

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SOUTHERN NEVADA WATER
AUTHORITY,

Appellant,

v.

COYOTE SPRINGS INVESTEMENT,
LLC; et al.,

Respondents.

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Elizabeth A. Brown
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Case No. 84741

**GEORGIA-PACIFIC GYPSUM LLC’S AND REPUBLIC
ENVIRONMENT TECHNOLOGIES, INC.’S OPPOSITION TO
SOUTHERN NEVADA WATER AUTHORITY’S
MOTION TO EXCEED PAGE LIMIT**

NRAP 27(d)(2) appropriately limits motions filed in this Court to just 10 pages. While NRAP 32 allows a party to move to file a brief that exceeds the page limit provided by the rule, it does not expressly apply to motions. Southern Nevada Water Authority (“SNWA”) nonetheless relies on this rule to seek an ***additional 14 pages***—more than double the 10-page limit provided in NRAP 27—for its Emergency Motion for Stay. For the reasons provided in the following points and authorities, Respondents Georgia-Pacific Gypsum LLC (“Georgia Pacific”) and Republic Environmental Technologies, Inc. (“Republic,” and collectively with Georgia-Pacific, “GP-R”) oppose SNWA’s attempt to manipulate the Nevada Rules of Appellate Procedure to use motion practice to argue the merits of its appeal.

MEMORANDUM OF POINTS AND AUTHORITIES

In its Motion to Exceed Page Limit, SNWA inappropriately asks this Court to treat its Emergency Motion for Stay like an appeal. It asks for permission to file a 24-page motion, claiming that “[t]he Motion for Stay addresses complex issues concerning the State Engineer’s authority to jointly manage groundwater basins and conjunctively manage groundwater and surface water.” Mot. at 2. But SNWA grossly conflates the purpose of an appeal with that of a motion for stay. Unlike an appeal, which requires this Court to rigorously analyze the evidence and determine the appropriate outcome, a motion for stay requires this Court to analyze just four factors, including whether there is a *probability* of success on appeal. *See* NRAP 8(c); *see also Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). And unlike an appeal, which asks this Court to take affirmative action, a motion for stay asks this Court to postpone an action. *See Nken v. Holder*, 556 U.S. 418, 429 (2009) (distinguishing a stay from a preliminary injunction because “a stay operates upon the judicial proceeding itself, either by halting or postponing some portion of the proceeding, or by temporarily divesting an order of enforceability”).

Based on the material differences between an appeal and motion for stay, the Nevada Rules of Appellate Procedure provide separate rules and procedures for an appeal and motion. *Compare* NRAP 27 *with* NRAP 28-32. Notably, NRAP 27

limits motions to 10 pages, and does not provide a mechanism through which a party may request additional pages *for a motion*, nor does it provide a procedure for filing appendices *for a motion*. This is likely because a motion does not require the same level of scrutiny and analysis as a complex appeal. Ignoring this distinction, SNWA did both—it exceeded the page limit and filed three appendices while doing so.

Not only did SNWA disregard the procedural rules that differentiate an appeal from a motion, it ignored the substantive differences between these two types of filings. As SNWA readily admits, it included “complex issues concerning the State Engineer’s authority” in its motion for stay, when these types of issues should instead be resolved upon full briefing and opportunity to be heard. *See* NRAP 28-32 (providing the rules for appellate briefing); NRSP 34 (providing the rules for oral argument). What’s more, SNWA files its motion on an emergency basis, accelerating the time within which respondents must respond. SNWA’s attempt to preemptively raise substantive legal issues in its motion for stay, and its request for additional pages to do so, should be denied.

Even if the rules permitted SNWA’s request, SNWA has failed to satisfy the stringent standard for granting such motions. *See* NRAP 32(a)(7)(D) (“A motion to file a brief that exceeds the applicable page limit or type-volume limitation will be granted only upon a showing of diligence and good cause.”). While SNWA has

made clear its desire to prematurely present the underlying arguments of this appeal during motion practice, this does not constitute good cause.

1. NRAP 32(a)(7)(D) Does Not Apply to SNWA's Emergency Motion for Stay.

The Nevada Rules of Appellate Procedure provide parties with the opportunity to request permission to exceed the page limit or type-volume limit when filing their appellate briefs. *See* NRAP 32(a)(7)(D). Providing parties an opportunity to exceed the 30-page limit for briefs makes sense because the purpose of a brief is to provide all factual and legal arguments, supported by the record, and provide the Court with enough information to fully and fairly resolve an appeal. If an appeal is particularly complex or involves a novel issue, a party may need additional space to adequately educate the Court and explain the issues on appeal.

NRAP 32 does not expressly apply to motions. And the rationale justifying exceeding the page limit for a brief does not apply to motions. While briefs are intended to be all-inclusive, motions are limited to a specific issue. Based on the shortened time allotted to motion practice, the uncertainty that such motions will be decided by all justices on the panel or en banc, and the lack of an opportunity for oral argument, motions are not intended to (and should not) address the dispositive issues on appeal.

SNWA nonetheless argues that because of the novelty and complexity of this appeal, it “could not condense the discussion of the NRAP 8(c) factors into just 10

pages.” Mot. at 2. It further argues that it needed to provide a history of groundwater over-appropriation and extensive discussion about the State Engineer’s authority of joint administration and conjunctive management of water basins. *Id.* at 3. But this Court need not resolve the underlying issues on appeal in order to resolve the only question presented in SNWA’s motion—whether a stay is appropriate during the pendency of the appeal. SNWA’s suggestion otherwise is nothing more than a disingenuous attempt to gain an unfair advantage by presenting its substantive arguments in its emergency motion, while respondents have just seven days to respond.

2. SNWA Failed to Prove Diligence and Good Cause, as Required under NRAP 32(a)(7)(D).

Even if NRAP 32(a)(7)(D) applied to SNWA’s Emergency Motion for Stay, requests to exceed page limits are disfavored and “will not be routinely granted.” Instead, “[a] motion to file a brief that exceeds the applicable page limit or type-volume limitation will be granted only upon a showing of diligence and good cause.” NRAP 32(a)(7)(D). SNWA has shown neither diligence nor good cause.

Summarily stating that SNWA has “worked diligently to present the Motion for Stay in a concise manner” does not actually demonstrate that SNWA has acted diligently. Mot. at 2. SNWA provided no specific examples of restraint or diligence in its drafting. On the contrary, it appears that SNWA made very little effort to limit its Emergency Motion for Stay to analysis on the narrow legal question presented in

such motion, which is whether SNWA is likely to prevail on the merits of the appeal. *See* NRAP 8(c). Importantly, NRAP 8(c) does not require SNWA to present its entire argument or prove to the Court at this early stage that its arguments will undoubtedly prevail. It merely requires SNWA to identify the legal errors in the district court's order and show that, based on the district court's legal errors, it will likely succeed on appeal. SNWA can (and should) satisfy NRAP 8(c) without presenting a full-blown history of water appropriation rights in Nevada.

SNWA has further failed to show good cause. SNWA's only argument regarding "good cause" is that this appeal involves complex and novel issues. While this *may* justify an enlarged Opening Brief, it does not justify an enlarged Motion for Stay, for the reasons provided above. This is especially true here because SNWA has requested that this Court review its motion on an emergency basis, providing respondents with just seven days to respond to SNWA's 24-page motion containing substantive analysis on dispositive appellate issues.

CONCLUSION

Respondents GP-R respectfully requests that this Court deny SNWA's Motion to Exceed Page Limit and require SNWA to refile its Emergency Motion to Stay in

compliance with 27(d)(2)'s 10-page limit.

DATED: June 6, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on June 6, 2022, a true and correct copy of the foregoing **GEORGIA-PACIFIC GYPSUM LLC’S AND REPUBLIC ENVIRONMENT TECHNOLOGIES, INC.’S OPPOSITION TO SOUTHERN NEVADA WATER AUTHORITY’S MOTION TO EXCEED PAGE LIMIT** was e-filed and e-served on all registered parties to the Supreme Court’s electronic filing system:

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Dated: June 6, 2022.

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