spring Valley), Basin 210, since August 21, 1985; the Black Mountains Area Hydrographic Basin (Black Mountains Area), Basin 215, since November 22, 1989; the Garnet Valley Hydrographic Basin (Garnet Valley), Basin 216, since April 24, 1990; the Hidden Valley Hydrographic Basin (Hidden Valley), Basin 217, since April 24, 1990; the California Wash Hydrographic Basin (California Wash), Basin 218, since April 24, 1990; and the

Muddy River Springs Area Hydrographic Basin (Muddy River Springs Area), Basin 219, since July 14, 1971.¹

WHEREAS, in 1984, the United States Department of Interior, Geological Survey (USGS), Water Services Division, proposed a ten-year investigation into carbonate-rock aquifers that underlay approximately 50,000 square miles of eastern and southern Nevada.² In 1985, a program for the study and testing of the carbonate-rock aquifer system of eastern and southern Nevada was authorized by the Nevada Legislature. In 1989, a report was published by the USGS summarizing the first phase of the study.³ Included in the summary was a determination that:

Large-scale development (sustained withdrawals) of water from the carbonate-rock aquifers would result in water-level declines and cause the depletion of large quantities of stored water. Ultimately, these declines would cause reductions in the flow of warm-water springs that discharge from the regional aquifers. Storage in other nearby aquifers also might be depleted, and water levels in those other aquifers could decline. In contrast, isolated smaller ground-water developments, or developments that withdraw ground water for only a short time, may result in water-level declines and springflow reductions of manageable or acceptable magnitude.

Confidence in predictions of the effects of development, however, is low; and it will remain low until observations of the initial hydrologic results of development are analyzed. A strategy of staging developments gradually and adequately monitoring the resulting hydrologic conditions would provide information that eventually could be used to improve confidence in the predictions.⁴

¹ See NSE Ex. 9, *Order 905*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See NSE Ex. 8, *Order 1018*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See NSE Ex. 5, *Order 1025*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See NSE Ex. 6, *Order 1024*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See NSE Ex. 4, *Order 1026*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See NSE Ex. 7, *Order 1023*, Hearing on Interim Order 1303, official records of the Division of Water Resources; NSE Ex. 11, *Order 392*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

² Memorandum dated August 3, 1984, from Terry Katzer, Nevada Office Chief, Water Resources Division, United States Department of Interior Geological Survey, Carson City, Nevada to Members of the Carbonate Terrane Study.

³ Michael D. Dettinger, *Distribution of Carbonate-Rock Aquifers in Southern Nevada and the Potential for their Development, Summary of Findings, 1985-1988*, Summary Report No. 1, U.S. Geological Survey, Department of Interior and Desert Research Institute, University of Nevada System, 1989, p. Forward. See also NSE Ex. 3, *Order 1169*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

⁴ *Id.*, p. 2.

WHEREAS, beginning in 1989 and through the early 2000s, numerous groundwater applications were filed in Coyote Spring Valley, Black Mountains Area, Garnet Valley, Hidden Valley, California Wash, and Muddy River Springs Area Hydrographic Basins seeking to appropriate more than 300,000 acre-feet annually (afa) of groundwater from the carbonate-rock aquifer underlying these basins.⁵ The State Engineer held a hearing on July 12-20, 23-24, and August 31, 2001, for pending Applications 54055–54059, filed by Las Vegas Valley Water District (LVVWD) to appropriate 27,510 afa of water in Coyote Spring Valley.⁶ The State Engineer conducted a hearing on Coyote Springs Investments LLC (CSI) Applications 63272–63276 on August 20-24, 27-28, 2001.⁷

WHEREAS, following the conclusions of these hearings, the State Engineer issued Order 1169 on March 8, 2002, requiring all pending applications in Coyote Spring Valley, Black Mountains Area, Garnet Valley, Hidden Valley, Muddy River Springs Area, and Lower Moapa Valley Hydrographic Basin (Basin 220), be held in abeyance pending an aquifer test of the carbonate-rock aquifer system to better determine whether the pending applications and future appropriations could be developed from the carbonate-rock aquifer.⁸

WHEREAS, in Order 1169, the State Engineer found that he did not believe that it was prudent to issue additional water rights to be pumped from the carbonate-rock aquifer until a significant portion of the then existing water rights were pumped for a substantial period of time to determine whether the pumping of those water rights would have a detrimental impact on existing water rights or the environment.⁹

WHEREAS, Order 1169 required that at least 50%, or 8,050 afa, of the water rights then currently permitted in Coyote Spring Valley be pumped for at least two consecutive years.¹⁰ On April 18, 2002, the State Engineer added the California Wash to the Order 1169 aquifer test basins.¹¹

⁵ See NSE Exs. 14–20, *Ruling 6254–Ruling 6260*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

⁶ See NSE Ex. 14.

⁷ *Id.*

⁸ See NSE Ex. 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See State Engineer's Ruling 5115, dated April 18, 2002, official records of the Division of Water Resources.

WHEREAS, subsequent to the issuance of Order 1169, the United States Fish and Wildlife Service (USFWS) expressed concern that current groundwater pumping coupled with additional groundwater withdrawals in Coyote Spring Valley and California Wash may cause reduction of spring flow to the Warm Springs area, tributary thermal springs in the upper Muddy River, which serves as critical habitat to the Moapa dace (*Moapa corciacea*), an endemic fish species federally listed as endangered in 1967.¹² Due to these concerns, on April 20, 2006, the Southern Nevada Water Authority (SNWA), USFWS, CSI, the Moapa Band of Paiute Indians (MBOP) and the Moapa Valley Water District (MVWD) entered into a Memorandum of Agreement (MOA).¹³

WHEREAS, the MOA stated that all the parties shared “a common interest in the conservation and recovery of the Moapa dace and its habitat.” The MOA established certain protections to the Moapa dace, including protocols relating to pumping from the regional carbonate-rock aquifer that may adversely impact spring flow to the dace habitat in the Warm Springs area. Specifically, the MOA identified conservation measures, which included protections for minimum instream flows in the Warm Springs area with trigger levels set at 3.2 cubic feet per second (cfs) at the Warm Springs West gage requiring initial action by the MOA parties, and the most stringent action required at a flow rate of 2.7 cfs.¹⁴

WHEREAS, the MBOP raised concerns that pumping 8,050 afa from the Coyote Spring Valley as part of the aquifer test would adversely impact the water resources at the Warm Springs area, and consequently the Moapa dace, and that the impacts would persist such that protective measures established in the MOA would be inadequate to protect the dace.¹⁵ As a result, the Order 1169 study participants, which included the LVVWD, SNWA, CSI, Nevada Power Company,¹⁶ MVWD, Dry Lake Water Company, LLC, Republic Environmental Technologies, Inc. (Republic),

¹² USFWS, *Fish and Aquatic Conservation - Moapa dace*, <https://bit.ly/moapadace> (last accessed June 3, 2020). See also SNWA Ex. 8, p. 1-1.

¹³ See NSE Ex. 236, *2006 Memorandum of Agreement between the Southern Nevada Water Authority, United States Fish and Wildlife Service, Coyote Springs Investment LLC, Moapa Band of Paiute Indians and Moapa Valley Water District*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

¹⁴ *Id.*

¹⁵ See May 26, 2010, letter from Darren Daboda, Chairperson, Moapa Band of Paiutes, to Jason King, Nevada State Engineer, official records of the Division of Water Resources.

¹⁶ Nevada Power Company, following the merger with Sierra Pacific Power Company and Sierra Pacific Resources subsequently began doing business as NV Energy. See, e.g., NV Energy, *Company History*, <https://bit.ly/NVEhistory> (last accessed April 20, 2020).

Chemical Lime Company, Nevada Cogeneration Associates, and the MBOP, or their successors, agreed that even if the minimum 8,050 afa was not pumped, sufficient information would be obtained to inform future decisions relating to the study basins.¹⁷

WHEREAS, on November 15, 2010, the Order 1169 aquifer test began, whereby the study participants began reporting to the Nevada Division of Water Resources (Division) on a quarterly basis the amounts of water pumped from wells in the carbonate-rock and alluvial aquifers during the pendency of the aquifer test.

WHEREAS, on December 21, 2012, the State Engineer issued Order 1169A declaring the completion of the Order 1169 aquifer test to be December 31, 2012, after a period of 25½ months. The State Engineer provided the study participants the opportunity to file reports with the Division until June 28, 2013, to present information gained from the aquifer test in order to estimate water to support applications in the Order 1169 study basins.¹⁸

WHEREAS, during the Order 1169 aquifer test, an average of 5,290 acre-feet per year (afy) was pumped from carbonate-rock aquifer wells in Coyote Spring Valley, and a cumulative reported total of 14,535 afy of water was pumped throughout the Order 1169 study basins. Of this total, approximately 3,840 afy was pumped from the Muddy River Springs Area alluvial aquifer with the balance pumped from the carbonate-rock aquifer.¹⁹

WHEREAS, during the aquifer test, pumpage was measured and reported from 30 other wells in the Coyote Spring Valley, Muddy River Springs Area, Garnet Valley, California Wash, Black Mountains Area, and Lower Meadow Valley Wash Hydrographic Basin (Lower Meadow Valley Wash). Stream diversions from the Muddy River were reported, and measurements of the natural discharge of the Muddy River and from the Warm Springs area springs were collected daily. Water-level data were collected from a total of 79 monitoring and pumping wells within the Order 1169 study basins. All of the data collected during the aquifer test were made available to each of the study participants and the public.²⁰

¹⁷ See July 1, 2010, letter from Jason King, Nevada State Engineer, to Order 1169 Study Participants, official records of the Division of Water Resources.

¹⁸ See NSE Ex. 2, *Order 1169A*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

¹⁹ See, e.g., NSE Ex. 1, Appendix B.

²⁰ See Division, *Water Use and Availability – Order 1169*, <https://bit.ly/Order1169>

WHEREAS, during the Order 1169 aquifer test, the resulting water-level decline encompassed 1,100 square miles and extended from southern Kane Springs Valley, northern Coyote Spring Valley through the Muddy River Springs Area, Hidden Valley, Garnet Valley, California Wash, and the northwestern portion of the Black Mountains Area.²¹ The water-level decline was estimated to be 1 to 1.6 feet throughout this area with minor drawdowns of 0.5 foot or less in the northern portion of Coyote Spring Valley north of the Kane Springs Wash fault zone.²²

WHEREAS, results of the two-year aquifer test demonstrated that pumping 5,290 afa from the carbonate-rock aquifer in Coyote Spring Valley, in addition to the other carbonate-rock aquifer pumping in Garnet Valley, Muddy River Springs Area, California Wash and the northwest portion of the Black Mountains Area, caused sharp declines in groundwater levels and flows in the Pederson and Pederson East springs, two springs considered to be sentinel springs for the overall condition of the Muddy River due to being higher in altitude than other Muddy River source springs, and therefore are proportionally more affected by a decline in groundwater level in the carbonate-rock aquifer.²³ The Pederson spring flow decreased from 0.22 cfs to 0.08 cfs and the Pederson East spring flow decreased from 0.12 cfs to 0.08 cfs. Additional headwater springs at lower altitude, the Baldwin and Jones springs, declined approximately 4% in spring flow during the test.²⁴ All of the headwater springs contribute to the decreed and fully-appropriated Muddy River and are the predominant source of water that supplies the habitat of the endangered Moapa dace.

WHEREAS, Order 1169A provided the study participants an opportunity to submit reports addressing three specific questions presented by the State Engineer: (1) what information was obtained from the study/pumping test; (2) what were the impacts of pumping under the pumping test; and, (3) what is the availability of additional water resources to support the pending applications. SNWA, USFWS, National Park Service (NPS) and Bureau of Land Management

²¹ USFWS Ex. 5, *Report in Response to Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 21, 67. *See, e.g.*, NSE Ex. 14. *See also* NSE Ex. 256, *Federal Bureaus Order 1169A Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. There was no groundwater pumping in Hidden Valley, but effects were still observed in the Hidden Valley monitor well.

²² *See, e.g.*, NSE Ex. 14. *See also* NSE Ex. 256.

²³ *See* NSE Ex. No. 236.

²⁴ NSE Ex. 256, pp. 43–46, 50–51. *See also*, USGS, *Water Data for Nevada*, <https://bit.ly/nvwater>.

(BLM), MBOP, MVWD, CSI, Great Basin Water Network (GBWN) and Center for Biological Diversity (CBD) submitted either reports or letters.

WHEREAS, in its report, SNWA addressed water levels throughout the Order 1169 basins. SNWA acknowledged that hydrologic connectivity supported the potential need for redistribution of existing pumping, and indirectly acknowledged the limitation on availability of water to satisfy the pending applications.²⁵ SNWA further acknowledged declines to spring flow in the Pederson and Pederson East springs as a result of the aquifer test, but characterized the decline in spring flow at the Warm Springs West location as minimal. SNWA further correlated the declining trends as associated with climate but opined that Muddy River flow did not decline as a result of the aquifer test and carbonate-rock aquifer pumping; rather, impact to Muddy River flows were due to alluvial aquifer pumping.²⁶

WHEREAS, CSI, through a letter, agreed with SNWA's report and asserted that additional water resources could be developed within the Coyote Spring Valley north of the Kane Springs Fault, which supported granting new appropriations of water.²⁷

WHEREAS, the United States Department of Interior Bureaus (USFWS, NPS and BLM) concluded that the aquifer test provided sufficient data to determine the effects of the aquifer drawdown as well as identify drawdown throughout the region and was sufficient to project future pumping effects on spring flow. Based upon their analysis, the Department of Interior Bureaus concluded that water-level declines due to the aquifer test encompassed 1,100 square miles throughout the Order 1169 study basins. Additionally, the Department of Interior Bureaus' analysis found a direct correlation between the aquifer test pumping and flow declines at Pederson, Plummer and Apcar units and Baldwin Spring, all springs critical to the Moapa dace habitat, and asserted that pumping at the Order 1169 rate at well MX-5 in Coyote Spring Valley could result in both of the high-altitude Pederson and Pederson East springs going dry in 3 years or less.²⁸

²⁵ See NSE Ex. 245, *Southern Nevada Water Authority Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 23–25.

²⁶ *Id.*

²⁷ NSE Ex. 247, *Coyote Springs Investments, LLC Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

²⁸ See, e.g., NSE Ex. 14, pp.15–18. See also NSE Ex. 256.

WHEREAS, the Department of Interior Bureaus further found that the groundwater withdrawals that occurred in Coyote Spring Valley during the Order 1169 aquifer test represented approximately one-third of the then existing water rights within Coyote Spring Valley, concluding that even one-third of the existing water rights could not be developed without adversely impacting spring flow to the headwaters of the Muddy River and habitat for the Moapa dace.²⁹ Ultimately, the Department of Interior Bureaus concluded that there was insufficient water available for the pending applications, and that the area that was subject to the Order 1169 aquifer test behaved as one connected aquifer and pumping in one basin would have similar effects on the whole aquifer.³⁰

WHEREAS, MBOP's report disagreed with the magnitude of drawdown resulting from the Order 1169 aquifer test, but ultimately concluded carbonate-rock aquifer pumping in Coyote Spring Valley and the Muddy River Springs Area would have a one-to-one impact on Muddy River flows.³¹ MBOP opined to the existence of a southern flow field, which included California Wash, Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountains Area, that could be developed without depleting spring flows. MBOP also argued that changes in the groundwater levels were directly tied to water level declines in Lake Mead.³²

WHEREAS, MVWD's report was limited to water levels and flows within the Muddy River Springs Area. In its report, MVWD acknowledged the groundwater level declines resulting from the aquifer test, including decreased spring flow at the Pederson springs, Warm Springs West gage and Baldwin Spring, but not at Jones Spring or Muddy Spring.³³ Ultimately, MVWD concluded that additional water was available in the Lower Moapa Valley, as that aquifer did not appear hydrologically connected to the regional carbonate-rock aquifer.

WHEREAS, GBWN presented a report that recognized the decline in the groundwater levels in Coyote Spring Valley and discharge to the Muddy River Springs Area resulting from the

²⁹ *Id.*

³⁰ *Id.*

³¹ See NSE Ex. 252, *Moapa Band of Paiute Indians Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 25.

³² *Id.*

³³ NSE Ex. 250, *Moapa Valley Water District Basin 220 Well Site Analysis*, Hearing on Interim Order 1303, official records of the Division of Water Resources; NSE Ex. 251, *Moapa Valley Water District Evaluation of MX-5 Pumping Test on Springs and Wells in the Muddy Springs Area*, dated June 24, 2013, Hearing on Interim Order 1303, official records of the Division of Water Resources.

aquifer test.³⁴ However, GBWN believed that the aquifer test failed to provide sufficient data to determine water availability throughout the other study basins. GBWN did assert that pumping of existing rights within all of the study basins would unacceptably decrease spring discharge.³⁵

WHEREAS, CBD, relying on GBWN's technical report, opined that pumping existing water rights within the Order 1169 study basins would result in unacceptable decline in spring flow, ultimately threatening the Moapa dace and the habitat necessary for the species survival.³⁶

WHEREAS, based upon the findings of the Order 1169 aquifer test, in denying the pending applications the State Engineer found: (1) that the information obtained from the Order 1169 aquifer test was sufficient to document the effects of pumping from the carbonate-rock aquifer on groundwater levels and spring flow and that the information could assist in forming opinions regarding future impacts of groundwater pumping and availability of groundwater in the study basins; (2) that the impacts of aquifer test pumping in Coyote Spring Valley was widespread throughout the Order 1169 aquifer test study basins and that the additional pumping in Coyote Spring Valley was a significant contributor to the decline in the springs that serve as the headwaters of the Muddy River and habitat for the Moapa dace; and, (3) that additional pumping from the then pending applications would result in significant regional water-level decline, and decreases in spring and Muddy River flows.³⁷

WHEREAS, the basins that were included in the Order 1169 aquifer test were acknowledged to have a unique hydrologic connection and share the same supply of water.³⁸ The State Engineer further went on to find that the total annual supply to the basins could not be more than 50,000 acre-feet, that the perennial yield is much less than that because the Muddy River and the springs in the Warm Springs area utilize the same supply, and that the quantity and location of

³⁴ NSE Ex. 246, *Great Basin Water Network Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

³⁵ *Id.*

³⁶ NSE Ex. 248, *Center for Biological Diversity Order 1169 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

³⁷ NSE Exs. 14-21. The study basins include Coyote Spring Valley, Garnet Valley, Hidden Valley, Muddy River Springs Area, California Wash, and that portion of the Black Mountains Area lying within the LWRFS was defined as those portions of Sections 29, 30, 31, 32, and 33, T.18S., R.64E., M.D.B.&M.; Section 13 and those portions of Sections 1, 11, 12, and 14, T.19S., R.63E., M.D.B.&M.; Sections 5, 7, 8, 16, 17, and 18 and those portions of Sections 4, 6, 9, 10, and 15, T.19S., R.64E., M.D.B.&M.

³⁸ See, e.g., NSE Ex. 14, p. 24.

any groundwater that could be developed without conflicting with senior rights on the Muddy River and the springs was uncertain.³⁹

II. INTERIM ORDER 1303

WHEREAS, on January 11, 2019, the State Engineer issued Interim Order 1303 designating the Lower White River Flow System (LWRFS), a multi-basin area known to share a close hydrologic connection, as a joint administrative unit for purposes of administration of water rights. The Interim Order defined the LWRFS to consist of the Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and the portion of the Black Mountains Area Hydrographic Basins as described in the Interim Order.⁴⁰ Pursuant to Interim Order 1303, all water rights within the LWRFS were to be administered based upon their respective dates of priority in relation to other rights within the regional groundwater unit.

WHEREAS Interim Order 1303 recognized the need for further analysis of the LWRFS because the pre-development discharge of 34,000 acre-feet of the Muddy River system plus the more than 38,000 acre-feet of existing groundwater appropriations within the LWRFS greatly exceed the total water budget, which was determined to be less than 50,000 acre-feet.⁴¹ Stakeholders with interests in water right development within the LWRFS were invited to file a report with the Office of the State Engineer addressing four specific matters, generally summarized as: 1) The geographic boundary of the LWRFS, 2) aquifer recovery subsequent to the Order 1169 aquifer test, 3) the long-term annual quantity and location of groundwater that may be pumped from the LWRFS, and 4) the effect of movement of water rights between alluvial and carbonate wells within the LWRFS. Stakeholders were also invited to address any other matter believed to be relevant to the State Engineer's analysis.

WHEREAS, on May 13, 2019, the State Engineer amended Interim Order 1303 modifying the deadlines for the submission of reports and rebuttal reports by interested stakeholders. Reports

³⁹ *Id.*

⁴⁰ See NSE Ex. 1, *Order 1303 and Addendum to Interim Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

⁴¹ *Id.*, p. 7.

submitted by interested stakeholders were intended to aid in the fact-finding goals of the Division.⁴²

WHEREAS, a public hearing was held in Carson City, Nevada between, September 23, 2019, and October 4, 2019. The purposes of this hearing were to afford stakeholder participants who submitted reports pursuant to the solicitation in Interim Order 1303 an opportunity to provide testimony on the scientific data analysis regarding the five topics within the Interim Order and to test the conclusions offered by other stakeholder participants.

WHEREAS, during the Interim Order 1303 hearing, testimony was provided by expert witnesses for the participants CSI, USFWS, NPS, MBOP, SNWA and LVVWD⁴³, MVWD, Lincoln County Water District and Vidler Water Company (LC-V), City of North Las Vegas (CNLV), CBD, Georgia Pacific Corporation (Georgia Pacific) and Republic, Nevada Cogeneration Associates Nos. 1 and 2 (collectively "NCA"), Muddy Valley Irrigation Company (MVIC), Western Elite Environmental, Inc. and Bedroc Limited, LLC (collectively "Bedroc"), and NV Energy.

WHEREAS, following the conclusion of the Interim Order 1303 hearing, stakeholder participants were permitted to submit written closing statements no later than December 3, 2019. The specific area evaluated, data analyzed, and methodology used varied by participant. Generally, participants relied on spring and streamflow discharge, groundwater level measurements, geologic and geophysical information, pumping data, climate data, and interpretations of aquifer hydraulics. Methodologies applied ranged from conceptual observations to statistical analysis to numerical and analytical models; the level of complexity and uncertainty differing for each.

WHEREAS, each of the participants' conclusions with respect to the topics set forth in Interim Order 1303 are summarized as follows:

⁴² *Id.*, pp. 16–17.

⁴³ SNWA is a regional water authority with seven water and wastewater agencies, one of which is LVVWD. References to SNWA include its member agency, LVVWD, which too retains water rights and interests within the LWRFS.

Center for Biological Diversity

The primary concern of the CBD was to ensure adequate habitat for the survival and recovery of the Moapa dace. CBD felt "that the Endangered Species Act is the primary limiting factor on the overall quantity of allowable pumping within the [LWRFS] and thus [...] geared [the] analysis toward that goal of protecting the dace." The Moapa dace primarily resides in the springs and pools of the Muddy River; protecting those areas of habitat are of the utmost importance to CBD's goal and have the collateral benefit of protecting the Muddy River decreed rights. Furthermore, CBD "believe[d] that withdrawals from the carbonate aquifer that cause a reduction in habitat quantity for the dace are a take under the Endangered Species Act and thus prohibited."⁴⁴

CBD urges that Kane Springs Valley Hydrographic Basin (Kane Springs Valley) be included and managed as part of the LWRFS; otherwise CBD did not dispute the boundary as presented in Interim Order 1303. The inclusion of Kane Springs Valley was based on a shallow hydraulic gradient between Coyote Spring Valley and Kane Springs Valley; propagation of water level decline into Kane Springs Valley during the Order 1169 aquifer test; and a finding that the carbonate-rock aquifer extends into Kane Springs Valley. In CBD's opinion, adequate management of the LWRFS does not require that the administrative boundary include the White River Flow System north of Coyote Spring Valley.⁴⁵

CBD identified a long-term, declining trend commencing in the 1990s in carbonate-rock aquifer water levels within the Muddy River Springs Area, which was accelerated by the Order 1169 aquifer test. Although CBD observed a partial, immediate recovery in the carbonate-rock aquifer water levels and spring flows, CBD finds that full recovery to pre-Order 1169 aquifer test conditions were never realized. Concurring with multiple other participants, CBD identified higher water levels in response to wet years despite the continued decline in the overall trend in the hydrographs. However, with regards to long-term drought, in their review of the Climate Division Data for southern Nevada, CBD saw no indication of a 20-year drought and disagreed with the conclusions and analysis presented by MBOP. Decreased spring flows in conjunction with

⁴⁴ See CBD Ex. 3, *CBD Order 1303 Report by Dr. Tom Myers*; 27 pp., Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 1; Transcript 1504-1505.

⁴⁵ See CBD Ex. 3, pp. 1, 2, 12, 17, 19; See CBD Ex. 4, *CBD Order 1303 Rebuttal in Response to Stakeholder Reports by Dr. Tom Myers*; 30 pp., Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 17-21; Tr. 1516; 1520-1521; 1526-1527; 1538-1539; CSI Ex. 2, p. 38; LC-V Ex. 2, pp. 11-14.

increased carbonate-rock aquifer pumping, led the CBD to infer the dependency of spring flows on carbonate-rock aquifer water supply.⁴⁶

Again, with emphasis on protecting spring flows, and thus the Moapa dace habitat, CBD did not support any pumping of the carbonate-rock aquifer. CBD's desired outcome would be to avoid decreases in spring flow in the Warm Springs area attributed to continued carbonate-rock aquifer pumping. CBD postulated that surface water rights on the Muddy River will be protected by limiting carbonate-rock aquifer pumping.

Alternatively, CBD speculated that some alluvial aquifer pumping, within the Muddy River Springs Area and Coyote Spring Valley, could be sustained without significantly impacting the Warm Springs area. A preliminary estimate of 4,000 afa of sustainable alluvial aquifer pumping was proposed, based on the existing pumping within the Muddy River Springs Area and considering pumping in the 1990s near 5,000 afa when alluvial aquifer water levels were stable.⁴⁷

Church of Jesus Christ of Latter-day Saints

The Church of Jesus Christ of Latter-day Saints (the Church) chose not to directly participate in the hearing but joined the evidentiary submissions of CNLV.⁴⁸ In response to the directives set forth in Interim Order 1303 and considering the testimony provided, the Church requests the continued administration and management of the LWRFS as identified in Interim Order 1303, and to allow for change applications throughout the LWRFS basins that move pumping of groundwater further away from the Muddy River Springs Area and from the alluvial aquifer to the carbonate-rock aquifer. The Church further requests that the testimony and recommendation of Dwight Smith, PE, PG on behalf of CNLV be considered and adopted.⁴⁹

⁴⁶ See CBD Ex. 3, pp. 1, 24; See CBD Ex. 4, p. 8–10, 21–25; Tr. 1508–1525; LC-V Ex. 2, p. 12, GP-REP Ex. 2, p. 3; CBD's expert suggest that the Palmer Drought Severity Index is more robust to evaluate for drought rather than using precipitation.

⁴⁷ See CBD Ex. 3, pp. 20–26; See CBD Ex. 4, p. 28–29; Tr. 1525–1528.

⁴⁸ See Letter from the Church, received August 15, 2019, Hearing on Interim Order 1303, official records of the Division of Water Resources.

⁴⁹ See *Closing Brief of the Church of Jesus Christ of Latter-Day Saints* (Church closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.

City of North Las Vegas

In CNLV's report submissions and closing statement it addressed four questions set forth in Interim Order 1303.⁵⁰ CNLV generally urges for more analysis and study of the LWRFS before administrative decisions are made due to lack of agreement on fundamental interpretations of the water availability and basin connectivity. It was agreed to by CNLV that most of Garnet Valley and a small portion of the Black Mountains area were within the larger carbonate-rock aquifer underlying the LWRFS basins, but that there is uncertainty in the boundaries of Garnet Valley with California Wash and Las Vegas Valley Hydrographic Basin (Las Vegas Valley).⁵¹ With respect to the recovery of the groundwater aquifer following the Order 1169 aquifer test, CNLV concluded that the record and evidence demonstrates a long-term declining trend in the groundwater level since the late 1990s and that pumping responses can propagate relatively quickly through the carbonate-rock aquifer and drawdown is directly related to the pumping.⁵²

While CNLV did consider the long-term quantity of groundwater that may be developed without adversely impacting discharge to the Warm Springs area, its opinions were limited to the sustainability of pumping within Garnet Valley.⁵³ CNLV concluded that the safe yield concept should be applied to the management of pumping within the LWRFS and that pumping between 1,500 afa to 2,000 afa does not appear to be causing regional drawdown within the LWRFS carbonate-rock aquifer and that pumping this quantity of water may be sustainable within the APEX Industrial Park area of Garnet Valley.⁵⁴ Finally, CNLV asserted that movement of alluvial water rights from the Muddy River Springs Area along the Muddy River would reduce the capture

⁵⁰ See CNLV Ex. 5, *City of North Las Vegas Utilities Department: Interim Order 1303 Report Submittal from the City of North Las Vegas – July 2, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See CNLV Ex. 6, *Rebuttal Document submitted on behalf of the City of North Las Vegas, to Interim Order 1303 Report Submittals of July 3, 2019 – Prepared by Interflow Hydrology – August 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. See Tr. 1416–66, and *City of North Las Vegas' Closing Statement* (CNLV Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.

⁵¹ See CNLV Ex. 5, pp. 2–3. See also CNLV Ex. 3, *Garnet Valley Groundwater Pumping Review for APEX Industrial Complex, City of North Las Vegas, Clark County, Nevada- Prepared by Interflow Hydrology, Inc.- July 2019*, pp. 7–8, 38.

⁵² *Id.*, p. 3, Technical Memo, pp. 14–16.

⁵³ *Id.*, pp. 3–4.

⁵⁴ *Id.*, p. 4., Technical Memo, p. 45.

of Muddy River flow, move more senior water rights into Garnet Valley to support a secure water supply for the municipal uses within the APEX area, and would support overall objectives relating to the management of the LWRFS.⁵⁵ CNLV advocated that transferring water rights between alluvial aquifer and carbonate-rock aquifer should be considered on a case-by-case basis with consideration given as to location, duration, and magnitude of pumping.⁵⁶

CNLV disagreed with certain conclusions of the NPS relating to the inclusion of the entirety of the Black Mountains Area within the LWRFS boundaries and had concerns relating to the reliability of the Tetra Tech model for future water resource management within the LWRFS.⁵⁷ CNLV further disagreed with stakeholder conclusions that movement of groundwater withdrawals from the alluvial aquifer along the Muddy River to the carbonate-rock aquifer in Garnet Valley will not alleviate the conflicts to Muddy River flow, rather concluding that there may be benefits for overall management of the LWRFS.⁵⁸ Further, CNLV disagreed with certain findings regarding water flow through the carbonate-rock aquifer, finding that it is likely that some groundwater can be pumped within Garnet Valley without capturing groundwater that would otherwise discharge to the Warm Springs area and the Muddy River.⁵⁹ Finally, in its rebuttal the CNLV joined other stakeholders in supporting the conclusion that there is a quantity of water that may be sustainably developed within the LWRFS and that use of carbonate-rock aquifer groundwater in Garnet Valley is critical to the short-term and long-term management and development of the APEX Industrial Complex.⁶⁰

Coyote Springs Investments

In presenting its opinions and conclusions CSI's focus was primarily on climate as the foundation for groundwater elevation declines after the Order 1169 aquifer test, and additional geophysical research that provided evidence of a structural block isolating the west side of Coyote Spring Valley.

⁵⁵ *Id.*, Technical Memo, p. 48–49.

⁵⁶ *Id.*

⁵⁷ *See* CNLV Ex. 6, pp. 1–2.

⁵⁸ *Id.*, p. 2.

⁵⁹ *Id.*, pp. 2–3.

⁶⁰ *Id.*, p. 3.

CSI did a statistical analysis of climate data, and determined from the results that 1998, 2004, 2005, and 2010 were wetter than normal, with a drying trend from 2006 to 2017.⁶¹ The Order 1169 aquifer test took place toward the end of an extended dry period when all water resources throughout the LWRFS were negatively affected.⁶² Additionally, annual cyclical patterns of groundwater pumping should not be confused with long-term climate variability.⁶³

CSI challenged the basic assumption that the LWRFS, as proposed in Interim Order 1303, is a homogenous unit.⁶⁴ CSI could not duplicate the results of the SeriesSEE, and its own Theis solution modeling concluded that a greater impact occurred from pumping at a well closer in proximity to Pederson Spring than pumping from a well further away, or the combined effect of both wells.⁶⁵ CSI also acknowledged that due to the fragmented nature of the LWRFS, the Theis solution is of limited utility.⁶⁶

CSI presented geologic and geophysical information in support of the idea that the LWRFS administrative unit is a geophysically and hydrogeologically heterogeneous area, characterized by multiple flow paths defined by faults and structural elements that control the occurrence and movement of regional and local groundwater along the western side of Coyote Spring Valley, the eastern side of Coyote Spring Valley, and from Lower Meadow Valley Wash into the LWRFS.⁶⁷ CSI stated that the LWRFS does not include Kane Springs Valley.⁶⁸

⁶¹ CSI Ex. 1, *CSI July 3, 2019 Order 1303 Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 4–5; Tr. 53.

⁶² CSI Ex. 1, p. 5.

⁶³ CSI Ex. 2, *CSI August 16, 2019 Rebuttal Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2, 7.

⁶⁴ CSI Ex. 1, p. 7.

⁶⁵ CSI Ex. 1, p. 7; Tr. 131–132.

⁶⁶ Tr. 154.

⁶⁷ CSI Ex. 2, p. 2; *CSI Closing Statement* (CSI Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources; CSI recommended including Lower Meadow Valley Wash in its Rebuttal report. See CSI Ex. 2, p. 12; Mr. Herrema said Lower Moapa Valley, but the report said Lower Meadow Valley 10:10.

⁶⁸ CSI Ex. 1, p. 15; the outflow from Kane Springs Valley is included in the water budget, but due to isolating geologic features, groundwater elevations in Kane Springs Valley are not impacted by pumping in the LWRFS, Tr. 135:7–137:3, 160:2–12.

CSI engaged a geophysicist to conduct a CSAMT survey at multiple points in the valley.⁶⁹ CSI's CSAMT study showed evidence of a prominent carbonate block bounded on either side by normal faults.⁷⁰ CIS asserts that the carbonate block isolates recharge from the zone west of the block, such that it eliminates or limits contribution of local recharge to the Warm Springs area.⁷¹ Faulting has created a preferred path for groundwater flow "from the east side Coyote Spring Valley to the Muddy River Springs Area".⁷²

CSI relied on a water budget as the best method to determine available water in the LWRFS, accounting for recharge and subsurface flow as well as climatic variations.⁷³ Comparing several models of recharge, CSI estimated recharge at 5,280 afy from the Sheep Range to the western side of Coyote Spring Valley.⁷⁴ CSI stated that 30,630 afa can be pumped from the LWRFS, but there would be impacts from pumping the water, and that the Coyote Spring Valley can sustain 5,280 afa of pumping from the western side without impact to the Warm Springs area or the Muddy River.⁷⁵

As asserted by CSI, groundwater pumping from the carbonate-rock aquifer in the Muddy River Springs Area affects flow in the carbonate-rock aquifer to the alluvial aquifer, which then affects flow from the alluvial aquifer to the Muddy River.⁷⁶ CSI argues that effects are dependent on well location, geologic formations, hydraulic gradients, and elevation.⁷⁷ Transfers between carbonate and alluvial pumping should be made on a case-by-case basis, analyzing place of use, points of diversion, and quantity of groundwater.⁷⁸ Movement of water rights between alluvial wells and carbonate-rock aquifer wells will only serve to shift the timing and location of impacts and not the amount of the impact.⁷⁹

⁶⁹ CSI Ex. 1, p. 25

⁷⁰ CSI Ex. 1, p. 25.

⁷¹ CSI Ex. 1, p. 29; evidence of impermeability, Tr. 181.

⁷² CSI Ex. 1, p. 29.

⁷³ CSI Closing.

⁷⁴ CSI Ex. 1, pp. 31-40.

⁷⁵ Tr. 221-223; CSI Closing, pp. 8-9.

⁷⁶ CSI Closing.

⁷⁷ CSI Closing, p. 19.

⁷⁸ CSI Closing.

⁷⁹ CSI Ex. 1, p. 58.

As a consequence of the heterogenous nature of the LWRFS, CSI recommended sustainable management of the LWRFS through the creation of "Management Areas" that recognize flow paths and their relative contributions to spring flow, surface flow, evapotranspiration, and sub-surface outflow.⁸⁰ For example, though pumping in the Muddy River Springs Area near the Warm Springs area would have a direct impact on available surface water resources, structural blocks and faults isolate the effect of groundwater pumping in other areas of the LWRFS.⁸¹ Thus CSI does not recommend a blanket ban on carbonate-rock aquifer pumping, or a decrease in carbonate-rock aquifer pumping in exchange for alluvial aquifer pumping.

Georgia Pacific and Republic

Dry Lake Water, LLC, Georgia Pacific and Republic submitted initial and rebuttal responses to Interim Order 1303 and offered testimony during the hearing.⁸² In their response, Georgia Pacific and Republic acknowledged impacts to groundwater elevations throughout the LWRFS, including wells in the Black Mountains Area and Garnet Valley, which does demonstrate a degree of hydraulic connectivity throughout the carbonate-rock aquifer. However, Georgia Pacific and Republic called for collection of more scientific evidence to further understand the LWRFS and its boundaries. Further, it was their opinion that climate, seasonal fluxes and pumping within Garnet Valley and the Black Mountains Area resulted in the groundwater declines observed during the Order 1169 aquifer test.⁸³ Ultimately, Georgia Pacific and Republic do not believe sufficient information exists to draw distinct conclusions as to the cause of the groundwater declines during the Order 1169 aquifer test and whether carbonate-rock aquifer pumping within

⁸⁰ CSI Closing.

⁸¹ CSI Ex. 2, p. 17.

⁸² The initial response was submitted on behalf of Dry Lake Water, LLC, Georgia Pacific, and Republic. See GP-REP Ex. 1, *Broadbent July 2, 2019 Initial Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. The rebuttal response was submitted on behalf of Dry Lake Water, LLC, Georgia Pacific Gypsum LLC, and Republic. See GP-REP Ex. 2, *Broadbent August 16, 2019 Rebuttal Report*, Hearing on Interim Order 1303, official records of the Division of Water Resources. However, the expert only appeared at the Hearing on Interim Order 1303 on behalf of Georgia Pacific and Republic. See Tr. 1588-91.

⁸³ See GP-REP Ex. 01, GP-REP Ex. 02, and *Closing Argument of Georgia Pacific Corporation and Republic Environmental Technologies, Inc.* (Closing GP-REP), Hearing on Interim Order 1303, official records of the Division of Water Resources.

the Garnet Valley and the Black Mountains Area has a measurable impact to spring flow in the Warm Springs area.⁸⁴

Great Basin Water Network

GBWN elected to pose procedural suggestions relating to public involvement, availability of documents and data, transparency, and decision making, and did not submit a report with an independent analysis addressing the questions in Interim Order 1303.⁸⁵ GBWN advocates for sustainable management of the entirety of the White River Flow System as one unit based on the interconnected nature of all of the hydrologically connected basins, although no analysis to support which areas this would include was provided. GBWN relies on conclusory statements to establish the interconnected nature of the system as support for its position. Later, GBWN chose not to participate in the hearing nor submit a rebuttal report, closing arguments, or public comment.

Lincoln County Water District and Vidler Water Company

LC-V's participation in the LWRFS hearing was driven by their existing and pending groundwater rights in Kane Springs Valley, and an interest in excluding Kane Springs Valley from the LWRFS management area.⁸⁶ They disputed that Kane Springs Valley should be included within the LWRFS boundary based on their assertion of: prior decisions of the State Engineer that acknowledged the separate nature of the basin from the rest of the LWRFS, groundwater elevation comparisons, precipitation and recharge data, groundwater chemistry, and geophysical study results. In general, Kane Springs Valley should be managed based on its perennial yield, recognizing that there is groundwater flow to the LWRFS as there are from other basins into the LWRFS, but where they are excluded from the proposed management area.⁸⁷

⁸⁴ See Closing GP-REP.

⁸⁵ *GBWN Report on Order 1303*, (GBWN Report), Hearing on Interim Order 1303, official records of the Division of Water Resources.

⁸⁶ LC-V Ex. 1, *Lower White River Flow System Interim Order #1303 Report Focused on the Northern Boundary of the Proposed Administrative Unit*, prepared by Lincoln County Water District and Vidler Water Company in Association with Zonge International Inc., dated July 3, 2019, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 2-1.

⁸⁷ LC-V Ex. 2, *Rebuttal Submittal to Reports Submitted in Response to Interim Order #1303*, dated August 16, 2019 and Attachments A, B, C, D and E containing the reports or technical memorandums of Greg Bushner, Peter Mock, Thomas Butler, Todd Umstot and Norman Carlson., Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 7, 14-15.

Various rulings of the State Engineer have previously addressed whether appropriation of groundwater from Kane Springs Valley would affect the Muddy River Springs Area.⁸⁸ LC-V states that these findings have not been challenged by any of the Order 1169 participants.⁸⁹ However, to the extent that SNWA relied on multiple linear regression models to establish groundwater flow from Kane Springs Valley to the LWRFS, LC-V do not agree.⁹⁰

LC-V identified a distinct “break,” or local increase, in water levels in the regional hydraulic gradient between wells drilled in the LWRFS versus wells drilled in Kane Springs Valley and northern Coyote Spring Valley.⁹¹ It attributed the break to geologic structures located throughout the carbonate-rock aquifer. Although wells within the LWRFS exhibit very consistent groundwater levels, indicative of high transmissivity values across the area, the gradient between well KPW-1 and down-basin wells is much steeper, implying an impediment to groundwater flow near the mouth of Kane Springs Valley.⁹²

In a 2006 hearing for protested water rights applications, LC-V presented an analysis of the regional geochemistry data including stable isotopes, temperature, and carbon-14 data.⁹³ That analysis found that the groundwater pumped from Kane Springs Valley could not be identified in the source water for the Big Muddy Spring, nor other springs farther south and outside the boundaries of the LWRFS.⁹⁴ LC-V concluded that groundwater pumped from production well KPW-1 is on a different groundwater flow path from the springs, consistent with the differences in hydraulic gradients, groundwater levels, and geophysical data.⁹⁵ CSVN-4, a well located in Coyote Spring Valley, and KPW-1, in Kane Springs Valley, have similar temperatures compared to the other wells in the basin, and a lower percentage difference on other markers tracked throughout groundwater in the basin.⁹⁶ LC-V argues that the water from these wells is chemically

⁸⁸ LC-V Ex. 1, pp. 2-2 through 2-3, citing State Engineer’s Rulings 5712, 6254, 5712.

⁸⁹ LC-V Ex. 1, p. 2-3.

⁹⁰ Testimony generally at Tr. 1311–1318. “... simply having correlation is not proof of causation. Causation is neither proved nor evaluated in a regression analysis.” Tr. 1303.

⁹¹ LC-V Ex. 1, p. 3-1.

⁹² LC-V Ex. 1, pp. 1-1, 3-1 through 3-4. LC-V went on to conclude that local groundwater recharge occurs in Kane Springs Valley that does not flow to the LWRFS, and therefore there is available unappropriated water in the basin. LC-V Ex. 1, p. 3-5.

⁹³ LC-V Ex. 1, Appendix C, pp. 111–153.

⁹⁴ *Id.*, pp. 124–125.

⁹⁵ “Gradient alone does not mean flow.” Thomas Butler, witness on behalf of LC-V, Tr. 1281.

⁹⁶ Tr. 1281–1282; LC-V Ex. 1, pp. 3-7 through 3-11.

unique and does not appear in any other wells in the LWRFS.⁹⁷ LC-V concludes carbon isotope data also confirmed that the water from Kane Springs Valley does not appear in the Muddy River Springs area.⁹⁸

LC-V engaged a geophysical company to perform a CSAMT survey across the boundary line between Kane Springs Valley and Coyote Spring Valley, and identified significant geologic structures in southern Kane Springs Valley and northern Coyote Spring Valley.⁹⁹ Several transect lines were conducted perpendicular to the axis of the Kane Springs Valley, and one was also conducted along the axis of the southern part of the basin.¹⁰⁰ Additional transects were run in Coyote Spring Valley.¹⁰¹ The results of the geophysical data validated concealed faulting indicated on existing maps, and was ground-truthed with observations in the field.¹⁰² Results indicated a previously unmapped fault at the mouth of Kane Springs Valley, which LC-V named the Northern Boundary LWRFS fault, with a potentially 2,500-foot offset of materials with different resistivities.¹⁰³ LC-V argues that the extensive faulting that occurs in southern Kane Springs Valley and northern Coyote Spring Valley form the basis for the exclusion of Kane Springs Valley from the LWRFS.¹⁰⁴

LC-V gave no opinion on the long-term annual quantity of groundwater that could be pumped from the LWRFS.¹⁰⁵ LC-V attributes all reduction in flows of the Muddy River and its associated springs to carbonate-rock aquifer pumping within the Muddy River Springs Area, and finds no discernable effect from carbonate-rock aquifer pumping occurring in Coyote Springs

⁹⁷ Tr. 1284.

⁹⁸ Tr. 1286.

⁹⁹ LC-V Ex. 1, pp. 1-1, 4-1 through 4-10.

¹⁰⁰ LC-V Ex. 1, p. 4-3.

¹⁰¹ LC-V Ex. 1, p. 4-3.

¹⁰² LC-V Ex. 1, p. 4-8, Tr. 1322.

¹⁰³ Tr. 1271-1272; LC-V Ex. 1, p. 4-9.

¹⁰⁴ LC-V Ex. 1, p. 7-1 through 7-2; Tr. 1408. Questions from the National Park Service and the State Engineer inquired whether the areas of high resistivity in the CSAMT necessarily implied low transmissivity, low permeability of the rock. LC-V conceded that the resistivity information alone does not provide data about the hydraulic properties of either side of the resistive area, but when considered with all available information, LC-V concluded that the fault is likely an impediment to groundwater flow. Tr. 1327-1328, 1363-1364.

¹⁰⁵ LC-V Ex. 1, p. 5-2.

Valley.¹⁰⁶ As a result, LC-V finds that the efforts to protect the Warm Springs area must focus on groundwater pumping within the Muddy River Springs Area itself.¹⁰⁷

Moapa Band of Paiutes

The MBOP participated in the administrative hearing due to their interest in the outcome of the proceedings and how it may affect their pending water right applications within California Wash. A regional approach, spanning a large aerial expanse, was taken by MBOP; the analysis and modeling efforts extended into central Nevada and Utah. MBOP stands apart from other participants with their interpretation of the data.¹⁰⁸ MBOP opposed management of the LWRFS as one basin and argues the scientific consensus is lacking amongst participants.¹⁰⁹ Regarding the interpretation of other participants, MBOP disagreed with the methodology and application of the 2013 USFWS SeriesSEE analysis and SNWA's multiple linear regression and requests repudiation of both.¹¹⁰

While not agreeing with the proposed boundaries of the LWRFS, MBOP did not provide a clear suggestion for which basins or portions therein should be included or excluded. MBOP suggested that pumping in California Wash has little to no impact on the Warm Springs area.¹¹¹ MBOP further suggested there are two capture zones, separated by a hydrodynamic and hydrochemical divide, which transects the Moapa River Indian Reservation area and results in south-flowing groundwater into the Las Vegas Valley through the LWRFS, bypassing the Muddy

¹⁰⁶ LC-V Ex. 1, p. 5-3.

¹⁰⁷ LC-V Ex. 1, p. 5-3.

¹⁰⁸ Tr. 772–773; 839.

¹⁰⁹ See *Closing Statement by the Moapa Band of Paiute Indians for Order 1303 Hearing* (MBOP Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 1–2, 6.

¹¹⁰ *Id.*, pp. 7–12, 15–16; See MBOP Ex. 3, Johnson, C., and Mifflin, M. *Rebuttal Report of the Moapa Band of Paiutes in Response to Stakeholder Technical Reports Filed under Order #1303: unpublished report and appendices*, August 16, 2019. 27 p., Hearing on Interim Order 1303, official records of the Division of Water Resources.

¹¹¹ See MBOP Ex. 2, Johnson, C., and Mifflin, M. *Water Level Decline in the LWRFS: Managing for Sustainable Groundwater Development. Initial Report of the Moapa Band of Paiutes in Response to Order #1303: unpublished report and appendices*, July 3, 2019. 84 p., Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2, 4, 14, 35; Tr. 819.

River Springs Area.¹¹² This hydrodynamic divide theory was not shared by SNWA, CBD, CSI, and NPS.¹¹³

Several participants agree that climate impacts were observed in the hydrographs, e.g., periods of wet and dry; however, MBOP interpreted the existing data to show that climate-driven decline, specifically drought, as the primary response observed in the long-term declining groundwater levels.¹¹⁴ Thus, MBOP concluded that no reduction in pumping will restore high-elevation spring flows.¹¹⁵ MBOP did not agree with other participants that decreasing groundwater levels and spring flows were attributed to increased carbonate-rock aquifer pumping beginning in the early 1990s.¹¹⁶

A quantity available for sustainable pumping was not proposed, but MBOP presumed more water is available in California Wash than previously thought.¹¹⁷ A flux of approximately 40,000 afy of south-flowing groundwater into the Las Vegas Valley, bypassing the Muddy River Springs Area, was postulated in the initial report as possible with the hydrodynamic divide; however, during the hearing this quantity was given a range of plus or minus an order of magnitude based on assumptions for calculations.¹¹⁸

MBOP acknowledged that the Muddy River is connected to the alluvial aquifer and thus pumping from the alluvial and carbonate-rock aquifers in the Muddy River Springs Area impact the Muddy River flows.¹¹⁹ Therefore, to mitigate impacts to the Muddy River, MBOP proposed that alluvial aquifer pumping, specifically between Arrow Canyon and White Narrows, can be moved to the carbonate-rock aquifer in basins to the south, such as California Wash, with minimal anticipated impacts to the Muddy River flows, rather than moving alluvial aquifer pumping from the Muddy River Springs Area to the carbonate-rock aquifer in connected areas, where impacts

¹¹² See MBOP Ex. 2, pp. 2, 4, 12, 14, 20, 35, 55; Tr. 812; 845.

¹¹³ SNWA Ex. 9, pp. 12–13; CBD Ex. 4, p. 15; CSI Ex. 2, p. 23; NPS Ex. 3, *National Park Service's Response to July 2019 Interim Order 1303 Reports*, Waddell, August 16, 2019, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 4.

¹¹⁴ See MBOP Ex. 2, pp. 3, 26–32, 35; Tr. 764–771; 805.

¹¹⁵ See MBOP Ex. 2, pp. 3, 35; Tr. 821–826.

¹¹⁶ See MBOP Ex. 2, p. 29; Tr. 775, 838–840; 848.

¹¹⁷ See MBOP Ex. 2, pp. 2, 20, 35.

¹¹⁸ See MBOP Ex. 2, pp. 6, 19, 35; Tr. 850–851.

¹¹⁹ See MBOP Ex. 2, pp. 23–24, 35; Tr. 836.

proportional to pumping may be expected.¹²⁰ Thus, MBOP proposed favoring temporary over permanent uses and transferring of rights between the carbonate-rock and alluvial aquifers on a case-by-case basis.¹²¹

Moapa Valley Water District

MVWD was created by the Nevada legislature in 1983, pursuant to NRS Chapter 477, to provide water service "vital to the economy and well-being of Moapa Valley."¹²² MVWD provides municipal water service to approximately 8,500 people with 3,250 metered service connections, including service to the MBOP.¹²³

MVWD supported the inclusion of Kane Springs Valley within the LWRFS boundary.¹²⁴ Data indicated a direct connection between Kane Springs Valley and Coyote Spring Valley. This data included observations that the water level in KMW-1/KSM-1 decreased 0.5 foot over the duration of the Order 1169 aquifer test.¹²⁵ State Engineer's rulings have concluded that geochemical evidence and groundwater gradient data indicate that groundwater flows from the Kane Springs Valley into Coyote Spring Valley, and MVWD supports LVRWD's 2001 calculation of that quantity of water at approximately 6,000 afy.¹²⁶ MVWD performed its own calculations of the groundwater gradients from Kane Springs Valley at KMW-1 to EH-4, and concluded that the gradient was "an uninterrupted, continuous, exceptionally flat gradient," unlike gradients commonly seen in the western U.S., especially in highly fractured areas.¹²⁷ MVWD also

¹²⁰ See MBOP Ex. 2, pp. 23, 35.

¹²¹ See MBOP Closing.

¹²² Tr. 1172.

¹²³ MVWD Ex. 3, *District July 1, 2019 Report in response to Interim Order 1303*, p.5, Hearing on Interim Order 1303, official records of the Division of Water Resources; MVWD Ex. 4, *District August 16, 2019 Rebuttal Report*, p. 1, Hearing on Interim Order 1303, official records of the Division of Water Resources. MVWD has 3,147 afa of water rights in Arrow Canyon. Tr. 1169-1170.

¹²⁴ MVWD Ex. 3, p. 1; Tr. 1175.

¹²⁵ MVWD Ex. 3, p. 1; MVWD Ex. 4, p. 2.

¹²⁶ MVWD Ex. 3, pp. 1-2, referring to State Engineer's Ruling 5712 (*see*, NSE Ex. 12, *Ruling 5712*, Hearing on Interim Order 1303, official records of the Division of Water Resources) and MVWD Ex. 8, *Las Vegas Valley Water District, Water Resources and Ground-Water Modeling in the White River and Meadow Valley Flow Systems, Clark, Lincoln, Nye, and White Pine Counties, Nevada (2001)*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 6-3.

¹²⁷ Tr. 1177-1178.

introduced evidence of a stipulation between LC-V and the USFWS that bases a reduction in pumping in Kane Springs Valley on a lowering of spring discharges in the Warm Springs area, and introduced a letter from SNWA to the State Engineer, as additional support that the participants to the Interim Order 1303 hearing have previously recognized Kane Springs Valley is part of the LWRFS.¹²⁸

MVWD disagreed that a hydrologic barrier exists between Coyote Springs Valley and Kane Springs Valley.¹²⁹ Relying on a 2006 report prepared by another consultant, MVWD said the evidence indicated that the fault at the mouth of Kane Springs Valley was not an impediment to flow, and that there was no evidence of having encountered hydraulic barriers to groundwater flow during a seven-day aquifer test.¹³⁰ Additionally, the "highly transmissive fault zone" is continuous across the basin boundary between Kane Springs Valley and Coyote Spring Valley.¹³¹ MVWD found further support for its position from evidence that KMW-1 showed drawdown during both the seven-day aquifer test on KPW-1, as well as from the Order 1169 aquifer test pumping that occurred from MX-5.¹³² MVWD considered the water level data collected before, during and after the Order 1169 aquifer test, and Warm Springs area spring discharge to support its finding that the fault is not interrupting groundwater flow.¹³³ MVWD found it "questionable" that the first suggestion of a fault that impedes southward groundwater flow would be prepared by LC-V for this hearing.¹³⁴

Although water levels and spring discharge did not recover to the levels measured before the Order 1169 aquifer test, MVWD believed that the LWRFS is at or near steady-state conditions

¹²⁸ Tr. 1195–1197.

¹²⁹ Tr. 1176–1177.

¹³⁰ Tr. 1181–1182. MVWD also quoted from the report that "the fracturing was so extensive that the fractured aquifer system really behaved as an equivalent porous media." *Id.* MVWD later agreed that this would behave like a sandy aquifer. Tr. 1224.

¹³¹ Tr. 1185.

¹³² Tr. 1250.

¹³³ Tr. 1219.

¹³⁴ *Post-Hearing Brief of Moapa Valley Water District (MVWD Closing)*, Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 5.

regarding aquifer recovery.¹³⁵ MVWD viewed this as being consistent with the State Engineer's statements in Interim Order 1303.¹³⁶

Finally, MVWD did not provide a specific quantity of available water but did acknowledge that the "actual safe pumpage" is less than current pumping rates, and recognized a direct relationship between pumping from the carbonate-rock aquifer, spring and Muddy River flows, and alluvial aquifer pumping.¹³⁷ The timing and magnitude of carbonate-rock aquifer pumping effects on spring discharge is dependent on the volume of water pumped and the proximity of a pumping center to the springs; however, all cumulative carbonate-rock aquifer pumping in the seven interconnected basins will eventually cause depletions on the Warm Springs area springs.¹³⁸ Further, if carbonate rights are transferred to the alluvial aquifer there will be depletions to Muddy River flows and impacts to senior Muddy River water right owners.¹³⁹

MVWD raised additional matters that they believed relevant to the analysis under Interim Order 1303. First, they stressed the importance of municipal water rights, and the necessity for a reasonably certain supply of water for future permanent uses without jeopardizing the economies of the communities that depend on the water supply, and to protect the health and safety of those who rely on the water supply.¹⁴⁰ To that end, MVWD requested that the State Engineer consider designating municipal use as the most protected and highest use of water, and to give MVWD the perpetual right to divert 6,791 afa of permitted and certificated rights from its carbonate-rock aquifer wells.¹⁴¹ Second, MVWD stated that it had already satisfied its obligation to protect Moapa dace habitat and senior water rights when it dedicated 1cfs/724 afa, or approximately 25% of the MVWD current diversions, from its most senior water right, to the enhancement of the Moapa dace habitat.¹⁴²

¹³⁵ Tr. 1198, MVWD Ex. 3, p. 4.

¹³⁶ Tr. 1199.

¹³⁷ Tr. 1199-1200; MVWD Closing, pp. 9-10.

¹³⁸ MVWD Ex. 3, p. 5.

¹³⁹ *Id.*

¹⁴⁰ MVWD Ex. 3, p. 5.

¹⁴¹ MVWD Ex. 3, p. 6; Tr. 1203-1204; 6,791 afa constitutes an increase in the carbonate-rock aquifer pumping for MVWD. Tr. 1228.

¹⁴² MVWD Ex. 3, pp. 6-7; Tr. 1202-1203.

Muddy Valley Irrigation Company

The MVIC is a non-profit Nevada corporation with the senior decreed water rights to the Muddy River, who provided testimony that SNWA is a majority shareholder while other participants such as CSI, LC-V, and MVWD are minority shareholders of the decreed rights.¹⁴³ MVIC concurred with SNWA's conclusions regarding aquifer recovery, long-term quantity of groundwater, and movement of water between the alluvial and the carbonate-rock aquifers.¹⁴⁴ Specifically, that any groundwater pumping, from both alluvial or carbonate-rock aquifers, within the Muddy River Springs Area impacts Muddy River flows, thus violating the Muddy River Decree.¹⁴⁵ MVIC did not dispute the geographic boundaries as identified in Interim Order 1303.¹⁴⁶ MVIC argued that the Muddy River and all of its sources are fully appropriated and emphasized the decreed seniority to groundwater rights, and further asserts that these surface water rights are protected by the Muddy River Decree and the prior appropriation doctrine.¹⁴⁷

United States Department of the Interior, National Park Service

NPS submitted both an initial and rebuttal report in response to the Interim Order 1303 solicitation and presented testimony during the hearing.¹⁴⁸ Based upon NPS's evaluation of the evidence relating to the Order 1169 aquifer test, the use of an updated numerical groundwater flow model previously developed to predict conditions within the LWRFS, data compiled since the conclusion of the Order 1169 aquifer test, and review of other available data, NPS came to multiple conclusions relating to the delineation and management of the LWRFS. NPS advocates for the

¹⁴³ Tr. 1693–1696, 1705.

¹⁴⁴ MVIC Ex. 1, *MVIC Rebuttal Report dated August 15, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources. MVIC identified sections from the SNWA report, but the references do not correspond with sections in SNWA's report. The State Engineer assumes that these section numbers correspond to page numbers of the SNWA report; *See also*, SNWA Ex. 7, Burns, A., Drici, W., Collins, C., and Watrus, J., 2019, *Assessment of Lower White River Flow System water resource conditions and aquifer response, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

¹⁴⁵ MVIC Ex. 1, p. 5; Tr. 1698.

¹⁴⁶ *See* MVIC Ex. 1, p. 3; Tr. 1697–1698.

¹⁴⁷ *Muddy Valley Irrigation Company Post Hearing Closing Statement (MVIC Closing)*, Hearing on Interim Order 1303, official records of the Division of Water Resources; Tr. 1967, 1700–1708. *See also*, NSE Ex. 333, *Muddy River Decree*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

¹⁴⁸ *See* NPS Ex. 2, *Prediction of the Effects of Changing the Spatial Distribution of Pumping in the Lower White River Flow System*, Waddell, July 3, 2019; Tr. 494–597.

inclusion of the entirety of the Black Mountains Area within the geographic boundary of the LWRFS based upon its review of geologic conditions that facilitate flow from the southern portion of the LWRFS through the Muddy Mountains thrust sheet and discharging in Rogers Spring and Blue Point Spring.¹⁴⁹ Further supporting this opinion, NPS cites to spring chemistry and isotopic composition of the water discharging from Rogers Spring and Blue Point Spring and the hydraulic head conditions that NPS believes supports the flow of groundwater beneath the Muddy Mountains from the carbonate-rock aquifer to those springs.¹⁵⁰ NPS acknowledge that there is a weak hydraulic connection between Rogers Spring and Blue Point Spring to the LWRFS based upon the geologic conditions within the Muddy Mountains, but argues that the entirety of the Black Mountains Area should be included to allow for management of the regional carbonate-aquifer to protect against diminished discharge to those springs.¹⁵¹

In addition to advocating for the inclusion of the entirety of the Black Mountains Area, the NPS provided evidence and analysis to support its conclusion that Kane Springs Valley too should be included within the geographic boundary of the LWRFS.¹⁵² Based upon a review of the hydrologic data, geology of the Kane Springs Valley and basin boundaries, Coyote Spring Valley, and data from the Order 1169 aquifer test, NPS concludes that there is a clearly established hydrological connection between Kane Springs Valley and the other LWRFS basins, including discharge to the Warm Springs area.¹⁵³ While NPS advocates for the inclusion of the entire Black Mountains Area and Kane Springs Valley, it did not find any evidence to support the inclusion of the Las Vegas Valley within the LWRFS based upon a similar review of the geology and hydrological data.¹⁵⁴

In interpreting data since the conclusion of the Order 1169 aquifer test, NPS reviewed the available data, concluding that the decades long decline of groundwater levels is not attributable to climate, but rather that the groundwater pumping within the LWRFS is the contributing

¹⁴⁹ See NPS Ex. 2, p. 22. See also, Tr. 569-70; NPS, *Closing Statements Interim Order 1303 Hearing Testimony* (NPS Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 2.

¹⁵⁰ NPS Ex. 2, p. 22; NPS Closing, pp. 2-4.

¹⁵¹ *Id.*

¹⁵² NPS Ex. 2, p. 22; NPS Ex. 3, pp. 5-11; Tr. 550-551; NPS Closing, pp. 4-5.

¹⁵³ NPS Ex. 2, p. 22; NPS Ex. 3, pp. 5-11; Tr. 550-551; NPS Closing, pp. 5-6.

¹⁵⁴ NPS Ex. 2, p. 22; Tr. 552-554.

factor.¹⁵⁵ NPS opined that if recent pumping withdrawals continued, the current declining trend would be accelerated, adversely impacting spring discharge in the Warm Springs area and Muddy River flow.¹⁵⁶ Further, NPS's review of the data lead to its conclusion that it will take many years, if not decades for the LWRFS carbonate-rock aquifer to reach equilibrium, particularly at the current groundwater pumping withdrawals and even longer if pumping withdrawals occurred at Order 1169 aquifer test levels.¹⁵⁷ However, NPS did not provide an opinion as what rate of groundwater withdrawals would be sustainable within the LWRFS.

Finally, NPS concluded that the movement of groundwater withdrawals from the alluvial aquifer within the Muddy River Springs Area to the carbonate-rock aquifer within the LWRFS would ultimately have little impact on capture of Muddy River flow. Specifically, NPS found that while there may be near-term benefits to the Warm Springs area and Muddy River flow, those benefits would eventually disappear, as the impact would only be delayed and not eliminated.¹⁵⁸

Nevada Cogeneration Associates

NCA submitted a Rebuttal Report Pertaining to Interim Order 1303 and provided testimony at the Interim Order 1303 hearing.¹⁵⁹ NCA objected to the inclusion of certain non-profit organizations on the basis that those organizations were not stakeholders and did not have an interest to protect as the non-governmental organizations did not have water rights within the LWRFS basins effected by the proceedings.¹⁶⁰

With respect to the geographic boundary of the LWRFS, in its Rebuttal Report, NCA is of the opinion that the northwestern portion of the Black Mountains Area, as identified by the State Engineer, should be within the LWRFS basins, but expressed its disagreement with other opinions advocating for the inclusion of the entire Black Mountains Area based upon NCA's analysis of the geology and groundwater elevations.¹⁶¹ During the Interim Order 1303 hearing and in its Post-Hearing Brief, NCA's opinion shifted to advocate for the boundary of the LWRFS to be adjusted

¹⁵⁵ NPS Ex. 2, pp. 7, 22–23. *See also* NPS Closing, pp. 5–6.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ NPS Ex. 2, p. 23. *See also* NPS Closing, p. 6, and Tr. 593–594.

¹⁵⁹ NCA Ex. 1, *NCA Rebuttal Report Pertaining to Interim Order 1303 August 16, 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources; Tr. 1602–50.

¹⁶⁰ NCA Ex. 1, pp. 1, 23.

¹⁶¹ *Id.*, pp. 2, 23.

to exclude its production wells in the Black Mountains Area; however, NCA did not alter its opinion regarding the remaining portion of the Black Mountains Area staying within the LWRFS.¹⁶²

NCA further expressed that the Lower Meadow Valley Wash should not be included in the LWRFS boundaries based upon the fact that observed groundwater levels do not indicate a hydrologic response to carbonate-rock aquifer pumping and that insufficient data supports a finding of continuity between water level trends to support its inclusion in the LWRFS.¹⁶³ However, NCA advocated for the inclusion of the Kane Springs Valley within the LWRFS based upon its opinion that the groundwater data demonstrated hydrologic connectivity between Coyote Spring Valley and Kane Springs Valley, acknowledging that the data is slightly attenuated resulting from the Kane Springs fault.¹⁶⁴ Ultimately, NCA concluded that Kane Springs Valley is tributary to the Coyote Spring Valley and the other LWRFS basins, which justify its inclusion within the boundary of the LWRFS.¹⁶⁵

Similarly, based upon the groundwater data from the northern portion of Coyote Spring Valley demonstrating similar water level responses as other wells throughout the LWRFS and pumping data demonstrating high hydrologic connectivity across all the LWRFS basins, NCA concluded that there was no basis to exclude the northern portion of Coyote Spring Valley.¹⁶⁶ Finally, NCA rejected a suggestion that the entirety of the White River Flow system, which extends into northeastern Nevada, be included within the management area.¹⁶⁷ Specifically, NCA concluded that the Pahrnagat Shear Zone creates a significant barrier to the northwestern portion of the LWRFS and that review of groundwater levels does not support a finding that groundwater level declines propagate into the northern reaches of the White River Flow System.¹⁶⁸ NCA concluded, advocating that proper management of the LWRFS is appropriate and sufficient for the

¹⁶² *Post-hearing brief of Nevada Cogeneration Associates Nos. 1 and 2 pertaining to Amended Notice of Hearing Interim Order #1303 following the hearing conducted September 23, 2019, through October 4, 2019, before the Nevada State Engineer (NCA Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 2–10. See also Tr. 1619–22.*

¹⁶³ NCA Ex. 1 pp. 3–7, 23. *See also* NCA Closing, pp. 15–16.

¹⁶⁴ NCA Ex. 1, pp. 8–17, 23. *See also* NCA Closing, pp. 10–14, and Tr. 1629–44.

¹⁶⁵ NCA Ex. 1, pp. 11–16.

¹⁶⁶ *Id.*, pp. 17–18, 23.

¹⁶⁷ *Id.*, pp. 19, 24.

¹⁶⁸ *Id.*

purpose of managing discharge of groundwater to the Warm Springs area to support habitat for the Moapa dace and serve senior Muddy River decreed rights.¹⁶⁹

In addressing the annual amount of groundwater that could be developed within the LWRFS without adversely impacting senior decreed rights on the Muddy River or Warm Springs area discharge supporting the habitat for the Moapa dace, NCA supported a target of 9,318 afa, a recent three-year average of annual pumping within the LWRFS,¹⁷⁰ as it did not believe there to be sufficient data to support either an increase or decrease from this amount.¹⁷¹ However, in its post-hearing brief, NCA opined that if their production wells located within the northwestern portion of the Black Mountains Area were excluded from the LWRFS boundary, then the annual amount of water that could be sustainably developed was less than the 9,318 afa.¹⁷²

Finally, NCA did not support movement of water rights from the Muddy River Springs Area alluvial aquifer to the carbonate-rock aquifer, as it was of the opinion that the movement of those rights would not mitigate impact to the Warm Springs area.¹⁷³ Rather, NCA concluded that movement of those rights would compound the impact of pumping from the carbonate-rock aquifer.¹⁷⁴ However, NCA did express some support for movement of senior alluvial water rights as a management tool to offset existing junior carbonate-rock aquifer pumping within the LWRFS.¹⁷⁵

NV Energy

NV Energy submitted a rebuttal report outlining its responses to the five matters the State Engineer solicited in Interim Order 1303 and presented its opinions and conclusions during the Interim Order 1303 hearing.¹⁷⁶ In its rebuttal report, NV Energy opined that the geographic boundary of the LWRFS should be as established in Interim Order 1303.¹⁷⁷ NV Energy further

¹⁶⁹ *Id.*

¹⁷⁰ NCA Ex. 1, p. 19. *See, e.g.* Draft order of the State Engineer distributed to LWRFS stakeholders at the LWRFS Working Group meeting, September 19, 2018, official records of the Division of Water Resources.

¹⁷¹ *Id.*, pp. 18, 24.

¹⁷² NCA Closing, pp. 14–15.

¹⁷³ NCA Ex. 1, pp. 19–23, 24.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ NVE Ex. 1, *NV Energy Rebuttal Report to State Engineer's Order 1303 Initial Reports by Respondents*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

¹⁷⁷ *Id.*, pp. 1–2.

opined that the existence of subsurface outflow from Kane Springs Valley into the LWRFS basins was insufficient to support its inclusion.¹⁷⁸

NV Energy, in its rebuttal report, disagreed with MBOP's conclusion that the groundwater level declines observed during and after the Order 1169 aquifer test were primarily caused by drought. Rather, NV Energy agreed with SNWA's and MVWD's conclusions that the groundwater recovery occurred between 2–3 years following the conclusion of the aquifer test, but that continued pumping within the carbonate-rock aquifer has inhibited recovery to pre-Order 1169 aquifer test groundwater levels, and that at the current rate of carbonate-rock aquifer pumping the aquifer has nearly reached steady-state conditions and discharge to the Warm Springs area has reached equilibrium.¹⁷⁹

NV Energy further agreed in its rebuttal report with MBOP's and CNLV's conclusions that some groundwater flowing within the carbonate-rock aquifer bypassed the Muddy River Springs Area, and ultimately the Muddy River. NV Energy also agreed that groundwater development within the southern boundary of the LWRFS would likely have less of an effect on discharge to the Warm Springs area and the river. NV Energy did not opine as to the quantity of water that bypassed the springs, but inferred that the current 7,000–8,000 afy of carbonate-rock aquifer pumping appeared to support the conclusion that steady-state conditions had been reached.¹⁸⁰ NV Energy also opined that movement of senior certificated alluvial water rights in the Muddy River Springs Area to carbonate-rock aquifer wells located in the southern portion of the LWRFS may be considered acceptable as Nevada law allows for the reasonable lowering of the groundwater table, and such movement would not necessarily result in a conflict to existing rights.¹⁸¹ NV Energy further concluded that, contrary to the conclusions of MBOP, drought was not a significant cause for the groundwater level declines observed.¹⁸² Finally, NV Energy concluded with suggestions that the State Engineer either: (1) combine the LWRFS basins into a single hydrographic basin and declare the new basin to be a Critical Management Area pursuant to NRS 534.037 and 534.110; or, (2) for the State Engineer to, under his authority in NRS 534.020 and

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*, pp. 2–7.

¹⁸⁰ NVE Ex. 1, p. 8.

¹⁸¹ *Id.*, pp. 8–9; *Nevada Energy's Closing Statements* (NV Energy Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, pp. 4–5.

¹⁸² *Id.*, pp. 9–12.

534.120, require the water right holders within the LWRFS to develop a conjunctive management plan.¹⁸³

After considering all of the evidence and testimony presented at the Interim Order 1303 hearing, NV Energy ultimately altered its opinion and found compelling arguments to both support the inclusion of Kane Springs Valley in the LWRFS as well as its exclusion.¹⁸⁴ Ultimately, NV Energy changed its opinion with respect to the geographic boundary of the LWRFS and in its closing statement expressed support for the inclusion of Kane Springs Valley within the LWRFS boundary due to the connection with Coyote Spring Valley and thus the potential for impacts to LWRFS from pumping within Kane Springs Valley.¹⁸⁵ NV Energy proposes that the current pumping regime of 7,000 to 8,000 afy be maintained to evaluate the potential for steady-state conditions and the continued monitoring of the Warm Springs West gage and agrees that moving pumping further south may reduce impact to the Muddy River and springs. With regards to moving water between the alluvial and carbonate-rock aquifers, similar to others, NV Energy agrees with the evaluation of change applications on a case-by-case basis with demonstration that impacts are reduced or unchanged by the proposed point of diversion compared to the existing point of diversion. NV Energy supports an agreement that would include all water users within the LWRFS for the purposes of not exceeding stresses within system and protecting the Moapa dace.¹⁸⁶

Southern Nevada Water Authority and Las Vegas Valley Water District

The SNWA and LVVWD submitted multiple reports in response to the Interim Order 1303 solicitation.¹⁸⁷ SNWA and LVVWD supported the boundary of the LWRFS as identified in Interim Order 1303, and argued that there was a general consensus of the participants regarding the

¹⁸³ *Id.*, p. 12.

¹⁸⁴ Tr. 1761–1762.

¹⁸⁵ NV Energy Closing, pp. 2–3.

¹⁸⁶ *Id.*, pp. 3–6.

¹⁸⁷ SNWA Ex. 7; SNWA Ex. 8, *Marshall, Z.L., and Williams, R.D., 2019, Assessment of Moapa dace and other groundwater-dependent special status species in the Lower White River Flow System, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources; SNWA Ex. 9, *Burns, A., Drici, W., and Marshall Z.L., 2019, Response to stakeholder reports submitted to the Nevada State Engineer with regards to Interim Order 1303, Presentation to the Office of the Nevada State Engineer: Southern Nevada Water Authority, Las Vegas, Nevada*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

boundaries based upon the hydraulic connectivity within the identified basins.¹⁸⁸ Further, SNWA and LVVWD argued against the exclusion of the northern and western portions of Coyote Spring Valley, that management of adjoining basins should be done in a manner recognizing an impact on pumping from those basins on water availability in the LWRFS basins, and that the Las Vegas Valley should be excluded from the LWRFS.¹⁸⁹

With respect to the evaluation of the carbonate-rock aquifer recovery since the conclusion of the Order 1169 aquifer test, SNWA and LVVWD concluded that the aquifer has not returned to pre-Order 1169 levels, and that the evidence demonstrates a continued declining trend within the carbonate-rock aquifer as a result of continued groundwater pumping.¹⁹⁰ SNWA and LVVWD concluded that the current pumping continues to capture groundwater storage and that based upon the current rate of groundwater withdrawals, water levels within the carbonate-rock aquifer will continue to decline for the foreseeable future.¹⁹¹ Further, SNWA and LVVWD rejected the premise that climate was a significant factor over groundwater withdrawals for the observed groundwater level decline.¹⁹²

Based upon a review of the evidence, SNWA and LVVWD concluded that current rate of groundwater withdrawals were not sustainable without adversely impacting senior Muddy River water rights and Moapa dace habitat.¹⁹³ Based upon the analysis performed by SNWA and LVVWD, examining the discharge from the Muddy River Springs Area and groundwater production within the carbonate-rock aquifer within the LWRFS, SNWA and LVVWD concluded that any groundwater development within the carbonate-rock aquifer resulted in a one-to-one (1:1) ratio of capture of Muddy River flow, and that regardless of where that pumping occurred, it still resulted in a 1:1 ratio of capture, only that the period of time that the capture was realized was longer.¹⁹⁴ Ultimately, SNWA and LVVWD concluded that while any amount of pumping results

¹⁸⁸ SNWA Ex. 7, pp. 5-1 through 5-18, 8-1. *See also*, Tr. 953.

¹⁸⁹ *Closing Brief of Southern Nevada Water Authority and Las Vegas Valley Water District* (SNWA Closing), pp. 4-9, Hearing on Interim Order 1303, official records of the Division of Water Resources. *See also* SNWA Ex. 9 at sections 6, 7 and 12.

¹⁹⁰ SNWA Closing, pp. 9-12. *See also* SNWA Ex. 7, pp. 5-1 through 5-18, and SNWA Ex. 9, pp. 15-20.

¹⁹¹ SNWA Closing, pp. 11-12. *See also* Tr. 932.

¹⁹² SNWA Closing, pp. 12-14. *See also* SNWA Ex. 9, pp. 15-17.

¹⁹³ SNWA Ex. 7, pp. 6-3 through 6-4, 8-2 through 8-4.

¹⁹⁴ *Id.*, pp. 6-4 through 6-11, 8-2 through 8-4; SNWA Ex. 9, pp. 22-27.

in a conflict with senior decreed Muddy River rights, approximately 4,000 to 6,000 afa could be sustainably pumped from the aquifer.¹⁹⁵ In conjunction with SNWA and LVVWD's evaluation of the quantity of water that may be sustainably developed within the LWRFS, SNWA and LVVWD reviewed the interrelationship between discharge from the carbonate-rock aquifer underlying the LWRFS, groundwater pumping and the impact on the habitat and recovery of the Moapa dace.¹⁹⁶ SNWA and LVVWD ultimately concluded that the flow required to sustain the Moapa dace from adverse effects, including habitat loss and fish population declines was a minimum 3.2 cfs at the Warm Springs West gage.¹⁹⁷

Finally, it was SNWA and LVVWD's opinion that movement of water rights from the Muddy River Springs Area alluvial aquifer to the carbonate-rock aquifer within the LWRFS may delay the capture of water serving senior decreed rights on the Muddy River, but that movement of water from the alluvial aquifer to the carbonate-rock aquifer would adversely impact the habitat of the Moapa dace.¹⁹⁸ Thus, SNWA and LVVWD concluded transfer of water rights from the Muddy River Springs Area alluvial aquifer to the LWRFS carbonate-rock aquifer would result in further depletion of flow to the Warm Springs area.¹⁹⁹

Technichrome

Technichrome submitted a response and additional response to the Interim Order in July 2019 but did not participate in the hearing.²⁰⁰ Technichrome stated that it had no objection to a "joint administrative basin" consisting of Coyote Spring Valley, Black Mountain Area, Garnet Valley, Hidden Valley, Muddy River Springs Area, and Lower Moapa Valley, expressed no comment regarding the inclusion of Kane Springs Valley, but questioned whether the entirety of the White River Flow System should be included in the State Engineer's analysis.²⁰¹ However,

¹⁹⁵ Tr. 921–22. *See also* SNWA Ex. 7, pp. 8-1 through 8-5; SNWA Ex. 9, p. 27.

¹⁹⁶ *See* SNWA Ex. 8.

¹⁹⁷ *Id.*, pp. 8-1 through 8-2. *See also* SNWA Closing, pp. 17–19.

¹⁹⁸ *See* SNWA Closing, pp. 19–20. *See also* SNWA Ex. 7, pp. 6-3 through 6-11, 8-4; SNWA Ex. 9, pp. 21–22.

¹⁹⁹ SNWA Closing, p. 20. *See also* Tr. 904–05.

²⁰⁰ *Response to Interim Order #1303 Submitted [sic] by Technichrome* (Technichrome Response), Hearing on Interim Order 1303, official records of the Division of Water Resources, and *Additional Comments from Technichrome* (Technichrome Addendum), Hearing on Interim Order 1303, official records of the Division of Water Resources.

²⁰¹ Technichrome Response, pp. 1–3.

Technichrome did note that it believed that combining all water rights into a single management structure reduced the State Engineer's ability to control groundwater withdrawals. Technichrome stated that it believed that the State Engineer should have the ability to control withdrawals in small areas to best manage the discharge to the Warm Springs area, and that more targeted control over the groundwater withdrawals would be more effective in managing the discharge.²⁰² Technichrome supported this opinion with some analysis of the results of the Order 1169 aquifer test and its opinion that pumping farther from the Warm Springs area had little to no impact on discharge to Pederson Spring.²⁰³

In Technichrome's additional comments, Technichrome addressed concerns regarding the injury that would result from a system-wide reduction of groundwater rights throughout the LWRFS.²⁰⁴ Finally, Technichrome addressed concerns regarding reliance on the priority system, as utilization of the prior appropriation system would benefit senior irrigation uses over the junior industrial uses, and that removal of basin boundaries would remove limitations on movement of water rights between the existing hydrographic basins, which would disrupt junior uses in areas where senior rights may be moved.²⁰⁵

U.S. Fish and Wildlife Service

USFWS holds several water rights within the LWRFS and its mission is consistent with the scientific and management aspects of the LWRFS and the management area as established in Interim Order 1303.²⁰⁶ USFWS opted to participate in the proceeding by submitting initial and rebuttal reports and providing testimony during the administrative hearing.²⁰⁷ The approach of

²⁰² *Id.*

²⁰³ *Id.*, and Technichrome Addendum.

²⁰⁴ Technichrome Addendum.

²⁰⁵ *Id.*

²⁰⁶ The USFWS' mission is to work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people. *See also*, USFWS, *About the U.S. Fish and Wildlife Service*, <https://bit.ly/aboutusfws> (last accessed June 4, 2020).

²⁰⁷ USFWS Ex. 5, *Report in Response to Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources; USFWS Ex. 7, *Rebuttal to: Water Level Decline in the LWRFS: Managing for Sustainable Groundwater Development by Cady Johnson and Martin Mifflin [sic], Mifflin & Associates, Inc., submitted by the Moapa Band of Paiutes in accordance with Order 1303*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

USFWS was to review available data, develop a hydrogeologic conceptual model, and answer the specific questions posed in Interim Order 1303.

USFWS proposed that the boundary be based on geologic breaks rather than the surface drainage areas. The boundary would then encompass all Muddy River Springs Area, Hidden Valley, Garnet Valley, most of Coyote Spring Valley, most of California Wash, the northwest portion of the Black Mountains area, Kane Springs Valley, and most of Lower Meadow Valley Wash. The extent to which Kane Springs Valley and Lower Meadow Valley Wash are included would depend on the data from an aquifer test that has not yet been performed.²⁰⁸

Although, USFWS did not directly opine their view on recovery, their report discusses a conceptual model with insight into lag times and hydraulic connections, and how current conditions relate to sustainable pumping. An “undiminished state of decline” in water levels and spring flows indicated that the system was not in equilibrium at the end of the Order 1169 aquifer test. USFWS postulated there was generally good connectivity within the aquifer system with areas of higher and lower transmittivity. Trends in water levels and spring flows allude to the connection between high elevation springs and carbonate-rock aquifer pumping, with a time lag observed in the recovery of carbonate-rock aquifer water levels and spring flows following the cessation of the Order 1169 aquifer test. The exception is Big Muddy Spring where surface water level trends appeared to be unrelated to the carbonate-rock aquifer water levels.²⁰⁹

USFWS determined that the optimum method currently available to estimate the maximum allowable rate of pumping in the LWRFS is the average annual rate of pumping from 2015–2017.²¹⁰ USFWS considered the period from 2015 to 2017 because it found that the groundwater withdrawals, the discharge of the Muddy River Springs, and the flow of the Muddy River were all relatively constant; flow rates from Plummer, Pederson, Jones and Baldwin springs, though generally lower than before the Order 1169 aquifer test, were reasonably stable compared to earlier

²⁰⁸ See USFWS Ex. 5, pp. 2, 28–36.

²⁰⁹ USFWS Ex. 5, pp. 3, 32–33, 35, 37–45; Tr. 266–270, 273–281, 299–301, 433–435.

²¹⁰ USFWS Ex. 5, p. 3.

periods.²¹¹ Using the pumpage inventories for this time period, USFWS estimated the sustainable groundwater withdrawals to be 9,318 afa.²¹²

Even if total carbonate-rock and alluvial aquifer pumping is maintained at a “sustainable” overall level, USFWS did not support increased carbonated-rock aquifer pumping in exchange for reductions in alluvial aquifer pumping, nor did USFWS support increased alluvial aquifer pumping in exchange for reductions in carbonate-rock aquifer pumping. USFWS suggested that carbonate-rock aquifer pumping should not be moved closer to the springs or the river. Similarly, USFWS suggests that alluvial aquifer pumping in the vicinity of the river should not be moved closer to the river. USFWS opines that any movement of water nearer to the springs or the river is anticipated to decrease the lag time for observing responses from pumping and shorten the time to respond to unfavorable impacts.²¹³

Moving forward with management of the LWRFS, USFWS supported the use of the triggers at the Warm Springs West gage, as established under the 2006 MOA. Continuing to use these Warm Springs West flows as a trigger for management will protect and provide habitat for the Moapa dace; a reduction in the flow translates to a reduction in habitat.²¹⁴

USFWS did not deny that water levels were independent of a climate response signal. Using observed data for Nevada Climate Divisions, USFWS visually inspected hydrographs for climate signals. USFWS opined that response to wet periods are observed for wells in both the carbonate-rock and alluvial aquifers and springs that discharge from the carbonate-rock aquifer but stated that response to dry periods cannot be separated from the impacts of pumping. USFWS did not observe these same climate signals in the hydrographs for Jones and Baldwin Springs or the Big Muddy Spring. USFWS disagreed with the conclusion of the MBOP regarding long-term, regional drought, as well as the analytical methods.²¹⁵

²¹¹ USFWS Ex. 5, pp. 3, 37; Tr. 269–270, 433–435.

²¹² USFWS Ex. 5, pp. 3, 36–38; Tr. 268–270.

²¹³ See USFWS Ex. 5, pp. 3–4, 38–39; Tr. 272–273.

²¹⁴ See USFWS Ex. 5, pp. 4, 39–45; Tr. 273–282; See also, NSE Ex. 256; NSE Ex. 244, 2006 Memorandum of Agreement Trigger Levels agreed to by the Southern Nevada Water Authority, Moapa Valley Water District, Coyotes Springs Investments LLC and Moapa Band of Paiute Indians, Hearing on Interim Order 1303, official records of the Division of Water Resources.

²¹⁵ See USFWS Ex. 5, pp. 24–28, 34–35; See USFWS Ex. 7, pp. 2–16; Tr. 258–260, 299–322, 429–432.

Western Elite Environmental/Bedroc

Bedroc is the land holding and water-right holding entity for Western Elite Environmental, Inc., a provider of construction and recyclable waste collection and disposal in Southern Nevada.²¹⁶ Bedroc submitted an undated rebuttal report signed by Derek Muaina, General Counsel, and a closing statement.²¹⁷ Bedroc presented Jay Dixon as its expert to give a presentation and to discuss the rebuttal report.²¹⁸ Mr. Dixon stated that he contributed to the report, and that he agreed with it, but he did not sign the report because he was working for another participant in the hearing (NCA).²¹⁹ Mr. Dixon did provide testimony consistent with the report, and adopted the findings of that report, and both the testimony and the report will be considered in this Order.²²⁰

Bedroc presented testimony and evidence that its source of groundwater is hydraulically disconnected from the regional carbonate aquifer of the LWRFS and that additional groundwater may be available for pumping in their part of Coyote Spring Valley. Bedroc also argued that its basin fill alluvial groundwater pumping should be managed outside of the proposed LWRFS joint administrative unit.²²¹

To show the hydraulic disconnect, Bedroc presented geologic information demonstrating its unique location.²²² Bedroc showed that a confining shelf of sedimentary rock was noticeably absent in the vicinity of the Bedroc site where recharge from the Sheep Range rises toward the surface between two faults, which results in shallow groundwater that is subject to ET and capture from shallow groundwater wells at the Bedroc site.²²³ Recharge from the Sheep Range was estimated to be 750 afy, an average of the high and low estimates of the maximum recharge

²¹⁶ Bedroc Ex. 2, *Interim Order 1303- Rebuttal Report- Prepared by Bedroc and Dixon Hydrologic, PLLC- August 2019*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

²¹⁷ Bedroc Ex. 2; *Western Elite Environmental Inc.'s and Bedroc Limited, LLC's Closing Statement* (Bedroc Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources.

²¹⁸ See Tr. 1718–1719.

²¹⁹ Tr. 1719, 1741.

²²⁰ Tr. 1718–1757, 1749–1750.

²²¹ Bedroc Closing, pp. 13–14. Bedroc offered summary responses to the first four questions posed by Order 1303 but did no independent analysis. See Bedroc Closing, p. 12.

²²² Bedroc Closing, p. 2.

²²³ *Id.*; Tr. 1726–1733.

available.²²⁴ SNWA challenged this calculation, pointing out that the estimated recharge could be as low as 130 acre-feet.²²⁵

Bedroc believes that it is capturing the recharge that would otherwise be lost to evapotranspiration.²²⁶ Groundwater conditions at Bedroc's site show a rise in water levels between 2003 and 2006.²²⁷ Bedroc attributed this rise in part to the installation of an unlined storage pond upgradient from the well, but also to the 2005 recharge event that was discussed by many participants to the proceeding.²²⁸ Between 2006 and 2011, Bedroc showed that groundwater levels had been relatively stable even though pumping by Bedroc was fairly constant.²²⁹ Bedroc showed photo evidence of evapotranspiration occurring around the Bedroc site, pointing to areas of white surface soils and green occurring in the photo as evidence of salt residue and phreatophytes, both occurring as a result of shallow groundwater evaporation.²³⁰ The area is estimated to be about 2,200 acres, and the ET range is estimated to be 0.2 to 0.3 feet per year.²³¹ This results in an estimate of 400 to 600 afa of groundwater that potentially could be captured every year without pulling groundwater from storage.²³² If pumping in this area exceeded ET, water levels to the east of Bedroc would be dropping.²³³

Bedroc considered the alluvial system at its location to be a separate aquifer from the carbonate-rock aquifer in the LWRFS.²³⁴ CBD in its report also supports this conclusion, suggesting that some groundwater can be withdrawn from the Coyote Spring Valley alluvial aquifer system because that system is disconnected from and not responsible for substantial recharge to the carbonate-rock aquifer.²³⁵ SNWA testified similarly during the hearing.²³⁶

²²⁴ Tr. 1724–1725, 1755.

²²⁵ Tr. 1755.

²²⁶ Bedroc Closing, pp. 5–9.

²²⁷ Tr. 1735.

²²⁸ *Id.*

²²⁹ Tr. 1735–1736.

²³⁰ Tr. 1734, 1738.

²³¹ Tr. 1739.

²³² Tr. 1739.

²³³ Tr. 1739. *See also* Bedroc Closing, p. 8.

²³⁴ Tr. 1746.

²³⁵ Bedroc Ex. 2, p. 5.

²³⁶ Tr. 1024.

Relying on a lack of connection between pumping at Bedroc and the carbonate-rock aquifer, Bedroc asserted that there is no likely impact to the Warm Springs area caused by Bedroc.²³⁷ Bedroc compared groundwater elevations over time in two alluvial wells, CSV-3009M and CSVM-7, and showed an upward trend in groundwater elevations.²³⁸ But, when comparing groundwater elevations of two monitoring wells in different sources, CSVM-7 in the alluvium and CSVM-4 in the carbonate-rock aquifers, the carbonate-rock aquifer well elevations showed a decline during the Order 1169 aquifer test, but the alluvial well elevation rose during the same period and leveled off after the conclusion of the test.²³⁹ Bedroc concluded that these data illustrate 1) the hydraulic disconnect between the local alluvial aquifer and carbonate-rock aquifer and 2) if historical alluvial pumping at Bedroc has not impacted water levels in nearby alluvial wells, then there is likely no impact to spring or streamflow in the Muddy River Springs Area.

Finally, Bedroc stated that managing all users in the region under the same system would arbitrarily impact users whose water neither comes from the regional carbonate-rock aquifer system nor impacts the springs of concern downstream.²⁴⁰ It urged caution in allowing transfer of water rights between alluvial and carbonate-rock aquifers due to potential impacts on senior users that are using local recharge that may not sustain pumping from additional users.²⁴¹ Transfers of senior alluvial rights from the Muddy River Springs Area to the area near Bedroc should be considered on a case-by-case basis to protect Bedroc's senior water rights.²⁴²

III. PUBLIC COMMENT

WHEREAS, following the conclusion of the Interim Order 1303 hearing, opportunity for public comment was offered, including the opportunity to submit written public comment, which was due to be submitted to the Division no later than December 3, 2019. Lincoln County Board of

²³⁷ Bedroc Closing, p.11. *See also* SNWA testimony of Andrew Burns that pumping at Bedroc wells is not likely to impact the carbonate system or the Muddy River. Tr. 1024–1025.

²³⁸ Bedroc Closing, p. 12. *See also* Tr. 1736–1737, 1752.

²³⁹ Tr. 1737–1738.

²⁴⁰ Bedroc Ex. 2, pp. 2–4.

²⁴¹ *Id.*, p. 6.

²⁴² Tr. 1740.

County Commissioners submitted written public comment in addition to the closing argument submitted by LC-V.²⁴³

IV. AUTHORITY AND NECESSITY

WHEREAS, NRS 533.024(1)(c) directs the State Engineer “to consider the best available science in rendering decisions concerning the availability of surface and underground sources of water in Nevada.”

WHEREAS, in 2017 the Nevada Legislature added NRS 533.024(1)(e), declaring the policy of the State to “manage conjunctively the appropriation, use and administration of all waters of this State regardless of the source of the water.”

WHEREAS, NRS 534.020 provides that all waters of the State belong to the public and are subject to all existing rights.

WHEREAS, as demonstrated by the results of the Order 1169 aquifer test and in the data collected in the years since the conclusion of the aquifer test, the LWRFS exhibits a direct hydraulic connection that demonstrates that conjunctive management and joint administration of these groundwater basins is necessary and supported by the best available science.²⁴⁴

WHEREAS, the pre-development discharge of 34,000 acre-feet of the fully appropriated Muddy River system plus the more than 38,000 acre-feet of groundwater appropriations within the LWRFS greatly exceed the total water budget that may be developed without impairment of senior existing rights or proving detrimental to the public interest.

WHEREAS, the available groundwater supply within the LWRFS that can be continually pumped over the long-term is limited to the amount that may be developed without impairing existing senior rights, rights on the Muddy River or adversely affecting the public interest in

²⁴³ See Board of County Commissioners, Lincoln County, Nevada, *Public Comment to Interim Order #1303 Hearing, Reports, and Evidence on the Lower White River Flow System*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

²⁴⁴ See, e.g., NSE Ex. 245; NSE Ex. 248; NSE Ex. 256; NSE Ex. 252; NSE Ex. 282, *Federal Bureaus Order 1169 Report Selected References: Comparison of Simulated and Observed Effects of Pumping from MX-5 Using Data Collected to the Endo of the Order 1169 Test, and Prediction of the Rates of Recovery from the Test*, TetraTech, 2013, Hearing on Interim Order 1303, official records of the Division of Water Resources. See also, e.g., CBD Ex. 3; MVWD Exs. 3–4; MVIC Ex. 1; NCA Ex. 1, SNWA Exs. 7–9; USFWS Exs. 5–6; NPS Exs. 2–3.

protection of the endangered Moapa dace and the habitat necessary to support the management and recovery of the Moapa dace.

WHEREAS, pursuant to NRS 532.120, the State Engineer is empowered to make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.

WHEREAS, pursuant to NRS 534.110(6) the State Engineer is directed to conduct investigations in groundwater basins where it appears that the average annual replenishment of the groundwater is insufficient to meet the needs of all water right holders, and if there is such a finding, the State Engineer may restrict withdrawals to conform to priority rights.

WHEREAS, within an area that has been designated by the State Engineer, as provided for in NRS Chapter 534, and specifically, NRS 534.120, where, in the judgment of the State Engineer, the groundwater basin is being depleted, the State Engineer in his or her administrative capacity may make such rules, regulations and orders as are deemed essential for the welfare of the area involved.²⁴⁵

WHEREAS, the State Engineer has the authority to hold a hearing to take evidence and the interpretation of the evidence with respect to its responsibility to manage Nevada's water resources and to allow willing participants to present evidence and testimony regarding the conclusions relating to the questions presented in Interim Order 1303. The State Engineer recognizes that the MBOP is a federally recognized tribe, and that its participation in the hearing was to facilitate the understanding of the interpretation of data with respect to the Interim Order 1303 solicitation.

V. ENDANGERED SPECIES ACT

WHEREAS, the Endangered Species Act (ESA), 16 U.S.C. §1531 et seq. is a federal law designed to serve the purpose of identifying, conserving and ultimately recovering species declining toward extinction.²⁴⁶ Specifically, while the ESA is primarily a conservation program, a critical element of the conservation component seeks to encourage cooperation and coordination

²⁴⁵ See also NRS 534.030, NRS 534.110.

²⁴⁶ 16 U.S.C. § 1531(a)-(b).

with state and local agencies.²⁴⁷ The responsibility of enforcement and management under the ESA rests predominately with the federal government; however, the ultimate responsibility is shared.²⁴⁸

WHEREAS, the ESA makes it unlawful for any person to “take” an endangered species — or to attempt to commit, solicit another to commit, or cause to be committed, a taking.²⁴⁹ The term “person” is broadly defined to include the State and its instrumentalities.²⁵⁰ “Take” encompasses actions that “harass, harm” or otherwise disturb listed species, including indirect actions that result in a take.²⁵¹ For example, a state regulator is not exempted from the ESA for takings that occur as a result of a licensee’s regulated activity. States have been faced with the impediment of their administrative management actions being subservient to the ESA. For example, the Massachusetts Division of Marine Fisheries was subject to an injunction prohibiting it from issuing commercial fishing licenses because doing so would likely lead to the taking of an endangered species.²⁵² In *Strahan v. Cox*, the court’s decision relied on reading two provisions of the ESA— the definition of the prohibited activity of a “taking” and the causation by a third party of a taking— “to apply to acts by third parties that allow or authorize acts that exact a taking and that, but for the permitting process, could not take place.”²⁵³ Although Massachusetts was not the one directly causing the harm to the endangered species, the court upheld the injunction because “a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA.”²⁵⁴ At least three other circuits have held similarly.²⁵⁵ In each case, “the regulatory entity purports to make lawful an activity that allegedly violates the ESA.”²⁵⁶ Thus the action of granting the permit for the regulated activity has been considered an indirect cause of a prohibited taking under the ESA.

²⁴⁷ 16 U.S.C. § 1531(c); 16 U.S.C. § 1536.

²⁴⁸ 16 U.S.C.A. § 1536.

²⁴⁹ 16 U.S.C.A. § 1538(g).

²⁵⁰ 16 U.S.C.A. § 1532(13).

²⁵¹ 16 U.S.C.A. § 1532(19). The term “harm” is defined by regulation, 50 C.F.R. § 17.3 (1999).

²⁵² *Strahan v. Cox*, 127 F.3d 155 (1st Cir.1997), *cert denied* 525 U.S. 830 (1998).

²⁵³ *Id.*, p. 163.

²⁵⁴ *Id.*

²⁵⁵ See *Sierra Club v. Yeutter*, 926 F.2d 429 (5th Cir.1991); *Defenders of Wildlife v. EPA*, 882 F.2d 1294 (8th Cir. 1989); *Loggerhead Turtle v. County Council*, 148 F.3d 1231 (11th Cir.1998); *Palila v. Hawaii Dept. of Land & Natural Resources*, 852 F.2d 1106 (9th Cir.1988).

²⁵⁶ *Loggerhead Turtle*, 148 F.3d at 1251.

WHEREAS, the use of water in Nevada is a regulated activity.²⁵⁷ It is the responsibility of the State to manage the appropriation, use and administration of all waters of the state.²⁵⁸ Based on *Strahan* and similar decisions, the act of issuing a permit to withdraw groundwater that reduces the flow of the springs that form the habitat of the Moapa dace and were to result in harm to the Moapa dace exposes the Division, the State Engineer and the State of Nevada to liability under the ESA.

WHEREAS, a USFWS biological opinion for the MOA found that the reduction in spring flow from the warm springs could impact the dace population in multiple ways. First, the USFWS found that declines in groundwater levels will reduce the flow to the Warm Springs area and allow for cooler groundwater seepage into streams. With reduced spring flow, Moapa dace habitat is reduced.²⁵⁹ Additionally, USFWS determined that the reduced flows of warm water from the springs will also result in cooler water available throughout the dace habitat, reducing spawning habitat and resulting in a population decline.²⁶⁰

WHEREAS, based upon the testimony and evidence offered in response to Interim Order 1303, it is clear that it is necessary for spring flow measured at the Warm Springs West gage to flow at a minimum rate of 3.2 cfs in order to maintain habitat for the Moapa dace.²⁶¹ A reduction of flow below this rate may result in a decline in the dace population. This minimum flow rate is not necessarily sufficient to support the rehabilitation of the Moapa dace.²⁶²

²⁵⁷ NRS 533.030; 533.325; 534.020.

²⁵⁸ NRS 533.325; 533.024(1)(e); 534.020.

²⁵⁹ USFWS Ex. 5, pp. 50–52.

²⁶⁰ SNWA Ex. 8, pp. 6-2 through 6-3; SNWA Ex. 40, *Hatten, J.R., Batt, T.R., Scoppettone, G.G., and Dixon, C.J., 2013, An ecohydraulic model to identify and monitor Moapa dace habitat. PLoS ONE 8(2):e55551, doi:10.1371/journal.pone.0055551.*, Hearing on Interim Order 1303, official records of the Division of Water Resources; SNWA Ex. 41, *U.S. Fish and Wildlife Service, 2006a, Intra-service programmatic biological opinion for the proposed Muddy River Memorandum of Agreement regarding the groundwater withdrawal of 16,100 acre-feet per year from the regional carbonate aquifer in Coyote Spring Valley and California Wash basins, and establish conservation measures for the Moapa Dace, Clark County, Nevada. File No. 1-5-05 FW-536, January 30, 2006.*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

²⁶¹ Tr. 1127–1128.

²⁶² Tr. 401–402, 1147, 1157–1158.

WHEREAS, the ESA prohibits any loss of Moapa dace resulting from actions that would impair habitat necessary for its survival. Some groundwater users are signatories to an MOA that authorizes incidental take of the Moapa dace; however, the State Engineer and many other groundwater users are not covered by the terms of the MOA.²⁶³ Not only would liability under the ESA for a “take” extend to groundwater users within the LWRFS, but would so extend to the State of Nevada through the Division as the government agency responsible for permitting water use.

WHEREAS, the State Engineer concludes that it is against the public interest to allow groundwater pumping from the LWRFS that will reduce spring flow in the Warm Springs area to a level that would impair habitat necessary for the survival of the Moapa dace and could result in take of the endangered species.

VI. GEOGRAPHIC BOUNDARY OF THE LWRFS

WHEREAS, the geographic boundary of the hydrologically connected groundwater and surface water systems comprising the LWRFS, as presented in Interim Order 1303, encompasses the area that includes Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley and the northwest portion of the Black Mountains Area.²⁶⁴ The rationale for incorporating these areas into a single administrative unit included the presence of a distinct regional carbonate-rock aquifer that underlies and uniquely connects these areas; the remarkably flat potentiometric surface observed within the area; the diagnostic groundwater level hydrographic pattern exhibited by monitoring wells distributed across the area; and the area-wide diagnostic water level response to pumping during the Order 1169 aquifer test. Each of these characteristics were previously identified and examined in the hydrological studies and subsequent hearing that followed the completion of the Order 1169 aquifer test. Indeed, these characteristics were the foundational basis for the State Engineer’s determination in Rulings 6254–6261 that the

²⁶³ NSE Ex. 236; SNWA Ex. 8, pp. 5-1 through 5-8.

²⁶⁴ See NSE Ex. 1, p. 6.

close hydrologic connection²⁶⁵ and shared source and supply of water in the LWRFS required joint management.²⁶⁶

WHEREAS, evidence and testimony presented during the Interim Order 1303 hearing indicated a majority consensus among stakeholder participants that this originally defined area is appropriately combined into a single unit.²⁶⁷ Evidence and testimony was also presented on whether to add adjacent basins, or parts of basins to the administrative unit; to modify boundaries within the existing administrative unit; or to eliminate the common administrative unit boundaries. The State Engineer has considered this evidence and testimony on the basis of a common set of criteria that are consistent with the original characteristics considered critical in demonstrating a close hydrologic connection requiring joint management in Rulings 6254–6261 and more specifically, include the following:

1) Water level observations whose spatial distribution indicates a relatively uniform or flat potentiometric surface are consistent with a close hydrologic connection.

²⁶⁵ The State Engineer notes that the terminology “*hydrologic connection*” and “*hydraulic connection*” have been used by different parties sometimes interchangeably, and commonly with nearly the same meaning. The State Engineer considers a hydraulic connection to be intrinsically tied to the behavior and movement of water. With regard to aquifers, it may be thought of as the natural or induced movement of water through permeable geologic material. The degree of hydraulic connection can be considered a measure of the interconnection between locations as defined by a cause and effect change in potentiometric surface or a change in groundwater inflow or outflow that reflects characteristics of both the aquifer material and geometry, and groundwater behavior. It is commonly characterized by a response that is transmitted through the aquifer via changes in hydraulic head, i.e., groundwater levels. Hydrologic connections may include hydraulic connections but can also represent more complex system interactions that can encompass all parts of the water cycle, and in some cases may focus on flow paths, water budgets, geochemical interactions, etc. The State Engineer’s use of the term “*close hydrological connection*” is intended to encompass and include a direct hydraulic connection that is reflected in changes in groundwater levels in response to pumping or other fluxes into or out of the aquifer system within a matter of days, months, or years. The closeness, strength, or directness of the response is indicated by timing, with more distinct and more immediate responses being more “close”.

²⁶⁶ See NSE Ex. 14, p. 12, 24.

²⁶⁷ See Participant testimony from SNWA (Tr. 875–876), CNLV (Tr. 1418), and CSI (Tr. 95–96). Several other participants agreed, too, that the State Engineer’s delineation of the LWRFS as defined in Interim Order 1303 was acceptable. See also Bedroc Closing, p. 12, Church Closing, p. 1; Technichrome Response, p. 1. Other participants recommended larger areas be included within the LWRFS boundary. See Tr. 261–266 (USFWS), 1571–1572 (CBD), 1697–1698 (MVIC). See also NV Energy Closing, pp. 2–3; NPS Closing pp. 2–5.

2) Water level hydrographs that, in well-to-well comparisons, demonstrate a similar temporal pattern, irrespective of whether the pattern is caused by climate, pumping, or other dynamic is consistent with a close hydrologic connection.

3) Water level hydrographs that demonstrate an observable increase in drawdown that corresponds to an increase in pumping and an observable decrease in drawdown, or a recovery, that corresponds to a decrease in pumping, are consistent with a direct hydraulic connection and close hydrologic connection to the pumping location(s).

4) Water level observations that demonstrate a relatively steep hydraulic gradient are consistent with a poor hydraulic connection and a potential boundary.

5) Geological structures that have caused a juxtaposition of the carbonate-rock aquifer with low permeability bedrock are consistent with a boundary.

6) When hydrogeologic information indicate a close hydraulic connection (based on criteria 1-5), but limited, poor quality, or low resolution water level data obfuscate a determination of the extent of that connection, a boundary should be established such that it extends out to the nearest mapped feature that juxtaposes the carbonate-rock aquifer with low-permeability bedrock, or in the absence of that, to the basin boundary.

WHEREAS, some testimony was presented advocating to include additional areas to the LWRFS based principally on water budget considerations and/or common groundwater flow pathways.²⁶⁸ Indeed, some participants advocate to include the entire White River Flow System, or other basins whose water may ultimately flow into or flow out of the system.²⁶⁹ Other participants used, but did not rely on, water budget and groundwater flow path considerations to support their analysis. Like those participants, the State Engineer agrees that while water budget and groundwater flow path analysis are useful to demonstrate a hydrologic connection, additional information is required to demonstrate the relative strength of that connection. Thus, the State

²⁶⁸ See e.g., CNLV Ex. 3, p. 33, Tr. 1430; NPS Closing, p. 2. See also Tr. 253–257; Sue Braumiller, *Interpretations of available Geologic and Hydrologic Data Leading to Responses to Questions Posed by the State Engineer in Order 1303 regarding Conjunctive Management of the Lower White River Flow System* (USFWS Braumiller presentation), slide 11, Item 6., bullet 1, official records of the Division of Water Resources; MBOP Ex. 2, p. 11.

²⁶⁹ See e.g., GBWN Report, pp. 1–2.

Engineer recognizes that while any hydrologic connection, weak or strong, needs to be considered in any management approach, many of the connections advocated based principally on a water budget or flow path analysis, including those between nearby basins like Las Vegas Valley and Lower Meadow Valley Wash, are not demonstrated to provide for the uniquely close hydraulic connection that require joint management.

WHEREAS, in their closing statement, NPS proposes that all adjacent hydrographic areas to the original Interim Order 1303 administrative unit where a hydraulic interconnection exists, whether weak or strong, be included in the LWRFS.²⁷⁰ It does so to alleviate the need for developing new management schemes for the excluded remnants and to provide for appropriate management approaches based on new information and improved understanding of differing degrees of hydraulic interconnection in various sub-basins. The State Engineer agrees with this logic, up to a point, and has applied these concepts to the extent practical as demonstrated in his criteria for determining the extent of the LWRFS. However, the State Engineer also finds that there must be reasonable and technically defensible limits to the geographic boundary. Otherwise, if management were to be based on the entire spectrum of weak to strong hydraulic interconnection, then exclusion of an area from the LWRFS would require absolute isolation from the LWRFS; every sub-basin would have its own management scheme based on some measure of its degree of connectedness; and proper joint management would be intractable.

WHEREAS, evidence and testimony was also presented by the NPS regarding the specific inclusion of the entirety of the Black Mountains Area in the LWRFS.²⁷¹ The State Engineer recognizes that there may be a hydrologic connection between the Black Mountains Area and upgradient basins that are sources of inflow, and that outflow from the LWRFS carbonate-rock aquifer may contribute to discharge from Rogers and Blue Point Springs. However, the State Engineer does not find that this supports inclusion of the entirety of the Black Mountains Area. This determination is made based on the lack of contiguity of the carbonate-rock aquifer into this

²⁷⁰ NPS Closing, pp. 3–5.

²⁷¹ NPS Closing pp. 3–4. *See also* Tr.534, 555–569; Richard K. Waddell, Jr., *Testimony of Richard K. Waddell on behalf of the National Park Service*, presentation during hearing for Interim Order 1303 (NPS Presentation), slides 32–46, official records of the Division of Water Resources.

area,²⁷² the difference in observed water level elevations compared to those in adjacent carbonate-rock aquifer wells to the north and west,²⁷³ and the absence of observed diagnostic hydrographic patterns and responses that define the uniquely close hydraulic connection that characterizes the LWRFS.²⁷⁴

WHEREAS, evidence and testimony presented by USFWS relied principally on SeriesSEE analysis of water level responses submitted by the Department of Interior Bureaus following the Order 1169 aquifer test to establish the general extent of the LWRFS. This was supported by the application of hydrogeology and principles of groundwater flow to define specific boundary limits to the LWRFS. It proposed that most of the Lower Meadow Valley Wash be considered for inclusion in the LWRFS based on the potential geologic continuity between carbonate rocks underlying the Lower Meadow Valley Wash and the carbonate-rock aquifer underlying Coyote Spring Valley, the Muddy River Springs Area, and California Wash.²⁷⁵ Additionally, it asserted that the alluvial aquifer system in Lower Meadow Valley Wash contributes to and is connected to both the Muddy River and the alluvial aquifer system in California Wash. The State Engineer finds that while carbonate rocks may underlie the Lower Meadow Valley Wash and be contiguous with carbonate rocks to the south and west, data are lacking to characterize the potential hydraulic connection that may exist. Regarding the hydraulic connection between the Lower Meadow Valley Wash alluvial aquifer and the LWRFS, the State Engineer agrees with USFWS that a connection exists, but finds that any impacts related to water development in the Lower Meadow Valley Wash alluvial aquifer are localized, and unrelated to the carbonate-rock aquifer, and can be appropriately managed outside the LWRFS joint management process.

WHEREAS, NCA advocated for the exclusion of the portion of the Black Mountains Area from the LWRFS that contains their individual production wells. NCA premise this primarily on testimony and analysis performed by SNWA with respect to the impact of pumping from this area

²⁷² See CSI Ex. 14, Plate 2, Map and Plate 4, Cross section K-K', in Peter D. Rowley et. al., *Geology and Geophysics of White Pine and Lincoln Counties, Nevada and Adjacent Parts of Nevada and Utah: The Geologic Framework of Regional Groundwater Flow Systems*, Nevada Bureau of Mines and Geology Report 56.

²⁷³ See, e.g., USFWS Ex. 5, p. 30.

²⁷⁴ *Id.*, p. 17.

²⁷⁵ *Id.*, pp. 19-24.

on discharge to the Warm Springs area.²⁷⁶ It also used hydrogeologic and water level response information to conclude that strike-slip faulting and a weak statistical correlation between water levels at NCA well EBM-3 and EH-4 in the Warm Springs area support a boundary to the north of the NCA production wells. While the State Engineer finds logic in NCA's position, other testimony describing flaws in the SNWA analysis make for a compelling argument against relying on SNWA's statistically-based results.²⁷⁷ The substantial similarity in observed water level elevation and water level response at EBM-3 compared to EH-4²⁷⁸ and limitations in relying on poor resolution water level measurements for statistical or comparative analysis²⁷⁹ requires a more inclusive approach that places the boundary to the south of the NCA production wells to a geological location that coincides with the projection of the Muddy Mountain Thrust. This more closely coincides with the measurable drop in water levels recognized to occur south of the NCA wells, between EBM-3 and BM-ONCO-1 and 2, that is indicative of a hydraulic barrier or zone of lower permeability.²⁸⁰ It also better honors the State Engineer's criteria by acknowledging the uncertainty in the data while reflecting a recognized physical boundary in the carbonate-rock aquifer. Specifically, this shall be defined to include that portion of the Black Mountains Area lying within portions of Sections 29, 30, 31, 32, and 33, T.18S., R.64E., M.D.B.&M.; portions of Sections 1, 11, 12, 14, 22, 23, 27, 28, 33, and 34 and all of Sections 13, 24, 25, 26, 35, and 36, T.19S., R.63E., M.D.B.&M.; portions of Sections 4, 6, 9, 10, and 15 and all of Sections 5, 7, 8, 16, 17, 18, 19, 20, 21, 29, 30, and 31, T.19S., R.64E., M.D.B.&M.²⁸¹

WHEREAS, numerous participants advocated to include Kane Springs Valley in the LWRFS basins.²⁸² Other participants advocated to exclude Kane Springs Valley.²⁸³ Several expert witnesses recommended the exclusion of Kane Springs Valley based on their characterization of water level elevation data, temporal hydrographic response patterns, geochemistry, and/or the

²⁷⁶ See, Tr. 1622, 1624; NCA Closing.

²⁷⁷ See, e.g., Tr. 1467–1469 CNLV presentation, slides 21–23; Tr. 1784–1786; NV Energy presentation, slides 32–33.

²⁷⁸ NCA Closing, p. 18, Figure 3.

²⁷⁹ NCA Closing, p. 8.

²⁸⁰ See e.g., USFWS Ex. 5.

²⁸¹ See map of the LWRFS Hydrographic Basin as defined by this Order, Attachment A.

²⁸² See, e.g., NV Energy Closing, p. 2; NCA Closing, p. 10–14; MVWD Closing, p. 2–8.

²⁸³ See e.g., *Written Closing Statement of Lincoln County Water District and Vidler Water Company, Inc.* (LC-V Closing), Hearing on Interim Order 1303, official records of the Division of Water Resources, p. 3–6; CSI Closing, p. 2.

geophysically-inferred presence of structures that may act as flow barriers. Others recommended inclusion based on the same or similar set of information. Water level elevations observed near the southern edge of Kane Springs Valley are approximately 60 feet higher than those observed in the majority of carbonate-rock aquifer wells within the LWRFS to the south; consistent with a zone of lower permeability.²⁸⁴ Some experts suggested that the hydrographic response pattern exhibited in wells located in the southern edge of Kane Springs Valley is different compared to that exhibited in wells in the LWRFS, being muted, lagged, obscured by climate response, or compromised by low-resolution data.²⁸⁵ In this regard, the State Engineer recognizes these differences. However, he finds that the evidence and testimony supporting a similarity in hydrographic patterns and response as provided by expert witnesses, like that of the NPS, to be persuasive.²⁸⁶ Namely, that while attenuated, the general hydrographic pattern observed in southern Kane Springs Valley reflects a response to Order 1169 pumping, consistent with a close hydraulic connection with the LWRFS. The State Engineer also finds that occurrence of the carbonate-rock aquifer in the southern Kane Springs Valley indicates that there is no known geologic feature at or near the southern Kane Springs Valley border that serves to juxtapose the carbonate-rock aquifer within the LWRFS with low permeability rocks in Kane Springs Valley.²⁸⁷ He also finds that while geologic mapping²⁸⁸ indicates that the carbonate-rock aquifer does not extend across the northern portion of the Kane Springs Valley, there is insufficient information available to determine whether the non-carbonate bedrock interpreted to underlie the northern part of the Kane Springs Valley represents low-permeability bedrock that would define a hydraulic boundary to the carbonate-rock aquifer.²⁸⁹ After weighing all of the testimony and evidence relative to his criteria

²⁸⁴ LC-V Closing, p. 7.

²⁸⁵ See, e.g., LC-V Closing, pp. 5–6; LC-V Ex. 1, pp. 3–3–3–4; CSI Closing, pp. 5–6.

²⁸⁶ See Tr. 524–55. See, e.g., NPS presentation, slides 23–27.

²⁸⁷ Pursuant to the criteria requiring joint management of hydrographic basins and the sixth criteria establishing that the boundary should extend to the nearest mapped feature that juxtaposes the carbonate-rock aquifer with low-permeability bedrock, or where a mapped feature cannot be adequately identified, to the basin boundary, the State Engineer includes the entirety of Kane Springs Valley.

²⁸⁸ See, e.g., NSE Ex. 12; Page, W.R., Dixon, G.L., Rowley, P.D., and Brickey, D.W., 2005, *Geologic Map of Parts of the Colorado, White River, and Death Valley Groundwater Flow Systems, Nevada, Utah, and Arizona*: Nevada Bureau of Mines and Geology Map 150, Plate plus text.

²⁸⁹ See, e.g., SNWA Ex. 7, pp. 2-4, 2-5, 2-10, 2-11, and 4-1, that describe volcanic rocks as important aquifers, and calderas as both flow paths and barriers depending on structural controls

for inclusion into the LWRFS, the State Engineer finds that the available information requires that Kane Springs Valley be included within the geographic boundary of the LWRFS.

WHEREAS, limited evidence and testimony were provided by participants advocating to either include or exclude the northern portion of Coyote Spring Valley. The State Engineer finds that while information such as that provided by Bedroc is convincing and supports a finding that local, potentially discrete aquifers may exist in parts of the northern Coyote Springs Valley, his criteria for defining the LWRFS calls for the inclusion of the entirety of the basin in the LWRFS. However, the State Engineer also acknowledges that there may be circumstances, like in the northern Coyote Spring Valley, where case-by-case considerations for proper management are warranted.

WHEREAS, evidence and testimony from Georgia-Pacific and Republic, and MBOP advocated against creating a single LWRFS administrative unit. Their arguments were principally based on concerns that there was insufficient consensus on defining the LWRFS geographic boundaries and that there were inherent policy implications to establishing an LWRFS administrative unit. MBOP recommended continuing to collect data and focusing on areas of scientific consensus. Georgia-Pacific and Republic asserted that boundaries are premature without additional data and without a legally defensible policy and management tools in place. They expressed concern that creating an administrative unit at this time inherently directs policy without providing for due process. The State Engineer has considered these concerns and agrees that additional data and improved understanding of the hydrologic system is critical to the process. He also believes that the data currently available provide enough information to delineate LWRFS boundaries, and that an effective management scheme will provide for the flexibility to adjust boundaries based on additional information, retain the ability to address unique management issues on a sub-basin scale, and maintain partnership with water users who may be affected by management actions throughout the LWRFS.

to flow, citing Peter D. Rowley, and Dixon, G.L., 2011, *Geology and Geophysics of Spring, Cave, Dry Lake, and Delamar Valleys, White Pine and Lincoln Counties, and Adjacent Areas, Nevada and Utah: The Geologic Framework of Regional Flow Systems*,.

WHEREAS, evidence and testimony support the delineation of a single hydrographic basin as originally defined by the State Engineer in Interim Order 1303, with the adjustment of the Black Mountain Area boundary and the addition of Kane Springs Valley. The State Engineer acknowledges that special circumstances will exist with regard to both internal and external management. Water development both inside and outside of the perimeter of the LWRFS will continue to be evaluated on the best available data and may become subject to or excluded from the constraints or regulations of the LWRFS.

WHEREAS, the geographic extent of the LWRFS is intended to represent the area that shares both a unique and close hydrologic connection and virtually all of the same source and supply of water, and therefore will benefit from joint and conjunctive management. In that light, the State Engineer recognizes that different areas, jointly considered for inclusion into the LWRFS, have been advocated both to be included and to be excluded by the different hearing participants based on different perspectives, different data subsets, and different criteria. For the Muddy River Springs Area, California Wash, Garnet Valley, Hidden Valley, Coyote Spring Valley, and a portion of the Black Mountain Area, there is a persuasive case previously laid out in Rulings 6254–6261, and the consensus amongst the participants support their inclusion in the LWRFS. For other sub-basins such as Kane Springs Valley and the area around the NCA production wells in the Black Mountain Area, there is persuasive evidence to support their inclusion or exclusion; however, the State Engineer's criteria and available data mandate their inclusion. Their inclusion in the LWRFS provides the opportunity for conducting additional hydrologic studies in sub-basins such as these, to determine the degree to which water use would impact water resources in the LWRFS and to allow continued participation by holders of water rights in future management decisions. Thus, these sub-basins, and any other portions of the LWRFS that may benefit from additional hydrological study, can be managed more effectively and fairly within the LWRFS. For other basins whose inclusion was advocated, such as the northern portion of Las Vegas Valley and the Lower Meadow Valley Wash, the State Engineer finds that data do not exist to apply his criteria, and therefore they cannot be considered for inclusion into the LWRFS. These types of areas may require additional study and special consideration regarding the potential effects of water use in these areas on water resources within the LWRFS.

VII. AQUIFER RECOVERY SINCE COMPLETION OF THE ORDER 1169 AQUIFER TEST

WHEREAS, during the Order 1169 aquifer test an average of 5,290 afa were pumped from the carbonate-rock aquifer wells in Coyote Spring Valley and a cumulative total of 14,535 afa were pumped throughout the Order 1169 study basins. A portion of this total, approximately 3,840 acre-feet per year, was pumped from the alluvial aquifer in the Muddy River Springs Area.²⁹⁰ In the years since completion of the Order 1169 aquifer test, pumping from wells in the LWRFS has gradually declined.²⁹¹ Pumping in 2013-2014 averaged 12,635 afa; pumping in 2015-2017 averaged 9,318 afa.²⁹² Pumpage inventories for 2018 that were published after the completion of the hearing report a total of 8,300 afa.²⁹³ Pumping from alluvial aquifer wells in the Muddy River Spring Area has consistently declined since closure of the Reid Gardner power plant beginning in 2014, while pumping from the carbonate-rock aquifer since the completion of the aquifer test has consistently ranged between approximately 7,000 and 8,000 afa.

WHEREAS, the information obtained from the Order 1169 aquifer test and in the years since the conclusion of the test demonstrates that while, following conclusion of the aquifer test, there was a recovery of groundwater levels, the carbonate-rock aquifer has not recovered to pre-Order 1169 test levels.²⁹⁴ Evidence and testimony submitted during the 2019 hearing does not refute the conclusions made by the State Engineer in Rulings 6254–6261 regarding interpretations of the Order 1169 aquifer test results, which were based on observations and analysis by multiple technical experts. Groundwater level recovery reached completion approximately two to three years after the Order 1169 aquifer test pumping ended.²⁹⁵

²⁹⁰ NSE Ex. 1, p. 4.

²⁹¹ *See, e.g.* NSE Ex. 50, *Pumpage Report Coyote Spring Valley 2017*; NSE Ex. 67, *Pumpage Report Black Mountains Area 2017*; NSE Ex. 84, *Pumpage Report Garnet Valley Area 2017*; NSE Ex. 86, *Pumpage Report California Wash Area 2017*; Ex. 88, *Pumpage Report Muddy River Springs Area 2017*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *See, e.g.*, SNWA Ex. 7, pp. 5-17–5-18, 8-2; NPS Closing, p. 4; MVWD Closing, p. 8. *See also* Tr. 1807; NV Energy presentation, p. 11.

²⁹⁵ SNWA Ex. 7, pp. 5-17–5-18; NVE Ex. 1, p. 2

WHEREAS, several participants testified about the effects of drought and climate on the recovery of groundwater levels and spring discharge after the Order 1169 aquifer test. Droughts, or periods of drier than normal conditions that last weeks, months, or years can lead to declines in groundwater levels.²⁹⁶ The LWRFS is within National Oceanic and Atmospheric Administration's Nevada Climate Division 4 (Division 4). Precipitation records for Division 4 from 2006 to the 2019 season records indicate that 10 of those 14 seasons received lower than average precipitation.²⁹⁷ Despite low precipitation, several participants submitted evidence that water levels continue to rise under current climate conditions in other areas with a relative lack of pumping that are tributary to the LWRFS, such as Dry Lake Valley, Delamar Valley, Garden Valley, Tule Desert, Dry Lake Valley, and other areas.²⁹⁸ These rises have been attributed to efficient winter recharge that has occurred despite low cumulative precipitation.²⁹⁹ Based on these observations, it was argued that the continued stress of pumping in the LWRFS carbonate-rock aquifer is limiting the recovery of water levels.³⁰⁰ The State Engineer acknowledges that spring discharge is affected by both pumping and climate, and finds that groundwater levels remain a useful tool for monitoring the state of the aquifer system in the LWRFS regardless of the relative contribution of climate and drought to the measured groundwater levels. The State Engineer only has the authority to regulate pumping, not climate, in consideration of its potential to cause conflict or to be detrimental to the public interest and must do so regardless of the relative contributing effects of climate.

WHEREAS, evidence and testimony during the 2019 hearing was divided on whether water levels in the Warm Springs area and carbonate-rock aquifer indicate the system has reached or is approaching equilibrium,³⁰¹ or is still in a state of decline.³⁰² Hydrographs and evidence presented show that water levels at well EH-4 near the Warm Springs area have been relatively stable for several years following recovery from the Order 1169 aquifer test.³⁰³ However, other

²⁹⁶ See USGS, 1993, *Drought*, US Geological Survey Open File Report 93-642, accessible at <https://bit.ly/93-642>, (last accessed June 6, 2020).

²⁹⁷ SNWA Ex. 7, pp. 4-1-4-4.

²⁹⁸ Tr. 577, 304-307.

²⁹⁹ NPS Ex. 3, Appendix A.

³⁰⁰ See, e.g., SNWA Closing, p. 11. NPS Closing, p. 4. See also Tr. 642, 644-45, 1545.

³⁰¹ MVWD Closing, pp. 8-9. See also NV Energy Closing, p. 3; CNLV Closing, pp. 5-7.

³⁰² SNWA Closing, pp. 11-12. NPS Closing, pp. 4-5.

³⁰³ SNWA Ex. 7, pp. 5-7.

carbonate-rock aquifer wells located further away from the Warm Springs area such as CSVM-1, TH-2, GV-1, and BM-DL-2 appear to have reached peak recovery from the Order 1169 aquifer test in 2015-2016 and have exhibited downward trends for the past several years.³⁰⁴ The State Engineer agrees that water levels in the Warm Springs area may be approaching steady state with current pumping conditions. However, the trend is of insufficient duration to make this determination with absolute assurance and continued monitoring is necessary to determine if this trend continues or if water levels are continuing to decline slowly.

VIII. LONG-TERM ANNUAL QUANTITY OF WATER THAT CAN BE PUMPED

WHEREAS, the evidence and testimony presented at the 2019 hearing did not result in a consensus among experts of the long-term annual quantity of groundwater that can be pumped. Recommendations range from zero to over 30,000 afa, though most experts agreed that the amount must be equal to or less than the current rate of pumping. There is a near consensus that the exact amount that can be continually pumped for the long-term cannot be absolutely determined with the data available and that to make that determination will require more monitoring of spring flows, water levels, and pumping amounts over time.

WHEREAS, evidence and testimony were presented arguing that the regional water budget demonstrates that far more groundwater is available for development within the LWRFS than is currently being pumped. CSI argues that the total amount of groundwater available for extraction from the LWRFS may be up to 30,630,³⁰⁵ which is an estimate of the entirety of natural discharge from the system that occurs through groundwater evapotranspiration and subsurface groundwater outflow. Nearly all other experts disagreed that pumping to that extent could occur without causing harm to the Moapa dace or conflict with senior Muddy River decreed rights. The disagreement is not about the amount of the water budget, but rather the importance of the water budget in determining the amount of groundwater in the LWRFS that can continually be pumped,³⁰⁶ not the amount of inflow and outflow to the system. In addition, availability of groundwater for pumping based on water budget should consider whether the same water is appropriated for use in upgradient and downgradient basins, and CSI did not account for this.

³⁰⁴ *Id.*

³⁰⁵ CSI Closing, p. 2.

³⁰⁶ See e.g., SNWA Ex. 9, p. 24.; MVWD Ex. 3, p. 4; NPS Ex. 3, p. 23.

The State Engineer recognizes that the water budget is important to fully understand the hydrology of the regional flow system but also agrees with nearly all participants that the regional water budget is not the limiting measure to determine water available for development in the LWRFS. The potential for conflict with senior rights and impacts that are detrimental to the public interest in the LWRFS is controlled by aquifer hydraulics and the effect of pumping on discharge at the Warm Springs area rather than the regional water budget.

WHEREAS, evidence and testimony were presented arguing that the location of pumping within the LWRFS is an important variable in the determination of the amount that can be pumped. Participants representing groundwater users in Garnet Valley and the APEX area at the south end of the LWRFS testified that pumping within Garnet Valley does not have a discernable signal at wells near the Warm Springs area and that the hydraulic gradient from north-to-south within the LWRFS indicates that there is a component of groundwater flow in Garnet Valley that does not discharge to the Warm Springs area.³⁰⁷ Several participants agreed that moving pumping to more distal locations within the LWRFS will lessen the effect of that pumping on spring flows. NV Energy testified that there would be a lesser effect because pumping areas around the periphery of the main carbonate-rock aquifer are less well-connected to the springs, and because of the likelihood that some amount of subsurface outflow occurs along and southern and southeastern boundary of the LWRFS and it is possible to capture some of that subsurface outflow without a drop-for-drop effect on discharge at the Warm Springs area.³⁰⁸ Others drew the same conclusion based on their review of the data and characterization of a heterogeneous system³⁰⁹ or on weak connectivity between peripheral locations and the Warm Springs area.³¹⁰

CSI argues that more groundwater development can occur in the LWRFS because subsurface fault structures create compartmentalization and barriers to groundwater flow that reduce the effects of pumping on discharge at the Warm Springs area.³¹¹ They rebut the contention by others that spring flow is affected homogeneously by pumping within the LWRFS.³¹² CSI used geophysical data to map a north-south trending subsurface feature that bisects Coyote Spring

³⁰⁷ See CNLV Ex. 3, pp. 45-47; GP-REP Ex. 1, pp. 2-3.

³⁰⁸ NVE Ex. 1, pp. 8-9.

³⁰⁹ See e.g. MBOP Ex. 2, p. 23; GP-REP Ex. 2, pp. 4-5. See also Technichrome Response.

³¹⁰ See e.g. NCA Closing, pp. 2-10; LC-V Closing, pp. 4-6; Bedroc Closing, pp. 9-11.

³¹¹ CSI Closing, pp. 2-5.

³¹² CSI Ex. 2, pp. 40-41.

Valley. They hypothesize that this structure is an impermeable flow barrier that creates an isolated groundwater flow path on the west side of Coyote Spring Valley from which pumping would capture recharge from the Sheep Range without spring flow depletion at the Warm Springs area.³¹³ MBOP also contends that the system is far too complex to characterize it as a homogeneous “bathtub” and that preferential flow paths within the region mean that pumping stress will greatly differ within the LWRFS depending on where the pumping occurs.³¹⁴ Rebuttals to MBOP and CSI contend that an emphasis on complexities in geologic structure is a distraction from the question at hand, and that the hydraulic data collected during and after the Order 1169 aquifer test clearly demonstrate close connectivity and disproves CSI’s hypothesis.³¹⁵

The State Engineer finds that the data support the conclusion that pumping from locations within the LWRFS that are distal from the Warm Springs area can have a lesser impact on spring flow than pumping from locations more proximal to the springs. The LWRFS system has structural complexity and heterogeneity, and some areas have more immediate and more complete connection than others. For instance, the Order 1169 aquifer test demonstrated that pumping 5,290 afa from carbonate-rock aquifer wells in Coyote Spring Valley caused a sharp decline in discharge at the springs, but distributed pumping since the completion of the aquifer test in excess of 8,000 afa has correlated with a stabilization of spring discharge. The data collected during and after the Order 1169 aquifer test provide substantial evidence that groundwater levels throughout the LWRFS rise and fall in common response to the combined effects of climate and pumping stress, which controls discharge at the Warm Springs area.³¹⁶ The State Engineer finds that the best available data do not support the hypotheses that variable groundwater flow paths and heterogeneous subsurface geology are demonstrated to exist that create hydraulically isolated compartments or subareas within the LWRFS carbonate-rock aquifer from which pumping can occur without effect on the Warm Springs area. However, there remains some uncertainty as to the extent that distance and location relative to other capturable sources of discharge either delay, attenuate, or reduce capture from the springs.

³¹³ *Id.* See also CSI Ex. 1, pp. 31–40.

³¹⁴ MBOP Closing, p. 7.

³¹⁵ See e.g., SNWA Ex. 9, pp. 23–24.

³¹⁶ NSE Exs. 15–21.

WHEREAS, evidence and testimony were presented to argue that no amount of groundwater can be pumped from the carbonate-rock aquifer or from the LWRFS without conflicting with the Muddy River decree or causing harm to the Moapa dace habitat. This argument is predicated on the interpretation that lowering of groundwater level anywhere within the LWRFS, whether caused by climate or pumping, eventually has an effect on spring discharge, and that any reduction in spring discharge caused by pumping conflicts with senior decreed rights or harms the Moapa dace or both.³¹⁷ MVIC and SNWA agree that capturing discharge from the Warm Springs area springs and the Muddy River are a conflict with the Muddy River decree, which appropriates "all of the flow of the said stream, its sources of supply, headwaters and tributaries."

The Muddy River Decree was finalized in 1920, decades before any significant amount of groundwater development within the Muddy River springs area or the LWRFS. The statement quoted above, or something similar to it, is a common conclusion in decrees to establish finality to the determination of relative priority of rights. By including this statement, the decreed right holders are afforded the assurance that no future claimants will interject a new priority right. However, it is also common on decreed systems for junior rights to be appropriated for floodwater or other excess flows, provided that no conflict occurs with the senior priorities. Similarly, groundwater development almost always exists in the tributary watersheds of decreed river systems, even though groundwater in a headwater or tributary basin is part of the same hydrologic system. There is no conflict as long as the senior water rights are served.

The State Engineer disagrees with SNWA and MVIC that the above quoted statement in the decree means that any amount of groundwater pumped within the headwaters that would reduce flow in the Muddy River conflicts with decreed rights. The State Engineer finds that capture or potential capture of the waters of a decreed system does not constitute a conflict with decreed right holders if the flow of the source is sufficient to serve decreed rights. Muddy River decreed rights were defined by acres irrigated and diversion rates for each user.³¹⁸ The sum of diversion rates greatly exceeds the full flow of the River, but all users are still served through a rotation schedule managed by the water master. The total amount of irrigated land in the decree is 5,614 acres.³¹⁹

³¹⁷ See, e.g., CBD Ex. 3, p. 23; SNWA Ex. 7, p. 8-4; MVIC Ex. 1, p. 3.

³¹⁸ NSE Ex. 333.

³¹⁹ *Id.*

Flow in the Muddy River at the Moapa Gage has averaged approximately 30,600 afa since 2015,³²⁰ which is less than the predevelopment baseflow of about 33,900.³²¹ If all decreed acres were planted with a high-water use crop like alfalfa, the net irrigation water requirement would be 28,300 afa, based on a consumptive use rate of 4.7 afa.³²² Conveyance loss due to infiltration is an additional consideration to serve all decreed users; however, this is limited in the Muddy River because the alluvial corridor is narrow and well defined so water stays within the shallow groundwater or discharges back to the river. The State Engineer finds that the current flow in the Muddy River is sufficient to serve all decreed rights in conformance with the Muddy River Decree, and that reductions in flow that have occurred because of groundwater pumping in the headwaters basins is not conflicting with Decreed rights.

WHEREAS, the majority of experts agree that there is an intermediate amount of pumping approximated by recent pumping rates that can continue to occur in the LWRFS and still protect the Moapa dace and not conflict with decreed rights. USFWS and NCA endorsed the use of average pumping over the years 2015-2017 (9,318 afa as reported by State Engineer pumpage inventories) as a supportable amount that can continue to be pumped, because the system appears to have somewhat stabilized.³²³ CSI also endorsed this approach as an initial phase, though they suggested 11,400 afa, which was the average pumping reported by State Engineer inventories over the years 2010-2015 that included the period of the Order 1169 aquifer test.³²⁴ CNLV makes a rough estimate that no more than 10,000 afa can be supported throughout the entire region, based on their professional judgment and review of the data.³²⁵ NV Energy concludes that 7,000–8,000 afa can continue to be pumped, based on the amount of pumping in recent years from carbonate-rock aquifer wells and the observation that steady-state conditions in Warm Springs area spring

³²⁰ NSE Ex. 211, *USGS 09416000 Muddy River Moapa 1914-2013*, Hearing on Interim Order 1303, official records of the Division of Water Resources.

³²¹ SNWA Ex. 7, p. 5-4.

³²² See, e.g., Huntington, J.L. and R. Allen, (2010), *Evapotranspiration and Net Irrigation Water Requirements for Nevada*, Nevada State Engineer's Office Publication, accessible at <https://bit.ly/etniwr>, (last accessed June 7, 2020), official records of the Division of Water Resources.

³²³ USFWS Ex. 5, p. 3; NCA Ex. 1, p. 19.

³²⁴ CSI Closing, p. 2.

³²⁵ CNLV Ex. 3, p. 2.

flow are being reached.³²⁶ SNWA estimates that only 4,000–6,000 afa of carbonate-rock aquifer pumping can continually occur within the LWRFS.³²⁷

WHEREAS, the State Engineer finds that the evidence and testimony projecting continual future decline in spring flow at the current rate of pumping is compelling but not certain. Several participants pointed out rising trends in groundwater levels at many locations in Southern Nevada, outside of the LWRFS, that are distant from pumping³²⁸ even though total precipitation has been below average and since 2006 has been described as a drought.³²⁹ This suggests that climate and recharge efficiency may have actually buffered the full effect of pumping on discharge at the Warm Springs area, and that the system could not support the current amount of groundwater pumping during an extended dry period with lesser recharge. In addition, slight declining trends that are observed in Garnet Valley monitoring wells are not evident in wells close to the Warm Springs area.³³⁰ If drawdown in Garnet Valley has not yet propagated to the Muddy Springs area, then the resilience of the apparent steady state of spring flow is in doubt. Projections of continued future decline in spring discharge suggests that the current amount of pumping in the LWRFS is a maximum amount that may need to be reduced in the future if the stabilizing trend in spring discharge does not continue.

WHEREAS, there is an almost unanimous agreement among experts that data collection is needed to further refine with certainty the extent of groundwater development that can be continually pumped over the long term. The State Engineer finds that the current data are adequate to establish an approximate limit on the amount of pumping that can occur within the system, but that continued monitoring of pumping, water levels, and spring flow is essential to refine and validate this limit.

³²⁶ NVE Ex. 1, p. 8.

³²⁷ SNWA Ex. 7, p. 8-4.

³²⁸ NPS Ex. 3, Appendix A. *See also* Tr. 304–307, 577.

³²⁹ Tr. 1292–1300. *See, also* LC-V Ex. 11, *PowerPoint Presentation of Todd G. Umstot, entitled Drought and Groundwater*, Hearing on Interim Order 1303, official records of the Division of Water Resources, slides 3–10.

³³⁰ CNLV Ex. 3, pp. 45–46.

WHEREAS, pumping from wells in the LWRFS has gradually declined since completion of the Order 1169 aquifer test and is approaching 8,000 afa. This coincides with the period of time when spring discharge may be approaching steady state. The State Engineer finds that the maximum amount of groundwater that can continue to be developed over the long term in the LWRFS is 8,000 afa. The best available data at this time indicate that continued groundwater pumping that consistently exceeds this amount will cause conditions that harm the Moapa dace and threaten to conflict with Muddy River decreed rights.

IX. MOVEMENT OF WATER RIGHTS

WHEREAS, the data and evidence are clear that location of pumping within the LWRFS relative to the Warm Springs area and the Muddy River can influence the relative impact to discharge to the Warm Springs area and/or senior decreed rights on the Muddy River. The transfer of groundwater pumping from the Muddy River Springs Area alluvial wells to carbonate-rock aquifer wells may change the timing of any impact to Muddy River flows and amplify the effect on discharge to the Warm Springs area, thus potentially adversely impacting habitat for the Moapa dace. And the transfer of groundwater withdrawals from the carbonate-rock aquifer into the Muddy River alluvial aquifer may reduce the impact to the Moapa dace habitat but increase the severity of impact to the senior decreed rights on the Muddy River. The State Engineer recognizes that the LWRFS is fundamentally defined by its uniquely close hydrologic interconnection and shared source and supply of water. However, the State Engineer also recognizes that there can be areas within the LWRFS that have a greater or lesser degree of hydraulic connection due to distance, local changes in aquifer properties, or proximity to other potential sources of capturable water.

WHEREAS, Rulings 6254–6261 acknowledge that one of the main goals of Order 1169 and the associated pumping test at well MX-5 was to observe the effects of increased pumping on groundwater levels and spring flows. Coyote Spring Valley carbonate-rock aquifer pumping during the Order 1169 aquifer test was the largest localized carbonate-rock aquifer pumping in the LWRFS. In addition, concurrent carbonate-rock aquifer and alluvial aquifer pumping in Garnet Valley, Muddy River Springs Area, California Wash, and the northwest portion of the Black Mountains Area occurred during the test period. Rulings 6254–6261 described the data and analysis used to determine that additional pumping at the MX-5 well contributed significantly to decreases in high elevation springs (Pederson Springs) and other springs that are the sources to the

Muddy River. Evidence and reports provided under Interim Order 1303 do not challenge the findings in Rulings 6254–6261 that pumping impacts were witnessed. There is a strong consensus among participants that pumping during the Order 1169 aquifer test along with concurrent pumping caused drawdowns of water levels throughout the LWRFS.³³¹ However, the effects of pumping from different locations within the LWRFS on discharge at the Warm Springs area is not homogeneous.³³² The State Engineer finds that movement of water rights that are relatively distal from the Warm Springs area into carbonate-rock aquifer wells that have a closer hydraulic connection to the Warm Springs area is not favorable.

WHEREAS, evidence and testimony provided by participants during the Interim Order 1303 hearing provides a strong consensus that alluvial aquifer pumping in the Muddy River Springs Area affects Muddy River discharge.³³³ There is also strong evidence that carbonate-rock aquifer pumping throughout the LWRFS affects spring flow but can also be dependent on proximity of pumping to springs.³³⁴ No participant is a proponent of moving additional water rights closer to the headwaters of the Muddy River within the Muddy River Springs Area, and most participants agree that carbonate-rock aquifer and alluvial aquifer pumping in the Muddy River Springs Area captures Muddy River flow. The State Engineer finds that any pumping within close proximity to the Muddy River could result in capture of the Muddy River. The State Engineer also finds that any movement of water rights into carbonate-rock aquifer and alluvial aquifer wells in the Muddy River Springs Area that may increase the impact to Muddy River decreed rights is disfavored.

WHEREAS, the Order 1169 aquifer test demonstrated that impacts from the test along with concurrent pumping was widespread within the LWRFS encompassing 1,100 square miles and supported the conclusion of a close hydrologic connection among the basins.³³⁵ While the effects of movement of water rights between alluvial aquifer wells and carbonate-rock aquifer wells on deliveries of senior decreed rights to the Muddy River or impacts to the Moapa dace may not be uniform across the entirety of the LWRFS, the relative degree of hydrologic connectedness

³³¹ See SNWA Closing, pp. 10, 16; MVIC Closing, p. 6.

³³² See, e.g., SNWA Closing, p. 10.

³³³ CNLV Closing, p. 8; Tr. 1456–1457, 1458. See also SNWA Closing, p. 16; MVWD Closing, p. 11; MVIC Closing, p. 6.

³³⁴ CNLV Closing, pp. 8–10; Tr. 1457, 1458; NV Energy Closing, p. 4; MVIC Closing, p. 6.

³³⁵ NSE Ex. 256. See also NSE Ex. 14, pp. 20–21; NSE Ex. 17, p. 19; SNWA Closing pp. 2, 3.

in the LWRFS will be the principle factor in determining the impact of movement of water rights. The State Engineer recognizes that there may be discrete, local aquifers within the LWRFS with an uncertain hydrologic connection to the Warm Springs area. Determining the effect of moving water rights into these areas may require additional scientific data and analysis. Applications to move water rights under scenarios not addressed in this Order will be evaluated on their individual merits to determine potential impact to existing senior rights, potential impact to the Warm Springs area and Moapa dace habitat, and impacts to the Muddy River.

X. ORDER

NOW THEREFORE, the State Engineer orders:

1. The Lower White River Flow System consisting of the Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and the northwest portion of the Black Mountains Area as described in this Order, is hereby delineated as a single hydrographic basin. The Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley and the northwest portion of the Black Mountains Area are hereby established as sub-basins within the Lower White River Flow System Hydrographic Basin.
2. The maximum quantity of groundwater that may be pumped from the Lower White River Flow System Hydrographic Basin on an average annual basis without causing further declines in Warm Springs area spring flow and flow in the Muddy River cannot exceed 8,000 afa and may be less.
3. The maximum quantity of water that may be pumped from the Lower White River Flow System Hydrographic Basin may be reduced if it is determined that pumping will adversely impact the endangered Moapa dace.
4. All applications for the movement of existing groundwater rights among sub-basins of the Lower White River Flow System Hydrographic Basin will be processed in accordance with NRS 533.370.

5. The temporary moratorium on the submission of final subdivision or other submission concerning development and construction submitted to the State Engineer for review established under Interim Order 1303 is hereby terminated.
6. All other matters set forth in Interim Order 1303 that are not specifically addressed herein are hereby rescinded.



TIM WILSON, P.E.

State Engineer

Dated at Carson City, Nevada this

15th day of June, 2020.